

**DISTRICT COURT
CITY AND COUNTY OF DENVER,
COLORADO**

1437 Bannock Street, Room 256
Denver, CO 80202
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**NORMA ANDERSON, MICHELLE PRIOLA,
CLAUDINE CMARADA, KRISTA KAUFER,
KATHI WRIGHT, and CHRISTOPHER
CASTILIAN,**
Petitioners,

v.

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

and

**COLORADO REPUBLICAN STATE CENTRAL
COMMITTEE,** an unincorporated association, and
DONALD J. TRUMP,
Intervenors.

▲ COURT USE ONLY ▲

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Case Number:
2023CV32577

Division:

**PRESIDENT DONALD J. TRUMP'S MOTION *IN LIMINE* TO OBJECT TO
AND EXCLUDE PETITIONERS' PROPOSED**



Introduction

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

Standard of Review

The testimony in [REDACTED] 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 [REDACTED] [REDACTED] (the “Declaration”), September 28, 2023.

³ The [REDACTED] Declaration does note that [REDACTED] attended “President Trump’s inauguration on January 20, 2017” and that Exhibit 1 to [REDACTED] declaration “is a true and correct copy of video of President Trump taking the oath of office on January 20, 2017.” ([REDACTED] 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.”⁶ 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.⁷

Finally, the Colorado Rules of Evidence state that while “all relevant evidence is admissible...[e]vidence which is not relevant is not admissible.”⁸ “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.”⁹

Argument

The [REDACTED] Declaration consists of 29 paragraphs, all of which are inadmissible.

First, [REDACTED] presents 12 paragraphs of background, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 [REDACTED] Decl. at ¶ 2.

¹¹ *Id.* at ¶ 4.

¹² *Id.* at ¶ 5.

¹³ *Id.* at ¶ 9.

[REDACTED] then explains that [REDACTED]
[REDACTED].¹⁵ None of this is relevant and should be excluded on those grounds.

From there, [REDACTED] explains how [REDACTED]
[REDACTED] and that he could have [REDACTED]
[REDACTED]” [REDACTED] claims that [REDACTED]
[REDACTED]
[REDACTED] and [REDACTED] outlines how “[REDACTED]
[REDACTED]
[REDACTED] after which President Trump claimed that there were [REDACTED]
[REDACTED] [REDACTED] also claims that [REDACTED] witnessed [REDACTED]
[REDACTED]
[REDACTED]”¹⁹ These statements are inadmissible 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 ¶ 26.

¹⁹ *Id.* at ¶ 18.

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

[REDACTED] Declaration then delves into hearsay that [REDACTED]. Specifically, [REDACTED] claims that [REDACTED].
[REDACTED]
[REDACTED]²⁰

that [REDACTED]
[REDACTED]²¹ that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁴ and that on election night, [REDACTED]
[REDACTED]²⁵ and

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

[REDACTED]

[REDACTED] Declaration also contains other irrelevant statements. For instance, [REDACTED] claimed that [REDACTED]²⁷ [REDACTED]

also speculates that [REDACTED]

[REDACTED] that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]” and that [REDACTED]

[REDACTED]³²

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

Nothing in [REDACTED] Declaration is admissible; the Court should not let [REDACTED] testify.

A. Evidence of President Trump’s prior acts is inadmissible to show that he acted conformity with character.

As explained above, [REDACTED] Declaration spends several paragraphs attempting to establish that [REDACTED]

[REDACTED]

[REDACTED]. This is an attempt to imply that President Trump’s character is in line with those supporters, and because he supported them in the past, he is supportive of their crimes or their character. This is both untrue and inadmissible.

The Colorado Supreme Court has articulated a four-part test to determine whether evidence is admissible under C.R.E. 404(b): (1) the evidence must be related to a material fact; (2) the evidence must be logically relevant to that material fact; (3) the logical relevance must be independent of the impermissible inference that the defendant has a bad character and likely committed the charged offense because the defendant acted in conformity with that bad character; and (4) the probative value of the evidence must not be substantially outweighed by the danger of unfair prejudice.”³³

As explained above, three paragraphs in [REDACTED] Declaration run afoul of C.R.E. 404: [REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED] 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. [REDACTED] 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 [REDACTED] 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. [REDACTED] 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 [REDACTED] testimony is hearsay and is thus inadmissible under C.R.E. 802.

³⁴ [REDACTED] 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.”³⁵ The rationale behind this rule is that there is no “opportunity to test, by cross-examination, the accuracy and truth of the statements offered.”³⁶

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

[REDACTED]

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).

³⁷ [REDACTED] 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, ¶ 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 ██████ was ██████

█████ 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.*

⁴² ██████ Decl. at ¶¶ 27, 14, 15, 16, and 17.

⁴³ ██████ Decl. at ¶ 8.

Certificate of Service

I certify that on this 17th day of October 2023, the foregoing was electronically served via e-mail or CCES on all parties and their counsel of record:

By: *s/ Joanna Bila*
Joanna Bila, Paralegal