DATE FILED: December 8, 2023 7:39 PM

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**. and **COLORADO REPUBLICAN STATE CENTRAL COMMITTEE,** an unincorporated association, and **DONALD J. TRUMP,** **Intervenors.**	▲ COURT USE ONLY ▲
Attorneys for Respondent and Intervenor 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:

MOTION FOR ATTORNEY FEES AND COSTS

Conferral under C.R.C.P 121 § 1-15(8)

Undersigned counsel has conferred with Petitioners' counsel, who reasonably seeks additional time to meet and confer. Undersigned counsel are nonetheless filing this motion to comply with the deadline set forth in C.R.C.P. 121 § 1-22, but they will continue to confer with opposing counsel in a good faith effort to resolve this matter.

INTRODUCTION

In Count II of their *Verified Petition*, Petitioners brought a declaratory judgment action again President Donald J. Trump, even though they knew that they did not have a "particularized" and "concrete" claim to satisfy standing requirements. As a Respondent, President Trump was forced to incur attorney fees and costs in defending against the *Verified Petition*. After petitioners admitted in federal court that they had no concrete or particularized claim, President Trump moved to dismiss their second claim in state court for lack of standing. In response, on September 29, 2023, the Petitioners voluntarily dismissed their declaratory judgment action claim in Count II. Accordingly, this request for attorney fees has been greatly narrowed to only include fees up to and including September 29, 2023.

ARGUMENT

I. Petitioners asserted their Second Count without conducting an appropriate evaluation of the law under Colorado Rule of Civil Procedure 11(a).

Colorado Rule of Civil Procedure 11 prohibits a party from bringing claims that are not "well grounded in fact and … warranted by existing law."[1] This rule is critical to the integrity of our legal system because it "safeguards the judicial process by compelling attorneys to submit pleadings which are truthful and advance meritorious legal arguments."[2]

[1] C.R.C.P. 1(a). *Maul v. Shaw*, 843 P.2d 139, 141 (Colo. Ct. App. 1992).

[2] *Stepanek v. Delta Cty.*, 940 P.2d 364, 370 (Colo. 1997)

A party must conduct a sufficient investigation of the law to ensure that a complaint is warranted by the law.[3] Petitioners failed this standard.

After President Trump removed this case to federal court, Petitioners filed their *Motion to Remand*.[4] In that motion, they admitted that they "do not have Article III standing to sustain subject matter jurisdiction in federal court" because their Fourteenth Amendment claim is not a "particularized or concrete claim." Instead, they stated that their claim alleges a "paradigmatic generalized grievance."[5] These arguments bind the Petitioners in this Colorado state court proceeding.[6]

To be sure, Petitioners claimed they relied "on state statutes" that "give them standing to sue in state court, but not Article III standing."[7] But Count II does not rely on an election code provision; it seeks a declaratory relief for a Fourteenth Amendment claim "under C.R.S. § 13-51-105 and C.R.C.P. 57(a)."[8] And state statute does not provide standing

---

[3] C.R.C.P. 11(a).

[4] **Ex. A**, *Petitioners' Unopposed Motion to Remand* [ECF No. 15], *Anderson et al. v. Griswold et al.*, U.S. Dist. Colo. Case No. 1:23-cv-02291-PAB (internal quotation marks removed).

[5] *Id.* at 7.

[6] *People v. Shell*, 148 P.3d 162, 175 (Colo. 2006).

[7] *Motion to Remand* at 1.

[8] *Verified Pet.* at 103.

for such a declaratory relief request; Section 113 confers procedural rights to challenge election code violations only, and Petitioners had no claim under Section 1204.

Like federal courts, Colorado also requires Petitioners to present a "concrete and particularized" claim. "To have standing to bring a declaratory judgment action, a plaintiff must assert a legal basis on which a Count can be grounded…[and] must allege an injury in fact to a legally protected or cognizable interest."[9] Under controlling Colorado Supreme Court precedent, this test "requires that a plaintiff show that its interest is derived from a recognized legal interest, such as a statute, creating a legally cognizable interest that is concrete and particularized."[10] It may not be "an abstract, generalized claim."[11]

The Colorado Supreme Court held that the injury-in-fact requirement "further ensures a *concrete* adverseness that sharpens the presentation of issues to the court."[12] Likewise, the Colorado Court of Appeals has ruled that "to support standing, a plaintiff's complaint must establish that plaintiff has a personal stake in the alleged dispute and that the

---

[9] *Farmers Ins. Exch. V. District Court*, 826 P.2d 944, 947-48 (Colo. 1993) (*quoting Board of County Comm'rs, La Plata County v. Bowen/Edwards Assocs.,* 830 P.2d 1045 (Colo. 1992).

[10] *Romer v. Board of County Comm'rs*, 956 P.2d 566, 573 (Colo. 1998) (emphasis supplied), *citing Douglas County Board of Commissioners v. Public Utilities Commission*, 829 P.2d 1303, 1309 (Colo. 1992).

[11] *City of Greenwood Village v. Petitioners for the Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000).

[12] *Schaden v. DIA Brewing Co., LLC*, 2021 CO 4M, ¶ 54.

alleged injury is particularized as to the plaintiff."[13] And "[i]n addition to providing the actual controversy required for courts to constitutionally exercise their power under Article VI of Colorado's constitution, the injury-in-fact requirement ensures a concrete adverseness which sharpens the presentation of issues that parties argue to the courts."[14]

Colorado courts explicitly incorporate the federal standard that Petitioners admit they did not meet. Citing federal and state decisions, the Colorado Supreme Court held that "[s]tanding may be lost for many reasons. As the United States Supreme Court has observed, the doctrine of standing requires that an individual maintain a personal stake in the outcome of the litigation throughout its course."[15] The Colorado Court of Appeals cited to federal precedent when requiring an injury "particularized as to the plaintiff."[16] And the most telling quotation is from the Colorado Supreme Court quoting the United States Supreme Court for the uncontroversial position that:

---

[13] *Rechberger v. Boulder County Board of County Commissioners*, 2019 COA 52, ¶10, *citing Grossman v. Dean*, 80 P.3d 952, 959 (Colo. App. 2003).

[14] *City of Greenwood Village v. Petitioners for the Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000).

[15] *In re C.T.G.*, 179 P.3d 213, 215, citing *Gollust v. Mendell*, 501 U.S. 115, 126, 111 S.Ct. 2173, 2180, 115 (1991), *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395-97 (1980); *In re Marriage of Yates*, 148 P.3d 304, 314 (Colo. App. 2006); *In re Baby Boy K.*, 546 N.W.2d 86, 102 (S.D. 1996); *Branick v. Downey Say. & Loan Ass'n*, 39 Cal. 4th 235, 243 (Cal. 2006); *Chamberlain v. Farm Bureau Mut. Ins. Co.*, 137 P.3d 1081, 1089 (Kan. 2006); *Denver Area Meat Cutters & Employers Pension Plan v. Clayton*, 120 S.W.3d 841 (Tenn. Ct. App. 2003).

[16] *Grossman v. Dean*, 80 P.3d 952, 959, citing *Raines v. Byrd*, 521 U.S. 811, 819 (1997).

> Prudential limitations add to the constitutional minima a healthy concern that if the claim is brought by someone other than one at whom the constitutional [or statutory] protection is aimed, the claim not be an *abstract, generalized grievance* that the courts are neither well equipped nor well advised to adjudicate.[17]

Petitioners admitted their grievance was a "paradigmatic generalized grievance," fitting them directly into the Supreme Court's *Greenwood Village* analysis.

The above "concrete and particularized" standard articulated in *Romer v. Board of County Commissioners*, *Greenwood Village*, and other cases remains good law. Petitioners admitted that they lacked the particularized or concrete injury necessary to support standing, but instead asserted an "abstract, generalized grievance" – even though directly controlling Colorado Supreme Court precedent requires them to demonstrate a "concrete and particularized" interest in order to have standing. Petitioners either ignored the law or negligently overlooked it when they *knew* they did not have adequate grounds for standing, and they are subject to attorney fees under Rule 11, which requires a complaint to be well-grounded in the law.[18]

---

[17] *City of Greenwood Village*, 3 P.3d at 437 *citing Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 955 n.5 (1984) (quotation marks omitted)(emphasis added).

[18] *Stepanek*, 940 P.2d at 370 (Colo. 1997); C.R.C.P. 11(a).

II. Petitioners' Second Count lacked substantial justification as defined by C.R.S. § 13-17-102.

Colorado law requires courts to award attorney's fees to a party subjected to a lawsuit that "lacked substantial justification."[19] "Substantial justification" means that the lawsuit was "substantially frivolous, substantially groundless, or substantially vexatious."[20] "A claim or defense is frivolous if the proponent can present no rational argument based on the evidence or law in support of that claim or defense."[21]

As shown above, Petitioners admitted they lacked standing to bring their Second Count because they admitted they did not have a particularized injury—they admitted their Second Count failed because of standing:

> Petitioners are private citizens asserting a paradigmatic "generalized grievance" under federal standing doctrine. Their challenge to Trump's constitutional eligibility is based on an "abstract injury" to the "generalized interest" of voters in "constitutional governance."[22]

Again, the law regarding such standing is well-settled in Colorado: a "generalized grievance" does not support standing in Colorado.[23] Because Petitioners admitted this in their *Motion to*

---

[19] C.R.C.P. § 13-17-102(2).

[20] C.R.C.P. § 13-17-102(4).

[21] *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984).

[22] **Ex. A**, *citing Schlesinger v. Reservists Comm. to Stop the War,* 418 U.S. 208, 216–17 (1974).

[23] *City of Greenwood Village*, 3 P.3d at 437.

Remand, their Count II was frivolous because they could "present no rational argument based on the evidence or law in support of that claim or defense."[24]

III. President Trump is entitled to his reasonable attorney's fees incurred up until the time Petitioners dismissed Count II.

Because Petitioners brought the Count II in violation of both C.R.C.P. 11 and C.R.S. § 13-17-201, President Trump is entitled to all of his fees and costs incurred on and before September 29, 2023. The declaratory judgment action seeking relief under the Fourteenth Amendment, required President Trump to brief every aspect of Fourteenth Amendment litigation, as well as prepare for the hearing set to commence on October 30, 2023. As a named Respondent, it was reasonable and appropriate for President Trump to fully defend his interests under the Fourteenth Amendment.

Attached to this motion is a Declaration by Scott E. Gessler, which sets forth those attorney's fees and costs, and explains that they are reasonable.

FOR THESE REASONS, the Court should find that the Petitioners' Count II was brought in violation of Colorado Rule of Civil Procedure 11 and lacked substantial justification under C.R.S. § 13-17-102. It should award Donald J. Trump his attorney's fees up to and including September 29, 2023, as set forth in the attached Declaration of Scott E. Gessler, and also grant Donald J. Trump all such further relief as is just, proper or appropriate.

---

[24] *Western United Realty, Inc.*, 679 P.2d at 1069.

Respectfully submitted this 8th day of December 2023,

GESSLER BLUE LLC

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

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

Certificate of Service

I certify that on this 8th day of December 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