

DISTRICT COURT, BOULDER COUNTY STATE OF COLORADO 1777 Sixth Street Boulder, Colorado 80302 (303) 441-3750	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: RALPH SHNELVAR, an individual acting on his own behalf and on the behalf of other similarly situated election watchers as defined in C.R.S. § 1-1-104(51), and as an eligible elector of Boulder County, as defined in C.R.S. §1-1-104(12) v. Defendants: HILLARY HALL in her official capacity as the Boulder County Clerk and Recorder, and MOLLY TAYER in her official capacity as a Boulder County Election Official at the Boulder County Clerk and Recorder	
Attorneys for Plaintiff: Shayne M. Madsen, #8750 M. Robin Repass, #33696 Jackson Kelly PLLC 1099 18 th Street, Suite 2150 Denver, Colorado 80202-1958 Telephone: (303) 390-0003 Facsimile: (303) 390-0177 smadsen@jacksonkelly.com rrepass@jacksonkelly.com	Case No.: Division: Ctrm:
<p style="text-align: center;">VERIFIED PETITION AGAINST DEFENDANTS FOR NEGLECT OF DUTY AND WRONGFUL ACTS, WITH REQUEST FOR FORTHWITH DETERMINATION</p>	

Plaintiff Ralph Shnelvar, (“Plaintiff”) by and through his undersigned counsel, Jackson Kelly PLLC, and pursuant to C.R.S. § 1-1-113, petitions and asks this Court for relief from Defendants’ neglect of duty and wrongful acts by ordering Defendants to perform those duties. In order to facilitate the relief sought prior to the general election date, Plaintiff respectfully requests that an Order directing Defendants to perform their duties be issued forthwith, in a form in compliance with the proposed Order filed with this Petition, or, in the alternative, that a hearing be held forthwith on the issues raised herein. A proposed Order is filed with the foregoing Petition. In support of the Petition, Plaintiff states the following:

JURISDICTION AND VENUE

This Court has jurisdiction under C.R.S. §1-1-113, and venue is proper because the events giving rise to this petition occurred in Boulder County, Colorado.

THE PARTIES

1. Ralph Shnelvar is an individual and eligible elector whose address is 1117 Chestnut Drive, Longmont, CO 80503. He may be contacted through counsel, c/o Jackson Kelly PLLC, 1099 18th Street, Suite 2150, Denver, Colorado 80202, phone number 303-390-0003. In addition to being an eligible elector in Boulder County, Plaintiff Shnelvar is a designated election watcher, designated by the Libertarian Party of Boulder County, as well as being the chair of the Libertarian Party of Boulder County.

2. The factual allegations raised in this Petition are supported by the verification of Shnelvar, who, as an eligible elector and election watcher, is knowledgeable regarding the factual averments presented herein, and who has also collected Affidavits from two other eligible electors and election watchers, Jim Fletcher and Karen Christopher, to further support and verify the factual averments presented herein. All allegations complained of herein concern and affect Plaintiff Shnelvar, both as an eligible elector, and as an election watcher and as an official of the Libertarian Party of Boulder County. Plaintiff Shnelvar also presents this Petition to address violations occurring, which are affecting, and continue to affect, other designed election watchers in Boulder County, Colorado.

3. Plaintiff is an individual and eligible Boulder County elector, as defined by C.R.S. §1-1-104(12).

4. Jim Fletcher ("Fletcher") is an individual and eligible Boulder County elector, as defined by C.R.S. §1-1-104(12).

5. Karen Christopher ("Christopher") is an individual and eligible Boulder County elector, as defined by C.R.S. §1-1-104(12).

6. Fletcher and Christopher are designated election watcher in Boulder County, designated by the Republican Party of Colorado.

7. Fletcher and Christopher have personal knowledge of events that they have outlined in Affidavits attached hereto as Exhibit A (Fletcher) and Exhibit B (Christopher), which have been brought to the attention of Plaintiff.

8. Plaintiff, Fletcher and Christopher were selected and duly certified by their political party chairperson as the eligible registered electors tasked with observing the election process on behalf of their party in accordance with C.R.S. § 1-1-104(51) and Rule 8 of the Election Rules adopted by the Colorado Secretary of State, 8 CCR 1505-1. Plaintiff, Fletcher, Christopher, and other similarly situated election watchers are sometimes referred to herein as ("Election Watchers")

9. As a Boulder County eligible elector, and as an Election Watcher, Plaintiff is concerned that his rights as an Election Watcher, as well as the rights of Fletcher, Christopher, and other similarly situated Election Watchers in Boulder County, have been violated by the Defendants through the refusal and neglect of Defendants to perform their duties related to election watchers, as is more fully described in the foregoing paragraphs of this Petition, and in the Affidavits attached hereto.

10. Defendant, Hillary Hall (“Clerk Hall” or “Clerk”), is the elected Clerk and Recorder in Boulder County, Colorado, located at 1750 33rd Street, Boulder, Colorado, 80301, 303-413-7740.

11. Defendant, Molly Tayer (“Tayer”), is a designated election official in the Clerk and Recorder’s office in Boulder County, Colorado, located at 1750 33rd Street, Boulder, Colorado, 80301, 303-413-7740.

12. Defendants are “officials charged with duty or function,” regarding elections, as described in C.R.S. §1-1-113.

INTRODUCTION

13. The essence of this action is to immediately place Plaintiff and other similarly situated duly certified Election Watchers in the Boulder County Clerk and Recorder’s office (the “Clerk” or the “Defendants”) to be able to meaningfully observe in plain sight the handling of mail-in absentee ballots and Uniformed Overseas Citizens Absentee Voting Act (UOCAVA) ballots by the Defendant Clerk and other election officials as they are entitled pursuant to C.R.S. §§ 1-7-105, *et seq.* and 8 CCR 1505-1:8, and subsequently issued Secretary of State guidelines. The Election Watchers were on several occasions denied the right to observe the Clerk’s activity handling these absentee mail-in ballots in a meaningful way by the Clerk, Hillary Hall (“Hall”), and also by election official, Molly Tayer (“Tayer”) on October 8, 15, and 16, 2012, and continuing through the current date.

14. The Defendants have failed to act in their official capacity to allow watchers to be present at each step in the conduct of the election, specifically the receiving and bundling of the ballots received by the election officials, including witnessing ballot processing and counting of absentee ballots. In order to compel the performance of their official duty to allow Election Watchers in the polling area, Plaintiff respectfully requests this Court grant relief to compel the named Defendants and other election officials in the Boulder County Clerk and Recorder’s office to respect the rights of the Election Watchers and allow them to witness in plain view, the election process.

15. Unless relief is granted forthwith as requested herein prior to the date of the General Election on November 6, 2012, Plaintiff and the other Election Watchers cannot perform, and are being refused the ability to perform, their duties.

GENERAL ALLEGATIONS

16. On October 8, 2012 at 8:30 a.m., the Plaintiff and other election watchers (named below) presented themselves to Defendant Tayer, Boulder County Election Official, at the Boulder County Clerk's Office, 1750 33rd Street in Boulder, Colorado, to be sworn in as election watchers.

17. Those watchers were Plaintiff, Jim Fletcher, Karen Christopher, and Mary Eberle, who had each been designated by various political parties as election watchers. Dan Martin, Canvass Board Member, also witnessed the activities.

18. Later in the morning another certified watcher, Larry Singer, designated by the Republican Party, presented himself to be sworn as an Election Watcher.

19. From approximately 8:30 a.m. until 9:00 a.m., the watchers and Tayer met in the 2nd floor foyer just outside the Clerk's office complex. The watchers advised Tayer that they wanted to be sworn by an Election Official and to observe the ongoing UOCAVA process.

20. Tayer indicated that she was an election official.

21. Fletcher and Mary Eberle ("Eberle") presented Tayer with lists of items that they wanted to observe in accordance with the Election Code requirements.

22. Plaintiff and others were told by Tayer that she needed to prepare a watching area and that those intending to watch could come back later.

23. At that point, the watchers asked to be sworn. Tayer then said that the Clerk's policy is not to accept and process watcher certificates until October 15 and she would not proceed to give the election watchers the oath. As a result, Defendants failed and refused to swear in Plaintiff as an Election Watcher.

24. Tayer confirmed that the UOCAVA ballots were being received from the electors who had requested them, which she indicated she presumed totaled about 1000, as of October 8, 2012.

25. Tayer also confirmed that mail ballots to local Boulder County residents would be mailed on October 15 and could start to arrive back at the Clerk's office as early as October 16.

26. Christopher noted that it would be extremely difficult if not impossible to have all the watchers processed by October 16 to effectively monitor the mail in ballot process.

27. Christopher specifically asked Tayer if the Clerk, Defendant Hall, was refusing to give watchers the oath in time to review the early mail ballot receipt process and Tayer responded that, yes, the Clerk was refusing to give watchers the oath in time to review the early mail ballot receipt process.

28. Tayer indicated that the Clerk would not “authorize” the watchers to observe the election processing until at least October 15.

29. All of the party-certified watchers present at that time told Tayer that this may be the Clerk’s policy but that her policy does not meet the state statutes and is thwarting the watchers’ right to observe the process. At that point, Tayer left the meeting.

30. The remaining Election Watchers waited in the foyer.

31. Just shortly after 9 a.m., the watchers were advised by email that David Hughes, Deputy Boulder County Attorney, reported that “mail ballots will not be sent out until October 15. It appears your question might be directed toward UOCAVA ballots. Clerk Hall receives UOCAVA ballots in her main office as they come in, and watchers may come into the main office and observe that if they like.”

32. At that point, about 9:45 a.m., Fletcher informed Tayer of an email of David Hughes’s decision and that they were waiting in foyer to be sworn. There was no reply from Tayer until she came into the foyer for another reason at about 10:45 a.m., saying, “I am working on it!”

33. At about 11:15 a.m., Tayer called Fletcher on his mobile phone and said the watcher certificates had been verified and were waiting for the watchers in the Clerk’s office. Tayer further indicated that the information that Fletcher had requested in writing for the watchers to observe during the UOCAVA process was being accumulated. She said that the watchers could view the process of the person who logged the information into the electronic system, but it would not be very meaningful since it was sporadic.

34. Fletcher indicated that the watchers would like to observe this process, and Tayer replied that since this was within the work area, she would need to get the approval of the Clerk.

35. Shortly thereafter, the watchers entered the small public area adjoining a large workroom outside the Clerk’s office. Each watcher spoke to Joan Barilla, an employee of the Boulder County Clerk’s office, in front of the public desk and received the verified certificates. Plaintiff, Eberle, Russ Boehm and Jim Remmert, who had previously left certified watcher forms with the Clerk, were required to have the “location” line at the top of their form changed because it said “all locations” (as previously instructed).

36. Fletcher, Eberle, and Larry Singer (“Singer”) recited the watcher oath in front of Joan Barilla. Christopher was refused the oath since Fletcher another affiliated Republican had been administered the oath and only one affiliated Republican could be a watcher at a given time.

37. The Clerk’s office then refused to allow the Election Watchers to access the area or areas where the UOCAVA ballots were being processed and said they could only “watch” from the public area or small vestibule on the public side of the long reception desk where it was impossible to observe any portion of the process.

38. The Election Watchers informed Tayer and others in the Clerk's office that the inability to witness the UOCAVA process was a violation of their rights, and that they should be able to witness the process.

39. Tayer argued that the Election Watchers could not have close observation per Article 1-7 (presumably meaning *C.R.S. § 1-7-101 et. seq.*), saying "You don't have the right."

40. Tayer also informed the Election Watchers that the Clerk Hall was still evaluating how close to allow the Election Watchers during signature verification. The Election Watchers reminded Tayer that they thought they should be allowed to be close enough to actually see the computer monitors and read what was on them. Tayer informed the Election Watchers that Clerk Hall would not follow that policy.

41. Fletcher requested from Tayer a copy of the process to be able to observe the mail-in process including UOCAVA ballots.

42. Tayer responded, "We have never been asked for this before and we do not have a process or procedure for mail-in watchers." Fletcher asked if she would have one by October 15 so that the Election Watchers could effectively perform their duties. She indicated that she did not know when they would have one.

43. A few minutes later, Tayer and Clerk Hall came to the public area where the Election Watchers were congregated. Clerk Hall reiterated that the Election Watchers could watch from the public area.

44. Fletcher countered that the Election Watchers could not actually see the UOCAVA processing center from the public area.

45. Hall stated that this way was the way the election would be conducted, that it was how she conducted all elections and encouraged the Election Watchers to take up the matter with the legislators after the election. Whereupon, all Election Watchers left the Clerk's Office.

46. At about 1:45 p.m. the same day, watcher Eberle returned to the clerk's office to inquire of one of the receptionists whether she as a watcher would be able to witness the UOCAVA process, and whether the Clerk's statement meant that the Election Watchers had to remain away from UOCAVA ballot processing in the back. A receptionist verified that the situation indeed did not change and the Election Watchers would not be able to watch from anywhere other than the public area.

47. Since October 8, 2012, the Election Watchers have been in contact with the Boulder County Clerk and Recorder's office every day. Every day they have sought access to the UOCAVA ballots they have been denied access.

48. Defendants and their employees have denied the Plaintiff, the Election Watchers, and other similarly-situated Boulder County watchers access to UOCAVA ballots despite the

Secretary of State's clarification that the six-foot rule (8 CCR 1505:8.6.1), through issuance of watcher guidelines on September 21, 2012, and its issuance of "Guidelines for observing processing of UOCAVA Ballots" on October 12, 2012, attached hereto as Exhibits C and D, respectively.

49. The September 21, 2012, guidelines, attached hereto as Exhibit C, were sent from the Secretary of State to the County Clerks in an email that read as follows:

Watcher Guidelines

The six foot rule only applies in the voting area, while the voter is present for the purpose of voting.

For all other activities in the conduct of election or a recount watchers must be permitted to witness and verify election activities. This means a watcher must be permitted access that would allow access at a reasonable proximity to read documents, writings or other screens and reasonable proximity to hear election-related discussions.

These activities include, but are not limited to:

- Witnessing the signature verification of mail enveloped at close distance to verify or challenge the signature.
- Witnessing the duplication of ballots to verify accuracy of voter intent.
- Observing the tabulation process or display screens of voting equipment at any time that the voter is not in the immediate area for purposes of voting or casting his ballot.
- Witnessing hand count tabulations as they are being conducted.
- Visual access to all documents and materials during the LAT and post-election audit.

50. On October 16, 2012, Singer and Eberle appeared before the clerk to observe the downloading and processing of emailed, faxed and mailed UOCAVA ballots.

51. An election official named Mary Beth told them upon arriving that there was no processing of UOCAVA ballots on that day and that the processing of those ballots was not scheduled, and the Defendants did not know when they would be scheduled.

52. Singer then requested the UOCAVA vote log from the clerk's office. Once printed he reviewed the roughly two inches of paper for information concerning the UOCAVA ballots.

53. Singer noted that under the "returned" column the vote log indicated only roughly 5% of the ballots sent had been returned and that no ballots had been returned (or logged) since 9/25/2012.

54. Tayer informed Singer and Eberle that there was nothing to see and they were not allowed to observe any of the UOCAVA ballot processing, where those ballots were stored, where the faxed ballots were being kept, and was also denied observing the ballot storage log.

55. Singer and Eberle left without seeing the UOCAVA ballots, the box in which they were stored before counting, or any other information they were entitled to watch in their role as watchers.

56. Later on October 16, 2012, Christopher appeared at the Clerk's office to review the UOCAVA ballots and processing procedure. She brought with her a copy of the Secretary of State's "Guidelines for observing processing of UOCAVA Ballots," issued on October 12, 2012, (Attached hereto as Exhibit D).

57. Christopher pointed out that the Clerk had been instructed process UOCAVA ballots "daily, every other day, or weekly basis based upon the number of UOCAVA ballots returned by email."

58. Instead of being sworn and allowed to view the process, she was chastised by Defendant Tayer in her office, with Tayer demanding to know how Christopher could possibly have the UOCAVA Watcher guidelines issued by the Secretary of State.

59. Tayer insisted that Christopher had no right to know the contents of the guidelines as it was sent to the County Clerks and not the public. She was enraged and would not answer any specific questions about the Boulder County policies going forward saying "she could not deal with this now."

60. Tayer refused to tell Christopher when they would have procedures or policies in place and when Christopher persisted, Tayer indicated "maybe in a couple of days," there would be UOCAVA processing but she could not say as she "was too busy."

61. Tayer then refused further conversation and dismissed Christopher from her office.

62. Plaintiff and the Election Watchers continue to be allowed the perform their duty to meaningfully observe the processing of mail-in and UOCAVA ballots.

I. PETITION FOR RELIEF UNDER C.R.S. § 1-1-113

63. Colorado law provides a remedy for an eligible elector when a person charged with a duty under the election code neglects that duty. Section 1-1-113 of the Colorado Revised Statutes state:

when any eligible elector 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.

C.R.S. § 1-1-113(1)

64. The facts before this Court clearly establish that Plaintiff is an eligible elector; that the Defendants have a duty as election officials to comply with the law by allowing Election Watchers their statutory right to observe election activities; that the defendants have neglected that duty; and that the Defendants should be ordered to substantially comply with the provisions of the election code.

A. Plaintiff and the Election Watchers have a right to personally witness and observe the conduct of elections.

65. It is well established in the Election Code, Title 1 of the Colorado Revised Statutes, that Election Watchers are entitled, to personally witness and observe each step in the conduct of elections. The main function a watcher provides to his or her political party and the voting public is in essence, a set of eyes on the voting process ensuring that the voting process is free of irregularities or misfeasance.

66. A “watcher” is defined by statute to mean “an eligible elector other than a candidate on the ballot who has been selected by a political party chairperson on behalf of the political party...” (*C.R.S. § 1-1-104(51)*), tasked to observe the progress and compliance of the conduct of elections. At general and congressional vacancy elections political parties “are entitled to have no more than one watcher at any one time in each precinct polling place in the county and at each place where votes are counted in accordance with this article.” *C.R.S. § 1-7-106* (emphasis added). Furthermore, “each watcher shall have the right to... witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results.” *C.R.S. § 1-7-108* (emphasis added). Adding to the clear right that a watcher has to witness the conduct of a general election, as the plaintiff and the watchers have attempted to do in Boulder County in this action, are the Secretary of State’s regulations concerning watchers. These rules contain clear mandate bolstering the right to observe the conduct of elections which includes the right to observe early and mail in voting activity. Election Rule 8 CCR 1505-1:8.6.3 states:

Watchers are permitted to witness and verify the conduct of elections and recount activities. Witness and verify means to personally observe actions of election judges in each step of the conduct of an election.

- (a) The conduct of election includes polling place and early voting, and ballot processing and counting.

- (b) Watchers must remain outside the immediate voting area.¹
- (c) Watcher may be present at each stage of the conduct of the election, including the receiving and bundling of the ballots received by the designated election official

8 CCR 1505-1:8.6.3(a) – (c)

67. The Defendants’ conduct as it relates to watchers in the Boulder County Clerk and Recorders office on October 8 and October 16, and ongoing, breached a duty in that it prevented the Election Watchers, including Plaintiff, who Defendants refused previously to even swear in, from watching the election process. The Election Watchers were refused the right to witness the early voting, and ballot processing and counting of mailed ballots, specifically UOCAVA ballots, to be unable to witness any of the processing of votes because they could not physically see the process and were even kept out of the room where there election process was occurring. Defendants’ conduct has denied the Election Watchers and the political parties appointing them the right to observe the election and voting process in accordance with clear law of Colorado.

B. The Defendants have a clear duty to perform the act requested.

68. Just as Election Watchers have the right to witness and verify the action of election judges in each step of the conduct of the election, it is a duty of an election official to facilitate that observation of the conduct of the election. The designated election official is tasked specifically by the election rules promulgated by the Secretary of State to enable a watcher to observe the conduct of the election. “The designated election official must position the voting equipment, voting booths and the ballot box so that they are in plain view of the election officials and watchers. 8 CCR 1505-1:8.6.2 (emphasis added). Thus, the election official has a clear duty to enable a watcher to watch.

69. The duty to place voting equipment in plain view of an election watcher is a clear, ministerial, non-discretionary duty, imposed by law. The duty also has the clear purpose of facilitating the watchers’ rights to personally observe the election process. This duty promotes the notion of free and fair elections in this state. It gives voters the assurance they can rely on the accuracy of the voting process for the clerk and recorder to count ballots correctly and be held accountable when there is an irregularity during the process. Ensuring that watchers are able to witness the conduct of the election is particularly important for absentee and overseas voters who are impaired from ensuring their votes in an election are counted due to distance from the polling place itself.

70. Requiring the election official, here the Defendants, to comply with the duty laid out by code to ensure that the watchers are able to see in plain view, the conduct of the election should not cause hardship, and also does not require the election officials to exercise discretion. As is the case here, the defendants are being asked to comply with their duty to ensure the law is followed and the watchers can verify the integrity of the process.

¹ “Immediate voting area” is the area within six feet of the voting equipment, voting booths and ballot box. 8 CCR 1505-1:8.6.1.

71. The fact that appropriately following all steps in the conduct of an election is an important duty in Colorado is highlighted by the actions of the Colorado legislature in enacting a statute making the very sort of conduct at issue a misdemeanor offense, to wit:

Any person who willfully interferes or willfully refuses to comply with the rules of the secretary of state or the secretary of state's designated agent in the carrying out of the powers and duties prescribed in section 1-1-107 is guilty of a misdemeanor . . .

C.R.S. §1-13-114.

72. Defendants have breached their duties, not only as those duties are outlined by C.R.S. §§ 1-7-105, *et. seq.*, and 8 CCR 1505-1:8, *et seq.*, in failing to allow Plaintiff and the Election Watchers to meaningfully observe the steps in the conduct of an election as it relates to mail-in and UOCAVA ballots, but Defendants have also violated the public policy of Colorado, clearly communicated in C.R.S. §1-13-114, by failing and refusing to follow the rules and directions of the Secretary of State contained in Exhibits C and D.

C. There is no other remedy other than to direct Defendants to substantially comply with the election code.

73. Defendants in the Boulder County Clerk and Records Office must be ordered to comply with the provisions of the elections code. There is no remedy that would alternatively compensate for the loss of time spent to observe the election in process, nor is there an available legal remedy to rectify, after the fact, errors in the steps of the conduct of an election, until ballot count results are called into question. The statutes, administrative rules and guidelines at issue are in place to protect the integrity of all steps in the election process, including the crucial time period in which we now find ourselves prior to the date of the General Election, when mail-in ballots and UOCAVA ballots have already begun to arrive.

74. Ensuring that all votes in a general election are cast in accordance with the law and that election officials are counting ballots in accordance with the law is not subject to a claim for damages or other remedy at law as the clear language of C.R.S. §1-1-113 reads that it is the remedy for filing actions regarding the neglect of duties of the defendants at issue.

75. It is imperative that the watchers designated by their political parties observe the process as they are entitled to do in real time, and as the conduct of the election occurs. Following the chain of custody for receiving UOCAVA votes through the process of counting that vote is part and parcel of the purpose of the election watcher's task in observing all steps in the conduct of an election. Denying the Election Watchers, including Plaintiff, the clear right to observe and verify the veracity of the voting process from start to finish has no other remedy other than to start the counting over. Plaintiff does not seek this relief. Instead, Plaintiff is merely seeking to be allowed his statutory right, and that the other watchers be allowed their statutory rights, to observe the actions in each step of the conduct of an election.

II. IN THE ALTERNATIVE, PLAINTIFF REQUESTS A PRELIMINARY INJUNCTION TO ENJOIN THE CLERK FROM INFRINGING WITH, AND PROHIBITING, THE WATCHERS' EXERCISE OF THEIR RIGHTS

76. For a temporary restraining order to issue, it must be clear from specific facts that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party can be heard. C.R.C.P. 65. Here, an injunction is the appropriate remedy to prohibit the Defendants from denying Plaintiff and similarly situated Election Watchers the right to observe the ballot, mail-in, and UOCAVA voting procedures guaranteed by the statutes of Colorado and in accordance with the law and the Secretary of State's rules.

77. For a preliminary injunction, a party must satisfy six factors that show: (1) a reasonable probability of success on the merits; (2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; (3) lack of a plain, speedy, and adequate remedy at law; (4) no disservice to the public interest; (5) the balance of equities in favor of the injunction; and, (6) the injunction will preserve the status quo pending a trial on the merits. *See Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo. 1982). Each element is addressed below.

A. There is a reasonable probability of success on the Merits.

78. The merits of this case show that there is a reasonable probability of success. Plaintiff and the Election Watchers here have a clearly defined right to "witness and verify means to personally observe actions of election judges in each step of the conduct of an election" 8 CCR 1505-1:8.6.3. The Election Watchers, including Plaintiff, have been denied that right despite clear language that the right to watch the conduct of the election begins before Election Day, including the receiving and bundling of the ballots received by the designated election official. 8 CCR 1505-1:8.6.3(c).

B. There is a danger of real, immediate and irreparable injury.

79. If relief is not granted the voting public, other Boulder County electors/voters, Plaintiff, political parties, and the Election Watchers are in danger of suffering real, immediate and irreparable injury.

80. Mail-in and absentee ballots are currently being received and are processed out of the sight of Plaintiff and the Election Watchers. The chain of custody of those ballots, nor any form of visual verification of those ballots, is not being witnessed by Plaintiff and the Election Watchers.

81. UOCAVA ballots from overseas voters and service men and women are being delivered to the Boulder County Clerk and Recorder's office daily. Tayer told the Election Watchers on October 8 that the presumed number of these types of ballots was approximate 1,000 ballots. As these ballots arrive at Defendants' office and are processed, Plaintiff and the Election Watchers are being immediately and irreparably injured because they have no way of observing the treatment of those ballots for counting in the conduct of the election.

82. If the election watcher cannot personally observe the actions of the election judges in each step of the conduct of an election, then they cannot verify the veracity of the process.

83. Furthermore, if the election watcher cannot verify that ballots are handled properly, then the voters voting absentee may be irreparably harmed because their ballot might not be counted. This is tangible and irreparable harm.

C. There is no plain, speedy remedy at law.

84. If relief under C.R.S. 1-1-113 is deemed inappropriate, Plaintiff has no plain or speedy remedy at law. If this case were to go through the traditional litigation route, the general election taking place on November 6, 2012, will be well over and the election process and conduct will no longer be subject to election watcher observation.

85. Unless relief is granted as requested herein, Plaintiff and the Election Watchers cannot perform their duties.

D. Granting relief is squarely in the public interest.

86. Granting injunctive relief is in the public's interest in maintaining free and fair elections. The very notion of free and fair elections where one person equals one vote is a beacon of democracy in this state and this nation. This policy is echoed in state and federal law. See *Colo. Const. Art. II, Section 5* ("All 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"); *Meyer v. Lamm*, 846 P.2d 862 (Colo. 1993) (right to vote is fundamental right that cannot be impeded by government absent a compelling interest).

87. Moreover, the public has an interest in the Election Watchers as designees of political parties, unaffiliated candidates, affiliated candidates; ballot initiative groups, and others to ensure they their party and candidates running for office enjoy the same rights and benefits and access to the poll as anyone else running for election or promoting an issue or candidate.

88. Finally, the Colorado legislature clearly intended that no persons interfere with, or refuse to comply with, the rules of the Secretary of State in carrying out the powers and duties incident to supervising the conduct of elections in this state by enacting C.R.S. §1-13-114, which makes such interference unlawful, and subject to misdemeanor penalties such as fines and imprisonment.

E. The balance of the equities favors the injunction.

89. The balance of the equities in this matter tilts strongly toward issuing an injunction to prevent the Defendants from impeding the rights of Election Watchers, such as the Plaintiff, from observing all steps in the conduct of the election. The Boulder County Clerk and Recorder's Office will not suffer an inequity if it is required to comply with existing law and allow observers to meaningfully participate in their statutory duties. The Clerk is already obligated to position the voting equipment so that Election Watchers may watch, in plain view, each step of the conduct of an election.

90. The statute and Secretary of State's rules and guidelines already explicitly dictate when and how a poll watcher may observe ballot counting and the election process, including the processing of UOCAVA ballots. While the Defendants may have to accommodate these Election Watchers in a closer vicinity than they might personally like, all parties should have the voting public's interest at top of mind. If the Election Watchers can watch in accordance with statute, then other electors and watchers will not be required to bring actions such as this against the clerk in the future to enforce elector's rights. Furthermore, the public will benefit from knowing that the polls are being monitored for irregularity or allegations of voter fraud.

91. The interest of UOCAVA voters and other absentee voters in particular pushes the equity of an injunction in favor of Plaintiff and similarly-situated watchers. The UOCAVA voters are the men and women serving in our military, overseas, often in harm's way, who deserve to have the same protections allowed in the election process by the watcher system as the local voters in the State receive. The overseas and military voters should be able to rely on the fact that Election Watchers are witnessing their ballots being processed and counted in accordance with the law. This interest is especially important because the UOCAVA ballots are not necessarily received in the same time frame as mail-in local voters or voting day voters, raising the chance of accounting irregularities.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants as follows:

- (a) In an order in substantially the same form as the one filed herewith and labeled as "[P]roposed Order Granting Verified Petition for Neglect of Duty and Wrongful Acts," requiring the Boulder County Clerk and Recorder and her office to permit Election Watchers to meaningfully observe the mail-in ballot processing and reporting as described in the Proposed Order; and
- (b) That a determination be made forthwith regarding the relief sought by Plaintiff, finding good cause for the issuance of the relief requested by Plaintiff, and with an Order issued within three (3) business days of the date Defendants receive notice of this action; and
- (c) In the alternative, that a hearing be convened within three (3) business days of the date Defendants receive notice of this action; and
- (d) Actual Damages incurred in bringing this action to force compliance in the

form court costs and litigation expenses, and, to the extent available, attorneys' fees; and

- (e) Injunctive relief prohibiting the Boulder Clerk and Recorder from infringing upon the rights of the duly sworn Election Watchers from meaningfully observing the election process specifically with regard to voted mail-in ballots, and UOCAVA ballots received from overseas; and
- (f) All other relief the Court deems just and proper.

Dated this 19th day of October, 2012.

JACKSON KELLY PLLC

*A duly signed copy is on file at the office of
Jackson Kelly PLLC*

/s/ Shayne M. Madsen

Shayne M. Madsen # 8750

M. Robin Repass, # 33696

Heather E. Joyce, # 41230

Jackson Kelly PLLC

1099 18th Street, Suite 2150

Denver, Colorado 80202-1958

Telephone: (303) 390-0003

Facsimile: (303) 390-0177


Attorneys for Plaintiff

Plaintiff's Addresses:

Ralph Shnelvar
1117 Chestnut Drive
Longmont, CO 80503

VERIFICATION OF COMPLAINT

I, Ralph Shnelvar, do hereby state that the facts asserted in this Complaint, are true and correct to the best of my knowledge.


J. S. G. L.

Ralph Shnelvar


STATE OF COLORADO)
) ss.
City and County of Boulder)

Subscribed and sworn to me this 19th day of October, 2012, by Ralph Shnelvar,
being sufficiently identified to me as such person pursuant to Colorado law.

Witness my hand and official seal.

My Commission expires:

3. 13. 14


Notary Public

Notary Public

