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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.

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Case No. 2022CV033456

Division: 215 Courtroom:

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs VET VOICE FOUNDATION, LESLIE DIAZ, RANDY EICHNER, JOHN ERWIN, AMANDA IRETON, and GREGORY WILLIAMS file this Complaint for Declaratory and Injunctive Relief against Defendant JENA GRISWOLD, in her official capacity as the Colorado Secretary of State, and allege as follows:

NATURE OF THE CASE

1. “This right to vote is fundamental to our democracy . . . Other rights, even the most basic, are illusory if the right to vote is undermined.” *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1228 (Colo.2003) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964)). “[C]itizens have the right to be free from restrictions that deny the franchise or render its exercise so difficult and inconvenient as to amount to the denial of the right to vote.” *Bickel v. City of Boulder*, 885 P.2d 215, 225 (Colo. 1994).

2. For the vast majority of Colorado voters who vote by mail, this fundamental right is contingent on an arbitrary, deeply flawed signature matching process. While ostensibly deployed to verify voter identity, signature matching is election integrity theater: it disenfranchises qualified voters by the tens of thousands, all for the appearance—but not the reality—of election integrity.

3. Signature verification offers paltry security benefits at enormous costs to voters in part because signatures can and do vary for many reasons. And election judges are far more likely to mistakenly identify genuine signatures as “non-matching” than they are to identify non-genuine signatures. As a result, signature matching is much more likely to disenfranchise qualified, legitimate voters than it is to weed out fraudulent ballots. Indeed, many thousands of Colorado voters have been denied the right to vote as a result of signature matching, especially young voters

and voters of color on whom the disenfranchising effects disproportionately fall: in the 2020 general election, young Black and Hispanic voters' ballots were rejected for purported signature mismatches **approximately 25 times more often** than were ballots from older White voters.

4. Even if mail-in voting fraud were a problem in Colorado, signature verification would not be the solution. And mail-in ballot fraud—and voter fraud in general—is decidedly *not* a problem; rather, voter fraud is exceedingly rare in Colorado. Unsurprisingly, few—if any—cases of prosecuted voter fraud have been caught by signature matching.

5. Colorado's signature matching law is unconstitutional. It disenfranchises tens of thousands of lawful voters without serving any legitimate, much less compelling, purpose. And its effects are not shared equally among the electorate; the signature matching law disparately impacts young and minority voters.

6. Absent relief from this Court, Colorado's signature matching procedure will continue to disenfranchise and otherwise burden qualified voters in upcoming elections and violate their constitutional rights, including the right to vote protected by Article II, Section 5, and the right to equal protection protected by Article II, Section 25 of the Colorado Constitution.

JURISDICTION AND VENUE

7. Plaintiffs bring this action to redress the deprivation, under color of state law, of rights secured by Article II Sections 5 and 25 of the Colorado Constitution.

8. This Court has jurisdiction over the subject matter of this action pursuant to Article VI, Section 9 of the Colorado Constitution because this matter is a civil case over which the Court has original jurisdiction.

9. This Court has personal jurisdiction over Secretary Griswold, who is sued in her official capacity only.

10. Venue is proper in this Court under Colorado Rule of Civil Procedure 98(b)(2) because Secretary Griswold is a public officer, found in Denver County, and at least some part of the events giving rise to the claims occurred in Denver County.

11. This Court has the authority to enter a declaratory judgment pursuant to Colorado Rule of Civil Procedure 57.

12. All conditions precedent to the maintenance of this case and Plaintiffs' claims have occurred, been performed, or otherwise been waived.

PARTIES

13. Plaintiff Vet Voice Foundation ("Vet Voice") is a non-profit, non-partisan organization dedicated to empowering active-duty service members, veterans, and military family members (collectively "Military Voters") to become civic leaders and policy advocates across the county. Part of Vet Voice's mission is to increase voter participation among Military Voters, veterans, and their families. Over the last two years, Vet Voice has built a first-of-its-kind voter file of hundreds of thousands of identified Military Voters in all 50 states, including Colorado. Vet Voice mobilizes, educates, and turns out those Military Voters in substantial numbers. Vet Voice also recognizes that many active-duty service members and their families, especially those stationed away from their homes during an election, are at risk of having their ballots rejected by Colorado's signature matching procedure. Indeed, numerous Military Voters and veterans, Vet Voice's constituents, have had their ballots rejected by Colorado's signature matching procedure

in the past. Vet Voice is stepping in the shoes of those active-duty military members and veterans to protect their rights.

14. Plaintiff Leslie Diaz is a 31-year-old Colorado citizen and voter who resides in Arapahoe County. Ms. Diaz, who is Latina, attempted to vote by absentee ballot in the 2020 general election, but her ballot was rejected on the basis of a perceived signature discrepancy. Ms. Diaz recalls receiving notice that her ballot was rejected, but by the time she received that notice, the results of the 2020 election had already been announced. For that reason, Ms. Diaz did not cure her ballot, and her vote was not counted. Ms. Diaz does not know why her signature might have been flagged as non-matching. Ms. Diaz is a first-generation naturalized citizen. Ms. Diaz worries that her parents, who became citizens after immigrating to the United States, may have their ballots rejected on the basis of perceived signature discrepancies in future elections.

15. Plaintiff Randy Eichner is a Colorado citizen and voter who resides in Larimer County. Mr. Eichner has amyotrophic lateral sclerosis (“ALS”), a progressive neurodegenerative disease that affects nerve cells in the brain and spinal cord. Mr. Eichner’s ALS has inhibited his ability to initiate and control muscle movement. As a result, Mr. Eichner has little to no use of his hands. For that reason, Mr. Eichner has had an extremely difficult time casting an absentee ballot in Colorado. Mr. Eichner attempted to cast an absentee ballot in the 2022 primary election with the assistance of the individual holding a power of attorney to act on his behalf, his mother, Vicki Pesce, but he received a notification that his signature had been identified as “non-matching.” Although Mr. Eichner attempted to cure his primary election ballot, he was unable to do so because, as a result of his mobility limitation, he had allowed his driver’s license (the only form

of state identification in his possession at the time) to expire. Because Mr. Eichner could not cure the perceived signature discrepancy, his ballot was not counted.

16. Despite expecting that he would encounter similar issues in the 2022 general election and taking steps to avoid those same pitfalls, Mr. Eichner encountered nearly insurmountable issues casting his absentee ballot. Mr. Eichner attempted to use a device designed to enable disabled individuals to sign documents, but he was unable to make any marks whatsoever. Mr. Eichner then learned that he may be eligible to vote electronically in Colorado. Mr. Eichner's mother spoke with the district attorney in his county, who informed her that, in order for Mr. Eichner to vote electronically, he would just need to submit a form of state identification to his county election's office. Mr. Eichner obtained a state ID for the purpose of voting, but when he attempted to cast his ballot electronically, he received an email informing him that he needed to resubmit his ballot with a printed and signed affidavit attesting to his disability. Mr. Eichner was ultimately able to cast his ballot electronically, but not before encountering extreme difficulty and nearly giving up. Mr. Eichner fears that his ballot, and the ballots of other disabled voters, may be rejected on the basis of perceived signature discrepancies in the future. Voting is crucial to Mr. Eichner because he is dying from ALS and believes that having his vote counted is the only way he can attempt to leave behind a better world for his children.

17. John Erwin is a 42-year-old Colorado citizen and a voter who resides in Denver County. Mr. Erwin attempted to vote by absentee ballot in the 2020 general election, but his ballot was rejected on the basis of a perceived signature discrepancy. Mr. Erwin does not recall receiving notice that his ballot was rejected. For that reason, he did not attempt to cure his ballot, and his vote was not counted. Mr. Erwin does not know why his signature might have been flagged as

non-matching, particularly because he registered and voted his absentee ballot on the same day. Mr. Erwin moved to Colorado shortly before the 2020 election from Texas. Mr. Erwin was looking forward to voting in Colorado because he thought the election process seemed more accessible than the election process in Texas. But Mr. Erwin was disappointed to learn that his ballot had been rejected and is concerned that it could happen again in future elections.

18. Amanda Ireton is a 26-year-old Colorado citizen and voter who resides in Denver County. Ms. Ireton attempted to vote by absentee ballot in the 2020 general election, but her ballot was rejected on the basis of a perceived signature discrepancy. Ms. Ireton does not recall receiving notice that her ballot was rejected. For that reason, she did not attempt to cure her ballot, and her vote was not counted. The 2020 general election was the first time Ms. Ireton attempted to vote in Colorado. When Ms. Ireton started working in Colorado as an infection control coordinator, she transferred her driver's license to Colorado. She believes that she registered to vote at the same time. Although Ms. Ireton acknowledges that her signatures may have some natural variations because she often signs things quickly, she does not know why someone may have perceived her signature to be non-matching in this instance, particularly because she had registered to vote shortly before casting her ballot. Because of her expertise in epidemiology, and the potential ramifications of the 2020 general election on the handling of the COVID-19 pandemic, voting in that election was particularly important to Ms. Ireton. Ms. Ireton was disappointed to learn that her ballot had not been counted, and she worries that her ballot may again be rejected on the basis of a signature discrepancy.

19. Gregory Williams is a 45-year-old Colorado citizen and voter who resides in Arapahoe County. Mr. Williams, who is Black, attempted to vote by absentee ballot in the 2020

general election, but his ballot was rejected on the basis of a perceived signature discrepancy. Mr. Williams recalls receiving notice that his ballot had been rejected, but he did not attempt to cure his ballot. For that reason, his ballot was not counted. Mr. Williams tries to vote in every election. Mr. Williams feels that his ballot was arbitrarily rejected.

20. Defendant Jena Griswold is the Secretary of State of Colorado and is sued in her official capacity only. The Colorado Secretary of State is the primary public officer responsible for supervising the conduct of primary, general, congressional vacancy, and statewide ballot issue elections in the state. COLO. REV. STAT. § 1-1-107. The Secretary of State is also responsible for interpreting and carrying out Colorado’s Election Code, including the signature matching procedure, and for “promulgat[ing], publish[ing] and distribut[ing]. . . such rules as the secretary finds necessary for the proper administration and enforcement of the election laws.” *Id.* § 1-1-107(2)(a). The Secretary of State is also responsible for promulgating rules regarding the counting of mail ballots. *Id.* § 1-7.5-107(6). Additionally, the Secretary of State is responsible for “provid[ing]” or “approv[ing] the training content” on signature matching that election judges must complete. 8 COLO. CODE REGS. § 1505-1:6.8. Secretary Griswold, personally and through the conduct of her employees, officers, agents, and servants, acted under color of State law at all times relevant to this action.

STATEMENT OF FACTS AND LAW

A. Colorado’s Signature Matching Procedure Disenfranchises Tens of Thousands of Voters for No Discernable Benefit

21. Colorado has almost no voter fraud. Secretary Griswold acknowledges that “fraud is extremely rare and easily identified.”¹ Indeed, Secretary Griswold maintains that “Colorado’s elections are the gold standard” for election security.²

22. Secretary Griswold’s observations are supported by her own data. After the 2018 General Election, the Secretary referred a mere 0.0027% of voted ballots—approximately 69 out of 2,566,784—to prosecutors for further investigation for potential fraud.³ Few, if any, of these referrals led to prosecutions or convictions.

23. Nevertheless, in the name of preventing nearly non-existent fraud, Colorado law prohibits counting absentee ballots unless an election official determines that the signature on the ballot “matches” a signature on file for the voter, an unreliable procedure that disenfranchises voters by the tens of thousands.

24. In the 2020 General Election, nearly 22,000 Colorado voters had their lawfully cast ballots rejected simply because election officials concluded that their ballot signature did not “match” a signature on file with election officials. The vast majority, if not all, of these 22,000 votes were wrongly rejected, and for those that were, the voters did everything required of them under Colorado law: they filled out their ballots, sealed the envelopes, signed them, and returned them on time. Still, their votes were not counted. More than 11,000 additional Colorado voters had

¹ *Facts vs Myths on Election Security*, SEC’Y OF STATE, <https://www.sos.state.co.us/pubs/elections/ElectionIntegrity/factsVSmyths.html> (last visited Oct. 4, 2022).

² Scott Doane, *Sec. of State Griswold: ‘Colorado’s Elections are the Gold Standard,’* KDVR (June 3, 2022), <https://kdvr.com/copov/sec-of-state-griswold-colorados-elections-are-the-gold-standard/>.

³ Shane Monaghan, *No, Fraud Isn’t Rampant in Colorado’s Mail-In Voting System*, 5280 (May 1, 2020), <https://www.5280.com/no-fraud-isnt-rampant-in-colorados-mail-in-voting-system/>.

their ballots initially rejected for signature discrepancies and were forced to jump through additional hoops to prove their identity and have their ballot counted.

25. These tens of thousands of Colorado voters had their ballots rejected for virtually no discernable benefit; few, if any, voters who cast fraudulent ballots were prosecuted *because of* Colorado's signature matching procedures.

26. While Colorado's signature matching procedure harms voters of all stripes, it disproportionately harms voters of color and, as Secretary Griswold has acknowledged, young voters.⁴ In 2020, ballots submitted by Black, Hispanic, and Asian-American voters were rejected about twice as frequently as those of white voters. Ballots submitted by the youngest voters (18-21) were rejected more than **14 times** as often as ballots from voters over the age of 40. And the disenfranchising effects of signature matching are especially pernicious for young voters of color: 18- to 21-year-old Black and Hispanic voters' ballots were rejected approximately **25 times** as often as ballots submitted by white voters over the age of forty.

27. Other groups especially vulnerable to disenfranchisement include voters with serious medical conditions that impact muscular control of hands and arms, including those with Parkinson's Disease and Multiple Sclerosis, as well as those who have had strokes, and non-native English speakers or those who speak no English at all. Active-duty military personnel and their families who are stationed away from home during an election are also especially vulnerable to disenfranchisement because overlapping ballot receipt and cure deadlines for such voters mean that some may have no real opportunity to cure a perceived mismatch.

⁴ *Colorado Secretary of State Jena Griswold Announces TXT2Cure Program*, SEC'Y OF STATE, <https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2020/PR20201007TXT2Cure.html> (Oct. 7, 2020).

28. This disenfranchising procedure is mandated by Colorado law. Election judges—none of whom are handwriting experts and who are required to attend only one training session per election, COLO. CODE REGS. § 1505-1:6.8—must reject an eligible voter’s mail ballot if they decide that the signature on the ballot envelope does not match the voter’s previously designated signature. *See* COLO. REV. STAT. §§ 1-7.5-107(5)(c), 1-7.5-107.3(1)(a). And if disenfranchisement were not enough, state law requires judges to refer for prosecution any voter whose ballot was rejected for a non-matching signature unless the voter sends in a form verifying their identity (the “Cure Form”) within eight days after Election Day. *See Id.* §1-7.5-107.3(2)(a) (referred to throughout as the “Signature Matching Procedure”).

29. Numerous studies have shown that signature matching conducted by laypersons results in a high rate of error that not only skews toward the over-rejection of legitimate signatures, but also disproportionately impacts the votes of racial and ethnic minorities, young voters, and individuals with disabilities. Colorado’s election judges have neither the time, resources, nor training to implement the Signature Matching Procedure in a manner that reduces the risk of erroneous deprivation of the right to vote.

30. But even if there were adequate training and election judges had adequate resources, erroneous rejections are inevitable. Individuals’ signatures vary for many non-fraud-related reasons, including age, illness, injury, medication, eyesight, pen type, ink, surface, position, paper quality, psychological factors, or even innocent carelessness. Indeed, Secretary Griswold’s signature matching guide recognizes that “no one signs his or her name exactly the same way twice.” Moreover, nowhere on the face of a mail ballot or its envelope are Colorado voters notified of the fact that their signature on the mail ballot envelope must “match” a previous, unspecified

signature to the satisfaction of some unidentified election worker. And nowhere else in a citizen's life does such a Signature Matching Procedure exist; Coloradans do not have their signatures scrutinized to prove their identity when they sign wills, property deeds, contracts, or other significant documents—just ballots.

31. Compounding the risk of erroneous deprivation is the fact that the fate of a Coloradan's mail ballot may depend on where they live because Colorado counties vary widely in their rejection rates. The variation is dramatic: in the 2020 general election, Adams County rejected 1.53% of ballots, and four counties (Jackson, Mineral, Hinsdale, and San Juan) reported no ballots rejected for non-matching signatures. And in that same election, the ten counties with the largest number of cast votes, rejection rates for non-matching signatures varied significantly. For example, poll workers in Adams County rejected ballots at a rate nearly five times higher than those in Larimer County. Some of those variations result from differences in how counties examine signatures—some use only human reviewers in the signature matching process, while others use signature verification machines.

32. Notwithstanding the high rate of error and variability inherent in signature matching, once their ballot is rejected, voters must jump through additional hoops to convince the election officials that they were in fact the one who signed the back of the envelope and have their lawfully cast ballot counted. Indeed, most voters whose ballots are rejected for signature discrepancies do not cure their ballots and as a result are disenfranchised entirely.⁵

⁵ Ben Markus, *Uncounted Votes in Colorado: Diverse Areas and Younger Voters More Likely to Have Ballots Rejected*, CPR NEWS (Oct. 8, 2020), <https://www.cpr.org/2020/10/08/colorado-vote-by-mail-ballots-rejected-signatures/>

33. State law provides only a narrow window—within eight days of Election Day—during which a voter may attempt to correct the erroneous rejection of his or her ballot by submitting a “cure” form along with identification, COLO. REV. STAT. § 1-7.5-107.3(2)(a), even though voters may not learn their ballots were rejected before the close of the cure period, if they learn at all. Even when voters do learn of the issue in time, they must incur additional time and expense to ensure that their lawfully cast ballot is counted. As one Colorado voter whose mail ballot was wrongly rejected—and who works 13-hour days—put it: “[l]ook, I ain’t got time for all that.”⁶ Nor do the thousands of other Coloradans who learn about their rejected ballots with too little time remaining to do anything about it. County clerks and recorders can wait until two days *after* Election Day to issue notification letters to voters informing them that their ballots have been rejected. *See* COLO. REV. STAT. § 1-7.5-107.3(2)(a). And that letter can take days or even up to a week to reach voters via the mail system—which at best cuts into, and at worst entirely nullifies, the cure period—after which point election judges must refer the voter to the district attorney for investigation. *Id.* And while Coloradans can now use the Secretary’s TXT2Cure program to cure ballots rejected for signature discrepancies, the program has been confusing to voters and resulted in “worthless responses” in the past, limiting its usefulness. Markus, *supra* n.5.

B. Colorado’s Electoral Scheme

34. In 1992, the Colorado General Assembly repealed and reenacted the Election Code to allow for mail ballot elections in certain circumstances. after finding that “mail-ballot elections

⁶ Corey Hutchins, *Could Colorado Dems Win a Board of Ed Seat in a Post-Election Ballot Chase?*, Colorado Independent (Nov. 15, 2016), <https://www.coloradoindependent.com/2016/11/15/ballot-cure-rebecca-mcclellan-colorado/>.

are cost-efficient and *have not resulted in increased fraud.*” COLO. REV. STAT. § 1-7.5-102 (1992); 1992 Colo. Legis. Serv. H.B. 92-1333 (emphasis added).

35. In 2013, the Colorado General Assembly expanded mail ballot elections by requiring that mail ballots be automatically sent to every registered voter for all elections other than municipality and special district elections. Voter Access and Modernized Elections Act, 2013 Colo. Legis. Serv. Ch. 185 H.B. 13-1303, § 2(2), 82; *see* COLO. REV. STAT. § 1-5-401(1). Currently, Colorado allows all elections to be conducted by mail ballot. *See* COLO. REV. STAT. § 1-5-401(1).

36. The ballot or the ballot’s label must warn voters of the consequences of committing voter fraud or intimidation. *Id.* § 1-7.5-107(3)(b).

37. After filling out their mail ballot, a voter places the ballot in the designated envelope, encloses a copy of their identification if necessary, and signs—under penalty of perjury—a self-affirmation on the outside of the envelope. *See Id.* § 1-7.5-107(3) (b.5), (4)(a). The affirmation sets forth, in relevant part: “I state under penalty of perjury that . . . my signature and name are as shown on this envelope” *Id.* § 1-7.5-107(3)(b.5).

38. Voters return their mail ballots by mail, in-person to the office of a designated election official, or at a designated drop-off location or polling center or to a third-party for delivery of the ballots under certain circumstances. *See id.* § 1-7.5-107(4)(b)(I)(A)-(B). Mail ballots must be received by the county clerk and recorder by 7 p.m. on Election Day. *Id.* § 1-7.5-107(4)(b)(II).

39. Once the mail ballots are received, lay individuals, referred to as “election judges,” *Id.* § 1-7.5-107.3(1)(a), compare the information on the mail ballot envelope with registration

records to determine whether the ballot was submitted by an eligible voter who did not already vote in the election. *See id.* § 1-7.5-107(5)(a). If the ballot qualifies and is otherwise valid, the election judge notes in the pollbook that an eligible voter cast a ballot. *Id.* Next, election judges conduct a signature matching verification process. *See id.* § 1-7.5-107(5)(c).

C. Colorado’s Signature Matching Procedure

40. Colorado law requires election officials to compare the signature on a voter’s mail ballot return envelope to the voter’s signature on file in the State’s voter registration system—specifically, the signature of the voter in the Colorado Statewide Registration and Election (“SCORE”) database. *See, e.g., id.* §1-7.5-107(5)(c); 8 COLO. CODE REGS. § 1505-1:7.7.3. If an election judge needs to “conduct further research on an elector’s signature,” the election judge “must check SCORE for additional documents signed by the voter, if available.” *Id.* § 1505-1:7.7.4.

41. In conducting this signature comparison, some county clerks and recorders use an electronic signature verification device, while others rely entirely on election judges’ visual inspections. *See* COLO. REV. STAT. § 1-7.5-107.3(5)(a).⁷

42. If an election judge through a visual inspection—or a signature verification device—concludes that the signatures match, “the signature on the self-affirmation [mail ballot envelope] is deemed verified,” COLO. REV. STAT. § 1-7.5-107.3(5)(b), and the ballot is counted. *See id.* §§ 1-7.5-107, 1-7.5-107.3(3).

⁷ Although the Secretary of State is required to adopt rules “establishing procedures for using signature verification devices,” *id.* at 1-7.5-107.3(6), Secretary Griswold has only adopted rules that require the county clerks to test the devices before each use, audit the devices regularly, and operate the devices on secure networks. *See* 8 COLO. CODE REGS. § 1505-1:7.7.11.

43. If an election judge concludes that the signatures do not match—or if a signature verification device is unable to conclude that signatures match—Colorado law requires that two other election judges compare the signatures. *See id.* § 1-7.5-107.3(2)(a).

44. If both judges agree that the signatures do not match, within three days after deciding there is a mismatch but no later than two days after the election, county clerks and recorders must notify the voter that their ballot was rejected. *Id.* § 1-7.5-107.3(2)(a). The voter must then cure the rejected ballot within eight days after the election for the voter’s ballot to be counted. *Id.*

D. Colorado’s Automated Signature Verification Software is Applied Inconsistently Across Counties and the Algorithm May Subject Certain Groups of Voters’ Signatures to Extra Scrutiny

45. In some counties, automated signature verification software conducts the first review of a voter’s signature. *Id.* § 1-7.5-107.3(5)(a). The use of these machines presents constitutional problems of their own because counties calibrate the software differently and the algorithms used may result in the signatures of certain groups of voters being subjected to extra scrutiny.

46. Most Colorado counties that rely on automated signature verification use an Agilis machine.⁸ Those machines use signature verification software developed by a company called

⁸ Matt Bloom, *Everything you need to know about voting, election security, and ballot counting in Colorado*, CPR NEWS (Oct. 17, 2020), <https://www.cpr.org/2022/10/17/colorado-elections-ballot-counting-and-security/>.

Parascript.⁹ The software applies algorithms to verify signatures.¹⁰ These algorithms are “trained” using datasets—often using handwriting in only a single language (English). *Id.* As a result, the algorithms are likely biased against immigrant names, and particularly against names with non-English characters, including characters with accent markings. *Id.* And because the algorithms are proprietary, the software that may determine whether signatures receive extra scrutiny is utterly opaque. *Id.*

47. Although election judges examine signatures rejected by automated verification software, they may be biased in favor of rejecting signatures that they know the software has already rejected.¹¹ Perhaps unsurprisingly, an investigation of the signature verification process between 2013 and 2020 found that counties that use signature verification software reject “far more” ballots than counties that do not use any automation. Markus, *supra* n.5.

48. Moreover, automated signature verification software is used differently even among counties that use the machines. Each county selects the percentage of signatures the software can approve without human review. Wiggers, *supra* n.10. As of 2020, Douglas County’s

⁹ Reuters Fact Check, *Fact Check-Nevada Attorney General did not interfere with 200,000 signature verifications in 2020 presidential election*, REUTERS (Mar. 16, 2021), https://www.reuters.com/article/factcheck-nevada-votes/fact-check-nevada-attorney-general-did-not-interfere-with-200000-signature-verifications-in-2020-presidential-election-idUSL1N2LE1IM_.

¹⁰ Kyle Wiggers, *Automatic signature verification software threatens to disenfranchise U.S. voters*, VENTURE BEAT (Oct. 25, 2020), <https://venturebeat.com/ai/automatic-signature-verification-software-threatens-to-disenfranchise-u-s-voters/>.

¹¹ See Junko Yoshida, *Did Your Mail-In-Ballot Get Counted?*, EE TIMES (Nov. 12, 2020), <https://www.eetimes.com/did-your-mail-in-ballot-get-counted/> (“[I]f a ballot is initially rejected by AI software, human reviewers might think, ‘This is a real fancy software. If it says it doesn’t match, then yeah, I guess it doesn’t match.’ It’s unclear whether any amount of training can overcome human deference to the machine, given the brevity and inconsistency of training provided to election workers.”).

software was set to approve 40% of signatures, while Adams County set its software to approve 35%, Denver County set its software to accept 20% of signatures, and Arapahoe and Larimer Counties set their software to approve 50% of signatures.¹²

E. Colorado’s Signature Matching Procedure is Applied Inconsistently Across Counties

49. In addition to the variations among counties regarding automated signature verification devices and their settings, counties apply other aspects of the Signature Matching Procedure differently, resulting in widely varying rejection rates.

50. Some counties allow voters to include a picture of their identification with their ballot if they are worried that their signatures will be rejected, while others do not.¹³ Counties also differ in which signatures election judges look to first in “matching” a voter’s ballot envelope signature. *Id.* (“Summit’s clerks said they use whatever most recent signature is on record, while Larimer’s said they use the signature on the voter’s registration.”). Counties further vary in whether election judges are trained by signature verification experts, whether rejection notices are sent in more than one language, and how many election judges conduct the first level of review. *Id.*

51. Given these differences in how Colorado counties review signatures, they unsurprisingly reject ballots for signature discrepancies at significantly different rates. *See* Markus,

¹² Paresh Dave & Andy Sullivan, *Factbox: U.S. Counties using automated signature verification software*, REUTERS (Sept. 24, 2020), <https://www.reuters.com/article/us-usa-election-ballot-signatures-softwa/factbox-u-s-counties-using-automated-signature-verification-software-idUSKCN26F1U4>.

¹³ Adam Rayes, *Counting Your Mail Ballot Hinges on a Signature*, KUNC (Oct. 15, 2020), <https://www.kunc.org/2020-10-15/counting-your-mail-ballot-hinges-on-a-signature-heres-how-colorado-election-officials-verify-your-scribbles>.

supra n.5. An investigation of Colorado’s Signature Matching Procedure from 2013 to 2020 found that “rejections happen at considerably different rates from county to county” and that “[c]ounties with populations of racial and ethnic minority residents above the state average account for some of the state’s highest rates of rejected ballots.” *Id.*

F. Colorado Provides Limited Signature Matching Guidance that Requires Election Judges to Make Subjective, Arbitrary Determinations.

52. When signatures are reviewed by an election judge, they are subjected to arbitrary, subjective, and unreliable determinations by lay election officials with little training on how to determine whether signatures are genuine.

53. Election judges are not handwriting experts and are not recruited based on any experience they have in validating signatures. They are required to take only a single election judge class prior to each election. 8 COLO. CODE REGS. § 1505-1:6.8.

54. Colorado law does not prescribe specific standards for distinguishing between authentic and inauthentic signatures, leaving the fate of each voter’s ballot to election judges’ subjective and arbitrary visual inspections. In fact, the limited guidance that the State does provide encourages election judges to invalidate signatures on the basis of minor, easy-to-misinterpret discrepancies.

55. For example, Colorado law instructs election judges to determine if the signatures differ in slant, scale, size, style (“such as how the letters are connected at the top and bottom”), or individual characteristics (“such as how the ‘t’s’ are crossed, ‘I’s’ are dotted, or loops are made on ‘y’s’ or ‘j’s’”). COLO. REV. STAT. § 31-10-910.3(2)(a). It further instructs election judges to look for “[e]vidence that ballots or envelopes from the same household have been switched” as well as “[a]ny other discrepancy such as misspelled names.” *Id.* Should an election judge find that one of

these red flags are present, the statute directs election judges to “research the signature further.” *Id.* But the statute fails to explain what “research the signature further” means or what tools the election judge should use to do so. *See id.*¹⁴

56. Secretary Griswold provides guidance to elections judges through a signature matching guide, but the guidance does not resolve the problems inherent in signature verification by laypersons. SECRETARY OF STATE, SIGNATURE VERIFICATION GUIDE 2 n.1 (2018) (“Guide”). While adherence to the Guide is not mandatory, it is intended to assist election judges in comparing signatures. *Id.* at 2. Yet, even when using the Guide, election judges must make subjective, arbitrary determinations.

57. The Guide sets forth a “two-step analysis” which it claims will allow election judges to “confidently decide whether or not signatures are consistent with each other” and instructs them to reject a signature if there are a combination of characteristic differences. *Id.* at 3.

58. Initially, the Guide instructs election judges to “[e]valuate the signature’s broad characteristics,” which include:

- “The type of writing (for example, cursive v. print)”;
- “The speed of writing (for example, harmonious v. slow and deliberate” and whether it has a “free and natural look to it”)—despite the recognition that “a reasonable explanation for a shaky signature is the voter’s advanced age, decreased muscle strength, or the surface below the envelope”;
- “Overall spacing”;
- “Overall size and proportions”;
- “Position of the signature (for example, slanted v. straight)”;
- “Spelling and punctuation.”

¹⁴ State law provides that a signature cannot be determined not to match due to the use of “initials” or “a common nickname.” *See, e.g.*, COLO. REV. STAT. § 1-7.5-107.3(4)(a).

Id. at 3-4.

59. The Guide indicates that if the broad characteristics of the signatures are “clearly consistent” with each other, the election judge may accept the signature and end the review. *Id.* at 3. Otherwise, the lay election judge must then proceed to examine the signatures’ “local characteristics:”

- “Internal spacing”;
- “The size or proportions of a letter or letter combination”;
- “Curves, loops, and cross-points”;
- “The presence or absence of pen lifts”—defined by the guide as “strange connection points or hesitation marks”; and
- “Beginning and ending strokes.”

Id.

60. The Guide instructs that if, after this review, the election judge finds a “combination of differences between the signature on the ballot-return envelope and the signature in SCORE,” and the election judge cannot “reasonably explain the differences,” then the election judge should “reject the signature” or “conduct further research.” *Id.* The Guide directs election judges to not “waste time trying to ‘explain away’ the differences” that are observed. *Id.* The Guide also vaguely instructs that in the event an election judge finds herself “*laboring*,” to reasonably explain the mismatch, “[she] should reject the signature or conduct further research.”¹⁵ *Id.* (emphasis added). The Guide provides no explanation as to what constitutes “laboring.”

61. The Guide contemplates that election judges may review “more than one SCORE signature [of the voter], if available,” because doing so “may help with [the] analysis because people develop certain habits over time.” *Id.* But it does not discuss the number of additional

¹⁵ The Guide does not explain what “further research” could be conducted and states only that “[l]ooking at more than one SCORE signature, if available, may help.” *Id.* at 3.

signatures an election judge may consider, nor does it indicate whether all or only a subset of SCORE signatures need to match the signature on the ballot envelope. As a result, some Colorado election judges may look at only one prior signature of the voter, while others may look at multiple previous signatures.

62. The Guide exacerbates lay election judges' propensity to err on the side of rejecting genuine signatures by providing numerous exemplars of signatures with apparent variations that should be rejected but almost none with apparent variations that should be accepted. *Id.* at 4–9. Other than a generic statement that “no one signs his or her name the same way twice,” the Guide contains no discussion of the normal range of variation that exist in genuine signatures. *Id.* at 3. And the Guide does not discuss what factors could cause someone's signature to vary, such as disease, infirmity, or age, or even how signatures naturally evolve over time. By providing primarily reasons for rejection, the Guide deepens the lay election judges' natural inclination to reject authentic signatures.

63. Many portions of the Guide are vague, such as indicating that a basis for invalidating a signature could be that it does not have a “free and natural look to it,” or indicating that certain proportions of size or spacing may be “unreasonable,” but providing no guidance as to how such reasonableness should be determined. *Id.* at 4, 7. In addition, some of the characteristics—such as cross points and pen lifts—may be appropriate considerations for a trained document expert with access to magnification aids and adequate time for careful study but could readily result in improper rejection of genuine signatures when reviewed by lay election judges.

64. Ultimately, the Guide encourages election judges to invalidate signatures based on minor, easy-to-misinterpret discrepancies. And as seen in the wide variation among county

rejection rates, the Signature Matching Procedure results in arbitrary or disparate treatment of similarly situated voters, depending on which election judges in which county are conducting the signature verification.

G. Colorado’s Signature Matching System is Highly Error-Prone and Unduly Burdens the Right to Vote

65. Signature matching is a fraught endeavor under any circumstances, and because Colorado’s Signature Matching Procedure relies on determinations made by untrained laypersons with limited time and inadequate equipment, it is even more error prone. Indeed, handwriting experts have repeatedly found that signature verification by laypersons is inherently unreliable.¹⁶

66. Critically, for the purposes of voting, errors committed by laypersons skew more heavily toward the misidentification of authentic signatures as mismatches. In one study, for instance, laypersons mistakenly declared authentic signatures to be inauthentic at least 26 percent of the time. *Id.* In that same study, laypersons mistakenly declared forged signatures to be authentic just six percent of the time. *Id.* Individuals made those mistakes despite having access to six authentic reference signatures for comparison. *Id.* In other words, people who are not trained forensic handwriting specialists, including election judges, are much more likely to incorrectly *invalidate* signatures from the same person than to incorrectly *validate* signatures from different people. Colorado’s cure numbers bear out the research: at least 11,085 voters cured ballots rejected for perceived signature matches in the 2020 election, suggesting that at least these 11,085 voters—

¹⁶ See, e.g., Rory Conn et al., *Signature Authentication by Forensic Document Examiners*, 46 J. OF FORENSIC SCI. 884–88 (2001).

and likely many thousands more—had their ballots wrongly rejected for perceived signature mismatches.¹⁷

67. This propensity to misidentify authentic signatures as forgeries is due in part to lay election judges' unawareness of the many reasons that a voter might produce two signatures that look different. Signatures are the product of a motor program developed in the brain after practice and executed with neuromuscular coordination. Many factors influence this process, including age, illness, injury, medicine, eyesight, alcohol or drugs, pen type, ink, surface—especially if signing on an electronic device, like many voters do at the Colorado Division of Motor Vehicles—position, paper quality, and one's psychological state of mind (i.e., distress, anger, fear, depression, happiness, and nervousness).¹⁸

68. Another reason for the high rate of error among lay signature reviewers, according to experts, is that signature reviewers need at least ten comparison signatures, adequate time for review, and access to magnification and lighting equipment in order to accurately compare signatures. Yet, Colorado election judges (who are largely untrained in signature matching to begin with) are afforded neither the luxury of time nor the resources recommended by experts. To give one example, election judges in Arapahoe County, prior to acquiring a signature verification

¹⁷ Miranda Paige, *Colorado voters can use smartphone to fix ballot signature discrepancies with TXT2Cure*, KKTU (Nov. 3, 2021). This number represents only the number of voters who cured ballots rejected for signature discrepancies using Colorado's TXT2Cure program. Plaintiffs have been unable thus far to determine how many more voters cured their rejected ballots through other methods, and it is likely that the true number of cured ballots rejected for signature discrepancies—i.e., erroneous rejections—is actually higher.

¹⁸ See Roy A. Huber & A.M. Headrick, *HANDWRITING IDENTIFICATION: FACTS AND FUNDAMENTALS* (CRC Press, Boca Raton, FL, 1999); Tomislav Fotak, et al., *Handwritten signature identification using basic concepts of graph theory*, 7 WSEAS Transactions on Signal Processing 145, 145 (2011).

device, each typically processed 200 mail ballots—which includes signature review and all other processing steps—in a single hour.¹⁹

69. Because Colorado offers different opportunities for voter registration, for many individuals the conditions under which they are signing their name for inclusion in the SCORE database can differ significantly from the conditions under which they sign their ballot return envelope. For example, voters may have provided their SCORE signature in-person at the Department of Motor Vehicles by signing on an electronic device, while signing the return envelope with a pen on a paper envelope at home. Significant time may have elapsed from the SCORE signature to the signature used on the ballot return envelope. These reasons to expect variation are further accentuated if there are a limited number of signature exemplars in SCORE.

70. It is, therefore, inevitable that election judges will erroneously reject legitimate ballots due to misperceived signature mismatches, resulting in the disenfranchisement of eligible voters.

71. Some election officials exacerbate the problems with lay signature matching and the Guide by instructing election judges to err on the side of disenfranchisement.²⁰

¹⁹ Tom Barry, *County Utilizing New Ballot-Sorting System* (Oct. 29, 2014), <https://villagerpublishing.com/county-utilizing-new-ballot-sorting-system/>.

²⁰ See Adam Rayes, *What Happens When Your Ballot Gets Rejected?*, KUNC (Oct. 28, 2020), <https://www.kunc.org/2020-10-28/what-happens-when-your-ballot-gets-rejected-one-kunc-reporter-found-out-first-hand> (“[C]lerks have told me they expect judges to reject any signature they aren’t certain about.”); Rayes, *supra* n.13 (“If they’re all even a bit unsure about the signature, Neel said she expects them to reject it.”); Kevin Beaty, *Here’s everything you need to know about signing your Denver ballot so it’s not rejected*, DENVERITE (Sept. 21, 2020), <https://denverite.com/2020/09/21/heres-everything-you-need-to-know-about-signing-your-denver-ballot-so-its-not-rejected/> (“Clubb said he tells judges not to worry too much if they feel they need to reject a ballot. For one thing, it’s better to be safe than sorry. Making a voter cure their own ballot means they’ll have to sign their name again, so signatures rejected because there

72. Signature matching laws disparately impact racial and ethnic minority voters, younger voters, and voters with disabilities, all of whom are more likely to have variations in their signatures or may require assistance from others to provide a consistent signature.²¹

H. Colorado’s Limited Cure Process Places Additional Unnecessary Burdens on Voters, and the Failure to Cure Results in Criminal Investigation

73. Despite the heightened risk of erroneous rejection inherent in Colorado’s Signature Matching Procedure, Colorado law provides limited opportunities to contest or cure a purported signature defect. When a mailed ballot is rejected due to an alleged mismatch determination, the county clerk and recorder must send the voter a letter providing notice of the rejection of the ballot “within three days after the signature deficiency has been confirmed, but in no event later than two days after election day.” COLO. REV. STAT. § 1-7.5-107.3(2)(a). This letter must be mailed to voter and, if an email address of the voter is available, also sent electronically. *See id.*

74. In order to cure the alleged mismatch, the voter must, within eight days of Election Day, fill out and return a form to the county clerk and recorder and provide an Identification Document. *Id.* If a voter does not provide an Identification Document, along with the completed cure form within that time frame, the voter’s ballot is not counted and the county clerk and recorder must forward information about the signature mismatch to the district attorney for investigation. *Id.* § 1-7.5-107.3(2)(a). In some cases, election officials may wait up to two days after Election Day to send notification of a signature mismatch rejection, *Id.* § 1-7.5-107.3(2)(a), and, if a voter does not have email, or has not provided her email address, and, like 48% of Coloradans, has not

are very few past examples will have a couple more examples in the system once they respond.”).

²¹ *See* Michael P. Caligiuri, et al., *Kinematics of Signature Writing in Healthy Aging*, 59 J. OF FORENSIC SCI. 1020 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4077921/>.

enrolled in Colorado’s ballot tracking system,²² she may not receive notice in time to cure. For example, one Colorado voter reported in 2016 that her general election ballot was wrongly flagged for a signature mismatch, and she was not informed until a campaign volunteer knocked on her door almost a week after Election Day.²³

75. This compressed timeline inevitably results in the disenfranchisement of some voters who receive notice of their rejected ballot, or attempt to cure a signature mismatch determination, by mail. Although there is no estimate for how long it will take for a rejection notice to reach a voter or for their cure form to reach the election office, guidance regarding ballots suggest that it can take a full week for mail between voters and the election office to arrive.²⁴ Thus, waiting until two days after Election Day to send notification of a signature mismatch—as Colorado law currently permits—denies many voters a reasonable opportunity to cure or challenge the rejection of their ballots.

76. Colorado’s eight-day deadline for curing signature mismatch determinations is significantly shorter than the same deadline in the two other states that conduct elections primarily by mail ballot. Washington gives voters 21 days after Election Day to cure an alleged signature mismatch, *see* WASH. ADMIN. CODE 434-261-050, and Oregon gives voters 14 days to cure any signature absence or discrepancy, *see* ORE. REV. STAT. § 254.431.

²² Colleen Flynn, *Take the wonder out of voting and track your ballot*, KDVR (Oct. 18, 2022), <https://kdvr.com/news/politics/colorado-politics-news/take-the-wonder-out-of-voting-and-track-your-ballot/>.

²³ *See* Corey Hutchins, *Could Colorado Dems Win a Board of Ed Seat in a Post-Election Ballot Chase?*, COLORADO INDEPENDENT (Nov. 15, 2016), <https://www.coloradoindependent.com/2016/11/15/ballot-cure-rebecca-mcclellan-colorado/>.

²⁴ UNITED STATES POSTAL SERVICE, *Election Mail*, <https://about.usps.com/what/government-services/election-mail/> (last visited Sept. 21, 2022).

77. The cure procedure, moreover, imposes costs on voters who already have taken all necessary steps to cast their mail ballot, only to be subjected to the additional burden of curing an erroneously rejected ballot.

78. In fact, many voters whose ballots are rejected for signature mismatch are unable to complete the cure process. In Arapahoe County, for example, the vast majority—72.3 percent—of voters did not cure their alleged mismatch in the 2016 primary, and 65.5 percent of voters did not do so in the 2016 general election.²⁵ Upon information and belief, none were prosecuted. But all were disenfranchised.

79. Colorado’s inadequate cure period is particularly burdensome considering the consequences voters face for failing to cure a rejected signature—not only are these voters disenfranchised, but they are also referred to a district attorney for investigation. COLO. REV. STAT. § 1-7.5-107.3(2)(a). Thus, after subjecting voters to an error-prone signature matching process that inevitably misidentifies their ballots as potential forgeries, Colorado law imposes an additional threat of criminal investigation on eligible voters.

I. The Signature Matching Procedure Disproportionately Disenfranchises Young Voters and Voters of Color

80. The cumulative effect of Colorado’s Signature Matching Procedure imposes a disproportionate impact on voters of color. In the 2020 General Election, Black, Hispanic, and Asian-American voters had their ballots rejected for signature discrepancies about twice as often as white voters.

²⁵ *Arapahoe County Elections Wins Prestigious Award for Mobile ‘Cure’ Tool*, ARAPAHOE VOTES (Sept. 21, 2018), <https://www.arapahoevotes.com/news/arapahoe-county-elections-wins-prestigious-award-for-mobile-‘cure’-tool>.

81. The Signature Matching Procedure has an even more devastating impact on the youngest voters. In the 2020 General Election, as compared to voters over the age of 40, ballots were rejected three times as often for voters 31-40 years old, seven times as often for voters aged 22-30, and almost **15 times** as often for 18- to 21-year-old voters.

82. Worse, the Signature Matching Procedure's disenfranchising effects fall hardest on young voters of color: 18- to 21-year-old Black and Hispanic voters' ballots were rejected approximately **25 times** as often as ballots from white voters over the age of 40.

83. Non-native English speakers are also disproportionately affected by Colorado's Signature Matching Procedure. An immigrant who learned to write in a script other than English, such as Chinese, will often show greater natural variation when signing a document in English than will native writers. And where the voter's native script is written right to left, the elector's signature may also be more likely to show variations in letter slanting, which the Guide identifies as a basis for questioning a signature. While lay election judges may be familiar with certain more common, typically Caucasian nicknames, they are likely to be less familiar with the nicknames of non-native English speakers and other minorities. For example, a lay judge might deem "Bob" and "Dick" to be common nicknames of "Robert" and "Richard," but fail to identify "Lalo" as a diminutive of "Eduardo" or "Chuy" as a nickname for "Jesús." Indeed, the Guide compounds this problem by telling election judges that misspelled signatures are supposed to be voided unless they are "common" nicknames, and by offering "Bobby" as the lone example of a valid nickname. As a result, the signature verification process results in a disparate impact on language minority groups.

J. Active-Duty Military and Overseas Voters Are Vulnerable to Disenfranchisement Through the Signature Matching Procedure

84. Members of the United States Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, among others, (and their spouses and dependents) who are residents of Colorado and otherwise eligible voters in Colorado but are absent from the state because they are on active duty may submit mail-in ballots under more flexible circumstances (“Military Voters”), as can certain qualifying overseas voters (“Overseas Voters”). COLO. REV. STAT. § 1-8.3-101-119. But the Signature Matching Procedure undermines the flexibility afforded Military Voters and Overseas Voters, in some cases providing them with no opportunity to cure ballots rejected for signature mismatches.

85. For example, although Military Voters and Overseas Voters must send their ballots back by 7:00 PM Mountain Time on Election Day, their ballots will be counted so long as they are received by the appropriate election official by the close of business on the eighth day after the election. *Id.* §§ 1-8.3-111, 1-8.3-113(2). But under Colorado’s Signature Matching Procedure, voters must cure ballots rejected for non-matching signatures by that same day, and Military Voters and Overseas Voters are not exempt from the signature matching requirement. *Id.* §§ 1-7.5-107.3(1.5)(b), 1-8.3-113(2); 8 COLO. CODE REGS. § 1505-1:16.2.6. Because the ballot receipt deadline for Military Voters and Overseas Voters is the same day as the signature cure deadline, Colorado’s Signature Matching Procedure means that the voters who sacrifice the most for the United States might be disenfranchised entirely if their signatures are deemed not to match, with no opportunity to cure.

86. Military Voters—who are outside of Colorado at the time of voting because they are on active duty and serving their country—with rejected ballots are most likely to have had their ballots rejected because of non-matching signatures. According to the Election Administration and

Voting Survey 2020 Comprehensive Report, the vast majority—80%—of the ballots from Military Voters that were rejected in the 2020 General Election were disallowed due to purportedly non-matching signatures. The Secretary has not provided information on how many more Military Voters' ballots were erroneously rejected for non-matching signatures but were cured in time to count after the voters jumped through additional hoops.

87. Likewise, according to the Election Administration and Voting Survey 2020 Comprehensive Report, nearly two-thirds of the ballots rejected from Overseas Voters in the 2020 General Election were disallowed because of purportedly non-matching signatures.

K. Other Groups Are Especially Vulnerable to Disenfranchisement Under the Signature Matching Procedure

88. Colorado's Signature Matching Procedure is especially likely to disenfranchise groups of voters who more likely to naturally exhibit wide ranges of variation in their signatures.

89. Voters with a disability or illness or who take certain prescription drugs that affect neuromuscular control and coordination are likely to exhibit a much wider range of variation in their signatures than are other individuals. Voters with Parkinson's Disease and Alzheimer's Disease, for example, tend to write much smaller, though that tendency could change depending on whether those voters take certain medication. Voters who have lost the use of their dominant hand and thus write with their non-dominant hand may also show a wide variation in their signatures. The longer a person writes with their non-dominant hand, the more consistent the signature will become, but that signature may never appear completely normal and natural, especially to a lay observer. This increased variation may make it nearly impossible for even a highly trained expert, no less a lay person, to determine authenticity.

L. The Signature Matching Procedure Imposes an Undue Burden on The Right to

Vote That is Not Justified by Any Legitimate, Much Less Compelling, State Interest

90. Colorado’s Signature Matching Procedure purports to serve as check on attempts at fraud, but it is unnecessary—both because other safeguards against fraud exist and because voter fraud is exceedingly rare—and ineffective.

91. This disenfranchising process cannot be justified by any fraud-prevention interest because voter impersonation fraud through the mail ballot system is virtually non-existent. During the 2018 General Election, voters cast 2.5 million ballots in Colorado, but the Secretary of State referred only 0.0027 percent—or approximately 69 ballots—for further investigation for potential fraud.²⁶ According to a conservative database known for being overinclusive, Colorado convicted only 16 individuals of election-related crimes between 2005 and 2022.²⁷ Only five of those cases appear to relate to absentee ballots.²⁸ *Id.* During that same time period, Colorado voters cast a total of 34,941,342 ballots in state-wide elections.²⁹ In other words, between 2005 and 2022, 0.00000014% of ballots cast resulted in convictions related to absentee ballot fraud.

²⁶ Monaghan, *supra* n.I.3; Saja Hindi, *The president says all-mail ballots benefit Democrats and lead to rampant voter fraud. Colorado says no.*, DENVER POST (May 24, 2020), <https://www.denverpost.com/2020/05/24/mail-vote-ballots-colorado-coronavirus/>.

²⁷ *See Election Fraud Cases*, THE HERITAGE FOUNDATION, https://www.heritage.org/voterfraud/search?combine=&state=CO&year=&case_type=All&fraud_type=All&page=1 (last visited Nov. 2, 2022).

²⁸ The Heritage Foundation’s database labeled a sixth case as relating to the “Fraudulent Use of Absentee Ballots,” but that case involved signatures on a petition and did not involve absentee ballots. *Compare id.* (listing 2012 Brittany Curtis case as involving fraudulent use of absentee ballot) with Denver DA Press Release, *Woman Charged in 2009 Petition Case* (Nov. 5, 2010), http://thf_media.s3.amazonaws.com/2020/Voter%20Fraud%20Database/9_21/Brittany%20Curtis%20CO%202012.pdf (file linked to as Heritage Foundation source describing charges against Brittany Curtis as involving signing petitions, not absentee ballots).

²⁹ *See* Colorado Secretary of State, *Election Results Archives*, <https://www.sos.state.co.us/pubs/elections/Results/Archives.html>.

92. The Signature Matching Procedure is also duplicative of multiple other safeguards against fraud already in place. For example, Colorado’s registered voters are individually mailed a ballot with a return envelope that is unique to that voter. 8 COLO. CODE REGS. § 1505-1:7.2.7. The State maintains records identifying who was sent a mail ballot and when, *see* COLO. REV. STAT. § 1-7.5-106.5, and voters can obtain a replacement ballot if they did not receive one. *See id.* § 1-7.5-107(3)(d).

93. The U.S. Postal Service provides a further check on mail ballots, returning undeliverable mail if the voter does not live at the designated address. *See id.* § 1-7.5-107(3)(a)(I) (stating that the mail ballot is sent through the United States Post office with a ‘DO NOT FORWARD. ADDRESS CORRECTION REQUESTED’ marker”). When that happens, the county clerk and recorder marks the registration status of the voter as inactive and sends them a confirmation card. *See id.* § 1-7.5-108.5.

94. Further, each ballot is verified by comparing the information on the return envelope to the registration records to ensure that the ballot was submitted by an eligible voter who had not yet voted. *Id.* § 1-7.5-107(5). And first-time voters who registered to vote by mail must submit a copy of their identification along with their mail ballot. *See id.* The mail ballots also include a warning that falsifying, altering, forging, or counterfeiting a mail ballot, as well as destroying, defacing, mutilating, or tampering with a mail ballot is a crime punishable by imprisonment, fine, or both. *Id.* § 1-7.5-107(b). Colorado law also criminalizes forgery relating to a mail ballot. *See id.* §§ 1-13-106, 1-13-112.

95. Colorado also requires that all mail ballot envelopes contain a self-affirmation stating:

I state under penalty of perjury that I am an eligible elector; that *my signature and name are as shown on this envelope*; that *I have not and will not cast any vote in this election except by the enclosed ballot*; and that my ballot is enclosed in accord with the provisions of the ‘Uniform Election Code of 1992.’

Id. § 1-7.5-107(b.5)(I) (emphasis added).

96. Voters can also enroll in BallotTrax, which informs voters when their ballot is sent and allows them to track their returned ballots and confirm when they have been counted. Flynn, *supra* n.22. These checks provide additional assurance that any attempted ballot fraud will be detected and deterred.

CLAIMS FOR RELIEF

COUNT I

Undue Burden on the Right to Vote Colorado Constitution Article II, §§ 5, 25

97. Plaintiffs reallege and incorporate by reference all prior and proceeding paragraphs, as though fully set forth herein.

98. Article II, Section 5 of the Colorado Constitution sets forth the right to vote: “[a]ll elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

99. The right to vote “is a fundamental right of the first order.” *Meyer v. Lamm*, 846 P.2d 862, 872 (Colo. 1993) (citation omitted). And “[c]oncomitant with the right to cast a vote is the *right to have that vote counted* without undue interference with the exercise of that right.” *Id.* (citation omitted) (emphasis added).

100. Under Colorado law, “the General Assembly may place ‘reasonable restrictions’ on the right to vote, [but] those restrictions may not ‘deny the franchise to the voter or render its

exercise so difficult and inconvenient as to amount to a denial of the right to vote.” *Id.* at 874 (internal citations omitted).

101. Colorado’s Signature Matching Procedure unconstitutionally burdens the right to vote. Signatures naturally vary and evolve. Colorado’s signature verification process does not adequately account for these explanations and presumes wrongdoing unless the voter “cures” the lay election judge’s error.

102. The Guide exacerbates the inherent problems with layperson signature verification by encouraging lay election judges—with no formal training or expertise—to actively look for reasons to conclude that signatures don’t match when they have no reason to believe that the ballot was fraudulently cast. The Guide fails to discuss normal variations that one might expect to find in genuine signatures, and it does not discuss reasons why someone’s signature may vary. The Guide effectively creates a presumption against counting ballots and forces many voters to take additional steps to have their ballots counted.

103. In 2020’s General Election, the Signature Matching Procedure completely disenfranchised 22,000 voters who were unable to cure in time and severely burdened more than an additional 11,000 voters who were forced to take additional steps to have their ballots counted, even though they were fully qualified to vote and had done everything the law demanded of them—(1) mark the ballot; (2) fill out the self-affirmation on the return envelope; and (3) mail or deposit the ballot on time. COLO. REV. STAT. § 1-7.5-107(4).

104. The Signature Matching Procedure imposes a severe and unreasonable burden—including outright disenfranchisement—on the right to vote for tens of thousands of Colorado voters in each election. Eligible voters’ mail ballots have been and will continue to be wrongly

rejected if election judges, who are not handwriting experts, determine that the signature on the mail ballot envelope does not match a signature the State has on file. Some voters are unable to send the State a Cure Form and Identification Document within the short window of time, and even those that are able to cure their ballots are burdened by the additional steps necessary to do so. What is more, if voters are unable to complete the State's cure procedures, they will be referred for criminal investigation, merely because they cast a ballot.

105. This extraordinary burden on the fundamental right to vote is not and cannot be justified by fraud prevention. In light of the paucity of voter fraud in Colorado and the number of other measures embedded in the mail-in voting process to guard against fraud, the Signature Matching Procedure is wholly unnecessary and therefore does not serve a legitimate, much less compelling, state interest. Nor is the Signature Matching Procedure narrowly tailored to any such interest. Any interest furthered by the procedure is vastly outweighed by the erroneous disenfranchisement of tens of thousands of voters who do everything required of them under the law.

106. Colorado's interest in implementing an error-prone, arbitrarily and unevenly applied, mass-disenfranchising Signature Matching Procedure, if any, is insufficient to justify the burden imposed on the right to vote.

107. Injunctive and declaratory relief are needed to resolve this existing dispute, which presents an actual controversy between the Defendant and Plaintiffs, who have adverse legal interests, because the Signature Matching Procedure will subject Plaintiffs to serious, concrete, and irreparable injuries by imposing severe burdens on the fundamental right to vote.

COUNT II

Equal Protection Colorado Constitution, Article II, § 25 Disparate Treatment

108. Plaintiffs reallege and incorporate by reference all prior and proceeding paragraphs, as though fully set forth herein.

109. Article II, Section 25 of the Colorado Constitution implicitly guarantees its citizens equal treatment under the law. *See Heninger v. Charnes*, 200 Colo. 194, 197, n.3 (Colo. 1980).

110. “When a statute is subjected to an equal protection challenge, the level of judicial scrutiny varies with the type of classification utilized and the nature of the right affected.” *Higgs v. Western Landscaping & Sprinkler Systems, Inc.*, 804 P.2d 161, 164 (Colo. 1991) (citation omitted). “If a classification creates a suspect class or interferes with the exercise of a fundamental right, it is subject to strict judicial scrutiny and the government bears the burden of establishing that the classification is necessarily related to a compelling governmental interest.” *Bath v. Colorado Dep’t of Revenue, Motor Vehicle Div.*, 758 P.2d 1381, 1385 (Colo. 1988).

111. Colorado’s Signature Matching Procedure interferes with the exercise of the fundamental right to vote and disproportionately disenfranchises young, Latino, Black, and Asian voters, whose ballots are rejected at much higher rates than are those of older white voters. In the 2020 general election, voters of color were approximately twice as likely to be disenfranchised by Colorado’s Signature Matching Procedure than white voters, young voters were up to nearly fifteen times more likely to be disenfranchised than older voters, and young Black and Latino voters were disenfranchised more than twenty times the rate of older white voters.

112. Colorado's Signature Matching Procedure, therefore, unduly burdens young, Latino, Black, and Asian voters in the exercise of their fundamental right to vote. This burden is not justified by any legitimate, much less compelling, state interest. Nor is Colorado's Signature Matching Procedure narrowly tailored to achieving any such purpose.

113. Colorado's Signature Matching Procedure has unconstitutionally burdened, and, if not declared illegal and enjoined, will continue to unconstitutionally burden, the right to vote of young, Latino, Black, and Asian voters in Colorado.

114. Injunctive and declaratory relief are needed to resolve this existing dispute, which presents an actual controversy between the Defendant and Plaintiffs, who have adverse legal interests because the Signature Matching Procedure subjects Plaintiffs to serious, concrete, and irreparable injuries due to disparate treatment in violation of equal protection.

COUNT III

Equal Protection Colorado Constitution, Article II, § 25 Disparate Treatment (County Disparity)

115. Plaintiff realleges and incorporates by reference all prior and proceeding paragraphs, as though fully set forth herein.

116. Colorado's error-prone Signature Matching Procedure denies voters equal protection because it subjects voters to arbitrary and diverging standards depending on the county in which they reside. *See Bush v. Gore*, 531 U.S. 98, 104-05 (2000) ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value

one person's vote over that of another."').³⁰ Counties employ diverging matching procedures and standards when counting mail ballots. Accordingly, counties vary drastically in the rate at which they reject signatures.

117. This disparate treatment is not justified by any legitimate, much less compelling state interest, nor is Colorado's Signature Matching Procedure narrowly tailored to any such interest. Colorado's interest in implementing an error-prone, arbitrarily enforced Signature Matching Procedure, if any, is insufficient to justify the disparate treatment of voters that ultimately results in disenfranchisement.

118. Injunctive and declaratory relief are needed to resolve this existing dispute, which presents an actual controversy between the Defendant and Plaintiffs, who have adverse legal interests, because the Signature Matching Procedure subjects Plaintiffs to serious, concrete, and irreparable injuries due to disparate treatment in violation of equal protection.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment:

- a) Declaring that the Signature Matching Procedure violates Sections 5 and 25 of Article II of the Colorado Constitution;
- b) Temporarily, preliminarily, and permanently enjoining the Defendant, her respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to the Signature Matching Procedure
- c) Temporarily, preliminarily, and permanently enjoining Colorado election officials and election judges from using the Signature Matching Procedure for a purpose other than confirming that the return envelope has been signed;
- d) Granting such other and further relief as the Court deems just and proper.

³⁰ Plaintiffs cite *Bush v. Gore* for its persuasive effect and not to invoke federal law as a basis for this claim.

Dated this 6th day of February, 2023.

Respectfully submitted,

/s/ Jessica R. Frenkel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 6, 2023, a true and correct copy of the foregoing Second Amended Complaint for Declaratory and Injunctive Relief was served via the Colorado Court's E-Filing System, to:

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