

<b>DISTRICT COURT</b> <b>125 North Spruce St.</b> <b>Grand Junction, Mesa County, Colorado</b>	DATE FILED: October 13, 2021 1:14 PM CASE NUMBER: 2021CV30214
<b>Petitioners:</b> <b>JENA GRISWOLD, in her official capacity as Colorado Secretary of State; HEIDI JEANNE HESS, in her capacity as a Mesa County registered elector,</b>  v.  <b>Respondents:</b> <b>TINA PETERS, in her official capacity as the Clerk and Recorder for Mesa County, Colorado; BELINDA KNISLEY, in her official capacity as the Deputy Clerk and Recorder for Mesa County, Colorado.</b>  v.  <b>Intervenor:</b> <b>THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA</b>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <b>Case Number: 21CV30214</b>  <b>Division: 5</b> <b>Courtroom: Robison</b>
<b>ORDER RE: VERIFIED PETITION FOR RELIEF UNDER C.R.S. § 1-1-113</b>	

This matter comes before the Court on Petitioners’ Verified Petition for Relief Under C.R.S. §1-1-113 (hereafter “Petition”). On September 28, 2021, a Status Conference was held. At that time, the parties agreed that the facts were undisputed, and an evidentiary hearing was unnecessary. Therefore, no hearing was held and the parties agreed that the Court would rule based on the pleadings and exhibits that have been filed. After reviewing the Petition, the Answers of the Respondents and Intervenor, the Opening Briefs of all parties, the Petitioners’ Joint Answer Brief, all exhibits attached thereto, the file, and the applicable legal authority, the Court enters this Order.

## I. BACKGROUND

In this case, the Petitioners, Jena Griswold, in her official capacity as Colorado Secretary of State (Secretary) and Heidi Jeanne Hess, in her capacity as a Mesa County registered elector (Hess), seek a determination that neither the Mesa County Clerk and Recorder, Tina Peters (Peters), nor the Mesa County Deputy Clerk and Recorder, Belinda Knisley (Knisley) are able to perform the functions of the Designated Election Official (DEO) for the November 2, 2021, coordinated election. The Petitioners request that the Court determine that Wayne Williams (Williams) be designated as the Mesa County DEO for the November 2, 2021 coordinated election, and that Shelia Reiner (Reiner) serve as the Mesa County Elections Supervisor for the November election.

The Respondents, Peters and Knisley, argue that there is no legal support for the claims of the Petitioners, and request the Court deny the Petitioners' requests.

The Mesa County Board of County Commissioners (BOCC), who is an accepted intervenor in the case, join in the request that the Court determine that neither Peters nor Knisley can perform the DEO functions. The BOCC also requests that the Court affirm Williams as the DEO for the November 2021 coordinated election.

## II. FACTS OF THE CASE

In 2018, Peters was elected as the Mesa County Clerk and Recorder. Peters took the oath<sup>1</sup> and began her duties in January of 2019. After taking the office, Peters appointed Knisley as the Mesa County Deputy Clerk and Recorder.

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<sup>1</sup> The Court makes the inference that Peters took the oath as it is a constitutional and statutory requirement.

In November of 2020, a coordinated election was held. Mesa County used electronic vote-tabulating equipment to scan ballots, interpret marks on the ballots as votes, and tabulate the votes for the final result of the election. To prevent any remote tampering, voting equipment<sup>2</sup> cannot be connected to the Internet. Therefore, any software updates or equipment changes that follow an election must be accomplished manually and in-person at the site of the voting equipment.

One type of software update is a “trusted build”. A “trusted build” means the “write-once installation disk or disks for software and firmware”. The “trusted build” ensures a chain-of-custody for the voting system. Part of the “trusted build” process is a “software build” where a “source code is converted to machine-readable binary instructions (executable code) for the computer.” As the custodian of the trusted version of voting system software, only the Department of State staff may possess or install updates to voting equipment. A “trusted build” was scheduled for all 64 counties in Colorado in 2021.

In April of 2021, the Department of State staff began the process to complete the “trusted build” for the 64 Colorado counties. On April 30, 2021, an email from Jessi Romero (Romero), a Voting Systems Manager at the Colorado Department of State, went to election officials across the state “reaching out” regarding the “trusted build” procedures. Romero advised the counties that only authorized state staff, county election staff and Dominion staff would be allowed to be present during the trusted build.

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<sup>2</sup> The Court uses the term “voting equipment” to include “vote-tabulating equipment”.

Romero instructed the counties to provide a list of county staff members (including their name and position) who would be involved in the “trusted build” and informed the counties that only two Mesa County staffers would be permitted to be present.

On May 18, 2021, Sandra Brown (Brown), the Elections Manager, provided a list of “Mesa County staff” that would be present. The list included Brown, Peters, and Gerald Wood, who was described as an “Administrative Assistant”. No information was presented to the Department of State that Gerald Wood was a “consultant” and not a county employee.

Prior to the “trusted build”, the Voting Systems Trusted Build Procedures (VSTBP) were sent to the counties, including Mesa County. The VSTBP described the “trusted build”, the procedures for the “trusted build”, how the “build environment” would be constructed, and other information. The VSTBP informed the counties that “[t]he device that will hold the build environment shall be completely erased, in accordance with Department of Defense or National Institute of Standards and Technology (NIST) approved methods. The VSTL [Voting Systems Testing Laboratory] shall ensure a complete erasure of the device.” Thereafter, a build environment would be constructed, other steps would be taken, and the “trusted build” media would be installed. An affidavit would be provided to the counties with information including, but not limited to, the date of installation and the name and signature of the person performing the installation.

Although notified about the erasure of the system, there was no request from Mesa County for a full system backup prior to the “trusted build”. If there had been such a

request, Romero stated that there would have been no objection from the Secretary to a backup being made, provided it conformed to the security and was conducted in accordance with Election Rules. Larimer County made such a request and the Department of State put the Larimer County Clerk's office in touch with Dominion Voting Systems to determine how to complete the requested backup.

The "trusted build" in Mesa County was scheduled for May 25 and 26, 2021.

Prior to the "trusted build", on May 17, 2021, Knisley sent an email to the Information Management Department requesting that the cameras in the Election Department be turned off. Knisley requested that the cameras be "turned back on" on August 1<sup>st</sup>. Based on the request of Knisley, the Election Department cameras were turned off on May 17, 2021. Knisley's email did not provide any basis for the request.

Peters authorized a person she later characterized as a "consultant" to take an image of the vote-tabulating equipment prior to the "trusted build". It was later determined that the "consultant" was Gerald Wood, the person previously described by Brown as an administrative assistant and employee of Mesa County. Gerald Wood had been provided with an access card to secured election system areas. Mesa County records showed that Gerald Wood had accessed the secured area of "Central Elections" via the electronic access card on May 23, 2021, which was a Sunday.

On May 25 and 26, 2021, the "trusted build" occurred. Present during the "trusted build" were Danny Casias (Casias), a Senior Voting Systems Specialist at the Colorado Department of State, three employees of Dominion Voting Systems, Brown, and Gerald Wood. Both Brown and Gerald Wood were described as "employees" of the Mesa

County Clerk and Recorder's office. Peters was also present at various times and introduced Gerald Wood as an administrative assistant with her office who was transitioning from the motor vehicle division to the election's division. Peters took a video recording and still photographs of the "trusted build" process on May 25, 2021.

Shortly after the "trusted build" process, Peters authorized the "same consultant", Gerald Wood, to take another forensic image of the electronic vote-tabulating equipment hard drive.

During the Mesa County "trusted build", confidential passwords were required. The passwords were maintained on a spreadsheet contained on a laptop Casias brought with him from Denver. At some point, during the four plus hours of the "trusted build" process, video and photos were taken of Casias' laptop and the passwords contained on his screen. Later, the confidential passwords were publicly posted to an online social media site.

On August 2, 2021, the Secretary learned that the confidential passwords had been publicly disseminated and an investigation began.

On August 9, 2021, the Secretary issued Election Order 2021-01 (EO-01). The EO-01 described the "Operative Facts", which included the posted images depicting the confidential passwords specific to the individual hardware stations of Mesa County's voting system. The confidential passwords could only have been obtained by a person physically present at the voting system in Mesa County. The Secretary described the publication as a "serious breach of voting system security protocols, as well as a violation of Election Rule 20.6.1". Based on the breach and on-going investigation, Mesa County

was required, among other things: to allow Department of State staff physical access to the voting system equipment; to preserve and produce to Department of State staff any and all information relating to persons with access to the vote-tabulating room and other information; and, ordered the Mesa County Clerk and Recorder to “immediately take all steps necessary to set up a protocol and prohibit any person, including the Clerk herself, from touching, accessing, logging into, or using, any component of Mesa County’s voting system, without the advance written authorization of the Secretary of State’s office.”

On August 10, 2021, Romero and five of his colleagues from the Department of State arrived in Mesa County. The purpose of the trip was to determine whether the security of the Mesa County vote-tabulation equipment could be verified, given the release of “highly confidential information”. The Department of State employees went through 9 computers. On the server computer there were two settings that were incorrect: the secure boot setting was disabled, and the boot from the optical drive setting was enabled. The combination of the changes to the two settings resulted in enabling of a security vulnerability if someone had physical access to the system. Additionally, the enabled security vulnerability of the server computer created a vulnerability for the other computers.

Following the discoveries from the August 10, 2021 visit to Mesa County, the Secretary issued Election Order 2021-02 (EO-02) on August 12, 2021. In EO-02, the Secretary prohibited Mesa County from using various voting system components, including computers, scanners, and tablets. In short, much of the Mesa County vote-

tabulation equipment was “decertified” and could no longer be used for any upcoming election.

On August 17, 2021, the Secretary issued Election Order 2021-03 (EO-03) and appointed Reiner “to supervise all conduct related to elections in Mesa County occurring under the authority of Title 1 of the Colorado Revised Statutes” and required all Mesa County Clerk and Recorder staff to “take any and all lawful direction from Ms. Reiner”. Knisley and Brown were “prohibited from supervising, accessing, or participating in any aspect of all elections occurring under the authority of Title 1 of the Colorado Revised Statutes ...” The Secretary also appointed a three-person advisory committee to “advise and assist Ms. Reiner in the performance of her supervisory duties.” Although there was a reference to Peters in the Operative Facts section of EO-3, there were no orders that pertained specifically to Peters and no language stating that she had been “removed” as Clerk and Recorder or as the Designated Election Official.

Also on August 17, 2021, the BOCC passed Resolution 2021-43 (MC 21-43). In MC 21-43, the BOCC recognized that the Secretary had effectively eliminated Peters’ ability to supervise Mesa County Elections and designated “former Colorado Secretary of State Wayne Williams as Mesa County’s Designated Election Official for the November 2, 2021, Mesa County Coordinated Election.” MC 21-43 granted Williams, as the DEO, “full and exclusive authority to direct election staff and make all employment decisions related to elections personnel, and to contract and make all other necessary decisions ...”

At some point, numerous complaints about inappropriate and unprofessional conduct in the workplace were made regarding Knisley. On August 23, 2021, after



determining that an investigation must be commenced, the Mesa County Human Resources Director, Brenda Moore, suspended Knisley with pay pending the outcome of the investigation. As part of the suspension, Knisley was prohibited from being present at her work site or conducting any work for Mesa County.

In addition to the human resources investigation, a criminal investigation began. Knisley was charged with crimes associated with the criminal investigation in Mesa County District Court Case No. 21CR1312. On September 1, 2021, a Mandatory Protection Order Pursuant to §18-1-1001, C.R.S., and Order Imposing Additional Bond Conditions Pursuant to §16-4-105, C.R.S. (Protection Order), was issued. The Protection Order restrained Knisley from the “Mesa County Clerk and Records Office, 200 S. Spruce Street, Grand Junction” and from any “direct or indirect contact or communication” with “all employees of the Clerk and Records Office, Mesa County, Colorado”. Knisley signed the Protection Order thereby acknowledging the restrictions.

This action was commenced on August 30, 2021 by the Secretary and Hess. At the time the Verified Petition was filed, it was understood that Peters had not been physically present in Mesa County during the Secretary of State’s investigation.

In the Verified Petition<sup>3</sup>, the Secretary and Hess requested: a declaration that Peters is absent and/or unable to perform the required duties and enjoin Peters from acting as the Mesa County Designated Election Official (MCDEO) for an upcoming coordinated election on November 2, 2021; a declaration that Knisley is likewise absent

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<sup>3</sup> There are various counter and cross claims that have also been filed. The parties have stipulated that those issues will be determined at a later date.

and/or unable to perform the required duties and enjoin Knisley from serving as the MCDEO; a declaration that Williams as the MCDEO for the November 2, 2021 election; and, a declaration that Reiner serve as the Mesa County Elections Supervisor for the November 2, 2021 election.

The BOCC makes substantially the same requests.

Peters and Knisley assert that there is no legal basis for the Petitioners' requests and ask that the requests be denied.

### **III. LEGAL ANALYSIS**

#### **A. The Parties and the Colorado Election Code**

##### *Secretary of State*

The secretary of state is a constitutional office which is part of the executive department and is elected by the citizens of the State of Colorado. CO Const. Art. 4, §1. The secretary of state must perform the duties prescribed by the constitution or by law. *Id.* Some of the duties set out in the Colorado Revised Statutes are to supervise general and statewide ballot issue elections and to enforce the Colorado Election Code (Code). C.R.S. §1-1-107(1)(a) and (b). The secretary of state also serves as the "chief state election official" and must coordinate the responsibilities of the State of Colorado under federal acts in accordance with the requirements of the Code. C.R.S. §1-1-107(1)(d) and (e).

The secretary of state has various powers, including: the power to promulgate, publish and distribute "such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws"; to "review the practices and procedures of county clerk and recorders, their employees, and other election officials in

the conduct of ... general ... elections ...”; and to “enforce the provisions of this code by injunctive action ... in the district court for the judicial district in which any violation occurs.” C.R.S. §1-1-107(2)(a)(b) and (d).

To promote the Code, specific requirements have been adopted in the Code of Colorado Regulations (CCR). The CCR provisions are more detailed than the Colorado Revised Statutes and are regulations that have been found to be necessary for the proper administration and enforcement of election laws. *See C.R.S. §1-1-107(2)(a).*

*Petitioner, Heidi Jeanne Hess*

It was undisputed that Hess resides in Mesa County, Colorado. It was also undisputed that Hess is a registered elector of Mesa County, Colorado.

*Mesa County*

Mesa County is a political subdivision of the State of Colorado and a creation of statute. The location and boundaries were determined by the General Legislature in 1883. C.R.S. §30-5-143. As political subdivision of the state, Mesa County has only those powers that are expressly granted to them by the Colorado Constitution or by the General Assembly. *Board of County Com'rs of Douglas County, Colo. v. Bainbridge, Inc.*, 929 P.2d 691, 699 (Colo.,1996). The powers of Mesa County and the BOCC are set out in the statutes. *See C.R.S. §§30-11-101 and 30-11-107.* C.R.S. §30-11-117 instructs that “[i]n case a vacancy occurs in any county office, ... by reason of death, resignation, removal, or otherwise, the board of county commissioners of such county has power to fill such vacancy by appointment ...” Likewise, the Election Code provides that “[a]ll vacancies in any county office, except that of county commissioner, shall be filled by appointment by the board of

county commissioners of the county in which the vacancy occurs, until the next general election, at which time the vacancy shall be filled by election.” C.R.S. §1-12-205.

*Clerk and Recorder & Deputy*

Each county shall have an elected county clerk. CO Const. Art. 14 §8. The county clerk shall be the ex officio recorder of the deeds and clerk to the board of county commissioners. *Id.* All other duties and powers of a county clerk, including election administration, are limited to those derived from statute. *Bd. of Cnty. Comm’rs v. Love*, 470 P.2d 861, 862-63 (Colo. 1970). Before any county clerk and recorder “enters upon the duties of [the] office,” they must “take and subscribe an oath or affirmation . . . to faithfully perform the duties of the office upon which [they] shall be about to enter.” CO Const. Art. 12 §8. Each county clerk and recorder is required to consult with the secretary of state in making decisions and interpretations of the Code. C.R.S. §1-1-110(1). The county clerk and recorder is also required to “follow the rules and orders promulgated by the secretary of state pursuant to this code.” *Id.*

Additionally, when a clerk is elected, the clerk is required to “execute ... and file ... a bond ... with conditions in substance as follows: ‘Whereas, The above bounden ..... was elected to the office of the county clerk of ....., on the ..... day of ....., Now, therefore, if the said ..... shall faithfully perform all the duties of the office ...’” C.R.S. §30-10-401.

Each county clerk and recorder is considered the “chief election official for the county” and is the “chief designated election official for all coordinated elections.” C.R.S. §1-1-110(3). A “designated election official” is the “member of a governing board,

secretary of the board, county clerk and recorder, or other person designated by the governing body as the person who is responsible for the running of an election.” C.R.S. §1-1-104(8).

If the county clerk and recorder is absent or “for any reason is unable to perform the required duties”, all powers and authority granted to the county clerk and recorder “may be exercised by the deputy clerk”. C.R.S. §1-1-110(2).

#### *Colorado Election Code*

All coordinated elections are governed by the Code, which includes the CCRs. A “coordinated election” is “an election where more than one political subdivision with overlapping boundaries or the same electors holds an election on the same day and the eligible electors are all registered electors, and the county clerk and recorder is the coordinated election official for the political subdivisions.” C.R.S. §1-1-104(6).

In Colorado coordinated elections votes may be cast, registered, scanned, and tabulated via an electromechanical or electronic voting system that must be certified by the Secretary of State. C.R.S. §§ 1-5-601(1), 1-5-612, 1-5-623. Access to such electronic or electromechanical voting systems and voting equipment<sup>4</sup> is strictly limited by Colorado law and the rules promulgated by the Secretary of State. Such rules include: a requirement that chain-of-custody evidence be maintained (8 CCR 1505-1:20, Election Rules 20.3); the use of physical locks and seals (*Id.* at 20.4); restrictions to access of secured areas to certain employees who have also passed background checks (*Id.* at 20.5);

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<sup>4</sup>C.R.S. §1-1-104(50.7) defines voting equipment as “electronic or electromechanical voting systems, electronic voting devices, and electronic vote-tabulating equipment, as well as materials, parts, or other equipment necessary for the operation and maintenance of such systems, devices, or equipment”.

limitations on users to those who have electronic access to voting equipment (*Id.* at 20.6); requirements for video surveillance of voting equipment at certain times (*Id.* at 20.9); prohibitions on elected officials from personally preparing, maintaining, or repairing voting equipment (C.R.S. §1-5-607(1)); and, requirements that DEOs establish their own security plans for the equipment, subject to the approval of the Secretary of State (C.R.S. §1-5-616(5)). Additionally, Colorado’s voting systems are prohibited from being connected to the Internet. 8 CCR 1505-1:20, Election Rule 20.19.1.

In the event of a controversy between an official and any officer of a political party, a verified petition may be filed “alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act, after notice to the official which includes an opportunity to be heard, upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code.” C.R.S. §1-1-113(1). The burden of proving the allegations is on the petitioner. *Id.*

C.R.S. §1-1-107(2)(d) provides the secretary of state with the power to “enforce the provisions of [the] code by injunctive action”.

## **B. Standing**

The Respondents argue that the Secretary does not have standing to bring an action pursuant to C.R.S. §1-1-113.

In order to bring an action before a court, the claimant must have standing to bring the action. *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo.,2004). Standing has been described as “a threshold issue that must be satisfied in order to decide a case on the merits.” *Id.*,

*see also HealthONE v. Rodriguez ex rel. Rodriguez*, 50 P.3d 879, 892 (Colo.2002). “Standing is a judicially developed test ... [and] much of the standard is a prudential exercise of judicial restraint.” *Id.* In Colorado, parties benefit from a relatively broad definition of standing. *Id.*

Here, there is no dispute that Hess has standing. Hess is an “eligible elector” of Mesa County who filed a “verified” petition and alleged that the two Respondents “committed or [are] about to commit a breach or neglect of duty or other wrongful act[.]” *See C.R.S. §1-1-113(1).*

Rather, the Respondents only argue that the Secretary does not have standing. However, when “at least one individual plaintiff has standing,” the Court “need not consider whether the other individual and corporate plaintiffs have standing to maintain the suit.” *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 n.9 (1977); *see also Weld Air & Water v. Colorado Oil and Gas Conservation Commission*, 457 P.3d 727, 732 n.4 (Colo. App. 2019). Although the Respondents argue that Hess lacks personal knowledge of the facts alleged in the Petition, none of the facts were disputed. Furthermore, lack of personal knowledge and standing are two vastly different concepts. One is an evidentiary issue (lack of knowledge), the other a jurisdictional issue (lack of standing). The foundational requirements of the Colorado Rules of Evidence have no bearing on the factual determinations in this case (there are no disputes concerning the facts) or whether Hess has standing.

The Court also notes the Colorado Supreme Court’s holding in *Carson v. Reiner*, 370 P.3d 1137, 1141 (Colo. 2016), which expressly “requires the district court, upon a

finding of good cause, to issue an order requiring substantial compliance with the provisions of the election code whenever any eligible elector files a verified petition alleging that a person charged with a duty under the code has committed a breach or neglect of that duty or other wrongful act.”

Therefore, based upon the above and the applicable legal authority, the Court determines that Hess satisfies all statutory requirements for standing to maintain a claim against Respondents under § 1-1-113(1). Furthermore, since Hess has standing, the Court determines that it is appropriate for the claims of the Secretary of State to be joined in the verified petition and the Court will determine the controversy under the procedures set out in C.R.S. §1-1-113.

### **C. C.R.S. §1-1-113 Claims**

The essence of the claim pursuant to C.R.S. §1-1-113 in Verified Petition is that Peters and Knisley committed a breach or neglect of duty or committed another wrongful act pursuant to the Election Code.

Here the following facts are undisputed:

- Peters, as the Clerk and Recorder, is required to comply with the law.
- Peters, as the Clerk and Recorder, is required to comply with the Code, including the CCRs.
- The Code and CCRs require “trusted builds”.
- A “trusted build” was scheduled for Mesa County.
- Prior to commencing the “trusted build”, Mesa County was required to provide a list of staff that would be present.



- Brown, the Elections Manager, provided a list of “Mesa County staff” that would be present at the “trusted build”.
- Included in the list of “Mesa County staff” was Gerald Wood.
- Gerald Wood was described as an “Administrative Assistant”.
- Gerald Wood accessed secured election areas with a Mesa County access card.
- During the “trusted build”, Peters introduced Gerald Wood as an administrative assistant with her office.
- Peters and Knisley now describe Gerald Wood as a “consultant” hired by Peters to copy the voting equipment computers.
- There was no information provided to the Secretary that Peters or Knisley obtained a background check of Gerald Wood.
- Any person accessing the secured areas of the election equipment is required to have a background check<sup>5</sup>. 8 CCR 1505-1:20, Election Rules 20.5.2 and 20.5.4.
- On Sunday, May 23, 2021, Gerald Wood copied the hard drives of the voting equipment computers before the “trusted build”.
- During the “trusted build” confidential passwords were photographed.
- The confidential passwords were posted on social media and made public.
- Gerald Wood, again, copied the hard drives of the voting equipment computers after the “trusted build”.

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<sup>5</sup> This requirement is the same under the prior version of Election Rule 20.5.4 and the modified version of Election Rule 20.5.4.

- After the “trusted build”, State Department staff returned to Mesa County and discovered that the server computer had two incorrect settings.
- The combined changes could result in a security vulnerability.
- As a result of the public disclosure of the passwords and the discovery that settings had been changed, the Secretary prohibited Mesa County from using various voting system components, including computers, scanners, and tablets.
- Knisley has been the subject of criminal and human resources investigations.
- Knisley has been suspended from her employment, and Mesa County has prohibited Knisley from being at her work site or conducting any work for Mesa County.
- Criminal charges have been brought against Knisley and a Protection Order has been issued which restrains Knisley from the “Mesa County Clerk and Records Office, 200 S. Spruce Street, Grand Junction” and from any “direct or indirect contact or communication” with “all employees of the Clerk and Records Office, Mesa County, Colorado”.

Peters took an oath to “faithfully perform the duties of the office” as was required by the Colorado Constitution and the Colorado Revised Statutes. CO Const. Art. 12 §8 and C.R.S. §30-10-401. Those duties included following the rules and orders promulgated by the Secretary pursuant to the Code. The rules and orders required, among other things that: any person having access to secured areas undergo a background check; a security plan be created with information about those having access to secured areas with voting equipment; required disclosure of which Mesa County staff that would be present for the

“trusted build”; and, required disclosure of any modifications to the system’s hardware, “including insertion or removal of removable storage media”. 8 CCR 1505-1:20, Election Rules 20.19.2(a)(2).

Instead, Peters was untruthful with the Secretary and her staff by stating that Gerald Wood was an employee of Mesa County and was an administrative assistance in her office. Peters failed to follow the rules and orders of the Secretary by facilitating and allowing a non-employee (Gerald Wood) without a disclosed background check to have access to a secured area via a Mesa County access card.

Knisley aided Peters in her wrongful acts by requesting that the cameras be disabled. In doing so, Knisley ensured that the wrongful behavior of Peters could not be viewed.

Peters and Knisley also failed to take adequate precautions to ensure that confidential information would be protected. Instead, passwords were displayed to the public which lead to the Secretary’s orders prohibiting use of certain equipment.

Therefore, the Court finds that Peters and Knisley breached their duties by failing to follow the rules and orders of the Secretary and the Code<sup>6</sup>, neglected their duties by failing to take adequate precautions to protect confidential information, and committed wrongful acts by being untruthful.

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<sup>6</sup> The Court does not find the arguments and rationalizations of the Respondents to be compelling, nor do the Respondents’ arguments and rationalizations overcome the specific acts of untruthfulness, the failure to comply with the Code and orders of the Secretary, and the failure to adhere to the oath of office by faithfully performing all the duties of the office.

#### **D. C.R.S. §1-1-107 Claims**

C.R.S. §1-1-107(2)(d) provides the Secretary with the power to enforce the provisions of the Code by injunctive action. Here, the Secretary requests that the Court enforce the provisions of the Code by prohibiting Peters and Knisley from performing as the Designated Election Official. The BOCC joins in the request.

Each county clerk and recorder, serving as the coordinated election official and DEO, is required to follow the rules, conditions of use, and orders promulgated by the Secretary of State when fulfilling duties and functions under the Code. C.R.S. §§1-1-110(1), 1-7.5-104. If a county clerk and recorder is absent or unable for any reason to perform the required duties under the Code, all power and authority granted to the county clerk and recorder may be exercised by a deputy county clerk. C.R.S. §1-1-110(2).

There is no specific provision in the Code that addresses the situation where both the county clerk and recorder and the deputy county clerk are unable to perform their required duties under the code. “When the language of a statute is susceptible of more than one reasonable interpretation, and is therefore considered ambiguous, or when there is conflicting language in different provisions, intrinsic and extrinsic aids may be employed to determine which reasonable interpretation actually reflects the legislative intent.” *Carson v. Reiner*, 370 P.3d 1137, 1140, 2016 CO 38, ¶ 13 (Colo., 2016).

Here, Peters and Knisley have been found to have breached their duties, neglected their duties, and committed wrongful acts. Knisley is prohibited from performing her duties, both by Mesa County and through the criminal Protection Order.

Furthermore, on August 17, 2021, the BOCC designated Williams as the Designated Election Official. *See C.R.S. §§30-11-117 and 1-1-104(8)*. Since that time, Williams has performed all the duties of the DEO<sup>7</sup>. Peters did not object to Williams' designation as DEO and did not attend the special meeting<sup>8</sup> where the designation was established.

Since his designation as the DEO, Williams has performed numerous duties including, but not limited to: signing Intergovernmental Agreements; conferring with major political parties concerning the submission of election judges; receiving and reviewing certified ballot content; reviewing and authorizing submission of security and contingency plans with the Secretary; authorizing video surveillance of designated areas for the election; reviewing ballot content and authorizing ballot content for printing; and providing guidance and direction to election staff<sup>9</sup>. Williams is also developing a plan to accomplish a re-tabulation of ballots using alternate voting machines and a hand-count. Williams was aware of no instance where Peters performed any of the duties of DEO<sup>10</sup>.

There has been no assertion that Peters attempted to perform her duties as DEO after August 17, 2021<sup>11</sup>, and was prevented from doing so. The coordinated election is scheduled less than a month away and many requirements of the election are already taking place.

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<sup>7</sup> *See Exhibit I-5 to Briefing in Support of Mesa County's 113 Claim.*

<sup>8</sup> Likewise, Peters did not attend any other election related public meetings held by the BOCC that concerned the November 2021 election. *See Exhibit I-6 to Briefing in Support of Mesa County's 113 Claim.*

<sup>9</sup> *See Exhibit I-5 to Briefing in Support of Mesa County's 113 Claim.*

<sup>10</sup> *See Exhibit I-5 to Briefing in Support of Mesa County's 113 Claim.*

<sup>11</sup> When EO-03 was issued.

#### IV. CONCLUSION

Based on the circumstances of this case, including the findings of the Court pursuant to C.R.S. 1-1-113, the Court determines that the Petitioners have met the burden of showing that Peters and Knisley have committed a breach and neglect of duty and other wrongful acts. As such, Peters and Knisley are unable or unwilling to appropriately perform the duties of the Mesa County Designated Election Official. The Court further determines substantial compliance with the provisions of the Code require an injunction prohibiting Peters and Knisley from performing the duties of the Designated Election Official. *C.R.S. §1-1-113(1)*.

Therefore, the request for an injunction pursuant to C.R.S. §1-1-107(2)(d) is granted. An injunction is entered prohibiting Peters and Knisley from performing as the Designated Election Official for Mesa County.

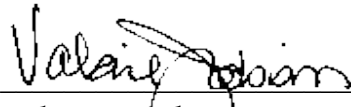
The Court confirms that Wayne Williams shall be the Mesa County Designated Election Official until the completion of the November 2021 election. "Completion" includes the tabulation and re-tabulation of ballots using voting machines, alternate voting machines, and a hand-count.

The Court also confirms Sheila Reiner as the Election Supervisor.

All other issues shall be determined at a later date.

DATED this 13<sup>th</sup> day of October, 2021.

BY THE COURT:

  
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Valerie J. Robison, District Court Judge