

DISTRICT COURT, CITY AND COUNTY OF DENVER,
STATE OF COLORADO
1437 Bannock Street
Denver, CO 80202

DATE FILED: April 24, 2024 3:04 PM
CASE NUMBER: 2024CV31103

Petitioner: JAMES GLASSER

v.

Respondent: JENA GRISWOLD, in her capacity as the
SECRETARY of STATE of COLORADO

and

Intervenor Respondent: TRISHA CALVARESE

▲ COURT USE ONLY ▲

Case Number: 2024CV31103

Courtroom: 280

ORDER RE: VERIFIED PETITION PURSUANT TO C.R.S. § 1-1-113

This matter is before the Court on Petitioner James Glasser’s Verified Petition Pursuant to C.R.S. § 1-1-113 filed on April 10, 2024. Intervenor Respondent Trisha Calvarese filed an Unopposed Motion to Intervene on April 16, 2024. The parties submitted briefs and the Court held a hearing on April 23, 2024. The Court having reviewed the pleadings, the file, applicable law, and being fully advised in the premises, finds, and concludes as follows:

Background

Counsel for the parties have conferred and agreed to the following Joint Stipulated Facts in this matter:

1. Petitioner James Glasser (“Petitioner”) is a registered Democrat and eligible elector in the Fourth Congressional District of Colorado.

2. On March 12, 2024, Congressman Ken Buck, who represented Colorado's 4th Congressional District ("4th CD"), announced his retirement, effective March 22, 2024. This act created a vacancy in the 4th CD.

3. A vacancy election to fill the vacancy is currently scheduled to be held on June 25, 2024 (the "Vacancy Election"). The Vacancy Election is scheduled to be held on the same day as the primary election for political parties (the "Primary Election").

4. For voters who are eligible to vote in both, the Vacancy Election and the Primary Election will appear on the same ballot.

5. The winner of the Vacancy Election will be elected to the U.S. House of Representatives and will serve as the 4th CD U.S. Representative until January 3, 2025, when the winner of this November's general election in the 4th CD is sworn into office.

6. On April 1, 2024, a Democratic Party special nominating convention for a vacancy in the US House (the "Nominating Convention") met to nominate a candidate to the Vacancy Election ballot.

7. The Nominating Convention nominated Trisha Calvarese ("Intervenor") to the Vacancy Election ballot.

8. On April 11, 2024, delegates at the Democratic 4th CD assembly nominated Intervenor to the Primary Election with 57.8% of the vote. Intervenor accepted this designation on April 12, 2024, by submitting a signed "Candidate Acceptance of Designation" form with the Colorado Secretary of State.

a. The Candidate Acceptance of Designation lists qualifications for United States Representative as: (1) At least 25 years old, (2) Inhabitant of Colorado, (3) U.S. citizen for at least 7 years.

9. Intervenor meets all the qualifications to be a U.S. Representative contained in Article I, Section 2 the U.S. Constitution. Specifically, Intervenor:

- a. Is more than twenty-five years old;
- b. Has been a citizen of the United States for more than seven years; and
- c. Will be a resident of the State of Colorado when elected.

10. Absent a court order to the contrary, the Colorado Secretary of State will certify Intervenor to both the Vacancy Election ballot and the Primary Election ballot on Friday, April 26, 2024.

11. Intervenor is a Colorado native but has lived out of state for most of her adult life.

12. Intervenor first registered to vote, and registered as a Democrat, while she was in college out of state.

13. Intervenor has previously registered with the Democratic Party in Delaware and Pennsylvania. She has never registered or affiliated with another party.

14. In 2019, Intervenor moved to Arlington, Virginia. Intervenor registered to vote in Virginia as of October 14, 2019.

15. Virginia does not register or track voters by political party. The Virginia Voter Registration Application does not include any option to register or affiliate with a political party.

16. While living in Virginia, Intervenor was active with her local Democratic Party, including voting in Democratic primaries, donating to Democratic candidates, attending Democratic events, and volunteering with the local Democratic Party.

17. Intervenor moved from Virginia to Colorado permanently in October 2023 after the death of her mother to help care for her then ill father before his death in November 2023.

18. Intervenor registered in Colorado for the first time, and first affiliated with the Colorado Democratic Party, on her birthday, December 15, 2023, though it was not recorded until December 16, 2023.

19. The Colorado Democratic Party has adopted a Plan of Organization and Rules ("CDP Rules"), as amended in January 2024.

Standard of Review

The Colorado Election Code provides that,

“When any controversy arises between any official charged with any duty or function under this code and any candidate, or any officers or representatives of a political party, or any persons who have made nominations or when any eligible elector files a verified petition in a district court of competent jurisdiction alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act, after notice to the official which includes an opportunity to be heard, upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code.”

C.R.S. § 1-1-113(1). If the court finds in favor of the petitioner, the court shall require the official to perform the duty at issue or desist from the wrongful act alleged. *Id.* The official may show cause why the court’s order should not be obeyed. *Id.* In a C.R.S. § 1-1-113 proceeding, “[t]he burden of proof is on the petitioner.” *Id.*

“Given the tight deadlines for conducting elections, C.R.S. section 1-1-113 is a summary proceeding designed to quickly resolve challenges brought by electors, candidates, and other designated plaintiffs against state election officials prior to election day.” *Frazier v. Williams*, 401 P.3d 541, 544 (Colo. 2017). Typically, such proceedings move “at a breakneck pace.” *Id.* The procedures specified by C.R.S. § 1-1-113 provide the exclusive method for the adjudication of controversies arising from a breach or neglect of duty, or other wrongful act, that occurs prior to the day of election. C.R.S. § 1-1-113(4).

Analysis

I. Constitutional Background

The framers of the United States Constitution determined that members of the House of Representatives should be elected by the people. U.S. Const. Amend. art. 1, § 2, cl. 1. The federal government delegated to the states the authority to determine “the times, places and manner of holding elections for senators and representatives.” U.S. Const. Amend. art. 1, § 4, cl. 1. Despite the power granted to the states to conduct elections for senators and representatives, Congress retained the authority to “make or alter” related state regulations. *Id.* Therefore,

“While, in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the states, this statement is true only in the sense that the states are authorized by the Constitution, to legislate on the subject as provided by s. 2 of Art. 1, to the extent that Congress has not restricted state action by the exercise of its powers to regulate elections under s. 4 Art. 1 and its more general power under Art. 1, s. 8 clause 18 of the Constitution ‘to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.’”

Oregon v. Mitchell, 400 U.S. 112, 120 (1970).

II. C.R.S. § 1-4-402

a. Statutory Text

Congressional vacancy elections in Colorado are governed by C.R.S. § 1-4-402, *et seq.* Colorado law prescribes that, “when any vacancy occurs in the office of representative in congress from this state, the governor shall set a day to hold an election to fill the vacancy and cause notice of the election...” Any convention of delegates to a political party or any committee authorized by the convention “shall nominate a candidate to fill a vacancy in the unexpired term of a representative in congress.” C.R.S. § 1-4-402(1)(a). Similarly, a state central committee or any other committee designated by the bylaws of the state central committee “shall convene the

convention and shall provide the procedure for the nomination of the candidate.” *Id.* Simply put, a nomination for a congressional vacancy election can originate from a vacancy committee or from a convention of delegates. *Id.*

For a citizen to be qualified for a nomination in a congressional vacancy election, the Colorado legislature enacted a statute that provides, “[a]ny candidate nominated by a political party must be affiliated with the party for at least twelve months prior to the date the convention begins, as shown in the statewide voter registration system.” C.R.S. § 1-4-402(d)(I). However, “notwithstanding the provisions of subparagraph (I) of this paragraph (d), if a political party has established a rule regarding the length of affiliation which is necessary to be eligible for nomination by convention for the office of representative in congress, the party rule shall apply.” C.R.S. § 1-4-402(d)(II).

Colorado Democratic Party (“CDP”) Rule 4.8 defines “Candidate Eligibility.” CDP Rule 4.8 declares that,

“A person shall be eligible for designation by an assembly or a vacancy committee as a candidate for nomination at a primary election or for appointment to a vacancy in such designation, if that person is a registered Democrat and a resident of the district by the statutory or constitutional deadline or by January 1 of the year of the general election if no deadline exists.”

CDP Rule 4.8(A). Additionally, “[p]rior to seeking the nomination, Congressional candidates must reside in the state of Colorado, but need not reside in the district for which they are seeking the nomination until elected.” *Id.*

CDP Rule 4.9 outlines “Vacancy in Office.” CDP Rule 4.9 states that,

“A person shall be eligible for election to fill a vacancy in office if that person has been a registered Democrat, and a resident of the district, for at least 12 months immediately preceding the date of the vacancy committee meeting and shall meet the requirements for running for office in the next general election.”

CDP Rule 4.9.

b. Statutory Interpretation

“When interpreting a statute, we seek to give effect to the purpose and intent of the General Assembly in enacting it.” *Arapahoe Cnty. Dept. of Human Serv. v. Velarde*, 507 P.3d 518, 521 (Colo. 2022). Courts first read the words and phrases of the statute in context, according them their plain and ordinary meanings. *Doe I v. Colorado Dept. of Public Health and Env’t*, 451 P.3d 851, 855 (Colo. 2019). “If the language is clear, we apply it as written and need not resort to other tools of statutory interpretation.” *Id.* When a statute is unambiguous, “the plain meaning rule – the cardinal rule in the realm of statutory interpretation – is both the first and last canon and nothing more is required of the judicial inquiry.” *Carrera v. People*, 449 P.3d 725, 729 (Colo. 2019).

However, a statute is ambiguous if it is susceptible to multiple reasonable interpretations. *Id.* If the language of the statute is ambiguous, courts will turn to legislative history, prior law, the consequences of a given construction, and the goal of the statutory scheme to ascertain the correct meaning of the statute. *Bd. of Cnty. Comm’rs, Costilla Cnty. v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188, 1193 (Colo. 2004).

c. Statutory Application

As a threshold matter, the Court finds that the statutory text of C.R.S. § 1-4-402 is clear and unambiguous. The legislature spoke in clear language when establishing party affiliation requirements for a congressional vacancy election. Similarly, the legislature unambiguously declared that if a political party creates its own party affiliation requirements for a congressional vacancy election, the party rule controls, and the default requirements are inapplicable. C.R.S. 1-4-402 is brief and written in language that is readily understandable. Accordingly, the Court need

not turn to other tools of statutory interpretation and the Court will apply C.R.S. 1-4-402 as it is written.

Petitioner argues that CDP Rule 4.8 governs state office primary elections and is inapplicable to congressional vacancy elections and, as such, C.R.S. § 1-4-402(1)(d)(I) controls this case. Petitioner contends that C.R.S. § 1-4-402(1)(d)(I) mandates strict compliance with the requirement that a congressional election nominee be a Colorado resident for twelve months. Petitioner avers that because Intervenor has not been a registered Colorado Democrat for twelve continuous months, Respondent should not certify Intervenor on the Vacancy Election ballot.

Intervenor, like Petitioner, directs the Court to CDP Rule 4.8. Intervenor asserts that Petitioner's reliance on CDP Rule 4.9 is misplaced because CDP Rule 4.9 mirrors state legislation applicable to state office elections and conflicts with federal election laws. Intervenor concludes that C.R.S. § 1-4-402(d)(II) applies to this case because the Democratic Party promulgated a rule concerning the requisite time to be affiliated with the Democratic Party to be nominated for a congressional election. Accordingly, Intervenor reasons that Intervenor is eligible to be certified on the Vacancy Election ballot because Intervenor was a registered Democrat and a resident of the congressional district by January 1, 2024.¹

The Court agrees with Intervenor that CDP Rule 4.8 applies to federal elections. First, the language of CDP Rule 4.9 is consonant with the language of the Colorado Constitution's provisions concerning the state's general assembly. CDP Rule 4.9 is not aligned with the United States Constitution's provisions concerning the qualifications of congressional candidates. The United States Constitution requires that a candidate: (1) is 25 years of age; (2) has been a United

¹ Respondent takes a neutral position on the candidate and notes that its interest in this case is merely to ensure that the Vacancy Election complies with state and federal law, and to ensure that this Court's decision is made in a timely manner to comply with impending ballot deadlines. Therefore, Respondent does not argue or assess whether CDP Rule 4.8 or CDP Rule 4.9 applies to the Vacancy Election.

States Citizen for seven years; and, pertinent to this discussion, (3) is a resident of the state, at the time of election, in which they are nominated to be a representative. U.S. Const. Amend. art. 1, § 2, cl. 2. CDP Rule 4.8 similarly requires that congressional candidates must only reside in their congressional district at the time of election. CDP Rule 4.8(4).

In contrast, both CDP Rule 4.9 and the Colorado Constitution's provisions for the state's general assembly mandate that for twelve months leading up to an election, the candidate be a resident of Colorado and reside in the specific district from which they intend to be nominated. C.R.S.A. Const. Art. 5, § 4; CDP Rule 4.9. The United States Constitution and CDP Rule 4.8 differ temporally and geographically from the Colorado Constitution and CDP Rule 4.9.

Second, under CDP Rule 4.9, the election candidate is required to be a registered Democrat for at least 12 months preceding the date of the vacancy committee meeting, and a candidate "shall meet the requirements for running for the office in the next general election." CDP Rule 4.9 mirrors the language of C.R.S. § 1-12-203. C.R.S. § 1-12-203, titled "Vacancies in General Assembly," requires that when there is a vacancy in the state's general assembly, that vacancy "shall be filled by the appropriate vacancy committee." C.R.S. § 1-12-203(1). Under C.R.S. § 1-12-203, the "[t]he vacancy shall be filled until the next general election after the vacancy occurs when the vacancy shall be filled by the election." C.R.S. § 1-12-203(1).

As is relevant here, C.R.S. § 1-12-202 is titled "Vacancies in Office of Representative in Congress." Unlike its state general assembly counterpart, C.R.S. § 1-12-202 requires the governor to set a date to hold a congressional vacancy election. CDP Rule 4.8 likewise differs from CDP Rule 4.9 in that CDP Rule 4.8 does not contain language concerning candidate eligibility based on the "next general election."

C.R.S. § 1-12-202 and CDP Rule 4.8 contemplate immediate procedures to fill a congressional vacancy. On the other hand, C.R.S. § 1-12-203 does not allow for a public vote to fill a state general assembly vacancy until the next general election, and CDP Rule 4.9 bases candidate eligibility, in part, on the candidate meeting eligibility requirements for the “next general election.” Further, C.R.S. § 1-12-203 requires that a vacancy committee fill a vacancy left on the state general assembly, and CDP Rule 4.9 examines party affiliation at the time of “the vacancy committee meeting.” Once again, the language of CDP Rule 4.9 closely mirrors the language from state legislation that concerns the state general assembly.

Third, while CDP Rule 4.9 does not contain any explicit mention of congressional elections, CDP Rule 4.8(D) closely mirrors the United States Constitution by declaring that “Congressional candidates must reside in the state of Colorado, but need not reside in the district for which they are seeking nomination until elected.”

Accordingly, considering all the legal, factual and policy considerations, the Court finds that CDP Rule 4.9 applies to the election of the state general assembly and the filling of vacancies on the state’s general assembly. The Court further finds that CDP Rule 4.8 applies to the election of congress and congressional vacancies. Because the Court has determined that the Democratic Party has established a rule regarding the required length of party affiliation to be eligible for a congressional vacancy election nomination, C.R.S. § 1-4-402(d)(II) applies to this case and CDP Rule 4.8 is therefore controlling.

d. Political Party Deference

The Colorado legislature, in passing C.R.S. § 1-3-106, grants political parties the authority to internally handle inner-party controversies. C.R.S. § 1-3-106(1) provides that,

“(1) The state central committee of any political party in this state has full power to pass upon and determine all controversies concerning the regularity of the organization of that party within any congressional... district.”

C.R.S. § 1-3-106 grants political parties discretion in handling internal affairs by stating that,

“The state central committee may make rules governing the method of passing upon and determining controversies as it deems best... All determinations upon the part of the state central committee shall be final.”

Here, pursuant to CDP Rule 5.1, Petitioner filed a complaint with the Colorado Democratic Party regarding Intervenor’s eligibility for the congressional vacancy election. The Democratic Party used its legislatively granted authority to “pass upon and determine” the issue presented by Petitioner.

The Colorado Democratic Party thereafter determined that Intervenor was validly elected pursuant to the CDP Rules and that Intervenor would appear on the Vacancy Election ballot. The determination by the Colorado Democratic Party is a final determination under C.R.S. § 1-3-106.

Therefore, the statutory discretion granted to political parties to internal handle controversies and issue final determinations is aligned with the Court’s findings and conclusions today.

III. CDP Rule 4.8

a. Strict vs. Substantial Compliance Under the Election Code

C.R.S. § 1-1-103(3) provides that “[s]ubstantial 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.” “[W]hen section 1-1-113 repeatedly refers to ‘this code,’ it is plainly referring to the Colorado Election Code.” *Frazier v. Williams*, 401 P.3d 541, 544 (Colo. 2017). Nevertheless, the Colorado Supreme Court has observed that “there are some aspects of the Code that simply cannot

be subject only to substantial compliance," and instead require a strict compliance standard. *Griswold v. Ferrigno Warren*, 462 P.3d 1081, 1085 (Colo. 2020). Because there is no controlling judicial precedent, the Court must assess whether strict or substantial compliance applies to Intervenor's actions under CDP 4.8.

i. Substantial Compliance

In *Loonan v. Woodley*, the petitioners seeking an amendment to the Colorado Constitution circulated a petition using an incorrect affidavit form, such that none of the affidavits "included a statement that the circulator 'read and understands the laws governing the circulation of petitions.'" 882 P.2d 1380, 1383 (Colo. 1994). The court acknowledged "the common statutory goal of inhibiting fraud and mistake" between the right to vote and the right of initiative and referendum and determined that the substantial compliance standard was appropriate. *Id.* at 1384. A statute's purpose, and whether a standard either aligns or contravenes that purpose, may be dispositive. See *City of Aurora v. Acosta*, 892 P.2d 264, 270 (Colo. 1995) (stating that "the dispositive consideration is whether the purpose of the disclosure provision is substantially achieved despite the district's literal noncompliance."); *Colorow Health Care, LLC v. Fischer*, 420 P.3d 259, 262-63, 264 (Colo. 2018) (in deciding whether to apply a strict or substantial compliance standard under the Health Care Availability Act, the court found, where direction is absent, the proper inquiry is "which standard better effectuates the General Assembly's purpose in enacting [the statute].").

In *Meyer v. Lamm*, Lamm contested the Secretary of State's instructions concerning the removal of certain write-in ballots during a ballot recount. 846 P.2d 862, 865 (Colo. 1993). The court observed that "a rule of strict compliance" with naming requirements in the Election Code "might well cause the two statutes in question, as applied, to unreasonably burden a voter's right

to cast a vote.” *Id.* at 876. This was particularly true where removing ballots discounts a voter’s clear intent to vote for a particular candidate. *Id.* at 874-75. The court determined that there was substantial compliance with the Election Code, guided by “the principle that statutes must be construed in such manner as to avoid potential constitutional difficulties.” *Id.* at 876. The court added that, “[t]he presumption of constitutionality accorded all statutes also assumes that the legislative body *intends the statutes it adopts to be compatible with constitutional standards.*” *Id.* (emphasis added).

ii. Strict Compliance

In *Griswold v. Ferrigno Warren*, a candidate for the U.S. Senate asserted that the pandemic interfered with her ability to meet the signature quantity requirement prescribed under the Election Code. 462 P.3d 1081, 1082 (Colo. 2020). The candidate argued that, given the unprecedented nature of the pandemic, the signatures that she collected constituted “substantial compliance” with the Code. *Id.* The court was unpersuaded, finding that the structure of the Election Code’s signature requirement – in combination with language deeming a petition not meeting the requirement was not “legal” – supported the conclusion the requirement was mandatory. *Id.* at 1085 This analysis, prevented the signature requirement from becoming “technical requirement” that could be dismissed in the face of substantial compliance. *Id.* at 1085-87.

Similarly, in *Kuhn v. Williams*, the petitioners challenged the signatures collected by a non-resident petition circulator for a Republican candidate. The court observed that “residency is not a mere technical requirement that is subject to substantial compliance. A person either is a resident for purposes of the Election Code or he is not.”² Here, there is no dispute that Intervenor is a resident of the state of Colorado.

² Note that this version of the statute and was amended by Laws 2019, Ch. 326 (H.B. 19-1278) § 21, eff. Aug. 2, 2019 to remove the state residency requirement. See *Goodall v. Griswold*, 369 F. Supp. 3d 1144, 1147 (D. Colo. 2019)

Strict scrutiny “is reserved for statutes or state constitutional amendments that discriminate against members of traditional suspect classes or infringe on any fundamental constitutional right.” *Evans v. Romer*, 854 P.2d 1270, 1275 (Colo. 1993). Under the strict scrutiny standard “[l]aws that are subject to strict scrutiny review will be sustained only if they are supported by a compelling state interest and narrowly drawn to achieve that interest in the least restrictive manner possible.” *Id.* In sum, strict scrutiny is typically reserved for issues that transcend mere “technical deficiencies.”

iii. Strict vs. Substantial Compliance Conclusion

The Court construes C.R.S. §§ 1-4-402(d)(I) and (II) in a manner that is constitutional and does not contravene the purpose of the statute or intent of the General Assembly. To the extent that affiliation and residency requirements add prerequisites to candidate eligibility already prescribed under the Article I of the U.S. Constitution, the Court finds no compelling state interest and applies a “substantial compliance” standard that is compatible with constitutional standards. The Court further concludes that this standard does not contravene the legislative purpose underlying the Election Code, does not encourage fraud or exploitation of the voting system, or otherwise unduly restrict the franchise.

b. Substantial Compliance

The Colorado Supreme Court has established a three-pronged test for a court to consider whether a party has “substantially complied” with a regulation: (1) the extent of noncompliance; (2) the purpose of the applicable provision and whether that purpose is substantially achieved despite the alleged noncompliance; and (3) whether there was a good faith effort to comply or

(holding the residency requirement to be a violation of the First Amendment of the U.S. Constitution). This history encourages the Court to construe the Election Code in a manner that is constitutional.

whether noncompliance is based on a conscious decision to mislead the electorate. *Meyer*, 846 P.2d at 875.

i. Degree of Noncompliance

Under CDP Rule 4.8, for Intervenor to be certified on the Vacancy Election ballot, Intervenor is required to be a registered Democrat and a resident of the CD by January 1, 2024. Intervenor became a registered member of the Colorado Democratic Party on December 15, 2023, and her party affiliation was recorded in the statewide voter registration system on December 16, 2023. Further, Intervenor became a Colorado resident in October of 2023. Intervenor has complied with the express requirements of CDP Rule 4.8.

Petitioner avers that because Intervenor has not been a registered Colorado Democrat for twelve continuous months, Intervenor is ineligible to be certified on the Vacancy Election ballot. Although the Court has found that CDP Rule 4.8 applies to this dispute and that Intervenor has, at minimum, substantially complied with the residency and party affiliation requirements of CDP Rule 4.8, the Court will nevertheless entertain Petitioner’s argument.

The Court disagrees with Petitioner’s argument that the CDP Rules specifically require continuous Colorado Democratic Party affiliation to be eligible for a congressional vacancy election nomination. In the first rule of the CDP Rules, the CDP specifically notes that, “[t]he legal name of the organization shall be the Democratic Party of Colorado, herein referred to as the Party, Colorado Democratic Party, or CDP.” CDP Rule 1.1.

Noticeably, in both CDP Rule 4.8 and CDP Rule 4.9, there is no reference to “the Party,” “Colorado Democratic Party,” or “CDP.” Rather, CDP Rule 4.8 and CDP Rule 4.9 merely require that the potential candidate be a “registered Democrat.”

For reference, a search of the CDP Rules shows that the term “the Party” was used 81 times, the term “Colorado Democratic Party” was used 84 times, and the term “CDP” was used 29 times. Conversely, “Democrat” was only referenced five times. The Court finds the Democratic Party’s choice of wording significant and that the choice of wording evidences that party affiliation requirements are based on Democratic Party membership, not Colorado Democratic Party membership. *See also Ad Two, Inc. v. City and Cnty. of Denver ex rel. Manager of Aviation*, 9 P.3d 373, 376 (Colo. 2000) (“Written contracts that are free from ambiguity will be found to express the intention of the parties and will be enforced according to their plain language.”); *cf. Dep’t of Revenue v. Agilent Tech., Inc.*, 441 P.3d 1012, 1016 (Colo. 2019) (“In addition, we must respect the legislature’s choice of language, and we will not add words to a statute or subtract words from it.”).

The Court finds that if there is any noncompliance by Intervenor with CDP Rule 4.8, the extent of Intervenor’s noncompliance is minimal. The Court further finds that the CDP Rules do not require a citizen to be a registered Colorado Democrat for twelve months to be eligible for nomination to a congressional vacancy election.

ii. Purpose of the Applicable Provision

States and political parties have a compelling interest in enforcing party affiliation requirements to “maintain the integrity of the various routes to the ballot.” *Colo. Libertarian Party v. Sec’y of State of Colo.*, 817 P.2d 998, 1004 (Colo. 1991). Party affiliation and state residency requirements promote the stability of the state’s election process but are not designed to unfairly or unnecessarily impinge upon a party’s association rights. *Id.*

Intervenor has been a resident of Colorado since October 2023, and has been a registered Colorado Democratic Party member since December 2023. Before moving to Colorado,

Intervenor was a registered Democrat in college, and was previously registered as a Democrat when she resided in Delaware and Pennsylvania. Intervenor lived in Virginia before moving to Colorado. Virginia does not register or track votes by political party. However, Intervenor contributed to Democratic campaigns and attended Democratic events while she resided in Virginia.

Given Intervenor's longtime commitment to the Democratic Party and her continuous residency in Colorado for the past several months, the Court finds that Intervenor's inclusion on the Vacancy Election ballot would substantially achieve the purpose of maintaining the integrity of the election.

iii. Good Faith Effort

Petitioner, Respondent, and Intervenor do not dispute that there was a good-faith effort by Intervenor to comply with applicable election laws and that Intervenor has not consciously acted to mislead the electorate. Further, there has been no evidence presented to the Court that would lead the Court to find that Intervenor has not acted in good faith.

In conclusion, the Court finds that: (1) to the extent noncompliance exists, it is minimal; (2) the purposes of residency and party affiliation requirements are fulfilled if Intervenor is included on the Vacancy Election ballot; and (3) Intervenor has presented a good faith effort to comply with applicable regulations and has not acted to mislead the electorate. The Court finds and concludes that Intervenor has substantially complied with CDP Rule 4.8 and has met the residency and party affiliation requirements to be placed on the Vacancy Election ballot.

IV. Constitutional Issues

Intervenor argues that while the Court cannot assess the constitutionality of C.R.S. § 1-4-402 during a C.R.S. § 1-1-113 proceeding, the Court retains the authority to review constitutional

issues. Intervenor contends that it would be a constitutionally wrongful act for Respondent to refuse to certify Intervenor on the Vacancy Election ballot.

Petitioner and Respondent disagree with Intervenor. Respondent argues that actions brought under C.R.S. § 1-1-113 are summary proceedings intended to provide expedited answers to parties, and as such, constitutional issues are outside the scope of what the Court can properly consider. Respondent explains that C.R.S. § 1-1-113 applies to an official's duties under the Colorado Election Code, and Respondent's alleged duties in this case do not fall under the Colorado Election Code.

Petitioner similarly argues that the limited scope of a C.R.S. § 1-1-113 proceeding allows a Court to consider matters of statutory interpretation, but a Court cannot consider policy disputes.

First, because the Court has previously found that CDP Rule 4.8 applies and that Intervenor has substantially complied with the requirements of CDP Rule 4.8, Intervenor's constitutional arguments are moot. However, for the sake of being thorough, the Court will briefly address whether Intervenor's constitutional challenges are properly presented to the Court.

C.R.S. § 1-1-113 proceedings are designed to quickly resolve challenges brought by electors, candidates, and other designated officials prior to election day. *Frazier*, 401 P.3d at 544. Due to the inherent time constraints of these expedited proceedings, the Colorado Supreme Court has found that only issues related to the Colorado Election Code, and not constitutional issues, may be brought under C.R.S. § 1-1-113. *Id.* at 542. *See also Kuhn v. Williams*, 418 P.3d 478, 489 (Colo. 2018) (Holding that the court lacked jurisdiction under C.R.S. § 1-1-113 to consider an affirmative defense regarding a statute's alleged unconstitutionality.); *see also Anderson v. Griswold*, 543 P.3d 283, 311 (Colo. 2023) *rev'd on other grounds by Trump v. Anderson*, 601 US 100 (2024) (“[C]onstitutional challenges to provisions of the Election Code fall outside the scope of

a proper C.R.S. § 1-1-113 challenge because these expedited statutory proceedings entertain only one type of claim – election officials’ violations of the Election Code – and one type of injunctive relief – an order compelling substantial compliance with the Election Code.”).

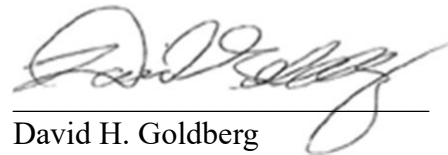
Therefore, although Intervenor’s constitutional arguments are now moot because of the Court’s previous findings and conclusions, Intervenor’s constitutional challenges are nevertheless not properly before the Court under C.R.S. § 1-1-113.

Conclusion

Petitioner’s Verified Petition Pursuant to C.R.S. § 1-1-113 is Denied.

SO ORDERED: April 24, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David H. Goldberg", is written over a horizontal line.

David H. Goldberg
District Court Judge