

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

Civil No. 08-CV-02321-JLK

COMMON CAUSE OF COLORADO, on behalf of itself and its members;
MI FAMILIA VOTA EDUCATION FUND; and
SERVICE EMPLOYEES INTERNATIONAL UNION, on behalf of itself and its
members,

Plaintiffs,

vs.

BERNIE BUESCHER, in his official capacity as Secretary of State for the State of
Colorado,

Defendant.

DECLARATION OF JAMES M. FINBERG

I, James M. Finberg, declare as follows:

1. I am a member in good standing of the bar of the state of California and
am admitted to practice in this judicial district.

2. I am a partner with Altshuler Berzon LLP, one of the firms serving as
counsel for Plaintiffs and moving parties in this action.

3. On October 5, 2010, I downloaded and printed a document entitled "2010
Election Calendar" from the website of Colorado Secretary of State Bernie Buescher,

Defendant in this action. The document is available at the following url:

<http://www.sos.state.co.us/pubs/elections/docs/2010ElectionCalendar.pdf>. A true and correct copy of that document is attached as Exhibit A. Exhibit A states that October 12, 2010 is the first day mail-in-ballots may be sent to voters with mail-in requests and October 18, 2010 is the date early voting begins for the November 2, 2010 general election.

4. Attached hereto as Exhibit B is an e-mail that I received on October 5, 2010 from Colorado Assistant Attorney General Melody Mirbaba. (The attachment to that e-mail will be filed with the court under seal.) Assistant Attorney General Mirbaba's e-mail states that as of October 5, 2010, 5,938 persons were identified in the Colorado Secretary of State's database as having a failed-20-day status. Of these, 2,006 persons were placed in that status after the November 2008 election.

5. According to Ms. Mirbaba's e-mail, the attachment to Ms. Mirbaba's October 5 2010 e-mail lists "all persons who failed the 20 day statute since November 2008 and who are still in that status." Page one of that Attachment lists Antonio L. Lewis of Aurora, CO, in Arapahoe County. The attachment says that Mr. Lewis's registration was cancelled on July 17, 2010. Page 19 of that attachment lists Luke Jon Jesser of Ft. Collins, CO, in Larimer County, and says his registration was cancelled on May 21, 2009.

6. According to Google Maps, the distance from Aurora to Littleton, CO (where the County Clerk's and Recorder's offices for Arapahoe County are located) is 16 miles (32 miles roundtrip) and the drive takes approximately 30 minutes each way.

7. On October 5, 2010, I sent Ms. Mirbaba's October 5, 2010 e-mail and it's attachments to Mr. Andy Supe of the SEIU and asked him to match the list against a list of SEIU members in Colorado.

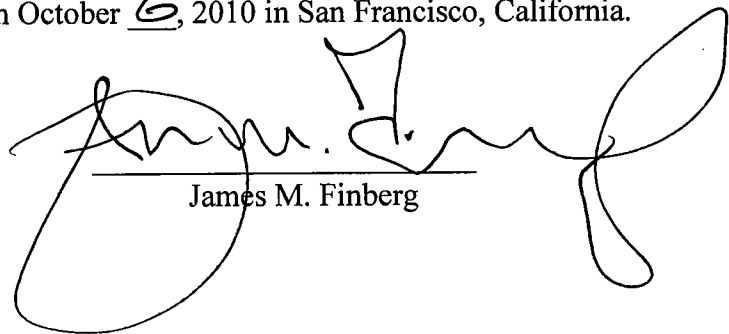
8. Before filing this motion for preliminary injunction, I and other co-counsel for Plaintiffs and moving parties met and conferred with Mr. Knaizer and Ms. Mirbaba of the Colorado Attorney General's office. We were not able to reach agreement. Defendant will neither agree to implement procedures comparable to those established by the 2008 stipulated preliminary injunction for the 2010 federal election, nor agree to restore to "active" status those voters whose registrations have been cancelled pursuant to the 20-Day Rule.

9. In connection with my meet and confer efforts, I spoke with Assistant Attorney General Mirbaba by telephone on September 26, 2010. In that conversation, Ms. Mirbaba informed me that if the Court rules that the 20-day rule is invalid, the Secretary of State will change the status of persons listed in the voter database as "failed 20 day" from "failed 20 day" to "active."

10. This morning, Ms. Mirbaba sent me an e-mail stating, among other things, "If the Court agrees with Plaintiffs, the Secretary would order the counties to register and activate all the failed 20 day records and to mail any ballots that were requested by those persons." A copy of that e-mail is attached as Exhibit C.

I declare, under the penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

This declaration is executed on October 6, 2010 in San Francisco, California.



James M. Finberg

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2010, I electronically filed the foregoing Declaration of James M. Finberg with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the registered, interested parties via electronic mail.

Executed on October 6, 2010

/s/ James M. Finberg