

**DISTRICT COURT, DENVER COUNTY
STATE OF COLORADO**

1437 Bannock Street
Denver, Colorado 80202

LIBERTARIAN PARTY OF COLORADO, a
Colorado minor political party, by and through,
HANNAH GOODMAN, as Party Chair; and,
JAMES WILEY, Congressional Candidate for
Colorado's 3rd District,

Petitioners,

v.

JENA GRISWOLD, in her official capacity as
Secretary of State of Colorado; and,
CHRISTOPHER P. BEALL, in his official capacity
as Deputy Secretary of State of Colorado,

Respondents.

Attorney for Petitioners:

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Case No.

Div.

VERIFIED PETITION FOR RELIEF PURSUANT TO C.R.S. § 1-1-113

COME NOW Petitioners, LIBERTARIAN PARTY OF COLORADO and JAMES WILEY, through counsel, Gary D. Fielder, Esq., pursuant to C.R.S. § 1-1-113, and hereby submit the following verified petition against JENA GRISWOLD, in her official capacity as Secretary of State of Colorado, and CHRISTOPHER P. BEALL, in his official capacity as Deputy Secretary of State of Colorado.

I. INTRODUCTION

Petitioners are the Libertarian Party of Colorado and James Wiley of Pueblo, a Libertarian candidate for the United States House of Representatives, Colorado's 3rd District, on the ballot for the upcoming General Election on Tuesday, November 5, 2024.

On Thursday, October 24, 2024, the Colorado Secretary of State, JENA GRISWOLD, removed a publicly accessible spreadsheet file named Voting Systems Inventory from the Colorado Secretary of State's website. This inventory file contained Basic Input/Output System (BIOS) passwords for election systems currently in use in up to 63 of the 64 counties in Colorado.

The passwords were located on hidden sheets within the spreadsheet and were not encrypted or otherwise protected. BIOS passwords allow a person to access and gain control over Colorado's voting systems, which includes the ability

to manipulate those systems and election results. Such access would allow that person to remove any trace of use by overwriting the system logs necessary for a subsequent audit. In allowing these passwords to be available to the public, the Secretary has breached her duty to ensure that Colorado's upcoming General Election is fair and accurate.

Colorado law requires the revocation of the Secretary's access to the state's voting system for causing these passwords to be published, and is punishable by a presumptive sentence of one to three years in the Department of Corrections. Instead of acting against the Secretary, Respondent, CHRISTOPHER P. BEALL, in his official capacity as Deputy Secretary of State, issued an emergency, temporary, voting rule change to allow the Secretary to change the passwords. This would allow employees or designees of the Secretary to access Colorado's voting systems literally days before the General Election to change the system's configuration after certification. The Deputy Secretary does not have the authority to make election rules, and Petitioners request that his temporary rule be voided. Petitioners further request that, among other things, this Court decommission any voting system device that was associated with the published passwords in Colorado's upcoming General Election.

II. PARTIES

1. Petitioner, Libertarian Party of Colorado (LPCO), is a recognized minor party in the state of Colorado, with an address of 11757 W Ken Caryl Ave, F124, Littleton, CO 80127.

2. Petitioner, James Wiley (Mr. Wiley), is a natural person and citizen of the state of Colorado and the United States of America. Mr. Wiley is a certified 2024 LPCO candidate for Colorado's 3rd Congressional District.

3. Respondent, JENA GRISWOLD (Secretary), is named in her official capacity as Secretary of the State of Colorado.

4. Respondent, CHRISTOPHER P. BEALL (Deputy Secretary), is named in his official capacity as Deputy Secretary of the State of Colorado.

III. JURISDICTION AND VENUE

5. Jurisdiction of the district court is properly invoked pursuant to C.R.S. § 1-1-113.

6. The district court has subject matter jurisdiction over the parties and this action, pursuant to Art. VI, § 9 of the Colorado Constitution.

7. Venue is proper in the county of Denver, pursuant to C.R.C.P. 98(b)(2).

IV. GENERAL ALLEGATIONS

8. On Thursday, October 24, 2024, the Secretary removed over 600 BIOS passwords to Colorado's voting systems in 63 of 64 of the state's counties that were contained in a publicly available Voting Systems Inventory spreadsheet on the Secretary of State's website.

9. On Tuesday, October 29, 2024, following the publication of the security breach by a third party, the Secretary notified the affected counties.

10. During that time-period, the voting systems in those counties were being used to scan ballots that had been mailed or delivered to the different counties, respectively.

11. The BIOS passwords had been on the Secretary's website since at least June of 2024, which is before Colorado's Primary Elections that were held on June 25, 2024.

12. In Colorado, voters mark their election choices on paper ballots, which are scanned and tabulated by voting devices.

13. The subject BIOS passwords allow a user to access a county's voting systems and data base.

14. Colorado's computerized voting systems are designed to allow county election officials to scan, tabulate, and review ballots, and to store vote-count data.

15. These BIOS passwords are a critical part of the security system for the voting systems' scanners, tabulators and servers.

16. The subject BIOS passwords allow access to a county's Election Management System (EMS), it's ImageCast® Central device, the Microsoft server, EMS client, adjudication client, and other voting devices.

17. Access to the voting system would allow the user to manipulate the data, change the totals, modify procedures, and otherwise make significant changes to how the system operates, which includes disabling restrictions against certain devices that can be plugged in, such as networking devices.

18. Pursuant to C.R.S § 1-1-107, the Secretary has the duty to,:

- a. Supervise the conduct of primary, general, congressional vacancy, and statewide ballot issue elections in this state;
- b. Serve as the chief state election official within the meaning of the federal "Help America Vote Act of 2002", 52 U.S.C. 20901 et seq., and, in that capacity, to coordinate the responsibilities of the state of Colorado under the federal act in accordance with the requirements of this code; and,

- c. Secure the purity of Colorado's elections and to guard against the abuses of the elective franchise, pursuant to section 11 of article VII of the state constitution.

19. The Secretary breached those duties by publishing the subject BIOS passwords on the Secretary of State's website.

20. On June 2, 2022, C.R.S. § 1-13-708(2), became Colorado law, which states:

Any person who knowingly publishes or causes to be published passwords or other confidential information relating to a voting system *shall immediately have their authorized access revoked* and is guilty of a class 5 felony. [*Emphasis added*].

21. C.R.S. § 18-8-405(1), states:

A public servant commits second degree official misconduct if [s]he knowingly, arbitrarily, and capriciously:

- (a) Refrains from performing a duty imposed upon him [or her] by law; or
- (b) Violates any statute or lawfully adopted rule or regulation relating to h[er] office.

22. Instead of taking corrective action against the Secretary, the Office of the Secretary of State simply changed the election rules, five days before the upcoming General Election.

23. On Thursday, October 31, 2024, the Office of the Secretary of State issued a notice of temporary adoption of Colorado's Department of State Elections Rules, under 8 CCR 1505-1. Attached hereto as Petitioner's Exhibit 1 is a copy of said notice, as though fully contained, herein.

24. Said "New Emergency Rule 20.5(c)(12) concerning the updating of BIOS passwords" states:

IF THE SECRETARY OF STATE DETERMINES THAT ANY BIOS PASSWORD NEEDS TO BE CHANGED, THEN AN EMPLOYEE OR DESIGNEE OF THE SECRETARY OF STATE MAY BE TASKED WITH ACCESSING THE VOTING SYSTEM COMPONENT TO FORTHWITH CHANGE THE PASSWORD(S). THE EMPLOYEE OR DESIGNEE OF THE SECRETARY OF STATE MAY ALSO TAKE ACTIONS TO INVESTIGATE THE VOTING SYSTEM. ANY EMPLOYEE OR DESIGNEE OF THE SECRETARY OF STATE WHO PERFORMS A TASK IN ACCORDANCE WITH THIS RULE MUST FIRST PASS A BACKGROUND CHECK IN ACCORDANCE WITH RULE 20.2.1.

25. This so-called "New Emergency Rule" was "Temporarily adopted on 31st of October 2024, by Deputy Secretary of State, Christopher P. Beall, For Jena Griswold, Colorado Secretary of State."

26. The Deputy Secretary does not have authority under Colorado law to promulgate new rules.

27. Said "New Emergency Rule 20.5.2(c)(12)" is void.

28. If, in fact, the Deputy Secretary was acting on behalf of the Secretary, this Rule void change is void as against public policy. Based upon information and belief, the Secretary violated her duty under Colorado law and committed a crime.

29. Based upon the violation of C.R.S. § 18-8-405(1), and the breach in the discharge of the Secretary's duties, the voting devices and systems to which the passwords were disclosed are no longer certified pursuant to the *Help America Vote Act of 2002*, Pub. L. No. 107-252, 116 Stat. 1666 (2002).

30. Based upon information and belief, any modifications, including the updating of any passwords to the subject voting machines and systems, herein described, creates a circumstance wherein the previous certifications of the voting systems involved are void.

31. In May of 2021, former Mesa County Clerk and Recorder, Tina Peters (Ms. Peters), took video and photographs of the trusted build process of Mesa County's voting system, which later appeared on the Internet.

32. Upon learning of the security breach, the Secretary initiated an immediate investigation and issued three election orders pursuant to her statutory authority.

33. On August 9, 2021, the Secretary issued Election Order 2021-01, directing Ms. Peters to, among other things: 1) grant access to Department of State civil servant employees to reset BIOS passwords on Mesa County's voting machines and inspect those machines for any evidence of tampering; 2) identify individuals with access to Mesa County's voting systems and produce chain-of-custody logs and video surveillance of voting system components; 3) produce communications relating to the trusted build process; 4) produce documents showing that criminal background checks were performed for all Mesa County staff present at the trusted build; and 5) prohibit any individual from accessing any component of Mesa County's voting system.

34. On August 12, 2021, the Secretary issued Election Order 2021-02, which ordered the decommissioning of 41 voting system components in Mesa County affected by the exposure of the BIOS passwords, forcing the purchase of new equipment at the county's expense.

35. The Secretary found that the chain-of-custody of the components could not be confirmed, including whether those components were accessed and/or altered after May 25, 2021.

36. The Colorado County Clerks Association, comprised of Colorado's sixty-four Republican, Democratic and unaffiliated County Clerks and Recordors, announced its support for the Secretary's prohibition on the use of Mesa County's voting equipment in 2021.

37. On August 17, 2021, the Secretary issued Election Order 2021-03, appointing Sheila Reiner; and, later, former Secretary of State Wayne Williams was appointed by the Board of County Commissioners "to supervise all conduct related to elections in Mesa County occurring under the authority of" the Elections Code, and a three-person advisory committee.

38. On July 11, 2022, the Secretary adopted Election Rule 8 CCR 1505-1, Rule 20.5.2(c)(11), which states:

The civil servants at the Department of State will securely and confidentially maintain all BIOS passwords for voting system components.

39. Ms. Peters was subsequently prosecuted and is now in the Department of Corrections.

V. CLAIM FOR RELIEF
(C.R.S. § 1-1-113)

40. Petitioners incorporate herein by reference all of the allegations contained in the preceding paragraphs, as though fully contained herein.

41. C.R.S. § 1-1-113 states, in pertinent part:

When *any* controversy arises between any official charged with *any* duty or function under this code and any candidate...files a verified petition in a district court of competent jurisdiction alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act, after notice to the official which includes an opportunity to be heard, upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code. The order shall require the person charged to forthwith perform the duty or to desist from the wrongful act or to forthwith show cause why the order should not be obeyed. The burden of proof is on the petitioner. [*Emphasis added*].

42. Pursuant to C.R.S. § 1-1-113, a controversy has arisen between the Petitioners and the Secretary and Deputy Secretary.

43. The Secretary and Deputy Secretary are under a duty to ensure that Colorado's elections are legal, lawful and fair.

44. The Secretary and Deputy Secretary have breached their duties and committed wrongful acts, as herein described.

45. On October 30, 2024, 2024 Presidential candidate, Donald Trump, through counsel, sent a letter to the Secretary requesting that “a new Trusted Build” be conducted, and an “immediate halt” of “the processing of mail ballots received” in preparation “to re-scan all mail ballots already scanned after the new Trusted Build and Logic and Accuracy Tests are completed.” Attached hereto as Exhibit 2 is a copy of said letter, as though fully contained, herein.

46. Petitioners do not believe that simply changing the passwords and conducting a new “Trusted Build” is insufficient under these circumstances.

47. Petitioners request that this Court orders:

- a.) The Secretary and the Office of the Secretary of State be immediately recused from participating in Colorado’s 2024 General Election;
- b.) Every voting system component to which the published passwords are associated be immediately decommissioned;
- c.) The ballots submitted to the respective counties across the state be hand counted;
- d.) Temporary Rule 8 CCR 1505-1, Rule 20.5.2(c)(12) is void;
- e.) The Colorado Attorney General conduct an investigation concerning the publishing of the BIOS passwords.

VI. PRAYER FOR RELIEF

Wherefore, the Petitioners hereby request that this Honorable Court issue orders, pursuant to C.R.S. § 1-1-113, that:

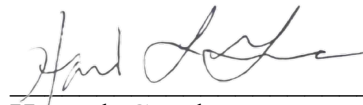
- 1) Petitioners serve the Offices of the Secretary of State and Attorney General by no later than 11:00 a.m. on this day of Friday, November 1, 2024;
- 2) Upon service, Respondents answer this complaint by the close of business (midnight), Friday, November 1, 2024;
- 3) A hearing be held on Monday, November 4, 2024;
- 4) The Attorney General conduct a full and fair investigation of this matter;
- 5) Every voting system component in the state of Colorado that are associated with the published BIOS passwords be immediately decommissioned;
- 6) All of the ballots submitted by Colorado voters be hand counted by the respective counties of the state;
- 7) Temporary Rule 8 CCR 1505-1, Rule 20.5.2(c)(12) is void;
- 8) Respondents desist from promulgating any new rules or regulations concerning this matter, until it resolved;
- 9) Respondents pay for the attorney fees and costs of Petitioners; and,
- 10) For any such further relief that may be deemed just and proper.

Respectfully submitted this 1st day of November 2024,

By: /s/ Gary D. Fielder, Esq.
Gary D. Fielder, #19757

Hannah Goodman
310 S Morlan Ave.
Holyoke, CO 80734

I, Hannah Goodman, declare under penalty of perjury under the laws of the United States and Colorado that the foregoing is true and correct to the best of my knowledge.



Hannah Goodman

James Wiley
2028 N Greenwood St.
Pueblo, CO 81003

I, James Wiley, declare under penalty of perjury under the laws of the United States and Colorado that the foregoing is true and correct to the best of my knowledge.



James Wiley