

<p><b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b>  1437 Bannock St.  Denver, CO 80203</p>	<p>DATE FILED: October 6, 2023 4:59 PM</p>
<p><b>Petitioners:</b>  NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAHER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN,</p> <p>v.</p> <p><b>Respondents:</b>  JENA GRISWOLD, in her official capacity as Colorado Secretary of State, and DONALD J. TRUMP</p> <p>and</p> <p><b>Intervenors:</b>  COLORADO REPUBLICAN STATE CENTRAL COMMITTEE and DONALD J. TRUMP</p>	<p>▲ COURT USE ONLY ▲</p>
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**RESPONSE TO INTERVENOR COLORADO REPUBLICAN CENTRAL  
COMMITTEE'S MOTION FOR JUDGMENT ON THE PLEADINGS UNDER RULE 12  
/ JUDGMENT AS A MATTER OF LAW UNDER RULE 56**

In a perfunctory filing devoid of legal authority or evidentiary submission, Intervenor Colorado Republican State Central Committee (“Intervenor the State Party” or “the State Party”) has moved for judgment on the pleadings under Colorado Rule of Civil Procedure 12 and judgment as a matter of law under Rule 56. This motion for judgment is improper and untimely because such motions cannot be brought before pleadings are closed. It is also substantively meritless because disputed issues of material fact abound.

**Standard of Review**

A motion for judgment on the pleadings is not proper until “after the pleadings are closed[.]” *Van Schaack v. Phipps*, 558 P.2d 581, 584 (Colo. App. 1976). In any motion for judgment on the pleadings, the trial court “must construe the allegations of the pleadings strictly against the movant, and must consider the allegations of the opposing parties’ pleadings as true.” *Strout Realty, Inc. v. Snead*, 530 P.2d 969, 970 (Colo.App. 1975).

### **Argument**

#### **I. Intervenor the State Party’s Motion is Premature and Improper**

Neither a motion for judgment on the pleadings nor a motion for judgment as a matter of law may be brought now, before any party has filed an answer. Both Rule 12(c) and Rule 56(h) require that the pleadings be closed and no genuine issue of material fact remain outstanding. *Van Schaack*, 558 P.2d at 585. Here, because the pleadings are not closed, and there are genuine issues of material fact outstanding, the Court should deny the State Party’s Motion.

A motion pursuant to Rule 12(c) may only be made “[a]fter the pleadings are closed” while Rule 56(h) authorizes a motion only “after the last required pleading.” *See* Rules 12(c) and 56(h). Not only are the parties in the middle of the pleading schedule set by the Court over competing motions to dismiss, but due to the nature of the proceeding, no party has filed an answer. The State Party improperly asks the Court to ignore this procedural posture, while citing no authority allowing the Court to do so.

#### **II. Intervenor the State Party Cannot Prove Entitlement to Relief Based on Undisputed Facts**

Intervenor the State Party’s motion also fails because it makes no effort to provide an evidentiary showing, or to otherwise explain how undisputed facts entitle the State Party to judgment as a matter of law.

First, there are clearly disputed facts as to whether Trump is disqualified from running for office under Section 3 of the Fourteenth Amendment. As Petitioners have laid out in detail in their Petition and in their responses to Respondent Trump’s Anti-SLAPP Motion to Dismiss and to Trump’s Third Motion to Dismiss, overwhelming evidence demonstrates that Trump engaged in insurrection against the Constitution in violation of his oath and is therefore disqualified. *See, e.g.,* Pet. ¶¶ 48-340, 392-429. The State Party’s motion does not even attempt to rebut these facts.

Second, the State Party cannot credibly argue that they have a First Amendment right to *compel* the Colorado Secretary of State to include a constitutionally ineligible candidate on Colorado’s ballots. As Petitioners have explained in their opposition to the State Party’s Motion to Dismiss, controlling Supreme Court precedent makes clear that although a political party has the right to support whatever candidate they wish, it has no First Amendment right to have an unqualified candidate “appear on the ballot[.]” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997).

Finally, the “factual allegations” made in the State Party’s Petition are primarily legal arguments and conclusions, neither of which this Court is bound to accept as true. *Warne v. Hall*, 2016 CO 50, ¶ 39. Petitioners dispute many of the State Party’s allegations, including whether the State Party “has a specific, protectable interest in ensuring that it will be able to designate the candidates of its choosing to public office,” whether the State Party, “not the Secretary of State ... has authority to determine who will be the primary choices,” or that the Secretary’s “sole responsibility is to provide to the voters the names of the people selected by the political process.” *Intervenor Pet.*, ¶¶ 15-17. Where, as here, “the record is not adequate to permit a conclusion that no material fact dispute exists, the entry of summary judgment is inappropriate” *Kral v. Am. Hardware Mut. Ins. Co.*, 784 P.2d 759, 766 (Colo. 1989).

Intervenor the State Party's Motion is therefore improper, and the Court should deny it.

**III. Intervenor the State Party's concerns about the Secretary are not grounds for granting its Motion for Judgment.**

Intervenor the State Party seeks an "affirmative legal declaration to ensure that the Secretary will comply with her legal responsibilities to put its candidates on the ballot." This argument fails for multiple reasons.

First, the Secretary has not given any indication that she will not abide by the ruling of the Court. To the contrary, in the very press release cited by the State Party, but left unquoted, the Secretary said, "I look forward to the Colorado Court's substantive resolution of the issues, and am hopeful that this case will provide guidance to election officials on Trump's eligibility as a candidate for office." Press Release, *Colorado Secretary of State, Colorado Secretary of State Jena Griswold Issues Statement on Lawsuit Pertaining to 14th Amendment and Access to Colorado's Ballot* (Sept. 6, 2023). (<https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2023/PR20230906AccessBallot.html>, accessed Oct. 3, 2023). Furthermore, it is worth noting that prior to this lawsuit the Secretary faced pressure to unilaterally find Trump disqualified and bar him from the ballot. See Erica Orden, *The sleeper legal fight that could define 2024: Is Trump even eligible to run?*, POLITICO, Sept. 1, 2023 (<https://www.politico.com/news/2023/09/01/fourteenth-amendment-insurrection-clause-trump-00113790>, accessed Oct. 3, 2023). That is not what the Secretary chose to do. In fact, the Secretary's refusal to unilaterally determine Trump is disqualified and bar him from accessing the Colorado ballot, and her subsequent statements to that effect, are exactly what led Petitioners to bring this § 1-1-113, C.R.S. (2023) action. See Nick Reynolds, *Colorado Responds to Pressure to Block Donald Trump From 2024 Run*, Newsweek, July 13, 2023 (<https://www.newsweek.com/colorado-responds-pressure-block->

[donald-trump-2024-run-1812888](#), accessed Oct. 4, 2023). Those claims in turn are based entirely upon the premise that the Secretary will follow any order of this Court.<sup>1</sup>

Regardless of any party's motives, the State Party provides no authority for this Court to ignore the pleading and factual dispute mandates contained in Rule 12(c) and Rule 56(h). The State Party provided no citation to statute, regulation, rule or case law that would support such unprecedented action. Instead, the State Party merely stated it "believes" the Secretary will not comply with her legal duties. Even if such a theory or belief had any basis, those concerns would be properly brought in a separate § 1-1-113 action against the Secretary, not as grounds to grant declaratory judgment in this case.

### Conclusion

Intervenor the State Party has not established that it is entitled to judgment on the pleadings or summary judgment. Intervenor the State Party's Motion for Judgment should be denied.

Respectfully submitted this 6<sup>th</sup> day of October 2023.



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<sup>1</sup> In contrast, Dave Williams, the chairman for the State Party, has said that if Petitioners are successful in this matter, "we will push to have all of our national delegates selected through our caucus and assembly process and bypass any rigged presidential primary election entirely." Ernest Luning, *Colorado GOP plans to use caucuses, assemblies to pick delegates if lawsuit keeps Trump off ballot*, Colorado Politics, Sept. 7, 2023 ([https://www.coloradopolitics.com/elections/2024/trump-lawsuit-colorado-republicans-plan-caucus-assembly-pick-delegates/article\\_12e09fbc-4dd5-11ee-8899-13dd19fd285a.html](https://www.coloradopolitics.com/elections/2024/trump-lawsuit-colorado-republicans-plan-caucus-assembly-pick-delegates/article_12e09fbc-4dd5-11ee-8899-13dd19fd285a.html)), accessed Oct. 3, 2023). If any party has indicated that they will not abide by the decision of this Court, it is the State Party, not the Secretary.

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