

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

In the Matter of the Application of

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

Case No. 2023-05859

**AFFIRMATION
IN OPPOSITION**

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

Respondents.

LISA M. EVANS, an attorney duly admitted to practice law before the Courts of the
State of New York, affirms under penalties of perjury, the truth of the following:

1. I am a Deputy Counsel in the Office of Court Administration of the State of New
York, and am of counsel to David Nocenti, attorney for Justice Arthur F. Engoron, a Justice of the
Supreme Court, New York County (“Justice Engoron”). I make this affirmation in opposition to
Petitioners’ request for a stay of the enforcement of the limited gag orders issued by Justice
Engoron in *People of the State of New York v. Donald Trump, et al.*, Index No. 452564/2022.

2. On or about November 16, 2023, Petitioners filed the within Article 78 proceeding by Order to Show Cause, seeking, *inter alia*, a stay of four gag orders issued by Justice Engoron in an ongoing trial before him pending an adjudication of their article 78 petition. On October 3, 2023, Justice Engoron issued a limited gag order prohibiting all parties in the underlying action from making any public statements about members of his staff (See October 3, 2023 Transcript annexed hereto as Exhibit A). On October 20, 2023, the court issued its second order sanctioning Petitioner Donald J. Trump for violating the October 3, 2023 order for failing to remove a disparaging and untrue post of his law clerk from his web site (See October 20, 2023 Order annexed hereto as Exhibit B).

3. The Court issued its third order on October 26, 2023, again sanctioning Donald J. Trump for violating the October 3, 2023 gag order on October 25, 2023, when Mr. Trump, during a break in the trial, made the following statement to the press outside of the courtroom: “This judge is a very partisan judge with a person who’s very partisan sitting alongside him, perhaps even more partisan than he is.” The Court found that this statement was referring to his Principal Law Clerk and in violation of the October 3, 2023 order (See October 26, 2023 Order annexed hereto as Exhibit C). On November 3, 2023, the Court issued a fourth order prohibiting “all counsel from making any public statements, in or out of court, that refer to *any* confidential communications, in any form, between my staff and me.” (See November 3, 2023 Order annexed as Exhibit D).

4. Petitioners’ application for a stay of the gag orders pending the adjudication of the within article 78 proceeding should be denied. Petitioners have no likelihood of success on the merits. By this proceeding, petitioners are seeking the extraordinary remedy of prohibition which “lies only where there is a clear legal right and only when the body or officer acts or threatens to

act without jurisdiction over which it has no power over the subject matter or *where* it exceed[s] its authorized powers in a proceeding over which it has jurisdiction.” *Hirschfeld v. Friedman*, 307 A. D. 2d 856, 858 (1st Dep’t 2003) 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.” *Matter of Hirschfeld* , 307 A. D. 2d at 858.

5. Petitioners cannot establish that they have a clear legal right to the relief sought. Petitioners allege that the gag orders violate their First Amendment Right to free speech. While prior restraints are viewed with a strong presumption against their validity, this Court has recognized that “reasonable limitations may be placed on speech where an important countervailing interest is being served.” *Fischetti v. Scherer*, 44 A.D. 3d 89, 93 (1s Dep’t 2007) Here, as set forth in the Affirmation of Charles Hollon annexed hereto as Exhibit E, it is unquestionable that the conduct engaged in by Petitioners -- the deluge of the court’s chambers phone and the law clerk’s personal cell phone, personal emails and social media accounts with hundreds of threatening, harassing, disparaging and antisemitic messages -- which threatens the safety of court staff is the type of countervailing interest being served that warrants the imposition of the limited gag orders imposed by the Court.

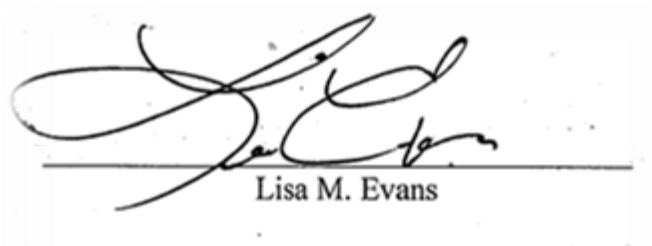
6. The First Amendment does not prohibit courts from limiting speech that threatens the safety of the court’s staff. Courts have broad discretion to control the conduct of litigants and attorneys in ongoing proceedings. *Sheppard v. Maxwell*, 384 U. S. 333, 363 (1966) (“The Court must take such steps by rule and regulation that will protect their process from prejudicial interference.”). Here, the Court reasonably determined that the limited gag orders were necessary for the protection of its staff and to protect the ongoing trial from prejudicial interferences. While

freedom of expression is given wide range, “it 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 courtroom according to legal procedure.” *Sheppard*, 384 U.S. 350-51.

7. Petitioners also seek a stay of the sanctions imposed against Mr. Trump for violating the gag orders. The issue of granting a stay is moot since, as petitioners concede, Mr. Trump already has paid the sanctions. *See*, Petition ¶ 107.

8. Based on the foregoing and for the reasons set forth in the Affirmation in Opposition to Motion for a Stay submitted by the New York State Attorney General, it is respectfully requested that Petitioners’ application for a stay of the gag orders and sanctions imposed for violating the court’s gag orders be denied.

November 22, 2023



Lisa M. Evans