

## **APPENDIX**

**APPENDIX**

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**APPENDIX A**

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List of States' Binding Statutes

**Alabama**

Ala. Code § 17-14-31(c) (2019): “Each person so listed shall execute the following statement . . . ‘I do hereby consent and do hereby agree to serve as elector for President and Vice President of the United States, if elected to that position, and do hereby agree that, if so elected, I shall cast my ballot as such elector for \_\_\_\_\_ for President and \_\_\_\_\_ for Vice President of the United States’ (inserting in the blank spaces the respective names of the persons named as nominees for the respective offices in the certificate to which this statement is attached).”

**Alaska**

Alaska Stat. § 15.30.040 (2019): “The party shall require from each candidate for elector a pledge that as an elector the person will vote for the candidates nominated by the party of which the person is a candidate.”

Alaska Stat. § 15.30.080 (2019): “If there is a vacancy caused by death, failure to attend, ineligibility, or other cause, and if available alternates have not been designated, the electors shall fill the vacancy by plurality vote.”

Alaska Stat. § 15.30.090 (2019): “After any vacancies have been filled, the electors shall proceed to cast their

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votes for the candidates for the office of President and Vice-President of the party that selected them as candidates for electors.”

### **Arizona**

Ariz. Rev. Stat. Ann. § 16-212 (2019): “B. . . . the presidential electors of this state shall cast their electoral college votes for the candidate for president and the candidate for vice president who jointly received the highest number of votes in this state as prescribed in the canvass.

C. A presidential elector who knowingly refuses to cast that elector’s electoral college vote as prescribed in subsection B of this section is no longer eligible to hold the office of presidential elector and that office is deemed and declared vacant by operation of law.”

### **California**

Cal. Elec. Code § 6906 (2019): “The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice President of the United States, who are, respectively, the candidates of the political party which they represent, one of whom, at least, is not an inhabitant of this state.”

### **Colorado**

Colo. Rev. Stat. § 1-4-304(1) (2019): “The presidential electors shall convene at the capital of the state, in the office of the governor at the capitol building, on the first Monday after the second Wednesday in the first December following their election at the hour of 12

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noon and take the oath required by law for presidential electors. If any vacancy occurs in the office of a presidential elector because of death, refusal to act, absence, or other cause, the presidential electors present shall immediately proceed to fill the vacancy in the electoral college. When all vacancies have been filled, the presidential electors shall proceed to perform the duties required of them by the constitution and laws of the United States. The vote for president and vice president shall be taken by open ballot.”

Colo. Rev. Stat. § 1-4-304(5) (2019): “Each presidential elector shall vote for the presidential candidate and, by separate ballot, vice-presidential candidate who received the highest number of votes at the preceding general election in this state.”

#### **Connecticut**

Conn. Gen. Stat. § 9-176 (2019): “The presidential electors . . . shall cast their ballots for President and Vice President. Each such elector shall cast his ballots for the candidates under whose names he ran on the official election ballot, as provided in section 9-175.”

#### **Delaware**

Del. Code Ann. tit. 15, § 4303(b) (2019): “In all cases, the electors chosen or appointed in this State for the election of a President and Vice President of the United States under this chapter shall be required to cast their individual votes for the presidential and vice presidential nominees, or their legal successors, of the political party that nominated the elector.”

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### **District of Columbia**

D.C. Code § 1-1001.08(g)(2) (2019): “Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he or she will vote for the candidates of the party he or she has been nominated to represent, and it shall be his or her duty to vote in such manner in the electoral college.”

### **Florida**

Fla. Stat. § 103.021(1) (2019): “Each such elector shall be a qualified elector of the party he or she represents who has taken an oath that he or she will vote for the candidates of the party that he or she is nominated to represent.”

### **Hawaii**

Haw. Rev. Stat. § 14-28 (2019): “The electors . . . shall vote by ballot for that person for president and that person for vice president of the United States, who are, respectively, the candidates of the political party or group which they represent, one of whom, at least, is not an inhabitant of this State.”

### **Indiana**

Ind. Code § 3-10-4-1.7 (2019): “(a) Each presidential elector nominee and each alternate presidential elector nominee of a political party shall execute the following pledge: ‘If selected for the office of presidential elector, I agree to serve and to mark my ballots for President and Vice President for the nominees for those offices of the party that nominated me.’”

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(b) Each presidential elector nominee and each alternate presidential elector nominee of a candidate not affiliated with a political party shall execute the following pledge: ‘If selected for the office of elector for a presidential candidate not affiliated with a political party, I agree to serve and to mark my ballots for that candidate and for that candidate’s vice-presidential running mate.’”

Ind. Code § 3-10-4-9 (2019): “(c) . . . each presidential elector shall present both completed ballots to the secretary of state, who shall examine the ballots and accept as cast all ballots of presidential electors whose votes are consistent with the presidential electors’ pledges executed under section 1.7 or 8(c) of this chapter . . . the secretary of state may not accept and may not count either a presidential elector’s presidential or vice-presidential ballot if the presidential elector has not marked both ballots or has marked a ballot in violation of the presidential elector’s pledge.

(d) A presidential elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of the presidential elector’s pledge executed under section 1.7 or 8(c) of this chapter, vacates the office of presidential elector.”

## Maine

Me. Stat. tit. 21-A, § 805(2) (2019): “The presidential electors at large shall cast their ballots for the presidential and vice-presidential candidates who received the largest number of votes in the State. The presidential electors of each congressional district shall

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cast their ballots for the presidential and vice-presidential candidates who received the largest number of votes in each respective congressional district.”

### **Maryland**

Md. Code Ann., Elec. Law § 8-505(c) (2019): “After taking the oath prescribed by Article I, § 9 of the Maryland Constitution . . . the presidential electors shall cast their votes for the candidates for President and Vice President who received a plurality of the votes cast in the State of Maryland.”

Md. Const. art. I, § 9: “Every person elected, or appointed, to any office of profit or trust, under this Constitution, or under the Laws, made pursuant thereto, shall . . . take and subscribe the following oath, or affirmation: I, \_\_\_\_\_, do swear, (or affirm, as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of \_\_\_\_\_, according to the Constitution and Laws of this State.”

Md. Const. art. I, § 11: “Every person, hereafter elected, or appointed, to office, in this State, who shall refuse, or neglect, to take the oath, or affirmation of office, provided for in the ninth section of this Article, shall be considered as having refused to accept the said office; and a new election, or appointment, shall be made, as in case of refusal to accept, or resignation of



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an office; and any person violating said oath, shall, on conviction thereof, in a Court of Law, in addition to the penalties now, or hereafter, to be imposed by Law, be thereafter incapable of holding any office of profit or trust in this State.”

### **Massachusetts**

Mass. Gen. Laws ch. 53, § 8 (2019): “The surnames of the candidates for president and vice president of the United States shall be added to the party or political designation of the candidates for presidential electors. . . . Said acceptance form shall include a pledge by the presidential elector to vote for the candidate named in the filing.”

Mass. Gen. Laws ch. 54, § 78A (2019): “In any year in which presidential electors are to be elected . . . there may be filed with the secretary of the commonwealth, in a form to be prescribed by him, a list of names and addresses of candidates for such electors, containing the names and addresses of a candidate for president and for vice president to whom such electors shall be pledged in writing. Said list shall contain the written acceptance of each candidate for presidential elector, who shall be a voter of the commonwealth, and the written acceptance of the presidential and vice presidential candidates, who shall be candidates other than those whose names are to be printed upon the official ballot.”

### **Michigan**

Mich. Comp. Laws § 168.47 (2019): “At any time before receipt of the certificate of the governor or within 48 hours thereafter, an elector may resign by submitting

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his written and verified resignation to the governor. Failure to so resign signifies consent to serve and to cast his vote for the candidates for president and vice-president appearing on the Michigan ballot of the political party which nominated him. Refusal or failure to vote for the candidates for president and vice-president appearing on the Michigan ballot of the political party which nominated the elector constitutes a resignation from the office of elector, his vote shall not be recorded and the remaining electors shall forthwith fill the vacancy. . . . When all the electors appear and the vacancy shall be filled, they shall proceed to perform the duties of such electors, as required by the constitution and laws of the United States.”

### **Minnesota**

Minn. Stat. § 208.46 (2019): “(b) Except as otherwise provided by law of this state other than this chapter, each elector shall present both completed ballots to the secretary of state, who shall examine the ballots and accept as cast all ballots of electors whose votes are consistent with their pledges executed under section 208.43 or 208.45, paragraph (c). Except as otherwise provided by law of this state other than this chapter, the secretary of state may not accept and may not count either an elector’s presidential or vice-presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the elector’s pledge.

(c) An elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of the elector’s pledge executed under section

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208.43 or 208.45, paragraph (c), vacates the office of elector, creating a vacant position to be filled under section 208.45.”

### **Mississippi**

Miss. Code. Ann. § 23-15-785(3) (2019): “(3) . . . Each person so listed shall execute the following statement which shall be attached to the certificate or petition when it is filed with the State Board of Election Commissioners: ‘I do hereby consent and do hereby agree to serve as elector for President and Vice President of the United States, if elected to that position, and do hereby agree that, if so elected, I shall cast my ballot as such for \_\_\_\_\_ for President and \_\_\_\_\_ for Vice President of the United States’ (inserting in said blank spaces the respective names of the persons named as nominees for said respective offices in the certificate to which this statement is attached).”

### **Montana**

Mont. Code Ann. § 13-25-307 (2019): “(3) Unless otherwise provided by law, each elector shall present both completed ballots to the secretary of state, who shall examine the ballots and accept as cast all ballots of electors whose votes are consistent with their pledges executed under 13-25-304 or 13-25-306(3). Except as otherwise provided by law, the secretary of state may not accept and may not count either an elector’s presidential or vice presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the elector’s pledge.

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(4) An elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot in violation of the elector's pledge executed under 13-25-304 or 13-25-306(3) vacates the office of elector, creating a vacant position to be filled under 13-25-306."

### **Nebraska**

Neb. Rev. Stat. § 32-714 (2019): "(3) Each presidential elector shall present the completed ballot to the Secretary of State. The Secretary of State shall examine each ballot and accept as cast each ballot marked by a presidential elector consistent with his or her pledge. The Secretary of State shall not accept and shall not count the ballot if the presidential elector has not marked the ballot or has marked the ballot in violation of his or her pledge.

(4) A presidential elector who refuses to present a ballot, who attempts to present an unmarked ballot, or who attempts to present a ballot marked in violation of his or her pledge vacates the office of presidential elector."

### **Nevada**

Nev. Rev. Stat. § 298.075 (2019): "2. After all presidential electors have presented their ballots to the Secretary of State, the Secretary of State shall examine each ballot. If a presidential elector:

(a) Presents both ballots and the ballots are marked with votes for the person who received the highest number of votes at the general election for the office of President and the person who received the highest number of votes at the general election for the office of

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Vice President, respectively, the Secretary of State shall accept both ballots.

(b) Does not present both ballots, presents an unmarked ballot or presents a ballot marked with a vote that does not conform with the provisions of subsection 1:

(1) The Secretary of State shall refuse to accept either ballot of the presidential elector; and

(2) The Secretary of State shall deem the presidential elector's position vacant. The vacancy must be filled pursuant to the provisions of NRS 298.065. The person appointed to fill the vacancy in the position of presidential elector, after signing the pledge described in NRS 298.065, shall mark both ballots and present both ballots to the Secretary of State pursuant to this section."

### **New Mexico**

N.M. Stat. Ann. § 1-15-9 (2019): "A. All presidential electors shall cast their ballots in the electoral college for the candidates of the political party which nominated them as presidential electors.

B. Any presidential elector who casts his ballot in violation of the provisions contained in Subsection A of this section is guilty of a fourth degree felony."

### **North Carolina**

N.C. Gen. Stat. § 163-212 (2019): "Any presidential elector having previously signified his consent to serve as such, who fails to attend and vote for the candidate of the political party which nominated such elector, for

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President and Vice-President of the United States . . . shall forfeit and pay to the State five hundred dollars (\$500.00), to be recovered by the Attorney General in the Superior Court of Wake County. In addition to such forfeiture, refusal or failure to vote for the candidates of the political party which nominated such elector shall constitute a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall forthwith fill such vacancy as hereinbefore provided.”

### **Ohio**

Ohio Rev. Code Ann. § 3505.40 (2019): “A presidential elector elected at a general election or appointed pursuant to section 3505.39 of the Revised Code shall, when discharging the duties enjoined upon him by the constitution or laws of the United States, cast his electoral vote for the nominees for president and vice-president of the political party which certified him to the secretary of state as a presidential elector pursuant to law.”

### **Oklahoma**

Okla. Stat. tit. 26, § 10-102 (2019): “Every party nominee for Presidential Elector shall subscribe to an oath, stating that said nominee, if elected, will cast a ballot for the persons nominated for the offices of President and Vice President by the nominee’s party. . . . Failure of any party nominee to take and file the oath by such date shall automatically vacate his or her nomination and a substitute nominee shall be selected by the state central committee of the appropriate political party. It shall be the duty of the

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Secretary of the State Election Board to notify the chairman of the state central committee of the failure of any nominee to file the oath. Refusal or failure to vote by a Presidential Elector for the persons nominated for the offices of President and Vice President by the nominee's party shall constitute a violation of the oath and shall result in the immediate forfeiture of the Elector's office. In such event, the vote shall not be recorded, a vacancy shall be declared, and the Presidential Electors present shall proceed to fill such vacancy as provided in Section 10-108 of this title."

Okla. Stat. tit. 26, § 10-109 (2019): "Any Presidential Elector who violates his oath as a Presidential Elector shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00)."

### **Oregon**

Or. Rev. Stat. § 248.355(2) (2019): "A candidate for elector when selected shall sign a pledge that, if elected, the candidate will vote in the electoral college for the candidates of the party for President and Vice President. The Secretary of State shall prescribe the form of the pledge. The party shall certify the names of the selected candidates for elector to the Secretary of State not later than the 70th day before the election of electors."

Or. Rev. Stat. § 248.370 (2019): "When all the electors have appeared or the vacancies have been filled, the electors shall perform the duties required of them by the Constitution and laws of the United States."

**South Carolina**

S.C. Code Ann. § 7-19-80 (2019): “Each candidate for presidential and vice-presidential elector shall declare which candidate for president and vice-president he will vote for if elected. Those elected shall vote for the president and vice-president candidates for whom they declared. Any person selected to fill a vacancy in the electoral college shall vote for the candidates the elector whose place he is taking had declared for. The declaration shall be made to the Secretary of State on such form as he may require not later than sixty days prior to the general election for electors. No candidate for president and vice-president elector shall have his name placed on the ballot who fails to make such declaration by the prescribed time. Any elector who votes contrary to the provisions of this section shall be deemed guilty of violating the election laws of this State and upon conviction shall be punished according to law. Any registered elector shall have the right to institute proper action to require compliance with the provisions of this section. The Attorney General shall institute criminal action for any violation of the provision of this section. Provided, the executive committee of the party from which an elector of the electoral college was elected may relieve the elector from the obligation to vote for a specific candidate when, in its judgment, circumstances shall have arisen which, in the opinion of the committee, it would not be in the best interest of the State for the elector to cast his ballot for such a candidate.”



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### **Tennessee**

Tenn. Code Ann. § 2-15-104(c)(1) (2019): “The electors shall cast their ballots in the electoral college for the candidates of the political party which nominated them as electors if both candidates are alive.”

### **Utah**

Utah Code Ann. § 20A-13-304(3) (2019): “Any elector who casts an electoral ballot for a person not nominated by the party of which he is an elector, except in the cases of death or felony conviction of a candidate, is considered to have resigned from the office of elector, his vote may not be recorded, and the remaining electors shall appoint another person to fill the vacancy.”

### **Vermont**

Vt. Stat. Ann. tit. 17, § 2732 (2019): “The electors shall meet . . . to vote for President and Vice President of the United States, agreeably to the laws of the United States. . . . When all the electors appear or a vacancy therein is filled, the electors shall perform the duties required of them by the Constitution and laws of the United States. . . . The electors must vote for the candidates for President and Vice President who received the greatest number of votes at the general election.”

### **Virginia**

Va. Code Ann. § 24.2-203 (2019): “When all electors are present, or the vacancies have been filled, they shall

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proceed to perform the duties required of such electors by the Constitution and laws of the United States.

Electors selected by the state convention of any political party as defined in § 24.2-101 shall be required to vote for the nominees of the national convention to which the state convention elects delegates. Electors named in any petition of qualified voters as provided in § 24.2-543 shall be required to vote for the persons named for President and for Vice President in the petition.”

Va. Code Ann. § 24.2-542 (2019): “In elections for President and Vice President of the United States, the appropriate chairman or secretary of each political party shall furnish . . . (i) the names of the electors selected by the party at its convention held for that purpose, together with the names of the political party and of the candidates for President and Vice President for whom the electors are required to vote in the Electoral College and (ii) a copy of a subscribed and notarized oath by each elector stating that he will, if elected, cast his ballot for the candidates for President and Vice President nominated by the party that selected the elector, or as the party may direct in the event of death, withdrawal or disqualification of the party nominee. In the event of the death or withdrawal of a candidate of a political party for President or Vice President, that party may substitute the name of a different candidate before the State Board certifies to the county and city electoral boards the form of the official ballots. The State Board shall also be furnished, if it requests, with satisfactory evidence that any person undertaking to act as an elector on behalf of any

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political party is, in fact, duly and properly authorized to do so.”

### **Washington**

Wash. Rev. Code § 29A.56.090 (2019): “(2) . . . each elector shall present both completed ballots to the secretary of state, who shall examine the ballots and accept as cast all ballots of electors whose votes are consistent with their pledges executed under RCW 29A.56.084 or 29A.56.088(3). Except as otherwise provided by law of this state other than RCW 29A.56.080 through 29A.56.092, the secretary of state may not accept and may not count either an elector’s presidential or vice presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the elector’s pledge.

(3) An elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of the elector’s pledge executed under RCW 29A.56.084 or 29A.56.088(3) vacates the office of elector, creating a vacant position to be filled under RCW 29A.56.088.”

### **Wisconsin**

Wis. Stat. § 7.75 (2019): “(1) . . . When all electors are present, or the vacancies filled, they shall perform their required duties under the constitution and laws of the United States.

(2) The presidential electors, when convened, shall vote by ballot for that person for president and that person for vice president who are, respectively, the candidates of the political party which nominated them under s.

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8.18, the candidates whose names appeared on the nomination papers filed under s. 8.20, or the candidate or candidates who filed their names under s. 8.185(2), except that at least one of the persons for whom the electors vote may not be an inhabitant of this state. A presidential elector is not required to vote for a candidate who is deceased at the time of the meeting.”

**Wyoming**

Wyo. Stat. Ann. § 22-19-108 (2019): “All Wyoming electors shall vote for the candidates for the office of president and vice-president receiving the highest number of votes in the Wyoming general election.”

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**APPENDIX B**

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

**Civil Action No.**

**[Filed December 6, 2016]**

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POLLY BACA and ROBERT	)
NEMANICH,	)
	)
Plaintiffs	)
	)
v.	)
	)
JOHN W. HICKENLOOPER JR.,	)
in his official capacity as Governor	)
of Colorado, CYNTHIA H.	)
COFFMAN, in her official capacity	)
as Attorney General of Colorado,	)
and WAYNE W. WILLIAMS,	)
in his official capacity as Colorado	)
Secretary of State.	)
	)
Defendants.	)

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**VERIFIED COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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Plaintiffs, through undersigned counsel, for their complaint against the above-named defendants avers as follows.

**General, Jurisdictional and Venue Allegations**

1. Polly Baca is a resident of the City and County of Denver, Colorado and, pursuant to C.R.S. § 1-4-302, is an elector.

2. Robert Nemanich is a resident of El Paso County, Colorado and, pursuant to C.R.S. §1-4-302, is an elector.

3. Defendant John W. Hickenlooper is the Governor of Colorado and, as its chief executive, has the power to enforce the laws of the State of Colorado, including C.R.S. § 1-4-304(5).

4. Defendant Cynthia H. Coffman is the Attorney General of Colorado and, in such capacity, enforces the laws of the State of Colorado, including C.R.S. § 1-4-304(5).

5. Defendant Wayne W. Williams is the Secretary of State of Colorado and, as such, gives notice of the time and place for the Presidential Electors to vote, provides documents pursuant to C.R.S. § 1-4-304, certifies the results of the Presidential Electors' balloting and votes, and, upon information and belief has authority to replace a Presidential Elector.

6. This Court has jurisdiction over the subject matter of this dispute as it relates to a federal question, 28 U.S.C. § 1331 as well as 28 U.S.C. §§ 2201 and 2202.

7. The federal question presented by this case is the constitutionality of Colorado's Presidential Electors statute, C.R.S. § 1-4-304(5), which requires electors to vote "for the presidential candidate and, by separate ballot, vice-presidential candidate who received the highest number of votes at the preceding general election in this state." This statute violates Article II of the U.S. Constitution, the First Amendment, the Twelfth Amendment, and the Fourteenth Amendment.

8. Unless this Court issues the relief requested, Plaintiffs' constitutional rights will be violated by Colorado, through the various Defendants. No state, including Colorado, can compel any person, including Plaintiffs, to cast his or her vote for any particular candidate whether in a general election, a special election, or the convention of the Presidential Electors. Further, any state law that dilutes the votes of its electors violates the Equal Protection Clause.

9. Venue is proper in this Court under 28 U.S.C. § 1391(b).

### **Claim for Relief**

10. Plaintiffs incorporate the prior allegations as if fully set forth herein.

11. Plaintiffs were nominated as a Presidential Elector at the Democratic Convention held on April 16, 2016. Each is a duly authorized Presidential Elector of the Democratic Party and have met all qualifications to be an elector.

12. Plaintiffs were required to sign an affidavit at the time they became Presidential Electors affirming

that they would cast their ballots on December 19, 2016 for the Democratic Presidential and Vice-Presidential candidates. *See* Affidavits of Plaintiffs attached at Exhibit 1.

13. The Democratic Presidential candidate is Hillary Rodham Clinton. The Democratic Vice-Presidential Candidate is Timothy Kaine.

14. Though the Democratic nominees for President and Vice-president won the nationwide popular vote by at least 2.5 million votes, the various states' popular votes portend that Donald Trump and Michael Pence (the Republican presidential and vice presidential nominees) will win the majority of electoral college votes on December 19, 2016 if the electors in each state vote consistent with the popular vote in their respective states.

15. Many states, including Colorado, require their Presidential Electors to vote consistent with the popular vote in the state. Thus, despite the plain language of Article II of the U.S. Constitution, as amended by the Twelfth Amendment, and the Founders' intent that the Presidential Electors be a deliberative and independent body free to cast votes for whomever they deem to be the most fit and qualified candidates, Messrs. Trump and Pence – if the state statutes are enforced – may “win” the election while also losing, by historical margins, the nationwide popular vote.<sup>1</sup>

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<sup>1</sup> To place Trump's win/loss in context, he obtained 46.3% of votes in 2016. Mr. Romney obtained 47.2% of votes in 2012; Mr. McCain 45.7% of the votes in 2008; Mr. Kerry obtained 48.5% of the vote in



16. Plaintiffs believe that Donald Trump is unfit for office due to, *inter alia*, his myriad conflicts of interests; his foreign business dealings; his belief – against all facts – that climate change and global warming are a “hoax;” the criminal and civil claims currently pending against him; his temperament; his promises to discriminate against Muslims and Latinos; his recent correspondence regarding his personal business dealings with the governments of India and Argentina; his lack of experience (most recently embodied by his call with Taiwan); his selection for Attorney General a person who failed confirmation hearings in the 1980’s due to sworn testimony that he was racist; his selection for Secretary of Education who lacks any teaching degree or experience, has likely never attended public schools, has refused to send her children to public schools, and has a vested interest in for-profit schools; his prior bankruptcies; his refusal to provide information regarding his investments and holdings; his penchant for nepotism; and his threats to use nuclear weapons against other sovereign nations. See Exhibit 1.

17. Plaintiffs believe that Michael Pence is unfit for office due to, *inter alia*, his refusal to comply with federal law including *Obergefell v. Hodges* and *Roe v. Wade*; his hostility towards the freedom of and from religion (particularly any religion other than Christianity); his efforts to shut down the federal government unless Planned Parenthood was prohibited from receiving federal funds; his belief – against all

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2004; and in 2000, Mr. Gore obtained 48.4% of the popular vote while President Bush obtained 47.9% of the popular vote.

facts – that evolution, climate change, and global warming are “myths;” his support for “conversion therapy” which seeks to “convert” homosexuals through methods such as forcing people to engage in heterosexual intercourse; and his discriminatory policies and statements regarding communities of color. *See* Exhibit 1.

18. Though Hillary Clinton and Timothy Kaine won the majority vote in Colorado and are qualified for office, Plaintiffs cannot be constitutionally compelled to vote for them. Plaintiffs are entitled to exercise their judgment and free will to vote for whomever they believe to be the most qualified and fit for the offices of President and Vice President, whether those candidates are Democrats, Republicans, or from a third party. For example, Plaintiffs may vote for a consensus candidate, other than Clinton or Trump, upon whom electors from both parties and along the ideological spectrum can agree, so as to prevent the unqualified Mr. Trump and Mr. Pence from ascending to the highest offices in the United States. *See* Exhibit 1.

19. The Colorado Secretary of State has stated that he would “remove the elector” who failed to “vote for the presidential/vice-presidential ticket that receives the most votes in the state” and would “seat a replacement elector.” *Id.*

20. Upon information and belief, the Attorney General, at the direction of the Governor, would enforce and support the actions of the Secretary of State. *Id.*

21. Removing Plaintiffs and replacing them violates Article II and the Twelfth Amendment. Article

II as amended by the Twelfth Amendment, provides that Plaintiffs “shall ... vote by ballot for President and Vice President.” Nothing within the Constitution permits states to remove and replace duly appointed and elected electors.

22. Colorado’s binding statute perpetuates a violation of the Equal Protection Clause of the Fourteenth Amendment by diluting the votes of Colorado’s electors.

23. Removing Plaintiffs and replacing them violates the First Amendment’s guarantees of freedom of speech. Voting, *i.e.* political speech, is the highest and most protected form of speech. Removing Plaintiffs and replacing them compels speech in violation of the First Amendment.

24. The purpose of the Electoral College, which is made up of electors such as Plaintiffs, is to elect the President and Vice President of the United States. There is nothing in the Constitution that permits or requires electors to vote the same as the popular vote in their states. For the first 100 years of our history, the majority of states did not hold popular votes for the election of president and vice president and, instead, the states themselves appointed the electors who voted for president and vice president.

25. Alexander Hamilton explicitly stated “that that the immediate election should be made by men most capable of analyzing the qualities adapted to the station.” Federalist No. 68. The electors (the “men”) would be “most likely to possess the information and discernment requisite to such complicated

investigations.” *Id.* The electors were created so that they, as a deliberative body, would be “detached” and less prone to be influenced by the “heats and ferments” of a raucous election. *Id.* The electors would help ensure “the office of President [would] never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications.” *Id.* The electors create an “obstacle” to “cabal, intrigue, and corruption” and prevent “foreign powers [from] gain[ing] an improper ascendant in our councils.” *Id.* The Electoral College, then, including Plaintiffs, must be free to vote for any candidate so as to avoid electing someone, such as Messrs. Trump and Pence, who only have “[t]alents for low intrigue, and the little arts of popularity.” *Id.*

26. While the requirement that Plaintiffs sign a pledge is constitutional pursuant to *Ray v. Blair*, 343 U.S. 214 (1952), the Supreme Court left open the question of whether enforcement of such pledges, or penalties for violating the pledges, was constitutional.

27. Similarly, while Article II, Section 1 provides that states “shall appoint, in such Manner as the Legislature thereof may direct,” electors, the Constitution does not provide that the states shall have the ability to penalize electors or remove electors. Once an elector is appointed, removal of the elector violates Article II.

28. Removing an elector for refusing to vote in conformance with the popular vote in his or her respective state, as set forth above, is tantamount to compelled speech. It also renders superfluous the Electoral College and is antithetical to the purpose of

the Electoral College as articulated by Alexander Hamilton, for if the electors are merely to vote for the candidate who won the popular vote in their state, then there is no need for the Electoral College at all. Also, by forcing electors to vote a certain way, Colorado has created a winner-take-all system when it comes to awarding its electoral votes, a system that violates the Equal Protection Clause because it dilutes Colorado's electors' votes.

29. Injunctive relief is necessary to prevent the Defendants from violating Plaintiffs' constitutional rights. Without such relief, the Defendants will remove Plaintiffs as electors and replace them with someone who will presumably vote the way Defendants want him/her to vote and Plaintiffs' rights will be irreparably harmed. Plaintiffs will be precluded from voting for the President and Vice President since the "general" election on November 8, 2016, in which Plaintiffs cast a ballot for President and Vice President, was not an actual vote for the President and Vice President, but rather a vote for electors. *See* Colorado Constitution, Schedule, Section 20 ("after the year [1876] the electors of the electoral college shall be chosen by direct vote of the people.").

30. This Court can provide declaratory relief because an actual and substantial controversy now exists between Plaintiffs and the Defendants with respect to Plaintiffs' rights and Defendants' rights and duties under C.R.S. § 1-4-304(5). Plaintiffs' constitutional rights will be directly, substantially, and irreparably violated, affected, and injured unless and until this Court declares any law or regulation

requiring electors to vote consistent with the popular vote in their state, and any law or regulation removing or otherwise penalizing an elector for not doing so, is unconstitutional.

WHEREFORE, Plaintiff asks the Court to:

A. Enter an order declaring C.R.S. § 1-4-304(5) unconstitutional under Article II, Section 1, Amendment I, Amendment XII, and Amendment XIV of the U.S. Constitution;

B. Enter an order permanently enjoining the Defendants from removing and/or replacing any presidential elector who votes for a presidential or vice presidential candidate who did not receive the highest number of votes in a general election in Colorado immediately preceding the convention of the electors; and

C. For all such other relief as the Court deems just and proper.

Dated this 6<sup>th</sup> day of December 2016.

By: /s/Jason B. Wesoky  
Jason B. Wesoky, Esq.  
Attorney for Plaintiff  
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Denver, CO 80202  
Telephone: (303) 623-9133  
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E-mail: jwesoky@dmhlaw.net



**EXHIBIT 1**

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

**Civil Action No.**

---

POLLY BACA and ROBERT )  
NEMANICH, )  
 )  
Plaintiffs )  
 )  
v. )  
 )  
JOHN W. HICKENLOOPER JR., )  
in his official capacity as Governor )  
of Colorado, CYNTHIA H. )  
COFFMAN, in her official capacity )  
as Attorney General of Colorado, )  
and WAYNE W. WILLIAMS, )  
in his official capacity as Colorado )  
Secretary of State. )  
 )  
Defendants. )  
 )

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**AFFIDAVIT OF POLLY BACA IN SUPPORT OF  
VERIFIED COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

---

I, Polly Baca, being duly sworn upon my oath, state:

1. I am over eighteen years old, and am fully competent to make this Affidavit.



2. I am resident of the City and County of Denver, Colorado. I ran for and was nominated as a presidential elector for Colorado Democratic Party.

3. I attended my Democratic caucus, my Democratic county convention, my Democratic congressional district convention, and my Democratic state convention. At each stage, I sought the nomination to be a presidential elector.

4. At the state convention on April 16, 2016, I became a presidential elector for the Colorado Democratic Party.

5. Upon becoming an elector, I was required to and did execute a pledge to vote for the Democratic Party's nominees for President and Vice-President.

6. I understand that the Democratic Presidential candidate is Hillary Rodham Clinton and the Democratic Vice-Presidential Candidate is Timothy Kaine.

7. I understand that the majority of persons in Colorado who cast their ballots on November 8, 2016, chose Hillary Clinton and Timothy Kaine for President and Vice-President. It is my understanding that those citizens' votes were not direct votes for the President and Vice-President, but rather votes for those candidates' slate of electors, of which I am a member.

8. I understand that, based on the votes in the remaining 49 states and the District of Columbia that if all electors in the Electoral College vote the same as the popular votes in their respective states, Donald Trump and Michael Pence will become President and

Vice-President despite them losing the nationwide popular vote by more than 2.5 million votes.

9. Based on my investigation, deliberation, and research, I believe that Donald Trump is unfit for office due to, *inter alia*, his myriad conflicts of interests; his foreign business dealings; his attacks on the First Amendment of the U.S. Constitution; his belief – against all facts – that climate change and global warming are a “hoax;” the criminal and civil claims currently pending against him; his temperament; his promises to discriminate against Muslims and Latinos; his recent correspondence regarding his personal business dealings with the governments of India and Argentina; his lack of experience (most recently embodied by his call with Taiwan); his selection for Attorney General a person who failed confirmation hearings in the 1980’s due to sworn testimony that he was racist; his selection for Secretary of Education who lacks any teaching degree or experience, has likely never attended public schools, has refused to send her children to public schools, and has a vested interest in for-profit schools; his prior bankruptcies; his refusal to provide information regarding his investments and holdings; his penchant for nepotism; and his threats to use nuclear weapons against other sovereign nations.

10. Based on my investigation, deliberation, and research, I believe that Michael Pence is unfit for office due to, *inter alia*, his refusal to comply with federal law as set forth in with *Obergefell v. Hodges* and *Roe v. Wade*; his hostility towards the freedom of and from religion (particularly any religion other than Christianity); his efforts to shut down the federal

government unless Planned Parenthood was prohibited from receiving federal funds; his belief – against all facts – that evolution, climate change, and global warming are “myths;” his support for “conversion therapy” which seeks to “convert” homosexuals through methods such as forcing people to engage in heterosexual intercourse; his refusal to comply; and his discriminatory policies and statements regarding communities of color.

11. It’s my understanding that the Secretary of State will “remove the elector” who fails to “vote for the presidential/vice-presidential ticket that receives the most votes in the state” and would “seat a replacement elector.”

12. It’s my understanding that the Attorney General or the Secretary of State, at the direction of the Governor, would conduct this removal and replacement.

13. Based on my deliberation, investigation, and research, I believe that it is in the best interests of Colorado and the United States to prevent Trump/Pence from taking office. Therefore, it is my duty, as a member of the Electoral College to vote in the best interests of the state and nation. I cannot do that if the State is going to force me to vote for Clinton/Kaine. While I am certain Clinton/Kaine are eminently qualified and fit to be President and Vice-President, it may be that I need to vote for someone other than them to prevent Trump/Pence from taking office. Therefore, I need the freedom to vote for any person whom I feel is the most viable, fit, and qualified person to become President and/or Vice-President.

14. I have been in contact with some of my fellow electors in other states and they have all expressed reservations about Trump/Pence and the need to protect the country from them. It is my desire and intent to vote for someone for President and Vice-President that will either obtain 270 electoral votes and is not Trump/Pence or who will obtain enough votes in the Electoral College to be one of the top-three vote getters if no candidates reach 270 electoral votes so that the House of Representatives can consider Mrs. Clinton, Trump, and one other candidate whom the electors – or at least a large portion of us – agree is viable, qualified, and fit for office. The same holds true for Vice President except that I understand the top two vote-getters for that office will be decided by the Senate.

Executed this 6<sup>th</sup> day of December 2016.

FURTHER AFFIANT SAYETH NAUGHT.

/s/Polly Baca  
Polly Baca



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

**Civil Action No.**

---

POLLY BACA and ROBERT )  
NEMANICH, )  
 )  
Plaintiffs )  
 )  
v. )  
 )  
JOHN W. HICKENLOOPER JR., )  
in his official capacity as Governor )  
of Colorado, CYNTHIA H. )  
COFFMAN, in her official capacity )  
as Attorney General of Colorado, )  
and WAYNE W. WILLIAMS, )  
in his official capacity as Colorado )  
Secretary of State. )  
 )  
Defendants. )  
 )

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**AFFIDAVIT OF ROBERT NEMANICH IN  
SUPPORT OF VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

---

I, Robert Nemanich, being duly sworn upon my oath, state:

1. I am over eighteen years old, and am fully competent to make this Affidavit.

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2. I am resident of El Paso County, Colorado. I ran for and was nominated as a presidential elector for Colorado Democratic Party.

3. I attended my Democratic caucus, my Democratic county convention, my Democratic congressional district convention, and my Democratic state convention. At each stage, I sought the nomination to be a presidential elector.

4. At the state convention on April 16, 2016, I became a presidential elector for the Colorado Democratic Party.

5. Upon becoming an elector, I was required to and did execute a pledge to vote for the Democratic Party's nominees for President and Vice-President.

6. I understand that the Democratic Presidential candidate is Hillary Rodham Clinton and the Democratic Vice-Presidential Candidate is Timothy Kaine.

7. I understand that the majority of persons in Colorado who cast their ballots on November 8, 2016, chose Hillary Clinton and Timothy Kaine for President and Vice-President. It is my understanding that those citizens' votes were not direct votes for the President and Vice-President, but rather votes for those candidates' slate of electors, of which I am a member.

8. I understand that, based on the votes in the remaining 49 states and the District of Columbia that if all electors in the Electoral College vote the same as the popular votes in their respective states, Donald Trump and Michael Pence will become President and

Vice-President despite them losing the nationwide popular vote by more than 2.5 million votes.

9. Based on my investigation, deliberation, and research, I believe that Donald Trump is unfit for office due to, *inter alia*, his myriad conflicts of interests; his foreign business dealings; his attacks on the First Amendment of the U.S. Constitution; his belief – against all facts – that climate change and global warming are a “hoax;” the criminal and civil claims currently pending against him; his temperament; his promises to discriminate against Muslims and Latinos; his recent correspondence regarding his personal business dealings with the governments of India and Argentina; his lack of experience (most recently embodied by his call with Taiwan); his selection for Attorney General a person who failed confirmation hearings in the 1980’s due to sworn testimony that he was racist; his selection for Secretary of Education who lacks any teaching degree or experience, has likely never attended public schools, has refused to send her children to public schools, and has a vested interest in for-profit schools; his prior bankruptcies; his refusal to provide information regarding his investments and holdings; his penchant for nepotism; and his threats to use nuclear weapons against other sovereign nations.

10. Based on my investigation, deliberation, and research, I believe that Michael Pence is unfit for office due to, *inter alia*, his refusal to comply with federal law as set forth in *Roe v. Wade* and its progeny; his hostility towards the freedom of and from religion (particularly any religion other than Christianity); his efforts to shut down the federal government unless



Planned Parenthood was prohibited from receiving federal funds (even though no such funds go towards abortion services); his belief – against all facts – that evolution, climate change, and global warming are “myths;” his support for “conversion therapy” which seeks to “convert” homosexuals through methods such as forcing people to engage in heterosexual intercourse; his refusal to comply with *Obergefell v. Hodges*; and his discriminatory policies and statements regarding communities of color.

11. I asked the Colorado Secretary of State what would happen if there was a “faithless” elector, someone who didn’t vote for Mrs. Clinton and Mr. Kaine. The response I received, attached as Exhibit A to this affidavit, states that the state would “remove the elector” who failed to “vote for the presidential/vice-presidential ticket that receives the most votes in the state” and would “seat a replacement elector.”

12. It’s my understanding that the Attorney General or the Secretary of State, at the direction of the Governor, would conduct this removal and replacement.

13. Based on my deliberation, investigation, and research, I believe that it is in the best interests of Colorado and the United States to prevent Trump/Pence from taking office. Therefore, it is my duty, as a member of the Electoral College to vote in the best interests of the state and nation. I cannot do that if the State is going to force me to vote for Clinton/Kaine. While I am certain Clinton/Kaine are eminently qualified and fit to be President and Vice-President, it may be that I need to vote for someone

other than them to prevent Trump/Pence from taking office. Therefore, I need the freedom to vote for any person whom I feel is the most viable, fit, and qualified person to become President and/or Vice-President.

14. I have been in contact with some of my fellow electors in other states and they have all expressed reservations about Trump/Pence and the need to protect the country from them. It is my desire and intent to vote for someone for President and Vice-President that will either obtain 270 electoral votes and is not Trump/Pence or who will obtain enough votes in the Electoral College to be one of the top-three vote getters if no candidates reach 270 electoral votes so that the House of Representatives can consider Mrs. Clinton, Trump, and one other candidate whom the electors – or at least a large portion of us – agree is viable, qualified, and fit for office. The same holds true for Vice President except that I understand the top two vote-getters for that office will be decided by the Senate.

Executed this 6<sup>th</sup> day of December 2016.

FURTHER AFFIANT SAYETH NAUGHT.

/s/Robert Nemanich

Robert Nemanich



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**Exhibit A**

**Colorado presidential electors** Inbox x

Joel Albin <Joel Albin@sos.state.co.us>

Nov 18 (1 day ago)

to me –

Per our conversation this afternoon. I am writing to let you know what the Colorado State Department's interpretation and action would be regarding a faithless presidential election.

1-4-304(5) C.R.S. states that presidential electors shall (must) vote for the presidential/vice-presidential ticket that receives the most votes in the state. Thus, if an elector failed to follow this requirement, our office would likely remove the elector and seat a replacement elector until all nine electoral votes were cast for the winning candidates.

However, this event does not have precedent in Colorado. Thus, we would likely seek the opinion of the state attorney general's office if this occurred.

Thanks,

Joel Albin  
Ballot Access Manager  
Elections Division  
Colorado State Department