

CREW



Disqualified:

The case for Donald Trump's disqualification
under the 14th Amendment

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Introduction

On January 20, 2017, Donald Trump took the Presidential Oath of Office, swearing to “preserve, protect and defend the Constitution of the United States.”¹ Almost four years to the day after taking that oath, on January 6, 2021, President Trump caused a violent insurrection that nearly overthrew an election and shattered our democracy, achieving what even the Confederates never did during the Civil War: The violent seizure of the United States Capitol and disruption of the peaceful transfer of presidential power.² The attack on the Capitol was not a spontaneous event. It was the culmination of a multi-part scheme by the former president and his allies to use lies, intimidation, coercion and ultimately violence to keep Trump in office and invalidate the votes of the more than 80 million Americans who cast ballots for Joseph R. Biden in the 2020 presidential election. By leading these unprecedented efforts to subvert the Constitution and American democracy, Trump disqualified himself under Section 3 of the Fourteenth Amendment from holding any federal or state office, including the Office of the President.

In the wake of the Civil War, the framers of the Constitution’s Reconstruction Amendments determined that public officials who try to dismantle the government by force should be barred from leading it. That is why they added Section 3 of the Fourteenth Amendment, also known as the Disqualification Clause, to the Constitution. Section 3 bars from public office anyone who took an “oath ... as an officer of the United States ... to support the Constitution of the United States” and then “engaged in insurrection or rebellion against” it, unless Congress “remove[s] such disability” by a two-thirds vote.³ Senator John Henderson of Missouri, a prominent framer of Section 3, explained that the section bars “from office the leaders of the past rebellion as well as the leaders of any [insurrection or] rebellion hereafter to come.”⁴ This includes Trump and the insurrection he led, culminating on January 6, 2021.

¹ U.S. Const. art. II, § 1, cl. 8.

² Between President Lincoln’s election in November 1860 and his inauguration in March 1861, seven Southern states seceded from the union, largely in response to Lincoln’s election, setting the stage for the Civil War. Olivia B. Waxman, *v.* TIME (Jan. 15, 2021), <https://time.com/5929078/lincoln-trump-capitol-history/>. Furthermore, a mob unsuccessfully attempted to enter the Capitol and interfere with the counting of states’ electoral votes in February 1861. *Id.* Despite these attempts, Congress’s certification of President Lincoln’s electoral victory was neither disrupted nor delayed.

³ U.S. Const. amend XIV, § 3.

⁴ Mark A. Graber, *Disqualification From Office: Donald Trump v. the 39th Congress*, Lawfare (Feb. 24, 2023), <https://www.lawfareblog.com/disqualification-office-donald-trump-v-39th-congress> (emphasis added).



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There is overwhelming evidence that Trump not only “engaged in” the January 6th insurrection, but was its “central cause.”⁵ Specifically:

- Trump knowingly spread false claims of a “stolen” and “rigged” election—even after he exhausted legal challenges, the states certified his loss and there was no lawful basis to contest the election results. Trump’s lie of a stolen election propelled the nationwide “Stop the Steal” movement, the purpose of which was to exert pressure on Vice President Mike Pence and Congress to unlawfully refuse to certify the presidential election results on January 6th as required by the Twelfth Amendment and the Electoral Count Act.
- Trump personally led a broad-based effort to pressure, coerce and intimidate government officials—including Vice President Pence, state election officials, and Department of Justice officials—to help him unlawfully overturn the election results.

⁵ Final Report, Select Committee to Investigate the January 6th Attack on the United States Capitol, H.R. Rep. No. 117-663 (2022) at 8 [hereinafter January 6th Select Committee Final Report], <https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf>.

- Through social media and grassroots “Stop the Steal” mobilizers, Trump summoned a violent mob of tens of thousands of his supporters—including paramilitary groups such as the Oath Keepers and the Proud Boys—to travel to Washington, D.C. for a “wild” protest on January 6th. In his now infamous December 19, 2020, tweet, Trump announced: “Big protest in D.C. on January 6th. Be there, will be wild!” Extremists widely understood this tweet as a call to arms, and it set in motion a chain of events that led directly to the attack on the U.S. Capitol. Hundreds of January 6th criminal defendants (and counting) have stated in court that they traveled to Washington, D.C. because President Trump called on them to do so.
- Once his mob was assembled on January 6th, Trump incited them to “fight like hell” to overturn the election results by marching to the Capitol to “Stop the Steal,” knowing that many were armed, adorned in tactical gear and prepared for violence.
- After learning the Capitol was under attack, Trump poured fuel on the fire, targeting Vice President Pence for lacking the “courage” to overturn the election in a tweet that measurably caused the mob to surge.
- Trump watched the attack unfold on television and failed to act for nearly three hours as his mob stormed and ransacked the Capitol, brutally assaulted police officers and called for the murder of Vice President Pence and other elected officials. Trump refused to call off his mob or deploy a federal response to protect the United States Capitol despite his constitutional duty to “take care that the laws be faithfully executed” and his role as Commander-in-Chief of the U.S. military,⁶ including the D.C. National Guard.
- Instead of intervening to defend the Capitol, Trump tried to enlist members of Congress to deliver on the mob’s goal to delay the election certification. It was only after several hours of violence that Trump posted a video instructing his mob to “go home,” adding that he “love[d]” them and understood their “pain” over an “election that was stolen from us.” Two hours later, he tweeted again to justify the mob’s violence: “These are the things and events that happen” when a so-called election victory is “unceremoniously & viciously stripped away from great patriots. ... Remember this day forever!”

Trump did all of this in the face of overwhelming evidence that the 2020 presidential election was “the most secure in American history”⁷ with Trump administration officials and courts agreeing that the election had no “fraud on a scale that could have affected a different outcome in the election.”⁸

Courts and Congress have disqualified individuals under the Fourteenth Amendment who played far less substantial roles in insurrections than Trump did, including Couy Griffin, a former New Mexico county

⁶ See U.S. Const. art II, §§ 2-3.

⁷ Cybersecurity & Infrastructure Security Agency [hereinafter CISA], *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees* (Nov. 12, 2020), <https://www.cisa.gov/news-events/news/joint-statement-elections-infrastructure-government-coordinating-council-election>; see also Jen Kirby, *Trump’s own officials say 2020 was America’s most secure election in history*, Vox (Nov. 13, 2020), <https://www.vox.com/2020/11/13/21563825/2020-elections-most-secure-dhs-cisa-krebs> (reporting on the statement by the Trump Administration’s coordinating bodies on election infrastructure and security).

⁸ Ryan Lucas, *Barr: DOJ Has No Evidence of Fraud Affecting 2020 Election Outcome*, NPR (Dec. 1, 2020), <https://www.npr.org/sections/biden-transition-updates/2020/12/01/940786321/barr-doj-has-no-evidence-of-fraud-affecting-2020-election-outcome>.

commissioner who was a grassroots mobilizer and member of Trump's mob on January 6th,⁹ and, during Reconstruction, officials who previously held local government positions in Confederate states.¹⁰ If these individuals' conduct passed the bar for constitutional disqualification, then Trump's conduct surely does. In the Griffin case, a Republican-appointed judge ruled that the January 6th attack on the Capitol and its surrounding events was an "insurrection," noting that "President Trump did not accept the election results and pursued multiple avenues to remain in power through legal and extra-legal means. ... The January 6 Attack followed a weeks-long campaign to stop – through extra-legal means—certification of the 2020 presidential election and the transfer of power as mandated by federal law."¹¹

Since January 6, 2021, Trump has repeatedly affirmed his disloyalty to the Constitution and his allegiance to the insurrectionists who seized the Capitol for him. In December 2022, Trump called for the "termination" of the Constitution in order to reinstate him to power.¹² He has also called the insurrectionists "great people," hugged them on camera, released a song with a choir of January 6th criminal defendants called "Justice for All" and as recently as May 2023 vowed to give "many of them" full pardons if he becomes president again.¹³

Trump also continues to spread the lie that the 2020 election was stolen and continues to fan the flames of political violence among his supporters. He has issued veiled and direct threats of violence against prosecutors, judges and anyone who would seek to pursue accountability for him. He's threatened those who would pursue constitutional disqualification against him. He is the living embodiment of the threat that the Fourteenth Amendment's framers sought to protect American democracy against when they barred constitutional oath-breakers from office.

There are many legitimate ways for public officials to effectuate change in a democracy. As our Constitution makes clear, however, inciting a violent insurrection is not one of them. Those, like Trump, who engage in insurrection against the Constitution after swearing an oath to support it are barred by Section 3 of the Fourteenth Amendment from holding office, including the Office of President of the United States.

⁹ *State ex. rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619 (N.M. Dist. Ct. Sep. 6, 2022), *appeal dismissed*, No. S-1-SC-39571 (N.M. Nov. 15, 2022).

¹⁰ *Worthy v. Barrett*, 63 N.C. 199 (1869) (county sheriff disqualified), *appeal dismissed sub nom.*, *Worthy v. Comm'rs*, 76 U.S. 611 (1869).

¹¹ *State v. Griffin*, 2022 WL 4295619, at *12, *17, *24.

¹² Kristen Holmes, *Trump calls for the termination of the Constitution in Truth Social post*, CNN (Dec. 4, 2022), <https://www.cnn.com/2022/12/03/politics/trump-constitution-truth-social/index>.

¹³ See, e.g., David Cohen, *Trump on Jan. 6 insurrection: 'These were great people'*, Politico (July 11, 2021), <https://www.politico.com/news/2021/07/11/trump-jan-6-insurrection-these-were-great-people-499165>; Annie Grayer and Paul LeBlanc, *Trump says he will 'very, very seriously' consider January 6 pardons if he runs and wins in 2024*, CNN (Sept. 1, 2022), <https://www.cnn.com/2022/09/01/politics/january-6-pardons-trump-2024/index.html>; Gustaf Kilander, *Trump hugs January 6 rioter who called for Pence and Congress to be executed*, Independent (Apr. 28, 2023), <https://www.independent.co.uk/news/world/americas/us-politics/donald-trump-january-6-pence-b2329177.html>; Isaac Arnsdorf, et al., *Behind Trump's musical tribute to some of the most violent Jan. 6 rioters*, Wash. Post (May 4, 2023), <https://www.washingtonpost.com/investigations/interactive/2023/trump-j6-prison-choir/>.

The Disqualification Clause: Section 3 of the Fourteenth Amendment

Section 3 of the Fourteenth Amendment states:

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.¹⁴

It is clear that Trump meets the elements for disqualification under Section 3 because (1) he took an “oath ... to support the Constitution of the United States” as “an officer of the United States” on January 20, 2017, (2) the events of January 6, 2021, constituted an “insurrection” against the Constitution of the United States and (3) Trump “engaged in” that “insurrection” through his actions before and on January 6, 2021. Trump is therefore constitutionally ineligible to “hold any office, civil or military, under the United States,” including the Office of the President.

Section 3 establishes a qualification for office that can be enforced against Trump through civil proceedings in state courts

Section 3 of the Fourteenth Amendment establishes a qualification for holding federal or state office in the United States,¹⁵ including the Office of the President. It is a constitutional limitation on who can serve as the president, in addition to the requirements that the president be at least 35 years of age, a natural-born U.S. citizen and a U.S. resident for at least 14 years.¹⁶ The Constitution similarly prohibits anyone from being elected president more than twice.¹⁷ The Constitution has very few requirements for serving as president,

¹⁴ U.S. Const. amend. XIV, § 3.

¹⁵ See *Cawthorn v. Amalfi*, 35 F.4th 245, 265 (4th Cir. 2022) (Wynn, J., concurring); *id.* at 275 (Richardson, J., concurring in the judgment); *State v. Griffin*, 2022 WL 4295619, at *16; *Greene v. Raffensperger*, 599 F. Supp. 3d 1283, 1316 (N.D. Ga. 2022).

¹⁶ See U.S. Const. art II, § 1.

¹⁷ See U.S. Const. amend. XXII. This restriction is effectively a requirement to serve as president except in the most far-fetched circumstances.

and allows the public to decide which qualified individual can serve in that office. However, the public understands that Malia Obama is currently ineligible to serve as president because she has yet to reach 35 years of age, and Barack Obama cannot be elected again because he has already been elected to two terms in office. Similarly, former California Governor Arnold Schwarzenegger is ineligible to serve as president because he is not a natural born citizen. Trump's disqualification under Section 3 of the Fourteenth Amendment is no different.

Section 3's text and historical applications make clear that a criminal charge or conviction is not necessary for a person to be adjudged disqualified.¹⁸ Instead, Section 3 can be adjudicated through civil lawsuits, including most recently in 2022 against former Otero County Commissioner and "Cowboys for Trump" founder, Couy Griffin, who was removed from office for his role recruiting and mobilizing members of Trump's mob before and during the January 6th attack. Those lawsuits can take the form of candidate eligibility challenges and quo warranto claims (i.e., claims challenging a sitting official's eligibility to hold office), as other litigation reviewing constitutional qualifications for office routinely does.¹⁹

With respect to presidential candidates, the Disqualification Clause can be enforced by state election officials and in state courts as part of the process for determining who can appear on ballots for presidential elections. As then-Judge (now Justice) Neil Gorsuch wrote in a 2012 decision involving a prospective presidential candidate, "a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office."²⁰ Earlier this year, even Trump's counsel has indicated in court filings that state ballot access laws can provide a means to enforce the Disqualification Clause.²¹

Unlike criminal cases, which require proof beyond a reasonable doubt, the standard of proof in civil disqualification proceedings is a "preponderance of the evidence," which means more likely than not.²² The lower standard of proof reflects the fact that disqualification is not a criminal penalty that could deprive a person of their liberty, but rather is a restriction on who can hold public office. This was the standard of proof applied in prior disqualification cases including the case litigated and won by CREW in 2022 on behalf of three New Mexico residents to disqualify former Otero County Commissioner Couy Griffin from office based on his role in the January 6th insurrection. The evidence demonstrating Trump's disqualification easily surpasses this threshold.

¹⁸ See *State v. Griffin*, 2022 WL 4295619, at *24 (distinguishing Section 3 disqualification proceeding from criminal prosecution); Jennifer K. Elsea, Cong. Research Serv., LSB10569, *The Insurrection Bar to Office: Section 3 of the Fourteenth Amendment* (2022) ("Section 3 of the Fourteenth Amendment does not expressly require a criminal conviction, and historically, one was not necessary."); see also *Worthy v. Barrett*, 63 N.C. 199, 205 (1869) (per curiam), *appeal dismissed sub nom., Worthy v. Comm'rs*, 76 U.S. 611 (1869) (Confederate county sheriff disqualified).

¹⁹ See, e.g., *State ex. rel. Kristof v. Fagan*, 504 P. 3d 1163 (Or. 2022) (upholding the exclusion of gubernatorial candidate Nick Kristof from the ballot because he failed to meet the state constitution's residency requirements and ruling that maintaining the integrity of elections in Oregon includes rejecting candidates from the ballot who are constitutionally or statutorily unqualified to take office).

²⁰ *Hassan v. Colorado*, 495 F. App'x 947, 948 (10th Cir. 2012) (excluding constitutionally ineligible presidential candidate from the ballot).

²¹ See Def.'s Reply in Supp. of Mot. to Dismiss at 5, *Castro v. Trump*, No. 9:23-cv-80015-AMC, ECF No. 28 (S.D. Fla., filed Mar. 7, 2023) (urging dismissal of Section 3 disqualification lawsuit filed against Trump in federal court because "it is state law, not federal law, that sets forth the procedures according to which political candidates appear on ballots," and acknowledging that "Section 3 of the Fourteenth Amendment ... functions ... in relation to state laws implementing the various ballot-access and registration qualifications").

²² See, e.g., *Watkins*, 21 La. Ann. 631; *Barrett*, 63 N.C. at 205; *In re Tate*, 63 N.C. 308, 309 (1869).

Enforcing President Trump’s disqualification is necessary to save our democracy

Disqualifying an individual, even for engaging in insurrection, is a serious step, but the January 6th insurrection posed a threat to our democracy that we have not seen since the Civil War and should hope that we never face again. A violent mob summoned by the sitting president was directed to “fight like hell” to overturn an election.²³ As Trump’s mob stormed the Capitol, members of Congress, including those who supported Trump’s cause, fled for their lives, hid in barricaded offices and called loved ones to say goodbye. Trump’s Vice President, Mike Pence, who was also forced to flee the mob, said, “President



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Trump was wrong. I had no right to overturn the election. And his reckless words endangered my family and everyone at the Capitol that day, and I know history will hold Donald Trump accountable.”²⁴

Section 3 is the tool that history designed to hold Trump accountable for his role in January 6th. Its drafters wanted to ensure that the architects of an insurrection did not escape consequences while its foot soldiers got prosecuted. No one should take lightly the idea that an individual, especially a former president, should be banned from the ballot. But the Disqualification Clause is a part of the Constitution and therefore embodies the “supreme Law of the Land.” The clause imposes a qualification for office— no different from the age, citizenship, and residency qualifications set forth elsewhere in the Constitution. The framers knew it was essential for protecting our republic from those who would engage in rebellion against it. America has never before had an interruption in the peaceful transfer of power— not even during the Civil War— and it can never happen again. Section 3 of the Fourteenth Amendment was dormant for more than a century before the attack on the Capitol. Enforcing it now against Trump is necessary to ensure that we do not face a similar or more violent assault on our democracy in the next two, 20 or 200 years.

²³ Brian Naylor, *Read Trump’s Jan. 6 Speech, A Key Part of Impeachment Trial*, NPR (Feb. 10, 2021), <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.

²⁴ Zeke Miller and Chris Megerian, *Pence says Trump ‘endangered my family’ on Jan. 6*, AP (Mar. 11, 2023), <https://apnews.com/article/pence-trump-january-6-capitol-riot-carlson-1e38cb44d55737031ca528b4f33aa1fb>.

The Constitution as originally adopted in 1789 established qualifications for the presidency and Congress based on age, citizenship, and residency.²⁵ The framers of the Fourteenth Amendment understood that allowing former public officials to serve in the government they fought to dismantle would place within the republic the seeds of its own destruction. That is why they—and ultimately “we, the people”—agreed to add another restriction on the public’s ability to choose their representatives: That the person, if they previously took an oath to support the Constitution, must not have engaged in insurrection or rebellion against the Constitution.

Section 3 codifies Alexander Hamilton’s maxim that, “[e]very government ought to contain in itself the means of its own preservation.”²⁶ The provision protects American democracy from those who have proven themselves disloyal to the Constitution.²⁷ To ignore Section 3 and not enforce it because it is too politically divisive would not only disregard the Constitution of the United States, but it would also undermine our country’s entire experiment with democracy.

The societal consequences of failing to enforce the Constitution against former President Trump are immense. Trump is an avowed insurrectionist who proudly stands against the democratic principles that have sustained our nation for more than 200 years. He has called on his supporters to violently stop the transfer of power once already; as someone who recently called for the “termination of ... the Constitution,” there is a real possibility that he will do so a second time. Lines must be drawn to make clear that summoning a mob to forcibly stop the transfer of power and invalidate the votes of millions of Americans is outside the bounds of legitimate democratic participation. That is why enforcing the Constitution’s disqualification of Trump is crucial to the continuation of American democracy.

Enforcing Trump’s disqualification is also necessary for the historical record. Efforts are already underway to rewrite the events of January 6th as a “peaceful protest.”²⁸ And as we have seen in states like Oklahoma, Tennessee and Montana, disingenuous politicians have weaponized the term “insurrection” to silence voices from marginalized communities, falsely equating engaging in peaceful protest with violent insurrection.²⁹ Numerous federal courts have rejected efforts by January 6th defendants to conflate protest with Trump’s insurrection to overturn an election.³⁰ Enforcing Section 3 against real insurrectionists who incited or participated in the January 6th attack would help to set the record straight, for this generation and future ones.

While Section 3 does limit voters’ ability to select candidates of their choice, the same could be said of any other constitutional qualification for office. Secretaries of State and state boards of election routinely disqualify candidates who fail to meet constitutional and statutory qualifications for federal, state

²⁵ U.S. Const. art. II, § 1, cl. 5.

²⁶ The Federalist No. 59 (Alexander Hamilton).

²⁷ Gerard N. Magliocca, *Background as Foreground: Section Three of the Fourteenth Amendment and January 6th*, J. of Const. L., Vol. 25:5, at 13, <https://dx.doi.org/10.2139/ssrn.4306094> (“Section Three disqualifications can be viewed as supporting democracy. ... Reasonable people could conclude that barring individuals who betrayed their constitutional oaths from serving in office was necessary or desirable to preserve, protect, and defend our democracy from those insurrectionists or as a deterrent against future betrayals.”).

²⁸ David Klepper, *Conspiracy theories paint fraudulent reality of Jan. 6 riot*, PBS (Jan. 1, 2022), <https://www.pbs.org/newshour/politics/conspiracy-theories-paint-fraudulent-reality-of-jan-6-riot>.

²⁹ Kimberlee Kruesi and Ali Swenson, *GOP uses state capitol protests to redefine ‘insurrection’*, AP (Apr. 28, 2023), <https://apnews.com/article/zooney-zephyr-montana-transgender-insurrection-trump-tennessee-9eadf09c9670659bee4ec759a4393c9d>.

³⁰ Josh Gerstein and Kyle Cheney, *Black Lives Matter comparison roils court in Jan. 6 cases*, Politico (Oct. 4, 2021), <https://www.politico.com/news/2021/10/04/black-lives-matter-comparison-roils-court-in-jan-6-cases-515086>.

and local office.³¹ Section 3 of the Fourteenth Amendment is less well known than other constitutional qualifications for office because we haven't had a major insurrection or rebellion since the Civil War. No one who is 20 years old or a non-citizen can serve as president, and Americans cannot again elect anyone who has already been elected to two terms. Nor are they entitled, under our Constitution, to elect a former public official who violated his constitutional oath by engaging in insurrection.³²

Section 3 also includes a built-in democratic safety valve: "a supermajority in Congress [can] waive disqualifications, as was done for most ex-Confederates just four years after the Fourteenth Amendment was ratified."³³ This safeguard mitigates any concerns about disqualification being undemocratic. If the people want a Section 3 disqualification lifted, their elected representatives are constitutionally empowered to do just that.

Admittedly, holding political leaders accountable, even for their abuses of power, is not without risk.³⁴ For instance, it is well documented that illiberal states are known for targeting political actors. While these are serious considerations that should not be dismissed lightly, we do not live in an illiberal state. Moreover, the converse is also true: The failure to hold accountable a former government official who flagrantly violated the law in order to stay in power undermines democratic governance and the rule of law. When former heads of state are seen as unpunishable and above the law, people start to abandon faith in democracy generally.³⁵ That potential slide into authoritarianism can be stopped—and democracy can even be bolstered—by accountability. Governments that "[hold] individuals, actors, networks, and institutions accountable for serious crimes...can not only strengthen the rule of law but also, perhaps equally as important, make it more inclusive and responsive."³⁶ This is particularly evident when citizens discuss the impact of accountability mechanisms in strengthening their belief in the rule of law; whereas, "actors in societies where little or no accountability was sought point to the entrenchment of a culture of impunity."³⁷ Ultimately, then, while it is important to take concerns about broad social disruption seriously, "[t]here is no evidence that justice processes inherently or generally undermine peace, and there is increased consensus that the two can be mutually reinforcing."³⁸

Healthy democracies such as the United States can hold politicians and leaders accountable. We can look to other democracies in the world to see successful examples. France has had two modern leaders found guilty of corruption: Jacques Chirac in 2011 and Nicolas Sarkozy in 2021 for corruption and influence

31 See, e.g., *Hassan*, 495 F. App'x 947 (affirming the Colorado Secretary of State's exclusion of Abdul Hassan from the ballot for president because he was not a natural born citizen and holding "a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office"). See generally *Munro v. Socialist Workers Party*, 479 U.S. 189, 193-95 (1986); *Bullock v. Carter*, 405 U.S. 134, 145 (1972); see, e.g., *State ex. rel. Kristof v. Fagan*, 504 P. 3d 1163 (Or. 2022).

32 See *Griffin v. White*, No. 22-0362 KG/GJF, 2022 WL 2315980, at *12 (D.N.M. 2022) ("Section Three of the Fourteenth Amendment narrows the First Amendment right to run for office . . .").

33 Gerard N. Magliocca, *supra* note 27, at 12-13.

34 See Monika Nalepa, *Transitional justice and authoritarian backsliding*, 32 Const. Polit. Econ. 278, 279 (2021), <https://doi.org/10.1007/s10602-020-09315-5> (explaining the literature on accountability but arguing that "a refusal to engage in [transitional justice] can endanger democratization and be used as a pretext for incumbent-led authoritarian backsliding"). Much of the social scientific literature on accountability for former heads of state and other powerful government officials deals with incidents of criminal prosecutions. This type of civil accountability is analogous to criminal accountability--which former President Trump may soon face as well.

35 *Id.*

36 Roger Duthie, *Transitional Justice and Prevention: Summary Findings from Five Country Case Studies*, International Center for Transitional Justice, June 2021, at 19, https://www.ictj.org/sites/default/files/ICTJ_Report_Overview_TJ_Prevention.pdf.

37 *Id.* at 19.

38 *Id.* at 3.

peddling.³⁹ South Korea has investigated and convicted five former presidents, including most recently Lee Myung-bak.⁴⁰ And former Italian Prime Minister Silvio Berlusconi was found guilty of tax fraud in 2012.⁴¹ Prosecutions of former leaders in modern democracies show that accountability helps to uphold our ideals and allows democracies to endure, rather than destabilize, and strengthen, not weaken, the rule of law.

Refusing to hold Trump accountable will embolden future autocrats to attempt even more audacious schemes to remain in power, or to plan better so their schemes work. That's already happening here at home, as Trump supporters seek to change laws in many states to make it easier for political leaders to override the people's votes and to put loyalists in place to do it.⁴² Many of these proposals seek to enact voter ID laws, eradicate mail-in ballots, restrict registration and voting times, purge voter rolls and socialize the "independent state legislature" theory.⁴³ These steps pave the way for Trump to attempt a second coup, but this time with a base of support occupying positions of power across the country. Indeed, "global scholarship on failed democracies teaches us that the best predictor of a successful coup is a failed coup without accountability."⁴⁴



U.S. President Donald Trump and Brazilian President Jair Bolsonaro.

Shealah Craighead / via The White House

We also already see the effects of this lack of accountability on autocrats in other parts of the world. In January 2023, supporters of Jair Bolsonaro stormed the Brazilian Congress, Supreme Court and the presidential palace after Bolsonaro lost an election to Brazil's current president, Luiz Inácio Lula da Silva.⁴⁵ Many of Bolsonaro's supporters had been camped out in Brasilia since October 30th when Bolsonaro lost and rejected the race's results as fraudulent.⁴⁶ The protesters broke through police barricades and stormed the buildings, smashing windows, furniture and

³⁹ Victor Menaldo, James D. Long, and Morgan Wack, *Here's when other countries have charged former leaders*, PBS NewsHour (Apr. 3, 2023), <https://www.pbs.org/newshour/politics/heres-when-other-countries-have-prosecuted-former-leaders>.

⁴⁰ *Id.*

⁴¹ Rachel Treisman, *Other countries have prosecuted their leaders. What took the U.S. so long?*, NPR (Apr. 3, 2023), <https://www.npr.org/2023/04/03/1167683121/trump-indictment-us-rare-other-countries-prosecute-leaders>.

⁴² See, e.g., Ed Pilkington, *Trump loyalists form alliance in bid to take over election process in key states*, The Guardian (Jan. 13, 2022), <https://www.theguardian.com/us-news/2022/jan/13/trump-loyalists-secretary-of-state-candidates>.

⁴³ See, e.g., *Voting Laws Roundup: February 2023*, Brennan Center for Justice (Feb. 27, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2023>; Pilkington, *supra* note 42; see also Ethan Herenstein and Thomas Wolf, *The 'Independent State Legislature Theory,' Explained*, Brennan Center for Justice (June 30, 2022), <https://www.brennancenter.org/our-work/research-reports/independent-state-legislature-theory-explained> (explaining the independent state legislature theory as a reading of the Constitution that has been pushed by small groups of advocates and would give state legislatures wide authority to gerrymander electoral maps and pass voter suppression laws).

⁴⁴ Duke Today Staff, *Duke Scholars: Jan. 6 Hearings Essential for American Democracy*, Duke Today (June 9, 2022), <https://today.duke.edu/2022/06/duke-scholars-jan-6-hearings-essential-american-democracy>.

⁴⁵ *Supporters of Jair Bolsonaro mount an insurrection in Brazil*, The Economist (Jan. 9, 2023), <https://www.economist.com/the-americas/2023/01/09/supporters-of-jair-bolsonaro-mount-an-insurrection-in-brazil>.

⁴⁶ Carla Bridi, *Explainer: Roots of the Brazilian capital's chaotic uprising*, AP (Jan. 9, 2023), <https://apnews.com/article/jair-bolsonaro-politics-brasilia-united-states-government-florida-state-29fad1e6c79a5737641932c939021e62>.

artwork.⁴⁷ While the Brazilian Congress was in recess, the images that came out of the rampage have a striking resemblance to January 6th.

Disqualifying Trump from office for his violation of Section 3 of the Fourteenth Amendment is the accountability explicitly contemplated by the Constitution for his conduct and the only way to ensure that he cannot serve as President of the United States. And it would demonstrate, once and for all, that no person and no official, including Trump, is above the law—or in this case, above democracy.

The First Amendment does not prevent President Trump’s disqualification under the Fourteenth Amendment

First Amendment experts and federal judges have repeatedly recognized, in other contexts, that conduct leading up to and on January 6th was not protected by the First Amendment.⁴⁸ National First Amendment advocates supported Trump’s second impeachment based on his conduct and statements leading to the January 6th attack.⁴⁹ Advocates cited Trump’s repeated knowingly false statements about voter fraud aimed at undermining public faith in the election results; his support of frivolous election lawsuits; his pressure campaign on election officials in several states to interfere with the results of the election; his attempt to disenfranchise people of color by targeting his efforts to overturn legitimate election results in jurisdictions with predominantly Black or Brown populations; and his urging a mob to attack the United States Capitol on January 6th, in an effort to prevent the election certification process and to intimidate the Vice President and members of Congress from carrying out their constitutional duties.⁵⁰

First Amendment scholars also flatly rejected Trump’s First Amendment defense as “legally frivolous” during his Senate impeachment trial, explaining that the constitutional protection does not apply in an impeachment proceeding.⁵¹ “No reasonable scholar or jurist,” they wrote, “could conclude that President Trump had a First Amendment right to incite a violent attack on the seat of the legislative branch, or then to sit back and watch on television as Congress was terrorized and the Capitol sacked.”⁵²

⁴⁷ *Id.*

⁴⁸ See *State v. Griffin*, 2022 WL 4295619; see also Brief for Floyd Abrams et al. as Amici Curiae Supporting Plaintiffs’ Action for Quo Warranto Relief, *State v. Griffin*, 2022 WL 4295619; Brief for NAACP New Mexico Conference and NAACP Otero County Branch as Amici Curiae Supporting Plaintiffs’ Action for Quo Warranto Relief, *State v. Griffin*, 2022 WL 4295619.

⁴⁹ See, e.g., *ACLU Again Calls for Impeachment of Donald Trump*, ACLU (Jan. 10, 2021), <https://www.aclu.org/press-releases/aclu-again-calls-impeachment-president-trump>; *People for the American Way: Trump Must be Held Accountable*, People for the American Way (Jan. 25, 2021), <https://www.pfaw.org/press-releases/people-for-the-american-way-trump-must-be-held-accountable/>.

⁵⁰ See, e.g., ACLU, *supra* note 49; People for the American Way, *supra* note 49.

⁵¹ See, e.g., Nicholas Fandos, Michael S. Schmidt, and Maggie Haberman, *144 Constitutional Lawyers Call Trump’s First Amendment Defense ‘Legally Frivolous’*, N.Y. Times (Feb. 5, 2021), <https://www.nytimes.com/2021/02/05/us/politics/trump-impeachment-defense.html>; Ian Milliser, *Trump’s false claim that impeachment violates the First Amendment, explained*, Vox (Feb. 12, 2021), <https://www.vox.com/22272734/trump-impeachment-first-amendment-lies-incitement-brandenburg-new-york-times-sullivan-bond>.

⁵² Fandos, Schmidt, and Haberman, *supra* note 51.

Similarly, in the Griffin case, some of these same scholars submitted an amicus brief (which was cited by the court in its opinion), noting that a First Amendment defense to removal under the Disqualification Clause “ignores the fact that the drafters of the Clause possessed full knowledge of the First Amendment, yet provided no First Amendment defense to disqualification.”⁵³ The brief referred to Griffin’s argument that the First Amendment prohibited his disqualification as an “inherently implausible theory,” noting that the Disqualification Clause “poses no threat to speech or expression protected by the First Amendment.”⁵⁴ Instead, the provision applies only to a “unique category of persons who assumed their positions voluntarily—namely, current and former officeholders who violated their oath—and it directly affects only their limited and qualified right to hold office.”⁵⁵

Similarly, the Griffin court rejected arguments that Griffin’s conduct on January 6th was constitutionally protected protest activity. The court cited an amicus brief from the NAACP State Conference of New Mexico in dismissing Griffin’s attempts to compare the conduct of insurrectionists to that of Black Lives Matter protesters.⁵⁶ The Griffin court also credited expert testimony explaining that “while some Black Lives Matter protests ‘caused a lot of property damage’, January 6th was an unprecedented use of ‘violence and intimidation to ‘affect the orderly transition of power’ as mandated by federal law.”⁵⁷

President Trump is disqualified from office under the Fourteenth Amendment

As noted above, former President Trump is disqualified from office under Section 3 of the Fourteenth Amendment because he meets the established elements of this constitutional provision: (1) he took an “oath ... to support the Constitution of the United States” as “an officer of the United States” on January 20, 2017, (2) the events of January 6, 2021 constituted an “insurrection” against the Constitution of the United States and (3) Trump “engaged in” that “insurrection” through his actions before and on January 6, 2021.

Trump took an “oath ... to support the Constitution of the United States” as an “officer of the United States”

On January 20, 2017, Trump was sworn in as the 45th President of the United States and took the Presidential Oath of Office set forth in Article II of the Constitution:

⁵³ Brief for Floyd Abrams et al. as Amici Curiae Supporting Plaintiffs’ Action for Quo Warranto Relief, at 5, *State v. Griffin*, 2022 WL 4295619.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *State v. Griffin*, 2022 WL 4295619, at *24 (citing Brief for NAACP New Mexico Conference and NAACP Otero County Branch as Amici Curiae Supporting Plaintiffs’ Action for Quo Warranto Relief).

⁵⁷ *Id.* (citing Trial Tr. (Aug. 16, 2022) (Test. of Rachel Kleinfeld, 161:12-18, 163:21-164:7, 148:3-5)).

“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”⁵⁸

Trump’s taking of this oath triggered the application of Section 3 to him, because the President of the United States is an “officer of the United States” within the meaning of Section 3.⁵⁹ This conclusion follows from the Constitution’s plain text, which refers to the president as holding an “Office” no fewer than 23 times. Because that “Office” is part of the federal executive branch, it is necessarily an office “of the United States.”⁶⁰ “Add the obvious point that a person who holds an office is an officer,” Fourteenth Amendment expert Mark Graber has opined, and there is “as certain an argument as exists in constitutional law that the presidency is an office of the United States and the President is an officer of the United States.”⁶¹

This common sense reading is reinforced by the original public meaning of the phrase “officer of the United States” at the time the Fourteenth Amendment was ratified. Section 3’s framers, President Andrew Johnson and other government leaders from the era routinely referred to the president as an “officer of the United States.”⁶² The congressional record from the 39th Congress—which adopted the Fourteenth Amendment—includes “sweeping arguments by [both] proponents and opponents of Section Three that did not admit [any] exceptions for the President or Vice President.”⁶³ Contemporary authorities continue to reflect the understanding that the president is an officer of the United States.⁶⁴

One would have to tie themselves into knots to argue that the president—the “chief executive officer of the United States”⁶⁵—is not an “officer of the United States.” Such a reading would also have absurd results. An ex-president who personally takes up arms and leads a violent rebellion against the United States could hold office again, but a state legislator who was a mere foot soldier for the rebel ex-president would be barred for life.

Section 3’s framers envisioned no such presidential exception. To the contrary, they adopted Section 3 to disqualify leaders of insurrections and lower-level officers alike.⁶⁶ What mattered to them was whether the officer took a legally required oath to support the Constitution.⁶⁷ As a leading Reconstruction-era case explained, “the oath to support the Constitution is the test.

⁵⁸ U.S. Const. art. II, § 1, cl. 8.

⁵⁹ See John Vlahoplus, *Insurrection, Disqualification, and the Presidency*, 13 Brit. J. Am. Legal Stud. (forthcoming).

⁶⁰ See U.S. Const. art. II, § 1, cl. 8; U.S. Const. amend. XII; U.S. Const. amend. XXII; U.S. Const. amend. XXV; Norman L. Eisen, Ricahrd Painter, and Laurence H. Tribe, *The Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump*, Brookings Institution, at 8 (Dec. 16, 2016), https://www.brookings.edu/wp-content/uploads/2016/12/gs_121616_emoluments-clause1.pdf.

⁶¹ Mark A. Graber, *Their Fourteenth Amendment, Section 3 and Ours*, Just Security (Feb. 16, 2021), <https://www.justsecurity.org/74739/their-fourteenth-amendment-section-3-and-ours/>.

⁶² See *id.*; Graber, *supra* note 4; Magliocca, *supra* note 27, at n. 48.

⁶³ Gerard N. Magliocca, *Amnesty and Section 3 of the Fourteenth Amendment*, 36 Const. Comm. 87, 94 n.32 (2021).

⁶⁴ See, e.g., *Officers of the U.S. Within the Meaning of the Appointments Clause*, 31 Op. O.L.C. 73, 78 (2007) (opining that “[t]he text and structure of the Constitution reveal that officers are persons to whom the powers ‘delegated to the United States by the Constitution,’ U.S. Const. amend. X, are in turn delegated in order to be carried out. The President himself is said to ‘hold [an] Office,’ and the Constitution provides that ‘[t]he executive Power shall be vested in’ that office. *Id.* art. II, § 1, cl. 1.”); *Morrison v. Olson*, 487 U.S. 654, 718 (1988) (Scalia, J., dissenting) (referring to the President as an “officer[] of the Government”).

⁶⁵ *Mississippi v. Johnson*, 71 U.S. 475, 480 (1866); see also *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2191 (2020) (“Under our Constitution, the ‘executive Power’—all of it—is ‘vested in a President,’ who must ‘take Care that the Laws be faithfully executed.’” (quoting U.S. Const. art. II, § 1, cl. 1; *id.* § 3)).

⁶⁶ Graber, *supra* note 4.

⁶⁷ *Id.*

The idea being that one who had taken an oath to support the Constitution and violated it, ought to be excluded from taking it again, until relieved by Congress.”⁶⁸

Thus, Trump became subject to disqualification under Section 3 when he took an “oath ... to support the Constitution of the United States” upon assuming the Office of the President.

January 6th was an “insurrection” against the Constitution

Ample evidence and authoritative sources establish that the January 6th attack on the Capitol and surrounding events constituted an “insurrection” against the Constitution of the United States.

Case law from the Civil War era recognized that the “existence of the rebellion [was] a matter of public notoriety,” supported by “public documents” such as “proclamations of the president” and “acts of congress.”⁶⁹ Similarly, the existence of the January 6th insurrection is a “matter of public notoriety” supported by bipartisan acts of Congress, congressional reports, presidential statements, judicial decisions, and other “public documents.”

All three branches of the federal government have referred to the January 6th attack as an insurrection. Just days after the attack, a bipartisan majority of the House of Representatives voted to impeach Trump for “incitement of insurrection.”⁷⁰ And after a trial in the Senate, a bipartisan majority of senators found Trump “guilty” of the same, though it fell short of the two-thirds supermajority threshold for conviction.⁷¹ Congress has also passed bipartisan bills honoring law enforcement officers who defended the Capitol that refer to the January 6th attackers as “insurrectionists.”⁷²

President Biden – the current Chief Executive of the United States – has referred repeatedly to January 6th as an insurrection.⁷³ The Department of Justice (DOJ) under Trump’s administration characterized January 6th as an “insurrection” in court filings.⁷⁴ Since then, the DOJ has also brought charges and secured convictions of key players in the attack for “seditious conspiracy,” a charge that closely tracks the definition

⁶⁸ Barrett, 63 N.C. at 204.

⁶⁹ *United States v. Greathouse*, 26 F. Cas. 18, 22 (C.C.N.D. Cal. 1863). This report is not intended to provide a complete legal analysis on the meaning of the term “insurrection.”

⁷⁰ See H.R. Res. 24, 117th Cong. (2021) (impeaching Donald Trump for “incitement of insurrection”).

⁷¹ Barbara Sprunt, *7 GOP Senators Voted to Convict Trump. Only 1 Faces Voters Next Year*, NPR (Feb. 15, 2021), <https://www.npr.org/sections/trump-impeachment-trial-live-updates/2021/02/15/967878039/7-gop-senators-voted-to-convict-trump-only-1-faces-voters-next-year>.

⁷² See Act of Aug. 5, 2021, Pub. L. No. 117-32 (2021); S. Con. Res. 14, 117th Cong. (2021); S. 35, 117th Cong. (2021).

⁷³ See, e.g., President Joe Biden, *Statement By President Joe Biden On the Six-month Anniversary of the January 6th Insurrection On the Capitol* (July 6, 2021), <https://perma.cc/VS89-CC3B>; Letter from Dana A. Remus, Counsel to the President, to David Ferriero, Archivist of the United States (Oct. 8, 2021), <https://perma.cc/SND5-58EX>; President Joe Biden, Remarks by President Biden at Signing of H.R. 3325, Awarding Congressional Gold Medals To Those Who Protected the U.S. Capitol On January 6, 2021 WL 3418358; President Joe Biden, Remarks By President Biden On Protecting the Sacred, Constitutional Right To Vote, 2021 WL 2935591.

⁷⁴ *United States v. Chansley*, No. 21-cr-00003, ECF No. 5 (D. Ariz. filed Jan. 14, 2021), <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/Jacob%20Chansley%20Detention%20Memo.pdf>.

of insurrection.⁷⁵ President Trump’s own impeachment lawyers stated that “everyone agrees” that there was “a violent insurrection of the Capitol’ on January 6th” and referred to the attackers as “insurrectionists.”⁷⁶

The bipartisan U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol (“Select Committee”) concluded in its final report that the January 6th attack was an insurrection within the meaning of the Fourteenth Amendment.⁷⁷ It further recommended that “those who took an oath to protect and defend the Constitution and then, on January 6th, engaged in insurrection can appropriately be disqualified and barred from holding government office—whether federal or state, civilian or military—absent at least two-thirds of Congress acting to remove the disability pursuant to Section 3 of the Fourteenth Amendment.”⁷⁸

More than a dozen federal judges, including those appointed by Republican and Democratic presidents, have called January 6th an “insurrection” and its participants “insurrectionists.”⁷⁹ In *United States v. Caldwell*, Judge Colleen Kollar-Kotelly repeatedly described the defendant, Mr. Caldwell, as an “insurrectionist.”⁸⁰ The judge stated that Caldwell was “entitled to [his] political views but not to an insurrection,” adding that an “insurrection is not and cannot ever be warranted.”⁸¹

Notably, wide swaths of civil society have also recognized January 6th as an insurrection, including leading experts in law and academia, former Republican governors, as well as civil society organizations such as the Anti-Defamation League and the NAACP Legal Defense and Education Fund.⁸² The variety and nonpartisan nature of these statements further demonstrate the overwhelming conclusion that the January 6th insurrection was a “matter of public notoriety.”⁸³

To date, the only court to consider the specific question of whether the January 6th attack was an “insurrection” within the meaning of the Fourteenth Amendment held that it was. In *State ex. rel White v. Griffin*, a New Mexico state district court concluded “that the January 6, 2021 attack on the United States Capitol and the surrounding planning, mobilization, and incitement constituted an ‘insurrection’ within

75 *U.S. v. Rhodes, et al.*, 1:22-cr-00015-APM, Superseding Indictment at 14-32 (D.D.C. June 22, 2022), <https://www.justice.gov/usao-dc/case-multi-defendant/file/1514906/download>; see also *Four Oath Keepers Found Guilty of Seditious Conspiracy Related to U.S. Capitol Breach*, Dep’t of Just. (Jan. 23, 2023), <https://www.justice.gov/opa/pr/four-oath-keepers-found-guilty-seditious-conspiracy-related-us-capitol-breach>; *Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. Attorney’s Office for the Dist. of Columbia (May 4, 2023), <https://www.justice.gov/usao-dc/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach>.

76 167 Cong. Rec. S5733 (daily ed. Feb. 13, 2021).

77 January 6th Select Committee Final Report at 690.

78 *Id.*

79 See, e.g., *United States v. Munchel*, 993 F.3d 1273, 1281 (D.C. Cir. 2021); *United States v. DeGrave*, 539 F. Supp. 3d 184 (D.D.C. 2021); *Noem v. Haaland*, 542 F. Supp. 3d 898, 906 (D.S.D. 2021); *Alsaada v. City of Columbus*, 536 F. Supp. 3d 216, 274 (S.D. Ohio 2021), modified in non-relevant part by 2021 WL 3375834 (2021); *United States v. Brogan*, 2021 WL 2313008, at *2 (E.D.N.Y. 2021); *United States v. Brockhoff*, 590 F. Supp. 3d 295, 298 (D.D.C. 2022); *United States v. Hunt*, 573 F. Supp. 3d 779, 807 (E.D.N.Y. 2021); *United States v. Puma*, 596 F. Supp. 3d 90, 94 (D.D.C. 2022); *O’Rourke v. Dominion Voting Sys. Inc.*, 552 F. Supp. 3d 3168, 1199 (D. Colo. 2021), modified in non-relevant part by 2021 WL 5548129, at *2 (2021); *United States v. Randolph*, 536 F. Supp. 3d 128, 132 (E.D. Ky. 2021); *United States v. Little*, 590 F. Supp. 3d 340, 344 (D.D.C. 2022); *O’Handley v. Padilla*, 579 F. Supp. 3d 1163, 1172 (N.D. Cal. 2022); *Amalgamated Transit Union Local 85 v. Port Auth. of Allegheny Cnty.*, 2021 WL 719671, at *2 (W.D. Pa. 2021).

80 *United States v. Caldwell*, 1:21-cr-00181-CKK (D.D.C. Mar. 3, 2021), Minute Entry for proceedings held before Judge Colleen Kollar-Kotelly: Sentencing held on 2/1/2023 (“Defendant sentenced as to Count 25 to Sixty-eight (68) Months incarceration followed by Thirty-six (36) Months Supervised Release and a Special Assessment of \$100.00 imposed.”)

81 *Id.*

82 See generally Jacob Glick, *Introduction to Expert Statements on Democracy and Political Violence*, submitted to January 6th House select committee, Just Security (May 1, 2023), <https://www.justsecurity.org/86298/introduction-to-expert-statements-on-democracy-and-political-violence-submitted-to-january-6th-house-select-committee/>.

83 See *Greathouse*, 26 F. Cas. at 22.

the meaning of Section Three of the Fourteenth Amendment.”⁸⁴ Griffin was a civil lawsuit brought by a group of New Mexico residents, represented by CREW and co-counsel, to enforce the Disqualification Clause against then Otero County Commissioner Couy Griffin, a grassroots mobilizer and member of Trump’s mob on January 6th. Following a two-day trial, the court issued a ruling declaring Griffin disqualified under Section 3, ordering his immediate removal from the county commission, and barring him for life from public office. The New Mexico Supreme Court dismissed Griffin’s appeal of that decision on November 15, 2022, and reaffirmed that ruling on February 16, 2023.

In declaring January 6th an insurrection, the Griffin court explained that the attack involved tens of thousands of people acting together to disrupt the constitutionally mandated certification of the 2020 presidential election through violence, force, and intimidation by numbers. The court noted that the attack “led to seven deaths, injuries to more than one hundred police officers, and millions of dollars in damage to the Capitol complex.”⁸⁵ It added that the “mob succeeded in delaying the constitutionally-mandated counting of electoral votes by several hours and, for the first time in our Nation’s history, disrupted the peaceful transfer of presidential power.”⁸⁶

The court relied on the historical analysis and expert testimony of Fourteenth Amendment expert Mark Graber demonstrating the central role that pre-Civil War rebellions, including the Whiskey Insurrection and Fries’ Insurrection, played in the Fourteenth Amendment’s framers’s understanding of “insurrection.” The court also heard testimony from Dr. Rachel Kleinfeld, an expert on contemporary political violence in the United States, who concluded that Griffin was an insurrectionist based upon his participation in a multifaceted effort in the lead-up to January 6th to prevent the transfer of power through violence and intimidation.⁸⁷ Furthermore, the court noted that Section 3’s framers did not believe that “actual violence” was necessary to constitute insurrection. “[I]ntimidation by numbers sufficed.”⁸⁸

Trump and his allies’ efforts in the lead-up to and on January 6th involved extra-legal efforts to prevent Congress from carrying out its constitutionally mandated functions of certifying the 2020 presidential election results in order to unlawfully keep Trump in office and invalidate the votes of more than 80 million Americans. Their plot involved assembling a mob to use violence, force and intimidation to prevent the certification of the 2020 election results and the peaceful transfer of power. These events were undoubtedly an “insurrection” against the Constitution within the meaning of the Fourteenth Amendment.

⁸⁴ *State v. Griffin*, 2022 WL 4295619, at *17.

⁸⁵ *Id.* at *8.

⁸⁶ *Id.* at *18.

⁸⁷ See *State v. Griffin*, 2022 WL 4295619, Trial Tr. (Aug. 16, 2022) (Test. of Dr. Rachel Kleinfeld).

⁸⁸ See *id.* (citing to Charge to the Grand Jury, July 1861).

President Trump engaged in insurrection through a coordinated assault on our democracy and Constitution culminating in the January 6th attack on the U.S. Capitol

President Trump was the undisputed leader of the mob that attacked the U.S. Capitol on January 6th. Without Trump’s knowingly false claims of election fraud, his coercive tactics, his inflammatory rhetoric, his mob recruitment and mobilization efforts and his promotion of violence, January 6th would not have happened. That is why the “overriding ... conclusion” of the Select Committee following its 18-month bipartisan investigation was that “the central cause of January 6th was one man, former President Donald Trump, whom many others followed. None of the events of January 6th would have happened without him.”⁸⁹ Hundreds of January 6th criminal defendants (and counting) have stated in court that they traveled to Washington, D.C. and breached the Capitol because President Trump called on them to do so,⁹⁰ and nine federal judges have blamed Trump for his role in the insurrection.⁹¹ Trump’s conduct easily qualifies as “engaging in” an insurrection within the meaning of the Fourteenth Amendment.

One engages in insurrection by “[v]oluntarily aiding...by personal service, or by contributions, other than charitable, of anything that [is] useful or necessary” to the insurrectionists’ cause.⁹² A person “engage[s] in’ insurrection whenever they were ‘leagued’ with insurrectionists – either by acting in concert with others knowing that the group intended to achieve its purpose in part by violence, force, intimidation by numbers, or by performing an ‘overt act’ knowing that act would ‘aid or support’ the insurrection.”⁹³

An individual does not have to personally commit violent acts to engage in insurrection.⁹⁴ “[N]on-violent overt acts or words in furtherance of the insurrection” are sufficient to demonstrate engagement.⁹⁵ Furthermore, when “a person has, by speech or by writing, incited others to engage in rebellion [or insurrection], he must come under the disqualification.”⁹⁶

Significant evidence demonstrates that Trump voluntarily aided the January 6th insurrection through numerous overt acts and words in furtherance of the insurrection. For weeks, Trump spread conspiracy theories of a “stolen” and “rigged” election, pressuring state election administration officials, state and federal lawmakers and Vice President Pence to overturn the election results and weaponizing his Justice

⁸⁹ January 6th Select Committee Final Report at 8.

⁹⁰ January 6th Select Committee Final Report at 2-3, 17.

⁹¹ *Nine different federal judges have blamed Trump for January 6th*, CREW (May 18, 2023), <https://www.citizensforethics.org/reports-investigations/crew-investigations/nine-different-federal-judges-have-blamed-trump-for-january-6th/>.

⁹² *Barrett*, 63 N.C. at 203.

⁹³ See *State v. Griffin*, 2022 WL 4295619, at *20.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *The Reconstruction Acts*, 12 Op. Atty. Gen. 182, 205 (1867); see *Worthy v. Barrett*, 63 N.C. 199 (1869), *appeal dismissed sub nom., Worthy v. Comm’rs*, 76 U.S. 611 (1869) (finding that during Reconstruction, individuals were disqualified for previously holding local office in Confederate states, even though they did not take up arms in the Confederate army); See also 9 Joint Committee on Printing of the House and Senate, *A Compilation of the Messages and Papers of the Presidents 376, 3728-29, 3750 (1897)* (Attorney General Stanbery opined that mere “[d]isloyal sentiments, opinions, or sympathies would not disqualify,” President Johnson and his Cabinet approved Stanbery’s interpretation, and Johnson directed officers commanding the Southern military districts to follow it).

Department to do the same. When his extra-legal attempts to overturn the election failed, he resorted to inciting violence. Trump assembled and later sent the mob to stop, by force, Congress and the Vice President from fulfilling their constitutional obligations under the Twelfth Amendment and the Electoral Count Act to certify the election results of the 2020 presidential election. And the mob did just that—they stormed the Capitol building and seized the Capitol grounds for several hours, forcing Congress and the Vice President to flee for their lives and halt congressional proceedings. During the attack, Trump poured fuel on the fire by sending inflammatory tweets targeting Vice President Pence for lacking the “courage” to overturn the election and invalidate the votes of more than 80 million Americans. Instead of deploying a federal response to repel his mob and secure the United States Capitol as required by his constitutional duty as chief executive to “take care that the laws be faithfully executed,” Trump simply watched on TV as the mob he summoned ransacked the Capitol, called for the murder of elected officials, raised gallows on Capitol grounds, beat and injured police officers and attempted to “Stop the Steal.”

Trump encouraged violence before and during the 2020 election and incited a violent mob on January 6th

Normalization and encouragement of violence has been a defining feature of Trump’s political career dating back to his 2016 campaign for president, and it was an integral part in organizing the January 6th insurrection. Trump repeatedly promoted political violence in the period between the announcement of his presidential campaign in 2015 and January 6, 2021.⁹⁷

Trump cultivated and emboldened a violent atmosphere at his rallies and encouraged physical assault as the appropriate response to dissent, pledging to provide legal defense for those willing to “knock the crap” out of any counter-protesters at his rallies.⁹⁸ In response to a counter-protester at his campaign rally on February 22, 2016, for example, Trump opined that “[w]e’re not allowed to punch back anymore. I love the old days. You know what they used to do to guys like that when they were in a place like this? They’d be carried out on a stretcher, folks.”⁹⁹

Trump’s response to the “Unite the Right” rally which took place on August 11 and 12, 2017, foreshadowed things to come. On August 11th, white nationalists and far right extremists marched at the University of Virginia (UVA) chanting, “white lives matter,” “Jews will not replace us,” and “blood and soil,” phrases which evoke the Nazi ideology.¹⁰⁰ The demonstration at UVA was followed by a rally the next day in downtown Charlottesville, protesting the city’s decision to remove a statue of Confederate General Robert E. Lee.¹⁰¹ The protest quickly turned violent, and in one case, deadly when a rally participant purposely drove into a group

⁹⁷ See e.g., Ivana Saric, *The times Trump has advocated for violence*, Axios (May 2, 2022), <https://www.axios.com/2022/05/02/trump-call-violence-presidency>.

⁹⁸ Daniel White, *Donald Trump Tells Crowd to ‘Knock the Crap Out Of’ Hecklers*, TIME (Feb. 1, 2016), <https://time.com/4203094/donald-trump-hecklers/>.

⁹⁹ Bloomberg Originals, *Donald Trump Says He’d Like to Punch a Protester in the Face*, YouTube (Feb. 24, 2016), <https://youtu.be/1es9MZyyPOA>.

¹⁰⁰ Devan Cole, *Multiple people charged with burning objects with the ‘intent to intimidate’ on day of 2017 White nationalist march in Charlottesville*, CNN (Apr. 18, 2023), <https://www.cnn.com/2023/04/18/politics/white-nationalist-charges-university-of-virginia-rally/index.html>.

¹⁰¹ Jordyn Phelps, *Trump defends 2017 ‘very fine people’ comments, calls Robert E. Lee ‘a great general’*, ABC News (Apr. 26, 2019), <https://abcnews.go.com/Politics/trump-defends-2017-fine-people-comments-calls-robert/story?id=62653478>.

protesting the rally, turning his car into a weapon and killing counter-protester Heather Heyer.¹⁰² In the days following Charlottesville, Trump refused to condemn the violence, at one point stating that both sides shared the blame and that there were “very fine people” on both sides.¹⁰³ The tacit approval Trump provided to the white supremacist and far right extremists who participated in the rally became emblematic of what would become a common theme throughout his presidency, culminating in January 6th.¹⁰⁴

In 2018, Trump celebrated Montana Rep. Greg Gianforte who body-slammed a reporter, telling the cheering crowd, “Any guy who can do a body-slam...he’s my guy.”¹⁰⁵ In 2019, when speaking at a rally about migrants coming to America, Trump asked, “How do you stop these people?” to which a supporter at the rally shouted “shoot them.” Rather than denounce the statement, Trump said, “That’s only in the Panhandle, you can get away with that statement.”¹⁰⁶ In May 2020, Trump retweeted, with thanks, a video of supporter Couy Griffin (a former Otero County commissioner who was disqualified from office for his role in the January 6th insurrection) saying that “the only good Democrat is a dead Democrat.”¹⁰⁷ After the 2020 election, he began to test just how far his followers would go in response to his thinly veiled calls for violence.

No incident was more of a harbinger for the events of January 6th than when Trump supporters, some armed with rifles and other weapons, swarmed and occupied the Michigan State Capitol in 2020.¹⁰⁸ On April 15, 2020, thousands of Michigan residents convoyed to Lansing for the “Operation Gridlock” protest, clogging the streets surrounding the state capitol to protest Governor Whitmer’s COVID-19 stay-at-home order.¹⁰⁹ Two days later, Trump tweeted “LIBERATE MICHIGAN”—a message that was



People take part in a protest for “Michiganders Against Excessive Quarantine” at the Michigan State Capitol in Lansing, Mich., April 15, 2020.

Jeff Kowalsky / AFP via Getty Images

¹⁰² *Id.*

¹⁰³ Patrice Taddonio, ‘Enabling It to Happen Again’: How Charlottesville Led to the Capitol Attack, PBS KQED (Jan. 26, 2021), <https://www.pbs.org/wgbh/frontline/article/how-charlottesville-led-to-the-capitol-attack/>.

¹⁰⁴ *Id.*

¹⁰⁵ Fabiola Cineas, *Donald Trump is the Accelerant*, Vox (Jan. 9, 2021), <https://www.vox.com/21506029/trump-violence-tweets-racist-hate-speech>.

¹⁰⁶ *Id.*

¹⁰⁷ Jason Silverstein, *Trump shares video of supporter saying “the only good Democrat is a dead Democrat”*, CBS News (May 28, 2020), <https://www.cbsnews.com/news/president-trump-shares-video-of-supporter-saying-the-only-good-democrat-is-a-dead-democrat/>.

¹⁰⁸ Jason Slotkin, *Protesters Swarm Michigan Capitol Amid Showdown Over Governor’s Emergency Powers*, NPR KQED (May 1, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/05/01/849017021/protesters-swarm-michigan-capitol-amid-showdown-over-governors-emergency-powers>.

¹⁰⁹ *Protesters chant ‘lock her up’ after Michigan governor’s stay-at-home order*, The Guardian (Apr. 15, 2020), <https://www.theguardian.com/world/2020/apr/15/michigan-coronavirus-protest-stay-home-order-gretchen-whitmer>.



Capitol Police with guns drawn stand near a barricaded door as rioters try to break into the House Chamber.

Andrew Harnik / via AP

retweeted and “liked” over one hundred thousand times.¹¹⁰

Perhaps heeding Trump’s words, armed protesters and militia groups returned to Lansing on April 30th to disrupt the legislature’s renewal of Governor Whitmer’s COVID-19 stay-at-home policy.¹¹¹ The mob—some armed with assault rifles and wearing ballistic vests and tactical gear—filled the Michigan State Capitol and attempted to force their way into the legislative chamber.¹¹²

Instead of condemning this armed takeover of the state capitol, Trump

lauded the attackers, stating: “The Governor of Michigan should give a little, and put out the fire. These are very good people, but they are angry. They want their lives back again, safely! See them, talk to them, make a deal.”¹¹³ Just two weeks later on May 14th, the emboldened and armed crowd swarmed the Capitol in Lansing again.¹¹⁴ Two of the extremists involved in the effort to storm the Michigan State Capitol were later involved in a plot to kidnap and kill Governor Whitmer, while others joined the mob in storming the Capitol on January 6th.¹¹⁵

Michigan was not an isolated incident. One day after the April 15th Michigan demonstration, smaller groups opposed to COVID-19 restrictions protested on state capitol grounds in Virginia and the governor’s mansion in Minnesota—protests that Trump also tweeted in support of.¹¹⁶ Violence and political intimidation also occurred at state capitols in Georgia, New Mexico and Idaho throughout 2020 and 2021, prior to the January 6th attack.¹¹⁷ In Oregon, a group of armed protesters opposed to COVID-19 health

110 Donald J. Trump (@realDonaldTrump), Twitter (Apr. 17, 2020, 11:22 AM), <https://twitter.com/realDonaldTrump/status/1251169217531056130?s=20>; see also Mary McCord, *Trump’s ‘LIBERATE MICHIGAN!’ tweets incite insurrection. That’s illegal*, Wash. Post (Apr. 17, 2020), <https://www.washingtonpost.com/outlook/2020/04/17/liberate-michigan-trump-constitution/> (arguing that Trump’s use of “liberate” as the chief executive of our republic is not something to be taken lightly; that in context, it is not unreasonable to consider Trump’s tweets about “liberation” as at least tacit encouragement to citizens to take up arms against duly elected state officials of the party opposite his own, in response to unpopular, but legal, orders).

111 Lois Beckett, *Armed protesters demonstrate against COVID-19 lockdown at Michigan capitol*, The Guardian (Apr. 30, 2020), <https://www.theguardian.com/us-news/2020/apr/30/michigan-protests-coronavirus-lockdown-armed-capitol>.

112 *Id.*

113 Donald J. Trump (@realDonaldTrump), Twitter (May 1, 2020, 8:42 AM), <https://twitter.com/realDonaldTrump/status/1256202305680158720?s=20>.

114 Abigail Censky, *Heavily Armed Protesters Gather Again At Michigan Capitol To Decry Stay-At-Home Order*, NPR (May 14, 2020), <https://www.npr.org/2020/05/14/855918852/heavily-armed-protesters-gather-again-at-michigans-capitol-denouncing-home-order>.

115 January 6th Select Committee Final Report at 503.

116 See Laura Vozzella and Gregory S. Schneider, *With picnic baskets and few masks, demonstrators protest Virginia stay-at-home orders*, Wash. Post (Apr. 16, 2020), https://www.washingtonpost.com/local/virginia-politics/with-picnic-baskets-and-few-masks-demonstrators-protest-virginia-stay-at-home-orders/2020/04/16/fe08b016-8016-11ea-8013-1b6da0e4a2b7_story.html (discussing the Virginia protest); see also *Coronavirus In Minnesota: Group Protests Stay-At-Home Order At Governor’s Mansion*, CBS Minnesota (Apr. 16, 2020), <https://www.cbsnews.com/minnesota/news/coronavirus-in-minnesota-protest-over-stay-at-home-order-expected-at-governors-mansion/> (discussing the Minnesota Protest at governor’s mansion).

117 Lois Beckett, *Riots, effigies and a guillotine: state capitol protests could be a glimpse of violence to come*, The Guardian (Jan. 3, 2021), <https://www.theguardian.com/world/2021/jan/11/trump-supporters-rightwing-violent-protest>.

restrictions, including members of the Proud Boys, stormed the state capitol after a state lawmaker opened the door to allow them to enter; at least three of those individuals traveled to the U.S. Capitol on January 6th.¹¹⁸

Trump's approval of political violence and intimidation became more and more explicit as the 2020 campaign wore on. When asked at a September 29, 2020 presidential debate to denounce white supremacists and right-wing militia groups, Trump responded by specifically singling-out the Proud Boys, a far-right group that has routinely endorsed violence, by stating, "Proud Boys – stand back and stand by."¹¹⁹ Social media interactions between group members called Trump's comments "historic," with some viewing them as a tacit endorsement of their violent tactics, while others took his statement as "marching orders" for election-related violence, which they would in fact go on to organize and carry out.¹²⁰ Joe Biggs, a leading figure in the Proud Boys, said on the social media app Parler that "Trump basically said to go fuck them up... This makes me so happy." (Biggs would later be convicted of seditious conspiracy in connection with his participation in the January 6th attack.)¹²¹ Proud Boys leaders have since testified that their organizational membership tripled in response to Trump's remarks at this debate.¹²²

On October 30, 2020, a convoy of Trump supporters driving dozens of trucks—a self-labeled "Trump Train"—surrounded a Biden-Harris campaign bus on a Texas highway and forced it to slow down to a crawl, then came within inches of hitting it and slammed into a campaign staffer's follow car.¹²³ The confrontation led Texas Democrats to cancel three scheduled campaign events due to safety concerns.¹²⁴ Two of the Trump Train's participants later settled a lawsuit accusing them of political intimidation under the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985.¹²⁵

Trump repeatedly celebrated this clear act of political intimidation in the days leading up to the 2020 election. On October 31st, he tweeted a video of the Trump Train confrontation and stated, "I LOVE TEXAS!"¹²⁶ On November 1st, in response to news that the FBI was investigating the incident, Trump tweeted, "In my opinion, these patriots did nothing wrong," adding that the FBI should investigate "ANTIFA" instead.¹²⁷ Later that day, at a rally in Michigan, Trump again celebrated the incident, falsely

¹¹⁸ Mike Baker, *In a Different Capitol Siege, Republicans in Oregon Call for Accountability*, N.Y. Times (June 8, 2021), <https://www.nytimes.com/2021/06/08/us/oregon-capitol-protest-nearman.html>; see also Laeshia Beachum, *GOP lawmaker charged with 'knowingly' letting rioters breach the Oregon Capitol*, Wash. Post (May 1, 2021), <https://www.washingtonpost.com/politics/2021/05/01/oregon-capitol-riot-republican-nearman/> (reporting that at least three of the men who took part at the far-right demonstration in Salem made the trip to the U.S. Capitol weeks later for the insurrection on Jan. 6).

¹¹⁹ Sheera Frenkel and Annie Karni, *Proud Boys Celebrate Trump's 'Stand By' Remark About Them At The Debate*, N.Y. Times (Sept. 29, 2020, updated Jan. 20, 2021), <https://www.nytimes.com/2020/09/29/us/trump-proud-boys-biden.html>.

¹²⁰ See, e.g., Ben Collins and Brandy Zadrozny, *Proud Boys celebrate after Trump's debate callout*, NBC News (Sept. 29, 2020, updated Sept. 30, 2020), <https://www.nbcnews.com/tech/tech-news/proud-boys-celebrate-after-trump-s-debate-call-out-n1241512>.

¹²¹ U.S. Attorney's Office for the Dist. of Columbia, *supra* note 75.

¹²² *Here's every word of the first Jan. 6 committee hearing on its investigation*, NPR (June 10, 2022), <https://www.npr.org/2022/06/10/1104156949/jan-6-committee-hearing-transcript>.

¹²³ Aliyya Swaby, *"These patriots did nothing wrong," Trump says of supporters who surrounded Biden bus*, Texas Tribune (Nov. 1, 2020), <https://www.texastribune.org/2020/11/01/trump-biden-bus/>.

¹²⁴ *Id.*

¹²⁵ *Two Defendants in the Texas "Trump Train" Lawsuit Agree to Settlement*, Protect Democracy (Apr. 27, 2023), <https://protectdemocracy.org/work/two-defendant-settle-trump-train/>.

¹²⁶ Donald J. Trump (@realDonaldTrump), Twitter (Oct. 31, 2020, 8:41 PM), <https://twitter.com/realDonaldTrump/status/1322700188624932869>.

¹²⁷ Donald J. Trump (@realDonaldTrump), Twitter (Nov. 1, 2020, 8:18 PM), <https://twitter.com/realDonaldTrump/status/1323072051402350592>.

stating his supporters “were protecting [Biden’s] bus ... because they’re nice,” and boasting “they had hundreds of cars, Trump, Trump. Trump and the American flag.”¹²⁸

Trump’s record of support and encouragement of political violence demonstrates that the attack on the Capitol and Trump’s role in it did not happen in isolation. Rather, Trump knew what his supporters were capable of, after having witnessed events like those in Michigan and Texas. And yet, he continued to escalate his violent rhetoric during the 2020 election as his grip on power became more tenuous, resulting in the violent mob that attacked the U.S. Capitol on January 6th. As former Rep. Liz Cheney (R-WY), the vice-chair of the Select Committee, said, “President Trump summoned the mob, assembled the mob and lit the flame of this attack.”¹²⁹ He knew or should have known that his words and actions before and on January 6, 2021 would lead to the violence we saw at the Capitol that day.

Trump used social media and frivolous litigation to spread election falsehoods and “Stop the Steal”

Prior to the 2020 election, Trump began spreading misinformation and election falsehoods, particularly as they related to so-called election fraud from mail-in ballots. After the voting ended and despite being told by election officials, state government officials, campaign staff and his own administration that he had lost a free and fair election, Trump doubled down on his baseless claims, spreading his conspiracy theories to his supporters through his deft use of social media. Around this time, Trump also found a new venue for his falsehoods: the courts. Between November 2020 and January 2021, Trump filed at least 62 lawsuits, each of them fraught with election falsehoods. Despite these claims being widely rejected—and in some cases resulting in sanctions—by state and federal courts, this frivolous litigation helped to lay the groundwork for Trump’s continued refusal to accept electoral defeat.¹³⁰

This was all done despite the fact that, as Trump’s own election officials stated, the 2020 election was the “most secure in American history,” and the election had no “fraud on a scale that could have affected a different outcome in the election.”¹³¹

¹²⁸ CBS Austin Staff, *‘These patriots did nothing wrong’: Trump says Texas trucks were ‘protecting’ Biden bus*, CBS Austin (Nov. 1, 2020), <https://cbsaustin.com/news/local/trump-says-protesters-were-protecting-the-biden-campaign-bus>.

¹²⁹ Mychael Schnell, *Cheney: Trump ‘summoned the mob, assembled the mob and lit the flame of this attack’*, The Hill (June 9, 2022), <https://thehill.com/policy/national-security/3518354-cheney-trump-summoned-the-mob-assembled-the-mob-and-lit-the-flame-of-this-attack/>.

¹³⁰ See Amanda Robert, *Federal judge orders pro-Trump lawyers to pay \$175,000 penalty after sanctions*, ABA Journal (Dec. 3, 2021), <https://www.abajournal.com/news/article/federal-judge-orders-pro-trump-lawyers-to-pay-175000-penalty-after-sanctions> (citing federal judge’s order that Sidney Powell, L. Lin Wood and other lawyers aligned with Trump pay sanctions for their conduct in lawsuit seeking to overturn Michigan election results, finding that the lawsuit represented a “historic and profound abuse of the judicial process”); see also Katelyn Polantz, *Judge orders pro-Trump attorneys who brought frivolous election fraud case to pay more than \$180,000 to defendants they sued*, CNN (Nov. 23, 2021), <https://www.cnn.com/2021/11/22/politics/gary-fielder-ernest-john-walker-fees-election-lawsuits/index.html> (reporting that federal magistrate judge ordered two defendants to pay sanctions, saying their lawsuit aimed to “manipulate gullible members of the public and foment public unrest”).

¹³¹ Kirby, *supra* note 7; Lucas, *supra* note 8.

Trump spread misinformation to delegitimize the election

Trump's attempt to delegitimize the 2020 election results began long before January 6th. In fact, his refusal to accept the election results dates back to his first campaign in 2016 and mirrors many of his actions throughout his presidency.

During the final presidential debate of the 2016 campaign, Trump insisted that the general election would be rigged against him. When asked if he would accept the election results, he said, "I will look at it at the time. I will keep you in suspense."¹³² After Trump won the 2016 election (but lost the popular vote), he claimed, without any evidence, that "if you deduct the millions of people who voted illegally" then he actually had won the popular vote.¹³³

Throughout his presidency, Trump continued to insist that widespread voter fraud had cost him the popular vote in 2016 and continued to sow doubt in the American electoral system.¹³⁴ Between April 2020 and the election, Trump mentioned rigged elections or voter fraud more than 70 times.¹³⁵ For example, in June 2020, Trump tweeted: "RIGGED 2020 ELECTION: MILLIONS OF MAIL-IN BALLOTS WILL BE PRINTED BY FOREIGN COUNTRIES, AND OTHERS. IT WILL BE THE SCANDAL OF OUR TIMES!"¹³⁶ When the coronavirus hit the United States, Trump found a new scapegoat for his claims of fraud: mail-in ballots. During a Coronavirus Task Force press briefing at the White House on April 7, 2020, Trump spoke about why he opposed mail-in voting, stating without evidence that "you get thousands and thousands of people sitting in somebody's living room, signing ballots all over the place."¹³⁷

As early as July 2020, Trump implied that he had no intent to abide by the will of the American people if he lost his reelection.¹³⁸ During a July 19, 2020 interview with Chris Wallace on Fox News Sunday, Trump refused to commit to accepting the election's results due to his unsubstantiated belief that mail-in ballots—the use of which increased due to the COVID-19 pandemic—would "rig" the election results, thereby making them untrustworthy.¹³⁹ As the election approached, he stated that ballots in California were being mailed to undocumented immigrants, claiming that the governor of California was "sending millions of ballots all over the state ... millions. To anybody. To anybody. People that aren't citizens, illegals, anybody

¹³² Patrick Healy and Jonathan Martin, *Donald Trump Won't Say if He'll Accept Result of Election*, N.Y. Times (Oct. 19, 2016), <https://www.nytimes.com/2016/10/20/us/politics/presidential-debate.html>.

¹³³ Tim LoBianco, *Trump falsely claims 'millions of people who voted illegally' cost him popular vote*, CNN (Nov. 28, 2016), <https://www.cnn.com/2016/11/27/politics/donald-trump-voter-fraud-popular-vote/index.html>.

¹³⁴ See Emily Olson, *Trump's Endgame*, ABC News (Nov. 7, 2020), <https://www.abc.net.au/news/2020-11-08/us-election-donald-trump-endgame-in-plain-sight-for-months/12858094>.

¹³⁵ Marianna Spring, *'Stop the Steal': The deep roots of Trump's 'voter fraud' strategy*, BBC News (Nov. 23, 2020), <https://www.bbc.com/news/blogs-trending-55009950?zephyr-modal-register>.

¹³⁶ Donald J. Trump (@realDonaldTrump), Twitter (June 22, 2020, 7:16 AM), <https://twitter.com/realDonaldTrump/status/1275024974579982336?s=20>.

¹³⁷ Paul Steinhauser, *Political battle escalates over push to increase voting-by-mail amid coronavirus pandemic*, Fox News (Apr. 8, 2020), <https://www.foxnews.com/politics/political-battle-escalates-over-push-to-increase-voting-by-mail-amid-coronavirus-pandemic>.

¹³⁸ See generally Kevin Liptak, *A List of the Times Trump Has Said He Won't Accept the Election Results or Leave Office if He Loses*, CNN (Sept. 24, 2020), <https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html>.

¹³⁹ *President Trump defends response to COVID crisis in exclusive interview with Chris Wallace*, Fox News (July 19, 2020), <https://www.foxnews.com/transcript/president-trump-defends-response-to-covid-crisis-in-exclusive-interview-with-chris-wallace>.

that walks in California is gonna get a ballot.”¹⁴⁰ And in West Virginia, he said that postal service workers were selling ballots.¹⁴¹

In a July 30, 2020 Twitter post, Trump argued that the 2020 election should be delayed because it “will be the most INACCURATE & FRAUDULENT Election in history. It will be a great embarrassment to the USA. Delay the Election until people can properly, securely and safely vote???”¹⁴² And at an August 17, 2020 election rally in Wisconsin, he argued that “the only way we’re going to lose this election is if the election is rigged.”¹⁴³ Again, one week later, at the Republican National Convention, he declared that “[t]he only way they can take this election away from us is if this is a rigged election.”¹⁴⁴ When pressed in September 2020 on whether he would “commit to making sure that there is a peaceful transferal [sic] of power after the election,” he responded, “We’re going to have to see what happens.”¹⁴⁵

While Trump continued to insist at election rallies and through social media that if he lost the election, the only plausible explanation was fraud, his advisors also worked to normalize this lie. On October 31, 2020, Stephen Bannon, Trump’s former White House Chief Strategist, told a small private group about Trump’s plan to declare victory. “[H]e’s gonna sit right there and say they stole it,” Bannon said. “He’s gonna declare himself the winner . . . He’s not going out easy. Trump, if Biden is winning, Trump is going to do some crazy shit.”¹⁴⁶ Roger Stone, another Trump advisor, similarly declared this intent prior to the election, “I really do suspect it will still be up in the air. When that happens, the key thing to do is to claim victory. Possession is nine-tenths of the law. No, we won. Fuck you, Sorry. Over. We won. You’re wrong. Fuck you.”¹⁴⁷

In his sworn testimony to the January 6th Committee, Vice President Pence’s counsel Greg Jacob stated that he was alerted prior to the election to the possibility of Trump prematurely declaring victory.¹⁴⁸ In response, Jacob drafted a memo to Marc Short, Pence’s Chief of Staff, advising that Pence take steps to ensure he did not echo a false victory announcement.¹⁴⁹ Moreover, prior to the election, on October 31, 2020, Trump’s outside advisor Tom Fitton sent an email to White House Deputy Chief of Staff Dan Scavino including a draft statement declaring victory and demanding all vote counting stop. On Election Day, Fitton indicated that he had spoken to Trump about this statement.¹⁵⁰

¹⁴⁰ Holmes Lybrand and Daniel Dale, *Fact check: Trump falsely claims California is sending mail-in ballots to undocumented immigrants*, CNN (May 28, 2020), <https://www.cnn.com/2020/05/26/politics/fact-check-trump-vote-by-mail-fraud-gavin-newsom-california/index.html>.

¹⁴¹ Olson, *supra* note 134.

¹⁴² Donald J. Trump (@realDonaldTrump), Twitter (July 30, 2020, 8:46 AM), <https://twitter.com/realDonaldTrump/status/1288818160389558273?s=20>.

¹⁴³ *Donald Trump Speech Transcript Wisconsin August 17* (unofficial), Rev.com (Aug. 17, 2020), <https://www.rev.com/blog/transcripts/donald-trump-speech-transcript-wisconsin-august-17>.

¹⁴⁴ *Donald Trump 2020 RNC Speech Transcript August 24* (unofficial), Rev.com (Aug. 24, 2020), <https://www.rev.com/blog/transcripts/donald-trump-2020-rnc-speech-transcript-august-24>.

¹⁴⁵ U.S. Dep’t of State, *September 23, 2020 - President Trump Holds a News Conference*, YouTube (Sept. 23, 2020), <https://www.youtube.com/watch?v=REDEcMIPcNk> (at 00:36:19).

¹⁴⁶ Dan Friedman and Abigail Weinberg, *Here’s the Whole Transcript of That Leaked Steve Bannon Tape, Annotated*, Mother Jones (Aug. 17, 2022), <https://www.motherjones.com/politics/2022/08/full-transcript-of-leaked-steve-bannon-tape-donald-trump-2020-election/>.

¹⁴⁷ January 6th Select Committee Final Report at 197-198; see also *Here’s every word from the 9th Jan. 6 committee hearing on its investigation*, NPR (Oct. 13, 2022) (quoting Roger Stone from footage obtained by the Committee after the election from Danish filmmaker Christopher Gilbranson [ph] pursuant to subpoena), <https://www.npr.org/2022/10/13/1125331584/jan-6-committee-hearing-transcript>.

¹⁴⁸ NPR, *supra* note 147.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

On November 2nd, in response to the U.S. Supreme Court letting stand a Pennsylvania Supreme Court decision to accept mail-in ballots received up to three days after Election Day, Trump tweeted the decision “will allow rampant and unchecked cheating and will undermine our entire systems of laws” and would “induce violence in the streets.”¹⁵¹

Trump’s rhetoric that he would deem any election loss as illegitimate was not mere posturing. It became very clear that Trump’s intent was to breed confusion by undermining Americans’ faith in the election, claiming victory no matter what the election results showed and using increasingly dubious and dangerous means to maintain his power.

On November 3, 2020, Trump began to execute this plan, when despite explicit guidance from advisors that it was “far too early” to claim victory because “[b]allots were still going to be counted for days,” Trump declared victory anyway.¹⁵² In his election night speech Trump spewed vague and unsubstantiated allegations of fraud to discredit the election results saying: “This is a fraud on the American public. This is an embarrassment to our country. We were getting ready to win this election. Frankly, we did win this election.”¹⁵³ Thanks to Trump advisors Steve Bannon and Roger Stone, we now know that this false victory claim had been planned in advance before any votes had been counted, no matter the election’s actual outcome.¹⁵⁴

On November 4, 2020, while votes were still being counted in several contested states, Trump again falsely declared: “We are up BIG, but they are trying to STEAL the Election. We will never let them do it.”¹⁵⁵ The major news networks announced on November 7th that Joe Biden was the projected winner of the 2020 presidential election.¹⁵⁶ True to his word, Trump did not accept the election results as reported, asserting on November 8th that “this was a stolen election.”¹⁵⁷

After the major news outlets, including Fox, pronounced that Joe Biden was the winner of the 2020 presidential election, Trump doubled down on his allegations of widespread fraud. He deftly used social media to spread misinformation and election fraud conspiracy theories, ranging from allegedly corrupt state election officials, to fraudulent voters, to illegal ballots smuggled in suitcases, while his campaign attorneys spread false claims about voting machines being controlled by nefarious international leaders like former Venezuelan president Hugo Chavez. On December 2, 2020, Trump alleged “tremendous voter fraud and irregularities” resulting from a suspicious late night “massive dump” of votes, adding that certain votes were “counted in foreign countries,” and that “[m]illions of votes were cast illegally in the swing states

¹⁵¹ Donald J. Trump (@realDonaldTrump), Twitter (Nov. 2, 2020, 8:02 PM), <https://twitter.com/realDonaldTrump/status/1323430341512622080>; see also Reuters Staff, *Twitter flags Trump tweet questioning Supreme Court decision on voting in Pennsylvania*, Reuters (Nov. 2, 2020), <https://www.reuters.com/article/usa-election-pennsylvania-trump-twitter/twitter-flags-trump-tweet-questioning-supreme-court-decision-on-voting-in-pennsylvania-idUKFWN2HP002>.

¹⁵² January 6th Select Committee Final Report at 9.

¹⁵³ *President Trump Remarks on Election Status*, C-SPAN (Nov. 3, 2020), <https://www.c-span.org/video/?477710-1/president-trump-remarks-election-status>.

¹⁵⁴ Friedman and Weinberg, *supra* note 146.

¹⁵⁵ Donald J. Trump (@realDonaldTrump), Twitter (Nov. 4, 2020, 12:49 AM), <https://twitter.com/realdonaldtrump/status/1323864823680126977>.

¹⁵⁶ Staff of S. Comm. on Homeland Security and Government Affairs and S. Comm. on Rules & Administration, 117th Cong., *Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6 21* (Comm. Print 2021) [hereinafter Joint Senate Committee Staff Report]; see, e.g., Christina Wilkie and Jacob Pramuk, *Joe Biden Is Projected to Defeat Incumbent Donald Trump in the Presidential Election*, CNBC (Nov. 7, 2020), <https://www.cnbc.com/2020/11/07/2020-election-winner-biden-final-count-results.html>.

¹⁵⁷ Donald J. Trump (@realDonaldTrump), Twitter (Nov. 8, 2020, 9:17 AM), <https://twitter.com/realDonaldTrump/status/1325442336957018112>.

alone,” and that “[i]t [was] statistically impossible” that he lost.¹⁵⁸ Trump seemed to only “find” fraud in cities with significant minority populations, such as Detroit, Philadelphia, Atlanta and Las Vegas—a thinly veiled attempt to disenfranchise people of color and overturn legitimate election results in jurisdictions with predominantly Black or brown populations.¹⁵⁹

On December 14, 2020, the Electoral College gathered to cast and certify each state’s electoral votes, confirming Biden’s victory. By December 14, 2020, the governor of each state where Biden had won had transmitted a certificate of ascertainment to the National Archives pursuant to 3 U.S.C. § 6, indicating that the Biden electors, not the Trump electors, had been appointed because the Biden electors received more votes in those states.¹⁶⁰ After this point, there was no lawful basis for challenging the election results.

Nonetheless, Trump continued to falsely claim that the election was stolen from him, despite many of his senior staff and certain members of his family urging him to concede that he had lost.¹⁶¹ Trump’s refusal to accept defeat became more infused with violent rhetoric as he began recklessly to put civil servants’ lives in danger.

Trump’s election fraud claims were particularly focused on Georgia. Trump’s false claims in that state included an allegation that poll workers in Atlanta’s State Farm Arena had hidden “suitcases” full of Biden ballots under the tables that were only taken out after cameras and poll watchers were told to leave and were then surreptitiously run through the scanner multiple times.¹⁶² A video that allegedly captured this fraud was shown by Rudy Giuliani to the Georgia state legislature on December 3, 2020, complete with selectively edited footage.¹⁶³ In reality, the video showed ballot bins, not suitcases, and was part of the normal ballot process (similarly, in fact no announcement was ever made telling election observers to leave).¹⁶⁴ This claim was investigated by Byung J. Pak, then the U.S. Attorney for the Northern District of Georgia, who ultimately told Attorney General William Barr that there was no substance to the allegations.¹⁶⁵ Acting Deputy Attorney General Richard Donoghue also made clear that the suitcase was in fact an official lockbox filled with valid votes and that what Trump was saying was not supported by evidence.¹⁶⁶

Trump, however, continued to repeat these false allegations, despite being told on at least four different occasions that the allegations were false: he was notified on December 15th by then-Deputy Attorney

¹⁵⁸ Factbase Videos, *Speech: Donald Trump Makes an Unscheduled Pre-Recorded Speech on the Election - December 2, 2020*, YouTube (Dec. 2, 2020), <https://www.youtube.com/watch?v=RFzTuaVS8Kk>.

¹⁵⁹ Emily Badger, *The Cities Central to Fraud Conspiracy Theories Didn't Cost Trump the Election*, N.Y. Times (Nov. 16, 2020), <https://www.nytimes.com/2020/11/16/upshot/election-fraud-trump-cities.html>; see also David Charns, *Clark County calls former President Trump's election claims 'misinformed'*, 8 News Now (Nov. 10, 2022), <https://www.8newsnow.com/news/politics/clark-county-calls-former-president-trumps-election-claims-misinformed/>.

¹⁶⁰ The “certificate of ascertainment” is a State executive’s official documentation announcing the official electors appointed pursuant to State law. See 3 U.S.C. § 6.

¹⁶¹ January 6th Select Committee Final Report at 21.

¹⁶² 11Alive, *Second Georgia Senate Election Hearing*, YouTube (Dec. 3, 2020), <https://www.youtube.com/watch?v=hRCXUNOwOjw&t=1987s> (at 33:07); see Rudy Giuliani (@RudyGiuliani), Twitter (Dec. 3, 2020, 11:14 PM), <https://archive.ph/ykw1q#selection-3025.0-3025.98> (“The video tape doesn’t lie. Fulton County Democrats stole the election. It’s now beyond doubt.”); Factbase Videos *Speech: Donald Trump Holds a Political Rally in Valdosta, Georgia - December 5, 2020*, YouTube (Dec. 5, 2020), <https://www.youtube.com/watch?v=hKBZemnSij4>.

¹⁶³ January 6th Select Committee Final Report at 379.

¹⁶⁴ 11Alive Staff, *GBI to help with ongoing investigations concerning election*, 11Alive (Dec. 4, 2020), <https://www.11alive.com/article/news/politics/elections/georgia-recount-results-live-blog-dec-3/85-a4209de7-4213-4fe8-96be-37d7a2aa7676>.

¹⁶⁵ January 6th Select Committee Final Report at 379.

¹⁶⁶ *Id.* at 386.

General Jeffrey Rosen, twice by Donoghue, Rosen's deputy, on December 27th and December 31st and on January 2, 2021 by Georgia Secretary of State Brad Raffensperger.¹⁶⁷ At one point, Trump even told DOJ officials Rosen and Donoghue to “[j]ust say the election was corrupt and leave the rest to me and the Republican Congressman.”¹⁶⁸

The desperation with which these false claims were repeatedly put forth by Trump and his allies to promote voter fraud fictions demonstrates the recklessness and viciousness of Trump's post-election pursuit to overturn the election.

Trump and his allies brought and lost more than 60 election related lawsuits designed to prevent the transfer of power

Trump and his campaign brought at least 62 state and federal lawsuits challenging the election results, which often contained false claims of election fraud.¹⁶⁹ Each challenge failed, except for a single technical violation in a Pennsylvania lawsuit that did not relate to voter fraud and did not affect the outcome of the election.¹⁷⁰ Judges in these cases found that the lawsuits before them were aimed to “breed confusion,” “undermine the public's trust in the election,” and “potentially disenfranchise [] millions of ... voters.”¹⁷¹ Every candidate has the right to sue to ensure that we have a free and fair election, but numerous judges criticized Trump and his campaign for irresponsibly peddling election lies and submitting disingenuous briefs and pleadings in court.

The U.S. Supreme Court denied numerous emergency applications aimed at overturning the election results.¹⁷² In response, Trump began a public campaign against the Supreme Court hoping to convince the nation's highest court to hear his claims of election fraud. On December 12th, while several “Stop the Steal” rallies were going on in D.C., Trump targeted the Court on Twitter, at one point stating that “The Supreme Court had ZERO interest in the merits of the greatest voter fraud ever perpetrated on the United States of

¹⁶⁷ *Id.* at 224-225.

¹⁶⁸ *Id.* at 386.

¹⁶⁹ See Staff of S. Comm. on the Judiciary, 117th Cong., *Subverting Justice: How the Former President and His Allies Pressured DOJ to Overturn the 2020 Election 2* (Comm. Print 2021) [hereinafter Senate Judiciary Committee Staff Report]; see also *King v. Whitmer*, 556 F. Supp. 3d 680, 688-89 (E.D. Mich. 2021) (sanctioning attorneys and calling the case “a historic and profound abuse of the judicial process” meant to “undermin[e] the People's faith in our democracy”); William Cummings, Joey Garrison, and Jim Sergent, *By the Numbers: President Donald Trump's Failed Efforts to Overturn the Election*, USA Today (Jan. 6, 2021), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

¹⁷⁰ *Trump for President, Inc. et al. v. Boockvar, et al.*, No. 602 M.D. 2020 (Pa. Commonwealth Ct. Nov. 12, 2020), <https://www.pacourts.us/Storage/media/pdfs/20210604/020642-file-10440.pdf> (holding that the state could not count ballots that were missing proof of identification and cured during an extended deadline).

¹⁷¹ *Trump v. Kemp*, 511 F. Supp. 3d 1325, 1339 (N.D. Ga. 2021).

¹⁷² See Jessica Gresko, *Supreme Court rejects Trump election challenge cases*, AP (Feb. 22, 2021), <https://apnews.com/article/joe-biden-donald-trump-pennsylvania-elections-us-supreme-court-5cc6aee8c328c7bb1d423244b979bcec> (reporting that the Supreme Court rejected a handful of cases related to the 2020 election, including disputes from Pennsylvania, Arizona, Georgia, Michigan, and Wisconsin).

America..."¹⁷³ and that, "The Supreme Court really let us down. No wisdom, No Courage!"¹⁷⁴ On December 26th, Trump tweeted that this nation's highest court was "totally incompetent and weak on the massive Election Fraud that took place in the 2020 Presidential Election."¹⁷⁵

Trump and his allies were well aware that the courts were consistently rejecting his claims of fraud. In a meeting at the White House with Trump on December 18th, Senior Advisor Eric Herschmann pointed out that Trump had every opportunity in the courts to present his case and every court had denied his claims.¹⁷⁶ In response, Sidney Powell retorted that "the judges are corrupt." According to Herschmann's testimony, he responded, "Every one? Every single case that you've done in the country you guys lost, every one of them is corrupt, even the ones we appointed?"¹⁷⁷ At least 22 federal judges who heard these post-election cases were appointed by Republican presidents.

Despite Trump's best efforts to demonize and intimidate the judiciary, later courts saw through Trump's facade and recognized how he was using these lawsuits to lay the groundwork for his more extreme conduct in December and January. For example, in *Eastman v. Thompson*, a suit in which the Select Committee sought documents from Trump attorney John Eastman, U.S. District Court Judge David Carter found that the "primary goal" of many of Trump's lawsuits was "not to obtain legal relief, but to disrupt or delay the January 6 congressional proceedings through the courts."¹⁷⁸ The court further held that it was "more likely than not" that certain emails in connection with these cases were related to a criminal conspiracy by Trump and others "to obstruct the Joint Session of Congress on January 6, 2021," thus fitting the "crime-fraud exception" to attorney-client privilege.¹⁷⁹

The *Eastman* court also found evidence that Trump knowingly made false claims of voter fraud under oath in one Georgia lawsuit. The court noted that in a December filing, Trump signed a verification in the case swearing under oath that the alleged numbers of instances of voter fraud were "true and correct" or "believed to be true and correct" to the best of his knowledge and belief, despite having been "made aware," by experts that the allegations of voter fraud were inaccurate.¹⁸⁰ The court held that this evidence showed "President Trump knew that the specific numbers of voter fraud were wrong but continued to tout those numbers, both in court and to the public."¹⁸¹

By mid-December 2020, if not before, Trump knew he had lost. The Supreme Court had rejected a lawsuit filed by the State of Texas challenging the election results in Pennsylvania, Georgia, Michigan and

¹⁷³ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 12, 2020, 11:04 AM), <https://twitter.com/realDonaldTrump/status/1337790419875352576?s=20>.

¹⁷⁴ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 11, 2020, 11:50 PM), <https://twitter.com/realDonaldTrump/status/1337620892139081728?s=20>; see also Donald J. Trump (@realDonaldTrump), Twitter (Dec. 12, 2020, 7:58 AM), <https://twitter.com/realDonaldTrump/status/1337743516294934529?s=20> (tweeting that "'Justices Alito and Thomas say they would have allowed Texas to proceed with its election lawsuit.' @seanhannity This is a great and disgraceful miscarriage of justice. The people of the United States were cheated, and our Country disgraced. Never even given our day in Court!").

¹⁷⁵ Todd Ruger, *Supreme Court denies Trump election challenge*, Roll Call (Dec. 11, 2020), <https://rollcall.com/2020/12/11/supreme-court-denies-trump-election-challenge/>; Donald J. Trump (@realDonaldTrump), Twitter (Dec. 26, 2020, 8:51 AM), <https://twitter.com/realDonaldTrump/status/1342830505163706369>.

¹⁷⁶ January 6th Select Committee Final Report at 212-213; see also January 6th Select Committee Final Report, Transcribed Interview of Eric Herschmann (Apr. 6, 2022), at 170-71, <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000062567/pdf/GPO-J6-TRANSCRIPT-CTRL0000062567.pdf>.

¹⁷⁷ January 6th Select Committee Final Report at 213.

¹⁷⁸ See *Eastman v. Thompson*, 2022 WL 11030550, at *15 (C.D. Cal. 2022).

¹⁷⁹ January 6th Select Committee Final Report at 101.

¹⁸⁰ See *Eastman v. Thompson*, 2022 WL 11030550, at *16.

¹⁸¹ *Id.*

Wisconsin.¹⁸² According to Special Assistant to the President Cassidy Hutchinson, Trump was enraged, at one point admitting to his Chief of Staff Mark Meadows that he didn't want "people to know we lost...This is embarrassing...We need to figure it out. I don't want people to know we lost."¹⁸³

Trump's repeated refusals, in the face of irrefutable evidence, to accept the results of the 2020 election metastasized the lie of a stolen election within the minds of many Americans.

Staff repeatedly told Trump there was no widespread election fraud yet he continued to spread conspiracy theories

After the Electoral College met on December 14, 2020, confirming Biden's victory, there was no lawful basis to challenge the election results. Nonetheless, Trump continued to falsely claim that the election was stolen from him, despite many of his senior staff and certain members of his family urging him to concede.¹⁸⁴ Trump's refusal to accept defeat became more infused with violent rhetoric, as he began recklessly to put civil servants' lives in danger.

For instance, Trump continued to publicly repeat false allegations about rigged voting machines at least a dozen more times, including:

- "The crime that was committed in this state [Georgia] is immeasurable. An immediate forensic audit of an appropriate sampling of Dominion's voting machines and related equipment is critical to determine the level of illegal fraudulent ballots improperly counted in Georgia during the 2020 General Election, and during tomorrow's race."¹⁸⁵
- "'Georgia election data, just revealed, shows that over 17,000 votes illegally flipped from Trump to Biden.' @OANN This alone (there are many other irregularities) is enough to easily 'swing Georgia to Trump'. #StopTheSteal"¹⁸⁶
- "Chris Krebs was totally excoriated and proven wrong at the Senate Hearing on the Fraudulent 2020 Election. Massive FRAUD took place with [voting] machines."¹⁸⁷
- "You start with these [voting] machines that have been suspect . . . they're not glitches. They're theft. They're fraud, absolute fraud. And there were many of them, but, obviously, most of them tremendous amounts, got by without us catching. We got lucky to catch them. I think we caught four or five glitches of about 5,000 votes each, and different states. And, again, they're not glitches. That was fraud. And they got caught. But, for the most part, they got away with it."¹⁸⁸

¹⁸² January 6th Select Committee Final Report at 20, 346.

¹⁸³ *Id.* at 20.

¹⁸⁴ *Id.* at 21.

¹⁸⁵ Donald J. Trump, Remarks at Rally in Dalton, Georgia (Jan. 4, 2021).

¹⁸⁶ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 3, 2021, 9:20 AM), <https://twitter.com/realDonaldTrump/status/1345736811906273282?s=20>.

¹⁸⁷ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 16, 2020, 1:51 PM), <https://twitter.com/realDonaldTrump/status/1339281950490697729?s=20>.

¹⁸⁸ Interview: Maria Bartiromo Interviews Donald J. Trump on Fox News (Nov. 29, 2020), <https://vimeo.com/485180163>.

- “Dominion is running our Election. Rigged!”¹⁸⁹
- “There could also have been a hit on our ridiculous voting machines during the election, which is now obvious that I won big, making it an even more corrupted embarrassment for the USA.”¹⁹⁰

Before the election, White House Director of Political Affairs and Trump Campaign Manager Bill Stepien advised Trump that he should not expect to know the election results on election night. Stepien explained to Trump how certain states would not begin to count absentee and other mail-in ballots until Election Day or after election-day polls had closed.¹⁹¹ Stepien made clear to Trump that Republicans tend to vote in person on Election Day, and Democrats tend to vote in advance of the election, which can lead to a so-called “red mirage” early on in the vote counting process where it appears like Republican candidates are ahead before mail-in votes, which tend to lean Democratic, are tabulated.¹⁹² Stepien also testified that as of November 5th, the Trump campaign had not found any proof of fraud and that there were “allegations and reports,” but “nothing hard [and] fast” that drew the results of the election into question.¹⁹³

According to sworn statements by Trump senior campaign advisor Jason Miller, soon after the polls closed on Election Day, a campaign expert told Trump “in pretty blunt terms” that he was going to lose.¹⁹⁴ Similarly, Rupert Murdoch, a staunch Trump ally, told Jared Kushner over the phone on election night (while Trump can be heard shouting in the background) that Trump had lost Arizona.¹⁹⁵

Trump privately admitted he lost the election, according to testimony from several of Trump’s closest military and civilian advisors. For example, General Mark Milley recalled Trump’s acknowledgment of defeat during an Oval Office conversation where it was discussed that certain issues, presumably within the State Department, would soon become President-elect Biden’s concern.¹⁹⁶ Similarly, White House Communications Director Alyssa Farah Griffin recalled Trump exclaiming, “Can you believe I lost to this f’ing guy?”¹⁹⁷ And White House aide Cassidy Hutchinson witnessed Trump state that he didn’t want people to know he had lost.¹⁹⁸ In other words, Trump knew he lost but continued in public to tout lies about the election to agitate his supporters.

Throughout November and December 2020, official government and Trump campaign documents and investigations concluded that election fraud claims were false. These reports were seen by Trump and his closest advisors. On November 12, 2020, the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency announced that there was no evidence of widespread election fraud

¹⁸⁹ Donald J. Trump (@realDonaldTrump), Twitter (Nov. 16, 2020, 8:26 AM), <https://twitter.com/realDonaldTrump/status/1328328547598000130?s=20>.

¹⁹⁰ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 19, 2020, 11:30 AM), <https://twitter.com/realDonaldTrump/status/1340333619299147781?s=20>.

¹⁹¹ January 6th Select Committee Final Report at 8.

¹⁹² *Id.* (detailing the “red mirage” and how this scenario has played out in prior elections).

¹⁹³ *Id.* at 204; January 6th Select Committee, Transcribed Interview of William Stepien (Feb. 10, 2022), at 92, <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000042624/pdf/GPO-J6-TRANSCRIPT-CTRL0000042624.pdf>.

¹⁹⁴ See Cong. Defs.’ Opp. to Pl. Eastman’s Privilege Assertions at 5, *Eastman v. Thompson*, 2022 WL 11030550 (C.D. Cal. 2022), <https://www.documentcloud.org/documents/21565075-congressional-defendants-brief-in-opposition-to-plaintiffs-privilege-assertions-eastman-v-thompson-et-al> (citing to Miller deposition).

¹⁹⁵ Alisha Rahaman Sarkar, *Rupert Murdoch gave Jared Kushner confidential information about Biden election ads, Dominion filing claims*, Independent (Feb. 28, 2023), <https://www.independent.co.uk/news/world/americas/us-politics/dominion-vs-fox-news-murdoch-biden-kushner-b2291301.html>.

¹⁹⁶ NPR, *supra* note 147.

¹⁹⁷ *Id.*

¹⁹⁸ January 6th Select Committee Final Report at 20.

and that the 2020 election was “the most secure in American history.”¹⁹⁹ On November 14, 2020, an internal memo produced within the Trump campaign debunked various conspiracy theories about voting machines that Trump lawyers Rudy Giuliani and Sidney Powell publicly and repeatedly espoused.²⁰⁰ Trump campaign lawyer Alex Cannon, who was tasked with assessing allegations of election fraud, told the Select Committee that he reported to Meadows in November 2020 that he wasn’t “finding anything that would be sufficient to change the results in any of the key states,” and Meadows appeared to accept his conclusion, stating: “So there is no there, there.”²⁰¹ Trump Deputy Campaign Manager Justin Clark confirmed that it was “fair” to say Giuliani never “produced evidence of election fraud.”²⁰² In describing Trump’s claims of fraud and attempts to overturn the election, Stepien testified: “I didn’t think what was happening was necessarily honest or professional.”²⁰³ Even Giuliani’s own former chief investigator, Bernie Kerik, admitted that his team was not able to find any evidence of fraud and that no Dominion voting machine improperly switched, deleted or injected votes during the 2020 election.²⁰⁴



U.S. Congressman Mark Meadows speaking at the 2018 Conservative Political Action Conference (CPAC) in National Harbor, Maryland. Gage Skidmore / via Flickr

¹⁹⁹ CISA, *supra* note 7. Christopher Krebs, the director of the CISA, was fired five days later; see Ben Fox, *Trump fires agency head who vouched for 2020 vote security*, AP (Nov. 18, 2020), <https://apnews.com/article/donald-trump-fires-christopher-krebs-dhs-5e63923e0c11c9155eb5af2362d78548>.

²⁰⁰ Senate Judiciary Committee Staff Report at A-1 (full internal memo at <https://int.nyt.com/data/documenttools/trump-campaign-memo/f7b2de7129fe91b2/full.pdf>); see also January 6th Select Committee Final Report at 18 (detailing Sidney Powell sanction for outlandish claims of election fraud without evidence); see also January 6th Select Committee Final Report at 215 (detailing Rudy Giuliani’s repeated assertions of speculative, unsupported and meritless claims as truth).

²⁰¹ January 6th Select Committee Final Report at 13.

²⁰² *Here’s every word from the seventh Jan. 6 committee hearing on its investigation*, NPR (July 12, 2022), <https://www.npr.org/2022/07/12/111123258/jan-6-committee-hearing-transcript>.

²⁰³ *Here’s every word of the second Jan. 6 committee hearing on its investigation*, NPR (June 13, 2022), <https://www.npr.org/2022/06/13/1104690690/heres-every-word-of-the-second-jan-6-committee-hearing-on-its-investigation>.

²⁰⁴ January 6th Select Committee, Transcribed Interview of Bernard Kerik (Jan. 13, 2022), at 182, <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000036628/pdf/GPO-J6-TRANSCRIPT-CTRL0000036628.pdf>.

Senior Department of Justice officials, including Attorney General Bill Barr, and later Acting Attorney General Jeffrey Rosen and Acting Deputy Attorney General Richard Donoghue, repeatedly told Trump that there was no widespread election fraud that could change the outcome of the election. Shortly after the election, then-Attorney General Barr directed U.S. Attorneys throughout the country to investigate all “substantial allegations” of voting irregularities before the 2020 presidential election was certified. This investigation—which ignored longstanding DOJ policy that prohibited such overt actions before an election was certified—nonetheless confirmed that there was no meaningful election fraud. On December 1, 2020, Barr met with an Associated Press reporter and announced that the DOJ had “not seen fraud on a scale that could have affected a different outcome in the election.”²⁰⁵

Barr not only told the public that there was no fraud, he told Trump directly, as well. Barr testified before the Select Committee that Trump never showed any “indication of interest in what the actual facts were.”²⁰⁶ Barr met with Trump several times during which he told him that his claims of election fraud were false, including a meeting after Barr had spoken to the AP reporter on December 1st.²⁰⁷ Trump was reportedly so livid that Barr had contradicted his stolen election claims to a reporter that Trump threw his lunch against the wall.²⁰⁸

In mid-December 2020, Barr announced his resignation, and Trump appointed Jeffrey Rosen as the Acting Attorney General. Rosen and his deputy Richard Donoghue continued to make it clear to Trump that the stolen election claims were false. Despite this, Rosen testified that “...between December 23rd and January 3rd, the President either called me or met with me virtually every day, with one or two exceptions, like Christmas Day.”²⁰⁹ Acting Deputy Attorney General Donoghue testified to the Select Committee about the difficulty of combating the various allegations that Trump would put forth, particularly during a December 27th conversation that he had with the president: “...he had this arsenal of allegations that he wanted to – to rely on... Because it was clear to us that there were a lot of people whispering in his ear, feeding him these conspiracy theories and allegations...As the President went through them I went piece by piece to say no, that’s false. That’s not true. And to correct him really in – in a serial fashion as he moved from one theory to another.”²¹⁰ Donoghue then testified that during the call on December 27th, he recorded in handwritten notes a request from Trump that he and Acting Attorney General Rosen “[j]ust say the election was corrupt and leave the rest to me and the Republican Congressman.”²¹¹

Again on December 31, 2020, Rosen made it clear to Trump in an Oval Office meeting that the claims of widespread election fraud had no basis in fact: “[W]e had seen nothing improper with regard to the voting machines. And I told him that the — the real experts that had been at DHS and they had briefed us, that they had looked at it and that there was nothing wrong with the — the voting machines.”²¹² Nevertheless,

²⁰⁵ Lucas, *supra* note 8.

²⁰⁶ January 6th Select Committee Final Report at 214.

²⁰⁷ *Id.* at 378.

²⁰⁸ *Here’s every word of the sixth Jan. 6 committee hearing on its investigation*, NPR (June 29, 2022), <https://www.npr.org/2022/06/28/1108396692/jan-6-committee-hearing-transcript>.

²⁰⁹ January 6th Select Committee Final Report at 49.

²¹⁰ *Here’s every word from the fifth Jan. 6 committee hearing on its investigation*, NPR (June 23, 2022), <https://www.npr.org/2022/06/23/1106700800/jan-6-committee-hearing-transcript>.

²¹¹ January 6th Select Committee, Transcribed Interview of Richard Peter Donoghue (Oct. 1, 2021), at 58, <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000034600/pdf/GPO-J6-TRANSCRIPT-CTRL0000034600.pdf>; Documents on file with the January 6th Select Committee (Department of Justice Production), HCOR-Pre-Certification-Events-07282021-000738, HCORPre-Certification-Events-07282021-000739 (December 27, 2020, handwritten notes from Richard Donoghue about call with President Trump).

²¹² NPR, *supra* note 210.

Trump, his attorneys, White House staff and political allies continued to make these false claims with a clear “focus on public statements that something was corrupt, as opposed to trying specifically to get to the bottom of the individual allegations.”²¹³

White House legal staff also told Trump that his fraud allegations were false. White House Counsel Pat Cipollone along with Eric Herschmann reinforced to Trump that “he had seen no evidence of massive fraud in the election” and that he had “forcefully” made this point to the president “over and over again.”²¹⁴ At a meeting on December 18th, both Cipollone and Herschmann urged Trump to stop relying on the advice of conspiracy theorists who were feeding him false information.²¹⁵

In the final weeks of 2020, Trump’s campaign employed two different outside research groups to study the 2020 election results.²¹⁶ The first, the Berkeley Research Group, specifically investigated whether there had been fraud in six key swing states.²¹⁷ The results of the Berkeley study showed that while there may have been some irregularities, none affected the election results in any state.²¹⁸ Notably, senior officials from the Berkeley Research Group briefed Trump personally in December on the findings of this study by phone.²¹⁹ Nevertheless, Trump and Meadows reportedly continued to insist on the call that Trump won the election, according to people familiar with the meeting.²²⁰ A second similar research group, Simpatico Software Systems, was hired by the Trump campaign during this same time to investigate over a dozen voter fraud theories and allegations.²²¹ Emails from Simpatico’s president, Ken Block, to Trump’s campaign show that many of the theories being pushed by Trump’s team were erroneous.²²² The Trump campaign did not release the findings of either study, seemingly because they contradicted Trump’s election fraud claims.²²³

Despite hearing over and over again from his trusted legal advisors, senior appointees, campaign staff, his own DOJ and others that his allegations were baseless, Trump persisted in spreading lies of a stolen election. Trump’s response to those who told him that his election claims were based on bad and unreliable information was to stop listening to them; soon, Trump simply appointed Giuliani, a big proponent of these lies, as head of his election lawsuits and continued to make his false allegations with reckless abandon.²²⁴

²¹³ See *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 160, at *15 (C.D. Cal. Mar. 2, 2022) (transcript of interview with Richard Donoghue).

²¹⁴ January 6th Select Committee Final Report at 16.

²¹⁵ *Id.*

²¹⁶ Josh Dawsey and Amy Gardner, *Trump-funded studies disputing election fraud are focus in two probes*, Wash. Post (June 5, 2023), <https://www.washingtonpost.com/nation/2023/06/05/trump-funded-studies-disputing-election-fraud-are-focus-two-probes/>.

²¹⁷ Josh Dawsey, *Trump campaign paid researchers to prove 2020 fraud but kept findings secret*, Wash. Post (Feb. 11, 2023), <https://www.washingtonpost.com/politics/2023/02/11/trump-campaign-report-electoral-fraud/>; see also Josh Dawsey, *Trump-commissioned report undercut his claims of dead and double voters*, Wash. Post (Mar. 17, 2023) <https://www.washingtonpost.com/elections/2023/03/17/trump-fraud-report-2020/>.

²¹⁸ Dawsey (Feb. 11, 2023), *supra* note 217; see also Dawsey (Mar. 17, 2023), *supra* note 217.

²¹⁹ Dawsey (Feb. 11, 2023), *supra* note 217; see also Dawsey (Mar. 17, 2023), *supra* note 217.

²²⁰ Dawsey (Feb. 11, 2023), *supra* note 217; see also Dawsey (Mar. 17, 2023), *supra* note 217.

²²¹ Aila Slisco, *Trump Hired Software Firm that Found 2020 Fraud Claims Were 'All False'*, Newsweek (Apr. 27, 2023), <https://www.newsweek.com/trump-hired-software-firm-that-found-2020-fraud-claims-were-all-false-1797178>.

²²² Dawsey (June 5, 2023), *supra* note 216.

²²³ Dawsey (Feb. 11, 2023), *supra* note 217; see also Dawsey (Mar. 17, 2023), *supra* note 217; see also Josh Dawsey, *A second firm hired by Trump campaign found no evidence of election fraud*, Wash. Post (Apr. 27, 2023) (reporting the second firm hired by Trump), <https://www.washingtonpost.com/nation/2023/04/27/trump-false-election-fraud-claims/>.

²²⁴ January 6th Select Committee Final Report at 16.

Trump attempted to force state and federal officials to overturn the 2020 election results

Prior to January 6th, Trump's attempt to overturn the election relied heavily on pressuring, coercing, intimidating and threatening state and federal officials, including the Vice President and those working at the Department of Justice, into overturning the lawful election results. In battleground states throughout the country, Trump publicly and privately pressured state legislators and election officials to overturn the 2020 presidential results and encouraged his supporters to do the same. His supporters responded to his rhetoric by engaging in widespread intimidation and threats of violence against state and local officials. At the same time, Trump's public pressure escalated when state lawmakers and party leaders were asked to sign fake electoral certificates claiming that Trump, rather than Biden, won the election in select battleground states. These fake electors were central to Trump's scheme to overturn the election results, and according to the Select Committee, "led directly to the violence that occurred on January 6th."²²⁵

Trump unleashed a wave of threats and intimidation against government officials at all levels

In the days and weeks following the 2020 presidential election, Trump publicly threatened state legislators and election officials, sometimes by name, urging them to overturn their state's election results. On several occasions, Trump's supporters followed up Trump's threats and intimidation with threats and intimidation of their own. This call and response between Trump's threats and his supporters' violence was a dress rehearsal for what was to come on January 6th.

In Arizona, Michigan and Pennsylvania, Trump's supporters—in response to his inflammatory rhetoric and baseless lies—descended on election centers. On November 4, 2020, in Maricopa County, Arizona, local law enforcement defended the election center from a large crowd of demonstrators—some armed with firearms—demanding the count continue.²²⁶ The protesters congregated at the Maricopa County Elections Department spurred on by an unfounded claim that pro-Trump ballots had been disqualified due to the use of a permanent marker to mark one's choices on the ballot (the ballots in fact were being counted by the Maricopa County Board of Supervisors).²²⁷ In Michigan, Trump supporters attempted to enter a vote-counting center in Detroit while banging on the windows of the room where ballots were being counted, chanting, "stop the count."²²⁸ On November 5th, police arrested two men with loaded handguns in Philadelphia near a vote-counting location, one of whom, in a video, said they were in a "fight for America as we know it" and wanted to make sure only "legitimate" votes were counted.²²⁹ Trump posted his support

²²⁵ *Id.* at 343.

²²⁶ Brianna Whitney (@BrianaWhitney), Twitter (Nov. 4, 2020, 11:41 PM), https://twitter.com/BrianaWhitney/status/1324210208948719616?s=20&t=7gko_ts_4LTz8mdMaRQBOQ; see also *Protesters gather outside Maricopa County Elections Department*, KTAR News (Nov. 4, 2020), <https://ktar.com/story/3678840/protesters-gather-outside-maricopa-county-elections-department> (reporting several hundred protesters gathered outside the office, attempting to get inside); see also Katie Shepherd and Hannah Knowles, *Driven by unfounded 'SharpieGate' rumor, pro-Trump protesters mass outside Arizona vote-counting center*, Wash. Post (Nov. 5, 2020), <https://www.washingtonpost.com/nation/2020/11/05/arizona-election-protest-votes/>.

²²⁷ KTAR News, *supra* note 226.

²²⁸ Tresa Baldas, et al., *'Get to TCF': What really happened inside Detroit's ballot counting center*, Detroit Free Press (Nov. 23, 2020), <https://www.freep.com/story/news/local/michigan/detroit/2020/11/06/tcf-center-detroit-ballot-counting/6173577002/>.

²²⁹ *Armed men arrested near Philadelphia vote counting location*, AP (Nov. 6, 2020), <https://apnews.com/article/philadelphia-men-guns-arrested-near-vote-d9f8fa1f3d556f3ee014769c543abdod>.

for these efforts to disrupt the vote counting process while they were ongoing, tweeting “STOP THE COUNT.”²³⁰

These were not isolated incidents. As of December 2021, Reuters reported at least 850 threatening and hostile messages related to the 2020 election aimed at election officials and staff across 30 jurisdictions in 16 states; almost all expressed support for Trump or referenced his false claim that the election was stolen.²³¹ Death threats and attacks were so prevalent during the 2020 election season that, according to a spring 2021 Brennan Center survey, one in three election officials felt unsafe because of their jobs.²³² The DOJ task force formed to investigate these threats found that 58 percent of all potentially criminal threats were in states where there were post-election lawsuits, recounts and audits following the 2020 election.²³³

Election workers in Georgia bore the brunt of Trump’s intimidation campaign. Following Trump’s and his lawyer’s claims of a suitcase full of ballots in Atlanta, his supporters made death threats against an election worker, Wandrea “Shaye” Moss, who appeared in the video.²³⁴ These death threats continued as Trump and Giuliani routinely told stories at his rallies, as well as on social media and TV appearances, that specifically alleged that Moss and her mother, Ruby Freeman, committed voter fraud in Atlanta to deny Trump victory in Georgia.²³⁵ Trump played the surveillance video of Ms. Moss and Ms. Freeman at a December 5th rally, and mentioned Ms. Freeman by name 18 times during his infamous January 2nd call to Georgia Secretary of State Brad Raffensperger.²³⁶ They did this despite Trump’s own officials, including an independent investigation by the U.S. Attorney for the Northern District of Georgia, determining that “nothing irregular happened in the counting and the allegations made by Mr. Giuliani were false.”²³⁷ Nonetheless, these stories became popularized on Fox News, One America News Network, and other conservative news outlets, as television personalities amplified the narrative and circulated the video they claimed bolstered these false claims of voter fraud.²³⁸

²³⁰ Donald J. Trump (@realDonaldTrump), Twitter (Nov. 5, 2020, 9:12 AM), <https://twitter.com/realDonaldTrump/status/1324353932022480896?s=20>.

²³¹ Peter Eisler, et al., *Anatomy of a death threat*, Reuters (Dec. 30, 2021), <https://graphics.reuters.com/USA-ELECTION/THREATS/mopanwmlkva/index.html>.

²³² *Election Officials Under Attack*, Brennan Center for Justice (June 16, 2021), <https://www.brennancenter.org/our-work/policy-solutions/election-officials-under-attack>.

²³³ *Readout Election Threats Task Force Briefing with Election Officials and Workers*, Dep’t of Just. (Aug. 1, 2022), <https://www.justice.gov/opa/pr/readout-election-threats-task-force-briefing-election-officials-and-workers>.

²³⁴ Tera W. Hunter, *What Trump Did to Shaye Moss and her family follows a dark American tradition*, NBC News (June 25, 2022), <https://www.nbcnews.com/think/opinion/trumps-attack-on-shaye-moss-follows-dark-american-tradition-rcna35309>; see also January 6th Select Committee Final Report at 225-226.

²³⁵ January 6th Select Committee Final Report at 306; see also Jason Szep and Linda So, *Trump campaign demonized two Georgia election workers – and death threats followed*, Reuters (Dec. 1, 2021), <https://www.reuters.com/investigates/special-report/usa-election-threats-georgia/>.

²³⁶ January 6th Select Committee Final Report at 306.

²³⁷ *The January 6th Investigation: Hearing Before the H. Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol*, 117th Cong. 20 (2022) (3rd hearing); see also January 6th Select Committee Final Report at 379 (noting that the “suitcase” was a secure storage container used to store ballots, and that US. Attorney BJay Pak told Attorney General Barr that there was no substance to the allegations).

²³⁸ January 6th Select Committee Final Report at 306; see also Farnoush Amiri, *‘Nowhere I feel safe’: Election officials recount threats*, AP (June 22, 2022), <https://apnews.com/article/capitol-siege-2022-midterm-elections-georgia-election-recounts-5cffe294a372eb32dc68588784202314> (discussing Moss and Freeman’s defamation lawsuit against OAN for pushing the false claims of packing ballots into suitcases); see also Mia Gingerich, *Fox News spread conspiracy theories about Georgia election workers that led to threats of violence. Another outlet is being sued for doing the same*, Media Matters for America (Dec. 10, 2021), <https://www.mediamatters.org/fox-news/fox-news-spread-conspiracy-theories-about-georgia-election-workers-led-threats-violence> (asserting that Fox News falsely claimed that the video showed election fraud occurring, resulting in threats and harassment of Moss and Freeman).

Ms. Freeman testified before the Select Committee that as a result of these baseless allegations, she was subject to violent and racist threats.²³⁹ Ms. Moss testified that Trump supporters sent her messages that she should “be glad it’s 2020 and not 1920,” and that she and her mother should “hang...for committing treason.”²⁴⁰ Moreover, she testified that a pro-Trump mob showed up at her grandmother’s house, forcing their way in to search for Ms. Moss and Ms. Freeman, in an effort to make a “citizen’s arrest,” a term long associated with vigilante violence used against Black Americans.²⁴¹ Moss’s son even received threats, with one phone call stating that he “should hang alongside [his] n**ger momma.”²⁴²

The threats to Ms. Moss and Ms. Freeman demonstrate the power that Trump’s voice and lies had with his supporters. The threats on Ms. Freeman’s life were so severe that she was warned by the FBI that it was unsafe to stay in her home, eventually causing her to flee from her home.²⁴³ According to federal prosecutors, a member of the Oath Keepers, who was convicted of multiple offenses for his role in the January 6th attack, had a document in his possession titled “DEATH LIST,” and the list contained just two names: Ruby Freeman and Shaye Moss.²⁴⁴

Other local election officials in Georgia received threats as well. Fulton County Elections Director Richard Barron, who was named and depicted on screen in a video Trump played at a December 5th rally, stated that this led to a spike in death threats targeting him and other election workers.²⁴⁵ One member of his team received death threats stating “n[**ger] who should be shot,” and another threatened, “to kill him by dragging his body around with a truck.”²⁴⁶ Election offices in 10 Georgia counties received bomb threats via email, stating that it would “make the Boston bombings look like child’s play” and that the “death and destruction” would continue “[u]ntil Trump is guaranteed to be POTUS.”²⁴⁷

On December 1, 2020, Georgia Secretary of State’s Chief Operating Officer Gabriel Sterling explicitly warned Trump during a press conference that his incendiary rhetoric could lead to increased violence and even death, stating: “Mr. President, you have not condemned these actions or this language . . . This has to stop . . . [it is] inspiring people to commit potential acts of violence. Someone’s going to get hurt. Someone’s going to get shot. Someone’s going to get killed.”²⁴⁸ Trump “apparently saw and disregarded” this warning, quote-tweeting a video of Sterling’s remarks and then stating: “Rigged Election. Show signatures and envelopes. Expose the massive voter fraud in Georgia. What is Secretary of State and @BrianKempGA afraid of. They know what we’ll find!!!”²⁴⁹ As the Select Committee noted, with this comment, Trump “doubled down on demonizing Georgia election workers in Georgia in spite of Sterling’s stark and detailed warning.”²⁵⁰

²³⁹ January 6th Select Committee Final Report at 307.

²⁴⁰ *Here’s every word from the fourth Jan. 6 committee hearing on its investigation*, NPR (June 21, 2022), <https://www.npr.org/2022/06/21/1105848096/jan-6-committee-hearing-transcript>; see also Hunter, *supra* note 234.

²⁴¹ NPR, *supra* note 240; see also Hunter, *supra* note 234.

²⁴² January 6th Select Committee Final Report at 306.

²⁴³ *Id.*

²⁴⁴ *Id.* at 307.

²⁴⁵ *Id.* at 305.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ See *id.* at 44-45; see also Stephen Fowler, ‘Someone’s Going to Get Killed’: Election Official Blasts GOP Silence on Threats, GPB (Dec. 1, 2020), <https://www.gpb.org/news/2020/12/01/someones-going-get-killed-election-official-blasts-gop-silence-on-threats>.

²⁴⁹ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 1, 2020, 10:27 PM), <https://twitter.com/realDonaldTrump/status/1333975991518187521> (quote-tweeting a video of Sterling’s remarks); see also January 6th Select Committee Final Report at 44 (stating that the select committee determined that President Trump “apparently saw and disregarded” the warning from Sterling).

²⁵⁰ January 6th Select Committee Final Report at 44 n. 242.



Georgia Secretary of State Brad Raffensperger.
Tom Williams / via Roll Call

Trump's pressure campaign on state and local officials in Georgia played out in both public and private. In private, Trump pressured both Georgia Secretary of State Raffensperger and Georgia Governor Brian Kemp to change the state's election results.²⁵¹ Trump similarly targeted them in public, such as in this tweet on November 13, 2020: "Georgia Secretary of State, a so-called Republican (RINO), won't let the people checking the ballots see the signatures for fraud. Why? Without this the whole process is very unfair and close to meaningless. Everyone knows that we won the state. Where is @BrianKempGA?"²⁵² On Thanksgiving Day 2020, Trump called Raffensperger "an enemy of the people" at a press conference.²⁵³

Not only did Trump identify specific officials directly in his tweets, but the Trump campaign also spent millions of dollars running online and television ads asking people to call their legislators and election officials.²⁵⁴ This pressure campaign included urging Trump's supporters to contact state officials, including

in Georgia, demanding that they hear Trump's so-called evidence of voter fraud and vote to decertify the election results, despite three separate audits or recounts finding no evidence of widespread fraud.²⁵⁵ For example, on January 1, 2021, Trump quote-tweeted a message from his campaign directing supporters to contact Georgia House Speaker David Ralston and Senate Majority Leader Mike Dugan to demand a vote on the decertification of electors "NOW."²⁵⁶

Trump and his Chief of Staff Meadows also directly inserted themselves into Georgia's ballot counting process. On December 22nd, Meadows traveled to Cobb County, Georgia to examine the audit of absentee ballots being led by Frances Watson, the Secretary of State's chief investigator.²⁵⁷ After this trip, Meadows connected Watson with Trump, who on a phone call alleged that Fulton County, Georgia was the "mother

251 January 6th Select Committee Final Report at 289-291.

252 Donald J. Trump (@realDonaldTrump), Twitter (Nov. 13, 2020, 7:53 PM), <https://twitter.com/realDonaldTrump/status/1327413534901350400?s=20>.

253 Ian Schwartz, *Trump: Georgia Secretary of State Brad Raffensperger The "Enemy Of The People"*, Real Clear Politics (Nov. 26, 2020), https://www.realclearpolitics.com/video/2020/11/26/trump_georgia_secretary_of_state_brad_raffensperger_the_enemy_of_the_people.html.

254 PBS NewsHour, *WATCH: Trump spent millions on 'stop the steal' ads ahead of Capitol attack, Rep. Swalwell says*, YouTube (Feb. 10, 2021), <https://www.youtube.com/watch?v=MavAlqQUIXY>; see also January 6th Select Committee Final Report at 301-302; Press Release, Donald J. Trump for President, Trump campaign releases new ads calling on the American people to help fix our broken election system (Dec. 11, 2020), <https://web.archive.org/web/20201214114301/https://www.donaldjtrump.com/media/trump-campaign-releases-new-ads-calling-on-the-american-people-to-help-fix-our-broken-election-system/>.

255 NPR, *supra* note 240; see also January 6th Select Committee Final Report at 301, 305.

256 See, e.g., Michael King, *Trump encouraging Georgia voters to call state lawmakers and demand decertification*, 11Alive (Jan. 1, 2021), <https://www.11alive.com/article/news/politics/elections/trump-encouraging-georgia-voters-to-call-state-lawmakers/85-c506eeb5-adb4-4097-a8bd-0375ceacecof>.

257 January 6th Select Committee Final Report at 291; see also Mark Niese, *Top Trump aid Mark Meadows visits Georgia ballot signature audit*, Atlanta Journal-Constitution (Dec. 22, 2020), <https://www.ajc.com/politics/top-trump-aide-mark-meadows-visits-georgia-ballot-signature-audit/LC5HBS3AUVH4ZONJFSEL5RO2XA/>.

lude” of fraud.²⁵⁸ Trump framed her job as a matter of national significance and repeated his claims of election fraud, and impliedly asked that the audit be completed by January 6th.²⁵⁹

Trump also called Georgia’s Republican Attorney General Chris Carr on December 8, 2020 after Carr made a statement about a lawsuit filed by the state of Texas attempting to throw out the election results in Georgia and three other states Biden had won. Carr issued a statement stating that the lawsuit was “constitutionally, legally and factually wrong.”²⁶⁰ Trump called Carr after the statement, urging him not to rally other Republicans to come out against the lawsuit.

In one of his more flagrant actions, Trump tried to coerce Georgia’s Republican Secretary of State Raffensperger to overturn the election results in his state through thinly-veiled threats of criminal prosecution. In a now-infamous January 2, 2021 phone call, Trump told Raffensperger to say that he had “recalculated” the election result in Georgia to “find 11,780 votes” for Trump, one more than Biden’s margin of victory in the state.²⁶¹ According to an audiotape of the phone conversation, Trump threatened Raffensperger with criminal prosecution unless he did what Trump wanted, telling Raffensperger that it’s “more illegal for you than it is for them” and that’s “a big risk” for Raffensperger to take.²⁶² Despite Trump’s threats, Raffensperger and his counsel, Ryan Germany, pushed back against Trump’s claims throughout the conversation. In response to one of Trump’s many assertions that he won the state, Raffensperger replied: “Well, Mr. President, the challenge that you have is the data you have is wrong.”²⁶³

Raffensperger testified to the Select Committee that he received death threats from Trump supporters citing the election lies spread by Trump, and that his wife also received “sexualized attacks” via text message, and that people broke into his widowed daughter-in-law’s home, where her children live.²⁶⁴ On January 5, 2021, Governor Kemp and Raffensperger were reportedly named in a Craigslist post encouraging people to “put an end to the lives of these traitors.”²⁶⁵

Trump’s intimidation campaign against state and local officials in Georgia stands out for its scope and breadth, but election officials in other states faced similar backlash after Trump attacked their state’s elections. Pennsylvania Secretary of the Commonwealth Kathy Boockvar’s phone number and home address were published by users of the ring-wing social media app Parler and people were encouraged to show up at her house.²⁶⁶ Armed protesters gathered outside Michigan Secretary of State Jocelyn Benson’s

²⁵⁸ Julia Jester, *You’ll be praised’: Audio of Trump call with Georgia elections investigator offers new details*, NBC News (Mar. 15, 2021), <https://www.nbcnews.com/politics/elections/you-ll-be-praised-audio-trump-call-georgia-elections-investigator-n1261159>.

²⁵⁹ January 6th Select Committee Final Report at 291; *see also* Jester, *supra* note 258.

²⁶⁰ Greg Bluestein, *Trump warns Georgia AG not to rally other Republicans against Texas lawsuit*, Atlanta Journal-Constitution (Dec. 9, 2020), <https://www.ajc.com/politics/trump-warns-georgia-ag-not-to-rally-other-republicans-against-texas-lawsuit/37ASZD4PJNE NHOLVIXZHRXCJI/>.

²⁶¹ NPR, *supra* note 240.

²⁶² *Id.*

²⁶³ Amy Gardner and Paulina Firozi, *Here’s the full transcript and audio of the call between Trump and Raffensperger*, Wash. Post (Jan. 5, 2021), https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356_story.html.

²⁶⁴ NPR, *supra* note 240; *see also* Amara Walker, Chris Youd, and Ray Sanchez, *Family of Georgia’s secretary of state was still getting death threats months after election, report says*, CNN (June 11, 2021), <https://www.cnn.com/2021/06/11/politics/georgia-raffensperger-family-death-threats-election/index.html>.

²⁶⁵ January 6th Select Committee Final Report at 305.

²⁶⁶ Megan Frank, *Dangers Of Doxing: Internet Users Release Addresses, Phone Numbers Of Election Officials*, WLTV News (Dec. 11, 2020), <https://www.wlvt.org/blogs/warren/dangers-of-doxing-internet-users-release-addresses-phone-numbers-of-election-officials/>.

home spewing “stolen” election claims.²⁶⁷ Arizona Secretary of State Katie Hobbs and her family faced ongoing death threats. Protesters surrounded her home and chanted, “We are watching you!”²⁶⁸ Federal prosecutors also charged a Massachusetts man with sending a message threatening to set off a bomb if Hobbs did not resign.²⁶⁹ Trump also targeted the Arizona House Speaker, Russell “Rusty” Bowers. Trump and his team reached out to Bowers asking him to replace Arizona’s presidential electors for Biden with electors for Trump, arguing that fraud had marred the election results in his state.²⁷⁰ In response, Bowers demanded proof supporting Trump’s claims of electoral fraud. At one point, after Bowers pressed Giuliani on whether they had proof of the fraud, Giuliani responded, “we’ve got lots of theories, we just don’t have the evidence.” Bowers replied that they were, “asking [him] to do something against [his] oath...”²⁷¹ At one point, Trump retweeted that Bowers was “misleading” Arizona voters.²⁷² Shortly after that tweet, Bowers’ address and phone number were published on social media and at least nine protests took place at his home, including one where an individual, believed to be a member of an extremist militia, showed up armed.²⁷³

The violence and intimidation deployed against Ms. Freeman, Ms. Moss, Secretary Raffensperger and others show that Trump’s words and actions had real life consequences. More importantly, they demonstrated to Trump his supporters’ capacity for violence when urged through either direct or coded calls to action.



²⁶⁷ Bill Chappell, *Michigan Secretary Of State Says Armed Protesters Descended On Her Home Saturday*, NPR (Dec. 7, 2020), <https://www.npr.org/sections/biden-transition-updates/2020/12/07/943820889/michigan-secretary-of-state-says-armed-protesters-descended-on-her-home-saturday>.

²⁶⁸ Brahm Resnik, *Video: Group Chants ‘We Are Watching You’ outside Arizona Secretary of State Katie Hobbs’ Home*, KPNX-TV 12 News (Nov. 18, 2020), <https://www.12news.com/article/news/politics/video-group-chants-we-are-watching-you-outside-arizona-secretary-of-state-katie-hobbs-home/75-a569ae35-3b62-424e-88f8-f03ca8b89458>.

²⁶⁹ Ryan Teague Beckwith, *Violent Threats to Election Workers Spiraled After 2020 Election*, Bloomberg (Aug. 3, 2022), <https://www.bloomberg.com/news/articles/2022-08-03/violent-threats-to-election-workers-spiraled-after-2020-election>.

²⁷⁰ See January 6th Select Committee Final Report at 46.

²⁷¹ See *id.*

²⁷² Christina Bobb (@christina_bobb), Twitter (Dec. 4, 2020, 6:02 PM), https://twitter.com/christina_bobb/status/1334996485075836936 (original tweet, retweeted by Trump, accusing Bowers of “misleading” Arizona voters); Donald J. Trump (@realDonaldTrump), Trump Twitter Archive (Dec. 6, 2020, 12:53 AM), <https://www.thetrumparchive.com/?searchbox=%22rusty+bowers%22> (archived retweet by Trump of original tweet).

²⁷³ January 6th Select Committee Final Report at 303.

A timeline of President Trump's tweets

April 17, 2020–October 3, 2022

Donald J. Trump @realDonaldTrump

RIGGED 2020 ELECTION: MILLIONS OF MAIL-IN BALLOTS WILL BE PRINTED BY FOREIGN COUNTRIES, AND OTHERS. IT WILL BE THE SCANDAL OF OUR TIMES!

7:16 AM · Jun 22, 2020

53.4K Retweets 32.9K Quotes 206.2K Likes 1,455 Bookmarks

Donald J. Trump @realDonaldTrump

I LOVE TEXAS!



8:41 PM · Oct 31, 2020

33.8K Retweets 29.4K Quotes 253.2K Likes 2,681 Bookmarks

Donald J. Trump @realDonaldTrump

Some or all of the content shared in this Tweet is disputed and might be misleading about an election or other civic process. [Learn more](#)

The Supreme Court decision on voting in Pennsylvania is a VERY dangerous one. It will allow rampant and unchecked cheating and will undermine our entire systems of laws. It will also induce violence in the streets. Something must be done!

8:02 PM · Nov 2, 2020

Donald J. Trump @realDonaldTrump

LIBERATE MICHIGAN!

11:22 AM · Apr 17, 2020

22.1K Retweets 13.3K Quotes 139.6K Likes 403 Bookmarks

Donald J. Trump @realDonaldTrump

Success: Since the National Guard moved into Kenosha, Wisconsin, two days ago, there has been NO FURTHER VIOLENCE, not even a small problem. When legally asked to help by local authorities, the Federal Government will act and quickly succeed. Are you listening Portland?

1:01 PM · Aug 28, 2020

26.8K Retweets 3,043 Quotes 137.3K Likes 220 Bookmarks

Donald J. Trump @realDonaldTrump

In my opinion, these patriots did nothing wrong. Instead, the FBI & Justice should be investigating the terrorists, anarchists, and agitators of ANTIFA, who run around burning down our Democrat run cities and hurting our people!

Tony Plohetski @tplohetski · Nov 1, 2020
NEW: Very short statement from the FBI confirming that they are investigating incident Friday involving Biden bus.

Record Statement:

FBI San Antonio is aware of the incident and investigating. No further information is available at this time.

8:18 PM · Nov 1, 2020

14.2K Retweets 9,783 Quotes 72.3K Likes 500 Bookmarks

Donald J. Trump @realDonaldTrump

STOP THE COUNT!

9:12 AM · Nov 5, 2020

84.1K Retweets 322.1K Quotes 587.3K Likes 5,623 Bookmarks

Donald J. Trump @realDonaldTrump

Georgia Secretary of State, a so-called Republican (RINO), won't let the people checking the ballots see the signatures for fraud. Why? Without this the whole process is very unfair and close to meaningless. Everyone knows that we won the state. Where is [@BrianKempGA](#)?

7:50 PM · Nov 13, 2020

34.3K Retweets 9,188 Quotes 164.5K Likes 328 Bookmarks

Christina Bobb @christina_bobb

This election struggle is because of leaders, elected by We the People, who have now rigged elections to rob Americans of their right to elect leaders of our choice. We gave them power and they are robbing us of ours.

11:21 AM · Dec 5, 2020

4,065 Retweets 690 Quotes 23.8K Likes 29 Bookmarks

Donald J. Trump @realDonaldTrump

Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn't know about this, but I'll be seeing them! [#MAGA](#)

9:59 AM · Dec 12, 2020

33.5K Retweets 7,326 Quotes 240K Likes 236 Bookmarks

Kylie Jane Kremer @KylieJaneKremer

The calvary is coming, Mr. President!

JANUARY 6th | Washington, DC

[TrumpMarch.com](#)

[#MarchForTrump](#) [#StopTheSteal](#)

Mike Lindell and 8 others

3:50 PM · Dec 19, 2020

Donald J. Trump @realDonaldTrump

Rigged Election. Show signatures and envelopes. Expose the massive voter fraud in Georgia. What is Secretary of State and [@BrianKempGA](#) afraid of. They know what we'll find!!! [twitter.com/BrendanKeefe/s...](#)

You're unable to view this Tweet because this account owner limits who can view their Tweets. [Learn more](#)

10:27 PM · Dec 1, 2020

13.3K Retweets 3,860 Quotes 65.7K Likes 271 Bookmarks

Donald J. Trump @realDonaldTrump

The Supreme Court really let us down. No Wisdom, No Courage!

11:50 PM · Dec 11, 2020

31.4K Retweets 17.5K Quotes 245.1K Likes 570 Bookmarks

Donald J. Trump @realDonaldTrump

Peter Navarro releases 36-page report alleging election fraud 'more than sufficient' to swing victory to Trump [washex.am/3nwaBCe](#). A great report by Peter. Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild!

1:42 AM · Dec 19, 2020

36.5K Retweets 7,398 Quotes 143K Likes 1,022 Bookmarks

Donald J. Trump @realDonaldTrump

If a Democrat Presidential Candidate had an Election Rigged & Stolen, with proof of such acts at a level never seen before, the Democrat Senators would consider it an act of war, and fight to the death. Mitch & the Republicans do NOTHING, just want to let it pass. NO FIGHT!

8:00 AM · Dec 26, 2020

32.2K Retweets 6,565 Quotes 156K Likes 273 Bookmarks

Donald J. Trump @realDonaldTrump
The "Justice" Department and the FBI have done nothing about the 2020 Presidential Election Voter Fraud, the biggest SCAM in our nation's history, despite overwhelming evidence. They should be ashamed. History will remember. Never give up. See everyone in D.C. on January 6th.
8:14 AM · Dec 26, 2020
35.7K Retweets 5,242 Quotes 164.1K Likes 297 Bookmarks

Machiavelli @TheRISEofROD
President Trump retweeted this!
Machiavelli @TheRISEofROD · Jan 3, 2021
We The People Refuse To Concede To A Fraudulent Election!!
Show this thread
11:37 PM · Jan 3, 2021

Donald J. Trump @realDonaldTrump
Washington is being inundated with people who don't want to see an election victory stolen by emboldened Radical Left Democrats. Our Country has had enough, they won't take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!
5:05 PM · Jan 5, 2021

Donald J. Trump @realDonaldTrump
Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!
2:38 PM · Jan 6, 2021
89.8K Retweets 42.7K Quotes 539.2K Likes 1,451 Bookmarks

Donald J. Trump January 6, 2021 · 🌐
Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!
769K reactions 244K comments 49K shares

Donald J. Trump @realDonaldTrump
The BIG Protest Rally in Washington, D.C., will take place at 11.00 A.M. on January 6th. Locational details to follow. StopTheSteal!
2:53 PM · Jan 1, 2021
37.5K Retweets 6,513 Quotes 195.8K Likes 409 Bookmarks

Donald J. Trump @realDonaldTrump
The Vice President has the power to reject fraudulently chosen electors.
11:06 AM · Jan 5, 2021
52.9K Retweets 19.5K Quotes 312.6K Likes 756 Bookmarks

Donald J. Trump @realDonaldTrump
States want to correct their votes, which they now know were based on irregularities and fraud, plus corrupt process never received legislative approval. All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!
8:17 AM · Jan 6, 2021
37.5K Retweets 7,229 Quotes 191.7K Likes 507 Bookmarks

Donald J. Trump @realDonaldTrump
These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!
11:01 PM · Jan 6, 2021
66 hearts 19 people are Tweeting about this

Donald J. Trump @realDonaldTrump
So, with the revelation of MASSIVE & WIDESPREAD FRAUD & DECEPTION in working closely with Big Tech Companies, the DNC, & the Democrat Party, do you throw the Presidential Election Results of 2020 OUT and declare the RIGHTFUL WINNER, or do you have a NEW ELECTION? A Massive Fraud of this type and magnitude allows for the termination of all rules, regulations, and articles, even those found in the Constitution. Our great "Founders" did not want, and would not condone, False & Fraudulent Elections!
24K ReTruths 82.1K Likes
Dec 03, 2022, 7:44 AM
Reply ReTruth Like

Trump schemed to send false slates of electors to Congress and pressured Pence to unilaterally overturn the 2020 election results

Starting shortly after the polls closed on election night, Trump and his allies, including Mark Meadows, Rudy Giuliani, John Eastman and Kenneth Chesebro, began crafting an unconstitutional strategy to keep Trump in office by reinterpreting how Electoral College votes are sent to and counted in Congress, claiming, without legal or historical support, that the vice president can unilaterally change the Electoral College outcome.

Under the U.S. Constitution, the president of the United States is elected through an indirect popular vote.²⁷⁴ Instead of directly voting for a specific candidate, each American votes for their preferred candidate's proposed presidential electors to participate in the Electoral College. Each state then certifies its election results and announces a winner; it also issues a "certificate of ascertainment," which lists the names of the duly chosen electors.²⁷⁵ The electors who receive the most votes on the certificate of ascertainment are those who participate in the Electoral College, while a losing candidate's proposed electors have no role to play and no standing to participate in the Electoral College.²⁷⁶ This process takes place after every presidential election, in every state and the District of Columbia. By law, the Electoral College meets and electors cast their votes on the Monday after the second Wednesday in December, which in 2020 was December 14th.²⁷⁷

Under the Twelfth Amendment, those Electoral College votes are then officially counted during a joint session of Congress presided over by the vice president in his capacity as President of the Senate.²⁷⁸ The Electoral Count Act of 1887 designates January 6th as the date for that Joint Session of Congress.²⁷⁹ The Constitution, the Electoral Count Act of 1887, and historical practice make clear that the vice president's role during the joint session is purely ministerial.²⁸⁰ Their job is to "open all of the certificates" and ensure that the Electoral College votes "shall then be counted".²⁸¹ Neither the vice president nor Congress have any discretion in naming the winner. Rather, the text of the Twelfth Amendment states that the "person having the greatest number of [electoral college] votes for President shall be the President."²⁸²

Trump and his allies sought to manipulate the process by creating fraudulent Electoral College votes. Core to this plan was having designated fake electors in battleground states—Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania and Wisconsin—sign and submit fake Electoral College certificates declaring that Trump, rather than Biden, won the 2020 presidential election in their state, so that the vice president would be presented with conflicting slates of electors during the Joint Session of Congress.²⁸³

²⁷⁴ U.S. Const. Art. II, §1, Cl. 2 and 3.

²⁷⁵ January 6th Select Committee Final Report at 265.

²⁷⁶ *Id.*

²⁷⁷ 3 U.S.C. § 7.

²⁷⁸ U.S. Const. amend. XII.

²⁷⁹ 3 U.S.C. § 15.

²⁸⁰ January 6th Select Committee Final Report at 30.

²⁸¹ U.S. Const. amend XII.

²⁸² *Id.*

²⁸³ Alan Feuer and Katie Benner, *The Fake Electors Scheme, Explained*, N.Y. Times (July 27, 2022), <https://www.nytimes.com/2022/07/27/us/politics/fake-electors-explained-trump-jan-6.html>; *see also* January 6th Select Committee Final Report at 31, 341-342.

The strategy then called upon former Vice President Pence to do one of two things:

- Faced with two conflicting slates of electors, say that “no electors that can be deemed validly appointed” in any state that Biden won but that the Trump campaign continued to contest, and simply “gavel[] President Trump as re-elected,” declaring that Trump has more electoral votes of the electors appointed; or
- Determine that pursuant to the Twelfth Amendment, “no candidate has achieved the necessary majority” of electoral votes, at which point Pence would send the election to the House of Representatives where each state delegation would be given one vote, noting that “Republicans ... control[led] 26 of the state delegations, the bare majority needed to win that vote.”

At a minimum, this strategy aimed to create “a stalemate that would give the state legislatures more time” to take action somehow legitimizing the “alternate slate[s] of electors” supportive of Trump.²⁸⁴ Importantly, this plan would also create uncertainty about Joe Biden’s actual victory—uncertainty that the mob on January 6th could then take advantage of.²⁸⁵

From the start, Trump and his allies knew that their plan to have battleground states sign and submit fake electoral college certificates was illegal, yet they pursued it anyway.

This idea originated with Kenneth Chesebro—an attorney recruited to assist the Trump campaign as a volunteer legal advisor—who drafted a series of memos on November 18th, December 9th and December 13th that became “central to the creation of the plan” to have fake electors in battleground states sign and submit fake electoral certificates, and then for Pence to reject the certified electoral votes on January 6, 2021.²⁸⁶ His memos argued in favor of what became known as the “President of the Senate” strategy: that the vice president, as President of the Senate, is “charged with ‘making judgments about what to do if there are conflicting votes’” when the joint session met on January 6th.²⁸⁷ Based upon this, Chesebro argued, Pence could unilaterally choose not to count Arizona’s electoral college votes for Biden and instead choose to count the fake electors convened by the Trump campaign.²⁸⁸ In his December 9, 2020 memo, however, Chesebro acknowledged that the strategy to organize Trump electors was “somewhat dicey” given state law.²⁸⁹ Despite this acknowledgement, Chesebro would go on to draft and distribute documents that were intended to be used at fake elector ceremonies, which were shared with contacts in Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania and Wisconsin.²⁹⁰ Chesebro even provided specific instructions, such as the logistics of when and where the fake electors should convene, how many copies each person would need to sign and directions to send their fake votes to Congress via registered mail.²⁹¹

²⁸⁴ Memorandum from John Eastman to legal team of Donald J. Trump on “Jan. 6 Scenario” (first memorandum), <https://www.washingtonpost.com/context/eastman-first-version-memo/4aeb9362-1989-4100-8e3f-a130bdd6e83a/>.

²⁸⁵ *Id.*

²⁸⁶ January 6th Select Committee Final Report at 344; *see also* Memorandum from Kenneth Chesebro to Judge James R. Troupis on The Real Deadline for Settling a State’s Electoral Votes, (Nov. 18, 2020), <https://www.nytimes.com/interactive/2022/02/02/us/trump-electors-memo-november.html>.

²⁸⁷ January 6th Select Committee Final Report at 431.

²⁸⁸ *Id.*

²⁸⁹ Memorandum from Kenneth Chesebro to Judge James R. Troupis on Statutory Requirements for December 14 Electoral Votes (Dec. 9, 2020), <https://www.nytimes.com/interactive/2022/02/02/us/trump-electors-memo-december.html>.

²⁹⁰ January 6th Select Committee Final Report at 350.

²⁹¹ *Id.*

Trump campaign attorney John Eastman, at the request of Trump campaign lawyer Cleta Mitchell, also drafted a series of memoranda justifying Trump’s strategy to overturn the election.²⁹² These memos—the first of which was drafted on December 23, 2020—would come to be the foundation of Trump’s January 6th plot. The memos argued that the vice president was the “ultimate arbiter” who could unilaterally decide the winner of the 2020 presidential election.²⁹³ Eastman’s argument relied upon the existence of fake electors as a justification for Pence to act, arguing that the mere existence of multiple slates of electors “demonstrates the uncertainty of either. That should be enough.”²⁹⁴ Tellingly, Eastman’s justification was circular and unanchored in precedent or reality; by his reasoning, the existence of the fake electors demonstrated that the election was disputed, and yet, the fake electors came into being solely through the surreptitious work of Trump and his allies.

The Eastman memos contradicted an earlier analysis Eastman himself had provided before the election which made clear that the vice president’s role in counting the electoral votes was passive and ministerial in nature.²⁹⁵ Moreover, Eastman conceded that there was no historical precedent for the role of the vice president that he was pushing; no vice president since the adoption of the Electoral Count Act has ever exercised this authority.²⁹⁶ Eastman even admitted in front of Trump during a January 4th Oval Office meeting attended by Vice President Pence and Vice President Pence’s counsel Greg Jacobs that “no judge would support his argument,”²⁹⁷ and that it would lose 9 to 0 in the Supreme Court.²⁹⁸

Trump fully embraced these legal theories, despite being told by the White House Counsel’s Office that it was legally unsound.²⁹⁹ Just days before the Electoral College met on December 14th, Trump enlisted the Republican National Committee (RNC) to help coordinate the fake electors scheme.³⁰⁰ On this call with the RNC, Trump introduced John Eastman, who emphasized to RNC Chairwoman Ronna Romney McDaniel the important role the RNC could play in helping to gather “contingent electors in case any of the legal challenges that were ongoing changed the results in any of the states;” McDaniel soon let Trump know that RNC staffers would assist in this scheme.³⁰¹

Michael Roman, a Trump campaign official, acted as “the lead for executing the voting on Monday” December 14th by the fake electors.³⁰² At his direction, campaign aides created a tracker for the fake electors, which listed contact information, whether they had been contacted, whether they had agreed to attend on December 14th as well as a list of substitute “electors” to replace any of the fake electors who were hesitant or unavailable.³⁰³

²⁹² *Id.* at 269.

²⁹³ *Id.* at 432.

²⁹⁴ *Id.* at 444.

²⁹⁵ *Id.* at 432.

²⁹⁶ *Id.* at 450.

²⁹⁷ Adam Klasfeld and Marisa Sarnoff, *Pence Lawyer Says John Eastman Admitted His Plan to Overturn Election Would Lose 9-0 at Supreme Court*, Law & Crime (June 16, 2022), <https://lawandcrime.com/jan-6-committee/pence-lawyer-says-john-eastman-admitted-his-plan-to-overturn-election-would-lose-9-0-at-supreme-court/>.

²⁹⁸ January 6th Select Committee Final Report at 450.

²⁹⁹ NPR, *supra* note 147.

³⁰⁰ January 6th Select Committee Final Report at 41; Adam Brewster, *Michigan GOP Co-chair Said Trump Campaign Encouraged Efforts to Give Him State’s Electoral Votes*, CBS News (Jan. 21, 2022), <https://www.cbsnews.com/news/trump-campaign-michigan-2020-state-electoral-votes/>.

³⁰¹ January 6th Select Committee Final Report at 346.

³⁰² *Id.* at 350.

³⁰³ *Id.* at 350-351.

On December 14th, fake electors organized by the Trump campaign in seven states that Biden won (Arizona, Georgia, Michigan, New Mexico³⁰⁴, Nevada, Pennsylvania³⁰⁵ and Wisconsin) met to sign “certificates” falsely declaring that they were the “duly elected and qualified Electors” from their state and that Trump was the winner of their state.³⁰⁶ These false certificates were then sent to the National Archives.³⁰⁷ Current Michigan Republican Party Co-Chair Meshawn Maddock, one of the state’s slate of sixteen fake electors, explicitly acknowledged that she acted at the direction of the Trump campaign when she organized the fake electors and signed the fake electoral certificate: “We fought to seat the electors. The Trump campaign asked us to do that,” she said.³⁰⁸

The Trump campaign also engaged in acts to cover up the fake elector scheme, leading a reasonable person to assume that they knew what they were doing was wrong. For example, a campaign staffer advised Georgia participants in an email that he required their “complete discretion” and “complete secrecy,” further advising that they should lie and that when they arrive at the state Capitol building they should say they are there for a meeting with Senators Brandon Beach or Burt Jones, with one person even referring to it as an “educational meeting.”³⁰⁹ In Michigan, an attorney working with the Trump campaign allegedly told Michigan GOP Chair Laura Cox that the fake electors in Michigan were planning to hide overnight in the state Capitol so that they could satisfy the state law requirement that electors must cast their vote in the Michigan chamber.³¹⁰ Ultimately, this plan did not succeed, and the Michigan fake electors signed their paperwork in the GOP headquarters in Michigan, where phones were not allowed inside.³¹¹

Most recently, at least eight of the fake electors in Georgia have accepted immunity deals in the ongoing criminal investigation into Trump’s efforts to overturn the 2020 election there.³¹² The investigation in Georgia by District Attorney Fani Willis had previously notified all 16 of the GOP fake electors that they were targets of the investigation. While the investigation is ongoing, the impact of these immunity deals is potentially significant; Willis is expected to announce whether or not she will indict Trump and others in connection to their efforts to overturn the election sometime between July and September 2023.³¹³

³⁰⁴ See *id.* at 353 (stating that the paperwork signed by the fake Trump electors in New Mexico made clear they were participating “on the understanding that it might later be determined that we are the duly elected and qualified Electors...”).

³⁰⁵ See *id.* (stating that the document signed by the fake Trump electors in Pennsylvania indicated they were signing “on the understanding that if, as a result of a final non-appealable Court Order or other proceeding proscribed by law, we are ultimately recognized as being the duly elected and qualified Electors...”).

³⁰⁶ Beth Reinhard et al., *As Giuliani coordinated plan for Trump electoral votes in states Biden won, some electors balked*, Wash. Post (Jan. 20, 2022), https://www.washingtonpost.com/investigations/electors-giuliani-trump-electoral-college/2022/01/20/687e3698-7587-11ec-8b0a-bcfab800c430_story.html.

³⁰⁷ See Letter from Katerina Horska, Director, Legal Affairs and Policy, Office of the Federal Register, to Austin Evers, American Oversight (Feb. 17, 2022), <https://www.justsecurity.org/wp-content/uploads/2022/06/january-6-clearinghouse-nara-records-regarding-invalid-alternate-slate-elector-21-0174-FOIA.pdf> (granting FOIA request making false certificates public).

³⁰⁸ Clara Hendrickson and Dave Boucher, *Michigan GOP co-chair says Trump campaign directed fake electors, per CNN audio*, Detroit Free Press (Jan. 20, 2022), <https://www.freep.com/story/news/local/michigan/detroit/2022/01/20/meshawn-maddock-donald-trump-fake-electors-cnn-audio/6599607001/>.

³⁰⁹ January 6th Select Committee, Deposition of Laura Cox (May 3, 2022), at 53–54, <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000082295/pdf/GPO-J6-TRANSCRIPT-CTRL0000082295.pdf>; see also January 6th Select Committee Final Report at 354.

³¹⁰ January 6th Select Committee Final Report at 354.

³¹¹ *Id.*

³¹² Sara Murray and Jason Morris, *At least 8 fake electors have been granted immunity in the Georgia Trump investigation*, CNN (May 5, 2023), <https://www.cnn.com/2023/05/05/politics/georgia-trump-fake-electors-immunity/index>.

³¹³ Hugo Lowell and Sam Levine, *Half of Trump’s ‘fake electors’ accept immunity in Georgia investigation*, The Guardian (May 5, 2023), <https://www.theguardian.com/us-news/2023/may/05/georgia-fake-electors-immunity-deals>.

As the court in *Eastman v. Thompson* explained, the fake electors scheme was “a critical objective” of the criminal conspiracy which Trump and Eastman likely engaged in, and it set the stage for Trump to use the rejection of these fake electors as a rallying cry on January 6th.³¹⁴ The court went on to describe the plan launched by Eastman and Trump as a “coup in search of a legal theory” that “spurred violent attacks on the seat of our nation’s government.”³¹⁵ The Select Committee found that “[t]he fake elector effort was an unlawful, unprecedented and destructive break from the electoral college process that our country has used to select its President for generations,” which “led directly to the violence that occurred on January 6th.”³¹⁶

Trump attempted to coerce the Department of Justice to interfere in the 2020 election

Trump attempted to weaponize the DOJ to spread his election lies and further his plan to prevent the transfer of presidential power. During the period after the election and before January 6th, Trump pressured DOJ to appoint a special counsel to investigate his false allegations of election fraud; seize voting machines as evidence; make public statements and write letters to state legislators disputing the election outcome; and initiate fraudulent lawsuits which called into question the legitimacy of the election.³¹⁷ Trump’s pressure became so intense that it caused Attorney General Barr to resign on December 14, 2020, leaving the fate of DOJ in the hands of Rosen and Donoghue, who faced Trump’s attempts to install a loyalist atop the department who would effectuate his most fraudulent desires.³¹⁸



President Donald J. Trump, joined by Mississippi Attorney General Lynn Fitch and U.S. Attorney General William Barr.

Tia Dufour / via Flickr, The White House

While Barr was still serving as Attorney General, Trump criticized the DOJ’s efforts with regard to election fraud, at one point disingenuously claiming in a television interview that the DOJ was “missing in action.”³¹⁹ After Barr resigned, Trump’s pressure campaign on DOJ officials did not let up as he continued to espouse lies and conspiracy theories about the election. Perhaps no one was more instrumental in this part of the plan than Jeffrey Clark, the Acting Head of the Civil Division and Head of the Environment and Natural Resources Division at DOJ. Clark was an attorney

³¹⁴ See January 6th Select Committee Final Report at 354.

³¹⁵ Katelyn Polantz, *Judge: ‘More likely than not’ that Trump ‘corruptly attempted’ to block Congress from counting votes on January 6*, CNN (Mar. 28, 2022), <https://www.cnn.com/2022/03/28/politics/john-eastman-memo/index.html>.

³¹⁶ January 6th Select Committee Final Report at 342-343.

³¹⁷ *Id.* at 396-397, 403.

³¹⁸ *Id.* at 379-380, 397-403.

³¹⁹ *Id.* at 377.

with no experience or responsibilities investigating allegations of election fraud but who shared Trump's conspiracy theories about election fraud despite all evidence to the contrary.³²⁰ It was this loyalty to the cause that made him an indispensable tool in Trump's pressure campaign.

Despite the DOJ investigating countless claims of election fraud in violation of longstanding department policy that prohibited such overt actions before an election was certified, Trump nonetheless complained to Acting Attorney General Rosen and Acting Deputy Attorney General Donoghue that the DOJ was not doing enough to investigate the 2020 election.³²¹

On December 22, 2020, Representative Scott Perry introduced Trump to Jeffrey Clark. In a series of Oval Office meetings between Trump and Clark, Clark told Trump that if he were to install him in leadership at the DOJ "then the Department might be able to do more" to support his claims that the election was stolen from him.³²² These meetings occurred without Clark's DOJ superiors present and in direct violation of DOJ policy intended to maintain independent criminal investigations free from presidential interference.³²³

On a December 27th call with Acting Attorney General Rosen and Acting Deputy Attorney General Donoghue, Trump espoused outlandish theories of voter fraud in Pennsylvania, Georgia and Michigan.³²⁴ Rosen and Donoghue repeatedly debunked the claims, at one point telling Trump that "much of the info you're getting is false."³²⁵ They also explained that the DOJ cannot intervene to alter the outcome of an election.³²⁶ At that point Trump floated the idea of replacing them with Clark, who had allegedly made clear to Trump that if he was leading the Department, he would do Trump's bidding.³²⁷

The next day, on December 28th, Clark drafted a 5-page letter in conjunction with Ken Klukowski, a senior counsel under Clark in the DOJ's Civil Division.³²⁸ The letter was addressed to three Georgia State officials, the Governor, the Speaker of the House and the President Pro Tempore of the Senate, and asserted several outright falsehoods, including that "The Department of Justice is investigating various irregularities in the 2020 election for President of the United States," and that the Department had identified "significant concerns that may have impacted the outcome of the election in multiple states, including the State of Georgia."³²⁹ The letter went on to discuss the fake elector scheme, and encouraged Georgia to convene a special session of the General Assembly to take additional testimony and receive new evidence on the matter.³³⁰ Clark had drafted the letter for Rosen and Donoghue's signatures and intended to distribute it to Georgia and several other contested states necessary to Trump's plan to overturn the election. Rosen and Donoghue, however, refused to sign it, with Donoghue warning that it "would be a grave step for the Department to take and it would have tremendous Constitutional, political and social ramifications for the country."³³¹ It is unclear how or if Clark coordinated with Trump and his campaign on writing this letter, but

³²⁰ *Id.* at 383.

³²¹ *Id.*

³²² *Id.* at 384.

³²³ *See id.* (citing DOJ policy to keep communications with the president as infrequent as possible to maintain independent criminal investigations, and free from actual or the appearance of interference from the administration).

³²⁴ *Id.*

³²⁵ *Id.* at 386-387.

³²⁶ *Id.* at 387.

³²⁷ *Id.*

³²⁸ *Id.* at 392.

³²⁹ *Id.* at 390.

³³⁰ *Id.*

³³¹ *Id.* at 390-392.

the similarities between the letter and Trump’s strategy to use fake electors to throw the outcome of the election into question could lead a reasonable person to conclude that there was some coordination.³³²

Trump’s pressure campaign on the DOJ to interfere in the election continued through the end of 2020 and into 2021. During a December 29th meeting, White House Chief of Staff Mark Meadows presented Rosen, Donoghue and Assistant Attorney General for the Office of Legal Counsel Steven Engel with a draft civil complaint—drafted by Trump campaign attorneys William Olson and Kurt Olsen—modeled after *Texas v. Pennsylvania* that Trump wanted the DOJ to file, which challenged the results of the election.³³³ Engel later testified to the Select Committee that the complaint was meritless and that the DOJ was never going to file it.³³⁴ Senior DOJ officials also repeatedly explained to Trump that the DOJ could not support litigation filed by Trump’s campaign; yet Trump continued to push the DOJ to act as an arm of his political campaign and file the lawsuit.³³⁵

During a December 31st meeting between Trump, Rosen and Donoghue, Trump again floated the idea of naming Clark as Acting Attorney General.³³⁶ When Rosen spoke with Clark after December 31st, Clark explained that Trump had offered him the position of Acting Attorney General but told Rosen and Donoghue that he would decline the offer if they agreed to sign his dishonest December 28th letter to Georgia officials.³³⁷ Rosen and Donoghue again refused to sign the letter. As a result, Clark informed Rosen that he planned to accept Trump’s offer and, it seems, steps were taken to effectuate Clark’s elevation including a White House call log that referred to Clark as “Acting Attorney General.”

DOJ leadership however, including Rosen, Donoghue, and Engel, took several steps to try to prevent Clark’s ascension, including reaching out to Meadows to secure a meeting with Trump and Cipollone, asking for his support in blocking Clark’s appointment and convening DOJ’s senior leadership to make them aware of the situation, and see how they would react to the potential appointment of Clark.³³⁸ Crucially, during a January 3, 2021 Oval Office meeting, Trump was advised by Donoghue that the entire Department leadership, including every Assistant Attorney General, would resign if Clark was appointed Acting Attorney General; White House Counsel Pat Cipollone also threatened to resign.³³⁹ Ultimately, after approximately 3 hours and facing the threat of a large-scale public showing of resistance, Trump reversed his decision to make Clark the Acting Attorney General. Although Trump’s desire to put Clark at the helm of the DOJ ultimately failed, this episode sheds light on the amount of coercion and cajoling that Trump was exerting on the DOJ, even in the face of overwhelming evidence that he lost a free and fair election.

332 *Id.* at 391-392.

333 *Id.* at 393.

334 *Id.* at 394.

335 *Id.*

336 *Id.* at 396.

337 *Id.* at 376.

338 *Id.* at 399.

339 *Id.* at 401.

Trump and his allies publicly and privately pressured Pence to overturn the election

Trump and his allies worked privately—and increasingly publicly—to pressure Pence to overturn the election for weeks prior to January 6th. This pressure increased once Trump’s attempt to install loyalist Jeffrey Clark atop the DOJ failed.³⁴⁰

On December 21st, Trump and Pence each attended parts of a meeting in the White House, at which several members of Congress including Representatives Mo Brooks, Brian Babin, Andy Biggs, Matt Gaetz, Louie Gohmert, Paul Gosar, Andy Harris, Jody Hice, Jim Jordan, Scott Perry, and Representative-elect Marjorie Taylor Greene, were present.³⁴¹ At this meeting, the members tried to convince Pence to reject Biden electors from the contested states.³⁴² Notably, after January 6th, several of the members present at this meeting sought pardons from Trump.³⁴³

On January 4th, Trump tried again to convince Pence that he had the unilateral authority to accept Trump’s fake electors in several states won by Biden as Eastman and Chesebro argued in their memos.³⁴⁴ It was during this January 4th meeting that Eastman acknowledged that not only was this scheme in violation of the Electoral Count Act of 1887, but that there was no historical precedent for this plan and that it would be rejected by the courts.³⁴⁵ Pence did not give in to this pressure.³⁴⁶

Later that evening on January 4th, Trump increased the public pressure on Pence during a Senate campaign rally in Dalton, Georgia. During Trump’s speech he claimed that the election was not yet over. Trump lauded Pence, and alluded to the crowd that it was up to Pence at this point, that “he’s going to have a lot to say about it... Of course, if he doesn’t come through, I won’t like him quite as much.”³⁴⁷ In another meeting on January 5th between Eastman, Pence’s Chief of Staff Marc Short and his counsel Greg Jacob, Eastman again attempted to convince them that Pence had the authority to send the electors back to the states.³⁴⁸ While this private pressure against Pence continued, Trump was publicly pressuring him via Twitter. At 11:06 A.M. Trump tweeted: “The Vice President has the power to reject fraudulently chosen electors.”³⁴⁹

Later that day, Trump summoned Pence to the Oval Office for a private, one-on-one lunch meeting.³⁵⁰ No written record exists of what transpired in this meeting, where Pence reportedly told Trump he did not believe he had the authority to unilaterally change the outcome of the presidential election.³⁵¹ Although

³⁴⁰ *Id.* at 428.

³⁴¹ Bryan Metzger, *11 House Republicans attended a White House meeting with Trump to strategize about overturning the election results on January 6. Six of them later asked for pardons*, Business Insider (July 12, 2022), <https://www.businessinsider.com/house-republicans-white-house-meeting-december-21-2020-election-2022-7>.

³⁴² January 6th Select Committee Final Report at 355.

³⁴³ *Id.* at 105, 121.

³⁴⁴ *Id.* at 445.

³⁴⁵ *Id.* at 446.

³⁴⁶ *Id.* at 448.

³⁴⁷ *Id.* at 449.

³⁴⁸ *Id.*

³⁴⁹ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 5, 2021, 11:06 AM), <https://twitter.com/realDonaldTrump/status/1346488314157797389?s=20>.

³⁵⁰ January 6th Select Committee Final Report at 452; *see also* Shannon Pettypiece, et al., *Trump leans harder on Pence to flip election results, even though he lacks that power*, NBC News (Jan. 5, 2021), <https://www.nbcnews.com/politics/white-house/trump-leans-harder-pence-flip-election-results-n1252849>.

³⁵¹ Pettypiece, et al., *supra* note 350.

Pence discussed the meeting with Marc Short, Short refused to disclose the details of that conversation to the Select Committee.³⁵² Another call between Trump and Pence took place later that day, during which Pence again advised that he didn't see how he had the authority to act unilaterally but that his counsel would hear Eastman's argument.³⁵³ After a New York Times article was published recounting these deliberations, Trump spoke to Pence again that evening from 9:33 to 9:41 PM. After that conversation, Trump released a short statement where he misrepresented that he and Pence were "in total agreement that the Vice President has the power to act."³⁵⁴

Trump's pressure campaign on Pence became so intense that it prompted Pence's Chief of Staff, Marc Short, to advise Pence's Secret Service detail on January 5th of possible danger. Short stated that due to "disagreements" between Trump and Pence, Trump may "lash out in some way." Sure enough, Pence's Secret Service detail began receiving intelligence of online conversations about the "VP being a dead man walking if he doesn't do the right thing" and that if he didn't, several alerts stated that they would "storm the [C] apitol."³⁵⁵

Trump assembled a violent mob to prevent the peaceful transition of presidential power and directed them to "fight like hell"

Trump spent months creating a culture permissive towards political violence. By cultivating a relationship with his supporters which normalized and called for violence, Trump was able to summon his supporters to Washington D.C. and incite them to launch the first assault on the Capitol since the War of 1812, all in the name of a lie. Moreover, once Trump became aware of the violence at the Capitol, he did nothing to stop it.

Trump's "will be wild" tweet summoned a violent mob to come to Washington, D.C. on January 6th

Trump's rhetoric sharply escalated after the Electoral College met on December 14th and officially elected Joe Biden president. But the real turning point towards embracing violence as a means to stop the transfer of presidential power came in the early hours of December 19, 2020 when Trump mobilized his supporters to come to D.C. with a tweet he sent at 1:42 A.M. announcing his own "Stop the Steal" rally, saying:

³⁵² January 6th Select Committee Final Report at 452.

³⁵³ *Id.* at 453.

³⁵⁴ Pettypiece, et al., *supra* note 350; see also Maggie Haberman and Annie Karni, *Pence Said to Have Told Trump He Lacks Power to Change Election Result*, NY Times (Jan. 5, 2021), <https://www.nytimes.com/2021/01/05/us/politics/pence-trump-election-results.html> (quoting sources that Vice President Mike Pence told President Trump that he did not believe he had the power to block congressional certification of Biden's victory in the presidential election despite Trump's baseless insistence that he did).

³⁵⁵ January 6th Select Committee Final Report at 429.

“Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild!”³⁵⁶

Just prior to sending the tweet, Trump met with a group of his advisors and attorneys on the evening of December 18th, including Sidney Powell, retired Lieutenant General Michael Flynn, former Overstock.com CEO Patrick Byrne, and Rudy Giuliani, later joined by White House lawyers Pat Cipollone and Eric Herschmann, to discuss various election fraud claims and remaining avenues for Trump’s attempt to remain in power.³⁵⁷ This meeting reportedly lasted several hours, during which the group discussed the status of lawsuits filed by the campaign and proposed more extreme measures to keep Trump in power including issuing an Executive Order directing the military to seize voting machines across the country “effective immediately” and providing Trump advisor and conspiracy theorist Sidney Powell a vague special counsel appointment to oversee the seizure of voting machines and pursue criminal charges “with all resources necessary.”³⁵⁸ White House Counsel Pat Cipollone rejected these approaches, calling some of them illegal, and explaining that there was no legal basis for further legal challenges, effectively ending at least some avenues of using the legal system to reverse the outcome of the election.³⁵⁹ Shortly thereafter, Trump sent a tweet mobilizing his supporters—who were known to resort to violence—to come to Washington D.C. on January 6th to “Stop the Steal” by whatever means necessary.

Trump’s December 19th “will be wild” tweet “immediately began to shift the intelligence landscape, with the volume of threatening messages about Jan. 6 expanding by the hour.”³⁶⁰ According to Anika Navaroli, the longest-tenured member of Twitter’s Trust and Safety team, Trump’s tweet was “essentially staking a flag in D.C. ... for his supporters to come and rally” and led to a “‘fire hose’ of calls to overthrow the U.S. Government.”³⁶¹

The same day as Trump’s tweet, Kylie Jane Kremer, the head of Women for America First (WFAF)—an organizer of the Second Million MAGA March on December 12th (which resulted in 4 stabbings and 33 arrests)³⁶²—tweeted a link to the website “Trumpmarch.com,” promoting a rally to take place in D.C. on January 6th. At the top of the post she added, “the calvary [sic] is coming, Mr. President!” Trump retweeted her post, responding, “A great honor!”³⁶³ WFAF had previously planned an event in Washington, D.C. on January 20th to coincide with Biden’s inauguration.³⁶⁴ But less than six hours after Trump’s tweet, an executive for WFAF emailed the National Park Service to change the date of the event to January 6th.³⁶⁵ Similarly, the co-founders of the Jericho March organization (who held a rally on December 12, 2020 in Washington, D.C.) also reacted to Trump’s tweet, emailing one another on December 19th, “enjoy the peace

³⁵⁶ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 19, 2020, 3:14 AM), <https://twitter.com/realDonaldTrump/status/1340185773220515840?s=20>.

³⁵⁷ NPR, *supra* note 202; *see also* January 6th Select Committee Final Report at 222 (discussing attendees of the meeting).

³⁵⁸ NPR, *supra* note 202.

³⁵⁹ January 6th Select Committee Final Report at 222, 445.

³⁶⁰ Aaron C. Davis, *Warnings of January 6 Insurrection*, Wash. Post (Oct. 31, 2021), <https://www.washingtonpost.com/politics/interactive/2021/warnings-jan-6-insurrection/>.

³⁶¹ January 6th Select Committee Final Report at 499.

³⁶² NBC Washington Staff, *4 Stabbed, 33 Arrested as Trump Supporters, Counterprotesters Clash in Downtown DC*, NBC Washington (Dec. 12, 2020), <https://www.nbcwashington.com/news/local/trump-supporters-maga-rally-protest-dc-saturday/2506267/>.

³⁶³ Kylie Jane Kremer (@KylieJaneKremer), Twitter (Dec. 19, 2020, 3:50 PM), <https://twitter.com/KylieJaneKremer/status/1340399063875895296?s=20>; Donald J. Trump (@realDonaldTrump), Twitter (Jan. 1, 2021, 3:34 PM), <https://twitter.com/realDonaldTrump/status/1345106078141394944?s=20>.

³⁶⁴ January 6th Select Committee Final Report at 530.

³⁶⁵ *Id.*

before the storm [...] Trump has called for a protest on 1/6, FYI.”³⁶⁶ The Jericho March organizers would go on to use Trump’s “Be there, will be wild!” language on their website to advertise more events leading up to January 6th.³⁶⁷

Professional right-wing commentators immediately latched onto Trump’s tweet, reinforcing it with references to violence and bloodshed. The day after Trump’s tweet, Ali Alexander, a leader of the Stop the Steal movement, registered Wildprotest.com, named after Trump’s tweet.³⁶⁸ Alex Jones, right-wing commentator and founder of InfoWars, posted a video stating, “President Trump, in the early morning hours [of Dec. 19], tweeted that he wants the American people to march on Washington DC on Jan. 6th, 2021 . . . He is now calling on We the People to take action and to show our numbers.”³⁶⁹ Matt Bracken, another right-wing commentator, produced a video for his followers announcing: “We’re going to only be saved by millions of Americans moving to Washington, occupying the entire area, if — if necessary storming right into the Capitol. You know, they’re — we know the rules of engagement. If you have enough people, you can push down any kind of a fence or a wall.”³⁷⁰ Salty Cracker, another right-wing commentator with hundreds of thousands of social media followers, produced a video for his followers announcing: “Ya better understand something, son. Ya better understand something. Red wave, bitch. Red wed — there’s gonna be a red wedding going down January 6th. ... Motherfucker, you better look outside. You better look out Jan. 6th. Kick that fucking door open, look down the street. There’s gonna be a million plus geeked up armed Americans.”³⁷¹

Some Trump supporters flocked to websites such as TheDonald.win to coordinate their plans for January 6th, including detailed discussions of weaponry and directions to “find the tunnels” and “arrest the worst traitors.”³⁷² At TheDonald.win, one poster stated: “If Congress illegally certifies Biden, . . . Trump would have absolutely no choice but to demand us to storm Congress and kill/beat them up for it.”³⁷³ Another poster wrote: “[Trump] can order the NAT guard to stand down if needed. unfortunately he has no control over the Capitol Police... but there are only around 2k of them and a lot are useless fat asses or girls.”³⁷⁴ In their posts, extremists made it clear that they were prepared to physically fight at Trump’s direction.

Communications revealed in court documents among Three Percenters, a violent anti-government extremist group, demonstrate that the group was monitoring Trump’s words and treating them as instructions. A post-January 6th indictment of a group of individuals allegedly affiliated with the Three Percenters cites social media discussions, beginning in December, indicating that their decision to travel to D.C. for the Stop the Steal rally on January 6th was triggered by Trump’s tweet on December 19th.

³⁶⁶ *Id.* at 531.

³⁶⁷ *Id.*

³⁶⁸ NPR, *supra* note 202.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.* (The term “red wedding” refers to a violent “Game of Thrones” scene where attendees at a festive event are surprised by an attack that traps them inside a venue where they are murdered.)

³⁷² Adam Rawnsley and Justin Rohrlich, *‘Ready to Die’: Two Months of MAGA Mob Warning Signs*, Daily Beast (Jan. 7, 2021), <https://www.thedailybeast.com/there-were-two-months-of-warning-signs-before-the-maga-mob-capitol-riot>; Craig Timberg, *Gallows or guillotines? The chilling debate on TheDonald.win before the Capitol siege*, Wash. Post (Apr. 15, 2021), <https://www.washingtonpost.com/technology/2021/04/15/thedonald-capitol-attack-advance-democracy/>.

³⁷³ Greg Miller, Greg Jaffe, and Razzan Nakhlawi, *A Mob Insurrection Stoked by False Claims Of Election Fraud And Promises Of Violent Restoration*, Wash. Post (Jan. 9, 2021), https://www.washingtonpost.com/national-security/trump-capitol-mob-attack-origins/2021/01/09/ocb2cf5e-51d4-11eb-83e3-322644d82356_story.html.

³⁷⁴ Staff of H. Comm. on the Judiciary, 117th Cong., *Materials in Support of H. Res. 24, Impeaching Donald John Trump, President of the United States, for High Crimes and Misdemeanors 20* (Comm. Print 2021).

These individuals clearly anticipated violence, writing that “we are all ready and willing to fight . . . for this moment that we are called upon” and “I personally want to be on the front steps and be one of the first ones to breach the doors!”³⁷⁵

Similarly, a message sent by the group known as “The Three Percenters Original” to its members on December 16, 2020 stated that they “stand ready and are standing by to answer the call from our President should the need arise” to fight the “pure evil that is conspiring to steal our country away from the american [sic] people” through the “2020 presidential election.”³⁷⁶ After his December 19th tweet, the same group sent another message instructing “any member who can attend is encouraged to participate” on January 6th because Trump had “put out a general call for the patriots of this nation to gather” in D.C.³⁷⁷

Indictments of a group of Oath Keeper members and affiliates show that as early as December 22nd, they also treated Trump’s messages as a call by Trump to violently march on the Capitol. Court documents allege that Kelly Meggs, the former head of the Oath Keepers’ Florida chapter, wrote Facebook messages to another individual on December 22nd that read in part: “He called us all to the Capitol and wants us to make it wild!!! Sir Yes Sir!!! Gentlemen we are heading to DC pack your shit!”³⁷⁸ On December 25th, Oath Keepers founder and national leader Stewart Rhodes (who along with Meggs was subsequently convicted of seditious conspiracy) stated in an internal chat that “Trump needs to know we support him in using the Insurrection Act . . . And he needs to know that if he fails to act, then we will.”³⁷⁹ During this period, Meggs wrote to Rhodes: “It’s easy to chat. The real question is who’s willing to DIE.”³⁸⁰



Kelly Meggs, the leader of the Florida chapter of the Oath Keepers militia, reached out to allies after President Donald J. Trump tweeted a call to action to his supporters.

Robert Nickelsberg / via Getty Images

The Proud Boys leadership also understood Trump’s December 19th tweet as a call to arms. On the same day as the tweet, Proud Boys leader Enrique Tarrio, who was recently convicted of seditious conspiracy, convened a 15-minute FaceTime call with two other leaders in the organization, Ethan Nordean and Joe

³⁷⁵ *U.S. v. Hostetter*, 1:21-cr-00392-RCL, Indictment at 9, 10 (D.D.C. June 9, 2021), <https://extremism.gwu.edu/sites/g/files/zaaxdzs2191/f/Kinnison%20et%20al%20Indictment.pdf>.

³⁷⁶ January 6th Select Committee Final Report at 59.

³⁷⁷ *U.S. v. Buxton*, 1:21-cr-00739-JDB, Statement of Facts at 7-8, (D.D.C. Dec. 8, 2021), <https://www.justice.gov/usao-dc/case-multi-defendant/file/1562961/download>; @Rogerdoger, Patriots.win (Dec. 29, 2020), <https://patriots.win/p/11RO2hdyR2/x/c/4DrwV8RcV1s> (“Oath Keepers claim to stand for the constitution yet will not call up its 30k membership to attend the 6th. I thought you guys stood for the constitution? It’s your only job as an organization...now or never boys”); see also January 6th Select Committee Final Report at 59.

³⁷⁸ *U.S. v. Caldwell*, 1:21-cr-00028-APM, First Superseding Indictment at 9 (D.D.C. Feb. 19, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.226728/gov.uscourts.dcd.226728.27.o.pdf>.

³⁷⁹ Michael Kunzelman, *Trial: Trump tweet about ‘wild’ protest energized extremists*, AP (Oct. 13, 2022), <https://apnews.com/article/capitol-siege-florida-donald-trump-conspiracy-congress-040a763522081e592af10fae682fda70>.

³⁸⁰ *Id.*

Biggs, during which he said, “Trumps [sic] calling the troops in on the 6th.”³⁸¹ It was during this time that Tarrío created a new encrypted chat channel to prepare the group’s January 6th plans, calling it the “Ministry of Self-Defense.”³⁸² Trump had told the Proud Boys to “stand back and stand by.”³⁸³ They had done so, and now, Trump was calling them to action.

After announcing the “wild” rally, Trump continued encouraging his supporters to come to Washington, D.C. on January 6th using violent and dangerous rhetoric. On December 22nd, three days after the tweet, Trump took to Facebook where he posted a video of himself speaking directly to the camera from behind a presidential podium. In the video titled, “Statement by Donald J. Trump, the President of the United States,” Trump targeted Democrats and the 2020 election, spewing his baseless accusations of voter fraud and election tampering, stating that Democrats used COVID-19 as a pretext to illegally violate state laws “in order to enable, encourage, and facilitate fraud on a scale never before seen in the history of our country... The truth is, we won the election by a landslide.”³⁸⁴

And on December 26, 2020, he doubled down on his dangerous rhetoric: “If a Democrat Presidential Candidate had an Election Rigged & Stolen, with proof of such acts at a level never seen before, the Democrat Senators would consider it an act of war, and fight to the death. Mitch & the Republicans do NOTHING, just want to let it pass. NO FIGHT!”³⁸⁵ Fourteen minutes later, he tweeted again: “The ‘Justice’ Department and the FBI have done nothing about the 2020 Presidential Election Voter Fraud, the biggest SCAM in our nation’s history, despite overwhelming evidence. They should be ashamed. History will remember. Never give up. See everyone in D.C. on January 6th.”³⁸⁶ He also shared a supporter’s social media post with his followers claiming: “It’s not election fraud, it’s treason!”³⁸⁷

Statements like Trump’s that “the Democrat Senators would consider it an act of war, and fight to the death...” helped to unify and define the common purpose behind January 6th, especially as it pertained to the undercurrent of violence that Trump drew to the surface that day. As detailed above, Trump knew the power his words had; he had seen their effects time and time again. And yet, he recklessly engaged with the political violence narrative, overtly helping to normalize it. By defining the election results in terms of war, Trump seemingly lowered the inhibitions of his supporters to engage in violence. Much of his rhetoric leading up to and including on January 6th can be likened to that of Couy Griffin, whose actions a New Mexico state judge concluded normalized and incited violence on January 6th.³⁸⁸

³⁸¹ Kyle Cheney, *Proud Boys sedition trial shows group keying off Trump comments*, Politico (Feb. 9, 2023), <https://www.politico.com/news/2023/02/09/proud-boys-sedition-trial-trump-00082067>.

³⁸² *Id.*

³⁸³ Frenkel, *supra* note 119.

³⁸⁴ Joan Donovan, Kaylee Fagan, and Frances Lee, “President Trump is Calling us to Fight”: What the Court Documents Reveal About the Motivations Behind January 6 and Networked Incitement 14 (Technology and Social Change Project and Harvard Kennedy School Shorenstein Center on Media, Politics and Public Policy 2022), https://mediamanipulation.org/sites/default/files/media-files/j6_motivations_working_paper.pdf.

³⁸⁵ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 26, 2020, 8:00 AM), <https://twitter.com/realDonaldTrump/status/1342817496924086278?s=20>.

³⁸⁶ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 26, 2020, 8:14 AM), <https://twitter.com/realDonaldTrump/status/1342821189077622792?s=20>.

³⁸⁷ Donald J. Trump (@realDonaldTrump), Trump Twitter Archive (Dec. 28, 2020, 2:52 AM), <https://www.thetrumparchive.com/?searchbox=%22rusty+bowers%22> (archived retweet by Trump of since-deleted tweet referring to election results as “treason”).

³⁸⁸ See *State v. Griffin*, 2022 WL 4295619, at *22 (finding that Griffin’s actions normalized and incited violence and that he suggested that the use of violence to prevent the transfer of presidential power was legitimate).

Trump’s allies coordinated with violent militia groups to help mobilize a mob to travel to Washington, D.C. to “Stop the Steal” on January 6th

Paramilitary groups known for their extremist views and penchant for violence were key partners in the Stop the Steal effort. Members of the Oath Keepers and Proud Boys not only attended Stop the Steal rallies throughout the country but also had connections to high-level Trump advisors such as Roger Stone, who was one of Trump’s longest-serving political advisors.³⁸⁹

Stone’s connections to these militant groups were significant. Stone used Oath Keepers to provide security for him at Stop the Steal events – including some who were convicted of seditious conspiracy for their role in the January 6th attack on the U.S. Capitol.³⁹⁰ During a call that took place on or around December 31, 2020, Oath Keepers leadership announced their plans to provide Stone with security on January 6th and that if they encountered problems, “there was a quick reaction force in Virginia that would come help them out...and that they would have firearms.”³⁹¹ According to the Select Committee, Stone was provided security by the Oath Keepers during an event on January 5th, as well as on January 6th.³⁹² One of the Oath Keepers who provided him security was Joshua James, who ultimately pled guilty to seditious conspiracy for his role in January 6th.³⁹³

Stone was also in regular contact with members of the Proud Boys and Oath Keepers including Enrique Tarrío and Stewart Rhodes, leaders of the respective groups, through a Signal group chat called “F.O.S.” – Friends of Stone.³⁹⁴ Both Rhodes and Tarrío (who was not physically present at the Capitol that day) were recently convicted of seditious conspiracy for their involvement in January 6th.³⁹⁵ This group chat allowed Stone and others like Ali Alexander to coordinate Stop the Steal strategy and events leading up to and on January 6th.³⁹⁶ The Select Committee attempted to question Stone about his involvement in January 6th and his relationship with Trump and far-right extremist groups, but during his depositions, Stone refused to answer and instead invoked his Fifth Amendment right against self-incrimination nearly 90 times.³⁹⁷

³⁸⁹ January 6th Select Committee Final Report at 517.

³⁹⁰ Dan Friedman, *Roger Stone’s Latest Mess: His Oath Keeper Bodyguards Arrested in Capitol Attack*, Mother Jones (Mar. 10, 2021), <https://www.motherjones.com/politics/2021/03/roger-stones-latest-mess-his-oath-keeper-bodyguards-arrested-in-capitol-attack>; Dan Friedman and Mark Helewski, *Exclusive Video: Watch Roger Stone’s Oath Keeper Bodyguards Practice Headshots to “#Stopantifa”*, Mother Jones (Mar. 25, 2021), <https://www.motherjones.com/politics/2021/03/exclusive-video-roger-stone-oath-keeper-bodyguards-training-stopantifa>; *Leader of Oath Keepers and Oath Keepers Member Found Guilty of Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, Dep’t of Just. (Nov. 29, 2022), <https://www.justice.gov/opa/pr/leader-oath-keepers-and-oath-keepers-member-found-guilty-seditious-conspiracy-and-other>.

³⁹¹ January 6th Select Committee Final Report at 515.

³⁹² *Id.* at 518.

³⁹³ *Id.*; *Leader of Alabama Chapter of Oath Keepers Pleads Guilty to Seditious Conspiracy and Obstruction of Congress for Efforts to Stop Transfer of Power Following 2020 Presidential Election*, Dep’t of Just. (Mar. 2, 2022), <https://www.justice.gov/opa/pr/leader-alabama-chapter-oath-keepers-pleads-guilty-seditious-conspiracy-and-obstruction>.

³⁹⁴ January 6th Select Committee Final Report at 519.

³⁹⁵ Carrie Johnson, *Jury convicts Enrique Tarrío of the Proud Boys on seditious conspiracy charge*, NPR KQED (May 4, 2023), <https://www.npr.org/2023/05/04/1172530436/proud-boys-jan-6-sedition-trial-verdict>; see also *Leader of Oath Keepers and Oath Keepers Member Found Guilty of Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, Dep’t of Just. (Nov. 29, 2022), <https://www.justice.gov/opa/pr/leader-oath-keepers-and-oath-keepers-member-found-guilty-seditious-conspiracy-and-other>.

³⁹⁶ January 6th Select Committee Final Report at 519.

³⁹⁷ *Id.*; see also January 6th Select Committee, *Deposition of Roger Stone* (Dec. 17, 2021), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000034613/pdf/GPO-J6-TRANSCRIPT-CTRL0000034613.pdf>.

Days after Trump's December 19th tweet, a faction of the Oath Keepers, Proud Boys, and Three Percenters sought to broker an alliance to "make history" on January 6th by descending upon the nation's capital in large numbers and with weapons.³⁹⁸ The significance of the alliance of these groups cannot be overstated. Thanks to Trump and his call to his supporters to gather together in Washington D.C. to "Stop the Steal," these groups put aside their differences and coordinated their plans.³⁹⁹

Based on prior reporting of these groups' propensity towards violence, it is not unreasonable to assume that Trump was aware of it. Even worse, time and again he made clear that he personally approved of their mission. For instance, after the deadly "Unite the Right" rally in Charlottesville, Virginia in August 2017, which was organized by a Proud Boy, Jason Kessler, and featured violence (including one death), Trump refused to condemn the violence, going so far as to say that there were "very fine people on both sides."⁴⁰⁰ And when asked during a presidential debate in September 2020 to disavow white supremacists, Trump instead responded by singling out the Proud Boys, stating, "Proud Boys – stand back and stand by" because "somebody's gotta do something about antifa and the left."⁴⁰¹ At a November 14th "Stop the Steal" event, known as the "Million MAGA March" and at which roughly 200 to 300 Proud Boys participated, Trump made sure the marchers knew he personally endorsed their mission to "Stop the Steal" by driving through the crowd in his presidential motorcade, waving to them.⁴⁰² Again on the morning of December 12th, he tweeted: "'Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn't know about this, but I'll be seeing them! #MAGA.'"⁴⁰³ Later that day, he flew over rally goers in Marine One and subsequently tweeted a video of the crowd's reaction on the ground.⁴⁰⁴

On January 5th, the eve of his "wild" rally, Trump insisted that his Chief of Staff Mark Meadows meet with both Roger Stone and Michael Flynn.⁴⁰⁵ Although it is not known if this contact happened, we do know that Stone and Flynn were in contact with extremist groups like the Proud Boys, Oath Keepers and

³⁹⁸ Alan Feuer and Zach Montague, *Texts Show Oath Keepers Coordinated With Other Far-Right Groups*, N.Y. Times (Oct. 13, 2022), <https://www.nytimes.com/2022/10/13/us/politics/oath-keepers-trial-texts.html>.

³⁹⁹ See January 6th Select Committee Final Report at 60 (noting that Kelly Meggs, the leader of the Florida chapter of the Oath Keepers, bragged on Facebook that the groups were going to "work together to shut this shit down"); See also January 6th Select Committee Final Report at 60; See also Ryan J. Reilly, *Feds arrest five members of 'B Squad' militia allegedly run by former GOP House candidate in Jan. 6 case*, NBC (Aug. 24, 2022),

(On December 22nd, Meggs messaged Jeremy Liggett (the leader of the Florida Guardians of Freedom, associates of the Three Percenters) specifically referencing Trump's tweet, stating that Trump "called us all to the Capitol and wants us to make it wild!!" Liggett responded that he would "have a ton of men with [him]," to which Meggs messaged back that the Oath Keepers had made contact with the Proud Boys, who "always have a big group" and that working together they could all "[f]ucking crush them for good." Stewart Rhodes also brought in the Three Percenters into the Oath Keepers' January 6th planning chats.), <https://www.nbcnews.com/politics/justice-department/feds-charge-members-b-squad-militia-allegedly-run-former-gop-house-can-rcna444621>.

⁴⁰⁰ Jordyn Phelps, *Trump defends 2017 'very fine people' comments, calls Robert E. Lee 'a great general'*, ABC News (Apr. 26, 2019), <https://abcnews.go.com/Politics/trump-defends-2017-fine-people-comments-calls-robert/story?id=62653478>; see also Tim Dickinson, *Your Handy Guide to the Absolute Worst People in American Politics*, Rolling Stone (June 14, 2022), <https://www.rollingstone.com/politics/politics-features/all-american-extremism-guide-1361035/> (reporting that Kessler helped organize the 2017 "Unite the Right" rally in Charlottesville).

⁴⁰¹ Glenn Thrush and Zolan Kanno-Youngs, *Refusing to categorically denounce white supremacists, Trump falsely says extremist violence is 'not a right-wing problem.'*, N.Y. Times (Sept. 29, 2020, updated Jan. 20, 2021), <https://www.nytimes.com/live/2020/09/29/us/presidential-debate-trump-biden/refusing-to-categorically-denounce-white-supremacists-trump-falsely-says-extremist-violence-is-not-a-right-wing-problem?smid=url-share>.

⁴⁰² *Donald Trump waves to supporters at 'Million MAGA March' in DC*, USA Today (Nov. 14, 2020), <https://www.usatoday.com/videos/news/nation/2020/11/14/donald-trump-waves-supporters-million-maga-march-dc/6294751002/>; see also January 6th Select Committee Final Report at 509.

⁴⁰³ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 12, 2020, 9:59 AM), <https://twitter.com/realDonaldTrump/status/1337774011376340992>.

⁴⁰⁴ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 12, 2020, 1:56 PM), <https://twitter.com/realDonaldTrump/status/1337833603309465600?s=20>.

⁴⁰⁵ NPR, *supra* note 208.

1st Amendment Praetorian during this period.⁴⁰⁶ We also know that at least Stone was expecting and encouraging election-related violence, saying, “Fuck the voting, let’s get right to the violence.”⁴⁰⁷

According to court documents, members of right wing extremist groups were waiting for instructions from Trump. For instance, on November 17th, Jessica Watkins, a military veteran and Oath Keeper, told a recruit that if Biden was president, “our Republic would be over”; that “it is our duty as Americans to fight, kill and die for our rights.”⁴⁰⁸ But Watkins indicated that she was waiting for directions from Trump, stating that she was “concerned this [was] an elaborate trap. Unless the POTUS himself activates us, it’s not legit. The POTUS has the right to activate units too. If Trump asks me to come, I will. Otherwise, I can’t trust it.”⁴⁰⁹ By December 29th, Watkins had apparently received the confirmation she was looking for, texting Donovan Crowl, her co-defendant and fellow Oath Keeper, that “[w]e plan on going to DC on the 6th” because “Trump wants all able bodied Patriots to come,” and how, “[i]f Trump activates the Insurrection Act, I’d hate to miss it.”⁴¹⁰ The government also cites communication where Watkins discusses individuals with weapons caches standing outside of Washington, D.C. on January 6th “await[ing] orders to enter DC under permission from Trump, not a minute sooner.”⁴¹¹

Trump’s supporters came to D.C. on January 6th prepared to fight because Trump asked them to

In the days leading up to January 6th, Trump continued to escalate his call to arms. On January 3rd, he shared a supporter’s social media post with his own supporters announcing: “We The People Refuse To Concede To A Fraudulent Election!!”⁴¹² Trump also shared a social media post from a well known supporter, Mike Lindell, publicizing the president’s gathering on January 6th and broadcasting its purpose, reading: “I am honored to be invited to speak at the biggest event in DC history! @realDonaldTrump will be our President for the next 4 years!!!”⁴¹³ On January 4th, Trump gave an angry speech in Dalton, Georgia, warning that “Democrats are trying to steal the White House... [y]ou can’t let it happen. You can’t let it happen,” and “they’re not taking this White House. We’re going to fight like hell, I’ll tell you right now.”⁴¹⁴ This speech came weeks after Trump was explicitly warned by the Georgia Secretary of State’s Chief Operating

⁴⁰⁶ See January 6th Select Committee Final Report at 514 (stating that Oath Keepers leader Stewart Rhodes coordinated with leaders of the Jericho March to provide security for VIPs, including Flynn); see also Marshall Chen, *What is the 1st Amendment Praetorian, the obscure far-right group subpoenaed by the January 6 committee?*, CNN (Nov. 24, 2021), <https://www.cnn.com/2021/11/24/politics/first-amendment-praetorian-january-6-subpoena/index.html> (describing the 1st Amendment Praetorian as a paramilitary group which provided security at pro-Trump rallies in November and December 2020.)

⁴⁰⁷ NPR, *supra* note 147.

⁴⁰⁸ *U.S. v. Watkins*, 1:21-cr-00028-APM, Gov’s Mem. in Support of Pre-Trial Detention at 4 (D.D.C. Feb. 11, 2021), https://storage.courtlistener.com/recap/gov.uscourts.dcd.226726/gov.uscourts.dcd.226726.15.o_7.pdf.

⁴⁰⁹ *Id.*

⁴¹⁰ *U.S. v. Crowl*, 1:21-cr-00028-APM, Seventh Superseding Indictment at 14 (D.D.C. Jan. 12, 2021), <https://www.justice.gov/usao-dc/case-multi-defendant/file/1471056/download>.

⁴¹¹ *U.S. v. Watkins*, 1:21-cr-00028-APM, Gov’s Mem. in Support of Pre-Trial Detention at 5 (D.D.C. Feb. 11, 2021), https://storage.courtlistener.com/recap/gov.uscourts.dcd.226726/gov.uscourts.dcd.226726.15.o_7.pdf.

⁴¹² Unknown Trump Supporter (@TheRISEofROD), Twitter (Jan. 3, 2021, 12:58 AM), <https://twitter.com/TheRISEofROD/status/1345610514047627267> (original tweet, retweeted by Trump, “refus[ing] to concede”); Donald J. Trump (@realDonaldTrump), Trump Twitter Archive (Jan. 3, 2021, 10:20 AM), <https://www.thetrumparchive.com/?retweet=%22true%22&searchbox=%22We+The+People+Refuse+to+concede%22> (archived retweet by Trump of original tweet).

⁴¹³ Donald J. Trump (@realDonaldTrump), Trump Twitter Archive (Jan. 3, 2021, 10:24 AM), <https://www.thetrumparchive.com/?results=1&searchbox=%22biggest+event+in+DC+history%22> (archived retweet by Trump of since-deleted tweet publicizing the gathering).

⁴¹⁴ *President Trump Remarks at Georgia U.S. Senate Campaign Event*, C-SPAN (Jan. 4, 2021), <https://www.c-span.org/video/?507634-1/president-trump-campaigns-republican-senate-candidates-georgia>.

Officer Gabriel Sterling that his continued promotion of election lies and violence could put lives in danger.⁴¹⁵

The next day, on January 5th, Trump tweeted: “Washington is being inundated with people who don’t want to see an election victory stolen by emboldened Radical Left Democrats. Our Country has had enough, they won’t take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!”⁴¹⁶ Trump made it clear that his goal was to prevent the election results from being certified: “I hope the Democrats, and even more importantly, the weak and ineffective RINO section of the Republican Party, are looking at the thousands of people pouring into D.C. They won’t stand for a landslide election victory to be stolen. @senatemajldr @JohnCornyn @SenJohnThune.”⁴¹⁷

In a January 5 interview, Trump outside advisor and former Chief Strategist Steve Bannon said, “All hell is going to break loose tomorrow . . . it’s all converging and now we’re . . . the point of attack tomorrow . . . strap in . . . tomorrow it’s game day.”⁴¹⁸ Meanwhile, that same week, Couy Griffin, the only January 6th participant thus far to be disqualified from public office under Section Three of the Fourteenth Amendment, made clear in public statements that he traveled to Washington, D.C. “because my president called me there” and so that his voice “would be heard by Mike Pence so Mike Pence would vote no on the certification of the election.”⁴¹⁹

Since the January 6th attack, members of the mob have insisted they went to the Capitol because they were answering Trump’s call.⁴²⁰

Stephen Ayres, one of the participants in the attack, testified that before January 6th, he was “pretty hardcore into the social media, Facebook, Twitter, Instagram. I followed, you know, President Trump, you know, on all the websites, you know. He basically put out, you know, come to the Stop the Steal rally, you know, and I felt like I needed to be down here.”⁴²¹ In a tweet on January 7th, Griffin made clear that he traveled to Washington, D.C. because “We were told over and over again by the SITTING President of the US our elections had been STOLEN! What else were we to do but stand up for our country!!”⁴²² Griffin also invoked Trump’s call to action in mobilizing Stop the Steal rally goers to travel to Washington, D.C. in the leadup to January 6th, explaining to a crowd in Franklin, Tennessee on January 3rd that the reason he was going to Washington, D.C. is “because my president called me there and I’m gonna be there.”⁴²³

415 January 6th Select Committee Final Report at 44-45; *see also* Fowler, *supra* note 248 (reporting Sterling’s statement: “Mr. President, you have not condemned these actions or this language...This has to stop...[it is] inspiring people to commit potential acts of violence. Someone’s going to get hurt. Someone’s going to get shot. Someone’s going to get killed.”).

416 Donald J. Trump (@realDonaldTrump), Twitter (Jan. 5, 2021, 5:05 PM), <https://twitter.com/realDonaldTrump/status/1346578706437963777?s=20>.

417 Donald J. Trump (@realDonaldTrump), Twitter (Jan. 5, 2021, 5:12 PM), <https://twitter.com/realDonaldTrump/status/1346580318745206785?s=20>.

418 NPR, *supra* note 147.

419 *State v. Griffin*, 2022 WL 4295619, at *6, *9.

420 *See, e.g., U.S. v. Chrestman*, 2:21-mj-08023-TJJ, Chrestman Opp. to Gov. Detention Mem. (D. Kan. Feb. 16, 2021) (“The Capitol Hill rioters were actively misled by . . . former President Donald Trump. Trump told the assembled rabble what they must do; they followed his instructions. Then, he ratified their actions [on Twitter], cementing his symbiotic relationship with the rioters . . . The former President gave that permission and privilege to the assembled mob on January 6. Trump’s incitement and enablement of this insurrectionary riot . . . the mob was given explicit permission and encouragement by the former President to do what they did. The American head of state directed a specific action; the Due Process Clause says that those who obeyed him have a viable defense against criminal liability.”).

421 NPR, *supra* note 202.

422 Couy Griffin (@CowboyCouy), Twitter (Jan. 7, 2023, 11:44 AM), <https://twitter.com/CowboyCouy/status/1611765808748953602>.

423 *State v. Griffin*, 2022 WL 4295619, at *6.

Similarly, Andrew Ryan Bennett, who pleaded guilty to unlawful picketing in the Capitol, asserted that he led an ordinary life until he believed Trump's false claims that the election was stolen and followed Trump's instructions to come to Washington, D.C. on January 6th. The defense's sentencing memorandum argued that Trump's statements should diminish Bennett's culpability because, "like thousands and hundreds of thousands of American citizens felt [sic] prey to a pervasive, destructive and false message emanating from the most powerful political pulpit in the United States."⁴²⁴ The government's sentencing memorandum stated that Bennett answered Trump's call to "Stop the Steal."⁴²⁵

Matthew Greene, a member of the Central New York chapter of the Proud Boys, stated in his plea agreement that Trump's December 19th tweet triggered his decision to go to D.C. on January 6th to conspire with other Proud Boys "to unlawfully enter the restricted area of the Capitol grounds . . . to obstruct, influence and impede . . . Congress's certification of the Electoral College vote. . . ."⁴²⁶

Lucas Denney, a leader of a militia affiliated with the Three Percenter movement repeatedly cited Trump's December 19th tweet as the reason for his decision to travel to D.C. on January 6th.⁴²⁷ Denney discussed travel plans, as well as the need to obtain body armor, helmets, knuckle gloves and pepper spray with another member, and stated that "Trump himself is calling for a big protest in DC on January 6th. I'm not going to miss this one."⁴²⁸ On December 30th, Denney wrote in a Facebook message to Donald Hazard, another member of his group, that "Trump has called this himself...It's the day the electoral college is suppose [sic] to be certified by congress to officially elect Biden. But, Pence is in charge of this and he's going to throw out all the votes from States that were proved to have fraud. There's so much more going on behind the scenes though. That's why [Trump's] called this rally for support...Trump will stay President..."⁴²⁹ Further messages between Denney and Hazard indicated their plan to march and occupy the U.S. Capitol, as well as discussing a "rumor" he had heard that Trump would march with them to the Capitol but that "we have special plans that I can't say right now over Facebook."⁴³⁰

On January 6th, Donald Hazard and Lucas Denney followed through and breached the Capitol building with the rest of the mob and engaged the officers in combat.⁴³¹ While on the Capitol grounds, Hazard took videos in and outside the Capitol building, in one stating that "We're here at the nation's capitol and we're storming it. We're taking the Capitol."⁴³² Denney and Hazard were ultimately charged with assaulting officers on January 6th. Denney pleaded guilty and was sentenced to 52 months in prison, while Hazard pleaded guilty and was sentenced to 57 months in prison.⁴³³

⁴²⁴ *U.S. v. Bennett*, 21-cr-227-JEB, Def.'s Sentencing Memo at *2 (D.D.C. Sept. 30, 2021), <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/Andrew%20Ryan%20Bennett%20Defense%20Sentencing%20Memorandum.pdf>.

⁴²⁵ *Id.* at *4.

⁴²⁶ *U.S. v. Greene*, 21-cr-52-3-TJK, Statement of Offense at *9 (D.D.C. Dec. 21, 2021), <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/Matthew%20Greene%20Statement%20of%20Offense.pdf>.

⁴²⁷ January 6th Select Committee Final Report at 522.

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ *Id.* at 522-523.

⁴³¹ *Texas Man Pleads Guilty to Assault On Law Enforcement During Jan. 6 Capitol Breach*, U.S. Attorney's Office for the Dist. of Columbia (Feb. 16, 2023), <https://www.justice.gov/usao-dc/pr/texas-man-pleads-guilty-assault-law-enforcement-during-jan-6-capitol-breach>.

⁴³² *Id.*

⁴³³ *Texas Man Sentenced to 52 Months in Prison for Assaulting Law Enforcement Officers During Jan. 6 Capitol Breach*, U.S. Attorney's Office for the Dist. of Columbia (Sept. 28, 2022), <https://www.justice.gov/usao-dc/pr/texas-man-sentenced-prison-assaulting-law-enforcement-officers-during-jan-6-capitol> (citing Denny's sentence of 52 months); *see also Texas Man Sentenced for Felony Assault on Law Enforcement During Jan. 6 Capitol Breach*, U.S. Attorney's Office for the Dist. of Columbia (May 19, 2023), <https://www.justice.gov/usao-dc/pr/texas-man-sentenced-felony-assault-law-enforcement-during-jan-6-capitol-breach> (citing Hazard's sentence of 57 months).

The Select Committee compiled a list of examples of statements by January 6th criminal defendants who claim they traveled to DC because Trump called upon them to do so.⁴³⁴ CREW has supplemented that list with its own compilation of statements by more than 170 January 6th defendants.⁴³⁵ This evidence clearly demonstrates a call-and-response dynamic: Trump called on his supporters, knowing they were violent and included paramilitary groups, to form a mob in Washington, D.C. on January 6th to “Stop the Steal,” and his supporters did just that.

“Stop the Steal” rallies around the country built momentum for violence on January 6th

Trump’s advisors, campaign officials and leaders of the “Stop the Steal” movement undertook an expansive effort to mobilize Trump supporters across the country to travel to Washington, D.C. to intimidate Vice President Pence and Congress to not certify the election results on January 6, 2021.⁴³⁶

“Stop the Steal” events around the nation helped create the violent atmosphere and build momentum for January 6th, assisting in the mobilization efforts. These rallies, held after Election Day and organized by Alex Jones and “Stop the Steal” organizers, provided an opportunity for far-right groups and other like-minded individuals to meet; groups like the Proud Boys, Oath Keepers, and Three Percenters were well represented.⁴³⁷

Women for America First (WFAF) was instrumental in the Stop the Steal effort. WFAF not only obtained the permit for Trump’s January 6th rally from the National Park Service, but their prolific online organization of “Stop the Steal” movements using a Facebook group with approximately 365,000 members coincided with on-the-ground mobilization activities and ultimately provided the stage on the Ellipse from which Trump directed the crowd to march on the Capitol.⁴³⁸

WFAF also spent the weeks leading up to January 6th visiting at least 20 cities holding rallies, encouraging Trump supporters to come to D.C. on January 6th, in coordination with Trump campaign officials.⁴³⁹ This grassroots level organizing was instrumental as it sought to encourage people to attend on January 6th, providing the necessary crowd to both intimidate Vice President Pence and members of Congress, as well as launch the attack on the Capitol building.⁴⁴⁰ This 20-city tour featured a multitude of speakers, including MyPillow CEO Mike Lindell and one speaker who told the crowd at a North Carolina rally that “We’d solve

434 January 6th Select Committee, Defendant Statements Chart (Dec. 22, 2022), <https://www.govinfo.gov/app/details/GPO-J6-DOC-DEFENDANT-STATEMENTS-CHART/>.

435 “Trump has called all patriots”: 174 Jan. 6th criminal defendants say Trump incited them, CREW, <https://www.citizensforethics.org/reports-investigations/crew-investigations/trump-incited-january-6-defendants/>

436 See *State v. Griffin*, 2022 WL 4295619, at *4; see also Charles Homans, *How ‘Stop the Steal’ Captured the American Right*, N.Y. Times (July 19, 2022), <https://www.nytimes.com/2022/07/19/magazine/stop-the-steal.html>.

437 January 6th Select Committee Final Report at 503.

438 *Id.* at 530.

439 Craig Silverman, Jane Lytvynenko, and Pranav Dixit, *How “The Women For America First” Bus Tour Led To The Capitol Coup Attempt*, BuzzFeed (Jan. 26, 2021), <https://www.buzzfeednews.com/article/craigsilverman/maga-bus-tour-coup>; Will Steakin, John Santucci, and Katherine Faulders, *Trump allies helped plan, promote rally that led to Capitol attack*, ABC News (Jan. 8, 2021), <https://abcnews.go.com/US/trump-allies-helped-plan-promote-rally-led-capitol/story?id=75119209> (“‘At a moment’s instance, we may need your help at protests in your state to make sure that the president is represented and our side of the argument shows,’ Trump Campaign Manager Bill Stepien said on the call. ‘At a moment’s notice, we may need your help and support on the ground, you know, waving the flag and yelling the president’s name and support.’”).

440 See *State v. Griffin*, 2022 WL 4295619, Trial Tr. (Aug. 16, 2022) (Test. of Dr. Rachel Kleinfeld).

every problem in this country if on the 4th of July every conservative went and shot one liberal.”⁴⁴¹ Another such speaker was Couy Griffin who spoke at several different stops and regularly invoked violence and war and warned of anticipated violence. In Bowling Green, Kentucky, he stated that “there might be some of us who lose our lives.”⁴⁴² Griffin, who was later removed from his county commissioner position under Section 3 of the Fourteenth Amendment, would pledge after the insurrection to return to the Capitol and “have a 2nd Amendment rally on those same steps” and that “there’s gonna be blood running out of that building.”⁴⁴³

The Select Committee gathered evidence about a number of these events, including a series of “Stop the Steal” events that occurred in Atlanta outside of the Georgia state capitol and governor’s mansion in November 2020 that members of the Proud Boys, Oath Keepers, and Groyper (a white supremacist group) attended.⁴⁴⁴ The events in Georgia, which ran nonstop from November 18-21, included armed protests and calls for the crowd to “storm the Capitol” in an effort to intimidate state lawmakers to overturn the legitimate election results in their state.⁴⁴⁵ At one point, Roger Stone gave a speech outside the Georgia Capitol and cried, “Victory or death!”⁴⁴⁶ At another point, the leader of the Groyper, Nick Fuentes, lamented that they had been out in front of the state Capitol but “maybe we’ve been trying the wrong approach.”⁴⁴⁷ Ali Alexander at one point goaded the crowd that “We’ll light the whole shit on fire.”⁴⁴⁸ Although the Atlanta events did not turn violent, they prefigured January 6th in their efforts to physically surround government buildings in an attempt to pressure lawmakers to overturn the 2020 election.

Two rallies held in Washington, D.C. on November 14 and December 12, 2020 were also instrumental in building momentum towards January 6th and brought together a variety of far-right organizations. The events were known as “Million MAGA Marches” and included Ali Alexander’s November 14th “Stop the Steal” event, as well as the “Jericho March,” which was a prayer rally held on December 12th.⁴⁴⁹

Stewart Rhodes, the founder of the Oath Keepers, spoke on December 12th, promising the crowd that if Trump did not invoke the Insurrection Act, then they would be forced to wage a “Much more desperate [and] much more bloody war.”⁴⁵⁰ After the Jericho March ended, Alex Jones, Ali Alexander, and Owen Shroyer (host of Infowars) led a march to the Supreme Court where the crowd chanted slogans such as “Stop the Steal!” “1776!!” “Our Revolution!” and “The fight has just begun!!” This march was seemingly in response to Trump’s public lobbying of the Supreme Court; at one point the evening before, Trump tweeted that “The Supreme Court really let us down. No Wisdom, No Courage!”⁴⁵¹

⁴⁴¹ Silverman, Lytvynenko, and Pranav Dixit, *supra* note 439.

⁴⁴² *State v. Griffin*, 2022 WL 4295619, at *6.

⁴⁴³ Silverman, Lytvynenko, and Pranav Dixit, *supra* note 439.

⁴⁴⁴ January 6th Select Committee Final Report at 504; *see also Groyper Army and “America First”*, Anti-Defamation League (Mar. 17, 2020), <https://www.adl.org/resources/background/groyper-army-and-america-first>.

⁴⁴⁵ January 6th Select Committee Final Report at 504.

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.* at 505.

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

⁴⁵⁰ *Pro-Trump Rallies in DC Attract Extremists & Erupt into Violence*, Anti-Defamation League (Dec. 13, 2020), <https://www.adl.org/resources/blog/pro-trump-rallies-dc-attract-extremists-erupt-violence>.

⁴⁵¹ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 11, 2020, 11:50 PM), <https://twitter.com/realDonaldTrump/status/1337620892139081728?s=20>; *see also* January 6th Select Committee Final Report at 505 (stating that Trump spent December 12th publicly lobbying the Supreme Court on Twitter and that the “Stop the Steal” coalition was eager to help).



Trump speaks to MAGA supporters.
Shealah Craighead / via The White House

Trump made sure that the crowds that gathered in November and December knew they had his attention and approval. During the November “Million MAGA March”, he waved to the crowd from his motorcade. And while the crowds gathered on December 12th, Trump tweeted: “WOW! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn’t know about this, but I’ll be seeing them! #MAGA.”⁴⁵² He also flew over the protesters in Marine One later that day.

On January 5th, several “Stop the Steal” events were held throughout Washington D.C. Moms for America hosted an event in front of the U.S. Capitol, at which Ali Alexander stated that “We’re going to keep fighting for you, Mr. President.”⁴⁵³ A prayer rally called the “One Nation Under God” at the Supreme Court was hosted by Virginia Women for Trump and co-hosted by the American Phoenix Project (a group linked to the Three Percenters). At this prayer rally, both Alex Jones and Roger Stone spoke, with Stone making clear that “nothing is over until we say it is,” and that “Victory will be ours.”⁴⁵⁴

Also on January 5th, a final “Stop the Steal” rally was held at Freedom Plaza, near the White House, where Ali Alexander claimed that “1776 is always an option.”⁴⁵⁵ Similarly, Alex Jones screamed to the crowd:

⁴⁵² January 6th Select Committee Final Report at 506.

⁴⁵³ *Id.* at 536-537.

⁴⁵⁴ *Id.* at 537.

⁴⁵⁵ *Id.* at 537-538.

“It’s 1776!” echoing many “Stop the Steal” partners who used the slogan to hint at their hope for a revolution in response to what they deemed to be an illegitimate election.⁴⁵⁶

Trump recruited his followers to come to Washington, D.C. on January 6th despite warnings of violence from law enforcement

Federal agencies—including executive branch agencies under then President Trump’s supervision—identified significant threats of violence ahead of January 6th.⁴⁵⁷ A survey of 10 government agencies revealed that agencies generated “26 threat products,” identifying potential violence tied to planned “Stop the Steal” and other demonstrations in D.C. on January 6th, with some predicting a “potentially violent uprising [that] could take place at the U.S. Capitol.”⁴⁵⁸ These included information that individuals attending events in Washington, D.C. on January 6th intended to be armed and that extremist groups planned to commit or incite violence, including violence directed at the U.S. Capitol and members of Congress.⁴⁵⁹

On January 3, 2021, the U.S. Capitol Police developed a special event assessment, noting that events on January 6th, such as the “Stop The Steal” protest, may lead to a significantly dangerous situation for law enforcement and the general public.⁴⁶⁰ A Capitol Police intelligence report issued that same day warned of increased risk of violence targeted against Congress “as the last opportunity to overturn the results of the presidential election.”⁴⁶¹ Two days later, on January 5th, an FBI office in Virginia issued an explicit warning that extremists were preparing to travel to Washington to commit violence and start a “war.”⁴⁶²

Senior administration officials who communicated regularly with Trump were aware of these warnings. General Milley testified to the Select Committee: “Everyone knew. I can’t imagine anybody in those calls that didn’t realize that on the 6th was going to be the certification of an intensely contested election...And everybody knew there was a probability, more than a possibility, a probability of violence.”⁴⁶³ And Acting Deputy Attorney General Donoghue testified that “[e]veryone knew that the Capitol and other facilities were potential targets.”⁴⁶⁴

At least one rally organizer expressed concerns about potential violence directly to Trump. Katrina Pierson, a former Trump campaign spokesperson who acted as the liaison between the White House and organizers for the January 6th “Save America” rally where Trump gave his now infamous speech, testified that on

⁴⁵⁶ Wash. Post Staff, *Identifying Far-Right Symbols That Appeared at the U.S. Capitol Riot*, Wash. Post (Jan. 15, 2021), <https://www.washingtonpost.com/nation/interactive/2021/far-right-symbols-capitol-riot/>.

⁴⁵⁷ January 6th Select Committee Final Report at 693.

⁴⁵⁸ U.S. Gov’t Accountability Off., GAO-22-105963, *Federal Agencies’ Use of Open Source Data and Related Threat Products Prior to January 6, 2021* 24 (2022), <https://www.gao.gov/assets/gao-22-105963.pdf>.

⁴⁵⁹ *Id.* at 23-24.

⁴⁶⁰ *Id.*

⁴⁶¹ Carol D. Leonnig, *Capitol Police intelligence report warned three days before attack that ‘Congress itself’ could be targeted*, Wash. Post (Jan. 15, 2021), https://www.washingtonpost.com/politics/capitol-police-intelligence-warning/2021/01/15/c8b50744-5742-11eb-ao8b-f1381ef3d207_story.html.

⁴⁶² Devlin Barrett and Matt Zapotosky, *FBI Report Warned Of ‘War’ At Capitol, Contradicting Claims There Was No Indication Of Looming Violence*, Wash. Post (Jan. 12, 2021), https://www.washingtonpost.com/national-security/capitol-riot-fbi-intelligence/2021/01/12/30d12748-546b-11eb-a817-e5e7f8a406d6_story.html.

⁴⁶³ January 6th Select Committee Final Report at 698.

⁴⁶⁴ *Id.*

January 4th, in a meeting with Trump, she expressed concerns about certain people being included in the event, at one point in her talking points making clear to “keep the fringe on the fringe.”⁴⁶⁵ Specifically, she asked Trump about Roger Stone being included in the lineup and expressed her concerns about Ali Alexander being included, as well as citing concerns for the possibility for violence as a reason why Trump should not travel to the Capitol after his speech.⁴⁶⁶ She tried to convince Trump to minimize the role of these figures at the rallies, but was ultimately unsuccessful as Trump was unwilling to remove them from the lineup entirely. Trump ultimately had Pierson give Stone and Alexander a speaking slot on January 5th.⁴⁶⁷

Similarly, Trump’s own chief of staff, Mark Meadows, was aware of the significant possibility of violence on January 6th. Cassidy Hutchinson testified to the Select Committee that Mark Meadows told her, “Yeah. You know, things might get real, real bad on the 6th.”⁴⁶⁸ When she asked what he meant, Meadows said, “I don’t know. There’s just going to be a lot of people here, and there’s a lot of different ideas right now.”⁴⁶⁹ Around the same time, White House Counselor Hope Hicks apparently repeatedly suggested that Trump publicly instruct the protesters to remain peaceful, but Trump refused to do so.⁴⁷⁰

The U.S. Secret Service was also tracking information about violence directed at the Capitol in advance of Trump’s Ellipse speech. On December 24th, the Secret Service received a report that multiple people online were planning on targeting members of Congress and marching on the chambers on January 6th.⁴⁷¹ On December 26th, Secret Service agents received a tip that the Proud Boys were planning to “literally kill people” and to “outnumber the police so they can’t be stopped.”⁴⁷² On December 31st, agents circulated reports that Trump supporters were planning on occupying Capitol Hill on January 6th.⁴⁷³ On January 5th, the Secret Service learned during an FBI briefing that right wing groups were creating armed quick reaction forces staged outside of Washington, D.C., ready to deploy on Trump’s orders.⁴⁷⁴ Reports indicate that the Secret Service was aware of multiple weapons arrests at rallies in D.C., as early as January 5th (for weapons offenses, handguns, high capacity feeding devices and ammunition), as well as specific threats against Vice President Pence.⁴⁷⁵ Deputy Chief of Staff Ornato testified that in his “normal daily functions,” he would have had a conversation with Meadows about “the groups coming in and what was expected from the Secret Service.”⁴⁷⁶ Ornato further stated that the threat landscape of January 6th, including the presence of weapons, would have typically been included in the presidential daily brief, although he could not recall if it specifically was included.⁴⁷⁷ Internal communications among Secret Service agents on the morning of January 6th before Trump’s Ellipse speech indicate an awareness that members of the crowd were armed

⁴⁶⁵ January 6th Select Committee, Transcribed Interview of Katrina Pierson (Mar. 25, 2022), at 104, 108, <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000060756/pdf/GPO-J6-TRANSCRIPT-CTRL0000060756.pdf>; *see also* January 6th Select Committee Final Report at 536 (noting Pierson tried to convince President Trump to minimize the role of potentially explosive figures like Roger Stone, Alex Jones and Ali Alexander at the Ellipse).

⁴⁶⁶ January 6th Select Committee, Transcribed Interview of Katrina Pierson (Mar. 25, 2022), at 115, 117, 124.

⁴⁶⁷ *Id.* at 76-77, 80-81; *see also* January 6th Select Committee Final Report at 536 (noting that after speaking with Dan Scavino, Trump asked that Ali Alexander be given a speaking slot on January 5th).

⁴⁶⁸ January 6th Select Committee Final Report at 64.

⁴⁶⁹ *Id.* at 65.

⁴⁷⁰ *Id.*

⁴⁷¹ NPR, *supra* note 147.

⁴⁷² *Id.*

⁴⁷³ *Id.*

⁴⁷⁴ *Id.*

⁴⁷⁵ January 6th Committee, *10/13/22 Business Meeting*, YouTube (Oct. 13, 2022), <https://www.youtube.com/watch?v=IQYvBoLBUCo> at 01:31:15, 01:34:40 (exhibits presented at Select Committee hearing, internal Secret Service emails).

⁴⁷⁶ January 6th Select Committee Final Report at 68.

⁴⁷⁷ *Id.*

with guns and other weapons and that some supporters refused to go through the metal detectors at the Ellipse speech.⁴⁷⁸

Local officials and law enforcement also warned that the rally posed a high risk of violence. On January 3rd, D.C. Mayor Muriel Bowser announced that all D.C. police officers would report on January 6th and asked residents to avoid the downtown area and “not to engage with demonstrators who come to our city seeking confrontation.”⁴⁷⁹ Law enforcement activity in the days leading up to January 6th confirmed that the gathering was dangerous. District of Columbia police made several rally-related arrests on January 4th and 5th, including for weapons charges and assaulting a police officer. The arrests were widely publicized and included the leader of the Proud Boys, Enrique Tarrío, who was arrested with high capacity firearms magazines and later convicted of seditious conspiracy. Tarrío claimed the firearms were meant to be supplied to a customer in D.C.⁴⁸⁰

Many observers have commented on the extent to which law enforcement and others were caught by surprise by the events of January 6th, or in some cases, dismissed concerns about the threat of violence altogether.⁴⁸¹ Though these issues are worth keeping in mind in considering what Trump was hearing from law enforcement and intelligence agencies, it is important to remember that Trump had more access than most to information about the threats posed and more reason to take the threats of violence seriously.

The calls for violence at the Capitol were widely covered in the press, of which Trump was an avid consumer.⁴⁸² As early as December 21st, an Israeli communications consultant wrote on Twitter warning that “On January 6th, armed Trumpist militias will be rallying in DC, at Trump’s orders. It’s highly likely that they’ll try to storm the Capitol after it certifies Joe Biden’s win.”⁴⁸³ On January 2nd, Fox News reported on a social media declaration by Proud Boys Leader Enrique Tarrío that the Proud Boys would come to the January 6th rally dressed “incognito” following previous Stop the Steal protests that turned violent.⁴⁸⁴

⁴⁷⁸ January 6th Committee, *10/13/22 Business Meeting*, YouTube (Oct. 13, 2022); see also NPR, *supra* note 147 (reporting that the Secret Service reported thousands of people in the crowd near the Washington Monument would not enter the rally area because magnetometers used in screening attendees would detect any prohibited items they carried).

⁴⁷⁹ Press Release, Office of the Mayor of the Dist. of Columbia, Mayor Bowser Continues Preparation for Upcoming First Amendment Demonstrations (Jan. 3, 2021), <https://mayor.dc.gov/release/mayor-bowser-continues-preparation-upcoming-first-amendment-demonstrations>.

⁴⁸⁰ Jennifer Steinhauer, et al., *Leader of Proud Boys, a Far-Right Group, Is Arrested as D.C. Braces for Protests*, N.Y. Times (Jan. 4, 2021), <https://www.nytimes.com/2021/01/04/us/politics/enrique-tarrio-proud-boys.html>; Peter Hermann and Keith Alexander, *Proud Boys Leader Barred From District By Judge Following His Arrest*, Wash. Post (Jan. 5, 2021), https://www.washingtonpost.com/local/public-safety/proud-boys-arrest-church-black-lives-matter/2021/01/05/18c58640-4f6a-11eb-83e3-322644d82356_story.html; Ewan Palmer, *Enrique Tarrío Faces Three Years in Jail Over Weapon Charges Outlined in Court Files*, Newsweek (Jan. 6, 2021), <https://www.newsweek.com/enrique-tarrio-proud-boys-arrest-washington-1559227> (reporting that Tarrío claimed he “was delivering [the magazines] personally to a customer in D.C following a mix-up with delivery”).

⁴⁸¹ See, e.g., Mary Clare Jalonick, *Senate report details sweeping failures around Jan. 6 attack*, PBS (June 8, 2021), <https://www.pbs.org/newshour/politics/senate-report-details-sweeping-failures-around-jan-6-attack>.

⁴⁸² See, e.g., Craig Timberg and Drew Harwell, *Pro-Trump Forums Erupt with Violent Threats Ahead of Wednesday’s Rally Against the 2020 Election*, Wash. Post (Jan. 5, 2021), <https://www.washingtonpost.com/technology/2021/01/05/parler-telegram-violence-dc-protests/>; Brandy Zadrozny and Ben Collins, *Violent Threats Ripple Through Far-Right Internet Forums Ahead of Protest*, NBC News (Jan. 5, 2021), <https://www.nbcnews.com/tech/internet/violent-threats-ripple-through-far-right-internet-forums-ahead-protest-n1252923>; Andrew Beaujon, *MAGA Geniuses Plot Takeover of US Capitol*, Washingtonian (Jan. 5, 2021), <https://www.washingtonian.com/2021/01/05/maga-geniuses-plot-takeover-of-us-capitol/>; Luke Barr, *Law Enforcement Braces For Protests As Trump Supporters Gather In Capital*, ABC News (Jan. 5, 2021), <https://abcnews.go.com/Politics/law-enforcement-braces-protests-trump-supporters-gather-capital/story?id=75057898>.

⁴⁸³ Arie Kovler (@ariehkovler), Twitter (Dec. 21, 2020, 8:43 AM), <https://twitter.com/ariehkovler/status/1341016471795843080?s=20>.

⁴⁸⁴ Caitlin McFall, *Proud Boys Flock to Washington ‘Incognito’ for Jan. 6 Protests*, Fox News (Jan. 2, 2021), <https://www.foxnews.com/politics/proud-boys-flock-capitol-incognito-jan-6-protests>.

In a video on his Parler account, another Proud Boys organizer said, “We are going to smell like you, move like you, and look like you. The only thing we’ll do that’s us is think like us! Jan 6th is gonna be epic.”⁴⁸⁵ On December 30, 2020, The Washington Post reported on “[t]hreats of violence, ploys to smuggle guns into the District and calls to set up an ‘armed encampment’ on the Mall” spreading in online chats.⁴⁸⁶

On January 5, 2021, Trump made statements to the Acting Secretary of Defense Christopher Miller that demonstrate his awareness of the potential for violence on January 6th. Specifically, Trump told the acting secretary of defense that they would need 10,000 “troops” to handle the events of January 6th, yet Trump never ordered those troops to be deployed or even readied, before or even during the attack.⁴⁸⁷

Trump knew the mob was armed and prepared for violence, yet told them to march to the Capitol and “fight like hell”

Before making his incendiary remarks at the Ellipse on January 6th, Trump was informed that his supporters in the crowd were armed and prepared for violence. And yet, instead of quelling the angry mob, Trump incited them by spewing conspiracy theories and telling them to “fight like hell” to overturn the election results.

On the morning of January 6th, White House Deputy Chief of Staff and former Secret Service agent Tony Ornato, whose responsibilities included security-related issues, reportedly told Trump that members of the crowd were unwilling to pass through the magnetometers because they were armed.⁴⁸⁸ At the rally, the Secret Service confiscated weapons and other items including pepper spray, knives, brass knuckles, tasers, body armor, gas masks, batons and blunt weapons from people entering the secured area for Trump’s Ellipse speech.⁴⁸⁹ Several thousand Trump supporters refused to go through the magnetometers and instead chose to listen to Trump’s speech from outside the secured area, thereby permitting them to retain any weapons they brought.⁴⁹⁰ Law enforcement throughout D.C. identified many individuals with firearms, including AR-15s and Glock-style handguns, as well as individuals with ballistic helmets and body armor.⁴⁹¹

Before his remarks, Trump reportedly was told that many of his supporters were not being let into the rally because they were armed, to which he responded: “I don’t [fucking] care that they have weapons.”

⁴⁸⁵ Joshua Zitser, *Far-Right Group Proud Boys Claim They Will Attend January 6 DC Rally ‘Incognito’ and Wear All-Black to Blend In With Antifa Protesters*, Business Insider (Jan. 3, 2021), <https://news.yahoo.com/far-group-proud-boys-claim-105651904.html>; see also Andrew Beaujon, *Proud Boys Say They’ll “Be Incognito” During January 6 Trump Rallies in DC*, Washingtonian (Dec. 31, 2020), <https://www.washingtonian.com/2020/12/31/proud-boys-say-theyll-be-incognito-during-january-6-trump-rallies-in-dc/>.

⁴⁸⁶ Marissa J. Lang, *Jan. 6 protests multiply as Trump continues to call supporters to Washington*, Wash. Post (Dec. 30, 2020), https://www.washingtonpost.com/local/trump-january6-dc-protest/2020/12/30/1773b19c-4acc-11eb-839a-cf4ba7b7c48c_story.html.

⁴⁸⁷ January 6th Select Committee, *Transcribed Interview of Christopher Miller* (Jan. 14, 2022), at 99-101, <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000036556/pdf/GPO-J6-TRANSCRIPT-CTRL0000036556.pdf>.

⁴⁸⁸ January 6th Select Committee Final Report at 640; see also January 6th Select Committee, *Transcribed Continued Interview of Cassidy Hutchinson* (June 20, 2022), at 12–13, <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000928884/pdf/GPO-J6-TRANSCRIPT-CTRL0000928884.pdf> (Hutchinson’s testimony that Ornato relayed this fact to her; Ornato does not recall whether this conversation took place).

⁴⁸⁹ NPR, *supra* note 208.

⁴⁹⁰ *Id.*

⁴⁹¹ January 6th Select Committee Final Report at 640-641; see also Tom Jackman, Rachel Weiner, and Spencer S. Hsu, *Evidence of firearms in Jan. 6 crowd grows as arrests and trials mount*, Wash. Post (July 8, 2022), <https://www.washingtonpost.com/dc-md-va/2022/07/08/jan6-defendants-guns> (discussing reports of sightings of AR-15s throughout D.C., as well as arrests for gun arrests).

They're not here to hurt me. Take the [fucking] mags away. Let my people in. They can march to the Capitol from here..."⁴⁹²

Just before noon on January 6, 2021, after Giuliani urged attendees to engage in "trial by combat" against the Democrats to win the election, Trump took the stage.⁴⁹³ In keeping with his sustained efforts to intimidate Vice President Pence and Congress to overturn the election, Trump used his speech to repeat, to a crowd he knew was prepared for violence, false claims that the election was "rigged" and "stolen," and urged Vice President Pence to "do[] the right thing" by refusing to certify the election.⁴⁹⁴ According to administration officials' testimony and draft versions of his speech, Trump ad libbed several references to Pence during the speech that were not in his prepared remarks.⁴⁹⁵ Trump then told the crowd to march to the Capitol to "demand that Congress do the right thing and only count the electors who have been lawfully slated." About fifteen minutes into his speech, Trump said that those marching toward the Capitol should do so "peacefully," but that single reference was eclipsed by the highly inflammatory rhetoric that followed.⁴⁹⁶

Throughout his speech, Trump made numerous statements leading his supporters to believe that he had the right to remain in office despite losing the election. Trump told the crowd, "We will never give up, we will never concede. It doesn't happen. You don't concede when there's theft involved."⁴⁹⁷ He proclaimed that, "[o]ur country has had enough. We will not take it anymore and that's what this is all about. And to use a favorite term that all of you people really came up with: We will stop the steal."⁴⁹⁸ He went on to say that, "[. . .] you'll never take back our country with weakness. You have to show strength and you have to be strong."⁴⁹⁹ Towards the end of the speech, he told the crowd, "And we fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore."⁵⁰⁰ Trump used some version of the word "fight" more than twenty times throughout this speech.⁵⁰¹ Trump's prior glorification of physical violence and his supporters' calls for physical violence are strong evidence that Trump was not referring to a metaphorical fight, but a physical one.

Video evidence confirms that Trump's words did in fact incite the crowd to march on the Capitol and commit violence. Stephen Ayres, a member of the January 6th mob, explained why he and others marched to the Capitol. Ayres testified, "Well, basically, you know, the President got everybody riled up and told everybody to head on down. So we basically [were] just following what he said."⁵⁰² Immediately after Trump told the crowd that "you'll never take back our country with weakness," and that "[y]ou have to show strength," supporters can be heard loudly shouting "take the Capitol right now!" and "invade the Capitol

⁴⁹² January 6th Select Committee Final Report at 585.

⁴⁹³ *User Clip: Rudy Giuliani & Professor John Eastman: Clip of Rally on Electoral College Vote Certification*, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?c4933578/user-clip-rudy-giuliani-professor-john-eastman>.

⁴⁹⁴ Joint Senate Committee Staff Report at B-1, 2.

⁴⁹⁵ *Compare* NPR, *supra* note 208, with *Transcript of Trump's speech at rally before US Capitol riot*, AP (Jan. 13, 2021), <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>; Brian Bennett, *From Taunts and Lies to an Angry Mob: Jan. 6 Panel Details Trump's Pressure Campaign Against Pence*, TIME (June 16, 2022), <https://time.com/6188551/pence-pressure-jan-6-trump>.

⁴⁹⁶ AP, *supra* note 495.

⁴⁹⁷ AP, *supra* note 495; Bennett, *supra* note 495.

⁴⁹⁸ AP, *supra* note 495; Bennett, *supra* note 495.

⁴⁹⁹ AP, *supra* note 495; Bennett, *supra* note 495.

⁵⁰⁰ AP, *supra* note 495; Bennett, *supra* note 495.

⁵⁰¹ AP, *supra* note 495; Bennett, *supra* note 495.

⁵⁰² NPR, *supra* note 201.

building!”⁵⁰³ At another point, the crowd interrupted him with chants of “Fight for Trump!” Trump did not push back on their aggression, but instead smiled and responded, “Thank you.”⁵⁰⁴ Trump ended his speech by imploring supporters to march to the Capitol, shouting, “So let’s walk down Pennsylvania Avenue!”⁵⁰⁵

Trump’s call for his supporters to march on the Capitol was a secret, premeditated strategy and included the possibility of Trump personally going into the Capitol building to be with members of Congress.⁵⁰⁶ One of Trump’s undated draft tweets, recovered by the National Archives, read: “I will be making a Big Speech at 10AM on January 6th at the Ellipse (South of the White House). Please arrive early, massive crowds expected. March to the Capitol after. Stop the Steal!!”⁵⁰⁷ This tweet was never sent. Instead, Trump’s plan to instruct the crowd to march to the Capitol was kept largely secret. On January 4th, Kylie Kremer texted MyPillow CEO Mike Lindell, informing him that Trump planned to call for the crowd to go to the Supreme Court and/or the Capitol, but said that it was important that this not be leaked.⁵⁰⁸ “It cannot get out about the second stage,” Kremer said, a reference to a potential second stage outside of the Supreme Court where Trump would address the mob at the Capitol.⁵⁰⁹ On the morning of January 5th, the leader of the Stop the Steal organization, Ali Alexander, sent a text to a conservative journalist, stating “Tomorrow: Ellipse, then US capitol. Trump is supposed to order us to capitol at the end of his speech but we will see.”⁵¹⁰

White House lawyers strongly objected to the idea of Trump going to the Capitol. Cipollone said, “We’re going to get charged with every crime imaginable if we make that movement happen,” according to Hutchinson’s testimony.⁵¹¹ Hutchinson also testified to the Select Committee that she had originally learned of Trump’s intent to go to the Capitol from Giuliani on or about January 2nd. Hutchinson testified that Giuliani told her, “It’s going to be great. The president’s going to be there. He’s going to look powerful.”⁵¹²

At the conclusion of his speech, Trump directed Secret Service agents to drive to the Capitol so that he could lead his mob of supporters.⁵¹³ Trump’s desire to go to the Capitol after his speech was well documented and corroborated by testimony to the Select Committee as well as national security chat logs.⁵¹⁴ Agents informed Trump that it was too dangerous for him to go to the Capitol; U.S. Capitol Police and other law enforcement agencies already indicated that the Capitol building’s security perimeters

⁵⁰³ Ryan Goodman and Justin Hendrix, “*Fight for Trump*”: Video Evidence of Incitement at the Capitol, Just Security (Jan. 25, 2021), <https://www.justsecurity.org/74335/fight-for-trump-video-evidence-of-incitement-at-the-capitol/>.

⁵⁰⁴ *In re Impeachment of President Donald J. Trump*, 117th Cong., Trial Memorandum, at 21 (Feb. 2, 2021), https://democrats-judiciary.house.gov/uploadedfiles/house_trial_brief_final.pdf.

⁵⁰⁵ *Id.*

⁵⁰⁶ NPR, *supra* note 208.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.*; see also January 6th Select Committee Final Report at 533 (quoting Kremer telling Mike Lindell that “POTUS is going to have us march there [Supreme Court]/the Capitol” but the plan should stay between them).

⁵⁰⁹ NPR, *supra* note 202; see also January 6th Select Committee Final Report at 533; see also Philip Bump, *Why evidence that Trump planned a Capitol march is important*, Wash. Post (July 12, 2022), <https://www.washingtonpost.com/politics/2022/07/12/why-evidence-that-trump-planned-capitol-march-is-important> (quoting the full text between Kremer and Lindell as: “This stays only between us, we are having a second stage at the Supreme Court again after the ellipse. POTUS is going to have us march there/the Capitol.” “It cannot get out about the second stage because people will try and set up another and Sabotage it. It can also not get out about the march because I will be in trouble with the national park service and all the agencies but POTUS is going to just call for it ‘unexpectedly.’”).

⁵¹⁰ NPR, *supra* note 202.

⁵¹¹ *Id.*

⁵¹² January 6th Select Committee Final Report at 73-74.

⁵¹³ NPR, *supra* note 146.

⁵¹⁴ January 6th Select Committee Final Report at 586; see also Eric Cortellessa and Vera Bergengruen, *What Trump Knew: How the Jan. 6 Committee is Building a Case Against a Former President*, Time (June 29, 2022), <https://time.com/6192383/donald-trump-knew-jan-6-hearings/> (citing national security chat logs showing that Secret Service was at one point preparing to clear a route for the president to walk to the Capitol).

were breached by the mob.⁵¹⁵ According to multiple members of the Secret Service, a member of the Metropolitan Police Department and a national security official in the White House, Trump reportedly became irate that they would not drive him to the Capitol.⁵¹⁶

After arriving back at the White House and being informed of the attack on the Capitol, Trump continued to pressure the Secret Service to take him to the Capitol to join the mob.⁵¹⁷ His motorcade waited for at least 40 minutes at the White House until a decision was made that Trump would not go to the Capitol.⁵¹⁸ A White House national security official testified:

To be completely honest, we were all in a state of shock . . . We all knew what that implicated and what that meant. That this was no longer a rally, that this was going to move to something else if he physically walked to the Capitol. I – I don't know if you want to use the word insurrection, coup, whatever. We all knew that this would move from a normal, democratic, public event into something else . . . Why were we alarmed? Right. The President wanted to lead tens of thousands of people to the Capitol. I think that was enough grounds for us to be alarmed.⁵¹⁹

Trump directed the violent mob to pressure Pence

In the lead up to January 6th, Trump continued to direct his supporters' focus and anger toward Pence. Early in the morning of January 6th, Trump set the tone for his Ellipse speech by tweeting false statements that Pence could refuse to count the electoral votes from states won by Biden. At 1:00 A.M., Trump tweeted, "If Vice President @Mike_Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!"⁵²⁰ Later that morning at 8:17 A.M., Trump tweeted, "States want to correct their votes, which they now know were based on irregularities and fraud, plus corrupt process never received legislative approval. All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!"⁵²¹ At 9:15 A.M., Trump tweeted, "The States want to redo their votes. They found out they voted on a FRAUD. Legislatures never approved. Let them do it. BE STRONG!"⁵²²

⁵¹⁵ January 6th Select Committee Final Report at 586-587, 591.

⁵¹⁶ *Id.* at 588, 590-591.

⁵¹⁷ *Id.* at 592.

⁵¹⁸ *Id.*; see also *Here's every word from the 8th Jan. 6 committee on its investigation*, NPR (July 22, 2022), <https://www.npr.org/2022/07/22/1112138665/jan-6-committee-hearing-transcript>.

⁵¹⁹ NPR, *supra* note 518.

⁵²⁰ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021, 1:00 AM), <https://twitter.com/realDonaldTrump/status/1346698217304584192?s=20>.

⁵²¹ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021, 8:17 AM), <https://twitter.com/realDonaldTrump/status/1346808075626426371?s=20>.

⁵²² Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021, 9:15 AM), <https://twitter.com/realDonaldTrump/status/1346822610957561858?s=20>.

Late in the morning of January 6th, at 11:20 AM, Trump spoke on the phone with Pence to deliver the message directly. Ivanka Trump, Herschmann, and others described the January 6, 2021 “heated” call during which Trump pressured Pence to reject electors or delay the count.⁵²³ In describing the call, Ivanka Trump testified, “It was a different tone than I’d heard him take with the Vice President before.”⁵²⁴ Ivanka Trump reportedly told Julie Radford, her chief of staff, that her father called Pence “the p-word.”⁵²⁵ Ret. Lt. Gen. Keith Kellogg, Pence’s national security adviser, testified that Trump told Pence, “You’re not tough enough to make the call.”⁵²⁶ Shortly after the call, at 12:37 PM, Wisconsin Sen. Ron Johnson’s Chief of Staff Sean Riley texted Pence’s Director of Legislative Affairs, Chris Hodgson, to ask if Johnson could hand deliver alternate electors documents from Michigan and Wisconsin to Pence.⁵²⁷ Hodgson unambiguously instructed Johnson’s team to do no such thing.⁵²⁸

After Trump’s phone call with Pence failed to convince him to overturn the election, Trump used his speech at the Ellipse to continue to publicly pressure Pence. Trump’s prepared remarks contained only one written reference to Mike Pence.⁵²⁹ It read: “And we will see whether Mike Pence enters history as a truly great and courageous leader. All he has to do is refer the illegally-submitted electoral votes back to the states that were given false and fraudulent information where they want to recertify.”⁵³⁰ That single reference—which Trump’s speechwriters had unsuccessfully tried to remove from the speech—snowballed into eight references that Trump ad libbed while speaking before his supporters including:

- “I hope Mike is going to do the right thing. I hope so. I hope so. Because if Mike Pence does the right thing, we win the election. ... He has the absolute right to do it. We’re supposed to protect our country, support our country, support our Constitution, and protect our constitution.”⁵³¹
- “And I actually, I just spoke to Mike. I said: ‘Mike, that doesn’t take courage. What takes courage is to do nothing. That takes courage.’ And then we’re stuck with a president who lost the election by a lot and we have to live with that for four more years. We’re just not going to let that happen.”⁵³²
- “And Mike Pence is going to have to come through for us, and if he doesn’t, that will be a sad day for our country . . .”⁵³³

Ultimately, Pence held firm and refused to overturn the election results. Shortly before 1:00 PM, Pence released a letter declaring it was his “considered judgment that my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not.”⁵³⁴ Reflecting later on Trump’s words and actions on January 6th at the

⁵²³ *Here’s every word of the third Jan. 6 committee hearing on its investigation*, NPR (June 16, 2022), <https://www.npr.org/2022/06/16/1105683634/transcript-jan-6-committee>.

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ January 6th Select Committee Final Report at 357.

⁵²⁸ *Id.*

⁵²⁹ NPR, *supra* note 202 (remarks of Rep. Stephanie Murphy).

⁵³⁰ NPR, *supra* note 202.

⁵³¹ AP, *supra* note 495.

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Read Pence’s full letter saying he can’t claim ‘unilateral authority’ to reject electoral votes*, PBS Newshour (Jan. 6, 2021), <https://www.pbs.org/newshour/politics/read-pences-full-letter-saying-he-cant-claim-unilateral-authority-to-reject-electoral-votes>.

Ellipse, Pence described them as “reckless . . . The President’s words that day at the rally endangered me, my family, and everyone at the Capitol building.”⁵³⁵

Trump’s mob attacked Congress, called for Pence’s murder and disrupted the peaceful transfer of presidential power

Heeding Trump’s calls to tens of thousands of his supporters at the Ellipse to march on the Capitol, many did just that while armed with weapons and wearing full tactical gear.⁵³⁶ According to an analysis by CREW, 94 criminal defendants in January 6th cases have said Trump’s remarks led them to walk to the Capitol.⁵³⁷ The mob breached security barriers surrounding the Capitol complex, overwhelmed law enforcement, and scaled the Capitol walls.⁵³⁸ By 2:13 PM, the mob breached the Capitol building



A mob of supporters of U.S. President Donald Trump clash with members of U.S. Capitol Police as they storm the U.S. Capitol Building in Washington, U.S., January 6, 2021

Leah Millis / via Reuters

⁵³⁵ ABC News, *ABC News Prime: Mike Pence interview; deadly UVA shooting latest; Scotland’s unique climate solution*, YouTube (Nov. 14 2022), <https://www.youtube.com/watch?v=jyOJVknzJkE> at 01:01:23.

⁵³⁶ Joint Senate Committee Staff Report at 26.

⁵³⁷ “Trump has called all patriots”: 174 Jan. 6th criminal defendants say Trump incited them, CREW, <https://www.citizensforethics.org/reports-investigations/crew-investigations/trump-incited-january-6-defendants/>

⁵³⁸ *Id.*

itself, where they violently confronted law enforcement and threatened the lives of Vice President Pence and members of Congress.⁵³⁹

Through their words, chants, flags, banners, and clothing, the mob made clear that they were following Trump's instructions to "Stop the Steal" by marching to the Capitol to stop the certification of the 2020 election and prevent the transfer of presidential power by force.⁵⁴⁰

The mob "engaged in violence, force, and intimidation by numbers" as it brutally attacked police officers with actual and improvised weapons, sprayed them with chemical irritants and engaged in hours of hand-to-hand combat.⁵⁴¹ Officers were electrocuted with cattle prods, bludgeoned with flag poles and metal poles broken apart from security barricades and beaten with their own stolen batons and riot shields. The mob crushed police officers in a metal door frame in the Capitol tunnel, chanting "Heave! Ho!" as they synchronized their movements in an attempt to force their way inside the building.⁵⁴² Several officers lost their lives, and many others suffered broken bones, contusions, lacerations, and psychological trauma as a result of the attack. All told, the attack led to seven deaths, including subsequent suicides, as well as injuries to more than 100 police officers, and over \$2.7 million in damage to the Capitol complex.⁵⁴³



A flag hangs between broken windows after then-President Donald Trump supporters tried to break through police barriers outside the U.S Capitol, Jan 6, 2021.

John Minchillo / via AP

⁵³⁹ U.S. Gov't Accountability Off., GAO-22-1048292, Additional Actions Needed to Better Prepare Capitol Police Officers for Violent Demonstrations 14 (2022), <https://www.gao.gov/assets/gao-22-104829.pdf> (providing a timeline of the attack); Untitled Video Compilation Presented by the House Select Committee to Investigate January 6, January 6th Select Committee (June 9, 2022) [hereinafter January 6th Select Committee Compilation Video]; Capitol Police surveillance video compilation, USCP (Jan. 6, 2021) [hereinafter Capitol Police Surveillance Video Compilation]; January 6th Select Committee Final Report at 512.

⁵⁴⁰ *State v. Griffin*, 2022 WL 4295619, at *7, *16.

⁵⁴¹ *Id.* at *8 (citing to PX 147 (Officer Hodges' body camera video)), *16.

⁵⁴² *Id.* at *8 (citing to PX 148 (Video of Officer Hodges being attacked in West Terrace Tunnel)).

⁵⁴³ Joint Senate Committee Staff Report at 26; U.S. Attorney's Office for the Dist. of Columbia, *24 Months Since the January 6 Attack on the Capitol*, (updated Jan. 4, 2023), <https://www.justice.gov/usao-dc/24-months-january-6-attack-capitol>.

In the trial that resulted in Couy Griffin’s disqualification from office, Daniel Hodges, a police officer with the D.C. Metropolitan Police Department who defended the Capitol on January 6th, testified that “[t]he size of the mob was the mob’s greatest weapon.”⁵⁴⁴ It was “what enabled them to achieve the level of success that they did” because “[t]he sheer number of the mob made it so [the officers] were overwhelmed with potential threats.”⁵⁴⁵ Officer Hodges went on to explain that the mob was “a cohesive group with all the same objectives, whether they were actively violent at the time or not. Those who were actively violent could use them [the non-violent members], and did use them, as support to overwhelm us, to make it so we could not safely engage them without considering the possible threat that the other members of the mob presented.”⁵⁴⁶

Trump’s mob also tried to directly intimidate Pence and members of Congress in the hopes of advancing Trump’s call to “Stop the Steal.” For example, the mob set up a noose and gallows and chanted “hang Mike Pence” on the Capitol grounds. Video displayed by the Select Committee shows members of the mob chanting in unison “Bring out Pence” and “Bring him out.” Another video shows Trump’s mob chanting “Hang Mike Pence. Hang Mike Pence. Hang Mike Pence. Hang Mike Pence. Hang Mike Pence.”⁵⁴⁷ Yet another clip confirmed the mob’s motivation, with a participant stating “I guess the hope is that there’s such a show of force here that Pence will decide to do the right thing, according to Trump.”⁵⁴⁸ In other acts of intimidation, members of the mob charged toward the office of Speaker of the House Nancy Pelosi, chanting menacingly, “Nancy! Nancy! Nancy” and with one member stating that he “kicked in [her] office door” and that Pelosi had narrowly missed being “torn into little pieces” if found.⁵⁴⁹

To clear the mob and regain control of the Capitol, the Capitol Police called in more than 2,000 reinforcements from 19 federal, state, and local law enforcement agencies.⁵⁵⁰ Officers used chemical spray and munitions, flash bangs, tactical teams with firearms, riot shields, and batons to fight back the mob.⁵⁵¹ Even with this significant show of force, the Capitol grounds were not secure for several hours.⁵⁵²

The mob succeeded, albeit temporarily, in stopping the Vice President and Congress from certifying the election pursuant to the Twelfth Amendment and the Electoral Count Act. The mob forced Pence and Congress to halt their constitutional duties and flee for their lives to more secure locations, disrupting the peaceful transfer of presidential power for the first time in American history.⁵⁵³ The mob forced both chambers of Congress to go into recess by 2:18 PM. The Senate did not reconvene until 8:00 PM, with

⁵⁴⁴ *State v. Griffin*, 2022 WL 4295619, Trial Tr. at 157 (Aug. 15, 2022) (Test. of Daniel Hodges).

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.*

⁵⁴⁷ *User Clip: January 6th, 2021 Riots - Hang Mike Pence*, C-SPAN (June 16, 2022), <https://www.c-span.org/video/?c5020172/user-clip-january-6th-2021-riots-hang-mike-pence>.

⁵⁴⁸ *Id.*

⁵⁴⁹ *See, e.g.*, January 6th Select Committee Compilation Video; Capitol Police Surveillance Video Compilation; Matthew S. Schwartz, *As Inauguration Nears, Concern Of More Violence Grows*, NPR (Jan. 9, 2021), <https://www.npr.org/sections/insurrection-at-the-capitol/2021/01/09/955289141/as-inauguration-nears-concern-grows-of-more-violence-to-come>; David K. Li and Ali Gostanian, *Georgia Lawyer Said He Kicked in Pelosi’s Door, She Could’ve Been ‘Torn into Little Pieces’*, NBC News (Jan. 19, 2021), <https://www.nbcnews.com/news/us-news/georgia-lawyer-said-he-kicked-pelosi-s-door-she-could-n1254756>.

⁵⁵⁰ U.S. Gov’t Accountability Off., GAO-22-105001, *Capitol Attack: The Capitol Police Need Clearer Emergency Procedures and a Comprehensive Security Risk Assessment Process* 19 (2022), <https://www.gao.gov/assets/gao-22-105001.pdf>.

⁵⁵¹ U.S. Gov’t Accountability Off., *supra* note 539 (providing a timeline of the attack); U.S. Gov’t Accountability Off., *supra* note 550.

⁵⁵² Joint Senate Committee Staff Report at 26.

⁵⁵³ *Id.*

the House reconvening approximately an hour later.⁵⁵⁴ It was not until 3:42 AM on January 7th that Congress completed its business and certified the election.⁵⁵⁵

To date, the Department of Justice has brought criminal charges against over 1,000 members of Trump's mob who participated in the January 6th attack on the U.S. Capitol.⁵⁵⁶ More than 300 defendants have been charged with obstructing, influencing, or impeding an official proceeding, or attempting to do so.⁵⁵⁷ More than 340 defendants have been charged with assaulting, resisting, or impeding officers or employees, including approximately 100 individuals who have been charged with using a deadly or dangerous weapon or causing serious bodily injury to an officer.⁵⁵⁸ And at least fourteen individuals have been convicted of seditious conspiracy stemming from the January 6th insurrection, a charge that closely tracks the definition of criminal insurrection.⁵⁵⁹

Trump inflamed the ongoing attack, causing the mob to surge

As the violence at the Capitol mounted, Trump poured fuel on the fire, encouraging his supporters to keep fighting to overturn the election. By 1:25 PM, Trump was told of the attack on the Capitol.⁵⁶⁰ At 1:49 PM, after insurrectionists breached the Capitol perimeter and began brutally attacking police officers, and after Trump had been informed of violence at the Capitol, Trump tweeted a video of his speech at the rally, which included his message that "Our country has had enough. We will not take it anymore, and that's what this is all about. ... You have to be strong!"⁵⁶¹

And at 2:24 PM, while reportedly watching the attack on TV at the White House, Trump tweeted: "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!"⁵⁶² At one point, Trump allegedly even called in to Lou Dobbs' show on Fox News, attempting to get on air, but Fox executives would not allow it,

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.*

⁵⁵⁶ Meg Anderson and Nick McMillan, *1,000 people have been charged for the Capitol riot. Here's where their cases stand*, NPR KQED (Mar. 15, 2023), <https://www.npr.org/2023/03/25/1165022885/1000-defendants-january-6-capitol-riot>.

⁵⁵⁷ Lindsay Whitehurst and Alanna Durkin Richer, *Court sides with Justice Dep. on Jan. 6 obstruction charge*, AP News (Apr. 7, 2023), <https://apnews.com/article/capitol-riot-jan-6-obstruction-charges-challenge-2c6205622672c65a4ce81b2ba4c8303c>.

⁵⁵⁸ *29 Months Since the Jan. 6 Attack on the Capitol*, U.S. Attorney's Office for the Dist. of Columbia (June 6, 2023), <https://www.justice.gov/usao-dc/29-months-jan-6-attack-capitol-o>.

⁵⁵⁹ Kyle Cheney, *4 more Oath Keepers found guilty of seditious conspiracy tied to Jan. 6 attack*, Politico (Jan. 23, 2023), <https://www.politico.com/news/2023/01/23/oath-keepers-guilty-seditious-conspiracy-jan-6-00079083>; see also Alan Feuer and Zach Montague, *Four Proud Boys Convicted of Sedition in Key Jan. 6 Case*, N.Y. Times (May 4, 2023), <https://www.nytimes.com/2023/05/04/us/politics/jan-6-proud-boys-sedition.html>.

⁵⁶⁰ January 6th Select Committee Final Report at 77.

⁵⁶¹ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021, 1:49 PM), <https://twitter.com/realDonaldTrump/status/1346891760174329859?s=20>.

⁵⁶² Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021, 2:24 PM), <https://www.thetrumparchive.com/?results=1&searchbox=%22giving+States+a+chance+to+certify%22> (archived copy of since-deleted tweet); see also Cong. Defs.' Opp. to Pl. Eastman's Privilege Assertions at 12, *Eastman v. Thompson*, 2022 WL 11030550 ("The evidence obtained by the Select Committee indicates that President Trump was aware that the violent crowd had breached security and was assaulting the Capitol when Mr. Trump tweeted.").



U.S. Capitol on January 6, 2021
Tom Williams / via Getty Images

citing the negative impact his appearance could have in the context of the ongoing attack on the Capitol.⁵⁶³

These tweets further inflamed the crowd and measurably caused them to surge. One minute after his 2:24 PM tweet was sent, the mob pushed past Capitol Police officers, who had previously been holding the line in the Capitol Crypt, and worked their way closer to the House floor.⁵⁶⁴ One officer in the Crypt claimed that rioters said they were there because their “boss,” inferred to be Trump, told them to be.⁵⁶⁵ Similarly, after

seeing this tweet, a Secret Service agent immediately sent a text, stating “POTUS just tweeted about Pence, probably not going to be good for Pence.”⁵⁶⁶ It was around this time that Pence’s Secret Service detail began to fear for their own lives and to make calls to say good-bye to family members.⁵⁶⁷ Employees at Twitter detected a surge in death threats against Mike Pence as the afternoon wore on, and continued to monitor tweets by users who were at the Capitol and tweeting about it.⁵⁶⁸ A member of the mob described the tweets as spreading “like wildfire” through the crowd, and observed that now “everybody is marching on the Capitol.”⁵⁶⁹ Evidence gathered by the Select Committee also demonstrates that the tweets further inflamed the mob, as video and audio footage from the Capitol shows that many in the crowd specifically mentioned Pence.⁵⁷⁰ At 2:38 PM, Stop The Steal organizer Ali Alexander texted another organizer, “POTUS is not ignorant of what his words would do.”⁵⁷¹

Deputy national security advisor Matthew Pottinger, who resigned his post that day, told the Select Committee that “The President was attacking Vice President Pence for doing his constitutional duty. So the tweet looked to me like the opposite of what — what we really needed at that moment, which was a de-escalation.”⁵⁷²

⁵⁶³ *O'Rourke v. Dominion Voting Sys. Inc.*, 552 F. Supp. 3d 3168, 1199 (D. Colo. 2021), *modified in non-relevant part by* 2021 WL 5548129, at *2 (D. Colo. 2021) Ex.133, Petterson 402:18-403:21; *See also* Annie Grayer, *Fox News executives refused to let Trump on-air when he called in during January 6 attack, Dominion says*, CNN (Feb. 18, 2023), <https://www.cnn.com/2023/02/17/politics/fox-news-trump-january-6/index.html>.

⁵⁶⁴ January 6th Select Committee Final Report at 660.

⁵⁶⁵ *Id.*

⁵⁶⁶ January 6th Committee, *10/13/22 Business Meeting*, YouTube (Oct. 13, 2022) <https://www.youtube.com/watch?v=IQvuBoLBuCo> at 02:23:30 (exhibits presented at Select Committee hearing, text messages and images).

⁵⁶⁷ January 6th Select Committee Final Report at 86.

⁵⁶⁸ NPR, *supra* note 146.

⁵⁶⁹ *Id.*

⁵⁷⁰ January 6th Select Committee Final Report at 110.

⁵⁷¹ *Id.* at 611.

⁵⁷² NPR, *supra* note 518.

Trump repeatedly refused to instruct his mob to leave the Capitol

Throughout the attack, White House Counsel Pat Cipollone urged Trump to put out a statement for his supporters to leave the Capitol, but Trump refused to do so.⁵⁷³ At 2:38 PM, Trump tweeted, “Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!”⁵⁷⁴ Trump notably did not instruct the mob to stand down, and his supporters did not do so.⁵⁷⁵

More than an hour after the Capitol was breached, Trump tweeted at 3:13 PM asking his supporters to “remain peaceful” and “respect” law enforcement, but he still did not ask his mob to leave the Capitol.⁵⁷⁶ All the while, Trump was calling on members of Congress to do exactly what the mob was demanding—stop the certification of the election results. While elected officials were “trapped and surrounded in the building,” Trump spoke with several of them, including Senator Tommy Tuberville of Alabama, allegedly asking them to continue objecting to the certification of the electoral count.⁵⁷⁷

Senior officials and Trump’s own family members attempted to convince the former president to call off his supporters. Donald Trump Jr. texted Meadows at 2:53 PM: “The Capitol Police tweet is not enough.” Meadows replied, “I am pushing it hard, I agree.”⁵⁷⁸ When House Republican Minority leader Kevin McCarthy asked Trump to call off his supporters between 2:26 and 3:06 PM, Trump responded, “Well, Kevin, I guess they’re just more upset about the election theft than you are.”⁵⁷⁹

Trump’s followers understood that he had not yet told them to disperse. Some of his most radical followers communicated with one another, saying, “He didn’t say not to do anything to the Congressmen” and “he did not ask them to stand down.”⁵⁸⁰ In fact, it was not until 4:17 PM that Trump released a video via tweet telling the mob to “go home.”⁵⁸¹ But even that video which finally caused the attackers to leave the Capitol and demonstrated the power Trump wielded did not disavow the insurrectionists. Rather, Trump’s video endorsed their cause, expressing both sympathy and love, and once again repeated his election lies.⁵⁸²

Statements by the attackers show that they understood this video as an instruction to leave the Capitol.⁵⁸³ Stephen Ayres testified, “[W]e literally left right after [President Trump’s 4:17 PM video] come out. You know, to me if he would have done that earlier in the day, 1:30 [PM.]... maybe we wouldn’t be in this bad of a situation or something.”⁵⁸⁴ Video footage from January 6th depicts Jake Angeli, an insurrectionist who

573 *Id.*

574 Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021 2:38 PM), <https://twitter.com/realDonaldTrump/status/1346904110969315332?lang=en>.

575 January 6th Select Committee Final Report at 90.

576 Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021 3:13 PM), <https://twitter.com/realDonaldTrump/status/1346912780700577792?s=20>.

577 January 6th Select Committee Final Report at 598.

578 NPR, *supra* note 518.

579 See Press Release, Representative Jaime Herrera Beutler, Herrera Beutler Again Confirms Conversation with McCarthy Regarding January 6 U.S. Capitol Attack (Feb. 12, 2021), <https://www.justsecurity.org/wp-content/uploads/2021/08/January-6-Clearinghouse-Rep.-Jamie-Herrera-Beutler-Statement-Confirming-Conversation-with-Rep.-Kevin-McCarthy.pdf>; see also January 6th Select Committee Final Report at 598.

580 NPR, *supra* note 518.

581 January 6th Select Committee Final Report at 92.

582 *Id.* at 579.

583 *Id.* at 92.

584 *Id.* at 579.

has since been convicted for breaching the Capitol, instructing other rioters to leave the building because of Trump's 4:17 PM tweeted video; in the video footage, Angeli is depicted stating "I'm here to deliver the president's message...Donald Trump has asked everybody to go home."⁵⁸⁵

Despite the violence, Trump and his team continued to try to stop the certification. At 2:26 PM, while the violence was ongoing, Trump called Senator Tommy Tuberville, a newly elected senator from Alabama, to talk about objections to the electoral count.⁵⁸⁶ Giuliani's phone records show that after 5:00 PM on January 6th, after Trump asked his supporters to go home in the video, Giuliani called Senators Marsha Blackburn, Mike Lee, Bill Hagerty, Lindsey Graham, Josh Hawley, Ted Cruz, Dan Sullivan, as well as Representative Jim Jordan. In a voicemail left on Senator Lee's phone (meant for Senator Tuberville), Giuliani made clear the reason he was calling was so that they "could object to every State...to give [them] the opportunity to get the legislators who are very, very close to pulling their vote."⁵⁸⁷

In the early evening, after the Capitol had finally been secured and the scope of the devastation was clear, Trump sent another tweet at 6:01 PM.⁵⁸⁸ Rather than denounce the violence and express concern for the safety of law enforcement and members of Congress, he again validated the insurrection, reiterated his election falsehoods and lionized the insurrectionists as patriots: "These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!"⁵⁸⁹

By all accounts, Trump's tweets further incited the mob and exacerbated the violence that was unfolding. As law enforcement was attempting to defend the Capitol, Trump stoked the mob through social media by continuing to espouse election lies and targeting the Vice President for refusing to overturn the election. It does not matter that Trump did not personally engage in violence.⁵⁹⁰ After the Civil War, individuals were disqualified even though they did not take up arms in the Confederate army, with a Reconstruction-era U.S. Attorney General opinion explaining that engaging in insurrection can include when "a person has, by speech or by writing, incited others to engage in rebellion [or insurrection]..."⁵⁹¹ "Engagement [. . .] can include non-violent overt acts or words in furtherance of the insurrection."⁵⁹² Trump's tweets encouraged and "voluntarily aided the insurrectionists' cause" by furthering their efforts to interfere with the peaceful transfer of power.⁵⁹³

⁵⁸⁵ Richard Ruelas, *Jake Angeli, QAnon shaman from Arizona, among crowd near Pence's Jan. 6 evacuation route*, AZCentral (July 22, 2022), <https://www.azcentral.com/story/news/politics/arizona/2022/07/21/jake-angeli-qanon-shaman-from-arizona-among-crowd-near-pence-jan-6-evacuation-route/10124546002>; see also January 6th Select Committee Final Report at 579 (discussing the 4:17 p.m. video asking his supporters to leave the Capitol).

⁵⁸⁶ January 6th Select Committee Final Report at 598.

⁵⁸⁷ *Id.* at 608.

⁵⁸⁸ *Id.* at 93.

⁵⁸⁹ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021, 6:01 PM), <https://www.thetrumparchive.com/?results=1&searchbox=%22sacred+landslide+election+vicory%22> (archived copy of since-deleted tweet).

⁵⁹⁰ See *State v. Griffin*, 2022 WL 4295619, at *20 ("One need not personally commit acts of violence to 'engage[e] in' insurrection.") (citing *U.S. v. Powell*, 65 N.C. 709 (1871) (holding that defendant "engaged in" rebellion if he voluntarily provided a substitute to avoid serving in the Confederate Army)).

⁵⁹¹ *The Reconstruction Acts*, 12 U.S. Op. Atty. Gen. 182, 205 (1867) ("[W]hen a person has, by speech or by writing, incited others to engage in rebellion [or insurrection], he must come under the disqualification."); *Barrett*, 63 N.C. at 199.

⁵⁹² See *State v. Griffin*, 2022 WL 4295619, at *20.

⁵⁹³ See *id.*

Trump violated his constitutional duties when he failed to deploy a federal response to the mob's seizure of the Capitol

As chief executive and commander in chief of the military, President Trump had the unique power and responsibility to defend the Capitol against insurrectionists seeking to prevent the execution of federal law. And yet, as the violence was underway, Trump failed to act for more than three hours watching the attack unfold on television, ignoring pleas to deploy a military response and to call off his mob. Instead of taking action to defend the Capitol, Trump attempted to convince his Secret Service detail to let him join the mob, continued to incite the mob through Twitter, and called multiple members of Congress urging them to do the mob's bidding by continuing to object to the certification of the presidential election. By failing to act when he had clear duties to do so, Trump further aided the insurrection.

Under Article II, Section 3 of the U.S. Constitution, the president has an affirmative duty to “take Care that the Laws be faithfully executed.”⁵⁹⁴ Because “[t]he entire ‘executive Power’ belongs to the President alone,” the Take Care Clause vests responsibility to ensure the faithful execution of federal law solely in the president.⁵⁹⁵ Among the laws that the president must ensure are faithfully executed are the laws the mob sought to impede including the Twelfth Amendment and the Electoral Count Act, and the federal criminal statutes the mob violated on January 6th.

Under Article II, Section 2, “[t]he President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.”⁵⁹⁶ Unlike “the National Guard units in 50 States and three territories, where deployment authority lies with the governor of those respective jurisdictions, the DC [National] Guard falls directly under the command of the United States President.”⁵⁹⁷

President Trump violated his constitutional duties on January 6th. After being informed that a violent mob was attacking the United States Capitol and disrupting the execution of federal law, Trump failed to act for 187 minutes, watching the attack unfold on television.⁵⁹⁸ For more than three hours, he took no action to defend the Capitol from the countless crimes being committed by his supporters in his name.⁵⁹⁹ At no point did Trump deploy the D.C. National Guard, or direct the Department of Defense or any law enforcement agencies to intervene. Rather, Trump glorified the events and tweeted, “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!”⁶⁰⁰ Trump knew that calling the National Guard was an option available to him. Trump advised Acting Secretary Miller on January 5th that based upon the number of demonstrators already in

⁵⁹⁴ U.S. Const. art. II, § 3.

⁵⁹⁵ *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2197 (2020) (emphasis added).

⁵⁹⁶ U.S. Const. art II, § 2.

⁵⁹⁷ January 6th Select Committee Final Report at 724 n.2; D.C. Code § 49-409 (1889) (“The President of the United States shall be the Commander-in-Chief of the militia of the District of Columbia.”).

⁵⁹⁸ See January 6th Select Committee Final Report at 577 (“By 1:21 p.m., President Trump was informed that the Capitol was under attack. He could have interceded immediately. But the President chose not to do so. It was not until 4:17 p.m. that President Trump finally tweeted a video in which he told the rioters to go home.”); NPR, *supra* note 518 (remarks of Rep. Elaine Luria).

⁵⁹⁹ NPR, *supra* note 518 (remarks of Rep. Elaine Luria).

⁶⁰⁰ Eliza Collins, *In Question, Senator Highlights Trump's Late Jan. 6 Tweet on 'Events That Happen'*, Wall Street Journal (Feb. 12, 2021), <https://www.wsj.com/livecoverage/trump-second-impeachment-trial-2021-02-12/card/YrHNzLNzltGz8v2i587>

Washington, D.C., they were going to need 10,000 troops the following day,⁶⁰¹ and falsely claimed on January 7th that he had “immediately deployed the National Guard” to protect the Capitol.⁶⁰² But he never deployed the National Guard or any other federal agencies to prevent further violence at the Capitol.

It was Vice President Pence—not President Trump—who pushed for National Guard troops to be deployed to the Capitol after several hours of inaction by Trump. “As Commander-in-Chief, President Trump had the power—more than any other American—to muster the U.S. Government’s resources and end the attack on the U.S. Capitol.”⁶⁰³ Yet “[h]e willfully remained idle even as others, including his own Vice President, acted.”⁶⁰⁴ As Chairman of the Joint Chiefs of Staff Mark Milley testified to the Select Committee:

You know, you’re the Commander in Chief. You’ve got an assault going on on the Capitol of the United States of America, and there’s nothing? No call? Nothing? Zero? ... [N]o attempt to call the Secretary of Defense? No attempt to call the Vice President of the United States of America, who’s down on the scene?⁶⁰⁵

Former Acting Secretary of Defense Christopher Miller confirmed that Trump had no involvement—“none”—in “the Department of Defense efforts on January 6th.”⁶⁰⁶ In addition to Vice President Pence, other elected officials made requests for support to defend the Capitol given the leadership vacuum created by Trump’s inaction. House Majority Leader Nancy Pelosi, Senate Majority Leader Chuck Schumer, and Senate Minority Leader Mitch McConnell coordinated with government officials to strengthen the law enforcement response.⁶⁰⁷ Speaker Pelosi and Leader Schumer spoke with, among others, acting Secretary of Defense Miller, Governor Ralph Northam of Virginia, acting Attorney General Jeffrey Rosen, and Vice President Pence.⁶⁰⁸

In recorded remarks to the nation on January 7th, Trump attempted to rewrite history, falsely stating that he “immediately deployed the National Guard and federal law enforcement to secure the building and expel the intruders.”⁶⁰⁹ In fact, White House staff understood that President Trump did not want anything done, and his administration ignored multiple pleas for assistance from congressional leaders of both parties.⁶¹⁰ In contrast to his swift federal law enforcement response to the Black Lives Matter protests in the summer of 2020, President Trump refused to deploy the National Guard on January 6th to protect the Capitol

601 January 6th Select Committee Final Report at 742.

602 Philip Bump, *Even on Jan. 7, Trump declined to say the rioters didn't represent him*, Wash. Post (July 25, 2022), <https://www.washingtonpost.com/politics/2022/07/25/even-jan-7-trump-declined-say-rioters-didnt-represent-him>.

603 January 6th Select Committee Final Report at 577.

604 *Id.*

605 *Id.* at 578.

606 *The Capitol Insurrection: Unexplained Delays and Unanswered Questions: Hearing Before the H. Comm. on Oversight and Reform*, 117th Cong. (2021) (written statement of Christopher C. Miller), <https://www.justsecurity.org/wp-content/uploads/2021/12/january-6-clearinghouse-house-oversight-hearing-chris-christopher-testimony-may-2021.pdf>.

607 NPR, *supra* note 147.

608 *Id.*

609 Bump, *supra* note 602.

610 NPR, *supra* note 208; NPR, *supra* note 147.

building and aid law enforcement officers who were being brutally attacked by the mob he summoned.⁶¹¹ As such, despite being ready to respond to the attack on the U.S. Capitol for hours, District of Columbia, Maryland, and Virginia National Guard forces never received approval from President Trump to deploy to the District of Columbia.⁶¹²

As the Select Committee concluded, “[t]he 187 minutes between the end of President Trump’s speech and when he finally told the mob to leave the U.S. Capitol was a dereliction of duty.”⁶¹³ Trump’s own former attorney, Ty Cobb, opined that Trump provided “aid and comfort” to the insurrection within the meaning of Section 3 of the Fourteenth Amendment through his “three hours of inaction.”⁶¹⁴ Cobb is correct. Trump’s failure to act despite his duties to do so materially aided the insurrection: it allowed the mob to advance and further disrupt certification of the election results.

President Trump has continued to normalize political violence, downplay the insurrection and affirm his hostility to the Constitution

On the morning of January 7th, White House staff prepared a speech for Trump to address the violence of the prior day, call for the prosecution of those who breached the Capitol, and state that the election was over as Congress had certified Biden’s victory.⁶¹⁵ For hours, Trump refused to record the speech, finally relenting when informed of discussions to remove him from office pursuant to the 25th Amendment or through impeachment.⁶¹⁶ However, while recording the address, Trump still could not bring himself to unequivocally denounce his followers or concede that he lost the election.⁶¹⁷ Trump reportedly also pushed for language in the speech that he would pardon the insurrectionists allegedly to prevent them from having to testify or be deposed about their involvement, which was ultimately left out at the behest of

⁶¹¹ See, e.g., *Justice Department Announces Civil Settlement in Lafayette Square Cases*, Dep’t of Just. (Apr. 13, 2022), <https://www.justice.gov/opa/pr/justice-department-announces-civil-settlement-lafayette-square-cases>; Lauren White and Sara Wiatrak, *Black Lives Matter faced an extreme police response. The January 6th mob was met with something completely different*, CREW (Mar. 28, 2023), <https://www.citizensforethics.org/news/analysis/black-lives-matter-faced-an-extreme-police-response-the-january-6th-mob-was-met-with-something-completely-different>.

⁶¹² Rachael Bade and Karoun Demirjian, *What Republicans Really Thought on January 6*, *The Atlantic* (Oct. 16, 2022), <https://www.theatlantic.com/politics/archive/2022/10/january-6-republican-gop-response-trump-capitol/671752>.

⁶¹³ January 6th Select Committee Final Report at 577.

⁶¹⁴ Rebecca Cohen, *Ex-Trump White House lawyer believes Trump gave ‘aid and comfort to the insurrectionists’*, *Business Insider* (Aug. 4, 2022), <https://www.businessinsider.in/politics/world/news/ex-trump-white-house-lawyer-believes-trump-gave-aid-and-comfort-to-the-insurrectionists/articleshow/93332541.cms>.

⁶¹⁵ NPR, *supra* note 518.

⁶¹⁶ *Id.*

⁶¹⁷ *Id.*

the White House Counsel's Office.⁶¹⁸ Nonetheless, Trump continues to discuss pardons for the January 6th defendants to this day.

Since leaving office, Trump has repeatedly affirmed his loyalty to the insurrectionists. He has argued publicly that all individuals arrested or convicted for their participation in the insurrection should be released. He has even gone so far as to state that should he become president again he would pardon them and issue a formal government apology for their so-called unfair treatment.⁶¹⁹ Trump has gone on record stating that he has provided financial assistance to January 6th defendants, helping to offset their legal fees.⁶²⁰

Trump has continued to embrace the insurrectionists (literally and figuratively), especially those facing criminal charges for January 6th, with whom he recorded a song. The song called "Justice for All," is the Star-Spangled Banner overlaid with Trump reciting the Pledge of Allegiance.⁶²¹ The song is designed to make the defendants look more like political prisoners who committed an act of patriotic resistance rather than criminals.⁶²² Trump has also physically embraced individuals who have said they are seeking to physically harm former government officials, recently hugging a convicted January 6th defendant who stated she wants Mike Pence executed for refusing to overturn the election for Trump.⁶²³



Former President Donald Trump greets Micki Larson-Olson while visiting the Red Arrow Diner in Manchester, N.H.
Jabin Botsford / The Washington Post via Getty Images

Trump has also affirmed his disloyalty to the Constitution. In a December 4, 2022 Truth Social post, Trump wrote that "Massive Fraud" in the 2020 election justifies overturning the results and "the termination of all rules, regulations, and articles, even those found in the Constitution."⁶²⁴ The former president's disturbing call to "terminat[e]" the Constitution drew bipartisan condemnation.⁶²⁵

⁶¹⁸ January 6th Select Committee Final Report at 581; Tara Palmeri, *Trump considered blanket pardons for Jan. 6 rioters before he left office*, Politico (Feb. 2, 2022), <https://www.politico.com/news/2022/02/02/trump-considered-blanket-pardons-for-jan-6-rioters-before-he-left-office-00004738>.

⁶¹⁹ Mariana Alfaro, *Trump vows pardons, government apology to Capitol rioters if elected*, Wash. Post (Sept. 1, 2022), <https://www.washingtonpost.com/national-security/2022/09/01/trump-jan-6-rioters-pardon>.

⁶²⁰ Audio: *Trump tells Wendy Bell he's 'financially supporting' Jan. 6 rioters*, Politico (Sept. 1, 2022), <https://www.politico.com/video/2022/09/01/audio-trump-tells-wendy-bell-hes-financially-supporting-jan-6-rioters-685718>.

⁶²¹ David Klepper, *Music to Trump's ears: Whitewashing Jan. 6 riot with song*, AP (Apr. 21, 2023), <https://apnews.com/article/j6-choir-trump-national-anthem-capitol-riot-79618f1f2a689c308dfdc34d54d327ea>.

⁶²² *Id.*

⁶²³ Ryan J. Reilly and Olympia Sonnier, *Donald Trump embraces Jan. 6 defendant who wants Mike Pence executed*, NBC News (Apr. 28, 2023), <https://www.nbcnews.com/politics/donald-trump/donald-trump-embraces-jan-6-defendant-wants-pence-executed-rcna81958>.

⁶²⁴ Holmes, *supra* note 12.

⁶²⁵ Lauren White and Lama Elsharif, *9 out of 10 Republicans silent on Trump's calls to terminate the Constitution*, CREW (Apr. 25, 2023), <https://www.citizensforethics.org/reports-investigations/crew-reports/9-out-of-10-republicans-silent-on-trumps-calls-to-terminate-the-constitution>; Zoe Richards, Kate Santaliz, and Garrett Haake, *Republicans disavow Trump's call to terminate the Constitution but stop short of saying it disqualifies him from 2024*, NBC News (Dec. 5, 2022), <https://www.nbcnews.com/politics/donald-trump/republicans-react-trumps-call-terminate-constitution-rcna60224>.

Trump has likewise continued to stoke violence among his supporters. After the FBI searched Trump's Mar-a-Lago home following his repeated refusal to return classified records, Trump told FOX News, "People are so angry at what is taking place" and that if the temperature isn't brought down "terrible things are going to happen."⁶²⁶ A Trump supporter later attacked an FBI field office in Cincinnati. Trump also re-posted a message on his social media platform Truth Social that stated in part, "People my age and old will physically fight for him this time. What we got to lose ? I'll donate the rest of my time here on this planet to do it. And I know many many others who feel the same. They got my 6 and we Are Locked and LOADED."⁶²⁷

Recently, Trump stated that Pence should have "sent the votes back to the legislatures," because if he had "they wouldn't have had a problem with Jan. 6 ... [h]ad he sent them back to Pennsylvania, Georgia, Arizona, the states, I believe ... you wouldn't have had 'Jan. 6' as we call it."⁶²⁸ By blaming Pence for the violence on January 6th, Trump was tacitly admitting that the mob was there to pressure him to unilaterally overturn the election results. It appears that in Trump's view, the insurrectionists were in the right and Pence should have succumbed to their intimidation instead of carrying out his constitutional duties.

On April 4, 2023, Trump was criminally charged in Manhattan with 34 felony counts of falsifying business records related to hush money payment schemes from 2016 through 2018. Trump has publicly attacked not only the District Attorney in that case, Alvin Bragg, but also the judge assigned to the case, Juan Merchan, as well as the judge's family. In advance of Trump's appearance in court on Tuesday, April 4, 2023, Trump posted to his Truth Social account that the "highly partisan judge" and his family were "Trump haters."⁶²⁹ Trump's sons then followed this post by uplifting conservative news stories which focused on Judge Merchan's daughter's employment. In May 2023, Judge Merchan issued an order effectively barring Trump from posting about evidence in the case on social media.⁶³⁰

Similarly, even before the charges were revealed, on Friday, March 24th, Trump posted on Truth Social that there would be "death and destruction" if he was indicted.⁶³¹ Trump also posted on his social media that DA Bragg was a "degenerate psychopath" next to a photo of Trump holding a baseball bat next to Bragg's head.⁶³² And just hours after Trump's arraignment on April 4th—where he was warned by the judge against using rhetoric that could incite threats and violence—Trump spoke at length at Mar-a-Lago, attacking Bragg and his wife, claiming that the prosecution was for political reasons.⁶³³

⁶²⁶ Alan Feuer and Maggie Haberman, *Hard Right Stokes Outrage After Search of Mar-a-Lago*, N.Y. Times (Aug. 30, 2022), <https://www.nytimes.com/2022/08/30/us/politics/trump-search-violence.html>.

⁶²⁷ Steve Benen, *Why Trump's rhetoric related to violence is tough to ignore*, MSNBC (Feb. 3, 2023), <https://www.msnbc.com/rachel-maddow-show/maddowblog/trumps-rhetoric-related-violence-tough-ignore-rcna68997>.

⁶²⁸ Isaac Arnsdorf and Maeve Reston, *Trump claims violence he inspired on Jan. 6 was Pence's fault*, Wash. Post (Mar. 13, 2023), <https://www.washingtonpost.com/politics/2023/03/13/trump-pence-iowa/>.

⁶²⁹ Ahmed Gaber, *Trump judge and his family receive threats after New York arrest*, NBC News (Apr. 5, 2023), <https://www.nbcnews.com/politics/donald-trump/judge-merchan-family-receive-threats-trumps-arrest-rcna78401>.

⁶³⁰ Adam Reiss and Dareh Gregorian, *Trump prohibited from posting evidence in hush money case to social media, judge rules*, NBC News (May 8, 2023), <https://www.nbcnews.com/politics/donald-trump/trump-barred-posting-evidence-hush-money-case-social-media-rcna83444>.

⁶³¹ Gram Slattery and Nathan Layne, *Trump warns of 'death & destruction' if charged with a crime*, Reuters (Mar. 5, 2023), <https://www.reuters.com/legal/trump-warns-death-destruction-if-charged-with-crime-2023-03-24>.

⁶³² Dan Mangan, *Manhattan DA Alvin Bragg gets death threat with powder after Trump warns of probe-related violence*, CNBC (Mar. 31, 2023), <https://www.cnbc.com/2023/03/24/death-threat-to-manhattan-da-bragg-after-trump-warning.html>.

⁶³³ David Jackson, Stephany Matat, and Antonio Fins, *Hours after arrest, Donald Trump attacks Manhattan district attorney in Mar-a-Lago speech*, USA Today (Apr. 4, 2023), <https://www.usatoday.com/story/news/politics/2023/04/04/trump-speech-mar-a-lago-bragg/11594085002/>.

The Select Committee and federal judges have recognized President Trump’s responsibility for the insurrection

The bipartisan Select Committee concluded after its 18-month investigation that Trump was the “central cause” of the insurrection and that “[n]one of the events of January 6th would have happened without him.”⁶³⁴ The Select Committee’s conclusion is supported by an 845-page report, thousands of pages of evidence, and witness interviews of dozens of Trump administration and Trump campaign officials.

Numerous federal judges have likewise blamed Trump for the insurrection or implicated him in related wrongdoing. CREW has compiled more than a dozen such statements, including the following from judges appointed by Republican and Democratic presidents alike:⁶³⁵

- Judge Rudolph Contreras: “The events of January 6th involved the rather unprecedented confluence of events spurred by then President Trump and a number of his prominent allies who bear much responsibility for what occurred on that day.”⁶³⁶
- Judge Amit Mehta: “President Trump’s January 6 Rally Speech was akin to telling an excited mob that corn-dealers starve the poor in front of the corn-dealer’s home. He invited his supporters to Washington, D.C., after telling them for months that corrupt and spineless politicians were to blame for stealing an election from them; retold that narrative when thousands of them assembled on the Ellipse; and directed them to march on the Capitol building—the metaphorical corn-dealer’s house—where those very politicians were at work to certify an election that he had lost.”⁶³⁷
- Judge David O. Carter: “The illegality of [Trump’s] plan was obvious. Our nation was founded on the peaceful transition of power, epitomized by George Washington laying down his sword to make way for democratic elections. Ignoring this history, President Trump vigorously campaigned for the Vice President to single-handedly determine the results of the 2020 election. As Vice President Pence stated, ‘no Vice President in American history has ever asserted such authority.’ Every American—and certainly the President of the United States—knows that in a democracy, leaders are elected, not installed. With a plan this ‘BOLD,’ President Trump knowingly tried to subvert this fundamental principle. Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021.”⁶³⁸

⁶³⁴ January 6th Select Committee Final Report at 8.

⁶³⁵ CREW, *supra* note 91.

⁶³⁶ *U.S. v. Prado*, 1:21-cr-00403-RC, Transcript of Sentencing at 38 (D.D.C. Feb. 7, 2022) at 38, <https://www.citizensforethics.org/wp-content/uploads/2023/05/NicolePradoSentencingHearingTranscript.pdf>.

⁶³⁷ *Thompson v. Trump*, 590 F. Supp. 3d 46, 118 (D.D.C. 2022).

⁶³⁸ *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1192-93 (C.D. Cal. 2022).

- Judge Amy Berman Jackson: “He [a January 6th criminal defendant] may very well have sincerely believed that the election had been unfair and tainted. I don’t doubt that. But that belief was misguided. By that time even the Republican election officials in the challenged states had said over and over, when more than 60 judges across the country had said – including Republican judges, including judges appointed by President Trump himself – had said over and over, there is no evidence behind these claims. At the end of the day the fact is that the defendant came to the Capitol because he placed his trust in someone who repaid that trust by lying to him.”⁶³⁹
- Judge Amit Mehta: “The fact remains that he and others were called to Washington, D.C. by an elected official; he was prompted to walk to the Capitol by an elected official. People like Mr. Lolos were told lies, fed falsehoods, and told that our election was stolen when it clearly was not.”⁶⁴⁰
- Judge John D. Bates: “[A]lthough [Trump’s] express words [on January 6th] only mention walking down Pennsylvania Avenue to the Capitol, one might conclude that the context implies that he was urging protesters to do something more – perhaps to enter the Capitol building and stop the certification.”⁶⁴¹
- Judge Reggie B. Walton: “...I think our democracy is in trouble. Because unfortunately, we have charlatans like our former president, who doesn’t in my view really care about democracy, but only about power. And as a result of that, it’s tearing this country apart. I have a concern that we have, unfortunately, American citizens who were so gullible that they were willing to accept what was being said without any proof that the allegations about the election had any merit whatsoever. People are just outraged at how they feel our system is not taking seriously what happened on that day because of their fear of the future of this country.”⁶⁴²

⁶³⁹ *U.S. v. Dresch*, 1:21-cr-00071-ABJ, Transcript of Plea and Sentence at 30 (D.D.C. Aug 4, 2021).

⁶⁴⁰ *U.S. v. Lolos*, 1:21-cr-00243-APM, Transcript of Sentencing at 55 (D.D.C. Nov. 19, 2021).

⁶⁴¹ *U.S. v. Sheppard*, 2022 WL 17978837, at *9 (D.D.C. Dec. 8, 2022).

⁶⁴² Alexander Mallin, *Judge slams Trump as ‘charlatan’ after jury finds Jan. 6 rioter guilty on all counts*, ABC News (Apr. 14, 2022), <https://abcnews.go.com/Politics/judge-slams-trump-charlatan-jury-finds-jan-rioter/story?id=84090253> (quoting Judge Walton’s remarks at the conclusion of the trial of January 6th defendant Dustin Thompson).

Conclusion

The violent mob that President Trump summoned to Washington, D.C. on January 6, 2021 and then told to “fight like hell” to overturn the election, carried out the most significant breach of the Capitol building since the War of 1812 and disrupted the peaceful transition of presidential power for the first time in American history. This attack on our democracy was the culmination of a multi-part scheme by Trump and his allies to unlawfully overturn the 2020 election results through knowingly false claims of election fraud, coercion, intimidation, and ultimately, violence.

Disqualifying anyone for engaging in insurrection is a very serious step, and no one should take lightly the thought of banning someone from the ballot. But the risk of a repeat or escalation of January 6th poses such an existential threat to our democracy that it demands the use of all available legal tools to prevent it. Section 3 is the measure that the Reconstruction-era framers designed to ensure insurrectionists like Trump are accountable and cannot serve in the government that they attacked; addressing the current risk is exactly what it is there for. The framers saw it as an essential protection against those who have proven themselves disloyal to the Constitution. Section 3 is both an extraordinary measure, to be used in the extraordinary circumstances of an insurrection like January 6th, and also a basic qualification for holding public office, like many others included in the Constitution that are far more familiar to the American public.

Donald Trump is neither above the law, nor is he above democracy. Overwhelming evidence establishes that President Trump was the central cause of and a participant in the insurrection. Because of that, Trump is disqualified from holding any public office, including the Office of the President, under Section 3 of the Fourteenth Amendment.

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