



adopt temporary rules to promote a very specific aim: “Authorizing registered electors to sign petitions by a means that does not require a petition circulator, including but not limited to providing electronic mail and mail-in options.”

Although the Governor claims his executive order is an emergency measure necessary to respond to public health concerns created by the COVID-19 pandemic, the action taken in the order exceeds his emergency powers. Gutting the constitutional process for ballot measure petitions to be circulated and qualified for the ballot in no way ameliorates the COVID-19 pandemic in the state, but instead adds to the uncertainty borne by Coloradoans as the state begins to emerge from the restrictions imposed over the last two months. Indeed, if the Governor’s action is permitted to stand, the public will have little idea as to what requirements, if any, proponents of ballot measures should follow in gathering signatures on their petitions.

The Governor’s violation of the bounds of his emergency powers and his unilateral infringement on the integrity of the state’s constitutionally mandated signature gathering process must be now remedied by the independent judicial branch of government.

## **BACKGROUND**

1. Late Friday evening, Defendant Governor Jared Polis issued Executive Order D 2020 065, entitled “Ordering the Temporary Suspension of Certain Regulatory Statutes Concerning Signature Collection for Ballot Issues and Authorizing the Secretary of State to Create Temporary Rules for Registered Electors to Receive and Return Issue Petitions Over Mail and Email Due to the Presence of COVID-19” (Executive Order). (Compl. ¶ 38.)

2. The Executive Order is one of a series of orders issued by the Governor since declaring a disaster emergency in Colorado on March 10, 2020, due to the community spread of

a novel coronavirus causing a disease called COVID-19. (*Id.* ¶ 30 (citing Executive Order No. D 2020 003).)

3. Among those orders was a March 25 order, in which the Governor ordered all Coloradans to stay home due to the continued presence and spread of COVID-19. (*Id.* ¶ 31 (citing Executive Order No. D 2020 017).) The “stay at home” order expired on April 26, 2020, 19 days before the Governor issued the Executive Order here. (*Id.* ¶ 32) Similar “stay at home” orders imposed by local jurisdictions in Colorado expired on or before May 8, 2020. (*Id.* ¶ 33.)

4. Additionally, on May 11, 2020, just four days before issuing the Executive Order, the Governor announced that state campgrounds would open on May 12, 2020. (*Id.* ¶ 35 (citing Press Release, *Governor Polis Updates Coloradans on Timeline for Decision Making Under Safer at Home Phase* (May 11, 2020), <https://www.colorado.gov/governor/news/governor-polis-updates-coloradans-timeline-decision-making-under-safer-home-phase>).) In that same announcement, the Governor offered that outdoor dining in restaurants may return before the end of May. (*Id.* ¶ 36.) In fact, the Governor has expressed that other activities typically conducted out-of-doors are due to return. (*Id.* ¶ 34.)

5. The Executive Order purports to temporarily suspend core statutory requirements governing the process for gathering signatures for citizen-initiated ballot measures. (*Id.* ¶¶ 39-43.) Specifically, the Executive Order targets Title 1, article 40 of the Colorado Revised Statutes (Article 40), which provides the statutory framework for the exercise of the initiative power. *See* Colo. Rev. Stat. § 1-40-103(1). (*Id.* ¶ 14.) Article 40 includes several provisions that prescribe the form of initiative petitions and implements the safeguards for the petitioning process set out in article V, section 1 of the Colorado Constitution. (*Id.* ¶ 15.)

6. The specified statutory requirements suspended by the Executive Order include:
- C.R.S. §§ 1-40-102(6), -110, -105.5(4), and -113 – governing the form of a ballot issue, how a ballot issue petition must be compiled, and the specific information that must be printed on the ballot issue petition.
  - C.R.S. § 1-40-111 – requiring a petition circulator to be in the physical presence of the registered electors signing the petition, the petition circulator be in the physical presence of a notary, and requiring the secretary of state reject any section of a petition that does not have a notarized circulator affidavit attached.
  - C.R.S. § 1-40-116 – requiring a petition circulator’s affidavit be attached to each section of the ballot issue petition and that the secretary of state assure that the information required by C.R.S. § 1-40-111(2) is complete.
  - C.R.S. §§ 1-40-130(1)(k), -130(1)(e), -130(1)(l) – making it unlawful for a petition to be signed outside the presence of a circulator; to the extent that subsection 130(1)(e) requires an affidavit to a ballot petition be signed in the physical presence of the person certifying the affidavit; and making it unlawful for any person to circulate in whole or in part a petition section, unless such person is the circulator who signs the affidavit attached to the petition section.
  - Authorizing the secretary of state to promulgate and issue temporary emergency rules to fill the void left by the Governor’s temporary suspension of these core provisions of Article 40.

(*Id.* ¶¶ 39-43.)

7. The Executive Order applies to a number of currently pending ballot measures. Of the 66 initiatives with a title currently set, 14 initiatives have been approved for circulation with the remaining 52 needing to submit petitions for review and approval of their format by the secretary of state. (*Id.* ¶ 24.) The last day to circulate petitions and to submit them to the secretary of state for verification is Monday, August 3, 2020. (*Id.* ¶ 28.) This means there are 78 days remaining to circulate petitions for those initiatives eligible to do so. (*Id.*)

8. As of the filing of this motion, two initiatives—2019-2020 #76 (clarifying the requirement of U.S. citizenship for Colorado electors) and 2019-2020 #107 (regarding the

proposed restoration of gray wolves in Colorado)—have qualified for the ballot. (*Id.* ¶ 23.) A third—2019-2020 #120 (forbidding certain late-term abortions)—is currently in a two-week “cure period” during which its proponents are seeking to provide additional valid signatures to cure a statement of deficiency from the secretary of state. (*Id.*)

9. The 2019-2020 ballot initiative cycle has been pending since December 2019. (*Id.* ¶ 22.) The first ballot measure to have its petition format approved was approved for circulation on March 5, 2019. (*Id.* ¶ 29.) The proponents of that initiative had a full six months until August 5, 2019, to submit their signatures—that is, their signature gathering period ended over seven months before the Governor declared a disaster emergency in Colorado due to the COVID-19 pandemic. (*Id.*)

10. Plaintiffs in this case are Daniel Ritchie and Colorado Concern. (*Id.* ¶¶ 3-4.) Plaintiff Colorado Concern was founded in 1986, and is a statewide CEO-based organization devoted to investing in and promoting a pro-business environment through the political process. (*Id.* ¶ 4.) Plaintiff Ritchie is a registered elector residing in Denver County, who serves on the board of Colorado Concern. (*Id.* ¶ 3.)

11. Plaintiffs will be adversely impacted by certain ballot measures subject to the Executive Order if they become law. (*Id.* ¶¶ 3-4, 25-27.) In particular, Initiative 2019-2020 #247, which has been approved for circulation, would create a mandatory state-run paid medical and family leave program into which employers and employees would be required to contribute. (*Id.* ¶ 26.) Adoption of such a measure would directly impact a charity chaired by Plaintiff Ritchie. (*Id.*) Another example is Initiative 2019-2020 # 271—also approved for circulation—which

would eliminate Colorado's flat rate of income taxation and would replace it with a graduated income tax system under which Plaintiff Ritchie's taxes would be increased. (*Id.* ¶ 27.)

12. Plaintiffs also have an interest in the strictures of article V, section 1 of the Colorado Constitution being followed to maintain the integrity of the constitutional requirements for gathering signatures for all ballot measures in Colorado and in ensuring clarity in the rules for the same. (*Id.* ¶¶ 3-4.)

13. Plaintiffs' verified complaint is being filed concurrently with this motion for a temporary restraining order.

### **LEGAL STANDARD**

14. In deciding a motion for injunctive relief, district courts must consider the factors outlined in *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982). Under *Rathke*, the party seeking injunctive relief must demonstrate: (1) there is a reasonable probability of success on the merits; (2) there is a danger of real, immediate, and irreparable injury that may be prevented by injunctive relief; (3) there is no plain, speedy, and adequate remedy at law; (4) the granting of an injunction will not disserve the public interest; (5) the balance of equities favors the injunction; and (6) the injunction will preserve the status quo pending a trial on the merits. *Id.* at 653-54. The grant of injunctive relief lies within the sound discretion of the district court and will be reversed only upon a showing of an abuse of that discretion. *Scott v. City of Greeley*, 931 P.2d 525, 530 (Colo. App. 1996).

## ARGUMENT

### I. ***Rathke* Requires a Temporary Restraining Order and/or Preliminary Injunction Against Defendants.**

#### A. **Reasonable probability of success on the merits.**

15. Plaintiffs have a reasonable probability of succeeding on the merits of their claims. Central to Plaintiffs' claims is whether the Governor has the authority under the Act, C.R.S. §§ 24-33.5-701 to -716, to suspend certain requirements for signature collection for ballot issues and to authorize the secretary of state to create temporary rules to allow for mail and email signature collection. As detailed below, the Governor lacks such authority. *First*, the Governor's issuance of the underlying Executive Order concerning citizen-initiated ballot measures exceeds his authority under the Act. *Second*, even if the Act grants the Governor authority to regulate citizen-initiated ballot measures during a disaster emergency, the Governor may not use that authority to unilaterally suspend or alter applicable requirements mandated by the constitution.

#### *The Executive Order exceeds the Governor's authority under the Act.*

16. Under the Act, "[t]he governor is responsible for meeting the dangers to the state and people presented by disasters." C.R.S. § 24-33.5-704(1). In order to ensure a prompt and efficient disaster response, the general assembly delegated to the governor certain emergency powers and discretion. *See* § 24-33.5-704(7). Among other powers so delegated, the governor may redirect state personnel and resources, commandeer and use private property, compel evacuation, and suspend statutes, rules, and regulations. *Id.*

17. These emergency powers, however, are not without limits. For example, the use of private property is subject to later compensation to the property owner. § 24-33.5-704(7)(d). Redirection of state personnel and resources must be "for the purpose of performing or

facilitating emergency services.” § 24-33.5-704(7)(c). Evacuation may be compelled only if it is “necessary for the preservation of life or other disaster mitigation, response, or recovery.” § 24-33.5-704(7)(e).

18. The governor’s authority to suspend statutes, rules, and regulations is likewise subject to limitations expressed in the Act. Subsection 24-33.5-704(7)(a) provides:

[T]he governor may . . . [s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency, *if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.*

(Emphasis added.) Thus, there must be a nexus between the laws suspended under subsection 24-33.5-704(7)(a) and the declared disaster emergency. That is, the governor may suspend a state “regulatory statute” only when strict compliance with the law would otherwise impede necessary state action in coping with the emergency.

19. Here, the Governor has failed to establish the required nexus between strict compliance with the signature gathering requirements for citizen-initiated ballot measures and necessary state action to cope with the COVID-19 pandemic. Significantly, the Executive Order does not identify necessary *state* action to cope with pandemic that would be inhibited by strict compliance with the signature gathering requirements. Rather, the claimed prejudice the Executive Order cites is private parties’ relative ease of gathering signatures in support of citizen-initiated ballot measures. For instance, according to the Executive Order, suspension of the relevant statutes is permissible because the Governor’s April 26, 2020 Safer at Home executive order “imposes a significant hurdle for ballot petition circulators” by creating “significant and determinative barriers . . . that prevent them from the normal statutory conduct



of in-person signature gathering.” (*See* Executive Order 1 (citing Executive Order D 2020 044 (Safer at Home))).) But such concerns do not implicate the state’s response to the pandemic.

20. Even more, nothing about the signature gathering requirements prevents, hinders, or delays the state’s response to the pandemic because, by definition, the targeted requirements govern only *citizen*-initiated ballot measures. In other words, the constitutional and statutory scheme for signature gathering is not an obstacle to necessary actions by the state in response to the pandemic. And none of the citizen-initiated ballot measures eligible for signature gathering concern the state’s response, nor would they impact how the state responds.<sup>1</sup>

21. Separate and apart from the absence of a necessary state action is that the current circumstances belie any claim that strict compliance with the signature gathering requirements would impair a necessary state response to the pandemic. To that, the purpose of Safer at Home is to move Colorado out of the Stay at Home lockdown and to allow additional movement and interaction, including the limited reopening of commercial businesses and retail stores. Indeed, two of the most common locations where signatures are gathered—in front of grocery stores and in public parks—have never been closed and take place outside where social distancing is more easily achieved and the risk of transmission is lower than indoors.

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<sup>1</sup> The Executive Order also vaguely states that its purpose is “to preserve our constitutional principle of ballot access” (Executive Order 2), but the order is not reasonably necessary for preservation of that right and exceeds the government interest purportedly protected. Ballot measures run on a two-year election cycle and two measures have already succeeded in making the ballot. A third ballot measure is in the signature cure period and, peculiarly, directive II.K of the Executive Order expressly prevents that particular ballot measure’s cure period from being extended even though the signature gathering period for all other ballot measures is extended under the Executive Order. Proponents of ballot measures that fail to gather sufficient signatures to make the ballot in this cycle can simply refile during the next cycle. Relaxing the signature gathering requirements to accommodate proponents who have waited until the eleventh hour to put forward their ballot measure is far greater than what is essential to preserving the principle of ballot access in this context.

22. And, as far as personal interaction is concerned, signing the petition for a ballot measure is no different than signing a receipt for a takeout food order or interacting with a grocery store clerk. Current circumstances may make signature gathering more difficult but, as with other activities being conducted during this pandemic, modifications are available to ensure that petition circulators and electors signing the petition are reasonably protected by wearing masks and gloves, using sanitized pens, and maintaining social distance. Additional protections may include posting information about when and where signature gathering drives will take place, taking appointments like salons, or by reserving specific times for vulnerable populations, as grocery stores do. Also, nothing prevents petition circulators from meeting an individual at his or her home and obtaining the individual's signature safely and at a distance in the same way a package is signed for upon pick up or delivery. In short, the current signature requirements do not impair, and indeed are perfectly consistent with, the Governor's Safer at Home order.

23. But, even if a nexus with the declared emergency exists, the Governor lacks the power to relax strict compliance with non-technical signature gathering requirements. The signature gathering requirements the Executive Order seeks to suspend are not the kind of technical deficiencies that can be deemed to meet the substantial compliance standard. Rather, they must be complied with strictly. As the Colorado Supreme Court held two weeks ago in *Griswold v. Warren*, the "legislature alone" has the power to lessen strict compliance with non-technical signature gathering requirements. 2020 CO 34 ¶ 2.

24. And some of the requirements are not merely statutory. Among other requirements, the Governor's Executive Order suspends the statutes and rules regarding the form of petitions and the petition affidavit—two requirements that originate in the Colorado

Constitution. For these constitutional requirements, not even the legislature has the power to relieve petitioners from compliance. Instead, any such change to these provisions must come in the form of a constitutional amendment.

*The Governor may not suspend requirements mandated by the constitution.*

25. Even if the Governor’s authority under the Act is sufficient to permit him to temporarily suspend some aspects of the statutory process for gathering petition signatures for ballot initiatives, the Governor has no authority to unilaterally suspend the signature gathering requirements in the Colorado Constitution. Yet, the Executive Order purports to do exactly this. The Executive Order’s centerpiece is its directive to the Secretary of State to promulgate temporary rules that “[a]uthorize registered electors to sign petitions by a means that does not require a petition circulator, including but not limited to providing electronic mail and mail-in options.” (Executive Order 3 (directive G.a).) Indeed, most of the other directives in the Executive Order are intended to facilitate this new scheme by eliminating the requirement that petition circulators be physically present to gather signatures from electors. But the problem with this design is that it violates the Colorado Constitution.

26. “Article V, section 1(2) of the Colorado Constitution reserves to the registered electors of the State of Colorado the constitutional right to initiate legislation and constitutional amendments.” *In re Election Reform Amend.*, 852 P.2d 28, 31 (Colo. 1993). To qualify for the ballot, proponents must circulate initiative petitions and collect “signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election.” Colo. Const. art. V, § 1(2). The signature gathering process is in part prescribed by the constitution, which states,

The petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state; such petition shall be signed by registered electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector.

Colo. Const. art. V, § 1(6).

27. The requirement that electors sign a petition “in their own proper persons only, to which shall be attached the residence address of such person and the date of signing,” along with the requirement that circulators attest that “each signature thereon is the signature of the person whose name it purports to be,” are part of a critical—and constitutionally mandated—authentication process. And it is on the basis of these procedural safeguards that the constitution grants a presumption of validity in favor of verified petitions: “Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors.” *Id.* This constitutional presumption of validity in turn informs the secretary of state’s petition review process. Indeed that process relies upon the presumption of validity in that the secretary of state’s office validates signatures for citizen-initiated ballot measures by randomly sampling only five percent (but no fewer than 4,000) of signatures submitted by proponents. *See* C.R.S. § 1-40-119(4)(b)(I).

28. The chief purpose of this prescribed “signature verification procedure is ‘to maintain integrity in the initiative process and to comply with the constitutional requirements.’” *Buckley v. Chilcutt*, 968 P.2d 112, 116 (Colo. 1998) (quoting *Fabec v. Beck*, 922 P.2d 330, 335 (Colo.1996)). Consistent with this tenet, the Colorado Supreme Court has emphasized that the

circulator affidavit requirement in article V, section 1, subsection 6 “provides a strong basis for the conclusion . . . that the circulator in fact *witnessed* the petitioners’ execution of the corresponding petition.” *Comm. for Better Health Care for All Colo. Citizens by Schrier v. Meyer*, 830 P.2d 884, 898 (Colo. 1992) (emphasis added). Although the Colorado Supreme Court has rejected the notion that an “affiant must be personally acquainted with each and every signer on that petition and know the signatures to be genuine,” it has nonetheless confirmed that the constitution requires “the affidavit directly state that the signature was personally affixed in the presence of the circulator by a person representing himself to be identifiable by the name signed to the petition or that the signature was known to the circulator as being that of the person affixing it to the section.” *Brownlow v. Wunsch*, 83 P.2d 775, 781 (Colo. 1938).

29. As such, Colorado’s design for gathering signatures for citizen-initiated ballot measures includes a constitutional requirement that petition circulators be physically present at the time the elector signs the petition and witness the signing. It is only by this process that the circulator can positively attest that “each signature [to the petition] is the signature of the person whose name it purports to be.” *See* Colo. Const. art. V, § 1(6); *see also Loonan v. Woodley*, 882 P.2d 1380, 1385 (Colo. 1994) (“The purpose of the affidavit is the assurance the circulators were aware of their important role in implementing all of the statutory safeguards and in assuring the validity of the signatures they collect.”).

30. Here, although the Executive Order states it is suspending certain statutory signature gathering requirements contained in Article 40, it also attempts to suspend requirements in article V, section 1 of the Colorado Constitution. For example, the Executive Order improperly seeks to circumvent the in-person, petition circulator process embedded in the

constitution by directing the secretary of state to promulgate temporary rules, which *must* include a provision “[a]uthorizing registered electors to sign petitions by a means that does not require a petition circulator, including but not limited to providing electronic mail and mail-in options.” (Executive Order 3.) But the Colorado Supreme Court has already answered whether the constitution requires petition circulators to witness the individuals who sign the petition under his or her control and who must verify the individuals who have signed the petition are registered electors. And the Governor may not avoid this constitutional mandate by executive action.

31. In addition to the supreme court’s firm guidance on the import of circulator affidavits, the constitution includes other textual cues confirming that signatures for citizen-initiated ballot measures must be gathered in the presence of a petition circulator. First, the text of article V, subsection 6 states the petition shall “consist of sheets” and have “general form printed or written at the top thereof.” Colo. Const., art. V, § 1(6). Second, the petition “shall be signed by registered electors in their own proper persons only” with address and date “attached.” *Id.* Third, the circulator affidavit required to be attached to each petition must verify “that each signature thereon is the signature of the person whose name it purports to be.” *Id.* And fourth, such verified petitions serve as “prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors.” *Id.* Thus, the text of the article V, section 1—specifically, subsection 6—is consistent with and supportive of the supreme court’s longstanding view of an in-person signature gathering process for ballot measures.<sup>2</sup>

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<sup>2</sup> The text of article V, section 1, subsection 6 is a near match to the language approved by the people when the initiative and referendum provisions were adopted in 1910. *See* Act of Sept. 2, 1910, ch. 3, § 1, 1910 Colo. Sess. Laws. 1, 13. Surely the 1910 electors did not contemplate the use of electronic forms to gather signatures. *See Davidson v. Sandstrom*, 83 P.3d

32. At bottom, because the requirements at issue are constitutional and not statutory, they are fixed in the absence of a constitutional amendment.

**B. Immediate and irreparable injury and lack of plain speed remedy.**

33. Plaintiffs will be irreparably injured by if the Executive Order if permitted to remain in effect.

34. With the substantive requirements of both the Colorado Constitution and Article 40 suspended, Plaintiffs are more likely to be adversely impacted by the unconstitutional qualification of ballot measures, which will adversely impact them if adopted.

35. Indeed, Colorado's scheme for the review of only a random sample of signatures on initiative petitions relies on the constitutional formula of an in-person circulator to provide prima facie evidence of the petition's validity. If the requirements of article V, section 1 are not vindicated by this Court, Plaintiffs will suffer an injury to their right under the Colorado Constitution against having ballot measures, which may adversely affect them, qualify for the ballot without passing appropriate muster. This right—ordinarily guaranteed by the right of interested citizens to file a protest to a statement of sufficiency under C.R.S. § 1-40-118—will be irretrievably undermined if a period of petition gathering is permitted in the limbo the Executive Order has created by purporting to suspend the requirements of Article 40 and the constitution.

36. When an alleged deprivation of a constitutional right is involved, Colorado courts hold that no further showing of irreparable injury is necessary. *See Evans v. Romer*, 854 P.2d 1270, 1286 (Colo. 1993) (affirming grant of preliminary injunction where rights guaranteed by constitution shown likely to be imperiled).

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648, 654 (Colo. 2004) (“[T]he court’s duty in interpreting a constitutional amendment is to give effect to the electorate’s intent in enacting the amendment.”).

37. No other remedy can provide Plaintiffs all the substantive relief requested. As long as the Executive Order stands, initiative proponents are free to collect signatures without a circulator in the hope that the Secretary of State's eventual rulemaking will validate their violation of the Colorado Constitution and Article 40. While expedited declaratory relief could deem the Executive Order void, unless the court is prepared to grant such relief immediately, only a temporary restraining order will protect Plaintiffs' rights under the Colorado Constitution to insist that proponents of initiated measures—some of which will adversely affect Plaintiffs—comply with circulation requirements in the interim before the Court can hear argument on Plaintiffs' request for expedited declaratory relief.

**C. An injunction would serve the public interest, with favorable equities, while preserving the status quo.**

38. The public interest and equities strongly favor Defendants complying with the limitations on the Governor's extraordinary powers under the Act and the basic constitutional protections of article V, section 1 implemented by Article 40. In other words, there is no public interest in Defendants being empowered to unilaterally eviscerate the basic constitutional requirements for circulation of initiative petitions.

39. Indeed, an injunction will prevent the legal and procedural uncertainty now faced by electors—and initiative proponents—in the wake of the Governor's suspension of critical provisions of Article 40 and the Colorado Constitution.

40. The status quo of initiative proponents continuing to comply with the longstanding and familiar requirements of article V, section 1 of the Colorado Constitution and Article 40 will be preserved by the issuance of an injunction.



41. Moreover, the issuance of a temporary restraining order will preserve the status quo pending a hearing on a motion for preliminary injunction and/or expedited declaratory relief pursuant to Colo. R. Civ. P. 57(m).

42. Rule 65 of the Colorado Rules of Civil Procedure empowers this Court to grant equitable relief as necessary to prevent irreparable injury to Plaintiffs. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if: (1) it clearly appears from specific facts shown by affidavit or by verified complaint or by testimony that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing or on the record the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.

43. Plaintiffs will suffer irreparable harm if the Governor is allowed to suspend the provisions of Article 40 and the constitutional requirement that a circulator witness signatures in-person and if Defendant issue temporary emergency regulations in the place of these constitutionally required procedures.

44. Plaintiffs are in the process of serving the Defendants with the verified complaint in this action and counsel for Plaintiffs will endeavor to provide notice to Defendants of the date and time when this motion will be considered by the Court. *See* Colo. R. Civ. P. 65(a) and (b).

45. Plaintiffs request that a date be set by the Court for a hearing on their motion for temporary restraining order and that after the date and time are set, Plaintiffs will attempt to provide Defendants with notice of the hearing by service or otherwise as set forth in Colo. R. Civ. P. 65(a) and (b).

46. No injury or damage will be sustained by Defendants if the requested temporary restraining order is issued. Following the limitation on the Governor's extraordinary powers under the Act and observing the requirements of the constitution cannot constitute an injury.

### CONCLUSION

WHEREFORE, Plaintiffs request that the Court issue a temporary restraining order directed at Defendants, restraining and enjoining them from:

- A. Exercising the Governor's authority under the Colorado Disaster Emergency Act, C.R.S. §§ 24-33.5-701 to -716, to suspend any part of Title 1, article 40 of the Colorado Revised Statutes;
- B. Acting upon Executive Order D 2020 065 to promulgate on an emergency or permanent basis, any rules giving effect to the Governor's suspension of any part of Title 1, article 40 of the Colorado Revised Statutes; and
- C. And for such other and further relief as this Court deems just and proper.

Dated May 18, 2020.

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