

**SUMMARY STATEMENT ON APPLICATION FOR  
EXPEDITED SERVICE AND/OR INTERIM RELIEF**

(SUBMITTED BY MOVING PARTY)

Date: December 4, 2023

Case # 2023-05859

Title Donald J. Trump, et al. v. Hon. Arthur F. Engoron, et al. Index/Indict/Docket # \_\_\_\_\_  
of \_\_\_\_\_  
Matter \_\_\_\_\_

Appeal Order  Supreme  County \_\_\_\_\_  
by \_\_\_\_\_ from Decree  of Surrogate's   
Judgment  Family  Court entered on \_\_\_\_\_, 20\_\_\_\_

Name of Judge \_\_\_\_\_ Notice of Appeal filed on \_\_\_\_\_, 20\_\_\_\_

If from administrative determination, state agency \_\_\_\_\_

Nature of Original Proceeding  
action \_\_\_\_\_  
or proceeding \_\_\_\_\_

Provisions of  order  
 judgment appealed from \_\_\_\_\_  
 decree \_\_\_\_\_

This application by appellant ~~respondent~~ is for expedited leave to appeal by permission to the  
Court of Appeals from this Court's November 30, 2023, order and expedited  
determination of the instant Article 78 proceeding

If applying for a stay, state reason why requested n/a

Has any undertaking been posted No If "yes", state amount and type \_\_\_\_\_

Has application been made to court below for this relief No If "yes", state Disposition n/a  
Has there been any prior application here in this court Yes If "yes", state dates and nature interim stay of enforcement of two  
unconstitutional gag orders was granted on November 16, 2023, by Justice Friedman,  
but the stay was vacated by this Court's November 30, 2023, order.

Has adversary been advised of this application Yes Does he/she consent \_\_\_\_\_

Attorney for Movant

Attorney for Opposition

Name Clifford S. Robert and Michael Madaio

Kevin Wallace, Esq. and Colleen Faherty, Esq.

Address Robert & Robert PLLC, 526 RXR Plaza, Uniondale

People of the State of New York, by Letitia James

NY 11566/Habba Madaio & Associates LLP, 112 West

Attorney General of the State of New York

34th Street, 17th and 18th Floors, NY, NY 10120

28 Liberty Street, NY, NY 10005

Tel. No. (516) 832-7000/ (908) 869-1188

(212) 416-6376

Email crobert@robertlaw.com/ mmadaio@habbamadaio.com

kevin.wallace@ag.ny.gov;

Appearing by \_\_\_\_\_

colleen.faherty@ag.ny.gov

-----  
**(Do not write below this line)**

DISPOSITION

-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----  
-----

Justice \_\_\_\_\_

Date \_\_\_\_\_

Motion Date \_\_\_\_\_ Opposition \_\_\_\_\_ Reply \_\_\_\_\_

EXPEDITE \_\_\_\_\_ PHONE ATTORNEYS \_\_\_\_\_ DECISION BY \_\_\_\_\_

ALL PAPERS TO BE SERVED PERSONALLY.

\_\_\_\_\_  
Court Attorney

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

----- )  
In the Matter of the Application of: )

Case No. 2023-05859

DONALD J. TRUMP, DONALD TRUMP, JR., )  
ERIC TRUMP, ALLEN WEISSELBERG, )  
JEFFREY MCCONNEY, THE DONALD J. )  
TRUMP REVOCABLE TRUST, THE TRUMP )  
ORGANIZATION, INC., THE TRUMP )  
ORGANIZATION, LLC, DJT HOLDINGS )  
LLC, DJT HOLDINGS MANAGING )  
MEMBER, TRUMP ENDEAVOR 12 LLC, 401 )  
NORTH WABASH VENTURE LLC, TRUMP )  
OLD POST OFFICE LLC, 40 WALL STREET )  
LLC, and SEVEN SPRINGS LLC, )

**ORDER TO SHOW CAUSE**

Petitioners, )

For a Judgment Under Article 78 of the CPLR )

-against- )

THE HONORABLE ARTHUR F. ENGORON, )  
J.S.C., and PEOPLE OF THE STATE OF NEW )  
YORK by LETITIA JAMES, ATTORNEY )  
GENERAL OF THE STATE OF NEW YORK, )

Respondents. )  
----- )

**UPON** reading and filing the annexed Affirmation of Urgency of Clifford Robert, dated December 3, 2023, and the exhibit annexed thereto and the accompanying memorandum of law; and upon all the pleadings and proceedings heretofore had herein, and sufficient cause having been shown,

**LET** Respondents, by their attorneys, show cause before this Court, at the courthouse thereof, located at 27 Madison Avenue, New York, New York 10010, on the \_\_\_\_ day of December, 2023, at \_\_\_\_\_, or as soon thereafter as counsel may be heard, why an order should not be made and entered:

- (a) granting expedited leave to appeal to the Court of Appeals pursuant to CPLR §§ 5602(a)(2) and (b)(1) from the order of this Court dated November 30, 2023; and
- (b) granting expedited resolution of Petitioners' Verified Joint Article 78 Petition; and
- (c) granting such other and further relief as this Court deems just and proper.

Sufficient cause therefore appearing, it is

**ORDERED** that Petitioners' motion for leave to appeal is immediately referred to the full panel of this Court that decided the order dated November 30, 2023, for expedited review and disposition no later than December 6, 2023; and it is further

**ORDERED** that opposition papers, if any, are to be served on Petitioners' counsel via e-filing on or before the \_\_\_\_ day of December 2023; and it is further

**ORDERED** that service of a copy of this Order to Show Cause and the papers upon which it is based, be made on or before December \_\_\_\_, 2023, by e-filing same shall be deemed good and sufficient service thereof.

---

Associate Justice  
Appellate Division: First Department

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

----- )  
In the Matter of the Application of: )  
 )  
DONALD J. TRUMP, DONALD TRUMP, JR., )  
ERIC TRUMP, ALLEN WEISSELBERG, )  
JEFFREY MCCONNEY, THE DONALD J. )  
TRUMP REVOCABLE TRUST, THE TRUMP )  
ORGANIZATION, INC., THE TRUMP )  
ORGANIZATION, LLC, DJT HOLDINGS )  
LLC, DJT HOLDINGS MANAGING )  
MEMBER, TRUMP ENDEAVOR 12 LLC, 401 )  
NORTH WABASH VENTURE LLC, TRUMP )  
OLD POST OFFICE LLC, 40 WALL STREET )  
LLC, and SEVEN SPRINGS LLC, )

Case No. 2023-05859

**AFFIRMATION OF URGENCY**

Petitioners, )

For a Judgment Under Article 78 of the CPLR )

-against- )

THE HONORABLE ARTHUR F. ENGORON, )  
J.S.C., and PEOPLE OF THE STATE OF NEW )  
YORK by LETITIA JAMES, ATTORNEY )  
GENERAL OF THE STATE OF NEW YORK, )

Respondents. )  
----- )

**CLIFFORD ROBERT**, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following statements to be true under the penalties of perjury:

1. I am the principal of the law firm of Robert & Robert PLLC, attorneys for Defendants Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC. I am

fully familiar with the facts and circumstances set forth herein based on the files and materials maintained by my firm.

2. This Affirmation of Urgency is submitted in support of Petitioners' emergency application for an order: (a) granting leave to appeal to the Court of Appeals pursuant to CPLR §§ 5602(a)(2) and (b)(1) from the order of this Court dated November 30, 2023, which (i) vacated the order of a Justice of this Court dated November 16, 2023, granting Petitioners' application for an interim stay of a Gag Order entered on the record by Supreme Court (Engoron, J.S.C.) on October 3, 2023, and so-ordered on October 26, 2023 (the "Gag Order"), and a Supplemental Gag Order entered on November 3, 2023 of the same court and justice (the "Supplemental Gag Order," and together with the Gag Order, the "Gag Orders"), and (ii) denied Petitioners' motion to stay enforcement of the Gag Orders; and (b) granting expedited review and disposition of Petitioners' Verified Joint Article 78 Petition ("Petition") against The Honorable Arthur F. Engoron, J.S.C. ("Justice Engoron") and the People of the State of New York by Letitia James, Attorney General of the State of New York (the "Attorney General" and, together with Justice Engoron, "Respondents").

3. Petitioners respectfully request that this Court grant immediate leave to appeal from the November 30, 2023, order to the Court of Appeals. Expedited review by the Court of Appeals is vital to Petitioners' rights and interests and necessary to redress Justice Engoron's ongoing violations of the United States Constitution, the New York State Constitution, the Judiciary Law, and the Rules of this Court. As set forth more fully in Petitioners' memorandum of law, the Gag Orders, which restrict both Petitioners' and their counsel's speech, impermissibly abrogate Petitioners' First Amendment right to highlight serious concerns raised by the public and partisan activities of Justice Engoron's Principal Law Clerk during an ongoing bench trial. The

Supplemental Gag Order also prohibits Petitioners' counsel from creating an appellate record of Justice Engoron and his Principal Law Clerk's conduct on the bench each day of trial.

4. On November 16, 2023, Justice David Friedman, after robust oral argument and “[c]onsidering the Constitutional and statutory rights at issue,” granted Petitioners’ request for an interim stay of enforcement of the Gag Orders pending a full panel determination of their Verified Article 78 Petition. NYSCEF Doc. No. 7. On November 30, 2023, a four-justice panel of this Court summarily vacated that interim relief and denied Petitioners’ motion to stay enforcement of the Gag Orders. NYSCEF Doc. No. 18.

5. This error requires immediate review by the Court of Appeals. Without expedited review, Petitioners will continue to suffer irreparable injury daily, as they are silenced on matters implicating the appearance of bias and impropriety on the bench during a trial of immense stakes. Petitioners’ counsel have no means of preserving evidence of or arguments regarding such bias and impropriety at this time, since the Gag Orders also prohibit in-court statements. Moreover, Justice Engoron’s abuse of the summary contempt power, which is properly circumscribed to conduct in Supreme Court’s presence that threatens to disrupt courtroom decorum, is nearly certain to continue and escalate in light of Justice Engoron’s previous statements warning of the same. Consequently, this Court should prevent further injury by granting immediate leave to appeal to the Court of Appeals.

6. Further, because a motion for leave to appeal in the ordinary course is likely to take weeks, if not months, to be resolved, and because trial will end and the Gag Orders will expire far sooner than that, these First Amendment issues will likely evade review absent an expedited grant of leave to appeal to the Court of Appeals. This risks permitting a grave Constitutional deprivation to remain law of this State.

7. Petitioners also request that this Court grant expedited review and resolution of the Article 78 Petition, a decision on which is appealable as of right.

8. The Article 78 Petition is currently returnable on Monday, December 11, 2023. However, should this Court grant expedited review, Petitioners will waive their right to reply and agree to the full submission of the Petition as of December 6, 2023, the date on which Respondents' opposition is due.

9. Petitioners' case-in-chief is scheduled to conclude on or about Tuesday, December 12, 2023.

10. A hearing has been scheduled on post-trial submissions on Thursday, January 11, 2024.


11. Petitioners request that this emergency application be directed to Justice Friedman, if available, since it results from the vacatur of the prior interim relief he granted.

12. In the interest of an expedited resolution, Petitioners waive reply on the instant emergency application.

13. On December 3, 2023, pursuant to 22 N.Y.C.R.R. § 1250.4(b)(2), I notified Respondents People of the State of New York, by Letitia James, Attorney General of the State of New York and Justice Arthur F. Engoron, J.S.C. via e-mail, of Petitioners' application. A true and correct copy of my e-mail is annexed hereto as **Exhibit A**.

14. A copy of the November 30, 2023, order is annexed hereto as **Exhibit B**.

Dated: Uniondale, New York  
December 3, 2023



Clifford S. Robert



# EXHIBIT A

**From:** Clifford Robert

**Sent:** Sunday, December 3, 2023 9:55 AM

**To:** Lisa Evans <[lievans@nycourts.gov](mailto:lievans@nycourts.gov)>; [dennis.fan@ag.ny.gov](mailto:dennis.fan@ag.ny.gov); [daniel.magy@ag.ny.gov](mailto:daniel.magy@ag.ny.gov); [judith.vale@ag.ny.gov](mailto:judith.vale@ag.ny.gov); [kevin.wallace@ag.ny.gov](mailto:kevin.wallace@ag.ny.gov); [andrew.amer@ag.ny.gov](mailto:andrew.amer@ag.ny.gov); [colleen.faherty@ag.ny.gov](mailto:colleen.faherty@ag.ny.gov)

**Cc:** Michael Farina <[mfarina@robertlaw.com](mailto:mfarina@robertlaw.com)>; chris kise <[chris@ckise.net](mailto:chris@ckise.net)>; Christopher Kise <[ckise@continentalpllc.com](mailto:ckise@continentalpllc.com)>; [ahabba@habbalaw.com](mailto:ahabba@habbalaw.com); Michael Madaio <[mmadaio@habbalaw.com](mailto:mmadaio@habbalaw.com)>

**Subject:** Donald J. Trump, et al. v. People of the State of New York, et al

Dear Counsel:

Pursuant to 22 N.Y.C.R.R. § 1250.4(b)(2), please be advised that Petitioners Donald J. Trump; Donald Trump, Jr.; Eric Trump; Allen Weisselberg; Jeffrey McConney; The Donald J. Trump Revocable Trust; The Trump Organization, Inc.; The Trump Organization LLC; DJT Holdings LLC; DJT Holdings Managing Member; Trump Endeavor 12 LLC; 401 North Wabash Venture LLC; Trump Old Post Office LLC; 40 Wall Street LLC; and Seven Springs LLC will be presenting an order to show cause tomorrow, December 4, 2023, at 10:00 a.m. to the Appellate Division, First Department seeking expedited leave to appeal to the Court of Appeals from the November 30, 2023 Order of the Appellate Division, First Department.

Thanks.

Cliff

Clifford S. Robert  
Robert & Robert PLLC

Long Island Office

[526 RXR Plaza](#)

[Uniondale, New York 11556](#)

Tel: [516-832-7000](tel:516-832-7000)

Fax: [516-832-7080](tel:516-832-7080)

*Mail and Service of Process Address*

Manhattan Office

[One Grand Central Place](#)

[60 East 42<sup>nd</sup> Street, Suite 4600](#)

[New York, New York 10165](#)

Tel: [212-858-9270](tel:212-858-9270)

[www.robertlaw.com](http://www.robertlaw.com)

\*\*\*\*\*

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under federal, state or local tax law or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

PLEASE TAKE NOTICE: The information transmitted is intended only for the person or entity to which is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you receive this transmission in error please contact the sender immediately and delete the material from any computer.

\*\*\*\*\*

# EXHIBIT B

Appellate Division, First Judicial Department

Present – Hon. Sallie Manzanet-Daniels,  
Ellen Gesmer  
Saliann Scarpulla  
Llinét M. Rosado,

Justice Presiding,  
  
Justices.

---

In the Matter of the Application of

Motion No. **2023-05088**

Case No. 2023-05859

Donald J. Trump, Donald Trump, Jr., Eric  
Trump, Allen Weisselberg, Jeffrey  
McConney, The Donald J. Trump Revocable  
Trust, The Trump Organization, Inc., The  
Trump Organization, LLC, DJT Holdings  
LLC, DJT Holdings Managing Member,  
Trump Endeavor 12 LLC, 401 North Wabash  
Venture LLC, Trump Old Post Office LLC, 40  
Wall Street LLC, and Seven Springs, LLC,  
Petitioners,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules,

-against-

The Honorable Arthur F. Engoron, J.S.C.,  
and the People of the State of New York by  
Letitia James, Attorney General of the State  
of New York,

Respondents.

---

A petition having been filed with this Court on November 15, 2023, seeking to annul and vacate pursuant to CPLR 7803(2) and (3): (1) orders of the Supreme Court, New York County, entered on or about October 20, 2023 and on or about October 26, 2023 constituting summary findings of contempt against petitioner Donald J. Trump; (2) a “gag order” of the same court and justice entered on the record on or about October 03, 2023, and so-ordered on or about October 26, 2023, and a “supplemental limited gag order” of the same court and justice entered on or about November 03, 2023,

And petitioners having moved to stay enforcement of the aforesaid gag order and supplemental limited gag order pending hearing and determination of the instant petition,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied; the interim relief granted by order of a Justice of this Court, dated November 16, 2023, is hereby vacated.

ENTERED: November 30, 2023

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is fluid and cursive, with a large initial "S" and "M".

Susanna Molina Rojas  
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

----- )  
In the Matter of the Application of: ) Case No. 2023-05859  
)  
DONALD J. TRUMP, DONALD TRUMP, JR., )  
ERIC TRUMP, ALLEN WEISSELBERG, )  
JEFFREY MCCONNEY, THE DONALD J. )  
TRUMP REVOCABLE TRUST, THE TRUMP )  
ORGANIZATION, INC., THE TRUMP )  
ORGANIZATION, LLC, DJT HOLDINGS )  
LLC, DJT HOLDINGS MANAGING )  
MEMBER, TRUMP ENDEAVOR 12 LLC, 401 )  
NORTH WABASH VENTURE LLC, TRUMP )  
OLD POST OFFICE LLC, 40 WALL STREET )  
LLC, and SEVEN SPRINGS LLC, )  
)  
Petitioners, )  
)  
For a Judgment Under Article 78 of the CPLR )  
)  
-against- )  
)  
THE HONORABLE ARTHUR F. ENGORON, )  
J.S.C., and PEOPLE OF THE STATE OF NEW )  
YORK by LETITIA JAMES, ATTORNEY )  
GENERAL OF THE STATE OF NEW YORK, )  
)  
Respondents. )  
----- )

**PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF  
EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

**HABBA MADAIO &  
ASSOCIATES, LLP**  
Alina Habba  
112 West 34th Street, 17th & 18th Floors  
New York, New York 10120  
Phone: (908) 869-1188  
Email: ahabba@habbalaw.com  
*Counsel for President Donald J. Trump, Allen  
Weisselberg, Jeffrey McConney,  
The Donald J. Trump Revocable Trust,*

**ROBERT & ROBERT PLLC**  
Clifford S. Robert  
Michael Farina  
526 RXR Plaza  
Uniondale, New York 11556  
Phone: (516) 832-7000  
Email: crobot@robertlaw.com  
mfarina@robertlaw.com  
*Counsel for Donald Trump, Jr.,  
Eric Trump, The Donald J. Trump*

*The Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC*

*Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC and Seven Springs LLC*

-and-

**CONTINENTAL PLLC**

Christopher M. Kise (of the bar of the State of Florida) by permission of this Court  
101 North Monroe Street, Suite 750  
Tallahassee, Florida 32301

Phone: (850) 332-3702

ckise@continentalpllc.com

*Counsel for Donald Trump, Jr., Eric Trump, The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC*



**TABLE OF CONTENTS**

	<b><u>Page</u></b>
PRELIMINARY STATEMENT .....	1
BACKGROUND .....	6
ARGUMENT .....	8
URGENT REVIEW BY THE COURT OF APPEALS IS WARRANTED .....	8
A. This Court Should Grant Leave to Appeal to the Court of Appeals Immediately.....	8
B. Appeal to the Court of Appeals by Permission is Warranted Here .....	10
C. The Court Should Grant Expedited Resolution of Petitioners’ Article 78 Petition.....	15
CONCLUSION.....	16

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b><u>Cases</u></b>	
<u>Ash v. Board of Managers of 155 Condominium,</u> 44 A.D.3d 324 (1st Dep’t 2007) .....	12
<u>Bani-Esraili v. Lerman,</u> 121 A.D.2d 192 (1st Dept 1986).....	12
<u>People v. Barton,</u> 8 N.Y.3d 70 (2006) .....	13
<u>Brummer v. Wey,</u> 166 A.D.3d 475 (1st Dep’t 2018) .....	12
<u>Brown v. Louisiana,</u> 383 U.S. 131 (1966).....	4, 13
<u>State v. Dennis K.,</u> 27 N.Y.3d 718 (2016) .....	12
<u>Gannett Co. v. De Pasquale,</u> 43 N.Y.2d 370 (1977), aff’d sub nom, 443 U.S. 368 (1979).....	15
<u>Gertz v. Robert Welch, Inc.,</u> 418 U.S. 323 (1974).....	3, 4
<u>In re Raab,</u> 100 N.Y.2d 305 (2003) .....	13
<u>Landmark Comm’cns v. Virginia,</u> 435 U.S. 829 (1978).....	3
<u>Matal v. Tam,</u> 582 U.S. 218 (2017).....	4
<u>Rockwell v. Morris,</u> 12 A.D.2d 272 (1st Dep’t 1961) .....	13
<u>Susan B. Anthony List v. Driehaus,</u> 573 U.S. 149 (2014).....	4
<u>Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.,</u> 425 U.S. 748 (1976).....	4

**Statutes and Codes**

Judiciary Law..... *passim*

**Rules and Regulations**

New York Civil Practice Law and Rules,

CPLR § 5601.....10, 15

CPLR § 5602.....1, 11

CPLR § 5713.....11, 12

CPLR § 7804.....15

Rules of the Appellate Division, First Department.....2, 8, 14

Code of Judicial Conduct.....2

**Constitutions**

New York Constitution..... *passim*

United States Constitution

First Amendment ..... *passim*

Petitioners President Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., The Trump Organization, LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, “Petitioners”), through their undersigned attorneys, respectfully submit this memorandum of law in support of Petitioners’ emergency motion for an order: (a) granting leave to appeal to the Court of Appeals pursuant to CPLR §§ 5602(a)(2) and (b)(1) from the order of this Court, dated November 30, 2023, which (i) vacated the order of a Justice of this Court, dated November 16, 2023, granting Petitioners’ application for an interim stay of a Gag Order of Supreme Court, New York County, entered on the record on October 3, 2023, and so-ordered on October 26, 2023, and a Supplemental Gag Order of the same court and justice entered on November 3, 2023, and (ii) denied Petitioners’ motion to stay enforcement of the Gag Order; and (b) granting expedited review and disposition of Petitioners’ Verified Joint Article 78 Petition (“Petition”) against The Honorable Arthur F. Engoron, J.S.C. (“Justice Engoron”) and the People of the State of New York by Letitia James, Attorney General of the State of New York (the “Attorney General” and, together with Justice Engoron, “Respondents”). Petitioners also request that, since the requested relief results from the vacatur of the prior interim relief granted by Justice David Friedman, the instant emergency application be directed to Justice Friedman.

### **PRELIMINARY STATEMENT**

On November 16, 2023, Petitioners requested an interim stay of enforcement of the Gag Orders<sup>1</sup> pending a full panel determination of their Verified Article 78 Petition to redress Justice

---

<sup>1</sup> Defined terms will be given the meanings ascribed to them in the Verified Article 78 Petition. NYSCEF Doc. No. 2.

Arthur F. Engoron’s continual violations of the United States Constitution, the New York State Constitution, the Judiciary Law, and the Rules of this Court. On the same date, after robust oral argument in chambers with all parties present by counsel, Justice David Friedman granted Petitioners’ application, “[c]onsidering the Constitutional and statutory rights at issue.” NYSCEF Doc. No. 7. On November 30, 2023, a four-justice panel of this Court vacated the interim relief granted by Justice Friedman and denied Petitioners’ motion to stay enforcement of the Gag Orders.<sup>2</sup> The panel provided no reasoning or authority for its decision.

Petitioners now respectfully request that this Court grant immediate leave to appeal from the November 30, 2023, order to the Court of Appeals. As set forth in the Petition, the sweeping, unconstitutional Gag Orders, which restrict both Petitioners’ and their counsel’s speech, have impermissibly abrogated Petitioners’ First Amendment right to demand basic fairness and to highlight serious concerns raised by the open, public, and partisan conduct that has permeated the trial. The Gag Orders silence the core political speech of the leading Presidential candidate, regarding a quintessential public figure, on a question of judicial bias, at the height of President Trump’s campaign, on the basis of a limitless “heckler’s veto” theory that would justify restricting virtually any core political speech. The Gag Orders prohibit Petitioners from making *any* in-court or extrajudicial statements about Justice Engoron’s staff, including the Principal Law Clerk, regardless of the content of such statements or their focus on perceived biased behavior by such individuals. Consequently, Petitioners are forbidden from speaking about the Principal Law Clerk’s public, partisan activities and likely violations of the Code of Judicial

---

<sup>2</sup> It should be emphasized that, in Petitioners’ papers and the Summary Statement on Application for Expedited Service or Interim Relief, Petitioners clearly requested an interim stay “pending a full panel determination of Article 78 petition,” NYSCEF Doc. No. 4, which Justice Friedman granted. Respondents did not seek review of that order, and there appears to be no basis for a full panel of this Court to have reconsidered the stay before the Petition was decided.

Conduct during the pendency of the underlying proceeding. Justice Engoron has confirmed that the Gag Orders, as applied, categorically prevent Petitioners' counsel from making a record of such conduct or of Justice Engoron's open and apparent delegation, and dereliction, of judicial duties to his Principal Law Clerk as she sits beside him passing notes on the bench each day of trial, providing near-constant input while an elected Supreme Court Justice presides.

By vacating the stay of the Gag Orders, this Court has bestowed on Justice Engoron an absolute, unfettered power to punish Petitioners for validly objecting to demonstrable partisan bias on the bench. At stake is a civil defendant's ability to critique, without fear of reprisal, the court presiding over a bench trial historic both by virtue of the parties thereto and the Attorney General's novel and open manipulation of the Executive Law to punish her political enemies. This Court should have protected the bedrock rights underpinning the legitimacy and integrity of the judicial system and continued the stay issued by Justice Friedman. Instead, the Court's order abrogated those rights and Petitioners' constitutionally protected speech by allowing Justice Engoron to continue to punish Petitioners without process and to silence their protest of flagrant bias in the chambers of Supreme Court. The injury the Court's order inflicts is all the more severe because it precludes speech in which tens of millions of Americans have an obvious and demonstrated interest, during a presidential election in which one of Petitioners, a former President of the United States, is the leading contender.

The ongoing injuries caused by the unconstitutional Gag Orders to the free-speech rights of President Trump and tens of millions of Americans are incalculable. "The operations of the courts and the judicial conduct of judges are matters of utmost public concern." Landmark Comm'cns v. Virginia, 435 U.S. 829, 839 (1978). This principle plainly extends to the Principal Law Clerk's conduct here because she has voluntarily undertaken to co-judge one of the highest-

profile civil cases in American history and thus voluntarily “thrust” herself “into the vortex of this public issue.” Gertz v. Robert Welch, Inc., 418 U.S. 323, 352 (1974). In addition, because the Attorney General has deliberately politicized this case by holding press conferences outside the courthouse and posting misleading information on the internet, the Gag Orders strike at the heart of President Trump’s speech during his Presidential campaign, when the First Amendment has its “fullest and most urgent application.” Susan B. Anthony List v. Driehaus, 573 U.S. 149, 162 (2014). The Gag Orders give no weight or consideration to the free-speech rights of President Trump’s vast audience, including the over 100 million followers who read President Trump’s speech on social media, even though it is black-letter law that those audiences have a “reciprocal” First Amendment right to receive President Trump’s speech, especially at the height of his campaign for President. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 757 (1976).

The Gag Orders rest entirely on the claim that *unidentified, unrelated third parties* have reacted to President Trump’s speech by making “threats” and “harassing” communications to the court. Thus, the Gag Orders violate the longstanding rule that under the First Amendment, speakers “are not chargeable with the danger” that certain individuals “might react with disorder or violence.” Brown v. Louisiana, 383 U.S. 131, 133 n.1 (1966). The government may not “[t]he] censorship to the reaction of the speaker’s audience... [A] speech burden based on audience reactions is simply government hostility and intervention in a different guise.” Matal v. Tam, 582 U.S. 218, 250 (2017) (Kennedy, J., concurring in part and concurring in the judgment). Indeed, in this age of internet trolls, such reactions by independent third parties are a feature of virtually all high-profile political discourse. Thus, the Gag Orders’ rationale would justify

silencing virtually any core political speech by a high-profile speaker—an outcome that flips the First Amendment on its head.

Immediate review of the Court’s order by the Court of Appeals is vital to Petitioners’ rights and interests. The American people have a right to hear the frank, uncensored speech of the leading Republican candidate for President in the midst of his Presidential campaign. Clearly, Petitioners will continue to suffer irreparable injury as they are silenced on an issue of grave personal and public import, during a bench trial of immense stakes. The coequal, ongoing injury to the public interest is enormous. Moreover, Justice Engoron’s obvious abuse of the summary contempt power, which is properly limited to conduct in Supreme Court’s presence that threatens to disrupt courtroom decorum, is certain to continue and escalate. Each time Justice Engoron, who states he does not follow media coverage of the case, has *sua sponte* punished Petitioners for out-of-court statements, he warns that the punishments will increase in severity and will end in the imprisonment of President Trump without process of any type.

Consequently, Petitioners respectfully request that this Court prevent further injury by granting leave to appeal to the Court of Appeals. Petitioners also request that this Court grant expedited resolution of the Article 78 Petition, on which a decision is appealable as of right. It is beyond cavil that Petitioners’ rights will continue to be prejudiced while the motion for leave is *sub judice*, and the urgency is evident where trial is scheduled to end, at the earliest, on January 11, 2024. Moreover, because a motion for leave to appeal in the ordinary course is likely to take weeks, if not months, to be resolved, the risk is high that these seminal First Amendment issues will evade review absent immediate leave to appeal to the Court of Appeals.



## **BACKGROUND**

On November 15, 2023, Petitioners initiated an Article 78 proceeding by order to show cause against Supreme Court challenging the constitutionality of two Gag Orders and the impropriety of the sanctions imposed against President Trump under the Judiciary Law. NYSCEF Doc. No. 2.

The speech giving rise to the Gag Order, a post on Petitioner President Donald J. Trump’s (“President Trump”) Truth Social account, included a photograph of Justice Engoron’s principal law clerk (the “Principal Law Clerk”) and Senator Chuck Schumer. *Id.* at ¶ 9. In the caption, President Trump described the Principal Law Clerk as “Schumer’s girlfriend” and stated that she “[wa]s running this case against me.” *Id.* The Principal Law Clerk had originally posted that photograph of her and Senator Schumer on a public Instagram account with the handle “greenfield4civilcourt,” an account explicitly linked to the Principal Law Clerk’s unsuccessful 2022 campaign for the Democrat nomination for New York County Civil Court. *Id.* at ¶ 10. It was then reposted by a public Twitter account, @JudicialProtest, and ultimately reposted by President Trump. *Id.* On October 20, 2023, without complying with the Judiciary Law, Justice Engoron sanctioned President Trump for the inadvertent failure to remove an archived version of the post from his campaign website. *Id.* at ¶¶ 21-22. The post in question highlighted the fact that the Principal Law Clerk has likely violated New York law by making political contributions in excess of legal limits for judicial staff and engaged in partisan political activity favoring Attorney General James and opposing President Trump—the parties in the case before the court—*while the case has been pending.*

Justice Engoron also sanctioned President Trump under the Gag Order for an October 25, 2023, comment made to the Associated Press outside of the courtroom about a “person who is

very partisan sitting alongside” Justice Engoron. Id. at ¶ 12. Completely disregarding the strictures of the Judiciary Law and President Trump’s own testimony that the comment referred to the testifying witness, Michael Cohen, and not the Principal Law Clerk, Justice Engoron has used the Gag Order to muzzle President Trump’s legitimate and well-founded concerns regarding the partiality of the factfinder at his trial. Id. at ¶¶ 12-15.

It is apparent to anyone attending the trial or reading contemporaneous press coverage that the Principal Law Clerk plays a visible and prominent role in the trial, as she sits immediately adjacent to Justice Engoron on the bench, Justice Engoron consults with her on almost every ruling, and they pass contemporaneous notes. Id. at ¶ 11. Although it occurs publicly and pervasively, this conduct escapes transcription in the trial record. Accordingly, in the weeks after the Gag Order was entered, counsel for Petitioners repeatedly raised with Justice Engoron, and observed on the record, the Principal Law Clerk’s unusual public presence on the bench, constant note-passing, eye-rolling, facial expressions, and influential role in the proceedings. Id. at ¶ 17. Counsel’s advocacy comported with their ethical obligations to competently and zealously represent their clients. Id. Nonetheless, on November 3, 2023, in order to inhibit creation of a complete record of that conduct, Justice Engoron issued the Supplemental Gag Order, which prohibits even President Trump’s *counsel* from “making any public statements, in or out of court, that refer to any confidential communications, in any form, between [Justice Engoron’s] staff and [Justice Engoron].” Id. at ¶ 18.

In connection with their order to show cause, Petitioners sought a stay of both Gag Orders pending resolution of the Article 78 proceeding. NYSCEF Doc. No. 4. The Attorney General opposed the request. NYSCEF Doc. No. 6. After oral argument, Justice Friedman

entered an interim stay, noting that “[c]onsidering the constitutional and statutory rights at issue[,] an interim stay is granted.” NYSCEF Doc. No. 7.

The Attorney General and Supreme Court opposed the application on November 22, 2023. NYSCEF Doc. Nos. 8-9. Petitioners submitted a reply in further support of the request for a stay on November 27, 2023. NYSCEF Doc. No. 16. On November 30, 2023, this Court issued an order vacating that stay. NYSCEF Doc. No. 18. That order contained no reasoning or authority for the decision. Id. Petitioners’ case-in-chief is scheduled to conclude on or about December 12, 2023, and Justice Engoron has scheduled a hearing following post-trial submissions for January 11, 2024. Affirmation of Clifford Robert, ¶¶ 9, 10.

## **ARGUMENT**

### **URGENT REVIEW BY THE COURT OF APPEALS IS WARRANTED**

#### **A. This Court Should Grant Leave to Appeal to the Court of Appeals Immediately**

The urgency of this application is evident. The Gag Orders currently preclude Petitioners from posting, emailing, or speaking publicly about any of Supreme Court’s staff in this case, and from making any statement, in or out of court, that refer to any communications in any form between Justice Engoron and his staff. The Gag Orders were specifically issued to prevent Petitioners from highlighting, critiquing, and creating an appellate record of the public partisanship and likely ethical misconduct of the Principal Law Clerk, who sits on the bench and exercises tremendous and visible influence over Justice Engoron each day at trial. The Gag Orders clearly contravene the First Amendment of the United States Constitution and Article I, Section 8 of the New York Constitution and trample Petitioners’ constitutional rights.

Additionally, Justice Engoron’s imposition of summary punishment for out-of-court conduct exceeds his jurisdiction, violates the Judiciary Law and the Rules of this Court, and constitutes an arbitrary and capricious exercise of his contempt powers. Justice Engoron has

repeatedly vowed to continue such abuses until he imprisons President Trump. With more than a month left of trial, Petitioners are at constant risk of being subject to additional and increasingly severe sanctions for engaging in constitutionally protected conduct. These sanctions have been all but promised by a judge whose violations of procedural and substantive law have become more brazen and unchecked on a daily basis. Moreover, Petitioners' injuries are exacerbated by the ongoing and exceedingly public nature of the foregoing violations during a bench trial that is estimated to conclude in just over a month, during the height of the Presidential primary campaign, and, in fact, just 4 days before the Iowa Caucuses.

If Petitioners are granted leave to appeal, the Court of Appeals will have a thorough record on which to rule. On the underlying application, Petitioners have submitted a 252-paragraph Petition with eleven exhibits detailing the Gag Orders' constitutional and procedural infirmities in comprehensive detail. As set forth more fully below, that Petition includes a thorough analysis of the myriad First Amendment issues implicated by the Gag Orders, including Supreme Court's inability to adduce a sufficient justification for such orders and that they are overbroad and vague, concern core political speech, and constitute an unconstitutional "heckler's veto." The Attorney General submitted an 80-paragraph opposition, with three exhibits, attempting to rebut those arguments, including by contending that the orders are narrowly tailored to protect the safety of court staff and preserve the orderly administration of the trial and that a prior restraint is justified under the circumstances of the case. NYSCEF Doc. No. 8. Petitioners submitted a 33-page reply brief further explicating and supporting their constitutional arguments. NYSCEF Doc. No. 16. Thus, the constitutional issues raised in this proceeding are more than sufficiently briefed to permit the Court of Appeals to assess the Gag Orders on their merits.

As set forth more fully below, the urgency of Petitioners' application is underscored by the fact that a judgment resolving the underlying Article 78 proceeding would be appealable to the Court of Appeals as of right. CPLR § 5601(b). Without an expedited grant of leave to appeal, these critical issues will be rendered moot before the Court of Appeals can consider them on their merits because the trial will end and the Gag Orders will then automatically expire, but not before their impact irreparably injures Petitioners in broad and diverse ways. It is beyond dispute that the Petition, and this Court's November 30, 2023, order arising out of it, present significant constitutional issues concerning the curtailment of core speech by the leading Presidential candidate on his factfinder's perceived bias. The mere passage of time should not permit a grave constitutional deprivation, as set forth herein, to evade review. Worse still, absent expedited review from the Court of Appeals, this Court's November 30, 2023, order allowing two unconstitutional gag orders to remain in place, will be the law of this state. Such a determination, in a motion decision without any explication of the Court's rationale, thus creates a precedent applicable not just to President Trump, but to any party, or even the press, whose free-speech rights could be similarly curtailed. The Court of Appeals, the ultimate arbiter in New York of such constitutional questions, must be allowed to opine, favorably or unfavorably.

#### **B. Appeal to the Court of Appeals by Permission is Warranted Here**

The New York State Constitution and the CPLR confer broad authority on this Court to grant leave to appeal of the November 30, 2023, order to the Court of Appeals, by permission. Under the New York Constitution, appeals to the Court of Appeals may be taken from an order of the Appellate Division "in a proceeding instituted by or against one or more public officers or a board, commission or other body of public officers or a court or tribunal, other than an order which finally determines such proceeding, where the court of appeals shall allow the same upon

the ground that, in its opinion, a question of law is involved which ought to be reviewed by it, and without regard to the availability of appeal by stipulation for final order absolute.” N.Y. Const. Art. VI, § 3(5). The CPLR also provides that an appeal may be taken to the Court of Appeals by permission of the Appellate Division granted before application to the Court of Appeals “in a proceeding instituted by or against one or more public officers or a board, commission or other body of public officers or a court or tribunal, from an order of the appellate division which does not finally determine such proceeding.” See CPLR § 5602(a)(2). As applied here, the Constitution and CPLR § 5602(a)(2) authorize this Court to grant permission for leave to appeal to the Court of Appeals from this Court’s nonfinal order in this Article 78 proceeding in the nature of prohibition to restrain a court or a Justice thereof from acting in excess of his jurisdiction and to review Supreme Court’s summary adjudications of contempt. See CPLR §§ 7802, 7803.

Also, under the New York Constitution, appeals to the Court of Appeals may be taken in civil cases and proceedings from a determination of the Appellate Division, other than a judgment or order that finally determines an action or special proceeding, where the Appellate Division allows the same and certifies that one or more questions of law have arisen which, in its opinion, ought to be reviewed by the Court of Appeals. N.Y. Const. Art. VI, § 3(b)(4); CPLR § 5713. Similarly, an appeal may be taken to the Court of Appeals by permission of the Appellate Division from an order of the Appellate Division that does not finally determine an action. CPLR § 5602(b)(1).<sup>3</sup>

---

<sup>3</sup> Not applicable here, orders excluded from this provision are: (1) an order of the appellate division which does not finally determine a proceeding instituted by or against one or more public officers or a board, commission or other body of public officers or a court or tribunal; (2) an order of the appellate division granting or affirming the granting of a new trial or hearing where the appellant stipulates that, upon affirmance, judgment absolute will be entered against it; and (3) an order granting new trial or hearing, upon stipulation for judgment absolute.

Permission to appeal to the Court of Appeals should be granted where questions of law have arisen that ought to be reviewed by the Court of Appeals. See CPLR § 5713. Indeed, where questions of law have arisen that ought to be reviewed by the Court of Appeals, this Court has *sua sponte* granted leave to apply to the Court of Appeals. See, e.g., Bani-Esraili v. Lerman, 121 A.D.2d 192 (1st Dep’t 1986). Similarly, when the Appellate Division seeks clarification on a matter of law raised by its own order, it may certify the propriety of the order to the Court of Appeals. See, e.g., State v. Dennis K., 27 N.Y.3d 718 (2016).

Here, the questions of law presented by the Petition must be reviewed by the Court of Appeals. At base, President Trump has been, under threat of fine or incarceration, precluded from publicly offering his well-founded opinion of how his own bench trial is being conducted, in an unprecedented case of enormous, international public interest, where that conduct is intertwined with an ongoing Presidential campaign in which President Trump is the leading candidate. Neither the First Amendment nor the New York Constitution permits such grave curtailment of plainly protected core speech in a trial playing out on a national and international stage.

Prior restraints, *i.e.*, orders that suppress speech based on content and viewpoint and in advance of its expression, are presumptively invalid. Ash v. Board of Managers of 155 Condominium, 44 A.D.3d 324, 325 (1st Dep’t 2007). Only a clear and present danger of a serious, substantive evil can justify such an infringement on the freedom of speech the First Amendment and the New York Constitution protects. Brummer v. Wey, 166 A.D.3d 475 (1st Dep’t 2018). This constitutional protection is at its apogee where the speech in question is core political speech, made by the frontrunner in the 2024 Presidential election, regarding perceived partisanship and bias at a trial where he is subject to hundreds of millions of dollars in penalties

and the threatened prohibition of his lawful business activities in the state, all in obvious retaliation for the exercise of his First Amendment right to speak and campaign for President. See In re Raab, 100 N.Y.2d 305, 312 (2003) (internal citations omitted).

Moreover, the Gag Order is overbroad on its face insofar as it prevents any speech, no matter how innocuous or relevant, about any member of Justice Engoron's staff. People v. Barton, 8 N.Y.3d 70, 75-76 (2006). As applied to President Trump, it precludes a presidential candidate from commenting on the public conduct and possible ethical violations of a vital member of Justice Engoron's chambers, who sits right beside him on the bench throughout the trial, effectively co-judging the proceedings.

The Gag Orders, as entered, are not narrowly tailored to achieve the supposed goal of protecting Justice Engoron's staff. The potential that speech may anger or provoke others does not entitle Justice Engoron to suspend wholesale the rights afforded litigants by the First Amendment and the New York Constitution. The First Amendment does not permit Justice Engoron to restrict speech based on the audience's anticipated unruly reaction—that is a forbidden “heckler’s veto.” Rockwell v. Morris, 12 A.D.2d 272, 279 (1st Dep’t 1961); see also Brown v. Louisiana, 383 U.S. at 133 n.1 (Public speakers “are not chargeable with the danger” that their audiences “might react with disorder or violence.”). Indeed, the “heckler’s veto” rationale is so broad and unlimited that it would authorize silencing *any* core political speech that might result in some random person reacting with unruly comments or threats, which encompasses virtually all political discourse in this age of internet trolls. That rationale would thus virtually cancel the First Amendment. That is why the U.S. Supreme Court has consistently rejected this approach for decades.



Justice Engoron's enforcement of the Gag Order is likewise plagued by myriad procedural and jurisdictional infirmities. Indeed, Justice Engoron has consistently violated the Judiciary Law and the Rules of the Appellate Division, First Department every time he purports to *sua sponte* impose punishment on President Trump.

The Supplemental Gag Order, which prohibits counsel from "making any public statements, in or out of court, that refer to any confidential communications, in any form, between [Justice Engoron's] staff and [Justice Engoron]," compounds Petitioners' significant injuries. In the weeks after the Gag Order was entered, counsel for Petitioners repeatedly raised with Justice Engoron and observed on the record the Principal Law Clerk's unusual public presence on the bench, constant note-passing to the Court, eye-rolling, facial expressions, and visible role co-judging of the proceedings. As this Court knows, counsel are obligated to zealously advocate for their clients and make a record of conduct they believe to be improper. Indeed, Justice Engoron has apparently gone so far as to have the closed-circuit courtroom camera angle adjusted to obscure his collaboration with the Principal Law Clerk while on the bench. Justice Engoron has also instructed counsel that they cannot make an oral motion regarding the Principal Law Clerk and ultimately refused to permit even a written motion addressing the same issues by declining to sign Petitioners' order to show cause for a mistrial.

Justice Engoron's extraordinary expansion of his initial order to Petitioners' counsel both limits and chills advocacy on Petitioners' behalf and precludes counsel, on pain of contempt, from making a record of misconduct and bias in a public courtroom. In closing the record to any further commentary on the Principal Law Clerk, the Supplemental Gag Order insulates Justice Engoron from contemporaneous criticism and denies Petitioners and the appellate courts a complete record on the appeal of the final judgment.

The imposition of the Gag Orders and continued enforcement thereof thus exceeds Justice Engoron’s jurisdiction and violates the First Amendment of the United States Constitution and Article I, Section 8 of the New York Constitution. The Court of Appeals must therefore be allowed to consider immediately these critical constitutional questions. Review by the Court of Appeals is vital to Petitioners’ rights, as Petitioners will continue to suffer irreparable injury during the enforcement of the Gag Orders. As has been evident throughout the proceedings, this is far from an ordinary case. The instant Article 78 proceeding is a conduit through which important constitutional considerations have been presented for review. For these reasons, the Court of Appeals should entertain the issues presented herein. Gannett Co. v. De Pasquale, 43 N.Y.2d 370, (1977), aff’d sub nom., Gannett Co. v. DePasquale, 443 U.S. 368 (1979).

**C. The Court Should Grant Expedited Resolution of Petitioners’ Article 78 Petition**

Finally, this Court should resolve Petitioners’ Article 78 Petition on its merits on an expedited basis. CPLR § 5601 provides, in relevant part, “[a]n appeal may be taken to the court of appeals as of right . . . (1) from an order of the appellate division which finally determines an action where there is directly involved the construction of the constitution of the state or of the United States.” Here, a decision on the underlying petition would necessarily involve the construction of those constitutional provisions in order to determine whether Supreme Court acted in excess of its jurisdiction and would thus be appealable as of right.

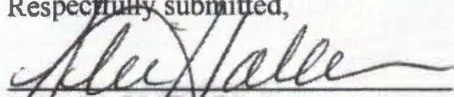
As set forth above, the Petition was filed on November 15, 2023, and is currently returnable on December 11, 2023. NYSCEF Doc. No. 2. Respondents submitted an extensive opposition to Petitioners’ request for a stay on November 22, 2023, and Petitioners submitted reply on November 27, 2023. NYSCEF Doc. Nos. 8-9, 16. Pursuant to CPLR § 7804,

Respondents' opposition to the underlying Petition is due on Wednesday, December 6, 2023. NYSCEF Doc. No. 2. Petitioners agree to waive any reply to allow this Court to decide the motion on an immediate and expedited basis. Absent expedited review of the Article 78 proceeding, the significant constitutional questions presented by the Petition may evade review, as the trial will have ended, and the constitutionally infirm orders will expire after causing irreparable harm to Petitioners, the New York Constitution, the U.S. Constitution, and our judicial system.

### **CONCLUSION**

Accordingly, Petitioners respectfully request that this Court immediately grant leave to appeal to the Court of Appeals from this Court's order lifting the stay of the Gag Orders and grant expedited resolution of Petitioners' Verified Joint Article 78 Petition.

Dated: New York, New York  
December 3, 2023  
Respectfully submitted,

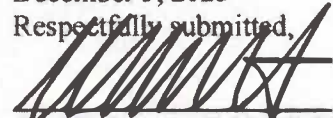


**HABBA MADAIO &  
ASSOCIATES, LLP**

Alina Habba  
Michael Madaio  
112 West 34th Street, 17th & 18th Floors  
New York, New York 10120  
Phone: (908) 869-1188  
Email: ahabba@habbalaw.com  
mmadaio@habbalaw.com

*Counsel for President Donald J. Trump, Allen  
Weisselberg, Jeffrey McConney,  
The Donald J. Trump Revocable Trust,  
The Trump Organization, Inc., Trump  
Organization LLC, DJT Holdings LLC,  
DJT Holdings Managing Member LLC,  
Trump Endeavor 12 LLC, 401 North  
Wabash Venture LLC, Trump Old Post  
Office LLC, 40 Wall Street LLC and  
Seven Springs LLC*

Dated: New York, New York  
December 3, 2023  
Respectfully submitted,



**ROBERT & ROBERT PLLC**

Clifford S. Robert  
Michael Farina  
526 RXR Plaza  
Uniondale, New York 11556  
Phone: (516) 832-7000  
Email: crobot@robertlaw.com  
mfarina@robertlaw.com

*Counsel for Donald Trump, Jr.,  
Eric Trump, The Donald J. Trump  
Revocable Trust, DJT Holdings LLC,  
DJT Holdings Managing Member  
LLC, Trump Endeavor 12 LLC, 401  
North Wabash Venture LLC, Trump  
Old Post Office LLC, 40 Wall Street  
LLC and Seven Springs LLC*

-and-

**CONTINENTAL PLLC**

Christopher M. Kise (of the bar of the State of  
Florida) by permission of this Court  
101 North Monroe Street, Suite 750  
Tallahassee, Florida 32301  
Phone: (850) 332-3702  
ckise@continentalpllc.com

*Counsel for Donald Trump, Jr., Eric Trump,  
The Donald J. Trump Revocable Trust, DJT  
Holdings LLC, DJT Holdings Managing  
Member, Trump Endeavor 12 LLC, 401 North  
Wabash Venture LLC, Trump Old Post Office  
LLC, 40 Wall Street LLC, and Seven Springs  
LLC*