

<p>DISTRICT COURT, MESA COUNTY, COLORADO</p> <p>125 N. Spruce St. Grand Junction, CO 81501</p> <hr/> <p>Petitioners: JENA GRISWOLD, in her official capacity as Colorado Secretary of State; HEIDI JEANNE HESS, in her capacity as a Mesa County registered elector,</p> <p>v.</p> <p>Respondents: TINA M. PETERS, in her official capacity as the Clerk and Recorder for Mesa County, Colorado; BELINDA KNISLEY, in her official capacity as the Chief Deputy Clerk and Recorder for Mesa County, Colorado; and JULIE E. FISHER, in her official capacity as the Second Chief Deputy Clerk and Recorder for Mesa County, Colorado.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Petitioner Jena Griswold:</i> NATALIE HANLON LEH, Chief Deputy Attorney General LEEANN MORRILL, First Assistant Attorney General* MICHAEL KOTLARCZYK, Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6159/6187 Email: leeann.morrill@coag.gov; michael.kotlarczyk@coag.gov Registration Numbers: 38742/43250 *Counsel of Record</p> <p><i>Attorney for Petitioner Heidi Jeanne Hess:</i> ERIC H. MAXFIELD Eric Maxfield Law, LLC 3223 Arapahoe Avenue, #300 Boulder, CO 80303 Telephone: (303) 502-7849 Email: eric@ericmaxfieldlaw.com Registration Number: 29485</p>	<p>Case No.</p> <p>Div:</p>
<p style="text-align: center;">VERIFIED PETITION FOR RELIEF UNDER C.R.S. § 1-1-113</p>	

INTRODUCTION

1. The Uniform Election Code of 1992, § 1-1-101, *et seq.*, C.R.S. (2021) (“Election Code” or “Code”), establishes the Secretary of State as the chief election official in Colorado and charges her with supervising the conduct of elections in the state.

2. Respondents Tina M. Peters, the Clerk and Recorder for Mesa County, and Belinda Knisley, the Deputy Clerk and Recorder for Mesa County, were removed by this Court from exercising their election-related duties in the 2021 coordinated election after allowing an unauthorized individual to participate in the secure process for installing an update to the County’s electronic voting system and to have access to the secure voting system, leading to the public disclosure of State-guarded passwords needed to access the equipment and compromising that equipment. That court order will expire upon the completion of all election-related tasks related to the 2021 election, which is anticipated to occur in the next few weeks.

3. To ensure compliance with the Code and the Election Rules for the 2022 elections in Mesa County, the Secretary issued Election Order 2022-01, setting forth specific supervisory directives that Peters must follow if serving as Mesa County’s designated election official (“DEO”). Among other things, the Election Order required Peters to certify that she will comply with Colorado’s laws as Mesa County’s DEO in 2022, and to agree to the use of the Dominion Voting Systems equipment Mesa County has purchased and adopted for use in its elections. Peters refused to sign. This failure is itself an independent, freestanding violation of the Election Order.

4. Secretary of State Jena Griswold, who supervises the conduct of all primary, general, statewide ballot issue, and coordinated elections in Colorado under §§ 1-7.5-104 and 1-1-107(1)(a), and Heidi Jeanne Hess, a Mesa County registered elector, bring this action to ensure that Mesa County’s upcoming elections will be conducted in full compliance with the Election Code, as well as any applicable rules promulgated and orders issued by the Secretary thereunder.

5. This action is necessary now. Preparations for the 2022 elections are already underway, and statutorily-required deadlines are already coming due. *See* 2022 Election Calendar prepared and published by the Secretary, *available at* <https://tinyurl.com/ez6wsx6j>. Any actions taken by the Respondents now that put the security of Mesa County’s voting systems at risk could seriously jeopardize Mesa County’s ability to timely conduct the 2022 primary and general elections.

6. Petitioners therefore respectfully request the Court determine that Respondents Peters, Belinda Knisley, and Julie E. Fisher are absent and/or unable to perform their duties under the Election Code and appoint Brandi Bantz to serve as the DEO for the 2022 elections in Mesa County.

PARTIES

7. Petitioner Jena Griswold is the duly elected Colorado Secretary of State. The Secretary of State is an elected constitutional officer and is Colorado's chief state election official. COLO. CONST. art. IV, § 1; §§ 1-1-107(1)(e), 1-1.5-101(1)(h).

8. Petitioner Heidi Jeanne Hess resides in, and is a registered elector of, Mesa County, Colorado.

9. Respondent Tina M. Peters is the duly elected Clerk and Recorder for Mesa County, Colorado. Her office is located at 200 S. Spruce St., Grand Junction, CO 81501, in Mesa County, Colorado. Respondent Peters is the DEO for all coordinated elections in Mesa County under § 1-1-110(3).

10. Respondent Belinda Knisley is the duly appointed Chief Deputy Clerk and Recorder for Mesa County, Colorado. § 30-10-403. Her office is located at 200 S. Spruce St., Grand Junction, CO 81501, within Mesa County, Colorado. Respondent Knisley is a would-be successor to Respondent Peters as the DEO for all coordinated elections in Mesa County under § 1-1-110(2).

11. On December 30, 2021, Clerk Peters appointed Respondent Julie E. Fisher as the "Second Chief Deputy Clerk and Recorder" for Mesa County, Colorado. Her office is located at 200 S. Spruce St., Grand Junction, CO 81501, in Mesa County, Colorado. Respondent Peters may consider Fisher as a would-be successor to Respondent Peters as the DEO for all coordinated elections in Mesa County under § 1-1-110(2).

12. The Secretary and Respondents are "election officials" charged with duties and functions under the Election Code. *See, e.g.*, §§ 1-1-104(10); 1-1-107; 1-1-110; 1-5-616, -617, -621, and -623; and 1-7.5-104.

VENUE AND JURISDICTION

13. This Court has jurisdiction over the subject matter of this action pursuant to §§ 1-1.5-104(1)(d), 1-1-113(1) and 1-1-107(2)(d), or alternatively under C.R.C.P. 57.

14. Venue is proper in this Court under Rule 98(b)(2) and § 1-1-107(2)(d).

FACTUAL ALLEGATIONS

Duties of the Secretary of State and County Clerks to ensure uniform elections

15. The Secretary of State is Colorado's chief state election official. §§ 1-1-107(1)(e), 1-1.5-101(1)(h).

16. The Secretary is responsible for, among other things, “supervis[ing] the conduct of primary, general, congressional vacancy, and statewide ballot issue elections” and “all . . . coordinated . . . elections”; together with the attorney general, “mak[ing] uniform interpretations of this Code”; and “enforc[ing] the provisions of this code by injunctive action brought by the attorney general in the district court for the judicial district in which any violation occurs.” §§ 1-1-107(1)(a); 1-7.5-104; 1-1-107(1)(c); 1-1-107(2)(d).

17. The Secretary also may “[i]ssue appropriate orders to county or local election officials in connection with the proper administration, implementation, and enforcement of the federal Help America Vote Act of 2002 (“HAVA”), which orders shall be enforceable in a court of competent jurisdiction. § 1-1.5-104(1)(d). The purposes of HAVA include “ensur[ing] that every eligible voter has the opportunity to vote, that every vote that should be counted will be counted, and that no legal vote will be canceled by a fraudulent vote.” § 1-1.5-101(1)(b).

18. County clerks are established by statute as the default DEO for all coordinated elections. § 1-1-110(3). Deputy county clerks “may” exercise the same powers and duties if the county clerk and recorder “for any reason is unable to perform the required duties.” § 1-1-110(2).

19. To ensure uniform elections, the Election Code requires county clerks to conduct elections under the direct supervision of the Secretary of State. Specifically: “The county clerk and recorder, in rendering decisions and interpretations under this code, shall consult with the secretary of state and follow the rules and orders promulgated by the secretary of state pursuant to this code.” § 1-1-110(1). “For all general, primary, odd-year, coordinated, recall, and congressional vacancy elections, the county clerk and recorder shall conduct the election by mail ballot under the supervision of, and subject to rules promulgated in accordance with article 4 of title 24, C.R.S, by, the secretary of state.” § 1-7.5-104.

Peters’ Breaches Result in Removal as DEO for the 2021 Coordinated Election

20. On October 13, 2021, the Mesa County District Court issued an order finding “that Peters and Knisley have committed a breach and neglect of duty and other wrongful acts” and that they “are unable or unwilling to appropriately perform the duties of the Mesa County [DEO].”

21. The facts supporting the Court’s order, which is attached to this Petition as Exhibit A, are set forth therein. In brief, Respondents violated the Election Code, Election Rules, the Secretary’s Orders, and Peters’ oath of office by facilitating access to the Mesa County voting equipment by an unauthorized person, resulting in the decommissioning of the voting equipment, and by being “untruthful with the Secretary and her staff.”

22. The Court entered an injunction prohibiting Peters and Knisley from performing the duties of DEO for Mesa County; appointed Wayne Williams as the DEO “until the completion of the November 2021 election”; and confirmed the appointment of Sheila Reiner as the Election Supervisor.

23. The Court specified that Williams' appointment as DEO continued through "the tabulation and re-tabulation of ballots using voting machines, alternate voting machines, and a hand-count."

24. On information and belief, these 2021 election-related activities are anticipated to conclude by mid-February, 2022.

25. On October 18, 2021, Peters and Knisley filed a petition for review in the Colorado Supreme Court.

26. On October 20, the Colorado Supreme Court entered an order declining further review of the district court's October 13 order.

27. Separately, Mesa County has administratively suspended Knisley based on allegations of a hostile work environment. On August 27, 2021, Knisley was charged with burglary and cybercrime. *See People v. Knisley*, 2021CR1312 (Mesa Cnty.).

2022 Elections, Electronic Voting Systems, and Accessibility

28. A "primary election" is "the election held on the last Tuesday in June of each even-numbered year." § 1-1-104(32). A primary election will be conducted in Mesa County on June 28, 2022. § 1-4-101(1).

29. A "general election" is "the election held on the Tuesday succeeding the first Monday of November in each even-numbered year." § 1-1-104(17). A general election will be conducted in Mesa County on November 8, 2022. § 1-4-201.

30. 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." § 1-1-104(6.5).

31. The 2022 primary and general elections will be coordinated elections within the meaning of § 1-1-104(6.5).

32. Primary, general, and coordinated elections are supervised and conducted at two levels. *First*, the Secretary of State is the chief state election official, § 1-1-107(1)(e), and, among other things, is responsible for:

- a. supervising all primary, general, and coordinated elections conducted by the County Clerks and Recorders as DEOs, §§ 1-1-107(1)(a); 1-1-110(3); 1-7.5-104;

- b. coordinating the responsibilities of the state of Colorado under the federal “Help America Vote Act of 2002,” 52 U.S.C. 20901, *et seq.* (“HAVA”), § 1-1-107(1)(e), and enforcing and implementing the provisions of HAVA and the Election Code, § 1-1.5-101(1)(h);
- c. promulgating “such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws,” § 1-1-107(2)(a);
- d. issuing appropriate orders to county or local election officials in connection with the proper administration, implementation, and enforcement of HAVA, § 1-1.5-104(1)(d);
- e. promulgating rules and conditions of use establishing minimum standards for electronic voting systems used in Colorado elections, §§ 1-5-616(1) and (3);
- f. issuing orders in furtherance of those rules and Election Code provisions governing electronic voting systems, §§ 1-1-110(1), 1-5-618(5), and 1-6-621(4);
- g. certifying electronic voting systems provided that they are compliant with federal and state standards, §§ 1-5-608.5(3), 1-5-615, 1-5-617(1);
- h. approving the purchase, installation, and use of a certified electronic voting system by any DEO of a political subdivision that plans to use the system, § 1-5-613;
- i. providing technical assistance to DEOs on issues related to the certification of the purchase, installation, and use of electronic voting systems by a political subdivision, § 1-5-617(6).

33. *Second*, as the chief election official for the County, the County Clerk and Recorder serves as the DEO and is responsible for the day-to-day conduct of all primary, general, and coordinated elections. §§ 1-1-110(3); 1-7.5-104. If a County Clerk and Recorder is absent or for any reason is unable to perform the required duties under the Election Code, all powers and authority granted to the County Clerk and Recorder by the Election Code may be exercised by a Deputy Clerk. § 1-1-110(2).

34. In carrying out their duties and functions under the Election Code, including specifically conducting coordinated elections, County Clerks and Recorders must follow the rules, conditions of use, and orders promulgated by the Secretary of State pursuant to the Code. §§ 1-1-110(1), 1-7.5-104.

35. The collaboration between the Secretary of State and Colorado’s sixty-four County Clerks and Recorders has been tremendously successful and has built an election

administration process that is a national model. In 2020, nearly 3.3 million votes were cast, for a turnout of 86.53% of active voters and with timely and accurate counting of those votes.

36. Votes may be cast, registered, scanned, and tabulated in all elections held in Colorado by means of an electromechanical or electronic voting system. § 1-5-601(1).

37. A “voting system” is “a process of casting, recording, and tabulating votes using electromechanical or electronic devices or ballot cards and includes, but is not limited to, the procedures for casting and processing votes and the operating manuals, hardware, firmware, printouts, and software necessary to operate the voting system.” § 1-1-104(50.8).

38. “Voting equipment” consists of “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, and equipment.” § 1-1-104(50.7).

39. An “electronic voting device” is “a device by which votes are recorded electronically, including a touchscreen system.” § 1-1-104(14.5).

40. The governing body of any political subdivision may, after consultation with the DEO, adopt an electromechanical or electronic voting system for use at polling locations to record, and tabulate votes cast at all elections held by the political subdivision provided that the system has been and remains certified by the Secretary of State. §§ 1-5-612, 1-5-623.

41. A governing body of a political subdivision that adopts an electromechanical or electronic voting system for use at elections must pay for the purchase or lease of such voting system with County funds. § 1-5-603.

42. The County Clerk and Recorder is the custodian of the voting system in a political subdivision and may appoint deputies necessary to prepare and supervise the voting system before and during elections. § 1-5-605.5.

43. Due to the integral role voting systems serve in conducting elections, access to “voting equipment”—which “means 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,” § 1-1-104(50.7)—is strictly limited by Colorado law, including the Secretary of State’s Elections Rules. *See* 8 CCR 1505-1, Election Rules 20.3 (requiring chain-of-custody evidence be maintained); 20.4 (requiring use of physical locks and seals); 20.5 (restricting access to secure areas to certain employees who have passed background checks); 20.6 (limiting users who have electronic access to voting equipment); 20.9 (requiring video surveillance of voting equipment at certain times); *see also* §§ 1-5-607(1) (prohibiting elected officials from preparing, maintaining, or repairing voting equipment); § 1-5-616(5) (requiring DEO to establish their own security plans for their equipment, subject to approval by the Secretary of State).

44. As an important security measure, Colorado’s voting systems are prohibited from being connected to the Internet. *See* Election Rule 20.19.1. As a result, updates to the software on voting equipment must be done manually and in person. These manual, in-person updates are essential to maintaining the security of voting systems.

45. This process is called a “trusted build.” A software build is a process where source code is converted to machine readable instructions for the voting system. A trusted build is a software build performed with security measures intended to ensure that the software installed on the machine is exactly the software created by the voting system provider and approved by the Department of State.

46. The Department of State conducts the trusted build installation process and limits participation to designated civil servant staff of the Colorado Department of State, the County Clerk and Recorder’s Office, and the voting system provider. These select individuals are present to ensure the trusted build securely and faithfully creates the necessary code in the voting system equipment, and must pass background checks to be present.

47. The Election Code and Title III of HAVA require that voters with disabilities must be able to cast their vote privately and without assistance. Each county has purchased accessible electronic voting devices that may be used at any polling place or voter service and polling center. These devices use assistive and adaptive technology to enable voters with a wide range of disabilities to vote privately and independently. *See* §§ 1-1.5-101(1)(c) and (d); 1-5-102.9(3)(g) and (h); 1-5-701 through -706.

Use of Dominion Voting System Equipment for the 2022 Elections in Mesa County

48. Under § 1-5-603, the Mesa County Board of County Commissioners (“Board”) has the authority to “adopt for use at elections any kind of voting machine fulfilling the requirements for voting machines set forth in” the Election Code.

49. In reliance on that statutory authority, Mesa County requested and received approval from the Secretary of State to purchase and use Dominion Voting Systems Democracy Suite voting system and voting equipment, which is certified by the Secretary of State’s Office for use in elections to which the Code applies.

50. To implement that decision, Mesa County, by and through the Board, entered into a contract with Dominion Voting Systems, Inc. on March 21, 2016, as amended on August 1, 2020, for the purchase of voting equipment and licensing of software for use with that equipment.

51. After the Secretary of State issued Election Order 2021-02 decertifying Mesa County’s voting system equipment for use in elections to which the Code applies because of the security breaches that Clerk Peters facilitated and participated in, Mesa County negotiated a new agreement with Dominion Voting Systems, Inc. to acquire certified replacement voting

equipment for use during the November 2021 Coordinated Election, at substantial cost to Mesa County.

52. The certified replacement voting equipment acquired from and software licensed by Dominion Voting Systems, Inc. also will be used in all 2022 elections to which the Code applies that are conducted in Mesa County.

53. In order for Mesa County's certified replacement voting system and voting equipment to remain certified, they must continuously be maintained in a secure manner and the failure to do so, whether as a result of neglect or wrongful act, will result in their decertification by the Secretary of State.

54. Any decertification of Mesa County's certified replacement voting system and voting equipment may jeopardize the timely conduct of one or more 2022 elections to which the Code applies, impose substantial financial costs on the taxpayers of Mesa County, and cause Mesa County to violate the accessibility requirements of HAVA and the Election Code.

55. HAVA empowers the U.S. Department of Justice to bring civil action seeking declaratory and injunctive relief as may be necessary to carry out uniform and nondiscriminatory election technology and administration requirements. Accordingly, failure to satisfy the requirements of HAVA may subject Colorado's election laws and procedures to stringent review and approval by the U.S. Department of Justice. § 1-1.5-101(1)(f).

56. Over the last four years, Mesa County has received more than \$138,000 in HAVA grants. This includes more than \$23,000 to establish a new voter service and polling center, including new Dominion ballot-marking tablets for the new center.

Peters Repeatedly Indicates Unwillingness to Follow the Election Code

57. Leading up to and upon being barred as Mesa County DEO for 2021, Peters continued to make statements indicating that she did not view her behavior as unlawful and that she could repeat that unlawful behavior.

58. In a September 26, 2021 podcast, Clerk Peters admitted to "commissioning someone" to enter Mesa County offices and to make images of the server without the Department's knowledge. See <https://truthandliberty.net/episode/tina-peters-and-sherronna-bishop-searching-for-the-truth/> (at 12:44).

59. In an October 11, 2021 news conference, Clerk Peters again admitted that she arranged to breach the security of Mesa County's voting system server and had images of the server's hard drive created before and after the "trusted build" process, in contravention of the Department's direction and rules. See <https://www.nbc1news.com/2021/10/12/mesa-county-clerk-recorder-tina-peters-hosts-news-conference/>.

60. After being enjoined from serving as Mesa DEO for the November 2021 Coordinated Election, Clerk Peters gave a speech at the Western Conservative Network Action Conference in Salt Lake City on October 22-23, 2021, in which she continued to extoll her illegal actions during the “trusted build” process, stating “I arranged to have a forensic image – it’s like a snapshot – before and after they did this trusted build. . . .I’m so grateful that I took the action that I did.” She further asserted, in reference to the “trusted build” update to the Mesa County voting equipment performed in May 2021, that, “This was indeed one of if not the worst crimes in America. If we don’t get these election problems fixed, I don’t see fair elections going forward.” *See* <https://www.youtube.com/watch?app=desktop&v=gshZtZHdHU8&feature=youtu.be> (at 1:40 and 3:40).

61. During a November 18, 2021 FacebookLive broadcast, Clerk Peters stated, again in reference to the routine actions by the Secretary of State’s Office to maintain the security of Mesa County’s voting system equipment, “They’re the ones that cheated. They’re the ones that destroyed election records. They’re the ones that are allowing influences to come into our computers changing votes and doing all these things.” *See* https://www.facebook.com/watch/live/?ref=watch_permalink&v=900957210533726 (at 44:30).

62. During a December 1, 2021 Truth and Liberty Rally in Grand Junction, Clerk Peters again indicated that she would take the same actions if faced with the same situation: “So I did what any business person would do and anyone that is elected by the people, and one of their main jobs is to protect election records, that doesn’t fall on anyone else, that falls on me and I will keep fighting.” *See* https://www.facebook.com/watch/live/?ref=watch_permalink&v=623559359002526 (at 57:27).

63. During a January 6, 2022 FacebookLive broadcast, Clerk Peters indicated that she remains a threat to voting equipment, stating, “We’re not backing down. If we don’t get this election irregularity solved, problem solved, there’s not going to be any fair elections. . . . We’ve got to get those machines so that they are transparent to the people and, they’re not able to do what they’re designed to do.” *See* <https://fb.watch/aomqK7a6n5/> (at 36:30).

Issuance of Election Order 2022-01 to Safeguard the 2022 Elections in Mesa County

64. On January 10, 2022, the Secretary issued Election Order 2022-01, attached as Exhibit B, pursuant to her authority as the chief state election official and her authority under §§ 1-1-107(1), 1-1-110(1), 1-1.5-104(1), and 1-7.5-104.

65. The purpose of the Election Order is to ensure Peters’ compliance with Colorado election law in 2022 and to take proactive measures, consistent with the Secretary’s legal authority to supervise elections, to protect Mesa County’s voting equipment and voting systems.

66. The Election Order was also prompted by the public statements by Peters indicating an unwillingness to comply with Colorado law and ensure the 2022 elections are conducted responsibly with the voting equipment purchased by Mesa County, including, for example, her statement on January 6, 2022, that “We’ve got to get those machines so that they are transparent to the people and they’re not able to do what they’re designed to do.”

67. Among other things, Election Order 2022-01:

- a. directs Peters to obtain prior approval from the Election Supervisor that will be appointed by the Secretary on all election-related decisions;
- b. prohibits Peters from accessing the statewide voter registration system known as “SCORE” unless and until she receives training on how to use the system and submits a signed SCORE Acceptable Use Policy as required by Election Rule 2.17.2;
- c. directs Peters to maintain 24-hour/day, 7-day/week video surveillance of all voting equipment;
- d. directs Peters to provide the Secretary with daily copies of all electronic logs for the key-card swipes of all doors in the Mesa County Elections Division;
- e. directs Peters to provide weekly written progress reports of all election-related matters to the Election Supervisor;
- f. directs Peters to affirm that she will use the Dominion Voting Systems Democracy Suite voting system and voting equipment, consistent with the contracts entered by Mesa County and approved by the Secretary;
- g. directs Peters to affirm her willingness to uphold the Code and security of voting equipment as DEO; and
- h. requires Peters to execute a written certification and attestation swearing that she will abide by all these and the other terms of Election Order 2022-01 while conducting the 2022 elections.

68. The provisions of the Election Order, including the certification and attestation requirement, are squarely within the Secretary’s authority to supervise the conduct of Colorado’s elections by County Clerks.

Peters Violates Election Order 2022-01

69. Peters violated Election Order 2022-01 by refusing to sign the attestation.

70. In public comments on January 13, 2022, Peters unequivocally stated she would “never” sign the attestation.

71. On January 13, 2022, Attorney General Phil Weiser and Mesa County District Attorney Dan Rubinstein announced the opening of a grand jury investigation to investigate “allegations of Mesa County election equipment tampering and official misconduct.”

Knisley and Fisher are Unable to Perform as Alternate DEOs

72. Upon information and belief, Respondent Knisley continues to be on indefinite administrative suspension and therefore is absent from her position as Chief Deputy Clerk and Recorder.

73. Respondent Knisley’s criminal charges of burglary and cybercrime render her unable to perform the required duties as an alternate DEO.

74. Upon information and belief, Respondent Fisher was aware of the administrative leave restrictions on Knisley but nevertheless facilitated her improper access to Mesa County buildings and computer systems. Additionally, Respondent Fisher has not completed any of the training provided by the Department of State for county election workers, and on information and belief, Respondent Fisher has no actual experience related to election administration.

75. Respondent Fisher’s facilitation of Knisley’s unauthorized access and her lack of training or experience render her unable to perform the required duties as an alternate DEO.

Bantz is Able by Experience and Training to Serve as DEO

76. Brandi Bantz currently serves as the director of the Elections Division in Mesa County, having previously worked in the elections office of El Paso County.

77. During the 2021 Coordinated Election, Bantz worked with and under the supervision of court-appointed DEO Wayne Williams and Election Supervisor Sheila Reiner. In that capacity, and according to the after-election reports of Williams and Reiner, Bantz’s work was effective, efficient, and contributed to the success that Mesa County enjoyed in completing the 2021 Coordinated Election.

78. Bantz has completed the election-related trainings provided by the Department of State.

79. Bantz has substantial experience with election administration.

FIRST CLAIM FOR RELIEF
(Substantial Compliance under §§ 1-1-113 and 1-1-107(2)(d))

80. Petitioners incorporate the above allegations.

81. The Secretary of State is authorized to enforce the provisions of the Election Code by injunctive action brought by the Attorney General in the District Court for the judicial district in which any violation occurs, § 1-1-107(2)(d), and “[s]ubstantial compliance with the provisions or intent of this code shall be all that is required for the proper conduct of an election to which this code applies.” § 1-1-103(3).

82. Section 1-1-113(1) provides that upon filing “a verified petition in a district court of competent jurisdiction 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 [the Election Code].”

83. The Code also provides that the “county clerk and recorder . . . shall . . . follow the rules and orders promulgated by the secretary of state pursuant to this code.” § 1-1-110(1).

84. By failing to execute the certification required by Election Order 2022-01, Peters has breached her duties and committed wrongful acts in relation to Mesa County’s 2022 coordinated elections under § 1-1-110(3). Peters’ repeated statements expressing an unwillingness to comply with the Election Code, the Election Rules, and the orders of the Secretary of State further establish that her breach of duty and wrongful acts will continue.

85. These wrongful acts and breaches of duty fall under § 1-1-113(1).

86. These wrongful acts and breaches of duty, when considered in conjunction with the prior acts of Peters reflected in the October 13 order, provide grounds under § 1-1-107(2)(d) to enjoin Peters from serving as the DEO for the 2022 elections in Mesa County.

87. To substantially comply with the Elections Code, Petitioners respectfully request an Order that:

- a. Peters’ failure to comply with Election Order 2022-01, considered in conjunction with her prior breaches of her duties as Mesa County’s DEO, renders her unable to perform the required duties under § 1-1-110(3) as the DEO for the 2022 elections in Mesa County;
- b. Knisley’s continued administrative suspension and her criminal charges of burglary and cybercrime render her absent and/or unable to serve as an alternate DEO;

- c. Fisher’s facilitation of Knisley’s unauthorized access and her lack of training or experience render her unable to serve as an alternate DEO; and
- d. Brandi Bantz shall serve as the DEO for all 2022 elections in Mesa County to which the Code applies.

**SECOND CLAIM FOR RELIEF
(Judicial enforcement under § 1-1.5-104(1)(d))**

88. Petitioners incorporate the above allegations.

89. The Secretary is authorized to “[i]ssue appropriate orders to county or local election officials in connection with the proper administration, implementation, and enforcement of [HAVA], which orders shall be enforceable in a court of competent jurisdiction.” § 1-1.5-104(1)(d).

90. Election Order 2022-01 was issued under this authority, among other bases of authority.

91. The purposes of HAVA include “prevent[ing] disenfranchisement resulting from . . . the use of outdated voting systems that are unreliable or insufficiently accessible for disabled voters,” and “ensuring greater access to the polls by individuals with disabilities[.]” §§ 1-1.5-101(1)(c) and (d).

92. Peters’ failure to comply with Election Order 2022-01 undermines these purposes, may disenfranchise disabled registered electors in Mesa County who have the right to vote privately and independently in any 2022 elections to which HAVA and the Code apply.

93. In addition, Mesa County receives substantial HAVA funds to administer its elections.

94. The Secretary of State is authorized to “exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA to be eligible on a timely basis for all federal funds made available to the state under HAVA.” § 1-1.5-104(1).

95. To ensure compliance with Election Order 2022-01, Petitioners respectfully request an order:

- a. Peters’ failure to comply with Election Order 2022-01, considered in conjunction with her prior breaches of her duties as Mesa County’s DEO, renders her unable to perform the required duties under § 1-1-110(3) as the DEO for the 2022 elections in Mesa County;

- b. Knisley's continued administrative suspension and her criminal charges of burglary and cybercrime render her absent and/or unable to serve as an alternate DEO;
- c. Fisher's facilitation of Knisley's unauthorized access and her lack of training or experience render her unable to serve as an alternate DEO; and
- d. Brandi Bantz shall serve as the DEO for all 2022 elections in Mesa County to which the Code applies.

**THIRD CLAIM FOR RELIEF
(Declaratory Judgment under C.R.C.P. 57)**

- 96. Alternatively, Petitioners seek injunctive and declaratory relief under C.R.C.P. 57.
- 97. Under C.R.C.P. 57(b), any person whose rights, status, or other legal relations are affected by a statute may have determined any question arising under the statute and may obtain a declaration of rights, status, or other legal relations thereunder.
- 98. Injunctive and declaratory relief are necessary here to settle the rights, status, or other legal relations of Petitioner and Respondents under the Election Code and Election Rules.
- 99. Accordingly, Petitioners respectfully request an Order:
 - e. Declaring that Peters' failure to comply with Election Order 2022-01, considered in conjunction with her prior breaches of her duties as Mesa County's DEO, renders her unable to perform the required duties under § 1-1-110(3) as the DEO for the 2022 elections in Mesa County;
 - f. Declaring that Knisley's continued administrative suspension and her criminal charges of burglary and cybercrime render her absent and/or unable to serve as an alternate DEO;
 - g. Declaring that Fisher's facilitation of Knisley's unauthorized access and her lack of training or experience render her unable to serve as an alternate DEO; and
 - h. Declaring that Brandi Bantz shall serve as the DEO for all 2022 elections in Mesa County to which the Code applies.

PRAYER FOR RELIEF

WHEREFORE, the Petitioners respectfully request that this Court, under §§ 1-1-113(1) and 1-1-107(2)(d), or alternatively C.R.C.P. 57, issue the following ORDER:

- A. Declaring that Peters is absent and/or unable to perform the required duties and enjoining her from serving as the DEO for any 2022 election in Mesa County to which the Code applies.
- B. Declaring that Knisley is absent and/or unable to perform the required duties and enjoining her from serving as the DEO for any 2022 election in Mesa County to which the Code applies.
- C. Declaring that Fisher is unable to perform the required duties and enjoining her from serving as the DEO for any 2022 election in Mesa County to which the Code applies;
- D. Declaring that Brandi Bantz shall serve as the DEO for all 2022 elections in Mesa County to which the Code applies; and
- E. Granting such other and further relief as the Court deems just and proper.

DATED: January 18, 2022.

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s/ Michael Kotlarczyk

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VERIFICATION

I declare under the penalty of perjury pursuant to the law of Colorado that the factual allegations set forth in the foregoing Verified Petition for Relief Under C.R.S. § 1-1-113 are true and correct to the best of my knowledge, information, and belief.

Executed on the 18th day of January, 2022, in the County of Mesa, State of Colorado.

Heidi Jeanne Hess
(printed name)

A handwritten signature in black ink, appearing to read "Heidi Jeanne Hess", with a large, stylized flourish at the end.

(signature)