

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

LORENA GARCIA,
LORENA FOR COLORADO,

Plaintiffs,

v.

JENA GRISWOLD, Colorado Secretary of State, in her official capacity,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Lorena Garcia, candidate for U.S. Senate, and her candidate committee, Lorena for Colorado, bring this complaint for declaratory relief against Secretary of State Jena Griswold, in her official capacity. Plaintiffs seek a declaratory judgment from this Court concluding that the State's requirement that she strictly comply with the election code in light of the COVID 19 pandemic (as announced by the Colorado Supreme Court yesterday, May 5, 2020, in reversing a District Court order that she be placed on the ballot) violates her First and Fourteenth Amendment rights and that she has substantially complied with the laws and regulations regarding ballot access. Plaintiffs also seek injunctive relief in the form of an order that her name be placed on the Democratic primary ballot for U.S. Senate.

By statute, the Secretary of State is required to certify the primary ballot tomorrow, May 7, 2020, absent a court order delaying the certification. Plaintiffs will be filing today a motion for temporary restraining order and preliminary injunction after conferring with

counsel for the Secretary.

In support of this complaint, Plaintiffs states as follows:

INTRODUCTION

1. Lorena Garcia is a candidate for U.S. Senate in the state of Colorado. Colorado law provides two ways in which a candidate for this office may access the ballot for the primary: (1) the candidate may proceed through the caucus and assembly process and must receive 30% of the State Assembly vote to be placed on the ballot; or (2) the candidate may petition on the ballot by obtaining signatures from 10,500 registered Democrats in the state, with the signatures distributed with 1,500 signatures in each of Colorado's 7 Congressional Districts. Alternatively, a candidate may pursue both in which case, he or she must obtain the 10,500 signatures (again, distributed with 1,500 per CD) and receive 10% of the State Assembly vote. Ms. Garcia elected to proceed by the only petition route.

2. Of the remaining candidates in the U.S. Senate race, Ms. Garcia was the first candidate to file to run, in November of 2018.

3. Ms. Garcia intends to access the ballot by petition, and by a primarily volunteer effort. To that end, her campaign recruited close to 200 volunteers, of which more than 150 were actively involved in getting signatures to get her on the ballot.

4. As explained below, the COVID 19 crisis seriously hampered Ms. Garcia's ability to collect signatures to gain access to the ballot. Staff and volunteers were concerned about the safety of collecting signatures, with respect to themselves, their families, and the potential petition signers. Large events which would have likely yielded many signatures were cancelled, public buildings were closed, and individuals were far less likely to answer their doors.

5. Despite the challenges presented by COVID 19, Ms. Garcia nonetheless submitted 13,812 signatures, of which the Secretary of State's Office ("SOS") concluded that 9,428 were valid, which was 89.79% of the 10,500 required signatures. Ms. Garcia's petitions met the required 1,500 signatures in Congressional Districts 1 and 2. The remaining Congressional Districts each had over 1,000 valid signatures, which was more than 66% of the requirement for those 5 Districts.

6. Ms. Garcia challenged the Secretary's insufficiency determination in Denver District Court, *Lorena Garcia v. Jena Griswold*, Civ. Action No. 2020CV31467. That case was transferred to Hon. Christopher Baumann, who had presided over *Michele Ferrigno Warren v. Jena Griswold*, Civ. Action No. 2020CV31077. In that case, the Court concluded that Ms. Warren had substantially complied with the petitioning requirements by obtaining just over 50% of the required number of signatures.

7. After an evidentiary hearing, the Denver District Court concluded that Ms. Garcia had substantially complied, and should be placed on the primary ballot. The Court also ruled that a number of signatures that Ms. Garcia challenged were in fact valid.

8. The Secretary of State appealed that decision a few hours after the Colorado Supreme Court ruled that the Ferrigno Warren decision should be reversed because "strict compliance" was required by the Election Code, even though the Secretary had not argued that position below.

9. Just 16 hours after the Secretary filed her appeal in Ms. Garcia's case, the Colorado Supreme Court also reversed the decision in Ms. Garcia's case, without even affording her an opportunity to file an answer brief.

10. The Colorado Supreme Court's adoption of a strict compliance test violates Ms.

Garcia's federal constitutional rights, and Ms. Garcia asks the Court to order that she be placed on the ballot.

PARTIES

11. Lorena Garcia is a candidate for U.S. Senate for the Democratic Party, and a resident of the County of Adams, State of Colorado.

12. Lorena for Colorado is the authorized and principal campaign committee of Lorena Garcia, and is registered with the Federal Election Commission as a federal political committee with FEC Committee ID No. C00691089, with a mailing address of P.O. Box 11428, Denver, Colorado 80211.

13. Jena Griswold is the Secretary of State for the State of Colorado. As the Colorado Secretary of State, Ms. Griswold 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." C.R.S. § 1-1-107. She is sued in her official capacity.

JURISDICTION AND VENUE

14. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiffs challenge Colorado law as violating Plaintiffs' rights guaranteed under the First and Fourteenth Amendments to the U.S. Constitution.

15. Federal question jurisdiction is also appropriate because this action is brought pursuant to 42 U.S.C. § 1983 and because Colorado has violated Plaintiffs' constitutional rights under the color of state law. *See* 28 U.S.C. § 1343; *see also id.* § 1331.

16. This Court is authorized to issue the requested declaratory and injunctive relief

pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983 and Federal Rule of Civil Procedure 57 and 65.

17. This Court is authorized to award attorneys' fees pursuant to 42 U.S.C. § 1988.

18. Venue is proper in this Court because the defendant is the Colorado Secretary of State, who resides and has her office in the State of Colorado. Ms. Garcia also resides within the State of Colorado. *See* 28 U.S.C. § 1391(b)(1).

19. In addition, all the events giving rise to Plaintiffs' claims occurred within the State of Colorado. *See id.* § 1391(b)(2).

FACTUAL BACKGROUND

A. Ms. Garcia's U.S. Senate Race

19. Ms. Garcia has been a candidate for U.S. Senate in Colorado since November of 2018.

20. Since the beginning, Ms. Garcia's campaign (hereinafter "the Campaign") has been a grassroots campaign and has operated largely on the support of volunteers all over Colorado, with three exceptions, who are paid staff members: (1) a Campaign Manager, Chris Meisner, who joined the team in April of 2019; (2) a Field Manager, Hayley Banyai-Becker, who joined in September of 2019; and (3) a Southern Colorado Field Manager Vicente Martinez-Ortega, who joined in January of 2020.

21. The Campaign was committed to raising the funds needed to operate a grassroots campaign. Since November of 2018, the campaign has raised a total of \$110,384.

22. In spite of the Campaign's shoestring budget, Ms. Garcia's campaign was able to reach voters all across the state multiple times, knock thousands of doors, and support 13 down ballot candidates through the 2019 elections through volunteer opportunities. The Campaign has also built

an email list of almost 32,000 contacts, participated in 18 candidate forums across the state, and held hundreds of local house parties and meet and greets.

23. The campaign has also built a social media following of more than 3,000 on Facebook, more than 4,500 on Twitter, and over 1,000 on Instagram.

24. Finally, as explained in more detail below, the campaign collected 13,812 signatures from all around the state in order to gain ballot access.

B. Ms. Garcia's Ballot Access Plan

25. Ms. Garcia had hired a Field Manager to organize and manage the volunteer base, including the recruitment and training of new volunteers. The role of Field Manager was specifically designed in a way to facilitate and support grassroots petition circulation, as the campaign chose to run an entirely volunteer based signature collection process (aside from the three paid campaign staff members), instead of hiring a petition collecting firm.

26. To that end, the campaign recruited 192 volunteers around the state, with between 16 and 35 active volunteer circulators in each of the 7 Congressional Districts in Colorado (for CD 1: 31 volunteer circulators; for CD 2: 23 volunteer circulators; for CD 3: 22 volunteer circulators; for CD 4: 22 volunteer circulators; for CD 5: 16 volunteer circulators, for CD 6: 20 volunteer circulators, for CD 7: 19 volunteer circulators).

27. Volunteers were organized within networks in their relative area (Denver Metro Volunteer Group; Boulder County Volunteer Group; Western Slope Volunteer Group; Southern Colorado Volunteer Group - Colorado Springs & Pueblo; Northern Colorado Volunteer Group - Fort Collins & Greeley; Garfield County Volunteer Group).

28. Volunteers were trained in groups using a powerpoint with slides copied directly from the Secretary of State's training, which explained the laws of petitioning in detail. The training included compliance with applicable rules, including that circulators verify the signer was a registered Democrat for at least 29 days in the state of Colorado and that they had not signed a petition for any other United States Senate candidate. Petitioners were trained to always have their volunteer badge visible on their body while collecting, not to interfere with any other candidate's petitioners, and not to misrepresent the candidate, Lorena Garcia, themselves, or any other candidate's petitioning.

29. Thus, the Campaign had organized an in-depth and ambitious field plan to ensure that they collected the valid number of signatures needed to make the ballot, with volunteer petitioners agreeing to collect signatures to make this a reality.

30. The Campaign intended to collect signatures in a number of ways, including by going to events that would likely be attended by registered democrats, by collecting signatures in public places, and by going door to door.

31. In preparation of petition collection, the Campaign identified public locations and events with heavy foot traffic in order to maximize their signature gathering efforts.

32. The Campaign also purchased the Voter Action Network (VAN) platform developed by the Democratic Party, so that they could develop voter contact lists of registered Democrats for door-to-door canvassing.

33. On January 2, 2020, the Campaign emailed the SOS to obtain petition format information and formally state its intent to circulate petitions on behalf of Lorena for Colorado to nominate Lorena Garcia to the Democratic Primary Ballot for the office of U.S. Senate.

34. The Petition Format was created January 3, 2020, and the Campaign submitted a hard copy in person to the SOS's office for review.

35. On January 6, 2020, the Campaign submitted its Candidate Petition Registration Form.

36. On January 7, 2020, the Campaign received the Petition Format Approval Letter, along with Candidate Petition Printing Instructions. In the same email, the SOS issued a Petition Entity License to Lorena for Colorado. This license allowed the Campaign to hire paid circulators, if needed, and ensured that the three paid staff members were in full compliance with Article 40 of Title 1, C.R.S.

37. Prior to the first day for collecting signatures, January 21, 2020, the Campaign printed hundreds of petition sections in-house and distributed them to volunteers around the state.

C. Ms. Garcia's Substantial Progress in Obtaining Signatures

38. In January and February, the Campaign focused primarily on events and heavy traffic locations to maximize the signature gathering potential, because more signatures could be gathered per hour than by canvassing door to door. These locations included household meet and greets and signature signing parties; presidential debate watch-parties and rallies; public universities and college campuses; county libraries, recreation centers, DMVs and RMVs; outside of grocery stores, bars, concerts, ski resorts, restaurants, and any other gatherings or public areas

where lines were formed; U.S. Senate debates, forums, and fireside chats; organized protests and strikes; and events, such as the Denver Chalk Walk, marches, Democratic committee meetings, and other political organization meetings; and fundraisers, drag shows, voting mixers, and parades.

39. The Campaign created events for petition gathering opportunities via Facebook, emails, website events calendar, and word-of-mouth. The Campaign also identified like-minded candidates who were going door-to-door and to high volume events, and encouraged those volunteers to circulate the Campaign's petitions, along with their other candidate's petitions and/or literature.

40. In addition, throughout the entire petition circulation process, the Campaign had volunteer signature verifiers tracking and validating signatures in order to inform the Campaign of accurate numbers so that the Campaign would know which Congressional Districts (CD) to prioritize for signature gathering.

41. The initial plan was to circulate petitions up until the March 17, 2020 deadline, having volunteer notaries across the state on stand-by, or until the Campaign was confident that we had enough acceptable signatures to meet the petition signature thresholds for each CD.

42. The Campaign had identified March as its busiest month for signature gathering due to some high profile and high volume events, including the precinct caucuses, as well as the additional urgency for the final Get Out The Vote (GOTV) efforts.

43. On peak signature collecting days, the Campaign had dozens of volunteers collecting in one location together or at various locations across the state. For example, on Sunday, February 16th, the Campaign had 35 volunteers actively collecting at the Bernie Sanders rally held in Denver.

On Saturday, February 29th, they had 15 volunteers join for a group canvass in Pueblo, with smaller group canvasses also occurring in other parts of the state.

44. The Campaign collected 1,139 signatures at the Bernie Sanders rally, which had about 12,000 attendees. The Campaign also collected 710 signatures at an Elizabeth Warren rally of around 7,000 attendees. Thus, the signature gatherers at these two events collected signatures from nearly 10% of all attendees.

45. Before coronavirus became a prominent issue in the state, approximately 10 signatures per hour had been the campaign's average rate for an individual collecting while going door-to-door, regardless of the city.

46. For example, on February 22, 2020, Youth Outreach Director Amelia Linett canvassed in Greeley and collected around 10-12 signatures per hour. Prior to the outbreak, Campaign Manager Chris Meisner would typically obtain about 7 signatures an hour.

47. As planned, the paid staff also participated in the signature gathering. Field Manager Benyai-Becker collected almost 2,000 signatures on her own across the 57 days of the petitioning period.

48. From March 1, 2020 through March 9, 2020, the campaign averaged 333 reviewable signatures per day. As explained below, that was reduced by 45% in the last week of the Campaign, when there would otherwise have been anticipated to be a significant increase in signature collection.

C. The Coronavirus Timeline in Colorado.

49. On December 31, 2019, the World Health Organization received its first report of a pneumonia of unknown cause, which later came to be known as Coronavirus (COVID-19).

50. On March 5, 2020, Colorado officials announced the first two positive cases of COVID-19 in the state.

51. On March 10, 2020, Governor Polis declared a state of emergency due to COVID-19.

52. On March 13, 2020, Colorado reported its first death related to COVID-19.

53. On March 25, 2020, Governor Polis issued a statewide “stay at home” order.

D. The Coronavirus Pandemic’s Effect on the Campaign’s Signature Gathering

54. After concerns about the coronavirus grew in early March, and in particular after the Governor had signed the State of Emergency declaration on March 10, 2020, and many more people had started to self-quarantine, the success rate of collecting signatures dropped significantly.

55. One of the first efforts to collect signatures after the declared emergency was on March 12, 2020, and Youth Outreach Coordinator Amelia Linett collected signatures in Colorado Springs on that day. There were several specific encounters that she had with voters that made it clear to her that people were reluctant to open the door to a petitioner because of coronavirus. One couple, when she approached their door, got angry at her for “trying to pass around a pen” during a pandemic and closed their door before she had the chance to talk to them about the candidate or to explain that she was giving people the option of signing with their own pens. Another older man

opened his door and accused her of violating his self-quarantine, telling her that it was unethical to continue petitioning during a pandemic. On March 12th, she collected 5 signatures per hour, at most.

56. Within three days after Governor Polis declared the State of Emergency issued on March 10, 2020, the total number of volunteer petitioners out collecting dropped from 156 to only 79 individuals, as follows: CD 1: 14; CD 2: 9; CD 3: 12; CD 4: 13; CD 5: 7, CD 6: 11, and CD 7: 13.

57. In other words, because of the State of Emergency, 71 of the volunteers were no longer willing or able to collect. Many told the Campaign that this was because they needed to protect themselves, because their counties had stay at home orders issued (*e.g.*, Eagle), or because they did not want to risk the health of other Coloradans.

58. Moreover, with respect to door-to-door canvassing, far fewer people were coming to the door, despite the fact that far more people than normal appeared to be home because of the pandemic.

59. Campaign Manager Chris Meisner saw his collection average fall from 7 signatures per hour, to just 7 signatures over a 3-hour shift. This represented a 66% decline, which was comparable to other circulators' experiences.

60. After the State of Emergency, the Campaign made significant changes to the field plan to ensure that the safety of volunteers who were still willing to go out and collect signatures and other Coloradans was put first, with the restraints the law provided.

61. The Campaign switched all signature collecting to door to door canvassing to reduce the number of individuals with whom they were in contact at a single time. They also asked all

volunteers to start carrying hand sanitizer or wipes and wear gloves while collecting at doors and to suggest that signers use their own pen and if they would not, then wipe and sanitize the pen after every use.

62. Around March 12, campaign staff heard that there was a possibility of a 2-week extension of the March 17th deadline coming from the Legislature. The SOS sent an email to the same effect to campaigns with outstanding petitions on March 13. Such an extension was included in a House Bill that made certain modifications to the Assembly process, but was removed by the Senate and was not signed into law.

63. After it became clear that campaigns that were petitioning to get onto the ballot were not going to be given an extension of the signature deadline, or any other form of relief, the Campaign began rapidly trying to notarize and collect the outstanding petitions.

64. COVID-19 severely impacted the ability to notarize and collect the signature packets in the final two weeks, which was the crucial time for these tasks to occur. Some Volunteer Circulators expressed concerns about risking their health in order to go to a bank for a notary or meet up with volunteer notaries.

65. As the Campaign was attempting to collect all of the petition packets, 36 of the 192 trained circulators either did not respond or indicated that they did not have any completed packets. Of those 36, 5 later confirmed that they had packets with signatures. Only after the Campaign shared with them their legal responsibility to have the packets notarized and returned, did 3 of those 5 volunteers notarize and return their packets. The Campaign was still unable to retrieve the packets from 2 of the 5 volunteers.

66. The Campaign took extreme safety measures to get packets notarized and returned, while at the same time making sure volunteers and volunteer notaries were as safe as possible under the circumstances.

67. Despite the changes made to the field plan with regards to the COVID emergency, it was extremely difficult and dangerous to keep going into the field, let alone expect volunteers to do the same.

68. Successful signature collecting significantly decreased because of COVID-19 for the volunteers and staff who were willing to keep collecting. People no longer wanted to open their doors, out of fear for their health.

69. By the final weekend, on average only about 2 people were answering their doors per hour, when previously, the Campaign had obtained several signatures an hour. It was extremely difficult to get even the people who answered their door to sign at that point. The circulators had to show them sanitation items and other necessary precautions.

70. As an example, on Sunday, March 15th, Ms. Linett canvassed with Field Manager Hayley Banyai-Becker in Longmont and after two hours, she had only gotten five people to sign.

71. In the last week of the petitioning period, site-based collection became more difficult, and eventually, practically impossible. Before the pandemic, the campaign had relied heavily on libraries, recreation centers and civic centers as collection sites. Site-based and event-based collection had been much more common and successful for the team than door-to-door canvassing. Circulators had collected outside of libraries in Boulder, Aurora, Arvada, Colorado Springs, Carbondale, Longmont, Lafayette, and Westminster, and elsewhere, and found them to

be one of the most productive places to collect signatures. However, libraries and other public buildings began to close in the days after the State of Emergency, which deprived the Campaign of one of its primary means of collection in the final weekend before signatures were due to the Secretary of State.

72. Additionally, many events where the Campaign planned to collect signatures were canceled or had a significantly reduced turnout. The precinct caucuses held on March 7 were not well attended as they had been in the past. Most importantly, all St. Patrick's Day parades were canceled. According to the Denver Post, the parades for St. Patrick's Day in 2018 drew an estimated 225,000 people. As mentioned above, at a Bernie Sanders rally in February, which had an estimated attendance of 12,000 people, the Campaign collected over 1,000 signatures. Extrapolating from this, the volunteer team likely would have been able to collect multiple thousands of signatures from the 2020 St. Patrick's Day parades alone, which likely would have been more than enough to meet the threshold for valid signatures in all of the 7 congressional districts.

73. Furthermore, debate watch parties for the presidential debate on March 16th were canceled. Two campaign circulators had collected at watch parties for the previous debates on February 7th and February 25th, where they were able to collect around 15-20 signatures each. The Denver Area Labor Federation's candidate forum, scheduled to take place on March 14th, was also canceled. From past experience, these candidate forums were ideal places to collect, with each volunteer expected to collect at least 20 or 30 signatures.

74. From March 1, 2020 through March 9, 2020, the Campaign averaged 333

reviewable signatures per day. From March 10, 2020 through March 17, 2020, they were averaging just 183 reviewable signatures per day. This represented a 45% reduction in reviewable signature gathering ability during a time period where they were planning to have the highest rate of signature collection.

75. In sum, the coronavirus pandemic significantly impeded the Campaign's ability to collect signatures during early March and in particular the last week of the petitioning period.

76. Despite these serious challenges, the Campaign timely submitted 13,812 signatures to the SOS. The SOS's review yielded the following, as set forth in the insufficiency notice dated April 20, 2020:

Petition Verification Summary - Garcia:

Congressional District 1 (2,566 signatures submitted)	
Invalid signatures	588
Valid signatures	1,978
Congressional District 2 (1,967 signatures submitted)	
Invalid signatures	401
Valid signatures	1,566
Congressional District 3 (1,839 signatures submitted)	
Invalid signatures	422
Valid signatures	1,417
Congressional District 4 (1,455 signatures submitted)	
Invalid signatures	312
Valid signatures	1,143
Congressional District 5 (1,412 signatures submitted)	
Invalid signatures	370
Valid signatures	1,042

Congressional District 6 (1,339 signatures submitted)	
Invalid signatures	286
Valid signatures	1,053
Congressional District 7 (1,520 signatures submitted)	
Invalid signatures	291
Valid signatures	1,229
Total (13,812 signatures submitted)	
Total invalid signatures	4,384
Invalid signatures (congressional district known)	2,670
Invalid signatures (congressional district not known)	1,714
Total valid signatures	9,428

E. Ms. Garcia’s Pursuit of Remedies in State Court.

77. On April 24, 2020, four days after receiving the insufficiency notice, Ms. Garcia filed a petition for review in Denver District Court. In that petition, she sought an order that she had substantially complied with the petition gathering requirements and also for the District Court to review the validity of rejected signatures.

78. Upon the joint motion of the parties, the case was transferred to the Hon. Chris Baumann, who had presided over the *Ferrigno Warren* case.

79. The Court began an evidentiary hearing on Wednesday, April 29, 2020, that continued into the late night hours. However, the Judge identified an issue with the Court’s FTR (court reporting device) after 9 p.m., and the hearing could not be completed.

80. The following morning, the Judge informed the parties that none of the hearing testimony the day before had been recorded, and the parties had to conduct and complete the hearing over again on April 30, 2020.

81. At the conclusion of the hearing on April 30, 2020, the Court ruled from the bench that Ms. Garcia should be placed on the ballot because she had substantially complied and also that she had carried her burden of showing that most of the 200+ signatures she was challenging were valid, as follows:

Congressional District 1		Percentage of total needed
Valid signatures (adjusted)	1,984	132.2%
Congressional District 2		
Valid signatures (adjusted)	1,575	105.2%
Congressional District 3		
Valid signatures (adjusted)	1,460	97.3%
Congressional District 4		
Valid signatures (adjusted)	1,193	79.4%
Congressional District 5		
Valid signatures (adjusted)	1,081	72.1%
Congressional District 6		
Valid signatures (adjusted)	1,085	72.3%
Congressional District 7		
Valid signatures (adjusted)	1,257	83.8%
Total		
Total valid signatures	9,639	91.8%

82. On Monday, May 4, 2020, at 2:55 p.m., the Colorado Supreme Court issued an order vacating the *Ferrigno Warren* decision, and deciding that strict compliance was required, even though the Secretary had agreed that substantial compliance was the appropriate standard to apply and none of the parties had briefed the strict compliance issue.

83. On Monday May 4, 2020, at 11:15 p.m., the Secretary filed an appeal with the Colorado Supreme Court in Ms. Garcia's case.

84. On Tuesday, May 5, 2020 at 3:34 p.m., without providing Ms. Garcia any opportunity to file an answer brief or otherwise be heard, the Colorado Supreme Court reversed the order of the District Court.

85. Ms. Garcia is filing this complaint the following day, May 6, 2020, given that the currently statutory deadline for the Secretary to certify the ballot is tomorrow, May 7, 2020.

APPLICABLE LAW

A. Colorado Election Law

86. Section 1-1-103(1) of Uniform Election Code of 1992, which applies to primary elections, provides that "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." Section 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."

87. Section 1-1-113(1) provides:

(1) 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. The order shall require the person charged to forthwith perform the duty

or to desist from the wrongful act or to forthwith show cause why the order should not be obeyed. The burden of proof is on the petitioner.

88. Pursuant to section 1-4-103, “All candidates for nominations to be made at any primary election shall be placed on the primary election ballot either by certificate of designation by assembly or by petition.”

89. Section 1-4-502(1) provides in part, “[N]ominations for United States senator . . . may be made by primary election under section 1-4-101 or by assembly or convention under section 1-4-702 by major political parties, by petition for nomination as provided in section 1-4-802, or by a minor political party as provided in section 1-4-1304.”

90. Section 1-4-801 provides that “[e]very petition in the case of a candidate for the office of governor or the office of United States senator must be signed by at least one thousand five hundred eligible electors in each congressional district. . . .” *See also* 1-4-902(1) (“The signatures to a petition [for candidacy] need not all be appended to one paper, but no petition is legal that does not contain the requisite number of names of eligible electors whose names do not appear on any other petition previously filed for the same office under this section.”).

91. There are 7 Congressional Districts in Colorado, and thus a total of 10,500 valid signatures are required pursuant to 1-4-801.

92. Just before taking a recess in light of the pandemic, the General Assembly revised portions of this statute in response to the COVID-19 pandemic. House Bill 20-1359 was signed by Governor Polis on March 16, 2020, and provides in part (with new language in capital letters, as reflected in the Bill itself):

1-4-801. Designation of party candidates by petition – repeal.

(5)(a) Party petitions shall not be circulated nor any signatures be obtained prior to the third Tuesday in January. EXCEPT AS PROVIDED IN SUBSECTION (5)(b)(I) OF THIS SECTION, petitions must be filed no later than the third Tuesday in March.

(b)(I) NOTWITHSTANDING SUBSECTION (5)(a) OF THIS SECTION, IN 2020, IF THE DESIGNATED ELECTION OFFICIAL WITH WHOM A PETITION IS TO BE FILED IS UNABLE TO ACCEPT THE FILING BECAUSE OF CLOSURES OR RESTRICTIONS DUE TO PUBLIC HEALTH CONCERNS, THE DESIGNATED ELECTION OFFICIAL MAY EXTEND THE DEADLINE TO FILE THE PETITION OR DESIGNATE AN ALTERNATE LOCATION FOR FILING THE PETITION OR BOTH; EXCEPT THAT A SIGNATURE GATHERED AFTER THE THIRD TUESDAY IN MARCH IS INVALID AND SHALL NOT BE COUNTED.

(II) THIS SUBSECTION (5)(b) IS REPEALED, EFFECTIVE DECEMBER 31, 2020.

93. For candidates seeking access to the primary election ballot of a major political party, the Colorado Secretary of State is required to approve a petition format, and then review all petition information submitted by the candidate, including verifying the information in the petition against voter registration records and comparing each signature on a candidate petition with the signature of the eligible elector stored in the statewide voter registration system, in order to determine whether a candidate nominating petition is sufficient or insufficient. *See* C.R.S. §§ 1-1-107, 1-4-903, and 1-4-908.

94. Within five days after a finding of insufficiency of a candidate nominating petition by the Colorado Secretary of State pursuant to Colorado Revised Statutes § 1-4-908, a candidate may file a petition for a review of the validity of a candidate nominating petition pursuant to Colorado Revised Statutes § 1-1-113 with the state district court. *See* C.R.S. § 1-4-909(1.5).

95. Colorado Revised Statutes §§ 1-4-801, 902, as interpreted by the Colorado Supreme Court, violate the First and Fourteenth Amendment because the strict compliance with the statutes do not advance any legitimate – let alone compelling – state interest, and violate Plaintiffs’ rights to equal protection and due process.

B. The First Amendment

96. The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” *See* U.S. Const. amend. I.

97. While there is no fundamental right to run for elected office, the Supreme Court has recognized that ballot access laws “place burdens on two different, although overlapping, kinds of rights – the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.” *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968).

98. Ballot access restrictions affect both candidates and individual voters because, absent recourse to state-wide proposals or referenda, “voters can assert their preferences only through candidates or parties or both.” *Lubin v. Panish*, 415 U.S. 709, 716 (1974). “By limiting the choices available to voters, the State impairs the voters’ ability to express their political preferences.” *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979).

99. The First Amendment “was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Meyer v. Grant*, 486 U.S. 414, 421 (1988) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).

100. Thus, Plaintiffs' claim should be decided under the *Anderson-Burdick* test, *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992), which applies strict scrutiny to a State's law that severely burdens ballot access and intermediate scrutiny to a law that imposes lesser burdens. The combination of the State's strict enforcement of the ballot-access provisions and the evolving and worsening pandemic and stay-at-home Orders imposed a severe burden on the Plaintiffs' ballot access. Strict scrutiny applies, and even assuming that the State's interest (*i.e.*, ensuring each candidate has a reasonable amount of support) is compelling, the provisions are not narrowly tailored to the present circumstances. Thus, the State's strict application of the ballot-access provisions is unconstitutional as applied here.

C. The Fourteenth Amendment

101. The Fourteenth Amendment provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

102. This amendment affords Plaintiffs the rights to notice and process before being deprived of a protected interest, as well as a right to be treated equally under the law.

103. Here, the State's refusal to allow any accommodation for the realities of the pandemic for candidates attempting to access the ballot by petition, while making accommodations to candidates attempting to access the ballot by assembly, violates Plaintiffs' rights to equal protection and to procedural and substantive due process.

COUNT I
(Violation of First Amendment, 42 U.S.C. § 1983)

104. Plaintiffs incorporate paragraphs 1 to 103 above.

105. The State's application of strict compliance to the ballot access rules preclude Ms. Garcia from exercising her core political speech and associational rights guaranteed under the First Amendment. It similarly precludes voters who signed her petition and want to vote for her in the primary from doing the same.

106. Because strict compliance with the state statutes imposes severe burdens on the Plaintiffs' ballot access under the conditions of the current election cycle, strict scrutiny applies. Even assuming that the State's interest of ensuring each candidate has a reasonable modicum of support is compelling, the provisions are not narrowly tailored to the present circumstances.

107. Under 42 U.S.C. § 1983, Colorado, under the color of state law, has violated Plaintiffs' constitutional rights.

COUNT II
(Violation of Fourteenth Amendment, 42 U.S.C. § 1983)

108. Plaintiffs incorporate paragraphs 1 to 107 above.

109. The State's refusal to allow for substantial compliance or other accommodation to petitioning candidates that takes into account the pandemic, and the Legislature's decision to provide relief to candidates proceeding through caucus assembly but not petitioning, violates Plaintiff's due process and equal protection rights.

110. Plaintiffs were not given adequate notice and an opportunity to be heard before the State imposed a strict compliance requirement.

111. Although there is no suspect class at issue here, this disparate treatment is not rationally related to a legitimate government interest, and it violates Plaintiffs' rights.

112. Moreover, the Colorado Supreme Court denied Ms. Garcia due process of law by determining that strict compliance was required without affording her the opportunity to file an answer brief or otherwise be heard before adopting a position that was not advocated by any of the parties below or briefed by the Secretary on appeal.

113. Under 42 U.S.C. § 1983, Colorado, under the color of state law, has violated Plaintiffs' constitutional rights.

PRAYER FOR RELIEF

Based on the above allegations, Plaintiffs respectfully request that the Court:

1. Pursuant to 28 U.S.C. §§ 2201(a), 2202, Plaintiffs request that this Court declare that the petitioning requirements in Colorado Revised Statutes § 1-4-801 *et seq.* are unconstitutional as applied to Plaintiffs during this election cycle because they violate Plaintiffs' First Amendment free speech and free associational rights and Fourteenth Amendment equal protection and due process rights.
2. Enter a temporary restraining order precluding the Secretary from certifying the ballot until Ms. Garcia's claims are heard.
3. In the alternative, order that the Secretary of State may certify the ballot by May 7, 2020, with Ms. Garcia's name included as a Democratic candidate for U.S. Senate, with the proviso that Ms. Garcia will voluntarily withdraw her candidacy in writing by a time specified by this Court if it rules in a way that results in Ms. Garcia not qualifying for the ballot, which will result in any votes cast for her in the June 2020 primary election not being counted.
4. Declare that the Petitions submitted by Ms. Garcia are sufficient and that they substantially comply with the law's requirement.
5. Issue an order requiring the Secretary of State to certify Ms. Garcia to the ballot for the Democratic Primary for U.S. Senate.

6. Award Plaintiffs their attorney's fees pursuant to 42 U.S.C. § 1988(b).
7. Award Plaintiffs any other relief that the Court deems just and reasonable.

RESPECTFULLY SUBMITTED this 6th day of May, 2020.

s/ Amy L. Padden

s/ Thomas E.M. Werge

Amy L. Padden

Thomas E.M. Werge

WERGE LAW LLC

2231 North Gaylord Street

Denver, CO 80205

Telephone: 720-507-5008

Fax: 303-586-4900

tom@werge.law

amy@werge.law

Attorneys for Plaintiffs