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 Justin T. North (56437), jnorth@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:
RESPONDENT DONALD J. TRUMP'S MOTION TO DISMISS	

Certification under C.R.C.P. 121 § 1-15(8)

The undersigned counsel has conferred with the Petitioners' counsel regarding this motion, who oppose the relief requested.

Former President of the United States, Donald J. Trump seeks dismissal of Petitioners' *Verified Petition* under C.R.C.P. 12(b)(1) and 12(b)(5). This is one of three motions to dismiss, as permitted by the Court. The first motion is the current motion

focusing on C.R.S. § 1-1-113, C.R.S. § 1-4-1204 and standing to bring a declaratory action. The second motion, filed concurrently, is a Special Motion to Dismiss under Colorado's anti-SLAPP statute. And the third motion, which focuses on the substance of Section 3 of the Fourteenth Amendment, will be submitted on Friday, September 28, 2023.

This *Motion* also incorporates the arguments set forth in Intervenor's *Motion to Dismiss*.

INTRODUCTION

Count I of the *Verified Petition* seeks relief under two statutes C.R.S. §§ 1-1-113 and 1-4-1204,[1] and Count II seeks declaratory relief under C.R.S. § 13-51-105 and C.R.C.P. 57(a).[2] Both counts fail. The Colorado Supreme Court has expressly held that Petitioners may not litigate constitutional claims in a Section 113 proceeding. This is particularly true here; Petitioners are using Section 113 against an individual to deprive him of his right to run for office, rather than using Section 113 procedures against a government official for a breach of duty under the Election Code.

Petitioners' Section 1204 claim is also without merit: the Secretary has not yet certified any candidate, Section 1204 does not provide grounds to use the Fourteenth Amendment to bar a candidate, and Section 1204 relies exclusively on Section 113 procedures, thus suffering the same infirmities resulting from a rushed, summary proceeding

[1] *Verified Petition* at 100.

[2] *Id.* at 101.

that, as the Colorado Supreme Court has made clear, cannot properly be used to adjudicate constitutional issues.

Finally, Petitioners have brought their summary judgment claim with full knowledge that they have no particularized injury that provides grounds for standing. Indeed, they admitted in federal court that as individuals they have no "particularized" or "concrete" claim that would grant standing. That admission is fatal to their case as the Colorado Supreme Court has stated that the same standards apply in state court.

ARGUMENT

A. Petitioners cannot litigate a constitutional claim in a Section 113 proceeding.

This is not a close call.

Section 113 is limited to wrongful acts under the Colorado Election Code. Its' plain language applies exclusively to claims "alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty" and that such breach or neglect be remedied by a court order "requiring substantial compliance with the provisions of this code."[3] "[W]hen section 1-1-113 repeatedly refers to 'this code,' it is plainly referring to the Colorado Election Code, and thus, claims brought pursuant to Section 1-1-113 are limited to those alleging a breach or neglect of duty or other wrongful act under the Colorado Election Code."[4] In other words, "all three grounds for a section 1-

[3] *Id.*

[4] *Frazier v. Williams (In re Frazier)*, 401 P.3d 541, 543 (Colo. 2017) ("See § 1-1-101 (defining "this code" as the Uniform Election Code of 1992")).

1-113 claim – that is, breach of duty, neglect of duty, or other wrongful act – all refer to acts that are inconsistent with the Election Code."[5]

While Petitioners plead their claim as a violation of Colorado law,[6] in fact their *Verified Petition* makes plain that the Colorado statutes are nothing more than a procedural vehicle for advancing a claim to deny President Trump's ability to hold office under the Fourteenth Amendment's "Disqualification Clause."[7] The very structure of Petitioner's *Verified Petition* demonstrates that Petitioners seek to litigate constitutional issues.

The *Verified Petition*'s introduction not only presents President Trump through the lens of the Fourteenth Amendment ("[Trump's efforts culminated on January 6, 2021, when he … engaged [in an] insurrection"[8]), but it also immediately declares that it is Petitioners' intent to invoke "Section 3 of the Fourteenth Amendment" to prohibit President Trump "from being President and from qualifying for the Colorado ballot for President in 2024."[9] Next, the *Verified Petition* proceeds to a "factual background" that has nothing to do with violations of Colorado's election code, but rather spends 68 pages discussing years of activity prior to January 6th, 2021. Then comes the legal argument: "Former President Trump is

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[5] *Id.* at 545.

[6] *See Verified Petition*, at 100, 103.

[7] U.S. Const. Amend. 14, § 3.

[8] *Verified Pet.*, at ¶ 1.

[9] *Id.* at ¶ 2.

Disqualified Under Section 3 of the Fourteenth Amendment." The *Verified Petition* then concludes by utilizing Colorado procedural vehicles to bring Petitioners' Fourteenth Amendment case. In 450 paragraphs, Petitioners refer to the Fourteenth Amendment nearly 50 times, while making scant reference to Colorado election law.

Finally, the hearing in this case revolved solely around the Fourteenth Amendment. As discussed below, there are no factual disputes about the application of Section 1204. All evidence is relevant for one issue, and one issue only – whether President Trump "engaged" in an "insurrection."

Directly controlling Supreme Court precedent bars Petitioners' attempt to shoehorn constitutional claims into a Section 113 proceeding.

In *Frazier v. Williams,* a U.S. Senate candidate challenged the Secretary of State's determination that he did not gather sufficient signatures to appear on the Republican Party primary ballot.[10] Frazier brought both statutory and constitutional claims in a Section 113 proceeding, and after the election the Secretary challenged Frazier's ability to litigate a constitutional claim, "arguing that federal claims such as section 1983 may not be brought in summary proceedings under section 1-1-113."[11]

The Supreme Court agreed with the Secretary and dismissed Frazier's constitutional challenge in the Section 113 proceeding for two reasons. First, "the last sentence of section

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[10] *In re Frazier*, 401 P.3d, at 542.

[11] *Id.*

1-1-113 makes clear that section 1983 claims cannot be adjudicated through section 1-1-113 proceedings" because the "last sentence provides the remedy available in a section 1-1-113 proceeding, namely, that upon a finding of good cause, the district court shall issue *an order requiring substantial compliance with the provisions of this code*."[12]

Second, the Court held that Section 1-1-113 does not provide an appropriate procedure for adjudicating Section 1983 claims due to "inconsistencies between section 1983 and a section 1-1-113" proceeding. This includes expedited procedures that do not allow proper consideration of constitutional issues, and a limitation on appellate review, by creating a three-day deadline and making the district court's decision "final and not subject to further appellate review" if the Supreme Court declines to review the proceedings."[13]

One year later, the Supreme Court again prohibited using Section 113 to assert constitutional claims. In *Kuhn v. Williams*, the Supreme Court considered whether the Secretary could certify an U.S. Representative on the 2018 Republican primary ballot.[14] That case again attempted to raise both statutory and constitutional claims under Section 113. Relying on *Frazier v. Williams*, the Court summarily dismissed the constitutional claims, holding "Finally, to the extent the Lamborn Campaign challenges the constitutionality of the circulator residency requirement . . . this court lacks jurisdiction to address such arguments

[12] *Id.* at 545 (emphasis provided in original).

[13] *Id.*

[14] *Kuhn v. Williams*, 418 P.3d 478, 480 (Colo. 2018).

in a section 1-1-113 proceeding."[15] Thus, two recent supreme court cases in two years mandate dismissal of this action.

Finally, Petitioners cannot use Section 113 procedures against a private individual, like President Trump. Section 113 is expressly limited to bringing claims against *Colorado election officials*, not private individuals or potential candidates. The statutory language is unambiguous; it is limited to allegations that "a person *charged with a duty* under this code…is about to commit a breach or neglect of duty or other wrongful act," and requires "notice *to the official*."[16] Again, the Colorado Supreme Court is clear and direct on this point: Section 113 is "a summary proceeding designed to quickly resolve challenges brought by electors, candidates, and other designated plaintiffs *against state election officials* prior to election day."[17]

This case exemplifies the unfairness of allowing a party to litigate constitutional issues under Section 113's expedited procedures that so troubled the *Frazier* court. Here, Petitioners seek to use Section 113 against a private citizen, to terminate his right to run as a candidate, without basic, well-established protections required by due process:

- C.R.C.P. 12 allows a defendant to test the legal sufficiency of a complaint, *before* proceeding with litigation. Under the current procedure, President

[15] *Id.* at 489.

[16] C.R.S. § 1-1-113(1)(emphasis supplied).

[17] *Kuhn v. Williams*, 418 P.3d 478, 488 (Colo. 2018) (emphasis supplied).

Trump would be denied his right to weed out meritless claims prior to discovery, development of his entire evidentiary case, and perhaps a hearing.

- C.R.C.P. 7 prohibits discovery and litigation until after C.R.C.P. 12 motions are decided. But Petitioners are forcing an immediate hearing.
- C.R.C.P. 26(a)(2) requires a plaintiff to disclose relevant documents and persons with knowledge about a claim. But here, President Trump must scramble to prepare for a hearing without knowledge of the evidence arrayed against him, benefit of broad disclosure to develop evidence, or adequate time to investigate potential witnesses.
- C.R.C.P. 26 requires a plaintiff to disclose experts, provide a report of expert opinions, give the defendant adequate time to obtain rebuttal experts, and affords the opportunity to depose experts. Petitioners seek to call experts to offer opinion testimony (and likely rely on hearsay evidence) without affording President Trump any of these protections.
- C.R.C.P. 56 affords a defendant an opportunity to obtain a ruling on the facts, to prevent an unnecessary, expensive, and in this case a politically charged trial. But President Trump cannot use this basic procedure to stop an unwarranted political trial, based on a 104-page *Verified Petition* spanning six years of activities.
- Of critical importance, C.R.C.P. 56(h) explicitly allows a party to seek a legal ruling on in areas of unclear or ambiguous points of law. This tool is

particularly important here, when Petitioners seek to use the Fourteenth Amendment as a sword, relying on unique and controversial legal theories, to prohibit President Trump from running for office. If any issue is appropriate for a Rule 56(h) motion, this is it. Yet President Trump cannot obtain clarity on fundamental issues, such as what constitutes an "insurrection."

In short, directly controlling Supreme Court precedent and plain statutory language prohibit Petitioners from bringing this constitutional claim in a Section 113 proceeding.

B. Under the plain statutory language, Petitioners cannot bring a claim under Section 1204.

1. President Trump has not been listed on the ballot, and the Secretary has not certified names to the presidential primary preference ballot.

Section 1204 is a short statute that imposes three separate duties on the Secretary of State. She must:

- "[C]ertify the names and party affiliations of the candidates to be placed on any presidential primary election ballots" sixty days before the election.[18]
- Remove from the ballot a candidate who has filed an affidavit requesting his or her name be removed from the ballot;[19]
- Determine the method for drawing lots to place candidates' names on the ballot.[20]

[18] C.R.S. § 1-4-1204(1).

[19] C.R.S. § 1-4-1204(1.5).

Only the first duty applies to this case; there is no controversy over the withdrawal of a candidacy or the method for drawing lots.

Critically, it is also undisputed that *no* controversy exists over the Secretary's *first* duty. Namely, she has not certified any candidates to the ballot. The Petitioners, Intervenors, and indeed the Secretary all agree that she currently has no duty to certify any candidate, for two reasons; no candidate has yet submitted any paperwork, and the deadline to certify candidates is months away, on January 5, 2024. In short, Petitioners can present no controversy or dispute under Section 1204, for the straightforward reason that the Secretary currently has no duties prescribed by that statute.

Section 1204 also contains an enforcement mechanism, which further demonstrates that absence of any dispute. Specifically, Section 1204 allows "[a]ny challenge to the listing of any candidate on the presidential primary election ballot."[21] The Secretary has not yet listed any person as a candidate on the presidential primary election ballot, and therefore the Petitioners cannot bring a challenge to the "listing of any candidate."

Overall, Section 1204 lists the Secretary's duties and provides a mechanism for an elector to challenge a violation of those duties. But at this point in the election cycle, the

[20] C.R.S. § 1-4-1204(2).

[21] C.R.S. § 1-4-1204(4).

Secretary has done nothing wrong or violated any duty in Section 1204. For this reason, a challenge under Section 1204 is not "real, immediate, and fit for adjudication."[22]

To be sure, the Petitioners have argued in their Petition that President Trump is a candidate and the Secretary is "about" to list him as a candidate. This fails for several reasons.

First, President Trump is not yet a candidate under Colorado law. For campaign finance purposes Colorado defines a candidate as "any person who seeks nomination or election to any state or local public office that is to be voted on in this state at any primary election, general election, school district election, special district election, or municipal election." Clearly, President Trump is not a person seeking state or local office. And for purposes of ballot access, President Trump will become a candidate when he files his *Major Party Candidate Statement of Intent or Presidential Primary*.[23] But until then, he is not a candidate for any purpose under Colorado law. Federal campaign finance law does not a Colorado candidate make, nor does self-proclamation as a candidate.

Second, the plain language of Section 1204(4) requires a challenge to a "listing" of a candidate. That language specifically refers to an event – the listing of a candidate – that triggers the timeline for a challenge. And conspicuously, Section 1204 contains no language

[22] *Developmental Pathways v. Ritter*, 178 P.3d 524, 530 (Colo. 2008).

[23] **Ex. A,** *Major Party Candidate Statement of Intent or Presidential Primary*.

that supports a challenge if someone is "about" to be listed as a candidate or "soon to be" listed as a candidate.

To be sure, Section 113 allows an action to be brought if a state officer is about to commit a breach of duty, but the enforcement mechanism of Section 1204 uses fundamentally different language that governs when a one may challenge a Section 1204 violation. Finally, as discussed below, Section 113 standards cannot apply to the Petitioner's constitutional claim.

2. Section 1204 does not provide grounds to challenge a candidate under the Fourteenth Amendment.

Even if a claim under Section 1204 were ripe for adjudication, that statute does not allow Petitioners to challenge a candidate on Fourteenth Amendment grounds. Section 1204 sets forth three – and only three – criteria for inclusion on the presidential primary ballot, and none of those criteria includes Section 3 of the Fourteenth Amendment.

The first criterion is whether the candidate is "seeking the nomination for president of a political party as a bona fide candidate . . . pursuant to political party rules." Here, Colorado law expressly vests authority with a political party to determine any candidates' bona fides, and members of the Colorado Republican Party determine whether a self-proclaimed candidate is a "bona fide candidate." Nowhere does this provision give the Secretary or the Petitioners authority to disqualify President Trump on Fourteenth Amendment grounds.

The second criterion is whether the candidate's political party "received at least twenty percent of the votes…in the last presidential election." This is a simple factual

determination and again does not provide authority to challenge a candidacy under the Fourteenth Amendment.

The third criterion is whether the candidate has submitted a "notarized candidate's statement of intent together with either a…filing fee…or a petition."[24] Again, this provision does not provide grounds for a Fourteenth Amendment challenge, even if one looks at the statement of intent.[25] That form requires a candidate to affirm he or she meets that qualifications set forth in Article II of the U.S. Constitution: age, years of residency, and natural-born citizenship. The statute itself says nothing about disqualification under the Fourteenth Amendment, and Petitioners have no basis to bring a Fourteenth Amendment challenge, even under the long-established forms promulgated by the Secretary.

The academic literature is rife with debate over whether states have authority to enforce any qualification for presidential candidates. For example, one commentator stated that "[Asking for birth certificates is] reason to be skeptical of claims that any state election official can investigate qualifications, as the consequences do sweep far more broadly than the Section 3 issues relating to former President Trump."[26] Respondent President Trump will address this issue more thoroughly in his forthcoming motion to dismiss, but for

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[24] C.R.S. § 1-4-1204(1)(c).

[25] **Ex. A,** *Major Party Candidate Statement of Intent or Presidential Primary*.

[26] Muller, Derek, *States have the power to judge the qualifications of presidential candidates and exclude ineligible candidates from the ballot, if they want to use it*, Election Law Blog (Aug. 15, 2023), available at https://electionlawblog.org/?p=138062, last visited September 22, 2023.

purposes of this argument, the Colorado General Assembly did not charge either the Secretary or the Petitioners with authority to investigate or presumably enforce Section 3 of the Fourteenth Amendment. Simply put, the Petitioners have no right to bring their Fourteenth Amendment claim under the plain language of Section 1204. Whatever authority the General Assembly may or may not have had to enforce Section 3 of the Fourteenth Amendment, the legislature did not use that purported authority in Section 1204.

3. Petitioners cannot litigate constitutional claims under Section 1204, because that section explicitly relies on Section 113 procedures.

As discussed above Petitioners may not litigate the Fourteenth Amendment in a Section 113 proceeding. And that prohibition applies to enforcement of duties under Section 1204, because the enforcement subsection explicitly relies on Section 113 procedures. Indeed, the reasoning in *Frazier v. Williams* reasoning fits precisely. *Frazier* limited Section 113 litigation to violations under the election code, and Section 1204 litigation is likewise limited to specific, statutory duties under Section 1204. Those duties do not include or invoke Section 3 of the Fourteenth Amendment.

Likewise, *Frazier* refused to allow rushed, summary procedures (including limited appellate review) when considering important constitutional questions. Here, the Court and all parties face the same, inappropriate pressures discussed in *Frazier*; as currently postured, the Petitioners seek a hearing on complex constitutional questions, using an unrelentingly short timeframe.

Section 1204 provides no relief for the Petitioners, and they must pursue their claims under a different source of authority. Seemingly, they have prepared for dismissal of their

state claims by simultaneously bringing a declaratory judgment action seeking relief directly under the Fourteenth Amendment. But the request for declaratory relief fails on standing grounds, as shown next.

C. Petitioners have confessed that they do not have an injury that confers standing to seek relief under the Fourteenth Amendment.

Petitioner's declaratory judgment action must be dismissed on standing grounds; indeed, by Respondent's count, *every* court in the nation has dismissed qualification and Fourteenth Amendment challenges against presidential candidates on standing or separation of powers grounds.[27] Most recently, a federal magistrate *sua sponte* submitted a proposed dismissal order for a challenge brought in the District of Colorado.[28]

Like others before them, Plaintiffs do not have standing to pursue Section 3 claims, and they properly admitted as much in their *Motion to Remand*.[29] In their own words, 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

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[27] *Berg v. Obama*, 586 F.3d 234, 238 (3d Cir. 2009); *Drake v. Obama*, 664 F.3d 774 (9th Cir. 2011); *Cohen v. Obama*, 2008 WL 5191864 (D.C. DC 2008); *Cook v. Good*, 2009 WL 2163535 (M.D. GA 2009); *Sibley v. Obama*, 866 F.Supp.2d 17, (D.C. DC 2012); *Hollander v. McCain*, 566 F.Supp.2d 63 (NH DC 2008); *Castro v. FEC*, 22-5323 (CA DC April 10, 2023); *Castro v. Trump*, 9:23-cv-80015 (S.D. FL, June 26, 2023); *Caplan v. Trump*, 23-cv-61628, (S.D. FL Aug. 31, 2023); and *Strunk v. New York State Bd. Of Elections*, 950 N.Y.S. 2d 722 (Sup. Ct. Kings County NY 2012*). Hill v. Mastriano*, No. 22-2464, 2022 WL 16707073, at *1 (3d Cir. Nov. 4, 2022) (gubernatorial candidate); *Stencil v. Johnson*, 605 F. Supp. 3d 1109, 1115–19 (E.D. Wis. 2022) (U.S. Senate and House of Representatives candidates).

[28] *Sladek v. Trump*, D. CO, 1:23-cv-02089, Doc. #10 (Sept. 20, 2023).

[29] **Ex. B**, *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.

assert a "paradigmatic generalized grievance."[30] These arguments bind the Petitioners in this Colorado state court proceeding.[31]

To be sure, Petitioners claim they rely "on state statutes" that "give them standing to sue in state court, but not Article III standing."[32] 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)."[33] And state statute does not provide standing for this declaratory relief request; Section 113 confers procedural rights to challenge election code violations only, and Petitioners have 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 claim for relief can be grounded…[and] must allege an injury in fact to a legally protected or cognizable interest."[34] Under controlling Colorado Supreme Court precedent, this test "requires that a plaintiff show that its interest is derived

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[30] *Id.* at 7.

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

[32] *Motion to Remand* at 1.

[33] *Verified Pet.* at 103.

[34] *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).

from a recognized legal interest, such as a statute, creating a legally cognizable interest that is concrete and particularized."[35]

The Petitioners admit they have no "particularized and concrete" interest; the Colorado Supreme Court specifically requires them to have a "concrete and particularized" interest in order to have the required standing. Accordingly, Petitioners have no standing to seek a declaratory judgment on the Fourteenth Amendment in this Court.

The above "concrete and particularized" standard articulated in *Romer v. Board of County Commissioners* remains good law that Petitioners may not ignore. 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."[36] Likewise, the Colorado Court of Appeals ruled that "to support standing, a plaintiff's complaint must establish that plaintiff has a personal stake in the alleged dispute and that the alleged injury is particularized as to the plaintiff."[37] 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-

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[35] *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).

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

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

in-fact requirement ensures a concrete adverseness which sharpens the presentation of issues that parties argue to the courts."[38]

Colorado courts explicitly incorporate the federal standard. 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."[39] The Colorado Court of Appeals cited to federal precedent when requiring an injury "particularized as to the plaintiff."[40] And just last week Judge Gillman in Denver District Court ruled that a "plaintiff must have suffered an 'injury in fact,' meaning that the injury is of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent."[41]

In short, Petitioners have admitted that they lack the particularized or concrete injury necessary to support standing. That admission is fatal to jurisdiction in Colorado courts.

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[38] *City of Greenwood Village v. Petitioners for the Proposed City of Centennial*, 3 P.3d 427, 43 (Colo. 2000).

[39] *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).

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

[41] *Cherry Hills III Condo Corp. v. Alpertcook Venture III LLC*, 2022 Colo. Dist. LEXIS 1179, *5.

FOR THESE REASONS, the court should dismiss this action, award attorney fees, and grant President Trump all such further relief as is just, proper or appropriate.

Respectfully submitted this 22nd day of September 2023,

GESSLER BLUE LLC

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

Certificate of Service

I certify that on this 22nd day of September 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