No. 23-766

In the Supreme Court of the United States

SCOTT DOUGLAS ORA, INDIVIDUALLY, AND IN HIS DERIVATIVE CAPACITY AS TRUSTEE OF THE LEO ROBIN TRUST, ON BEHALF OF THE LEO ROBIN TRUST,

Petitioner,

v.

HOLLYWOOD CHAMBER OF COMMERCE, HOLLYWOOD CHAMBER'S BOARD OF DIRECTORS, HOLLYWOOD WALK OF FAME AND WALK OF FAME COMMITTEE,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of California for the Second Appellate District, Division Two

PETITION FOR REHEARING

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PETITION FOR REHEARING

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Pursuant to Supreme Court Rule 44.2, Petitioner respectfully seeks petition for rehearing of the Court's March 18, 2024 order denying the writ of certiorari. This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented." There are intervening high-profile cases with similar constitutional issues that substantially impact the case at bar—the perfect vehicle for an ordinary person deserving the same due process rights as the rich and powerful.

GROUNDS FOR REHEARING

I. ANALYSIS REGARDING STANDARD OF PROOF AND QUESTIONING BY JUSTICE SAMUEL ALITO DURING ORAL ARGUMENT FOR FORMER PRESIDENT'S TRUMP COLORADO CASE BEFORE THE U.S. SUPREME COURT VALIDATES THE REHEARING OF THIS CASE

A common theme among many of the actions against former President Trump is the standard of proof. In *Trump v. Anderson*, No. 23-719, 601 U.S. ___ (March 4, 2024), the U.S. Supreme Court granted certiorari to a case brought by a group of Colorado electors, where the Supreme Court of the State of Colorado considered whether former President Trump

could appear on the Colorado Republican presidential primary ballot. The electors claimed that Trump was disqualified under Section Three of the Fourteenth Amendment, which prohibits anyone who has engaged in insurrection against the U.S. Constitution from holding office. The U.S. Supreme Court ruled that states cannot remove Trump from ballot for insurrection.

In the oral argument before the Court, the Honorable Justice Samuel Alito skillfully pressed Jason Murray, of Denver, the attorney on behalf of Anderson and respondents on what the U.S. Supreme Court should do if different states adjudicate Trump's conduct differently based on different standards of proof. Justice Alito's questions are directed at procedural due process in an effort to fashion due process in the circumstances. Justice Alito posed this line of questions:

> "Would we have to decide what is appropriate standard of proof?" "Would we give any deference to these findings by state court judges, some of whom may be elected? Would we have to have our own trial?" The attorney Murray responded, "No, your honor, this court takes the evidentiary record as it's given...."

(Reh.App., *infra*, 3a)

In *Anderson v. Griswold*, Case No. 2023CV32577 (Denv. Dist. Ct. Nov. 17, 2023), the Denver District Court found after trial by clear and convincing evidence that Trump engaged in insurrection as those terms are used in Section Three but that Section Three does not apply to the President. Thus, the court denied the petition. Trump's brief regarding standard of proof

for the proceeding in the Denver District Court, Colorado provides bedrock analysis and authorities:

> To determine which standard of proof is appropriate, the Court in *Santosky* [*Santosky v. Kramer*, 455 U.S. 745, 754-755 (1982)] applied a "straight-forward consideration of the factors identified in *Eldridge* [*Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)] to determine whether a particular standard of proof in a particular proceeding satisfies due process." The factors are "the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure." Importantly, "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'" [*Goldberg v. Kelly*, 397 U.S. 254, 262–263 (1970)] "Whether the loss threatened by a particular type of proceeding is sufficiently grave to warrant more than average certainty on the part of the factfinder turns on both the nature of the private interest threatened and the permanency of the threatened loss." [*Id.*]

(Reh.App., *infra*, 9a)

The central issue in many of these cases is "the opportunity to be heard." This is the same issue and class of cases presented in Petitioner's writ including *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), *Rucker v. WCAB* (2000) 82 Cal. App. 4th 151 and *Morgan v. United States*, 298 U.S. 468 (1936). In *Armstrong v.*

Manzo, after the Supreme Court of Texas refused an application for writ of error, the U.S. Supreme Court held: "A fundamental requirement of due process is 'the opportunity to be heard.'" *Grannis v. Ordean*, 234 U.S. 385, 394.

The analysis in *Anderson v. Griswold* regarding whether a particular standard of proof in a particular proceeding satisfies due process validates the reasoning in Petitioner's writ. The test with the factors established in *Eldridge* are stated, "the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure."

This is the identical formula that was set forth in Petitioner's writ but identified as the "trifactor balancing analysis" from Judge Friendly's "Some Kind of Hearing." Henry J. Friendly, *Some Kind of Hearing*, 123 U. PA. L. REV. 1267, 1277-87 (1975), which slightly preceded the decision in *Eldridge*.

The application of the trifactor balancing analysis makes this a compelling case worthy of certiorari. The balancing analysis to determine the type of process due in the initial adjudication would at a minimum mandate for Appellant the opportunity to be heard. The risk of an erroneous deprivation of protected interests through the procedures actually utilized is a low bar to meet given the Appellant was precluded any opportunity to be heard. The rationale for the probable value of added or substitute procedural safeguards is demonstrated more comprehensively in the writ. (Cert., pp. 14-15)

The risk of an erroneous deprivation of Appellant's rights in the proceeding was heightened because the procedures employed by the Court of Appeal were such that it simultaneously served as the factfinder and the reviewing court. The Court of Appeal frustrated the purpose stated in *Goldberg*: "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'" The Appellant's inalienable Fifth, Seventh and Fourteenth Amendment rights were erroneously deprived.

The court in *Conservatorship of O.B.* (2020) 9 Cal. 5th 989, 1012 held that "logic, policy, and precedent require the appellate court to account for the heightened standard of proof. Logically, whether evidence is "of ponderable legal significance" cannot be properly evaluated without accounting for a heightened standard of proof that applied in the trial court...." The Court of Appeal thwarted the stated objective "for a heightened standard of proof that applied in the trial court." What's clear from the landmark case *Conservatorship of O.B.* is that the role of the Court of Appeal is one of review of the trial court's finding. Thus, the Court of Appeal demonstrably violated the due process rights of Appellant by simultaneously serving as the factfinder and the reviewing court. (Cert., pp. 32-33)

This begs the question on how should've the Court of Appeal proceeded since there was never any finding by the trial court on the waiver of the conditions precedent by the Hollywood Chamber. "Once it is determined that due process applies, the question remains what process is due. It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for

such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471 (1972). (Cert., p. 33)

Like in *Trump v. Anderson* where Justice Alito's questions are targeted at procedural due process in an effort to craft due process in the circumstances, the Court of Appeal here should've addressed due process with the same due diligence and remanded the case back to the trial court with instructions to make a determination as the factfinder whether or not Plaintiff met the "clear and convincing" standard.

Whether it be the name Trump on a ballot as in *Anderson v. Griswold* or a star with Robin's name on the Hollywood Walk of Fame, they have constitutionally guaranteed rights. "Procedural due process imposes constraints on court decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge.*

II. THE NEWS THAT MARTHA REEVES APPEARED TO BE GRANTED A WAIVER ON HER JOURNEY TO GET HER STAR ON THE HOLLYWOOD WALK OF FAME SUPPORTS THE REHEARING OF THIS CASE

The news that Martha Reeves appeared to be granted a waiver on her journey to get her star on the Hollywood Walk of Fame is a comparable situation to the waiver in the instant case. However, unlike here, the Hollywood Chamber is honoring the waiver granted to Reeves so that she had her star installed on March 27, 2024 on the Hollywood Walk of Fame. (Reh.App. 21a) The circumstances of Reeves' star was reported by numerous news outlets including Business Insider on Mar 26, 2023 by Taylor Ardrey in her news story

Singer Martha Reeves of Motown's Martha and the Vandellas is fundraising to get her star on the Hollywood Walk of Fame — and has 3 months to secure her spot:

> Martha Reeves of the famed Motown girl group Martha and the Vandellas is fundraising to get her star on the illustrious Hollywood Walk of Fame—and has just under three months left to get it done.
>
> The singer... was tapped to receive a star on the Hollywood Walk of Fame in 2021 after being nominated by an ex-manager, The Detroit Free Press reported.
>
> During that time, she was under the impression that the manager was going to handle the cost of the star and that her induction ceremony would be in 2022, per the report.
>
> The cost of the star is $55,000, according to the Hollywood Walk of Fame's website, which is used for the star installation and maintenance. Now in a bind, and under new management, her team created a fundraiser to help gather enough money by June to secure her spot for next year, according to the Free Press.
>
> "If we do not make a sizeable indentation to our goal, it is likely that Martha's Hollywood Star selection will be withdrawn, and we will have to start the nomination process all over again (which could take several years)," Reeves' current manager, Chris Roe, wrote on the campaign page. "Since she was nominated and chosen in 2021, as part of the Class of 2022, we have very little time. There is a

> time limit to receive your star after being selected."...
>
> "Martha's former representation got in over their heads on this," Roe told the Free Press. "They didn't realize how hard it would be and wasted a year of fundraising time. Now we're down to the wire."

(Reh.App., *infra*, 18a-20a).

With this background on the star awarded to Reeves on the Hollywood Walk of Fame and the subsequent fundraising efforts to pay for the star, here is an explanation of the waiver. The conditions precedent stated in the Hollywood Walk of Fame Nomination for Selection provide that "1. It is understood that the cost of installing a star in the Walk of Fame upon approval is... [$55,000]** and the sponsor of the nominee accepts the responsibility for arranging for payment to the Hollywood Historic Trust..." (Cert., App.135a)

Based on the terms of the contract, the $55,000 was due "upon approval" at the time the star was awarded back in June of 2021. According to Business Insider, "Now in a bind, and under new management, her team created a fundraiser to help gather enough money by June [2023] to secure her spot for next year [2024], according to the [Detroit] Free Press." (*See supra* on p.7).

This means that the payment came in 2023, approximately two years after it was due in 2021. The only way this could occur is with a waiver by the Hollywood Chamber to allow the payment to be after the time stated in the terms of the contract.

The waiver of performance of conditions precedent for Robin's star by the Hollywood Chamber is comparable to that with the waiver of performance of condition precedent for Reeves' star by the Hollywood Chamber. In the case of Reeves' star, the Hollywood Chamber granted a waiver when the new sponsor needed more time beyond the due date in the contract for fundraising to pay for the star. In the case of Robin's star, the Hollywood Chamber granted a waiver to Petitioner, the new sponsor, when the former sponsors, actor Bob Hope and Mrs. Robin, either was not informed or died.

Plaintiff alleged in the FAC the relinquishment of the conditions precedent by the Hollywood Chamber in allegation no. 72:

> On July 17, 2018, Ms. Martinez sent Ora an email where she stipulated, "From what I gather you are now willing to have the star dedication happen with a ceremony?? There is the sponsorship fee involved of [$]40,000.00. Please let me know when you would like to do the ceremony and once you give me a date we can move forward... Please let me know if you do want to move forward." (3 CT 749.).

(Cert., pp. 29-30)

Appellant should have prevailed because he met the burden of proof standard that there was a "waiver of a right... by clear and convincing evidence." (*City of Ukiah v. Fones* (1966) 64 Cal.2d 104, 107-108).

Further, Appellant should succeed as matter of law under *DuBeck v. California Physicians' Service* (2015) 234 Cal.App.4th 1254, 1265, which held "Waiver

is ordinarily a question for the trier of fact; '[h]owever, where there are no disputed facts and only one reasonable inference may be drawn, the issue can be determined as a matter of law.'"

If there are disputed facts and different reasonable inferences may be drawn, then a jury is the trier of fact, not the Court of Appeal. It would be up to the trier of fact to consider all of the facts including Reeves being granted a waiver for her star on the Hollywood Walk of Fame.

Whether a star is awarded to a recording artist from Motown or a songwriter from Tin Pan Alley, they have constitutionally guaranteed rights under the Seventh and Fourteenth Amendments. The judicial system demands "equal protection of the laws." The Hollywood Chamber honored the waiver granted to Reeves so that she received her star on the Hollywood Walk of Fame. The Hollywood Chamber failed to honor the waiver granted to Robin so that he never received his star on the Hollywood Walk of Fame. The Court of Appeal's decision egregiously violated Petitioner's due process rights and sacred right to a jury trial.

III. THE NEW IMPORTANT DEVELOPMENTS THAT FOLLOWED THE PETITIONER'S WRIT OF CERTIORARI TIP THE BALANCE SQUARELY TO GRANT A PETITION FOR REHEARING AND WRIT OF CERTIORARI TO PROTECT THE STATEWIDE AND NATIONWIDE HISTORICAL AND CULTURAL INTERESTS

The new important developments that followed Petitioner's writ of certiorari warrant consideration for granting a rehearing given the high-stakes which

impact the statewide and nationwide historical and cultural interests.

Before the new developments, a sum up of where things stand. During the trial court proceedings, Plaintiff repeatedly argued the absolute waiver of performance of conditions precedent by the Hollywood Chamber. The waiver issue was never fleshed out earlier because the trial court failed to acknowledge, overlooked and/or avoided this salient legal argument. The Hollywood Chamber ducked the waiver issue until its response in the Court of Appeal with a terse two sentence statement with no analysis of the facts and no authorities cited to support its conclusion.

The California courts have been carrying the water for their elitist-municipal-brethren Hollywood Chamber and trampled the due process rights of Petitioner. The waiver issue had become the firewall of the Court of Appeal after giving up on the contract issues relied upon by the trial court and Hollywood Chamber.

The only way the Court of Appeal had to champion its cause and win the waiver issue was to flagrantly torpedo the Petitioner's proven factual allegations without a hearing at the eleventh hour; but the court did indeed lose its way. In *Armstrong v. Manzo*, the U.S. Supreme Court held: "A fundamental requirement of due process is "the opportunity to be heard." Petitioner was never allowed the opportunity to be heard—truly anathema to the rule of law.

Petitioner has presented new developments that tip the balance squarely for granting a petition for rehearing. The analysis in *Anderson v. Griswold* regarding whether a standard of proof applied in a

proceeding satisfies due process lends support to the reasoning in Petitioner's writ. Further, Justice Alito's questions in *Trump v. Anderson* in an effort to craft due process in that case should be a guidepost how the case here should be managed. Finally, the news that Reeves was granted a waiver to get her star is relevant context for the trier of fact to consider in determining whether Petitioner met the burden of proof "clear and convincing" standard to prove the Hollywood Chamber waived performance of the conditions precedent for the star awarded to Robin.

Given the new developments, the case here is an exceptional candidate for grant, vacate, and remand (GVR) on rehearing. The basis of this GVR is not triggered by a new Supreme Court decision. However, the same general principles could be applied to the reasoning. What was reasoned in *Trump v. Anderson* and *Anderson v. Griswold* applies *mutatis mutandis* to the case at bar. The question in *Anderson v. Griswold* whether a standard of proof applied in a proceeding satisfies due process presents a similar constitutional question to the one raised here. Granting rehearing and GVR in light of the reasoning in these cases justifies consideration here.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Honorable Court to grant rehearing and the petition for a writ of certiorari and, alternatively, a GVR to protect the statewide and nationwide historical and cultural interests.

Executed in Sherman Oaks, California

Respectfully submitted,

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April 4, 2024

RULE 44.2 CERTIFICATE

I hereby certify, under penalty of perjury, that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Scott Douglas Ora
Petitioner

April 4, 2024

REHEARING APPENDIX
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APPENDIX A:
A TRANSCRIPT (EXCERPT) OF QUESTIONING BY JUSTICE SAMUEL ALITO DURING ORAL ARGUMENT IN THE SUPREME COURT OF THE UNITED STATES, *TRUMP v. ANDERSON*, CASE NO. 23-719 (FEBRUARY 8, 2024)

SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP,

Petitioner,

v.

NORMA ANDERSON, ET AL.,

Respondents.

No. 23-719
Washington, D.C.
Thursday, February 8, 2024

Pages: 1 through 140
Place: Washington, D.C.
Date: February 8, 2024

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IN THE SUPREME COURT OF
THE UNITED STATES

DONALD J. TRUMP,

Petitioner,

v.

NORMA ANDERSON, ET AL.,

Respondents.

No. 23-719
Washington, D.C.
Thursday, February 8, 2024

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:08 a.m.

APPEARANCES:

JONATHAN F. MITCHELL, ESQUIRE, Austin, Texas; on behalf of the Petitioner.

JASON C. MURRAY, ESQUIRE, Denver, Colorado; on behalf of Respondents Anderson, et al.

SHANNON W. STEVENSON, Solicitor General, Denver, Colorado; on behalf of Respondent Griswold.

PROCEEDINGS

(10:08 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument this morning in Case 23-719, Trump versus Anderson.

[. . .]

JUSTICE ALITO: Let me come back to the question of what we would do if we were—if different states had adjudicated the question of whether former President Trump is an insurrectionist using a different record, different rulings on the admissibility of evidence, perhaps different standards of proof. Then what would we do?

MR. MURRAY: Ultimately, this Court would—first of all, if there were deficiencies in the record, the Court could either refuse to hear the case or it could decide on the basis of deficiencies of the record.

JUSTICE ALITO: Well, would we have to decide what is the appropriate rule of evidence that should be applied in this—in this case? Would we have to decide what is the appropriate standard of proof? Would we give any deference to these findings by state court judges, some of whom may be elected? Would we have to have our own trial?

MR. MURRAY: No, Your Honor. This Court takes the evidentiary record as—as it's given. And, here, we have an evidentiary record that all the parties agree is sufficient for a decision in—in this case.

And then, as—as I discussed earlier, there's a possibility of a Bose Corp. independent review of the facts, but, ultimately, what we have here is

an insurrection that was incited in plain sight for all to see.

JUSTICE ALITO: Yeah, but you're really not answering my question. It's not helpful if you don't do that.

We have—suppose we have two different records, two different bodies of evidence, two different rulings on questions of admissibility, two different standards of proof, two different sets of fact findings by two different judges or maybe multiple judges in multiple states.

Then what do we do?

MR. MURRAY: Well, first, this Court would set the legal standard, and then it would decide which view of the record was—was correct, I think, under that—if—if this Court had two cases—

[. . .]

APPENDIX B:
DONALD J. TRUMP'S BRIEF REGARDING STANDARD OF PROOF FOR THE PROCEEDING IN THE DENVER DISTRICT COURT, COLORADO, *ANDERSON v. GRISWOLD*, CASE NO. 2023CV32577, DISTRICT COURT, CITY AND COUNTY OF DENVER (NOV. 17, 2023)

DISTRICT COURT
CITY AND COUNTY OF DENVER, COLORADO
1437 Bannock Street, Room 256
Denver, CO 80202
Phone: (303) 606-2300

NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN,

Petitioners,

v.

JENA GRISWOLD, in her official capacity as Colorado Secretary of State, and DONALD J. TRUMP,

Respondents.

Case Number: 2023CV32577

Division/Courtroom: 209

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DONALD J. TRUMP'S BRIEF REGARDING STANDARD OF PROOF IN THIS PROCEEDING

Respondent and Intervenor Donald J. Trump hereby files this brief regarding the appropriate standard of proof for the hearing commencing on October 30, 2023. Under case law of both the United States Supreme Court and the Colorado Supreme Court, Petitioners must satisfy the "clear and convincing evidence" standard of proof to receive the relief they desire, because they seek the absolute deprivation of the First and Fourteenth Amendment rights of President Trump and Colorado voters.

I. The "clear and convincing evidence" standard is the minimum standard of proof required when constitutional rights are at stake.

The standard of proof used in any proceeding is fundamentally a due process issue. While Section 1-4-1204(4) specifies that "[t]he party filing the challenge has the burden to sustain the challenge by a preponderance of the evidence," this statutory standard of proof is not dispositive because courts must always

apply the appropriate standard of proof as a matter of federal law: "The 'minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.'"[1] Furthermore, "the degree of proof required in a particular type of proceeding 'is the kind of question has traditionally been left to the judiciary to resolve.'"[2]

"The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'"[3] "In any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants."[4] On this basis, the Supreme Court in *Addington v. Texas* explained which circumstances are appropriate for each of the three standards of proof.

---

[1] *Santosky v. Kramer*, 455 U.S. 745, 755 (1982) (quoting *Vitek v. Jones*, 445 U.S. 480, 491 (1980)).

[2] *Id.* at 755-56 (quoting *Woodby v. INS*, 385 U.S. 276 (1966)).

[3] *Addington v. Texas*, 441 U.S. 418, 423 (1979) (quoting *In re Winship*, 397 U.S. 358, 370, 90 S.Ct. 1068, 1075, 25 L.Ed.2d 368 (1970) (Harlan, J., concurring).

[4] *Santosky*, 455 U.S. at 754-755.

"Preponderance of the evidence" is appropriate for "the typical civil case involving a monetary dispute between private parties" because "society has a minimal concern with the outcome of such private suites" and the litigants should "thus share the risk of error in roughly equal fashion."[5]

"Clear and convincing evidence" is appropriate when "[t]he interests at stake . . . are deemed to be more substantial than mere loss of money" and a higher standard of proof would be necessary "to protect particularly important individual interests in various civil cases."[6] To that end, "the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with 'a significant deprivation of liberty' or 'stigma.'"[7]

The "beyond a reasonable doubt" standard is appropriate in criminal cases, where "the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirements they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment," because in those circumstances "our society imposes almost the entire risk of error upon itself."[8]

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[5] *Addington*, 441 U.S. at 423.

[6] *Id.* at 424.

[7] *Santosky*, 455 U.S. at 756 (quoting *Addington*, 441 U.S. at 425, 426).

[8] *Addington*, 441 U.S. at 423-24.

To determine which standard of proof is appropriate, the Court in *Santosky* applied a "straightforward consideration of the factors identified in *Eldrige* to determine whether a particular standard of proof in a particular proceeding satisfies due process."[9] The factors are "the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure."[10] Importantly, "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'"[11] "Whether the loss threatened by a particular type of proceeding is sufficiently grave to warrant more than average certainty on the part of the factfinder turns on both the nature of the private interest threatened and the permanency of the threatened loss."[12]

The Supreme Court has consistently applied this analysis when defendants' important or fundamental constitutional rights are at-stake, finding that the clear and convincing evidence standard is necessary to provide due process in proceedings concerning termination of parental rights[13] and involuntary psychiatric commitment.[14]

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[9] *Santosky*, 455 U.S. at 754.

[10] *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

[11] *Id.* at 758 (*Goldberg v. Kelly*, 397 U.S. 254, 262–263 (1970)).

[12] *Id.*

[13] *See Santosky*, 455 U.S. 745.

[14] *See M.L.B. v. S.L.J.*, 519 U.S. 102 (1996).

In the First Amendment context, such as this case which implicates President Trump's First Amendment rights to free speech and petition, this analysis has lead the Supreme Court to require that a public official prove by clear and convincing proof that a speaker's defamatory statements were made with knowledge or the reckless disregard of their falsity.[15] The point of this higher standard is to give freedom of speech the necessary "'breathing space' essential to their fruitful exercise."[16]

The Colorado Supreme Court also uses this framework to determine the appropriate standard of proof in various cases:[17]

> Previously, we held that the three-factor analysis in *Eldridge* was an appropriate tool to assess the question of "what process is due" parties facing termination of parental rights. In *A.M.D.*, we employed the *Eldridge* balancing test to determine whether the Due Process Clause mandated a stricter standard of proof at the adjudicatory and termination hearings. There, we determined that the private interests of the parents in preserving their rights were "commanding."

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[15] *BE&K Constr. Co. v. NLRB*, 536 US 516, 531 (2002).

[16] *Id.*, citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974).

[17] *See People in Interest of A. M. D.*, 648 P.2d 625 (Colo. 1982); *A.M. v. A.C.*, 2013 CO 16, ¶ 32, 296 P.3d 1026, 1035–36, *as modified on denial of reh'g* (Mar. 18, 2013); *E.R.S. v. O.D.A.*, 779 P.2d 844, 847-48 (Colo. 1989); *In re D.I.S.*, 249 P.3d 775, 785 (Colo. 2011); *L.L. v. People*, 10 P.3d 1271, 1276 (Colo. 2000); *People in Int. of O.E.P.*, 654 P.2d 312, 315 (Colo. 1982).

> We discussed that the risk of error at stake was the "risk of erroneous fact finding." The government's interests, we held, included the *parens patriae* interest in preserving and promoting the well-being of the child and the interest in reducing the fiscal and administrative burdens that come with a higher burden of proof. We also discussed, however, that a higher burden of proof at the adjudicatory stage could highlight the adversarial nature of the process, replacing the State's role as a "helping intervenor" with that of an "adversary of the parents, bent on the permanent destruction of their relationship with the child."
>
> For these reasons, we concluded that the government's "substantial" interests went beyond its pecuniary stake. Balancing those interests against one another in the context of each hearing, we concluded that fairness required a clear and convincing standard at the termination hearing but only a preponderance of the evidence standard at the adjudicatory hearing.[18]

Both the United States Supreme Court and the Colorado Supreme Court have consistently found that whenever constitutional rights are at stake, the

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[18] *A.M. v. A.C.*, 2013 CO 16, ¶ 32, *as modified on denial of reh'g* (Mar. 18, 2013) (paragraph breaks added) (relying on *People in Interest of A. M. D.*, 648 P.2d 625 (Colo. 1982)) (internal citations omitted).

appropriate standard of proof is either clear and convincing evidence or higher.[19]

An evaluation of the *Eldridge* factors under *Santosky* shows that the appropriate standard of proof is clear and convincing evidence, so that President Trump and those who seek to vote for him may be afforded due process.

II. The appropriate standard of proof is "clear and convincing evidence" because important constitutional rights would be permanently damaged by an error.

The appropriate standard of proof in this proceeding is "clear and convincing evidence" because Petitioners' requested relief would permanently deprive President Trump and Colorado voters of their important constitutional rights regarding freedom of association and voting. All three factors of the *Santosky* analysis indicate that due process requires the "clear and convincing evidence standard."

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[19] *See Santosky*, 455 U.S. 745 (clear and convincing evidence needed before terminating parental rights); *M.L.B.*, 519 U.S. 102 (same); *Addington v. Texas*, 441 U.S. 418 (clear and convincing evidence needed before involuntarily committing defendant to psychiatric hospital); *In re Winship*, 397 U.S. 358 (1970) (beyond a reasonable doubt standard necessary for juvenile delinquency proceeding); *People in Interest of A. M. D.*, 648 P.2d 625 (Colo. 1982) (applying *Santosky* to hold that clear and convincing evidence is needed before termination parental rights); *A.M. v. A.C.*, 2013 CO 16 (same); *People in Int. of O.E.P.*, 654 P.2d 312 (Colo. 1982) (preponderance of the evidence standard was acceptable in parental neglect determination because no constitutional rights were threatened, unlike in an action to terminate parental rights).

First, the private interests at stake are significant. Petitioners here seek to have President Trump declared permanently ineligible for access to the ballot in Colorado for any federal or state office. Unlike a purely monetary interest that merits only a preponderance of the evidence standard of proof,[20] the interests threatened in this case are important First and Fourteenth Amendment constitutional rights related to freedom of association.[21] The Colorado Supreme Court has directly recognized that "restrictions on a political organization's access to an election ballot burden two fundamental rights: 'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.'"[22] And "ballot access restrictions imposed on candidates necessarily implicate voters' freedom of association by limiting the field of candidates from which the voters might choose.[23]

Second, the Government's interest in regulating its elections is not harmed by using the "clear and convincing evidence" standard and are actually preserved. While the Government does have an

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[20] *See Addington*, 441 U.S. at 423.

[21] *Colorado Libertarian Party v. Sec'y of State of Colo.*, 817 P.2d 998, 1002 (Colo. 1991).

[22] *Id.* (quoting *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)); *accord Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986); *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979); *National Prohibition Party v. State*, 752 P.2d 80, 83 (Colo.1988).

[23] *Id.* (citing *Anderson v. Celebrezze*, 460 U.S. 780, 787-88 (1983).

interest in regulating its election to ensure they are "'fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes,'"[24] this interest must be balanced against the effect of those regulations on the rights of candidates, political organizations, and voters.[25]

Unlike election regulations which impose a surmountable hurdle to would-be candidates that can be overcome by patience, effort, or savvy, such as the one-year disaffiliation requirement for independent candidates, the government action Petitioners seek here would permanently bar President Trump from the ballot, including of course access to the ballot for the 2024 election. Whereas regulations like the disaffiliation requirement provide a clear benefit to the government by cutting down on chaos that would be caused by candidates continuing intra-party on the general election ballot,[26] President Trump's permanent disqualification does not present an unambiguous regulatory benefit to the Government's administration of elections. To the degree the Government has an interest in substantively evaluating the constitutional qualifications of presidential candidates under Section Three in order to keep disqualified candidates off the ballot (which President Trump has disputed in separate briefing), this interest is only in keeping off candidates who are actually disqualified.

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[24] *Colorado Libertarian Party*, 817 P.2d at 1002 (quoting *Storer v. Brown*, 41 U.S. 724, 730 (1974)).

[25] *Id.* at 1001-02.

[26] *Id.* at 1003.

The Government has no interest in keeping candidates off the ballot who are qualified—especially on a permanent basis. Accordingly, the "clear and convincing evidence" *serves* the Government's interest here by reducing the risk of an erroneous permanent bar on an otherwise qualified candidate. Given the limited procedures for resolving Petitioners' challenge and the insurmountable nature of the disability they seek to impose on President Trump, the governmental interest in only prohibiting truly disqualified candidates from the ballot is aided by the heightened standard of proof. And the Colorado General Assembly has explicitly stated that the Election Code "shall be liberally construed so that all eligible electors may be permitted to vote."[27] This interest is not served by erroneously barring a qualified and popular candidate from the ballot forever. Thus, requiring Petitioners to meet the "clear and convincing evidence" standard before permanently banning President Trump from the ballot is in the interests of both the Government and President Trump.

Third, the risk of erroneous deprivation of President Trump and Colorado voters' rights in this proceeding is heightened because of its abbreviated procedures. Petitioners have chosen to proceed under Section 113's expedited procedures, preventing President Trump's use of the discovery process, putting him under significant time-constraints while they have had over a year to prepare, and affording him severely limited procedures for appeal. Because of these procedural pressures, President Trump and Colorado voters face a real risk that their important First and Fourteenth

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[27] C.R.S. § 1-1-103(1).

Amendment rights will be erroneously deprived without adequate remedy. Furthermore, the hearing requires the Court to go into deep and uncharted constitutional waters regarding how to apply Section Three of the Fourteenth Amendment to a former President.

This combination of limited procedures for establishing and adjudicating complex factual issues related to the events of January 6, 2021, the Court's need to decide novel constitutional issues, and an abridged appeals process presents a distinct risk of an erroneous judgment. This risk of error is all the more severe because Petitioners seek a *permanent* prohibition on President Trump's ballot access. A risk of an erroneous permanent deprivation of constitutional rights, particularly when that risk is magnified by procedures that remove traditional due process safeguards, necessitates a higher standard of proof.[28]

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28 *See Santosky*, 455 U.S. at 761-64 (finding a higher standard of proof was necessary when procedural limitations meant that parents' rights were subject to termination based on complex, subjective, or otherwise imprecise standards).

Conclusion

The Court has a duty to ensure that the First and Fourteenth Amendment rights of President Trump and Colorado voters are protected by sufficient process. Applying the "clear and convincing" standard of proof protects against an erroneous deprivation of these rights while serving the governmental interests. Accordingly, the Court must require Petitioners to meet this higher standard of proof for the relief they seek.

Respectfully submitted this 25th day of October 2023,

GESSLER BLUE LLC

/s/ Geoffrey N. Blue

APPENDIX C: BUSINESS INSIDER REPORTED ON MAR 26, 2023 THE NEWS STORY *SINGER MARTHA REEVES OF MOTOWN'S MARTHA AND THE VANDELLAS IS FUNDRAISING TO GET HER STAR ON THE HOLLYWOOD WALK OF FAME—AND HAS 3 MONTHS TO SECURE HER SPOT* BY TAYLOR ARDREY

Singer Martha Reeves of Motown's Martha and the Vandellas is fundraising to get her star on the Hollywood Walk of Fame — and has 3 months to secure her spot

Taylor Ardrey Mar 26, 2023, 12:52 PM PDT

Singer Martha Reeves and the Vandellas perform on stage during Day 2 of the Vintage at Goodwood Festival on August 14, 2010 in Chichester, England (Chris Jackson/Getty Images for Vintage at Goodwood)

- Singer Martha Reeves is raising money to receive a star on the Hollywood Walk of Fame.
- She was nominated in 2021 and thought the cost would be covered by her former manager.
- Now, as the Detroit Free Press reported, her team is trying to raise $55,000 by June.

Martha Reeves of the famed Motown girl group Martha and the Vandellas is fundraising to get her star on the illustrious Hollywood Walk of Fame – and has just under three months left to get it done.

The singer, known for hits "Dancing in the Street" and "Come And Get These Memories," was tapped to receive a star on the Hollywood Walk of Fame in 2021 after being nominated by an ex-manager, The Detroit Free Press reported.

During that time, she was under the impression that the manager was going to handle the cost of the star and that her induction ceremony would be in 2022, per the report.

The cost of the star is $55,000, according to the Hollywood Walk of Fame's website, which is used for the star installation and maintenance. Now in a bind, and under new management, her team created a fundraiser to help gather enough money by June to secure her spot for next year, according to the Free Press.

"If we do not make a sizeable indentation to our goal, it is likely that Martha's Hollywood Star selection will be withdrawn, and we will have to start the nomination process all over again (which could take several years)," Reeves' current manager,

Chris Roe, wrote on the campaign page. "Since she was nominated and chosen in 2021, as part of the Class of 2022, we have very little time. There is a time limit to receive your star after being selected."

Detroit Free Press reported that some celebrities have record labels or movie production studios behind them to take care of the costs while others sometimes have to crowdfund.

For instance, last year, legendary "Everything Everywhere All At Once" actor James Hong received a star on the Hollywood Walk of Fame after fellow actor Daniel Dae Kim raised the money back in 2020, according to The Los Angeles Times.

In addition, as the Free Press noted, money was crowdfunded for Motown music group The Funk Brothers, who got their sidewalk star in 2013.

"Martha's former representation got in over their heads on this," Roe told the Free Press. "They didn't realize how hard it would be and wasted a year of fundraising time. Now we're down to the wire."

APPENDIX D:
THE HOLLYWOOD CHAMBER OF COMMERCE MAKES ANNOUNCEMENT ON MARCH 21, 2024 THAT MARTHA REEVES' STAR INDUCTION CEREMONY WILL BE ON MARCH 27, 2024 IN THE PRESS RELEASE *FANS WILL BE "DANCING IN THE STREET" WHEN ENTERTAINER MARTHA REEVES IS HONORED WITH STAR ON THE HOLLYWOOD WALK OF FAME*

Fans Will Be "Dancing in the Street" When Entertainer Martha Reeves Is Honored with Star on the Hollywood Walk of Fame

WHO | HONOREE Martha Reeves

GUEST SPEAKERS
Berry Gordy, Smokey Robinson and William "Mickey" Stevenson

EMCEE
Angelique Jackson,
Variety Senior Entertainment Correspondent

WHAT
Dedication of the 2,776th star on the Hollywood Walk of Fame

WHEN Wednesday, March 27, at 11:30 AM PT

WHERE 7080 Hollywood Boulevard

WATCH LIVE
The event will live streamed exclusively at walkoffame.com

Performer Martha Reeves will be honored on March 27, with the 2,776th star on the Hollywood Walk of Fame. The star will be unveiled at 7080 Hollywood Boulevard. Reeves will be awarded her star in the category of Recording. Speakers joining emcee Angelique Jackson will be Berry Gordy, Smokey Robinson, and William "Mickey" Stevenson.

The Hollywood Chamber of Commerce administers the legendary Hollywood Walk of Fame for the City of Los Angeles and has proudly hosted globally iconic ceremonies for decades. Millions of people from here and around the world have visited this cultural landmark since 1960.

ABOUT OUR HONOREE

"We are very proud to honor Martha Reeves with a star on the Hollywood Walk of Fame. It is wonderful to see that her legacy and contributions to the music world will be recognized" stated Walk of Fame Producer, Ana Martinez. "Being a Motown great, it is fitting that her star will be on the strip where many iconic Motown acts such as: The Supremes, Stevie Wonder, The Temptations and The Miracles have also been honored with their own stars!" added Martinez.

Martha Reeves has made her imprint in the history books and in pop culture for her string of hit Motown songs in the 1960's and early 1970's including such hits as "Dancing in the Street," "My Baby Loves Me", "Come and Get These Memories", "Nowhere to Run", "Quick Sand", "(Love is Like a) Heatwave," "Jimmy Mack" and "Bless You," Martha was front and center as the lead singer of the legendary Motown girl group, Martha Reeves and the Vandellas.

During the 1970's and 1980's Martha recorded as a solo artist releasing a handful of critically acclaimed albums on the MCA, Fantasy, Phonarama and ARISTA labels. Her first solo album in 1974, the self-titled classic was produced by legendary record producer, Richard Perry.

While born in Alabama, Reeves moved to Detroit with her family as a baby and has become a fixture in the Motor City. She even served as an elected councilwoman for the city from 2005 to 2009. In 2007 she fought to rename the road in front of Hitsville USA on West Grand Blvd. (Now the Motown Museum) Berry Gordy Jr. Boulevard after Motown's founder.

Martha continues to perform concerts and club dates both solo and with the Vandellas (currently her sisters, Lois and Delphine). Martha and the Vandellas were Grammy nominated in 1964 for Best R&B Performance for their hit, "Heat Wave". In 1999, "Dancing in the Street" was inducted into the Grammy Hall of Fame. She was inducted into the Rock and Roll Hall of Fame in 1995 and is also the recipient of the Dinah Washington Award, a Rhythm n' Blues Foundation Pioneer Award, a Black Woman in Publishing Legends Award, and has been inducted in the Alabama Soul, Rock and Roll and Vocal Group Hall of Fame. Martha Reeves and the Vandellas are listed among Rolling Stone magazine's 100 Immortal Artists of all time.

2023 marked Martha's 60th anniversary of her first two albums with Motown both from 1963, "Come and Get These Memories" and "Heat Wave".

Reeves has been actively involved in charity work with the Shriners and Boys Town, demonstrating her

dedication to making a positive impact on the community through her philanthropic endeavors.

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