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November 2, 2022

**SENT VIA ELECTRONIC MAIL:** [dbeckman@weldgov.com](mailto:dbeckman@weldgov.com)

*Re: Unconstitutional charter provision purporting to bar anyone with prior felony conviction from running for county office*

Dear County Attorney McCargar:

I write to draw your attention to an unlawful restriction in the Weld County Charter—article VI, section 5(5)—that purports to bar everyone who has ever been convicted of any felony from being eligible for county office.<sup>1</sup> That categorical barrier to candidacy plainly conflicts with the Colorado Constitution, which protects the right to run for office as a fundamental right of citizenship that can be permanently revoked *only* upon conviction for a handful of specifically enumerated crimes.<sup>2</sup> Earlier this year, ACLU of Colorado (“ACLU”) successfully challenged a restriction similar to article III, section 3 in Aurora, obtaining not only a court judgment—but also the defendant city’s agreement—that its categorical ban violated the Colorado Constitution.<sup>3</sup> This letter sets out article VI, section 5(5)’s parallel flaws and asks that you address this unlawful barrier to ballot access in Weld County.

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<sup>1</sup> County Charter § 6-5(5) (“A person who has been convicted of a felony shall not be eligible to be elected or appointed to County office.”).

<sup>2</sup> Colo. Const. art. II, § 25; art. VII, § 10; art. XII, § 4.

<sup>3</sup> *Bailey v. Aurora*, 2021CV30919 (Arapahoe Dist. Ct., March 14, 2022) (Scipione, J.) (attached as Exhibit A); Michael Roberts, *Latest Blow to Laws that Ban Candidates with Past Felonies*, Westword (Mar. 30, 2022), <https://www.westword.com/news/aurora-colorado-felony-candidate-bans-update-13751798>.

**A. The County Charter categorically disqualifies everyone who has ever been convicted of any felony from eligibility for county office.**

Article VI, section 5 of the Weld County Charter sets out the qualifications of county officers. To be eligible for elected office, an individual must (1) be a qualified elector of the county; (2) have resided in the county for a consecutive period of not less than one year preceding election; and (3) be at least twenty-one years of age before assuming office. Weld County Charter § 6-5. But even where the above criteria are met, the charter provides that “A person who has been convicted of a felony shall not be eligible to be elected or appointed to County office.” Weld County Charter § 6-5(5) (hereinafter, the “categorical ban”).

**B. The Categorical Ban infringes upon rights of citizenship guaranteed under article VII, section 10 of the Colorado Constitution.**

Under Colorado law, individuals lose some rights of citizenship—including the rights to vote and to run for public office—during their incarceration for a felony conviction. Colo. Const. art. VII, § 10; C.R.S. § 18-1.3-401(3). But the Colorado Constitution makes clear that, as a general rule, once a person completes their sentence, all their rights of citizenship are automatically restored. Colo. Const. art. VII, § 10 (“[E]very such person . . . by virtue of having served out his full term of imprisonment, shall without further action, be [re]invested with all the rights of citizenship.”); *Cowan v. City of Aspen*, 181 Colo. 343, 348 (1973) “[T]he right to hold public office, by either appointment or election, is one of the valuable and fundamental rights of citizenship.”); *Sterling v. Archambault*, 332 P.2d 994, 995 (Colo. 1958) (holding under article VII, section 10 that a person who had served out his full term of imprisonment was automatically reinvested with all the rights of citizenship and therefore eligible to be a candidate for State Senator).

The Colorado Constitution carves out only a single exception to article VII, section 10’s automatic restoration rule: where the underlying conviction is for one of five crimes enumerated in article XII, section 4—(1) embezzlement of public moneys, (2) bribery, (3) perjury, (4) solicitation of bribery, or (5) subornation of perjury—the person is permanently ineligible for “holding any office of trust or profit” in the state. Colo. Const. art. XII, § 4. Thus, the *only* convictions that can, consistent with the Colorado Constitution, continue to disqualify a person from running for public office in Colorado after they have completed their sentence are the five specified in article XII, section 4.<sup>4</sup>

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<sup>4</sup> The General Assembly has codified this constitutional rule in the Colorado Criminal Code. C.R.S. § 18-1.3-401(3) (restoring right to hold public office following completed term of imprisonment or probation except where underlying felony conviction is for one of five crimes enumerated in Colo. Const. art. XII, § 4).

Because article VI, section 5(5) of the County Charter bars anyone who has ever been convicted of *any* felony from county office—including felonies *not* enumerated in article XII, section 4—it impermissibly infringes upon rights of citizenship guaranteed under article VII, section 10 of the Colorado Constitution.

**C. The Categorical Ban also violates the right to equal protection of the laws guaranteed under article II, section 25 of the Colorado Constitution.**

The Colorado Supreme Court has characterized the right to run for public office as “one of the valuable and fundamental rights of citizenship,” which “may not be infringed upon by invidious discriminatory disqualifications.” *Cowan v. Aspen*, 509 P.2d 1269, 1272 (Colo. 1973). While candidacy requirements may legitimately be drawn to meet the basic needs of a particular elected position, the “individual fitness of a candidate . . . must be left to the choice of the voter if voting is to mean anything.” *Id.* at 1273.

For these reasons, the Court has applied a “compelling governmental interest test” to ballot restrictions like article VI, section 5(5) of the County Charter. That test requires that “the reason for making a decision for the voters as to who shall be qualified to run for public office must be real, clear and compelling.” *Id.* Weld County simply cannot justify a permanent and total ban on the candidacy of every person who has ever been convicted of any felony under this exacting standard. It cannot be said that every felony conviction, no matter the crime, no matter its age, and no matter the circumstances, necessarily renders one incompetent for public office. Such a categorical exclusion is not only unreasonable, but also harmfully entrenches racial disparity in ballot access given disproportionate conviction rates of people of color.<sup>5</sup> Ultimately, the decision whether a prior felony conviction has any bearing on a candidate’s fitness for office is properly left to Weld County voters.

**D. The County should address its unconstitutional charter provision.**

Weld County is one of many Colorado municipalities with a charter provision purporting to ban anyone with a prior felony conviction from running for local office.<sup>6</sup> The ACLU successfully challenged the constitutionality of Aurora’s ban earlier this year. *See Bailey*, Ex. A. Similar to Weld’s charter, Aurora’s provided that “a person who has been convicted of a felony shall not become a candidate for nor hold elective office.” Aurora Charter § 3-3. The court concluded this total ban

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<sup>5</sup> *See* NAACP, *Criminal Justice Fact Sheet*, <https://naacp.org/resources/criminal-justice-fact-sheet> (last visited Oct. 28, 2022).

<sup>6</sup> *See Roberts*, *supra* note 3.

violated both the rights of citizenship and equal protection guarantees of the Colorado Constitution:

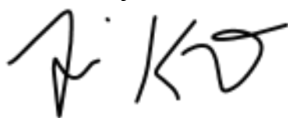
[T]o the extent that section 3-3 of the Aurora City Charter purports to ban all persons who have a prior felony conviction from running for or holding elective office in the City of Aurora, that provision violates the Colorado Constitution's guarantees of the rights of citizenship . . . and equal protection of the laws . . . .

We are confident that if challenged in court, the substantially similar article VI, section 5(5) of the Weld County Charter would be invalidated for the same reasons.

The ACLU asks that you acknowledge that the Weld County Charter provision violates the Colorado Constitution. In addition, we ask you to take affirmative steps to ensure that this unconstitutional provision does not prevent otherwise eligible candidates from running for local public office. In our case against Aurora, for example, the city (1) immediately conceded the unconstitutionality of its ban; (2) committed not to enforce it; and (3) annotated the charter provision with an “editor’s note” reflecting that the ban must be read to apply only to the felonies listed in article XII, section 4 of the Colorado Constitution—all *before* the ban was formally declared unconstitutional in court. Aurora’s City Council also referred a charter amendment to the voters to remove the voided language “to conform the qualifications of elective officers of the city with . . . the Colorado Constitution.”<sup>7</sup> We encourage Weld to follow Aurora’s good example and take all available steps to align its charter with the Colorado Constitution.

We would appreciate a substantive response to this letter within two weeks.

Sincerely,



Anna I. Kurtz  
Staff Attorney, ACLU of Colorado

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<sup>7</sup> *Ballot Question on City Charter Amendment*, City of Aurora (Oct. 24, 2022), [https://www.auroragov.org/news/whats\\_new/ballot\\_question\\_on\\_city\\_charter\\_amendment](https://www.auroragov.org/news/whats_new/ballot_question_on_city_charter_amendment).

# Exhibit A

District Court, ARAPAHOE COUNTY, COLORADO 7325 S. Potomac Street Centennial, CO 80112	DATE FILED: March 14, 2022 2:51 PM CASE NUMBER: 2021CV30919
<p><b>Plaintiff:</b> CANDICE BAILEY, an individual,</p> <p>v.</p> <p><b>Defendants:</b> CITY OF AURORA; and          KADEE RODRIGUEZ, in her official capacity as City Clerk          for the City of Aurora</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	Case Number: 2021CV30919  Ctrm: 204
<b>ORDER RE: PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT</b>	

In consideration of Plaintiff's Motion for Entry of Judgment, the Response, Reply, together with this Court's findings, conclusions, and orders set forth in its Order dated November 29, 2021, the Court **GRANTS** the Motion.

Accordingly, this Court declares that, to the extent that section 3-3 of the Aurora City Charter purports to ban all persons who have a prior felony conviction from running for or holding elective office in the City of Aurora, that provision violates the Colorado Constitution's guarantees of the rights of citizenship, Art. VII, § 10, and equal protection of the laws, Colo. Const. art. II, § 25. Finding no disputes of material fact requiring trial, summary judgment is hereby entered against Defendants on Plaintiff's First and Second Claims for Relief.

**SO ORDERED** this 14<sup>th</sup> day of March 2022.

BY THE COURT:

  
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 John E. Scipione  
 District Court Judge