No.

IN THE

Supreme Court of the United States

RYAN FRAZIER & LIBERTARIAN PARTY OF COLORADO,

Petitioners,

v.

WAYNE WILLIAMS, in his official capacity as Colorado Secretary of State, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Scott E. Gessler
Counsel of Record
Steven A. Klenda
KLENDA GESSLER & BLUE LLC
1624 Market Street, Suite 202
Denver, CO 80202
(720) 432-5705
sgessler@klendagesslerblue.com
Counsel for Petitioners

LEGAL PRINTERS LLC, Washington DC • 202-747-2400 • legalprinters.com

QUESTIONS PRESENTED

May a state use one set of civil procedures for state claims brought in state courts, but different rules for federal claims brought under 42 U.S.C. § 1983?

PARTIES TO THE PROCEEDING

The following are parties to this proceeding; Ryan Frazier, an individual, Wayne Williams, in his official capacity as Colorado Secretary of State, the Libertarian Party of Colorado, Chuck Broerman, in his official capacity as the El Paso County Clerk and Recorder, and Gilbert Ortiz, in his official capacity as the Pueblo County Clerk and Recorder.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitution

Statutes

Rules

Other Authorities

OPINIONS AND ORDERS BELOW

This petition involves two separate cases that were decided by the Colorado Supreme Court. Both cases were briefed and argued separately. The Colorado Supreme Court issued both opinions on September 11, 2017. It issued a full written opinion in *Frazier v. Williams*. App. A, p. A-1. In *Williams v. Colorado Libertarian Party*, it reviewed the procedural history and grounded its opinion in "the reasons set forth in more detail in our lead companion case *Frazier v. Williams*." App. A, p. A-1.

In *Frazier*, the majority and dissenting opinions are reported at *Frazier v. Williams*, 401 P3d 541 (Colo. 2017). The Supreme Court took appeal directly from the district court decision, and accordingly there is no intermediate appellate court decision. The district court decisions are unreported.

In *Williams v. Libertarian Party of Colorado*, the Colorado Supreme Court's opinion is reported at *Williams v. Libertarian Party of Colorado*, 401 P.3d 558 (Colo. 2017). This decision reversed a Colorado Court of Appeals published opinion, reported at *Libertarian Party of Colorado v. Williams*, 405 P.3d 1159 (Colo. App. 2016). The district court opinions were not reported.

JURISDICTION

The Colorado Supreme Court issued its opinion on September 11, 2017. On November 29, 2017, this Court granted a 58 day extension of time, to and including February 6, 2018, for the Libertarian Party of Colorado in Case No. 17A588. On November 30, 2017, this Court granted a 60 day extension of time, to and including February 8, 2017, for Ryan Frazier in Case No. 17A591.

This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves three constitutional and statutory provisions;

1. The Supremacy Clause of the United States Constitution, art. VI, cl. 2, which states in pertinent part:

> The Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

2. Section 1 of the Civil Rights Act of 1871, codified at 42 U.S.C. § 1983, which states in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person 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 . . . .

3. Colorado Revised Statutes, § 1-1-113, which states in pertinent part:

> **§ 1-1-113 Neglect of duty and wrongful acts—procedures for adjudication of controversies—review by supreme court.**
>
> (1) When any controversy arises between any official charged with any duty or function under this code and any candidate, or any officers or representatives of a political party, or any persons who have made nominations or when any eligible elector files a verified petition in a

district court of competent jurisdiction alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act, after notice to the official which includes an opportunity to be heard, upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code. The order shall require the person charged to forthwith perform the duty or to desist from the wrongful act or to forthwith show cause why the order should not be obeyed. The burden of proof is on the petitioner . . .

(3) The proceedings may be reviewed and finally adjudicated by the supreme court of this state, if either party makes application to the supreme court within three days after the district court proceedings are terminated, unless the supreme court, in its discretion, declines jurisdiction of the case. If the supreme court declines to review the proceedings, the decision of the district court shall be final and not subject to further appellate review.

(4) Except as otherwise provided in this part 1, the procedure specified in this section shall be 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. . . .

STATEMENT OF THE CASE

This petition arises from two ballot access cases in which the plaintiffs challenged decisions by the Colorado Secretary of State (Colorado's chief election official) under both state law and 42 U.S.C. § 1983.

Frazier v. Williams

In April 2016, Ryan Frazier filed a petition with the Colorado Secretary of State as a candidate for United States Senate for placement on Colorado's Republican primary ballot. In order to petition on to the ballot in Colorado, a candidate for a statewide office must have 1,500 valid signatures from each of Colorado's seven congressional districts. Colo. Rev. Stat. § 1-4-801(2)(c)(II). Upon reviewing the petition, the Colorado Secretary of State rejected several thousand signatures and issued a *Statement of Insufficiency* on April 28, 2016.[1] According to the Secretary's count, Frazier's candidate petition fell short by 408 signatures. Four out of seven Congressional Districts did not have enough signatures, including District 3, which fell short by

---

[1] Frazier was not alone in his petition signature difficulties. Four Republican Senate candidates submitted petitions for placement on the ballot, and three of them initially failed to meet the threshold. All three successfully sued the Secretary of State to be placed on the ballot.

306 signatures. *Petition by Ryan Frazier Protesting Statement of Insufficiency,* App. C, p. A-41.

The Secretary rejected signatures for multiple reasons, including;

1. Several circulators who collected signatures were not registered Republicans in the state of Colorado,
2. Many petition signers did not reside at the address listed on the state voter rolls, and
3. Several hundred petition signers signed more than one petition, and the Secretary only counted the signature for the first petition it reviewed (regardless of the date the voter signed any petition).

Colorado has enacted Colo. Rev. Stat. § 1-1-113 as the exclusive procedure for resolving disputes under the Colorado Election Code. Colo. Rev. Stat. §§ 1-1-101 through 1-13-803. Colorado's Election Code governs all aspects of Colorado's state elections, except campaign finance regulations and statewide ballot initiatives. Section 113 does not, by its terms, direct state courts to expedite election contests. But state courts nonetheless frequently expedite § 113 litigation, for the simple reason that they must resolve election contests before an impending election.

Frazier's signature challenge was not expedited just because of the impending election,

however. It moved at breakneck speed for three additional reasons.

First, in 2016 the Colorado General Assembly had established the window for candidates to collect petition signatures relatively late in the primary election cycle. For the 2016 election, candidates could not begin gathering signatures on ballot-access petitions until February 1, 2016, and petitions were due April 4, 2016. Colo. Rev. Stat. § 1-4-801(5) (West 2016). This allowed only 63 days to collect signatures, and required petitions to be turned in 25 days before ballot certification for the primary election on June 28, 2016. Colo. Rev. Stat. § 1-5-203(1)(a) (requiring Secretary of State to certify primary ballot by April 29, 2016); Colo. Rev. Stat. § 1-4-101(1) (setting primary election date).

Second, the Secretary did not issue Frazier's *Statement of Insufficiency* until the afternoon of April 28, 2016—one day before ballot certification. This provided exceedingly little time to contest the *Statement of Insufficiency*.

Third, under Colorado law candidates must protest a *Statement of Insufficiency* within five calendar days. Colo. Rev. Stat. § 1-4-909(1.5). The Secretary issued Frazier's Statement of Insufficiency on Thursday, April 28, 2016, giving him until Tuesday, May 3, 2016, to file a protest.

This statutory and administrative framework created a very compressed litigation cycle. One day after receiving the Statement of Sufficiency, Frazier

filed an uncontested motion to stay ballot certification. That day and over the weekend he reviewed thousands of signatures, interviewed well over a dozen witnesses, researched applicable law, worked with the Secretary to develop 151 stipulated facts, and drafted and filed the *Petition by Ryan Frazier Protesting Statement of Insufficiency,* on Monday, May 2, 2016.[2]

Both Frazier and the Secretary filed trial briefs on May 2nd, and Frazier also submitted his witness and exhibit list. The hearing took place one day later, on Tuesday, May 3rd.

Frazier sought to rehabilitate rejected petition signatures under both Colorado law and under § 1983. Under state law, for example, he claimed the Secretary erroneously rejected circulators who were, in fact, registered Republican voters; he also claimed that the Secretary improperly applied Colorado statute in rejecting signers who had signed more than one petition. And at trial Frazier also argued that the Secretary improperly rejected signers who were, in fact, registered voters in Congressional District 3, but lived at different addresses than the ones reflected on Colorado's voter rolls. *Petition by*

---

[2] For the trial, Frazier cooperated with another candidate, Robert Blaha, who also received a statement of insufficiency on April 28, 2016. Frazier and Blaha brought similar claims with similar facts, in part because many of the same circulators worked for both Frazier and Blaha. Upon their joint motion and without objection from the Secretary, the court consolidated the hearings for both candidates.

Ryan Frazier Protesting Statement of Insufficiency App. C, A-41.

Under federal law, Frazier asserted two claims under 42 U.S.C. § 1983. He claimed that that Colorado (1) unconstitutionally required petition circulators to be registered Colorado Republican voters; and (2) that Colorado improperly limited voters to signing only one nominating petition. *Petition by Ryan Frazier Protesting Statement of Insufficiency* App. C, p. A-41.

For purposes of this petition, it is critical to understand that because of the various factual combinations of signatures that Frazier sought to rehabilitate, Frazier claimed relief through several avenues: a combination of federal and state claims, or state claims only, or federal claims only. At closing argument, Frazier provided the district court six different combinations of signature categories under which he could prevail. For example, one signature category was "circulator voter registration" for a particularly critical petition circulator, which was subject to both a state substantial compliance claim under state law and a residency challenge under § 1983. Relief under all six of these signature rehabilitation combinations could be achieved through over a dozen combinations of federal and state claims. Several avenues of relief also relied solely on state law claims or solely on federal claims.

Ruling solely on state law and not addressing any federal claims, the state court denied Frazier

relief the day after the hearing,[3] and the Colorado Supreme Court granted expedited review.[4] It accepted 46 signatures of one circulator on state law grounds, which made it unnecessary to address Frazier's constitutional grounds for accepting these signatures. And it remanded to the district court for factual findings concerning the eligibility 51 petition signers in the Third Congressional District. This one-page opinion is unreported. Upon remand, the parties entered into additional factual stipulations regarding the 51 signatures at a telephonic hearing, at which point the Court entered an uncontested order placing Frazier on the ballot.

Frazier then sought attorney fees under 42 U.S.C. § 1988. Although the district court had declined to address Frazier's federal claims, Frazier nonetheless argued that he had brought strong federal claims. To challenge Colorado's residency and voter registration requirement, he cited *Libertarian Party of Virginia v. Judd*, 718 F.3d 308, 316-17 (4th Cir. 2013), *Yes On Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008), *Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008), *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008), and *Moore v. Johnson*, 2014 WL 4924409, *4 n.3 (E.D. Mich. May 23, 2014).

To challenge Colorado's prohibition that voters could not sign more than one nominating

---

[3] The district court granted Blaha's request for relief and placed him on the ballot.

[4] Frazier successfully obtained a second, contested motion to stay ballot certification, pending Supreme Court review.

petition, he cited *Anderson v. Celebrezze*, 460 U.S. 780, 788-90 (1983) and *Fontes v. City of Central Falls,* 660 F. Supp. 2d 244, 251 (D. R.I. 2009). Relying on this court's decision in *Maher v. Gagne*, 448 U.S. 122, 133 n.5 (1980), the district court agreed that Frazier had brought substantial federal claims, entered an order for attorney fees, and scheduled a hearing to determine the amount. The Secretary sought review of this decision.

Throughout the *Frazier* litigation, the Secretary argued that Frazier could not bring § 1983 claims in a § 113 proceeding. For example, in his trial brief the Secretary argued that "this Court lacks jurisdiction to consider [Frazier's federal constitutional claims] as part of this special statutory proceeding." Adhering to a longstanding decision by the Colorado Court of Appeals in *Brown v. Davidson*, 192 P.3d 415 (Colo. App. 2006), the district court rejected those arguments.

Upon the Secretary's petition, the Colorado Supreme Court accepted review and found that candidates and other claimants may *not* bring § 1983 claims as part of a Colorado state election law case. It reasoned that: (1) the reference of § 1-1-113 to "a person charged with a duty under this code" restricted § 113 to "the Colorado Election Code, which does not include section 1983"; (2) the last sentence of § 113, "upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code"; and § 113's three-day window for expedited appeal to the Colorado Supreme Court are

incompatible with § 1983; and (3) the Supremacy Clause does not permit state law to limit the remedies available in a § 1983 action. App. A, p. A-1.

The court nonetheless stated that Colorado's courts would be fully open to hearing § 1983 claims because they could be asserted in a separate proceeding: "[w]hen a section 1983 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, which should then be assigned, where possible, to the same judge." *Id.* at 545.

Two of the Colorado Supreme Court's seven judges dissented, arguing that the majority selectively read § 113. In the dissent's view: (1) section 113's reference to "any controversy . . . between any official charged with any duty or function under this code and any candidate," did not exclude 1983 claims; and (2) section 113's status as "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" required § 1983 claims to be resolved under § 113 and was not limited (as the majority read it) to claims "under the Colorado Election Code." *Id.* at 548-49. The dissent further reasoned that the majority's holding was inconsistent with both speedy and expeditious resolution of claims and "Congress's intent to facilitate the filing of viable section 1983 claims." *Id.* at 449-550.

Libertarian Party of Colorado v. Williams

This case began approximately two years before Frazier's case, but ultimately involved the same issue: whether the Libertarian Party of Colorado could join a § 1983 claim with claims in a state election law challenge under §113.

Colorado allows for the recall of state legislators. Colo. Const. art. XXI, sec. 1. Following several controversies arising from the 2013 legislative session, a group of voters successfully petitioned to initiate a recall election of two state senators. In 2013, the Colorado General assembly also enacted a new law that substantially changed Colorado's election procedures. The new procedures allowed for same-day voter registration and mandated mail ballot elections throughout the state. 2013 Colo. Legis. Serv. Ch. 185 (H.B. 13-1303) (eff. May 6, 2013). Colorado requires recall and successor elections to be held simultaneously on the same ballot, Colo. Const. art. XXI, sec. 3. In an effort to reconcile state statute and constitutional mandate, the Colorado Secretary of State issued an emergency rule setting candidate petition deadlines for the recall.

The Libertarian Party of Colorado and two candidates sued the Secretary under § 1-1-113 to invalidate the rule and challenge the state statute. They also "summarily asserted" a § 1983 claim for ballot-access violations under the First and Fourteenth Amendments. *Libertarian Party of Colorado v. Williams,* 405 P.3 1159, 1160-61 (Colo.

App. 2016), *rev'd* 401 P.3d 558 (Colo. 2016). The federal constitutional claims were not litigated in the trial court because the Secretary and the Libertarian Party agreed to bifurcate the case and first litigate the state claims. Both parties thought it would be more efficient to focus on state claims and later litigate federal claims, if necessary.

At the hearing, the Colorado district court voided the new statutory petition deadline as inconsistent with the Colorado Constitution. *Id.* at 1161 [¶ 7]. Because the Libertarian Party prevailed on its state claims, resolving its federal claims was unnecessary. After the district court granted relief, an evenly divided Colorado Supreme Court denied the Secretary's immediate appeal under § 113 and ordered that the district court's decision would "not [be] subject to further review." *Id.* at ¶ 9.

Thereafter, the Libertarian party moved for summary judgment on its § 1983 claim and for fees under § 1988. The state district court found that (1) the Party's 1983 claim was moot because the legislature had amended the challenged statute by then, and (2) the district court was without jurisdiction because the Colorado Supreme Court's "no review" order was a final judgment that the Party had not moved to amend. *Id.*

Unlike in *Frazier*, for the first two years — from 2013 until early 2015 — the Secretary did not object to the joinder of state and federal § 1983 claims in a § 113 proceeding. He did, however, reserve the right to raise the argument. In January,

2015, a new Colorado Secretary of State took office. One month later, in pleadings before the Colorado Court of Appeals, the new Secretary reversed position and argued that the Libertarian Party could not join state and federal claims in a § 113 proceeding.

Upon review of the district court decision, the Colorado Court of Appeals held that: (1) following *Davidson*, federal and state claims could be joined in a §113 proceeding; (2) the state district court retained jurisdiction over the Party's unadjudicated §§ 1983 and 1988 claims; and (3) the district court correctly held that the Party's § 1983 claim was moot. *Id.* at 1161-62, ¶¶ 10-13 and 1162, ¶¶ 14-18. App. B, p. A-33. The Court of Appeals remanded to the district court for findings to determine whether the Libertarian Party had brought substantial federal claims that entitled it to an award of attorney fees under § 1988. *Id.* at 1164-65, ¶¶ 31-32.

The Colorado Supreme Court accepted jurisdiction, scheduled briefings and oral argument after *Frazier*, and issued orders for both cases on September 11, 2017. It decided *Colorado Libertarian Party v. Williams* on the same grounds as *Frazier v. Williams*.

Because both cases hinge on whether Colorado allows claimants to join federal and state claims in a state law proceeding, Frazier and the Libertarian Party of Colorado have filed this consolidated *Petition*.

REASONS FOR GRANTING THE WRIT

I. COLORADO'S "SEPARATE BUT EQUAL" PROCEDURE FOR FEDERAL CLAIMS RUNS COUNTER TO THIS COURT'S RULINGS IN *HAYWOOD*, *HOWLETT*, AND *FELDER*.

A. Colorado discriminates against federal claims.

Colorado treats federal and state claims differently. Under Colorado law, any state claim arising under the Election Code must be brought under Colo. Rev. Stat. § 1-1-113. But as interpreted by the Colorado Supreme Court, § 1983 claims that arise from that same election conduct may never be joined with state claims, regardless of the underlying facts, conduct, or parties to the action. This prohibition is absolute. It applies to matters ranging from the Help America Vote Act (Colo. Rev. Stat. §§ 1-1.5-101 to 106) to political party organization (Colo. Rev. Stat. §§ 1-3-100.3 to 115) to Election Day operations (Colo. Rev. Stat. §§ 1-7-101 to 1004), to other election matters.

This case presents a different twist on this Court's Supremacy Clause case law articulated in *Haywood v. Drown*, 556 U.S. 729, (2009), *Howlett v. Rose*, 496 U.S. 356, (1990), and *Felder v. Casey*, 487 U.S. 131 (1988). In those cases, the state either denied or limited jurisdiction over federal claims. In Colorado a § 1983 claim may still be brought in a state court of general jurisdiction. According to the

Colorado Supreme Court, "[w]hen a section 1983 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, which should then be assigned, where possible, to the same judge." App. A, p. A-15. Further, "[o]ur decision today in no way imposes a limitation on a person's rights as set forth in section 1983. The courts of this state remain entirely open to section 1983 claims, even (and perhaps especially) where expedited review is sought in the form of a preliminary injunction." App. A, p. A-14.

Colorado has, accordingly, set up a judicial "separate but equal" doctrine. Federal and state claims arising from conduct under the Election Code must be brought separately – but they are both brought in Colorado's district courts.

While this Court has never directly confronted Colorado's "separate but equal" doctrine, the state's approach is in tension with this Court's existing precedent. This Court has made clear that "[s]tates may apply their own neutral procedural rules to federal claims, unless those rules are pre-empted by federal law." *Howlett v. Rose*, 496 U.S. 356, 372 (1990), and more recently in *Haywood v. Drown* this Court reaffirmed that state courts could have a valid excuse to decline federal jurisdiction when "the state rule at issue treated state and federal claims equally." *Haywood*, 556 U.S. 729, 738 (2009). *Haywood* identified four instances in which a state could decline jurisdiction over state and federal claims alike: *Douglas v. New York, N.H. & H.R. Co.*,

279 U.S. 377, 387 (1929) (state court could decline jurisdiction when neither party a state resident); *Herb v. Pitcairn*, 324 U.S. 117, 123 (1945) (a court could decline jurisdiction where a cause of action arose outside of a court's territorial jurisdiction); *Missouri ex rel. Southern R. Co. v. Mayfield*, 340 U.S. 1, 4 (1950) (application of *forum non conveniens* could bar federal claim, if policy enforced impartially) and *Johnson v. Fankell*, 520 U.S. 911, 918 (1997) (interlocutory jurisdiction did not discriminate against § 1983 actions).

On its face, section 113 discriminates against federal § 1983 claims. Under Colo. R. Civ. P. 18(a), "A party asserting a claim to relief as an original claim . . . may join, either as an independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party." But this simply doesn't apply to federal claims that arise out of the same conduct giving rise to a state claim under the Colorado Election Code. Colorado law requires the dismissal and refilling of a federal claim. That is not equal treatment.

B. Colorado's discriminatory treatment frustrates federal law and harms litigants seeking to vindicate rights under section 1983.

To be sure, Colorado argues that this discriminatory treatment is without consequence, because a plaintiff like Frazier or the Libertarian Party of Colorado may simply refile a separate federal claim in state court.

It is well established that "[f]ederal law takes state courts as it finds them only insofar as those courts employ rules that do not 'impose unnecessary burdens upon rights of recovery authorized by federal laws.'" *Felder v. Casey*, 487 U.S. 131, 150 (1988), *quoting Brown v. Western R. Co. of Alabama,* 338 U.S. 294, 298–299 (1949). *Felder* struck down Wisconsin's notice-of-claim statute even though it applied equally to state and federal claims, reasoning that the Wisconsin statute's "purpose and effect" was "to control the expense associated with the very litigation Congress has authorized." *Felder* at 144. Accordingly, even if state law treats state and federal equally, it is not enough: "[a]lthough the absence of discrimination is necessary to our finding a state law neutral, it is not sufficient . . . ensuring equality of treatment is thus the beginning, not the end, of the Supremacy Clause analysis." 556 U.S. at 740. In short, a state may not burden the exercise of a federal right.

Colorado's prohibition on joinder of federal and state claims may seem like a minor issue, but it's a big deal. That simple change makes it far more difficult for claimants to vindicate § 1983 rights in election cases. As this Court has written, "the central objective of the Reconstruction-Era civil rights statutes ... is to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief. Thus, § 1983 provides a uniquely federal remedy against incursions upon rights secured by the Constitution and laws of the Nation and is to be

accorded "a sweep as broad as its language." *Felder* 487 U.S. at 139. (internal quotations and citations omitted). Indeed, the purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. *Wyatt v. Cole*, 504 U.S. 158, 161 (1992).

As discussed below, Colorado has severed federal and state claims in section 113 proceedings in part to delay full resolution of federal claims until (1) after the state claims are resolved and (2) after the election. As demonstrated in *Libertarian Party of Colorado*, this can easily serve to moot the federal claims. A state procedure designed, in part, to moot federal claims directly burdens the ability of plaintiffs to hold government accountable and vindicate federal rights.

Of course, § 1983 claims are sometimes mooted nonetheless, because a court will seek to determine a case on state law or statutory grounds and avoid constitutional issues. But this points to the second, and perhaps most obvious, manner in which Colorado's "separate but equal" doctrine harms federal litigants. Using seemingly innocent procedural tweaks, the state often makes it impossible to recover attorney fees. Under well-established law, courts seek to avoid deciding cases on constitutional grounds. Accordingly, if a civil litigant brings substantial § 1983 claims, yet prevails on other grounds, a court will nonetheless

award attorney fees. *Maher v. Gagne*, 448 U.S. 122, 133 n.5 (1980).

Unlike fee shifting provisions in civil litigation between private parties, fee recovery is an essential component in civil rights litigation; it gives citizens access to the legal resources necessary to effectively limit and check government overreach. In 1976 Congress enacted 42 U.S.C. § 1988, which authorizes a district court to award attorney fees to plaintiffs who prevail on a § 1983 claim. Congress' purpose in doing so was to "ensure effective access to the judicial process for persons with civil rights grievances. *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (quotation omitted).

> [F]ee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate the important Congressional policies which these laws contain. . . . If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court.

City of Riverside v. Rivera, 477 U.S. 561, 577-578 (1986) (quoting Senate Report, at 2, U.S.Code Cong. & Admin.News 1976, p. 5910).

Both Frazier and the Libertarian Party of Colorado provide perfect examples of the critical role played by federal fee recovery provisions. Frazier was a U.S. Senate candidate. The Libertarian Party is a well-known and respected minor political party. Both play very important roles in our political system, yet neither can independently afford the fees necessary to intensively litigate these types of cases. Nonetheless, the Secretary argued that § 1983 cases could not be brought in a § 113 proceeding, so that Colorado would avoid paying attorney fees in both cases. And of course, the Secretary succeeded. In *Frazier*, the district court avoided resolving the cases on constitutional grounds, and in *Libertarian Party of Colorado* the district court found that federal claims had been mooted. By severing the federal claims from the § 113 proceeding, the Secretary avoided the payment of attorney fees otherwise required by *Maher*.

Third, and nearly as important as fee recovery provisions, requiring two parallel proceedings in election cases substantially increases litigation complexity and costs, precisely when a claimant can least afford it. Joinder protects litigants from relitigating the same issue, promotes efficient and less costly litigation, prevents inconsistent judicial results, and preserves the integrity of the judicial system. And when time is short because the election is near, it becomes nonsensical to require multiple actions in different cases. Under Colorado's approach, a plaintiff must now bring two cases on a similar timeframe and harmonize two face-paced, time sensitive cases that essentially cover the same

set of facts and have overlapping legal theories. It was difficult enough for Frazier to challenge the Secretary's *Statement of Insufficiency* in five days. It would have been impossible to divide that into two separate cases with two separate sets of pleadings and factual determinations.

It should be axiomatic that more litigation, more complexity, and more difficulty simply make it far more difficult to vindicate federal rights.

Frazier's case also shows a fourth way that severing claims harms plaintiffs — sometimes a plaintiff can only obtain relief only by prevailing on both state *and* federal claims, in the same proceeding.

Frazier needed to rehabilitate several hundred signatures to gain ballot access. In retrospect, the court granted Frazier relief on the basis of his state claims only, but that outcome was not pre-ordained. A real possibility existed that Frazier needed to prevail on some federal claims plus some state claims, in order to overturn the *Statement of Insufficiency*. Full and complete relief sometimes requires a combination of *both* federal and state claims. By prohibiting joinder, Colorado makes it quite possible that a federal claimant will be denied relief, because the state forum does not afford full and complete resolution of all claims.

Fifth, Colorado's prohibition on joinder effectively enables the state to shield itself from federal claims in state court by creating powerful

incentives for election law litigants to avoid state court altogether. Any experienced counsel would commit a grave error by bringing separate federal and state actions for election contests in state court. He or she would forfeit the client's possibility of an attorney fee recovery in § 1983 claims, drive up client costs, and possibly prevent the client from obtaining full relief. As a result, federal courts become the primary courts, through pendant jurisdiction, to interpret and apply complex state law provisions that govern the mechanics of an election.

In the election law context, this is not merely conjecture. Elections cannot be divorced from the underlying state laws that give them structure. States have primary responsibility to determine the "Time, Places and Manner" of elections, U.S. Const. art. I, § 4, cl. 1, and "government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) *quoting Storer v. Brown*, 415 U.S. 724, 730 (1974). Accordingly, in many – if not most – election cases a claimant will often be able to identify state law violations in addition to § 1983 violations. *Frazier* and *Libertarian Party of Colorado* both provide examples arising from very different factual circumstances.

In short, seemingly minor discriminatory treatment — barring joinder of federal and state claims — has outsized consequences that harm

claimants and burden their ability to vindicate federal rights.

II. ABSENT ACTION BY THIS COURT, COLORADO'S "SEPARATE BUT EQUAL" DOCTRINE FOR FEDERAL CLAIMS PROVIDES A TEMPLATE FOR STATES TO DISCRIMINATE AGAINST FEDERAL LAW.

A. States have strong incentives to seize upon Colorado's example and discriminate against federal claims.

Colorado has explicitly stated that one policy behind severing federal and state claims is to slow down litigation of federal claims — in this context, to avoid full resolution prior to an election. In his pleadings before the Colorado Supreme Court, the Secretary stated "[a]mong other things, the complexity of First Amendment litigation is entirely at odds with the rapid resolution required in pre-election disputes," and therefore a state does not violate the Supremacy Clause "when it merely re-channels a federal claim to a non-expedited process." And the Colorado Supreme Court reflected this reasoning. It studiously limiting the state's pre-election litigation of federal claims to preliminary injunctions: "[t]he courts of this state remain entirely open to section 1983 claims, even (and perhaps especially) where expedited review is sought *in the form of a preliminary injunction*." *Williams v. Frazier* at 12 (App. A, p. A-14) (emphasis supplied).

Whether an election dispute occurs five days or five months before a deadline, Colorado does not want to fully resolve any federal claims before an election.

To be sure, some federal claims cannot be resolved on an expedited basis. Some, however, can. But *no* state should be able to enshrine in law a blanket policy that slows down *all* federal claims involving elections, regardless of the factual circumstances or legal theories. Colorado has led the way, and like Colorado, other states and governmental entities who adopt a narrowly focused litigation mindset may exploit opportunities to slow the pace of federal litigation, bogging down and eventually exhausting plaintiffs. This tactic only adds weight to the proverb. "You can't fight city hall."

Government defendants may also follow Colorado's lead because they have strong incentive to avoid paying a claimant's attorney fees. Indeed, the payment of attorney fees drove both appeals in *Frazier* and *Libertarian Party of Colorado*. The Colorado Secretary of State sought Colorado Supreme Court review in both *Frazier* and *Libertarian Party of Colorado* solely to avoid payment of attorney fees. Attorney fees were the only outstanding issue in both cases, and in *Frazier* the Secretary argued, as an alternative to his joinder argument under § 113, that an award of attorney fees would be unjust. Further, the practical effect of the case — the thing the parties had been fighting over and the thing the Secretary wanted at all costs to avoid — was attorney fees. Indeed, "the risk of

fees" was the "basis for adopting novel procedures that will likely discourage litigants from asserting potentially viable section 1983 claims." *Williams v. Frazier*, at 11 (Gabriel, J. dissenting). App. A, p. A-20.

Unfortunately, Colorado's effort is only one among many creative state schemes avoid or limit the ability of plaintiffs to recover their costs for vindicating federal rights. Much of this Court's Supremacy Clause case law on state jurisdiction over federal claims arises from § 1983 claims and the attorney fee provision in § 1988. *See, e.g., Haywood*, 556 U.S. at 731. And it should come as no surprise that governments place a high priority on avoiding monetary outlays for claimants' attorney fees. But unlike private parties in civil litigation, government actions can violate personal rights, and attorney fee recoveries are critical for claimants to vindicate constitutional and civil rights.

B. States may apply different court procedures to federal claims, beyond prohibiting joinder with state claims.

Although the state procedure in *Frazier* and *Libertarian Party of Colorado* involves joinder of state and federal claims in two ballot access cases, the Colorado Supreme Court's reasoning extends well beyond joinder. It stands for the argument that as long as federal claimants can "refile" a case in the state's district courts, then any differing treatment does not violate the Supremacy Clause. This

reasoning leaves states free to impose other unique procedures on federal claims. Indeed, states often implement different procedures — such as discovery procedures — depending on the size of the claimed recovery in state court. *See, e.g.,* Colo. R. Civ. P. 16.1. Using Colorado as a continuing example, for several years the state implemented the Colorado Civil Access Pilot Project, whereby it applied different pretrial procedures to certain types of business actions in four judicial districts, comprising the Denver Metropolitan Area. Colo. Civ. Access Pilot Proj. So, it is not unusual for states to have different civil procedures — even in a court of general jurisdiction — depending on the type or size of claim.

Using the Colorado Supreme Court's reasoning (no harm occurs if a litigant can file a separate action in state court) — states could easily enact rules of civil procedure that would be different for federal claims. Logically, there is little to limit a state once it may already separate and segregate federal claims from actions under state law. If left unreviewed by this Court, Colorado's approach opens up many possibilities for states to change their approach to litigating federal claims in state courts.

III. THIS CASE AFFECTS A LARGE NUMBER OF IMPORTANT CIVIL RIGHTS CASES; CANDIDATE BALLOT ACCESS, OTHER ELECTION LAW CASES, AND OTHER CIVIL RIGHTS LITIGATION.

This court has long acknowledged that the freedoms that state election laws burden — the right to associate, to advance political beliefs, to cast an effective vote — "rank among our most precious freedoms." *Williams v. Rhodes*, 393 U.S. 23, 30–31 (1968). Ballot-access restrictions implicate both rights by "limit[ing] the field of candidates from which voters might choose." *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983), quoting *Bullock v. Carter*, 405 U.S. 134, 143, (1972). More broadly, it is "beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'" *Burdick v. Takushi*, 504 U.S. 428, 433 (1992), quoting *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979).

Frazier and *Libertarian Party of Colorado* apply directly to ballot access matters — and there are thousands and thousands of candidates for various political offices throughout the country every year. And of course, ballot access occupies a critical role in a healthy democracy.

But beyond ballot-access, Colorado's approach also directly applies to election matters in general. It is a vast field, and vastly important. "[V]oting is of the most fundamental significance under our constitutional structure." *Burdick*, 504 U.S. at 433. Colorado's policy to segregate federal claims that attempt to vindicate these rights into a proceeding separate from any related state law election claims would merit this Court's attention even if it only affected these rights, and even if this effect were limited to Colorado. But the overlapping state and

federal interests in election law make the neat separation that Colorado posits essentially impossible.

Voting is a constitutional right. But the constitution delegates to states the task of providing the legal structure necessary to effectuate and effectively administer this right. *Anderson*, 460 U.S. at 788. Because federal voting rights are implemented through and regulated by state law, state law (which governs the mechanics of elections) and fundamental constitutional rights (voting and participating in elections) are inextricably intertwined. By their nature, state election law actions frequently implicate — and give rise to — constitutional claims under § 1983. Yet Colorado has effectively stripped federal claims from underlying state law election context. If other states follow suit, the harms will mushroom. Unfortunately, those seeking to vindicate federal rights in state courts will pay the price.

Finally, the potential effect of Colorado's new "separate but equal" regime will affect far more than voting or specifically election law contests. The same tactic — segregating civil rights claim to slow federal claim litigation and insulate government from potential fee awards —s can be easily transferred to all civil rights claims. By merely establishing a separate procedure to resolve state-law claims, then requiring federal claims to be separately filed, state courts remain "open for business" in a manner that, by design, severely weakens the effective vindication of federal civil rights. The damage caused by

Colorado's decision will not be limited to election law matters only.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

Scott E. Gessler
Counsel of Record
Steven A. Klenda
KLENDA GESSLER & BLUE LLC
1624 Market Street, Suite 202
Denver, CO 80202
Phone: (720) 432-5705
sgessler@klendagesslerblue.com

February 6, 2018

APPENDIX A

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2017 CO 85

Supreme Court Case No. 16SA230
Original Proceeding Pursuant to C.A.R. 21 Denver County District Court Case No. 16CV31574
Honorable Elizabeth A. Starrs, Judge

In Re
Petitioner:
Ryan Frazier,

v.

Respondent:
Wayne W. Williams, in his official capacity as Colorado Secretary of State.

Rule Made Absolute
en banc
September 11, 2017

Attorneys for Plaintiff:

Klenda Gessler & Blue, LLC
Scott E. Gessler
Geoffrey N. Blue
Denver, Colorado

Attorneys for Defendant:

Cynthia H. Coffman, Attorney General
Frederick R. Yarger, Solicitor General
Leeann Morrill, First Assistant Attorney General
Matthew D. Grove, Assistant Solicitor General
Denver, Colorado

Attorneys for Amici Curiae Libertarian Party of Colorado and Gordon Roy Butt:

The Matthew C. Ferguson Law Firm, P.C.
Matthew C. Ferguson
Michelle K. Schindler
Aspen, Colorado

JUSTICE EID delivered the Opinion of the Court. **JUSTICE GABRIEL** dissents, and **JUSTICE HOOD** joins the dissent.

¶1 Ryan Frazier sought to appear on the Republican primary ballot for United States Senate. After Secretary of State Wayne Williams determined that he had gathered insufficient signatures to appear on the ballot, Frazier challenged the Secretary's determination under § 1-1-113, C.R.S. (2017), arguing that the Secretary improperly invalidated hundreds of signatures that substantially complied with the Colorado Election Code. Within the section 1-1-113 proceeding, Frazier also brought a claim under 42 U.S.C. § 1983 (2012) arguing that certain Colorado statutes prohibiting nonresident circulators from gathering signatures violated the First Amendment.

Frazier filed an accompanying request for attorney's fees as authorized by 42 U.S.C. § 1988 (2012), which allows the award of a "reasonable attorney's fee" to "the prevailing party" in an action to enforce civil rights under section 1983. 42 U.S.C. § 1988. The district court ruled that the Secretary had properly invalidated certain signatures such that Frazier could not appear on the primary ballot. Frazier appealed to this court. We accepted jurisdiction and remanded the case for reconsideration of a number of signatures under the appropriate standard. On remand, the district court found that additional signatures substantially complied with the code, providing Frazier with sufficient signatures to appear on the Republican primary ballot for United States Senate. No ruling was made on Frazier's section 1983 claim.

¶2 Frazier then sought attorney's fees pursuant to section 1988. The Secretary opposed the fee request, arguing that federal claims such as section 1983 may not be brought in summary proceedings under section 1-1-113. The district court disagreed. Relying on *Brown v. Davidson*, 192 P.3d 415 (Colo. App. 2006), and *Libertarian Party of Colorado v. Williams*, No. 14CA2063 (Colo. App. Jan. 14, 2016), the companion case we review today, the court ruled that Colorado law permitted 1983 claims to be joined in section 1-1-113 proceedings. The court accordingly determined that Frazier was entitled to an award of attorney's fees. The Secretary filed a petition for a rule to show cause, which we issued.

¶3 The language of section 1-1-113 repeatedly

refers to "this code," which is defined as the Colorado Election Code. § 1-1-101 *et seq.*, C.R.S. (2017). We hold that where the language of section 1-1-113 allows a claim to be brought against an election official who has allegedly committed a "breach or neglect of duty or other wrongful act" under "this code," it is referring to a breach of duty or other wrongful action under the Colorado Election Code, not a section 1983 claim. § 1-1-113. We emphasize that Colorado courts remain entirely open for the adjudication of section 1983 claims, including on an expedited basis if a preliminary injunction is sought, and that therefore section 1-1-113 does not run afoul of the Supremacy Clause. To the extent that *Brown v. Davidson* holds to the contrary, it is overruled. Accordingly, we make our rule absolute and remand the case for further proceedings.

I.

¶4 Frazier sought the Republican Party's nomination for United States Senate in the 2016 election. In order to have his name appear on the primary election ballot, Frazier was required by Colorado law to file a petition containing a certain number of valid signatures of registered Republican electors.

¶5 After submitting these signatures to the Colorado Secretary of State for an official determination of eligibility, Frazier was informed on April 28, 2016, that the Secretary had determined that the signatures he had submitted were insufficient to

place his name on the ballot. The Secretary stated that the signatures were insufficient in a variety of ways, including that signatures had been gathered by non-resident circulators.

¶6 Frazier filed a petition with the district court protesting the Secretary's decision on May 2, 2016, within five days of notification as required by § 1-4-909(1.5), C.R.S. (2017). In his petition, Frazier asserted two claims for relief: first, he sought an order under section 1-1-113 stating that the disputed signatures should be accepted by the Secretary of State because he had substantially complied with the Colorado Election Code; and second, he brought a section 1983 claim contending, inter alia, that the Colorado election laws prohibiting non-resident circulators were unconstitutional under the First Amendment.[1] He sought attorney's fees under section 1988, which permits the recovery of attorney's fees in connection with a section 1983 claim. 42 U.S.C. § 1988.

---

[1]Section 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person 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 . . . .

42 U.S.C. § 1983.

¶7 The district court held a hearing the next morning, May 3. The district court issued its order on May 4, concluding that Frazier had gathered insufficient signatures to appear on the ballot. Frazier asked this court to review the district court's order on May 9, within three days of the issuance of the court's order terminating proceedings, as required by section 1-1-113(3). This court accepted jurisdiction and concluded by order dated May 24 that Frazier had substantially complied with respect to a number of disputed signatures, and remanded the case for reconsideration of many other signatures under the standard mandated by the Colorado Election Code. After a telephonic hearing on May 25, the district court concluded that Frazier had enough signatures to qualify for the ballot, and ordered the Secretary to place Frazier on the Republican primary ballot for United States Senate. Frazier's section 1983 claim was not addressed in any of the above proceedings.

¶8 Frazier then sought to collect attorney's fees under section 1988 as a prevailing party. The Secretary opposed the fee request, arguing that federal claims such as section 1983 may not be brought in a section 1-1-113 proceeding. The district court disagreed, noting that it was bound by two court of appeals precedents, *Brown v. Davidson*, and *Libertarian Party of Colorado v. Williams*, the companion case we review today, both reading section 1-1-113 to permit joinder of section 1983 claims. As such, it rejected the Secretary's argument and applied the test set forth in *Brown v. Davidson*, eventually finding that Frazier was entitled to an award of

attorney's fees.

¶9 The Secretary then challenged the district court's decision under C.A.R. 21 and section 1-1-113, asking us to consider whether section 1983 claims could be brought in a section 1-1-113 proceeding and, if so, whether special circumstances exist making an attorney's fee award unjust in this instance. We treated the petition as one brought under Rule 21, and issued a rule to show cause.

¶10 We now make the rule absolute. We hold that claims brought pursuant to section 1-1-113 are limited to those alleging a breach or neglect of duty or other wrongful act under the Colorado Election Code.[2]We emphasize that Colorado courts remain entirely open for adjudication of section 1983 claims, including on an expedited basis if a preliminary injunction is sought, and that therefore section 1-1-113 does not run afoul of the Supremacy Clause. To the extent that *Brown v. Davidson* holds to the contrary, it is overruled. Accordingly, we make our rule absolute and remand the case for further proceedings.

II.

¶11 Given the tight deadlines for conducting

---

[2]Because we conclude that section 1-1-113 proceedings are limited to "breach or neglect of duty or other wrongful acts" under the Colorado Election Code, we need not consider the Secretary's alternative argument regarding whether the attorney's fee award should be set aside. § 1-1-113.

elections, section 1-1-113 is a summary proceeding designed to quickly resolve challenges brought by electors, candidates, and other designated plaintiffs against state election officials prior to election day. Both parties agree that such proceedings generally move at a breakneck pace. Here, for example, Frazier filed his petition challenging the Secretary's decision that his signatures were insufficient on May 2, 2016, within five days of notice of decision as required by section 1-4-909(1.5). The district court held a hearing the next morning and issued an order the day after the hearing, agreeing with the Secretary that certain signatures collected in congressional district three were invalid. As a result, Frazier lacked sufficient signatures to be a candidate in the Republican primary. Frazier then sought review with this court within three days, as required by section 1-1-113(3), and we accepted jurisdiction. We remanded the case on May 24, ordering the district court to accept certain signatures and to reconsider others under the appropriate standard. The district court ordered that Frazier be placed on the ballot on May 25. Frazier's section 1983 claim was never addressed.

¶12 The Secretary argues that the language of section 1-1-113 limits the claims that can be brought to those alleging a breach or neglect of duty or other wrongful act under the Colorado Election Code. We agree.

¶13 Section 1-1-113 provides that:

> When any controversy arises between

> any official charged with any duty or function *under this code* and any candidate, or any officers or representatives of a political party, or any persons who have made nominations or when any eligible elector files a verified petition in a district court of competent jurisdiction alleging that a person charged with a duty *under this code* has committed or is about to commit a breach or neglect of duty or other wrongful act . . . 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(1) (emphasis added). We conclude that when section 1-1-113 repeatedly refers to "this code," it is plainly referring to the Colorado Election Code. *See* § 1-1-101 (defining "this code" as the "Uniform Election Code of 1992"). Indeed, Frazier does not propose an alternate meaning for the phrase "this code." Therefore, when section 1-1-113 refers to a verified petition brought against "any official charged with any duty or function under this code," it is specifying who the proper defendant in a section 1-1-113 action may be—namely, an official charged with carrying out duties under the Colorado Election Code. *Id.* As for grounds, the petition must allege that the official "committed . . . a breach or neglect of duty or other wrongful act." *Id.* And finally, the section specifies the available remedy: "upon a finding of good cause, the district court shall issue an order requiring substantial

compliance with the provisions of this code" —that is, the Colorado Election Code. *Id.*

¶14 Frazier focuses on the statutory language specifying that a petition must allege that the official "committed . . . a breach or neglect of duty or other wrongful act." *Id.* According to Frazier, the legislature could have simply stated that the petition must allege a breach or neglect of duty, but instead included "or other wrongful act," which, he continues, expands the coverage of a section 1-1-113 proceeding to include section 1983 claims. We are not persuaded.

¶15 To start, Frazier's argument ignores the preceding portion of the language referring to "a person charged with a duty under *this code* [who] has committed . . . a breach or neglect of duty or other wrongful act." *Id.* (emphasis added). Read together, the second portion of the sentence most naturally refers to "a breach or neglect of duty or other wrongful act" under the Colorado Election Code, which does not include section 1983.

¶16 Moreover, Frazier's argument simply proves too much. Under Frazier's reasoning, the breach or neglect of duty or "other wrongful act" need not have any connection to the Colorado Election Code. Therefore, an accelerated section 1-1-113 proceeding could be invoked by allegations of any wrongful act by the election official—for example, that she committed a tort against a neighbor—where the neighbor happened to be an "eligible elector" (or other proper plaintiff) under section 1-1-113. Frazier offers no limiting

principle for the "other wrongful act" language that would permit section 1983 claims to be alleged in a section 1-1-113 proceeding, but not torts generally or other claims. As noted above, the limiting principle that most naturally comports with the language is that "other wrongful act" refers to acts that are wrongful under the Election Code. To be sure, as Frazier points out, "other wrongful act" is more expansive than a "breach" or "neglect of duty." But all three grounds for a section 1-1-113 claim—that is, breach of duty, neglect of duty, or other wrongful act—all refer to acts that are inconsistent with the Election Code.

¶17 Even if that were not the case, the last sentence of section 1-1-113 makes clear that section 1983 claims cannot be adjudicated through section 1-1-113 proceedings. The last sentence provides the remedy available in a section 1-1-113 proceeding, namely, that "upon a finding of good cause, the district court shall issue *an order requiring substantial compliance with the provisions of this code*." *Id.* (emphasis added). 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. *Carson v. Reiner*, 2016 CO 38, ¶ 15, 370 P.3d 1137, 1141. We see no authority for the proposition that "substantial compliance" upon the finding of "good cause" is a proper standard under section 1983, and Frazier does not point us to any. Instead, such a standard is only appropriate with regard to "this code"—that is, the Colorado Election Code.

¶18 Further inconsistencies between section 1983 and a section 1-1-113 proceeding reinforce the conclusion that the former cannot be raised in the latter. For example, section 1-1-113 limits appellate review. Within three days of the termination of the district court proceedings, the plaintiff must file for review with this court. § 1-1-113(3). If this court "declines to review the proceedings, the decision of the district court shall be final and not subject to further appellate review." *Id.* Section 1983 contains no similar limitation on appellate review. Similarly, section 1983 allows "any citizen of the United States or other person within the jurisdiction thereof" to bring a claim. 42 U.S.C. § 1983. Section 1-1-113, by contrast, limits those who may file a verified petition to "any candidate, or any officers or representatives of a political party, or any persons who have made nominations or . . . any eligible elector." § 1-1-113. Again, given the substantial inconsistences between section 1983 and section 1-1-113 proceedings, section 1-1-113 does not provide an appropriate procedure for adjudicating section 1983 claims.[3]

---

[3]We note that the Secretary and Frazier disagree as to whether, as a practical matter, section 1983 claims can possibly be adjudicated under the accelerated timelines applicable to section 1-1-113 proceedings. The Secretary says no, arguing that it is impossible to fully litigate a complex constitutional issue within days or weeks, as is typical of a section 1-1-113 proceeding. Frazier argues that it can be done, and points to other cases in which it allegedly has been done. We need not resolve this question, however, because we conclude that section 1983 claims cannot be brought in a section 1-1-113 proceeding under the language of the provision.

¶19 Additionally, we agree with the Secretary that bifurcation of the section 1983 and section 1-1-113 claims under C.R.C.P. 42(b), as was done in the companion case we issue today, *Williams v. Libertarian Party*, 2017 CO 86, ___ P.3d ___, is not the appropriate remedy. Rule 42(b) allows a court to "order a separate trial of any separate issue or . . . claim[]" if doing so would further "convenience," "avoid prejudice," or serve the interests of "expedition or economy." C.R.C.P. 42(b). A bifurcation, however, would still allow a section 1983 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 section 1983 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, which should then be assigned, where possible, to the same judge.

¶20 Lastly, Frazier contends that the Supremacy Clause requires Colorado district courts to include section 1983 claims in section 1-1-113 proceedings. Again, we disagree.

¶21 Frazier cites *Felder v. Casey*, 487 U.S. 131 (1988), *Board of County Commissioners v. Sundheim*, 926 P.2d 545 (Colo. 1996), and *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981), for the proposition that the district courts must allow section 1983 claims to be brought within a section 1-1-113 proceeding. These cases do not require that litigants be afforded the option to bring section 1983 suits in summary state proceedings. Rather, they stand for an entirely

different proposition—namely, that certain state-law limitations cannot set limits on the section 1983 remedy.

¶22 For example, in *Felder*, the Wisconsin Supreme Court held that section 1983 plaintiffs were required to comply with the state's notice-of-claim statute, which mandated that plaintiffs inform government defendants, inter alia, of the basis of their claims within 120 days of the alleged injury; failure to do so would result in dismissal of the claims. *Felder*, 487 U.S. at 134. The Supreme Court reversed, concluding that the notice-of-claim statute was inconsistent with section 1983's remedial objectives and therefore preempted under the Supremacy Clause. *Id.* at 153. Similarly, in *Sundheim*, we relied on *Felder* and held that the 30-day filing deadline for review of a quasi-judicial decision under C.R.C.P. 106(b) could not be applied to a section 1983 claim. *Sundheim,* 916 P.2d at 548–49. Finally, in *Espinoza*, a case that preceded *Felder* and *Sundheim* but applied similar reasoning, we held that the damage limitations of the state wrongful death statute could not be applied to limit the damages available in a section 1983 claim. *Espinoza*, 633 P.2d at 464–65.

¶23 Our decision today in no way imposes a limitation on a person's rights as set forth in section 1983. The courts of this state remain entirely open to section 1983 claims, even (and perhaps especially) where expedited review is sought in the form of a preliminary injunction.

¶24 Indeed, if this court were to hold, as urged by Frazier, that section 1983 could be brought in a section 1-1-113 proceeding, we would run afoul of the Supremacy Clause principles enshrined by *Felder*, *Sundheim*, and *Espinoza*. Under these cases, section 1983 claims cannot be subject to the kind of state-law limitations that section 1-1-113 would impose, such as truncated appellate review, limitation on proper plaintiffs, and a standard of "substantial compliance" upon a showing of "good cause." § 1-1-113. We know of no authority suggesting we should allow section 1983 claims to be litigated in a special statutory proceeding that is inconsistent with section 1983 in many ways simply because the plaintiff is willing to subject himself to the limitations of the proceeding (as Frazier apparently is) if he can simultaneously take advantage of what he views as its benefits.

¶25 If anything, a more recent Supreme Court case discussed by the parties, *Haywood v. Drown*, 556 U.S. 729 (2009), indicates that section 1983 claims should not be shoehorned into specialized judicial proceedings that limit the federal right. In *Haywood*, a state law required inmates to file suits seeking money damages against correctional officers under state or federal law (including section 1983) in a specialty court that operated under significant procedural and substantive limitations, and required state courts of general jurisdiction to dismiss such claims. *Id.* at 734. The Court held that the state law violated the Supremacy Clause because the plaintiff was prevented from pursuing his section 1983 claim in a state court of general jurisdiction. *Id.* at 740. According to the Court,

the state law was not a "neutral rule of judicial administration," *see id.* at 736–38 (citing *Howlett v. Rose*, 496 U.S. 356, 371 (1990)), but instead was a decision by the state "to shut the courthouse door to federal claims that it considers at odds with its local policy." *Id.* at 740. As applied here, our interpretation of section 1-1-113 has not "shut the courthouse door" to section 1983 claims. That door remains wide open.[4]Instead, we have avoided the Supremacy Clause problem identified in *Haywood* that would arise if we were to subject section 1983 claims to the limitations of section 1-1-113.

¶26 In fact, Frazier's interpretation of section 1-1-113 is further in tension with the Supremacy Clause and *Haywood* given section 1-1-113's mandatory joinder rule. Under section 1-1-113, "the procedure specified in this section shall be 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) (emphasis added). Under Frazier's interpretation, plaintiffs would be obligated to bring related section 1983 claims within a section 1-1-113 proceeding. Mandating joinder of section 1983 claims in specialized election proceedings that place limits on available remedies and appellate review is to

---

[4]Because the courts of Colorado remain entirely open to section 1983 claims under our interpretation of section 1-1-113, we need not consider whether section 1-1-113 is a "neutral rule of judicial administration" that would justify divesting Colorado courts of jurisdiction over section 1983 claims.

require what the Supremacy Clause condemns.

¶27 As a final note, Frazier argues that for many years various Secretaries of State have not objected to, and in some cases encouraged, plaintiffs to bring section 1983 claims in section 1-1-113 proceedings. Frazier also points out that this court has addressed a section 1983 claim in the context of a section 1-1-113 proceeding without objection from the prior officeholder. *See Colo. Libertarian Party v. Sec'y of State*, 817 P.2d 998 (Colo. 1991). But Frazier concedes, as he must, that we have never addressed the question we examine today—namely, whether such joinder is appropriate under section 1-1-113. Squarely addressing the issue for the first time, we conclude, for the reasons stated above, that section 1983 claims cannot be brought in section 1-1-113 proceedings. To the extent that *Brown v. Davidson* holds to the contrary, we overrule it.[5]Because a section 1983 claim cannot be brought in a section 1-1-113 proceeding, Frazier could not seek fees under section 1988 in the context of a section 1-1-113 claim. Therefore, the attorney's fee award associated with Frazier's section 1983 claim cannot stand.

III.

¶28 For these reasons, we make our rule to show cause absolute and remand the case for further

---

[5]In addition to *Brown*, the district court in this case relied on *Williams v. Libertarian Party*, the companion case we review, and reverse, today.

proceedings consistent with this opinion.

JUSTICE GABRIEL dissents, and **JUSTICE HOOD** joins the dissent.

JUSTICE GABRIEL, dissenting.

¶29 After Colorado Secretary of State Wayne Williams (the "Secretary") concluded that plaintiff Ryan Frazier did not obtain a sufficient number of petition signatures to qualify to be placed on the ballot for the Republican primary as a candidate for the United States Senate, Frazier brought the current lawsuit, asserting claims under § 1-1-113, C.R.S. (2016), and 42 U.S.C. § 1983 (2012). After an appeal to this Court and a remand to the district court, the district court ruled in Frazier's favor on the section 1-1-113 claims and did not reach the section 1983 claims. Frazier then sought attorney fees under 42 U.S.C. § 1988 (2012), as the prevailing party on his section 1983 claims, which, he claimed, were intertwined with his section 1-1-113 claims. The district court awarded Frazier fees, and the Secretary appealed, arguing, as pertinent here, that a section 1983 claim may not be joined with a section 1-1-113 claim in a single action because section 1-1-113 establishes a narrow proceeding limited solely to claims brought under the Colorado Election Code.

¶30 The majority agrees with the Secretary's construction and concludes that claims brought pursuant to section 1-1-113 are limited to those alleging a breach or neglect of duty or other wrongful act under the Colorado Election Code and therefore, (2) section 1983 claims may not be joined in a section 1-1-113 proceeding. *See* maj. op. ¶¶ 10, 18. In support of these conclusions, the majority principally relies on the text of section 1-1-113 (most notably, the text's

references to "this code") and the fact that the section provides for expedited appellate procedures. *See id.* at ¶¶ 13–18.

¶31 Unlike the majority, I perceive nothing in the text of section 1-1-113 that precludes joinder of a section 1983 claim. To the contrary, in my view, the statutory text directly supports the joinder of such claims. Moreover, precluding joinder would mandate the filing of multiple lawsuits in direct contravention of both the applicable rules of civil procedure and Congress's intent to facilitate the filing of viable section 1983 claims.

¶32 Nor am I persuaded by the fact that section 1-1-113 provides for certain expedited procedures. We have never relied on the existence of such procedures to preclude joinder, and our courts have had no difficulty managing appeals in cases like this one.

¶33 Accordingly, I respectfully dissent.

I. Analysis

¶34 I begin by addressing the applicable standard of review and rules of statutory construction. I then discuss the text of section 1-1-113 and explain why, in my view, the text of that statute, settled rules of civil procedure, and sound public policy support allowing the joinder of section 1983 claims with section 1-1-113 claims. Thereafter, I address section 1-1-113's expedited procedures for appeal and show why those procedures should not preclude joinder of section 1983

claims. I conclude with a comment on attorney fees, which appear to have been a significant factor motivating the Secretary's effort to preclude joinder of section 1983 claims in section 1-1-113 proceedings.

A. Standard of Review and Rules of Statutory Construction

¶35 We review questions of statutory interpretation de novo. *Vallagio at Inverness Residential Condo. Ass'n v. Metro. Homes, Inc.*, 2017 CO 69, ¶ 16, 395 P.3d 788, 792. In doing so, we look to the entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts, and we apply words and phrases in accordance with their plain and ordinary meanings. *Id.* When the statutory language is clear, we apply it as written and need not resort to other rules of statutory construction. *See id.* In addition, when construing a statute, we must respect the legislature's choice of language. *Turbyne v. People*, 151 P.3d 563, 568 (Colo. 2007). Accordingly, "[w]e do not add words to the statute or subtract words from it." *Id.* at 567.

B. Section 1-1-113

¶36 Section 1-1-113 provides, in pertinent part:

> When *any controversy arises between any official charged with any duty or function under this code and any candidate*, . . . or when any eligible elector files a verified petition in a district court of competent

> jurisdiction alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act, after notice to the official which includes an opportunity to be heard, upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code. The order shall require the person charged to forthwith perform the duty or to desist from the wrongful act or to forthwith show cause why the order should not be obeyed. The burden of proof is on the petitioner.
>
> . . . .
>
> Except as otherwise provided in this part 1, *the procedure specified in this section shall be 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*.

(Emphasis added.)

¶37 Although the majority focuses to a large extent on the statute's references to "this code," maj. op. ¶ 13, it pays less attention to the broad language with which the statute begins and that appears throughout the statutory text. For example, the statute starts by

referring to "any controversy between any official charged with any duty or function under this code and any candidate." § 1-1-113(1). In my view, this language is plain and unambiguous. It subsumes *any* controversy between an election official and a candidate relating to the official's duties or functions under the Election Code, and it does not limit such controversies to the nature of the claims asserted.

¶38 This interpretation is further supported by subsection (4), which states that the procedures set forth in section 1-1-113 constitute the "exclusive method" for adjudicating controversies arising from an alleged breach or neglect of duty "or other wrongful act that occurs prior to the day of an election." To me, "exclusive method" suggests that *all* disputes between an election official and a candidate arising from the official's duties under the Code *must* be brought in a single proceeding under section 1-1-113. Moreover, the phrase "other wrongful act that occurs prior to the day of an election" plainly encompasses claims beyond those for violations of the Election Code.

¶39 This does not mean, however, that the types of claims that can be brought in a section 1-1-113 proceeding are unlimited. To the contrary, as I read that provision, the claim must arise from the election official's performance of his or her statutory duties. And with that understanding, I have no difficulty concluding that Frazier's section 1983 claim fell within the proper bounds of a section 1-1-113 proceeding. Specifically, as the majority correctly observes, in Frazier's section 1983 claim, he argued that the

Colorado election laws prohibiting non-resident circulators were unconstitutional under the First Amendment. This claim was directly pertinent to the Secretary's statutory duty to determine whether a candidate had submitted sufficient signatures to qualify for the ballot: the Secretary had rejected the signatures gathered by Frazier circulator James Day, after Day's voter registration had expired, because Colorado election laws required circulators to be registered electors at the time the petition was circulated. Accordingly, Frazier's section 1983 claim reflected a controversy arising from the Secretary's performance of his statutory duties in conducting the election at issue, and this is precisely the type of claim contemplated by section 1-1-113.

¶40 In reaching a contrary conclusion, the majority reads section 1-1-113 to apply only to controversies between election officials and candidates involving breaches of duties and wrongful acts *under the Colorado Election Code*. But that is not what the statute says. As noted above, the statute refers to "any controversy between any official charged with any duty or function under this code and any candidate" and to "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(1), (4). In my view, the majority's interpretation reads into the statute a limitation—"under the Colorado Election Code"—that does not appear in the statute's plain text. As noted above, however, we do not add words to a statute. *See Turbyne*, 151 P.3d at 567.

¶41 Nor am I persuaded by the majority's reliance on section 1-1-113(1)'s requirement that, on finding a violation, the district court "shall issue an order requiring substantial compliance with the provisions of this code." Maj. op. ¶ 17. I perceive nothing in that language that is inconsistent with the remedies that may be imposed under section 1983. Nor does the fact that section 1983 may allow additional remedies suggest to me that section 1-1-113 precludes joinder of a section 1983 claim.

¶42 Accordingly, based on the plain and unambiguous language of section 1-1-113, I would conclude that the joinder of section 1983 claims with section 1-1-113 claims is appropriate. Indeed, a contrary rule strikes me as inconsistent with the Colorado Rules of Civil Procedure, with settled public policy, and with Congress's intent to facilitate the filing of viable section 1983 claims.

¶43 Specifically, C.R.C.P. 1(a) provides, in pertinent part, that our rules of civil procedure "shall be liberally construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action."

¶44 C.R.C.P. 18(a), in turn, provides, "A party asserting a claim to relief as an original claim, counterclaim, cross claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party."

¶45 The purpose of these rules is to allow parties to present their claims in a speedy and expeditious way and, in particular, to avoid requiring a party to file—and the opposing party to defend—multiple proceedings arising from the same transaction. *See, e.g.*, *CLPF-Parkridge One, L.P. v. Harwell Invs., Inc.*, 105 P.3d 658, 662 (Colo. 2005) (noting that the civil procedure rules are designed to avoid "extensive seasons of fractured litigation" and that the rules "promote expeditious resolution of all disputes arising out of the same transaction in a single lawsuit"); *Benton v. Adams*, 56 P.3d 81, 85 (Colo. 2002) (noting that the purpose of the civil procedure rules is to secure a just, speedy, and inexpensive determination of every action and that the focus is on the resolution of actions on their merits in a reasonable and expeditious manner). Indeed, for the same reason, we have long construed rules of claim preclusion as barring not only claims that were actually litigated but also claims that could have been litigated in a prior proceeding. *See Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 2015 CO 64, ¶ 36, 361 P.3d 392, 398.

¶46 Notwithstanding the foregoing, in this case, the majority adopts a new rule precluding joinder of section 1983 claims and *mandating* that such claims be asserted in a separate proceeding. *See* maj. op. ¶ 19 (stating that when a section 1983 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). For the reasons set forth above, I perceive no basis for construing section 1-1-113 as creating so unique a rule, and one that

seems so squarely to conflict with the civil procedure rules noted above. And this is particularly true here, given Congress's long-established intent to facilitate the filing of viable section 1983 claims.

¶47 Specifically, over thirty years ago, the Supreme Court made clear that the very reason fees are awarded in section 1983 cases is to *encourage* competent counsel to pursue such cases to vindicate the rights of parties whose constitutional rights have been violated but who otherwise would lack the financial means to seek an appropriate remedy to protect those rights. *See City of Riverside v. Rivera*, 477 U.S. 561, 576–78 (1986). Requiring a civil rights litigant like Frazier to file a second lawsuit to protect his constitutional rights would serve no purpose other than to increase the time and expense of Frazier's claims. This, in turn, would tend to *discourage* the pursuit of such a claim, contrary to Congress's expressed intent.

¶48 In interpreting section 1-1-113 as I do, I acknowledge and appreciate the Secretary's concerns regarding the possible breadth of a section 1983 claim and the potential need for substantial discovery on such a claim. Because Frazier's section 1983 claim presented strictly a legal question and was closely interrelated to Frazier's state law claims, however, no such discovery was necessary or at issue in this case. Moreover, thus far, cases in which section 1983 claims have been joined in section 1-1-113 proceedings do not appear to have presented any difficult discovery problems. And were such problems to arise, in my

view, they would present a case management issue for the district court, not a reason to bar joinder of a possibly viable constitutional claim.

¶49 For all of these reasons, I believe that a party in Frazier's position may appropriately join a section 1983 claim with a section 1-1-113 claim.

B. Appellate Considerations

¶50 To justify further its conclusion that section 1-1-113 precludes the joinder of section 1983 claims, the majority points to section 1-1-113's limits on appellate review. *See* maj. op. ¶ 18. I, however, do not believe that such limits warrant a rule precluding joinder of section 1983 claims.

¶51 Section 1-1-113(3) allows for expedited review in this court:

> The proceedings may be reviewed and finally adjudicated by the supreme court of this state, if either party makes application to the supreme court within three days after the district court proceedings are terminated, unless the supreme court, in its discretion, declines jurisdiction of the case. If the supreme court declines to review the proceedings, the decision of the district court shall be final and not subject to further appellate review.

¶52 I perceive nothing in this section that precludes the joinder of a section 1983 claim. In fact, and as Frazier correctly observes, joined section 1983 claims can—and have—been properly adjudicated (and appealed) within the context of section 1-1-113 proceedings. Indeed, *Williams v. Libertarian Party*, 2017 CO 86, ___ P.3d ___, which we are also deciding today, is an example of such a case. I am not aware of any intractable problems or confusion regarding the trial and appellate procedures to be employed in cases like this, and thus, I see no reason to overrule *Brown v. Davidson*, 192 P.3d 415 (Colo. App. 2006), which has been on the books for over a decade without apparent controversy or difficulty.

¶53 I am not persuaded otherwise by the majority's reliance on cases like *Felder v. Casey*, 487 U.S. 131, 144–45 (1988), *Haywood v. Drown*, 556 U.S. 729, 736–40 (2009), and their progeny. *See* maj. op. at ¶¶ 21–26. To the contrary, I believe that these cases support the joinder of section 1983 claims in a section 1-1-113 proceeding.

¶54 In *Felder*, 487 U.S. at 144–45, the Supreme Court concluded that section 1983 plaintiffs were not required to comply with a state notice-of-claim statute because the state law's protection applied solely to governmental defendants and thus "condition[ed] the right to bring suit against the very persons and entities Congress intended to subject to liability." In so concluding, the Court observed that a state law that conditions a congressionally mandated right of recovery on compliance with a rule designed to

minimize governmental liability and that directs injured persons to seek redress in the first instance from the targets of that federal legislation "is inconsistent in both purpose and effect with the remedial objectives of the federal civil rights law." *Id.* at 153.

¶55 In *Haywood*, 556 U.S. at 733–34, the Court considered a challenge to a New York law that (1) divested state courts of general jurisdiction of their jurisdiction over civil rights actions brought by state prisoners against corrections officers and (2) required that such actions be brought in a claims court of limited jurisdiction. This state law was motivated by the belief that such actions were largely frivolous and vexatious. *Id.* at 733. The Court struck down the law, holding that, "having made the decision to create courts of general jurisdiction that regularly sit to entertain analogous suits, New York is not at liberty to shut the courthouse doors to federal claims that it considers at odds with its local policy." *Id.* at 740.

¶56 In my view, these cases do not support the majority's assertion that Frazier's (and, implicitly, my) reading of section 1-1-113 would result in a Supremacy Clause violation. *See* maj. op. ¶ 26. Joinder of a section 1983 claim in a section 1-1-113 proceeding in no way limits or discriminates against a claimant's federal rights. Nor does it close a courthouse door to them. If anything, it enhances those rights by ensuring a prompt hearing and appellate process in a single court proceeding. In contrast, the majority's interpretation of section 1-1-113 would inevitably close the

courthouse door to viable section 1983 claims, which we cannot properly do. *See Haywood*, 556 U.S. at 740.

C. Attorney Fees

¶57 Finally, I feel compelled to say a word about attorney fees, which appear to have been a significant factor motivating the Secretary's effort to preclude joinder of section 1983 cases in this context. *See* maj. op. ¶ 2 (noting that after Frazier sought attorney fees under section 1988, the Secretary opposed that request and argued that section 1983 claims may not be brought in a section 1-1-113 proceeding).

¶58 I have no doubt that some parties may well be motivated to assert section 1983 claims because those claims provide a potential avenue for the recovery of fees. Indeed, such an outcome is fully consistent with Congress's intent to promote viable section 1983 claims by awarding fees to prevailing parties. *See City of Riverside*, 477 U.S. at 576–78. Given this intent, I do not believe that it is appropriate to use the risk of fees as a basis for adopting novel procedures that will likely discourage litigants from asserting potentially viable section 1983 claims. Yet, that appears to be what we have done today.

II. Conclusion

¶59 For these reasons, I believe that the plain language of section 1-1-113, the applicable civil procedure rules, and sound public policy support allowing a petitioner like Frazier to join section 1983

claims with claims under section 1-1-113.

¶60 Accordingly, I respectfully dissent.

I am authorized to state that JUSTICE HOOD joins in this dissent.

APPENDIX B

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2017 CO 86

Supreme Court Case No. 16SC145
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 14CA2063

Petitioner:
Wayne Williams, in his official capacity as Colorado Secretary of State,

v.

Respondents:
Libertarian Party of Colorado and Gordon Roy Butt.

Judgment Reversed
en banc
September 11, 2017

Attorneys for Petitioner:

Cynthia H. Coffman, Attorney General
Frederick R. Yarger, Solicitor General
Amy Colony, Senior Assistant Attorney General
Matthew D. Grove, Assistant Attorney General
Grant T. Sullivan, Assistant Solicitor General
Denver, Colorado

Attorneys for Respondents:

The Matthew C. Ferguson Law Firm, P.C.
Matthew C. Ferguson
Michelle K. Schindler
Aspen, Colorado

JUSTICE EID delivered the Opinion of the Court. **JUSTICE GABRIEL** dissents, and **JUSTICE HOOD** joins the dissent.

¶1 Gordon Roy Butt sought to run for state senate for the Libertarian Party in a 2013 recall election. The Secretary of State denied his request to circulate a petition because his request came after the deadline as then set by section 1-12-117(1). *See* Ch. 170, sec. 8, § 1-12-117(1), 2014 Colo. Sess. Laws 621. Butt and the Libertarian Party (collectively, "the Party") sued the Secretary under § 1-1-113, C.R.S. (2017), alleging that the statutory deadline conflicted with the Colorado Constitution. Within the section 1-1-113 proceeding, the Party also raised a claim for relief under 42 U.S.C. § 1983 (2012), and an accompanying request for an award of attorney's fees under 42 U.S.C. § 1988 (2012), alleging, inter alia, a First Amendment violation. The district court found for the Party on the state constitutional claim, and did not address the section 1983 claim. After this court denied appellate review on a split vote, further proceedings occurred before the district court. The case was appealed once again, and this court again denied review.

¶2 Nine months later, the Party returned to district

court seeking summary judgment on its section 1983 claim and, in the alternative, an attorney's fee award under section 1988 on the ground that the Party had been successful on its state constitutional claim. The district court denied the Party's request for attorney's fees, finding that it had not pursued fees in a timely manner. It also dismissed the section 1983 claim as moot due to the General Assembly's 2014 amendment of section 1-12-117(1).

¶3 On appeal, the court of appeals reversed the district court. *Libertarian Party of Colorado v. Williams*, No. 14CA2063 (Colo. App. Jan. 14, 2016). Citing *Brown v. Davidson*, 192 P.3d 415 (Colo. App. 2006), it noted that section 1983 claims may be brought in a section 1-1-113 proceeding. *Williams*, ¶ 11. The court then held that, although the Party's section 1983 claim was moot, the request for attorney's fees under section 1988 was appropriate so long as the section 1983 claim was substantial, stemmed from the same nucleus of operative facts as the state constitutional claim, and was reasonably related to the plaintiff's ultimate success. *Id.* at ¶ 29. The court remanded the case to the district court to apply this test to determine whether the Party was entitled to fees. *Id.* at ¶¶ 31–32.

¶4 We granted the Secretary's request for certiorari review and now reverse the court of appeals.[6]For

[6]We granted review of the following issues:

1. Whether *Brown v. Davidson*, 192 P.3d 415 (Colo. App. 2006),

reasons discussed at length in our companion case, *Frazier v. Williams*, 2017 CO 85, ___ P.3d___, also announced today, we hold that a section 1983 claim may not be brought in a section 1-1-113 proceeding. The language of that section repeatedly refers to "this code," meaning the Colorado Election Code. Therefore, a section 1-1-113 proceeding is limited to allegations of a "breach or neglect of duty or other wrongful act" under the election code itself. § 1-1-113(1). We emphasize that Colorado courts remain entirely open for adjudication of section 1983 claims, including on an expedited basis if a preliminary injunction is sought, and that therefore section 1-1-113 does not run afoul of the Supremacy Clause. To the extent that *Brown v. Davidson*, 192 P.3d 415 (Colo. App. 2006), holds to the contrary, it is overruled. Accordingly, we reverse and remand the case for further proceedings.

I.

¶5 This case arose out of legislative recall elections in 2013. Butt requested approval from the Secretary to

---

which held that a claim asserted under 42 U.S.C. § 1983 may be joined with a petition filed under section 1-1-113, C.R.S. (2016), should be overturned.

2. Whether, when the supreme court denies review under section 1-1-113(3), that denial marks the conclusion of the proceedings, thereby triggering the deadline for attorney fees applications under C.R.C.P. 121, section 1-22.

3. Whether a plaintiff who prevails on a state claim is entitled to attorney fees under 42 U.S.C. § 1988 for an unadjudicated 42 U.S.C § 1983 claim.

circulate a petition to qualify as a successor candidate on the Libertarian Party ticket. The Secretary denied the request because it was submitted after the statutory deadline that was then set forth in section 1-12-117(1) ("Nomination petitions . . . shall be filed no later than ten calendar days prior to the date for holding the [recall] election . . . .").

¶6 The Party filed a petition for relief under section 1-1-113, arguing that the statutory deadline then set by section 1-12-117(1) and enforced by the Secretary conflicted with Article XXI, section 3 of the Colorado Constitution, which would have allowed Butt more time to file his petition.[7]See Colo. Const. art. XXI, § 3 ("[P]etitions for nomination to office are required by law to be filed not less than 15 days before such recall election . . . ."). Within the section 1-1-113 proceeding, the Party also brought a section 1983 claim alleging, inter alia, a First Amendment violation, and requested attorney's fees pursuant to 42 U.S.C. section 1988.

¶7 After bifurcating the case pursuant to C.R.C.P. 42(b), the district court concluded that the statute conflicted with the Colorado Constitution. It did not address the Party's section 1983 claim. We declined review on an evenly divided vote. Further proceedings occurred before the district court and the case was appealed once again, and this court denied review.

---

[7]No one has challenged Butt's joinder of a state constitutional claim under section 1-1-113, so we do not address that issue in this case.

¶8 The Party returned to the district court nine months later seeking summary judgment on the section 1983 claim and, in the alternative, an attorney's fee award under section 1988 on the ground that the Party had been successful on its state constitutional claim. The district court denied the Party's request for attorney's fees, finding that it had not pursued fees in a timely manner. It also dismissed the section 1983 claim as moot due to the General Assembly's amendment of section 1-12-117(1) that remedied any conflict between the statute and the Colorado Constitution.

¶9 On appeal, the court of appeals determined that under *Brown v. Davidson*, the Party was permitted to bring its section 1983 claim under section 1-1-113. *Williams*, ¶ 11. While it agreed that the section 1983 claim was moot, it found that attorney's fees were nonetheless appropriate so long as the section 1983 claim was substantial, stemmed from the same nucleus of operative facts as the state claim, and was reasonably related to the plaintiff's ultimate success. *Id.* at ¶ 29. The court remanded the case to the district court to apply this test to determine whether the Party was entitled to fees. *Id.* at ¶¶ 31–32.[8]

¶10 We granted the Secretary's petition for certiorari review. We now reverse the court of appeals and remand the case for further proceedings.

---

[8]The court of appeals also determined that the district court's decision as to fees was a reviewable final judgment, id. at ¶ 13, a conclusion that the Secretary does not challenge before this court.

II.

¶11 Here, the Secretary contends that section 1983 claims cannot be brought in a section 1-1-113 proceeding. For the reasons set forth in more detail in our lead companion case *Frazier v. Williams*, 2017 CO 85, ___ P.3d ___, we agree. The language of section 1-1-113 limits claims that may be brought to those alleging a breach or neglect of duty or other wrongful act under "this code," meaning the Colorado Election Code. Colorado courts remain entirely open for adjudication of section 1983 claims, including on an expedited basis if a preliminary injunction is sought, and that therefore section 1-1-113 does not run afoul of the Supremacy Clause. To the extent that *Brown v. Davidson* holds to the contrary, it is overruled.

¶12 Because we find that section 1983 claims may not be brought in a section 1-1-113 proceeding, we need not consider the remaining two issues upon which we granted certiorari, as both assume that, if a section 1983 claim may be brought in section 1-1-113 proceeding, the court of appeals erred in permitting fees under section 1988. Accordingly, we reverse and remand the case for further proceedings consistent with this opinion.

JUSTICE GABRIEL dissents, and **JUSTICE HOOD** joins the dissent.

JUSTICE GABRIEL, dissenting.

¶13 Relying on its opinion in *Frazier v. Williams*, 2017 CO 85, ___ P.3d ___, which we also decide today, the majority concludes that (1) claims brought pursuant to section 1-1-113 are limited to those alleging a breach or neglect of duty or other wrongful act under the Colorado Election Code and therefore, (2) section 1983 claims may not be joined in a section 1-1-113 proceeding. *See* maj. op. ¶¶ 10, 18. For the reasons set forth in my dissent in *Frazier*, ¶¶ 29-60, I respectfully disagree. Instead, I would conclude that the plain language of section 1-1-113, the applicable civil procedure rules, and sound public policy support allowing parties like petitioners here to join section 1983 claims with claims under section 1-1-113.

¶14 Accordingly, I respectfully dissent.

I am authorized to state that JUSTICE HOOD joins in this dissent.

APPENDIX C

DISTRICT COURT, DENVER COUNTY, COLORADO
Denver City and County Building
1437 Bannock Street, Room 256
Denver, CO 80202

[DATE STAMP]
DATE FILED: May 2, 2016 2:59 PM
FILING ID: 2B73ABE92E967
CASE NUMBER: 2016CV31575

Petitioners: RYAN FRAZIER, an individual

v.

Respondent: WAYNE W. WILLIAMS, in his official capacity as the Colorado Secretary of State

Case Number:
Division: 4

Attorneys for Petitioner Ryan Frazier
Scott E. Gessler, Atty Reg No. 28944
Geoffrey N. Blue, Atty Reg. No. 32684
Klenda Gessler & Blue, LLC
1624 Market St.
Suite 202

Denver, Colorado 80202
720-839-6637, sgessler@klendagesslerblue.com
303-906-1050, gblue@klendagesslerblue.com

PETITION BY RYAN FRAZIER PROTESTING STATEMENT OF INSUFFICIENCY

Petitioner Ryan Frazier ("Frazier"), through undersigned counsel, submits this Petition under to C.R.S. §§ 1-4-909 and 1-1-113 against Respondent Secretary of State Wayne W. Williams ("Secretary") and states as follows:

This *Petition* challenges the Statement of Insufficiency issued by Secretary of State Wayne Williams (the "Secretary"), finding that Frazier did not have an adequate number of signatures for placement on the June 28, 2016, primary ballot for Republican Party nominee for United States Senate. This *Petition* outlines the Frazier's challenge, and either concurrently or shortly after filing, Frazier will supplement this *Petition* with the following:

(1) Stipulated facts agreed to by the Secretary, which will greatly streamline the hearing

(2) A trial brief that will provide legal argument for two of the more complex arguments, as discussed below.

Further, Robert Blaha, another Republican

Party candidate for United States Senate, received a similar Statement of Insufficiency. Because of the large overlap of legal and factual issues, both Frazier and Blaha intend to move to consolidate these actions, with the support of the Secretary.

Parties

1. Petitioner Ryan Frazier is an individual residing in Denver, Colorado.

2. Respondent Wayne W. Williams is the Colorado Secretary of State with his offices in Denver, Colorado

Jurisdiction and Venue

3. This Court has jurisdiction over this matter under C.R.S. § 1-1-113.

4.Venue is proper in this Court pursuant to C.R.C.P. 98(b)(2) because the Secretary resides in the City and County of Denver.

General Allegations

5. It is well established that the Colorado Election Code shall be "liberally construed" to permit eligible electors to vote and that all provisions are subject to "substantial compliance" as the standard for proper conduct. See C.R.S. §§ 1-1103; 1-1-113; *Loonan v. Woodley*, 882 P.2d 1380, 1384 (Colo. 1994) (discussing substantial compliance standard).

6. On April 4, 2016, Frazier submitted a petition seeking to be placed on the June 28 ballot.

7. The Secretary reviewed the signatures in the petition, and on the afternoon of Thursday, April 28, 2016, sent Frazier a Statement of Insufficiency, notifying him that his petitions did not contain enough valid signatures.

8. Frazier's petition required 1,500 signatures of voters from each of Colorado's seven Congressional districts. According to the Statement of Insufficiency, Frazier fell below the threshold as follows:

Congressional District 1:	52 Signatures
Congressional District 2:	6 Signatures
Congressional District 3:	306 Signatures
Congressional District 6:	44 Signatures

FIRST CLAIM FOR RELIEF
(For an Order Under C.R.S. § 1-1-113)

9. The Secretary improperly rejected signatures that should be included, for a combination of reasons:

a. Several circulators were registered voters, but the Secretary rejected them because their affidavit addresses did not match their voting record addresses.

b. One Notary Public did not affix his notary stamp when notarizing a petition section. Adequate, uncontested evidence shows

substantial compliance with Colorado law.

c. The Secretary made certain errors in reviewing signatures.

d. Through minor error, one circulator's voter registration was administratively cancelled without his knowledge. He nonetheless substantially complied with Colorado law. At the same time, Colorado law unconstitutionally requires circulators to be registered voters and residents in Colorado.

e. The Secretary improperly rejected signatures for voters who signed more than one petition, for three reasons:

I. The statutory plain language does not prohibit voters from signing multiple petitions – it only prohibits voters from stating they did not sign a second petition.

ii. The Secretary misapplied Colorado law, even if it states that once a voter signs a petition, he or she cannot sign a second petition. Instead of applying a first-in-time rule when reviewing voters who have signed multiple petitions, the Secretary improperly applied a first-filed standard, whereby he accepted the first signature filed and reviewed by staff, and rejecting other signatures even if the

voter signed another petition first.

iii. If Colorado law is construed broadly to deny voters the right to sign multiple petitions, then that law does not survive a First Amendment challenge. Under Colorado law, voters may both sign a party-affiliated candidate petition and vote to nominate a party candidate for the same office at an assembly. But they cannot sign multiple major-party candidate petitions. This prohibition unconstitutionally restricts their right to associate with the candidates of their choice.

Congressional Districts 1, 2 and 6.

10. For the First, Second and Sixth Congressional Districts, the acceptance of one circulator cures Frazier's petition deficiencies.

11. After living in Colorado for several years, Mr. Shaun Sachs registered to vote at a Colorado address. Mr. Shaun Sachs was a circulator for Frazier's petitions. After moving from his registration address, he signed his circulator affidavits using an address different from the one where he registered to vote. At all times he circulated affidavits Sachs was a registered voter, and Sachs substantially complied with Colorado's election code. Sachs' circulator affidavits should be accepted, curing the following deficiencies:

Congress-ional District	Signatures short of 1,500	Signatures Cured	Total Valid Signatures
CD1	52	58	1,506
CD2	5	9	1,503
CD6	44	177	1,633

12. The Secretary rejected other signatures in Congressional Districts 1, 2 and 6 that should otherwise be accepted, due to various circulator and other signature issues. But acceptance of Sachs' circulator affidavits provide an adequate number of signatures to enable Frazier to meet the statutory threshold.

13. Frazier and the Secretary will submit stipulated facts that provide detail surrounding Sachs' registration and residency history, and specify the sections and lines cured by the acceptance of Sach's circulator affidavits.

14. Signatures collected by other Frazier petition circulators were also wrongly denied by the Secretary, which Frazier will raise at the hearing. Frazier identifies Sach as an exemplar of the reasons why their signatures should be rehabilitated.

Congressional District 3

15. Frazier is short 306 signatures in Congressional District 3. The following allegations identify, in

summary form, the number of signatures that should be accepted resulting from the circulator, notary, and signature acceptances.

16. Forthcoming stipulated facts will provide additional detail and specify the sections and lines cured by the acceptance of circulators or signatures.

17. *Gilberto Abundis, Circulator*. Abundis circulated petitions for Frazier in District 3. On two petitions, the Secretary found that the date of his circulator affidavits did not match the date of the notary public review. Abundis' testimony will establish that he signed his circulator affidavits in front of a notary public. This testimony will cure **2 signatures**.

18. *Nicholas Burton, Circulator*. Burton circulated petitions for Frazier in District 3. Like Sachs, Burton registered at one address, but signed his circulator affidavits using a different address. He was in fact a registered voter at all times, and he substantially complied with Colorado law. Acceptance of petition sections that he circulated will cure **56 signatures**.

19. *David Dazlich, Circulator*. Dazlich circulated petitions for Frazier in District 3. Like Sachs, Dazlich registered at one address, but signed his circulator affidavits using a different address. He was in fact a registered voter at all times, and he substantially complied with Colorado law. Acceptance of petition sections that he circulated will cure **98 signatures**.

20. *Dawn Nieland, Circulator*. Nieland circulated

petitions for Frazier in District 3. Like Sachs, Nieland registered at one address, but signed her circulator affidavits using a different address. She was in fact a registered voter at all times, and she substantially complied with Colorado law. Acceptance of petition sections that she circulated will cure **23 signatures**.

21. *Theresa Romero, Circulator. Romero circulated petitions for Frazier in District 3*. Like Sachs, Romero registered at one address, but signed her circulator affidavits using a different address. She was in fact a registered voter at all times, and she substantially complied with Colorado law. Acceptance of petition sections that she circulated will cure **34 signatures**.

22. *Trevor Donarsky, Notary Public*. Donarsky notarized petitions circulated for Frazier in District 3. On one petition section, Donarsky failed to affix his notary stamp. Nonetheless, he properly witnessed the circulator's affidavit and substantially complied with Colorado law. Acceptance of the petition section notarized by Donarsky will cure *22 signatures*.

23. *James Day, Circulator*. Day circulated petitions for Frazier in District 3. When Day properly registered to vote he listed his mailing address, but he did not include his apartment number. Accordingly, the post office refused to deliver a voter confirmation card to Day's residence and returned it to the El Paso County Clerk's office as undeliverable. Even though Day continued to reside at the address, and without his knowledge, the County Clerk cancelled his registration upon receipt of the returned mail. Day continued to

circulate petitions for Frazier. Day substantially complied with Colorado law, and acceptance of the petition sections he circulated will cure **46 signatures**.

24. The Secretary erroneously rejected individual signatures. An examination of signatures under the substantial compliance standard will cure **4 signatures.**

25. The Secretary improperly interpreted Colorado law and rejected the signatures of voters who signed more than one affidavit. Proper application of the statutory plain language will cure **213 signatures**.

26. Colorado Revised Statutes § 1-4-904 is unconstitutional to the extent it prevents an elector from signing more than one nominating petition. Correction of this unconstitutional act will cure **213 signatures**.

27. Alternatively, the Secretary unconstitutionally imposed a "first-to-file" standard for signatures of voters who signed more than one affidavit. Correction of this unconstitutional act will cure **31 signatures**.

28. Alternatively, for voters who signed more than one petition, the Secretary improperly rejected the second signature he reviewed, rather than accepting the signature for the first petition the voter signed, and rejecting the signature on the second petition the voter signed. Using the first-in-time rule, rather than the Secretary's first-reviewed rule, cures **31 signatures**.

29. A summary of the cured signatures, accepting all voters who signed multiple petitions, is as follows:

Circulator/Issue	Cured Signatures
Gilberto Abundis, Circulator	2
Nicholas Burton, Circulator	56
David Dazlich, Circulator	98
Dawn Nieland, Circulator	23
Theresa Romero, Circulator	34
Trevor Donarsky, Notary	22
James Day, Circulator	46
Signature errors	4
Dual-petition signatures	232
Total Cured Signatures	**519**
CD 3 Deficiency	**306**
Total Valid Signatures	**1,711**

30. A summary of the cured signatures, accepting voters under the first-in-time rule, is as follows:

Circulator/Issue	Cured Signatures
Gilberto Abundis, Circulator	2
Nicholas Burton, Circulator	56
David Dazlich, Circulator	98
Dawn Nieland, Circulator	23
Theresa Romero, Circulator	34
Trevor Donarsky, Notary	22
James Day, Circulator	46
Signature errors	4
First-in-time signatures	29
Total Cured Signatures	**314**
CD 3 Deficiency	**306**
Total Valid Signatures	**1,508**

SECOND CLAIM FOR RELIEF
(Violation of 42 U.S.C. § 1983)

31.This claim applies to the rejection of James Day's signatures.

32. Even if the Secretary deemed Day not to be a registered voter, he should have nonetheless accepted Day's signatures.

33. Petitioner re-alleges here each and every allegation and averment set forth in this Petition.

34. Colorado, unlike any other State, requires petition circulators for major party candidates to be a "resident" of the state and be "registered to vote and affiliated with the political party mentioned in the petition," C.R.S. 1-4-905(1).

35. The First Amendment protects core political speech, including circulation of petitions, which may only be burdened if the regulation furthers a compelling interest and is narrowly tailored to achieve that interest. See *Libertarian Party of Virginia v. Judd*, 718 F.3d 308, 316-17 (4th Cir. 2013) ("[A] consensus has emerged that petitioning restrictions like the one at issue here are subject to strict scrutiny analysis.").

36. Colorado laws that burden the political speech of petition circulators have been consistently struck down by courts. *E.g. Yes On Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008) (concluding that ban on non-resident initiative and referendum petition circulators violated the First Amendment).

37. Every federal court of appeals that has considered a challenge to residency or registration requirements for nominating petition circulators has found that the regulation is unconstitutional. *See, e.g. Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008); *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008) (finding that residency requirement for nominating petition

circulators severely burdened candidate's and circulators' First Amendment rights…).

38. Requirements that limit nominating petition circulators to registered voters are even more restrictive, as only residents may register to voter. *See Moore v. Johnson*, 2014 WL 4924409, *4 n.3 (E.D. Mich. May 23, 2014).

39. 42 U.S.C. § 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person 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…"

40. 42 U.S.C. § 1988(b) provides that "[i]n any action or proceeding to enforce a provision of [section 1983 of this title]… the court, in its discretion, may allow the prevailing party… a reasonable attorney's fee as part of the costs…."

41. The Fourteenth Amendment to the United States Constitution mandates that no state shall "deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. Amend. XIV § 1.

42. Defendant, acting under color of state law, have deprived the Petitioner of the Due Process of Law as

set forth in this Petition.

43. Petitioner is entitled to reasonable attorney's fees, costs and expenses for prosecuting this claim.

THIRD CLAIM FOR RELIEF
(Violation of 42 U.S.C. § 1983)

44. This claim applies to the rejection of all signatures belonging to voters who signed more than one candidate's petition.

45. The Secretary should have accepted all signatures of voters who signed more than one candidate's petition regardless of order of filing or review by his office.

46. Adopting and implementing a rule rejecting multiple petition signatures in the same race based on an ambiguous, at best, statute is contrary to Colorado law and thus exceeds the Secretary's authority.

47. *Lee v. Keith*, 463 F.3d 763, 771 (7th Cir. 2006) ("Disqualifying a voter who signs an independent candidate's nominating petition from voting in the primary election severely burdens the voting and political association rights of the petition signer.")

48. By imposing a single petition signature requirement, both C.R.S. § 1-4-904 and 8 CCR 1505-1:15(d)(12) violated the First and Fourteenth Amendment rights of both the voters of Colorado and prospective candidates for office.

49. The single petition signature requirement unduly burdens voters First and Fourteenth Amendment rights by foreclosing their choice to nominate more than one candidate for the primary for an elected office.

50. The single petition signature requirement overly burdens candidates' First and Fourteenth Amendment rights by burdening candidates' ability to get on the ballot, especially in districts such as Colorado's 3rd Congressional District.

51. The single petition signature requirement overly burdens candidates' First and Fourteenth Amendment rights by requiring them to engage in a rush to gather signatures and file their signatures with election officials to avoid submitting signatures of voters previously submitted by opposing candidates

Prayer for Relief

WHEREFORE, Petitioners pray for judgment and relief as follows:

A. For an order placing Ryan Frazier on the June 28, 2016 primary ballot for the Republican nomination for United States Senator.

B. For attorney fees under 42 U.S.C. § 1983.

C. For such other and further relief as this Court deems just and proper.

DATED: May 2, 2016

Counsel for Ryan Frazier
Klenda Gessler & Blue, LLC

s / Scott E. Gessler
Scott E. Gessler
Geoff Blue
1624 Market St.
Suite 202
Denver, Colorado 80202
720-839-6637,
sgessler@klendagesslerblue.com
303-906-1050,
gblue@klendagesslerblue.com

Ryan Frazier
6500 S. Quebec
Suite 205
Greenwood Village, Colorado 80012

Verification

I, Ryan Frazier declare under penalty of perjury under the laws of the United States and Colorado that the foregoing is true and correct to the best of my knowledge.

/s/
Ryan Frazier

SUBSCRIBED AND SWORD TO ME this 2nd day of May, 2016 by Ryan Frazier.

Witness my hand and official seal:

/s/

My Commission Expires:
May 22, 2019

TREVOR DONARSKI
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20154020318
MY COMMISSION EXPIRES MAY 22, 2019