DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED November 4, 2024 9:46 AM FILING ID: 60AEA034E4F10 CASE NUMBER: 2024CV33363
LIBERTARIAN PARTY OF COLORADO, *et al.*, **Petitioners**, v. JENA GRISWOLD, in her official capacity as Secretary of State of Colorado, *et al.*, **Respondents**.	▲ **COURT USE ONLY** ▲
Attorneys for Respondents: PHILIP J. WEISER, Attorney General LEEANN MORRILL, First Assistant Attorney General* EMILY B. BUCKLEY, Senior Assistant Attorney General* LILY E. NIERENBERG, Assistant Attorney General* Colorado Attorney General's Office 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6000 Email: leeann.morrill@coag.gov; emily.buckley@coag.gov; lily.nierenberg@coag.gov Reg. Nos. 38742, 43006, & 45451 *Counsel of Record	Case No.: 2024CV33363 Division: 275
RESPONDENTS' HEARING BRIEF	

Respondents Jena Griswold, in her official capacity as Colorado Secretary of State ("the Secretary"), and Christopher Beall, in his official capacity as Deputy Colorado Secretary of State (the "Deputy Secretary"), submit the following hearing brief in advance of the November 4, 2024, hearing on the Verified Petition for Relief Pursuant to C.R.S. § 1-1-113.

INTRODUCTION

Colorado's election system is the gold standard across the nation. Its pillars are comprised of mail ballots that leave a paper trail of the total number of votes and how they were cast, and electronic voting systems that securely, accurately, and swiftly tabulate all ballots cast thus enabling election officials to meet post-election deadlines set by state and federal law. Both pillars feature numerous safeguards, so the election process remains secure even if one lapses.

In late October 2024, the Colorado Department of State ("Department") learned that a partially outdated set of passwords for certain voting systems components had been inadvertently posted on its website. The Secretary—with support from the Governor—promptly remedied this unfortunate mistake by ensuring that the compromised passwords for the subset of affected voting system components were all changed as of October 31, 2024, and verifying the security of such components. But even aside from these remedial actions, the voting systems components remained safe because Colorado's election system contains many layers of security. The posted set of passwords was only one of *two* needed to alter the operation of the affected voting system components and could only be used by a person with in-person physical access to such components because they are not connected to the internet. Under Colorado law, voting equipment must be stored in locked rooms that require a secure ID badge to access, which in turn creates an access log that tracks who enters a secure area and when. There is 24/7 video camera recording on all voting equipment. County Clerks, who by law are the official custodians of any voting system components used by their political subdivisions, are required to maintain restricted access to secure voting equipment areas and may only provide access to background-checked employees and contractors. No person may be present in a secure area unless they are authorized

to do so or are supervised by an authorized and background-checked employee. There are also strict chain-of-custody requirements that track when a voting systems component has been accessed and by whom. It is a felony to access voting equipment without authorization.

Based solely on the publicly known facts about the inadvertently posted passwords, Petitioners—the Libertarian Party of Colorado ("LPC"), through its Chair, Hannah Goodman, and a candidate for the Third Congressional District who is affiliated with the LPC, James Wiley—seek unprecedented relief from this Court that would upend the orderly administration of the November 5 general election. Such relief should be denied for three main reasons.

First, Petitioners improperly bring this action under C.R.S.[1] § 1-1-113 when the central relief sought—namely, decertification of the affected voting system components—may only be brought after the administrative complaint and investigation procedure required by § 1-5-621 has been followed and, if any party is aggrieved by the Secretary's final decision, judicial review is sought under the State Administrative Procedure Act, §§ 24-4-101, *et seq*. ("APA"). As a result, this Court lacks jurisdiction to consider and decide the merits of Petitioners' request for relief under § 1-1-113.

Second, Petitioners' request that this Court invalidate new Election Rule 20.5.2(c)(12),[2] which the Secretary promulgated on an emergency basis to facilitate the password changes and verify the security of all affected components, under § 1-1-113 is improper because a challenge to an administrative rule, too, may only be brought under the APA. And even if this Court could

[1] Unless otherwise specified, all statutory citations in this brief are to the 2024 version of the Colorado Revised Statutes.

[2] Election Rule 20.5.2(c)(12) is codified at 8 CCR 1505-1 and went into effect on October 31, 2024.

consider and decide the merits of Petitioners' rulemaking challenge in this proceeding, it would fail because Colorado law expressly authorizes the Secretary to permit the Deputy Secretary to act with her full authority in promulgating administrative rules, including without limitation Rule 20.5.2(c)(12).

And *third*, even if this Court finds that it has jurisdiction under § 1-1-113, Petitioners' *Verified Petition for Relief Pursuant to C.R.S. § 1-1-113* ("Petition") wholly failed to satisfy their burden of proving that, because one set of passwords for certain voting systems components was inadvertently posted on the Department's website, it must be assumed that the now obsolete passwords were used to improperly access and alter the components so as "to manipulate those systems and election results." Pet. at 2-3. Simply put, Petitioners lack the foundation needed to verify any facts in support of that assertion, and their Petition was not supported by a declaration of any person who has such foundation. Their request that this Court grant them extraordinary and unprecedented relief that would upend the November 5 general election is based on supposition alone, and therefore should be flatly rejected.

FACTUAL BACKGROUND

Late on October 24, 2024, the Colorado Department of State learned that a spreadsheet located on a subpage of the Department's website improperly included a hidden tab that showed passwords for approximately 600 of the more than 2,100 voting systems components in the state. Specifically, the spreadsheet included Basic Input/Output System (BIOS) passwords for voting system components in 63 of Colorado's 64 counties. Upon learning this information, the Department took immediate action to investigate the extent and impact of this issue. That evening, the Department promptly informed the federal Cybersecurity and Infrastructure

Security Agency, which closely monitors and protects the counties' essential security infrastructure. By the following day, the Department determined that only 34 of the 63 counties were potentially impacted because the remaining counties listed in the spreadsheet's hidden tabs had upgraded their voting system components and their newer components were not included in the spreadsheet. Over the next several days, the Department painstakingly identified line by line which specific components within those remaining 34 counties still had the specific passwords that were disclosed in the hidden tabs of the spreadsheet. The Department had not completed this process of identifying which machines in which counties were linked to which passwords until the morning of October 29, 2024, by which point, the Colorado GOP had issued its own public announcement about the partial password disclosure. *See* Exhibit A.

The Department began investigating the security of impacted components and changing their BIOS passwords on October 29, 2024. Since Colorado law prohibits any voting system component from being connected to the internet, *see* 8 CCR 1505-1, Rule 20.5.3(b)(2), all passwords had to be changed by persons who were physically present in the affected counties. In order to change the passwords as quickly as possible, the Secretary promulgated 8 CCR 1505-1, Rule 20.5.2(c)(12), on a temporary basis, which provides:

> If the Secretary of State determines that any BIOS password needs to be changed, then an employee or designee of the Secretary of State may be tasked with accessing the voting system component to forthwith change the password(s). The employee or designee of the Secretary of State may also take actions to investigate the voting system. Any employee or designee of the Secretary of State who performs a task in accordance with this rule must first pass a background check in accordance with Rule 20.2.1.

See Exhibit B.

On October 30, 2024, the Governor deployed human capital, air and ground assets, and other logistical support to the Department to complete changes to all the affected passwords—255 out of the approximately 600 passwords in the hidden tabs of the spreadsheet file—and verify that the proper settings for each piece of election equipment remained correct. This investigation included verifying the security of all affected components, confirming BIOS settings, changing passwords for those components that were still in use, and confirming that all components that were on the password list but were not in active use had their hard drives removed. By the end of the day of October 31, 2024, the Department had successfully changed of all the passwords and investigated every active device with an impacted password. During that process, the Department found *no evidence* that *any* component had been altered. This joint deployment included nine staff from the Department and an additional twenty-two state cybersecurity personnel who were directed to support the operation by Governor Polis. All deployed state personnel had appropriate background checks and received detailed instructions pursuant to the rules promulgated by the Secretary before beginning their tasks. Additionally, all deployed state personnel worked in pairs and were observed by county elections officials.

On November 1, 2024, the Governor and Secretary of State publicly stated that the posting of the passwords did not pose an immediate security threat to Colorado's elections and that affected passwords had been updated.[3] As the Governor stated on November 1:

> Every Coloradan can rest assured that their vote will be counted fairly and accurately. While the leaked passwords compromised just one of many layers of security that protect our election integrity in Colorado, we knew it was critical to take swift action and to work with Secretary Griswold and the county clerks to update the passwords immediately[.][4]

The now obsolete passwords do not pose any threat because Colorado's election system includes many layers of security. As stated above, the set of passwords that was inadvertently posted were one of two sets to make changes to the affected voting system components and can only be used with in-person physical access to that specific machine. Under Colorado law, voting equipment must be stored in secure rooms that require a secure ID badge to access. That ID badge creates an access log that tracks who enters a secure area and when. There is 24/7 video camera recording on all election equipment. County Clerks are required to maintain restricted access to secure ballot areas and may only share access information with background-checked individuals. No person may be present in a secure area unless they are authorized to do so or are supervised by an authorized and background-checked employee. There are also strict chain of custody requirements that track when a voting systems component has been accessed and by whom. It is a felony to access voting equipment without authorization.

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[3] Press Release, Colorado Governor's Office, Governor Polis & Secretary of State Griswold Announce That All Passwords Have Been Updated on Colorado Voting Machines, Security of Voting Machines Has Been Verified (Nov. 1, 2024), *available at* https://www.colorado.gov/governor/news/governor-polis-secretary-state-griswold-announce-all-passwords-have-been-updated-colorado-0.

[4] *Id*.

Further, every Colorado voter votes on a paper ballot. Paper ballots are then reviewed during the Risk Limiting Audit ("RLA") to verify that ballots were counted according to voter intent. The Risk Limiting Audit will be completed by November 26, 2024, before the election results are certified in Colorado. *See* 8 CCR 1505-1, Rule 25.2.3(a)(1).[5] Since 2017, Colorado's statewide elections have been subject to a post-election RLA which is "designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome." § 1-7-515(5)(b). The RLA utilizes comparison audits, which involve manually comparing randomly selected batches of ballots to voting machine totals.[6] The RLA is specifically designed to catch possible errors in tabulation machines and verify the result of elections (using paper ballots) to a high degree of statistical confidence. The RLA is the ultimate backstop to catch and immediately account for any errors or irregularities in the election tabulation process.

PETITIONERS' § 1-1-113 ACTION

On November 1, 2024, Petitioners filed their Petition under § 1-1-113, which contains bald assertions about the effect of the obsolete passwords on the security and accuracy of the November 5 general election results, without alleging any facts establishing that any unauthorized access or alterations to Colorado's secure voting systems has, in fact, occurred. *See generally*, Pet. Petitioners seek extraordinary relief from this Court to "decommission" each voting system component with which the posted passwords were associated, require a hand count

[5] *See also* Colorado Secretary of State Election Calendar 2024, https://www.sos.state.co.us/pubs/elections/calendars/2024ElectionCalendar.pdf.

[6] https://www.sos.state.co.us/pubs/elections/RLA/faqs.html. Only one county hand counts its ballots today in Colorado (San Juan County), and therefore, it does not participate in the RLA.

of 3.5 million or more ballots, and invalidate Rule 20.5.2(c)(12), despite the dearth of such evidence and without regard to the fact that the upcoming RLA will determine whether the votes cast in the election were counted correctly. *See* Pet. ¶ 47. They also seek injunctive relief that is not authorized under § 1-1-113 or other Colorado law, such as an order directing that the Secretary and the Department be immediately recused from participating in the November 5 general election, prohibiting the Secretary from promulgating any new administrative rules concerning the matters alleged in the Petition, and requiring the Colorado Attorney General to conduct an investigation concerning the posted passwords, as well as an award of their attorney fees and costs. *See id.* ¶ 47, and at 14.

LEGAL FRAMEWORK

I. The Administrative Complaint and Investigation Process in § 1-5-621 Governs Challenges to Electronic Voting Systems.

Colorado law requires political subdivisions with more than 1,000 active electors to use electronic or electromechanical voting systems[7] to count votes. § 1-5-612(1)(b). The Secretary is responsible for certifying voting systems. § 1-5-612(2). To be certified, a system must meet detailed statutory and regulatory requirements. *See* §§ 1-5-615 to -617; 8 CCR 1505-1, Rule 21. If someone believes that a voting system does not comply with the requirements of the Election Code, they must first file an administrative complaint with the Secretary pursuant to § 1-5-621.

[7] Per § 1-1-104(13.5), "'[e]lectromechanical voting system' means a system in which an elector votes using a device for marking a ballot card using ink or another visible substance and the votes are counted with electronic vote-tabulating equipment. The term includes a system in which votes are recorded electronically within the equipment on paper tape and are recorded simultaneously on an electronic device that permits tabulation at a counting center. As used in part 6 of article 5 of this title, 'electromechanical voting system' shall include a paper-based voting system."

That section specifically governs challenges to whether a certified voting system complies with Colorado law and is codified in Part 6 of Article 5 of Title 1, entitled "Authorization and Use of Voting Machines and Electronic Voting Systems." It permits any person to submit a complaint to the Secretary if they believe any electronic or electromechanical voting system in Colorado fails to comply with applicable standards, and states:

> *Notwithstanding any provision of law to the contrary*, upon filing of a complaint, the secretary of state shall investigate the complaint and may review or inspect the electronic or electromechanical voting system of a political subdivision at any time, including election day, to determine whether the system complies with applicable requirements of this part 6 or deviates from a certified system."

§ 1-5-621(1) (emphasis added).

The Secretary must then investigate the complaint and determine whether the voting system complies with Colorado law. § 1-5-621(1), (3), (4). If it does not, the Secretary will either direct the political subdivision to fix the system or will decertify the system altogether. § 1-5-621(4). After the investigation, the Secretary's staff may dismiss the complaint, refer the complaint to a prosecuting authority, or recommend to the Secretary a resolution for a violation. *See id*; *see also* 8 CCR 1505-1, Election Rule 13.1.6. Once the Secretary issues a final agency order on the complaint, any aggrieved party may seek judicial review under § 24-4-106(4) of the APA.

II. The APA Controls Judicial Review of Agency Rulemaking.

The state Administrative Procedures Act, § 24-4-106, exclusively controls judicial review of agency rulemaking, including temporary emergency rules. In general, "[t]he appropriate standard of review for a rulemaking proceeding is one of reasonableness." *Brighton Pharm., Inc. v. Colo. State Pharm. Bd.*, 160 P.3d 412, 415 (Colo. App. 2007). It is a highly deferential

inquiry. "Rules adopted by an administrative or regulatory agency are presumed valid, and the challenging party has a heavy burden to establish a rule's invalidity." *Id.*

A reviewing court may not substitute its judgment for that of the administrative agency on the merits of the adopted rule. *Citizens for Free Enter. v. Dep't of Revenue*, 649 P.2d 1054, 1065 (Colo. 1982). Courts "presume the validity and regularity of the administrative proceedings and resolve all reasonable doubts as to the correctness of the administrative ruling in favor of the agency." *Romero v. Colo. Dep't of Human Servs.*, 2018 COA 2, ¶ 25. A court may only set aside an agency rule if the rule is "arbitrary or capricious"; "contrary to constitutional right"; "in excess of statutory . . . authority"; "an abuse . . . of discretion"; "unsupported by substantial evidence when the record is considered as a whole"; or "otherwise contrary to law." § 24-4-106(7)(b). While different standards of review apply to different types of administrative challenges, the Colorado Supreme Court has recognized that "the underlying question is whether the agency action is reasonable." *Citizens for Free Enter.*, 649 P.2d at 1063 n.6.

III. Section 113 is a Special Summary Proceeding with a Narrow Scope of Review.

Section 113 is the "exclusive method for the adjudication of controversies arising from a breach or neglect of duty or other wrongful act that occurs prior to the day of an election." § 1-1-113(4). Under Section 113, the reviewing trial court may only consider claims that "a person charged with a duty under [the Election Code] has committed or is about to commit a breach or neglect of duty or other wrongful act[.]" § 1-1-113(1). After "notice to the official which includes an opportunity to be heard," if the district court finds good cause to conclude that the Secretary "has committed or is about to commit a breach or neglect of duty or other wrongful

act," then it "shall issue an order requiring substantial compliance with the provisions of [the Election Code]." *Id*. The burden of proof is on the petitioner. *Id.*

A reviewing court with jurisdiction under § 1-1-113is authorized to apply a less rigorous "substantial compliance" standard under which it may liberally construe the Election Code. § 1-1-103(1) & (3) ("[s]ubstantial compliance with the provisions or intent of [the Election Code] shall be all that is required") (emphasis added)). A court considers the following nonexclusive list of factors in determining whether a party has substantially complied with statutory requirements:

> (1) the extent of noncompliance; (2) the purpose of the applicable provision and whether that purpose is substantially achieved despite the noncompliance; and (3) whether there was a good-faith effort to comply or whether noncompliance is based on a conscious decision to mislead the electorate.

Fabec v. Beck, 922 P.2d 330, 341 (Colo. 1996) (citing *Loonan v. Woodley*, 882 P.2d 1380, 1384 (Colo. 1994)); *see also Kuhn v. Williams*, 418 P.3d 478, 488 n.4 (Colo. 2018) (referencing *Fabec* and *Loonan* test for substantial compliance in context of a § 1-1-113 challenge to the Secretary's determination of insufficiency on a candidate petition). These are referred to herein as the *Loonan* factors.

IV. The *Purcell* Principle Militates Against Altering the *Status Quo* Shortly Before or During an Election.

In *Purcell v. Gonzales*, the U.S. Supreme Court held that, as a general rule, federal courts should not enjoin state election laws in the period close to an election. 549 U.S. 1 (2006). The Court in *Purcell* allowed Arizona's election to proceed with its then-existing voter identification rules because "[c]ourt orders affecting elections … can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will

increase[.]" *Id*. at 4-5. The Court emphasized that "the possibility that qualified voters might be turned away from the polls" should "caution any ... judge to give careful consideration" before intervening in a state's elections. *Id*. at 4. The *Purcell* principle weighs against court-ordered changes to election procedures just before or during voting. *See, e.g., id*.; *Frank v. Walker*, 574 U.S. 929 (2014) (vacating stay of state photo identification law when votes had already been cast without photo identification requirement); *Veasey v. Perry*, 769 F.3d 890 (5th Cir. 2014) (staying trial court's decision to enjoin existing voter identification law shortly before voting began).

The *Purcell* principle also has been applied by state courts when presiding over election disputes that arise shortly before the date of an election. *See, e.g.*, *State ex rel. Ohio Democratic Party v. LaRose*, --- N.E.3d ----, 2024 WL 4488054, at *5 (Ohio Oct. 15, 2024) (finding *Purcell*'s logic "persuasive"); *Abdus-Sabur v. Evans*, No. NNH-CV-23-6135336-S, 2023 WL 5697658, at *4 (Conn. Super. Ct. Aug. 29, 2023) (finding that after voting had begun, "the risk of voter confusion discussed in *Purcell* is applicable, and the court must invoke the *Purcell* principle to ensure an orderly primary election process[.]").

SUMMARY OF ARGUMENT

The relief Petitioners seek must be denied. As a threshold matter, § 1-5-621(1) provides the exclusive avenue for Petitioners' concerns about the security of any electronic voting systems and their request to decommission voting machines. This provision is more specific to the challenge Petitioners raise and a far more recent legislative enactment than § 1-1-113. In addition, the Court lacks jurisdiction under Section 113 to review Rule 20.5.2(c)(12), as such review is governed by the APA and outside of the scope of Section 113. Moreover, the Rule was properly signed by the Deputy Secretary on behalf of the Secretary because Colorado law

authorizes the Secretary to delegate her rulemaking authority to him. Further, the Rule—which was enacted to further protect the election—cannot be void against public policy. Finally, if the Court did review the Petitioners' challenges under Section 113, it could not reward the extraordinary relief they seek because the Secretary and Deputy Secretary are in strict compliance with their duties under the Election Code. The relief that Petitioners seek is not based in the Elections Code and would undermine the orderly and timely administration of the November 5 general election in Colorado and make the process less secure.

ARGUMENT

I. Because Petitioners Must First Seek Administrative Relief Under § 1-5-621 for Claims Concerning the Security of Electronic Voting Systems, the Court Lacks Jurisdiction Over Such Claims.

Petitioners ask this Court to hold that "[e]very voting system component to which the published passwords are associated be immediately decommissioned." *Id*. ¶ 47. The Court has no jurisdiction to do so in a Section 113 action.

Petitioners bring this case under Section 113, the general pre-election dispute-resolution statute that authorizes the district court to order "substantial compliance" with the Election Code if the petitioner proves that an election official "has committed or is about to commit" a breach or neglect of duty or other wrongful act. § 1-1-113(1). But the General Assembly has enacted a more specific and recent statute to govern complaints against Colorado's voting systems—the exact subject that Petitioners attack here. *See* § 1-5-621. Although Petitioners avoid citing § 1-5-621, the Petition alleges that certain voting systems do not comply with the requirements of the Election Code and ask the Court to decommission these systems. Thus, § 1-5-621 controls.

The General Assembly and Colorado appellate courts have explained that a more specific statute acts as an exception to a general statute when the two conflict. *See* § 2-4-205; *Martin v. People*, 27 P.3d 846, 852 (Colo. 2001); *Smith v. Colo. Motor Vehicle Dealer Bd*., 200 P.3d 1115, 1118 (Colo. App. 2008). The reasoning behind this rule is "a simple matter of logic." *Martin*, 27 P.3d at 852. A general provision, by definition, covers a larger area of the law. A specific provision, by contrast, acts as an exception to that general provision, carving out a "special niche" from the general rules to accommodate a specific circumstance. *Id.* (citing § 2-4-205). This allows "both provisions to exist," consistent with the General Assembly's instruction that the entire statute is intended to be effective. *Id.*; *see also* § 2-4-201(1)(b).

The Colorado Supreme Court applied this well-established rule of statutory interpretation in the election context in *Carson v. Reiner*, 370 P.3d 1137, 1140-41 & n.2 (Colo. 2016). There, three voters attempted to use Section 113 one week before a school board election to challenge the residency of a candidate who had been certified to the ballot months earlier. The Court explained that a different statute, § 1-4-501(3), specifically authorizes pre-election challenges to a candidate's qualifications, but only if brought within five days of the candidate's certification to the ballot. While Section 113 contemplates challenges to a "broad range" of wrongful acts committed by election officials before election day, § 1-4-501(3) contemplates a "specific challenge to the qualification[s] of a candidate." *Carson*, 370 P.3d at 1141. The Court held that § 1-4-501(3) acts as a specific exception to Section 113, and the latter cannot be used to challenge a candidate's residency after the five-day window expires. *Id.* at 1142.

Here, like the specific statute in *Carson*, the General Assembly has established a specific administrative complaint procedure for challenges to whether a voting "system complies with the

applicable requirements of this part 6 or deviates from a certified system." *See* § 1-5-621(1) ("*Notwithstanding any provision of law to the contrary*, upon filing of a complaint, the secretary of state shall investigate the complaint and may review or inspect the electronic or electromechanical voting system…") (emphasis added). Moreover, § 1-5-621 was enacted in 2004, eleven years after § 1-1-113(1)'s most recent amendment. *Compare* 2004 Colo. Sess. Laws, ch. 334, § 14, p. 1352, *with* 1993 Colo. Sess. Laws, ch. 258, § 8, p. 1396. Thus, in addition to being more specific, § 1-5-621(1) controls as the later of the two enactments. *See In re Org. of Upper Bear Creek Sanitation Dist*., 682 P.2d 61, 64 (Colo. App. 1983). This fact was also present in *Carson* and informed the Court's decision that Section 113 could not be used to evade § 1-4-501(3)'s five-day deadline for challenging a candidate's qualifications. *Carson*, 370 P.3d at 1142.

Like the specific five-day challenge window in *Carson*, the General Assembly's creation of an administrative complaint procedure in § 1-5-621(1) for disputes involving voting systems acts as a specific exception to the broader dispute-resolution procedures in Section 113. Three sister district courts have so concluded in recent cases. *See Kirkwood v. Griswold*, Denver District Court No. 2022CV32954 (Dec. 23, 2022) (attached as Exhibit C) at 8 (dismissing Section 113 petition because "C.R.S. § 1-5-621(1) was intended to carve out a special niche from the general judicial process specifically to accommodate challenges to the integrity of a certified electronic voting system"); *Kirkwood v. Williams*, El Paso County District Court No. 2022CV31462 (Oct. 10, 2022) (attached as Exhibit D) at 3 ("The specific provisions of C.R.S. § 1-5-621 control over the broader provisions of C.R.S. § 1-1-113."); *Crossman v. Davis*, Mesa County District Court No. 22CV30323 (Sept. 23, 2022) (attached as Exhibit E) at 6. Were it

otherwise, § 1-5-621(1) would be "superfluous, serving no purpose." *Kirkwood v. Williams*, Ex. D at 3. This Court should reach the same conclusion.[8]

Because the more specific and recent provisions of § 1-5-621 control and provide the sole avenue for Petitioners' relief concerning concerns about the security of any electronic voting systems, this Court lacks jurisdiction over any and all related claims for relief, including their request that Colorado's certified voting systems be decommissioned. Pet. ¶ 47.

II. The Court Lacks Jurisdiction to Review Rule 20.5.2(c)(12), Which Was Legally Promulgated.

The Court lacks jurisdiction to review—much less void— Rule 20.5.2(c)(12) in this Section 113 action. Regardless, the Rule was properly adopted and is consistent with public policy.

A. Review of agency rulemaking is outside the scope of Section 113.

The state Administrative Procedures Act controls judicial review of agency rulemaking, including temporary emergency rules. § 24-4-106. Petitioners cannot circumvent the APA by suing under Section 113. *See Hanlen v. Gessler*, 333 P.3d 41, 48 (Colo. 2014) (conceding the Court "[did] not have appellate jurisdiction under section 1-1-113(3) to review [the district court's APA] ruling" in an appeal taken under § 1-1-113(3)).[9] Petitioners identify *no* authority that would allow this Court to void an administrative rule in a Section 113 action.

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[8] To be clear, § 1-5-621 does not shield this matter from judicial review. If Petitioners proceed under § 1-5-621 by filing an administrative complaint, the Secretary's final agency order would be subject to judicial review in the district court consistent with the APA. *See* § 24-4-106(4).

[9] Instead, *Hanlen* exercised discretionary jurisdiction under CAR 21 to hear the APA appeal. 333 P.3d at 48. But *Hanlen* does not allow this Court to consider an APA claim as part of a Section 113 action. To the extent the procedural posture of *Hanlen* might suggest otherwise, it is

Further, the plain text of Section 113 makes clear that Petitioner's challenge to Rule 20.5.2(c)(12) cannot be adjudicated through Section 113 proceedings. The remedy available in a Section 113 proceeding, is that "upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code." *Id*. "Thus, the remedy available at the end of a section 1-1-113 proceeding is limited to an order, upon the finding of good cause shown, that the provisions of the Colorado Election Code have been, or must be, substantially complied with." *Frazier v. Williams*, 401 P.3d 541, 545 (Colo. 2017); *see also Carson*, 370 P.3d at 1141, 2016 CO 38, ¶ 15. There is absolutely no authority for the proposition that "substantial compliance" upon the finding of "good cause" would allow this court to "void" any administrative rule promulgated under the APA, including without limitation Rule 20.5.2(c)(12).

Further, as the Supreme Court announced in *Frazier*, petitioners cannot join another claim with a Section 113 claim. *Frazier*, 401 P.3d at 545. Before 2017, there was some uncertainty as to whether parties could add a non-Section 113 claim to a Section 113 action. But in Frazier, the Court held in no uncertain terms that this can't be done. *See id*. at 542, 2017 CO 85, ¶ 3 (holding this court has jurisdiction to consider only claims of "breach or neglect of duty or other wrongful act" under the Colorado Election Code when a petition is brought through a § 1-1-113 proceeding). Similarly, in *Kuhn*, the Court refused to hear a constitutional challenge to part of the Election Code because "this court lacks jurisdiction to address such arguments in a

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important to note that *Hanlen* predates *Frazier*, which made clear that a court may only hear Section 113 claims in a Section 113 action, as discussed in more detail below.

section 1-1-113 proceeding." 418 P.3d at 489. Therefore, this court lacks jurisdiction to consider or decide Petitioners' rulemaking challenge to Rule 20.5.2(c)(12) under § 1-1-113.[10]

B. Rule 20.5.2(c)(12) was properly adopted.

Even if the Court reaches the merits of Petitioners' challenge to Rule 20.5.2(c)(12), it should uphold the Rule as valid. Petitioners assert that the Rule is void because it was signed by the Deputy Secretary on behalf of the Secretary. This contention lacks merit.

The Election Code provides the Secretary with broad rulemaking and administrative authority to satisfy her duties and responsibilities. *See* §§ 1-2-302(6), 1-1-107(2)(a), 1-1.5-104(1)(e). The Election Code grants the Secretary authority to "promulgate conditions of use . . . of electronic and electromechanical voting systems as may be appropriate to mitigate deficiencies identified in the certification process," § 1-5-608.5(3), and requires the Secretary to establish minimum security standards for computer voting systems, §§ 1-5-616(1)(g), 1-5-623. An agency may promulgate a temporary emergency rule when "immediate adoption of the rule is imperatively necessary to comply with the state or federal law or federal regulations" and complying with the APA would be contrary to the public interest. § 24-4-103(6)(a). Rule 20.5.2(c)(12) is consistent with the Secretary's legal authority to enact temporary and emergency rules—a fact that Petitioners do not dispute.

[10] Nor could this Court bifurcate Petitioners' claims. As *Frazier* explained, "A bifurcation … would still allow [a non-Section 113] claim—though adjudicated in a separate trial—to be brought in a section 1-1-113 proceeding in contravention of the statutory language. When a [a non-Section 113] claim is brought in a section 1-1-113 proceeding, the district court should dismiss the claim without prejudice with leave to refile it in a separate action[.]" *Frazier*, 401 P.3d at 545.

The Secretary has authority to appoint a Deputy Secretary. § 24-21-105. By statute, the Deputy Secretary "has full authority to act in all things related to the office" *Id*. The Secretary is "responsible for all acts of such deputy." *Id*. This statute "give[s] the power to the Secretary of State to delegate full authority [to the Deputy Secretary] to act in her stead," as the Colorado Supreme Court held decades ago. *Olshaw v. Buchanan*, 527 P.2d 545, 547 (Colo. 1974); *cf.* Colorado Attorney General Formal Opinion, the Role of the Deputy Treasurer, No. 04-5 (Dec. 6, 2004), *available at* https://coag.gov/app/uploads/2019/07/No.-04-05.pdf (opining that Colorado's Deputy Treasurer may act on behalf of the Treasurer in all matters, in the discretion of and as designated by the Treasurer).

Here, the Secretary of State delegated full authority to the Deputy Secretary of State to sign Rule 20.5.2(c)(12) on her behalf, as is permitted by law. § 24-21-105; *Olshaw*, 527 P.2d at 547. Petitioners cannot show that the Deputy Secretary acted outside his delegated authority in signing Rule 20.5.2(c)(12) and therefore the Rule is not void.

C. Rule 20.5.2(c)(12) is not void against public policy.

In the alterative, Petitioners contend that "if in fact, the Deputy Secretary was acting on behalf of the Secretary, this Rule void [sic] change is void as against public policy. Based upon information and belief, the Secretary violated her duty under Colorado law and committed a crime." Pet. ¶ 28. But rules adopted by an administrative or regulatory agency are "presumed valid," and plaintiffs have "a heavy burden to establish invalidity of the rule." *Colo. Ground Water Comm'n. v. Eagle Peak Farms, Ltd.*, 919 P.2d 212, 216-17 (Colo. 1996). A reviewing court may not substitute its judgment for that of the administrative agency on the merits of the adopted rule. *Citizens for Free Enter.*, 649 P.2d at 1065.

Petitioners' argument for voiding Rule 20.5.2(c)(12) appears to be that because the passwords were inadvertently posted in the first place, any subsequent rulemaking by the Secretary must be nullified by this Court without regard to the Rule's content. This is nonsensical, unsupported by law, and contrary to the APA. Rule 20.5.2(c)(12) allowed the State to act quickly to change the affected passwords across the State—making the election *more* secure, not less secure. The Governor has stated that "it was critical to take swift action ... to update the passwords immediately[.]"[11] Petitioners offer no sensible reason as to why this Court should void a rule that only further *protects* the 2024 General Election and remediates any possible fall out caused by the improper posting of the passwords. As stated above, the Court lacks jurisdiction to review Rule 20.5.2(c)(12) in this Section 113 action, but regardless, the Rule was legally promulgated and not void against public policy.

Furthermore, Petitioners argument on this requested relief is moot. All the BIOS passwords for active affected voting systems components have already been changed and the Department no longer requires the aid of third-party cybersecurity experts, as contemplated in the Rule.

III. Petitioners Have Not Shown They Are Entitled to Their Stated Relief Under § 1-1-113.

With respect to Petitioners' claims properly brought under Section 113, Petitioners cannot meet their burden to show an entitlement to relief. § 1-1-113(1). Petitioners appear to allege the Secretary breached or neglected duties under two provisions of the Election Code, namely §§ 1-1-107 and 1-13-708(2). Pet. ¶¶ 18-19. Section 107 lists the Secretary's powers and

[11] *Id*.

duties, among them to supervise elections and coordinate Colorado's responsibilities under the federal Help America Vote Act ("HAVA"). § 1-1-107(1)(a) and (e).[12] Petitioners allege the "Secretary breached those duties by publishing the subject BIOS passwords on the Secretary of State's website." Pet. ¶ 19. Petitioners also cite § 18-8-405(1), but that is not a provision of the Election Code and is therefore outside the scope of a § 1-1-113 action. To the extent that a staff member's inadvertent posting of one set of passwords on the Department's website was a past breach or neglect of the Secretary's duties under the Election Code, the Secretary has gone to great lengths to investigate and remediate that unfortunate mistake. *See* above at 5-7. Accordingly, the Secretary presently is in *strict compliance* with her duties under the Election Code, Petitioners' claims are moot, and the Court cannot grant the relief requested by Petitioners under § 1-1-113.

A. The Secretary is in strict compliance with § 1-1-107.

Petitioners claim that the posting of passwords in hidden tabs of a spreadsheet file breached the Secretary's duties under § 1-1-107. However, Petitioners do not identify a specific provision of that section that addresses voting system component passwords. Therefore, the Petition fails to explain whether and to what extent the more general duties imposed by that provision have been breached. Section 107 states the Secretary has the duty to supervise elections and coordinate Colorado's responsibilities under HAVA. § 1-1-107(1)(a) & (e). Petitioners have pointed to no specific provisions of HAVA that were violated, and indeed

[12] In enacting § 1-1-107, the legislature's stated intent was "to secure the purity of elections and to guard against the abuses of the elective franchise." *Id.* § 1-1-107(5). Section 107 does not impose a separate affirmative duty on state or county election officials to secure the purity of elections or guard against abuses of the elective franchise.

HAVA creates voluntary, not mandatory, standards for voting systems and procedures for the certification of voting. To the extent a staff member's posting of passwords on the Department's website could be considered a breach of the *Secretary's* duties under Section 107, the Secretary's actions to investigate, mitigate, and remediate the compromised passwords has brought her into strict compliance with the Election Code and therefore relief from this Court is unwarranted.

Petitioners also contend that third parties could have somehow used the passwords contained in the hidden tabs in an illegal fashion. But Petitioners present no factual indication of actual security breaches to support a violation. *Cf. generally* Pet. Conjecture and speculation are insufficient to support Petitioner's burden of proof under Section 113. In an unrelated case, the Alabama Supreme Court held that speculation about the possibility of fraud is not sufficient to demonstrate standing in a right to vote case alleging plaintiffs' votes were diluted:

> Specifically, they contend that somebody could "potentially" tamper with the machines, connect them to the Internet, and use that connection to distort the vote totals so significantly as to undermine their constitutional right to vote. However, the plaintiffs do not allege that any such behavior actually occurred in Alabama. Rather, they merely argue that the possibility of those things occurring infringes upon their right to vote.
>
> …
>
> The plaintiffs discuss many things that could go wrong and ultimately lead to the dilution of their votes. But they fail to allege anything that has gone wrong. As a result, the plaintiffs have failed to allege an injury in fact.

Hanes v. Merrill, 384 So. 3d 616, 621 (Ala. 2023). As in *Hanes*, the possibility that something will go wrong—i.e., that a third party would use passwords to alter voting system components—is not sufficient to show that the bad thing has occurred.

Further, the actions taken by the Secretary after October 24 demonstrate that the Department is in strict compliance with the purpose of Section 107. As of October 31, 2024, the

spreadsheet of passwords had been removed from the Secretary's website, all impacted passwords changed, and personnel dispatched to confirm the affected voting systems components' software was correct. The 2024 General Election remains secure.[13]

Even if Petitioners could prove a past breach or neglect of duty—which their Verified Petition fails to do—the Court has no need to Order substantial compliance because the Secretary already meets those requirements as demonstrated by the *Loonan* factors. To evaluate substantial compliance, courts look at (1) the extent of noncompliance; (2) the purpose of the applicable provision and whether that purpose is substantially achieved despite the noncompliance; and (3) whether there was a good-faith effort to comply or whether noncompliance is based on a conscious decision to mislead the electorate. *Fabec*, 922 P.2d at 341 (citing *Loonan*, 882 P.2d at 1384).

As noted above, the current extent of noncompliance is zero. The Department's efforts with assistance from the Governor's Office to quickly change the passwords was solely in furtherance of securing and ensuring an orderly administration of the election. To that end, Petitioners present no evidence of bad faith. The Secretary's efforts since October 24, 2024, when the inadvertent posting of passwords was discovered, demonstrates her good-faith effort to comply with the Election Code. The Secretary's immediate and substantial efforts to ensure that the integrity of Colorado's voting system is not impacted include:

- Promptly informing the federal Cybersecurity and Infrastructure Security Agency, which closely monitors and protects the county's essential security infrastructure.

[13] As noted above at 8, the RLA process is designed to ensure that the output of Colorado's electronic voting systems accurately reflect voters' intent. This process, which will be completed by November 26, 2024, has not identified any irregularities, *i.e.*, a mismatch between the electronic voting system tabulation results and the paper ballots that were tabulated, since statewide implementation of such audits began in 2017.

- Determining which equipment was still using the passwords contained in the hidden tabs of the spreadsheet.

- Adopting new Rule 20.5.2(c)(12) to govern the rapid response including changing compromised passwords for all affected voting system components as of October 31, 2024, and verifying the security of such components.

- Deploying nine staff from the Department and additional state cybersecurity personnel to all the affected Counties to update passwords and verify that no settings had been changed in any piece of affected equipment.

See above at 5-7.

Petitioners cannot meet their burden to show the Secretary was or currently is in breach or neglect of her duty under § 1-1-107. Rather, the facts will show that compromised passwords for all affected voting system components were changed as of October 31, 2024, and the Secretary is in strict compliance with the Election Code.

B. Section 1-13-708 does not require revocation of Respondents' access to voting system component passwords.

Petitioners also rely on § 1-13-708(2), which specifies the remedy for persons who "knowingly publish[] or cause[] to be published passwords … relating to a voting system." Pet. ¶ 19. The Petition wholly failed to allege that one or both Respondents (or any Department employee) *knowingly* published or caused to be published the BIOS passwords that were inadvertently posted on the Department's website. And to be sure, the "knowingly" mens rea in § 1-13-708(2) requires actual, not constructive, knowledge. As the Colorado Supreme Court wrote in *Przekurat ex rel. Przekurat v. Torres*, 428 P.3d 512, 516 (Colo. 2018):

> Affording 'knowingly' its 'plain and ordinary meaning,' *Clyncke* [*v. Waneka*, 157 P.3d 1072, 1077 (Colo. 2007)], we conclude that actual knowledge is required. When the General Assembly imposes a constructive knowledge requirement, it typically provides that a person 'should have known' of a particular thing."). *See, e.g.*, § 13-21-115(3)(c)(I), C.R.S. (2017) (imposing premises liability on a

> landowner who unreasonably fails to protect against dangers of "which he actually knew or should have known"). Statutory interpretation in Colorado has consistently construed the words 'know' or 'knowingly' without that qualifying 'should have known' to require actual knowledge. *See State ex rel. Suthers v. Mandatory Poster Agency, Inc*., 260 P.3d 9, 14 (Colo. App. 2009) (interpreting 'knowingly' in one portion of the Colorado Consumer Protection Act to require actual knowledge while noting that other portions of the CCPA provide liability when the person 'knows or should know' they are making a misrepresentation); *cf. People v. Coleby*, 34 P.3d 422, 424 (Colo. 2001) (holding that a criminal statute that required an 'actual knowledge' mental state as to one element of the crime imposed a "knowingly" mens rea to all elements of that crime). Unsurprisingly, [petitioner] has been unable to point to any other situation in which we have construed the word 'knowingly'—standing alone—to allow for constructive knowledge.

The Petition here does contain any verified facts for which Ms. Goodman and Mr. Wiley have sufficient personal knowledge and therefore failed to establish that either of the Respondents had actual knowledge that the BIOS passwords had been posted to the Department's website in violation of § 1-13-708(2). Further, the only arguable duty imposed on Respondents by that section would be to revoke password access for those who "knowingly published" the passwords, but again the Petition failed to allege that any Department employee "knowingly" did so (or even constructively knowingly did so).[14] For the same reasons discussed above, Respondents' prompt actions to change the passwords for all affected voting system components and verify the security of such components demonstrates a good faith effort to substantially comply with the Election Code including, to whatever extent relevant, this provision.

[14] Additionally, the Election Code provides that local district attorneys and the Attorney General are responsible for prosecuting violations of the Code, not state district courts presiding in civil actions brought under § 1-1-113.

IV. The Extraordinary Relief Petitioners Request is Not Contemplated by § 1-1-113 and Cannot be Awarded by the Court.

As noted above, § 1-1-113 is not the appropriate vehicle to challenge voting systems in the first instance, and even if it were, the Secretary can demonstrate strict compliance. In the unlikely event the Court disagrees, and finds that Petitioners have met their burden, it nonetheless should deny the extraordinary relief that they seek.

As the Colorado Supreme Court has held, § 1-1-113 provides a special summary proceeding that authorizes state courts to award extremely narrow relief. It is not a vehicle for rewriting the Election Code and it does not grant a reviewing court broad remedial powers. Instead, the remedy available in such a proceeding, is that "upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code." § 1-1-113(3). "[T]he remedy available at the end of a section 1-1-113 proceeding is limited to an order, upon the finding of good cause shown, that the provisions of the Colorado Election Code have been, or must be, substantially complied with." *Frazier*, 401 P.3d at 545; *Carson*, 370 P.3d at 1141. There is absolutely no authority for the proposition that "substantial compliance" upon the finding of "good cause" would allow this court to grant the extraordinary and unprecedented relief Petitioners seek here.

First, Petitioners ask this Court to remove the Secretary and the Department from supervising the November 5 general election, and prohibit them from promulgating any new rules concerning the matters alleged in the Petition. Pet. ¶ 47. But Petitioners failed to point to any provision of the Election Code that authorizes this Court to take such action under § 1-1-113 and Respondents are aware of none. *Cf.* § 1-1-110(2) ("All powers and authority granted to the county clerk and recorder by this code may be exercised by a deputy clerk in the absence of the

county clerk and recorder or if the county clerk and recorder for any reasons is unable to perform the required duties."). Nor does the Petition explain how such relief would substantially comply with the Election Code, which expressly requires: (1) the Secretary "[t]o supervise the conduct of … general … and statewide ballot issue elections in this state"; (2) "[t]o promulgate … such rules as the secretary of state deems necessary for the proper administration and enforcement of the election laws; (3) [f]or all general … elections, the county clerk and recorder shall conduct the election by mail ballot under the supervision of, and subject to the rules promulgated in accordance with [the APA], by, the secretary of state"; and (4) "[i]n Colorado, the secretary of state is the chief state election official and, in that capacity, is charged by HAVA and existing state statutory provision with the responsibility for supervising the conduct of elections and for enforcing and implementing the provisions of HAVA and of this code." § 1-1-107(1)(a) & (2)(a); § 1-7.5-104; § 1-1.5-101(1)(h). Petitioners cite no statute or precedent in support of these requests, which are contrary to the Election Code's directives, and therefore they must be denied.

Second, Petitioners ask that voted ballots returned to all 64[15] County Clerks across Colorado be hand counted. Pet. ¶ 47. But the Election Code does not provide for a statewide hand count. To the contrary, Colorado law requires political subdivisions with more than 1,000 active electors to use electronic or electromechanical voting systems to count votes. § 1-5-612(1)(b). Ordering a hand count would require re-writing Title I, would be an unprecedented

[15] Petitioners have no explanation for why a hand count is required in all 64 counties when at most, the password disclosure affected only 34 counties, and further when the nature of the decentralized, disconnected voting system architecture in Colorado means that all 255 compromised passwords in all of those 34 counties would have to all be used, one at a time, at each individual component, in order to achieve the demise of accurate ballot tabulation across all of those 34 counties.

action by a state court, and Petitioners have not met their burden to show that such extraordinary relief is justified. Moreover, hand counts require significant resources in the form of thousands of election judges,[16] newly devised training, and unappropriated financial reserves. Petitioners seek this relief on the eve of election day. On this bare record before the Court, it could have no confidence that ordering a hand count would increase the security of the General Election. The Court cannot grant such relief on the scant record it reviews today.[17]

Third, Petitioners ask this Court to award them their attorney fees and costs. *See* Pet. at 14. But it is well-established that "Colorado follows the traditional American Rule that, absent statutory authority, an express contractual provision, or a court rule, the parties in a lawsuit are required to bear their own legal expenses." *Moore v. Edwards*, 111 P.3d 572, 573 (Colo. App. 2005) (citing *Bernhard v. Farmers Ins. Exch.,* 915 P.2d 1285 (Colo. 1996)). Here, § 1-1-113 does not contain a fee-shifting provision, so even in the unlikely event that Petitioners obtain any relief under that section, they must still bear their own fees and costs.

Fourth, Petitioners ask the Court to order the Colorado Attorney General to investigate the publishing of the BIOS passwords. Pet. ¶ 47. Again, ordering a criminal investigation is not the type of relief that a court can grant in a § 1-1-113 proceeding. And in fact, courts cannot

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[16] Further, there is the problem of finding and training enough qualified election judges. For example, during the 2018 primary election, a ballot printing error in Montrose County forced a hand count of more than 10,600 ballots which took five days to complete. Based on this real-life example, as well as more recent examples from Pennsylvania, staff at the Department of State estimate that, for a statewide hand count, approximately 24,500 judges would be needed at an estimated cost of at least $13 million. By comparison, there are currently fewer than 2,000 election judges working this election across the state.

[17] This is especially so in light of the fact that the passwords have been remediated and that the upcoming RLA will determine if ballots have been inaccurately counted by the tabulation machines.

order independently elected officials to conduct criminal investigations. *See, e.g.*, *People v. Dist. Ct., In & For Tenth Jud. Dist.*, 632 P.2d 1022, 1024 (Colo. 1981). The relief requested here is beyond this Court's jurisdiction and therefore should be denied.

And *fifth*, although the Petition here was "verified" by Ms. Goodman and Mr. Wiley as required by § 1-1-113(1), both lack foundation to verify the supposition that the now obsolete passwords were used to improperly "access and gain control over Colorado's voting systems, which includes the ability to manipulate those systems and election results." Pet. at 2-3. The word "verified" is the past tense of the word "verify," which in the legal context means "to confirm or substantiate by oath or affidavit; to swear to the truth of." VERIFY, Black's Law Dictionary (11th ed. 2019). This Court should conclude that, like an affidavit, a "verified" petition "must be made 'positively,' by one with knowledge of the facts, and cannot be submitted on information and belief by a corporate officer or attorney." *Old Republic Nat'l Title Ins. Co. v. Kornegay*, 292 P.3d 1111, 1118–19 (Colo. App. 2012) (construing the requirement in C.R.C.P. 102(n) that a defendant's traverse to a writ of attachment be supported by an affidavit) (quoting *Colo. Vanadium Corp. v. W. Colo. Power Co.*, 213 P. 122, 124 (Colo. 1923)); *see accord In re Marriage of Herrera*, 772 P.2d 676, 678 (Colo. App. 1989) (Noting that "while C.R.C.P. 107(c) permits the court to issue a contempt citation upon a 'motion supported by affidavit' of any person, § 14–10–129.5(1) requires that a motion alleging noncompliance with a visitation order be *verified* by a parent." (emphasis in original)). The Petition failed to allege that either Ms. Goodman or Mr. Wiley have accessed any voting system component, much less determined that it was, in fact, altered to manipulate the system and election results, and therefore they lack foundation to verify that assertion to this Court.

CONCLUSION

For the above reasons and based on the above authorities, Respondents respectfully request that the Court deny the Petition and discharge all proceedings under § 1-1-113.

DATED: November 4, 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **RESPONDENTS' HEARING BRIEF** upon all counsel of record for the parties who have appeared to date in Case No. 24CV33363 electronically via the Colorado Courts E-Filing System on November 4, 2024.

s/ Carmen Van Pelt
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