

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

Civil Action 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,

v.

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

Defendant.

ORDER

Kane, J.

Plaintiffs Unopposed Motion to Require Defendant to Disclose Provisional Ballot Information (doc. #112), filed November 20, 2009, is **GRANTED**.

1. Plaintiffs' discovery requests in this matter include requests for documents and information related to certain provisional ballots cast in the 2008 primary and general federal elections.

2. The Secretary objected to these requests on various grounds, including that the Help America Vote Act of 2002 ("HAVA") mandates that access to information about individual provisional ballots "shall be restricted to the individual who cast the ballot." 42 U.S.C. § 15482(a). On that basis, the Secretary declined to provide the results of provisional ballots without a court order permitting him to do so.

3. The Court previously ordered the disclosure of similar information in the Stipulated

Preliminary Injunction entered on October 29, 2008, which related in part to information regarding provisional ballots cast other than those at issue here.

4. Although formal discovery in this matter has now closed, a limited and informal exchange of information continues. Plaintiffs' counsel has represented that entry of an order requiring the Secretary to disclose whether certain provisional ballots were counted and to provide documentation regarding such ballots would substantially facilitate the completion of this process.

5. The Secretary does not oppose Plaintiffs' motion.

6. Based on the above facts, the Court hereby orders the Secretary to disclose information and documents responsive to Plaintiffs Second Set of Interrogatories and Second Set of Document Requests concerning provisional ballots cast in the 2008 primary and general elections cast by members of Plaintiff organizations and individuals registered to vote in voter registration drives conducted under the auspices of by Plaintiffs Mi Familia Vota Educational Fund and Service Employees International Union.

7. Any such disclosures are subject to the terms of the Stipulated Protective Order, entered on November 5, 2008, and the Second Stipulated Protective Order, entered on May 22, 2009.

IT IS SO ORDERED this 20th day of November, 2009.

s/John L. Kane

JOHN L. KANE

UNITED STATES DISTRICT JUDGE