

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JOHN CASTRO,

Plaintiff,

vs.

CHRISTI JACOBSEN, Secretary of
State, and DONALD JOHN TRUMP,

Defendants.

6:23-cv-62-SPW

ORDER

Before the Court is Plaintiff John Castro's Emergency Application for a Temporary Restraining Order and Expedited Preliminary Injunction Hearing. (Doc. 7). Plaintiff contends that Defendant Donald John Trump is prohibited from holding the office of the president under § 3 of the 14th Amendment of the U.S. Constitution because he "provided 'aid or comfort' to an insurrection," namely the events leading up to, on, and after January 6, 2021, at the United States Capitol. (Doc. 7-1 at 5). Because, according to Plaintiff, Trump is ineligible for the presidency, Plaintiff asks the Court to enjoin Defendant Christi Jacobsen, Secretary of State for the State of Montana, from accepting or scheduling an appointment for the acceptance of Trump's declaration of candidacy, ballot access fee, petitions in support thereof, and any other ballot access documentation that Trump may submit or that another party may submit on his behalf. (*Id.* at 1). In addition to the

temporary restraining order, Castro asks for an expedited hearing on his motion for a preliminary injunction to occur before the commencement of the presidential primary filing period, September 29, 2023. (*Id.* at 5-6).

The Court denies Castro's motion for failure to properly serve the motion on the parties. Under Federal Rule of Civil Procedure 5(a), all written motions, except those made ex parte, must be served on every party. If a party is represented by an attorney, service must be made on the attorney. Fed. R. Civ. P. 5(a). Conversely, if the party does not have an attorney, service on the party is required. If a party has not appeared through an attorney, but is not yet in default, the party must be served in accordance with Rule 4's requirements for service of the initial summons and complaint. Roger S. Haydock, *Fundamentals of Litigation Practice* § 23:7 (2023 ed.).

Because neither the Secretary of State nor Trump has appeared through an attorney, Castro must have served his motion on them personally and according to the service rules for a complaint and summons. Service by emailing non-attorneys of record does not comply with Rules 4 and 5.

IT IS SO ORDERED that Plaintiff John Castro's Emergency Application for a Temporary Restraining Order and Expedited Preliminary Injunction Hearing (Doc. 7) is DENIED without prejudice.

DATED this 20th day of September, 2023.



SUSAN P. WATTERS
United States District Judge