DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO

1437 Bannock Street, Room 256
Denver, CO 80202
720-865-8301

Plaintiffs:

VET VOICE FOUNDATION, LESLIE DIAZ, RANDY EICHNER, JOHN ERWIN, AMANDA IRETON, and GREGORY WILLIAMS,

v.

Defendants:

JENA GRISWOLD, in her official capacity as Colorado Secretary of State

and

Intervenor-Defendants:

Vera Ortegon and Wayne Williams.

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Case No. 2022CV33456

Division: 215 Courtroom:

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MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Consistent penmanship is not a constitutional prerequisite to vote in Colorado. Yet nearly 100,000 ballots have been rejected in Colorado elections in the last five years because election officials mistakenly thought the voters' ballot envelope signatures did not "match" their signatures on file. Election officials initially rejected an *additional* 52,000 ballots for purportedly non-matching signatures, forcing voters to jump through additional hoops to "cure" their ballots by proving that they did in fact cast their vote and that election officials mistakenly rejected them in the first place. Untold numbers of other voters try, without success, to cure their ballots or never have the opportunity because they never even learn that their ballot was rejected.

Colorado's Signature Matching Requirement ("SMR") is a guilty-until-proven innocent regime, an abhorrence to our constitutional system in general and intolerable because it strips eligible voters of their right to vote—which it does, by the thousands, in each election. Worse, the pernicious effects of signature matching are not borne equally. Instead, it disproportionately disenfranchises Colorado's most vulnerable communities: Voters of color, young voters, uniformed servicemembers serving outside of Colorado, and voters with physical limitations. The differences are stark: Young Black and Hispanic voters are disenfranchised at 25 and 23 times the rate of older white voters, respectively, and military voters casting UOCAVA ballots are disenfranchised at 3.7 times the rate of non-UOCAVA voters. This shameful disparate impact is hardly an outlier; it occurs *every election* in Colorado.

Worse still, the widespread disenfranchisement benefits no one. While ostensibly deployed to "verify" a voter's identity, signature verification is nothing more than election integrity theater. Despite disenfranchising nearly 100,000 voters in the last five years alone, the Secretary of State cannot identify *even a single case* of convicted voter fraud caught by signature matching. The lack of a single conviction should come as no surprise given the many obvious

reasons why signatures vary over time, including age, disease, injury, writing surface, type of pen used, or haste.

The undisputed material record evidence is clear and points inexorably to the conclusion that the SMR is fundamentally flawed and violates Sections 5 and 25 of Article II of the Colorado Constitution. Signature matching is a highly subjective process that disenfranchises tens of thousands of fully qualified Colorado voters who did everything required of them to lawfully vote, and it disproportionately affects minority and younger voters. It is a clumsy, inaccurate, and grossly overbroad procedure that cannot be justified by abstract "election security" or "voter confidence" concerns without actual evidence that it advances either.

II. CERTIFICATE OF COMPLIANCE WITH C.R.C.P. 121 § 1-15(8)

Counsel for Plaintiffs conferred with counsel for Defendant and Intervenors regarding the relief sought in this motion. Counsel oppose this motion.

III. STATEMENT OF UNDISPUTED FACTS

A. Colorado's Signature Matching Requirement

Colorado is a vote-by-mail state. Since 2014, each active registered Colorado voter has automatically received a ballot through the U.S. Mail. Decl. of Matthew P. Gordon,[1] Ex. H Def.'s Second Suppl. Resps. to Pls.' First Set of Interrogs. & Reqs. for Produc. ("Def.'s Second Suppl. Resps.") at 3. Each time a Colorado voter submits a mail ballot, they must attest under penalty of perjury that they are signing the ballot issued to them:

> I affirm under penalty of perjury that I am a United States citizen and an eligible elector; I have been a Colorado resident for at least twenty-two days immediately before this election; I am registered to vote at my sole legal place of residence; I will be at least eighteen years of age on election day; I voted the ballot that was issued to me; and this is the only ballot I have voted in this election.

Id. Voters can return this ballot by mail, to a voter service and polling center, or to a drop box. *Id.* Although in-person polling locations are available, the vast majority of Colorado voters vote

[1] All exhibits are to the Declaration of Matthew P. Gordon unless otherwise indicated.

their mail ballot. *Id.*[2] Since 2018, Coloradans have successfully cast more than 17 million ballots by mail. Ex. A, Expert Report of Dr. Maxwell Palmer ("Palmer Report") at 18.

Colorado law requires signature matching on mail ballots. *Id.* at 4; C.R.S. § 1-7.5-107.3(1)(a). It directs citizen election judges to compare the signature on the self-affirmation against "the signature of the eligible elector stored in the statewide voter registration system" to determine whether the two "match" or "do not match." C.R.S. § 1-7.5-107.3(1)(a)–3(a); Def.'s Second Suppl. Resps. at 4. But there is no clear standard governing how a judge is meant to determine whether any two signatures match. Davidson Dep. 122:1–8. Signatures are supposed to be reviewed by at least three judges before a ballot is rejected and sent for cure. Def.'s Second Suppl. Resps. at 4–5. But in practice, county procedures vary. *See* Ex. Q (survey of Colorado counties showing that not all require review by three judges before rejection).

Election judges must be trained, but the training each judge receives also varies by county. Def.'s Second Suppl. Resps. at 5; Ex. R (survey of Colorado counties showing that some use their own training instead of or in addition to the Secretary's). The Secretary's widely used but meager training consists of a self-paced computer-based module that is meant to take less than one hour to complete and includes only two knowledge check questions, neither of which even have to be answered correctly. Ex. P CR 30(b)(6) Deposition of Hillary Rudy ("Rudy Dep.") 127:1–131:7. Colorado law also requires audits of election judges, but how and when those audits take place varies by county. Ex. R; Lepik Dep. 85:8–86:1; Zygielbaum Dep. 79:16–20. Moreover, there is no consistent standard for when election judges pass or fail an audit—the rules simply require a judge be reassigned for an "unexplained, irregular acceptance or rejection rate," none of which is defined. 8 CCR 1505-1, Rule 6.2; Davidson Dep. 111:15–25.

[2] Ex. K CR 30(b)(6) Deposition of Carly Koppes ("Koppes Dep.") 43:1–3; Ex. L CR 30(b)(6) Deposition of Dan Lepik ("Lepik Dep.") 56:17–20; Ex. M CR 30(b)(6) Deposition of Josh Zygielbaum ("Zygielbaum Dep.") 71:12–15; Ex. N CR 30(b)(6) Deposition of Todd Davidson ("Davidson Dep.") 121:4–12.

Colorado allows for the possibility of curing a mail ballot rejected for signature discrepancy, but some voters are not timely notified of the rejection or the need to cure. Colorado law requires only that county clerks send the voter a cure form by mail within three days (and within two days after Election Day). Def.'s Second Suppl. Resps. at 5; C.R.S. § 1-7.5-107.3(2)(a). Some voters might receive a cure notification in other ways, such as through BallotTrax—if they're among the roughly half of voters who signed up, and the state has the right email address, Rudy Dep. 53:11–24—or if they happen to live in a county that calls voters to encourage them to cure their ballots and the county has a current phone number, Koppes Dep. 58:5–15. But because a county must call all voters if it calls any, many make no calls at all. Rudy Dep. 82:23–84:17.

Those voters who receive timely notification of the need to cure must send in a signed cure form with a copy of a specified form of current identification through the mail or, alternatively, using the TXT2Cure system—if they're able. Def.'s Second Suppl. Resps. at 5; C.R.S. § 1-7.5-107.3(2)(a). Voters may also indicate on the cure form that they did not return the ballot. C.R.S. § 1-7.5-107.3(2)(a). Only if the signed cure form is received within eight days after Election Day with the proper identification included will the ballot be counted—otherwise, the ballot is not counted, and the voter is referred to the district attorney for investigation. *Id.*

B. The SMR Consistently Disenfranchises Thousands of Lawful Colorado Voters

Nearly 100,000 Colorado ballots have been rejected since 2018 because of signature matching. Palmer Report ¶ 15; Exs. J–Q. Colorado election officials also initially rejected tens of thousands of *additional* ballots for non-matching signatures. In total, election officials initially rejected almost 150,000 ballots for non-matching signatures, and over 50,000 voters had to take additional steps to cure their ballots by proving that election officials had erred. Exs. J–Y. In other words, just the cure data vividly demonstrates that election officials mistakenly rejected ***at least*** 50,000 ballots—over a third of the total ballots rejected for non-matching signatures. In the

2020 General Election alone, 38,220 ballots were initially rejected for non-matching signatures. Ex. I at SOS001152; Ex. J at SOS001160. Of those, 16,319 were cured—an error rate of nearly 43%. *Id.*

But the actual error rate is assuredly much higher. In fact, as discussed below, there is ample evidence in the record of additional wrongful rejections and zero evidence to suggest that nearly all ballots rejected for "signature mismatch" are anything other than genuine. The Secretary can identify only a few cases of voter fraud that *might* have been caught by the signature matching. And the Secretary has made no effort to determine how accurate the process is or at what rate Colorado voters are being wrongly disenfranchised by signature matching, and as a result, the Secretary simply does not know how many ballots have been wrongly rejected. Beall Dep. 49:21–50:6. The Secretary and counties have undertaken various initiatives, including TXT2Cure, to try to increase the cure rate, demonstrating that they know most ballots rejected for signature mismatch are valid; if the ballots had been correctly rejected, efforts to increase curing would be futile. *Id.* 74:18–75:4; 18:20–19:16; Davidson Dep. 19:17–20:3.

1. The Voter Declarations Show Many Reasons a Ballot May Be Rejected.

The record demonstrates numerous examples of rejections of properly submitted ballots signed by eligible Colorado voters, along with many reasons why such voters were unable to cure. Plaintiffs Randy Eichner, John Erwin, and Amanda Ireton, and the 38 additional voters who submitted declarations in support of this motion, are among the many thousands of Colorado voters whose ballots were wrongfully rejected and, ultimately, not counted due to signature matching. Even former Secretary of State and Intervenor-Defendant Wayne Williams's daughter had her ballot wrongfully rejected for a non-matching signature. Ex. T Deposition of Wayne Williams ("Williams Dep.") 30:2–9. Luckily for his daughter, she was able to cure after calling her father for guidance. *Id.* 30:17–20. But not every voter whose ballot is rejected has a former Colorado top election official on speed dial.

Some voters have had their legitimate votes rejected multiple times,[3] or have become so frustrated after having their ballots rejected for a non-matching signature that they no longer trust their ballots will be counted if signature verification is in place and, accordingly, no longer vote by mail.[4] Having their ballots rejected has driven some voters to question whether to vote at all.[5]

2. Voters' Signatures Vary for Many Non-Fraudulent Reasons.

Signatures naturally vary over time for all sorts of reasons, including age, disease, injury, whether the writer is sitting or standing, writing surfaces, different writing instruments, prescription drug use, whether the writer has multiple signatures, and even carelessness, close concentration, or stress. Ex. B Expert Report of Dr. Linton Mohammed ("Mohammed Report") 9–13, Ex. F Deposition of Gregory Dalzell 56:6–64:5.

This is not merely theoretical. Pamela Zimmerman has a tremor in both hands. Decl. of Pamela Zimmerman ¶ 1. Her handwriting, as a result, is now inconsistent and varies day to day. *Id.* Amanda Nohr usually signs documents with just her initials. Decl. of Amanda Nohr ¶ 6. She saves her "full signature" for important documents, but she uses that "full signature" so infrequently that it varies. *Id.* Abby Ferry is legally blind, so her signature naturally varies. Decl. of Abby Ferry ¶ 6. Young voters are more likely to have signature variability, given how rare handwritten communication is today. Mohammed Report 15–16.

C. Voters Are Often Unable to Cure Their Ballots

The parties agree that a ballot rejected for signature discrepancy may remain uncured for myriad reasons. First, some voters never get notice that their ballot was rejected in the first place. Colorado law requires only that a cure letter be mailed, and while it is unknown how many of those are actually sent or received in time for the voter to have their vote counted, it is a certainty

[3] John Bankhead, Jensen McCoy, Joel Cephus, Clayton Mullins, Sam Sides, and Abby Ferry all had their ballots rejected for non-matching signatures in multiple elections. Decl. of John Bankhead ¶ 2; Decl. of Jensen McCoy ¶ 1; Decl. of Joel Cephus ¶ 1; Decl. of Clayton Mullins ¶ 1; Decl. of Sam Sides ¶ 1; Decl. of Abby Ferry ¶ 2.
[4] Decl. of Megan Garcia ¶ 7; Decl. of Juan Sarralde ¶ 1; Decl. of Jensen McCoy ¶ 1.
[5] Decl. of Terry McConnell ¶ 9; Decl. of Nicholas Turner ¶ 6.

that not all are. Ex. S (Secretary of State admonishing Pueblo County Clerk and Recorder for failing to timely send cure letters to voters); Rudy Dep. 60:11–19; Davidson Dep. 29:22–30:24.

The record is replete with example of voters who were not timely notified that they needed to cure. Voters such as Plaintiff John Erwin, Jessica Buehler, Ethan Hobson, Maurice Walker, and Benjamin Brown never received any notice that their ballots had been rejected.[6] Others, including Miles Gilbert, Jeffrey Sharpe, Rachel DeMartin, Amanda Crego, Sam Sides, and Angela Reuter received notice only after the deadline to cure had passed.[7] Whitney Caspers lives in Germany, where her husband was deployed with the United States military during the 2022 General Election. Decl. of Whitney Caspers ¶ 1. Her ballot was rejected, but she did not learn of the rejection until a month or two after the election. *Id.* ¶ 5. Because they weren't timely notified, each of these voters never had the chance to prove to election officials they in fact cast their ballots. They did not have their ballots counted despite doing everything required to vote.

Second, some voters try to cure but are unable to jump through all the hoops. Curing a ballot requires a voter to submit, within eight days after Election Day, a signed cure form along with certain current identification. Def.'s Second Suppl. Resps. at 5. For many voters, including voters with disabilities, busy voters, and low-income voters, these additional barriers prevent them from successfully voting.

Many eligible voters who lawfully cast their ballots, such as Plaintiffs Amanda Ireton and Randy Eichner, and declarants Mark Cournoyer, John Bankhead, David Berman, and Amanda Nohr, took the time to try to cure their ballots but *still* had them rejected.[8] Plaintiff Randy Eichner was unable to cure because, due to his ALS, his only form of identification had expired. Decl. of Vicki Pesce ¶ 5. Plaintiff Amanda Ireton was a valid Colorado voter but, like many

[6] Decl. of John Erwin ¶ 4; Decl. of Jessica Buehler ¶ 4; Decl. of Ethan Hobson ¶ 4; Decl. of Maurice Walker ¶ 6; Decl. of Benjamin Brown ¶ 1.
[7] Decl. of Miles Gilbert ¶ 1; Decl. of Jeffrey Sharpe ¶¶ 4–5; Decl. of Rachel DeMartin ¶ 4; Decl. of Amanda Crego ¶ 5; Decl. of Sam Sides ¶ 6; Decl. of Angela Reuter ¶ 5.
[8] Decl. of Amanda Ireton ¶ 5–6; Decl. of Mark Cournoyer ¶ 5; Decl. of John Bankhead ¶ 6; Decl. of David Berman ¶¶ 5–6; Decl. of Amanda Nohr ¶ 1.

young people, did not yet have a Colorado driver's license when her ballot was rejected. Decl. of Amanda Ireton ¶ 5. She tried to cure her ballot using her out-of-state license but her vote was not counted. *Id.* After her ballot was rejected, Emily Rambo was told that she needed to go in person to vote, but the in-person times conflicted with her work schedule. Decl. of Emily Rambo ¶ 6. And Marissa Kraynik received notice of her rejected ballot only a couple days before the deadline, leaving her no time to cure. Decl. of Marissa Kraynik ¶ 6.

Yet others, such as Monte McKee, Aaron Wilkinson, Jeff Sharpe, and Erin Custer were notified after the election results had been announced or called, so they felt little incentive to cure their validly cast ballots.[9]

D. Signature Matching Is Ineffective and Does Not Advance Any State Interest

1. Signature Matching Has Not Caught a Single Case of Convicted Voter Fraud.

The Secretary has no evidence that the SMR is effective at accomplishing what it purports to do—deter or detect voter fraud.

Election fraud in Colorado is, according to the Secretary, "extremely rare." Answer to Second Am. Compl. ¶ 21; Beall Dep. 59:7–13. And the few instances of confirmed fraud did not relate to forged signatures or, if they did, were not caught by signature matching. In response to interrogatories, the Secretary identified, at most, 23 *total* cases of voter fraud since 2005 *possibly* identified through signature verification. Def.'s Second Suppl. Resps. at 9–10; Ex. C, Expert Report of Dr. Michael Herron ("Herron Report") ¶¶ 101–03. Coloradans have successfully cast roughly 17 million mail-in ballots since 2018. Palmer Report at 18. Even assuming that every one of the Secretary's 23 cases was, in fact, voter fraud[10] and occurred after 2018, that would be

[9] Decl. of Monte McKee ¶ 5; Decl. of Aaron Wilkinson ¶ 7; Decl. of Jeff Sharpe ¶ 5; Decl. of Erin Custer ¶ 6.

[10] This would be an inaccurate assumption. After filtering out the pending cases and those unrelated to signing a ballot, Plaintiffs' Expert Dr. Michael Herron concluded that between 2018 and 2022, there were only *two cases* of confirmed voter fraud related to ballot signatures–a voter fraud rate of 0.000012%. Herron Report ¶¶ 101–03. One of those two, the infamous case of

a voter fraud rate of 0.000135% since 2018. And, worse, there's no evidence that any of the 23 actually was caught by signature verification.

To be sure, Colorado tries to identify instances in which a ballot was returned by someone other than the voter. Every one of the nearly 150,000 cure forms sent to a Colorado in the last five years has included a prompt to check a box if the voter believes that someone else cast their ballot. But very few do, and some of those appear to be simple mix-ups rather than fraud. For example, in the last 25 months, of the 6,106 Adams County voters initially rejected for non-matching signatures, only eight (0.13%) checked the box. Zygielbaum Dep. 143:4–21; Gordon Decl. ¶¶ 30–31. In Weld County, forms were received from fourteen voters out of 1,631 (0.86%) rejected. Koppes Dep. 90:18–94:2; Gordon Decl. ¶¶ 32–33. In Pueblo County, eight voters out of 1,545 (0.52%) rejected. Lepik Dep. 117:10–15; Gordon Decl. ¶¶ 34–35. Moreover, there is no record evidence that any of these forms reflected actual voter fraud. Koppes Dep. 108:9–109:4; Davidson Dep. 137:17-22. In fact, the only evidence shows that forms are sometimes submitted in circumstances that "do[] not look suspicious" to election officials. Davidson Dep. 155:7–24.

Indeed, there is no evidence that signature matching is effective at anything other than mass disenfranchisement—the Secretary admits that she knows of no evidence that signature matching actually distinguishes ballots submitted by somebody other than the voter (assuming they exist) from other ballots with any degree of accuracy. Beall Dep. 47:10–48:22.

2. Other States That Refuse to Use Signature Verification Do Not Experience Higher Fraud or Lower Voter Confidence.

At least seven states—Connecticut, Delaware, Maryland, New Mexico, Pennsylvania, Vermont, and Wyoming—and the Virgin Islands do not conduct signature verification on mail

Barry Lee Morphew, was flagged because the ballot was unsigned, not because it had a non-matching signature, so it was not even subject to signature verification. *Id.* ¶ 104; Beall Dep. 55:5–10. And the other case is a perfect example of signature verification failing to detect or prevent fraud. *Id.* ¶ 110. In 2018 Gail Arlene Gray successfully forged her son's signature and submitted his ballot, and signature matching failed to catch it. *Id.*

ballots. Ex. U Deposition of Professor Robert M. Stein ("Stein Dep.") 41:19–42:5. None of them suffer from higher rates of fraud or lower voter confidence. *Id.* 42:6–43:18.

Notably, states that have considered the issue most recently have rejected signature verification because they recognize that it is inherently unreliable tool with no discernable benefit. Vermont, for example, transitioned to a universal vote-by-mail system for the 2020 General Election and did not implement signature verification. Elections Div., Vt. Sec'y of State, Report Requested Under Section 21a of Act 60, at 2 (2023), ("Vt. SoS Report")[11]; Ex. E Rebuttal Report of Dr. Michael Herron ("Herron Rebuttal Report") ¶ 17. In fact, the Vermont Secretary of State called signature matching "an unreliable, subjective procedure that is much more likely to disenfranchise qualified, legitimate voters than it is to prevent fraud." Vt. SOS Report at 1. Vermont recorded its highest turnout ever recorded and did not see *any* instances of voter fraud that would have been caught by signature verification. *Id.* at 2; Herron Rebuttal Report ¶ 19. According to the Secretary of State, of the 370,968 votes cast in that election, officials referred only 7 cases of potential voter fraud to the Attorney General. Elections Div., Vt. Sec'y of State, Facts Matter—The Truth About Vermont Elections.[12] Only one charge resulted. *Id.* Not one of those cases, or any cases of suspected voter fraud in Vermont in the last four election cycles, involved someone fraudulently signing a ballot. Vt. SoS Rep. at 12.

3. There Is No Evidence that Signature Matching Increases Election Security or Voter Confidence.

Despite their claims, the Secretary and her expert both acknowledge that there is no actual evidence that the SMR increases voter confidence, the popularity of vote by mail in Colorado, or voter participation. Beall Dep. 70:18–73:15. There is similarly no evidence that signature matching decreases fraud. *Id.* 64:5–15.

[11] Available at https://legislature.vermont.gov/assets/Legislative-Reports/Gov-Ops-Report-on-Mailing-Ballots.Jan2023.Final.2.6-.pdf (last visited Oct. 30, 2023).
[12] Available at https://sos.vermont.gov/elections/election-info-resources/myth-v-fact/#q13 (last visited Oct. 30, 2023).

4. Colorado Employs Numerous Procedures to Detect or Deter Fraud.

Colorado already employs many overlapping and widespread procedures to detect fraudulent ballots, including:

Voter Registration: Colorado maintains a centralized voter registration database. When they register, voters provide basic information, including their mailing address, C.R.S. § 1-2-204(2), and receives a unique voter identification number, *id.* § 1-2-301(1). Colorado law imposes fines and/or imprisonment on individuals who provide false information. *Id.* § 1-13-104.

Voter List Maintenance: Colorado election officials are required to (and do) maintain the accuracy of the voter list to ensure that only eligible voters are allowed to vote. C.R.S. 1-2-301(1); Williams Dep. 51:23–52:4. This includes updating voter addresses and removing voters who moved out of Colorado, died, or are ineligible because of a felony. Herron Report ¶¶ 57–58.

Ballot Security: Election officials assign a unique number to each ballot issued to a voter, ensuring that only one ballot is accepted per voter. Once a ballot has been returned, election officials use the unique ballot number to ensure that the voter has not already cast a ballot. Rudy Dep. 55:13–18; Herron Report ¶ 50. All voters must sign their declaration affirming their eligibility to vote under penalty of perjury. Def.'s Second Suppl. Resps. at 3.

Ballot Notification and Vigilant Voters: Voters statewide can track their ballot status through BallotTrax, through which they receive notifications about the status of their mail ballot throughout the voting process. Def.'s Second Suppl. Resps. at 3–4; Herron Report ¶¶ 51–53.

Post-Election Fraud Detection: After each election, officials review the voter list for potential fraud by comparing it with other states (looking for multi-state voters), other counties (double voters), and vital records (deceased people who cast a ballot). Rudy Dep. 93:16–94:10.

Post-Election Audits: Election officials must conduct a series of audits of both voting machines and election results. Williams Dep. 54:14–21, 58:18–61:24; Herron Report ¶¶ 60–61.

Signing Ballot Under Penalty of Perjury: When individuals sign a ballot, they are attesting that they understand it is a crime to sign a ballot for someone else, which has an inherently deterrent effect of its own. Beall Dep. 84:13–23; Williams Dep. 183:25–184:7.

Each mechanism provides opportunities to identify and prevent fraudulent ballots.

E. Signature Matching Disproportionately Disenfranchises Younger Voters, Voters of Color, and Military Voters

Stripping tens of thousands of lawful Colorado voters of the franchise every election is an outrageous violation of Coloradans' constitutional rights in all events. But the practice, as applied in Colorado, is even worse: The burden shamefully falls with disproportionate impact on younger and minority voters, adding insult to constitutional injury. Voters of color (particularly young voters of color) have their ballots rejected at higher rates for non-matching signatures. Voters also have widely different chances of having their ballot rejected for signature discrepancy based purely on their county of residence.

1. Signature Matching Disproportionately Disenfranchises Voters of Color.

The SMR disproportionately rejects ballots of voters of color. It is undisputed that in *every* statewide election from 2018 through the present, ballots submitted by non-white voters were rejected at higher rates. Palmer Report ¶ 20–21; Ex. D Second Supplemental Declaration of Dr. Maxwell Palmer ("Second Supplemental Palmer Report") ¶ 10. In the 2020 General Election, for example, voters of color were more than twice as likely to have their ballots rejected as white voters. Palmer Report ¶ 21. This was true even when adjusted for age, *id.* ¶ 24, and experience, Second Supplemental Palmer Report ¶ 13.[13]

2. Signature Matching Especially Disenfranchises Younger Voters of Color.

Young voters also have their ballots rejected by disproportionately high margins, and the greatest rejection rate due to signature verification is from ballots cast by young voters of color.

[13] In his second supplemental report, Dr. Palmer re-analyzed the data using the same methodology for inferring race as the Secretary's expert, Dr. Aravkin, and he reached the same conclusions, namely that non-white voters' ballots are disproportionately rejected at higher rates.

In the 2020 General Election alone, voters aged 18–21 were over 13 times more likely to have their ballots rejected than voters over 40. Palmer Report ¶ 23. And a Black voter aged 18–21 was nearly ***26 times more likely*** to have a ballot rejected for a non-matching signature than a white voter over 40. Palmer Report ¶ 24. A Hispanic voter aged 18–21 in that same election was over ***23 times more likely*** to have a ballot rejected for a non-matching signature. *Id.*[14]

3. Military Voters Are Rejected at Higher Rates.

Military voters casting UOCAVA ballots from outside the country are also disproportionately impacted. These voters have their ballots rejected at 3.7 times the rate of non-UOCAVA voters. *Id.* ¶ 6.

4. Signature Matching Affects Voters Differently Across Colorado Counties.

Although they ostensibly apply the same statute and regulations, the rejection rates for non-matching signatures in Colorado's 64 counties vary considerably. In the 2020 General Election, for example, the rate in the county with the highest rejection rate (Adams County) was ***20 times higher*** than the rate in the county with the lowest rejection rate (Rio Grande County).[15] Palmer Report ¶ 34. The Secretary is aware of and acknowledges the variation. Beall Dep. 24:16–25:13.

The wide variation in rejection rates exists among Colorado's most populous counties. For example, in the 2020 General Election, El Paso County, had a rejection rate ***five times*** that of Jefferson County. *Id.* In the same election, Adams County rejected about 1.25% of ballots—***five times*** the approximately 0.25% rejected by Douglas County. *Id.*

[14] The Secretary's expert, Dr. Aravkin, does not dispute Dr. Palmer's calculations of disparate impact, and, in fact, his own calculations—which seek to answer different questions, about which differences among groups best explain the disparities—support Dr. Palmer's conclusions. Ex. G Deposition of Aleksandr Aravkin ("Aravkin Dep.") 67:4–13. Indeed, the Secretary herself acknowledges that younger voters have their ballots rejected at higher rates than older voters. Beall Dep. 23:1–15.

[15] Five counties rejected zero ballots. Palmer Report at 16.

IV. LEGAL STANDARD

Under C.R.C.P 56(c), summary judgment should be granted when there are no material issues of disputed fact and the moving party is entitled to judgment as a matter of law. The moving party bears the initial burden of establishing "the nonexistence of a genuine issue of material fact." *Cont'l Air Lines, Inc. v. Keenan*, 731 P.2d 708, 712 (Colo. 1987) (en banc). Where a party moves for judgment on an issue where it would not bear the burden of persuasion at trial, the "initial burden of production may be satisfied by showing the court that there is an absence of evidence in the record to support the nonmoving party's case." *Id.* The burden then shifts to the nonmoving party to "muster sufficient evidence to make out a triable issue of fact on [its claim.]" *Id*. at 713.

V. ARGUMENT

The undisputed facts establish that the SMR is an unconstitutional violation of Article II Sections 5 and 25 of the Colorado Constitution because it consistently disenfranchises thousands of voters with no discernable benefit to election security or public confidence in election administration. There is no dispute that Plaintiffs and Declarants did everything required to cast a lawful ballot: They were each over the age of 18, a citizen of the United States and Colorado and resided in Colorado at least 22 days prior to Election Day, had not been convicted of a felony (or, if so, they had their civil rights restored), were lawfully registered, and received, voted, and timely returned their ballots—in each case after signing the declaration on the outside of the ballot envelope under penalty of perjury, as required. Yet, *none of their votes counted*. Each was wrongfully disenfranchised by the SMR.

A. The SMR Unconstitutionally Violates the Right to Vote Guaranteed in Article II, Section 5 of the Colorado Constitution

Under Article II, Section 5 of the Colorado Constitution, "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." COLO. CONST. art II, § 5. The Colorado Constitution guarantees to

Colorado's citizens the right to vote, including "the right to have that vote counted without undue interference with the exercise of that right." *Meyer v. Lamm*, 846 P.2d 862, 872 (Colo. 1993) (en banc). The SMR unduly interferes with the exercise of the fundamental right to vote, thereby mandating application of strict scrutiny, and it cannot withstand strict scrutiny because it neither prevents voter fraud nor supports voter confidence in the least restrictive manner possible. As a result, the signature matching fails constitutional scrutiny.

1. Strict Scrutiny Applies to the SMR Because It Infringes the Fundamental Right to Vote.

The right to vote is "of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *In re Hickenlooper*, 2013 CO 62, ¶ 12 (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). A law that infringes on a fundamental right is subject to strict scrutiny. *See Evans v. Romer*, 882 P.2d 1335, 1341 (Colo. 1994) (en banc). And a citizen's right to vote is, without question, fundamental. *Moran v. Carlstrom*, 775 P.2d 1176, 1179 (Colo. 1989) (en banc). Indeed, "because it is ultimately preservative of all rights," the right to vote is not just *a* fundamental right—it is *the* fundamental right. *Hickenlooper*, ¶ 13 (cleaned up); *see Erickson v. Blair*, 670 P.2d 749, 754 (Colo. 1983) (en banc) ("[T]he right to vote is a fundamental right of the first order."); *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1015 n.7 (Colo. 1982) (en banc) (collecting cases about fundamental rights including the right to vote); *Austin v. Litvak*, 682 P.2d 41, 49 (Colo. 1984) ("This court has recognized that fundamental rights are essentially those rights which have been recognized as having a value essential to individual liberty in our society."). The Colorado Supreme Court has repeatedly highlighted the importance of the right to vote, emphasizing that "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1228 (Colo. 2003) (en banc) (citation omitted).

As a threshold matter, the signature matching unmistakably infringes on Coloradans' long-recognized fundamental right to vote. It is difficult to imagine a more dramatic infringement: Nearly 100,000 ballots have been rejected and uncounted in Colorado elections in just the last five years because of signature matching. Palmer Report ¶ 15. In the 2020 General Election alone, nearly 22,000 voters were wholly disenfranchised, Ex. I at SOS001152, and 16,000 additional voters had their fundamental rights unnecessarily burdened when they were required to take additional steps to fix mistakes made by election officials. Ex. J at SOS001160.

In fact, the SMR infringes on the right to vote in the *precise way* the Colorado Supreme Court has said is impermissible. The Court recognized that certain reasonable restrictions may be made on the right to vote if they *neither* "deny the franchise to the voter or render its exercise so difficult and inconvenient as to amount to a denial of the right to vote" *nor* require "a degree of precision that in many cases may be a source of more confusion than enlightenment to interested voters." *Moran*, 775 P.2d at 1179–80 (internal citations omitted). That is precisely what signature matching does by disenfranchising tens of thousands of Colorado voters each year based solely on penmanship.

Because this mass disenfranchisement is undeniably an infringement on the fundamental right to vote, the SMR must be subject to strict scrutiny. A law "which infringes on a fundamental right or which burdens a suspect class is constitutionally permissible only if it is *necessary to promote a compelling state interest and does so in the least restrictive manner possible*." *Evans*, 882 P.2d at 1341 (cleaned up) (emphasis added); *see Jarmel v. Putnam*, 499 P.2d 603, 603–04 (Colo. 1972) (en banc) ("[T]he right to vote is at the core of our constitutional system and is a fundamental right of every citizen. There must be no discrimination between citizens with respect to that right . . . except for a *compelling state interest which cannot be reasonably protected in any other way*.") (emphasis added). Application of strict scrutiny to a Colorado law that infringes the right to vote—a fundamental right preservative of all others—is

well-accepted as necessary to protect that right. Indeed, numerous other states, including Kansas, Montana, Missouri, Pennsylvania, and Illinois, have substantively similar free and equal elections clauses to Colorado's and apply strict scrutiny to laws that infringe the right to vote.[16]

2. The SMR Cannot Withstand Strict Scrutiny.

Defendants bear the burden of showing that a statute survives strict scrutiny. *Bath v. Colo. Dep't of Revenue, Motor Vehicle Div.*, 758 P.2d 1381, 1385 (Colo. 1988) (en banc). Accordingly, they must show that the law is "necessary to promote a compelling state interest and does so in the least restrictive manner possible." *Evans*, 882 P.2d at 1341 (cleaned up).

To satisfy that burden, the government must point to evidence in the record showing how the "particular restriction imposed is actually necessary, meaning it actually addresses, the interest put forth." *Ohio State Conf. of NAACP v. Husted*, 768 F.3d 524, 545 (6th Cir. 2014), *vacated on other grounds*, No. 14-3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014); *see, e.g*, *Fish v. Schwab*, 957 F.3d 1105, 1133 (10th Cir. 2020) ("[W]e agree with the Secretary that Kansas's interest in counting only the votes of eligible voters is legitimate in the abstract, but, on this record, we do not see any evidence that such an interest made it necessary to burden voters' rights here."). The analysis in *Evans* is instructive. In that case, the Colorado Supreme Court analyzed, among other things, the actual evidence in the record to determine if the statute was both "necessary and narrowly tailored to serve [the government's stated] interest." 882 P.2d at

[16] *See League of Women Voters of Kan. v. Schwab*, 525 P.3d 803, 822 (Kan. 2023), *review granted* (June 23, 2023) (strict scrutiny applied to challenges to election laws); *Mont. Democratic Party v. Jacobsen*, No. DV 21-0451, 2022 WL 1126671, at *22 (Mont. Dist. Apr. 06, 2022) (granting preliminary injunction after applying strict scrutiny), *aff'd*, 410 Mont. 114; *League of Women Voters of Ark. v. Thurston*, 60CV-21-3138, at *15 (Ark. Cir. Ct. Mar. 24, 2022) (ordering permanent injunction by applying strict scrutiny to signature matching requirement restrictions and other voting statutes), available at https://www.lwv.org/sites/default/files/2023-03/2022-03-24_Pulaski-Cnty-Ct_memo-law-grant-PI.pdf, appeal pending; *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at *20 (Pa. Commw. Ct. Jan. 17, 2014) (applying strict scrutiny to voter ID restrictions); *Weinschenk v. State*, 203 S.W.3d 201, 215 (Mo. 2006) ("Photo–ID Requirement is subject to strict scrutiny."); *Orr v. Edgar*, 670 N.E.2d 1243, 1253 (Ill. App. Ct. 1996) (applying strict scrutiny to two-tiered registration system).

1346. Taking each interest in turn, for those interests the Court either found or assumed for purposes of argument were compelling, the Court determined whether there was evidence in the record showing whether it was both *actually necessary* and *narrowly tailored*. *See id*. at 1345–49. For instance, the Court noted that, even assuming that the government's asserted interest was compelling, the "evidence presented" indicated that the challenged statute "is not necessary to achieve these goals" and cited specific evidence from the record. *See id*. at 1346. Defendants must show—by competent evidence in the record—how signature matching actually advances state interests. Mere abstractions are not enough.[17]

a. Signature Matching Does Not Further Any Compelling State Interest.

Defendants do not dispute that nearly 100,000 ballots were rejected due to the SMR (with a disproportionate impact on minority and younger voters), but they nevertheless defend the statute by claiming it furthers two state interests:

- Election Security: The SMR allegedly ensures that the voter who was supposed to cast a ballot actually cast that ballot as opposed to someone else casting their ballot. Beall Dep. 68:11-70:17.
- Voter Confidence in Elections: The SMR also allegedly boosts confidence in the integrity of Colorado elections and that voters' ballots will count. *Id*.

But while these interests may be compelling, neither can withstand scrutiny of any kind—much less the rarely met strict scrutiny standard demanded by Colorado law—because there is no competent evidence that signature matching *actually advances* either interest. In fact, the undisputed evidence shows precisely the opposite.

Election Security: The government cannot point to a single instance where signature matching demonstrably identified—much less prevented—voting fraud. In fact, the Secretary

[17] Colorado is not unique in this respect. *See*, *e.g.*, *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 246 (4th Cir. 2014) ("North Carolina asserts goals of electoral integrity and fraud prevention. But nothing in the district court's portrayal of the facts suggests that those are anything other than merely imaginable."); *Obama for Am. v. Husted*, 697 F.3d 423, 433–34 (6th Cir. 2012) (by not providing actual evidence regarding regulation, state failed to justify its "sufficiently weighty" interest, let alone a "compelling" interest).

candidly acknowledges that she is not aware of any study into whether signature matching prevents, deters, or helps catch voter fraud. Beall Dep. 64:5–14. When pressed, Defendants identified a vanishingly small (23 in 18 years) number of *potential* cases of voter fraud and, even then, some of those potential cases were mere mix-ups or ballots lacking any signature whatsoever. *See* Def.'s Second Suppl. Resps. at 9–10; Herron Report ¶¶ 101–03; *see also* Section III(D)(1), *supra*. Put simply: Defendants *cannot point to a single instance* where signature matching caught a case of confirmed voter fraud. Nor can they point to *any* evidence that it has deterred any fraud.

This is hardly surprising given the absence of evidence that signature matching is effective. Defendants acknowledge that they have conducted no reviews, no analyses, and no studies to determine whether the SMR *actually advances* election security or prevents voter fraud. Beall Dep. 64:5–14, 72:7–10. And they admit that they have no evidence that signature matching is at all effective at doing what it's meant to do, namely, accurately identify fraudulent ballots. Beall Dep. 47:10–48:22. Defendants simply cannot meet their burden to show that disenfranchising voters via signature matching *actually*—not merely theoretically—advances a compelling state interest without even knowing whether any of the 100,000 ballots rejected for non-matching signatures were *actually* fraudulent. *See Fish*, 957 F.3d at 1132 (finding state interests were insufficiently weighty to justify voting restrictions because the Secretary could not point to "concrete evidence" that state interests merited such restrictions); *Ohio State Conf. of NAACP*, 768 F.3d at 547 (a few examples of voter fraud and general testimony were insufficient to prevent a "precise" problem of voter fraud).[18]

Defendants' first rationale, in short, is utterly unsupported by evidence, much less specific admissible evidence of the sort sufficient to withstand summary judgment.

[18] The Secretary, lacking any evidence that the SMR advances election security in Colorado, also has no evidence that there are any higher rates or incidences of fraud in any of the states that accept returned absentee ballots without signature verification. *See* Section III(G)(3); Stein Dep. 42:6–43:18.

Voter Confidence: Defendants' second rationale, voter confidence, is likewise bereft of support. There is no evidence that the SMR increases voter confidence in elections rather than decreasing voter confidence by disenfranchising fully qualified voters at the brisk pace of up to 24,000 voters per election. As with election security, although both the Secretary and her expert claim that signature verification is integral to voter confidence, neither has studied the matter or can point to any competent evidence to support their assertions. Beall Dep. 71:6–72:10; Stein Dep. 35:8–17.

Indeed, the only actual evidence touching on this point shows that signature matching erodes, rather than enhances, voter confidence. Forty declarants who have been disenfranchised by the SMR expressed concern "that the signature verification system may prevent myself and many of my fellow citizens from being able to exercise their right to vote." *E.g.*, Decl. of John Swailes ¶ 7; Decl. of Abby Ferry ¶ 7; Decl. of Caleb Batts ¶ 7. That concern isn't speculation; it's from affected voters themselves. And that concern is borne out in the statewide data. Colorado voters who were forced to cure a ballot for a non-matching signature in 2020 were, on average, 8 percentage points less likely to vote in the 2022 General Election than voters whose ballots were accepted without challenge, and voters whose ballots were rejected for a non-matching signature in 2020 and not cured were *over 31 percent less likely to vote in the 2022 General Election.* Palmer Report ¶ 31. That's a significant decrease in voter confidence. *See Fish*, 957 F.3d at 1115, 1134–35 (When a regulation enacted under guise of "safeguarding voter confidence" results in disenfranchising otherwise eligible voters, it may "have the inadvertent effect of eroding, instead of maintaining, confidence in the electoral system.").

Nicholas Turner illustrates the point. Mr. Turner was a regular voter until his ballot was wrongly rejected for a non-matching signature in the 2018 General Election. Decl. of Nicholas Turner ¶ 6. Mr. Turner was so frustrated at the experience of having his ballot rejected for a non-matching signature that he has not voted since. *Id*. ¶¶ 4–5.

The only competent evidence in the record shows that, contrary to the abstract and unsupported claims by Defendants that the SMR advances the state interest of increasing voter confidence, signature matching in fact *does the opposite*. The lack of evidence that signature matching advances a state interest falls dramatically short of justifying a practice that disenfranchises tens of thousands of fully qualified Colorado voters who did everything required of them and—worse—places that burden disproportionately on the shoulders of minority and younger voters. The state, in short, stumbles at the very threshold of the strict scrutiny analysis because they have not yet even examined whether signature matching furthers any of the purported state interests it identifies, let alone provided evidence that it does. Instead, because the government cannot point to actual evidence showing that signature matching advances its stated interests, the interests are merely "legitimate in the abstract" and cannot survive strict scrutiny. *Fish*, 957 F.3d at 1133.

b. The SMR Is Not Narrowly Drawn in the Least Restrictive Manner.

Even if the Secretary could show that the SMR advances a compelling state interest—and she cannot—she could not meet her burden to demonstrate that it is the "least restrictive manner possible" to serve the State's compelling interest. *Evans*, 882 P.2d at 1341 ("A legislative enactment which infringes on a fundamental right . . . is constitutionally permissible if it is *necessary* to promote a *compelling* state interest and does so in the least restrictive manner possible.") (internal quotations and citations omitted). Narrow tailoring requires a showing that a statute "is not substantially broader than necessary." *Denver Publ'g. Co. v. City of Aurora*, 896 P.2d 306, 314–15 (Colo. 1995) (en banc).

The SMR is anything *but* narrowly tailored. It is, in fact, wildly overinclusive. Every mail-in ballot in Colorado—approximately 17 million since 2018—is required to go through signature matching. Palmer Report at 18. Since 2018, nearly 100,000 Colorado voters have had their ballots rejected for purported signature mismatch, and another 50,000 were forced to take

additional steps to cure their ballots. Exs. J–Y. Yet, despite burdening 17 million votes with the SMR and disenfranchising nearly 100,000 voters in the last five years, the Secretary *cannot identify a single case of voter fraud*, ever, that was caught by signature matching and led to a conviction or guilty plea. This is the very definition of an overbroad sweep: A law that creates such a "dramatic mismatch" between the harm it seeks to prevent and the cudgel it wields to prevent such harm cannot possibly be considered "narrowly tailored." *See*, *e.g.*, *Ams. for Prosperity Found. v. Bonta,* 594 U.S. ---, 141 S. Ct. 2373, 2386 (2021) ("There is a dramatic mismatch, however, between the interest that the Attorney General seeks to promote and the disclosure regime that he has implemented in service of that end.").

Not only is the SMR ineffective, but it is also redundant. Colorado already has robust overlapping mechanisms to protect the integrity of its elections at every step of the voting process, including through voter registration, voter list maintenance, ballot security and tracking, post-election fraud detection, post-election audits, and the county canvassing boards' ability to reject challenged or questioned ballots. *See* Section III(D)(4), *supra*. Voters also sign the ballot envelope declaration under penalty of perjury. Individuals who sign a false declaration can—and should be—prosecuted for that crime. Prosecuting those who submit fraudulent ballots would advance far better the same interests the state asserts here. And doing so would bring the full weight of Colorado's police powers to bear on those citizens actually guilty of a crime—rather than broadly stripping fundamental civil rights from, literally, tens of thousands of lawful voters who did everything constitutionally required of them. Such an approach might be narrowly tailored. Colorado's "guilty until proven innocent" approach is not.

Colorado's signature matching process, in short, fails constitutional scrutiny. It advances no legitimate state interest and is not narrowly tailored.

B. The SMR Violates the Equal Protection Clause Found in Article II, Section 25 of the Colorado Constitution

Signature matching violates equal protection because it values voters in some counties over voters in other counties.[19] Article II, Section 25 of the Colorado Constitution guarantees equal treatment under the law. *See Heninger v. Charnes*, 613 P.2d 884, 886 n.3 (Colo. 1980). This "ensures that all individuals be treated fairly in their exercise of fundamental rights, and that suspect classifications based on impermissible criteria be eliminated." *Lujan*, 649 P.2d at 1015.

Signature matching violates Colorado's Equal Protection Clause because it favors voters in certain counties over others. This is a textbook example of the type of arbitrary and inconsistent application of a voting procedure that the Supreme Court explicitly forbade in *Bush v. Gore*: "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (discussing disparate standards and procedures among counties); *see also Reynolds v. Sims*, 377 U.S. 533, 567 (1964) ("The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote."). By rejecting significantly higher numbers of ballots in certain counties over others solely due to inconsistencies in the application of the SMR, voters in some counties are arbitrarily subjected to more burdensome and restrictive voting procedures than voters in other counties despite being similarly situated.

[19] Plaintiffs seek summary judgment on Count III of the complaint, asserting an equal protection claim based on the disparate impact between Colorado counties, but *do not* at this point seek summary judgment with respect to Count II, which asserts a race-based equal protection claim. To be sure, signature verification disproportionately disenfranchises voters of color, but disenfranchising tens of thousands of fully qualified Colorado voters is an outrageous violation of the state constitution, regardless of the color of the skin of those affected. Any dispute over the magnitude of the racially disparate impact is irrelevant to this motion, which does *not* turn on a showing of such disparities. Should summary judgment be denied, there will be time enough to demonstrate those disparities at trial.

Despite ostensibly applying the same SMR in every county, outcomes for voters are wildly different because such an inherently subjective standard *cannot* be applied uniformly. Recent election data show a wide range of rejection rates among counties:

- In the 2020 General Election, Adams County had a rejection rate that was ***20 times higher*** than the rate in Rio Grande County. Palmer Report ¶ 34.
- Even amongst similarly populous counties there is enormous disparity. For example, Adams and Douglas Counties had a nearly identical number of total ballots, but Adams County rejected approximately ***five times more*** ballots than Douglas County. *Id.* at 15.
- In that same election, El Paso County had a rejection rate ***five times*** that of Jefferson County despite similar numbers of ballots cast. *Id.*

This county-by-county disparate treatment inherently values the votes of voters in counties with lower rejection rates over those who live in counties with higher rejection rates and is a hallmark violation of equal protection. In *Bush v. Gore*, the Supreme Court reversed the Supreme Court of Florida's order to manually recount ballots in certain Florida counties, holding that "the use of standardless manual recounts" violated the Equal Protection Clause. *Bush*, 531 U.S. at 102–05. Of particular concern to the Court was, as the Sixth Circuit later summarized, the "lack of statewide standards," which "effectively denied voters the fundamental right to vote." *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477 (6th Cir. 2008). The Supreme Court held that the recount mechanisms, which were inconsistent between counties, violated equal protection because they did not satisfy "the minimum requirement for nonarbitrary treatment of voters necessary to secure the fundamental right." *Bush*, 531 U.S. at 105. In applying *Bush v. Gore*, courts across the country have found that arbitrary, inconsistent application of voting procedures that lead to disparate burdens on voters based solely on where those voters live—precisely what occurs with signature matching—violates equal protection.[20]

[20] *See*, *e.g.*, *Black v. McGuffage*, 209 F. Supp. 2d 889, 899 (N.D. Ill.2002) (applying *Bush v. Gore* and holding that allegations that votes in some counties were statistically less likely to be counted than votes in other counties stated a valid equal protection claim); *Common Cause S.*

A "lack of statewide standards" for signature verification leads to fundamentally arbitrary application of the SMR, as evidenced by the wide variance among counties, and leads to disparate burdens on similarly situated voters based solely on the county in which they reside. *See Brunner*, 548 F.3d at 477. Defendants offer no competent evidence showing that voters in certain Colorado counties are not arbitrarily burdened due to inconsistent application of the SMR, nor can they. Signature matching is precisely the type of procedure that "deprives [Colorado's] citizens of the right to vote or severely burdens the exercise of that right depending on where they live" and, therefore, violates the Equal Protection Clause. *See Brunner*, 548 F.3d at 478.

VI. CONCLUSION

Colorado's Signature Matching Requirement imposes an unlawful and unconstitutional burden on Colorado voters, stripping the most precious and fundamental civil right from tens of thousands of fully qualified voters who did everything required to exercise the franchise. This faux science penmanship requirement does nothing to advance any compelling state interest and is most certainly not "narrowly tailored" to advance such an interest. Its undisputed—and shameful—disparate impact on young and minority voters only adds gratuitous insult to constitutional injury. Plaintiffs respectfully submit that summary judgment should be entered.

Christian Leadership Conf. of Greater L.A. v. Jones, 213 F. Supp. 2d 1106, 1108–10 (C.D. Cal.2001) (plaintiffs alleged that some counties adopted more reliable voting procedures than others in violation of equal protection and, accordingly, defendants were not entitled to judgment on the pleadings); *Brunner*, 548 F.3d at 477–48 (alleged failure to allocate voting machines among counties "proportionately to the voting population" in each county, which "caus[ed] more severe wait times in some counties than in others," unconstitutionally violated voters' rights "based on where they live"); *Jones v. U.S. Postal Serv.*, 488 F. Supp. 3d 103, 135 (S.D.N.Y. 2020) ("[T]he lack of uniformity in the Postal Service's treatment of Election Mail among local post offices will result in intrastate and interstate disparities in citizens' voting power."), order clarified, No. 20 CIV. 6516 (VM), 2020 WL 6554904 (S.D.N.Y. Sept. 29, 2020); *Fla. Democratic Party v. Detzner*, No. 16cv607, 2016 WL 6090943, at *7 (N.D. Fla. Oct. 16, 2016) ("This court is deeply troubled by the complete lack of uniformity" in the "crazy quilt of conflicting and diverging procedures" used to compare signatures.).

DATED this 7th day of November, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 7, 2023, a true and correct copy of the foregoing was served via the Colorado Court's E-Filing system, addressed to the following:

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