

**SUPPLEMENTAL
APPENDIX**

SECOND SUPPLEMENTAL APPENDIX

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**DISTRICT COURT, CITY AND COUNTY OF
DENVER, STATE OF COLORADO**
1437 Bannock Street
Denver, CO 80202

Case No. 2023CV32577

Division: 209

Petitioners:

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

v.

Respondents:

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

**MOTION FOR AN EXPEDITED CASE
MANAGEMENT CONFERENCE**

By and through undersigned counsel, Petitioners
move the Court to hold an expedited case
management conference. As grounds for this motion,
Petitioners state:

**Certification Pursuant to C.R.C.P. 121, Section
1-15(8)**

Undersigned counsel certify that they will serve copies of the *Verified Petition Under C.R.S. § 1-4-1204, § 1-1-113, § 13-51-105, and C.R.C.P. 57(a)*, together with this *Motion for an Expedited Case Management Conference* upon Respondent Colorado Secretary of State Griswold (the “Secretary”) and Respondent Donald J. Trump. Given the expedited nature of the relief requested, Petitioners were unable to confer with opposing counsel for all parties regarding their position on this Motion. Petitioners will promptly notify the Court upon learning of Respondents’ position on this Motion.

1. Petitioners filed their *Verified Petition Under C.R.S. § 1-4-1204, § 1-1-113, § 13-51-105, and C.R.C.P. 57(a)* on Wednesday, September 6, 2023.
2. Petitioners are “eligible electors” who are challenging the listing of Respondent Donald J. Trump on Colorado’s presidential primary election ballot or any future Colorado ballot. Pursuant to C.R.S. § 1-1-113, Petitioners allege that the Secretary is “about to commit a breach or neglect of duty, or other wrongful act” by taking a series of actions that would allow Respondent Trump access to the presidential primary ballot. Petitioners also seek declaratory relief against both Respondents under C.R.S. § 13-51-105, and C.R.C.P. 57(a). Under C.R.S. § 1-4-1204(4), the Court must hold a hearing “[n]o later than five days after the challenge is filed.”

3. Immediately after the filing of the Petition and this Motion, Petitioners will serve the Secretary at her office and will attempt to serve Mr. Trump at his usual places of abode and workplaces in Palm Beach, Florida and Bedminster, New Jersey, and at his usual workplace in New York, New York. Petitioners are also emailing a copy of the Petition, this Motion, and summons to Mr. Trump's counsel of record in several pending cases and have made a copy of the Petition publicly available on a website, so that Mr. Trump or his agents can find it easily if they are alerted to the case by the media.
4. Petitioners are prepared to put on evidence and witnesses within the five-day timeframe set forth in C.R.S. § 1-4-1204(4).
5. At the same time, Petitioners understand that the complexity and importance of the matters raised in their Petition, as well as the need to permit meaningful participation by all Respondents in the proceedings, may necessitate additional time.
6. Meanwhile, expedited proceedings are necessary because the Secretary faces looming deadlines to prepare ballots. All hearings, decisions, and appeals (including potentially to the Colorado Supreme Court and U.S. Supreme Court) must be completed prior to the certification deadlines below.

7. Colorado’s 2024 presidential primary is scheduled for March 5, 2024.¹ The deadline for the Secretary of State to certify the contents of the 2024 presidential primary ballot is January 5, 2024. C.R.S. §1-4-1204(1).
8. Under Colorado’s presidential primary elections statute, the Secretary is responsible for overseeing ballot access for presidential primary candidates, including by accepting a major political party’s form designating a candidate “as a bona fide candidate for president of the United States” who is “affiliated with a major political party,” C.R.S. § 1-4-1204(1)(b); and accepting a “notarized candidate’s statement of intent together with either a nonrefundable filing fee of five hundred dollars, or a petition signed by at least five thousand eligible electors,” C.R.S. § 1-4-1204(1)(c).
9. The last date that a 2024 presidential primary candidate can submit a statement of intent, along with either the \$500 fee, or a signed petition, is December 11, 2023. C.R.S. §1-4-1204(1)(c).² These ballot access steps, however, may begin much earlier and can proceed over a several month period. For example, major political parties can submit to the Secretary a form designating a candidate as a “bona fide candidate for president of the United States” who is “affiliated with [the] major political

¹ See 2024ElectionCalendar.pdf (state.co.us).

² See also 2023ElectionCalendar.pdf (state.co.us).

party” at any point. C.R.S. § 1-4-1204(1)(b). Presidential primary candidates can begin circulating petitions on November 6, 2023, C.R.S. §1-4-801(6), but before they begin circulating a petition, they must submit the petition form to the Secretary of State for approval, which may happen weeks or months in advance. C.R.S. §1-4-903. Similarly, presidential primary candidates can submit their notarized candidate’s statement of intent and a \$500 filing fee at any time after announcing their candidacy, so long as it is “not later than eighty-five days before the date of the presidential primary election.” C.R.S. §1-4-1204(1)(c).

10. Respondent Trump is already a “candidate” under Colorado and federal law for the 2024 Republican presidential primary election. *See* Colo. Const. art. XXVIII, § 2 (defining “candidate” as one who “has publicly announced an intention to seek election to public office ... and thereafter has received a contribution or made an expenditure in support of the candidacy”); C.R.S. § 1-4-905.5(1)(a) (same); 52 U.S.C. § 30101(2) (defining “candidate” as “an individual who seeks nomination for election ... to Federal office” and has “received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000”). Mr. Trump publicly announced his 2024 presidential campaign on November 15, 2022. He has filed with the Federal Election Commission a

Statement of Candidacy and a candidate Public Financial Disclosure Report.³ To date, Mr. Trump’s campaign has raised at least \$35,987,476 and spent at least \$13,471,085.⁴ In Colorado, Mr. Trump’s campaign has raised at least \$476,302 in individual contributions.⁵

11. At any point over the next few weeks, the Colorado Republican Party could submit its form to the Secretary designating Mr. Trump as a bona fide presidential primary candidate for the party, and Trump could submit to the Secretary his notarized candidate’s statement of intent. The Secretary’s acceptance of either filing, and any other action by the Secretary allowing Mr. Trump ballot access, will be “improp[er],” C.R.S. § 1-4-1204(4), and “a breach or neglect of duty or other wrongful act” that, absent relief by this Court, the Secretary is “about to commit,” C.R.S. § 1-1-113(1), in violation of the U.S. Constitution and Colorado law.
12. Given that Mr. Trump is already a candidate, and that the Secretary may face an imminent

³ OGE Form 278e, Executive Branch Personnel Public Financial Disclosure Report, Donald J. Trump, Apr. 14, 2023, <https://www.citizensforethics.org/wp-content/uploads/2023/04/Disclosure-Report-Part-1-4-14-23.pdf>.

⁴ Federal Election Commission, Financial Summary: Donald J. Trump for President 2024, Inc., https://www.fec.gov/data/candidate/P80001571/?cycle=2024&election_full=true.

⁵ Federal Election Commission, Presidential Candidate Map, <https://www.fec.gov/data/candidates/president/presidential-map/>.

decision to allow him to seek ballot access, a case management conference will benefit all parties.

13. A case management conference will allow the Parties and the Court to discuss scheduling, along with potential discovery, witnesses, and deadlines for motions and briefing.

WHEREFORE, Petitioners respectfully request that the Court order an expedited case management conference to take place prior to an evidentiary hearing.

Date: September 6, 2023

Respectfully submitted,

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**Pro hac vice* admission pending

Counsel for Petitioners

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Chief Judge Philip A. Brimmer

Civil Action No. 23-cv-02291-PAB

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

Petitioners,

v.

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

Respondents.

ORDER

This matter comes before the Court on Petitioners' Unopposed Motion to Remand [Docket No. 15] and Petitioners' Unopposed Motion for Expedited Consideration of Motion to Remand [Docket No. 16].

Petitioners initiated this action in the District Court for Denver County, Colorado, on September 6, 2023 ("state court case"). Docket No. 8; Docket No. 15

at 3; Docket No. 15-1 at 2. Respondent Donald Trump removed the case to this Court on September 7, 2023. Docket No. 1. The notice of removal states that the “Denver District Court docket does not contain a return of service for Jena Griswold, . . . and to undersigned’s knowledge the Secretary has not been served.” *Id.* at 5, ¶ 14. Mr. Trump attached a state court docket sheet to the notice of removal that did not show that Jena Griswold, the Colorado Secretary of State, had been served. Docket No. 1-1. The notice of removal does not allege that Secretary Griswold consented to removal. Docket No. 1.

On September 8, 2023, petitioners filed a motion to remand the case to state court. Docket No. 15. The remand motion states that Secretary Griswold was served on September 6, 2023. *Id.* at 3. The motion attaches a state court docket sheet showing that Secretary Griswold executed a waiver of service, which was filed in the state court case at 3:42 p.m. on September 6, 2023. *Id.*; Docket No. 15-1 at 2. The notice of removal was filed the next day, on September 7, 2023. Docket No. 1. On September 12, 2023, Secretary Griswold filed a response to petitioners’ motion to remand stating that she “supports the remand to state court.” Docket No. 27 at 1.

Mr. Trump removed the case under 28 U.S.C. § 1441(a). Docket No. 1 at 1. Section 1446(b)(2)(A) of Title 28 states that, “[w]hen a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.” 28 U.S.C. § 1446(b)(2)(A). The Tenth Circuit has held that “lack of

unanimity is a procedural defect clearly established by statute as precluding removal.” *Harvey v. Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 797 F.3d 800, 805 (10th Cir. 2015) (citing 28 U.S.C. § 1446(b)(2)(A)); *see also Huffman v. Saul Holdings Ltd. P’shp*, 194 F.3d 1072, 1077 (10th Cir. 1999) (“The failure to comply with the[] express statutory requirements for removal can fairly be said to render the removal ‘defective’ and justify a remand.” (quoting *Snapper, Inc. v. Redan*, 171 F.3d 1249, 1253 (11th Cir. 1999))).

On September 12, 2023, Mr. Trump filed his response to petitioners’ motion to remand, wherein he seeks to “withdraw” his Notice of Removal and indicates that he does not object to a remand of this matter to state court. Docket No. 28 at 1, 3, ¶¶ 2, 6. In his response, Mr. Trump claims that he did not need Secretary Griswold’s consent to remove this matter because she is a nominal party. *Id.* at 1, ¶ 2. While it is true that a “federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy,” *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 461 (1980), petitioners’ first claim, which is brought against Secretary Griswold, makes it clear that the Secretary is not a nominal party. The first claim alleges that:

As part of her duties “[t]o supervise the conduct of primary” and “general . . . elections in this state,” [Colo. Rev. Stat.] § 1-1-107(1)(a), the Secretary is “responsible for ensuring the qualifications of candidates for statewide and federal elections,” including presidential candidates, *Hassan v. Colorado*, 870 F. Supp.

2d 1192, 1195 (D. Colo. 2012), *aff'd*, 495 F. App'x 947 (10th Cir. 2012) [unpublished] (Gorsuch, J.) (upholding the Secretary's exclusion of a constitutionally ineligible presidential candidate from the ballot)[.]

Docket No. 8 at 105, ¶ 436. The first claim further alleges that “[a]ny action by the Secretary to provide ballot access to a presidential primary candidate who fails to meet all constitutional qualifications for the Office of President is an ‘impropriety,’ [Colo. Rev. Stat.] § 1-4-1204(4), and ‘a breach or neglect of duty or other wrongful act,’ *id.* § 1-1-113(1).” *Id.* at 106, ¶ 442. Thus, petitioners focus their first claim on Secretary Griswold's alleged statutory duty to ensure that candidates for federal elections in Colorado have the necessary qualifications. Moreover, as Mr. Trump's response to petitioners' motion notes, Secretary Griswold is the person who will make the decision to “allow[] or disallow[] Trump's name on the ballot.” Docket No. 28 at 2, ¶ 3. Secretary Griswold is therefore not a nominal party and her consent to removal was therefore required.

Because Secretary Griswold accepted service before Mr. Trump removed the case and she did not join in or consent to removal, the Court finds that removal was defective under 28 U.S.C. § 1446(b)(2)(A). Therefore, it is

ORDERED that Petitioners' Unopposed Motion to Remand [Docket No. 15] and Petitioners' Unopposed Motion for Expedited Consideration of Motion to Remand [Docket No. 16] are **GRANTED**. It is further

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ORDERED that this case is remanded to the District Court for Denver County, Colorado, where it was filed as Case No. 2023CV032577. It is further **ORDERED** that this case is closed.

DATED September 12, 2023.

BY THE COURT:

PHILIP A. BRIMMER
Chief United States District Judge

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**DISTRICT COURT, CITY AND COUNTY OF
DENVER, STATE OF COLORADO**

1437 Bannock Street
Denver, CO 80202

Case No. 2023CV32577

Division: 209

Petitioners:

NORMA ANDERSON, MICHELLE PRIOLA,
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WRIGHT, and CHRISTOPHER CASTILIAN

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Respondents:

JENA GRISWOLD, in her official capacity as
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and

Intervenors:

COLORADO REPUBLICAN STATE CENTRAL
COMMITTEE and DONALD J. TRUMP

**AGREED RESPONSE TO COURT'S OCTOBER
2, 2023, ORDER**

In its October 2, 2023, Order, the Court requested that “all Parties submit a short statement as to whether the Court must rule on the C.R.S. Sec.

1-1-113 within 48 hours after the close of the hearing commencing on October 30, 2023.” The parties have conferred, and all agree with the following statement:

“The parties disagree on whether a requirement that the Court rule within 48 hours of the close of the hearing applies to this case. Those parties that believe the requirement applies agree that any such requirement is waivable and further agree to waive any such requirement.”

Date: October 10, 2023

Respectfully submitted,

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**Pro hac vice* admission pending

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