

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Ave. Denver, Colorado 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Petition taken from: Denver District Court, Case No. 20CV31415 Hon. Michael Anthony Martinez</p>	
<p>In re:</p> <p>Petitioner: KARL K. SCHNEIDER</p> <p>v.</p> <p>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</p> <p>Intervenors: LARRY LISTON; the COLORADO REPUBLICAN COMMITTEE, an unincorporated non-profit association; and DAVID STIVER</p>	
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<p style="text-align: center;">PETITION FOR RULE TO SHOW CAUSE PURSUANT TO C.A.R. 21</p>	

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with all requirements of C.A.R. 32 and 21, including all the formatting requirements set forth in these rules.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 32 and C.A.R. 21.

Dated May 6, 2020.

Respectfully submitted,

/s/ Brian E. Lewis

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TABLE OF CONTENTS

Certificate of Compliance.....	2
I. Petitioner and Proposed Respondents.....	5
II. Identity of the Court Below.....	5
III. Identity of the Persons or Entities Against Whom Relief is Sought	5
IV. Ruling Complained of and Relief Sought	6
V. Reason Why No Other Adequate Remedy is Available	6
VI. Statement of the Issue Presented	7
VII. Statement of the Case and Facts	7
A. Factual Background	7
B. Procedural Background	12
VIII. Argument	
A. Legal Standard	20
B. The district court erred in not originally identifying Stiver as a necessary or indispensable party and requiring him to be joined in the action	20
C. The district court erred in granting Stiver’s motion to intervene without affording him an adequate opportunity to present evidence	24
D. The district court erred in finding that the results of the election were not in dispute and that it therefore did not need to take evidence on the underlying facts	28

E. This Court should stay or otherwise enlarge the ballot certification deadline pending resolution of this petition31

IX. Counsel for the Parties33

X. Supporting Documents34

XI. Conclusion34

XII. Certificate of Service35

I. PETITIONER AND PROPOSED RESPONDENTS

1. David Stiver is an intervenor in the underlying proceeding and the Petitioner in this C.A.R. 21 action. The proposed Respondents are as follows: Karl K. Schneider, is the petitioner in the underlying proceeding; Jena Griswold, as Secretary of State and a respondent in the underlying proceeding; Eli Bremer, as presiding officer of the Republican Party State Senate District 10 Assembly and a respondent in the underlying proceeding; Colorado Republican Committee, an intervenor in the underlying proceeding; and Larry Liston, an intervenor in the underlying proceeding.

II. IDENTITY OF THE COURT BELOW

2. The Court below is the City & County of Denver District Court, Second Judicial District, Colorado, Courtroom 259, the Honorable Michael A. Martinez presiding.

III. IDENTITY OF THE PERSONS OR ENTITIES AGAINST WHOM RELIEF IS SOUGHT

3. The entities or persons against whom relief is sought are the City & County of Denver District Court and the Honorable Michael A. Martinez, District Court Chief Judge.

IV. RULING COMPLAINED OF AND RELIEF SOUGHT

4. On May 4, 2020, the district court granted Stiver's motion to intervene. In that same Order, the district court construed Stiver's communications as a request to reopen the evidence, which it denied. The district court granted Schneider's *Petition for Relief Under C.R.S. §1-1-113* as to its first claim of relief and denied as to its second claim for relief. The district court found that because Stiver had not received 30% of the vote at the Republican nominating assembly, C.R.S. §1-4-601(2)(a) bars him from being placed on the primary ballot. As a result of this finding, the district court determined that Schneider's second claim for relief preventing Respondent Griswold from certifying Stiver was moot. Stiver seeks reversal of the district court's denial of his opportunity to present evidence, remand for a new hearing, and a stay of the May 7, 2020, ballot certification deadline.

V. REASON WHY NO OTHER ADEQUATE REMEDY IS AVAILABLE

5. This Court has exercised its original jurisdiction under Colorado Appellate Rule 21 to review rulings on petitions for relief under C.R.S. §1-1-113. *E.g., In re Frazier*, 401 P.3d 541 (Colo. 2017), ¶9. This is an election matter in which an intervenor, Stiver, has been stripped of his position on the ballot due to the district court's order and without an opportunity to present evidence or

argument on his own behalf. Pursuant to the Colorado Secretary of State's 2020 Election Calendar, the deadline for certification and delivery to county clerks of the June 30th Primary Election ballots is Thursday, May 7, 2020. Without forthwith exercise of this Court's original jurisdiction, including a stay of the ballot certification deadline pending a ruling or further proceedings, Stiver will be irrevocably prejudiced. The narrow window of time available and the nature of the rights involved precludes recourse to the Court of Appeals or other alternative forms of relief, which would not be resolved until long after this ballot question must be resolved. Furthermore, because this issue involves a question of ballot access and finalization of candidates for a State Senate seat, this matter is of considerable public importance.

VI. STATEMENT OF THE ISSUE PRESENTED

6. Whether the district court erred in granting Stiver's motion to intervene without giving him an adequate opportunity to present evidence and argument on his own behalf.

VII. STATEMENT OF THE CASE AND FACTS

A. FACTUAL BACKGROUND

7. In mid-March 2020, Governor Polis declared a disaster emergency in Colorado related to the COVID-19 disease. (See APX016.) Recognizing the likely

impact on political parties' assemblies and conventions, the general assembly adopted, and the governor signed into law, H.B. 201359, 72d Gen. Assemb., 2d Sess. (Colo. 2020) (H.B. 1359), which made temporary changes to the assembly and convention process for designating candidates to the June 2020 primary ballot. (Id. at 17.)

8. 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. (APX017-18.) Respondent Bremer further rescheduled the SD-10 assembly on March 19, by moving the assembly up three days to March 22. (APX018.) At the same time, Respondent Bremer placed two individuals who had declared their intention to run for state senator, Intervenor Larry Liston and Intervenor David Stiver, into nomination for designation to the Republican primary ballot for SD-10. (Id.)

9. The next day Respondent Bremer emailed instructions to the SD-10 delegates 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, ostensibly 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.) Intervenor Stiver and others objected to the process and claimed it impermissibly allowed voting before the SD-10 assembly opened. (Id.) The Colorado Republican Committee (“Committee”) also advised Respondent Bremer against permitting voting before gaveling the assembly open, but he declined to follow their advice. (APX018, n.3.)

10. 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. (APX018.) 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. (APX019.)

11. Nonetheless, while voting was open, it is undisputed Intervenor Stiver accused Respondent Bremer of gamesmanship in a Facebook post. (Id.) In response to Intervenor 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 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.)

12. 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. (APX020.) Respondent Bremer refused to hear the delegate's motion on the ground that the SD-10 assembly was not yet technically open. (Id.)

13. 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.)

14. 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. (Id.) Respondent Bremer again refused the motion, this time when the SD-10 assembly was gaveled open. (Id.)

15. After the assembly convened on March 22, leadership determined that 10 alternates were eligible for elevation to 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.) 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 Intervenor Stiver, and 1 vote (or 0.59%) for “no one.” (Id.) The election results were emailed to the delegates the next day. (Id.)

B. PROCEDURAL BACKGROUND

16. Two days after the designation election, Intervenor Stiver and eight other contestants lodged a party controversy with the Committee’s executive committee. (APX016, 021.) The contestants alleged 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 Intervenor 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. (APX021-22.)

17. The executive committee determined it had jurisdiction to hear the party controversy under Colo. Rev. Stat. § 1-3-106(1) and the Committee's bylaws and emergency bylaws, and no party to the controversy contested the Committee's jurisdiction to finally decide the matter. (APX016.) 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, and all did so. (APX021.) 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.)

18. The Committee's executive committee issued its written findings on April 15. (See generally APX015-0027.) The executive committee found that the SD-10 assembly was irregular to the point of undermining the confidence in the reported results of the election. (APX024.) First, Respondent Bremer impermissibly opened voting for the designation election prior to the assembly, which was permitted by neither the Committee's bylaws nor H.B. 1359. (APX024-25.) Second, Respondent Bremer impermissibly used his office as chairman of the SD-10 committee to send an email during the election attacking one of the two candidates for the SD-10 nomination. (APX025-26.) 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 reconducted to redress the irregularities with the assembly. (APX026-27.)

19. 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.” (APX027.) To effectuate this remedy, the executive committee ordered Respondent Bremer to file a certificate of designation with the secretary of state naming Intervenor Stiver to the Republican primary ballot for SD-10. (Id.)

20. Respondent Bremer appealed the executive committee’s decision to the Committee’s state central committee. All of 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.

21. 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 APX007, ¶ 49; see also APX050, ¶ 49.)

22. 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(1). He asked the district court to enjoin Respondent Bremer, as chairman of the SD-10 committee, from complying with the Committee's order that he designate Intervenor Stiver as a candidate to the Republican primary ballot, and to enjoin Respondent Secretary of State from certifying the Republican primary ballot with Intervenor Stiver's name. (APX009-10, ¶¶ 66-73, 74-80.)

23. Both Intervenor Liston and the Committee intervened in the case. The district court held a hearing via WebEx virtual courtroom on April 27. Attorney Randy Corporon attended the hearing in his individual capacity and not as a representative of any interested party. (APX142.)

24. At 4:23 p.m. on April 30, 2020, the district court received a voice mail from Stiver expressing interest in filing an amicus brief and requesting instruction on how to do so. On May 1, the district court made several attempts to contact Stiver by telephone but was unsuccessful (APX140; 142.)

25. The district court sent an email to Stiver on May 1, advising that he must first request to become a party in order to make any filings, and that he must confer with all parties for their positions. The district court instructed him that

after conferring he may file a motion to intervene, accompanied simultaneously by any brief he wished to file. The court further authorized Stiver to make these filings via email on a one-time basis. Stiver was also instructed to first pay a filing fee of \$234.00, after which he would be permitted to email his pleadings to the court. The district court, writing to Stiver at 3:34 p.m., required him to take these actions prior to 5:00 p.m. that same day. (APX140.)

26. At 4:00 p.m., the district court received an email from Corporon attempting to make a limited entry of appearance via email on the basis of the very short time remaining before the court's deadline. For the same reason, Corporon asked for permission to intervene without conferring with the other parties, and for an opportunity to present evidence and argument by 4:00 p.m. on Monday, May 4, 2020. (APX179). The district court responded that Corporon must follow ordinary filing procedures via CCEF. (APX143.) Corporon then communicated to the court and all parties that he believed Stiver would email in his own right before the court's deadline. (APX181.)

27. At 4:59 p.m. and again at 5:48 p.m., Stiver submitted emails asking permission to intervene. Stiver requested that, if the district court determined it had jurisdiction and that this determination would prevent him from appearing on the June Primary Ballot, he be allowed to present argument and evidence by 4:00

p.m. on Monday, May 4, 2020. (APX191.) At 8:56 p.m. that evening Stiver, in an email to the parties which included the district court, stated that he had made numerous calls in an attempt to make payment of his filing fee but was unable to reach anyone. (APX188.) Stiver drove from El Paso County to the courthouse in Denver on May 4 and paid his filing fee in person. (APX200.)

28. On May 4, 2020, the district court issued its order granting in part and denying in part Petitioner Schneider's petition. (APX192, 202.) Specifically, the district court granted Petitioner Schneider's petition against Respondent Bremer and enjoined him from submitting a certificate of designation to the secretary of state that designates Intervenor Stiver as a candidate to the Republican primary ballot. (APX201.) In so ordering, the district court acknowledged the tipping point issue to be whether the Committee or the court had jurisdiction over this matter. (APX199.) The district court analyzed section 1-3-106 (the party controversy statute) and concluded that "[t]he 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." (APX200.) That is, the district determined state political parties' exclusive jurisdiction to hear and finally decide party controversies is limited to two narrow classes of disputes: (i) "disputes over a party's structure," and (ii) disputes over

“the right to use the party name.” (Id.) The district court went so far as to say that interpreting section 1-3-106 any broader “would lead to an absurd result,” because, in the court’s view, it would interfere with the scope of subsection 1-1-113(1). (Id.) The court apparently disregarded the antiquated but determinable phrase within C.R.S. §1-3-106(1) that provided the Committee with the “full power to pass upon and determine all controversies concerning the regularity of the organization of that party,” including within any senatorial district, which “shall be final.” Designation elections such as the one at issue here, which determine who will be the Republican nominees in the Republican primary election, are without question matters of party organization, the regularity of which are determined exclusively by state political parties.

29. Stiver’s reliance on the Committee’s determination is borne out by the fact that none of the litigants – not Petitioner Schneider, Respondent Bremer, nor Intervenors Liston and Stivers – questioned the Committee’s jurisdiction to hear and decide the controversy until *after* the Committee’s determination and report.

30. After the district court decided the Committee did not have jurisdiction, it then broadly interpreted subsection 1-1-113(1) and its reference to “official” to find it had jurisdiction over the claims. (Id.) For the first time since subsection 1-1-113(1)’s adoption, the district court concluded that subsection 1-1-

113(1) must include claims against public election officials and non-public officials, including the chairman of a political party's state senate district committee as here. (Id.)

31. On the merits, the district court found that the results of the SD10 designation election “[we]re not disputed by the parties.” (APX201.) Strikingly, the district court made specific reference to the Committee’s report but did not acknowledge the Committee’s explicit finding to the contrary: “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.” (APX024.) Having concluded that the designation election results were not in dispute, the district court held that Intervenor Stiver could not be placed on the Republican primary ballot for SD-10 because he had not received the statutorily minimum vote at the SD-10 assembly. (APX201.) To this point, the district court denied Intervenor Stiver’s request to present evidence on the regularity of the SD-10 assembly because of his purported delay in intervening in the case. (APX198-99.)

32. Because the district court enjoined Respondent Bremer from submitting a certificate of designation designating Intervenor Stiver to the June 2020 Republican primary ballot, it denied Petitioner Schneider’s claim against

Respondent Secretary of State, as the Secretary would not be in receipt of such a designation. (APX201-02.)

VIII. ARGUMENT

A. Legal Standard

33. A court's decision to reopen the record to take additional evidence is reviewed for abuse of discretion. *Clopine v. Kemper*, 344 P.2d 451, 454 (Colo. 1959). A court abuses its discretion when it acts in a manifestly arbitrary, unfair, or unreasonable manner. *In re Marriage of Page*, 70 P.3d 579, 581 (Colo.App. 2003). The court must also comport with due process. While what constitutes due process varies with the circumstances of a particular case, it requires a meaningful opportunity to prepare, as well as an opportunity to cross-examine opposing witnesses. *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). Notice must be granted at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

B. **The district court erred in not originally identifying Stiver as a necessary or indispensable party and requiring him to be joined to the action.**

34. Due process requires that those parties whose interests are at stake be before the court. *Hidden Lake Dev. Co. v. District Court*, 515 P.2d 632, 635 (Colo. 1973). C.R.C.P. 19(a) provides that a person who is properly subject to service of

process in the action shall be joined as a party if in his absence complete relief cannot be accorded among those already parties. C.R.C.P. 19(b) states that a party shall be joined if he claims an interest in the subject of the action and a disposition in his absence may impair or impede his ability to protect that interest or leave any of the persons already parties subject to a substantial risk of incurring inconsistent obligations by reason of his claimed interest.

35. The rule further provides that if such a person has not joined, the court shall order that he be made a party. The rule provides that such a person may be joined even involuntarily. The only enumerated exception is for a person who objects to venue and whose joinder would make the venue of the action improper.

36. This matter was brought by Schneider against Griswold and Bremer to challenge the decision of the Committee to designate both Liston and Stiver as candidates on the ballot for the State Senate District 10 seat. Curiously, Schneider chose not to join the Committee, Liston, or Stiver, though all had clear and obvious interests in the outcome of the action and would be obviously prejudiced by any orders made without their participation: the Committee, in defending its right to determine who is on its ballot, and Liston and Stiver as the Committee's candidates.

37. The Committee and Liston both moved to intervene early in the proceeding. Stiver did not do so. As he later explained in an email to the district court, at that time Stiver believed, as the Committee would argue, that it did not possess jurisdiction over the matter. (APX190.)

38. C.R.C.P. 19 however clearly gives the court the authority to determine that additional parties must be joined, and to affect that joinder directly or by ordering an existing party to do so. Persons who fall under C.R.C.P. 19(a) are mandatory parties and must be joined if feasible. Joinder is feasible so long as the absent person is subject to service of process, his joinder would not deprive the court of jurisdiction, and he has no valid objection to venue of the court. *Potts v. Gordon*, 525 P.2d 500, 503-504 (Colo. 1974). A party is indispensable if no decree can be entered without injuriously affecting the right of such absent person. *Brody v. Brock*, 897 P.2d 769, 778 (Colo. 1995).

39. Stiver was clearly a party who ought to have been included at the outset of this action. Were the district court to find in Schneider's favor – as it eventually did – Stiver would be prohibited from access to the ballot, a direct and easily foreseeable prejudice to him. The presence of Liston as an intervenor should surely have been an indication that the list of necessary parties was not complete without the second candidate.

40. Although the district court did grant Stiver's eventual motion to intervene, its failure to identify him as a party who should be joined and to either effect his joinder or to order a party to do so created a situation where Stiver's intervention came after the conclusion of the hearing on Schneider's petition. While the *pro se* candidate Stiver can be questioned for making an incorrect judgment concerning the reception Schneider's petition would receive with the court, the fact that he ought to have been identified and joined earlier, by direction of the court if necessary, mitigates that lapse.

41. Had Stiver been properly identified and joined earlier in the proceeding, he would have had fair opportunity to prepare a brief and participate in the proceedings, rather than have his efforts to brief post-hearing denied.

42. At the very least, if not indispensable, Stiver was a necessary party and ought to have been joined. Although Stiver was ultimately added as an intervenor, the Court did so in such a way that deprived him of due process (as will be argued below) by denying him the opportunity to present substantive evidence and argument on his own behalf.

43. The district court noted that Stiver had not earlier filed to intervene out of his belief that the district court did not have jurisdiction over the issue. (APX198.) Stiver's failure to intervene at the outset of the case appears to have

weighed against him when the district court considered the effect of his motion to intervene. (APX199.)

44. Whether or not Stiver would have been well advised to retain counsel or otherwise move to intervene at the outset of the case, the court should have been on notice and realized that Stiver was a necessary or indispensable party, without whom it could not fashion adequate relief without distinctly prejudicing his rights.

C. The district court erred in granting Stiver's motion to intervene without affording him an adequate opportunity to present evidence.

45. After unsuccessful efforts to reach Stiver by telephone, the court emailed him on May 1, 2020, at 3:34 p.m., and notified him that if he wished to intervene, he would need to confer with all parties and file his motion to intervene with any accompanying brief by 5:00 p.m. that day. The district court also required him to make arrangements to pay the requisite filing fee by that same time, and to file the same documents in paper by 4:00 p.m. on Monday, May 4, 2020. (APX140.)

46. The district court therefore gave Stiver less than one-and-a-half hours to confer, move to intervene, and submit an effective brief outlining his position. While the requirements of due process are flexible and highly contingent upon the circumstances, this schedule cannot possibly comport with any meaningful

definition of that right. The district court's schedule would be difficult if not impossible for an attorney to achieve, to say nothing of a *pro se* party.

47. Nevertheless, Stiver endeavored to respond and make at least partial attempts to comply. (APX190-91; 188.) He contacted attorney Randy Corporon, who heretofore had had no direct involvement in the district court case. Corporon attempted to enter on Stiver's behalf using email, which the court had authorized for Stiver, but was rebuffed with an instruction to file electronically. (APX179.) Corporon, unable to comply within the Court's timeframe, then sent notice that he would not be entering. Stiver sent two emails to the Court at 4:59 p.m. and 5:49 p.m. attempting to file his motion to intervene. (APX190-91.)

48. While doubtless well-intentioned, the district court's handling of the issue was less than ideal. The schedule it imposed is truncated beyond reason, and the instructions regarding payment of the fees were worded in a way that is confusing and suggests that his ability to file was conditioned upon payment of the fee. It is puzzling that the court was willing to authorize email filings for Stiver but not for counsel, given the circumstances and the fact that electronic filings are not instantaneous but must be reviewed and accepted by a court's designated CCEF clerk, and Corporon had no cause to believe the court would receive and act upon any entry filed by him within the court's deadline. While the rules of

procedure do require counsel to file electronically, there is no reason the district court could not, in the interests of time and in light of the extremely short deadline, made similar dispensation for Corporon and require him to file an electronic entry at a later time.

49. Having received no response from the district court regarding his request to file on May 4, Stiver was unclear as to whether he would be permitted to do so, or whether the Court's silence indicated it was unlikely to rule in Schneider's favor and so obviate any need to file a brief. (See APX190.)

50. Making Stiver's ability to participate contingent on his payment of the filing fee also introduced foreseeable and unnecessary complexity. Due to the ongoing COVID-19 crisis, courts statewide have reduced staffing and access to courthouses. Stiver made good faith efforts to reach a clerk to make payment as the court instructed but did not reach anyone. (APX188.) In the end, he made the journey from El Paso County to Denver on Monday, May 4, and made payment in person.

51. While the district court did, on May 4, grant Stiver's motion to intervene, it denied what it construed as his request to reopen the evidence. (APX198.) Joining a party to the case is meaningless without providing that party an opportunity to present evidence and argument. By granting the motion to

intervene, the district court conferred on Stiver an expectation of and right to due process, which he was not provided.

52. The district court had several options available to it. Rather than its severe and confusing instructions on May 1, it would have been better and more meaningful for the court to have simply directed Stiver to pay his filing fee and to submit his motion and supporting brief by a time certain the following Monday, May 4. The court could then determine whether to hold an additional hearing, allow the parties to submit responsive briefs, or take additional action as appropriate. Such an approach would have had the benefit of being clear and straightforward, as well as allowing Stiver a plausibly reasonable amount of time to prepare his materials.

53. The district court voiced concerns about creating delay, giving rise to new litigation, and running afoul of the ballot certification deadline on May 7, 2020. (APX199.) However, the court's approach virtually assured that the present filing would become necessary.

54. The ballot certification deadline is perhaps the most pressing of the concerns mentioned by the court, but it is not clear that the district court could not have allowed Stiver an opportunity to participate without transgressing that deadline. If necessary, the district court certainly had it in its authority to stay or

otherwise enlarge that deadline, a measure which has become increasingly common over the past few election cycles. While staying or enlarging that deadline is not an act to take lightly, the district court gave inadequate consideration of and protection to Stiver's interest in being placed on the ballot and has created a situation where Stiver must now seek such a stay from this Honorable Court.

55. A court's interest in administrative efficiency does not take precedence over a party's right to due process, which includes the right to cross-examine and to present evidence. *In re Marriage of Goellner*, 770 P.2d 1387, 1389 (Colo.App. 1989). While the concerns expressed by the district court were more than mere matters of efficiency, a party's interest in due process and having a substantive opportunity to participate must outweigh the more abstract consideration of possible future litigation – an outcome perhaps inevitable under any circumstance. As argued above, the certification deadline is a reasonable consideration but one which the court had means to deal with and which stood to prejudice Stiver more directly than any other party.

D. The district court erred in finding that the results of the election were not in dispute and that it therefore did not need to take evidence on the underlying facts.

56. A trial court's findings of fact are not disturbed on review unless clearly erroneous or unsupported in the record. In its ruling, the District Court found it undisputed that Liston received 75% of the vote and Stiver 24%, with 1% abstaining. The district court relied on these numbers in finding that C.R.S. §1-4-601(2)(a) controlled, and in determining that it therefore need not consider the underlying irregularities in the election process as Stiver had not met the statutory requirement of receiving 30% of the vote. These findings undoubtedly influenced the District Court's handling of Stiver's attempt to intervene.

57. It is clear from the Committee's own report that there were significant irregularities in the voting process, notably the voting being opened prior to the assembly; Respondent Bremer's email during the election attacking one of the two candidates; the hacking of the email voting system during the election and failure to entertain delegate requests before and after the hacking to hold a new election (while there were still 20 days left to do so), and the inability to reconduct the election due to the passing of the completion deadline with respect to single-district counties. (APX024-27; 111-112.) These irregularities led the Party to conclude in its own internal report that the election had been irregular to the point of undermining the confidence in the results of that election. (APX024.)

58. So, while it may be superficially true that the parties did not dispute that Liston received 75% of the vote and Stiver 24%, the district court seemingly ignored the fact that the Committee had concluded that those numbers were unreliable. The district court therefore erred in treating as fact numbers that the record clearly suggested were unreliable.

59. The Party's internal report was submitted to the district court as Exhibit 2 to Schneider's petition and became part of the record. That report concluded that there was so little confidence in the results of the election that the most equitable solution was to certify two candidates to the ballot. (APX026-27.)

60. The district court however did not appear to make this connection and simply took the numbers at face value, despite the fact that they were the result of an election the Party itself had determined was thoroughly compromised. While the district court stated that it was "cognizant" of the "alleged" irregularities in the election (APX201), the court nevertheless found that those irregularities did not dilute the effect of C.R.S. §1-4-601(2)(a). (Id.)

61. This is clearly erroneous, as the district court's conclusion that the numbers were not in dispute was not true in a substantive sense and were contradicted by the record. The district court does not appear in its ruling to have given due consideration to the impact of those irregularities upon Stiver. The

entire point of the Committee's determination that Stiver ought to be certified on the ballot was because the deficiencies in the process (which include a direct attack from Bremer, who was managing the process, against Stiver during the election) (APX026) were such that Stiver almost certainly lost votes. Without those irregularities Stiver, though not likely to have been the front runner, might still have cleared the 30% threshold. (APX026-27.)

62. This is an issue which highlights the importance of having afforded Stiver an opportunity to participate. As the candidate with ostensibly the lower number of votes and who was the direct target of Bremer's inappropriate communications to delegates, he was the one with a vested interest in showing the district court why the irregularities were indeed relevant to its considerations. This is an analysis the district court felt it did not need to conduct.

63. The other parties were primarily interested in the issue of whether final determination of who makes the ballot rests in the political party or with the courts. As such, they had no compelling reason to delve into the uncertainties behind the voting results and their various causes. This includes Liston who, as the ostensible majority vote holder, had little to lose on this particular point.

E. This Court should stay or otherwise enlarge the ballot certification deadline pending resolution of this petition.

64. Stiver won the right to be on the ballot as a result of two contested hearings within the Committee. The hearing found that the irregularities in the underlying election had such an effect on the outcome of the election that Stiver was entitled to relief, and that the most equitable, and perhaps only, such relief was that he be placed on the ballot alongside Liston and the voters be permitted to decide. (APX026-27.) The parties and the district court failed to identify him as a necessary or indispensable party who should have the opportunity to defend his interests. When Stiver did act to protect himself, the district court set a schedule that deprived him of due process. It then rendered a decision premised on a flawed analysis of the facts that stripped him of access to the ballot.

65. The primary ballot is due to be certified on Thursday, May 7, 2020. Under the circumstances, it is only right and fair that this Honorable Court remand this matter to the district court to take additional evidence from Stiver and, in the interim, to stay the ballot certification deadline until the proceedings in the district court have concluded.

66. Such a stay is within this Court's authority and is a measure it has exercised in similar disputes in the past. While it cannot be said that there is no prejudice from such a delay, that prejudice creates no irrevocable harm and is an acceptable compromise in order to resolve an important election question. In

contrast, if Stiver is stripped from the ballot and it is certified without him, that opportunity is forever lost. In the balance, the permanency of this prejudice must weigh in favor of granting a stay until these issues are resolved.

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X. SUPPORTING DOCUMENTS

72. An appendix of supporting documents is provided, including an index.

No transcript is available at this time.

XI. CONCLUSION

73. For the foregoing reasons, this Honorable Court should exercise jurisdiction in this matter and remand it to the district court to take additional evidence and argument from Intervenor David Stiver, and stay or otherwise enlarge the May 7, 2020, ballot certification deadline pending a final resolution of the matter.

Dated: May 6, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2020, a true and accurate copy of the forgoing **PETITION FOR RULE TO SHOW CAUSE PURSUANT TO C.A.R. 21** was filed and served via CCEF to the following:

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Denver District Court
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Denver, Colorado 80302
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