

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202 (303) 606-2300	
Plaintiff: MICHAEL A. HANCOCK, registered Colorado elector, v. Defendants: JENA GRISWOLD, in her official capacity as Secretary of State for the State of Colorado; and CHRIS DEGRUY KENNEDY and KIYANA NEWELL, as designated representatives for Proposed Initiative 2025–2026 #195	
<i>Counsel for Colorado Chamber of Commerce:</i> Troy A. Eid, #21164 Matthew J. Douglas, #26017 Christopher J. Neumann, #29831 John A. Wharton, #47776 GREENBERG TRAURIG, LLP 1144 15th Street, Suite 3300 Denver, CO 80202 (303) 572.6500 EidT@gtlaw.com ; Matt.Douglas@gtlaw.com ; NeumannC@gtlaw.com ; john.wharton@gtlaw.com	▲ COURT USE ONLY ▲ Case No.: 2026CV33363 Division: 280
BRIEF OF AMICUS CURIAE THE COLORADO CHAMBER OF COMMERCE IN SUPPORT OF PLAINTIFF	

The Colorado Chamber of Commerce (“Chamber”), by and through undersigned counsel, respectfully submits this amicus brief as follows:

INTRODUCTION

The Colorado Chamber, the State’s largest and broadest business association, represents employers across every industry and region of Colorado and has direct and substantial interests in this proceeding distinct from those of the individual Plaintiff, Michael A. Hancock. First, if adopted, Initiative #195 would directly affect the Chamber’s members and the statewide

economy, including businesses in sectors such as mining, water, energy, and agriculture, as well as corporate entities across Colorado, Second, and more fundamentally, the Chamber's members depend on the predictable and even-handed administration of the rules the Secretary of State promulgates. When an agency announces mandatory requirements but declines to enforce them, the resulting uncertainty harms those who rely on the rules in conducting their affairs. The Chamber therefore has a material interest in ensuring that Initiative #195 reaches the ballot only after all applicable constitutional, statutory, and regulatory requirements are met; its statewide perspective and institutional resources may also assist the Court in resolving this expedited election matter.

Consistent with the proper role of an amicus, the Chamber does not seek to inject new facts or new claims. It writes to supply legal and policy analysis that the parties have not fully developed on three questions of law—the operation of C.R.S. § 1-40-118(5), the Secretary's obligation to follow her own mandatory rules, and the allocation of the burden to prove substantial compliance—and to explain why, if the Court resolves those questions in Plaintiff's favor, the relief Plaintiff requests is legally compelled.

SUMMARY OF ARGUMENT

Jena Griswold (the "Secretary"), Chris DeGruy Kennedy ("Kennedy"), and Kiyana Newell ("Newell") (Kennedy and Newell are collectively referred to as the "Proponents") defend the Statement of Sufficiency for Initiative #195 on the premise that the petition "substantially complied" with Colorado law. That premise, even if accepted, does not resolve this case.

First, C.R.S. § 1-40-118(5) provides that entries which substantially comply are deemed valid "*unless*" a protestor establishes, by a preponderance, a violation of a provision of law that

prevents fraud, abuse, or mistake. Substantial compliance is a floor, not a safe harbor. A violation of the Secretary's fraud-prevention registration rules—proven here on stipulated facts—overrides a substantial-compliance finding, and no proof of *actual* fraud is required.

Second, the Secretary cannot excuse that violation by declining to enforce her own mandatory rules. An agency is bound by the regulations it adopts; “must” and “shall” impose discretion-less obligations; and no deference is owed to an interpretation that contradicts a rule's plain text. Allowing ad hoc waiver would destroy the regulatory certainty on which the Colorado business community and the State's entire initiative system depend.

Third, once a protestor justifies a protest and rebuts the presumption of validity, the burden to prove substantial compliance rests on the Proponents, not the protestor. On this record—where the margin above the signature threshold is smaller than the universe of signatures collected by unregistered circulators, and where the Secretary concedes the timing data does not exist—the Proponents cannot carry that burden.

Fourth, the invalidation consequence follows as a matter of law. Invalidation of the noncompliant entries is mandatory, not discretionary; it drops the petition below the constitutional threshold. Because ballots are already printed and mailed, the Court should order that votes on Initiative #195 not be counted.

ARGUMENT

I. A finding of substantial compliance does not insulate the petition, because C.R.S. § 1-40-118(5) makes a proven fraud-prevention violation an independent and overriding ground for invalidation.

The Secretary's and Proponents' reliance on substantial compliance misreads the statute's structure. Section 1-40-118(5) provides that entries that “substantially comply” are deemed valid

by the Secretary or any court, unless one of three conditions is established—including, in subsection (5)(b), “[a] violation of any provision of this article or any other provision of law that, in either case, prevents fraud, abuse, or mistake in the petition process, . . . established by a preponderance of the evidence.” Colo. Rev. Stat. § 1-40-118. The “unless” clause is an override: it operates *on* entries that already substantially comply. A substantial-compliance finding therefore does not answer the question; it is the premise on which the (5)(b) exception does its work.

Two features of the text matter. First, subsection (5)(b) is separate from the actual-fraud exception in subsection (5)(a). The statute thus requires only a *violation of a fraud-prevention provision*, proven by a preponderance—not proof that fraud in fact occurred. The grounds for protest in § 1-40-118(2)(b) confirm the point, listing “fraud” and “a violation of any provision . . . that . . . prevents fraud, abuse, or mistake” as distinct grounds, and framing the list as one that “shall include, but [is] not limited to” those items. Colo. Rev. Stat. § 1-40-118.

Second, whether a given command tolerates substantial compliance or demands strict adherence “is a question of statutory construction” reviewed *de novo* and turns on “which standard better effectuates the General Assembly’s purpose.” *Colorow Health Care, LLC v. Fischer*, 2018 CO 52M, 420 P.3d 259, 264, *as modified on denial of reh’g* (July 2, 2018). The word “shall” is not alone dispositive, *id.*, but the Supreme Court has repeatedly held that mandatory, fraud-guarding commands fall outside the substantial-compliance default.

In *Griswold v. Ferrigno Warren*, the Court held that “there are some aspects of the Code that simply cannot be subject only to substantial compliance,” and that a requirement that is “clear, direct and specific” must be strictly met. 2020 CO 34, 462 P.3d 1081, 1085. Even when

the Court adopted the substantial-compliance framework for initiatives in *Loonan v. Woodley*, it recognized that “a specific statutory command could not be ignored in the name of substantial compliance.” *Id.* (citing *Loonan v. Woodley*, 882 P.2d 1380, 1384–86 (Colo. 1994)). And *Loonan* itself invalidated petition sections where the circulators’ affidavits omitted mandatory fraud-prevention language, holding that noncompliance with a “clear, direct and specific” requirement defeats validity even absent any finding of actual fraud or intent to mislead. *Loonan*, 882 P.2d at 1385–1386.

The registration rules at issue are exactly such provisions. Election Rule 15 requires petition entities to register each paid circulator—and to associate each circulator with the specific petition—before paying them to circulate, and to update that information within 20 days of any change. The Secretary adopted these rules to “increase transparency and security of the election process”—the same anti-fraud purpose that animated the 2009 legislative overhaul of circulator regulation. Colo. Dept. of State, Notice of Permanent Adoption, Election Rules, 8 CCR 1505-1 (Dec. 22, 2025), at 24 [“Notice of Permanent Adoption”]. A violation of those rules is a “violation of . . . [a] provision of law that . . . prevents fraud, abuse, or mistake,” and it is established on the parties’ own stipulation: at least 66 paid circulators who submitted petition sections were not registered to circulate for Initiative #195, and they collected roughly 10,860 signatures across 462 sections.

The Secretary’s contrary reading—that § 1-40-118 reaches only the conduct of electors, circulators, and notaries, and that entity-registration failures are relegated to administrative enforcement under § 1-40-135—cannot be squared with the statute. Subsection (5)(b) sweeps in “any other provision of law” that prevents fraud, abuse, or mistake; it is not confined to the three

signatories, and the grounds in (2)(b) are expressly “not limited to” an enumerated set. Colo. Rev. Stat. § 1-40-118. That administrative penalties may *also* be available does not make them exclusive; the statute supplies signature invalidation as a distinct consequence. Similarly, the Secretary contends that violations by petition entities of registration requirements “shall” be referred to the Attorney General for criminal prosecution, Colo. Sec’y of State, Hearing Br., at 11, which would lead to an absurd result here that should be avoided—namely that signatures obtained through criminal behavior of a petition entity must be counted. *See, e.g., State v. Nieto*, 993 P.2d 493, 501 (Colo. 2000) (en banc) (citing C.R.S. § 2-4-201(1)(c) for proposition that statutory interpretation that leads to absurd results will not be followed). Nor does the canon favoring the initiative right rescue the petition: *Loonan* teaches that the initiative laws are construed liberally only so far as is consistent with guarding “against fraud and mistake,” not to excuse violations of the very rules enacted to prevent it. 882 P.2d at 1384.

II. The Secretary cannot excuse the violation by declining to enforce her own mandatory rules, and doing so would undermine the regulatory certainty the business community depends on.

The Secretary’s position reduces to a claim that she may treat her own mandatory rules as optional in the signature-review process. Colorado law forecloses that claim, and sound policy counsels strongly against it.

An agency is bound by the regulations it promulgates; failure to do so is arbitrary and capricious. *Rags Over the Arkansas River, Inc. v. Colorado Parks & Wildlife Bd.*, 2015 COA 11M, 360 P.3d 186, 191. Rules 15.2.1 and 15.2.4 require petition entities to register paid circulators, associate them with the relevant petition, and update the required information. The

Secretary's own guidance likewise states that "[c]irculators must be registered." Notice of Permanent Adoption, at 10.

The Secretary cannot waive those requirements case by case; if a rule proves unworkable, the remedy is formal rulemaking, not selective nonenforcement. *Rags Over the Arkansas River*, 360 P.3d at 193. Nor is the Secretary's contrary litigation position entitled to deference when it conflicts with the regulation's plain language. Deference in that circumstance would allow an agency to create a new rule without notice and comment. *Id.* A court reviews the legal question *de novo*, and an erroneous interpretation of law warrants reversal. *Stell v. Boulder Cnty. Dep't of Soc. Servs.*, 92 P.3d 910, 915–916 (Colo. 2004). The difficulty of enforcing a mandatory rule does not excuse noncompliance; an agency remains bound by its regulations notwithstanding broad statutory discretion. *Rags Over the Arkansas River*, 360 P.3d at 194.

That principle matters beyond this petition. The Chamber's members and other participants in the initiative process need to be able to rely on the Secretary's rules as written. If a mandatory registration requirement can be set aside when enforcement is inconvenient, those rules no longer provide predictable guidance. The Secretary's adoption notice identifies uniform and proper administration and enforcement as purposes of the amendments. Notice of Permanent Adoption, at 24. Excusing noncompliance here would undermine that predictability and invite future participants to treat registration as optional.

III. The burden to prove substantial compliance rests on the Proponents, who cannot carry it on this record.

The Secretary and the Proponents repeatedly invoke the protestor's burden of proof, but their invocation leaves out a critical burden-shifting step. As an initial matter, while the governing statute provides that "the party protesting the finding of the secretary of state

concerning the sufficiency of signatures shall have the burden of proof,” Colo. Rev. Stat. § 1-40-119, the Colorado Supreme Court has construed that provision narrowly. In *Fabec v. Beck*, the Court held that the statute merely requires any party disagreeing with an initial administrative determination to justify that party’s protest. 922 P.2d 330, 342–343 (Colo. 1996). Importantly, once the protestor does so and the presumption of *prima facie* validity is rebutted, “it is the proponents, and not the protestors, . . . that bear the burden of showing that substantial compliance occurred.” *Fabec*, 922 P.2d at 342–343. That allocation of burden makes sense. The constitutional presumption that signatures are “genuine and true” attaches only to *properly verified* petitions; where an irregularity is shown, the presumption falls away and the proponents must come forward with affirmative evidence of compliance. *Fabec*, 922 P.2d at 342–343, 345. And the proponents are the parties with the relevant knowledge: they control the signature-gathering process from start to finish and themselves submit the statutorily required paid-circulator report.

Here, Hancock has more than “justified” his protest: on the stipulated facts, at least 66 paid circulators collected roughly 10,860 signatures¹ while unregistered for Initiative #195, a violation of fraud-prevention rules that, under Argument I, strips those entries of their “deemed valid” status. The burden to prove substantial compliance therefore rests on the Proponents. They cannot meet it. *Loonan* is instructive: there, proponents who “made no attempt to demonstrate that, in fact, all circulators read and understood” the governing laws could not establish substantial compliance. *Loonan*, 882 P.2d at 1385–1386. The Proponents face the same problem,

¹ Despite the 10,860 number in the Joint Stipulated Facts, ¶ 30, Plaintiff now contends that 11,216 is more accurate. Plaintiff’s Hearing Br. at 3 n.2.

compounded by the Secretary's own concession that she is "unaware of any database" that would show how many of the disputed signatures were gathered after a circulator was paid—the very fact on which any substantial-compliance defense would depend. Sec'y of State's Hearing Br. at 15. The Secretary further concedes that the parties are "still working to verify" the number of signatures and sections at issue, Joint Stip. Facts at ¶ 30 n.2, that her agency is "continuing to investigate the accuracy of the registration records previously produced," and that the investigation "may alter the other calculations in this filing." Joint Stip. Facts at ¶ 22 n.1.

The shifting arithmetic makes the burden dispositive. The initiative cleared the 124,238-signature threshold by only 6,700 valid signatures, while the signatures collected by unregistered circulators number far more. The parties dispute how many signatures are ultimately at issue—the Proponents contend the number is as low as 3,808—but that dispute is precisely why the burden controls the outcome. A party that bears the burden of proof on a contested, incomplete record does not prevail. Because the Proponents cannot affirmatively demonstrate that enough valid signatures survive, the Statement of Sufficiency cannot stand.

IV. If the Court sustains the protest, the relief Plaintiff seeks is legally compelled: the Court must invalidate the noncompliant entries, vacate the Statement of Sufficiency, and order that votes on Initiative #195 not be counted.

Section 1-40-118(5) makes entries "deemed valid" only subject to its express exceptions. Once a protestor establishes, by a preponderance of the evidence, a violation of a provision of law that prevents fraud, abuse, or mistake in the petition process, the Court cannot continue to count the affected entries merely because the petition otherwise substantially complied with the law. The Election Code makes invalidation mandatory. Colo. Rev. Stat. § 1-40-118(5)(b). Section 1-40-113(1)(a) is equally categorical: "Any petition section that fails to conform to the

requirements of this article or is circulated in a manner other than that permitted in this article shall be invalid.” See *Loonan*, 882 P.2d. at 1383. Once the noncompliant entries are removed—more than enough to erase the 6,700-signature margin—the petition falls below the constitutional minimum and the Court must vacate the Secretary’s determination of sufficiency and enjoin the Secretary from counting votes cast on Initiative #195. That is precisely the relief the Supreme Court affirmed in *Loonan*, where the trial court “vacate[ed] the Secretary of State’s determination of sufficiency of the petition” and “enjoin[ed] the Secretary from certifying the proposed initiative to the county clerks.” *Id.* at 1382.

If this Court is concerned with the timing of this remedy, Colorado law resolves it. In *Fabec*, the Supreme Court confronted a situation identical to this one, where the ballots had already been printed. After the district court invalidated enough signatures that the petition “fell . . . short of the minimum,” the court “enjoined the Secretary from counting any of the votes cast with regard to the initiative.” 922 P.2d at 334. That is the appropriate remedy.

Ordering this limited remedy is well within the Court’s authority because “the power to fashion equitable remedies lies within the discretion of the trial court,” and is disturbed only for an abuse that is “manifestly arbitrary, unreasonable, or unfair.” *La Plata Med. Ctr. Assocs., Ltd. v. United Bank of Durango*, 857 P.2d 410, 420 (Colo. 1993) (internal quotations and citation omitted). Declining to count votes on a measure that never qualified for the ballot is not arbitrary, unreasonable, or unfair. To the contrary, counting votes on an unqualified measure—after a fraud-prevention violation has been shown—would itself subvert the integrity of the process the Election Code exists to protect. And ordering this remedy does not invalidate voters’ choices on the remainder of the ballot or disturb the other matters before Colorado voters.

CONCLUSION

A finding of substantial compliance does not end this case; it begins it. Section 1-40-118(5) makes a proven violation of the Secretary's fraud-prevention rules an overriding ground for invalidation. The Secretary cannot cure that violation by ignoring her own mandatory commands, and the burden to prove substantial compliance rests with the Proponents, who cannot carry it on this record. Invalidation then follows as a matter of law, dropping Initiative #195 below the constitutional threshold. The Chamber respectfully urges the Court to sustain the protest and vacate the Statement of Sufficiency, and—because ballots have already issued—order the Secretary not to count votes cast on Initiative #195.

Respectfully submitted this 16th day of October 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October 2026, a true and correct copy of the foregoing **BRIEF OF AMICUS CURIAE THE COLORADO CHAMBER OF COMMERCE IN SUPPORT OF PLAINTIFF** was electronically filed with the Clerk of the Court using the Colorado Courts E-Filing system, which notifies the following parties:

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Filing Receipt
Filing Information

Filing ID:	DA687F3442580
Court Location:	Denver County - District
Case Number:	2026CV033363
Case Caption:	Hancock, Michael A v. Griswold, Jena et al
Authorized Date:	10/16/2026 4:34 PM
Submitted By:	Slovana Mancuso

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Documents

Document ID	Document	Title	Statutory Fee	Security
6409567375F7E	Brief	Brief of Amicus Curiae the Colorado Chamber of Commerce in Support of Plaintiff	\$0.00	Public

Service

Party	Type	Attorney/Paraprofessional	Organization	Method
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Submission Options

Note To Clerk:	N/A
Authorizer:	Matthew J Douglas
Submit Options:	Submit to the court and serve selected parties.

Billing Information

Statutory Filing Fees:	\$0.00
E-Filing Fees:	\$18.00
Service Fees:	\$18.00
Total Fees:	\$36.00
Billing Reference:	187475-014700