

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| UNITED STATES OF AMERICA | : | |
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| | : | Criminal No. 21-670 (CJN) |
| | : | |
| v. | : | |
| | : | |
| STEPHEN K. BANNON, | : | |
| | : | |
| <i>Defendant.</i> | : | |

**MOTION IN LIMINE PRECLUDING EVIDENCE OR
ARGUMENT REGARDING ATTACK ON THE U.S. CAPITOL**

Defendant Stephen K. Bannon, by and through his undersigned counsel, respectfully moves *in limine*, pursuant to Federal Rules of Evidence 401 and 403, for a pretrial ruling that precludes the Government from presenting evidence or argument at trial regarding the January 6, 2021, attack on the U.S. Capitol. In support of this Motion, we state as follows:

This Court has the “inherent authority” to determine evidentiary issues in advance of trial. *Barnes v. District of Columbia*, 924 F. Supp. 2d 74, 78 (D.D.C. 2013). Under Rule 401 of the Federal Rules of Evidence, evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence . . . and the fact is of consequence in determining the action.” Fed. R. Evid. 401(a)-(b). Even if evidence is relevant, it must be excluded under Federal Rule of Evidence 403 if its “probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, [or] misleading the jury.” Fed. R. Evid. 403. Evidence is unfairly prejudicial when it has “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *Old Chief v. United States*, 519 U.S. 172, 180 (1997).

On November 12, 2021, Mr. Bannon was charged in a two count Indictment that alleged that his conduct after receiving a subpoena dated September 23, 2021, issued by the Select Committee to Investigate the January 6th Attack on the United States Capitol (“Select Committee”), constituted contempt of Congress, in violation of 2 U.S.C. § 192. [Doc. 1]. Evidence about events that took place eight months earlier – namely the January 6, 2021, attack on the U.S. Capitol – have no bearing on whether Mr. Bannon willfully made default in response to the September 23, 2021, subpoena. Thus, any evidence or argument regarding those events should be precluded. Even were one to assume that any evidence about January 6, 2021, was relevant – and it is not – the evidence and argument must nonetheless be excluded under Rule 403. Its probative value would be far outweighed by its prejudicial effect. This is especially true given that trial will take place in Washington, DC, where the U.S. Capitol is located, and because images and commentary about the attack, and the subsequent actions of the Select Committee, have saturated the local (and national) media.

WHEREFORE, Mr. Bannon, by and through his undersigned counsel, respectfully moves this Court to issue a pretrial Order precluding the Government from presenting any evidence, including but not limited to, testimony, argument, documents, photos, videos, and audio recordings that detail or depict the events of the January 6, 2021, attack on the U.S. Capitol.

(Signature block on next page)

Dated: June 17, 2022

Respectfully submitted,

SILVERMAN|THOMPSON|SLUTKIN|WHITE, LLC

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Counsel for Defendant Stephen K. Bannon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June 2022, a copy of the foregoing Motion in Limine Precluding Evidence or Argument Regarding the Attack on The U.S. Capitol was served *via* the Court's CM/ECF system on registered parties and counsel.

/s/ M. Evan Corcoran
M. Evan Corcoran (D.C. Bar No. 440027)