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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**.	▲ COURT USE ONLY ▲
Attorneys for Respondent and Intervenor Donald J. Trump: Scott E. Gessler (28944), sgessler@gesslerblue.com Geoffrey N. Blue (32684), gblue@gesslerblue.com Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Tel. (720) 839-6637 or (303) 906-1050	Case Number: 2023CV32577 Division:

MOTION TO REALIGN THE SECRETARY OF STATE AS A PETITIONER

Conferral under C.R.C.P. 121 § 15-8

The undersigned counsel has conferred with the Secretary of State's counsel regarding this motion who opposes the relief sought. Petitioners' counsel opposes the relief requested. The Intervenor does not oppose the relief requested.

Introduction

This lawsuit is about keeping President Trump from running for office again.

Although the Petitioners brought this action against the Secretary as a Respondent, through

her actions the Secretary has aligned herself with the Petitioners, as is most evident by her refusal to accept President Trump's statement of intent, absent an order from this Court. Immediately after Petitioners brought this action, she publicly repeated Petitioners' talking points and unequivocally argued that that President Trump participated in an insurrection and should not be permitted to run for office again. Her positions in this lawsuit consistently oppose President Trump and the Intervenors, even when those positions contradict prior policy. In short, the Secretary is acting in this lawsuit as a Petitioner and should be realigned with Petitioners to allow President Trump to appeal decisions by the Secretary, to ensure a proper order of proof, and, if necessary, to cross-examine witnesses endorsed by the Secretary.

Argument

Colorado law allows a court to realign the parties when the antagonism between the parties shows that they are not properly aligned.[1] In *Pine v. Duhon*, the court realigned the corporation in a derivative lawsuit from plaintiff. Although corporations are normally aligned with plaintiffs, in that case the court realigned the corporation with defendants because the corporation's economic interests were antagonistic to the plaintiff.[2] Other Colorado courts

[1] *Pine v. Duhon*, 2014 Colo. Dist. LEXIS 3059, No 13CV30948, *7 (June 27, 2014) *citing First Nat. Bancshares of Beloit, Inc. v. Geisel,* 853 F.Supp. 1333 (Dist. Kansas 1994).

[2] *Id.*

have done the same, realigning parties to place them in the proper alignment for the claims in a case.[3]

Federal courts follow the same logic when determining proper jurisdiction.[4] As the Supreme Court has said, litigation is not meant to be "a game of chess," and the Court does not apply strict rules to determine "[w]hether the necessary collision of interests exists," but ascertains that collision "from the principal purpose of the suit and the primary and controlling matter in dispute."[5] "The courts, not the parties, are responsible for aligning the parties according to their interests in the litigation."[6]

I. The Secretary refuses to fulfill her statutory duty and accept President Trump's Statement of Intent.

The Secretary has admitted that she has no explicit authority to disqualify President Trump from appearing on the Republican Party Presidential Preference Primary ballot: "the Election Code does not explicitly give the Secretary independent authority to determine whether a candidate is disqualified from holding office under Section 3 of the Fourteenth Amendment."[7] Yet on October 11, 2023, she stated that she received President Trump's

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[3] *See Sunvara Land Co. v. Fiduciary Trust Co.,* 371 P.2d 431, 435 (Colo. 1962) *Wright v. Beauvallon Condo. Ass'n.*, 2019 Colo. Dist. LEXIS 578, CN 2018CV30145, *1 (Denver Dist. Court, March 15, 2019).

[4] *Indianapolis v. Chase Nat'l.* Bank, 314 US 63, 68 (1941). *See also* 15A Moore's Federal Practice – Civ. § 102.20 and *First Nat'l Bancshares v. Geisel*, 853 F. Supp. at 1335.

[5] *Id.*

[6] 15A Moore's Federal Practice – Civ. § 102.20.

[7] *Secretary of State's Omnibus Response to Motions to Dismiss* at 2.

statement of intent, but now refuses to certify President Trump to the ballot, absent a court order.[8] In short, she currently has refused to fulfill her duty to execute Colorado's election laws knowing that those laws do not permit her to exclude President Trump from the ballot in this situation.

II. The Secretary prejudged President Trump's guilt regarding whether he engaged in or incited an "insurrection" on January 6, 2021.

The Secretary's overall posture is antagonistic to President Trump and should be aligned with Petitioners. She has loudly publicized her contempt for President Trump, her belief that he both instigated and engaged in an insurrection on January 6, 2023, and her demand that he should be barred from running for re-election. Here are a few examples:

- In a speech following reelection last year, the Secretary stated that President Trump tried to steal the election, is a liar, and is a threat to our Democracy: "The former president of the US in his thwarted effort to steal the presidency has opened a new chapter in the history of the United States. The use of conspiracies and lies incited an insurrection at the US Capital in hopes of stopping the peaceful transfer of power on July 6 [sic]."[9]

[8] *Secretary of State's Notice Regarding Receipt of Candidacy Materials for Donald J. Trump* at 2, October 11, 2023.

[9] Secretary Jena Griswold Victory Speech, Nov. 8, 2022, https://www.youtube.com/watch?v=A5nojN1eA-4, last accessed Oct. 2, 2023.

- On August 19, 2023, the Secretary stated, "It's a novel situation, as all of this has been, given the former president tried to steal the 2020 election, and his assault on democracy has not stopped."
- On September 6, 2023, the day of Petitioners' lawsuit, she issued a press release agreeing with Petitioners, arguing "the January 6th insurrection and attempt[ed] to overturn the 2020 Presidential Election."[10]
- Also, on September 6 she took her message to local and national media, stating "This is an unprecedented situation. We've never had a president incite an insurrection and attack our democracy like this."[11]
- And again, on the day of this lawsuit: "Look, Donald Trump tried to steal the 2020 election, it was a blatant attack on the United States and the American people. It's a blatant attack on the fundamental right to vote."[12]

In other words, the Secretary has taken a strong stand that President Trump: 1) incited an insurrection; 2) is disqualified from being President; and 3) is a danger to

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[10] Ex. A, Press Release, June 6, 2023, https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2023/PR20230906AccessBallot.html, last accessed Oct. 2, 2023.

[11] Ex. B, Zach Montellaro, Constitutional debate over Trump's eligibility to run more extensive than realized, Sept. 6, 2023, https://www.politico.com/news/2023/09/06/colorado-14amendment-trump-00114339, last accessed Oct. 2, 2023.

[12] Ex. C, Young, Quentin, Lawsuit seeks to bar Trump from presidential ballot in Colorado, Sept. 6, 2023, https://coloradonewsline.com/2023/09/06/lawsuit-bar-trump-colorado/, last accessed October 2, 2023.

democracy in the United States. Her unrelenting hostility to President Trump's position in this case shows that the Secretary's interests are antagonistic to President Trump's interests. The "collision of interests," as articulated by Colorado courts, are straightforward; both Petitioners and the Secretary want to bar President Trump from running for President again. But whether President Trump may appear on the ballot is the "principal purpose of the suit and the "primary and controlling matter in dispute."[13]

III. The Secretary has aligned herself with Petitioners in this matter.

Further, the Secretary has actively aligned herself with Petitioners in this matter. She admitted in *The Secretary of State's Omnibus Response to Motions to Dismiss* (the "*Omnibus Response*"), that she is aligned with Petitioners, arguing "In light of the prima facie showing presented in the Verified Petition and the evidence cited there, the Secretary believes that Mr. Trump incited the insurrection."[14] As shown above in Section I, this statement is consistent the Secretary's long-standing and loudly-publicized official position. To be sure, the Secretary implies that the Verified Petition caused her to believe that President Trump should be barred. In fact, however, she has maintained that position for a long time.

Furthermore, at every step in the litigation the Secretary has proven herself to be aligned with the Petitioners. She supported Petitioner's *Motion to Remand* this matter to state from federal court, she supports Petitioner's use of Sections 113 and 1204, she has joined Petitioners in opposing discovery, and she has joined Petitioners' efforts to dismiss President

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[13] *Indianapolis*, 314 US at 68.

[14] *Secretary of State's Omnibus Response to Motions to Dismiss*, p. 2.

Trump's *Special Motion to Dismiss*. Her actions before this Court show that she opposes President Trump's efforts to appear on Republican Presidential Preference ballot.

IV. Re-alignment will facilitate the litigation of this matter.

Re-alignment is important from a litigation perspective. First, re-alignment puts the aligned parties on the same side of the case for purposes of the hearings in this matter. The Court should receive orderly presentation of evidence. To the extent the Secretary will present any evidence, it should be presented *before* evidence presented by President Trump and Intervenor (the Colorado Republican Party), giving them the opportunity to understand the case against them prior to putting on their testimony.[15] This also clarifies who bears the burden of proof; it is the Secretary, along with the Petitioners, because her arguments and positions impose upon her the burden of proof as an actual petitioner.[16] Further, to the extent the Secretary would want to examine witnesses, she should not be permitted to cross-examine Petitioners' witnesses by claiming they are hostile witnesses. She, like Petitioners, should be properly limited to direct examination of those witnesses. Finally, this case is a matter of public interest. The public deserves an honest presentation of the real interests of parties, and realignment will present to the public the Secretary's proper position in this high-profile, highly consequential litigation.

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[15] *Syntel Sterling Best Shores Mauritius Ltd. v. TriZetto Grp.*, 2020 U.S. Dist. LEXIS 181093, *4 (S.D.N.Y. September 30, 2020).

[16] *Id.*

Conclusion

The Secretary has never been neutral in this matter. She has pre-judged President Trump, loudly and publicly declaring her support for Petitioners. She has consistently taken legal positions in opposition to President Trump. The Secretary's position in opposition to President Trump should be clearly reflected in the position of the parties in this litigation, and the Court should realign her as a petitioner.

FOR THESE REASONS, the court should realign the Secretary of State with Petitioners in this matter, and also grant Donald J. Trump all such further relief as is just, proper or appropriate.

Respectfully submitted this 13th day of October 2023,

GESSLER BLUE LLC

s/ Geoffrey N. Blue
Geoffrey N. Blue

Certificate of Service

I certify that on this 13th day of October 2023, the foregoing was electronically served via e-mail or CCES on all parties and their counsel of record:

By: *s/ Joanna Bila*
Joanna Bila, Paralegal