

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	
DANIEL L. RITCHIE, an individual, COLORADO CONCERN, a Colorado non-profit corporation, Plaintiffs, v. JARED POLIS, in his capacity as Governor of Colorado, and JENA GRISWOLD, in her capacity as Colorado Secretary of State, Defendants.	
<i>Attorneys for Plaintiffs:</i> Christopher O. Murray, #39340 Sarah M. Mercer, #39367 Stanley L. Garnett, #12282 Melissa Kuipers Blake, #46447 Julian R. Ellis, Jr., #47571 Brownstein Hyatt Farber Schreck, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Tel: 303.223.1183 (tel.) Fax: 303.223.1111 (fax) Email: cmurray@bhfs.com	Case Number: Div.:
VERIFIED COMPLAINT FOR EXPEDITED DECLARATORY RELIEF	

Plaintiffs Daniel L. Ritchie and Colorado Concern file this Verified Complaint for
Declaratory Relief, and allege:

JURISDICTION & VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Colo.
Const. art. V, § 1 and C.R.S. §§ 13-51-101, -106.

2. Venue is proper in this Court pursuant to Colo. R. Civ. P. 98(b)(2).

PARTIES

3. Plaintiff Daniel L. Ritchie is an individual and a registered elector residing in Denver County. Mr. Ritchie serves on the board of Colorado Concern.

4. Founded in 1986, Plaintiff Colorado Concern, Inc. (Colorado Concern) is a statewide CEO-based organization devoted to investing in and promoting a pro-business environment through the political process.

5. Defendant Jared Polis is the Governor of Colorado (Governor). Pertinent here, the Governor issued Executive Order D 2020 065, entitled “Ordering the Temporary Suspension of Certain Regulatory Statutes Concerning Signature Collection for Ballot Issues and Authorizing the Secretary of State to Create Temporary Rules for Registered Electors to Receive and Return Issue Petitions Over Mail and Email Due to the Presence of COVID-19” (Executive Order) late in the evening of Friday, May 15, 2020.

6. Defendant Jena Griswold is the Colorado Secretary of State (Secretary). Pertinent here, the Executive Order charges the Secretary with “promulgat[ing] and issu[ing] temporary emergency rules that allow campaigns for ballot issues that have titles set or pending before the Colorado Supreme Court . . . to continue collecting signatures in a way that protects public health consistent with the Constitutional requirement that some registered elector must attest to the validity of signatures on the petition.”

FACTUAL ALLEGATIONS

Colorado Constitution Article V, Section 1

7. The Colorado Constitution (Constitution) was drafted on March 14, 1876 and adopted by Colorado's electorate on July 1, 1876. The Constitution took effect upon Colorado's admission to the Union on August 1, 1876.

8. From the time of its drafting, article V of the Constitution has governed the exercise of the legislative power of Colorado's government.

9. Article V, section 1 of the Constitution vests the legislative power in the General Assembly with the exception of the powers of initiative and referendum, which are expressly reserved for direct exercise by the people of Colorado themselves.

10. Since 1910, article V, section 1 has specified requirements for the exercise of the powers of initiative and referendum by the people of Colorado.

11. Article V, section 1, subsection 2 of the Constitution establishes requirements for the exercise of the power of initiative as follows:

The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

12. Likewise, article V, section 1, subsection 6 of the Constitution specifies the substantive requirements as to the form of petitions:

The petition ***shall consist of sheets having such general form printed or written at the top thereof*** as shall be designated or prescribed by the secretary of state;

such petition shall be signed by registered electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors.

(Emphasis added.)

13. Article V, section 1 is in all respects self-executing, “except that the form of the initiative or referendum petition may be prescribed pursuant to law.” Colo. Const. art. V, § 1(10).

Title 1, Article 40 of the Colorado Revised Statutes

14. Title 1, Article 40 of the Colorado Revised Statutes (Article 40) provides the statutory framework for the exercise of the initiative power. *See* C.R.S. § 1-40-103(1).

15. Article 40 includes several provisions that prescribe the form of initiative petitions and implement the safeguards for the petitioning process set out in article V, section 1 of the Constitution.

16. Article 40 defines a petition section as:

“Section” means a bound compilation of initiative forms approved by the secretary of state, which shall include pages that contain the warning required by section 1-40-110 (1), the ballot title, the abstract required by section 1-40-110 (3), and a copy of the proposed measure; succeeding pages that contain the warning, the ballot title, and ruled lines numbered consecutively for registered electors' signatures; and a final page that contains the affidavit required by section 1-40-111 (2). Each section shall be consecutively prenumbered by the petitioner prior to circulation.

C.R.S. § 1-40-102(6).

17. Article 40 requires that certain language shall be printed on every petition section, including (i) a warning that only eligible electors may sign initiative petitions, (ii) a statement explaining that by signing the petition the elector is indicating that he or she wants the measure included on the ballot, (iii) the ballot title for the proposed measure and (iv) an abstract of the proposed measure. *See* C.R.S. §§ 1-40-105.5(4) (requiring printing of abstract), 1-40-110 (requiring printing of warning, statement as to effect of signature, ballot title and abstract).

18. Article 40 mandates that each petition section shall be printed on a form prescribed by the Secretary pursuant to law and prohibits the circulation of any petition section without the approval of the form and printer's proof by the Secretary, who "shall assure that the petition contains only the matters required by this article and contains no extraneous material." C.R.S. § 1-40-113(1)(a).

19. Article 40 prohibits the "circulation of any petition section described by this Article other than personally" and provides that any "petition section circulated in whole or in part by anyone other than the person who signs the affidavit attached to the petition section shall be invalid." *Id.*

20. Article 40 requires that any petition section that is disassembled to separate the affidavits of petition circulators from the signatures "shall render that section of the petition invalid and of no force and effect." C.R.S. § 1-40-113(2).

21. And Article 40 makes plain that "[a]ny petition section that fails to conform to the requirements of this article or is circulated in a matter other than that permitted in this article shall be invalid." C.R.S. § 1-40-113(1)(a).

The 2019-2020 Initiative Season

22. Pursuant to Article 40, the first opportunity for proponents of initiated measures to have their draft initiatives considered by the State Title Setting Board was Wednesday, December 5, 2018. *See* C.R.S. § 1-40-106(1) (providing that the first meeting of the State Title Setting Board shall not occur no sooner than the first Wednesday in December after an election); *see also* Colorado Secretary of State 2019-2020 Initiative Calendar, available at <https://www.sos.state.co.us/pubs/elections/Initiatives/files/initiativeCalendar.pdf>.

23. As of the filing of this Verified Complaint, two initiatives—2019-2020 #76 (clarifying the requirement of U.S. citizenship for Colorado electors) and 2019-2020 #107 (regarding the proposed restoration of gray wolves in Colorado)—have qualified for the ballot. A third—2019-2020 #120 (forbidding certain late-term abortions)—is currently in a two-week “cure period” during which its proponents are seeking to provide additional valid signatures to cure a Statement of Deficiency from the Secretary.

24. Of the 66 initiatives with a title currently set, 14 initiatives have been approved for circulation with the remaining 52 needing only to submit petitions for review and approval of their format by the Secretary.

25. Plaintiff Ritchie will be adversely impacted by several of these initiatives if they become law.

26. For example, Initiative 2019-2020 #247—which has been approved for circulation—would create a mandatory state-run paid medical and family leave program into which employers and employees would be required to contribute. This would directly impact a charity chaired by Plaintiff Ritchie.

27. Another example is Initiative 2019-2020 # 271—also approved for circulation—would eliminate Colorado’s flat rate of income taxation and would replace it with a graduated income tax system under which Plaintiff Ritchie’s taxes would be increased.

28. The last day to circulate petitions and to submit them to the Secretary for verification is Monday, August 3, 2020. This means there are 78 days remaining to circulate petitions for those initiatives eligible to do so.

29. The first initiative in the 2019-2020 cycle to have its petition format approved was approved for circulation on March 5, 2019. The proponents of that initiative had until August 5, 2019 to submit their signatures—over seven months before the Governor declared a disaster emergency in Colorado due to COVID-19.

The Governor’s Emergency Declaration

30. On March 10, 2020, the Governor declared a disaster emergency in Colorado due to the community spread of a novel coronavirus causing a disease called COVID-19. *See* Executive Order No. D 2020 003.

31. On March 25, 2020, the Governor ordered all Coloradans to stay home due to the continued presence and spread of the novel coronavirus. *See* Executive Order No. D 2020 017.

32. The Governor’s order for Coloradans to stay at home expired on April 26, 2020. *Id.*

33. Similar “stay at home” orders imposed by local jurisdictions in Colorado expired on or before May 8, 2020.

34. Indeed, the Governor has expressed that other activities typically conducted out-of-doors like petition signature gathering are due to return.

35. On May 11, 2020, just four days before issuing the Executive Order, the Governor announced that state campgrounds will be opening beginning May 12, 2020. *See* Press Release, *Governor Polis Updates Coloradans on Timeline for Decision Making Under Safer at Home Phase* (May 11, 2020), <https://www.colorado.gov/governor/news/governor-polis-updates-coloradans-timeline-decision-making-under-safer-home-phase>.

36. In the same announcement, the Governor offered that outdoor dining in restaurants may return before the end of May. *Id.*

37. Under the Colorado Disaster Emergency Act, C.R.S. §§ 24-33.5-701 to -716, “the governor may: (a) [s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.” C.R.S. § 24-33.5-704(7)(a).

The Executive Order

38. Late in the evening on Friday, May 15, 2020, the Governor signed the Executive Order. A true and correct copy of the Executive Order is attached as **Exhibit 1** to this Verified Complaint.

39. The Executive Order purports to temporarily suspend the requirements in C.R.S. §§ 1-40-102(6), 1-40-110, 1-40-105.5(4), and 1-40-113 that govern the form of a ballot issue, how a ballot issue petition must be compiled, and the specific information that must be printed on the ballot issue petition.

40. The Executive Order purports to temporarily suspend the requirements in C.R.S. § 1-40-111 that a petition circulator be in the physical presence of the registered electors signing the petition, that the petition circulator be in the physical presence of a notary, and that the Secretary reject any section of a petition that does not have a notarized circulator affidavit attached.

41. The Executive Order purports to temporarily suspend the requirements in C.R.S. § 1-40-116 that a circulator's affidavit be attached to each section of the ballot issue petition and that the Secretary assure that the information required by C.R.S. § 1-40-111(2) is complete.

42. The Executive Order purports to temporarily suspend C.R.S. § 1-40-130(1)(k), which makes it unlawful for a petition to be signed outside the presence of a circulator, § 1-40-130(1)(e), to the extent that it requires an affidavit to a ballot petition be signed in the physical presence of the person certifying the affidavit, and § 1-40-130(1)(l), which makes it unlawful for any person to circulate in whole or in part a petition section, unless such person is the circulator who signs the affidavit attached to the petition section.

43. The Executive Order purports to authorize the Secretary to promulgate and issue temporary emergency rules to fill the void left by the Governor's temporary suspension of these core provisions of Article 40.

**FIRST CLAIM FOR RELIEF
(Colorado Disaster Emergency Act)**

44. Plaintiffs incorporate and reallege the allegations of paragraphs 1-43 above.

45. The Colorado Disaster Emergency Act limits the Governor's power to suspend law during a declared emergency to those statutes prescribing the procedures for conduct of state business and only if strict compliance with the provisions of such statutes, would in any way

prevent, hinder, or delay necessary action in coping with the emergency. C.R.S. § 24-33.5-704(7)(a).

46. Strict compliance with Article 40, which implements the constitutional directives of article V, section 1, does not and cannot in any way prevent, hinder, or delay necessary action in coping with the emergency, especially in the wake of the expiration of the Governor's stay at home order on April 26, 2020.

47. The actions of the Governor in issuing the Executive Order are therefore ultra vires as in excess of his authority under the Colorado Disaster Emergency Act and must be held void and of no legal effect.

**SECOND CLAIM FOR RELIEF
(Declaratory Judgment Pursuant to C.R.S. § 13-51-106)**

48. Plaintiffs incorporate and reallege the allegations of paragraphs 1-47 above.

49. C.R.S. § 13-51-106 provides in pertinent part that "[a]ny person . . . whose rights, status, or other legal relations are affected . . . may have determined any question . . . and obtain a declaration of rights, status, or other legal relations thereunder."

50. As set forth above, Plaintiffs have suffered an injury in fact to the legally protected interest of their right to insist that any initiative petition presented to them for their signature be in a form that will work to give effect to their indication of support for the measure.

51. Further, Plaintiffs have suffered an injury to their legally protected interest in requiring, as electors and participants in the political process, the ability to ascertain the rules by which initiative proponents must conduct their petition gathering in conformity with the Constitution.

52. Declaratory relief is required, as there is a presently existing controversy regarding the constitutionality of the Defendants' actions.

53. Pursuant to C.R.S. § 13-51-106 and Colo. R. Civ. P. 57, Plaintiffs request a determination that the actions of Defendants violated the Colorado Disaster Emergency Act and the Colorado Constitution, and that the Executive Order is therefore void as will be any temporary emergency rules issued and promulgated by the Secretary pursuant to it.

54. Plaintiffs request an expedited determination pursuant to Colo. R. Civ. P. 57(m). The gathering of initiative petition signatures is ongoing and is currently occurring without the protections of Article 40. Therefore, time is of the essence.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray this Court order relief as follows:

1. Set an expedited determination pursuant to Colo. R. Civ. P. 57(m);
2. Declare pursuant to C.R.S. § 13-51-106 and Colo. R. Civ. P. 57, that the action of the Governor to suspend core provisions of Article 40 are ultra vires as in excess of the authority granted to him under the Colorado Disaster Emergency Act;
3. Declare pursuant to C.R.S. § 13-51-106 and Colo. R. Civ. P. 57, that the action of the Governor to suspend Colorado's requirement that a petition signature be personally collected and witnessed by a third-party circulator to be entitled to presumption of regularity and validity is violation of article V, section 1 of the Constitution;
4. Declare pursuant to C.R.S. § 13-51-106 and Colo. R. Civ. P. 57, that the Secretary may not issue and/or promulgate any rules giving effect to the Governor's Executive Order D 2020 0065.

4. Enter an order restraining and enjoining Defendants from:
 - A. Exercising the Governor's authority under the Colorado Disaster Emergency Act, C.R.S. §§ 24-33.5-701 to -716, to suspend any part of Title 1, article 40;
 - B. Acting upon Executive Order D 2020 065 to promulgate on an emergency or permanent basis, any rules giving effect to the Governor's suspension of any part of Title 1, article 40 of the Colorado Revised Statutes.
5. Enter such other and further relief as may be appropriate.

Dated May 18, 2020.

Brownstein Hyatt Farber Schreck, LLP

By: /s/ Christopher O. Murray
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VERIFICATION

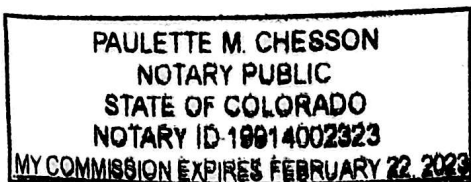
STATE OF COLORADO)
COUNTY OF Denver) ss.

I, Daniel L. Ritchie, having been first duly sworn under oath, state that I am a plaintiff in the within action, that I have read the foregoing VERIFIED COMPLAINT FOR EXPEDITED DECLARATORY RELIEF and that the facts set forth therein are true and correct to the best of my knowledge and belief.


Daniel L. Ritchie

SUBSCRIBED AND SWORN to before me this 17th day of May 2020, by Daniel L. Ritchie.

My commission expires: 2/22/23

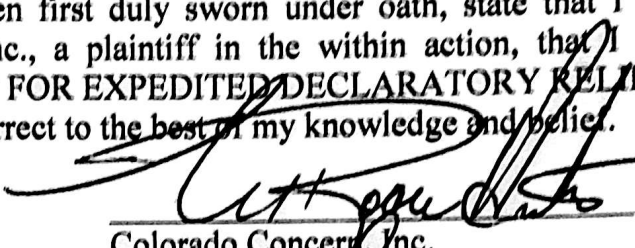



Notary Public

VERIFICATION

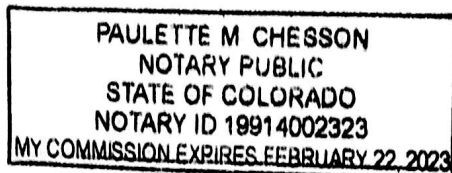
STATE OF COLORADO)
COUNTY OF Denver) ss.

I, Roger Hutson, having been first duly sworn under oath, state that I am the Board Chairman of Colorado Concern, Inc., a plaintiff in the within action, that I have read the foregoing VERIFIED COMPLAINT FOR EXPEDITED DECLARATORY RELIEF and that the facts set forth therein are true and correct to the best of my knowledge and belief.


Colorado Concern, Inc.
By: Roger Hutson, Board Chairman

SUBSCRIBED AND SWORN to before me this 17th day of May 2020, by
Roger Hutson, Board Chairman of Colorado Concern, Inc.

My commission expires: 2/22/2023




Notary Public