

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-_____

JOELLE RIDDLE, GARY HAUSLER,
KATHLEEN CURRY and THE COMMITTEE
TO ELECT KATHLEEN CURRY

Plaintiffs,

v.

WILLIAM RITTER, in his official capacity as
Governor of Colorado; and BERNIE BUESCHER,
in his official capacity as Secretary of State of the
State of Colorado

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

COME NOW Plaintiffs, by their attorney, William E. Zimsky, Abadie & Schill, P.C., pursuant to 28 U.S.C. § 2201 and FED. R. CIV. P. 57 and 65, for their Complaint against the Defendants, allege and aver as follows:

I. INTRODUCTION

1. The subject of this lawsuit is article XXVIII, Section 3 of the Colorado Constitution and related statutes that impose limits on contributions to candidates running for elective office. Plaintiffs assert that Colorado's two-tier system for limiting campaign contributions, which allows a person to contribute twice the amount of money to candidates of major political parties than it permits a person to contribute to unaffiliated candidates and to

almost all minor party candidates, impermissible impinges upon the First Amendment rights of persons by unnecessary restricting their freedoms of political expression and political association.

2. Plaintiff Kathleen Curry is running for re-election to the office of Representative for State House District 61 as an unaffiliated candidate and has authorized the formation of The Committee to Elect Kathleen Curry to receive contributions and making expenditures. Plaintiffs Joelle Riddle and Gary Hausler have each contributed \$200 to The Committee to Elect Kathleen Curry, the maximum amount allowed under article XXVIII, section 3 of the state constitution. There are two major party candidates running against Representative Curry. Under Colorado's system regulating campaign contributions, a person may contribute \$400 to the candidate committees of either of her opponents. Riddle and Hausler both want to contribute another \$200 each to The Committee to Elect Kathleen Curry, and Representative Curry wants to accept such contributions for her candidate committee, but section 3 prohibits them from doing so.

3. The only constitutionally sufficient basis to limit campaign contributions is to prevent corruption or the appearance of corruption. Colorado's two-tiered system regulating campaign contributions is not closely drawn to avoid unnecessary abridgement of associational freedoms and political expression. The two-tiered system invidiously discriminates against persons who want to contribute to the campaigns of unaffiliated candidates and candidates of minor political parties.

II. PARTIES

4. Plaintiff Joelle Riddle is a resident of La Plata County, Colorado. Ms. Riddle is the founder of Independent Voters for Colorado, an organization formed to promote the rights

and interests of independent voters in the state of Colorado. Ms. Riddle is a County Commissioner for La Plata County who disaffiliated from the Democratic Party. She is concerned that Colorado's two-tiered system for limiting campaign contributions subordinates the interests of independent voters and candidates to the interests of the two major political parties.

5. Plaintiff Gary Hausler is a resident of Gunnison County, Colorado.

6. Plaintiff Kathleen Curry is a resident of Gunnison County, Colorado. She is currently the Representative for House District 61 and is running for re-election as an unaffiliated candidate.

7. The Committee to Elect Kathleen Curry is the "candidate committee" authorized by Kathleen Curry pursuant to Article XXVIII, Section 2(3) to receive contributions and make expenditures for her re-election campaign.

8. Defendant William Ritter is the Governor of the State of Colorado. Plaintiffs are suing Governor Ritter in his official capacity.

9. Defendant Bernie Buescher is the Secretary of State of the State of Colorado. Secretary Buescher is the chief election officer for the state of Colorado and, pursuant to COLO.CONST. article XXVIII, section 9, is responsible for enforcing the campaign contribution limits set forth in COLO.CONST. article XXVIII, section 3. Pursuant to § 1-45-111.5, C.R.S., Secretary Buescher is also charged with promulgating rules as may be necessary to enforce and administer Title 1, Article 45 of the Colorado Revised Statutes, also known as the Fair Campaign Practices Act. Plaintiffs are suing Secretary Buescher in his official capacity.

III. JURISDICTION AND VENUE

10. Plaintiffs' causes of action arise under the First Amendment of the United States Constitution, as incorporated into the Fourteenth Amendment, that guarantees the freedoms of political expression and political association and under the Fourteenth Amendment to the Constitution that guarantees Plaintiffs the equal protection of the laws.

11. This lawsuit seeks to redress the deprivation under color of state law of rights secured by the United States Constitution. This lawsuit is authorized by 42 U.S.C. §§ 1983 and 1988. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

12. All of the events that give rise to the causes of action stated herein occurred within the District of Colorado. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1381(a).

IV. GENERAL ALLEGATIONS

A. COLORADO'S CONSTITUTIONAL AND LEGISLATIVE SYSTEM FOR LIMITING CONTRIBUTIONS TO CANDIDATE COMMITTEES

i. The legal framework that applies to all persons contributing to candidate committees

13. Section 3 of article XXVIII of the Colorado Constitution sets a limit on the total amount of money that any one "person" or any "small donor committee" may contribute to a "candidate committee." As set forth in section 3(13), these limits are subject to change based on the consumer price index for Denver-Boulder-Greeley.

14. Section 2(11) of article XXVIII defines "person" as "any natural person, partnership, committee association, corporation, labor organization, political party, or other organization or group of persons."

15. Section 2(3) of article XXVIII defines “candidate committee” as “a person, including the candidate, or persons with the common purpose of receiving contributions or making expenditures under the authority of the candidate.”

16. Section 2(14) of article XXVIII defines “small donor committees” as “any political committee that has accepted contributions only from natural persons who each contributed no more than fifty dollars in the aggregate per year.”

17. Section 3(1)(a)(I) allows a person to make up to \$500 in aggregate contributions to any one governor candidate committee for the primary election and to make up to an additional \$500 in aggregate contributions to any one governor and lieutenant governor candidate committee for the general election.

18. Section 3(1)(a)(II) allows a person to make up to \$500 in aggregate contributions to any one secretary of state, state treasurer or attorney general candidate committee for the primary election and to make up to an additional \$500 in aggregate contributions to any one secretary of state, state treasurer or attorney general candidate committee for the general election.

19. Section 3(1)(b) allows a person to make up to \$200 in aggregate contributions to any one state senate, state house of representative, state board of education, regent of the university of Colorado, or district attorney candidate committee for the primary election and to make up to an additional \$200 in aggregate contributions to any one secretary of state, state treasurer or attorney general candidate committee for the general election.

20. Section 3(2)(a)(I) allows a small donor committee to make up to \$5,000 in aggregate contributions to any one governor candidate committee for the primary election and to

make up to an additional \$5,000 in aggregate contributions to any one governor and lieutenant governor candidate committee for the general election.

21. Section 3(2)(a)(II) allows a small donor committee to make up to \$5,000 in aggregate contributions to any one secretary of state, state treasurer or attorney general candidate committee for the primary election and to make up to an additional \$5,000 in aggregate contributions to any one secretary of state, state treasurer or attorney general candidate committee for the general election.

22. Section 3(2)(b) allows a small donor to make up to \$2,000 in aggregate contributions to any one state senate, state house of representative, state board of education, regent of the university of Colorado, or district attorney candidate committee for the primary election and to make up to an additional \$2,000 in aggregate contributions to any one state senate, state house of representative, state board of education, regent of the university of Colorado, or district attorney candidate committee for the general election.

23. Pursuant to article XXVIII, section 2(13), the Secretary of State has adopted 8 CCCR 1505-6, Rule 12.3 and 12.4. These rules increase the following aggregate limits on contributions: section 3(1)(a): from \$500 to \$525; section 3(2)(a): from \$5,000 to \$5,300; and section 3(2)(b): from \$2,000 to \$2,125.

ii. The legal framework that applies to all persons contributing to candidate committees of major political party candidates

24. There are currently two major political parties in Colorado: the Democratic Party of Colorado and the Colorado Republican Party.

25. Pursuant to § 1-4-101(3), C.R.S., all nominations by major political party candidates for all elective state officers and members of the general assembly must be made by primary election.

26. Pursuant to § 1-45-103.7(3)(a), C.R.S., a candidate committee may accept “[t]he aggregate contribution limit specified in [section 3(1)] for a primary election at any time *after* the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary ballot.” (Emphasis supplied.)

27. Pursuant to § 1-45-103.7(3)(b), C.R.S., a candidate committee may accept “[t]he aggregate contribution limit specified in [section 3(1)] for a general election at any time *prior to* the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary ballot.” (Emphasis supplied.)

28. Pursuant to § 1-45-103.7(4), C.R.S., a candidate committee may “expend contributions received and accepted for a general election *prior to* the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary ballot.” (Emphasis supplied.) Subsection (4) also allows a candidate committee of a candidate who wins the primary election to “expend contributions received and accept for a primary election in the general election.”

29. Thus, because candidates of major political parties always have their name placed on the primary election ballot, section 3 of article XXVIII allows a person to donate up to \$1,050 to any one governor, secretary of state, state treasurer or attorney general candidate committee for a major political party candidate and up to \$400 to any one state senate, state house of representatives, state board of education, regent of the university of Colorado, or district attorney

candidate committee for a major political party candidate. Section 3 of article XXVIII allows a small donor committee to donate up to \$10,600 to any one governor, secretary of state, state treasurer or attorney general candidate committee for a major political party candidate and up to \$4,250 to any one state senate, state house of representatives, state board of education, regent of the university of Colorado, or district attorney candidate committee for a major political party candidate.

30. Moreover, a person may make a single, lump-sum contribution to a candidate committee for a major political party candidate before the primary election that matches the total aggregate amount that section 3 allows for both the primary and general election and the candidate committee is free to spend that money on the primary election, the general election or both. Furthermore, a person may make a single, lump-sum contribution to a candidate committee for a major political party candidate *after* the primary election that matches the total aggregate amount that section 3 allows for both the primary and general elections and the candidate committee is free to spend that money entirely on the general election.

iii. The legal framework that applies to all persons contributing to candidate committees of unaffiliated candidates and candidate committees of minor political party candidates

31. Unaffiliated candidates obtain access to the general election ballot by nominating petition as set forth in § 1-4-802, C.R.S. or by running as write-in candidates. Unaffiliated candidates do not participate in primary elections.

32. There are currently three minor political parties in Colorado: the Libertarian Party of Colorado, the American Constitution Party and the Green Party of Colorado.

33. If only one candidate from one of the minor political parties is designated for an office by petition or assembly, that candidate shall be the candidate of the minor party at the general election and that candidate's name is not on the primary ballot. § 1-4-1304(1)(d), C.R.S. Since the time a federal court forced Colorado to give ballot access to minor party candidates by court order, the majority of both major and minor party candidates have not faced an opponent from the same party for the same office. While major party candidates must be nominated to the general election ballot by primary election, even if they do not face any opposition at the primary election, most minor party candidates are nominated directly to the general election ballot and their names are placed on the primary election ballot.

34. Because their names are not on the primary election ballot, section 3 of article XXVIII limits the amount of money a person may contribute to a candidate committee of an unaffiliated candidate, or to a candidate committee of a minor party candidate who is nominated directly to the general election. This limitation on contributions equals one-half of the amount a person may make to a candidate committee for a major party candidate. For example, under section 3(1)(b), a person is allowed to make only \$200 in aggregate contributions to a candidate committee of an unaffiliated candidate running for the state house of representatives or to a candidate committee of a minor political party candidate who is nominated directly to the general election and whose name is not on the primary election ballot. Their major political party rivals, however, may receive up to \$400 in aggregate from a person, either before or after the primary election, and spend the entire amount on the general election even if they are unopposed at a primary election.

B. FACTUAL ALLEGATIONS

35. Representative Kathleen Curry is the incumbent State Representative in the Colorado General Assembly representing State House District 61, which consists of Gunnison, Hinsdale and Pitkin counties and parts of Eagle, Garfield counties.

36. The voters of State House District 61 first elected Representative Curry, running as a Democrat, to a two-year term in the November 2, 2004 general election, casting 20,398 votes in her favor, representing 60.7% of the votes cast in that election. The voters of State House District 61 re-elected Representative Curry, running as a Democrat, to a two-year term in the November 7, 2006 general election, casting all of the 20,733 votes that were cast for this office in her favor. The voters of State House District 61 re-elected Representative Curry, running as a Democrat, to a third two-year term in the November 4, 2008 general election, casting all of the 28,012 votes that were cast for this office in her favor.

37. Representative Curry is currently unaffiliated with any political party.

38. Representative Curry meets the residency requirement as well as all other eligibility requirements to run for re-election for State House District 61.

39. Representative Curry is running for re-election for State Representative representing State House District 61 as an unaffiliated candidate.

40. The Committee to Elect Kathleen Curry is properly formed and registered with Defendant Bernie Buescher, the Colorado Secretary of State, as a “candidate committee” formed under pertinent Colorado law and regulations, which Kathleen Curry has authorized to receive contributions and make expenditures for her re-election campaign.

41. Plaintiff Joelle Riddle has contributed \$200 to the Committee to Elect Kathleen Curry for the 2010 general election. Ms. Riddle wants to contribute another \$200 to The Committee to Re-Elect Kathleen Curry for the 2010 general election, but cannot do so pursuant to section 3.

42. Plaintiff Gary Hausler is an eligible elector in State House District 61. Mr. Hausler voted for Representative Curry in the 2004, 2006 and 2008 general elections and intends to voter for her in the upcoming November 2, 2010 general election. Mr. Hausler has contributed \$200 to The Committee to Elect Kathleen Curry for the 2010 general election. Mr. Hausler wants to contribute another \$200 to the Committee to Elect Kathleen Curry for the 2010 general election, but she cannot do so pursuant to section 3.

43. Plaintiff Kathleen Curry wants The Committee to Elect Kathleen Curry to accept additional contributions from Ms. Riddle and Mr. Hausler, as well as other supporters who have expressed a similar desire to contribute more than the \$200 limitation imposed by section 3, but cannot do so.

44. Pursuant to COLO.CONST., article XXVIII, section 10(1), “[a]ny person who violates any provision of this article relating to contribution . . . limits shall be subject to a civil penalty of at least double and up to five times the amount contributed, received, or spent in violation of the applicable provision of this article. Candidates shall be personally liable for penalties imposed upon the candidate’s committee.”

45. Representative Curry is facing two opponents in the upcoming 2010 general election for House District 61: Roger Ben Wilson, a Democrat; and Luke Korkowski, a Republican. While both of these candidates are on the primary election ballot and a person is

allowed under section 3 to make \$400 in aggregate contributions to their respective candidate committees, neither of these candidates is facing an opponent in the primary election. The fact that Messrs. Wilson and Korkowski are running unopposed in the primary election is not unusual. For example, in the upcoming August 8, 2010 primary election involving the 65 Colorado House Districts, only 8 of the 130 primaries involve contested elections and in two of those districts there is no major party candidate running against the two candidates who are in a primary election contest. Similarly, for the 34 Colorado Senate Districts, only 6 of the 68 primaries involve contested elections.

FIRST CAUSE OF ACTION

DECLARATORY RELIEF SEEKING A JUDGMENT AGAINST DEFENDANTS DECLARING THAT SECTION 3 OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION IS FACIALLY UNCONSTITUTIONAL BECAUSE IT VIOLATES THE FIRST AMENDMENT RIGHTS OF PERSONS WHO CONTRIBUTE OR WANT TO CONTRIBUTE TO UNAFFILIATED AND/OR TO CANDIDATES ON MINOR POLITICAL PARTIES WHOSE NAMES ARE NOT PLACED ON A PRIMARY ELECTION BALLOT

46. By this reference, Plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 through 45 as though fully set forth herein.

47. An actual controversy exists between Plaintiffs, on the one hand, and Defendants, on the other hand, with regard to the exercise of the First Amendment rights of persons who contribute or want to contribute to unaffiliated and minor party candidates. Plaintiffs assert that Colorado's regulatory scheme for limiting campaign contributions violates the freedoms of political expression and association of persons who contribute or want to contribute to unaffiliated and minor party candidates. Defendants contend that Colorado's two-tier regulatory system does not violate the First Amendment rights of these persons. This controversy is real

and immediate because persons who violate Colorado's regulatory framework are subject to civil monetary penalties.

48. The only constitutionally sufficient basis for establishing campaign contribution limits is to serve the state interests of preventing corruption or the appearance of corruption. Colorado has failed to closely draw its two-tiered system regulating campaign contributions to match the State's interest in avoiding corruption or the appearance of corruption or any other possible legitimate interest that the State may have to justify its two-tiered system regulating campaign contributions. Instead, Colorado's system unnecessarily abridges the freedoms of political expression and political association of persons who contribute to unaffiliated and minor political party candidates.

49. Plaintiffs are entitled to a declaratory judgment declaring that the contribution limits set forth in COLO. CONST. article XXVIII, section 3(1) and (2), are facially unconstitutional to the extent that these provisions prohibit persons and small donor committee from making contributions in an aggregate amount to a candidate committee of an unaffiliated candidate or a minor political party candidate whose name is not on the primary election ballot in an amount equal to what every person and small donor committee is allowed to make to a candidate committee of a major political party candidate who is running for the same elective office and establishing the right of every person and small donor committee to make contributions in the same amount to candidate committees of unaffiliated candidates or minor political party candidates whose names are not on the primary election ballot as they are allowed to make to the candidate committees of major party candidates who are running for the same elective office.

50. Pursuant to 42 U.S.C. § 1983, *et seq.*, Plaintiffs are entitled to a declaratory judgment declaring their rights and to their reasonable attorneys' fees and costs in this case.

SECOND CAUSE OF ACTION

DECLARATORY RELIEF SEEKING A JUDGMENT AGAINST THE DEFENDANTS DECLARING THAT SECTION 3 OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION IS UNCONSTITUTIONAL AS APPLIED TO THE PLAINTIFFS BECAUSE IT VIOLATES THEIR FREEDOMS OF POLITICAL EXPRESSION AND POLITICAL ASSOCIATION THAT THE FIRST AMENDMENT GUARANTEES

51. By this reference Plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 through 50 as though fully set forth herein.

52. An actual controversy exists between Plaintiffs, on the one hand, and Defendants, on the other hand, with regard to the federally protected rights of Plaintiffs Riddle and Hausler involving their exercise of their First Amendment guaranteed freedoms of political expression and political association through the contribution of their money to The Committee to Elect Kathleen Curry and Representative Curry's First Amendment rights to use those contributions to express her political views. This controversy is real and immediate because if any of the Plaintiffs violate Colorado's regulatory framework they will be subject to civil monetary penalties.

53. The only constitutionally sufficient basis for establishing campaign contribution limits is to serve the state interests of preventing corruption or the appearance of corruption. Allowing a person to contribute \$400 to the candidate committees of Representative Curry's opponents while limiting the contributions of Plaintiffs Riddle and Hausler and others wishing to contribute to The Committee to Elect Kathleen Curry to \$200 does not prevent corruption or the

appearance of corruption. Colorado has failed to closely draw its two-tiered system regulating campaign contributions to match the State's interest in avoiding corruption or the appearance of corruption or any other possible legitimate interest that the State may have to justify its two-tiered system regulating campaign contributions. Instead, Colorado's system unnecessarily abridges the freedoms of political expression and association of persons who contribute or want to contribute to unaffiliated and minor political party candidates whose names do not appear on a primary election ballot.

54. Plaintiffs are entitled to a declaratory judgment declaring that the contribution limits set forth in COLO. CONST. article XXVIII, section 3(1) and (2), are unconstitutional as applied to Plaintiffs and any person or small donor committee who has contributed or wants to contribute to The Committee to Elect Kathleen Curry and establishing the right of every person and small donor committee to make contributions in the same amount to The Committee to Elect Kathleen Curry as they are allowed to make to her opponent's candidate committees.

55. Pursuant to 42 U.S.C. § 1983, *et seq.*, the Plaintiffs are entitled to a declaratory judgment declaring their rights and to their reasonable attorneys' fees and costs in this case.

THIRD CAUSE OF ACTION

DECLARATORY RELIEF SEEKING A JUDGMENT AGAINST THE DEFENDANTS DECLARING THAT SECTION 3 OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION IS FACIALLY UNCONSTITUTIONAL BECAUSE IT VIOLATES THE RIGHT TO EQUAL PROTECTION OF THE LAWS AS GUARANTEED BY THE FOURTEENTH AMENDMENT OF PERSONS WHO CONTRIBUTE OR WANT TO CONTRIBUTE TO UNAFFILIATED CANDIDATES OR TO CANDIDATES ON MINOR POLITICAL PARTIES WHOSE NAMES ARE NOT PLACED ON A PRIMARY ELECTION BALLOT

56. By this reference Plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 through 55 as though fully set forth herein.

57. An actual controversy exists between Plaintiffs, on the one hand, and Defendants, on the other hand, with regard to Colorado's two-tier system that allows a person or a small donor committee which supports major party candidates to contribute twice as much money than a person or small donor committee which supports an unaffiliated candidate or a candidate of a minor political party whose name is not placed on a primary election ballot. Plaintiffs assert that Colorado's two-tiered regulatory scheme for limiting campaign contributions invidiously discriminates against persons and small donor committees who contribute or want to contribute to the candidate committee of an unaffiliated or minor party candidate whose name does not appear on a primary election ballot vis-à-vis persons who contribute to a candidate committee of a major party candidate or to a candidate committee of a minor political party whose name does appear on a primary election ballot. Defendants contend that Colorado's two-tier regulatory system does not treat similarly situated persons differently in a constitutionally significant way. This controversy is real and immediate because persons who violate Colorado's regulatory framework are subject to civil monetary penalties.

58. The only constitutionally sufficient basis for establishing campaign contribution limits is to serve the state interests of preventing corruption or the appearance of corruption. The Equal Protection Clause requires that state constitutional provisions and statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives. When government regulation discriminates among speech-related activities in a public forum, the Equal Protection Clause mandates that the legislation be finely tailored to serve substantial state interests. In this case, Colorado has not narrowly tailored its two-tiered system regulating campaign contributions to serve the State's legitimate objectives of preventing corruption or the appearance of corruption or any other possible legitimate interest that the State may have to justify its two-tiered system regulating campaign contributions. Allowing one class of persons, consisting of those who support major party candidates and minor political party candidates whose names appear on a primary election ballot, to contribute twice as much money to their candidates as another class of persons, consisting of those who support unaffiliated and/or minor party candidates whose names are not placed on a primary election ballot, does not serve the state interest of preventing corruption or the appearance of corruption or any other legitimate state interest.

59. Plaintiffs are entitled to a declaratory judgment declaring that the contribution limits set forth in COLO. CONST. article XXVIII, section 3(1) and (2), are facially unconstitutional to the extent that these provisions prohibit persons and small donor committee from making contributions in an aggregate amount to a candidate committee of an unaffiliated candidate or a minor political party candidate whose name is not on the primary election ballot in an amount equal to what every person and small donor committee is allowed to make to a candidate committee of a major political party candidate who is running for elective office and

establishing the right of every person and small donor committee to make contributions in the same amount to candidate committees of unaffiliated candidates or minor political party candidates whose names are not on the primary election ballot as they are allowed to make to the candidate committees of major party candidates who are running for the same elective office.

60. Pursuant to 42 U.S.C. § 1983, *et seq.*, Plaintiffs are entitled to declaratory judgment declaring their rights and to their reasonable attorneys' fees and costs in this case.

FOURTH CAUSE OF ACTION

DECLARATORY RELIEF SEEKING A JUDGMENT AGAINST THE DEFENDANTS DECLARING THAT SECTION 3 OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION IS UNCONSTITUTIONAL AS APPLIED TO PLAINTIFFS BECAUSE IT VIOLATES THE PLAINTIFFS' RIGHT TO EQUAL PROTECTION OF THE LAWS AS GUARANTEED BY THE FOURTEENTH AMENDMENT

61. By this reference Plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 through 60 as though fully set forth herein.

62. An actual controversy exists between Plaintiffs, on the one hand, and Defendants, on the other hand, with regard to Colorado's two-tier system that allows a person who contributes to either of the candidate committees of Representative Curry's two opponents to contribute twice as much money than either Riddle or Hausler or any other person is allowed to contribute to The Committee to Elect Kathleen Curry. Plaintiffs assert that Colorado's two-tiered regulatory scheme for limiting campaign contributions invidiously discriminates against Plaintiffs Riddle and Hausler and other persons and small donor committees who contribute or want to contribute to The Committee to Elect Kathleen Curry vis-à-vis persons and small donor committees who contribute to her opponents' candidate committees. Defendants contend that

Colorado's two-tier regulatory system does not treat those persons who contribute or want to contribute to The Committee to Elect Kathleen Curry differently from those who contribute or want to contribute to her opponent's candidate committees in a constitutionally significant way. This controversy is real and immediate because if Plaintiffs violate Colorado's regulatory framework, they will be subject to civil monetary penalties.

63. The only constitutionally sufficient basis for establishing contribution limits is to serve the state interests of preventing corruption or the appearance of corruption. The Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives. When government regulation discriminates among speech-related activities in a public forum, the Equal Protection Clause mandates that the legislation be finely tailored to serve substantial state interests. In this case, Colorado has not narrowly tailored its two-tiered system regulating campaign contributions to serve the State's legitimate objectives of preventing corruption or the appearance of corruption or any other possible legitimate interest that the State may have to justify its two-tiered system regulating campaign contributions. Allowing one class of persons, consisting of those who support either of Representative Curry's opponents to contribute twice as much money to their candidates as another class of persons, consisting of those who support Kathleen Curry, does not serve the state interest of preventing corruption or the appearance of corruption or any other legitimate state interest.

64. Plaintiffs are entitled to a declaratory judgment establishing that the contribution limits set forth in COLO. CONST. article XXVIII, section 3, are unconstitutional as applied to Plaintiffs and all persons and small donor committees who have contributed or want to contribute to The Committee to Elect Kathleen Curry and establishing the right of every person and small

donor committee to make contributions in the same amount to The Committee to Elect Kathleen Curry as other persons and small donor committees are allowed to contribute to her opponents' candidate committees.

65. Pursuant to 42 U.S.C. § 1983, *et seq.*, Plaintiffs are entitled to declaratory judgment declaring their rights and to their reasonable attorneys' fees and costs in this case.

FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF AGAINST DEFENDANTS

66. By this reference Plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 through 65 as though fully set forth herein.

67. Colorado's two-tiered system regulating campaign contributions is facially unconstitutional as it violates the freedoms of political expression and political association guaranteed by the First Amendment of persons and small donor committees who contribute or want to contribute to unaffiliated candidates and/or to the candidate committees of minor political party candidates whose names are not placed on the primary election ballot and also invidiously discriminates against them in violation of their right to equal protection of the laws that the Fourteenth Amendment guarantees.

68. Colorado's two-tiered system of campaign contribution limits is unconstitutional as applied to Plaintiffs as it violates their freedoms of political expression and political association that the First Amendment guarantees, as well as the rights of others persons and small donor committees who contribute or want to contribute The Committee to Elect Kathleen Curry and also invidiously discriminates against them in violation of their right to equal protection of the laws that the Fourteenth Amendment guarantees.

69. There exists an imminent and ongoing threat by Defendants to deprive Plaintiffs of their civil rights by limiting the contributions of Plaintiffs Riddle and Hausler to the Committee to Elect Kathleen Curry through the imposition of monetary civil penalties provided for in article XXVIII, section 10. There exists an imminent and ongoing threat by Defendants to deprive the civil rights of other persons and small donor committees who have contributed or want to contribute in this election cycle to unaffiliated candidates and candidates of minor political parties whose names are not on the primary election ballot by limiting their contributions to the candidate committees of such candidates.

70. Plaintiffs Curry and Hausler will suffer irreparable injury if they are not allowed to contribute as much money to The Committee to Elect Kathleen Curry as persons who support her opponents. Representative Curry will suffer irreparable injury if she is not allowed to accept contributions from Plaintiffs Curry and Hausler as well as other persons and small donor committees in an amount equal to the amount her opponents are allowed to accept from their supporters.

71. The supporters of other unaffiliated candidates and candidates of minor political parties whose names are not on the primary election ballot will suffer irreparable injury if they are not allowed to contribute as much money to those candidates as persons who support candidates of the two major political parties who are running against such candidates in the upcoming general election. Unaffiliated candidates and candidates of minor political parties whose names are not on the primary election ballot will suffer irreparable injury if they are not allowed to accept contributions from persons and small donor committees that is the same as their opponents are allowed to accept from their supporters.

72. The Plaintiffs are entitled to a permanent injunction restraining and enjoining Defendants, and all those working in concert with them, from enforcing article XXVIII, section 3(1) and (2) of the Colorado Constitution against: (1) any person or small donor committee to the extent that any person or small donor committee makes a contribution to a candidate committee of an unaffiliated candidate or a candidate committee of a minor political party candidate whose name is not placed on the primary election ballot in an amount that they are allowed to contribute to a candidate committee of major political party candidate who is running for the same elective office; and (2) any candidate or candidate committee of an unaffiliated candidate or minor political party candidate whose name is not on the primary election ballot to the extent such candidate or candidate committee accepts contributions from persons or small donor committees in an amount that a candidate committee of a major political party candidate is allowed to accept who is running for the same elective office.

73. The Plaintiffs are entitled to a permanent injunction restraining and enjoining Defendants, and all those working in concert with them, from enforcing article XXVIII, section 3(1) and (2) of the Colorado Constitution against (1) any person or small donor committee to the extent that any person or small donor committee wishes to contribute up to an aggregate amount of \$400 or \$4,250, respectively, to The Committee to Elect Kathleen Curry; and (2) Kathleen Curry and The Committee to Elect Kathleen Curry to the extent that Kathleen Curry and/or The Committee to Elect Kathleen Curry accepts contributions from persons or small donor committees up to an aggregate amount of \$400 or \$4,250, respectively.

WHEREFORE, premises submitted, Plaintiffs pray for judgment in their favor and against Defendants Governor Ritter and Secretary Buescher as follows:

- A. A declaratory judgment in favor of Plaintiffs and against Defendants Ritter and Buescher declaring that the contribution limits set forth in COLO. CONST. article XXVIII, section 3(1) and (2), are facially unconstitutional to the extent that these provisions prohibit persons and small donor committee from making contributions in an aggregate amount to a candidate committee of an unaffiliated candidate or a minor political party candidate whose name is not on the primary election ballot in an amount equal to what every person and small donor committee is allowed to make to a candidate committee of a major political party candidate who is running for the same elective office and establishing the right of every person and small donor committee to make contributions in the same amount to candidate committees of unaffiliated candidates or minor political party candidates whose names are not on the primary election ballot as they are allowed to make to the candidate committees of major party candidates who are running for the same elective office;
- B. A declaratory judgment in favor of all Plaintiffs and against Defendants Ritter and Buescher declaring that the contribution limits set forth in COLO. CONST. article XXVIII, section 3(1) and (2), are unconstitutional as applied to Plaintiffs and any person or small donor committee who has contributed or wants to contribute to The Committee to Elect Kathleen Curry and establishing the right of every person and small donor committee to make contributions in the same amount to The Committee to Elect Kathleen Curry as they are allowed to make to her opponent's candidate committees;
- C. A declaratory judgment in favor of all Plaintiffs and against Defendants Ritter and Buescher declaring that COLO.CONST. article XXVIII, section 3 are facially unconstitutional to the extent that these provisions prohibit persons and small donor committees from making contributions in an aggregate amount to a candidate committee of an unaffiliated candidate or a minor political party candidate whose name is not on the primary election ballot in an amount equal to what every person and small donor committee is allowed to make to a candidate committee of a major political party candidate who is running for the same elective office and establishing the right of every person and small donor committee to make contributions in the same amount to candidate committees of unaffiliated candidates or minor political party candidates whose names are not on the primary election ballot as they are allowed to

make to the candidate committees of major party candidates who are running for the same elective office;

- D. A declaratory judgment in favor of Plaintiffs and against Defendants Ritter and Buescher declaring that COLO.CONST. article XXVIII, section 3 are unconstitutional as applied to Plaintiffs and all persons and small donor committees who have contributed or want to contribute to The Committee to Elect Kathleen Curry and establishing the right of every person and small donor committee to make contributions in the same amount to The Committee to Elect Kathleen Curry as other persons and small donor committees are allowed to contribute to her opponents' candidate committees;
- E. A permanently injunction enjoining and restraining Defendants Ritter and Buescher, and all those acting in concert with them, from enforcing the contribution limits set forth in COLO.CONST. article XXVIII, section 3 against: (1) any person or small donor committee to the extent that any person or small donor committee makes a contribution to a candidate committee of an unaffiliated candidate or a candidate committee of a minor political party candidate whose name is not placed on the primary election ballot in an amount that they are allowed to contribute to a candidate committee of major political party candidate who is running for the same elective office; and (2) any candidate or candidate committee of an unaffiliated candidate or minor political party candidate whose name is not on the primary election ballot to the extent such candidate or candidate committee accepts contributions from persons or small donor committees in an amount that a candidate committee of a major political party candidate is allowed to accept who is running for the same elective office.
- F. A permanently injunction enjoining and restraining Defendants Ritter and Buescher, and all those acting in concert with them, from enforcing the contribution limits set forth in COLO.CONST. article XXVIII, section 3 against: (1) any person or small donor committee to the extent that any person or small donor committee wishes to contribute up to an aggregate amount of \$400 or \$4,250, respectively, to The Committee to Elect Kathleen Curry; and (2) Kathleen Curry and The Committee to Elect Kathleen Curry to the extent that Kathleen Curry and/or The Committee to Elect Kathleen Curry accepts contributions from persons or small donor committees up to an aggregate amount of \$400 or \$4,250, respectively

- G. For costs of suit herein, including Plaintiffs' reasonable attorney's fees pursuant to 42 U.S.C. § 1988 against Defendants Ritter and Buescher; and,
- H. For such other and further relief as the Court may deem just and reasonable under the circumstances.

Respectfully submitted, the 4th day of August, 2010.

/s/ William E. Zimsky

By: _____

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