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## Purged Voter Lists

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# NOTES

## PURGED VOTER LISTS

### INTRODUCTION

THE General Assembly amended the Colorado Election Code in 1963 to provide that:

Within ninety days following the general election,<sup>[1]</sup> the county clerk *shall* furnish to the county chairmen of the *two major political parties*<sup>[2]</sup> a list containing the names, addresses, precinct numbers and party affiliations of the electors<sup>[3]</sup> whose names were removed<sup>[4]</sup> from the registration book<sup>[5]</sup> for failure to vote at the last preceding general election.<sup>6</sup>

Although the legislature has the power to enact reasonable regulations regarding registration of voters when such regulations do not violate constitutional provisions of the state<sup>7</sup> or of the United

<sup>1</sup> The term *general election* is defined as "the election held on the Tuesday succeeding the first Monday of November in each even numbered year." COLO. REV. STAT. § 49-1-4(1) (1963).

<sup>2</sup> A *major political party* is defined as "one of the two political parties whose candidates for governor at the last preceding gubernatorial election received the first and second greatest number of votes." COLO. REV. STAT. § 49-1-4(13) (1963). Query whether this is a just classification, in that any political party *might* number the *greatest* percentage of electors and yet not have even run a gubernatorial candidate.

<sup>3</sup> An *elector* is one "who is legally qualified to register to vote in this state." COLO. REV. STAT. § 49-1-4(4) (1963).

<sup>4</sup> Purging the registration book is required by COLO. REV. STAT. § 49-4-21(1) (1963).

<sup>5</sup> A *registration book* contains the identification and registration information pertaining to individual electors. See COLO. REV. STAT. § 49-1-4(21), (22) (1963).

<sup>6</sup> COLO. REV. STAT. § 49-4-21(3) (1963) (emphasis and footnotes added). See also COLO. REV. STAT. § 49-4-21(4) (1963), which required similar action *before* the primary election in 1964.

<sup>7</sup> *Harrell v. Sullivan*, 220 Ind. 108, 40 N.E.2d 115 (1942), *overruled on other grounds*, *State v. Marion Cir. Ct.*, 225 Ind. 7, 72 N.E.2d 225 (1947). As to the problem of concern here, *Harrell* is closely analogous on one point of its four alternative holdings. *Harrell* holds that:

The requirement that registration boards . . . shall supply the county chairmen of the two major political parties with copies of registration memoranda is likewise invalid for two reasons. It is bad for classification since . . . it grants privileges to the members of two political parties which, upon the same terms, do not equally belong to all.

*Id.* at 124, 40 N.E.2d at 121.

The broad language in *Marion Cir. Ct.* overruling *Harrell* "in all things" has not been followed in Indiana or elsewhere. *Cf. Terry v. Adams*, 90 F. Supp. 599 (S. D. Tex. 1950); *State v. Millspaugh*, 241 Ind. 656, 659, 175 N.E.2d 13, 15 (1961); *Indiana Dep't of Rev. v. Callaway's Estate*, 232 Ind. 1, 5, 110 N.E.2d 903, 905 (1953). Apparently the *Marion Cir. Ct.* holding is being limited to the question of the constitutionality of a statute requiring appointment of public officials from members of political parties, which is the point on which *Harrell* is overruled. In *Harrell*, the taxpayers laid a great deal of stress in their brief on the furnishing of memoranda at public expense for private (major political party) purposes. See Annot., 140 A.L.R. 455, 459 (1942).

States,<sup>8</sup> it is submitted that this enactment falls within the prohibition of "special legislation."<sup>9</sup>

### I. THE REGISTRATION LAWS

The laws regarding registration, purging of voters who did not vote or register, and re-registration of voters, are all a part of the "machinery of election" or of conducting an election.<sup>10</sup> Nothing in our constitutional system expressly sanctions legislative favoritism or discrimination in the elective process based on political party affiliation.<sup>11</sup> Nonetheless, in Colorado, no person can lawfully be permitted to vote at any primary, general or special election without first having registered within the time and in the manner required by statute.<sup>12</sup> This includes designating one's political affiliation. The underlying purpose of the registration laws is the prevention of election fraud.<sup>13</sup>

As a consequence of the new provisions of the Election Code, the County Clerk would appear to be required by law to use tax-paid personnel and the facilities of his office to provide the county chairmen of the winning and runner-up political parties with a free list of purged voters. This free service<sup>14</sup> is given without provision for

<sup>8</sup> *Mason v. Missouri*, 179 U.S. 328 (1900). See also *Stewart v. Bacon County*, 148 Ga. 105, 95 S.E. 983 (1918); *People v. Hoffman*, 116 Ill. 587, 5 N.E. 596 (1886); *Coggeshall v. Des Moines*, 138 Iowa 730, 117 N.W. 309 (1908); *Pope v. Williams*, 98 Md. 59, 56 Atl. 543 (1903), *aff'd*, 193 U.S. 621 (1904); *Capen v. Foster*, 29 Mass. (12 Pick) 485 (1832).

<sup>9</sup> COLO. CONST. art. V, § 25. The statute may also violate the equal protection clause of the Federal Constitution. Throughout the paper there will be references to that clause and its application. The theory of invalidity under equal protection, is predicated on an analysis quite similar to the one utilized in this paper; however, the special legislation argument would seem to have more validity and less technical problems associated with it. For instance, the questions of a) standing, b) jurisdiction, and c) the giving of advisory opinions or declaratory judgments, present problems if a "federal case" is made out. There would seem to be no problem that this is sufficient "state action" and that the personal or political rights involved are appropriate to raise a justiciable issue. As these questions are peripheral to our discussion, it has been assumed that *at least* taxpaying purged electors of the minority parties would have standing in a class action and that the Colorado Supreme Court would grant a declaratory judgment.

<sup>10</sup> *Board of Registration Comm'rs v. Campbell*, 251 Ky. 597, 65 S.W.2d 713 (1933) (dictum).

<sup>11</sup> The heritage of a predominantly two-party system would seem to be, however, a natural result of the "republican form" we are guaranteed. See generally BROGAN, *POLITICS AND LAW IN THE UNITED STATES*, ch. 11 (1945). Brogan depicts the so-called two-party system as not a truly national concept but states that it operates in a regional fashion at best. In BROGAN, *op. cit. supra* at 47, it is further pointed out that the framers may have attempted to provide *against* the two-party concept.

<sup>12</sup> COLO. REV. STAT. § 49-4-1 (1963).

<sup>13</sup> *Board of Registration Comm'rs v. Campbell*, 251 Ky. 597, 65 S.W.2d 713 (1933); *Simms v. County Ct. of Kanawha County*, 134 W. Va. 867, 61 S.E.2d 849 (1950). *Cf.* § IV, B *infra*, of this Note, as to the more express purpose.

<sup>14</sup> COLO. REV. STAT. § 49-4-21(3) (1963). There is no provision for a charge or fee. It is assumed that none could be made by the clerk. Compare COLO. REV. STAT. § 49-4-23 (1963), authorizing receipt from the county of certain fees. See also COLO. REV. STAT. § 49-4-25 (1963), providing for examination of the books as public records.

equal, or *any*, services to other political parties or unaffiliated, *i.e.*, independent, electors.

## II. THE FACTS

Among electors both purged and unpurged are those affiliated with each of several political parties and others unaffiliated with any political party. In 1960 the names of two "minor" political parties, the Socialist-Labor and Socialist Workers, appeared on the general election ballots.<sup>15</sup> These two parties cast a total of 3,375 votes in Colorado,<sup>16</sup> 1,618 votes in the City and County of Denver,<sup>17</sup> 582 votes in Pueblo County,<sup>18</sup> over 100 votes in four other counties,<sup>19</sup> and some votes in almost all of the counties.<sup>20</sup> An independent candidate for the United States Senate in 1960 received 3,351 votes.<sup>21</sup> In 1964, the Socialist-Labor, Socialist Workers and Prohibition parties cast a total of 4,195 votes in Colorado,<sup>22</sup> over 100 votes in nine different counties,<sup>23</sup> and some votes in all but five counties.<sup>24</sup> The "major political parties" in those years were the Republican and the Democratic parties.<sup>25</sup>

It would seem safe to assume that the electors voting Socialist-Labor, Independent, et cetera, were also *registered* as other than Democrat or Republican, and that the percentage purged from each group would be approximately the same. It would then follow that, although there has been no serious threat to the dominance of the two major parties currently in power, there are substantial numbers of electors whose rights stand to be infringed.

Since the burden of proof, through the presentation of adequate facts, is on the one who attacks the constitutionality of registration statutes,<sup>26</sup> it would seem of paramount importance that some discrepancy be shown between re-registration of members of the major

<sup>15</sup> STATE OF COLORADO, ABSTRACT OF VOTES CAST 10 (1960).

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Id.* at 20 (1964).

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.* Even more impressive was the New Hispano showing in the 1966 gubernatorial race, in which they tallied 16,201 votes. STATE OF COLORADO, ABSTRACT OF VOTES CAST 25 (1966). Elsewhere in the nation, it was found that in Norwalk, Connecticut, in the 1947 and 1949 elections, the two *major* political parties were the Socialist Party with the Republican Party in 1947 and with the Democratic Party in 1949. See *Mills v. Gaynor*, 136 Conn. 632, 73 A.2d 823 (1950).

<sup>26</sup> *People v. Earl*, 42 Colo. 238, 254, 94 Pac. 294, 299 (1908) (holding, *inter alia*, that the registration statute attacked was not special legislation).

and of the minor political parties (the latter taken to include independents). It is submitted that this can be accomplished.<sup>27</sup>

### III. THE PROBLEM

Article V, Section 25 of the Constitution of Colorado provides:

The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say; for . . . the opening or conducting of any election, . . . granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever. In all other cases, where a general law can be made applicable, no special law shall be enacted.

As can be seen, Colorado adopted this section for the purpose of prohibiting special legislation, privileges and favoritism where general laws could be applied.

It is well settled that a law is not local or special when it is general and uniform in its operation upon all in like situation, [so the second question is] . . . whether or not the classification provided by the acts under consideration is unreasonable. . . .

"To make such a law general there must be some distinguishing peculiarity which gives rise to a *necessity* for the law as to the designated class. A mere classification for the purpose of legislation without regard to such necessity, is simply special legislation of the most pernicious character, and is condemned by the constitution."<sup>28</sup>

What "distinguishing peculiarity" gives rise to a necessity for a law affording to the two major political parties the gratuity and favor of a free list of purged voters?

### IV. THE TESTS

#### A. Power

The legislature has authority, under its police power,<sup>29</sup> to enact *reasonable* regulations for registration of electors only as long as such regulations do not violate any provision of the constitution of the state or of the United States.<sup>30</sup> Basically, the tests for determining the validity of the statutes in question under both the state and federal constitutional provisions, *i.e.*, the "special legislation" and "equal protection" clauses, respectively, are the same.<sup>31</sup> This would seem to

<sup>27</sup> The election commission records regarding purged and re-registered electors are not broken down; in Denver, however, the information is on IBM cards and could be grouped to reflect the statistics necessary.

<sup>28</sup> *People v. Earl*, 42 Colo. 238, 264, 94 Pac. 294, 302-03 (1908), citing *State v. Miller*, 100 Mo. 439, 13 S.W. 677 (1890).

<sup>29</sup> *People v. Hoffman*, 116 Ill. 587, 5 N.E. 596 (1886); *People v. Ford Motor Co.*, 271 App. Div. 141, 63 N.Y.S.2d 697 (1946).

<sup>30</sup> *Simmons v. Byrd*, 192 Ind. 274, 136 N.E. 14 (1922); *State v. Seibert*, 228 Mo. App. 1133, 65 S.W.2d 129 (1933).

<sup>31</sup> *State Tax Comm'rs v. Jackson*, 283 U.S. 527 (1931); *Rosenblum v. Griffin*, 89 N.H. 314, 197 Atl. 701 (1938); *Milwaukie Co. of Jehovah's Witnesses v. Mullen*, 214 Ore. 281, 330 P.2d 5 (1958), *appeal dismissed and cert. denied*, 359 U.S. 436 (1959).

be true, despite the fact that the two provisions are the "antithesis" of one another.<sup>32</sup> That is, whereas one prevents discrimination in enlarging the rights of citizens, the other prevents discrimination in restricting their rights.<sup>33</sup>

### B. *The Purpose*

The legislature's valid exercise of power is predicated on its having a valid purpose in the first instance. The legislature's purpose must be established before determining whether the classification itself is reasonable. According to the cases, the underlying purpose is the prevention of election fraud.<sup>34</sup> It has been said that the exercise of legislative power in this area is for the purpose of regulating, not qualifying, the exercise of the right of suffrage.<sup>35</sup> Apparently, in this instance, the purpose of the legislature was to increase the number of voters of *all persuasions* exercising the elective franchise. Undoubtedly if the purpose had been to aid the major political parties at the expense of the minor parties or minor party and independent electors, the legislation would have been unconstitutional from the outset.<sup>36</sup>

### C. *Determination of Reasonableness of the Classification*

"In the matter of classification, the legislature has a wide range of discretion."<sup>37</sup> Special legislation, or class legislation as it is sometimes called, violates constitutional prohibitions when the classification used is arbitrary and capricious,<sup>38</sup> when it is not reasonable,<sup>39</sup>

<sup>32</sup> *State v. Savage*, 96 Ore. 53, 59, 184 Pac. 567, 570 (1919). Compare *Truax v. Corrigan*, 257 U.S. 312 (1921); *Central Lumber Co. v. South Dakota*, 226 U.S. 157 (1912); *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540 (1901); *American Sugar Refining Co. v. Louisiana*, 179 U.S. 89 (1900), to the effect that the Fourteenth Amendment is not necessarily infringed by special legislation.

<sup>33</sup> *Savage v. Martin*, 161 Ore. 660, 684, 91 P.2d 273, 286-87 (1939). *But see* *Rosenblum v. Griffin*, 89 N.H. 314, 197 Atl. 701 (1938), to the effect that the equal protection clause requires equality of benefit as well as equality of burden.

<sup>34</sup> See note 13 *supra*.

<sup>35</sup> *Piuser v. Sioux City*, 220 Iowa 308, 262 N.W. 551 (1935); *Dysart v. St. Louis*, 321 Mo. 514, 11 S.W.2d 1045 (1928); *Simms v. County Ct. of Kanawha County*, 134 W. Va. 867, 61 S.E.2d 849 (1950).

<sup>36</sup> See note 7 *supra*. Compare *Remsen v. Woolley*, 22 N.J. Super. 459, 92 A.2d 87 (1952), *with* *Harrell v. Sullivan*, 220 Ind. 108, 40 N.E.2d 115 (1942), *overruled on other grounds*, *State v. Marion Cir. Ct.*, 225 Ind. 7, 72 N.E.2d 225 (1947).

<sup>37</sup> *Driverless Car Co. v. Armstrong*, 91 Colo. 334, 338, 14 P.2d 1098, 1100 (1932), citing *Rifle Potato Growers Co-op. Ass'n v. Smith*, 78 Colo. 171, 240 Pac. 937 (1925). See also cases cited at 16 AM. JUR. 2d Constitutional Law § 495 n. 20, at 862 (1964).

<sup>38</sup> *Walters v. St. Louis*, 347 U.S. 231, 237 (1954); *Southern Ry. Co. v. Greene*, 216 U.S. 400 (1910); *Billings v. Illinois*, 188 U.S. 97 (1903); *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540 (1902); *Cotting v. Godard*, 183 U.S. 79 (1901); *Gulf, Colo. & Santa Fe Ry. Co. v. Ellis*, 165 U.S. 150 (1897); *State ex rel. Astor v. Schlitz Brewing Co.*, 104 Tenn. 715, 731, 59 S.W. 1033, 1040 (1900).

<sup>39</sup> *New York Rapid Transit Corp. v. New York*, 303 U.S. 573 (1937), *reh. denied*, 304 U.S. 588 (1938); *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison*, 301 U.S. 459 (1937); *Old Dearborn Distrib. Co. v. Seagram-Distillers Corp.*, 299 U.S. 183 (1936).

when it is unjust,<sup>40</sup> when it does not have a rational basis,<sup>41</sup> when it is not based on a reasonable distinction in principle,<sup>42</sup> when it is not reasonably adopted to secure a legitimate public interest,<sup>43</sup> or when it reflects no material or substantial differences between the regulated and nonregulated classes.<sup>44</sup> Also, when one class benefits, there must be good reason for conferring a special privilege on that class.<sup>45</sup> Furthermore, the statute "must affect alike all persons in the same class and under similar conditions."<sup>46</sup>

If we assume the valid purpose of the legislation,<sup>47</sup> the next step is to determine whether the classification limiting the distribution of the purged voter list to the county chairmen of the two major parties is reasonable, by the tests above. One reason for the legislature conferring a special privilege on the two major political parties might have been the belief that other political parties would not have a county chairman in each of the sixty-three counties. Also, the legislature might have felt that the classification was reasonable because this was the only way of getting any voters re-registered. It is of record, however, that votes are cast in most of the counties by these other political parties,<sup>48</sup> so there would seem to be at least *one* person to receive the information. And, in any event, the independent voters are in no way represented by the classification. It is just as arbitrary to distinguish Democrats and Republicans from New Hispanos as it would be to distinguish red-headed and black-haired men.<sup>49</sup> Yet this is the net effect of the statute. Similarly, the other tests (above) are not met. Thus, there would seem to be no reason, in law or fact, to classify into "major" and "minor" political parties.

<sup>40</sup> Consumers' League v. Colo. & So. Ry. Co., 53 Colo. 54, 125 Pac. 577 (1912).

<sup>41</sup> Minnesota v. Probate Court, 309 U.S. 270 (1940).

<sup>42</sup> American Sugar Refining Co. v. Louisiana, 179 U.S. 89 (1900).

<sup>43</sup> Woolf v. Fuller, 87 N.H. 64, 174 Atl. 193 (1934).

<sup>44</sup> Old Dearborn Distrib. Co. v. Seagram-Distillers Corp., 299 U.S. 183 (1936); Nebbia v. New York, 291 U.S. 502 (1934); State Bd. of Tax Comm'rs v. Jackson, 283 U.S. 527 (1931). The Supreme Court of Colorado has held that:

to constitute class legislation within the constitutional prohibition, the classification must be unreasonable. The question of classification is primarily for the legislature. Courts will not interfere with legislative classification *unless* it appears that there is 'no fair reason for the law that would not equally require its extension to the excepted class.'

Driverless Car Co. v. Armstrong, 91 Colo. 334, 338, 14 P.2d 1098, 1100 (1932), citing Watson v. Maryland, 218 U.S. 173 (1910) (emphasis added).

<sup>45</sup> Champlin Refining Co. v. Cruse, 115 Colo. 329, 173 P.2d 213 (1946).

<sup>46</sup> Zeigler v. People, 109 Colo. 252, 264, 124 P.2d 593, 598 (1942); *accord*, Champlin Refining Co. v. Cruse, 115 Colo. 329, 173 P.2d 213 (1946).

<sup>47</sup> The burden of proof is almost too heavy to meet on this point. An object (purpose) would probably be held valid for an exercise of power if any set of facts could reasonably be conceived which would allow a finding of constitutionality. McGowan v. Maryland, 366 U.S. 420 (1961); Allied Stores, Inc. v. Bowers, 358 U.S. 522 (1959); Savage v. Martin, 161 Ore. 660, 91 P.2d 273 (1939).

<sup>48</sup> See notes 15-25 *supra*.

<sup>49</sup> Tanner v. Little, 240 U.S. 369 (1916).

Furnishing a free list of purged voters to the two major political parties is a "sophisticated" mode of discrimination (in equal protection language) against all other political parties and individual voters, but it would seem that the constitutional provision should nullify "sophisticated as well as simple-minded modes of discrimination."<sup>50</sup>

#### D. *Determination of the Reasonable Relation Between Classification and Purpose*

If there is no legislative power, then the reasonableness and valid scientific basis of the classification are to no avail in upholding the statute.<sup>51</sup> Likewise, if the classification is improper, there can be no reasonable relationship of that classification to any legitimate ends of the legislation.<sup>52</sup>

A valid purpose and power have been stipulated above.<sup>53</sup> Now assume *arguendo* that a valid classification exists. The analysis is still not complete, however, until a reasonable relationship is established between the classification and the purpose. The classification will not serve to achieve the legitimate ends sought unless it is also assumed that the county chairmen are required,<sup>54</sup> by implication, to make an effort to re-register all electors purged.

#### E. *Discrimination in Administration*

The constitutionality of the statute before us must be tested in its *practical* effects. The validity of a statute depends upon how it is construed and applied.<sup>55</sup> Under the existing law, all purged voters are not treated uniformly throughout the state in an effort to re-register them.<sup>56</sup> The extent of the effort made to re-register them is delegated to the discretion of two major political party county chairmen in each county. The natural objective of these chairmen is not to get *all* purged voters re-registered, but rather it is to register only those persons who vote for their own party. It is clearly unreasonable to expect the Republican or Democratic county chairmen to exert as

<sup>50</sup> Lane v. Wilson, 307 U.S. 268, 275 (1939). See Gomillion v. Lightfoot, 364 U.S. 339 (1960); Yick Wo v. Hopkins, 118 U.S. 356 (1886). See also Reynolds v. Sims, 377 U.S. 533 (1964).

<sup>51</sup> Tanner v. Little, 240 U.S. 369 (1916).

<sup>52</sup> Walters v. St. Louis, 347 U.S. 231 (1954).

<sup>53</sup> See text, § IV, B *supra*.

<sup>54</sup> Note that county chairmen are not officials of the government nor strictly under legislative, judicial or executive control. Cf. State v. Millspaugh, 241 Ind. 656, 175 N.E.2d 13 (1961) (judicial control).

<sup>55</sup> Concordia Fire Ins. Co. v. Illinois, 292 U.S. 535 (1934) (equal protection case); Mackay Tel. & Cable Co. v. Little Rock, 250 U.S. 94 (1919); Sunday Lake Iron Co. v. Wakefield, 247 U.S. 350 (1918). *In re* Hunter, 97 Colo. 279, 49 P.2d 1009 (1935) (practical inequalities may be permitted).

<sup>56</sup> For the uniformity requirement, see note 28 *supra* and accompanying text.

much effort in getting registrations of Socialist-Laborites as they will in procuring the registration of members of their own parties. Nor will they make an equal, uniform and impartial effort to register all purged voters in a spasm of patriotism to "get out the vote." Obviously a county chairman will use the furnished lists with selectivity and partisan discrimination (in urging re-registration and in giving assistance to the purged electors) in order to justify his own political existence and to achieve the election of his own party candidates, which (latter) function is his primary one.

## V. OTHER POSSIBILITIES

If the Colorado law had provided that the County Clerk and Recorder must mail notices to only those purged voters who were registered as Democrats and Republicans or of any other class or groups less than a whole group of purged voters, the unconstitutionality of such unreasonable special privileges would be clear. Likewise it seems clear that a law furnishing a free list of purged voters to the county chairmen of *all* political parties would violate the constitutional rights of unaffiliated voters.

While courts have power to designate legislative schemes as unlawful, they have no authority to prescribe how the legislature should meet any particular problem or lawful objective.<sup>57</sup> It is helpful in this study to keep in mind that the *lawful* objectives of the legislature to obtain the registration of *all* purged voters (so that they would not be dis-enfranchised at subsequent elections) could have been accomplished in various constitutional ways. For example, the legislature could have required the County Clerk within ninety days after (or before, or both before and after) a general election to mail notices to each purged voter at his last registered address warning him or her that they were purged and must re-register in order to be eligible to vote in any subsequent election.

Similarly, the legislature could have provided that the County Clerk could cause copies of the registry list, or the purged list, or both, to be printed in handbill form and copies made available to any person for a specified fee.<sup>58</sup> In Colorado, certain school districts are already authorized to pay from one to two cents per name to the

<sup>57</sup> *Williams v. State*, 85 Ark. 464, 108 S.W. 838 (1908), *aff'd*, 217 U.S. 79 (1910); *Driverless Car Co. v. Armstrong*, 91 Colo. 334, 14 P.2d 1098 (1932); *Baird v. Wichita*, 128 Kan. 100, 276 Pac. 77 (1929).

<sup>58</sup> This would be similar to the New Jersey practice. See *Remsen v. Woolley*, 22 N.J. Super. 459, 92 A.2d 87 (1952). The New Jersey procedure is permissive with the County Clerk as to whether or not such copies will be prepared at all. However, preparation and availability could be made mandatory. The fee, if any, could be set sufficient in amount to recoup some, if not all, of the cost preparation.

County Clerk and Recorder for registration lists used in their elections.<sup>59</sup>

#### CONCLUSION

In summary, Colorado Revised Statutes, 1963, Section 49-4-21 (3) appears unconstitutional as follows:

A. A general law could have been made applicable without giving an exclusive and special privilege to any political party.

B. The classification made is clearly unreasonable, partisan and discriminatory.

C. The discrimination inherent in the law violates the requirement that there be a reasonable relationship between a legitimate end sought to be achieved and the means utilized.

If by law, lists of purged voters are to be prepared by the County Clerk and Recorder and furnished to anyone, they must be equally available to everyone on the same basis, whether furnished free or for a fee.

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<sup>59</sup> See COLO. REV. STAT. § 123-10-7 (1963).