

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

WILLIAM A. LINK, et al.,

Plaintiffs,

v.

Case No.: 4:21cv271-MW/MAF

MANNY DIAZ, JR., et al.,

Defendants.

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ORDER GRANTING MOTION TO QUASH SUBPOENAS

This Court has considered, without hearing, Defendants' motion to quash certain trial subpoenas, ECF No. 216. Defendants argue that the "apex doctrine" shields the three witnesses at issue, Richard Corcoran, Manny Diaz, Jr., and Representative Spencer Roach, from having to testify at trial to authenticate remarks they made in social media posts, video recordings from out-of-state speaking engagements, and televised press conferences. Because these witnesses are protected by the "apex doctrine," this Court need not address whether their testimony is also subject to another asserted privilege. Accordingly, as explained below, Defendants' motion, ECF No. 216, is **GRANTED**.

To start, Defendants assert that Richard Corcoran, Manny Diaz, Jr., and Representative Roach are "apex officials"—in other words, "high-ranking official[s] . . . warrant[ing] heightened protection from depositions." *Odom v. Roberts*, 337

F.R.D. 359, 364 (N.D. Fla. 2020). Plaintiffs disagree, asserting this Court should assess their status based on the limited authentication testimony they seek to introduce at trial. ECF No. 223 at 14.

This Court is not persuaded that simply because Plaintiffs seek only to elicit testimony to authenticate social media posts and video recordings, the apex doctrine does not still apply to these witnesses. Indeed, if this Court were to permit Plaintiffs to subpoena apex officials whenever necessary to authenticate a trial exhibit, this would turn the apex doctrine on its head. This Court also disagrees with Plaintiffs' argument that Representative Roach is not an apex official because he is a state legislator. Plaintiffs cite this Court's earlier decision in *In re Subpoena Ad Testificandum Issued to Representative Ted Yoho*, No. 1:16cv188-MW/GRJ, 2016 WL 3149728 (N.D. Fla. June 3, 2016), but that case is distinguishable.

In Representative Yoho's case, this Court addressed a state court subpoena of the congressman, for which the House of Representatives already had a process in place to determine whether he should not respond to the subpoena. Given this Court's concerns about intruding "into a co-equal branch of the federal government's affairs," and its disagreement that a congressman ought to always be considered an apex official, this Court rejected Representative Yoho's assertion of the apex doctrine—which this Court referred to as the "extraordinary circumstances" argument. Here, on the other hand, Representative Roach is a legislator in the Florida

Legislature. No separate process appears to be in place in the Florida Legislature to determine whether Representative Roach should or should not respond to the subpoena. Nor is this Court convinced that the policies giving rise to the apex doctrine do not apply with equal force to a state legislator when he has been subpoenaed solely to authenticate his social media posts when other avenues of authentication are available.

Indeed, this Court finds that the authenticating information Plaintiffs seek to introduce at trial is available from other sources. *See, e.g., United States v. Recio*, 884 F.3d 230, 236 (4th Cir. 2018). Federal Rule of Evidence 901 does not impose a high bar to authenticate or identify evidence, and it provides a lengthy, but non-exhaustive, list of ways to meet its requirements. *See* Fed. R. Evid. 901(a)–(b); *see also United States v. Vayner*, 769 F.3d 125, 130 (2d Cir. 2014) (noting that the bar for authentication of evidence “is not particularly high”). As the Eleventh Circuit has noted, the function of Rule 901 is simply to “make[] the court’s determination of authenticity merely a preliminary evaluation and leaves the ultimate decision on genuineness to the [factfinder].” *United States v. Caldwell*, 776 F.2d 989, 1003 (11th Cir. 1985). Setting aside objections based on relevance or hearsay and any arguments that the proposed trial exhibits fall within any hearsay exceptions, Plaintiffs’ proposed exhibits may be authenticated through many different modes or witnesses. *See, e.g.,* Fed. R. Evid. 901(b)(1) (“Testimony of a witness with knowledge.”), (4)

(“Distinctive characteristics and the like.”), (5) (“Opinion about a voice.”). In short, authenticating trial exhibits is not difficult, nor does it require Plaintiffs to subpoena high-ranking state government officials to do so. If there is any doubt, any number of treatises or courtroom manuals—such as *Weissenberger’s Federal Evidence Courtroom Manual*—may help. The trial subpoenas to Richard Corcoran, Manny Diaz, Jr., and Spencer Roach are **QUASHED**. The parties are to immediately inform Representative Roach of this Order.

SO ORDERED on January 4, 2023.

s/ MARK E. WALKER
Chief United States District Judge

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