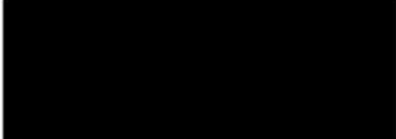


Brian C. Shuck
Law Office of Brian C. Shuck, P.C.



Local Counsel for Wyoming Republican Party

Benjamin Sisney
Nathan Moelker
American Center for Law and Justice



Counsel for Wyoming Republican Party
Application for Admission Pro Hac Vice Pending

IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT
IN AND FOR ALBANY COUNTY, STATE OF WYOMING

TIM NEWCOMB,

Plaintiff,

v.

**CHUCK GRAY, AS SECRETARY OF
STATE OF WYOMING,**

Defendant,

and

DONALD J. TRUMP,

Intervenor,

and

WYOMING REPUBLICAN PARTY,

Intervenor.

Civil Action No. 2023-CV-36100

WYOMING REPUBLICAN PARTY'S MOTION TO INTERVENE

The Wyoming Republican Party (“WRP”), a Wyoming major political party and voluntary nonprofit corporation, respectfully moves the Court, pursuant to WY R. Civ. Proc. Rule 24, to allow it to intervene as of right or, alternatively, to permissibly intervene. Plaintiff objects to the relief sought by this motion. Defendant, Chuck Gray, as Secretary of State of Wyoming, and Intervenor, former President Donald J. Trump, consent to the relief sought by this motion.

1. Plaintiff filed suit against Wyoming Secretary of State Chuck Gray on November 1, 2023, seeking to enjoin the Secretary of State from placing President Trump on the Wyoming ballot for President of the United States and requesting declaratory relief. However, Plaintiff failed to join the WRP, President Trump, or Ms. Lummis in the action.

2. Plaintiff seeks injunctive and declaratory relief and has requested an expedited hearing on the matter. As of the date of this filing, the Court has not scheduled any hearings or scheduling conferences.

3. WRP is a major political party dedicated to advancing the interests of the Republican Party in Wyoming, including representing and protecting the interests of Republican voters. Also, the WRP is the entity that will select at its State Republican Party Convention on April 20, 2024, which Republican presidential candidate will receive Wyoming’s support and votes at the Republican National Committee’s Convention in July of 2024, in lieu of a primary.

4. The WRP manages the Republican Party’s business in Wyoming, including, without limitation, supporting Republican candidates for public office in Wyoming at all levels, coordinating fundraising and election strategy, mobilizing Republican voters to participate in elections, developing and promoting the WRP platform, and communicating the WRP’s position and priorities to voters. This role is clearly implicated in this action.

5. Presidential elections in Wyoming are different from any other elections in Wyoming in that the political parties decide which candidate they will support through its internal party processes and State Convention in lieu of a Presidential Primary election. For this reason, Plaintiff – a Democrat – is seeking to not only interfere with who is listed as the Republican candidate on the Wyoming ballot, but also interfere with which candidate the WRP can make the internal choice to support.

6. Intervenor seeks intervention in this action to protect its rules, processes and procedures and the voter access of its members statewide and any Wyomingite who might vote for any Republican candidate. The claims advanced by the Plaintiff impair the Intervenor's interests and those of all Republican voters. Indeed, the Plaintiff's claims impair the interests of voters everywhere.

7. WY R. Civ. Proc. Rule 24 governs intervention in civil cases.

8. To intervene as of right, the party wishing to intervene must timely move for such intervention, and:

claim[] an interest relating to the property or transaction that is the subject of the action, and [be] so situated that disposing of the action may as a practical matter impair or impeded the movant's ability to protect its interest, unless existing parties adequately represent that interest.

WY R. Civ. Proc. Rule 24(a)(2).

9. Thus, a party seeking to intervene in a civil case pursuant to Rule 24(a)(2) must demonstrate the following four requirements:

- a. A timely application for intervention;
- b. A demonstrated interest relating to the property or transaction that forms the basis of the ongoing action;

- c. A satisfactory showing that the disposition of the action threatens to create a practical impairment or impediment to its ability to protect that interest; and
- d. A satisfactory showing that existing parties inadequately represent its interest.

See State Farm Mut. Auto. Ins. Co. v. Colley, 871 P.2d 191, 194 (Wyo. 1994).

10. “Intervention of right is construed broadly in favor of intervention.” *Concerned Citizens of Spring Creek Ranch v. Tips Up, L.L.C.*, 2008 WY 64, ¶ 14, 185 P.3d 34, 39 (Wyo. 2008). “Because the Wyoming Rules of Civil Procedure are patterned after the Federal Rules of Civil Procedure, federal court interpretations of their rules are highly persuasive in our interpretation of the corresponding Wyoming rules.” *Windham v. Windham*, 2015 WY 61, ¶ 20, 348 P.3d 836, 842 (Wyo. 2015). Courts should follow “a somewhat liberal line in allowing intervention.” *Utah Ass’n of Cnty. v. Clinton*, 255 F.3d 1246, 1249 (10th Cir. 2001) (quotations omitted). “The central concern in deciding whether intervention is proper is the practical effect of the litigation on the applicant for intervention.” *San Juan Cnty. v. United States*, 503 F.3d 1163, 1193 (10th Cir. 2007) (*en banc*).

11. This motion is unquestionably timely. Plaintiff filed this action November 1, 2023, but made no effort to serve the only named Defendant, the Secretary of State, until just days ago. The Defendant has not yet filed a responsive pleading. The Wyoming Attorney General’s Office agreed to accept service on or about November 22, 2023, which then entitled the Secretary of State to sixty days within which to respond. The Court has taken no action on the Complaint or Plaintiff’s request for a hearing. No Court rulings have been entered or substantial pleadings other than the recently served Complaint have been filed.

12. The Wyoming Supreme Court instructs that Rule 24’s timeliness requirement should be evaluated in light of “the totality of the circumstances.” *Colley*, 871 P.2d at 197.

First, the length of time the applicant for intervention knew or reasonably should have known of its interest in the case before the application for leave to intervene

was filed. ... Second, the extent of the prejudice that the existing parties to the litigation may suffer as a result of the applicant's failure to seek intervention as soon as the applicant actually knew or reasonably should have known of its interest in the case. ... Third, the extent of the prejudice that the applicant for intervention may suffer if the application is denied. . . . Fourth, the existence of unusual circumstances militating either for or against a determination that the application is timely.

Id. The Tenth Circuit has further explained that such factors “are a function of intervention itself rather than the timing of the motion to intervene. The prejudice prong of the timeliness inquiry measures prejudice caused by the intervenors’ delay-not by the intervention itself.” *Clinton*, 255 F.3d at 1251 (internal citation omitted). Here, all factors favor the WRP. It moved to intervene promptly after coming to know of the case, less than a month after the case was filed. The existing parties will not suffer any prejudice by the WRP’s participation; if intervention is granted, the legal issues present in this case regarding the meaning of the Fourteenth Amendment will be unaltered, and there will likewise be no change to the practical questions before this Court. As this case should be resolved at the motion to dismiss stage, there would be no additional discovery burden imposed by the addition of the WRP as an additional party. Accordingly, there would be no burden to the Court or to the parties that would result from intervention. In contrast, the WRP would be severely prejudiced by its motion being denied and by being denied the ability to participate in this action and vindicate its rights clearly implicated by this suit.

13. Second, the WRP has a significant, legally protectable interest relating to the transaction that is the subject of this action. While Rule 24(a) does not explicitly specify the nature of the interest required for intervention as a matter of right, the Supreme Court has held that “what is obviously meant . . . is a significantly protectable interest.” *Donaldson v. United States*, 400 U.S. 517, 531 (1971). It must be “a significant interest in the present litigation and not one that was merely contingent or similar to the interest of any member of the public at large.” *Platte County Sch. Dist. v. Basin Elec. Power Coop.*, 638 P.2d 1276, 1279 (Wy 1982). The threshold for finding

the requisite legally protectable interest is not high. The Tenth Circuit has stated that, “[s]uch impairment or impediment need not be ‘of a strictly legal nature,’” and a court “‘may consider any significant legal effect in the applicant’s interest and [we are] not restricted to a rigid res judicata test.’” *Coal. of Ariz./N.M. Cnty. for Stable Econ. Growth v. U.S. Dep’t of Interior*, 100 F.3d 837, 845 (quoting *Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regul. Comm’n*, 578 F.2d 1341, 1345 (10th Cir. 1978)). “[T]he interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967).

14. A United States District Court in this circuit has explained in detail why a Republican Committee has interests justifying intervention in election disputes:

“The RPNM is similar to the environmental organizations who many courts have recognized to have protectable interests in litigation challenging the goals of those organizations. . . . As an organization involved in helping to elect candidates to office, it has a direct and specific interest in the litigation that is not the same general interest in fair elections that is common to all voters. . . . The RPNM, though, is not asserting “indirect and speculative partisan concerns,” but has a concrete interest in this action, and invalidation of the challenged law could directly impact its interest in getting its candidates elected. Its protectable interest in this matter . . . is not in vague, general interests such as preserving confidence in the electoral system. Its protectable interest is a result of running a slate of state-wide candidates.”

Am. Ass’n of People with Disabilities v. Herrera, 257 F.R.D. 236, 258 (D.N.M. 2008). That analysis applies here, as well. The WRP has a specific, protectable interest in ensuring that it will be able to nominate the candidates of its choosing to public office.

15. As the only organization in the State that selects which presidential candidate will receive Wyoming’s support at the Republican National Convention in lieu of a presidential primary, the WRP has a direct and distinct interest in this action in ensuring that the WRP retains its First Amendment right to choose which presidential Republican candidate it supports.

16. Any disenfranchisement of, or interference with, the WRP’s right to choose its preferred candidate – regardless of who that candidate might be – by removing him/her from eligibility to

be listed on the Wyoming ballot would violate the WRP's First Amendment rights of free association in selecting its standard bearer. WRP has a direct, substantial interest in ensuring that the WRP's Republican State Convention delegates can vote for the candidate of their choice at the Wyoming Republican Party State Convention without interference from the Plaintiff. Non-republicans should not decide who the WRP chooses as its Presidential nominee. As the political party with ultimate authority to determine its nominees for office, the WRP has a specific, identifiable interest in ensuring that it can conduct its decisions through determining its party nominees, justifying its intervention in this action. Because Plaintiff's Complaint seeks relief that would deprive the WRP's State Convention delegates of the ability to select their candidate of choice as the WRP's nominee for President, the WRP has a vital interest in the outcome of this case that no other party shares.

17. Third, relatedly, the WRP is situated such that the disposition of this action will impair its ability to protect its interests. The Tenth Circuit has emphasized that "the question of impairment is not separate from the question of existence of an interest." *Nat. Res. Def. Council v. U.S. Nuclear Regul. Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978). Moreover, "the Rule refers to impairment 'as a practical matter.' Thus, the court is not limited to consequences of a strictly legal nature." *Id.* "To satisfy this element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. This burden is minimal." *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997).

18. A decision in this case adverse to President Trump would likewise have an adverse effect on the WRP. Should the WRP wish to designate President Trump as a candidate for President pursuant to its applicable rules and procedures, an adverse decision in this action impairs its ability to do so with res judicata effect, just as much as if it had been a party to the litigation. Moreover, this case has broader consequences on the ability of the WRP to designate or nominate the

candidates of its choosing, pursuant to its own rules and procedures. Accordingly, there is a clear likelihood that the Intervenor's interests would be impaired by this action, justifying intervention as of right.

19. Finally, the WRP's interests in this matter are not represented adequately by the existing parties. "An intervenor's burden is only minimal in that he or she must only show that his or her interest may not be adequately represented." *Concerned Citizens of Spring Creek Ranch*, 185 P.3d at 37. Courts look at:

1) whether the interest of a present party is such that the party will undoubtedly raise the same arguments as the intervenor; 2) whether the present party is capable and willing to make such arguments; and 3) whether the intervenor would offer any necessary elements to the proceedings that the existing parties would neglect.

Id. (quoting *Oregon Envtl. Council v. Oregon Dep't of Envtl. Quality*, 775 F. Supp. 353, 358-59 (D. Or. 1991)). Only "when the objective of the applicant for intervention is *identical* to that of one of the parties" is representation considered to be adequate. *Coal. of Ariz./N.M. Cnty. for Stable Econ. Growth v. U.S. Dep't of Interior*, 100 F.3d 837, 845 (10th Cir. 1996) (quotations omitted) (emphasis added). *See Nat'l Farm Lines v. Interstate Com. Comm'n*, 564 F.2d 381, 383 (10th Cir. 1977) (recognizing the proposed intervenor's "slight" and "minimal" burden of establishing that representation of his interests "may be inadequate").

20. As to the Defendant Secretary of State, this minimal burden is further reduced when it is the government whose ability to adequately represent the potential intervenor's interest is in question. *See Clinton*, 255 F.3d at 1254-55. "[A] presumption of adequate representation arises when an applicant for intervention and an existing party have the same ultimate objective in the litigation," but the Tenth Circuit has "held this presumption rebutted by the fact that the public interest the government is obligated to represent may differ from the would-be intervenor's particular interest." *Id.* at 1255; *see Trbovich v. United Mine Workers*, 404 U.S. 528, 538 (1972)

(holding that a union member's interest was not adequately represented by the Secretary of Labor because the Secretary had a "duty to serve two distinct interests, which are related, but not identical" that of the individual union member and that of the general public); *Nat'l Farm Lines*, 564 F.2d at 384 ("We have here also the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible. The cases correctly hold that this kind of a conflict satisfies the minimal burden of showing inadequacy of representation.").

21. In this case, the interests of the Secretary of State are clearly different from those of the WRP. The Secretary's interest is primarily that of the public generally, in the general and faithful application of the law. The WRP's interest is different in nature: its interest is instead in the maintenance of its own rights, autonomy, procedures, operations, prerogatives, and its members' interests and ballot access. The Secretary's role as a government official, even where properly executed, presents inherently different interests than those of a private litigant, including those of the Intervenor herein.

22. Moreover, only the WRP can adequately represent its own First Amendment claims. The desired relief of the Plaintiff would interfere with the WRP's ability to select the candidates of its choice, and thereby infringe on its constitutional rights. Political parties are free to make their own choices, and courts rightly refuse to deny parties the opportunity to set their own requirements in primary elections. *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000) (statute providing that any voter could vote in a party's primary unconstitutional); *Tashjian v. Republican Party*, 479 U.S. 208 (1986) (statute's requirement that voters in a primary be members of that party unconstitutional). The Supreme Court regularly recognizes the right of a political party to make associational decisions. *Jones*, 530 U.S. at 575 ("In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines

the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views."'). It is only the WRP that can present its arguments regarding its unique First Amendment rights to select its candidates. It has a right to select a "standard bearer" who best represents the party's ideologies and preferences. *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989); see also *Republican Party of State of Conn. v. Tashjian*, 770 F.2d 265, 281 (2nd Cir. 1985); *aff'd*, 479 U.S. 208 (1986). No present party is in a position to make the same arguments of the Intervenor.

23. Likewise, the WRP's interests are not fully represented here by Intervenor President Trump.¹ Intervenor President Trump clearly has his own important and legitimate interests implicated in this action. However, his interests and the WRP's interests are not identical in several material respects. Intervenor WRP's interests encompass its operations and processes in all future elections, in perpetuity, and without regard to whether the Intervenor President Trump is a candidate on the ballot. This alone makes its interests not identical to Intervenor President Trump's

¹ As the Tenth Circuit has explained, even if parties apparently have similar interests and align in that sense, their interests may still diverge for multiple reasons. *Barnes v. Sec. Life of Denver Ins. Co.*, 945 F.3d 1112, 1125 (10th Cir. 2019). As explained in *Barnes*:

To be sure, Jackson and SLD are both undoubtedly interested in defending against, and ultimately defeating, the claims asserted in Barnes's complaint. From there, however, their interests clearly diverge.... Differences in their pertinent administrative practices could prompt different factual defenses and strategies, both as to class certification-related arguments and the merits. Further, and relatedly, SLD's counsel cannot be expected to act in the best interests of both SLD and Jackson. Rather, SLD's counsel will, and should, act only in the best interests of its client, SLD. And, indeed, SLD admits as much in its appellate brief We therefore conclude that Jackson easily satisfies the 'minimal' burden of establishing a 'possibility' that its interests will not be adequately represented by SLD.

Barnes v. Sec. Life of Denver Ins. Co., 945 F.3d 1112, 1125 (10th Cir. 2019). Likewise in this case, Intervenor President Trump's counsel will act in the best interests of President Trump, as they should, while the WRP's counsel will act in its best interests.

interests. *Coal. of Ariz./N.M. Cnty. for Stable Econ. Growth v. U.S. Dep't of Interior*, 100 F.3d 837, 845 (10th Cir. 1996).

24. The Plaintiff's claims thwart the autonomy of the WRP to determine its candidates through the nomination process. If a novel lawsuit like this one, based on the types of conclusory assertions contained in the Complaint, is allowed to proceed or the relief requested by Plaintiff is granted, the Intervenor is materially harmed – and it is harmed long after the 2024 Presidential Elections are decided.

25. The Republican Party of West Virginia moved to intervene in a similar Fourteenth Amendment-based lawsuit and had its motion granted in *Castro v. Warner*, No. 2:23-CV-00598, Doc. 14 (S.D. West Virginia Sept. 28, 2020). In *Castro v. Warner*, John Anthony Castro has filed an action parallel to this action, seeking Defendant President Trump's disqualification from the ballot in West Virginia. Like Intervenor in this matter, the Republican Party of West Virginia moved to intervene in that action in order to represent its interests (undersigned counsel for the American Center for Law and Justice also represent the Republican Party of West Virginia). The court granted the motion to intervene, concluding that the Republican Party of West Virginia established the requirements to intervene as of right under Fourth Circuit precedent. "[W]hile not conflicting, the unidentical interests among the Defendants and the WVRP cannot be ignored. The WVRP, as one of two major political parties in this State, has shown that it has an interest in defending its own rights and testing the constitutionality of the Plaintiff's arguments." (Ex. A at 5). That decision, concerning similarly situated parties, should be highly persuasive to this Court.

26. For these reasons, the WRP asserts it is entitled to intervene in this action as of right under Rule 24(a)(2); therefore, the WRP respectfully requests that this Court grant its motion.

27. Alternatively, even if this Court were to find the WRP ineligible for intervention as of right, it clearly satisfies the requirements for permissive intervention under Rule 24. Rule 24(b)(1)(B),

which concerns “permissive intervention,” states that “the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Courts across the country have regularly granted permissive intervention to political parties in election-related cases. *See Democratic Party of Va. v. Brink*, No. 3:21-cv-756-HEH, 2022 U.S. Dist. LEXIS 19983, at *2 (E.D. Va. Feb. 3, 2022) (“[Intervenor] is one of Virginia’s two major political parties, and it brings a unique perspective on the election laws being challenged and how those laws affect its candidates and voters. Courts often allow the permissive intervention of political parties in actions challenging voting laws for exactly this reason.”) (citation omitted).

28. WY R. Civ. Proc. Rule 24(c) requires an accompanying pleading. This motion to intervene is accompanied by a Motion to Dismiss. While a Motion to Dismiss is not typically considered a pleading, WRP respectfully submits that in this circumstance, where this matter should be resolved before the filing of any responsive pleadings, the accompanying Motion to Dismiss should be considered sufficient as a “pleading” for purposes of Rule 24(c). “The purpose of the rule is not only to inform the court of the grounds upon which intervention is sought, but also to inform parties against whom some right is asserted or relief sought, so they may be heard before the court passes upon the application.” *International Brotherhood of Teamsters, etc. v. Keystone Freight Lines, Inc.*, 123 F.2d 326, 328 (10th Cir. 1941). In this circumstance, that purpose is amply satisfied by the filing of the accompanying motion to dismiss.

29. In the event this Court requires or prefers that Intervenor WRP file an Answer as a “pleading” to accompany this Motion, the Intervenor will of course promptly do so.

30. Plaintiff has advised WRP counsel that he consents to and joins in the WRP’s motions to intervene and for admission pro hac vice, but that he will not consent to WRP’s Motion to Dismiss or voluntarily dismiss his Complaint. WRP’s counsel has also conferred with the Attorney

General's Office and they have advised that Defendant will take no position on the WRP's motions to intervene, to dismiss, and for admission pro hac vice.

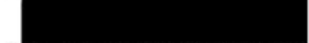
DATED this 12 day of December, 2023.

**RESPECTFULLY SUBMITTED,
WYOMING REPUBLICAN PARTY:**



Brian C. Shuck, WBN 6-2817
Law Office of Brian C. Shuck, P.C.
General Counsel to Wyo. Republican Party


BENJAMIN P. SISNEY*


NATHAN MOELKER*


AMERICAN CENTER
FOR LAW AND JUSTICE

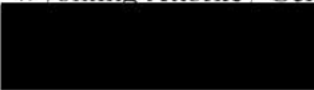

Counsel for Intervenor

*Application for pro hac vice admission forthcoming

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing *Wyoming Republican Party's Motion to Intervene* was properly served upon the following listed persons by depositing the same in First Class U.S. Mail, postage prepaid, on this 12 day of December, 2023, and addressed as follows:

Mr. Timothy K. Newcomb


Ms. Bridget L. Hill
Ms. Brandi Monger
Mr. Mackenzie Williams
Ms. Alysia Goldman
Wyoming Attorney General's Office




Law Office of Brian C. Shuck, P.C.

Brian C. Shuck
Law Office of Brian C. Shuck, P.C.



Local Counsel for Wyoming Republican Party

Benjamin Sisney
Nathan Moelker
American Center for Law and Justice



Counsel for Wyoming Republican Party
Application for Admission Pro Hac Vice Pending

IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT
IN AND FOR ALBANY COUNTY, STATE OF WYOMING

TIM NEWCOMB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2023-CV-36100
	)	
CHUCK GRAY, AS SECRETARY OF	)	
STATE OF WYOMING,	)	
	)	
Defendant,	)	
	)	
And	)	
	)	
DONALD J. TRUMP,	)	
	)	
Intervenor,	)	
	)	
And	)	
	)	
WYOMING REPUBLICAN PARTY,	)	
	)	
Intervenor.	)	

WYOMING REPUBLICAN PARTY'S MOTION TO DISMISS

The Wyoming Republican Party ("WRP") moves to dismiss with prejudice Plaintiff's Complaint for lack of jurisdiction and for failure to state a claim, pursuant to WY R. Civ. Proc. Rule 12(b)(1) and 12(b)(6). Plaintiff objects to the relief sought by this motion. Defendant, Chuck Gray, as Secretary of State of Wyoming, and Intervenor, former President Donald J. Trump, concur in the relief sought by this motion.

This motion to dismiss is submitted on a provisional basis, subject to an order by this Court granting the WRP's Motion to Intervene.

1. There are many reasons why the Plaintiff's Complaint should be dismissed, but the most crucial are these two: (a) He lacks standing to bring his presidential disqualification claim and (b) the Fourteenth Amendment does not provide to him or anyone a self-executing cause of action. Taking the well-pleaded facts in his Complaint as true for purposes of this motion, the Plaintiff's Complaint nonetheless fails on jurisdictional grounds. His unsupported legal conclusions are given no deference or assumption of truth, and fail as a matter of law. *Dowlin v. Dowlin*, 2007 WY 114, ¶ 8, 162 P.3d 1202, 1204 (Wyo. 2007) ("Unlike factual allegations, legal allegations are not given deference at the motion to dismiss stage. Although we are required to assume that all factual allegations contained in the complaint are true, we are not required to give that same deference to legal conclusions.").

I. Plaintiff Newcomb Lacks Standing to Bring His Disqualification Claim.

2. "[T]he standing doctrine holds that a decision-making body should refrain from considering issues in which the litigants have little or no interest in vigorously advocating. A litigant is said to have standing when he has a 'personal stake in the outcome of the controversy.'" *Robinson v. Hamblin*, 914 P.2d 152, 154 (Wyo. 1996) (quoting *Schulthess v. Carollo*, 832 P.2d

552, 556-57 (Wyo. 1992)). “The rules of standing . . . are threshold determinants of the propriety of judicial intervention.” *Warth v. Seldin*, 422 U.S. 490, 517-18 (1975). The party asserting standing, namely, the plaintiff, bears the burden of proving standing. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Courts “do not relax the standing requirement in the context of an action under the Uniform Declaratory Judgments Act.” *Pedro/Aspen, Ltd. v. Bd. of County Comm’rs*, 2004 WY 84, ¶ 9, 94 P.3d 412, 415 (Wyo. 2004). In all cases, “[t]he parties must have existing and genuine, as distinguished from theoretical, rights or interests.” *Id.*

3. Although significant deference is given to the briefing of *pro se* plaintiffs, and to all plaintiffs at the pleading stage, that deference does not overcome the black-letter legal bar against the standing of individual voters who seek to disqualify presidential candidates. Courts have repeatedly, emphatically, and universally rejected on standing grounds this very kind of lawsuit, an attempt to disqualify a presidential candidate by undifferentiated voters.

4. “A generalized interest of all citizens in constitutional governance does not suffice to confer standing on one such citizen.” *Sibley v. Obama*, 866 F. Supp. 2d 17, 20 (D.D.C. 2012); *Hollander v. McCain*, 566 F. Supp. 2d 63, 69 (D.N.H. 2008) (Voters lacked standing to challenge Senator John McCain’s eligibility for President and to exclude him from the presidential primaries, and court stated that “voters have no standing to complain about the participation of an ineligible candidate in an election.”); *Berg v. Obama*, 586 F.3d 234, 239 (3d Cir. 2009) (“Standing has been a consistent barrier to lower courts hearing generalized, undifferentiated claims by voters and citizens.”) (noting various cases in which citizens attempted to challenge a presidential candidate’s eligibility for office but lacked standing); *Jones v. Bush*, 122 F. Supp. 2d 713, 716-18 (N.D. Tex. 2000) (“[P]laintiffs conspicuously fail to demonstrate how they, as opposed to the general voting population, will feel its effects.”); *Drake v. Obama*, 664 F.3d 774, 778, 780-84 (9th Cir. 2011) (group of military personnel, state representatives, political candidates, and individual citizens

lacked standing to challenge President Obama's eligibility to hold office); *Chapman v. Obama*, 719 F. App'x 13 (D.C. Cir. 2018) (per curiam) (same); *Const. Ass'n Inc. by Rombach v. Harris*, No. 20-cv-2379, 2021 WL 4442870, at *2-3 (S.D. Cal. Sept. 28, 2021) (finding plaintiffs lacked standing to challenge Vice President Kamala Harris' eligibility); and *Christie v. President of the United States*, 532 F. App'x 88, 89 (3d Cir. 2013) (plaintiff lacked standing to assert claims that President committed treason).

5. Many courts have specifically concluded that citizens attempting to disqualify individuals from participating in elections or from holding office based on the January 6, 2021, events at the United States Capitol lacked standing. *See, e.g., Stencil v. Johnson*, 605 F. Supp. 3d 1109 (E.D. Wis. 2022). In *Stencil*, the plaintiffs sought a declaratory judgment that three members of Wisconsin's congressional delegation were ineligible to serve under the Fourteenth Amendment because their participation in the January 6 events constituted an insurrection against the United States. *Id.* at 1112-13. Among other things, the court determined that the plaintiffs lacked standing, explaining that

[e]very citizen and voter could claim to have suffered the same injury as the plaintiffs here, which amounts to nothing more than engaging in political advocacy against candidates for office or issue advocacy against the views the candidates hold. The relief that the plaintiffs seek would no more directly and tangibly benefit them than it would the public at large.

Id. at 1117. *See also Hill v. Mastriano*, No. 22-2464, 2022 WL 16707073, at *1 (3d Cir. Nov. 4, 2022) (same); *Schaefer v. United States of America, et al.*, No. 23-cv-1451-JLS (BLM), 2023 WL 6798507, at *2 (S.D. Cal. Oct. 13, 2023) (same).

6. Most recently, in *Castro v. Scanlan*, 2023 U.S. App. LEXIS 31016, *1 (1st Cir. Nov. 23, 2023), the United States Court of Appeals for the First Circuit held that a purported political candidate, Anthony Castro, failed to demonstrate that he had standing to sue to disqualify President Trump from the New Hampshire ballot. "[W]e cannot define a 'direct and current competitor' in

the political context so loosely that a claim of political competitor injury becomes a means by which a federal court entertains a suit based on what is, in effect, a generalized concern that a particular individual is not lawfully entitled to run for office.” *Id.* at * 19. That Court made clear that individuals do not have a right to seek to disqualify presidential candidates based on their generalized concerns about election qualifications.

7. Taking every assertion in the Plaintiff’s Complaint as true, he still nonetheless utterly fails to identify any specific injury that he has experienced, distinct from alleged injury to the public as a whole or separate from any injury he may have experienced as a citizen. As the United States Supreme Court has repeatedly indicated, “when the asserted harm is a ‘generalized grievance’ shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction.” *Warth*, 422 U.S. at 499. The Wyoming Supreme Court has reiterated the same thing: Parties only have standing if they bring a claim that is not “based upon future or contingent interests indistinguishable from that which could be raised by any citizen of Wyoming.” *Jolley v. State Loan & Inv. Bd.*, 2002 WY 7, ¶8, 38 P.3d 1073, 1077 (Wyo. 2002).

8. Plaintiff’s claim of standing is, in full, that “[t]he Plaintiff is a registered Wyoming voter. His interest in seeking the Court to enjoin them from Wyoming’s ballot is justiciable and tangible.” (Complaint at 5). This is a generalized grievance that, if true, would apply to anyone, not a specific claim based on individual conduct or even threatened conduct that he has experienced. Like all the many similar cases dismissed for lack of standing, the Plaintiff’s purported standing is generalized, nonspecific, and not based in any particular injury that he may have experienced. It is a textbook example of a generalized grievance that cannot suffice for standing.

9. Plaintiff cites *Pedro/Aspect, Ltd. v. Board of County Comm'rs*, 94 P. 3d 412, (Wyo. 2004), to purport to establish his standing here. But that case did not by any means suggest that a voter has standing to seek to disqualify a presidential candidate based on a generalized grievance. On

the contrary, it dealt with the standing of a land developer to challenge a zoning regulation. The opinion in no way suggests that individual voters have standing to challenge the qualifications of presidential candidates. Instead, the Court regularly reaffirmed the requirement for an individual injury rather than a generalized grievance to sustain standing, an injury that the Plaintiff has not alleged here. Voters do not have standing to seek to disqualify presidential candidates; a generalized allegation of wrongdoing is insufficient to establish an individual right to sue.

10. Because this case involves a generalized grievance, this Court, in accord with the many, many courts that have dismissed similar lawsuits, should dismiss for lack of standing. Plaintiff simply does not possess standing to preemptively attempt to disqualify President Trump from a potential election, based simply on his status as a citizen. Regardless of any other fact he may allege, Plaintiff simply cannot point to any individual injury he has experienced or any claim that he has made that is specific to himself. This is fatal to his suit.

II. Plaintiff Fails to State a Claim for Which Relief May Be Granted Because the Fourteenth Amendment is Not Self-Executing.

11. Moreover, the Complaint should be dismissed under Rule 12 (b) (6) because Section Three of the Fourteenth Amendment must be enforced by federal legislation – which Congress in fact has done, if at all, through 18 U.S.C. § 2383, a statute under which President Trump has not been charged, let alone convicted. Because the United States Constitution vested Congress with the exclusive authority to enforce the Fourteenth Amendment and Congress has not chosen to do so by creating a cause of action or by giving State Secretaries of State the authority to enforce disqualification, this Court lacks jurisdiction to enforce Section Three.

12. The United States Supreme Court has indicated multiple times that the enforcement power of the Fourteenth Amendment lies only in Congress, and Section Five of the Fourteenth Amendment confers enforcement power on Congress to determine “whether and what legislation is needed to” enforce the Fourteenth Amendment. *Katzenbach v. Morgan*, 384 U.S. 641, 651

(1966). The Supreme Court has consistently indicated that it is Congress alone who is vested with the authority to enforce the Fourteenth Amendment by positive legislation. “It is the power of Congress which has been enlarged[.] Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective.” *Ex parte Va.*, 100 U.S. 339, 345 (1879); *Ownbey v. Morgan*, 256 U.S. 94, 112 (1921) (“[I]t cannot rightly be said that the Fourteenth Amendment furnishes a universal and self-executing remedy.”).

13. In the seminal decision of *Griffin’s Case*, 11 F. Cas. 7, 22 (C.C.D. Va. 1869), Chief Justice Salmon Chase held that only Congress can provide the means of enforcing Section 3. In *Griffin*, Judge Sheffey, a former officer of Confederate Virginia, sentenced Caesar Griffin to two years’ imprisonment for assault with intent to kill. Griffin filed a federal action, arguing that the Fourteenth Amendment automatically acted to remove Judge Sheffey from office, “operating directly, without any intermediate proceeding whatever, upon all persons within the category of prohibition, and as depriving them at once, and absolutely, of all official authority and power.” *Id.* at 23. Chief Justice Chase rejected this theory, holding that the provisions of Section 3 can only be enforced by Congress. “To accomplish this ascertainment and ensure effective results, proceedings, evidence, decisions, and enforcements of decisions, more or less formal, are indispensable; and these can only be provided for by congress.” *Id.* He concluded that:

the intention of the people of the United States, in adopting the fourteenth amendment, was to create a disability, to be removed in proper cases by a two-thirds vote, and to be made operative in other cases by the legislations of congress in its ordinary course. This construction gives certain effect to the undoubted intent of the Amendment to insure the exclusion from office of the designated class of persons, if not relieved from their disabilities, and avoids the manifold evils which must attend the construction insisted upon by the counsel for the petitioner.

Id.; see also *In re Brosnahan*, 18 F. 62, 81 n.73 (C.C.W.D. Mo. 1883) (McCrary, J., concurring) (same).

14. State courts and officials have followed *Griffin*. See, e.g., *Hansen v. Finchem*, 2022 Ariz. Super. LEXIS 5 (Maricopa Cnty. Sup. Ct. 2022) (“given the current state of the law and in accordance with the United States Constitution, Plaintiffs have no private right of action to assert claims under the Disqualification Clause”), *aff’d on other grounds*, 2022 Ariz. LEXIS 168 (Ariz. S. Ct. May 9, 2022); *Rothermel v. Meyerle*, 136 Pa. 250, 254 (1890) (citing *Griffin’s Case*, 11 F. Cas. at 26) (“[I]t has also been held that the Fourteenth Amendment, as indeed is shown by the provision made in its fifth section, did not execute itself.”); *State v. Buckley*, 54 Ala. 599, 616 (Ala. 1875) (Stone, J.) (same); Mark R. Herring, Va. Attorney General to Lee J. Carter, Delegate, Commonwealth of Virginia Opinion No. 21-003, 2021 Va. AG Lexis 1, 2, n.11 (2021) (“[T]he weight of authority appears to be that Section 3 of the Fourteenth Amendment is not ‘self-executing’—put another way, it is possible that Congress may need to pass implementing legislation to make this provision operative.”) (citing *Griffin*).

15. If there were any doubt, it is axiomatic that for a cause of action to exist under federal law, Congress must authorize it. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) (“Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress.”).

As the United States Court of Appeals for the Fourth Circuit explained:

It is true that in the Civil Rights Cases, the Court referred to the Fourteenth Amendment as self-executing, when discussing the Fifteenth, but it is also true that earlier in the opinion, discussing § 1 of the Fourteenth Amendment, the court stated: “in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with power to enforce it by appropriate legislation.” The Civil Rights Cases did not overrule *Ex Parte Virginia*, and any apparent inconsistency between the two just quoted statements in the Civil Rights Cases may be resolved, we think, by reference to the protection the Fourteenth Amendment provided of its own force as a shield under the doctrine of judicial review.

Cale v. Covington, 586 F.2d 311, 316-17 (4th Cir. 1978) (rejecting the argument that there is an implied cause of action under the Fourteenth Amendment because the Amendment is self-executing). The Fourth Circuit highlighted a crucial distinction. In some circumstances the

Fourteenth Amendment may be self-executing as a shield, providing a constitutional defense even if not explicitly provided for by law. But in *no circumstance* is the Fourteenth Amendment a self-executing sword, providing in its own force a self-executing cause of action.¹

16. Section Five of the Fourteenth Amendment gives Congress “the power to enforce, by appropriate legislation, the provisions of this article,” including Section Three. U.S. Const., amend. XIV, § 5. Congress has not exercised that power to authorize private plaintiffs to sue or state officials and courts to adjudicate Section Three; therefore, this determination still belongs exclusively to Congress. Accordingly, regardless of any of his allegations about President Trump, no cause of action is available to the Plaintiff to seek to remove President Trump from the Wyoming ballot.

III. The Plaintiff’s Lack of a Cause of Action to Interfere With a Political Party’s Choices Reflects the First Amendment Constitutional Rights of Political Parties to Freely Associate.

17. The unavailability of a cause of action to the Plaintiff reflects the WRP’s First Amendment rights. The WRP enjoys a constitutionally-protected right of political association. There can be no doubt that freedom of association with others for the common advancement of political beliefs and ideas is protected by the First and Fourteenth Amendments. See *Cousins v. Wigoda*, 419 U.S. 477,

¹ Intervenor further points the Court to the unanimous federal precedent holding that 42 U.S.C. § 1983 provides the exclusive vehicle for bringing constitutional claims against state officials under the Fourteenth Amendment. See, e.g., *Sweat v. City of Fort Smith*, 265 F.3d 692, 696 (8th Cir. 2001) (noting Eighth Circuit precedent holding that § 1983 is an exclusive remedy for constitutional violations); *Cedar-Riverside Associates, Inc. v. City of Minneapolis*, 606 F.2d 254 (8th Cir. 1979) (stating that Congress intended 42 U.S.C. § 1983 as an exclusive remedy for constitutional violations committed by municipalities and that “no reason exists to imply a direct cause of action (for such violations) under the fourteenth amendment.”) See also *Foster v. Michigan*, 573 F. App’x. 377, 391 (6th Cir. 2014) (“[W]e have long held that § 1983 provides the exclusive remedy for constitutional violations.”); *Burns-Toole v. Byrne*, 11 F.3d 1270, 1273 n.3 (5th Cir. 1994) (providing that § 1983 is the appropriate vehicle for asserting violations of constitutional rights); *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992) (“We have previously held that a litigant complaining of a violation of a constitutional right must utilize 42 U.S.C. § 1983.”).

487 (1975). The First Amendment right of free association “is entitled to the same protection from infringement by the States” under the Fourteenth Amendment. *Id.* (quoting *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968)).

18. In *O’Brien v. Brown*, 409 U.S. 1 (1972) the U.S. Supreme Court provided significant guidance in political matters, stating:

No case is cited to us in which any federal court has undertaken to interject itself into the deliberative processes of a national party convention; no holding of this Court up to now gives support for the judicial intervention in the circumstances presented here, involving as they do, relationships of great delicacy that are essentially political in nature. *Cf. Luther v. Borden*, 7 How. 1 (1849). Judicial intervention in this area traditionally has been approached with great caution and restraint. *See Irish v. Democratic Farmer-Labor Party of Minnesota*, 399 F.2d 119 (CA8 1968), *affirming* 287 F.Supp. 794 (Minn. 1968), and cases cited; *Lynch v. Torquato*, 343 F.2d 370 (CA3 1965); *Smith v. State Exec. Comm. of Dem. Party of Ga.*, 288 F.Supp. 371 (ND Ga. 1968). *Cf. Ray v. Blair*, 343 U.S. 214 (1952). It has been understood since our national political parties first came into being as voluntary associations of individuals that the convention itself is the proper forum for determining intra-party disputes as to which delegates shall be seated. Thus, these cases involve claims of the power of the federal judiciary to review actions heretofore thought to lie in the control of the political parties. * * * Vital rights of association guaranteed by the Constitution are also involved. In light of . . . the large public interest in allowing the political processes to function free from judicial supervision, we conclude the judgments of the Court of Appeals must be stayed.

Id. at 4-5.

19. Further, Wyoming law recognizes the authority of political parties to make political decisions and decide which presidential candidate it will support. For example, it indicates that “the state convention of a political party nominating candidates for president and vice-president of the United States shall nominate the party’s candidates for presidential electors and file certificates of nomination for these candidates with the secretary of state.” Wyo. Stat. § 22-19-102(a). Even any vacancies in nominations are “filled by the state central committee of the political party whose vacancy is to be filled.” Wyo. Stat. § 22-19-105. Throughout the political process, it is *not* the role

of the state but of the WRP to make political decisions regarding whether candidates are appropriate representatives of their parties and to decide the qualifications of those candidates. This role belongs to the WRP, as is clearly recognized by Wyoming law.

20. The statutes are not written the way they are by happenstance. Instead, this language reflects the First Amendment Right of Free Association of the WRP. This fundamental constitutional right is an independent reason why the Plaintiff should be denied the opportunity to interfere with the WRP's political choices. Political parties are free to make their own choices for a reason – the First Amendment protects them. The Supreme Court has regularly recognized the fundamental First Amendment right of a political party to make associational decisions. *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000) (“In no area is the political association’s right to exclude more important than in the process of selecting its nominee. That process often determines the party’s positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party’s ambassador to the general electorate in winning it over to the party’s views.”); *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 629 (1996) (“Political parties have a unique role in serving this principle; they exist to advance their members’ shared political beliefs.”).

21. It is the WRP, not the state or the courts, that sets the rules and determines the requirements for Republican decisions. Election law reflects the constitutional right of a political party to freely associate and to exercise its political decisions. One of the ways it does so is by *not* giving individuals or even the state the right to interfere with a political party’s political decisions.

22. There is simply no cause of action available to the Plaintiff to try to obligate the state to do something that would be a violation of the WRP’s First Amendment right of free association, namely, interfering with the internal political processes and decisions of the WRP.

IV. Conclusion

23. For these reasons, along with any additional arguments that may be raised by the Secretary of State or by Intervenor President Donald Trump, the Plaintiff lacks standing and lacks an individual cause of action to enforce the disqualification provision contained within Section Three of the Fourteenth Amendment, in part because the relief he seeks would violate the WRP's First Amendment associational rights. This Court should dismiss the Plaintiff's Complaint with prejudice. It suffers incurable flaws.

24. Plaintiff has advised WRP counsel that he consents to and joins in the WRP's motions to intervene and for admission pro hac vice, but that he will not consent to WRP's Motion to Dismiss or voluntarily dismiss his Complaint. WRP's counsel has also conferred with the Attorney General's Office and they have advised that Defendant will take no position on the WRP's motions to intervene, to dismiss, and for admission pro hac vice.

DATED this 12 day of December, 2023.

**RESPECTFULLY SUBMITTED,
WYOMING REPUBLICAN PARTY:**



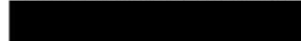
Brian C. Shuck, WBN 6-2817
Law Office of Brian C. Shuck, P.C.
General Counsel to Wyo. Republican Party



BENJAMIN P. SISNEY*



NATHAN MOELKER*



AMERICAN CENTER
FOR LAW AND JUSTICE



Email: bsisney@aclj.org
Counsel for Intervenor
Wyo. Republican Party (pending)

*Application for pro hac vice admission forthcoming

CERTIFICATE OF SERVICE

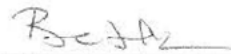
I hereby certify that a true and correct copy of the above and foregoing *Wyoming Republican Party's Motion to Intervene* was properly served upon the following listed persons by depositing the same in First Class U.S. Mail, postage prepaid, on this 12 day of December, 2023, and addressed as follows:

Mr. Timothy K. Newcomb



Ms. Bridget L. Hill
Ms. Brandi Monger
Mr. Mackenzie Williams
Ms. Alysia Goldman
Wyoming Attorney General's Office





Law Office of Brian C. Shuck, P.C.