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Faithless electors: In U.S. Supreme Court brief, State says it must enforce electors' pledges to protect the true character of the Nation's democratic principles

April 1, 2020 (DENVER, Colo.)— Colorado Attorney General Phil Weiser and Secretary of State Jena Griswold today filed the [State's brief with the U.S. Supreme Court](#) urging the Court to uphold Colorado's law requiring presidential electors to follow the will of the voters when casting their Electoral College ballots for President.

As authorized by Article II and the Twelfth Amendment of the U.S. Constitution, Colorado and over 30 other States and the District of Columbia bind their presidential electors to the winner of the presidential election in their state. In the case before the Court, *Colorado Department of State v. Baca*, Weiser said the States' ability to enforce their electors' pledges is necessary to protect the true character of the Nation's democratic principles and stable governance.

"The U.S. Constitution gives exclusive power to the States to appoint and control their electors, and that includes removal if necessary. Without this State oversight, electors would be free to violate their oath, take a bribe, or cast a ballot for a constitutionally ineligible candidate. Such an outcome would not only shake the foundations of our democracy, it would deprive the States' voters of their voice in the selection of the President," said Weiser. "This is the fundamental issue that the Court must resolve ahead of the 2020 election to avoid uncertainty, chaos, and confusion."

"We must fight against voter suppression and corruption whenever we see it. Without the ability to enforce state law, presidential electors could willingly disenfranchise millions of American voters, or be bribed or manipulated for their vote," said Griswold. "I am confident the Supreme Court will protect Americans' right to self-governance and the foundation of our county. Just as elections must continue in both times of tranquility and crisis, Americans equally must have the assurance that our voices will be heard and our votes counted in presidential elections."

After the 2016 election, Colorado's electors met at the State Capitol to cast their Electoral College ballots for President and Vice President. One of Colorado's presidential electors, Micheal Baca, violated Colorado law by not casting his ballot for Hillary Clinton, who won the most votes in Colorado. Former Secretary of State Wayne Williams declined to accept his ballot and removed him as an elector. Mr. Baca was replaced with an alternate elector who properly cast a ballot for Clinton.

Baca and two other presidential electors filed suit in U.S. District Court in Denver after the Electoral College vote. The court ruled that the electors could not sue because they are state officials when acting as electors. Additionally, the court concluded that States may bind their electors to the candidate who wins the most votes in the State's election without running afoul of Article II or the Twelfth Amendment of the U.S. Constitution.

The former electors appealed to the 10th U.S. Circuit Court of Appeals and, in an unprecedented decision, the 10th Circuit ruled that Colorado cannot remove presidential electors if they fail to cast

their ballots in accordance with state law. Griswold and Weiser said the decision, if upheld, threatens to ignore the will of our Nation's voters by allowing presidential electors to choose whomever they want for President and Vice President.

Because the 10th Circuit's ruling prohibits Colorado from enforcing state law and has the potential to undermine voters across the Nation, Weiser and Griswold asked the U.S. Supreme Court to review the case and protect Americans' fundamental right to self-governance.

Earlier this year, the U.S. Supreme Court agreed to review the case. Even though the Court has delayed its March in-person oral arguments due to the coronavirus public health emergency, the parties in the case are still required to file their briefs as scheduled. The Court has not yet adjusted the scheduled oral argument in this case, currently set for April 28. Attorney General Weiser is preparing to present oral argument for whenever the Court schedules it in this case.

The case is No. 19-518, *Colorado Department of State v. Micheal Baca, Polly Baca, and Robert Nemanich*.

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