

In the United States District Court
For the District of Colorado

Civil Action No.

William Semple, individually; The Coalition for Colorado Universal Health Care, a/k/a Cooperate Colorado, a Colorado not-for-profit corporation; ColoradoCareYes, a Colorado not-for-profit corporation; and Daniel Hayes, individually,

Plaintiffs,

vs.

Wayne W. Williams, in his official capacity as Secretary of State of Colorado,
Defendant.

COMPLAINT

Plaintiffs complain against the defendant as follows:

Jurisdiction and Venue

1. This is a complaint for declaratory and injunctive relief pursuant to 42 U.S.C. section 1983. Plaintiffs seek a judicial declaration that the 2016 amendment to Colorado Constitution, identified on the ballot as Amendment 71, violates the plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution. Plaintiffs also seek preliminary and final injunctions against the Colorado Secretary of State to prohibit him from enforcing Amendment 71.

2. Jurisdiction exists under 28 U.S.C. section 1331, as this case raises a question under the United States Constitution.

3. Venue exists under 28 U.S.C. section 1391(b), as the defendant is a resident of, and has his office in, this District, and all of the actions complained of have occurred in this district.

The Plaintiffs

4. William Semple is a registered voter in Colorado Senate District 18. He was a designated representative on the successful petition to place 2015-2016 initiative # 20 on the 2016 general election ballot as Amendment 69.

5. The Coalition for Colorado Universal Health Care is a Colorado not-for-profit corporation in good standing with the Colorado Secretary of State. In 2014 and 2015, it sponsored the drafting of 2015-2016 initiative # 20, which was a proposed amendment to the Colorado Constitution that would have created ColoradoCare, a statewide system for financing health care for all Colorado residents. In 2015, it presented the proposed Amendment to the Colorado State Title Board, which then set the ballot title and submission clause and made it possible to collect signatures on the petition to place the proposal on the 2016 general election ballot.

6. The Coalition for Colorado Universal Health Care created an issue committee pursuant to the Colorado Fair Campaign Practices Act, C.R.S. sections 1-45-101 et seq, to solicit and receive contributions and spend money on the collection of signatures on the petition.

7. The Coalition created ColoradoCareYes as the issue committee. ColoradoCareYes is a Colorado not-for-profit corporation in good standing with the Colorado Secretary of State. ColoradoCareYes collected a sufficient number of signatures to place the proposal on the 2016

general election ballot. The Secretary of State named the initiative “Amendment 69”. The amendment was defeated in the 2016 general election.

8. The Coalition for Colorado Universal Health Care intends to run a similar proposed amendment to the Colorado Constitution in either the 2018 or the 2020 general election.

9. ColoradoCareYes will be the issue committee for collecting signatures on the petition to amend the Colorado constitution which the Coalition for Colorado Universal Health Care intends to draft and present to the Colorado State Title Board in time for either the 2018 or 2020 general election.

10. Amendment 71 violates the First and Fourteenth Amendment rights of the Coalition, of ColoradoCareYes, and their supporters, including William Semple, because it greatly increases the cost and difficulty of collecting sufficient signatures on a petition to amend the Colorado Constitution without a compelling reason for doing so, because it compels them to engage in political speech and associational activity in state senate districts they and their supporters would otherwise avoid, and because it dilutes the value of the signatures of voters in densely populated senate districts and gives them less value than the signatures of voters in sparsely populated districts.

11. Daniel Hayes is a registered voter in Colorado senate district 20.

12. Daniel Hayes is a designated representative for 2017-2018 initiative # 4, which would amend Article XVIII of the Colorado Constitution by adding a new section 17. The Title Board set the ballot title and submission clause on December 21, 2016, and amended them on January 4, 2014, pursuant to a petition for rehearing. Opponents have since filed an appeal to the Colorado Supreme Court, which is pending.

13. Once the appellate issues are resolved, Daniel Hayes intends to begin collecting signatures on the petition for 2017-2018 initiative # 4.

14. Because Amendment 71 greatly increases the cost and difficulty of collecting sufficient signatures on a petition to amend the Colorado Constitution without a compelling reason for doing so, and because it compels him and the supporters of 2017-2018 Initiative # 4 to engage in political speech and associational activity in state senate districts he and his supporters would otherwise avoid, it violates Daniel Hayes' and his supporters' First and Fourteenth Amendment rights.

15. Amendment 71 violates the rights of William Semple and Daniel Hayes under the Equal Protection Clause of the Fourteenth Amendment to have their signatures on a petition to amend the Colorado Constitution given the same weight as the signatures of every other voter in Colorado.

The Defendant

16. Wayne W. Williams is the duly elected Secretary of State of Colorado.

17. The Secretary of State is charged by C.R.S. sections 1-40-116 and 1-40-117 with counting the signatures on petitions to initiate an amendment to the Colorado Constitution and either certifying that there are sufficient signatures to place the proposed amendment on the general election ballot, or that there are not sufficient signatures for this purpose.

18. The Secretary of State is the Colorado official charged with enforcing the provisions of Amendment 71.

Background – Allegations Common to All Claims

19. Prior to the enactment of Amendment 71, Article V, section 1(2) of the Colorado Constitution stated that to place a proposed constitutional amendment on the general election ballot, proponents must collect the signatures of five percent of the voters who voted for secretary of state in the most recent election, without regard to the place of residence of those signatories.

20. On March 2, 2016, Colorado electors Greg Brophy and Dan Gibbs submitted 2015-2016 Initiative # 96 to the State Title Board for the determination of a title and submission clause. Initiative #96 was a proposed amendment to Article V, section 1(4) of the Colorado Constitution that was intended to make it more difficult for individuals and organizations like the plaintiffs to meet the signature requirements of Article V, section 1(2) for placing proposed amendments to the Colorado Constitution on the general election ballot. Initiative # 96 did not change the requirement that proponents must collect the signatures of five percent of the voters who voted for secretary of state in the last election. Instead, it stated that of the five percent, the proponents must also collect the signatures of at least two percent of the registered electors in each of Colorado's thirty-five state senate districts.

21. Initiative # 96 was also intended to make it more difficult for voters to approve proposed initiated amendments in the general election by increasing the number of votes necessary for approval from a simple majority to fifty-five percent of those voting.

22. The text of Initiative # 96 appears in capital letters along with the lower case provisions of Article V, section 1 which were not affected by the amendment.

SECTION 1. In the constitution of the state of Colorado, Section 1(4) of article V is amended and said section 1 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

Section 1. General assembly - initiative and referendum

(2.5) IN ORDER TO MAKE IT MORE DIFFICULT TO AMEND THIS CONSTITUTION, A PETITION FOR AN INITIATED CONSTITUTIONAL AMENDMENT SHALL BE SIGNED BY REGISTERED ELECTORS WHO RESIDE IN EACH STATE SENATE DISTRICT IN COLORADO IN AN AMOUNT EQUAL TO AT LEAST TWO PERCENT OF THE TOTAL REGISTERED ELECTORS IN THE SENATE DISTRICT PROVIDED THAT THE TOTAL NUMBER OF SIGNATURES OF REGISTERED ELECTORS ON THE PETITION SHALL AT LEAST EQUAL THE NUMBER OF SIGNATURES REQUIRED BY SUBSECTION (2) OF THIS SECTION. FOR PURPOSES OF THIS SUBSECTION (2.5), THE NUMBER AND BOUNDARIES OF THE SENATE DISTRICTS AND THE NUMBER OF REGISTERED ELECTORS IN THE SENATE DISTRICTS SHALL BE THOSE IN EFFECT AT THE TIME THE FORM OF THE PETITION HAS BEEN APPROVED FOR CIRCULATION AS PROVIDED BY LAW.

(4) (a) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon OR, IF APPLICABLE THE NUMBER OF VOTES REQUIRED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4), and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure.

(b) IN ORDER TO MAKE IT MORE DIFFICULT TO AMEND THIS CONSTITUTION, AN INITIATED CONSTITUTIONAL AMENDMENT SHALL NOT BECOME PART OF THIS CONSTITUTION UNLESS THE AMENDMENT IS APPROVED BY AT LEAST FIFTY-FIVE PERCENT OF THE VOTES CAST THEREON; EXCEPT THAT THIS PARAGRAPH (b) SHALL NOT APPLY TO AN INITIATED CONSTITUTIONAL AMENDMENT THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ANY PROVISION OF THIS CONSTITUTION.

SECTION 2. In the constitution of the state of Colorado, Section 2(1) of article XIX is amended to read:

Section 2. Amendments to constitution - how adopted

(1) (a) Any amendment or amendments to this constitution may be proposed in either house of the general assembly, and, if the same shall be voted for by two-thirds of all the members elected to each house, such proposed amendment or amendments, together with the ayes and noes of each house thereon, shall be entered in full on their respective journals. The proposed amendment or amendments shall be published with the laws of that session of the general assembly. At the next general election for members of the general assembly, the said amendment or amendments shall be submitted to the registered electors of the state for their approval or rejection, and such as are approved by a majority of those voting thereon OR, IF APPLICABLE THE NUMBER OF VOTES REQUIRED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), shall become part of this constitution.

(b) IN ORDER TO MAKE IT MORE DIFFICULT TO AMEND THIS CONSTITUTION, A CONSTITUTIONAL AMENDMENT SHALL NOT BECOME PART OF THIS CONSTITUTION UNLESS THE AMENDMENT IS APPROVED BY AT LEAST FIFTY-FIVE PERCENT OF THE VOTES CAST THEREON; EXCEPT THAT THIS PARAGRAPH (b) SHALL NOT APPLY TO A CONSTITUTIONAL AMENDMENT THAT IS LIMITED TO REPEALING, IN WHOLE OR IN PART, ANY PROVISION OF THIS CONSTITUTION.

23. Pursuant to C.R.S. section 1-40-106, on March 2, 2016, the Colorado State Title Board set the title and submission clause. This was a necessary prerequisite for the designated representatives to begin collecting signatures on the petition to place Initiative # 96 on the ballot.

24. The title as designated and fixed by the State Title Board is:

An amendment to the Colorado constitution making it more difficult to amend the Colorado constitution by requiring that any petition for a citizen-initiated constitutional amendment be signed by at least two percent of the registered electors who reside in each state senate district for the amendment to be placed on the ballot and increasing the percentage of votes needed to pass any proposed constitutional amendment from a majority to at least fifty-five percent of the votes cast, unless the proposed constitutional amendment only repeals, in whole or in part, any provision of the constitution.

25. The ballot title and submission clause as designated and fixed by the State Title Board is:

Shall there be an amendment to the Colorado constitution making it more difficult to amend the Colorado constitution by requiring that any petition for a citizen-initiated constitutional amendment be signed by at least two percent of the registered electors who reside in each state senate district for the amendment to be placed on the ballot and

increasing the percentage of votes needed to pass any proposed constitutional amendment from a majority to at least fifty-five percent of the votes cast, unless the proposed constitutional amendment only repeals, in whole or in part, any provision of the constitution?

26. On August 16, 2016, the Colorado Secretary of State issued a “Statement of Sufficiency” in which he determined that the proponents of Initiative # 96 had submitted enough signatures to place the initiative on the 2016 election ballot for consideration by the voters in the November election. The secretary of state then designated the proposal as “Amendment 71”.

27. Pursuant to its constitutional duty, set forth in Article V, section 1(7.3), the Colorado Legislative Council began preparing the Colorado BlueBook, which is designed to give Colorado voters unbiased information about initiated and referred measures appearing on the general election ballot. It began this process by seeking input about the effect of each proposal and arguments for and against from proponents, opponents, and other interested parties.

28. The proponents of Amendment 71 submitted materials to the Legislative Council, including their recommendations for the “Arguments For” Section. In the final draft of the BlueBook, these arguments were:

“Arguments For

- 1) It should be difficult to change the constitution because it is a foundational document for the state. Because the current requirements for proposing and adopting constitutional and statutory amendments are the same, the constitution has seen the addition of detailed provisions that cannot be changed without an election. Amendment 71 is expected to encourage citizen-initiated changes to law in statute by making it harder to amend the constitution. Statutory changes allow the legislature to react when laws require clarification or when problems or unforeseen circumstances arise.
- 2) Requiring that signatures for constitutional initiatives be gathered from each state senate district ensures that citizens from across the state have a say in which measures are placed on the ballot. Due to the relative ease of collecting signatures in heavily populated urban areas compared to sparsely populated

rural areas, rural citizens currently have a limited voice in determining which issues appear on the ballot.”

29. These arguments were reflected in the advertisements of the proponents’ issue committee which urged the passage of Amendment 71.

30. In the November 8, 2016, general election, the voters approved amendment 71 by a vote of 1,476,948 “yes” votes to 1,175,324 “no” votes.

31. On December 28, 2016, the Governor of Colorado issued a proclamation pursuant to Article V, section 1(4) of the Colorado Constitution in which he declared the vote on Amendment 71, thus making it part of the Colorado Constitution.

32. The process of collecting signatures on an initiative petition involves core political speech and is given the highest degree of protection by the First Amendment to the United States Constitution.

33. Colorado gives its citizens the right to use the initiative process to petition their government for changes in the state Constitution. Having given this right, Colorado cannot then place unconstitutional restrictions on its availability even if those unconstitutional conditions were approved by the voters themselves.

34. The First and Fourteenth Amendments to the United States Constitution protect plaintiffs’ right not only to advocate their cause, but also to select what they believe to be the most effective means for doing so.

The First Claim for Relief

35. This claim is brought pursuant to 42 U.S.C. section 1983 and the Fourteenth Amendment to the United States Constitution.

36. A stated purpose and effect of Amendment 71's two percent requirement is to give rural voters a greater say in determining which proposed constitutional amendments appear on the ballot: "Requiring that signatures for constitutional initiatives be gathered from each state senate district ensures that citizens from across the state have a say in which measures are placed on the ballot. Due to the relative ease of collecting signatures in heavily populated urban areas compared to sparsely populated rural areas, rural citizens currently have a limited voice in determining which issues appear on the ballot."

37. The purpose and effect of Amendment 71 is to discriminate against urban voters, from whom it is much easier and less expensive to gather the signatures of five percent of the voters who most recently voted for secretary of state than it is to gather signatures from rural voters.

38. Colorado has no legitimate interest in giving rural voters a greater say in what proposed initiatives will appear on the ballot, just as it has no legitimate interest in giving their votes greater weight in the general election. Thus, just as Colorado could not, consistent with the United States Constitution, require that a successful statewide ballot initiative or candidate obtain two percent of the votes in each state senate district in addition to obtaining the votes of a majority of the state's citizens who voted in an election, it cannot, consistent with the United States Constitution, require the proponents of an initiative to obtain signatures of two percent of the voters in each senate district in order to place an initiative on the ballot.

39. Colorado has no legitimate interest in requiring that a proposed initiative have a modicum of support everywhere in the state rather than having the support of a designated number of electors, regardless of their place of residence.

40. There is a huge variation in the population of registered voters in the various state senate districts. For example, as of January 1, 2017, district 11 had 86,181 voters, district 25 had 85,051 voters, district 21 had 80,499 voters, and five other districts (1, 12, 13, 29 and 35) had between 91,728 and 96,463 voters. By way of comparison, district 4 had 121,093 voters, district 16 had 119,920 voters, district 18 had 120,222 voters, district 20 had 126,844 voters, and district 23 had 132,222 voters. Thus, district 23 has 51,723 more voters than district 21, and that variance is slightly more than 60%.

41. By giving rural voters a greater voice in determining which initiatives appear on the ballot, Amendment 71 limits the voice of voters in heavily populated urban districts. Amendment 71 thus violates the one person, one vote rule of *Reynolds v. Sims*, 377 U.S. 533 (1964) and its progeny, including *Moore v. Ogilvie*, 394 U.S. 814 (1969) and *Bloomquist v. Thomson*, 739 F.2d 525 (10th Cir. 1984).

42. The one person, one vote rule is inextricably tied to the fundamental notion of representational democracy that the majority rules.

43. Amendment 71 limits the rights of voters who sign the petition in more populous districts in sufficient numbers to meet the five percent requirement, and who would, for purposes of placing an initiative on the ballot, form a majority, by also requiring participation by a minority of voters in rural districts.

44. Because the petition process is an integral part of Colorado's election process, voters in densely populated districts have the right to have their signatures counted and given the same weight as the voters in sparsely populated districts.

45. Amendment 71's two percent requirement violates the right of citizens in densely populated districts to have their signatures on a petition counted with the same weight as the signatures of sparsely populated districts because even if five percent of the voters who voted for secretary of state in the most recent election signed the petition, their signatures would only count if two percent of the voters in every other senate district also signed the petition.

46. The United States Constitution contains no indication that one's place of residence affords a permissible basis for distinguishing between qualified voters within the State.

47. Under Amendment 71, voters in one district can thwart the will of a far greater number of voters in another, and prevent a popular initiative that might win majority support in the general election from appearing on the ballot.

WHEREFORE, Plaintiffs request a judicial declaration that Amendment 71's requirement that initiated constitutional amendment petitions contain the signatures of at least two percent of the registered voters in each state senate district violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; a judicial declaration that the two percent requirement cannot be severed from the other provision of the amendment, and a declaration that the entire amendment is void and is not a part of the Colorado Constitution; preliminary and final injunctions which prohibit the Colorado Secretary of State from enforcing any provision of Amendment 71, an award of costs, including reasonable attorney's fees pursuant to 42 U.S.C. section 1988, and all other just and proper relief in the premises.

The Second Claim for Relief

48. This claim is brought pursuant to 42 U.S.C. section 1983 and the First and Fourteenth Amendments to the United States Constitution.

49. The purpose and effect of Amendment 71 is to make it more difficult to place initiatives on the ballot. Thus, the purpose and effect of Amendment 71 is to limit core political speech and associational activities by making it more difficult for citizens to present important public issues to the public through the initiative process.

50. It is no answer to the constitutional infirmity of Amendment 71 to say that the state has not placed similar obstacles to placing a statutory initiative on the ballot. The State cannot mute the voices of some advocates who wish to speak in a certain way by telling them they can speak in another way on which the state has not placed unconstitutional burdens.

51. Amendment 71 compels core political speech in some senate districts and inhibits it in others. Both compulsory political speech and inhibited political speech violate the First and Fourteenth Amendments to the United States Constitution.

52. By requiring initiative proponents to gather signatures from voters in every state senate district, and to engage in political speech and associational activities in each of those thirty-five senate districts, Amendment 71 compels the proponents to spend money and engage in political speech and associational activities in those districts even though, in the absence of Amendment 71's requirements, they would avoid engaging in political speech and associational activities in those districts.

53. Amendment 71 inhibits core political speech and associational activities because it requires that signatures must be collected in all thirty-five senate districts, rather than the ones which are most populous. Thus, political speech and associational activities in the most populous districts are unconstitutionally inhibited because the amendment makes some speech and associational activities there superfluous.

54. The First Amendment to the United States Constitution protects plaintiffs' right not only to advocate their cause, but also to select what they believe to be the most effective means for doing so.

55. Amendment 71 violates the plaintiffs' right to select what they believe to be the most effective means of advocating their cause by compelling them to advocate it in a manner and in places that are contrary to their choosing.

56. By compelling initiative proponents to engage in core political activity and spend money and other resources to do so in districts that they would otherwise avoid, Amendment 71 coerces proponents in a manner that is prohibited by the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiffs request a judicial declaration that Amendment 71's requirement that initiated constitutional amendment petitions contain the signatures of at least two percent of the registered voters in each state senate district violates the First and Fourteenth Amendments to the United States Constitution; a judicial declaration that the two percent requirement cannot be severed from the other provision of the amendment, and a declaration that the entire amendment is void and is not a part of the Colorado Constitution; preliminary and final injunctions which prohibit the Colorado Secretary of State from enforcing any provision of

Amendment 71, an award of costs, including reasonable attorney's fees pursuant to 42 U.S.C. section 1988, and all other just and proper relief in the premises.

The Third Claim for Relief

57. The petition process is a ballot access vehicle, as well as a vehicle for political expression.

58. The fundamental right to vote loses much of its vigor if there is an unconstitutional limit on candidates or issues to vote on.

59. Amendment 71 imposes a burden on ballot access for initiated constitutional amendments by requiring signatures from all thirty-five senate districts, rather than simply requiring a specified number of voters from anywhere in the state to sign the petition.

60. By creating unconstitutional obstacles that proponents must overcome to place an initiative on the ballot and begin the process of political debate about the merits of their proposal, Amendment 71 limits – and is intended to limit – the number of proposed constitutional amendments that will reach the ballot, and it therefore places burdens on two different, although overlapping, rights – the right of individuals to associate for the advancement of their political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively on important issues that concern them.

61. Amendment 71 deprives voters of the right to vote on important public issues which have the support of a significant number of voters who sign petitions to place a proposed constitutional amendment on the ballot by giving voters the power to block an amendment from appearing on the ballot simply because they live in a certain location.

62. By requiring initiative proponents to gather signatures from each of the state's thirty-five senate districts, Amendment 71 significantly increases the cost and difficulty of placing an initiated constitutional amendment on the general election ballot because it is far more efficient and far more cost effective for circulators to collect signatures in densely populated senate districts than it is for them to collect signatures in rural districts where the population density is very low.

WHEREFORE, Plaintiffs request a judicial declaration that Amendment 71's requirement that initiated constitutional amendment petitions contain the signatures of at least two percent of the registered voters in each state senate district violates the First and Fourteenth Amendments to the United States Constitution; a judicial declaration that the two percent requirement cannot be severed from the other provision of the amendment, and a declaration that the entire amendment is void and is not a part of the Colorado Constitution; preliminary and final injunctions against its enforcement, an award of costs, including reasonable attorney's fees pursuant to 42 U.S.C. section 1988, and all other just and proper relief in the premises.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ralph Ogden", with a stylized, cursive script.

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