

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Room 256 Denver, CO 80202 720-865-8301	DATE FILED: May 18, 2023 1:56 PM CASE NUMBER: 2022CV33456
Plaintiffs, VET VOICE FOUNDATION, LESLIE DIAZ, RANDY EICHNER, JOHN ERWIN, AMANDA IRETON, and GREGORY WILLIAMS, v. Defendant, JENA GRISWOLD, in her official capacity as Secretary of State.	▲ COURT USE ONLY ▲
	Case No. 2022CV033456 Division: 215 Courtroom:
CASE MANAGEMENT ORDER	

Pursuant to Colo. R. Civ. P. 16(b), the parties hereby submit their proposed case management order.

The case management conference is set for May 18, 2023 at 1:30 PM.

1. The “at issue date” is: May 3, 2023.
2. Responsible attorneys’ names, address, phone number, and email address:

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**Counsel of Record*

3. The following attorneys, including lead counsel for each party, met and conferred by telephone on May 3, 2023 and May 12, 2023 concerning this Proposed Order and each of the issues listed in Rule 16(b)(3)(A) through (E): Matthew Gordon, Gillian Kuhlmann, and Jessica Frenkel (on May 12) for Plaintiffs; Emily Buckley and Peter Baumann (on May 3) for Defendants.

4. Brief description of the case:

a. Plaintiffs' statement

This dispute arises out of Colorado's signature verification procedure for mail in ballots. Signature verification is an error-prone process that results in widespread disenfranchisement of voters based on erroneous determinations that signatures don't "match" and fails to provide

corresponding benefits to the state. Many thousands of Colorado voters are denied the right to vote in each election as a result of signature matching, especially young voters and voters of color on whom the disenfranchising effects disproportionately fall: in the 2020 general election, young Black and Hispanic voters' ballots were rejected for purported signature mismatches approximately 25 times more often than were ballots from older White voters.

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

Plaintiffs allege that the signature verification process violates the Colorado Constitution. Specifically, Plaintiffs claim that the process places an undue burden on the right to vote under Article II, §§ 5, 25 of the Colorado Constitution and violates the right to equal protection ensured by Article II, § 25 of Colorado's Constitution by unduly burdening young, Latino, Black, and Asian voters in the exercise of their fundamental right to vote and by subjecting voters to arbitrary and diverging standards depending on the county in which they reside. The issues presented in this case are: (1) whether Colorado's signature verification procedure unconstitutionally burdens the right to vote; (2) whether Colorado's signature verification procedure unconstitutionally places an undue burden on young, Latino, Black, and Asian voters in the exercise of their fundamental right to vote; and (3) whether Colorado's signature verification unconstitutionally subjects voters to arbitrary and diverging standards depending on the county in which they reside.

Due to the importance of the issues in this case and the upcoming 2024 elections, Plaintiffs' position is that trial of this matter should take place as soon as reasonably possible to ensure resolution of the issues with sufficient time before the next statewide election to give Coloradans and election officials certainty about the applicable rules. In order to accomplish this, Plaintiffs take the position that discovery must begin as soon as possible.

b. Defendant's statement

Colorado makes it easy to vote, and voter participation in Colorado is extremely high. Colorado has a mail ballot system where every registered voter receives a ballot by mail, which can be returned to a drop box or by mail. Trained election judges verify voters' signatures on mail ballots by comparing the signatures on the mail ballots to voters' signatures in the statewide election database. A signature is only rejected if three election judges agree it cannot be accepted. At that point, Colorado gives voters an opportunity to cure their ballot by confirming they cast their mail ballot by showing one of thirteen forms of identification, which can be done by email or text message. Combined with the rest of Colorado's best-in-the-nation voting system—including extensive opportunities for in-person voting—the signature verification program protects Colorado's legitimate interests in election confidence and integrity while imposing, at most, minimal burdens on voters. Voter fraud is rare in Colorado precisely because of the signature verification program, including its deterrent effect. Colorado has a legitimate and important interest in protecting election integrity and confidence, and its electoral scheme, including the signature verification program, is the least burdensome way of advancing those interests. Colorado's signature verification requirement does not violate the equal protection rights of Coloradans.

As explained in Defendant's Motion to Dismiss, each Plaintiff here lacks standing. Most of the individual Plaintiffs failed to avail themselves of Colorado's easy opportunities for curing a rejected ballot, and all have failed to show that they face continuing injury from the signature verification program. And the organizational Plaintiff lacks both personal and associational standing. Although the Court denied Defendant's Motion to Dismiss, Plaintiffs must establish standing at the merits stage. Pending motions:

- c. Motion to Intervene
 - i. Plaintiffs: Plaintiffs oppose the Motion to Intervene
 - ii. Defendant: Defendant takes no position on the Motion to Intervene.
- 5. Brief assessment of application of proportionality factors, including those listed in Colo. R. Civ. P. 26(b)(1):

- a. **Plaintiffs' position**

Plaintiffs take the position that the issues at stake in this action are of paramount importance because they involve protecting the fundamental right to vote. Much of the key factual information, such as the number of ballots rejected for perceived signature discrepancies, the number of such ballots that were cured, investigations into perceived signature discrepancies, the process of signature verification, and prosecutions for mail in ballot fraud, if any, is in the government's control—whether through the Secretary or other State, county, or local officials—and will not be accessible to Plaintiffs other than through discovery. This factual information is relevant to the extent to which the signature verification procedure disenfranchises and burdens Colorado voters, whether any state interest exists sufficient to justify that burden, and whether any such interest is actually served by the signature verification process. These are key issues in this case, and, as such, discovery will be vital in resolving this case.

b. Defendant's position

Defendant agrees that the issues in this lawsuit are of paramount importance, and that the relevant information may be dispersed amongst Colorado's 64 county clerks and recorders and their election officials. Defendant only notes, however, that such extensive discovery as described in Plaintiffs' position is likely to be time-consuming, and will likely affect Plaintiffs' expressed desire to litigate this matter on an expedited timeline. Plaintiffs seek to fundamentally alter Colorado's best-in-class mail ballot system, and Defendant agrees these issues warrant care and attention reflective of their importance. To the extent resolution of this matter requires extensive fact and expert discovery, the priority should be gathering all relevant information instead of artificially accelerating this case.

6. Settlement prospects: Lead counsel for each party met and conferred regarding possible settlement and will continue to do so as appropriate. At present, the parties do not anticipate a settlement.

7. Deadlines for:

- a. Amending or supplementing pleadings: August 16, 2023
- b. Joinder of additional parties: August 16, 2023
- c. Identifying non-parties at fault: September 1, 2023

8. Dates of initial disclosures: May 31, 2023

- a. Objections, if any, about their adequacy: June 15, 2023

9. The parties do not anticipate needing to disclose any information pursuant to Colo. R. Civ. P. 26(a)(1)(C) because no party seeks monetary damages in this case.

10. The parties propose the following limitations and modifications to the scope and types of discovery, consistent with the proportionality factors in Colo. R. Civ. P. 26(b)(1), reserving their right to return to the Court to request additional discovery beyond the limits set forth below if necessary:

- a. Number of depositions per party: Any named party (which shall be a 30(b)(6) deposition for Defendant and any non-natural person party), plus 5 per side, excluding expert depositions.
- b. Number of interrogatories per party: 30
- c. Number of requests for production of documents per party: 20
- d. Number of requests for admission per party: 20, with unlimited requests for admission as to genuineness of documents
- e. Any physical or mental examination per Colo. R. Civ. P. 35: 0
- f. Any limitations on awardable costs: none
- g. Justification for any modifications to the foregoing Colo. R. Civ. P. 26(b)(2) limitations: The parties anticipate that non-parties, including but not limited to county election officials, may have discoverable information warranting additional depositions.

11. Number of experts, subjects of expert testimony, and whether experts will be under Colo. R. Civ. P. 26(a)(2)(B)(I) or (B)(II):

a. Plaintiffs' experts:

Plaintiffs anticipate engaging 3 testifying experts in this case pursuant to Colo. R. Civ. P. 26(a)(2)(B)(I). One expert will be a forensic document examiner who can testify to the

unreliability of signature verification in election administration. Another expert will be a statistical analyst experienced in evaluating the impact of voting restrictions on voters in general and on specific subgroups who will present data and analysis about the disproportionate effects of signature verification on young voters and voters of color. The third expert will evaluate and report on the incidence of voter fraud in Colorado and nationally and the extent to which signature verification has uncovered voter fraud.

b. Defendant's experts:

Defendant anticipates one or more rebuttal experts in response to Plaintiffs' offered experts. Defendant does not yet know whether it will produce one or more affirmative experts apart from its rebuttal experts.

- c. If more than one expert in any subject per side is anticipated, state the reasons why such expert is appropriate consistent with the proportionality factors in Colo. R. Civ. P. 26(b)(1) and any differences among the positions of multiple parties on the same side: N/A.

12. Proposed deadlines of expert witness disclosure: The parties propose the following deadlines for expert witness disclosure:

- a. Disclosure by a claiming party: August 15, 2023
- b. Disclosure by a defending party: September 12, 2023
- c. Contradictory or rebuttal expert disclosures: October 3, 2023

Defendant: except, however, if the Court cannot accommodate a trial date until later in 2024, Defendant requests that the expert disclosure deadlines be adjusted appropriately.

13. Consistent with the Court's Pretrial Order, the parties will contact the Court in the event of a discovery dispute to see if it can be resolved by oral ruling.

14. The parties anticipate needing to discover a moderate amount of electronically stored information. The following is a brief report concerning their agreements or positions on search terms to be used, if any, and relating to the production, continued preservation, and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs:

- a. The parties anticipate that most discovery will be electronically stored information and intend on negotiating an ESI protocol to determine production formats. The parties also intend to negotiate mutually agreeable custodians and search terms.

15. The parties estimate that discovery can be completed no later than October 31, 2023.

- a. Defendant: except, however, if the Court cannot accommodate a trial date until later in 2024, Defendant requests that the discovery deadline be adjusted appropriately.

16. The parties estimate that trial will last 10 days. ***A ten-day bench trial will commence on January 29, 2024 at 8:30 a.m.***

17. Plaintiffs' counsel will contact the Court the week of May 22, 2023 to obtain a trial date.

- a. Plaintiffs:
 - i. Plaintiffs request that the Court set a trial date in early- to mid-December 2023 to ensure the issues in this case are resolved with sufficient time before the 2024 primary election.

b. Defendant:

- i. Defendant requests that the Court set a reasonable trial date, consistent with its docket and availability. To the extent this matter requires extensive fact and expert discovery, the priority should be gathering all relevant information instead of artificially accelerating this case. Further, the case will necessitate an appropriate allocation of the Court's time and resources. If the Court prefers the parties to file proposed findings of fact and conclusions of law, appropriate deadlines should be set.
- ii. Defendant advises the Court that the 2024 Presidential Primary is set for March 5, 2024 and the 2024 Primary Election is set for June 25, 2024. Under federal law, the deadline for transmitting ballots to military and overseas voters is 45 days before an election. County clerks and recorders spend months preparing for an election, including submitting an election plan to Defendant (110 days before an election), providing advance training to election judges (starting 60 days before an election), and reviewing ballots promptly.¹ From mid-March 2024 through mid-April 2024, Defendant's elections staff will be focused on reviewing candidate petitions to determine which candidates' names are placed on the 2024 Primary Election ballot; candidates can contest aspects of this process in court and it is likely that Defendant will be a party to related-litigation

¹ See <https://www.sos.state.co.us/pubs/elections/calendars/2024ElectionCalendar.pdf>.

from mid-April through mid-May. To the extent that Plaintiffs are requesting the Court to set a trial date to allow for a decision prior to the upcoming 2024 election dates, Defendant requests that the Court consider these deadlines and the extensive planning that occurs before an election.

- iii. Defendant anticipates that a ruling from this Court will be subject to appellate review. The parties cannot control when the Colorado Court of Appeals and the Colorado Supreme Court would decide any appeal—including whether any such appeal could be briefed, argued, and decided prior to the 2024 Primary or General Elections.

***All appearances will be in person absent written motion showing good cause.
Discovery disputes may be held remotely if requested at the time of scheduling.***

Should any party or witness need an interpreter, please notify the Court as soon as possible and in no event later than 90 days before trial.

DATED this 15th day of May, 2023.

Respectfully submitted,

ATTORNEY GENERAL'S OFFICE

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By: s/ Matthew P. Gordon

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Attorneys for Defendant

Attorneys for Plaintiffs

CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the court, is and shall be the Case Management Order in this case.

ENTERED this 18th day of May, 2023.

BY THE COURT:



J. Eric Elliff
District Court Judge