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<tr><td>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO<br>1437 Bannock St.<br>Denver, CO 80203</td><td rowspan="2">DATE FILED: November 13, 2023 5:48 PM<br><br>▲ COURT USE ONLY ▲</td></tr>
<tr><td>Petitioners:<br>NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN,<br><br>v.<br><br>Respondent:<br>JENA GRISWOLD, in her official capacity as Colorado Secretary of State,<br><br>and<br><br>Intervenors:<br>COLORADO REPUBLICAN STATE CENTRAL COMMITTEE, and DONALD J. TRUMP.</td></tr>
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**PETITIONERS' RESPONSE TO TRENISS EVANS'S MOTION TO INTERVENE FOR LIMITED PURPOSE**

Treniss Evans III was at the U.S. Capitol on January 6, 2021, as a supporter of Intervenor Donald Trump. Evans claims he moves to intervene to bring to the Court's attention to a lawsuit he recently filed against Petitioners' counsel. In that separate action, he alleges a portion of one exhibit here—on which Petitioners do not rely in their proposed Findings of Fact and Conclusions of Law—is inaccurate. Evans's characterization of the evidence provides him with no basis to intervene, and his motion should be denied. Any other ruling would delay this expedited proceeding, prejudice the parties, disrupt the timely conclusion of this action, and open the door to incessant intervention beyond what the rules contemplate.

## Background

Petitioners' opening statement referenced Petitioners' Exhibit 94, which included, among other things, a brief video of a person reading Trump's 2:24 p.m. tweet, which stated that "Mike Pence didn't have the courage to do what should have been done," into a bullhorn to the crowd during the attack on the Capitol.

Evans shortly thereafter sued Petitioners' counsel, alleging that Petitioners' counsel

defamed him by inaccurately representing the precise time at which Evans read the tweet to the crowd. *Evans v. Olson, et al.*, No. 2023CV689 (Denver Dist. Ct.). In short, Evans admits that he is the person on the video and admits he read the tweet into bullhorn during the attack but claims that he did so later in the afternoon. Evans then moved to intervene here.

To avoid any distraction from Evans's separate suit and this motion, Petitioners did not reference this exhibit in their Proposed Findings of Fact and Conclusions of Law. Petitioners rely instead on other admitted—and uncontested—evidence showing a surge in the attack on the Capitol right after Trump's 2:24 p.m. tweet.

**Legal Standard**

Under Colorado Rule of Civil Procedure 24, a non-party may intervene in a civil action as a matter of right or by permissive intervention. Rule 24(a) provides for a mandatory right of intervention "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Rule 24(b) allows a court to grant permissive intervention "when an applicant's claim or defense and the main action have a question of law or fact in common." *In re Marriage of Paul*, 978 P.2d 136, 139 (Colo. App. 1998). The court must ensure that intervention "will not unduly delay or prejudice the rights of the original parties." *Id*. It has "'considerable discretion' to grant or deny a motion for permissive intervention." *State ex rel. Weiser v. City of Aurora*, 2023 COA 52, ¶ 48 (Colo. App. 2023) (quoting *In re Marriage of Paul*, 978 P.2d at 139).

**Argument**

Evans asks for "limited intervention" so that he can inform the Court of litigation he filed

against Petitioners' counsel.[1] Evans Mot. 4. But nowhere does Evans argue that he meets the requirement for intervention under Rule 24. Nor could he. His grievances are simply too far removed from the questions of law and fact here.

First, there is no basis for mandatory intervention under Rule 24(a) because the Court's decision here will not "impair or impede [Evans's] ability to protect" any "interest related to the property or transaction which is the subject of the action." C.R.C.P. 24(a). No ruling here will bind Evans or otherwise affect his rights.

Second, there is no basis for permissive intervention because the cases do not "have a question of law or fact in common." C.R.C.P. 24(b)(2). This case is about Trump's qualifications to hold public office. It raises questions of law, like whether Trump engaged in an insurrection against the U.S. Constitution, and of fact, like what Trump did and did not do leading up to and on January 6 and how he communicated with his supporters. Evans's separate lawsuit, on the other hand, raises questions about whether Evans can produce evidence proving the elements of defamation and overcome the many legal defenses that bar his claims.[2]

There is no meaningful overlap between the questions of law and fact present here and those Evans raises. Evans is not a party to this case, and his dispute with one segment of one of Petitioners' exhibits does not affect the resolution of this case. Petitioners no longer rely on the video clip Evans contests in his lawsuit or even any part of the Exhibit 94 video. As Petitioners showed in their proposed findings, Petitioners have proven that the crowd surged after Trump's 2:24 p.m. tweet through indisputable evidence, including time-stamped Capitol security camera

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[1] Petitioners are not aware of, and Evans did not cite, any authority to support a non-party's intervention merely to alert the Court to another proceeding.
[2] For instance, the Colorado Supreme Court recently confirmed that attorneys are "absolutely privileged" for statements made "during the course and as part of, a judicial proceeding in which he participates as counsel." *Killmer, Lane & Newman, LLP v. BKP, Inc.*, 2023 CO 47, ¶¶ 21-22 (quoting from and adopting Restatement (Second) of Torts § 583).

footage and the body camera footage and testimony of officers who were there that day. Evans's admitted conduct further shows that Trump's supporters at the Capitol were monitoring his Twitter feed during the attack.

Answering the questions Evans raises and delving into his—and only his—actions during the insurrection does not inform the questions of law and fact the Court must grapple with here. Allowing Evans to intervene would only improperly inject "new and essentially different questions of law and fact" into this case. *Grijalva v. Elkins*, 287 P.2d 970, 972 (Colo. 1955) (affirming denial of permissive intervention where non-party's intervention would bring in "collateral or extrinsic issues").

Allowing permissive intervention at the late stages of this expedited proceeding would also "unduly delay or prejudice the rights of the original parties." C.R.C.P. 24(b). The evidentiary hearing is over, closing arguments are scheduled for November 15, 2023, and any intervention here could disrupt the course of these proceedings, which must be completed (including appeals) in time for certification of the Republican presidential primary election ballot on January 5, 2024.

Granting permissive intervention simply to challenge evidence in the underlying case also would open the door to endless interventions. Every case involves evidence, which is often contested. Permitting non-parties to intervene in cases only to challenge or question evidence would result in a massive and unwarranted increase in interventions. This case, for example, involves hundreds of items of evidence. Permitting intervention by Evans to challenge one item of those items of evidence—which, to avoid distraction and delay, Petitioners no longer rely on—would invite an incalculable number of outsiders to intervene to challenge other items. "Intervention is a procedural device whereby an outsider or stranger to litigation may enter the case as a party for the purpose of presenting a claim or defense." *People v. Ham*, 734 P.2d 623,

625 (Colo. 1987). Intervention to allow an outsider to challenge evidence goes far beyond the purpose of the rules and what they contemplate.

## Conclusion

Evans's allegations have no meaningful bearing on this case, and the Court should therefore deny his Motion to Intervene.

Date: November 13, 2023

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I served this document on November 13, 2023, by Colorado Courts E-filing or via electronic mail upon all parties and their counsel:

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