

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

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

v.

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

and

**COLORADO REPUBLICAN STATE CENTRAL
COMMITTEE,** an unincorporated association, and
DONALD J. TRUMP,
Intervenors.

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Case Number:
2023CV32577

Division:

MOTION TO RECUSE JUDGE WALLACE

Conferral under C.R.C.P. 121 § 15-8

The undersigned counsel has conferred with all parties. The Petitioners oppose the relief, the Colorado Republican Party does not oppose, and the Secretary had not yet responded at the time of filing.

Introduction

Respondent/Intervenor Donald J. Trump (“President Trump”) reluctantly moves to recuse Judge Sarah Wallace in this matter (referred to as “the Court”), because she has expressed her support for the Colorado Turnout Project, which explicitly characterizes as the event on January 6, 2021, as a “violent insurrection,” characterizes as “political extremists” the people who occupied the Capitol on January 6, 2021, and attacks officeholders who failed to sufficiently condemn people who committed violence on January 6, 2021.

And the Court’s support for these views indicates that she has pre-judged certain issues—including that one. At a minimum this support creates the strong perception of bias.

Undersigned counsel learned of this information today, October 27, 2023. The contribution is not readily apparent. Federal Election Commission reports show contributions directly to Act Blue, and it requires an additional level of research to identify an earmark for the Colorado Turnout Project. And the Colorado Turnout Project has reported this contribution as part of aggregated, non-itemized contributions, without identifying the specific contributor.

Although brought two days before the hearing is to commence, this is a meritorious argument. Importantly, undersigned has an obligation to seek recusal. “[A]n attorney who believes a judge’s impartiality is reasonably subject to question has not only a professional

duty to his or her client to raise the matter, but also an independent responsibility as an officer of the court to preserve public confidence in the judicial system.”¹

It goes without saying that this is a highly charged matter with extensive public policy and political implications. The court’s expression of support for the view that January 6, 2021, constituted an insurrection is probative evidence of pre-judgement and bias. This Court should avoid all implications of bias. Recusal is necessary to maintain public confidence in these proceedings.

Argument

1. This motion contains adequate evidence to support recusal.

The procedures for recusal are set forth in C.R.C.P. 97:

A judge shall be disqualified in an action in which he is interested . . . or is so related or connected with any party or his attorney as to render it improper for him to sit on the trial, appeal, or other proceeding therein. . . . [A]ny party may move for such disqualification and a motion by a party for disqualification shall be supported by affidavit. Upon the filing by a party of such a motion all other proceedings in the case shall be suspended until a ruling is made thereon.

Attached to this motion is an affidavit from undersigned counsel, attesting to the accuracy of (1) the Federal Election Commission web page identifying the political contribution at issue, and (2) a printout from the web site of The Colorado Turnout web site entitled “Our Story. Fighting for what we believe in. Together.”²

¹ 12 Moore's Federal Practice - Civil § 63.60 (2023).

² **Ex. A**, Affidavit of Scott E. Gessler, October 28, 2023.

The Colorado Supreme Court has held that “[w]hen evaluating the legal sufficiency of a motion for disqualification and the accompanying affidavits, a court must accept the facts alleged in those documents as true,”³ “even though the judge believes that the statements contained in the affidavits are false or that the meaning attributed to them by the party seeking recusal is erroneous.”⁴ Therefore, the test for whether a motion is sufficient is whether the motion and affidavit state adequate facts.⁵ Accordingly, “the motion and supporting affidavit speak for themselves, and the only question involved is whether the facts alleged are sufficient to compel the judge to disqualify himself.”⁶

2. A contribution to a political organization requires recusal.

As a general matter, “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.”⁷ The circumstances that mandate recusal include “mak[ing] a contribution to a political organization.”⁸ Contributions to political organizations are properly disqualifying, because they demonstrate support for

³ *Klinck v. Dist. Court of the Eighteenth Judicial Dist.*, 876 P.2d 1270, 1274 (Colo. 1994).

⁴ *Wright v. Dist. Court of Cty. of Gunnison, Seventh Judicial Dist.*, 731 P.2d 661, 664 (Colo. 1987).

⁵ *Moody v. Corsentino*, 843 P.2d 1355, 1374 (Colo. 1993).

⁶ *Wright v. Dist. Court of Cty. of Gunnison, Seventh Judicial Dist.*, 731 P.2d 661, 665 (Colo. 1987)(internal quotation marks and citation omitted).

⁷ Colo. CJC Canon 2, Rule 2.11(A).

⁸ Colo. CJC Canon 2, Rule 2.11(A)(4).

the political organization's goals and objectives. In its analysis of contributions to a political organization, the U.S. Supreme Court ruled:

Individuals who contribute to appellee are fully aware of its political purposes, and in fact contribute precisely because they support those purposes. It is true that a contributor may not be aware of the exact use to which his or her money ultimately may be put, or the specific candidate that it may be used to support. However, individuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction. Any contribution therefore necessarily involves at least some degree of delegation of authority to use such funds in a manner that best serves the shared political purposes of the organization and contributor. In addition, an individual desiring more direct control over the use of his or her money can simply earmark the contribution for a specific purpose . . .⁹

This standard in *Massachusetts Citizens for Life* establishes three controlling principles:

1. As a general matter, a contributor is presumed to know an organization's political purposes, and the contributor is presumed to support the organization's purpose.
2. Individuals contribute to organizations in part because they view it as an effective form of advocacy.
3. An individual seeking control over the use of a contribution can earmark it for specific purposes.

⁹ *Federal Election Com'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 260–261 (1986).

The fact that a political contribution demonstrates the contributor’s support for the recipient’s political views is not new. Longstanding U.S. Supreme Court jurisprudence, dating back nearly 50 years, holds that “[a] contribution serves as a general expression of support for the candidate and his views.”¹⁰

3. The Colorado Turnout Project’s sole focus is rooting out officeholders and political figures associated with January 6, 2021.

Rooting out “violent extremists” is the self-declared justification for the Colorado Turnout Project’s existence. Its website proudly proclaims that the group was formed “shortly after Colorado Republicans refused to condemn the political extremists who stormed the United States Capitol on January 6, 2021,” and its mission “aims to prevent violent insurrections by addressing this problem at its source – if we vote out pariahs like Representative Boebert, we can turn CO Blue once and for all.”¹¹ The group is anti-Republican and it targets “pariahs like Representative Boebert” because she allegedly “encouraged the violence” on January 6, 2021.

And the Colorado Turnout Project repeatedly refers to “MAGA Republicans” in a derogatory manner, calling them “extremists” who are “trying to burn the country down.”¹² The term “MAGA Republicans” is universally understood to refer to Republicans identified

¹⁰ *Buckley v. Valeo*, 424 U.S. 1, 21 (1976).

¹¹ **Ex. A2**, “Our Story” Colorado Turnout Project available at <https://www.coloradoturnout.org/our-story/>, last visited Oct. 28, 2023.

¹² **Ex. A3**, Fundraising Email, available at <https://politicalemails.org/messages/828456>, last visited Oct. 28, 2023.

with President Trump, who used the phrase Make America Great Again (or “MAGA”) as a campaign slogan in 2016.

In short, there is no doubt about the Colorado Turnout Project’s exclusive focus on officeholder, using the prism of January 6, 2021. And a brief review of the organization’s web site shows this singular focus.

4. Recusal is proper because the Court supports the Colorado Turnout Project’s views that January 6, 2021, was a “violent insurrection,” and that “political extremists” “stormed” the Capitol on that day.

On October 22, 2022, the Court contributed to Act Blue, and it specifically earmarked the contribution to go to the “Colorado Turnout Project.”¹³ As noted above, the Colorado Turnout Project states its mission is remove politicians from office who refused “to condemn the political extremists who stormed the United States Capitol on January 6, 2021.”¹⁴ It views the events of January 6, 2021 as a “violent insurrection,” and it opposes politicians who failed to “condemn” the “political extremists.”¹⁵

These three beliefs are directly at issue in this case. First, Petitioners have alleged that the events of January 6, 2021, constituted an insurrection. Indeed they devote nine pages in

¹³ **Ex. A1**, FEC report available at https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=sarah+wallace&contributor_city=Denver, last visited Oct. 28, 2023.

¹⁴ **Ex. A2**, “Our Story” Colorado Turnout Project available at <https://www.coloradoturnout.org/our-story/>, last visited Oct. 28, 2023.

¹⁵ *Id.*

their *Verified Complaint* arguing that “[t]he January 6, 2021 mob attack on the U.S. Capitol and surrounding events constituted an “insurrection” against the U.S. Constitution.”¹⁶ A contribution to the Colorado Turnout Project shows support for the view that January 6, 2021, constituted an “insurrection.” And now this Court called upon to determine whether the events of January 6, 2021, constituted an insurrection, having reserved the issue for trial.¹⁷

Second, the Petitioners argue that “political extremists” committed violence on January 6, 2021. The *Verified Petition* contains 34 references to “extremists,” making allegations such as “[a]mong those Trump mobilized for January 6th were violent extremists,”¹⁸ and “Trump used the bully pulpit of the presidency...to summon tens of thousands of his supporters – including violent extremists,”¹⁹ and “[t]hree Percenter across the country immediately began planning for violence after Trump’s ‘be wild’ tweet, which tapped into a well of anti-government extremism.”²⁰ And they have also submitted an expert who claims to know “how extremist leaders, groups, and individuals come together,

¹⁶ *Verified Petition* at 84.

¹⁷ *Order re Donald J. Trump’s Motion to Dismiss*, Sept. 29, 2023, p. 22.

¹⁸ *Verified Pet.*, ¶ 8.

¹⁹ *Id.*, ¶ 401.

²⁰ *Id.*, ¶ 196.

communicate, and act,”²¹ and who claims that President Trump played a role in “mobilizing and organizing” these “extremists.”²² Again, a contribution shows agreement with the view that “extremists” “stormed” the Capitol – the same allegations and evidence advanced by Petitioners.

Third, using nearly the exact same language as the Colorado Turnout Project, Petitioners allege that President Trump “engaged” in an insurrection because he failed to properly condemn the people committing violence on January 6, 2021. For example, they allege that “President Trump did not condemn the attack – he justified it,”²³ and make multiple other allegations that President Trump failed to do enough to stop violence on January 6, 2021. Again, a contribution shows support for the idea that politicians who refused to adequately condemn the events of January 6, 2021, should be removed from office. This is one of the Petitioners’ exact allegations.

The Court’s contributions raise serious concerns. And even if “a trial judge believes in his or her own impartiality, the court’s duty is to eliminate every semblance of *reasonable* doubt or suspicion that a trial by a fair and impartial tribunal may be denied. Courts must meticulously avoid any appearance of partiality, not merely to secure the

²¹ **Ex. B**, Final Expert Witness Report, ██████████, Oct. 6, 2023, p. 1,

²² *Id.*

²³ *Verified Pet.*, ¶ 331.

confidence of the litigants immediately involved, to retain public respect and secure willing and ready obedience to their judgments.”²⁴

Importantly, the Court made its contribution less than one year before the Petitioners filed their *Verified Petition* – and one year and eight days from the commencement of this hearing. One year is a short period of time; the Colorado Judicial Ethics Advisory Board has opined that a one-year time frame is the appropriate measure for a recusal period. Specifically, “a judge should disqualify himself or herself for one year in proceedings involving an attorney who represented the judge in a personal matter.” Likewise, under federal standards, judges should recuse themselves for at least two years, from matters involving their former law firms.²⁵ These timelines apply to a personal relationship from which one can infer a conflict. They provide an appropriate, minimum timeframe here, because the Court’s political views – as shown by the prior contribution – are directly connected to the issues in this case.

Finally, the Court’s contribution of \$100 is sizeable enough to reveal political views that interfere with a dispassionate analysis of this case. In this instance, the contribution unambiguously shows political support for very specific policy views.

²⁴ *People v. District Court of Third Judicial Dist.*, 560 P.2d 828, 831-832 (Colo. 1977) (citations and quotes omitted, emphasis in original).

²⁵ Guide to Judiciary Policy, Vol. 2B, Ch. 2, p. 25.

FOR THESE REASONS, Judge Wallace should recuse herself in this highly-publicized and politically-charged matter, and also grant the President Trump all such further relief as is just, proper or appropriate.

Respectfully submitted this 28th day of October 2023,

GESSLER BLUE LLC

s/ Scott E. Gessler
Scott E. Gessler

Certificate of Service

I certify that on this 28th 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