DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
Plaintiffs: VET VOICE FOUNDATION, LESLIE DIAZ, RANDY EICHNER, JOHN ERWIN, AMANDA IRETON, and GREGORY WILLIAMS v. **Defendant**: JENA GRISWOLD, in her official capacity as Colorado Secretary of State and **Proposed Intervenor-Defendants**: VERA ORTEGON and WAYNE WILLIAMS.	**▲ COURT USE ONLY▲**
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COLORADO ELECTORS' REPLY IN SUPPORT OF THEIR MOTION TO INTERVENE	

Vet Voice's opposition is silent on Colorado caselaw interpreting Rule 24, fails to respond to a dispositive argument (that a government official cannot adequately represent both public and private interests), and tries to inject new intervention standards that no Colorado court has adopted. Further, Vet Voice's opposition misunderstands the meaning of "permissive" intervention.

Proposed Intervenors have clear and distinct interests in this litigation that may be impaired in the event of an adverse decision. And the Secretary will not—and cannot—adequately represent Proposed Intervenors and their interests. In addition to the interests already discussed, Proposed Intervenors will speak to the many benefits of signature matching. Finally, Proposed Intervenors will not encumber the proceedings in any way. Quite the opposite: Proposed Intervenors' deep knowledge of these issues will aid the Court in its resolution of this litigation.

REPLY IN SUPPORT

I. Proposed Intervenors May Intervene as a Matter of Right.

In opposing intervention as of right, Vet Voice mounts a challenge to all three of Rule 24(a)(2)'s substantive requirements. None of its arguments withstand even the slightest scrutiny.

Proposed Intervenors have an interest in the action. Proposed Intervenors have real and protectable interests in this litigation. Through this case, Vet Voice—an out-of-state organization—seeks to overhaul Colorado's mail-in balloting system by asking the Court to disregard the state's signature-verification process, a critical component that protects the integrity of Colorado's highly regarded elections. Proposed Intervenors' work centers on fair and secure elections. This is apparent from Ms. Ortegon's organizing and voter turnout efforts in statewide races and Mr. Williams's prior and ongoing work administering elections as both an elected and designated election official.

Vet Voice dismisses Proposed Intervenors' interests by rewriting the Rule 24(a)(2) standards and distorting Proposed Intervenors' actual interests. At first, Vet Voice fails to cite a single case applying *Colorado's* Rule 24(a)(2)'s interest standard.[1] This is telling. Colorado courts use a "flexible approach" to evaluate a proposed intervenor's interest, and the existence of

[1] Instead, Vet Voice points to a "substantially similar" Washington case (in which Vet Voice is the plaintiff). The barely-legible handwritten order Vet Voice cites to speaks for itself. Proposed Intervenors also have a pending appeal of that order with the Washington State Court of Appeals, Division I.

an interest must be "determined in a liberal manner." *Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 404 (Colo. 2011) (quoting *Feigin v. Alexa Grp., Ltd.*, 19 P.3d 23, 29 (Colo. 2001)). Contrary to Vet Voice's contention, Colorado courts do not require some "unique," "particular," or "significantly protectable" interest to permit intervention. (Opp'n 5.) In fact, they reject such "'formalistic' constraints" in favor of a standard that serves as "a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Cherokee Metro. Dist.*, 266 P.3d at 404 (quoting *O'Hara Grp. Denver, Ltd. v. Marcor Hous. Sys., Inc.*, 595 P.2d 679, 687 (Colo. 1979)).

Proposed Intervenors' interests in this litigation easily satisfy Colorado's standard. Ms. Ortegon organizes and supports voter registration drives where she and her volunteers, among other things, leverage the security of Colorado's mail-in balloting systems in their pitch to promote registration, voting, and to fundraise. (Ortegon Decl. ¶ 3.) Ms. Ortegon also helps county Republican parties recruit election judges, who, along with their Democratic counterparts, perform the signature-verification process that Vet Voice claims is unconstitutional. (*Id.* ¶ 3.) Ms. Ortegon believes the signature-verification requirement aids her and her volunteers in recruiting election judges. (*Id.* ¶ 6.) For his part, Mr. Williams—Colorado's 38th Secretary of State and a former county clerk and recorder—is intimately familiar with mail-ballot system and the critical role the signature-verification procedures play in the security of elections and the public's confidence in them. (Williams Decl. ¶ 6.) Indeed, Mr. Williams has served, and plans to continue serving, as a designated election official in mail-ballot elections across the state. (*Id.* ¶ 5.) As a designated election official, Mr. Williams earns income coordinating and administering elections consistent with state law, including overseeing adherence to the state's signature-verification processes. (*See id.*) Mr. Williams believes the signature-verification requirement helps him perform his duties as an election official, including ensuring that Colorado elections are conducted lawfully. (*Id.* ¶ 6.)

To be clear, Proposed Intervenors' interests are more concrete than the interests Vet Voice—again, an out-of-state organization with no right to franchise—claimed gave it standing to challenge the state's signature-verification processes. (*See* Vet Voice's Opp'n to Mot. to Dismiss 16–17 (arguing standing based on allegation that Colorado's signature verification and cure processes frustrate "Vet Voice's mission [of] increasing voter participation" and protecting against "disenfranchisement")). If Vet Voice's interests are good enough for standing, Proposed Intervenors' interests must also be sufficient to satisfy Rule 24(a)(2)'s minimal interest standard.

An adverse decision may impair Proposed Intervenors' interests. Absent intervention, Proposed Intervenors' interests would be impaired if Vet Voice manages to convince the Court to strike Colorado's signature-verification system. *See Utah Ass'n of Cntys. v. Clinton*, 255F.3d 1246, 1253 (10th Cir. 2001) (describing standard as "minimal burden" requiring proof "only that impairment of [a] substantial legal interest is possible if intervention is denied"). Signature verification is paramount to the integrity and security of the state's mail-ballot elections. An adverse decision limiting the state's ability, in any way, to enforce its signature-verification system would destroy the delicate balance on which the mail-in balloting system is predicated, from both a legislative and public perspective. And there is a direct nexus between undermining the integrity and security of mail-in balloting and Proposed Intervenors' interests in this action.

Vet Voice is careful to avoid this obvious impairment of interests. Rather, it questions the uniqueness of Proposed Intervenors' interests. (Opp'n 6.) But again, its arguments fail. (*See supra* page 2–3.)

Vet Voice attempts to argue that, even if Intervenors have an interest in Colorado's signature-verification system (they do), it's unworthy of protection because "[n]o one has a legitimate, cognizable interest in preventing fully qualified voters from participating in our democracy." That is not a legal standard – or what anybody is attempting to do in this case. Proposed Intervenors vehemently deny Colorado's signature-verification and cure processes

disenfranchise voters and are prepared to defend the constitutional bona fides of the system. In any event, were the Court to disagree with those arguments, the proper course would not be to preclude Proposed Intervenors from making those arguments. Proposed Intervenors would still be entitled to a chance to advocate for alternatives that adequately protect their interests, including alternatives that preserve election integrity and security. For example, it is difficult to see how Colorado's mail-in balloting system could survive severability analysis or pass constitutional muster without a signature-verification system in place.

At bottom, any relief that would limit the state's use of signature verification for mail-ballot elections would harm Proposed Intervenors, who rely on and promote the implementation of the state's carefully balanced signature-verification processes.

The Secretary does not adequately represent Proposed Intervenors' interests. Vet Voice's primary argument is that intervention is unwarranted because the Secretary and the Attorney General's Office are already defending *the state's* interests in Colorado's signature-verification system. (Opp'n 7.) To make this argument work, Vet Voice invokes the "presumption of adequate representation" under federal law. (*Id.* (collecting cases from courts primarily in the Ninth Circuit).) But Vet Voice's law is stale, if it was ever good in Colorado. The U.S. Supreme Court recently clarified that, while lower courts have adopted varying approaches to analyzing the presumption of adequate representation, this presumption applies only when the interests of the proposed intervenor "overla[p] fully" with an existing party. *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2204 (2022); *see also Callahan v. Brookdale Senior Living Cmtys., Inc.*, 42 F.4th 1013, 1020–21 (9th Cir. 2022) (holding presumption is only triggered where "the proposed intervenor's interest is 'identical to that of one of the present parties'"). Because Proposed Intervenors' interests are not a one-to-one match (as explained below and in Proposed Intervenors' Motion to Intervene at 6–8) with the

Secretary's interest, even if federal law's presumption was somehow applicable (it's not), it would not apply here.

More problematically for Vet Voice, Colorado subscribes to a different standard altogether. *See Cherokee Metro. Dist.*, 266 P.3d at 407. That Vet Voice did not even acknowledge state law is quizzical. Under Colorado law, if the proposed intervenor's interests are not represented, or if a state actor's interests may be adverse to the proposed intervenor's interest, there is no adequate representation. *Id*; *Roosevelt v. Beau Monde Co.*, 384 P.2d 96, 101 (Colo. 1963). And even when a proposed intervenor's interests are "similar to, but not identical with," another party, courts must engage in a "discriminating judgment [of] the circumstances of the particular case" and "intervention ordinarily should be allowed *unless it is clear* … the party will provide adequate representation for the absentee." *Id.* (emphasis added).

Not only are Proposed Intervenors' *private* interests not "identical" to the Secretary's *public* interests, but Proposed Intervenors' interests are not represented at all in the litigation. The incongruity between interests is apparent from the legal arguments Proposed Intervenors intend to raise in response to Vet Voice's claims. For one, Proposed Intervenors will argue the state's signature-verification system is lawful and necessary under the Constitution because it "guard[s] against abuses of the elective franchise." *See* Colo. Const. art. VII, § 11. The Secretary has not shared whether she intends to defend signature matching as a lawful, effective (and minimally burdensome) measure to detect and deter voter fraud and to promote public confidence mail-ballot elections.[2] This argument is distinct from simply defending Colorado's system as the least burdensome way to implement its chosen electoral scheme, of which signature verification is a part. (*See* Opp'n 9 (foretelling the Secretary's defense).) Without intervention by Proposed Intervenors, this important aspect of the signature-verification system

[2] Indeed, the Secretary has advocated for federal legislation that is inconsistent with Colorado's election system. (Williams Decl. ¶ 11.)

will likely go untold. Proposed Intervenors, particularly Mr. Williams, is uniquely positioned to defend the entirety of Colorado's mail-in balloting and explain how the component parts—like signature verification—are necessary to enable the system without destroying election integrity and security. (*See* Williams Decl. ¶ 7 (describing examples when signature verification prevented voter fraud).)

Even if the Secretary does counter the supposed burden of signature verification, she will not do so from the same perspective as Proposed Intervenors. And that perspective can shape how the Court approaches the factual and legal questions at stake. As explained, Proposed Intervenors have personal insight and interest with respect to signature verification's *benefits*, including on voter confidence and corresponding voter turnout. And those benefits—and thus Proposed Intervenors' interest—compound over time. The voters who register or serve as election judges in response to their recruitment efforts see firsthand what makes Colorado's election system best-in-class. Those same volunteers, in turn, share their observations—including the reliability and security of Colorado's election apparatus—with friends, neighbors, coworkers, and, oftentimes, their respective state political parties. It is this latter point that is most crucial. Colorado's signature-verification requirement breeds trust. Trust is the most important part of this process. It allows losing candidates—and those who voted for them—to accept defeat. These benefits, which flow from the signature-matching requirement, are not apparent from the Secretary's approach to this case so far, and thus will not be adequately presented to the court absent Proposed Intervenors.

Further, if this case reaches the remedy phase (it should not), Proposed Intervenors intend to advocate for alternative remedies and considerations that the Secretary is unlikely to offer. For instance, if the Court strikes the state's signature-verification and cure processes, it should also consider whether Colorado's mail-in balloting system can stand alone without signature

verification. It cannot. The only workable alternative would be a return to polling place voting.[3] But due to her varied legitimate political interests, the Secretary is unlikely to advance this alternative.

Vet Voice's argument that Proposed Intervenors' partisan interests will harm an otherwise non-partisan case is as irrelevant as it is difficult to credit. (Opp'n 11.) Proposed Intervenors' partisan affiliation is a feature, not a bug. In a case that attempts to transform mail-balloting elections in Colorado—elections that decide both partisan, nonpartisan, and primary elections—by removing a safeguard that protects against fraud and promotes public confidence in elections, surely all interests (even partisan) should be represented. There are perhaps no two people better positioned to mount a bipartisan defense of Colorado's mail-balloting system than our current (Democratic) and previous (Republican) Secretaries of State.

II. Proposed Intervenors Are Entitled to Permissive Intervention.

Vet Voice resists permissive intervention primarily on the same failed grounds discussed above. The only new argument Vet Voice offers against permissive intervention is that intervention "will inevitably delay and disrupt the proceedings." (Opp'n 10.) According to Vet Voice, it intends to litigate this case "on an accelerated basis" and intervention "will slow the case's progress and jeopardize any resolution … in advance of the 2024 election season." (*Id.* 10–11.) Vet Voice's concerns are moot. The Court has already heard this argument and set case deadlines in its case management order. Consistent with undersigned counsel's representations at the case management conference, Proposed Intervenors have no intention to delay or unduly complicate or duplicate these proceedings and will comply with the deadlines set by the Court. To that end, Proposed Intervenors will serve their initial disclosures (currently due May 30,

[3] Note also that signature matching is not unique to mail-in ballots. *See, e.g.*, C.R.S. § 1-4-908 (petitions). Vet Voice's reasoning for the unconstitutionality of signature matching would implicate these other provisions, and would necessarily render them unconstitutional.

2023), within 48 hours of the Court granting intervention. Likewise, Proposed Intervenors will promptly comply with any other deadlines applicable to the parties that have passed.

Vet Voice's only argument against permissive intervention is based on unfounded speculation and conjecture. Proposed Intervenors offer a critical voice in defense of interests that are not adequately protected. The Court should permit Proposed Intervenors' participation.

CONCLUSION

Accordingly, Proposed Intervenors request an order allowing them to intervene as defendants in this litigation as a matter of right or, in the alternative, permissively.

Respectfully Submitted this 30th day of May, 2023.

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CERTIFICATE OF SERVICE

I certify on May 30, 2023, I electronically filed a true and correct copy of **COLORADO ELECTORS' REPLY IN SUPPORT OF THEIR MOTION TO INTERVENE** with the Clerk via the Colorado Courts E-Filing system, which will send notification of such filing to:

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