

1 James E. Barton II, 023888
Jacqueline Mendez Soto, 022597
2 **BARTON MENDEZ SOTO PLLC**
401 W. Baseline Road, Suite 205
3 Tempe, Arizona 85283
480-550-5165
4 James@bartonmendezsoto.com
Jacqueline@bartonmendezsoto.com
5 *Attorneys for Plaintiffs*

6 ARIZONA SUPERIOR COURT

7 MARICOPA COUNTY

8 THOMAS HANSEN, an individual; et
9 al.;

10 Plaintiffs,

11 v.

12 REP. MARK FINCHEM, a candidate
13 for Secretary of State; et al.;

14 Defendants.

Case No.:

**APPLICATION FOR PRELIMINARY
AND PERMANENT INJUNCTION
AND MEMORANDUM IN SUPPORT**

**(Election Case/Candidate Challenge
Per A.R.S. § 16-351)**

15 Plaintiff Thomas Hansen, a registered Arizona voter, hereby applies for a
16 Preliminary and Permanent Injunction prohibiting Mark Finchem from appearing on the
17 August 2022 Primary Election Ballot.

MEMORANDUM OF POINTS AND AUTHORITIES

18 As provided in the Verified Complaint, Representative Mark Finchem is a
19 candidate for Secretary of State, a statewide office. Ver. Compl. ¶ 2. Pursuant to Section
20 16-351, Arizona Revised Statutes, Plaintiff seeks a preliminary and permanent injunction
21

1 barring Finchem’s name from the August 2022 Primary Election Ballot because he is not
2 constitutionally qualified to hold the office he seeks.

3 Under Section Three of the Fourteenth Amendment to the U.S. Constitution
4 (“Section Three”), known as the Disqualification Clause, “No Person shall be a . . .
5 Representative in Congress . . . or hold any office, civil or military . . . under any State . .
6 . who, having previously taken an oath, as a member of Congress . . . or as a member of
7 any State legislature . . . to support the Constitution of the United States, shall have
8 engaged in insurrection or rebellion against the same.”

9 As will be described in detail below, Candidate Finchem was involved in planning
10 efforts to intimidate Congress and the Vice President into rejecting valid electoral votes
11 and subvert the essential constitutional function of an orderly and peaceful transition of
12 power. Representative Finchem was engaged with the January 6 attack by being in close
13 contact with the planners of the Wild Protest, including throughout the day on January 6,
14 and participating in the attack. Finchem encouraged the insurrectionists as they stormed
15 the Capitol. As a member of the Arizona Legislature, and prior to the insurrection, he
16 took an oath of office to support the Constitution of the United States. Thus, under
17 Section Three, Candidate Finchem shall not hold any office in the State of Arizona.
18 Under Section 16-351, Arizona Revised Statutes, subsection(B), Candidate Finchem is
19 not qualified to hold the office of Secretary of State and the government defendants be
20 ordered to exclude his name from the ballot for the August 2022 Primary Election.

21 **I. FACTUAL BACKGROUND**

1 The actions of three candidates for office, State Representative Finchem and U.S.
2 Representatives Gosar and Biggs, taken in support of the insurrection that culminated
3 with the events of January 6, 2021 are not easily separated. For the sake of adherence to
4 Arizona’s candidate challenge procedures, each candidate is being challenged in a
5 separate action, but the events supporting their disqualification are nearly identical. Thus,
6 this application along with those filed in the cases filed against Representatives Gosar
7 and Biggs are identical. Public reports and publicly available evidence support the
8 allegations that follow.

9 **A. Finchem Swore to Uphold the Constitution, which He Failed to Keep.**

10 Finchem took an oath as an elected member of the Arizona House of
11 Representatives. Ariz. Stat. § 38-231(E)–(F). That oath included a promise to “support
12 the Constitution of the United States.” *Id.* § 38-231(E). A record of the oath is filed with
13 the Secretary of State. *Id.* § 38-233(A).

14 Notwithstanding his oath, Finchem has a history of incendiary rhetoric and
15 advocating violence against his political opponents.¹ Finchem was, at one point, the
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17 ¹ See, e.g., Melanie Zanona & John Bresnahan, *Conservatives push to reinstate*
18 *Steve King on committees despite racist remarks*, Politico (June 3, 2019),
19 <https://www.politico.com/story/2019/06/03/steve-king-1352064>; Joseph Flaherty, *From*
20 *Charlottesville to Oath Keepers, Rep. Mark Finchem Is a Fringe Lawmaker*, Phoenix
21 *New Times* (March 22, 2019), [https://www.phoenixnewtimes.com/news/rep-mark-
finchem-oathkeepers-charlottesville-deep-state-conspiracy-11249452](https://www.phoenixnewtimes.com/news/rep-mark-finchem-oathkeepers-charlottesville-deep-state-conspiracy-11249452); Josh Delk, *GOP*
lawmaker on memo: FBI conduct ‘constitutes treason’, *The Hill* (Feb. 2, 2018),
[https://thehill.com/blogs/blog-briefing-room/372072-republican-rep-on-memo-fbi-
conduct-constitutes-treason](https://thehill.com/blogs/blog-briefing-room/372072-republican-rep-on-memo-fbi-conduct-constitutes-treason); Derek Hawkins, *Arizona congressman repeats bogus claim*
that Charlottesville violence was left-wing plot, *Wash. Post* (Oct. 6, 2017)

1 Arizona Coordinator of the Coalition of Western States (“COWS”), which supported both
2 Cliven Bundy’s violent confrontation with federal law enforcement in 2014 and the
3 occupation of the Malheur National Wildlife Refuge in 2016.² He also claimed at one
4 point to be a member of the “Oath Keepers,” a violent far-right militia group.³

5 **B. Finchem Engaged in the Insurrection against the United States in the**
6 **Planning Phase.**

7 After the 2020 election, Finchem publicly insisted that then-President Trump had
8 won the election, posting those false claims online consistently from November through
9 January 6.⁴ These statements were made in support of a larger movement, often using the
10 slogan “Stop the Steal,” that advances and promotes the false claim that Donald Trump
11 won the 2020 election.

12 Representative Paul Gosar was a leader of this movement.⁵ He helped to organize
13 some of the earliest rallies and made contacts with both Finchem and a violent extremist
14

15 <https://www.washingtonpost.com/news/morning-mix/wp/2017/10/06/arizona-congressman-repeats-bogus-claim-that-charlottesville-violence-was-left-wing-plot/>.

16 ² Josh Kletey, Rep. Mark Finchem Worked With Anti-Government Extremists, Emails Show, Phoenix New Times (Oct. 1, 2020),

17 <https://bit.ly/PhoenixTimesFinchemEmail>.

18 ³ “Oath Keeper” running for House seat, in Maricopa.com (July 30, 2014),
<https://bit.ly/FinchemOathkeeper>.

19 ⁴ Representative Zoe Lofgren, *Arizona Social Media Review*, 8–46 (statements of Representative Biggs); 59–212 (statements of Representative Gosar) (2021),

<https://lofgren.house.gov/sites/lofgren.house.gov/files/Arizona2.pdf>.

20 ⁵ See, e.g., Luke O’Brien, *Republican Congressman Helped Organize Ugly Far-Right Protest Against Election Result*, Huffpost (Nov. 13, 2020),

21 https://www.huffpost.com/entry/paul-gosar-far-right-protest-arizona_n_5fada218c5b6370e7e311861; Paul Gosar, *Are We Witnessing a Coup d’etat?*,

1 named Ali Alexander. Gosar publicly and consistently coordinated with both Finchem
2 and Alexander in the weeks leading up to January 6.⁶ On November 6, 2020, Gosar was
3 already advocating illegal means to overturn the election, urging the U.S. Department of
4 Justice to seize voting machines.⁷ Along with Finchem, on November 30, he advocated
5 that Arizona withhold its electors.⁸ In late November, Gosar spoke at a meeting of the
6 “Oath Keepers” in Northern Arizona where he said, “We are in a Civil War, we just
7 haven’t started shooting yet.”⁹ On December 7, Gosar wrote an op-ed arguing Biden’s
8 win amounted to a “coup.”¹⁰

9 Finchem took money to advance this narrative. On December 18, the Trump
10 campaign paid Finchem \$6,037 for “recount: legal consulting” even though Finchem is
11 not a lawyer. Finchem claimed the money was for security at an event he held in Phoenix
12 with Rudy Giuliani – an event Finchem and Giuliani used to promote the lie that Trump
13
14

15 _____
16 Revolver News (December 7, 2020), <https://bit.ly/GosarDec7Oped> (bragging that he
17 “helped organize the very first “Stop the Steal” rally in Arizona”).

18 ⁶ Rep. Lofgren, *Arizona Social Media Review*, at 139, 145, 168, 182, 190, 207,
19 211 (coordinating with Finchem); *id.* at 90, 123, 134, 139, 214, 215 (coordinating with
20 Alexander).

21 ⁷ Rep. Lofgren, *Social Media Review*, 88.

⁸ *Id.* at 145.

⁹ Zach Crenshaw, *Oath Keepers look to recruit in Arizona with alarmist ‘Civil
20 War’ rhetoric*, ABC 15 Arizona (Feb. 18, 2021), <https://bit.ly/ABCOathKeeperVideo>.

¹⁰ Paul Gosar, *Are We Witnessing a Coup d’etat?*, Revolver News (December 7,
2020), <https://bit.ly/GosarDec7Oped>.

1 won the election.¹¹ Simultaneously, in November 2020, various persons associated with
2 the movement attempted to block the certification of President-elect Biden’s victory with
3 dozens of lawsuits. None succeeded, and all were found to be baseless.¹² After litigation
4 failed, some within this larger movement accepted that they had exhausted their legal
5 options for challenging the results of the presidential election.¹³

6 Others, however, followed Gosar and Finchem’s lead and turned to extralegal
7 plans. They formulated an unconstitutional scheme to subvert the constitutional process
8 of counting the electoral votes in Congress, preventing President-elect Biden from being
9 sworn in as President. Leaders of this scheme—including then-President Trump, certain
10 Members of Congress, including Representatives Biggs and Gosar, and others outside
11 government—established and promoted a plan to prevent Congress from certifying
12 President-elect Biden’s victory on January 6, the day Congress counts the presidential
13 electors’ votes.¹⁴

14 The votes of presidential electors, under the provisions of the Twelfth Amendment
15 to the U.S. Constitution and the Electoral Count Act, 3 U.S.C. §§ 15 et seq., are officially

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17 ¹¹ Andrew Oxford, *Trump campaign paid Arizona state Rep. Mark Finchem \$6,000 during effort to overturn election results*, Ariz. Republic (Feb. 6, 2021),
<https://bit.ly/AzCentralFinchemTrumpPayment>.

18 ¹² Jacob Shamisian & Sonam Sheth, *Trump and his allies filed more than 40*
19 *lawsuits challenging the 2020 election results. All of them failed*, Business Insider (Feb.
20 22, 2021), <https://bit.ly/3mZYfEf>.

21 ¹³ Colin Dwyer, *After Supreme Court Defeat, Trump’s Backers In Congress Are*
Quiet On What Comes Next, NPR (Dec. 12, 2020), <https://n.pr/32ybK7f>; Rep. Bruce
Westerman (@RepWesterman), Twitter (Dec. 11, 2020, 8:49 PM),
<https://bit.ly/3eFkZ7S>.

¹⁴ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

1 counted as follows. At 1:00 p.m. on January 6 of the year following a presidential
2 election, the U.S. Senate and the U.S. House of Representatives meet jointly in the House
3 Chamber, with the Vice President of the United States (in his capacity as President of the
4 Senate) presiding. Beginning with Alabama, and proceeding alphabetically, the Vice
5 President opens each state’s certificate of the votes of its electors, and calls for
6 objections, if any. Any objection must be filed by at least one Senator and at least one
7 Member of the House. These objections are then voted upon separately by the House and
8 Senate.¹⁵

9 The Electoral Count Act provides that, if a state has submitted only one return of
10 electoral votes, and if the electoral votes were “regularly given by electors whose
11 appointment has been lawfully certified,” then Congress *cannot* reject those electoral
12 votes.¹⁶ The Electoral Count Act provides two scenarios in which, theoretically, Congress
13 can reject electoral votes. First, “the two Houses concurrently” may reject one or more
14 electoral votes from a state when both Houses “agree that such vote or votes have not
15 been so regularly given by electors whose appointment has been so certified.” Second, if
16 a state submits *multiple* conflicting returns of its electoral votes, the Act contains
17 procedures for determining which return prevails.¹⁷

18 After the 2020 election, no lawful procedure under the Electoral Count Act could
19 prevent the counting of electoral votes from the states where President-elect Biden had

20 ¹⁵ 3 U.S.C. § 15; U.S. Const. amend. XII.

21 ¹⁶ 3 U.S.C. § 15.

¹⁷ *Id.*

1 won the election. None of those states had submitted multiple competing electoral tallies
2 to Congress, notwithstanding attempts to create “alternate slates,” described below. And,
3 as was generally understood at the time, there were insufficient votes in the U.S. House
4 of Representatives to reject as not “regularly given” the electoral votes from any state, let
5 alone to reject enough electoral votes to change the outcome to anything other than a
6 Biden victory.¹⁸

7 Since no lawful procedure under the Electoral Count Act could prevent the
8 counting of electoral votes from the states where President-elect Biden had won the
9 election, leaders of the scheme to subvert the counting of the votes developed plans by
10 which Vice President Pence would refuse to recognize the votes of electors from certain
11 states that Trump had lost, thus leading to a Trump “victory” in Congress.¹⁹ However,
12 these plans relied on cooperation from sympathetic members of Congress and, crucially,
13 Vice President Pence. The strategy centered on Pence abusing the Vice President’s
14 ceremonial duty to “open all the certificates” of state electoral votes as a pretext to
15 unilaterally *reject* votes.²⁰

17 ¹⁸ Joseph Choi, *Pelosi sets up call on election challenge: ‘No situation matches*
18 *Trump presidency,*’ The Hill (Jan. 3, 2021), <https://bit.ly/32F5CtP>.

19 ¹⁹ *What Happened on Jan. 6,* Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>;
20 *READ: Trump lawyer’s full memo on plan for Pence to overturn the election,* CNN (Sept.
21 21, 2021), <https://cnn.it/3qldg4p>. Alternately, there may have been a plan for Pence to
simply recognize the “alternate slates” of fake electors on January 6 and declare Trump
the winner. Rosalind S. Helderman, *All the ways Trump tried to overturn the election –*
and how it could happen again, Wash. Post (Feb. 9, 2022),
<https://www.washingtonpost.com/politics/interactive/2022/election-overturn-plans/>.

²⁰ U.S. Const. amend. XII.

1 Key leaders and participants in the larger scheme developed plans to pressure or
2 intimidate Congress and Pence into cooperating—and, if that failed, to obstruct the
3 electoral count certification.²¹ Obstructing certification would have also delayed the
4 process so as to facilitate another strategy: to introduce fake electoral votes. In December
5 2020, Trump and key allies devised a plan to create “alternate slates” of electors.²² These
6 “electors” met on the same day as the real electors. The apparent plan was to introduce
7 them at some point during or after January 6.²³

8 An “alternate slate” was created in Arizona. Both Gosar and Finchem promoted
9 the effort to produce “alternate” electors.²⁴

10 Finchem has been subpoenaed by the U.S. Congress’s Select Committee to
11 Investigate the January 6th Attack on the United States Capitol regarding his role in that
12

13 ²¹ See, e.g., *Trump pressures Pence to throw out election results — even though he*
14 *can’t*, Politico (Jan. 5, 2021), <https://politi.co/3961iTx>; *READ: Trump lawyer's full memo*
15 *on plan for Pence to overturn the election*, CNN (Sept. 21, 2001), <https://cnn.it/3qldg4p>;
16 *Ahead of Jan. 6, Willard hotel in downtown D.C. was a Trump team ‘command center’*
17 *for effort to deny Biden the presidency*, Wash. Post (Oct. 23, 2021),
18 <https://wapo.st/3pOUPpL>; *‘A roadmap for a coup’: inside Trump’s plot to steal the*
19 *presidency*, The Guardian (Oct. 30, 2021), <https://bit.ly/31q0MjJ>; *United States v.*
20 *Greene*, No. 21-CR-52, Statement of Offense, ¶¶ 29-31 (D.D.C. Dec. 22, 2021),
21 <https://www.justice.gov/usao-dc/press-release/file/1458266/download>; see also *infra* note
32.

18 ²² Luke Broadwater, *Jan. 6 Inquiry Subpoenas 6 Tied to False Pro-Trump Elector*
19 *Effort*, The New York Times (Feb. 15, 2022),
20 <https://www.nytimes.com/2022/02/15/us/politics/jan-6-subpoenas-trump.html>.

20 ²³ *Id.*

20 ²⁴ Rep. Lofgren, *Arizona Social Media Review*, 187, 209, 211; see also Andrew
21 Oxford, *Trump campaign paid Arizona state Rep. Mark Finchem \$6,000 during effort to*
22 *overturn election results*, azcentral (Feb. 6, 2021),
23 <https://bit.ly/AzCentralFinchemTrumpPayment>.

1 effort.²⁵ This effort to produce “alternate” electors has been described in a recent brief by
2 that congressional committee as a criminal conspiracy to defraud the United States.²⁶

3 To further their scheme to overturn the presidential election results, in December
4 2020 and January 2021, organizers associated with a group called “Women for America
5 First” planned a demonstration at the Ellipse in Washington, D.C. (the “Ellipse
6 Demonstration”) on January 6 to coincide with, and seek to block, the certification of
7 electoral votes. At this demonstration, they planned to push false claims of massive voter
8 fraud and to pressure Pence to refuse to count slates of electors from states with close
9 contests.²⁷

10 The organizers of the Ellipse Demonstration were in direct communication with
11 White House staff about the demonstration.²⁸ In addition, the organizers of the Ellipse
12 Demonstration had planned and promoted events that developed into violence in
13 November and December. Specifically, the group promoted the November 14 “Million
14 MAGA March” in D.C. that left one person stabbed and several arrested; a demonstration
15 on December 6, 2020 in Des Moines where a pro-Trump attendee shot into a car of
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19 ²⁵ Luke Broadwater, *Jan. 6 Inquiry Subpoenas 6 Tied to False Pro-Trump Elector Effort*, The New York Times (Feb. 15, 2020), <https://nyti.ms/3JuoHPc>.

20 ²⁶ See generally Def.’s Br. in Opp. to Pl.’s Privilege Assertions, *Eastman v. Thompson*, ECF No. 160, No. 22-cv-00099-DOC-DFM (C.D. Cal. March 8, 2022).

21 ²⁷ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>;
see also supra note 21.

²⁸ *Id.*

1 teenage girls; and a December 12 demonstration in D.C. where several were stabbed and
2 one person was arrested.²⁹

3 Organizers' plans for January 6 also included a march on the U.S. Capitol while
4 Congress was counting electoral votes.³⁰ On December 19, 2020, Trump endorsed the
5 demonstration, claiming it would be "wild."³¹ Trump's call for a protest was widely
6 understood to be a coded call for violence by Trump supporters. On social media, his
7 supporters openly called for weapons to be carried into the District of Columbia, for law
8 enforcement to be murdered if they interfered, and for supporters to storm the Capitol to
9 prevent the certification of President-elect Biden's victory.³²

11 ²⁹ See DFRLab, *#StopTheSteal: Timeline of Social Media and Extremist Activities*
12 *Leading to 1/6 Insurrection*, Just Security (Feb. 10, 2021),
13 [https://www.justsecurity.org/74622/stopthesteal-timeline-of-social-media-and-extremist-](https://www.justsecurity.org/74622/stopthesteal-timeline-of-social-media-and-extremist-activities-leading-to-1-6-insurrection/)
14 [activities-leading-to-1-6-insurrection/](https://www.justsecurity.org/74622/stopthesteal-timeline-of-social-media-and-extremist-activities-leading-to-1-6-insurrection/); see also Marissa J. Lang et al, *After thousands of*
15 *Trump supporters rally in D.C., violence erupts when night falls*, Wash. Post (Nov. 15,
16 2020), [https://www.washingtonpost.com/dc-md-va/2020/11/14/million-maga-march-dc-](https://www.washingtonpost.com/dc-md-va/2020/11/14/million-maga-march-dc-protests/)
17 [protests/](https://www.washingtonpost.com/dc-md-va/2020/11/14/million-maga-march-dc-protests/); Des Moines Register, *Man charged with 5 new felonies in Iowa Trump rally*
18 *shooting*, (Jan. 19, 2021), <https://bit.ly/3isXp0f>; Mark Osborne, *4 stabbed in skirmishes*
19 *at DC protests, while 1 person shot at clashes in Washington state*, ABC News (Dec. 13,
20 2020), [https://abcnews.go.com/US/shot-competing-protesters-clash-washington-](https://abcnews.go.com/US/shot-competing-protesters-clash-washington-state/story?id=74697209)
21 [state/story?id=74697209](https://abcnews.go.com/US/shot-competing-protesters-clash-washington-state/story?id=74697209).

³⁰ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

³¹ *Id.*

³² Brandy Zadrozny & Ben Collins, *Violent threats ripple through far-right*
18 *internet forums ahead of protest*, NBC News (Jan. 5, 2021),
19 [https://www.nbcnews.com/tech/internet/vio.lent-threats-ripple-through-far-right-internet-](https://www.nbcnews.com/tech/internet/violent-threats-ripple-through-far-right-internet-forums-ahead-protest-n1252923)
20 [forums-ahead-protest-n1252923](https://www.nbcnews.com/tech/internet/violent-threats-ripple-through-far-right-internet-forums-ahead-protest-n1252923); Craig Timberg & Drew Harwell, *Pro-Trump forums*
21 *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-](https://www.washingtonpost.com/technology/2021/01/05/parler-telegram-violence-dc-protests/)
[telegram-violence-dc-protests/](https://www.washingtonpost.com/technology/2021/01/05/parler-telegram-violence-dc-protests/); see also Dan Barry & Sheera Frenkel, *'Be There. Will Be*
Wild!': Trump All but Circled the Date, N.Y. Times (Jan. 6, 2021),
<https://www.nytimes.com/2021/01/06/us/politics/capitol-mob-trump-supporters.html>;

1 Around this time, Alexander’s allies received a permit to host a separate but
2 related protest, which Alexander labeled the “Wild Protest,” around the steps of the
3 Capitol on January 6.³³ Gosar and Finchem were publicized as speakers at the Wild
4 Protest.³⁴

5 On December 30, 2020, Alexander replied to a tweet by Representative-elect
6 Marjorie Taylor Greene, a well-known promoter of political violence, promising that
7 “1776”—the American Revolution and subsequent Revolutionary War—“is *always* an
8 option” if objections to certification were blocked.³⁵ The responses indicate it was
9 understood as a call to storm the Capitol.³⁶ Alexander increasingly used references to
10 “1776” between December 30 and January 6 as a call for violence if Trump was not
11 installed as president for another four years.³⁷ By this time, it was well known that events

13 [Ryan Goodman & Justin Hendrix, *The Absence of “The Donald,”* Just Security \(Dec. 6, 2021\), <https://bit.ly/3sRenLY>.](#)

14 ³³ [Logal Jaffe et al., *Capitol Rioters Planned for Weeks in Plain Sight. The Police Weren’t Ready*, ProPublica \(Jan. 7, 2021\), <https://www.propublica.org/article/capitol-rioters-planned-for-weeks-in-plain-sight-the-police-werent-ready>.](#)

17 ³⁴ [Wild Protest, *Speakers*, archived at Internet Archive Wayback Machine, <https://bit.ly/3L8GnRd>; Representative Mark Finchem, News Release \(Jan. 11, 2021\), <https://www.azleg.gov/press/house/55LEG/1R/210111FINCHEM.pdf>.](#)

18 ³⁵ [Because Alexander’s Twitter account has been suspended, only image captures remain. *E.g.*, Onesecondname \(@onesecondname\), Twitter \(Dec. 31, 2020, 10:56 a.m.\) <https://twitter.com/Onesecondname/status/1344673792010768385>.](#)

20 ³⁶ *Id.*

21 ³⁷ [Will Sommer, ‘*Stop the Steal*’ Organizer in Hiding After Denying Blame for Riot, Daily Beast \(Jan. 10, 2021\), <https://www.thedailybeast.com/stop-the-steal-organizer-in-hiding-after-denying-blame-for-riot>.](#)

1 Alexander planned and promoted had developed into violence.³⁸ Indeed, the organizers of
2 the Ellipse Demonstration claim that they warned their congressional contacts about the
3 possibility of violence at the Wild Protest.³⁹

4 Trump and his associates in the movement to overturn the 2020 election used
5 extralegal and unlawful tactics, as Trump and Meadows attempted to intimidate Georgia
6 Secretary of State Raffensperger into fabricating votes and declaring Trump the winner of
7 Georgia’s presidential election.⁴⁰ At the time Gosar defended this blatant and unlawful
8 attempt to “find votes” as a legitimate conversation about fraud.⁴¹

9 On January 5, 2021, Pence informed Trump that he did not have the authority to
10 unilaterally reject electoral votes and consequently would not do so. This was widely and
11 publicly reported that same day.⁴² Nonetheless, Gosar continued to promote the January 6

14
15 ³⁸ DFRLab, *#StopTheSteal: Timeline of Social Media and Extremist Activities*
16 *Leading to 1/6 Insurrection*, Just Security (Feb. 10, 2021) (finding that the rallies
17 Alexander promoted or helped plan led to violence, including the November 14 “Million
18 MAGA March” and the December 12 demonstration, both in D.C.),
19 <https://www.justsecurity.org/74622/stopthesteal-timeline-of-social-media-and-extremist-activities-leading-to-1-6-insurrection/>.

20 ³⁹ Hunter Walker, *Two Jan. 6 Organizers Are Coming Forward and Naming*
21 *Names: ‘We’re Turning It All Over’*, Rolling Stone (Dec. 13, 2021),
<https://bit.ly/RollingStoneJan6Part2>.

⁴⁰ Michael D. Shear & Stephanie Saul, *Trump, in Taped Call, Pressured Georgia*
Official to ‘Find’ Votes to Overturn Election, N.Y. Times (Jan. 3, 2021),
<https://nyti.ms/3mUVQef>.

⁴¹ Rep. Lofgren, *Arizona Social Media Review*, 201.

⁴² Kaitlan Collins & Jim Acosta, *Pence informed Trump that he can’t block*
Biden’s win, CNN (Jan. 5, 2021), <https://cnn.it/3FH4gx9>.

1 demonstrations.⁴³ Also on January 5, Finchem spoke at a “pre-rally” organized by
2 Alexander, where Finchem made false claims of fraud.⁴⁴

3 **C. Candidate Defendants Engaged in the Insurrection against the United**
4 **States in the Executing the January 6, 2021 Insurrection.**

5 At the Ellipse Demonstration that Gosar and Biggs had helped organize and
6 promote, speakers included Trump’s lawyer, Rudy Giuliani, who called for “trial by
7 combat,”⁴⁵ and Rep. Mo Brooks of Alabama, who urged the crowd to “start taking down
8 names and kicking ass” and be prepared to sacrifice their “blood” and “lives” and “do
9 what it takes to fight for America” by “carry[ing] the message to Capitol Hill,” since “the
10 fight begins today.”⁴⁶ At 11:09 a.m., Gosar tweeted support for the day’s events, tagging
11 Alexander and Finchem.⁴⁷ At noon he tweeted, “Biden should concede. I want his
12 concession on my desk tomorrow morning. Don’t make me come over there.
13 #StopTheSteal2021 @ali.”⁴⁸ (@ali is the Twitter handle for Ali Alexander.)

14 Finchem attended the Ellipse Demonstration that morning and claimed he was in
15 D.C. “to deliver an evidence book and letter to Vice President Pence showing key

16 ⁴³ Rep. Lofgren, *Arizona Social Media Review*, 207.

17 ⁴⁴ Jerod Macdonald-Evoy, *Mark Finchem was much closer to the Jan. 6*
18 *insurrection than he claimed*, *Ariz. Mirror* (June 2, 2021),
<https://bit.ly/FinchemJan6Summary>.

19 ⁴⁵ *Wash. Post*, *Trump, Republicans incite crowd before mob storms Capitol*,
YouTube (Jan. 6, 2021), <https://youtu.be/mh3cbd7niTQ>.

20 ⁴⁶ *The Hill*, *Mo Brooks gives FIERY speech against anti-Trump Republicans,*
socialists, YouTube (Jan. 6, 2021), <https://youtu.be/ZKHwV6sdrMk>.

21 ⁴⁷ Rep. Lofgren, *Arizona Social Media Review*, 214.

⁴⁸ Rep. Paul Gosar (DrPaulGosar), Twitter (Jan. 6, 2021, 12:05 p.m.),
<https://bit.ly/GosarTweetJan6-1>.

1 evidence of fraud in the Arizona Presidential Election, and asking him to consider
2 postponing the award of electors” and to “visit with Congressmen from Arizona.”⁴⁹

3 Around 12:00 pm, then-President Trump began speaking about how “we will stop
4 the steal.”⁵⁰ Seven minutes into his speech, the crowd was chanting “Fight for Trump!”
5 About 16 minutes into his speech, he said, “[a]fter this, we’re going to walk down and I’ll
6 be there with you. We’re going to walk down. We’re going to walk down any one you
7 want, but I think right here. We’re going walk down to the Capitol, and we’re going to
8 cheer on our brave senators, and congressmen and women. We’re probably not going to
9 be cheering so much for some of them because you’ll never take back our country with
10 weakness. You have to show strength, and you have to be strong.”⁵¹ At about this point,
11 10,000-15,000 demonstrators began the roughly 30-minute march to the Capitol, where
12 they joined a crowd of 300 members of the violent extremist group “Proud Boys.”⁵²

13 Around 1:00 p.m.—just as Congress had begun the process of jointly counting the
14 electoral votes—then-President Trump ordered the remaining crowd to “walk down
15

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17 ⁴⁹ Rep. Finchem, News Release (Jan. 11, 2021),
<https://www.azleg.gov/press/house/55LEG/1R/210111FINCHEM.pdf>. He was also
18 photographed at the Ellipse Demonstration. Jerod Macdonald-Evoy, *Mark Finchem was*
much closer to the Jan. 6 insurrection than he claimed, Ariz. Mirror (June 2, 2021),
<https://bit.ly/FinchemJan6Summary>.

19 ⁵⁰ *Donald Trump Speech “Save America” Rally Transcript January 6*, Rev (Jan. 6,
20 2021), <https://bit.ly/3GheZid>; Brian Naylor, *Read Trump’s Jan. 6 Speech, A Key Part Of*
Impeachment Trial, NPR (Feb. 10, 2021), <https://n.pr/3G1K2ON>.

⁵¹ *Id.*

21 ⁵² Martha Mendoza & Juliet Linderman, *Officers maced, trampled: Docs expose*
depth of Jan. 6 chaos, AP News (Mar. 10, 2021), <https://bit.ly/3F2Hi26>.

1 Pennsylvania Avenue . . . we are going to the Capitol.”⁵³ At around that time, Trump
2 supporters attacked police protecting the barricades surrounding the Capitol.⁵⁴ As Trump
3 ended his speech, a large portion of the crowd began their 30-minute march to the
4 Capitol.⁵⁵ By 1:30 p.m., law enforcement retreated as insurrectionists scaled the walls of
5 the Capitol. Many were armed with weapons, pepper spray, and tasers. Some wore full
6 body armor; others carried homemade shields. Many used flagpoles, signposts, or other
7 weapons to attack police officers defending the Capitol.⁵⁶ Because Gosar and Biggs had
8 filed objections to Arizona’s slate of electors, by this time the joint counting session had
9 been suspended and the House and Senate were debating the objections separately.⁵⁷

10 Text messages between Finchem, Alexander, and other planners of the event
11 reveal that Finchem, after asking “I presume you want me to get as close to the front as I
12 can,” was warned that “They are storming the capital [sic], I don’t think it [sic] safe.”
13 Finchem responded or attempted to respond, “I am on the side of the Capitol facing the
14 supreme Court, is that the right side?”⁵⁸ Contemporaneous photographs show that he

17 ⁵³ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

18 ⁵⁴ *Id.*

19 ⁵⁵ Kat Lonsdorft et al., *A timeline of how the Jan. 6 attack unfolded — including
who said what and when*, NPR (Jan. 5, 2022), <https://n.pr/3ztHpmo>.

20 ⁵⁶ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

21 ⁵⁷ *Id.*

⁵⁸ Josh Kelety, *Mark Finchem Planned Jan. 6 D.C. Visit With Right-Wing Activist
Ali Alexander*, Phoenix New Times (Feb. 17, 2021), <https://bit.ly/FinchemTexts>. The text
message in question was marked by the messaging application as “Not Delivered.”

1 ignored those warnings and rushed to the Capitol in a golf cart.⁵⁹ By 2:00 p.m., as Gosar
2 was objecting to the certification of the Arizona election results, the Capitol had been
3 breached by insurrectionists, smashing through first-floor windows.⁶⁰ Over the next two
4 hours, hundreds of insurrectionists stormed the Capitol, attacking police with weapons
5 and pyrotechnics. One police officer was crushed against a door, screaming in agony as
6 the crowd chanted “Heave, ho!”⁶¹ An attacker ripped off the officer’s gas mask, beat his
7 head against the door, took his baton, and hit his head with it.⁶² Another officer was
8 pulled into a crowd, beaten and repeatedly Tased by insurrectionists.⁶³

9 The insurrectionists demanded the arrest or murder of various other elected
10 officials who refused to participate in their attempted coup.⁶⁴ They chanted “hang Mike
11 Pence” and threatened Speaker Pelosi.⁶⁵ They taunted a Black police officer with racial
12 slurs for pointing out that overturning the election would deprive him of *his* vote.⁶⁶

14 ⁵⁹ Jerod Macdonald-Evoy, *Mark Finchem was much closer to the Jan. 6*
15 *insurrection than he claimed*, Ariz. Mirror (June 2, 2021),
<https://bit.ly/FinchemJan6Summary>.

16 ⁶⁰ *Id.*

17 ⁶¹ Kelsie Smith & Travis Caldwell, *Disturbing video shows officer crushed against*
18 *door by mob storming the Capitol*, CNN (Jan. 9, 2021), <https://cnn.it/3eAmdSc>.

19 ⁶² Clare Hymes & Cassidy McDonald, *Capitol riot suspect accused of assaulting*
20 *cop and burying officer’s badge in his backyard*, CBS News (Mar. 13, 2021),
<https://cbsn.ws/3eFAaxS>.

21 ⁶³ Michael Kaplan & Cassidy McDonald, *At least 17 police officers remain out of*
work with injuries from the Capitol attack, CBS News (June 4, 2021),
<https://cbsn.ws/3eyXZr8>.

⁶⁴ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

⁶⁵ H.R. Rep. No. 117-2, at 16, 12–13 (2021),
<https://www.govinfo.gov/app/details/CRPT-117hrpt2/CRPT-117hrpt2>.

⁶⁶ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

1 Confederate flags and symbols of white supremacist movements were widespread.⁶⁷

2 Throughout the insurrection, both Representative Biggs and Gosar continued to tweet
3 false allegations of fraud.⁶⁸

4 At 2:13 p.m., Vice President Pence was removed by the Secret Service; the House
5 adjourned at 2:20 p.m.⁶⁹ The insurrectionists had successfully obstructed Congress from
6 certifying the votes, temporarily blocking the peaceful transition of power from one
7 presidential administration to the next. Around this time—approximately 2:30 p.m.—
8 Finchem took a picture of a throng of insurrectionists on the steps of the Capitol.⁷⁰ He
9 was also videotaped around this time near the steps of the Capitol.⁷¹

10 At 2:44 p.m., insurrectionists attempted to force their way into the Speaker’s
11 Lobby (adjacent to the House Chamber) as lightly armed security guards tried to hold the
12 door long enough to evacuate Members of Congress and others.⁷² Senate staffers took the
13 electoral college certificates with them when they were evacuated, ensuring they did not

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15 ⁶⁷ *Id.*; Staff of S. Comm. on Rules & Admin., 117th Cong., A Review of the
16 Security, Planning, and Response Failures on January 6, at 28 (June 1, 2021),
<https://www.rules.senate.gov/download/hsgac-rules-jan-6-report>.

17 ⁶⁸ Rep. Lofgren, *Arizona Social Media Review*, at 46 (Biggs Tweet, 2:47 p.m., Jan.
18 6 2021) (“This is the appropriate forum, from our founders, to debate whether this
19 election complied w/ the Constitution that we have all sworn to protect.”); *id.* at 222
(Rep. Gosar Tweets).

18 ⁶⁹ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

19 ⁷⁰ Jerod Macdonal-Evoy, *Mark Finchem cleared of 82 ethics complaints related to*
20 *the Jan. 6 riot*, Arizona Mirror (Feb. 12 2021), <https://bit.ly/FinchemJan6Tweet>. Finchem
21 has since deleted his Twitter account.

20 ⁷¹ Jerod Macdonald-Evoy, *Mark Finchem was much closer to the Jan. 6*
21 *insurrection than he claimed*, Ariz. Mirror (June 2, 2021),
<https://bit.ly/FinchemJan6Summary>.

⁷² *Id.*

1 fall into the hands of the insurrectionists.⁷³ Simultaneously, Gosar was tweeting a defense
2 of his objection to the certification of Biden’s victory.⁷⁴

3 Shortly after, the House Chamber and Senate Chamber fell. Insurrectionists, some
4 carrying zip ties and tactical equipment, overtook the defenses of the United States
5 government and achieved, through force, effective control over the seat of the United
6 States Congress.⁷⁵

7 After 3:00 p.m., DHS, ATF, and FBI agents, and police from Virginia and
8 Maryland, joined Capitol Police to help regain control of the Capitol.⁷⁶ At 3:16 p.m.
9 Finchem posted online the picture he had taken of insurrectionists after the Capitol was
10 breached, and offered his support for the insurrection by commenting “What happens
11 when the People feel they have been ignored, and congress refuses to acknowledge
12 rampant fraud. #stopthesteal.”⁷⁷

13 Around 4:00 p.m. Gosar posted a picture on “Parler” of insurrectionists scaling the
14 Capitol walls. Parler is a social media site that mirrors Twitter in structure and
15 functionality, but quickly became a haven for far-right users and proponents of false
16
17

18 ⁷³ *Id.*

19 ⁷⁴ Rep. Lofgren, *Arizona Social Media Review*, at 221 (Gosar Tweet, 2:44 p.m.).

20 ⁷⁵ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

21 ⁷⁶ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

⁷⁷ Jerod Macdonal-Evoy, *Mark Finchem cleared of 82 ethics complaints related to the Jan. 6 riot*, Arizona Mirror (Feb. 12 2021) <https://bit.ly/FinchemJan6Tweet>. Finchem has since deleted his Twitter account.

1 claims of voter fraud.⁷⁸ It was also a central node in planning the January 6 insurrection.⁷⁹
2 Due that central role, it was temporarily shut down after the insurrection and all posts
3 prior to the shutdown are unavailable unless they were reproduced elsewhere, as Gosar’s
4 post was.⁸⁰ In Gosar’s Parler post with the photograph of the insurrectionists scaling the
5 Capitol walls, he wrote “Americans are upset.” An upload to Twitter of of Gosar’s Parler
6 post shows that it was viewed 92,000 times in the twenty-four minutes after it was
7 posted.⁸¹

8 At approximately the same time, however, Gosar posted an identical picture on
9 Twitter, this time with text condemning the insurrection.⁸² Shortly after, around 4:08
10 p.m., Gosar retweeted a commentator arguing “Biden lecturing everyone on lawlessness
11 is pretty rich after the summer of 2020.”⁸³ While the insurrection was still raging, Gosar
12 retweeted a video of himself, taken earlier that morning, arguing that Vice President
13 Pence should “remand those six states back to their state legislatures to have a full

14 ⁷⁸ BBC, *Parler ‘free speech’ app tops charts in wake of Trump defeat*, (Nov. 9,
15 2020), <https://www.bbc.com/news/technology-54873800>.

16 ⁷⁹ Craig Timberg & Drew Harwell, *Pro-Trump forums erupt with violent threats*
17 *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/>.

18 ⁸⁰ Adi Robertson, *Parler is back online after a month of downtime*, The Verge
(Feb. 15, 2021), <https://www.theverge.com/2021/2/15/22284036/parler-social-network-relaunch-new-hosting>.

19 ⁸¹ Rabbi Mike Harvey (@RabbiHarvey) Twitter (Jan. 6, 2021, 3:30 p.m.),
<https://twitter.com/RabbiHarvey/status/1346917068898185216>.

20 ⁸² Rep. Lofgren, *Arizona Social Media Review*, at 220 (Rep. Gosar Parler post);
21 Rabbi Mike Harvey (@RabbiHarvey) Twitter (Jan. 6, 2021, 3:30 p.m.),
<https://twitter.com/RabbiHarvey/status/1346917068898185216>.

⁸³ Rep. Lofgren, *Arizona Social Media Review*, at 221.

1 forensic audit and let the chips fall where they may. Where they elect the elector, as
2 specified by the Constitution, then reconvene in ten days.”⁸⁴

3 Around 4:30 p.m., insurrectionists attacked officers guarding the Capitol, beating
4 them with improvised weapons, spraying them with mace, and beating one so badly he
5 required staples.⁸⁵ At 5:03 p.m., Gosar continued to defend the ongoing insurrection,
6 claiming that “I’m being a broken record but if the democrats [sic] actually want to
7 uphold the rule of law they would stop fighting our requests for an election audit. People
8 want transparency.”⁸⁶

9 The contemporaneous replies to Gosar’s 5:03 p.m. tweet, positive and negative,
10 show that it was understood as support for the insurrection—both from supporters and
11 opponents—notwithstanding occasional support for Gosar’s inconsistent and false
12 statements about antifa involvement. There were not any replies that indicated it meant
13 anything else. For example, responses to Gosar’s 5:03 p.m. tweet over the next hour
14 included:

- 15 • “if they don’t follow the law why should anyone?!”⁸⁷
- 16 • “Thank you for standing up for the American people.”⁸⁸

18 ⁸⁴ Rep. Lofgren, *Arizona Social Media Review*, at 213.

19 ⁸⁵ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

20 ⁸⁶ Rep. Gosar (DrPaulGosar), Twitter (Jan. 6, 2021, 5:03 p.m.),
<https://twitter.com/DrPaulGosar/status/1346940422451392513>.

21 ⁸⁷ Michele Allen (@MicheleAllenSTL), Twitter (Jan. 6, 2021 5:10 p.m.),
<https://twitter.com/MicheleAllenSTL/status/1346942155655421955>.

⁸⁸ (@BioGenx2b), Twitter (Jan. 6, 2021, 6:25 p.m.),
<https://twitter.com/BioGenx2b/status/1346961142363676672>.

- 1 • “Thank you, @DrPaulGosar! I’m so disappointed and disgusted with
- 2 @Mike_Pence PLEASE hold the line for us. He promised he would
- 3 but apparently sold his soul to Pelosi and McConnell.”⁸⁹
- 4 • “Exactly. I can take a legitimate loss. I will fight if it was stolen.
- 5 Only way to accomplish this. AUDIT.”⁹⁰
- 6 • “An audit is the only way for peace.”⁹¹
- 7 • “Exactly. They attempt to take our lives away by stealing, lying and
- 8 cheating and then we are told to be peaceful. I would give my life for
- 9 my country.”⁹²
- 10 • “Exactly!!! Is that so much to ask? I don’t get it!! Just let us have a
- 11 forensic audit and we will shut up. This is why people are so
- 12 upset!”⁹³ “No Audit.....No Peace”⁹⁴
- 13 • “Simple as that! No fraud, prove it.”⁹⁵

15 ⁸⁹ Miss Deplorable (@Miss_Deplorable), Twitter (Jan. 6, 2021, 5:04 p.m.),
https://twitter.com/Miss_Deplorable/status/1346940790329774085.

16 ⁹⁰ Melissa Case (@Melissa_Case), Twitter (Jan. 6, 2021, 5:13 p.m.)
https://twitter.com/Melissa_Case/status/1346942926442668032.

17 ⁹¹ Meghan Landers (@MeghanLanders11), Twitter (Jan. 6, 2021, 5:04 p.m.),
<https://twitter.com/MeghanLanders11/status/1346940805055963140>.

18 ⁹² Evelyn Killingsworth (@EvelynKillings7), Twitter (Jan. 6, 2021, 5:17 p.m.),
<https://twitter.com/EvelynKillings7/status/1346944117029228544>.

19 ⁹³ Lindsay Rosado (@LindsayRosado), Twitter (Jan. 6, 2021, 5:07 p.m.),
<https://twitter.com/LindsayRosado/status/1346941462911582209>.

20 ⁹⁴ (@MeMidwest), Twitter (Jan. 6, 2021, 6:48 p.m.),
<https://twitter.com/MeMidwest/status/1346966993900097542>.

21 ⁹⁵ Landon Cole (@CLandonCole), Twitter (Jan. 6, 2021, 5:06 p.m.),
<https://twitter.com/CLandonCole/status/1346941316672991234>.

- 1 • “You get it. When they shit on our constitution and tell us rules for
2 thee and not for me...something is going to break...probably the
3 union itself if the constitution means nothing”⁹⁶
- 4 • “exactly!! Does the Government plan on killing everyone [sic] of
5 us? Law and Order? They broke the law and heist the election then
6 the government kills an American unarmed woman while they are
7 locked behind a door REALLY!!!”⁹⁷
- 8 • “@DrPaulGosar Stand firm for what is right. The ANTIFA false flag
9 crew can’t be allowed to further the COUP attempt. As VP wouldn’t
10 do his job, need either Congress or martial law to address it.”⁹⁸
- 11 • “An election audit is immensely more simple than what is currently
12 going on. You can’t ignore peoples concerns and just expect them to
13 shut up and accept it. If the election was fair, and audit will provide
14 answers.”⁹⁹
- 15
- 16
- 17

18 ⁹⁶ President-Elect Marv, (@DrPaulGosar), Twitter (Jan. 6, 2021, 5:05 p.m.),
19 <https://twitter.com/marv96678492/status/1346940932864634883>.

20 ⁹⁷ lynno100(@lynno100), Twitter (Jan. 6, 2021, 5:12 p.m.),
21 <https://twitter.com/lynno100/status/1346942683881762826>.

⁹⁸ Laurie Lalko (@heyteachkp), Twitter (Jan. 6, 2021, 5:10 p.m.),
 <https://twitter.com/heyteachkp/status/1346942295354929155>.

⁹⁹ ? (@AZConcernedCit1), Twitter (Jan. 6, 2021, 5:08 p.m.),
 <https://twitter.com/AZConcernedCit1/status/1346941638027792389>.

1 One minute later, at 5:04 p.m., Gosar shifted tack and became one of the first
2 elected officials to falsely claim that “antifa” was responsible for the violence.¹⁰⁰ This
3 claim was widely and quickly picked up by national and local media.¹⁰¹

4 Three minutes later, at 5:07 p.m., Gosar shifted tack again, retweeting a since-
5 deleted post by Finchem and writing “Is @katiehobbs satisfied with her obstructionism
6 now? For weeks the people have demanded transparency. Instead they got lies and cover
7 up.”¹⁰² Similar to Gosar’s tweet at 5:03 p.m., the contemporaneous replies to his 5:07
8 p.m. tweet, positive and negative, show that it was understood as support for the
9 insurrection notwithstanding occasional support for Gosar’s inconsistent statements about
10 antifa involvement. There were not any replies that indicated it meant anything else.

11 For example, responses to Gosar’s 5:07 p.m. tweet over the next hour include a
12 call for Vice President Pence to be arrested for calling the National Guard and quelling
13 the insurrection (something Pence did not in fact do),¹⁰³ a statement that “For the first

14 ¹⁰⁰ Rep. Gosar (DrPaulGosar), Twitter (Jan. 6, 2021, 5:04 p.m.),
15 <https://bit.ly/GosarTweetJan6-2>.

16 ¹⁰¹ See e.g., Fox10Phoenix, *Rep. Paul Gosar: DC riot had ‘hallmarks fo Antifa*
17 *provocation’* (Jan. 6, 2021), [https://www.fox10phoenix.com/news/rep-paul-gosar-dc-riot-](https://www.fox10phoenix.com/news/rep-paul-gosar-dc-riot-had-hallmarks-of-antifa-provocation)
18 [had-hallmarks-of-antifa-provocation](https://www.fox10phoenix.com/news/rep-paul-gosar-dc-riot-had-hallmarks-of-antifa-provocation); Christina Cauterucci, *Republican Leaders Issue*
19 *Meek Statements in Response to Capitol Siege*, Slate (Jan 6, 2021),
20 [https://slate.com/news-and-politics/2021/01/republican-leaders-issue-meek-statements-](https://slate.com/news-and-politics/2021/01/republican-leaders-issue-meek-statements-capitol-siege.html)
21 [capitol-siege.html](https://slate.com/news-and-politics/2021/01/republican-leaders-issue-meek-statements-capitol-siege.html); Andrew Solender, *House Democrats Push to Expel GOP Colleagues*
Who ‘Incited’ Capitol Breach, Forbes (Jan. 6, 2021),
[https://www.forbes.com/sites/andrewsolender/2021/01/06/house-democrats-push-to-](https://www.forbes.com/sites/andrewsolender/2021/01/06/house-democrats-push-to-expel-gop-colleagues-who-incited-capitol-breach/?sh=5a7659207755)
[expel-gop-colleagues-who-incited-capitol-breach/?sh=5a7659207755](https://www.forbes.com/sites/andrewsolender/2021/01/06/house-democrats-push-to-expel-gop-colleagues-who-incited-capitol-breach/?sh=5a7659207755).

¹⁰² Rep. Gosar (DrPaulGosar), Twitter (Jan. 6, 2021, 5:07 p.m.)
<https://twitter.com/DrPaulGosar/status/1346941610299420674>.

¹⁰³ Nationalism is Patriotism (@MiloWear1A), Twitter (Jan. 6, 2021, 5:12 p.m.)
<https://twitter.com/MiloWear1A/status/1346942667981258752>;

1 time the old guard fears the people and they are flipping out!”¹⁰⁴ thanks from a supporter
2 who argued that “stealing elections MUST be stopped!”¹⁰⁵ Around 5:20 p.m., the D.C.
3 National Guard began arriving.¹⁰⁶ By 6:00 p.m., the insurrectionists had been removed
4 from the Capitol, though some committed sporadic acts of violence through the night.¹⁰⁷
5 At 6:37 p.m., Gosar again defended the insurrectionists, arguing “When you engage in
6 election fraud and then refuse to allow an audit you @hiral4congress spray gasoline. This
7 is on you. The people demand transparency.”¹⁰⁸ An hour later, Gosar shifted tack again,
8 arguing at 7:58 p.m. and 8:05 p.m. that “antifa” was responsible for the violence.¹⁰⁹

9 Vice President Pence was not able to reconvene Congress until 8:06 p.m., nearly
10 six hours after the process had been obstructed.¹¹⁰ Around 9 p.m., Trump’s counsel John
11 Eastman argued to Pence’s counsel via email that Pence should refuse to certify Biden’s
12 victory by not counting certain states.¹¹¹ Pence’s counsel ignored it. Congress was
13 required under the Electoral Count Act to debate the objections filed by Senators and
14 Members of Congress to electoral results from Arizona and Pennsylvania. During that
15

16 ¹⁰⁴ Scott hupp (@Scotthupp6), Twitter (Jan. 6, 2021, 9:27 p.m.),
<https://twitter.com/Scotthupp6/status/1347006947346804738>.

17 ¹⁰⁵ Gabriel Hope (@IAMGabrielHope), Twitter (Jan. 6, 2021 9:13 p.m.),
<https://twitter.com/IAMGabrielHope/status/1347003497040908290>;

18 ¹⁰⁶ Staff of S. Comm. on Rules & Admin., 117th Cong., A Review of the Security,
19 Planning, and Response Failures on January 6, at 26 (June 1, 2021),
<https://www.rules.senate.gov/download/hsgac-rules-jan-6-report>.

20 ¹⁰⁷ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

¹⁰⁸ Rep. Lofgren, *Arizona Social Media Review*, at 223.

¹⁰⁹ *Id.* at 224.

21 ¹¹⁰ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

¹¹¹ *Id.*

1 debate, Gosar retweeted a video of Representative Gaetz falsely claiming that antifa was
2 responsible for the violence.¹¹² Despite six Senators and 121 Representatives (including
3 Gosar and Biggs) voting to reject Arizona’s electoral results,¹¹³ and seven Senators and
4 138 Representatives (including Gosar and Biggs) voting to reject Pennsylvania’s electoral
5 results,¹¹⁴ Biden’s victory was ultimately certified at 3:14 a.m., January 7.¹¹⁵ In total, five
6 people died¹¹⁶ and over 150 police officers suffered injuries, including broken bones,
7 lacerations, and chemical burns.¹¹⁷ Four Capitol Police officers on-duty during January 6
8 have since died by suicide.¹¹⁸

9 **D. Candidate Defendants Confirmed Their Engaging in the Insurrection**
10 **against the United States in Statements Made About It.**

11 On January 11, 2021, Finchem released a press release with false information
12 about his actions on January 6. He claimed that he walked “at the rear of the crowd that
13 made its way down Pennsylvania Avenue,” arrived at the Capitol around 1:45, stayed

14 ¹¹² Rep. Lofgren, *Arizona Social Media Review*, at 227.

15 ¹¹³ 167 Cong. Rec. H77 (daily ed. Jan. 6, 2021), <http://bit.ly/Jan6CongRec>.

16 ¹¹⁴ *Id.* at H98.

17 ¹¹⁵ *What Happened on Jan. 6*, Wash. Post (Oct. 31, 2021),
<https://wapo.st/3eSdf2y>;

18 167 Cong. Rec. H114–15 (daily ed. Jan. 6, 2021), <http://bit.ly/Jan6CongRec>.

19 ¹¹⁶ Jack Healy, *These Are the 5 People Who Died in the Capitol Riot*, N.Y. Times
(Jan. 11, 2021), <https://nyti.ms/3pTyN5q>.

20 ¹¹⁷ Michael Kaplan & Cassidy McDonald, *At least 17 police officers remain out of*
work with injuries from the Capitol attack, CBS News (June 4, 2021),
<https://cbsn.ws/3eyXZr8>; Michael S. Schmidt & Luke Broadwater, *Officers’ Injuries,*
Including Concussions, Show Scope of Violence at Capitol Riot, N.Y. Times (Feb. 11,
2021), <https://nyti.ms/3eN31k2>.

21 ¹¹⁸ Luke Broadwater & Shaila Dewan, *Congress Honors Officers Who Responded*
to Jan. 6 Riot, N.Y. Times (Aug. 3, 2021), <https://nyti.ms/3EURwlp>.

1 there for “about 20 minutes, took a few photos, and left the area,” never getting within
2 “500 yards” of the Capitol and not learning about the breach until 5:00 p.m. when he had
3 returned to his hotel.¹¹⁹ He also repeated the claim that “antifa” was responsible for any
4 violence.¹²⁰ Finchem’s *post hoc* denial or obfuscation of his actions on January 6 is
5 contradicted by contemporary evidence and indicates consciousness of culpability.

6 On January 12, Gosar characterized the insurrectionists as “vandals and rioters.”¹²¹
7 On January 13, in the midst of Trump’s impeachment trial, Representative Biggs tweeted,
8 “Violence has been condemned, but it takes more than lip service to prevent violence. It
9 takes resisting the temptation to destroy President Trump, and a realization that his
10 removal now has the unfortunate likelihood of creating a conflagration.”¹²² Both Biggs
11 and Gosar asked then-President Trump for pardons for their roles in the events of January
12 6.¹²³ They did not receive pardons.

13 On February 26, 2021, Gosar attended a fundraising event hosted by white
14 supremacist Nick Fuentes who, at the event, described the storming of the Capitol as
15 “awesome.”¹²⁴ On May 12, 2021, both Gosar and Biggs shifted tack yet again, defending

16
17 ¹¹⁹ Rep. Finchem, News Release (Jan. 11, 2021),
<https://www.azleg.gov/press/house/55LEG/1R/210111FINCHEM.pdf>.

18 ¹²⁰ Rep. Finchem, News Release (Jan. 11, 2021),
<https://www.azleg.gov/press/house/55LEG/1R/210111FINCHEM.pdf>.

19 ¹²¹ Rep. Lofgren, *Arizona Social Media Review*, at 229.

20 ¹²² Rep. Lofgren, *Arizona Social Media Review*, at 54 (Biggs Tweet, Jan. 13).

21 ¹²³ Jim Small, *Biggs and Gosar sought pardons for Capitol riot, but didn’t get them*, AZ Mirror (Jan. 19, 2021), <https://bit.ly/AZMirrorPardons>.

¹²⁴ Will Sommer, GOP Rep. Appears at White Nationalist Event Where Organizer Calls Capitol Riot ‘Awesome,’ Daily Beast (Feb. 27, 2021), <https://bit.ly/GosarWhiteSupremacy>.

1 the insurrectionists wholeheartedly. Furthermore, they attempted to prevent a
2 congressional investigation. During Congressional hearings, Biggs claimed there was no
3 violence, while Gosar claimed that Ashli Babbitt was “executed” and that investigating
4 the insurrection amounted to “harassing peaceful patriots.”¹²⁵ On September 2, 2021,
5 Biggs insisted that any Member of Congress supporting an investigation of the January 6
6 insurrection should be subject to consequences.¹²⁶

7 Biggs’ and Gosar’s aforementioned actions since January 6 indicate consciousness
8 of culpability. On February 15, 2022, Finchem was subpoenaed by the January 6 Select
9 Committee to testify and produce documents regarding the insurrection.¹²⁷ On February
10 25, 2022, Gosar sent a pre-taped speech to another event organized by Nick Fuentes, who
11 praised the attack again at the event.¹²⁸

12 II. ARGUMENT

13 A. Injunction Called for in Section 16-351, Arizona Revised Statutes Is the 14 Appropriate Remedy.

17 ¹²⁵ Mark Sumner, *Republican reps declare Jan. 6 insurgency ‘a normal tourist
visit’ from ‘peaceful patriots,’* Daily Kos (May 12, 2021), <https://bit.ly/May12Testimony>.

18 ¹²⁶ Melanie Zanona & Manu Raju, *Biggs to call on McCarthy to boot Kinzinger
and Cheney from GOP over January 6 probe,* CNN (Sep. 1, 2021),
19 <https://bit.ly/CNNBiggsLetter>.

20 ¹²⁷ Luke Broadwater, *Jan. 6 Inquiry Subpoenas 6 Tied to False Pro-Trump Elector
Effort,* The New York Times (Feb. 15, 2020), <https://nyti.ms/3JuoHPc>.

21 ¹²⁸ Aaron Navarro & Robert Costa, *Marjorie Taylor-Greene downplays speaking
at a conference founded by white nationalist,* CBS News (Feb. 28, 2022),
<https://www.cbsnews.com/news/marjorie-taylor-greene-cpac-nick-fuentes-afpac-white-nationalist/>.

1 Injunction is the proper method of challenging a candidate’s position on the ballot.
2 *Bearup v. Voss*, 142 Ariz. 489, 490, 690 P.2d 790, 791 (App. 1984). A court may issue a
3 preliminary injunction if the moving party establishes: 1) a strong likelihood of success
4 on the merits; 2) the possibility of irreparable injury if the relief is not granted; 3) a
5 balance of hardships in the moving party’s favor; and 4) public policy favors the relief.
6 *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 410, ¶ 10 (2006)
7 (citation omitted). Arizona courts apply this standard using a sliding scale: “the moving
8 party may establish either 1) probable success on the merits and the possibility of
9 irreparable injury; or 2) the presence of serious questions and that the balance of
10 hardships tips sharply in favor of the moving party.” *Id.* at 411, ¶ 10 (internal marks and
11 citations omitted). The factors for permanent injunctive relief are “[a] plaintiff must
12 demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at
13 law, such as monetary damages, are inadequate to compensate for that injury; (3) that,
14 considering the balance of hardships between the plaintiff and defendant, a remedy in
15 equity is warranted; and (4) that the public interest would not be disserved by a
16 permanent injunction.” *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006).

17 The Government Defendants must be enjoined from including the insurrectionists
18 names on the August 2022 Primary Election Ballot because it is the remedy called for in
19 Section 16-351, Arizona Revised Statutes and because no other remedy is available.

20 **B. Candidate Defendants Are Ineligible to Hold Office.**

1 Under Section Three of the Fourteenth Amendment to the U.S. Constitution,
2 known as the Disqualification Clause, “No Person shall be a . . . Representative in
3 Congress . . . or hold any office, civil or military . . . under any State . . . who, having
4 previously taken an oath, as a member of Congress . . . or as a member of any State
5 legislature . . . to support the Constitution of the United States, shall have engaged in
6 insurrection or rebellion against the same.” Thus, Plaintiffs must show that (1) the
7 Defendants swore an oath to the United States Constitution, and (2) subsequent to
8 swearing that oath they engaged in an insurrection.

9 **1. Candidate Defendants took an oath to support the United States**
10 **Constitution.**

11 Gosar swore an oath to support the U.S. Constitution as Members of Congress. He
12 is a candidate for the office of U.S. Representative, one of the covered offices under
13 Section Three of the Fourteenth Amendment. Biggs swore an oath to support the U.S.
14 Constitution as Members of Congress. He is a candidate for the office of U.S.
15 Representative, one of the covered offices under Section Three of the Fourteenth
16 Amendment. Finchem swore an oath to support the U.S. Constitution as a member of a
17 state legislature. He is a candidate for the office of Arizona Secretary of State, an “office”
18 within the meaning of Section Three of the Fourteenth Amendment. *See* Ariz. Const. art.
19 5, §§ 1, 9; *Citizens in Charge, Inc. v. Husted*, 810 F.3d 437, 442 (6th Cir. 2016).

20 **2. The January 6 attack was an “insurrection or rebellion.”**
21

1 The January 6, 2021 attack on the U.S. Capitol, either alone or in combination
2 with related attempts to prevent a peaceful and legitimate transfer of power, constituted
3 an “insurrection” or “rebellion” under Section Three of the Fourteenth Amendment. First,
4 the insurrectionists successfully defied the authority of the United States. *See In re*
5 *Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894) (noting that an insurrection does
6 not require “bloodshed” or to be so large “as to insure its probable success,” only that
7 “the rising be in opposition to the execution of the laws of the United States, and should
8 be so formidable as for the *time being* to defy the authority of the United States.”)
9 (emphasis added); *Insurrection*, Worcester’s Dictionary (1835) (leading pre-1868
10 dictionary defining “insurrection” to mean “[a] seditious rising against government”);¹²⁹
11 *see also Allegheny Cty. v. Gibson*, 90 Pa. 397, 417 (1879) (applying a similar definition);
12 4 Wm. Blackstone, Commentaries on the Laws of England, *81–82 (distinguishing riots
13 from violence against the state). During the attack, insurrectionists were armed, called for
14 the death of elected officials (including the Vice President, the Speaker of the House of
15 Representatives, and other prominent Members of Congress), attacked law enforcement,
16 and forced their way into the building. Five people died and 150 law enforcement officers

17
18
19 ¹²⁹ Most legal authority defining “insurrection” pertains to insurrections against
20 *any* government. Under Section Three, the violent uprising must be against the United
21 States, rather than state or local government. *See* U.S. Const. amend. XIV, § 3 (applying
to a person who previously swore “to support the Constitution of the United States” but
engaged in insurrection “against the same”).

1 were injured. It took the combined efforts of the Capitol Police, federal agents, state
2 police, and the National Guard to clear the insurrectionists from the Capitol.

3 Second, the January 6 attack meets the definition of an insurrection because the
4 insurrectionists' goal was to overthrow or obstruct the U.S. government, "a lawfully
5 constituted regime." *Pan Am. World Airways, Inc. v. Aetna Cas. & Sur. Co.*, 505 F.2d
6 989, 1005 (2d Cir. 1974); *Home Ins. Co. of N.Y. v. Davila*, 212 F.2d 731, 736 (1st Cir.
7 1954) (insurrectionary action must be "specifically intended to overthrow the constituted
8 government and to take possession of the inherent powers thereof"). Even before the
9 attack, the entire point of the demonstration was to intimidate Congress and Vice
10 President Pence—in particular, to intimidate Pence into violating the Twelfth
11 Amendment and the Electoral Count Act by ignoring the legal electoral votes for Biden.
12 And the insurrectionists mounted their violent assault on the U.S. Capitol and the
13 government officials within for the purpose of preventing the Vice President of the
14 United States and the United States Congress from fulfilling their constitutional roles in
15 ensuring the peaceful transition of power. As they attacked, the insurrectionists insisted
16 that elected officials anoint their preferred candidate the winner—or be murdered.

17 This was an attack on the *United States*. The importance of counting the electoral
18 votes in our constitutional system cannot be overstated. It formalizes a deeper, bedrock
19 norm in our democracy: the peaceful transition of power. The Electoral Count Act, as
20 well as the Article II and the Twelfth Amendment, lay out the procedures for counting
21 votes; together with the Twentieth Amendment, they ensure that transition is orderly and

1 non-violent. They are essential constitutional functions of the United States government.
2 An attempt to disrupt those procedures, particularly through violence, is an attack on our
3 country itself.

4 This was no mere riot; it was an attempt to disrupt an essential constitutional
5 function and illegally prolong Trump’s tenure in office. And while an attack on public
6 authority need not be likely to succeed in order to constitute an insurrection, *see Davila*,
7 212 F.2d at 736 (“An insurrection aimed to accomplish the overthrow of the constituted
8 government is no less an insurrection because the chances of success are forlorn.”), the
9 January 6 insurrectionists’ violent seizure of the House and Senate Chambers and key
10 congressional offices did, in fact, obstruct and delay this essential constitutional
11 procedure. They very nearly succeeded in achieving their aim of overturning the results
12 of the 2020 presidential election.

13 This violent attack on the political system of the United States in the heart of the
14 nation’s capital is the paradigm of insurrection.

15 This analysis of January 6 is consistent with the understanding of Congress, the
16 U.S. Department of Justice, and federal courts. On the evening of January 6, after
17 Congress was finally able to reconvene, Senator Mitch McConnell of Kentucky, the
18 Senate Majority Leader, described the assault as a “failed insurrection.”¹³⁰ He has since
19 confirmed his understanding in response to the attempted characterization—by

20 ¹³⁰ Nicholas Fandos et al., *Resuming electoral counting, McConnell condemns the*
21 *mob assault on the Capitol as a ‘failed insurrection’*, N.Y. Times (Jan. 6, 2021),
<https://www.nytimes.com/2021/01/06/us/politics/insurrection.html>.

1 Representatives including Greene—of the insurrection as “legitimate political discourse”:
2 “We saw it happen. It was a violent insurrection for the purpose of trying to prevent the
3 peaceful transfer of power after a legitimately certified elections, from one administration
4 to the next. That’s what it was.”¹³¹

5 In court filings, the U.S. Department of Justice has characterized the attack on the
6 Capitol as “an insurrection attempting to violently overthrow the United States
7 Government.”¹³² Judge Carl Nichols of the U.S. District Court for the District of
8 Columbia has issued a ruling in a pending case, describing the attack as an “uprising” that
9 “target[ed] a proceeding prescribed by the Constitution and established to ensure a
10 peaceful transition of power.”¹³³ Members of the “Oath Keepers” that stormed the Capitol
11 or organized the storming have been indicted on seditious conspiracy charges.¹³⁴ The
12 elements of that crime track the definition of insurrection almost exactly. 18 U.S.C. §
13 2384.¹³⁵

16 ¹³¹ Jonathan Weisman & Annie Karni, *McConnell Denounces R.N.C. Censure of*
17 *Jan. 6 Panel Members*, N.Y. Times (Feb. 8, 2022)
<https://www.nytimes.com/2022/02/08/us/politics/republicans-censure-mcconnell.html>.

18 ¹³² United States v. Chansley, No. 21-cr-00003 (D. Ariz. filed Jan. 14, 2021), ECF
19 No. 5, <https://bit.ly/3FJ1LdM>.

19 ¹³³ United States v. Miller, No. 21-cr-00119 (D.D.C. Dec. 21, 2021), ECF No. 67,
<https://bit.ly/318NBmX>.

20 ¹³⁴ Indictment, 8–32 (D.D.C. Jan 12, 2022)
<https://s3.documentcloud.org/documents/21178549/rhodes-complaint.pdf>.

21 ¹³⁵ Defining the crime as “conspir[ing] to overthrow, put down, or to destroy by
force the Government of the United States . . . or to oppose by force the authority thereof,
or by force to prevent, hinder, or delay the execution of any law of the United States.”

1 Bipartisan majorities of the House and Senate voted for articles of impeachment
2 describing the attack as an “insurrection.”¹³⁶ And in the impeachment trial, President
3 Trump’s own defense lawyer stated that “the question before us is not whether there was
4 a violent insurrection of [sic] the Capitol. On that point, everyone agrees.”¹³⁷ The Senate
5 voted by unanimous consent to award a Congressional Gold Medal for Capitol Police
6 officer Eugene Goodman via a bill that categorized the January 6 attackers as
7 “insurrectionists.”¹³⁸ Congress separately voted to award Congressional Gold Medals to
8 other Capitol Police, using the same “insurrectionists” language.¹³⁹

9 Recognizing January 6 as an insurrection or rebellion for purposes of Section
10 Three is also consistent with the intent of the Fourteenth Amendment’s drafters, who
11 worried that the reelection of the pre-war political class in the South would re-empower
12 those willing to use violence or otherwise reject the results when their preferred policies
13 were not enacted, or their preferred candidates were not elected. *See, e.g.*, 69 Cong.
14 Globe, 39th Cong., 1st Sess. 2532 (1866) (statement of Rep. Banks) (“They do not rely
15 on ideas for success. They govern by force. Their philosophy is force. Their tradition is
16 force.”). The idea behind Section Three was that politicians who took an oath to protect
17 the Constitution and then disregarded the norms of peaceful and lawful political discourse
18 could not be trusted to hold office—that was true then, and it remains true today.

19 _____
20 ¹³⁶ 167 Cong. Rec. H191 (daily ed. Jan. 13, 2021); 167 Cong. Rec. S733 (daily ed.
Feb. 13, 2021).

¹³⁷ 167 Cong. Rec. S729 (daily ed. Feb. 13, 2021), <http://bit.ly/EveryoneAgrees>.

¹³⁸ 167 Cong. Rec. S694–95 (daily ed. Feb. 12, 2021).

¹³⁹ Pub. L. No. 117-32, 135 Stat. 322 (2021).

1 **3. The Candidate Defendants engaged in the January 6 attacks.**

2 Representatives Gosar and Biggs, who were intimately involved in the plans *inside*
3 the Capitol to reject the electoral votes of several states, were engaged in, at minimum,
4 the planning and promotion of events that led to the insurrection. Similarly.

5 Representative Finchem was engaged with the January 6 attack by being in close
6 contact with the planners of the Wild Protest, including throughout the day on January 6.

7 To “engage” in insurrection or rebellion, one must voluntarily and knowingly aid
8 the insurrection by providing it with something useful or necessary. *United States v.*
9 *Powell*, 65 N.C. 709 (C.C.D.N.C. 1871) (holding that “engage” merely required “a
10 voluntary effort to assist the Insurrection . . . and to bring it to a successful [from
11 insurrectionists’ perspective] termination”); *Worthy v. Barrett*, 63 N.C. 199, 203 (1869)
12 (in Section Three case, interpreting “engage” to mean “[v]oluntarily aiding the rebellion,
13 by personal service, or by contributions, other than charitable, of any thing that was
14 useful or necessary”). *Cf. Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement*
15 *Masons Local No. 395 Pension Trust Fund*, 38 P.3d 12, 23 (Ariz. 2002) (three part-test
16 for civil accomplice liability: a legal harm, knowledge of that harm, substantial assistance
17 or encouragement).

18 Representatives Biggs and Gosar did not promote the event as citizens, but as
19 sitting members of Congress, insisting to their supporters that there was a legal route to
20 install Trump as president for another four years. They did so against a backdrop of calls
21 from groups, to forcibly prevent the certification of Biden and install Trump as president

1 for another four years. When those legal plans broke down—as they must have known
2 they would—their supporters did what she had told them for years they had to do, and
3 what they had said they would do: fight.

4 Finchem admits that he was in Washington, D.C. “to deliver an evidence book and
5 letter to Vice President Pence showing key evidence of fraud in the Arizona Presidential
6 Election, and asking him to consider postponing the award of electors” and to “visit with
7 Congressmen from Arizona.”¹⁴⁰ He had been in continuous public coordination with
8 Gosar, he had contacts with Giuliani, he was involved in a scheme orchestrated by then-
9 President Trump to introduce false electors, and he was in D.C. to bring that plan to a
10 conclusion. Finchem raced to the Capitol when he heard it was stormed, despite being
11 warned to stay away. He knew he was racing toward an unlawful act. He approached the
12 steps as insurrectionists were pouring into the Capitol building, took a picture of them,
13 and posted it online with words of encouragement.

14 While violence was still ongoing, Gosar repeatedly supported and attempted to
15 publicly justify the insurrection. These posts, widely shared, aided the insurrection,
16 giving it real-time moral justification and encouragement. Furthermore, the replies to
17 those tweets show that they were understood by both his political supporters and
18 opponents as supporting the ongoing insurrection.

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21 ¹⁴⁰ Rep. Finchem, News Release (Jan. 11, 2021),
<https://www.azleg.gov/press/house/55LEG/1R/210111FINCHEM.pdf>.

1 Gosar’s re-tweet of his video advocating for Pence to decertify certain states is
2 even more chilling. At the time of the retweet Pence had been evacuated separately from
3 the Senators and Representatives. Insurrectionists were stalking the halls of Congress,
4 looking for him. Gosar’s solution was to encourage Vice President Pence to give in to
5 their demands and overturn the election. These statements from a sitting member of
6 Congress both encouraged the insurrectionists that their scheme was going according to
7 plan and sought to leverage the violence to unlawfully overturn the election.

8 Gosar posted a picture *of the insurrection* accompanied by words of
9 encouragement to the insurrectionists—“Americans are upset.” Gosar’s statement,
10 contextually, cannot be read as anything other than encouragement. Notably, he referred
11 to the insurrectionists as “Americans.” In Gosar’s usage of social media, every reference
12 to “Americans” is a reference to his political allies and supporters.¹⁴¹ When Gosar said
13 “Americans are upset,” anyone who had listened to him for any length of time—
14 especially his supporters who were committing an insurrection as he said it—would have
15 understood he was referring to them as his *allies*. His supporters were upset and storming
16 the walls. Gosar’s promotion of the insurrection on Parler is contrasted with both his
17 near-simultaneous Twitter post and subsequent disinformation. In the Twitter post, Gosar
18 claims that he only asked for “an audit” and that things have gotten out of hand. But, in
19 fact, Gosar claimed that Biden’s win was a “coup” and demanded his “concession

20
21 ¹⁴¹ Rep. Lofgren, *Arizona Social Media Review*, at 87, 90, 103, 110, 113, 118, 119, 125, 127, 136, 137, 143, 146, 161, 167, 188, 191, 208 (referring to supporters as “Americans” or “Real Americans”).

1 speech.” And later Gosar falsely claimed that violence was committed by “antifa” agents,
2 not “Americans.” Contextually, the Parler message is one of encouragement to his
3 political allies. On Twitter, a more mainstream service, he disavowed violence; on Parler,
4 populated by violent extremists, he spoke candidly to his supporters, including the
5 insurrectionists.

6 Gosar was one of the first elected officials to falsely claim that “antifa” was
7 responsible for violence even as insurrectionists had not yet been cleared from the
8 Capitol. By actively posting disinformation during a chaotic situation, Gosar knowingly
9 aided the insurrection by impeding both the immediate response to the insurrectionists as
10 well as the broader response since.

11 The candidates’ occasional professions of denial or distancing from the violence
12 of the foot soldiers who stormed the Capitol cannot conceal the fact that the candidates
13 encouraged and helped aid the insurrection. All three candidates pose precisely the type
14 of ongoing threat to the Republic that the Disqualification Clause was written to guard
15 against.

16 **C. Candidates that Are Ineligible to Hold Office May not Appear on the**
17 **Ballot.**

18 Under the plain language of Section 16-351, Arizona Revised Statutes, subsection
19 B, the Court reviews a candidates qualifications to hold office within a candidate
20 challenge wherein the remedy available is enjoining the candidate’s name from being
21 placed on the ballot. Arizona courts have frequently exercised this authority in relation to

1 the validity of signatures as well as complying with state election law. *See, e.g., Clayton*
2 *v. West*, 251 Ariz. 226, 230, 489 P.3d 394, 398 (2021) (denying presidential electors a
3 position on the ballot where they failed to fail the statutorily mandated statement of
4 interest).

5 Arizona courts also review the qualification of the candidate to serve in office. In
6 *Escamilla v. Cuello*, the Supreme Court considered a challenge to a candidate's position
7 on the ballot based on the allegation that the candidate was not sufficiently proficient in
8 English. 230 Ariz. 202, 282 P.3d 403 (2012). The Court upheld the trial court's
9 disqualification of the candidate from the ballot based on this reason. *Id.* at 205 ¶ 16, 282
10 P.3d at 406.

11 The fact that the Candidate Defendants are ineligible to hold office based on the
12 United States Constitution requires the Court to enjoin the government Defendants from
13 including their names on the August 2022 Primary Election Ballot.

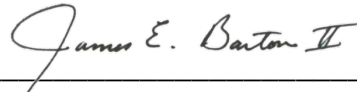
14 **III. CONCLUSION**

15 Gosar, Biggs, and Finchem were involved in planning efforts to intimidate
16 Congress and the Vice President into rejecting valid electoral votes and subvert the
17 essential constitutional function of an orderly and peaceful transition of power. They
18 were involved in either planning the attack on January 6, or alternatively the planning of
19 the pre-attack Ellipse Demonstration, Wild Protest, and/or march on the Capitol, with the
20 advance knowledge that it was substantially likely to lead to the attack, and otherwise
21 voluntarily aided the insurrection. Gosar and Finchem encouraged the insurrectionists as

1 they stormed the Capitol. Gosar actively disseminated disinformation while the
2 insurrectionists were in the Capitol, impeding the response. Having taken an oath, as
3 Members of Congress and the House of Representatives of Arizona to support the
4 Constitution, these actions disqualify Representatives Gosar, Biggs, and Finchem from
5 public office under the Disqualification Clause of Section Three of the Fourteenth
6 Amendment. Because Defendant is disqualified from public office under the
7 Disqualification Clause of Section Three of the Fourteenth Amendment, he does not meet
8 “qualifications for the office sought as prescribed by law” within the meaning of Ariz.
9 Stat. § 16-351(B). For these reasons, the Court should grant Plaintiff’s injunctive relief
10 sought in the Verified Complaint.

11 DATED this 7th of April 2022.

12 BARTON MENDEZ SOTO PLLC

13 
14 _____

15 James E. Barton II
16 Jacqueline Mendez Soto

17 Ronald Fein*
18 John C. Bonifaz*
19 Ben Clements*
20 Courtney Hostetler*
21 Benjamin Horton*
FREE SPEECH FOR PEOPLE
1320 Centre St. #405
Newton, MA 02459
(617) 244-0234
rfein@freespeechforpeople.org

Jonathan S. Abady*

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O. Andrew F. Wilson*
Nick Bourland*
EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP
600 Fifth Avenue, 10th Floor
New York, NY 10020
(212) 763-5000
jabady@ecbawm.com
acelli@ecbawm.com

Attorneys for Challengers
* Motions for pro hac vice admission
forthcoming.

1 James E. Barton II, 023888
Jacqueline Mendez Soto, 022597
2 **BARTON MENDEZ SOTO PLLC**
401 W. Baseline Road, Suite 205
3 Tempe, Arizona 85283
480-550-5165
4 James@bartonmendezsoto.com
Jacqueline@bartonmendezsoto.com
5 *Attorneys for Plaintiffs*

6 ARIZONA SUPERIOR COURT
7
8 MARICOPA COUNTY

9 TOM HANSEN, et al.;

10 Plaintiffs,

11 v.

12 REP. MARK FINCHEM, et al.;

13 Defendants.

Case No.:

**PLAINTIFFS' MOTION FOR
LEAVE TO SERVE EXPEDITED
DISCOVERY REQUESTS**

**(Election Case/Candidate Challenge
Per A.R.S. § 16-351)**

14
15 Plaintiffs' Verified Complaint challenges the qualifications of Mark Finchem to
16 serve as Arizona Secretary of State based on his participation in an insurrection. U.S.
17 Const. Amend. 14, §3. Due to the compressed timeline for candidate challenges, which
18 are required to be filed before April 18 and decided within ten days of filing and
19 reviewed by the Supreme Court by approximately May 18, A.R.S. § 16-351(A), Plaintiffs
20 move the Court for leave to file expedited discovery requests. The Requests for
21 Production are attached hereto as Exhibit A.

1 This discovery will provide the Court and the parties with as complete a record as
2 possible at trial. In order to obtain the necessary discovery, however, Plaintiffs require a
3 finding of good cause by the Court. *See* Ariz. R. Civ. P. 26(f)(1). As such, Plaintiffs
4 respectfully request that the Court issue an order granting the following relief:

- 5 1. Waiving the requirement under Rule 26(f)(1) that an initial disclosure
6 statement be served prior to issuing discovery to parties and non-parties.
- 7 2. Allowing Plaintiffs to serve deposition notices to parties immediately upon
8 issuance of the Court's order;
- 9 3. Waving Rule 30(b)(1)'s requirement that deponents be provided at least 10
10 days' notice prior to a deposition.
- 11 4. Waiving Rule 34(b)(3)(A)'s requirement that Requests for Production be
12 responded to within 30 days of service. Plaintiffs request that any request
13 for production be responded to by April 14, 2022.

14 DATED this 7th of April 2022.

15 BARTON MENDEZ SOTO PLLC

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17 _____
James E. Barton II
Jacqueline Mendez Soto

18
19 Ronald Fein*
John C. Bonifaz*
Ben Clements*
20 Courtney Hostetler*
Benjamin Horton*
21 FREE SPEECH FOR PEOPLE
1320 Centre St. #405

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Newton, MA 02459
(617) 244-0234
rfein@freespeechforpeople.org

Jonathan S. Abady*
O. Andrew F. Wilson*
Nick Bourland*
EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP
600 Fifth Avenue, 10th Floor
New York, NY 10020
(212) 763-5000
jabady@ecbawm.com
acelli@ecbawm.com

Attorneys for Challengers

* Motions for pro hac vice admission
forthcoming.

Exhibit A

1 James E. Barton II, 023888
Jacqueline Mendez Soto, 022597
2 **BARTON MENDEZ SOTO PLLC**
401 W. Baseline Road, Suite 205
3 Tempe, Arizona 85283
480-550-5165
4 James@bartonmendezsoto.com
Jacqueline@bartonmendezsoto.com
5 *Attorneys for Plaintiffs*

7 ARIZONA SUPERIOR COURT

8 MARICOPA COUNTY

9 TOM HANSEN, et al.;

10 Plaintiffs,

11 v.

12 REP. MARK FINCHEM, et al.;

13 Defendants.

Case No.:

**PLAINTIFFS' FIRST REQUEST
FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT
REP. MARK FINCHEM**

**(Election Case/Candidate Challenge
Per A.R.S. § 16-351)**

14
15
16 **TO: DEFENDANT REP. MARK FINCHEM**

17 PLEASE TAKE NOTICE that, pursuant to Arizona Rule of Civil Procedure 34,
18 Plaintiffs request that Defendant Mark Finchem answer the following Requests for
19 Production of Documents (collectively, the "Requests") by the deadline set in the Court's
20 order granting leave to file expedited discovery and produce for copying and inspection
21 at the office of Barton Mendez Soto PLLC, 401 W. Baseline Road, Suite 205, Tempe,

1 Arizona 85283 all documents and materials described herein.

2 **DEFINITIONS**

3 1. You: The term “You” means the responding Defendant or anyone acting on
4 his behalf, including attorneys.

5 2. Your Staff: The term “Your Staff” means any employees of the responding
6 Defendant’s congressional office.

7 3. Document: The term “document” shall be given the broadest meaning possible
8 under the Arizona Rules of Civil Procedure or other applicable rules. By way of
9 example, but not limitation, “document” means any written, recorded, or graphic
10 material, whether prepared by you or any other person, that is in your possession,
11 custody, or control, including memoranda, reports, letters, telegrams, electronic mail,
12 other electronic correspondence, and any other communications or information recorded
13 in any form or medium; notes, minutes, and transcripts of conferences, meetings, and
14 telephone or other communications; transparencies, slides, handouts, and multimedia
15 presentations; contracts and other agreements; statements, ledgers, and other records of
16 financial matters or commercial transactions; notebooks and diaries; plans and
17 specifications; publications; photographs; diagrams, graphs, charts, cut sheets, shop
18 drawings, floor plans, and other drawings; photocopies, microfilm, and other copies or
19 reproductions; audio and video recordings; tape, disk (including all forms of magnetic,
20 magneto-optical, and optical disks), and other electronic recordings; financial models;
21 statistical models and other data compilations; and computer printouts. The term

1 includes all drafts of a document; the original document (or a copy thereof if the original
2 is not available); and all copies that differ in any way from the original (including as to
3 any notations, underlining, or other markings). The term also includes information stored
4 in, or accessible through, computer or other information retrieval systems, together with
5 instructions and all other materials necessary to use or interpret such data compilations.

6 4. Communications: The term “communications” refers to any transfer of
7 information, ideas, opinions, or thoughts by any means, at any time or place, under any
8 circumstances, and is not limited to written or oral transfers between natural persons, but
9 includes all other transfers, including electronic transfers, transfers of information stored
10 on computer disk or in computer memory, and memoranda to file.

11 5. All/Each: The terms “all” and “each” shall be construed as all and each.

12 6. And/Or: The terms “all” and “or” shall be construed either disjunctively or
13 conjunctively as necessary or bring within the scope of these Requests all responses that
14 might otherwise be construed to be outside of their scope.

15 INSTRUCTIONS

16 1. In answering the following Requests, you shall furnish all information that
17 is available to you, including information in the possession, custody, or control of your
18 attorneys, accountants, investigators, experts, representatives, or other agents.

19 2. If any document responsive to the Requests has been lost, destroyed or is
20 otherwise unavailable, describe and identify each such document by stating in writing: (i)
21 the name(s) of the authors(s), the name(s) of the person(s) who received the original and

1 all copies, and the date and subject matter, (ii) the last known custodian of the document,
2 (iii) the incident, event, or occurrence during which such document was lost, destroyed,
3 or otherwise became unavailable, (iv) each person having knowledge of the
4 circumstances of it being lost, discarded or destroyed and (v) your efforts to locate each
5 such document.

6 3. If a claim of privilege is asserted with respect to any document, or you
7 refuse to disclose any document requested herein on any other ground, state the basis for
8 your claim that such document need not be disclosed with such specificity as will permit
9 the Court to determine the legal sufficiency of your objection or position, and, for each
10 such document, identify:

- 11 a. whether the document contains a request for legal advice and, if so, identify
12 the person who requested the legal advice;
- 13 b. whether the document contains advice as to the meaning or application of
14 particular laws or rules in response to such request;
- 15 c. any further information to explain and support the claim of privilege and to
16 permit the adjudication of the propriety of that claim;
- 17 d. the nature of the privilege (including work product) that is being claimed
18 and, if the privilege is being asserted in connection with a claim or defense
19 governed by state law, indicate the state's privilege rule being invoked; and
- 20 e. the type of document, e.g. letter or memorandum; the general subject matter
21 of the document; and such other information as is sufficient to identify the

1 document for a subpoena duces tecum, including, where appropriate, the
2 author, addressee, and any other recipient of the document, and, where not
3 apparent, the relationship of the author, addressee, and other recipient to
4 each other.

5 4. If, in answering these Requests, you claim any ambiguity in interpreting
6 either the Request or a definition or instruction applicable thereto, such claim shall not be
7 utilized by you as a basis for refusing to respond, rather you shall set forth in a part of
8 your response to such a request the language deemed to be ambiguous and the
9 interpretation chosen or used in responding to the request.

10 5. You shall respond separately and completely to each Request, setting forth
11 the question in full followed by each answer.

12 6. With respect to the documents requested, these Requests seek production of
13 all documents described, in their entirety, along with any attachments, drafts and non-
14 identical copies.

15 7. Questions regarding the interpretation of these Requests should be resolved
16 in favor of the broadest possible construction.

17 8. The documents produced in response to these Requests shall be: (i)
18 organized and designated to correspond to the categories in the requests, or (ii) produced
19 in a form that accurately reflects how they are maintained by you in the normal course of
20 business, including but not limited to the following:

- 1 a. that all associated file labels, file headings and file folders be produced with
2 the responsive documents from each file and that each file be identified as
3 to its owner(s) or custodian(s);
- 4 b. that all pages now stapled or fastened together be produced stapled or
5 fastened together; and
- 6 c. that all documents which cannot legibly be copied be produced in their
7 original form.

8 9. The use of the singular form of any words includes the plural and vice
9 versa.

10 10. Plaintiff requests that all documents be produced in their native
11 format and/or as TIFFs and include electronically stored information.

12 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

13 1. All documents on which You will rely at any hearing held in this matter
14 pursuant to Ariz. Stat. § 16-351.

15 2. All documents concerning the demonstration at the Ellipse on the National
16 Mall in Washington, D.C. on January 6, 2021, including all documents concerning the
17 planning for the event.

18 3. All documents concerning the march on and demonstration at the United
19 States Capitol on January 6, 2021, including all documents concerning the planning for
20 the event.

1 4. All documents related to oral or written statements made by You
2 concerning those who participated in any demonstration on January 6, 2021 concerning
3 the 2020 presidential election.

4 5. All documents or communications sent or received by You between
5 November 1, 2020 and January 31, 2021 in which a reference was made to the term
6 “1776.”

7 6. All communications between You or Your Staff and any organizers of the
8 November 14, 2020 “Million MAGA March” in Washington, D.C.

9 7. All communications between You or Your Staff and any organizers of the
10 December 6, 2020 demonstration in Des Moines, Iowa in support of Donald Trump.

11 8. All communications between You or Your Staff and any organizers of the
12 December 12, 2020 demonstration in Washington, D.C. in support of Donald Trump.

13 9. All communications between You or Your Staff and any organizers of the
14 January 5, 2021 “pre-rally” at Freedom Plaza in Washington, D.C.

15 10. All documents concerning Your appearance at the January 5, 2021 “pre-
16 rally” at Freedom Plaza in Washington, D.C.

17 11. All communications between You or Your Staff on one hand, and any
18 organizers of protests, demonstrations, or other public gatherings in support of Donald
19 Trump that occurred on January 6, 2021 on the other hand.

20 12. All documents concerning any payment made to You by the Donald Trump
21 presidential campaign on December 18, 2020.

1 13. All photographs or videos taken by you at the January 5, 2021 “pre-rally” at
2 Freedom Plaza in Washington, D.C.

3 14. All photographs or videos taken by you at the demonstration at the Ellipse
4 on the National Mall, the march from the Ellipse to the United States Capitol, and outside
5 the Capitol building on January 6, 2021.

6 15. All documents concerning Your participation in any event organized by Ali
7 Alexander on or around January 6, 2021.

8 16. All communications between You or Your Staff and Ali Alexander
9 between November 1, 2020 and January 31, 2021.

10 17. All communications between You or Your Staff and Enrique Tarrío
11 between November 1, 2020 and January 31, 2021.

12 18. All communications between You or Your Staff and Patrick Casey between
13 November 1, 2020 and January 31, 2021.

14 19. All communications between You or Your Staff and U.S. Rep. Paul Gosar
15 concerning one or more of the following topics: (i) the 2020 presidential election and the
16 results thereof; or (ii) any protest, demonstration, or other public gathering in support of
17 Donald Trump.

18 20. All communications between You or Your Staff and U.S. Rep. Andrew
19 Biggs concerning one or more of the following topics: (i) the 2020 presidential election
20 and the results thereof; or (ii) any protest, demonstration, or other public gathering in
21 support of Donald Trump.

1 21. All communications between You or Your Staff and any member or
2 affiliate of the Proud Boys (including, but not limited to, Ethan Nordean, Joseph Biggs,
3 Zachary Rehl, Charles Donohoe, and Dominic Pezzola) between November 1, 2020 and
4 January 31, 2021 concerning one or more of the following topics: (i) the 2020
5 presidential election and the results thereof; (ii) any protest, demonstration, or other
6 public gathering in support of Donald Trump; or (iii) violence.

7 22. All communications between You or Your Staff and any member or
8 affiliate of Women for America First (including, but not limited to, Amy Kremer, Kylie
9 Kremer, and Cynthia Chafian) between November 1, 2020 and January 31, 2021
10 concerning one or more of the following topics: (i) the 2020 presidential election and the
11 results thereof; (ii) any protest, demonstration, or other public gathering in support of
12 Donald Trump; or (iii) violence.

13 23. All communications between You or Your Staff and any member or
14 affiliate of the America First Foundation between November 1, 2020 and January 31,
15 2021 concerning one or more of the following topics: (i) the 2020 presidential election
16 and the results thereof; (ii) any protest, demonstration, or other public gathering in
17 support of Donald Trump; or (iii) violence.

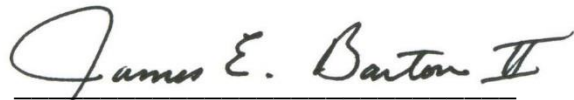
18 24. All communications between You or Your Staff and any member or
19 affiliate of the Three Percenters (including, but not limited to, Allan Hostetter, Russel
20 Taylor, Erik Scott Warner, Felipe Antonio “Tony” Martinez, Derek Kinnison, and
21 Ronald Mele) between November 1, 2020 and January 31, 2021 concerning one or more

1 of the following topics: (i) the 2020 presidential election and the results thereof; (ii) any
2 protest, demonstration, or other public gathering in support of Donald Trump; or (iii)
3 violence.

4 25. All communications between You or Your Staff and any member or
5 affiliate of the Oath Keepers (including, but not limited to Stewart Rhodes, Edward
6 Vallejo, Thomas Caldwell, Joseph Hackett, Kenneth Harrelson, Joshua James, Kelly
7 Meggs, Roberto Minuta, David Moerschel, Brian Ulrich, Jessica Watkins, James Beeks,
8 Donovan Crawl, William Isaacs, Connie Meggs, Sandra Parker, Bernie Parker, Laura
9 Steele, Mark Grods, and Jonathan Walden) between November 1, 2020 and January 31,
10 2021 concerning one or more of the following topics: (i) the 2020 presidential election
11 and the results thereof; (ii) any protest, demonstration, or other public gathering in
12 support of Donald Trump; or (iii) violence.

13 DATED this 7th of April 2022.

14 BARTON MENDEZ SOTO PLLC

15 

16 James E. Barton II
Jacqueline Mendez Soto

17 Ronald Fein*
18 John C. Bonifaz*
Ben Clements*
19 Courtney Hostetler*
Benjamin Horton*
20 FREE SPEECH FOR PEOPLE
1320 Centre St. #405
Newton, MA 02459
21 (617) 244-0234
rfein@freespeechforpeople.org

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Jonathan S. Abady*
O. Andrew F. Wilson*
Nick Bourland*
EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP
600 Fifth Avenue, 10th Floor
New York, NY 10020
(212) 763-5000
jabady@ecbawm.com
acelli@ecbawm.com

Attorneys for Challengers

* Motions for pro hac vice admission forthcoming.