

DISTRICT COURT, DENVER, COLORADO
1437 Bannock Street
Denver, CO 80203

Petitioners:

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

v.

Respondent:

JENA GRISWOLD, in her official capacity as Colorado
Secretary of State,

and

Intervenors:

COLORADO REPUBLICAN STATE CENTRAL
COMMITTEE, and DONALD J. TRUMP.

PHILIP J. WEISER, Attorney General
MICHAEL KOTLARCZYK, Senior Assistant Attorney
General, Attorney Reg. No. 43250*
GRANT T. SULLIVAN, Assistant Solicitor General,
Attorney Reg. No. 40151*
JENNIFER L. SULLIVAN, Deputy Attorney General,
Attorney Reg. No. 32092*
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center



*Counsel of Record
Attorney for Respondent Jena Griswold

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Case No. 2023CV32577

Courtroom: 209

**SECRETARY OF STATE'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

INTRODUCTION

The Secretary is named in this lawsuit as a respondent in her official capacity, as the state's chief election official responsible for certifying the presidential primary ballot. The Secretary did not affirmatively present evidence at the hearing concerning whether Trump engaged in insurrection. And for the same reasons, the Secretary does not now propose any findings on that subject.

The Secretary of State has not taken a formal legal position on whether Trump is ineligible to appear on Colorado's presidential primary ballot. That question is fairly presented to the Court here, and the Secretary welcomes the Court's direction. To assist the Court in the important task before it, the Secretary proposes the following findings of fact and conclusions of law that fall within her expertise as Colorado's chief election official.

FINDINGS OF FACT

The Secretary of State's practices concerning determinations of candidate eligibility.

1. On November 1, 2023, Hilary Rudy, the deputy elections director in the Colorado Secretary of State's office, testified as to the office's historic practices with respect to reviewing candidate eligibility. TR 11/1/2023 at 89-160.

2. Ms. Rudy has served in the Secretary of State's office since 2006 and has been the deputy elections director since 2013 under Secretaries of State from both political parties. *Id.* at 89:5-90:2. Her testimony was credible.

3. The Secretary of State is responsible for “certify[ing] the content for state and federal offices to the ballot.” *Id.* at 91:4-5. The Secretary of State's office “is the filing office for state and federal offices for individuals seeking . . . to run for office in Colorado.” *Id.* at 96:10-12. When the Secretary of State receives a candidate's paperwork, the office “verif[ies] the information on the application as required under state law, and then ultimately there is a deadline by which [the] office must certify all [contents] to the ballot,” including candidates. *Id.* at 96:13-17.

4. “The Secretary of State is responsible for ensuring that only eligible candidates are placed on the ballot.” Ex. 107. In determining whether a candidate is eligible, the Secretary “must give effect to applicable federal and state law unless a court has held such law to be invalid.” *Id.*; *see also* TR 11/1/2023 at 107:24-108:3. If

the Secretary of State's office "has affirmative knowledge that a candidate is ineligible for office," then it "will not certify them to the ballot." *Id.* at 99:14-16.

5. The Secretary of State's office has "kept state legislative candidates off the ballot due to ineligibility in the past." *Id.* at 100:6-9. The office verifies information contained on the candidate's paperwork by comparing it to information in the statewide voter database. *Id.* at 100:19-25.

6. The office has also kept ineligible presidential candidates off the ballot. *Id.* at 104:24-105:4. One candidate, Abdul Hassan, informed the Secretary of State's office that he did not meet the constitutional requirements for the presidency because he was not a natural-born United States citizen. *Id.* at 106:7-107:1. The Secretary of State's office informed Mr. Hassan that he was ineligible, and a court affirmed that determination. *Id.* at 106:17-107:1, 108:11-17; *see also Hassan v. Colo.*, 495 F. App'x 947 (10th Cir. 2012) (Gorsuch, J.).

7. Other presidential candidates were excluded from the ballot in 2012, 2016, and 2023 (for the 2024 ballot) because they failed to certify their compliance with mandatory federal constitutional requirements for the presidency by completing the required paperwork that would otherwise attest to their qualifications. TR 11/1/2023 at 151:24-153:12.

8. Candidates, or other individuals, who disagree with the Secretary of State's decision regarding whether to certify a candidate to the ballot can challenge

the Secretary's decision in court. *Id.* at 91:18-92:2; 102:25-103:3. The office expects such challenges in every election cycle. *Id.* at 101:20-102:3. Accordingly, the "Secretary's Office is never the final arbiter of eligibility because the Secretary's decision to either certify a candidate or not can be challenged in court." *Id.* at 108:7-10.

9. The Secretary of State's office creates the forms used by candidates to access the ballot, including the presidential primary forms. *See id.* at 111:17-22; *see also* Ex. 158.

10. The Major Party Candidate Statement of Intent for the Presidential Primary includes, among other things, checkboxes that require the candidate to certify: "Age of 35 Years"; "Resident of the United States for at least 14 years"; and "Natural-born U.S. Citizen." TR 11/1/2023 at 113:1-5; Ex. 158. But those qualifications are not the only qualifications for president. TR 11/1/2023 at 113:9-12. Candidates submitting this form must also sign and notarize the following statement: "I intend to run for the office stated above and solemnly affirm that I meet *all* qualifications for the office prescribed by law." Ex. 158 (emphasis added).
Trump's submission to appear on the 2024 presidential primary ballot.

11. On October 11, 2023, the Secretary of State's office received (1) a Major Party Candidate Statement of Intent for Presidential Primary, signed by Donald J. Trump; (2) a State Party Presidential Primary Approval, signed by Dave Williams,

the chair of the Colorado Republican Party, stating that the “Colorado Republican Party has determined [Donald J. Trump] is bona fide and affiliated with the party”; and (3) a \$500 filing fee from Donald J. Trump for President 2024, Inc. Ex. 158.

12. The Major Party Candidate Statement of Intent for Presidential Primary contains the following affirmation: “I intend to run for the office stated above and solemnly affirm that I meet all qualifications for the office prescribed by law.” Ex. 158. Donald J. Trump signed the affirmation. *Id.*

13. The documents contained in Exhibit 158 are facially complete. No additional paperwork is required for Trump to be certified to the 2024 presidential primary ballot. TR 11/1/2023 at 123:8-12.

14. The Secretary is holding Trump’s application “pending further direction from the Court.” *See* Notice (Oct. 11, 2023).

The Secretary of State’s certification of the presidential primary ballot.

15. The Secretary of State is required to certify the candidates who will be listed on the 2024 presidential primary ballot on January 5, 2024. § 1-4-1204(1).

16. The Secretary does not certify candidates individually; rather, she certifies the entire contents of the ballot at once. TR 11/1/23 at 145:7-16. The Secretary intends to certify the entire 2024 presidential primary ballot on January 5, 2024. *See id.*

CONCLUSIONS OF LAW

Colorado's Election Code.

1. The Election Code is codified at articles 1 to 13 of the Colorado Revised Statutes. *See* § 1-1-101, C.R.S. (2023).

2. The Secretary of State is the “chief state election official.” § 1-1-107(1)(e). Among other duties, the Secretary is responsible for “supervis[ing] the conduct of primary . . . elections in this state” and “enforc[ing] the provisions of this code.” § 1-1-107(1)(a), (b).

3. Petitioners bring their lawsuit under sections 1-1-113 and 1-4-1204 of the Election Code. Section 1-1-113 is the “exclusive method for the adjudication of controversies arising from a breach or neglect of duty or other wrongful act that occurs prior to the day of an election.” § 1-1-113(4).

4. Section 1-4-1204 was added to the Election Code in 2016 as part of Proposition 107. It governs challenges “to the listing of any candidate on the presidential primary election ballot.” § 1-4-1204(4). The statute expressly incorporates the procedures of § 1-1-113. *See id.*

5. Any challenge to the listing of a candidate on the presidential primary ballot “must provide notice in a summary manner of an alleged impropriety that gives rise to the complaint.” § 1-4-1204(4).

6. Under § 1-1-113, a verified petition may be filed by any eligible elector against “any official charged with any duty or function under” the Election Code. § 1-1-113(1).

7. “[T]he remedy available at the end of a section 1-1-113 proceeding is limited to an order, upon the finding of good cause shown, that the provisions of the Colorado Election Code have been, or must be, substantially complied with.” *Frazier v. Williams*, 2017 CO 85, ¶ 17; accord § 1-1-113(1).

The Court has jurisdiction to reach the merits of Petitioners’ claim under §§ 1-4-1204 and 1-1-113 because the Election Code does not allow candidates who are ineligible to hold office to appear on the ballot.

8. Intervenor Trump has previously argued that the Court lacks jurisdiction over Petitioners’ claim because it requires adjudication of federal constitutional issues. The Court correctly held that because Petitioners’ claim alleges an impending violation of the Colorado Election Code, it is properly brought as a § 1-1-113 claim. *See* Omnibus Ruling on Pending Dispositive Motions, at 10-11 (Oct. 20, 2023) (“Omnibus Ruling”).

9. The Court further held as follows:

Petitioners’ C.R.S. § 1-1-113 claim is brought against the Secretary of State based on her alleged dereliction of her duty under the Election Code to only certify qualified candidates to the ballot. C.R.S. § 1-1-113 is the exclusive vehicle for such challenges. And while the question of whether the Secretary of State has neglected her duties in this case requires resolution of constitutional questions, it remains a challenge against an election official based on her alleged duties under the Election Code. *Frazier* has made clear that a Court cannot consider

independent claims in a C.R.S. § 1-1-113 proceeding based on a violation of constitutional rights, but such cases do not stand for the proposition that a petitioner cannot seek to compel compliance with the Election Code to the extent that the Code itself requires that an election official verify constitutional qualifications for office. The Court holds that such a claim is proper under C.R.S. § 1-1-113 as a matter of procedure.

Id. at 12-13.

10. The Election Code makes the Secretary responsible for certifying the contents of the presidential primary ballot. § 1-4-1204(1). It states that Colorado’s presidential primary process is intended to “conform to the requirements of federal law,” which of course includes the U.S. Constitution. § 1-4-1201. And “§ 1-4-1203(2)(a) provides that political parties may participate in a presidential primary only if the party has a ‘qualified candidate.’” Omnibus Ruling at 15. Further, the Election Code empowers the Secretary to “adopt additional ballot requirements necessary to avoid voter confusion in voting in presidential primary elections.” §§ 1-4-1203(4)(d), 1203(6).

11. In addition, election officers who administer the presidential primary “have the same powers and shall perform the same duties for presidential primary elections as they provide by law for other” elections. § 1-4-1203(3). Those preexisting administrative powers, so far as candidates for state offices are concerned, include screening candidates for disqualifications. *See* § 1-4-501(1) (for state offices, “[t]he designated election official shall not certify the name of any designee or candidate . . . who the designated election official determines is not qualified to hold the office

that he or she seeks based on residency requirements”). These administrative powers for races involving state candidates focus on screening to ensure that a candidate meets the affirmative state-law qualifications for office of citizenship, voter registration, and residency. *See id.* (for state offices, “[t]he designated election official shall not certify the name of any designee or candidate who fails to swear or affirm under oath that he or she will fully meet the qualifications for office if elected; or who is unable to provide proof that he or she meets any requirements of the office relating to registration, residence, or property ownership”).

12. In concert with the Secretary of State’s duty to refuse to certify constitutionally ineligible candidates, section 1-1-113 applies to a “breach or neglect of duty or other wrongful act,” and “other wrongful act’ is more expansive than a ‘breach’ or ‘neglect of duty.’” *Frazier*, 2017 CO 85, ¶ 16; *see also Carson v. Reiner*, 2016 CO 38, ¶ 17 (“section 113 . . . clearly comprehends challenges to a broad range of wrongful acts committed by officials charged with duties under the code”).

13. Regardless of whether certifying to the ballot a candidate who is ineligible to hold office violates an election official’s duty, it would clearly constitute a “wrongful act.” “Ballots serve primarily to elect candidates[.]” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363 (1997). Colorado thus has a “legitimate interest in protecting the integrity and practical functioning of the political process [that] permits it to exclude from the ballot candidates who are constitutionally

prohibited from assuming office.” *Hassan v. Colo.*, 495 F. App’x 947, 948 (10th Cir. 2012) (Gorsuch, J.) (citing *Munro v. Socialist Workers Party*, 479 U.S. 189, 193-95 (1986)).

14. An individual who cannot be elected to the office they seek should therefore not be listed on the ballot, and placing such a person on the ballot would be a wrongful act within the meaning of § 1-1-113.

15. This case is also ripe for determination, as the Court has previously held. Under § 1-4-1204, it is brought “no later than five days after the filing deadline,” which is December 11, 2023. As the Court has previously recognized, “§ 1-1-113 does not limit challenges to acts that have already occurred, but rather provides for relief when the Secretary is ‘about to’ take an improper or wrongful act.” Omnibus Ruling at 14. Challenges to the inclusion or exclusion of a candidate on a ballot have previously been brought under § 1-1-113 prior to a ballot certification deadline. TR 11/1/2023 at 151:9-16. And finally, Intervenor Trump has now submitted his paperwork to be included on the ballot. Ex. 158.

16. In this posture, the requirements of section 1-1-113(1) mandate that the Court must issue an order directing the Secretary of State to effect “substantial compliance with the provisions of this code,” which includes the voters’ dictate that Colorado’s presidential primary shall “conform to the requirements of federal law.” §§ 1-1-113(1), 1-4-1201. This substantial compliance determination necessarily must

encompass the Court’s assessment of whether Intervenor Trump is eligible to be listed on Colorado’s March 5, 2024, presidential primary ballot. § 1-4-1204(4).

The Court will not lose jurisdiction over this matter if it does not rule within 48 hours “after the hearing.”

17. Section 1-4-1204(4) provides, “The district court shall issue findings of fact and conclusions of law no later than forty-eight hours after the hearing.”

18. The 48-hour time limit provided by statute is not jurisdictional. As with many other timelines in the Election Code, this timeline is waivable. And even if not waived, a court is not deprived of jurisdiction if the timeline is not followed.

19. In *Nicholls v. Barrick*, 62 P. 202 (Colo. 1900), the Court concluded another timeline from the Election Code was waivable by the parties. That provision, now codified at § 1-11-214 (with minor modernizing updates to the language of the statute), provided that “[i]mmediately after the joining of issue as aforesaid, the county judge shall fix a day for the trial to commence, not more than twenty, nor less than ten, days after the joining of issue.” *See id.* (quoting § 1677, 1 Mills’ Ann. Stat.); accord § 1-11-214(1), C.R.S. (2023) (“Immediately after the issue is joined, the district judge shall set the date for trial, which shall be not more than twenty days nor less than ten days after the issue was joined.”).

20. Notwithstanding the mandatory language about the timing for an election contest under the statute, the Colorado Supreme Court held that where the

parties had stipulated to trial outside the specified timeline, the losing party could not then complain that trial was untimely.

The object of the statute in requiring the judge to fix a day for the trial [between 10 and 20 days] is for the purpose of enabling a speedy trial. This is for the benefit of both parties. They may waive this provision. That is what they did in this case by stipulation. And contestee, thereby having consented to fixing the date of the trial of the cause at a period greater than 20 days after issue was joined, cannot complain of the results of his own voluntary acts.

Nicholls, 62 P. at 204.

21. As in *Nicholls*, the parties here agreed that the Court's ruling is not required within 48 hours of the hearing. *See* Agreed Resp. to Court's Oct. 2, 2023 Order (Oct. 10, 2023) ("The parties disagree on whether a requirement that the Court rule within 48 hours of the close of the hearing applies to this case. Those parties that believe the requirement applies agree that any such requirement is waivable and further agree to waive any such requirement.").

22. *Mahaffey v. Barnhill*, 855 P.2d 847 (Colo. 1993), expanded the *Nicholls* holding to apply even in the absence of a waiver. *Mahaffey* concerned a parallel provision from the Municipal Election Code: "the district court shall fix a day for the trial to commence, not more than twenty days nor less than ten days after the joining of issue." § 31-10-1305. Although the parties in *Mahaffey* did not expressly waive the timeline, the Court held that a failure to hold the trial within 20 days did not deprive the court of jurisdiction.

Section -1305 does not state that jurisdiction is lacking absent the setting of trial within its limitations. . . . In light of the fact that we will construe a statute to limit jurisdiction only when that limitation is explicit . . . , we conclude that section -1305 creates no limitation on the district court's power to hear this controversy.

Mahaffey, 855 P.2d at 849 (citing *Nichols*, among other cases).

23. Section 1-4-1204(4) also contains no explicit limitations on the district court's jurisdiction. Therefore, while the statute clearly contemplates a decision within 48 hours of the hearing, courts do not lose jurisdiction to resolve the matter if they fail to act within that timeframe. That is particularly true here, given the unusually large amount of evidence presented at this hearing in comparison to other ballot certification challenges.

24. The timing provisions in § 1-11-214(1) contain the same mandatory language found in § 1-4-1204(4). Therefore, just as a failure to strictly adhere to the timing provisions of § 1-11-214(1) does not deprive a court of jurisdiction to decide an election contest, neither does the Court's failure to strictly adhere to the timing provisions of § 1-4-1204(4).

25. The Secretary appreciates the urgency with which the Court has treated this matter and requests a prompt ruling so that any appeals may be resolved in advance of the January 5, 2024, ballot certification deadline. But if the

Court does not rule within 48 hours of the November 15, 2023, closing arguments, the Court will not lose jurisdiction to render a final order in this matter.¹

DATED: November 10, 2023.

PHILIP J. WEISER
Attorney General

/s/ Michael Kotlarczyk
MICHAEL KOTLARCZYK, Senior Assistant
Attorney General, No. 43250*
GRANT T. SULLIVAN, Assistant Solicitor
General, No. 40151*
JENNIFER L. SULLIVAN, Deputy Attorney
General, Attorney Reg. No. 32092*
Public Officials Unit | State Services Section
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center



*Counsel of Record

¹ For the same reasons, the fact that the hearing occurred more than five days after the filing of the verified petition also does not deprive the Court of jurisdiction to act. *See* § 1-4-1204(4).

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2023, I served a true and complete copy of the foregoing **SECRETARY OF STATE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**, upon all parties and their counsel by e-filing with the ICCES system maintained by the court.

/s/ Carmen Van Pelt

Attorneys for Respondent Jena Griswold