APPENDIX INDEX

Document Number	Description	Pages
13.	5/03/2020 – Colorado Republican Committee's Response to David Stiver's Motion to Intervene	App. 148-152
14.	5/04/2020 – Intervenor Larry Liston's Response to David Stiver's Motion to Intervene (Corrected)	App. 153-159
15.	5/04/2020 – Attached Affidavit to Intervenor Liston's Response	App. 160-163
16.	5/04/2020 – Petitioner Karl Schneider's Response to David Stiver's Motion to Intervene	App. 164-170
17.	5/04/2020 – Exhibit 1 to Petitioner Schneider's Response (Order re Stay in *Ryan Frazier v. Wayne Williams*, Case No. 2016cv31575, Denver District Court)	App. 171
18.	5/04/2020 – Exhibit 2 to Petitioner Schneider's Response (Colorado Springs Gazette news article, *Colorado Republican Party mired in dispute of El Paso County Senate race*)	App. 172-173
19.	5/04/2020 – Exhibit 3 to Petitioner Schneider's Response (Colorado Springs Gazette news article, *Former GOP election officials ask judge to keep candidate off El Paso County Senate primary ballot*)	App-174-176
20.	5/04/2020 – Exhibit 4 to Petitioner Schneider's Response (Email dated April 20, 2020 from S. Gessler to R. Corporon)	App. 177
21.	5/4/2020 – David Stiver Motion to Intervene	App. 178-179
22.	5/04/2020 – Order re Petition For Relief Under C.R.S. § 1-1-113	App. 180-190

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St., Room 281 Denver, CO 80202	DATE FILED: April 20, 2020 4:45 PM FILING ID: B85EF5D5CFC20 CASE NUMBER: 2020CV31415
Petitioner: KARL K. SCHNEIDER, an individual v. **Respondents:** JENA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly.	▲ **COURT USE ONLY** ▲
Attorney for Petitioner Karl K. Schneider: Scott E. Gessler, Atty Reg No. 28944 Gessler Law Firm, LLC 1801 Broadway, Suite 507 Denver, Colorado 80202 Tel: 720-839-6637 sgessler@gesslerlawfirm.com	Case Number: Division:
Petition for Relief under C.R.S. § 1-1-113	

Introduction

1. Petitioner Karl K. Schneider, through undersigned counsel, submits this *Petition* under C.R.S. § 1-1-113 against Eli Bremer, presiding officer of Republican Party Senate District 10 Assembly, as well as Jena Griswold, Colorado Secretary of State, and states as follows:

2. Under Colorado law, a candidate for state Senate must earn at least 30% of the vote at a nominating assembly to be placed on the primary ballot. Voters at the Republican Senate District 10 nominating assembly elected one candidate with 75% of the vote, but the Colorado State Republican Party central committee seeks to disregard those results, by ordering Eli Bremer, chair of the Senate District 10 Nominating Assembly, to designate two candidates for the ballot, including one who received less than 30% of the vote. This order overturns the election results and directly contradicts state law. Accordingly, this *Petition* seeks to enjoin (1) Chairman Bremer from illegally designating a candidate who

received less than 30% of the vote, and (2) the Colorado Secretary of State from certifying for the June primary ballot a candidate who did not reach the 30% vote threshold.

Parties

3. Petitioner Schneider is a registered Republican elector residing in State Senate District 10, in El Paso County, Colorado. He also is the Vice-Chairman of the Republican Party State Senate District 10 Committee for Senate District 10 (the "Committee").

4. Respondent Eli Bremer is the Chairman of the Republican State Senate District 10 Committee, located in El Paso County, Colorado. He was the presiding officer at the Republican State Senate District 10 Assembly (the "Assembly").

5. Respondent Jena Griswold is the Colorado Secretary of State, located in Denver, Colorado.

Jurisdiction and Venue

6. This Court has jurisdiction over this matter under C.R.S. § 1-1-113.

7. Venue is proper in this Court under to C.R.C.P. 98(b)(2) because the Colorado Secretary of State is located in Denver, Colorado.

General Allegations

8. Candidates who seek to be nominated by a major political party – either the Republican Party or the Democratic Party – have two ways to have their names placed on the ballot; submission of a candidate petition or nomination by party assembly. C.R.S. § 1-4-102.

9. In order to be designated a candidate by assembly, a candidate must receive 30% or more of the vote at a nominating assembly. C.R.S. § 1-4-601(2)(a).

10. Under Republican Party rules, each senate district has a standing committee, responsible for running that district's nominating assembly.

11. Eli Bremer is the chair of the Republican Party Senate District 10 Committee.

12. As chair of the Committee, he serves as the presiding officer at the State Senate District 10 Assembly for the Republican Party.

13. Senate District 10 is located entirely within El Paso County. Under C.R.S. § 1-4-602(2)(a), persons elected as delegates to the county assembly serve also as delegates to the Senate District 10 Assembly.

14. Under El Paso County Republican Party rules, the County Party authorized 355 delegates and 355 alternate delegates to the Assembly. Delegates and alternate delegates were allocated by precinct, as required by C.R.S. § 1-4-602(1)(a)(I).

15. The El Paso County Republican Party held its County Assembly on March 18, 2020.

16. The El Paso County Republican Party designated 179 delegates and 24 alternate delegates to the State Senate District 10 Assembly. These delegates and alternates represented the precincts in which they resided.

17. The County Party transmitted the names and emails of each delegate and alternate to Jody Richie, the Secretary for the State Senate District 10 Committee.

18. Following review of each delegates' eligibility, Ms. Richie determined that one person designated as a delegate for Senate District 10 did not, in fact, reside in Senate District 10.

State Senate District 10 Assembly Convenes

19. The Committee consists of three officers:

a. Eli Bremer, Chair.

b. Karl Schneider, Vice-Chair

c. Jody Richie, Secretary.

20. As the Committee Chair, Bremer also served as presiding officer for the Assembly.

21. On March 14, 2020, the Committee scheduled the Assembly to be held on March 25, 2020 at the Colorado Springs Country Club, located at 3333 Templeton Gap Road, Colorado Springs, CO 80907.

22. Due to emergency measures in response to the declared state of emergency in Colorado, on March 17, 2020, the Committee informed delegates via email that the

Assembly could not be held as scheduled, and that the Assembly would instead be conducted online.

23. On March 19, 2020, the Committee rescheduled the Assembly for 3:00 pm, March 22, 2020.

24. The next day, on March 20, 2020, the Colorado State Republican Party Central Committee adopted emergency bylaws to govern the conduct of nominating assemblies.

25. In preparation for the upcoming Assembly, Schneider personally researched several different options for remote voting. He had some familiarity with different approaches, because he works for a cybersecurity company.

26. After conferring together, the three Committee officers unanimously agreed that delegates could credential and vote according to the following process:

a. The Committee appointed Joe Webb to serve as both the credentialing committee (to confirm delegate and alternate eligibility), and the teller committee, to count votes. Joe Webb is the former chair of the Jefferson County Republican Party, and therefore is considered an experienced, neutral person with no connections to any candidate seeking nomination through assembly.

b. Webb created a separate email address, sd10assembly@yahoo.com. Delegates seeking to participate in the assembly were required to send their email to this address.

c. This email from a delegate or alternate delegate had to match the email the Committee received from the County Party. In instances where the County Party did not send an accompanying email address, the Committee sought to telephonically contact delegates to obtain an email address. In instances where two or more delegates shared an email address, the individual would identify himself or herself to Mr. Webb.

d. Delegates would vote by sending an email to the email address.

e. Upon receiving an email, Webb would contact Ms. Richie to confirm that the email belonged to a delegate. Ms. Richie did not provide the voter's name to Mr. Webb. Upon receiving confirmation of the voter's eligibility, Webb would count the accompanying vote. Webb would not tell Ms. Richie how any email sender voted.

f. Credentialing and early voting could begin on prior to the convening of the Assembly.

g. No votes would be tabulated until after the Assembly convened, on Sunday, March 22, 2020, at 3:00 pm.

h. Delegates could change their vote up until three hours after the assembly convened, or 6:00 pm, March 22, 2020.

i. At 6:00 pm, alternates would be elevated to slots that did not have voting delegates in that particular precinct.

27. While researching alternatives and deciding upon the process, Bremer regularly consulted with the Republican State Party Executive Director, as well as the Chair of the Republican State Party bylaws committee, to ensure the procedures met State Party requirements.

28. In addition, the Committee relied upon the following Emergency Bylaws passed by the State Republican Party on March 20, 2020:

a. Emergency bylaw number 4 governed voting methods, deferring to state law. Specifically, it stated: "[a]ll district and county central committees or district and county assemblies and conventions may provide for alternative credentialing, nominating, and/or voting procedures as permitted by House Bill 2020-1359."

b. Emergency bylaw number 9 also deferred to state law, holding "[p]ursuant to House Bill 2020-1359 all district and county assemblies and conventions shall be completed no later than April 11, 2020, and may be held over a period of no more than seven calendar days."

29. Credentialing and early voting opened on Saturday, March 21, 2020, at 10:32 am.

30. The Assembly followed the process outlined above.

31. Within hours Mr. Dave Stiver, one of the two candidates, complained about the Assembly process. He also that day, threatened to protest the election before the State Party Central Committee.

32. Webb conferred with Ms. Richie at 3:00 pm and 8:00 pm on that Saturday to credential delegates. This was done by conference call, whereby Mr. Webb read off emails to Ms. Richie, who confirmed eligibility. Bremer and Schneider monitored the phone calls and exchanges of information.

33. At 11:00 on Sunday, March 22, 2020, Webb and Richie again had a conference call to credential delegates. There were an additional 25 emails. After confirming eligibility. Webb also counted the number of votes for those 25 emails.

34. While after reviewing the emails, a message appeared on Webb's web browser screen asking whether he wanted to leave the web page. Webb attempted to exit the message screen. When he did so, the email web browser page shut down and locked him out of the account.

35. Webb and the Committee officers believe someone purposefully tried to hack and disable the email account.

36. Webb unsuccessfully sought to regain access to the email account.

37. When he couldn't regain access, he promptly created a new email address, sd10assembly2@yahoo.com. He informed Bremer of the new email address. Bremer immediately informed all delegates of the new address, urging delegates who had not yet voted to use the new email address instead.

38. Approximately 35 additional delegate credentials and votes were received at the second email address.

39. The Assembly convened at 3:00 p.m. on March 22, 2020.

40. At 6:00 pm that day, delegate voting closed.

41. Following the close of voting, five delegates were elevated to delegate status and allowed to vote.

42. The final vote tally was as follows: 169 delegates (including 5 alternates elevated to delegate) out of 178 voted, for a participation rate of 95%. Larry Liston received 127 votes, or 75%. Dave Stiver received 41 votes, or 24%. One percent of voters abstained. (All percentages are rounded to the nearest full percent.)

43. Two days later, on March 24, 2020, Ms. Richie mailed the Certificate of Designation for Senate District 10 to the Colorado Secretary of State. (**Exhibit 1**).

Protest and Republican State Party Intervention.

44. The voting procedures engendered controversy within Senate District 10. One of two candidates, Dave Stiver, publicly complained about voting procedures shortly after credentialing and early voting began on March 21, 2020. These complaints included threats to contest the election.

45. Indeed, following the election Mr. Stiver filed a complaint with the Colorado Republican Party Executive Committee, according to Republican Party bylaws and C.R.S. § 1-3-106, which authorizes the party central committee "pass upon and determine all controversies concerning the regularity of the organization of that party within any . . . senatorial . . . district."

46. Stiver raised multiple objections to the Assembly. None of these objections, however, claimed that he received 30% or more of the vote at the Assembly.

47. The Executive Committee considered the complaint and the responses. Stiver, Larry Liston (the winning candidate), and Bremer all presented to the Executive Committee.

48. Following presentations and a divided vote, the Executive Committee issued a report, entitled "Report of the Executive Committee In re: Controversy regarding March 21-22 Designation Election and Assembly for Senate District 10." (the "Executive Committee Report") (**Exhibit 2**).

49. The Central Committee subsequently adopted and approved the Executive Committee Report by a vote of 98 to 88.

50. The Central Committee resolved the complaint by ordering that Dave Stiver be designated as a candidate for Senate District 10. Specifically, the Central Committee did this as an "equitable remedy for the irregularity of the assembly." Executive Committee Report, p. 12. Because the Central Committee believed that Liston had "campaigned honestly and honorably" "Mr. Stiver's only plausible place on the Republican primary election ballot is as the second-place vote-getter." *Id.*

51. The Central Committee based its equitable remedy on two perceived "irregularities."

52. First, the Central Committee claimed that the Committee could not allow early voting prior to the convening of the Assembly at 3:00 pm, because C.R.S. § 1-4-601(b)(I) prohibits early voting. That statute states in relevant part that "due to public health concerns in any assembly held in 2020 . . . A delegate may participate in the assembly remotely, including casting his or her vote by e-mail . . ."

53. But Section 1-4-601(b)(I) does not prohibit early voting. The language is permissive, not prohibitive; nothing in the plain language prohibits early voting.

54. Moreover, it is well established that early voting is allowed for elections. For example, federal law establishes the second Tuesday of November in even numbered years as "the day for the election" 2 U.S.C. § 7, but states like Colorado can utilize early voting because (1) candidate selection is not made until election day, (2) courts refuse to adopt hyper-technical interpretations that restrict the franchise, and (3) an "election" consists of many actions that take place well before voting and selection. *See, e.g. Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773, 776 (5th Cir. 2000). This reasoning applies to C.R.S. § 1-4-601(b)(I).

55. Like the State Senate District 10 Committee, the State Republican Party mailed delegates ballots in advance of the State Convention and Assembly and allowed delegates to cast ballots prior to the formal convening of the State Assembly.

56. And early voting did not prejudice any delegate, because all delegates had an opportunity to change or withdraw their vote prior to 6:00 pm, Sunday, March 22, 2020.

57. Second, the Central Committee argued that an email sent by Bremer to delegates on the evening of May 21, 2020, constituted an irregularity justifying equitable relief. Executive Committee Report, p. 10.

58. On March 21, at 6:32 pm, Chairman Bremer sent an email to all Assembly delegates in response to accusations from Mr. Stiver that the election was improperly run. In relevant part, Bremer stated that Mr. Stiver made "false accusations" and further stated "I want to assure you that Mr. Stiver's allegations are 100% false and demonstrably so. Despite his public slander, we are fully committed to running a fair and transparent election."

59. The Central Committee argued that this email (1) could "only" be "fairly interpreted" "as being in opposition to Mr. Stiver," (2) was "incompatible" with county Republican Party bylaws requiring candidate neutrality, and (3) "it [was] possible, if not likely" that the email influenced the outcome of the election. (Executive Committee Report, p. 12).

60. Even assuming the email violated Republican Party bylaws, mere violation of party bylaws does not give the Central Committee authority to place a candidate on the ballot in contravention of state law.

61. Further, the claim that the email may have influenced the outcome of the election is unsupported by evidence and pure speculation. The email did not oppose Mr. Stiver, *see, e.g., Buckley v. Valeo*, 424 U.S. 1, 44 n. 52 (1976), and the Central Committee did not – and cannot – identify a single voter who changed his or her vote because of the email.

62. Importantly, at no point did the Central Committee challenge or seek to overturn the results of the election.

63. Finally, the Republican State Party Central Committee does not have authority to amend a candidate designation under its authority to resolve "controversies concerning the regularity of the organization" under C.R.S. § 1-3-106.

64. Nonetheless, following the Central Committee's adoption of the Executive Committee Report, the Chairman of the State Republican Party ordered Bremer to issue a new certificate of designation, designating both Liston and Stiver as candidates for the Senate District 10 Republican Primary.

65. The Chairman ordered Bremer to make the designation no later than Monday, April 20, 2020.

FIRST CLAIM FOR RELIEF
(Illegal designation of candidacy, in violation of C.R.S. § 1-4-601(2)(a))

66. Petitioner incorporates all previous allegations.

67. Eli Bremer was the presiding office at the Republican Senate District 10 Assembly held on March 22, 2020.

68. Bremer is an official under the election code charged with submitting the certificate of designation to the Colorado Secretary of State. C.R.S. § 1-4-604(1)(a).

69. The Certificate of Designation identifies candidates who received 30% or more of the votes at a nominating assembly, and therefore are designated as primary candidates for the ballot.

70. Because he has been ordered to submit an amended certificate of designation, Bremer is likely to designate Dave Stiver as a candidate for Senate District 10 Republican Primary, even though Stiver did not obtain 30% or more of the votes at the Republican Senate District 10 Assembly.

71. Instead, Stiver is being designated a candidate as an "equitable remedy" for perceived election irregularities.

72. The Chairman of the Republican State Party has ordered Bremer to submit an amended designation of candidacy no later than Monday, April 20, 2020.

73. Any Certificate of Designation of Candidacy that includes Dave Stiver as a candidate violates C.R.S. § 1-4-601(2)(a).

SECOND CLAIM FOR RELIEF
(Illegal certification of ballot, C.R.S. § 1-5-203(1)(a)(II))

74. Petitioner incorporates all previous allegations.

75. The Colorado Secretary of State is the public official responsible for certifying primary ballots for state Senate districts. C.R.S. § 1-5-203(1)(a)(II).

76. As part of these responsibilities, she must certify candidates for the Senate District 10 Republican Party primary.

77. For each primary race, the Secretary relies upon the certificate of designation by assembly, submitted and certified by the assembly's presiding officer or secretary. C.R.S. § 1-5-203(1)(a)(II).

78. The Secretary does not investigate each and every designation, but instead relies upon the sworn certification that designation meets legal requirements.

79. If the Secretary receives an amended certificate of designation from Bremer, she will likely place David Stiver's name on the ballot, absent a court order.

80. Secretary cannot lawfully certify David Stiver for the Senate District 10 Republican Primary, because he did not receive 30% or more of the votes at the Republican Senate District 10 Assembly.

REQUEST FOR RELIEF

WHEREFORE, Schneider asks that the Court order the following relief:

1. An order enjoining Bremer from submitting a certificate of designation that designates Dave Stiver as a candidate for the State Senate District 10 Republican Primary.

2. An order prohibiting the Secretary of State from certifying Stiver as a candidate for the State Senate District 10 Republican Primary.

3. All other relief that the Court deems appropriate

DATED: April 20, 2020

Counsel for Karl K. Schneider

s / Scott E. Gessler

Scott E. Gessler
Gessler Law, LLC
1801 Broadway, Suite 507
Denver, Colorado 80202
Tel: 720-839-6637
sgessler@gesslerlawfirm.com

Petitioner's Address:
6506 Graymont Dr.
Colorado Springs, Colorado 80923

Verification

I, Karl K. Schneider, declare under penalty of perjury under the laws of the United States and Colorado that the foregoing is true and correct to the best of my knowledge.

/Karl K. Schneider

Karl K. Schneider

STATE OF COLORADO)
)ss.
COUNTY OF Jefferson)

SUBSCRIBED AND SWORN TO ME this 20th day of April 2020, by Karl K. Schneider

JOANNA BILA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19974005174
MY COMMISSION EXPIRES MARCH 23, 2021

Joanna Bila

Notary Public

Certificate of Designation By Assembly

Office Use Only:

Complete, sign, and return this form to the Colorado Secretary of State no later than 4 days after adjournment of the assembly.

DATE FILED: April 20, 2020 4:45 PM
FILING ID: B85EF5D5CFC20
CASE NUMBER: 2020CV31415

Office & District

Office: State Senator

District: Senate District [illegible]

Assembly Information

Name of Political Party: Republican

County: El Paso

Location of Assembly: Teleconference due to pubic gathering restrictions

Date: March 22, 2020

Number of Assembly Delegates Present and Voting: 169

Names of all Candidates Receiving Votes by Assembly (Must include the rank order of Votes Received and Percentage)

Name & Address of Candidate	Ballot 1 Votes Received	Ballot 1 % of Vote Received	Ballot 1 Rank	Ballot 2 Votes Received	Ballot 2 % of Vote Received	Ballot 2 Rank
Larry G. Liston 2846 Country Club Cir, C/S 80909	127	75.14	1			
David Stivet 4562 Excalibur Ct, C/S 80917	41	24.26	2			
unnamed candidate	1	.59	3			

Assembly Requirements (Please check all boxes that are applicable)

☒ No more than 2 ballots were taken for the office listed on this form.

First Ballot

☒ At least one candidate received 30 percent or more of the votes of all delegates who were present and voted for this office.

☐ No candidate received 30 percent, therefore a second ballot was cast for ALL candidates.

Second Ballot

☐ At least one candidate received 30 percent or more of the votes of all delegates who were present and voted for this office.

☐ No candidate received 30 percent or more of the votes cast, therefore the TWO candidates that received the highest number of votes are designated by the assembly.

Affiliation Requirement

☒ I certify that each of the candidates listed on this form have been affiliated with the political party for the time period required by party rule or by law if the party has no such rule.

EXHIBIT
1

Colorado Secretary of State
1700 Broadway, Suite 200
Denver, Colorado 80290
Phone: (303) 894-2200
Fax: (303) 869-4861
Email: ballot.access@sos.state.co.us

Print Form

SOS Revised May 7, 2015
Sections 1-4-601 & 1-4-1304 C.R.S.

Name of Secretary or Chairman:

Name: Jody Richie Phone #: 719.250.4923

Address: 4630 Ranch Circle Colorado Springs, CO 80918

Members of the Assembly Vacancy Committee:

Under section 1-4-601(2), C.R.S., assemblies are required to select a vacancy committee to fill vacancies in designation or nomination.

☒ The assembly did not select vacancy committee members. Any vacancy in designation for the office on this form will be filled per party bylaws.

☐ The assembly chose the following people as vacancy committee members to fill vacancies in designation for the office on this form.

Name _____ Phone # _____

Address _____

Name _____ Phone # _____

Address _____

Name _____ Phone # _____

Address _____

Name _____ Phone # _____

Address _____

Name _____ Phone # _____

Address _____

Name _____ Phone # _____

Address _____

Name _____ Phone # _____

Address _____

Additional members can be attached.

Signature

Affirmation of Secretary or Chairman

I solemnly affirm that the party I represent is qualified to nominate candidates by assembly. Furthermore, the information provided on this form is, to the best of my knowledge, true and correct.

Jody Richie
Signature of Secretary or Chairman

Mar 24 2020
Date of Signing

CANDICE K. BOYER
NOTARY PUBLIC
[seal] STATE OF COLORADO
NOTARY ID #19984018969
MY COMMISSION EXPIRES OCTOBER 30, 2020

STATE OF COLORADO

COUNTY OF El Paso

Subscribed and sworn to before me this 24 (Day) day of March (Month), 20 20 (Year) by Jody Richie (Printed name of Secretary or Chairman).

Signature (and Title) of Notary / Official Administering Oath Candice K Boyer, Notary Public

My Commission Expires: 10-30-20

Colorado Secretary of State
1700 Broadway, Suite 200
Denver, Colorado 80290
Phone: (303) 894-2200
Fax: (303) 869-4861
Email: ballot.access@sos.state.co.us

Print Form

SOS Revised May 7, 2015
Sections 1-4-601 & 1-4-1304 C.R.S.

Colorado Republican Committee

REPORT OF THE EXECUTIVE COMMITTEE

DATE FILED: April 20, 2020 4:45 PM
FILING ID: B85EF5D5CFC20
CASE NUMBER: 2020CV31415

In re: Controversy regarding

March 21-22 Designation Election and Assembly for Senate District 10

David Stiver, et al.

v.

Eli Bremer, et al.

April 15, 2020

EXHIBIT 2

Pursuant to a Resolution adopted by the Colorado Republican Committee Executive Committee by a vote of 12-7, April 14, 2020

The following constitutes the Report and Resolution of the Executive Committee of the Colorado Republican Committee (the "Executive Committee") concerning the controversy regarding the conduct of the Senate District 10 assembly's designation election held on March 21-22, 2020.

I. JURISDICTION

The Executive Committee unanimously concludes that it has jurisdiction over the controversy pursuant to C.R.S. § 1-3-106(1), Article IX, Section B(4), Article XIV, Section C and Emergency Bylaw #10 (adopted March 20, 2020) of the Bylaws of the Colorado Republican Committee (the "CRC Bylaws"). The controversy was lodged by Contestants David Stiver (a declared candidate for designation by the Senate District 10 assembly), Shannon Buckley, Kristina Finley, Deb Doolittle Flentje, Jason Jorgenson, Larry Langston, Tina Stevens, Rex Tonkins and Vickie Tonkins[1] (delegates to the Senate District 10 assembly) on March 24, 2020 within two days of the Senate District 10 designation election as required by Emergency Bylaw #10.

II. BACKGROUND

On March 10, 2020, Governor Jared Polis declared a disaster emergency in Colorado due to the presence of a novel coronavirus causing a disease called COVID-19. *See* Governor's Executive Order No. D 2020 003. In response to this declaration and the social distancing requirements being implemented by the Governor of Washington State in response to the then apparent community spread of COVID-19 in the Seattle area, the Colorado General Assembly acted to quickly adopt House Bill 2020-1359 ("HB 1359"), which made temporary emergency

[1] Ms. Tonkins is also Chair of the El Paso County Republican Central Committee.

changes to Colorado's assembly and convention process for political parties designating candidates to the June, 2020 primary election ballot. Governor Polis signed HB 1359 into law on March 16, 2020 and on the same day promulgated Executive Order D 2020 005 which permitted political parties to adopt changes to their bylaws outside of regular processes provided for in those bylaws. Together, HB 1359 and Executive Order D 2020 005 gave political parties broad emergency powers to amend their bylaws and to otherwise make changes to their designating assemblies and conventions in light of the disaster emergency. On March 20, 2020 the Executive Committee, acting for the Colorado Republican State Central Committee which was legally precluded from meeting, adopted 17 Emergency Bylaws to govern the remaining district, county and state assemblies and conventions. A copy of these Emergency Bylaws is attached to this Report.

Senate District 10 is a single-county senate district. That is, it is located entirely within El Paso County. As such the Senate District 10 assembly was initially scheduled to be conducted concurrently with the El Paso County Republican assembly and convention. Emergency Bylaw #3 waived the requirement that the senate District 10 assembly be co-located freeing Senate District 10 to hold its assembly at a place and time of its choosing. On March 14, 2020, Senate District 10 Chairman Eli Bremer, the Respondent in this controversy, issued a call via email for the Senate District 10 assembly to be held on Wednesday, March 25, 2020 at the Colorado Springs Country Club.[2] Apparently in response to concerns raised by Senate District 10 delegates including Mr. Stiver, Mr. Bremer changed course on March 17. That day he e-mailed Senate District 10 delegates and alternates announcing that he would be issuing another revised call for

[2] In their written submissions and presentations to the Executive Committee Contestants and Chairman Bremer agreed that his emails concerning the Senate District 10 assembly went only to those delegates and alternates for whom Chairman Bremer had an email address. It was also agreed that all Senate District 10 assembly delegates and alternates would have received an information packet at their precinct caucuses specifying that all communication regarding the Senate District 10 assembly would come via e-mail.

the Senate District 10 assembly to provide an "online platform" for the assembly. On March 19, Chairman Bremer, emailed Senate District 10 delegates and alternates informing them that the Senate District 10 assembly would be advanced to Sunday, March 22 at 3:00pm. His e-mail also placed the names of Mr. Stiver and State Representative Larry Liston into nomination for designation to the Republican primary ballot in Senate District 10 and required that any further nominations for the office be made to him by 10:00pm that evening. No other names were placed into nomination by the deadline.

The next day Chairman Bremer emailed Senate District 10 delegates and alternates announcing that credentialing and voting would be accomplished by e-mail to a dedicated e-mail address (still to be identified at that point) and that this e-mail address would be overseen by persons from outside El Paso County and Senate District 10 so as to preserve both the integrity and secrecy of the ballot. Chairman Bremer also stated that from the moment the e-mail address was provided for voting, credentialing and balloting would be open and "remain open until the time of the Assembly on Sunday which begins at 3pm." Chairman Bremer did not say when voting would begin – just that he would announce when it had begun. Mr. Stiver and others promptly objected to this method of conducting credentialing and balloting arguing that it impermissibly permitted voting to begin before the announced date/time of the assembly's opening, endangered the secret ballot and was not subject to verification of the results. Chairman Bremer dismissed these concerns as impossible to perfectly address given the exigencies of the moment.[3]

The next day, Saturday, March 21, Chairman Bremer announced by e-mail that voting in the designation election was open by e-mail to sd10assembly@yahoo.com which would be

[3] Chairman Bremer was also advised by Colorado Republican Committee staff that voting before the official convening of an assembly was irregular and that he should wait to open voting until after gaveling the assembly open. Chairman Bremer declined to follow this advice.

overseen by former Jefferson County GOP Chairman Joe Webb. Contestants allege that several delegates, including Mr. Stiver did not receive this e-mail, but nonetheless voted using this email address as word of it spread via forwarded copies of the e-mail that reached other delegates. For his part Chairman Bremer insists that this e-mail and all emails regarding the Senate District 10 assembly went to all delegates for whom the Senate District 10 leadership had email addresses. Whatever the truth is regarding this e-mail opening voting, it is undisputed that Mr. Stiver accused Chairman Bremer of gamesmanship in posts to Facebook. It is also undisputed that Chairman Bremer responded to these Facebook posts with the following e-mail sent to all Senate District 10 delegates the evening of March 21:

> Dear Senate 10 Delegates,
>
> It was just brought to my attention that one of the candidates for this office, Mr. Dave Stiver, is making false and defamatory statements on Facebook about the volunteer officers of Senate District 10. Among his false accusations are that he was not notified that balloting had opened despite the fact that he himself successfully voted. We have checked and double checked our system to confirm that he was sent notification. We suggested he check his junk mail since we have been sending numerous emails in an effort to be fully transparent. Despite this, Mr. Stiver has decided to slander the officers of SD10 publicly rather than attempt to work through this process.
>
> I want to assure you that Mr. Stiver's allegations are 100% false and demonstrably so. Despite his public slander, we are fully committed to running a fair and transparent election. If you have any questions or concerns, please feel free to reach out to any of the district officers.
> Thank you for your time and participation in this admittedly deeply flawed system that the State Government has forced on our Party.
>
> Eli Bremer
> SD10 Chair
>
> R. Eli Bremer
> (719) 213-3428
> www.elibremer.com

In apparent response to Chairman Bremer's e-mail, Senate District 10 delegate Janice McLain e-mailed Chairman Bremer the morning of Sunday, March 22, with a motion to postpone the designation election "until another system can be put in place and agreed by the delegates of this assembly." The motion was seconded by Senate District 10 delegate Gary Carlile. In e-mail communication Chairman Bremer refused to consider the motion because the assembly was "not yet technically open." At virtually the same time he declined to entertain this motion, and just under three hours before the Senate District assembly was set to open, Chairman Bremer e-mailed all Senate District 10 delegates announcing that he and the Senate District 10 leadership were "working though what appears to be an unsuccessful hack of our voting email account." Chairman Bremer's e-mail stated that he did not believe any votes had been lost, but that access to the e-mail account was impaired and that delegates who had not yet voted should send their votes to a new e-mail account (also monitored by Mr. Webb) sd10assembly2@yahoo.com. In response to the news of this "apparent unsuccessful hack," other delegates, including Contestant Kristina Finley asked that Chairman Bremer reconsider his refusal to entertain Ms. McLain's motion to postpone the designation election. Chairman Bremer refused to consider the motion when the assembly was gaveled open via teleconference just after 3:00pm that day.

After Chairman Bremer officially convened the Senate District 10 assembly, Senate District 10 Secretary Jodie Richie determined that ten alternates were eligible for elevation to voting delegate status. After their elevation, voting was held open from 3:00pm to 6:00pm in order to permit these alternates to cast their ballots. Five alternates did so The Senate District 10 assembly reconvened shortly after 6:00pm and Mr. Webb reported the results of the designation election as: 169 votes cast (of a possible 179 delegate slots) with 127 or 75.14% for Representative Liston, and 41 or 24.26% for Mr. Stiver and one or .59% cast for "no one." These results were e-mailed to Senate District 10 delegates the next day by Chairman Bremer.

As noted above, Contestants lodged this controversy with the Executive Committee two days later on March 24, 2020 in accordance with Emergency Bylaw #10. In light of the ongoing public health crisis and the Governor's prohibition on in-person gatherings, the Executive Committee convened a special meeting via Zoom conferencing to consider the controversy on April 14, 2020. In advance of that meeting, the Executive Committee invited Contestants, Respondent and Representative Liston, as an interested party to submit written materials for its consideration. All did so. Further, Contestants, Respondent and Representative Liston were invited to present their cases to the Executive Committee at the April 14, 2020 special meeting. All did so with Mr. Stiver and Chairman Bremer representing themselves and the other Contestants and Representative Liston appearing through counsel.

III. CONTESTANT'S CONTENTIONS

Contestants assert that:

1. Chairman Bremer unnecessarily advanced the date of the Senate District 10 assembly from March 25, 2020 to March 22, 2020 and thereby handicapped Mr. Stiver's ability to appeal to Senate District 10 delegates;

2. Chairman Bremer hastily and improperly opened voting in the Senate District 10 designation election before the Senate District 10 assembly itself had been convened thereby calling into question the regularity of the vote and handicapping Mr. Stiver's ability to appeal to some of the Senate District 10 delegates;

3. Chairman Bremer exposed Senate District 10 delegates to voter intimidation by using e-mail voting which effectively deprived them of a secret ballot;

4. Chairman Bremer violated pre-primary neutrality and impermissibly influenced the outcome of the designation election by sending an e-mail accusing Mr. Stiver of dishonesty while voting in the designation election was open;

5. Chairman Bremer improperly declined to entertain a motion made by certain delegates to the Senate District 10 assembly to halt and re-start the designation election after he disclosed that the original email account being used for balloting had been compromised; and

6. Chairman Bremer impermissibly elevated five alternates to voting delegate during the designation election.

IV. RESPONDENT'S CONTENTIONS

Chairman Bremer responds that he correctly administered the Senate District 10 under trying circumstances and that in any event any error on his part could not have altered the outcome of the election because Mr. Stiver would have needed 14 additional votes to reach 30% and only 10 (of 179 possible) votes were not cast. Specifically, he argues:

1. The meeting was advanced to Sunday, March 22, 2020 in order to avoid any further disruption by the changing landscape resulting from the orders of the Governor and other public officials affecting mass gatherings;

2. Although voting was opened before the Senate District 10 assembly was officially convened, such a process is permitted by CRC Bylaw Emergency Bylaw #4 which permits district and county assemblies to provide for alternative credentialing, nominating, and/or voting procedures by a vote of their officers. Further, Chairman Bremer argues that all delegates to the Senate District 10 assembly were aware that communications regarding the assembly would be exclusively made via e-mail and this is the medium he used to announce changes so there was no lack of notice to delegates about voting procedures and the high turnout (169 of 179 possible delegate votes cast) evidences there was no prejudice to delegates from these procedures;

3. There was no evidence presented of voter intimidation and this was in fact avoided by having Mr. Webb, who is not an El Paso County resident, monitor the e-mail accounts where votes were submitted;

4. That his e-mail to delegates during the designation election was necessary to protect delegates' faith in the assembly and designation election in light of personal attacks made against him by Mr. Stiver and that in any event Senate District 10 bylaws do not require pre-primary neutrality from officers;

5. There was no need to re-start the designation election after the compromise of the first e-mail account used for voting because Mr. Webb had kept a running tally of all the votes lodged there and was able to add those votes to votes placed via the new e-mail address;

6. The elevation of alternates during the designation was done only after the deadline for delegate votes had passed and it was therefore apparent that the delegates were not "present" to vote in the remote assembly such that elevation of alternates was appropriate; and

7. Most fundamentally, that because Mr. Stiver was 14 votes short of reaching the 30% necessary to qualify for the primary election ballot under C.R.S. § 1-4-601(2), even if all 10 missing votes were to be attributed to him, he could still not qualify for the primary election ballot and therefore the alleged errors in the assembly are harmless.

V. REPRESENTATIVE LISTON'S CONTENTIONS

Representative Liston, through counsel, argues that while the Senate District 10 assembly was not perfectly administered that the result should nonetheless be upheld because with only 10 votes not cast there are simply not enough potential votes remaining for Mr. Stiver to reach the 30% necessary to qualify for the Republican primary election ballot. Representative Liston also argues that any prejudice suffered by Mr. Stiver is most fairly attributable to his last-minute entry into the race as opposed to any mistakes by Chairman Bremer and the Senate District 10 party organization.

VI. DECISION

The Executive Committee finds that the Senate District 10 assembly was irregular to the point that the Executive Committee cannot have confidence in the outcome of the designation election. Specifically, the Executive Committee determines:

A. Chairman Bremer impermissibly opened voting prior to the convening of the Senate District 10 assembly and this innovation is not permitted by Emergency Bylaw #4 or House Bill 1359. Emergency Bylaw #4 provides:

> All district and county central committees or district and county assemblies and conventions may provide for alternative credentialing, nominating, and/or voting procedures *as permitted by House Bill 2020-1359*. Such procedures may be adopted by a vote of the district or county officers. Such procedures may alternatively be adopted by a district or county assembly or convention by a majority vote of the members present and voting. All assemblies and conventions may use more than one voting method.

(emphasis added). The bylaw expressly limits the permissible alternative credentialing, nominating and/or voting procedures to those "permitted by House Bill 2020-1359." House Bill 1359 does not permit remote voting before an assembly is convened. Section 3 of that bill provides:

> (b) (I) NOTWITHSTANDING ANY REQUIREMENT IN SUBSECTION (2)(a) OF THIS SECTION TO THE CONTRARY, DUE TO PUBLIC HEALTH CONCERNS, ***IN ANY ASSEMBLY HELD IN 2020***:
>
> (A) A DELEGATE MAY PARTICIPATE IN THE ASSEMBLY REMOTELY, INCLUDING CASTING HIS OR HER VOTE BY E-MAIL, MAIL, TELEPHONE, OR THROUGH AN INTERNET-BASED APPLICATION IF ALLOWED BY THE PARTY;

(emphasis added). The bill's language requires that the alternative voting procedures be used "in" an assembly. Not before it. Section 4 of House Bill 1359 is consistent with the requirement that alternative voting procedures happen in or during an assembly and not before or after it. This section permits county assemblies (which would ordinarily be the vehicle for single-county district assemblies) to be held over a period of days in order to accommodate the alternative procedures

allowed under Section 3 of the bill. The Executive Committee recognizes the extraordinary circumstances under which Chairman Bremer and the Senate District 10 leadership was required to act. Nonetheless, the Executive Committee determines that opening balloting before the convening of the assembly and closing it (with the exception of 10 alternates) at the convening of the assembly was irregular. Further, and most troublingly, Chairman Bremer actually refused to consider a motion to delay the balloting on the grounds that the body to consider that motion—the Senate District 10 assembly—had not yet convened. This begs the question how the body that did not yet exist to consider the motion could at the very moment be conducting a designation election. This prejudiced delegates opposed to the procedure and left them no recourse to address the improper early balloting.

B. Chairman Bremer used his office as Senate District Chairman to send an email to delegates attacking Mr. Stiver during the delegates' voting in the designation election and that it is possible, if not likely, that this breach of mandatory pre-primary neutrality influenced the outcome of the designation election given that Mr. Stiver fell only 14 votes short of reaching the 30% threshold necessary for qualifying for the Republican primary election ballot and a total of 15 votes were not cast by delegates (10 completely uncast and 5 cast by late-elevated alternates). It is true that the senate District 10 bylaws do not require Senate District 10 officers to be neutral before primary elections. However, Section 2.03(B) and 2.03(C) of the Bylaws of the El Paso County Republican Central Committee unequivocally require pre-primary neutrality from district officers within the county. Section 2.03(B) provides:

> Prior to the primary, Senate, House, and Commissioner district chairs shall not use their title as district chair to endorse, support, or oppose any Republican candidate for the district for which they are chair, unless such candidate is unopposed in the Republican primary.

Section 2.03(C) is even more prohibitive and particularly important here. It provides:

> While chairing any meeting occurring prior to the primary, no individual shall endorse,

> support, or oppose any Republican candidate unless such candidate is unopposed in the Republican primary. Such individual may temporarily relinquish the chair in order to make such a statement. This provision applies to all Republican meetings of any type, including district, division, and committee meetings and precinct caucuses.

Chairman Bremer did exactly this. While preparing to chair the assembly—the most important meeting with regard to the primary election—he sent an e-mail to all members of the assembly that can only fairly be read as calling Mr. Stiver a liar. Such a statement must be interpreted as being in opposition to Mr. Stiver. That such a statement was made while votes were being cast is incompatible with the El Paso County Republican Central Committee Bylaws and highly likely to have influenced the outcome of the election.

The Executive Committee recognizes that Chairman Bremer was responding to attacks leveled at him by Mr. Stiver and his supporters. However, by choosing to do so in the manner he did while votes—votes which would determine the fate of Mr. Stiver's candidacy—were being cast by Republicans under his leadership, he compromised his obligation to be neutral and contributed to distrust in the results of the assembly and designation election for which he was responsible. Mr. Bremer would have been perfectly within his rights to respond to Mr. Stiver after Mr. Stiver was no longer a Republican candidate in a contested primary election. He should have waited until that time.

C. The deadline for the completion of single-county district assemblies under House Bill 1359 and Emergency Bylaw #9 was April 11, 2020. Because this deadline has passed, the Executive Committee finds that the Senate District 10 designation election cannot be re-conducted. As a result, the Executive Committee determines that the equitable remedy for the irregularity of the assembly is that the voters in the Republican primary election in Senate District 10 be permitted to choose between Representative Liston and Mr. Stiver. In reaching this conclusion the Executive Committee is sympathetic to Representative Liston and notes there is no allegation that Representative Liston did anything but campaign honestly and honorably in the designation election. In light of this and

because there is no allegation that Representative Liston could have finished as anything other than the first-place vote getter in the designation election, Mr. Stiver's only plausible place on the Republican primary election ballot is as the second-place vote-getter.

VII. ORDER

Therefore, the Colorado Republican Committee Executive Committee ORDERS that on Monday, April 20, 2020 Senate District 10 Central Committee Chairman Eli Bremer shall file a certificate of designation with the Secretary of State naming Mr. Stiver to the Republican primary ballot for Senate District 10 as the second-place vote-getter to Representative Liston. Mr. Bremer shall provide a copy of such certificate of designation to the Colorado Republican State Central Committee contemporaneously with his filing of it with the Secretary of State.

Pursuant to C.R.S. § 1-3-106(1) and CRC Bylaws Article XV, Section C, this decision is subject to review by the Colorado Republican State Central Committee at its meeting scheduled for 10:00am on Friday, April 17, 2020. Any party to this controversy wishing to appeal this decision to the Colorado Republican State Central Committee must do so by e-mail to CRC Secretary Devin Camacho at secretary@cologop.org by 3:00pm on Thursday, April 16, 2020.

Ken Buck
Chairman

DATE FILED: April 22, 2020 12:46 AM
FILING ID: 85D7FC79B8F86
CASE NUMBER: 2020CV31415

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St., Room 281 Denver, CO 80202	
Petitioner: KARL K. SCHNEIDER, an individual, v. **Respondents:** JENA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly, & **Intervenor**: Larry Liston, an individual.	▲COURT USE ONLY▲
Counsel for Intervenor Larry Liston: Wayne W. Williams, Atty Reg No. 22723 Law Offices of Wayne Williams 3472 Research Parkway, Ste. 104-200 Colorado Springs, CO 80920 Tel: 719-439-1870 WayneWilliamsLaw@comcast.net	Case Number: 2020CV031415 Division:
Unopposed Motion to Intervene of Larry Liston	

Representative Larry Liston, through his counsel Wayne W. Williams, hereby moves to intervene in the above-captioned action under CRCP 24(a) and, alternatively, under CRCP 24(b).

Unopposed: Pursuant to CRCP 121, § 1-15, the undersigned conferred with counsel for each of the three named parties to the action and is authorized to state that this motion is unopposed.

Intervention Should Be Granted

The Petition for Relief under C.R.S. § 1-1-113 ("Petition") seeks to resolve the question of whether Representative Larry Liston will be the only Republican candidate on the June 30 primary election ballot for Senate District 10. Petition, Request for Relief, at 11.

As set forth in ¶ 42 of the Petition, Larry Liston received 75% of the vote of the grassroots delegates at the Senate District 11 Republican Assembly. No other candidate received more than 25% of the vote. Colorado law requires that "To qualify for placement on the primary election ballot, a candidate must receive thirty percent or more of the votes of the assembly." C.R.S. § 1-4-103. *Accord* C.R.S. § 1-4-601(2)(a). Since Mr. Liston is the only candidate who may be legally placed on the Republican primary election ballot, he is so situated that disposition of this action will determine his interest. Mr. Liston therefore has an intervention of right under CRCP 24(a).

Alternatively, Mr. Liston should be permitted to permissively intervene under CRCP 24(b) since his interest in appearing as the sole Republican candidate shares a question of law or fact with the underlying action.

As the Colorado's 38th Secretary of State, the undersigned understands the need to promptly adjudicate the matter so that ballot certification may proceed. Mr. Liston's intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

Respectfully Submitted this 22nd day of April, 2020,

Law Offices of Wayne Williams

/s/ Wayne W. Williams
Wayne W. Williams, #22723

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was electronically served on:

Scott Gessler <sgessler@gesslerlawfirm.com>, counsel for Petitioner Karl Schneider,
Grant Sullivan <Grant.Sullivan@coag.gov>, counsel for Respondent Jena Griswold,
John Buckley <john@buckleylaw.com>, counsel for Respondent Eli Bremer, and
Chris Murray <cmurray@bhfs.com>, counsel for potential intervenor Colorado Republican Party

Dated this 22nd day of April, 2020.

Law Offices of Wayne Williams

/s/ Wayne W. Williams
Wayne W. Williams, #22723

Address of Intervenor Larry Liston:
2846 Country Club Circle
Colorado Springs, CO 80909

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Denver, CO 80202	DATE FILED: April 22, 2020 7:02 PM FILING ID: A272420ED65E9 CASE NUMBER: 2020CV31415
Petitioner: KARL K. SCHNEIDER, an individual, v. **Respondents:** JENNA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly, **Intervenor:** LARRY LISTON, an individual.	▲ **COURT USE ONLY** ▲
Attorneys for Intervenor Colorado Republican Committee: Name(s): Christopher O. Murray, #39340 Julian R. Ellis, Jr. #47571 Address: Brownstein Hyatt Farber Schreck, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone Number: 303.223.1183 FAX Number: 303.223.1111 E-mail: cmurray@bhfs.com; jellis@bhfs.com	Case Number: 2020cv031415 Div.: 259

COLORADO REPUBLICAN COMMITTEE'S UNOPPOSED MOTION TO INTERVENE

Colorado Republican Committee (Party) files its unopposed motion to intervene under Colorado Rule of Civil Procedure 24(a)(2), and states:

RULE 121, § 1-15(8) CONFERRAL STATEMENT

Undersigned counsel conferred with counsel for Petitioner Karl K. Schneider (Petitioner), counsel for Respondent Colorado Secretary of State, counsel for Respondent Eli Bremer and counsel for Intervenor Larry Liston regarding the relief requested in this motion and no party opposes the motion.

PUTATIVE INTERVENOR

1. The Party is an unincorporated non-profit association and a major political party in Colorado under Colo. Rev. Stat. § 1-1-104(22).

2. The Party works to promote fair elections throughout the state of Colorado; seeks to promote the election of Republican candidates; and, most relevant here, has the exclusive jurisdiction under Colorado law "to pass upon and determine all controversies concerning the regularity of the organization of [the Party]," *see* Colo. Rev. Stat. § 1-3-106(1).

GROUNDS FOR INTERVENTION AS OF RIGHT

3. Petitioner, in his capacity as the vice-chairman of the Senate District 10 Republican Committee, seeks to re-litigate an internal party controversy. That controversy involved the Senate District 10 Republican Assembly designation election. On March 24, 2020, David Stiver (a declared candidate for designation by the Senate District 10 assembly), along with eight other contestants, lodged a controversy regarding the conduct of the Senate District 10 assembly's designation election held on March 21 and 22. As was its right under Colorado statute and the Party's bylaws, the Party passed upon and finally determined the controversy. Specifically, the Party found that due to irregularities in the Senate District 10 assembly, confidence in the outcome of the designation election was undermined. Because of these irregularities—and because the deadline for the completion of single-county district assemblies had passed—the Party ordered that Mr. Stiver be named to the Republican primary ballot for Senate District 10 as one of two Republican candidates for the seat.

4. Rule 24(a)(2) allows for intervention as a matter of right by a non-party where:

> (1) the applicant claims an interest in the subject matter of the litigation; (2) the disposition of the case may impede or impair the applicant's ability to protect that interest; and (3) the interest is not adequately represented by existing parties.

Feigin v. Alexa Gr., Ltd., 19 P.3d 23, 26 (Colo. 2001); *see also* Colo. R. Civ. P. 24(a)(2).

5. And "Rule 24 should be liberally interpreted to allow, whenever possible and compatible with efficiency and due process, issues related to the same transaction to be resolved in the same lawsuit and at the trial court level." *Id.*

6. Although this party controversy has been finally determined by the Party, Petitioner nonetheless filed his petition with this Court ostensibly seeking collateral review of the Party's determination. But Colorado statute is clear in that "[t]he state central committee of any political party in this state has full power to pass upon and determine all controversies concerning the regularity of the organization of that party within any congressional, judicial, senatorial, representative, or county commissioner district or within any county . . . ." Colo. Rev. Stat. § 1-3-106(1). And, "[a]ll determinations upon the part of the state central committee shall be final." *Id.* Because Petitioner's petition invades the exclusive jurisdiction of the Party to hear and finally determine party controversies, *see People ex rel. Lowry v. Dist. Court of Second Judicial Dist.*, 74 P. 896, 898 (Colo. 1903), and because the petition implicates the Party's associational rights under the First Amendment, the Party moves to intervene in this matter.

7. It is beyond dispute that the Party has an interest in the subject matter of this litigation, which may be impeded or impaired if not allowed to intervene in this case. Indeed, the core of Petitioner's request is to seek judicial review of the Party's determination that a Colorado Republican *candidate* for Senate District 10 should be named on the June 2020 Republican *primary* ballot for that seat. That decision was rendered after reviewing the parties' written submissions, hearing evidence and argument of counsel, and conducting internal deliberations at the party level. The Party's decision is reflected in a 13-page, reasoned report, which noted the many irregularities with the Senate District 10 assembly and decided that, in light of those irregularities and related deadlines, the proper course was ballot access rather than exclusion.

(*See* Pet., Ex. 2.) The Party's decision was issued consistent with the Party's authority under subsection 1-3-106(1), and its finality should be respected.

8. Likewise, Petitioner's petition questions the Party's associational rights under the First Amendment. "The First Amendment protects the freedom to join together to further common political beliefs, which presupposes the freedom to identify those who constitute the association." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 568 (2000). And in no area is the political association's right "more important than in the process of selecting its nominee," because "it is the nominee who becomes the party's ambassador to the general electorate." *Id.* at 575. For this reason, the Supreme Court's "cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party 'select[s] a standard bearer who best represents the party's ideologies and preferences.'" *Id.* (quoting *Eu v S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989)). By second guessing the Party's final determination naming the candidates to the Republican primary ballot for Senate District 10—a remedy fashioned due to irregularities and deficiencies with Senate District 10's designation election and assembly—Petitioner strikes at the heart of the Party's associational guarantees under the First Amendment, which the Party must protect.

9. Finally, the Party's interest is not adequately represented by existing parties. No party to this case is similarly situated. For instance, no party has the exclusive jurisdiction to hear and finally determine party controversies like the one at issue here. *See Lowry*, 74 P. at 898 ("That the state central committee of a political party, or the state convention, as the case may be, is now the sole tribunal to determine such controversies as is here presented is, to our mind, clear beyond all doubt; and, as a necessary sequence, the courts do not have concurrent jurisdiction in the premises."). And no party has the unique interest of the Party in maintaining its prerogative to nominate Republican candidates for its primary election.

10. Based on the foregoing, the Party satisfies the requirements for intervention as of right under Rule 24(a)(2), and this Court should grant the Party's motion. Alternatively, the Party of should be permitted to intervene under Rule 24(b), as its claims and defenses are inextricably intertwined with the parties' dispute under subsection 1-1-113(1).

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, the Party respectfully requests that this Court grant its motion to intervene in this case and accept its answer in intervention, which is being filed concurrently with this motion.

Dated April 22, 2020

Brownstein Hyatt Farber Schreck, LLP

By: *s/ Christopher O. Murray*
Christopher O. Murray, #39340
Julian R. Ellis, Jr. #47571

Attorneys for Intervenor Colorado Republican Committee

CERTIFICATE OF SERVICE

I certify that on the April 22, 2020, I electronically filed a true and correct copy of the **Colorado Republican Committee's Unopposed Motion to Intervene** via the Colorado Courts E-Filing System which will send notification of such filing and service upon:

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s/ Paulette M. Chesson
Paulette Chesson, Paralegal

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Denver, CO 80202	DATE FILED: April 22, 2020 7:09 PM FILING ID: B43DC74175881 CASE NUMBER: 2020CV31415
Petitioner: KARL K. SCHNEIDER, an individual, v. **Respondents:** JENNA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly, **Intervenor:** LARRY LISTON, an individual.	▲ **COURT USE ONLY** ▲
Attorneys for Intervenor Colorado Republican Committee: Name(s): Christopher O. Murray, #39340 Julian R. Ellis, Jr. #47571 Address: Brownstein Hyatt Farber Schreck, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone Number: 303.223.1183 FAX Number: 303.223.1111 E-mail: cmurray@bhfs.com; jellis@bhfs.com	Case Number: 2020cv031415 Div.: 259
INTERVENOR COLORADO REPUBLICAN COMMITTEE'S ANSWER IN INTERVENTION	

Intervenor Colorado Republican Committee (Party) files its answer in intervention under Colorado Rule of Civil Procedure 24(c), to Petitioner Karl L. Schneider's petition under Colo. Rev. Stat. § 1-1-113 (Petition), and states:

Introduction

1. Petitioner Karl K. Schneider, through undersigned counsel, submits this *Petition* under C.R.S. § 1-1-113 against Eli Bremer, presiding officer of Republican Party

Senate District 10 Assembly, as well as Jena Griswold, Colorado Secretary of State, and states as follows:

Response: Because this paragraph does not constitute an allegation under C.R.C.P. 8, the Party declines to respond to it.

2. Under Colorado law, a candidate for state Senate must earn at least 30% of the vote at a nominating assembly to be placed on the primary ballot. Voters at the Republican Senate District 10 nominating assembly elected one candidate with 75% of the vote, but the Colorado State Republican Party central committee seeks to disregard those results, by ordering Eli Bremer, chair of the Senate District 10 Nominating Assembly, to designate two candidates for the ballot, including one who received less than 30% of the vote. This order overturns the election results and directly contradicts state law. Accordingly, this *Petition* seeks to enjoin (1) Chairman Bremer from illegally designating a candidate who received less than 30% of the vote, and (2) the Colorado Secretary of State from certifying for the June primary ballot a candidate who did not reach the 30% vote threshold.

Response: Because this paragraph does not constitute an allegation under C.R.C.P. 8, the Party declines to respond to it.

Parties

3. Petitioner Schneider is a registered Republican elector residing in State Senate District 10, in El Paso County, Colorado. He also is the Vice-Chairman of the Republican Party State Senate District 10 Committee for Senate District 10 (the "Committee").

Response: Admitted.

4. Respondent Eli Bremer is the Chairman of the Republican State Senate District 10 Committee, located in El Paso County, Colorado. He was the presiding officer at the Republican State Senate District 10 Assembly (the "Assembly").

Response: Admitted.

5. Respondent Jena Griswold is the Colorado Secretary of State, located in Denver, Colorado.

Response: Admitted.

Jurisdiction and Venue

6. This Court has jurisdiction over this matter under C.R.S. § 1-1-113.

Response: Denied.

7. Venue is proper in this Court under to C.R.C.P. 98(b)(2) because the Colorado Secretary of State is located in Denver, Colorado.

Response: Admitted that to the extent this court has jurisdiction over this matter, venue in the Second Judicial District is proper.

General Allegations

8. Candidates who seek to be nominated by a major political party – either the Republican Party or the Democratic Party – have two ways to have their names placed on the ballot; submission of a candidate petition or nomination by party assembly. C.R.S. § 1-4102.

Response: Admitted.

9. In order to be designated a candidate by assembly, a candidate must receive 30% or more of the vote at a nominating assembly. C.R.S. § 1-4-601(2)(a).

Response: Denied. Stated that in order to be designated to the primary ballot by a political party assembly, a candidate must either receive 30% or more of the vote at the assembly or must be one of the top-two vote getters on a second ballot where no candidates achieve 30% of the vote.

10. Under Republican Party rules, each senate district has a standing committee, responsible for running that district's nominating assembly.

Response: Admitted.

11. Eli Bremer is the chair of the Republican Party Senate District 10 Committee.

Response: Admitted.

12. As chair of the Committee, he serves as the presiding officer at the State Senate District 10 Assembly for the Republican Party.

Response: Admitted.

13. Senate District 10 is located entirely within El Paso County. Under C.R.S. § 1- 4-602(2)(a), persons elected as delegates to the county assembly serve also as delegates to the Senate District 10 Assembly.

Response: Admitted.

14. Under El Paso County Republican Party rules, the County Party authorized 355 delegates and 355 alternate delegates to the Assembly. Delegates and alternate delegates were allocated by precinct, as required by C.R.S. § 1-4-602(1)(a)(I).

Response: Admitted that the El Paso County Republican Party authorized 355 delegates and 355 alternate delegates to the El Paso county Republican Party Assembly.

15. The El Paso County Republican Party held its County Assembly on March 18, 2020.

Response: Admitted

16. The El Paso County Republican Party designated 179 delegates and 24 alternate delegates to the State Senate District 10 Assembly. These delegates and alternates represented the precincts in which they resided.

Response: Admitted.

17. The County Party transmitted the names and emails of each delegate and alternate to Jody Richie, the Secretary for the State Senate District 10 Committee.

Response: Admitted that the El Paso County Republican Party transmitted the names of each delegate and alternate to Ms. Richie. Further admitted that the El Paso County Republican Party transmitted e-mail addresses for some of these delegates to Ms. Richie.

18. Following review of each delegates' eligibility, Ms. Richie determined that one person designated as a delegate for Senate District 10 did not, in fact, reside in Senate District 10.

Response: The Party is without information sufficient to admit or deny this allegation.

State Senate District 10 Assembly Convenes

19. The Committee consists of three officers:

a. Eli Bremer, Chair.

b. Karl Schneider, Vice-Chair

c. Jody Richie, Secretary.

Response: Admitted that the Senate District 10 Republican Committee has three officers and they are the individuals identified in this paragraph.

20. As the Committee Chair, Bremer also served as presiding officer for the Assembly.

Response: Admitted.

21. On March 14, 2020, the Committee scheduled the Assembly to be held on March 25, 2020 at the Colorado Springs Country Club, located at 3333 Templeton Gap Road, Colorado Springs, CO 80907.

Response: Admitted.

22. Due to emergency measures in response to the declared state of emergency in Colorado, on March 17, 2020, the Committee informed delegates via email that the Assembly could not be held as scheduled, and that the Assembly would instead be conducted online.

Response: Admitted that on March 17, 2020 Mr. Bremer as the Chairman of the Senate District 10 Republican Committee e-mailed delegates to the Senate District 10 Republican Assembly and stated that the Assembly would be held online.

23. On March 19, 2020, the Committee rescheduled the Assembly for 3:00 pm, March 22, 2020.

Response: Admitted.

24. The next day, on March 20, 2020, the Colorado State Republican Party Central Committee adopted emergency bylaws to govern the conduct of nominating assemblies.

Response: Admitted.

25. In preparation for the upcoming Assembly, Schneider personally researched several different options for remote voting. He had some familiarity with different approaches, because he works for a cybersecurity company.

Response: The Party is without information sufficient to admit or deny this allegation.

26. After conferring together, the three Committee officers unanimously agreed that delegates could credential and vote according to the following process:

a. The Committee appointed Joe Webb to serve as both the credentialing committee (to confirm delegate and alternate eligibility), and the teller committee, to count votes. Joe Webb is the former chair of the Jefferson County Republican Party, and therefore is considered an experienced, neutral person with no connections to any candidate seeking nomination through assembly.

b. Webb created a separate email address, sd10assembly@yahoo.com. Delegates seeking to participate in the assembly were required to send their email to this address.

c. This email from a delegate or alternate delegate had to match the email the Committee received from the County Party. In instances where the County Party did not send an accompanying email address, the Committee sought to telephonically contact delegates to obtain an email address. In instances where two or more delegates shared an email address, the individual would identify himself or herself to Mr. Webb.

d. Delegates would vote by sending an email to the email address.

e. Upon receiving an email, Webb would contact Ms. Richie to confirm that the email belonged to a delegate. Ms. Richie did not provide the voter's name to Mr. Webb. Upon receiving confirmation of the voter's eligibility, Webb would count the accompanying vote. Webb would not tell Ms. Richie how any email sender voted.

f. Credentialing and early voting could begin on prior to the convening of the Assembly.

g. No votes would be tabulated until after the Assembly convened, on Sunday, March 22, 2020, at 3:00 pm.

h. Delegates could change their vote up until three hours after the assembly convened, or 6:00 pm, March 22, 2020.

i. At 6:00 pm, alternates would be elevated to slots that did not have voting delegates in that particular precinct.

Response: The Party is without information sufficient to admit or deny this allegation.

27. While researching alternatives and deciding upon the process, Bremer regularly consulted with the Republican State Party Executive Director, as well as the Chair of the Republican State Party bylaws committee, to ensure the procedures met State Party requirements.

Response: Admitted that Mr. Bremer as the Chairman of the Senate District 10 Republican Committee consulted with the Colorado Republican Committee's Executive Director regarding the conduct of the Senate District 10 Assembly. Stated that Mr. Bremer was advised that the procedures he was contemplating were likely to expose the results of the Assembly to challenge in a party controversy. The Party is without information sufficient to admit or deny the remainder of this allegation.

28. In addition, the Committee relied upon the following Emergency Bylaws passed by the State Republican Party on March 20, 2020:

a. Emergency bylaw number 4 governed voting methods, deferring to state law. Specifically, it stated: "[a]ll district and county central committees or district and county assemblies and conventions may provide for alternative credentialing, nominating, and/or voting procedures as permitted by House Bill 2020-1359."

b. Emergency bylaw number 9 also deferred to state law, holding "[p]ursuant to House Bill 2020-1359 all district and county assemblies and conventions shall be completed no later than April 11, 2020, and may be held over a period of no more than seven calendar days."

Response: Admitted that the quoted Emergency Bylaws of the Colorado Republican Committee contain the portions quoted in this paragraph. Stated that a true and correct copy of the Emergency Bylaws of the Colorado Republican Committee are publicly available at: https://cologop.org/wp-content/uploads/2020/03/ADOPTED_CRC-EMERGENCY-BYLAWS_03202020.pdf

29. Credentialing and early voting opened on Saturday, March 21, 2020, at 10:32 am.

Response: Admitted that credentialing and voting were announced as being open in an e-mail from Mr. Bremer as the Chairman of the Senate District 10 Republican Committee at 10:32 am on Saturday, March 21, 2020.

30. The Assembly followed the process outlined above.

Response: The Party is without information sufficient to admit or deny this allegation.

31. Within hours Mr. Dave Stiver, one of the two candidates, complained about the Assembly process. He also that day, threatened to protest the election before the State Party Central Committee.

Response: Admitted.

32. Webb conferred with Ms. Richie at 3:00 pm and 8:00 pm on that Saturday to credential delegates. This was done by conference call, whereby Mr. Webb read off emails to Ms. Richie, who confirmed eligibility. Bremer and Schneider monitored the phone calls and exchanges of information.

Response: Party is without information sufficient to admit or deny this allegation.

33. At 11:00 on Sunday, March 22, 2020, Webb and Richie again had a conference call to credential delegates. There were an additional 25 emails. After confirming eligibility. Webb also counted the number of votes for those 25 emails.

Response: The Party is without information sufficient to admit or deny this allegation.

34. While after reviewing the emails, a message appeared on Webb's web browser screen asking whether he wanted to leave the web page. Webb attempted to exit the message screen. When he did so, the email web browser page shut down and locked him out of the account.

Response: The Party is without information sufficient to admit or deny this allegation.

35. Webb and the Committee officers believe someone purposefully tried to hack and disable the email account.

Response: The Party is without information sufficient to admit or deny this allegation.

36. Webb unsuccessfully sought to regain access to the email account.

Response: The Party is without information sufficient to admit or deny this allegation.

37. When he couldn't regain access, he promptly created a new email address, sd10assembly2@yahoo.com. He informed Bremer of the new email address. Bremer immediately informed all delegates of the new address, urging delegates who had not yet voted to use the new email address instead.

Response: Admitted that the e-mail address sd10assembly2@yahoo.com was communicated to the delegates to the Senate District 10 Republican Assembly by Mr. Bremer. The Party is without information sufficient to admit or deny the remainder of this allegation.

38. Approximately 35 additional delegate credentials and votes were received at the second email address.

Response: The Party is without information sufficient to admit or deny this allegation.

39. The Assembly convened at 3:00 p.m. on March 22, 2020.

Response: Admitted.

40. At 6:00 pm that day, delegate voting closed.

Response: Admitted.

41. Following the close of voting, five delegates were elevated to delegate status and allowed to vote.

Response: Admitted that five alternate delegates who were elevated to delegate status eventually cast a ballot in the Senate District 10 Republican Assembly's designation election.

42. The final vote tally was as follows: 169 delegates (including 5 alternates elevated to delegate) out of 178 voted, for a participation rate of 95%. Larry Liston received 127 votes, or 75%. Dave Stiver received 41 votes, or 24%. One percent of voters abstained. (All percentages are rounded to the nearest full percent.)

Response: Admitted that the results reported by the Senate District 10 Republican Assembly were 169 votes with 127 cast for Larry Liston, 41 votes cast for David Stiver and one ballot cast for "no one." The Party is without information sufficient to admit or deny the remainder of this allegation.

43. Two days later, on March 24, 2020, Ms. Richie mailed the Certificate of Designation for Senate District 10 to the Colorado Secretary of State. (**Exhibit 1**)

Response: Admitted.

Protest and Republican State Party Intervention

44. The voting procedures engendered controversy within Senate District 10. One of two candidates, Dave Stiver, publicly complained about voting procedures shortly after credentialing and early voting began on March 21, 2020. These complaints included threats to contest the election.

Response: Admitted.

45. Indeed, following the election Mr. Stiver filed a complaint with the Colorado Republican Party Executive Committee, according to Republican Party bylaws

and C.R.S. § 1-3-106, which authorizes the party central committee "pass upon and determine all controversies concerning the regularity of the organization of that party within any . . . senatorial . . . district."

Response: Admitted.

46. Stiver raised multiple objections to the Assembly. None of these objections, however, claimed that he received 30% or more of the vote at the Assembly.

Response: Admitted.

47. The Executive Committee considered the complaint and the responses. Stiver, Larry Liston (the winning candidate), and Bremer all presented to the Executive Committee.

Response: Admitted that all the parties identified in this paragraph presented written and oral argument to the Executive Committee. Stated that in addition to these parties a group of Delegates to the Senate District 10 Assembly also presented written and oral argument to the Executive Committee.

48. Following presentations and a divided vote, the Executive Committee issued a report, entitled "Report of the Executive Committee In re: Controversy regarding March 2122 Designation Election and Assembly for Senate District 10." (the "Executive Committee Report") (**Exhibit 2**).

Response: Admitted.

49. The Central Committee subsequently adopted and approved the Executive Committee Report by a vote of 98 to 88.

Response: Admitted.

50. The Central Committee resolved the complaint by ordering that Dave Stiver be designated as a candidate for Senate District 10. Specifically, the Central Committee did this as an "equitable remedy for the irregularity of the assembly." Executive Committee Report, p. 12. Because the Central Committee believed that Liston had "campaigned honestly and honorably" "Mr. Stiver's only plausible place on the Republican primary election ballot is as the second-place vote-getter." *Id.*

Response: Admitted that the Executive Committee's Report as adopted by the State Central Committee contains the language quoted. Stated that the Executive Committee's Report is a document which speaks for itself.

51. The Central Committee based its equitable remedy on two perceived "irregularities."

Response: Admitted that the Executive Committee's Report as adopted by the State Central Committee identified irregularities in the conduct of the Senate District 10 Assembly. Stated that the Executive Committee's Report is a document which speaks for itself.

52. First, the Central Committee claimed that the Committee could not allow early voting prior to the convening of the Assembly at 3:00 pm, because C.R.S. § 1-4-601(b)(I) prohibits early voting. That statute states in relevant part that "due to public health concerns in any assembly held in 2020 . . . A delegate may participate in the assembly remotely, including casting his or her vote by e-mail . . ."

Response: Admitted that the Executive Committee's Report as adopted by the State Central Committee contains the language quoted. Stated that the Executive Committee's Report is a document which speaks for itself.

53. But Section 1-4-601(b)(I) does not prohibit early voting. The language is permissive, not prohibitive; nothing in the plain language prohibits early voting.

Response: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

54. Moreover, it is well established that early voting is allowed for elections. For example, federal law establishes the second Tuesday of November in even numbered years as "the day for the election" 2 U.S.C. § 7, but states like Colorado can utilize early voting because (1) candidate selection is not made until election day, (2) courts refuse to adopt hyper-technical interpretations that restrict the franchise, and (3) an "election" consists of many actions that take place well before voting and selection. *See, e.g. Voting Integrity Project, Inc. v. Bonier*, 199 F.3d 773, 776 (5th Cir. 2000). This reasoning applies to C.R.S. § 1-4-601(b)(I).

Response: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

55. Like the State Senate District 10 Committee, the State Republican Party mailed delegates ballots in advance of the State Convention and Assembly and allowed delegates to cast ballots prior to the formal convening of the State Assembly.

Response: Admitted that some delegates to the Colorado Republican State Assembly and Convention were mailed ballots. The remainder of the allegations in this paragraph are denied.

56. And early voting did not prejudice any delegate, because all delegates had an opportunity to change or withdraw their vote prior to 6:00 pm, Sunday, March 22, 2020.

Response: The Party is without information sufficient to admit or deny this allegation.

57. Second, the Central Committee argued that an email sent by Bremer to delegates on the evening of May 21, 2020, constituted an irregularity justifying equitable relief. Executive Committee Report, p. 10.

Response: Admitted that the Executive Committee's Report as adopted by the State Central Committee identified irregularities in the conduct of the Senate District 10 Assembly. Stated that the Executive Committee's Report is a document which speaks for itself.

58. On March 21, at 6:32 pm, Chairman Bremer sent an email to all Assembly delegates in response to accusations from Mr. Stiver that the election was improperly run. In relevant part, Bremer stated that Mr. Stiver made "false accusations" and further stated "I want to assure you that Mr. Stiver's allegations are 100% false and demonstrably so. Despite his public slander, we are fully committed to running a fair and transparent election."

Response: Admitted that Mr. Bremer sent an e-mail to Senate District 10 delegates on March 21 at 6:32 pm including the passages quoted.

59. The Central Committee argued that this email (1) could "only" be "fairly interpreted" "as being in opposition to Mr. Stiver," (2) was "incompatible" with county Republican Party bylaws requiring candidate neutrality, and (3) "it [was] possible, if not likely" that the email influenced the outcome of the election. (Executive Committee Report, p. 12).

Response: Admitted that the Executive Committee's Report as adopted by the State Central Committee found that Mr. Bremer's e-mail violated party bylaws applicable to Mr. Bremer and that this violation possibly, if not likely affected the outcome of the Senate District 10 Assembly's designation election. Stated that the Executive Committee's Report is a document which speaks for itself.

60. Even assuming the email violated Republican Party bylaws, mere violation of party bylaws does not give the Central Committee authority to place a candidate on the ballot in contravention of state law.

Response: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

61. Further, the claim that the email may have influenced the outcome of the election is unsupported by evidence and pure speculation. The email did not oppose Mr. Stiver, *see, e.g., Buckley v. Valeo*, 424 U.S. 1, 44 n. 52 (1976), and the Central Committee

did not – and cannot – identify a single voter who changed his or her vote because of the email.

Response: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

62. Importantly, at no point did the Central Committee challenge or seek to overturn the results of the election.

Response: Denied.

63. Finally, the Republican State Party Central Committee does not have authority to amend a candidate designation under its authority to resolve "controversies concerning the regularity of the organization" under C.R.S. § 1-3-106.

Response: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

64. Nonetheless, following the Central Committee's adoption of the Executive Committee Report, the Chairman of the State Republican Party ordered Bremer to issue a new certificate of designation, designating both Liston and Stiver as candidates for the Senate District 10 Republican Primary.

Response: Admitted.

65. The Chairman ordered Bremer to make the designation no later than Monday, April 20, 2020.

Response: Admitted.

FIRST CLAIM FOR RELIEF
(Illegal designation of candidacy, in violation of C.R.S. § 1-4-601(2)(a))

66. Petitioner incorporates all previous allegations.

Response: The Party incorporates its responses to the previous paragraphs.

67. Eli Bremer was the presiding office at the Republican Senate District 10 Assembly held on March 22, 2020.

Response: Admitted.

68. Bremer is an official under the election code charged with submitting the certificate of designation to the Colorado Secretary of State. C.R.S. § 1-4-604(1)(a).

Response: Denied.

69. The Certificate of Designation identifies candidates who received 30% or more of the votes at a nominating assembly, and therefore are designated as primary candidates for the ballot.

Response: Admitted that the Certificate of Designation reflects the results of the Senate District 10 Assembly's designation election as reported by the Senate District.

70. Because he has been ordered to submit an amended certificate of designation, Bremer is likely to designate Dave Stiver as a candidate for Senate District 10 Republican Primary, even though Stiver did not obtain 30% or more of the votes at the Republican Senate District 10 Assembly.

Response: Admitted that Mr. Bremer has been ordered to submit a revised Certificate of Designation including Mr. Stiver. The Party is without information sufficient to admit or deny the remainder of this allegation.

71. Instead, Stiver is being designated a candidate as an "equitable remedy" for perceived election irregularities.

Response: Admitted that the Executive Committee's Report as adopted by the State Central Committee orders Mr. Stiver designated to the ballot as an equitable remedy for the irregularities in the conduct of the Senate District 10 Assembly's designation election. Stated that the Stated that the Executive Committee's Report is a document which speaks for itself.

72. The Chairman of the Republican State Party has ordered Bremer to submit an amended designation of candidacy no later than Monday, April 20, 2020.

Response: Admitted.

73. Any Certificate of Designation of Candidacy that includes Dave Stiver as a candidate violates C.R.S. § 1-4-601(2)(a).

Response: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

SECOND CLAIM FOR RELIEF
(Illegal certification of ballot, C.R.S. § 1-5-203(1)(a)(II))

74. Petitioner incorporates all previous allegations.

Response: The Party incorporates its responses to the previous paragraphs.

75. The Colorado Secretary of State is the public official responsible for certifying primary ballots for state Senate districts. C.R.S. § 1-5-203(1)(a)(II).

Response: Admitted.

76. As part of these responsibilities, she must certify candidates for the Senate District 10 Republican Party primary.

Response: Admitted.

77. For each primary race, the Secretary relies upon the certificate of designation by assembly, submitted and certified by the assembly's presiding officer or secretary. C.R.S. § 1-5-203(1)(a)(II).

Response: Admitted.

78. The Secretary does not investigate each and every designation, but instead relies upon the sworn certification that designation meets legal requirements.

Response: Admitted.

79. If the Secretary receives an amended certificate of designation from Bremer, she will likely place David Stiver's name on the ballot, absent a court order.

Response: The Party is without information sufficient to admit or deny this allegation.

80. Secretary cannot lawfully certify David Stiver for the Senate District 10 Republican Primary, because he did not receive 30% or more of the votes at the Republican Senate District 10 Assembly.

Response: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

REQUEST FOR RELIEF

With respect to the Wherefore clause in Petitioner's Petition, the Party asserts Petitioner is not entitled to any of the requested relief, including an order enjoining Respondent Bremer from submitting a certificate of designation that designates Dave Stiver as a candidate for the State Senate District 10 Republican Primary; or an order prohibiting the Secretary of State from certifying Mr. Stiver as a candidate for the State Senate District 10 Republican Primary.

PARTY'S AFFIRMATIVE DEFENSES

The Party alleges the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Petitioner's Petition fails to a state claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Petitioner's first claim fails to state a claim for relief against Respondent Bremer, because Respondent Bremer is not an election "official" within the meaning of that term in Colo. Rev. Stat. § 1-1-113(1).

THIRD AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over Petitioner's claims for relief, because they are "party controversies" over which the Colorado Republican State Central Committee has exclusive jurisdiction. *See People ex rel. Lowry v. Dist. Ct. of Second Judicial Dist.*, 74 P. 896 (Colo. 1903); *see also* Colo. Rev. Stat. § 1-3-106(1).

FOURTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred in whole or in part, because granting him the requested relief would violate the U.S. Constitution, including the Party's associational rights under the

First Amendment. *See Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000); *Ray v. Blair*, 343 U.S. 214 (1952).

FIFTH AFFIRMATIVE DEFENSE

Petitioner's claims are non-justiciable political questions, because they necessarily turn on an intra-Party dispute. *See O'Brien v. Brown*, 409 U.S. 1 (1972).

* * *

The Party reserves its right to rely on other affirmative defenses that it may become aware of during the course of this case, and the Party reserves the right to amend its answer in intervention to assert such defenses.

RELIEF REQUESTED

Based on the foregoing, the Party requests:

1. That the court dismiss the Petition for lack of subject matter jurisdiction.

2. In the alternative that the court enter an order confirming the authority of the Party, through its State Central Committee, to resolve the controversy at issue including the power to file a revised Certificate of Designation.

Dated April 22, 2020

Brownstein Hyatt Farber Schreck, LLP

By: *s/ Christopher O. Murray*
Christopher O. Murray, #39340
Julian R. Ellis, Jr. #47571

Attorneys for Intervenor Colorado Republican Committee

CERTIFICATE OF SERVICE

I certify that on the April 22, 2020, I electronically filed a true and correct copy of the **Intervenor Colorado Republican Committee's Answer in Intervention** via the Colorado Courts E-Filing System which will send notification of such filing and service upon:

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CASE NUMBER: 2020CV31415

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St., Room 256 Denver, CO 80202	
Petitioner: KARL K. SCHNEIDER, an individual, v. **Respondents:** JENA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly, & **Intervenors**: Larry Liston, an individual, and Colorado Republican Committee.	▲COURT USE ONLY▲
Counsel for Intervenor Larry Liston: Wayne W. Williams, Atty Reg No. 22723 Law Offices of Wayne Williams 3472 Research Parkway, Ste. 104-200 Colorado Springs, CO 80920 Tel: 719-439-1870 WayneWilliamsLaw@comcast.net	Case Number: 2020CV031415 Division:

Intervenor Larry Liston's Answer

Intervenor Representative Larry Liston ("Liston"), through his counsel Wayne W. Williams and pursuant to the Court's April 22 Order, hereby files his answer in intervention under Colorado Rule of Civil Procedure 24(c), to Petitioner Karl L. Schneider's petition under Colo. Rev. Stat. § 1-1-113 ("Petition").

For ease of reference, *this Answer includes the allegations of the Petition and the responses to the allegations made by Intervenor Colorado Republican Committee's Answer in*

Intervention (the "CRC Answer"). The inclusion of the allegations and responses does not constitute an endorsement of the Petition or the CRC Answer.

Liston's Response to the Petition

Introduction

1. Petitioner Karl K. Schneider, through undersigned counsel, submits this Petition under C.R.S. § 1-1-113 against Eli Bremer, presiding officer of Republican Party Senate District 10 Assembly, as well as Jena Griswold, Colorado Secretary of State, and states as follows:

CRC Answer: Because this paragraph does not constitute an allegation under C.R.C.P. 8, the Party declines to respond to it.

Liston Response: Because this is not an allegation, no response is made.

2. Under Colorado law, a candidate for state Senate must earn at least 30% of the vote at a nominating assembly to be placed on the primary ballot. Voters at the Republican Senate District 10 nominating assembly elected one candidate with 75% of the vote, but the Colorado State Republican Party central committee seeks to disregard those results, by ordering Eli Bremer, chair of the Senate District 10 Nominating Assembly, to designate two candidates for the ballot, including one who received less than 30% of the vote. This order overturns the election results and directly contradicts state law. Accordingly, this Petition seeks to enjoin (1) Chairman Bremer from illegally designating a candidate who received less than 30% of the vote, and (2) the Colorado Secretary of State from certifying for the June primary ballot a candidate who did not reach the 30% vote threshold.

CRC Answer: Because this paragraph does not constitute an allegation under C.R.C.P. 8, the Party declines to respond to it.

Liston Response: Admits the allegations of the Petition.

Parties

3. Petitioner Schneider is a registered Republican elector residing in State Senate District 10, in El Paso County, Colorado. He also is the Vice-Chairman of the Republican Party State Senate District 10 Committee for Senate District 10 (the "Committee").

CRC Answer: Admitted.

Liston Response: Admits.

4. Respondent Eli Bremer is the Chairman of the Republican State Senate District 10 Committee, located in El Paso County, Colorado. He was the presiding officer at the Republican State Senate District 10 Assembly (the "Assembly").

CRC Answer: Admitted.

Liston Response: Admits.

5. Respondent Jena Griswold is the Colorado Secretary of State, located in Denver, Colorado.

CRC Answer: Admitted.

Liston Response: Admits.

Jurisdiction and Venue

6. This Court has jurisdiction over this matter under C.R.S. § 1-1-113.

CRC Answer: Denied.

Liston Response: Admits. The Secretary and Bremer each are officials charged with duties and functions under the Uniform Election Code of 1992. E.g., C.R.S. § 1-4-604(1)(a) requires the presiding officer (or secretary) of the assembly (i.e., Bremer) to file the certificate of designation by assembly with the Colorado Secretary of State (Griswold).

7. Venue is proper in this Court under to C.R.C.P. 98(b)(2) because the Colorado Secretary of State is located in Denver, Colorado.

CRC Answer: Admitted that to the extent this court has jurisdiction over this matter, venue in the Second Judicial District is proper.

Liston Response: Admits.

General Allegations

8. Candidates who seek to be nominated by a major political party – either the Republican Party or the Democratic Party – have two ways to have their names placed on the ballot; submission of a candidate petition or nomination by party assembly. C.R.S. § 1-4102.

CRC Answer: Admitted.

Liston Response: Admits.

9. In order to be designated a candidate by assembly, a candidate must receive 30% or more of the vote at a nominating assembly. C.R.S. § 1-4-601(2)(a).

CRC Answer: Denied. Stated that in order to be designated to the primary ballot by a political party assembly, a candidate must either receive 30% or more of the vote at the assembly or must be one of the top-two vote getters on a second ballot where no candidates achieve 30% of the vote.

Liston Response: Admits that the Petition correctly states the law when a single ballot takes place as was the case in the instant matter. No second ballot occurred, but if one had occurred the CRC Answer correctly states the exception for such a ballot in which no candidate receives 30%.

10. Under Republican Party rules, each senate district has a standing committee, responsible for running that district's nominating assembly.

CRC Answer: Admitted.

Liston Response: Admits.

11. Eli Bremer is the chair of the Republican Party Senate District 10 Committee.

CRC Answer: Admitted.

Liston Response: Admits.

12. As chair of the Committee, he serves as the presiding officer at the State Senate District 10 Assembly for the Republican Party.

CRC Answer: Admitted.

Liston Response: Admits.

13. Senate District 10 is located entirely within El Paso County. Under C.R.S. § 1-4-602(2)(a), persons elected as delegates to the county assembly serve also as delegates to the Senate District 10 Assembly.

CRC Answer: Admitted.

Liston Response: Admits.

14. Under El Paso County Republican Party rules, the County Party authorized 355 delegates and 355 alternate delegates to the Assembly. Delegates and alternate delegates were allocated by precinct, as required by C.R.S. § 1-4-602(1)(a)(I).

CRC Answer: Admitted that the El Paso County Republican Party authorized 355 delegates and 355 alternate delegates to the El Paso County Republican Party Assembly.

Liston Response: Admits.

15. The El Paso County Republican Party held its County Assembly on March 18, 2020.

CRC Answer: Admitted.

Liston Response: Admits.

16. The El Paso County Republican Party designated 179 delegates and 24 alternate delegates to the State Senate District 10 Assembly. These delegates and alternates represented the precincts in which they resided.

CRC Answer: Admitted.

Liston Response: Admits that the delegates and alternates to the Senate District 10 Assembly represented the precincts in which they resided. Pursuant to C.R.S. § 1-4-602(1)(a)(I), the participants at the precinct caucus elected 178 delegates and 24 alternates to the Senate District 10 Assembly. No separate "designation" is required but admits that the El Paso County Republican Party erroneously reported 179 delegates and 24 alternates.

17. The County Party transmitted the names and emails of each delegate and alternate to Jody Richie, the Secretary for the State Senate District 10 Committee.

CRC Answer: Admitted that the El Paso County Republican Party transmitted the names of each delegate and alternate to Ms. Richie. Further admitted that the El Paso County Republican Party transmitted e-mail addresses for some of these delegates to Ms. Richie.

Liston Response: Adopts the CRC Answer.

18. Following review of each delegates' eligibility, Ms. Richie determined that one person designated as a delegate for Senate District 10 did not, in fact, reside in Senate District 10.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Admits. One of the delegates on the list sent to Ms. Richie from the El Paso County Republican Party was shown as living in Precinct "5111821177" (underlining added). Pursuant to Colorado law, the second and third digits of a precinct number represent the senate district of the precinct. It thus was readily apparent that the listed delegate did not in fact live in Senate District 10.

State Senate District 10 Assembly Convenes

19. The Committee consists of three officers:

a. Eli Bremer, Chair.

b. Karl Schneider, Vice-Chair

c. Jody Richie, Secretary.

CRC Answer: Admitted that the Senate District 10 Republican Committee has three officers and they are the individuals identified in this paragraph.

Liston Response: Admits.

20. As the Committee Chair, Bremer also served as presiding officer for the Assembly.

CRC Answer: Admitted.

Liston Response: Admits.

21. On March 14, 2020, the Committee scheduled the Assembly to be held on March 25, 2020 at the Colorado Springs Country Club, located at 3333 Templeton Gap Road, Colorado Springs, CO 80907.

CRC Answer: Admitted.

Liston Response: Admits.

22. Due to emergency measures in response to the declared state of emergency in Colorado, on March 17, 2020, the Committee informed delegates via email that the Assembly could not be held as scheduled, and that the Assembly would instead be conducted online.

CRC Answer: Admitted that on March 17, 2020 Mr. Bremer as the Chairman of the Senate District 10 Republican Committee e-mailed delegates to the Senate District 10 Republican Assembly and stated that the Assembly would be held online.

Liston Response: Admits.

23. On March 19, 2020, the Committee rescheduled the Assembly for 3:00 pm, March 22, 2020.

CRC Answer: Admitted.

Liston Response: Admits.

24. The next day, on March 20, 2020, the Colorado State Republican Party Central Committee adopted emergency bylaws to govern the conduct of nominating assemblies.

CRC Answer: Admitted.

Liston Response: Admits. Liston notes that the emergency bylaws do not change the 30% requirement.

25. In preparation for the upcoming Assembly, Schneider personally researched several different options for remote voting. He had some familiarity with different approaches, because he works for a cybersecurity company.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Liston is without information sufficient to admit or deny this allegation.

26. After conferring together, the three Committee officers unanimously agreed that delegates could credential and vote according to the following process:

a. The Committee appointed Joe Webb to serve as both the credentialing committee (to confirm delegate and alternate eligibility), and the teller committee, to count votes. Joe Webb is the former chair of the Jefferson County Republican Party, and therefore is considered an experienced, neutral person with no connections to any candidate seeking nomination through assembly.

b. Webb created a separate email address, sd10assembly@yahoo.com.

Delegates seeking to participate in the assembly were required to send their email to this address.

c. This email from a delegate or alternate delegate had to match the email the Committee received from the County Party. In instances where the County Party did not send an accompanying email address, the Committee sought to telephonically contact delegates to obtain an email address. In instances where two or more delegates shared an email address, the individual would identify himself or herself to Mr. Webb.

d. Delegates would vote by sending an email to the email address.

e. Upon receiving an email, Webb would contact Ms. Richie to confirm that the email belonged to a delegate. Ms. Richie did not provide the voter's name to Mr. Webb. Upon receiving confirmation of the voter's eligibility, Webb would count the accompanying vote. Webb would not tell Ms. Richie how any email sender voted.

f. Credentialing and early voting could begin on prior to the convening of the Assembly.

g. No votes would be tabulated until after the Assembly convened, on Sunday, March 22, 2020, at 3:00 pm.

h. Delegates could change their vote up until three hours after the assembly convened, or 6:00 pm, March 22, 2020.

i. At 6:00 pm, alternates would be elevated to slots that did not have voting delegates in that particular precinct.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Admits b, d, f, g, and h. Liston is without information sufficient to admit or deny the remainder of this allegation.

27. While researching alternatives and deciding upon the process, Bremer regularly consulted with the Republican State Party Executive Director, as well as the Chair of the Republican State Party bylaws committee, to ensure the procedures met State Party requirements.

CRC Answer: Admitted that Mr. Bremer as the Chairman of the Senate District 10 Republican Committee consulted with the Colorado Republican Committee's Executive Director regarding the conduct of the Senate District 10 Assembly. Stated that Mr. Bremer was advised that the procedures he was contemplating were likely to expose the results of the Assembly to challenge in a party controversy. The Party is without information sufficient to admit or deny the remainder of this allegation.

Liston Response: Liston is without information sufficient to admit or deny this allegation.

28. In addition, the Committee relied upon the following Emergency Bylaws passed by the State Republican Party on March 20, 2020:

a. Emergency bylaw number 4 governed voting methods, deferring to state law. Specifically, it stated: "[a]ll district and county central committees or district and county assemblies and conventions may provide for alternative credentialing, nominating, and/or voting procedures as permitted by House Bill 2020-1359."

b. Emergency bylaw number 9 also deferred to state law, holding "[p]ursuant to House Bill 2020-1359 all district and county assemblies and conventions shall be completed no later than April 11, 2020, and may be held over a period of no more than seven calendar days."

CRC Answer: Admitted that the quoted Emergency Bylaws of the Colorado Republican Committee contain the portions quoted in this paragraph. Stated that a true and correct copy of the Emergency Bylaws of the Colorado Republican Committee are publicly available at: https://cologop.org/wpcontent/uploads/2020/03/ADOPTED_CRC-EMERGENCYBYLAWS_03202020.pdf.

Liston Response: Admits both the allegations of the Petition and the CRC Answer.

29. Credentialing and early voting opened on Saturday, March 21, 2020, at 10:32 am.

CRC Answer: Admitted that credentialing and voting were announced as being open in an e-mail from Mr. Bremer as the Chairman of the Senate District 10 Republican Committee at 10:32 am on Saturday, March 21, 2020.

Liston Response: Admits.

30. The Assembly followed the process outlined above.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Admits that the Assembly generally followed the process outlined above. Liston is without information sufficient to admit or deny certain specifics of this allegation.

31. Within hours Mr. Dave Stiver, one of the two candidates, complained about the Assembly process. He also that day, threatened to protest the election before the State Party Central Committee.

CRC Answer: Admitted.

Liston Response: Admits.

32. Webb conferred with Ms. Richie at 3:00 pm and 8:00 pm on that Saturday to credential delegates. This was done by conference call, whereby Mr. Webb read off emails to Ms. Richie, who confirmed eligibility. Bremer and Schneider monitored the phone calls and exchanges of information.

CRC Answer: Party is without information sufficient to admit or deny this allegation.

Liston Response: Liston is without information sufficient to admit or deny this allegation.

33. At 11:00 on Sunday, March 22, 2020, Webb and Richie again had a conference call to credential delegates. There were an additional 25 emails. After confirming eligibility. Webb also counted the number of votes for those 25 emails.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Liston is without information sufficient to admit or deny this allegation.

34. While after reviewing the emails, a message appeared on Webb's web browser screen asking whether he wanted to leave the web page. Webb attempted to exit the message

screen. When he did so, the email web browser page shut down and locked him out of the account.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Liston is without information sufficient to admit or deny this allegation.

35. Webb and the Committee officers believe someone purposefully tried to hack and disable the email account.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Liston is without information sufficient to admit or deny this allegation.

36. Webb unsuccessfully sought to regain access to the email account.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Admits.

37. When he couldn't regain access, he promptly created a new email address, sd10assembly2@yahoo.com. He informed Bremer of the new email address. Bremer immediately informed all delegates of the new address, urging delegates who had not yet voted to use the new email address instead.

CRC Answer: Admitted that the e-mail address sd10assembly2@yahoo.com was communicated to the delegates to the Senate District 10 Republican Assembly by Mr. Bremer. The Party is without information sufficient to admit or deny the remainder of this allegation.

Liston Response: Admits.

38. Approximately 35 additional delegate credentials and votes were received at the second email address.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Liston is without information sufficient to admit or deny this allegation.

39. The Assembly convened at 3:00 p.m. on March 22, 2020.

CRC Answer: Admitted.

Liston Response: Admits.

40. At 6:00 pm that day, delegate voting closed.

CRC Answer: Admitted.

Liston Response: Admits.

41. Following the close of voting, five delegates were elevated to delegate status and allowed to vote.

CRC Answer: Admitted that five alternate delegates who were elevated to delegate status eventually cast a ballot in the Senate District 10 Republican Assembly's designation election.

Liston Response: Admits that five *alternates* were elevated to delegate status and allowed to vote.

42. The final vote tally was as follows: 169 delegates (including 5 alternates elevated to delegate) out of 178 voted, for a participation rate of 95%. Larry Liston received 127 votes, or 75%. Dave Stiver received 41 votes, or 24%. One percent of voters abstained. (All percentages are rounded to the nearest full percent.)

CRC Answer: Admitted that the results reported by the Senate District 10 Republican Assembly were 169 votes with 127 cast for Larry Liston, 41 votes cast for David Stiver and one ballot cast for "no one." The Party is without information sufficient to admit or deny the remainder of this allegation.

Liston Response: Admits.

43. Two days later, on March 24, 2020, Ms. Richie mailed the Certificate of Designation for Senate District 10 to the Colorado Secretary of State. (Exhibit 1)

CRC Answer: Admitted.

Liston Response: Admits. Liston further states that no challenge to the March 24, 2020 designation was filed within five days under C.R.S. § 1-4-501(3).

Protest and Republican State Party Intervention

44. The voting procedures engendered controversy within Senate District 10. One of two candidates, Dave Stiver, publicly complained about voting procedures shortly after credentialing and early voting began on March 21, 2020. These complaints included threats to contest the election.

CRC Answer: Admitted.

Liston Response: Admits.

45. Indeed, following the election Mr. Stiver filed a complaint with the Colorado Republican Party Executive Committee, according to Republican Party bylaws and C.R.S. § 1-3-106, which authorizes the party central committee "pass upon and determine all controversies concerning the regularity of the organization of that party within any . . . senatorial . . . district."

CRC Answer: Admitted.

Liston Response: Admits that following the election Mr. Stiver filed a complaint with the Colorado Republican Party Executive Committee, citing Republican Party bylaws and C.R.S. § 1-3-106, , which authorizes the party central committee "pass upon and determine all controversies concerning the regularity of the organization of that party within any . . . senatorial . . . district."

46. Stiver raised multiple objections to the Assembly. None of these objections, however, claimed that he received 30% or more of the vote at the Assembly.

CRC Answer: Admitted.

Liston Response: Admits.

47. The Executive Committee considered the complaint and the responses. Stiver, Larry Liston (the winning candidate), and Bremer all presented to the Executive Committee.

CRC Answer: Admitted that all the parties identified in this paragraph presented written and oral argument to the Executive Committee. Stated that in addition to these parties a group of

Delegates to the Senate District 10 Assembly also presented written and oral argument to the Executive Committee.

Liston Response: Admits the allegations of the Petition and of the CRC Answer. Liston further states that each of the cited “group of Delegates” cast a ballot that was counted in the Assembly.

48. Following presentations and a divided vote, the Executive Committee issued a report, entitled "Report of the Executive Committee In re: Controversy regarding March 2122 Designation Election and Assembly for Senate District 10." (the "Executive Committee Report") (Exhibit 2).

CRC Answer: Admitted.

Liston Response: Admits.

49. The Central Committee subsequently adopted and approved the Executive Committee Report by a vote of 98 to 88.

CRC Answer: Admitted.

Liston Response: Admits.

50. The Central Committee resolved the complaint by ordering that Dave Stiver be designated as a candidate for Senate District 10. Specifically, the Central Committee did this as an "equitable remedy for the irregularity of the assembly." Executive Committee Report, p. 12. Because the Central Committee believed that Liston had "campaigned honestly and honorably" "Mr. Stiver's only plausible place on the Republican primary election ballot is as the second-place vote-getter." Id.

CRC Answer: Admitted that the Executive Committee's Report as adopted by the State Central Committee contains the language quoted. Stated that the Executive Committee's Report is a document which speaks for itself.

Liston Response: Admits.

51. The Central Committee based its equitable remedy on two perceived "irregularities."

CRC Answer: Admitted that the Executive Committee's Report as adopted by the State Central Committee identified irregularities in the conduct of the Senate District 10 Assembly. Stated that the Executive Committee's Report is a document which speaks for itself.

Liston Response: Admits.

52. First, the Central Committee claimed that the Committee could not allow early voting prior to the convening of the Assembly at 3:00 pm, because C.R.S. § 1-4601(b)(I) prohibits early voting. That statute states in relevant part that "due to public health concerns in any assembly held in 2020 . . . A delegate may participate in the assembly remotely, including casting his or her vote by e-mail . . ."

CRC Answer: Admitted that the Executive Committee's Report as adopted by the State Central Committee contains the language quoted. Stated that the Executive Committee's Report is a document which speaks for itself.

Liston Response: Admits.

53. But Section 1-4-601(b)(I) does not prohibit early voting. The language is permissive, not prohibitive; nothing in the plain language prohibits early voting.

CRC Answer: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

Liston Response: Admits.

54. Moreover, it is well established that early voting is allowed for elections. For example, federal law establishes the second Tuesday of November in even numbered years as "the day for the election" 2 U.S.C. § 7, but states like Colorado can utilize early voting because (1) candidate selection is not made until election day, (2) courts refuse to adopt hyper-technical interpretations that restrict the franchise, and (3) an "election" consists of many actions that take place well before voting and selection. See, e.g. Voting Integrity Project, Inc. v. Bonier, 199 F.3d 773, 776 (5th Cir. 2000). This reasoning applies to C.R.S. § 1-4-601(b)(I).

CRC Answer: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

Liston Response: Admits.

55. Like the State Senate District 10 Committee, the State Republican Party mailed delegates ballots in advance of the State Convention and Assembly and allowed delegates to cast ballots prior to the formal convening of the State Assembly.

CRC Answer: Admitted that some delegates to the Colorado Republican State Assembly and Convention were mailed ballots. The remainder of the allegations in this paragraph are denied.

Liston Response: Admits.

56. And early voting did not prejudice any delegate, because all delegates had an opportunity to change or withdraw their vote prior to 6:00 pm, Sunday, March 22, 2020.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Admits.

57. Second, the Central Committee argued that an email sent by Bremer to delegates on the evening of May 21, 2020, constituted an irregularity justifying equitable relief. Executive Committee Report, p. 10.

CRC Answer: Admitted that the Executive Committee's Report as adopted by the State Central Committee identified irregularities in the conduct of the Senate District 10 Assembly. Stated that the Executive Committee's Report is a document which speaks for itself.

Liston Response: Admits.

58. On March 21, at 6:32 pm, Chairman Bremer sent an email to all Assembly delegates in response to accusations from Mr. Stiver that the election was improperly run. In relevant part, Bremer stated that Mr. Stiver made "false accusations" and further stated "I want to assure you that Mr. Stiver's allegations are 100% false and demonstrably so. Despite his public slander, we are fully committed to running a fair and transparent election."

CRC Answer: Admitted that Mr. Bremer sent an e-mail to Senate District 10 delegates on March 21 at 6:32 pm including the passages quoted.

Liston Response: Admits.

59. The Central Committee argued that this email (1) could "only" be "fairly interpreted" "as being in opposition to Mr. Stiver," (2) was "incompatible" with county Republican Party bylaws requiring candidate neutrality, and (3) "it [was] possible, if not likely" that the email influenced the outcome of the election. (Executive Committee Report, p. 12).

CRC Answer: Admitted that the Executive Committee's Report as adopted by the State Central Committee found that Mr. Bremer's e-mail violated party bylaws applicable to Mr. Bremer and that this violation possibly, if not likely affected the outcome of the Senate District 10 Assembly's designation election. Stated that the Executive Committee's Report is a document which speaks for itself.

Liston Response: Admits that the cited Report so claimed. Liston notes that the applicable state[1] and senate district bylaws did not require neutrality and that cited bylaws of another entity (El Paso County) are not applicable. CRS 1-3-103(10) (a) provides that "[e]ach party state senatorial central committee . . . shall . . . adopt its own bylaws concerning its conduct. . . ."

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[1] The state bylaws provide:
Article III, Section C. Pre-Primary Neutrality.
No candidate for any designation or nomination for partisan public office shall be endorsed, supported, or opposed by the CRC, acting as an entity, or by its state officers or committees, before the Primary Election, unless such candidate is unopposed in the Primary Election.....

Article XVI: BYLAWS FOR COUNTIES AND DISTRICTS, Section A. Adoption.
Counties and districts may adopt their own bylaws but they shall not be in conflict with the CRC bylaws.....

60. Even assuming the email violated Republican Party bylaws, mere violation of party bylaws does not give the Central Committee authority to place a candidate on the ballot in contravention of state law.

CRC Answer: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

Liston Response: Admits.

61. Further, the claim that the email may have influenced the outcome of the election is unsupported by evidence and pure speculation. The email did not oppose Mr. Stiver, see, e.g., Buckley v. Valeo, 424 U.S. 1, 44 n. 52 (1976), and the Central Committee did not – and cannot – identify a single voter who changed his or her vote because of the email.

CRC Answer: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

Liston Response: Admits.

62. Importantly, at no point did the Central Committee challenge or seek to overturn the results of the election.

CRC Answer: Denied.

Liston Response: Admits.

63. Finally, the Republican State Party Central Committee does not have authority to amend a candidate designation under its authority to resolve "controversies concerning the regularity of the organization" under C.R.S. § 1-3-106.

CRC Answer: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

Liston Response: Admits. C.R.S. § 1-3-106 is limited to just two matters: (1) "controversies concerning the regularity of the organization of that party" and (2) "use of the party name." Thus, the statute gives the state party the right to say which organization was the one authorized to conduct an assembly on its behalf, see *People ex rel. Lowry v. Dist. Ct. of Second Judicial Dist.*, 74 P. 896 (Colo. 1903) (state party has right to decide which of two competing assemblies was that of the party) but not the power to override state law with respect to ballot access.

64. Nonetheless, following the Central Committee's adoption of the Executive Committee Report, the Chairman of the State Republican Party ordered Bremer to issue a new certificate of designation, designating both Liston and Stiver as candidates for the Senate District 10 Republican Primary.

CRC Answer: Admitted.

Liston Response: Admits.

65. The Chairman ordered Bremer to make the designation no later than Monday, April 20, 2020.

CRC Answer: Admitted.

Liston Response: Admits.

FIRST CLAIM FOR RELIEF

(Illegal designation of candidacy, in violation of C.R.S. § 1-4-601(2)(a))

66. Petitioner incorporates all previous allegations.

CRC Answer: The Party incorporates its responses to the previous paragraphs.

Liston Response: Liston incorporates his responses to the previous paragraphs.

67. Eli Bremer was the presiding office at the Republican Senate District 10 Assembly held on March 22, 2020.

CRC Answer: Admitted.

Liston Response: Admits.

68. Bremer is an official under the election code charged with submitting the certificate of designation to the Colorado Secretary of State. C.R.S. § 1-4-604(1)(a).

CRC Answer: Denied.

Liston Response: Admits.

69. The Certificate of Designation identifies candidates who received 30% or more of the votes at a nominating assembly, and therefore are designated as primary candidates for the ballot.

CRC Answer: Admitted that the Certificate of Designation reflects the results of the Senate District 10 Assembly's designation election as reported by the Senate District.

Liston Response: Admits.

70. Because he has been ordered to submit an amended certificate of designation, Bremer is likely to designate Dave Stiver as a candidate for Senate District 10 Republican Primary, even though Stiver did not obtain 30% or more of the votes at the Republican Senate District 10 Assembly.

CRC Answer: Admitted that Mr. Bremer has been ordered to submit a revised Certificate of Designation including Mr. Stiver. The Party is without information sufficient to admit or deny the remainder of this allegation.

Liston Response: Liston admits that Stiver did not obtain 30% or more of the votes at the Republican Senate District 10 Assembly. Liston is without information sufficient to admit or deny the remainder of this allegation.

71. Instead, Stiver is being designated a candidate as an "equitable remedy" for perceived election irregularities.

CRC Answer: Admitted that the Executive Committee's Report as adopted by the State Central Committee orders Mr. Stiver designated to the ballot as an equitable remedy for the irregularities in the conduct of the Senate District 10 Assembly's designation election. Stated that the Executive Committee's Report is a document which speaks for itself.

Liston Response: Liston states that the Executive Committee's Report is a document which speaks for itself.

72. The Chairman of the Republican State Party has ordered Bremer to submit an amended designation of candidacy no later than Monday, April 20, 2020.

CRC Answer: Admitted.

Liston Response: Admits.

73. Any Certificate of Designation of Candidacy that includes Dave Stiver as a candidate violates C.R.S. § 1-4-601(2)(a).

CRC Answer: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

Liston Response: Admits. Said designation also would violate C.R.S. § 1-4-103 which requires that "To qualify for placement on the primary election ballot, a candidate must receive thirty percent or more of the votes of the assembly."

SECOND CLAIM FOR RELIEF

(Illegal certification of ballot, C.R.S. § 1-5-203(1)(a)(II))

74. Petitioner incorporates all previous allegations.

CRC Answer: The Party incorporates its responses to the previous paragraphs.

Liston Response: Liston incorporates his responses to the previous paragraphs.

75. The Colorado Secretary of State is the public official responsible for certifying primary ballots for state Senate districts. C.R.S. § 1-5-203(1)(a)(II).

CRC Answer: Admitted.

Liston Response: Admits.

76. As part of these responsibilities, she must certify candidates for the Senate District 10 Republican Party primary.

CRC Answer: Admitted.

Liston Response: Admits.

77. For each primary race, the Secretary relies upon the certificate of designation by assembly, submitted and certified by the assembly's presiding officer or secretary. C.R.S. § 1-5-203(1)(a)(II).

CRC Answer: Admitted.

Liston Response: Admits that for each primary race, the Secretary usually relies upon the certificate of designation by assembly, submitted and certified by the assembly's presiding officer or secretary.

78. The Secretary does not investigate each and every designation, but instead relies upon the sworn certification that designation meets legal requirements.

CRC Answer: Admitted.

Liston Response: Admits that the Secretary does not investigate each and every designation, but instead usually relies upon the sworn certification that designation meets legal requirements.

79. If the Secretary receives an amended certificate of designation from Bremer, she will likely place David Stiver's name on the ballot, absent a court order.

CRC Answer: The Party is without information sufficient to admit or deny this allegation.

Liston Response: Liston is without information sufficient to admit or deny this allegation.

80. Secretary cannot lawfully certify David Stiver for the Senate District 10 Republican Primary, because he did not receive 30% or more of the votes at the Republican Senate District 10 Assembly.

CRC Answer: Because this paragraph is not an allegation under C.R.C.P. 8, but rather legal argument, no response to it is required. To the extent a response is required it is denied.

Liston Response: Admits. C.R.S. § 1-4-103 requires that "To qualify for placement on the primary election ballot, a candidate must receive thirty percent or more of the votes of the assembly."

REQUEST FOR RELIEF

PETITION: WHEREFORE, Schneider asks that the Court order the following relief:

1. An order enjoining Bremer from submitting a certificate of designation that designates Dave Stiver as a candidate for the State Senate District 10 Republican Primary.

2. An order prohibiting the Secretary of State from certifying Stiver as a candidate for the State Senate District 10 Republican Primary.

3. All other relief that the Court deems appropriate.

CRC Answer: With respect to the Wherefore clause in Petitioner's Petition, the Party asserts Petitioner is not entitled to any of the requested relief, including an order enjoining Respondent Bremer from submitting a certificate of designation that designates Dave Stiver as a candidate for the State Senate District 10 Republican Primary; or an order prohibiting the Secretary of State from certifying Mr. Stiver as a candidate for the State Senate District 10 Republican Primary.

Liston Response: Liston concurs in the relief sought by Petition. Liston denies the relief sought by the CRC Answer.

Liston's Responses to CRC Affirmative Defenses

Liston responds to CRC's Affirmative Defenses as follows:

1. CRC's First Affirmative Defense: Petitioner's Petition fails to a state claim upon which relief may be granted.

Liston's Response: As set forth above, the Petition sets forth claims under Colorado law upon which relief may be granted.

2. CRC's Second Affirmative Defense: Petitioner's first claim fails to state a claim for relief against Respondent Bremer, because Respondent Bremer is not an election "official" within the meaning of that term in Colo. Rev. Stat. § 1-1-113(1).

Liston's Response: Denies. Bremer is an official charged with duties and functions under the Uniform Election Code of 1992. See C.R.S. § 1-4-604(1)(a) requires the presiding officer (or secretary) of the assembly (i.e., Bremer) to file the certificate of designation by assembly with the Colorado Secretary of State.

3. CRC's Third Affirmative Defense: The Court lacks jurisdiction over Petitioner's claims for relief, because they are "party controversies" over which the Colorado Republican State Central Committee has exclusive jurisdiction. *See People ex rel. Lowry v. Dist. Ct. of Second Judicial Dist.*, 74 P. 896 (Colo. 1903); *see also* Colo. Rev. Stat. § 1-3-106(1).

Liston's Response: Denies. C.R.S. § 1-3-106 is limited to just two matters: (1) "controversies concerning the regularity of the organization of that party" and (2) "use of the party name." Thus, the statute gives the state party the right to say which organization was the one authorized to conduct an assembly on its behalf, *see People ex rel. Lowry v. Dist. Ct. of Second Judicial Dist.*, 74 P. 896 (Colo. 1903) (state party has right to decide which of two competing assemblies was that of the party) but not the power to override state law with respect to ballot access. Under the CRC's assertion, the CRC would be free to disregard the law entirely and put whatever names it desired on the ballot – even if the delegates in the district

overwhelming rejected the candidate as was the case here – or even if the candidates did not even run at the assembly.

4. CRC's Fourth Affirmative Defense: Petitioner's claims are barred in whole or in part, because granting him the requested relief would violate the U.S. Constitution, including the Party's associational rights under the First Amendment. *See Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000); *Ray v. Blair*, 343 U.S. 214 (1952).

Liston's Response: Denies. Adhering to the 30% threshold requirement does not violate the CRC's associational rights. The cases cited by CRC make clear that "States have a major role to play in structuring and monitoring the election process, including primaries" and that states may "require parties to demonstrate 'a significant modicum of support' before allowing their candidates a place on the ballot." *See Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000), citing *Jenness v. Fortson*, 403 U. S. 431, 442 (1971).

5. CRC's Fifth Affirmative Defense: Petitioner's claims are non-justiciable political questions, because they necessarily turn on an intra-Party dispute. *See O'Brien v. Brown*, 409 U.S. 1 (1972).

Liston's Response: Denies. It is undisputed that only Liston received the requisite 30% of the delegate vote.

Each allegation or defense not specifically admitted is denied. Liston reserves his right to rely on other claims and affirmative defenses that he may become aware of during the course of this case, and Liston reserves the right to amend his answer in intervention to assert such defenses.

Respectfully Submitted this 24th day of April, 2020,

Law Offices of Wayne Williams

/s/ Wayne W. Williams
Wayne W. Williams, #22723

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was electronically served on:

Scott Gessler <sgessler@gesslerlawfirm.com>, counsel for Petitioner Karl Schneider,
Grant Sullivan <Grant.Sullivan@coag.gov>, counsel for Respondent Jena Griswold,
John Buckley <john@buckleylaw.com>, counsel for Respondent Eli Bremer, and
Chris Murray <cmurray@bhfs.com>, counsel for intervenor Colorado Republican Committee

Dated this 24th day of April, 2020.

Law Offices of Wayne Williams

/s/ Wayne W. Williams
Wayne W. Williams, #22723

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DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1427 Bannock Street, Room 281 Denver, CO 80202	
KARL K. SCHNEIDER, an individual, Petitioner, v. JENA GRISWOLD, in her capacity as the Colorado Secretary of State, and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly, Respondents; and LARRY LISTON, an individual, and the COLORADO REPUBLICAN COMMITTEE, Intervenors.	▲ COURT USE ONLY ▲
PHILIP J. WEISER, Attorney General GRANT T. SULLIVAN, Assistant Solicitor General, No. 40151* MICHAEL KOTLARCZYK, Assistant Attorney General, No. 43250* Colorado Attorney General's Office 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: 720.508.6349 720.508.6187 E-Mail: grant.sullivan@coag.gov mike.kotlarczyk@coag.gov *Counsel of Record *Attorneys for Respondent Jena Griswold, in her capacity as Colorado Secretary of State*	Case No.: 20CV31415 Division: 259

THE SECRETARY OF STATE'S HEARING BRIEF

INTRODUCTION

The Secretary of State does not take sides in this dispute between the statewide Republican Party and the local party assembly in Senate District 10. Indeed, the Secretary should be dismissed from this case because there is no allegation that she has or is about to commit a breach or neglect of any duty or other wrongful act—the sole grounds available for naming an election official in this type of suit. § 1-1-113(1), C.R.S. (2019).

To the extent the Secretary of State is a proper respondent at all, she has no stake in the identity or number of candidates who are placed on the primary ballot for Senate District 10. And the Secretary is unaware of any previous primary election dispute similar to this case arising in Colorado that might provide useful precedent.

Instead, the Secretary of State's concerns are to ensure that the process for making the ballot comports with state and federal law, is administrable, and that this Court's decision is made in a timely fashion to ensure compliance with impending ballot deadlines. With those goals in mind, the Secretary files this brief to advise the Court of

the broad principles of Colorado election law that govern here, but without taking a position on how they apply to the parties in this specific litigation.

One point that the Secretary of State wishes to stress to the Court: time is of the essence. By statute, the Secretary must certify the content of the June 30, 2020 primary ballot no later than May 7, 2020. *See* § 1-5-203(1), C.R.S. (2019) (as amended by H.B. 20-1359, § 9). This deadline cannot be extended. Among other reasons, Colorado is under strict federal deadlines for transmitting ballots to absent uniformed services and overseas voters, 52 U.S.C. § 20302(a)(8)(A), and may suffer federal sanctions for any noncompliance. Accordingly, to permit sufficient time for appellate review, the Secretary of State urges the Court to issue its decision as soon as possible after the April 27, 2020 hearing. *See* § 1-1-113(3) (stating appellate review must be sought in the Colorado Supreme Court within 3 days of the district court's decision).

DISCUSSION

I. The Secretary of State is not a proper respondent and should be dismissed.

Section 1-1-113 permits a district court "to issue an order requiring substantial compliance with the provisions of the election code whenever any eligible elector files a verified petition alleging that a person charged with a duty under the code has committed [or is about to commit] a breach or neglect of that duty or wrongful act." *Carson v. Reiner*, 2016 CO 38, ¶ 15; *accord* § 1-1-113(1) (relief may be had if "a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act").

Here, there is no credible allegation that the Secretary of State has or is about to commit a breach or neglect of any duty. The only duty of the Secretary identified in the Petition is her duty to issue a certificate to each county listing "the persons for whom certificates of designation or petitions have been filed with the secretary of state and the office for which each person is a candidate." § 1-5-203(1)(a)(II). But Petitioner is not concerned that the Secretary will not comply with that duty; he is concerned that, if Mr. Bremer submits a certificate

designating Mr. Striver as a candidate, the Secretary ***would*** then comply with her duty under § 1-5-203 to certify Mr. Striver to the ballot. There is no allegation or suggestion that, if Mr. Bremer does not submit a certificate designating Mr. Striver, that the Secretary would nevertheless designate Mr. Striver to the ballot. The Secretary of State would have no basis to do so. Accordingly, there is no duty that the Petition suggests that the Secretary of State has or will breach. She should therefore be dismissed as a party to this § 1-1-113 action.

The Secretary of State expresses no opinion as to Petitioner's first claim of relief against Mr. Bremer. The Secretary further notes that if the Court granted relief to Petitioner on his claim against Mr. Bremer and barred Mr. Bremer from submitting a certificate of designation naming Mr. Striver, this would provide Petitioner with the full relief that he seeks. Because the Secretary is not needed to afford relief and there is no plausible allegation that she may breach a duty, the Secretary of State should be dismissed from this § 1-1-113 action.

II. Colorado law contains specific requirements for assemblies to certify candidates to the primary ballot.

A candidate seeking a major political party's nomination for political office at a primary election can qualify for the primary ballot through two routes: submission of a candidate petition or designation by a party assembly. § 1-4-102. This case deals with only the party assembly route.

Colorado statute sets forth specific (though limited) requirements for conducting major political party assemblies that will result in candidates being certified to the primary ballot. Assemblies must normally be held no later than 73 days before the primary election. § 1-4-601(1)(a). House Bill 20-1359, enacted in reaction to the ongoing COVID-19 pandemic, grants additional time for assemblies in 2020, permitting them through April 25, 2020. H.B. 20-1359, § 3. It also permits delegates to participate in an assembly remotely, including by casting ballots via email, mail, telephone, or through an internet-based application if allowed by the party. *Id.*

An assembly may take no more than two ballots for each office to be filled at the next general election. § 1-4-601(2)(a). Any candidate receiving "thirty percent or more of the votes of all duly accredited assembly delegates who are present and voting on that office must be certified" to the primary ballot by the assembly's chairperson and secretary. *Id.* If no candidate receives thirty percent, a second ballot is conducted. *Id.* If the second ballot also fails to produce a candidate with thirty percent, the two candidates receiving the highest number of votes must be certified to the primary ballot. *Id.*

The assembly's chairperson and secretary must certify the results of the assembly to the Secretary of State by filing a "certificate of designation" under § 1-4-604. *Id.*; *see Murphey v. Trott*, 160 Colo. 336, 340, 417 P.2d 234, 237 (1966) ("It is the duty, under the statute, of the presiding officer and the secretary of the assembly to certify [a candidate's] designation"). Although the certificate is due in the Secretary's office within four days of the assembly, § 1-4-604(3), a late filing does "not deprive candidates of their candidacy." § 1-4-604(5). A copy of the certificate of designation must also be transmitted by the

assembly's chairperson or secretary to the state central committee of the political party holding the assembly. § 1-4-604(1)(b).

The certificate "must indicate the order of the vote received at the assembly," meaning it must rank the candidates by number or percentage of votes received. § 1-4-601(2)(a). The ranking determines the order of the candidates' names on the primary ballot. § 1-4-605.

Colorado's statutes governing the assembly process do not provide an explicit mechanism for resolving disputes between an assembly's chairperson and the state central committee over procedural irregularities occurring at the assembly. Instead, those statutes are limited to remedying omitted or missing certificates of designation. Using the certificate copies transmitted to it, the state central committee prepares a "compilation of the certificates of designation" of the various assemblies held throughout the State. § 1-4-604(6)(a). The state central committee's compilation is filed with the Secretary of State, who then compares the compilation with the certificates she

receives from each assembly.[1] § 1-4-604(6)(a)-(b). If the Secretary of State discovers that a certificate appearing on the state central committee's compilation has not been filed, she notifies the state central committee of the omission. § 1-4-604(6)(b). The state central committee must then "direct" the assembly's chairperson to file the missing certificate with the Secretary of State. § 1-4-604(6)(c).

III. A political party's state central committee holds exclusive authority to resolve controversies over "the regularity of the organization of that party."

While Article 4 of the Election Code details the assembly process, Article 3 concerns political party organization. By statute, a political party's state central committee has "full power to pass upon and determine all controversies concerning the regularity of the organization of that party" within any district. § 1-3-106. The party's state central committee may promulgate rules governing "the method of passing upon and determining controversies as it deems best," and all

[1] As a practical matter, the parties' state central committees often do not file their compilations with the Secretary of State, but her office nonetheless coordinates with the parties to remedy any omitted certificates.

determinations by the party's state central committee "shall be final." *Id.*

What constitutes a controversy concerning the "regularity of the organization" of the party is not defined in statute and not well developed in case law. In the sole reported case, *People ex rel. Lowry v. Dist. Court*, 32 Colo. 15, 74 P. 896 (1903), the Colorado Supreme Court held that the Republican Party's state central committee had exclusive authority to determine which of two rival groups were authorized to convene the Denver Republican Party's convention. The court explained that the statute makes the party's state central committee the "sole tribunal" to determine disputes like those "here presented" and that the courts "do not have concurrent jurisdiction." 74 P. at 898. The court did not elaborate on the types of disputes that fall within the state central committee's exclusive jurisdiction. But at the very least, "factional disputes" between subordinate divisions of a political party fall within the exclusive control of the party's state central committee. *Id.*

IV. Election administration deadlines are imminent.

For the Court's convenience, the Secretary of State provides the following list of relevant imminent election administration deadlines:

- May 7, 2020: Primary ballot content must be certified by the Secretary of State;
- May 16, 2020: Ballots must be transmitted to absent uniformed services and overseas voters;
- May 29, 2020: All ballots for the primary election must be printed and in possession of the county clerk; and
- June 30, 2020: Primary election is held.

CONCLUSION

The Secretary of State requests that this Court issue its decision as soon as possible. Timely resolution is necessary to ensure that ballots are transmitted in a manner consistent with state and federal law to absent uniformed services and overseas voters.

Dated: April 24, 2020

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE SECRETARY OF STATE'S HEARING BRIEF** upon the following parties or their counsel electronically via Colorado Courts E-Filing this 24nd day of April, 2020 as follows:

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DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Denver, CO 80202	DATE FILED: April 27, 2020 7:48 AM FILING ID: 8A904A8BA27DD CASE NUMBER: 2020CV31415
Petitioner: KARL K. SCHNEIDER, an individual, v. **Respondents:** JENNA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly, **Intervenors:** LARRY LISTON, an individual, and the COLORADO REPUBLICAN COMMITTEE, an unincorporated non-profit association.	▲ **COURT USE ONLY** ▲
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COLORADO REPUBLICAN COMMITTEE'S BRIEF FOR APRIL 27 HEARING

The Colorado Republican Committee (Party) files this hearing brief ahead of the April 27, 2020 hearing on Petitioner Karl Schneider's petition under Colo. Rev. Stat. § 1-1-113. That petition seeks to challenge and overturn the Party's finding that the Republican State Senate District 10 assembly and designation election was irregular to the point of undermining the confidence in the outcome of the election. Unsatisfied with the Party's decision, Petitioner recasts his objections as claims under section 1-1-113 and asks this Court to bar what the Party

expressly ordered—that the Republican State Senate District 10 leadership must designate both Republican candidates for the Senate District 10 seat (Intervenor Larry Liston and David Stiver) to the June 2020 Republican primary ballot. Because the Party retains the exclusive jurisdiction to resolve party controversies under Colorado statute, the Party's position, as an intervenor in this case, is that the Court should decline jurisdiction and yield to the Party's resolution of this intra-party dispute. By doing so, the Court will be in lockstep with over 100 years of Colorado precedent deferring to political parties' authority to finally resolve party controversies, and will avoid abridging the Party's rights under the First Amendment.

FACTUAL AND PROCEDURAL BACKGROUND

Factual Background

1. In mid-March 2020, Governor Polis declared a disaster emergency in Colorado related to the COVID-19 disease. (*See* Pet., Ex. 2 at 2 (hereinafter Party Report).) Recognizing the likely impact on political parties' assemblies and conventions, the general assembly adopted, and the governor signed into law, H.B. 1359, which made temporary changes to the assembly and convention process for designating candidates to the June 2020 primary ballot. (*Id.* at 3.)

2. The Party adopted 17 emergency bylaws in response H.B. 1359 to govern Republican district, county, and state assemblies and conventions in Colorado. (*Id.*)

3. On March 14, 2020, Respondent Eli Bremer, as chairman of the Republican State Senate District 10 Committee (SD-10 committee), scheduled the SD-10 assembly for an in-person meeting at the Colorado Springs Country Club on March 25. (*Id.*) Days later, on March 17, Respondent Bremer restructured the SD-10 assembly as an online assembly in response to concerns raised by SD-10 delegates. (*Id.* at 3-4.) Respondent Bremer further rescheduled the SD-10 assembly on March 19, by moving the assembly up three days to March 22. (*Id.* at 4.) At the same time, Respondent Bremer placed two individuals who had declared their intention to run

for state senator, Intervenor Larry Liston and David Stiver, into nomination for designation to the Republican primary ballot for SD-10. (*Id.*)

4. The next day Respondent Bremer emailed instructions to the SD-10 delegates[1] on credentialing and voting in the designation election. (*Id.*) Specifically, delegates would send an email to a dedicated email address overseen by someone from outside SD-10 and El Paso County to preserve the integrity and secrecy of the balloting. (*Id.*) Respondent Bremer clarified that credentialing and balloting would be open upon circulation of the designated email and would remain open until the time of the assembly on March 22. (*Id.*) Mr. Stiver and others objected to the process and claimed it impermissibly allowed voting before opening the SD-10 assembly. (*Id.*) The Party also advised Respondent Bremer against permitting voting before gaveling the assembly open, but he declined to heed the Party's advice. (*Id.* at 4 n.3.)

5. On March 21, Respondent Bremer circulated a Yahoo email address (sd10assembly@yahoo.com) to the SD-10 delegates and announced that voting in the designation election was open immediately. (*Id.* at 4.) Some delegates claimed they never received Respondent Bremer's email, but Respondent Bremer disputed that allegation and stated he sent the email to all delegates for whom leadership had an email address. (*Id.* at 5.)

6. Nonetheless, while voting was open, it is undisputed Mr. Stiver accused Respondent Bremer of gamesmanship in a Facebook post. (*Id.* at 5.) In response to Mr. Stiver's accusations, and while voting for the SD-10 designation election was open, Respondent Bremer emailed the SD-10 delegates the evening before the assembly:

> Dear Senate 10 Delegates,
>
> It was just brought to my attention that one of the candidates for this office, Mr. Dave Stiver, is making false and defamatory statements on Facebook about the volunteer officers of Senate District 10. Among his false accusations are that he was not notified that balloting had opened despite the fact that he himself

[1] The El Paso Republican Party designated 179 delegates and 24 alternates to the SD-10 assembly. (*See* Pet. ¶ 16; Party's Answer in Intervention ¶ 16.)

> successfully voted. We have checked and double checked our system to confirm that he was sent notification. We suggested he check his junk mail since we have been sending numerous emails in an effort to be fully transparent. Despite this, Mr. Stiver has decided to slander the officers of SD10 publicly rather than attempt to work through this process.
>
> I want to assure you that Mr. Stiver's allegations are 100% false and demonstrably so. Despite his public slander, we are fully committed to running a fair and transparent election. If you have any questions or concerns, please feel free to reach out to any of the district officers. Thank you for your time and participation in this admittedly deeply flawed system that the State Government has forced on our Party.
>
> Eli Bremer
> SD10 Chair

(*Id.*) On the morning of the SD-10 assembly, a delegate responded to Respondent Bremer with a motion to postpone the designation election until an agreed-upon balloting system could be put in place. (*Id.* at 6.) Respondent Bremer refused to hear the delegate's motion on the ground that the SD-10 assembly was not yet technically open. (*Id.*)

7. At the same time Respondent Bremer declined to hear the motion to postpone the SD-10 designation election he emailed the delegates announcing that SD-10 leadership had identified an apparent hack on the designated Yahoo email account used for voting. (*Id.*) Respondent Bremer stated the email account was impaired and directed delegates who had not voted to use a second email address to vote (sd10assembly2@yahoo.com). (*Id.*)

8. Apparently because of the claimed hack on SD-10's designated voting email account, additional SD-10 delegates renewed the request to postpone the designation election to allow leadership to implement a new voting process. (*See id.*) Respondent Bremer again refused the motion, this time when the SD-10 assembly was gaveled open at 3 p.m. on March 22. (*Id.*)

9. After the assembly convened, it was determined that 10 alternates were eligible for elevation to the status of voting delegates. The SD-10 committee held open voting from 3 p.m. to 6 p.m. to allow the alternates to vote, five of whom did so. (*Id.*)

10. When the SD-10 assembly reconvened shortly after 6 p.m., the teller reported the results of the designation election: 169 votes cast (of a possible 179 delegate slots) with 127 votes (or 75.14%) for Intervenor Liston, 41 votes (or 24.26%) for Mr. Stiver, and 1 vote (or 0.59%) for "no one." (*Id.*) The election results were emailed to the delegates the next day. (*Id.*)

Procedural Background

11. On March 24, Mr. Stiver and eight other contestants lodged a controversy with the Party's executive committee. (*Id.* at 2, 7.) The contestants alleged a host of irregularities with the SD-10 assembly and designation election, including that Respondent Bremer unnecessarily advanced the date of the assembly; Respondent Bremer improperly opened voting in the designation election before the assembly had been convened; Respondent Bremer exposed the delegates to voter intimidation by using email voting that was not secret; Respondent Bremer violated rules on neutrality and improperly sent an email to the delegates while voting was open accusing Mr. Stiver of dishonesty; Respondent Bremer failed to entertain a motion to postpone the designation election after the voting process had been compromised; and Respondent Bremer impermissibly elevated five alternates to voting delegates during the election. (*Id.* at 7-8.)

12. The executive committee determined it had jurisdiction to hear the party controversy under Colo. Rev. Stat. § 1-3-106(1) and the Party's bylaws and emergency bylaws, and no party to the controversy contested the Party's jurisdiction to decide the matter. (*See id.* at 2.) Due to the governor's prohibition on in-person gatherings, the executive committee held a special meeting on April 14 via Zoom to hear the controversy. The executive committee invited all parties to submit written submissions—all did so. (*Id.* at 7.) Additionally, the contestants, Respondent Bremer, and Intervenor Liston were invited to present evidence and argument to the executive committee at the special meeting, which they did. (*Id.*)

13. The Party's executive committee issued its written findings on April 15. (*See generally id.* at 1.) Specifically, the executive committee found that the SD-10 assembly was

irregular to the point of undermining the confidence in the designation election. (*Id.* at 10.) First, Respondent Bremer impermissibly opened voting for the designation election prior to the assembly, which was permitted by neither the Party's bylaws nor H.B. 1359. (*Id.* at 10-11.) Second, Respondent Bremer impermissibly used his office as chairman of the SD-10 committee to send an email during the designation election attacking one of the two candidates for the SD-10 nomination. (*Id.* at 11-12.) And third, because the deadline for the completion of single-county district assemblies under H.B. 1359 had expired, the designation election could not be re-conducted to redress the irregularities with the assembly. (*Id.* at 12-13.)

14. Due to the irregularities and the expired deadline, the executive committee ordered "that the equitable remedy for the irregularity of the assembly is that the voters in the Republican primary election in Senate District 10 be permitted to choose between Representative Liston and Mr. Stiver." (*Id.* at 13.) To effectuate this remedy, the executive committee ordered Respondent Bremer to file a certificate of designation with the Secretary of State naming Mr. Stiver to the Republican primary ballot for SD-10. (*Id.*)

15. Respondent Bremer appealed the executive committee's decision to the Party's state central committee. All the parties' written submissions were forwarded to the members of the state central committee, and each party was invited to make an oral presentation at the state central committee meeting on April 17. After considering the parties submissions and arguments, the state central committee adopted the executive committee's report by a margin of 98 to 88. (*See* Pet. ¶ 49; Party's Answer in Intervention ¶ 49.)

16. On April 20, Petitioner Schneider (the vice-chairman of the SD-10 committee) filed a petition against Respondent Bremer and Respondent Secretary of State under Colo. Rev. Stat. § 1-1-113. Petitioner asks this Court to enjoin Respondent Bremer, as chairman of the SD-10 committee, from complying with the Party's order that he designate Mr. Stiver as a candidate

to the Republican primary ballot, and to enjoin Respondent Secretary of State from certifying the June 2020 Republican primary ballot with Mr. Stiver's name. (Pet. ¶¶ 66-73, 74-80.)

17. The Court granted Intervenor Liston's and the Party's respective motions to intervene and ordered a hearing via WebEx virtual courtroom on April 27 at 1:30 p.m.

STATUTORY BACKGROUND AND LEGAL STANDARDS

The Party's Exclusive Jurisdiction to Hear Party Controversies

Colorado law vests the Party's state central committee with the "*full power* to pass upon and determine *all controversies concerning the regularity of the organization* of that party within any congressional, judicial, senatorial, representative, or county commissioner district or within any county." Colo. Rev. Stat. § 1-3-106(1) (emphasis added). The statute also states the Party has the authority to adopt "rules governing the method of passing upon and determining controversies as it deems best," and the statute makes clear that "[a]ll determinations upon the part of the state central committee shall be final." *Id.*

While state political parties' right to decide party controversies is codified in state statute—which has existed since 1901, *see People ex rel. Lowry v. Dist. Ct. of Second Judicial Dist.*, 74 P. 896, 897 (Colo. 1903)[2]—that right is of constitutional significance. "[A] State, or a

[2] The history of how Colo. Rev. Stat. § 1-3-106(1) came to be is germane to this dispute. Prior to the adoption of the statute in 1901, several cases percolated through the courts that required choosing between candidates of various factions within a single political party. *See Spencer v. Maloney*, 62 P. 850, 852 (Colo. 1900) (collecting cases). For example, in *Spencer*, two factions of the Democratic Party nominated candidates, and a lower court ordered both candidates on the ballot. *Id.* The Colorado Supreme Court reversed, concluding that one of the two factions' tickets was the true winner. *Id.* at 856. In resolving the underlying party controversy, the court lamented that it had become common for courts to resolve these matters, but that such a practice "should never have been adopted." *Id.* Heeding the court's reticence in *Spencer*, the general assembly adopted the precursor to Colo. Rev. Stat. § 1-3-106(1), designating "the state central committee of a political party" as "the sole tribunal to determine [party] controversies" and divesting the courts of concurrent jurisdiction. *Lowry*, 74 P. at 897, 898. The law has remained almost unchanged since 1901, "reliev[ing] the courts of a class of litigation w[hich] should never be imposed on them, and confer[ing] the power and places the responsibility for its exercise upon the political parties, where it properly belongs." *Id.* at 899.

court, may not constitutionally substitute its own judgment for that of the Party" even if the court believes a particular expression protected by the First Amendment is "unwise or irrational." *Democratic Party of U.S. v. Wis. ex rel. La Follette*, 450 U.S. 107, 123-24 (1981); *see also Tashjian v. Republican Party*, 479 U.S. 208, 224 (1986).

Process for Designating Candidates to a Party's Primary Ballot

"All candidates for nominations to be made at any primary election shall be placed on the primary election ballot either by certificate of designation by assembly or by petition." Colo. Rev. Stat. § 1-4-102. For a candidate to be designated by assembly for the June 2020 primary ballot, the process outlined in subsection 1-4-601(2)(a) applies:

- The assembly may "take no more than two ballots for party candidates for each office to be filled at the next general election."
- Candidates who receive "thirty percent or more of the votes" of "assembly delegates who are present and voting" are certified as candidates for the office.
- "If no candidate receives thirty percent or more of the votes," a second ballot is cast on all of the candidates. If "no candidate receives thirty percent or more of the votes" on the second ballot, the top two vote-getters are certified as candidates for the office.

After the designation election, the presiding officer or secretary must file a certificate of designation by the assembly with the secretary of state. § 1-4-604(1)(a). The state central committee also "file[s] with the secretary of state a compilation of the certificates of designation of each assembly." § 1-4-604(6)(a)(I). The secretary of state then "compare[s the] party compilation of certificates of designation with the certificates of designation filed by each such assembly," § 1-4-604(6)(b),[3] and certifies the ballot for the primary election, § 1-5-203(1)(a)(II).

[3] The statute also requires the secretary of state to provide notice to the state central committee of any certificates of designation not filed in compliance with subsection 1-4-604(1)(a), *see* § 1-4-604(6)(b), and directs the state central committee to "file, or direct the presiding officer of the assembly to file, the certificate of designation," § 1-4-604(6)(c).

Section 1-1-113 Actions Against State Election Officials

Section 1-1-113 actions involve "controvers[ies] aris[ing] between any *official* charged with any duty or function under this code and any candidate, or any officers or representatives of a political party" who allege that a person charged with such a duty "has committed or is about to commit a breach or neglect of duty or other wrongful act." § 1-1-113(1) (emphasis added). The Colorado Supreme Court has described section 1-1-113 actions this way: "A summary proceeding designed to quickly resolve challenges brought by electors, candidates, and other designated plaintiffs against *state election officials* prior to election day." *Frazier v. Williams*, 401 P.3d 541, 544 (Colo. 2017) (emphasis added).

After notice and an opportunity to be heard, and upon a showing of good cause, the court may order a state election official to "substantially comply" with the Colorado Election Code. *Id.* The petitioner lodging a section 1-1-113 petition bears the burden of proof. *Id.*

ARGUMENT

Petitioner's claims—one against Respondent Bremer for his anticipated "illegal designation of a candidate" and one against Respondent Secretary of State for her anticipated "illegal certification of a ballot"—turn on the accuracy and regularity of the SD-10 designation election. As Petitioner's argument goes:

- To be designated to the primary ballot by a political party assembly, Colorado law requires that a candidate receive 30% or more of the vote at the assembly.
- Mr. Stiver received 24.26% of the votes at the SD-10 assembly.
- Therefore Mr. Stiver cannot be designated to the primary ballot.

But the problem with Petitioner's proof is the assumed second premise. That premise is wrong, or at least undetermined because of the irregularities at the SD-10 assembly, and more importantly, runs contrary to the express findings of the Party, which has exclusive jurisdiction under section 1-3-106 to make such findings. (*See* Party Report 10 ("The Executive Committee finds that the Senate District 10 assembly was irregular to the point that the Executive

Committee cannot have confidence in the outcome of the designation election.").) In truth, Petitioner is using Colo. Rev. Stat. § 1-1-113 to seek collateral review of an issue the Party resolved through its internal contest procedures—namely, whether the SD-10 assembly was irregular to the point of undermining confidence in the results the designation election. That issue was finally resolved by nearly ***200 Party members*** (between the executive committee and state central committee), and the Party urges the Court to yield to the Party's express findings.

I. The Party Has Exclusive Jurisdiction to Decide Party Controversies, Including Whether the SD-10 Designation Election Was Irreparably Irregular.

Petitioner's claims are an artful pass at re-litigating issues decided by the Party after it heard and finally determined this matter on April 14 and 17. When this matter was first initiated at the party level, the Party invited the interested parties to submit written materials; it heard evidence and argument of counsel; and it conducted internal deliberations. After which, the Party's executive committee issued a 13-page report (later adopted by the state central committee) that outlined the irregularities with the SD-10 assembly and decided that, because of the irreparable designation election and expired deadline for single-county assemblies, the proper remedy was ballot access rather than excluding one (of two) candidates for the seat.

While it is true Petitioner now invokes Colo. Rev. Stat. § 1-1-113 and reframes the challenge as one seeking to enjoin Respondent Bremer from submitting a certificate of designation that designates Mr. Stiver as a candidate for the SD-10 Republican primary, and to enjoin Respondent Secretary of State from certifying the same (*see* Pet. 11), the substance of the challenge and the relief requested is the same. In that way, although veiled as something different, Petitioner through section 1-1-113 seeks to rehabilitate a flawed SD-10 designation election in contravention of the Party's express findings. Put differently, the only way Petitioner can carry his burden under section 1-1-113 is to first validate the results of the SD-10 designation election in disregard of a final determination by the Party. And that determination was supported

by evidence that Respondent Bremer impermissibly opened voting for the designation election prior to the assembly, which was permitted by neither the Party's bylaws nor H.B. 1359 (Party Report 10-11); that Respondent Bremer impermissibly used his office as chairman of SD-10 to send an email attacking one of the two candidates for the SD-10 nomination during the designation election (*id.* at 11-12); and that, because the deadline for the completion of single-county district assemblies under H.B. 1359 had expired, the designation election may not be re-conducted to fix the irregularities with the assembly (*id.* at 12-13).

The Party stands by its determination. More fundamentally, however, the correctness of the Party's determination is not a question for this Court. It has long been the law in Colorado that the state central committees of political parties are the final arbiters of internal party affairs and controversies. *See* Colo. Rev. Stat. § 1-3-106(1). Shortly after adoption of the original state statute in 1901 delegating exclusive jurisdiction to state political parties to decide internal party controversies, the Colorado Supreme Court summarized the law this way: "That the state central committee of a political party, or the state convention, as the case may be, is now the sole tribunal to determine such controversies as is here presented is, to our mind, clear beyond all doubt; and, as a necessary sequence, the courts do not have concurrent jurisdiction in the premises." *People ex rel. Lowry v. Dist. Ct. of Second Judicial Dist.*, 74 P. 896, 898 (Colo. 1903). And, to the supreme court, such a shift in review authority made good sense:

> We close the discussion by saying that the General Assembly exhibited wisdom and a regard for the interests of the judiciary in passing [the 1901] statute, by which members of the same political body are required to submit their controversies to the highest constituted authority of the party in the state. It relieves the courts of a class of litigation w[hich] should never be imposed on them, and confers the power and places the responsibility for its exercise upon the political parties, where it properly belongs.

Id. at 899; *see also People v. Republican State Cent. Comm.*, 226 P. 656, 666 (Colo. 1924) (Campbell, J., dissenting) ("My observation and experience in these matters have convinced me not only of the unwisdom of an attempt to confer such power, but likewise of the lack of

legislative authority under the Constitution to confer it. This court . . . should unhesitatingly now, as it summarily did two years ago, refuse to permit any judicial tribunal in this state to interfere with, or pass upon, purely political controversies of a political party.").

Contrary to Intervenor Liston's view, section 1-3-106 is not limited to disputes concerning "which [party] organization [i]s the one authorized to conduct an assembly on [the state party's] behalf." (Liston Answer 30.) Although only two reported cases have examined the contours of section 1-3-106 during its nearly 120-year run, nothing in the text of the statute limits the Party's jurisdiction to controversies involving "factional disputes." Indeed, one of the two reported cases involved a challenge to the removal of two plaintiffs "from their positions of Captain and Co-captain of a captaincy district within the Democratic Party of Adams County." *Nichol v. Bair*, 626 P.2d 761, 762 (Colo. App. 1981). The court of appeals easily found subject matter jurisdiction lacking, citing to section 1-3-106 (then section 1-14-109) and *Lowry* for support. *Id.* To be sure, state political parties regularly hear and finally determine many types of party controversies—including controversies over designation elections—and it's telling there aren't scores of decisions over the last century in the Pacific Reporters resolving such disputes. Even more telling of the general acceptance of the Party's review power is that neither Petitioner, Respondent Bremer, nor Intervenor Liston (nor Mr. Stiver and others) questioned the Party's jurisdiction hear the matter when it was litigated before the Party.

And it makes sense that courts defer to political party's exclusive jurisdiction to finally decide party controversies. Take this case for instance. If the Court finds it has jurisdiction and disregards the Party's factual findings (it should not)—or if this case was initially brought in court—the Court would have to hear the same evidence that was presented to the Party and determine whether the SD-10 designation election was tainted by irregularities such that the election results could not be trusted. If the Court answers in the affirmative, the court would have to fashion a remedy. Because ordering a new election is foreclosed by statute, two options would

remain for deciding the Republican primary ballot for SD-10: validate the results of an irregular designation election, or order the SD-10 committee certify the designation of both declared Republican candidates to the primary ballot so the SD-10 Republican electors could decide who should be their nominee for SD-10. To embark on this task would place the Court in the precise position the supreme court in *Lowry* praised the general assembly for avoiding.

In the end, the issues before the Court have already been litigated in an adversarial setting and finally decided by the Party's executive and state central committees. Petitioner, unsatisfied with an imperfect remedy to redress an irreparable designation election, is asking this Court to do what his Party-colleagues would not. It is the Party's position that the Court should defer to the exclusive jurisdiction of the Party to hear and decide party controversies like this.

II. Failing to Defer to the Party's Decision on the Adequacy of the SD-10 Designation Election Will Impermissibly Undermine the Party's First Amendment Rights.

The underlying dispute—i.e., determining the candidates designated to the Republican primary ballot for SD-10 by party assembly—implicates two First Amendment guarantees, and failure to defer to the Party's express findings on the inadequacy of the SD-10 assembly and designation election would abridge the Party's constitutional rights. First, "[t]he First Amendment protects the freedom to join together to further common political beliefs, which presupposes the freedom to identify those who constitute the association." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 568 (2000). In no area is the political association's right "more important than in the process of selecting its nominee," because "it is the nominee who becomes the party's ambassador to the general electorate." *Id.* at 575. For this reason, the Supreme Court's "cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party 'select[s] a standard bearer who best represents the party's ideologies and preferences.'" *Id.* (*quoting Eu v S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989)).

Second, the Party's resolution of party controversies is afforded constitutional protection. *Democratic Party of U.S. v. Wis. ex rel. La Follette*, 450 U.S. 107, 123-24 (1981) ("[A] State, or a court, may not constitutionally substitute its own judgment for that of the Party."). Indeed, the Supreme Court has consistently rejected judicial resolution of intra-party disputes. *See, e.g.*, *Cousins v. Wigoda*, 419 U.S. 477, 491 (1975) ("[T]his is a case where 'the convention itself (was) the proper forum for determining intraparty disputes as to which delegates (should) be seated.'"); *O'Brien v. Brown*, 409 U.S. 1, 4 (1972) ("[N]o holding of this Court up to now gives support for judicial intervention in the circumstances presented here, involving as they do, relationships of great delicacy that are essentially political in nature."); *Buckley v. Valeo*, 424 U.S. 1, 250 (1976) (Burger, C.J., concurring) ("[T]his Court has scrupulously refrained, absent claims of invidious discrimination, from entering the arena of intraparty disputes concerning the seating of convention delegates." (footnote omitted)). *Cf. Morse v. Republican Party of Va.*, 517 U.S. 186, 241 (1996) (Scalia, J., dissenting) ("[W]e have always treated government assertion of control over the internal affairs of political parties—which, after all, are simply groups of like-minded individual voters—as a matter of the utmost constitutional consequence.").

The process and procedures the Party used to select the candidates for the SD-10 primary was in part mandated by state statute and in part governed by the Party's bylaws. Included among the Party's bylaws is a process for resolving contests of designations by district or county assemblies. (*See* Party's Answer in Intervention ¶ 28 (linking to the Party's Emergency Bylaws, *available at* https://bit.ly/2zvfeZm).) Specifically, emergency bylaw #10 states,

> Any delegate or candidate who wishes to contest the designation of any candidate to the primary ballot by district or county assembly and convention must within two days of the adjournment of the district or county assembly and convention at which the designation was made, present such contest to the state Executive Committee with simultaneous notice to all candidates for designation at the assembly and convention in the race subject to contest and to the district or county chair. The state Executive Committee will make a recommended determination of

> all such contests to the Colorado Republican State Central Committee which will make the final determination of all such contests at its pre-assembly meeting.

This is the precise process the interested parties invoked, and actively participated in, to challenge (and defend) the SD-10 assembly and designation election. As previously detailed, the Party conducted a thorough examination of the facts and allowed for the presentation of evidence and argument by all interested parties and their counsel. No party here, or before the Party, questioned the adequacy of the process or the neutrality of that adjudication.

Review of the Petitioner's claims would necessarily require the Court to reexamine an issue the Party has already finally resolved—the adequacy and regularity of the SD-10 assembly and designation election. For its part, the Party deemed the assembly and designation and election irregular for a number of reasons, to the point of having no confidence the results of the election. For the Court to grant Petitioner the relief he now requests, not only must the Court evaluate the Party's findings, but it must overrule the Party on a matter that strikes at the heart of its associational guarantees to select the Party's nominees for primary elections and to decide intra-party disputes that are of great delicacy and political in nature. Without question such a decision would undermine the Party's constitutional rights, particularly when the same parties that are before the Court (save for Respondent Secretary of State) actively participated in the designation-election contest before the Party. If the Court allows Petitioner's claims to proceed, it will encourage parties to use the Colorado judicial system as an appellate forum to litigate adverse decisions by state political parties resolving party controversies, and it will thereby impermissibly undermine important constitutional rights in the process. Respectfully, the Court should avoid these treacherous constitutional waters by applying section 1-3-106 and deferring to the Party's resolution of this matter.

CONCLUSION

For the foregoing reasons, it is the Party's position that the Court should refuse Petitioner's attempt to re-litigate matters already finally resolved by the Party.

Dated April 27, 2020

Brownstein Hyatt Farber Schreck, LLP

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CERTIFICATE OF SERVICE

I certify that on the April 27, 2020, I electronically filed a true and correct copy of the **Colorado Republican Committee's Brief for April 27 Hearing** via the Colorado Courts E-Filing System which will send notification of such filing and service upon:

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DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St., Room 256 Denver, CO 80202	DATE FILED: April 27, 2020 9:15 AM FILING ID: 4072876AE7B3A CASE NUMBER: 2020CV31415
Petitioner: KARL K. SCHNEIDER, an individual v. **Respondents:** JENA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party Senate District 10 Assembly; and **Intervenor:** LARRY LISTON, an individual and COLORADO REPUBLICAN COMMITTEE.	▲ **COURT USE ONLY** ▲
Attorney for Petitioner Karl K. Schneider: Scott E. Gessler, Atty Reg No. 28944 Gessler Law Firm, LLC 1801 Broadway, Suite 507 Denver, Colorado 80202 Tel: 720-839-6637 sgessler@gesslerlawfirm.com	Case Number: 2020CV31415 Division: 259

PETITIONER KARL SCHNEIDER'S HEARING BRIEF

Introduction

This case is about whether a state party can overrule the election results of a district assembly. The State Senate District 10 Committee for the Republican Party convened its assembly, at which only one candidate received at least 30% of the delegate votes. But following a protest, the Republican State Party Central Committee (the "Party") placed a

second candidate into nomination. The Party made its decision as "equitable relief," because the second candidate did not reach the 30% threshold. In support, the Party cited two reasons – its belief that (1) the assembly's early voting procedures violated state law, and (2) the presiding officer violated a Party Rule governing the El Paso County Republican Party.

As discussed below, the neither the underlying facts nor the statutory framework is disputed. Accordingly, this case presents two straightforward legal questions. First, this Court has jurisdiction under C.R.S. § 1-1-113, and second, state law requires a candidate to obtain 30% of the vote in a district assembly.

Argument

A. The underlying facts are not in dispute.

To date, the Colorado Republican Party and Larry Liston have answered the *Petition*, whereas Respondents the Colorado Secretary of State (the "Secretary") and Eli Bremer have not. The Secretary takes no position on the outcome of this matter, except that she believes the Court does not have jurisdiction. Based on undersigned counsel's conversations with Bremer's counsel, it is expected that at the hearing Bremer will (1) admit all allegations in the Petition, and (2) also take no position regarding the outcome of the case.

The underlying facts in this matter are straightforward: The Senate District 10 Committee held an assembly. Two candidates sought the party nomination, but only one candidate received at least 30% of the vote. Following the assembly, the secretary for the assembly submitted a certificate of designation to the Secretary. The losing candidate, however, challenged the results before the Republican State Party Executive Committee. On

a divided vote the Executive Committee determined that, as a matter of equitable relief, the second candidate should be placed on the ballot. The Party Central Committee later adopted the report, by a majority of 53%.

Importantly, both the Party and Liston agree upon the basic facts in this controversy:

- Eli Bremer properly served as the presiding office for the State Senate District 10 Assembly (Allegations 20, 67).
- The Assembly took place on March 22 (Allegation 39). (The State Party is unaware of the actual procedures used for the voting at the assembly. (Allegations 26, 30, and 33-38)).
- Voting for delegates remained open until 6:00 pm that day. (Allegation 40). (The Party does not dispute that voting delegates could change their vote any time up until 6:00 pm that day. (Allegation 56)).
- Larry Liston received 127 votes, or 75%. Dave Stiver received 41 votes, or 24% (Allegations 42 and 69).
- Dave Stiver did not, as part of his protest before the Party, claim that he received 30% or more of the vote (Allegation 46).
- The reasons for the State Central Committee action are contained within the State Party Executive Committee Report. (Allegations 48, 49 and 51).
- The Party ordered Bremer to place Stiver on the ballot as an equitable remedy (Allegation 71).

The Executive Committee Report contains the basis for the Republican Party Central Committee's decision ordering Bremer to designate Stiver as a candidate for Senate District 10. The Central Committee report did not challenge the delegates' or alternate delegates' qualifications to vote, it did not challenge the tabulation of votes, and it did not challenge the results reported by the secretary to the Assembly. Rather, it identified two reasons for the Central Committee's decision to impose an "equitable" remedy of ordering Bremer to designate Stiver as a candidate.

First, the Central Committee claimed that the Senate 10 District Assembly could not allow early voting prior to the convening of the Assembly at 3:00 pm, because C.R.S. § 1-4-601(b)(I) prohibits early voting. Executive Committee Report, pp. 10-11. It based its decision on its interpretation of Colorado statute, which states in relevant part "due to public health concerns in any assembly held in 2020 . . . a delegate may participate in the assembly remotely, including casting his or her vote by e-mail . . ."

Second, the Central Committee argued that an email sent by Bremer to all delegates on the evening of March 21, 2020, constituted an irregularity justifying equitable relief. Executive Committee Report, p. 10. Specifically, Bremer stated in that email that Mr. Stiver made "false accusations" and "I want to assure you that Mr. Stiver's allegations are 100% false and demonstrably so. Despite his public slander, we are fully committed to running a fair and transparent election." (Allegation 58). The Central Committee argued that this email (1) could "only" be "fairly interpreted" "as being in opposition to Mr. Stiver," (2) was "incompatible" with *county* Republican Party bylaws requiring candidate neutrality, and (3) "it

[was] possible, if not likely" that the email influenced the outcome of the election. Executive Committee Report, p. 12.

B. This Court has jurisdiction under the plain statutory language and well-established case law.

1. Both the Secretary and Bremer fall within Section 113's definitions.

Under C.R.S. § 1-1-113(1):

> When any controversy arises between any official charged with any duty or function under this code and any candidate, or any officers or representatives of a political party, or any persons who have made nominations or when any eligible elector files a verified petition in a district court of competent jurisdiction alleging that *a person charged with a duty under this code* has committed or is about to commit a breach or neglect of duty or other wrongful act . . .[1]

This statute confers jurisdiction over two separate categories of disputes. First is a controversy between an official and candidate, party representative, or person making a nomination. Second is a controversy between an eligible elector and a person charged with a duty under the election code.

Under this plain language, the Secretary is an official subject to jurisdiction, as well as a "person" charged with a duty under the code. The Colorado Supreme Court has interpreted Section 113 jurisdiction expansively, finding that even if an official properly executes his or her duties, that official's actions are subject to challenge under Section 113.[2] Here, the Secretary is required to "supervise the conduct of primary . . . elections in this state"[3] and is the official responsible for certifying names on the ballot. She may only place

[1] C.R.S. § 1-1-113(1) (emphasis supplied).
[2] *Kuhn v. Williams*, 418 P.3d 478, 483-487 (Colo. 2018).
[3] C.R.S. § 1-1-107(1)(a).

on the primary ballot a candidate designated and certified by assembly if that candidate receives "thirty percent or more of the votes of the assembly."[4] And this *Petition* alleges that she is about to certify a candidate who does not meet the statutory requirements.

Bremer is also subject to jurisdiction under the code, for similar reasons. As a person who executes functions required by state law, he is an "official." But at a minimum, he is also "person" charged with a duty under the code. Specifically, he was the presiding officer for the Senate District 10 Assembly and therefore was required to certify, by affidavit, "every candidate receiving thirty percent or more of the votes of all duly accredited assembly delegates who are present and voting on that office."[5] Furthermore, the State Republican Party itself recognized that Bremer had that duty, when the party chairman ordered Bremer to designate Dave Stiver as primary candidate for Senate District 10. This *Petition* alleges that Bremer may not make that designation, and that it would be unlawful for him to do so. Accordingly, this Court may order Bremer to refrain from acting contrary to law.

2. The Court may decide the scope of the Central Committee's authority.

Under its Third Affirmative Defense, the Party argues in part that it may order Bremer to designate Stiver as a candidate, claiming it has "full power to pass upon and determine all controversies concerning the regularity of the organization of that party within any . . . senatorial . . . district," and that "[a]ll determinations upon the part of the state central committee shall be final."[6] These powers, however, derive from Colorado statute.

[4] C.R.S. § 1-4-103.
[5] C.R.S. § 1-4-601(2)(a).
[6] C.R.S. § 1-3-106(1).

This Court has jurisdiction to determine whether the current dispute is a "controvers[y] concerning the regularity of the organization of the party," because it involves a civil dispute arising under Colorado law.[7]

3. The Party itself recognizes that this dispute hinges on state law, not the regularity of the party's organization.

The Party's claim that this is an intra-party dispute not subject to state jurisdiction also fails based upon the reasoning employed by the Party in arriving at its equitable remedy, for it is the Party itself that has treated the matter as a dispute governed by Colorado law. Under its first reason justifying an equitable remedy, the Party expressly relied upon Colorado statute. According to the Executive Committee Report, the Party's internal rules deferred to state law, and the State Senate District 10 Assembly's early voting procedures violated state law.[8] On its face, the Party did not treat this as a dispute over "the regularity of the organization of" the Republican Party, or even the Assembly. Instead, the Party itself treated it at as a matter involving the legality of the Assembly's actions under Colorado law.

Under its second reason, the Party admitted that the "neutrality" rule it relied upon was a county, and not an assembly bylaw: "It is true that the senate District 10 bylaws do not require Senate District 10 officers to be neutral before primary elections."[9] In making this disclaimer, the Executive Committee Report implicitly recognized the direct conflict with Colorado statute, which states that "[e]ach party state senatorial central committee . . . shall

[7] Colo. Const. art. VI, § 9(1).
[8] Executive Committee Report at 10-11.
[9] Executive Committee Report at 11.

elect its own chairperson, vice-chairperson, and secretary and adopt its own bylaws concerning its conduct."[10] Although the Party did not explicitly state so, in fact it substituted county bylaws for the assembly bylaws required by statute.

4. The State Party may not raise constitutional claims in a Section 113 proceeding.

As affirmative defenses, the Party argues that this Court is without jurisdiction because this matter is a "party controversy,"[11] an "intra-party dispute,"[12] and is subject to the "party's associational rights."[13] As support for these affirmative defenses, the Party cites several U.S. Supreme Court cases which struck down state laws regulating parties, as a matter of constitutional law. In short, these affirmative defenses are all variations on the same theme: the Party's order concerning assembly results is a private, party matter that cannot, under the U.S. Constitution, be constrained by Colorado law or be reviewed by this Court.

But Colorado case law is explicit that a litigant may not raise constitutional claims in a Section 113 proceeding. This Court must reject the Party's challenges to the constitutionality of state jurisdiction. "[T]his court lacks jurisdiction to address such arguments in a section 1-1-113 proceeding," because the court has jurisdiction "to consider only claims of breach or neglect of duty or other wrongful act *under the Colorado Election Code* when a petition is brought through a section 1-1-113 proceeding."[14]

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[10] C.R.S. § 1-3-103(10)(a).

[11] *Intervenor Colorado Republican Party's Answer in Intervention*, Third Affirmative Defense.

[12] *Id.*, Fourth Affirmative Defense.

[13] *Id.*, Fifth Affirmative Defense.

[14] *Kuhn v. Williams*, 418 P.3d 478, 489 (Colo. 2018), reh'g denied (May 7, 2018) (emphasis in original)(internal citations and quotations omitted).

In the event the Party believes the exercise of this Court's jurisdiction violates its constitutional right to association, the Party may bring a civil rights complaint under 42 U.S.C. § 1983 in federal or state court.[15]

5. The State Party has no constitutional right to override state laws requiring ballot access.

Finally, the Party's Third, Fourth, and Fifth Affirmative Defenses essentially argue that Colorado may not, as a matter of constitutional law, exercise jurisdiction over this matter. Under this reasoning, as a private association the Party has an expansive right to determine a "party controversy" or an "intra-party dispute." None of these arguments is correct.

It is well-established that "[s]tates have a major role to play in structuring and monitoring the election process, including primaries."[16] Accordingly, states may require party primaries, may require parties and candidates to demonstrate a minimum threshold of support, and may prevent party raiding, whereby a state allows non-party members to participate in party primaries.[17] Indeed, in *Smith v. Allwright* the U.S. Supreme Court held that a political party is "an agency of the state in so far as it determines the participants in a primary election," and that "the duties do not become matters of private law because they are performed by a political party."[18] *Smith* was part of the "white primary cases" which took the name from a series of cases striking down southern states' efforts to exclude black voters

[15] *See Frazier v. Williams*, 401 P.3d 541, 542 (Colo. 2017).
[16] *Democratic Party v. Jones*, 530 U.S. 567, 572 (2000).
[17] *Id.*
[18] *Smith v. Allwright*, 321 U.S. 649, 663, (1944).

from effective participation in party primaries. The cases established the principle that "a party's external activities in selecting candidates for *public* office must necessarily be subject to greater state involvement and scrutiny than its wholly internal machinations."[19]

Accordingly, as a matter of constitutional law a state may regulate party functions. Here, the thirty percent threshold for support does not implicate the Party's "internal processes, its authority to exclude unwanted members, or its capacity to communicate with the public."[20] It does not force the Party to include or exclude any non-party members in the nominating process. It does not limit the Party's ability to communicate with the public. And it does not mandate the Assembly's voting or tabulation procedures.

C. The Party Central Committee does not have authority to alter the outcome of the State Senate District 10 Assembly.

Colorado law provides extensive oversight of party operations. This includes detailed provisions governing party committees (including district committees),[21] and it includes detailed provisions governing how committees may nominate candidates.[22] The upshot is this: state statute vests nominating power for State Senate Districts in a State Senate District Assembly. It does not vest that power in the State Party Central Committee.

Among the procedures for nominating State Senate candidates, state law requires a Senate district assembly to nominate Senate candidates.[23] It requires delegates to the county

[19] *Utah Republican Party v. Cox*, 892 F.3d 1066, 1079 (10th Cir. 2018) (emphasis in original).
[20] *Clingman v. Beaver*, 544 U.S. 581, 590 (2005).
[21] C.R.S. §§ 1-3-101 to 105.
[22] C.R.S. §§ 1-4-601 and 602.
[23] C.R.S. § 1-4-601(1)(a).

party assembly to also serve as delegates to the Senate district assembly,[24] requires the county party to allocate delegates by precinct caucuses,[25] and requires the proceedings follow senate district committee bylaws.[26] Stiver's challenge before the State Party Central Committee was misplaced. State law authorized the State Senate 10 District Assembly, state law required the presiding officer and secretary of the assembly to submit the designation of candidacy, and it is under state law, C.R.S. § 1-1-113(1), that Stiver should have brought his election challenge.

Most importantly, of course, Colorado law requires that a candidate receive at least thirty percent of the vote to be placed on the ballot.[27] Importantly, at no point did the Party challenge the above procedures, or the one central fact: only one candidate received thirty percent or more of the vote at the Assembly. Instead, the Party identified two "irregularities" that it believed justified imposing the equitable remedy of placing Mr. Stiver on the ballot. But the Party cannot overturn a statutorily-mandated election conducted by the State Senate District 10 Assembly.

The Party's reasoning shows just how far these reasons strayed from well-established law regarding election contests. First, the Party examined the Assembly's use of early voting, deeming it an irregularity and prohibited by state law. But Colorado law does not prohibit early voting in district assemblies. The law states in relevant part that "due to public health concerns in any assembly held in 2020 . . . A delegate may participate in the assembly

[24] C.R.S. § 1-4-602(2)(a),
[25] C.R.S. § 1-4-602(1)(a)(I).
[26] C.R.S. § 1-3-103(10)(a).
[27] C.R.S. §§ 1-3-103 and 1-4-601(2)(a).

remotely, including casting his or her vote by e-mail . . ."[28] This wording does not prohibit early voting. The language is permissive, not prohibitive, and casting a vote by e-mail is allowed as but one option.

Moreover, it is well established under Colorado and federal law that early voting is allowed for elections. For decades, Colorado has taken a liberal approach to allowing absentee ballots, refusing to interpret absentee ballot statutes in a manner that "unduly interferes with the exercise of this right by those otherwise qualified to vote."[29] And even though federal law establishes a very specific timeframe for an election – the second Tuesday of November in even numbered years as "*the day* for the election"[30] – states like Colorado can utilize early voting because (1) candidate selection is not made until election day, (2) courts refuse to adopt hyper-technical interpretations that restrict the franchise, and (3) an "election" consists of many actions that take place well before voting and selection. *See, e.g. Voting Integrity Project, Inc. v. Bonier*, 199 F.3d 773, 776 (5th Cir. 2000). This reasoning applies to Section 1-4-601(b)(I).

The Party may not use early voting to overturn election results for another reason – at no point did the Party argue that early voting for the Assembly altered or changed any vote. In order to overturn an election, a challenger must "establish not only that illegal votes were cast, but that the number of illegal votes were sufficient in number to change the result

[28] C.R.S. § 1-4-601(b)(I).
[29] *Erickson v. Blair*, 670 P.2d 749, 754 (Colo. 1983).
[30] 2 U.S.C. § 7 (emphasis supplied).

of the election."[31] Here, the party did not even show any votes were improper, illegal, or in any way changed the results of the election.

Second, the Party also imposed its equitable remedy because Bremer sent an email the evening before the Assembly convened (during the time delegates were allowed to vote), which stated in relevant part that Mr. Stiver made "false accusations" and "I want to assure you that Mr. Stiver's allegations are 100% false and demonstrably so. Despite his public slander, we are fully committed to running a fair and transparent election." The Central Committee argued that this email (1) could "only" be "fairly interpreted" "as being in opposition to Mr. Stiver," (2) was "incompatible" with county Republican Party bylaws requiring candidate neutrality, and (3) "it [was] possible, if not likely" that the email influenced the outcome of the election.[32]

But this reasoning is directly contrary to state law in several ways:

- County bylaws do not apply to district Assemblies. Colorado law specifically states that the central committee for each district must use its own bylaws.[33]
- The County Party cannot suppress the speech of Senate District Committee officers or participants. Political parties and political party officials have an unfettered right to endorse candidates in primary contests.[34]

[31] *Russell v. Wheeler*, 439 P.2d 43, 49 (Colo. 1968).
[32] Executive Committee Report, p. 12.
[33] C.R.S. § 1-3-103(10)(a).
[34] *See Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 222-229 (1989)

- Bremer's wording was not, under any federal or state standard "in opposition to Mr. Stiver." The words did not expressly advocate the election or defeat of Mr. Stiver, but rather defended the Assembly process.[35]
- Finally, the Central Committee did not – and cannot – identify a single voter who changed his or her vote because of the email. The Party used the phrase "it is possible, if not likely" to cast doubt on the election. But that was pure speculation, unsupported by evidence, let alone identification of votes that would have changed the outcome of the election.[36]

D. "Controversies concerning the regularity of the organization of the party" does not encompass election challenges regarding the 30% threshold.

The State Party Central Committee's authority to resolve disputes is limited to just two matters: (1) "controversies concerning the regularity of the organization of that party" and (2) "use of the party name."[37] For example, the statute gives the state party the right to say which of two competing organizations may be authorized to conduct an assembly on its behalf.[38]

But this is a far cry from the power to override state law with respect to ballot access. Here, there was no challenge to the delegates' qualifications, the alternate delegates' qualifications, the Assembly officers, or a host of other matters.

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[35] *Buckley v. Valeo*, 424 U.S. 1, 44 n. 52 (1976); *Colorado Ethics Watch v. Senate Majority Fund, LLC*, 269 P.3d 1248, 1256-1257 (Colo. 2012).

[36] *Russell v. Wheeler*, 439 P.2d 43, 49 (Colo. 1968).

[37] C.R.S. § 1-3-106.

[38] *People ex rel. Lowry v. Dist. Ct. of Second Judicial Dist.*, 74 P. 896 (Colo. 1903).

Under the pain language of Section 106, the State Party Central Committee's authority to resolve disputes is limited to "organization of the party" and further limited to the "regularity" of the organization. In common usage the definition of "organization" means "an administrative and functional structure (such as a business or a political party)."[39] But much of the "administrative and functional structure" of the State Party is prescribed by state law. Accordingly, the Party is limited to handling controversies involving the "regularity" of those structures, and also subjects that are not governed by Colorado law. In short, party authority is highly circumscribed, and it does not, under any reasonable reading, apply to specific, state-mandated ballot access requirements.

DATED: April 27, 2020

Counsel for Karl K. Schneider

s / Scott E. Gessler

Scott E. Gessler
Gessler Law, LLC
1801 Broadway, Suite 507
Denver, Colorado 80202
Tel: 720-839-6637
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[39] "Organization" *Merriam-Webster.com Dictionary*, Merriam-Webster, available at https://www.merriam-webster.com/dictionary/organization, accessed April 26, 2020.

CERTIFICATE OF SERVICE

I certify that on this 27th day of April 2020, the foregoing **PETITIONER KARL SCHNEIDER'S HEARING BRIEF** was electronically served via ICCES on the following:

Wayne W. Williams, Esq.
Law Offices of Wayne Williams
3472 Research Parkway, Ste. 104-200
Colorado Springs, CO 80920
Attorney for Intervenor Larry Liston.

Grant T. Sullivan, Esq.
Michael Kotlarczyk, Esq.
Colorado Attorney General's Office
1300 Broadway, 6th Floor
Denver, CO 80203
Attorneys for Jena Griswold, in her capacity as the Colorado Secretary of State

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Julian R. Ellis, Esq.
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Denver, CO 80202
Attorneys for Colorado Republican Committee

John C. Buckley III, Esq.
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1277 Kelly Johnson Blvd., Ste. 250
Colorado Springs, CO 80920
Attorney for Eli Bremer

By: *s/ Joanna Bila*
Joanna Bila, Paralegal

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	DATE FILED: May 1, 2020 7:03 PM CASE NUMBER: 2020CV31415
KARL K SCHNEIDER v. JENA GRISWOLD et al.	⚠ COURT USE ONLY ⚠ Case Number: 2020CV31415 Division: 259 Courtroom:

ORDER REGARDING DAVID STIVER'S WRITTEN AND ORAL REQUESTS TO INTERVENE

THIS MATTER is before the Court on Karl K. Schneider's ("Petitioner") Petition for Relief Under C.R.S. 1-1-113 ("Petition"). The record reflects that all parties were served or waived service and filed responsive pleadings. Given the nature of this dispute, the Court recognizes that time is of the essence and that expedited treatment of all issues in this matter is warranted.

On April 27, 2020, a remote hearing was held before this Court on these matters. Counsel for Petitioner, Respondents and Intervenors were present. Also present and observing at the remote hearing was Randy Corporon, Esq. Not in attendance was Mr. David Stiver, a candidate for State Senate District 10.

Counsel presented argument and admitted Exhibits 1 and 2 by stipulation. Upon completion of the hearing, the Court took the matter under advisement. Procedurally, the evidence was closed and the case stands as submitted.

Yesterday afternoon, April 30, 2020, the Court received a voice mail message from Mr. Stiver at 4:23 p.m., indicating his desire to file an "amicus brief" with the Court and requesting an email account to send his pleading to. In response to Mr. Stiver's voice mail, the Court's staff attempted to contact him earlier today at the phone numbers he left. A voice message was left for Mr. Stiver directing him to return our call but otherwise all attempts to contact him were unsuccessful.

This afternoon, the Court reconvened this matter for a telephone status conference to apprise the parties of Mr. Stiver's voicemail request. All counsel of record appeared for this conference. The Court inquired of the parties as to their positions on Mr. Stiver's request and heard remarks from counsel. Counsel advised the Court that multiple efforts had been made to engage Mr. Stiver and Mr. Corporon on behalf of Mr. Stiver and to inquire whether they would be entering an appearance or participating in this litigation. Neither Mr. Stiver or Mr. Corporon advised that they would be participating in this litigation. In fact, Mr. Corporon expressly advised this Court he was not entering an opinion in this matter at the April 27th hearing. At the conclusion of the proceedings this afternoon, the Court then advised counsel of its decision on how it would address Mr. Stiver's request and allowed them to be heard regarding that decision.

Consistent with the decision I described to counsel on the record in today's conference call, the Court endeavored to advise Mr. Stiver as set forth below -

"*Mr. Stiver*

The Court is in receipt of your voicemail message of April 30, 2020 at 4:23 p.m. The Court has made several attempts to return your call at the two phone numbers you left in the voicemail. ((719) 339-4479 was stated to be your cell phone; however the phone call goes straight to a busy signal and will not ring nor give the option to leave a voicemail. The Court has attempted to call you on this number not less than four times today. The second phone number you left was (719) 594-4003 and was stated to be your office number. A voicemail was left for you on this number at 11:07 a.m. this morning and no return call has been received as of this email message.

In response to your voicemail message that you would like to email to the Court an amicus brief in this matter, the Court replies as follows:

Colorado Rules of Civil Procedure do not allow for filing of amicus briefs in the trial court as a matter of course. Further, any filing in a civil case must be electronically filed by an attorney through CCE, or you may file the pleadings in person in the main clerk's office, or the filing can be mailed in to the main clerk's office at 1437 Bannock Street, Room 256, Denver, CO 80202. Filings by email are expressly prohibited.

If you wish to be heard by the Court, you must first request to be added as a party in this action and you must confer with all parties for their positions. Presuming you have conferred with all parties, you may then file a motion to intervene and your brief simultaneously. You must serve all parties of record with the filings, and in this instance only you may email them to the following email addresses for the attorneys of record: cmurray@bhfs.com; jellis@bhfs.com; sgessler@gesslerlawfirm.com; waynewilliamslaw@comcast.net; grant.sullivan@goag.gov; mike.kotlarczyk@coag.gov; john@buckleylaw.com.

Despite the fact that filings by email are expressly prohibited, the Court will make a one-time exception in the instant matter to allow you to email your initial pleadings only to the Court. All pleadings filed with the Court require payment of a filing fee, which in your case will be $234.00, that needs to be paid to the Clerk of Court by either cash, check, money order or credit card. If you would like to email the pleadings to the Court, you must pay the filing fee of $234.00, and you must provide a phone number that the clerk's office can reach you to take the payment by credit card over the phone. You may then email the pleadings to the email address listed below, or reply to this email message, not later than 5:00 p.m. today. Also, you must then file the paper documents in the main clerk's office located at 1437 Bannock Street, Room 256, Denver, CO 80202 not later than 4:00 p.m. on Monday, May 4, 2020.

Failure to comply with these directions will result in the Court proceeding to rule in this case without consideration of your pleadings."

Subsequent to sending this email, and after having arranged for clerk's office staff to stay after closure to assist Mr. Stiver with his filing fee, the Court received an email from Mr. Corporon whereby he expressed that he was entering his limited appearance on behalf of Mr. Stiver and expressing his desire to file the "pleading" on behalf of Mr. Stiver. The Court's staff promptly contacted Mr. Corporon and directed him to follow proper procedure for entry of appearance and filing of pleadings by counsel utilizing CCE. The Court also, released the heldover clerk's staff in light of Mr. Corporon's anticipated entry of appearance. However, no written entry of appearance was filed by Mr. Corporon utilizing CCE, rather another email was sent by Mr. Corporon to the Court attempting to effectuate his withdrawal of earlier entry. Later, the Court then received two additional emails by Mr. Stiver (at 4:59 p.m. and again at 5:49 p.m.) attempting to file his Motion to Intervene in this matter, detailing his reasons for not previously entering the case and requesting to present evidence in the case. No other pleadings or briefs were submitted.

ORDER

As noted above, the Court made a one time conditional exception in this matter for Mr. Stiver, appearing pro se, to "file" his Motion to Intervene, including a simultaneous filing of any brief, in this case by email. This authorization for email filing was conditioned upon Mr. Stiver submitting the appropriate filing fee which the record reflects he has not done. On that basis, and due to the expedited timing required here, the Court now orders that Mr. Stiver pay the appropriate filing fee for a Motion to Intervene by 11:00 a.m., Monday, May 4, 2020. Failure to pay that fee will result in the pleading being stricken from the record as if it had not been submitted at all.

The Court further orders that, Counsel for Petitioner, Respondents and Intervenors shall file a written response to Mr. Stiver's Motion to Intervene, which the record reflects had been served upon them by email today, not later than Monday, May 4th at 8:00 a.m. Given the urgency of timing in this matter, no Reply will be received.

Counsel for Petitioner shall serve this order upon Mr. Stiver and file a certification that the same has been accomplished, not later than 24 hours from today.

BY THE COURT:

Issue Date: 5/1/2020

MICHAEL ANTHONY MARTINEZ

District Court Judge

DATE FILED: May 3, 2020 1:36 PM
FILING ID: 593AB43CFC0BB
CASE NUMBER: 2020CV31415

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1427 Bannock Street, Room 281 Denver, CO 80202	
KARL K. SCHNEIDER, an individual, Petitioner, v. JENA GRISWOLD, in her capacity as the Colorado Secretary of State, and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly, Respondents; and LARRY LISTON, an individual, and the COLORADO REPUBLICAN COMMITTEE, Intervenors.	▲ **COURT USE ONLY** ▲
PHILIP J. WEISER, Attorney General GRANT T. SULLIVAN, Assistant Solicitor General, No. 40151* MICHAEL KOTLARCZYK, Assistant Attorney General, No. 43250* Colorado Attorney General's Office 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: 720.508.6349 720.508.6187 E-Mail: grant.sullivan@coag.gov mike.kotlarczyk@coag.gov *Counsel of Record *Attorneys for Respondent Jena Griswold, in her capacity as Colorado Secretary of State*	Case No.: 20CV31415 Division: 259

THE SECRETARY OF STATE'S RESPONSE TO THE COURT'S MAY 1, 2020 ORDER RE: DAVID STIVER

The Secretary of State does not oppose David Stiver's request to intervene in this case. The Secretary also does not oppose the Court accepting a brief or other pleading from Mr. Stiver, provided it is submitted promptly and in no event later than the deadline of Monday, May 4, 2020, at 11:00 a.m., set by the Court for Mr. Stiver to pay the appropriate filing fee.

The Secretary of State objects, however, to reopening evidence in this case or holding any further evidentiary hearing. Mr. Stiver does not allege that he was unaware of this proceeding or barred from participating, and has not identified any new evidence he could present that would be relevant to the Court's determination. Denying his eleventh hour request to present new evidence thus would not cause him any undue prejudice.

More importantly, reopening evidence would risk even further delay in this case, preventing the Secretary of State from certifying the primary ballot by the May 7, 2020 deadline. *See* § 1-5-203(1), C.R.S. (2019) (as amended by H.B. 20-1359, § 9). As it stands, the Court will likely not enter its order in this case until May 4, at the earliest.

Appellate review could then be sought by any adversely affected party through and including May 7. *See* § 1-1-113(3). That is the same day as the ballot-certification deadline, leaving almost no time for the Colorado Supreme Court to consider the merits of the appeal. While that is an untenable position, this Court should not risk even further delay by reopening evidence.

The May 7, 2020 certification deadline is not soft or malleable. Extending the deadline has real collateral consequences that affect election administration, including delaying the transmission of ballots to uniformed and overseas voters as required by federal law. 52 U.S.C. § 20302(a)(8)(A). Violating these strict federal laws not only risks disenfranchising our military and overseas voters, it may subject the State of Colorado to federal sanctions from the Department of Justice. Accordingly, the Secretary of State urges the Court to issue its decision as soon as possible to avoid these adverse collateral consequences to the State of Colorado and its voters.

Dated: May 3, 2020

PHILIP J. WEISER
Attorney General

s/ Grant T. Sullivan
GRANT T. SULLIVAN, 40151*
Assistant Solicitor General
MICHAEL KOTLARCZYK, 43250*
Assistant Attorney General
State Services Section
Public Officials Unit
Attorneys for Respondent Jena Griswold, in her capacity as Colorado Secretary of State
* Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **THE SECRETARY OF STATE'S RESPONSE TO THE COURT'S MAY 1, 2020 ORDER RE: DAVID STIVER** upon the following parties or their counsel electronically via Colorado Courts E-Filing and/or Email transmission this 3rd day of May, 2020 as follows:

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Attorney for Petitioner

John Buckley
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Attorney for Respondent Eli Bremer

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David Stiver
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s/ Grant T. Sullivan
Grant T. Sullivan

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Denver, CO 80202	DATE FILED: May 3, 2020 10:04 PM FILING ID: BA155CF9F6429 CASE NUMBER: 2020CV31415
Petitioner: KARL K. SCHNEIDER, an individual, v. **Respondents:** JENNA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly, **Intervenors:** LARRY LISTON, an individual and COLORADO REPUBLICAN COMMITTEE, an unincorporated non-profit association	▲ **COURT USE ONLY** ▲
Attorneys for Intervenor Colorado Republican Committee: Name(s): Christopher O. Murray, #39340 Julian R. Ellis, Jr. #47571 Address: Brownstein Hyatt Farber Schreck, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone Number: 303.223.1183 FAX Number: 303.223.1111 E-mail: cmurray@bhfs.com; jellis@bhfs.com	Case Number: 2020cv031415 Div.: 259

COLORADO REPUBLICAN COMMITTEE'S
RESPONSE TO DAVID STIVER'S MOTION TO INTERVENE

Colorado Republican Committee (Party) files its response to Putative Intervenor David Stiver's motion to intervene under Colorado Rule of Civil Procedure 24(a)(2), and states:

1. While the Party does not oppose Mr. Stiver's intervention, the Party maintains that this Court lacks jurisdiction to hear this matter because it is a controversy concerning the regularity of the Republican Party organization in Senate District 10, which has been heard and finally resolved by the Party's state central committee pursuant to Colo. Rev. Stat. § 1-3-106(1).

As such, whether Mr. Stiver is permitted to intervene should have no bearing on the Court's disposition of the Petition.

2. However, if the Court disagrees with the Party and finds it has jurisdiction to determine this case on the merits, then Mr. Stiver may be an indispensable party and certainly ought to be permitted to intervene under Colo. R. Civ. P. 24.

3. Mr. Stiver—a prevailing contestant in the party controversy—is the person whose right to be designated to the Republican primary ballot for Senate District 10 is subject to collateral attack in this action.

4. As of today, the parties to this case are:

- Petitioner Schneider (a member of Respondent Bremer's Senate District 10 leadership team adverse to Mr. Stiver),
- Respondent Bremer (the Republican Senate District 10 chairman and the respondent in the party controversy adverse to Mr. Stiver),
- Respondent Secretary of State (who understandably has little interest in this matter beyond the timely certification of the primary election ballot),
- Mr. Liston (Mr. Stiver's opponent in the Senate District 10 assembly designation election and an interested party who participated in the party controversy process adverse to Mr. Stiver), and
- The Party (who, as the adjudicator of the party controversy pursuant to Colo. Rev. Stat. § 1-3-106(1), has a limited interest in this action—namely, vindicating its right to hear and finally determine party controversies free of the sort of novel collateral attack Petitioner Schneider is attempting by his Petition).

Hence, if Mr. Stiver is not permitted to intervene, the only parties to this case will be adverse to him, uninterested in the merits of his position, or unable to present the merits of his position.

5. To the extent the Court determines that it has jurisdiction to hear and determine this matter, it will be holding that district court—and not the party controversy process—is the proper forum for disputes regarding the conduct of political party assembly designation elections under Colo. Rev. Stat. § 1-4-601. Such a holding would be the first of its kind. To be sure, there is not a single reported decision of a Colorado court determining a controversy regarding the

conduct of an assembly designation election under Colo. Rev. Stat. § 1-1-113 since that statute's adoption over a century ago.

6. Such a novel holding would necessarily mean that Mr. Stiver (and the other contestants and respondents to the controversy before the Party) unwittingly made a mistake when they relied upon Colo. Rev. Stat. § 1-3-106 and the Party's bylaws by submitting their dispute to the Party. Rather, they should have run to district court (perhaps in the Fourth Judicial District given that Senate District 10 is in El Paso County) and made their case there.

7. And, if disputes concerning the conduct of political party designation elections must now be litigated in district court, the parties to this controversy—who will have discovered this rule—must be permitted to litigate the merits of their dispute before this Court.

8. Indeed, there is already another aggrieved contestant in a political party assembly designation election who has eschewed the party controversy process and run straight to court. Pending before another division of this Court is *Underwood v. Griswold*, No. 2020CV31482 (Colo. Dist. Ct, Denver Cty.), a case in which Mr. Underwood, a candidate for the Democratic Party's nomination for United States Senator, has sued both the secretary of state and the Democratic Party's state chair alleging that irregularities in the conduct of the Democratic Party's state assembly and convention necessitate his designation to the Democratic primary ballot for United States Senator. Of course it is to be expected that the Democratic Party will argue that Mr. Underwood's grievances are subject to his party's controversy process under Colo. Rev. Stat. § 1-3-106. But, if Mr. Schneider's case can be heard, so must Mr. Underwood's. And if these cases are entertained on their merits, *Schneider v. Bremer* and *Underwood v. Griswold* will come to be known as the bipartisan advent of a biannual burden upon this Court and its sister courts in Colorado's other judicial districts.

9. Finally, to the extent the Court were to—after considering this controversy on the merits—enter an order that would have the effect of setting aside the Party's determination that

Mr. Stiver be designated to the Republican primary ballot for Senate District 10, Mr. Stiver is unquestionably an indispensable party who, but for his motion to intervene, would be subject to mandatory summons under Colo. R. Civ. P. 19. Hence, to the extent the Court is considering any such order, it must permit him to intervene and present evidence.

10. Mr. Stiver's participation, however, is only indispensable if the Court determines that it has jurisdiction, and by extension that a district court is the proper forum for the determination of a controversy regarding a political party's conduct of a designation election under Colo. Rev. Stat. § 1-4-601.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, the Party does not oppose Mr. Stiver's intervention in this action.

Dated May 3, 2020

Brownstein Hyatt Farber Schreck, LLP

By: *s/ Christopher O. Murray*
Christopher O. Murray, #39340
Julian R. Ellis, Jr. #47571

Attorneys for Intervenor Colorado Republican Committee

CERTIFICATE OF SERVICE

I certify that on the May 3, 2020, I electronically filed a true and correct copy of the **Colorado Republican Committee's Response to David Stiver's Motion to Intervene** via the Colorado Courts E-Filing System which will send notification of such filing and service upon:

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Counsel for Respondent Bremer

s/ Christopher O. Murray
Christopher O. Murray

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St., Room 256 Denver, CO 80202	DATE FILED: May 4, 2020 8:23 AM FILING ID: C62E0CEEC7A4B CASE NUMBER: 2020CV31415
Petitioner: KARL K. SCHNEIDER, an individual, v. **Respondents:** JENA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly, & **Intervenors**: Larry Liston, an individual, and Colorado Republican Committee.	▲COURT USE ONLY▲
Counsel for Intervenor Larry Liston: Wayne W. Williams, Atty Reg No. 22723 Law Offices of Wayne Williams 3472 Research Parkway, Ste. 104-200 Colorado Springs, CO 80920 Tel: 719-439-1870 WayneWilliamsLaw@comcast.net	Case Number: 2020CV031415 Division:

Larry Liston's Response to David Stiver's Motion to Intervene (Corrected)

Intervenor Representative Larry Liston ("Liston"), through his counsel Wayne W. Williams and pursuant to the Court's May 1, 2020, Order Regarding David Stiver's Written and Oral Requests to Intervene, hereby files his response to Mr. Stiver's Motion to Intervene (the "Motion").

Intervention – even if of right – may only be granted "upon timely application." Mr. Stiver's failure to timely seek intervention and failure to comply with the Orders of this Court means that his Motion should be denied.

A. In Order to Ensure the Franchise of Military and Overseas Voters and Comply with Federal Law, a Decision on the Merits Is Necessary Today.

Colorado's primary is June 30, 2020. This primary includes federal races for U.S. Senate and the U.S. House of Representatives. Under federal law, ballots for this primary must be mailed to military and overseas voters in just 12 days – no later than Saturday, May 16 (45 days before the primary). The Secretary of State's Response to the Court's May 1, 2020 Order re: David Stiver ("SOS Response") sets forth the general concerns with any delay in ballot certification beyond May 7, 2020. SOS Response at 3.

Chuck Broerman is the El Paso County Clerk and Recorder and is the election official charged with ensuring compliance with this federally mandated deadline and with ensuring that each voter receives a ballot customized for their affiliation and location of residence. As set forth in attached Affidavit of Chuck Broerman ("Affidavit"), there are a number of steps that must be complied with in order to ensure the transmittal of accurate ballots to the 850 Senate District 10 military and overseas voters in compliance with federal law. Affidavit, ¶ 11 and ¶ 15 (incorporating Exhibit A "Project Timeline" to the Affidavit). As explained by Mr. Broerman, the statutory extension of SOS certification to May 7, created "an extremely narrow window for the El Paso County Clerk and Recorder's Office to layout the ballot, proof, and submit to the

Clerk's printing vendor" and then to print, insert, and mail the correct ballots. Affidavit, ¶ 14, and Exhibit A.

Given the novelty of the Colorado Republican Committee's assertion that it has complete ability to override Article 4 of the Uniform Election Code of 1992, appellate review may indeed be sought. As noted by the SOS Response, C.R.S. § 1-1-113 sets a 3-day time-frame for seeking such review. SOS Response at 3. But even this greatly narrowed appellate window would mean a party seeking appellate review of a decision issued today could delay doing so until the statutory ballot certification deadline of May 7.

Representative Liston therefore concurs with the SOS that the decision should be issued as soon as possible, see SOS Response at 3, and urges that it be issued today.

B. Mr. Stiver's Dilatory Tactics Should Not Be Rewarded.

More than six weeks ago, on March 22, 2020, Representative Larry Liston received 75% of the vote and was the sole candidate at the Senate District 10 Assembly to receive the requisite 30% of the vote. The Certificate of Designation for Senate District 10 was sent to the Colorado Secretary of State two days later on March 24, 2020. Mr. Stiver, who received only 24%, did not seek judicial review of this certification which was issued more than a month ago.

On April 20, 2020, the next business day after the Colorado Republican Committee ("CRC") forged new ground and for the first time asserted its ability both to override the overwhelming vote of the elected delegates in a district and to overturn two separate provisions of Article 4[1] of the Uniform Election Code of 1992 that establish a nondiscretionary 30% vote

[1] Article 4 covers "Elections – Access to Ballot by Candidate" and includes requirements for both primaries and nominations. The CRC seeks to override these provisions by invoking

requirement, *see both* C.R.S. § 1-4-601(2)(a) and C.R.S. § 1-4-103, the instant case was filed. The following day the case was reported in *The Gazette*, the local paper of record in Colorado Springs, https://gazette.com/news/former-gop-election-officials-ask-judge-to-keep-candidate-off-el-paso-county-senate-primary/article_fcd5264c-8436-11ea-8a0a-e3facab486fc.html (April 21, 2020). Mr. Stiver admits he was aware of the lawsuit and concedes he chose not to seek permission to intervene. E-Mail from David C. Stiver, 4:59 p.m., May 1, 2020. Indeed, on the same day as the hearing held on April 27, 2020, Mr. Stiver sent a Facebook message to Petitioner Karl Schneider stating:

> hey Karl. Did you know that the very same argument that the attorneys made today, was the same argument they tried in 2002 to remove someone from the ballot?
>
> Oddly, only one person in this universe has the documents to prove it. Including the Pueblo DA investigation and report. Always nice to have an ACE up ones sleeve....

Mr. Stiver's own message concedes he was aware of the discussion in the hearing and yet he still chose to do nothing.

On April 30, 2020, as the Court was preparing to enter its Order, Mr. Stiver called the Court seeking to file an amicus. Mr. Stiver then failed to respond to messages left by the Court. The Court then indulged Mr. Stiver, made extraordinary exceptions, permitted him to file by e-mail, and gave him until 5 p.m. on Friday, May 1, 2020 to:

C.R.S. § 1-3-106 which deals with "the regularity of the organization of that party" and is found in Article 3 which covers "Political Party Organization." As far as all counsels' research was able to determine, never before has a party asserted its ability to override the clear language of a provision in Article 4, let alone the 30% ballot access threshold.

(1) "[C]onfer with all parties for their positions."
(2) "Presuming you have conferred with all parties, you may then file a motion to intervene and your brief simultaneously."
(3) Pay the filing fee of $234; and then
(4) "[E]mail the pleadings to the email address listed below."

Email Correspondence Sent to David Stiver from the Court Dated May 1 2020. Mr. Stiver failed to confer with the parties, failed to include a brief "simultaneously" (or even to offer any argument whatsoever), and failed to pay the filing fee. While the filing fee failure was explained in the Court's Order, Mr. Stiver admitted he ignored the Court's direction to confer with the other parties, and offered no explanation whatsoever for the requested 3-day delay in presenting any argument on the merits.

Colorado law permits intervention only "Upon timely application." C.R.C.P. 24(a) and 24(b). This is true even if the intervention is one of right. C.R.C.P. 24(a). The Colorado Court of Appeals affirmed the denial of a motion to intervene filed four days before trial:

> C.R.C.P. 24(a) permits intervention [of right] in an action "upon timely application." Timeliness is a threshold question to be determined by the court. *See Diamond Lumber, Inc. v. H.C.M.C., Ltd.*, 746 P.2d 76 (Colo. App. 1987).
>
> As a division of this court recognized in *Diamond Lumber*, the point of progress in the lawsuit is only one factor to be considered and is not, in itself, determinative. Timeliness must be evaluated by consideration of all the circumstances in the case.
>
> Here, Intervenor did not seek to be included in the litigation until four days before trial. As the trial court recognized in its findings, Intervenor did not submit a supporting factual affidavit, and, because of the late filing, plaintiff had little or no opportunity to investigate the allegations contained in the motion.
>
> Although Intervenor represented that it had only obtained knowledge of the lawsuit a short time before filing its motion, the **court weighed that consideration against the lateness of the motion and the potential impact on the proceedings.**

> Under all the circumstances here, we find no abuse of discretion in the trial court's considered determination that the intervention was untimely. Accordingly, we conclude that the trial court did not err in denying the motion to intervene.

Andrikopoulos v. Minnelusa Co., 911 P.2d 663, 667 (Colo. App. 1995) (emphasis added). *Accord Law Offices of Quiat v. Ellithorpe*, 917 P.2d 300, 303-04 (Colo. App. 1995) (affirming trial court's finding of untimely motion to intervene).

Once an applicant has shown he timely sought intervention, he then must meet three other factors, including that his interest is not adequately represented by other parties. In the present case, the only question before the Court is whether the CRC can overturn Article 4's 30% requirements for placement on the ballot. With respect to this issue, Mr. Stiver's interests are adequately represented by the CRC who engaged one of the state's preeminent law firms to argue its position.[2]

When the undersigned promptly moved to intervene on April 22, 2020, he assured the Court that granting the intervention "will not unduly delay or prejudice the adjudication of the rights of the original parties." Unopposed Motion to Intervene of Larry Liston at 2.

In contrast, Mr. Stiver dilatorily delayed intervening, repeatedly failed to follow the Court's orders, and now seeks further delay that will result in the potential disenfranchisement of military and overseas voters in violation of federal law.

[2] Had Mr. Stiver wished to raise a separate legal issue – such as seeking review of the propriety of the Assembly itself – that matter became ripe for judicial challenge more than six weeks ago and he was free to do so. He did not.

Conclusion

Mr. Stiver failed to timely seek intervention and failed to comply with the direct orders of the Court. His interests in the question at hand – can the CRC override state law and force the Chairman of a district assembly to submit a false certification – are adequately represented. His motion to intervene therefore should be denied in its entirety.

If the Court were to permit intervention at this late date, we concur with the SOS Response that any argument or evidence to be submitted should be done by 11 a.m. today.

Respectfully submitted this 4th day of May, 2020,

Law Offices of Wayne Williams

/s/ Wayne W. Williams
Wayne W. Williams, #22723

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was electronically served on:

Scott Gessler <sgessler@gesslerlawfirm.com>, counsel for Petitioner Karl Schneider,
Grant Sullivan <Grant.Sullivan@coag.gov>, counsel for Respondent Jena Griswold,
John Buckley <john@buckleylaw.com>, counsel for Respondent Eli Bremer,
Chris Murray <cmurray@bhfs.com>, counsel for intervenor Colorado Republican Committee,
and David Stiver <davidstiver@outlook.com>.

Dated this 4th day of May, 2020.

Law Offices of Wayne Williams

/s/ Wayne W. Williams
Wayne W. Williams, #22723

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St., Room 256 Denver, CO 80202	DATE FILED: May 4, 2020 12:41 AM FILING ID: 43235A2CE5EA7 CASE NUMBER: 2020CV31415
Petitioner: KARL K. SCHNEIDER, an individual v. **Respondents**: JENA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party Senate District 10 Assembly; and **Intervenor**: LARRY LISTON, an individual and COLORADO REPUBLICAN COMMITTEE.	**Δ Court Use Only Δ** Case Number: **2020CV31415** Div. 9 Ctrm. S503

AFFIDAVIT OF CHUCK BROERMAN

STATE OF COLORADO)
)ss.
COUNTY OF EL PASO)

I, Chuck Broerman, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen years.

2. I am the elected Clerk and Recorder for El Paso County, State of Colorado, and I am responsible for conducting the 2020 Colorado Primary Election within my jurisdiction.

3. The Colorado State Senate District 10 race, at issue in this matter, is also within my jurisdiction.

4. As the election official charged with these responsibilities, I believe it is critical that this Honorable Court fully understand and recognize the complexities of an election, which includes adhering to important deadlines and numerous laws, to ensure the enfranchisement of all eligible electors.

5. If there are any changes to the ballot at this point in time, then severe complications are likely to occur for my office. Colorado sets forth election deadlines for voters, candidates, governmental entities seeking voter approval, and those charged with conducting the election itself. All of these deadlines must work harmoniously to ensure an orderly election while providing maximum enfranchisement to eligible electors.

6. If a candidate is permitted to be placed on the ballot, outside of the usual method provided for under Colorado law, and quite literally at the eleventh hour, then I have grave concerns in considering two federal laws which protect military and overseas voters, which require my office to mail them ballots earlier than other voters to provide them with adequate time to vote. Additionally, my office utilizes a printing vendor to produce more than 409,400 ballots, which includes ballots for those military and overseas voters. Our vendor requires a certain timeframe to produce those ballots for us.

7. The Military and Overseas Voter Empowerment ("MOVE") Act is a federal law designed to provide greater protection for the voting rights of members of the armed forces and Americans temporarily living overseas. The Act was introduced in Congress on July 8, 2009 and signed into law by President Barack Obama on October 28, 2009. The MOVE Act is an expansion of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") enacted in 1986.

8. According to the Overseas Vote Foundation, 13.8 percent of overseas military voters were unable to vote in 2012. 21.6 percent of overseas military voters and 17 percent of overseas civilians did not receive a ballot.

9. To my knowledge, and at no point during my tenure as Clerk and Recorder, has El Paso County missed a federal election deadline and my intention is that will not change for the 2020 Colorado Primary. My office's core mission is to ensure that all voters, no matter the distance or difficulty, can enjoy their constitutionally guaranteed franchise to vote.

10. El Paso County is home to a number of military installations: Fort Carson, Peterson Air Force Base, Schriever Air Force Base, Cheyenne Mountain Air Force Station, the United States Air Force Academy, and the newly created United States Space Force. Accordingly, El Paso County has over 40,500 military members.

11. Currently El Paso County has **4,356** overseas voters in the entirety of the county, and within State Senate District 10, there are **850** overseas voters.

12. Pursuant to H.B. 20-1359, May 7 is the last day for the Colorado Secretary of State to deliver the June 30 Primary Election ballot order and content to county clerks.

13. Part of the reason for the change in date from May 1 to May 7 was as a result of the COVID-19 outbreak to provide political parties time to hold party assemblies in a safe and orderly manner. Many other state deadlines remain in place, along with federal deadlines.

14. With ballot certification changed from May 1 to May 7, this creates an extremely narrow window for the El Paso County Clerk and Recorder's Office to layout the ballot, proof, and submit to the Clerk's printing vendor, Runbeck Election

Services, Inc. The Clerk's deadline to provide its ballot layout to its printing vendor is noon on Friday, May 8; however, the Clerk sets an internal deadline of start of business to allow more time for the printing vendor. This creates a tighter timeline to layout and proof the ballot than originally planned prior to the certification deadline moving to May 7. El Paso County Clerk and Recorder staff have already devoted many long hours and overtime in order to layout and proof the ballot, and staff will need to be available on Saturday, May 9, and possible the following Sunday, in order to provide final proofing of ballot images from the printing vendor.

15. UOCAVA ballots must be mailed by May 16[1], and I have provided a rough, but current, timeframe my office is operating under as **Exhibit A** to this Affidavit, in order to show the steps my office must take to meet that deadline.

16. Due to all of these considerations, I humbly request that this Honorable Court enter a ruling on this matter as soon as practicable so that my office will have the assurances to move forward to ballot printing in order to meet all of the federal and state deadlines required of me.

17. Further affiant sayeth naught.

Chuck Broerman
El Paso County Clerk and Recorder
1675 W. Garden of the Gods Road, Suite 2201, Colorado Springs, CO 80907

Sworn to and subscribed before me this 3rd day of May, 2020.

Witness my hand and official seal.

Notary Public

(Seal) MARY A BARTELSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20044005258
MY COMMISSION EXPIRES MARCH 12, 2024

March 12, 2024
My Commission Expires

[1] The Colorado Secretary of State's Office strongly encourages mailing on May 15 if possible.

Exhibit A

Project Timeline

Steps that need to be completed by El Paso County Clerk and Recorder Election Department (May 7th and May 8th (noon)). This is an extremely aggressive schedule that leaves no margin for error:

1. Begin ballot Layout in Election system software (Dominion) the evening of Thursday May 7.
2. El Paso County Election Staff begins ballot proof-reading to ensure proper translation the evening of Thursday and early Friday May 8. El Paso County ensures accuracy of text and the correct spelling of candidate names and information.
3. Transmittal of Election System (Dominion) file to Print vendor (Runbeck)-Morning of May 8.
4. Print vendor Runbeck creates pdf file of ballot images and transmits those images to El Paso County. El Paso County verifies that ballot can be scanned, identified and tabulated in El Paso election equipment the weekend of Saturday May 9-Sunday May 10. Staff will need to work overtime that weekend to verify and communicate results to Runbeck.
5. Results from El Paso County's weekend tests are communicated to Runbeck on Monday May 11. If needed Runbeck makes corrections and El Paso County re-tests.
6. Runbeck is to deliver the ballot stock for the UOCAVA ballots by the morning of Tuesday, May 12 to El Paso County.
7. Vendor Runbeck uploads those .pdf images onto Print on Demand printers for final review on May 12.
8. El Paso County Election Department begins printing ballots on Wednesday May 13.
9. El Paso continues the printing of ballot, inserts ballot and voting instructions into mail packets on Thursday May 14.
10. Mail delivered to United State Postal Service on or before May 16, which is 45-days before the June 30 Primary.

UOCAVA ballots are to be mailed on Friday, May 15. (Saturday, May 16, is the deadline for County Clerk to transmit a primary election ballot to military and overseas voters.)

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St., Room 256 Denver, CO 80202	DATE FILED: May 4, 2020 7:06 AM FILING ID: 2168571ABB7A2 CASE NUMBER: 2020CV31415
Petitioner: KARL K. SCHNEIDER, an individual v. **Respondents:** JENA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party Senate District 10 Assembly; and **Intervenor:** LARRY LISTON, an individual and COLORADO REPUBLICAN COMMITTEE.	▲ **COURT USE ONLY** ▲
Attorney for Petitioner Karl K. Schneider: Scott E. Gessler, Atty Reg No. 28944 Gessler Law Firm, LLC 1801 Broadway, Suite 507 Denver, Colorado 80202 Tel: 720-839-6637 sgessler@gesslerlawfirm.com	Case Number: 2020CV31415 Division: 259

PETITIONER KARL SCHNEIDER'S RESPONSE TO DAVID STIVER'S MOTION TO INTERVENE

Petitioner Karl Schneider does not oppose the Court providing David Stiver an opportunity to present argument by way of an *Amicus* Brief, as this Court discussed at the conference call on May 1, 2020. Schneider does, however, object to Stiver's intervention and request for an evidentiary hearing.

A. Intervention is inappropriate, because it will unduly delay this case.

At this point, Schneider does not object to Mr. Stiver's ability to present argument as an *amicus*, so that Stiver has an opportunity to be heard in this matter. Assuming Stiver presents arguments late Monday, it is likely this Court will require at least overnight to consider and modify (if appropriate) its current decision. That, of course, delays the matter by one day. But Schneider does not object to this short delay.

Intervention, however, is another matter. Permissive intervention under C.R.C.P. 24 is not appropriate, because Stiver's application is untimely (as discussed further below), and because it will unduly delay this case.

As adequately explained by Secretary Jena Griswold and Representative Larry Liston, ballot certification is May 7, 2020. Although that deadline can – and has – been extended in prior years due to ballot access litigation,[1] the fact remains that elections face exceptionally tight deadlines. Even if this Court renders a decision on May 5, 2020, the parties will have until Friday, May 8, 2020 to file an appeal. And if the Supreme Court hears the appeal, past experience indicates that final resolution will likely take another two weeks.[2] These are

[1] *See, e.g., Frazier v. Williams*, Case No. 2016CV31575, *Order Re: Stay* (Denver Dist. Ct., May 5, 2016) (**Exhibit 1**).

[2] For perspective, undersigned counsel offers the following past timelines after reviewing the respective pleadings in *Frazier v. Williams*, Case No. 2016SA159 (Colo. 2016) and *Kuhn v. Williams*, 418 P.3d 478 (Colo. 2018). Undersigned counsel represented the Petitioner in *Frazier v. Williams*. There, Frazier filed his *Petition and Opening Brief* on May 9, 2016, and the Court issued a final order on May 24th. Two years later counsel represented Petitioner in *Kuhn v. Williams*. Kuhn filed his *Petition for Review under C.R.S. § 1-1-113 and Opening Brief* on April 13, 2018, and the Court issued its decision on April 23, 2018.

exceptionally difficult timelines by any measure, and Mr. Stiver's efforts have already delayed this matter a minimum of four days.

And there remains a possibility that the Court will hear an appeal. The facts in this matter are undisputed, and it presents an issue of first impression. And if the Party prevails, its ability to override statutory requirements will have wide-ranging consequences regarding Colorado's ability to structure ballot access requirements. Finally, as noted above, in each of the past two election cycles the Supreme Court has accepted urgent ballot access appeals (although admittedly both of those cases involved election to federal office).

Stiver is intervening for the purpose of introducing evidence, which will further delay resolution of this case. New evidence will require the parties to re-open the litigation, as if anew. If Stiver is granted the opportunity to present evidence, then Schneider – as the Petitioner who carries the burden of proof – is also entitled to present evidence. Depending on the scope of evidence and facts disputed, Schneider will likely require two days to contact witnesses and prepare testimony, and the parties will require another day (or perhaps two) to present evidence and closing argument. And all of that assumes that Stiver, Schneider, Liston, and the Colorado Republican Party are able to coordinate matters to efficiently identify the facts at issue.

This is no small feat. As it stands, this case required nearly a week to coordinate among the parties. Schneider's counsel spoke with counsel for the Colorado Republican Party the night before filing the *Petition*, promptly forwarded a copy of the *Petition*, and the next day those two parties discussed theories, defenses, and likely evidence. And both the

Party and Liston promptly answered the *Petition*, which allowed the parties to quickly identify disputed facts. In particular, Schneider and the Party had several substantive discussions aimed at streamlining this case, and Schneider and Liston also worked to streamline their arguments. But adding another party, and adding entirely new factual disputes, will take time to coordinate and prepare for a hearing. And this Court does not have the time.

B. Stiver has no right to intervene; his application is untimely, and the Republican Party adequately represented his interests.

Under C.R.C.P. 24, Stiver's application to intervene by right fails for two reasons. First, it is untimely. Plainly put, Stiver could – and should – have intervened earlier. Stiver had adequate notice. This matter was heavily publicized in Colorado Springs, where Senate District 10 is located. Even before Schneider filed this case, it was well known among the public that this matter would likely wind up in court. On April 17, 2020 – three days before Schneider filed the *Petition* – the Colorado Springs Gazette ran an extensive article reporting on the dispute and the likelihood of litigation.[3] Then, the day after Schneider filed the *Petition*, the Gazette ran another story about this lawsuit.[4] This case was well-known and widely publicized.

Stiver is a public figure who seeks to represent approximately 150,000 voters in Senate District 10. As such, he is a person heavily involved in the community, and one

[3] Ernest Luning, *Colorado Republican Party mired in dispute over El Paso County Senate race*, Colorado Springs Gazette (April 17, 2020) (**Exhibit 2**).

[4] Ernest Luning, *Former GOP election officials ask judge to keep candidate off El Paso County Senate primary ballot*, Colorado Springs Gazette, (April 21, 2020) (**Exhibit 3**).

properly assumes that he stays abreast of political and public policy developments. Counsel also respectfully offers that Republican politics in El Paso County is a small, tight-knit world, and word travels very fast. At a minimum Stiver should have been immediately aware of this litigation. And in his *Motion to Intervene*, Stiver himself admits that he was aware of this matter, but that he did not previously intervene because he was "unclear" about this Court's jurisdiction.

Furthermore, undersigned counsel made every effort to giver Stiver notice and allow him the opportunity to intervene in a timely manner. Schneider's counsel proactively contacted Randy Corporon by telephone before Schneider filed his *Petition*. In that conversation Schneider's counsel articulated his belief that Corporon represented Stiver, a belief that went uncontradicted. That same day he also sent Corporon a courtesy copy of the *Petition*. Later he left a voicemail with Corporon, and in a follow-up email he specifically told Corporon that Schneider would not object to intervention, but asked Corporon to intervene quickly, if his client wished to intervene.[5]

In short, Stiver has absolutely no excuse for not intervening in a timely manner.

As a second reason that Stiver has no right to intervene, Stiver's position has been well-represented by the Colorado Republican Party. The Party is represented by experienced counsel and has been fully engaged in this matter. It promptly intervened in this case, provided this Court with extensive written and oral argument, and has vigorously defended

[5] Email from S. Gessler to R. Corporon, dated April 20, 2020 (**Exhibit 4**).

Stiver's place on the ballot. All of these efforts have met with no objection, because both Schneider and Liston cooperated with the Party to ensure that it had every opportunity to fully present its arguments. And to date, Stiver has not in any way indicated that the Party's defense in this matter inadequately represented his interests. Stiver seeks access to the ballot, and the Party has done everything within its abilities (although Schneider would argue *outside* of its authority) to place Stiver on the ballot.

Stiver is a responsible, engaged public figure, who had every opportunity to intervene earlier in this case. But at this point, his intervention is untimely and will unduly delay resolution. In short, this case should be completed by now, and this Court should deny Stiver's *Motion to Intervene*.

DATED: May 4, 2020

Counsel for Karl K. Schneider

s / Scott E. Gessler

Scott E. Gessler
Gessler Law, LLC
1801 Broadway, Suite 507
Denver, Colorado 80202
Tel: 720-839-6637
sgessler@gesslerlawfirm.com

CERTIFICATE OF SERVICE

I certify that on this 4th day of May 2020, the foregoing **PETITIONER KARL SCHNEIDER'S RESPONSE TO DAVID STIVER'S MOTION TO INTERVENE** was electronically served via ICCES and/or email on the following:

Wayne W. Williams, Esq.
Law Offices of Wayne Williams
3472 Research Parkway, Ste. 104-200
Colorado Springs, CO 80920
Attorney for Intervenor Larry Liston.

Grant T. Sullivan, Esq.
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Colorado Attorney General's Office
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Attorneys for Jena Griswold, in her capacity as the Colorado Secretary of State

Christopher O. Murray, Esq.
Julian R. Ellis, Esq.
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410 Seventeenth Street, Suite 2200
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Attorneys for Colorado Republican Committee

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Attorney for Eli Bremer

David Stiver
davidstiver@outlook.com
Pro Se Intervenor

By: *s/ Joanna Bila*
Joanna Bila, Paralegal

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Petitioner(s) RYAN FRAZIER v. **Respondent(s)** WAYNE W WILLIAMS IN HIS OFFICIAL CAPACIT	DATE FILED: May 4, 2020 7:06 AM FILING ID: 2168571ABB7A2 CASE NUMBER: 2020CV31415 DATE FILED: May 5, 2016 9:24 AM CASE NUMBER: 2016CV31575 ⚠ **COURT USE ONLY** ⚠ Case Number: 2016CV31575 Division: 376 Courtroom:

Order Re: Stay

This matter is before the Court on Petitioner Ryan Frazier's Motion to Stay Certification or Place Candidate on Ballot, filed May 5, 2016. The Court will stay the deadline for ballot certification for the Republican Senate Primary until 5:00 p.m. on Monday, May 9, 2016, or until the stay is lifted by this Court.

Issue Date: 5/5/2016

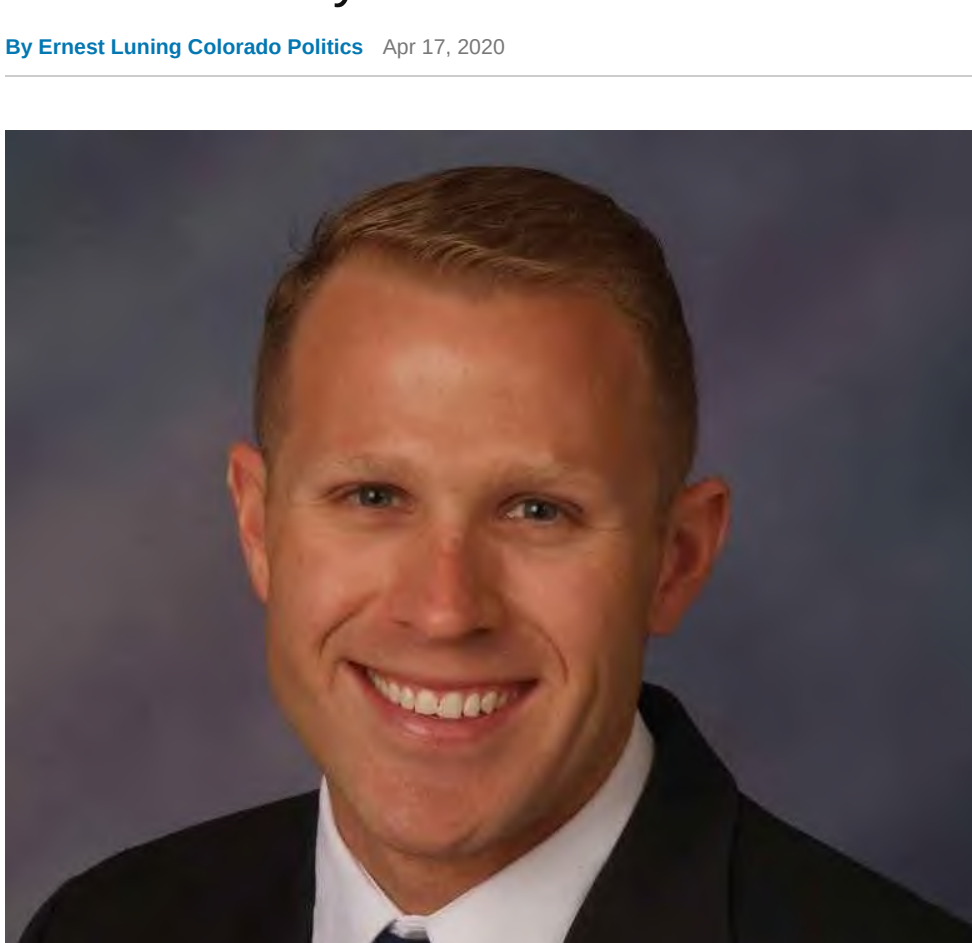
ELIZABETH ANNE STARRS
District Court Judge

EXHIBIT
1

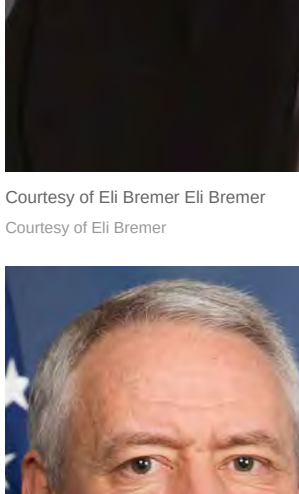
DATE FILED: May 4, 2020 7:06 AM
FILING ID: 216B571A9B7A2
CASE NUMBER: 2020CV31415

Colorado Republican Party mired in dispute over El Paso County Senate race

By Ernest Luning Colorado Politics Apr 17, 2020

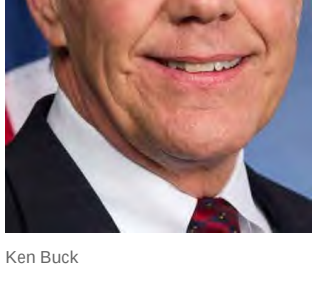


Courtesy of Eli Bremer Eli Bremer
Courtesy of Eli Bremer



Ken Buck

MORE INFORMATION



Hickenlooper outraises rivals in first quarter, but Gardner has far more cash on hand
John Hickenlooper is the only Democrat guaranteed a spot on the June 30 primary ballot, qualifying by petition.

Colorado's Michael Bennet taking on Trump over pandemic power
National Popular Vote supporters launch campaign to keep Colorado law on books
Hearkening back to an old referendum battle

The Colorado Republican Party has become embroiled in controversy in recent days over a legislative district assembly held last month in El Paso County as the novel coronavirus outbreak was forcing the state's political parties to cancel in-person meetings and, instead, conduct business remotely.

The dispute revolves around whether the March 22 Senate District 10 assembly that designated state Rep. Larry Liston unopposed to the Republican primary was carried out fairly, or if another candidate should have also made the ballot.

But in the wake of high-level meetings of the state GOP's governing bodies this week, the brawl has escalated to include threatened lawsuits, a possible criminal complaint and an accusation that state Republican Party Chairman Ken Buck, a member of Congress and former district attorney, instructed a party officer to violate state law.

Eli Bremer, the Senate District 10 Republican chairman and a former El Paso County GOP chairman, said late Friday that he wasn't going to comply with the state party's order to sign an official document knowing it isn't accurate.

"The action they demand I take literally requires me to commit a crime," Bremer said, adding that "everything is on the table," including possibly suing the state party.

In early March, Bremer notified delegates to the upcoming Senate District 10 assembly that they would convene remotely to decide which candidates to advance to the June 30 primary ballot.

Due to the mounting threat of the coronavirus pandemic just beginning to take hold in the state, the delegates would meet in a conference call on March 22 and cast their ballots by email, Bremer said, citing recently adopted emergency legislation and party bylaws.

Two candidates were in the running for the north-central Colorado Springs seat held by term-limited Republican state Sen. Owen Hill — Liston and longtime GOP activist David Stiver.

According to paperwork filed by Bremer with the Colorado Secretary of State's Office, only Liston, who received 76% of the delegate vote, met the 30% threshold required to make the primary ballot. Stiver, with 24% support, came up short.

Two days later, however, Stiver and several of his supporters filed a complaint with the state party, alleging numerous irregularities they claimed deprived Stiver of a fair election, including what Stiver contends were constantly changing rules, a shifting number of credentialed delegates and the hacking of the email account set up to receive ballots during the middle of voting.

Download PDF

"The whole thing was a comedy of errors," he told Colorado Politics. "The one thing that I don't understand is why, when things started sideways, why didn't we just shut things down and regroup?"

Stiver said he was so disturbed by how the assembly had been conducted that he was considering approaching Colorado's attorney general to initiate a criminal complaint against Bremer for violating state election law by "holding a fraudulent assembly."

Bremer countered that the process was conducted fairly, but the state GOP's executive committee disagreed, finding that the assembly "was irregular to the point" that the committee lacked confidence in the results. Since the deadline to hold another assembly had passed, the panel ordered Bremer to file paperwork with the Secretary of State's Office naming Stiver to the primary ballot, giving him a Monday deadline to comply.

GOP central comm excerpt

Bremer objected, calling the proceeding a "sham" that ignored the facts and relevant party bylaws. He insisted that what the committee was ordering amounted to breaking the law, since he would have to swear in an official state form that Stiver got at least 30% of the delegate vote, when he didn't.

He appealed the ruling to the state GOP's larger central committee, which met on a conference call Friday afternoon. After hearing brief arguments from both sides, the central committee voted 98-90 to uphold the ruling.

In a recording of the central committee meeting obtained by Colorado Politics, Buck repeatedly asks Bremer if he understands the order.

"I understand that the committee has adopted a resolution that requires me to sign a false affidavit," Bremer responds.

Bremer said later that he had been informed by an attorney he could be sued by a district Republican if he files the paperwork putting Stiver on the ballot and that he was weighing his options.

"This is the position that my party has put me in," he told Colorado Politics. "The state party has not only commanded me to do something that is demonstrably not legal, they've put me in legal jeopardy."

In response to an inquiry from Colorado Politics, state GOP communications director Joe Jackson said in an email: "Both the CRC Executive Committee and State Central Committee looked into this matter and both voted to assign Mr. Stiver to the ballot. During this morning's meeting, Chairman Buck simply asked Mr. Bremer to acknowledge that he understood what the final decision of the committee was and asked that he abide by that decision."

Bremer is one of five candidates running for Republican National committeeman from Colorado at the party's state assembly and convention, which will be held online Saturday. Conservative talk radio host and tea party group founder Randy Corporon, who represented Stiver in the Senate District 10 controversy, is also running for the position, which holds a two-year term.

Former Secretary of State Wayne Williams, a Colorado Springs city councilman and an attorney who represented Liston in front of the executive committee proceeding, told Colorado Politics Friday afternoon that the state GOP was putting Bremer in an impossible situation.

"The only way you can submit paperwork showing (Stiver) getting on the ballot is by lying," he said. "If you submit a form saying someone got 24% of the vote, that doesn't put him on the ballot. There's not a way to submit a form honestly that does what they say he has to do."

Pointing to the form the party is ordering Bremer to submit, Williams noted that it requires a sworn statement affirming that "the information provided on this form is, to the best of my knowledge, true and correct."

"This is not an inconsequential statement that the chairman is asking be done," Williams said.

Jackson declined to discuss internal party deliberations but said in a text message Friday that "Chairman Buck stands by the decision made by the [executive committee]."

Tags: Colorado Republican Party · Colorado · El Paso County Republican Party · Secretary Of State

Ernest Luning
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Tim Fotinos · 15 days ago · edited
Still no regrets I am no longer a member of the party that became Cult of Trump.
6 ^ | v · Reply · Share ›

LIBERTY vs democrat tyranny → Tim Fotinos · 13 days ago
I walked away when Daddy Bush said READ MY LIPS and then jacked Our taxes

Trump is the first GOP POTUS candidate I voted for since then

the rotten GOP can go to hell along with the anti-American dem'rats
^ | v · Reply · Share ›

Tim Fotinos → LIBERTY vs democrat tyranny · 13 days ago
What Bush Sr did was reduce the deficit. A good move. We should be looking at a war tax now to deal with COVID.
^ | v · Reply · Share ›

LIBERTY vs democrat tyranny → Tim Fotinos · 13 days ago
more taxes = more govt

you flunking fool
^ | v · Reply · Share ›

Dillard Jenkins · 16 days ago
Any political dispute that Ken *The Ruthless* Buck is involved in will be merciless, especially if a woman is a part of the disagreement.
4 ^ | v · Reply · Share ›

LIBERTY vs democrat tyranny → Dillard Jenkins · 13 days ago
merciless to women = Joe the sniffer-squeezer-feeler Biden
^ | v · Reply · Share ›

Rich · 16 days ago
Hopefully this will be a singular "irregular" event, although I have no confidence that it will be the only one. Mr. Bremer's comment of "The state party has not only commanded me to do something that is demonstrably not legal, they've put me in legal jeopardy" is a rather strong statement. Being that the directive which could well put another into legal jeopardy, is coming from a former District Attorney, and now party boss is disheartening, certainly undermines credibility and ethics. Unfortunately, it in part is a sign of the times, credibility and ethics for some is not important.
3 ^ | v · Reply · Share ›

Dougie Jones → Rich · 15 days ago · edited
At least the GOP is completely dysfunctional from the bottom to all the way to the top.

I imagine that happens when you don't stand for anything good.
3 ^ | v · Reply · Share ›

LIBERTY vs democrat tyranny → Dougie Jones · 13 days ago · edited
I imagine that's why Trump switched from democrat to GOPer -
so he could make monkeys of them all - lmao

dem'rats stand for abortion, baby parts market, sex with kids, Q "marriage, fascism

HOW DOES THAT FEEL TO BE THE LEFT WING OF THE GOP UNIPARTY
MAYBE IF YOU JOIN FORCES YOU CAN BEAT TRUMP BUT I DOUBT IT

STAND FOR NOTHING, FALL FOR ANYTHING -
how you wound-up with Biden, LOL
^ | v · Reply · Share ›

Dougie Jones → LIBERTY vs democrat tyranny · 13 days ago
I think this shillbot is broken.

I guess you get what you pay for?
^ | v · Reply · Share ›

LIBERTY vs democrat tyranny → Dougie Jones · 13 days ago
the godless donkey-dems have broken your party

you get the failure they paid for with your foolish contributions
^ | v · Reply · Share ›

bob cl · 16 days ago
idiots - bremer relative was one who screwed up Iraq by firing all army - as result americans died
2 ^ | v · Reply · Share ›

Snickett → bob cl · 16 days ago
What difference does a relative of Bremer have to this feud?
2 ^ | v · Reply · Share ›

bob cl → Snickett · 16 days ago
i just like to remember how how paul bremer was a moron
3 ^ | v · Reply · Share ›

Dave · 16 days ago
how does it feel in your heart to know Donald J Trump is your POTUS for five more years? You just love the feeling don't you
1 ^ | v 3 · Reply · Share ›

Dougie Jones → Dave · 15 days ago
Dave is what happens when you go years and years and years without human companionship.

Can't blame the other humans, though.
4 ^ | v · Reply · Share ›

LIBERTY vs democrat tyranny → Dougie Jones · 13 days ago
Trump is what happens when you run a murderous traitorous NWO witch

SLICK WILLY WAS SEEKING HUMAN COMPANIONSHIP huh

you can blame the DNC for Trump
^ | v · Reply · Share ›

Dougie Jones → LIBERTY vs democrat tyranny · 13 days ago
Do you and Dave know each other?
^ | v · Reply · Share ›

LIBERTY vs democrat tyranny → Dougie Jones · 13 days ago
Patriots are common kin

so are you Sheeple
^ | v · Reply · Share ›

Dougie Jones → LIBERTY vs democrat tyranny · 12 days ago
Oh, I'm sure you "patriots" are all about getting with your "common kin".
3 ^ | v · Reply · Share ›

LIBERTY vs democrat tyranny → Dougie Jones · 12 days ago
LOL - another lefty kink posts its XXX fantasies

you sick flunks are unaware how perverted you appear

to normal people

HOW DOES THAT FEEL - TO BE PART OF THE KIDDY-SEX CROWD
^ | v · Reply · Share ›

Dougie Jones → LIBERTY vs democrat tyranny · 12 days ago
Normal people do not act like weak, internet trolls, kid.

That's your lane,
^ | v · Reply · Share ›

LIBERTY vs democrat tyranny → Dougie Jones · 11 days ago
normal people love Liberty, dumbercrats love govt
WEAK = YOUR LOBOTOMISED CANDIDATE FOR POTUS
internet troll speaks Truth, you deny it
sex with kids = new "norm" for your godless party
^ | v · Reply · Share ›

Heywood Jablome → Dougie Jones · 15 days ago
I know a few Daves. No friends and all their problems are someone else's fault.
1 ^ | v · Reply · Share ›

Dillard Jenkins → Dave · 16 days ago
The peacock preens his long tail feathers.
1 ^ | v · Reply · Share ›

Array PEP → Dave · 16 days ago
Hope so
The actions of our Republican reps at the convention disgusted me
^ | v 1 · Reply · Share ›

LIBERTY vs democrat tyranny → Array PEP · 13 days ago
GOP is a disgusting NWO-owned p.o.s.
^ | v · Reply · Share ›

LIBERTY vs democrat tyranny · 13 days ago
were the rotten GOP not a uniparty sham, Tom Tancredo would have been Our Governor

always GREAT to see the rotten GOP further devolvng to drain with the swamp
^ | v · Reply · Share ›

Druck · 15 days ago · edited
Mr. Bremer, there seems to be enough credible evidence that the alternate process crafted under your leadership for the Assembly was flawed enough to taint the results...especially given that a majority of the state's Party leadership said as much. Thus, think it disingenuous to cast all blame at state Party when it was your Assembly process in question. However, the state Party solution seems highly inappropriate, unless there is overwhelming evidence that Mr. Stiver was unquestionably the winner and the election was stolen from him. If there is no way to substantiate that Mr. Stiver won, it seems incredulous that the state Party would insist that he won...unless their solution is to settle this dispute by giving the nod to the longtime Party loyalist.
^ | v · Reply · Share ›

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MILITARY
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Erin Prater erin.prater@gazette.com Apr 17, 2020
The Gazette spoke to three of the class's nearly 1,000 members, all of whom have faced unprecedented circumstances due to the pandemic.
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VIDEO | Highlights from Gov. Polis briefing on COVID-19
Apr 17, 2020
Colorado Gov. Jared Polis announced at a coronavirus briefing Friday that all essential employees will be mandated to wear face masks while working, along with other updates regarding the state's response to the pandemic.

COLORADO SPRINGS NEWS
Coronavirus in Colorado: National Guard will conduct testing in three of state's largest nursing homes
LIZ HENDERSON liz.henderson@gazette.com Apr 17, 2020
The Colorado National Guard will be sent into three of the largest nursing homes in the state to conduct testing as part of a stepped up effort to protect those who are most vulnerable to the coronavirus, Gov. Jared Polis said Friday.
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COLORADO SPRINGS NEWS
Colorado opens COVID-19 'symptom tracker' to collect data
By MICHAEL KARLIK Colorado Politics Apr 17, 2020
Respondents have the ability to enter their temperature, several potential symptoms that include vomiting and shortness of breath, and questions about underlying health conditions.
Michael Karlik, Colorado Politics — Follow Michael Karlik, Colorado Politics

EXHIBIT 2

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Former GOP election officials ask judge to keep candidate off El Paso County Senate primary ballot

Ernest Luning, Colorado Politics
Apr 21, 2020

The Associated Press file

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Colorado secretary of state appeals decision adding Democrat to U.S. Senate primary ballot

Two former Republican secretaries of state are asking a judge to block an order issued by the Colorado GOP to add a second candidate to an El Paso County legislative primary ballot, arguing the state party is trying to force a volunteer to violate the law.

Scott Gessler, an election law attorney who served as Colorado's chief election officer from 2011 to 2015, asked for an injunction in Denver District Court late Monday to prevent the Senate District 10 Republican chairman from filing a document designating David Stiver to the primary ballot for the district, which covers north-central Colorado Springs.

Reacting to what governing bodies of the Colorado Republican Party determined last week were "election irregularities" in the GOP assembly that put state Rep. Larry Liston on the senate district primary ballot, the state party ordered district chairman Eli Bremer to submit a form saying that both Liston and Stiver, a veteran party activist, had qualified for the primary. Stiver hadn't received the votes of at least 30% of the delegates, as the law requires.

EXHIBIT
3

Wayne Williams, a Colorado Springs at-large city councilman and Gessler's successor as secretary of state, said he'll ask to intervene in the lawsuit on behalf of Liston, who is so far the only Republican running in the June 30 primary for the seat held by term-limited state Sen. Owen Hill.

"The attorneys say they believe I've been asked to do something illegal," Bremer told Colorado Politics after learning the lawsuit had been filed.

He stressed the lawsuit isn't alleging he did anything wrong, but that he's being sued in his official capacity so a judge can determine whether complying with the party's order is within the law.

"It wasn't a surprise. We'll await whatever the court says," Bremer said.

In a court filing submitted on behalf of Karl Schneider, the senate district's Republican vice chairman, Gessler argued the sworn document Bremer was ordered to sign on Friday by U.S. Rep. Ken Buck, the state Republican Party chairman, would amount to a violation of state law, which says only candidates who meet the 30% threshold can be included on the ballot.

At the Senate District 10 assembly, which was held online on April 22, Liston received about 75% of the vote, and Stiver received about 25%. After it concluded, Stiver and several GOP allies filed a complaint with the state party alleging the assembly had been riddled with difficulties, including violations of party bylaws.

The state GOP's executive and central committees last week sided with Stiver and said the only "equitable remedy" would be to put him on the ballot, which led Buck to tell Bremer to file the designation of candidacy over Bremer's objections.

A spokesman for the Colorado GOP declined to comment on the lawsuit.

"I am very much looking forward to having this go outside the political arena," Bremer said. "I'm going to let the attorneys duke it out, and I'll do what the court says."

The lawsuit also asks the court to prevent Secretary of State Jena Griswold, the Democrat who unseated Williams in the 2018 election, from certifying Stiver as a candidate, because he didn't receive the necessary support at the Republican assembly.

Ernest Luning

From: Scott Gessler <sgessler@gesslerlawfirm.com>
Subject: Schneider v. Bremer et. al.
Date: April 20, 2020 at 6:03:06 PM MDT
To: Randy Corporon <rbc@corporonlaw.com>

DATE FILED: May 4, 2020 7:06 AM
FILING ID: 2168571ABB7A2
CASE NUMBER: 2020CV31415

Hi Randy,

I just left a message on your phone and understand that you spoke with Chris.

I also understand that you still need to confer with your client to determine whether you'll be intervening. If you seek to intervene, we will not object.

As far as the schedule going forward, I'm going to be calling the court tomorrow morning to ask for a status conference Wednesday morning. My hope is that all the parties can agree on a briefing and hearing schedule before Wednesday morning, and that we can present a proposal to the judge to manage the case.

So, if you plan to intervene, please decide quickly! Feel free to call me to discuss.

Thanks,

Scott

Scott E. Gessler
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1801 Broadway, Suite 507
Denver, CO 80202
720-839-6637 cell
sgessler@gesslerlawfirm.com
www.gesslerlawfirm.com

EXHIBIT
4

budzien, abigail

From: David Stiver <davidstiver@outlook.com>
Sent: Friday, May 1, 2020 4:59 PM
To: Grant Sullivan; budzien, abigail; Wayne Williams; john@buckleylaw.com; mike.kptlarcyzk@coag.gov; jellis@bhfs.com; Murray, Christopher O.
Subject: Limited Entry of Appearance and Motion/Answer in Intervention for David Stiver re: 2020CV031415 (Schneider v. Griswold, et al.)

I, David C. Stiver respectfully enter my limited appearance pursuant to CRCP Rule 121, sec. 1-1(5) for the sole purpose of filing this "pleading," and do so seeking the permission of the court as a potential Intervenor ("Candidate").

As the interested party who will be most impacted by the Court's decision, I respectfully request permission to intervene. It is presumed that all except counsel for the Colorado Republican Party will object. I, David C. Stiver, am fully aware of the obligation to pay the District Court filing fee and will do so accordingly.

I, David C. Stiver, did not previously seek permission to intervene as I was not specifically named as a party to this action and was unclear as to whether this Court had jurisdiction to overturn the specific actions and decisions of the Colorado Republican Party pertinent to this matter. My understanding pursuant to the El Paso County Senate District #10 Bylaws Article XII (Controversies) and the Emergency Bylaw Rule #10 was to Contest the Assembly results to the next higher level of inter-party authority.

As such, I appealed pursuant to Rule 10 to the Colorado State Republican Party Executive Committee who rendered their opinion. After hearing testimony from witnesses and reviewing the evidence submitted, the Colorado State Republican Central Committee endorsed the decision of the Executive Committee by a clear majority in accordance with C.R.S. §1-4-604(5—6a-6d). Should the Court determine otherwise, and if the Court intends to rule in a manner that will keep me (as a candidate off of the Primary Ballot), I respectfully request the opportunity to present evidence and argument to the contrary prior to the Court's final ruling.

Wherefore, I, David C. Stiver, respectfully request permission to intervene and, should the Court determine it has jurisdiction to render a determination and that determination will prevent me from being on the June primary ballot, requests an opportunity to present evidence and argument by 4 p.m. on Monday, May 4, 2020, prior to the Court's ruling.

Respectfully submitted this 1st of May, 2020, by David C. Stiver (individual)(pro se)and filed and served to counsel for all parties via the email addresses above.

David C. Stiver(Individual)(pro se)
4562 Excalibur Court
Colorado Springs CO 80917
(719) 339-4479

Sent from Mail for Windows 10

budzien, abigail

From: David Stiver <davidstiver@outlook.com>
Sent: Friday, May 1, 2020 5:48 PM
To: Grant Sullivan; budzien, abigail; Wayne Williams; john@buckleylaw.com; mike.kptlarcyzk@coag.gov; jellis@bhfs.com; Murray, Christopher O.
Subject: Limited Entry of Appearance and Motion/Answer in Intervention for David Stiver re: 2020CV031415 (Schneider v. Griswold, et al.)(Corrected Copy)

I, David C. Stiver respectfully enter my limited appearance pursuant to CRCP Rule 24 for the sole purpose of filing this "pleading," and do so seeking permission of the court as a potential intervenor ("Candidate").

As the interested party who will be most impacted by the Court's decision, I respectfully request permission to intervene. It is presumed that all except counsel for the Colorado Republican Party will object. I, David C. Stiver, am fully aware of the obligation tom pay the District Court filing fee and will do so accordingly.

I, David C. Stiver, did not previously seek permission to intervene as I was not specifically named as a party to this action and was unclear as to whether this Court had jurisdiction to overturn the specific actions and decisions of the Colorado Republican Party pertinent to this matter. My understanding, pursuant to the El Paso County Senate District #10 Bylaws Article XII (Controversies) and the Emergency Bylaw Rule #10 was to Contest the Assembly results to the next higher level of inter-party authority.

As such, I appealed pursuant to Rule #10 to the Colorado State Republican Party Executive Committee who rendered their decision. After hearing testimony from witnesses and reviewing the evidence submitted, the Colorado State Republican Central Committee endorsed the decision of the Executive Committee by a clear majority in accordance with C.R.S. §1-4-604 (5, 6a-6d). Should the Court determine otherwise, and if the Court intends to rule in a manner that will keep me (as a candidate off the Primary Ballot), I respectfully request permission to present evidence and argument to the contrary to the Court's final ruling.

Wherefore, I, David C. Stiver, respectfully request permission to intervene and, should the Court determine that it has jurisdiction to render a determination and that determination will prevent me from being on the June Primary Ballot, request an opportunity to present evidence and argument by 4:00 p.m. on Monday, May 4, 2020 prior to the Court's ruling.

Respectfully submitted this 1st day of May, 2020 by David C. Stiver (individual)(pro se) and filed and served to counsel for all parties via the email addresses above.

David C. Stiver (Individual)(pro se)
4562 Excalibur Court
Colorado Springs CO 80917
Cell: (719) 339-4479
Office: (719) 594-4003

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St. Denver, Colorado 80202	DATE FILED: May 4, 2020 12:21 PM CASE NUMBER: 2020CV31415
Petitioner: KARL K. SCHNEIDER v. **Respondents:** JENA GRISWOLD, in her capacity as the Colorado Secretary of State and ELI BREMER, in his capacity as presiding officer of the Republican Party State Senate District 10 Assembly **Intervenors:** LARRY LISTON; the COLORADO REPUBLICAN COMMITTEE, an unincorporated non-profit association; and DAVID STIVER	**▲ COURT USE ONLY ▲** Case No: 2020CV31415 Courtroom: 259
ORDER RE PETITION FOR RELIEF UNDER C.R.S. § 1-1-113	

THIS MATTER is before the Court on Karl K. Schneider's ("Petitioner") Petition for Relief Under C.R.S. § 1-1-113 ("Petition"). A remote hearing was held before this Court on these matters on April 27, 2020. Petitioner's Exhibits 1 and 2 were admitted by stipulation. The Court, having heard argument, reviewed the parties' briefs, and being fully advised on the matter, finds and orders as follows:

STATEMENT OF RELEVANT FACTS

The following facts are taken primarily from Petitioner's Verified Petition and are largely undisputed.

1. In Colorado, candidates who seek to be nominated by a major political party – either the Republican Party or the Democratic Party – have two ways to have their names placed on the ballot; submission of a candidate petition or nomination by party assembly. C.R.S. § 1-4- 102.

2. To be designated a candidate by assembly, a candidate must receive 30% or more of the vote at a nominating assembly. C.R.S. § 1-4-601(2)(a).

3. Under Republican Party rules, each senate district has a standing committee, responsible for running that district's nominating assembly.

4. Respondent Eli Bremer ("Respondent Bremer") is the Chairman of the Republican State Senate District 10 Committee and served as the presiding officer at the Republican State Senate District 10 Assembly (the "Assembly").

5. Senate District 10 is located entirely within El Paso County. Under C.R.S. § 1-4-602(2)(a), persons elected as delegates to the county assembly serve also as delegates to the Senate District 10 Assembly.

6. Under El Paso County Republican Party rules, the County Party authorized 355 delegates and 355 alternate delegates to the Assembly. Delegates and alternate delegates were allocated by precinct, as required by C.R.S. § 1-4-602(1)(a)(I).

7. The El Paso County Republican Party held its County Assembly on March 18, 2020.

8. The El Paso County Republican Party designated 179 delegates and 24 alternate delegates to the State Senate District 10 Assembly. These delegates and alternates represented the precincts in which they resided.

9. The County Party transmitted the names and email addresses of each delegate and alternate to Jody Richie, the Secretary for the State Senate District 10 Committee "SSDC".

10. Following review of each delegates' eligibility, Ms. Richie determined that one person designated as a delegate for Senate District 10 did not, in fact, reside in Senate District 10.

11. On March 14, 2020, the SSDC scheduled the Assembly to be held on March 25, 2020 at the Colorado Springs Country Club, located at 3333 Templeton Gap Road, Colorado Springs, CO 80907.

12. Due to emergency measures taken in response to the declared state of emergency in Colorado, on March 17, 2020, the SSDC informed delegates via email that the Assembly could not be held as scheduled, and that the Assembly would instead be conducted online. On March 19, 2020, the SSDC rescheduled the Assembly for 3:00 pm, March 22, 2020.

13. The next day, on March 20, 2020, the Colorado State Republican Party Central Committee ("Central Committee") adopted emergency bylaws to govern the conduct of nominating assemblies.

14. After conferring together, the three SSDC officers unanimously agreed that delegates could credential and vote according to the following process:

    a. The SSDC appointed Joe Webb to serve as both the credentialing committee (to confirm delegate and alternate eligibility), and the teller committee, to count votes. Joe Webb is the former chair of the Jefferson County Republican Party, and therefore is considered an experienced, neutral person with no connections to any candidate seeking nomination through assembly.

    b. Webb created a separate email address, sd10assembly@yahoo.com. Delegates seeking to participate in the assembly were required to send their vote by email to this address.

    c. This email address from a delegate or alternate delegate had to match the email address the SSDC received from the County Party. In instances where the County Party did not send an accompanying email address, the SSDC sought to telephonically contact delegates to obtain an email address. In instances where two or more delegates shared an email address, the individual delegate would identify himself or herself to Mr. Webb.

    d. Upon receiving an email vote, Webb would contact Ms. Richie to confirm that the email address belonged to a delegate. Ms. Richie did not provide the voter's name to Mr. Webb. Upon receiving confirmation of the voter's eligibility, Webb would count the accompanying vote. Webb would not tell Ms. Richie how any email sender voted.

    e. Credentialing and early voting could begin on or prior to the convening of the Assembly.

    f. No votes would be tabulated until after the Assembly convened, on Sunday, March 22, 2020, at 3:00 pm.

    g. Delegates could change their vote up until three hours after the assembly convened, or 6:00 pm, March 22, 2020.

    h. At 6:00 pm, alternates would be elevated to slots that did not have voting delegates in that precinct.

15. While researching alternatives and deciding upon the process, Respondent Bremer regularly consulted with the Republican State Party Executive Director, as well as the Chair of the Republican State Party bylaws committee, to ensure the Assembly voting procedures met State Party requirements.

16. In addition, the SSDC relied upon the following Emergency Bylaws passed by the Central Committee on March 20, 2020:

    a. Emergency bylaw number 4 governed voting methods, deferring to state law. Specifically, it stated: "[a]ll district and county central committees or district and county assemblies and conventions may provide for alternative credentialing, nominating, and/or voting procedures as permitted by House Bill 2020-1359."

    b. Emergency bylaw number 9 also deferred to state law, holding "[p]ursuant to House Bill 2020-1359 all district and county assemblies and conventions shall be completed no later than April 11, 2020, and may be held over a period of no more than seven calendar days."

17. Credentialing and early voting opened on Saturday, March 21, 2020, at 10:32 am. and the Assembly followed the process outlined above.

18. Webb conferred with Ms. Richie at 3:00 pm and 8:00 pm on Saturday, March 21, 2020, to credential delegates. This was done by conference call, whereby Mr. Webb read off email addresses to Ms. Richie, who confirmed eligibility. Respondent Bremer and Schneider monitored the phone calls and exchanges of information.

19. At 11:00 a.m. on Sunday, March 22, 2020, Webb and Richie again had a conference call to credential delegates. There were an additional 25 emails. After confirming eligibility. Webb also counted the number of votes for those 25 emails.

20. On March 22, 2020, after reviewing the emails, Webb encountered technical difficulties with his web browser screen, and while attempting to resolve the difficulties, the email web browser page shut down and locked him out of the account.

21. Webb unsuccessfully sought to regain access to the email account. When he couldn't regain access, he promptly created a new email address, sd10assembly2@yahoo.com. He informed Respondent Bremer of the new email address. Respondent Bremer immediately informed all delegates of the new address, urging delegates who had not yet voted to use the new email address instead.

22. Approximately 35 additional delegate credentials and votes were received at the second email address.

23. The Assembly convened at 3:00 p.m. on March 22, 2020. At 6:00 pm that day, delegate voting closed. Following the close of voting, five delegates were elevated to delegate status and allowed to vote.

24. The final vote tally is undisputed for purposes of these proceedings and was as follows: 169 delegates (including 5 alternates elevated to delegate) out of 178 voted, for a participation rate of 95%. Larry Liston received 127 votes, or 75%. Dave Stiver received 41 votes, or 24%. One percent of voters abstained. (All percentages are rounded to the nearest full percent.) No party to this case is challenging these results.

25. Two days later, on March 24, 2020, Ms. Richie mailed the Certificate of Designation for Senate District 10 to the Colorado Secretary of State. (Pet. Exh. 1).

26. The Assembly's voting procedures engendered controversy within Senate District 10 leading to protest and Republican State Party Intervention. Indeed, following the election Mr. Stiver filed a complaint with the Colorado Republican Party Executive Committee ("Executive Committee"), according to Republican Party bylaws and C.R.S. § 1-3-106, which authorizes the party central committee to "pass upon and determine all controversies concerning the regularity of the organization of that party within any . . . senatorial . . . district."

27. Mr. Stiver raised multiple objections to the Assembly, none of which are pertinent to the Court's determination of the issues presented here. As it has been noted, Mr. Stiver does not dispute that he received less than 30% of the vote at the Assembly.

28. The Executive Committee considered the complaint and the responses. Mr. Stiver, Larry Liston (the winning candidate), and Respondent Bremer all presented to the Executive Committee.

29. Following presentations and a divided vote, the Executive Committee issued a report, entitled "Report of the Executive Committee In re: Controversy regarding March 21- 22 Designation Election and Assembly for Senate District 10." (the "Executive Committee Report") (Pet. Exh. 2).

30. The Central Committee subsequently adopted and approved the Executive Committee Report by a vote of 98 to 88 and thereby resolved the complaint by ordering that Mr. Stiver be designated as a candidate for Senate District 10. Specifically, the Central Committee did this as an "equitable remedy for the irregularity of the assembly." Executive Committee Report, p. 12. Because the Central Committee believed that Mr. Liston had "campaigned honestly and honorably" "Mr. Stiver's only plausible place on the Republican primary election ballot is as the second-place vote-getter." *Id.*

31. The Central Committee based its equitable remedy on two perceived "irregularities." As the Court's decision is based solely on statutory analysis it is unnecessary to consider the underlying findings of purported irregularities and I decline to do so here.

32. Following the Central Committee's adoption of the Executive Committee Report, the Chairman of the State Republican Party ordered Respondent Bremer to issue a new certificate of designation, designating both Mr. Liston and Mr. Stiver as candidates for the Senate District 10 Republican Primary as an equitable remedy to the perceived irregularities in the Assembly process. The Chairman ordered Respondent Bremer to make the designation no later than Monday, April 20, 2020.

33. On April 20, 2020, Petitioner filed this Petition for Relief Under C.R.S. § 1-1-113. The Petition seeks to enjoin (1) Respondent Bremer from designating Mr. Stiver, a candidate who received less than 30% of the vote, and (2) the Colorado Secretary of State, Respondent Jena Griswold ("Respondent Griswold"), from certifying for the June primary ballot a candidate who did not meet the 30% vote requirement.

34. On April 22 and 23, 2020, the Court granted Intervenor Larry Liston ("Liston") and Colorado Republican Committee's ("Party") unopposed motions to intervene.

35. At a remote hearing, the Court heard argument from the parties on April 27, 2020. Counsel for the parties were present. Also present and observing at the remote hearing was Randy Corporon, Esq. Not in attendance was Mr. David Stiver, a candidate for State Senate District 10. Respondent Griswold and the Party (collectively, "Respondents") oppose the Petition. Respondent Bremer takes no position regarding the outcome of this case.

The Petition is now ripe for disposition.

ANALYSIS

A. Motion to Intervene

Before discussing the merits of the Petition, the Court must address the unusual legal posture of David Stiver's request to intervene in this action. On April 30, 2020, the Court received a voice mail message from Mr. Stiver indicating his desire to file an "amicus brief" with the Court and requesting an email account to send his pleading to. In response to Mr. Stiver's voice mail, the Court's staff attempted to contact him at the phone numbers he provided. A voice message was left for Mr. Stiver directing him to return our call but otherwise all attempts to contact him were unsuccessful.

On May 1, 2020, the Court reconvened this matter for a telephone status conference to apprise the parties of Mr. Stiver's voicemail request. All counsel of record appeared for this conference. The Court inquired of the parties as to their positions on Mr. Stiver's request and heard remarks from counsel. Counsel advised the Court that multiple efforts had been made to engage Mr. Stiver and Mr. Corporon on behalf of Mr. Stiver and to inquire whether they would be entering an appearance or participating in this litigation. Neither Mr. Stiver or Mr. Corporon indicated that they would be participating in this litigation. In fact, Mr. Corporon expressly advised this Court he was not entering an appearance in this matter at the April 27th hearing.

At the conclusion of the status conference, the Court then advised counsel that the Court would make a one-time conditional exception in this matter for Mr. Stiver, appearing pro se, to "file" his Motion to Intervene, including a simultaneous filing of any brief, in this case by email. This authorization for email filing was conditioned upon Mr. Stiver submitting the appropriate filing fee which he did not do. On that basis, the Court then ordered Mr. Stiver to pay the appropriate filing fee for a Motion to Intervene no later than 11:00 a.m., Monday, May 4, 2020. On May 4, 2020, Mr. Stiver submitted the appropriate filing fee for a Motion to Intervene but filed no additional pleadings. Therefore, the Court construes Mr. Stiver's email pleading as his Motion to Intervene and a request to reopen evidence, which are now properly before this Court. Respondents filed Responses on May 3, 2020 as did Intervenor Liston on May 4, 2020. Upon review and consideration, Mr. Stiver's Motion to Intervene is GRANTED, and the Court will consider the arguments presented therein. However, Mr. Stiver's request to reopen evidence is DENIED.

Determination of whether to reopen evidence is a matter which lies within the sound discretion of the trial court, which must weigh the lapse of time in the light of all the circumstances of the case, including the proponent's ability to offer the evidence at an earlier stage in the case, and the likelihood of undue prejudice. *See Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 US 321, 330 (1971). Here, there is little question Mr. Stiver was aware of his interest in this litigation from the outset of the case. As demonstrated by his own email to the Court, Mr. Stiver stated that he did not intervene earlier because he doubted the Court had jurisdiction over the matter. Furthermore, counsel at the May 1, 2020 telephonic status conference confirmed that multiple efforts had been made, prior to initiating this litigation, to engage Mr. Stiver and Mr. Corporon on behalf of Mr. Stiver and to inquire whether they would be entering an appearance or participating in this litigation. Lastly, the Court notes that there has reportedly been extensive local media coverage on this lawsuit in Senate District 10. Despite his awareness of his interest in intervening, and his ability to do so, Mr. Stiver neither personally nor through the efforts of Mr. Corporon, made any attempt to present evidence at the April 27th hearing. In fact, Mr. Stiver waited until four days after the April 27th hearing was held before seeking to formally intervene and present evidence to this Court.

Importantly, time is of the essence in this case and the reopening of evidence at this point would likely result in further delay and additional litigation. The threat of further delay and the prospect of reopening evidence, which, at this late date might prevent the Colorado Secretary of State from certifying the primary ballot by the May 7, 2020 deadline, are sufficient bases to conclude that Mr. Stiver's untimely efforts to introduce evidence will prejudice the parties. Considering Mr. Stiver's delay in seeking to intervene, his lack of credible explanation for his delay, and the prejudice arising from the further delay that would necessarily follow the reopening of evidence, the Court must deny Mr. Stiver's request to present further evidence.

B. Petition for Relief Under C.R.S. 1-1-113

The issue of jurisdiction is a central and threshold consideration for the Court. The parties dispute whether this Court has jurisdiction over the issues presented in the Petition. Petitioner asserts that C.R.S. § 1-1-113 confers jurisdiction over Respondents Bremer and Griswold because each are officials charged with duties and functions under the Uniform Election Code.

C.R.S. § 1-1-113 provides in relevant part that:

> When any controversy arises between any official charged with any duty or function under this code and any candidate, or any officers or representatives of a political party, or any persons who have made nominations or when any eligible elector files a verified petition in a district court of competent jurisdiction alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act . . .

C.R.S. § 1-1-113(1).

Conversely, Respondents insist that under C.R.S. § 1-3-106, this Court is without jurisdiction because this matter can be decided only by the Central Committee. C.R.S. § 1-3-106 states that:

> The state central committee of any political party in this state has full power to pass upon and determine ***all controversies concerning the regularity of the organization of that party*** within any congressional, judicial, senatorial, representative, or county commissioner district or within any county ***and also concerning the right to the use of the party name.*** The state central committee may make rules governing the method of passing upon and determining controversies as it deems best, unless the rules have been provided by the state convention of the party as provided in subsection (2) of this section. All determinations upon the part of the state central committee shall be final.

C.R.S. § 1-3-106(1) (emphasis added).

A basic tenet of statutory interpretation is that a court must first look to the language of the statute. *People v. Yascavage*, 101 P.3d 1090, 1093 (Colo. 2004). Absent an ambiguity in the language of the statute, a court will not resort to further rules of statutory interpretation. *Id*. "When interpreting two statutory sections, [courts] must attempt to harmonize them to give effect to their purposes and, if possible, reconcile them so as to uphold the validity of both." *Gonzales v. Allstate Ins. Co.*, 51 P.3d 1103, 1106 (Colo. App. 2002). Finally, "a statutory interpretation that defeats legislative intent or leads to an absurd result will not be followed." *AviComm, Inc. v. Colo. Public Utils. Comm.*, 955 P.2d 1023, 1031 (Colo. 1998).

Here, Petitioner's position must prevail. The Court first notes that Respondents' argument disregards the placement of C.R.S. § 1-3-106 in Article 3 which is titled "Political Party Organization." The plain text and title of Article 3 suggests that the legislature intended to limit the scope of C.R.S. § 1-3-106 to determining controversies concerning the organization of the party and the right to use the party name. Respondents provide no clear support for their view that C.R.S. § 1-3-106 is not limited to disputes over a party's structure. Had the legislature intended that the Central Committee be the sole tribunal to determine disputes over ballot access, it could have expressed that intent in any number of ways.

However, absent such legislative intent or authority to the contrary, the Court declines to expand the plain language of the statute to accommodate Respondents' interpretation. Accordingly, because this case is a dispute over the legality of a candidate's designation of candidacy, as opposed to a controversy concerning the party's structure, C.R.S. § 1-3-106 simply does not apply. Moreover, the Court finds that adopting Respondents' position would lead to an absurd result. That is, it would undermine the legislative intent expressed in C.R.S. § 1-1-113 to provide this Court jurisdiction over disputes involving officials charged with duties under the Election Code and who are alleged to have breached those duties. Indeed, the only way for this Court to give effect to both C.R.S. § 1-3-106 and C.R.S. § 1-1-113 is to accept Petitioner's position.

Having found that C.R.S. § 1-3-106 does not apply to the present action, the Court must discern whether C.R.S. § 1-1-113 confers jurisdiction over Respondent Bremer and Respondent Griswold. This Court answers that question in the affirmative. Respondents Bremer and Griswold are officials charged with duties and functions under the Uniform Election Code that they are allegedly about to breach. More specifically, Respondent Bremer, as the presiding officer for the Senate District 10 Assembly, is charged with submitting the certificate of designation, which identifies candidates who received 30% or more of the votes at a nominating assembly to the Colorado Secretary of State. Because Respondent Bremer has been ordered to submit an amended certificate of designation naming Mr. Stiver, a candidate who received less than 30% of the vote, to the Republican primary ballot for Senate District 10, Petitioner alleges Respondent Bremer is

also likely to breach his duty. Thus, Respondent Bremer is subject to the jurisdiction of this Court under C.R.S. § 1-1-113.

Likewise, Respondent Griswold is also subject to the jurisdiction of this Court. As the Colorado Secretary of State, Respondent Griswold is required to supervise the conduct of primary elections in this state and is the official responsible for certifying names on the ballot. *See* C.R.S. § 1-1-107(1)(a). Petitioner alleges that Respondent Griswold is about to breach her duty by certifying a candidate who received less than 30% of the vote in violation of C.R.S. § 1-4-601(2)(a). On that basis, the Court finds that it has jurisdiction over this action pursuant to C.R.S. § 1-1-113.

Having established its jurisdiction to determine the Petition, the Court will now address the Central Committee's order directing Respondent Bremer to issue a new certificate of designation, designating both Mr. Liston and Mr. Stiver as candidates for the Senate District 10 Republican Primary.

Under Colorado law, a candidate for state senate must earn at least 30% of the vote at a nominating assembly to be placed on the primary ballot. C.R.S. § 1-4-601(2)(a). Here, the final vote at the Republican Senate District 10 nominating assembly was as follows: 169 delegates (including 5 alternates elevated to delegate) out of 178 voted, for a participation rate of 95%. Larry Liston received 127 votes, or 75%. Dave Stiver received 41 votes, or 24%. One percent of the voters abstained. As noted above, these results are not disputed by the parties here. However, the Executive Committee's Report as adopted by the Central Committee orders Mr. Stiver designated to the ballot as an equitable remedy for the previously described irregularities in the conduct of the Senate District 10 Assembly's designation election even though Mr. Stiver received less than 30% of the vote.

While the Court is cognizant of the alleged irregularities that occurred during the nominating assembly, the occurrence of those events, if any, do not take precedence over or preclude application of C.R.S. § 1-4-601(2)(a). Therefore, any Certificate of Designation of Candidacy including Dave Stiver as a candidate clearly violates C.R.S. § 1-4-601(2)(a) because he did not receive 30% or more of the votes at the Republican Senate District 10 Assembly. Thus, Petitioner's first claim for relief is GRANTED.

Because Respondent Bremer is now enjoined from submitting a certificate of designation that designates Dave Stiver, there is no plausible allegation that Respondent Griswold will breach any duty she owes under the Uniform Election Code. The Court takes judicial notice of the fact that Respondent Griswold has confirmed that she will uphold her duty under C.R.S. § 1-5-203(1)(a)(II) irrespective of the Court's ruling on the within Petition. As such, Petitioner's second

claim for relief prohibiting Respondent Griswold from certifying Dave Stiver as a candidate is deemed moot and therefore DENIED.

CONCLUSION

WHEREFORE, as set forth above, David Stiver's Motion to Intervene is **GRANTED**; David Stiver's request to reopen evidence is **DENIED**; and Petitioner's Petition for Relief Under C.R.S. § 1-1-113 is hereby **GRANTED** as to the first claim for relief and **DENIED** as to the second claim for relief.

SO ORDERED.

Dated this 4th day of May, 2020.

BY THE COURT:

MICHAEL A. MARTINEZ
District Court Chief Judge