

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	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> 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 "campaign[ed] 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:

A handwritten signature in black ink, appearing to read "Michael A. Martinez", written over a horizontal line.

MICHAEL A. MARTINEZ
District Court Chief Judge