

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

CARYN ANN HARLOS,
KIYOMI BOLICK,
ANDREW MADSON,

Plaintiffs,

v.

DISTRICT ATTORNEY MITCH MORRISSEY, in his official capacity;
ATTORNEY GENERAL CYNTHIA COFFMAN, in her official capacity;
SECRETARY OF STATE WAYNE WILLIAMS, in his official capacity;

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, through their attorneys Adam Frank and Faisal Salahuddin of FRANK & SALAHUDDIN LLC, respectfully allege as follows:

INTRODUCTION

1. This is a civil rights action for declaratory and injunctive relief brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of Colorado Revised Statute § 1-13-712, subsections (1) and (3), both facially and as applied.
2. Subsections (1) and (3) of Colorado Revised Statute § 1-13-712 each prohibit important political speech that is protected by the First Amendment.
3. As a result of Colorado Revised Statute § 1-13-712, Plaintiffs each face a restraint on their political speech. Certain Plaintiffs even face potential prosecution.

4. Plaintiffs ask that this Court declare that subsections (1) and (3) of Colorado Revised Statute § 1-13-712 are unconstitutional and enjoin Defendants from enforcing this unconstitutional law.

JURISDICTION AND VENUE

5. This action arises under the First and Fourteenth Amendments to the United States Constitution. It is brought pursuant to 42 U.S.C. § 1983. This Court possesses subject matter jurisdiction pursuant to 28 U.S.C. § 1343 and 28 U.S.C. §1331. This Court has the authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-02. This Court further has the authority to award attorneys' fees pursuant to 42 U.S.C. § 1988(b).

6. Venue of this action is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All Plaintiffs and Defendants reside in the District of Colorado and all events giving rise to this litigation occurred in the District of Colorado.

PARTIES

7. Plaintiff Caryn Ann Harlos is the Communications Director of the Libertarian Party of Colorado, as well as the Region 1 Representative¹ on the Libertarian National Committee. Ms. Harlos, in her role as Communications Director, has made and would like to publish a video of herself filling out her ballot while describing why she is voting for Gary Johnson, the Libertarian Party's candidate for President. As the Communications Director for a third party, it is vital to her party's future she be allowed to publicize her vote on social media in order to encourage others to vote for her party's candidates in this and future elections.

¹ Region 1 covers Alaska, Arizona, Colorado, Hawaii, Kansas, Montana, Utah, Wyoming, and Washington.

8. Plaintiff Kiyomi Bolick is a voter in Denver County. She is extremely proud to have voted for her chosen candidate for President.² As an expression of her political beliefs, Ms. Bolick posted a photograph of her ballot on Facebook. Ms. Bolick was then contacted through Facebook by an acquaintance who is a prosecutor with the Colorado Attorney General's Office. This prosecutor notified Ms. Bolick that it was illegal for her to post the photo of her completed ballot. As a result of this interaction with the prosecutor, Ms. Bolick removed her post. However, as she already made the post, she is at risk for prosecution. If it were not illegal, Ms. Bolick would re-post the picture of her completed ballot.

9. Plaintiff Andrew Madson is a voter in Denver County. Like Ms. Bolick, he is also extremely proud to have voted for his chosen candidate for President.³ After he filled out his ballot, he took a photograph of himself with his ballot and sent the photograph to a few family members. He planned to post it on social media as well. However, Mr. Madson then learned about the existence of Colorado Revised Statute § 1-13-712. After learning about this statute, Mr. Madson chose not to post the photograph on social media in order to avoid heightening his risk of prosecution. However, as Mr. Madson has already send his ballot photograph to others, he is at risk of prosecution.

10. Defendant Mitch Morrissey is the District Attorney for Colorado's Second Judicial District, which covers Denver County. Defendant Morrissey has the power to prosecute Plaintiffs under Colorado Revised Statute § 1-13-712 in Denver County, where Ms. Bolick and Mr. Madson posted or transmitted a picture of their completed ballot and where Ms. Harlos intends to post her ballot video.

² Under Colorado Revised Statute § 1-13-712(3), it would be illegal for Ms. Bolick or her counsel to reveal the candidate who won her vote. She therefore refrains from doing so, though were it not for the possibility of prosecution, she would reveal the candidate she chose.

³ Under Colorado Revised Statute § 1-13-712(3), it would be illegal for Mr. Madson or his counsel to reveal the candidate who won his vote. He therefore refrains from doing so, though were it not for the possibility of prosecution, he would reveal the candidate he chose.

11. Defendant Cynthia Coffman is the Attorney General of Colorado. She has the power to prosecute anyone who violates Colorado Revised Statute § 1-13-712 throughout Colorado. This includes Plaintiffs.

12. Defendant Wayne Williams is the Secretary of State for the State of Colorado. He has the power to prosecute anyone who violates Colorado Revised Statute § 1-13-712 throughout Colorado. This includes Plaintiffs.

FACTUAL ALLEGATIONS

I. The Challenged Statute

13. Colorado Revised Statute § 1-13-712 reads as follows:

- (1) Except as provided in section 1-7-108, no voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents. No voter shall place any mark upon his ballot by means of which it can be identified as the one voted by him, and no other mark shall be placed on the ballot by any person to identify it after it has been prepared for voting.
- (2) No person shall endeavor to induce any voter to show how he marked his ballot.
- (3) No election official, watcher, or person shall reveal to any other person the name of any candidate for whom a voter has voted or communicate to another his opinion, belief, or impression as to how or for whom a voter has voted.
- (4) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

14. Colorado Revised Statute § 1-13-111 reads as follows: “In all cases where an offense is denominated by this code as being a misdemeanor and no penalty is specified, the offender, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.”

15. A person who violates Colorado Revised Statute § 1-13-712 faces a fine of up to \$1000 and incarceration of up to one year.

II. Colorado Revised Statute § 1-13-712 Restricts Plaintiffs' Political Speech

A. Plaintiff Harlos

16. As the Colorado Communications Director for the Libertarian Party, one part of Ms. Harlos's job is to find innovative and creative ways to encourage publicity and support for the Libertarian Party's candidates in Colorado.

17. In order to accomplish this, Ms. Harlos regularly publicizes the positions of the Libertarian Party as well as its candidates on social media, including Facebook.

18. Ms. Harlos publicizes the positions of the Libertarian Party and its candidates on Facebook and other social media because she believes doing so is the best and the most cost-effective way to spread her political party's message.

19. On September 19, 2016, Ms. Harlos posted a video on Facebook encouraging people to register as Libertarian Party voters. As she stated in this video, "Nothing builds success like success. So a lot of people will not join something unless they know that other people are doing it. So when you put your name down as a registered Libertarian, that starts to encourage other people that it's okay to come ... out of the closet and buck the statist mold." Ms. Harlos firmly believes this is true.

20. Based on her deeply-held political beliefs Ms. Harlos has made a similar video to encourage voters to cast their vote for the Libertarian candidate for President, Gary Johnson, as well as other Libertarians currently running for office.

21. In this video, Ms. Harlos fills out her mail-in ballot with a vote for Gary Johnson while explaining why she believes he is the best candidate for President. Through this video, she hopes to encourage others to also vote for Gary Johnson for President. See Exhibit 1 (still frame from Ms. Harlos's video).⁴

⁴ In order to comply with Colorado Revised Statute § 1-13-712, Ms. Harlos has censored a still capture from her video and sent the censored version to counsel. Ms. Harlos has not shared an uncensored still capture or video with anyone.

22. In this video, Ms. Harlos also states her belief that her spouse has already voted for a particular presidential candidate.

23. Ms. Harlos' video is political speech.

24. Prior to posting her video, On October 13, 2016, Ms. Harlos consulted with the office of the Secretary of State for the State of Colorado. The Secretary of State's office informed Ms. Harlos about Colorado Revised Statute § 1-13-712 and told her that her proposed video would be illegal.

25. The only reason Ms. Harlos has not posted this video or shared this video with anyone is that doing so is illegal under Colorado Revised Statute § 1-13-712, subsections (1) and (3).

26. Were it not illegal, Ms. Harlos would post similar videos of her casting her ballot not only for this election, but for all future elections as well.

27. The credible threat of prosecution is preventing this.

B. Plaintiff Bolick

28. Ms. Bolick received her mail-in ballot a few days before the final Presidential debate. She held off on filling it out and mailing it in until after she could hear from the major party candidates at the final debate.

29. Ms. Bolick had not made up her mind who to vote for until the final Presidential debate. During the Presidential campaign, Ms. Bolick was contemplating voting for a third party candidate as well as for one of the major party nominees.

30. During the third Presidential debate, the two major party candidates discussed their respective positions on abortion and *Roe v. Wade*. Hearing these positions was very impactful on Ms. Bolick and convinced her to vote for one of the major party candidates.

31. The morning after the third Presidential debate, Ms. Bolick logged onto Facebook, where she saw a large number of attacks on the candidate she had chosen. Many of these attacks were posted by family members, people Ms. Bolick knew would see any post she made in response.

32. This caused Ms. Bolick to want to publicly voice her support for her chosen candidate.

33. Ms. Bolick posted her ballot photograph to Facebook for the sole purpose of engaging in political speech.

34. Ms. Bolick captioned her ballot photograph, “Nasty women make history.”

35. Once Ms. Bolick posted the picture of her ballot to Facebook, she was contacted through Facebook by an acquaintance who works for the Office of the Attorney General as a prosecutor.

36. This Assistant Attorney General made Ms. Bolick aware of Colorado Revised Statute § 1-13-712 by typing out a portion of the statute in a comment on Ms. Bolick’s picture, with a citation to the statute.

37. In addition, Ms. Bolick’s employer as well as multiple co-workers notified Ms. Bolick that her post was in violation of current Colorado law.

38. After receiving these communications, Ms. Bolick decided that it would be in her best interest to remove the photo of her completed ballot from Facebook.

39. The credible threat of prosecution is what caused Ms. Bolick to remove the photograph of her ballot from Facebook.

40. Were it legal, Ms. Bolick would re-post the photograph of her ballot.

41. Further, Ms. Bolick would continue to post photographs of her ballots in future elections.

42. Even though she has removed her post, Ms. Bolick is currently in fear that she will be prosecuted for having violated Colorado Revised Statute § 1-13-712.

C. Plaintiff Madson

43. Mr. Madson is a proud voter. He received a mail-in ballot, filled it out with his chosen candidate, and got ready to mail it in. As a proud voter, once he voted for his chosen candidate and before he sealed his ballot in its envelope, he took a picture of his ballot and sent it to selected family members.

44. In sharing the photograph of his ballot, Mr. Madson was engaging in political speech.

45. Further, Mr. Madson intended to broadcast his political speech more broadly by posting the photograph of his ballot to social media.

46. However, before Mr. Madson posted the photograph of his ballot to social media, he learned about Colorado Revised Statute § 1-13-712.

47. Once Mr. Madson learned about Colorado Revised Statute § 1-13-712, he felt a credible threat of prosecution and decided not to post the photograph of his ballot to social media.

48. Were it legal, Mr. Madson would post the photograph of his ballot to social media. In future elections, he would continue to post photographs of his ballots to social media.

49. Even though Mr. Madson did not post the photo of his ballot to social media and only shared it with a small group of friends and family, he still finds himself in violation of Colorado Revised Statute § 1-13-712.

50. Mr. Madson is therefore currently in fear that he will be prosecuted for having violated Colorado Revised Statute § 1-13-712.

III. Colorado Revised Statute § 1-13-712(3) Makes Enormous Amounts of Political Speech Illegal

51. In addition to restricting specific political speech that Plaintiffs either have already or want to engage in, Colorado Revised Statute § 1-13-712 also restricts enormous amounts of political speech that occupies a central part of our modern political discourse.

52. For example, under Colorado Revised Statute § 1-13-712(3), any voter who participates in a so-called “exit poll,” in which pollsters outside of voting locations ask voters who they have voted for, has violated the law.

53. Similarly, any journalist who asks any voter how they voted – a staple of election-day television coverage – is inducing the voter to violate Colorado Revised Statute § 1-13-712(3) while

on camera. Any voter who answers risks a year of imprisonment. If the journalist then repeats what the voter said to the television audience, the journalist faces the same potential consequences.

54. Finally, in households across the state, on Election Day people will be discussing who they voted for and who they think their friends and relatives likely voted for. Any person who engages in such a conversation is violating Colorado Revised Statute § 1-13-712(3).

IV. Defendants Have Made Public Statements that Plaintiffs Interpret as Threats to Enforce Colorado Revised Statute § 1-13-712

55. On October 20, 2016, The Denver District Attorney's Office issued a press release in which it quoted the portion of Colorado Revised Statute § 1-13-712 that states, "No voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents." See Exhibit 2.

56. On the same day, The Denver District Attorney's Office made a post on its official Twitter page that stated, "REMINDER: BALLOT SELFIES ARE ILLEGAL IN COLORADO." See Exhibit 3.

57. Plaintiffs interpreted these statements as a threat that, if they were to post an image of their ballot on social media, they would face prosecution.

58. Also on October 20, 2016, Secretary of State Wayne Williams gave multiple televised interviews in which he discussed Colorado Revised Statute § 1-13-712. He did not state that it was unconstitutional and should not be enforced.

59. On October 24, 2016, the Deputy Secretary of State put out a statement in which she declared that it was important that Colorado Revised Statute § 1-13-712 remain in effect. She stated, "We believe the current law protects the integrity of the election and protects voters from intimidation or inducement. In fact, given Colorado's unique election system and rise of social networking, the prohibition may be more important in Colorado than in other states and may be more timely today than ever."

60. On October 22, a prosecutor with the Office of the Attorney General reached out directly to Ms. Bolick and told her that her posted photograph of her ballot was illegal.

61. Based on Ms. Bolick's perception of the threat of prosecution, she removed the posting.

62. On October 20, 2016, Ms. Harlos sought to get clarification from District Attorney Morrissey and Attorney General Coffman regarding whether Defendants would disavow any intent to prosecute under Colorado Revised Statute § 1-13-712 based on the fact that it is blatantly unconstitutional.

63. Ms. Harlos, through counsel, sent a letter to District Attorney Morrissey and Attorney General Coffman asking each to publicly state that Colorado Revised Statute § 1-13-712 is unconstitutional and that they would each refuse to enforce it. See Exhibit 4.

64. Ms. Harlos sent her letter in an attempt to resolve the issue of the constitutionality of Colorado Revised Statute § 1-13-712 without having to file a lawsuit.

65. Defending this lawsuit will result in a significant expenditure of taxpayer money to defend a statute that is blatantly unconstitutional.

66. Unfortunately, District Attorney Morrissey and Attorney General Coffman have each declined to publicly state that Colorado Revised Statute § 1-13-712 is unconstitutional.

67. As a result, Plaintiffs have no choice but to assume that they currently face a credible threat of prosecution under Colorado Revised Statute § 1-13-712.

CLAIM FOR RELIEF

First Cause of Action: Violation of the First Amendment and Fourteenth Amendment under 42 U.S.C. § 1983

68. Plaintiffs incorporate all other paragraphs as if fully detailed herein.

69. The First Amendment to the United States Constitution, as applicable to the State of Colorado through the Fourteenth Amendment, prohibits Colorado from making of any law “abridging the freedom of speech.”

70. Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, unconstitutionally infringes or imminently threatens to infringe Plaintiffs’ rights under the First and Fourteenth Amendments, including their rights to freedom of speech and freedom of expression.

71. Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, is an unconstitutional prior restraint on speech because it restricts the speech of Plaintiffs and other Colorado voters before the speech occurs.

72. Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, is an unconstitutional content-based restriction on political speech made far away from a polling place that bears no relationship to any potential state interest.

73. Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, is not narrowly tailored towards the advancement of any government interest, let alone a significant or compelling government interest.

74. Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, is substantially overbroad, as it restricts a large amount of protected speech of both the Plaintiffs and all Colorado voters.

75. Accordingly, Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, violates the First and Fourteenth Amendments.

Second Cause of Action: Violation of the First Amendment and Fourteenth Amendment under 42 U.S.C. § 1983

76. Plaintiffs incorporate all other paragraphs as if fully detailed herein.

77. The First Amendment to the United States Constitution, as applicable to the State of Colorado through the Fourteenth Amendment, prohibits Colorado from making of any law “abridging the freedom of speech.”

78. Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, unconstitutionally infringes or imminently threatens to infringe Plaintiffs’ rights under the First and Fourteenth Amendments, including their rights to freedom of speech and freedom of expression.

79. Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, is an unconstitutional prior restraint on speech because it restricts the speech of Plaintiffs and other Colorado voters before the speech occurs.

80. Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, is an unconstitutional content-based restriction on political speech made far away from a polling place that bears no relationship to any potential state interest.

81. Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, is not narrowly tailored towards the advancement of any government interest, let alone a significant or compelling government interest.

82. Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, is substantially overbroad, as it restricts a large amount of protected speech of both the Plaintiffs and all Colorado voters.

83. Accordingly, Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, violates the First and Fourteenth Amendments.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request the following relief:

- (a) Declaratory relief, in the form of a declaration that Colorado Revised Statute § 1-13-712 is facially unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution;
- (b) Declaratory relief, in the form of a declaration that Colorado Revised Statute § 1-13-712 is unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution as applied to Plaintiffs' already-completed and proposed speech;
- (c) Injunctive relief, in the form of temporary, preliminary, and permanent restraining orders that restrain and enjoin the State of Colorado and the Denver District Attorney's Office from enforcing Colorado Revised Statute § 1-13-712;
- (d) An immediate hearing on this complaint. Counsel for Plaintiffs are have notified counsel for Defendants that this complaint is forthcoming and are providing counsel for Defendants with a copy of this complaint contemporaneously with this filing;
- (e) An award Plaintiffs attorneys' fees pursuant to 42 U.S.C. § 1988(b);
- (f) An award Plaintiffs their costs of suit;
- (g) A grant of such other and further relief as this Court deems just and proper.

Dated: October 25, 2016

s/Adam Frank _____
Adam Frank
Faisal Salahuddin
FRANK & SALAHUDDIN LLC
1741 High Street
Denver, CO 80218
Telephone: (303) 974-1084
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Attorneys for Plaintiffs

VERIFICATION PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: October 25, 2016

/s/ Caryn Ann Harlos
Caryn Ann Harlos

VERIFICATION PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: October 25, 2016

/s/ Kiyomi Bolick
Kiyomi Bolick

VERIFICATION PURSUANT TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: October 25, 2016

/s Andrew Madson
Andrew Madson



Official Ballot For
 2016 General Election
 Douglas County, Colorado
 November 08, 2016

Michelle King
 County Clerk and Registrar

Important Voter Instructions

1. **Check for and follow any special instructions on the ballot.**

2. **Mark your ballot correctly.** Use a pencil to mark your ballot. Do not use a pen, marker, or any other writing instrument. Do not use a ruler or any other measuring device. Do not use a stamp or any other marking device. Do not use a stamp or any other marking device.

3. **Mark your ballot correctly.** Use a pencil to mark your ballot. Do not use a pen, marker, or any other writing instrument. Do not use a ruler or any other measuring device. Do not use a stamp or any other marking device. Do not use a stamp or any other marking device.

Ballot Marking Instructions

4. **Mark your ballot correctly.** Use a pencil to mark your ballot. Do not use a pen, marker, or any other writing instrument. Do not use a ruler or any other measuring device. Do not use a stamp or any other marking device. Do not use a stamp or any other marking device.

Additional Instructions

5. **Mark your ballot correctly.** Use a pencil to mark your ballot. Do not use a pen, marker, or any other writing instrument. Do not use a ruler or any other measuring device. Do not use a stamp or any other marking device. Do not use a stamp or any other marking device.

Presidential Electors

Vote for One Pair

Hillary Clinton / Tim Kaine
 Donald Trump / Mike Pence

United States Senator

Vote for One

Michael Bennet
 Democrat
 Dan Claitor
 Republican
 Lily Tang Williams
 Libertarian
 (Signed declaration to limit term to no more than 2 terms)

Ann Merriam
 Green
 Bill Hammons
 Unity
 (Signed declaration to limit term to no more than 2 terms)

Dan Claitor
 Unaffiliated
 Paul Noel Fleming
 Unaffiliated
 Withdraw

District 11

Vote for One

Give to the Congress

CENSORED



DenverDA

Mitchell R. Morrissey, District Attorney - Second Judicial District

201 W. Colfax Avenue, Dept. 801, Denver, CO 80202

Bus. Phone: 720-913-9000
Fax: 720-913-9035

NEWS RELEASE –

October 20, 2016

Contact: Lynn Kimbrough, 720-913-9025

REMINDER: BALLOT SELFIES ARE ILLEGAL IN COLORADO

Denver District Attorney Mitch Morrissey is reminding voters that there is a state law prohibiting voters from showing their completed ballot to others. This would include posting your completed ballot on social media.

Colorado is one of many states that ban a ballot selfie. The law, found at §1-13-712 in the Colorado Revised Statutes, states that, “No voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents.” It is a misdemeanor violation.

The prohibition on sharing completed ballot results is an effort to guard against potential voter fraud.



Denver DA

@DenverDAsOffice

 Follow

REMINDER: BALLOT SELFIES ARE ILLEGAL IN COLORADO

Colorado law prohibits voters from showing their completed... fb.me/2qQ6WsfQW

RETWEETS

7

LIKE

1



9:50 AM - 20 Oct 2016



October 20, 2016

Cynthia Coffman
Colorado Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203
attorney.general@coag.gov

Mitch Morrissey
Denver District Attorney
201 West Colfax Avenue
Denver, CO 80202
info@denverda.org

VIA EMAIL AND FEDERAL EXPRESS

Re: Colorado's Unconstitutional "Ballot Selfie" Law

Dear Attorney General Coffman and District Attorney Morrissey,

Caryn Ann Harlos has retained FRANK & SALAHUDDIN LLC in order to ask your offices to publicly declare that C.R.S. § 1-13-712 is unconstitutional and that your office will not enforce it.¹ Among other prohibitions, this statute makes it illegal for a person to take a photograph of his or her ballot and share this photograph on social media. It also bars people from discussing who they voted for. This statute creates serious criminal penalties for engaging in political speech. There is no question that it violates the First Amendment.

Ms. Harlos is the Communications Director of the Libertarian Party of Colorado, as well as the Regional Representative for Western United States on the Libertarian National Committee. In her role as Communications Director, Ms. Harlos would like to make and publish a video of herself filling out her ballot while describing why she is voting for Gary Johnson, the Libertarian Party's candidate for President. As the Communications Director for a third party, it is vital to her party's future she be allowed to publicize her vote on social media in order to encourage others to vote for her party's candidates in this and future elections. In short, Ms. Harlos seeks to engage in essential political speech. Prosecuting her for doing so would be blatantly unconstitutional.

¹ As I am sure you know, C.R.S. § 1-13-712(1) makes it a crime punishable by up to a year of incarceration and a \$1,000 fine for a person to "show his ballot after it is prepared for voting to any person in such a way as to reveal its contents." C.R.S. § 1-13-712(3) mandates the same penalties for any person who "reveal[s] to any other person the name of any candidate for whom a voter has voted," as well as for any person who "communicate[s] to another his opinion, belief, or impression as to how or for whom a voter has voted."

October 20, 2016

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As you may be aware, across the country laws such as C.R.S. § 1-13-712 are being struck down as unconstitutional restrictions on speech that violate the First Amendment. In *Rideout v. Gardner*, both the District of New Hampshire and the First Circuit have held that New Hampshire's law prohibiting showing one's ballot to another person violates the First Amendment. 123 F. Supp. 3d 218 (D.N.H. 2015), *aff'd*, No. 15-2021, 2016 U.S. App. LEXIS 17622 (1st Cir. Sept. 28, 2016). The Southern District of Indiana has reached the same conclusion concerning a similar Indiana law. *Ind. Civil Liberties Union v. Ind. Sec'y of State*, No. 15-cv-01356-SEB-DML (S.D. Ind. Oct. 19, 2015), available at http://www.aclu-in.org/images/newsReleases/DECISION_1_15-cv-1356-SEB-DML_ICLU_v_IN_SOS_10-19-2015.pdf. In each of these cases, law enforcement officials in the state chose to disregard the First Amendment and defended their state statute. These law enforcement officials now face the potential of paying the plaintiffs' attorneys fees, pursuant to 42 U.S.C. § 1988(b). For the sake of both the Constitution and Colorado taxpayers, Ms. Harlos urges that you follow a different path.

Please let me know by 5 pm on Wednesday, October 26 whether you will publicly declare that C.R.S. § 1-13-712 is unconstitutional and that your office will not enforce it. If I do not hear from you by then, Ms. Harlos will assume that you are taking the position that this law is constitutional and she will seek to enjoin its enforcement.

You have the opportunity to either take a stand for the Constitution and free speech, or to spend taxpayer dollars to defend a plainly unconstitutional restriction on one of our most basic liberties. Please choose the side of freedom.

Sincerely,



Adam Frank

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> _____</p>	<p style="text-align: center;">DEFENDANTS</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> _____</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

<p style="text-align: center;">CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p style="text-align: center;">TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p style="text-align: center;">FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p style="text-align: center;">LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p style="text-align: center;">IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p style="text-align: center;">BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p style="text-align: center;">PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p style="text-align: center;">SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p style="text-align: center;">FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p style="text-align: center;">OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>	
<p style="text-align: center;">REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p style="text-align: center;">CIVIL RIGHTS</p> <p><input type="checkbox"/> 440 Other Civil Rights</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 448 Education</p>	<p style="text-align: center;">PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 463 Alien Detainee</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p>Other:</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p>			

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):* _____

Brief description of cause: _____ AP Docket _____

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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