

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St. Denver CO 80202		DATE FILED: January 10, 2022 8:25 PM FILING ID: 74A5B86277B8B CASE NUMBER: 2021CV33691
Plaintiffs: Ron Hanks, Amy Mitchell, Gary Moyer, Jeff Rector, individually and as county commissioners; Merlin Klotz, individually and as Clerk and Recorder for Douglas County, Colorado, and Dallas Schroeder, individually and as Clerk and Recorder for Elbert County		
v.		
Defendant: JENA GRISWOLD, individually and as Colorado Secretary of State		
Plaintiff's Attorney: John Case, Atty reg. # 2431 John Case, P.C. 5460 S. Quebec St. #330 Greenwood Village CO 80111 Phone: (303) 667-7407 FAX: (303) 648-4786 E-mail: brief@johncaselaw.com		Case No: 2021CV033691 Courtroom: 280
[PROPOSED] SECOND AMENDED COMPLAINT and JURY DEMAND		

The Plaintiffs state:

PARTIES, STANDING, AND VENUE

1. Plaintiffs are county election officials who have statutory duties to ensure that the computerized election systems that are used to tabulate votes in their counties meet Federal and state standards.

2. Plaintiff Amy Mitchell is a resident of Park County, Colorado who voted in the 2020 election. Ms. Mitchell is a 5th generation Coloradan. She is a graduate of the University of Colorado, and she has worked in the Natural Products Industry for 29 years. In the 2020 election, voters of Park County elected Ms. Mitchell to serve as a Park County Commissioner, an office that she has held since taking the oath of office in January 2021.

3. Plaintiff Gary Moyer is a fourth-generation resident of Rio Blanco County, Colorado. Mr. Moyer voted in the 2020 election. He is a graduate of the University of Minnesota School of Forestry, an independent business owner, and he has served as a County Commissioner of Rio Blanco County since January 2019.

4. Plaintiff Jeff Rector is a resident of Rio Blanco County, Colorado who voted in the 2020 election. Mr. Rector graduated from high school in Rangely, Colorado and has owned his own well servicing company since the age of 27. Mr. Rector was elected a county commissioner of Rio Blanco County in 2016, and he was re-elected in 2020.

5. Plaintiff Dallas Schroeder is a resident of Elbert County who voted in the 2020 election. Mr. Schroeder was appointed Elbert County Clerk and Recorder in 2013, when the previous clerk resigned. Mr. Schroeder was elected Clerk and Recorder in 2014, and he was re-elected in 2018. Mr. Schroeder graduated from Milligan College in Tennessee with a double major in history and business. He was a self-employed entrepreneur for 18 years until his appointment as Clerk and Recorder of Elbert County.

6. Plaintiff Merlin Klotz is a resident of Douglas County who voted in the 2020 election. Mr. Klotz has served as the Douglas County Clerk and Recorder since January 2015. He is a graduate of the University of Iowa with a degree in accounting. Before being elected to the office of clerk and recorder, Mr. Klotz worked in the private sector as an auditor and board member.

7. C.R.S. §1-1-111(1)(a) requires Plaintiffs Amy Mitchell, Gary Moyer, and Jeff Rector (“the county commissioner Plaintiffs”) to supervise the conduct of elections. This duty includes ensuring that county election equipment meets legal requirements.

8. Plaintiffs Schroeder and Klotz (CCR Plaintiffs) are the chief election officials in their respective counties, and they have *inter alia* the powers and duties specified in C.R.S. §11-1-110.

9. At all times relevant, all Plaintiffs were “election officials” as defined by C.R.S. §11-1-104(10), who engaged in the performance of election duties as defined by the Colorado election code.

10. All Plaintiffs have standing as aggrieved persons to bring this action pursuant to C.R.S. §24-4-106(4).

11. Plaintiffs Dallas Schroeder and Merlin Klotz have standing as county clerks and recorders to bring this action pursuant to C.R.S. §24-4-106(4.7).

12. All plaintiffs have standing as persons who relied upon Defendant’s representations.

13. Defendant Jena Griswold (“Defendant”) has held the office of Colorado Secretary

of State since January 8, 2019. She is the chief election officer for the state of Colorado.

14. Plaintiffs timely filed their initial Complaint on November 18, 2021.
15. Venue is proper pursuant to C.R.C.P. 98(b)(2) and C.R.S. §24-4-106 (4.7).

FACTUAL ALLEGATIONS

16. All voting systems and voting equipment sold in Colorado must comply with C.R.S. § 1-5-601.5:

[Editor's note: This version of this section is effective until July 1, 2022.]

All voting systems and voting equipment offered for sale on or after May 28, 2004, shall meet the voting systems standards that were promulgated in 2002 by the federal election commission. At his or her discretion, the secretary of state may require by rule that voting systems and voting equipment satisfy voting systems standards promulgated after January 1, 2008, by the federal election assistance commission as long as such standards meet or exceed those promulgated in 2002 by the federal election commission. Subject to section 1-5-608.2, nothing in this section shall be construed to require any political subdivision to replace a voting system that is in use prior to May 28, 2004.

(underline added)

17. The mandatory standards referred to above are set forth in Federal Election Commission Publication “2002 Voting Systems Standards” (“2002 VSS”).
18. Defendant has statutory duties to test, certify, and qualify software and hardware that is used on county election systems.
19. On April 26, 2021, Defendant certified Dominion Voting Systems Democracy Suite 5.13 (hereafter “DVS 5.13”) voting system for use in Colorado. A copy of Defendant’s certification is attached hereto and incorporated herein by reference as Exhibit 1. The certification represented, *inter alia*, that DVS 5.13 had been tested by a “federally accredited voting system testing laboratory,” and that DVS 5.13 “substantially complies with 2002 Voting Systems Standards (VSS) promulgated by the Federal Election Commission, and the Colorado standards contained in sections 1-5-601.5, 1-5-615, and 1-5-616, C.R.S., and Election Rule 21.” Defendant reserved the right to “promulgate conditions of use in connection with the use by political subdivisions of the Democracy Suite 5.13 voting system, and to amend those conditions from time to time, in accordance with section 1-5-608.5(3)(b), C.R.S.”
20. During 2021, Defendant and her agents installed DVS 5.13 on computer voting systems in 62 counties, including Mesa, Park, Rio Blanco, and Elbert counties.
21. The 2021 software installation was called a “trusted build.”

22. Based on the findings of a qualified cyber-security expert who examined before and after forensic images of the Mesa County election system, Plaintiffs allege that DVS 5.13 does not meet 2002 VSS standards.

23. DVS 5.13 was not tested by a “federally accredited voting system testing laboratory,” as required by C.R.S. § 1-5-608.5, because the testing laboratory was not federally accredited when it conducted portions of the testing.

24. Prior to election day, November 2, 2021, Defendant could have promulgated additional conditions of use of DVS 5.13, and she could have ensured that DVS met 2002 VSS standards before it was used to tabulate votes.

25. Prior to election day, November 2, 2021, Defendant did not promulgate additional conditions, and she did not ensure that DVS met 2002 VSS standards before it was used to tabulate votes.

26. On November 2, 2021, election systems in 62 counties, including Park, Rio Blanco, and Elbert counties, tabulated votes using DVS 5.13.

27. On August 12, 2021, Defendant certified Clear Ballot Group election system software version ClearVote 2.1.5 (hereafter “CV 2.1.5”). A copy of Defendant’s certification is attached hereto and incorporated herein by reference as Exhibit 2. The certification represented, *inter alia*, that CV 2.1.5 had been tested by a “federally accredited voting system testing laboratory,” and that CV 2.1.5 “substantially complies with 2002 Voting Systems Standards (VSS) promulgated by the Federal Election Commission, and the Colorado standards contained in sections 1-5-601.5, 1-5-615, and 1-5-616, C.R.S., and Election Rule 21.” Defendant reserved the right to “promulgate conditions of use in connection with the use by political subdivisions of the ClearVote 2.1.5 voting system, and to amend those conditions from time to time, in accordance with section 1-5-608.5(3)(b), C.R.S.”

28. During 2021, Defendant and her agents installed CV 2.1.5 on computer voting systems in Douglas and Garfield counties. The software installation was called a “trusted build.”

29. CV 2.1.5 was not tested by a “federally accredited voting system testing laboratory,” as required by C.R.S. § 1-5-608.5, because the testing laboratory was not federally accredited when it conducted portions of the testing.

30. Prior to election day, November 2, 2021, Defendant could have promulgated additional conditions of use of CV 2.1.5, and she could have ensured that it was properly tested.

31. Prior to election day, November 2, 2021, Defendant did not promulgate additional conditions, and she did have CV 2.1.5 properly tested before it was used to tabulate votes.

32. On November 2, 2021, election systems in Douglas and Garfield counties tabulated votes using CV 2.1.5.

FIRST CLAIM FOR RELIEF
(All Plaintiffs – For Declaratory and Injunctive Relief –
Violations of C.R.S. § 1-5-601.5 and 2002 VSS)

33. Plaintiffs incorporate all other allegations of this Complaint as if fully re-written.

34. On November 2, 2021, DVS 5.13 was used in an election when it did not meet 2002 VSS standards, and when it had not been properly tested by a federally accredited voting system testing laboratory.

35. Using DVS 5.13 in an election, when it did not meet 2002 VSS standards, and when it had not been tested by a federally accredited voting system testing laboratory, violated state law, including but not limited to C.R.S. § 1-5-601.5 and C.R.S. § 1-5-608.5.

36. On November 2, 2021, CV 2.1.5 was used in an election in Douglas and Garfield Counties when it had not been tested by a federally accredited voting system testing laboratory.

37. Using CV 2.1.5 to tabulate votes in Colorado counties, when it had not been tested by a federally accredited voting system testing laboratory, violated state law, including but not limited to C.R.S. § 1-5-601.5 and C.R.S. § 1-5-608.5.

38. The use of DVS 5.13 in an election in Park, Rio Blanco, and Elbert counties on November 2, 2021, injured Plaintiffs Mitchell, Moyer, Rector, and Schroeder as voters who were entitled to have their votes tabulated by an election system that had been tested by a federally accredited voting system testing laboratory, and met 2002 VSS standards.

39. The use of DVS 5.13 in an election in Park, Rio Blanco, and Elbert counties on November 2, 2021, injured Plaintiffs Mitchell, Moyer, Rector, and Schroeder in performing their statutory duties as election officials in those counties.

40. The use of CV 2.1.5 in an election in Douglas County on November 2, 2021, injured Plaintiff Merlin Klotz as a voter who was entitled to have his votes tabulated by an election system that had been properly tested and met 2002 VSS standards.

41. The use of CV 2.1.5 in an election in Douglas County on November 2, 2021, injured Plaintiff Merlin Klotz in performing his statutory duties as county clerk and recorder.

42. Defendant's actions continue to cause injury to Plaintiffs in performing their duties as election officials, because their county voting systems do not comply with 2002 VSS as required by C.R.S. § 1-5-601.5, and because the systems have not been properly tested by a federally accredited voting system testing laboratory as required by C.R.S. § 1-5-608.5.

WHEREFORE, on their First Claim for Relief, Plaintiffs pray that this Honorable Court enter judgment declaring that Defendant violated C.R.S. § 1-5-601.5, 2002 VSS, and C.R.S. § 1-5-608.5 when she certified DVS 5.13 and CV 2.1.5; that the installation of DVS 5.13 and CV 2.1.5

on county election systems during the 2021 “trusted build” violated C.R.S. § 1-5-601.5, 2002 VSS, and C.R.S. § 1-5-608.5; and that Plaintiffs were harmed in performing their duties as county election officials when DVS 5.13 and CV 2.1.5 were used on county voting systems on November 2, 2021. Plaintiffs pray that the Court enter judgment that an independent forensic audit is necessary to determine what steps are required to bring county voting systems into compliance with 2002 VSS standards. Plaintiffs pray that the Court order the Defendant to pay the costs of such audit. Plaintiffs pray for an award of costs, expert witness fees, reasonable attorney fees, and all other appropriate relief.

SECOND CLAIM FOR RELIEF

(All Plaintiffs – Declaratory Judgment and injunctive relief – violations of 52 USC § 20701 and C.R.S. § 1-7-802 – Defendant deleted or destroyed electronic election records of the 2020 election that Plaintiffs have duties to preserve and protect under Federal and state statutes)

43. Plaintiffs incorporate all other allegations of this Complaint as if fully re-written.
44. During the November 2020 election, computerized voting systems in the counties where Plaintiffs serve as election officials.
45. Computer operations involving ballot scanning, interpretation, adjudication, tabulation, and reporting during the November 2020 election generated electronic files that were stored on the county voting systems.
46. 52 USC § 20701 states:

52 USC § 20701. Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Boldface added)
47. Defendant is an “officer of election” as defined in 52 USC § 20706.
48. Pursuant to 52 USC § 20701, Plaintiffs and Defendant have duties to preserve “all records and papers which come into his possession relating to any application, registration,

payment of poll tax, or other act requisite to voting in such election” for a period of 22 months.

49. The phrase “all records and papers” includes all electronic files related to an election, including log files and all other files on the computerized election system, that relate to any event that happened on any component of the computerized election system during an election..

50. C.R.S. § 1-7-802 states:

1-7-802 Preservation of election records.

The designated election official shall be responsible for the preservation of any election records for a period of at least twenty-five months after the election or until time has expired for which the record would be needed in any contest proceedings, whichever is later. Unused ballots may be destroyed after the time for a challenge to the election has passed. If a federal candidate was on the ballot, the voted ballots and any other required election materials shall be kept for at least twenty-five months after the election.

(Underline added)

51. Pursuant to C.R.S. § 1-7-802, Plaintiffs have a duty to preserve election records for a period of 25 months.

52. The phrase “election records” in C.R.S. § 1-7-802 includes all electronic files, including log files and all other files on the computerized voting system, that relate to any event that happened on any component of the computerized voting system during an election.

53. Defendant represented that the 2021 “trusted build” would comply with Federal and state election laws and regulations.

54. During the 2021 “trusted build,” Defendant’s agents erased electronic records of the November 2020 election that were stored on the county computerized voting systems.

55. Defendant’s destruction of election records injured Plaintiffs, and continues to injure Plaintiffs, in the performance of their official duties, including their duties under 52 USC 20701 and C.R.S. § 1-7-802.

56. An independent forensic audit is necessary to determine the extent of deleted or destroyed records, and whether such records can be reconstructed.

57. Defendant must be enjoined from deleting or destroying election records in the future.

WHEREFORE, on their Second Claim for Relief, Plaintiffs pray that this Honorable Court enter judgment declaring that Defendant violated 52 USC § 20701 and C.R.S. § 1-7-802 by destroying election records as the 2021 “trusted build.” Plaintiffs pray that the Court enter judgment that an independent forensic audit is necessary to determine the extent of deleted or destroyed records, and whether such records can be reconstructed. Plaintiffs pray that the Court order the Defendant to pay the costs of such audit. Plaintiffs pray that the Court enjoin defendant from further altering or destroying election records. Plaintiffs pray that the Court order Defendant to preserve all election records of the 2020 election under her control until December 3, 2022, and all records of the 2021 election until December 2, 2023, or until final judgment is entered, whichever is later. Plaintiffs pray for an award of costs, expert witness fees, reasonable attorney fees, and all other appropriate relief.

THIRD CLAIM FOR RELIEF
(All Plaintiffs – Declaratory Judgment for Negligent Misrepresentation)

58. Plaintiffs incorporate all other allegations of this Complaint as if fully re-written.

59. Defendant gave false information to Plaintiffs, including but not limited to statements that DVS 5.13 and CV 2.1.5 had been properly tested by a federally accredited voting system testing laboratory, and that the systems met legal standards, including but not limited to 2002 VSS standards.

60. Defendant gave such information to Plaintiffs in performing Defendant’s official duties as secretary of state.

61. Defendant gave the information to Plaintiffs for use in performing their duties as county election officials in the 2021 election.

62. Defendant was negligent in obtaining or communicating the information.

63. Defendant gave the information with the intent and knowing that county election officials including the Plaintiffs would act in reliance on the information.

64. Plaintiffs relied on the information supplied by Defendant, and reliance caused damage to Plaintiffs.

WHEREFORE, on their Third Claim for Relief, Plaintiffs pray that this Honorable Court enter judgment declaring that Defendant violated C.R.S. § 1-5-601.5, 2002 VSS, and C.R.S. § 1-5-608.5 when she certified DVS 5.13 and CV 2.1.5; that the installation of DVS 5.13 and CV 2.1.5 on county voting systems during the 2021 “trusted build” violated C.R.S. § 1-5-601.5, 2002 VSS, and C.R.S. § 1-5-608.5; and that Plaintiffs were harmed in performing their duties as county election officials when DVS 5.13 and CV 2.1.5 were used for the election on county voting systems on November 2, 2021. Plaintiffs pray that the Court enter judgment that an independent forensic audit is necessary to determine what steps are necessary to bring Colorado voting systems into compliance with 2002 VSS standards. Plaintiffs pray that the Court order the

Defendant to pay the costs of such audit. Plaintiffs pray for an award of costs, expert witness fees, reasonable attorney fees, and all other appropriate relief. Plaintiffs pray further that this Honorable Court enter judgment declaring that Defendant violated 52 USC § 20701 and C.R.S. § 1-7-802 by destroying election records as the 2021 “trusted build.” Plaintiffs pray that the Court enter judgment that an independent forensic audit is necessary to determine the extent of deleted or destroyed records, and whether such records can be reconstructed. Plaintiffs pray that the Court order the Defendant to pay the costs of such audit. Plaintiffs pray that the Court enjoin defendant from further altering or destroying election records. Plaintiffs pray that the Court order Defendant to preserve all election records of the 2020 election under her control until December 3, 2022, and all records of the 2021 election until December 2, 2023, or until final judgment is entered, whichever is later. Plaintiffs pray for an award of costs, expert witness fees, reasonable attorney fees, and all other appropriate relief.

FOURTH CLAIM FOR RELIEF

(Plaintiff Merlin Klotz - Declaratory Judgment and injunctive relief allowing independent forensic examination of Douglas County voting system, and independent forensic audit of Douglas County 2021 election)

65. Plaintiff Merlin Klotz incorporates all other allegations of this Complaint as if fully re-written.

66. After the November 2020 and 2021 elections, Defendant ordered “Risk Limiting Audits” (RLAs) of the election results in Douglas County and other counties.

67. The RLAs ordered by Defendant’s were only a sample of one candidate race or one ballot issue selected by Defendant.

68. The RLAs ordered by Defendant did not verify the authenticity of ballots, the eligibility of voters, or compliance with 2002 VSS standards.

69. The RLAs ordered by Defendant were insufficient to guarantee the security or integrity of the November 2020 and 2021 elections.

70. Plaintiff seeks a court order permitting him to do the following:

- a. Contract with an independent cybersecurity expert to determine if the Douglas County voting system meets the requirements of C.R.S. § 1-5-601.5, including 2002 VSS and any subsequent standards adopted by Defendant.
- b. Contract for a statistically valid, but limited, independent forensic audit, of the 2021 election that includes the authenticity of ballots and the eligibility of voters.

71. On information and belief, Defendant's actions injured Plaintiff in the performance of his official duties, and her actions continue to injure Plaintiff in the performance of his official duties, including (1) the duty to ensure that Douglas County voting system meets the requirements of C.R.S. § 1-5-601.5, including 2002 VSS, and (2) the duty to preserve electronic election records under 52 USC § 20701 and C.R.S. § 1-7-802.

72. Plaintiff has a vital interest in obtaining the relief requested in subparagraph (a) above, so that the parties can take the necessary action to bring the Douglas County voting system into compliance with C.R.S. § 1-5-601.5, including 2002 VSS and any subsequent standards adopted by Defendant.

73. Plaintiff has a vital interest in obtaining the relief requested in subparagraph (b) above, so that he can verify the results of the 2021 election.

WHEREFORE, on Plaintiff Merlin Klotz's Fourth Claim for Relief, Plaintiff prays that this Honorable Court grant declaratory and injunctive relief allowing Plaintiff to (1) contract with an independent cybersecurity expert to determine if the Douglas County voting system meets the requirements of C.R.S. § 1-5-601.5, including 2002 VSS and any subsequent standards adopted by Defendant; and (2) contract for a statistically valid, but limited, independent forensic audit, of the 2021 election that includes the authenticity of ballots and the eligibility of voters. Plaintiff prays that the Court enter judgment that an independent forensic examination is necessary to determine if the Douglas County voting system meets the requirements of C.R.S. § 1-5-601.5, including 2002 VSS and any subsequent standards adopted by Defendant, and that the RLAs conducted by Defendant are insufficient to guarantee the security or integrity of elections in Douglas County. Plaintiff prays that the Court order Defendant to pay the costs of such forensic examination and audit. Plaintiff prays for an award of costs, expert witness fees, reasonable attorney fees, and all other appropriate relief.

FIFTH CLAIM FOR RELIEF

(All Plaintiffs - Judicial Review of Final Agency Action – 2021 new Election Rules)

74. Plaintiffs incorporate all other allegations of this Complaint as if fully re-written.

75. At all times prior to June 17, 2021, county clerks and recorders could lawfully hire or designate non-employee technical consultants with the necessary expertise to evaluate, audit, or otherwise ensure that electronic vote-tabulating equipment, and other election equipment, functions correctly and in accordance with Colorado law.

76. On June 17, 2021, Defendant promulgated, on an alleged emergency basis, a new version of Election Rule 20.5.4 that prohibits CCRs from allowing qualified technical consultants access to election equipment. The rule states:

(a) Except for voters using a voting system component to vote during an election, county clerks may not allow any person to access any component

of a county's voting system unless that person has passed the background check required by this or any other rule or law, is performing a task permitted by the county clerk or the Office of the Secretary of State under statute or rule, and is:

- (1) An employee of the county clerk;
- (2) Appointed as an election judge by the county clerk in accordance with Article 6 of Title 1, C.R.S.;
- (3) An employee of the voting system provider for the county's voting system; or
- (4) An employee or designee of the Secretary of State.

77. Defendant does not employ on her staff a qualified cyber-security expert with the skills and experience necessary to test the integrity of Colorado voting systems.

78. Colorado clerks and recorders, including Plaintiffs Dallas Schroeder and Merlin Klotz, do not employ on their staff cyber-security experts with the skills and experience necessary to test the integrity of county voting systems.

79. The only way that Plaintiffs can perform their duty to verify whether the county election system in their respective counties meet 2002 VSS standards, is by hiring a qualified cyber-security expert to examine the election system.

80. The only way that Plaintiffs can verify that their votes will be tabulated by a county election system that meets 2002 VSS standards, is for the county governing bodies to hire a qualified cyber-security expert to examine the election systems in their respective counties.

81. Defendant's Rule 20.5.4 prevents county governing bodies and county clerks from hiring a qualified cyber-security expert to examine county election systems.

82. Defendant's Rule 20.5.4 prevents Plaintiffs from performing their statutory duties as county election officials.

83. Defendant's Rule 20.5.4 is arbitrary and capricious, exceeds Defendant's statutory authority, is an abuse and clearly unwarranted exercise of discretion, violates Plaintiffs' constitutional rights and privileges as voters under Article VII of the Colorado Constitution, and violates Plaintiffs' rights and privileges as county election officials under Article VII of the Colorado Constitution and the Colorado election code.

84. Rule 20.5.4 is included in new election rules that Defendant promulgated.

85. On August 3, 2021, Defendant held a public hearing via Zoom to receive public input her proposed new election rules

86. At the hearing, 360 concerned citizens attended. Sixty-three citizens spoke in opposition to the new rules. No person spoke in favor of adopting the rules.

87. Despite unanimous opposition to the new rules, Defendant adopted them on August 26, 2021.

88. The new rules became final October 15, 2021.

89. New rule 2.13.2 states:

2.13.2 In accordance with section 1-2-605(7), C.R.S., no later than 90 days following a General Election, the Department of State, working in conjunction with county clerks, will cancel the registrations of electors:

- (a) Whose records have been marked “Inactive – returned mail”, “Inactive – undeliverable ballot”, or “Inactive – NCOA”; and
- (b) Who have been mailed a confirmation card; and
- (c) Who have thereafter failed to vote in two consecutive general elections.

90. 91. C.R.S. §1-2-605(7) states:

(7) If an elector whose registration record is marked “Inactive” fails to update his or her registration record, fails to respond to any confirmation card, and fails to vote in any election conducted by the county clerk and recorder during the time period that includes two consecutive general elections since the elector’s registration record was marked “Inactive”, the county clerk and recorder shall cancel the elector’s registration record. Nothing in this section allows an elector’s registration record to be canceled solely for failure to vote.

(underline added)

91. C.R.S. §1-2-605(7) gives each county clerk and recorder exclusive authority to cancel voter registration records in his or her respective county.

92. The legislature gave Defendant no authority under C.R.S. §1-2-605(7) to cancel voter registration records.

93. Defendant’s Rule 2.13.2 is arbitrary and capricious, exceeds Defendant’s statutory authority, and usurps the statutory authority of Plaintiffs Dallas Schroeder and Merlin Klotz.

94. New rule 7.11 states:

7.11 At each Voter Service and Polling Center, election judges and, if appropriate, election staff, must:

7.11.1 Provide all services outlined in 1-5-102.9, C.R.S., including providing blank cure forms and collecting completed cure forms for voters who wish to cure their ballot in accordance with sections 1-2-502.5 (4)(c), 1-7.5-107 (3.5)(d), or 1-7.5-107.3 (1.5), C.R.S.; and

7.11.2 Use WebSCORE to register voters; update existing voter registrations; issue and replace mail ballots; and issue, spoil, and replace in-person ballots.

95. The webSCORE database is insecure and subject to access by foreign actors.
96. On information and belief, WebSCORE database contains numerous errors in voter registration information.
97. Inaccuracies in the WebSCORE database necessarily cause inaccuracies in voter registration information in Douglas County and other counties.
98. There is no provision in the new rules for an audit of the webSCORE database.
99. The secretary requires Plaintiff Merlin Klotz to mail ballots to every active registered voter in the webSCORE database.
100. After the 2021 election, the U.S. Postal service returned thousands of ballots to the Douglas County office marked “Undeliverable.”
101. The number of ballots marked “Undeliverable” shows that unscrupulous persons have access to large numbers of blank ballots that can be fraudulently cast.
102. Under the new election rules, Plaintiff Merlin Klotz and other county clerks have no way to audit the webSCORE database of voters in their counties.

WHEREFORE, their Third Claim for Relief, Plaintiffs pray that this Honorable Court grant the following relief:

- (1) Stay the effective date of the new rules until further Order of Court;
- (2) Declare that the new rules are a nullity;
- (3) Declare that the new rules are arbitrary and capricious, exceed Defendant’s statutory authority, are an abuse and clearly unwarranted exercise of discretion, violate Plaintiffs’ constitutional rights and privileges as voters under Article VII of the Colorado Constitution, and violate Plaintiffs’ rights and privileges as county election officials under Article VII of the Colorado Constitution and the Colorado election code.

PLAINTIFFS DEMAND TRIAL BY JURY OF DISPUTED ISSUES OF FACT

Respectfully submitted January 10, 2022

JOHN CASE, P.C.
Counsel for Plaintiffs

s/John Case

John Case, #2431

Plaintiff's addresses are confidential

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2022, a true copy of the foregoing was filed with the Court and served on opposing counsel electronically via ICCES to:

Denver District Court
1437 Bannock St.
Denver CO 80202

Emily Buckley, Assistant Attorney General, emily.buckley@coag.gov
Peter G. Baumann, Assistant Attorney General, peter.baumann@coag.gov
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver CO 80203

s/John Case

John Case