

DISTRICT COURT, ARAPAHOE COUNTY,
COLORADO
7325 S. Potomac Street
Centennial, CO 80112

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Plaintiff: CANDICE BAILEY, an individual,

v.

Defendants: CITY OF AURORA; and
KADEE RODRIGUEZ, in her official capacity as City Clerk
for the City of Aurora

▲ COURT USE ONLY ▲

Attorneys for Plaintiff:

Edward T. Ramey #6748
Tierney Lawrence LLC
225 E. 16th Avenue, Suite 350
Denver, CO 80203
eramey@tierneylawrence.com
P: (720) 242-7585
(303) 949-7676 (cell)

Mark Silverstein, #26979
Sara R. Neel, #36904
American Civil Liberties Union Foundation of Colorado
303 E. 17th Ave., Suite 350
Denver, Colorado 80203
msilverstein@aclu-co.org
sneel@aclu-co.org
P: (303) 777-5482
F: (303) 777-1773

Case Number:

Div:

Ctrm:

**VERIFIED PETITION PURSUANT TO C.R.S. §1-1-113 AND C.R.S. §31-10-1401
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Candice Bailey, for her Petition and Complaint against the City of Aurora and Kadee Rodriguez, in her official capacity as City Clerk for the City of Aurora, states as follows:

1. Plaintiff Candice Bailey intends to run for City Council in Aurora in the upcoming municipal election. The Aurora City Charter and City Code, however, forbid her from being a candidate or holding public office in Aurora, simply because she has a past felony conviction.

2. Ms. Bailey submits that these provisions of the Aurora Charter and Code violate the Colorado Constitution and applicable Colorado statutes, and that precluding her candidacy for office on the basis of her prior conviction would constitute a wrongful act under the Uniform and Municipal Election Codes. She asks this Court to enter appropriate orders requiring the City Clerk to comply with the requirements of the Constitution and laws of the State of Colorado, as well as to enter such declaratory and injunctive relief as may be necessary or appropriate to ensure such compliance.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this case pursuant to COLO. CONST. art. VI, §9(1), C.R.S. §1-1-113(1), and C.R.S. §31-10-1401(1).

4. Venue is proper in this Court under C.R.C.P. 98(b)(2) and (c)(1).

PARTIES

5. Ms. Bailey is a resident of the City of Aurora, a registered elector in the City of Aurora as defined in Sec. 1-9(l) of the Aurora City Charter, Sec. 54-2(y) of the Aurora City Code, C.R.S. §1-1-104(35), and C.R.S. §31-10-201; and a “qualified elector” in the City of Aurora as employed in COLO. CONST. art VII, §§6 and 10 and C.R.S. §31-10-201. Ms. Bailey also seeks to be a “candidate” as defined by Sec. 54-2(f) of the Aurora City Code (as she is seeking nomination for election to City Council).

6. Defendant City of Aurora (“Aurora”) is a political subdivision of the State of Colorado. Aurora operates under a home rule charter adopted in 1961 pursuant to COLO. CONST. art. XX, §6.

7. Defendant Kadee Rodriguez is the City Clerk for the City of Aurora. As such, she is responsible under Sec. 2-65(6) of the City Code for the preparation for and conduct of all municipal elections. Ms. Rodriguez is also the “designated election official” for the City as defined in C.R.S. §1-1-104(8), as well as an “election official” as defined in C.R.S. §31-10-102(2) with the powers specified in C.R.S. §31-10-104(1).

FACTUAL ALLEGATIONS

8. The government in the City of Aurora consists of an at-large mayor, four city council members elected at-large, and six ward council members elected by citizens in each respective ward. Council member terms (four years each) are staggered over two-year periods.

9. The Aurora City Charter and the Aurora City Code set forth the qualifications for candidacy for elected office. To run for municipal office in Aurora, all candidates must meet the following requirements:

- a) be a registered elector of Aurora
- b) be a United States citizen
- c) be a resident of the City for at least a year before the date of the election
- d) be 21 years of age or older before the date of the election
- e) have no felony convictions

See City Charter Section 3-3 (“Qualifications of elective officers”); Aurora City Code Sec. 54-31, (“Electors eligible to hold municipal office”).

10. An eligible candidate running for an at-large position on the City Council must obtain signatures on a nomination petition from 100 registered electors residing in the City. Aurora City Code Sec. 54-32(b)(1). For the upcoming election, those signatures may be obtained beginning on August 4, 2021 and turned in to the City Clerk no later than August 24, 2021. *See* Aurora City Code Sec. 54-32(b).

11. The upcoming election is to be held on November 2, 2021, and there are two at-large positions available for four-year terms.

12. Candice Bailey, a very active Aurora resident and activist leader for racial justice, intends to run for an at-large position on the Aurora City Council in the November 2021 municipal election.

13. Ms. Bailey meets all requirements to run for elected office in Aurora, except one. In 1999, when Ms. Bailey was 22 years old, she pled guilty to second degree assault, a class 4 felony. As a result of that conviction, Ms. Bailey spent approximately three years in prison. She successfully completed her full term of imprisonment and all requirements of her sentence.

14. Ms. Bailey has been informed by Aurora City Officials that because of her felony conviction she is ineligible to become a candidate for or to be elected to office in the City of Aurora.

FIRST CLAIM
Rights of Citizenship (Colorado Constitution, Article VII, Section 10)

15. Paragraphs 1 through 14, above, are incorporated herein by reference.

16. Article VII, section 10 of the Colorado Constitution guarantees the automatic restoration of all the rights of citizenship to every person who was a qualified elector prior to imprisonment and who has finished serving their full term of imprisonment:

No person while confined in any public prison shall be entitled to vote, but every such person who was a qualified elector prior to such imprisonment, and who is released therefrom by virtue of a pardon, or by virtue of having served out his full term of imprisonment, shall without further action, be invested with all the rights of citizenship, except as otherwise provided in this constitution.

17. The right to run for public office is among the rights of citizenship automatically restored to a person who has served out their full term of imprisonment under COLO. CONST. art. VII, §10. *Sterling v. Archambault*, 332 P.2d 994, 995 (Colo. 1958).

18. Article XII, section 4 of the Colorado Constitution sets forth the limited exceptions that are referenced in article VII, section 10:

No person hereafter convicted of embezzlement of public moneys, bribery, perjury, solicitation of bribery, or subornation of perjury, shall be eligible to the general assembly, or capable of holding any office of trust or profit in this state.

None of these exceptions are applicable to Ms. Bailey.

19. Through its Charter and City Code, Aurora purports to exclude permanently from candidacy for elective office any person who has ever been convicted of any felony.

20. Section 3-3 of the Aurora City Charter provides, “A person who has been convicted of a felony shall not become a candidate for nor hold elective office.”

21. Section 54-31 of the Aurora City Code provides, “Persons convicted of a felony shall not become a candidate and are not qualified to hold elective office.”

22. The vestment of authority upon “home rule” cities and towns over their “local and municipal matters” under article XX, section 6 of the Colorado Constitution does not negate the applicability of other constitutional constraints on those cities and towns. “Ours is a constitutional government, wherein the sovereign will of all the people, as expressed in the constitution, is supreme, beyond the express limitations of which a municipality may not go.” *Lord v. Denver*, 143 P. 284, 292 (Colo. 1914).

23. The specific references in article XX, section 6(a) of the Colorado Constitution to “the definition, regulation and alteration of the . . . qualifications . . . of all municipal officers, agents, and employees”—and in section 6(d) to “[a]ll matters pertaining to municipal elections”—as examples of “local and municipal matters” subject to “home rule” regulation—do not negate or override the applicability of independent constitutionally conferred rights and limitations.

24. Ms. Bailey meets all the qualifications for candidacy for municipal office in the City of Aurora except that she has a felony conviction for second-degree assault.

25. Ms. Bailey served out her full term of imprisonment almost two decades ago.

26. Ms. Bailey was a qualified elector prior to her conviction and imprisonment and is a qualified elector now.

27. Second-degree assault is not one of the five crimes that permanently bar eligibility for holding public office in Colorado under article XII, section 4 of the Colorado Constitution.

28. Without further action, after finishing her sentence of imprisonment, Ms. Bailey was reinvested with all the rights of citizenship, including the right to be a candidate for and, if elected, hold public office in Colorado.

29. To the extent section 3-3 of the Aurora City Charter and section 54-31 of the Aurora City Code purport to ban persons with any felony conviction from running for or holding elective office in the City of Aurora, those provisions violate Ms. Bailey’s restored rights of citizenship under article VII, section 10 of the Colorado Constitution.

SECOND CLAIM

Equal Protection (Colorado Constitution, Article II, Section 25)

30. Paragraphs 1 through 29, above, are incorporated herein by reference.

31. The due process clause of article II, section 25 of the Colorado Constitution guarantees the right to equal protection of the laws. *City of Broomfield v. Farmers Reservoir & Irrigation Co.*, 239 P.3d 1270, 1278 (Colo. 2010).

32. “[T]he equal protection guarantee insures that all individuals be treated fairly in their exercise of fundamental rights.” *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1014–15 (Colo. 1982).

33. “[T]he right to hold public office, by either appointment or election, is one of the valuable and fundamental rights of citizenship. This right may not be infringed upon by invidious discriminatory disqualifications.” *Cowan v. Aspen*, 509 P.2d 1269, 1272 (Colo. 1973).

34. By purporting to ban anyone with a felony conviction from running for or holding elective office in the City of Aurora, Section 3-3 of the Aurora City Charter and section 54-31 of the Aurora City Code “mak[e] a decision for the voters as to who shall be qualified to run for public office.” *Id.* at 1273. But the “individual fitness of a candidate . . . must be left to the choice of the voter if voting is to mean anything.” *Id.*

35. The complete and permanent exclusion from candidacy of any person with a past felony conviction is a severe restriction on the right to run for public office.

36. There is no real, clear, and compelling reason that anyone who has ever been convicted of a felony is necessarily unqualified even to become a candidate for public office in Aurora.

37. Permanently banning anyone with a felony conviction from candidacy for public office in Aurora is not reasonably necessary to the accomplishment of a legitimate municipal objective.

38. Ms. Bailey’s decades-old conviction has no bearing on her ability to meet the basic needs of the office of city councilor.

39. The severe restriction on Ms. Bailey’s right to run for public office is not outweighed by any counterbalancing government interest.

40. Application of Section 3-3 of the Aurora City Charter and section 54-31 of the Aurora City Code to Ms. Bailey to prevent her from running for or holding elective office in the City of Aurora violates her rights to equal protection of the laws as guaranteed article II, section 25 of the Colorado Constitution.

THIRD CLAIM
Preemption by State Law

41. Paragraphs 1 through 40, above, are incorporated herein by reference.

42. As reflected in the Colorado Constitution and the Colorado Revised Statutes, Colorado has a strong public policy of restoring all the rights of citizenship, including the right to run for and hold public office, to those who have completed sentences of imprisonment.

43. Article VII, section 10 and article XII, section 4 of the Colorado Constitution provide that the only convictions that can permanently bar a person from running for public office in Colorado are the five convictions specified in article XII, section 4.

44. State statutes codify and implement these constitutional provisions:

a. C.R.S. § 18-1.3-401(3) provides that after a person completes their service of imprisonment and is discharged, or completes a C.R.S. § 18-1.3-401(3) provides that after a person term of probation, their right to hold public office is restored, except where the underlying conviction is for one of the five crimes enumerated in article XII, section 4 of the Colorado Constitution:

Every person convicted of a felony, whether defined as such within or outside this code, shall be disqualified from holding any office of honor, trust, or profit under the laws of this state . . . during the actual time of confinement or commitment to imprisonment or release from actual confinement on conditions of probation. Upon his or her discharge after completion of service of his or her sentence or after service under probation, the right to hold any office of honor, trust, or profit shall be restored, except as provided in section 4 of article XII of the state constitution.

b. C.R.S. § 31-10-201, titled “qualifications of municipal electors” – and part of the Colorado Municipal Election Code (C.R.S. 31-10-101, *et. seq.*) – applies the language in article VII, section 10 of the Colorado Constitution to municipal elections:

No person confined in any public prison is entitled to register or to vote at any regular or special election. Every person who was a qualified elector prior to such imprisonment and who is released by pardon or by having served his full term of imprisonment shall be vested with all the rights of citizenship except as otherwise provided in the state constitution.

Id. §201(2).

45. To the extent Section 3-3 of the Aurora City Charter and section 54-31 of the Aurora Municipal Code ban anyone with any felony conviction from running for or holding elective office in the City of Aurora, those provisions conflict with Colorado law restoring all the rights of citizenship, including the right to run for public office, to those who have completed their sentences resulting from the felony conviction.

46. Preemption doctrine is the proper methodology for “resolving state and local legislative conflicts.” *Colo. Mining Ass’n v. Bd. of County Comm’rs*, 199 P.3d 718, 723 (Colo. 2009). “[W]hen a home-rule ordinance conflicts with state law in a matter of either statewide or mixed state and local concern, the state law supersedes that conflicting ordinance.” *City of Longmont v. Colo. Oil & Gas Ass’n*, 2016 CO 29, ¶¶ 17–18, 369 P.3d 573, 579.

47. Article XX, section 6(a) of the Colorado Constitution provides home rule cities like Aurora “power to legislate upon, provide, regulate, conduct and control” the “qualifications and terms or tenure of all municipal officers, agents and employees.”

48. “Although the legislature may not *prohibit* the exercise of article XX powers, it may *regulate* the exercise of those powers in areas of statewide or mixed state and local concern.” *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161, 170 n.8 (Colo. 2008); *see also Denver v. State*, 788 P.2d 764, 771 (Colo. 1990) (“[T]he enumeration in Section 6 of matters subject to regulation by home rule municipalities is not dispositive” of whether such matters are of local or statewide concern.).

49. With respect to aspects of municipal employment which are of statewide concern, state statutes may supersede inconsistent municipal provisions. *Denver v. State*, 788 P.2d at 770. For example, there is no “disput[ing] the applicability of laws which implement the state’s general public policy regarding such matters as workers’ compensation or employment discrimination even though such laws may interfere with a municipality’s right to determine the ‘terms and tenure’ of municipal employment.” *Id.*

50. As reflected in the Colorado Constitution and the Colorado Revised Statutes, the restoration of the rights of citizenship, including the right to run for public office, to those who have completed sentences resulting from felony convictions is a matter of fundamental statewide concern.

51. Statewide uniformity is necessary to achieve Colorado’s weighty interests in ensuring that every qualified elector in Colorado may run for public office – *see* COLO CONST. art. VII, § 6; C.R.S. § 31-10-301 – that every person who has served a sentence of imprisonment is restored to all the rights of citizenship guaranteed by the Colorado Constitution – *see* COLO. CONST. art. VII, § 10 – and that no one in Colorado is unfairly deprived of their fundamental right of citizenship to run for elected office, *see* COLO. CONST. art. II, § 25.

52. The Colorado General Assembly has traditionally defined which crimes are felonies as well as the consequences of felony conviction and imprisonment.

53. Since it was first adopted, the Colorado Constitution has defined the effect of conviction and imprisonment on disqualification from office as a statewide matter. *See* COLO. CONST. art. VII, § 10; COLO. CONST. art. XII, § 4.

54. To the extent Section 3-3 of the Aurora City Charter and section 54-31 of the Aurora City Code ban anyone with any felony conviction from running for or holding elective office in the City of Aurora, those provisions are preempted by Colorado law restoring all the rights of citizenship, including the right to run for and hold public office, to those who have completed sentences resulting from the felony conviction.

FOURTH CLAIM
Controversy under Colorado Municipal Election Code
C.R.S. §13-10-1401

55. Paragraphs 1 through 54, above, are incorporated herein by reference.

56. Section 2-1 of the Aurora City Charter states that municipal elections shall be governed by the Colorado Uniform Election Code (C.R.S. §1-1-101, *et seq.*) or the Colorado Municipal Election Code (C.R.S. §31-10-101, *et seq.*) “except as modified by City Code.” Section 54-1 of the Aurora City Code states that the provisions of the Colorado Uniform Election Code (C.R.S. §1-1-101, *et seq.*) and the Colorado Municipal Election Code (C.R.S. §31-10-101, *et seq.*) shall govern all city elections “unless otherwise provided by this Code.”

57. To the extent that a provision of the Aurora City Charter and/or City Code cannot be given effect as a matter of law, such matter shall be governed by the Colorado Municipal Election Code and/or the Colorado Uniform Election Code. As set forth in Ms. Bailey’s First, Second, and Third Claims, above, section 3-3 of the Aurora City Charter and section 54-31 of the Aurora City Code cannot be given effect as a matter of law to the extent that they prevent Ms. Bailey from becoming a candidate for or holding municipal office on the basis of her prior felony conviction.

58. There is no criterion or disqualification under the Colorado Municipal Election Code for persons who have been convicted of a felony:

Every registered elector eighteen years of age or older on the date of the election may circulate a nominating petition and hold office in any municipality, unless another age is required by local charter or ordinance, if he or she has resided in the municipality or municipality and ward, as the case may be, from which he or she is to be elected for a period of at least twelve consecutive months immediately preceding the date of the election.

C.R.S. § 31-10-301.

59. Pursuant to C.R.S. § 31-10-302(1) of the Colorado Municipal Election Code, “[c]andidates for municipal offices shall be nominated, without regard to affiliation, on forms supplied by the clerk.”

60. Pursuant to C.R.S. § 31-10-305 of the Colorado Municipal Election Code, “[a]ll petitions of nomination and affidavits that are in apparent conformity with the provisions of section 31-10-302, as determined by the clerk, are valid” [unless objection is made and sustained under that section].

61. Any action or inaction by the City Clerk that would impede or permit the impeding of Ms. Bailey’s right or ability to seek nomination and election to municipal office in

the City of Aurora based upon her having a prior felony conviction would constitute a breach of duty under, and noncompliance with, the provisions of the Colorado Municipal Election Code.

62. Because section 3-3 of the City Charter and section 54-31 of the City Code disqualify Ms. Bailey from becoming a candidate for or holding elective office in the City of Aurora on the basis of her prior felony conviction, a controversy exists between Ms. Bailey and the City Clerk—an officer charged with a duty or function under the Colorado Municipal Election Code—under C.R.S. § 31-10-1401.

63. Pursuant to C.R.S. §31-10-1401, Ms. Bailey is entitled to request this Court to summarily hear and dispose of the issues giving rise to the controversy “with a view to obtaining substantial compliance with the provisions of [the Colorado Municipal Election Code].”

FIFTH CLAIM
Controversy and Breach of Duty and Wrongful Act
under the Colorado Uniform Election Code
C.R.S. §1-1-113

64. Paragraphs 1 through 63, above, are incorporated herein by reference.

65. Section 2-1 of the Aurora City Charter states that municipal elections shall be governed by the Colorado Uniform Election Code (C.R.S. §1-1-101, *et seq.*) or the Colorado Municipal Election Code (C.R.S. §31-10-101, *et seq.*) “except as modified by City Code.” Section 54-1 of the Aurora City Code states that the provisions of the Colorado Uniform Election Code (C.R.S. §1-1-101, *et seq.*) and the Colorado Municipal Election Code (C.R.S. §31-10-101, *et seq.*) shall govern all city elections “unless otherwise provided by this Code.”

66. To the extent a provision of the Aurora City Charter and/or City Code cannot be given effect as a matter of law, such matter shall be governed by the Colorado Uniform Election Code and/or the Colorado Municipal Election Code. As set forth in Ms. Bailey’s First, Second, and Third Claims, above, section 3-3 of the Aurora City Charter and section 54-31 of the Aurora City Code cannot be given effect as a matter of law to the extent that they prevent Ms. Bailey from becoming a candidate for or holding municipal office on the basis of her prior felony conviction.

67. Nominations and elections for municipal offices in the City of Aurora are nonpartisan. Aurora City Code Sec. 54-32(a). Pursuant to C.R.S. § 1-4-503 of the Colorado Uniform Election Code, “[n]ominations for all elected nonpartisan local government officials must be by petition for nomination as provided in part 8 of this article.” Part 8 of article 4 provides that “[a]ny person who desires to be a candidate for a municipal office in a coordinated election shall, in lieu of the requirements of this article, comply with the nominating petition procedure set forth in the ‘Colorado Municipal Election Code of 1965’, article 10 of title 31, C.R.S.” C.R.S. § 1-4-805. Section 54-7(a) of the Aurora City Code provides that its municipal elections shall be held as part of coordinated elections.

68. Noncompliance or immediately prospective noncompliance by the Aurora City Clerk with the requirements of the Colorado Municipal Election Code—as set forth in Ms. Bailey’s Fourth Claim, above—therefore also constitutes a present or immediately prospective “breach or neglect of duty or other wrongful act” and a present “controversy” between an “official charged with any duty or function” under the Colorado Uniform Election Code. *See* § 1-1-113(1).

69. Pursuant to C.R.S. §1-1-113(1), Ms. Bailey is entitled to request that this Court to issue an order requiring substantial compliance with the requirements of the Colorado Uniform Election Code and requiring the City Clerk to forthwith perform her duty thereunder and/or to desist from any wrongful act.

SIXTH CLAIM
Declaratory and Injunctive Relief Pursuant to C.R.S. §13-51-101, *et seq.*,
and C.R.C.P 57 and 65

70. Paragraphs 1 through 69, above, are incorporated herein by reference.

71. Ms. Bailey is entitled to a declaration of her rights to seek nomination as a candidate for City Council in the City of Aurora, and to serve in such capacity if elected, pursuant C.R.S. §13-51-101, *et seq.* (the Colorado “Uniform Declaratory Judgments Law”) and C.R.C.P. 57.

72. Ms. Bailey is also entitled to a permanent injunction under C.R.C.P. 65 to prevent the City of Aurora and the City Clerk from seeking to disqualify her from being a candidate for or holding public office in the City of Aurora on the basis of her prior felony conviction.

PRAYER FOR RELIEF

WHEREFORE, Ms. Bailey respectfully requests that the Court grant her the following relief:

A. To summarily hear and enter such orders as it deems appropriate to assure substantial compliance by the Defendants with the requirements of the Colorado Municipal Election Code, C.R.S. §31-10-101, *et seq.*, and to assure that Ms. Bailey’s constitutional and statutory rights to be a candidate for office and, if elected, to serve in office in the City of Aurora will not be impaired or interfered with in any way on account of her prior felony conviction;

B. To summarily hear and enter such orders as it deems appropriate to assure substantial compliance by the Defendants with the requirements of the Colorado Uniform Election Code, C.R.S. §1-1-101, *et seq.*, and to assure that Ms. Bailey’s constitutional and statutory rights to be a candidate for office and, if elected, to serve in office in the City of Aurora will not be impaired or interfered with in any way on account of her prior felony conviction;

C. To declare that, to the extent that section 3-3 of the Aurora City Charter and section 54-31 of the Aurora City Code purport to ban persons with any felony conviction from running for

or holding elective office in the City of Aurora, application of such provisions to her would violate the Constitution and laws of the State of Colorado and would, therefore, be invalid;

D. To enter a permanent injunction prohibiting the Defendants, and all persons and entities acting under their direction or on their behalf, from taking any further actions to exclude Ms. Bailey from running for or holding public office in the City of Aurora on account of her prior felony conviction; and

E. For such further and different relief as the Court may deem just and proper.

Respectfully submitted this 27th day of May, 2021.

/s/ Edward T. Ramey

Edward T. Ramey #6748
Tierney Lawrence LLC
225 E. 16th Avenue, Suite 350
Denver, CO 80203
eramey@tierneylawrence.com
P: (720) 242-7585
(303) 949-7676 (cell)

Mark Silverstein, #26979
Sara R. Neel, #36904
American Civil Liberties Union Foundation
of Colorado
303 E. 17th Ave., Suite 350
Denver, Colorado 80203
msilverstein@aclu-co.org
sneel@aclu-co.org
P: (303) 777-5482
F: (303) 777-1773

Attorneys for Plaintiff