DISTRICT COURT, ARAPAHOE COUNTY, COLORADO Court Address: 7325 S POTOMAC ST, CENTENNIAL, CO, 80112	
Plaintiff(s) VICKIE TONKINS et al. v. **Defendant(s)** KRISTI BURTON BROWN et al.	DATE FILED: February 9, 2023 3:31 PM CASE NUMBER: 2023CV30176 ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV30176 Division: 202 Courtroom:

Order:Order Granting Defendants' Motion to Dismiss Under Rule 12(b)(1)

The motion/proposed order attached hereto: GRANTED.

It was the intent of the Court to issue a more thorough explanation for its ruling, finding that it does not have jurisdiction to determine this dispute. However, as the parties are aware, this Judge is presently on vacation, but has been made aware of the parties need for a prompt ruling. The Court finds that the language of Section 1-3-106, C.R.S directs that "the state central committee ... has full power ... to determine all controversies concerning the regularity of the organization ... within any county..." 1-3-106, C.R.S.(Emphasis added). The supreme court's ruling in People ex rel Lowry v. Dist. Ct 2nd Jud Dis, 32 Colo 15, 74 P. 896 (Colo 1903) and Nichol v Bair, 626 P2d 761 (Colo. App. 1981) support the finding that any court is without jurisdiction to determine disputes regarding who should chair a county organizational meeting. In Lowry the court was faced with a petition to determine which of two tickets should be considered the proper ticket of the Republican party. The two tickets were determined by two separately held conventions and each claimed it was the true representative of the party. In Nichols the COA held that the trial court lacked jurisdiction to determine whether the state committee had properly determined district captaincy. What each of these cases demonstrates is that the state committee of a political party has the authority and jurisdiction to determine how it shall function. Plaintiff/Petitioner is asking this court to direct the state committee on its ability to make such determinations. This Court does not have jurisdiction over such matters. Defendant's motion to dismiss for lack of jurisdiction is GRANTED.

Issue Date: 2/9/2023

ELIZABETH BEEBE VOLZ
District Court Judge

ARAPAHOE COUNTY DISTRICT COURT, STATE OF COLORADO 7325 S. Potomac Street Centennial, Colorado 80112	
Plaintiffs: Vickie Tonkins, as Chairwoman of the El Paso County Republican Central Committee; the El Paso County Republican Central Committee; Sheryl Betts; Desra Conrad; Bonnie Lapora; Scott Sellers; Judith Cole; and Sharon Kortrey v. **Defendants:** Kristi Burton Brown, as Chairwoman of the Colorado Republican State Central Committee; and the Colorado Republican State Central Committee	▲ **COURT USE ONLY** ▲
***Attorneys for Defendants*:** Christopher O. Murray, #39340 Julian R. Ellis, Jr., #47571 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone: 303.223.1183 Email: cmurray@bhfs.com	Case Number: 2023CV30176 Div. 202
Defendants' Motion to Dismiss Under Rule 12(b)(1)	

Colorado gained statehood on August 1, 1876. Less than 25 years later, the Colorado Supreme Court lamented that it had become common for politicians in the new state's political parties to take their internal party squabbles to court, a practice degrading to both the parties and the judiciary that "should never have been adopted." *Spencer v. Maloney*, 62 P. 850, 856 (Colo. 1900). In 1901, the general assembly acted to prevent those disgruntled by internal party deliberations from continuing to rope in the state judiciary by adopting a statute that recognized the exclusive authority of the state central committee of political parties to resolve controversies regarding the organization of subsidiary committees of those parties within Colorado.

Amazingly (or perhaps, gamely), Plaintiffs would have this Court hold this very provision, Colo. Rev. Stat. § 1-3-106, authorizes their lawsuit, which asks the Court to declare that the Colorado Republican State Central Committee (the Committee) may not appoint a neutral third-party to run the upcoming organizational meeting of the El Paso County Republican Central Committee (RCC). Such a holding is impossible to reconcile with section 106 and the unmistakably clear history of its adoption and application. Even more, such a holding would occasion grave concern under the First Amendment, which requires that no court may substitute its judgment for the judgment of a political party about its internal affairs.

Because Plaintiffs' lawsuit is an axiomatic example of the sort of internal party dispute wisely barred from judicial adjudication, this Court lacks jurisdiction to take any action and should therefore immediately dismiss Plaintiffs' lawsuit.

STATEMENT OF CONFERRAL

Counsel for Defendants conferred with counsel for Plaintiffs regarding the jurisdictional defects raised in this motion. As of this filing, Plaintiffs have not responded. Defendants nonetheless file this motion to dismiss to prior to a response because of timing issues and to fully apprise Plaintiffs of the clear jurisdictional bar to their claims. If Plaintiffs move forward with

this case, Defendants will seek all reasonable attorneys' fees under Colo. Rev. Stat. § 13-17-102(2), incurred after the filing of this motion.

BACKGROUND

I. Factual Background.

Plaintiff Vickie Tonkins was elected Chairwoman of the El Paso County RCC on October 12, 2019. She remains the Chairwoman of the El Paso County RCC. (Compl. ¶¶ 8, 21.)

Before the El Paso County RCC's biennial organizational meeting, scheduled for Saturday, February 11, 2023, a group of El Paso County Republicans submitted a petition to Defendant Kristi Burton Brown, the Committee's Chairwoman, requesting she convene a special meeting of the Committee to consider a motion to appoint a neutral third-party and Parliamentarian to conduct the El Paso County RCC organizational meeting. (*See id.* ¶¶ 31–38.) The basis for these members' petition was that Plaintiff Tonkins' past actions against other Republicans in the county demonstrated that she could not be trusted to chair a meeting where she was standing for reelection. (*See id.*) On January 16, 2023, Ms. Burton Brown issued a call for the requested special meeting, which was held on January 31, 2023. (*See id.*, Ex. 3.)

Plaintiffs filed this lawsuit the day before the Committee's special meeting, alleging two claims for relief. *First*, Plaintiffs "seek a declaration that … Defendants have no authority or jurisdiction under Colo. Rev. Stat. § 1-3-106" to replace Plaintiffs Tonkins with a neutral third-party to chair the El Paso County RCC's organizational meeting scheduled for February 11, or to determine the voting credentials of "those whom the El Paso RCC Executive Committee validly appointed such as the Plaintiff [Precinct Committeepersons (or PCPs)]." (*See id.* ¶ 75.) *Second*, "and in the event that th[e] Court determines" that section 106(1) applies, "Plaintiffs seek a declaratory judgment that Defendants' actions are still void and of no legal effect because they are in violation of Colorado state law and the Colorado RCC bylaws." (*Id.* ¶ 88.)

* * *

Because of the expediated nature of this case, and because some of Plaintiffs' allegations in their complaint are now stale, Defendants provide the added context outlined below. Although none of this context is necessary to decide Defendants' Rule 12(b)(1) motion, Defendants provide it as a supplement consistent with their opposition to Plaintiffs' anticipated motion for preliminary injunction, which Plaintiffs have promised by the day's end.

At the January 31, 2023 special meeting, the subject of Plaintiffs' complaint, presentations for and against the motion to appoint a neutral third-party to conduct the El Paso County RCC organizational meeting were made by the petitioners and by Plaintiff Tonkins and her supporters. After these presentations, the 301 participating members of the Committee debated the motion. The motion was adopted by a majority, and it was decided that a Committee-designee, Gregory Carlson, a registered Parliamentarian, will run the El Paso County RCC's organizational meeting on Saturday, February 11.

II. Statutory Background on Colo. Rev. Stat. § 1-3-106.

This motion invokes a state statute that has existed for over 120 years. It grants state political parties the ***exclusive*** jurisdiction to resolve party controversies:

> The state central committee of any political party in this state has ***full power*** to pass upon and determine ***all controversies concerning the regularity of the organization of that party*** within any congressional, judicial, senatorial, representative, or county commissioner district or within any county and also concerning the right to the use of the party name. … ***All determinations upon the part of the state central committee shall be final.***

Colo. Rev. Stat. § 1-3-106(1) (emphasis added).

The history of how section 106 came to be is particularly relevant here. The general assembly adopted the statute's precursor in 1901. *See Lowry v. Dist. Ct. of Second Jud. Dist.*, 74 P. 896, 897 (Colo. 1903). Before adoption, cases percolated through the state judicial system requiring courts to decide disputes between competing factions in a single political party. *See Spencer v. Maloney*, 62 P. 850, 852 (Colo. 1900) (collecting cases). For example, in *Spencer*,

two factions of the Democratic Party nominated candidates, and a lower court ordered both candidates on the ballot. *Id.* The Colorado Supreme Court reversed, concluding that one of the two factions' tickets was the "true" winner. *Id.* at 856. In resolving the controversy, however, the court lamented it had become common for courts to resolve these matters and admonished that such a practice "should never have been adopted." *Id.*

The general assembly agreed. Heeding the court's reticence in *Spencer*, a year later the general assembly adopted the party-controversy statute now codified in section 106. That statute designated "the state central committee of a political party" as "the sole tribunal to determine [party] controversies" and divests the courts of concurrent jurisdiction. *Lowry*, 74 P. at 897, 898. The supreme court lauded the shift in review authority:

> We close the discussion by saying that the General Assembly exhibited wisdom and a regard for the interests of the judiciary in passing [the 1901] statute, by which members of the same political body are required to submit their controversies to the highest constituted authority of the party in the state. It relieves the courts of a class of litigation w[hich] should never be imposed on them, and confers the power and places the responsibility for its exercise upon the political parties, where it properly belongs.

Id. at 899. Since the 1901 act, it has been the law in Colorado that state central committees of political parties are the final arbiters of intra-party affairs and controversies. That state central committees are the "sole tribunal to determine such controversies" is "clear beyond all doubt" and "the courts do not have concurrent jurisdiction in the premises." *Id.* at 898.

While state political parties' right to decide party controversies is codified in statute, this right is of constitutional significance. The U.S. Supreme Court has repeatedly reminded that "a State, or a court, may not constitutionally substitute its own judgment for that of the Party," even if the court believes a particular expression protected by the First Amendment (association or speech) is "unwise or irrational." *Democratic Party of U.S. v. Wis. ex rel. La Follette*, 450 U.S. 107, 123–24 (1981); *see also Tashjian v. Republican Party*, 479 U.S. 208, 224 (1986).

This textual and historical backdrop supports Defendants' argument that the Court lacks jurisdiction to hear the intra-party disputes Plaintiffs raise in this case.

LEGAL STANDARD

A motion challenging subject matter jurisdiction is proper under Rule 12(b)(1). Colo. R. Civ. P. 12(b)(1); *Medina v. State*, 35 P.3d 443, 452 (Colo. 2001). When a defendant opposes jurisdiction, "the objection is that the court has no authority or competence to hear or decide the case." *Krystkowiak v. W.O. Brisben Cos.*, 90 P.3d 859, 870–71 (Colo. 2004). "A court … ha[s] jurisdiction of the subject matter of an action if the case is one of the type of cases that the court has been empowered to entertain by the sovereign from which the court derives its authority." *State ex rel. Suthers v. Tulips Invs., LLC*, 343 P.3d 977, 979 (Colo. App. 2012) (quoting *Paine, Webber, Jackson & Curtis, Inc. v. Adams*, 718 P.2d 508, 513 (Colo. 1986)), *aff'd*, 340 P.3d 1126 (Colo. 2015). "[T]he plaintiff has the burden of proving that the trial court has jurisdiction to hear the case." *Brown v. Jefferson Cnty. Sch. Dist. No. R-1*, 297 P.3d 976, 979 (Colo. App. 2012) (citing *Lee v. Banner Health*, 214 P.3d 589, 594 (Colo. App. 2009)).

ARGUMENT

Section 106 of the Colorado Revised Statutes recognizes the exclusive authority of the Committee to resolve disputes over the organization of subsidiary Republican committees. This statute is not a limited grant of authority or jurisdiction. Rather, it is a recognition—consistent with the First Amendment and the lessons learned from past judicial involvement in such affairs—that disputes within political parties must be resolved by those political parties. Because this case is such a dispute, this Court lacks jurisdiction to hear it.

I. Plaintiffs' Dispute Falls Within the Committee's Exclusive Jurisdiction Under Colo. Rev. Stat. § 1-3-106.

Plaintiffs' first claim seeks a declaration that Colo. Rev. Stat. § 1-3-106 does not grant the Committee the authority to resolve the dispute over how the El Paso County RCC's

organizational meeting, scheduled for February 11, 2023, must be conducted. (*See* Comp. ¶¶ 75–79.) Plaintiffs misunderstand subsection 106's function.

Subsection 106(1) is not an "authority or jurisdiction" conveying statute. (*See id.*) That is, it does not establish a precondition authorizing the Committee to determine party controversies, as Plaintiffs claim. Rather, subsection 106(1) vests state central committees with the "full power" to determine and finally decide "all controversies concerning the regularity of the organization of th[e] party … within any county," to the exclusion of the courts. Colo. Rev. Stat. § 1-3-106(1). Subsection 106(1) therefore is a jurisdiction striping statute specific to party controversies. This is material because a finding that this case falls under section 106 is case ending. Simply, if the Court concludes this dispute is a "controvers[y] concerning the regularity of the organization"—as it is—the Court must dismiss the complaint for lack of jurisdiction.

Thus, the (only) question the Court must answer in deciding this motion is: Does Plaintiffs' complaint concern the regularity and organization of the state Republican Party within El Paso County? Plaintiffs' well-pled allegations leave no doubt the answer is, yes.

Plaintiffs' dispute centers on how officers intend to conduct the El Paso County RCC's organizational meeting on Saturday, February 11. The specific issues they raise are (1) whether, to ensure fairness and accountability, a neutral third party and registered Parliamentarian will preside over the organizational meeting, rather than the Chair of the El Paso County RCC, Plaintiff Tonkins; and (2) whether the same neutral party will require verifiable and credible credentialing for all PCPs prior to voting at the meeting. (*See* Compl. ¶¶ 78–79.) The phrase "regularity of the organization of th[e] party" must include disputes over the regularity of a county central committee's organizational meeting. Organizational meetings are without question matters of party organization; they are the mechanisms by which central committees choose their standard bearers and leaders. A plain reading of subsection 1-3-106(1) supports this truth. Indeed, it's difficult to imagine a dispute more fundamental to the "regularity of the

organization of th[e] party … within any county" than a controversy over the process to be followed by the central committee in conducting its ***organizational*** meeting.

History is on Defendants' side. The division of responsibility for deciding party controversies—with challenges arising out of the political-party process left to the parties—if anything, has been consistent. Since the general assembly adopted section 106's predecessor in 1901, only two reported cases have examined the contours of section 106 during its 120-year existence: *Lowry v. Dist. Ct. of Second Jud. Dist.*, 74 P. 896, 897 (Colo. 1903) and *Nichol v. Bair*, 626 P.2d 761 (Colo. App. 1981). *Lowry* is discussed above, and *Nichol* involved a challenge to the removal of two plaintiffs "from their positions of Captain and Co-captain of a captaincy district within the Democratic Party of Adams County." 626 P.2d at 762. There, the court of appeals summarily found it lacked subject matter jurisdiction, citing subsection 106(1) (then section 1-14-109) and *Lowry* for support. *Id.* That there are not scores of reported decisions over the last century resolving disputes like this one is telling.

Nor is the Denver District Court's decision in *Schneider v. Griswold* (*see* Compl. ¶¶ 81–82 & Ex. 11), to the contrary.[1] In *Schneider*, then-Chief Judge Martinez enjoined the presiding officer of the Republican Party state Senate District 10 (SD-10) assembly from submitting, and the Colorado Secretary of State from accepting, a certificate of designation that designated a candidate to the Republican primary ballot who did not obtain the minimum vote at the SD-10 assembly. (*Id.*, Ex. 11 at 6.) The district court recognized a threshold issue was whether the court had jurisdiction, or whether the Committee had exclusive jurisdiction to hear and decide the SD-10 dispute. (*Id.* at 8.) Chief Judge Martinez analyzed section 106 and concluded "[t]he plain text and title of Article 3 suggests that the legislature intended to limit the scope of C.R.S. § 1-3-106 to determining controversies concerning the organization of the party and the right to use the party name," not disputes over "ballot access" in a primary election. (*Id.* at 9.) To Chief

[1] Counsel for Defendants was also counsel of record in *Schneider*.

Judge Martinez, while the Committee had exclusive jurisdiction to decide intra-party affairs, section 106 was no bar to determining ballot access and whether election officials (the secretary of state and the SD-10 presiding officer) were likely to breach their statutorily prescribed duties in setting the Republican primary ballot. (*See id.* at 9–10.)

Although *Schneider* is not binding on this Court, the dispute in this case—how a county central committee's organizational meeting must be conducted—fits neatly within the category of controversies Chief Judge Martinez said is within the Committee's exclusive jurisdiction. The dispute is over the process for holding the biennial meeting by which the El Paso County RCC decides how to organize itself. County central committees meet between February 1 and February 15 (inclusive) of odd-numbered years. *See* Colo. Rev. Stat. § 1-3-103(c). At these meetings, the county central committees "***organize*** by selecting a chairperson, a vice-chairperson, and a secretary and any other officers provided for in the county rules." § 1-3-103(c) (emphasis added). They also "select a vacancy committee authorized to fill vacancies in the county central committee and the offices held by members of the county central committee" and "select a separate vacancy committee to fill vacancies in the office of county commissioner held by members of the political party." § 1-3-103(c). These meetings are indisputably the meetings by which political parties organize themselves. Because the dispute here is over the conduct of such a meeting, it unquestionably concerns matters concerning the regularity of the organization of the party, and therefore jurisdiction lies exclusively with the Committee. Plaintiffs' complaint therefore should be dismissed.[2]

[2] Plaintiffs raise a second, alternative declaratory judgment claim. (Compl. ¶¶ 87–106.) By admission, Plaintiffs' alternative claim assumes "th[e] Court determines that the kind of controversy at issue here falls withing the scope of controversies" in section 106. (*Id.* ¶ 88.) But, if section 106 applies, the Court has no jurisdiction to hear the alternative claim. Plaintiffs' pleading error further reveals their misunderstanding of subsection 106(1)'s function.

II. The Committee's Exclusive Jurisdiction Also Implicates the First Amendment.

A plain reading of Colo. Rev. Stat. § 1-3-106 supports the Committee's no-jurisdiction argument. That said, any interpretation of subsection 106(1) that impugns the Committee's exclusive jurisdiction to decide intra-party affairs and controversies would violate the constitutional-doubt canon of statutory construction because such an interpretation would infringe the Committee's First Amendment rights. The dispute implicates two First Amendment guarantees. *First*, "[t]he First Amendment protects the freedom to join together to further common political beliefs, which presupposes the freedom to identify those who constitute the association." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 568 (2000). In no area is the political association's right "more important than in the process of selecting" the people who represent the party, because it is these people who "become[] the party's ambassador[s]." *Id.* at 575. U.S. Supreme Court cases therefore "vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party 'select[s] a standard bearer who best represents the party's ideologies and preferences.'" *Id.* (quoting *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989)).

Second, political parties' resolution of party controversies is itself a constitutionally protected activity. *See Democratic Party of U.S. v. Wis. ex rel. La Follette*, 450 U.S. 107, 123–24 (1981) ("[A] State, or a court, may not constitutionally substitute its own judgment for that of the Party."). That is why the Supreme Court has predicably rejected judicial intervention in intra-party affairs and controversies. *See, e.g.*, *Cousins v. Wigoda*, 419 U.S. 477, 491 (1975) ("[T]his is a case where 'the convention itself (was) the proper forum for determining intraparty disputes as to which delegates (should) be seated.'"); *O'Brien v. Brown*, 409 U.S. 1, 4 (1972) ("[N]o holding of this Court up to now gives support for judicial intervention in the circumstances presented here, involving as they do, relationships of great delicacy that are essentially political in nature."); *Buckley v. Valeo*, 424 U.S. 1, 250 (1976) (Burger, C.J., concurring) ("[T]his Court

has scrupulously refrained, absent claims of invidious discrimination, from entering the arena of intraparty disputes concerning the seating of convention delegates." (footnote omitted)). *Cf. Morse v. Republican Party of Va.*, 517 U.S. 186, 241 (1996) (Scalia, J., dissenting) ("[W]e have always treated government assertion of control over the internal affairs of political parties—which, after all, are simply groups of like-minded individual voters—as a matter of the utmost constitutional consequence.").

The Committee's First Amendment rights therefore support its interpretation of section 106 and confirm state political parties' exclusive jurisdiction under subsection 106(1) to hear and finally decide party controversies like the one here. The constitutional-doubt canon provides that "where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [the court's] duty is to adopt the latter." *Jones v. United States*, 526 U.S. 227, 239 (1999) (quoting *United States ex rel. Att'y Gen. v. Del. & Hudson Co.*, 213 U.S. 366, 408 (1909)); *see also People v. Iannicelli*, 449 P.3d 387, 392 (Colo. 2019). Choosing an interpretation of section 106 that does not harmonize the Committee's First Amendment rights would question the constitutionality of the statute. This Court should therefore reject any interpretation that Plaintiffs offer that would approve a process in which courts review or supplant internal party deliberations in violation of the Committee's First Amendment rights.

Not only should state political parties' associational rights inform how the Court interprets Colo. Rev. Stat. § 1-3-106, but the First Amendment also provides an independent ground requiring deference to the Committee's resolution of this intra-party dispute. Redress of Plaintiffs' claims in this litigation would necessarily require the Court to reexamine an issue the Committee has finally resolved—how the El Paso County RCC's organizational meeting is to be conducted. To disregard the Committee's findings on a matter that strikes at the heart of its

associational guarantees to select the Colorado Republican Party's leadership and decide its organization would trample on the First Amendment.

At bottom, the Committee maintains that section 106 fits with the First Amendment in that it requires courts and other branches of government to accede jurisdiction to state political parties to resolve party controversies. In that way, the First Amendment and section 106 do the same work and the remedy is the same: for the Court to decline jurisdiction and defer to state political parties' resolution of intra-party affairs.

CONCLUSION

Because the Court lacks jurisdiction to hear Plaintiffs' claims, the Court should summarily dismiss Plaintiffs' complaint.

DATED this 3rd day of February, 2023.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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CERTIFICATE OF SERVICE

I certify that on February 3, 2023, a true and correct copy of **Defendants' Motion to Dismiss Under Rule 12(b)(1)** was filed with the Court and served via the Colorado Courts E-Filing System upon all counsel of record.

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