DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St. Denver, CO 80203	
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.	▲ COURT USE ONLY ▲
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Donald Sherman*
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Citizens for Responsibility and Ethics in Washington
[redacted]

**Pro hac vice* admission pending

RESPONSE TO RESPONDENT TRUMP'S MOTION TO DISMISS

Petitioners respond to *Respondent Donald J. Trump's Motion to Dismiss* ("Motion to Dismiss") and assert that their claims seek to compel compliance with the Colorado Election Code by enjoining the Secretary of State from allowing Trump access to the ballot under Colorado state law due to his ineligibility to hold office. In expedited proceedings under the Election Code, the Court has jurisdiction over claims alleging breaches of duty under the code, such as placing an unqualified candidate on the ballot. Petitioners do not inject a separate constitutional claim in their Petition. Petitioners' claim is ripe and Part 12 of the Election Code provides a cause of action to challenge ballot access to ineligible presidential primary candidates. For all of these reasons, Trump's Motion to Dismiss should be denied.

Standard of Review

A trial court reviews subject matter jurisdiction in a motion to dismiss under C.R.C.P. 12(b)(1) by examining the substance of the claim based on the facts alleged and the relief requested. The plaintiff has the burden of proving jurisdiction, and evidence outside the

pleadings may be considered to resolve a jurisdictional challenge. *City of Aspen v. Kinder Morgan, Inc*., 143 P.3d 1076, 1078 (Colo. App. 2006).

In reviewing a motion to dismiss under C.R.C.P. 12(b)(5), the Court should "accept all factual allegations in the complaint as true and view those allegations in the light most favorable to the plaintiff." *Winston v. Polis*, 2021 COA 90, ¶ 6. A complaint survives a C.R.C.P. 12(b)(5) motion to dismiss when, as here, it pleads sufficient facts that, if taken as true, suggest plausible grounds to support a claim for relief. *Id.*; *see also Warne v. Hall*, 2016 CO 50, ¶¶ 9, 24.

Argument

A. Petitioners assert a valid § 1-1-113 claim, not a constitutional challenge to a statute.

Petitioners properly assert a § 1-1-113 claim by alleging a "breach or neglect of duty or other wrongful act" under the Election Code itself. § 1-1-113(1), C.R.S. (2023). *Williams v. Libertarian Party*, 2017 CO 86, ¶ 4. In *Frazier v. Williams*, 2017 CO 85, the Colorado Supreme Court held that a party may not inject into an expedited election proceeding a First Amendment challenge to the Election Code itself. Here, Petitioners properly bring a claim under § 1-4-1204(4), C.R.S. (2023) using the prescribed § 1-1-113 procedure, asserting that Secretary Griswold is about to commit a breach or neglect of duty or other wrongful act by allowing Respondent Trump—an ineligible candidate—access to the Colorado ballot. Petition, ¶¶ 443–48. Petitioners ask that the Court enjoin Secretary Griswold from violating the Election Code by taking any action that would place an unqualified candidate on the ballot. *Id*. at 103–04, ¶¶ 1–5.

Petitioners do not challenge the constitutionality of the Election Code. They seek to enforce it. To be sure, the Petition implicates federal constitutional questions concerning Trump's eligibility for office. But that is because the Election Code itself charges the Secretary with assessing whether a candidate is qualified for the office they are seeking—including

whether candidates for the presidency meet federal qualifications. Indeed, counsel for Trump embraced this view when he served as Colorado's Secretary of State. *See Hassan v. Colorado*, 495 F. App'x 947, 948 (10th Cir. 2012) (Gorsuch, J.) (upholding then-Secretary Gessler's right to exclude a constitutionally ineligible presidential primary candidate from the ballot); Ex. 1, Letter from Colorado Secretary of State to Abdul K. Hassan, Aug. 12, 2011 ("The Secretary of State is responsible for ensuring that only eligible candidates are placed on the ballot, and *must give effect to* … the qualifications for the office of President as outlined in the U.S. Constitution.") (emphasis added).

Petitioners ask this Court to hear "evidence demonstrating that [Trump's nomination would] fail[] to comply with the Election Code, even if it 'appear[s] to be sufficient' in a paper review," and allege that "evidence calls into question the validity of the paper record on which the Secretary's initial approval [might] appropriately rest[]." *Kuhn v. Williams*, 2018 CO 30M, ¶ 45. If this Court determines that Trump is not qualified to be on the ballot, "the [Secretary] would certainly 'commit a breach or neglect of duty or other wrongful act' to nonetheless certify that candidate to the ballot." *Id.* ¶ 38. Petitioners' claim here is no different from a challenge to placing someone on the presidential election ballot who is under the age of 35, a non-citizen, or who has already served two terms as president. These qualifications also come from the U.S. Constitution. And the Secretary must enforce them under the Election Code. *See infra* Part B.3.

In contrast, in *Frazier,* Ryan Frazier brought a § 1-1-113 action to challenge then-Secretary of State Wayne Williams' determination that he had not collected enough signatures to appear on the Republican primary ballot for the United States Senate. *Frazier*, ¶ 1. That claim was appropriate for adjudication. Frazier also asserted a separate claim under 42 U.S.C. § 1983, arguing that state laws prohibiting non-resident circulators were unconstitutional under the First

Amendment. *Id.*[1] The Supreme Court held that Frazier could not bring his § 1983 claim, which challenged the constitutionality of the Election Code, in his § 1-1-113 action because "section 1-1-113 limits the claims that can be brought to those alleging a breach or neglect of duty or other wrongful act under the Colorado Election Code." *Id.* ¶ 12.

The Court in *Frazier* also noted conflicts between Frazier's constitutional challenge and a § 1-1-113 proceeding. For example, § 1-1-113's remedy of ordering "substantial compliance with the provisions of [the Election Code]" upon a finding of "good cause" is not the proper standard under § 1983, and § 1-1-113 limits appellate review, while § 1983 does not. *Id.* ¶¶ 17–18. Given those "substantial inconsistencies," the Supreme Court concluded that "section 1-1-113 does not provide an appropriate procedure for adjudicating section 1983 claims." *Id*. ¶ 18. Thus, the Court held that a § 1983 claim brought in a § 1-1-113 proceeding should be dismissed without prejudice and refiled in a separate action. *Id*. ¶ 19.

Similarly, in *Kuhn v. Williams*, 2018 CO 30M, the Colorado Supreme Court considered whether the Secretary could certify a candidate for Congress on the 2018 Republican primary ballot. That case again attempted to raise separate statutory claims, asserting a challenge to signature reviews under § 1-1-113, and constitutional claims, asserting that the petition circulator residency requirement in the statute violated the First Amendment. Relying on *Frazier*, the Court summarily dismissed the constitutional challenge to the statute, holding that "to the extent the Lamborn Campaign challenges the constitutionality of the circulator residency requirement . . . this court lacks jurisdiction to address such arguments in a section 1-1-113 proceeding." *Id.* ¶ 55.

[1] Petitioners have attached as **Exhibit 2** a copy of the complaint in *Frazier v. Williams*, for ease the Court's ease of reference. The complaint clearly makes § 1-1-113 claim and a second, separate claim challenging the constitutionality of the statute.

In both *Frazier* and *Kuhn*, the Colorado Supreme Court made clear that it was the petitioners' separate constitutional challenges to a statute that were improper in a § 1-1-113 action. Here, Petitioners do not bring separate constitutional claims, but rather bring their claims under the Election Code. On this point, Trump's Motion to Dismiss fails.[2]

B. Petitioners' claims are ripe and proper for review under §§ 1-4-1204 and 1-1-113.

Petitioners have brought this case to stop the Secretary from taking any action that would allow Trump to access the ballot in Colorado. Petitioners are authorized to make such a challenge under the Colorado Election Code, specifically § 1-4-1204(4) which in turn incorporates the procedures outlined in § 1-1-113. A careful analysis of those statutes and Colorado case law related to candidate qualifications to be on the ballot demonstrate that this matter is ripe for review.

Trump claims the Petition is not ripe because he is not yet a candidate under Colorado law. Trump further argues that § 1-4-1204 does not authorize Petitioners to challenge his eligibility to hold public office and appear on the ballot. Trump's arguments fail because: (1) the Secretary is "about to commit" an "impropriety" or "wrongful act"; (2) Trump is a "candidate" under Colorado law; and (3) candidate qualifications may be challenged under § 1-4-1204 and § 1-1-113.

[2] Trump's argument that "Petitioners cannot use Section 113 procedures against a private individual" (Mot. at 7) is a red herring. Count I of the Petition, Petitioners' claim under §§ 1-4-1204 and 1-1-113, is asserted against *the Secretary alone*. *See* Petition ¶¶ 443–48. While the Petition also sought declaratory relief against both Respondents, *see id.* ¶¶ 449-52, that claim did not purport to seek any § 1-1-113 relief against Trump and, in any event, Petitioners have now acceded to dismissal of that claim. *See infra* Part C.

1. The Secretary is "about to commit" an "impropriety" or "wrongful act."

To begin, much of Trump's motion reflects an unduly narrow reading of § 1-4-1204 that fails to give effect to incorporated provisions of the Election Code. *See* Mot. at 9, 12 (incorrectly asserting that § 1-4-1204 only "imposes three … duties" on the Secretary and "only three … criteria" for ballot access). Trump disregards that statutes must be construed as a whole to give a consistent, harmonious, and sensible effect to all its parts and the entire statutory scheme. *Martinez v. Cont'l Enters.*, 730 P.2d 308, 315 (Colo. 1986). Consequently, the Court must read § 1-4-1204 in context of the entire statutory scheme governing presidential primary elections codified at Colorado Revised Statutes Title 1, article 4, Part 12 ("Part 12"), including provisions that make clear the Secretary's duties in presidential primary elections go far beyond those set out in § 1-4-1204. *See, e.g.*, §§ 1-4-1201, C.R.S. (2023), 1-4-1203(3), C.R.S. (2023), 1-1-107, C.R.S. (2023).

Myopically focusing on § 1-4-1204, Trump incorrectly claims that the only relevant "duty" here is the Secretary's duty to certify candidates to the ballot under § 1-4-1204(1). Mot. at 10. But Part 12 imposes several duties on the Secretary *prior to* certifying any candidate. For example, the Secretary must approve the form for a petition for candidacy and review such petitions if a candidate chooses the option to submit petition signatures under § 1204(1)(c) (discussed in more detail below). If a candidate chooses to submit a five hundred dollar filing fee instead, the Secretary must necessarily accept the fee along with the candidate's statement of intent before certifying the candidate to the ballot. Petitioners assert that any of these actions (or

any other that would allow ballot access to Trump) is an impropriety or wrongful act. *See* Petition, ¶¶ 442, 447.

Moreover, the Election Code anticipates and condones forward-looking challenges to improprieties and wrongful acts by the Secretary. Specifically, the challenge procedure set forth in § 1-1-113—which § 1-4-1204(4) expressly incorporates—does not limit challenges to acts that have already occurred or taken place but also provides relief when an election official is "about to" take an improper or wrongful act. Here, the Secretary is about to take such action.

The Court cannot ignore the term "about to" as used in § 1-1-113. § 2-4-201(1)(b), C.R.S. (2023) ("The entire statute is intended to be effective"). Courts must "give effect to every word, phrase, clause, sentence, and section" and cannot presume language was used "idly" or "with no intent that meaning should be given to its language." *Blue River Defense Comm. v. Town of Silverthorne*, 516 P.2d 452, 454 (Colo. App. 1973). Furthermore, the Colorado Supreme Court has found that "section 113, which clearly comprehends challenges to a broad range of wrongful acts" and "permits the adjudication of controversies arising from any wrongful act that occurs prior to the day of an election, without further limitation." *Carson v. Reiner*, 2016 CO 38, ¶ 17.[3] To give effect to the phrase "about to" as used in § 1-1-113, the Court must interpret it to apply to any improprieties or wrongful acts that would take place soon, in the near future. That is the case here.

To access the presidential primary ballot, a candidate must follow the procedure set in § 1-4-1204. There is no other option to access the ballot. While the statute sets a final deadline for

[3] *Carson v. Reiner* is the last in a trio of cases reviewing candidate qualifications for the ballot in Colorado (*see also Hanlen v. Gessler*, 2014 CO 24, and *Figueroa v. Speers*, 2015 CO 12). The Court laid out a process for harmonizing § 1-1-113 with other statutes in the Election Code. As Petitioners previously stated in a hearing before this Court, due to differences in language, the same analysis harmonizing § 1-4-1204 with § 1-1-113 provides a much broader outcome.

submitting a statement of intent ("not later than eighty-five days before the date of the presidential election primary"), it does not set an *earliest* date by which a candidate may make such a submission. It is an open-ended process. A candidate can choose to submit their statement of intent at any time prior to the final deadline. Consequently, candidates may submit their statements of intent for the March 5, 2024, presidential primary election any time before December 11, 2023. Historically, candidates have taken advantage of that open-ended process to submit their statements of intent in the months prior to the deadline. For example, as noted in the Petition, during the 2020 presidential election, the Colorado Republican Party submitted its presidential party approval of Trump on October 10, 2019, and Trump submitted his statement of intent on November 12, 2019. While the Secretary received it on those dates, the Secretary accepted them on October 17, 2019, and November 18, 2019, respectively. *See* Petition, ¶ 45, n. 21 & 22.

Given the lack of alternatives for Trump to access the ballot, the looming deadline to file paperwork with the Secretary, and the historical practice of the Colorado Republican Party and Trump submitting necessary paperwork early, it is evident that the Secretary will soon be faced with a situation where she will be required to accept those documents for the 2024 presidential primary ballot. That circumstance could be triggered at any time in the next two and half months —including today if either the Colorado Republican Party or Trump chose to submit their paperwork today. Consequently, absent a Court order to the contrary, the Secretary is about to accept those documents and commit an impropriety or wrongful act under §§ 1-1-113 & 1-4-1204.[4]

[4] There is also an urgent public interest in resolving disputes over Trump's eligibility to serve as President "well in advance of the election." *24 for '24: Urgent Recommendations in Law, Media, Politics, and Tech for Fair and Legitimate 2024 U.S. Elections*, Ad Hoc Committee for 2024 Election Fairness and Legitimacy, 11 (Sept. 2023),

2. Trump is currently a presidential primary "candidate."

Trump announced his candidacy for president on November 5, 2022. Petition, ¶ 43. He subsequently filed a Statement of Candidacy for president with the Federal Election Commission ("FEC") on December 8, 2022. *Id*. He has continued to campaign since that time, including raising hundreds of thousands of dollars in Colorado. *Id*. Trump is frequently cited in public opinion polls, by media covering the race, and by his own campaign, as the leading Republican candidate for president.

Under any reasonable interpretation of the term "candidate," Trump is currently a presidential primary "candidate" within the meaning of § 1-4-1204(4). Consequently, a ballot access challenge under that statute to Trump as a candidate is proper.

Part 12 uses the term candidate (or "candidates") 28 times, but does not include a definition in § 1-4-1202, C.R.S. (2023). Additionally, because Colorado has held only one presidential primary since adoption of the statutes in 2016, there has been little opportunity for courts to interpret the term as used in Part 12. However, the term "candidate" has been defined in other statutes and the Colorado Constitution for more than two decades. It has a technical and particular use that can be applied by this Court. Alternatively, the common usage of "candidate" provides an even broader definition if applied by this Court.

a. Trump is a candidate under either a "technical or particular" definition already in use in Colorado law or the plain meaning of the term.

Under § 2-4-101, C.R.S. (2023), "words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." That is the situation in this case. The word "candidate" has had a particular

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https://law.ucla.edu/sites/default/files/PDFs/Safeguarding_Democracy/24_for_24-REPORT-FINAL.pdf.

definition in Colorado election law since Colo. Const. art. XXVIII was adopted in 2002. The Court should use that definition for presidential candidates such as Trump.

Colorado Constitution article XXVIII § 2(2) 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 … " and declares "[a] person is a candidate for election if the person has publicly announced an intention to seek election … and thereafter has received contributions or made expenditures in support of the candidacy." While Trump focuses on the language limiting the definition to state or local offices (Mot. at 11), he ignores the timeline and statutory framework within the Election Code that indicates Part 12 should be interpreted to incorporate the constitutional definition.

To start, the statute specifically contemplates that a candidate takes multiple actions before certification to the ballot. Section 1-4-1204 was adopted fourteen years after Article XXVIII. It dictates how presidential candidates may access the presidential primary ballot. As a part of that process, § 1-4-1204(1)(c) allows candidates the option to submit petitions that "meet the requirements of parts 8 [Nomination of Candidates by Petition] and 9 [Petitions for Candidacy] of this article 4, as applicable." In turn, § 1-4-905.5, C.R.S. (2023) defines "candidate" to have the same meaning found in the Colo. Const. art. XXVIII. This step-by-step reference indicates that Part 12 expanded the particular meaning in common use under the Election Code to presidential candidates. Consequently, as used in Part 12, the term "candidate" should be read to include any person who seeks nomination or election to the office of president to be voted on in this state at any primary election or general election. This definition is neither too broad nor too unworkable to be used. To the contrary, it provides a bright line standard that works in harmony with the rest of the Election Code and the Colorado Constitution. Furthermore, it ensures that the entire statute is effective and leads to a just and reasonable result.

See § 2-4-201(1). Applied here, it is evident that Trump became a candidate in Colorado after he publicly announced his candidacy, filed his Statement of Candidacy with the FEC, and began raising money, including in Colorado.

Even if the Court does not accept that the drafters of Part 12 intended to adopt the particular definition found in the Colorado Constitution, the Court would be bound to construe "candidate" according to its plain meaning. § 2-4-101; *Harding v. Indus. Comm'n*, 515 P.2d 95, 98 (Colo. 1973), *Pearson v. District Court, 18th Jud. Dist.*, 924 P.2d 512, 516 (Colo. 1996). Here, the plain meaning of "candidate" encompasses an even broader scope than the one defined by the Colorado Constitution. "Candidate" is defined alternately in dictionaries as "a person who seeks an office, honor, etc." (Dictionary.com, Accessed 9/20/2023); "a person who is competing to get a job or elected position" (Dictionary.Cambridge.org, Accessed 9/20/2023); "a person who offers himself, or is presented by others, to be elected to an office" (TheLawDictionary.org, Accessed 9/20/2023); or "An individual seeking nomination, election, or appointment to an office, membership, award, or like title or status" (Black's Law Dictionary, Eighth Ed.). Unlike the Colorado constitutional definition, which requires a public announcement and accepting contributions or making expenditures, these definitions do not employ limiting language. Instead, each would apply to anyone seeking an office, whether publicly announced or not and regardless of contributions or expenditures in support of that pursuit. They effectively create a concentric circle that wholly includes the definition contained within the Colorado Constitution. Consequently, Trump would also be considered a candidate under any of these definitions as well.

b. The term "candidate" as used in Part 12 cannot be limited to individuals who file a statement of intent, as Trump argues.

Trump's argument that he is not a "candidate" until "he files his *Major Party Candidate Statement of Intent [f]or Presidential Primary*" (Mot. at 11) ignores the rules of statutory construction, leads to a circular, nonsensical outcome, and is in direct conflict with his own stated position regarding the Secretary. Consequently, the Court should refuse to adopt such a standard.

Review of the statute's structure, language and grammar demonstrate that Trump's definition is unworkable. For example, § 1-4-1204(1) presupposes that individuals must be candidates *prior to* submitting a statement of intent or certification to the ballot. The statute begins by referencing "the candidates to be placed on any presidential ballot" and limits those to "only candidates" who satisfy the requirements of the following subsections. By using this language and setting such requirements, it is apparent that some individuals may not meet the requirements to be placed on the ballot yet would still be considered a candidate for purposes of the statute.

The statute also refers to"candidates" who "[a]re seeking the nomination for president of a political party as a bona fide candidate for president of the United States." § 1-4-1204(1)(b). This language and structure clearly indicate that individuals must be considered candidates prior to seeking their political party's affirmation that they are a "bona fide candidate," prior to submitting a statement of intent, prior to the Secretary accepting the statement of intent, and prior to certification by the Secretary of State. Furthermore, the statute gives "candidates" the option of collecting petition signatures to access the ballot, and specifically references Part 8 ("Nomination of Candidates by Petition") and Part 9 ("Petitions for Candidacy"), which must be done prior to submitting the statement of intent to the Secretary, prior to the Secretary accepting the statement of intent, and prior to the Secretary certifying the candidate to the ballot.

Effectively, Trump's proposed definition would put the horse behind the cart. That could lead to significant problems enforcing the Election Code, especially in the event of a challenge to signatures on candidate petitions. It would be unworkable for a person to be a non-candidate while circulating or contesting an insufficiency in their own candidate petitions. The Court cannot endorse a definition that leads to such unworkable scenarios. *See* § 2-4-201(1)(d) ("In enacting a statute, it is presumed that: … A result feasible of execution is intended").

3. Presidential candidate qualifications may be challenged under Part 12.

Trump asserts that § 1-4-1204 does not authorize Petitioners to challenge his qualifications under the Fourteenth Amendment as a presidential primary candidate because the statute is limited to only "three … criteria," none of which explicitly mention the Fourteenth Amendment. Mot. at 12. Here again, Trump is improperly construing § 1-4-1204 in isolation. He ignores the rest of Part 12, other provisions of the Election Code that Part 12 expressly incorporates, a long line of Colorado case law concerning candidate eligibility challenges, and the Supremacy Clause of the U.S. Constitution. When read in proper context, § 1-4-1204(4) authorizes challenges based on a broad scope of improprieties, wrongful acts, and qualifications established by the U.S. Constitution.

First, § 1-4-1201 dictates that all of Part 12 is meant to "conform to the requirements of federal law," which includes the Fourteenth Amendment to the U.S. Constitution. Second, § 1-4-1203(2)(a) provides that political parties may participate in the presidential primary only if the party has a "qualified candidate" participating. Third, § 1-4-1203(3) requires that a "presidential primary must be conducted in the same manner as any other primary election to the extent statutory provisions governing other primary elections are applicable to this part 12," and provides that the Secretary has "the same powers and shall perform the same duties for presidential primary elections as they provide by law for other primary elections and general

elections." In all "other primary and general elections," only candidates who meet all qualifications to hold office may access the ballot, and the Secretary is subject to suit to prevent her from granting ballot access to unqualified candidates. *See*, *e.g.*, § 1-4-501(1), (3), C.R.S. (2023); *Hanlen*, 2014 CO, ¶ 40; *Kuhn*, 2018 CO, ¶¶ 36–46; *see also* Ex. 1, Letter from Colorado Secretary of State to Abdul K. Hassan, Aug. 12, 2011 ("The Secretary of State is responsible for ensuring that only eligible candidates are placed on the ballot, and must give effect to … the qualifications for the office of President as outlined in the U.S. Constitution."). Through § 1-4-1203(3)'s catch-all incorporation of other provisions of the Election Code, the same principles apply to presidential primary candidates.

Fourth, by incorporating § 1-1-113, § 1-4-1204(4) itself establishes that a broad scope of challenges may be brought under its umbrella. As discussed above, the Colorado Supreme Court has been clear that § 1-1-113 "comprehends challenges to a broad range of wrongful acts" and "permits the adjudication of controversies arising from any wrongful act that occurs prior to the day of an election, without further limitation." *Carson v. Reiner*, 2016 CO 38, ¶ 17. The text of § 1-4-1204(4) confirms the breadth of judicial review contemplated: the statute does not limit the grounds on which a challenge must be based, but rather permits "*any* challenge to the listing of any candidate" based on an "alleged impropriety" and directs that "the district court shall … assess the validity of *all alleged improprieties*." (emphasis added). This open-ended language is consistent with the tradition and practice of Colorado courts adjudicating candidate eligibility challenges de novo. *See Hanlen*, 2014 CO, ¶ 40 ("Under the statutory framework established by the General Assembly, challenges may be brought to a candidate's eligibility at various junctures in the electoral process. … Importantly, at each of these junctures, the election code requires a court, not an election official, to determine the issue of eligibility."); *Kuhn*, 2018 CO, ¶¶ 41, 42

(holding that judicial review under § 1-1-113(1) is "de novo" and "includes the taking of evidence").

Finally, the U.S Constitution itself imposes an affirmative duty on this Court to adjudicate Petitioners' challenge to Trump's qualifications through the ballot access challenge procedures set forth in § 1-4-1204(4) and § 1-1-113. The U.S. Constitution's Supremacy Clause explicitly "charges state courts with a coordinate responsibility to enforce [federal] law according to their regular modes of procedure, unless Congress dictates otherwise." *Consumer Crusade, Inc. v. Affordable Health Care Sols., Inc.*, 121 P.3d 350, 353 (Colo. App. 2005) (quoting *Howlett v. Rose*, 496 U.S. 356, 367 (1990), and *Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820 (1990)); *see* U.S. Const. art. VI cl. 2 ("This Constitution … shall be the supreme Law of the Land; *and the Judges in every State shall be bound thereby*.") (emphasis added). Indeed, "the Constitution … [is] as much [the] law[] in the States as laws passed by the state legislature." *Howlett*, 496 U.S. at 367. It follows that, in accordance with Colorado's "regular mode[] of procedure" for adjudicating candidate eligibility challenges, this Court *must* consider Section 3 of the Fourteenth Amendment in evaluating whether the Secretary granting Trump access to the ballot would be an "impropriety" or a "wrongful act."

Read in its totality, Part 12 does allow Petitioners to bring a challenge to Trump's qualifications as presidential primary candidate.

C. Petitioners accede to dismissal of their second claim for declaratory relief.

While Petitioners maintain that their second claim for declaratory relief is meritorious and that they have standing under relevant Colorado law, they nonetheless accede to dismissal of that claim. They are mindful of the expedited nature of this proceeding and wish to preserve judicial efficiency and an orderly process under such circumstances. Because Petitioners' claim

for declaratory relief was necessarily derived from their underlying state law claims in their first claim for relief under § 1-4-1204(4) and § 1-1-113, they believe it would help streamline arguments to proceed solely under those statutes at this time.

Petitioners note that dismissal of their declaratory relief claim will have a series of knock-on effects. First, dismissal will by operation of law remove Trump from the proceeding as a party. The only remaining claims will be solely against the Secretary. However, it is not the intention of the Petitioners to bar Trump from active participation in this matter. Should Trump choose to remain in the proceeding as an intervenor, Petitioners will not oppose such intervention.

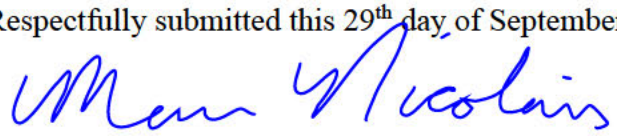
Second, Trump's "Special Motion to Dismiss Pursuant to C.R.S. § 13-20-1101(A)" becomes moot. Because Petitioners are no longer asserting any claims against Trump, his anti-SLAPP motion is no longer before the Court. Petitioners have nevertheless filed their response to Trump's anti-SLAPP motion in an abundance of caution and to provide disclosure of Petitioners' *prima facie* case. But because all claims against Trump have now been dismissed, an anti-SLAPP hearing will no longer be necessary and the Court will not need to make a ruling on that matter.

Conclusion

Because Petitioners have properly asserted a claim under § 1-4-1204(4) and § 1-1-113, and appropriately alleged that Respondent Trump is a candidate, Respondent Trump's Motion to Dismiss Petitioners first claim for relief should be denied.

Because Petitioners have acceded to dismissal of their second claim, for declaratory relief, the Court should dismiss that claim and dismiss Trump as a party to this action.

Respectfully submitted this 29th day of September, 2023.



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CERTIFICATE OF SERVICE

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