

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

1437 Bannock St.
Denver, CO 80203

DATE FILED: October 18, 2023 8:23 AM

Petitioners:

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

v.

Respondents:

JENA GRISWOLD, in her official capacity as
Colorado Secretary of State, and
DONALD J. TRUMP,

and

Intervenor:

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

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**Pro hac vice* admission pending

**PETITIONERS' MOTION FOR PERMISSION
TO CONDUCT A TRIAL PRESERVATION DEPOSITION OF DONALD J. TRUMP¹**

Petitioners request leave from the Court to depose Intervenor and Respondent Donald J. Trump under Colorado Rules of Civil Procedure 45(e)(2) and 32(a)(3)(B) so that his testimony may be presented at the hearing.² Petitioners identified Trump on their witness list, and Counsel for Trump told Petitioners that Trump will not be at the hearing scheduled to begin on October 30, 2023. Trump obviously has relevant knowledge regarding his engagement in the insurrection on

¹ On October 4, 2023, the Court ordered that the parties file any documents that contain “the identity of witnesses or sensitive information” as suppressed and that the parties then publicly file redacted versions of those documents. Accordingly, Petitioners filed this motion and an accompanying proposed order as suppressed on October 17, 2023. Counsel for Petitioners then conferred with Intervenor and Respondent Donald J. Trump’s counsel on proposed redactions to this motion. Trump responded the Petitioners’ motion could be filed publicly, with his name on it. Petitioners therefore publicly file the motion and proposed order today. Aside from this footnote and today’s date, the suppressed and public versions of this motion are identical.

² C.R.C.P. 45(e)(2) permits issuing a subpoena for an out-of-court deposition of nonresidents. C.R.C.P. 32(a)(3)(B) allows a party to use “at trial” the deposition testimony “of a witness, whether or not a party, . . . if the court finds . . . that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition.” *See Margenau v. Bowlin*, 12 P.3d 1214, 1217-18 (Colo. App. 2000) (explaining that C.R.C.P. 32 can be used for “admitting deposition testimony into evidence in civil cases.”).

January 6, 2021, and his actions in the weeks and months before it. The only way for Petitioners to obtain Trump's testimony at trial is to take a trial preservation deposition.

Counsel for Petitioners raised this issue with all parties at the October 13, 2023 status conference. Trump and Intervenor the Colorado Republican State Central Committee oppose this motion. Counsel for Petitioners attempted to confer with counsel for Respondent Secretary of State Jena Griswold via telephone and email before filing this motion.

Petitioners should be allowed to depose Trump. Petitioners have identified Trump on their "will call" witness list. Trump has relevant testimony. Trump is a party in the case, having sought and been granted intervention. Trump is represented by able counsel. Petitioners do not want to take a discovery deposition, but merely a deposition to preserve trial testimony instead of Trump showing up live. There is far more justification for a deposition of Trump than of witnesses disclosed by a party. Witnesses disclosed by a party will testify at trial and be subject to cross examination. Without an order from this Court, Trump will not. A deposition is the only way to secure his testimony. And there is sufficient time before the hearing to take a trial preservation deposition. Counsel for Petitioners can make themselves available to take the deposition virtually or in-person wherever Trump is any day before the beginning of the hearing on October 30, 2023. Counsel for Trump made clear at the initial status conference that even on the compressed schedule, the Parties can make time for depositions as needed.

Petitioners are not asking for Trump's deposition to harass the former president. While Petitioners will present more than sufficient evidence to prove that Trump engaged in an insurrection against the Constitution, they anticipate Trump's team will argue that Petitioners' evidence falls short because it does not include sufficient evidence of Trump's knowledge or his own testimony about the 2020 presidential election and January 6, 2021. Trump should not be allowed to levy such attacks while also refusing to show up at trial or testify in any way. At the

very least, this Court and any appellate court should know that Petitioners tried to obtain Trump's testimony and he refused.

That said, if Trump intends to assert his Fifth Amendment right against self-incrimination at any such deposition, given the overlap of issues with his pending criminal cases, Petitioners can provide Trump with written questions to which Trump can assert the Fifth Amendment in writing. (If he intends to offer substantive answers, then a trial preservation deposition is appropriate so he faces the same cross examination as witnesses for Petitioners.) There is no need for Trump to testify in person, either at a deposition or the hearing, if he is simply going to invoke his right to remain silent. But Petitioners are entitled to ask Trump questions and have him invoke the Fifth Amendment, rather than have their request for his testimony refused on the assumption that he might do so. *State ex rel. Weiser v. Castle L. Grp., LLC*, 2019 COA 49, ¶ 74 (“[T]he privilege against self-incrimination may not be asserted in advance of questions actually propounded; it is an option of refusal, not a prohibition of inquiry. The proper procedure is to wait until a question which tends to be incriminating has been asked and then decline to answer.” (quoting *People in the Interest of I.O.*, 713 P.2d 396, 397 (Colo. App. 1985); *People v. Austin*, 412 P.2d 425, 427 (Colo. 1966))).

Petitioners therefore request leave to depose Trump or, in the alternative if Trump intends to assert the Fifth Amendment, to serve written questions on Trump to which he can assert the Fifth Amendment in writing.

Date: October 18, 2023

Respectfully submitted,

/s/ Sean Grimsley

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*Pro hac vice admission pending

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