SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FIRST 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., 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 C.P.L.R.

v.

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.

No. 2023-05859

Supreme Court
New York County
Index No. 452564/2022

VERIFIED ANSWER

Respondent Letitia James, Attorney General of the State of New York (OAG), by her undersigned counsel, answers the Verified Joint Article 78 Petition dated November 15, 2023 (the "petition") as follows:

PRELIMINARY STATEMENT

1. States that paragraph 1 sets forth legal matter to which no response is required.

2. Denies knowledge and information sufficient to admit or deny the purpose for which petitioners bring this proceeding, states that paragraph 2 sets forth legal conclusions to which no response is required, and otherwise denies the allegations contained in paragraph 2.

3. Admits the allegations contained in paragraph 3, and respectfully refers the Court to Supreme Court's orders for a true and accurate statement of their contents. Admits the allegation in footnote 1 that Supreme Court's October 3 order "applies on its face to the Attorney general as

a party to the case," but states that the assertion that the October 3 order "is plainly directed at, and has only been enforced against, Petitioners" constitutes legal argument to which no response is required.

4. States that the allegations contained in paragraph 4 set forth legal conclusions as to which no response is required. To the extent that a response is required, respondent denies the allegations contained in this paragraph.

5. States that the allegations contained in paragraph 5 set forth legal conclusions as to which no response is required. To the extent that a response is required, respondent denies the allegations contained in this paragraph.

6. States that the allegations contained in paragraph 6 set forth legal argument as to which no response is required. To the extent that a response is required, respondent denies the allegations contained in this paragraph.

7. States that the allegations contained in paragraph 7 set forth legal conclusions as to which no response is required.

8. States that the allegations contained in paragraph 8 set forth legal conclusions as to which no response is required. To the extent that a response is required, respondent denies knowledge and information sufficient to admit or deny the allegations contained in this paragraph.

9. Admits the allegations contained in paragraph 9 insofar as they accurately describe the contents of petitioner Donald J. Trump's social-media post, but states that the allegation that Mr. Trump's post "g[ave] rise" to Supreme Court's October 3 order is a legal conclusion to which no response is required.

10. Admits that the referenced posts appeared on the referenced social-media accounts, but otherwise denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 10.

11. Admits that the principal law clerk occasionally "consult[s] with" Supreme Court but otherwise denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 11.

12. Admits that Supreme Court imposed a fine on Mr. Trump on October 25, 2023, but states that the remaining allegations contained in paragraph 12 set forth legal argument as to which no response is required. To the extent that a further response is required, respondent denies the allegations that Supreme Court "[c]ompletely disregard[ed]" Mr. Trump's testimony (inasmuch as Supreme Court considered the testimony but found it not to be credible) and that Supreme Court has "muzzle[d]" Mr. Trump's purported "concerns regarding the partiality of the factfinder at his trial" (inasmuch as the Supreme Court's orders do not prohibit the parties from commenting about Supreme Court or the justice presiding over the case), and respectfully refers the Court to the full text of Supreme Court's orders for a true and accurate statement of their contents.

13. States that the allegations contained in paragraph 13 set forth legal conclusions as to which no response is required, and respectfully refers the Court to the full text of Supreme Court's orders for a true and accurate statement of their contents.

14. States that the allegations contained in paragraph 14 set forth legal conclusions as to which no response is required, and respectfully refers the Court to the full text of Supreme Court's orders for a true and accurate statement of their contents.

15. States that the allegations contained in paragraph 15 set forth legal conclusions as to which no response is required, and respectfully refers the Court to the full text of Supreme Court's orders for a true and accurate statement of their contents.

16. States that the allegations contained in paragraph 16 set forth legal conclusions as to which no response is required, and respectfully refers the Court to the full text of Supreme Court's orders for a true and accurate statement of their contents.

17. States that the allegations contained in paragraph 17 set forth legal conclusions to which no response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate statement of its contents.

18. Denies knowledge or information sufficient to admit or deny the allegation that Supreme Court caused the angle of the courtroom camera to be adjusted, denies the allegations in paragraph 18 to the extent that they imply that Supreme Court precluded petitioners from making a motion regarding the principal law clerk (inasmuch as Supreme Court directed that the motion should be made in writing), respectfully refers the Court to the record of the proceedings for a true and accurate statement of its contents, and states that the allegations contained in paragraph 18 otherwise set forth legal conclusions as to which no response is required.

19. States that the allegations contained in paragraph 19 set forth legal conclusions as to which no response is required.

20. States that the allegations contained in paragraph 20 set forth legal conclusions as to which no response is required.

21. Admits that Supreme Court issued two fines against Mr. Trump during the underlying trial, but states that the allegations contained in paragraph 21 otherwise set forth legal conclusions as to which no response is required.

22. States that the allegations contained in paragraph 22 set forth legal conclusions as to which no response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate statement of its contents.

23. States that the allegations contained in paragraph 23 set forth legal conclusions as to which no response is required.

24. States that the allegations contained in paragraph 24 set forth legal conclusions as to which no response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate statement of its contents.

25. Admits that Supreme Court imposed fines of $5,000 and $10,000 on Mr. Trump, but states that the allegations contained in paragraph 25 otherwise set forth legal conclusions as to which no response is required.

26. States that the allegations contained in paragraph 26 set forth legal conclusions as to which no response is required.

27. Denies the characterizations of the record set forth in paragraph 27, and respectfully refers the Court to the record of the proceedings for a true and accurate statement of its contents.

28. States that the allegations contained in paragraph 28 set forth legal conclusions as to which no response is required.

29. States that the allegations contained in paragraph 29 set forth legal conclusions and requests for relief as to which no response is required.

JURISDICTION AND VENUE

30. States that the allegations contained in paragraph 30 set forth legal conclusions as to which no response is required. To the extent that a response is required, respondent denies the allegations contained in this paragraph.

31. Admits that the underlying action is triable in Supreme Court, New York County, but states that the allegations contained in paragraph 31 otherwise set forth legal conclusions as to which no response is required. To the extent that a response is required, respondent denies the allegations contained in this paragraph.

THE PARTIES

32. Admits that Mr. Trump is the beneficial owner of the Trump Organization, but otherwise denies the characterizations of Mr. Trump's ownership and of the Trump Organization in the allegations contained in paragraph 32.

33. Admits the allegations contained in paragraph 33.

34. Admits the allegations contained in paragraph 34.

35. Admits the allegations contained in paragraph 35.

36. Denies the allegations contained in paragraph 36, inasmuch as petitioner Jeffrey McConney testified at trial in the underlying action that he has not been employed by the Trump Organization since February 2023.

37. States that the allegation that The Donald J. Trump Revocable Trust is a trust governed under the laws of the State of Florida sets forth legal conclusions as to which no response is required, and denies that allegation to the extent that a response is required. Respondent otherwise admits the allegations contained in paragraph 37.

38. Admits the allegations contained in paragraph 38.

39. Admits the allegations contained in paragraph 39.

40. Admits the allegations contained in paragraph 40.

41. Admits the allegations contained in paragraph 41.

42. Admits the allegations contained in paragraph 42.

43. Admits the allegations contained in paragraph 43.

44. Admits the allegations contained in paragraph 44.

45. Admits the allegations contained in paragraph 45.

46. Admits the allegations contained in paragraph 46.

47. Admits the allegations contained in paragraph 47.

48. Admits the allegations contained in paragraph 48.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

49. Admits the allegations contained in paragraph 49, except denies that the equitable remedy of disgorgement constitutes a "penalty."

50. Admits the allegations contained in paragraph 50 insofar as Supreme Court conducted the referenced conference at which the referenced social-media post was discussed, but otherwise denies the allegations contained in paragraph 50, and respectfully refers the Court to the record of the proceedings for a true and accurate statement of its contents.

51. Denies knowledge and information sufficient to admit or deny the date on which the principal law clerk was appointed to her position, but otherwise admits the allegations contained in paragraph 51.

52. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 52.

53. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 53.

54. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 54.

55. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 55.

56. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 56.

57. States that the allegations concerning the permissibility of the alleged contributions set forth legal conclusions as to which no response is required, and otherwise denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 57.

58. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 58.

59. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 59.

60. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 60.

61. Admits the allegations contained in paragraph 61 insofar as they accurately describe the contents of Mr. Trump's social-media post, and respectfully refers the Court to the social-media post for a true and accurate statement of its contents, and otherwise denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 61.

62. Admits the allegations contained in paragraph 62 insofar as they accurately describe the contents of Mr. Trump's social-media post, and respectfully refers the Court to the social-media post for a true and accurate statement of its contents, and otherwise denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 62.

63. Admits that Supreme Court conducted the referenced off-the-record conference, but otherwise denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 63.

64. Admits the allegations contained in paragraph 64 insofar as they accurately quote the record of the proceedings (except that petitioners have added to the quotation an emphasis that does not appear in the record), but respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

65. Admits the allegations contained in paragraph 65, but respectfully refers the Court to the referenced order for a true and accurate representation of the contents thereof.

66. Admits that the federal district court's order was administratively stayed by a three-judge panel of the D.C. Circuit, but denies the allegation concerning the date of the administrative stay, the characterization of the district court's order as "extremely short-lived," and the characterization of the stay as one "pending appeal." The D.C. Circuit's order granting an administrative stay was entered on November 3, 2023, and its effect is only to stay the district court's order for so long as necessary to "give the court sufficient opportunity to consider the emergency motion for a stay pending appeal"; moreover, the order expressly states that it "should not be construed in any way as a ruling on the merits of that motion." *United States v. Trump*, No. 23-3190, Doc. No. 2025399 (D.C. Cir. Nov. 3, 2023). Respondent respectfully refers the Court to the D.C. Circuit's order for a true and accurate representation of the contents thereof.

67. Admits the allegations insofar as the referenced opinion pieces were published, except that the piece authored by Andrew McCarthy was published October 17, 2023 (not 2021). Admits that the American Civil Liberties Union (ACLU) submitted a motion in the federal district court for leave to file an amicus brief, but denies the allegation that the proposed brief was "filed"

inasmuch as the district court denied the ACLU's motion for leave to file the brief. *See United States v. Trump*, No. 23-cr-257, ECF No. 125 (Oct. 31, 2023). Denies the allegation that the ACLU "ask[ed] the D.C. Circuit to reject" the district court's order, inasmuch as the ACLU never sought to file an amicus brief in Mr. Trump's appeal to that court. *See generally United States v. Trump*, No. 23-3190 (D.C. Cir.). Admits the allegation that "members of the media" have criticized certain aspects of the referenced orders, but denies knowledge and information sufficient to admit or deny the allegation that the referenced orders have been "widely criticized by legal experts."

68. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 68.

69. Admits the allegations contained in paragraph 69, except denies knowledge and information sufficient to admit or deny the allegation that the referenced email was "based on information obtained outside the record."

70. Admits that counsel represented that the continued publication of the referenced social-media post was "inadvertent," but otherwise denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 70, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

71. Admits that Supreme Court issued October 20 order referenced in paragraph 71, but denies the allegation that Supreme Court found that Mr. Trump's violation was "inadvertent" (Supreme Court used that term only in describing Mr. Trump's position on the question whether the violation was intentional), and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

72. Admits the allegations contained in paragraph 72 insofar as they accurately quote Supreme Court's October 20 order, and respectfully refers the Court to that order for a true and accurate representation of the contents thereof.

73. Admits the allegations contained in paragraph 73 insofar as they accurately quote Supreme Court's October 20 order, but denies the allegation that Supreme Court "threaten[ed]" Mr. Trump, and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

74. States that the allegations contained in paragraph 74 set forth legal argument and conclusions as to which no response is required, and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

75. Admits that Cohen testified as a witness in the underlying trial on October 25, 2023, but denies the allegation in paragraph 75 that Cohen testified "for the Attorney General."

76. Denies the allegation that the witness box is located at the justice's "immediate left-hand side," states that the allegation that a witness "admitted to perjuring himself in front of the late Judge William Pauley of the Southern District of New York" constitutes a legal conclusion to which no response is required, but otherwise admits the allegations contained in paragraph 76 and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

77. Admits the allegations contained in paragraph 77 insofar as they accurately quote the portion of Mr. Trump's statement that is reproduced in Supreme Court's October 26 order, and

respectfully refers the Court to Mr. Trump's complete statement[1] and Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

78. Denies knowledge and information sufficient to admit or deny the allegation that Supreme Court "has repeatedly claimed not to read any press coverage of the underlying proceeding," but otherwise admits the allegations contained in paragraph 78 insofar as they accurately quote Supreme Court's statement at trial, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

79. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 79.

80. Admits the allegations contained in paragraph 80. Admits that the articles referenced in footnote 2 were published, but observes that the citations in footnote 2 commit several errors including misstatement of the title and publication date of the Business Insider article *A law clerk repeatedly had to tell Trump's lawyer to stop interrupting the judge while she ranted about political bias and right-wing conspiracy theories*, which was published on February 18, 2022 (not 2023).

81. States that the allegations contained in paragraph 81 constitute legal argument to which no response is required. To the extent that a response is required, respondent denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 81.

82. Admits the allegations contained in paragraph 82, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

[1] A video recording and a transcript of Trump's remarks are available at https://www.c-span.org/video/?531393-101/president-trump-comments-michael-cohen-york-civil-fraud-trial (video at 0:46 to 2:08).

83. Admits the allegations contained in paragraph 83 insofar as they accurately quote the statements of petitioners' counsel during trial, except that the quotation of Ms. Habba's argument contains a transcription error, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

84. Admits the allegations contained in paragraph 84 insofar as they accurately quote Supreme Court's statements during trial, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

85. Admits the allegations contained in paragraph 85 insofar as they accurately describe counsel's statements during trial, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

86. Admits the allegations contained in paragraph 86 insofar as they accurately describe Supreme Court's statements during trial, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

87. Admits that Supreme Court conducted the conference referenced in paragraph 87, at which Mr. Trump's statement was among the topics discussed, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

88. Admits the allegations contained in paragraph 88 insofar as they accurately quote Supreme Court's statements during trial, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

89. Admits the allegations contained in paragraph 89 insofar as they accurately quote Supreme Court's statements during trial, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

90. Admits the allegations contained in paragraph 90 insofar as they accurately describe the referenced portion of Mr. Trump's testimony, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

91. Admits the allegations contained in paragraph 91 insofar as they accurately quote the colloquy, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

92. States that the characterization of Supreme Court's statement as "testifying on the record" constitutes legal argument to which no response is required, and denies that characterization to the extent that it requires a response, but otherwise admits the allegations contained in paragraph 92 insofar as they accurately quote Supreme Court's statements during trial and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

93. States that the characterization of Supreme Court's statement as "punctuating his testimony" constitutes legal argument to which no response is required, and denies that characterization to the extent that it requires a response, but otherwise admits the allegations contained in paragraph 93 insofar as they accurately quote Supreme Court's statements during trial and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

94. Admits the allegations contained in paragraph 94, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

95. States that the characterization of the hearing as "Star Chamber questioning" and the characterization of Supreme Court's role as representing "both prosecutor and jury" constitute legal argument to which no response is required, and denies those characterizations to the extent

that they require a response, but otherwise admits the allegations contained in paragraph 95 insofar as they accurately quote Supreme Court's statements during trial and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

96. Admits the allegations contained in paragraph 96, and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

97. Admits the allegations contained in paragraph 97, and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

98. States that identifying the "primary basis" for Supreme Court's decision is a legal matter to which no response is required, but otherwise admits the allegations contained in paragraph 98 insofar as they accurately quote Supreme Court's statements and respectfully refers the Court to Supreme Court's October 26 order and the record of the proceedings for a true and accurate representation of the contents thereof.

99. Admits the allegations contained in paragraph 99 insofar as they accurately quote Supreme Court's October 26 order, and respectfully refers the Court to that order for a true and accurate representation of the contents thereof.

100. Admits the allegations contained in paragraph 100 insofar as they accurately quote Supreme Court's October 26 order, and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

101. States that the characterization of Supreme Court's October 26 order as "illogical[]" constitutes legal argument to which no response is required, but otherwise admits the allegations contained in paragraph 101 insofar as they accurately quote Supreme Court's October 26 order, and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

102. States that the allegations contained in paragraph 102 set forth legal argument and conclusions as to which no response is required.

103. States that petitioners' insinuation that "there was no record evidence" in support of Supreme Court's determination and that Supreme Court's orders suffer from "constitutional infirmities" constitute legal argument to which no response is required, and denies those allegations to the extent that they require responses, but otherwise admits the allegations contained in paragraph 103 and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

104. States that the allegations contained in paragraph 104 constitute legal argument to which no response is required. To the extent that a response is required, respondent admits that counsel made the quoted statements but respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

105. Admits the allegations contained in paragraph 105 inasmuch as they accurately quote counsel's statement, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

106. Admits the allegation contained in paragraph 106 and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

107. Admits the allegation contained in paragraph 107 and respectfully refers the Court to the referenced correspondence for a true and accurate representation of the contents thereof.

108. Admits the allegations contained in paragraph 108 insofar as they accurately quote Supreme Court's statement, but states that the characterization of Supreme Court's statement as an "ad hominem attack on counsel" constitutes legal argument to which no response is required,

and denies that characterization to the extent that it requires a response, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

109. Admits the allegations contained in paragraph 109 insofar as they accurately describe statements of petitioners' counsel during trial, except that the transcription of Mr. Kise's remarks omits a brief interjection by Supreme Court, but denies petitioners' characterization of Supreme Court's statements (e.g., "threat") and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

110. Admits the allegations contained in paragraph 110 insofar as they accurately describes counsel's statements during trial, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

111. Admits the allegations contained in paragraph 111 insofar as they accurately describes counsel's statements during trial, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

112. Admits the allegations contained in paragraph 112 insofar as they accurately describes counsel's statements during trial, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

113. Denies knowledge and information sufficient to admit or deny the allegation that Supreme Court "became irate," but admits the allegations contained in paragraph 113 insofar as they accurately quote Supreme Court's statement, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

114. Admits the allegations contained in paragraph 114 insofar as they accurately describes counsel's statements during trial, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

115. Admits the allegations contained in paragraph 115 insofar as they accurately quote Supreme Court's statement and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

116. Admits the allegations contained in paragraph 116 and respectfully refers the Court to Supreme Court's orders for a true and accurate representation of the contents thereof.

117. States that the characterization of Supreme Court's decisions imposing fines on Trump were "instances of summary contempt" constitutes legal argument to which no response is required, and denies that characterization to the extent that it requires a response, but otherwise admits the allegations contained in paragraph 117 insofar as they accurately quote Supreme Court's November 3 order and respectfully refers the Court to Supreme Court's orders for a true and accurate representation of the contents thereof.

118. Admits the allegations contained in paragraph 118 insofar as they accurately quote Supreme Court's November 3 order and respectfully refers the Court to Supreme Court's orders for a true and accurate representation of the contents thereof.

119. Admits the allegations contained in paragraph 119 insofar as they accurately quote Supreme Court's November 3 order and respectfully refers the Court to Supreme Court's orders for a true and accurate representation of the contents thereof.

120. Admits the allegations contained in paragraph 120 insofar as they accurately quote Supreme Court's statements, but states that the characterization of those statement constitutes legal argument to which no response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

121. Admits the allegations contained in paragraph 121 insofar as they accurately quote the colloquy, but states that the characterization of that colloquy constitutes legal argument to

which no response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

122. Admits the allegations contained in paragraph 122 insofar as they accurately quote the colloquy, but states that the characterization of that colloquy constitutes legal argument to which no response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

123. Admits the allegations contained in paragraph 123 insofar as they accurately quote the colloquy, but states that the characterization of that colloquy constitutes legal argument to which no response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

124. Admits the allegations contained in paragraph 124 insofar as they accurately quote the colloquy, but states that the characterization of that colloquy constitutes legal argument to which no response is required and denies that characterization to the extent that a response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

125. Admits the allegations contained in paragraph 125 insofar as they accurately quote the colloquy, but states that the characterization of that colloquy and the characterization of Supreme Court's procedure as "highly unusual" constitute legal argument to which no response is required and denies those characterizations to the extent that a response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

FIRST CAUSE OF ACTION

126. Answering paragraph 126, respondent repeats her responses to paragraphs 1 to 125 as if fully set forth herein.

127. States that the allegations contained in paragraph 127 constitute legal matter to which no response is required.

128. States that the allegations contained in paragraph 128 constitute legal matter to which no response is required.

129. States that the allegations contained in paragraph 129 constitute legal matter to which no response is required.

130. States that the allegations contained in paragraph 130 constitute legal matter to which no response is required.

131. States that the allegations contained in paragraph 131 constitute legal argument to which no response is required.

132. States that the allegations contained in paragraph 132 constitute legal matter to which no response is required.

133. States that the allegations contained in paragraph 133 constitute legal matter to which no response is required.

134. States that the allegations contained in paragraph 134 constitute legal matter to which no response is required.

135. States that the allegations contained in paragraph 135 constitute legal conclusions to which no response is required.

136. States that the allegations contained in paragraph 136 constitute legal matter to which no response is required.

137. States that the allegations contained in paragraph 137 constitute legal matter to which no response is required.

138. States that the allegations contained in paragraph 138 constitute legal matter to which no response is required.

139. States that the allegations contained in paragraph 139 constitute legal matter to which no response is required.

140. States that the allegations contained in paragraph 140 constitute legal matter to which no response is required.

141. States that the allegations contained in paragraph 141 constitute legal matter to which no response is required.

142. States that the allegations contained in paragraph 142 constitute legal matter to which no response is required.

143. States that the allegations contained in paragraph 143 constitute legal matter to which no response is required.

144. States that the allegations contained in paragraph 144 constitute legal matter to which no response is required.

145. States that the allegations contained in paragraph 145 constitute legal matter to which no response is required.

146. States that the allegations contained in paragraph 146 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations.

147. States that the allegations contained in paragraph 147 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the

allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

148. States that the allegations contained in paragraph 148 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

149. States that the allegations contained in paragraph 149 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

150. States that the allegations contained in paragraph 150 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

151. States that the allegations contained in paragraph 151 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

152. States that the allegations contained in paragraph 152 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

153. States that the allegations contained in paragraph 153 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent admits that Supreme Court stated that the conduct was a "first time violation" but otherwise denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

154. States that the allegations contained in paragraph 154 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

155. States that the allegations contained in paragraph 155 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

156. States that the allegations contained in paragraph 156 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent admits that Supreme Court's October 20 order imposed a fine in excess of $1,000 but otherwise denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

157. States that the allegations contained in paragraph 157 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

158. States that the allegations contained in paragraph 158 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

159. States that the allegations contained in paragraph 159 constitute legal conclusions to which no response is required.

160. States that the allegations contained in paragraph 160 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

161. States that the allegations contained in paragraph 161 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

162. States that the allegations contained in paragraph 162 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

163. States that the allegations contained in paragraph 163 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

164. States that the allegations contained in paragraph 164 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

165. States that the allegations contained in paragraph 165 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

166. States that the allegations contained in paragraph 166 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

167. States that the allegations contained in paragraph 167 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent admits that Supreme Court's October 26 order imposed a fine in excess of $1,000 but otherwise denies the allegations and respectfully refers the Court to Supreme Court's order for a true and accurate representation of the contents thereof.

168. States that the allegations contained in paragraph 166 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

169. States that the allegations contained in paragraph 169 constitute legal conclusions to which no response is required.

170. States that the allegations contained in paragraph 170 constitute a request for relief to which no response is required.

SECOND CAUSE OF ACTION

171. Answering paragraph 171, respondent repeats her responses to paragraphs 1 to 170 as if fully set forth herein.

172. States that the allegations contained in paragraph 172 constitute legal matter to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 and October 26 orders for a true and accurate representation of the contents thereof.

173. States that the allegations contained in paragraph 173 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 and October 26 orders for a true and accurate representation of the contents thereof.

174. States that the allegations contained in paragraph 174 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 and October 26 orders for a true and accurate representation of the contents thereof.

175. States that the allegations contained in paragraph 175 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent denies the allegations and respectfully refers the Court to Supreme Court's October 20 and October 26 orders for a true and accurate representation of the contents thereof.

176. States that the allegations contained in paragraph 176 constitute legal conclusions to which no response is required.

177. States that the allegations contained in paragraph 177 constitute a request for relief to which no response is required.

THIRD CAUSE OF ACTION

178. Answering paragraph 178, respondent repeats her responses to paragraphs 1 to 177 as if fully set forth herein.

179. States that the allegations contained in paragraph 179 constitute legal matter to which no response is required.

180. States that the allegations contained in paragraph 180 constitute legal matter to which no response is required.

181. States that the allegations contained in paragraph 181 constitute legal matter to which no response is required.

182. States that the allegations contained in paragraph 182 constitute legal matter to which no response is required.

183. States that the allegations contained in paragraph 183 constitute legal matter to which no response is required.

184. States that the allegations contained in paragraph 184 constitute legal matter to which no response is required.

185. States that the allegations contained in paragraph 185 constitute legal matter to which no response is required.

186. States that the allegations contained in paragraph 186 constitute legal conclusions to which no response is required.

187. States that the allegations contained in paragraph 187 constitute legal matter to which no response is required. To the extent that a response is required, respondent admits that

Supreme Court's October 20 order contains the quoted language, and respectfully refers the Court to Supreme Court's order for a true and accurate representation of the contents thereof.

188. States that the allegations contained in paragraph 188 constitute legal matter to which no response is required.

189. States that the allegations contained in paragraph 189 constitute legal matter to which no response is required.

190. States that the allegations contained in paragraph 190 constitute legal conclusions to which no response is required. To the extent that a response is required, respondent admits that Supreme Court made the quoted statements, but respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

191. States that the allegations contained in paragraph 191 constitute legal argument to which no response is required.

192. States that the allegations contained in paragraph 192 constitute legal argument to which no response is required.

193. States that the allegations contained in paragraph 193 constitute legal argument to which no response is required.

194. States that the allegations contained in paragraph 194 constitute legal argument to which no response is required. To the extent that a response is required, respondent admits that Supreme Court made the quoted statements, but respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

195. States that the allegations contained in paragraph 195 constitute legal argument to which no response is required.

196. States that the allegations contained in paragraph 196 constitute legal argument to which no response is required. To the extent that a response is required, respondent admits that the principal law clerk occasionally confers with Supreme Court during the proceedings (although the matters on which she confers with Supreme Court are generally unknown to the parties), but otherwise denies the allegations contained in paragraph 196.

197. Denies knowledge and information sufficient to admit or deny the allegations that the principal law clerk published the referenced photograph and that the referenced social-media post "has been viewed by over one million people," but otherwise admits the allegations contained in paragraph 197 and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

198. Admits that Supreme Court's October 20 order contains the quoted language, but states that the remainder of paragraph 198 constitutes legal argument to which no response is required. To the extent that a further response is required, respondent denies the remaining allegations contained in paragraph 198 and respectfully refers the Court to Supreme Court's October 20 order for a true and accurate representation of the contents thereof.

199. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 199.

200. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 200.

201. Admits that the principal law clerk has been visible to the public and that counsel to petitioners made the quoted comment, but states that the remainder of paragraph 201 constitutes legal argument to which no response is required.

202. Denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 202.

203. Admits that counsel made the quoted comment about the principal law clerk, but states that the remainder of the allegations contained in paragraph 203 constitute legal argument to which no response is required.

204. States that the allegations contained in paragraph 204 constitute legal argument to which no response is required.

205. States that the allegations contained in paragraph 205 constitute legal argument to which no response is required.

206. States that the allegations contained in paragraph 206 constitute legal argument to which no response is required.

207. Admits the allegations contained in paragraph 207, and respectfully refers the Court to Supreme Court's October 26 order for a true and accurate representation of the contents thereof.

208. Admits that Supreme Court made the quoted statement, but denies knowledge and information sufficient to admit or deny the allegation concerning Supreme Court's "assum[ption]," and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

209. States that the allegations contained in paragraph 209 constitute legal argument to which no response is required.

210. States that the allegations contained in paragraph 210 constitute legal argument to which no response is required.

211. States that the allegations contained in paragraph 211 constitute legal argument to which no response is required.

212. States that the allegations contained in paragraph 212 constitute legal argument to which no response is required.

213. States that the allegations contained in paragraph 213 constitute legal argument to which no response is required.

214. States that the allegations contained in paragraph 214 constitute legal argument to which no response is required.

215. States that the allegations contained in paragraph 215 constitute legal argument to which no response is required.

216. States that the allegations contained in paragraph 216 constitute legal argument to which no response is required.

217. States that the allegations contained in paragraph 217 constitute legal argument to which no response is required.

218. States that the allegations contained in paragraph 218 constitute legal argument to which no response is required.

219. States that the allegations contained in paragraph 219 constitute legal argument to which no response is required.

220. Admits paragraph 220's allegations that Supreme Court's October 3 order contains the quoted language, that Trump did not "refer to the Principal Law Clerk by name," and that Trump "testified under oath that he was, in fact, speaking about Cohen," but observes that Supreme Court's October 26 order specifically found that Trump's testimony on this point was "hollow and untrue" and that Trump's October 25 statement to the press had "unmistakably" referred to the principal law clerk. Respondent respectfully refers the Court to Mr. Trump's complete October 25

statement (see *supra* ¶ 77 n.1), to the record of the proceedings, and to Supreme Court's orders for a true and accurate representation of the contents thereof.

221. States that the allegations contained in paragraph 221 constitute legal argument to which no response is required.

222. States that the allegations contained in paragraph 222 constitute legal argument to which no response is required.

223. Admits that Supreme Court made the determinations referenced in paragraph 223, and respectfully refers the Court to the record of the proceedings and to Supreme Court's orders for a true and accurate representation of the contents thereof.

224. Admits that Supreme Court's October 26 order contains the quoted language, but states that the remainder of paragraph 224 constitutes legal argument to which no response is required, and respectfully refers the Court to Supreme Court's order for a true and accurate representation of the contents thereof.

225. States that the allegations contained in paragraph 225 constitute legal argument to which no response is required. To the extent that a response is required, respondent denies the allegations contained in paragraph 225.

226. Admits that Supreme Court's October 20 order contains the quoted language, but states that the allegations contained in paragraph 226 otherwise constitute legal argument to which no response is required, and respectfully refers the Court to Supreme Court's order for a true and accurate representation of the contents thereof.

227. Admits that Supreme Court's October 20 order contains the quoted language, but states that the allegations contained in paragraph 227 otherwise constitute legal argument to which

no response is required, and respectfully refers the Court to Supreme Court's order for a true and accurate representation of the contents thereof.

228. Admits that Supreme Court called Trump to testify under oath, that Trump testified that his October 25, 2023 statement was not about the principal law clerk and that he believes the principal law clerk to be "partisan," and that Supreme Court found Trump's testimony to be "not credible," but otherwise states that the allegations contained in paragraph 228 constitute legal argument to which no response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

229. States that the allegations contained in paragraph 229 constitute legal conclusions and requests for relief to which no response is required.

FOURTH CAUSE OF ACTION

230. Answering paragraph 230, respondent repeats her responses to paragraphs 1 to 229 as if fully set forth herein.

231. States that the allegations contained in paragraph 231 constitute legal matter to which no response is required.

232. States that the allegations contained in paragraph 232 constitute legal matter to which no response is required.

233. States that the allegations contained in paragraph 233 constitute legal matter to which no response is required.

234. States that the allegations contained in paragraph 234 constitute legal matter to which no response is required.

235. States that the allegations contained in paragraph 235 constitute legal matter to which no response is required.

236. States that the allegations contained in paragraph 236 constitute legal matter to which no response is required.

237. States that the allegations contained in paragraph 237 constitute legal matter to which no response is required.

238. States that the allegations contained in paragraph 238 constitute legal matter to which no response is required. To the extent that a response is required, respondent admits that Supreme Court's November 3 order contains the quoted language and respectfully refers the Court to Supreme Court's order for a true and accurate representation of the contents thereof.

239. States that the allegations contained in paragraph 239 constitute legal argument to which no response is required. To the extent that a response is required, respondent admits that petitioners' counsel and Supreme Court have engaged in a colloquy regarding counsel's ability to comment on the principal law clerk's role in the proceedings, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof, but otherwise denies knowledge and information sufficient to admit or deny the allegations contained in paragraph 239.

240. States that the allegations contained in paragraph 240 constitute legal argument to which no response is required. To the extent that a response is required, respondent denies the allegations contained in paragraph 240 and respectfully refers the Court to Supreme Court's orders for a true and accurate representation of the contents thereof.

241. Admits that Supreme Court's November 3 order contains the quoted language, but states that the allegations contained in paragraph 241 otherwise constitute legal conclusions to which no response is required and respectfully refers the Court to Supreme Court's order for a true and accurate representation of the contents thereof.

242. States that the allegations contained in paragraph 242 constitute legal conclusions to which no response is required.

243. States that the allegations contained in paragraph 243 constitute legal matter to which no response is required.

244. States that the allegations contained in paragraph 244 constitute legal conclusions to which no response is required.

245. States that the allegations contained in paragraph 245 constitute legal conclusions to which no response is required.

246. Admits that Supreme Court's November 3 order contains the language quoted in paragraph 246, and respectfully refers the Court to Supreme Court's order for a true and accurate representation of the contents thereof.

247. States that the allegations contained in paragraph 247 constitute legal conclusions to which no response is required.

248. Admits the allegations contained in paragraph 248, except denies that Supreme Court's determinations were "implicit[]," and respectfully refers the Court to Supreme Court's November 3 order for a true and accurate representation of the contents thereof.

249. States that the allegations contained in paragraph 249 constitute legal argument to which no response is required, and respectfully refers the Court to the record of the proceedings for a true and accurate representation of the contents thereof.

250. States that the allegations contained in paragraph 250 constitute legal argument to which no response is required, and respectfully refers the Court to Supreme Court's orders and the record of the proceedings for a true and accurate representation of the contents thereof.

251. States that the allegations contained in paragraph 251 constitute legal conclusions to which no response is required.

252. States that the allegations contained in paragraph 252 constitute legal conclusions and requests for relief to which no response is required.

PRAYER FOR RELIEF

253. Denies that petitioners are entitled to any relief, and denies each and every allegation of the petition except to the extent set forth herein.

OBJECTIONS IN POINTS OF LAW

1. Article 78 of the C.P.L.R. does not permit petitioners to challenge the orders at issue.

2. Petitioners' claims are moot or are otherwise non-justiciable.

3. Respondent did not undertake the challenged actions.

4. The petition fails to state a claim for which relief can be granted.

5. The petition fails to demonstrate that petitioners are entitled to the relief sought.

6. Petitioners are not entitled to relief because they have an adequate remedy at law.

7. Petitioners have failed to demonstrate that prohibition or any other writ is appropriate under the circumstances alleged in the petition.

8. Petitioners do not have standing and are not proper parties to challenge Supreme Court's application of the November 3, 2023 order against petitioners' counsel.

9. Respondent reserves the right to amend or supplement these Objections in Point of Law based upon continuing investigation or disclosure.

WHEREFORE, respondent respectfully requests that the relief requested in the petition be denied, that the petition be dismissed, and that the Court grant such other and further relief to respondents as the Court deems just and proper.

Dated: New York, New York
December 6, 2023

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: _____
Dennis Fan

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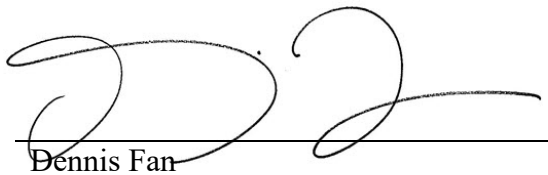
Attorneys for Respondent People of the State of New York

VERIFICATION

Dennis Fan, an attorney duly admitted to the practice of law in the State of New York, affirms, under the penalties of perjury, pursuant to C.P.L.R. 2106 that:

I am a Senior Assistant Solicitor General in the office of respondent Letitia James, Attorney General of the State of New York. I have read the foregoing answer and know the contents thereof. The same are true to my knowledge, except to matters therein stated to be alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York
December 6, 2023



Dennis Fan

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FIRST 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., 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 C.P.L.R.

v.

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.

No. 2023-05859

Supreme Court
New York County
Index No. 452564/2022

AFFIRMATION IN OPPOSITION TO PETITION UNDER C.P.L.R. ARTICLE 78

DENNIS FAN, an attorney admitted to practice law in the State of New York, who is not a party to this action, under penalty of perjury affirms as follows:

1. I am a Senior Assistant Solicitor General in the Office of Letitia James, Attorney General of the State of New York (OAG), the plaintiff in the underlying Executive Law § 63(12) enforcement action from which this C.P.L.R. article 78 petition arose. I submit this affirmation on behalf of OAG in opposition to the petition filed by petitioners—entities operating as the Trump Organization and certain executives of the Trump Organization who are the defendants in the underlying action. The petition seeks a writ of prohibition against respondent Honorable Arthur F. Engoron—the justice of Supreme Court, New York County, who is presiding over the ongoing trial in the underlying action—and respondent OAG. The petition challenges four orders of Supreme Court dated October 3, 20, 26, and November 3, 2023. I am familiar with the facts and

circumstances of this matter based upon my review of the relevant orders and decisions rendered and submissions filed by the parties, and through communications with OAG attorneys.

2. Supreme Court issued the four orders challenged here to protect the safety of its staff and to ensure the orderly progression of the ongoing trial proceedings. The court issued the orders in response to extraordinary and dangerous personal attacks made against the court's staff by both petitioner Donald J. Trump and petitioners' counsel during trial. Specifically, petitioners and their counsel repeatedly made baseless, highly inappropriate, and personally identifying attacks against the court's principal law clerk. Despite multiple warnings from the court, those attacks continued.

3. After the filing of the petition, this Court denied petitioners' motion to stay the four orders pending adjudication of the article 78 proceeding and vacated an interim stay that had been issued by a single justice. A copy of this Court's November 30 order denying the stay motion is attached as Exhibit 1.

4. The Court should now deny the petition. As Supreme Court made clear, the attacks on its staff threaten its ability to proceed with trial in a safe and orderly manner. The court has been "inundated with hundreds of harassing and threat[en]ing phone calls, voicemails, emails, letters, and packages." Ex. J, Nov. 3 Order at 2.[1] The public-safety department of the court further considered the threats "serious and credible and not hypothetical or speculative." Hollon Aff. ¶ 8. Each time Mr. Trump made personal attacks on the court's staff, the number of threats increased. *Id.* ¶¶ 5, 11.

[1] Lettered exhibits refer to exhibits to the petition. Numbered exhibits refer to exhibits to this affirmation. "Hollon Aff." refers to the affirmation of Captain Charles Hollon of the Judicial Threats Assessment Unit of the Unified Court System's Department of Public Safety—submitted as Exhibit E to Office of Court Administration's affirmation on behalf of respondent Justice Engoron in opposition to petitioners' stay motion.

5. Supreme Court's October 3 and November 3 orders properly prohibited petitioners and their counsel, respectively, from targeting the court's staff. The court issued its October 3 order, which prohibits the parties from publicly commenting about its staff, after Mr. Trump posted on social media and emailed to millions of recipients a personally identifying and disparaging comment about its principal law clerk. The court issued its November 3 order, which prohibits the parties' counsel from commenting on the principal law clerk's communications with the court, after petitioners' counsel refused to stop repeating unprofessional and vexatious arguments about the fact that the principal law clerk communicates with and advises the court—which is a significant part of her job. Each of these orders properly imposed exceedingly limited restraints on speech to protect the safety of the court's staff and preserve the orderly administration of the trial. Accordingly, petitioners' free-speech arguments are meritless, and the equities tip decisively against relief. As courts have repeatedly made clear, neither litigants nor their counsel have an unfettered right to say whatever they want in the context of an ongoing trial. Rather, courts may impose reasonable limits on trial participants to further important interests such as protecting court safety and preserving the orderly administration of trial. Otherwise, any trial could be derailed by ad hominem attacks against witnesses, staff, opposing counsel, or other participants.

6. Supreme Court's October 20 and 26 orders properly sanctioned Mr. Trump $5,000 and $10,000, respectively, for violating its October 3 order. The court issued its October 20 order after Mr. Trump continued to publish on his presidential campaign's website the derogatory post about the court's principal law clerk, despite the court's order prohibiting such statements. The court issued its October 26 order after Mr. Trump made another inappropriate comment about the principal law clerk, accusing her of being a partisan actor at trial, to reporters located immediately outside the courtroom. The modest amounts that Mr. Trump has needed to pay—and indeed, has

already paid—do not support the extraordinary writ of prohibition. Moreover, petitioners' arguments about contempt fail because the court did not hold Mr. Trump in contempt. Rather, the court's sanctions were justified based on the Rules of the Chief Administrator (22 N.Y.C.R.R.) § 130-1.1, which governs frivolous conduct and the court's inherent authority to address such conduct. Specifically, "frivolous conduct" is defined for this purpose as, inter alia, conduct "undertaken primarily . . . to harass or maliciously injure another." Rules of the Chief Administrator § 130-1.1(c)(2).

BACKGROUND

7. In September 2022, OAG brought an action in Supreme Court against petitioners pursuant to Executive Law § 63(12), alleging that they engaged in repeated and persistent fraud and illegality in the carrying on, conducting, or transaction of their business in New York. *See* Ex. A, Verified Compl., ¶¶ 1-8 (Sept. 21, 2022). A bench trial in that action has been ongoing since October 2, 2023. OAG completed its case in chief on November 8, and petitioners are currently presenting their case in chief. *See* Ex. F, Nov. 8 Tr. at 3842-44. The trial remains ongoing, and petitioners have indicated that they will conclude their case in chief on or around December 12.

8. The high-profile nature of this trial has required extensive security preparations by Supreme Court, the Office of Court Administration, the parties, and counsel. Since the start of trial, the court has been "inundated with hundreds of harassing and threat[en]ing phone calls, voicemails, emails, letters, and packages." Ex. J, Nov. 3 Order at 2. For example, the court's principal law clerk has had her personal information posted online, and she has been receiving 20 to 30 calls per day on her personal cellphone and 30 to 50 messages per day on social media or through email. *See* Hollon Aff. ¶ 6. The court issued the challenged orders to protect the safety of

its staff (approximately three staff members) during the trial and to ensure the orderly administration of trial. *See* Ex. F, Oct. 26 Tr. at 2479; *id.*, Nov. 2 Tr. at 3396.

A. Supreme Court Issues Its October 3 Order Against Petitioner Donald J. Trump and Other Petitioners to Protect the Court's Staff

9. From the October 2 start of trial, petitioners' counsel began personally targeting Supreme Court's principal law clerk in a highly unprofessional and inappropriate manner. For example, during her opening statement, one of petitioners' counsel improperly commented about the principal law clerk by openly complaining that she is "probably writing [the court] a note right now to say" that counsel's arguments were inaccurate. *See* Ex. F, Oct. 2 Tr. at 58.

10. That day, during a break from trial, Mr. Trump announced outside the courtroom door, in front of news cameras: "This rogue judge, a Trump hater. The only one that hates Trump more is his associate up there, this person that works with him, and she's screaming into his ear on almost every time we ask a question. It's a disgrace." LiveNOW from FOX, *Trump trial video: Trump blasts 'rogue' judge during break at civil fraud trial* at 1:06-1:22, YouTube (Oct. 2, 2023), https://www.youtube.com/watch?v=59momWwUiGQ. The court then gave petitioners an off-the-record warning about the inappropriate nature of those comments. *See* Ex. F, Oct. 3 Tr. at 270.

11. Despite the warning, the next morning on October 3, Mr. Trump posted a personally identifying and inappropriate remark about Supreme Court's principal law clerk on the Truth Social social-media platform. A copy of Mr. Trump's Truth Social posts is attached as Exhibit 2. In the post, Mr. Trump asserted that it was "disgraceful" that she was "running this case against me." In the same post, he reposted a photograph of the principal law clerk and U.S. Senator Charles Schumer, taken at an April 2022 event, claiming that she was "Schumer's girlfriend." Through his presidential campaign, Mr. Trump then emailed the post to millions of recipients. *See* Ex. F, Oct. 3 Tr. at 270; *id.*, Oct. 20 Tr. at 2023. He boasted to news cameras outside the courtroom, "you saw

what was just put out about Schumer and the principal clerk." @SkyNews, Twitter (Oct. 3, 2023, 1:01 p.m.), https://twitter.com/i/status/1709252399234260995.

12. That afternoon, Supreme Court issued an on-the-record order "forbidding all parties from posting, emailing, or speaking publicly about any members of [the court's] staff." Ex. F, Oct. 3 Tr. at 271. As the court explained, Mr. Trump's statements about the principal law clerk were "disparaging, untrue and personally identifying." *Id.* at 270. The court further explained that such "[p]ersonal attacks on members of [the] court staff" were "unacceptable" and "inappropriate." *Id.* And the court explicitly warned the parties that violations of the October 3 order would result in "serious sanctions." *Id.* at 271. At that time, Mr. Trump represented to the court that he would not engage in similar conduct again. *See id.*, Oct. 20 Tr. at 2021.

13. On October 26, Supreme Court entered a so-ordered transcript that contained the October 3 order. A copy of that so-ordered transcript is attached as Exhibit 3.

B. Supreme Court Issues Its October 20 and 26 Sanctions Orders Against Mr. Trump for Violations of the October 3 Order

14. Supreme Court, during the next few weeks, addressed two instances where Mr. Trump violated the October 3 Order.

15. First, despite the October 3 order, Mr. Trump failed to remove the offending Truth Social post about the principal law clerk from his presidential campaign's website for 17 days, until October 20. *See* Ex. G, Oct. 20 Order at 1. As a result, the post remained viewable by millions of people.

16. Once alerted to this conduct, Supreme Court offered petitioners an opportunity to explain on the record their ongoing publication of the Truth Social post, informing them on the evening of October 19 that they should prepare to address the matter the next day in court. *See* Ex. K, Oct. 19 Email from Supreme Court. Petitioners and petitioners' counsel were thus able both to

consult regarding how Mr. Trump's presidential campaign posted the website statements and to present that information to the court. *See* Ex. F, Oct. 20 Tr. at 2023-25 (discussing counsel's "confirmation" of certain facts). Petitioners, however, did not dispute that the offending statements in fact remained on Mr. Trump's campaign website for 17 days after the October 3 order issued.

17. On October 20, Supreme Court issued a sanctions order that required Mr. Trump to pay "a nominal fine" of $5,000 for violating the October 3 order. Ex. G, Oct. 20 Order at 2. The court warned of the dangers of allowing the post to remain published on Mr. Trump's campaign website, explaining that "[i]n the current overheated climate, incendiary untruths can, and in some cases already have, led to serious physical harm, and worse." *Id.* The court rejected Mr. Trump's argument that their continued publication of the Truth Social post resulted from only some abstract "campaign structure." *Id.* at 1-2. Petitioners' counsel identified no person ultimately responsible for Mr. Trump's campaign other than Mr. Trump. *See* Ex. F, Oct. 20 Tr. at 2022-26. And Mr. Trump did not dispute that the violation resulted from the actions of his employees or agents. *See id.* at 2023 (blaming "campaign communication team"); *see also* Ex. G, Oct. 20 Order at 2 (holding that actions of employees or agents are enough for imposing sanctions).

18. Second, despite the multiple warnings and the first sanction, Mr. Trump violated the October 3 order yet again. On October 25, during a break from trial, Mr. Trump announced to the news cameras outside the courtroom: "This judge is a very partisan judge, with a person who's very partisan sitting alongside of him, perhaps even much more partisan than he is." Jack Queen & Luc Cohen, *Donald Trump Fined $10,000 for Second Gag Order Violation in Civil Fraud Case*, Reuters (Oct. 25, 2023), https://www.reuters.com/legal/donald-trump-michael-cohen-face-off-again-new-york-fraud-trial-2023-10-25/ (video at 0:00-0:10).

19. When the parties returned to the courtroom after the break, Supreme Court observed that Mr. Trump appeared to have again made disparaging comments about its principal law clerk. And the court reiterated the need to protect its staff in this "overheated environment," explaining that "I don't want anybody killed." Ex. F, Oct. 25 Tr. at 2372-73. The court then gave Mr. Trump ample opportunity to respond on the record. For example, the court confirmed that petitioners' counsel had a chance to confer with Mr. Trump about to whom he was referring in his remark. The court provided counsel time to argue that Mr. Trump had been referring to the witness who was testifying that day rather than to the principal law clerk. *Id.* at 2374, 2415-23. And the court held a hearing, in which the court placed Mr. Trump under oath and questioned him about the statement. *See id.* at 2412-15. After listening to Mr. Trump's testimony, the court found "not credible" his assertion that his comment had referred to a witness rather than to the principal law clerk. *See id.* at 2415.

20. As a result, Supreme Court again sanctioned Mr. Trump, this time in the amount of $10,000. Ex. F, Oct. 25 Tr. at 2415, 2423. The court memorialized that ruling in an order issued the next day. Ex. H, Oct. 26 Order. The court determined that Mr. Trump, "[q]uite clearly, was referring, once again, to my Principal Law Clerk, who sits alongside me on the bench." *Id.* at 1. As the court explained, Mr. Trump's language "mirror[ed]" his prior language on October 3, when he complained about the principal law clerk "'up there'" at the bench who works with the court and was purportedly "'screaming into [the judge's] ear.'" *Id.* at 2. The court further explained that it was implausible that Mr. Trump's statement had referred to a witness because the witnesses did not sit alongside the judge and instead sat "in the witness box, separated from the judge by a low wooden barrier." *Id.*

21. On October 26, 2023, Mr. Trump paid the $5,000 and $10,000 fines to the New York Lawyers' Fund for Client Protection. Ex. I, Oct. 26 Letter from Alina Habba.

C. Supreme Court Issues Its November 3 Order to Protect Its Staff and to Preserve the Orderly Administration of Proceedings After Petitioners' Counsel Make Inappropriate Remarks About the Principal Law Clerk

22. Around the time of the second sanctions order, petitioners' counsel again began making unprofessional and inappropriate comments about Supreme Court's principal law clerk. Petitioners' counsel made repeated comments about where the principal law clerk sits in the courtroom, taking issue with her sitting near the judge. *See, e.g.*, Ex. F, Oct. 25 Tr. at 2308, 2416, 2419-20; *id.*, Oct. 26 Tr. at 2470-71; *id.*, Nov. 2 Tr. at 3398-99. And counsel made repeated comments about the principal law clerk passing notes to the judge during the trial. *See, e.g.*, *id.*, Oct. 26 Tr. at 2470; *id.*, Oct. 31 Tr. at 1911; *id.*, Nov. 1 Tr. at 3061; *id.*, Nov. 2 Tr. at 3396, 3399, 3404. For instance, counsel insisted that "the law secretary is writing notes advocating" to the court. *Id.*, Oct. 26 Tr. at 2470. Counsel also cast aspersions on the court's process for consulting with its principal law clerk, such as announcing during trial that "I'll wait again to get the note" from the clerk, because the court "may have a question" based on that note or because the note might instead just be about "dinner." *Id.*, Nov. 2 Tr. at 3396. Counsel accused the court of "co-judging" with its principal law clerk. *Id.* at 3403.

23. On November 2, after around a week of this behavior, Supreme Court cautioned petitioners' counsel to stop referring to its staff and that the court was considering expanding the October 2 order to cover counsel. *Id.* at 3396-97. The court explained to counsel that the principal law clerk is a civil servant whose job is to assist the court in processing and deciding cases. *Id.* at 3396. Indeed, the court explained, judges have a right to receive advice from their law clerks. *Id.* at 3400.

24. On November 3, petitioners' counsel continued to insist on discussing the principal law clerk's role at trial. *See id.* at 3408-23. For instance, counsel suggested that her passing notes to the judge somehow injected possible bias into the trial. *Id.* at 3418. But the court explained (again) to counsel that this was part of its "unfettered right to get advice from my principal law clerk or assistant law clerk." *Id.* at 3411. The court observed that it was a shame that petitioners' arguments and objections at trial, in attacking the principal law clerk at trial, had "descended to this level." *Id.* at 3422.

25. Later that day, Supreme Court issued an order prohibiting all counsel from making "public statements, in or out of court, that refer to *any* confidential communications, in any form," between the court and its staff. *See* Ex. J, Nov. 3 Order at 3 (emphasis in original). The court observed that it had initially imposed the October 2 order on only the parties based on "the assumption that such a gag order would be unnecessary upon the attorneys, who are officers of the Court." *Id.* at 1. However, the court explained, petitioners' counsel had made "repeated, inappropriate remarks" about the court's principal law clerk, including making "long speeches" asserting that it is improper for a judge to consult with a law clerk during proceedings. *Id.* at 2. The court explained that counsel's arguments had no basis because it is well established that "[a] judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibility." *Id.* at 2 (quoting 22 N.Y.C.R.R. § 100.3(B)(6)(c)). The court further explained that petitioners' counsel had already "had ample opportunity to make their record, and they have at length," and that their objections to the principal law clerk's role were preserved. *Id.* at 3. The court underscored that its order was again to protect the safety of its staff and promote the orderly progression of the trial. *Id.*

D. Supreme Court Declines to Sign Petitioners' Proposed Order to Show Cause on Their Motion for a Mistrial

26. On November 15, petitioners presented an order to show cause to Supreme Court, requesting that the court direct briefing on their motion for a mistrial. Petitioners' motion again raised issues about the principal law clerk. For example, petitioners again accused the court of "co-judging" by consulting with its principal law clerk. (*See* Nov. 15 Mot for Mistrial at 4, No. 452564/2022, Sup. Ct. NYSCEF Doc. No. 1634.)

27. On November 17, Supreme Court declined to sign the proposed order to show cause and provided an accompanying decision that explained its reasoning. A copy of that declined order to show cause and the accompanying decision is attached as Exhibit 4. In particular, the court explained that petitioners' arguments were "utterly without merit" and that there was "absolutely no 'co-judging' at play." Ex. 4, Nov. 17 Decision at 3. The court again explained that the court has a right to consult its law clerks. *Id.* at 2. And the court made clear to petitioners that the principal law clerk "does not make rulings or issue orders—I do." *Id.*

E. The Article 78 Proceedings

28. On November 15, petitioners filed the instant article 78 petition in this Court, challenging Supreme Court's October 3 and November 3 orders as unconstitutional under the First Amendment of the U.S. Constitution and Article I, Section 8 of the New York Constitution and challenging Supreme Court's October 20 and 26 sanctions orders as unlawful. Pet. ¶¶ 126-252.

29. On November 16, a single justice of this Court granted an interim stay of those orders while this Court resolves petitioners' motion for a stay of the orders pending its disposition of the article 78 petition. *See* Interim Order, NYSCEF Doc. No. 7 (Nov. 16, 2023).

30. After that interim stay, Mr. Trump engaged in a number of personal attacks against Supreme Court's principal law clerk on the Truth Social social-media platform. For example, on

November 16, he posted that the court's "politically biased and out of control, Trump Hating Clerk, who is sinking him and his Court to new levels of LOW, is a disgrace." Ex. 2, Truth Social Posts at 2. Two days later, he reposted an online article suggesting that the principal law clerk engaged in drug use. *Id*. at 3. In yet another post, Mr. Trump lambasted the "crooked and highly partisan Law Clerk" and stated that she "should be sanctioned and prosecuted over this complete and very obvious MISCARRIAGE OF JUSTICE!!!" *Id.* at 4. In the following weeks, Mr. Trump further attacked the principal law clerk, such as by commenting that she was a "horrendous, seething with ANGER Law Clerk, with her illegal campaign contributions," and calling her the "very disturbed and angry law clerk." *Id.* at 5-6.

31. Supreme Court's public-safety department has explained that "the threats, harassment, and disparaging comments" against the court and its principal law clerk "increased exponentially" following Mr. Trump's initial October 3 attacks. Hollon Aff. ¶ 5. Those attacks resulted in "over 275 single spaced pages" of transcribed threatening and harassing voicemails to the principal law clerk, many of which are antisemitic. *Id.* ¶¶ 5-6. While the court's October 3 and November 3 orders (when they have been in effect) "resulted in a decrease in the number of threats, harassment, and disparaging messages," Mr. Trump's continued attacks led to an increase in such messages. *See id.* ¶ 11.

32. On November 30, a panel of this Court unanimously vacated the interim stay and denied petitioner's stay motion. *See* Ex. 1, Order Denying Stay. On December 4, petitioners filed a motion with this Court for leave to appeal to the Court of Appeals. This Court has set a return date of December 11 for that motion, with OAG's opposition due at 10 a.m. on December 11.

ARGUMENT

THE COURT SHOULD DENY THE ARTICLE 78 PETITION

33. "[P]rohibition is an extraordinary remedy which lies only where a clear legal right to such relief exists, and only when a court 'acts or threatens to act either without jurisdiction or in excess of its authorized powers.'" *Matter of Neal v. White*, 46 A.D.3d 156, 159 (1st Dep't 2007) (footnote omitted) (quoting *Matter of Holtzman v. Goldman,* 71 N.Y.2d 564, 569 (1988)). Prohibition is "*never* available merely to correct or prevent trial errors of substantive law or procedure, however grievous." *Id.* at 159 (quotation marks omitted); *see Matter of Johnson v. Price*, 28 A.D.3d 79, 81 (1st Dep't 2006). The writ of prohibition is not issued "as of right, but only in the sound discretion of the court." *Matter of Rush v. Mordue*, 68 N.Y.2d 348, 354 (1986). Here, petitioners cannot challenge Supreme Court's orders through article 78 at all, and in any event, petitioners have not satisfied the high burden for obtaining prohibition.

A. Article 78 Is Unavailable to Challenge Supreme Court's Orders.

34. As a threshold manner, the Court should dismiss the petition because petitioners cannot challenge Supreme Court's orders through an article 78 proceeding. By its plain terms, article 78 cannot be used to challenge a judicial determination that "can be adequately reviewed by appeal to a court or to some other body or officer." C.P.L.R. 7801(1); *see Matter of Rush*, 68 N.Y.2d at 354 (applying this rule to petition seeking prohibition).

35. Here, Supreme Court's orders were issued without motion practice during a civil case, and each of those orders can be reviewed through some other appellate process. Petitioners may file a motion to vacate any of those orders (*see* C.P.L.R. 2221(a)) and appeal from any denial of that motion to obtain an appeal (*see* C.P.LR. 5701(a)(3)). *See Sholes v. Meagher*, 100 N.Y.2d 333, 335-36 (2003); *Budwilowitz v. Marc Nichols Assoc.*, 195 A.D.3d 404, 144 (1st Dep't), *appeal*

dismissed & lv. denied, 37 N.Y.3d 1132, *rearg. denied*, 38 N.Y.3d 1001 (2021), *cert. denied*, 143 S. Ct. 429 (2022). Or if petitioners proceed by presenting an order to show cause and if Supreme Court declines to sign the order, they may proceed by filing an application with this Court under C.P.L.R. 5704 to seek review of whether Supreme Court should have declined to sign. Because petitioners have adequate remedies in this Court, article 78 is unavailable. *See Matter of Molea v. Marasco*, 64 N.Y.2d 718, 720 (1984); *Matter of Northern Manhattan Equities, LLC v. Civil Ct. of the City of N.Y.*, 191 A.D.3d 536, 536 (1st Dep't 2021).

36. Petitioners incorrectly claim (Pet. ¶¶ 179-80, 231-32) that article 78 is available to review the October 3 and November 3 orders that restricted their statements regarding Supreme Court's staff. Petitioners rely only on (Pet. ¶¶ 185, 243-44) article 78 challenges to gag orders that arose in criminal cases, but the underlying case here is civil rather than criminal. That distinction matters: the Court has only granted "Article 78 relief vacating gag orders preventing counsel from speaking with the press in the course of *criminal prosecutions*." *Matter of Fischetti v. Scherer*, 44 A.D.3d 89, 91 (1st Dep't 2007) (emphasis added). In those criminal proceedings, the usual modes of obtaining appellate review pursuant to the C.P.L.R. are unavailable, as those civil rules have "no application to criminal actions and proceedings." *People v. Silva*, 122 A.D.2d 750, 750 (1st Dep't 1986). And immediate review is presumably needed to protect the criminal defendant's constitutional jury-trial rights, which may be impaired by any such order. *See Matter of New York Times Co. v. Rothwax*, 143 A.D.2d 592, 592 (1st Dep't 1988). No such concerns are at issue in this civil bench trial.

37. Petitioners also err in arguing (Pet. ¶¶ 30, 145) that the October 20 and 26 sanctions orders are reviewable under article 78 because they are orders "summarily punishing a contempt committed in the presence of the court," *see* C.P.L.R. 7801(2). As explained below (*infra* ¶¶ 85-

83), Supreme Court's orders are best understood as imposing sanctions for frivolous conduct. The sanctions orders thus did not amount to criminal *punishment* of Mr. Trump for contempt—and were not issued through a summary procedure—such that immediate review is available under article 78. *See, e.g.*, *Matter of Premo v. Breslin*, 89 N.Y.2d 995, 996 (1997) (permitting C.P.L.R. 7801(2) review where sanction reprimanded attorney for his unpreparedness); *cf. Union Tool Co. v. Wilson*, 259 U.S. 107, 110 (1922) (longstanding rule in federal court that only punishment for criminal contempt is immediately appealable). Rather, the Court of Appeals has held that litigants challenging a sanctions order for frivolous conduct entered without motions practice must instead proceed by first moving to vacate the order and then appealing from any denial of that motion. *See Sholes*, 100 N.Y.2d at 335-36. That holding would have been altogether advisory had the Court of Appeals believed that a civil litigant could bypass that process by simply proceeding through article 78. *See id.*

B. The Court Should Deny Petitioners' Challenge to the October 3 and November 3 Orders Prohibiting Statements Regarding Supreme Court's Staff.

1. The October 3 and November 3 orders are constitutional.

38. The Court should also deny the petition because the October 3 and November 3 orders each complies with both the federal and state Constitutions. Neither the First Amendment of the U.S. Constitution nor Article I, Section 8 of the New York Constitution prohibits trial courts from restricting speech of trial participants if it threatens the safety of the court's staff or frustrates the orderly progression of an ongoing trial. To the contrary, courts have the authority to impose reasonable restrictions on both litigants and their attorneys during ongoing proceedings when necessary to safeguard those important interests.

39. It is well established that, though "litigants do not surrender their First Amendment rights at the courthouse door, those rights may be subordinated to other interests that arise in this

setting." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 n.18 (1984) (quotation marks omitted); *see Matter of Fischetti*, 44 A.D.3d at 92-93 ("reasonable limitations may be placed on speech where an important countervailing interest is being served"). As the U.S. Supreme Court has explained, the right to freedom of speech "must not be allowed to divert the trial from the very purpose of a court system to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures." *Sheppard v. Maxwell*, 384 U.S. 333, 350-51 (1966). Thus, courts have an affirmative duty to "take such steps by rule and regulation that will protect their processes from prejudicial outside interferences," and "[n]either prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function." *Id.* at 363.

40. In light of these important considerations present during ongoing litigation, "[t]he Supreme Court and [federal] Courts of Appeals have recognized a distinction between participants in the litigation and strangers to it, pursuant to which gag orders on trial participants are evaluated under a less stringent standard than gag orders on the press." *United States v. Brown*, 218 F.3d 415, 425 (5th Cir. 2000) (quotation marks omitted); *see Matter of National Broadcasting Co. v. Cooperman*, 116 A.D.2d 287, 292-93 (2d Dep't 1986). A more stringent standard is required for restraints on the press because of the "unique role" the press plays as the "public's 'eyes and ears'" into the judicial system. *Brown*, 218 F.3d at 427. Unlike trial participants, "[t]he press . . . guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism," and the Supreme Court "has, therefore, been unwilling to place any direct limitations on the freedom traditionally exercised by the news media." *Sheppard*, 384 U.S. at 350.

41. Trial participants do not play this same role, *see id.* at 350-51—instead, "[i]n the conduct of a case, a court often finds it necessary to restrict the free expression of participants, including counsel, witnesses, and jurors." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 104 n.21 (1981). As both federal courts and New York courts have recognized, "the tests which must be applied in cases involving prior restraints on publication are stricter than the tests which may be applied to prior restraints upon attorneys, parties, jurors and court personnel." *Cooperman*, 116 A.D.2d at 293 (citing *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 562 (1976)); *see Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1072-73 (1991) (drawing "distinction between participants in the litigation and strangers to it" under the First Amendment).

42. Accordingly, while judicial restraints on the press or non-participants at trial "bear a heavy presumption of constitutional invalidity which may only be overcome upon a showing of a 'clear and present danger' of a serious threat to the administration of justice," *Cooperman*, 116 A.D.2d at 292, the same rule does not apply to restraints imposed by a court on trial participants.[2] Instead, as it relates to the free-speech rights of litigants or their attorneys outside the courtroom, prior restraints may be imposed on a "showing of a necessity for such restraint and a determination that less restrictive alternatives" are unavailable. *Id.* at 293; *see Rothwax*, 143 A.D.2d at 592. The need for a prior restraint on trial participants can be established by demonstrating "a 'reasonable likelihood' of a serious and imminent threat to the administration of justice." *Cooperman*, 116

[2] Petitioners rely on inapposite cases applying the "clear and present danger" test to prior restraints in contexts that do not involve participants in an ongoing trial. *See* Pet. ¶¶ 183-85. Petitioners' reliance on *Ash v. Board of Managers of the 155 Condominium* is misplaced as it used that standard to assess, in part, a litigant's manner of communicating with his own counsel. *See* 44 A.D.3d 324, 325 (1st Dep't 2007). Moreover, though the Court in that case drew the "clear and present danger" test from *Cooperman*, *id.* at 325, *Cooperman* held that that the "clear and present danger" test applies to restraints imposed on "the rights of free speech and publication *by the media*." 116 A.D.2d at 290 (emphasis added). *Cooperman* then made clear that restraints on trial participants, as opposed to the media, are *not* required to meet that high standard. *Id.* at 292-93.

A.D.2d at 292; *accord Cleveland v. Perry*, 175 A.D.3d 1017, 1019 (4th Dep't 2019); *Matter of Fischetti*, 44 A.D.3d at 93; *In re Dow Jones & Co., Inc.*, 842 F.2d 603, 610 (2d Cir. 1988). A judicial order restraining speech should be "limited solely to information or statements which might be likely to impugn the fairness and integrity of the trial." *Cooperman*, 116 A.D.2d at 294.

43. The free-speech rights of attorneys *inside* the courtroom during litigation are even more limited. "[A] trial court has broad authority to control the courtroom, rule on the admission of evidence, elicit and clarify testimony, expedite the proceedings and to admonish counsel and witnesses when necessary." *Pramer S.C.A. v. Abaplus Intl. Corp.*, 123 A.D.3d 474, 474 (1st Dep't 2014) (quotation marks omitted); *see* C.P.L.R. 4011 ("The court may . . . regulate the conduct of the trial in order to achieve a speedy and unprejudiced disposition of the matters at issue in a setting of proper decorum."). Thus, "[i]t is unquestionable that in the courtroom itself, during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed."[3] *Gentile*, 501 U.S. at 1071; *see Mezibov v. Allen*, 411 F.3d 712, 720-21 (6th Cir. 2005) ("[I]n the context of the courtroom proceedings, an attorney retains no personal First Amendment rights when representing his client in those proceedings."). As a federal court of appeals explained in rejecting the argument that attorneys have First Amendment rights in the courtroom, "[a]n attorney's speech in court and in motion papers has always been tightly cabined by various procedural and evidentiary rules, along with the heavy hand of judicial discretion." *Mezibov*, 411 F.3d at 717.

44. Applying these principles, the October 3 and November 3 orders comport with free-speech rights, and the Court should thus deny petitioners' challenge to those orders.

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[3] This Court has recognized an attorney's right to free speech inside the courtroom in only extremely limited contexts that are not present here. *See Matter of Frankel v. Roberts*, 165 A.D.2d 382, 384-85 (1st Dep't 1991) (concluding that attorneys had a constitutional right to wear a "button with a political slogan" in the courtroom during a pretrial proceeding where the court precluded them from doing so because it disagreed with the message expressed).

a. The October 3 order is appropriately tailored to protect Supreme Court's staff from harassment and harm, without undue burden on the parties' speech.

45. Supreme Court's October 3 order properly prohibited the parties in the underlying proceeding from making public statements about members of its staff to protect their safety and the progress of its proceedings. *See* Ex. F, Oct. 3 Tr. at 270.

46. Supreme Court adequately demonstrated the need to restrain the parties' speech. Contrary to petitioners' arguments (Pet. ¶¶ 193, 198), the need to protect the court's staff and manage the trial were well founded. The court issued the October 3 order only after learning that Mr. Trump had made "a disparaging, untrue and personally identifying [social-media] post about a member of [the court's] staff." Ex. F, Oct. 3 Tr. at 270. The post included a picture of the court's principal law clerk with a U.S. Senator, insinuated that the law clerk had a romantic relationship with him, and attacked her integrity. *See* Ex. 2, Truth Social Posts at 1. This personally identifying post that targeted a member of the court's staff not only was posted online but also was emailed to millions of other recipients. *See* Ex. F, Oct. 3 Tr. at 270; *id.*, Oct. 20 Tr. at 2023.

47. Supreme Court reasonably found that such posts put its staff at risk of harassment and harm, *see* Rules of the Chief Administrator § 130-1.1(c)(2), creating a "'reasonable likelihood' of a serious and imminent threat to the administration of justice." *Cooperman*, 116 A.D.2d at 292. As the court's public-safety department has explained, as a result of Mr. Trump's misconduct, "the threats, harassment, and disparaging comments increased exponentially and also were now being directed at the judge's law clerk." Hollon Aff. ¶ 5. As the court later explained, it became "inundated with hundreds of harassing and threat[en]ing phone calls, voicemails, emails, letters, and packages." Ex. J, Nov. 3 Order at 2. In light of these harassing and threatening communications, the court properly concluded that any purported constitutional right of the parties

to engage in personal attacks on its staff were outweighed by the need to protect its staff and ensure the progress of trial.

48. Supreme Court's order was especially appropriate because of Mr. Trump's pattern of similar conduct in other trials where he is a defendant. For example, in the criminal prosecution of Mr. Trump pending in the federal district court in Washington, D.C., the court imposed a similar order on Mr. Trump after he made personally identifying and disparaging statements on social media about individuals involved in those proceedings. The court there specifically determined that Mr. Trump's "statements pose sufficiently grave threats to the integrity of these proceedings that cannot be addressed by alternative means." Order at 3, *United States v. Trump*, No. 23-cr-257 (D.D.C. Oct. 17, 2023), ECF No. 105, *appeal pending*, No. 23-3190 (D.C. Cir.).[4] As that court found, "[u]ndisputed testimony . . . demonstrates that when [Mr. Trump] has publicly attacked individuals . . . those individuals are consequently threatened and harassed." *Id.* at 2. For example, after Mr. Trump attacked a government official in charge of election integrity on social media, the official received death threats and had to evacuate their home. *See* Compl., *Krebs v. Trump*, No. 484243V (Md. Cir. Ct. Montgomery County Dec. 8, 2020). The former Lieutenant Governor of Georgia also received death threats after Mr. Trump attacked him on social media. *See* MSNBC, Morning Joe, *Georgia's Lieutenant Governor Won't Seek Reelection, Turns Focus to GOP 2.0* (May 18, 2021), https://www.msnbc.com/morning-joe/watch/georgia-s-lieutenant-governor-won-t-seek-reelection-turns-focus-to-gop-2-0-112276037799.

49. Mr. Trump has continued this pattern in the underlying trial proceedings here. In addition to the social-media posts that prompted the October 3 order, Mr. Trump has repeatedly

[4] The federal court of appeals in Washington, D.C. issued an administrative stay of that order on November 3, 2023, and has heard argument in the appeal as of November 20. *See* Order, *United States v. Trump*, No. 23-3190 (D.C. Cir. Nov. 3, 2023), ECF No. 2025399.

and routinely attacked the judge, the Attorney General, witnesses, and others involved in the trial. See *supra* ¶¶ 9-32. For instance, in the past weeks, Mr. Trump has called for the judge and the Attorney General to be criminally prosecuted and reposted an alarming call for a citizen's arrest of those individuals. *See* Ex. 2, Truth Social Posts at 4; Alison Durkee, *Trump Escalates Attacks On Judge, NY Attorney General—Shares Post Urging They Face 'Citizen's Arrest'*, Forbes (Nov. 14, 2023), https://www.forbes.com/sites/alisondurkee/2023/11/14/trump-shares-suggestion-for-ny-judge-and-attorney-general-to-face-citizens-arrest-latest-attack-during-fraud-trial/. Supreme Court thus reasonably concluded that the October 3 order was necessary to protect the safety of its staff—civil servants who support the judge presiding over the trial. *See* Ex. F, Nov. 2 Tr. at 3396.

50. The October 3 order is also properly limited to safeguarding the important interests of protecting the safety of Supreme Court's staff and preserving the fairness and integrity of the trial. *See Cooperman*, 116 A.D.2d at 294. The only topic that the October 3 order prohibits is comments about members of the court's staff. The October 3 order does not prohibit the parties (or anyone else) from publicly discussing any aspect of the case, commenting on the trial or the court itself, or even making comments about the judge or the Attorney General—broad leeway of which Mr. Trump has taken extensive advantage. *See KPNX Broadcasting Co. v. Arizona Superior Ct.*, 459 U.S. 1302, 1306 (1982) (Rehnquist, J.) (denying stay because orders did "not prohibit the reporting of any facts on the public record" and because "trial has never been closed, and all the proceedings may be reported and commented upon").

51. Petitioners miss the mark in arguing (Pet. ¶ 215) that the October 3 order cannot further an important interest because this is a bench trial rather than a jury trial. As this Court has explained, there are important interests other than protecting the jury that can "justify a reasonable

limitation on free speech," including the "privacy interests" of individuals involved in the trial proceedings. *Matter of Fischetti*, 44 A.D.3d at 93.

52. The October 3 order is also not overbroad, as petitioners baselessly claim. *See* Pet. ¶¶ 192-194. Courts have approved of far broader orders prohibiting extrajudicial speech about a case to protect the integrity of the proceedings. *See, e.g.*, *Brown*, 218 F.3d at 430 (order prohibiting "[s]tatements or information intended to influence public opinion regarding the merits of this case" (quotation marks omitted)); *In re Stone*, 940 F.3d 1332, 1336, 1338 (D.C. Cir. 2019) (orders required the defendant "not to discuss the case in any way"); *In re Dow Jones.*, 842 F.2d at 605-06 (order that, with the exception of two narrow carve-outs, "prohibits virtually all other extrajudicial speech relating to the" case); *United States v. Tijerina*, 412 F.2d 661, 663 (10th Cir. 1969) (contempt convictions for defendants who violated an order prohibiting trial participants from making public statements regarding "the merits of the case, the evidence, actual or anticipated, the witnesses or rulings of the Court"); Order, *United States v. Bankman-Fried*, No. 1:22-cr-673 (S.D.N.Y. July 26, 2023), ECF No. 180 (order precluding public discussion of "anything about the case"). The October 3 order is far narrower than these orders.

53. Moreover, the October 3 order is far narrower than other orders that this Court and other courts have deemed overbroad. For example, in *Rothwax*, this Court rejected an order that prohibited any discussion of "th[e] case or any subject aspect thereof, or decision relating thereto with the press or media" except for certain scheduling matters. 143 A.D.2d at 592. (quotation marks omitted). Similarly, in *Cooperman*, the Second Department rejected an order that prohibited attorneys "from speaking to the news media on any matters related to the trial." 116 A.D.2d at 293; *see Cleveland*, 175 A.D.3d at 1019 (rejecting order that prohibited parties from "making extrajudicial statements about the action or the underlying facts in a public forum or in front of the

media"). Here, the October 3 order does not preclude discussion of the case except for statements about Supreme Court's staff and is thus properly "limited solely to information or statements which might be likely to impugn the fairness and integrity of the trial." *Cooperman*, 116 A.D.2d at 294. Contrary to petitioners' arguments (Pet. ¶¶ 193, 212), the court was not required to identify a specific threat to a member of its staff ; courts have acknowledged "the 'necessity' of some 'speculation' and the weighing of 'factors unknown and unknowable' confronting a trial judge" in equivalent situations. *In re Russell*, 726 F.2d 1007, 1011 (4th Cir. 1984) (quoting *Nebraska Press*, 427 U.S. at 563); *see Brown*, 218 F.3d at 431. In any event, as the court explained, it has been "inundated with hundreds of harassing and threat[en]ing phone calls, voicemails, emails, letters, and packages" during the trial. Ex. J, Nov. 3 Order at 2. And the court's public-safety department has found the ongoing threats "to be serious and credible and not hypothetical or speculative." Hollon Aff. ¶ 8.

54. Supreme Court also properly held that no less restrictive alternatives were available to protect its staff's safety and the integrity of the trial. Indeed, before it issued the October 3 order, the court had warned petitioners that personal attacks on the court's staff would not be tolerated, but the warning was disregarded. Ex. F, Oct. 3, Tr. at 270. And Mr. Trump's subsequent conduct confirms that he will not voluntarily refrain from attacking the court's staff. The October 3 order warned the parties that any violation would result in sanctions, *id.* at 271, but Mr. Trump failed to remove the offending social-media post from his website and made additional comments about the principal law clerk to the press, including stating that she is "very partisan," see *supra* ¶ 18.

55. The October 3 order is not unconstitutionally vague either. *See* Pet. ¶¶ 217-19. A restraint on speech is vague only when it "fails to provide a person of ordinary intelligence with a reasonable opportunity to know what is prohibited, and it is written in a manner that permits or

encourages arbitrary or discriminatory enforcement." *Matter of Independent. Ins. Agents & Brokers of N.Y., Inc. v. New York State Dept. of Fin. Servs.*, 39 N.Y.3d 56, 63-64 (2022) (quotation marks omitted). Here, the October 3 order—which "forbid[s] all parties from posting, emailing, or speaking publicly about any members of [the court's] staff, *see* Ex. F, Oct. 3 Tr. 271—is quite clear. Courts have rejected such vagueness challenges to far broader orders in other cases. *See, e.g.*, *Brown*, 218 F.3d at 430 (rejecting vagueness challenge to order that prohibited "'[s]tatements or information intended to influence public opinion regarding the merits of this case'"); *Levine v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 764 F.2d 590, 598-99 (9th Cir. 1985) (rejecting vagueness challenge to order that prohibited "any statements to members of the news media concerning any aspect of this case that bears upon the merits to be resolved by the jury").

56. Petitioners miss the mark in arguing (Pet. ¶¶ 219-25) that the October 3 order is vague because Supreme Court concluded that it applied to Mr. Trump's statement to the press that "[t]his judge is a very partisan judge with a person who's very partisan sitting alongside him, perhaps even more partisan than he is." *See* Ex. H, Oct. 26 Order at 1. That Mr. Trump's statement omits the principal law clerk's name does not mean that he was referring to someone other than the court's staff. As the court reasonably concluded, Mr. Trump's statement "[q]uite clearly" referred to the judge's principal law clerk "who sits alongside me on the bench." *Id.*

57. Contrary to petitioners' arguments (Pet. ¶¶ 195, 205, 211-214), the constitutionality of the October 3 order is not altered by Mr. Trump's personal choice to run for President of the United States. Petitioners assert that the October 3 order prevents Mr. Trump from engaging in "core political speech" (Pet. ¶¶ 209, 214), but it does no such thing. As noted, the October 3 order does not prevent Mr. Trump from offering his opinion on the case, the judge, the Attorney General, or even the witnesses—and he has done so frequently. Because the October 3 order does not violate

Mr. Trump's right to free speech, petitioners cannot rely on (Pet. ¶ 211; *see id.* ¶ 14) a purported right of the public to "hear, respond to, and amplify" Mr. Trump's speech. *See In re Dow Jones*, 842 F.2d at 608 (explaining that the public's "right to receive speech does not enlarge the rights of those directly subject to [a] restraining order").

b. The November 3 Order is appropriately tailored to protect the orderly administration of the trial proceedings from disruptive and unprofessional conduct of petitioners' attorneys.

58. Furthermore, Supreme Court's November 3 order properly prohibited counsel for all parties from "making any public statements, in or out of court, that refer to *any* confidential communications, in any form, between" the court's staff and the court. *See* Ex. J, Nov. 3 Order at 3.

59. As it applies to statements or arguments made by counsel in the courtroom during the trial, the November 3 order was well within Supreme Court's broad discretion to "regulate the conduct of the trial in order to achieve a speedy and unprejudiced disposition of the matters at issue in a setting of proper decorum." C.P.L.R. 4011. The court has "broad authority to control the courtroom, rule on the admission of evidence, elicit and clarify testimony, expedite the proceedings and to admonish counsel and witnesses when necessary." *Pramer*, 123 A.D.3d at 474 (quotation marks omitted). Here, as the court explained, it imposed the November 3 order only after petitioners' counsel made "inappropriate remarks about [the court's] Principal Law Clerk, falsely accusing her of bias against them and of improperly influencing the ongoing bench trial." Ex. J. Nov. 3 Order at 3. For example, the attorneys argued that it was improper for the principal law clerk to sit next to or confer with the judge during the trial, particularly by passing the judge notes. *See, e.g.*, Oct. 25 Tr. at 2308, 2416, 2419-20; *id.*, Oct. 26 Tr. at 2470-71; *id.*, Oct. 31 Tr. at 1911; *id.*, Nov. 1 Tr. at 3061; *id.*, Nov. 2 Tr. at 3396, 3398-99, 3404. Supreme Court repeatedly rejected these arguments, explaining that the well-established and lawful role of a law clerk is to

assist and provide advice to the court. *See id.*, Nov. 2 Tr. at 3411. Yet petitioners' counsel would not refrain from repeating the same arguments in a vexatious and unprofessional manner. *See, e.g.*, *id.*, Oct. 25 Tr. at 2421; *id.*, Nov. 2 Tr. at 3400-01.

60. Given these circumstances, Supreme Court properly prohibited petitioners' counsel from continuously reraising previously rejected arguments that targeted the principal law clerk. *See Ultracashmere House. v. Kenston Warehousing Corp.*, 166 A.D.2d 386, 387 (1st Dep't 1990) (holding that courts have authority to limit vexatious and highly unprofessional litigation); *see also Gentile*, 501 U.S. at 1071 ("An attorney may not, by speech or other conduct, resist a ruling of the trial court beyond the point necessary to preserve a claim for appeal."). "[W]hen viewed in their proper context," the court's November 3 order "reveal[s] nothing more than an evenhanded attempt 'towards focusing the proceedings on the relevant issues and clarifying facts material to the case in order to expedite the trial.'" *Solomon v. Meyer*, 149 A.D.3d 1320, 1321 (3d Dep't 2017) (quotation marks omitted).

61. Contrary to petitioners' arguments (Pet. ¶¶ 242-50), the November 3 order's application to in-court statements does not violate their counsel's right to free speech. An attorney's free-speech rights in the courtroom are "extremely circumscribed," *Gentile*, 501 U.S. at 1071, and essentially nonexistent as it pertains to legal arguments, *see Mezibov*, 411 F.3d at 719 ("[M]yriad procedural and evidentiary rules, along with a liberal allowance for judicial discretion, operate to severely limit what an attorney can say in the courtroom."). Indeed, petitioners do not cite a single case applying the First Amendment to restrictions placed on an attorney's in-court statements or arguments.

62. In any event, even if counsel's in-court conduct implicates any right to free speech, the November 3 order does not violate it. The November 3 order does not prevent counsel from

raising any other objections, presenting their defenses, or calling or cross-examining witnesses. Instead, the November 3 order prohibits counsel from raising arguments concerning a single topic—communications between the court and its staff—and Supreme Court imposed that restriction only because counsel would not refrain from reraising the argument after the court had already considered it and rejected it. The right to free speech does not give attorneys the ability to repeatedly raise arguments that have been rejected and have become vexatious and unprofessional. *See Gentile*, 501 U.S. at 1071; *Mezibov*, 411 F.3d at 719; *see also KPNX Broadcasting*, 459 U.S. at 1306 ("I do not have the slightest doubt that a trial judge may insist that the only performance which goes on in the courtroom is the trial of the case at hand.").

63. Petitioners' other arguments concerning the November 3 order's application to in-court statements are also meritless. The November 3 order does not "contravene[] the principles of absolute privilege" (*see* Pet. ¶ 238), which are inapposite. Absolute privilege is a doctrine that protects attorneys from liability for defamation for statements made during court proceedings. *See Front, Inc. v. Khalil*, 24 N.Y.3d 713, 718 (2015). It does not limit the broad authority the trial court itself to control its own courtroom or to regulate the conduct of attorneys practicing before it. *See* C.P.L.R. 4011; *Pramer*, 123 A.D.3d at 474.

64. The November 3 order also does not "prevent[] counsel from abiding by their ethical obligations to advocate for their clients" (*see* Pet. ¶ 240) or punish them for making a record (*see* Pet. ¶ 237). As Supreme Court explained, petitioners' counsel have not been prevented in any way from making a record regarding alleged bias or misconduct by the court or its staff—even though these arguments are unsubstantiated and plainly baseless. *See* Ex. J, Nov. 3 Order at 2 (explaining that "[d]efendants' attorneys have had ample opportunity to make their record, and they have at length" and their "record is now fully preserved for the duration of the proceedings").

Indeed, even after the November 3 order was issued, petitioners were able to file a proposed order to show cause for a mistrial motion that raised many of those same arguments.[5] (*See* Nov. 15 Mot for Mistrial, Sup. Ct. NYSCEF Doc. No. 1634.) And if counsel wish to compulsively count each note passed between the judge and the principal law clerk, they can do so and submit an affirmation to that effect with any future filing. What counsel has no license to do is to use the pretense of making a record to disrupt trial and repeat arguments that the court has already considered and rejected. *See Pramer*, 123 A.D.3d at 474.

65. To the extent that the November 3 order applies to statements made by the parties' counsel outside the courtroom, it does not violate their free-speech rights for essentially the same reasons that the October 3 order does not violate the parties' free-speech rights (see *supra* ¶¶ 45-57). Like the October 3 order, the November 3 order is extremely limited. The only topic the order prohibits the attorneys from commenting on is Supreme Court's communications with its staff—an exceedingly narrow topic that petitioners' counsel has already discussed at length on the record. *See* Ex. J, Nov. 3 Order at 2. The order does not prevent counsel from publicly commenting on any other aspects of the proceedings. *See id.* And as Supreme Court explained, the same concerns animating the imposition of the October 3 order—threats to and harassment of the court's staff—also animate the November 3 order. *Id.* The court thus reasonably concluded that the November 3 order was necessary in light of counsel's failure to refrain from raising "repeated, inappropriate remarks about [his] Principal Law Clerk." *Id.*; *see Cooperman*, 116 A.D.2d at 294.

[5] Petitioners' reliance on *Matter of Hart (State Commn. on Jud. Conduct)*, 7 N.Y.3d 1 (2006), is misplaced. There, the trial court held an attorney's client in contempt after the attorney ignored the court's directive not to place on the record the circumstances of an incident that took place outside the courtroom between the client and the judge. *Id.* at 4-5. Here, petitioners' counsel have not been prevented from making a record, and none the petitioners have been sanctioned for any statements made by their counsel.

2. In any event, the petition should be denied in this Court's sound discretion.

66. For similar reasons, this Court should deny the petition in its sound discretion because petitioners have failed to demonstrate that they would suffer irreparable harm absent the extraordinary writ of prohibition or that the court's October 3 and November 3 orders cause them any serious speech-related harms that a writ of prohibition would ameliorate. *See Matter of Soares v. Herrick*, 20 N.Y.3d 139, 145 (2012). Indeed, petitioners' delay in bringing the petition should counsel against relief. Petitioners waited weeks to challenge these orders—the first order was issued on October 3 and the second one on November 3, yet petitioners waited until November 16 to seek relief in this Court. Petitioners' inordinate delay in seeking relief itself warrants denying their request.

67. In addition, as noted, Supreme Court has been flooded with "hundreds of harassing and threat[en]ing phone calls, voicemails, emails, letters, and packages." Ex. J, Nov. 3 Order at 2. There is a paramount interest in protecting the court's staff, and the ability of the State's judiciary to function, especially in the "overheated" environment in which the trial is taking place. Ex. G, Oct. 20 Order at 1-2; Ex. F, Oct. 25 Tr. at 2372-73. Those threats endanger "the judge, his chambers staff, and those closely associated around him, including his family," and require the court to expend resources in coordinating with local law enforcement, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security "to devise the appropriate security measures." Hollon Aff. ¶ 4. Indeed, any actualized threat against the court's staff would also have dangerous ramifications for others—it would endanger security personnel charged with protecting the court and counsel, the news media, and the public, all of whom are present in the courtroom.

68. Notably, petitioners' alleged free-speech interests here, if any, are vanishingly slim. As explained, litigants and their attorneys do not have any unfettered right to attack the integrity

of trial participants during an ongoing trial. And the exceedingly narrow scope of the October 3 and November 3 orders means that, at most, those orders have only "some minimal effect" on petitioners' speech rights. *City of Erie v. Pap's A.M.*, 529 U.S. 277, 294 (2000). Indeed, petitioners may comment about Supreme Court, the judge, witnesses, or the substance of the proceedings. As the court made clear, "You can attack me, you can do whatever you want," so long as its staff are not discussed. Ex. F, Nov. 6 Tr. at 3484.

69. Petitioners confusingly contend (Pet. ¶ 204) that a principal law clerk is in effect "a public figure." But a principal law clerk is not "among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs." *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966). As Supreme Court explained, the principal law clerk's primary "function is to aid the judge." Ex. J, Nov. 3 Order at 2 (quoting 22 N.Y.C.R.R. § 100.3(B)(6)(c)). The court stressed that the principal law clerk, much like any law clerk, "does not make rulings or issue orders—I do." Ex. 4, Nov. 17 Decision at 4.

70. Petitioners argue (Pet. ¶¶ 6, 18, 109-14) that they have a continued interest in commenting about the principal law clerk to preserve the appellate record, but that argument is a red herring. As Supreme Court has made clear, petitioners' counsel "have had ample opportunity to make their record, and they have at length" through their "long speeches." Ex. J, Nov. 3 Order at 2. Indeed, the court ruled affirmatively that their "record is now fully preserved for the duration of the proceeding" and for purposes of any appeal. *Id.* Petitioners have even filed a mistrial motion premised largely on their rehashed arguments about the principal law clerk, and the court issued a decision declining an order to show cause on that motion and explaining why it was meritless, without invoking the limitations of the October 3 and November 3 orders. *See* Ex. 4, Nov. 17

Declined Order to Show Cause. Neither petitioners nor their counsel have any cognizable interest in repeating vexatious statements and arguments that have already been considered and rejected.

C. The Court Should Deny Petitioners' Challenge to the October 20 and 26 Orders Sanctioning Mr. Trump.

1. The petition should be denied in this Court's equitable discretion.

71. As an initial matter, this Court should deny the aspect of the petition challenging the October 20 and 26 sanctions orders in its sound discretion. Petitioners cannot show that they will suffer any harm based on the sanctions orders—and the "gravity of the harm" is an important factor to be weighed in considering the extraordinary writ of prohibition. *See Matter of Soares*, 20 N.Y.3d at 145 (quotation marks omitted). Except for Mr. Trump, none of the petitioners was subject to the sanctions orders. They thus have not and will not suffer any harm from those orders, and they do not have standing to assert harm on Mr. Trump's behalf.

72. Nor has Mr. Trump himself shown that he will suffer serious harm without this Court's intervention. Merely needing to pay money is not the sort of injury that supports extraordinary judicial relief. *See Matter of J.O.M. Corp. v. Department of Health of State of N.Y.*, 173 A.D.2d 153, 154 (1st Dep't 1991);*e.g.*, *Wall St. Garage Parking Corp. v. New York Stock Exch., Inc.*, 10 A.D.3d 223, 228-29 (1st Dep't 2004). While Mr. Trump characterizes the $5,000 and $10,000 sanctions as "punitive" (Pet. ¶ 21), he does not claim an inability to pay the fine. Nor could he plausibly do so, when he has already paid the sanctions and when he is an avowed billionaire.

73. Moreover, the broader interest in the "orderly administration of justice" warrants denying the petition. *See Matter of Soares*, 20 N.Y.3d at 145. To the extent petitioners wish to recoup their monetary payments from the New York Lawyers' Fund for Client Protection—which

reimburses clients who lost money because of a lawyer's dishonest conduct—to give back to Mr. Trump, such a result is plainly not in the broader public interest.

2. The October 20 and 26 orders are lawful.

74. This Court should also deny the petition because the sanctions orders are lawful exercises of Supreme Court's authority.

75. *First*, petitioners' arguments are based on the standards for imposing summary civil or criminal contempt (*see* Pet. ¶¶ 130-46), but Supreme Court did not hold Mr. Trump in contempt. Rather, the court appears to have imposed monetary sanctions under § 130-1.1 of the Rules of the Chief Administrator of the Courts and the court's inherent authority. *See Jones v. Camar Realty Corp.*, 167 A.D.2d 285, 286-87 (1st Dep't 1990). In each sanctions order, the court stated that it was imposing a monetary *sanction* or *fine* on Mr. Trump; it did not say that it was holding Mr. Trump in contempt of court. *See* Ex. G, Oct. 20 Order at 2; Ex. H, Oct. 26 Order at 1 (describing October 20 order as imposing "nominal sanction"); *id.* at 2 (imposing "fine of $10,000" for second violation). Indeed, the court contrasted its imposition of monetary sanctions with contempt, explaining that *further* violations of the October 3 order might subject Mr. Trump to contempt of court. *See* Ex. G, Oct. 20 Order at 2.

76. Supreme Court acted well within its broad discretion in imposing monetary sanctions for Mr. Trump's misconduct. Under § 130-1.1, the court has broad discretion to impose "financial sanctions against either an attorney or a party" in any civil action or proceeding, *id.* § 130-1.1(b), for engaging in "frivolous conduct," *id.* § 130-1.1(a). Frivolous conduct is defined to include, inter alia, conduct undertaken primarily "to harass or maliciously injure another." *Id.* § 130-1.1(c)(2); *see Jones*, 167 A.D.2d at 286. In determining whether conduct was frivolous, a court considers, among other issues, the circumstances under which the conduct took place,

including "whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party." Rules of the Chief Administrator § 130-1.1(c). Courts may impose sanctions under § 130-1.1 either upon a motion or "upon the court's own initiative, after a reasonable opportunity to be heard." *Id.* § 130-1.1(d). The form of the opportunity to be heard "shall depend upon the nature of the conduct and the circumstances of the case." *Id.* The court may impose sanctions up to the amount of $10,000 for any single occurrence of frivolous conduct. *Id.* § 130-1.2.

77. Courts have repeatedly determined that litigants or counsel who made harassing, inappropriate, or abusive statements have engaged in frivolous conduct warranting sanctions under § 130-1.1. As this Court has explained, "sanctions and costs have been imposed for insulting behavior to opposing counsel, baseless ad hominem attacks against the court and opposing party, and mischaracterization of the record." *Matter of Kover*¸134 A.D.3d 64, 74 (1st Dep't 2015). For example, the Court of Claims imposed sanctions on a litigant who sent a letter impugning the integrity of court staff and opposing counsel by claiming, among other things, that the court's chief clerk had refused to provide claimant's motions to the judge; that the court stenographer had threatened claimant; and that an OAG attorney had offered to have sex with claimant. *See Faison v. State of New York*, 176 Misc. 2d 808, 809 (Ct. Claims 1998). The court explained that such statements were sanctionable because they constituted "a groundless attack on the motives of the Chief Clerk" and were "plainly intended to harass and demean" opposing counsel. *Id.* at 810.

78. Similarly, this Court and others have sanctioned litigants or attorneys for pursuing disrespectful ad hominem attacks against the integrity or independence of judges or the court. *See, e.g.*, *Nachbaur v. American Tr. Ins. Co.*, 300 A.D.2d 74, 75 (1st Dep't 2002) (sanctions for "baseless, serious accusations against the motion court"); *Jones*, 167 A.D.2d at 286-87 (sanctions for ad

hominem attacks on judges, including claiming they had never read the appeal papers or were illegally appointed). And courts have sanctioned litigants for sending harassing and threatening communications to opposing counsel, *see Jermosen v. State*, 178 A.D.2d 810, 811 (3d Dep't 1991), or using disparaging terms or gestures during a deposition, *see Principe v. Assay Partners*, 154 Misc. 2d 702, 704 (Sup. Ct. N.Y. County 1992) (referring to counsel as "little lady" or "young girl").

79. Moreover, to ensure their proper functioning, courts "are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates, and, as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution." *CDR Créances S.A.S. v. Cohen*, 23 N.Y.3d 307, 318 (2014) (quoting *Anderson v. Dunn*, 19 U.S. 204, 227 (1821)). This "inherent authority," which has been recognized in New York for over a century, incudes "all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective." *Matter of Diane D.*, 161 Misc. 2d 861 (Sup. Ct. N.Y. County 1994) (quotation marks omitted); *see Jones*, 167 A.D.2d at 287. Thus, while courts may not craft their own sanctions to address a systemic problem that requires a plenary rule, they have inherent authority to impose sanctions when needed to control its order of business. *Matter of Diane D.*, 161 Misc. 2d at 863-64; *see Matter of A.G. Ship Maintenance Corp. v. Lezak*, 69 N.Y.2d 1, 5-6 (1986) (concluding that systemic problem of frivolous filings required plenary sanctions rule, while acknowledging that "some matters . . . deal with the inherent nature of the judicial function").

80. Here, Mr. Trump's inappropriate targeting of Supreme Court's principal law clerk, using demeaning language and baselessly impugning her integrity, easily qualifies as sanctionable conduct under § 130-1.1 or the court's inherent authority. Mr. Trump used disparaging and highly

inappropriate language in his first social-media post, which personally identified the clerk, falsely claimed that she was "Schumer's girlfriend," and stated that it was "disgraceful" that she was purportedly "running the case against me." Ex. 2, Truth Social Posts at 1. These offensive remarks were plainly aimed at harassing and maligning the clerk, whether they "sprang from a misogynous or other maladapted point of view," such as a tactic to make the principal law clerk uncomfortable or to anger the court. *See Principe*, 154 Misc. 2d at 708. Indeed, the subsequent unprofessional and vexatious conduct of petitioners' counsel, including continuing to comment about the principal law clerk throughout the trial and then filing a frivolous mistrial motion based nearly entirely on baseless claims about the principal law clerk, makes plain that petitioners—and, even more shockingly, their counsel—are harassing her as part of an improper tactic to disrupt trial and undermine the proceedings.

81. The surrounding circumstances further supported the imposition of sanctions. The offensive targeting of the court's staff member was not an isolated incident. The disparaging post was emailed to millions of recipients. On the same day, Mr. Trump again harassed and demeaned the court's principal law clerk by stating to the media that "[t]he only one who hates Trump more is his associate up there, this person that works with him, and she's screaming into his ear on almost every time we ask a question. It's a disgrace." See *supra* ¶ 10. And Mr. Trump's lawyers, who have ethical and professional obligations to the court, had already by that point begun making inappropriate comments about the court's clerk—and continued doing so. *See, e.g.*, Ex. F, Oct. 25 Tr. at 2308, 2416, 2419-20; *id.*, Oct. 26 Tr. at 2470-71; *id.*, Oct. 31 Tr. at 2911; *id.*, Nov. 1 Tr. at 3061; *id.*, Nov. 2 Tr. at 3396, 3398-99, 3404. Moreover, Supreme Court imposed sanctions only after Mr. Trump disregarded warnings to stop the insulting and baseless targeting of the court's staff.

82. There is no merit to Mr. Trump's contention (*see* Pet. ¶ 12) that his reference to the person "sitting alongside" the judge was describing a witness rather than the principal law clerk. Supreme Court conducted a hearing and found Mr. Trump's testimony on this score to be not credible—a factual finding that should be accorded deference. In any event, petitioners' contention is implausible. The witness box is not located alongside where the judge sits but rather separated from where the judge sits. *See* Ex. H, Oct. 26 Order at 2. And most glaringly, one of petitioners' own oft-repeated complaints, including in their petition here, is that the principal law clerk sits alongside the judge. *See* Pet. ¶ 11; *e.g.*, Ex. F, Oct. 25 Tr. at 2308, 2416, 2419-20; *id.*, Oct. 26 Tr. at 2470-71; *id.*, Nov. 2 Tr. at 3398-99.

83. Contrary to Mr. Trump's contentions (Pet. ¶¶ 155, 166), he received sufficient due process before sanctions were imposed. Section 130-1.1 authorizes the court to impose sanctions on its own initiative, after an opportunity to be heard that is reasonable under the circumstances—which Mr. Trump plainly received. *See* Rules of the Chief Administrator § 130-1.1(d); *Matter of Gordon v. Marrone*, 202 A.D.2d 104, 110 (2d Dep't 1994). For example, before issuing the October 20 order, the court informed petitioners' counsel that they should be prepared to address the offensive post that had remained on Mr. Trump's campaign website, provided counsel with an opportunity to consult Mr. Trump, and allowed them to present their arguments about the issue on the record. There was no need for any further hearing or evidence (*see* Pet. ¶¶ 152, 164) because there was no dispute that Mr. Trump was ultimately responsible for the initial post or that it had remained on his own website for 17 days after the October 3 order. *See Matter of Gordon*, 202 A.D.2d at 111 (evidentiary hearing unnecessary prior to imposing sanctions when "pertinent material facts were not disputed"). And Mr. Trump similarly received ample opportunity to be heard before the October 26 sanctions order issued. For example, the court gave Mr. Trump time

to confer with his counsel, allowed Mr. Trump's counsel to present his argument on the record, and held a brief hearing at which Mr. Trump testified. *See* Ex. F, Oct. 25 Tr. at 2374, 2415-23. Mr. Trump thus had a reasonable opportunity to respond, and the court was entitled to find Mr. Trump's response not credible.

84. *Second*, and in any event, the sanctions orders can also be supported under Supreme Court's authority to find litigants in civil contempt. Under the Judiciary Law, disobedience of the court's lawful orders may result in civil contempt. *See* Judiciary Law § 753(A)(3) (civil contempt). Although petitioners' focus almost exclusively on these and related statutory contempt provisions, they fail to recognize the full scope of the court's authority. For civil contempt, courts also retain an "inherent authority to impose remedial fines for failure to obey their orders." *Baralan Intl. v. Avant Indus.*, 242 A.D.2d 226, 227 (1st Dep't 1997); *see* Judiciary Law § 753(A)(8); *People ex rel. Munsell v. Court of Oyer & Terminer of N.Y.*, 101 N.Y. 245, 249 (1886). This Court has indeed emphasized, as to civil contempt, that a "financial sanction to compel compliance [can be] a proper exercise of the court's discretionary power." *Matter of People v. Trump*, 213 A.D.3d 503, 504 (1st Dep't 2023). This inherent civil-contempt authority to sanction disobedience of its judgments "is not exhausted until the purpose for which the judgment was rendered has been completely attained." *De Lancey v. Piepgras*, 141 N.Y. 88, 96-97 (1894).

85. Here, Mr. Trump twice violated Supreme Court's October 3 order. There is no dispute that the October 3 order expressed a clear and unequivocable mandate prohibiting further statements about the principal law clerk and that Mr. Trump knew about the October 3 order. *See El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 29 (2015). And the court properly concluded that it appeared "with reasonable certainty, that the order ha[d] been disobeyed." *See id.* (quotation marks omitted). Contrary to Mr. Trump's contention that the sanctions were purely "punitive" and had

to comply with the statutory procedures for criminal contempt (Pet. ¶ 21), the court issued the sanctions for the civil remedial purpose of trying to obtain Mr. Trump's compliance with the October 3 order for the remainder of the trial, and thereby to protect the safety of the court's staff and to prevent disruption to the orderly administration of the proceedings, which would prejudice OAG's ability to proceed with their case. *See* Ex. G, Oct. 20 Order at 2; Ex. H, Oct. 26 Order at 1.

86. Finally, Mr. Trump's arguments about summary contempt findings are misplaced because, as explained, he received ample notice and opportunity to defend himself—including the ability to testify about the comment that resulted in the October 26 sanctions order. And the judge was not disqualified from ruling on the misconduct, as Mr. Trump's comments involved the court's staff rather than "disrespect to or vituperative criticism of the judge." *See* Rules of App. Div., 1st Dept. (22 N.Y.C.R.R.) § 604.2(d)(1). Indeed, the October 3 order does not preclude Mr. Trump from speaking about the judge or Supreme Court.

WHEREFORE, this Court should either dismiss or deny petitioners' C.P.L.R. article 78 petition challenging Supreme Court's orders dated October 3, 20, and 26, and November 3, 2023.

Dated: New York, New York
December 6, 2023

By: _____

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Exhibit 1

Supreme Court of the State of New York
Appellate Division, First Judicial Department

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

Susanna Molina Rojas
Clerk of the Court

Exhibit 2

Petitioner Donald J. Trump's Truth Social Posts

October 3, 2023:

← Truth Details

Trending

Donald J. Trump
@realDonaldTrump

Schumer's girlfriend, Alison R. Greenfield, is running this case against me. How disgraceful! This case should be dismissed immediately!! instagram.com/greenfield4civil...

Judicial Protest
@JudicialProtest

Why is Judge Engoron's Principal Law Clerk, Allison R. Greenfield, palling around with Chuck Schumer? 👇

November 16, 2023:

Truth Details
2.4k Replies

Donald J. Trump
@realDonaldTrump

Judge Arthur Engoron has just been overturned (stayed!) by the New York State Appellate Division (Appeals Court), for the 4th TIME (on the same case!). His Ridiculous and Unconstitutional Gag Order, not allowing me to defend myself against him and his politically biased and out of control, Trump Hating Clerk, who is sinking him and his Court to new levels of LOW, is a disgrace. They are defending the Worst and Least Respected Attorney General in the United States, Letitia James, who is a Worldwide disgrace, as is her illegal Witch Hunt against me. The Radical and Unprecedented actions of Judge Engoron will keep BUSINESSES and JOBS forever out of New York State. I have done NOTHING WRONG, my numbers were low, not high, I have a COMPLETE DISCLAIMER CLAUSE, their Star Witness admitted he lied and made up this Fake case against me, and the the Attorney General used a "Get Trump" platform in order to run for A.G. & Governor (she failed!). This wicked attack on Democracy must be ended, NOW!

8.06k ReTruths | **26.1k** Likes 11/16/23, 6:44 PM

November 18, 2023:

Truth Details
886 Replies

Donald J. Trump
@realDonaldTrump

"Engoron's 'Co-Judge' Law Clerk, Allison Greenfield, Attended Anti-Trump Events Endorsing Biden & Tish James, Spurred on By Impeachment Leader Dan Goldman." thenationalpulse.com/2023/11/1...

The National Pulse+
Engoron's 'Co-Judge' Law Clerk, Allison Greenfield, Attended Anti-Trump Events

Allison Greenfield, law clerk to Judge Arthur Engoron, has been recently involved with leading anti-Trump organizations in New York City, and has even

2.56k ReTruths | **5.81k** Likes 11/18/23, 12:20 PM

Truth Details
628 Replies

Donald J. Trump
@realDonaldTrump

The Judge committed FRAUD in my Trial by valuing my assets at a tiny fraction of what they are really worth in order to make his FAKE CASE against me - And everyone, including his crooked and highly partisan Law Clerk, Allison Greenfield, and Racist A.G. Letitia James, knows it. The Judicial System in New York State is in chaos and disrepute over this horribly handled Persecution of a Political Opponent. The World is watching this illegal Witch Hunt. Engoron, James, and Greenfield should be sanctioned and prosecuted over this complete and very obvious MISCARRIAGE OF JUSTICE!!!

2.73k ReTruths | 8.62k Likes 11/18/23, 2:45 PM

Truth Details
841 Replies

Donald J. Trump
@realDonaldTrump

A Rigged Trial going on against me by a corrupt N.Y. State Attorney General and an out of control Judge. They brought Values down to a FRACTION of what they are really worth, like Mar-a-Lago, and then called me a Fraud. They are the FRAUDSTERS, and the whole system is CORRUPT. I didn't even include one of my most valuable assets, BRAND VALUE, in my Financial Statements. Also, this Psycho Judge refuses to acknowledge the fact that I have a 100% Disclaimer Clause on the First Page of my Statements - "DO YOUR OWN DUE DILIGENCE." But it all doesn't matter, because regardless of what we say to show our TOTAL INNOCENCE, and it has been proven in many ways, and many times over, this political, Trump Hating Judge, together with his horrendous, seething with ANGER Law Clerk, with her illegal campaign contributions, will find me guilty as hell. NO JURY ALLOWED, A STATUTE NEVER USED FOR THIS BEFORE, A RIGGED TRIAL, A RACIST & CORRUPT ATTORNEY GENERAL, A TRUMP HATING JUDGE, ELECTION INTERFERENCE!

2.54k ReTruths | **8.38k** Likes 11/21/23, 6:37 PM

November 29, 2023

Exhibit 3

In The Matter Of:

People of the State of New York v.
Donald J. Trump, et al - CORRECTED

October 3, 2023

So Ordered

AE 10/26/2023

HON. ARTHUR F. ENGORON J.S.C.

OCT 26 2023

Original File People v. Trump 10-3-2023 - CORRECTED.txt

1 of 3.

through the document, please.
Mr. Bender, do you recognize this document?
A The document --
Q What's that?
A Repeat the question, please?
Q Do you recognize this document?
A Yes, I do.
Q What is this document?
A This is the representation letter for the DJT -- the compilation of the personal financial statement of Donald J. Trump, as of June 30, 2020.
MR. WALLACE: If we could go to the bottom of this document.
Q Do you recognize the signature on the left hand side of the screen?
A Yes, I do.
Q Whose signature is that?
A It's Allen Weisselberg.
Q And in what capacity is Mr. Weisselberg signing this document?
A Chief Financial Officer and Trustee of the Donald J. Trump Revocable Trust.
Q And do you recognize the signature on the right hand side?
A Yes, I do.

Q Whose signature is that?
A That's Donald J. Trump, Junior's signature.
Q And in what capacity is he signing this document?
A Executive Vice President of the Trump Organization, and Trustee of the Donald J. Trump Revocable Trust.
MR. WALLACE: Your Honor, we would ask that this document be entered into evidence?
THE COURT: Granted. It's in evidence.
(Whereupon, Plaintiff's Exhibit 855 was received in evidence.)
Q And Mr. Bender, would Mazars have issued the 2020 Statement of Financial Condition if Mr. Weisselberg and Mr. Trump did not offer these representations?
A No, we would not have.
Q Would Mazars have issued the 2020 Statement of Financial Condition if it knew that any representations contained in this letter were false?
A No, we would not have.
Q Mr. Bender, did you work on Statements of Financial Condition for Mr. Trump in any later years?
A No, we did not.
Q Why not?
A Mazars disengaged from the Trump Organization.
Q And did you have any involvement in the decision to disengage from the Trump engagement?

A No, I did not.
Q After the time that you disengaged from the Trump engagement, did you have any personal contact with Donald J. Trump?
A No, I did not.
Q Before seeing him in the courtroom the last two days, when was the last time you saw Donald J. Trump in person?
A It was before Covid. It was December, 2019.
Q And do you remember in what context that was?
A Yes. Ms. Trump had invited by son to a Christmas party for children, to make ornaments, and I had to get some papers signed by Mr. and Ms. Trump.
Q Since that meeting, did you have any conversations with Mr. Trump?
A No, I have not.
Q Did you have any conversations with Mr. Trump about the decision by Mazars to end the engagement with the Trump Organization?
A No, I did not.
Q Did you have any in-person meetings with Mr. Trump about the decision by Mazars to end to the relationship with the Trump Organization?
A No, I did not.
MR. WALLACE: Your Honor, we reserve our right to re-direct; or cross, if they go beyond the scope of his

testimony. We have no more questions at this time, of Mr. Bender.
THE COURT: Mr. Kise, do you want five minutes to cross exam?
MR. KISE: Do we want to -- just, probably better to just take our break.
THE COURT: I thought you would say that. Give me one second.
(Whereupon, there was a pause in the proceedings.)
THE COURT: Okay. We are going to resume at 2:15. Have a good lunch, everybody.
(Whereupon, a recess was taken.)
* * * * * *
THE COURT: Welcome back, everyone.
This morning, one of the defendants posted, to a social media account, a disparaging, untrue and personally identifying post about a member of my staff. Although I have since order the post deleted, and apparently it was, it was also emailed out to millions of other recipients. Personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them, under any circumstances. Yesterday, off the record, I warned counsel of this, and this was disregarded. My warning was disregarded.

Consider this statement a gag order forbidding all parties from posting, emailing, or speaking publicly about any members of my staff. Any failure to abide by this directive will result in serious sanctions. I hope I've been very clear.

Okay. Let's get Mr. Bender back.

MR. KISE: While we're waiting, Judge, I'll just observe, this will be better for me because I don't have to stand up and object when there's a document, since it's cross examination.

THE COURT: Are we up to cross?

MR. SUAREZ: Your Honor, I'll take the opportunity to introduce myself. My name is Jesus Suarez. Thank you for admitting me, pro hac vice. I practice with Mr. Kise, in Florida.

THE COURT: Of course. I remember the application.

MR. SUAREZ: I don't speak as nicely as he does.

THE COURT: Well, almost nobody does, so --

MR. SUAREZ: Is my mike on? Now my mike is on.

THE COURT: Is he as good in the office as he is in court?

MR. SUAREZ: He is certainly as charming in the office as he is in court, but he almost never picks up lunch. I don't know what that's about.

That was a joke. Mr. Kise picks up lunch.

MR. KISE: You are forgetting all the dinners.

THE COURT: They don't laugh at mine, either, so.

(Whereupon, the witness resumed the witness stand.)

THE COURT: I'll remind the witness, as usual, that he is still under oath.

THE WITNESS: Thank you.

THE COURT: Counsel, please proceed.

CROSS EXAMINATION

BY MR. BENDER:

Q Mr. Bender, good afternoon.

A Good afternoon.

Q We have met before?

A Good afternoon.

THE COURT: That's a question. Have you met before?

Q We have met before. We met in April of 2023, when I took your deposition on behalf of the defendants. Do you recall, sir?

A Yes, sir.

Q Okay. Mr. Bender, you have been up here testifying for the last day about the Statements of Financial Condition of the 45th President of the United States. Is that correct?

A Yes, sir.

Q And Mr. Bender, preparing the president's Statements of Financial Condition, that was a big job; wasn't it, Mr. Bender?

A It wasn't a big job. It was part of my normal engagement.

Q Part of your normal engagement, I see. In 2011 alone, the first Statement of Financial Condition that the Attorney General had you talk about, the president had over $258 million in cash, Mr. Bender. You don't think that's a significant engagement?

A No, sir.

Q Okay. The president had a company with a brand value of over $10-, maybe even $20 billion, Mr. Bender. That, for you, wasn't a significant engagement?

A No, sir.

Q Okay. Now, is that because you were the in-house accountant at the Trump Organization for over 30 years, Mr. Bender?

A I wasn't the in-house accountant.

Q Okay. So who was?

A The in-house accountant?

Q Yes.

A Mr. McConney, Mr. Weisselberg. They were the in-house accountants.

Q Mr. McConney. Mr. McConney worked with you at Spahr

Lacher?

A Yes, he did.

Q May have been responsible for giving you the name Doc?

A He wasn't, but he kept it going.

Q Did they call you Doc because you were good at documented transactions? That was the Doc?

A No.

Q It's a cute nickname.

Was Mr. Weisselberg an accountant?

A He was an accountant.

Q Mr. Weisselberg is a CPA?

A No. He is not a CPA.

Q Mr. McConney is a CPA?

A No. Mr. McConney is not a CPA.

Q Okay. So who was the in-house accountant at the Trump Organization, Mr. Bender?

A Mr. Weisselberg, and his team.

Q All right. You did work for the Trump Organization for over 35 years; did you not, Mr. Bender?

A Excuse me?

Q You did work for the president and his company, the Trump Organization, for over 35 years?

A Approximately.

Q Approximately. In fact, you came to work with the Trump Organization through a gentlemen named Mr. Mitnick; didn't

Exhibit 4

PRESENT: Engoron
J.S.C.

At I.A.S. Part 37 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the 17 of November, 2023.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC 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, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022
Engoron, J.S.C.

ORDER TO SHOW CAUSE
MS #36

UPON reading and filing the annexed Affirmation of Clifford Robert, dated November 15, 2023 and the exhibits annexed thereto; the Affirmation of David Demarest, dated November 14, 2023 and the exhibits annexed thereto, and the Memorandum of Law in Support of a Mistrial, dated November 15, 2023; and upon all the pleadings and proceedings heretofore had herein, and sufficient cause having been shown,

LET Plaintiff People of the State of New York by Letitia James, Attorney General of the State of New York, by her attorneys, show cause before this Court on IAS Part 37, Room 418 of Supreme Court of the State of New York, County of New York, located at 60 Centre Street, New York, New York on the ___ day of ____ 2023, at _____ o'clock, or as soon thereafter as counsel may be heard, why an order should not be made and entered:

(a) granting a mistrial pursuant to CPLR § 4402; and

(b) granting such other and further relief as this Court deems just and proper.

Sufficient cause therefore appearing, it is

ORDERED that opposition papers, if any, are to be served on Defendants' counsel via e-filing on or before the ___ day of November 2023; and it is further

ORDERED that reply papers, if any, are to be served on Plaintiff's counsel via e-filing on or before the ___ day of November 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 upon Plaintiff be made on or before November____, 2023, by e-filing same shall be deemed good and sufficient service thereof.

Decline to sign for the reasons stated in the order annexed hereto.

AE 11/17/2023

HON. ARTHUR F. ENGORON J.S.C. NOV 17 2023

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **37**

Justice

----------X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC 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, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

----------X

INDEX NO. 452564/2022

MOTION DATE 11/15/2023

MOTION SEQ. NO. 036

ORDER DECLINING TO SIGN DEFENDANTS' PROPOSED ORDER TO SHOW CAUSE

The following e-filed documents, listed by NYSCEF document number (Motion 036) 1633, 1634, 1635, 1636, 1637, 1638

were read on this application for MISTRIAL.

This Court declines to sign defendants' proposed order to show cause seeking permission to move, pursuant to CPLR 4402, for a mistrial.

CPLR 4402 provides that "[a]t any time during the trial, the court, on motion of any party, may order a continuance or a new trial in the interest of justice on such terms as may be just."

Defendants' supporting papers argue a mistrial is necessary because, essentially, the Court has exhibited bias: (1) directly, as I publish a high school alumni newsletter with links to articles referencing this case; and (2) indirectly, through my Principal Law Clerk, Allison Greenfield, whom they allege has violated 22 NYCRR 100.5(C)(2) by exceeding the permissible amount of political donations in a calendar year.

As an initial matter, to the extent that defendants' arguments rely on alleged "facts" based on editorial *opinions* that denounce plaintiff's case (NYSCEF Doc. No. 1634 at 4-5), such opinions are irrelevant and of no evidentiary value.

Equally irrelevant is the "expert affirmation" of yet another retired judge, David Demarest, who states that he was "retained as an expert" by defendants' counsel to opine on the legal basis for a mistrial. (NYSCEF Doc. No. 1635). As I explained in my September 26, 2023 Decision and

Order granting partial summary judgment, legal arguments are for counsel to make, and for judges to decide. Therefore, such expert affidavit is neither necessary not permitted. "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.'" In re Initial Pub. Offering Sec. Litig., 174 F Supp 2d 61, 64 (SD NY 2001) (citing Thomas Baker, The Impropriety of Expert Witness Testimony on the Law, 40 U Kan LRev 325, 352 (1992) (precluding "expert affidavits" on the law); accord, Note, Expert Legal Testimony, 97 Harv LRev 797, 797 (1984) ("it remains black-letter law that expert legal testimony is not permissible"). This Court has already cautioned defendants' counsel against submitting "expert opinions" on purely legal issues. Moreover, as detailed herein, former Judge Demarest's "expert opinion" incorrectly summarizes the relevant law and fails to address all applicable governing ethical guidelines.

Defendants correctly assert that 22 NYCRR 100.5(C)(2) generally limits to $500 the political contributions that members of a judge's staff may make annually. However, defendants, and their "legal expert," fail to cite the applicable unambiguous ethical guidelines for *candidates for judicial office*, found in Judicial Ethics Opinion 98-19.[1] Since 2020, my Principal Law Clerk has been pursuing elected judicial office, as the governing ethical guidelines for New York State law clerks expressly contemplate and permit. Id. Indeed, Judicial Ethics Opinion 98-19 clearly states: "the $500 limitation on political contributions does 'not apply to an appointee's contributions to his or her own campaign.' Nor would there be such a monetary restriction on the purchasing of tickets to political functions.'" Id.

When deducting the price of tickets to political functions that my Principal Law Clerk attended from all the contributions to which defendants cite, the remainder is still well below the ethical and legal permissible annual limit. Defendants further attempt to argue that since my Principal Law Clerk attended events sponsored by certain organizations, also legally and ethically permitted, each and every separate action and position by those organizations should be imputed to her, and by proxy, to me. Such arguments are nonsensical; and in any event, they are a red herring, as my Principal Law Clerk does not make rulings or issue orders – I do.

As I have explained on the record in open court, I have, pursuant to 22 NYCRR 100.3(B)(6)(6)(c) and Advisory Opinion 07-04,[2] an absolute unfettered right to consult with my law clerks in any way, shape, or form I choose. 22 NYCRR 100.3(B)(6)(6)(c) ("A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges").

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[1] Judicial Ethics Opinion 98-19, available at https://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/98-19.htm.

[2] "The relationship between a judge and his/her law clerk is one of particular trust and confidence. Although a judge and his/her law clerk are of course not 'partners,' the two engage in the kind of professional interchange that might be found between long-time colleagues in a law firm." Advisory Opinion 07-04, available at https://www.nycourts.gov/ipjudicialethicsopinions/07-04.htm.

However, as I have made clear over the course of this trial, my rulings are mine, and mine alone. There is absolutely no "co-judging" at play. That I may consult on the trial record, the law, and the facts, before issuing any respective ruling is within my absolute discretion and is in no way evidence that the final decisions are anyone's but mine. Accordingly, there is no factual or legal basis for a mistrial based on these allegations against my Principal Law Clerk.

To the extent defendants argue that I have exhibited bias by stating in Court that "I'm not here to hear what [Donald Trump] has to say," such argument is disingenuous and made in bad faith, as defendants omitted what I said immediately after that sentence, which is "I'm here to hear him answer questions." NYSCEF Doc. No. 1637 at 3510. Indeed, those are precisely the roles of the witness and the finder of fact.

Defendants also take issue with my publishing my high school alumni association newsletter, alleging that it was inappropriate to include links to articles referencing this case, as it creates an appearance of impropriety.

In 2007, I co-founded The Wheatley School Alumni Association[3] and began publishing the Association Newsletter. All issues are free of charge, reach approximately 4,700 email addresses, and contain no advertising. They contain news about the school, its faculty, and primarily, its graduates. When an online publication mentions a graduate, including myself, I include an excerpt and/or a link, usually both. Consequently, I have been the subject of entries concerning this case due to its undeniable newsworthiness.

In fact, because of my job, I have been the subject of a fair amount of news coverage over approximately the past decade. However, I neither wrote nor contributed to any of the articles on which defendants focus, and no reasonable reader could possibly think otherwise.

Many years ago, a legal ethics lecturer told a group of jurists, of which I was one, that "judges do not lose their individual identities or personalities just because they are judges." A significant part of my personality and identity is as a graduate of an institution that I admire, who has taken on the time-consuming but gratifying task of keeping its alumni connected and informed. None of this has anything to do with, much less does it interfere with, my presiding fairly, impartially, and professionally over the instant dispute, which I have now been doing for more than three years, and which I intend to do until its conclusion.

Plaintiff has advocated for a full briefing schedule, emphasizing that although it believes defendants' motion is without merit, it also believes briefing would economize the timing and effects of any appeal. However, in good conscience, I cannot sign a proposed order to show cause that is utterly without merit, and upon which subsequent briefing would therefore be futile.

The Court has considered defendants' remaining arguments, including, but not limited to defendants' assertions that the Court's evidentiary rulings are per se evidence of bias as they allege there are more rulings in favor of plaintiffs than defendants, and finds them to be similarly without merit and/or non-dispositive. I stand by each and every ruling, and they speak for

[3] The Wheatley School, founded in 1956, is an esteemed public school in Old Westbury, New York.

themselves. Finally, as I have made abundantly clear, the basis for overruling objections to allegedly "time-barred evidence" is legally sound, as there is a statute of limitations on claims, not evidence.

Accordingly, this Court hereby declines to sign defendants' proposed order to show cause seeking permission to move, pursuant to CPLR 4402, for a mistrial.

NOV 17 2023 HON. ARTHUR F. ENGORON

11/17/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION		
	☐	GRANTED	☒ DENIED	☐	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE