

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

1437 Bannock St.
Denver, CO 80203

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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' RESPONSE TO INTERVENOR TRUMP'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF [REDACTED]

Intervenor Donald J. Trump argues that the Declaration of Petitioners' witness [REDACTED] is inadmissible and asks the Court to exclude [REDACTED] testimony.¹ Trump's attempt to preclude [REDACTED] from testifying is premature and based on an incorrect understanding of the facts and the law. The Court should deny Trump's motion.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In these positions, [REDACTED] regularly interacted with Trump and his West Wing and campaign staff. [REDACTED] is expected to testify on topics including but not limited to: [REDACTED] observations of Trump's communication with his

¹ Trump's motion incorrectly identifies [REDACTED] as a "Proposed Expert." [REDACTED] is a fact witness, not a proposed expert.

supporters; his acknowledgment of his ability to influence his supporters' conduct; his acknowledgement and appreciation of violent elements among his supporters (including groups that attacked the Capitol); his knowledge of the prevalence of weapons at his rallies; his stated attitudes towards safety measures at his rallies; his consumption of relevant information preceding the attack on January 6, 2021, and his communications capabilities.

Argument

I. Trump's objections are premature.

Trump's Motion in Limine takes on [REDACTED] Declaration line by line, asserting that each is inadmissible. *See, e.g.*, Trump's Mot. In Limine on [REDACTED] 4. But Plaintiffs do not seek to admit [REDACTED] Declaration as an exhibit at trial and have not included it on their exhibit list. Rather, Petitioners offered [REDACTED] Declaration only as an exhibit to their Opposition to Trump's Anti-SLAPP Motion to Dismiss. In that Opposition, Petitioners had to make a prima facie factual showing sufficient to sustain a favorable judgment. Pet'rs' Opp. On Trump's Anti-SLAPP Mot. to Dismiss, 8 (quoting *L.S.S. v. S.A.P.*, 2022 COA 123, ¶ 23, *cert. denied*, No. 22SC880, 2023 WL 4568488 (Colo. July 17, 2023)). Petitioners cited [REDACTED] Declaration as part of their prima facie case—as evidence to show Trump wrote or approved his tweets, knew the effect his rhetoric would have on his supporters, and summoned the mob on January 6, 2021. *Id.* at 20, 22, 44. But because Petitioners will not try to admit [REDACTED] Declaration at trial, Trump's specific objections to it are irrelevant.

Regardless of Trump's concern that [REDACTED] trial testimony will resemble [REDACTED] Declaration, his objections to certain statements, if made, should be raised at trial. There, Trump can object to questions counsel ask or answers [REDACTED] offers, and the Court can make a specific ruling with the benefit of hearing them within the context of [REDACTED] broader testimony. It is premature to lodge these objections now, before [REDACTED] takes the stand. That's especially true

here, where the Court—not a jury—will hear evidence and decide the case. There is no risk of inadmissible or prejudicial evidence tainting *a jury's* understanding of the case. *See Good v. A.B. Chance Co.*, 565 P.2d 217, 221 (Colo. App. 1977), *superseded by statute on other grounds, as stated in Uptain v. Huntington Lab, Inc.*, 685 P.2d 218 (Colo. App. 1984) (motions in limine are used to “forestall introduction of potentially prejudicial evidence until the court has ruled on its admissibility *outside the presence of the jury.*” (emphasis added)). And as the Court has made clear in status conferences, the Court can tell counsel when their examination of a witness is objectionable.

II. ██████ testimony will be admissible.

Trump moves to exclude ██████ testimony for three reasons: (1) it is improper character evidence; (2) it contains hearsay; and (3) it is irrelevant. Trump’s Mot. In Limine on ██████ 8-13. But if the Court examines the substance of the Declaration as a preview of ██████ testimony, it will see that each of these arguments is unpersuasive.

a. ██████ testimony bears on Trump’s state of mind.

Trump asserts that certain of ██████ testimony will “attempt to imply that President Trump’s character is in line with [his] supporters, and because he supported them in the past, he is supportive of their crimes or character.” Trump’s Mot. In Limine on ██████ 8. Not so. Petitioners will not call ██████ to introduce character evidence. Trump’s objections under Colorado Rule of Evidence 404 are off base. *See id.* at 8-9.

Rather, ██████ testimony will bear on Trump’s state of mind—namely his “intent, ... knowledge, ... absence of mistake, or lack of accident,” C.R.E. 404(b)(2)—leading up to and on January 6, 2021. As a member of Trump’s inner circle, ██████ witnessed Trump discuss the effect of his violent, extreme rhetoric on his supporters and disregard warnings about the potential for violence by his supporters. ██████ can testify to occasions on which Trump was

informed of his supporters' tendency to interpret his statements as a call to violence and on which Trump continued to make statements despite (or because of) that fact. [REDACTED] testimony on those observations will address Trump's state of mind when he tweeted and made other statements. *See* C.R.E. 404(b)(2); C.R.E. 803(3); *see also* *Winkler v. Rocky Mountain Conf. of United Methodist Church*, 923 P.2d 152, 161 (Colo. App. 1995), *cert. denied*, 519 U.S. 1093 (1997) ("similar transaction" evidence can be used in civil cases to prove motive, intent, and absence of mistake or accident, among others).

Trump's state of mind matters. Petitioners expect a core part of Trump's defense to be that he did not *intend* to incite his supporters to violence on January 6, 2021—that he somehow did so accidentally. [REDACTED] testimony goes directly to this central issue of Trump's state of mind. It will help show that Trump conditioned his supporters over the span of his campaigns and his Presidency to interpret his words as a call to violence, that he knew his supporters would interpret his words as such, that he deliberately summoned a mob to Washington, D.C. on January 6, 2021, and that his speech that day used language that he intended as (and his supporters understood as) a command to violently overturn the election.

To be clear, Petitioners' argument is *not* that Trump was more likely to incite violence on January 6, 2021, because he had done so before. Petitioners instead offer evidence of a pattern of past call-and-response behavior between Trump and his extremist supporters—a pattern which proves that Trump knew precisely how the mob would interpret his words on January 6, 2021.

b. [REDACTED] will recount [REDACTED] own observations of Trump's state of mind.

Trump next argues that hearsay rules prohibit [REDACTED] from testifying about conversations with Trump to which [REDACTED] was a party. Trump's Mot. In Limine on [REDACTED] 9-11. Trump forgets that a statement made out of court is only hearsay if it is offered "to prove the truth of the matter asserted." C.R.E. 801(c). [REDACTED] will testify that [REDACTED] was personally present

when Trump was informed at various times of the risk that his words may encourage violence and that Trump was unmoved by these warnings. These statements will be introduced not for the truth of the matter but for what they show about Trump’s state of mind. *See* C.R.E. 803(3).

In any event, it would be premature to block ██████████ from testifying because ██████████ testimony *might* include hearsay. If it does, counsel for Trump can object. The Court is well-versed in addressing hearsay objections during witness testimony. And there is no risk here that ██████████ testimony, even if the Court sustains a hearsay objection, will taint a jury’s deliberations. The Court will surely disregard any hearsay evidence in reaching its decision. *People v. J.M.*, 22 Pd.3d 545, 547 (Colo. App. 2000) (citing *Vanadium Corp. of America v. Wesco Stores Co.*, 308 P.2d 1011 (Colo. 1957)).

c. ██████████ testimony will be relevant.

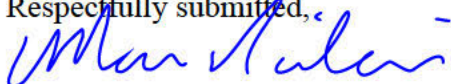
Trump’s final argument—something of a Hail Mary—is that ██████████ testimony is irrelevant. Trump’s Mot. In Limine on ██████████ 11-13. That’s plainly incorrect. For example, ██████████ can testify that Trump had to personally approve of any tweet sent from his Twitter accounts. That’s relevant to how Trump used Twitter as part of his efforts to incite an insurrection on January 6, 2021, and deflects any claim that these tweets were sent without his knowledge. *See, e.g.*, Pet’rs’ Opp. On Trump’s Anti-SLAPP Mot. to Dismiss, 17-23. For another example, ██████████ can testify about Trump’s television-viewing habits. That’s relevant to Trump’s knowledge of how his supporters historically responded to his tweets and statements and to his awareness of the insurrection unfolding on January 6, 2021. *See id.* at 29-30. Such testimony will tend “to make the existence of any fact that is of consequence to the determination of the action”—like that Trump summoned the mob on January 6, 2021—“more probable...than it would be without the evidence.” C.R.E. 401. This testimony is particularly important when Trump himself refuses to provide testimony to this Court.

Conclusion

It is too soon for Trump to attempt to block [REDACTED] from testifying. His arguments turn on [REDACTED] Declaration—which Petitioners will *not* introduce as an exhibit at trial—and flawed understandings of Petitioners' case and the law. The Court should deny Trump's Motion in Limine to exclude [REDACTED] testimony.

Date: October 20, 2023

Respectfully submitted,



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A handwritten signature in blue ink, appearing to read "Mark A. Niles".

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