

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

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COMMON CAUSE OF COLORADO, *et al.*, : CIVIL ACTION NO.  
Plaintiffs, : 1 :08-cv-02321-JLK  
v. :  
BERNIE BUESCHER, in his official capacity as Secretary of  
State for the State of Colorado,  
Defendant

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**DECLARATION OF S. GALE DICK IN SUPPORT OF PLAINTIFFS' REPLY IN  
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

1. I am an attorney with the law firm of Debevoise & Plimpton LLP and counsel for the plaintiffs in this case. I make this declaration from my personal knowledge and, if called upon to do so, could and would competently testify to the matters set forth herein in a court of law.

2. On February 2, 2010, I or persons acting at my direction accessed the world wide web site for the Rocky Mountain News and downloaded an article entitled "Coffman says report wrong on voter purging," by Todd Hartman and dated October 9, 2008, available at <http://www.rockymountainnews.com/news/2008/oct/09/democratic-official-questions-report-voter-purges/?partner=RSS>. Attached hereto as Exhibit 74 is a true and correct copy of the downloaded article.

3. Attached hereto as Exhibit 75 is a true and correct copy of a memo to Joanne Wright from Susannah Goodman, Jenny Flanagan, and Elena Nunez, as Bates Nos. CC0000226-CC0000229.

4. Attached hereto as Exhibit 76 is a true and correct copy of Common Cause hotline callers cancelled under the 20-Day Rule, provided by the Secretary of State in response to Plaintiffs' Second Supplemental Interrogatory Responses to Interrogatory number



CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2010, I electronically filed the foregoing Declaration of S. Gale Dick in Support of Plaintiffs' Reply in Support of Motion for Summary Judgment with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the registered, interested parties via electronic mail.

Executed on February 4, 2010

/s/ S. Gale Dick

# **EXHIBIT 74**

## Coffman says report wrong on voter purging

By **Todd Hartman**, Rocky Mountain News

Published October 9, 2008 at 2:01 p.m.



George Kochanec Jr. © The Rocky

Colorado Secretary of State Mike Coffman denounced at a news conference Thursday a New York Times story claiming Colorado (and other states) may have illegally purged voter rolls

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Secretary of State Mike Coffman said this afternoon a media report that voters were being illegally purged from Colorado election rolls was "pretty out to lunch" and that the numbers cited in the story "were way off."

The New York Times reported today that six states, including Colorado, appeared to be moving voters from the rolls in violation of federal voting rights laws. The newspaper didn't say the moves were intentional, or being driven by one party or the other, but were the result of mistakes by election officials.

But Coffman said two key numbers pertaining to Colorado were inaccurate.

The Times' article reported that Colorado had purged some 37,000 voters from the rolls since July 21, a figure that the paper said was unusually high.

But Coffman said the actual figure was 14,049 voters. They were removed for various reasons, including moving away, death or because they were convicted felons still serving sentences.

One group, about 1,100, were listed as "failed to respond," meaning they didn't follow up with county clerks who made efforts to contact the voters to confirm addresses and other information.

Coffman did say that 2,454 duplicate voters were canceled within 90 days of the election, and conceded that may violate the National Voter Registration Act. His office was checking with state Attorney General John Suthers for an interpretation, Coffman said.

Coffman said miscommunication between the Times and his office prevented him from correcting the paper's numbers before publication.

"I think they extrapolated their numbers in the absence of having information from our office, and they're highly inaccurate," he said. "And they're also making allegations that we are in fact canceling voter registrations without cause, and that couldn't be further from the truth."

William Browning, also with the secretary of state's office, said another assertion in the Times' story — that Colorado's total voter registration figure was 100,000 below 2004 despite major voter registration drives and a population increase — was also inaccurate.

"We believe there are 3.1 million registered voters; we believe that's an increase from 2004," said Browning.

State Democratic Party chair Pat Waak also questioned the accuracy of the Times article.

Waak said the Democratic Party's own data doesn't align with the assertion that 37,000 people were removed from the rolls in the three weeks after July 21.

The total was closer to 12,000 according to numbers obtained by the state Democratic Party, Waak said, and 8,000 of those had died or moved out of state.

She said the party was still looking at the other 4,000 but said it's likely many of those moved from one county to another, meaning they probably fell off one county's roll but were added to another's.

The Times' numbers "aren't the numbers we're seeing," she said. "I don't know where they're getting their numbers."

But the watchdog group Colorado Common Cause said it was "concerned" about the Times' report.

"Our election officials must immediately investigate if any legitimately registered voters were wrongfully removed from the rolls and re-evaluate Colorado's policy, more stringent than many

other states, of declaring voters 'inactive' after missing a single federal election," the group said in a statement.

Also today, Coffman's deputy responded to a letter sent by Gov. Bill Ritter urging Coffman to "clarify with voters" an error that resulted in voters being told they had until Oct. 6 to remedy an incomplete voter registration applications.

In fact, Ritter said, the deadline is Election Day.

Browning said the secretary of state's office has identified 4,000 voters with incomplete registration and has already started to notify them that they have more time to fix any problems.

# **EXHIBIT 75**

To: Joanne Wright  
FR: Susannah Goodman, Jenny Flanagan, Elena Nunez

### Overview

This memo is to follow up on our phone call last week – articulating hot spots and proposed remedies. The Just Vote Colorado (formerly Fair Vote Colorado) program has been highly successful in 2004 and 2006. This year the Just Vote Colorado program should be expanded so that organizers are hired to conduct outreach to the 64 counties in the state with a specific focus on the most populous counties, including **Denver, Arapahoe, and Jefferson** and counties with vulnerable populations such as **Weld, Adams, and Pueblo**.

As you'll read below there are several issues facing Colorado that could jeopardize a fair election, most pressing is the statewide voter database and how each county will address the potential shortfalls with this new system. Another element of this dynamic is the strained relationship between the Colorado County Clerks and the Secretary of States office. In many states this issue of local control can be problematic. In Colorado, the Clerks are particularly frustrated this year because of the lack of leadership in the Secretary of States office and the recent decertification of voting machines. Finally, it's important to note the Secretary Coffman is running for Congress and is favored to win the primary. Not only is his campaign time taking away from his duties as secretary of state, but it is likely that we will see a transition of that office after the August Primary.

Building on our success in 2004 and 2006 JVC has the infrastructure in place to be an effective advocate for this year's election. Our current funding and staffing levels will enable us to meet the minimum goals of the project which is to set up a website and host a call center. With funding to expand the program we can organize an effective campaign and deepen our impact statewide.

### **Hot Spots in Colorado**

The recent decertification and then recertification of voting machines, the ongoing challenges with the new statewide voter registration database, and the anticipated large turnout for the 2008 election will require increased vigilance of election administration and increased voter education and outreach to make sure that all Coloradans are able to participate.

Voting Machines: While counties now have a clearer sense of the type of voting equipment they will use this fall, the questions surrounding the integrity of the equipment remain. With the decertification and recertification of the voting machines also came requirements for upgrades and improvements to ensure the machines are meeting new requirements. Because of the ongoing machine problems we can expect a vote count challenge post election. We must ensure every county is monitored for security and machine integrity as well as effective post election audits. Voter confidence is important for a successful election.

Problems with the Statewide Database: SCORE II, Colorado's new statewide voter database, is currently being tested and reports out of the Secretary of State's office indicate 'all will be well' come this fall. Our concerns over the implementation of this new voter registration system stem from the fact that this database will serve as the gatekeeper for all voters. Any programming glitch, improper implementation, or simple data entry error could gravely impact a voter's opportunity to cast a ballot and have it counted. While provisional ballots will be offered to any voter who is not on the registration list, only those provisional ballots that can be verified (through a voter registration list) will be counted. Anytime we see a major change in technology, we have heightened concern and will watch closely to ensure voters are protected.

The two examples above are new to 2008, but most election barriers occur time and again, every election year. The number one reason voters contact JVC on Election Day is to obtain basic information about their voter registration status and the location of their polling place.

Some of the annual election problems Colorado will face include:

1. Inadequate Voter Education: Voters are often unaware of fundamental voting rights such as ID requirements, their right to a provisional ballot, the hours of voting, and that they are entitled to time off from their employment.
2. Ballot Access for Vulnerable Populations: County specific issues such as language assistance and student voting remain. In the four corners area, there have been concerns about voter access for tribal communities. In La Plata and El Paso counties, there has been a history of complaints about voter intimidation to discourage student voting.
3. Provisional Ballots: Often these ballots are given out in excess and place the voter in a secondary status because their ballot needs to be verified after the close of the polls. Ideally, election judges can resolve a voter's questions and find the voter's proper registration to allow the voter to cast a regular ballot. In 2006, provisional ballots were used as back up ballots when polling places ran out of ballots or machines went down. Provisional ballots should not be used for this purpose; emergency paper ballots should be available.
4. Absentee (Mail) Ballots: Nearly every year we see ballots being sent out late with little remedy for voters. We must ensure ballots are sent on time, and that replacement ballots are available for voters who did not receive their mail ballots. We should also increase drop off locations, and make clear what the postage requirements are to limit voter confusion.
5. Election Judge training: Many Election Day issues can be traced back to inadequate training of election workers. Each county differs greatly in terms of the kind of training, length of training, even how issues are dealt with. Inadequate information and sometimes inaccurate information leads to unnecessary problems for voters on Election Day. Training must be improved and should include procedures on how to handle crisis situations.
6. Logistical/Planning problems: The key to a successful election is in proper planning and administration. In 2006 we saw many counties fail in their attempt to implement vote centers because of inadequate planning. County administrators can address such deficiencies through proper planning. Counties should be prepared for record turnout and have good contingency plans in place. Lessons from prior elections teach us what must be improved such as better communication plans between county offices and election workers and adequate supply and delivery procedures for back up ballots, provisional ballots, other materials needed at the polls.

To address these pressing issues we have organized a diverse **steering committee** which meets at least monthly, and as needed. In addition to **Common Cause**, the steering committee members include Dusti Gurule of the **Latina Initiative**, Faith Gross with the **Legal Center for People with Disabilities and Older People**, Gerry Cummins and Carol Tone from the **League of Women Voters** and Dan Sweetser representing the **Colorado Lawyers Committee**.

The 2008 JVC program plan features:

**Outreach to state and local officials**: We plan to expand on the activities of our previous efforts in 2004 and 2006 where we built a network of contacts in many counties throughout the state. Working with our legal team, we will identify at least one Election Day contact person for every county in the state. With an inside contact in each county and at the Secretary of State's office we can let election officials know of any identified concerns immediately.

We have good working relationships with many Denver metropolitan area County Clerks including **Scott Doyle–R, Larimer, Hillary Hall–D, Boulder, and Stephanie O’Malley, Denver**. We also work regularly with the Secretary of State’s office. Nearly all of the JVC steering committee members also serve on an election task force organized by the Colorado Lawyers Committee that meets monthly, often with the Secretary and or his staff, to address policy concerns and implementation of the rules and procedures that impact our elections.

As we did in 2006, we plan to organize at least one meeting to bring elected leaders and key community stakeholders together in an effort to resolve election challenges facing Colorado before the 2008 election takes place. We will provide them detailed information about our efforts to educate and inform voters and listen to any concerns they have about the upcoming election. We will also work to support election administrators by recruiting election judges, an ongoing deficit for all of Colorado’s counties. Our goal is to expand this element of the program to include 5 regional meetings, one in each region of the state.

While we work to build relationships with election administrators and to solve problems before they negatively impact voters, we are no strangers to controversy. We will take what actions we believe are necessary to ensure voters are offered the greatest protections possible. In 2004, after the primary election, Common Cause brought a lawsuit challenging three major issues in election law: polling place ID requirements, the method for counting provisional ballots, and whether or not voters who requested but did not cast their absentee ballot could vote at the polls on Election Day.

The results of this lawsuit provided that in 2004 voters could receive a provisional ballot if, for any reason, they did not cast their absentee ballot. During the 2005 legislative session Common Cause successfully led the fight to allow provisional ballots to count all statewide and federal offices rather than just votes for president and vice president.

On Election Day in 2006, JVC, represented by Jenny Flanagan of Common Cause, was called upon to testify on the issue of whether to extend polling place hours due to long lines at Denver vote centers. JVC supported the effort to extend the hours because we witnessed thousands of voters leaving the polls through our volunteers and call center. News reports later confirmed that nearly 20,000 voters left the polls without voting that day.

**To accomplish the above goals we need focused efforts in key counties to assess county by county plans and identify strategic plans for improvements before Election Day.**

**Voter Outreach and Education:** Through our field operation, website and call center, we expect that we will reach nearly 1 million people. In 2004 and 2006 we received over 20,000 calls to our call center on Election Day, and in 2006 had nearly 2 million visits to our website.

We are committed to serving populations that are traditionally underrepresented in the voting process to ensure that minority, low income, young voters and voters with disabilities have the tools they need to participate. Because of our location, our focus will be on voters in the metro Denver area, but we will reach out to out state areas as well.

Our outreach and education will begin with existing community contacts, including organizations such as the African American Voter Information Project, the Interfaith Alliance, Colorado Progressive Coalition, and Colorado Coalition for the Homeless. We will also reach out to coalitions such as labor, conservation and women’s rights groups. We expect to reach voters in Colorado Springs, Pueblo, Durango, Ft Collins and Grand Junction through volunteers and local chapters of participating organizations.

Participating organizations will enable us to reach a wide range of voters to provide the tools they need to vote via the toll-free number and website. In addition to utilizing the number and voter information

services, organizations and individuals can participate by recruiting and training volunteers for Election Day monitoring; working locally with election officials to identify key election issues for specific regions; engaging their memberships in community dialogues; and supporting election administrators by assisting in the recruitment of election judges.

Our goal for 2008 is to have 400 volunteers around the state of Colorado. In 2004, we had 200 volunteers with the majority in the Denver Metro Area. We recruit our volunteers through our steering committee and coalition allies as well as through the mass media. Through our coalition, we will host trainings throughout the state, as well as phone briefings for volunteers who cannot attend in person. To expand our trainings, we are working with law students at the University of Denver and CU-Boulder. The students can organize trips to local universities and partner with organizations to train JVC trainers as well as volunteers directly. Particularly beyond the Denver metropolitan area, we will work with coalition allies such as the local chapters of the League of Women Voters to train leaders by phone, and have them train local volunteers directly.

**REDACTED**

**EXHIBIT 76**  
**[FILED UNDER SEAL]**