

**DISTRICT COURT, CITY & COUNTY OF DENVER,
COLORADO**

Court Address: 1437 Bannock Street
Denver, CO 80202

Plaintiff:

COLORADO DEMOCRATIC PARTY,

v.

Defendants:

WAYNE W. WILLIAMS, SECRETARY OF STATE OF
THE STATE OF COLORADO, in his official capacity;

and,

DEBRA JOHNSON, CLERK AND RECORDER OF THE
CITY AND COUNTY OF DENVER, in her official
capacity.

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ATTORNEYS FOR PLAINTIFF

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Case Number:

Div.:

Ctrm.:

VERIFIED PETITION
TO MANDATE EXTENSION OF VOTING HOURS

Plaintiff Colorado Democratic Party ("Plaintiff"), by undersigned counsel, as and for its Verified Petition in connection with this emergency proceeding in connection with today's voting across Colorado in the 2016 national election, avers as follows:

INTRODUCTION

1. This is an emergency action for immediate injunctive relief to remedy statewide, systemic breakdowns of the State's voting system on Election Day. The source of these breakdowns is as yet undetermined but appears to be the result of failures within the computer servers of the Secretary of State's office. These server shutdowns have resulted in substantial delays at polling locations across Colorado, and those delays have the potential of disenfranchising voters who were unable to vote during the regular voting hours today.

PARTIES

2. Plaintiff Colorado Democratic Party is a non-profit corporation qualified to do business in the State of Colorado, is duly organized, existing and operating under the laws of the State of Colorado, and is a "major political party" as defined in C.R.S., § 1-1-104(22).

3. Defendant Wayne W. Williams is the elected Secretary of State of the State of Colorado. He is named here solely in his official capacity.

4. Defendant Debra Johnson is the appointed Clerk and Recorder of the City and County of Denver. She is named in her official capacity.

JURISDICTION AND VENUE

5. This Court has jurisdiction and venue over this action because the City & County of Denver is the county in which the cause of action arose and where the Secretary of State the Denver Clerk and Recorder are subject to suit.

6. Pursuant to C.R.S. § 1-1-113(1), this Court has jurisdiction over this Verified Complaint, which alleges that there has been a breach or neglect of the constitutional and statutory duty to ensure the proper conduct of the election under Colorado's Election Code.

FACTS

7. Today, November 8, 2016, the State of Colorado is holding its General Election ("General Election"). The General Election provides registered voters in all Colorado counties the opportunity to vote for candidates for certain federal offices, including President of the United States.

8. Under policies and procedures enacted by the Secretary of State, all in-person voting in Colorado today is being conducted using a state-wide electronic pollbook system where every voter's eligibility to vote is being confirmed by election judges at each voting location by accessing the Secretary of State's internet-based voter registration systems.

9. As a result of this system, every county throughout the state, and every voting location, must access the Secretary of State's pollbook system in order to permit a voter to vote a regular ballot.

10. Throughout the day today, however, the Secretary of State's internet servers and its pollbook system have crashed or locked up or become overloaded, such that election judges at individual voting locations have been unable to process voters seeking to vote.

11. Although the Secretary of State's electronic pollbook systems have been repeatedly brought back online following these breakdowns, although usually after a significant delay, the ripple effects of the breakdowns have persisted thereafter, further delaying the processing of voters waiting to vote.

12. The Secretary of State's public information officer has acknowledged outages of nearly one hour.

13. As a result of such outages, election judges have been required to log out and log back into the electronic pollbook, which therefore has resulted in further delays in the processing of voters.

14. The foregoing systemic failures of the Secretary of State's electronic pollbook systems have resulted in voters being unable to vote because they have been unable to wait for the voting systems to be reestablished or repaired, or the voters have turned away because they are unable to wait for the voting system to be reestablished.

15. Colorado's Election Code guarantees to each voter in Colorado a continuous twelve-hour (12 hours) period of voting on election day, nominally set from 7 a.m. to 7 p.m. on election day. *See* C.R.S. § 1-7-101(1).

16. The failures of the Secretary of State's pollbook system have interfered with, diminished, otherwise prevented a full twelve hour period of voting.

17. The failures of the Secretary of State's pollbook system have also unreasonably burdened or deprived the constitutional rights of eligible voters to cast a valid, regular ballot during today's election.

18. The failures of the Secretary of State's pollbook system have violated C.R.S. § 1-7-101(1), and Article II, Section 2 and 25 of the Colorado Constitution.

19. In similar circumstances where acts of God, or other unanticipated circumstances, created a real and imminent risk of depriving voters of their constitutional rights to exercise their elective franchise, various courts have issued orders requiring extensions of various requirements or deadlines in the election system. *See, e.g., Florida Democratic Party v. Scott*, No. 4:16CV626-MW/CAS, 2016 WL 6080990, at *3-*4 (N.D. Fla. Oct. 10, 2016) (granting TRO "to extend the new voter registration deadline to Wednesday, October 12, 2016, at 5:00 p.m.," a day after the statutory deadline, even though "[u]nder Florida's statutory framework, there is no provision that extends the voter registration deadline in the event of an emergency," because "Hurricane Matthew ... foreclosed ... registering to vote[] in person or by mail. Because those

aspiring eligible voters could not register, they could not vote in the upcoming election. As a result, Florida's statutory framework completely disenfranchises thousands of voters, and amounts to a severe burden on the right to vote" under the Constitution," and "the balance of hardships favors Plaintiff. This case pits the fundamental right to vote against administrative convenience."), *later op.*, 2016 WL 6080225, at *1 (N.D. Fla. Oct. 12, 2016) (granting preliminary injunction further extending registration deadline: "the deadline is extended to Tuesday, October 18, 2016, at 5:00 p.m., to afford a full opportunity to register for those who may have been affected by Hurricane Matthew[]"); *Bethea v. Deal*, No. CV216-140, 2016 WL 6123241 (S.D. Ga. Oct. 19, 2016) (recounting how "th[e] Court granted a request for a preliminary injunction . . . and extended the voter registration deadline to October 18 only in Chatham County due to the complete closure of its local BOE office during the last days of the registration period" as a result of Hurricane Matthew).

20. The server failures today in Colorado have caused and continue to cause Plaintiff to suffer real, immediate and irreparable injuries, for which Plaintiff has no adequate remedy at law. Without redress by this Court, Plaintiff will be deprived of a lawful, full, and fair election. Immediate and effective relief is essential to ensure that the general election currently in progress is fairly conducted pursuant to the laws cited above.

21. Greater injury would be inflicted upon Plaintiff by the denial of relief than will be inflicted upon Defendant by the granting of relief. Issuance of an injunction granting relief to Plaintiff will not substantially harm Defendant, and therefore the balance of equities favors granting a preliminary injunction.

22. A preliminary injunction will preserve the fundamental, constitutional right to vote.

23. The public interest weighs heavily in favor of entry of an injunction designed to protect the right to a full and fair general election.

24. The relief sought by Plaintiff herein is reasonably suited to abate the offending activity.

25. Plaintiff has no reason to believe that the wrongful conduct alleged above will cease unless enjoined.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that an injunction be entered in Plaintiff's favor and against Defendant and that the Court:

- a. Enter a preliminary injunction and/or temporary restraining order immediately requiring the Secretary of State to promulgate an emergency rule directing the following:
 - i. Voting during today's election will be extended to 9:00 p.m.;

- ii. All county election officers will immediately deliver to every voting location within their counties sufficient paper ballot forms and provisional ballots to allow any eligible voter to vote a paper ballot or a provisional ballot, if the voter wishes, immediately upon the voter arriving at the voting location;
 - iii. Any voter wishing to express the voter's intent concerning any candidate or ballot measure through the use of a homemade or hand-written ballot or any other ad-hoc ballot shall be permitted to do so, and such handwritten ballots shall be treated as provisional ballots;
 - iv. The foregoing emergency regulations shall be immediately communicated to all county election officers through the Secretary of State's emergency system for notifying county election officers of such measures; and,
 - v. County election officers are to convey the emergency regulations to every voting location within their counties.
- b. Grant such other and further relief that this Court deems equitable, just, and appropriate.

Respectfully submitted this 8th day of November, 2016,

/s Christopher P. Beall
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