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DISTRICT COURT	7, 2023 2.43 TW
CITY AND COUNTY OF DENVER,	
COLORADO	
1437 Bannock Street, Room 256	
Denver, CO 80202	
Phone: (303) 606-2300	
NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN, Petitioners, v. JENA GRISWOLD, in her official capacity as Colorado Secretary of State, and DONALD J. TRUMP Respondents.	▲ COURT USE ONLY ▲
and	
COLORADO REPUBLICAN STATE CENTRAL COMMITTEE, an unincorporated association, and DONALD J. TRUMP, Intervenors.	
Attorneys for Respondent and Intervenor Donald J. Trump:	Case Number:
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PRESIDENT DONALD J. TRUMP'S MOTION IN AND EXCLUDE PETITIONERS' PROPOSED	

Introduction

President Trump files this Motion in limine ("Motion") to object to and exclude the witness testimony of Petitioners listed as a "will call witness" in their witness disclosure of September 29, 2023,¹ and explained that "will testify generally about the subject matter and contents of declaration."² The Court should not allow to testify because none of testimony is admissible.³ First, attempts to introduce character evidence about President Trump for an improper purpose. Further, much of testimony is based upon hearsay. Finally, all of testimony that does not fit in either of the preceding categories is inadmissible because it is irrelevant. The Court should refuse to allow to testify because Petitioners have clearly stated that testimony is limited to declaration, and declaration contains nothing admissible.

Standard of Review

The testimony in Declaration can be divided into three categories: (1)

¹ Exhibit A, Email from Eric Olson to President Trump's counsel re: witness list for October 30 hearing.

² Exhibit B, Declaration of (the "Declaration"), September 28, 2023.

The Declaration does note that attended "President Trump's inauguration on January 20, 2017" and that Exhibit 1 to declaration "is a true and correct copy of video of President Trump taking the oath of office on January 20, 2017." (Declaration at ¶ 4). President Trump stipulates that on January 20, 2017, he took the oath required by Article 2 of the United States Constitution.

Character evidence; (2) hearsay evidence; and (3) irrelevant information. Each of these categories has a rule within the Colorado Rules of Evidence prohibiting admission of evidence under that category.

With regards to character evidence, such "evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith.⁴ An outgrowth of that rule is that "[e]vidence of *any other crime, wrong, or act* is not admissible to prove a person's character in order to show that on a particular occasion the person acted in conformity with the character."⁵

With regards to hearsay, the Colorado Rules of Evidence generally forbid out-of-court statements "to prove the facts asserted in them" due to "the lack of opportunity to test, by cross-examination, the accuracy and truth of the statements offered." The hearsay rule "does not permit any exception based upon 'case law' or 'common law' decisions to its

⁴ C.R.E. 404(a)(1).

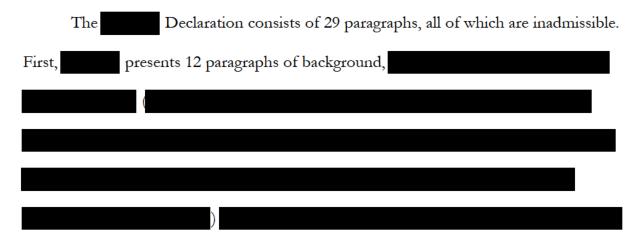
⁵ C.R.E. 404(b)(1) (emphasis provided).

⁶ Fernandez v. People, 490 P.2d 690, 693-94 (1971).

prohibition against the admission of hearsay evidence" and as such, for hearsay to be admissible, it must fit within an exception to the rule.

Finally, the Colorado Rules of Evidence state that while "all relevant evidence is admissible...[e]vidence which is not relevant is not admissible." Relevant evidence is evidence that has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Argument



⁷ People v. Rosenthal, 670 P.2d 1254 (Colo. App. 1993).

⁸ C.R.E. 402.

⁹ Settle v. Basinger, 411 P.3d 717, 728 (Colo. App. 2013) (citing C.R.E. 401).

¹⁰ Decl. at ¶ 2.

¹¹ *Id.* at ¶ 4.

¹² *Id.* at ¶ 5.

¹³ *Id.* at ¶ 9.

then explains that

.15 None of this is relevant and should be excluded on those grounds.

From there, explains how and that he could have and that he could have and claims that

after which President Trump claimed that there were also claims that witnessed

.15 None of this is relevant and should be excluded on those grounds.

Therefore, explains how and the could have and that he could have and that he could have also claims that

.15 None of this is relevant and should be excluded on those grounds.

Therefore, explains how and the could have and the could have also claims that also claims th

because they attempt to show that President Trump's prior acts establish bad character, for

¹⁴ *Id.* at ¶ 6.

¹⁵ *Id.* at ¶ 12.

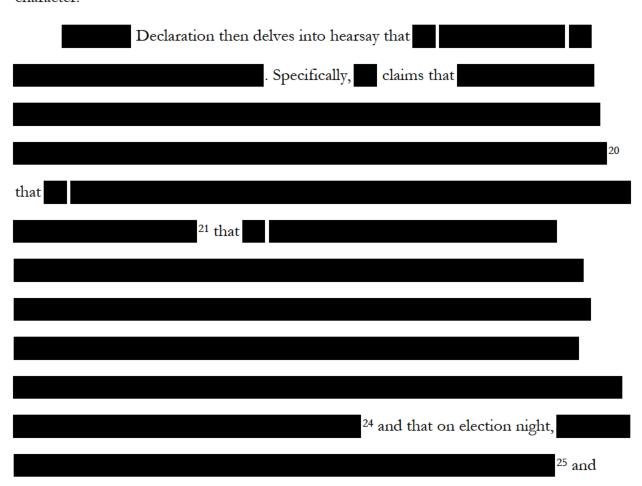
¹⁶ *Id.* at ¶ 13.

¹⁷ *Id.* at ¶ 19.

¹⁸ *Id.* at \P 26.

¹⁹ *Id.* at ¶ 18.

the purpose of showing that on January 6th he acted in conformity with that purported bad character.



- ²⁰ *Id.* at ¶ 22.
- ²¹ *Id.* at ¶ 23.
- ²² *Id.* at ¶ 24.
- ²³ *Id.* at \P 20.
- 24 *Id.* at ¶ 25.
- ²⁵ *Id.* at ¶ 28.

Declaration also contains other irrelevant statements. For instance,

claimed that

also speculates that

that

A final statement by is irrelevant for a different reason – because it relates to things that happened *long* before the events of January 6th. Specifically,

" and that

²⁶ *Id.* at ¶ 29.

²⁷ *Id.* at ¶ 27.

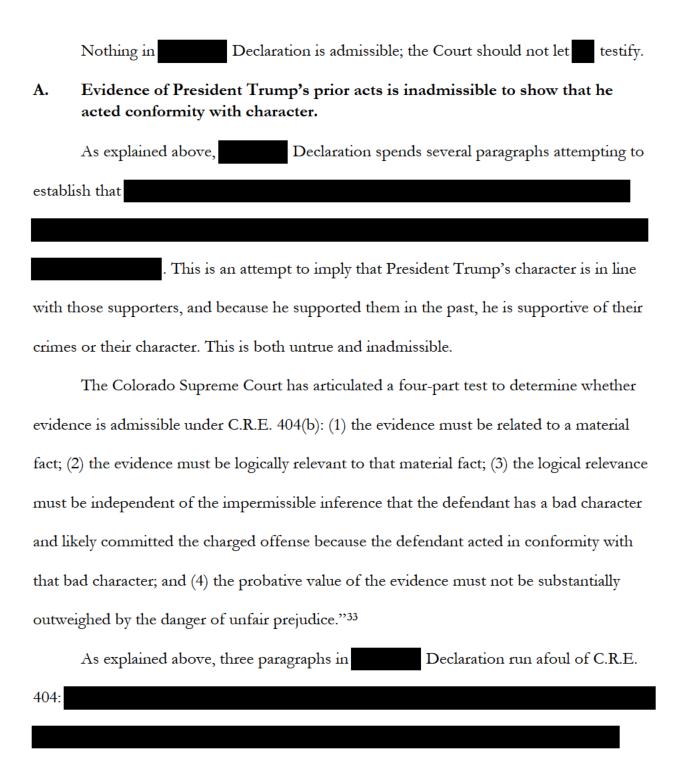
²⁸ *Id.* at ¶ 14.

²⁹ *Id.* at ¶ 15.

³⁰ *Id.* at ¶ 16.

³¹ *Id.* at ¶ 17.

³² *Id.* at ¶ 21



³³ People v. Harris, 370 P.3d 231, 234 (Colo. App. 2015) (citing People v. Spoto, 795 P.2d 1314, 1318 (Colo. 1990).

None of these statements are even tangentially related to a material fact in this case which is about whether January 6th constituted an "insurrection" and, if so, whether President Trump "engaged" in it. Further, because President Trump's statements were unrelated to any material facts, they were similarly irrelevant to those material facts.

proposed testimony fails the first two steps of the *Harris* test.

The next step in the *Harris* analysis is whether the logical relevance is independent of the impermissible inference. Here, because there is no relevance, this step also fails. Finally, the probative value of the evidence must not be outweighed by the danger of unfair prejudice. Not only does above-described testimony fail this last step, it does so spectacularly – there is no probative value in this evidence because it is totally unrelated to the issues of this case. At the same time, it presents the impermissible and prejudicial inference that because President Trump voiced support for a group of people, he was therefore responsible for their subsequent bad acts. testimony about President Trump's prior statements concerning some of his supporters fails the *Harris* test, and it is therefore inadmissible under C.R.E. 404.

B. Some of testimony is hearsay and is thus inadmissible under C.R.E. 802.

Decl. at ¶ 18, 19, and 26.

"Inadmissible hearsay evidence is not transformed into competent evidence by permitting a witness to testify as to his own observations when the effect is the same as admitting inadmissible hearsay on statements or conduct which are not in evidence." The rationale behind this rule is that there is no "opportunity to test, by cross-examination, the accuracy and truth of the statements offered."

The very phrasing of Declaration shows that much of testimony is based upon inadmissible hearsay:



These are precisely the types of statements that C.R.E. 802 is in place to protect against. To present these purported facts, Petitioners need to elicit testimony from the people who actually:

- "advised President Trump";
- Provided "warnings to President Trump";
- As Secret Service agents, "told President Trump";
- Provided daily national security briefings to President Trump;

³⁵ People v. Botham, 629 P.2d 589, 601 (Colo. 1981); see also Baney v. People, 130 Colo. 318, 275 P.2d 195 (1954); Brown v. People, 130 Colo. 77, 273 P.2d 128 (1954).

³⁶ Fernandez v. People, 490 P.2d 690 (Colo. 1971).

Decl. at ¶¶ 20, 22, 23, 24, 25, 28, and 29.

- Tried to tell President Trump things as a part of "the group around" him; and
- Was one of the people who "told him to say we need to ...".

By not doing so, Petitioners prevent the speakers from explaining the statements in context and prevent President Trump from having the opportunity to cross-examine them.³⁸

Because President Trump has not been able to cross-examine the actual declarants about these statements and to present their context to the Court, he is prejudiced, which is the point of prohibiting hearsay.³⁹ And if the Court allows these statements to be introduced via

President Trump will never have that opportunity to do so. For this reason, these statements are inadmissible, and should not be permitted to appear before the Court to repeat them.

C. The remainder of testimony is irrelevant and is thus inadmissible under C.R.E. 402.

The remainder of the testimony in Declaration is inadmissible because it is irrelevant. "In resolving an issue of relevancy, a court must first ask whether the proffered evidence relates to a fact that is of consequence to the determination of the action – in other words, whether the proffered evidence is legally material to some factual issue in the case." 40 "If this question is answered in the negative, the evidence is simply inadmissible as having no

³⁸ People v. Phillips, 2012 COA 176, \P 61.

³⁹ *Id.*

⁴⁰ People v. Carlson, 712 P.2d 1018, 1021-1022 (Colo. 1986).

bearing whatever on any issue in the case."41 discussed President Trump's offered (unqualified) opinions about President Trump's knowledge and made several comments about These statements are all irrelevant. The first twelve paragraphs of Declaration are either introductory and designed to establish that was once in President Trump's inner-circle and that had developed a Likewise, they were an opportunity for to disparage President Trump by declaring that These statements do not relate to any facts of consequence to the determination of this action which, as previously stated, is exclusively about whether the events of January 6th constituted an "insurrection" and if so, whether President Trump "engaged" in it. Similarly, commentary about and as such, they fail the preliminary test outlined in Carlson. Finally, states that when 41 Id.

Decl. at ¶¶ 27, 14, 15, 16, and 17.

Decl. at ¶ 8.

44 These statements are inadmissible for several reasons.

First, as discussed above they are intended to show character evidence, and that

Second, they are not logically relevant, because they occurred six years prior to January 6, 2023. They do not show his state of mind on January 6, 2021, meaning they cannot show character. And as a matter of law, they cannot be relevant because President Trump's statements were made six years before the events January 6, 2021. They cannot show whether President Trump "engaged" in an "insurrection" on that date.

Conclusion

FOR THESE REASONS, the court should refuse to allow testify as a witness in this case, and also grant President Donald J. Trump all such further relief as is just, proper or appropriate.

Respectfully submitted this 17th day of October 2023,

s/ Scott E. Gessler
Scott E. Gessler

GESSLER BLUE LLC

Decl. at ¶ 21.

Certificate of Service

I certify that on the	is 17th day of Octobe	er 2023, the forego	ing was electronic	cally
served via e-mail or CCE	S on all parties and th	ieir counsel of reco	ord:	

By: <u>s/ Joanna Bila</u> Joanna Bila, Paralegal