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DISTRICT COURT **CITY AND COUNTY OF DENVER, COLORADO** 1437 Bannock Street, Room 256 Denver, CO 80202 Phone: (303) 606-2300	
NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT, and **CHRISTOPHER CASTILIAN**, **Petitioners**, v. **JENA GRISWOLD,** in her official capacity as Colorado Secretary of State, and **DONALD J. TRUMP** **Respondents**.	▲ COURT USE ONLY ▲
Attorneys for Respondent Donald J. Trump: Scott E. Gessler (28944), sgessler@gesslerblue.com Geoffrey N. Blue (32684), gblue@gesslerblue.com Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Tel. (720) 839-6637 or (303) 906-1050	Case Number: 2023CV32577 Division:

PRESIDENT DONALD J. TRUMP'S UNOPPOSED MOTION TO INTERVENE

Conferral under C.R.C.P. 121§ 15-8

Petitioners do not oppose the relief requested, and undersigned counsel has conferred with counsel for the Colorado Secretary of State, who does not oppose the relief requested.

Following Petitioners' abandonment of Count II in their claim for relief, as well as their representation that Count I is not brought against Respondent Donald J. Trump, President Trump seeks to intervene in this matter

I. President Trump has the right to intervene.

Colorado Rule of Civil Procedure 24 provides that an applicant has the right to intervene when 1) a statute confers on the applicant the right to intervene, or 2) when the applicant has such an interest in the outcome of the proceeding and the proceeding may impair or impede his ability to protect that right and none of the other parties would adequately represent the applicant's interests.[1] Sections 1204 and 113 do not explicitly "confer on the applicant" the right to intervene, so the focus of this motion is on subsection 2.

The Court must grant President Trump's motion if he satisfies three elements: (1) President Trump has a significantly protectable interest relating to the property or transaction that is the subject of the action; (2) President Trump is situated such that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (3) President Trump's interest is not represented adequately by existing parties.[2] Courts construe Rule 24 liberally "to allow, whenever possible and compatible with efficiency and due process, issues related to the same transaction to be

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[1] C.R.C.P. 24(a).

[2] *Diamond Lumber, Inc. v. H.C.M.C., Ltd.*, 746 P.2d 76, 78 (Colo. App. 1987) ("All three elements of the rule, i.e., a property interest, an impairment in the ability to protect it, and inadequate representation, must be present in order to intervene.").

resolved in the same lawsuit and at the trial court level."[3] Because the federal intervention rule is identical to Colorado's, Colorado courts look to those rules to aid in determining a motion such as this one.[4] "The central concern in deciding whether intervention is proper is the practical effect of the litigation on the applicant for intervention."[5] "The legal concept of intervention is based upon the natural right of a litigant to protect himself from the consequences of an action against one in whose cause he has an interest, or by the result of which he may be bound."[6]

A. This motion is timely.

Before the Court can review the three elements set forth in *Diamond Lumber*, it must first determine if the motion to intervene is timely.[7] "The determination of the timeliness of a motion to intervene is a matter which rests within the sound discretion of the trial court, which must weigh the lapse of time in light of all the circumstances of the case, including

[3] *Feigin v. Alexa Grp., Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

[4] *Warne v. Hall*, 373 P.3d 588, 592 (Colo. 2016) ("[W]e have always considered it preferable to interpret our own rules of civil procedure harmoniously with our understanding of similarly worded federal rules of practice."); *Roosevelt v. Beau Monde Co.*, 384 P.2d 96, 101 (Colo. 1963) ("Rule 24 is a duplicate of the same numbered Federal rule, which rule has been construed in many Federal cases").

[5] *San Juan Cnty. v. United States*, 503 F.3d 1163, 1193 (10th Cir. 2007) (*en banc*).

[6] *Grijalva v. Elkins*, 287 P.2d 970, 972 (Colo. 1955).

[7] *Diamond Lumber, Inc.*, 746 P.2d at 78.

whether the applicant was in a position to seek intervention at an earlier stage in the case."[8] There is no doubt that President Trump's motion is timely. First, President Trump was (and currently is) a respondent in this action from the beginning. Petitioners named President Trump in the Petition, and President Trump accepted service. It was not until Petitioners abandoned Count II of their Claim for Relief that President Trump could arguably be considered a non-party.

Second, President Trump, and not the Secretary, has been defending this action since its inception. He removed it to federal court. He disputed Petitioners' efforts to remand the case. He took the lead for Respondents in the two status conferences. He filed three separate motions to dismiss in the past 10 days. By granting this Motion expeditiously, the Court can keep the same schedule it set at those status conferences.

In essence, President Trump intervened within days of Petitioners' initiating this matter. As such he has intervened timely.

B. President Trump has a legally protectable interest relating to this matter.

The Petitioners seek to affect President Trump's status as a candidate for president. Indeed, it is *only* President Trump who has a legally protectable interest at the heart of this action. The Secretary is merely a nominal defendant in this action. Because the threshold for

[8] *Law Offices of Andrew L. Quiat v. Ellithorpe*, 917 P.2d 300, 303 (Colo. App. 1995); *Lattany v. Garcia*, 140 P.3d 348, 350 (Colo. App. 2006).

finding the requisite legally protected interest is not high,[9] it is easy for this Court to find that President Trump has a protectable interest here.

Colorado takes a "flexible approach" to this issue, and "the interest requirement should not be viewed formalistically."[10] The Tenth Circuit has further explained that, "[s]uch impairment or impediment need not be 'of a strictly legal nature,'" and a court "'may consider any significant legal effect in the applicant's interest and [we are] not restricted to a rigid res judicata test.'"[11] "[T]he interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process."[12]

Petitioners attempt to prevent President Trump for running for President. The right to run for office is a protected First Amendment right under the United States Constitution.[13] Further, Petitioners ask this Court to impose penalties on President Trump

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[9] *O'Hara Grp. Denver, Ltd. v. Marcor Hous. Sys., Inc.*, 595 P.2d 679, 687 (Colo. 1973) ("The existence of the interest of a proposed intervenor should be determined in a liberal manner").

[10] *Feigin*, 19 P.3d at 29.

[11] *Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. U.S. Dep't of Interior*, 100 F.3d 837, 844 (10th Cir. 1996) (quoting *Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regul. Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978)).

[12] *O'Hara Grp. Denver, Ltd.*, 595 P.2d at 687 (quoting *Smuck v. Hobson*, 408 F.2d 175, 179 (D.C. Cir. 1969)).

[13] *Ostrowski v. Doe*, 2016 U.S. Dist. LEXIS 28402, No. 3:14-CV-429, *16 (M.D. Pa. March 7, 2016).

for exercising his First Amendment rights. Both of these First Amendment rights are protected and require this Court to grant President Trump's motion to intervene. Even setting aside President Trump's constitutional protections, President Trump certainly meets the lower bar of a "significantly protectable interest" in running for office sufficient to satisfy Colorado's liberal approach to the interest requirement.[14]

C. Disposition of this matter may adversely impact President Trump's interest in running for President.

The Tenth Circuit has emphasized that "the question of impairment is not separate from the question of existence of an interest."[15] Moreover, "the Rule refers to impairment 'as a practical matter.' Thus, the court is not limited to consequences of a strictly legal nature."[16] ""To satisfy this element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. *This burden is minimal*.""[17]

Petitioners aim to prevent President Trump from running for President. Without his intervention, it is very likely that President Trump's interest in running for President will be

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[14] *Donaldson v. United States*, 400 U.S. 517, 531, 91 S. Ct. 534, 27 L. Ed. (1971); *O'Hara Grp.*, 595 P.2d at 687.

[15] *Natural Res. Def. Council v. United States Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978).

[16] *Id.*

[17] *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999) (quoting *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997)) (emphasis added).

denied. That is quintessentially an impairment of his interest to do so.[18] Accordingly, President Trump meets this "minimal" burden to show that disposition of this matter may adversely affect President Trump's interest to run for President.

D. The Secretary is antagonistic to President Trump's interests in this case and will not adequately represent his interests.

"Inadequacy of representation is shown if there is proof of collusion between the representative and an opposing party, if the representative has or represents some interest adverse to that of the petitioner, or fails because of nonfeasance in his duty of representation."[19] "Although an applicant for intervention as of right bears the burden of showing inadequate representation, that burden is the 'minimal' one of showing that representation 'may' be inadequate."[20] This minimal burden should be further reduced when it is the government whose ability to adequately represent the potential intervenor's interest is in question.[21] "[A] presumption of adequate representation arises when an applicant for intervention and an existing party have the same ultimate objective in the litigation," but the Tenth Circuit has "held this presumption rebutted by the fact that the public interest the

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[18] *Feigen*, 19 P.3d at 30 ("An intervenor's interest is impaired if the disposition of the action in which intervention is sought will prevent any future attempts by the applicant to pursue his interest").

[19] *Denver Chapter Colo. Motel Ass'n v. Denver*, 374 P.2d 494, 495-96(Colo. 1962).

[20] *Sanguine, Ltd. v. U.S. Dep't of Interior*, 736 F.2d 1416, 1419 (10th Cir. 1984) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)); *See Nat'l Farm Lines v. ICC*, 564 F.2d 381, 383 (10th Cir. 1977).

[21] *See Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1254-55 (10th Cir. 2001).

government is obligated to represent may differ from the would-be intervenor's particular interest."[22]

The Secretary is adverse to President Trump. She has made efforts to appear impartial in this matter, but her own words belie her impartiality. In her well-publicized commentary to national media, the Secretary has not hidden her contempt for President Trump, her belief that he both instigated and engaged in an insurrection on January 6, 2023, and he should be barred from running for re-election. For instance, in her victory speech when she won reelection last year, Secretary Griswold stated that President Trump tried to steal the election, is a liar, and is a threat to our Democracy:

> The former president of the US in his thwarted effort to steal the presidency has opened a new chapter in the history of the United States. The use of conspiracies and lies incited an insurrection at the US Capital in hopes of stopping the peaceful transfer of power on July 6 [sic].[23]

On August 19, 2023, the Secretary stated, "I[i]t's a novel situation, as all of this has been, given the former president tried to steal the 2020 election, and his assault on democracy has not stopped." On September 6, 2023, she issued a press release in which she stated that

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[22] *Id.* at 1255; *see Trbovich v. United Mine Workers*, 404 U.S. 528, 538 (1972) (holding that a union member's interest was not adequately represented by the Secretary of Labor because the Secretary had a "duty to serve two distinct interests, which are related, but not identical" to that of the individual union member and that of the general public); *Nat'l Farm Lines v. I.C.C.*, 564 F.2d 381, 384 (10th Cir. 1977) ("We have here also the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible. The cases correctly hold that this kind of a conflict satisfies the minimal burden of showing inadequacy of representation.").

[23] Secretary Jena Griswold Victory Speech (Nov. 8, 2022), https://www.youtube.com/watch?v=A5nojN1eA-4, last visited Oct. 2, 2023.

President Trump incited "the January 6th insurrection and attempt[ed] to overturn the 2020 Presidential Election."[24]

Also on September 6, Politico published an article in which she is quoted as saying, "This is an unprecedented situation. We've never had a president incite an insurrection and attack our democracy like this."[25] As did Colorado Newsline, with a quote from the Secretary stating, "Look, Donald Trump tried to steal the 2020 election, it was a blatant attack on the United States and the American people. It's a blatant attack on the fundamental right to vote."[26] In other words, the Secretary has taken a strong stand that President Trump 1) incited an insurrection; 2) is disqualified from being President; and 3) is a danger to democracy in the United States.

Furthermore, at every step in the litigation the Secretary has proven herself to be aligned with the Petitioners. For example, she supported Petitioner's *Motion to Remand* this matter to state from federal court, she supports Petitioner's use of Sections 113 and 1204,

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[24] Ex. A, Press Release (June 6, 2023), https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2023/PR20230906AccessBallot.html, last visited accessed Oct. 2, 2023.

[25] Ex. B, Zach Montellaro, *Constitutional debate over Trump's eligibility to run more extensive than realized*, Politico (Sept. 6, 2023), https://www.politico.com/news/2023/09/06/colorado-14amendment-trump-00114339, last visited Oct. 2, 2023.

[26] Ex. C, Young, Quentin, *Lawsuit seeks to bar Trump from presidential ballot in Colorado,* Colorado NewsLine (Sept. 6, 2023), https://coloradonewsline.com/2023/09/06/lawsuit-bar-trump-colorado/, last visited Oct. 2, 2023.

she has joined Petitioners in opposing discovery, and she has joined Petitioners efforts to dismiss President Trump's *Special Motion to Dismiss*. This, despite her claims that she has not taken a position in the litigation. But even her self-proclaimed non-position in this matter shows that she does not adequately represent President Trump's interest.

Conclusion

President Trump is entitled to intervene in this matter. This case is about his right to run for President and his right to speak. The Petitioners directly attack those two rights. The Secretary is plainly antagonistic to President Trump and will not adequately represent his interests.

FOR THESE REASONS, the court should grant President Donald J. Trump's Unopposed Motion to Intervene and also grant Donald J. Trump all such further relief as is just, proper or appropriate.

Respectfully submitted this 4th day of October 2023,

GESSLER BLUE LLC

s/ *Geoffrey N. Blue*
Geoffrey N. Blue

s/ *Scott E. Gessler*
Scott E. Gessler

Certificate of Service

I certify that on this 4th day of October 2023, the foregoing was electronically served via e-mail or CCES on all parties and their counsel of record.

By: *s/ Joanna Bila*
Joanna Bila, Paralegal