

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St., Room 281 Denver, CO 80202</p>	
<p>Petitioner: KARL K. SCHNEIDER, an individual</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>▲ COURT USE ONLY ▲</p>
<p><i>Attorney for Petitioner Karl K. Schneider:</i> Scott E. Gessler, Atty Reg No. 28944 Gessler Law Firm, LLC 1801 Broadway, Suite 507 Denver, Colorado 80202 Tel: 720-839-6637 sgessler@gesslerlawfirm.com</p>	<p>Case Number: Division:</p>
<p>Petition for Relief under C.R.S. § 1-1-113</p>	

Introduction

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

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

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

Parties

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

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

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

Jurisdiction and Venue

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

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

General Allegations

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

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

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

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

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

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

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

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

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

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

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

State Senate District 10 Assembly Convenes

19. The Committee consists of three officers:

- a. Eli Bremer, Chair.
- b. Karl Schneider, Vice-Chair
- c. Jody Richie, Secretary.

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

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

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

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

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

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

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

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

- a. The Committee appointed Joe Webb to serve as both the credentialing committee (to confirm delegate and alternate eligibility), and the teller committee, to count votes. Joe Webb is the former chair of the Jefferson County Republican Party, and therefore is considered an experienced, neutral person with no connections to any candidate seeking nomination through assembly.
- b. Webb created a separate email address, sd10assembly@yahoo.com. Delegates seeking to participate in the assembly were required to send their email to this address.
- c. This email from a delegate or alternate delegate had to match the email the Committee received from the County Party. In instances where the County Party did not send an accompanying email address, the Committee sought to telephonically contact delegates to obtain an email address. In instances where two or more delegates shared an email address, the individual would identify himself or herself to Mr. Webb.
- d. Delegates would vote by sending an email to the email address.
- e. Upon receiving an email, Webb would contact Ms. Richie to confirm that the email belonged to a delegate. Ms. Richie did not provide the voter's name to Mr. Webb. Upon receiving confirmation of the voter's eligibility, Webb would count the accompanying vote. Webb would not tell Ms. Richie how any email sender voted.

- f. Credentialing and early voting could begin on prior to the convening of the Assembly.
- g. No votes would be tabulated until after the Assembly convened, on Sunday, March 22, 2020, at 3:00 pm.
- h. Delegates could change their vote up until three hours after the assembly convened, or 6:00 pm, March 22, 2020.
- i. At 6:00 pm, alternates would be elevated to slots that did not have voting delegates in that particular precinct.

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

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

- a. Emergency bylaw number 4 governed voting methods, deferring to state law. Specifically, it stated: “[a]ll district and county central committees or district and county assemblies and conventions may provide for alternative credentialing, nominating, and/or voting procedures as permitted by House Bill 2020-1359.”
- b. Emergency bylaw number 9 also deferred to state law, holding “[p]ursuant to House Bill 2020-1359 all district and county assemblies and conventions shall be completed no later than April 11, 2020, and may be held over a period of no more than seven calendar days.”

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

30. The Assembly followed the process outlined above.

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

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

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

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

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

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

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

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

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

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

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

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

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

Protest and Republican State Party Intervention.

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

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

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

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

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

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

50. The Central Committee resolved the complaint by ordering that Dave Stiver be designated as a candidate for Senate District 10. Specifically, the Central Committee did this as an “equitable remedy for the irregularity of the assembly.” Executive Committee Report, p. 12. Because the Central Committee believed that Liston had “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.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

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

66. Petitioner incorporates all previous allegations.

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

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

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

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

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

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

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

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

74. Petitioner incorporates all previous allegations.

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

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

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

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

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

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

REQUEST FOR RELIEF

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

1. An order enjoining Bremer from submitting a certificate of designation that designates Dave Stiver as a candidate for the State Senate District 10 Republican Primary.
2. An order prohibiting the Secretary of State from certifying Stiver as a candidate for the State Senate District 10 Republican Primary.
3. All other relief that the Court deems appropriate

DATED: April 20, 2020

Counsel for Karl K. Schneider

s / Scott E. Gessler

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Verification

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

Karl K. Schneider
Karl K. Schneider

STATE OF COLORADO)
COUNTY OF Jefferson)ss.
)

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

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

Joanna Bila
Notary Public