

Marcus A. Murphy v. Wayne W. Williams

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JEFFREY B. COLWELL
CLERK

BY _____ DEP. CLK

Marcus A. Murphy, §

Plaintiff §

§

'18 - CV - 01919

v. §

Civil Action No.: _____.

§

Wayne W. Williams, §

in his official capacity as Colorado §

Secretary of State, §

Defendant §

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. Introduction

(¶ 1.) Here comes now Marcus A. Murphy, Plaintiff, and offers this Civil Complaint against Wayne W. Williams, Defendant, personally, in his official capacity, as Secretary of State of Colorado. Plaintiff is a resident/citizen of Colorado, and defendant is a resident/citizen of Colorado. This federal Question Civil Complaint challenges Colorado Revised Statutes (CRS) § 1-4-105 as an unconstitutional abridgement of Plaintiff's Article I right to qualify for office, First Amendment rights to speech and freedom of association, as well as rights to Due Process &

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Equal Protection under the laws, and the statutory prohibition of deprivation & resultant causes of action related to such deprivation, including conspiracy with staff to deprive; or in the alternative, that the State statute has been incorrectly applied on an arbitrary & capricious factual basis to the Plaintiff's unique factual situation as an anonymous Write-In Candidate in an Open Primary.

A.Plaintiff Information

(¶ 2.) Marcus Allen Murphy, 5795 Southmoor Dr Lot 53, Fountain, CO 80817, (720) 256-0991, MarcusMurphy1975@hotmail.com, County of Residence: El Paso, Attorney: N/A-Pro Se. Plaintiff, Marcus Allen Murphy, has resided at 5795 Southmoor Dr Lot 53, Fountain, CO 80817 since August of 2016. Fountain is a city within El Paso County. Plaintiff is a registered Colorado voter and is affiliated with the Democrat Party. Murphy for Congress (CO-5)!, Inc. is the authorized and principal campaign committee of Marcus Murphy, and is registered with the Federal Election Commission (FEC) as a federal political committee with FEC Committee ID No. C00668152. The mailing address of Murphy for Congress (CO-5)!, Inc. is 307 Garrett St., Borger, TX 79007. The federal campaign committee treasurer for Murphy for Congress (CO-5)!, Inc. is Marcus A. Murphy, residing at 5795 Southmoor Dr Lot 53, Fountain, CO 80817. Plaintiff registered to vote when he first moved to Colorado from Texas two years ago, in November 2016. Plaintiff has not attended any party functions, other than a Candidates' Forum last September 2017 at Colorado College. Plaintiff publicly-announced his

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candidacy & entered the congressional-race (CO-5) on July 19, 2017 (7-19-17) with his first facebook post. Plaintiff filed, as a congressional-candidate for Colorado's Fifth District, with the Federal Elections Commission (FEC) on February 1, 2018 (2-1-18). Plaintiff was ignored as an ineligible Democrat-Party primary-candidate on Tuesday, March 6, 2018 Caucus Day (3-6-18) at Mesa Ridge High School & did not receive any delegates. Plaintiff was physically assaulted & told to leave, as an ineligible Democrat-Party primary-candidate, by the Rules Committee Chairman at the State Assembly in Broomfield on April 13, 2018 (4-13-18). As a result, Plaintiff filed an Affidavit of Intent for Write-In Designation for United States Representative in the primary-election on April 13, 2018 (4-13-18) with the Colorado Secretary of State. Plaintiff filed a Complaint of Mis-conduct with the FEC regarding his treatment by the Colorado Democrats on April 14, 2018 (4-14-18). Plaintiff never signed a party-pledge to support the nominee. Plaintiff filed an Affidavit of Intent for Write-In Designation for United States Representative in the general election on June 26, 2018 (6-26-18) with the Colorado Secretary of State. Plaintiff received 38 write-in votes in the Democrat-Party Open-Primary on Tuesday, June 26, 2018 (6-26-2018), as publicly announced by the Colorado Secretary of State as the Official-Results on Monday, July 23, 2018 (7-23-18). Plaintiff was informed via e-mail on July 6, 2018 (7-6-18) by the Colorado Secretary of State Elections Division Manager, Joel Albion, that he is ineligible for the general-election under CRS § 1-4-105. Plaintiff exhausted all available administrative-remedies by requesting that the Elections Manager refer-up to the Secretary of State personally for

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re-consideration, and was subsequently informed via e-mail on July 9, 2018 (7-9-2018) that, upon consultation with elections-division attorneys, the decision is final.

B. Defendant Information

(¶ 3.) Wayne W. Williams, 1700 Broadway, Ste 200, Denver, CO 80290, (303) 894-2200, elections@sos.state.co.us, County of Residence: Denver, Attorney: Unknown. Wayne W. Williams is the Secretary of State for the State of Colorado. Mr. Williams is sued personally, only in his official capacity. The Colorado Secretary of State is sued, because, by statute, the Colorado Secretary of State is the chief elections-official of the State with the duty “[t]o supervise the conduct of primary, general, congressional vacancy, and statewide ballot issue elections” in the State of Colorado, and is required to review all petition information, including determining who is eligible to run in the general-election as a write-in congressional-candidate. *See* CRS §§ 1-1-107, 1-4-105. The Colorado Secretary of State must also deliver to the county clerk and recorder of each county a certificate in writing of the general-election ballot-order and content of the ballot for each county on Friday, September 7, 2018. *See* CRS § 1-5-203(3)(a).

C. Nature of Suit

(¶ 4.) The nature of this suit is 441: Civil Rights-Voting and 950: the Constitutionality of State statutes.

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D. Origin

(¶ 5.) The origin of this suit is as an Original Proceeding.

E. Cause of Action

(¶ 6.) The causes of action that this suit arises are under: 28 USC (United States Code) § 1331-federal Question, as well as 28 USC § 1343(a)-Civil Rights and Elective Franchise (per 42 USC § 1985(1) & (3)-Conspiracy to Interfere with Civil Rights), 28 USC § 1355(a)-Fine, Penalty or Forfeiture, and 42 USC § 1983-Civil Action for Deprivation of Rights.

F. Requested in Complaint

(¶ 7.) The relief requested in this complaint is Declaratory and Injunctive Relief.

II. Jurisdiction

(¶ 8.) Plaintiff claims federal Question Jurisdiction under the U.S. Constitution Article I § 2 cl. 2, as well as the First, Fifth, & Fourteenth Amendments; also under 28 USC § 1331-federal Question, as well as 28 USC § 1343(a)-Civil Rights and Elective Franchise (per 42 USC § 1985(1) & (3)-Conspiracy to Interfere with Civil Rights), 28 USC § 1355(a)-Fine, Penalty or

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Forfeiture, and 42 USC § 1983-Civil Action for Deprivation of Rights. This court has federal question jurisdiction pursuant to 28 USC § 1331, because Plaintiff challenges Colorado law as violating Plaintiff's rights guaranteed under the U.S. Constitution Article I § 2 cl. 2, as well as the First, Fifth, & Fourteenth Amendments. Federal question jurisdiction is also appropriate, because this action is brought pursuant to 42 USC § 1983, as Colorado has violated Plaintiff's Constitutional-rights under the color of State law. *See* 28 USC § 1343; *see also id.* § 1331. This court is authorized to issue the requested injunctive relief pursuant to 42 USC § 1983 and FRCP (Federal Rule of Civil Procedure) 65. 28 USC § 1391(a), (b)(1),(2), & (c)-Venue generally, provides that: "(a) Applicability of Section.-Except as otherwise provided by law- (1) this section shall govern the venue of all civil actions brought in district courts of the United States; and (2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature. (b) Venue in General.-A civil action may be brought in- (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, (c) Residency.-For all venue purposes- (1) a natural person, ..., shall be deemed to reside in the judicial district in which that person is domiciled;" Venue is proper in this court, because the defendant is the Colorado Secretary of State, and resides & has his office in the State of Colorado. Additionally, Plaintiff resides within the State of Colorado. *See* 28 USC § 1391(b)(1). In addition, all of the events that give rise to Plaintiff's claims occurred within the State of Colorado. *See id.* § 1391 (b)(2). Plaintiff's personal constitutional right to vote ... for himself, gives him standing to make the Right to Vote argument. In *Ex Parte Young*, 209 U.S. 123 (1908), the Court ruled that if government officials

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attempt to enforce an unconstitutional law, then sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for injunctive relief, because those government officials are not acting on behalf of the State in this situation.

III. Claims

(Count I) A. Claim Relating to Article I § 2 cl. 2

(¶ 9.) 1. Allegations-Plaintiff incorporates paragraphs 1-8 as if fully stated herein.

This challenged State statute, CRS § 1-4-105, provides that: “No person who has been defeated as a candidate in a primary election shall be eligible for election to the same office by ballot or as a write-in candidate in the next general election unless the party vacancy committee nominates that person.” This unconstitutional prohibition directly conflicts with the pre-emptive, plenary provision of the U.S. Constitution: “No Person shall be a Representative who shall not have attained to the age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.” The Constitution placed notably few hurdles between ordinary citizens and becoming a Member of the U.S. House of Representatives. The founders wanted the House to be the legislative chamber closest to the People – the least restrictive on age, citizenship, and the only federal office at the time subject to frequent popular election. The Constitution requires that Members of

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the House be at least 25 years old, have been a U.S. citizen for at least seven years, and live in the State they represent (though not necessarily the same district). And Article VI, clause 3 requires that all Members take an oath to support the Constitution before they exercise the duties of their office. In Federalist 52, James Madison of Virginia wrote that, "Under these reasonable limitations, the door of this part of the federal government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith." Plaintiff alleges that Defendant, and his agents, deprived Plaintiff of his Article I § 2 cl. 2 rights of qualification for office by incorrectly applying the unconstitutional State law, CRS § 1-4-105. The burdens on Plaintiff's Constitutional-rights are significant, and the State of Colorado has no legitimate interests, let alone a compelling State interest, that can withstand strict scrutiny to justify dis-qualifying Plaintiff as an eligible congressional-candidate for the general-election, merely because the Plaintiff was an anonymous, un-welcome, write-in primary-candidate for the Democrat-Party nomination. The Sore-Loser Dis-qualification of a Primary, Anonymous, Write-In Candidate from continuing as an eligible congressional-candidate in the general-election, under CRS § 1-4-105, prevents the Open-Primary voters, supporters, and constituents of Plaintiff residing in Colorado's Fifth Congressional District who voted for Plaintiff, from exercising their Constitutional-rights under Article I § 2 cl. 2. Plaintiff, Marcus Allen Murphy, wants to exercise his constitutional-rights to become a Member of

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the United States House of Representatives by acting as a congressional-candidate in the 2018 general-election. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Allen Murphy, from exercising his constitutional-rights guaranteed under Article I § 2 cl. 2. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Murphy, from exercising his constitutional-rights guaranteed under Article I § 2 cl. 2, and negatively impacts his authorized federal campaign-committee, Murphy for Congress (CO-5)!, Inc. CRS § 1-4-105 directly limits Qualifications for federal office, and is subject to strict scrutiny. *See, e.g., Am. Constitutional Law Found.*, 525 U.S. at 186. Defendant's interest in minimizing excessive factionalism & party-splintering and voter-confusion, and ensuring the orderly, fair, & efficient election of public officials was already served, for example, by the anonymity of Plaintiff as a mere Anonymous, Write-In Primary-Candidate. Under 42 USC § 1983, Defendant, under the color of State law, has violated Plaintiff's constitutional-rights.

(¶ 10.) 2. Request for Relief-Wherefore, Plaintiff, Marcus A. Murphy, demands of Defendant, Wayne W. Williams, Declaratory and Injunctive Relief, and any other relief the court deems appropriate, on this one individual claim. This Complaint seeks a declaratory judgment that CRS § 1-4-105, as enforced by Defendant, violates Article I § 2 cl. 2. This Complaint also seeks a permanent injunction directing the Colorado Secretary of State, and all of Defendant's agents

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and successors, including but not limited to the county clerk and recorder of each county within Colorado's Fifth Congressional District, from enforcing CRS § 1-4-105. Equitable relief is necessary, because there is no adequate remedy at law. Preliminary injunctive relief is also necessary, because the State of Colorado will hold the general-election on Tuesday, November 6, 2018 ("... the Tuesday succeeding the first Monday of November in every even-numbered year."). *See* CRS §§ 1-4-201, 1-4-203. The deadline and last day for the Colorado Secretary of State to deliver to the county clerk and recorder of each county a certificate in writing of the general-election ballot-order and content for each county is Friday, September 7, 2018. *See* CRS § 1-5-203(3)(a). There is simply insufficient time between now and when the election-machinery begins for Plaintiff to obtain an adequate remedy, absent the granting of a preliminary injunction. Due to the impending election-related deadlines, including deadlines relating to the printing and transmission of general-election ballots, a preliminary injunction is necessary to avoid violating Plaintiff's Article I § 2 cl. 2 rights. 28 USC § 2201(a)-Creation of remedy, provides that: "In a case of actual controversy within its jurisdiction, ..., any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." 28 USC § 2202-Further relief, provides that: "Further necessary or proper relief based on a declaratory judgment or decree may be

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granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.” Pursuant to 28 USC §§ 2201(a), 2202, Plaintiff requests that this court declare the Sore-Loser Law, applicable to an anonymous write-in congressional-candidate, in CRS § 1-4-105, unconstitutional; because it violates Plaintiff’s Article I § 2 cl. 2 rights. Plaintiff requests that this court direct the Colorado Secretary of State to certify Marcus Murphy as an eligible congressional-candidate to the 2018 general-election ballot, in accordance with the Plaintiff’s filing of an Affidavit of Intent for Write-In Designation for United States Representative on June 26, 2018 (6-26-18) with the Colorado Secretary of State; and enjoin both preliminarily and permanently the Defendant, and his agents & successors, including but not limited to each county clerk and recorder, from enforcing the Sore-Loser Law, applicable to anonymous write-in congressional-candidates in CRS § 1-4-105. Plaintiff further requests that this court direct the Colorado Secretary of State to include Plaintiff as a named congressional-candidate on the general-election ballot.

(Count II) B. Claim Relating to First Amendment

(¶ 11.) **1. Allegations**-Plaintiff incorporates paragraphs 1-8 as if fully stated herein. Amendment I to the Constitution of the United States of America provides that: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the

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press; or the right of the People peaceably to assemble, and to petition the government for a redress of grievances.” The First Amendment to the United States Constitution prevents Congress from making any law respecting an establishment of religion, prohibiting the free exercise of religion, or abridging the freedom of speech, the freedom of the press, the right to peaceably assemble, or to petition for a governmental redress of grievances. This case involves violation of a fundamental part of the First Amendment-the rights of association & assembly. Freedom of association encompasses both an individual’s right to join or leave groups voluntarily, the right of the group to take collective action to pursue the interests of its members, and the right of an association to accept or decline membership based on certain criteria. The right of association is commonly described as coming together with other individuals to collectively express, promote, pursue, and/or defend common interests. Freedom of Association is both an individual right and a collective right. Freedom of association is manifested through the right to join a trade union, to engage in free speech or to participate in debating societies, political parties, or any other club or association, including religious denominations and organizations, fraternities, and sport clubs. It is closely linked with freedom of assembly. Freedom of assembly is typically associated with political contexts. However, the right to freedom of association may include the right to freedom of assembly. The core First Amendment rights of association & assembly to vote for Plaintiff as a Write-In Candidate on the general-ballot for the 2018 election, have been violated, not only

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with respect to the Plaintiff voting for himself, but also the electors of Colorado's Fifth Congressional District, and most importantly the electors of Colorado's Fifth Congressional District who wrote-in Plaintiff on the Democrat-Party Primary-Ballot, with the expectation that they can continue their association & assembly with Plaintiff as a Write-In Congressional-Candidate for the general-election, regardless of party affiliation. Under Proposition 108-the Open Primary State Law, un-affiliated Colorado electors were allowed to participate in a party primary without joining said party. Therefore, those un-affiliated voters retain their right to vote for Plaintiff in the general-election. The electors of Colorado's Fifth Congressional District, including the electors of Colorado's Fifth Congressional District who wrote-in Plaintiff on the Democrat-Party Primary-Ballot, with the expectation that they can continue their association & assembly with Plaintiff for the general-election, are prohibited from exercising their association & assembly rights guaranteed under the First Amendment to the United States Constitution to Write-In Plaintiff for Congress in the General-Election, because of CRS § 1-4-105. Plaintiff, Marcus Allen Murphy, will be harmed by the application of CRS § 1-4-105, as this State law is being interpreted and applied, so as to prevent eligible electors in the Fifth Congressional District to Write-In Plaintiff's name on the general-ballot, to deny him a place on the general-ballot and the ability to be a Write-In Congressional-Candidate for the Fifth Congressional District general-election, and thus to deprive the voters of the Fifth Congressional District the opportunity to elect Plaintiff to the United States

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House of Representatives. The First Amendment is “[p]remised on mistrust of governmental power” and is at “ ‘its fullest and most urgent application’ to speech uttered during a campaign for political office.” *Citizens United v. FEC*, 558 U.S. 310, 339-40 (2010). 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)). Speech concerning salient political issues is constitutionally enshrined, because it is “the type of speech [that is] indispensable to decision making in a democracy[.]” *First Nat’l Bank v. Bellotti*, 435 U.S. 765, 776-77 (1978). A person’s ability to exercise their rights guaranteed under the First Amendment is “ ‘undeniably enhanced by group association.’ ” *Buckley v. Valeo*, 424 U.S. 1, 15 (1976) (quoting *NAACP v. Alabama*, 357 U.S. 449, 460 (1958)). Both the First and the Fourteenth Amendments, therefore, guarantee the “ ‘freedom to associate with others for the common advancement of political beliefs and ideas. ...’ ” *Kusper v. Pontikes*, 414 U.S. 51 at 56 (1973); see also *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) (“ ‘[T]he right of individuals to associate for the advancement of political beliefs ... rank[s] among our most precious freedoms.’ ”). The First Amendment, through the Fourteenth Amendment, applies to State government action. The Incorporation Doctrine is a constitutional doctrine through which the first ten amendments of the United States Constitution (known as the Bill of Rights) are made applicable to the States through the Due Process clause of the Fourteenth Amendment. In *Gitlow v. New*

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York, 268 U.S. 652 (1925), the Court ruled that the Fourteenth Amendment to the United States Constitution extends the reach of certain limitations on federal government authority set forth in the First Amendment, specifically the provisions protecting freedom of speech and freedom of the press, to the governments of the individual States. In *Timmons v. Twin Cities Area New Party*, 520 U.S. 428, 434 (1997), the Court ruled that statutes that place a severe burden on association rights are subject to strict scrutiny. In addition, in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), the Court ruled that States cannot add to the constitutional qualifications for federal office because of their recent past political behavior. It is well settled law that “[w]hen State elections laws subject speech, association, or the right to vote to ‘severe restrictions, the regulation must be narrowly drawn to advance a State interest of compelling importance.’ ” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Strict scrutiny demands State regulations “impos[ing] ‘severe burdens’ on speech ... be narrowly tailored to serve a compelling State interest.” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182 (1999) at 192 n. 12, 119 S.Ct. 636 (quoting Thomas, J., concurring in judgment). Colorado’s Sore-Loser Law, as factually applied to an anonymous Write-In Candidate, is properly subject to strict scrutiny. *See Buckley v. Am. Constitutional Law Found.*, 525 U.S. at 192 n. 12 (declaring unconstitutional Colorado’s initiative petition laws, because they “significantly inhibit[ed] communication with voters about proposed political change and [were] not warranted by the State interests ... alleged to justify those restrictions”). Plaintiff

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alleges that Defendant, and his agents, deprived Plaintiff of his First Amendment rights of speech, assembly, & association by incorrectly applying the unconstitutional State law, CRS § 1-4-105. The burdens on Plaintiff's First Amendment speech, association, & assembly rights are significant, and the State of Colorado has no legitimate interests, let alone a compelling State interest, that can withstand strict scrutiny to justify dis-qualifying Plaintiff as an eligible congressional-candidate for the general-election, merely because the Plaintiff was an anonymous, un-welcome, write-in primary-candidate for the Democrat-Party nomination. The Sore-Loser Dis-qualification of a Primary, Anonymous, Write-In Candidate from continuing as an eligible congressional-candidate in the general-election, under CRS § 1-4-105, prevents the Open-Primary voters, supporters, and constituents of Plaintiff residing in Colorado's Fifth Congressional District who voted for Plaintiff, from exercising their core political speech, associational, and assembly rights guaranteed under the First Amendment. Plaintiff, Marcus Allen Murphy, wants to exercise his First Amendment rights to free speech, association, & assembly by acting as a congressional-candidate in the 2018 general-election. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Allen Murphy, from exercising his core political speech, associational, & assembly rights guaranteed under the First Amendment. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Murphy, from exercising his core political speech, associational, & assembly rights guaranteed under the First Amendment, and negatively impacts his authorized

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federal campaign-committee, Murphy for Congress (CO-5)!, Inc. CRS § 1-4-105 directly limits core political speech, and is subject to strict scrutiny. *See, e.g., Am. Constitutional Law Found.*, 525 U.S. at 186. Defendant's interest in minimizing excessive factionalism & party-splintering and voter-confusion, and ensuring the orderly, fair, & efficient election of public officials was already served, for example, by the anonymity of Plaintiff as a mere Anonymous, Write-In Primary-Candidate. Under 42 USC § 1983, Defendant, under the color of State law, has violated Plaintiff's Constitutional-rights.

(¶ 12.) 2. Request for Relief-Wherefore, Plaintiff, Marcus A. Murphy, demands of defendant, Wayne W. Williams, Declaratory and Injunctive Relief, and any other relief the court deems appropriate, on this one individual claim. This Complaint seeks a declaratory judgment that CRS § 1-4-105, as enforced by Defendant, violates the First Amendment. This Complaint also seeks a permanent injunction directing the Colorado Secretary of State, and all of Defendant's agents and successors, including but not limited to the county clerk and recorder of each county within Colorado's Fifth Congressional District, from enforcing CRS § 1-4-105. Equitable relief is necessary, because there is no adequate remedy at law. Preliminary injunctive relief is also necessary, because the State of Colorado will hold the general-election on Tuesday, November 6, 2018 ("... the Tuesday succeeding the first Monday of November in every even-numbered year."). *See* CRS §§ 1-4-201, 1-4-203. The deadline and last day for the Colorado Secretary of

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State to deliver to the county clerk and recorder of each county a certificate in writing of the general-election ballot-order and content for each county is Friday, September 7, 2018. *See* CRS § 1-5-203(3)(a). There is simply insufficient time between now and when the election-machinery begins for Plaintiff to obtain an adequate remedy, absent the granting of a preliminary injunction. Due to the impending election-related deadlines, including deadlines relating to the printing and transmission of general-election ballots, a preliminary injunction is necessary to avoid violating Plaintiff's First Amendment rights. Pursuant to 28 USC §§ 2201(a), 2202, Plaintiff requests that this court declare the Sore-Loser Law, applicable to an anonymous write-in congressional-candidate, in CRS § 1-4-105 unconstitutional, because it violates Plaintiff's First Amendment free speech and free associational rights. Plaintiff requests that this court direct the Colorado Secretary of State to certify Marcus Murphy as an eligible congressional-candidate to the 2018 general-election ballot, in accordance with the Plaintiff's filing of an Affidavit of Intent for Write-In Designation for United States Representative on June 26, 2018 (6-26-18) with the Colorado Secretary of State; and enjoin both preliminarily and permanently the Defendant, and his agents & successors, including but not limited to each county clerk and recorder, from enforcing the Sore-Loser Law, applicable to anonymous write-in congressional-candidates in CRS § 1-4-105. Plaintiff further requests that this court direct the Colorado Secretary of State to include Plaintiff as a named congressional-candidate on the general-election ballot.

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(Count III) C. Claim Relating to Fifth Amendment

(¶ 13.) 1. **Allegations**-Plaintiff incorporates paragraphs 1-8 as if fully stated herein. This case involves violation of a fundamental part of the Fifth Amendment-the right of due process. Plaintiff alleges that Defendant, and his agents, deprived Plaintiff of his Article I § 2 cl. 2 rights of qualification for office and his First Amendment rights of speech, assembly, & association by incorrectly applying the unconstitutional State law, CRS § 1-4-105. In *Bolling v. Sharpe*, 347 U.S. 497 (1954), the Court ruled that the concepts of Equal Protection and Due Process are not mutually exclusive. Proposition 108 (Colorado's Open-Primary Law), passed in 2016, allows un-affiliated voters to vote in major-party primaries & retain their un-affiliated status. Facially, Prop. 108 directly conflicts with, & amends to, CRS § 1-4-108; and therefore, does not constitute due process of law. Although CRS § 1-4-105 is codified, it fails to take into account the applicable terms of the new, presumably un-codified, Open-Primary Law, which conflicts with & amends to CRS § 1-4-105, specifically allowing outside-Electors to vote for a Democrat Write-In Candidate, presumably reserving the right to vote for that same person in the November General-Election, without joining the major-party. Defendant's agent, the Colorado Secretary of State's Elections Manager, Joel Albion, informed Plaintiff via e-mail, without referring-up to the Secretary for a formal, direct, written, agency policy-statement, that he is ineligible for the general-election as a congressional-candidate, which does not constitute Due

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Process of Law. CRS § 1-4-105 is also unconstitutional, because, once triggered & enforced, it grants the sole & exclusive power to nominate the Democrat Congressional-Candidate, in the event of the Primary/State Assembly Nominee dropping-out, to the Party Vacancy Committee, instead of the electors, which does not constitute due process of law. The burdens on Plaintiff's Fifth Amendment due-process right are significant, and the Defendant has no legitimate interests, let alone a compelling State interest, that can withstand strict scrutiny to justify dis-qualifying Plaintiff as an eligible congressional-candidate for the general-election, merely because the Plaintiff was an anonymous, un-welcome, write-in primary-candidate for the Democrat-Party nomination. The Sore-Loser Dis-qualification of a Primary, Anonymous, Write-In Candidate from continuing as an eligible congressional-candidate in the general-election, under CRS § 1-4-105, prevents the Open-Primary voters, supporters, and constituents of Plaintiff, residing in Colorado's Fifth Congressional District who voted for Plaintiff, from exercising their core due-process right guaranteed under the Fifth Amendment. Plaintiff, Marcus Allen Murphy, wants to exercise his Fifth Amendment right to due process by acting as a congressional-candidate in the 2018 general-election. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Allen Murphy, from exercising his core due-process right guaranteed under the Fifth Amendment. The Sore Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Murphy, from exercising his core due-process right guaranteed under the Fifth Amendment, and negatively impacts his

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authorized federal campaign-committee, Murphy for Congress (CO-5)!, Inc. CRS § 1-4-105 directly limits core due-process, and is subject to strict scrutiny. *See, e.g., Am. Constitutional Law Found.*, 525 U.S. at 186. Defendant's interest in minimizing excessive factionalism & party-splintering and voter-confusion, and ensuring the orderly, fair, & efficient election of public-officials was already served, for example, by the anonymity of Plaintiff as a mere Anonymous, Write-In Primary-Candidate. Under 42 USC § 1983, Defendant, under the color of State law, has violated Plaintiff's constitutional-rights.

(¶ 14.) 2. Request for Relief-Wherefore, Plaintiff, Marcus A. Murphy, demands of Defendant, Wayne W. Williams, Declaratory and Injunctive Relief, and any other relief the court deems appropriate, on this one individual claim. This Complaint seeks a declaratory judgment that CRS § 1-4-105, as enforced by Defendant, violates the Fifth Amendment. This Complaint also seeks a permanent injunction directing the Colorado Secretary of State, and all of Defendant's agents and successors, including but not limited to the county clerk and recorder of each county within Colorado's Fifth Congressional District, from enforcing CRS § 1-4-105. Equitable relief is necessary, because there is no adequate remedy at law. Preliminary injunctive relief is also necessary, because the State of Colorado will hold the general-election on Tuesday, November 6, 2018 ("... the Tuesday succeeding the first Monday of November in every even-numbered year."). *See* CRS §§ 1-4-201, 1-4-203. The deadline and last day for the Colorado Secretary of

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State to deliver to the county clerk and recorder of each county a certificate in writing of the general-election ballot-order and content for each county is Friday, September 7, 2018. *See* CRS § 1-5-203(3)(a). There is simply insufficient time between now and when the election-machinery begins for Plaintiff to obtain an adequate remedy, absent the granting of a preliminary injunction. Due to the impending election-related deadlines, including deadlines relating to the printing and transmission of general-election ballots, a preliminary injunction is necessary to avoid violating Plaintiff's Fifth Amendment right. Pursuant to 28 USC §§ 2201(a), 2202, Plaintiff requests that this court declare the Sore-Loser Law, applicable to an anonymous write-in congressional-candidate, in CRS § 1-4-105 unconstitutional, because it violates Plaintiff's Fifth Amendment due-process right. Plaintiff requests that this court direct the Colorado Secretary of State to certify Marcus Murphy as an eligible congressional-candidate to the 2018 general-election ballot, in accordance with the Plaintiff's filing of an Affidavit of Intent for Write-In Designation for United States Representative on June 26, 2018 (6-26-18) with the Colorado Secretary of State; and enjoin both preliminarily and permanently the Defendant, and his agents & successors, including but not limited to each county clerk and recorder, from enforcing the Sore-Loser Law, applicable to anonymous write-in congressional-candidates in CRS § 1-4-105. Plaintiff further requests that this court direct the Colorado Secretary of State to include Plaintiff as a named congressional-candidate on the general-election ballot.

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(Count IV) D. Claim Relating to Fourteenth Amendment

(¶ 15.) **1.Allegations-**Plaintiff incorporates paragraphs 1-8 as if fully stated herein. This case involves violation of a fundamental part of the Fourteenth Amendment-the rights of due process and equal protection of the laws. Plaintiff alleges that Defendant, and his agents, deprived Plaintiff of his Article I § 2 cl. 2 rights of qualification for office and First Amendment rights of speech, assembly, & association by incorrectly applying the unconstitutional State law, CRS § 1-4-105. The burdens on Plaintiff's Fourteenth Amendment due process & equal protection rights are significant, and the State of Colorado has no legitimate interests, let alone a compelling State interest, that can withstand strict scrutiny to justify dis-qualifying Plaintiff as an eligible congressional-candidate for the general-election, merely because the Plaintiff was an anonymous, un-welcome, write-in primary-candidate for the Democrat-Party nomination. The Sore-Loser Dis-qualification of a Primary, Anonymous, Write-In Candidate from continuing as an eligible congressional-candidate in the general-election, under CRS § 1-4-105, prevents the Open-Primary voters, supporters, and constituents of Plaintiff residing in Colorado's Fifth Congressional District who voted for Plaintiff, from exercising their constitutional-rights guaranteed under the Fourteenth Amendment. Plaintiff, Marcus Allen Murphy, wants to exercise his Fourteenth Amendment rights to due process & equal protection, by acting as a congressional-candidate in the 2018 general-election. The Sore-Loser Dis-

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qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Allen Murphy, from exercising his core due process & equal protection rights guaranteed under the Fourteenth Amendment. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Murphy, from exercising his core due process & equal protection rights guaranteed under the Fourteenth Amendment, and negatively impacts his authorized federal campaign-committee, Murphy for Congress (CO-5)!, Inc. CRS § 1-4-105 directly limits core due process & equal protection, and is subject to strict scrutiny. *See, e.g., Am. Constitutional Law Found.*, 525 U.S. at 186. Defendant's interest in minimizing excessive factionalism & party-splintering and voter-confusion, and ensuring the orderly, fair, & efficient election of public-officials was already served, for example, by the anonymity of Plaintiff as a mere Anonymous, Write-In Primary-Candidate. In fact, because Plaintiff was the only Write-In Congressional-Candidate for Colorado's Fifth District, he is the only person in the entire District who is ineligible to participate in the General-Election! Under 42 USC § 1983, Defendant, under the color of State law, has violated Plaintiff's constitutional-rights.

(¶ 16.) 2. Request for Relief-Wherefore, Plaintiff, Marcus A. Murphy, demands of Defendant, Wayne W. Williams, Declaratory and Injunctive Relief, and any other relief the court deems appropriate, on this one individual claim. This Complaint seeks a declaratory judgment that CRS § 1-4-105, as enforced by

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Defendant, violates the Fourteenth Amendment. This Complaint also seeks a permanent injunction directing the Colorado Secretary of State, and all of Defendant's agents and successors, including but not limited to the county clerk and recorder of each county within Colorado's Fifth Congressional District, from enforcing CRS § 1-4-105. Equitable relief is necessary, because there is no adequate remedy at law. Preliminary injunctive relief is also necessary, because the State of Colorado will hold the general-election on Tuesday, November 6, 2018 ("... the Tuesday succeeding the first Monday of November in every even-numbered year."). *See* CRS §§ 1-4-201, 1-4-203. The deadline and last day for the Colorado Secretary of State to deliver to the county clerk and recorder of each county a certificate in writing of the general-election ballot-order and content for each county is Friday, September 7, 2018. *See* CRS § 1-5-203(3)(a). There is simply insufficient time between now and when the election-machinery begins for Plaintiff to obtain an adequate remedy, absent the granting of a preliminary injunction. Due to the impending election-related deadlines, including deadlines relating to the printing and transmission of general-election ballots, a preliminary injunction is necessary to avoid violating Plaintiff's Fourteenth Amendment rights. Pursuant to 28 USC §§ 2201(a), 2202, Plaintiff requests that this court declare the Sore-Loser Law, applicable to an anonymous write-in congressional-candidate, in CRS § 1-4-105 unconstitutional, because it violates Plaintiff's Fourteenth Amendment due process & equal protection rights. Plaintiff requests that this court direct the Colorado Secretary of State to certify Marcus Murphy as

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an eligible congressional-candidate to the 2018 general-election ballot, in accordance with the Plaintiff's filing of an Affidavit of Intent for Write-In Designation for United States Representative on June 26, 2018 (6-26-18) with the Colorado Secretary of State; and enjoin both preliminarily and permanently the Defendant, and his agents & successors, including but not limited to each county clerk and recorder, from enforcing the Sore-Loser Law, applicable to anonymous write-in congressional-candidates in CRS § 1-4-105. Plaintiff further requests that this court direct the Colorado Secretary of State to include Plaintiff as a named congressional-candidate on the general-election ballot.

(Count V) E. Claim Relating to 28 USC § 1331-federal Question

(¶ 17.) **1.Allegations-**Plaintiff incorporates paragraphs 1-8 as if fully stated herein. This case involves violation of a fundamental part of 28 USC § 1331-federal Question, which provides that: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Plaintiff alleges that Defendant, and his agents, deprived Plaintiff of his Article I § 2 cl. 2 rights of qualification for office and First Amendment rights of speech, assembly, & association by incorrectly applying the unconstitutional State law, CRS § 1-4-105. The burdens on Plaintiff's statutory rights are significant, and the State of Colorado has no legitimate interests, let alone a compelling State interest, that can withstand strict scrutiny to justify dis-

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qualifying Plaintiff as an eligible congressional-candidate for the general-election, merely because the Plaintiff was an anonymous, un-welcome, write-in primary-candidate for the Democrat-Party nomination. The Sore-Loser Dis-qualification of a Primary, Anonymous, Write-In Candidate from continuing as an eligible congressional-candidate in the general-election, under CRS § 1-4-105, prevents the Open-Primary voters, supporters, and constituents of Plaintiff residing in Colorado's Fifth Congressional District who voted for Plaintiff, from exercising their core statutory-rights guaranteed under 28 USC § 1331. Plaintiff, Marcus Allen Murphy, wants to exercise his statutory-rights by acting as a congressional-candidate in the 2018 general-election. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Allen Murphy, from exercising his core statutory-rights guaranteed under 28 USC § 1331. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Murphy, from exercising his core statutory-rights guaranteed under 28 USC § 1331, and negatively impacts his authorized federal campaign-committee, Murphy for Congress (CO-5)!, Inc. CRS § 1-4-105 directly limits core statutory-language, and is subject to strict scrutiny. *See, e.g., Am. Constitutional Law Found.*, 525 U.S. at 186. Defendant's interest in minimizing excessive factionalism & party-splintering and voter-confusion, and ensuring the orderly, fair, & efficient election of public officials was already served, for example, by the anonymity of Plaintiff as a mere Anonymous, Write-In Primary-Candidate.

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Under 42 USC § 1983, Defendant, under the color of State law, has violated Plaintiff's constitutional-rights.

(¶ 18.) 2. Request for Relief-Wherefore, Plaintiff, Marcus A. Murphy, demands of Defendant, Wayne W. Williams, Declaratory and Injunctive Relief, and any other relief the court deems appropriate, on this one individual claim. This Complaint seeks a declaratory judgment that CRS § 1-4-105, as enforced by Defendant, violates 28 USC § 1331. This Complaint also seeks a permanent injunction directing the Colorado Secretary of State, and all of Defendant's agents and successors, including but not limited to the county clerk and recorder of each county within Colorado's Fifth Congressional District, from enforcing CRS § 1-4-105. Equitable relief is necessary, because there is no adequate remedy at law. Preliminary injunctive relief is also necessary, because the State of Colorado will hold the general-election on Tuesday, November 6, 2018 ("... the Tuesday succeeding the first Monday of November in every even-numbered year."). *See* CRS §§ 1-4-201, 1-4-203. The deadline and last day for the Colorado Secretary of State to deliver to the county clerk and recorder of each county a certificate in writing of the general-election ballot-order and content for each county is Friday, September 7, 2018. *See* CRS § 1-5-203(3)(a). There is simply insufficient time between now and when the election-machinery begins for Plaintiff to obtain an adequate remedy, absent the granting of a preliminary injunction. Due to the impending election-related deadlines, including deadlines relating to the printing

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and transmission of general-election ballots, a preliminary injunction is necessary to avoid violating Plaintiff's statutory-rights. Pursuant to 28 USC §§ 2201(a), 2202, Plaintiff requests that this court declare the Sore-Loser Law, applicable to an anonymous write-in congressional-candidate, in CRS § 1-4-105 unconstitutional, because it violates Plaintiff's statutory-rights. Plaintiff requests that this court direct the Colorado Secretary of State to certify Marcus Murphy as an eligible congressional-candidate to the 2018 general-election ballot, in accordance with the Plaintiff's filing of an Affidavit of Intent for Write-In Designation for United States Representative on June 26, 2018 (6-26-18) with the Colorado Secretary of State; and enjoin both preliminarily and permanently the Defendant, and his agents & successors, including but not limited to each county clerk and recorder, from enforcing the Sore-Loser Law, applicable to anonymous write-in congressional-candidates in CRS § 1-4-105. Plaintiff further requests that this court direct the Colorado Secretary of State to include Plaintiff as a named congressional-candidate on the general-election ballot.

(Count VI) F. Claim Relating to 28 USC § 1343(a)-Civil Rights and Elective Franchise (per 42 USC § 1985(1) & (3)-Conspiracy to Interfere with Civil Rights)

(¶ 19.) 1.Allegations-Plaintiff incorporates paragraphs 1-8 as if fully stated herein. This case involves violation of a fundamental part of 28 USC § 1343(a)-Civil Rights and Elective Franchise (per 42 USC § 1985(1) & (3)-Conspiracy to

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Interfere with Civil Rights), which provides that: “The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42; (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent; (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; (4) To recover damages or to secure equitable or other relief under any act of Congress providing for the protection of civil rights, including the right to vote.” Furthermore, 42 USC § 1985 (1) & (3)-Conspiracy to Interfere with Civil Rights provides that: “(1) Preventing Officer from Performing Duties-If two or more persons in any State ... conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; ... (3) Depriving Persons of Rights or Privileges-If two or more persons in any State ... conspire ..., for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; ..., the party so

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injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.” Plaintiff alleges that Defendant, and his agents, deprived Plaintiff of his Article I § 2 cl. 2 rights of qualification for office and First Amendment rights of speech, assembly, & association by incorrectly applying the unconstitutional State law, CRS § 1-4-105. The burdens on Plaintiff’s statutory-rights are significant, and the State of Colorado has no legitimate interests, let alone a compelling State interest, that can withstand strict scrutiny to justify dis-qualifying Plaintiff as an eligible congressional-candidate for the general-election, merely because the Plaintiff was an anonymous, un-welcome, write-in primary-candidate for the Democrat-Party nomination. The Sore-Loser Dis-qualification of a Primary, Anonymous, Write-In Candidate from continuing as an eligible congressional-candidate in the general-election, under CRS § 1-4-105, prevents the Open-Primary voters, supporters, and constituents of Plaintiff residing in Colorado’s Fifth Congressional District who voted for Plaintiff, from exercising their core statutory-rights guaranteed under 28 USC § 1343(a)-Civil Rights and Elective Franchise (per 42 USC § 1985(1) & (3)-Conspiracy to Interfere with Civil Rights). Plaintiff, Marcus Allen Murphy, wants to exercise his statutory-rights by acting as a congressional-candidate in the 2018 general-election. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Allen Murphy, from exercising his core statutory-rights guaranteed under 28 USC § 1343(a)-Civil Rights and Elective Franchise (per 42 USC § 1985(1) & (3)-Conspiracy to Interfere with Civil Rights). The Sore-Loser

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Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Murphy, from exercising his core statutory-rights guaranteed under 28 USC § 1343(a)-Civil Rights and Elective Franchise (per 42 USC § 1985(1) & (3)-Conspiracy to Interfere with Civil Rights), and negatively impacts his authorized federal campaign-committee, Murphy for Congress (CO-5)!, Inc. CRS § 1-4-105 directly limits core statutory-language, and is subject to strict scrutiny. *See, e.g., Am. Constitutional Law Found.*, 525 U.S. at 186. Defendant's interest in minimizing excessive factionalism & party-splintering and voter-confusion, and ensuring the orderly, fair, & efficient election of public officials was already served, for example, by the anonymity of Plaintiff as a mere Anonymous, Write-In Primary-Candidate. Under 42 USC § 1983, Defendant, under the color of State law, has violated Plaintiff's constitutional-rights.

(¶ 20.) 2. Request for Relief-Wherefore, Plaintiff, Marcus A. Murphy, demands of Defendant, Wayne W. Williams, Declaratory and Injunctive Relief, and any other relief the court deems appropriate, on this one individual claim. This Complaint seeks a declaratory judgment that CRS § 1-4-105, as enforced by Defendant, violates 28 USC § 1343(a)-Civil Rights and Elective Franchise (per 42 USC § 1985(1) & (3)-Conspiracy to Interfere with Civil Rights). This Complaint also seeks a permanent injunction directing the Colorado Secretary of State, and all of Defendant's agents and successors, including but not limited to the county clerk and recorder of each county within Colorado's Fifth Congressional District,

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from enforcing CRS § 1-4-105. Equitable relief is necessary, because there is no adequate remedy at law. Preliminary injunctive relief is also necessary, because the State of Colorado will hold the general-election on Tuesday, November 6, 2018 (“... the Tuesday succeeding the first Monday of November in every even-numbered year.”). *See* CRS §§ 1-4-201, 1-4-203. The deadline and last day for the Colorado Secretary of State to deliver to the county clerk and recorder of each county a certificate in writing of the general-election ballot-order and content for each county is Friday, September 7, 2018. *See* CRS § 1-5-203(3)(a). There is simply insufficient time between now and when the election-machinery begins for Plaintiff to obtain an adequate remedy, absent the granting of a preliminary injunction. Due to the impending election-related deadlines, including deadlines relating to the printing and transmission of general-election ballots, a preliminary injunction is necessary to avoid violating Plaintiff’s statutory-rights. Pursuant to 28 USC §§ 2201(a), 2202, Plaintiff requests that this court declare the Sore-Loser Law, applicable to an anonymous write-in congressional-candidate, in CRS § 1-4-105 unconstitutional, because it violates Plaintiff’s statutory-rights. Plaintiff requests that this court direct the Colorado Secretary of State to certify Marcus Murphy as an eligible congressional-candidate to the 2018 general-election ballot, in accordance with the Plaintiff’s filing of an Affidavit of Intent for Write-In Designation for United States Representative on June 26, 2018 (6-26-18) with the Colorado Secretary of State; and enjoin both preliminarily and permanently the Defendant, and his agents & successors, including but not limited to each county

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clerk and recorder, from enforcing the Sore-Loser Law, applicable to anonymous write-in congressional-candidates in CRS § 1-4-105. Plaintiff further requests that this court direct the Colorado Secretary of State to include Plaintiff as a named congressional-candidate on the general-election ballot.

(Count VII) G. Claim Relating to 28 USC § 1355(a)-Fine, Penalty or Forfeiture

(¶ 21.) **1.Allegations-**Plaintiff incorporates paragraphs 1-8 as if fully stated herein. This case involves violation of a fundamental part of 28 USC § 1355(a)-Fine, Penalty or Forfeiture, which provides that: “(a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any act of Congress,” Plaintiff alleges that Defendant, and his agents, deprived Plaintiff of his Article I § 2 cl. 2 rights of qualification for office and First Amendment rights of speech, assembly, & association by incorrectly applying the unconstitutional State law, CRS § 1-4-105. The burdens on Plaintiff’s statutory-rights are significant, and the State of Colorado has no legitimate interests, let alone a compelling State interest, that can withstand strict scrutiny to justify dis-qualifying Plaintiff as an eligible congressional-candidate for the general-election, merely because the Plaintiff was an anonymous, un-welcome, write-in primary-candidate for the Democrat-Party nomination. The Sore-Loser Dis-qualification of a Primary, Anonymous, Write-In

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Candidate from continuing as an eligible congressional-candidate in the general-election, under CRS § 1-4-105, prevents the Open-Primary voters, supporters, and constituents of Plaintiff residing in Colorado's Fifth Congressional District who voted for Plaintiff, from exercising their core statutory-rights guaranteed under 28 USC § 1355(a)-Fine, Penalty or Forfeiture. Plaintiff, Marcus Allen Murphy, wants to exercise his statutory-rights by acting as a congressional-candidate in the 2018 general-election. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Allen Murphy, from exercising his core statutory-rights guaranteed under 28 USC § 1355(a)-Fine, Penalty or Forfeiture. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Murphy, from exercising his core statutory-rights guaranteed under 28 USC § 1355(a)-Fine, Penalty or Forfeiture, and negatively impacts his authorized federal campaign-committee, Murphy for Congress (CO-5)!, Inc. CRS § 1-4-105 directly limits core statutory-language, and is subject to strict scrutiny. *See, e.g., Am. Constitutional Law Found.*, 525 U.S. at 186. Defendant's interest in minimizing excessive factionalism & party-splintering and voter-confusion, and ensuring the orderly, fair, & efficient election of public officials was already served, for example, by the anonymity of Plaintiff as a mere Anonymous, Write-In Primary-Candidate. Under 42 USC § 1983, Defendant, under the color of State law, has violated Plaintiff's constitutional-rights.

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(¶ 22.) **2. Request for Relief**-Wherefore, Plaintiff, Marcus A. Murphy, demands of Defendant, Wayne W. Williams, Declaratory and Injunctive Relief, and any other relief the court deems appropriate, on this one individual claim. This Complaint seeks a declaratory judgment that CRS § 1-4-105, as enforced by Defendant, violates 28 USC § 1355(a)-Fine, Penalty or Forfeiture. This Complaint also seeks a permanent injunction directing the Colorado Secretary of State, and all of Defendant's agents and successors, including but not limited to the county clerk and recorder of each county within Colorado's Fifth Congressional District, from enforcing CRS § 1-4-105. Equitable relief is necessary, because there is no adequate remedy at law. Preliminary injunctive relief is also necessary, because the State of Colorado will hold the general-election on Tuesday, November 6, 2018 ("... the Tuesday succeeding the first Monday of November in every even-numbered year."). *See* CRS §§ 1-4-201, 1-4-203. The deadline and last day for the Colorado Secretary of State to deliver to the county clerk and recorder of each county a certificate in writing of the general-election ballot-order and content for each county is Friday, September 7, 2018. *See* CRS § 1-5-203(3)(a). There is simply insufficient time between now and when the election-machinery begins for Plaintiff to obtain an adequate remedy, absent the granting of a preliminary injunction. Due to the impending election-related deadlines, including deadlines relating to the printing and transmission of general-election ballots, a preliminary injunction is necessary to avoid violating Plaintiff's statutory-rights. Pursuant to 28 USC §§ 2201(a), 2202, Plaintiff

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requests that this court declare the Sore-Loser Law, applicable to an anonymous write-in congressional-candidate, in CRS § 1-4-105 unconstitutional, because it violates Plaintiff's statutory-rights. Plaintiff requests that this court direct the Colorado Secretary of State to certify Marcus Murphy as an eligible congressional-candidate to the 2018 general-election ballot, in accordance with the Plaintiff's filing of an Affidavit of Intent for Write-In Designation for United States Representative on June 26, 2018 (6-26-18) with the Colorado Secretary of State; and enjoin both preliminarily and permanently the Defendant, and his agents & successors, including but not limited to each county clerk and recorder, from enforcing the Sore-Loser Law, applicable to anonymous write-in congressional-candidates in CRS § 1-4-105. Plaintiff further requests that this court direct the Colorado Secretary of State to include Plaintiff as a named congressional-candidate on the general-election ballot.

(Count VIII) H. Claim Relating to 42 USC § 1983-Civil Action for Deprivation of Rights

(¶ 23.) 1.Allegations-Plaintiff incorporates paragraphs 1-8 as if fully stated herein. This case involves violation of a fundamental part of 42 USC § 1983-Civil Action for Deprivation of Rights, which provides that: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ..., subjects, or causes to be subjected, any citizen of the United States or other person

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within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable....”

Plaintiff alleges that Defendant, and his agents, deprived Plaintiff of his Article I § 2 cl. 2 rights of qualification for office and First Amendment rights of speech, assembly, & association by incorrectly applying the unconstitutional State law, CRS § 1-4-105. The burdens on Plaintiff's statutory-rights are significant, and the State of Colorado has no legitimate interests, let alone a compelling State interest, that can withstand strict scrutiny to justify dis-qualifying Plaintiff as an eligible congressional-candidate for the general-election, merely because the Plaintiff was an anonymous, un-welcome, write-in primary-candidate for the Democrat-Party nomination. The Sore-Loser Dis-qualification of a Primary, Anonymous, Write-In Candidate from continuing as an eligible congressional-candidate in the general-election, under CRS § 1-4-105, prevents the Open-Primary voters, supporters, and constituents of Plaintiff residing in Colorado's Fifth Congressional District who voted for Plaintiff, from exercising their core statutory-rights guaranteed under 42 USC § 1983-Civil Action for Deprivation of Rights. Plaintiff, Marcus Allen Murphy, wants to exercise his statutory-rights by acting as a congressional-candidate in the 2018 general-election. The Sore-Loser Dis-qualification

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provision of CRS § 1-4-105 prevents Plaintiff, Marcus Allen Murphy, from exercising his core statutory-rights guaranteed under 42 USC § 1983-Civil Action for Deprivation of Rights. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Murphy, from exercising his core statutory-rights guaranteed under 42 USC § 1983-Civil Action for Deprivation of Rights, and negatively impacts his authorized federal campaign-committee, Murphy for Congress (CO-5)!, Inc. CRS § 1-4-105 directly limits core statutory-language, and is subject to strict scrutiny. *See, e.g., Am. Constitutional Law Found.*, 525 U.S. at 186. Defendant's interest in minimizing excessive factionalism & party-splintering and voter-confusion, and ensuring the orderly, fair, & efficient election of public officials was already served, for example, by the anonymity of Plaintiff as a mere Anonymous, Write-In Primary-Candidate. Under 42 USC § 1983, Defendant, under the color of State law, has violated Plaintiff's constitutional-rights.

(¶ 24.) 2. Request for Relief-Wherefore, Plaintiff, Marcus A. Murphy, demands of Defendant, Wayne W. Williams, Declaratory and Injunctive Relief, and any other relief the court deems appropriate, on this one individual claim. This Complaint seeks a declaratory judgment that CRS § 1-4-105, as enforced by Defendant, violates 42 USC § 1983-Civil Action for Deprivation of Rights. This Complaint also seeks a permanent injunction directing the Colorado Secretary of State, and all of Defendant's agents and successors, including but not limited to

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the county clerk and recorder of each county within Colorado's Fifth Congressional District, from enforcing CRS § 1-4-105. Equitable relief is necessary, because there is no adequate remedy at law. Preliminary injunctive relief is also necessary, because the State of Colorado will hold the general-election on Tuesday, November 6, 2018 ("... the Tuesday succeeding the first Monday of November in every even-numbered year."). *See* CRS §§ 1-4-201, 1-4-203. The deadline and last day for the Colorado Secretary of State to deliver to the county clerk and recorder of each county a certificate in writing of the general-election ballot-order and content for each county is Friday, September 7, 2018. *See* CRS § 1-5-203(3)(a). There is simply insufficient time between now and when the election-machinery begins for Plaintiff to obtain an adequate remedy, absent the granting of a preliminary injunction. Due to the impending election-related deadlines, including deadlines relating to the printing and transmission of general-election ballots, a preliminary injunction is necessary to avoid violating Plaintiff's statutory-rights. Pursuant to 28 USC §§ 2201(a), 2202, Plaintiff requests that this court declare the Sore-Loser Law, applicable to an anonymous write-in congressional-candidate, in CRS § 1-4-105 unconstitutional, because it violates Plaintiff's statutory-rights. Plaintiff requests that this court direct the Colorado Secretary of State to certify Marcus Murphy as an eligible congressional-candidate to the 2018 general-election ballot, in accordance with the Plaintiff's filing of an Affidavit of Intent for Write-In Designation for United States Representative on June 26, 2018 (6-26-18) with the Colorado Secretary of

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State; and enjoin both preliminarily and permanently the Defendant and his agents & successors, including but not limited to each county clerk and recorder, from enforcing the Sore-Loser Law, applicable to anonymous write-in congressional-candidates in CRS § 1-4-105. Plaintiff further requests that this court direct the Colorado Secretary of State to include Plaintiff as a named congressional-candidate on the general-election ballot.

(Count IX) I. Claim Relating to Arbitrary & Capricious State Agency Decisions

(¶ 25.) **1.Allegations-**Plaintiff incorporates paragraphs 1-8 as if fully stated herein. This case involves violation of a fundamental part of the Arbitrary & Capricious standard of federal judicial review of State agency decisions. In a relevant California Law Review article from 1999, entitled, *Judicial Federalism and the Administrative States*, specifically Section IV, “Federal-Law Challenges to State Agency Action in the federal Courts,” Ms. Woolhandler and Mr. Collins conclude that: “On the one hand, ... federal courts should ordinarily decline to entertain claims that a state agency has acted unreasonably or has applied state law in an arbitrary manner in individual (as opposed to systemic) cases.... On the other hand, as to challenges implicating fundamental rights or systemic due process claims, ... final state agency action ordinarily should be no more immune from federal court challenges based on federal law and the Constitution than any other action of the state or its officials.” Ann Woolhandler & Michael G. Collins,

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Judicial Federalism and the Administrative States, 87 Calif. L. Rev. 613, 702 (1999). Plaintiff alleges that Defendant, and his agents, deprived Plaintiff of his Article I § 2 cl. 2 rights of qualification for office and First Amendment rights of speech, assembly, & association by incorrectly applying the unconstitutional State law, CRS § 1-4-105. The burdens on Plaintiff's federal judicial-review rights are significant, and the State of Colorado has no legitimate interests, let alone a compelling State interest, that can withstand strict scrutiny to justify disqualifying Plaintiff as an eligible congressional-candidate for the general-election, merely because the Plaintiff was an anonymous, un-welcome, write-in primary-candidate for the Democrat-Party nomination. The Sore-Loser Dis-qualification of a Primary, Anonymous, Write-In Candidate from continuing as an eligible congressional-candidate in the general-election, under CRS § 1-4-105, prevents the Open-Primary voters, supporters, and constituents of Plaintiff residing in Colorado's Fifth Congressional District who voted for Plaintiff, from exercising their core federal judicial-review rights guaranteed under the Arbitrary & Capricious standard of judicial-review of State agency decisions by a federal court. Plaintiff, Marcus Allen Murphy, wants to exercise his federal judicial-review rights by acting as a congressional-candidate in the 2018 general-election. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Allen Murphy, from exercising his core federal judicial-review rights guaranteed under the Arbitrary & Capricious standard. The Sore-Loser Dis-qualification provision of CRS § 1-4-105 prevents Plaintiff, Marcus Murphy,

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from exercising his core federal judicial-review rights guaranteed under the Arbitrary & Capricious standard, and negatively impacts his authorized federal campaign-committee, Murphy for Congress (CO-5)!, Inc. CRS § 1-4-105 directly limits core federal judicial-review language, and is subject to strict scrutiny. *See, e.g., Am. Constitutional Law Found.*, 525 U.S. at 186. Defendant's interest in minimizing excessive factionalism & party-splintering and voter-confusion, and ensuring the orderly, fair, & efficient election of public-officials was already served, for example, by the anonymity of Plaintiff as a mere Anonymous, Write-In Primary-Candidate. Under 42 USC § 1983, Defendant, under the color of State law, has violated Plaintiff's constitutional-rights.

(¶ 26.) 2. Request for Relief-Wherefore, Plaintiff, Marcus A. Murphy, demands of Defendant, Wayne W. Williams, Declaratory and Injunctive Relief, and any other relief the court deems appropriate, on this one individual claim. This Complaint seeks a declaratory judgment that CRS § 1-4-105, as enforced by Defendant, is an incorrect, arbitrary & capricious factual application. This Complaint also seeks a permanent injunction directing the Colorado Secretary of State, and all of Defendant's agents and successors, including but not limited to the county clerk and recorder of each county within Colorado's Fifth Congressional District, from enforcing CRS § 1-4-105. Equitable relief is necessary, because there is no adequate remedy at law. Preliminary injunctive relief is also necessary, because the State of Colorado will hold the general-

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election on Tuesday, November 6, 2018 (“... the Tuesday succeeding the first Monday of November in every even-numbered year.”). *See* CRS §§ 1-4-201, 1-4-203. The deadline and last day for the Colorado Secretary of State to deliver to the county clerk and recorder of each county a certificate in writing of the general-election ballot-order and content for each county is Friday, September 7, 2018. *See* CRS § 1-5-203(3)(a). There is simply insufficient time between now and when the election-machinery begins for Plaintiff to obtain an adequate remedy, absent the granting of a preliminary injunction. Due to the impending election-related deadlines, including deadlines relating to the printing and transmission of general-election ballots, a preliminary injunction is necessary to avoid violating Plaintiff’s federal judicial-review right. Pursuant to 28 USC §§ 2201(a), 2202, Plaintiff requests that this court declare the Sore-Loser Law, applicable to an anonymous write-in congressional-candidate, in CRS § 1-4-105 unconstitutional, because it violates Plaintiff’s federal judicial-review rights. Plaintiff requests that this court direct the Colorado Secretary of State to certify Marcus Murphy as an eligible congressional-candidate to the 2018 general-election ballot, in accordance with the Plaintiff’s filing of an Affidavit of Intent for Write-In Designation for United States Representative on June 26, 2018 (6-26-18) with the Colorado Secretary of State; and enjoin both preliminarily and permanently the Defendant, and his agents & successors, including but not limited to each county clerk and recorder, from enforcing the Sore-Loser Law, applicable to anonymous write-in congressional-candidates in CRS § 1-4-105. Plaintiff further requests that this

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court direct the Colorado Secretary of State to include Plaintiff as a named congressional-candidate on the general-election ballot.

IV. Conclusion

(¶ 27.) In conclusion, Plaintiff, Marcus A. Murphy, seeks relief for above-said claims in this matter. Plaintiff never signed a written pledge to support the ultimate nominee of the Democratic Party. In addition, Plaintiff merely chose the Democratic-Party affiliation when he registered to vote for Hillary Clinton for President and Senator Michael Bennet for re-election two years ago in November 2016, when he first moved here. Plaintiff has not attended any party functions, other than a Candidates' Forum last September 2017 at Colorado College, and when he did attempt to participate in the Party-Assembly last April in Broomfield, he was grabbed by the arm & told to leave by the Rules Committee Chairman. Because Plaintiff was an Anonymous Write-In Candidate, there is no Voter Confusion. It was widely reported in both local & national media-news that Stephany Rose Spaulding ran Un-opposed & received 100% of democrat votes, even though 10,362 Democrat voters filled-out the primary ballot & voted for Governor but skipped-over her name, even though it was the only one on the Congress section of the ballot. *A fortiori*, Plaintiff was never an actual Named Primary-Candidate, because he did not appear on the Democrat Primary-Ballot; and according to the strict scrutiny standard, the State has the burden of proving that prohibiting Primary Write-In Candidates from the November General-Election is both narrowly tailored and the least-restrictive means available to further a compelling governmental interest. Write-In Candidates are inherently cross-party in nature;

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therefore, the Un-affiliated Voters in the November General-Election, as well as the Republican-Electors, have a Right to Vote for Plaintiff. Because the Defendant, and his predecessors, both promoted & enforced CRS § 1-4-105, in general, that a losing primary-candidate cannot continue as a general-election congressional-candidate; and because the Defendant, and his agents, have incorrectly factually applied unconstitutional CRS § 1-4-105 to the plaintiff, as an anonymous write-in candidate, in specific, the only effective equitable remedy is to place Plaintiff on the General-Election Ballot as an Eligible, Named Congressional-Candidate, in order to prevent the Defendant's pre-text of Voter-Confusion, that Plaintiff is an *ineligible* congressional-candidate. In *Corfield v. Coryell*, 6 Fed Cas. 546 (C.C.E.D. Penn. 1823), Justice Bushrod Washington listed several rights that he deemed were fundamental "privileges and immunities of citizens in the several States." One of the greatest traditions in American history is for the ordinary citizen to run for office as a write-in candidate. I, Marcus Allen Murphy, declare, under penalty of perjury, that I am the Plaintiff in this action, that I have read this Complaint, and that the information in this Complaint is true and correct. *See*, 28 USC § 1746; 18 USC 1621. Under Federal Rule of Civil Procedure (FRCP) 11, by signing below, I also certify to the best of my knowledge, information, and belief that this Complaint: (1) is not being presented for an improper purpose, such as to harass, cause un-necessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the Complaint otherwise complies with the requirements of Rule 11.

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Respectfully submitted, this the 30th day of July, 2018.

A handwritten signature in black ink, reading "Marcus Murphy", is written over a horizontal line.

Marcus A. Murphy

Pro Se Plaintiff

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