

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

Sufficient cause therefore appearing, it is

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

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

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

Associate Justice
Appellate Division: First Department

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

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In the Matter of the Application of:)

Case No. 2023-05859

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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,)

AFFIRMATION OF URGENCY

)
Petitioners,)

)
For a Judgment Under Article 78 of the CPLR)

)
-against-)

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

)
Respondents.)
)

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

Dated: Uniondale, New York
December 3, 2023


Clifford S. Robert