

SUPREME COURT  
STATE OF COLORADO

2 East 14th Avenue  
Denver, CO 80203

Application for review under § 1-1-113(3), C.R.S.,  
Denver District Court No. 20CV31467  
Hon. Christopher J. Baumann

JENA GRISWOLD, in her official capacity as  
Colorado Secretary of State,

Petitioner,

v.

LORENA GARCIA,

Respondents.

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Case No. 2020SC \_\_\_\_\_

**APPLICATION FOR REVIEW PURSUANT TO § 1-1-113(3), C.R.S.  
AND OPENING BRIEF**

## **CERTIFICATE OF COMPLIANCE**

This brief serves as the petition for writ of certiorari and the opening brief of Appellant. I hereby certify that this brief complies with the requirements of C.A.R. 28, C.A.R. 32, and C.A.R. 53, including all formatting requirements set forth in these rules, as follows. Specifically, the undersigned certifies that:

**The brief complies with the content requirements and word limits set forth in C.A.R. 53. The brief complies with the word limits set forth in C.A.R. 28(g).**

It contains  words.

**The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).**

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

**I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28, C.A.R. 32 or C.A.R. 53.**

/s/ Emily Buckley  
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Petitioner Jena Griswold, in her official capacity as Colorado Secretary of State (“the Secretary”), submits this application for review and opening brief under § 1-1-113<sup>1</sup> (“Section 113”).

## INTRODUCTION

Today, the Court issued its opinion in *Griswold v. Ferrigno Warren*, 2020 CO 34, reversing the district court’s application of a substantial compliance standard to the signature threshold and distribution requirements for major party candidates for U.S. Senate to petition onto the primary election ballot. *Ferrigno Warren*, 2020 CO 34, ¶ 23. *Ferrigno Warren* explains that the “collection of 1,500 signatures from each congressional district in order to petition onto the ballot as a candidate for U.S. Senate” is a “clear and unequivocal” statutory mandate that must be complied with strictly. *Id.*

The result in *Ferrigno Warren* controls this case. Like the district court there, the district court here applied a substantial compliance standard to the Election Code’s signature threshold and distribution

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<sup>1</sup> All citations are to the 2019 version of the Colorado Revised Statutes, unless otherwise indicated.

requirements. The Court’s holding in *Ferrigno Warren* requires reversal of the district court’s ruling in this case. The Secretary respectfully requests forthwith review of this application due to the May 7, 2020 ballot content certification deadline. § 1-5-203(1)(c)(I).

### **ISSUE PRESENTED**

Whether the district court erred in applying a substantial compliance standard to the valid signature threshold and distribution requirements for a major party candidate for U.S. Senate seeking nomination by petition to the primary election ballot.

### **DECISION BELOW**

The Secretary seeks review of the district court’s April 30, 2020 decision in *Lorena Garcia v. Griswold*, Denver District Court No. 20CV31467. *App. E*, TR 04/30/20, pp 211:2–223:3.

### **JURISDICTION**

This Court has jurisdiction under Section 113(3), which permits a party to seek review of a district court’s decision under Section 113(1) “within three days after the district court proceedings are terminated[.]”

If this Court declines to accept jurisdiction, “the decision of the district court shall be final and not subject to further appellate review.” § 1-1-113(3). The district court issued its decision on April 30, 2020; this application is timely filed within three days after the district court proceedings terminated.

### **EXISTENCE OF OTHER CASES**

There is one other pending case which presents the same issue, *Wheeler v. Griswold*, Denver District Court Case No. 20CV31476, in which the Secretary is filing a contemporaneous appeal to this Court. Today, the Court issued an opinion in a case presenting the same issue, *Griswold v. Ferrigno Warren*, 2020 CO 34.

### **STATEMENT OF THE CASE**

#### **I. Facts and procedural history**

##### **A. Ms. Garcia’s candidate petition**

Ms. Garcia is a Democratic candidate for U.S. Senate who sought nomination by petition to the primary election ballot. *App. A*, p 1, ¶ 1. The Secretary notified Ms. Garcia that her candidate petition format was approved on January 7, 2020. *App. D*, p 2, ¶ 3. Under the Election

Code, candidates seeking nomination by petition to the June 30, 2020 primary election ballot had fifty-seven days (from January 21, 2020 until March 17, 2020) to gather petition signatures. *See* § 1-4-801(5)(a). Ms. Garcia began collecting signatures on the first day of the nearly two-month collection window. *App. D*, p 2, ¶ 6.

As a major party candidate for U.S. Senate, Ms. Garcia was required to obtain the valid signatures of 1,500 registered Democratic electors in each of Colorado’s seven congressional districts for a total of 10,500 valid signatures to be nominated to the ballot by petition. § 1-4-801(2)(c)(II). “[N]o petition is legal that does not contain the requisite number of names of eligible electors.” § 1-4-902(1).

### **B. The Secretary’s Statement of Insufficiency**

Ms. Garcia filed her petition with the Secretary on March 17, 2020. *App. E*, TR 04/30/20, p 124:9–12. The Secretary determined the petition contained 13,812 reviewable signature lines. *App. G*, pp 3–4, ¶ 19. As the Secretary’s Ballot Access Manager testified, the Secretary’s designees perform a thorough review process, including multiple



reviews of every invalid signature. *App. E*, TR 04/30/20, pp 172:23–175:14.

After completing her review, the Secretary issued a Statement of Insufficiency on April 20, 2020, finding Ms. Garcia submitted less than 1,500 valid signatures in five of seven congressional districts and fell short of the 10,500 threshold requirement by 1,072 signatures. *App. A*, Ex. 2, Attachment 1; *App. D*, pp 3–4, ¶ 19. The Statement of Insufficiency reflects that only 9,428 signatures were valid and that the remaining 4,384 were invalid. *Id.*

The Secretary also provided Ms. Garcia with the master record of each accepted and rejected signature entry. *App. D*, p 3, ¶ 18. The master record contains the reason code for each rejected entry and the date on which the signature was collected. *App. C*.

### **C. The district court proceedings and decision**

Section 113 action: Ms. Garcia filed a Section 113 action on April 24, 2020, alleging that the COVID-19 emergency prevented her from gathering sufficient signatures to be placed on the ballot. *App. A*. She

asked the district court to grant her ballot access under a substantial compliance theory. *Id.*

The district court ordered the Secretary to file a hearing brief at 10:00 a.m., on April 29, 2020, and scheduled a summary trial on the merits for 1:30 p.m., on April 29, 2020. A bench trial was held on the afternoon and evening of April 29, but due to a malfunction with the FTR recording equipment, the parties had to redo the entire trial beginning at 11:30 a.m., on April 30, 2020. *App. M.* Ms. Garcia testified, as did three members of her campaign staff. *Id.* Ballot Access Manager Joel Albin testified for the Secretary. *Id.*

*The district court's opinion:* At the conclusion of the April 30, 2020 summary trial on the merits, the district court ruled from the bench holding that Ms. Garcia substantially complied with the valid signature threshold and distribution requirements. *App. E*, TR 04/30/20, pp 218:4–223:3. The Secretary urged the court to apply a test that would discount the percentage of signatures affected by COVID-19 in calculating substantial compliance. The Court disagreed with that approach. The court did not enforce strict compliance with the signature

threshold and distribution requirements, but concluded that Ms. Garcia substantially complied by getting over half of the overall required 10,500 signatures statewide. *Id.* at 220:1–221:2.

It also sustained Ms. Garcia’s line-by-line challenge to 211 invalidated signatures, despite the Secretary’s objection that such a challenge was time barred under § 1-4-909(1.5), and counted all 211 signatures toward Ms. Garcia’s satisfaction of the 50% threshold. *Id.* at 214:2–215:5. However, even with these additional signatures, the district court concluded that Ms. Garcia did not strictly comply with the threshold and distribution requirements. *See id.* The district court ordered the Secretary to place Ms. Garcia’s name on the primary election ballot as a Democratic candidate for U.S. Senate. *Id.* at 223:1–3.

## **SUMMARY OF THE ARGUMENT**

The Secretary properly determined that Ms. Garcia’s candidate petition was insufficient because the Secretary must strictly enforce the election code and the petition failed to meet the valid signature threshold and distribution requirements under the Election Code. Ms.

Garcia conceded that her petition was numerically deficient, and filed a Section 113 action asking the district court to grant her ballot access under a substantial compliance theory.

The district court agreed that substantial compliance applies and concluded that Ms. Garcia satisfied the substantial compliance standard. In doing so, the district court erred as a matter of law as held by this Court’s ruling in *Griswold v. Ferrigno Warren*, 2020 CO 34.

## **ARGUMENT**

### **I. Standard of review and preservation**

On appeal, this Court defers to a district court’s findings of fact if they are supported by the record and reviews the district court’s legal determinations de novo. *Kuhn v. Williams*, 418 P.3d 478, 483 (Colo. 2018). “Whether a statute requires strict or substantial compliance is a question of statutory construction ... which [the Court] review[s] de novo.” *Colorow Health Care, LLC v. Fischer*, 420 P.3d 259, 261–62 (Colo. 2018). Where “the trial court rules sua sponte on an issue, the merits of its ruling are subject to review on appeal, whether timely objections were made or not.” *Rinker v. Colina-Lee*, 452 P.3d 161, 168

(Colo. App. 2019); *see also* C.A.R. 1(d) (an appellate “court may in its discretion notice any error appearing of record” whether or not it was raised below). The issue presented herein was preserved below. *App. B*, pp 11–13; *App. M*, TR 04/30/20, pp 211:2–223:3.

## **II. The district court’s substantial compliance ruling conflicts with this Court’s precedent.**

As this Court held today in *Griswold v. Ferrigno Warren*, 2020 CO 34, candidates must strictly comply with the signature threshold and distribution requirements in §§ 1-4-801(2)(c)(II) and -902(1). The district court found that Ms. Garcia did not strictly comply with these requirements but instead that she could be allowed on the ballot under a substantial compliance standard. *App. E*, TR 04/30/2020, pp 214:2–215:5; 218:4–223:3. As a result, the district court’s order holding that Ms. Garcia substantially complied with the signature threshold and distribution requirements must be reversed.

## **CONCLUSION**

For the foregoing reasons, the Secretary respectfully requests that this Court accept this appeal and reverse the district court’s decision below.

## APPENDIX

- A. Ms. Garcia’s Section 113 Petition and her Exhibit 1  
(Declaration of Lorena Garcia), Exhibit 2 (Declaration of  
Chris Meisner),<sup>2</sup> Exhibit 3 (Declaration of Haley Banyai-  
Becker), and Exhibit 4 (Declaration of Amelia Linett)
- B. The Secretary’s Hearing Brief and her Exhibit A (Statement  
of Insufficiency), Exhibit C (H.B. 20-1359), and Exhibit D  
(earlier version of H.B. 20-1359)<sup>3</sup>
- C. Signer Adjudication Report
- D. Joint Statement of Stipulated Facts
- E. Transcript of April 30, 2020 Hearing

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<sup>2</sup> Attachment 2 to the Declaration of Chris Meisner, the Signer Adjudication Report, is not included in Appendix A because it is provided in native form at Appendix C.

<sup>3</sup> Exhibit B, the Signer Adjudication Report, is not included in Appendix B because it is provided in native form at Appendix C.

Respectfully submitted this 4th day of May, 2020.

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## CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that she filed the foregoing **C.R.S. § 1-1-113(3) APPLICATION FOR REVIEW AND OPENING BRIEF** and served a true and correct copy of same on all counsel of record via the Colorado Courts E-Filing system on May 4, 2020.

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