DATE FILED: October 28, 2023 4:03 PM

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202	
Petitioners: NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN **v.** **Respondent:** JENA GRISWOLD, in her official capacity as Colorado Secretary of State **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 BRIEF REGARDING STANDARD OF PROOF IN THIS PROCEEDING

This matter comes before the Court on Donald J. Trump's Brief Regarding Standard of Proof in This Proceeding, filed on October 25, 2023. Petitioners' Response to the Brief was filed on October 27, 2023. The Court, having considered the matter, FINDS and ORDERS as follows:

Intervenor Trump argues in his Brief that even though C.R.S. § 1-4-1204(4) specifies that "[t]he party filing the challenge has the burden to sustain the challenge by a preponderance of the evidence," as a matter of due process, this Court should apply the higher standard of clear and convincing evidence.

Intervenor Trump cites *Santosky v. Kramer,* 455 U.S. 745, 754 (1982) for the test to determine whether a standard of proof in a particular proceeding satisfies due

process. The factors are: (1) "the private interests affected by the proceeding;" (2) "the risk of error created by the State's chosen procedure;" and (3) "the countervailing governmental interest supporting use of the challenged procedure." *Id.* The Colorado Supreme Court has also adopted this framework. *People in Interest of A.M.D.*, 648 P.2d 625, 636 (Colo. 1982).

Intervenor Trump argues that applying the *Santosky* test, this Court must apply a clear and convincing standard. First, he argues that the private interests at stake are significant because they implicate the "First and Fourteenth Amendment constitutional rights related to freedom of association." Intervenor Trump points out that the Colorado Supreme Court recognized in *Colorado Libertarian Party v. Sec'y of State of Colorado*, 817 P.2d 998, 1002 (Colo. 1991) that ballot access restrictions burden two fundamental rights: "'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.'"[1] (quoting *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)).

Petitioners respond citing the same cases and argue that under *Santosky,* the threshold inquiry is "the individual interests at stake" and that a heightened standard is only required when a "fundamental liberty interest" is implicated. 455 U.S. at 753-56. Petitioners then point out that many Courts, including Colorado, have held that "candidacy for a public office has not been recognized as a fundamental right." *Colorado Libertarian Party*, 817 P.2d at 1002; *see also Carver v. Dennis*, 104 F.3d 847, 850-51 (6th Cir. 1997); *Supreme v. Kansas State Elections Bd*., No. 18-CV-1182-EFM, 2018 WL 3329864, *5-6, n. 27 (D. Kan. July 6, 2018).

Applying the government interest factor, Intervenor Trump argues the government's interest is served in using a higher standard of proof because the government has no interest in keeping qualified candidates off the ballot and a higher standard of proof would help ensure that does not happen. Petitioners respond that this argument puts the cart before the horse because it assumes that Intervenor Trump is qualified. The real governmental interest, according to Petitioners, is the right of the citizens of Colorado to cast a meaningful ballot—i.e., one for candidates who are constitutionally qualified. The Petitioners also urge the Court to discard Intervenor Trump's repeated references to his popularity because the fact that his supporters want to vote for him does not trump the public interest in only having qualified candidates on the ballot.

Finally, Intervenor Trump argues the risk of erroneous deprivation of his and Colorado voters' rights is heightened due to expedited procedures under C.R.S. § 1-1-113.

---

[1] The right of qualified voters "to cast their votes effectively" cuts against a central theme of Intervenor Trump's position in this case which is that the Congress should decide whether he is qualified after the election has taken place and a hundred million voters have already cast their votes.

This has been a repeated mantra of Intervenor Trump.[2] The Petitioners respond that this is not like the cases described in *Addington v. Texas*, 441 U.S. 418, 427 (1979) or *Santosky*, 455 U.S. at 753 where the risk of error is high because the Defendant was at risk of indefinite solitary confinement based on mental illness or parents were at risk of their parental rights being terminated. According to Petitioners, the injury to Intervenor Trump of not being on a ballot is no greater than that of the public's interest in ensuring that only constitutionally qualified candidates are on the ballot. Petitioners point out that the United States Supreme Court has held that when both parties have "an extremely important, but nevertheless relatively equal, interest in the outcome. . . . it is appropriate that each share roughly equally the risk of an inaccurate factual determination." *Rivera v. Minnich,* 483 U.S. 574, 581 (1987).

Considering all the above and the fact that Intervenor Trump does not point to a single case holding that a heightened standard of proof is required in a ballot access challenge, the Court holds that under *Santosky,* the Court need not look beyond the fact that Intervenor Trump has failed to identify a fundamental liberty interest. While Intervenor Trump clearly has an interest in being on Colorado's ballot, that interest does not rise to the level of a fundamental liberty interest. *Colorado Libertarian Party*, 817 P.2d at 1002. As a result, the Court need not analyze the issue further.

The Court, therefore, will apply the burden of proof prescribed in C.R.S. § 1-4-1204(4).

DATED: October 28, 2023.

BY THE COURT:

Sarah B. Wallace
District Court Judge

[2] The Court notes that at no point during these proceedings has Intervenor Trump articulated what discovery he would need to protect his interests further. Intervenor Trump ignores that while the Court declined to order expert depositions because it held that it would strictly construe C.R.C.P. 26(a)(2) and only allow opinions that were adequately disclosed, it never ruled that it would not consider fact depositions. To the contrary, the Court specifically advised the Parties that after witnesses were disclosed the Court would consider requests for fact depositions. *See* September 22, 2023 Minute Order.