

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

1437 Bannock St.
Denver, CO 80203

DATE FILED: September 21, 2023 6:51 PM

Petitioners:

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

v.

Respondents:

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

and

Intervenor:

COLORADO REPUBLICAN STATE CENTRAL
COMMITTEE.

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Case Number: 2023CV032577

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**Pro hac vice* admission pending

MODIFIED CASE MANAGEMENT ORDER

1. Lead counsel for each party met and conferred by videoconference on September 19, 2023, counsel for each party met again by videoconference on September 21, 2023, and lead counsel for Petitioner and Respondent Trump spoke later that day. The parties could not reach complete agreement on any of the issues below, but their proposals are set forth below.
2. Fact witness disclosure.
 - a. Petitioners' position:
 - i. If parties have agreed (or the Court orders) sufficient protections to protect witnesses from harassment and intimidation, Petitioners will disclose their will and may call fact witnesses by October 6.
 - ii. Respondents and Intervenors will disclose their will and may call fact witnesses by October 13.
 - iii. Petitioners will disclose any additional fact witnesses responsive to witnesses listed by Respondents and Intervenors by October 25.
 - iv. No depositions or other discovery will be taken of any witness, unless a witness cannot attend trial and a trial preservation deposition is necessary.
 - b. Respondent Griswold's position:
 - i. The Secretary of State does not anticipate calling any fact witnesses and therefore takes no position with respect to the timing of any such disclosures.

ii. The Secretary opposes depositions in this matter. Petitioners have brought this matter primarily as a § 1-1-113 claim, which is “a summary proceeding designed to quickly resolve challenges brought by electors, candidates, and other designated plaintiffs against state election officials prior to election day.” *Frazier v. Williams*, 2017 CO 85, ¶ 11. Depositions are inconsistent with this summary procedure and have not historically been available in § 1-1-113 proceedings.

c. Respondent Trump’s position:

i. Petitioners’ protective order is unwarranted, and Petitioners, cannot demonstrate good cause for the entry of the order. Among other problems, the order merely reiterates general prohibitions against witness tampering or intimidation. Limiting disclosure of witnesses to attorneys only handicaps Respondents’ ability to develop rebuttal evidence, and Respondents have not seen concrete evidence that any specific witness faces threats. Trump should be afforded the same presumptions and rights afforded to all civil defendants.

ii. Petitioners should disclose their witnesses immediately. Petitioners have represented to the Court that they are ready to go and have already prepared witnesses to testify. Meanwhile, Trump has not been afforded basic protections such as a determination of a motion to dismiss prior to discovery, disclosure of relevant evidence and names of people with knowledge early in the process, or any opportunity to engage in discovery.

iii. Trump does not object to the sequence of producing witnesses. Trump will in good faith disclose witnesses immediately upon identification, and no later than October 16th, and Petitioners disclose rebuttal witnesses no later than October 23rd.

d. Intervenor Colorado Republican Party’s position:

i. The Colorado Republican Party reiterates its position, expressed in more detail in the forthcoming motions to dismiss, that this case should not proceed to discovery of any kind or an evidentiary hearing, as the petitioners have failed to state a claim as a matter of law. Should this matter proceed to discovery and a hearing regardless, the Colorado Republican Party agrees with Respondent Trump regarding the discovery process timeline and deadlines.

3. Expert witness disclosure.

a. Petitioners’ position:

i. If parties have agreed (or the Court orders) sufficient protections to protect witnesses from harassment and intimidation, Petitioners will disclose their expert witnesses by name, and provide a bullet point summary of their

opinions by September 27. Petitioners will provide expert reports that comply with CRCP 26(a)(2)(B) by October 6.

- ii. Respondents and Intervenors will disclose their expert witnesses by name and provide a bullet point summary of their opinions by October 13 and will provide expert reports that comply with CRCP 26(a)(2)(B) by October 20.
- iii. Petitioners will disclose any additional rebuttal experts (or additional opinions by previously disclosed expert) by name and provide a bullet point summary by October 27.
- iv. No depositions or other discovery will be taken of any expert witness, unless a witness cannot attend trial and a trial preservation deposition is necessary.

b. Respondent Griswold's position:

- i. The Secretary of State does not anticipate calling any expert witnesses and therefore takes no position with respect to the timing of any such disclosures.
- ii. The Secretary opposes depositions in this matter. Petitioners have brought this matter primarily as a § 1-1-113 claim, which is "a summary proceeding designed to quickly resolve challenges brought by electors, candidates, and other designated plaintiffs against state election officials prior to election day." *Frazier v. Williams*, 2017 CO 85, ¶ 11. Depositions are inconsistent with this summary procedure and have not historically been available in § 1-1-113 proceedings.

c. Respondent Trump's position:

- i. President Trump and Intervenors do not believe a protective order is necessary or that Petitioners have met their burden of showing good cause for one. This particularly applies to experts, who are supposedly well-versed and well-known in their area of purported expertise, who will produce opinion testimony, and who may seek rely on hearsay evidence.
- ii. President Trump and Intervenors seek immediate disclosure of Petitioners' expert witnesses, particularly since Petitioners have already represented that their experts were prepared to testify five days after Petitioners filed their Petition.
- iii. Respondent does not object to other timelines for expert witness disclosures.
- iv. Depositions of the expert witnesses are essential to prepare for trial. Without depositions, Trump will be severely disadvantaged in filing any

potential challenges under C.R.E. 702 and severely disadvantaged in cross-examination. It will also substantially extend trial testimony.

v. Depositions of President Trump's and Intervenor's experts will occur the week of October 23.

d. Intervenor Colorado Republican Party's position:

i. The Colorado Republican Party reiterates its position, expressed in more detail in the forthcoming motions to dismiss, that this case should not proceed to discovery of any kind or an evidentiary hearing, as the petitioners have failed to state a claim as a matter of law. Should this matter proceed to discovery and a hearing regardless, the Colorado Republican Party agrees with Respondent Trump regarding the discovery process timeline and deadlines.

4. Exhibit list disclosure.

a. Petitioners' position:

i. If parties have agreed (or the Court orders) sufficient protections to protect witnesses from harassment and intimidation, each party will disclose a draft exhibit list with exhibits on October 6.

ii. Each party will provide a supplemental exhibit list, including any additional exhibits to respond to exhibits disclosed by other parties, and objections to the October 6 exhibits by October 13.

iii. Parties will work to resolve objections and prepare a final exhibit list, with remaining objections, by October 20.

b. Respondent Griswold's position:

i. The Secretary does not anticipate introducing any exhibits and therefore takes no positions with respect to exhibit list disclosures.

c. Respondent Trump's position:

i. The entry of a protective order regarding the alleged potential harassment and intimidation of witnesses is unnecessary to the production of exhibits.

ii. Petitioners will produce their draft exhibit list with exhibits immediately.

iii. President Trump and Intervenor will produce a draft exhibit list with exhibits on October 16, 2023.

iv. Each party will provide a supplemental exhibit list, including any additional exhibits to respond to exhibits disclosed by other parties, and objections to exhibits by October 23, 2023

- d. Intervenor Colorado Republican Party's position:
 - i. The Colorado Republican Party reiterates its position, expressed in more detail in the forthcoming motions to dismiss, that this case should not proceed to discovery of any kind or an evidentiary hearing, as the petitioners have failed to state a claim as a matter of law. Should this matter proceed to discovery and a hearing regardless, the Colorado Republican Party agrees with Respondent Trump regarding the discovery process timeline and deadlines.
- 5. Protection of petitioners, witnesses, and counsel from harassment and intimidation.
 - a. Petitioners' counsel circulated a draft protective order to protect against harassment and intimidation on September 21. Petitioners propose discussing a process for considering a protective order at the September 22 status conference.
 - b. President Trump and Intervenors do not agree that this protective order is necessary and would not include it for the reasons stated above.
- 6. Additional topics for discussion.
 - a. At the meet and confer sessions, the parties discussed raising the following topics at the status conference:
 - i. The Court's preference on hearing framework and logistics, including:
 - 1. The possibility of remote testimony;
 - 2. Whether the Court would like brief opening statements and closing argument; and
 - 3. The Court's preferred technology setup for the presentation of electronic evidence.
 - ii. Timing and other requirements for amicus briefs.

Date: September 21, 2023 Respectfully submitted,

/s/ Eric Olson

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CERTIFICATE OF SERVICE

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