

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

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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.

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Case Number:
2023CV32577

Division:

**PRESIDENT DONALD J. TRUMP'S MOTION TO EXCLUDE THE
PROFFERED EXPERT TESTIMONY OF [REDACTED]**

Certificate of Conferral under C.R.C.P. 121 § 15-8

The undersigned counsel has conferred with Petitioners' counsel and counsel for the Secretary of State, who oppose the relief sought. The Colorado Republican Party supports *Motion*.

Introduction

The central factual dispute in this case is whether the events of January 6, 2021, at the United States Capitol constituted an “insurrection,” and if so, whether President Trump “engaged” in such insurrection. Petitioners have retained sociology professor [REDACTED] to provide opinion testimony about President Trump’s words and actions surrounding the events of January 6th, and the effect those words and actions had upon a subset of his supporters.

As a basis for his opinion, [REDACTED] relies on a number of writings about extremist groups, opinion pieces about President Trump, the January 6th Report, and materials wholly unrelated to any fact at issue in this case.

The only material that relates to President Trump and the events surrounding January 6th—the January 6th Report and opinion pieces about President Trump—are highly biased, unreliable sources. Expert testimony based upon biased sources is unreliable and must be excluded. And the Court should not allow [REDACTED] to offer his opinions because the probative value of his testimony is dramatically outweighed by the prejudice President Trump will suffer if it is allowed. As such, the Court should refuse to certify [REDACTED] as an expert and decline to allow him to offer opinion testimony in this case.

Standard of Review

Trial courts are vested with broad discretion to determine the admissibility of expert testimony.¹ “This deference reflects the superior opportunity of the trial judge to gauge both

¹ *People v. Ramirez*, 155 P.3d 371, 380 (Colo. 2007).

the competence of the expert and the extent to which his opinion” is helpful.² In determining the admissibility of expert testimony, the Court must employ an analysis under C.R.E. 702 and C.R.E. 403, which is referred to as a *Shreck* analysis.³ Importantly, just because proposed testimony is offered by an expert, a court is not obligated to admit it.⁴

“The focus of a Rule 702 inquiry is whether the scientific evidence proffered is both reliable and relevant.”⁵ The *Shreck* court specified that in assessing the admissibility of scientific evidence, the “inquiry requires a determination as to (1) the reliability of the scientific principles; (2) the qualifications of the witness; and (3) the usefulness of the testimony to the jury.”⁶ The *Shreck* court also recognized that the “trial judge’s gatekeeping function” was not limited exclusively “to testimony based ... on scientific knowledge, but also to testimony based on technical and other specialized knowledge.”⁷ When conducting this *Shreck* analysis, trial courts are instructed to apply their “discretionary authority under CRE 403 to ensure that the probative value of the evidence is not substantially outweighed

² *Id.*

³ *People v. Shreck*, 22 P.3d 68, 77-79 (Colo. 2001); *see also People v. Rector*, 248 P.3d 1196, 1200 (Colo. 2011).

⁴ *United States v. Mamah*, 332 F.3d 475, 478 (7th Cir. 2003).

⁵ *Id.* at 77 (*quoting Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993)).

⁶ *Id.* at 78.

⁷ *Id.* at 74 (*citing Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 142 (1999)).

by unfair prejudice.”⁸ Additionally, *Shreck* held that “under CRE 702, a trial court must issue specific findings as it applies the CRE 702 and 403 analyses.”⁹

When “a trial court applies CRE 702 to determine the reliability of scientific evidence, its inquiry should be broad in nature and consider the totality of the circumstances of each specific case.”¹⁰ In doing so, a trial court may consider a wide range of factors pertinent to the case at bar.”¹¹ “Expert testimony is reliable if (1) the scientific principles are reliable; and (2) if the witness is qualified to opine on those scientific principles.”¹²

Because of the “fact-specific nature of the inquiry,” the *Shreck* court held that “a trial court [is not required to] consider any particular set of factors when making its determination of reliability.”¹³ Instead the Court held that “the CRE 702 inquiry contemplates a wide range of considerations that may be pertinent to the evidence at issue.”¹⁴ The Colorado Supreme Court also discussed “whether or to what extent a court should apply the *Daubert* factors,” and determined that “the proper focus should be on

⁸ *Id.* at 79.

⁹ *Shreck*, 22 P.3d at 79.

¹⁰ *Id.*

¹¹ *Id.* at 78-79.

¹² *People v. Martinez*, 74 P.3d 316, 321 (Colo. 2003).

¹³ *Shreck*, 22 P.3d at 77.

¹⁴ *Id.*

whether the evidence is reasonably reliable information that will assist the trier of fact.”¹⁵

Further, an expert’s opinions may be unreliable if he relies on biased sources to reach those opinions.¹⁶

Argument

I. The “scientific principles” relied upon by █████ are not reliable.

A. ████ methodology is not reliable.

████ is a sociologist.¹⁷ Sociologist “experts must meet the same standards as those of experts in the hard sciences.”¹⁸ █████ expert report does not present an actual methodology. Providing a sound methodology that leads him to his conclusions is necessary for █████ to show that his opinions are reliable.¹⁹ This requirement applies to the social sciences.²⁰ The goal is to ensure that the expert opinions are “grounded in the methods and procedures of science rather than subjective belief or unsupported speculation.”²¹ Finally, there must be an

¹⁵ *Id.*, citing *Brooks v. People*, 975 P.2d 1105, 1114 (Colo. 1999).

¹⁶ *Advanced Med. Optics, Inc. v. Alcon Inc.*, 2005 U.S. Dist. LEXIS 5803, *36 (citing *Tuman v. Genesis Associates*, 935 F. Supp 1375, 1385 (E. D. Pa. 1996)).

¹⁷ █████, Professor, Final Expert Witness Report, Oct. 6, 2023, at 2.

¹⁸ *Paine v. Johnson*, 2010 US Dist. LEXIS 14036, *5 (N.D. Ill. 2010).

¹⁹ *People v. Ramirez*, 155 P.3d 371, 378 (Colo. 2007).

²⁰ *See United States v. Mamah*, 332 F.3d 475, 477-78 (7th Cir. 2003).

²¹ *Ramirez*, 155 P.3d at 378.

empirical link between the expert's research and his opinion.²²

In his one-page description of his purported methodology, he describes the following steps:

First, I used professional knowledge of political extremism based on my research on these issues.

Second, I drew on my knowledge from decades of studying the research of social scientists, information analysts, computer scientists, and other scholars and analysts who examine extremist social movements, across a wide political and religious spectrum.

Third, I reviewed multiple types of documentation relevant to the events on and before January 6, 2021 including video and photos of the events, declarations from various experts; statements, including testimony, of those that participated or observed these events; court documents; and government reports. Materials on which I relied are cited herein or contained in the attached list of references.²³

This is not a methodology. It does not establish the reliability of his analysis other than his “bare assertions.”²⁴ Nor does it come close to meeting the factors set forth in *Shreck*.²⁵

Instead, by ██████'s own admission, the only thing he did in preparation for offering his opinion regarding the issues in this case was review “multiple types of documentation

²² *Mamah*, 332 F.3d at 478.

²³ ██████ Report at 4.

²⁴ *People v. Ramirez*, 155 P.3d 371, 379 (Colo. 2007).

²⁵ *Shreck*, 22 P.3d at 79.

relevant to the events on and before January 6, 2021,” including a list of the materials upon which he also relied (“References”).²⁶

B. ██████ relies exclusively on highly biased sources.

██████ Report is essentially an omnibus opinion piece that relies upon, and summarizes the contents of, other opinion pieces. All of his research into the relevant facts and circumstances at issue in this case come from heavily biased sources, or from sources that could not have offered relevant information to support ██████ conclusions, and as such, ██████ opinions are unreliable.

In ██████ Report has 239 footnotes and 66 references. The documents cited in ██████ footnotes can be broken down into five categories: First, ██████ cites to 48 pieces of opinion writing – albeit opinion that masquerades as news.²⁷ He also cites to the January 6th Committee or their Report 89 times.²⁸ ██████ additionally relies upon 39 instances of President Trump either speaking or tweeting.²⁹ ██████ also cites to certain legal proceedings 24 times (although, notably, not one of them is a final judicial opinions, but rather all of them are

²⁶ ██████ Report at 47-51

²⁷ ██████ Report at nn.20, 36-38, 40-41, 44-45, 47-52, 54-55, 57-59, 62-63, 68, 70-72, 85-86, 91-92, 94, 111, 118, 120, 123-124, 127, 159, 189, 211, 216, and 233-238.

²⁸ ██████ Report at nn.34, 65, 83, 88, 101-105, 108-110, 112, 114-117, 119, 121, 126, 129-131, 133-143, 147, 151, 153-156, 158, 161-164, 167-172, 174-178, 185-188, 192-193, 195-196, 198, 202-203, 205-207, 209, 212, 214, 219-224, and 226-232.

²⁹ ██████ Report at nn.3, 56, 67, 73-82, 84, 93, 95-100, 132, 144-146, 148-149, 199-200, 208, 210, 213, and 239.

submissions of witnesses and parties in various cases around the country).³⁰ Finally, [REDACTED] uses footnotes to cite to work that is contained in his references 39 times.³¹

Of the 66 References listed at the conclusion of [REDACTED] Report, three of the References were related to the U.S. Select Committee to Investigate the January 6th Attack on the United States Capitol (“January 6 Committee”) and their report (the “January 6 Report”). Additionally, 55 of the References were to publications (books or articles) published prior to the events of January 6th, and of the paltry eight publications written after January 6th, not one was about President Trump and only two or three were even tangentially related to the election of 2020.³²

1. *The January 6 Committee and their Report are biased and inherently unreliable.*

As explained in [REDACTED] declaration,³³ the January 6th Committee and their Report are unabashedly biased as explained in President Trump’s motion in *limine*.³⁴ The Committee was structured by the former Speaker of the House, Nancy Pelosi, with the

³⁰ See [REDACTED] Report at nn.28, 64, 90, 107, 113, 122, 125, 128, 150, 152, 157, 160, 165-166, 173, 190-191, 194, 197, 215, 225.

³¹ See [REDACTED] Report at nn.1-2, 4, 19, 21-27, 29-32, 35, 39, 42-43, 46, 53, 60-61, 66, 69, 87, 106, 179-184, 217-218.

³² *Id.*

³³ See, generally, Declaration of Congressman Troy Edwin Nehls, attached to Respondent and Intervenor Donald J. Trump’s Motion in Limine to Exclude Petitioners’ Anticipated Exhibits, Oct. 17, 2023.

³⁴ See Respondent and Intervenor Donald J. Trump’s Motion in Limine To Exclude Petitioners’ Anticipated Exhibits, October 17, 2023, pp. 3-21.

political goal of blaming President Trump for the riot on January 6, thereby removing any patina of reliability from its work and work product – the January 6th Report.³⁵ [REDACTED] reliance on the report endorses this highly politicized approach of providing a one-sided, seemingly authoritative report that could be used to prevent President Trump from serving as President again.

2. *The News “articles” relied upon by [REDACTED] are biased, and thus, unreliable.*

Aside from information derived from the highly partisan January 6th Committee and Report, [REDACTED] otherwise relied upon 49 articles that appear to be “news” but each of which contains a substantial amount of biased opinion, rendering them unreliable as well. For instance, [REDACTED] relied upon an article from the website Vox that discussed the events of January 6, and which contained the biased opinion that “Trump’s campaign rallies have always been incubation grounds for violence, sites where Trump spewed hate speech that encouraged physical harm against dissenters.”³⁶ Even the more historically reputable “news” sources relied upon by [REDACTED] contained significant amounts of bias. For instance, [REDACTED] cited to CNN for an article that attempted to paint President Trump as a racist because “he was directing Secretary of State Mike Pompeo to study and monitor the treatment of [] white farmers in South Africa,”³⁷ and to the Southern Poverty Law Center for an article that

³⁵ *Id.*

³⁶ *See* [REDACTED] Report at n.70.

³⁷ *See Id.* at n.59.

claimed, “Trump appeared on Infowars...as part of his campaign to” obtain the support “from the far right.”³⁸ While time and space in this Motion do not allow a full breakdown of each article relied upon by [REDACTED], any of the articles cited in footnote 18, supra, are similarly biased and unreliable.

3. *The biased information sources make [REDACTED] report unreliable.*

This review of the documentation relied upon by [REDACTED] shows that he could only have learned about President Trump’s actions through a limited number of the documents he reviewed. Specifically, [REDACTED] was only able to learn about President Trump’s actions and the subsequent response of his supporters through biased and opinion-laden “news” articles, through the partisan January 6 Committee and their Report, or through President Trump’s own speeches and tweets, which speak for themselves and all of which are included in Petitioners’ exhibits³⁹ and all of which are relied upon in Petitioners’ Verified Complaint.⁴⁰

Based on reviewing these biased sources, [REDACTED] comes to the conclusion, unremarkable considering his sources, that Trump is responsible for the violence on January 6.⁴¹

³⁸ *See Id.* at n.44.

³⁹ *See* Ex. 64 to Petitioners’ Opposition to Respondent Trump’s Anti-SLAPP Motion to Dismiss. (43 pages of Tweets from @RealDonaldTrump).

⁴⁰ *See* Petitioners’ Verified Petition at ¶¶ 28, 59, 63-64, 69, 74, 77, 81, 87-89, 93-94, 106, 120, 136, 138, 162, 173, 214, 216, 218, 222, 233-235, 260-261, 279, 281-284, 302, 327, and 334.

⁴¹ *See* Summary Expert Disclosure at 1; [REDACTED] Report at 1.

However, this opinion is not reliable because it is a product of biased sources.⁴² In *Advanced Med. Optics*, a proffered expert in a patent infringement case was challenged because the expert's opinions were "based solely on [the Plaintiff's] brochures and promotional materials,"⁴³ which were biased. The Court "precluded [the expert] from testifying" about that subject. Similarly, the bias of the January 6th Committee, their Report, and the "news" sources relied upon by █████ render █████ testimony unreliable, and, therefore, inadmissible.

C. █████ testimony is not relevant and will not assist the Court.

A court's relevancy inquiry focuses on the usefulness of the expert testimony to the finder of fact.⁴⁴ An expert's opinion is useful to the fact finder if "it embraces a relevant matter outside the understanding" of that fact finder,⁴⁵ and it will assist them "to either understand other evidence or to determine a fact in issue."⁴⁶ "Usefulness thus hinges on whether there is a logical relation between the proffered testimony and the factual issues involved in the case."⁴⁷ In other words, expert testimony is only relevant if "the testimony would be helpful" to the finder of fact.⁴⁸

⁴² *Advanced Med. Optics*, 2005 U.S. Dist. LEXIS 5803 at *34-36.

⁴³ *Id.* at *34.

⁴⁴ *Shreck*, 22 P.3d at 79.

⁴⁵ *Huntoon v. TCI Cablevision of Colo., Inc.*, 969 P.2d 681, 690 (Colo. 1998).

⁴⁶ *Ramirez*, 155 P.3d at 379.

⁴⁷ *Id.*

⁴⁸ *Martinez*, 74 P.3d at 321.

In making a determination about helpfulness, the Court must determine if on “this subject” can a finder of fact “receive appreciable help.”⁴⁹ The Court should consider “the elements of the particular claim, the nature and extent of other evidence in the case, the expertise of the proposed expert witness, the sufficiency and extent of the foundational evidence upon which the expert witness’ ultimate opinion is to be based, and the scope and content of the opinion itself.”⁵⁰

It is insufficient for expert testimony to simply be generally helpful, it must also be relevant by helping the trier of fact to “understand other evidence or to determine a fact in issue.”⁵¹ Further, “[w]hen the trial court is sitting as the fact finder, it need not admit expert testimony on an issue that it is capable of resolving itself.”⁵² In *Snizek*, the “plaintiffs sought to introduce the testimony of an expert...who would testify that the sale of ad-tabs through the vending machine that was confiscated did not violate any Colorado gambling statute and was not illegal gambling.”⁵³ The Appeals Court ultimately found that the trial court was not

⁴⁹ *Masters v. People*, 58 P.3d 979, 989 (Colo. 2002), quoting *People v. Williams*, 790 P.2d 796, 798 (Colo. 1990).

⁵⁰ *Id.* at 379.

⁵¹ *Ramirez*, 155 P.3d, at 379.

⁵² *Snizek v. Colo. Dep’t of Revenue*, 113 P.3d 1280, 1284 (Colo. App. 2005) (Citing *Tri-State Generation & Transmission Co. v. City of Thornton*, 647 P.2d 670 (Colo. 1982); *Zick v. Krob*, 872, P.2d 1290 (Colo. App. 1993).

⁵³ *Id.*

wrong to “exclude the testimony” because “the testimony would have encompassed the ultimate legal determination that the trial court was capable of determining itself.”⁵⁴

As previously discussed, [REDACTED] opinions about the words and actions of President Trump surrounding the events of January 6th, and the actions of his supporters in response, are based *entirely* upon partisan news sources, the January 6th Committee and their Report, and certain comments made by President Trump either in person or via Twitter. As addressed above, the opinion-laden “news” articles and the January 6 Committee and their Report are so biased as to be unreliable, and as such, they are not useful to the Court.

That leaves only President Trump’s comments as the sole subject about which [REDACTED] could testify that would be potentially helpful to the Court. However, as was the case in *Snizek*, that testimony encompasses the ultimate legal determination to be made and is more appropriately left in the hands of the Court. The Court will have ample opportunity to address these comments, as President Trump’s speech and Tweets are not only cited in the Verified Petition, they are exhibits that Petitioners will use in attempting to prove their case.

Because the Court will have an opportunity to assess President Trump’s statements and determine whether they constitute “engaging” in an insurrection—to the extent that the Court finds that an insurrection occurred at all, which President Trump disputes—the Court will not be helped by [REDACTED] testimony and as such, his testimony is irrelevant and must be excluded.

D. [REDACTED] opinions are unfairly prejudicial under C.R.E. 403.

⁵⁴ *Id.*

C.R.E. 702’s approach to the admissibility of expert testimony “is tempered by CRE 403,”⁵⁵ which gives a court discretion to exclude expert testimony where its “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”⁵⁶

The type of opinion testimony that Petitioners are attempting to introduce through [REDACTED] is the very definition of prejudicial. While the Court is capable of interpreting President Trump’s words and actions on her own, allowing an “expert” to offer his opinion that “Trump’s involvement in the Capitol attack was a multistage process that furthered his stated public goal, which he communicated to his supporters, to prevent the lawful transfer of power and unlawfully remain in power”⁵⁷ is prejudicial because the basis for this opinion lies in biased and partisan information that this Court will undoubtedly find inadmissible. Circumventing this inadmissibility by attempting to have an “expert” summarize the inadmissible evidence under the guise of “sociology” is unduly prejudicial.

Finally, it is also prejudicial because is an attempt to avoid the violation of President Trump’s First Amendment rights because it attempts to present the argument that President

⁵⁵ *Id.*

⁵⁶ C.R.E. 403.

⁵⁷ [REDACTED] Report at 6.

Trump essentially groomed his supporters for years through an expert when Petitioners may not make it themselves.⁵⁸

Because ██████ proposed opinion testimony has virtually no probative value and because it will be highly prejudicial to President Trump, it should be excluded under C.R.E. 403.

E. ██████ testimony improperly introduces evidence of President Trump's prior acts to show that he acted in conformity with that character.

Finally, ██████ expert report discusses President Trump speaking well of some of his supporters who either previously or subsequently engaged in criminal behavior or who were otherwise unsavory. 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

⁵⁸ See President Donald J. Trump's Motion to Dismiss Based on the First Amendment, pp. 7-8 citing *James v. Meow Media, Inc.*, 300 F.3d 683, 698 (6th Cir. 2002).

outweighed by the danger of unfair prejudice.”⁵⁹

As explained above, █████ Report is replete with statements that run afoul of C.R.E. 404. For instance, █████ claims that “Trump’s advocacy for birtherism placed him in the same orbit as leading far right extremism figures like founder of the Oath Keepers Stewart Rhodes.”⁶⁰ He claimed that, “After announcing his candidacy, Trump...appeared on far right extremist media influencer Alex Jones’ *InfoWars* praising Jones and his followers.”⁶¹ █████ alleges that, “[i]n August 2016, Trump sent a clear signal to the far right when he brought on Steven Bannon as his campaign CEO.”⁶² █████ also noted that during an October 2018 rally, “Trump referred to a candidate who attacked a reporter as ‘my kind of guy’.”⁶³ █████ report is chock-full of these sorts of statements, but perhaps none make the point as clearly as █████ claim that:

Trump’s cultivation of far right extremist support and promotion of violence was not limited to public statements” but that his “campaign, political, and advisory circles also included numerous individuals, like former White House advisor Steven Bannon and Presidential advisor Roger Stone, both of whom are well known figures among far right extremist, and have themselves made various comments supporting the use of political violence.”⁶⁴

⁵⁹ *People v. Harris*, 370 P.3d 231, 234 (Colo. App. 2015) (citing *People v. Spoto*, 795 P.2d 1314, 1318 (Colo. 1990)).

⁶⁰ █████ Report at 14.

⁶¹ *Id.*

⁶² *Id.* at 15.

⁶³ *Id.* at 19.

⁶⁴ *Id.* at 20.

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. Indeed, █████ presents them to argue that President Trump acted in accordance with the way the people █████ associates President Trump with.

Further, because President Trump’s statements were unrelated to any material facts, they are similarly irrelevant to those material facts. █████’s 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 – █████ links President Trump to people who have been convicted of crimes, are negatively viewed by the public (and presumably this Court), and have engaged in political violence to “opine” that President Trump’s character is in line with those individuals. The prejudice from this outweighs any probative value, because this evidence has no probative value—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.

Conclusion

Petitioners proposed expert witness, Professor [REDACTED] methodology in reaching his opinions is based upon biased information and as such, is unreliable. Further, his testimony will be unhelpful to the Court, and is thus irrelevant. Additionally, because his opinion testimony is far more prejudicial than it is probative, it is inadmissible under C.R.E. 403. Finally, much of [REDACTED] testimony will violate C.R.E. 404, and must be excluded on that basis as well.

FOR THESE REASONS, the court should refuse to certify Professor [REDACTED] as an expert, refuse to allow Professor [REDACTED] to offer opinion testimony in this matter, and also grant President Donald J. Trump all such further relief as is just, proper or appropriate.

Respectfully submitted this 18th day of October 2023,

GESLER BLUE LLC

s/ Geoffrey N. Blue
Geoffrey N. Blue

Certificate of Service

I certify that on this 18th 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