

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

1437 Bannock St.
Denver, CO 80203

Petitioners:

NORMA ANDERSON, MICHELLE PRIOLA,
CLAUDINE CMARADA, KRISTA KAUFER,
KATHI WRIGHT, and CHRISTOPHER
CASTILIAN,

v.

Respondents:

JENA GRISWOLD, in her official capacity as
Colorado Secretary of State, and DONALD J.
TRUMP,

and

Intervenors:

COLORADO REPUBLICAN STATE CENTRAL
COMMITTEE, and DONALD J. TRUMP.

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Case Number: 2023CV032577

Division/Courtroom: 209

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**Pro hac vice* admission pending

**PETITIONERS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS
INTERVENOR THE STATE PARTY'S FIRST CLAIM UNDER C.R.C.P. 12(b)(1)**

Intervenor Colorado Republican State Central Committee's (the "State Party") Response to Petitioners' motion to dismiss its first claim under C.R.C.P. 12(b)(1) tries to distract the Court by characterizing its first claim as something it's not and by rehashing Donald Trump's arguments. But Intervenor the State Party cannot contest the bottom line: the Court has no jurisdiction to entertain an as-applied constitutional challenge to the Election Code in this action.

Argument

I. Intervenor the State Party's first claim is an as-applied constitutional challenge to the Election Code and thus improper for this proceeding.

Intervenor the State Party contends that its first claim—which asks for a declaration that Petitioners' "requested relief violates Intervenor [the State Party]'s First Amendment rights," Intervenor's Pet., ¶ 39—does not contest the Colorado Election Code's constitutionality. Intervenor's Resp., 2. That's incorrect. Because Petitioners request only what is available under the Election Code, Intervenor the State Party's claim attacks the Election Code's constitutionality as it applies to the State Party.

Petitioners ask for relief that the Election Code provides. Section 1-1-113, which establishes the process for this case, states that if a petitioner carries their burden, “the district court shall issue an order requiring substantial compliance with the provisions of this code. The order shall require the person charged to forthwith perform the duty or to desist from the wrongful act.” § 1-1-113(1), C.R.S. Petitioners request exactly that relief. They ask the Court to “enjoin[] the Secretary from taking any action that would allow Trump to access the 2024 Republican presidential primary election ballot,” Pet., 104, ¶ 4—in other words, to require that the Secretary substantially comply with the Election Code.

By arguing that Petitioners’ requested relief—relief the Election Code provides for—would infringe on its First Amendment rights, Intervenor the State Party must show that the Election Code violates its First Amendment rights. Intervenor’s Resp., 2-3. Even if Intervenor the State Party does not challenge the Election Code’s *facial* constitutionality, it is challenging its constitutionally *as sought to be applied* here. And as Petitioners explained in their Motion to Dismiss Intervenor the State Party’s First Claim, this court lacks jurisdiction to hear any constitutional challenge to the Election Code via the § 1-1-113 process. *Kuhn v. Williams*, 2018 CO 30M, ¶ 55 (citing *Frazier v. Williams*, 2017 CO 85, ¶ 3). Intervenor the State Party cannot dress its first claim up as anything but an argument that the Election Code is unconstitutional.

II. Petitioners have already responded to these arguments.

Intervenor the State Party responds to Petitioners’ motion by repeating arguments Trump made in his September 22, 2023 motion to dismiss on state law grounds. *See generally* Trump’s Mot. to Dismiss (state law grounds). Petitioners refuted those arguments in their September 29, 2023 response to that motion. *See generally* Pet’rs’ Corrected Response to Trump’s Mot. to Dismiss (state law grounds). Because the Court ordered the parties to avoid duplicative briefing, Petitioners refer the Court to their previous filings and will only summarize their positions here.

a. Section 1-1-113's process applies.

Intervenor the State Party repeats Trump's argument that § 1-1-113 does not apply here. Intervenor's Resp., 3-5; *see* Trump's Mot. to Dismiss (state law grounds), 3-9. But this is a proper § 1-1-113 proceeding. Petitioners contend that any action by the Secretary of State to certify Trump to the Republican presidential primary ballot would breach the Election Code. That's exactly the type of claim for which § 1-1-113 provides a process. *Williams v. Libertarian Party*, 2017 CO 86, ¶ 4. That Petitioners' claim implicates Section 3 of the Fourteenth Amendment does not change this analysis.

Petitioners gave a thorough explanation of § 1-1-113's applicability on pages 3 through 6 of their Response to Trump's Motion to Dismiss on state law grounds. They incorporate that explanation here. The Secretary of State agreed in her response that § 1-1-113 applies:

The Secretary ... agrees that Petitioners have stated a claim under section 1-1-113 arising from their premise that certifying Mr. Trump to the ballot, if they prove he is disqualified under Section 3 of the Fourteenth Amendment, may be contrary to Colorado's Election Code and may constitute a breach of her duties. The case therefore may, and should, proceed exclusively under section 1-1-113.

Sec'y Griswold's Omnibus Resp., 3-8.

Because § 1-1-113 provides the process for this action, Intervenor the State Party's first claim, which challenges the Election Code's constitutionality, should be dismissed. The Court has no jurisdiction to hear such a challenge via § 1-1-113. *See Kuhn*, ¶ 55; *Frazier*, ¶ 3.

b. Petitioners do not contest Intervenor the State Party's standing to bring a declaratory judgment claim.

Straying from Petitioners' Motion to Dismiss Intervenor's First Claim, Intervenor the State Party asserts that Petitioners don't have standing to bring a declaratory judgment claim but that it does. Intervenor's Resp., 5-6. This point was also previously argued by Trump. Trump's Mot. to Dismiss (state law grounds), 15-19. It's a moot point. To preserve judicial efficiency and ensure an orderly process, Petitioners agreed to the dismissal of their declaratory judgment claim

(Claim II) on September 29, 2023.¹ Pet'rs' Corrected Response to Trump's Mot. to Dismiss (state law grounds), 16-17. They filed a Stipulation of Dismissal on this claim on October 6, 2023. Pet'rs' Stipulation of Dismissal, 1-2. And Petitioners did not argue in its Motion to Dismiss Intervenor's First Claim that Intervenor the State Party lacks standing.

Conclusion

Intervenor the State Party's first claim is a constitutional challenge to the Election Code. In this action under § 1-1-113, the Court lacks jurisdiction to hear that challenge. The State Party's first claim should be dismissed under Rule 12(b)(1).

Date: October 6, 2023

Respectfully submitted,

/s/ Jason Murray

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¹ Petitioners maintain that their second claim had merit and that they had standing to bring it.

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CERTIFICATE OF SERVICE

I served this document on October 6, 2023, by Colorado Courts E-filing and/or via electronic mail upon all parties and their counsel:

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