

**DISTRICT COURT, EL PASO COUNTY  
STATE OF COLORADO**

270 S. Tejon St.  
Colorado Springs, CO 80903

RAE ANN WEBER, PETER LUPIA, LYNDA  
ZAMORA WILSON, LINDSAY MOORE,  
DAVID WINNEY, SUMMER GROUBERT and  
TODD WATKINS,

Petitioners,

v.

JENA GRISWOLD, in her official capacity as  
Secretary of State of Colorado, and CHUCK  
BROERMAN, in his official capacity as Clerk and  
Recorder of the county of El Paso,

Respondents.

**▲ COURT USE ONLY ▲**

**Counsel for Petitioners:**

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Dallas, TX 75208  
(214) 937-0037  
nick@armerlaw.com

Case No.

Div.

**VERIFIED PETITION FOR RELIEF  
PURSUANT TO C.R.S. § 1-1-113**

COME NOW Petitioners, Rae Ann Weber, Peter Lupia, Lynda Zamora Wilson, Lindsay Moore, David Winney, Summer Groubert and Todd Watkins (Candidates), by and through counsel, Nicholas A. Armer, Esq., pursuant to C.R.S. § 1-1-113, and hereby submit the following verified petition against JENA GRISWOLD, in her official capacity as Secretary of State of Colorado, and CHUCK BROERMAN, in his official capacity as clerk and recorder of the county of El Paso, and hereby states as follows:

## **I. INTRODUCTION**

The Petitioners are Republican Party (GOP) candidates (Candidates) for several offices within the county of El Paso and state of Colorado. The Candidates allegedly lost their respective primary elections, which were held on June 28, 2022.

The Candidates requested a recount, as is their right under Colorado law. Pursuant to C.R.S. § 1-10.5-106, CHUCK BROERMAN, in his official capacity as Clerk and Recorder of the county of El Paso (Clerk and Recorder), determined the costs of a recount for Candidates, Rae Ann Weber, Peter Lupia, Lindsay Moore, David Winney, and Todd Watkins, for whom he was the election official.

Similarly, JENA GRISWOLD, in her official capacity as Secretary of State of Colorado (Secretary), determined the costs of a recount for Candidates, Lynda Zamora Wilson and Summer Groubert, for whom she was the election official.

In the determinations, the Clerk and Recorder and Secretary included additional costs for vendor programming and support. These additional costs were calculated at a rate of \$250 an hour for an estimated 40 hours, for a total amount of \$10,000. As such, these additional costs practically doubled the estimated costs of approximately \$10,819 for election judges, staff overtime and other costs.

Although three (3) Candidates, Rae Ann Weber, Peter Lupia and Lynda Zamora Wilson, have paid the determined costs in full, within the statutory time period, several of the Candidates have been unable to pay the full amount requested—despite tendering partial payment to the Clerk and Recorder and Secretary, respectfully. However, the Secretary and Clerk and Recorder have refused to accept payment from the Candidates who could not pay the full amount.

The addition of vendor costs for programing and support is unreasonable, arbitrary, and capricious. The involvement of a vendor is unnecessary and the additional expense is cost prohibitive. The exorbitant fee of \$250 an hour for 40 hours of contemplated work is vague and ambiguous. The so-called “vendor” is

unidentified. However, based upon the cost break-down, the Secretary and Clerk and Recorder are relying on this vendor to substantially participate in the recounts.

The Candidates are protected from state action the violates their rights to equal protection, freedom of expression, and due process under the Constitution of the United States (Constitution) and the Constitution of the State of Colorado (Colorado Constitution).

These unreasonable additional costs, and thus the actions of the Secretary and Clerk and Recorder serve to chill Petitioner's First Amendment rights, and further violates their rights to equal protection and due process. Even the Candidates who were able to pay the determined costs in full have been strained financially by having to pay these inflated estimates, while those unable to pay the determined costs in full are in jeopardy of losing their opportunity for recount.

Accordingly, the Candidates hereby request that this Court issue an order requiring the Secretary and Clerk and Recorder to remove that portion of the cost determination with regard to the several requests for recounts made by the Candidates, return any over payment, allow those Candidates who have not paid in full another opportunity to pay the adjusted costs, and, if necessary, issue a show cause order to the Secretary and Clerk and Recorder that she and he may be



notified and heard as to why the determination of costs for these Candidates should include the costs of an outside vendor for unnecessary and expensive services—which may already be covered by the normal operating costs of government—and why they should not have to obey said order.

## **II. PARTIES**

1. Petitioner, Rae Ann Weber (Dr. Weber), is a natural person, and citizen of the state of Colorado and the United States of America. Dr. Weber is a certified 2022 GOP candidate for the office of coroner for the county of El Paso. Dr. Weber is an “interested party,” pursuant to C.R.S. 1-10.5-106, and followed all the necessary requirements of said statute in requesting a recount of the GOP primary held on June 28, 2022, concerning her race, including paying the determination of costs, in full, to the Clerk and Recorder.

2. Petitioner, Peter Lupia (Mr. Lupia), is a natural person, and citizen of the state of Colorado and the United States of America. Mr. Lupia is a certified 2022 GOP candidate for the office of clerk and recorder for the county of El Paso. Mr. Lupia is an “interested party,” pursuant to C.R.S. 1-10.5-106, and followed all the necessary requirements of said statute in requesting a recount of the GOP

primary held on June 28, 2022, concerning his race, including paying the determination of costs, in full, to the Clerk and Recorder.

3. Petitioner, Lynda Zamora Wilson, (Ms. Wilson), is a natural person, and citizen of the state of Colorado and the United States of America. Ms. Wilson is a certified 2022 GOP candidate for state senate, district 9. Ms. Wilson is an “interested party,” pursuant to C.R.S. 1-10.5-106, and followed all the necessary requirements of said statute in requesting a recount of the GOP primary held on June 28, 2022, concerning his race, including paying the determination of costs, in full, to the Secretary.

4. Petitioner, Lindsay Moore (Ms. Moore), is a natural person, and citizen of the state of Colorado and the United States of America. Ms. Moore was a certified 2022 GOP candidate for the office of county commissioner of the county of El Paso. Ms. Moore is an “interested party,” pursuant to C.R.S. § 1-10.5-106, and followed all the necessary requirements of said statute in requesting a recount of the GOP primary held on June 28, 2022, concerning her race. However, Ms. Moore was unable to pay the full amount of the determination of costs, as estimated by the Clerk and Recorder. On July 27, 2022, at approximately, 3:30 p.m., which is within the statutory deadline, Ms. Moore tendered a partial payment

of certified funds for her requested recount. The Clerk and Recorder refused to accept the payment.

5. Petitioner, David Winney (Mr. Winney), is a natural person, and citizen of the state of Colorado and the United States of America. Mr. Winney is a certified 2022 GOP candidate for the office of county commissioner of the county of El Paso. Mr. Winney is an “interested party,” pursuant to C.R.S. § 1-10.5-106, and followed all the necessary requirements of said statute in requesting a recount of the GOP primary held on June 28, 2022, concerning his race. However, Mr. Winney was unable to pay the full amount of the determination of costs, as estimated by the Clerk and Recorder. On July 27, 2022, at approximately, 3:30 p.m., which is within the statutory deadline, Mr. Winney tendered a partial payment of certified funds, as payment for his requested recount. The Clerk and Recorder refused to accept the payment.

6. Petitioner, Summer Groubert (Ms. Groubert), is a natural person, and citizen of the state of Colorado and the United States of America. Ms. Groubert was a certified 2022 GOP candidate for candidate for state house, district 18. Ms. Groubert is an “interested party,” pursuant to C.R.S. § 1-10.5-106, and followed all the necessary requirements of said statute in requesting a recount of the GOP

primary held on June 28, 2022, concerning her race. However, Ms. Groubert was unable to pay the full amount of the determination of costs, as estimated by the Secretary. On July 28, 2022, at approximately, 2:30 p.m., which is within the statutory deadline, Ms. Groubert tendered a partial payment of certified funds for her requested recount. The Secretary refused to accept the payment.

7. Petitioner, Todd Watkins (Mr. Watkins), is a natural person, and citizen of the state of Colorado and the United States of America. Mr. Watkins is a certified 2022 GOP candidate for the office of sheriff of the county of El Paso. Mr. Watkins is an “interested party,” pursuant to C.R.S. § 1-10.5-106, and followed all the necessary requirements of said statute in requesting a recount of the GOP primary held on June 28, 2022, concerning her race. However, Mr. Watkins was unable to pay the full amount of the determination of costs, as estimated by the Clerk and Recorder. On July 27, 2022, at approximately, 3:30 p.m., which is within the statutory deadline, Mr. Watkins tendered a partial payment of certified funds, as payment for his requested recount. The Clerk and Recorder refused to accept the payment.

8. Respondent, JENA GRISWOLD, is named in her official capacity as Secretary of State of Colorado.

9. Respondent, CHUCK BROERMAN, is named in his official capacity as clerk and recorder of the county of El Paso.

### **III. JURISDICTION AND VENUE**

10. Jurisdiction of the district court is properly invoked pursuant to C.R.S. § 1-1-113.

11. The district court has subject matter jurisdiction over the parties and this action, pursuant to Art. VI, § 9 of the Colorado Constitution.

12. Venue is proper in the county of El Paso, pursuant to C.R.C.P. 98(b)(2).

### **IV. STATEMENT OF FACTS**

13. On June 28, 2022, the GOP primary election was held to determine the party's candidates for offices across the state of Colorado.

14. The Candidates allegedly lost their respective primary elections to the several offices, as described herein.

15. C.R.S. § 1-10.5-106 allows an "interested party" to request a recount of an election conducted with the state of Colorado.

16. Candidates are all interested parties, pursuant to statute, and have all formally requested a recount by submitting a notarized request to either the

Secretary or Clerk and Recorder, within the statutory time period of 28 days after said primary election.

17. Pursuant to said statute, on July 26, 2022, the Clerk and Recorder prepared a determination of costs for Candidates, Rae Ann Weber, Peter Lupia, Lindsay Moore, David Winney and Todd Watkins.

18. Each cost determination was for the same amount of twenty thousand, eight hundred and nineteen dollars and eighty seven cents (\$20,819.87).

19. Said determinations all include a cost for vendor programing and support in an amount of ten thousand dollars (\$10,000), which reflects the calculated rate of two hundred and fifty dollars (\$250) an hour for an estimated forty (40) hours of work.

20. Pursuant to said statute, on July 27, 2022, the Secretary prepared a determination of costs for Candidates, Ms. Wilson and Ms. Groubert.

21. The cost determination for Ms. Wilson was for the similar amount of twenty thousand, eight hundred and nineteen dollars and eighty seven cents (\$20,819.87).

22. Because the costs determination for Ms. Groubert included the county of El Paso and a small part of the county of Teller, her cost determination

was for the amount of twenty one thousand, five hundred and ninety four dollars and eighty five cents (\$21,594.85).

23. However, said determinations also include a cost for vendor programing and support in an amount of ten thousand dollars (\$10,000), which similarly reflected the calculated rate of two hundred and fifty dollars (\$250) an hour for an estimated forty (40) hours of work.

24. The identity of the vendor is not disclosed.

25. Other than describing the work anticipated as “Vendor programming/support,” no other information, or work description is provided.

26. The estimated costs for Vendor programming/support is vague and ambiguous.

27. The need for such services is unnecessary and over-estimated.

28. The total amount determined is unreasonable, arbitrary, and capricious.

29. The Secretary and Clerk and Recorder have abused their discretion by including the costs of an unidentified vendor.

30. The Secretary and Clerk and Recorder have abused their discretion by inflating the costs of the unidentified vendor.

31. C.R.S. § 1-1-113 states, in pertinent part:

When *any* controversy arises between *any* official charged with *any* duty or function under this code and *any* candidate...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. [Emphasis added].

32. Pursuant to C.R.S. § 1-10.5-106, the Secretary and Clerk and Recorder has a duty to determine the cost of a recount for the Candidates, herein.

33. However, that determination must be done fairly and equally, pursuant to Colorado law, the Constitution and the Colorado Constitution.

34. The Secretary and Clerk and Recorder have breached their duty, and/or committed a wrongful act by unreasonably including the costs of an outside, presumably private vendor for unnecessary, expensive, arbitrary, and capricious costs.

35. Upon information and belief, the Secretary and Clerk and Recorder have a contractual relationship with the unidentified vendor.



36. Upon information and belief, the unidentified vendor is a private company.

37. Upon information and belief, said vendor is engaged in state action, and is subject to the Constitution and the Colorado Constitution.

38. Upon information and belief, said vendor was previously engaged in a contract with the Secretary and Clerk and Recorder.

39. Upon information and belief, said vendor is part of the Secretary and Clerk and Recorder's normal overhead expenses and, as such, should not be included in a determination of costs for a recount.

40. Approximately 98,171 ballots were cast in the county of El Paso concerning the 2022 GOP primary.

41. Petitioner, Mr. Winney, is a candidate for county commissioner district 5 of the county of El Paso.

42. Approximately, fourteen thousand, five hundred and thirty one (14,531) votes were cast in the 2022 GOP primary election concerning the nomination for county commissioner district 5 for the county of El Paso.

43. Petitioner, Ms. Moore, is a candidate for county commissioner district 1 for the county of El Paso.

44. Approximately twenty seven thousand, nine hundred and seventy eight (27,978) votes were cast in the 2022 GOP primary election concerning the nomination for county commissioner district 1 of the county of El Paso.

45. Petitioner, Ms. Wilson, is a candidate for state senate district 9 for the county of El Paso.

46. Approximately thirty three thousand, two hundred and thirteen (33, 213) votes were cast in the 2022 GOP primary election concerning the nomination for state senate district 1 of the county of El Paso.

47. Petitioner, Ms. Groubert, is a candidate for state house district 18 for the county of El Paso and a very small portion of the county of Teller.

48. Approximately twelve thousand, seven hundred and four (12,704) votes were cast in the county of El Paso, and three (3) votes were cast in the county of Teller in the 2022 GOP primary election concerning the nomination for state house district 18.

49. Despite the substantially fewer number of ballots to recount within the 2022 GOP primary election concerning the nominations for county commissioner, state senate and state house, the costs determinations for Mr. Winney, Ms. Moore,

Ms. Wilson and Ms. Groubert are the same, or more, than the county-wide recounts for the respective offices of coroner, clerk and recorder, and sheriff.

50. Petitioners, Dr. Weber, Mr. Lupia and Ms. Wilson, who all paid their cost determinations in full, have nonetheless had their campaigns put under considerable financial stress; and, although they paid the determined costs in full, nonetheless challenge the Secretary and Clerk and Recorder's inclusion of ten thousand dollars (\$10,000) in vendor costs for programming and support.

## **V. CLAIM FOR RELIEF**

51. Petitioners incorporate herein by reference all of the allegations contained in the preceding paragraphs, as though fully contained herein.

52. Pursuant to C.R.S. § 1-1-113, a controversy has arisen between the Petitioners and the Secretary and Clerk and Recorder.

53. The Secretary and Clerk and Recorder are under a duty to fairly and equally discharge his duties concerning the determination of costs regarding the Petitioners' request for recount, pursuant to C.R.S. § 1-10.5-106.

54. The Secretary and Clerk and Recorder have breached their duty and committed a wrongful act by including unnecessary and excessive costs for vendor programming and support.

55. The Secretary and Clerk and Recorder has further breached their duty and committed a wrongful act by including costs for vendor programming and support, which is excessive, burdensome, unreasonable, arbitrary, and capricious.

56. Pursuant to C.R.S. § 1-10.5-106, a recount of votes must be completed no later than the thirty-seventh day after a primary election, which is Thursday, August 4, 2022.

## **VI. PRAYER FOR RELIEF**

Wherefore, the Petitioners hereby request that this Honorable Court issue an order pursuant to C.R.S. § 1-1-113, to: (1) the Respondents, Secretary and Clerk and Recorder, to desist from requiring the Petitioners to pay for the costs of a vendor for programming and support as it is associated with their individual requests for a recount of their respective primary races; (2) return any monies paid to the Secretary and Clerk and Recorder, over and above the determined costs of ten thousand, eight hundred and nineteen dollars and eighty seven cents (\$10,819.87); (3) to allow the other Candidates who have not paid in full another opportunity to pay the determined costs after reduction of ten thousand dollars (\$10,000), and (4) to, if necessary, issue a show cause order to the Secretary and Clerk and Recorder that she and he may be notified and heard as to why they

should not have to obey said order, and (5) for such other relief as is just and proper, as the Court deems appropriate.

Respectfully submitted this 29<sup>th</sup> day of July, 2022,

By: /s/ Nicholas A. Armer, Esq.  
Nicholas A. Armer, #55856

Rae Ann Weber  
4360 Hidden Rock Rd.  
Colorado Springs, CO 80908

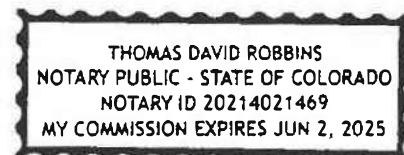
I, Rae Ann Weber, declare under penalty of perjury under the laws of the United States and Colorado that the foregoing is true and correct to the best of my knowledge.

  
Dr. Rae Ann Weber

SUBSCRIBED AND SWORN TO ME this 28<sup>th</sup> day of July, 2022, by Rae Ann Weber.

Witness my hand and official seal: 

My Commission Expires: 2 June 2025



Peter Lupia  
2627 Flintridge Dr.  
Colorado Springs, CO 80918

I, Peter Lupia, 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.

  
Peter Lupia

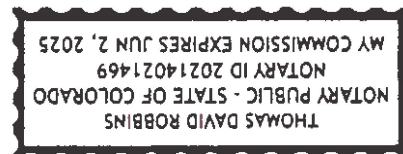
SUBSCRIBED AND SWORD TO ME this 28<sup>th</sup> day of July, 2022, by Peter Lupia.

Witness my hand and official seal:

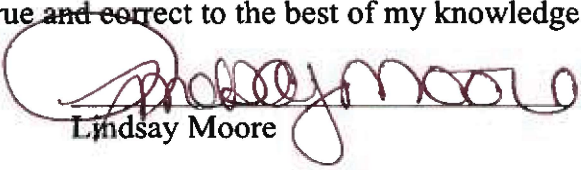


My Commission Expires: 2 June 2025

Lindsay Moore  
3270 Birnamwood Dr.  
Colorado Springs, CO 80920



I, Lindsay Moore, 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.

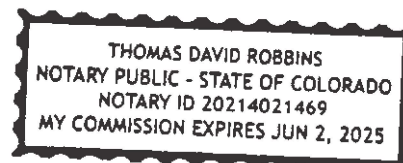
  
Lindsay Moore

SUBSCRIBED AND SWORD TO ME this 28<sup>th</sup> day of July, 2022, by Lindsay Moore.

Witness my hand and official seal:



My Commission Expires: 2 June 2025



David Winney  
6205 Whirlwind Dr.  
Colorado Springs, CO 80922

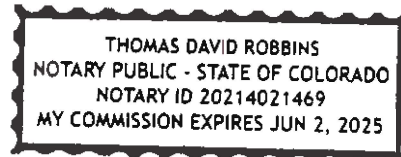
I, David Winney, under penalty of perjury, under the laws of the United States and Colorado that the foregoing is true and correct to the best of my knowledge.

  
David Winney

SUBSCRIBED AND SWORD TO ME this 28<sup>th</sup> day of July, 2022, by David Winney.

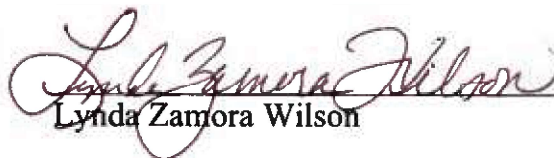
Witness my hand and official seal: 

My Commission Expires: 2 JUNE 2025




Lynda Zamora Wilson  
4207 E. Muledeer Dr., #C  
USAF Academy, CO 80840

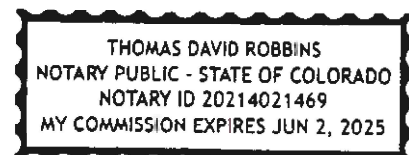
I, Lynda Zamora Wilson, under penalty of perjury, under the laws of the United States and Colorado that the foregoing is true and correct to the best of my knowledge.

  
Lynda Zamora Wilson

SUBSCRIBED AND SWORD TO ME this 28<sup>th</sup> day of July, 2022, by Lynda Zamora Wilson.

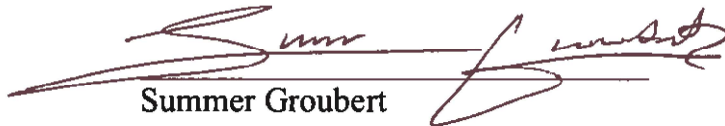
Witness my hand and official seal: 

My Commission Expires: 2 JUNE 2025



Summer Groubert  
3246 Centennial Blvd., #214  
Colorado Springs, CO 80907

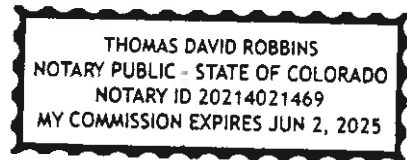
I, Summer Groubert, under penalty of perjury, under the laws of the United States and Colorado that the foregoing is true and correct to the best of my knowledge.

  
Summer Groubert

SUBSCRIBED AND SWORD TO ME this 28<sup>th</sup> day of July, 2022, by Summer Groubert.

Witness my hand and official seal: 

My Commission Expires: 2 JUNE 2025




Todd Watkins  
81625 Longhorn Acres Tr.  
Peyton, CO 80831

I, Todd Watkins, 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.

  
Todd Watkins

SUBSCRIBED AND SWORD TO ME this 28<sup>th</sup> day of July, 2022, by Todd Watkins.

Witness my hand and official seal: 

My Commission Expires: 2 JUNE 2025

