

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER,          COLORADO          1437 Bannock Street          Denver, Colorado 80202</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p><b>Plaintiffs:</b> VET VOICE FOUNDATION, LESLIE DIAZ,          RANDY EICHNER, JOHN ERWIN, AMANDA IRETON,          and GREGORY WILLIAMS</p> <p>v.</p> <p><b>Defendant:</b> JENA GRISWOLD, in her official capacity as          Colorado Secretary of State</p> <p>and</p> <p><b>Proposed Intervenor-Defendants:</b> VERA ORTEGON          and WAYNE WILLIAMS.</p>	
<p><b><i>Attorneys for Proposed Intervenor-Defendants</i></b></p> <p>Christopher O. Murray, #39340          Julian R. Ellis, Jr., #47571          Max Porteus, #56405          BROWNSTEIN HYATT FARBER SCHRECK, LLP          410 Seventeenth Street, Suite 2200          Denver, Colorado 80202          Telephone: (303) 223-1100          Fax: (303) 223-1111          Email: cmurray@bhfs.com                jellis@bhfs.com                mporteurus@bhfs.com</p>	
<p><b>COLORADO ELECTORS' MOTION TO INTERVENE</b></p>	

Proposed Intervenor-Defendants Vera Ortegon and Wayne Williams (Proposed Intervenor) respectfully move to intervene as defendants in this matter under Rule 24 of the Colorado Rules of Civil Procedure. In support of the motion, Proposed Intervenor state:

**COLO. R. CIV. P. 121, § 1-15(8) CONFERRAL STATEMENT**

Counsel for Proposed Intervenor attempted to confer in good faith with counsel for Plaintiffs and Defendant Secretary of State Jena Griswold. Neither Plaintiffs nor the Secretary

have stated a position on the motion as of this filing, which is being made in advance of receipt of the Plaintiffs' and Secretary's position to ensure its timeliness.

## INTRODUCTION

Plaintiff Vet Voice Foundation, a Portland, Oregon-based organization with no apparent connection to Colorado has decided that Colorado's election laws—considered the gold standard by some—violate the Colorado Constitution.<sup>1</sup> Its argument? A handful of individuals, who it has deemed its “constituents,” had to cure signature discrepancies on their ballots, something Colorado makes exceedingly easy to do and the principal means by which the state protects the integrity of its widely used, no-excuse-necessary vote-by-mail system.

Proposed Intervenors Vera Ortegon and Wayne Williams seek to intervene in this matter to ensure that Colorado's signature verification requirement is not tossed aside by way of inchoate allegations of “discrimination.” Vera Ortegon is the Colorado GOP National Committeewoman. In that role, Ms. Ortegon is a high-ranking official responsible for organizing, running, and advancing the interests of the Colorado Republican Party. She also advocates on behalf of Republican candidates and encourages Republican voter participation in Colorado elections. She has a strong interest in ensuring not only robust and secure voting procedures, but also protecting procedures that promote voters' confidence in the security of Colorado's elections. Mr. Williams is the former Colorado Secretary of State, where he was intimately involved in administering Colorado's election laws. During his time as Secretary of State, Mr. Williams advocated for and eventually won adoption (by unanimous vote in both chambers of the general assembly) a law requiring that Colorado municipalities use signature verification in local elections conducted by mail ballots. Mr. Williams is currently a candidate for Mayor of Colorado Springs and has a strong interest in ensuring the votes cast in the upcoming runoff

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<sup>1</sup> See, e.g., Molly Bohannon, *Colorado election officials defend 'gold standard' system against attacks*, Coloradoan, Sept. 2, 2022, <https://bit.ly/445bqrr> (“Colorado is regularly recognized for having some of the most inclusive voting policies in the country, from universal mail ballots to allowing felons to vote the day they step out of prison. And expanding election security and accessibility has been a focus for nearly a decade.”).

election (which will be exclusively by mail ballots) are secure and that his voters understand and believe that they are secure. Both Ms. Ortega and Mr. Williams are also, of course, electors with an interest in secure elections, as well as leaders with constituents whose franchise is currently protected by signature verification. Ms. Ortega and Mr. Williams seek to intervene to ensure that Coloradans do not lose the protection of Colorado’s laws and particularly its Constitution, which requires the general assembly to “pass laws to secure the purity of elections, and guard against abuses of the elective franchise.” Colo. Const. art. VII, § 11.

This constitutional command—to ensure the purity and security of elections—can surely be satisfied in many ways. Coloradans have decided that one simple, fair, and effective way to keep elections safe is by verifying mail-ballot signatures. Electors whose signatures do not match must simply “cure” their ballots.

### **PROCEDURAL BACKGROUND**

1. Vet Voice filed its Second Amended Complaint on February 6, 2023.
2. In its Second Amended Complaint, Vet Voice alleges that Colorado’s signature verification requirement is unconstitutional because (1) it places an undue burden on the right to vote; (2) it violates equal protection through disparate treatment of “young, Latino, Black, and Asian voters”; and (3) it violates equal protection through disparate treatment of electors depending on which county they live in.
3. The Secretary filed a Motion to Dismiss for Lack of Standing Under Rule 12(b)(1) on February 28, 2023. The Court denied the Motion to Dismiss on April 17, 2023. This means that under Colo. R. Civ. P. 12(a)(1)(A), the Secretary’s Answer is due by May 1, 2023. This case is not yet at issue.

### **LEGAL STANDARD**

Under Colorado Rule of Civil Procedure 24(a)(2), an applicant must be permitted to intervene in an action as a matter of right if the application is timely and: (a) the applicant claims an interest relating to the property or transaction that is the subject of the action, (b) the applicant

is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (c) the applicant's interest is not adequately represented by existing parties. Colo. R. Civ. P. 24(a)(2).

The Court also may allow permissive intervention if: (1) the request to intervene is timely; (2) "an applicant's claim or defense and the main action have a question of law or fact in common"; and (3) intervention will not unduly delay or prejudice the rights of the original parties. Colo. R. Civ. P. 24(b)(2).

"Rule 24 should be liberally interpreted to allow, whenever possible and compatible with efficiency and due process, issues related to the same transaction to be resolved in the same lawsuit and at the trial court level." *Feigin v. Alexa Grp., Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

## ARGUMENT

### I. Proposed Intervenors Are Entitled to Intervene as a Matter of Right.

Proposed Intervenors meet the Rule 24(a)(2) requirements to intervene as a matter of right. *First*, this motion is timely. Vet Voice filed its Second Amended Complaint on February 6, 2023. The Secretary filed her Motion to Dismiss on February 28, 2023. While this Motion was denied on April 17, 2023, the Secretary has not yet filed her Answer. Thus, the case is not yet at issue, and intervention will not prejudice any party.

*Second*, Proposed Intervenors possess "an interest relating to the property or transaction which is the subject of the action." Colo. R. Civ. P. 24(a)(2). Determining whether a potential intervenor has an interest under Rule 24(a)(2) "should be determined in a liberal manner" and "should not be viewed formalistically." *Feigin*, 19 P.3d at 29. An elector's right "to be [] safeguarded carries with it the corresponding duty on the part of the state to furnish all needed protection. It is a matter of general public concern that, at all elections, such safeguards be afforded." *Mauff v. People*, 52 Colo. 562, 570, 123 P. 101, 103 (1912). Moreover, the right to vote "can be denied by a debasement *or dilution* of the weight of a citizen's vote just as effectively as by wholly prohibiting free exercise of the franchise," *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (emphasis added), and invalid votes necessarily dilute the power of legal ones,

*Gray v. Sanders*, 372 U.S. 368, 380 (1963) (“[T]he right to have one’s vote counted has the same dignity as the right to put a ballot in a box. It can be protected from the diluting effect of illegal ballots.” (internal punctuation omitted)).

Proposed Intervenors here have an interest in protecting their franchise in future elections and they have an interest in protecting the franchise of the many thousands of Coloradans on whose behalf they carry out their work. Ms. Ortegon oversees organizing, supporting, and driving voter turnout in statewide races, and she has an interest in ensuring that Colorado’s voting procedures are, and appear to be, fair and secure. As the former Secretary of State, Mr. Williams has an interest in ensuring the continued strength and security of Colorado’s election procedures. Since his time as Secretary of State, Mr. Williams has served as a designated elections official in various other mail-ballot elections including the 2021 Mesa County Coordinated Election, where he was initially selected by the Mesa County Commissioners and then ultimately approved by the courts upon motion from Secretary Griswold. As someone who administers elections Mr. Williams has an interest in safeguarding the procedures by which these elections are run. Further, as a current and potential future officeholder, Mr. Williams has an interest in ensuring the legality of the votes cast on his—and his opponents’—behalf. Moreover, Mr. Williams has an interest in ensuring that Coloradans’ legal votes are not diluted by invalid votes. All these interests relate to the subject of Vet Voice’s action, which seeks to jettison Colorado’s signature verification requirement, a linchpin of the state’s efforts to protect the integrity of its widely used and highly regarded mail-in balloting system. Declarations of Ms. Ortegon and Mr. Williams in support of this Motion are submitted concurrently herewith.

**Third**, the disposition of this case may impair Proposed Intervenors’ ability to protect their interests. An intervenor’s interest is impaired “if the disposition of the action in which intervention is sought will prevent any future attempts by the applicant to pursue his interest.” *Feigin*, 19 P. 3d at 30; *see also Utah Ass’n of Cnty’s. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001) (The impairment requirement in the analogous Rule 24(a) of the Federal Rules of Civil Procedure “requires the intervenors to demonstrate that the disposition of this action may as a

practical matter impair or impede their ability to protect their interest”). Satisfying this element of the intervention test imposes a “minimal burden,” and requires proof “only that impairment of [a] substantial legal interest is *possible* if intervention is denied.” *Id.* (emphasis added) (quoting *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999)). It is more than possible that denying intervention will impair or impede Proposed Intervenors’ ability to protect their interests in any number of ways. For example, Ms. Ortegon works to increase voter turnout in Colorado, and electors who cannot rely on the signature verification requirement may not trust Colorado’s election procedures, and may ultimately lose interest in voting. Or, take Mr. Williams, who is currently a candidate in an election that will occur solely by mail ballot. Mr. Williams and his supporters have an interest in knowing that their votes will not be diluted by invalid ballots. Moreover, if Vet Voice ultimately prevails, Proposed Intervenors would be unable to protect their interests because claim and issue preclusion would prevent them from defending the constitutional protection that signature verification provides. *See, e.g., Gale v. City and Cnty. of Denver*, 500 P.3d 351, 354 (Colo. 2020); *see also Foster v. Plock*, 394 P.3d 1119, 1123 (Colo. 2017). Further, if Vet Voice prevails, Proposed Intervenors will lose constitutional and statutory protections without having had the opportunity to argue why Colorado’s signature matching is not only beneficial, but constitutional, and should be upheld.

**Fourth**, the Secretary does not adequately represent Proposed Intervenors’ interests. The Colorado Supreme Court has held that the inadequacy requirement was met when “certain persons who will be affected by the outcome of the litigation are not represented at all, or where the interests of [a state actor] and those of intervenors are *or may be* adverse.” *Roosevelt v. Beau Monde Co.*, 384 P.2d 96, 101 (Colo. 1963). *Id.* (emphasis added). The burden of making this showing “should be treated as minimal.” *In re Underground Water Rights*, 304 P.3d 1167, 1175 (Colo. 2013) (quoting *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972) (discussing the analogous Rule 24(a) of the Federal Rules of Civil Procedure)).

Here, there are several reasons to doubt the adequacy of Secretary’s representation of Intervenors’ interests. For example, the Secretary has legitimate political interests with both the

public (which elects her) and the legislature (which regulates her authorities and budgets) that can understandably shade and influence her defense of this relatively political matter. Such interests very well could push her to settle this case on terms that undermine Proposed Intervenors' interests and leave them without adequate legal recourse. They might also influence her to decline to defend on robust constitutional grounds, as Proposed Intervenors seek to do.

Simply put, the Secretary has not yet revealed how (or whether) she intends to defend the merits of signature matching. For example, she has not yet—and ultimately might not—defend signature matching as lawful under the Colorado Constitution because it helps “guard against abuses of the elective franchise.” Colo. Const. art. VII, § 11. Proposed Intervenors intend to invoke this provision to advance a vigorous defense of signature matching as a lawful, effective (and minimally burdensome) measure to detect and deter voter fraud and to promote public confidence in elections generally and mail balloting in particular.

The Secretary—and the Attorney General—as governmental agencies, cannot adequately represent the private interests of Proposed Intervenors. The Tenth Circuit has highlighted the inherent tension that arises when governmental agencies try to protect both public and private interests: “it is on its face impossible for a government agency to carry the task of protecting the public’s interests and the private interests of a prospective intervenor.” *WildEarth Guardians v. Nat’l Park Serv.*, 604 F.3d 1192, 1199 (10th Cir. 2010). This impossible task is “the kind of conflict that satisfies the minimal burden of showing inadequacy of representation.” *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 295 F.3d 1111, 1115 (10th Cir. 2002) (quotation marks and citation omitted)). As a matter of law, the Secretary will not be able to adequately represent both the public and private interests at stake. *Cf. La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 308 (5th Cir. 2022) (noting divergent interests when Secretary of State sought to dismiss on standing grounds rather than on the merits).

Moreover, the Secretary’s interest in enforcing the law is distinct from the Proposed Intervenors’ interest. *See Utah Ass’n of Cnty. v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir. 2001). For example, the Secretary must consider “a broad spectrum of views, many of which

may conflict,” with the Proposed Intervenors’ specific interests. *Id.* at 1256. The Secretary may have to consider the “expense of defending” the current laws, *Clark v. Putnam County*, 168 F.3d 458, 461–62 (11th Cir. 1999); the “social and political divisiveness of the election issue,” *Meek v. Metropolitan Dade County*, 985 F.2d 1471, 1478 (11th Cir. 1993), *abrogated on other grounds by Dillard v. Chilton Cnty. Comm’n*, 495 F.3d 1324 (11th Cir. 2007) (per curiam); and the interests of opposing parties, *In re Sierra Club*, 945 F.2d 776, 779–80 (4th Cir. 1991). Proposed Intervenors will focus on their private interests, which very likely will diverge from the Secretary’s public interests. *See Cleveland Cnty. Ass’n for Gov’t by the People v. Cleveland Cnty. Bd. of Comm’rs*, 142 F.3d 468, 474 (D.C. Cir. 1998) (per curiam). This possibility of inadequate representation is more than enough to justify intervention under Rule 24(a).

Because they satisfy all the factors under Rule 24(a)(2), Proposed Intervenors are entitled to intervene as a matter of right.

## **II. Proposed Intervenors Are Entitled to Permissive Intervention.**

Alternatively, and for the reasons stated above, Proposed Intervenors should be allowed permissive intervention under Rule 24(b) because those requirements are met. **First**, as explained above, the Motion is timely and will not prejudice the existing parties.

**Second**, Proposed Intervenors’ defense has several questions of law and fact in common with this action because Proposed Intervenors seek to uphold the signature matching requirement that Vet Voice attacks and the Secretary of State is tasked with overseeing. Moreover, Proposed Intervenors’ defense involves virtually all the same issues of fact and law as the Secretary’s: Vet Voice’s allegations, the constitutionality of Colorado’s signature matching requirement, and the ultimate remedy, if any, that will result.

## **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. Pursuant to Colo. R. Civ. P. 24(c) a proposed Answer in Intervention is filed concurrently herewith.



Respectfully Submitted this 28th day of April, 2023.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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## CERTIFICATE OF SERVICE

I certify on April 28, 2023, I electronically filed a true and correct copy of **COLORADO ELECTORS' 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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