

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. \_\_\_\_\_

JOELLE RIDDLE, CAROL BLATNICK,  
WAYNE BUCK and MANDY MIKULENCAK

Plaintiffs,

v.

LINDA DALEY, in her official capacity as  
La Plata County Clerk and Recorder,

Defendant.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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

**I. INTRODUCTION**

1. This case involves a constitutional challenge to a Colorado statutory scheme involving ballot access for unaffiliated candidates for partisan elective office. Plaintiffs aver that the statutory scheme is unconstitutional on its face and as applied in this case because it violates their rights of freedom of speech and freedom of association as guaranteed by the First Amendment, as applied to the States through the Fourteenth Amendment, and violates their right to equal protection under the laws as guaranteed by the Fourteenth Amendment.

2. Under Colorado law, in order to be eligible to be placed in nomination for a partisan office by petition as an unaffiliated candidate, the person has to have been registered as

unaffiliated at least twelve months before the last date the nominating petition is due. For the general election to be held on November 2, 2010, the period of required non-affiliation began on June 15, 2009.

3. The statutes applicable to political parties, however, allow political parties to enact party rules that are less restrictive than imposed on unaffiliated candidates. The Democratic Party of Colorado has adopted a rule that provides that Democratic candidates need only be affiliated with the Democratic Party for twelve months prior to the general election, which in this election cycle would be November 2, 2009. The Colorado Republican Party has adopted an even less restrictive affiliation rule that allows candidates to be eligible for nomination as Republicans if they change their affiliation to Republicans by February 24, 2010. The Libertarian Party has adopted a rule that allows a candidate to be nominated as long as they were a member of the Libertarian Party at least 86 days before the nominating assembly. The Green Party adopted a rule that requires that a candidate not to have been affiliated with another political party for six months before being nominated by the Green Party for partisan elective office. There is nothing in the statute that precludes political parties from removing the affiliation restriction altogether.

4. Plaintiff Joelle Riddle is one of three county commissioners of La Plata County, Colorado. The voters of La Plata County elected Commissioner Riddle, running as a Democrat, to a four-year term at the November 6, 2006 general election, casting 9,453 votes in her favor as she defeated the incumbent Republican county commissioner. Commissioner Riddle changed her party affiliation on August 21, 2009 from Democratic to unaffiliated. Commissioner Riddle intends to file a nominating petition to run for re-election as an independent candidate.

However, pursuant to the challenged statutory scheme, Riddle is not eligible to be placed on the ballot as an unaffiliated candidate.

5. Colorado's party affiliation requirements discriminate invidiously against unaffiliated candidates and voters who desire to cast votes for such candidates and are unconstitutional on their face; they further burden protected rights by limiting the freedom of persons seeking to run for office to choose to run unaffiliated; they further burden constitutional rights by limiting the range of candidates available to voters.

6. The statutory scheme is unconstitutional as applied because Commissioner Riddle would have been eligible to be placed on the ballot to seek re-election if she had changed her affiliation from Democrat to Republican, Libertarian or Green Party instead of unaffiliated on August 21, 2009 or if she had changed back to Democrat on or before November 2, 2009 or if she changes her affiliation to Republican on or before February 24, 2010 or if she changes her affiliation to Libertarian 86 days before its nominating assembly or if she changes her affiliation to the Green Party six months before its nominating assembly.

## **II. PARTIES**

7. Plaintiff Joelle Riddle is a resident of La Plata County, Colorado. Ms. Riddle is a member of the La Plata County Board of County Commissioners. The voters of La Plata County elected her to a four-year term in the November 6, 2006 general election as the nominee of the Democratic Party for County Commission in District 1 of La Plata County. Commissioner Riddle is currently unaffiliated with any political party and is an eligible elector for purposes of voting in the 2010 general election for the District 1 La Plata County commissioner.

Commissioner Riddle meets the residency requirement to run for re-election for the District 1 La Plata County commissioner.

8. Plaintiff Carol Blatnick is a resident of La Plata County, Colorado. Ms. Blatnick is an eligible elector for purposes of voting in the 2010 general election for the District 1 La Plata County commissioner. Ms. Blatnick registered as a member of the Democrat Party.

9. Plaintiff Wayne Buck is a resident of La Plata County, Colorado. Mr. Buck is an eligible elector for purposes of voting in the 2010 general election for the District 1 La Plata County commissioner. Mr. Buck registered as a member of the Republican Party.

10. Plaintiff Mandy Mikulencak is a resident of La Plata County, Colorado. Ms. Mikulencak is an eligible elector for purposes of voting in the 2010 general election for the District 1 La Plata County commissioner. Ms. Mikulencak registered as an unaffiliated voter.

11. Defendant Linda Daley is the County Clerk and Recorder for La Plata County Colorado. Defendant Daley is the chief election officer for La Plata County. § 1-1-110, C.R.S. Defendant Daley is the election official with whom Commissioner Riddle must file her nominating petition. § 1-4-907, C.R.S. Defendant Daley is the election official who reviews the petition for compliance with application state election laws. § 1-4-908, C.R.S.

## **II. JURISDICTION AND VENUE**

12. Plaintiffs' causes of action arise under the First Amendment of the United States Constitution, as incorporated into the Fourteenth Amendment, that guarantees freedom of speech and freedom of association and under the Fourteenth Amendment to the Constitution that guarantees Plaintiffs the equal protection of the laws.

13. 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.

14. 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).

### **III. GENERAL ALLEGATIONS**

#### **A. County Commissioner Joelle Riddle and the Plaintiff Voters**

15. The voters of La Plata County elected Joelle Riddle to a four-year term as the county commissioner from District 1 in the general election held on November 6, 2006. Commissioner Riddle received 9,453 votes defeating Sheryl Ayers, the incumbent county commissioner for District 1. (The three commissioners of the La Plata County Board of County Commissioners each represent a distinct geographic district in which they must reside, but all of the electors residing in La Plata County are eligible to vote in the election of all county commissioners.)

16. Commissioner Riddle was a member of the Democratic Party of Colorado when she was nominated and elected to the office of county commissioner at the 2006 general election.

17. On August 21, 2009, Commissioner Riddle changed her party affiliation and became an unaffiliated elector.

18. Commissioner Riddle desires and intends to run for re-election as county commissioner for District 1 of La Plata County as an independent candidate by utilizing the petition process set forth at § 1-4-802, C.R.S.

19. Plaintiff Carol Blatnick, a member of the Democrat party, voted for Commissioner Riddle in the 2006 general election and would vote to re-elect Commissioner Riddle in the 2010 general election if her name were on the ballot as an unaffiliated candidate.

20. Wayne Buck, a member of the Republican Party, did not vote for Commissioner Riddle in the 2006 general election but would vote to re-elect Commissioner Riddle in the 2010 general election if her name were on the ballot as an unaffiliated candidate.

21. Mandy Mikulencak is an unaffiliated voter who voted for Commissioner Riddle in the 2006 general election and would vote to re-elect Commissioner Riddle in the 2010 general election if her name were on the ballot as an unaffiliated candidate.

**B. The requirements for unaffiliated candidates to be placed on the ballot.**

22. Section 1-4-802(g), C.R.S., provides, in pertinent part, that:

No person shall be placed in nomination by petition unless the person is an eligible elector of the political subdivision or district in which the officer is to be elected and unless the person was registered . . . as unaffiliated, as shown on the books of the county clerk and recorder, for at least twelve months prior to the last date the petition may be filed; . . .

23. The last day to file an unaffiliated candidate nomination petition for the November 2, 2010 general election is June 15, 2010. *See* § 1-4-802(1)(f)(I), C.R.S. (nominating petitions must be filed no later than 3:00 p.m. on the one hundred fortieth day before the general election).

24. Thus, in order to have been eligible under §1-4-802(g), C.R.S. to be placed in nomination for re-election to the county commissioner seat she currently holds as an independent candidate, Commissioner Riddle would have had to have changed her registration from Democrat to unaffiliated on or before June 15, 2009, one year and one hundred forty days before

the general election. Pursuant to §1-4-802(g), Commissioner Riddle is ineligible to avail herself of the petition process to be nominated as an unaffiliated candidate for the office of county commissioner for District 1 in the 2010 general election.

**C. The requirements for candidates and members of major and minor political parties to be placed on the ballot.**

25. In contrast to the rather stringent affiliation requirements imposed by § 1-4-802(g) on independent candidates to be placed on the ballot, Colorado has enacted a statutory scheme that allows the major and minor political parties to opt out of the affiliation requirement for persons who want to change their affiliation to one of the major or minor political parties.

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

27. Section 1-4-601(4)(a), C.R.S., provides that:

No person is eligible for designation by assembly as a candidate for nomination at any primary election [by a major political party] unless the person has been affiliated with the political party holding the assembly for a period of at least twelve months immediately preceding the date of the assembly, as shown by the registration books of the county clerk and recorder, *unless otherwise provided by party rules.* (Emphasis supplied.)

28. This statute does not prevent either major political party from opting out of any type of affiliation requirement.

29. Both major political parties have decided to utilize the “opt out” provision of § 1-1-401(4)(a), C.R.S., to impose less restrictive affiliation requirements.

30. The Democratic Party of Colorado has enacted the following rule:

Candidate Eligibility. A person shall be eligible for designation by an assembly as a candidate for nomination at a primary election, or for appointment to a vacancy in such designation, if that person has been a

registered Democrat for a period of at least 12 months immediately preceding the date of the General Election next following such primary election. CRS 1-4-601 (4)

Colorado Democratic Party Plan of Organization and Rules, as amended on December 8, 2007 at Part III, Article II(B)(6).

31. Thus, if Commissioner Riddle had changed her registration back to Democrat on or before November 2, 2009, she would have been eligible to be nominated by the Democratic Party for re-election to her office as county commission.

32. On August 8, 2009, the 6<sup>th</sup> Senate District Vacancy Committee of the Democratic Party of Colorado selected Bruce Whitehead to serve out the term of Jim Isgar, a Democrat who resigned his senate seat on July 20, 2009. Senator Whitehead was sworn into his office on August 17, 2009.

33. Senator Whitehead was an unaffiliated elector who changed his registration to the Democratic Party on July 1, 2009.

34. Bruce Whitehead has formed a candidate committee under the laws of the State of Colorado, is currently raising money to run for the Democratic Party nomination for state senate from the 6<sup>th</sup> district and has publically declared his intention to run for that office in the November 2, 2010 general election.

35. Absent the “opt out” provision of § 1-4-601(4)(a) and the Democratic Party rule placing a less restrictive affiliation requirement on persons who become members of the Democratic Party of Colorado, Senator Whitehead would be ineligible to be placed on the ballot for any partisan office for the 2010 general election.

36. The Colorado Republican Party has enacted the following party rule:



Section I. Party Registration.

Affiliation as a Republican shall be as shown on the registration books of the county clerk and recorder. No candidate shall be designated to the primary election ballot by any assembly for the Republican primary election ballot unless he shall have been continuously affiliated as a Republican for at least thirty (30) days preceding the date of the assembly making such designation, and this provision shall control notwithstanding any other provision in any county or district bylaws or rules.

Colorado Republican Party Bylaws, at Article XIII, Section I, adopted on March 9, 2009.

37. The county assembly for designating nominees for the office of county commissioner for the November 2, 2010 election has to be held sometime between March 26 and April 15, 2001. Section 1-4-602(1)(a)(I), C.R.S. (county assemblies to be held not less than 10 nor more than 30 days after the March 16, 2010 precinct caucuses, which are held on the third Tuesday in March in even-numbered years per § 1-3-102(1)(a)(I), C.R.S.).

38. Thus, had Commissioner Riddle changed her affiliation from Democrat to Republican on August 21, 2009, instead of to unaffiliated, Commissioner Riddle would have been eligible to be nominated as the Republican candidate for re-election to her office as county commission.

39. Commissioner Riddle could change her affiliation to the Republican Party by February 24, 2010 (30 days before the earliest date the county assembly can be held) and be eligible to be nominated as a candidate for county commissioner as a Republican.

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

41. Section 1-4-1304 C.R.S., provides, in pertinent part, that:

**1-4-1304. Nomination of candidates.**

(2) Nominations by a minor political party, to be valid, shall be made in accordance with the party's constitution or bylaws. No nomination under this section shall be valid for any general election held after January 1, 1999, unless the nominee:

(a) Is a registered elector;

(b) Has been affiliated for a period of twelve months immediately preceding the date of nomination with the minor political party that is making the nomination as shown in the registration books of the county clerk and recorder ***unless otherwise provided in the constitution or bylaws of the minor political party*** (emphasis supplied); and

(c) Has not been registered as a member of a major political party for at least twelve months prior to the date of nomination ***unless otherwise provided in the constitution or bylaws of the minor political party***. (Emphasis supplied.)

42. The Green Party of Colorado has adopted the following by-laws:

4.5.4 Candidates for partisan elective office shall not have been registered as a member of a political party other than the Green Party of Colorado for at least six months prior to the date of nomination.

4.5.5. Candidates for partisan political office must be registered with the Green Party for at least six months before the general election or for two months prior to the Green Party of Colorado nominating convention, whichever is earlier, in order to be eligible for nomination.

Green Party of Colorado By-laws, revised May 2008, at Article IV, at Sections 4.5.4 and 4.5.5.

43. Thus, had Commissioner Riddle changed her affiliation from Democrat to Green Party on August 21, 2009, instead of to unaffiliated, Commissioner Riddle would have been eligible to be nominated as the Green Party candidate for re-election to her office as county commission.

44. If Commissioner Riddle changes her affiliation to the Green Party two months before the Green Party's nominating convention, she would be eligible to be nominated as the

Green Party candidate for re-election to her office as county commission.

45. The Constitution of the Libertarian Party of Colorado provides, in pertinent part, that:

**Section 4:** Each candidate must have been a Member for at least ninety (90) days on the last date on which the Party can file its certificate of designation with the appropriate election official . . .

Constitution of the Libertarian Party of Colorado, adopted March 8, 2008 at Article VIII, Section 4.

46. Pursuant to § 1-4-1304(3)(4), June 6, 2010 is that last day to hold minor party assemblies for the General Election (65 days before the primary election, which is set for August 10) and minor parties must file certificates of designation with Defendant Daley within four days of the assembly to run for the District 1 county commissioner seat in the 2010 general election.

47. Thus, had Commissioner Riddle changed her affiliation from Democrat to Libertarian on August 21, 2009, instead of to unaffiliated, Commissioner Riddle would have been eligible to be nominated as the Libertarian candidate for re-election to her office as county commission.

48. Commissioner Riddle could change her affiliation to the Libertarian Party 86 days before the Libertarian Party assembly and be eligible to be nominated as a candidate for county commissioner for District 1 as a Libertarian.

49. Commissioner Riddle does not want to change her affiliation to a member of any major or minor political party. Instead, she desires to run as an independent candidate, unaffiliated with any political party .

## **FIRST CAUSE OF ACTION - DECLARATORY RELIEF**

50. By this reference Plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 49 as though fully set forth herein.

51. An actual controversy exists between Plaintiffs and Defendant with regard to the Plaintiffs' federally protected rights. Plaintiffs are entitled to declaratory judgment establishing the unconstitutionality of the affiliation requirement set forth in § 1-4-802(g), C.R.S., and establishing Commissioner Riddle's right to be eligible to be placed in nomination for county commission for District 1 of La Plata County by petition as an independent candidate.

52. Section 1-4-802(g) is facially unconstitutional to the extent that it prohibits a person from being placed in nomination by petition as an unaffiliated candidate unless that person was unaffiliated, as shown on the books of the county clerk and recorder, for at least twelve months prior to the last date the petition may be filed in that it violates the Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment.

53. Section 1-4-802(g) is unconstitutional as applied to Commissioner Riddle to the extent that it requires her to have been unaffiliated with any political party for at least twelve months prior to the last date for her to file a petition seeking to be placed on the ballot for re-election as county commissioner as an independent candidate because it violates the Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment.

54. 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.

## **SECOND CAUSE OF ACTION - DECLARATORY RELIEF**

55. By this reference Plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 54 as though fully set forth herein.

56. Section 1-4-802(g) is facially unconstitutional to the extent that it prohibits a person from being placed in nomination by petition as an unaffiliated candidate unless that person was unaffiliated, as shown on the books of the county clerk and recorder, for at least twelve months prior to the last date the petition may be filed in that it violates the Plaintiffs' right to freedom of speech and association as guaranteed by the Fourteenth and First Amendments in as much it impedes the ability of candidates to run as unaffiliated, discourages potential candidates from disaffiliating with a political party, and limits the opportunity of voters to vote for an unaffiliated candidates.

57. Section 1-4-802(g) is unconstitutional as applied to Commissioner Riddle to the extent that it requires her to have been unaffiliated with any political party for at least twelve months prior to the last date for her to file a petition seeking to be placed on the ballot for re-election as county commissioner as an independent candidate in that it violates the Plaintiffs' freedom of speech and association as guaranteed by the Fourteenth and First Amendments.

58. 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.

## **THIRD CAUSE OF ACTION - INJUNCTIVE RELIEF**

59. By this reference Plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 58 as though fully set forth herein.

60. There exists an imminent and ongoing threat by Defendant to deprive Plaintiffs of their civil rights by precluding Commissioner Riddle from obtain access to the ballot to stand for re-election for county commissioner for the 2010 general election.

61. Plaintiffs will suffer irreparable injury if Commissioner Riddle is not allowed access to the ballot to stand for re-election for county commissioner for the 2010 general election.

62. Plaintiffs are entitled to a permanent injunctive relief restraining Defendant from excluding Commissioner Riddle from the ballot to stand for re-election for county commissioner for the 2010 general election based on the affiliation provisions set forth at § 1-4-802(g) because that affiliation requirement is unconstitutional as it violates the Plaintiffs' rights of freedom of speech and freedom of association guaranteed by the First Amendment, as applied to the States through the Fourteenth Amendment, and violates their right to equal protection of the laws as guaranteed by the Fourteenth Amendment.

63. 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.

**WHEREFORE**, Plaintiffs pray for judgment in their favor and against Defendant Daley as follows:

- A. A declaratory judgment that § 1-4-801(g), C.R.S. is facially unconstitutional and unconstitutional as applied to Commission Riddle because it violates the Plaintiffs' rights for freedom of speech and freedom of association as guaranteed by the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and their right to equal protection of the laws as guaranteed by the Fourteenth Amendment.

- B. A permanently injunction enjoining and restraining Defendant and all those acting in concert with her from enforcing § 1-4-801(g) against Commissioner Riddle to preclude her from the ballot to stand for re-election for county commissioner for the 2010 general election based on the affiliation provisions set forth at § 1-4-802(g).
- C. For costs of suit herein, including Plaintiff's reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and,
- D. For such other and further relief as the Court may deem just and reasonable under the circumstances.

Dated November 16, 2009.

Respectfully submitted,

/s William E. Zimsky

By:

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