

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1427 Bannock Street, Room 256 Denver, Colorado 80202 Phone: (303) 606-2300	DATE FILED: September 29, 2023 3:45 PM
<p>Petitioners: NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAHER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN</p> <p>v.</p> <p>Respondents: JENA GRISWOLD, in her official capacity as Colorado Secretary of State, and DONALD J. TRUMP</p> <p>And</p> <p>Intervenor: COLORADO REPUBLICAN STATE CENTRAL COMMITTEE, an unincorporated association</p>	<p>▲ COURT USE ONLY ▲</p>
<p>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</p> <p>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</p>	<p>Case No: 23CV32577</p> <p>Division: 209</p>
<p style="text-align: center;">COLORADO REPUBLICAN STATE CENTRAL COMMITTEE’S MOTION FOR JUDGMENT ON THE PLEADINGS UNDER RULE 12/JUDGMENT AS A MATTER OF LAW UNDER RULE 56</p>	

The Colorado Republican Committee hereby moves for judgment on the pleadings, pursuant to C.R.C.P. 12(c), or, in the alternative, as a matter of law in its favor pursuant to C.R.C.P.

56(h), regarding its First Amendment (Count I), Fourteenth Amendment (Count II), and C.R.S. § 1-4-1204 (Count III) claims. Intervenor seeks a ruling that an act by the Respondent Secretary of State barring from the ballot a presidential candidate designated by a major political party as qualified, and in the absence of proper disqualification pursuant to the processes Congress has established and otherwise qualified under §1204 and federal election law, is ultra vires and in violation of the Intervenor’s First Amendment and statutory rights – even if such an act is not ordered by the Court or the Petitioners case is dismissed. This is a question of law.

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

Counsel for Intervenor conferred with counsel for the parties. Respondent President Donald Trump consents. However, Respondent Colorado Secretary of State and Petitioners have withheld their consent. Conferral occurred via telephone calls and emails.

“Judgment on the pleadings is appropriate when a case’s material facts are not in dispute, and judgment on the merits can be achieved by focusing on the content of the pleadings and any facts of which the court will take judicial notice.” *Sterebuch v. Goss*, 266 P.3d 428 (Colo. App. Oct. 13, 2011) (internal quotations and citation omitted). Alternatively, to the extent granting this motion is not dispositive, C.R.C.P. 56(h) “allows a party to move for determination of a question of law at any time after the last required pleading.” *Coffman v. Williamson*, 2015 CO 35, ¶ 11 (internal quotes and ellipses omitted); *id.* ¶ 12 (Explaining Rule 56(h) is appropriate where question of law is not dispositive of a claim, noting that “[t]he summary judgment standard applies to Rule 56(h) motions: A Court may grant the motion if there is no genuine issue of any material fact necessary for the determination of the question of law.”).

This motion is dependent upon the constitutional and statutory arguments advanced in Intervenor’s motion to dismiss filed September 22, 2023, along with the arguments advanced in the

motions to dismiss filed by Respondent President Trump and joined by the Intervenor the same date, Intervenor's response brief being filed today, and the Respondent President Trump's constitutional motion to dismiss being filed today and joined by the Intervenor. All these filings are incorporated herein by reference as if fully set forth herein, in keeping with the Court's instructions to avoid duplication and reduce the number of pages as much as possible. If the Court desires further briefing on this motion, the Intervenor stands ready to do so.

In short, in preparing and reviewing the motions to dismiss and briefs identified above, it has crystalized that the grounds supporting those motions and briefs identified above also constitute grounds for affirmatively granting to the Intervenor the relief it seeks herein. Intervenor has made this motion at this time because, although the Secretary has not yet officially taken a position on this litigation, throughout this litigation she has repeatedly sided with the Petitioners, on issues like the application of C.R.S. § 1-1-113, discovery questions, and issues regarding the length of litigation. Moreover, she has indicated her agreement with the Petitioners' constitutional views publicly.¹ Her enigmatic conduct throughout this litigation has continued to align with the Petitioners. It has become clear to the Intervenor that the time to seek the relevant declarations of law is now, and not at an unknown time following an evidentiary hearing. Intervenor seeks this affirmative legal declaration to ensure that the Secretary will comply with her legal responsibilities to put its candidates on the ballot. If this case is dismissed without an affirmative order constraining the Secretary from acting in violation of Intervenor's constitutional and election code rights, Intervenor believes she will do so.

¹ For example, the day the lawsuit was announced, she stated, "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.*" 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).

To the extent the Court desires an affidavit in support of this motion, the Intervenor's petition is a Verified Petition, executed by the Chair of the Colorado Republican Party, which is also incorporated by reference as if fully set forth herein.

WHEREFORE, Intervenor requests that this Court, in addition to granting the Intervenor and President Trump's motions to dismiss the Petitioners' claims, affirmatively grant the relief sought by the Intervenor in its Verified Petition as against the Secretary of State. Further, Intervenor respectfully requests its motion be set for hearing or decided in advance of the currently scheduled evidentiary hearing in order to avoid the time and expense of that proceeding.

Respectfully submitted this 29th day of September, 2023,

/s/ Michael Melito

MICHAEL MELITO (CO Bar No. 36059)
MELITO LAW, LLC
1875 Lawrence St., Ste. 730
Denver, Colorado 80202
Telephone: 303-813-1200
Email: Melito@melitolaw.com

/s/ Robert A. Kitsmiller

Robert A. Kitsmiller (CO Bar. No. 16927)
Podoll & Podoll, P.C.
5619 DTC Parkway, Suite 1100
Greenwood Village, Colorado 80111
Telephone: (303) 861-4000
Email: bob@podoll.net

Counsel for Intervenor

JAY ALAN SEKULOW*
(D.C. Bar No. 496335)
JORDAN SEKULOW*
(D.C. Bar No. 991680)
STUART J. ROTH**
(D.C. Bar No. 475937)
ANDREW J. EKONOMOU**
(GA Bar No. 242750)
JANE SERENE RASKIN**
(FL Bar # 848689)
BENJAMIN P. SISNEY*
(D.C. Bar No. 1044721)
NATHAN MOELKER*
(VA Bar No. 98313)
AMERICAN CENTER FOR LAW AND JUSTICE
201 Maryland Avenue, NE
Washington, D.C. 20002
Telephone: (202) 546-8890
Facsimile: (202) 546-9309
Email: bsisney@aclj.org

*Admitted pro hac vice

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 29, 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/Michael Melito*