

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

Civil Action No. 1:23-cv-2291

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

v.

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

RESPONSE TO PETITIONERS' UNOPPOSED MOTION TO REMAND

1. On September 8, 2023, Petitioners filed their *Unopposed Motion to Remand* (ECF No. 15) (“*Motion to Remand*”) in response to Respondent Donald J. Trump’s (“Trump”) *Notice of Removal* (ECF. No. 1) filed on September 7, 2023.

2. Respondent Donald J. Trump filed his *Notice to Remove* because this matter arises under federal law and consent of the Secretary of State is not required, because she is a nominal defendant. Nonetheless, in light of the Plaintiffs’ unexpected confession that they do not have standing to pursue an action in federal court, Trump withdraws his *Notice of Removal* and does not object to remand.

3. Under 28 U.S.C. § 1446(b)(2)(A), all defendants “who have been properly joined and served must join in or consent to the removal of the action.” Courts have interpreted this to mean that “nominal or formal” parties are not necessary signatories on a

removal action,¹ and whether a party is a nominal defendant depends on that party's interest in the litigation.² Without engaging in a lengthy legal or factual analysis, the Secretary here is a nominal defendant because she has no interest in the actual litigation. The Secretary has no official position or concern with respect to Trump's placement on the ballot. Even assuming a court has jurisdiction to resolve the 14th Amendment claims, the Secretary's role is a ministerial one — to effectuate the judgment of the court, by allowing or disallowing Trump's name on the ballot.³

4. Indeed, the Secretary's public statements exemplify her ministerial role and disinterest in the outcome of this case. Immediately after Petitioners filed this lawsuit, the Secretary publicly stated "I look forward to the Colorado Court's substantive resolution of the issues and am hopeful this case will provide guidance to election officials on Trump's eligibility as a candidate for office."⁴ And she has made identical statements in other media outlets.⁵

¹ *Tri-Cities Newspapers, Inc. v. Tri-Cities Printing Pressmen & Assistants' Local 349, etc.*, 427 F.2d 325, 327 (5th Cir. 1970).

² 15A Moore's Federal Practice – Civil § 102.15.

³ See Colo. Rev. Stat. § 1-4-1204.

⁴ *Colorado Secretary of State Jena Griswold Issues Statement on Lawsuit Pertaining to 14th Amendment and Access to Colorado's Ballot*, News Release from the State of Colorado, Department of State (Sept. 6, 2023), <https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2023/PR20230906.AccessBallot.html>, last accessed Monday, September 11, 2023.

5. Nonetheless, a case removed to federal court must be remanded to state court “if at any time before final judgment it appears that the district court lacks subject matter jurisdiction.”⁶ Petitioners have unexpectedly confessed that they only assert a “generalized grievance” and have not suffered harm to a “legally protected interest” that is “concrete and particularized.” To be sure, the Petitioners’ Count I contains a claim under two state law provisions (Colo. Rev. Stat. §§ 1-1-113 and 1-4-1204). But their confession of a lack of a concrete, legally protected interest is surprising; it will prove fatal to their Count II request for a declaratory judgment regarding Amendment XIV, Sec. 3, because Colorado also denies standing to plaintiffs who can only show a “generalized grievance.”

6. Due to Petitioners’ confession that they lack standing, Donald J. Trump withdraws his *Notice of Removal* and does not object to a remand to state court.

Respectfully submitted this 12th day of September 2023.

GESSLER BLUE LLC

s/ *Scott E. Gessler*
Scott E. Gessler

⁵ *About the lawsuit to bar Trump from the ballot*, CNNPolitics (Sept. 9, 2023), <https://www.cnn.com/videos/politics/2023/09/09/smr-colorado-lawsuit-to-bar-trump-from-ballot.cnn>, last accessed Monday, September 11, 2023; *CO Secretary of State: Trump is a liar with no respect for the Constitution*, MSNBC, Ali Velshi (Sept. 9, 2023), <https://www.msnbc.com/ali-velshi/watch/-co-secretary-of-state-trump-is-a-liar-with-no-respect-for-the-constitution-192606789690>, last accessed Monday, September 11, 2023; *‘Lawsuit may be brought again if he wins’: CO official on 14th Amendment push to disqualify Trump*, MSNBC, The ReidOut (Sept. 7, 2023), <https://www.msnbc.com/the-reidout/watch/legal-theory-emerges-to-disqualify-trump-from-running-for-president-using-14th-amendment-192503365798>, last accessed Monday, September 11, 2023.

⁶ 28 U.S.C. § 1447(c).

