DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: October 11, 2023
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** **Intervenors:** COLORADO REPUBLICAN STATE CENTRAL COMMITTEE and DONALD J. TRUMP	**Δ COURT USE ONLY Δ** Case No.: 2023CV32577 Division: 209
ORDER RE: DONALD J. TRUMP'S SPECIAL MOTION TO DISMISS PURSUANT TO C.R.S. § 13-20-1101(3)(a)	

This matter comes before the Court on Donald J. Trump's Special Motion to Dismiss brought pursuant to C.R.S. § 13-20-1101.

I. PROCEDURAL BACKGROUND

1. On September 6, 2023, Petitioners filed their Verified Petition under C.R.S. §§ 1-4-1204, 1-1-113, 13-51-105 and C.R.C.P. 57(a). Petitioners alleged two claims

for relief. First, they asserted a claim against Respondent Griswold pursuant to C.R.S. § 1-4-1204 and § 1-1-113. Second, they requested declaratory relief against both Respondent Griswold and then-Respondent Trump. The declaratory relief requested included a declaration that then-Respondent Trump was not constitutionally eligible for the office of presidency.

2. On September 22, 2023, then-Respondent Trump filed a Special Motion to Dismiss Pursuant to C.R.S. § 13-20-1101(3)(a). In that motion, then-Respondent Trump argued that "this lawsuit" is subject to Colorado's anti-SLAPP statute because Petitioners' claims all stem from protected speech or the refusal to speak, and that because the speech concerned election fraud and a hard-fought election, they are the epitome of public issues. Trump further argued that Petitioners were unable to establish a reasonable likelihood of success on their claims. As a result, argued then-Respondent Trump, the Court must dismiss the claims.

3. Also on September 22, 2023, then-Respondent Trump separately moved to dismiss Petitioners' claims. Specifically, Trump argued: (1) Petitioners may not litigate constitutional claims in a C.R.S. § 1-1-113 proceeding; (2) the C.R.S. § 1-4-1204 claim was not ripe; (3) C.R.S. § 1-4-1204 does not provide grounds to use the Fourteenth Amendment to bar candidates; and (4) there is no standing on the declaratory judgment claim because there is no particularized or concrete injury.

4. On September 29, 2023, the Petitioners responded to then-Respondent Trump's Motion to Dismiss. In that Response, the Petitioners agreed to dismiss the declaratory judgment claim.

5. Also on September 29, 2023, the Petitioners responded to then-Respondent Trump's Special Motion to Dismiss. In that Response, they argued: (1) because Petitioners concede their declaratory judgment claim, Trump does not have standing to bring an anti-SLAPP motion; (2) anti-SLAPP procedures do not apply to a C.R.S. § 1-1-113 proceeding; (3) Petitioners' claim is exempt from the anti-SLAPP statute under the public interest exemption and (4) if the anti-SLAPP procedure applies, there is a reasonable likelihood that the Petitioners will prevail on the claim.

6. Also on September 29, 2023, Respondent Griswold filed an omnibus response to the motions to dismiss. In that Response, and relative to then-Respondent Trump's Special Motion to Dismiss, Respondent Griswold argued, in part, the anti-SLAPP motion is incompatible with C.R.S. § 1-1-113 proceedings.

7. On October 5, 2023, the Court granted Trump's motion to intervene.

8. On October 6, 2023, the Petitioners filed a stipulation of dismissal of the declaratory judgment claim.

9. On October 6, 2023, Intervenor Trump filed a reply in further support of his Special Motion to Dismiss.

II. LEGAL FRAMEWORK

A. The Anti-SLAPP Statute

In 2019, the Colorado General Assembly enacted C.R.S. § 13-20-1101 (the "Anti-SLAPP Statute"). Given the recent enactment of this statute, appellate courts in Colorado have minimally addressed its application in cases brought within this state. However, other states—California in particular—have longstanding "anti-SLAPP"

statutes and thus a developed jurisprudence concerning their use. The Court notes that Colorado's statute is nearly identical to California's statute, except the California statute requires a plaintiff to show a "probability" of prevailing on his or her claim to overcome a special motion to dismiss while Colorado's requires a showing of "a reasonable likelihood" of prevailing. *Cf.* Cal. Civ. Proc. Code § 425.16. As such, cases from California appellate courts interpreting their statute are particularly helpful in resolving the present Motion. *See Stevens v. Mulay*, 2021 WL 1300503, at *4 (D. Colo. Feb. 16, 2021) ("Colorado's anti-SLAPP law is, in fact, copied nearly verbatim from California's anti-SLAPP law . . . [t]herefore, the Court, as do the parties, primarily looks to California law for persuasive authority as to the interpretation of Colorado's statute, to the extent necessary."). The Court observes that "anti-SLAPP" statutes "provid[e] a special procedure for striking meritless, chilling causes of action at the earliest possible stages of litigation." *Lefebvre v. Lefebvre*, 131 Cal.Rptr.3d 171, 174 (Ct. App. 2015).

Anti-SLAPP laws serve a limited purpose—to dismiss frivolous claims targeting constitutional rights. These laws were enacted specifically to combat "Strategic Lawsuits Against Public Participation" (*i.e.* "SLAPP"). They are intended to enable courts to dismiss frivolous cases brought with the intent to chill a person's constitutional rights. *FilmOn.com Inc. v. DoubleVerify Inc.*, 439 P.3d 1156, 1160 (Cal. 2019). They provide a procedural mechanism invoked in limited circumstances early in a case for the purpose of dismissing meritless claims; they do not bar meritorious claims. *See Baral v. Schnitt*, 376 P.3d 604, 608 (Cal. 2016) ("The Anti-SLAPP statute does not insulate defendants from any liability for claims arising from the protected rights of petition or

speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity.") (emphasis original).

Colorado enacted its anti-SLAPP statute to prevent the "abuse of the judicial process." C.R.S. § 13-20-1101(1)(a). An additional purpose of the anti-SLAPP statute is "to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law." C.R.S. § 13-20-1101(1)(b). However, the statute expressly requires courts to simultaneously "protect the rights of persons to file meritorious lawsuits for demonstrable injury." *Id*.

Under the statute, "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States constitution or the state constitution in connection with a public issue is subject to a special motion to dismiss . . ." C.R.S. § 13-20-1101(3)(a). An "act of [a] person in furtherance of [a] person's right of petition or free speech under the United States constitution or the state constitution in connection with a public issue" as that phrase is used in the statute shall be referred to herein as a "protected act." The statute states that protected acts include:

> (I) Any written or oral statement or writing made before a legislative, executive, or judicial proceeding or any other official proceeding authorized by law;
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> (II) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body or any other official proceeding authorized by law;

(III) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; or

(IV) Any other conduct or communication in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

C.R.S. § 13-20-1101(2)(a).

There are several exemptions to the Colorado anti-SLAPP statute. Relevant to this motion, C.R.S. § 13-20-1101(8)(a) provides, in pertinent part:

This section does not apply to:

(II) Any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

(A) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney fees, costs, or penalties does not constitute greater or different relief for purposes of this subsection (8)(a)(II)(A);

(B) The action, if successful, would enforce an important right affecting the public interest and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons; and

(C) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

Importantly, C.R.S. § 13-20-1101(9) provides "if any trial court denies a special motion to dismiss on the grounds that the action or cause of action is exempt pursuant to subsection (8) of this section, the appeal provisions in subsection (7) of this section do not apply," meaning there is no right to immediate appeal if one of the exemptions to the anti-SLAPP statute applies.

The public interest exemption is, itself, subject to certain exceptions. C.R.S. § 13-20-1101(8)(b) provides that the public interest exemption does not apply to:

> (I) any publisher, editor, reporter, or other person connected with or employed by a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed; or a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed; or any person engaged in the dissemination of ideas or expression in any book or academic journal while engaged in the gathering, receiving, or processing of information for communication to the public; or
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> (II) any action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including but not limited to a motion picture, television program, or an article published in a newspaper or magazine of general circulation.

A special motion to dismiss requires a reviewing court to engage in a two-step process. First, the moving party must make a prima facie showing that the claim at issue arises from activity protected by the "anti-SLAPP" law. C.R.S. § 13-20- 1101(3)(a); *see also Tamkin v. CBS Broad., Inc.*, 122 Cal.Rptr.3d 264, 271 (Ct. App. 2011). The moving defendant must then demonstrate that the acts upon which the plaintiff's claim is based were taken in furtherance of the defendant's right of petition or free speech under the federal or state constitution. *Lefebvre*, 131 Cal.Rptr.3d at 174. However, before engaging in the two-step analysis, a court must consider any claims by the plaintiff that a statutory exemption applies. *See San Diegans for Open Government v. Har Construction, Inc.*, 192 Cal.Rptr.3d 559, 567 (Ct. App. 2015).

B. Election Code

The Colorado Secretary of State is charged with the duty to "supervise the conduct of primary, general, congressional vacancy, and statewide ballot issue elections" and to "enforce the provisions of [the election] code." C.R.S. § 1-1-107. When a dispute regarding the application and enforcement of the Election Code arises, C.R.S. § 1-1-113 is implicated. This statute provides in part:

> (1) When any controversy arises between any official charged with any duty or function under this code and any candidate, or any officers or representatives of a political party, or any persons who have made nominations or when any eligible elector files a verified petition in a district court of competent jurisdiction alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act, after notice to the official which includes an opportunity to be heard, upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code. The order shall require the person charged to forthwith perform the duty or to desist from the wrongful act or to forthwith show cause why the order should not be obeyed. The burden of proof is on the petitioner.

CR.S. § 1-1-113 is the "exclusive method for the adjudication of controversies arising from a breach or neglect of duty or other wrongful act that occurs prior to the day of an election." C.R.S. § 1-1-113(4). After the filing of a "verified petition" by a registered elector and "notice to the official which includes an opportunity to be heard," if a court finds good cause to believe that the election official "has committed or is about to commit a breach or neglect of duty or other wrongful act," it "shall issue an order requiring substantial compliance with the provisions of [the Election Code]." C.R.S. § 1-1-113(1).

C.R.S. § 1-4-1204 was added to the Election Code in 2016. Section 1-4-1204(1) provides that "[n]ot later than sixty days before the presidential primary election, the secretary of state shall certify the names and party affiliations of the candidates to be placed on any presidential primary election ballots." Each candidate must be "seeking the nomination for president of a political party as a bona fide candidate for president of the United States pursuant to political party rules and [must be] affiliated with a major political party that received at least twenty percent of the votes cast by eligible electors in Colorado at the last presidential election." C.R.S. § 1-4-1204(1)(b). Section 1-4-1204(4) expressly incorporates section 1-1-113 for challenges "to the listing of any candidate on the presidential primary ballot." Such challenges "must be . . . filed with the district court in accordance with section 1-1-113(1)." C.R.S. § 1-4-1204(4). "Any such challenge must provide notice in a summary manner of an alleged impropriety that gives rise to the complaint."

III. ANALYSIS

Petitioners argue that the anti-SLAPP statute does not apply for three reasons: (1) there is no cause of action against Intervenor Trump and he, therefore, lacks standing; (2) this lawsuit falls within the public interest exemption to the anti-SLAPP statute; and (3) the anti-SLAPP statute is incompatible with C.R.S. § 1-1-113 and, therefore, is inapplicable. The Court addresses all three arguments.

A. Intervenor Trump's Standing Under the Anti-SLAPP Statute

Under the anti-SLAPP statute, **"[a] cause of action against a person** arising from any act of that person in furtherance of the person's right of petition or free speech

under the United States constitution or the state constitution in connection with a public issue is subject to a special motion to dismiss . . ." C.R.S. § 13-20-1101(3)(a) (emphasis added).

In response to then-Respondent Trump's Special Motion to Dismiss, the Petitioners argue that at then-Respondent Trump's behest, they dismissed the declaratory action against him. Since then, Mr. Trump has moved to intervene in the C.R.S. § 1-1-113 claim—which intervention this Court granted. The Petitioners argue that as an intervenor Trump has no standing to invoke the protections of C.R.S. § 13-20-1101(3)(a) because there is no pending "cause of action against him." In support of that argument the Petitioners cite *Found. for Taxpayer & Consumer Rights v. Garamendi*, 34 Cal.Rptr.3d 368, 381 (Ct.. App. 2023). In *Garamendi*, a public interest group filed a petition for writ of mandate and complaint against the Insurance Commissioner to invalidate legislation regulating insurance companies. *Id*. at 371. Although the complaint did not sue Mercury Insurance Group ("Mercury"), the complaint alleged that the challenged legislation was sponsored by Mercury. *Id*. Mercury was permitted to intervene and then filed a special motion to dismiss under California's anti-SLAPP statute. *Id*. at 374. The appellate court rejected Mercury's argument that its status as an intervenor gave it the same right to bring an anti-SLAPP motion as a defendant. *Id*. at 381. Because it was not a defendant and there was therefore no claim against it, there was no right to file a special motion to dismiss. *Id*.

Intervenor Trump argues that *Iloh v. Regents of Univ. of Cal.*, 312 Cal.Rptr.3d 674 (Ct.. App. 2023), not *Garamendi,* governs. There, the California appellate court

found that the relevant inquiry was whether the organization seeking anti-SLAPP relief was the real party in interest. *Id*. at 681. In *Iloh*, the plaintiff was a professor at the University of California Irvine ("UCI"). *Id*. at 679. The plaintiff published a series of articles that were subsequently retracted by the entities who had published them. *Id*. The Center for Scientific Integrity ("CSI") filed a records request under California's Public Records Act for all communications between the Plaintiff, UCI and the journals that retracted the articles. *Id*. at 680. The plaintiff filed a petition for writ of mandate, declaratory relief, and injunctive relief against UCI to prevent disclosure of her communications and added CSI as a real party in interest. *Id*. CSI filed an anti-SLAPP motion. *Id*. The plaintiff argued that an anti-SLAPP motion was not available to CSI because it was not a named defendant and because there were no claims asserted against it. *Id*. at 681. The court held that a "real party in interest may bring an anti-SLAPP motion if it has a direct interest in the subject of the mandamus proceeding and will be impacted by the litigation's outcome." *Id*.

The *Iloh* court relied on *Rudisill v. Cal. Coastal Comm'n.*, 247 Cal.Rptr.3d 840 (Ct. App. 2019); in that case, the petitioner sought a writ of mandate against the California Coastal Commission and the City of Los Angeles to compel them to treat a series of proposed projects as a single development project. The property owners were named as real parties in interest by virtue of the fact that they owned the property which was to be affected by the proposed development projects and because it was alleged that they engaged in conduct designed to improperly "piecemeal" the development project proposals. *Id*. at 844. In assessing whether the property developers could maintain an

anti-SLAPP motion as persons against whom a claim was asserted, the *Rudisill* court adopted a broad construction of a "claim" under the anti-SLAPP statute, finding that it must merely "amount to a 'cause of action' in the sense that it is alleged to justify a remedy." *Id*. at 846 (internal citation omitted). Further, the *Rudisill* court found that, by virtue of their direct interest in the outcome of the action, the real parties in interest were "persons" against whom a claim was asserted for purposes of the anti-SLAPP statute, in a mandamus claim. *Id*.

Iloh and *Rudisill* were actions seeking relief in the nature of mandamus; the petitioners sought a court order directing a government entity to behave in a way that impacted the interests of a third party, thus imbuing that third-party with standing as the real party in interest for purposes of the anti-SLAPP statute. Here, as in *Iloh and Rudisill*, Intervenor Trump is not the named defendant, but clearly has a direct interest in the outcome of the litigation because it will determine whether he may be on the primary presidential ballot in Colorado. The Court accordingly holds *Iloh* and *Rudisill* govern this case and Intervenor Trump's status as an intervenor does not preclude him from filing a Special Motion to Dismiss.

B. Public Interest Exemption to the Anti-SLAPP Statute

Petitioners argue that even if Intervenor Trump does have standing, the public interest exemption to the anti-SLAPP statute would apply, thus requiring the Court to deny the Special Motion to Dismiss on that basis.

The California Supreme Court counsels that the public interest exemption is to be narrowly construed and applies "only when the entire action is brought in the public

interest." *Simpson Strong-Tie Co., Inc. v. Gore*, 230 P.3d 1117, 1123 (Cal. 2010) (quoting *Club Members for an Honest Election v. Sierra Club*, 196 P.3d 1094, 1096 (Cal. 2008)). The public interest exemption is a threshold issue based on the nature of the allegations.

i. Petitioners do not seek any relief greater than or different from the relief sought for the general public.

The first condition necessary for the public interest exemption to apply is that "[t]he plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member." C.R.S. § 13-20-1101(8)(a)(II)(A). Intervenor Trump seems to concede that Petitioners' action meets this first requirement. *See* Reply, p. 8 ("[C.R.S. § 13-20-1101(8)(a)(II)] sets forth three criteria, all of which must be met…Petitioners fail to meet the second and third criteria."). In general, his Reply advances two primary arguments on the public interest exemption: 1) "Petitioners seek relief that is not to the benefit of the general public;" and 2) "Petitioners are not seeking to enforce an important right." *See* Reply, pp. 8, 10. These arguments appear to address the second factor. *See* C.R.S. § 13-20-1101(8)(a)(II)(B) ("The action, if successful, would **enforce an important right** affecting the public interest and would **confer a significant benefit**…**on the general public**.") (emphasis added).

To the extent Intervenor Trump intended to contest this first prong, the Court finds that it is met by the Petition. The focus of the inquiry is on the nature and scope of the relief requested as it relates to the relief that would be afforded to the general public. In other words, do the Petitioners seek relief "greater than or different from the relief

sought for the general public," or is the relief they seek identical to that sought on behalf of the public. Having examined the Petition, the Court finds that Petitioners seek no relief from the Court for themselves that is greater than, or different from, the relief which would also flow to the general public.

ii. The action, if successful, would enforce an important right affecting the public interest and would confer a significant benefit on the general public.

The second requirement is that "the action, if successful, would enforce an important right affecting the public interest and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons." C.R.S. § 13-20-1101(8)(a)(II)(B). Courts make this determination by "examining [the] complaint to determine whether [the] lawsuit is of the kind that seeks to vindicate public policy goals." *Tourgeman v. Nelson & Kennard*, 166 Cal.Rptr.3d 729, 743 (Ct. App. 2014).

Petitioners argue that they have met this second condition by virtue of their action seeking to "vindicate public policy goals"[1] by "ensuring that those who the Constitution forbids from holding office do not appear on the ballot." Response, pp. 5, 6. Petitioners also argue that by seeking to bar Intervenor Trump from the ballot, they are ensuring that Colorado voters do not cast a ballot in favor of a candidate who may not be eligible to seek or hold office. Response, p. 6.

[1] Intervenor Trump challenges the facial sufficiency of Petitioners' argument by suggesting that seeking to "vindicate public policy goals" is not the equivalent of seeking to enforce an important public right. The Court disagrees. See *Tourgeman*, *supra*.

Intervenor Trump, in turn, first argues that the general public is not benefited because the question of whether he is disqualified under the Fourteenth Amendment is for Congress to decide, not the Secretary of State or the Court. That argument is putting the cart before the horse as it relates to the public interest exemption. It would essentially require the Court to decide the merits of the lawsuit when determining whether the public interest exemption applies. Because this is a threshold issue, the Court holds it would be improper for it to determine whether the Fourteenth Amendment applies to the Election Code. Indeed, the statute explicitly requires the Court to assume that the action, as contemplated, would be successful when assessing this factor. The Court therefore assumes, for the purposes of assessing the public interest exemption only, that Intervenor Trump is indeed barred from holding office pursuant to Section Three of the Fourteenth Amendment, and that this is a determination within the capacity of either the Court or the Secretary of State to make.

Intervenor Trump next argues that the relief sought does not benefit the general public because almost fifty percent of the country want Intervenor Trump to be their President. That argument, however, again presumes that Intervenor Trump is qualified to be the President. Further, the Court disagrees with Intervenor Trump that the Petitioners' position puts the Court in the position of having to take a political stance. First, the Court has no difficulty concluding that it is to the benefit of the general public that, regardless of political affiliation, only constitutionally qualified candidates are placed on the ballot.[2] Second, the Court has no intention to make any decisions in this

[2] Again, the Court assumes at this stage for purposes of this analysis, as it must, that Intervenor Trump is constitutionally disqualified from holding office.

matter based on political stances, nor is such required of this Court. The issue before the Court is purely an issue of law and does not turn, in any way, on the identity of the intervenor, or his political opinions. The question before the Court, as to this factor, is simple: would the preclusion of a constitutionally incapable candidate from seeking public office enforce an important right affecting the public interest and confer a significant benefit on the public? The Court, again, has little trouble finding that it would. It goes without saying that, in the abstract, ensuring that only constitutionally qualified candidates can seek to hold the highest office in the country, particularly when the disqualification sought is based on allegations of insurrection against the very government over which the candidate seeks to preside, seeks to enforce an important right which confers a significant benefit to the public. In short, it is in the public's interest that only qualified and faithful candidates be allowed to seek public office. The Court therefore finds that this condition is met by the allegations in the Petition.

iii. Private enforcement is necessary and places a disproportionate financial burden on the Petitioners in relation to their stake in the matter.

Finally, the third condition necessary for the public interest exemption is that "[p]rivate enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter." C.R.S. § 13-20-1101(8)(a)(II)(C). Despite stating that Petitioners have not met this condition,[3] Intervenor Trump does not substantively address this element in his Reply. Here, the Secretary of State has made it clear that she does not intend to evaluate whether the Fourteenth Amendment applies to the Election Code or whether Intervenor Trump is

[3] *See* Reply, p. 8 ("Petitioners fail to meet the second and third criteria.").

qualified for the ballot under the Fourteenth Amendment. As a result, the only way this question will be evaluated is if the Court does so, and the only means by which the Court may evaluate such a question is if it is presented to the Court by a private citizen through the costly endeavor of a lawsuit. California Courts of Appeal have held that if no public entity has sought to enforce the right the plaintiff seeks to vindicate in the lawsuit, "[t]his fact alone is a sufficient basis to conclude the action is 'necessary,' within the meaning of the public interest [exemption]." *Inland Oversight Comm. v. Cty. of San Bernardino*, 190 Cal.Rptr.3d 884, 887–88 (Ct. App. 2015); *see also Tourgeman*, 166 Cal.Rptr.3d at 744 (citing cases). As to the relative financial cost, here the Petitioners do not seek any financial benefit from the lawsuit. As a result, there is clearly a disproportionate financial burden on the Petitioners. *Tourgeman*, 166 Cal.Rptr.3d at 745.

The Petitioners set forth their bases of why the exceptions to the public interest exemption, outlined in C.R.S. § 13-20-1101(8)(a), do not apply. Intervenor Trump does not argue that the exceptions to the statutory exemption apply. As such, the Court declines to consider whether the exceptions to the exemption apply. For the reasons stated above, the Court finds that the Petition satisfies the requirements of the public interest exemption to the anti-SLAPP statute and therefore the Petition is exempt from application of the anti-SLAPP statute.

C. Whether the anti-SLAPP Statute is Compatible with a Claim under C.R.S. § 1-1-113 and C.R.S. § 1-4-1204(4)

C.R.S. § 1-4-1204(4) provides that "any challenge to the listing of any candidate on the presidential primary election ballot must be made in writing and filed with the

district court in accordance with section 1-1-113(1) no later than five days[4] after the filing deadline for candidates." It further requires that a hearing be held within five days of a challenge and that "[t]he district court shall issue findings of fact and conclusions of law no later than forty-eight hours after the hearing." *Id.*

Section 1-1-113(4) states that "[t]he procedure specified in this section shall be the exclusive method for the adjudication of controversies arising from a breach or neglect of duty or other wrongful act that occurs prior to the day of an election." Section 1-1-113(3) provides "[t]he proceedings may be reviewed and finally adjudicated by the supreme court of this state, if either party makes application to the supreme court within three days after the district court proceedings are terminated."

The Colorado Supreme Court in *Frazier v. Williams*, 401 P.3d 541, 544 (Colo. 2017) recognized that "section 1-1-113 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" and that the proceedings generally move at a "breakneck pace."

Petitioners and Respondent Griswold both argue that the expedited procedures in C.R.S. § 1-1-113 and C.R.S. § 1-4-1204 are incompatible with the anti-SLAPP procedures. An anti-SLAPP motion may be made anytime within the first sixty-three days after service of the Complaint. C.R.S. § 13-20-1101(5). A hearing must be held "not

[4] In this case, the Court specifically asked the Parties whether she needed to have a hearing within five days and all Parties stated no. As a result, the Parties waived any statutory requirement for a hearing within five days of the challenge. They requested this so that they had time to properly prepare for a hearing on the merits and engage in motions practice. The Parties have taken advantage of that opportunity and there are currently four dispositive motions before this Court in addition to the anti-SLAPP motion that is the subject of this Order.

more than twenty-eight days after the service of the motion unless the docket conditions of the court require a later hearing." *Id*. Importantly, there is a direct conflict between the appellate procedures in the anti-SLAPP statute and C.R.S. § 1-1-113. The anti-SLAPP statute provides for a right to appeal to the Colorado Court of Appeals after a merits ruling on the anti-SLAPP motion (regardless of whether it is granted or denied), C.R.S. § 13-20-1101(7), whereas C.R.S. § 1-1-113 provides for a direct appeal to the Colorado Supreme Court which must be made within three days of a district court ruling.

The nature of the appellate procedures creates an impasse for the Court. Should the Court decide the merits of the anti-SLAPP motion prior to the merits of the petition, then the matter would be immediately appealable. *See* C.R.S. § 13-20-1101(7). An appeal of a denial of the motion would impose an immediate stay on the matters which were the subject of anti-SLAPP motion. *See Nirschl v. Schiller*, 308 Cal.Rptr.3d 338, 409-10 (Ct. App. 2023). This would prevent this Court from expeditiously resolving the ballot question, undermining the legislative goal of resolving such questions quickly, with certainty, well in advance of the election.

Conversely, if the Court defers ruling on the merits of the anti-SLAPP motion until after it has ruled on the merits of the petition, then the purpose of the anti-SLAPP procedures would go unredeemed. *See NeedBasedApps, LLC v. Robbins Research Int'l, Inc.*, 655 F.App'x. 541, 543 (9th Cir. 2016) (noting that the Ninth Circuit has held that the anti-SLAPP statute functions not only as a defense, but also as an immunity from suit, similar to qualified immunity, such that if a matter is permitted to proceed to trial

the purpose of the protection is "effectively lost"); *see also Muddy Waters, LLC v. Superior Court*, 227 Cal.Rptr.3d 204, 213 (Ct. App. 2021) ("The point of the anti-SLAPP statute is that you have a right *not* to be dragged through the courts because you exercised your constitutional rights.").

Thus, if the Court were to attempt to entertain both the merits of the petition and the anti-SLAPP motion, it would be forced to choose between the necessity of an expeditious resolution under C.R.S. § 1-4-1204(4) or the anti-SLAPP statute's goal of avoiding subjecting litigants to the onus of litigation. The Court does not see how it could accomplish both objectives; as such, the statutes are incompatible.

The Petitioners and Respondent Griswold further argue that applying the anti-SLAPP statute to ballot access challenges would not serve the purpose of the anti-SLAPP statute which is meant to "seek an early end to litigation based, essentially, on the assertion that the plaintiff will ultimately, and inevitably, lose." *Salazar v. Public Trust Institute*, 522 P.3d 242, 247 (Colo. App. 2022). According to the Petitioners and Respondent Griswold, that purpose is not needed because a C.R.S. § 1-1-113 proceeding is even more expedited. Further, one goal of the anti-SLAPP statute is to protect the defendant from the cost of expensive discovery, but there is generally no discovery in a C.R.S. § 1-1-113 matter, and the Court denied Intervenor Trump's request for discovery.

Intervenor Trump argues that the legislature could have exempted C.R.S. § 1-1-113 from the anti-SLAPP statute but it did not. He further argues that "there is more than sufficient time for the Court to address the anti-SLAPP Motion and the underlying issues and for the appellate court to review the Court's decisions." While the Court

agrees that the legislature could have explicitly exempted C.R.S. § 1-1-113 from the anti-SLAPP statute, the fact that it did not is not dispositive. No special statutory proceedings are explicitly exempted from the anti-SLAPP statute's application.

Finally, the Court agrees that the purpose of the anti-SLAPP statute is not served in an expedited election ballot proceeding because under the anti-SLAPP statute regime, the Court determines within the first three months of the case whether it can proceed on the merits. Here, the Court intends to issue a decision on the merits in far less time. Further, the Court disagrees with Intervenor Trump's position that there is time for this Court to rule on the substance of an anti-SLAPP motion and for the Court of Appeals to rule on that motion before the scheduled October 30, 2023 hearing on C.R.S. § 1-1-113. Even if this Court issued a ruling on the first business day after the currently scheduled anti-SLAPP hearing (October 16), that would allow for exactly two weeks for the parties to brief the issue to the Court of Appeals and the Court of Appeals to issue an order prior to the October 30, 2023 hearing. For the foregoing reasons, the Court finds that the anti-SLAPP statute is incompatible with C.R.S. §§ 1-1-113 and 1-4-1204(4).

IV. CONCLUSION

For the above stated reasons, the Court holds that the anti-SLAPP statute does not apply to this matter and for that reason denies the motion. The Court further holds that the previously scheduled anti-SLAPP hearing set for Friday, October 13, will proceed as a status conference to discuss the status of the case and the upcoming trial on the merits commencing on October 30, 2023.

DATED: October 11, 2023.

BY THE COURT:

Sarah B. Wallace
District Court Judge