

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

-----X

COMMON CAUSE OF COLORADO, on behalf of itself :
and its members; MI FAMILIA VOTA EDUCATION :
FUND; and SERVICE EMPLOYEES INTERNATIONAL :
UNION, on behalf of itself and its members,

: Civil No. 08-cv-02321-JLK

Plaintiffs,

vs.

BERNIE BUESCHER, in his official capacity as Secretary :
of State for the State of Colorado,

Defendant.

-----X

AMENDED COMPLAINT

Plaintiffs, by their attorneys, and for their Complaint against Defendant, allege as follows:

INTRODUCTION

1. This is an action to rectify the improper disenfranchisement of eligible Colorado voters to and prevent the disenfranchisement of thousands more such voters, including Plaintiffs' members and citizens registered by Plaintiffs, by striking down

certain provisions of Colorado election law and halting certain practices by Defendant. In violation of the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg (1993) and the Help America Vote Act (“HAVA”), 42 U.S.C. § 15483 (2002), the challenged practices illegally disenfranchise eligible voters by “canceling” the registration records of eligible Colorado citizens, depriving them of the right to cast a ballot that will count, and improperly preventing certain eligible voters from registering.

2. Colorado’s voter registration practices violate the NVRA and HAVA in five ways:

a. Colorado law requires immediate cancellation of new registrations when a new registrant’s voter registration card, sent via non-forwardable mail, is returned as undeliverable within 20 business days of receipt of the registration application. This practice violates the express terms of section 8(d) of the NVRA, 42 U.S.C. § 1973gg-6(d), which prohibits removal of a voter’s name from the voter rolls based on returned mail unless the voter either (i) confirms his or her change of address in writing or (ii) fails to respond to a notice sent via forwardable mail and fails to vote in two subsequent general federal elections. Defendant has asserted that its practices do not violate the law and has taken no steps to prevent violations of § 1973gg-6(d) in future elections.

b. Section 8(c)(2) of the NVRA prohibits a state from systematically purging any voter from the list of eligible voters within 90 days before the date of a primary or general election for Federal office except under specific and limited circumstances. 42 U.S.C. § 1973gg-6(c)(2). In violation of this prohibition,

Defendant systematically canceled registrations of thousands of voters within 90 days of the August 12, 2008 primary election and the November 4, 2008 general election. Defendant has asserted that its practices do not violate the law and has taken no steps to prevent future violations of § 1973gg-6.

c. Colorado procedures for canceling voter records identified as “duplicates” or as belonging to voters who have moved from one Colorado county to another also violate the NVRA and HAVA. Both of those statutes mandate that all state programs aimed at maintaining accurate and current voter registration lists include adequate safeguards against erroneous disenfranchisement of eligible registered voters. 42 U.S.C. §§ 15483(a)(2)(B),(a)(4); 42 U.S.C. §§ 1973gg(b), 1973gg-6(a), (c). Colorado does not have such safeguards. Instead, Defendant relies on computer database matching programs to identify records of voters who appear to have moved to a different county or that may belong to the same voter with different addresses. Election officials then review these records and are required to cancel records they decide belong to voters who have moved to a new address or are “duplicates,” including records that appear to belong to the same voter registered at different addresses. Although the NVRA and HAVA clearly prohibit any cancellation of a registration record on the basis of a change of address without following the statutorily required process which includes written notice to the voter and the opportunity to correct any errors, and a waiting period before cancellation, Defendant cancels such records without sending the required notice

or waiting the required period. In addition to this ongoing process, Defendant is preparing to undertake a one-time “voter merge process” in an effort to eliminate duplicate records throughout the statewide computerized voter registration list. This process, scheduled to begin in May 2009, will remove millions of purportedly duplicate voter records, but without the safeguards required by the NVRA and HAVA to prevent the erroneous cancellation of records belonging to eligible voters. The voter merge process not only is likely to purge the records of thousands of eligible voters, but will make it more difficult to detect and remedy previously erroneous and unlawful purges.

d. The NVRA and HAVA prohibit states from removing voters from the rolls merely for a failure to vote. 42 USC § 1973gg-6(b)(2); 42 U.S.C. § 15483(a)(4)(A). The NVRA explicitly requires that any State program or activity to ensure “the maintenance of an accurate and current voter registration roll ... *shall not* result in the removal of the name of any person from the official list of voters registered to vote ... by reason of the person’s failure to vote.” 42 U.S.C. § 1973gg-6(b)(2) (emphasis added). In violation of this prohibition, Colorado election law creates a mechanism for the removal from the rolls of eligible and registered voters solely by reason of their failure to vote. COLO. REV. STAT. § 1-2-605(2). In particular, registered voters who do not vote in a general federal election are classified as “inactive” in the state’s computerized voter database and are sent confirmation notices and simultaneously flagged for eventual removal from the voter rolls. If a voter fails to respond to the confirmation notice and also

fails to vote in two succeeding federal general elections, the voter's registration is canceled. This process does precisely what the NVRA and HAVA prohibit: a voter's decision not to vote or inability to vote in a single election, on its own, sets in motion a process that results in the purge of that voter from the registration list.

e. The NVRA allows states to remove names from the list of eligible voters "as provided by State law, by reason of criminal conviction," 42 U.S.C. § 1973gg-6(a)(3)(B). Such removals, however, are subject to the requirement that the state "ensure that any eligible applicant is registered to vote in an election." *Id.* at (a)(1). In Colorado, individuals convicted of felonies are ineligible to vote only while confined or on parole. COLO. REV. STAT. § 1-2-302 (3.5)(b), 8 CCR §1505-1 (Rule 39). However, the counties receive lists of individuals who are purportedly ineligible to vote only once per month. The result is that registrants who are no longer ineligible by reason of felony conviction, and who have attempted to register to vote, are likely disenfranchised and prevented from registering to vote, in violation of the NVRA.

3. The purpose of this action is both to rectify prior violations of federal election law and to prevent ongoing and future violations. Shortly before the November 4, 2008 general election, Plaintiffs filed the original complaint in this action seeking to enjoin some of these unlawful practices. On October 29, 2008, this Court approved a stipulation whereby voters whose registrations had been canceled under the 20-day rule described in ¶ 2(a), above, and voters whose registrations were canceled for any reason between May 14, 2008 and November 4, 2008, were permitted to vote by provisional

ballot. The stipulation also established a presumption that such registrants were eligible to vote and a process for heightened review of such provisional ballots. Although the stipulation resolved Plaintiffs' Motion for Preliminary Injunction, it did not resolve Plaintiffs' legal claims or alter Colorado election law or Defendant's ongoing and unlawful policies and procedures. With the exception of some voters whose registrations were reinstated after they cast provisional ballots, the stipulation also did not reinstate voters who had been unlawfully purged from the voter rolls prior to the November 2008 election.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as a case arising under the laws of the United States; under 28 U.S.C. § 1343(a)(3) and (4), as a case seeking equitable and other relief pursuant to an act of Congress providing for the protection of the right to vote; and under 42 U.S.C. § 1983, as a case seeking to enforce rights and privileges secured by the laws of the United States.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim have occurred or will occur in this district.

PARTIES

6. Common Cause of Colorado ("Common Cause") is a non-profit organization whose purpose, as defined by its mission statement, is "[t]o strengthen public participation and faith in our institutions of self-government; ... to promote fair

elections and high ethical standards for government officials; and to protect the civil rights and civil liberties of all Americans.” Common Cause has 4,000 dues-paying members and 8,000 online members within the state of Colorado, many of whom are registered Colorado voters and who regularly vote in Colorado elections. Common Cause has provided and continues to provide advice, information, and technical assistance to numerous voter registration drives that have been and continue to be active in Colorado. As part of its goal to promote open, honest and accountable government, Common Cause is committed to ensuring that every eligible American, and every eligible Common Cause member, has the right to vote and the opportunity to exercise that right.

7. Common Cause works actively on a variety of election reform issues, including “the development of fair and effective voter database management protocols so that voters are not inadvertently purged from the rolls.” Common Cause conducts a variety of voter education activities, including holding voter education fora for the public, identifying problems that may adversely affect Coloradans’ ability to vote, addressing those problems with election officials and organizations, and providing assistance to voter registration drives. During the 2008 general election cycle, Common Cause implemented a program called “Just Vote Colorado” with the aim of monitoring the 2008 election and writing a post-election report about how Colorado’s election laws impacted the voters in the state.

8. The acts complained of herein have harmed and will continue to harm Common Cause and its members. The ongoing, improper purge of eligible voters from Colorado’s election rolls directly impacts Common Cause, its ability to fulfill its mission,

and its expenditure of time, energy and resources. Common Cause's resources are limited, and the amount of time the organization's staff are required to spend investigating and taking measures to counteract the State's unlawful practices forces the diversion of necessary resources from Common Cause's voter protection and education activities. The challenged practices also have injured Common Cause because, on information and belief, individual Common Cause members have been unlawfully purged from the voter rolls in the past, and other individual members will be subjected to the concrete and imminent risk that they will be purged unlawfully from the rolls and/or not permitted to vote in upcoming elections.

9. Plaintiff Mi Familia Vota ("Mi Familia") is a non-partisan civic engagement campaign working with Latino and immigrant families to bring positive change to their communities and improve their lives. Part of Mi Familia's mission is to empower members of the Latino and immigrant communities by registering eligible citizens to vote and encouraging registered voters to participate in the electoral system. The rights this suit seeks to vindicate are thus germane to the purposes of Mi Familia.

10. Mi Familia expended significant resources and staff time on voter registration activities in advance of the November 4, 2008 general election and continues to expend significant resources and staff time on voter registration, empowerment and education activities. These activities have included outreach through churches and community organizations, outreach to newly sworn-in citizens, and door-to-door canvassing. In advance of the 2008 general election, Mi Familia registered

approximately 2,300 persons to vote. Mi Familia is continuing to register voters in Colorado, including voters for future federal elections.

11. The acts complained of herein have harmed and will continue to harm Mi Familia by undermining the organization's efforts to register eligible voters and to conduct voter education activities, creating uncertainty about the lawfulness and legitimacy of the entire registration process, which will make it more difficult for the organization to fulfill its mission of registering and engaging voters in the democratic process. Additionally, Defendant's unlawful practices harm Mi Familia because, on information and belief, some eligible voters who were registered by Mi Familia staff or volunteers will be or have already been purged unlawfully from the rolls. Finally, Defendant's actions have required, and will continue to require, Mi Familia to devote some of its limited resources and time to measures necessary to counteract the unlawful practices, and to divert resources from planned voter education efforts.

12. Plaintiff Service Employees International Union ("SEIU") is a labor union representing employees working in the fields of healthcare, property services and the public sector. SEIU has approximately 10,000 members in Colorado and represents approximately 38,000 workers in the state. Many of SEIU's members are registered to vote or have sought to register to vote. SEIU is committed to ensuring that every eligible American, including every eligible SEIU member, has the right to vote and the opportunity to exercise that right. SEIU's Mission Statement in its 2008 Constitution and Bylaws states: "We must build political power to ensure that workers' voices are heard at every level of government to create economic opportunity and foster social justice."

During the 2008 general election cycle, SEIU devoted significant time, energy and resources to registering voters in Colorado. SEIU plans to continue registering voters in Colorado for future federal elections, to encourage its members to exercise that right and to ensure they are not deprived of that right. SEIU's voter registration efforts require the expenditure of staff time and financial resources.

13. The acts complained of herein have harmed and will continue to harm SEIU and its members by undermining the organization's efforts to register eligible voters and to conduct voter education activities. SEIU has limited resources, and Defendant's actions have required SEIU to expend its resources investigating and taking measures to counteract the unlawful practices, diverting resources from other planned voter education activities. SEIU is further harmed by Defendant's actions because, as a result of Defendant's actions, some union members who are eligible to vote and properly registered to vote, as well as eligible voters who were registered by SEIU staff, were purged unlawfully from the rolls; and because there is a concrete and imminent risk that some union members who are eligible to vote and/or eligible voters registered by SEIU staff will be removed unlawfully from the voter rolls and/or not permitted to vote. Defendant's unlawful purges cast a cloud of uncertainty over SEIU's registration efforts, and there is an imminent and likely threat that Defendant's unlawful activity will adversely affect SEIU's ability to engage newly registered voters in the political process and its future efforts to register new voters.

14. In his capacity as Secretary of State, Defendant Bernie Buescher is the chief election officer for the state of Colorado. COLO. REV. STAT. § 1-1-107. As such,

Defendant is responsible for coordinating Colorado's responsibilities under the NVRA and HAVA. *Id.*

FACTUAL ALLEGATIONS

I. DEFENDANT'S UNLAWFUL PURGE OF VOTERS BASED ON RETURN OF UNDELIVERED MAIL WITHIN 20 DAYS OF REGISTRATION.

15. Section 8(a) of the NVRA establishes the basic framework for state administration of voter registration for federal office. Subsection (a)(1) requires state election officials to "ensure that any eligible applicant is registered to vote in an election" whenever a valid voter registration form is received or postmarked on or prior to 30 days before the date of the election. 42 U.S.C. § 1973gg 6(a)(1). Section 8(a)(2) then requires state officials to send notice to applicants of the disposition of their application. Once a valid registration application is timely received, Section 8(a)(3) prohibits states from removing the name of a "registrant" from the voter rolls except under limited and prescribed circumstances: at the registrant's request; due to criminal conviction or mental incapacity pursuant to state law; or due to a change in the registrant's address outside the registrar's jurisdiction when certain conditions are met. *Id.* § 1973gg-6(a)(3)-(4). Removal by reason of change of address may occur under only two circumstances: a) if the registrant confirms the change of address in writing, or b) if the registrant both (i) fails to respond to a notice sent by forwardable mail pursuant to the NVRA, and (ii) does not vote in the two general federal elections following the date of the notice. *Id.* § 1973-gg(6)(d)(1)(A)-(B). This notice-and-waiting procedure is the only mechanism allowed under the NVRA for purging registrants on the basis of returned mail.

16. Colorado law requires county election officials to ensure that eligible applicants are registered to vote if the registration application is submitted in one of several ways no later than twenty-nine days before the election. COLO. REV. STAT. § 1-2-508(1). County election officials – known as county clerk and recorders – must then determine whether the application is complete and accurate. *Id.* § 1-2-509. If the registration is complete and accurate, the county clerk and recorder “shall notify the applicant of the registration,” *id.* § 1-2-509(2), by sending a voter information card. At that point, the voter may receive a mail-in ballot or appear at the polls and cast a regular ballot. Under both state and Federal law, the voter is deemed to be a “registrant,” and his or her name can be removed from the rolls only under strictly limited conditions established by the NVRA.

17. In direct violation of these NVRA protections, however, Colorado law and the Defendant’s practices create a mechanism for purging a registrant on the basis of a single piece of returned mail. As noted, upon receipt of a registration application, a county clerk and recorder must determine whether a registration application is complete and accurate. COLO. REV. STAT. § 1-2-509(2). If the application is complete and accurate, the county clerk and recorder enters the voter’s information in Colorado’s computerized statewide voter registration list, known as “SCORE.” At that point the voter is categorized in SCORE as “Active - 20-day.”

18. The county clerk and recorder is also required, within 10 days of the determination that an application is complete and accurate, to “notify each applicant of the disposition of the application by non-forwardable mail.” COLO. REV. STAT. § 1-2-

509(3). If the notification is returned within 20 business days as undeliverable, the voter is deemed “not ... registered,” *id.*, and the status of the SCORE record is changed to “C - Canceled.” In a separate field within the SCORE database, the reason for such cancellation is designated “failed 20 day.”

19. A voter who appears at the polls on Election Day and whose SCORE record has the “Active – 20 day” status is entitled to vote by regular ballot. A voter who appears at the polls to vote and whose SCORE record has been canceled by reason of “failed 20 day” may only vote by provisional ballot.

20. Recent amendments to the Election Rules of the Colorado Secretary of State add another layer to this procedure but do not cure the NVRA violation. Rule 2.17 will require county clerks and recorders to send a confirmation card, by forwardable mail, to registrants whose status in SCORE has been changed to “Canceled” by reason of the 20-day rule. (See Exhibit 1) If the registrant signs the confirmation card and returns it within 90 days, the county clerk and recorder will deem that person “registered” as of the date of the original application. The new rule does not specify what will happen to confirmation cards that are not returned or are returned as undeliverable, and in particular does not require election officials to wait for two successive general federal elections before purging a voter who does not respond to the mailings.

21. In the months leading up to the November 4, 2008 general election, many thousands of registrations were canceled by operation of the 20-day rule. In a news release issued on October 9, 2008, the Secretary of State’s office stated that 1,136 voter records were “cancel[ed]” for that reason during the period between July 21, 2008 and

October 9, 2008. (See Exhibit 2) According to data provided by Defendant in response to a public records request from Plaintiffs, approximately 1,415 voters were purged for “failed 20-day period” in the period between May 13, 2008 and August 5, 2008 (which slightly overlaps the period discussed in Defendant’s news release).

22. The unlawful purge of eligible, properly registered voters through operation of the “20-day rule” is ongoing and continues to harm the Plaintiffs and their members.

II. DEFENDANT’S UNLAWFUL PURGE OF VOTERS WITHIN 90 DAYS OF FEDERAL ELECTIONS.

A. The NVRA Prohibits Systematic Purges Within 90 Days Of Federal Elections.

23. The NVRA requires that Colorado and Defendant Buescher “complete, *not later than 90 days prior to the date of a primary or general election for Federal office*, any program the purpose of which is to systematically remove the names of ineligible voters from the official list of eligible voters.” 42 U.S.C. § 1973gg-6(c)(2)(A) (emphasis added). This bar on systematic purges within 90 days of an election is central to the NVRA’s goals of protecting against possible disenfranchisement and ensuring accurate and current voter registration rolls.

24. The NVRA carves out only three specific and narrow exceptions to the prohibition on purges within the 90-day window: removal at registrant’s request; removal by reason of criminal conviction or mental incapacity during the period; or death of the registrant during the period. *Id.* § 1973gg-6(c)(2)(B)(i). The 90-day window also

does not preclude “correction of registration records pursuant to this subchapter.” *Id.* § 1973gg-6(c)(2)(B)(ii). Cancellation of registrations due to a voter’s change in residence is not included among the exceptions authorized by the NVRA.

25. In addition to the NVRA’s requirements, the State of Colorado was required by Section 303 of HAVA to establish a statewide computerized voter registration list by January 1, 2006, *see* 42 U.S.C. § 1543(d), maintained by the chief state election official, that “that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State.” 42 U.S.C. § 15483(a).

26. As part of its duty to create and maintain a statewide computerized voter registration list, the State of Colorado is required to ensure that “duplicate names are eliminated from the computerized list.” 42 U.S.C. § 1543(a)(2)(B)(iii). HAVA mandates that statewide computer list maintenance programs be undertaken in accordance with the NVRA, including the 90-day window provisions thereof. *See* 42 U.S.C. § 1543(a)(2)(A)(i).

B. Purges During the 2008 Election Cycle

27. According to Defendant’s responses to public records requests, national news reports, and Defendant’s own public statements in response thereto, Colorado systematically purged many thousands of voters from its rolls within the 90-day windows relating to the 2008 federal primary and general elections. On information and belief,

many of these voters were eligible to vote and should not have been removed from the rolls.

28. The 90-day period preceding the August 12, 2008 federal primary election began on May 13, 2008. The 90-day period preceding the November 4, 2008 general federal election began on August 5, 2008. The NVRA 90-day window applies to the periods before both primary and general elections.

29. In response to a public documents request by Advancement Project, Defendant provided a list of voter registration records canceled by Colorado between May 13, 2008, which marked the beginning of the 90-day window relating to the primary election, and September 25, 2008, the date on which the list was generated. These cancellations were broken down according to the purported justification for the purge, including “Moved,” “Duplicated,” and “Failed 20 Day,” “Withdrawn,” and others. Below is a summary of the number of canceled records in these categories, prepared by Plaintiffs:

Table 1		
Purges Between May 13, 2008 and September 25, 2008		
Source: Data provided in response to public records request		
Reason	Number of Cancellations	Percentage of total
Conversion	4,097	10.63%
Moved	12,970	33.64%
Duplicated	11,484	29.78%
Deceased	5,366	13.92%
Failed 20 Day	2,301	5.97%
Felon	1,557	4.04%
Withdrawn	329	0.85%
Inactive	436	1.13%
Not a Citizen	12	0.03%
Voter Fraud	8	0.02%

TOTAL	38,560	100%
--------------	--------	------

The state's list of canceled voters thus indicates that 38,550 voters' names were purged between May 12 and September 25, 2008. Based on the state's own categorization, the majority of the above voters were purged, in violation of the NVRA's 90-day rule, for reasons other than those permitted by law – that is, at the request of the registrant; or for being convicted of a felony, adjudged incapacitated, or dying in the 90 days prior to the federal election.

30. Public statements by the Secretary of State provided further proof of these violations. On October 9, 2008, the *New York Times* reported that 37,000 voters had been “purged” from the Colorado's voter registration rolls in the three weeks after July 21, 2008. That same day, Defendant's office issued a News Release stating that 14,049 voter registrations had been canceled between July 21, 2008 and October 9, 2008. The News Release included the following chart:

<u>Table 2</u>		
Colorado Purges Between July 21, 2008 and October 9, 2008		
Source: News Release dated October 9, 2008 from Colorado Department of State		
Reason	Number of Cancellations	Percentage of total
Conversion	1,256	11.6%
Moved	4,371	40.5%
Duplicated	1,847	17.1%
Deceased	1,649	15.2%
Failed 20 Day	886	8.2%
Felon	595	5.5%
Withdrawn	153	1.7%
Inactive	25	0.2%
Not a Citizen	7	0.1%
Voter Fraud	0	0%
TOTAL	10,779	100%

Like Table 1, this table reflects Defendant's own data and suggests that most voter purges occurring during the affected period did not fall within limited exceptions to the NVRA's ban on systematic purges within 90 days of a federal election.

31. Defendant has defended its practices as legal and taken no steps to prevent future violations; indeed, Defendant has indicated it will continue these practices in future election cycles. In addition, on information and belief, eligible voters who were unlawfully purged within the 90-day windows preceding the 2008 federal elections have not been reinstated and will be unable to cast their ballot in future elections. Plaintiff organizations and their members have thus been injured and also face a concrete threat of further injury from the unlawful purge of eligible, properly registered voters within the 90-day NVRA prohibition period.

III. III. DEFENDANT'S UNLAWFUL PURGE OF PURPORTEDLY "DUPLICATE" VOTER REGISTRATION RECORDS AND RECORDS OF VOTERS WHO MAY HAVE MOVED.

A. Under NVRA and HAVA, States Must Ensure That List Maintenance Practices Do Not Erroneously Disenfranchise Eligible Voters.

32. The NVRA was enacted to ensure, in part, "that accurate and current registration rolls are maintained." 42 U.S.C. § 1973gg(b)(4). HAVA, enacted several years after the NVRA, requires states to establish computerized statewide voter registration lists and requires that states "ensure that voter registration records ... are accurate and updated regularly" and make a "reasonable effort" to ensure that the names of ineligible voters are removed from the computerized list. *Id.* § 15483(a)(2)(A) and (a)(4)(A).

33. Both the NVRA and HAVA, however, impose strict safeguards to ensure that state efforts to eliminate the names of ineligible voters from the rolls do not erroneously disenfranchise eligible voters. Under section 8(d) of the NVRA, unless the voter confirms in writing that he or she has changed residence, the state may not cancel a registration for change of address unless the voter (i) fails to respond to an address confirmation notice sent by the state and (ii) does not vote or appear to vote in two consecutive general federal elections following the date of the notice. 42 U.S.C. § 1976gg-6(d)(1). Section 303 of HAVA provides that state must implement “[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.” 42 U.S.C. § 15483(a)(4)(B). HAVA prohibits states from removing voter names from computerized registration databases except “in accordance with” the NVRA, including the notice and confirmation process of Section 8(d). *Id.* § 15483(a)(2)(A)(i), 15483(a)(4)(A).

B. Colorado’s Current Procedures For Cancellation Of “Duplicate” Records With Different Addresses And Records Of Voters Who May Have Moved Violate the NVRA and HAVA.

1. Overview.

34. Election officials in Colorado engage in various list maintenance programs designed to ensure that voter lists remain current and do not include ineligible voters. In particular, Colorado election officials regularly cancel the registration records belonging to voters who have moved from one Colorado county to another. Additionally, Colorado election officials regularly conduct list maintenance activities for the purpose of

cancelling purportedly duplicate registration records – “duplicate” records that purportedly belong to the same individual with different addresses. COLO. REV. STAT. §§ 1-2-603, 1-2-604.

35. Colorado’s current practices for cancelling registration records because a voter purportedly appears to have moved to another county or because the record is ostensibly a duplicate violate the NVRA and HAVA. The specific procedures and criteria to be applied by election officials in canceling such records are unclear, inconsistent, and vulnerable to error and abuse. The procedures bypass and undermine the safeguards created by the NVRA and HAVA, including the notice and confirmation steps that must precede any cancellation of a voter record based on a purported change of address.

36. Section 1-2-603 of Colorado’s election code regulates when a previously registered voter registers in a new county in Colorado. The statute requires election officials in the county of prior residence to cancel the existing registration if they decide there is a match in certain information in the two voter records – without notice to the voters and without waiting to confirm that the voters fail to vote in subsequent elections. Under § 1-2-604, if SCORE suggests that a voter is registered in more than one county (at different addresses), election officials must cancel the apparently duplicate registration if certain matching criteria are met, again without following the NVRA’s notice and confirmation process.

37. In practice, the cancellation procedure nominally governed by both §§ 1-2-603 and 1-2-604 proceeds as follows:

(a) When a new voter registration application is entered into SCORE, the system is programmed to generate a list of existing records that potentially match information on the new application. That list may include identical voter records as well as records with different addresses or other personal data that does not match the new registration record. Once this list is generated, it is reviewed by election officials. If they decide that any of the existing records reflects a previous registration at a different address than the one given by the new registrant, the old registration record may be canceled or transferred so that the voter will no longer appear on the rolls or be eligible to vote at the precinct associated with the address of the canceled record.

(b) In addition to this initial matching procedure, election officials in Colorado conduct systematic searches of SCORE to try to determine if there are duplicates within the system. Election officials use SCORE to periodically generate lists of potential duplicate records. These lists are also reviewed by election officials, and if those officials decide that there are multiple records for a single voter at different addresses, the old registration records are canceled. The result is that the voter will no longer appear on the rolls or be eligible to vote at the precinct associated with the address of the canceled record. If the canceled records are not in fact duplicates, the voter whose record is canceled will not appear on the rolls or be able to cast a regular ballot at any precinct.

2. Existing Statutory Provisions and Cancellation Practices Are Unclear and Prone to Error and Abuse.

38. The current statutory scheme governing these cancellations is unclear and inconsistent. Under the current version of section 1-2-603, when a county election official receives notice that a registrant may have registered in a new county, officials may cancel the existing registration if they find that a match between the name and birth date or name and social security number on the two records. Election Rule 2.15 applies to § 1-2-603, but establishes somewhat different cancellation criteria: if a voter provides a prior address, the record shall be “transferred” to the new county only if county officials can match the name, birth date, and prior address of the two records. 8 C.C.R. § 1505-1 (Rule 2.15). But if the new registration does not include the registrant’s prior address, the existing record will be canceled only if there is a match between name, date of birth, and driver’s license or social security number on the two records.

39. Under the current version of section 1-2-604, election officials must review lists of potential duplicates generated by SCORE and cancel the older record(s) if they find a match between the name and birth date or name and social security number in the records. There is no corresponding election rule and no heightened matching requirement in circumstances where the voter does not provide a prior address on the newer registration application.

40. Not only is the current statutory scheme inconsistent and ambiguous, but the execution of that scheme is vulnerable to error and abuse and lacks sufficient oversight by Defendant. The practice starts from lists of potentially “duplicate” records

with different addresses generated automatically by SCORE. While SCORE ostensibly searches for apparent matches in criteria such as the registrant's voter identification number, name, date of birth, address, social security number, and drivers license number, the matching done by SCORE is unreliable. These lists may include many different records with only partial matches.

41. SCORE purports to provide a "confidence ranking" of the match. But the Secretary of State gives no guidance regarding how election officials should weigh these rankings in their deliberation, if at all. In practice, these "confidence scores" can be highly misleading. SCORE sometimes assigns rankings of nearly 100% based on a complete match in one criterion, such as driver license number, even though the names or dates of birth bear no resemblance to one another. Clerical errors in entering driver license or Social Security numbers, or in reading handwritten voter registration applications, can thus distort the entire process and lead to the erroneous disenfranchisement of eligible and properly registered voters. Moreover, as a result of the lack of necessary safeguards, at least some county election officials purport to disregard the confidence rankings entirely, but others may look to those rankings in judging the adequacy of the match on various criteria.

42. Additionally, there are no clear guidelines or standards for election officials to apply in deciding whether the various criteria "match." It is not clear whether officials must match the full name, including initials, suffixes and prefixes, or the entire social security number or only the last four digits. There also are no guidelines dictating what sources of information counties should consult in evaluating potential

matches. Some election officials review images of the original voter registration forms, including signatures, but there is no guarantee that other officials review the same type of documentation or consider the same factors. As a result of the lack of necessary safeguards, individual counties, and individual officials within the various counties, are thus free to use different standards in these determinations, or to operate with no predetermined or objective standards at all. And the Secretary of State conducts no systematic or ongoing oversight to ensure uniformity or accuracy in cancellation decisions by local election officials.

3. *The Upcoming Merge Process Will Proceed Under the Current Statutes and Rules.*

43. In addition to the on-going practices related to ostensibly duplicate registrations that occur when a new registration record is received and as part of election officials' regular list maintenance, the Secretary of State of Colorado is currently starting the process of conducting a one time "voter merge process." During this merge process, which will begin in May of 2009, election officials in Colorado will remove millions of purportedly "duplicate" registration records. Like the regular list maintenance practices in Colorado, the starting point for determining whether there are ostensible "duplicate" records will be lists generated by SCORE. While election officials are instructed to review the lists generated by SCORE to make determinations about which records are duplicate, it is unclear what, if any, additional matching criteria election official will be required to use when determining if there is a match in certain information in two voter records.

44. While some data from the records identified as duplicates as part of this voter merge process may survive and be transferred to other registration records, the actual records will be completely removed from SCORE without notice to the voters and without waiting to confirm that the voters fail to vote in subsequent elections.

4. Existing Law and Practice Violate the NVRA and HAVA

45. The existing statutory provisions and procedures described in ¶¶ 34-42 for cancellation of “duplicate” records with different addresses and records identified as potentially belonging to voters who have moved lack the requisite safeguards required by HAVA and the NVRA in two separate ways.

46. *First*, these procedures violate HAVA’s requirements that states establish minimum standards for accuracy of computerized voter registration records. In particular, HAVA requires states to establish “safeguards to ensure that eligible voters are not removed in error” from the voter rolls. 42 U.S.C. § 15483(a)(4)(B). HAVA also requires states to conduct computerized list maintenance in a manner that ensures “the name of each registered voter” appears in the list and “only voters who are not registered or who are not eligible to vote are removed” from the list. *Id.* § 15483(a)(2)(B). These safeguards are missing from COLO. REV. STAT. §§ 1-2-603 and 1-2-604, and from Defendant’s guidance and oversight of the cancellation procedures pursuant to these provisions.

47. *Second*, COLO. REV. STAT. §§ 1-2-603 and 1-2-604 violate the notice and confirmation procedures set forth in Section 8(d) of the NVRA and Section 303(a) of

HAVA, which specifies that those notice and confirmation procedures apply to list maintenance programs and the removal of names from computerized registration lists. Sections 1-2-603 and 1-2-604 of the Colorado election code require election officials to create lists of records belonging to registrants who may have moved or whose names appear to match the names on other registration records, but have different addresses, and then review those lists for potential removal. By any measure, this constitutes a procedure for removing voters based on change of residence. As such, the process triggers the NVRA's notice and confirmation requirements. 42 U.S.C. § 1976gg-6(d).

48. Rather than following this procedure, Colorado relies on computer database matching programs to identify records of voters with different Colorado addresses or voters who have moved to a new county, and then requires election officials to cancel one or more of those records without notice to the voters and without waiting to confirm that the voters have failed to vote in subsequent elections. This amounts to an end-run around the NVRA's protections against erroneous removal for changed residence.

49. The fact that these Colorado procedures are nominally meant to eliminate "duplicate" registrations does not exempt them from the safeguards of Section 8(d) of the NVRA. States are prohibited from canceling the registration of a voter who has changed residence unless they first confirm that the voter has in fact moved by following the steps laid out in Section 8(d). Section 303 of HAVA provides that a state may remove names from a computerized voter list only "in accordance with" the NVRA, including Section 8(d), 42 U.S.C. § 15483(a)(2)(A)(i), and specifically states that these protections apply to

the elimination of “duplicate names,” 42 U.S.C. § 15483 (a)(2)(B). Colorado cannot avoid these requirements by naming the existing record a “duplicate” of other records that appear to belong to the same voter but have different addresses. The notice and waiting period is the federally mandated method for determining whether such records are actually “duplicates.”

B. Pending Statutory Amendments Will Not Cure NVRA and HAVA Violations.

50. Plaintiffs are aware that sections 1-2-603 and 1-2-604 may be modified in the future under legislation recently passed in the Colorado Legislature. *See* House Bill 09-1018. (Exhibit 3) While the new legislation purports to change the matching criteria established in sections 1-2-603 and 1-2-604, the new legislation does not resolve the violations of the NVRA and HAVA. The amended provisions will still require election officials to identify registration records that appear to belong to voters who have moved and to review those records for potential cancellation. This process thus will still comprise a mechanism for cancellation based on purported change of address, and will still result in cancellation on that basis without following the notice and confirmation process required by the NVRA and HAVA. Even if the matching criteria are clarified and standardized, they cannot substitute for the federally mandated safeguards.

51. In addition, the process under the revised statute will still rely upon computer-generated “confidence” rankings, and will still proceed without concrete written guidance or adequate oversight to ensure uniformity and minimize error.

52. Furthermore, this new legislation will not go into effect until August of 2009, *see* House Bill 09-1018 § 8, so it will not regulate the merge process, during which time potentially millions of registration records will be removed from SCORE in violation of the procedures established by the NVRA and HAVA. In addition, election officials in Colorado are also currently engaged in their regular list maintenance activities and thus the new legislation does not effect any purportedly duplicate registration records canceled in violation of the NVRA and HAVA between now and August.

53. The amended statutes also will not reinstate voters who were unlawfully removed from the rolls under existing procedures. In fact, after the merge process, “duplicate” records will be permanently eliminated, thereby “locking in” unlawful cancellations that occurred prior to the merge.

54. On information and belief, eligible voters who have been unlawfully purged as a result of the removal practices set forth in ¶¶ 34-42 have not been reinstated and will be unable to cast their ballot in future elections. Plaintiff organizations and their members have thus been injured and also face a concrete threat of further injury the Defendant’s on-going removal of allegedly duplicate records, and from the unlawful purge of eligible voters that will likely occur during merge process when potentially millions of records will be permanently removed from SCORE.

IV. V. DEFENDANT’S UNLAWFUL PURGE OF INFREQUENT OR SPORADIC VOTERS.

55. The NVRA and HAVA prohibit states from removing voters from the rolls merely for a failure to vote. 42 USC § 1973gg-6(b)(2); 42 U.S.C. § 15483(a)(4)(A).

These prohibitions are based on an underlying principle in both acts: that once properly registered, eligible voters should remain on the list as long as they remain eligible to vote in the jurisdiction and should not lose their right to vote simply because they choose not to exercise that right in a particular election.

56. In violation of this prohibition, Colorado law creates a mechanism for the eventual removal from the rolls of eligible and registered voters that is triggered solely their failure to vote. Pursuant to COLO. REV. STAT. § 1-2-605(2), a voter who is classified as “Active” in the SCORE system but fails to vote in a general election is reclassified as “Inactive — Failed to Vote.” Such “Inactive” voters are then mailed forwardable confirmation notices not later than 90 days after the general election and simultaneously flagged for eventual removal from the voter rolls. COLO. REV. STAT. § 1-2-605(6)(a). If a voter fails to respond to the confirmation notice and also fails to vote in two succeeding federal general elections, the voter’s registration is canceled and the voter is removed from the rolls, pursuant to COLO. REV. STAT. § 1-2-605(7), without regard to whether the confirmation notice was returned by the post office as undeliverable or whether any other evidence exists (such as a National Change of Address Registry (“NCOA”)) to indicate that the registered voter has changed residences.

57. The NVRA requires states to create programs that make reasonable efforts to remove voters who have changed residence. 42 U.S.C. § 1973gg-6(a)(4). However, such programs must be uniform, non-discriminatory, and in compliance with the Voting Rights Act of 1965. Moreover, such programs “*shall not result in the removal of the*

name of any person from the official list of voters registered to vote...by reason of the person's failure to vote...." 42 U.S.C. § 1973gg-6(b)(2) (emphasis added).

58. Subsections (c) and (d) of Section 8 of the NVRA provide mechanisms by which states may carry out their duty under Section 8(a)(4) to make reasonable attempts to remove persons who are suspected of being ineligible to vote by reason of a change in residence. States may either rely on NCOA or other information provided by the Postal Service, 42 U.S.C. § 1973gg-6(c); or they may send residency confirmation notices by forwardable mail, along with a postage-prepaid return card, and then allow the voter a minimum of two general federal elections following the mailing of the notice to either respond to the notice, contact the registration authority, or appear to vote. 42 U.S.C. § 1976gg-6(c)-(d).

59. Section 8(b)(2) of the NVRA expressly provides, however, that states may not use a person's failure to vote as the basis, or "trigger," for sending a residency confirmation notice and commencing the two federal general election waiting period under Section 8(d) of that statute. Similarly, Section 303(a)(4)(A) of HAVA expressly provides that that states may not use NVRA residency confirmation procedures to remove voters from the rolls solely because of their failure to vote. 42 U.S.C. § 15483(a)(4)(A).

60. Colorado's election law (COLO. REV. STAT. § 1-2-605) requires precisely what the NVRA and HAVA prohibit: the commencement of statutory removal proceedings against voters solely because of their failure to vote, and not based on any permissible indication of a change in residence for any of those voters.

61. Defendant has admitted that Colorado's election officials have routinely removed "inactive - failed to vote" voters from the rolls in the past, in accordance with the requirements of Colorado law. On information and belief, Plaintiffs' members and constituents are among those voters who have been improperly removed.

62. On information and belief, some number of Plaintiffs' members and constituents who were eligible and registered to vote in advance in the November 2006 and/or 2008 general elections and who remained a resident of the jurisdiction in which they were registered were either unable or chose not to vote in those elections. Consequently, by operation of Colorado law, such individuals are now designated "inactive - failed to vote" and are targeted for removal from the rolls solely by reason of their failure to vote. Accordingly, Plaintiffs and their members continue to be harmed by these provisions of Colorado law.

63. On or about February 18, 2009, counsel for Plaintiffs gave written notice to Defendant of Colorado's violation of the NVRA with respect to the unlawful removal of voters solely by reason of their failure to vote. In response to that notice, counsel for Defendant informed counsel for Plaintiffs on or about March 18, 2009, that Defendant was contemplating the commencement of administrative rulemaking proceedings to address those "inactive - failed to vote" voters.

64. On or about March 31, 2009, Defendant did, in fact, issue a Notice of Proposed Rulemaking that addresses "inactive - failed to vote" voters. (See Exhibit 4, Proposed Rule 1.1(E)) Under the rules proposed by Defendant, "inactive - failed to vote" voters will continue to be designated as such if they fail to vote in a general election;

however, such voters will be compared against the NCOA database to determine whether there is evidence that they have changed residence. If evidence of a change of address is found, the “inactive - failed to vote” voters’ SCORE designation would be changed to “inactive - NCOA,” and those voters would be sent a residency confirmation notice in accordance with Section 8(d) of the NVRA, and they will be subject to cancellation if they do not respond to the notice, appear to vote, or otherwise confirm or correct their registration within the next two succeeding general elections. If no evidence of an address change is found in the NCOA database and no other undeliverable returned mail is received related to those voters, the “inactive - failed to vote” voters would not be subject to cancellation.

65. Defendant states that a final draft of the proposed rules will be posted no later than April 30, 2009, and that a public hearing will be held on May 5, 2009. Accordingly, as of the date of filing this Amended Complaint, no final administrative rule has been adopted by Defendant in accordance with its March 31, 2009 Notice of Proposed Rulemaking. Accordingly, as of the date of filing this Amended Complaint, the rights and responsibilities of the parties remain unclear with respect to the issue of the state’s authority to purge voters by reason of their failure to vote.

VI. DEFENDANT’S PRACTICES IMPROPERLY DISENFRANCHISE PERSONS WITH FELONY CONVICTIONS.

66. The primary purpose of the NVRA is “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.” 42 U.S.C. § 1973gg(b)(1). The NVRA therefore requires states to ensure that all

eligible individuals who submit a proper registration application shall be registered to vote. *Id.* § 1973gg-6(a). Further, all procedures and processes set forth in the NVRA, including those governing removal of names from voter lists, are to be “implement[ed] . . . in a manner that enhances the participation of eligible citizens as voters in elections for Federal office.” 42 U.S.C. § 1973gg(b)(2). Similarly, under HAVA, every state effort to remove ineligible persons from registration lists must be done in accordance with the NVRA and must ensure that only ineligible voters are removed from the lists. 42 U.S.C. §§ 15483(a)(2)(A)(i), 15483(a)(2)(B), 15483(a)(4)(B).

67. Under Colorado law, individuals convicted of felonies are ineligible to vote only while confined or on parole. Colo. Rev. Stat. §§ 1-2-302 (3.5(b)), 1-2-606, 8 C.C.R. § 1505-1 (Rule 39). In violation of the NVRA and HAVA, however, the procedures followed by Defendant to exclude individuals from the voting rolls by reason of felony conviction are overbroad, and result in the exclusion of individuals who have completed their sentences and are no longer on parole.

68. Every month, counties receive a list from the Colorado Department of Corrections (“CDOC”) of individuals who are ostensibly ineligible to vote because they are currently in prison or on parole due to a felony conviction (“the CDOC list”). Pursuant to COLO. REV. STAT. §1-2-302 (3.5(b)) and 8 C.C.R. § 1505-1 (Rule 39), election officials are required to compare this list against the lists of registered voters and to cancel the registration of persons who appear on the CDOC list.

69. Because the CDOC list is typically distributed only every 30 days, the list can contain the names of individuals who have been eligible to vote for up to one month.

There is no apparent mechanism for the county clerk and recorders to be able to evaluate the eligibility status of the people on the CDOC list, instead, they must rely on the list as accurate.

70. In addition, county election officials are required to obtain a list from county sheriffs identifying individuals convicted of felonies. 8 C.C.R. § 1505-1 (Rule Rule 39.4). Like the CDOC list, these lists are overinclusive because they provide no indication of the date of the individual's discharge and can be up to 30 days out of date. The sheriffs' lists also provide almost no information about the individuals named and are thus vulnerable to error.

71. On information and belief, these procedures have resulted in the disenfranchisement of individuals who registered to vote after completing their sentences, and who thus are eligible to vote under state law, but whose names nevertheless appear on lists of ineligible persons provided by the CDOC and county sheriffs' departments. These procedures therefore violate the provisions of the NVRA and HAVA that require states to ensure that all eligible applicants are registered to vote, and prohibit states from the removing the names of eligible voter from the rolls. 42 U.S.C. §§ 1976gg-6(a)(1), 1976gg-6(c); 42 U.S.C. §§ 15483(a)(2)(A)(i), 15483(a)(2)(B), 15483(a)(4)(B). These illegal procedures adversely affect the ability of Plaintiffs effectively to carry out voter registration and education efforts and may affect the ability of individual members or voters registered by Plaintiff Organizations to vote.

CLAIMS

COUNT I

**(VIOLATION OF THE NVRA AND 42 U.S.C. § 1983 –
20-DAY CANCELLATION PROCEDURE)**

72. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

73. Section 8(d) of the NVRA expressly prohibits Colorado from removing a voter's name from the voter rolls based on returned mail unless either (i) the voter confirms the change of address in writing or (ii) the state mails a notice (in a manner and form prescribed by the NVRA) to the voter and the voter fails to respond to it and does not vote for two general elections after the notice is sent. 42 U.S.C. § 1973gg-6(d). This provision prescribes the only method for canceling a registration on the ground that the registrant has changed residences.

74. Section 1-2-509(3) of Colorado's election law violates these NVRA provisions on its face because it requires the immediate removal of a voter's name from the rolls if the voter's notice of registration is returned to the county clerk as undeliverable within 20 days after the notice is mailed.

75. COLO. REV. STAT § 1-2-509(3) harms Plaintiffs because it adversely affects Plaintiffs' ability to fulfill their organizational goals of registering voters, ensuring that all eligible citizens can participate in the political process, and creating politically active communities. Defendant's conduct also requires Plaintiffs to expend limited

resources responding to and taking measure to counteract the unlawful purges. These injuries are ongoing and will continue unless and until they are remedied.

76. COLO. REV. STAT § 1-2-509(3) is also invalid as applied to individual voters and members of Plaintiff organizations because the statute disenfranchises members of the communities that Plaintiffs represent and serve, and deprive the members of Plaintiff organizations of their rights under the NVRA and HAVA. Colorado's 20-day rule has caused the unlawful removal from the voter rolls of eligible voters, including individual members of Plaintiff organizations and voters whom members of Plaintiff registered to vote. The 20-day rule also creates a concrete and imminent risk that additional voters, including members of Plaintiff organizations and individuals registered to vote by members of these organizations, will be improperly purged from the voter rolls within 20 days of their registration.

COUNT II

(VIOLATION OF THE NVRA AND 42 U.S.C. § 1983 – PURGING PROCEDURE)

77. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

78. The NVRA prohibits a state from purging systematically voters from the official list of eligible voters later than 90 days before the date of a primary or general election for Federal office unless the voter has died, been convicted of a felony or declared incapacitated, or voluntarily withdrawn her registration during that period. *Id.*, § 1973gg-6(c)(2).

79. In violation of § 1973gg-6, Defendant systematically purged thousands of voters from the official list of eligible voters within the 90 days of the 2008 federal primary and general elections on grounds not permitted by within the 90-day NVRA exclusion period.

80. Defendant's unlawful purges disenfranchise members of the communities that Plaintiffs represent and serve, and deprive the members of Common Cause and SEIU of their rights under the NVRA. Defendant's conduct harms Plaintiffs because it adversely affects Plaintiffs' ability to fulfill their organizational goals of registering voters and maximizing participation in the political process and by requiring Plaintiffs to expend limited resources responding to and taking measure to counteract the unlawful purges. These injuries are ongoing and will continue unless and until they are remedied.

81. On information and belief, members of Plaintiff organizations, as well as persons registered to vote by members of Plaintiff organizations, were among those eligible voters who were improperly purged in the 2008 federal election cycles. On further information and belief, some eligible voters have not been reinstated and will be unable to vote in future elections if Defendant's statutory violations are not remedied.

82. Defendant has taken no steps to prevent violations of § 1973gg-6 in future elections, and has asserted that its practices do not violate the law. Members of Plaintiff organizations therefore face a concrete and imminent threat that they, and individuals whom they register to vote, will be unlawfully purged from the rolls in future election cycles.

COUNT III

**(VIOLATION OF THE NVRA, HAVA AND 42 U.S.C. § 1983 –
PURGE OF “DUPLICATE” REGISTRATIONS)**

83. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

84. Section 8 of the NVRA prohibits cancellation of voter registration on the basis of change of address unless the voter (i) fails to respond to an address confirmation notice sent by the state and (ii) does not vote or appear to vote in two consecutive general federal elections following the date of the notice. 42 U.S.C. § 1976gg-6(d).

85. Section 303 of HAVA requires that state list maintenance procedures must adhere to these NVRA restrictions and must include adequate safeguards against erroneous disenfranchisement of eligible registered voters. 42 U.S.C. §§ 15483(a)(2)(B) and (a)(4).

86. In violation of these provisions, Colorado law requires cancellation of the records that may belong to voters that have apparently moved to a different county, or that appear to be “duplicate” records belonging to the same voter at purportedly different addresses, based upon unclear and error-prone computer matching procedures without observing the notice and waiting requirements of the NVRA. COLO. REV. STAT. §§ 1-2-603, 1-2-604.

87. In addition, Defendant is preparing to undertake a one-time “voter merge process” in an effort to eliminate duplicate records throughout the computerized voter registration list. This process will remove millions of ostensibly duplicate voter records,

but without adequate safeguards required by the NVRA and HAVA to prevent erroneous cancellation of records belonging to eligible voters.

88. The unlawful cancellation procedures in COLO. REV. STAT. §§ 1-2-603, 1-2-604 disenfranchise members of the communities that Plaintiffs represent and serve, and deprive the members of Common Cause and SEIU of their rights under the NVRA. Defendant's conduct harms Plaintiffs because it adversely affects Plaintiffs' ability to fulfill their organizational goals of registering voters and maximizing participation in the political process and by requiring Plaintiffs to expend limited resources responding to and taking measure to counteract the unlawful cancellations. These injuries are ongoing and will continue unless and until they are remedied.

89. On information and belief, members of Plaintiff organizations, as well as persons registered to vote by members of Plaintiff organizations, have been among those whose records were improperly cancelled due to these procedures. On further information and belief, members of Plaintiff organizations, and persons registered to vote by Plaintiffs, face the concrete and imminent threat of removal as part of the "voter merge" process and by ongoing operation of Defendant's regular removal procedures.

COUNT IV

(VIOLATION OF THE NVRA, HAVA AND 42 U.S.C. § 1983 – PURGE FOR FAILURE TO VOTE)

90. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

91. The NVRA and HAVA prohibit a state from targeting eligible voters for removal from the list of registered voters solely by reason of their failure to vote.

92. In violation of federal law, Defendant has removed voters from the rolls, in accordance with state law, solely because they have failed to vote in successive general elections. In addition, several additional voters are currently designated by Defendant as “inactive - failed to vote” and are subject to being purged from the rolls if they do not respond to the residency confirmation notice, appear to vote, or otherwise correct their registrations prior to the occurrence of future general elections.

93. Defendant’s unlawful purges disenfranchise members of the communities that Plaintiffs represent and serve, and deprive the members of Common Cause and SEIU of their rights under the NVRA and HAVA. Defendant’s conduct harms Plaintiffs because it adversely affects Plaintiffs’ ability to fulfill their organizational goals of registering voters, ensuring that all eligible citizens can participate in the political process, and creating politically active communities.

94. Defendant’s unlawful purges further harm and threaten imminently to harm Plaintiffs because the purges undermine Plaintiffs’ registration efforts, place undue burdens on and impediments to the registration process, and require Plaintiffs to expend limited resources responding to and taking measure to counteract the unlawful purges.

95. Moreover, the harm to Plaintiffs’ registration efforts and the diversion of Plaintiffs’ resources are ongoing harms that Plaintiff will continue to suffer unless and until they are remedied.

96. Although Defendant has recently expressed some willingness to address these violations of federal law, no final administrative rules have been adopted. Moreover, it is unclear whether, under Colorado law, the administrative remedial measures proposed by Defendant would effectively override the legislative statute and, thereby, provide true relief to Plaintiffs. Accordingly, the rights and responsibilities of the parties remain unclear and need to be declared by this Court.

COUNT V

**(VIOLATION OF THE NVRA AND 42 U.S.C. § 1983 –
PURGE FOR FELONY CONVICTION)**

97. The NVRA requires states to ensure that all eligible persons who submit timely, accurate and complete registration applications are registered to vote. 42 U.S.C. §§ 1976gg-6(a)(1).

98. The NVRA and HAVA also prohibit states from removing states from the removing the names of eligible voter from the rolls. 42 U.S.C. §§ 1976gg-6(a)(1), 1976gg-6(c); 42 U.S.C. §§ 15483(a)(2)(A)(i), 15483(a)(2)(B), 15483(a)(4)(B).

99. Colorado procedures for the cancellation of registration records belonging to individuals convicted of felonies violate these provisions by excluding individuals who are no longer incarcerated or on parole, and thus are eligible to vote under state law. COLO. REV. STAT. § 1-2-302 (3.5), 8 CO Code § 1505-1 (Rule 39).

100. COLO. REV. STAT. § 1-2-302 (3.5), and 8 CO Code § 1505-1 (Rule 3) harms Plaintiffs because it adversely affects their ability to fulfill their organizational goals of registering voters and maximizing participation in the political process and by

requiring Plaintiffs to expend limited resources responding to and taking measure to counteract the unlawful purges. These injuries are ongoing and will continue unless and until they are remedied.

101. On information and belief, some eligible voters, including members of Plaintiff organizations and/or as well as persons registered to vote by members of Plaintiff organizations, have been or will be among those eligible voters improperly prevented from registering to vote by operation of COLO. REV. STAT. § 1-2-302 (3.5), and 8 CCR § 1505-1 (Rule 3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue an order:

- (a) declaring that the provision of COLO. REV. STAT § 1-2-509(3), prescribing procedures for removing or cancelling new voter registrations when a new registrant's voter registration card is returned as undeliverable within 20 days of receipt of the registration application, violates rights granted to Colorado citizens, including Plaintiffs' members and constituents, and conflicts with preempting provisions of the National Voter Registration Act, 42 U.S.C. § 1976gg-6(d)(1), and permanently enjoining and restraining Defendant from removing or cancelling the names of any voters on Colorado's statewide voter registration pursuant to COLO. REV. STAT § 1-2-509(3);

- (b) declaring that the practice of systematically removing or cancelling names of any voters from Colorado's statewide registration list within 90 days of any federal general or primary election unless at the request of a registrant, by reason of disqualifying criminal conviction or declaration of mental capacity, or at the death of the registrant, violates rights granted to Colorado citizens, including Plaintiffs' members and constituents, and conflicts with preempting provisions of the National Voter Registration Act, 42 U.S.C. § 1976gg-6(c)(2)(A), and permanently enjoining and restraining Defendant from systematically removing or cancelling names of any voters from Colorado's statewide registration list within 90 days of any federal general or primary election except at the request of a registrant, by reason of disqualifying criminal conviction or declaration of mental incapacity, or at the death of the registrant;
- (c) declaring that the provisions of COLO. REV. STAT § § 1-2-603 and 1-2-604, prescribing procedures for removing or cancelling voter records identified as "duplicates" with different addresses or belonging to voters who moved from one Colorado county to another, violate rights granted to Colorado citizens, including Plaintiffs' members and constituents, and conflict with preempting provisions of the National Voter Registration Act, 42 U.S.C. § 1976gg-6(d)(1) and Help America Vote Act 42 U.S.C. §§ 15483(a)(2) and 15483(a)(4), and permanently enjoining and restraining Defendant from removing or cancelling the names of any voters on Colorado's statewide

voter registration list on the basis of changes of address pursuant to COLO. REV. STAT §§ 1-2-603 and 1-2-604;

- (d) declaring that Colorado's current proposed plan to systematically permanently remove large numbers of purportedly "duplicate" records from SCORE under the voter merge process violates rights granted to Colorado citizens, including Plaintiffs' members and constituents, and conflicts with preempting provisions of the National Voter Registration Act, 42 U.S.C. § 1976gg-6(d)(1) and Help America Vote Act 42 U.S.C. §§ 15483(a)(2) and 15483(a)(4), and permanently enjoining and restraining Defendant from removing the names of any voters under the voter merge process except as consistent with the declaratory requested in this paragraph (d) of the Prayer for Relief;
- (e) declaring that the provision of COLO. REV. STAT § 1-2-605(7) violates rights granted to Colorado citizens, including Plaintiffs' members and constituents, and conflicts with preempting provisions of the National Voter Registration Act, 42 U.S.C. § 1976gg-6(b)(2), and Help America Vote Act, 42 U.S.C. § 15483(a)(2)(A) and 15483(a)(4), to the extent it permits the State of Colorado (or any election official therein) to remove voters from the list of eligible voters if such removal and cancellation is premised solely upon the voter's failure to respond to a residency confirmation notice sent in connection with a person's failure to vote in an election for federal office and not in connection with an election official's

receipt of evidence (e.g., from the NCOA system or from returned undeliverable mail addressed to the voter) that the voter has changed residence and moved from the jurisdiction or is otherwise ineligible (e.g., by reason of death, criminal conviction, or mental incapacity), and permanently enjoining and restraining Defendant from removing or cancelling the names of any voters on Colorado's statewide voter registration list on the basis of COLO. REV. STAT § 1-2-605(7) except as consistent with the declaratory requested in this paragraph (e) of the Prayer for Relief;

- (f) declaring that COLO. REV. STAT. § 1-2-302 (3.5)(b) and 8 CCR § 1505-1 (Rule 39) violate rights granted to Colorado citizens, including Plaintiffs' members and constituents, and conflict with preempting provisions of the National Voter Registration Act, 42 U.S.C. §§ 1976gg and 1976gg-6(a), and Help America Vote Act, 42 U.S.C. § 15483(a)(2)(A) and 15483(a)(4), to the extent they permit the State of Colorado (or any election official therein) to cancel the registration of, or reject the registration applications of, eligible individuals who are no longer ineligible to vote by reason of a felony conviction; and permanently enjoining and restraining Defendant from removing or cancelling the names of any voters on Colorado's statewide voter registration list on the basis of COLO. REV. STAT. §1-2-302 (3.5)(b) and 8 CCR § 1505-1 (Rule 39) except as consistent with the declaratory requested in this paragraph (f) of the Prayer for Relief;

- (g) requiring Defendant to reinstate the names of any and all voters who were removed or canceled from the official list of eligible voters in violation of the National Voter Registration Act or Help America Vote Act;

Plaintiffs further request that the Court:

- (h) award Plaintiffs their attorneys' fees and costs in accordance with 42 U.S.C. § 1988 and 42 U.S.C. § 1973gg-9(c); and
- (i) grant Plaintiffs such additional relief as the interests of justice may require, together with their costs and disbursements in maintaining this action.

Dated: April 6, 2009

Respectfully submitted by:

/s/ S. Gale Dick
James E. Johnson
S. Gale Dick
Semra Mesulam
Elaina J. Loizou
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
Tel: 212-909-6000
Fax: 212-909-6836
jejohnsn@debevoise.com
sgdick@debevoise.com

Richard Rosenblatt, Esq.
RICHARD ROSENBLATT &
ASSOCIATES, L.L.C.
8085 East Prentice Avenue
Greenwood Village, Colorado 80111
Tel: 303-721-7399 x11
Fax: 720-528-1220
rosenblatt@cwa-union.org

Penda D. Hair
Elizabeth S. Westfall
Bradley Heard
ADVANCEMENT PROJECT
1730 M Street, NW #910
Washington, D.C. 20036
Tel: 202-728-9557
Fax: 202-728-9558
phair@advancementproject.org
ewestfall@advancementproject.org
bheard@advancementproject.org

Wendy Weiser
Myrna Pérez
BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
161 Avenue of the Americas
12th Floor
New York, New York 10013

Tel: 212-998-6284
Fax: 212-995-4550
wendy.weiser@nyu.edu
myrna.perez@nyu.edu

Karen Neuman
Sarah Brannon
FAIR ELECTIONS LEGAL
NETWORK
1730 Rhode Island Avenue, NW
Suite 712
Washington, D.C. 20036
kneuman@fairelectionsnetwork.com
sbrannon@fairelectionsnetwork.com

Stephen P. Berzon
James Finberg
Stacey M. Leyton
Barbara J. Chisholm
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, California 94108
Tel: 415-421-7151
Fax: 415-362-8064
sberzon@altshulerberzon.com
jfinberg@altshulerberzon.com
sleyton@altshulerberzon.com
bchisholm@altshulerberzon.com

*Attorneys for Plaintiffs Common Cause
of Colorado, Mi Familia Vota Education
Fund and Service Employees
International Union*

EXHIBIT 1

STATE OF COLORADO
Department of State
1700 Broadway
Suite 250
Denver, CO 80290



Bernie Buescher
Secretary of State

William A. Hobbs
Deputy Secretary of State

NOTICE OF ADOPTION

Office of the Secretary of State
Election Rules
8 CCR 1505-1

March 20, 2009

Pursuant to sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2008) and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103 C.R.S. (2008), I, Bernie Buescher, Colorado Secretary of State, do hereby adopt and give **NOTICE** of the permanent rule adoption this 20th day of March, 2009, of the Secretary of State Election Rules (8 CCR 1505-1) as follows (additions to the current rules are reflected in **SMALL CAPS** and deletions from current rules are shown in ~~stricken type~~).

New Rule 2.17 is adopted as follows:

2.17 **WHEN A COUNTY CLERK AND RECORDER DEEMS AN APPLICANT "NOT REGISTERED" UPON RECEIPT OF AN UNDELIVERABLE NEW VOTER NOTIFICATION IN ACCORDANCE WITH SECTION 1-2-509(3), C.R.S., THE APPLICANT SHALL BE MAILED A CONFIRMATION CARD BY FORWARDABLE MAIL. THE CONFIRMATION CARD SHALL HAVE A POSTAGE PREPAID RETURNABLE PORTION THAT IS PREAMRESSED TO THE SENDING COUNTY CLERK AND RECORDER.**

2.17.1 **IF THE COUNTY CLERK AND RECORDER RECEIVES A SIGNED CONFIRMATION CARD WITHIN 90 DAYS FROM AN APPLICANT WHO WAS DEEMED "NOT REGISTERED" IN ACCORDANCE WITH SECTION 1-2-509(3), C.R.S., THE APPLICANT SHALL BE DEEMED REGISTERED AS OF THE DATE OF THE ORIGINAL APPLICATION.**

2.17.2 **DURING THE 28 DAYS PRIOR TO AN ELECTION, IF AN APPLICANT WHO HAS BEEN DEEMED "NOT REGISTERED" IN ACCORDANCE WITH SECTION 1-2-509(3), C.R.S., COMPLETES A CERTIFICATE OF REGISTRATION AND PRESENTS IDENTIFICATION IN PERSON AT THE OFFICE OF THE COUNTY CLERK AND RECORDER, THE APPLICANT SHALL BE DEEMED REGISTERED AS OF THE DATE OF THE ORIGINAL APPLICATION.**

New Rule 49.4 is adopted as follows:

49.4 SCORE ADVISORY BOARD

49.4.1 THE SECRETARY OF STATE SHALL ESTABLISH AN ADVISORY BOARD (THE BOARD) TO PROVIDE GUIDANCE TO THE OPERATION AND MAINTENANCE OF THE STATEWIDE COLORADO REGISTRATION AND ELECTIONS SYSTEM, KNOWN AS "SCORE". SINCE SCORE IS THE ELECTION MANAGEMENT SYSTEM USED BY COUNTY CLERK AND RECORDERS TO CARRY OUT THEIR LEGAL RESPONSIBILITIES FOR THE CONDUCT OF ELECTIONS IN THEIR COUNTIES, A FORMAL USER GROUP IS NECESSARY TO ENSURE COUNTY REPRESENTATION IN DECISIONS AFFECTING THE USABILITY AND FUNCTIONALITY OF THE SYSTEM.

49.4.2 DUTIES OF THE BOARD. THE BOARD SHALL PROVIDE GUIDANCE REGARDING THE OPERATION AND MAINTENANCE OF THE SCORE SYSTEM, INCLUDING BUT NOT LIMITED TO USER TRAINING, HELP DESK REQUIREMENTS, SERVICE LEVEL AGREEMENTS, VENDOR EVALUATION, AND THE IDENTIFICATION, DEVELOPMENT, AND PRIORITIZATION OF FUTURE ENHANCEMENTS TO FUNCTIONALITY OF THE SYSTEM.

49.4.3 BOARD MEMBERSHIP.

49.4.3.1 THE BOARD MEMBERSHIP SHALL INCLUDE EIGHT COLORADO COUNTY CLERK AND RECORDERS OR EMPLOYEES OF COUNTY CLERK AND RECORDERS' OFFICES WHOSE DUTIES INCLUDE ELECTION ADMINISTRATION. THE EIGHT MEMBERS SHALL BE NOMINATED BY AGREEMENT OF A MAJORITY OF THE COUNTY CLERK AND RECORDERS OR BY AGREEMENT OF THE CHOSEN REPRESENTATIVES OF THE COUNTY CLERK AND RECORDERS. THE NOMINATED MEMBERS SHALL BE ACCEPTED BY THE SECRETARY OF STATE UNLESS THE NOMINATIONS CLEARLY FAIL TO MEET THE CRITERIA ESTABLISHED IN PARAGRAPH A OF THIS RULE 49.4.3.1.

A. TO THE EXTENT FEASIBLE, MEMBERSHIP SHALL BE BALANCED POLITICALLY AND GEOGRAPHICALLY, AND WITH BALANCE AMONG COUNTIES WITH VARYING POPULATIONS. TO FURTHER ENSURE BALANCED REPRESENTATION, COUNTY CLERK AND RECORDERS SHOULD CONSIDER OTHER RELEVANT FACTORS INCLUDING, BUT NOT LIMITED TO, VOTING SYSTEMS VENDOR, PREFERENCE OF PAPER OR ELECTRONIC VOTING, AND USE OF VOTE CENTERS OR POLLING PLACES.

B. THE SECRETARY OF STATE MAY APPOINT UP TO TWO ADDITIONAL MEMBERS AS MAY BE NECESSARY TO PRESERVE A REPRESENTATIONAL BALANCE IN ACCORDANCE WITH THE CRITERIA ESTABLISHED IN PARAGRAPH A OF THIS RULE 49.4.3.1.

49.4.3.2 THE SECRETARY OF STATE MAY APPOINT UP TO TWO ADDITIONAL MEMBERS OF THE BOARD AS MAY BE NECESSARY TO REPRESENT THE PUBLIC INTEREST

49.4.3.3 THE SECRETARY OF STATE, OR HIS OR HER DESIGNEE, SHALL BE AN EX OFFICIO MEMBER AND SHALL CHAIR THE BOARD.

49.4.3.4 THE SECRETARY OF STATE'S OFFICE SHALL PROVIDE STAFF SUPPORT TO THE BOARD.

49.4.4 MEETINGS AND VOTING.

49.4.4.1 THE BOARD SHALL MEET NO FEWER THAN FOUR TIMES ANNUALLY. MEETINGS SHALL BE OPEN TO THE PUBLIC EXCEPT WHEN CLOSED BY THE AFFIRMATIVE VOTE OF AT LEAST TWO-THIRDS OF THE MEMBERS PRESENT TO DISCUSS CONFIDENTIAL MATTERS SUCH AS PERSONNEL OR SYSTEM SECURITY.

49.4.4.2 THE BOARD MUST HAVE A QUORUM PRESENT FOR A VOTE TO BE TAKEN. MEMBERS MAY ATTEND AND VOTE BY TELEPHONE WHEN PERSONAL ATTENDANCE IS NOT PRACTICABLE.

49.4.4.3 BOARD MEMBERS AND THE CHAIR SHALL EACH HAVE ONE VOTE ON ANY MATTER. THE SECRETARY OF STATE MAY VETO ANY DECISION OF THE BOARD BY WRITTEN OBJECTION GIVING THE REASONS THEREFOR.

49.4.4.4 FROM TIME TO TIME, THE BOARD MAY REQUEST PARTICIPATION OR INFORMATION TO BE PROVIDED BY COUNTY CLERK AND RECORDERS OR THEIR ELECTIONS STAFF, POLITICAL PARTIES, VENDORS, TECHNICAL EXPERTS, OR OTHER MEMBERS OF THE PUBLIC, AS MAY BE APPROPRIATE.

49.4.5 ADVISORY BOARD CHARTER.

49.4.5.1 THE BOARD SHALL DEVELOP A CHARTER DOCUMENT DETAILING ROLES AND RESPONSIBILITIES OF THE BOARD AND SHALL PERFORM ITS DUTIES CONSISTENT WITH THE CHARTER AND THIS RULE.

49.4.5.2 THE CHARTER DOCUMENT MAY INCLUDE PROCEDURES GOVERNING TERMS OF OFFICE FOR BOARD MEMBERS, REASONS AND PROCEDURES FOR REMOVAL FROM OFFICE, AND PROCEDURES FOR FILLING VACANCIES.

These new and amended rules shall take effect twenty (20) days after publication in the Colorado Register in accordance with the State Administrative Procedures Act.

A written Statement of Basis, Purpose and Specific Statutory Authority is attached and hereby incorporated herein by reference.

Dated this 20th day of March, 2009.



William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State

STATE OF COLORADO
Department of State
1700 Broadway
Suite 250
Denver, CO 80290



Bernie Buescher
Secretary of State

William A. Hobbs
Deputy Secretary of State

Statement of Basis, Purpose and Specific Statutory Authority

Office of the Secretary of State
Election Rules

March 20, 2009

1. Basis and Purpose

This statement pertains to the amendments to the Colorado Secretary of State Election Rules for the administration of Colorado State Constitution Article VII, and Title 1 of the Colorado Revised Statutes. The amendments are implemented to achieve the uniform and proper administration and enforcement of the election laws of the State of Colorado, including the requirements of the federal Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252. See sections 1-1.5-101 *et seq.*, C.R.S. (2008).

The amendments to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Article 1, Title 1 of the Colorado Revised Statutes. Such revisions are necessary to improve the administration of elections in Colorado, and to answer questions arising under Title 1 of the Colorado Revised Statutes. These amendments are further necessary to increase the transparency and security of the election process, and to provide guidance until a legislative clarification may be proposed.

The Secretary of State finds that the adoption and enactment of these amendments is specifically necessary to provide an additional layer of protection to help ensure that eligible electors who apply for voter registration are not precluded from becoming registered because of postal or other error. The adoption of these amendments is further necessary to ensure county representation in decisions affecting the usability and functionality of the statewide voter registration database and election management system used by county clerk and recorders to carry out their legal responsibilities for the conduct of elections in their counties.

The Secretary of State therefore finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the permanent adoption of the amendments to the Election Rules is necessary both to comply with law and to preserve the public welfare generally.

2. Statutory Authority

Amendments to the Colorado Secretary of State Election Rules are adopted pursuant to the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S. (2008), which authorizes the Secretary of State:

“[t]o promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”

2. Section 1-1.5-104(1), C.R.S. (2008), which provides that:

“The secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA . . . including, without limitation, the power and duty to:

(e) Promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of this article.”

EXHIBIT 2

STATE OF COLORADO
Department of State
 1700 Broadway
 Suite 250
 Denver, CO 80290



Mike Coffman
Secretary of State

William A. Hobbs
Deputy Secretary of State

News Release

FOR IMMEDIATE RELEASE
 October 9, 2008

MEDIA CONTACT: Rich Coolidge
 (303) 860-6903
richard.coolidge@sos.state.co.us

Coffman responds to *NY Times* article inaccuracies *Actual numbers in Colorado well below article's estimates*

Denver, Colorado – Today Secretary of State Mike Coffman responded to voter concerns generated by an October 9 story in the *New York Times*. The article identified six states, one of which was Colorado, and referenced inaccurate numbers related to voter registration.

“Colorado voters can rest assured that our county clerks take every precaution in maintaining our state’s voter rolls,” said Coffman.

The Secretary of State’s office provided an actual report from Colorado’s statewide system that included all cancelled voters since July 21, 2008 and the reasons for cancellation. Those numbers are as follows:

Reason for Cancellation	Total
Moved out of County/State	6,572
Duplicate	4,434
Failed 20-day period	1,136
Deceased	1,145
Convicted Felon	544
Withdrawn	203
Not a Citizen	13
Voter Fraud	2
TOTAL	14,049

In revisiting the numbers, the state did identify 2,454 duplicate voter records that were cancelled within the 90-day window referenced in the National Voter Registration Act (NVRA). Coffman did say that he was checking with the state Attorney General’s office for an interpretation of NVRA.

Last year, the state began developing the statewide voter registration database (SCORE) and consolidating the voter records of 64 counties into one system. SCORE was deployed statewide in April of 2008 and allows real-time access for counties to verify voter information through Colorado state agencies and identify duplicate records from other counties.

“Centralizing the state’s voters helped to consolidate the rolls by identifying duplicate voters across county lines and providing additional verification tools,” said Coffman.

Coffman also encouraged Colorado voters to visit www.GoVoteColorado.com, where they can verify their own voter registration information to ensure it’s up to date and accurate.

#

EXHIBIT 3

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 09-0548.01 Bob Lackner

HOUSE BILL 09-1018

HOUSE SPONSORSHIP

Bradford,

SENATE SPONSORSHIP

Spence,

House Committees

State, Veterans, & Military Affairs

Senate Committees

State, Veterans & Military Affairs

SENATE
3rd Reading Unam ended
M arch 25 , 2009

SENATE
2nd Reading Unam ended
M arch 24 , 2009

HOUSE
3rd Reading Unam ended
M arch 9 , 2009

HOUSE
Am ended 2nd Reading
M arch 6 , 2009

A BILL FOR AN ACT

101 **CONCERNING THE REMOVAL OF OBSOLETE LANGUAGE IN STATUTORY**
102 **PROVISIONS IMPLEMENTING THE STATEWIDE VOTER**
103 **REGISTRATION AND ELECTION SYSTEM FOR PURPOSES OF**
104 **COMPLIANCE WITH THE FEDERAL "HELP AMERICA VOTE ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Removes obsolete language in statutory provisions implementing the statewide voter registration and election system for purposes of compliance with the federal "Help America Vote Act" as follows:

- In connection with a verification of the registration of an

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

elector in connection with the change of address of the elector, specifies that the county shall only be required to issue or authorize a certificate of registration where it has printed its pollbooks.

- Repeals obsolete requirements that the counties transmit voter registration lists to the secretary of state (secretary) under specified circumstances.
- Repeals obsolete requirements that counties transmit to the secretary lists of canceled voters after each general election and lists of electors showing who voted and their voting method.
- Repeals obsolete notification requirements applicable to electors who moved to and registered in another county.
- Repeals obsolete requirements that the secretary transmit duplicate voter lists to the counties.
- Repeals an obsolete requirement that the county clerk make a determination of active registered voters in each county on election day for inclusion in the official abstract of votes cast.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 1-2-216 (4) (a), Colorado Revised Statutes, is
3 amended to read:

4 **1-2-216. Change of residence.** (4) (a) For the twenty-eight days
5 before and on the day of any election, any eligible elector, by appearing
6 in person at the office of the clerk and recorder of the county in which the
7 elector is registered, may complete a change of address form stating,
8 under penalty of perjury, that the elector moved no later than the thirtieth
9 day before the election and that, on the day of the election, the elector will
10 have lived at the new address in the new precinct for at least thirty days.
11 Upon the receipt of the request, the county clerk and recorder shall verify
12 the registration of the elector and, upon verification, if the elector does
13 not choose to vote at the time the request is verified, shall issue or
14 authorize a certificate of registration showing the information required in

1 section 1-2-215 plus the change of address; EXCEPT THAT THE COUNTY
2 SHALL ONLY BE REQUIRED TO ISSUE OR AUTHORIZE A CERTIFICATE OF
3 REGISTRATION IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH
4 (a) WHERE IT HAS PRINTED ITS POLLBOOKS.

5 **SECTION 2. Repeal.** 1-2-301 (2) (b), Colorado Revised
6 Statutes, is repealed as follows:

7 **1-2-301. Centralized statewide registration system - secretary**
8 **of state to maintain computerized statewide voter registration list -**
9 **county computer records - agreement to match information.**

10 ~~(2) (b) No later than five days after the last day to register for a primary,~~
11 ~~general, odd-numbered year, or congressional vacancy election, the~~
12 ~~county clerk and recorder of each county shall transmit to the secretary of~~
13 ~~state, in a media format acceptable to the secretary of state, a list of the~~
14 ~~registered electors in the county. The list shall contain, but shall not be~~
15 ~~limited to, each elector's name, place of residence, mailing address if~~
16 ~~different from residence address, precinct number, date of birth, social~~
17 ~~security number or other identification number, and the date on which the~~
18 ~~elector was last registered.~~

19 **SECTION 3.** 1-2-302 (1) and (3), Colorado Revised Statutes, are
20 amended to read:

21 **1-2-302. Maintenance of computerized statewide voter**
22 **registration list - confidentiality.** (1) The secretary of state shall
23 maintain the master list of registered electors of the entire state on as
24 current a basis as is possible. ~~In order to assist the secretary of state, the~~
25 ~~county clerk and recorder in each county, no later than five days after the~~
26 ~~end of each month, shall transmit to the secretary of state in a media~~
27 ~~format acceptable to the secretary of state all additions, changes, and~~

1 ~~deletions to the master registration records made in each county for the~~
2 ~~previous month.~~

3 (3) ~~As soon as is practicable after a general election, the county~~
4 ~~clerk and recorders shall transmit to the secretary of state, in a media~~
5 ~~format acceptable to the secretary of state, a list of the electors canceled~~
6 ~~from the registration records by the county clerk and recorders pursuant~~
7 ~~to part 6 of this article. The electors shall be identified as provided in~~
8 ~~subsection (2) of this section.~~

9

10 **SECTION 4.** 1-2-305 (1) and (2), Colorado Revised Statutes, are
11 amended to read:

12 **1-2-305. Postelection procedures - voting history.** (1) Not later
13 than sixty days after a state election, ~~each county clerk and recorder shall~~
14 ~~transmit to the secretary of state, in a media format acceptable to the~~
15 ~~secretary of state,~~ THE SECRETARY OF STATE SHALL GENERATE a list of
16 electors showing who voted and who did not vote in the election. The list
17 shall ~~contain the information provided for in section 1-2-301 (1)~~ BE
18 DRAWN FROM THE STATEWIDE VOTER REGISTRATION DATABASE. For
19 electors who voted, the list shall show such elector's method of voting,
20 whether by early voting, mail-in ballot, mail ballot, polling place voting,
21 or otherwise.

22 (2) Upon receipt of the lists, the secretary of state shall ~~compare~~
23 ~~them with the master list of registered electors maintained in the office~~
24 EXAMINE THE LISTS TO SEE WHICH ELECTORS DID AND DID NOT VOTE IN
25 THE ELECTION in order to ascertain if any elector has voted more than
26 once. If it is determined that an elector has voted more than once, the
27 secretary of state shall notify the proper district attorney for prosecution

1 of a violation of the provisions of this code.

2 **SECTION 5.** 1-2-603 (1), Colorado Revised Statutes, is amended
3 to read:

4 **1-2-603. Notification that elector has moved and registered in**
5 **different county.** (1) If the elector registers to vote in another county,
6 the county clerk and recorder shall immediately transmit the information
7 to the county clerk and recorder of the elector's prior county of residence.
8 ~~Upon receipt of the information, the county clerk and recorder of the~~
9 ~~county of prior residence shall cancel the elector's registration record.~~
10 ~~The county clerk and recorder of the county of prior residence shall~~
11 ~~cancel the registration record only if the name and birth date or the name~~
12 ~~and social security number of the elector match.~~ OF THE ELECTOR'S NEW
13 COUNTY OF RESIDENCE SHALL TRANSFER THE ELECTOR'S REGISTRATION
14 RECORD FROM THE OLD COUNTY IN ACCORDANCE WITH THE FOLLOWING
15 REQUIREMENTS:

16 (a) IF THE ELECTOR PROVIDES A NAME, DATE OF BIRTH, AND PRIOR
17 ADDRESS AND THE COUNTY CLERK AND RECORDER CAN MATCH THE NAME,
18 DATE OF BIRTH, AND PRIOR ADDRESS TO THE ELECTOR'S PRIOR
19 REGISTRATION RECORD, THE ELECTOR'S REGISTRATION RECORD SHALL BE
20 TRANSFERRED FROM THE OLD COUNTY.

21 (b) IF THE ELECTOR PROVIDES A NAME AND DATE OF BIRTH BUT
22 DOES NOT PROVIDE A PRIOR ADDRESS, THE ELECTOR'S REGISTRATION
23 RECORD SHALL BE TRANSFERRED FROM THE OLD COUNTY ONLY IF:

24 (I) THE ELECTOR PROVIDES A DRIVER'S LICENSE OR
25 IDENTIFICATION CARD NUMBER, AND THE COUNTY CLERK AND RECORDER
26 OF THE NEW COUNTY OF RESIDENCE CAN MATCH THE NAME, DATE OF
27 BIRTH, AND DRIVER'S LICENSE OR IDENTIFICATION CARD NUMBER TO THE

1 ELECTOR'S PRIOR REGISTRATION RECORD; OR

2 (II) THE ELECTOR PROVIDES A SOCIAL SECURITY NUMBER, AND THE
3 COUNTY CLERK AND RECORDER OF THE NEW COUNTY OF RESIDENCE CAN
4 MATCH THE NAME, DATE OF BIRTH, AND SOCIAL SECURITY NUMBER TO THE
5 ELECTOR'S PRIOR REGISTRATION RECORD.

6 (c) IF THE ELECTOR DOES NOT PROVIDE A PRIOR ADDRESS,
7 DRIVER'S LICENSE NUMBER, OR SOCIAL SECURITY NUMBER, THE
8 REGISTRATION RECORD SHALL NOT BE TRANSFERRED FROM THE OLD
9 COUNTY UNLESS THE ELECTOR SUBMITS ADDITIONAL INFORMATION THAT
10 COMPLIES WITH THE REQUIREMENTS OF THIS SUBSECTION (1). THE
11 COUNTY CLERK AND RECORDER OF THE COUNTY OF PRIOR RESIDENCE MAY
12 SEND NOTICE TO THE ELECTOR BY FORWARDABLE MAIL TO THE ELECTOR'S
13 ADDRESS OF RECORD. ANY SUCH NOTICE SHALL HAVE A RETURNABLE
14 PORTION THAT HAS THE RETURN POSTAGE PREPAID AND IS PREAMBITTED
15 TO THE SENDING COUNTY CLERK AND RECORDER, AND SHALL INCLUDE AN
16 AREA FOR THE ELECTOR TO INDICATE IF THE ELECTOR HAS MOVED TO
17 ANOTHER COUNTY AND WISHES TO HAVE HIS OR HER REGISTRATION
18 RECORD TRANSFERRED FROM THE OLD COUNTY.

19 SECTION 6. 1-2-604 (1) and (2), Colorado Revised Statutes, are
20 amended to read:

21 **1-2-604. Cancellation of electors with a multiple registration.**

22 ~~(1) If the secretary of state's master list of registered electors shows an~~
23 ~~elector to be registered in more than one precinct in this state, the~~
24 ~~secretary of state shall notify every applicable county clerk and recorder~~
25 ~~each month of such multiple registration. Each county clerk and recorder~~
26 ~~who receives such notification~~ BASED UPON AN EXAMINATION OF THE
27 SECRETARY OF STATE'S MASTER LISTS OF REGISTERED ELECTORS, EACH

1 COUNTY CLERK AND RECORDER SHALL GENERATE A LIST CONTAINING THE
2 NAME OF EACH ELECTOR WHO IS REGISTERED IN MORE THAN ONE PRECINCT
3 IN THE STATE AND shall cancel from the county's master lists of registered
4 electors the name of the elector wherever it appears, except where it
5 corresponds to the elector's most recent date of registration.

6 (2) ~~Not later than fifteen days prior to each primary, general,~~
7 ~~odd-numbered year, or congressional vacancy election, the secretary of~~
8 ~~state shall furnish to each county clerk and recorder a list of registered~~
9 ~~electors who are registered to vote in more than one precinct in this state.~~
10 ~~The lists shall identify each elector as provided in section 1-2-301 (1).~~

11 (3) (a) ~~The county clerk and recorder of the county of prior~~
12 ~~residence shall cancel the registration record pursuant to subsection (1)~~
13 ~~of this section only if the name and birth date or the name and social~~
14 ~~security number of the elector match. THE COUNTY CLERK AND~~
15 ~~RECORDER MAY NOT CANCEL THE REGISTRATION RECORD PURSUANT TO~~
16 ~~SUBSECTION (1) OF THIS SECTION UNLESS THERE IS A MATCH IN THE~~
17 ~~COUNTY'S REGISTRATION RECORDS AND THE STATEWIDE VOTER~~
18 ~~REGISTRATION DATABASE WITH RESPECT TO, AT A MINIMUM, THE~~
19 ~~FOLLOWING TYPES OF IDENTIFYING INFORMATION:~~

20 (I) THE ELECTOR'S NAME, DATE OF BIRTH, AND PRIOR RESIDENCE;
21 OR

22 (II) THE ELECTOR'S NAME, DATE OF BIRTH, AND DRIVER'S LICENSE
23 NUMBER OR SOCIAL SECURITY NUMBER.

24 (b) IF THE COUNTY CLERK AND RECORDER IS NOT ABLE TO CANCEL
25 THE REGISTRATION RECORD PURSUANT TO PARAGRAPH (a) OF THIS
26 SUBSECTION (3), THE COUNTY CLERK AND RECORDER SHALL SEND A
27 NOTICE TO THE ELECTOR WHOSE RECORD THE CLERK AND RECORDER

1 INTENDS TO CANCEL. THE NOTICE SHALL BE SENT TO THAT ELECTOR'S
2 ADDRESS OF RECORD, SHALL HAVE A RETURNABLE PORTION THAT HAS THE
3 RETURN POSTAGE PREPAID AND THAT IS PREAMDRESSED TO THE SENDING
4 COUNTY CLERK AND RECORDER, AND SHALL INCLUDE AN AREA FOR THE
5 ELECTOR TO INDICATE IF THE ELECTOR HAS MOVED TO ANOTHER COUNTY
6 AND WISHES TO HAVE HIS OR HER REGISTRATION RECORD TRANSFERRED
7 FROM THE OLD COUNTY.

8 SECTION 7. 1-10-105 (5) (c), Colorado Revised Statutes, is
9 amended to read:

10 1-10-105. Official abstract of votes cast - certification by
11 secretary of state. (5) The secretary of state shall publish on a biennial
12 basis an official abstract of votes cast for all statewide elections held in
13 the year of the general election and include the odd-number year
14 immediately preceding that general election. The abstract shall contain
15 the following information:

16 (c) The reconciled total number of active, registered voters in each
17 county on election day; ~~as determined by the county clerk and recorders~~
18 ~~no later than forty-five days after the election;~~

19 SECTION 8. Act subject to petition - effective date. This act
20 shall take effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly that is
22 allowed for submitting a referendum petition pursuant to article V,
23 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
24 sine die is on May 6, 2009); except that, if a referendum petition is filed
25 against this act or an item, section, or part of this act within such period,
26 then the act, item, section, or part, if approved by the people, shall take

- 1 effect on the date of the official declaration of the vote thereon by
- 2 proclamation of the governor.

EXHIBIT 4

STATE OF COLORADO

Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Bernie Buescher

Secretary of State

William A. Hobbs

Deputy Secretary of State

NOTICE OF PROPOSED RULEMAKING

Office of the Secretary of State

Election Rules

8 CCR 1505-1

March 31, 2009

Pursuant to the requirements of section 24-4-103(3)(a), C.R.S., (2008), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **May 5, 2009 from 2:00pm to 4:00pm** in the Blue Spruce Conference Room on the second floor of the Office of the Secretary of State at 1700 Broadway, Denver, Colorado 80290. All interested persons will be afforded an opportunity to be heard on the subject of revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1.

Subject of the Proposed Rulemaking

Amendments and revisions to the Colorado Secretary of State Election Rules as may be necessary or appropriate to improve the administration of elections in Colorado. The revisions and amendments to be considered include rules concerning definitions of common terms, list maintenance pursuant to the National Voter Registration Act of 1993, and the creation of an elections best practice and vision commission. The Secretary of State shall also consider such other rule amendments as may be necessary to answer questions arising under Title 1 of the Colorado Revised Statutes.

Authority for Proposed Rulemaking

Revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1, are proposed pursuant to the following statutes:

1. Section 1-1-107(2)(a), C.R.S., (2008), which authorizes the Secretary of State "[t]o promulgate, publish and distribute . . . such rules as the secretary finds necessary for the proper administration and enforcement of the election laws."
2. Section 1-1.5-104(1)(e), C.R.S., (2008), which authorizes the Secretary of State to "[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the "Help America Vote Act of 2002", 42 U.S.C. 15301-15545]."

Copies of the initial draft of the proposed rules may be obtained from the office of the Secretary of State at 1700 Broadway, Suite 270, Denver, Colorado, 80290, or by calling (303) 894-2200,

Main Number	(303) 894-2200
Administration	(303) 860-6900
Fax	(303) 869-4860

TDD	(303) 869-4867
Web Site	www.sos.state.co.us
E-mail	administration@sos.state.co.us

extension 6329. The proposed rules are also posted on the Secretary of State website at www.sos.state.co.us.

A final copy of the proposed rules for consideration at the public rulemaking hearing will be posted on the Secretary of State website and made available to the public no later than **April 30, 2009** in accordance with section 24-4-103(4)(a), C.R.S., (2008), which states that “[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing.”

The rulemaking hearing on May 5, 2009 will be held in accordance with section 24-4-103, C.R.S., (2008). Written and oral data, comments, and arguments will be received from all interested parties. Written submissions must be filed at or before the commencement of the hearing on May 5, 2009 at 2:00pm in order to be considered. Oral testimony may be limited in order to allow the proceedings to go forward with reasonable promptness and efficiency. The hearing will be audio recorded and broadcast over the Internet. The broadcast may be accessed through the Secretary of State website at www.sos.state.co.us on the “Information Center” page under “Broadcast and Recorded Meetings.” For additional information, please contact Andrea Gyger, Elections Division at andrea.gyger@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 31st Day of March, 2009.



William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State

STATE OF COLORADO

Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Bernie Buescher

Secretary of State

William A. Hobbs

Deputy Secretary of State

Proposed Statement of Basis, Purpose, and Specific Statutory Authority

**Office of the Secretary of State
Election Rules**

March 31, 2009

1. Basis and Purpose

This statement pertains to the amendments to the Colorado Secretary of State Election Rules for the administration of Colorado State Constitution Article VII, and Title 1 of the Colorado Revised Statutes. The amendments are implemented to achieve the uniform and proper administration and enforcement of the election laws of the State of Colorado, including the requirements of the federal Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252. See sections 1-1.5-101 *et seq.*, C.R.S. (2008).

The amendments to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Article 1, Title 1 of the Colorado Revised Statutes. Such revisions are necessary to improve the administration of elections in Colorado, and to answer questions arising under Title 1 of the Colorado Revised Statutes. These amendments are further necessary to increase the transparency and security of the election process, and to provide guidance until a legislative clarification may be proposed.

The Secretary of State finds that the adoption and enactment of these amendments is specifically necessary to establish a vision commission to provide guidance to the Secretary of State on the vision of elections and voting in Colorado and best practices in the administration of elections. The adoption of these rules is further necessary to provide clear and consistent guidance to the counties regarding list maintenance processes under the National Voter Registration Act of 1993, and to provide uniform definitions for common election terms.

The Secretary of State therefore finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the adoption of these amendments to the Election Rules is necessary both to comply with law and to preserve the public welfare generally.

2. Statutory Authority

Amendments to the Colorado Secretary of State Election Rules are adopted pursuant to the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S. (2008), which authorizes the Secretary of State:

Main Number (303) 894-2200
Administration (303) 860-6900
Fax (303) 869-4860

TDD (303) 869-4867
Web Site www.sos.state.co.us
E-mail administration@sos.state.co.us

“[t]o promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”

2. Section 1-1.5-104(1), C.R.S. (2008), which provides that:

“The secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA . . . including, without limitation, the power and duty to:

(e) Promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of this article.”

COLORADO SECRETARY OF STATE

8 CCR 1505-1

ELECTION RULES

Preliminary Draft of Proposed Rules

March 31, 2009

Disclaimer: This draft is not yet final. The proposed changes to be considered at the public rulemaking hearing may be different than the proposed changes in this draft. This draft is submitted to the Department of Regulatory Agencies for the purpose of complying with section 24-4-103(2.5), C.R.S., which requires that a draft be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

A final copy of the proposed rule changes will be available to the public no later than April 30, 2009, and a copy will be posted on the Department of State's web site, in compliance with the requirement of section 24-4-103(4)(a), C.R.S., that "[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing."

Proposed additions to the current rules are reflected in SMALL CAPS. Proposed deletions from current rules are shown in ~~stricken type~~. Annotations may be included.

1 Rule 1.1 would be amended as follows:

2

3 1.1 As used in these Rules and the "Uniform Election Code of 1992" unless the
4 context otherwise requires, the following terms shall have the meanings indicated:

5

6 A. "ACTIVE STATUS" OR "ACTIVE RECORD" MEANS THAT THERE ARE NO
7 CONDITIONS OR RESTRICTIONS ON THE VOTER'S ELIGIBILITY. ACTIVE
8 STATUS VOTERS' NAMES WILL APPEAR ON THE POLL BOOK, THEY WILL
9 RECEIVE A BALLOT IN A MAIL BALLOT ELECTION, AND THEY WILL RECEIVE
10 ELECTION NOTICE MAILINGS.

11

12 B. "CANCELLED STATUS" OR "CANCELLED RECORD" MEANS THAT THE
13 VOTER'S ELIGIBILITY HAS BEEN CANCELLED OR REVOKED IN ACCORDANCE
14 WITH THESE RULES AND TITLE 1, C.R.S. CANCELLED VOTERS' RECORDS
15 WILL REMAIN IN THE STATEWIDE VOTER REGISTRATION DATABASE;
16 HOWEVER, THEY ARE NOT ELIGIBLE TO VOTE IN ANY ELECTION. CANCELLED
17 STATUS VOTERS' NAMES WILL NOT APPEAR ON THE POLL BOOK AND THEY
18 WILL NOT RECEIVE ELECTION NOTICE MAILINGS.

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
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

- C. "CONFIRMATION CARD" MEANS A MAILING BY FORWARDABLE MAIL THAT INCLUDES A REGISTRATION FORM SO THAT THE VOTER MAY UPDATE HIS OR HER REGISTRATION OR REQUEST A MAIL-IN BALLOT. THE MAILING SHALL BE POSTAGE PREPAID AND HAVE A RETURNABLE PORTION THAT IS PREAMBITED TO THE SENDING COUNTY CLERK AND RECORDER.
- D. "District office of state concern" means any of the following offices: Member of the State Board of Education, Member of the Board of Regents of the University of Colorado, and Member of the Board of Directors of the Regional Transportation District.
- E. "INACTIVE – FAILED TO VOTE STATUS" MEANS THAT THE VOTER WAS ACTIVE PRIOR TO A GENERAL ELECTION, BUT SUBSEQUENTLY FAILED TO VOTE IN THAT GENERAL ELECTION. INACTIVE – FAILED TO VOTE STATUS VOTERS ARE ELIGIBLE VOTERS; THEIR NAMES WILL APPEAR ON THE POLL BOOK AND THEY WILL RECEIVE ELECTION NOTICE MAILINGS.
- F. "INACTIVE – NCOA STATUS" MEANS THAT THE COUNTY CLERK AND RECORDER HAS RECEIVED INFORMATION FROM THE UNITED STATES POSTAL SERVICE NATIONAL CHANGE OF ADDRESS SERVICE. INACTIVE - NCOA STATUS VOTERS ARE ELIGIBLE VOTERS AND THEIR NAMES WILL APPEAR ON THE POLL BOOK; HOWEVER, THEY WILL NOT RECEIVE ELECTION NOTICE MAILINGS.
- G. "INACTIVE – RETURNED MAIL STATUS" OR "INACTIVE – UNDELIVERABLE STATUS" MEANS THAT A VOTER INFORMATION CARD OR CONFIRMATION CARD WAS RETURNED TO THE COUNTY CLERK AND RECORDER BY THE UNITED STATES POSTAL SERVICE AS UNDELIVERABLE. INACTIVE – RETURNED MAIL AND INACTIVE – UNDELIVERABLE STATUS VOTERS ARE ELIGIBLE VOTERS AND THEIR NAMES WILL APPEAR ON THE POLL BOOK; HOWEVER, THEY WILL NOT RECEIVE ELECTION NOTICE MAILINGS.
- H. "INACTIVE – UNDELIVERABLE BALLOT STATUS" MEANS THAT A VOTER WAS MAILED A BALLOT THAT WAS SUBSEQUENTLY RETURNED TO THE COUNTY CLERK AND RECORDER BY THE UNITED STATES POSTAL SERVICE AS UNDELIVERABLE. INACTIVE – UNDELIVERABLE BALLOT STATUS VOTERS ARE ELIGIBLE VOTERS AND THEIR NAMES WILL APPEAR ON THE POLL BOOK; HOWEVER, THEY WILL NOT RECEIVE ELECTION NOTICE MAILINGS.

Rule 2.10 would be amended as follows:

2.10 Changes to an Elector's Voter Registration Record.

1 2.10.1 If an elector submits a change to his or her voter registration record that
2 does not contain all of the information required by sections 1-2-216 or 1-
3 2-219, C.R.S., the county clerk and recorder may not make the requested
4 change, unless the county clerk and recorder can confidently identify the
5 voter, otherwise the county clerk and recorder shall notify the voter what
6 additional information is required to process the request.
7

8 2.10.2 IF AN ELECTOR SUBMITS A CHANGE TO HIS OR HER VOTER REGISTRATION
9 RECORD AND WRITES OR SELECTS A NAME OF AN ORGANIZATION THAT IS
10 NOT A QUALIFIED POLITICAL PARTY OR QUALIFIED POLITICAL
11 ORGANIZATION, OR WRITES "NONE", THE ELECTOR'S AFFILIATION SHALL BE
12 RECORDED AS "UNAFFILIATED".
13

14 2.10.3 IF AN ELECTOR SUBMITS A CHANGE TO HIS OR HER VOTER REGISTRATION
15 RECORD AND LEAVES THE AFFILIATION SECTION BLANK, NO CHANGE WILL
16 BE MADE TO THE VOTER'S AFFILIATION IN THE REGISTRATION RECORD.
17
18

19 New rule 2.18 would be adopted as follows:
20

21 2.18 LIST MAINTENANCE PURSUANT TO SECTION 8 OF THE NATIONAL VOTER
22 REGISTRATION ACT OF 1993.
23

24 2.18.1 WHEN A VOTER INFORMATION CARD OR CONFIRMATION CARD IS RETURNED
25 BY THE UNITED STATES POSTAL SERVICE TO THE COUNTY CLERK AND
26 RECORDER AS UNDELIVERABLE, THE COUNTY CLERK AND RECORDER SHALL
27 MARK THE VOTER'S RECORD "INACTIVE - RETURNED MAIL" AND IN THE
28 CASE OF A RETURNED VOTER INFORMATION CARD, SHALL MAIL A
29 CONFIRMATION CARD.
30

31 2.18.2 NATIONAL CHANGE OF ADDRESS (NCOA). NO LATER THAN JUNE 1 OF
32 EVERY ODD-NUMBERED YEAR, THE SECRETARY OF STATE SHALL UTILIZE
33 THE NCOA SERVICE TO COMPARE THE RECORDS OF ALL VOTERS MARKED
34 "INACTIVE - FAILED TO VOTE" WITH THE NCOA DATABASE.
35

36 A. THE SECRETARY OF STATE SHALL FORWARD A LIST TO EACH
37 COUNTY CLERK AND RECORDER OF THE RECORDS THAT APPEAR TO
38 HAVE A CHANGE OF ADDRESS BASED UPON THE NCOA
39 COMPARISON.
40

41 B. THE COUNTY CLERK AND RECORDER SHALL SEND A CONFIRMATION
42 CARD TO EACH VOTER WHO APPEARS TO HAVE A CHANGE OF
43 ADDRESS AND SHALL MARK THE RECORD "INACTIVE - NCOA".
44

45 2.18.3 IN ACCORDANCE WITH SECTION 1-2-605(7), C.R.S., NO LATER THAN 90
46 DAYS FOLLOWING A GENERAL ELECTION, THE COUNTY CLERK AND

1 RECORDER IN EACH COUNTY SHALL CANCEL ONLY THE REGISTRATIONS OF
2 ELECTORS:

- 3
4 A. WHOSE RECORDS HAVE BEEN MARKED "INACTIVE – RETURNED
5 MAIL", "INACTIVE – NCOA" OR "INACTIVE – UNDELIVERABLE
6 BALLOT",
7
8 B. WHO HAVE BEEN MAILED A CONFIRMATION CARD; AND
9
10 C. WHO HAVE SINCE FAILED TO VOTE IN TWO CONSECUTIVE FEDERAL
11 ELECTIONS.
12

13 New Rule 50 would be adopted as follows:
14

15 **50. RULES CONCERNING THE ELECTIONS BEST PRACTICES AND VISION COMMISSION**
16

17 **50.1 PURPOSE**
18

19 50.1.1 THE SECRETARY OF STATE RECOGNIZES THAT NONPARTISAN AND OPEN
20 DISCUSSION REGARDING THE ADMINISTRATION AND CONDUCT OF ELECTIONS
21 IN COLORADO IS NECESSARY TO ENSURE THAT EVERY ELIGIBLE CITIZEN HAS
22 THE OPPORTUNITY TO PARTICIPATE IN FAIR, ACCESSIBLE, AND IMPARTIAL
23 ELECTIONS, AND HAS THE ASSURANCE THAT HIS OR HER VOTE WILL COUNT.
24

25 50.1.2 THE SECRETARY OF STATE SHALL ESTABLISH A BEST PRACTICES AND
26 VISION COMMISSION (THE COMMISSION) TO PROVIDE GUIDANCE TO THE
27 SECRETARY OF STATE ON ISSUES CONCERNING THE VISION OF ELECTIONS
28 AND VOTING IN COLORADO AND BEST PRACTICES IN THE ADMINISTRATION
29 OF ELECTIONS.
30

31 50.1.3 THE COMMISSION SHALL CONSIDER ALL ASPECTS OF VOTING AND
32 ELECTIONS IN COLORADO INCLUDING, BUT NOT LIMITED TO: THE CONDUCT
33 AND ADMINISTRATION OF ELECTIONS; BEST PRACTICES, TECHNOLOGY,
34 SIMPLICITY, UNIFORMITY AND STANDARDIZATION.
35

36 **50.2 MEMBERSHIP OF THE COMMISSION**
37

38 50.2.1 THE COMMISSION MEMBERSHIP SHALL INCLUDE 15-19 MEMBERS WHO ARE
39 APPOINTED BY THE SECRETARY OF STATE.
40

41 50.2.2 THE MEMBERSHIP SHALL INCLUDE REPRESENTATION FROM THE GENERAL
42 PUBLIC INCLUDING, BUT NOT LIMITED TO:
43

- 44 A. COUNTY CLERK AND RECORDERS OR EMPLOYEES OF COUNTY CLERK
45 AND RECORDERS' OFFICES WHOSE DUTIES INCLUDE ELECTIONS
46 ADMINISTRATION,

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
26
27

- B. OTHER DESIGNATED ELECTION OFFICIALS OR EMPLOYEES OF DESIGNATED ELECTION OFFICIALS' OFFICES WHOSE DUTIES INCLUDE ELECTIONS ADMINISTRATION,
- C. POLITICAL PARTIES; AND
- D. VOTING ADVOCACY GROUPS.

50.2.3 THE SECRETARY OF STATE, OR HIS OR HER DESIGNEE, SHALL BE A MEMBER AND SHALL CHAIR THE COMMISSION.

50.2.4 THE SECRETARY OF STATE'S OFFICE SHALL PROVIDE STAFF SUPPORT TO THE COMMISSION.

50.3 MEETINGS

50.3.1 THE COMMISSION SHALL MEET NO FEWER THAN TWO TIMES ANNUALLY. MEETINGS SHALL BE OPEN TO THE PUBLIC.

50.3.2 NOTICES AND RECORDS OF MEETINGS SHALL BE PUBLISHED ON THE OFFICIAL WEBSITE OF THE SECRETARY OF STATE.

50.3.3 THE COMMISSION MAY REQUEST PARTICIPATION OR INFORMATION TO BE PROVIDED BY COUNTY CLERKS AND RECORDERS OR THEIR ELECTIONS STAFF, POLITICAL PARTIES, VENDORS, TECHNICAL EXPERTS, OR OTHER MEMBERS OF THE PUBLIC, AS MAY BE APPROPRIATE.

CERTIFICATE OF SERVICE

I, S. Gale Dick, of the law firm of Debevoise & Plimpton LLP, herein certify that on April 13, 2009, I caused Plaintiffs' Unopposed Motion for Leave to File an Amended Complaint to be served by CM/ECF upon:

Maurice G. Knaizer
Colorado Attorney General's Office-State Services
1525 Sherman Street
Denver, CO 80203
303-866-5380
Email: maurie.knaizer@state.co.us

Monica M. Márquez
Assistant Solicitor General
Public Officials Unit
Office of the Attorney General
1525 Sherman St., 5th Fl.
Denver, CO 80203
303-866-5163
Email: monica.marquez@state.co.us

Melody Mirbaba
Colorado Attorney General's Office
1525 Sherman Street
7th Floor
Denver, CO 80203
303-866-4224
Email: melody.mirbaba@state.co.us

[Remainder of this page intentionally left blank.]

I certify under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
April 13, 2009

Respectfully submitted,

/s/ S. Gale Dick_____

James E. Johnson

S. Gale Dick

Semra Mesulam

Elaina J. Loizou

Jessica R. Simonoff

DEBEVOISE & PLIMPTON LLP

919 Third Avenue

New York, New York 10022

Tel: 212-909-6000

Fax: 212-909-6836

jejohnsn@debevoise.com

sgdick@debevoise.com