
IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MICHEAL BACA, POLLY BACA, and
ROBERT NEMANICH,

Plaintiffs-Appellants,

v.

COLORADO DEPARTMENT OF
STATE,

Defendant-Appellee.

Case No. 18-1173

On Appeal from the United States District Court
For the District of Colorado

The Honorable Wiley Y. Daniel, Senior District Court Judge
D.C. No. 1:17-cv-01937-WYD-NYW

APPELLEE'S SUPPLEMENTAL APPENDIX

CYNTHIA H. COFFMAN
Attorney General

FREDERICK R. YARGER*
Solicitor General

LEEANN MORRILL*
First Assistant Attorney General

MATTHEW GROVE*
Assistant Solicitor General

GRANT T. SULLIVAN*
Assistant Solicitor General

State of Colorado, Department of Law
1300 Broadway, 10th Floor
Denver, Colorado 80203
(720) 508-6349

*Counsel of Record
*Attorneys for Colorado Department of
State*

Supplemental Appendix: Volume I Table of Contents

Doc.	Document Title	Appendix Volume & Page Numbers
N/A	Supplemental Appendix Cover	Vol. I, Cover Page
N/A	Supplemental Appendix Table of Contents	Vol. I Appendix Table of Contents, pp. i-ii
N/A	Supplemental Appendix Certificate of Digital Submission and Privacy Redactions	Vol. I, p. iii
N/A	Supplemental Appendix Certificate of Service	Vol. I, p. iv
1	D. Colo. Docket Sheet, 1:16-cv-02986-WYD- NYW (“Baca I”)	Vol. I, pp. 0001 - 013
2	D. Colo. Docket Sheet, 1:17-cv-01937-WYD- NYW (“Baca II”)	Vol. I, pp. 014 - 025
3	Baca I, Official Sample Ballot for 2016 General Election (ECF Doc. 13-1)	Vol. I, pp. 026 - 027
4	Baca I, U.S. Tenth Circuit Court of Appeals Order (ECF Doc. 26)	Vol. I, pp. 028 - 042
5	Baca I, District Court Order (ECF Doc. 27)	Vol. I, pp. 043 - 055
6	Baca I, Scheduling Order (ECF Doc. 28)	Vol. I, pp. 056 - 65

7	Baca I, Plaintiffs' Notice of Dismissal Without Prejudice (ECF Doc. 57)	Vol. I, pp. 066 - 068
8	Baca I, Reporter's Transcript Motion Proceedings (excerpts from December 12, 2016 hearing)	Vol. I, pp. 069 - 084
9	Baca II, Complaint (ECF Doc. 1)	Vol. I, pp. 085 - 096
10	Baca II, Plaintiffs' Notice of Amended Complaint (ECF Doc. 13)	Vol. I, pp. 097 - 099
11	Baca II, Exhibit 1 to Plaintiffs' Notice of Amended Complaint (ECF Doc. 13-1)	Vol. I, pp. 0100 - 0113
12	Baca II, Order of the Court Re: Stipulation of the Parties (ECF Doc. 37)	Vol. I, pp. 0114 - 0117

**CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY
REDACTIONS**

This is to certify that the undersigned has complied with the electronic filing requirements set forth in 10th Cir. R. 30.1, including the requirement concerning privacy redactions and the certification that there are no known viruses attached to the electronic submission. The digital submission has been scanned for viruses with the most recent version of CrowdStrike Falcon, Version 4.10.7310.0, recently updated on 08/21/2018, and according to the program is free of viruses. In addition, I certify that the foregoing documents contained in this APPELLEE'S SUPPLEMENTAL APPENDIX are exact copies of the hard copies filed with the Clerk.

s/ Xan Serocki

Dated August 22, 2018

CERTIFICATE OF SERVICE

This is to certify that I have electronically served the foregoing
APPELLEE'S SUPPLEMENTAL APPENDIX upon all parties herein
via CM/ECF on this 22nd day of August, 2018, addressed as follows:

Jason B. Wesoky
1331 17th Street, Suite 800
Denver, CO 80202
Jason.w@hamiltondefenders.org

Lawrence Lessig
Jason Harrow
Equal Citizens
12 Eliot St.
Cambridge, MA 02138
lessig@law.harvard.edu
jason@equalcitizens.us

/s/ Xan Serocki

JD1,NDISPO,TERMED

U.S. District Court - District of Colorado
District of Colorado (Denver)
CIVIL DOCKET FOR CASE #: 1:16-cv-02986-WYD-NYW

Baca et al v. Hickenlooper et al	Date Filed: 12/06/2016
Assigned to: Judge Wiley Y. Daniel	Date Terminated: 08/02/2017
Referred to: Magistrate Judge Nina Y. Wang	Jury Demand: None
Case in other court: USCA, 16-01482	Nature of Suit: 950
Cause: 28:2201 Constitutionality of State Statute(s)	Constitutionality of State Statutes
	Jurisdiction: Federal Question

Plaintiff**Polly Baca**

represented by **Jason Bryan Wesoky**
Darling Milligan Horowitz PC
1331 17th Street
Suite 800
Denver, CO 80202
303-623-9133
Fax: 303-623-9129
Email: jwesoky@dmhlaw.net
ATTORNEY TO BE NOTICED

Plaintiff**Robert Nemanich**

represented by **Jason Bryan Wesoky**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

John W. Hickenlooper, Jr.
*in his official capacity as Governor
of Colorado*

represented by **Grant T. Sullivan**
Colorado Attorney General's
Office
Ralph L. Carr Colorado Judicial
Center
1300 Broadway
Denver, CO 80203
720-508-6349

Supplemental Appendix 0001

Fax: 720-508-6038
Email: grant.sullivan@coag.gov
ATTORNEY TO BE NOTICED

LeeAnn Morrill
Colorado Attorney General's
Office
Ralph L. Carr Colorado Judicial
Center
1300 Broadway
Denver, CO 80203
720-508-6000
Fax: 720-508-6032
Email: leeann.morrill@coag.gov
ATTORNEY TO BE NOTICED

Matthew David Grove
Colorado Attorney General's
Office
Ralph L. Carr Colorado Judicial
Center
1300 Broadway
Denver, CO 80203
720-508-6000
Fax: 720-508-6032
Email: matt.grove@coag.gov
ATTORNEY TO BE NOTICED

Defendant

Cynthia H. Coffman
in her official capacity as
Attorney General of Colorado

represented by **Grant T. Sullivan**
(See above for address)
ATTORNEY TO BE NOTICED

LeeAnn Morrill
(See above for address)
ATTORNEY TO BE NOTICED

Matthew David Grove
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Supplemental Appendix 0002

Appellate Case: 18-1173 Document: 010110041321 Date Filed: 08/22/2018 Page: 8

Cynthia (I) H. Coffman
Individually

represented by **Grant T. Sullivan**
(See above for address)
ATTORNEY TO BE NOTICED

LeeAnn Morrill
(See above for address)
ATTORNEY TO BE NOTICED

Matthew David Grove
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Wayne W. Williams
in his official capacity as
Colorado Secretary of State

represented by **Grant T. Sullivan**
(See above for address)
ATTORNEY TO BE NOTICED

LeeAnn Morrill
(See above for address)
ATTORNEY TO BE NOTICED

Matthew David Grove
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Wayne (I) W. Williams
Individually

represented by **Grant T. Sullivan**
(See above for address)
ATTORNEY TO BE NOTICED

LeeAnn Morrill
(See above for address)
ATTORNEY TO BE NOTICED

Matthew David Grove
(See above for address)
ATTORNEY TO BE NOTICED

Intervenor

Colorado Republican
Committee

represented by **Christopher Owen Murray**
Brownstein Hyatt Farber Schreck,
LLP-Denver

Supplemental Appendix 0003

410 17th Street
 Suite 2200
 Denver, CO 80202-4432
 303-223-1100
 Fax: 303-223-1111
 Email: cmurray@bhfs.com
ATTORNEY TO BE NOTICED

Intervenor**Donald J. Trump**

represented by **Christopher Owen Murray**
 (See above for address)
ATTORNEY TO BE NOTICED

Intervenor**Donald J. Trump for President, Inc.**

represented by **Christopher Owen Murray**
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/06/2016	1	COMPLAINT against All Defendants (Filing fee \$ 400,Receipt Number 1082-5275753)Attorney Jason Bryan Wesoky added to party Polly Baca(pty:pla), Attorney Jason Bryan Wesoky added to party Robert Nemanich(pty:pla), filed by Polly Baca, Robert Nemanich. (Attachments: # 1 Exhibit 1, # 2 Civil Cover Sheet, # 3 Summons to John W. Hickenlooper, Jr., in his official capacity as Governor of Colorado, # 4 Summons to Cynthia H. Coffman, in her official capacity as Attorney General of Colorado, # 5 Summons to Wayne W. Williams, in his official capacity as Colorado Secretary of State)(Wesoky, Jason) (Entered: 12/06/2016)
12/06/2016	2	MOTION for Temporary Restraining Order <i>and Preliminary Injunction</i> by Plaintiffs Polly Baca, Robert Nemanich. (Attachments: # 1 Proposed Order (PDF Only))(Wesoky, Jason) (Entered: 12/06/2016)
12/06/2016	3	Case assigned to Judge Wiley Y. Daniel and drawn to Magistrate Judge Nina Y. Wang. Text Only Entry (dbera,) (Entered: 12/06/2016)
12/06/2016	4	SUMMONS issued by Clerk. (Attachments: # 1 Summons, # 2 Summons, # 3 Magistrate Judge Consent Form) (dbera,) (Entered: 12/06/2016)

Supplemental Appendix 0004

12/06/2016	5	Exhibits in Support of 2 MOTION for Temporary Restraining Order <i>and Preliminary Injunction</i> by Plaintiffs Polly Baca, Robert Nemanich. (Wesoky, Jason) (Entered: 12/06/2016)
12/07/2016	6	NOTICE of Entry of Appearance by Matthew David Grove on behalf of All Defendants Attorney Matthew David Grove added to party Cynthia H. Coffman(pty:dft), Attorney Matthew David Grove added to party John W. Hickenlooper, Jr(pty:dft), Attorney Matthew David Grove added to party Wayne W. Williams(pty:dft) (Grove, Matthew) (Entered: 12/07/2016)
12/08/2016	7	NOTICE of Entry of Appearance by Grant T. Sullivan on behalf of All Defendants Attorney Grant T. Sullivan added to party Cynthia H. Coffman(pty:dft), Attorney Grant T. Sullivan added to party John W. Hickenlooper, Jr(pty:dft), Attorney Grant T. Sullivan added to party Wayne W. Williams(pty:dft) (Sullivan, Grant) (Entered: 12/08/2016)
12/08/2016	8	ORDER REFERRING CASE to Magistrate Judge Nina Y. Wang for non-dispositive matters. That pursuant to 28 U.S.C. Section 636 (b)(1)(A) and (B) and Fed. R. Civ. P. 72(a) and (b), this matter is referred to the assigned United States Magistrate Judge is designated to conduct proceedings in this civil action as follows: (1) Convene a scheduling conference under Fed.R.Civ.P. 16(b) and enter a scheduling order meeting the requirements of D.C.COLO.LCivR 16.2. (2) Conduct such status conferences and issue such orders necessary for compliance with the scheduling order, including amendments or modifications of the scheduling order upon a showing of good cause. (3) Hear and determine pretrial matters, including discovery and other non-dispositive motions. (4) Alternative Dispute Resolution Authority: Court sponsored alternative dispute resolution is governed by D.C.COLOLCivR 16.6. On the recommendation or informal request of the magistrate judge, or on the request of the parties by motion, the court may direct the parties to engage in an early neutral evaluation, a settlement conference, or another alternative dispute resolution proceeding. (5) Conduct a pretrial conference and enter a pretrial order. It is further ORDERED that parties and counsel shall be familiar and comply with the above judge's requirements found at www.cod.uscourts.gov . Entered by Judge Wiley Y. Daniel on 12/8/16. Text Only Entry (rkeec) (Entered: 12/08/2016)
12/08/2016	9	MINUTE ORDER A hearing on Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction ECF No. 2 , filed

Supplemental Appendix 0005

		December 6, 2016, is set for Tuesday, December 13, 2016, at 1:30 p.m. in Courtroom A-1002. Defendants shall file an expedited response to Plaintiffs Motion no later than 12:00 p.m. on Monday, December 12, 2016. Plaintiffs shall serve all pleadings in this case, including this Order, on the Defendants and their counsel no later than 12:00 p.m. on Friday, December 9, 2016, by Judge Wiley Y. Daniel on 12/8/2016. (evana,) (Entered: 12/08/2016)
12/08/2016	10	AMENDED MINUTE ORDER re: 9 Order Setting Hearing on Plaintiffs 2 Motion for Temporary Restraining Order and Preliminary Injunction, is RESET for Monday, December 12, 2016, at 3:00 p.m. in Courtroom A-1002 . Defendants shall file an expedited response to Plaintiffs Motion no later than 5:00 p.m. on Friday, December 9, 2016 , by Judge Wiley Y. Daniel on 12/8/2016. (evana,) (Entered: 12/08/2016)
12/09/2016	11	MOTION to Intervene by Interested Party Colorado Republican Committee. (Attachments: # 1 Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, # 2 Answer in Intervention)(Murray, Christopher) (Modified on 12/12/2016 edited the name to Interested party until the motion is ruled on)(evana,). (Entered: 12/09/2016)
12/09/2016	12	Unopposed MOTION for Leave to File Excess Pages <i>in Response to Motion for Preliminary Injunction</i> by Defendants Cynthia H. Coffman, John W. Hickenlooper, Jr, Wayne W. Williams. (Sullivan, Grant) (Entered: 12/09/2016)
12/09/2016	13	RESPONSE to 2 MOTION for Preliminary Injunction filed by Defendants Cynthia H. Coffman, John W. Hickenlooper, Jr, Wayne W. Williams. (Attachments: # 1 Exhibit)(Sullivan, Grant) (Modified on 12/12/2016 edited to correct the link to 2 and the text)(evana,). (Entered: 12/09/2016)
12/09/2016	14	NOTICE of Entry of Appearance by LeeAnn Morrill on behalf of All Defendants Attorney LeeAnn Morrill added to party Cynthia H. Coffman(pty:dft), Attorney LeeAnn Morrill added to party John W. Hickenlooper, Jr(pty:dft), Attorney LeeAnn Morrill added to party Wayne W. Williams(pty:dft) (Morrill, LeeAnn) (Entered: 12/09/2016)
12/09/2016	15	MINUTE ORDER Putative Intervenor Colorado Republican Committee's Motion to Intervene ECF No. 11 , filed on December 9, 2016, is GRANTED. Additionally, Defendants' Unopposed Motion to Exceed Page Limitation ECF No. 12 , filed December 9, 2016, is

Supplemental Appendix 0006

		GRANTED, by Judge Wiley Y. Daniel on 12/9/2016. (evana,) (Entered: 12/12/2016)
12/12/2016	16	MOTION to Intervene by Interested Parties Donald J. Trump, Donald J. Trump for President, Inc.. (Attachments: # 1 Answer in Intervention)(Murray, Christopher) (Modified on 12/12/2016 edited the party text to Interested Party until the Motion has been ruled on) (evana,). (Entered: 12/12/2016)
12/12/2016	17	JOINDER re 11 MOTION to Intervene ; <i>Joinder in Intervenor Colorado Republican Committee's Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction</i> by Intervenor Parties Donald J. Trump for President, Inc., Donald J. Trump. (Murray, Christopher) (Entered: 12/12/2016)
12/12/2016	18	MINUTE ORDER Granting 16 the Motion to Intervene by President-Elect Donald J. Trump and Donald J. Trump for President. Either the Intervenors or their counsel of record is hereby directed to appear at the hearing on Plaintiffs Motion for Temporary Restraining Order and Preliminary Injunction ECF No. 2 , set for Monday, December 12, 2016, at 3:00 p.m. in Courtroom A-1002, by Judge Wiley Y. Daniel on 12/12/2016. (evana,) (Entered: 12/12/2016)
12/12/2016	19	COURTROOM MINUTES for Motion Hearing held before Judge Wiley Y. Daniel on 12/12/2016. Denying 2 Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction. A written order will issue. Court Reporter: Julie Thomas. (ebuch) (Entered: 12/12/2016)
12/13/2016	20	NOTICE OF APPEAL as to 19 Order on Motion for TRO,, Motion Hearing, by Plaintiffs Polly Baca, Robert Nemanich (Filing fee \$ 505, Receipt Number 1082-5284974) (Wesoky, Jason) (Entered: 12/13/2016)
12/13/2016	21	LETTER Transmitting Notice of Appeal to all counsel advising of the transmittal of the 20 Notice of Appeal filed by Robert Nemanich, Polly Baca to the U.S. Court of Appeals. (Retained Counsel, Fee paid,) (Attachments: # 1 Docket Sheet, # 2 Preliminary Record) (evana,) (Entered: 12/13/2016)
12/13/2016	22	USCA Case Number 16-1482 for 20 Notice of Appeal filed by Robert Nemanich, Polly Baca. (evana,) (Entered: 12/13/2016)
12/14/2016	23	TRANSCRIPT of MOTION PROCEEDINGS held on 12/12/16 before Judge Daniel. Pages: 1-73. NOTICE - REDACTION

Supplemental Appendix 0007

		OF TRANSCRIPTS: Within seven calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal identifiers from the electronic transcript of the court proceeding. If a Notice of Intent to Redact is not filed within the allotted time, this transcript will be made electronically available after 90 days. Please see the Notice of Electronic Availability of Transcripts document at www.cod.uscourts.gov. Transcript may only be viewed at the court public terminal or purchased through the Court Reporter/Transcriber prior to the 90 day deadline for electronic posting on PACER. (Thomas, Julie) (Entered: 12/14/2016)
12/14/2016	24	ORDER SETTING RULE 16(b) SCHEDULING CONFERENCE by Magistrate Judge Nina Y. Wang on 12/14/16. A Scheduling Conference is set for 1/18/2017 02:00 PM in Courtroom C204 before Magistrate Judge Nina Y. Wang. The parties shall submit their proposed scheduling order, including a copy of the proposed order in Word format sent via email to Daniel_Chambers@cod.uscourts.gov and Wang_Chambers@cod.uscourts.gov, on or before 1/4/2017. (bwilk,) (Entered: 12/14/2016)
12/14/2016	25	Utility Correcting Hearing - Scheduling Conference set for 1/18/2017 02:00 PM in Courtroom A1002 before Judge Wiley Y. Daniel . Corrective entry to move hearing and courtroom from Judge Wang to Judge Daniel. Text Only Entry(bwilk,) (Entered: 12/15/2016)
12/16/2016	26	USCA Order as to 20 Notice of Appeal filed by Robert Nemanich, Polly Baca : (USCA Case No. 16-1482) Plaintiffs' emergency motion for injunction pending appeal is DENIED. (This document is not the Mandate) (Attachments: # 1 cover letter to Order)(evana,) (Entered: 12/19/2016)
12/21/2016	27	ORDER Denying 2 MOTION for Temporary Restraining Order and Preliminary Injunction filed by Robert Nemanich, Polly Baca. Plaintiffs have failed to meet the requirements to grant a temporary restraining order and preliminary injunction in this matter, by Judge Wiley Y. Daniel on 12/21/2016. (evana,) (Entered: 12/21/2016)
01/04/2017	28	Proposed Scheduling Order by Plaintiffs Polly Baca, Robert Nemanich. (Wesoky, Jason) (Entered: 01/04/2017)
01/10/2017	29	USCA Order as to 20 Notice of Appeal filed by Robert Nemanich, Polly Baca : This matter is before the court on Appellants

Supplemental Appendix 0008

		Unopposed Motion to Dismiss Appeal, which is construed as a motion for voluntary dismissal pursuant to Fed. R. App. P. 42(b). Upon consideration and as construed, the motion is granted and this appeal is dismissed. 10th Cir. R. 27.4(A)(9). (USCA Case No. 16-1482) (This document is not the Mandate) (evana,) (Entered: 01/10/2017)
01/10/2017	30	MANDATE of USCA as to 20 Notice of Appeal filed by Robert Nemanich, Polly Baca, 29 USCA Order/Opinion/Judgment, : (USCA Case No. 16-1482) (evana,) (Entered: 01/10/2017)
01/12/2017	31	MOTION to Stay <i>Discovery and Disclosures and for Protective Order Under Fed. R. Civ. P. 26(c)</i> by Defendants Cynthia H. Coffman, John W. Hickenlooper, Jr, Wayne W. Williams. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Sullivan, Grant) (Entered: 01/12/2017)
01/13/2017	32	JOINDER re 31 MOTION to Stay <i>Discovery and Disclosures and for Protective Order Under Fed. R. Civ. P. 26(c)</i> by Intervenor Parties Colorado Republican Committee, Donald J. Trump for President, Inc., Donald J. Trump. (Murray, Christopher) (Entered: 01/13/2017)
01/13/2017	33	MEMORANDUM regarding 31 MOTION to Stay <i>Discovery and Disclosures and for Protective Order Under Fed. R. Civ. P. 26(c)</i> filed by John W. Hickenlooper, Jr., Cynthia H. Coffman, Wayne W. Williams. Motion referred to Magistrate Judge Nina Y. Wang by Judge Wiley Y. Daniel on 1/13/17. Text Only Entry (rkeec) (Entered: 01/13/2017)
01/13/2017	34	MINUTE ORDER: in light of the 31 MOTION to Stay <i>Discovery and Disclosures and for Protective Order Under Fed. R. Civ. P. 26 (c)</i> that Defendants just filed and to which Plaintiffs have not yet had an opportunity to respond, the Scheduling Conference set for 1/18/2017 is VACATED. The court will reset the Scheduling Conference upon resolution of the Motion to Stay, if appropriate. By Magistrate Judge Nina Y. Wang on 1/13/2017. Text Only Entry (nywlc1) (Entered: 01/13/2017)
01/31/2017	35	MOTION to Dismiss <i>Under Fed. R. Civ. P. 12(b)(1) and 12(b)(6)</i> by Defendants Cynthia H. Coffman, John W. Hickenlooper, Jr, Wayne W. Williams. (Sullivan, Grant) (Entered: 01/31/2017)
02/02/2017	36	MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Stay <i>Discovery and Disclosures and for Protective</i>

Supplemental Appendix 0009

		<i>Order Under Fed. R. Civ. P. 26(c)</i> by Plaintiffs Polly Baca, Robert Nemanich. (Wesoky, Jason) (Entered: 02/02/2017)
02/03/2017	37	MEMORANDUM regarding 36 MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Stay <i>Discovery and Disclosures and for Protective Order Under Fed. R. Civ. P. 26(c)</i> filed by Robert Nemanich, Polly Baca. Motion referred to Magistrate Judge Nina Y. Wang by Judge Wiley Y. Daniel on 2/3/17. Text Only Entry (rkeec) (Entered: 02/03/2017)
02/03/2017	38	ORDER granting 36 Motion for Extension of Time to File Response/Reply. The Response is due on or before 2/14/2017. Counsel are reminded they must serve their clients contemporaneously with any motion seeking an extension of time. See D.C.COLO.LCivR 6.1(c). By Magistrate Judge Nina Y. Wang on 2/3/2017. Text Only Entry (nywlc1) (Entered: 02/03/2017)
02/14/2017	39	RESPONSE to 31 MOTION to Stay <i>Discovery and Disclosures and for Protective Order Under Fed. R. Civ. P. 26(c)</i> filed by Plaintiffs Polly Baca, Robert Nemanich. (Wesoky, Jason) (Entered: 02/14/2017)
02/21/2017	40	MOTION for Extension of Time to File Response/Reply as to 35 MOTION to Dismiss <i>Under Fed. R. Civ. P. 12(b)(1) and 12(b)(6)</i> by Plaintiffs Polly Baca, Robert Nemanich. (Wesoky, Jason) (Entered: 02/21/2017)
02/22/2017	41	MINUTE ORDER Plaintiffs' Unopposed Motion for Extension of Time to Respond to Defendants' Motion to Dismiss Under Fed. R. Civ. P. 12(b)(1) and (12)(b)(6) ECF No. 40 , is GRANTED . Accordingly, Plaintiffs shall file their response to Defendants motion to dismiss not later than Friday, February 24, 2017 , by Judge Wiley Y. Daniel on 2/22/2017. (evana,) (Entered: 02/22/2017)
02/24/2017	42	RESPONSE to 35 MOTION to Dismiss <i>Under Fed. R. Civ. P. 12(b)(1) and 12(b)(6)</i> filed by Plaintiffs Polly Baca, Robert Nemanich. (Wesoky, Jason) (Entered: 02/24/2017)
02/27/2017	43	REPLY to RESPONSE to 31 MOTION to Stay Discovery and Disclosures and for Protective Order Under Fed. R. Civ. P. 26(c) filed by Defendants Cynthia H. Coffman, John W. Hickenlooper, Jr, Wayne W. Williams. (Attachments: # 1 Exhibit C, # 2 Exhibit D) (Sullivan, Grant) (Modified on 3/2/2017 edited the title of the text to reflect the title of the document filed)(evana,). (Entered: 02/27/2017)

Supplemental Appendix 0010

02/28/2017	44	MOTION to Amend/Correct/Modify 1 Complaint,, <i>Under Fed. R. Civ. P. 15(a)(2)</i> by Plaintiffs Polly Baca, Robert Nemanich. (Attachments: # 1 Amended Complaint)(Wesoky, Jason) (Entered: 02/28/2017)
02/28/2017	45	MEMORANDUM regarding 44 MOTION to Amend/Correct/Modify 1 Complaint,, <i>Under Fed. R. Civ. P. 15(a)(2)</i> filed by Robert Nemanich, Polly Baca. Motion referred to Magistrate Judge Nina Y. Wang by Judge Wiley Y. Daniel on 2/28/17. Text Only Entry (rkeec) (Entered: 02/28/2017)
03/10/2017	46	MINUTE ORDER re: 44 MOTION to Amend/Correct/Modify 1 Complaint,, <i>Under Fed. R. Civ. P. 15(a)(2)</i> filed by Robert Nemanich, Polly Baca. On or before 3/14/2017, Plaintiffs shall file a copy of the proposed amended pleading which strikes through the text to be deleted and underlines the text to be added, in accordance with D.C.COLO.LCivR 15.1. By Magistrate Judge Nina Y. Wang on 3/10/2017. Text Only Entry (nywlc1) (Entered: 03/10/2017)
03/14/2017	47	NOTICE of Proposed Redlined AMENDED COMPLAINT against Cynthia H. Coffman, John W. Hickenlooper, Jr, Wayne W. Williams, filed by Polly Baca, Robert Nemanich.(Wesoky, Jason) (Modified on 3/15/2017 the text has been edited to reflect that this is a PROPOSED Document and NOT and Amended Complaint as filed)(evana,). (Entered: 03/14/2017)
03/21/2017	48	RESPONSE to 44 MOTION to Amend/Correct/Modify 1 Complaint,, <i>Under Fed. R. Civ. P. 15(a)(2) Defendants' Response to Motion to Amend</i> filed by Defendants Cynthia H. Coffman, John W. Hickenlooper, Jr, Wayne W. Williams. (Sullivan, Grant) (Entered: 03/21/2017)
03/21/2017	49	JOINDER re 48 Response to Motion, by Intervenor Parties Colorado Republican Committee, Donald J. Trump for President, Inc., Donald J. Trump. (Murray, Christopher) (Entered: 03/21/2017)
04/28/2017	50	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE that 44 MOTION to Amend/Correct/Modify 1 Complaint,, <i>Under Fed. R. Civ. P. 15(a)(2)</i> filed by Robert Nemanich, Polly Baca, be GRANTED. By Magistrate Judge Nina Y. Wang on 4/28/2017. (nywlc1) (Entered: 04/28/2017)
05/02/2017	51	MINUTE ORDER re: 31 MOTION to Stay <i>Discovery and Disclosures and for Protective Order Under Fed. R. Civ. P. 26(c)</i> filed by John W. Hickenlooper, Jr., Cynthia H. Coffman, Wayne W.

Supplemental Appendix 0011

		Williams. A Motion Hearing is set for 5/23/2017 02:00 PM in Courtroom C204 before Magistrate Judge Nina Y. Wang. Counsel should be prepared to address the Motion to Stay in light of the 50 Recommendation that the Motion to Amend be granted, including how, if at all, the proposed amended complaint affects the discovery Plaintiffs seek. By Magistrate Judge Nina Y. Wang on 5/2/2017. Text Only Entry (nywlc1) (Entered: 05/02/2017)
05/23/2017	52	COURTROOM MINUTES/MINUTE ORDER for Motion Hearing held on 5/23/2017 before Magistrate Judge Nina Y. Wang. Defendants' Motion to Stay Discovery and Disclosures and for Protective Order Under Fed. R. Civ. P. 26(c) 31 is TAKEN UNDER ADVISEMENT. A separate written order shall issue. FTR: Courtroom C-204. (bwilk,) (Entered: 05/24/2017)
05/24/2017	53	ORDER by Magistrate Judge Nina Y. Wang on 5/24/17. The Motion to Stay Discovery and Disclosures and for Protective Order Under Fed. R.Civ. P. 26(c) 31 is GRANTED; Defendants and Intervenors are ORDERED to PRESERVE all documents that could be relevant to this action under Rule 26(b)(1), including but not limited to any documents that would be identified and disclosed pursuant to Rule 26(a)(1) Initial Disclosures; and The Parties shall file a joint status report with the court within five days following a disposition of either the original motion to dismiss or renewed motion to dismiss, depending on whether the original motion to dismiss is mooted and then replaced, should the ruling not dispose of the case in its entirety. (bwilk,) (Entered: 05/24/2017)
07/18/2017	54	ORDER that the Recommendation of United States Magistrate Judge ECF No. 50 is AFFIRMED and ADOPTED. In accordance therewith, it is ORDERED that Plaintiffs' Motion to Amend Under Fed. R. Civ. P.15(a)(2) ECF No. 44 is GRANTED and the Court accepts ECF. No. 44-1 as the First Amended Complaint. Further, it is ORDERED that Defendants' Motion to Dismiss Under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) ECF No. 35 is DENIED as MOOT. See Quezada v. Mink, No. 10-cv-00879-REB-KLM, 2010 WL 5343143, at *1 (D. Colo. Dec. 21, 2010) (The filing of an amended complaint moots a motion to dismiss directed at the superseded complaint.), by Judge Wiley Y. Daniel on 7/18/2017. (evana,) (Entered: 07/18/2017)
07/18/2017	55	AMENDED COMPLAINT against Cynthia H. Coffman in her Official and Individual capacity, Colorado Republican Committee, Donald J. Trump for President, Inc., John W. Hickenlooper, Jr,

Supplemental Appendix 0012

		Donald J. Trump, Wayne W. Williams in his Official and Individual capacity, filed by Polly Baca, Robert Nemanich.(evana,) (Entered: 07/18/2017)
07/24/2017	56	STIPULATION of Dismissal of Party <i>Donald J. Trump for President, Inc. and Donald J. Trump</i> by Intervenor Parties Colorado Republican Committee, Donald J. Trump for President, Inc., Donald J. Trump. (Murray, Christopher) (Entered: 07/24/2017)
08/01/2017	57	NOTICE of Voluntary Dismissal of Case <i>without Prejudice, or in the Alternative, Stipulated Motion to Dismiss without Prejudice</i> by Plaintiffs Polly Baca, Robert Nemanich (Wesoky, Jason) (Entered: 08/01/2017)
08/02/2017	58	ORDER DISMISSING CASE THIS MATTER is before the Court on Plaintiffs' Notice of Dismissal Without Prejudice, or, in the Alternative Stipulated Motion to Dismiss Without Prejudice ECF No. 57 , filed August 1, 2017. Plaintiffs notify the Court that they wish to voluntarily dismiss their case pursuant to Fed. R. Civ. P. 41 (a)(1)(A)(i). Plaintiffs filed their Amended Complaint ECF No. 55 on July 18, 2017, and none of the Defendants has filed an answer to Plaintiffs' Amended Complaint or other responsive pleading. Accordingly, it is ORDERED that this case is DISMISSED WITHOUT PREJUDICE, each party to pay its own costs and attorneys fees, by Judge Wiley Y. Daniel on 8/2/2017. (evana,) (Entered: 08/02/2017)

APPEAL,JD4,NDISPO,TERMED

U.S. District Court - District of Colorado
District of Colorado (Denver)
CIVIL DOCKET FOR CASE #: 1:17-cv-01937-WYD-NYW

Baca et al v. Colorado Department of State
Assigned to: Judge Wiley Y. Daniel
Referred to: Magistrate Judge Nina Y. Wang
Case in other court: USCA, 18-01173
Cause: 42:1983 Civil Rights Act

Date Filed: 08/10/2017
Date Terminated: 04/10/2018
Jury Demand: None
Nature of Suit: 441 Civil Rights:
Voting
Jurisdiction: Federal Question

Plaintiff

Micheal Baca

represented by **Jason Bryan Wesoky**
Darling Milligan Horowitz PC
1331 17th Street
Suite 800
Denver, CO 80202
303-623-9133
Fax: 303-623-9129
Email: jwesoky@dmhlaw.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lester Lawrence Lessig , III
Harvard Law School
1563 Massachusetts Avenue
Cambridge, MA 02138
617-496-8853
Email: lessig@this.is
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jason Seth Harrow
Equal Citizens
20 Armory Street
Brookline, MA 02446
610-357-9614

Supplemental Appendix 0014

Email: jason@equalcitizens.us
ATTORNEY TO BE NOTICED

Plaintiff

Polly Baca

represented by **Lester Lawrence Lessig , III**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jason Seth Harrow
(See above for address)
ATTORNEY TO BE NOTICED

Jason Bryan Wesoky
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Robert Nemanich

represented by **Lester Lawrence Lessig , III**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jason Seth Harrow
(See above for address)
ATTORNEY TO BE NOTICED

Jason Bryan Wesoky
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Colorado Department of State

represented by **Grant T. Sullivan**
Colorado Attorney General's
Office
Ralph L. Carr Colorado Judicial
Center
1300 Broadway
Denver, CO 80203
720-508-6349

Supplemental Appendix 0015

Appellate Case: 18-1173 Document: 010110041321 Date Filed: 08/22/2018 Page: 21

Fax: 720-508-6038
Email: grant.sullivan@coag.gov
ATTORNEY TO BE NOTICED

Matthew David Grove
Colorado Attorney General's
Office
Ralph L. Carr Colorado Judicial
Center
1300 Broadway
Denver, CO 80203
720-508-6000
Fax: 720-508-6032
Email: matt.grove@coag.gov
ATTORNEY TO BE NOTICED

Defendant

Wayne W. Williams
*Colorado Secretary of State, in
his individual capacity*
TERMINATED: 10/25/2017

represented by **Grant T. Sullivan**
(See above for address)
ATTORNEY TO BE NOTICED

LeeAnn Morrill
Colorado Attorney General's
Office
Ralph L. Carr Colorado Judicial
Center
1300 Broadway
Denver, CO 80203
720-508-6000
Fax: 720-508-6032
Email: leeann.morrill@coag.gov
ATTORNEY TO BE NOTICED

Matthew David Grove
(See above for address)
ATTORNEY TO BE NOTICED

William V. Allen
Colorado Attorney General's
Office
Ralph L. Carr Colorado Judicial
Center

Supplemental Appendix 0016

1300 Broadway
 Denver, CO 80203
 720-508-6000
 Fax: 720-508-6032
 Email: Will.allen@coag.gov
 TERMINATED: 01/23/2018

Date Filed	#	Docket Text
08/10/2017	1	COMPLAINT against Wayne W. Williams (Filing fee \$ 400,Receipt Number 1082-5657982)Attorney Jason Bryan Wesoky added to party Polly Baca(pty:pla), Attorney Jason Bryan Wesoky added to party Robert Nemanich(pty:pla), filed by Robert Nemanich, Polly Baca. (Attachments: # 1 Civil Cover Sheet, # 2 Summons, # 3 Notice of a Lawsuit and Request to Waive Service of Summons)(Wesoky, Jason) (Entered: 08/10/2017)
08/10/2017	2	Case assigned to Magistrate Judge Nina Y. Wang. Text Only Entry (dbera,) (Entered: 08/10/2017)
08/10/2017	3	SUMMONS issued by Clerk. (Attachments: # 1 Magistrate Judge Consent Form) (dbera,) (Entered: 08/10/2017)
08/18/2017	4	SUMMONS Returned Executed by All Plaintiffs. All Defendants. (Wesoky, Jason) (Entered: 08/18/2017)
08/21/2017	5	ORDER by Magistrate Judge Nina Y. Wang on 8/21/2017. Consent Form due by 9/19/2017. Scheduling Conference set for 10/3/2017 10:30 AM in Courtroom C204 before Magistrate Judge Nina Y. Wang. (tsher,) (Entered: 08/21/2017)
09/06/2017	6	NOTICE of Entry of Appearance by Grant T. Sullivan on behalf of Wayne W. Williams (Sullivan, Grant) (Entered: 09/06/2017)
09/06/2017	7	Stipulated MOTION for Extension of Time to File Answer or Otherwise Respond re 1 Complaint, by Defendant Wayne W. Williams. (Sullivan, Grant) (Entered: 09/06/2017)
09/06/2017	8	NOTICE OF CASE ASSOCIATION by Grant T. Sullivan on behalf of Wayne W. Williams (Sullivan, Grant) (Entered: 09/06/2017)
09/06/2017	9	MINUTE ORDER: Pending before the court is 7 Defendant's Unopposed Motion for Extension of Time to Answer or Otherwise Respond. The Parties indicate that this 21-day extension is sought pursuant to D.C.COLO.LCivR 6.1(a). Accordingly, this court construes the motion as the Parties' one stipulation for an extension

Supplemental Appendix 0017

		of time pursuant to Local Rule 6.1(a). Defendant Wayne W. Williams shall answer or otherwise respond on or before 9/28/2017. By Magistrate Judge Nina Y. Wang on 9/6/2017. Text Only Entry (nywlc2,) (Entered: 09/06/2017)
09/12/2017	10	MOTION to Stay <i>Discovery and Disclosures and For Protective Order Under Fed. R. Civ. P. 26(c)</i> by Defendant Wayne W. Williams. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Sullivan, Grant) (Entered: 09/12/2017)
09/14/2017	11	NOTICE of Entry of Appearance by LeeAnn Morrill on behalf of Wayne W. WilliamsAttorney LeeAnn Morrill added to party Wayne W. Williams(pty:dft) (Morrill, LeeAnn) (Entered: 09/14/2017)
09/19/2017	12	CONSENT to Jurisdiction of Magistrate Judge by Plaintiffs Polly Baca, Robert Nemanich All parties consent.. (Wesoky, Jason) (Entered: 09/19/2017)
09/20/2017	13	NOTICE of Filing Amended Pleading - <i>Amended Complaint</i> by Plaintiffs Polly Baca, Robert Nemanich (Attachments: # 1 Exhibit Amended Complaint, # 2 Exhibit Redline of Amended Complaint) (Wesoky, Jason) (Entered: 09/20/2017)
09/20/2017	14	ORDER: Pursuant to 28 U.S.C. 636(c)(4) and Local Rule 40.1(c)(9), the undersigned finds that although the parties have consented to the have the Magistrate Judge preside in full over this action, the subject matter of the action -- a challenge to the constitutionality of a state statute -- has a public consequence that makes the case inappropriate for reference to a Magistrate Judge upon the private parties' consent. Accordingly, the Clerk of the Court shall treat this action as one in which consent has not been achieved under Local Rule 40.1(c)(7), and shall draw this action to an Article III judge. By Chief Judge Marcia S. Krieger on 9/20/17. Text Only Entry (msklc2,) (Entered: 09/20/2017)
09/21/2017	15	CASE REASSIGNED. pursuant to 14 Order. This case is randomly reassigned to Judge Wiley Y. Daniel. All future pleadings should be designated as 17-cv-01937-WYD. (Text Only Entry) (nmarb,) (Entered: 09/21/2017)
09/21/2017	16	NOTICE of Entry of Appearance by Matthew David Grove on behalf of Wayne W. WilliamsAttorney Matthew David Grove added to party Wayne W. Williams(pty:dft) (Grove, Matthew) (Entered: 09/21/2017)
09/21/2017	17	

Supplemental Appendix 0018

		ORDER REFERRING CASE to Magistrate Judge Nina Y. Wang for non-dispositive matters. That pursuant to 28 U.S.C. Section 636 (b)(1)(A) and (B) and Fed. R. Civ. P. 72(a) and (b), this matter is referred to the assigned United States Magistrate Judge is designated to conduct proceedings in this civil action as follows: (1) Convene a scheduling conference under Fed.R.Civ.P. 16(b) and enter a scheduling order meeting the requirements of D.C.COLO.LCivR 16.2. (2) Conduct such status conferences and issue such orders necessary for compliance with the scheduling order, including amendments or modifications of the scheduling order upon a showing of good cause. (3) Hear and determine pretrial matters, including discovery and other non-dispositive motions. (4) Alternative Dispute Resolution Authority: Court sponsored alternative dispute resolution is governed by D.C.COLO.LCivR 16.6. On the recommendation or informal request of the magistrate judge, or on the request of the parties by motion, the court may direct the parties to engage in an early neutral evaluation, a settlement conference, or another alternative dispute resolution proceeding. It is further ORDERED that parties and counsel shall be familiar and comply with the above judge's requirements found at www.cod.uscourts.gov. By Judge Wiley Y. Daniel on 9/21/17. Text Only Entry (rkeec) (Entered: 09/21/2017)
09/21/2017	18	MEMORANDUM regarding 10 MOTION to Stay <i>Discovery and Disclosures and For Protective Order Under Fed. R. Civ. P. 26(c)</i> filed by Wayne W. Williams. Motion referred to Magistrate Judge Nina Y. Wang by Judge Wiley Y. Daniel on 9/21/17. Text Only Entry (rkeec) (Entered: 09/21/2017)
09/22/2017	19	NOTICE of Entry of Appearance by William V. Allen on behalf of Wayne W. Williams Attorney William V. Allen added to party Wayne W. Williams(pty:dft) (Allen, William) (Entered: 09/22/2017)
09/26/2017	20	MINUTE ORDER: In light of 10 MOTION to Stay <i>Discovery and Disclosures and For Protective Order Under Fed. R. Civ. P. 26(c)</i> , the Scheduling Conference set for 10/3/2017 10:30 AM is VACATED and RESET as a Motion Hearing/Scheduling Conference for 11/3/2017 09:30 AM in Courtroom C204 before Magistrate Judge Nina Y. Wang. The Parties shall submit their Proposed Scheduling Order, including a Microsoft Word copy to Wang_Chambers@cod.uscourts.gov, by 10/27/2017. By Magistrate Judge Nina Y. Wang on 9/26/2017. Text Only Entry (nywlc2,) (Entered: 09/26/2017)

Supplemental Appendix 0019

09/29/2017	21	Unopposed MOTION for Extension of Time to File Response/Reply as to 10 MOTION to Stay <i>Discovery and Disclosures and For Protective Order Under Fed. R. Civ. P. 26(c)</i> by Plaintiffs Micheal Baca, Polly Baca, Robert Nemanich. (Attachments: # 1 Proposed Order (PDF Only))(Wesoky, Jason) (Entered: 09/29/2017)
09/29/2017	22	MEMORANDUM regarding 21 Unopposed MOTION for Extension of Time to File Response/Reply as to 10 MOTION to Stay <i>Discovery and Disclosures and For Protective Order Under Fed. R. Civ. P. 26(c)</i> filed by Robert Nemanich, Micheal Baca, Polly Baca. Motion referred to Magistrate Judge Nina Y. Wang by Judge Wiley Y. Daniel on 9/29/17. Text Only Entry (rkeec) (Entered: 09/29/2017)
09/29/2017	23	ADVISORY NOTICE OF NONCOMPLIANCE WITH COURT RULES/PROCEDURES: re: 21 Unopposed MOTION for Extension of Time to File Response/Reply as to 10 MOTION to Stay <i>Discovery and Disclosures and For Protective Order Under Fed. R. Civ. P. 26(c)</i> filed by attorney Jason B. Wesoky. Attorney has used an incorrect signature format in violation of D.C.COLO.LCivR 5.1 (a) and 4.3(a) of the Electronic Case Filing Procedures (Civil cases). DO NOT REFILE THE DOCUMENT. (Text Only Entry) (evana,) (Entered: 09/29/2017)
10/02/2017	24	ORDER granting 21 Motion for Extension of Time to File Response/Reply. Plaintiffs shall have up to and including 10/6/2017, to file their Response to the Motion to Stay. Furthermore, all motions for an extension of time shall comply with D.C.COLO.LCivR 6.1(c), as future noncompliance may result in this court striking the motion without substantive consideration. By Magistrate Judge Nina Y. Wang on 10/2/2017. Text Only Entry (nywlc2,) (Entered: 10/02/2017)
10/03/2017	25	MOTION for Extension of Time to File Answer or Otherwise Respond re 13 Notice of Filing Amended Pleading <i>Amended Complaint</i> by Defendant Wayne W. Williams. (Sullivan, Grant) (Entered: 10/03/2017)
10/03/2017	26	MEMORANDUM regarding 25 MOTION for Extension of Time to File Answer or Otherwise Respond re 13 Notice of Filing Amended Pleading <i>Amended Complaint</i> filed by Wayne W. Williams. Motion referred to Magistrate Judge Nina Y. Wang by Judge Wiley Y. Daniel on 10/3/17. Text Only Entry (rkeec) (Entered: 10/03/2017)
10/05/2017	27	

Supplemental Appendix 0020

		ORDER granting 25 Motion for Extension of Time to Answer or Otherwise Respond. Defendant shall answer or otherwise respond to the First Amended Complaint 13 on or before 10/25/2017. Defendant also indicates that the Parties are discussing the possibility of Plaintiffs filing a Second Amended Complaint. To the extent Plaintiffs intend to do so, they shall file their Second Amended Complaint, whether by motion or consent, on or before 10/25/2017. No further extensions will be granted absent extraordinary circumstances. By Magistrate Judge Nina Y. Wang on 10/5/2017. Text Only Entry (nywlc2,) (Entered: 10/05/2017)
10/06/2017	28	Unopposed MOTION for Extension of Time to File Response/Reply as to 10 MOTION to Stay <i>Discovery and Disclosures and For Protective Order Under Fed. R. Civ. P. 26(c)</i> by Plaintiffs Micheal Baca, Polly Baca, Robert Nemanich. (Wesoky, Jason) (Entered: 10/06/2017)
10/06/2017	29	MEMORANDUM regarding 28 Unopposed MOTION for Extension of Time to File Response/Reply as to 10 MOTION to Stay <i>Discovery and Disclosures and For Protective Order Under Fed. R. Civ. P. 26(c)</i> filed by Robert Nemanich, Micheal Baca, Polly Baca. Motion referred to Magistrate Judge Nina Y. Wang by Judge Wiley Y. Daniel on 10/6/17. Text Only Entry (rkeec) (Entered: 10/06/2017)
10/11/2017	30	Joint STATUS REPORT <i>and Request for Case Management Conference</i> by Defendant Wayne W. Williams. (Grove, Matthew) (Entered: 10/11/2017)
10/11/2017	31	ORDER granting 28 Motion for Extension of Time to File Response/Reply. Plaintiffs shall file their Response, if any, on or before 10/20/2017. Counsel are reminded that all motions for an extension of time must comply with the Honorable Wiley Y. Daniel's Civil Practice Standards § II.F.2., as future noncompliance may result in this court striking the motion without substantive consideration. Furthermore, a Status Conference is SET for 10/17/2017 09:00 AM in Courtroom C204 before Magistrate Judge Nina Y. Wang to discuss 30 Joint Status Report. By Magistrate Judge Nina Y. Wang on 10/11/2017. Text Only Entry (nywlc2,) (Entered: 10/11/2017)
10/12/2017	32	Joint MOTION to Vacate <i>and Reset Status Conference Scheduled for October 17, 2017</i> by Defendant Wayne W. Williams. (Morrill, LeeAnn) (Entered: 10/12/2017)

Supplemental Appendix 0021

10/12/2017	33	MEMORANDUM regarding 32 Joint MOTION to Vacate <i>and Reset Status Conference Scheduled for October 17, 2017</i> filed by Wayne W. Williams. Motion referred to Magistrate Judge Nina Y. Wang by Judge Wiley Y. Daniel on 10/12/17. Text Only Entry (rkeec) (Entered: 10/12/2017)
10/12/2017	34	ORDER granting 32 Motion to Vacate. The Status Conference set for 10/17/2017 is VACATED and RESET for 10/19/2017 10:30 AM in Courtroom C204 before Magistrate Judge Nina Y. Wang. By Magistrate Judge Nina Y. Wang on 10/12/2017. Text Only Entry (nywlc2,) (Entered: 10/12/2017)
10/19/2017	35	COURTROOM MINUTES/MINUTE ORDER for Status Conference held on 10/19/2017 before Magistrate Judge Nina Y. Wang. Parties discuss the issues outlined in Joint Status Report and Request for Case Management Conference 30 filed 10/11/2017. Defendant shall file a Joint Motion for the Entry of the Stipulation as an Order of the Court, as discussed, no later than 10/19/2017. FTR: Courtroom C-204. (bwilk,) (Entered: 10/19/2017)
10/19/2017	36	Joint MOTION for Order to <i>Approve and Enter the Stipulation of the Parties as an Order of the Court</i> by Defendant Wayne W. Williams. (Attachments: # 1 Exhibit A)(Morrill, LeeAnn) (Entered: 10/19/2017)
10/20/2017	37	ORDER re: 36 Joint Stipulation of the parties, by Judge Wiley Y. Daniel on 10/20/2017. (evana,) (Entered: 10/20/2017)
10/25/2017	38	NOTICE of <i>Second Amended Complaint</i> by Plaintiffs Micheal Baca, Polly Baca, Robert Nemanich (Attachments: # 1 Exhibit, # 2 Exhibit)(Wesoky, Jason) (Entered: 10/25/2017)
10/25/2017	39	SECOND AMENDED COMPLAINT against Colorado Department of State, filed by Robert Nemanich, Polly Baca, Micheal Baca. (evana,) (Entered: 10/27/2017)
10/27/2017	40	NOTICE of Withdrawal of Objection to Defendant's 10 Motion to Stay Discovery and Disclosure by Plaintiffs Micheal Baca, Polly Baca, Robert Nemanich (Wesoky, Jason) (Modified on 10/27/2017 added link to 10)(evana,). (Entered: 10/27/2017)
10/27/2017	41	ORDER granting 10 Motion to Stay. In light of Plaintiffs' withdrawal of their opposition to the Motion to Stay, and pursuant to the Honorable Wiley Y. Daniel's 37 Order of the Court Re: Stipulation of the Parties, this matter is STAYED as follows: Discovery and disclosures will be stayed until the Colorado

Supplemental Appendix 0022

		Department of State's forthcoming Motion to Dismiss the Second Amended Complaint is decided; In the event that the Colorado Department of State's forthcoming Motion to Dismiss is denied, the parties will engage in informal written discovery to expedite the case, including the voluntary exchange of documents and reaching stipulations of fact where possible, and to forego formal written discovery; the parties will be permitted to take depositions, including a Rule 30(b)(6) deposition of the Department of State, but the Secretary of State, Wayne W. Williams, will not be deposed. In addition, the Motion Hearing and Scheduling Conference set for 11/3/2017 9:30 AM before Magistrate Judge Nina Y. Wang are hereby VACATED. By Magistrate Judge Nina Y. Wang on 10/27/2017. Text Only Entry (nywlc2,) (Entered: 10/27/2017)
11/08/2017	42	MOTION to Dismiss by Defendant Colorado Department of State. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Sullivan, Grant) (Entered: 11/08/2017)
11/27/2017	43	Unopposed MOTION for Extension of Time to File Response/Reply as to 42 MOTION to Dismiss by Plaintiffs Micheal Baca, Polly Baca, Robert Nemanich. (Attachments: # 1 Proposed Order (PDF Only))(Wesoky, Jason) (Entered: 11/27/2017)
11/28/2017	44	ORDER granting 43 Motion for Extension of Time to File Response up to and including December 22, 2017 by Judge Wiley Y. Daniel on 11/28/17. Text Only Entry (wydlc2,) (Entered: 11/28/2017)
12/22/2017	45	NOTICE of Entry of Appearance by Jason Seth Harrow on behalf of All Plaintiffs Attorney Jason Seth Harrow added to party Micheal Baca(pty:pla), Attorney Jason Seth Harrow added to party Polly Baca(pty:pla), Attorney Jason Seth Harrow added to party Robert Nemanich(pty:pla) (Harrow, Jason) (Entered: 12/22/2017)
12/22/2017	46	RESPONSE to 42 MOTION to Dismiss filed by Plaintiffs Micheal Baca, Polly Baca, Robert Nemanich. (Wesoky, Jason) (Entered: 12/22/2017)
01/02/2018	47	Unopposed MOTION for Extension of Time to File Response/Reply as to 42 MOTION to Dismiss by Defendant Colorado Department of State. (Sullivan, Grant) (Entered: 01/02/2018)
01/03/2018	48	ORDER granting 47 Motion for Extension of Time to File Reply up to and including January 19, 2018 by Judge Wiley Y. Daniel on 1/3/18. Text Only Entry (wydlc2,) (Entered: 01/03/2018)
01/19/2018	49	

Supplemental Appendix 0023

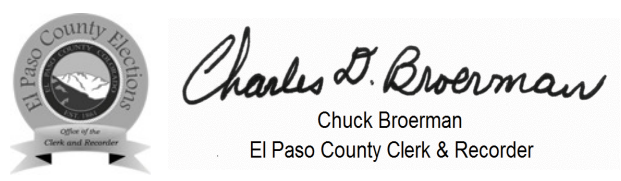
		REPLY to Response to 42 MOTION to Dismiss Attorney Matthew David Grove added to party Colorado Department of State(pty:dft) filed by Defendant Colorado Department of State. (Grove, Matthew) (Entered: 01/19/2018)
01/23/2018	50	Unopposed MOTION to Withdraw as Attorney by Defendant Wayne W. Williams. (Allen, William) (Entered: 01/23/2018)
01/23/2018	51	MEMORANDUM regarding 50 Unopposed MOTION to Withdraw as Attorney filed by Wayne W. Williams. Motion referred to Magistrate Judge Nina Y. Wang by Judge Wiley Y. Daniel on 1/23/18. Text Only Entry (rkeec) (Entered: 01/23/2018)
01/23/2018	52	ORDER granting 50 Motion to Withdraw as Attorney. Attorney William V. Allen is granted leave to withdraw, and shall be removed from electronic service in this matter. By Magistrate Judge Nina Y. Wang on 1/23/2018. Text Only Entry (nywlc2,) (Entered: 01/23/2018)
04/10/2018	53	ORDER that Defendant's Motion to Dismiss Plaintiff's Complaint Under Rules 12(b)(1) and 12(b)(6) filed on May 1, 2015 ECF No. 23 is GRANTED, and Plaintiffs' claims are DISMISSED WITH PREJUDICE, by Judge Wiley Y. Daniel on 4/10/2018. (evana,) (Entered: 04/10/2018)
04/10/2018	54	FINAL JUDGMENT in favor of Colorado Department of State against Micheal Baca, Polly Baca, Robert Nemanich by Clerk on 4/10/18. (rkeec) (Entered: 04/10/2018)
04/26/2018	55	NOTICE OF APPEAL as to 53 Order on Motion to Dismiss, 54 Clerk's Judgment by Plaintiffs Micheal Baca, Polly Baca, Robert Nemanich (Filing fee \$ 505, Receipt Number 1082-6071574) (Attachments: # 1 Exhibit, # 2 Exhibit)(Wesoky, Jason) (Entered: 04/26/2018)
04/26/2018	56	LETTER Transmitting Notice of Appeal to all counsel advising of the transmittal of the 55 Notice of Appeal, filed by Robert Nemanich, Micheal Baca, Polly Baca to the U.S. Court of Appeals. (Retained Counsel, Fee paid,) (Attachments: # 1 Docket Sheet, # 2 Preliminary Record)(evana,) (Entered: 04/26/2018)
04/26/2018	57	USCA Case Number 18-1173 for 55 Notice of Appeal, filed by Robert Nemanich, Micheal Baca, Polly Baca. (evana,) (Entered: 04/26/2018)
05/11/2018	58	

Supplemental Appendix 0024

		TRANSCRIPT ORDER FORM re 55 Notice of Appeal, by Plaintiffs Micheal Baca, Polly Baca, Robert Nemanich (Wesoky, Jason) (Entered: 05/11/2018)
05/11/2018	59	LETTER TO USCA and all counsel certifying the record is complete as to 55 Notice of Appeal, filed by Robert Nemanich, Micheal Baca, Polly Baca. A transcript order form was filed stating that a transcript is not necessary. (Appeal No. 18-1173) Text Only Entry (evana,) (Entered: 05/14/2018)

Supplemental Appendix 0025

Case 1:16-cv-02986-WYD-NYW Document 12-1 Filed 12/09/16 USDC Colorado Page 1 of 2
OFFICIAL SAMPLE BALLOT FOR 2016 GENERAL ELECTION
 Appellate Case: 18-1173 Document: 010110041321 Date Filed: 08/22/2018 Page: 31
EL PASO COUNTY, COLORADO
TUESDAY, NOVEMBER 8, 2016



FEDERAL OFFICES	STATE OFFICES	DISTRICT ATTORNEY	COUNTY OFFICE	EL PASO COUNTY COURT JUDGES (Vote Yes or No)
Presidential Electors (Vote for One Pair) <ul style="list-style-type: none"> <input type="radio"/> Hillary Clinton / Tim Kaine Democratic <input type="radio"/> Donald J. Trump / Michael R. Pence Republican <input type="radio"/> Darrell L. Castle / Scott N. Bradley American Constitution <input type="radio"/> Gary Johnson / Bill Weld Libertarian <input type="radio"/> Jill Stein / Ajamu Baraka Green <input type="radio"/> Frank Atwood / Blake Huber Approval Voting <input type="radio"/> "Rocky" Roque De La Fuente / Michael Steinberg American Delta <input type="radio"/> James Hedges / Bill Bayes Prohibition <input type="radio"/> Tom Hoefling / Steve Schulin America's <input type="radio"/> Chris Keniston / Deacon Taylor Veterans of America <input type="radio"/> Alyson Kennedy / Osborne Hart Socialist Workers <input type="radio"/> Kyle Kenley Kopitke / Nathan R. Sorenson Independent American <input type="radio"/> Laurence Kotlikoff / Edward Leamer Kotlikoff for President <input type="radio"/> Gloria Estela La Riva / Dennis J. Banks Socialism and Liberation <input type="radio"/> Bradford Lyttle / Hannah Walsh Nonviolent Resistance/Pacifist <input type="radio"/> Joseph Allen Maldonado / Douglas K. Terranova Independent People <input type="radio"/> Michael A. Maturen / Juan Munoz American Solidarity <input type="radio"/> Evan McMullin / Nathan Johnson Unaffiliated <input type="radio"/> Ryan Alan Scott / Bruce Kendall Barnard Unaffiliated <input type="radio"/> Rod Silva / Richard C. Silva Nutrition <input type="radio"/> Mike Smith / Daniel White Unaffiliated <input type="radio"/> Emidio Soltysik / Angela Nicole Walker Socialist USA <input type="radio"/> Write-In 	Representative to the 115th United States Congress - District 5 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Misty Plowright Democratic <input type="radio"/> Doug Lamborn Republican <input type="radio"/> Mike McRedmond Libertarian <input type="radio"/> Write-In State Board of Education Member - Congressional District 5 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Jeffery L. Walker Sr. Democratic <input type="radio"/> Steven Durham Republican Regent of the University of Colorado - At Large (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Alice Madden Democratic <input type="radio"/> Heidi Ganahl Republican State Senator - District 10 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Mark Anthony Barrionuevo Democratic <input type="radio"/> Owen Hill Republican State Senator - District 12 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Bob Gardner Republican <input type="radio"/> Manuel Quintel Libertarian State Representative - District 14 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Dan Nordberg Republican <input type="radio"/> Chris Walters Democratic State Representative - District 15 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Dave Williams Republican <input type="radio"/> Sharon Huff Democratic State Representative - District 16 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Larry G. Liston Republican <input type="radio"/> John C. Hjersman Libertarian 	State Representative - District 17 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Thomas "Tony" Exum Sr. Democratic <input type="radio"/> Kit Roupe Republican <input type="radio"/> Susan Quilleash Libertarian State Representative - District 18 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Cameron Forth Republican <input type="radio"/> Pete Lee Democratic <input type="radio"/> Norman "Paotie" Dawson Libertarian State Representative - District 19 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Paul Lundeen Republican <input type="radio"/> Tom Reynolds Democratic State Representative - District 20 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Terri Carver Republican <input type="radio"/> Julia Endicott Democratic <input type="radio"/> Judith Darcy Libertarian State Representative - District 21 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Lois Landgraf Republican <input type="radio"/> Michael Seebeck Libertarian 	County Commissioner District 4 (Vote for One) <ul style="list-style-type: none"> <input type="radio"/> Longinos Gonzalez Jr. Republican <input type="radio"/> Liz Rosenbaum Democratic COLORADO SUPREME COURT JUSTICE (Vote Yes or No) <ul style="list-style-type: none"> Shall Justice William Hood of the Colorado Supreme Court be retained in office? <input type="radio"/> YES <input type="radio"/> NO COLORADO COURT OF APPEALS JUDGES (Vote Yes or No) <ul style="list-style-type: none"> Shall Judge Karen M. Ashby of the Colorado Court of Appeals be retained in office? <input type="radio"/> YES <input type="radio"/> NO Shall Judge Michael H. Berger of the Colorado Court of Appeals be retained in office? <input type="radio"/> YES <input type="radio"/> NO Shall Judge Steven L. Bernard of the Colorado Court of Appeals be retained in office? <input type="radio"/> YES <input type="radio"/> NO Shall Judge Stephanie E. Dunn of the Colorado Court of Appeals be retained in office? <input type="radio"/> YES <input type="radio"/> NO Shall Judge David Furman of the Colorado Court of Appeals be retained in office? <input type="radio"/> YES <input type="radio"/> NO Shall Judge Robert D. Hawthorne of the Colorado Court of Appeals be retained in office? <input type="radio"/> YES <input type="radio"/> NO Shall Judge Jerry N. Jones of the Colorado Court of Appeals be retained in office? <input type="radio"/> YES <input type="radio"/> NO Shall Judge Anthony J. Navarro of the Colorado Court of Appeals be retained in office? <input type="radio"/> YES <input type="radio"/> NO Shall Judge Gilbert M. Román of the Colorado Court of Appeals be retained in office? <input type="radio"/> YES <input type="radio"/> NO 	Shall Judge Diana Terry of the Colorado Court of Appeals be retained in office? <input type="radio"/> YES <input type="radio"/> NO
Supplemental Appendix 0026				EXHIBIT A

QUESTIONS OR ISSUES	STATE INITIATED STATUTORY PROPOSITIONS
<p>Ballot questions referred by the general assembly or any political subdivision are listed by letter, and ballot questions initiated by the people are listed numerically. A ballot question listed as an "amendment" proposes a change to the Colorado constitution, and a ballot question listed as a "proposition" proposes a change to the Colorado Revised Statutes. A "yes/for" vote on any ballot question is a vote in favor of changing current law or existing circumstances, and a "no/against" vote on any ballot question is a vote against changing current law or existing circumstances.</p>	<p>Proposition 106 (STATUTORY)</p> <p>Shall there be a change to the Colorado revised statutes to permit any mentally capable adult Colorado resident who has a medical prognosis of death by terminal illness within six months to receive a prescription from a willing licensed physician for medication that can be self-administered to bring about death and in connection therewith, requiring two licensed physicians to confirm the medical prognosis, that the terminally-ill patient has received information about other care and treatment options, and that the patient is making a voluntary and informed decision in requesting the medication; requiring evaluation by a licensed mental health professional if either physician believes the patient may not be mentally capable; granting immunity from civil and criminal liability and professional discipline to any person who in good faith assists in providing access to or is present when a patient self-administers the medication; and establishing criminal penalties for persons who knowingly violate statutes relating to the request for the medication?</p> <p><input type="radio"/> YES / FOR</p> <p><input type="radio"/> NO / AGAINST</p>
<p>Amendment T (CONSTITUTIONAL)</p> <p>Shall there be an amendment to the Colorado constitution concerning the removal of the exception to the prohibition of slavery and involuntary servitude when used as punishment for persons duly convicted of a crime?</p> <p><input type="radio"/> YES / FOR</p> <p><input type="radio"/> NO / AGAINST</p>	<p>Proposition 107 (STATUTORY)</p> <p>Shall there be a change to the Colorado Revised Statutes recreating a presidential primary election to be held before the end of March in each presidential election year in which unaffiliated electors may vote without declaring an affiliation with a political party?</p> <p><input type="radio"/> YES / FOR</p> <p><input type="radio"/> NO / AGAINST</p>
<p>Amendment U (CONSTITUTIONAL)</p> <p>Shall there be an amendment to the Colorado constitution concerning an exemption from property taxation for a possessory interest in real property if the actual value of the interest is less than or equal to six thousand dollars or such amount adjusted for inflation?</p> <p><input type="radio"/> YES / FOR</p> <p><input type="radio"/> NO / AGAINST</p>	<p>Proposition 108 (STATUTORY)</p> <p>Shall there be a change to the Colorado Revised Statutes concerning the process of selecting candidates representing political parties on a general election ballot, and, in connection therewith, allowing an unaffiliated elector to vote in the primary election of a political party without declaring an affiliation with that party and permitting a political party in specific circumstances to select all of its candidates by assembly or convention instead of by primary election?</p> <p><input type="radio"/> YES / FOR</p> <p><input type="radio"/> NO / AGAINST</p>
STATE INITIATED CONSTITUTIONAL AMENDMENTS	COUNTY QUESTION
<p>Amendment 69 (CONSTITUTIONAL)</p> <p>SHALL STATE TAXES BE INCREASED \$25 BILLION ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY AN AMENDMENT TO THE COLORADO CONSTITUTION ESTABLISHING A HEALTH CARE PAYMENT SYSTEM TO FUND HEALTH CARE FOR ALL INDIVIDUALS WHOSE PRIMARY RESIDENCE IS IN COLORADO, AND, IN CONNECTION THEREWITH, CREATING A GOVERNMENTAL ENTITY CALLED COLORADOCARE TO ADMINISTER THE HEALTH CARE PAYMENT SYSTEM; PROVIDING FOR THE GOVERNANCE OF COLORADOCARE BY AN INTERIM APPOINTED BOARD OF TRUSTEES UNTIL AN ELECTED BOARD OF TRUSTEES TAKES RESPONSIBILITY; EXEMPTING COLORADOCARE FROM THE TAXPAYERS BILL OF RIGHTS; ASSESSING AN INITIAL TAX ON THE TOTAL PAYROLL FROM EMPLOYERS, PAYROLL INCOME FROM EMPLOYEES, AND NONPAYROLL INCOME AT VARYING RATES; INCREASING THESE TAX RATES WHEN COLORADOCARE BEGINS MAKING HEALTH CARE PAYMENTS FOR BENEFICIARIES; CAPPING THE TOTAL AMOUNT OF INCOME SUBJECT TO TAXATION; AUTHORIZING THE BOARD TO INCREASE THE TAXES IN SPECIFIED CIRCUMSTANCES UPON APPROVAL OF THE MEMBERS OF COLORADOCARE; REQUIRING COLORADOCARE TO CONTRACT WITH HEALTH CARE PROVIDERS TO PAY FOR SPECIFIC HEALTH CARE BENEFITS; TRANSFERRING ADMINISTRATION OF THE MEDICAID AND CHILDREN'S BASIC HEALTH PROGRAMS AND ALL OTHER STATE AND FEDERAL HEALTH CARE FUNDS FOR COLORADO TO COLORADOCARE; TRANSFERRING RESPONSIBILITY TO COLORADOCARE FOR MEDICAL CARE THAT WOULD OTHERWISE BE PAID FOR BY WORKERS' COMPENSATION INSURANCE; REQUIRING COLORADOCARE TO APPLY FOR A WAIVER FROM THE AFFORDABLE CARE ACT TO ESTABLISH A COLORADO HEALTH CARE PAYMENT SYSTEM; AND SUSPENDING THE OPERATIONS OF THE COLORADO HEALTH BENEFIT EXCHANGE AND TRANSFERRING ITS RESOURCES TO COLORADOCARE?</p> <p><input type="radio"/> YES / FOR</p> <p><input type="radio"/> NO / AGAINST</p>	<p>El Paso County Question - 1A</p> <p>Without increasing taxes, shall El Paso County have the authority to provide, or to facilitate or partner or coordinate with service providers for the provision of, "advanced (high-speed internet) service," "cable television service," and "telecommunications service," either directly, indirectly, or by contract, to residential, commercial, nonprofit, government or other subscribers, and to acquire, operate and maintain any facility for the purpose of providing such services, restoring local authority and flexibility that was taken away by Title 29, Article 27, Part 1 of the Colorado Revised Statutes?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>Amendment 70 (CONSTITUTIONAL)</p> <p>Shall there be an amendment to the Colorado constitution increasing the minimum wage to \$9.30 per hour with annual increases of \$0.90 each January 1 until it reaches \$12 per hour effective January 2020, and annually adjusting it thereafter for cost-of-living increases?</p> <p><input type="radio"/> YES / FOR</p> <p><input type="radio"/> NO / AGAINST</p>	<p>Town of Palmer Lake - 2A</p> <p>SHALL TOWN OF PALMER LAKE TAXES BE INCREASED BY \$30,000 ANNUALLY, OR BY SUCH AMOUNT AS MAY BE RAISED BY A CONTINUATION OF THE PREVIOUSLY APPROVED CURRENT SALES TAX RATE OF 3%, PROCEEDS OF WHICH SHALL CONTINUE TO BE USED TO PROVIDE PROPER AND ESSENTIAL PUBLIC SAFETY RESPONSE AND FOR OTHER PROPER GOVERNMENTAL PURPOSES; AND SHALL THE PROCEEDS OF SUCH TAX AND ANY INVESTMENT INCOME THEREON BE COLLECTED AND SPENT BY THE TOWN AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATIONS CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, OR SECTION 29-1-301, COLORADO REVISED STATUTES, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE TOWN?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>Amendment 71 (CONSTITUTIONAL)</p> <p>Shall there be an amendment to the Colorado constitution making it more difficult to amend the Colorado constitution by requiring that any petition for a citizen-initiated constitutional amendment be signed by at least two percent of the registered electors who reside in each state senate district for the amendment to be placed on the ballot and increasing the percentage of votes needed to pass any proposed constitutional amendment from a majority to at least fifty-five percent of the votes cast, unless the proposed constitutional amendment only repeals, in whole or in part, any provision of the constitution?</p> <p><input type="radio"/> YES / FOR</p> <p><input type="radio"/> NO / AGAINST</p>	<p>Town of Palmer Lake - 2B</p> <p>SHALL TOWN OF PALMER LAKE TAXES BE INCREASED, COMMENCING JANUARY 1, 2017, BY \$150,000 ANNUALLY IN THE FIRST FISCAL YEAR ENDING DECEMBER 31, 2017, AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER, BY IMPOSING A NEW EXCISE TAX OF 5% OF THE AVERAGE MARKET RATE FOR UNPROCESSED MARIJUANA AS DETERMINED BY THE COLORADO DEPARTMENT OF REVENUE WHEN UNPROCESSED RETAIL MARIJUANA IS FIRST SOLD OR TRANSFERRED BY A MARIJUANA CULTIVATION FACILITY LOCATED WITHIN THE LIMITS OF THE TOWN OF PALMER LAKE; WITH THE RATE OF SUCH EXCISE TAX BEING ALLOWED TO BE DECREASED OR INCREASED BY THE TOWN BOARD WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF SUCH TAX DOES NOT EXCEED 10%, AND SHALL ALL REVENUES DERIVED FROM SUCH EXCISE TAX BE COLLECTED AND SPENT, AS A VOTER-APPROVED REVENUE CHANGE, NOTWITHSTANDING ANY REVENUE OR EXPENDITURE LIMITATIONS CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, ARTICLE 1 OF TITLE 29, COLORADO REVISED STATUTES, OR ANY OTHER LAW?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>Amendment 72 (CONSTITUTIONAL)</p> <p>SHALL STATE TAXES BE INCREASED \$315.7 MILLION ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION INCREASING TOBACCO TAXES, AND, IN CONNECTION THEREWITH, BEGINNING JANUARY 1, 2017, INCREASING TAXES ON CIGARETTES BY 8.75 CENTS PER CIGARETTE (\$1.75 PER PACK OF 20 CIGARETTES) AND ON OTHER TOBACCO PRODUCTS BY 22 PERCENT OF THE MANUFACTURER'S LIST PRICE; AND ALLOCATING SPECIFIED PERCENTAGES OF THE NEW TOBACCO TAX REVENUE TO HEALTH-RELATED PROGRAMS AND TOBACCO EDUCATION, PREVENTION, AND CESSATION PROGRAMS CURRENTLY FUNDED BY EXISTING CONSTITUTIONAL TOBACCO TAXES; AND ALSO ALLOCATING NEW REVENUE FOR TOBACCO-RELATED HEALTH RESEARCH, VETERANS' PROGRAMS, CHILD AND ADOLESCENT BEHAVIORAL HEALTH, CONSTRUCTION AND TECHNOLOGY IMPROVEMENTS FOR QUALIFIED HEALTH PROVIDERS, EDUCATIONAL LOAN REPAYMENT FOR HEALTH PROFESSIONALS IN RURAL AND UNDERSERVED AREAS, AND HEALTH PROFESSIONAL TRAINING TRACKS?</p> <p><input type="radio"/> YES / FOR</p> <p><input type="radio"/> NO / AGAINST</p>	<p>Town of Palmer Lake - 2C</p> <p>WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT TAXES, SHALL THE TOWN OF PALMER LAKE BE PERMITTED TO RETAIN AND SPEND TOWN REVENUES DERIVED FROM ALL SOURCES IN EXISTENCE NOW OR IN THE FUTURE IN EXCESS OF ANY SPENDING OR OTHER LIMITATIONS SET FORTH IN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION (TABOR), COLORADO REVISED STATUTES SECTION 29-1-301, OR ANY OTHER LAW?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p>Amendment 73 (CONSTITUTIONAL)</p> <p>SHALL THERE BE AN AMENDMENT TO THE COLORADO CONSTITUTION PERMITTING THE TOWN OF PALMER LAKE TO BE ALLOWED TO PUBLISH ORDINANCES BY TITLE ONLY RATHER THAN PUBLISHING ORDINANCES IN FULL, SAVING THE TOWN PUBLISHING COSTS, AND SO LONG AS SUCH ORDINANCES ARE PUBLISHED IN FULL ON THE TOWN WEB SITE UPON ADOPTION?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>	<p>Town of Palmer Lake - 2D</p> <p>Shall the Town of Palmer Lake be allowed to publish ordinances by title only rather than publishing ordinances in full, saving the town publishing costs, and so long as such ordinances are published in full on the town web site upon adoption?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>

QUESTIONS OR ISSUES	STATE INITIATED STATUTORY PROPOSITIONS
<p>Appellate Case 16-0175 Document: 0101110442-1 Date Filed: 09/22/2018</p>	<p>Town of Palmer Lake - 300</p> <p>SHALL THE RATE OF PALMER LAKE TAXES BE INCREASED BY \$300,000 IN THE FIRST FISCAL YEAR AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER, BY IMPOSING AN ADDITIONAL SALES TAX OF 5% ON THE SALE OF RETAIL (RECREATIONAL) MARIJUANA AND RETAIL (RECREATIONAL) PRODUCTS AS DEFINED IN THE COLORADO RETAIL MARIJUANA CODE, WITH THE RATE OF SUCH TAX BEING ALLOWED TO BE DECREASED OR INCREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF THE TAX DOES NOT EXCEED 10%, PROVIDED THAT THE RATE SHALL NOT EXCEED 7% ON OR BEFORE JANUARY 1, 2019, WITH THE REVENUES DERIVED FROM SUCH TAX TO BE COLLECTED AND SPENT TO PROMOTE THE GENERAL PURPOSES OF THE TOWN OF PALMER LAKE AS A VOTER-APPROVED REVENUE CHANGE NOTWITHSTANDING ANY REVENUE OR EXPENDITURE LIMITATIONS CONTAINED IN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Town of Palmer Lake - 301</p> <p>Shall the Town of Palmer Lake regulate commercial marijuana by permitting the establishment or retail (recreational) marijuana stores by existing retail marijuana business licensees in good standing in the Town of Palmer Lake and the state of Colorado as of March 1, 2016 by repealing measure 301 and ordinance 2 of 2014, and enacting an ordinance amending the PalmerLake town code, subject to the requirements of the Colorado retail marijuana code and regulations to be adopted by the council of Palmer Lake?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Town of Green Mountain Falls - 2E</p> <p>SHALL TOWN OF GREEN MOUNTAIN FALLS TAXES BE INCREASED \$19,000.00 IN 2017 AND THEN ANNUALLY BY WHATEVER AMOUNTS ARE RAISED THEREAFTER BY THE IMPOSITION OF AN ADDITIONAL LOGGING TAX AT THE RATE OF 2% SUBJECT TO THE FOLLOWING:</p> <p>ALL OR ANY PORTION OF THE NET PROCEEDS OF THE ADDITIONAL 2% LOGGING TAX, AS DETERMINED BY THE BOARD OF TRUSTEES, MAY BE COLLECTED, RETAINED AND SPENT TO FUND PARK IMPROVEMENTS OR TOWN BEAUTIFICATION OR TO PAY THE COSTS OF OPERATING OR MAINTAINING IMPROVEMENTS;</p> <p>SUCH TAX INCREASE SHALL COMMENCE JANUARY 1, 2017 AND BE COLLECTED IN THE SAME TRANSACTIONS AS THE TOWN'S LOGGING TAX; AND</p> <p>SUCH ORDINANCE NO. 9-6-2016 A PROVIDING FOR SUCH TAX INCREASE BE APPROVED; AND SHALL THE REVENUES GENERATED BY SUCH TAX INCREASE AND PROCEEDS MAY BE COLLECTED AND SPENT BY THE TOWN AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Town of Green Mountain Falls - 2F</p> <p>Without increasing taxes, shall the Town of Green Mountain Falls have the legal ability to provide any and all services currently restricted by title 29, article 27, Part 1, of the Colorado Revised Statutes, specifically described as "Advanced Service," "Telecommunications Services" and "Cable Television Services," as defined by the Statute, specifically including new and improved bandwidth services based on best available technologies, utilizing current and new community owned infrastructure to any existing fiber optic network, either directly, or indirectly with public or private sector service providers, to potential subscribers that may include telecommunications service providers, and residential or commercial users within Green Mountain Falls, and that said services may be provided by Green Mountain Falls alone or in partnership with other Governmental, Private or Corporate, including nonprofit, entities?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
STATE INITIATED CONSTITUTIONAL AMENDMENTS	SCHOOL DISTRICT ISSUES
<p>Amendment 69 (CONSTITUTIONAL)</p> <p>SHALL STATE TAXES BE INCREASED \$25 BILLION ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND BY SUCH AMOUNTS THAT ARE RAISED THEREAFTER, BY AN AMENDMENT TO THE COLORADO CONSTITUTION ESTABLISHING A HEALTH CARE PAYMENT SYSTEM TO FUND HEALTH CARE FOR ALL INDIVIDUALS WHOSE PRIMARY RESIDENCE IS IN COLORADO, AND, IN CONNECTION THEREWITH, CREATING A GOVERNMENTAL ENTITY CALLED COLORADOCARE TO ADMINISTER THE HEALTH CARE PAYMENT SYSTEM; PROVIDING FOR THE GOVERNANCE OF COLORADOCARE BY AN INTERIM APPOINTED BOARD OF TRUSTEES UNTIL AN ELECTED BOARD OF TRUSTEES TAKES RESPONSIBILITY; EXEMPTING COLORADOCARE FROM THE TAXPAYERS BILL OF RIGHTS; ASSESSING AN INITIAL TAX ON THE TOTAL PAYROLL FROM EMPLOYERS, PAYROLL INCOME FROM EMPLOYEES, AND NONPAYROLL INCOME AT VARYING RATES; INCREASING THESE TAX RATES WHEN COLORADOCARE BEGINS MAKING HEALTH CARE PAYMENTS FOR BENEFICIARIES; CAPPING THE TOTAL AMOUNT OF INCOME SUBJECT TO TAXATION; AUTHORIZING THE BOARD TO INCREASE THE TAXES IN SPECIFIED CIRCUMSTANCES UPON APPROVAL OF THE MEMBERS OF COLORADOCARE; REQUIRING COLORADOCARE TO CONTRACT WITH HEALTH CARE PROVIDERS TO PAY FOR SPECIFIC HEALTH CARE BENEFITS; TRANSFERRING ADMINISTRATION OF THE MEDICAID AND CHILDREN'S BASIC HEALTH PROGRAMS AND ALL OTHER STATE AND FEDERAL HEALTH CARE FUNDS FOR COLORADO TO COLORADOCARE; TRANSFERRING RESPONSIBILITY TO COLORADOCARE FOR MEDICAL CARE THAT WOULD OTHERWISE BE PAID FOR BY WORKERS' COMPENSATION INSURANCE; REQUIRING COLORADOCARE TO APPLY FOR A WAIVER FROM THE AFFORDABLE CARE ACT TO ESTABLISH A COLORADO HEALTH CARE PAYMENT SYSTEM; AND SUSPENDING THE OPERATIONS OF THE COLORADO HEALTH BENEFIT EXCHANGE AND TRANSFERRING ITS RESOURCES TO COLORADOCARE?</p> <p><input type="radio"/> YES / FOR</p> <p><input type="radio"/> NO / AGAINST</p>	<p>El Paso County School District No. 20 (Academy) - 3A</p> <p>SHALL EL PASO COUNTY SCHOOL DISTRICT NO. 20 (ACADEMY) DEBT BE INCREASED \$230 MILLION, WITH A REPAYMENT COST OF NOT MORE THAN \$387 MILLION, AND SHALL DISTRICT TAXES BE INCREASED NOT MORE THAN \$22 MILLION ANNUALLY, WITH NO EXPECTED INCREASE IN THE DISTRICT'S CURRENT TOTAL MILL LEVY RATE OF 60.216 MILLS (APPROVED BY THE VOTERS IN 1999) BASED ON THE DISTRICT'S PROJECTED ASSESSED VALUES, AND SHALL SUCH DEBT BE ISSUED FOR CAPITAL IMPROVEMENT PURPOSES, INCLUDING BUT NOT LIMITED TO:</p> <ul style="list-style-type: none"> CONSTRUCTING AND EQUIPPING 2 NEW ELEMENTARY SCHOOLS, 1 NEW MIDDLE SCHOOL, AND A CENTER FOR INNOVATIVE LEARNING; MAKING ADDITIONS TO AND REMOVING MODULAR CLASSROOMS FROM DISCOVERY CANYON CAMPUS, LIBERTY HIGH SCHOOL, PINE CREEK HIGH SCHOOL, AND SCHOOL IN THE WOODS; REMODELING AIR ACADEMY HIGH SCHOOL, CHALLENGER MIDDLE SCHOOL, AND RAMPART HIGH SCHOOL; UPDATING TECHNOLOGY INFRASTRUCTURE AT ALL SCHOOLS AND FOR ALL STUDENTS; PROVIDING IMPROVEMENTS TO ALL EXISTING ELEMENTARY, MIDDLE, AND HIGH SCHOOLS AND FACILITIES, INCLUDING THE CLASSICAL ACADEMY CHARTER SCHOOL; <p>PROVIDED THAT ALL EXPENDITURES SHALL BE IN CONFORMANCE WITH ACADEMY SCHOOL DISTRICT NO. 20 BOARD OF EDUCATION RESOLUTION NO. 205-16 ADOPTED ON AUGUST 18, 2016;</p> <p>SUCH DEBT TO BE EVIDENCED BY THE ISSUANCE AND PAYMENT OF GENERAL OBLIGATION BONDS, WHICH SHALL BEAR INTEREST, MATURE, BE SUBJECT TO REDEMPTION, WITH OR WITHOUT PREMIUM OF NOT TO EXCEED 3%, AND BE ISSUED, DATED AND SOLD AT SUCH TIME OR TIMES, AT SUCH PRICES (AT, ABOVE OR BELOW PAR, AND IN SUCH MANNER AND CONTAINING SUCH TERMS, NOT INCONSISTENT HERewith, AS THE DISTRICT MAY DETERMINE; AND SHALL AD VALOREM PROPERTY TAXES BE LEVIED IN ANY YEAR, WITHOUT LIMITATION AS TO RATE, TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON SUCH BONDS AND TO FUND ANY RESERVES FOR THE PAYMENT THEREOF?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Colorado Springs School District 11 - 3C</p> <p>SHALL COLORADO SPRINGS SCHOOL DISTRICT 11 TAXES BE INCREASED UP TO \$15,000,000 IN COLLECTION YEAR 2017, \$16,250,000 IN 2018, \$17,500,000 IN 2019, AND \$32,600,000 IN 2024 AND THEREAFTER \$32,600,000 ADJUSTED FOR ANNUAL CHANGES IN THE DENVER-BOULDER CONSUMER PRICE INDEX BY A PROPERTY TAX OVERRIDE MILL LEVY FOR DISTRICT EDUCATIONAL PURPOSES AS DETERMINED BY THE DISTRICT AND AS MONITORED BY CITIZENS' OVERSIGHT COMMITTEE, WITH THE CONTINUATION OF THE INDEPENDENT REVIEW THAT ASSESSES AND REPORTS TO THE PUBLIC THE DISTRICT'S PROGRESS IN MEETING THE GOALS OF THE DISTRICT PERFORMANCE PLAN, INCLUDING BUT NOT LIMITED TO:</p> <ul style="list-style-type: none"> PROVIDING A SAFE AND HEALTHY LEARNING AND WORKING ENVIRONMENT; REDUCING CLASS SIZE; ATTRACTING, RETAINING AND RECRUITING QUALITY STAFF; PROVIDING UP-TO-DATE TECHNOLOGY REQUIREMENTS; MAINTAINING EFFICIENT, SECURE BUILDINGS AND EQUIPMENT; AND PROVIDING EQUITABLE FUNDING FOR CHARTER SCHOOLS; <p>ALL AS DESCRIBED IN THE DISTRICTS' 2016 MILL LEVY OVERRIDE SPENDING PLAN" DATED AUGUST 24, 2016, WHICH PLAN IS SUBJECT TO AMENDMENT IN ACCORDANCE WITH THE PLAN;</p> <p>WHICH PROPERTY TAX OVERRIDE MILL LEVY SHALL BE LIMITED BY APPLICABLE LAW AS PROVIDED IN C.R.S. SECTION 22-54-108 (CURRENTLY 25% OF TOTAL PROGRAM FUNDING);</p> <p>AND SHALL THE PROPERTY TAX OVERRIDE MILL LEVY APPROVED BY THIS QUESTION AND THE MILL LEVY REQUIRED FOR THE PAYMENT OF DEBT SERVICE ON GENERAL OBLIGATION BONDS OF THE DISTRICT APPROVED ON OR AFTER NOVEMBER 8, 2016, BE EXCLUDED FROM THE MILL LEVY LIMIT CONTAINED IN THE OVERRIDE TAX QUESTION APPROVED BY THE VOTERS ON NOVEMBER 7, 2000; AND SHALL THE DIRECT AND INDIRECT REVENUES FROM SUCH TAXES (E.G. SPECIFIC OWNERSHIP TAXES AND ANY EARNINGS FROM THE INVESTMENT OF SUCH REVENUES), BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Colorado Springs School District 11 - 3D</p> <p>SHALL COLORADO SPRINGS SCHOOL DISTRICT 11 DEBT BE INCREASED \$235 MILLION, WITH A REPAYMENT COST UP TO \$390 MILLION, AND SHALL DISTRICT TAXES BE INCREASED UP TO \$15.5 MILLION ANNUALLY FOR PURPOSES DESCRIBED IN THE DISTRICT'S CAPITAL PLAN, APPROVED BY THE BOARD AND MONITORED BY A CITIZENS' OVERSIGHT COMMITTEE, INCLUDING WITHOUT LIMITATION:</p> <ul style="list-style-type: none"> BUILDING REPAIRS - REPAIRING AND REPLACING ROOFS, BOILERS, HEATING AND VENTILATION SYSTEMS, PLUMBING, ELECTRICAL SYSTEMS AND ASPHALT IN EXISTING DISTRICT FACILITIES TO ADDRESS SAFETY CONCERNS AND IMPROVE COST EFFICIENCY; TECHNOLOGY - ACQUIRING AND UPGRADING TECHNOLOGY TO ENHANCE DISTRICT OPERATIONS, INCREASE EFFICIENCIES AND IMPROVE LEARNING; SCHOOL CAPITAL IMPROVEMENTS - ENLARGING, IMPROVING, REMODELING, REPAIRING, AND MAKING ADDITION TO EXISTING SCHOOL FACILITIES TO IMPROVE SAFETY AND SECURITY, REDUCE OVERCROWDING, AND TO IMPROVE OPERATIONAL AND EDUCATIONAL EFFICIENCY; OTHER FACILITIES - CONSTRUCTING, IMPROVING, REMODELING, AND REPAIRING PROPERTY AND ATHLETIC FACILITIES; ENERGY CONSERVATION - ACQUIRING AND UPGRADING EQUIPMENT AND FACILITIES IN CONNECTION WITH ENERGY MANAGEMENT AND COST CONSERVATION PROJECTS; <p>ALL AS DESCRIBED IN THE DISTRICTS' "2016 BOND SPENDING PLAN" DATED AUGUST 24, 2016, WHICH PLAN IS SUBJECT TO AMENDMENT IN ACCORDANCE WITH THE PLAN;</p> <p>AND SHALL THE MILL LEVY BE INCREASED IN ANY YEAR WITHOUT LIMITATION AS TO RATE (PROVIDED THAT SUCH RATE SHALL NOT PRODUCE REVENUE IN EXCESS OF \$15.5 MILLION ANNUALLY AS SET FORTH ABOVE) TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON SUCH DEBT OR ANY REFUNDING DEBT (OR TO CREATE A RESERVE FOR SUCH REPAYMENT), SUCH DEBT TO BE EVIDENCED BY THE ISSUANCE OF GENERAL OBLIGATION BONDS IN ONE OR MORE SERIES AND ISSUE DATES FOR A PRICE AT, ABOVE OR BELOW THE PRINCIPAL AMOUNT OF EACH SUCH SERIES, ON TERMS AND CONDITIONS INCLUDING REDEMPTION PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF A PREMIUM NOT TO EXCEED 3%, AND WITH SUCH MATURITIES AS PERMITTED BY LAW, ALL AS THE DISTRICT BOARD OF EDUCATION MAY DETERMINE;</p> <p>AND SHALL THE DIRECT AND INDIRECT REVENUES FROM SUCH TAX LEVY AND BOND PROCEEDS (E.G. SPECIFIC OWNERSHIP TAXES AND ANY EARNINGS FROM THE INVESTMENT OF SUCH REVENUES) BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>

QUESTIONS OR ISSUES	STATE INITIATED STATUTORY PROPOSITIONS
<p>Appellate Case 16-0175 Document: 0101110442-1 Date Filed: 09/22/2018</p>	<p>Falcon School District 49 - 3B</p> <p>SHALL THE RATE OF THE TAX RATE FOR THE PAYMENT OF DEBT SERVICE LEVIED BY FALCON SCHOOL DISTRICT 49 FOR THE PAYMENT OF DEBT SERVICE ON GENERAL OBLIGATION BONDS, SHALL DISTRICT 49 COLLECT UP TO \$3,300,000 IN PROPERTY TAX REVENUE IN 2017 AND SUCH ADDITIONAL AMOUNTS GENERATED ANNUALLY THEREAFTER BY CONTINUING TO COLLECT SUCH 10.159 MILLS TO BE USED FOR GENERAL FUND PURPOSES INCLUDING RENTAL PAYMENTS ON LEASE-PURCHASE FINANCINGS AND FOR OTHER CAPITAL IMPROVEMENTS AND FOR OPERATIONAL PRIORITIES DIRECTED TO:</p> <ul style="list-style-type: none"> ATTRACTING AND RETAINING HIGHLY EFFECTIVE TEACHERS BY OFFERING SALARIES AND BENEFITS THAT ARE COMPETITIVE WITH OTHER DISTRICTS IN EL PASO COUNTY; MAKING PRIORITY CAPITAL IMPROVEMENTS TO RESTORE AND REFURBISH ALL EXISTING EDUCATIONAL FACILITIES ON A REGULAR PATTERN GOING FORWARD; INVESTING IN THE TRADITIONAL HIGH SCHOOLS TO ENSURE THE BUILDINGS PROVIDE EQUITABLE OPPORTUNITIES FOR STUDENTS AND SAFE AND EFFECTIVE ENVIRONMENTS FOR STUDENT ACHIEVEMENT; CONSTRUCTING TWO K-5 NEIGHBORHOOD SCHOOLS, IN ORDER TO SERVE CURRENT DEMAND IN THE CENTRAL AND NORTHERN PORTIONS OF THE DISTRICT; <p>PROVIDED THAT IN 2017 A PORTION OF THE 10.159 MILLS WILL BE USED TO MAKE THE FINAL PAYMENT ON THE DISTRICT'S GENERAL OBLIGATION DEBT?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Colorado Springs School District 11 - 3C</p> <p>SHALL COLORADO SPRINGS SCHOOL DISTRICT 11 TAXES BE INCREASED UP TO \$15,000,000 IN COLLECTION YEAR 2017, \$16,250,000 IN 2018, \$17,500,000 IN 2019, AND \$32,600,000 IN 2024 AND THEREAFTER \$32,600,000 ADJUSTED FOR ANNUAL CHANGES IN THE DENVER-BOULDER CONSUMER PRICE INDEX BY A PROPERTY TAX OVERRIDE MILL LEVY FOR DISTRICT EDUCATIONAL PURPOSES AS DETERMINED BY THE DISTRICT AND AS MONITORED BY CITIZENS' OVERSIGHT COMMITTEE, WITH THE CONTINUATION OF THE INDEPENDENT REVIEW THAT ASSESSES AND REPORTS TO THE PUBLIC THE DISTRICT'S PROGRESS IN MEETING THE GOALS OF THE DISTRICT PERFORMANCE PLAN, INCLUDING BUT NOT LIMITED TO:</p> <ul style="list-style-type: none"> PROVIDING A SAFE AND HEALTHY LEARNING AND WORKING ENVIRONMENT; REDUCING CLASS SIZE; ATTRACTING, RETAINING AND RECRUITING QUALITY STAFF; PROVIDING UP-TO-DATE TECHNOLOGY REQUIREMENTS; MAINTAINING EFFICIENT, SECURE BUILDINGS AND EQUIPMENT; AND PROVIDING EQUITABLE FUNDING FOR CHARTER SCHOOLS; <p>ALL AS DESCRIBED IN THE DISTRICTS' 2016 MILL LEVY OVERRIDE SPENDING PLAN" DATED AUGUST 24, 2016, WHICH PLAN IS SUBJECT TO AMENDMENT IN ACCORDANCE WITH THE PLAN;</p> <p>WHICH PROPERTY TAX OVERRIDE MILL LEVY SHALL BE LIMITED BY APPLICABLE LAW AS PROVIDED IN C.R.S. SECTION 22-54-108 (CURRENTLY 25% OF TOTAL PROGRAM FUNDING);</p> <p>AND SHALL THE PROPERTY TAX OVERRIDE MILL LEVY APPROVED BY THIS QUESTION AND THE MILL LEVY REQUIRED FOR THE PAYMENT OF DEBT SERVICE ON GENERAL OBLIGATION BONDS OF THE DISTRICT APPROVED ON OR AFTER NOVEMBER 8, 2016, BE EXCLUDED FROM THE MILL LEVY LIMIT CONTAINED IN THE OVERRIDE TAX QUESTION APPROVED BY THE VOTERS ON NOVEMBER 7, 2000; AND SHALL THE DIRECT AND INDIRECT REVENUES FROM SUCH TAXES (E.G. SPECIFIC OWNERSHIP TAXES AND ANY EARNINGS FROM THE INVESTMENT OF SUCH REVENUES), BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Green Mountain Falls - Chipita Park Fire Protection District - 4A</p> <p>SHALL GREEN MOUNTAIN FALLS - CHIPITA PARK FIRE PROTECTION DISTRICT DEBT BE INCREASED NOT TO EXCEED \$3,500,000, WITH A MAXIMUM REPAYMENT COST NOT TO EXCEED \$6,102,800, AND SHALL DISTRICT TAXES BE INCREASED UP TO \$308,000 ANNUALLY FOR THE PURPOSE OF FINANCING THE COSTS OF ACQUIRING AND CONSTRUCTING A NEW FIRE STATION INCLUDING ADMINISTRATIVE AND MEETING SPACE, BY THE ISSUANCE OF GENERAL OBLIGATION BONDS, BEARING INTEREST AT A MAXIMUM NET EFFECTIVE INTEREST RATE NOT TO EXCEED 6.0% PER ANNUM, TO BE ISSUED AT SUCH TIMES AND PRICES (AT, ABOVE OR BELOW PAR) AND IN SUCH MANNER AND CONTAINING SUCH TERMS, NOT INCONSISTENT HERewith, AS THE BOARD OF DIRECTORS MAY DETERMINE; SHALL AD VALOREM PROPERTY TAXES BE LEVIED WITHOUT LIMIT AS TO RATE AND IN AN AMOUNT SUFFICIENT IN EACH YEAR TO PAY THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON SUCH DEBT; AND SHALL ANY EARNINGS FROM THE INVESTMENT OF SUCH TAXES OR OTHER LAWS, INCLUDING WITHOUT LIMITATION THE 5.5% PROPERTY TAX REVENUE LIMIT OF 29-1-301 C.R.S.,</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Triview Metropolitan District - 5A</p> <p>COMMENCING JANUARY 1, 2018 THROUGH DECEMBER 31, 2028, SHALL TRIVIEW METROPOLITAN DISTRICT, WITHOUT INCREASING EXISTING TAX RATES OR IMPOSING A NEW TAX, BE AUTHORIZED, FOR THE PURPOSE OF PAYING DOWN THE DISTRICT'S DEBT SOONER, TO COLLECT, RETAIN AND SPEND AS A VOTER APPROVED REVENUE CHANGE PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND REGARDLESS OF THE PROVISIONS OF ANY OTHER LAW, INCLUDING WITHOUT LIMITATION THE 5.5% PROPERTY TAX REVENUE LIMIT OF 29-1-301 C.R.S.,</p> <p>(C1) ALL REVENUES ACCOUNTED FOR IN THE DISTRICT'S GENERAL FUND SUCH AS PROPERTY TAXES, SPECIFIC OWNERSHIP TAXES, SALES TAXES, PROPERTY TAXES AND OTHER REVENUES RECEIVED FROM THE TOWN OF MONUMENT, COLORADO, IMPACT FEES, GRANT REVENUES, AND INVESTMENT INCOME, AND</p> <p>(C2) IN ANY YEAR IN WHICH THE DISTRICTS' WATER AND SEWER UTILITY DOES NOT QUALIFY AS AN ENTERPRISE, REVENUES ACCOUNTED FOR IN THE ENTERPRISE FUND, SUCH AS WATER AND SEWER USER FEES, TAP FEES, INCLUSION FEES, WATER REUSE FEES, GRANTS, AND INVESTMENT INCOME?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Paint Brush Hills Metropolitan District - 5B</p> <p>SHALL PAINT BRUSH HILLS METROPOLITAN DISTRICT BE AUTHORIZED TO COLLECT, RETAIN, AND SPEND ANY AND ALL AMOUNTS ANNUALLY FROM ANY REVENUE SOURCES WHATSOEVER, INCLUDING BUT NOT LIMITED TO TAXES, TAX INCREMENT REVENUES, TAP FEES, PARK FEES, FACILITY FEES, SERVICE CHARGES, INSPECTION CHARGES, ADMINISTRATIVE CHARGES, GIFTS, GRANTS OR ANY OTHER FEE, RATE, TOLL, PENALTY, INCOME OR CHARGE AUTHORIZED BY LAW OR CONTRACT TO BE IMPOSED, COLLECTED OR RECEIVED BY THE DISTRICT IN FISCAL YEAR 2016 AND IN EACH FISCAL YEAR THEREAFTER, SUCH AMOUNTS TO CONSTITUTE A VOTER-APPROVED REVENUE CHANGE AND BE COLLECTED, RETAINED AND SPENT BY THE DISTRICT WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, INCLUDING ANY FUTURE AMENDMENTS TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION IMPOSING TAX CUTS, THE LIMITS IMPOSED ON INCREASES IN PROPERTY TAXATION BY SECTION 29-1-301, C.R.S. IN ANY SUBSEQUENT YEAR, OR ANY OTHER LAW WHICH PURPORTS TO LIMIT THE DISTRICT'S REVENUES OR EXPENDITURES AS IT CURRENTLY EXISTS OR AS IT MAY BE AMENDED IN THE FUTURE, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED, RETAINED AND SPENT BY THE DISTRICT?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Stratmoor Hills Fire Protection District - 5C</p> <p>WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT TAXES OR MILL LEVY, SHALL THE STRATMOOR HILLS FIRE PROTECTION DISTRICT, COLORADO, BE PERMITTED TO RETAIN SIXTEEN THOUSAND, FOUR HUNDRED AND NO/100 DOLLARS (\$16,400.00) IN 2015 REVENUE ACTUALLY COLLECTED THAT IS IN EXCESS OF TABOR LIMITS, WITHOUT REGARD TO ANY REVENUE OR EXPENDITURE LIMITATIONS INCLUDING THOSE CONTAINED IN THE COLORADO REVISED STATUTES AND ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Stratmoor Hills Fire Protection District - 5D</p> <p>WITHOUT CREATING ANY NEW TAX OR INCREASING ANY CURRENT TAXES, SHALL THE STRATMOOR HILLS FIRE PROTECTION DISTRICT, COLORADO, BE PERMITTED TO COLLECT, RETAIN AND SPEND OR RESERVE THE FULL AMOUNT OF ALL TAXES, GRANTS, AND OTHER REVENUE COLLECTED FROM ALL SOURCES INCLUDING ALL REVENUE RECEIVED IN 2016 AND EACH SUBSEQUENT YEAR THEREAFTER THROUGH 2019, WITHOUT REGARD TO ANY REVENUE OR EXPENDITURE LIMITATIONS, INCLUDING THOSE CONTAINED IN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND IN THE COLORADO REVISED STATUTES OR IN ANY OTHER LAW?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>

QUESTIONS OR ISSUES	STATE INITIATED STATUTORY PROPOSITIONS
<p>Appellate Case 16-0175 Document: 0101110442-1 Date Filed: 09/22/2018</p>	<p>Town of Palmer Lake - 300</p> <p>SHALL THE RATE OF PALMER LAKE TAXES BE INCREASED BY \$300,000 IN THE FIRST FISCAL YEAR AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER, BY IMPOSING AN ADDITIONAL SALES TAX OF 5% ON THE SALE OF RETAIL (RECREATIONAL) MARIJUANA AND RETAIL (RECREATIONAL) PRODUCTS AS DEFINED IN THE COLORADO RETAIL MARIJUANA CODE, WITH THE RATE OF SUCH TAX BEING ALLOWED TO BE DECREASED OR INCREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF THE TAX DOES NOT EXCEED 10%, PROVIDED THAT THE RATE SHALL NOT EXCEED 7% ON OR BEFORE JANUARY 1, 2019, WITH THE REVENUES DERIVED FROM SUCH TAX TO BE COLLECTED AND SPENT TO PROMOTE THE GENERAL PURPOSES OF THE TOWN OF PALMER LAKE AS A VOTER-APPROVED REVENUE CHANGE NOTWITHSTANDING ANY REVENUE OR EXPENDITURE LIMITATIONS CONTAINED IN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Town of Palmer Lake - 301</p> <p>Shall the Town of Palmer Lake regulate commercial marijuana by permitting the establishment or retail (recreational) marijuana stores by existing retail marijuana business licensees in good standing in the Town of Palmer Lake and the state of Colorado as of March 1, 2016 by repealing measure 301 and ordinance 2 of 2014, and enacting an ordinance amending the PalmerLake town code, subject to the requirements of the Colorado retail marijuana code and regulations to be adopted by the council of Palmer Lake?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Town of Green Mountain Falls - 2E</p> <p>SHALL TOWN OF GREEN MOUNTAIN FALLS TAXES BE INCREASED \$19,000.00 IN 2017 AND THEN ANNUALLY BY WHATEVER AMOUNTS ARE RAISED THEREAFTER BY THE IMPOSITION OF AN ADDITIONAL LOGGING TAX AT THE RATE OF 2% SUBJECT TO THE FOLLOWING:</p> <p>ALL OR ANY PORTION OF THE NET PROCEEDS OF THE ADDITIONAL 2% LOGGING TAX, AS DETERMINED BY THE BOARD OF TRUSTEES, MAY BE COLLECTED, RETAINED AND SPENT TO FUND PARK IMPROVEMENTS OR TOWN BEAUTIFICATION OR TO PAY THE COSTS OF OPERATING OR MAINTAINING IMPROVEMENTS;</p> <p>SUCH TAX INCREASE SHALL COMMENCE JANUARY 1, 2017 AND BE COLLECTED IN THE SAME TRANSACTIONS AS THE TOWN'S LOGGING TAX; AND</p> <p>SUCH ORDINANCE NO. 9-6-2016 A PROVIDING FOR SUCH TAX INCREASE BE APPROVED; AND SHALL THE REVENUES GENERATED BY SUCH TAX INCREASE AND PROCEEDS MAY BE COLLECTED AND SPENT BY THE TOWN AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Town of Green Mountain Falls - 2F</p> <p>Without increasing taxes, shall the Town of Green Mountain Falls have the legal ability to provide any and all services currently restricted by title 29, article 27, Part 1, of the Colorado Revised Statutes, specifically described as "Advanced Service," "Telecommunications Services" and "Cable Television Services," as defined by the Statute, specifically including new and improved bandwidth services based on best available technologies, utilizing current and new community owned infrastructure to any existing fiber optic network, either directly, or indirectly with public or private sector service providers, to potential subscribers that may include telecommunications service providers, and residential or commercial users within Green Mountain Falls, and that said services may be provided by Green Mountain Falls alone or in partnership with other Governmental, Private or Corporate, including nonprofit, entities?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
	<p>Colorado Springs School District 11 - 3D</p> <p>SHALL COLORADO SPRINGS SCHOOL DISTRICT 11 DEBT BE INCREASED \$235 MILLION, WITH A REPAYMENT COST UP TO \$390 MILLION, AND SHALL DISTRICT TAXES BE INCREASED UP TO \$15.5 MILLION ANNUALLY FOR PURPOSES DESCRIBED IN THE DISTRICT'S CAPITAL PLAN, APPROVED BY THE BOARD AND MONITORED BY A CITIZENS' OVERSIGHT COMMITTEE, INCLUDING WITHOUT LIMITATION:</p> <ul style="list-style-type: none"> BUILDING REPAIRS - REPAIRING AND REPLACING ROOFS, BOILERS, HEATING AND VENTILATION SYSTEMS, PLUMBING, ELECTRICAL SYSTEMS AND ASPHALT IN EXISTING DISTRICT FACILITIES TO ADDRESS SAFETY CONCERNS AND IMPROVE COST EFFICIENCY; TECHNOLOGY - ACQUIRING AND UPGRADING TECHNOLOGY TO ENHANCE DISTRICT OPERATIONS, INCREASE EFFICIENCIES AND IMPROVE LEARNING; SCHOOL CAPITAL IMPROVEMENTS - ENLARGING, IMPROVING, REMODELING, REPAIRING, AND MAKING ADDITION TO EXISTING SCHOOL FACILITIES TO IMPROVE SAFETY AND SECURITY, REDUCE OVERCROWDING, AND TO IMPROVE OPERATIONAL AND EDUCATIONAL EFFICIENCY; OTHER FACILITIES - CONSTRUCTING, IMPROVING, REMODELING, AND REPAIRING PROPERTY AND ATHLETIC FACILITIES; ENERGY CONSERVATION - ACQUIRING AND UPGRADING EQUIPMENT AND FACILITIES IN CONNECTION WITH ENERGY MANAGEMENT AND COST CONSERVATION PROJECTS; <p>ALL AS DESCRIBED IN THE DISTRICTS' "2016 BOND SPENDING PLAN" DATED AUGUST 24, 2016, WHICH PLAN IS SUBJECT TO AMENDMENT IN ACCORDANCE WITH THE PLAN;</p> <p>AND SHALL THE MILL LEVY BE INCREASED IN ANY YEAR WITHOUT LIMITATION AS TO RATE (PROVIDED THAT SUCH RATE SHALL NOT PRODUCE REVENUE IN EXCESS OF \$15.5 MILLION ANNUALLY AS SET FORTH ABOVE) TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON SUCH DEBT OR ANY REFUNDING DEBT (OR TO CREATE A RESERVE FOR SUCH REPAYMENT), SUCH DEBT TO BE EVIDENCED BY THE ISSUANCE OF GENERAL OBLIGATION BONDS IN ONE OR MORE SERIES AND ISSUE DATES FOR A PRICE AT, ABOVE OR BELOW THE PRINCIPAL AMOUNT OF EACH SUCH SERIES, ON TERMS AND CONDITIONS INCLUDING REDEMPTION PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF A PREMIUM NOT TO EXCEED 3%, AND WITH SUCH MATURITIES AS PERMITTED BY LAW, ALL AS THE DISTRICT BOARD OF EDUCATION MAY DETERMINE;</p> <p>AND SHALL THE DIRECT AND INDIRECT REVENUES FROM SUCH TAX LEVY AND BOND PROCEEDS (E.G. SPECIFIC OWNERSHIP TAXES AND ANY EARNINGS FROM THE INVESTMENT OF SUCH REVENUES) BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW</p>

UNITED STATES COURT OF APPEALS December 16, 2016

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

POLLY BACA; ROBERT NEMANICH,

Plaintiffs-Appellants,

v.

JOHN W. HICKENLOOPER, JR., in his
official capacity as Governor of Colorado;
CYNTHIA H. COFFMAN, in her official
capacity as Attorney General of Colorado;
WAYNE W. WILLIAMS, in his official
capacity as Colorado Secretary of State,

Defendants-Appellees.

COLORADO REPUBLICAN
COMMITTEE; DONALD J. TRUMP;
DONALD J. TRUMP FOR PRESIDENT,
INC.,

Intervenors-Appellees.

No. 16-1482

(D.C. No. 1:16-CV-02986-WYD-NYW)
(D. Colo.)

ORDER

Before **BRISCOE**, **McHUGH** and **MORITZ**, Circuit Judges.

Plaintiffs/appellants Polly Baca and Robert Nemanich have filed an emergency motion for injunction pending appeal. For the reasons outlined below, we deny their motion.

I

Colorado's Presidential Electors Statute

Colorado's Presidential Electors statute, Colo. Rev. Stat. 1-4-304, provides as follows:

(1) The presidential electors shall convene at the capital of the state, in the office of the governor at the capitol building, on the first Monday after the second Wednesday in the first December following their election at the hour of 12 noon and take the oath required by law for presidential electors. If any vacancy occurs in the office of a presidential elector because of death, refusal to act, absence, or other cause, the presidential electors present shall immediately proceed to fill the vacancy in the electoral college. When all vacancies have been filled, the presidential electors shall proceed to perform the duties required of them by the constitution and laws of the United States. The vote for president and vice president shall be taken by open ballot.

(2) The secretary of state shall give notice in writing to each of the presidential electors of the time and place of the meeting at least ten days prior to the meeting.

(3) The secretary of state shall provide the presidential electors with the necessary blanks, forms, certificates, or other papers or documents required to enable them to properly perform their duties.

(4) If desired, the presidential electors may have the advice of the attorney general of the state in regard to their official duties.

(5) Each presidential elector shall vote for the presidential candidate and, by separate ballot, vice-presidential candidate who received the highest number of votes at the preceding general election in this state.

Colo. Rev. Stat. § 1-4-304.

Plaintiffs/appellants

Baca is a resident of the City and County of Denver, Colorado. Nemanich is a

resident of El Paso County, Colorado. Both Baca and Nemanich were nominated at the Democratic Convention on April 16, 2016, to be Presidential Electors for the State of Colorado. Both were required to sign affidavits at that time affirming that they would cast their ballots on December 19, 2016, for the Democratic Presidential and Vice-Presidential candidates.

Baca and Nemanich concede that the Democratic candidates for President and Vice-President, Hillary Clinton and Timothy Kaine, received the highest number of votes in the State of Colorado during the general election held on November 8, 2016. Baca and Nemanich also concede that, given these election results, Colo. Rev. Stat. § 1-4-304(5) mandates that they cast their votes for Clinton and Kaine.

Baca and Nemanich allege, however, that they “cannot be constitutionally compelled to vote for” Clinton and Kaine, and are instead “entitled to exercise their judgment and free will to vote for whomever they believe to be the most qualified and fit for the offices of President and Vice President.” Complaint at 4. “For example,” they allege, they “may vote for a consensus candidate, other than Clinton or Trump, upon whom electors from both parties and along the ideological spectrum can agree, so as to prevent” the Republican Presidential and Vice-Presidential Candidates, Donald Trump and Michael Pence, “from ascending to the highest offices in the United States.” Id.

The Colorado Secretary of State’s response

On or about November 18, 2016, Nemanich contacted Colorado’s Secretary of State, Wayne Williams, and asked “what would happen if” a Colorado state elector

“didn’t vote for . . . Clinton and . . . Kaine.” Id., Att. 1 at 7 (Nemanich Affidavit at 3).

Williams responded, by email, saying that “if an elector failed to follow th[e] requirement” outlined in Colo. Rev. Stat. § 1-4-304(5), his “office would likely remove the elector and seat a replacement elector until all nine electoral votes were cast for the winning candidates.” Id. at 9.

In recent days, Williams has allegedly instituted a new oath to be given to Colorado’s Electors on December 19, 2016, and has stated that if an elector violates Colo. Rev. Stat. § 1-4-304(5), they will likely face either a misdemeanor or felony perjury charge.

Plaintiffs’ initiation of this action

On December 6, 2016, plaintiffs initiated this action by filing a verified complaint against three Colorado state officials: Governor John Hickenlooper, Jr., Attorney General Cynthia Coffman, and Secretary of State Wayne Williams. The complaint alleged, in pertinent part, that Colo. Rev. Stat. § 1-4-304(5) violates Article II of the United States Constitution, as amended by the Twelfth Amendment, and compels speech in violation of the First Amendment.

On that same date, plaintiffs also filed a motion for temporary restraining order and preliminary injunction. They alleged in their motion that they were “substantially likely to prevail on the paramount issue that Colorado’s elector binding statute, [Colo. Rev. Stat.] § 1-4-304(5), is unconstitutional because it violates Article II of the U.S. Constitution, as amended by the Twelfth Amendment, and it compels speech in violation

of the First Amendment.” Dist. Ct. Docket No. 2 at 4. They asked for an order declaring Colo. Rev. Stat. § 1-4-304(5) unconstitutional. They also asked for an order “temporarily and preliminarily enjoining and restraining Defendants . . . from removing or replacing [them] as electors, compelling them to vote for certain candidates, precluding them from voting for any candidates, or otherwise interfering with the vote of the electors on December 19, 2016.” Id. at 14.

The district court’s denial of plaintiffs’ motion

On December 12, 2016, the district court held a hearing on plaintiffs’ motion and, at the conclusion of the hearing, orally denied the motion. In doing so, the district court concluded that plaintiffs failed to establish a substantial likelihood of success on the merits of their claims. The district court also concluded that “granting an injunction would irreparably harm the status quo and the public’s general expectations.” Dist. Ct. Docket No. 23 at 68. Further, with respect to the balance of harms, the district court found that “the last-minute nature of this action . . . tip[ped] the scales in favor of the defendants rather than the plaintiff[s].” Id. at 69. Relatedly, the district court concluded that the public’s interest “in fair and effective elections, political stability, [and the] legitimacy of the eventual winner . . . would be adversely affected if [it] granted this injunction.” Id. at 70. Indeed, the district court concluded that granting the injunction “would undermine the electoral process and unduly prejudice the American people by prohibiting a successful transition of power.” Id.

Plaintiffs' appeal

Plaintiffs filed a notice of appeal on December 13, 2016, and have since filed with this court their emergency motion for injunction pending appeal.

II

The issuance of an injunction pending appeal unquestionably amounts to “extraordinary relief.” Hobby Lobby Stores, Inc. v. Sebelius, — U.S. —, 136 S. Ct. 641, 643 (2012); see Ruckelshaus v. Monsanto Co., 463 U.S. 1315, 1316 (1983) (holding that “a stay pending appeal” will be granted “only under extraordinary circumstances”). “In ruling on . . . a request” for injunction pending appeal, “this court makes the same inquiry as it would when reviewing a district court’s grant or denial of a preliminary injunction.” Homans v. City of Albuquerque, 264 F.3d 1240, 1243 (10th Cir. 2001). Thus, the applicant must establish (1) “the likelihood of success on appeal,” (2) “the threat of irreparable harm if the stay or injunction is not granted,” (3) “the absence of harm to opposing parties if the stay or injunction is granted,” and (4) that the public interest will not be harmed if the stay or injunction is granted. Id.

As discussed below, we conclude, after considering these four factors in light of the preliminary record before us, that the district court did not “abuse[] its discretion” in denying plaintiffs’ motion for temporary restraining order and preliminary injunction and that plaintiffs have not “demonstrated a clear and unequivocal right to relief.” Id.

Likelihood of success on appeal

In analyzing plaintiffs’ likelihood of success on appeal, we begin by addressing

defendants' assertion that plaintiffs lack standing. We then turn to the question of whether plaintiffs have established a likelihood of success on appeal on their claims that Colo. Rev. Stat. § 1-4-304(5) violates Article II and the Twelfth Amendment of the United States Constitution, and the First Amendment of the United States Constitution.

a) Plaintiffs' standing

Defendants argue that plaintiffs are, in essence, state officials who lack Article III standing to challenge the constitutionality of a state statute. In support, they cite primarily to the Supreme Court's decision in Columbus & Greenville Ry. v. Miller, 283 U.S. 96, 99-100 (1931). We are not persuaded, however, that Columbus necessarily leads to the conclusion that the plaintiffs in this case lack standing. Columbus involved a challenge by a state tax collector to the validity of a state tax law. Notably, the taxpayer in Columbus, i.e., the party directly affected by the state tax law, conceded the validity of the law. In the instant case, in contrast, plaintiffs allege that Colo. Rev. Stat. § 1-4-304(5) infringes upon their own personal constitutional rights. At this stage of the proceedings, and given the preliminary record before us, we conclude that is sufficient to provide them with standing to challenge Colo. Rev. Stat. § 1-4-304(5). See Coleman v. Miller, 30 U.S. 433, 438 (1939) (holding that state legislators had standing to restrain action on a resolution, as they had "a plain, direct and adequate interest in maintaining the effectiveness of their votes").

b) The Article II and Twelfth Amendment claim

As noted, plaintiffs argue that Colo. Rev. Stat. § 1-4-304(5) violates Article II, as

amended by the Twelfth Amendment, by requiring electors to vote for the presidential and vice-presidential candidates who received the highest number of votes in the State of Colorado during the general election. In addressing this argument, we begin by examining the relevant provisions of the Constitution.

The Constitution mandates that the election of the President of the United States occur by way of the Electoral College, rather than by individual voters at the general election, and it outlines both how the Electoral College is to be created and how it shall operate. In particular, Article II Section 1 of the Constitution provides, in pertinent part:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

* * *

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

U.S. Const. art. II, § 1.¹

As originally established, Article II section I also addressed the details of how Electors would cast their votes and how those votes would be counted. That language was superseded by the Twelfth Amendment to the Constitution, which was ratified on June 15, 1804. The Twelfth Amendment provides, in pertinent part:

¹ This latter provision has been interpreted to grant Congress power over Presidential elections coextensive with that which Article I section 4 grants it over congressional elections. Burroughs v. United States, 290 U.S. 534 (1934).

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. * * * The person having the greatest number of votes as Vice-President, shall be Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

U.S. Const. amend. XII.

Lastly, Section 3 of the Fourteenth Amendment addresses who may not serve as a State Elector:

No person shall be . . . [an] elector of President and Vice President . . . who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same or given aid or comfort to the enemies thereof.

U.S. Const. amend. XIV, § 3.

Plaintiffs argue that Colo. Rev. Stat. § 1-4-304(5) violates Article II and the Twelfth Amendment by rendering electors superfluous. In making this argument, however, plaintiffs fail to quote any of these provisions of the Constitution. And, more importantly, they fail to point to a single word in any of these provisions that support their position that the Constitution requires that electors be allowed the opportunity to exercise their discretion in choosing who to cast their votes for.² We conclude that this failure is fatal at this stage of the litigation. As noted, it is plaintiffs' burden to establish a likelihood of success on appeal. By failing to point us to any language in the Constitution that would support their position, we conclude they have failed to meet their burden.³

But even if we were to overlook the plaintiffs failure to point us to the Constitutional language that supports their position, they raise at best a debatable

² Instead, plaintiffs point primarily to statements made by Alexander Hamilton in The Federalist No. 68. E.g., Dist. Ct. Docket No. 2 at 6; Emergency Motion at 10. Although we turn to external sources when unable to discern the meaning of the Constitution from its plain language, we begin our analysis with careful examination of the words used. Here, plaintiffs make no textual argument, at all.

³ This is not to say that there is no language in Article II or the Twelfth Amendment that might ultimately support plaintiffs' position. See Ray v. Blair, 343 U.S. 214, 232 (1952) ("No one faithful to our history can deny that the plan originally contemplated, *what is implicit in its text*, that electors would be free agents, to exercise an independent and nonpartisan judgment as to the men best qualified for the Nation's highest offices." (emphasis added)). For example, there is language in the Twelfth Amendment that could arguably support the plaintiffs' position. E.g., Michael Stokes Paulsen, The Constitutional Power of the Electoral College, Public Discourse (Nov. 21, 2016) (available at www.thepublicdiscourse.com/2016/11/18283/). But it is not our role to make those arguments for them.

argument. Defendants point instead to the direction that: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors” U.S. Const. Art. II, § 2. And they argue that the Supreme Court has held this power to be plenary under McPherson v. Blacker, 146 U.S. 1, 35-36 (1892). Accordingly, we cannot conclude the plaintiffs have met their burden of showing a likelihood of success on the merits.

Plaintiffs also argue that “[r]equiring an Elector to vote is clearly an improper qualification because it mandates that only the people that agree to vote for particular candidates are allowed (*i.e.*, qualified) to become Electors.” Emergency Motion at 7-8. We are not persuaded, however, that the requirement to vote consistent with the majority vote in the state is a “qualification.” The term qualification suggests a preexisting condition or quality that either renders a person eligible or ineligible to be an Elector. See Oxford Dictionaries (defining qualification as “[a] quality or accomplishment that makes someone suitable for a particular job or activity”; “[a] condition that must be fulfilled before a right can be acquired; an official requirement.”). Under this definition, a pledge to vote for a particular candidate (like the ones that the plaintiffs in this case made to vote for the Democratic nominees for President and Vice-President) would be a qualification. But a statutory requirement to vote in a certain way, like the one in Colo. Rev. Stat. § 1-4-304(5), is more in the way of a duty than a qualification.

Lastly, plaintiffs argue that Colo. Rev. Stat. § 1-4-304(5) violates the Supremacy Clause by usurping Congress’s exclusive power to count electoral votes. Emergency

Motion at 12 (citing U.S. Const. amend. XII and 3 U.S.C. § 15). In support, plaintiffs argue that Colo. Rev. Stat. § 1-4-304(5) “gives Colorado the authority to discount/delete/ignore an elector’s vote for persons who did not win the popular vote in the state.” Id. In turn, they argue that “[i]f Congress counts the votes, and it has counted over 150 ‘faithless’ electors’ votes over the centuries, the states lack the power to count an electors’ [sic] vote,” and thus “the statute is unconstitutional.” Id.

The problem with this argument is that, according to the limited record before us, defendant Williams’ threat to remove and place any elector who fails to comply with Colo. Rev. Stat. § 1-4-304(5) is not based on the text of that provision, but rather upon his interpretation of the authority afforded to him under Colo. Rev. Stat. § 1-4-304(1). As noted above, § 1-4-304(1) expressly affords the State of Colorado with authority to “fill [any] vacanc[ies] in the electoral college” prior to the start of voting. Whether that statute also affords the State with authority to remove an elector after voting has begun is not a question that has been posed by plaintiffs to either the district court or this court.⁴

c) The First Amendment claim

Plaintiffs also argue that Colo. Rev. Stat. § 1-4-304(5) violates their First Amendment rights by burdening their core political speech and compelling them to vote in a certain way. The problem for plaintiffs at this stage, however, is that they fail to identify any authority establishing, or even remotely suggesting, that the First

⁴ And we deem such an attempt by the State unlikely in light of the text of the Twelfth Amendment.

Amendment applies to electors. See Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293 n.5 (1984) (holding that “it is the obligation of the person desiring to engage in assertedly expressive conduct to demonstrate that the First Amendment even applies.”). For these reasons, we conclude that plaintiffs have failed to establish a likelihood of success on the merits of the claims asserted in their appeal.

Irreparable harm

Plaintiffs argue that they will suffer irreparable harm if an injunction is not granted pending appeal. In support, they argue that, in light of defendant Williams’ statements to date, there is a substantial likelihood that he will remove and replace them if they fail to vote for Clinton and Kaine. The problem with this argument is two-fold. First, as we have discussed, plaintiffs have failed to establish a likelihood of success on the merits of their constitutional challenges to Colo. Rev. Stat. § 1-4-304(5). In other words, they have failed at this point to establish that the State of Colorado cannot constitutionally require them to vote for Clinton and Kaine. Second, any removal and replacement authority that defendant Williams may possess derives not from § 1-4-304(5), but rather from § 1-4-304(1). While we question whether that subsection provides him any such authority after voting has commenced, that precise question is not before us.

Plaintiffs also argue that defendant Williams has threatened to charge them with a felony or misdemeanor if they fail to comply with § 1-4-304(5). The district court declined to address this argument because plaintiffs presented it for the first time at the hearing on their motion for temporary restraining order and preliminary injunction. Dist.

Ct. Docket No. 23 at 66. We conclude that the district court did not abuse its discretion in this regard and thus adopt the same position.

Harm to opposing parties if the injunction is granted

Plaintiffs argue that “[n]o hardship will occur to Defendants or the State if the injunction is implemented.” Emergency Motion at 18. They explain that “[t]here will be no need to re-do the election” because when the people of Colorado “cast their ballots for presidential and vice-presidential candidates, they were voting for electors specific to political parties/candidates,” and “[i]t is up to those electors, who have now been chosen by the people of Colorado, to choose the best candidates.” *Id.* Further, they argue, the injunction would “not require Defendants to take any action,” and would “merely prevent[] Defendants from enforcing an unconstitutional statute.” *Id.* at 19.

The district court considered and rejected these very same arguments in denying plaintiffs’ motion for temporary restraining order and preliminary injunction. In doing so, it concluded that “the last-minute nature of this action, coupled with the potentially stifling effects it may have on our country, . . . tip[ped] the scales in favor of the defendants.” Dist. Ct. Docket No. 66 at 69. We are unable to say that this amounted to an abuse of discretion, particularly given our conclusion that plaintiffs have failed to establish a likelihood of success on appeal.

Public interest

Finally, plaintiffs argue that the public interest weighs in favor of granting the requested injunction because “[t]he public has a strong interest in the protection and

enforcement of the rights established by the First and Fourteenth Amendments.”

Emergency Motion at 19. “The public,” plaintiffs argue, also “has a strong interest in having the Electoral College operate as intended by deliberating and selecting a President and Vice-President who they believe best qualified.” Id. Lastly, plaintiffs argue that “[t]he public has a significant interest in making sure fit and competent leaders are elected.” Id.

The district court considered and rejected these same arguments, and instead concluded that granting plaintiffs’ requested injunctive relief “would undermine the electoral process and unduly prejudice the American people by prohibiting a successful transition of power.” Dist. Ct. Docket No. 66 at 70. We are unable to say that this amounted to an abuse of discretion, given plaintiffs’ failure to establish a likelihood of prevailing on appeal.

III

Plaintiffs’ emergency motion for injunction pending appeal is DENIED.

Entered for the Court



Elisabeth A. Shumaker, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Civil Action No. 16-cv-02986-WYD-NYW

POLLY BACA and
ROBERT NEMANICH,

Plaintiffs,

v.

JOHN W. HICKENLOOPER JR., in his official capacity as Governor of Colorado;
CYNTHIA H. COFFMAN, in her official capacity as Attorney General of Colorado; and
WAYNE W. WILLIAMS, in his official capacity as Colorado Secretary of State,

Defendants.

ORDER

I. INTRODUCTION

THIS MATTER is before the Court on Motion by Plaintiffs for Temporary Restraining Order and Preliminary Injunction (ECF No. 2), filed December 6, 2016. A hearing was held on December 12, 2016, at the end of which I orally denied Plaintiffs' motion. Plaintiffs filed an emergency motion with the Tenth Circuit Court of Appeals, filed December 13, 2016, seeking an injunction pending appeal. For the reasons noted in its December 16, 2016, Order, the Tenth Circuit denied Plaintiffs' emergency motion for injunction pending appeal. Therefore, the sole purpose of this Order is to state in a written order why Plaintiffs' request for injunctive relief was denied.

Plaintiffs are two of the nine appointed presidential electors, selected to vote for the candidates that received the majority of Colorado's electorate vote. (See Compl., ECF No. 1). On Tuesday, November 8, 2016, Hillary Clinton and Timothy Kaine won the

majority of Colorado's votes, and as such, the Democrat Party's presidential electors are tasked with the duty to cast their votes for them when the Electoral College meets on Monday, December 19, 2016. Plaintiffs argue that Colorado's binding presidential elector statute, Colo. Rev. Stat. § 1-4-304(5), violates Article II of the U.S. Constitution, the Twelfth Amendment, the First Amendment, and the Fourteenth Amendment's Equal Protection Clause because they are "forced" to vote for the Clinton-Kaine ticket and will be removed from their position if they do not. (*Id.*).

Defendants filed a Response to Plaintiffs Motion for Preliminary Injunction (ECF No. 13), on December 9, 2016, arguing that Colorado's statute—which is similar to that of 28 other states and the District of Columbia—is constitutional. Defendants cite a bevy of case law and historical support for their position. In addition to contesting Plaintiffs' First and Fourteenth Amendment arguments, Defendants argue Plaintiffs' claims fail due to their lack of standing and laches. (*Id.*).

The Colorado Republican Committee filed a Motion to Intervene (ECF No. 11), on December 9, 2016, along with a Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 11-1). President Elect Donald J. Trump and Donald J. Trump for President, Inc., filed a Motion to Intervene (ECF No. 16), on December 12, 2016, the day of the preliminary injunction hearing, which motion was granted. I now turn to the merits of Plaintiffs' motion.

II. ANALYSIS

I first note that "[a]s a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal." *Schrier v. Univ. Of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005) (quoting *SCFC ILC, Inc. v. Visa USA, Inc.*, 936 F.2d 1096, 1098 (10th

Cir.1991) (citation omitted)); *United States ex rel. Citizen Band Potawatomi Indian Tribe of Okla. v. Enter. Mgmt. Consultants, Inc.*, 883 F.2d 886, 888–89 (10th Cir.1989) (“Because it constitutes drastic relief to be provided with caution, a preliminary injunction should be granted only in cases where the necessity for it is clearly established.”). In order to be entitled to entry of a preliminary injunction pursuant to Fed. R. Civ. P. 65, the moving party must establish that:

(1) [he or she] will suffer irreparable injury unless the injunction issues; (2) the threatened injury ... outweighs whatever damage the proposed injunction may cause the opposing party; (3) the injunction, if issued, would not be adverse to the public interest; and (4) there is a substantial likelihood [of success] on the merits.

Schrier, 427 F.3d at 1258.

Because the limited purpose of a preliminary injunction “is merely to preserve the relative positions of the parties until a trial on the merits can be held,” we have “identified the following three types of specifically disfavored preliminary injunctions...: (1) preliminary injunctions that alter the status quo; (2) mandatory preliminary injunctions; and (3) preliminary injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits.” *Schrier*, 427 F.3d at 1258-59 (citations omitted). Such disfavored injunctions “must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course.” *Id.* (citations omitted).

Where the opposing party has notice, the procedure and standards for issuance of a temporary restraining order mirror those for a preliminary injunction. *Stine v. Lappin*, No. 08-cv-00164-WYD-KLM, 2009 WL 482630, *2 (D. Colo. Feb. 25, 2009) (citation

omitted).

In this case, I find that the injunction that Plaintiffs request seeks to alter the status quo and, because it would otherwise be a mandatory injunction, it is disfavored under Tenth Circuit law. As such, Plaintiffs' motion must be more closely scrutinized under the standard prescribed above.

This case is extraordinary because the two plaintiffs were selected as Democratic electors and they signed a pledge pursuant to Colorado statute, Colo. Rev. Stat. § 1-4-304, which provides that they would vote consistent with the popular vote of the presidential election, which took place on November 8, 2016. See Colo. Rev. Stat. § 1-4-304(5). Hillary Clinton and Tim Kaine won the vote in Colorado, and because of that, the electors are bound to vote for the Clinton/Kaine ticket when the electors meet at high noon at the Colorado State Capitol, Monday, December 19, 2016. See Colo. Rev. Stat. § 1-4-304(1). Plaintiffs ask the Court to enjoin Defendants from enforcing Colorado's binding presidential elector statute, which provides:

Each presidential elector shall vote for the presidential candidate and, by separate ballot, vice-presidential candidate who received the highest number of votes at the preceding general election in this state.

Colo. Rev. Stat. § 1-4-304(5).

The only consequences to the Plaintiffs' failure to comply with the statute raised by their filings with the Court is that the Secretary of State would replace them as electors and someone else would be chosen. At oral argument, Plaintiffs raised, for the first time, that the Secretary of State's office would pursue misdemeanor charges or misdemeanor allegations against these plaintiffs, and Plaintiffs' counsel referenced 18 U.S.C. § 594.

Because neither of these two issues was properly raised in Plaintiffs' pleadings, and neither would change the outcome of my ruling, I will decide this matter based on whether or not there is a substantial likelihood of the plaintiffs prevailing on the merits, and whether or not there has been compliance with the other requirements for the issuance of an injunction, given the fact that the type of injunction sought here is disfavored and is an extraordinary remedy.

A. Substantial Likelihood of Prevailing on the Merits

Plaintiffs argue that somehow requiring them to honor their obligations pursuant to the pledge they signed, and as required by state statute, violates Article II of the Constitution, the Twelfth Amendment, the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. Based on the reasons below, I find that Plaintiffs do not have a substantial likelihood of prevailing on the merits of their claim.¹

i. Colorado's Binding Statute

The selection of presidential electors is provided in Art. II, § 1, of the Constitution. States may appoint electors "in such Manner as the Legislature thereof may direct." U.S. Const. Art. II, § 1, cl. 2. Presidential electors act by authority of the State, which receives its authority from the federal constitution. *Ray v. Blair*, 343 U.S. 214, 224 (1952). The state legislature's power to select the manner for appointing electors is plenary; they may establish the manner in which electors are appointed and take back such power. *Bush v. Gore*, 531 U.S. 98, 104 (2000). States have "broad powers to regulate voting, which may include laws relating to the qualification and functions of electors." *Williams v.*

¹ I want to point out that the Supreme Court expressly rejected the application of strict scrutiny to a challenge of state election laws, which is really what this case is, in favor of a more flexible standard. See *Burdick v. Takushi*, 504 U.S. 428, 432 (1992) (strict scrutiny would unreasonably tie the hands of States seeking to assure that elections are operated equitably and efficiently).

Rhodes, 393 U.S. 23, 34 (1968).

Federal law supports the notion that the State's requirement that presidential electors pledge to vote for a particular candidate, in conformity with State law, is constitutional. See *Blair*, 343 U.S. at 224 (“[n]either the language of Art. II, § 1, nor that of the Twelfth Amendment forbids a party to require from candidates in its primary a pledge of political conformity with the aims of the party.”). *Blair* suggests that the state may also set requirements for presidential electors, and in the event they fail to conform to the state's statutory mandate, the state is permitted to take some remedial action, such as removal of the electors. See *id.* at 228-231.

Defendants draw support from other state statutory provisions that allow states to remove electors who refuse to comply with state law. See, e.g., Mich. Comp. Laws Ann. § 168.47 (2016) (stating that refusal or failure to vote for the presidential and vice-presidential candidates appearing on the ballot of the political party that nominated the elector constitutes “a resignation from the office of the elector”); N.C. Gen. Stat. § 163-212 (2016) (same); Utah Code Ann. § 20A-13-304(3) (2016) (same). Defendants also point to 28 other states and the District of Columbia's choice to exercise the power to bind its presidential electors to the candidates who won the State's popular vote. (ECF No. 13, at 7). Plaintiffs cite no case or statute striking down that choice as unconstitutional. Furthermore, Plaintiffs' argument that Colorado's statute makes the Electoral College superfluous is unfounded. There is a strong presumption favoring the constitutionality of Colorado's elector statute, which they have failed to overcome. See *Gilmor v. Thomas*, 490 F.3d 791, 798 (10th Cir. 2007).

Decisions from other state courts and federal district courts support Defendants'

argument that Colorado's elector statute is constitutional. The plaintiffs in *Gelineau* brought an analogous action seeking an injunction to prevent the state from taking action against them for failing to vote consistent with their pledges. *Gelineau v. Johnson*, 904 F. Supp. 2d 742 (W.D. Mich. 2012). The court held that although the court in *Blair* did not answer whether a pledge was ultimately enforceable, "the opinion's reasoning strongly suggested that it would be." *Id.* at 748. The court declined to grant the injunction because the plaintiffs would either lose on the likelihood of success on the merits or on a theory of laches. *Id.* at 750.

The Supreme Court of New York held that the "services performed by the presidential electors today are *purely ministerial*." *Thomas v. Cohen*, 262 N.Y.S. 320, 326 (Sup. Ct. 1933) (emphasis added). An elector who attempted to disregard their promise to vote for the candidate that won the majority could, in the court's opinion, "be required by mandamus to carry out the mandate of the voters of his state." *Id.* The court reasoned that presidential electors do not have a right to "defy the will of the people and to 'vote as they please, even for a candidate whose electors were rejected at the polls.'" *Id.* at 331. The electors' choosing is "merely a formality;" they must vote in accordance with the vote of the people. *Id.*

The Nebraska Supreme Court held that presidential electors' only duty is to vote for the candidates nominated by the party by whose votes they were themselves nominated. *State ex rel. Neb. Republican State Cent. Comm. v. Wait*, 138 N.W. 159, 163 (Neb. 1912). If the electors openly declare that they will not perform that duty, then performance of their duty is impossible. *Id.* As such, the electors, by their own acts, vacated their places as presidential electors, creating vacancies for the state to fill. *Id.*

The court ultimately concluded that allowing presidential electors to vote for the candidate of their choice would deprive the citizens of their right to vote, in “violation of both the letter and spirit of our laws.” *Id.* at 165.

ii. First Amendment

The cases cited above have confirmed the notion that electors perform ministerial duties, which are merely formal in nature. *See Thomas*, 262 N.Y.S. at 326; *Spreckels v. Graham*, 228 P. 1040, 1045 (Cal. 1924) (electors “are in effect no more than messengers). As such, presidential electors are not afforded First Amendment protection because their conduct constitutes carrying out the will of the people, who deserve First Amendment protection. Requiring presidential electors to pledge a vote of his ballot is simply “an exercise of the state’s right to appoint electors in such manner... as it may choose.” *Blair*, at 227-28. Furthermore, their conduct would be illegal under Colorado’s elector statute, and conduct made illegal by a state is not unconstitutional simply because the activity purportedly involves elements of speech. *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949).

I agree with Defendants’ contention that the presidential electors waived their First Amendment rights when they accepted the nomination to be presidential electors. They knew or should have known the obligations that accompanied their acceptance. Thus, I find that Plaintiffs cannot show a likelihood of success on the merits of their claim.

iii. Fourteenth Amendment

In determining whether or not a state law violates the Equal Protection Clause, the Court must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the

classification. *Rhodes*, 393 U.S. at 30.

The Court in *Rhodes* held that “the State does have an interest in attempting to see that the election winner be the choice of a majority of its voters.” *Id.* at 32. “The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college.” *Bush*, 531 U.S. at 104.

Plaintiffs cannot show a likelihood of success on the merits of their claim because the relief they seek would essentially violate the Equal Protection clause, because granting an injunction allowing the plaintiffs to vote as they please would effectively dilute each citizen’s vote. Plaintiffs, in effect, ask the Court to value their vote over that of the citizens of Colorado. I agree with Defendants’ response that allowing the presidential electors to vote as they wish would deprive Coloradoans of their fundamental right to vote for the President and Vice-President. (See ECF No. 13, at 11). Additionally, *Gelineau* upheld Michigan’s winner-take-all method of appointing presidential electors, which is analogous to Colorado.

Based on the record submitted before me, I find that Plaintiffs have not shown that they have a substantial likelihood of prevailing on the merits of their claim that Colorado’s presidential elector statute violates the Fourteenth Amendment’s Equal Protection Clause.

B. Irreparable Harm

To establish irreparable injury “the plaintiff[] must show that [he] will suffer irreparable injury and that the irreparable injury is of such imminence that there is a clear

and present need for equitable relief to prevent the harm.” *Stender v. ERP Operating Ltd. Partnership*, No. 13-cv-00496-REB-MEH, 2013 WL 788186, *3 (D. Colo. March 1, 2013 (citing *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir.2003)).

“Generally, an injury is considered to be irreparable when it is incapable of being fully compensated for in damages or where the measure of damages is so speculative that it would be difficult if not impossible to correctly arrive at the amount of the damages.” *Id.*

Thus, irreparable injury is established “when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain.” *Dominion Video*, 269 F.3d at 1156. “To constitute irreparable harm, an injury must be certain, great, actual and not theoretical.” *Stender*, 2013 WL 788186, at *3 (quoting *Heideman*, 348 F.3d at 1189).

Plaintiffs contend they would suffer irreparable harm if a preliminary injunction is not granted because they, in effect, will be removed as electors. I do not find that Plaintiffs will suffer irreparable injury within the context of the law. What I do find, however, is that the citizens of Colorado would be irreparably harmed if an injunction is granted because they expect electors to vote for the candidate who won the majority of the state’s votes.

I find that granting an injunction would irreparably harm the status quo and the public’s general expectations. The public has some expectation, and it is a permissible expectation, that presidential electors are bound by the promises they voluntarily made when they accepted their nominations. Thus, Plaintiffs fail to meet their requirement to show that they will suffer irreparable harm.

C. Balance of Hardships

Plaintiffs assert no hardship will occur to Defendants or the State if the injunction is granted. Plaintiffs further contend that great hardship will occur to them if they are barred from fulfilling their role as electors and voting for the most fit and qualified candidates. Defendants argue that the hardships tip in favor of the State because Plaintiffs' eleventh-hour claim is barred by laches² and nullifying the results of Colorado's general election disserves the public interest.

I believe there is some merit to Defendants' laches argument, but I do not find it, in and of itself, bars the claim. Instead, I agree with Defense counsel's argument that laches tips the scales in favor of Defendants on the balance of hardships. Defendants argue that the last-minute nature of this action, coupled with the potentially stifling effects it may have on the presidential election in our country, supports a finding of significant prejudice that Defendants would suffer if Plaintiffs were to prevail. Thus, Plaintiffs have also failed to meet their burden on this prong.

D. Public Interest

I briefly mentioned the public interest above, and I consider this element with as much solemnity and importance as my words can express. Our country was founded a long time ago, and when it was founded, the electoral system was incorporated in Article II of the U.S. Constitution. Then, in the 19th Century, the Twelfth Amendment was enacted as part of the Constitution, which clarified the role of electors as it relates to the selection of the President and Vice President. The Colorado statute at issue, Colo. Rev.

² Laches consists of two elements: (1) inexcusable delay in instituting suit; and (2) resulting in prejudice to defendant from such delay. *Brunswick Corp. v. Spirit Reel Co.*, 832 F.2d 513, 523 (10th Cir. 1987) (citations omitted).

Stat. § 1-4-304, has been in existence since 1959. The statute compels presidential electors, who voluntarily assume the responsibility, to do what the statute requires. For reasons that do not make a lot of sense to me, Plaintiffs do not want to do what they pledged to do. I find that their obligations are legally enforceable. The public interest tilts substantially in favor of the public expecting and requiring the electors to do what they agreed to do.

My ruling goes to the whole premise of the public having an interest in fair and effective elections, political stability, legitimacy of the eventual winner, and the expectations of the American people. The public would be adversely affected if I granted this injunction and allowed Plaintiffs, the presidential electors, to vote as they please, contrary to the agreement they made when they accepted their nominations. In the context of the public interest, if I granted this injunction, it would undermine the electoral process and unduly prejudice the American people by prohibiting a successful transition of power. If Plaintiffs have concerns with Colorado's statute and the electoral process, they need to address those with the Colorado General Assembly.

III. CONCLUSION

In conclusion, for the reasons set forth herein, Plaintiffs have failed to meet the requirements to grant a temporary restraining order and preliminary injunction in this matter. Accordingly, it is

ORDERED that the Motion by Plaintiffs for Temporary Restraining Order and Preliminary Injunction (ECF No. 2) is **DENIED**.

Dated: December 21, 2016

BY THE COURT:

s/ Wiley Y. Daniel _____
WILEY Y. DANIEL,
SENIOR UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:16-cv-2986

POLLY BACA and ROBERT NEMANICH,

Plaintiffs

v.

JOHN W. HICKENLOOPER JR., in his official capacity as Governor of Colorado, CYNTHIA H. COFFMAN, in her official capacity as Attorney General of Colorado, and WAYNE W. WILLIAMS, in his official capacity as Colorado Secretary of State.

Defendants.

COLORADO REPUBLICAN COMMITTEE, DONALD J. TRUMP, and DONALD J. TRUMP FOR PRESIDENT, INC.,

Intervenors.

SCHEDULING ORDER

**1. DATE OF
CONFERENCE
AND APPEARANCES OF COUNSEL AND PRO SE
PARTIES**

January 18, 2017. Jason Wesoky on behalf of Plaintiffs. LeeAnn Morrill, Matthew Grove, and Grant Sullivan on behalf of Defendants. Christopher Murray on behalf of Intervenors.

**2. STATEMENT OF
JURISDICTION**

Plaintiffs assert jurisdiction under 28 U.S.C. §§ 1331, 2201, and 2202. Defendants

deny subject matter jurisdiction under Rule 12(b)(1); see statement of defenses below.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff(s): The Plaintiffs are elected representatives and members of the Electoral College in Colorado. The Plaintiffs' rights, duties, and obligations as members of the Electoral College were violated by Defendants' requirement that Plaintiffs vote for specific candidates for the office of President and Vice-President in contravention of the U.S. Constitution Art. II § 1, the First Amendment, the Twelfth Amendment, and the Fourteenth Amendment.

b. Defendant(s): This Court lacks subject matter jurisdiction under Rule 12(b)(1). Specifically: (a) Plaintiffs are state officers and therefore lack standing to challenge the constitutionality of state statutes; (b) Plaintiffs' claims are moot because the Electoral College's vote already occurred on December 19, 2016; and (c) because the vote has already occurred, Plaintiffs' claims are not redressable by this Court; no order by this Court will give Plaintiffs what they seek—the ability to vote their conscience in the Electoral College in an effort to prevent Donald Trump from becoming the U.S. President.

Even if this Court possesses subject matter jurisdiction, Plaintiffs' claims fail to state a claim upon which relief can be granted. Specifically: (a) the U.S. Constitution permits states to bind presidential electors; (b) the First Amendment does not protect the purported "speech" that Plaintiffs assert they wish to express; and (c) the Equal Protection Clause of the Fourteenth Amendment does not prohibit Colorado's system of casting votes in the Electoral College.

4. UNDISPUTED FACTS

The following facts are undisputed:

1. Plaintiffs were nominated by the Colorado Democratic Party to be members of Colorado's Electoral College in April 2016.

2. The Democratic candidates for president and vice-president, Hillary Clinton and Tim Kaine, won the popular vote in Colorado following the November 8, 2016 general election. Consequently, Plaintiffs were certified by the Secretary of State of Colorado as members of the Electoral College on or about December 9, 2016.

3. On December 6, 2016, the Complaint was filed.

4. On December 12, 2016, this Court held a hearing on Plaintiffs' motion for temporary restraining order and preliminary injunction and denied the motions.

5. On December 13, 2016, in a separate state action initiated by Defendant Williams, the District Court for the City and County of Denver ruled that an elector who failed to vote for the presidential and vice-presidential candidates that obtained the most votes in Colorado would be deemed, as a matter of Colorado state law, to have refused to act, thereby creating a vacancy in that elector's office. The state court ruled that a presidential elector whose office is deemed vacant must be replaced by a vote of the remaining electors. At the hearing, the Secretary of State's office stated that it would administer an oath to the electors on December 19, 2016 that would, in part, mirror the language in Colo. Rev. Stat. § 1-4-304(5).

6. Plaintiffs filed an emergency motion for injunction in the 10th Circuit on December 15, 2016. On December 16, 2016, the 10th Circuit denied the motion.

7. On the morning of December 19, 2016, the District Court for the City and County of Denver ruled that the proposed oath could not be given but that the Secretary of State's rulemaking authority was not affected by the court's ruling. Shortly thereafter, the Secretary of State issued an emergency rule prescribing language for the oath mirroring in part

the language of Colo. Rev. Stat. § 1-4-304(5). The state court concluded that the oath, contained in the emergency rule, could be administered.

8. The electors took the oath at the beginning of the proceedings outlined by Colo. Rev. Stat. § 1-4-304(1). Plaintiffs cast their electoral college ballots for the presidential and vice-presidential candidates that obtained the most votes in Colorado.

9. The electors first cast their electoral college ballots for president. One elector, Micheal Baca, did not cast his ballot for Hillary Clinton. Consistent with the earlier order of the Denver District Court, his office was deemed vacant and he was replaced with another elector via a majority vote of the remaining electors.

10. Thereafter, Secretary Williams referred Micheal Baca to the Attorney General's office for investigation.

5. COMPUTATION OF DAMAGES

As a declaratory judgment action, no economic or non-economic damages are sought.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

a. Date of Rule 26(f) meeting.

January 3 and 4, 2016.

b. Names of each participant and party he/she represented.

Jason Wesoky on behalf of Plaintiffs. LeeAnn Morrill, Matthew Grove, and Grant Sullivan on behalf of Defendants. Christopher Murray on behalf of Intervenors.

c. Statement as to when Rule 26(a)(1) disclosures were made or will be made.

Plaintiffs propose February 1, 2017. Defendants propose that all discovery be stayed until the Court issues a ruling on Defendants' motion to dismiss. In the event that the Court denies the motion to dismiss, Defendants propose that Rule 26(a)(1) disclosures should be made within 30 days of the court's order.

- d. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1).

Defendants will soon be filing a motion to stay all discovery and disclosure-related deadlines until after the Court resolves their Motion to Dismiss, which will be filed on or before their responsive pleading deadline.

- e. Statement concerning any agreements to conduct informal discovery:

None.

- f. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system.

Plaintiffs propose that, upon receipt of initial disclosures, the parties should discuss if discovery will be suspended until motions to dismiss are decided. Plaintiffs have informed Defendants of the type of information that they expect to be in Defendants' initial disclosures to increase the chances that discovery can be suspended until motions to dismiss are decided.

Defendants propose staying all discovery and disclosure-related deadlines—including initial disclosures under Rule 26(a)(1)—until after their Motion to Dismiss is fully resolved by the Court. Based on the district court's analysis in its written ruling denying Plaintiff's request for a preliminary injunction, it is likely that Plaintiffs' claims will be dismissed under Rule 12(b)(1) and/or 12(b)(6). Staying discovery and disclosure-related deadlines will therefore save

the parties significant time and resources in the event the claims are dismissed.

- g. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

In the event discovery moves forward, Plaintiffs and Defendants do not anticipate a large amount of discovery or information that is stored electronically.

- h. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.

Plaintiffs and Defendants do not anticipate this matter settling due to the nature of the claims and the dispute.

7. CONSENT

All parties [have] [have not] consented to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

- a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

None.

- b. Limitations which any party proposes on the length of depositions.

Five hours of on-the-record questioning.

- c. Limitations which any party proposes on the number of requests for production and/or requests for admission.

None.

- d. Other Planning or Discovery Orders

None.

9. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings:

Plaintiffs propose February 21, 2017. Plaintiffs also propose that Defendants be provided until March 13 to answer or otherwise respond (i.e., move to dismiss) and Plaintiffs would file their response to any motion to dismiss on or before March 31, 2017.

Defendants propose February 17, 2017.

b. Discovery Cut-off:

Plaintiffs propose June 16, 2017. Defendants propose 180 days from the date Defendants' Motion to Dismiss is denied.

c. Dispositive Motion Deadline:

Plaintiffs propose August 4, 2017. Defendants propose 240 days from the date Defendants' Motion to Dismiss is denied.

d. Expert Witness Disclosure:

The parties do not anticipate any expert testimony. If that changes, the parties will meet and confer to seek to amend this Order.

e. Identification of Persons to Be Deposed:

In the event discovery moves forward, Plaintiff propose:

Defendant Williams or Rule 30(b)(6) designee – 4-5 hours

Plaintiff Baca – 2-3 hours

Plaintiff Nemanich – 2-3 hours

Defendant Coffman or Rule 30(b)(6) designee – 2-3 hours

Defendants do not agree that Secretary Williams or Attorney General Coffman are subject to deposition, and reserve their right to seek a protective order.

f. Deadline for Interrogatories:

Plaintiffs propose May 1, 2017. Defendants propose 150 days from the date Defendants' Motion to Dismiss is denied.

g. Deadline for Requests for Production of Documents and/or Admissions

Plaintiffs propose May 1, 2017. Defendants propose 150 days from the date Defendants' Motion to Dismiss is denied.

10. DATES FOR FURTHER CONFERENCES

[The magistrate judge will complete this section at the scheduling conference if he or she has not already set deadlines by an order filed before the conference.]

a. Status conferences will be held in this case at the following dates and times:

_____.

b. A final pretrial conference will be held in this case on _____ at o'clock ____m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement.

Counsel, after good faith effort, were unable to reach agreement on whether discovery and disclosure-related deadlines should be stayed pending the Court's resolution of Defendants' Motion to Dismiss.

b. Anticipated length of trial and whether trial is to the court or jury.

2-day bench trial.

c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facilities at 212 N. Wahsatch Street, Colorado Springs, Colorado 80903-3476; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado 81501-2520; or the U.S. Courthouse/Federal Building, 103 Sheppard Drive, Durango, Colorado 81303-3439.

None.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1(c) by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

13. AMENDMENTS TO SCHEDULING ORDER

This scheduling order may be altered or amended only upon a showing of good cause.

DATED at Denver, Colorado, this ____ day of _____, 2017.

BY THE COURT:

United States Judge

APPROVED:

/s/ Jason B. Wesoky

Jason Wesoky
1331 17th St., Suite 800
Denver, CO 80202
303-623-9133
(f) 303-623-9129
Jason@hamiltondefenders.org
Attorney for Plaintiffs

CYNTHIA H. COFFMAN
Attorney General

/s/ Grant T. Sullivan

LEEANN MORRILL, 38742*
First Assistant Attorney General
MATTHEW D. GROVE, 34269*
Assistant Solicitor General
GRANT T. SULLIVAN, 40151*
Assistant Solicitor General

Public Officials Unit / State Services
Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720 508-6000
FAX: 720 508-6041
E-Mail: leeann.morrill@coag.gov
matt.grove@coag.gov
grant.sullivan@coag.gov

*Counsel of Record
Attorneys for Defendants

/s/Christopher O. Murray

Christopher O. Murray, #39340
BROWNSTEIN HYATT FARBER
SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
Telephone: 303-223-1100
Fax: 303-223-1111
Email: cmurray@bhfs.com
*Attorneys for Intervenors President-Elect
Donald J. Trump and Donald J. Trump for
President, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:16-cv-2986-WYD-NYW

POLLY BACA and ROBERT NEMANICH,

Plaintiffs

v.

JOHN W. HICKENLOOPER JR., in his official capacity as Governor of Colorado, CYNTHIA H. COFFMAN, in her official capacity as Attorney General of Colorado and individually, and WAYNE W. WILLIAMS, in his official capacity as Colorado Secretary of State and individually.

Defendants, and

COLORADO REPUBLICAN COMMITTEE,

Intervenor.

**PLAINTIFFS' NOTICE OF DISMISSAL WITHOUT PREJUDICE, OR, IN THE
ALTERNATIVE STIPULATED MOTION TO DISMISS WITHOUT PREJUDICE**

Plaintiffs, through undersigned counsel, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) hereby notify the Court of the dismissal of this action, and in support state as follows:

Defendants have not yet filed an answer or motion for summary judgment in this matter. Accordingly, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), Plaintiffs dismiss this action without prejudice.

In the alternative, if the Court determines dismissal is not permitted absent stipulation, the parties stipulate to dismissal without prejudice as evidenced by their signatures hereto, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii).

Respectfully submitted this 1st day of August, 2017.

By: /s/ Jason B. Wesoky
Jason B. Wesoky, Esq.
1331 17th Street, Suite 800
Denver, CO 80202
Phone: (303) 623-9133
Fax: (303) 623-9129
E-mail: jason.w@hamiltondefenders.org

Attorney for Plaintiffs

/s/ Grant Sullivan
Grant T. Sullivan
LeeAnn Morrill
Matthew David Grove
Colorado Attorney General's Office
Ralph L. Carr Colorado Judicial Center
1300 Broadway
Denver, CO 80203
Phone: (720) 508-6349
Fax: (720) 508-6038
Email: grant.sullivan@coag.gov
Email: leeann.morrill@coag.gov
Email: matt.grove@coag.gov

Attorneys for Defendants

JOHN W. HICKENLOOPER, JR., CYNTHIA H. COFFMAN, and WAYNE W. WILLIAMS

/s/ Christopher Murray
Christopher Owen Murray
Brownstein Hyatt Farber Schreck, LLP-Denver
410 17th Street, Suite 2200
Denver, CO 80202-4432
Phone: (303) 223-1100
Fax: (303) 223-1111
Email: cmurray@bhfs.com

Attorney for Intervenor

COLORADO REPUBLICAN COMMITTEE

CERTIFICATE OF SERVICE

I certify that on the 1st day of August, 2017, a true and correct copy of the above and foregoing **PLAINTIFFS' NOTICE OF DISMISSAL WITHOUT PREJUDICE, OR, IN THE ALTERNATIVE STIPULATED MOTION TO DISMISS WITHOUT PREJUDICE** was filed with the Court and served as via ECF/Pacer on the following:

Grant T. Sullivan
LeeAnn Morrill
Matthew David Grove
Colorado Attorney General's Office
Ralph L. Carr Colorado Judicial Center
1300 Broadway
Denver, CO 80203
Phone: (720) 508-6349
Fax: (720) 508-6038
Email: grant.sullivan@coag.gov
Email: leeann.morrill@coag.gov
Email: matt.grove@coag.gov

Attorneys for Defendants
JOHN W. HICKENLOOPER, JR., CYNTHIA H. COFFMAN,
and WAYNE W. WILLIAMS

Christopher Owen Murray
Brownstein Hyatt Farber Schreck, LLP-Denver
410 17th Street, Suite 2200
Denver, CO 80202-4432
Phone: (303) 223-1100
Fax: (303) 223-1111
Email: cmurray@bhfs.com

Attorney for Intervenors
COLORADO REPUBLICAN COMMITTEE.

/s/ Kurt E. Krueger

Kurt E. Krueger, Paralegal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-CV-02986-WYD

POLLY BACA and ROBERT NEMANICH,

Plaintiffs,

vs.

JOHN W. HICKENLOOPER, JR., in his official
capacity as Governor of Colorado,
CYNTHIA H. COFFMAN, in her official
capacity as Attorney General of Colorado,
and WAYNE W. WILLIAMS, in his official
capacity as Colorado Secretary of State,

Defendants,

and

COLORADO REPUBLICAN COMMITTEE,
DONALD J. TRUMP, and DONALD J. TRUMP FOR
PRESIDENT, INC.,

Intervenors.

REPORTER'S TRANSCRIPT
MOTION PROCEEDINGS

Proceedings before the HONORABLE WILEY Y. DANIEL,
Judge, United States District Court for the District of
Colorado, commencing at 3:02 p.m. on the 12th day of
December, 2016, in Courtroom A1002, Alfred A. Arraj United
States Courthouse, Denver, Colorado.

JULIE H. THOMAS, RMR, CRR, 901 19th Street, Room A256,
Denver, CO 80294, (303)296-3056 (CA CSR No. 9162)

Proceedings reported by mechanical stenography;
transcription produced via computer.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

For the Plaintiffs:

JASON B. WESOKY, DARLING MILLIGAN HOROWITZ, P.C., 1331 17th Street, Suite 800, Denver, CO 80202

For the Defendants:

LEEANN MORRILL, First Assistant Attorney General, GRANT T. SULLIVAN and MATTHEW D. GROVE, Assistant Solicitors General, COLORADO ATTORNEY GENERAL'S OFFICE, 1300 Broadway, 6th Floor, Denver, CO 80203

For the Intervenors:

CHRISTOPHER O. MURRAY, BROWNSTEIN HYATT FARBER SCHRECK, LLP, 410 17th Street, Suite 200, Denver, CO 80202-4432

* * * * *

I N D E X

MOTIONS

PAGE

Motion for Temporary Restraining Order and Preliminary Injunction

Mr. Wesoky	11
Mr. Sullivan	36
Mr. Murray	47
Mr. Wesoky	53
Ruling of the Court	63

1 (Proceedings commenced 3:02 p.m.,
2 December 12, 2016.)

3 THE COURT: All right, you may be seated.

4 This is 16-CV-2986, Polly Baca and Robert Nemanich
5 versus John W. Hickenlooper, in his official capacity as the
6 Governor of the State of Colorado, Wayne W. Williams, in his
7 official capacity as Colorado Secretary of State, and
8 Cynthia H. Coffman, in her official capacity as Colorado
9 Attorney General.

10 So since this action was filed on the 6th there were
11 some motions to intervene which I granted. First, a motion to
12 intervene was filed on behalf of the Republican Party. I
13 granted that. And then this morning a motion to intervene was
14 filed by President-elect Donald Trump and Donald J. Trump for
15 President, Inc., as ECF number 16. I called counsel, same
16 counsel who was representing the Republican Party, and
17 indicated that motion was granted.

18 So with that understanding, let me have counsel enter
19 their appearances for the record.

20 MR. WESOKY: Good afternoon, Your Honor. Jason
21 Wesoky on behalf of Plaintiffs Polly Baca and Robert Nemanich.
22 Thank you.

23 MR. SULLIVAN: Good afternoon, Your Honor. Grant
24 Sullivan, Assistant Solicitor General. With me is First
25 Assistant Attorney General LeAnn Morrill and Assistant

1 MR. WESOKY: Yes, sir.

2 THE COURT: That doesn't make any sense to me. We're
3 not talking about them voting in the context of an election.
4 We are talking about the fact that they presumably campaigned
5 for and became Democratic electors. They signed a pledge to
6 support the candidates who won the primary -- I don't mean the
7 primary -- won the presidential election. Two Democrats won
8 Colorado. And I bet that if Hillary Clinton had actually
9 prevailed nationally with electoral votes, we wouldn't be here
10 today, that they would be gladly voting for Hillary Clinton.

11 So it seems to me that what we're talking about is
12 how the First Amendment, as you are asserting it, really
13 applies to their status as electors. Because, again, unless
14 this state statute is unconstitutional, that means that when
15 they campaigned for and were selected as Democratic electors,
16 they signed a pledge to vote in favor of the presidential and
17 vice-presidential candidates who prevailed, and it so happened
18 that two Democrats prevailed. And so part of me thinks this
19 is really a political stunt, I hate to say it this way, to
20 prevent Mr. Trump from being President. And I guess I'm
21 really concerned about all of the accusations that are made in
22 the affidavit about how horrible and disgusting Donald Trump
23 and Michael Pence are, and I express no opinion about that
24 because whatever I do is always apolitical, but I would
25 suspect -- you don't have to respond to this -- that if

1 Hillary Clinton had won 270-plus electoral votes nationally,
2 this lawsuit never would have been filed and your clients
3 would have gladly cast electoral votes for her.

4 Is there any merit to what I'm saying, and does it
5 resonate at all?

6 MR. WESOKY: Well, Your Honor, I would respond with a
7 hypothetical. Let's say, for example, you are correct in this
8 world, Hillary Clinton obtains 270 ostensible Electoral
9 College votes on November 8th.

10 THE COURT: Subject to the electoral votes being
11 cast.

12 MR. WESOKY: Exactly, because there is still an
13 election to be had, Your Honor. Nobody is President-elect
14 until the electors say so. But let's say, for example, as you
15 laid forth, that Mrs. Clinton did achieve ostensibly 270
16 electoral votes and Wolf Blitzer and everybody else, you know,
17 had a big blue map. And then between November 8th and
18 December 19th FBI Director Comey comes out and he says not
19 only am I going to give you this letter, here is the evidence,
20 and it is clear from that evidence that Mrs. Clinton has
21 engaged in a criminal act. My clients may very well be here
22 today, Your Honor, saying I cannot be forced to vote for
23 somebody who is a criminal, I need to be free to vote for
24 whomever I choose in good conscience.

25 And just because the shoe is on my foot today doesn't

1 do it for the presidential electors because doing so violates
2 the separation of powers.

3 So either this Court understands and agrees that the
4 Electoral College and my clients are a separate body that
5 represents those who put them in that federal office or this
6 Court deems them to be acting simply ministerially, which
7 effectively eliminates the Electoral College's fundamental and
8 founding purpose.

9 THE COURT: All right. So here's what we're going to
10 do. I'm going to make a ruling here. I'm going to do it now,
11 and then I will decide if I'm going to write something up.

12 So a couple things. I am not going to regurgitate
13 the claims asserted by the plaintiff. I did that at the
14 beginning, and no need to repeat that. But what I think I
15 need to lift up first is what is being requested here. So
16 this is not a trial on the merits. It's not a summary
17 judgment argument, which I have many of. It's not a hearing
18 on a motion to dismiss. It's a hearing on the preliminary
19 injunction.

20 And I forgot to mention something earlier when I
21 talked about the test. Where the opposing party has notice,
22 the procedure and standards for issuance of a temporary
23 restraining order mirror those for a preliminary injunction.

24 So really what we're talking about is whether or not
25 the Court should grant injunctive relief. And I noted at the

1 beginning of this argument sort of the test that applies in
2 this Circuit, and so I want to talk a little bit about that
3 because I think the test and whether or not it's been met are
4 things that we need to focus on.

5 And as I said earlier, to grant an injunction,
6 particularly one that is designed to change and alter the
7 status quo and, in fact, in what would otherwise be a
8 mandatory injunction, is disfavored under Tenth Circuit law.
9 That doesn't mean it can't be granted, but it does mean that
10 it's extraordinary. And so as noted in the case that I
11 mentioned at the beginning, *Schrier versus University of*
12 *Colorado*, 427 F.3d 1253, as a preliminary injunction is an
13 extraordinary remedy, the right to relief must be clear and
14 unequivocal. In order to be entitled to the entry of a
15 preliminary injunction pursuant to Federal Rule of Civil
16 Procedure 65, the moving party must establish that (1) he or
17 she will suffer irreparable injury unless the injunction
18 issues; the threatened injury outweighs whatever damage the
19 proposed injunction may cause the opposing party; the
20 injunction, if issued, would not be adverse to the public
21 interest; and (4) there is a substantial likelihood of success
22 on the merits. And as I noted, and I'm not going to repeat it
23 again, because the limited purpose of a preliminary injunction
24 is merely to preserve the relative positions of the parties
25 until a trial on the merits can be held or to preserve the

1 status quo, when we're dealing with injunctions such as the
2 one that's requested here, they are disfavored. And when
3 injunctions are disfavored, they must be more closely
4 scrutinized to assure that the exigencies of the case support
5 the granting of a remedy that is extraordinary even in the
6 normal course.

7 So what is alleged to be extraordinary in this case
8 has to do with the fact that these two plaintiffs were
9 selected as Democratic electors and they signed a pledge
10 pursuant to Colorado state statute that they would vote
11 consistent with the popular vote of the presidential election
12 which took place on November 8th, 2016. And in Colorado the
13 Clinton/Kaine ticket won the vote, and because of that the
14 Democratic electors are the ones to cast the vote when they
15 show up at high noon next Monday at the state capitol.

16 Now, section 1-4-304 of Colorado Revised Statutes
17 says a lot of things, and I'm not going to read all of them.
18 I'm going to read subsection (5), which says: Each
19 presidential elector shall vote for the presidential candidate
20 and, by separate ballot, vice-presidential candidate who
21 received the highest number of votes at the preceding general
22 election in this state.

23 Now, in the initial papers filed by the plaintiffs
24 the only thing that they said about that as a consequence was
25 as follows: that they had talked to the Secretary of State's

1 office, and that the Secretary of State said that if they did
2 not comply with the statute they would be replaced as electors
3 and someone else would be chosen. For the first time today I
4 heard this argument that the Secretary of State's office would
5 pursue misdemeanor charges or misdemeanor allegations against
6 these plaintiffs, and for the first time today I heard this
7 reference to 18 U.S.C. Section 594. I'm not going to consider
8 either of those for purpose of my ruling because they weren't
9 properly presented to this Court, there was no opportunity for
10 the defendants to respond, and I think that they are
11 tangential anyway to the issue. And so I'm going to decide
12 this case on whether or not there is a substantial likelihood
13 of prevailing on the merits and whether or not there's been
14 compliance with the other requirements for the issuance of an
15 injunction given the fact that this type of injunction is
16 disfavored and it's an extraordinary remedy.

17 So let's talk first about prevailing on the merits.
18 And the argument was presented in several different ways. So,
19 for example, the argument is that somehow requiring these
20 plaintiffs to honor their obligations pursuant to the pledge
21 they signed and as required by state statute violates
22 Article II of the Constitution, the Twelfth Amendment, the
23 First Amendment, and the Equal Protection Clause of the
24 Fourteenth Amendment. I find that, in fact, none of those
25 violations exist on the record before me. In other words, I

1 don't find there to be a constitutional violation. And I
2 probably will write something that will spell that out in more
3 detail. So, therefore, I find that the plaintiffs do not have
4 a substantial likelihood of prevailing on the merits.

5 So that in and of itself is enough for me to deny the
6 request for an injunction, but I want to say a little bit
7 more. And I want to say this first because I alluded to this.
8 The Supreme Court has expressly rejected the application of
9 strict scrutiny to a challenge of state election laws, which
10 is really what this is, and a more flexible standard does
11 apply. And it's in *Burdick versus Takushi*, 504 U.S. 428, 432,
12 1992 case.

13 Irreparable harm. As I alluded to earlier, to
14 establish irreparable injury the plaintiff must show that he
15 or she will suffer irreparable injury and that the irreparable
16 injury is of such imminence that there is a clear and present
17 need for equitable relief to prevent the harm. Generally, an
18 injury is considered to be irreparable when it is incapable of
19 being fully compensated for in damages or where the measure of
20 damages is so speculative that it would be difficult if not
21 impossible to correctly arrive at the amount of the damages.
22 Thus, irreparable injury is established, quote, when the court
23 would be unable to grant an effective monetary remedy after a
24 full trial because such damages would be inadequate or
25 difficult to ascertain. And there's Tenth Circuit law, and

1 when I write something up I'll note those cases.

2 Plaintiffs contend they would suffer irreparable harm
3 if a preliminary injunction is not granted because they, in
4 effect, will be removed as electors. I don't find that we
5 have irreparable injury within the context of the law. What I
6 find is that the citizens of Colorado, and I alluded to this
7 earlier, would be irreparably harmed if an injunction is
8 granted because they expect electors to vote for the candidate
9 who won the majority of the state's votes.

10 It's my finding that granting an injunction would
11 irreparably harm the status quo and the public's general
12 expectations. I think that the public has some expectation,
13 and it's a permissible expectation, that presidential electors
14 are bound by the promises they voluntarily made when they
15 accepted their nominations.

16 Balance of hardships. Plaintiffs assert no hardship
17 will occur to defendants or the State if the injunction is
18 implemented. Plaintiffs further contend that great hardship
19 will occur to them if they are barred from fulfilling their
20 role as electors and voting for the most fit and qualified
21 candidates. Defendants argue that the hardships tip in favor
22 of the State because plaintiffs' eleventh-hour claim is barred
23 by laches and nullifying the results of Colorado's general
24 election disserves the public interest.

25 Now, I think there is some merit to the laches

1 argument, but I tend to agree with counsel who said that this
2 whole issue of laches really supports a finding that the
3 public interest and balance of harms or balance of hardships
4 tips in favor of the defendants. Defendants argue that
5 because of the last-minute nature of this action, coupled with
6 the potentially stifling effects it may have on our country,
7 laches prevents plaintiff from prevailing. I agree with the
8 defendants that while laches -- I'm not going to find that
9 laches in and of itself bars the claim, I'm going to find that
10 it does tip the scales in favor of the defendants rather than
11 the plaintiff on balance of harms.

12 Now, public interest. We've talked about this, and I
13 alluded to this, and I take this with as much solemnity and
14 importance as my words can express. Our country was founded a
15 long time ago, and when it was founded the electoral system
16 was incorporated in the Constitution, Article II. And then in
17 the 19th century the Twelfth Amendment was enacted as a part
18 of the Constitution, and it clarified the role of electors as
19 it relates to the selection of the President and Vice
20 President. And Colorado statute has been in existence I think
21 since about 1959, if my memory is right. And sometimes my
22 memory doesn't work, but I've had to remember a lot of things
23 getting ready for this hearing. But since 1959 Colorado has
24 had this statute. And this statute compels, I think
25 correctly, presidential electors, if they choose to be

1 electors, to do what the statute says. And for reasons that
2 don't make a lot of sense to me, these electors don't want to
3 do what they took a pledge to do. I know what they say in
4 their papers, but anyway. But whether it makes sense or
5 doesn't make sense, I find that their obligations are legally
6 enforceable. And because they are legally enforceable, the
7 public interest tilts, I think, substantially in favor of the
8 public expecting and requiring the electors to do what they
9 agreed to do.

10 And this goes to the whole premise of the public
11 having an interest in fair and effective elections, political
12 stability, legitimacy of the eventual winner, and the
13 expectations of the American people which would be adversely
14 affected if I granted this injunction and allowed the
15 presidential electors, meaning these plaintiffs, to vote as
16 they please, contrary to the agreement they made when they
17 accepted their nominations. I think if I granted this
18 injunction in the context of public interest, it would
19 undermine the electoral process and unduly prejudice the
20 American people by prohibiting a successful transition of
21 power.

22 Really if the plaintiffs have some concerns about all
23 of this, they need to go to the Colorado General Assembly and
24 say change the statute and not have a last-minute attempt to
25 have the Court do things that perhaps the Court shouldn't do.

1 So for all of those reasons, I deny the motion for a
2 temporary restraining order and preliminary injunction.

3 So, Mr. Wesoky, what I need to ask is: Is this case
4 going to go forward as a case that's going to be litigated, or
5 will it end when I write an order that memorializes this
6 but -- so I just need to understand what's going to happen
7 next.

8 MR. WESOKY: Yes, Your Honor. Thank you for your
9 consideration today. As of right now, the case will continue
10 forward. The intervention of the parties, the Republican
11 Party and Mr. Trump, kind of changes the dynamics of the case
12 a little bit, and we're still assessing that since it all just
13 happened very recently.

14 THE COURT: All right. Well, I did an order of
15 reference to Magistrate Judge Wang, as I remember, on this,
16 and my normal practice is for her to do the scheduling order,
17 but I may very well do the scheduling order myself. So I'm
18 going to talk to her about perhaps revoking that reference or
19 putting it on hold, but just because I do have some
20 familiarity with this case getting ready for today's hearing.
21 And one of the things I'm going to ask you is -- and we're not
22 going to have a scheduling order until after the electors have
23 acted, and we'll figure out when we're going to do that, and
24 then I'll decide sort of what should happen next with input
25 from the attorneys.

1 All right. Is there anything else we need to do
2 today?

3 MR. WESOKY: Just one quick question, Your Honor,
4 procedurally.

5 THE COURT: Sure.

6 MR. WESOKY: Obviously there were response briefs.
7 The injunction has been decided. I just didn't know if the
8 Court wanted any response to the defendants' and the
9 intervenors' briefs.

10 THE COURT: No. I mean, I -- to the best of my
11 ability I have looked at everything you gave me and a whole
12 lot more so that at least I'd have some perspective on what
13 this is all about. So my decision is a final decision. So,
14 therefore, we don't need briefing on something I've already
15 decided. I have too much to read as it is. All right.

16 MR. WESOKY: And that brings me just to one
17 ministerial --

18 THE COURT: What's that?

19 MR. WESOKY: -- statement, and that is the Court is
20 denying both the TRO and the preliminary injunction. Is that
21 correct?

22 THE COURT: That's what I said.

23 MR. WESOKY: Okay. Thank you.

24 THE COURT: I will say it again. Your motion for
25 temporary restraining order and your motion for preliminary

1 injunction are hereby denied for all the reasons I previously
2 stated.

3 MR. WESOKY: Thank you, Your Honor.

4 THE COURT: All right. We'll be in recess.

5 (Proceedings concluded 4:49 p.m.,
6 December 12, 2016.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

POLLY BACA, and
ROBERT NEMANICH,

Plaintiffs

v.

WAYNE W. WILLIAMS, Colorado Secretary of State, in his individual capacity.

Defendant.

COMPLAINT

Defendant Wayne Williams, Colorado's Secretary of State, under color of state law, threatened and intimidated Plaintiffs Polly Baca and Robert Nemanich in the exercise of their federally protected rights as presidential Electors. This complaint seeks damages for these infringements of a fundamental federal right.

INTRODUCTION

1. The United States Constitution secures to "Electors" the power to vote to select the President and Vice President of the United States.

2. Colorado purports to control how an Elector exercises her franchise, by binding her, with the force of law, to vote for a particular candidate. See C.R.S. § 1-4-304.

3. The Constitution gives Colorado no such power to restrict the legal freedom of federal Electors to vote as they deem fit. The actions of Colorado's Secretary of State to enforce that unconstitutional law thus violated Plaintiffs' federally protected rights.

PARTIES

4. Polly Baca is a resident of the City and County of Denver, Colorado and, pursuant to C.R.S. § 1-4-302, was a Democratic Elector for the 2016 presidential election.

5. Robert Nemanich is a resident of El Paso County, Colorado and, pursuant to C.R.S. § 1-4-302, was a Democratic Elector for the 2016 presidential election.

6. Defendant Wayne W. Williams is a resident of Colorado Springs, Colorado, and is the Secretary of State of Colorado. Williams is sued in his individual capacity.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the case arises under the Constitution and laws of the United States.

8. This Court has jurisdiction to award attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

9. This Court has personal jurisdiction over Defendant Williams. Defendant Williams is a state official who resides in Colorado and works in Denver.

10. Venue is properly laid in this District under 28 U.S.C. § 1391(b)(1), because Defendant is a state official working in Denver. The events giving rise to this action also occurred in this district, making venue also proper under 28 U.S.C. § 1391(b)(2).

BACKGROUND

11. Under the Constitution of the United States, the President and Vice-President are selected by "Electors," not by popular vote. Each state has two Electors plus an additional Elector for each member of the House of Representatives from that state. The District of Columbia also has three Electors.

12. On a date set by Congress, at a place specified by state law, presidential Electors meet in each state and cast one ballot for President and one ballot for Vice President. Those votes are then sent to Congress.

13. If any candidate receives a majority of the Electors' votes, that candidate is selected for that office. If a candidate does not receive a majority of the electoral college votes, then that election is determined in Congress — in the House for the President, in the Senate for the Vice-President.

14. States have plenary power to select their Electors. That power includes the freedom to discriminate in the selection of Electors against an Elector who refuses to pledge support to one candidate or another. States cannot have Electors who have engaged in insurrection or rebellion or have given aid or comfort to the enemies of the United States. *See* U.S. Const. amend. XIV, § 3. Nor can an Elector be a Senator or Representative or a person holding an office of trust or profit under the United States. U.S. Const. art. II, § 1.

15. In every state, the Electors are chosen according to the popular vote for President and Vice-President in that state. Most states appoint the Electors who have pledged to support, or were slated by the party of, the presidential candidate who received the most votes in that state. In two states, the two at-large Electors are appointed in the same way, and the other Electors are appointed according the popular vote in each congressional district in the state.

16. Once an Elector is selected, the Constitution imposes just a single restriction on how that Elector may vote. Electors may not vote for two candidates from their own state. *See* U.S. Const. amend. XII.

17. The Constitution does not expressly or implicitly give the states any power to restrict Electors' freedom beyond the 12th Amendment's single limitation. The power of voting resides entirely with the Electors. Because the Constitution states "the Electors" shall vote by ballot, not the states, the states cannot control how Electors vote. U.S. Const. amend. XII.

18. Beyond the single restriction expressed in the 12th Amendment prohibiting Electors from voting for a President and Vice President from the same state as the Elector, Electors are therefore free to vote as their conscience determines.

19. This protected freedom of presidential Electors makes sense of the framers' purpose in establishing the electoral college itself. As Alexander Hamilton described in Federalist 68, while it was "desirable that the sense of the people should operate in the choice of" the President, it was "equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice." If Electors could simply be directed how to vote, there would be no need for "men" who would "possess the information and discernment requisite to such complicated investigations," Federalist No. 68, as there is nothing especially "complicated" about identifying the "candidate who received the highest number of votes at the preceding general election in this state." C.R.S. § 1-4-304(5).

20. Consistent with this freedom, 20 states impose no restriction on how Electors may vote at all. However, 30 states, including Colorado, require that presidential Electors cast their vote for the presidential candidate for the party they were selected to represent. Five states

purport to apply a penalty to an Elector who votes contrary to the popular vote. Six states purport to cancel the vote of an Elector who votes contrary to the popular vote.

21. Though Electors throughout our history have typically exercised their franchise consistent with their party pledge or their state's popular vote, Electors for both President and Vice President have exercised their judgment to vote against their party pledge or the popular vote of their state 167 times before 2016. In 2016, a record number of Electors voted for persons for president who did not receive the majority of the popular vote in their state.

22. These votes contrary to a party pledge or the popular vote of a state have never prevented a presidential candidate from receiving a majority of the Electors' votes. They have affected the process of choosing of Vice President. In 1836, 23 Virginia Electors abstained rather than voting for Vice President nominee Richard Johnson because he was alledged to be living with a black woman. Those defections forced the decision into the Senate, where Johnson was selected nonetheless.

23. Before the 2016 election, no Elector who voted against her pledge or the popular vote in her state had been penalized legally, investigated criminally, or assessed a fine.

EVENTS UNDERLYING PLAINTIFFS' INJURIES

A. The Election of 2016

24. On April 16, 2016, Plaintiffs Baca and Nemanich were nominated as Presidential Electors at the Colorado Democratic Convention in Loveland, Colorado.

25. Plaintiff Polly Baca executed a pledge to vote for the Democratic Party's nominee for President and Vice-President.

26. Plaintiff Nemanich executed a pledge to vote for Bernie Sanders for President.

27. On November 8, 2016, Colorado, and every other state, held an election to select the Electors who would later vote for President and Vice-President.

28. In that election, Hillary Clinton received close to 3 million more votes than President Donald Trump did nationally, and almost 72,000 more votes than Trump did in Colorado.

29. Despite losing the popular vote nationally, Donald Trump was expected to receive enough votes in the Electoral College to become the 45th President of the United States.

30. This prospect raised grave concerns among many, including Plaintiffs.

31. No candidate for President in modern history has ever lost the popular vote by such a large margin yet been selected as President by the electoral college.

32. No candidate for President in modern history so openly flouted the requirements of the Foreign Emoluments Clause, by refusing both to disclose his foreign holdings and to divest himself from any beneficial interest in those holdings.

33. Neither had any election of any candidate for President in the history of the United States been so credibly alleged to have been affected by the conspiracy of a foreign nation intent on securing the election of the presumptive president.

34. During the time period between the national election day and the date for the Electoral college voting to occur, U.S. intelligence agencies confirmed that they possessed evidence showing foreign interference in the presidential election with the purpose of favoring Donald J. Trump and undermining Hillary R. Clinton in that election.

35. Plaintiffs and many other Presidential Electors considered this information of foreign influence in the election to be a matter of grave importance. Some Electors, including

Plaintiffs, took affirmative steps to obtain more information from the then current President, Barrack Obama, intelligence agencies, or Congress and specifically requested an intelligence briefing. Their requests were denied. It was later learned that U.S. Intelligence agencies knew Donald J. Trump's top campaign officials and one of his sons met with Russians in June 2016 at Trump Tower in New York City after being told the Russians had "dirt" on Secretary Clinton that could help the Trump Campaign.

36. This election, in the view of many, was thus unprecedented, and it focused attention again upon the framers' purpose in establishing an electoral college with Electors who are not beholden to popular sentiment, meet and vote separately, and have the freedom to choose a President and Vice President of their own selection.

B. The determination of Electors to exercise their constitutional freedom

37. These concerns led many to consider whether Electors should exercise their constitutional freedom to vote contrary to their pledge or the popular vote in their state.

38. A number of Electors, referred to as the "Hamilton Electors," began to discuss the possibility of pledging to support a compromise candidate, with the express purpose of giving the House of Representatives the chance to select that candidate rather than Donald Trump.

39. In early December, 2016, the Hamilton Electors announced that their preferred candidate was Ohio Governor John Kasich.

40. Acting on that recommendation, Plaintiffs determined that they wanted to vote for John Kasich rather than Hillary Clinton.

C. Colorado’s restriction of Plaintiffs’ freedom

41. Colorado law purports to control how Electors shall exercise their vote. Section 1-4-304(5) of the Colorado Revised Statutes provides that “[e]ach presidential elector shall vote for the presidential candidate and, by separate ballot, vice-presidential candidate who received the highest number of votes at the preceding general election in this state.” Section 1-13-723 of the Colorado Revised Statutes gives the state the power to punish criminally any “officer upon whom any duty is imposed by any election law who violates his duty.”

42. On November 18, 2016, Plaintiff Nemanich emailed Colorado’s Secretary of State, Wayne Williams, to ask “what would happen if” a Colorado state Elector “didn’t vote for . . . Clinton and . . . Kaine.” Williams responded by email, stating that “if an elector failed to follow th[e] requirement” outlined in C.R.S. § 1-4-304(5), his “office would likely remove the elector and seat a replacement elector until all nine electoral votes were cast for the winning candidates.”

43. Subsequent to that email, Defendant Williams stated that if an Elector violates C.R.S. § 1-4-304(5), they would likely face either a misdemeanor or felony perjury charge.

44. On December 6, 2016, so as to secure their constitutional freedom to vote as their conscience determined, Plaintiffs Polly Baca and Nemanich filed suit in Colorado District Court, asking the Court to enjoin Defendant from enforcing C.R.S. § 1-4-304(5).

45. On December 12, 2016, the district court denied Plaintiffs’ injunction.

46. The following day, Plaintiffs filed an emergency motion for injunction pending appeal in the 10th Circuit.

47. On December 16, 2016, the 10th Circuit denied Plaintiffs' emergency motion. The Court of Appeals was not persuaded that the Colorado Secretary of State would in fact restrict the freedom of Electors. Specifically, the Court did not credit Plaintiffs' concern that Defendant Williams would actually remove Plaintiffs if they voted contrary to their pledge. As the Court noted, C.R.S. § 1-4-304(1) gave Defendant the power to remove Electors "prior to the start of voting." The Court did not believe the statute purported to give Defendant any such power "after voting has begun." Indeed, as the Court expressly noted, such an act by the Secretary of State was "unlikely in light of the text of the Twelfth Amendment."

48. The predictions of the Court of Appeals proved mistaken.

49. On December 19, 2016, Defendant Williams, under his emergency rule making authority, changed the oath of the Electors to put further pressure on them to vote consistent with Colorado's popular vote. The oath was changed to state that the Electors swore to vote for the person who received the most votes in the general election. At a meeting with the Electors just prior to their vote, the new oath was administered over objections from Plaintiffs. In the press before the vote, Defendant Williams, both personally and through surrogates, stated that anyone who violated their oath may be subject to felony perjury charges for intentionally violating the oath. The new oath, created just moments before the Electors' vote, increased the pressure on Plaintiffs to vote for Hillary Clinton and Tim Kaine regardless of Plaintiffs' determined judgment.

50. Presidential Elector Michael Baca, who is unrelated to Plaintiff Baca, cast his ballot for John Kasich.

51. Despite the clear language of the 10th Circuit Court of Appeals indicating that Defendant Williams had no authority to remove an Elector once the Elector was seated and voting began—either because the statute did not so empower him or because the 12th Amendment would not permit it—Defendant Williams willfully removed Elector Michael Baca as an Elector, refused to count Mr. Baca’s vote, and referred him to Colorado’s Attorney General for criminal investigation and prosecution. That investigation remains open.

52. Because of Defendant Williams’ threats, his changing of the oath, and his actions and against Elector Michael Baca, Plaintiffs felt intimidated and pressured to vote against their determined judgment.

COUNT 1
(42 U.S.C. §1983)

53. Plaintiffs repeat and reallege all prior paragraphs.

54. 42 U.S.C. § 1983 provides a civil cause of action to any person who is deprived of rights guaranteed by the United States Constitution or federal law, by another person, acting under color of State law.

55. Defendant deprived Plaintiffs Polly Baca and Nemanich of a federally protected right when he threatened to remove them as Electors, and refer them for criminal prosecution, if they voted for a candidate other than Hillary Clinton.

56. At all times, Defendant was acting under color of state law.

57. At all times, Defendant was acting in his individual capacity.

58. As a result of Defendant’s conduct, Plaintiffs have suffered damages in an amount to be determined by the Court.

COUNT 2
(52 U.S.C. §10101(b) & §20510(b))

59. Plaintiffs repeat and reallege all prior paragraphs.

60. Title 52 U.S.C., §10101(b) provides:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

61. Title 52 U.S.C., §20510(b) provides a private right of action to any person “aggrieved by a violation of [Chapter 52 of the US Code].”

62. Defendant Williams “intimidate[d], threaten[ed], coerce[d], or attempt[ed] to intimidate, threaten, or coerce” Plaintiffs Polly Baca and Robert Nemanich to get them to vote contrary to their conscience and in accord with Colorado law.

63. Defendant Williams’ intimidation was at, and leading up to, the election for selecting the President and thus violated 52 U.S.C. § 10101(b).

64. At all times, Defendant was acting under color of state law.

65. At all times, Defendant was acting in his individual capacity.

66. As a result of Defendant’s conduct, Plaintiffs have suffered damages in an amount to be determined by the Court.

COSTS AND ATTORNEYS’ FEES

67. Pursuant to 42 U.S.C. § 1988 and 52 U.S.C. § 20510(c), Plaintiffs further seek an award of their costs, including reasonable attorneys’ fees, incurred in the litigation of this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request this Court enter judgment:

1. Finding Defendant Williams violated Plaintiffs' federally protected rights by threatening and intimidating Plaintiffs Baca and Nemanich.
2. Declaring C.R.S. § 1-4-304 unconstitutional;
3. Awarding Plaintiffs the costs of this action, including reasonable attorneys' fees; *and*
4. Awarding any further relief this Court deems just and appropriate.

Respectfully submitted this 10th day of August, 2017.

By: /s/ Lawrence Lessig
Lawrence Lessig
1563 Massachusetts Ave
Cambridge, MA 01238
Telephone: 617-496-8853
Email: lessig@this.is

/s/ Jason Wesoky
Jason Wesoky
1331 17th Street, Suite 800
Denver, CO 80202
Telephone: 303-623-9133
Facsimile: 303-623-9129
Email: jwesoky@hamiltondefenders.org

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:17-cv-1937-NYW

MICHEAL BACA, POLLY BACA and ROBERT NEMANICH,

Plaintiffs

v.

WAYNE W. WILLIAMS, Colorado Secretary of State, in his individual capacity

Defendant.

PLAINTIFFS' NOTICE OF AMENDED COMPLAINT

Plaintiffs, through undersigned counsel, hereby amend their complaint as a matter of course.

Plaintiffs Polly Baca and Robert Nemanich filed their complaint in this matter on August 10, 2017. Defendant Williams sought and received an extension to respond to the complaint until September 28, 2017. To date, no responsive pleading or motion to dismiss has been filed by Defendant. Micheal Baca seeks to join this matter as an additional Plaintiff and assert the same claims as Plaintiffs Polly Baca and Robert Nemanich. *See* Amended Complaint attached as Exhibit 1.

Federal Rule of Civil Procedure 15(a) provides for amendment of pleadings and provides a party the right to amend as a matter of course either before a responsive pleading is filed or

within 21 days after a responsive pleading or 12(b) motion to dismiss.¹ Plaintiffs' amended complaint is not proposed in bad faith or merely for the purpose of delay and is being brought at the earliest possible time.

Respectfully submitted this 20th day of September, 2017.

/s/ Lawrence Lessig

Lawrence Lessig
1563 Massachusetts Ave.
Cambridge, MA 01238
617-496-8853
lessig@this.is

/s/ Jason Wesoky

Jason Wesoky
1331 17th St. Suite 800
Denver, CO 80202
303-623-9133
Jason.w@hamiltondefenders.org

Counsel for Plaintiffs

¹ To the extent Defendant argues Plaintiffs cannot amend as a matter of course because this amendment comes more than 21 days after service, that argument should be rejected. *See Swanigan v. City of Chicago*, 775 F.3d 953, 963 (7th Cir. 2015) (amendment two years after initial complaint permitted under Fed. R. Civ. P. 15(a)(1) “[b]ecause no responsive pleading or motion to dismiss had been filed, the 21-day clock under Rule 15(a)(1)(B) never started and Swanigan retained the right to amend his complaint.”); *United States ex rel. Gacek v. Premier Med. Mgmt.*, 2017 U.S. Dist. LEXIS 101963 *13-15, 2017 WL 2838179 (S. D. Ala. June 30, 2017) (rejecting argument that precluding amendment as matter of course more than 21 days after service but before responsive pleading or 12(b) motion because it is inefficient); *Canales v. Sheahan*, 2016 U.S. Dist. LEXIS 15768 *7-10, 2016 WL 489896 (W.D.N.Y, February 9, 2016) (“Nothing in the plain text of the rule, however, pushes against the view that the right to amend once as a matter of course theoretically can be used at any time in the case, as long as circumstances satisfy the prerequisites of Rule 15(a)(1)(B).”). Here, it would make little sense to require Plaintiffs to wait until Defendant spent the time, money, and effort of filing a responsive pleading or 12(b) motion to file the Amended Complaint, which would become the operative complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B) if filed within 21 days of Defendant’s filing.

CERTIFICATE OF SERVICE

I certify that on the 20th day of September, 2017, a true and correct copy of the above and foregoing **PLAINTIFFS' NOTICE OF AMENDED COMPLAINT** was filed with the Court and served as via CM/ECF on the following:

Grant T. Sullivan
LeeAnn Morrill
Matthew David Grove
Colorado Attorney General's Office
Ralph L. Carr Colorado Judicial Center
1300 Broadway
Denver, CO 80203
Phone: (720) 508-6349
Fax: (720) 508-6038
Email: grant.sullivan@coag.gov
Email: leeann.morrill@coag.gov
Email: matt.grove@coag.gov

Attorneys for Defendant

/s/ Kurt E. Krueger

Kurt E. Krueger, Paralegal

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:17-cv-1937-NYW

MICHEAL BACA, POLLY BACA and ROBERT NEMANICH,

Plaintiffs

v.

WAYNE W. WILLIAMS, Colorado Secretary of State, in his individual capacity.

Defendant.

COMPLAINT

Defendant Wayne Williams, Colorado’s Secretary of State, under color of state law, threatened and intimidated Plaintiffs Micheal Baca, Polly Baca, and Robert Nemanich in the exercise of their federally protected rights as presidential Electors. This complaint seeks damages for this infringement of a fundamental federal right.

INTRODUCTION

1. The United States Constitution secures to “Electors” the power to vote to select the President and Vice President of the United States.

2. Colorado purports to control how an Elector exercises her franchise, by binding her, with the force of law, to vote for a particular candidate. *See* C.R.S. § 1-4-304.

3. The Constitution gives Colorado no power to restrict the legal freedom of federal Electors to vote as they deem fit. The actions of Colorado’s Secretary of State to enforce that unconstitutional law thus violated Plaintiffs’ federally protected rights.

PARTIES

4. Micheal Baca is a resident of the State of Nevada at the current time. At all times pertinent to this complaint, he was a resident of Denver County and the State of Colorado and, pursuant to C.R.S. § 1-4-302, was a Democratic Elector for the 2016 presidential election.

5. Polly Baca is a resident of the City and County of Denver, Colorado and, pursuant to C.R.S. § 1-4-302, was a Democratic Elector for the 2016 presidential election.

6. Robert Nemanich is a resident of El Paso County, Colorado and, pursuant to C.R.S. § 1-4-302, was a Democratic Elector for the 2016 presidential election.

7. Defendant Wayne W. Williams is a resident of Colorado Springs, Colorado, and is the Secretary of State of Colorado. Williams is sued in his individual capacity.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the case arises under the Constitution and laws of the United States.

9. This Court has jurisdiction to award attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

10. This Court has personal jurisdiction over Defendant Williams. Defendant Williams is a state official who resides in Colorado and works in Denver.

11. Venue is properly laid in this District under 28 U.S.C. § 1391(b)(1), because Defendant is a state official working in Denver. The events giving rise to this action also occurred in this district, making venue also proper under 28 U.S.C. § 1391(b)(2).

BACKGROUND

12. Under the Constitution of the United States, the President and Vice-President are selected by “Electors,” not by popular vote. Each state has two Electors plus an additional Elector for each member of the House of Representatives from that state. The District of Columbia also has three Electors.

13. On a date set by Congress, at a place specified by state law, presidential Electors meet in each state and cast one ballot for President and one ballot for Vice President. Those votes are then sent to Congress.

14. If any candidate receives a majority of the electoral college votes, that candidate is selected for that office. If no candidate in a race receives a majority of the electoral college votes, then that election is determined in Congress — by the House for the President, by the Senate for the Vice-President.

15. States have plenary power to select their Electors. That power includes the freedom to discriminate in the selection of Electors against an Elector who refuses to pledge support to one candidate or another. States cannot select Electors who have engaged in insurrection or rebellion or have given aid or comfort to the enemies of the United States. *See* U.S. Const. amend. XIV, § 3. Nor can an Elector be a Senator or Representative or a person holding an office of trust or profit under the United States. U.S. Const. art. II, § 1.

16. In every state, the Electors are chosen according to the popular vote for President and Vice-President in that state. Most states appoint the Electors who have pledged to support, or were slated by the party of, the presidential candidate who received the most votes in that state.

In two states, the two at-large Electors are appointed in this way, and the other Electors are appointed according the popular vote in each congressional district in the state.

17. Once an Elector is selected, the Constitution imposes just a single restriction on how that Elector may vote. Under the 12th Amendment, electors may not vote for two candidates from their own state.

18. The Constitution does not expressly or implicitly give the states any power to restrict the Electors' freedom beyond the 12th Amendment's single limitation. The power of voting resides entirely with the Electors. Because the Constitution states "the Electors" shall vote by ballot, not the states, the states cannot control how Electors vote. U.S. Const. amend. XII.

19. Beyond the single restriction expressed in the 12th Amendment prohibiting Electors from voting for a President and Vice President from the same state as the Elector, Electors are free to vote as their conscience determines.

20. This protected freedom of presidential Electors makes sense of the framers' purpose in establishing the electoral college itself. As Alexander Hamilton described in Federalist 68, while it was "desirable that the sense of the people should operate in the choice of" the President, it was "equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice." If Electors could simply be directed how to vote, there would be no need for "men" who would "possess the information and discernment requisite to such complicated investigations," Federalist No. 68, as there is nothing especially

“complicated” about identifying the “candidate who received the highest number of votes at the preceding general election in this state.” C.R.S. § 1-4-304(5).

21. Consistent with this freedom, twenty states impose no restriction on how Electors may vote at all. Thirty states, however, require that presidential Electors cast their vote for the presidential candidate of the party they were selected to represent. Five states purport to apply a penalty to an Elector who votes contrary to the popular vote. Six states purport to cancel the vote of an Elector who votes contrary to the popular vote.

22. Though Electors throughout our history have typically exercised their franchise consistent with their pledge or their state’s popular vote, Electors for both President and Vice President have exercised their judgment to vote against their pledge or the popular vote of their state 167 times before 2016. In 2016, a record number of Electors voted for persons for president who did not receive the majority of the popular vote in their state.

23. These votes contrary to a pledge or the popular vote of a state have never prevented a presidential candidate from receiving a majority of the Electors’ votes. They have affected the process of choosing the Vice President. In 1836, 23 Virginia Electors abstained rather than voting for vice presidential nominee Richard Johnson because he was alleged to be living with a black woman. Those defections forced the decision into the Senate, where Johnson was selected nonetheless.

24. Before this election, no Elector who voted against her pledge or the popular vote in her state has been penalized legally.

EVENTS UNDERLYING PLAINTIFFS' INJURIES

A. The Election of 2016

25. In April 2016, Plaintiffs Micheal Baca, Polly Baca and Robert Nemanich were nominated as Presidential Electors. Micheal Baca was nominated at the First Congressional District Assembly in Denver, Colorado, and Polly Baca and Robert Nemanich were nominated at the Colorado Democratic Convention in Loveland, Colorado.

26. Upon becoming an Elector, Plaintiff Micheal Baca executed a pledge to vote for Bernie Sanders for President.

27. Upon becoming an Elector, Plaintiff Polly Baca executed a pledge to vote for the Democratic Party's nominee for President and Vice-President.

28. Upon becoming an Elector, Plaintiff Robert Nemanich executed a pledge to vote for Bernie Sanders for President.

29. On November 8, 2016, Colorado, and every other state, held an election to select the Electors who would later vote for President and Vice-President.

30. In that election, Hillary Clinton received close to 3 million more votes than Donald Trump did nationally, and almost 72,000 more votes than Trump did in Colorado.

31. Despite losing the popular vote nationally, Donald Trump was expected to receive enough votes in the Electoral College to become the 45th President of the United States.

32. The election of Donald Trump raised grave concerns among many, including Plaintiffs.

33. No candidate for President in modern history has ever lost the popular vote by such a large margin yet been selected as President by the electoral college.

34. No candidate for President in modern history so openly flouted the requirements of the Foreign Emoluments Clause, by refusing both to disclose his foreign holdings and to divest himself from any beneficial interest in those holdings.

35. Neither had any election of any candidate for President in the history of the United States been so credibly alleged to have been affected by the conspiracy of a foreign nation intent on securing the election of the presumptive president.

36. During the time between the national election day and the date for the Electoral college voting to occur, U.S. intelligence agencies confirmed that they possessed evidence showing foreign interference in the presidential election with the purpose of favoring Donald J. Trump and undermining Hillary R. Clinton in that election.

37. Plaintiffs and many other Presidential Electors considered this information of foreign influence in the election to be a matter of grave concern. Some Electors, including Plaintiffs, took affirmative steps to obtain more information from the then current President, Barack Obama, intelligence agencies, or Congress and specifically requested an intelligence briefing. Their requests were denied. It was later learned that U.S. Intelligence agencies knew Donald J. Trump's top campaign officials and one of his sons met with Russians in June 2016 at Trump Tower in New York City after being told the Russians had "dirt" on Secretary Clinton that could help the Trump Campaign.

38. The 2016 election, in the view of many, was thus unprecedented, and it focused attention upon the framers' purpose in establishing an electoral college with Electors with discretion who meet and vote separately from their own selection.

B. The determination of Electors to exercise their constitutional freedom

39. These concerns led many to consider whether Electors should exercise their constitutional discretion to vote contrary to their pledge or the popular vote in their state.

40. A number of Electors, referred to as the “Hamilton Electors,” began to discuss the possibility of pledging to support a compromise candidate, at first with the purpose of changing the result in the Electoral College, and ultimately with the purpose of giving the House of Representatives the chance to select that candidate rather than Donald Trump.

41. In early December, 2016, the Hamilton Electors announced that their preferred candidate was Ohio Governor John Kasich.

42. Acting on that recommendation, Plaintiffs determined finally that they wanted to vote for John Kasich rather than Hillary Clinton.

C. Colorado’s restriction of Plaintiffs’ freedom

43. Colorado law purports to control how Electors may exercise their vote. Section 1-4-304(5) of the Colorado Revised Statutes provides that “[e]ach presidential elector shall vote for the presidential candidate and, by separate ballot, vice-presidential candidate who received the highest number of votes at the preceding general election in this state.” Section 1-13-723 of the Colorado Revised Statutes gives the state the power to punish criminally any “officer upon whom any duty is imposed by any election law who violates his duty.”

44. On November 18, 2016, Plaintiff Nemanich emailed Colorado’s Secretary of State, Wayne Williams, to ask “what would happen if” a Colorado state Elector “didn’t vote for . . . Clinton and . . . Kaine.” Williams, through surrogates, responded by email, stating that “if an elector failed to follow th[e] requirement” outlined in C.R.S. § 1-4-304(5), his “office would

likely remove the elector and seat a replacement elector until all nine electoral votes were cast for the winning candidates.”

45. Subsequent to that email, Defendant Williams also stated that if an Elector violates C.R.S. § 1-4-304(5), they would likely face either a misdemeanor or felony perjury charge.

46. On December 6, 2016, so as to secure their constitutional freedom to vote as their conscience determined, Plaintiffs Polly Baca and Nemanich filed suit in Colorado District Court, asking the Court to enjoin Defendant from enforcing Colo. Rev. Stat. § 1-4-304(5).

47. On December 12, 2016, the district court denied Plaintiffs’ injunction.

48. The following day, Plaintiffs filed an emergency motion for an injunction pending appeal in the 10th Circuit.

49. On December 16, 2016, the 10th Circuit denied Plaintiffs’ emergency motion. The Court of Appeals was not persuaded that the Colorado Secretary of State would in fact restrict the freedom of Electors. Specifically, the Court did not credit Plaintiffs’ concern that Defendant Williams would actually remove an Elector if an Elector voted contrary to the state statute. As the Court noted, C.R.S. § 1-4-304(1) gave Defendant the power to remove Electors “prior to the start of voting.” The Court did not read the statute to give Defendant any such power “after voting has begun.” Indeed, as the Court expressly noted, such an act by the Secretary of State was “unlikely in light of the text of the Twelfth Amendment.”

50. The predictions of the Court of Appeals proved mistaken.

51. On December 19, 2016, after a hearing in state court on a related matter, Defendant Williams, under his emergency rule making authority, changed the oath of the

Electors to put further pressure on them to vote consistent with Colorado's popular vote. At a meeting with the Electors in advance of their vote, the new oath was administered over objections from Plaintiffs. In the press before the vote, Defendant Williams, both personally and through surrogates, stated that anyone who violated their oath may be subject to felony perjury charges for intentionally violating the oath. The new oath, created just moments before the Electors' vote, increased the pressure on Plaintiffs to vote for Hillary Clinton and Tim Kaine regardless of Plaintiffs' determined judgment.

52. Despite the new oath, Plaintiff Micheal Baca cast his ballot for John Kasich. Mr. Baca noted that the ballot was pre-printed with Hillary Clinton's name, he requested a new ballot, but his request was denied. Mr. Baca then crossed out Mrs. Clinton's name and wrote in Mr. Kasich's name with the undisputed intention that his ballot be counted for purposes of the final tally of Electoral College votes.

53. Despite the clear language of the 10th Circuit Court of Appeals indicating that Defendant Williams had no authority to remove an Elector once the Elector was seated — either because the statute did not so empower him or because the 12th Amendment would not permit it even if the statute did so empower him—Defendant Williams willfully removed Plaintiff Micheal Baca as an Elector, refused to count Mr. Baca's vote, and referred him to Colorado's Attorney General for criminal investigation and prosecution. Mr. Baca was replaced by a substitute Elector who cast her ballot for Mrs. Clinton. When the vote for Vice President was held, Mr. Baca cast a ballot for Mr. Kaine by writing Mr. Kaine's name on a pen box, which the Defendant, through a surrogate, retained but did not count.

54. Because of the actions by Defendant Williams in changing the oath and removing Plaintiff Micheal Baca, Plaintiffs Polly Baca and Nemanich felt intimidated and pressured to vote against their determined judgment.

COUNT 1
(42 U.S.C. §1983)

55. Plaintiffs repeat and reallege all prior paragraphs.

56. 42 U.S.C. § 1983 provides a civil cause of action to any person who is deprived of rights guaranteed by the United States Constitution or federal law, by another person, acting under color of State law.

57. Defendant deprived Plaintiffs Micheal Baca, Polly Baca, and Nemanich of a federally protected right when he threatened to remove them as Electors, and refer them for criminal prosecution, if they voted for a candidate other than Hillary Clinton.

58. At all times, Defendant was acting under color of state law.

59. At all times, Defendant was acting in his individual capacity.

60. As a result of Defendant's conduct, Plaintiffs are entitled to damages.

COUNT 2
(52 U.S.C. §10101(b) & §20510(b))

61. Plaintiffs repeat and reallege all prior paragraphs.

62. Title 52 U.S.C., §10101(b) provides:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

63. Title 52 U.S.C., §20510(b) provides a private right of action to any person “aggrieved by a violation of [Chapter 52 of the US Code].”

64. Defendant Williams “intimidate[d], threaten[ed], coerce[d], or attempt[ed] to intimidate, threaten, or coerce” Plaintiffs Micheal Baca, Polly Baca and Robert Nemanich to get them to vote contrary to their conscience, and vote contrary to a determination that was consistent with the prerogatives granted to electors under the U.S. Constitution.

65. Defendant Williams’ intimidation was at, and leading up to, the election for selecting the President and thus violated 52 U.S.C. § 10101(b).

66. At all times, Defendant was acting under color of state law.

67. At all times, Defendant was acting in his individual capacity.

68. As a result of Defendant’s conduct, Plaintiffs are entitled to damages.

COSTS AND ATTORNEYS’ FEES

69. Pursuant to 42 U.S.C. § 1988 and 52 U.S.C. § 20510(c), Plaintiffs further seek an award of their costs, including reasonable attorneys’ fees, incurred in the litigation of this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request this Court enter judgment:

1. Finding Defendant Williams violated Plaintiffs’ federally protected rights by depriving Micheal Baca of his federal right to act as an Elector and by threatening and intimidating Plaintiffs Polly Baca and Robert Nemanich;
2. Awarding plaintiffs nominal damages of \$1 each for the violation of their rights;
3. Awarding plaintiffs the costs of this action, including reasonable attorneys’ fees; *and*
4. Awarding any further relief this Court deems just and appropriate.

Respectfully submitted this 20th day of September 2017.

/s/ Lawrence Lessig _____

Lawrence Lessig
1563 Massachusetts Ave.
Cambridge, MA 01238
617-496-8853
lessig@this.is

/s/ Jason Wesoky _____

Jason Wesoky
1331 17th St. Suite 800
Denver, CO 80202
303-623-9133
Jason.w@hamiltondefenders.org

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-01937-WYD-NYW

ROBERT NEMANICH, *et al.*,
Plaintiffs,

v.

WAYNE W. WILLIAMS, Colorado Secretary of State, in his individual capacity,
Defendant.

ORDER OF THE COURT RE: STIPULATION OF THE PARTIES

THIS MATTER comes before the Court on the stipulation of the parties, Plaintiffs Robert Nemanich, Polly Baca, and Micheal Baca (“Plaintiffs”), and Defendant Wayne W. Williams, the Colorado Secretary of State (“the Secretary”).

The parties stipulate as follows:

1. Plaintiffs will seek leave to file a Second Amended Complaint on or before October 25, 2017. The Second Amended Complaint will:
 - a. Name the Colorado Department of State as the sole defendant;
 - b. Assert a single claim arguing that COLO. REV. STAT. § 1-4-304(5), which binds presidential electors to cast their ballots in favor of the presidential and vice-presidential candidates who won the state’s general election, is unconstitutional;
 - c. Seek only nominal damages in the amount of \$1.00 per Plaintiff for alleged violations of rights that Plaintiffs assert are protected by the U.S. Constitution, based on the course of events leading up to and

during the ballot-casting ceremony for Colorado’s presidential electors in the 2016 Electoral College;

- d. Not request an award of attorneys’ fees pursuant to 42 U.S.C. § 1988;
- e. Not include any claim for a violation of 52 U.S.C §§ 10101 or 20510; and
- f. Not include a jury demand.

2. Plaintiffs waive and affirmatively relinquish any right in this case to more than \$1.00 per Plaintiff in nominal damages. Plaintiffs waive and affirmatively relinquish their right to all other forms of damages (be they compensatory, consequential, punitive, or otherwise) from the Secretary or the Colorado Department of State for alleged injuries arising out of or related to the 2016 Electoral College.

3. Plaintiffs waive and affirmatively relinquish any right in this case to seek an award of attorneys’ fees pursuant to 42 U.S.C. § 1988, or any other attorney-fee shifting statute or law. Should any such fees be awarded, Plaintiffs agree to forgo collection of the award.

4. Plaintiffs waive and affirmatively relinquish any right or cause of action that they may have under 52 U.S.C §§ 10101 or 20510, arising out of or related to the 2016 Electoral College.

5. Plaintiffs waive and affirmatively relinquish any right to a jury in this case.

6. The Secretary agrees that the Colorado Department of State, once joined as a defendant, will waive its sovereign immunity under the Eleventh Amendment for this case only.

7. Neither the Secretary nor the Colorado Department of State, once joined as a defendant, will seek an award of attorneys' fees or costs incurred during the defense of Plaintiffs' first, similar lawsuit (*Baca, et al. v. Williams, et al.*, Case No. 16-cv-02986-WYD-NYW) pursuant to FED. R. CIV. P. 41(d).

8. Discovery and disclosures will be stayed until the Colorado Department of State's forthcoming Motion to Dismiss the Second Amended Complaint is decided.

9. In the event that the Colorado Department of State's forthcoming Motion to Dismiss is denied, the parties will engage in informal written discovery to expedite the case, including the voluntary exchange of documents and reaching stipulations of fact where possible, and to forego formal written discovery; the parties will be permitted to take depositions, including a Rule 30(b)(6) deposition of the Department of State, but the Secretary of State, Wayne W. Williams, will not be deposed.

The above stipulations of the parties are approved by the Court and are now made an Order of the Court.

DONE this 20th day of October, 2017.

BY THE COURT

s/Wiley Y. Daniel

Judge

APPROVED BY THE PARTIES:

s/Lawrence Lessig

Lawrence Lessig
1563 Massachusetts Ave.
Cambridge, MA 01238
617-496-8853
lessig@this.is

s/ Jason Wesoky

Jason Wesoky
1331 17th St. Suite 800
Denver, CO 80202
303-623-9133
Jason.w@hamiltondefenders.org
Counsel for Plaintiffs

CYNTHIA H. COFFMAN
Attorney General

s/ Grant T. Sullivan

LEEANN MORRILL, 38742*
First Assistant Attorney General
MATTHEW D. GROVE, 34269*
Assistant Solicitor General
GRANT T. SULLIVAN, 40151*
Assistant Solicitor General

Public Officials Unit
State Services Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720 508-6349
FAX: 720 508-6041
E-Mail: leeann.morrill@coag.gov
matt.grove@coag.gov
grant.sullivan@coag.gov

*Counsel of Record
Attorneys for Defendant