

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

Civil Action No. 08-CV-2321-JLK-KMT

COMMON CAUSE OF COLORADO,  
on behalf of itself and its members;  
MI FAMILIA VOTA EDUCATION FUND; and  
SERVICE EMPLOYEES INTERNATIONAL UNION,  
on behalf of itself and its members,

Plaintiffs,

v.

BERNIE BUESCHER, in his official capacity as Secretary of State  
for the State of Colorado,

Defendant.

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**SECRETARY'S MOTION FOR SUMMARY JUDGMENT**

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Pursuant to Fed. R. Civ. P. 56, Defendant Bernie Buescher, in his official capacity as the Colorado Secretary of State ("the Secretary"), by and through undersigned counsel, respectfully submits this Motion for Summary Judgment on all claims asserted by Plaintiffs. As grounds, the Secretary states as follows:

1. This action involves a broad challenge to the State of Colorado's efforts to ensure fair and open elections while remaining in compliance with the requirements of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg (1993), and the Help America Vote Act ("HAVA"), 42 U.S.C. § 15483 (2002).

2. Generally speaking, Plaintiffs object to the Secretary's use of procedures designed to ensure the eligibility of those attempting to register, reduce duplicate voter registrations, and prevent electoral fraud.

3. Plaintiffs contend that they, numerous participants in their voter registration drives, and, where applicable, their organizational members have been aggrieved by the list maintenance procedures outlined by Colorado statute and adopted into rule by the Secretary. Am. Compl.

4. More specifically, the Plaintiffs challenge:

- a. The validity, under NVRA, of § 1-2-509(3), C.R.S. (2009), which provides for the rejection of invalid applications for voter registration, Am. Compl. ¶¶ 72-76;
- b. The Secretary's cancellation of meticulously confirmed duplicate voter registration records in advance of the 2008 primary and general elections, Am. Compl. ¶¶ 77-82;
- c. The Secretary's adherence to the requirements of §§ 1-2-603 and 1-2-604, C.R.S. (2009), which require the cancellation of inactive registrations left over from an elector's prior county of residence, as well as the cancellation of registrations that are duplicative of an elector's most current voter registration, Am. Compl. ¶¶ 83-89; and

- d. The Secretary's compliance with HAVA's requirement that he make reasonable efforts to remove registrants who have not responded to a notice and who have failed to vote in two consecutive general elections for federal office. ¶¶ 90-96.

5. As demonstrated in the supporting brief submitted with this motion, which brief is incorporated herein by reference, there is no genuine issue as to any material fact, and the Secretary is entitled to judgment as a matter of law on all of Plaintiffs' claims for relief.

WHEREFORE, the Colorado Secretary of State respectfully moves this Court to enter summary judgment in favor of the Secretary and against Plaintiffs on all of Plaintiffs' claims for relief.

Respectfully submitted this 10<sup>th</sup> day of December, 2009.

JOHN W. SUTHERS  
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*s/Melody Mirbaba*

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CERTIFICATE OF SERVICE

I hereby certify that on this December 10, 2009, I served the foregoing Motion for Summary Judgment as stated below:

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