DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1427 Bannock Street, Room 256 Denver, Colorado 80202 Phone: (303) 606-2300	
Petitioners: NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN v. **Respondents:** JENA GRISWOLD, in her official capacity as Colorado Secretary of State, and DONALD J. TRUMP And **Intervenor:** COLORADO REPUBLICAN STATE CENTRAL COMMITTEE, an unincorporated association	▲ COURT USE ONLY ▲
Attorneys for Intervenor: Michael Melito, CO Reg. #36059 MELITO LAW LLC 1875 Lawrence St., Suite 730 Denver, Colorado 80202 Phone: (303) 813-1200 Email: Melito@melitolaw.com Robert Kitsmiller, Esq., Atty. Reg. #16927 PODOLL & PODOLL, P.C. 5619 DTC Parkway, Suite 1100 Greenwood Village, CO 80111 Tel: (303) 861-4000 Fax: (303) 861-4004 bob@podoll.net	Case No: 23CV32577 Division: 209

COLORADO REPUBLICAN STATE CENTRAL COMMITTEE'S MOTION TO INTERVENE PURSUANT TO COLORADO RULE OF CIVIL PROCEDURE 24

Movant, the Colorado Republican Committee, respectfully moves to intervene in this action pursuant to Colorado Rule of Civil Procedure 24, and requests the Court accept its proposed

Complaint in Intervention, attached hereto.

CERTIFICATE OF CONFERRAL, PURSUANT TO C.R.C.P 121, SECTION 1-15,

Counsel for Movant conferred with counsel for the parties. Petitioners consent. Respondent Donald Trump consents. However, Respondent Colorado Secretary of State has withheld her consent. Emails were exchanged and a conferral telephone call is planned for this morning with counsel for the Respondent Colorado Secretary of State.

For the reasons stated below, Movant requests that this Court grant this motion and allow the Republican Committee of Colorado to intervene as of right, or alternatively, via permissive intervention, to represent its interests in this action, and to seek declaratory relief against the Respondent, Colorado Secretary of State.

I. The Movant, Colorado Republican Committee

The Colorado Republican State Central Committee, also known as the Colorado Republican Committee, is an unincorporated nonprofit association and Political Party Committee in the state of Colorado, operating under Colorado law. Its primary purpose, as reflected in its bylaws, is to elect duly nominated Republican candidates to office, to promote the principles and achieve the objectives of the Republican Party, and to perform its functions under Colorado election law. Also, according to the Colorado Republican Committee's bylaws, no candidate for any designation or nomination for partisan public office shall be endorsed, supported, or opposed by it, acting as an entity, or by its state officers or committees, before the Primary Election, unless such candidate is unopposed in the Primary Election.

Under C.R.S. § 1-4-1204(1)(b), it is the Colorado Republican Committee, not the Secretary of State, who was the ultimate authority to determine whether an individual is a "bona fide candidate for president of the United States pursuant to political party rules," as it is the Colorado

Republican Committee, not the Secretary, who sets those rules and determines the requirements for Republican nominees.

Its interests, clearly implicated in this action, are to elect Republican candidates and to protect the access of its members, statewide, to as many candidates as possible. Nominating and designating candidates is its core role – regardless of who any particular candidate might be. Movant seeks intervention in this action to protect its processes and procedures and the voter access of its members. The claims advanced by Petitioners impair the Movant's interests and those of its members. Indeed, the Petitioners' claims impair the interests of voters everywhere.

As explained below, it is the Movant's job to designate a candidate and present the designated candidate to the Secretary of State, whose role in placing the so-designated candidate on the ballot is ministerial in nature.

II. The Movant Requests Intervention as of Right.

This Court should grant the Colorado Republican Committee's motion for intervention as of right. Intervention as a matter of right under Colorado Rule 24(a) is mandated when the applicant satisfies each of three elements: (1) the applicant has a significantly protectable interest relating to the property or transaction that is the subject of the action; (2) the applicant 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) the applicant's interest is not represented adequately by existing parties. *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."). "Rule 24 should be liberally interpreted to allow, whenever possible and compatible with efficiency and due process, issues related to the same transaction to be resolved in the same lawsuit and at the trial court level."

Feigin v. Alexa Grp., Ltd., 19 P.3d 23, 26 (Colo. 2001). Federal cases, construing the identical federal intervention rules, should be highly persuasive to this inquiry. *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."). "The central concern in deciding whether intervention is proper is the practical effect of the litigation on the applicant for intervention." *San Juan Cnty. v. United States*, 503 F.3d 1163, 1193 (10th Cir. 2007) (*en banc*). "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." *Grijalva v. Elkins*, 287 P.2d 970, 972 (Colo. 1955).

First, the Colorado Republican Committee's motion to intervene is timely. Timeliness is a threshold requirement for intervention. *Diamond Lumber, Inc.*, 746 P.2d at 78. "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 whether the applicant was in a position to seek intervention at an earlier stage in the case." *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). This action was filed in state court on Wednesday, September 6, 2023. The action was removed to federal court on Thursday, September 7, 2023. The action was remanded to state court on September 12, 2023. This motion was filed at the earliest possible date such a filing was feasible, the day after remand, recognizing the imminent nature of this matter. Accordingly, this motion to intervene, by being filed now, was filed in a timely fashion.

Second, the Colorado Republican Committee has a significant, legally protectable interest relating to the transaction that is the subject of this action. While Rule 24(a) does not explicitly specify the nature of the interest required for intervention as a matter of right, the Supreme Court of the United States has explained that "what is obviously meant . . . is a significantly protectable interest." *Donaldson v. United States*, 400 U.S. 517, 531 (1971). The threshold for finding the requisite legally protectable interest is not high. "The existence of the interest of a proposed intervenor should be determined in a liberal manner." *O'Hara Grp. Denver, Ltd. v. Marcor Hous. Sys., Inc.*, 595 P.2d 679, 687 (Colo. 1973).

Colorado takes a "flexible approach" to this issue, and "the interest requirement should not be viewed formalistically." *Feigin*, 19 P.3d at 29. 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.'" *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)). "[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." *O'Hara Grp. Denver, Ltd.*, 595 P.2d at 687 (quoting *Smuck v. Hobson*, 408 F.2d 175, 179 (D.C. Cir. 1969)). In contract cases, the Colorado Supreme Court has "expressly rejected any requirement that the would-be intervenors prove that they had enforcement rights under, or were intended beneficiaries of, the underlying agreements." *Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 406 (Colo. 2011).[1]

[1] A federal district court has explained in detail why a Republican Committee has interests justifying intervention in election disputes:

"The RPNM is similar to the environmental organizations who many courts have

The Colorado Republican Committee has a specific, protectable interest in ensuring that it will be able to designate the candidates of its choosing to public office. It is the Colorado Republican Committee, not the Secretary of State, who has authority to determine who will be the primary choices through a "certificate of designation" or through the petition process. C.R.S. § 1-4-102. It is either through the assembly process, C.R.S. § 1-4-601, or through the petition process, C.R.S. § 1-4-801, that an individual seeks a nomination through the primary. In neither case is the Secretary of State given any duty that is anything other than ministerial; his sole responsibility is to provide to the voters the names of the people selected by the political process.

Under C.R.S. § 1-4-1204(1)(b), it is the Colorado Republican Committee who determines who the Republican candidates will be on a ballot. It determines whether a candidate is a "bona fide candidate" for president, and does "pursuant to political party rules." *Id.* The Secretary of State does not play a role in making this decision, but only the Colorado Republican Committee. Accordingly, the Colorado Republican Committee has a specific, identifiable interest in ensuring that it has the ability to carry out its decisions through determining its party nominees. The Colorado Republican Committee possesses an interest in the disposition of this case, sufficient to serve as a prerequisite for intervention.

Third, relatedly, the Colorado Republican Committee is situated such that the disposition

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> recognized to have protectable interests in litigation challenging the goals of those organizations. . . . As an organization involved in helping to elect candidates to office, it has a direct and specific interest in the litigation that is not the same general interest in fair elections that is common to all voters. . . . The RPNM, though, is not asserting "indirect and speculative partisan concerns," but has a concrete interest in this action, and invalidation of the challenged law could directly impact its interest in getting its candidates elected. Its protectable interest in this matter, . . . is not in vague, general interests such as preserving confidence in the electoral system. Its protectable interest is a result of running a slate of state-wide candidates."

Am. Ass'n of People with Disabilities v. Herrera, 257 F.R.D. 236, 258 (D.N.M. 2008). That analysis applies here, as well.

of this action will impair its ability to protect its interests as a practical matter. "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." *Feigen,* 19 P.3d at 30. The Tenth Circuit has emphasized that "the question of impairment is not separate from the question of existence of an interest." *Nat. Res. Def. Council v. U.S. Nuclear Reg. Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978). Moreover, "the Rule refers to impairment 'as a practical matter.' Thus, the court is not limited to consequences of a strictly legal nature." *Id.* "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*." *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997) (emphasis added). The inquiry may include, although it is not limited to, whether the action would have a "res judicata, collateral estoppel or stare decisis effect" on the intervenors. *Feigin*, 19 P.3d at 30.

A decision in this case adverse to Respondent Trump would likewise have an adverse effect on the Colorado Republican Committee. Should the Colorado Republican Committee wish to designate Respondent Trump as a candidate for President pursuant to its applicable rules and procedures, an adverse decision in this action impairs its ability to do so with res judicata effect, just as much as if it had been a party to the litigation. Moreover, this case has broader consequences on the ability of the Colorado Republican Committee to designate or nominate the candidates of its choosing. An adverse ruling would ostensibly limit the Colorado Republican Committee's ability to exercise its statutory authority to determine whether a candidate is a "bona fide candidate" for president, and to do so "pursuant to political party rules." C.R.S. § 1-4-1204(1)(b). Accordingly, there is a clear likelihood that the Movant's interests would be impaired by this action, justifying intervention as of right.

Finally, the Colorado Republican Committee's interests in this matter is not represented adequately by the existing Respondents. "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." *Denver Chapter Colo. Motel Ass'n v. Denver*, 374 P.2d 494, 495-96(Colo. 1962). "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. *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).

Only "when the objective of the applicant for intervention is *identical* to that of one of the parties" is representation considered to be adequate. *Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. U.S. Dep't of Interior*, 100 F.3d 837, 845 (10th Cir. 1996) (quotations omitted) (emphasis added). *See Nat'l Farm Lines v. I.C.C.*, 564 F.2d 381, 383 (10th Cir. 1977) (recognizing the proposed intervenor's "slight" and "minimal" burden of establishing that representation of his interests "may be inadequate"). "[I]f the absentee's interest is similar to, but not identical with, that of one of the parties, a discriminating judgment is required on the circumstances of the particular case, although intervention ordinarily should be allowed unless it is clear that the party will provide adequate representation for the absentee." *Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 407 (quoting 7C Charles Alan Wright, Arthur R. Miller, Mary Kay Kane & Richard L. Marcus, *Federal Practice and Procedure* § 1909 (3d ed. 1997).

As to the Respondent Secretary of State, 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. *See Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1254-55 (10th Cir. 2001). "[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 government is obligated to represent may differ from the would-be intervenor's particular interest." *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.").

In this case, the interests of the Secretary of State are clearly different from that of the Colorado Republican Committee. Her interest is primarily that of the public generally, in the general and faithful application of the law. The Colorado Republican Committee's interest is different: its interest is instead in the maintenance of its own rights, autonomy, procedures, operations, prerogatives, and its members' interests and voter access.

Specifically, it is seeking to maintain its right to determine presidential candidates according to C.R.S. § 1-4-1204(1)(b). Respondent Secretary Griswold, an active member of the opposing major political party who has publicly weighed in with her views on Respondent Trump, [2] will certainly not adequately represent the Movant's interests in this action, as her mind is already

[2] Earnest Luning, *Jena Griswold Reelected to Head Democratic Secretaries of State Group,*

made up: "Today a lawsuit was filed to determine whether former President Donald J. Trump is disqualified from the Colorado ballot *for inciting the January 6th insurrection and attempting to overturn the 2020 Presidential Election.*"[3] Her inherent views and posture will present a conflict with the interests of the Colorado Republican Committee. Regardless, as explained above, her role as a government official, even if properly executed, presents inherently different interests than those of a private litigant, including those of the Movant herein.

Likewise, the Colorado Republican Committee's interests are not fully represented here by Respondent Trump.[4] The interests of parties being "coincident" does not end the inquiry into whether they can fully represent each other's interests. *O'Hara Grp. Denver, Ltd.*, 595 P.2d at 688; *Cherokee Metro. Dist.*, 266 P.3d at 407 ("Like Meridian, Cherokee presumably wants to go

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Denver Gazette (Feb, 2, 2023), https://denvergazette.com/outtherecolorado/premium/jena-griswold-reelected-to-head-democratic-secretaries-of-state-group/article_b37ce37a-25b5-5a2d-8322-147445c8782d.html; Tom Porter, *Colorado's Secretary of State Says Trump Supporters are "Chipping Away" at Secure Elections as They're Placed in Election-Oversight Roles Across the Country*, (Nov. 30, 2021), https://www.businessinsider.com/trump-loyalists-chipping-away-secure-elections-jena-griswold-2021-11?op=1.

[3] 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 (emphasis added).

[4] As the Tenth Circuit has explained, even if parties apparently have similar interests and align in that sense, their interests may still diverge for multiple reasons. *Barnes v. Sec. Life of Denver Ins. Co.*, 945 F.3d 1112, 1125 (10th Cir. 2019). As explained in *Barnes*:

> To be sure, Jackson and SLD are both undoubtedly interested in defending against, and ultimately defeating, the claims asserted in Barnes's complaint. From there, however, their interests clearly diverge.… Differences in their pertinent administrative practices could prompt different factual defenses and strategies, both as to class certification-related arguments and the merits. Further, and relatedly, SLD's counsel cannot be expected to act in the best interests of both SLD and Jackson. Rather, SLD's counsel will, and should, act only in the best interests of its client, SLD. And, indeed, SLD admits as much in its appellate brief . . . . We therefore conclude that Jackson easily satisfies the 'minimal' burden of establishing a 'possibility' that its interests will not be adequately represented by SLD.

Barnes v. Sec. Life of Denver Ins. Co., 945 F.3d 1112, 1125 (10th Cir. 2019). Likewise in this case, Respondent Trump's counsel will act in the best interests of Respondent Trump, while the Colorado Republican Committee's counsel will act in the Committee's best interests.

forward with the Replacement Plan and does not want the water court to grant the declaratory judgment requested by UBS. Ultimately, however, both Cherokee and Meridian have separate water rights to protect. Thus, Cherokee and Meridian do not have the kind of relationship as to make their interests identical."). Respondent Donald Trump clearly has his own important and legitimate interests implicated in this action. However, Respondent Trump's interests and the Colorado Republican Committee's interests are not identical in several material respects. Movant's interests encompass its operations and processes in all future elections, in perpetuity, and without regard to whether Donald Trump is a candidate on the ballot. Its interest is not just in this particular election, but in what authority it possesses under C.R.S. § 1-4-1204(1)(b) to choose any presidential candidate.

The Petitioners' claims thwart the autonomy of the Colorado Republican Committee to determine its candidates which it in turn provides to the Secretary of State. If a novel lawsuit like this one, based on the types of conclusory assertions contained in the Verified Petition, and brought before a Republican candidate is even qualified in this state,[5] is allowed to proceed or the relief requested by Petitioners is granted, the Movant is materially harmed – and it is harmed long after the 2024 Presidential Elections are decided. Petitioners are attempting to accomplish a maneuver with the express intent to block from the ballot the candidate it believes the Movant will designate to the Secretary. [*See* Verified Petition, ¶42, Doc. # 1-2, at p. 15 (referencing the Secretary's job to "accept[] a major political party's form designating a candidate 'as a bona fide candidate for

[5] Secretary Griswold promptly issued a public statement which includes the following: "At the time of this publication, no candidates have qualified for the presidential primary ballot in Colorado. Information about candidates' statuses for the Colorado ballot will be available at GoVoteColorado.gov after candidates begin filing presidential primary paperwork with the Colorado Department 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 .

president of the United States' who is 'affiliated with [the] major political party,' C.R.S. § 1-4-1204(1)(b)")]. The Movant's interests are not in conflict with Respondent Trump, but they are not identical, either.

III. Alternatively, the Movant Requests this Court Grant its Intervention Permissively.

Even if this Court were to find the Colorado Republican Committee ineligible for intervention as of right, it clearly satisfies the requirements for permissive intervention under Rule 24. Colorado Rule of Civil Procedure 24(b)(1)(B), which concerns "permissive intervention," states that "anyone may be permitted to intervene . . . when an applicant's claim or defense and the main action have a question of law or fact in common." For context, federal courts across the country have regularly granted permissive intervention to political parties in election-related cases. *See Democratic Party of Va. v. Brink*, No. 3:21-cv-756-HEH, 2022 U.S. Dist. LEXIS 19983, at *2 (E.D. Va. Feb. 3, 2022) ("[Intervenor] is one of Virginia's two major political parties, and it brings a unique perspective on the election laws being challenged and how those laws affect its candidates and voters. Courts often allow the permissive intervention of political parties in actions challenging voting laws for exactly this reason.") (citation omitted).

Both types of intervention share the timeliness requirement. As explained above regarding intervention as of right, the Colorado Republican Committee's motion to intervene is timely. The Colorado Republican Committee's response to the Petitioner's arguments will share common questions of law and fact with the central issue already present in this litigation, namely, disqualification under the Fourteenth Amendment. Intervention will result in neither prejudice nor undue delay.

This case has only just begun, and the Colorado Republican Committee has an interest in ensuring that this matter is resolved as promptly as possible so that it may determine who its

designated presidential candidates will be. If intervention is granted, the legal issues present in this case regarding the meaning of the Fourteenth Amendment will be unaltered, and there will likewise be no change to the practical questions before this Court. Accordingly, there would be no burden to the Court or to the parties that would result from intervention.

In sum, the Movant's "claim or defense and the main action have a question of law or fact in common." Colo. R. Civ. P. 24(b). "It is the duty of courts to respect the integrity of the issues raised by the pleadings between the original parties and to prevent the injection of new issues by intervention." *Moreno v. Com. Sec. Bank*, 125 Colo. 11, 14 (Colo. 1952). Here intervention would raise no new issues but would solely require the addition of an additional necessary party to address the same primary issues already before the Court. That common question is grounded upon the Fourteenth Amendment to the Constitution of the United States and whether Petitioners' request to thwart the Movant's ability under C.R.S. § 1-4-1204(1)(b) to have its designated candidates presented to the people for a vote. The Colorado Republican Committee deserves an opportunity to participate in the adjudication of this issue central to its own existence.

WHEREFORE, Movant respectfully requests that the Court grant this motion and allow the Colorado Republican Committee to intervene and defend its interests in this action and seek the declaratory relief as set forth in the accompanying Verified Petition.

Respectfully submitted,

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*Not admitted in this jurisdiction; application for pro hac vice admission forthcoming.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 14, 2023, a true and correct copy of the foregoing was served electronically, via the Colorado Courts E-filing system upon all parties and their counsel of record.

By: *s/Christa K. Lundquist*