

No. 23-719

In the Supreme Court of the United States

DONALD J. TRUMP,
Petitioner,

v.

NORMA ANDERSON, ET AL.,
Respondents.

On Writ of Certiorari to the
Supreme Court of Colorado

**SECRETARY OF STATE JENA GRISWOLD'S
APPLICATION FOR ENLARGEMENT
AND DIVISION OF TIME FOR ORAL ARGUMENT**

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January 26, 2024

Pursuant to Rules 21, 28.3, and 28.4 of this Court, Respondent Jena Griswold, the Secretary of State for the State of Colorado (“the Secretary”), respectfully moves for a divided oral argument and for an enlargement of time for argument.

The Secretary has conferred with counsel for Petitioner Donald J. Trump and with the other Respondents concerning her request for an enlargement and division of argument to allow her to address the unique state-law and state-level election-administration issues presented in this matter. Petitioner Trump and Respondent Colorado Republican State Central Committee take no position on the relief requested here. The Respondent Electors oppose the relief requested.

Among the issues Petitioner Trump presents in his brief are (1) whether Section 3 of the 14th Amendment precludes Colorado from excluding unqualified candidates from its presidential primary ballot and (2) whether the Colorado Supreme Court violated the Electors Clause, and (3) whether this Court should defer to the Colorado Supreme Court’s interpretation of Colorado’s Election Code. These issues implicate Colorado’s—and indeed many states’—specific state-law procedures for determining a presidential candidate’s eligibility to be placed on the state’s presidential primary ballot.

Colorado’s presidential primary statutes, like many states’ various statutory mechanisms, are authorized in “such Manner as the Legislature . . . may direct.” U.S. Const. art. II, § 1, cl. 2. Petitioner Trump’s arguments, if accepted, would dramatically undermine the statutory mechanisms for conducting presidential primaries in Colorado—mechanisms Colorado voters overwhelmingly approved by direct ballot initiative and that Colorado’s legislature further amended pursuant to the ballot initiative’s enabling provisions.

As Colorado’s “chief state election official,” COLO. REV. STAT. § 1-1-107(1)(e), and the only Colorado official who is a party to this proceeding, the Secretary has a unique and crucial interest in this matter, one not otherwise addressed by the other parties. The Secretary is represented by different counsel from the other parties and has a distinct function in this proceeding. Further, Petitioner Trump’s assertion that federal courts may review state court determinations of state law—particularly concerning election statutes—directly implicates the Secretary’s ability to interpret and enforce Colorado’s election laws.

The Secretary therefore respectfully requests that oral argument time in this matter on February 8, 2024, be enlarged and

divided so (1) President Trump, (2) the Respondent Electors, and (3) the Secretary all be afforded argument time. Specifically, the Secretary requests an enlargement of time for a total amount of argument time of seventy-five (75) minutes among the three parties. The Secretary requests fifteen (15) minutes of time for herself to present argument, a modest amount to convey Colorado's interests and provide information about Colorado's election laws, as compared with the 30 minutes each for both Petitioner Trump and the Respondent Electors.

Both divided argument and additional argument time are appropriate for several reasons. *First*, unlike the Secretary, the Respondent Electors—apart from their use of the mechanism for a court petition to seek candidate disqualification under COLO. REV. STAT. § 1-4-1204(4)—have no additional interest in the mechanics of Colorado's presidential primary election. The Secretary does. Given the implications this case has on Colorado's presidential election process, as well as the constitutional protections Colorado's citizens enjoy, the Secretary provides an important perspective on Colorado's election laws.

The Respondent Electors, having overriding interests in pursuit of a presidential primary ballot that does not include a candidate who is ineligible to hold the office of President, filed this case as petitioners *against* the Secretary. The Respondent Electors—Republican and unaffiliated voters—sought a court order barring the Secretary from placing Petitioner Trump on Colorado’s presidential primary ballot, in an effort to protect their own participation in the Colorado presidential primary. Given the different parties with different interests, both a divided argument and additional argument time is warranted. *See* STEPHEN M. SHAPIRO ET AL., SUPREME COURT PRACTICE Ch. 14.5, p. 14-16 (11th ed. 2019) (“Having more than one lawyer argue on a side is justifiable . . . when they represent different parties with different interests or positions.”).

Second, the Secretary and the Respondent Electors will address different concerns and rely on different historical authorities in connection with their different roles in the candidate-review process. The Secretary will address how Colorado’s statutory scheme for the resolution of this case comports with federal constitutional requirements, as well as how Colorado’s Election Code provides for appropriate review and resolution of these claims; the Respondent

Electors, meanwhile, presumably will focus on the historical and substantive scope of Section 3 of the 14th Amendment, as well as evidentiary arguments. Given the different arguments and distinct interests from the Secretary and Respondent Electors, divided argument and additional argument time are warranted. *See* SHAPIRO Ch. 14.5, p. 14-16 (noting that when argument is divided, the Court often grants more time).

Finally, the Court has regularly granted motions for divided argument when parties represent the distinct perspectives of government and private litigants.¹ The Court has also regularly granted motions for divided argument and extended argument time in complex election law cases.² Additionally, this Court frequently grants

¹ *E.g.*, *Moore v Harper*, 600 U.S. 1 (2022) (United States, state government respondents, private respondents); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2022) (No. 21-707) (United States and private respondents); *Students for Fair Admissions, Inc. v. Univ. of North Carolina*, 600 U.S. 181 (2022) (No. 20-1199) (same); *Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020) (City of Philadelphia and private respondent); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 398 (2019) (private respondents and state respondents); *Dep't of Com. v. New York*, 139 S. Ct. 1543 (2019) (government respondents and private respondents); *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 974 (2018) (state respondents and AFSCME Council 31); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 466 (2017) (State of Colorado and private respondents).

² *E.g.*, *Moore v Harper*, 600 U.S. 1 (2022) (United States, state government respondents, private respondents); *Allen v Milligan*, 143 S. Ct. 1487 (2022);

argument time to state government respondents even when acting as amicus curiae in cases with significant state interests when states can add valuable perspective not fully articulated by the parties.³ And this Court has granted motions for divided argument in cases, like this one, that involve litigants with different perspectives.⁴

Given the State of Colorado's substantial interest in the proceedings and Colorado's underlying election laws, the Secretary's participation at oral argument would materially assist the Court in its consideration of this case. The Secretary thus respectfully requests that the Court grant divided argument and additional argument time.

Rucho v. Common Cause, 139 S. Ct. 2484 (2019) (divided and enlarged argument time for multiple parties); *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1237 (2019) (United States, state government respondents, private respondents), *Abbott v. Perez*, 584 U.S. 928, 138 S. Ct. 1544 (2018) (mem.) (same); *Wittman v. Personhuballah*, 577 U.S. 1134 (2016) (same); *Ala. Legis. Black Caucus v. Alabama*, 574 U.S. 969 (2014).

³ *E.g.*, *Tennessee Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449 (2018) (No. 18-96) (Illinois); *Sturgeon v. Frost*, 139 S. Ct. 1066 (2018) (17-949) (Alaska); *Gamble v. United States*, 139 S. Ct. 1960 (2018) (No. 17-646) (Texas); *ONEOK, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015) (No. 13-271) (Kansas).

⁴ *E.g.*, *Moore v Harper*, 600 U.S. 1 (2022) (United States, state government respondents, private respondents); *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 951 (2019) (dividing argument among four parties and granting extra time).

Respectfully submitted,

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