

**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:

**RESPONDENT AND INTERVENOR DONALD J. TRUMP'S MOTION IN
LIMINE TO EXCLUDE PETITIONERS' ANTICIPATED EXHIBITS**

Conferral under C.R.C.P. 121 § 15-8

The undersigned counsel has conferred with Petitioners' counsel regarding this motion.
Petitioners oppose the relief sought.

* * *

Respondent files this omnibus *Motion in Limine to Exclude Petitioners' Anticipated Exhibits* ("Motion in limine") Petitioners have identified they intend to present to this Court in their case-in-chief. Petitioners have listed 155 exhibits, and President Trump can only, at this point, make educated guesses as to how each exhibit will be used. In an effort to clarify issues, this *Motion in limine* groups exhibits into categories for purposes of common objections. This *Motion in limine*, however, is not intended to be the only objection to evidence. President Trump reserves his rights to object to exhibits at trial, and he may supplement this *Motion in limine* with additional information as it becomes available. Much of this objection centers around Petitioners' efforts to introduce the January 6th Report.

Each exhibit (or group) is listed, followed by President Trump's objection.

1. ***Final Report, Select Committee to Investigate the January 6th Attack on the United States Capitol, HR 117-663, 117th Cong., 2d Sess. (Dec. 22, 2022) ("January 6th Report")*** (Exhibit No. 23).

Petitioners apparently intend to rely heavily on the January 6th Report, including the exhibits, interviews, documents, videos, statements, and reports it contains. This is a political document, intended to make a political case against President Trump. As outlined in

██████████ ██████████ declaration, the Select Committee was chosen and designed to obtain

evidence for a political conclusion. It was not designed to obtain and weigh evidence in any objective or reasonable manner. This Court should not endorse this highly biased and controversial document and instead rely only upon admissible, first-hand information presented in Court.

Under Colorado Rule of Evidence 104(a), “Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court In making its determination it is not bound by the rules of evidence except those with respect to privileges.” As a preliminary matter, therefore, this Court must first determine whether the January 6th Report is reliable enough to be admitted into evidence. The Court should examine the context surrounding the formation of the Select Committee and its “findings,” and find that neither was the product of a bipartisan, reliable exercise whose work-product should be acceptable. In doing so, this Court should consider the materials discussed below. On the preliminary matter of admissibility under Colorado Rule of Evidence 104(a), Respondent submits to this Court a history of the formation, composition, and authority of the Select Committee, including news articles, congressional records, and statements concerning the activities and conduct of the Select Committee.

A. The January 6th Report is not trustworthy

When considering the admissibility of Congressional reports, courts judge trustworthiness according to the “nonexclusive list of four factors [the Advisory Committee] thought would be helpful in passing on this question: (1) the timeliness of the investigation;

(2) the investigator's skill or experience; (3) whether a hearing was held;” and (4) possible motivation problems.¹ In *Coleman v. Home Depot, Inc.*, the Court stated:

Most notably, a report may be untrustworthy “if the report appears to have been made subject to a suspect motivation. For example, if the public official or body who prepared the report has an institutional or political bias, and the final report is consistent with that bias.” *Federal Rules of Evidence Manual* 1688–89 (Stephen A. Saltzburg et al. eds., 7th ed. 1998); *see also Pearce v. E.F. Hutton Group, Inc.*, 653 F.Supp. 810, 814 (D.D.C.1987) (excluding findings made in a congressional report because, “[g]iven the obviously political nature of Congress, it is questionable whether any report by a committee or subcommittee of that body could be admitted under rule 803(8)(C) against a private party. There would appear to be too great a danger that political considerations might affect the findings of such a report”).²

“Congressional reports are *not* entitled to an additional presumption of trustworthiness or reliability—beyond the one already established in the Advisory Committee Notes—simply by virtue of having been produced by Congress.”³ “[C]ourts have based their decisions in part on the possibility that partisan political considerations, as well as elected officials' tendency to ‘grandstand,’ have influenced the factual findings, conclusions, or opinions included in Congressional reports.”⁴ Courts have also emphasized “whether members of both parties joined in the report, or whether the report was filed over the

¹ *See Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 167 n.11 (1988); *Barry v. Tr. of Int'l Ass'n Full Time Salaried Officers & Emps. of Outside Local Unions & Dist. Counsel's (Iron Workers) Pension Plan*, 467 F. Supp. 2d 91, 97 (D.D.C. 2006).

² *Coleman v. Home Depot, Inc.*, 306 F.3d 1333, 1342 (3d Cir. 2002).

³ *Barry*, 467 F. Supp. 2d at 98; *see also Anderson v. City of New York*, 657 F. Supp. 1571, 1577–79 (S.D.N.Y. 1987).

⁴ *Barry*, 467 F. Supp. 2d at 98 (collecting cases).

dissent of the minority party. Where the former has occurred . . . courts have been more likely to reject challenges to the admissibility of Congressional reports.”⁵ “[R]eports that are truly reliable on a methodological and procedural level are less likely to provoke bitter divisions than those that have politics, rather than policy or truth-seeking, as their ultimate objective.”⁶ Here, the January 6th Report fails miserably, due to its political bias, committee composition, and members’ motivation.

The Select Committee consisted of nine members (seven Democrats and only two Republicans), who each held deep personal animus towards President Trump. And they made no effort to conceal it. President Trump had been impeached by the 117th Congress for incitement of insurrection and was found not guilty of that charge by the Senate; every one of the nine members of the Select Committee who voted to impeach President Trump, and then as members of the committee used the opportunity to inveigh ceaselessly against President Trump.⁷ One, Representative Raskin, had actually served as the lead impeachment manager for the House. Thus, the Select Committee was heavily biased against President Trump, containing not even one member who could even be described as neutral (let alone favorable) toward him.

⁵ *Id.* (collecting cases).

⁶ *Id.* at 99.

⁷ Exhibit A, Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors, H. 24, 117th Cong. (2021); https://www.senate.gov/legislative/LIS/roll_call_votes/vote1171/vote_117_1_00059.htm (last visited on October 16, 2023).

Out of the more than 200 Republicans in Congress at the time, the two who joined the committee were selected by the Democrat Speaker of the House, not by House Republican leadership, in a shocking break with House tradition. And those two had openly attacked President Trump. And like every one of the seven Democrat members, both had voted to impeach him. Thus, far from a neutral panel, the Select Committee consisted of nine members, handpicked by the Democrat Speaker of the House, who were on record that they each blamed President Trump for the events of January 6th. Given its composition alone, therefore, this Court should find the January 6th Report does not meet the required level of trustworthiness.

The January 6th Report is more akin to the House report, than the Senate report discussed in *Barry*.⁸ Unlike the Senate Report at issue in *Barry*, the January 6th Report was not only the product of bias and political grandstanding but was also discredited by the lack of any proper involvement of the minority party, and lack of opportunity for effective dissent.⁹ It was also full of “inflammatory rhetoric.”¹⁰ While the Select Committee relied on carefully selected witnesses and a handpicked set of evidence to furnish the report—a report that set out to prove a predetermined political narrative despite the failed impeachment—as shown below, the bias of its members found full expression in its operations.

⁸ *See Barry*, 467 F. Supp. 2d at 100-01.

⁹ *See Id.*

¹⁰ *See Id.* at 101.

As [REDACTED] notes in his declaration, “Any assertion that the Select Committee was established or run to produce a reliable, bipartisan, factual investigation is simply false. . . . [T]he Select Committee was established and run as a highly partisan kangaroo court, intended to create support for the Democrat Party’s favored political narrative.”¹¹ After a failed attempt to establish a bipartisan commission, on June 28, 2021, then-Speaker Nancy Pelosi introduced H. Res. 503, “Establishing the Select Committee to Investigate the January 6th Attack on the United States Capitol.” Two days later, the House passed H. Res. 503 on a near party-line vote of 222 yeas and 190 nays. Notably, only two Republicans—Reps. Cheney and Kinzinger, who were President Trump’s political rivals and had voted to impeach him for the events of January 6—voted in favor of H. Res. 503.¹² H. Res. 503 instructed the Speaker to appoint thirteen members to the Committee, only five of which “shall be appointed after consultation with the minority leader.”¹³ Thus, from the beginning, the Select Committee was designed to have an 8-5 imbalance that substantially favored the Democrat majority. Speaker Pelosi appointed Chairman Thompson to serve as chair of the Committee and appointed six additional Democrat members: Reps. Lofgren,

¹¹ Declaration of [REDACTED], October 17, 2023, ¶¶ 2, 25.

¹² *Id.* at ¶ 3; Exhibit B, Kristin Wilson and Clare Foran, *Only two House Republicans vote for the January 6 select committee*, CNN, June 30, 2021, available at: <https://edition.cnn.com/2021/06/30/politics/republicans-january-6-select-committee-vote/index.html> (last visited Oct. 16, 2023).

¹³ [REDACTED] Decl., ¶ 4.

Schiff, Aguilar, Murphy (FL), Raskin, and Luria. She also appointed Republican Rep. Cheney without any designation of position.¹⁴ Then-House Minority Leader Kevin McCarthy recommended five Republican members to serve on the Committee, consistent with H. Res. 503: Rep. Jim Banks of Indiana to serve as Ranking Member and Reps. Rodney Davis of Illinois, Jim Jordan of Ohio, Kelly Armstrong of North Dakota, and Troy Nehls of Texas to serve as additional minority members. Unwilling to allow an effective minority position on the Select Committee—even with the pre-baked 8-5 Democrat majority—Speaker Pelosi refused to appoint Rep. Banks to serve as Ranking Member. Nor did she appoint any of Minority Leader McCarthy’s other recommended minority members. In a public statement, she acknowledged that her refusal to appoint the members recommended by the then-Minority Leader was an “unprecedented decision.”¹⁵ Instead, Speaker Pelosi appointed Rep. Kinzinger—the only Republican other than Rep. Cheney who voted in favor of H. Res. 503—and left four vacancies.¹⁶

¹⁴ *Id.*, ¶ 5.

¹⁵ [REDACTED] Decl., ¶¶ 6-7; Exhibit C, Press Release, Nancy Pelosi, Speaker, U.S. House of Representatives, Pelosi Statement on Republican Recommendations to Serve on the Select Committee to Investigate the January 6th Attack on the U.S. Capitol (July 21, 2021), available at: <https://web.archive.org/web/20211222223910/https://www.speaker.gov/newsroom/72121-2> (last visited Oct. 16, 2023).

¹⁶ [REDACTED] Dec., ¶ 8.

On July 21, 2021, Minority Leader McCarthy issued a statement condemning Speaker Pelosi's partisan actions and sheer abuse of power:

Speaker Nancy Pelosi has taken the unprecedented step of denying the minority party's picks for the Select Committee on January 6. This represents an egregious abuse of power and will irreparably damage this institution. Denying the voices of members who have served in the military and law enforcement, as well as leaders of standing committees, has made it undeniable that this panel has lost all legitimacy and credibility and shows the Speaker is more interested in playing politics than seeking the truth.

Unless Speaker Pelosi reverses course and seats all five Republican nominees, Republicans will not be party to their sham process and will instead pursue our own investigation of the facts.¹⁷

The obvious and intended result of Speaker Pelosi's actions was that the Select Committee effectively lacked minority party representation. Witnesses who disagreed with the Select Committee's narrative were therefore not called, a minority report was not issued, and findings regarding failures of House security, intelligence, and communications problems that contributed to the events of January 6th were not included in the January 6th Report.¹⁸ And, thus, from the very beginning of its life, the Select Committee was an exercise in harsh partisanship.

¹⁷ [REDACTED] Decl., ¶ 24; Exhibit D, McCarthy Statement about Pelosi's Abuse of Power on January 6th Select Committee, Jul. 21, 2021, available at: <https://www.speaker.gov/mccarthy-statement-about-pelosis-abuse-of-power-on-january-6th-select-committee/> (last visited Oct. 16, 2023).

¹⁸ [REDACTED] Decl. ¶ 9.

The Committee was irregularly composed from the beginning. For example, House Rule XI(2)(d) instructs that a committee chair shall designate “[a] member of the majority party . . . as vice chair of the committee.” On September 2, 2021, Chairman Thompson announced in a press release that “he has named Representative Liz Cheney (R-WY) to serve as the Vice Chair of the Select Committee.”¹⁹ Rep. Cheney was a member of the Republican Conference of the House of Representatives, and thus was not formally a member of the majority party. That she was nonetheless designated for the position of Vice Chair of the Select Committee—and was given one of the 8 seats originally designated for a Democrat member—is ample indication that she was understood to be what she was: a fanatical political opponent of President Trump, wholly aligned with Democratic leadership, who used her Select Committee membership to target President Trump politically.

Similarly, the Select Committee never had a ranking minority member, even though under the House Resolution certain aspects of its operations required the participation of a minority ranking member. For example, H. Res. 503 provides: “The chair of the Select Committee, upon consultation with the ranking minority member, may order the taking of depositions.” But neither H. Res. 503 nor the House Rules define the term “ranking

¹⁹*Id.* at ¶ 10; *See* Exhibit E, Press Release, Bennie Thompson, Chairman, Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Chairman Thompson Announces Representative Cheney as Select Committee Vice Chair (Sept. 2, 2021), available at: <https://january6th-benniethompson.house.gov/news/press-releases/chairman-thompson-announces-representative-cheney-select-committee-vice-chair> (last visited Oct. 16, 2023).

minority member.” That term, by custom and practice of the House, is defined by the parties themselves in their respective Conference and Caucus Rules. Under Rule 14 of the Republican Conference Rules of the 117th Congress, a member’s designation as the ranking Republican member of a committee comes only through nomination by the Steering Committee and election by the Conference. Rule 13 provides that, for a Select Committee, such nominations shall be made by the minority leader. No ranking minority member was ever designated in accordance with the Republican Conference Rules for the Committee. Therefore, the Committee had no ranking minority member.²⁰ As a result, none of the depositions taken by the Committee were taken in conformity with the requirements of H. Res. 503.

The Committee held its first hearing on July 27, 2021.²¹ After the hearing, Chairman Thompson reportedly “told reporters the select committee could have another hearing in August while the House is scheduled to be in a seven-week recess.”²² But the Committee did

²⁰ [REDACTED] Decl., ¶¶ 11-13.

²¹ *Id.* at ¶ 15; See Exhibit F, Press Release, Select Committee, Select Committee to Investigate the January 6th Attack on the United States Capitol to Hold First Hearing July 27th (Jul. 20, 2021), available at: <https://january6th-benniethompson.house.gov/news/press-releases/select-committee-investigate-january-6th-attack-united-states-capitol-hold-first> (last visited Oct. 16, 2023).

²² [REDACTED] Decl., ¶ 16; Exhibit G, Melissa Macaya et al., *Capitol Riot Committee Holds First Hearing*, CNN (Jul. 27, 2021), available at: https://www.cnn.com/politics/live-news/jan-6-house-select-committee-hearing-07-27-21/h_f000be289ea8ac4e1fb4b992b3d0b80e (last visited Oct. 16, 2023).

not have another hearing in August 2021; nor did it have another hearing for the remainder of 2021. Instead, the Committee waited almost a year to hold a second hearing, holding it on June 9, 2022, right at or before the majority of the 2022 midterm primary and primary runoff elections.²³ The Committee subsequently held seven additional hearings during the summer of 2022: on June 13, 2022, June 16, 2022, June 21, 2022, June 23, 2022, June 28, 2022, July 12, 2022, and July 21, 2022.²⁴ After holding no hearings for two and a half months, the Committee decided to hold one more hearing on October 13, 2022—less than one month before the 2022 midterm elections.²⁵

It is no secret that the two nominally Republican Select Committee members—each of whom had declared their positions when they voted to impeach President Trump well before the Select Committee was formed—harshly criticized President Trump throughout the life of the Committee, often on matters having nothing to do with the events of January 6th. For example, at the October 13, 2022, hearing of the Committee, Congressman Kinzinger focused on his policy disagreements with President Trump’s orders as commander in chief of the armed forces, stating “President Trump issued an order for large-scale US troop withdrawals. He disregarded concerns about the consequences for fragile

²³ ██████ Decl., ¶¶ 17-18.

²⁴ ██████ Decl., ¶ 19; Exhibit H, Select Committee, Past Hearings, available at: <https://january6th-benniethompson.house.gov/news/press-releases/thompson-cheney-opening-statements-select-committee-hearing> (last visited Oct. 16, 2023).

²⁵ ██████ Decl., ¶ 20.

governments on the front lines of the fight against ISIS and Al-Qaeda terrorists.”

Congressman Kinzinger further referenced conversations between the President and his subordinates, including General Keith Kellogg, National Security Advisor to the Vice President, and General Mark Milley, Chairman, Joint Chiefs of Staff.²⁶ Of course, none of this had anything to do with the events of January 6. Numerous articles highlight both Rep. Kinzinger and Cheney’s anti-Trump bias and their continued obsession with President Trump.²⁷

The Select Committee issued the January 6th Report on December 22, 2022. But throughout its lifespan, its partisan rancor was the subject of criticism. From its inception,

²⁶ *Id.* at ¶¶ 20-21.

²⁷ Exhibit I, Brian Naylor, *GOP Rep. Adam Kinzinger, who voted to impeach Trump, won't run for reelection*, NPR, October 29, 2021, available at: <https://www.npr.org/2021/10/29/1050454729/gop-rep-adam-kinzinger-who-voted-to-impeach-trump-wont-run-for-reelection> (last visited Oct. 16, 2023); Exhibit J, Steve Peoples and Paul Weber, *Kinzinger goes to Texas in search of anti-Trump Republicans*, Associated Press, April 30, 2021, available at: <https://apnews.com/article/donald-trump-adam-kinzinger-elections-illinois-political-organizations-4a8ca7b3e66818622c146c7b65f04aaf> (last visited Oct. 16, 2023); Exhibit K, Rick Pearson, *US Rep. Adam Kinzinger says he'll focus on GOP anti-Trump movement rather than run for statewide office*, Chicago Tribune, Jan. 5, 2022, available at: <https://web.archive.org/web/20220201044329/https://www.chicagotribune.com/politics/ct-adam-kinzinger-trump-20220106-6lm6rmlivyhefnah5p5y3pcgea-story.html> (last visited Oct. 16, 2023); Exhibit L, Kristina Peterson, *Liz Cheney Draws More GOP Fire Over Anti-Trump Stance*, Wall Street Journal, May 4, 2021, available at: <https://www.wsj.com/articles/liz-cheney-draws-more-gop-fire-over-anti-trump-stance-11620161615> (last visited Oct. 16, 2023); Exhibit M, Julia Manchester, *58 percent say Jan. 6 House committee is biased: poll*, The Hill, Aug. 2, 2021, available at: <https://thehill.com/homenews/house/565981-58-percent-say-jan-6-commission-is-biased-poll/> (last visited Oct. 16, 2023).

Americans saw through the partisanship. Poll results released in August 2021 confirmed that perception:

A majority of voters say they believe the House select committee investigating the Jan. 6 attack on the Capitol is biased, according to a new Harvard CAPS-Harris Poll survey. Fifty-eight percent of voters polled said they believed the committee set up by Speaker Nancy Pelosi (D-Calif.) was biased, while 42 percent said they thought it was fair. Americans want an examination of the riots over the summer and the origins of the virus over investigating Jan. 6th,” said Mark Penn, the co-director of the Harvard CAPS-Harris Poll survey. “The voters reject the Pelosi move to toss Republicans off of the committee and see it now as just a partisan exercise.”²⁸

One year after the events of January 6th, Minority Leader McCarthy stated, “Unfortunately, one year later, the majority party seems no closer to answering the central question of how the Capitol was left so unprepared and what must be done to ensure it never happens again Instead, they are using it as a partisan political weapon to further divide our country.”²⁹ Shortly thereafter, Minority Leader McCarthy stated, “It is not serving any legislative purpose. The committee’s only objective is to attempt to damage its political opponents — acting like the Democrat Congressional Campaign Committee one day and the DOJ the next.” He continued:

The committee has demanded testimony from staffers who applied for First Amendment permits. It has subpoenaed the call records of private citizens and their financial records from banks while demanding secrecy not supported

²⁸ Exhibit M.

²⁹ Exhibit N, Monique Beals, *McCarthy says Democrats using Jan. 6 as ‘partisan political weapon’*, The Hill, Jan. 2, 2022, available at: <https://thehill.com/homenews/house/587954-mccarthy-says-democrats-using-jan-6-as-partisan-political-weapon-ahead-of/> (last visited Oct. 16, 2023).

by law. It has lied about the contents of documents it has received. It has held individuals in contempt of Congress for exercising their Constitutional right to avail themselves of judicial proceedings. And now it wants to interview me about public statements that have been shared with the world, and private conversations not remotely related to the violence that unfolded at the Capitol. I have nothing else to add.

As a representative and the leader of the minority party, it is with neither regret nor satisfaction that I have concluded to not participate with this select committee's abuse of power that stains this institution today and will harm it going forward.³⁰

House Republicans repeatedly protested and condemned the Select Committee's partisanship. On June 8, 2022, for example, Rep. Bice of Oklahoma issued a statement highlighting that the Select Committee was merely a political stunt:

After a year of overreaching subpoenas and dramatized hearings, the next show trial event from the January 6 Select Committee will take place Thursday, during prime time. This further proves that this biased committee does not intend to investigate what occurred on Jan. 6, but instead weaponize the government for their own political gain.

As you may remember, there were two bills voted on by the House of Representatives last year regarding Jan. 6. I voted in favor to establish a fair, nonpartisan commission, modeled on the September 11 Commission, to fully investigate the security failure and ensure that this incident at our Nation's Capital would not happen again. . . .

However, I vehemently opposed legislation that established the January 6 Select Committee, because I was deeply concerned it would be nothing but

³⁰ [REDACTED] Decl., ¶ 24; Exhibit O, Barbara Sprunt, *The top House Republican won't comply with Jan. 6 panel request to voluntarily testify*, NPR, Jan. 12, 2022, available at: <https://www.npr.org/2022/01/12/1072544752/jan-6-panel-investigating-insurrection-requests-kevin-mccarthys-voluntary-testim> (last visited Oct. 16, 2023); Exhibit P, Leader McCarthy's Statement about Pelosi's Illegitimate Select Committee, Jan. 12, 2022, available at: <https://www.speaker.gov/leader-mccarthys-statement-about-pelosis-illegitimate-select-committee/> (last visited Oct. 16, 2023).

political theater for House Democrats. Sadly, this is precisely what we are witnessing today. In creating the membership of this committee, Speaker Pelosi broke 232 years of House precedent, trampling over the rights of the Minority party, by rejecting Republican's chosen Members, including Rep. Banks (R-IN) and Rep. Jordan (R-OH). This move eliminated the objectivity and legitimacy of this committee from the very start. . . .

. . . A major goal of the committee is becoming increasingly clear: to normalize and ram through a far-left agenda.

I strongly opposed what we are seeing today, which is a dangerous, political stunt. Our country could have benefited from a bipartisan commission that would have worked to protect the People's House and keep Americans who visit and work there safe and secure in the future, while also holding Pelosi and those in charge accountable for their failures. Unfortunately, the reasons why I voted against the Jan. 6 Select Committee have come true. No progress has been made, Republicans have no voice, and Democrats continue their witch hunt against the Republican party to distract from their catastrophic foreign and domestic policy failures.³¹

Minority Leader McCarthy, on June 9, 2022, delivered remarks calling the Select Committee illegitimate and echoing Rep. Bice's concerns:

Speaker Pelosi's Select Committee on January 6 is unlike any committee in American history. In fact, it's the most political and least legitimate committee in American history. It has used congressional subpoenas to attack Republicans, violate due process, and infringe on the political speech of private citizens. It has been caught altering evidence – including text messages from Ranking Member Jordan. It has permanently damaged the House and divided the country. It's a smokescreen for Democrats to push their radical agenda To be clear, the violence at the Capitol that day was wrong, and we have repeatedly denounced it. But keeping the Capitol safe is not the point of Pelosi's illegitimate Select Committee. From the beginning, the Select Committee refused to investigate the real circumstances that led to the riot, including the lack of security around the Capitol. They also ignored left-wing

³¹ Exhibit Q, Stephanie Bice, Democrats' Partisan Jan. 6th Committee, June 8, 2022, available at: <https://bice.house.gov/media/weekly-columns/democrats-partisan-jan-6th-committee> (last visited Oct. 16, 2023).

mob violence, which led to riots and loss of life across the country. When House Republicans proposed investigating these facts, Speaker Pelosi did not respond for 3 months. Then, she jumped to create the Select Committee. Not only that, she rejected my picks to serve on that Committee – violating 232 years of House tradition. Pelosi rejected Congressman Banks, a distinguished Afghanistan veteran. She rejected Congressman Jordan, the ranking member of the Judiciary Committee. But while she rejected qualified Republicans, she appointed radical Democrats. She appointed Chairman Thompson, who — to be clear — objected to presidential electors in 2005. She appointed Congressman Raskin, who also objected to presidential electors in 2017 AND called for President Trump’s impeachment before Trump took office. And she appointed Congressman Schiff, despite his years of lying about the Russia-Collusion Hoax and the Hunter Biden Laptop. The future of our nation rests on the ability of Americans to trust our political system, to have safer streets, to have affordable food and gas, and to have confidence that elected officials are listening to real concerns. Democrats are using January 6 to avoid accountability for making the nation less safe and less prosperous. But Americans are not fooled by Democrats’ distractions. And Republicans are not deterred from focusing on the issues that matter most to them. Now I want to bring up Congressman Jim Banks. As we said at the time Speaker Pelosi rejected my picks to serve on the committee – Republicans would be conducting our own investigation. And Jim Banks has led that.³²

Vice President Pence referred to the partisan nature of the Select Committee as a “disappointment” for its harsh partisanship,³³ stating that “It seemed to me in the beginning, there was an opportunity to examine every aspect of what happened on January 6, and to do so more in the spirit of the 9/11 Commission — nonpartisan, nonpolitical, and that was an

³² Exhibit R, Leader McCarthy, House GOP: The Select Committee is Illegitimate, June 9, 2022, available at: <https://www.speaker.gov/house-gop-the-select-committee-is-illegitimate/> (last visited Oct. 16, 2023).

³³ Exhibit S, Caroline Linton, *Pence says he thinks there will be "better choices" than Trump for president in 2024*, CBS News, Nov. 16, 2022, available at: <https://www.cbsnews.com/news/mike-pence-donald-trump-2024-better-choices-face-the-nation-interview/> (last visited Oct. 16, 2023).

opportunity lost.”³⁴ Members of the United States Senate felt the same way about the Select Committee.³⁵

As [REDACTED] Declaration makes clear, besides being partisan, the Select Committee also engaged in dishonest behavior. “In one remarkable display—later admitted by the Select Committee’s spokesman when the press reported it—Select Committee staff doctored evidence and a Member of the Committee publicly presented that falsified evidence during a hearing.”³⁶ “In addition, the Select Committee doctored silent video captured by security cameras in the House, adding a soundtrack to make their presentation more dramatic.”³⁷

But Republicans were not the only ones condemning the Select Committee for its obvious political nature. Ted Van Dyk penned an op-ed in the Wall Street Journal, stating “Count me as a Democrat disappointed by the way my party has responded to Donald Trump” He continued:

³⁴ Exhibit T, Brady Knox, *Mike Pence says he will not testify to Jan. 6 committee*, Washington Examiner, Nov. 16, 2022, available at: <https://www.washingtonexaminer.com/news/justice/pence-not-testify-jan-6-committee> (last visited Oct. 16, 2023).

³⁵ Exhibit U, Melissa Quinn, *Rubio says January 6 committee is a "complete partisan scam,"* CBS News, Feb. 7, 2022, available at: <https://www.cbsnews.com/news/marco-rubio-january-6-committee-partisan-face-the-nation/> (last visited Oct. 16, 2023).

³⁶ [REDACTED] Decl., ¶ 22.

³⁷ *Id.* at ¶ 23.

The House Jan. 6 hearings offered an opportunity to examine Mr. Trump's activities carefully. But it didn't happen. Thursday's opening statements by Chairman Bennie Thompson and Republican Rep. Liz Cheney were more like prosecutors' closing arguments than introductions to a fact-finding inquiry. Ms. Cheney read aloud a statement by Mr. Trump that was supposed to implicate him in inciting his followers-but she left out that he told his followers: "Go home."

The committee members included harsh Trump critics like Rep. Adam Schiff. Speaker Nancy Pelosi rejected Republican members nominated by Minority Leader Kevin McCarthy and allowed only Mr. Trump's outspoken Republican opponents -- Ms. Cheney and Rep. Adam Kinzinger —to serve on the committee. As a result, chances for a bipartisan outcome were lost and any minority report will be undertaken outside the committee. There will be no consensus on any findings, only further polarization.³⁸

Media outlets aired the Democrats' open secret that coverage of the Select Committee's work during prime time would be a tool in the Democratic Party's arsenal to continue to control the House past 2022. The New York Times wrote, "With their control of Congress hanging in the balance, Democrats plan to use made-for-television moments and a carefully choreographed rollout of revelations over the course of six hearings . . . to persuade voters that the coming midterm elections are a chance to hold Republicans accountable for [January 6th]." ³⁹ The partisan motivation of House Democrats shone in this

³⁸ Exhibit V, Ted Van Dyk, *Jan. 6 Hearing Disappoints This Democrat*, Wall Street Journal, June 12, 2022, available at: <https://www.wsj.com/articles/jan-6-hearing-disappoints-this-democrat-partisan-cheney-thompson-investigation-security-trump-11655038308> (last visited Oct. 16, 2023).

³⁹ Exhibit W, Annie Karni and Luke Broadwater, *Jan. 6 Hearings Give Democrats a Chance to Recast Midterm Message*, The New York Times, June 7, 2022, available at: <https://web.archive.org/web/20230105192247/https://www.nytimes.com/2022/06/07/us/politics/jan-6-hearings-tv-democrats.html> (last visited Oct. 16, 2023).

primetime opportunity to grandstand. To underscore its partisan purpose, the House Democrats hired a television producer to orchestrate their hearings in order to maximize their political impact in the runup to the 2022 election.

If the political bent of the Select Committee were not already clear by its composition and staffing, the Committee's conduct was reprehensible. According to H.R. 503, the Select Committee had three purposes: 1) "To investigate and report upon the facts, circumstances, and causes relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex;" 2) "To examine and evaluate evidence developed by relevant Federal, State, and local governmental agencies regarding the facts and circumstances surrounding the domestic terrorist attack on the Capitol;" and 3) "To build upon the investigations of other entities and avoid unnecessary duplication of efforts by reviewing the investigations, findings, conclusions, and recommendations of other executive branch, congressional, or independent bipartisan or nonpartisan commission investigations into the domestic terrorist attack on the Capitol." Instead, the "evidence" and "findings" of the January 6th Report focused almost exclusively on the conduct of President Trump before and after the General Election in 2020. Staffers intimately involved with the information-gathering arm of the Select Committee and the manner in which information was used have lamented "that important findings unrelated to Trump will not become available to the American public."⁴⁰

⁴⁰ Exhibit X, Jacqueline Alemany, Josh Dawsey and Carol D. Leonnig, *Jan. 6 panel staffers angry at Cheney for focusing so much of report on Trump*, The Washington Post, Nov. 23, 2022, available at: <https://www.washingtonpost.com/politics/2022/11/23/liz-cheney-jan-6-committee/> (last visited Oct. 16, 2023).

And this Court should be concerned that the Select Committee failed to properly archive information related to President Trump – information potentially useful to him in his ongoing legal matters. It further highlights the underlying point that from its inception, the Select Committee formed to engage in political grandstanding, culminating in a political hit job against President Trump.⁴¹

The January 6th Report, rooted in political bias and grandstanding aimed in part to secure a Democratic majority in Congress during the 2022 midterm elections, is the poisonous tree out of which many other exhibits Petitioners intend to rely on emanate. As noted above, Respondent objects to Petitioners' use of the January 6th Report and *all* documents, statements, reports, and videos cited by or derived from that report.

B. The January 6th Report is itself hearsay.

In addition to being unreliable and untrustworthy as a product of a politically motivated and biased grandstanding exercise the January 6th Report is also itself hearsay under Colorado Rule of Evidence 802. Rule 802 generally forbids out-of-court statements “to prove the facts asserted in them” due to “the lack of opportunity to test, by cross-

⁴¹ Exhibit Y, Catherine Yang, *Trump Trying to Subpoena Records Missing From January 6 Select Committee Archives*, The Epoch Times, Oct. 11, 2023, available at: https://www.theepochtimes.com/us/trump-trying-to-subpoena-records-missing-from-january-6-select-committee-archives-5508235?utm_source=Morningbrief&src_src=Morningbrief&utm_campaign=mb-2023-10-12&src_cmp=mb-2023-10-12&utm_medium=email&cta_utm_source=Morningbrief&est=5%2BJlyMJcrOKGUi2B32%2FyfcdMISXGc31irTxezMWPoFLWgt%2FYwpOGHC9rOxL8 (last visited Oct. 16, 2023).

examination, the accuracy and truth of the statements offered.”⁴² Here, President Trump, the party named in the action before this Court, was not a party to the Committee’s proceedings, had no lawyer or other representative to protect his interests, and had no opportunity to cross-examine the witnesses, introduce testimony or documents, or question the Report’s underlying evidence, accuracy, conclusions, or truth. The highly biased and politicized report is now offered by Petitioners for the truth of the matters it asserts. Allowing the report into evidence would severely constrain his right to due process.

And the Report itself does not fit within any exception to the hearsay rule, including C.R.E. 803(8)(C), which states that public records and reports “in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law” are exceptions to the hearsay bar “[u]nless the sources of information or other circumstances indicate lack of trustworthiness.” The Colorado Rules of Evidence “largely track” the Federal Rules of Evidence; the Federal Rules of Evidence are therefore instructive in interpreting the Colorado Rules of Evidence.⁴³

C. The January 6th Report contains inadmissible hearsay.

The January 6th Report is also inadmissible because it contains multi-level hearsay under Colorado Rule of Evidence 805. As the Court in *Barry* noted, when a congressional

⁴² *Fernandez v. People*, 176 Colo. 346, 353, 490 P.2d 690, 693-94 (1971).

⁴³ *See Bernache v. Brown*, 2020 COA 106, ¶ 35, 471 P.3d 1234, 1242 n.5.

report includes out-of-court statements that are also hearsay, hearsay within hearsay is present.⁴⁴ “These other hearsay statements are admissible only ‘if each part of the combined statements conforms with an exception to the hearsay rule provided in’ the [] Rules of Evidence.”⁴⁵ The January 6th Report quotes and relies upon hundreds of other reports, documents, videos, and third-party statements. Each is hearsay. Even if this Court were to admit the January 6th Report into evidence, it is still Petitioners’ burden to overcome the multi-level hearsay objections to each and every subsidiary component of the report.

2. Compilation of Findings Contained in the January 6th Report (Exhibit No. 78).

President Trump incorporates all of his arguments regarding the January 6th Report’s inadmissibility here. The Compilation, like the January 6th Report it comes from, is inadmissible for the same reasons applicable to the untrustworthy and unreliable January 6th Report: it is hearsay, contains numerous instances of hearsay within hearsay, and the Select Committee out of which these “findings” emanate was politically motivated to do the work it believed the Senate—whose constitutional duty it was to try President Trump for incitement of insurrection—failed to do. Every member on the committee had already determined – through their votes to impeach – that President Trump was at fault for the events of January 6.

These “findings” suffer other deficiencies. Overall, they are subject to authentication under Colorado Rule of Evidence 901. Additionally, Petitioners have cherry-picked only

⁴⁴ *Barry*, 467 F. Supp. 2d at 102.

⁴⁵ *Id.*

certain findings in an attempt to shoehorn them into various hearsay exceptions. That is improper. If Petitioners wish to admit each of the 411 findings into evidence, they must overcome Respondent's omnibus hearsay objection and demonstrate each finding fits into a proper exception. That, ultimately, is their burden. Examples are the cherry-picked findings contained in Appendix 1 to *Petitioners' Opposition to Respondent Trump's Anti-SLAPP Motion to Dismiss*.

App'x 1, p. v. only shows improperly authenticated evidence and statements which were not subject to cross-examination of those who engaged in a riot that day. *See* Finding #54. But as President Trump has argued in his *Motion to Dismiss*, the events of January 6th do not constitute an insurrection. As such, this finding is also irrelevant under Colorado Rule of Evidence 402. Should this Court find it relevant, it should also be excluded under Colorado Rule of Evidence 403 because "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." Further, "likely" being aware of something, like a government report on election integrity, does not show one's state of mind. *See id.* at #176. The Court may not assume the relevance of that finding based on a characterization Petitioners have made. In any event, that finding should also be excluded under Colorado Rule of Evidence 403.

Moreover, President Trump's statements in the form of tweets and speeches are inadmissible because they are taken out of context and without reference to further tweets and speeches where he asked people to be "peaceful" and "go home." They are therefore irrelevant. Should this Court find they are relevant under Colorado Rule of Evidence 402,

they should be excluded under Colorado Rule of Evidence 403. In any event, they must also be authenticated under Colorado Rule of Evidence 901. The examples Petitioners cite to at App'x 1, p. v, are also inadmissible under Colorado Rule of Evidence 1002 because full, unedited, and unclipped versions are required as “best evidence.” *See* Findings at #111, 254. The findings Petitioners cite for their “untruth” are also inadmissible due to lack of authentication under Rule 901, a lack of relevance under Rule 402 (they do not tend to prove that President Trump engaged in an insurrection on January 6, 2021), the probative value being substantially outweighed by the danger of unfair prejudice and confusion of the issues, and because those findings do not show the entirety of the alleged conversations at issue under Rule 1002. *See* Findings at #75, 196.

Findings #50 and #229 are improperly labelled as agent admissions absent a determination from this Court. Regardless, they are also inadmissible due to lack of authentication under Rule 901, lack of relevance under Rule 402, prejudice substantially outweighing probative value under Rule 403; and because those findings do not show the entirety of the alleged conversations at issue under Rule 1002. Relying on statements made out of this Court to prove the truth of the matter asserted therein is highly improper. And if the Findings show anything about President Trump’s state of mind, they show that he was concerned with the integrity of the General Election in 2020, which makes their admission irrelevant to the Court’s mission—determining whether President Trump is disqualified under Section Three of the Fourteenth Amendment—here.

Petitioners specifically cite Findings #88 and #103, which rely on other government reports. That constitutes hearsay within hearsay. Additionally, courts have explained:

We do not perceive, however, that the drafters intended to piggyback the whole administrative proceeding on top of the trial. To do so would permit vast amounts of time to be spent addressing the admissibility of exhibits which are but excess baggage with no direct bearing on the issues at trial. Such a result would, indeed, offend the basic constructional rule, F.R.E. 102, one of whose precepts is the “elimination of unjustifiable expense and delay,” as well as the principles underlying Rule 403.⁴⁶

Accordingly, the government reports Petitioners cite are irrelevant under Rule 402 because they do not tend to show that President Trump engaged in insurrection or provided aid or comfort to enemies under Section Three of the Fourteenth Amendment. They should also be excluded under Rule 403 because of the risk of their probative value being substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the trier of fact, or by considerations of undue delay. Inclusion of the government reports as evidence will not aid this Court in determining whether President Trump is disqualified from being on Colorado’s ballots in 2024; instead, they will only confuse the issues and cause undue delay and waste. And again, that Petitioners assume President Trump knew directly about these specific government reports is improper; this Court may not also assume that the existence of these reports equates to knowledge of them and that they therefore bear on his state of mind. To the extent Petitioners intend to use these exhibits as character evidence regarding President Trump, these exhibits are also

⁴⁶ *Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, 505 F.Supp. 1125, 1145 (3d Cir. 1980).

inadmissible under 404(a), which states, “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 on a particular occasion.”

3. Videos Included as Exhibits to the January 6th Report (Exhibit Nos. 79-96, 108-110, 117, and 119-120).

President Trump incorporates all of his arguments regarding the January 6th Report’s inadmissibility here. These videos, like the January 6th Report they come from, are inadmissible for the same reasons applicable to the untrustworthy and unreliable January 6th report: they constitute hearsay under Rule 802 and are not subject to an appropriate exception. To the extent any of these videos are clips of original video recordings, Respondent also objects under Colorado Rule of Evidence 1002 because full, unedited, and unclipped versions are required as “best evidence.” Additionally, if they are relevant, their 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 under Rule 403. They have also not been authenticated under Rule 901. To the extent Petitioners intend to use these exhibits as character evidence regarding President Trump, these exhibits are also inadmissible under 404(a), which states, “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 on a particular occasion.”

4. Transcribed Interviews and Other Sworn Statements Relied Upon for the January 6th Report (Exhibit Nos. 75-76, 97, and 116).

President Trump incorporates his previous arguments regarding the January 6th Committee. To the extent Petitioners intend to offer transcribed interviews, or other sworn statements from individuals who are not identified on a witness list to offer testimony at trial, Petitioners cannot offer the exhibits noted above as evidence because they constitute hearsay under Colorado Rule of Evidence 802, were not subject to appropriate cross-examination at the time they were created, and would not be subject to the safeguard of cross-examination at trial here. Respondent hereby incorporates all of his arguments regarding the January 6th Report's inadmissibility here, as well as his objections under Rule 1002, Rule 402, Rule 403, Rule 901, and Rule 404(a).

5. Charts Compiling Defendant Statements by the Select Committee (Exhibit Nos. 25 and 142).

Petitioners cannot offer the exhibits noted above as evidence because those exhibits constitute hearsay under Colorado Rule of Evidence 802, were not subject to appropriate cross-examination at the time they were created and would not be subject to the safeguard of cross-examination at trial here. Respondent hereby incorporates all of his arguments regarding the January 6th Report's inadmissibility here, as well as his objections under Rule 1002, Rule 402, Rule 403, Rule 901, and Rule 404(a).

6. Declarations and Associated Trial Testimony, if any (Exhibit No. 118).

To the extent Petitioners intend to offer declarations from individuals who are not identified on a witness list to offer testimony at trial, Petitioners cannot offer the exhibits noted above as evidence because those exhibits constitute hearsay under Colorado Rule of Evidence 802, were not subject to appropriate cross-examination at the time they were

created and would not be subject to the safeguard of cross-examination at trial here. They also contain hearsay within hearsay.

To the extent any of these exhibits reference other potential evidence, like the Declarations of [REDACTED] and [REDACTED], Respondent also objects under Colorado Rule of Evidence 1002 because the above exhibits are not “best evidence.” Any declaration adopting prior testimony in a case with different ultimate consequences is also highly barred, especially in the case of *New Mexico ex rel. White v. Griffin*,⁴⁷ where a pro se defendant could not engage in effective cross-examination with meaningful probing of the issues. To the extent Petitioners intend to use these exhibits as character evidence regarding President Trump, these exhibits are also inadmissible under 404(a). For reasons stated above, they should also be excluded under Rule 402, 403, and 901.

7. Various Videos, Pictures, Other Footage, and Statements from Individuals
(Exhibit Nos. 1-21, 37-40, 42-44, 47-72, 99-102, 111-114, 121-131, 133-141, 143, 147, and 150-155).

These exhibits constitute hearsay under Rule 802. Indeed, most of them are the essence of hearsay; news broadcasts, feature President Trump at various points over his more than eight years on the presidential circuit, and feature people making out-of-court statements offered for the truth of the matter asserted not before this court (like Vice President Mike Pence, Governor Doug Doucey of Arizona, Steve Bannon, Rudy Giuliani, and John Eastman). Many of the above exhibits also contain statements from people,

⁴⁷ *New Mexico ex rel. White v. Griffin*, No. D-101-CV-2022-00473 (N.M. Dist. Ct. 2022).

offered for the truth of the matter asserted, not before this Court, and which contain hearsay within hearsay.

Very few are relevant under Rule 402, because they were made months and years before the events of January 6, 2021. President Trump incorporates his objections under Rule 403 and Rule 901. And to the extent any of these exhibits are clips or compilations of original recordings or photographs, Respondent also objects under Colorado Rule of Evidence 1002 because full, unedited, and unclipped versions are required as “best evidence.” To the extent Petitioners intend to use these exhibits as character evidence regarding President Trump, these exhibits are also inadmissible under 404(a).

8. Various Social Media Posts (Exhibit Nos. 73-74, 103, 148).

These exhibits constitute hearsay under Rule 802 because they are out-of-court statements offered for the truth of the matter asserted. To the extent any of these exhibits are clips or compilations of original versions, Respondent also objects under Colorado Rule of Evidence 1002 because full, unedited, and unclipped versions are required as “best evidence.” As discussed above, the exhibits are inadmissible under Rules 402, 403, 404(a) and 901.

9. News Articles and Releases (Exhibit Nos. 34, 36, 41, 77, 98, and 104).

These exhibits constitute hearsay for the same reasons described in category 8, above.

10. Government Agency and Staff Reports (Exhibit Nos. 22, 24, 26-33, and 35 on Petitioners’ October 6, 2023, Exhibit List).

These exhibits constitute hearsay under Rule 802. For the same reasons discussed above. To the extent the exhibits reference the January 6th Report, President Trump

incorporates all of his arguments regarding the January 6th Report's inadmissibility. As discussed above, the exhibits are inadmissible under Rules 402, 403, 404(a) and 1002. And as government reports, they should not be admitted under the reasoning in *Zenith Radio Corporation*, discussed above.

FOR THESE REASONS, the court should not admit the above-referenced exhibits, and also grant Donald J. Trump all such further relief as is just, proper or appropriate.

Respectfully submitted this 17th day of October 2023,

GESSLER BLUE LLC

s/ Scott E. Gessler
Scott E. Gessler

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