

District Court, Denver County, Colorado 1437 Bannock Street Denver, CO 80202	DATE FILED: April 28, 2020 2:54 PM FILING ID: 1D970FDAE94AA CASE NUMBER: 2020CV31482  ^ Court Use Only ^
Petitioner: <b>ERIK MONROE UNDERWOOD</b> , an individual,  v.  Respondent: <b>JENA GRISWOLD</b> , in her official capacity as Colorado Secretary of State.	
<i>Attorneys for Plaintiff:</i> <b>Castle Lantz Maricle, LLC</b> Robert D. Lantz, #30825 Luke C. Griscom Benjamin, #51566 Castle Lantz Maricle, LLC 4100 E. Mississippi Ave., Ste. 410 Denver, CO 80246 Ph: (720) 613-1364 <a href="mailto:rlantz@clmatty.com">rlantz@clmatty.com</a> <a href="mailto:lbenjamin@clmatty.com">lbenjamin@clmatty.com</a>	Case No.: 2020CV _____  Division: ____
<b>PETITION FOR DECLARATORY RELIEF</b>	

Petitioner, Erik Monroe Underwood (“Mr. Underwood”), by and through his undersigned attorneys, submits his Petition for Declaratory Relief, and as grounds states as follows:

**PARTIES/JURISDICTION/VENUE**

1. Mr. Underwood is an individual residing in Denver County, Colorado.
2. Jena Griswold (“Respondent”) is the Colorado Secretary of State, with her office in Denver, Colorado.
3. This Court has jurisdiction over this matter pursuant to C.R.S. § 1-1-113.
4. Venue is proper pursuant to C.R.C.P. 98(b)(2) because the Respondent’s official office is located within the City and County of Denver.

## STANDING

5. The party invoking standing bears the burden of establishing standing. *See, e.g., Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014). As enunciated by the Supreme Court of Colorado in *Farmers Ins. Exch. v. District Court*, 862 P.2d 944, 946 (Colo. 1993):

A declaratory judgment action must be based on an actual controversy. *Community Tele-Communications, Inc. v. Heather Corp.*, 677 P.2d 330 (Colo. 1984); *Beacom v. Board of County Comm'rs*, 657 P.2d 440 (Colo. 1983). To have standing to bring a declaratory judgment action, a plaintiff must assert a legal basis on which a claim for relief can be grounded. The plaintiff must allege an injury in fact to a legally protected or cognizable interest. *Board of County Comm'rs, La Plata County v. Bowen/Edwards Assocs.*, 830 P.2d 1045 (Colo. 1992); *Wimberly v. Ettenberg*, 570 P.2d 535 (Colo. 1977). "Indirect and incidental pecuniary injury . . . is insufficient to confer standing." *Ettenberg*, 570 P.2d at 539.

A declaratory judgment action is only appropriate when the rights asserted by the plaintiff are present and cognizable ones. "It calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 242, (1937). If entered, a declaratory judgment would effect a change in the plaintiff's present rights or status. "It is not the function of the courts, even by way of declaration, to adjudicate . . . in the absence of a showing that a judgment, if entered, would afford the plaintiff present relief." *Taylor v. Tinsley*, 330 P.2d 954, 955 (Colo. 1958).

6. As set forth below, Mr. Underwood chose the State Democratic assembly process (the "Assembly Process") and the assembly met and adjourned on Saturday, April 18, 2020. Andrew Romanoff ("Mr. Romanoff") was the prevailing candidate, who seemingly won by a landslide during the Assembly Process. Mr. Underwood, as a candidate in the flawed Assembly Process has been injured since, if the Assembly Process results are ratified, Mr. Underwood will not be on the ballot in June as discussed below. Consequently, on that basis alone, he has standing.

7. Moreover, even if the Respondent has not yet certified the results of the Assembly Process, Mr. Underwood has standing to seek declaratory relief. *See, e.g. Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)("[A]lthough an injury must usually be imminent, a plaintiff need not wait for the harm to occur before seeking redress").

## **BACKGROUND**

### **Path to Nomination Chosen by Mr. Underwood**

8. Mr. Underwood is a U.S. citizen and a resident of the State of Colorado.
9. Mr. Underwood is seeking to be on the 2020 Democratic Primary ballot for the upcoming June 2020 primary election.
10. Under C.R.S. § 1-4-502, there are various methods for nomination of partisan candidates. On the one hand, Mr. Underwood could pursue nomination through a petition process, or, on the other hand, as here, he could pursue nomination at the State Democratic Assembly (the “State Assembly”).
11. The legislature emphasized the importance of transparency, fair process and notice with respect to the Assembly Process stating:

The general assembly hereby finds and declares that it is beneficial to improve the procedure and timeliness for communicating the designation of candidates for the primary election ballot by political party assemblies between the officers of such assemblies, the state central committee of each political party, and the secretary of state. The general assembly further finds that prescribing certain additional review processes for the documentation evidencing designations and nominations of candidates that are not onerous will serve to minimize the likelihood of a candidate being deprived of his or her candidacy and of an erroneous primary election ballot. The general assembly further encourages the responsible officials to engage in the enhanced communication and review described in this subsection (6) well in advance of statutorily prescribed deadlines or ballot certification dates, if possible, in order to maximize the time for giving notice and resolving any issues that may arise from the primary ballot nomination process.

C.R.S. § 1-4-604(6)(d).

### **The Rise of COVID-19**

12. On March 2, 2020, Colorado participated in an election process called Super Tuesday.

13. On or about March 5, 2020, Colorado Governor Jared Polis (“Governor Polis”) confirmed Colorado had its first COVID-19 case.

14. On March 7, 2020, Colorado conducted the caucus process.

15. On Tuesday, March 10, 2020, Governor Polis declared a state of emergency in Colorado to give officials “access to resources and more legal flexibility to take steps ... to protect the most vulnerable and better contain the outbreak.”

16. On Wednesday, March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic.

17. On March 13, 2020, Denver Mayor Michael Hancock (“Mayor Hancock”) ordered city venues to close their doors and cancel events until April 12, 2020.

18. On March 16, 2020, Governor Polis ordered Colorado bars and restaurants closed.

19. On March 23, 2020, Denver issued a stay-at-home order.

20. On March 25, 2020, Governor Polis ordered statewide stay-at-home order.

21. On the date of the filing of this Petition, Denver and other counties in Colorado remain under stay-at-home orders and Colorado has now switched to a safer-at-home phase in restoring normalcy eventually in Colorado.

#### Breakdowns and Anomalies in the Assembly Process

22. As evidenced in another action filed in this County styled: *Michelle Fergino Warren v. Jena Griswold, in her official capacity as Colorado Secretary of State*, Case No. 2020CV31077 (the “Petition Process Case”), the COVID-19 pandemic and the response thereto have dramatically and adversely impacted the permissible methods for Democratic Party (the “State Party”) candidates to be nominated. A true and correct copy of the District Court’s Order in

the Petition Process Case is attached hereto as **Exhibit 1**, and is incorporated herein by reference. The Petition Process Case is being appealed by the Petitioner.

23. By April 13, 2019, the State Party had carefully crafted its Plan of Organization and Rules, as amended, which set the groundwork for the upcoming Democratic elections.

24. As the COVID-19 pandemic exploded, on March 10, 2020, Morgan Carroll (“Ms. Carroll”), the Democratic Committee Chairman, emailed the Democratic U.S. Senate candidates (the “Candidates”), updating them on how the processes and procedures of the Assembly Process likely would not be altered:

**Corona Virus Update:** Our current statutes and rules do not allow us to waive or extend assembly deadlines. I am speaking with Sen. Fenburg and Rep. Garnett in conjunction with Martha Tierney and the GOP to ask for a bill that would allow us to extend deadlines in the event of an emergency. *Also, our current rules allow e-voting and remote participation at central and executive committee meetings, but not at assemblies. Our rules prohibit us from changing the rules in an election year, so the only way to add those options would be if the legislature authorized it. We are asking for those options as well as a mail ballot option. Meanwhile we are proceeding with all plans for the state, urging at risk people to stay home and vote by proxy. I think it is important that we neither “under-react” or “over-react”.*

(emphasis added). A true and correct copy of Ms. Carroll’s May 10, 2020 email is attached hereto as **Exhibit 2**, and is incorporated herein by reference.

25. On March 12, 2020, in response to Governor Polis’s announcement of a state of emergency, Ms. Carroll emailed the Candidates indicating that various options for the State Assembly were being considered.

26. On March 12, 2020, the State Party entered the Colorado Emergency Rules – March 12, 2020 – Approved by the CDP State Leadership at 4:00 p.m., adopted by Authority of HB20-1359 & Executive Order D 2020 005 on March 16, 2020 (the “Emergency Rules”). A true and correct copy of the Emergency Rules is attached hereto as **Exhibit 3**, and is incorporated herein by reference.

27. The Emergency Rules set in place various systems, which appear to have benefited a single candidate to the exclusion of others, for instance:

a. The usual quorum requirement of 40% was waived for 2020 assemblies and conventions. Organizers were “encouraged to maximize participation by all delegates either in person, by proxy, or remotely, but if attendance falls below quorum, the convening officer can waive the usual quorum requirements and deem those present (in person, by proxy, or electronically) satisfying quorum requirements and proceed with party business.

b. The Emergency Rules allowed for remote voting which “includes, but is not limited to, reliable polling software including, but not limited to Google forms, *Survey Monkey*, a recorded voice vote or mail ballots.” Ostensibly, these “electronic voting systems must be able to identify the person voting and create a record of those votes.”

c. Additionally, “candidates who are using the assembly process to be nominated to the primary ballot must be given an opportunity at the relevant assembly to make speeches, either via webinar, conference, or pre-recorded You Tube or other video and people urged to listen or watch those before voting.”

28. On March 13, 2020, a conference call was held by Ms. Carroll with the Candidates to assure the Candidates the Assembly Process, going forward, would be fair, transparent, and effective despite the evolving circumstances related to the COVID-19 pandemic. Certain elements of the conference call were reiterated in an email by Ms. Carroll. Ms. Carroll also informed the Candidates that the State Party was canceling its third-party vendor contract with Denver Elections, who would have presided over the balloting of the Assembly Process, as a neutral party tabulating votes in this official process.

29. On March 13, 2020, Mr. Underwood contacted Ms. Carroll to address his campaign's concerns regarding the Assembly Process. A true and correct copy of his email is attached hereto as **Exhibit 4**, and is incorporated by reference.

30. Based upon information and belief, Stephany Spaulding ("Ms. Spaulding") and Senate Candidate Patricia Zornio ("Ms. Zornio") attended, in person, the Park County Assembly, without prior coordination with the County because the county assemblies are public meetings and nothing was published about altering the meeting. Both Ms. Spaulding and Ms. Zornio, because they were in attendance, were able to speak to the Park County Assembly. John Hickenlooper, Mr. Romanoff, and Mr. Underwood were not present. Nevertheless, the presiding officers specifically noted that Mr. Romanoff was pre-arranged to call into the assembly. No other accommodation to participate by phone was given to any other candidate. In the interim of waiting for his phone call, a surrogate was allowed to speak on his behalf. Ultimately, Mr. Romanoff did phone in, provided a speech of his own, and in essence doubled his time and influence of his message to assembly attendees. No one was asked to speak at all on Mr. Hickenlooper's or Mr. Underwood's behalf.

31. Similarly, in Logan County, where Shenika Carter was present on behalf of Ms. Spaulding, the Assembly was held off until Mr. Romanoff was able to call-in. Again, no other candidates were offered or advised of the ability to call-in to the meeting and give a speech.

32. On March 16, 2020, Mr. Hickenlooper had sufficient signatures verified under the signature process. Mr. Hickenlooper and his campaign removed himself from the Assembly Process. However, based upon information and belief, numerous counties, including Pitkin County, proceeded thereafter with Mr. Hickenlooper on their county's preference poll ballot while removing other Candidate's names who had not received the caucus threshold in their precincts.

After March 16, 2020, Mr. Hickenlooper should not have been an option on any county assembly ballot and every Candidate continuing in the Assembly Process should have always been an option on every County Assembly's preference poll.

33. On March 17, 2020, Broomfield County emailed out the delegate list to Mr. Romanoff's, Ms. Spaulding's and Ms. Zornio's campaigns. Ms. Spaulding inquired whether Mr. Underwood's campaign was included on the email as no one else was listed on the email chain.

34. On March 18, 2020, the State Party advised the Candidates to prepare 5-minute videos for county assemblies and also could prepare a 5-minute video for the State Assembly.

35. On March 19, 2020, Mr. Underwood emailed Charlie King, who is a Field Coordinator for the Broomfield County Democratic Party. Mr. Underwood asked Mr. King for a delegate list. On March 20, 2020, Mr. King replied "I will check this morning and get you a status on the delegate list". Despite multiple attempts by Mr. Underwood, Mr. King never provided the delegate list.

36. On March 21, 2020, Mr. Romanoff's, Ms. Spaulding's, and Ms. Zornio's campaigns received an invitation to participate in the upcoming Elbert County Assembly. Elbert County's Assembly did not include an invitation or mention of Erik Underwood as a Senatorial Candidate at all.

37. On March 22, 2020, the Candidates received an email from Electra Johnson advising:

Dear Senate candidates,

We appreciate your responsiveness. Our schedule was already made out and we were not aware that Morgan Carroll (sic) had told you five minute (sic) videos. We requested 2 1/2 minute videos that fit in our schedule. *We are also adjusting for a shortened attention span since our entire assembly will be online. Morgan Carroll (sic) said we could send your videos out with our call if they were longer than 2 1/2*



*minutes. If you send us a video that is 2 to 2 1/2 minutes long we will play it During our assembly next weekend, 28 March which is next Saturday. If the only video we received from you is the five minute video that will be sent out in our call as per my conversation with Morgan Carroll (sic).*

(Emphasis added). Mr. Underwood was *not* informed of any conversation as between Electra Johnson and Morgan Carroll, nor were other candidates, based upon information and belief.

38. On March 25, 2020, Ms. Spaulding sent a communication to the State Party that one campaign had gained access to the email addresses to delegates in Chaffee County. These email addresses were and are not available in the voter (“VAN”) database, which campaigns can access at a cost from the State Party and ultimately National Party. Upon recognizing the slight, the response from the State Party was to share the data with campaigns that pay for VAN. While the concern of correcting the mistake was redressed, the sharing of the data did not rectify the time of earlier access by one campaign over others nor did it address that many of the larger counties had sent out mail and email ballots days before and a large number of delegates had already voted.

39. On March 28, 2020, all of the Candidates were invited to El Paso County’s live video webinar to observe vote tabulation and results from the El Paso County Assembly. Mr. Underwood and Ms. Spaulding observed in real time that multiple people voted more than once for the same Candidate. Although there were some corrections made it is unknown how many people voted more than once for the same Candidate.

40. On March 29, 2020 in the midst of calling delegates in Pueblo County, Ms. Spaulding was personally made aware from delegates that the county party had not even provided county delegates Mr. Underwood’s name, nor other Candidate’s names, as an option to choose. In essence, there was no current preference poll for county delegates.

41. In early April 2020, Mr. Underwood contacted Morgan Carroll and Peter Williams regarding his video for the State Assembly. The email chain evidences that no communications were made with Mr. Underwood regarding the video (or transcript), and Ms. Carroll and Mr. Williams seem confused as to which video, if any, were to air on behalf of his campaign at the State Assembly. A true and correct copy of his email regarding the video is attached hereto as **Exhibit 5**, and is incorporated herein by reference

42. On April 10, 2020, the Colorado Democratic Party Chair & Rules Recommendations Committee, in a letter from Tish Beuford to Morgan Carroll acknowledged elements of election tampering:

*I wanted to take some time to reach out to you to share some issues and concerns that were brought to my attention pertaining to the 2020 Colorado Democratic Senate race. I felt that these concerns were important enough to engage you directly so we could discuss them in more detail and decide on the best course of action. A few examples of these issues that were disclosed to me were omissions and incorrect listing of eligible candidates on preference polls and county ballots, being prohibited from addressing constituents in certain forums and local precinct delegate suppression.*

Now, I'm aware that some of these issues may have already been brought to your attention which is why I wanted to address this with you first out of respect for your leadership as our state party chair. Also, I do realize how extremely difficult and challenging this year has been so far for all of us. There really hasn't been a lot of time to totally grasp the political state of affairs that we are currently dealing with in light of this once in a lifetime world pandemic health crisis that we're all living through right now. This unprecedented scenario created the necessity to draft and implement new emergency legislation to create a legal avenue for each of the local counties to still convene and facilitate their respective assemblies virtually.

However, due to the urgency and short turnaround window to complete the statewide county assembly conversions there were some significant procedural and administrative inconsistencies that were discovered leading up to and after the virtual county assemblies. *In addition to that, there were several incidents that were reported at different local precinct caucus locations which involved deliberate delegate misinformation and tampering.*

A true and correct copy of the Colorado Democratic Chair & Rules Committee Recommendations letter dated April 10, 2020, is attached hereto as **Exhibit 6**, and is incorporated herein by reference. Mr. Underwood was unaware of Ms. Beuford's letter to Ms. Carroll and Ms. Carroll, who is the Colorado Democratic State Party Chair, failed to notify Mr. Underwood of these serious irregularities.

43. On April 11, 2020, Anne Murdaugh emailed Morgan Carroll and Halisi Vinson inquiring about where information about the State Virtual Assembly was posted. Specifically, she wrote:

I hope you and yours are both well in this difficult time.

I'm trying to find info about the State Virtual Assembly on the CDP website, and all I can find is the original info about it taking place at the CO Convention Center on Apr 18.

When/where will you post info about the virtual assembly? *Also, I see you have posted info on some of the DNC delegate candidates (I noticed some are missing).* But I don't see any info about the DNC member candidates. Is that posted on the website?

By April 14, 2020, Anne Murdaugh still had not received a response to this email.

44. On April 13, 2020, Morgan Carroll was advised by Ms. Spaulding of certain credentialing and delegate disbursement concerns. Specifically, Morgan Carroll was advised:

As you know, we have been reaching out all day regarding problems with the allocation of delegates and the credentialing process. We learned this morning that based on the percentages of votes our campaign earned in Kit Carson, the apportioning of delegates is off. *Given that we earned 36.6% of the preference vote, it is surprising that we were not awarded any delegates from this county's assembly.*

Moreover, we are still awaiting information regarding a number of counties' convention votes. As of April 13th at 5:15 PM, there are several counties for which the assembly results are not even posted on the Colorado Democratic Party's website--of which we were explicitly informed by the State Party to us for formal information regarding the results. *There is no data from Broomfield, Adams, El Paso, Denver, Pueblo, Douglas and more on the state party's official assemblies*

*and conventions site. Yet, the credentialing of delegates have been certified! How is this possible?*

If we had not deliberately requested of Pete on Saturday, April 11th the list of delegates moving on to the State Assembly, we would be utterly in the dark about who the delegates are. Still, this does not provide universal data on what the actual raw votes and delegate proportioning totals were/are to even allow us to challenge a situation like we have found in Kit Carson. This is beyond acceptable and another stain on this year's ballot access process.

(Emphasis added).

45. On Wednesday, April 15, 2020, Ms. Spaulding and others filed a formal complaint pursuant to Part Four, Article IV, section C and Part Three, Article V, section B of the State Party's Rules and Bylaws, adopted April 19, 2020, with the Executive Committee noting the various discrepancies in the Assembly Process.

46. On that same day, April 15, 2020, rather unceremoniously, Ms. Carroll indicated that she was unclear as to what Ms. Spaulding wanted. "No assembly? A different assembly? A complete do-over?" She went on to accuse Ms. Spaulding of "creating bad press and ill will for us."

47. On April 16, 2020, Ms. Carroll received a letter from Nancy Johnson, Chair State Credentials Committee regarding her formal complaint asserting that insufficient information had been provided regarding any violation of "Federal Election Law." She went on to state:

While there are mistakes made in putting information into VAN, the party could not exist and do all that is done without these marvelous volunteers. *Incomplete records in many cases are the choice of the voters themselves, not mistakes.*

(Emphasis added).

48. On Saturday, April 18, 2020, the State Assembly (and Convention) was held. Ms. Spaulding's formal complaint, which was filed on April 15, 2020, in accordance with Article IV, section C and Part Three, Article V, section B of the State Party's Rules and Bylaws, was never

brought to the State Assembly delegates for a vote as *required* in the Bylaws. Article IV, section C and Part Three, Article V, section B of the Colorado Democratic Party’s Rules and Bylaws, which is a mechanism for due process, was ignored completely by the State Party.

49. At the time of the Assembly, a quorum was determined to be “the number of ballots returned.” A true and correct copy of the Assembly Rules is attached hereto as **Exhibit 7**, and is incorporated herein by reference.

50. Despite Mr. Underwood’s request to present a speech directed to the State Assembly, the video shown was his speech prepared for county assemblies. It was on or after this date that Mr. Underwood also discovered that several counties either did not play his speech prepared during assemblies or simply cut his speech off at two-minutes thirty-seconds.

51. The balloting was conducted on Survey Monkey, which is an online survey or polling resource. Ostensibly, each respondent can only vote *one time per email address*. A true and correct copy of the Help screenshot for “Using a Survey for an Election or Poll” is attached hereto as **Exhibit 8**, and is incorporated herein by reference. In other words, if one person uses other email addresses, a single person could vote multiple times.

52. It appears that multiple responses can be allowed from users on a shared device. A true and correct copy of the Help Screenshot for “Allowing Multiple Responses” is attached hereto as **Exhibit 9**, and is incorporated herein by reference.

53. At the conclusion of balloting, according to the Assembly Rules:

[The Colorado Democratic Party (“CDP”) will submit a final summary report (vote tally) that will be made available to the credentials committee candidates, the Assembly Chair and Secretary. *This will include data from Survey Monkey in a PDF, read-only and password protected format and include a record of any issues or determinations.* See the Credentials Logistics Document for the format of the Final Summary Report. Summary results will then be posted on CDP website.

(emphasis added). In addition to electronic voting, the State Party allowed delegates to vote by telephone - an option that provided no transparency or protocols for voter verification.

54. On April 20, 2020, the State Party released its Final Report of the Committee on Permanent Organization for Assembly and Convention (the “Final Report”). In paragraph 4, the Final Report falsely stated, “There were no challenges to the election of delegates,” despite the fact that over 50 delegates in a formal letter challenged the election of delegates to the State Assembly on April 15, 2020, three days before the April 18, 2020 State Assembly. A true and correct copy of the Final Report is attached hereto as **Exhibit 10**, and is incorporated herein by reference.

55. To date, Mr. Underwood has not been provided the Survey Monkey Results with any record regarding the reliability of the same, or any issues or determinations.

**FIRST CLAIM FOR RELIEF**  
(Declaratory Judgment)

56. Mr. Underwood adopts and incorporates in this claim for relief paragraphs 1-54 above.

57. Mr. Underwood seeks to be a candidate for the United States Senate in the 2020 general election.

58. The Emergency Rules set in place various systems, which broke down and appear to have benefited a single candidate to the exclusion of others at the State Assembly.

59. The usual quorum requirement of 40% was waived for 2020 assemblies and conventions. At the time of the State Assembly, a quorum was determined to be “the number of ballots returned.”

60. The Emergency Rules allowed for voting via *Survey Monkey*, which according to its website one can only vote *one time per email address*. Moreover, it appears that multiple responses can be allowed from users on a shared device.

61. Candidates were either excluded from county assemblies for failure to play entire messages from the Candidates, specifically, this occurred in Park County, Logan County, Pitkin County, Elbert County, and Broomfield County.

62. Mr. Underwood was denied the opportunity to speak to the State Assembly with a speech addressing that specific audience.

63. Mr. Underwood was not informed of the change from five-minute videos to two minutes and thirty-seconds videos.

64. The Colorado Democratic Party Chair & Rules Recommendations Committee acknowledged “*omissions and incorrect listing of eligible candidates on preference polls and county ballots, being prohibited from addressing constituents in certain forums and local precinct delegate suppression.*” And, that “*there were several incidents that were reported at different local precinct caucus locations which involved deliberate delegate misinformation and tampering.*”

65. Even more baffling, Ms. Carroll seems to blame “[i]ncomplete [County] records in many cases [as] the choice of the voters themselves, not mistakes.

66. At the conclusion of balloting, according to the Assembly Rules:

[The Colorado Democratic Party (“CDP”) will submit a final summary report (vote tally) that will be made available to the credentials committee candidates, the Assembly Chair and Secretary. *This will include data from Survey Monkey in a PDF, read-only and password protected format and include a record of any issues or determinations.* See the Credentials Logistics Document for the format of the Final Summary Report. Summary results will then be posted on CDP website.

(emphasis added).

67. To date, Mr. Underwood has not been provided the Survey Monkey results with any record regarding the reliability of the same, or any issues or determinations.

68. Pursuant to C.R.S. § 1-1-102, the “Uniform Election Code of 1992” applies to primary elections.

69. C.R.S. § 1-1-103(1) provides, “This code shall be liberally construed so that all eligible electors may be permitted to vote and those who are not eligible electors may be kept from voting in order to prevent fraud and corruption in elections.”

70. C.R.S. § 1-1-103(3) states, “Substantial compliance with the provisions or intent of this code shall be all that is required for the proper conduct of an election to which this code applies.” The Colorado Secretary of State is charged with the duty to “supervise the conduct of primary, general, congressional vacancy, and statewide ballot issue elections” and to “enforce the provisions of [the election] code.” *See* C.R.S. § 1-1-107.

71. Where, as here, a dispute arises regarding the application and enforcement of the Election Code C.R.S. § 1-1-113 becomes applicable. Specifically, the statute provides the District Court over the action and the burden of proof in any such dispute is on the petitioner.

72. Because of the COVID-19 pandemic and the Democratic Party Committee mismanagement leading up to and during the Assembly Process, Mr. Underwood was not allowed the opportunity to fully participate in the State Assembly or present his case to the delegates to be placed on the ballot for U.S. Senate.

### **SECOND CLAIM FOR RELIEF**

(Violation of United States and Colorado Constitutions – Propriety of Elections)

73. Mr. Underwood adopts and incorporates in this claim for relief paragraphs 1-72 above.



74. Pursuant to Colo. Const., art. II, § 5, “[a]ll elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

75. Moreover, [t]he general assembly shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise.” Colo. Const., art.7, §11.

76. As discussed more fully above, the Emergency Rules set in place various systems, which broke down and appear to have benefited a single candidate to the exclusion of others at the State Assembly.

77. The usual quorum requirement of 40% was waived for 2020 assemblies and conventions. At the time of the State Assembly, a quorum was determined to be “the number of ballots returned.”

78. The Emergency Rules allowed for voting via *Survey Monkey*, which according to its website one can only vote *one time per email address*. Moreover, it appears that multiple responses can be allowed from users on a shared device.

79. The Colorado Democratic Party Chair & Rules Recommendations Committee acknowledged “*omissions and incorrect listing of eligible candidates on preference polls and county ballots, being prohibited from addressing constituents in certain forums and local precinct delegate suppression.*” And, that “*there were several incidents that were reported at different local precinct caucus locations which involved deliberate delegate misinformation and tampering.*”

80. At the conclusion of balloting, according to the Assembly Rules:

[The Colorado Democratic Party (“CDP”) will submit a final summary report (vote tally) that will be made available to the credentials committee candidates, the Assembly Chair and Secretary. *This will include data from Survey Monkey in a PDF, read-only and password protected format and include a record of any issues or determinations.* See the Credentials Logistics Document for the format of the Final Summary Report. Summary results will then be posted on CDP website.

(emphasis added).

81. To date, Mr. Underwood has not been provided the Survey Monkey results with any record regarding the reliability of the same, or any issues or determinations.

82. Because of the COVID-19 pandemic and the Democratic Party Committee mismanagement leading up to and during the Assembly Process, Mr. Underwood was not allowed the opportunity to fully participate in the State Assembly or present his case to the delegates to be placed on the ballot for U.S. Senate.

### **THIRD CLAIM FOR RELIEF**

(Violation of United States and Colorado Constitutions – Free Speech)

83. Mr. Underwood adopts and incorporates in this claim for relief paragraphs 1-82 above.

84. U.S. Const., Amend. I provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. persons in the United States are granted free speech.”

85. Pursuant to Colo. Const., art II, § 10, “[n]o law shall be passed impairing the freedom of speech; ever person shall be free to speak, write or publish whatever he will on any subject...”

86. Candidates were either excluded from county assemblies for failure to play entire messages from the Candidates, specifically, this occurred in Park County, Logan County, Pitkin County, Elbert County, and Broomfield County.

87. Mr. Underwood was denied the opportunity to speak to the State Assembly with a speech addressing that specific audience.

88. Mr. Underwood was not informed of the change from five-minute videos to two minutes and thirty-seconds videos.

89. Because of the suppression of speech by the Colorado Democratic Party, Mr. Underwood was not allowed the opportunity to fully participate in the State Assembly or present his case to the delegates to be placed on the ballot for U.S. Senate.

**FOURTH CLAIM FOR RELIEF**

(Violation of United States and Colorado Constitutions – Due Process)

90. Mr. Underwood adopts and incorporates in this claim for relief paragraphs 1-89 above.

91. Pursuant to Colo. Const., art. II, § 25 and the U.S. Const., Amend. XIV, 1, Mr. Underwood is guaranteed due process under the law. Because of the procedures implemented and addressed above, Mr. Underwood was not allowed the opportunity to fully participate in the State Assembly or present his case to the delegates to be placed on the ballot for U.S. Senate.

92. Mr. Underwood was not allowed the opportunity to fully participate in the State Assembly or present his case to the delegates to be placed on the ballot for U.S. Senate.

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**PRAYER FOR RELIEF**

WHEREFORE, Mr. Underwood prays for declaratory relief directing the Respondent to place Mr. Underwood on the ballot in light of the flawed process and procedures leading up to and including the April 18, 2020 Assembly, and for such other and further relief as is just and appropriate under the circumstances.

Dated April 28, 2020.

/s/ Robert D. Lantz  
Robert D. Lantz, #30825  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I, Kaitlyn Riebe, certify that a true and correct copy of the foregoing was served to the other parties via electronic service on April 28, 2020, to:

Office of the Attorney General  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, CO 80202

/s/ Kaitlyn Riebe  
Kaitlyn Riebe