

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.

CARYN ANN HARLOS,  
KIYOMI BOLICK,  
ANDREW MADSON,

Plaintiffs,

v.

DISTRICT ATTORNEY MITCH MORRISSEY, in his official capacity;  
ATTORNEY GENERAL CYNTHIA COFFMAN, in her official capacity;  
SECRETARY OF STATE WAYNE WILLIAMS, in his official capacity;

Defendants.

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**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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Plaintiffs, through their attorneys Adam Frank and Faisal Salahuddin of FRANK &  
SALAHUDDIN LLC, respectfully allege as follows:

**INTRODUCTION**

1. This is a civil rights action for declaratory and injunctive relief brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of Colorado Revised Statute § 1-13-712, subsections (1) and (3), both facially and as applied.
2. Subsections (1) and (3) of Colorado Revised Statute § 1-13-712 each prohibit important political speech that is protected by the First Amendment.
3. As a result of Colorado Revised Statute § 1-13-712, Plaintiffs each face a restraint on their political speech. Certain Plaintiffs even face potential prosecution.

4. Plaintiffs ask that this Court declare that subsections (1) and (3) of Colorado Revised Statute § 1-13-712 are unconstitutional and enjoin Defendants from enforcing this unconstitutional law.

### **JURISDICTION AND VENUE**

5. This action arises under the First and Fourteenth Amendments to the United States Constitution. It is brought pursuant to 42 U.S.C. § 1983. This Court possesses subject matter jurisdiction pursuant to 28 U.S.C. § 1343 and 28 U.S.C. §1331. This Court has the authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-02. This Court further has the authority to award attorneys' fees pursuant to 42 U.S.C. § 1988(b).

6. Venue of this action is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All Plaintiffs and Defendants reside in the District of Colorado and all events giving rise to this litigation occurred in the District of Colorado.

### **PARTIES**

7. Plaintiff Caryn Ann Harlos is the Communications Director of the Libertarian Party of Colorado, as well as the Region 1 Representative<sup>1</sup> on the Libertarian National Committee. Ms. Harlos, in her role as Communications Director, has made and would like to 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 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.

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<sup>1</sup> Region 1 covers Alaska, Arizona, Colorado, Hawaii, Kansas, Montana, Utah, Wyoming, and Washington.

8. Plaintiff Kiyomi Bolick is a voter in Denver County. She is extremely proud to have voted for her chosen candidate for President.<sup>2</sup> As an expression of her political beliefs, Ms. Bolick posted a photograph of her ballot on Facebook. Ms. Bolick was then contacted through Facebook by an acquaintance who is a prosecutor with the Colorado Attorney General's Office. This prosecutor notified Ms. Bolick that it was illegal for her to post the photo of her completed ballot. As a result of this interaction with the prosecutor, Ms. Bolick removed her post. However, as she already made the post, she is at risk for prosecution. If it were not illegal, Ms. Bolick would re-post the picture of her completed ballot.

9. Plaintiff Andrew Madson is a voter in Denver County. Like Ms. Bolick, he is also extremely proud to have voted for his chosen candidate for President.<sup>3</sup> After he filled out his ballot, he took a photograph of himself with his ballot and sent the photograph to a few family members. He planned to post it on social media as well. However, Mr. Madson then learned about the existence of Colorado Revised Statute § 1-13-712. After learning about this statute, Mr. Madson chose not to post the photograph on social media in order to avoid heightening his risk of prosecution. However, as Mr. Madson has already send his ballot photograph to others, he is at risk of prosecution.

10. Defendant Mitch Morrissey is the District Attorney for Colorado's Second Judicial District, which covers Denver County. Defendant Morrissey has the power to prosecute Plaintiffs under Colorado Revised Statute § 1-13-712 in Denver County, where Ms. Bolick and Mr. Madson posted or transmitted a picture of their completed ballot and where Ms. Harlos intends to post her ballot video.

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<sup>2</sup> Under Colorado Revised Statute § 1-13-712(3), it would be illegal for Ms. Bolick or her counsel to reveal the candidate who won her vote. She therefore refrains from doing so, though were it not for the possibility of prosecution, she would reveal the candidate she chose.

<sup>3</sup> Under Colorado Revised Statute § 1-13-712(3), it would be illegal for Mr. Madson or his counsel to reveal the candidate who won his vote. He therefore refrains from doing so, though were it not for the possibility of prosecution, he would reveal the candidate he chose.

11. Defendant Cynthia Coffman is the Attorney General of Colorado. She has the power to prosecute anyone who violates Colorado Revised Statute § 1-13-712 throughout Colorado. This includes Plaintiffs.

12. Defendant Wayne Williams is the Secretary of State for the State of Colorado. He has the power to prosecute anyone who violates Colorado Revised Statute § 1-13-712 throughout Colorado. This includes Plaintiffs.

## **FACTUAL ALLEGATIONS**

### **I. The Challenged Statute**

13. Colorado Revised Statute § 1-13-712 reads as follows:

- (1) Except as provided in section 1-7-108, no voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents. No voter shall place any mark upon his ballot by means of which it can be identified as the one voted by him, and no other mark shall be placed on the ballot by any person to identify it after it has been prepared for voting.
- (2) No person shall endeavor to induce any voter to show how he marked his ballot.
- (3) No election official, watcher, or person shall reveal to any other person the name of any candidate for whom a voter has voted or communicate to another his opinion, belief, or impression as to how or for whom a voter has voted.
- (4) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

14. Colorado Revised Statute § 1-13-111 reads as follows: “In all cases where an offense is denominated by this code as being a misdemeanor and no penalty is specified, the offender, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.”

15. A person who violates Colorado Revised Statute § 1-13-712 faces a fine of up to \$1000 and incarceration of up to one year.

## **II. Colorado Revised Statute § 1-13-712 Restricts Plaintiffs' Political Speech**

### **A. Plaintiff Harlos**

16. As the Colorado Communications Director for the Libertarian Party, one part of Ms. Harlos's job is to find innovative and creative ways to encourage publicity and support for the Libertarian Party's candidates in Colorado.

17. In order to accomplish this, Ms. Harlos regularly publicizes the positions of the Libertarian Party as well as its candidates on social media, including Facebook.

18. Ms. Harlos publicizes the positions of the Libertarian Party and its candidates on Facebook and other social media because she believes doing so is the best and the most cost-effective way to spread her political party's message.

19. On September 19, 2016, Ms. Harlos posted a video on Facebook encouraging people to register as Libertarian Party voters. As she stated in this video, "Nothing builds success like success. So a lot of people will not join something unless they know that other people are doing it. So when you put your name down as a registered Libertarian, that starts to encourage other people that it's okay to come ... out of the closet and buck the statist mold." Ms. Harlos firmly believes this is true.

20. Based on her deeply-held political beliefs Ms. Harlos has made a similar video to encourage voters to cast their vote for the Libertarian candidate for President, Gary Johnson, as well as other Libertarians currently running for office.

21. In this video, Ms. Harlos fills out her mail-in ballot with a vote for Gary Johnson while explaining why she believes he is the best candidate for President. Through this video, she hopes to encourage others to also vote for Gary Johnson for President. See Exhibit 1 (still frame from Ms. Harlos's video).<sup>4</sup>

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<sup>4</sup> In order to comply with Colorado Revised Statute § 1-13-712, Ms. Harlos has censored a still capture from her video and sent the censored version to counsel. Ms. Harlos has not shared an uncensored still capture or video with anyone.

22. In this video, Ms. Harlos also states her belief that her spouse has already voted for a particular presidential candidate.

23. Ms. Harlos' video is political speech.

24. Prior to posting her video, On October 13, 2016, Ms. Harlos consulted with the office of the Secretary of State for the State of Colorado. The Secretary of State's office informed Ms. Harlos about Colorado Revised Statute § 1-13-712 and told her that her proposed video would be illegal.

25. The only reason Ms. Harlos has not posted this video or shared this video with anyone is that doing so is illegal under Colorado Revised Statute § 1-13-712, subsections (1) and (3).

26. Were it not illegal, Ms. Harlos would post similar videos of her casting her ballot not only for this election, but for all future elections as well.

27. The credible threat of prosecution is preventing this.

#### **B. Plaintiff Bolick**

28. Ms. Bolick received her mail-in ballot a few days before the final Presidential debate. She held off on filling it out and mailing it in until after she could hear from the major party candidates at the final debate.

29. Ms. Bolick had not made up her mind who to vote for until the final Presidential debate. During the Presidential campaign, Ms. Bolick was contemplating voting for a third party candidate as well as for one of the major party nominees.

30. During the third Presidential debate, the two major party candidates discussed their respective positions on abortion and *Roe v. Wade*. Hearing these positions was very impactful on Ms. Bolick and convinced her to vote for one of the major party candidates.

31. The morning after the third Presidential debate, Ms. Bolick logged onto Facebook, where she saw a large number of attacks on the candidate she had chosen. Many of these attacks were posted by family members, people Ms. Bolick knew would see any post she made in response.

32. This caused Ms. Bolick to want to publicly voice her support for her chosen candidate.

33. Ms. Bolick posted her ballot photograph to Facebook for the sole purpose of engaging in political speech.

34. Ms. Bolick captioned her ballot photograph, “Nasty women make history.”

35. Once Ms. Bolick posted the picture of her ballot to Facebook, she was contacted through Facebook by an acquaintance who works for the Office of the Attorney General as a prosecutor.

36. This Assistant Attorney General made Ms. Bolick aware of Colorado Revised Statute § 1-13-712 by typing out a portion of the statute in a comment on Ms. Bolick’s picture, with a citation to the statute.

37. In addition, Ms. Bolick’s employer as well as multiple co-workers notified Ms. Bolick that her post was in violation of current Colorado law.

38. After receiving these communications, Ms. Bolick decided that it would be in her best interest to remove the photo of her completed ballot from Facebook.

39. The credible threat of prosecution is what caused Ms. Bolick to remove the photograph of her ballot from Facebook.

40. Were it legal, Ms. Bolick would re-post the photograph of her ballot.

41. Further, Ms. Bolick would continue to post photographs of her ballots in future elections.

42. Even though she has removed her post, Ms. Bolick is currently in fear that she will be prosecuted for having violated Colorado Revised Statute § 1-13-712.

### **C. Plaintiff Madson**

43. Mr. Madson is a proud voter. He received a mail-in ballot, filled it out with his chosen candidate, and got ready to mail it in. As a proud voter, once he voted for his chosen candidate and before he sealed his ballot in its envelope, he took a picture of his ballot and sent it to selected family members.

44. In sharing the photograph of his ballot, Mr. Madson was engaging in political speech.

45. Further, Mr. Madson intended to broadcast his political speech more broadly by posting the photograph of his ballot to social media.

46. However, before Mr. Madson posted the photograph of his ballot to social media, he learned about Colorado Revised Statute § 1-13-712.

47. Once Mr. Madson learned about Colorado Revised Statute § 1-13-712, he felt a credible threat of prosecution and decided not to post the photograph of his ballot to social media.

48. Were it legal, Mr. Madson would post the photograph of his ballot to social media. In future elections, he would continue to post photographs of his ballots to social media.

49. Even though Mr. Madson did not post the photo of his ballot to social media and only shared it with a small group of friends and family, he still finds himself in violation of Colorado Revised Statute § 1-13-712.

50. Mr. Madson is therefore currently in fear that he will be prosecuted for having violated Colorado Revised Statute § 1-13-712.

### **III. Colorado Revised Statute § 1-13-712(3) Makes Enormous Amounts of Political Speech Illegal**

51. In addition to restricting specific political speech that Plaintiffs either have already or want to engage in, Colorado Revised Statute § 1-13-712 also restricts enormous amounts of political speech that occupies a central part of our modern political discourse.

52. For example, under Colorado Revised Statute § 1-13-712(3), any voter who participates in a so-called “exit poll,” in which pollsters outside of voting locations ask voters who they have voted for, has violated the law.

53. Similarly, any journalist who asks any voter how they voted – a staple of election-day television coverage – is inducing the voter to violate Colorado Revised Statute § 1-13-712(3) while

on camera. Any voter who answers risks a year of imprisonment. If the journalist then repeats what the voter said to the television audience, the journalist faces the same potential consequences.

54. Finally, in households across the state, on Election Day people will be discussing who they voted for and who they think their friends and relatives likely voted for. Any person who engages in such a conversation is violating Colorado Revised Statute § 1-13-712(3).

#### **IV. Defendants Have Made Public Statements that Plaintiffs Interpret as Threats to Enforce Colorado Revised Statute § 1-13-712**

55. On October 20, 2016, The Denver District Attorney's Office issued a press release in which it quoted the portion of Colorado Revised Statute § 1-13-712 that states, "No voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents." See Exhibit 2.

56. On the same day, The Denver District Attorney's Office made a post on its official Twitter page that stated, "REMINDER: BALLOT SELFIES ARE ILLEGAL IN COLORADO." See Exhibit 3.

57. Plaintiffs interpreted these statements as a threat that, if they were to post an image of their ballot on social media, they would face prosecution.

58. Also on October 20, 2016, Secretary of State Wayne Williams gave multiple televised interviews in which he discussed Colorado Revised Statute § 1-13-712. He did not state that it was unconstitutional and should not be enforced.

59. On October 24, 2016, the Deputy Secretary of State put out a statement in which she declared that it was important that Colorado Revised Statute § 1-13-712 remain in effect. She stated, "We believe the current law protects the integrity of the election and protects voters from intimidation or inducement. In fact, given Colorado's unique election system and rise of social networking, the prohibition may be more important in Colorado than in other states and may be more timely today than ever."

60. On October 22, a prosecutor with the Office of the Attorney General reached out directly to Ms. Bolick and told her that her posted photograph of her ballot was illegal.

61. Based on Ms. Bolick's perception of the threat of prosecution, she removed the posting.

62. On October 20, 2016, Ms. Harlos sought to get clarification from District Attorney Morrissey and Attorney General Coffman regarding whether Defendants would disavow any intent to prosecute under Colorado Revised Statute § 1-13-712 based on the fact that it is blatantly unconstitutional.

63. Ms. Harlos, through counsel, sent a letter to District Attorney Morrissey and Attorney General Coffman asking each to publicly state that Colorado Revised Statute § 1-13-712 is unconstitutional and that they would each refuse to enforce it. See Exhibit 4.

64. Ms. Harlos sent her letter in an attempt to resolve the issue of the constitutionality of Colorado Revised Statute § 1-13-712 without having to file a lawsuit.

65. Defending this lawsuit will result in a significant expenditure of taxpayer money to defend a statute that is blatantly unconstitutional.

66. Unfortunately, District Attorney Morrissey and Attorney General Coffman have each declined to publicly state that Colorado Revised Statute § 1-13-712 is unconstitutional.

67. As a result, Plaintiffs have no choice but to assume that they currently face a credible threat of prosecution under Colorado Revised Statute § 1-13-712.

### **CLAIM FOR RELIEF**

#### **First Cause of Action: Violation of the First Amendment and Fourteenth Amendment under 42 U.S.C. § 1983**

68. Plaintiffs incorporate all other paragraphs as if fully detailed herein.

69. The First Amendment to the United States Constitution, as applicable to the State of Colorado through the Fourteenth Amendment, prohibits Colorado from making of any law “abridging the freedom of speech.”

70. Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, unconstitutionally infringes or imminently threatens to infringe Plaintiffs’ rights under the First and Fourteenth Amendments, including their rights to freedom of speech and freedom of expression.

71. Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, is an unconstitutional prior restraint on speech because it restricts the speech of Plaintiffs and other Colorado voters before the speech occurs.

72. Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, is an unconstitutional content-based restriction on political speech made far away from a polling place that bears no relationship to any potential state interest.

73. Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, is not narrowly tailored towards the advancement of any government interest, let alone a significant or compelling government interest.

74. Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, is substantially overbroad, as it restricts a large amount of protected speech of both the Plaintiffs and all Colorado voters.

75. Accordingly, Colorado Revised Statute § 1-13-712(1), on its face and as applied to the Plaintiffs’ speech, violates the First and Fourteenth Amendments.

**Second Cause of Action: Violation of the First Amendment and Fourteenth Amendment under 42 U.S.C. § 1983**

76. Plaintiffs incorporate all other paragraphs as if fully detailed herein.

77. The First Amendment to the United States Constitution, as applicable to the State of Colorado through the Fourteenth Amendment, prohibits Colorado from making of any law “abridging the freedom of speech.”

78. Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, unconstitutionally infringes or imminently threatens to infringe Plaintiffs’ rights under the First and Fourteenth Amendments, including their rights to freedom of speech and freedom of expression.

79. Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, is an unconstitutional prior restraint on speech because it restricts the speech of Plaintiffs and other Colorado voters before the speech occurs.

80. Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, is an unconstitutional content-based restriction on political speech made far away from a polling place that bears no relationship to any potential state interest.

81. Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, is not narrowly tailored towards the advancement of any government interest, let alone a significant or compelling government interest.

82. Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, is substantially overbroad, as it restricts a large amount of protected speech of both the Plaintiffs and all Colorado voters.

83. Accordingly, Colorado Revised Statute § 1-13-712(3), on its face and as applied to the Plaintiffs’ speech, violates the First and Fourteenth Amendments.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully request the following relief:

- (a) Declaratory relief, in the form of a declaration that Colorado Revised Statute § 1-13-712 is facially unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution;
- (b) Declaratory relief, in the form of a declaration that Colorado Revised Statute § 1-13-712 is unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution as applied to Plaintiffs' already-completed and proposed speech;
- (c) Injunctive relief, in the form of temporary, preliminary, and permanent restraining orders that restrain and enjoin the State of Colorado and the Denver District Attorney's Office from enforcing Colorado Revised Statute § 1-13-712;
- (d) An immediate hearing on this complaint. Counsel for Plaintiffs are have notified counsel for Defendants that this complaint is forthcoming and are providing counsel for Defendants with a copy of this complaint contemporaneously with this filing;
- (e) An award Plaintiffs attorneys' fees pursuant to 42 U.S.C. § 1988(b);
- (f) An award Plaintiffs their costs of suit;
- (g) A grant of such other and further relief as this Court deems just and proper.

Dated: October 25, 2016

*s/Adam Frank*  
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*Attorneys for Plaintiffs*

**VERIFICATION PURSUANT TO 28 U.S.C. § 1746**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: October 25, 2016

/s/ Caryn Ann Harlos  
Caryn Ann Harlos

**VERIFICATION PURSUANT TO 28 U.S.C. § 1746**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: October 25, 2016

/s/ Kiyomi Bolick  
Kiyomi Bolick

**VERIFICATION PURSUANT TO 28 U.S.C. § 1746**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: October 25, 2016

/s/ Andrew Madson  
Andrew Madson