

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-02768-WJM-STV

STATE OF COLORADO and
SECRETARY OF STATE JENA GRISWOLD

Plaintiffs,

v.

LOUIS DEJOY, in his official capacity as Postmaster General;
UNITED STATES POSTAL SERVICE;
SAMARN S. REED, in his official capacity as the Denver, Colorado Postmaster; and
CHRIS J. YAZZIE, in his official capacity as the Albuquerque, New Mexico
Postmaster,

Defendants.

NOTICE OF DISMISSAL

The parties have settled this case under the terms of the Settlement Agreement attached as Exhibit A. The State of Colorado and Secretary of State Jena Griswold therefore dismiss this case under Rule 41(a)(1)(A)(i).

RESPECTFULLY SUBMITTED this 17th day of September, 2020.

PHILIP J. WEISER
Attorney General

s/Eric Olson

ERIC OLSON*

Solicitor General

LEEANN MORRILL*

First Assistant Attorney General

EMILY BUCKLEY

Assistant Attorney General

MICHAEL KOTLARCZYK

Assistant Attorney General

PETER G. BAUMANN

Campaign Finance Fellow

Attorneys for Plaintiffs

Ralph L. Carr Colorado Judicial Center

1300 Broadway, Floor

Denver, Colorado 80203

Telephone: 303-892-7400

E-Mail: eric.olson@coag.gov

Leeann.morrill@coag.gov

Emily.buckley@coag.gov

Mike.kotlarczyk@coag.gov

Peter.baumann@coag.gov

*Counsel of Record

Exhibit A

Settlement Agreement

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

Civil Action No. 20-cv-02768-WJM-STV

STATE OF COLORADO, and
JENA GRISWOLD, Colorado Secretary of State,

Plaintiffs,

v.

LOUIS DEJOY, in his official capacity as Postmaster General,
UNITED STATES POSTAL SERVICE,
SAMARN S. REED, in his official capacity as Denver, Colorado Postmaster, and
CHRIS J. YAZZIE, in his official capacity as Albuquerque, New Mexico Postmaster,

Defendants.

STIPULATION AND SETTLEMENT AGREEMENT

Plaintiffs State of Colorado, and Jena Griswold, Colorado Secretary of State (collectively, “Plaintiffs” or “the State”) and Defendants United States Postal Service, and Louis DeJoy, Samarn S. Reed, and Chris J. Yazzie, in their official capacities (collectively “Defendants” or “USPS”), through their respective undersigned counsel, have agreed to resolve the above-captioned case in accordance with the terms set forth below.

BACKGROUND

1. This Stipulation and Settlement Agreement (“Agreement”) is of the above-captioned lawsuit Plaintiffs filed on September 12, 2020. In the Complaint, Plaintiffs asked the Court to halt the distribution, in Colorado, of postcards that USPS prepared and mailed to USPS customers across the country. *See* ECF No. 1 at 3 (hereinafter “Notices”). Plaintiffs filed a

motion for a temporary restraining order prohibiting Defendants from delivering the Notices to any Colorado household. ECF No. 8.

2. The same day, the Court issued a Temporary Restraining Order. ECF No. 11 (hereinafter “TRO”). The TRO includes, among other things, an order restraining Defendants and certain other related parties “from delivering by mail to Colorado households the [Notices]....” *Id.* at 8. Unless extended by the Court, the TRO expires at 11:59 p.m. on September 22, 2020. *Id.*

3. After good faith discussions, the parties have agreed that a cooperative resolution of this lawsuit will further their shared interests, as expressed above.

TERMS

1. The USPS agrees, in consideration for Plaintiff’s commitment below, that:

A. *Colorado Undelivered USPS Postcards.* The USPS will take all reasonable measures not to deliver, to Colorado residents, the Notices that are currently undelivered and are currently being held by the USPS in accordance with the TRO. The USPS will destroy those collected, undelivered Notices. In addition, the USPS will send a certification within 30 days of the execution of this agreement that, to the best of its knowledge, USPS has destroyed the Notices.

B. *Input on usps.com/votinginfo.* The USPS will seek input from the Colorado Secretary of State on the website found at usps.com/votinginfo about any changes to that website that could aid in avoiding voter confusion relating to use of the mails for voting in Colorado. The Colorado Secretary of State and Attorney General, or their designee, may make proposals to change the website by sending those proposals to a

USPS designee. The USPS will provide the name of that designee to Plaintiffs by Friday, September 18, 2020. This USPS designee will be available to receive proposals from the Colorado Secretary of State or Attorney General, or their designee, through December 14, 2020. The USPS retains full editorial control over the website and has full authority not to incorporate suggested input or changes from the Colorado Secretary of State or Attorney General or their designee, but commits to working in good faith to advance the mutual goals of the parties as described herein. If the USPS intends to make changes that the State does not assent to, the Colorado Secretary of State or Attorney General, or their designee, will inform the USPS designee of the objection, and the USPS will embargo and not make those changes for 24 hours. The designees will continue to confer in good faith during this period to determine whether the objection can be addressed or cured. This settlement agreement does not prohibit the State from going to court to raise any objections, and the State reserves all rights to do so.

C. *Input on USPS Media Campaign.* The USPS has developed a multi-part media campaign to educate postal customers concerning the use of the mail to vote (hereinafter “USPS Media Campaign”). The USPS Media Campaign includes several discrete components, including television, radio, print advertisements, and other media. USPS agrees as follows as to the USPS Media Campaign.

i. The USPS will, through its designee, provide, by Friday, September 18, 2020, to the Colorado Secretary of State and Attorney General, or their designee, a list of the items it is planning to issue as part of the USPS Media Campaign. If this list is expanded to include any new item, the USPS designee

will notify the Colorado designee of the new item.

ii. From Friday, September 18, 2020, through December 14, 2020, before public release of any component of the USPS Media Campaign, the USPS designee will provide the Colorado Secretary of State and Attorney General, or their designee, a copy of the proposed media item. The USPS then will embargo and not release that item for 48 hours (the “Media Review Period”), in order to allow time for the Colorado Secretary of State and Attorney General, or their designee, to provide comments related to whether, in her view, the proposed media item may cause voter confusion in Colorado. The USPS designee may exchange in a back-and-forth discussion with the Colorado designee during this 48-hour period.

iii. If after the Media Review Period, the USPS intends to release a component that the State does not assent to, the Colorado Secretary of State or Attorney General, or their designee, will inform the USPS designee of the objection, and the USPS will embargo and not release that item for an additional 24 hours. The designees will continue to confer in good faith during this period to determine whether the objection can be addressed or cured.

iv. This process is designed to enable input from the Colorado Secretary of State and Attorney General, before a media item is released publicly, on whether the proposed media item may create voter confusion in Colorado. The USPS retains full editorial control over the item, and has full authority not to incorporate suggested input or changes from the Colorado Secretary of State or

Attorney General or designee, but commits to working in good faith to advance the mutual goals of the parties as described herein.

v. This settlement agreement does not prohibit the State from going to court to raise any objection, and the State reserves all rights to do so.

2. Plaintiffs agree as follows:

A. By September 17, 2020, Plaintiffs will file a stipulation of dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

B. Plaintiffs will attach this stipulation to the publicly-filed notice of dismissal. Plaintiffs will not seek a court order adopting the agreement and agree that this agreement is contingent on the Court not retaining jurisdiction or adopting this stipulation as an order of the Court.

3. Each party will bear its own costs and fees.

4. The Parties agree that this Agreement shall constitute the whole agreement and supersedes any other agreement between the Parties relating to the subject of this Agreement. This Agreement may be amended only by a written amendment signed by the Parties. This Agreement shall not constitute an admission by any party as to any facts or as to the merits of any position taken in the litigation.

Respectfully submitted this 17th day of September, 2020.

s/ Samuel J. Schmidt

UNITED STATES POSTAL SERVICE

By: Samuel J. Schmidt

Managing Counsel

U.S. Postal Service Law Department

9350 South 150 East, Suite 800

Sandy, UT 84070-2716

Telephone: (801) 984-8400

s/ Jena Griswold

JENA GRISWOLD,

Colorado Secretary of State

JASON R. DUNN

United States Attorney

s/ Kevin T. Traskos

By: Kevin T. Traskos

Chief, Civil Division

United States Attorney's Office,
District of Colorado

1801 California St., Suite 1600

Denver, Colorado 80202

Telephone: (303) 454-0100

s/ Philip J. Weiser

STATE OF COLORADO

By: Philip J. Weiser,
Attorney General

Ralph L. Carr Colorado Judicial Center

1300 Broadway, 6th Floor

Denver, Colorado 80203

Telephone: 720-508-6000