THE SUPREME COURT FOR THE STATE OF COLORADO 2 E 14th Avenue Denver, CO 80203	
Appeal Pursuant to § 1-1-113(3), C.R.S. District Court, City and County of Denver, Case No. 2023CV032577 Honorable Sarah B. Wallace, Judge	
Petitioners-Appellants: NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN, **v.** **Respondent-Appellee:** JENA GRISWOLD, in her official capacity as Colorado Secretary of State, and **Intervenors-Appellees:** COLORADO REPUBLICAN STATE CENTRAL COMMITTEE, an unincorporated association, **Intervenor-Appellant/Cross-Appellee:** and DONALD J. TRUMP.	**▲ COURT USE ONLY ▲** Case Number: 23SA000300
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AMICUS BRIEF OF SECRETARIES OF STATE CHUCK GRAY, JAY ASHCROFT, AND FRANK LAROSE

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of C.A.R. 21 and C.A.R. 32, including all formatting requirements set forth in those rules. I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 21 and C.A.R. 32.

This brief complies with the word limit in C.A.R. 28(g) because it is a principal brief and contains 1,925 words.

s/ Suzanne M. Taheri
Suzanne M. Taheri
West Group Law & Policy

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Court Rules

State Constitutional Provisions

INTEREST OF *AMICUS CURIAE*

This brief is filed on behalf of Wyoming Secretary of State Chuck Gray, Missouri Secretary of State Jay Ashcroft, and Ohio Secretary of State Frank LaRose.[1] As the chief elections officers of their respective states, the undersigned Secretaries' responsibilities transcend administrative oversight, extending to the guardianship of democratic principles and the integrity of electoral processes.

The undersigned Secretaries' understanding of electoral administration and the sanctity of voter choice is deeply informed by their positions. Their concern in this case is rooted in a commitment to preserving the electorate's freedom in selecting their presidential candidates without undue judicial intervention. This issue goes beyond procedural considerations and strikes at the heart of self-governance: the citizenry's fundamental right to elect a president of their choosing. Thus, the undersigned Secretaries' interest in this case is profoundly tied to the principles of electoral integrity and democratic sovereignty, ensuring that the voice of voters is respected and upheld in the national electoral landscape.

In addition, there is an interest for the undersigned Secretaries in relation to their respective primaries, caucuses, and general elections. The removal of a

[1] Although the undersigned Secretaries of State are filing this brief in their official capacities, they are not filing on behalf of their respective states.

candidate from the ballot in one state not only affects that state's election but also has far-reaching ramifications in other states. It artificially alters momentum in relation to primaries and caucuses; therefore, affecting the entire process.

This brief aims to provide insight into the potential impact and ramifications of the District Court's decision to label President Trump an "insurrectionist" at trial with respect to administration of elections across the country.

ARGUMENT

I. The District Court should have decided this matter on a motion to dismiss, rather than declare President Trump an "insurrectionist."

In an over 100-page decision, the District Court largely did two things. First, it declared that President Trump "engaged in an insurrection on January 6, 2021[.]" District Court Op. ¶ 298. Second, the District Court declared that Section Three of the Fourteenth Amendment did not apply to President Trump because the president is not an "officer of the United States" that is subject to disqualification under Section Three of the Fourteenth Amendment. *Id.* ¶¶ 299-315. Given the grounds on which this case was disposed of, the District Court should have granted President Trump's motion to dismiss for failure to state a claim upon which relief can be granted.

Rule 12(b)(5) of the Colorado Rules of Civil Procedure allows a party to file a motion to dismiss on the grounds that a complaint fails to state a claim upon

which relief can be granted. When determining whether a petitioner states a claim, courts "accept all factual allegations in the complaint as true and view them in the light most favorable to the plaintiff." *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). Furthermore, courts grant a "motion to dismiss only when the plaintiff's factual allegations do not, as a matter of law, support the claim for relief." *Id.*

In this case, the District Court should have granted President Trump's motion to dismiss because Petitioners' factual allegations do not support a claim for relief. While lengthy, the petition in this case alleged in relevant part:

> "[President] Trump's efforts culminated on January 6, 2021, when he incited, exacerbated, and otherwise engaged in a violent insurrection at the United States Capitol by a mob who believed they were following his orders, and refused to protect the Capitol or call off the mob for nearly three hours as the attack unfolded." Petition ¶ 1.
>
> "By instigating this unprecedented assault on the American constitutional order, [President] Trump violated his oath and disqualified himself under the Fourteenth Amendment from holding public office, including the Office of the President." *Id.* ¶ 6.

Distilled to its essence, Petitioners claim that 1) President Trump engaged in an insurrection and therefore 2) is disqualified from holding the office of president of the United States under Section Three of the Fourteenth Amendment.

Thus, Petitioners' attempt to remove President Trump from the ballot could only possibly succeed if the office of president were one that is subject to

disqualification under Section Three of the Fourteenth Amendment. However, the District Court ruled that the office of president was not subject to Section Three's Disqualification Clause. Therefore, the question at trial regarding President Trump's actions on January 6, 2021 had no bearing on whether Petitioners were entitled to relief. Due to the District Court's ultimate conclusion that the president is not an officer subject to the Disqualification Clause, a dismissal under Rule 12(b)(5), rather than proceeding to an evidentiary hearing, would have been the proper disposition of this case. *See, e.g.*, Colorado Republican Party Motion to Dismiss, September 22, 2023 (arguing that the District Court should dismiss the case under Rule 12(b)(5)).

II. Allowing this ruling to stand could prejudice future defenses to claims that President Trump engaged in an insurrection.

Allowing the District Court's finding regarding President Trump's actions on January 6, 2021 to stand could potentially prejudice the ability of President Trump or other states to challenge the legal conclusions the District Court made when this issue inevitably arises in other jurisdictions. Although the undersigned Secretaries believe that a proper application of the issue preclusion doctrine should not prevent President Trump, or other states, from asserting a proper defense on the issue of whether President Trump engaged in an insurrection on January 6, 2021 if the issue arises elsewhere, courts in other jurisdictions could potentially use the

District Court's ruling to prevent President Trump, and other states, from relitigating this issue. The ultimate end of which would undermine the integrity of other states' elections by artificially limiting ballot access, thus effectively depriving voters in other states from making their own decision in the 2024 presidential election.

By way of example, Colorado's issue preclusion doctrine contains four elements: "(1) the prior proceeding was decided on a final judgment on the merits; (2) the issue in the current proceeding is identical to the issue actually adjudicated in a prior proceeding; (3) the party against whom issue preclusion is asserted had a full and fair opportunity to litigate the issue in the prior proceeding; and (4) the party against whom issue preclusion is asserted is a party or in privity with a party in the prior proceeding." *Foster v. Plock*, 2017 CO 39, ¶ 13, 394 P.3d 1119, 1123 (Colo. 2017).

Here, there is a real risk that the District Court's judgment, if allowed to stand, could prejudice the ability of President Trump, and other states, to defend similar cases in other jurisdictions because other courts could determine that the issue preclusion doctrine bars President Trump, and other states, from litigating whether President Trump engaged in an insurrection on January 6, 2021. Consider how a court could review the four elements listed above. First, rather than merely

dismiss the case on the grounds presented in President Trump's motion to dismiss, the District Court held a trial and issued a final judgment concluding that President Trump engaged in an insurrection on January 6, 2021. Second, this identical issue is likely to arise in future proceedings. Cases such as this one have been filed in over half of the states in the United States, with more possible to follow.[2] Third, a court could determine that due to the District Court's evidentiary hearing on this issue, that President Trump had a full and fair opportunity to litigate this issue and thus prevent him, as a party or intervenor in other states, from relitigating it. Fourth, President Trump was a party to this proceeding and will likely be a party, or intervenor, to future proceedings that attempt to remove him from the ballot.

The decision of the District Court, if upheld, not only sets a concerning precedent but also encroaches upon the fundamental rights of voters, a principle deeply embedded in our democratic fabric. This Court has consistently recognized that the right to vote is paramount, holding it as a "fundamental right of the first order." *E.g. Erickson v. Blair*, 670 P.2d 749, 754 (Colo. 1983). Additionally, the Colorado Constitution enshrines this right, stating in Article Two, Section Five, "All elections shall be free and open; and no power, civil or military, shall at any

[2]Tracking Section 3 Trump Disqualification Challenges, The Lawfare Institute, https://www.lawfaremedia.org/current-projects/the-trump-trials/section-3-litigation-tracker

time interfere to prevent the free exercise of the right of suffrage." The District Court's findings, if left unchallenged, not only undermine this fundamental right but also open the door for other jurisdictions to similarly circumvent the electoral process. By leveraging the District Court's decision, other courts could justify excluding a presidential candidate from the ballot, thereby directly impinging upon the electorate's freedom to choose their leader. This scenario poses a grave threat to the principles of voter choice and self-governance, as it would allow judicial proceedings to override the will of the people. It is imperative that this Court steps in to safeguard the sanctity of the electoral process and uphold the voters' right to select a candidate without unwarranted judicial intervention.

The District Court's legal conclusion on this issue is particularly troubling when considering the evidence it relied on.

For example, the District Court admitted the January 6th Report into evidence, District Court Op. ¶¶ 20-38, a report issued by a committee that did not have any appointees made by the minority party, and whose bias has become increasingly clear as more security camera footage of January 6th continues to be released to the general public.[3]

[3] It should be noted that while the January 6th Committee originally boasted two House republicans among its membership, Adam Kinzinger of Illinois, and Liz Cheney of Wyoming, neither have remained in the House of Representatives,

Furthermore, in concluding that President Trump intended to incite violence on January 6, 2021, the District Court relied heavily on Peter Simi, a sociology professor who divined President Trump's intent based on the opposite of the words President Trump uttered. Professor Simi used pretzel logic to conclude that President Trump's denunciation of neo-Nazis and white supremacists somehow meant the opposite of what President Trump said, concluding that President Trump's "condemnation of neo-Nazis and white supremacists…would be understood as plausible deniability" of his alleged support of these groups. *Id.* ¶ 72.

Resting the final judgment on biased evidence so far disconnected from logic and reality not only prejudices the parties to the case, and cases in other states, but ultimately risks prejudicing the integrity of the electoral process of the entire country through ultimately denying voters in other states the right to choose a presidential candidate for themselves. Such removal not only affects that state's election but also has far-reaching ramifications in other states, by artificially altering momentum in relation to primaries and caucuses; therefore, affecting the entire process. Thus, the District Court's decision threatens the integrity of the electoral process the undersigned Secretaries undertook to defend. It is crucial to

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Kinzinger having chosen not to run for reelection, and Cheney having been overwhelmingly voted out of office by the people of Wyoming.

vacate the District Court's judgment and to stop other jurisdictions from using issue preclusion to prevent President Trump, or other states, from contesting this issue, especially considering the lack of competent evidence that forms the basis of the District Court's decision.

CONCLUSION

This Court should vacate the District Court's final order and direct the District Court to dismiss the petition for failure to state a claim upon which relief can be granted.

Respectfully submitted this 29th day of November, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2023, a true and correct copy of the **AMICUS BRIEF** was served via the Colorado Court's E-Filing System.

/s/ Suzanne Taheri
Suzanne Taheri

Duly signed original on file at West Group