

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 520 W. Colfax Ave. Denver, CO 80204	DATE FILED: December 10, 2020 3:48 PM FILING ID: 45DD37CA24F0C CASE NUMBER: 2020CV34204
RECALL POLIS 2020, Plaintiff, vs. JENA GRISWOLD, in her official capacity as SECRETARY OF STATE OF THE STATE OF COLORADO, Defendant.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Counsel for Defendant: Wes McConnell, # MCCONNELL LAW, P.C. P.O. Box 1067, 84-4 Highway 105 Palmer Lake, CO 80133 Phone: (719) 375-3629 wesmccconnell@mccconnell-lawpc.com	Case No. Division:
COMPLAINT	

COMES NOW the Plaintiff, RECALL POLIS 2020 ("Recall Polis"), a political action committee, by and through counsel, McConnell Law, P.C. and, pursuant to Colorado Rule of Civil Procedure 106, hereby submits this Complaint, in the above-styled case, and in support thereof states as follows:

INTRODUCTION

1. This case arises out of the Plaintiff's effort to initiate a recall election in the state of Colorado.

2. Specifically, the Plaintiffs and their supporters seek the recall of Jared Polis, the Governor of Colorado.

3. On or about September 14, 2020, the Secretary of State approved the petition at issue.

4. The deadline for submission of the petitions was set for November 13, 2020.

5. Due to restrictions set in place by the Governor and other agencies of the executive branch of the State of Colorado, the Plaintiff's ability to gather signatures was severely hampered.

6. On or about November 12, 2020, Plaintiffs requested an extension of time from Jena Griswold, in her official capacity as the Secretary of State of the State of Colorado, to continue gathering signatures.

7. On the same day, Plaintiffs were notified by e-mail that this request was denied.

PARTIES, JURISDICTION AND VENUE

8. Plaintiff, Recall Polis, is a political action committee, whose physical address is 16115 Highway 9 , Breckenridge, Colorado 80424, with a mailing address of P.O. Box 1005, Frisco, CO 80443.

9. Lori Cutunilli, a registered voter in Colorado and citizen of the United States, is the registered agent for Plaintiff, Recall Polis.

10. Greg Merschel, a registered voter in Colorado and citizen of the United States, is the designated filing agent for Plaintiff, Recall Polis.

11. Defendant, Jena Griswold, is named in her official capacity as the Secretary of State of Colorado ("Secretary of State"), with an office address of 1700 Broadway Suite 200, Denver, Colorado 80290.

12. Jurisdiction is proper in the District Court pursuant to C.R.S. §13-1-124 because the parties regularly conduct business in the State of Colorado.

13. Venue is proper in the District Court of Denver County, Colorado pursuant to C.R.C.P. 98(b)(2) because this action is against a public officer, the Secretary of State, for an act done by her in virtue of her office, or for a failure to perform any act or duty which she is by law required to perform and the claim or part thereof arose in Denver County.

GENERAL ALLEGATIONS

14. The First Amendment to the Constitution of the United States recognizes the right of the people to freedom of speech and to petition the government for redress of grievances.

15. Article II, Section 24 of the Colorado Constitution recognizes the right of the people to petition the government for redress of grievances.

16. Article II, Section 5 of the Colorado Constitution states that "All elections shall be free and open; and *no power, civil or military, shall at any time interfere* to prevent the free exercise of the right of suffrage." (emphasis added).

17. Article XXI of the Constitution of Colorado provides Coloradans with a constitutional right to recall elected officials, including the governor.

18. The Constitution of Colorado sets the required number of signatures at twenty-five percent of votes cast for the office in the previous election.

19. Article XXI of the Colorado Constitution does not establish the time frame in which a petition for recall must be submitted.

20. C.R.S. § 1-12-108 provides that petitions are to be submitted no later than 60 days after approval by the designated election official, in this case, the Secretary of State.

21. On March 11, 2020 Governor Polis issued Executive Order D2020-003, declaring a disaster emergency, due to the presence of COVID-19 in the state. Plaintiff Exhibit 1.

22. This order has been extended ten times and is set to expire 30 days from December 1, 2020.

23. On March 19, 2020, the Colorado Department of Public Health & Environment (CDPHE) issued Public Health Order 20-23 restricting mass gatherings to no more than ten people. Plaintiff Exhibit 2.

24. Gatherings subject to this Order included, but were not limited to, community, civic, public, leisure, faith-based events, sporting events with spectators, concerts, conventions, fundraisers, parades, fairs, festivals, and any similar event or activity that brings together ten or more persons in a single room or space at the same time in a venue such as an auditorium, stadium, arena, large conference room, meeting hall, private club, or any other confined indoor or outdoor space. Id.

25. Individuals violating Public Health Order 20-23 could be subject to a fine of up to \$1000 and face up to one year in county jail. Id.

26. Governor Polis himself recognized that restrictions imposed by the state affected the ability of citizens to gather signatures when, on April 26, 2020, he issued Executive Order D 2020 044, Safer at Home. This order limited in person activities, which "impose[d] a significant hurdle for ballot petition circulators, who play an essential role in our democratic republic and have significant and determinative barriers due to state and local public health orders that prevent them from the normal statutory conduct of in-person signature gathering." Plaintiff Exhibit 3.

27. On or about September 14, 2020 the petition seeking recall of Governor Polis was approved by the Secretary of State. The deadline for gathering signatures was November 13, 2020. Plaintiff Exhibit 4.

28. Recall Polis has nearly 1,750 volunteers who diligently spent the original sixty days gathering signatures. Id.

29. Despite the best efforts of the volunteers, they were able to collect only approximately 175,000 signatures. Id.

30. On or about November 12, 2020, Plaintiff requested an extension of time to gather signatures based on the difficulties caused by the restrictions due to COVID-19. Plaintiff Exhibit 5.

31. On the same day, Plaintiff was notified by email that the request was denied. Plaintiff Exhibit 6.

32. Due to the restrictions established by the state, whether the Governor himself or the CDPHE, the Plaintiffs were denied access to carnivals, music festivals, concerts, sporting events, churches and houses of worship, annual fundraising events, political rallies and more. The result was that normal venues for gathering signatures were denied to Plaintiff. Plaintiff Exhibit 4.

33. In multiple instances volunteers were asked to cease signature gathering efforts in front of grocery stores and other locations after management at those locations received complaints from customers who did not feel comfortable having signature gathering on the premises because of physical distancing concerns. Id.

34. Furthermore, on multiple occasions volunteers encountered citizens who wanted to sign but declined to do so because they believed that COVID-19 restrictions prohibited them

from doing so. This was also true of volunteers who desired to collect signatures but believed that collecting signatures exposed them to criminal liability. Id.

35. The oath of office taken by the Secretary of State upon her taking of the office states that she "will support the constitution of the United States, the constitution of the State of Colorado, and the laws of the state of Colorado, and will faithfully perform the duties of the office of Secretary of State upon which [she is] about to enter to the best of [her] ability."

CLAIM FOR RELIEF

(Abuse of Discretion)
C.R.C.P. 106

36. Plaintiff incorporates the proceeding paragraphs as though fully contained herein.

37. That the Secretary of State had a duty to protect the right of the citizens to freedom of speech, freedom of assembly and freedom to petition the government for redress of grievances;

38. That the Secretary of State further had a duty to protect the constitutional right of the people to initiate a recall of the Governor;

39. The Plaintiff hereby alleges that the Secretary of State abused her discretion when she denied a valid request by the Plaintiffs requesting an extension of 90 days to continue gathering signatures.

40. The Plaintiff has no plain, speedy and adequate remedy otherwise provided by law.

41. The Plaintiff will suffer irreparable injury if this request for relief is not granted.

42. The actions of the Secretary of State indicate the reasonable probability of the Plaintiff's success on this action.

PRAYER FOR RELIEF

Plaintiff, Recall Polis, by and through counsel, respectfully requests that this Court issue an Order reversing the decision of the Secretary of State, declare that the Secretary of State does in fact have the authority to grant an extension to the Plaintiff, and to direct the Secretary of State to, under these particular circumstances, grant an extension of time to the Plaintiff in the amount of 90 days to continue to gather signatures for the Plaintiff's otherwise lawful petition.

Respectfully submitted this 10th day of December, 2020.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Wes McConnell', followed by a horizontal line.

s/ Wes McConnell, Esq.

Wes McConnell #45545
Attorney for Plaintiff

Plaintiff's Address:

RECALL POLIS 2020
c/o Lori Cutunilli
P.O. Box 1005
Frisco, CO 80443