October 20, 2016

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VIA EMAIL AND FEDERAL EXPRESS

Re: Colorado's Unconstitutional "Ballot Selfie" Law

Dear Attorney General Coffman and District Attorney Morrissey,

Caryn Ann Harlos has retained FRANK & SALAHUDDIN LLC in order to ask your offices to publicly declare that C.R.S. § 1-13-712 is unconstitutional and that your office will not enforce it.[1] Among other prohibitions, this statute makes it illegal for a person to take a photograph of his or her ballot and share this photograph on social media. It also bars people from discussing who they voted for. This statute creates serious criminal penalties for engaging in political speech. There is no question that it violates the First Amendment.

Ms. Harlos is the Communications Director of the Libertarian Party of Colorado, as well as the Regional Representative for Western United States on the Libertarian National Committee. In her role as Communications Director, Ms. Harlos would like to make and publish a video of herself filling out her ballot while describing why she is voting for Gary Johnson, the Libertarian Party's candidate for President. As the Communications Director for a third party, it is vital to her party's future the she be allowed to publicize her vote on social media in order to encourage others to vote for her party's candidates in this and future elections. In short, Ms. Harlos seeks to engage in essential political speech. Prosecuting her for doing so would be blatantly unconstitutional.

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[1] As I am sure you know, C.R.S. § 1-13-712(1) makes it a crime punishable by up to a year of incarceration and a $1,000 fine for a person to "show his ballot after it is prepared for voting to any person in such a way as to reveal its contents." C.R.S. § 1-13-712(3) mandates the same penalties for any person who "reveal[s] to any other person the name of any candidate for whom a voter has voted," as well as for any person who "communicate[s] to another his opinion, belief, or impression as to how or for whom a voter has voted."
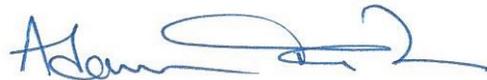
As you may be aware, across the country laws such as C.R.S. § 1-13-712 are being struck down as unconstitutional restrictions on speech that violate the First Amendment. In *Rideout v. Gardner*, both the District of New Hampshire and the First Circuit have held that New Hampshire's law prohibiting showing one's ballot to another person violates the First Amendment. 123 F. Supp. 3d 218 (D.N.H. 2015), *aff'd*, No. 15-2021, 2016 U.S. App. LEXIS 17622 (1st Cir. Sept. 28, 2016). The Southern District of Indiana has reached the same conclusion concerning a similar Indiana law. *Ind. Civil Liberties Union v. Ind. Sec'y of State*, No. 15-cv-01356-SEB-DML (S.D. Ind. Oct. 19, 2015), *available at* http://www.aclu-in.org/images/newsReleases/DECISION_1_15-cv-1356-SEB-DML_ICLU_v_IN_SOS_10-19-2015.pdf. In each of these cases, law enforcement officials in the state chose to disregard the First Amendment and defended their state statute. These law enforcement officials now face the potential of paying the plaintiffs' attorneys fees, pursuant to 42 U.S.C. § 1988(b). For the sake of both the Constitution and Colorado taxpayers, Ms. Harlos urges that you follow a different path.

Please let me know by 5 pm on Wednesday, October 26 whether you will publicly declare that C.R.S. § 1-13-712 is unconstitutional and that your office will not enforce it. If I do not hear from you by then, Ms. Harlos will assume that you are taking the position that this law is constitutional and she will seek to enjoin its enforcement.

You have the opportunity to either take a stand for the Constitution and free speech, or to spend taxpayer dollars to defend a plainly unconstitutional restriction on one of our most basic liberties. Please choose the side of freedom.

Sincerely,

Adam Frank