In The Supreme Court of the United States

No. 23-719

DONALD J. TRUMP,
Petitioner,
v.
NORMA ANDERSON, ET AL.,
Respondents.

On Writ of Certiorari to the Colorado Supreme Court

ANDERSON RESPONDENTS' OPPOSITION TO SECRETARY OF STATE JENA GRISWOLD'S APPLICATION FOR ENLARGEMENT AND DIVISION OF TIME FOR ORAL ARGUMENT

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The Anderson Respondents respectfully submit that undivided argument would be most appropriate and beneficial to the Court. Trump and the Anderson Respondents have taken the lead at all phases of this case, with the Secretary of State playing a minor role. This case demonstrates why Rule 28.4's directive that "divided argument is not favored" is correct—the Secretary of State has taken no position on most issues in the case and identifies no different arguments she has made from the Anderson Respondents in defending the application of Colorado's Election Code here.

Argument

At trial, the Secretary called no witnesses and repeatedly took no position on the core question in the case. Rather, throughout the case she has stated she will follow the rulings of the courts on that question. For example, the Secretary said to

the trial court, "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." Griswold Proposed Findings of Fact and Conclusions of Law 2.

Although both Trump and the Anderson Respondents asked the Colorado Supreme Court to review the trial court's decision, the Secretary did not. Once the court accepted Trump's and the Anderson Respondents' applications for review, the Secretary filed a short brief that focused only on state law issues. The Secretary did not seek any argument time and did not present oral argument in the Colorado Supreme Court.

And at this Court, the Secretary filed no papers supporting or opposing certiorari in this case. In response to a petition for certiorari filed by the Colorado Republican State Central Committee in a separate case, No. 23-696, the Secretary filed a six-page brief that focused on the impending election deadlines, pages 2-4, and asked the Court not to grant certiorari on the third question presented in that case—the associational rights of political parties to place disqualified candidates on primary ballots—which is not presented by Trump's petition, pages 4-6. These cases have not been consolidated and the Colorado Republican State Central Committee has not sought argument time here.

In this case, the Secretary does not identify any "different interests" between her and the Anderson Respondents, either in the briefing below or at this Court. Both seek to defend the Colorado Supreme Court's interpretation of Colorado law. *Compare*

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Griswold Br. in Support of Partial Grant of Certiorari (No. 23-696) 1-2 (noting the Colorado Supreme Court "agreed" with the Secretary's "interpretation of Colorado law") *with* Anderson Resp't Br. 58-60 (stating that the "Colorado Supreme Court correctly concluded" that Colorado law prevented Trump's inclusion on the ballot).

The Secretary makes no arguments on the core issues in this case: Trump's actions leading up to and on January 6 and whether Section 3 applies to him. The Anderson Respondents address those issues, as well as the state law issues that the Secretary seeks to advance. Any added focus that the Secretary seeks to bring on the state law points can be raised in her brief, particularly because the Anderson Respondents filed their merits brief early so the Secretary has several days to adjust her brief to provide different emphasis or analysis.

The only specific arguments that the Secretary identifies in her motion that she seeks to make are "how Colorado's statutory scheme for 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." Mot. 4. These arguments are not the focus of Trump's presentation to this court, occurring at the end of his brief. *See* Petr. Br. 40-50. One of them—that the state courts' interpretation of the Colorado's Election Code violates the Electors Clause—was forfeited below. Anderson Resp't Br. 57-58. And to the extent the Court has questions on the merits of that argument, the Anderson Respondents addressed that claim in their briefing at this Court and can do so at argument. *Id.* at 56-60.

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The Secretary is also incorrect that the Anderson Respondents will not "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." Mot. 4. The Anderson Respondents address those arguments at length, on pages 45-60 of their Merits Brief. The Secretary can adjust her brief as she sees fit based on these arguments. And, again, Trump's complaints about interpretation of state law are not properly presented here. *Id.* at 57-58.

Nothing in the Secretary's motion for argument time supports her taking a prominent role in this case now with more time than usually received by the federal government at argument, having largely chosen to stay silent below. Even if she is correct that this case may have "implications" for "the constitutional protections Colorado's citizens enjoy," that does not support the Secretary's request for argument. Mot. 3. The six Anderson Respondents here—four Republican and two unaffiliated voters—are better situated to defend "the constitutional protections" afforded Colorado voters in the Republican presidential primary than an official who has not advanced those arguments in the case to date.

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Finally, the Secretary's cursory recitation of cases where additional argument was granted only highlights why it is not necessary here.

For example, in *Moore v. Harper* itself, two cases were consolidated and the motion for divided argument identified actual, different arguments made by the different parties, including that "the Non-State Respondents' brief … advances an

argument under 2 U.S.C. § 2a." Resp't's Joint Mot. for Divided Argument and for an Enlargement of Time for Argument (No. 21-1271) 3. The Secretary does not identify any argument she makes in this Court that differs from the Anderson Respondents and, unlike there, only one case is on review here.

And in *American Legion v. American Humanist Association*, the parties in two consolidated cases each argued below and advanced different legal positions before this Court, neither factor the Secretary satisfies here. Joint Mot. of Petrs. for Divided Argument and Enlargement of Argument Time (No. 17-1717) 3-4 (noting both parties "participated in oral argument" below and describing different constitutional arguments advanced by the parties).

The Secretary takes no position on most of the issues here, and offers no actual differences between her position and that of the Anderson Respondents in the defense of Colorado law in the one area she seeks to participate in. Her brief will no doubt help the Court resolve that issue, but because of the limited focus of her position at the Court, any oral argument will necessarily be "somewhat overlapping, repetitious and incomplete." STEPHEN M. SHAPIRO ET AL., SUPREME COURT PRACTICE pp. 14-15 to 14-16 (11th ed. 2019) (quoting Justice Robert H. Jackson).

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Conclusion

The Anderson Respondents respectfully request that the Secretary of State's Application for Enlargement and Division of Time for Oral Argument be denied.

Respectfully submitted,

Jason Murray
counsel of record
Eric Olson
Sean Grimsley
Isabel Broer
OLSON GRIMSLEY KAWANABE
HINCHCLIFF & MURRAY LLC

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