DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80203 **Plaintiffs:** VET VOICE FOUNDATION, LESLIE DIAZ, RANDY EICHNER, JOHN ERWIN, AMANDA IRETON, and GREGORY WILLIAMS **v.** **Defendant:** JENA GRISWOLD, in her official capacity as Colorado Secretary of State and **Intervenor Defendants,** VERA ORTEGON and WAYNE WILLIAMS	**□COURT USE ONLY□** Case No. 2022CV33456 Ctrm./Div.: 215
Attorneys for Defendant: PHILIP J. WEISER Attorney General EMILY BURKE BUCKLEY, #43002* Senior Assistant Attorney General PETER G. BAUMANN, #51620* Senior Assistant Attorney General KYLE M. HOLTER, #52196 Assistant Attorney General Colorado Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway Denver, Colorado 80203 Telephone: (720) 508-6152 Email: emily.buckley@coag.gov; peter.baumann@coag.gov; kyle.holter@coag.gov *Counsel of Record	

THE SECRETARY'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON CLAIMS I AND III

Colorado's elections are safe and secure, and the State makes it easy to vote through its mail ballot system, one part of which includes signature verification. § 1-7.5-107.3(2), C.R.S. (2023). Voter participation in Colorado is among the highest in the country; indeed, in the 2020 general election, 86.5% of active, registered voters successfully cast a ballot. Ex. 2 (Rudy Decl.) ¶ 6. Since 2018, out of nearly 17 million votes cast, fewer than 100,000 voters—**roughly .05%**—had their mail ballots held for cure due to a signature mismatch and did not cure those ballots. Pls.' Mot. for Summ. J. ("MSJ") at 1, 3. Based almost entirely on this statistic, and without regard to the broad variety of reasons why those voters did not cure their signature discrepancies, Plaintiffs argue signature verification is facially unconstitutional and ask this Court to strike down Colorado's mail ballot system without trial.

Because this case deserves a trial on the merits, Plaintiffs' motion should be denied. Aside from a basic agreement on the text of Colorado's election code, the parties dispute nearly all facts in this case and the reasonable inferences the Court should draw from them. At minimum, four key fact disputes require the Court to deny summary judgment:

First, the parties dispute whether the signature verification procedure at § 1-7.5-107.3(2) can be performed reliably. *See* Ex. 15 (Dalzell Rep.) at 10. The parties' experts flatly disagree on this point. The parties similarly disagree on the factual burden that signature verification imposes on voters. This dispute requires a denial of summary judgment on both Claims I and III.

Second, the parties dispute the conclusion the Court should draw from the remarkably low—and remarkably consistent—rates at which Colorado's 64 counties hold ballots for cure. Specifically, they disagree on whether any differences in those rates are due to disparate treatment of similarly situated voters, or result from differences in underlying demographics or different rates of unlawfully submitted ballots. This dispute, which goes to the inferences that

can be drawn from minor differences in the rates at which ballots are held for cure, means Plaintiffs are not entitled to summary judgment on their equal protection claim (Claim III).

Third, the parties dispute whether the relatively low number of criminal convictions for election fraud is evidence that signature verification is unnecessary, or evidence that it is working, or evidence of prosecutorial discretion. The parties even dispute the appropriate definition of "election fraud." *See* Ex. 3 (Stein Rep.) at 15–18. This precludes summary judgment on Claim I.

Fourth, the parties dispute the factual conclusions that can be drawn from Plaintiffs' individual experiences or the singular experiences of any individual voter. Plaintiffs bring a facial challenge, meaning (1) they must show that "no conceivable set of circumstances exist under which [§ 1-7.5-107.3(2)] may be applied in a constitutionally permissible manner," *People v. Heisler*, 488 P.3d 176, 182 (Colo. App. 2017), and (2) that the statute "as written" is unconstitutional. *Dallman v. Ritter*, 225 P.3d 610, 626–27 (Colo. 2010); *see also United States v. Salerno*, 481 U.S. 739, 745 (1987) ("[T]hat [an act] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid."). Whether individual stories show facial unconstitutionality on this record is subject to intense dispute, precluding summary judgment on any of Plaintiffs' claims. Plaintiffs' Motion should be denied.

SUMMARY JUDGMENT STANDARD

A party is entitled to summary judgment where "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." C.R.C.P. 56(c). Summary judgment "is not a substitute for [a] trial" as "it is only at a trial that the court can assess the weight of the evidence or credibility of [the] witnesses." *People ex rel. S.N. v. S.N.*, 329 P.3d 276, 281–82 (Colo. 2014) (quotations omitted). Summary judgment is a "drastic remedy" because it eliminates a trial on the facts. *Id*.

On summary judgment, the court must give the non-moving party all favorable inferences that can be drawn from the record. *See Jones v. Dressel*, 623 P.2d 370, 373 (Colo. 1981). The party moving for summary judgment "bears the burden of proving clearly that there is no genuine issue of material fact." *Kaiser Found. Health Plan of Colo. v. Sharp*, 741 P.2d 714, 719 (Colo. 1987). "Only if the moving party establishes that no disputed material facts exist must the opposing party then demonstrate a controverted factual question." *S.N.*, 329 P.3d at 282. To grant the motion, the trial court must find not only that the material facts are undisputed, but also that "reasonable minds could draw but one inference from them" and the moving party is entitled to judgment as a matter of law. *Id.* (quoting *Gibbons v. Ludlow*, 304 P.3d 239, 244 (Colo. 2013)).

RESPONSE TO STATEMENT OF UNDISPUTED FACTS

The purpose of summary judgment is to further the prompt administration of justice and expedite litigation by avoiding needless trials. *Crawford Rehab. Servs., Inc. v. Weissman*, 938 P.2d 540, 550 (Colo. 1997). Key to this purpose is a factual record, presented clearly and plainly, so that the Court may assess whether summary judgment is appropriate.

Here, Plaintiffs did not undertake the hard but necessary work of identifying facts that are truly undisputed or material and presenting them to the Court in a neutral manner. Instead, they selectively cite their own evidence and experts, making no effort to reconcile their chosen facts with other evidence in the record. Plaintiffs' statement is replete with legal argument, irrelevant and immaterial allegations, and rhetorical flourishes, including adjectives such as "meager," and "shameful," that appear nowhere in the factual evidence itself. *See Sender v. Powell*, 902 P.2d 947, 950 (Colo. App. 1995) ("[A] material fact is a fact that will affect the outcome[.]"); *Aler v. Diversified Mgmt., Inc.*, 534 P.2d 645, 647 (Colo. App. 1975) ("Where a party contends there ... is not a genuine issue of fact, he cannot do so simply by hypothetical argument; he must support his contention in accordance with C.R.C.P. 56."). This strategic choice does not serve the Court's

truth finding mission, nor does it carry Plaintiffs' initial burden of establishing no disputed material facts exist. *See S.N.*, 2014 CO 64, ¶ 16. The Motion may be denied on that basis alone.

Nevertheless, consistent with the spirit of Rule 56, the Secretary has attempted to identify Plaintiffs' factual statements, where appropriate, in the attached Exhibit 1. The Secretary responds to those statements, as numbered in Exhibit 1, below.

1. Disputed. Colorado is a mail-ballot state. Ex. 2 ¶ 3.

2. Disputed. Pursuant to § 1-8.3-110(2), C.R.S., covered voters may request that ballots and balloting materials be transmitted by fax or email.

3. Not disputed for purposes of this Motion.[1]

4. Not disputed for purposes of this Motion.

5. Not disputed for purposes of this Motion.

6. Disputed. In the cited portion of Mr. Davidson's November 2, 2023, deposition, he stated that he is "not aware" of whether election judges must apply a standard or "burden of proof" when reviewing signatures. Ex. 4 (Davidson Dep.) 127:3–10. In fact, pursuant to 8 CCR 1505-1:7.7.3, election judges must accept signatures that are "more likely than not to be the signature of the voter." *Id.*; Ex. 5 (SOS0003535–39) (October 11, 2023, email to County Clerks concerning the "more likely than not" standard applicable to signature verification).

7. Disputed. Exhibit Q, relied on by Plaintiffs, was created in 2014 and does not reflect the signature verification procedures currently applied by counties. Ex. 2 ¶ 12.a.

[1] Any statement of fact propounded by Plaintiffs to which the Secretary responds "not disputed" or "admitted" is not disputed or admitted for purposes of this Motion only. The Secretary does not intend her responses that a fact is not disputed to be the equivalent of an admission to a request for admission served pursuant to C.R.C.P. 36.

8. Disputed. All election judges receive the same training provided by the Secretary's office. 8 CCR 1505-1:6.8; Ex. 8 (Beall Dep.) 16:12–17:4. If the county clerk provides additional training, it must be approved by the Secretary "each year before its first use." 8 CCR 1505-1:6.8. Plaintiff's Exhibit R, a Colorado County Clerks Association survey from 2021, was not created by the Secretary, nor is it consistent with Colorado's current rules or practice. 8 CCR 1505-1:6.8 (effective November 14, 2023); Ex. 2 ¶ 12.b.

9. Disputed. Counsel's opinion of the Secretary's training is not a statement of fact. Ms. Rudy explained the training walks election judges "through the various aspects of the signature review guide," and supervisors oversee the training to ensure election judges complete it. Ex. 6 (Rudy Dep.) 127:18–23; 128:15–20. When election judges answer a question incorrectly, they are "provided with correct information to help them understand ... what they missed in that question." *Id.* at 127:24–128:4.

10. Disputed. Counsel's opinion of Colorado regulations are not statements of fact. 8 CCR 1505-1:7.7.8 provides "the county clerk must audit all signature verification judges who are conducting signature verification every day the judge conducts signature verification." 8 CCR 1505-1:6.2.1–6.2.3 defines consistent standards for the evaluation of election judges.

11. Disputed. Counsel's characterizations of Colorado law are not statements of fact. Under § 1-7.5-107.3(2)(a), county clerks, "within three days after the signature deficiency has been confirmed, but in no event later than two days after election day," send voters forms to cure their ballots. Under this procedure, all voters receive a timely opportunity to cure their ballots.

12. The Secretary admits that, in addition to the cure letter sent to all voters pursuant to § 1-7.5.107.3(2)(a), voters may receive additional notification of the opportunity to cure ballots including through BallotTrax, the TXT2Cure system, and calls from county clerks. Additionally, counties post the list of voters who need to cure their ballot "online as public

record." *See* Ex. 7 (Zygielbaum Dep.) 88:25–89:10. Candidates, proponents of ballot issues, or political parties will then "track down those particular voters" to let them know of the opportunity to cure their ballot. *Id.*

13. The Secretary admits voters required to cure their ballots may do so in accordance with the procedure at § 1-7.5-107.3(2)(a) or by using the TXT2Cure system. Ex. 2 ¶¶ 9, 10.

14. The Secretary admits that nearly 100,000 ballots have been held for cure because of mismatched signatures since 2018 and not cured. The Secretary disputes that Plaintiffs' blanket citation to exhibits "J–Q" satisfies their burden on summary judgment.

15. The Secretary admits that over 50,000 voters have cured ballots originally held for cure based on a signature discrepancy since 2018. The Secretary disputes that Plaintiffs' blanket citation to exhibits "J–Y" satisfies their burden on summary judgment.

16. Disputed. Ballots cured by voters are not rejected, mistakenly or otherwise; ballots cured by voters are counted, and therefore not indicative of an "error rate." § 1-7.5-107.3(2)(a). Only those ballots voters do not cure are not counted. *Id.*

17. The Secretary admits she has identified cases where voter fraud was identified based on the signature verification process. Ex. 8 at 54:18–55:4; Ex. C to MSJ ¶¶ 101–03. She has not done an analysis on "what percentage of the ballots held for cure were submitted by the proper voter or someone else." Ex. 8 at 54:18–55:4.

18. Disputed. The Secretary believes "[s]ignature verification is in fact central to our confidence in the security of the election process." Ex. 8 at 61:20–21. Consistent with that belief, she has undertaken efforts to make curing ballots pursuant to the signature verification process more convenient for voters, including TXT2Cure and BallotTrax. Ex. 8 at 74:8–17.

19. Disputed. Plaintiff cites to no record evidence in support of these allegations. Mr. Erwin's ballot was not held for cure because of a signature mismatch. Ex. 2 ¶ 13; Ex. 9

(SOS0003590–97). Of Plaintiffs' "38 additional voters," most admit they chose not to cure despite having the opportunity to do so. *E.g.*, Brown Decl.; Cephus Decl.; E. Custer Decl.; Crego Decl.; Cruz Decl.; Ferry Decl.; Freund Decl.; Garcia Decl.; Kraynik Decl.; McKee Decl.; McConnell Decl.; Mullins Decl.; Rambo Decl.; Sarralde Decl.; Sharpe Decl.; Sleeter Decl.; Swailes Decl.; Turner Delc.; Vucasovich Decl.; Wilkinson Decl.; Zimmerman Decl. Others delayed opening their cure letter, claim to have received the cure letter late, or they deny receiving the cure letter, despite receiving their timely mail ballot at the same address on file with the Secretary. *E.g.,* Buehler Decl.; DeMartin Decl.; Gilbert Decl.; Hobson Decl.; Sides Decl.; Thompson Decl. Ballots that a voter chose not to cure, for whatever reason, were not "wrongfully rejected" under § 1-7.5-107.3(2)(a).

20. The Secretary admits Mr. Williams' daughter cured her ballot after it was held for cure. The Secretary denies that Mr. Williams's daughter "had her ballot wrongfully rejected." As Plaintiff acknowledges, her ballot was counted. Ex. T to MSJ 30:17–20.

21. Not disputed for purposes of this Motion, except as to the credibility and weight to be given the testimony of individual witnesses, identified for the first time in declarations accompanying the Motion, whom the Secretary has never had the opportunity to cross examine. *See Sartor v. Ark. Nat. Gas Corp.*, 321 U.S. 620, 628 (1944) (explaining affidavits were "far from conclusive" and "may not withdraw ... witnesses from cross-examination, the best method yet devised for testing trustworthiness of testimony" when the "credibility and the weight to be given to their opinions is yet to be determined"). Such declarations may create factual disputes, but they cannot carry Plaintiffs' burden to show no factual dispute exists.

22. Not disputed for purposes of this Motion.

23. Disputed. Voters receive notice of their opportunity to cure by mail, text, phone call, and online public records. *Supra*, ¶ 12. Plaintiffs' citations pertain only to the 2018 general election or show only that some mail is returned as undeliverable in Denver County.

24. Not disputed for purposes of this Motion, except as to the credibility and weight to be given the testimony of individual witnesses, identified for the first time in the Motion, whom have never been subject to cross-examination. *See supra*, ¶ 21.

25. Disputed. The cure process is not burdensome. Ex. 10 (Ireton Dep.) 24:15–21; Ex. 6 at 81:16–24; Ex. 23 (Lepik Dep.) 65:18–66:20.

26. Not disputed for purposes of this Motion.

27. Disputed. Ms. Pesce's declaration establishes only that Mr. Erwin did not have access to a driver's license or other state-issued identification. But Colorado accepts 13 different types of identification, including certain forms of non-state-issued identification. Ex. 2 ¶ 11. Moreover, as is relevant for Mr. Erwin's claims for prospective relief, Mr. Erwin now has valid identification. Ex. 11 (Erwin Interrogatory Resps.) at 9.

28. Disputed. Colorado requires drivers over 16 to obtain a Colorado drivers' license within "thirty days after becoming a resident of the state of Colorado." § 42-2-102(2), C.R.S. There is no record evidence on how many young voters fail to comply with this law. Regardless, Ms. Ireton possessed a utility bill, which was a valid form of identification. Ex. 10 at 21:16–22:2.

29. Not disputed for purposes of this Motion, except as to the credibility and weight to be given the testimony of individual witnesses, identified for the first time in the Motion, whom have never been subject to cross-examination. *See supra*, ¶ 21.

30. Disputed. The rarity of voter fraud in Colorado proves deterrence through voter identification, including signature verification, works. Ex. 8 at 59:7–13. Communications received from voters during the cure process indicating they did not sign and submit their own

ballots are record evidence of voter fraud, or instances in which someone other than the voter submitted the voter's ballot, identified through signature verification. Ex. 12 (signature affidavit forms received by county clerks); Ex. 8 at 56:19–25 (explaining clerk's offices received such affidavit forms "indicating that the voter did not submit [their own] ballot").

31. Not disputed for purposes of this Motion.

32. Disputed. Communications received from voters during the cure process indicating they did not sign and submit their own ballots are record evidence of voter fraud identified through signature verification. Ex. 12. Plaintiffs misleadingly conflate "actual voter fraud" with convicted voter fraud. Ex. 8 at 64:15–65:14; Ex. 3 at 15–18. Additionally, the cited portion of Mr. Beall's deposition does not contain the "admission" alleged by Plaintiffs. Mr. Beall testified merely that the Secretary had not "undertaken any analysis ... of how many of the ballots that were held for cure were actually submitted by somebody other than the voter." Ex. 8 at 47:10-16.

33. Disputed. Of the seven states listed by Plaintiff, six do not have mail ballot systems remotely comparable to Colorado's because they do not send all active registered voters mail ballots. Ex. 13 (Stein Dep.) at 202:9–203:1. Stein testified that state laws regulating ballot access have a "strong and positive relationship" with voter confidence. *Id.* at 210:2–23.

34. Disputed. Vermont is one state, not "states." The "Vt. SoS Report" relied on by plaintiffs was relied upon by Dr. Herron, but is not itself in evidence in this case. Nor did Dr. Herron testify as to whether the "voter abnormalities" identified in a 2020 election in Vermont would or would not have been caught by signature verification. Ex. E to MSJ ¶ 19.

35. Not disputed for purposes of this Motion. The document cited by Plaintiffs, however, is not in evidence.

36. Not disputed for purposes of this Motion. The document cited by Plaintiffs, however, is not in evidence.

37. Disputed. Ex. 3 at 7–8; Ex. 8 at 61:20–62:7.

38. The Secretary admits that Colorado uses multiple procedures to ensure election integrity. The Secretary disputes that any of the procedures perform the same function as voter identification through signature verification. Ex. 2 ¶ 4.

39-46. These are not statements of fact but legal arguments and counsel's unsupported opinions. Further, Plaintiffs' facts concerning "disproportionate impact" on younger, minority, and military voters are irrelevant to this Motion. The Secretary vigorously disputes these facts, *see* Ex. 14 (Aravkin Rep.), ¶¶ 15.c, 66, 73–75, Ex. 8 at 20:13–24:9, and objects to their inclusion in the Motion as immaterial. *See* MSJ at 23 n.19 (conceding Plaintiffs do not seek summary judgment on Count II and disputes concerning disparate impact are "irrelevant" to their Motion).

47. Not disputed for purposes of this Motion.

48. Not disputed for purposes of this Motion.

49. Disputed. Plaintiffs' citations to portions of Mr. Beall's deposition show that variation in signature verification rates between counties "change over time" so that "some counties have gone down, some counties ... have gone up." Ex. 8 at 25:2–13. The portion of Mr. Beall's deposition cited by Plaintiffs concerning uncured signature discrepancy rates in El Paso, Jefferson, Douglas, and Adams County does not recite the figures quoted by Plaintiffs. *See id*. at 24:16–25:13.

ARGUMENT

Plaintiffs move for summary judgment on Claim I, their undue burden claim, and Claim III, their equal protection claim premised on county disparities. As to Claim I, Plaintiffs wrongly assume that strict scrutiny applies despite controlling precedent applying the *Anderson/Burdick*

balancing test to election regulations, including in the mail ballot context. This dooms Plaintiffs' Motion, as do fact disputes on the reliability and burdens imposed by the signature verification.

Plaintiffs likewise fail to demonstrate an entitlement to summary judgment on Claim III. This claim rests on *Bush v. Gore*, 531 U.S. 98 (2000), but *Bush* (which concerned a standardless recount) does not apply here as Colorado's clear laws and regulations afford the "equal dignity owed to each voter." *Id.* at 104. And again, the facts surrounding the treatment of voters in different counties are hotly contested, as are the inferences that can be drawn from those facts. Plaintiffs' Motion should be denied.

I. The *Anderson/Burdick* framework applies.

A. The *Anderson/Burdick* test applies, and Plaintiffs' omission of Colorado precedent is reason alone to deny their Motion.

Plaintiffs claim for summary judgment on Count I is premised entirely on a strict scrutiny standard of review. MSJ at 15–17. But strict scrutiny does not apply. The right to vote is undoubtedly a "fundamental right," but "it does not follow ... that the right to vote in any manner ... [is] absolute." *In re Hickenlooper*, 312 P.3d 153, 158 (Colo. 2013). And it certainly does not follow that all regulations that burden the right to vote are subject to strict scrutiny. "Election laws will invariably impose some burden upon individual voters ... [But] to subject every voting regulation to strict scrutiny ... would tie the hands of States seeking to assure that elections are operated equitably and efficiently." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

Instead, like their federal counterparts, Colorado courts eschew strict scrutiny of election regulations in favor of a balancing framework known as *Anderson*/*Burdick*.[2] *In re Hickenlooper*, 312 P.3d at 157–58; *Colo. Libertarian Party v. Sec. of State of Colo.*, 817 P.2d 998, 1001–02 (Colo. 1991) ("This court has favored the balancing test set forth in *Anderson*."); *Nat.*

[2] *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick*, 504 U.S. at 433–34.

Prohibition Party v. State, 752 P.2d 80, 85 (Colo. 1988) (applying *Anderson* framework); *Colo. Com. Cause v. Davidson*, 2004 WL 2360485, at *4 (Denver Dist. Ct. Oct. 18, 2004) ("our appellate courts, like the federal courts" apply the *Anderson/Burdick* framework).[3] *In re Hickenlooper*, 312 P.3d at 157–58, explained why a balancing test applies:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society.... It does not follow ... that the right to vote in any manner and the right to associate for political purposes through the ballot are absolute. *Burdick*, 504 U.S. at 433 (1992). Rather, the United States Constitution provides that States may prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, § 4, cl. 1 ... As a result, the United States Supreme Court has crafted a flexible balancing test for considering "the propriety of a state election law [in light of citizens'] First and Fourteenth Amendment rights." *Id.* at 434. The "flexible standard" requires courts to "weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments" against the State's interests "as justifications for the burden imposed by its rule." *Id.* (internal quotation marks omitted). Essentially, the severity of the burden on individuals' voting rights determines the constitutionality of the State's election procedure. *See id.*

The Supreme Court's decisions in *Colorado Libertarian Party* and *In re Hickenlooper* are binding on this Court.[4] Consistent with this precedent, the Colorado Court of Appeals applied *Anderson*/*Burdick* to a facial challenge to Colorado's mail-ballot procedures. *Bruce v. City of Colo. Springs*, 971 P.2d 679, 683–84 (Colo. App. 1998).

---

[3] It is irrelevant that some of these cases applied the federal constitution; Art. II, Sec. 5 of the Colorado constitution does not provide greater rights. *Nat. Prohibition Party v. State*, 752 P.2d 80, 83 n.4 (Colo. 1988); *MacGuire v. Houston*, 717 P.2d 948, 954–55 (Colo. 1986).

[4] Plaintiffs cite *Jarmel v. Putnam*, 499 P.2d 603, 604 (Colo. 1972). MSJ at 16. Even if that case could be construed as applying a strict scrutiny standard to a voter registration law, it predates the 1983 *Anderson* and 1992 *Burdick* decisions and is not persuasive due to the Court's subsequent, express adoption of *Anderson/Burdick*.

Plaintiffs' reliance on largely unpublished, out-of-state cases is not persuasive given Colorado's controlling precedent. MSJ at 17 n.16.[5] Plaintiffs twice cite *In re Hickenlooper*, but omit that *In re Hickenlooper* applies *Anderson/Burdick*. MSJ at 15.

The failure to discuss *Anderson/Burdick* is not only misleading, it is also fatal to Plaintiffs' Motion. By not mentioning *Anderson/Burdick* in their opening brief, Plaintiffs waived any argument that summary judgment is appropriate under *Anderson/Burdick*. *See, e.g.*, *Meadow Homes Dev. Corp. v. Bowens*, 211 P.3d 743, 748 (Colo. App. 2009) (declining to consider new arguments raised in Reply). Plaintiffs' Motion should be denied on this basis alone.

B. Plaintiffs have not shown § 1-7.5-107.3(2) is unconstitutional under *Anderson/Burdick*.

Under *Anderson/Burdick*, courts "must weigh 'the character and magnitude of the asserted injury" to voters' rights—here, the signature verification and cure processes—"against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights." *Burdick*, 504 U.S. at 434. A law that imposes a "severe" burden on voting rights must meet strict scrutiny. *Id.* "Lesser burdens, however, trigger less exacting review, and a

[5] Plaintiffs ignore this Colorado precedent entirely. None of the Colorado cases they cite apply strict scrutiny to a challenge to election laws. MSJ at 15 citing *Moran v. Carlstrom*, 775 P.2d 1176, 1179–80 (Colo. 1989) (balancing test applies to voting restriction, as Colorado "may place reasonable restrictions upon the right to vote"); *Erickson v. Blair*, 670 P.2d 749, 754 (Colo. 1983) ("substantial compliance, rather than strict compliance" applies to election code proceedings); *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1015 (Colo. 1982) (education finance case that mentions the right to vote once in a footnote); *Austin v. Litvak*, 682 P.2d 41, 44 (Colo. 1984) (medical malpractice case not addressing election law); *Evans v. Romer*, 882 P.2d 1335, 1347 (Colo. 1994), *aff'd*, 517 U.S. 620 (1996) (striking voter initiative declaring sexual orientation is not a protected status; not addressing election law); *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1243 (Colo. 2003) (addressing when legislature may create redistricting plan; not addressing challenge to voting laws).

State's 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (quoting *id.* at 434). "Essentially, the severity of the burden on individuals' voting rights determines the constitutionality of the State's election procedure." *In re Hickenlooper*, 312 P.3d at 158. On this standard, courts will uphold "generally-applicable and evenhanded restrictions" that protect the integrity of the electoral process itself. *Anderson*, 460 U.S. at 788 n.9.

To determine if summary judgment is appropriate, independent of the unresolved factual disputes, the Court must weigh the character and magnitude of the burden signature verification places on the right to vote against the State's regulatory interests.

1. Signature verification does not unduly burden the right to vote.

Plaintiffs have not shown signature verification imposes a significant burden on the right to vote. All electoral regulations impose burdens. "For example, even a state's decision to close its polls at 7:00 PM instead of 8:00 PM will invariably burden some voters ... for whom the earlier time is inconvenient." *Utah Republican Party v. Cox*, 892 F.3d 1066, 1077 (10th Cir. 2018). But the polls must close at some time. And Colorado must have some way of verifying that voters are who they say they are. The burden imposed by § 1-7.5-107.3(2) is a disputed fact that precludes summary judgment. Further, other courts have held that the burden of signature verification is **minimal to nonexistent**. *Lemons v. Bradbury*, 538 F.3d 1098, 1104 (9th Cir. 2008) ("magnitude of plaintiffs' asserted injury" of signing referendum petition consistent with voter registration card is "minimal"); *Election Integrity Project Cal., Inc. v. Weber*, 2023 WL 5357722, at *6 (C.D. Cal. July 18, 2023) (California's statewide standards for verifying ballot signatures and cure "do not burden the right to vote, and do not burden Plaintiffs' right to vote").

As a threshold matter, in addressing Claim I, Plaintiffs present no evidence on the alleged magnitude of the burden of signature verification on Colorado voters. Instead, Plaintiffs appear

to argue that because since 2018, 0.05% of ballots were held for cure but never cured, strict scrutiny applies as a matter of law. MSJ at 16-17. As discussed above, this is contrary to *Anderson/Burdick*, and Plaintiffs cannot establish an absence of material fact as to burden.

The record evidence shows Colorado makes voting easy, and the burdens on voting are low. *First*, Colorado has one of the highest voter participation rates in the country, which belies that voters are significantly burdened in any way, let alone by signature verification. Ex. 2 ¶ 6. Plaintiffs' own expert avers that when voting costs are lower, voter turnout is higher, *and* that after Colorado adopted a mail ballot system in 2014, voter turnout increased in a "positive and substantial" way. Ex. 16 (Herron Dep.) 22:11-21; 34:3-37:3. Dr. Stein expresses the same opinion. Ex. 3 at 3, 7. Colorado's high voter participation proves the burden on voters is low.

Second, the Secretary presented evidence showing the burden of signature verification on voters is low. Signature verification is the most utilized means of verifying ballots cast by mail in the United States. Ex. 3 at 18. Twenty-seven states, including Colorado, conduct signature verification on returned mail ballots. *Id*. The process is widely used because of its numerous advantages, including ease of access and implementation, transparency, history, accuracy, and voter acceptance. *Id*. It is the most widely available system of verification. *Id*. Signatures have also been used to verify identities for hundreds of years (verification of identity is why pen and paper signatures were used in the first place). *Id*. Further, the low percentage of total ballots held for cure but not cured since 2018 (i.e., .05%), is evidence that the process usually works.

Third, Plaintiffs argue, without factual support, that the .05% of ballots cast represent ballots that were "wrongfully rejected."[6] But the evidence does not establish this. Instead, the

[6] In saying that it is "difficult to imagine a more dramatic infringement" on the right to vote than signature verification, Plaintiffs hyperbolically elevate the practice above poll taxes, *Harper v.*

evidence supports that ballots may not have been cured because: (1) the ballots were not signed by the voter to whom they were sent, Ex. 8 at 50:7-52:25; (2) voters may make a rational decision not to cure, *id.* 50:7-52:25; and/or (3) signatures were correctly rejected because they did not match, *id.*; Ex. 17 (Mohammed Dep.) 80:6-98:17 and Exhibit 6 thereto (Exhibit 18).

Fourth, in evaluating the burdens imposed by signature verification, the Court must consider the remedy available to voters whose ballots are held for cure: the cure process. *See, e.g.*, *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197–98 (2008) (considering "availability of the right to cast a provisional ballot [as] an adequate remedy" for burdens imposed by identification requirement); *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1181 (9th Cir. 2021) (burden in mail ballot signature case is "the ... burden on the voter to sign the affidavit *or* to correct a missing signature by election day") (emphasis added). Plaintiffs describe the cure process as an additional burden, MSJ at 6–8, 16, but the record shows that one of the Plaintiffs herself describes the process as not a burden, Ex. 10 24:15–21. Record evidence supports that the cure process is not burdensome. Ex. 2, ¶¶ 8-11; Ex. 6 81:12-85:19.

Fifth, and finally, Colorado requires all voters to present identification when voting. *See* § 1-7-110(1)(b) (requiring identification for in-person voters). If a voter chooses to cast a mail ballot, and their signature is consistent with the signature(s) the State has on file for that voter, their signature serves as their identification. But if the signatures are inconsistent, the mail ballot is held for cure, during which the voter may cure their ballot by providing identification. Colorado could constitutionally require all voters to submit a copy of their identification with their initial mail ballot. *See, e.g.*, *Crawford*, 553 U.S. at 197 (upholding constitutionality of voter identification requirement). The signature verification process allows the vast majority of

---

Va. State Bd. of Elections, 383 U.S. 663 (1966), literacy tests, *Lassiter v. Northampty Cty. Bd. of Educ.*, 360 U.S. 45 (1959), and other invidious restrictions like land ownership and gender.

voters—those whose signature match—to opt-out of this requirement. In that way it only enhances, rather than restricts, electoral access.[7]

2. Signature verification is supported by compelling State interests.

The parties also dispute whether § 1-7.5-107.3(2) advances Colorado's compelling state interests. Plaintiffs argue, at length, that the absence of voter fraud in Colorado since the adoption of signature verification is proof that it is unnecessary. *See, e.g.*, MSJ at 8–9. To the contrary, this pristine record is proof that signature verification is working.

Plaintiffs concede that the state has compelling interests in election security and voter confidence. MSJ at 18. *See also* Colo. Const. art. VII, § 11 (requiring the General Assembly to pass laws that "guard against abuses of the elective franchise"); *Crawford*, 553 U.S. at 196 ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters."). And the evidentiary record concerning signature verification's role in advancing those interests is deeply contested. Plaintiffs argue that the absence of confirmed instances of fraud identified by signature verification is enough to undermine the state's interest. MSJ at 18. But this exact argument was rejected in *Crawford*, 553 U.S. at 194–95, and the Secretary, through her designated representative, as well as the Secretary's expert, disputes Plaintiffs' conclusions. First, because Plaintiffs employ "an inadequate methodology that does not reflect the most recent scholarship on measuring the incidence of voter fraud," and second because Plaintiffs fail to account for signature verification's role in *deterring* fraud or the role prosecutorial discretion plays in convictions for fraud. Ex. 3 at 15, 17; Ex. 8 at 59:7–13; Ex. 16, 99:8-102:16. At this stage, these inferences must be drawn in the Secretary's favor.

[7] As a matter of common-sense, the burden on a voter to provide a signature consistent with past signatures is less than the burden of providing identification. *See* Ex. 3 at 18–21.

II. The signature verification requirement evenly applies to all mail ballot voters and does not violate equal protection.

Plaintiffs' equal protection claim alleges similarly situated voters in separate counties are treated disparately by the signature verification procedures. The "threshold inquiry" in an equal protection claim is whether the law produces "dissimilar treatment of similarly situated individuals'" *Dallman*, 225 P.3d at 634; *see also Jones v. Samora*, 395 P.3d 1165, 1177 (Colo. App. 2016) (equal protection requires state to "treat similarly situated persons in a like manner").

In advancing an equal protection claim, "it is the claimant's burden to demonstrate in the first instance a discrimination against [him] of some substance." *Colo. Libert.*, 817 P.2d at 1005 (dismissing equal protection claim where party failed to carry burden). Plaintiffs have not shown signature verification treats similarly situated voters differently, much less that any Plaintiff has been discriminated against in the first instance.

A. *Bush v. Gore* does not apply.

Plaintiffs' equal protection challenge relies entirely on *Bush v. Gore*, 531 U.S. 98, but that decision is neither controlling nor persuasive. MSJ at 23–25; 2nd Amd. Compl. ¶ 116. *First*, *Bush* is not precedential. Colorado courts have never applied *Bush* to strike down any law, and the United States Supreme Court expressly limited *Bush* to its unique, historic context. *Id.* at 105, 109 (holding "consideration [was] limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities"); *Rodriguez v. Newsom*, 974 F.3d 998, 1006 (9th Cir. 2020) (precedential value of *Bush* is limited).

Second, *Bush* is not persuasive. *Bush* involved an equal protection challenge to a Florida court-ordered statewide manual recount in the 2000 presidential election. 531 U.S. at 100. The case centered on how to conduct a recount of Florida's now infamous punch-card ballots, which sometimes failed to clearly indicate a voter's chosen candidate. *Id.* at 103-105. In ordering a recount of these problematic ballots, the Florida Supreme Court ordered local elections officials

to determine "the intent of the voter" but failed to prescribe "specific standards to ensure its equal application." *Id*. at 105–106. This lack of guidance "led to unequal evaluation of ballots," *id*., and *Bush* held the recount process was "inconsistent with the minimum procedures necessary to protect the fundamental right of each voter in the special instance of a statewide recount under the authority of a single state judicial officer," *id*. at 109. Importantly, *Bush* did not announce a new equal protection standard applicable to all election cases. *Id*.

Courts have rejected *Bush*-type challenges where a state has established standards for signature verification. The Ninth Circuit rejected a *Bush* challenge to Oregon's referendum petition signature matching law because the state had a uniform standard, unlike *Bush*:

> The Secretary argues that county elections officials use a uniform standard: whether a referendum petition signature matches the signature on the signer's existing voter registration card. The district court held that this standard is uniform and specific enough to ensure equal treatment of voters. We agree… Even were *Bush* applicable to more than the one election to which the Court appears to have limited it, Oregon's standard for verifying referendum signatures would be sufficiently uniform and specific to ensure equal treatment of voters.

Lemons, 538 F.3d at 1105–06.

Recently, a federal district court rejected a *Bush* equal protection challenge to California's ballot signature verification law because the state has an established process for verifying ballot signatures. *Election Integrity*, 2023 WL 5357722, at *8. *Election Integrity* held "Plaintiffs cannot baldly claim that the State lacks uniform voting laws and regulations while at the same time seeking to overturn such laws." *Id*. The court held *Bush* did not apply because the "challenged regulations provide a framework for elections officials to follow when they are verifying signatures and counting votes; a framework which was wholly missing in *Bush*[.]" *Id*.

As in *Lemons* and *Election Integrity*, *Bush* does not apply here. Colorado's signature verification procedure is set forth in statute, in administrative rules carrying the effect of law, and in detailed instructions issued by the State's top election official. Ex. 19 (Signature Verification

Guide); Ex. 5 at SOS003538–39. Each county is required by law to apply the very same laws, rules, and instructions to each signature. Because Colorado has specific laws and guidance on signature verification, this case is nothing like *Bush*. Indeed, Plaintiffs never claim Colorado lacks statewide standards—nor could they. They fail to do the hard work of engaging with the statute, rules, and binding guidance to justify how this case falls could possibly fall under *Bush*.

Plaintiffs fail to identify any other persuasive authority, much less any cases that apply *Bush*'s equal protection framework to strike down statewide laws on signature verification. Plaintiffs' reliance on *Common Cause Southern Christian Leadership Conference of Greater Los Angeles v. Jones*, 213 F. Supp. 2d 1106 (C.D. Cal. 2001), and *Black v. McGuffage*, 209 F. Supp. 2d 889 (N.D. Ill. 2002), is misplaced. *See* MSJ at 24 n.20. Those cases concern the same punch-card balloting machines at issue in *Bush*, which increased the likelihood that voters in counties with those machines would have their right to vote denied. Such facts are not present here. The citation to *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 478 (6th Cir. 2008), which found *Bush* "relevant," is also unpersuasive. *Brunner* is distinguishable as it found that a panoply of alleged election hardships stated an equal protection claim, including 12-hour waits at polling places, voters waiting in person until 4 a.m. after election day to vote, nearly 40% of provisional ballots being incorrectly discarded; disabled voters being turned away at polling places; and broken voting machines that possibly caused a vote to be counted for the wrong candidate, 548 F.3d at 478. *Florida Democratic Party v. Detzner*, 2016 WL 6090943, at *7 (N.D. Fla. Oct. 16, 2016), is also inapposite; that case did not rely on *Bush*, but held that because the state provided no-signature absentee voters a cure, it also must also provide mismatched-signature absentee voters with a cure. Finally, *Jones v. U.S. Postal Service*, 488 F. Supp. 3d 103, 135 (S.D.N.Y 2020), did not involve signature verification, but entered an injunction specifying the U.S. Postal Service act to ensure the timely delivery of mailed ballots.

Plaintiffs cannot draw support from *Bush*, as the law they challenge comprises the type of statewide standard absent in *Bush*.

B. The signature verification procedure equally applies to all voters.

Colorado requires counties to apply the same uniform, statewide standard and procedures in verifying each voter's mail ballot signature. Instead of requiring all voters to vote in person and show identification—as many other states do—Colorado allows mail ballot voting and uses signature verification to confirm a voter's identity when processing returned mail ballots. Under Colorado law, mail ballots received with the voter's signature on the ballot-return envelope are only held for cure if three different election judges determine that the signature does not match the voter's signature(s) on file. First, a single election judge—the Tier 1 Judge—compares the signature on the ballot to the voter's signature(s) stored in the statewide voter registration system. § 1-7.5-107.3(1)(a). If the Tier 1 judge determines the signatures match, the ballot is counted. § 1-7.5-107.3(3). If, upon comparing the signatures, the Tier 1 Judge determines that the signatures do not match, a bipartisan team of two election judges compare the signatures together. § 1-7.5-107.3(2)(a). Only if both Tier 2 election judges agree the signatures are not consistent does the county initiates the cure process described below. § 1-7.5-107.3(2)(a). If at least one Tier 2 judge believes the signatures match, regardless of the position of the other two election Judges, the ballot is accepted and counted. § 1-7.5-107.3(2)(c).

Colorado counties apply the same standard to determine whether a signature is consistent with the voter's signatures on file. In short, election judges must apply a "more likely than not" standard to determine whether signatures are consistent. Election judges must compare the self-affirmation signature on each ballot-return envelope with the elector's signature(s) in SCORE in accordance with the Secretary of State's Signature Verification Guide. Election Rule 7.7.3 provides that "[a] signature on a mail ballot envelope that is consistent with a signature for the

voter in SCORE is one that is more likely than not to be the signature of the voter. A signature that is consistent must be accepted as a match." 8 CCR 1505-1:7.7.3. Consistent with the Rule, the Secretary recently released an addendum to the Signature Verification Guide which specifies that: "A signature returned with a ballot is consistent if it is more likely than not to be the signature of the voter in SCORE. If you find that the signature is consistent, you must accept that signature as a match." Ex. 5; Ex. 2 ¶¶ 14–15. The September 2023 addendum provides detailed instructions on how election judges must conduct signature verification. *Id*. Since Election Rule 7.7.3 requires election judges to follow the Secretary's Signature Verification Guide, these instructions have "the force and effect of law." *Cornerstone Partners v. Indus. Claim App. Off.*, 830 P.2d 1148, 1149 (Colo. App. 1992).

Before participating in this process, each election judge must complete specific training. 8 CCR 1505-1:6.8. As of September 2023, counties must use the training created by the Secretary' office. Ex. 2 ¶ 14; Ex. 20 (Signature Verification Training). County clerks periodically audit signature verification judges. 8 CCR 1505-1:7.7.8. If a judge or team of judges has an unexplained, irregular acceptance or rejection rate, the county clerk must retrain or remove the judge or team from conducting signature verification. 8 CCR 1505-1:7.7.8. Further, a county clerk may remove or reassign an election judge performing signature verification at any time, for cause, including, "[a]n inability to perform signature verification" or "an irregular acceptance or rejection rate." 8 CCR 1505-1:6.2.2.

C. There is no evidence Colorado law treats similarly situated voters differently.

The only factual basis Plaintiffs provide for their equal protection claim is three findings by their own expert related to different counties' "rejection" rates in the 2020 general election. This scant evidence does not support the relief Plaintiffs request—i.e., declaratory and injunctive relief premised on the holding that the signature verification procedure is likely to violate the

equal protection clause in the future. Most importantly, Plaintiffs' focus on "rejection" rate is inapposite in this challenge and fails to clear their evidentiary burden as a matter of law. [8] *See generally* Ex. 21 (Aravkin Dep.) 168:12–171:1 (describing the "pitfall[s]" of conducting a rate-based analysis, and how it can lead to "a conclusion that's contrary to ground truth").

First, focusing solely on the rate of uncured signature discrepancies does a disservice to the dramatically low absolute figures at issue. One of the counties on which Plaintiffs rely is Rio Grande County, which in the 2020 General Election saw only 6,377 ballots cast. Ex. 2 ¶ 12.c. Rio Grande County's rate of uncured signature discrepancies rate was .06%, because it had only four ballots that were held for cure and not ultimately cured. *Id.* If just two more ballots were to have been uncured, that figure jumps to almost .1%.

Second, nothing in the record shows that the counties identified by Plaintiffs experienced the same levels of *wrongfully* rejected ballots. Plaintiffs' argument is based wholly on the rates at which ballots were held for cure in the 2020 general election in four counties: 1) Adams County, 2) Rio Grande County, 3) Douglas County, 4) El Paso County, and 5) Jefferson County. MSJ at 24. But the Motion is silent as to whether one should expect to find different, or similar, rejection rates in those counties. Perhaps Adams County's uncured signature discrepancy rate was higher than Rio Grande County's in 2020, as alleged by Plaintiffs, because Adams County received more ballots that were not signed by the voter to which they were addressed—a fact quite plausible because of the small figures in question.

Third, Plaintiffs have failed to satisfy the threshold issue of an equal protection challenge: similarity. To establish an equal protection violation, Plaintiffs must prove that Colorado's voting system "produces dissimilar treatment of similarly situated individuals." *Dallman*, 225

[8] Plaintiffs' use of the term "signature rejection" is inaccurate—these ballots were not rejected, they were held for signature discrepancy and not cured, see above at pages 7 ¶ 16, 8 ¶ 19, & 17.

P.3d at 634 (quotations omitted). But Plaintiffs offer no evidence that voters in the counties they identify are similarly situated. Plaintiffs' analysis fails to address whether differences in uncured signature discrepancy rates across counties result from different procedures used in those counties, or differences in the voters that *comprise* those counties. Ex. 14 ¶ 80 (showing how variations in county rates can be driven by demographic data, such as age and voting experience). Plaintiffs' expert expresses no opinion as to whether different rates amongst different counties are a result of demographic differences or different procedures. Ex. 22 (Palmer Dep.) 92:14–19 ("Q: [Y]our report does not express an opinion as to whether Adams County has a rejection rate that is 1.5 times the statewide rate because of the procedures it employs or whether that's because of the demographics of the people that live in Adams County. A: That's correct."). In fact, he expresses no causal analysis at all. *See, e.g.*, Ex. 22 at 91:20–21 (noting that "causal question[s]" related to county rejection rates were "beyond the scope of [the expert's report]."); *id.* at 92: 19–20 ("That's correct, I did not do any sort of causal analysis of what caused the rejection rates [amongst counties].").

Fourth, even if undisputed, these facts establish that at most, in one election in 2020, Adams County had a higher ratio of ballots held for cure than Rio Grande and Douglas Counties, and El Paso County had a higher rate than Jefferson County. MSJ at 24. These statistics do not prove, as Plaintiffs must, that Colorado law treats similarly situated voters differently, much less that any Plaintiff was discriminated against. *Colorado Libert.*, 817 P.2d at 1005.

Fifth, although Plaintiffs' Motion focuses on only one election, their expert's data shows the rate at which ballots are held for cure in any given county varies by election. In the 2018 General Election, Lake County had the highest rate of ballots held for cure of any County in Colorado. Ex. A to MSJat 16. But it failed to crack the top-10 in either the 2020 or 2022 general

elections. This further suggests that variations in uncured signature discrepancy rates amongst counties is not driven by county-specific procedures.

Finally, Plaintiffs' evidence is of little value when it comes to predicting future election outcomes. This year, the Secretary promulgated new rules governing signature verification and published an addendum to the signature verification guide. Ex 5. These new rules promulgated a new "more likely than not" standard for signature verification that applies to all counties in all future elections. Even if Plaintiffs had shown meaningful differences in past elections, conducted under different regulatory guidance, that evidence could not sustain a claim for declaratory and injunctive relief as to the new regulatory scheme. Plaintiffs have no evidence, even rate-based evidence, that county-level differences will exist under the new regulatory scheme. And because the purpose of an injunction "is to prevent further harm," not to remedy past injury, *Graham v. Hoyl*, 402 P.2d 604, 606 (Colo. 1965), it is the new regime that is relevant to Plaintiffs' claim.

D. Summary judgment must be denied on Claim III.

Neither the law nor the facts support summary judgment on the equal protection claim. Plaintiffs' main argument on their *Bush*-style equal protection claim appears to be that "Defendants offer no competent evidence showing that voters in certain Colorado counties are not arbitrarily burdened due to inconsistent application of the SMR, nor can they." MSJ at 25. But it is *Plaintiffs'* burden to prove an equal protection violation. And in moving for summary judgment, *Plaintiffs* bear the burden of proving that voters in certain Colorado counties are treated differently under the law. They have not done so.

CONCLUSION

For the reasons stated herein, the Court should deny the Motion for Summary Judgment.

Dated this 30th day of November 2023.

PHILIP J. WEISER
Attorney General

/s/ *Emily Burke Buckley*
EMILY B. BUCKLEY*
Senior Assistant Attorney General, No. 43002
PETER G. BAUMANN
Senior Assistant Attorney General, No. 51620
KYLE M. HOLTER,
Assistant Attorney General, No. 52196
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: 720-508-6152
Fax: 720-508-6041
emily.buckley@coag.gov
peter.baumann@coag.gov
kyle.holter@coag.gov
*Counsel of Record
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November 2023, a copy of the foregoing **OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON CLAIMS I AND III** was served, via Colorado Courts e-filing, on the following:

Kevin J. Hamilton
Matthew P. Gordon
Jessica R. Frenkel
Gillian C. Kuhlmann
Heath L. Hyatt
Daniel Graham
Hannah Parman
KHamilton@perkinscoie.com
MGordon@perkinscoie.com
JFrenkel@perkinscoie.com
GKuhlmann@perkinscoie.com
hhyatt@perkinscoie.com
DGraham@perkinscoie.com
HParman@perkinscoie.com

Counsel for Plaintiffs

Christopher O. Murray
Julian R. Ellis, Jr.
Max Porteus
cmurray@bhfs.com
jellis@bhfs.com
mporteus@bhfs.com

Counsel for Intervenors-Defendants

s/ Carmen Van Pelt