DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Room 256 Denver, CO 80202 720-865-8301	DATE FILED: May 19, 2023 4:45 PM FILING ID: 55844859D92F2 CASE NUMBER: 2022CV33456
Plaintiffs, VET VOICE FOUNDATION, LESLIE DIAZ, RANDY EICHNER, JOHN ERWIN, AMANDA IRETON, and GREGORY WILLIAMS, v. **Defendant,** JENA GRISWOLD, in her official capacity as Secretary of State, and **Proposed Intervenor-Defendants,** VERA ORTEGON and WAYNE WILLIAMS.	▲ COURT USE ONLY ▲
Attorneys for Plaintiffs Matthew P. Gordon* Kevin J. Hamilton* PERKINS COIE LLP 1201 Third Avenue, Suite 4900 Seattle, Washington 98101-3099 Telephone: +1.206.359.8000 Facsimile: +1.206.359.9000 MGordon@perkinscoie.com KHamilton@perkinscoie.com Jessica R. Frenkel, Bar No. 51342 PERKINS COIE LLP 1900 Sixteenth Street, Suite 1400 Denver, Colorado 80202-5255 Telephone: +1.303.291.2300 Facsimile: +1.303.291.2400 JFrenkel@perkinscoie.com **Admitted pro hac vice*	Case No. 2022CV033456 Division: 215 Courtroom:
PLAINTIFFS' OPPOSITION TO MOTION TO INTERVENE	

Plaintiffs Vet Voice Foundation, Leslie Diaz, Randy Eichner, John Erwin, Amanda Ireton, and Gregory Williams (together, "Plaintiffs") submit this opposition to Proposed Intervenor-Defendants Vera Ortegon and Wayne Williams's (together, "Movants") motion to intervene.

INTRODUCTION

Movants' motion should be denied because they fail to demonstrate a significantly protectable interest warranting intervention, much less one that could be impaired by the disposition of this action. Instead, Movants offer only murky descriptions of vague "interests" regarding electoral prospects, election integrity, and upholding the fairness of Colorado's elections. These generalized interests fall far short of the requirements of Colorado Rule of Civil Procedure 24. Indeed, such an overbroad application of Rule 24 would allow virtually any voter to intervene in any case involving election laws.

Moreover, the existing defendant, the Colorado Secretary of State ("Secretary"), who is represented by the Attorney General of Colorado, shares these same interests in the fairness and integrity of the elections and is already vigorously defending signature verification and Colorado's election system more broadly. The Secretary and her counsel have deep experience with Colorado's electoral systems and are well-equipped to defend the signature-matching process at issue. Nothing in Movants' motion—or in the proceedings in this case to date—even remotely suggests that the Secretary is incapable of or unwilling to defend this litigation.

Movants similarly cannot meet their burden for permissive intervention because their participation as parties is not necessary to the adequate representation of the interests they claim, and their presence would clutter the litigation and imperil the expedited litigation schedule necessary to resolve this case (and the inevitable appeals) before the 2024 election. Movants'

intervention would frustrate that effort, delay these proceedings, and inject partisan politics into an otherwise nonpartisan dispute.

Indeed, for all the reasons discussed above, one court recently denied intervention in a substantially similar case. *Vet Voice Foundation v. Hobbs*, No. 22-2-19384-1 SEA, Dkt. No. 40 (King Cnty. Super. Ct. Feb. 1, 2023) (order denying motion to intervene), attached hereto as Exhibit A. This Court should follow suit and deny Movant's motion to intervene.

At most, Movants should be allowed to appear as amicus curiae, which would allow them to offer whatever partisan insight they wish without burdening the Court and the parties with the risk of derailing these proceedings, to the prejudice of the existing parties, and—most importantly—to the fully qualified Colorado voters who will be disenfranchised by its signature-matching process if relief is not timely granted.

PROCEDURAL BACKGROUND

Plaintiffs filed their complaint for declaratory and injunctive relief against the Secretary on December 5, 2022, alleging that Colorado law regarding signature verification of mail-in ballots violates the Colorado Constitution. After meeting and conferring with the Secretary, Plaintiffs moved to amend on February 3, 2023. Then, on February 28, the Secretary moved to dismiss Plaintiffs' proposed amended complaint. The Court denied the Secretary's motion to dismiss on April 17, concluding that the Plaintiffs have standing to bring this case. After meeting and conferring, the parties then filed a proposed case management order and engaged in a case management conference with the Court on May 18. Meanwhile, after sitting on the sidelines for nearly five months, Movants filed their motion to intervene on April 28, 2023.

ARGUMENT

I. Movants are not entitled to intervene as of right.

To warrant intervention as of right, Movants must meet Rule 24(a)(2)'s requirements, but here they fall short on each one. *First*, Movants demonstrate no significantly protectable interest. They identify only highly generalized interests in election fairness and integrity that apply to nearly any citizen in Colorado. *Second*, Movants' ability to protect those interests would not be impeded or impaired by a final disposition in this litigation. Movants rely on nothing more than a generic recitation of theoretical "harms" without any specific connection to the procedure challenged in this litigation. *Third*, any protectable interests are more than adequately represented by the Secretary, who is represented by some of the most highly skilled and experienced lawyers in the state, with deep expertise in Colorado's electoral systems, processes, and issues, and who has made clear that she has vigorously defended those systems in this case and will continue to do so.

A. Legal Standard

Under Rule 24(a), a party can intervene as a matter of right "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." *Id*. As the parties seeking to intervene, Movants bear the burden of showing that all the requirements for intervention have been met. *See Goodall v. Williams*, No. 18-CV-00980-PAB, 2018 WL 2008849, at *4 (D. Colo. Apr. 28, 2018*)*.[1]

[1] Because Colorado Rules of Civil Procedure 24(a) and (b) are substantially similar to Federal Rules of Civil Procedure 24(a) and (b), case law applying the federal rules is instructive here. *Sawyer ex rel. Sawyer v. Kindred Nursing Ctrs. W., LLC*, 225 P.3d 1161, 1165 (Colo. App. 2009) ("When a Colorado rule is similar to a federal rule of civil procedure, the court may look to federal authority for guidance in constructing the Colorado rule."); *see also Feigin v. Alexa Grp., Ltd.*, 19

B. Movants fail to show that they have a significantly protectable interest that warrants intervention.

Movants' scatter-shot list of generalized interests in the election process falls well short of the interests required for intervention as of right. This list includes "ensuring that Colorado's voting procedures are, and appear to be, fair and secure," "safeguarding the procedures by which these elections are run," and "ensuring the legality of the votes cast." Mot. at 5.[2] In other words, Movants' want safe, secure, fair elections—just like everybody else.

These interests are neither specific nor particular to Movants. Nearly every voter in Colorado wants the state's voting procedures to be fair and secure and to ensure that the votes cast are legal. Every citizen, including the Secretary of State, has an interest in fair elections. *See One Wisconsin Inst., Inc. v. Nichol*, 310 F.R.D. 394, 397 (W.D. Wis. 2015) ("asserted interest in fraud-free elections" was not unique to proposed-intervenor Republican legislators and voters and so did not warrant intervention). Nothing about Movants makes *their* interests unique, warranting intervention. Certainly, what Movants argue cannot be the standard for intervention as of right or Rule 24(a) would be meaningless, and *any* voter or group of voters could intervene here or in any other voting rights case.

Movants also fail to assert with any specificity why they support the Colorado Signature-Matching Procedure or what harms to them specifically the law purports to prevent that are not shared by anyone else. This lack of specificity or credibility is precisely why courts reject

P.3d 23, 31 (Colo. 2001) (applying test under Federal Rule of Civil Procedure 24(a) to motion to intervene under Colorado rules).

[2] Movant Wayne Williams also claims an interest, as a candidate for Mayor of Colorado Springs, in "ensuring the votes cast in the upcoming runoff election . . . are secure and that his voters understand and believe that they are secure." *Id*. at 2. That runoff election has now occurred, so any such interest no longer exists.

"generalized" and "undifferentiated" interests in motions to intervene. *See Goodall*, 2018 WL 2008849, at *5 ("It is settled beyond peradventure . . . that an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right.") (quoting *Public Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 205 (1st Cir. 1998)).

C. Movants fail to establish that their purported interests would be impaired by the Court's disposition of this action.

Because Movants fail to demonstrate a direct and specific interest in this action, their ability to protect an interest is not impaired. *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001) ("[T]he question of impairment is not separate from the question of existence of an interest.") (quoting *Nat. Res. Def. Council v. U.S. Nuclear Regul. Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978)); *Am. Ass'n of People With Disabilities v. Herrera*, 257 F.R.D. 236, 252 (D.N.M. 2008) ("Where no protectable interest is present, there can be no impairment of the ability to protect it.").;

Even assuming Movants had somehow demonstrated a protectable interest, they still fail to establish that their ability to protect that interest would be impeded or impaired by the disposition of this litigation. It cannot be that correcting a process that wrongfully disenfranchises fully qualified voters would somehow "impair" Movants' interests. No one has a legitimate, cognizable interest in preventing fully qualified voters from participating in our democracy.

Movants instead again rely on generalized assertions to conclude that their ability to protect their interests will suffer if the Secretary loses or if the matter settles against Movants' position.[3]

[3] Any concerns regarding settling this matter could be addressed by far less burdensome means to intervention, such as notifying Movants of any settlement 48 hours before notifying the Court, giving Movants an opportunity to object before the Court.

Mot. at 5-6; Ortegon Decl. ISO Mot. to Intervene, ¶ 7; Williams Decl. ISO Mot. to Intervene, ¶ 11. For example, Movants contend that their interests will suffer if Vet Voice is successful in this litigation because "electors who cannot rely on the signature verification requirement may not trust Colorado's election procedures, and may ultimately lose interest in voting." Mot. at 6. But Movants offer no support for such speculation, and they ignore that Plaintiffs challenge only one specific procedure, not the many safeguards Colorado has in place to ensure election integrity.

D. The Secretary adequately represents Movants' interests

Movants have also failed to demonstrate that the Secretary of State does not adequately represent their interests. And given that the Secretary shares their interests and is already vigorously defending this case, they cannot. Where movants seek to intervene alongside another party with the same objective, courts "presume representation is adequate." *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regul. Comm'n*, 787 F.3d 1068, 1072 (10th Cir. 2015); *see also Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (applying presumption of adequacy when government acts on behalf of its constituency); *United States v. City of L.A.*, 288 F.3d 391, 401 (9th Cir. 2002); *PEST Comm. v. Miller*, 648 F. Supp. 2d 1202, 1212–14 (D. Nev. 2009). To overcome the presumption that the Secretary adequately represents Movants' interests, Movants must make "a concrete showing of circumstances" of inadequate representation, such as "collusion between the representative and an opposing party," adverse interests between the representative and the movant, or "that the representative failed to represent" the movant's interest. *Bottoms v. Dresser Indus., Inc.*, 797 F.2d 869, 872-73 (10th Cir. 1986). ..

The Secretary of State and Movants share the same "ultimate objective" in maintaining the Signature-Matching Procedure. And the Secretary of State certainly shares the only legitimate

purported interests that Movants offer: fairly conducted elections and the integrity of the election process. *See Common Cause Rhode Island v. Gorbea*, No. 120CV00318MSMLDA, 2020 WL 4365608, at *3 n.5 (D.R.I. July 30, 2020) ("[A] desire to 'protect' their voters from possible election fraud … is the same interest that the defendant agencies are statutorily required to protect.").

As the Chief Elections Officer of the state, Secretary Griswold has a particularly strong desire (and statutory obligation) to protect those interests. Indeed, the Secretary doesn't just have an interest in fair and secure elections—that is a core purpose of her job and the agency she heads: "The basic mission of the Department of State is to collect, secure, and make accessible a wide variety of public records, *ensure the integrity of elections* . . . ." Office of Colorado Secretary of State Overview, https://www.sos.state.co.us/pubs/info_center/about.html, (last visited May 19, 2023).

The Secretary is, moreover, represented by an Attorney General's office that is well-versed in both litigation over election administration and in defending Colorado's election system. Contrary to Movants' assertion that it is unclear whether the Secretary will defend this litigation, her aggressive defense has already been born out in the motion to dismiss.

Movants' argument rest on inaccurate assertions about the Secretary's defense and speculation that defies the history of this case. Movants contend that the Secretary "has not yet revealed how (or whether) she intends to defend the merits of signature matching," and then speculate that the Secretary "might not" defend it as constitutional. Motion at 7. Such speculation is baseless. The Secretary has given every indication that she will vigorously defend the lawfulness of Colorado's signature matching. *See, e.g.,* Reply in Support of Motion to Dismiss ("Since 2014,

Colorado's mail-ballot system has been the gold-standard in the United States. The system works securely because of signature verification"). And to the extent there was any doubt about her position on constitutionality because the issue had not yet been briefed, the Secretary's statement in the recently filed Proposed Case Management Order makes it clear: "Colorado has a legitimate and important interest in protecting election integrity and confidence, and its electoral scheme, including the signature verification program, is the least burdensome way of advancing those interests. Colorado's signature verification requirement does not violate the equal protection rights of Coloradans."

Indeed, if there is one thing this litigation is missing, it is most assuredly *not* a lack of experienced litigation counsel deeply versed in Colorado's electoral systems. Movants point to no unique perspective they could offer, nor have they articulated even a *single argument* they intend to make if intervention is granted, let alone shown that the Secretary is unwilling or incapable of making those arguments herself.

For all these reasons, Movants' motion for intervention as of right under Civil Rule 24(a) should be denied.

II. The Court should deny Movants' motion for permissive intervention.

The Court has discretion to deny permissive intervention and should here because Movants' purported interests are adequately represented by the existing parties and intervention threatens to unduly delay or prejudice the original parties. *Miracle v. Hobbs,* 333 F.R.D. 151, 156 (D. Ariz. 2019); C.R.C.P. 24(b).

A. Legal Standard

Under Rule 24(b), a proposed intervenor may show that their claim or defense has a question of law or fact in common with the main action, and that the intervention will not "unduly delay or prejudice" the adjudication of the parties' rights. C.R.C.P. 24(b)(2). Notably, where an applicant fails to overcome the strong presumption of adequate representation, "the case for permissive intervention disappears." *Nichol*, 310 F.R.D. at 399; *see also United States v. N. Colo. Water Conservancy Dist.*, 251 F.R.D. 590, 601 (D. Colo. Mar.25, 2008) ("Permissive intervention is not . . . appropriate if the applicant's interests are adequately represented by existing parties."); *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 955 (9th Cir. 2009) (district court properly denied permissive intervention where movants were adequately represented by existing parties).

B. The Court should deny permissive intervention.

The Court should exercise its discretion to deny Movants' request for permissive intervention for three reasons. First, as discussed above, Movants have fundamentally failed to show that the Secretary cannot adequately represent their purported interests. *See supra* I(D)).

Second, allowing Movants to intervene will inevitably delay and disrupt the proceedings, increase litigation costs, and prejudice the existing parties and the voting public. *See PEST Comm.*, 648 F. Supp. 2d at 1214 (declining to allow permissive intervention despite movants meeting the threshold factors because their interests were already met by existing parties and "adding [movants] as parties would unnecessarily encumber the litigation"). As discussed with the Court at the Case Management Conference and with the Secretary several times beforehand, Plaintiffs plan to pursue this litigation on an accelerated basis to allow for resolution (including any appeals) prior to the 2024 elections. To that end, Plaintiffs intend to file an early motion for summary judgment in time to ensure resolution before the 2024 election. Allowing Movants to intervene

will slow this case's progress and jeopardize any resolution of the issue in advance of the 2024 election season. *Judicial Watch, Inc. et al. v. Griswold*, No. 20-cv-02992-PAB-KMT, 2021 WL 4272719, at *4-5 (D. Colo. Sept. 21, 2021) ("[P]ermitting intervention 'would only clutter the action unnecessarily,' without adding any corresponding benefit to the litigation.") (citation omitted).

Third, allowing Movants to intervene "will introduce unnecessary partisan politics into an otherwise nonpartisan legal dispute." *Miracle*, 333 F.R.D. at 156 (internal quotations omitted). If Ms. Ortegon, "a high-ranking official responsible for organizing, running, and advancing the interests of the Colorado Republican Party" is allowed to intervene, it is not difficult to imagine that Democratic officials or parties (or other partisan groups, candidates, or entities) would move to intervene—all advancing the same argument as Movants.

Ultimately, Movants are entitled to participate in this litigation if—*and only if*—they establish their right to do so. Because they have failed, the motion should be denied.

III. The Court should limit Movants involvement to amici, if anything.

Given Movants' inability to meet the elements for intervention, the Court should, at most, allow Movants to participate as *amici*. *See Judicial Watch*, 2021 WL 4272719, at *5 (denying proposed intervenors' motion to intervene but considering their arguments as amicus curiae); *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20457, 2020 WL 6589359, at *1 (M.D.N.C. June 30, 2020) (declining to reconsider denial of Republican groups' motion to intervene, but allowing them to file as amici curiae).

Permitting *amici* participation would allow Movants to provide whatever partisan input they wish to contribute, while facilitating the speedy and efficient resolution of the matter and

keeping the floodgates shut on unnecessary third-party participation, particularly since all of Movants' legitimate interests are already fully represented by existing parties.

CONCLUSION

For the reasons described above, Movants fail to meet their burden for intervention. Movants' request should be denied, and at best, they should be allowed to participate as amici.

Dated: May 19, 2023

s/ Matthew P. Gordon

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CERTIFICATE OF SERVICE

I certify that on May 19, 2023, a true and correct copy of the foregoing was served on all parties to this action via the Colorado Court's E-Filing system.

s/ Jessica R. Frenkel
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