

<p>DISTRICT COURT, SAGUACHE COUNTY, COLORADO</p> <p>501 Christy P.O. Box 197 Saguache, Colorado 81149</p> <hr/> <p>SCOTT GESSLER, in his official capacity as Secretary of State Of The State Of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>MELINDA MYERS, in her official capacity as Clerk and Recorder for the County of Saguache,</p> <p>Defendant.</p>	<p>FILED Document CO Saguache County District Court 12th JD Filing Date: Mar 16 2011 4:26PM MDT Filing ID: 36519010 Review Clerk: Brandie Taylor</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p>COMPLAINT</p>	

Scott Gessler, in his official capacity as Secretary of State of the State of Colorado (hereinafter “Secretary”), respectfully alleges for his Complaint against Melinda Myers, in her official capacity as Clerk and Recorder of the County of Saguache (hereinafter “Clerk”), as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to § § 1-1-107(1)(b) and (2)(d), C.R.S. (2010).
2. Venue is proper in the County of Saguache. The Secretary may bring an action “in the district court for the judicial district in which any violation occurs.” Section 1-1-107(2)(d), C.R.S. (2010)

PARTIES

3. The Secretary is a member of the executive department of state government. Colo. Const. art. IV, § 1(1). The Secretary “perform[s] such duties as are prescribed by this constitution or by law.” *Id.* The Secretary has the power and duty to “supervise the conduct of primary, general, congressional vacancy, and statewide ballot issue elections,” § 1-1-107(1)(a), C.R.S. (2009) to enforce the provisions of the election code, § 1-1-107(1)(b) and (2)(d).

4. The Clerk is the clerk and recorder of the County of Saguache. Colo. Const. art. XIV, § 8. The Clerk is the chief election official for the county. Section 1-1-110 (3), C.R.S. (2009). The clerk must follow the rules and orders promulgated by the Secretary, pursuant to the election code. Section 1-1-110(1), C.R.S. (2009)

BACKGROUND

5. The General Assembly has delegated to the Secretary specific duties and responsibilities with respect to elections. The Secretary supervise[s] the conduct of primary, general, congressional vacancy, and statewide ballot issue elections; enforces the provisions of the election code, and makes uniform interpretations of the election code. Section 1-1-107(1)(a)-(c), C.R.S. (2010).

6. The General Assembly has delegated to the Secretary certain powers, including but not limited to:

(a) inspection, with or without the filing of a complaint by a person, and review of practices and procedures of a county clerk and recorder, their employees and other election officials in the conduct of primary, general, and congressional vacancy elections and registration of electors in this state, and

(b) enforcement 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. Section 1-1-107(2)(b), (d).

7. During the course of the primary and general elections held in 2010, the Secretary received complaints that the Clerk had violated certain statutes and regulations governing the preparation for, and conduct of, said elections. The Secretary sent observers to examine the allegations of non-compliance.

8. The Secretary confirmed many of the allegations of non-compliance, including that the Clerk and her staff altered ballots to clarify particular votes instead of creating duplicate ballots as required by the Secretary’s rules, neglected to maintain continuous video surveillance, and failed to conduct the post-election audit in the presence of the canvass board.

9. Subsequent to the 2010 general election, the Secretary received additional complaints filed by canvass board members with direct oversight of the elections concerning the Clerk's conduct of the 2010 primary and general elections.

10. The Secretary intends to conduct additional inspection and review of the practices and procedures of the Clerk. Clerk was notified of this intention.

11. On March 9, 2011, the State Election Director, Judd Choate, met with the Clerk and Scott Doyle, President of the County Clerks Association, to discuss the inspection, where Myers agreed to allow inspection of the ballots.

12. On March 10, 2011, the Clerk announced her intention to refuse the Secretary's inspection.

13. On March 11, 2011, Choate and Doyle discussed by phone and email the impasse, with Doyle agreeing to encourage the Clerk to not refuse the inspection.

14. On March 15, 2011, Choate spoke to Myers on the phone to notify her that the Secretary would send inspectors to the Clerk's office to inspect and review all aspects of the 2010 Primary and General Elections, including the ballots.

15. Later on March 15, 2011, the Clerk notified the Secretary that she would not comply with the inspection and review. In particular, she stated:

(a) the deadline for contesting the election has passed, "it is unclear what this exercise would accomplish, and could only serve to undermine the work already done in this election;"

(b) "this election is under investigation by the Attorney General's office and that process deserves to unfold without this questionable action prejudicing the proceedings;"

(c) "Sealed voted ballots are sensitive documents and historically treated as confidential."

(d) "Without clear guidance from the courts on the legality of this proposed hand count, I would be remiss in my duty by not protecting the voter's ballots."

16. The Secretary's power to inspect and review is plenary.

17. The Clerk does not have the power to prevent the Secretary from inspecting and reviewing all aspects of the election process because she is unclear about the utility of the inspection and review.

18. The Clerk does not have the power to prevent the Secretary from inspecting and reviewing all aspects of the election process because she believes that the inspection and review may interfere with an ongoing investigation by the Colorado Attorney General.

19. Inspection by the Secretary will not violate any constitutional or statutory provision regarding ballot secrecy or security. By granting the power to inspect and review elections, the General Assembly authorizes the Secretary to inspect and review ballots.

FIRST CLAIM FOR RELIEF

20. The Secretary incorporates paragraphs 1-15 of the Complaint as if fully set forth herein.

21. The Clerk must comply with an order of the Secretary, pursuant to § 1-1-110(1).

22. The Secretary is entitled to an injunction requiring the Clerk to comply with the Secretary's order for inspection and review. Section 1-1-107(2)(d).

SECOND CLAIM FOR RELIEF

23. The Secretary incorporates paragraphs 1-18 of the Complaint as if fully set forth herein.

24. The Secretary has the power to inspect and review the practices and procedures of each county clerk.

25. The Secretary seeks an injunction requiring the Clerk to allow the Secretary to inspect and review her practices and procedures.

PRAYER FOR RELIEF

WHEREFORE, the Secretary requests the court enter judgment in his favor and against the Clerk as follows:

A. Enter an injunction requiring the Clerk to obey the Secretary's order and permit the Secretary to inspect and review all aspects of the 2010 primary and general elections in Saguache County, including but not limited to access to all materials and equipment related to said elections, the right to transport such materials and equipment to another location, and require the clerk to be available and assist as necessary during normal business hours to enable the Secretary to "inspect...and review the practices and procedures of" the Clerk, including answering questions in good faith concerning her practices and procedures relating to the conduct of the 2010 primary and general elections.

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/s/Maurice G. Knaizer

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