

Colorado Republican Committee

REPORT OF THE EXECUTIVE COMMITTEE

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

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 Tonkins¹ (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
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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 gavelled 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

Ken Buck
Chairman