

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street, Denver, Colorado 80202</p> <hr/> <p>WAYNE W. WILLIAMS, in his official capacity as Colorado Secretary of State,</p> <p>Petitioner,</p> <p>v.</p> <p>POLLY BACA and ROBERT NEMANICH, in their official capacities as presidential electors, and others so similarly situated,</p> <p>Respondents.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>CYNTHIA H. COFFMAN, Attorney General LEEANN MORRILL, First Assistant Attorney General* W. ERIC KUHN, Senior Assistant Attorney General* CHRISTOPHER JACKSON, Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6159/6143/6178 Fax: (720) 508-6041 E-Mail: leeann.morrill@coag.gov/eric.kuhn@coag.gov/ christopher.jackson@coag.gov Registration Number: 38742/38083/49202 *Counsel of Record</p>	<p>Case No.</p> <p>Div:</p>
<p>PETITION</p>	

Wayne W. Williams, in his official capacity as Colorado Secretary of State (“the Secretary”), by and through the Colorado Attorney General and undersigned counsel, submits the following Petition pursuant to C.R.S. § 1-1-113, or alternatively § 1-1-107(2)(d), to settle a controversy between the Secretary, as an official charged with duties under the Election Code, and the presidential electors, as officers or representatives of a political party:

PARTIES

1. Petitioner Wayne W. Williams is the duly elected Colorado Secretary of State. The Secretary of State is an elected constitutional officer and is the chief state election official. COLO. CONST. art. IV, § 1; C.R.S. § 1-1-107(1).

2. Respondent Polly Baca is a resident of the City and County of Denver.

3. Respondent Baca is a Colorado presidential elector.

4. Respondent Robert Nemanich is a resident of El Paso, Colorado.

5. Respondent Nemanich is a Colorado presidential elector.

VENUE AND JURISDICTION

6. This Court has jurisdiction over the subject matter of this action pursuant to C.R.S. § 1-1-113(1), or alternatively under C.R.C.P. 57 and C.R.S. § 1-1-107(2)(d).

7. Venue is proper in this Court under Rule 98(b)(2), or C.R.S. § 1-1-107(2)(d).

FACTUAL ALLEGATIONS

8. The Uniform Election Code of 1992, C.R.S. §§ 1-1-101, *et seq.* (the “Election Code”), governs presidential electors in Colorado. § 1-4-301.

9. The Secretary has a duty to enforce the provisions of the Election Code. § 1-1-107(1)(b).

10. Presidential electors may be nominated by political parties. § 1-4-302.

11. Respondent Baca was nominated as a presidential elector at the Colorado Democratic Convention held on April 16, 2016.

12. Respondent Nemanich was nominated as a presidential elector at the Colorado Democratic Convention held on April 16, 2016.

13. Upon information and belief, as a condition of nomination, each potential presidential elector at the Colorado Democratic Convention was required to swear a pledge to vote for the Democratic Party’s nominees for president and vice president.

14. Upon information and belief, Respondent Baca swore a pledge to vote for the Democratic Party’s nominees for president and vice president if she was elected as a presidential elector.

15. Upon information and belief, Respondent Nemanich swore a pledge to vote for the Democratic Party's nominees for president and vice president if he was elected as a presidential elector.

16. Presidential electors are selected by the general election.

17. The presidential electors are selected if the slate of president and vice president for the party they were nominated by receives the highest number of votes in the general election.

18. The Democratic Party nominated Hillary Clinton for president and Timothy Kaine for vice president.

19. The general election was conducted on November 8, 2016.

20. Hillary Clinton and Timothy Kaine received the most votes for president and vice president in that general election in Colorado.

21. As a nominated presidential elector for the Colorado Democratic Party, Respondent Baca was selected for the office of presidential elector based on the results of the general election.

22. As a nominated presidential elector for the Colorado Democratic Party, Respondent Nemanich was selected for the office of presidential elector based on the results of the general election.

23. The presidential electors are required to meet in the state capitol building at noon on December 19, 2017. § 1-4-304(1).

24. At that time they will take the oath required by law for presidential electors. *Id.*

25. The presidential electors will then vote by open ballot for president and vice president of the United States.

26. Presidential electors are required to cast their votes for the presidential and vice presidential candidate who received the highest number of votes in the preceding general election. § 1-4-304(5).

27. Under state law, Respondent Baca is required to cast her vote for president for Hillary Clinton.

28. Under state law, Respondent Baca is required to cast her vote for vice president for Timothy Kaine.

29. Under state law, Respondent Nemanich is required to cast his vote for president for Hillary Clinton.

30. Under state law, Respondent Nemanich is required to cast his vote for vice president for Timothy Kaine.

31. Despite her pledge to the Colorado Democratic Party and the requirements of state law, Respondent Baca has indicated that she does not want to cast her Electoral College votes for Hillary Clinton and Timothy Kaine.

32. Despite his pledge to the Colorado Democratic Party and the requirements of state law, Respondent Nemanich has indicated that he does not want to cast his Electoral College votes for Hillary Clinton and Timothy Kaine.

33. Presidential electors who wish to cast their votes in a way other than how they are pledged are commonly known as “faithless electors.”

34. Respondent Baca has filed suit in the United States District Court for the District of Colorado, 16-cv-02986-WYD, challenging the constitutionality of C.R.S. § 1-4-304(5), which requires her to cast her electoral college votes in accordance with the popular vote of Colorado’s citizens.

35. Respondent Nemanich is also a plaintiff in 16-cv-02986-WYD.

36. A copy of the Verified Complaint for Declaratory and Injunctive Relief in 16-cv-02986-WYD, with its exhibits, is attached to this Petition as Exhibit A.

37. While the federal district court will determine the federal question before it—namely the constitutionality of C.R.S. § 1-4-304(5)—the recent events detailed above have caused significant concern to the Secretary regarding the administration of the Electoral College on December 19, 2016.

38. Respondent Baca has represented that it is her “desire and intent to vote for someone for President and Vice-President that will either obtain 270 electoral votes and is not Trump/Pence or who will obtain enough votes in the Electoral College to be one of the top-three vote getters if no candidates reach 270 electoral votes.” Ex. A at 11–12 ¶ 14.

39. Respondent Nemanich has represented that it is his “desire and intent to vote for someone for President and Vice-President that will either obtain 270 electoral votes and is not Trump/Pence or who will obtain enough votes in the Electoral College to be one of the top-three vote getters if no candidates reach 270 electoral votes.” Ex. A at 15–16 ¶ 14.

40. Respondent Baca’s statement reflects her intent to not vote for Hillary Clinton and Timothy Kaine unless each can obtain 270 electoral votes.

41. Current estimates show that Hillary Clinton has 232 Electoral College votes compared to 306 for Donald Trump. *E.g.*, <http://www.cnn.com/election/results/president>.
42. Accordingly, it is unlikely that Hillary Clinton will receive 270 electoral votes.
43. Unless Respondent Baca votes for Hillary Clinton and Timothy Kaine, she will be in violation of state law.
44. Respondent Nemanich's statement reflects his intent to not vote for Hillary Clinton and Timothy Kaine unless each can obtain 270 electoral votes.
45. Unless Respondent Nemanich votes for Hillary Clinton and Timothy Kaine, he will be in violation of state law.
46. Upon information and belief, Respondent Baca does not intend to vote for Hillary Clinton and Timothy Kaine even if her federal lawsuit is unsuccessful.
47. Upon information and belief, Respondent Nemanich does not intend to vote for Hillary Clinton and Timothy Kaine even if his federal lawsuit is unsuccessful.
48. Media sources quote Respondent Nemanich as stating that "he's spoken to five electors in his state alone who intend to join him." Exhibit B at 4 (Kyle Chenny, *Democratic presidential electors revolt against Trump*, POLITICO, Nov. 23, 2016, available at <http://www.politico.com/story/2016/11/democrats-electoral-college-faithless-trump-231731>).
49. Media sources quote Respondent Baca as saying that she had spoken with her fellow presidential electors about not following state law and believes that they will "come around" to her view. Exhibit C at 4 (Corey Hutchins, COLORADO INDEPENDENT, *Four out of 9 Colorado Electoral College members agree: Revolt is necessary*, Nov. 28, 2016, available at <http://www.coloradoindependent.com/162679/electoral-college-revolt-colorado-electors-hamilton>).
50. Colorado has nine presidential electors.
51. According to news reports and the federal lawsuit, at least seven of those presidential electors are considering not complying with state law.
52. The Election Code provides that "[i]f any vacancy occurs in the office of a presidential elector because of death, refusal to act, absence, or other case, the presidential electors present shall immediately proceed to fill the vacancy in the electoral college." C.R.S. § 1-4-304(1).
53. Once any vacancies are filled "the presidential electors shall proceed to perform the duties required of them by the constitution and laws of the United States." *Id.*

54. The vote for president and vice president shall be taken by open ballot. *Id.*

55. “Each presidential elector shall vote for the presidential candidate, and by separate ballot, vice presidential candidate who received the highest number of popular votes at the preceding general election in this state.” § 1-4-304(5).

56. This suit does not reach the same question as the federal suit, and involves only the paramount concerns of the State of Colorado on the manner in which it administers its own elections, which properly belongs in state courts. *E.g. Burford v. Sun Oil Co.*, 319 U.S. 315, 332–33 (1943) (describing the “federal-state conflict” that requires a federal court to yield jurisdiction in favor of a state forum in matters of state policy).

FIRST CLAIM FOR RELIEF
[Substantial Compliance under C.R.S. § 1-1-113]

57. The Secretary incorporates the allegations contained in paragraphs 1 through 56 above as if recited herein.

58. C.R.S. § 1-1-113(1) provides that “upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of” the Election Code when a person charged with a duty under the code has committed or is about to commit a breach or neglect of duty or other wrongful act.

59. Respondent Baca has been elected as a presidential elector.

60. Respondent Baca has a duty under the Election Code to cast her Electoral College votes for Hillary Clinton and Timothy Kaine.

61. Respondent Baca has indicated that she is about to breach that duty.

62. Respondent Nemanich has been elected as a presidential elector.

63. Respondent Nemanich has a duty under the Election Code to cast his Electoral College votes for Hillary Clinton and Timothy Kaine.

64. Respondent Nemanich has indicated that he is about to breach that duty.

65. The other Colorado presidential electors have a duty under the Election Code to cast their electoral votes for Hillary Clinton and Timothy Kaine.

66. Respondent Nemanich has also indicated that other of the Colorado presidential electors are about to breach that duty.

SECOND CLAIM FOR RELIEF

[In the alternative, injunctive relief under C.R.S. § 1-1-107(2)(d)]

67. The Secretary incorporates the allegations contained in paragraphs 1 through 66 above as if recited herein.

68. Alternatively, if relief is not available under C.R.S. § 1-1-113, then the Secretary seeks a declaration that a refusal to vote in accordance with § 1-4-304(5) constitutes a refusal by the presidential elector to act, which creates a vacancy for that elector under § 1-4-304(1).

69. The Secretary further seeks an injunction requiring the Respondents to cast their electoral votes for Hillary Clinton and Timothy Kaine in accordance with state law.

70. The Secretary has the power to enforce the provisions of the Election Code by injunctive action brought by the Attorney General in the district court for the judicial district in which any violation occurs. § 1-1-107(d)(2).

71. To perform their duties, the presidential electors must convene at the state capitol building, which is located in this judicial district. § 1-4-304(1).

WHEREFORE, the Secretary respectfully requests that this Court, pursuant to C.R.S. § 1-1-113, or in the alternative, pursuant to C.R.C.P. 57 and C.R.S. § 1-1-107(2)(d), issue the following ORDER:

- A. Declare that under C.R.S. § 1-4-304(5), Colorado's presidential electors are required to vote for the presidential candidate and vice presidential candidate who received the most votes in the general election. In 2016, those candidates are Hillary Clinton for president and Timothy Kaine for vice president.
- B. Declare that refusal of a presidential elector to cast his or her vote in accordance with C.R.S. § 1-4-304(5) constitutes a "refusal to act," which creates a vacancy in that presidential elector's office by operation of law.
- C. Declare that if any vacancy in the office of a presidential elector occurs, the remaining presidential electors present shall immediately fill the vacancy by majority vote pursuant to § 1-4-304(1). Determine that the presidential electors may fill any vacancy with any registered elector in the state who is nominated by the Democratic Party of Colorado, the Colorado Secretary of State, the Court, or another party selected by the Court.
- D. Declare that presidential electors do not need a quorum to fill the vacancy under § 1-4-304, § 2-4-111, or any other state law.

- E. Declare that if no presidential elector acts or if all presidential electors' offices are vacant, then the Democratic Party of Colorado, the Colorado Secretary of State, the Court, or another party selected by the Court shall immediately fill all vacancies and may select any registered elector nominated by the party designated in request C above.
- F. Order the Respondents, and the other presidential electors similarly situated, to substantially comply with the Election Code by casting their Electoral College votes for Hillary Clinton and Timothy Kaine, who are the presidential candidate and vice presidential candidate who received the highest number of votes at the preceding presidential election in this state, unless enforcement of § 1-4-304(5) is enjoined by the federal district court; or, alternatively,
- G. Enjoin the Respondents to cast their Electoral College votes for Hillary Clinton and Timothy Kaine, unless enforcement of § 1-4-304(5) is enjoined by the federal district court.
- H. Grant such other and further relief as the Court deems just and proper.

Dated this 9th day of December, 2016.

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s/ W. Eric Kuhn

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