DISTRICT COURT **CITY & COUNTY OF DENVER, COLORADO** **1437 Bannock Street** **Denver, Colorado 80202**	DATE FILED: May 27, 2020 4:32 PM
Plaintiffs: **DANIEL RITCHIE, an individual, COLORADO CONCERN, a Colorado non-profit corporation,** **v.** **Defendants:** **JARED POLIS, in his capacity as Governor of Colorado, and JENA GRISWOLD, in her capacity as Colorado Secretary of State;** **and** **Plaintiff-Intervenor:** **PROTECTING COLORADO'S ENVIRONMENT, ECONOMY, AND ENERGY INDEPENDENCE.**	▲ **COURT USE ONLY** ▲ **Case Number: 2020CV31708** **Courtroom: 414**

ORDER RE: PLAINTIFFS' FORTHWITH MOTION FOR TEMPORARY RESTRAINING ORDER and VERIFIED COMPLAINT FOR EXPEDITED DECLARATORY RELIEF

THIS MATTER comes before me on Plaintiffs' Forthwith Motion for Temporary Restraining Order and a Verified Complaint for Expedited Declaratory Relief, filed on May 18, 2020. On May 18, 2020, I held a scheduling hearing with Plaintiffs' counsel and the Attorney General's Office, setting this matter for a public hearing on preliminary injunction and/or declaratory relief on May 22, 2020, via Webex.

On May 21, 2020, several briefs were filed:

1. Plaintiffs filed a "Brief for May 22 Hearing;"

2. Amici Curiae "Cross-Ideological Nonpartisan Group Committed to the Rule of Law in Colorado" filed a Brief in Support of Plaintiffs;

3. Governor Polis filed a “Response to Forthwith Motion for Temporary Restraining Order;”

4. Plaintiff-Intervenor Protecting Colorado’s Environment, Economy, and Energy Independence filed a Brief; and

5. Secretary of State Griswold filed a “Hearing Brief of the Secretary of State.”

6. During the Webex hearing held on May 22, 2020, I granted Cross-Ideological Nonpartisan Group Committed to the Rule of Law in Colorado’s Motion for Leave to File an Amicus Brief. I also granted Protecting Colorado’s Environment, Economy, and Energy Independence Unopposed Motion to Intervene.

7. No Parties presented, and I did not hear any additional evidence or testimony during the May 22, 2020 hearing.

8. On May 26, 2020, Plaintiff-Intervenor Protecting Colorado’s Environment, Economy, and Energy Independence filed an Unopposed Motion to Supplement the Record.

9. Having reviewed the record, briefings, and applicable law, I hereby make the following findings of fact, conclusions of law and enter the following **ORDERS**:

I. PARTIES

10. Plaintiff Daniel L. Ritchie is an individual and a registered elector residing in Denver County. Mr. Ritchie serves on the board of Colorado Concern.

11. Plaintiff Colorado Concern, Inc. ("Colorado Concern") is a statewide CEO-based organization devoted to investing in and promoting a pro-business environment through the political process.

12. Defendant Jared Polis is the Governor of Colorado ("Governor Polis") and is sued here in his official capacity as the Governor of Colorado.

13. Defendant Jena Griswold ("Secretary of State Griswold") is the Colorado Secretary of State and is sued here in her official capacity as Secretary of State.

14. Amici Curiae are a group of thirty-nine organizations referring to themselves as the "Cross-Ideological Nonpartisan Group Committed to the Rule of Law in Colorado." A full list of the amici parties can be found in their Motion for Leave to file Brief as Amici Curiae in Support of Plaintiffs, filed on May 21, 2020.

15. Plaintiff-Intervenor Protecting Colorado's Environment, Economy, and Energy Independence ("PCEEEI") is a non-profit organization with a mission to support state and local ballot initiatives that promote a vibrant Colorado economy and oppose those measures that seek to harm Colorado's economy and way of life.

II. BACKGROUND

16. The Colorado Constitution was drafted on March 14, 1876, was adopted by Colorado's electorate on July 1, 1876, and into effect upon Colorado's admission to the Union on August 1, 1876.

17. Article V, Section 1 of the Colorado Constitution vests the legislative power in the General Assembly apart from the powers of initiative and referendum, which are expressly reserved for direct exercise by the people of Colorado. Colo. Const. art. V, § 1.

18. Article V, Section 1, subsection 2 establishes requirements for the exercise of the power of initiative. Colo. Const. art. V, § 1, (2).

19. Article V, Section 1, subsection 6:

    a. The petition shall consist of ***sheets having such general form printed or written*** at the top thereof as shall be designated or prescribed by the secretary of state; ***such petition shall be signed by registered electors*** in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors. Colo. Const. art. V, § 1, (6) (emphasis added).

20. Article V, Section 1, subsection 2 of the Colorado Constitution states that the petition must "include the full text of the measure" and be addressed to and filed with the Secretary [of State] within three months of the related election. Colo. Const. Art. V, § 1(2).

21. These are the only two provisions found in the Colorado Constitution that govern the signature gathering process. All other requirements about the signature gathering process are contained in statutes and regulations.

22. Article V, Section 1, subsection 10 of the Colorado Constitution provides that: "[t]his section of the constitution shall be in all respects self-executing; except that the form of the initiative or referendum petition may be prescribed pursuant to law." Colo. Const. art. V, § 1(10).

23. Title 1, Article 40 of the Colorado Revised Statutes ("Article 40"), provides the statutory framework for the exercise of the initiative and referendum power of the people of Colorado. *See* C.R.S. § 1-40-103(1).

24. The legislative declaration at the front of Article 40 states that: "[t]he general assembly declares that it is not the intention of this article to limit or abridge in any manner the powers reserved to the people in the initiative and referendum, but rather to ***properly safeguard, protect, and preserve inviolate for them these modern instrumentalities of democratic government.***" C.R.S. § 1-40-101(1) (emphasis added).

25. Article 40 includes provisions that prescribe the form of initiative petitions and implements the safeguards for the petitioning process set out in Article V, Section 1 of the Colorado Constitution. *See e.g.,* C.R.S. §§ 1-40-105 (setting out the procedure for filing); 1-40-107 (setting out the procedure for a rehearing), 1-40-111 (setting out the procedures for affidavits and notarization), 1-40-119 (setting out the procedure of hearings).

26. Under the Colorado Disaster Emergency Act ("CDEA"), the governor is responsible for "meeting the dangers to the state and people presented by disasters." C.R.S. § 24-33.5-704(1); *see also* Polis Ex. A, at 001.

27. The CDEA was updated most recently in 2018. C.R.S. § 24-33.5-704.

28. On March 10, 2020, Governor Polis declared a disaster emergency under the CDEA because of the community spread of a novel coronavirus causing COVID-19. *Id.*, at 008.

29. Governor Polis has issued numerous executive orders[1] designed to mitigate the effects of the COVID-19 pandemic, prevent further spread of COVID-19, protect against overwhelming Colorado's healthcare resources, while also ensuring as much as is feasible that critical activities in the state may continue.

30. On May 15, 2020, Governor Polis issued the Executive Order at issue in this case, "Executive Order D 2020 065," ("Executive Order 65").

31. The stated purpose of Executive Order 65 is to address the "significant and determinative barriers due to state and local public health orders that prevent [petition circulators] from the normal statutory conduct of in-person signature gathering. Executive Order 65, 1, § I.

32. Two components of Executive Order 65 are at issue in this case:

    b. The first component challenged is that Executive Order 65 suspends those provisions in Article 40 which have the effect of requiring petition circulators be physically present when a registered elector signs an initiative position. Executive Order 65, at 2, §§ II.A-D;

    c. The second component challenged is that Executive Order 65 authorizes the Secretary of State Griswold to promulgate emergency rules in the wake of these statutory suspension to ensure both the protection of public health and the reliability of the petition signatures that are gathered. *Id.* at § II.G.

33. The specified statutory requirements of Article 40 which are suspended by Executive Order 65 are:

    d. C.R.S. §§ 1-40-102(6), -110, -105.5(4), and -113;

    e. C.R.S. § 1-40-111;

    f. C.R.S. § 1-40-116;

[1] https://www.colorado.gov/governor/2020-executive-orders.

g. C.R.S. §§ 1-40-130(l)(k), -130(l)(e), -130(l)(l);

34. None of the provisions of Executive Order 65 "relieves circulators…of the burden to ensure that the signature on the petitions are valid to the best of their knowledge," nor does Executive Order 65 suspend "the other provisions of C.R.S. § 1-40-130, which define the unlawful signature gathering actions and their penalties. Executive Order 65, §§ II.H-J.

35. The process of placing a citizen initiative on the November ballot of an even year election in the State of Colorado contains four major steps that occur in the following order: (A) setting a title; (B) obtaining a petition form from the Secretary of State; (C) circulating and obtaining signatures; and (D) review of the petition signatures by the Secretary of State. Hr'g Br. of the Secretary of State, 6.

36. Executive Order 65 primarily affects three provisions of this process: (1) the timing of submitting petitions; (2) the contents of petition sections; and (3) the process of circulating and signing petitions. *Id.*, at 11.

37. Executive Order 65 applies to several currently pending ballot measures. Of the sixty-six initiatives with a title currently set, fourteen initiatives have been approved for circulation with the remaining fifty-two needing to submit petitions for review and approval of their format by the Secretary of State. *See* Pl.s' Forthwith Mot. for Temp. Restraining Order, ¶ 7; Pl.'s Verified Compl. For Expedited Decl. Relief, ¶ 23.).

III. STANDARD OF REVIEW

38. A hearing on the motion for preliminary injunction and/or expedited declaratory relief pursuant to Colo. R. Civ. P. 57(m) has been completed and the case has been submitted for judicial review.

A. Preliminary Injunction Standard under *Rathke.*

39. To obtain a preliminary injunction, the moving party must establish all six of the factors outline in *Rathke v. MacFarlane*. 648 P.2d 648 (Colo. 1982). Here,

Plaintiffs must demonstrate the following six factors: (1) a reasonable probability of success on the merits; (2) a danger of real, immediate, and irreparable injury that may be prevented by injunctive relief; (3) no plain, speedy, and adequate remedy at law; (4) granting of an injunction will not disserve the public interest; (5) balance of equities favors the injunction; and (6) injunction will preserve the status quo pending a trial on the merits. *Id.* at 653-54. A preliminary injunction is not warranted, unless the trial court finds that the moving party has demonstrated each of the *Rathke* factors. *Phoenix Capital, Inc. v. Dowell*, 176 P.3d 835, 839 (Colo. App. 2007); *see also Wakabayashi v. Tooley,* 648 P.2d 655, 657 (Colo. 1982); *Keller Corp. v. Kelley*, 187 P.3d 1133 (Colo. App. 2008). I will address all six factors.

40. Granting injunctive relief lies within the sound discretion of the district court and will be reversed only upon a showing of an abuse of that discretion. *Scott v. City of Greeley*, 931 P.2d 525, 530 (Colo. App. 1996). If only legal, rather than factual questions are at issue, the trial court's preliminary injunction ruling is reviewed *de novo*. *Gitlitz v. Bellock*, 171 P.3d 1274, 1278 (Colo. App. 2007).

B. Declaratory Judgment Standard under C.R.C.P. 57 and C.R.S. § 13-51-106.

41. Under C.R.S. § 13-51-106; "Any person…whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder."

42. "District and superior courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations." C.R.C.P. 57(a). The granting of declaratory relief is a matter resting in the sound discretion of the trial court. *Troelstrup v. Dist. Court In & For City & Cty. of Denver*, 712 P.2d 1010, 1012 (Colo. 1986); *see also* C.R.C.P 57(a). A declaratory judgment "calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present rights upon established facts." *Bd. of Dir., Metro Wastewater Reclamation Dist. v.*

Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 105 P.3d 653, 656 (Colo. 2005) (*quoting Cacioppo v. Eagle Cty. Sch. Dist. Re–50J,* 92 P.3d 453, 467 (Colo. 2004)).

IV. ANALYSIS

43. As our Colorado Supreme Court recently noted in its *per curium* opinion in *Griswold v. Warren,* "the COVID-19 pandemic has radically altered nearly every aspect of life in Colorado and around the world." *Griswold v. Warren,* -- P.3d --, 2020 CO 34 at ¶ 1, 2020 WL 2553063, *1 (Colo. May 4, 2020)[2].

44. I wish to reiterate the narrow nature of the case before me. This case is a focused consideration of actions that Governor Polis has taken, in his official capacity, to temporarily suspend the operation of certain provisions of state statutes governing the petitioning process, and authorizes Secretary of State Griswold to issue emergency rules to implement both its express provisions and the remaining unsuspended statutory provisions, pursuant to the CDEA, C.R.S. § 24-33.5-701, *et seq.* The State of Colorado has a very robust culture and history of initiative and referendum, and "the right of initiative and referendum…is a fundamental right under the Colorado Constitution." *Loonan v. Woodley*, 882 P.2d 1380, 1383 (Colo. 1994) (*citing Clark v. City of Aurora,* 782 P.2d 771, 777 (Colo. 1989). That culture and history provides the backdrop for this case.

A. PLAINTIFFS' CLAIMS AGAINST GOVERNOR POLIS.

i. Plaintiffs Have Not Established All of the *Rathke* Factors.

a. PLAINTIFFS HAVE NOT ILLUSTRATED A REASONABLE PROBABILITY OF SUCCESS ON THE MERITS.

45. Under the CDEA, the governor is responsible for "meeting the dangers to the state and people presented by disasters." C.R.S. § 24-33.5-704(1). The general assembly delegated to the Governor broad emergency powers and discretion,

[2] As I said during the hearing on this matter: "Strange days indeed." Lennon, J., 1984. *Nobody Told Me*. Milk and Honey: Geffen label.

including the authority to "[s]uspend the provisions of ***any regulatory statute*** prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency, ***if strict compliance*** with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency." *Id.* § 24-33.5-704 (7)(a) (emphasis added). To date, there is no case law in Colorado defining what a "regulatory statute" is, in the context of the CDEA.

46. Plaintiffs argued that Executive Order 65 exceeds Governor Polis' authority under the CDEA. Plaintiffs assert that there must be a "nexus" between the laws suspended under subsection 24-33.5-704 (7)(a) and the declared disaster emergency. For example, according to Plaintiffs, Governor Polis may suspend a "regulatory statute" only when strict compliance with that statute would otherwise impede necessary state action in coping with the emergency. Plaintiffs further argue that Governor Polis has failed to establish the allegedly required "nexus" between strict compliance with the signature gathering requirements for citizen-initiated ballot measures and necessary state action to cope with the COVID-19 pandemic. Plaintiffs' argument is premised on their claim that state action, as defined in the statute, does not implicate private action. According to the Plaintiffs, "the targeted [statutory] requirements [suspended by Executive Order 65] govern only citizen-initiated ballot measures…[and] the constitutional and statutory scheme for signature gathering is not an obstacle to necessary actions by the state in response to the [COVID-19] pandemic." Pl.s' Forthwith Mot. for Temp. Restraining Order, ¶ 20; *see also* Pl.'s Verified Compl. For Expedited Decl. Relief, ¶ 46.

47. Governor Polis has responded by citing to how courts in several other jurisdictions have interpreted the meaning of a "regulatory statute." Def. Governor Polis' Resp. to Forthwith Mot. for Temp. Restraining Order, 6. Governor Polis also asserts that Governor Polis must have authority to issue orders affecting private action subject to state regulation in order to protect public health and

safety, asserting that regulatory statutes are ones that regulate private conduct even without state action. *Id.,* at 6-7. I agree. *See infra* ¶¶ 51-61.

48. Plaintiffs also claim, that even if a "nexus" exists with the declared emergency, Governor Polis still lacks the power to relax strict compliance with signature gathering requirements which would generally be required by the suspended statutory provisions. Plaintiffs claim that the signature gathering requirement is "non-technical." Pl.s' Forthwith Mot. for Temp. Restraining Order, ¶ 23. Plaintiffs' cite the recent Colorado Supreme Court case, which found that there are some aspects of the Election Code that simply cannot be subject to only substantial compliance. *Griswold v. Warren*, 2020 CO 34 at ¶ 18, 2020 WL 2553063, *4 (Colo. May 4, 2020) (quoting *Kuhn v. Williams*, 418 P.3d 478, 488, *reh'g denied* (Colo. 2018)).

49. Governor Polis argues that Executive Order 65, suspends only "the technical requirements" relating to the ballot initiative process. Def. Governor Polis' Resp. to Forthwith Mot. for Temp. Restraining Order, 9, 11. I agree. *See infra* ¶¶ 62-69.

50. Additionally, Executive Order 65 authorizes Secretary of State Griswold promulgate temporary emergency rules to allow campaigns which have titles set or pending in the Supreme Court "to continue collecting signatures in a way that protects public health consistent with the constitutional requirement that some registered elector must attest to the validity of signatures on the petition." Def. Governor Polis' Resp. to Forthwith Mot. for Temp. Restraining Order at 11, *citing* Executive Order 65, § II.G.

51. Article 40 proscribes how the initiative and referendum process will be conducted and regulated. While there are provisions in Article 40 dealing with substantive procedures for the initiative and referendum process, taken as a whole the statute, is a comprehensive regulatory scheme designed to "properly safeguard, protect, and preserve inviolate for [the citizens of Colorado] these modern instrumentalities of democratic government." C.R.S. § 1-40-101(1).

52. I find that Article 40 overall is a "regulatory statute" because it defines how the popular initiative and referendum right – as provided by the Colorado Constitution – is to be effectuated. Indeed, without the regulatory scheme contained in Article 40 it would be impossible to effectuate the initiative and referendum process contained in the Colorado Constitution. *See supra* ¶ 22.

53. In Colorado, when a statute is part of a "comprehensive regulatory scheme, the scheme should be construed to give consistent, harmonious, and sensible effect to all its parts." *Martinez v. People*, 69 P.3d 1029, 1031 (Colo. 2003) (*citing Martin v. People,* 27 P.3d 846, 851 (Colo. 2001); *N.A.H. v. S.L.S.,* 9 P.3d 354, 367 (Colo. 2000); *Left Hand Ditch Co. v. Hill,* 933 P.2d 1, 3 (Colo.1997)).

54. The CDEA allows the Governor to "[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency." C.R.S. § 24-33.5-704 (7)(a).

55. Colorado Courts have consistently upheld the principle that "statues should not be interpreted to reach an absurd result." *Bodelson v. City of Littleton*, 36 P.3d 214, 217 (Colo. App. 2001) (*quoting Denver Post Corp. v. Stapleton Dev. Corp.*, 19 P.3d 36 (Colo.App. 2000).

56. Courts must consider "whether the resulting interpretation is inconsistent with the purposes of the legislation." *Town of Erie v. Eason*, 18 P.3d 1271, 1276 (Colo. 2001) (*citing AviComm, Inc. v. Colo. Pub. Utils. Comm'n*, 955 P.2d 1023, 1031 (Colo.1998) ("[T]he intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result").

57. To take the position advanced by the Plaintiffs that Governor Polis is only authorized under the CDEA to suspend regulatory statutes relating to state action would be contrary to the purpose of the CDEA itself. The intent of the CDEA is to delegate to the Governor the authority to act to meet "the dangers to the state and people presented by disasters." C.R.S. § 24-33.5-704(1). Allowing the Governor to suspend statutes that solely implicate state action, as argued by the

Plaintiffs, would hamstring the Governors authority to respond to disasters and would create an absurd result.

58. Even if Plaintiffs' "state action" argument is correct, Article 40 is a statute that regulates "state action."

59. The language in the CDEA states that the Governor has authority to suspend statutes that "prescribe[] the procedure for the conduct of state business or the orders, rules, or regulations of any state agency," thus Article 40 clearly "regulatory statute." C.R.S. § 24-33.5-704 (7)(a).

60. Article 40 regulates not only private citizen action with regard to the initiative and referendum process but also regulates the Secretary of State's actions with regard to the initiative and referendum process. *See e.g.,* C.R.S. §§ 1-40-105, 1-40-106. The best demonstration of this? The manner of collecting signatures in inherently a part of the Secretary of State's obligation to verify signatures. *See e.g.,* C.R.S. § 1-40-116.

61. The CDEA states that the Governor has the authority to "[s]uspend the provisions…if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency." C.R.S. § 24-33.5-704 (7)(a).

62. The CDEA applies to all statutes, not just the Election Code – of which Article 40 is part. Here, Plaintiffs seem to unintentionally misconstrue the idea of strict compliance as applied to Article 40.

63. As explicitly expressed by the Colorado Supreme Court in *Griswold v. Warren,* the Election Code is generally subject only to the substantial compliance standard, even without the threat of a pandemic or other disaster emergency. 2020 CO 34 at ¶ 22, 2020 WL 2553063, at *6.

64. As further explained below, *see infra* ¶ 65, even though the Colorado Supreme Court has found that some portions of the Election Code require strict compliance, generally only the substantial compliance standard applies. Whether

or not strict compliance is required can be determined on a case-by-case basis applying the *Loonan* standard. 882 P.2d 1380, 1384.

65. The present case is distinguishable from *Griswold*. In *Griswold, supra,* the Plaintiff filed a petition seeking to have her name placed on the primary ballot, even though she failed to obtain the required number of signature on her nomination petition, alleging the COVID-19 pandemic and resulting state of emergency prevented her from collecting the required signatures. The Colorado Supreme Court held that the Election Code's minimum signature requirement in order to petition onto the ballot was a substantive requirement that required strict compliance. *Griswold*, 2020 CO 34, at ¶ 18, 2020 WL 2553063, at *4. The *Griswold* decision is instructive in explaining the differences between substantive and technical provisions in Colorado's election law: "the clear and unambiguous standard adopted by the General Assembly requires compliance with a specific numerical threshold determined according to a specific mathematical formula. A candidate either meets that minimum threshold or does not. There is no close enough." *Griswold,* 2020 CO 34 at ¶ 22, 2020 WL 2553063, at *6 (*quoting Jackson-Hicks v. E. St. Louis Bd. of Election Comm'rs*, 28 N.E.3d 170, 178 (Ill. 2015)). Comparing that language to the facts in the present case, I find there is nothing to suggest that any of pending ballot initiatives with a title set will stop attempting to obtain the required number of signatures for those petitions, when – or if – any new rules are promulgated by Secretary of State Griswold on how to obtain them. *See e.g., supra* ¶¶ 20-22.

66. Here, compliance with the non-suspended portions of Article 40 is achievable, albeit through other means. Nothing in Executive Order 65 changes the minimum signature requirements or changes any of the substantive provisions of Article 40's requirements. Given the prevalence of video conferencing[3] and other forms

[3] I note specifically that the Hearing in this matter conducted on May 22, 2020 was done remotely via Webex. Indeed, even the United States Supreme Court heard oral arguments remotely: https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-13-20

of virtual communication, there is nothing in the facts before me to suggest that the equivalent of "in-person" signatures is impossible.

67. The methods by which technical requirements of regulatory statutes are accomplished is likely to be shaped by the COVID-19 pandemic for years to come. And it should not be forgotten that Article 40 specifically refers to "modern instrumentalities of democratic government." C.R.S. § 1-40-101(1).

68. There are ways other than physical presence to ensure that a circulator can attest to the identity of signatures consistent with the purpose of the signature verification procedure to "maintain integrity in the initiative process and to comply with the constitutional requirements." *Buckley v. Chilcutt*, 968 P.2d 112, 116 (Colo. 1998) (internal citations omitted). In fact, the Colorado Supreme Court has rejected the argument that an affiant must be in the physical presence of the signer. In 1938, the Colorado Supreme Court considered the constitutionally required affidavit and concluded, "the circulator can make a positive affidavit that the signature was the genuine signature affixed by the signer" in one of two ways: 1) "by reason of its having been written in his presence," or 2) "through his familiarity with the signer's handwriting." *Brownlow v. Wunsch*, 83 P.2d 775, 781 (Colo. 1938). The manner in which signatures are collected for the ballot initiatives that have a title, but still need to complete the signature gathering process, are technical. An example of how an in-person technical requirement has been suspended in light of the COVID-19 pandemic is in person notarization[4] -- which includes but is not limited to suspending the notarization requirement for new bar applicants;[5] default judgments; service of process, etc.[6]

69. Because of the foregoing, Plaintiffs have not shown a reasonable likelihood of success on the merits.

[4] https://www.nationalnotary.org/knowledge-center/news/law-updates/co-governor-executive-order-d-2020-019
[5] https://www.coloradosupremecourt.com/AboutUs/Notices.asp
[6] It is worth noting that my signature at the bottom of this Order is an electronic signature.

b. PLAINTIFFS HAVE NOT SUFFERED ACTUAL INJURY.

70. Plaintiffs define their injury as such:

1) "Plaintiff Ritchie ***will be*** adversely impacted by several of these initiatives if they become law." Pl.'s Verified Compl. For Expedited Decl. Relief, ¶ 23; and

2) "With the substantive requirements of both the Colorado Constitution and Article 40 suspended, Plaintiffs are ***more likely*** to be adversely impacted by the unconstitutional qualification of ballot measures, which will adversely impact them if adopted." Pl.s' Forthwith Mot. for Temp. Restraining Order, ¶ 34; and

3) "Plaintiffs ***will*** suffer an injury to their right under the Colorado Constitution against having ballot measures, ***which may adversely affect them***, qualify for the ballot without passing appropriate muster. *Id., at* ¶ 35. (emphasis added).

71. It is inappropriate for a preliminary injunction to be based on this kind of hypothetical harm that is not ripe for judicial review. Plaintiffs have not established "irreparable injury" because they have not demonstrated that any of their alleged injuries are ripe for judicial review, only that "uncertain or contingent future matters" may occur. *See Stell v. Boulder Cty. Dep't of Soc. Servs.*, 92 P.3d 910, 914-15 (Colo. 2004), *as modified on denial of reh'g* (July 12, 2004) (internal citations omitted). In the present case, even if the Secretary of State Griswold promulgates temporary rules to effectuate Executive Order 65, there is no guarantee than any of the initiatives with title currently set will be able to fully comply with any of the new rules and/or the non-suspended provisions of Article 40. Simply put, none of the initiatives that Plaintiffs are hypothetically complaining about may ever appear on the November ballot.

72. Therefore, based on the preceding, Plaintiffs have not shown that they have suffered actual injury.

c. ENJOINING EXECUTIVE ORDER 65 WOULD BE CONTRARY TO THE PUBLIC INTEREST AND THE BALANCE OF EQUITIES FAVORS ENSURING ACCESS TO THE INITIATIVE AND REFERENDUM PROCESS.

73. Executive Order 65 retains all requirements for ballot qualification found in the Colorado Constitution and strikes a careful balance that facilitates petition circulation while protecting public health, especially for "Vulnerable Individuals." *See* Executive Order D 2020 044, § II.C (recognizing the continuing threat of the COVID-19 pandemic on this population even in the move to "Safer at Home" in Colorado). Given the strong culture and history of the initiative and referendum process in Colorado, the injunction sought by the Plaintiffs would harm the public interest by negatively impacting citizens' fundamental right to initiative and referendum as provided by the Colorado Constitution. Because that right is fundamental in character and self-executing, *see* Colo. Const. art. V, § 1(10), "the initiative provisions of the [Colorado] Constitution must not be narrowly construed, but rather that they must be liberally construed to effectuate their purpose and to facilitate the exercise by electors of this most important right reserved to them by the [Colorado] Constitution." *Colorado Project-Common Cause v. Anderson*, 495 P.2d 220, 221 (Colo. 1972).

74. While Governor Polis has issued additional orders "re-opening" certain activities and areas in the state over the Memorial Day weekend, everything has not reopened and what is being reopened is subject to conditions in many cases. The fact that some activities have reopened does not change my analysis. For example, the number of people allowed to gather is still limited and schools have not reopened.

75. Granting the preliminary injunction requested by the Plaintiffs would be against the public interest because it would create confusion and delay with the signature gathering processes for initiatives and referendum.

76. This same analysis would apply to the *Rathke* balance of equities factor.

d. ENJOINING EXECUTIVE ORDER 65 WOULD NOT PRESERVE THE STATUS QUO.

77. Not entering a preliminary injunction allows initiatives with title set to continue to collect signatures, this is the current status quo. Entering a preliminary injunction in this matter would change the status quo, therefore the Plaintiffs have not shown enjoining Executive Order would preserve it.

e. PLAIN, SPEEDY, AND ADEQUATE REMEDY

78. I have fully considered this final *Rathke* factor. I have found that whether or not there is another plain, speedy, or adequate remedy available to Plaintiffs in this matter is irrelevant to the final determination in this matter, as Plaintiffs have failed to establish at least five of the six *Rathke* factors. *Keller Corp. v. Kelley*, 187 P.3d 1133 (Colo. App. 2008).

ii. The Forgoing Analysis Applies to C.R.C.P. 57 as well.

79. Declaratory judgment proceedings are designed to resolve a dispute between parties as to their respective rights, status, or obligations under a law, controlling instrument, or relationship. *Bd. of Dirs. of Alpaca Owners & Breeders Ass'n, Inc. v. Clang*, 80 P.3d 945, 948 (Colo. App. 2003). As shown above, I have reviewed this case thoroughly under the *Rathke* standards for preliminary injunctions. This same analysis would apply to relief requested pursuant to C.R.C.P. 57, such relief is **denied**.

iii. Plaintiff-Intervenor's Claims

80. Plaintiff-Intervenor PCEEEI has advanced arguments about Equal Protection and election fraud. My review of those arguments show that those arguments are premised on speculative concerns. Plaintiff-Intervenor has not articulated any non-speculative harm in any of their briefs. *Developmental Pathways v. Ritter*, 178 P.3d 524, 534 (Colo. 2008). I do not find those arguments persuasive.

B. PLAINTIFFS' CLAIMS AGAINST SECRETARY OF STATE GRISWOLD.

i. Plaintiffs' Alleged Claims Against Secretary of State Griswold Are Not Ripe.

81. Secretary of State Griswold currently does not seek dismissal from this lawsuit on ripeness grounds. However, Secretary of State Griswold does state that Plaintiffs' request for a preliminary injunction or expedited declaratory relief as to her is not ripe for review because it depends on uncertain, contingent future events. I agree.

82. If Executive Order 65 stands, Secretary of State Griswold will be able to promulgate emergency rules to effectuate that Order. As of the date of the entry of this Order, Secretary of State has not promulgated or issued any rules to effectuate Executive Order 65. "Under the doctrine of ripeness, a claim must be real and immediate." *Developmental Pathways v. Ritter*, 178 P.3d 524, 534 (Colo. 2008). *Villa Sierra Condo. Ass'n v. Field Corp.*, 878 P.2d 161, 165 (Colo. App. 1994) ("if the parties' legal rights are dependent upon the happening of a contingency that may never occur, the issuance of a declaratory judgment would be premature"). Plaintiffs' request for an injunction as to Secretary of State Griswold is based on speculative and contingent matters that may never occur, namely, the Secretary promulgating rules implementing Executive Order 65. The matter is thus not ripe for me to enter any Order enjoining Secretary of State Griswold or entering any form of expedited declaratory relief against her. I will, however, retain jurisdiction to review any and all rules actually promulgated by Secretary of State Griswold, if such rules are objected to.

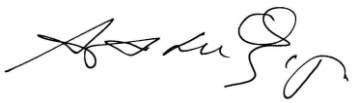
V. ORDER

For the reasons set forth above, Plaintiffs' Forthwith Motion for a Temporary Restraining Order is **DENIED**. Further, the portion of Plaintiffs' Complaint requesting relief under C.R.C.P. 57 is also **DENIED**.

The time for filing a Notice of Appeal and/or Request for Post-Judgment Relief shall begin to run upon the entry of this Order.

IT IS SO ORDERED this Wednesday, May 27, 2020.

BY THE COURT:



Judge Robert L. McGahey, Jr.
Denver District Judge