

# L I C H T E N & L I S S - R I O R D A N , P. C.

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January 4, 2024

## VIA HAND DELIVERY

The Hon. William Francis Galvin  
Secretary of the Commonwealth  
Elections Division  
1 Ashburton Place, Room 1705  
Boston, MA 02108

*RE: Chafee et. al. v. Donald John Trump*  
SBLC Docket No. \_\_\_\_

Dear Secretary Galvin:

Pursuant to Mass. Gen. L. c. 55B, attached please find an Objection to the inclusion of Donald John Trump on the Massachusetts presidential primary ballot, as well as Objectors' Certificates of Voter Registration. Exhibits referenced in the Objection are included in the three accompanying binders.

As set forth in the statute, please forward the Objection and exhibits to the State Ballot Law Commission.

Sincerely,

  
Shannon Liss-Riordan

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

STATE BALLOT LAW COMMISSION  
SBLC Docket No. \_\_\_\_\_

BRUCE CHAFEE, KIM JANEY, MARK  
BRODIN, ELIZABETH BARTHOLET,  
and AUGUSTA MCKUSICK,

Objectors

v.

DONALD JOHN TRUMP,

Respondent

**OBJECTION AND COMPLAINT**

**INTRODUCTION**

1. This is an objection under M.G.L. ch. 55B § 5, brought by Republican, Democrat, and unaffiliated Massachusetts registered voters, objecting to Donald Trump (“Trump”) appearing as a presidential candidate on the Republican Party presidential primary ballot. Trump may not appear on the presidential primary *or* general election ballots because, after taking the oath of office to support the Constitution, he engaged in rebellion and insurrection against the Constitution of the United States and gave aid and comfort to the enemies of the same and is therefore disqualified from the presidency (and any other public office) under Section 3 of the Fourteenth Amendment.

2. On November 15, 2022, Trump filed paperwork with the Federal Election Commission as a candidate for president of the United States. That same day, he publicly announced his candidacy in a speech at his Mar-a-Lago property in Florida.

3. As set forth below, Trump is constitutionally ineligible for the office of president of the United States, or for any other public office. As such, pursuant to Massachusetts state law, any nomination papers or actions required by law to give him, as a candidate, access to a state ballot lack legality, validity, completeness and/or accuracy; he fails to meet statutory and constitutional qualifications of a nominee to national office; and any certificates of nomination or nomination papers filed in a presidential primary nominating him are unlawful. Donald Trump is not capable of standing as a party's nominee for public office on a Massachusetts ballot.

4. Accordingly, registered Massachusetts voters Bruce Chafee, Kim M. Janey, Elizabeth Bartholet, Mark Brodin, and Augusta McKusick (“Objectors”) hereby file this objection pursuant to M.G.L. ch. 55B § 5, objecting to the inclusion of Trump as a candidate in the Presidential Primary election for the Republican Nomination for the Office of the President of the United States.

### **PARTIES**

5. Mr. Bruce Chafee is a registered voter affiliated with the Republican Party who resides in Massachusetts. He is a bio-pharmaceuticals professional. He is registered to vote at [REDACTED]

6. The Hon. Kim M. Janey is a registered voter affiliated with the Democratic Party who resides in Massachusetts. She served as the 55th Mayor of the City of Boston and as the President of the Boston City Council. She is registered to vote at [REDACTED].

7. Professor Mark Brodin is a registered voter unenrolled in any party, who resides in Massachusetts. He is the Michael and Helen Lee Distinguished Scholar and Professor at Boston College Law School and a renowned legal scholar, predominantly in the fields of Evidence, Civil & Criminal Procedure, and Employment Discrimination. He is registered to vote at [REDACTED].

8. Professor Elizabeth Bartholet is a registered voter affiliated with the Democratic Party who resides in Massachusetts. She is the Morris Wasserstein Public Interest Professor of Law, Emerita, at Harvard Law School and a renowned legal scholar with expertise and extensive experience in civil rights and public interest law. She is registered to vote at [REDACTED].

9. Ms. Augusta McKusick is a registered voter unenrolled in any party who resides in Massachusetts. She is a retired nurse practitioner and former elected member of the Board of Health of Orleans, Massachusetts. She is registered to vote at [REDACTED].

#### **NATURE OF OBJECTION**

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of

Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

U.S. Const. amend. XIV, § 3.

10. Trump cannot satisfy the eligibility requirements for the Office of the President of the United States established in Section 3 of the Fourteenth Amendment of the U.S. Constitution.

11. Under Section 3 of the Fourteenth Amendment to the U.S. Constitution, known as the Insurrectionist Disqualification Clause:

No person shall . . . hold any office, civil or military, under the United States, . . . who, having previously taken an oath, . . . as an officer of the United States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.

12. As set forth below, after having sworn an oath to support the Constitution of the United States,<sup>1</sup> Trump has “engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof” and is therefore disqualified from public office under Section 3 of the Fourteenth Amendment.

13. On December 19, 2023, the Colorado Supreme Court decided, in a detailed 133-page opinion, a case presenting nearly identical legal and factual issues as this challenge. *See Anderson v. Griswold*, \_\_ P.3d \_\_, 2023 CO 63, 2023

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<sup>1</sup> Trump White House Archived, *The Inauguration of the 45<sup>th</sup> President of the United States*, YOUTUBE (Jan. 20, 2017), <https://www.youtube.com/watch?v=4GNWldTc8VU>; *see also* U.S. Const. art. I, § 2, cl. 8. *See also infra* ¶¶ 58–61.

WL 8770111 (Colo. Dec. 19, 2023). (The Colorado Supreme Court decision is attached as Exhibit A, and the trial court’s Final Order dated Nov. 17, 2023, is attached as Exhibit B.). Trump was a party to that proceeding and participated fully both in the trial court proceedings (including a five-day bench trial) and on appeal. The Court held that:

A. “Congress does not need to pass implementing legislation for Section Three's disqualification provision to attach, and Section Three is, in that sense, self-executing.”

B. “Judicial review of President Trump's eligibility for office under Section Three is not precluded by the political question doctrine.”

C. “Section Three encompasses the office of the Presidency and someone who has taken an oath as President.”

D. The trial court did not err in concluding that “the events at the U.S. Capitol on January 6, 2021, constituted an ‘insurrection.’”

E. The trial court did not err in concluding that Trump “‘engaged in’ that insurrection through his personal actions.”

F. “President Trump’s speech inciting the crowd that breached the U.S. Capitol on January 6, 2021, was not protected by the First Amendment.”

Thus, it concluded:

Trump is disqualified from holding the office of President under Section Three; because he is disqualified, it would be a wrongful act under [Colorado law] for the Secretary to list him as a candidate on the presidential primary ballot.

*Griswold*, 2023 WL 8770111, at \*2-3 (Ex. A).

14. On December 28, 2023, the Maine Secretary of State also determined, following briefing and an evidentiary hearing, that Trump’s Maine “primary petition is invalid” based on his false declaration that he is qualified to hold office when he, in fact, is constitutionally disqualified under Section 3 of the Fourteenth Amendment. *See* Ruling of the Secretary of State, *In re: Challenges to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States*, (Dec. 28, 2023) (“Maine Sec. of State Ruling,” attached as Exhibit C). This decision recognized:

A. The administrative authority of the Secretary of State to assess whether a candidate is “qualified” for office, and thus can be included on the state ballot, encompasses constitutional qualifications, including under Section 3.

B. Section Three is self-executing without Congressional action and applies to the office of President.

C. The “events of January 6, 2021 were an insurrection.”

D. “Trump engaged in the insurrection of January 6, 2021.”

E. There is no precedent to support Trump’s argument that the First Amendment can “override” Section 3 or any other qualification for public office.

F. Trump’s speech, in any case, “is unprotected by the First Amendment,” because it was intended to incite lawless action.

15. As in Colorado, Trump was a party to the proceeding, and had a full opportunity to present evidence, call and cross-examine witnesses, and argue legal and factual issues. *Id.* at 17.

16. Thus, the only two decisions evaluating Section 3 challenges that reached the merits of the challenge and assessed evidence from both Trump and objectors determined that Trump is constitutionally barred from office.

17. In *Worthy v. Barrett*, 63 N.C. 199, 204 (1869) (emphasis in original), the North Carolina Supreme Court recognized:

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

Persons who are disqualified by Section 3 are thus ineligible to hold the presidency, just like those who fail to meet the age, residency, or natural-born citizenship requirements of Article II, Section 1 of the Constitution, or those who have already served two terms, as provided by the Twenty-Second Amendment.

18. The events of January 6, 2021 — a violent, coordinated effort to storm the Capitol to obstruct and prevent the Vice President of the United States and the United States Congress from fulfilling their constitutional roles by certifying President Biden’s victory, and to illegally extend then-President Trump’s tenure in office — were an insurrection or a rebellion as those terms are used in Section 3.

19. The effort to overthrow the results of the 2020 election by unlawful means, starting on or about November 3, 2020, through at least January

6, 2021, constituted a rebellion under Section 3, as it was an attempt to overturn or displace lawful government authority by unlawful means.

20. By overwhelming majorities, both chambers of Congress declared those who attacked the Capitol on January 6, 2021 “insurrectionists.” Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322. Just days afterward, the U.S. Department of Justice under the Trump Administration labeled it an “insurrection” in federal court.<sup>2</sup> So have more than fifteen federal judges,<sup>3</sup> and Trump’s own defense lawyer in his impeachment proceeding.<sup>4</sup> And both courts that have addressed whether the January 6 attack constituted an “insurrection” within the meaning of Section 3 have held that it did. *See Griswold*, 2023 WL 8770111, at \*37-39 (Ex. A); *State ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, at \*17-19 (N.M. 1st Jud. Dist., Sept. 6, 2022), *appeal dismissed*, No. S-1-SC-39571 (N.M. Nov. 15, 2022), *cert. filed* May 18, 2023.

21. Under Section 3, to “engage” means “a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from insurrectionists’ perspective] termination.” *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871); *Worthy*, 63 N.C. at 203 (defining “engage” under Section 3 as “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary”); Att’y Gen. Henry

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<sup>2</sup> Government’s Br. in Supp. of Detention at 1, *United States v. Chansley*, No. 2:21-MJ-05000-DMF, ECF No. 5 (D. Ariz. Jan. 14, 2021).

<sup>3</sup> *See infra* ¶¶ 267–85.

<sup>4</sup> 167 Cong. Rec. S729 (daily ed. Feb. 13, 2021), <https://www.govinfo.gov/content/pkg/CREC-2021-02-13/pdf/CREC-2021-02-13.pdf>.

Stanbery, *The Reconstruction Acts*, 12 U.S. Op. Att’y. Gen. 141, 161-62 (1867) (defining “engage” in similarly-worded statute to include “persons who . . . have done any overt act for the purpose of promoting the rebellion”); Att’y Gen. Henry Stanbery, *The Reconstruction Acts*, 12 U.S. Op. Att’y. Gen. 182, 204 (1867) (defining “engage” in similarly-worded statute to require “an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose”).

22. An individual need not personally commit an act of violence to have “engaged” in insurrection. *Powell*, 27 F. Cas. at 607 (defendant paid to avoid serving in Confederate Army); *Worthy*, 63 N.C. at 203 (defendant simply served as county sheriff). Indeed, Jefferson Davis—the president of the Confederacy—never fired a shot.

23. All three modern judicial decisions to construe “engage” under Section 3 have adopted this standard. *See Griswold*, 2023 WL 8770111, at \*39-45 (Colorado Supreme Court summarizing definition as “an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose”); *White*, 2022 WL 4295619, at \*19; *Rowan v. Greene*, Case No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off. of State Admin. Hg’s, May 6, 2022), slip op. at 13-14. The only courts and election officials that have addressed the merits of a Section 3 challenge to Trump’s eligibility have concluded that Trump “engaged” in the January 6 insurrection.

24. “Engagement” does not require previous conviction, or even charging, of any criminal offense. *See, e.g., Griswold*, 2023 WL 8770111, at \*23, \*39-40 (Ex. A) (recognizing charging and conviction is not required and defining

standard for “engage”); *Powell*, 27 F. Cas. at 607 (defendant not charged with any prior crime); *Worthy*, 63 N.C. at 203 (same); *In re Tate*, 63 N.C. 308 (1869) (same); see also Gerard N. Magliocca, *Amnesty and Section 3 of the Fourteenth Amendment*, 36 Const. Comment. 87, 98-99 (2021) (describing special congressional action in 1868 to enforce Section 3 and remove Georgia legislators, none of whom had been charged criminally); William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. \_\_\_ (forthcoming), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4532751](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751), at 16-22.

25. Most of the House and Senate candidates-elect that Congress excluded from their seats during Reconstruction for engagement in insurrection had never been charged or convicted of any crimes.

26. Indeed, the vast majority of disqualified ex-Confederates were never charged with any crimes.

27. Modern authority agrees that no evidence suggests that a prior criminal conviction — whether under 18 U.S.C. § 2383 (outlawing insurrection) or any other statute — was ever considered necessary to trigger Section 3. *Griswold*, 2023 WL 8770111, at \*23 (Ex. A); *White*, 2022 WL 4295619, at \*16, \*24; *Greene*, supra ¶ 23, slip op., at 13.

28. As set forth in detail below and in the reports of publicly available investigations, in the months leading up to January 6, 2021, then-President

Donald Trump, who was a candidate for re-election in 2020, plotted to overturn the 2020 presidential election outcome.<sup>5</sup>

29. First, he disseminated false allegations of fraud and challenged election results through baseless litigation. When his election lawsuits failed, he attempted unlawful schemes, including pressuring then-Vice President Mike Pence to discard electoral votes from states that had voted for President-elect Biden.

30. After votes in the 2020 election were cast, Trump repeatedly exhorted his followers to “STOP THE FRAUD!” and “STOP THE COUNT!” and falsely told them that he had won the election.<sup>6</sup>

31. On December 14, 2020, pursuant to law, presidential electors convened in all 50 states and in D.C. to cast their official electoral votes. They voted 306-232 against Trump.<sup>7</sup>

32. To pressure Pence to discard electoral votes from states that had voted for Biden, Trump summoned tens of thousands of supporters to Washington for a violent protest on January 6, 2021, the day that Congress would count and certify the electoral votes.

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<sup>5</sup> See *infra* pp. 20–45.

<sup>6</sup> See, e.g., Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 5, 2020 at 12:21 PM; Nov. 5, 2020 at 9:12 AM; Nov. 7, 2020 at 10:36 AM), attached hereto as part of a Group Exhibit E, which is also referred to hereinafter as “Trump Twitter Collection.”

<sup>7</sup> National Archives, *2020 Electoral College Results*, <https://www.archives.gov/electoral-college/2020>.

33. Trump encouraged his supporters to dispute the election results, Tweeting on December 19, 2020, “Big protest in D.C. on January 6th. Be there, will be wild!”<sup>8</sup>

34. Armed and militant supporters, including members of the extremist groups the Proud Boys and Oath Keepers, mobilized in response to Trump’s “wild” tweet and reported for duty at the Capitol on January 6, 2021.<sup>9</sup>

35. Although Trump knew that these supporters were angry and that many were armed, Trump incited them to a violent insurrection and instructed them to march to the Capitol to “take back” their country.

36. His campaign was directly involved in organizing and selecting speakers for a demonstration at a park near the Capitol on January 6, 2021.<sup>10</sup>

37. The speakers who preceded Trump on the stage at this demonstration prepped the crowd with violent rhetoric. Trump’s lawyer, Rudy Giuliani, called for “trial by combat,”<sup>11</sup> and Representative Mo Brooks of

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<sup>8</sup> See Trump Twitter Collection, *supra* note 6, at 6 (Group Ex. E) (Dec. 19, 2020 at 12:42 AM).

<sup>9</sup> Indictment at 9, *U.S. v. Thomas Caldwell et al.*, 21-cr-28-APM (2021), <https://www.justice.gov/usao-dc/case-multi-defendant/file/1369071/download> (found guilty 11/29/22); Indictment at 7-8, *U.S. v. Hostetter et al.*, 1:21-cr-00392, (D.D.C. 2021), <https://www.justice.gov/opa/press-release/file/1403191/download>; Affidavit in Support of Criminal Complaint and Arrest Warrant at 7, *U.S. v. Derrick Evans*, 1:21-cr-337, <https://www.justice.gov/usao-dc/press-release/file/1351946/download>. (pleaded guilty 3/18/22); *see also* Ex. H, H.R. REP. NO. 117-663, at 500-15 (2022) [hereinafter January 6th Report]; Ex. M, Proceedings Day 5 Tr., at 200:3-21 (Nov. 3, 2023) [hereinafter Day 5 Transcript] (Heaphy Testimony); *see also* Ex. J, Proceedings Day 2 Tr., at 79:5-80:22 (Oct. 31, 2023) [hereinafter Day 2 Transcript] (Simi Testimony).

<sup>10</sup> See January 6th Report, *supra* note 9, at 533-36 (Ex. H); Anna Massoglia, *Trump’s political operation paid more than \$3.5 million to Jan. 6 organizers*, OPEN SECRETS (Feb. 10, 2021), <https://www.opensecrets.org/news/2021/02/jan-6-protests-trump-operation-paid-3p5mil/>.

<sup>11</sup> Wash. Post, *Trump, Republicans incite crowd before mob storms Capitol*, YOUTUBE (Jan. 6, 2021), <https://youtu.be/mh3cbd7niTQ>.

Alabama urged the crowd to “start taking down names and kicking ass” and to be prepared to sacrifice their “blood” and “lives” and “do what it takes to fight for America” by “carry[ing] the message to Capitol Hill,” since “the fight begins today.”<sup>12</sup>

38. During Trump’s speech at the demonstration, he said, “We fight. We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore.”<sup>13</sup> Trump then instructed the crowd to march on the Capitol.<sup>14</sup>

39. What followed was a searing image of violence Americans will always remember: violent insurrectionists flooding the Capitol, brandishing the Confederate flag and other symbols of insurrection and white supremacy, beating law enforcement, breaking into the chambers, threatening to kill Pence, Speaker of the House Nancy Pelosi, and other leaders, and ultimately overwhelming law enforcement to successfully seize control of the Capitol Building.<sup>15</sup>

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<sup>12</sup> The Hill, *Mo Brooks gives FIERY speech against anti-Trump Republicans, socialists*, YOUTUBE (Jan. 6, 2021), <https://youtu.be/ZKHwV6sdrMk>.

<sup>13</sup> *Rally on Electoral College Vote Certification*, at 4:41:25, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification>; see also *Donald Trump Speech “Save America” Rally Transcript January 6*, at 1:12:43, REV (Jan. 6, 2021), <https://bit.ly/3GheZid> [hereinafter *Donald Trump Speech*]; Brian Naylor, *Read Trump’s Jan. 6 Speech, A Key Part Of Impeachment Trial*, NPR (Feb. 10, 2021), <https://n.pr/3G1K2ON>.

<sup>14</sup> *Rally on Electoral College Vote Certification*, *supra* note 13, at 3:46:55; *Donald Trump Speech*, *supra* note 13, at 16:25; Naylor, *supra* note 13.

<sup>15</sup> Ex. F, Staff of S. Comm. on Rules & Admin., 117th Cong., *A Review of the Security, Planning, and Response Failures on January 6*, at 28 (June 1, 2021) [hereinafter *Rules & Admin. Review*]; see *January 6th Report*, *supra* note 9, at 651-59 (Ex. H); Ex. I, *Proceedings Day 1 Tr.*, at 142:9–143:2, 144:11–23, 146:16–18 (Oct. 30, 2023) [hereinafter *Day 1 Transcript*] (Swalwell Testimony); see also *Day 1 Transcript*, *supra* at 197:8-13, 199:8-200:8 (Ex. I) (Pigeon Testimony); Ex. L, *Proceedings Day 4 Tr.*, at 192:10–195:24 (Nov. 2, 2023) [hereinafter *Day 4 Transcript*] (Buck Testimony); H.R. REP. NO. 117-2, at 16, 12–13 (2021), <https://www.govinfo.gov/app/details/CRPT-117hrpt2/CRPT-117hrpt2>; Audie Cornish et al., *Transcript: 2 reporters who were in the Capitol on Jan. 6 talk about media coverage of the attack*, NPR (Jan. 5, 2022), <https://www.npr.org/2022/01/05/1070700663/2-reporters-who-were->

40. The insurrectionists shared the common purpose of preventing Congress from certifying the electoral vote to prevent Trump’s electoral loss.<sup>16</sup> The attack forced members of Congress and Pence to flee and suspended Congress’ count of the electoral vote.<sup>17</sup>

41. Even as Trump watched on television as the insurrectionists demanded Pence’s murder — chanting “hang Mike Pence!”<sup>18</sup> — Trump goaded them further. Knowing that his supporters’ violent attack on the Capitol was underway, and knowing that his words would aid and encourage the insurrectionists and induce further violence, at 2:24 PM Trump sent a widely-read social media message publicly condemning Pence. He wrote, “Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution.”<sup>19</sup>

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[in-the-capitol-on-jan-6-talk-about-media-coverage-of-the-at](#); Jacqueline Alemany et al., *What Happened on Jan. 6*, WASH. POST (Oct. 31, 2021), <https://wapo.st/3eSdf2y>; Kelsie Smith & Travis Caldwell, *Disturbing video shows officer crushed against door by mob storming the Capitol*, CNN (Jan. 9, 2021), <https://cnn.it/3eAmdSc>; Clare Hymes & Cassidy McDonald, *Capitol riot suspect accused of assaulting cop and burying officer’s badge in his backyard*, CBS NEWS (Mar. 13, 2021), <https://cbsn.ws/3eFAaxS>.

<sup>16</sup> See *Rally on Electoral College Vote Certification*, *supra* note 13, at 4:34:53; *Donald Trump Speech*, *supra* note 13, at 1:05:43; Naylor, *supra* note 13; see also Day 4 Transcript, *supra* note 15, at 230:3-7, 341:24-342:8 (Ex. L) (Buck Testimony); Day 1 Transcript, *supra* note 15, at 197:8-13, 199:8-200:8 (Ex. I) (Pingeon Testimony).

<sup>17</sup> See January 6th Report, *supra* note 9, at 466 (Ex. H); See Rules & Admin. Review, *supra* note 15, at 28 (Ex. F); Martha Mendoza & Juliet Linderman, *Officers maced, trampled: Docs expose depth of Jan. 6 chaos*, ASSOCIATED PRESS (Mar. 10, 2021), <https://bit.ly/3F2Hi26>; Alemany, *supra* note 15.

<sup>18</sup> See January 6th Report, *supra* note 9, at 449 n.171 (Ex. H).

<sup>19</sup> This tweet was removed. It is archived on the American Oversight website. 2:24 PM-2:24 PM, AMERICAN OVERSIGHT, <https://www.americanoversight.org/timeline/224-p-m> (archived); see January 6th Report, *supra* note 9, at 429, 596 (Ex. H).

42. During the attack, Trump did not order any federal law enforcement or the D.C. National Guard to help retake the Capitol or protect Pence and Congress from the attackers.<sup>20</sup>

43. Despite knowing that violence was ongoing at the Capitol and that his violent supporters would have heeded a call from him to withdraw, for 187 minutes, Trump repeatedly refused requests that he instruct his violent supporters to disperse and leave the Capitol. Instead, he reveled in the violent attack as it unfolded on television before him.

44. When he finally made a public statement at 4:17 PM, he said:

We love you, you're very special, you've seen what happens, you've seen the way others are treated . . . I know how you feel, but go home, and go home in peace.<sup>21</sup>

45. The insurrection overcame the forces of civilian law enforcement; forced the United States Congress to go into recess; halted the crucial constitutional process of certifying electoral votes; forced the Vice President, Senators, Representatives, and staffers into hiding; garrisoned the United States

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<sup>20</sup> See January 6th Report, *supra* note 9, at 6-7, 595 (Ex. H); Ex. G, The Daily Diary of President Donald J. Trump, January 6, 2021 [Hereinafter Trump Daily Diary]; *READ: Transcript of CNN's town hall with former President Donald Trump*, CNN (May 11, 2023), <https://www.cnn.com/2023/05/11/politics/transcript-cnn-town-hall-trump/index.html>; see also Day 2 Transcript, *supra* note 9, at 245:19-250:16, 259:20-260:11 (Ex. J) (Banks Testimony).

<sup>21</sup> See January 6th Report, *supra* note 9, at 579-80 (Ex. H); *President Trump Video Statement on Capitol Protestors*, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?507774-1/president-trump-video-statement-capitol-protesters>; see also Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 36 (July 12, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg49355/pdf/CHRG-117hrg49355.pdf> (“[A]s soon as that come [*sic*] out, everybody started talking about it and it seemed like it started to disperse.”); see Rules & Admin. Review, *supra* note 15, at 26 (Ex. F); Alemany, *supra* note 15.

Capitol — a feat never achieved by the Confederate rebellion; detained the Capitol for hours until reinforcements could arrive; and blocked the peaceful transition of power in the United States of America — another feat never achieved by the Confederate rebellion.

46. The Colorado Supreme Court recently confirmed that Trump’s action and inaction during the January 6, 2021, insurrection met the definition of “engag[ing]” in “insurrection” as set out in Section 3 of the Fourteenth Amendment. *Griswold*, 2023 WL 8770111 at \*37-44 (Ex. A). The Maine Secretary of State came to the same conclusion, finding that Trump engaged in insurrection and was thus disqualified from the office of the presidency and could not appear on the Maine presidential primary ballot. See Ex. C.

47. Trump, through his words and actions, after swearing an oath as an officer of the United States to support the Constitution, engaged in insurrection or rebellion, or gave aid and comfort to its enemies, as defined by Section 3 of the Fourteenth Amendment. He is thus disqualified from holding the presidency or any other office under the United States and is disqualified from standing as a candidate or nominee for public office on the Massachusetts ballot, unless and until Congress removes this disability, which it has not done.

#### **AUTHORITY AND DUTY OF STATE BALLOT LAW COMMISSION TO HEAR OBJECTION**

48. Pursuant to M.G.L. ch. 55B, §§ 4, 5, the State Ballot Law Commission indisputably possesses the authority and statutory duty to determine

whether candidates meet all statutory and constitutional eligibility requirements for their office. As dictated by the Massachusetts law:

The commission may investigate upon objection made in accordance with the provisions of this chapter the legality, validity, completeness and accuracy of all nomination papers and actions required by law to give candidates access to a state ballot or to place an initiative or referendum on a state ballot.

The commission shall have jurisdiction over and render a decision on any matter referred to it, pertaining to the statutory and *constitutional qualifications* of any nominee for state, *national* or county office [and] the certificates of nomination or nomination papers filed in any *presidential* or state *primary*, state election, or special state primary or election...

M.G.L. ch. 55B, § 4 (emphasis added).

49. This authority includes, but is not limited to, adjudicating the legality and validity of all “actions required by law to give candidates access to a state ballot,” *id.*, made pursuant to M.G.L.ch. 53, §§ 1, 70E, whereby party nominees must be eligible to be elected. *See, e.g., Thacher v. Cook*, 250 Mass. 188, 191 (1924) (“The party nominations must be effective to the end of an election so that any party may nominate as many such candidates only as may be elected under the law. More narrowly stated the word ‘candidates’ in the first sentence of G. L. c. 53, § 1, signifies ‘candidates capable under the law of being elected.’”).

50. Thus, the Commission has the authority — and obligation — to determine the constitutional eligibility of a candidate for president nominated pursuant to M.G.L.ch. 53, §§ 1, 70E.

51. Candidates for office are subject to numerous eligibility requirements, including those arising under Massachusetts statutory law and the

Massachusetts and United States Constitutions. *See, e.g., Del Gallo v. Sec’y of Com.*, 442 Mass. 1032, 1033 (2004) (upholding validity of party loyalty and disaffiliation statutes); U.S. Const. art. II, § 1, cl. 5 (specifying age, residency, and citizenship qualifications for Office of President); U.S. Const. Amend. XXII, § 1 (forbidding the election of a person to the office of President more than twice); U.S. Const. Amend. XIV, § 3 (requiring disqualification of candidates for public office who took an oath to uphold the Constitution and then engaged in or supported insurrection against the United States or gave aid or comfort to those who have).

52. Article II, Section 1, Clause 5 of the U.S. Constitution requires the President to be a natural-born citizen, at least thirty-five years of age, and a resident of the United States for at least fourteen years. Section 1 of the Twenty-Second Amendment provides that no person can be elected President more than twice. Section 3 of the Fourteenth Amendment disqualifies from public office any individual who has taken an oath to uphold the U.S. Constitution and then engages in insurrection or rebellion against the United States or gives aid or comfort to those who are.

53. Adjudicating objections concerning a candidate’s eligibility to be included on the Massachusetts ballot for the presidential primary election falls squarely within the Commission’s jurisdiction and statutory duties.

54. The State Ballot Law Commission’s authority over this objection falls within the state legislature’s express grant of jurisdiction and authority to the Commission to review “the legality, validity, completeness and accuracy of all

nomination papers and actions required by law to give candidates access to a state ballot.” M.G.L. ch. 55B, § 4; *see also Thomson v. Romney*, SBLC 02–05 (affirming candidate’s constitutional eligibility to hold office). This authority specifically applies to “constitutional qualifications of any nominee for . . . national . . . office,” including the certificates of nomination or nomination papers filed in “any presidential . . . primary.” M.G.L. ch. 55B, § 4; *see also id.* § 5 (authorizing objections to “candidates at a presidential primary”).

55. To fulfill this role, the Commission has the authority —and indeed the duty — to evaluate evidence and resolve complex factual issues when necessary. *See, e.g., Connolly v. Sec’y of the Com.*, 404 Mass. 556, 560 (1989) (affirming Commission’s determination, based on evidence gleaned in an evidentiary hearing, that challenged candidate was legally qualified to hold office).

56. This Objection asks the State Ballot Law Commission to enforce the candidate qualification requirements spelled out in the United States Constitution, a task that falls to it under state law. M.G.L. ch. 55B, § 4. Recognizing the urgency of this matter, pursuant to state law, this Commission must render a decision before January 29, 2024, at 5:00 PM. M.G.L. ch. 55B § 10.

### **STATEMENT OF FACTS**

57. The facts set out below establish that Trump cannot meet the eligibility requirements for the high office he seeks, as set out in Section 3 of the Fourteenth Amendment, because he: (1) was an officer of the United States; (2) took an oath to support the Constitution of the United States; and, (3) engaged in

insurrection or rebellion and/or gave aid or comfort to those engaging in insurrection.

## **I. TRUMP TOOK AN OATH TO UPHOLD THE U.S. CONSTITUTION.**

58. On January 20, 2017, Trump was sworn in as the 45<sup>th</sup> President of the United States.

59. That same day, Trump took the presidential oath of office required by Article II, section 1, of the Constitution, whereby he attested:

I, Donald John Trump, do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my Ability preserve, protect, and defend the Constitution of the United States.<sup>22</sup>

60. This oath includes a solemn vow to support the Constitution of the United States.

61. After taking this oath, Trump gave an inaugural speech in which he stated, “Every four years, we gather on these steps to carry out the orderly and peaceful transfer of power.”<sup>23</sup> He failed to honor this commitment.

## **II. TRUMP’S SCHEME TO OVERTURN THE GOVERNMENT.**

### **A. Trump Sought Re-Election but Prepared to Retain Power Even if He Lost.**

62. On June 18, 2019, at a rally in Florida, Trump officially launched his campaign for a second term as President.<sup>24</sup>

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<sup>22</sup> Trump White House Archived, *supra* note 1, at 26:36.

<sup>23</sup> *Id.*; see also Ex. K, Proceedings Day 3 Tr., at 59:17-62.6 (Nov. 1, 2023) (Magliocca Testimony) (testimony that Presidency is historically understood as an “office” within the scope of the Fourteenth Amendment).

<sup>24</sup> *Donald Trump formally launches 2020 re-election bid*, BBC (June 18, 2019), <https://www.bbc.com/news/world-us-canada-48681573>.

63. During his campaign, Trump stated that fraudulent voting activity, rather than not receiving enough votes, would be the only possible reason for his electoral defeat. For example:

A. On August 17, 2020, Trump spoke to a crowd in Oshkosh, Wisconsin and stated: “The only way we’re going to lose this election is if the election is rigged.”<sup>25</sup>

B. On August 24, 2020, during his Republican National Convention acceptance speech, Trump stated: “The only way they can take this election away from us is if this is a rigged election.”<sup>26</sup>

C. On September 24, 2020, Trump stated: “We want to make sure the election is honest, and I’m not sure that it can be. I don’t know that it can be with this whole situation [of] unsolicited ballots.”<sup>27</sup>

64. In particular, Trump claimed that this “fraud” occurred or would occur in cities and states with majority or substantial Black populations.

65. At the same time, Trump aligned himself with violent extremist and white supremacist organizations and suggested they should be prepared to act on his behalf.

66. For example, on September 29, 2020, Trump was asked if he would disavow the Proud Boys. Instead, he stated: “Proud Boys, stand back and

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<sup>25</sup> Kevin Liptak, *Trump warns of ‘rigged election’ as he uses conspiracy and fear to counter Biden’s convention week*, CNN (Aug. 18, 2020), <https://www.cnn.com/2020/08/17/politics/donald-trump-campaign-swing/index.html>.

<sup>26</sup> *RNC 2020: Trump warns Republican convention of ‘rigged election’*, BBC (Aug. 25, 2020), <https://www.bbc.com/news/election-us-2020-53898142>.

<sup>27</sup> *President Trump Departs White House*, C-SPAN (Sept. 24, 2020), <https://www.c-span.org/video/?476212-1/president-trump-departs-white-house#>.

stand by,” later adding “somebody’s got to do something about Antifa and the left.”<sup>28</sup>

67. The Proud Boys immediately celebrated this call to “stand by”:

A. On the social media site Parler, Proud Boys leader Henry “Enrique” Tarrío responded, “Standing by sir.”<sup>29</sup> On May 4, 2023, Tarrío was convicted of seditious conspiracy and sentenced to 22 years in prison for his actions on January 6.<sup>30</sup>

B. Another Proud Boys leader, Joseph Biggs, posted that “President Trump told the proud boys to stand by because someone needs to deal with ANTIFA...well sir! we're ready!!” and that “Trump basically said to go fuck them up! this makes me so happy.”<sup>31</sup> Biggs was convicted of seditious conspiracy and sentenced to 17 years in prison for his role on January 6.<sup>32</sup>

C. That same night, the Proud Boys began making and selling merchandise with the slogan “Stand Back and Stand By.”

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<sup>28</sup> Associated Press, *Trump tells Proud Boys: ‘Stand back and stand by’*, YOUTUBE (Sept. 29, 2020), [https://www.youtube.com/watch?v=qIHhB1ZMV\\_o](https://www.youtube.com/watch?v=qIHhB1ZMV_o).

<sup>29</sup> See January 6th Report, *supra* note 9, at 507-08 (Ex. H); <https://twitter.com/ByMikeBaker/status/1311130735584051201/photo/1> (screenshot).

<sup>30</sup> *Proud Boys Leader Sentenced to 22 Years in Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, DEP’T. OF JUSTICE (Sept. 5, 2023), <https://www.justice.gov/usao-dc/pr/proud-boys-leader-sentenced-22-years-prison-seditious-conspiracy-and-other-charges>.

<sup>31</sup> See January 6th Report, *supra* note 9, at 507-08 (Ex. H); <https://twitter.com/ByMikeBaker/status/1311130735584051201/photo/1> (screenshot).

<sup>32</sup> *Two Leaders of the Proud Boys Sentenced to Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, DEP’T. OF JUSTICE (Aug. 31, 2023), <https://www.justice.gov/usao-dc/pr/two-leaders-proud-boys-sentenced-prison-seditious-conspiracy-and-other-charges-related-us>.

68. Meanwhile, before November 3, 2020 (“Election Day”), Trump was advised by his campaign manager William Stepien not to prematurely declare victory while lawful votes, including mail-in and absentee ballots, were still being counted.<sup>33</sup>

69. Notwithstanding Stepien’s advice, Trump and his associates deliberately planned to declare victory before the election’s winner was determinable. For instance:

A. On November 1, 2020, Trump told close associates that he would declare victory on election night if it looked as if he was “ahead.”<sup>34</sup>

B. Around the same time, Steve Bannon, former White House strategist and advisor to Trump told a group of associates:

And what Trump’s going to do is just declare victory, right? He’s gonna declare victory, but that doesn’t mean he’s the winner, he’s just gonna say he’s a winner.<sup>35</sup>

70. On November 3, 2020, the United States held its presidential election.

71. That evening, media outlets projected Biden was in the lead.<sup>36</sup>

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<sup>33</sup> Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess. (June 13, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg48999/pdf/CHRG-117hrg48999.pdf> [hereinafter Second Jan. 6 Hearing Transcript].

<sup>34</sup> Jonathan Swan, *Scoop: Trump’s plan to declare premature victory*, AXIOS (Nov. 1, 2020), <https://www.axios.com/2020/11/01/trump-claim-election-victory-ballots>.

<sup>35</sup> Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 38 (July 21, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg49356/pdf/CHRG-117hrg49356.pdf>.

<sup>36</sup> Meg Wagner et al., *Election 2020 presidential results*, CNN (Nov. 5, 2020), <https://www.cnn.com/politics/live-news/election-results-and-news-11-04-20/index.html>.

72. Trump falsely alleged that widespread voter fraud had compromised the validity of such results. For example:

A. On November 4, 2020, he tweeted: “We are up BIG, but they are trying to STEAL the Election. We will never let them do it. Votes cannot be cast after the Polls are closed!”<sup>37</sup>

B. On November 5, 2020, he tweeted: “STOP THE FRAUD!” and “STOP THE COUNT!”<sup>38</sup>

73. On November 7, 2020, news organizations across the country declared that Biden had won the 2020 presidential election.<sup>39</sup>

74. That same day, Trump falsely tweeted: “I WON THIS ELECTION, BY A LOT!”<sup>40</sup>

**B. Trump Attempted to Enlist Government Officials to Overturn the Election Illegally.**

75. Several aides and advisors close to Trump investigated his election fraud claims and informed Trump that such allegations were unfounded. For example:

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<sup>37</sup> See Trump Twitter Collection, *supra* note 6, at 1 (Group Ex. E) (Nov. 4, 2020 at 12:49 AM).

<sup>38</sup> *Id.* at 1–2, (Nov. 5, 2020 at 9:12 AM & 12:21 PM).

<sup>39</sup> See, e.g., Bo Erickson, *Joe Biden projected to win presidency in deeply divided nation*, CBS NEWS (Nov. 7, 2020), <https://www.cbsnews.com/news/joe-biden-wins-2020-election-46th-president-united-states/>; Scott Detrow & Asma Khalid, *Biden Wins Presidency, According to AP, Edging Trump in Turbulent Race*, NPR (Nov. 7, 2020), <https://www.npr.org/2020/11/07/928803493/biden-wins-presidency-according-to-ap-edging-trump-in-turbulent-race>.

<sup>40</sup> See Trump Twitter Collection, *supra* note 6, at 2 (Group Ex. E) (Nov. 7, 2020 at 10:36 AM). <https://twitter.com/realDonaldTrump/status/1325099845045071873>.

A. Days after the election, a top data expert for Trump’s campaign, Matt Oczkowski, informed Trump that he would lose because not enough votes were cast in his favor.<sup>41</sup>

B. Around the same time, then-United States Attorney General William Barr told Trump he did not agree with the idea of saying the election was stolen.<sup>42</sup>

C. On November 23, 2020, Barr again informed Trump that his claims of fraud lacked merit.<sup>43</sup>

D. In mid-to-late November, Trump campaign lawyer Alex Cannon told Trump’s Chief of Staff, Mark Meadows, that he had been unable to find evidence of voter fraud sufficient to change the results in any of the key states.<sup>44</sup>

76. On December 1, 2020, Barr publicly declared that the United States Department of Justice had found no evidence of voter fraud that would affect the election’s result.<sup>45</sup>

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<sup>41</sup> Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, No. 117-2 (June 9, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg48998/pdf/CHRG-117hrg48998.pdf> [hereinafter First Jan. 6 Hearing Transcript].

<sup>42</sup> Second Jan. 6 Hearing Transcript, *supra* note 33.

<sup>43</sup> Select Comm. to Investigate the Jan. 6 Attack on the U.S. Capitol, Transcribed Interview of William Barr, at 18 (June 2, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000083860/pdf/GPO-J6-TRANSCRIPT-CTRL0000083860.pdf>.

<sup>44</sup> First Jan. 6 Hearing Transcript, *supra* note 41.

<sup>45</sup> Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, ASSOCIATED PRESS (June 28, 2022), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

77. Sometime between the election and December 14, 2020, Trump urged Barr to instruct the Department of Justice to seize voting machines.<sup>46</sup>

78. Barr refused, citing a lack of legal authority.<sup>47</sup>

79. On December 6, 2020, Trump called the Chairwoman of the Republican National Committee, Ronna Romney McDaniel, to enlist the Committee's help in gathering slates of fraudulent electors that would cast votes for Trump in states where Biden had won the election but where legal challenges to the election results were underway.<sup>48</sup>

80. On December 8, 2020, a senior campaign advisor to Trump wrote in an internal campaign email:

When our research and campaign legal team can't back up any of the claims made by our Elite Strike Force Legal Team, you can see why we're 0-32 on our cases. I'll obviously hustle to help on all fronts, but it's tough to own any of this when it's all just conspiracy shit beamed down from the mothership.<sup>49</sup>

81. On December 14, 2020, the electors of the Electoral College from each of the 50 states and the District of Columbia respectively convened to cast their official electoral votes. They voted 306-232 against Trump.<sup>50</sup>

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<sup>46</sup> Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess. (June 23, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhrg49353/pdf/CHRG-117hhrg49353.pdf> [hereinafter Fifth Jan. 6 Hearing Transcript].

<sup>47</sup> *Id.*

<sup>48</sup> Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Ronna Romney McDaniel, at 9-13 (June 1, 2022), <https://www.documentcloud.org/documents/23559939-transcript-of-ronna-mcdaniels-interview-with-house-january-6-committee>.

<sup>49</sup> Indictment at 13-14, *U.S. v. Trump*, Case No. 1:23-cr-00257-TSC, ECF No. 1 (D.D.C., Aug. 1, 2023), [https://www.justice.gov/storage/US\\_v\\_Trupp\\_23\\_cr\\_257.pdf](https://www.justice.gov/storage/US_v_Trupp_23_cr_257.pdf) [hereinafter August 1, 2023 Indictment].

<sup>50</sup> National Archives, *supra* note 7.

82. On December 14, 2020, at Trump’s direction, fraudulent electors without any colorable legal authority to do so convened sham proceedings in seven targeted states wherein Biden had won a majority of the votes — Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin — and cast fraudulent electoral ballots in favor of Trump.

83. Also on December 14, 2020, Barr resigned as the nation’s Attorney General, and Trump appointed Jeffrey Rosen as Acting Attorney General and Richard Donoghue as Acting Deputy Attorney General.<sup>51</sup>

84. During Rosen’s tenure, Trump requested that the Department of Justice file a lawsuit directly the United States Supreme Court challenging the election as an exercise of the Court’s original jurisdiction.<sup>52</sup>

85. The Department of Justice declined on the basis that it did not have legal authority to challenge state electoral procedures.<sup>53</sup>

86. On December 18, 2020, at a meeting in the Oval Office that included Trump, Sidney Powell, Mike Flynn, Patrick Byrne, Giuliani, Meadows, and other Trump advisors, Powell, Flynn, and Byrne attempted to persuade Trump to issue an executive order that would, among other things, direct either the Department of Homeland Security or the Department of Defense to seize states’ voting machines.

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<sup>51</sup> Fifth Jan. 6 Hearing Transcript, *supra* note 46, at 1.

<sup>52</sup> *Id.* at 8-9.

<sup>53</sup> *Id.*

87. White House Counsel Pat Cipollone, Eric Herschmann (a lawyer in the White House Counsel’s office and senior advisor to Trump), and Giuliani dissuaded Trump from ordering the seizure of voting machines using his official authority.

88. However, as the meeting continued, Giuliani and others stated in Trump’s presence that they could instead obtain access to voting machines through “voluntary” means.<sup>54</sup>

89. On December 31, 2020, Trump asked Rosen and Donoghue to direct the Department of Justice to seize voting machines.<sup>55</sup>

90. Rosen and Donoghue rejected Trump’s request, again citing the Department’s lack of authority to take such an action.<sup>56</sup>

91. Meanwhile, just as Giuliani and others had told Trump they would, teams coordinated by Powell, Giuliani, and other Trump advisors illegally accessed or attempted to illegally access voting machines in multiple battleground states. These included:

A. Fulton County, Pennsylvania (successfully breached on Dec. 31, 2020)

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<sup>54</sup> Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Derek Lyons, at 113-116 (Mar. 17, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000055541/pdf/GPO-J6-TRANSCRIPT-CTRL0000055541.pdf>; Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Deposition of Rudolph Giuliani, at 179-181 (May 20, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000083774/pdf/GPO-J6-TRANSCRIPT-CTRL0000083774.pdf>.

<sup>55</sup> Lyons Interview Transcript, *supra* note 54; Giuliani Dep. Transcript, *supra* note 54.

<sup>56</sup> Lyons Interview Transcript, *supra* note 54; Giuliani Dep. Transcript, *supra* note 54.

B. Coffee County, Georgia (successfully breached on Jan. 7, 2021)

C. Cross County, Michigan (attempted to be breached on Jan. 14, 2021)

92. A purpose of these illegal breaches or attempted breaches was to support Trump’s efforts to overturn the 2020 election by generating supposed “proof” of “fraud,” in some cases even after the violent January 6, 2021 attack.<sup>57</sup>

93. Between December 23, 2020, and early January of 2021, Trump attempted to speak with Rosen on the matter of election fraud nearly every day.<sup>58</sup>

94. According to Rosen, “the President’s entreaties became more urgent” and Trump “became more adamant that we weren’t doing our job.”<sup>59</sup>

95. On December 25, 2020, Trump called Pence — who, as President of the Senate, presides over the electoral count in Congress — to wish him a Merry Christmas and to urge him to reject the electoral votes on January 6, 2021; Pence responded, “You know I don’t think I have the authority to change the outcome.”<sup>60</sup>

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<sup>57</sup> See, e.g., Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Christina Bobb, at 96-97 (Apr. 21, 2022), <https://www.govinfo.gov/con tent/pkg/GPO-J6-TRANSCRIPT-CTRL0000071088/pdf/GPO-J6-TRANSCRIPT-CTRL0000071088.pdf>.

<sup>58</sup> Fifth Jan. 6 Hearing Transcript, *supra* note 46, at 8-9.

<sup>59</sup> *Id.* at 10; see also Katie Benner, *Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General*, N.Y. TIMES (Jan. 22, 2021), <https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justice-department-election.html>.

<sup>60</sup> August 1, 2023 Indictment, *supra* note 49, at 33.

96. On December 27, 2020, Rosen told Trump “that the DOJ can’t and won’t snap its fingers and change the outcome of the election. It doesn’t work that way.”<sup>61</sup> Trump’s response was, in essence, “just say [the election] was corrupt and leave the rest to me and the Republican Congressmen.”<sup>62</sup>

97. On January 2, 2021, Jeffrey Clark, the Acting United States Assistant Attorney General for the Civil Division and Assistant Attorney General for the Environment and Natural Resources Division at the Department of Justice — and who had met with Trump without prior authorization from his superiors, breaking departmental protocol — told Rosen and Donoghue that Trump was prepared to fire them and to appoint Clark as the Acting Attorney General.<sup>63</sup>

98. Clark asked Rosen and Donoghue if they would sign a draft letter to state officials recommending that the officials send an alternate slate of electors to Congress, and if they did so, then Clark would turn down Trump’s offer and Rosen would remain in his position.<sup>64</sup>

99. Rosen refused.<sup>65</sup>

100. On January 3, 2021, Clark — again without authorization — met with Trump and accepted Trump’s offer to become Acting Attorney General in light of Rosen’s refusal to sign the draft letter.<sup>66</sup>

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<sup>61</sup> Fifth Jan. 6 Hearing Transcript, *supra* note 46, at 13.

<sup>62</sup> *Id.*

<sup>63</sup> See January 6th Report, *supra* note 9, at 397 (Ex. H).

<sup>64</sup> Fifth Jan. 6 Hearing Transcript, *supra* note 46, at 28-29.

<sup>65</sup> *Id.*

<sup>66</sup> See January 6th Report, *supra* note 9, at 398 (Ex. H).

101. That afternoon, Clark attempted to fire Rosen, but Rosen would not accept being fired by a subordinate.<sup>67</sup>

102. That evening, when told that Rosen's departure would result in mass resignations at the Department of Justice and by his own White House Counsel, Trump relented on his plan to replace Rosen with Clark.<sup>68</sup>

103. Trump's efforts to coerce public officials to assist in his scheme to unlawfully overturn the election were not limited to federal officials. Following his election loss, Trump both publicly and privately pressured state officials in various states around the country to unlawfully overturn the election results. For example, on January 2, 2021, in a recorded telephone conversation, Trump pressured Georgia Secretary of State Brad Raffensperger to "find 11,780 votes" for him, and thereby fraudulently and unlawfully turn his electoral loss in Georgia into an electoral victory.

104. Trump's relentless false claims about election fraud and his public pressure on and condemnation of election officials resulted in threats of violence against election officials around the country.

105. Trump knew about the threats of violence that he was provoking and, in the face of pleas from public officials to denounce the violence, instead further encouraged it with inflammatory tweets.

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<sup>67</sup> Fifth Jan. 6 Hearing Transcript, *supra* note 46, at 27-28.

<sup>68</sup> Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Richard Peter Donoghue, at 125 (Oct. 1, 2021), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000034600/pdf/GPO-J6-TRANSCRIPT-CTRL0000034600.pdf>.

106. During the weeks leading up to January 6, 2021, Trump oversaw, directed, and encouraged a “fake elector” scheme under which seven states that Trump lost would submit an “alternate” slate of electors as a pretext for Vice President Pence to decline to certify the actual electoral vote on January 6.

107. Trump’s efforts to unlawfully overturn the results of the 2020 presidential election are the subjects of criminal indictments pending against him in the United States District Court for the District of Columbia and in the State of Georgia.

108. On January 3, 2021, Trump again told Pence that Pence had the right to reject the electoral vote on January 6 and urged him to do so.<sup>69</sup>

109. Pence again rejected Trump’s request.<sup>70</sup>

110. On January 4, 2021, Trump and his then-attorney, John Eastman, met with Pence and Pence’s Counsel, Gregory Jacob, to discuss Eastman’s legal theory that Pence could either reject votes on January 6 during the certification process or suspend the proceedings so that states could reexamine the results.<sup>71</sup>

111. Later, Trump admitted that the decision to continue seeking to overturn the election after the failure of legal challenges was his alone. On a September 17, 2023 broadcast of NBC’s “Meet the Press,” moderator Kristen Welker asked Trump:

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<sup>69</sup> August 1, 2023 Indictment, *supra* note 49, at 33.

<sup>70</sup> *Id.*

<sup>71</sup> Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, No. 117-4 (June 16, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg49351/pdf/CHRG-117hrg49351.pdf> [hereinafter Third Jan. 6 Hearing Transcript]; *see also* Order Re Privilege of Documents, *Eastman v. Thompson*, No. 8:22-cv-00099, ECF No. 260 at 7 (C.D. Cal. March 28, 2022).

The most senior lawyers in your administration and on your campaign told you that after you lost more than 60 legal challenges that it was over. Why did you ignore them and decide to listen to a new outside group of attorneys?

Trump responded: “I didn’t respect them as lawyers. . . . You know who I listen to? Myself.”<sup>72</sup> When Welker asked, “Were you calling the shots, though, Mr. President, ultimately?” Trump replied: “As to whether or not I believed it was rigged? Oh, sure. It was my decision.”<sup>73</sup>

112. On January 5, 2021, Eastman met privately with Jacob.<sup>74</sup>

113. On Trump’s behalf, Eastman expressly requested that Pence reject the certification of election results.<sup>75</sup> During this meeting, Eastman acknowledged that vice presidents both before and after Pence would not have the legal authority to do so under the Electoral Count Act. He also stated that this theory would lose in the Supreme Court without a single justice in agreement.<sup>76</sup>

114. All the while, Trump publicly and falsely maintained that the 2020 presidential election results were illegitimate due to fraud and set the expectation that Pence had the authority to overturn the election. For example:

A. On December 4, 2020, Trump tweeted: “RIGGED ELECTION!”<sup>77</sup>

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<sup>72</sup> Full transcript: Read Kristen Welker’s interview with Trump, NBC NEWS (Sept. 17, 2023), <https://www.nbcnews.com/meet-the-press/transcripts/full-transcript-read-meet-the-press-kristen-welker-interview-trump-rcna104778>.

<sup>73</sup> *Id.*

<sup>74</sup> Third Jan. 6 Hearing Transcript, *supra* note 71, at 14-15.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 18-19.

<sup>77</sup> See Trump Twitter Collection, *supra* note 6, at 3 (Group Ex. E) (Dec. 4, 2020 at 8:55 AM). <https://twitter.com/realDonaldTrump/status/1334858852337070083>.

B. On December 10, 2020, Trump tweeted:

How can you give an election to someone who lost the election by hundreds of thousands of legal votes in each of the swing states. How can a country be run by an illegitimate president?<sup>78</sup>

C. On December 15, 2020, Trump tweeted: “Tremendous evidence pouring in on voter fraud. There has never been anything like this in our Country!”<sup>79</sup>

D. On December 23, 2020, Trump retweeted a memo titled “Operation ‘PENCE’ CARD,” which falsely asserted that the Vice President could disqualify legitimate electors.<sup>80</sup>

E. On January 5, 2021, Trump tweeted: “The Vice President has the power to reject fraudulently chosen electors.”<sup>81</sup>

**C. Trump Urged his Supporters to Amass at the Capitol.**

115. On December 11, 2020, the Supreme Court rejected a lawsuit brought by the State of Texas alleging that election procedures in four states had resulted in illegitimate votes.<sup>82</sup>

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<sup>78</sup> See Trump Twitter Collection, *supra* note 6, at 3 (Group Ex. E) (Dec. 10, 2020 at 9:26 AM). <https://twitter.com/realDonaldTrump/status/1337040883988959232>.

<sup>79</sup> *Id.* at 5 (Dec. 15, 2020 at 10:41 AM). <https://twitter.com/realDonaldTrump/status/1338871862315667456>.

<sup>80</sup> Mike Pence, *Mike Pence: My Last Days With Donald Trump*, WALL STREET JOURNAL (Nov. 9, 2022) <https://www.wsj.com/articles/donald-trump-mike-pence-jan-6-president-rally-capitol-riot-protest-vote-count-so-help-me-god-stolen-election-11668018494?st=rna6xw1pmjmaoss>.

<sup>81</sup> The American Presidency Project, *Tweets of January 5, 2021*, UC SANTA BARBARA (Jan. 8, 2021) (archived), <https://www.presidency.ucsb.edu/documents/tweets-january-5-2021>.

<sup>82</sup> *Texas v. Pennsylvania, et al.*, No. 22-155, Order (U.S. Sup. Ct., Dec. 11, 2020).

116. The next morning, on December 12, 2020, Trump tweeted that the Supreme Court order was “a great and disgraceful miscarriage of justice,” and that “WE HAVE JUST BEGUN TO FIGHT!!!”<sup>83</sup>

117. That same day, Ali Alexander, the organizer of the “Stop the Steal” rally, as well as Alex Jones and Owen Shroyer of Infowars (a conspiracy website specializing in disinformation and false election fraud theories) led a march on the Supreme Court.<sup>84</sup>

118. The crowd at the march chanted slogans such as “Stop the Steal!” “1776!” “Our revolution!” and Trump’s earlier tweet, “The fight has just begun!”<sup>85</sup>

119. That same day, Trump tweeted: “Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn’t know about this, but I’ll be seeing them! #MAGA.”<sup>86</sup>

120. Later that day, Trump flew over the crowd in Marine One.<sup>87</sup>

121. On December 18, 2020, Trump tweeted:

@senatemajldr [Senate Majority Leader Mitch McConnell] and Republican Senators have to get tougher, or you won’t have a Republican

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<sup>83</sup> See Trump Twitter Collection, *supra* note 6, at 4, (Group Ex. E) (Dec 12, 2020 at 7:58 AM & 8:47 AM).

<https://twitter.com/realDonaldTrump/status/1337743516294934529>, and <https://twitter.com/realDonaldTrump/status/1337755964339081216>.

<sup>84</sup> See January 6th Report, *supra* note 9, at 505 (Ex. H).

<sup>85</sup> *Id.*

<sup>86</sup> See Trump Twitter Collection, *supra* note 6, at 5 (Group Ex. E) (Dec. 12, 2020 at 9:59 AM). <https://twitter.com/realDonaldTrump/status/1337774011376340992>.

<sup>87</sup> See January 6th Report, *supra* note 9, at 506 (Ex. H).

Party anymore. We won the Presidential Election, by a lot. FIGHT FOR IT. Don't let them take it away!<sup>88</sup>

122. On December 19, 2020, Trump tweeted: “Big protest in D.C. on January 6th! Be there, will be wild!”<sup>89</sup>

**D. In Response to Trump’s Call for a “Wild” Protest, Trump’s Supporters Planned Violence.**

123. In response to Trump’s “will be wild!” tweet, Twitter’s Trust and Safety Policy team recorded a “fire hose of calls to overthrow the U.S. government.”<sup>90</sup>

124. Other militarized extremist groups began organizing to prepare for January 6 after Trump’s “will be wild!” tweet. These included the Oath Keepers, the Proud Boys, the Three Percenter militias, and others.<sup>91</sup>

125. An analyst at the National Capital Region Threat Intelligence Consortium observed that Trump’s Tweet led to “a tenfold uptick in violent online rhetoric targeting Congress and law enforcement” and noticed “violent right-wing groups that had not previously been aligned had begun coordinating their efforts.”<sup>92</sup>

126. For example:

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<sup>88</sup> See Trump Twitter Collection, *supra* note 6, at 6 (Group Ex. E) (Dec 18, 2020 at 9:14 AM). <http://www.twitter.com/realDonaldTrump/status/1339937091707351046>.

<sup>89</sup> *Id.* at 6, (Dec. 19, 2020 at 1:42 PM), <https://twitter.com/realDonaldTrump/status/1340185773220515840>.

<sup>90</sup> See January 6th Report, *supra* note 9, at 449 (Ex. H).

<sup>91</sup> See Day 5 Transcript, *supra* note 9, at 200:3-21, 200:5-202:22, 218:7-16 (Ex. M) (Heaphy Testimony).

<sup>92</sup> See January 6th Report, *supra* note 9, at 694 (Ex. H).

A. Kelly Meggs of the Oath Keepers Florida Chapter read

Trump's tweet and commented in a Facebook post:

Trump said It's gonna be wild!!!!!! It's gonna be wild!!!!!! He wants us to make it WILD that's what he's saying. He called us all to the Capitol and wants us to make it wild!!! Sir Yes Sir!!! Gentlemen we are heading to DC pack your shit!!<sup>93</sup>

Meggs was later convicted by a federal jury for seditious conspiracy under 18 U.S.C. § 2384 for her participation in the January 6 attack and was sentenced to 12 years in prison.<sup>94</sup>

B. Oath Keepers from various states had established a "Quick Reaction Force" plan wherein they cached weapons for January 6, 2021, at hotels in Ballston and Vienna, Virginia.<sup>95</sup>

C. Tarrío sent encrypted messages to others instructing that they should "storm the Capitol."<sup>96</sup>

D. The Proud Boys received and had been in possession of a document titled "1776 Returns" wherein the authors divided their plan to

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<sup>93</sup> Third Superseding Indictment at ¶ 37, *United States v. Crowl et al.*, No. 1:21-cr-28, ECF No. 127 (D.D.C. Mar. 31, 2021); *see also* January 6th Report, *supra* note 9, at 515 (Ex. H).

<sup>94</sup> *United States v. Rhodes, III et al.*, No. 1:22-cr-00015 (D.D.C. Nov. 29, 2022).

<sup>95</sup> Superseding Indictment at ¶ 45, *United States v. Rhodes, III et al.*, No. 1:22-cr-15, ECF No. 167 (D.D.C. June 22, 2022); Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Frank Anthony Marchisella, at 34 (Apr. 29, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000071096/pdf/GPO-J6-TRANSCRIPT-CTRL0000071096.pdf>.

<sup>96</sup> Second Superseding Indictment at ¶ 50, *United States v. Nordean, et al.*, No. 1:21-cr-00175, ECF No. 305 (D.D.C. Mar. 7, 2022).

overtake federal government buildings into five parts: “Infiltrate, Execution, Distract, Occupy and Sit-In.”<sup>97</sup>

E. Members of the Proud Boys were also convicted of seditious conspiracy after the January 6 attack.<sup>98</sup>

F. Matt Bracken, a host for Infowars, told viewers that it may be necessary to storm the Capitol, stating:

“We’re going to only be saved by millions of Americans . . . occupying the entire area, if—if necessary, storming right into the Capitol. . . We know the rules of engagement. If you have enough people, you can push down any kind of a fence or a wall.”<sup>99</sup>

G. Subscribers to the conspiracy theory group QAnon shared online a digital banner that read “Operation Occupy the Capitol” and depicted the U.S. Capitol Building being torn in two.<sup>100</sup>

H. The Three Percenter militias, a far-right, anti-government movement, sought to share images with text that read, “#OccupyCongress,” “ELECTION FRAUD IS TREASON,” “JANUARY

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<sup>97</sup> Zachary Rehl’s Motion to Reopen Detention Hearing and Request for a Hearing, Ex. 1: “1776 Returns,” *United States v. Nordean, et al.*, No. 1:21-cr-00175-TJK, ECF No. 401-1 (D.D.C. June 15, 2022), <https://s3.documentcloud.org/documents/22060615/1776-returns.pdf>.

<sup>98</sup> *Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. DEP’T OF JUSTICE (May 4, 2023), <https://www.justice.gov/opa/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach>.

<sup>99</sup> The Alex Jones Show, “January 6th Will Be a Turning Point in American History,” BANNED.VIDEO, at 16:29 (Dec. 31, 2020), <https://www.bitchute.com/video/XBIIZYTRfaIB/>; See January 6th Report, *supra* note 9, at 507 (Ex. H).

<sup>100</sup> Ben Collins & Brandy Zadrozny, *Extremists made little secret of ambitions to ‘occupy’ Capitol in weeks before attack*, NBC (Jan. 8, 2021), <https://www.nbcnews.com/tech/internet/extremists-made-little-secret-ambitions-occupy-capitalweeks-attack-n1253499>.

6, 2021,” and “IF THEY WON’T HEAR US[,] THEY WILL FEAR US.”<sup>101</sup>

127. On January 1, 2021, a supporter tweeted to Trump that “The calvary [sic] is coming, Mr. President!”<sup>102</sup> Trump quoted that tweet and wrote back: “A great honor!”<sup>103</sup>

128. Organizers planned two separate demonstrations for January 6, 2021.

A. Kylie and Amy Kremer, a mother-daughter pair involved with “Women for America First,” planned a demonstration on the Ellipse (“Ellipse Demonstration”), a park south of the White House fence and north of Constitution Avenue and the National Mall in Washington, D.C.<sup>104</sup>

B. Alexander planned an assemblage immediately surrounding the Capitol grounds and the steps of the building.<sup>105</sup>

129. On December 29, 2020, Alexander tweeted:

Coalition of us working on 25 new charter buses to bring people FOR FREE to #JAN6 #STOPTHESTEAL for President Trump. If you have

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<sup>101</sup> Criminal Complaint at 10-11, *United States v. Hazard*, No. 1:21-mj-00686, ECF No. 1 (D.D.C. Dec. 7, 2021).

<sup>102</sup> See Trump Twitter Collection, *supra* note 6, at 7 (Group Ex. E) (Jan. 1, 2021 at 3:34 PM). <https://twitter.com/realDonaldTrump/status/1345106078141394944>.

<sup>103</sup> *Id.*

<sup>104</sup> Women For America First Ellipse Public Gathering Permit, NAT’L PARK SERV. (Jan. 5, 2021), <https://www.nps.gov/aboutus/foia/upload/21-0278-Women-for-America-First-Ellipse-permit-REDACTED.pdf>.

<sup>105</sup> *President Trump Wants You in DC January 6*, WILDPROTEST.COM (2020), <https://web.archive.org/web/20201223062953/http://wildprotest.com/> (archived).

money for more buses or have a company, let me know. We will list our buses sometime in the next 72 hours. STAND BACK & STAND BY!<sup>106</sup>

130. Meanwhile, by late December, Trump, his White House staff, and his campaign became directly involved in planning the Ellipse Demonstration. Trump personally helped select the speaker lineup, and his campaign and joint fundraising committees made direct payments of \$3.5 million to rally organizers.<sup>107</sup>

131. By December 29, 2020, Trump had formed and conveyed to allies a plan to order his supporters to march to the Capitol at the end of his speech.<sup>108</sup> His goal was to unlawfully force Congress to stop the certification of electoral votes.<sup>109</sup>

132. Between January 2 and 4, 2021, Kremer and other organizers of the Ellipse Demonstration became aware that Trump intended to “order [the crowd] to the Capitol at the end of his speech.” These organizers messaged each other that “POTUS is going to have us march there [the Supreme Court]/the Capitol,” and that Trump was going to “call on everyone to march to the [C]apitol.”<sup>110</sup> These organizers received this information from Meadows.<sup>111</sup>

133. In early January 2021, Trump and extremists began publicly referring to January 6 and these extremists’ plans surrounding the congressional

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<sup>106</sup> See January 6th Report, *supra* note 9, at 532 (Ex. H).

<sup>107</sup> See January 6th Report, *supra* note 9, at 533-36 (Ex. H); Massoglia, *supra* note 10.

<sup>108</sup> See January 6th Report, *supra* note 9, at 533 (Ex. H).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

certification of electoral votes using increasingly apocalyptic terminology. Some referred to it as “1776,” analogizing it to the American colonists’ violent rebellion against the British during the American Revolution.

134. On January 4, 2021, at a rally in Dalton, Georgia, Trump stated: “If you don’t fight to save your country with everything you have, you’re not going to have a country left.”<sup>112</sup>

135. During the rally, Trump asserted that the congressional certification of the election set for January 6, 2021, would not take place and insinuated that violent events would occur.<sup>113</sup> For example, he stated:

- A. “If the liberal Democrats take the Senate and White House. . . And they’re not taking this White House. We’re going to fight like hell, I’ll tell you right now.”
- B. “We’re going to take it back.”
- C. “There’s no way we lost Georgia. There’s no way. That was a rigged election, but we’re still fighting it and you’ll see what’s going to happen.”
- D. “We can’t let that happen. The damage they do will be permanent and will be irreversible. Can’t let it happen.”
- E. “We will never give in. We will never give up. We will never back down. We will never, ever surrender.”
- F. “We have to go all the way and that’s what’s happening. You watch what happens over the next couple of weeks. You watch what’s going to come out. Watch what’s going to be revealed. You watch.”

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<sup>112</sup> Bloomberg Quicktake, *LIVE: Trump Stumps for Georgia Republicans David Perdue, Kelly Loeffler Ahead of Senate Runoff*, YOUTUBE (Jan. 4, 2021), <https://www.youtube.com/watch?v=9HisWmJJ3oE>.

<sup>113</sup> *Id.*

136. At the rally, the crowd chanted “Fight for Trump! Fight for Trump!” several times.<sup>114</sup>

137. By early January 2021, Trump anticipated that the crowd that was preparing to amass on January 6 at his behest would be large and violent.<sup>115</sup>

138. On January 5, 2021, several events were held across D.C. on behalf of Stop the Steal, an entity formed in early November 2020 to mobilize around Trump’s claim that the election had been rigged.<sup>116</sup> Speakers during these events made remarks about the event to be held at the Capitol the next day. For example:

A. Alexander said: “We must rebel. . . we might make this Fort Trump. . . we’re going to keep fighting for you Mr. Trump.”<sup>117</sup>

B. Jones announced: “This is a fight for the future of western civilization as we know it. . . we dare not fail,” and “1776 is always an option. . . these degenerates in the deep state are going to give us what we want, or we are going to shut this country down.”<sup>118</sup>

C. Several members of the Phoenix Project, a Three-Percenter-linked group, told the January 5 crowd: “We are at war,”

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<sup>114</sup> *Id.*

<sup>115</sup> Letter from Donald J. Trump to The Select Committee to Investigate the January 6th Attack on the U.S. Capitol (Oct. 13, 2022), <https://s3.documentcloud.org/documents/23132276/830-am-final-january-6th-committee-letter14446.pdf>.

<sup>116</sup> On information and belief, this “Stop the Steal” entity is distinct from an identically named organization founded in 2016 by Roger Stone.

<sup>117</sup> *See* January 6th Report, *supra* note 9, at 537 (Ex. H).

<sup>118</sup> *Id.*

promising to “fight” and “bleed,” and that they will “not return to our peaceful way of life until this election is made right.”<sup>119</sup>

139. On January 5, in response to these extremist demonstrations,

Trump tweeted:

Our Country has had enough, they won't take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!<sup>120</sup>

140. That same evening, Trump told his White House staff that his supporters would be “fired up” and “angry” the next day.<sup>121</sup>

141. Also on January 5, 2021, Trump met privately with Pence and again demanded he obstruct the certification.<sup>122</sup>

142. Pence again informed Trump that he did not have the authority to unilaterally reject electoral votes and consequently would not do so.<sup>123</sup>

143. Trump informed Pence that if he did not reject the votes, then Trump would publicly criticize Pence for it.<sup>124</sup>

144. Later that night, Trump authorized his campaign to issue a fallacious public statement that read: “The Vice President and I are in total agreement that the Vice President has the power to act.”<sup>125</sup>

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<sup>119</sup> *Id.*

<sup>120</sup> See Trump Twitter Collection, *supra* note 6, at 8 (Group Ex. E) (Jan. 5, 2021 at 5:05 PM). <http://www.twitter.com/realDonaldTrump/status/1346578706437963777>.

<sup>121</sup> See January 6th Report, *supra* note 9, at 539 (Ex. H).

<sup>122</sup> August 1, 2023 Indictment, *supra* note 49, at 36.

<sup>123</sup> Jim Acosta & Kaitlan Collins, *Pence informed Trump that he can't block Biden's win*, CNN (Jan. 5, 2021), <https://cnn.it/3FH4gx9>.

<sup>124</sup> August 1, 2023 Indictment, *supra* note 49, at 36.

<sup>125</sup> *Id.*

**E. Trump and his Administration Knew of Supporters’ Plans to Use Violence and/or to Forcefully Prevent Congress from Certifying the Election Results.**

145. Trump, his closest aides, the Secret Service, and the Federal Bureau of Investigation were all aware that Trump supporters—whom Trump had aroused with false claims of election fraud and veiled calls for violence—intended to commit violence at the Capitol on January 6 if the vote was certified.

146. On December 24, 2020, the Secret Service received from a private intelligence group a list of responses to Trump’s December 19 “will be wild!” tweet.<sup>126</sup> Those responses included<sup>127</sup>:

A. “I read [the Tweet] as armed.”

B. “There is [sic] not enough cops in DC to stop what is coming.”

C. “Make sure they know who to fear,” and “Waiting for Trump to say the word.”

147. On December 26, 2020, the Secret Service received a tip that the Proud Boys had plans to enter Washington, D.C. armed. The Secret Service forwarded this tip to the Capitol Police.<sup>128</sup>

148. On December 28, 2020, the Secret Service again forwarded warnings that pro-Trump demonstrators were being urged to occupy the federal building.<sup>129</sup>

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<sup>126</sup> See January 6th Report, *supra* note 9, at 62 (Ex. H).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

149. On December 30, 2020, the Secret Service held a briefing that highlighted how the President’s December 19 “will be wild!” Tweet was found alongside hashtags such as #OccupyCapitols and #WeAreTheStorm.<sup>130</sup>

150. Also on December 30, 2020, Jason Miller — a senior advisor to Trump — texted Meadows a link to “thedonald.win” website and stated, “I got the base FIRED UP.” The link was to a page with comments such as “Gallows don’t require electricity” and “if the filthy commie maggots try to push their fraud through, there will be hell to pay.”<sup>131</sup>

151. The FBI received many tips regarding the potential for violence on January 6. One tip said:

They think they will have a large enough group to march into DC armed and will outnumber the police so they can't be stopped .... They believe that since the election was “stolen” it's their constitutional right to overtake the government and during this coup no U.S. laws apply. Their plan is to literally kill. Please, please take this tip seriously and investigate further.<sup>132</sup>

152. On January 5, 2021, an FBI office in neighboring Norfolk, Virginia issued an alert to law enforcement agencies titled, “Potential for Violence in Washington, D.C., Area in Connection with Planned ‘StopTheSteal’ Protest on 6 January 2021.”<sup>133</sup>

153. Trump was personally informed of at least some of these plans for violent action.

154. Trump nevertheless proceeded with his plans for January 6, 2021.

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 63.

<sup>132</sup> *See* Day 5 Transcript, *supra* note 9, at 218:7-16 (Ex M) (Heaphy Testimony).

<sup>133</sup> *See* January 6th Report, *supra* note 9, at 62 (Ex. H).

### III. THE JANUARY 6, 2021 INSURRECTION.

#### A. The Two Demonstrations.

155. On the morning of January 6, 2021, before the joint session of Congress convened to count the Electoral College’s votes and certify the results, thousands of people began gathering around Washington, D.C. Many of these people headed to the Ellipse, near the White House, where then-President Trump and others were scheduled to speak. Others headed directly to the Capitol Building.

156. By 11:00AM EST, the United States Capitol Police (“USCP”) reported “large crowds around the Capitol building,” including approximately 200 members of the Proud Boys.<sup>134</sup> Some of the people gathering in Washington were “equip[ed] ... with communication devices and donning reinforced vests, helmets, and goggles.”<sup>135</sup>

#### B. Trump’s Preparations as the Demonstrations Began.

157. On January 6, at 1:00 AM, Trump tweeted: “If Vice President @Mike\_Pence comes through for us, we will win the Presidency. . . Mike can send it back!”<sup>136</sup>

158. On January 6, at approximately 10:00 AM, White House Deputy Chief of Staff Tony Ornato — who was formerly the head of Trump’s Secret

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<sup>134</sup> U.S. Senate Comm. On Homeland Security & Gov’t Affairs, *Examining The U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6 (Staff Report)*, at 26 (June 8, 2021), [https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/HSGAC&RulesFullReport\\_ExaminingU.S.CapitolAttack.pdf](https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/HSGAC&RulesFullReport_ExaminingU.S.CapitolAttack.pdf).

<sup>135</sup> *United States v. Caldwell*, 581 F. Supp. 3d 1, 8 (D.D.C. 2021).

<sup>136</sup> See Trump Twitter Collection, *supra* note 6, at 8 (Group Ex. E) (Jan. 6, 2021 at 1:00 AM). <https://twitter.com/realDonaldTrump/status/1346698217304584192>.

Service detail — briefed Meadows on concerns that members of the crowd were armed with weapons such as knives and guns. Ornato confirmed with Meadows that he had already spoken with Trump about this.<sup>137</sup>

159. At approximately 10:30 AM, Trump edited a draft of his speech for that afternoon’s Ellipse Demonstration (also known as the Save America Rally). Trump personally added the text:

[W]e will see whether Mike Pence enters history as a truly great and courageous leader. All he has to do is refer the illegally-submitted electoral votes back to the states that were given false and fraudulent information where they want to recertify.<sup>138</sup>

160. Before Trump edited the draft, it did not contain any mention of Pence.

161. Herschmann had tried to remove the newly added lines and advised against advancing Eastman’s legal theory that Pence should reject electoral votes because, he stated, he “didn’t concur with the legal analysis.”<sup>139</sup>

**C. The Increasingly Rampageous Demonstration at the Ellipse.**

162. At the Ellipse Demonstration, speakers preceding Trump exhorted the crowd to take forceful action to ensure that Congress and/or Pence rejected electoral votes for Biden. For example:

A. Brooks urged the crowd to “start taking down names and kicking ass” and be prepared to sacrifice their “blood” and “lives” and “do

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<sup>137</sup> See January 6th Report, *supra* note 9, at 585 (Ex. H).

<sup>138</sup> *Id.* at 582.

<sup>139</sup> *Id.*

what it takes to fight for America” by “carry[ing] the message to Capitol Hill,” since “the fight begins today.”<sup>140</sup>

B. Giuliani called for “trial by combat.”<sup>141</sup>

C. Eastman perpetuated claims of voter fraud and said:

“All that we are demanding of Pence is this afternoon at one o’clock he let the legislators of the states look into this so we get to the bottom of it.”<sup>142</sup>

163. Trump and Meadows were aware of the planned line-up of speakers at the Ellipse Demonstration.<sup>143</sup>

164. Trump and Meadows were warned by aides against including incendiary speakers like Giuliani and Eastman, who were well-known and exceedingly likely to rile up the crowd with incendiary comments and false claims of election fraud.

165. Trump refused to remove Giuliani and Eastman as speakers.

166. Around 10:57 AM, the organizers of the demonstration played a two-minute pro-Trump video.<sup>144</sup> The video included flashing images of Biden and Pelosi while Trump’s pre-recorded voiced announced: “For too long, a small

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<sup>140</sup> The Hill, *supra* note 12.

<sup>141</sup> Wash. Post, *supra* note 11.

<sup>142</sup> *Rally on Electoral College Vote Certification*, *supra* note 13, at 2:26:00.

<sup>143</sup> Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Deposition of Max Miller, at 81-83, 129-30 (Jan. 20, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000038857/pdf/GPO-J6-TRANSCRIPT-CTRL0000038857.pdf>; *see also* Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Katrina Pierson (Mar. 25, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000060756/pdf/GPO-J6-TRANSCRIPT-CTRL0000060756.pdf>.

<sup>144</sup> Ryan Goodman, Trump Film Ellipse Jan. 6, 2021, VIMEO (Feb. 3, 2021), <https://vimeo.com/508134765>.

group in our nation's capital has reaped the rewards of government, while the people have borne the cost." The video emphasized that the government had been compromised by sinister powers.

167. Around 11:39 AM, Trump left the White House by motorcade and drove to the Ellipse.<sup>145</sup>

168. At the Ellipse, an estimated 25,000 people refused to walk through the magnetometers, devices for detecting weapons, at the entrance.<sup>146</sup>

169. Ornato informed Trump that these people were unwilling to pass through the monitors because they had weapons that they did not want confiscated by the Secret Service.<sup>147</sup>

170. Trump became upset that his confederates were not being allowed to carry their weapons through the entrance.

171. Trump ordered his team to remove the magnetometers.

172. He shouted at his advance team words to the effect of:

I don't [fucking] care that they have weapons. They're not here to hurt me. Take the [fucking] mags away. Let my people in. They can march to the Capitol from here. Take the [fucking] mags away.<sup>148</sup>

173. Around 11:57 AM, Trump took the stage at the Ellipse to give his speech.

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<sup>145</sup> Alemany, *supra* note 15.

<sup>146</sup> See January 6th Report, *supra* note 9, at 585 (Ex. H).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

**D. Insurrectionists Prepared For Battle at the Capitol.**

174. Even before Trump gave his speech at the Ellipse Demonstration, crowds had already begun amassing near the Capitol Building.

175. Around 11:30 AM, a large group of Proud Boys arrived at the Capitol, moving in loosely organized military-style columns of five across. The crowd made way for them.<sup>149</sup>

176. At the same time, Washington, D.C. police personnel had to leave Capitol Grounds to respond to reports of rampant lawbreaking throughout the city, including a man with a rifle and a vehicle loaded with weaponry.<sup>150</sup> For example:

A. Around 12:33 PM, police detained a separate individual with a rifle near the World War II Memorial, which was close to where Trump was speaking.

B. Around 12:45 PM, law enforcement security agencies such as the Capitol Police and FBI responded to reports of a pipe bomb outside the Republican National Committee headquarters and suspicious packages found in or around other buildings near the Capitol — including the Supreme Court and the Democratic National Committee headquarters.

177. On information and belief, Trump was personally informed about the escalating security situation at the Capitol before he began his speech.

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<sup>149</sup> Alemany, *supra* note 15.

<sup>150</sup> *Id.*

**E. Trump Directed Supporters to March on the Capitol and Intimidate Pence and Congress.**

178. Around 11:57 AM, Trump began his speech at the Ellipse.<sup>151</sup>

179. For the first 15 minutes of his speech, he falsely repeated that he had been defrauded of the presidency, which he claimed he had won “by a landslide,” and said, “we will never give up, we will never concede. It doesn’t happen. You don’t concede when there’s theft involved.”<sup>152</sup>

180. Throughout his speech, Trump repeatedly called out Pence by name, urging Pence to reject electoral votes from states Trump had lost.

181. As his speech continued, the mob became audibly and increasingly angry at Pence and Congress. During Trump’s speech, demonstrators shouted “storm the Capitol!,” “invade the Capitol building!,” and “take the Capitol!”<sup>153</sup>

182. Around 12:16 PM, Trump made his first call on demonstrators to head towards the Capitol:

After this, we’re going to walk down and I’ll be there with you. We’re going to walk down. We’re going to walk down any one you want, but I think right here. We’re going to walk down to the Capitol, and we’re going to cheer on our brave senators, and congressmen and women. We’re probably not going to be cheering so much for some of them because you’ll never take back our country with weakness. You have to show strength, and you have to be strong.

183. Immediately after this remark, approximately 10,000-15,000 demonstrators began the roughly 30-minute march to the Capitol Building, just as

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<sup>151</sup> *Id.*

<sup>152</sup> See *Rally on Electoral College Vote Certification*, *supra* note 13; *Donald Trump Speech*, *supra* note 13; Naylor, *supra* note 13.

<sup>153</sup> Dylan Stableford, *New video shows Trump rally crowd cheering call to ‘storm the Capitol’*, YAHOO NEWS (Jan. 25, 2021), [https://news.yahoo.com/trump-jan-6-rally-crowd-storm-the-capitol-video-184828622.html?fr=sycsrp\\_catchall](https://news.yahoo.com/trump-jan-6-rally-crowd-storm-the-capitol-video-184828622.html?fr=sycsrp_catchall).

Trump had directed, where they joined a crowd of roughly 300 members of the violent extremist group the Proud Boys.<sup>154</sup>

184. Nearly halfway through the speech, Trump again called on Pence to reject the certification, stating:

I hope you're [Mike Pence] going to stand up for the good of our Constitution and for the good of our country. And if you're not, I'm going to be very disappointed in you. I will tell you right now. I'm not hearing good stories.

185. During Trump's speech, the audience chanted "Storm the Capitol," "Invade the Capitol Building," "Take the Capitol Right Now," "Fight Like Hell," and "Fight For Trump."<sup>155</sup>

186. For the remainder of his speech, Trump asserted that Biden's victory was illegitimate and that the process of transferring power to Biden could not be permitted to take place. For example, he said:

- A. "And then we're stuck with a president who lost the election by a lot, and we have to live with that for four more years. We're just not going to let that happen."
- B. "We want to go back and we want to get this right because we're going to have somebody in there that should not be in there and our country will be destroyed and we're not going to stand for that."
- C. "And we're going to have to fight much harder."
- D. "And you know what? If they do the wrong thing, we should never, ever forget that they did. Never forget. We should never ever forget."
- E. "You will have an illegitimate president. That's what you'll have. And we can't let that happen."

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<sup>154</sup> Mendoza & Linderman, *supra* note 17.

<sup>155</sup> *Thompson v. Trump*, 590 F. Supp. 3d 46, 100 (D.D.C. 2022).

- F. “And we fight. We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore.”
- G. “When you catch somebody in a fraud, you’re allowed to go by very different rules.”

187. Around 1:00 PM, towards the end of his speech, Trump again directed the crowd to the Capitol:

After this, we’re going to walk down, and I’ll be there with you,” and “I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard.

188. Knowing that many in the crowd were armed, Trump gave a final plea urging that the crowd assemble near the Capitol:

- A. “So we’re going to, we’re going to walk down Pennsylvania Avenue. . . And we’re going to the Capitol, and we’re going to try and give.”
- B. “But we’re going to try and give our Republicans, the weak ones because the strong ones don’t need any of our help. We’re going to try and give them the kind of pride and boldness that they need to take back our country. So let’s walk down Pennsylvania Avenue.”

189. At approximately 1:10 PM, Trump ended his remarks.

F. **Trump Intended to March on the Capitol and Capitalize on the Unfolding Chaos.**

190. On January 6, at approximately 1:17 PM, Trump was seated in the armored limousine of his motorcade and ordered that he be transported to the Capitol.<sup>156</sup>

191. The Secret Service refused to comply with this order, citing security concerns over the volatile situation he had fomented. When it became

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<sup>156</sup> See January 6th Report, *supra* note 9, at 587 (Ex. H); NBC News, *supra* note 72 (Trump stating, “I wanted to go down peacefully and patriotically to the Capitol.”).

clear to Trump that his security detail would not transport him to the Capitol despite his orders, Trump became irate with the agents.

192. According to accounts from members of Trump’s White House staff, on the drive back to the White House from the Ellipse, Trump attempted to physically seize control of the limousine’s steering wheel and lunged at an agent in an attempt to drive himself to the Capitol, but he was thwarted from doing so.<sup>157</sup>

193. At around 1:19 PM, Trump arrived at the White House and sat in the private dining room to watch news coverage of the insurrection unfold.<sup>158</sup>

194. At around 1:25 PM, the Secret Service communicated internally, “The President is planning on holding at the White House for the next approximate two hours, then moving to the Capitol.”<sup>159</sup>

195. At around 1:55 PM, the motorcade — which had stayed at the ready in preparation for a possible trip to the Capitol — finally disbanded on orders from the Secret Service that Trump’s plan to go to the Capitol had been nixed.<sup>160</sup>

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<sup>157</sup> Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess. (June 28, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhrg49354/pdf/CHRG-117hhrg49354.pdf>.

<sup>158</sup> Alemany, *supra* note 15.

<sup>159</sup> See January 6th Report, *supra* note 9, at 592 (Ex. H).

<sup>160</sup> *Id.*

**G. Pro-Trump Insurrectionists Violently Attacked the Capitol.**

196. Before Trump ended his speech at the Ellipse, attackers had already begun swarming the Capitol Building, the legislative seat of government of the United States.<sup>161</sup>

197. The attackers, following directions from Trump and his allies, shared the common purpose of preventing Congress from certifying the electoral vote.<sup>162</sup> Many of them also expressed a desire to assassinate Pence, Pelosi, and other Members of Congress.

198. By 12:53 PM, attackers had breached the outer security perimeter that the Capitol Police had established around the Capitol. Many were armed with weapons, pepper spray, and tasers. Some wore full body armor; others carried homemade shields. Many used flagpoles, signposts, or other weapons to attack police officers defending the Capitol.<sup>163</sup> Some moved through the crowd and entered the Capitol in a “stacked” formation, a single file configuration often used by special forces or infantry units during urban combat or close-quarters operations.

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<sup>161</sup> See Day 1 Transcript, *supra* note 15, at 142:9-143:2, 144:11-23, 146:16-147:24 (Ex. I) (Swalwell Testimony); see also Day 1 Transcript, *supra* note 15, at 197:8-13; 199:8-200:8 (Ex. I) (Pigeon Testimony); Day 4 Transcript, *supra* note 15, at 192:10-195:24 (Ex. L) (Buck Testimony).

<sup>162</sup> See *Rally on Electoral College Vote Certification*, *supra* note 13; *Donald Trump Speech*, *supra* note 13; Naylor, *supra* note 13.

<sup>163</sup> Alemany, *supra* note 15; see also Day 1 Transcript, *supra* note 15, at 74:4–10; 75:15–76:4, 105:25–106:24 (Ex. I) (Hodges Test); *id.* at 201:22–202:5, 220:23–221:2, 224:25–225:2 (Ex. I) (Pigeon Test).

199. Following the perimeter's breach, the violent crowd flooded into the Capitol West Front grounds. Attackers began climbing and scaling the Capitol Building.

200. At around 12:55 PM, the Capitol Police called all available units to the Capitol to respond to the attack. The attackers clashed violently with police officers on the scene.<sup>164</sup>

201. At around 1:03 PM, Capitol Police officers found an unoccupied vehicle containing weapons, ammunition, and components to make Molotov cocktails.<sup>165</sup>

202. Inside the Capitol Building, Congress was in session to certify the electoral votes in accordance with the Electoral Count Act and the Twelfth Amendment to the U.S. Constitution. At about 1:15 PM, the House and the Senate adjourned to their respective chambers, per the prescribed procedures, to debate objections to the certification of Arizona's Electoral College votes. These objections were encouraged by Trump.

203. At around 1:30 PM, some law enforcement personnel were forced to retreat as the attackers scaled the walls of the Capitol.

204. At around 1:50 PM, the on-site D.C. Metropolitan Police Department incident commander officially declared a riot at the Capitol.<sup>166</sup>

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<sup>164</sup> Alemany, *supra* note 15.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

205. At this point, law enforcement still controlled the inside of the building, and Congress was still able to function. But that soon changed.
206. By 2:06 PM, the attackers reached the Rotunda steps.
207. By 2:08 PM, the attackers reached the House Plaza.
208. By 2:10 PM, barricades protecting the West Front and northwest side of the Capitol Building had been breached. Attackers smashed first floor windows big enough to climb through. Two individuals kicked open a nearby door to let others into the Capitol. The violent crowd began to flood into the building.
209. Many attackers demanded the arrest or murder of various other elected officials who refused to participate in their attempted coup.<sup>167</sup>
- A. Some chanted “hang Mike Pence” and threatened to kill Pelosi.<sup>168</sup>
- B. Some taunted a Black police officer with racial slurs for pointing out that overturning the election would deprive him of his vote.<sup>169</sup>
210. Confederate flags and symbols of white supremacist movements were widespread.<sup>170</sup>
211. Throughout the roughly 187 minutes of the attack, police defending the Capitol were viciously attacked. For example:

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<sup>167</sup> *Id.*

<sup>168</sup> H.R. REP. NO. 117-2, at 16, 12-13.

<sup>169</sup> Alemany, *supra* note 15.

<sup>170</sup> *Id.*; *See* Rules & Admin. Review, *supra* note 15, at 28 (Ex. F).

A. One police officer was crushed against a door, screaming in agony as the crowd chanted “Heave, ho!”<sup>171</sup>

B. An attacker ripped off the officer’s gas mask, beat his head against the door, took his baton, and hit his head with it.<sup>172</sup>

C. Another officer was pulled into a crowd, beaten, and repeatedly tased by attackers.<sup>173</sup>

212. While not all who stormed the Capitol personally used violence against law enforcement, the combined mass overwhelmed the police and prevented the execution of lawful authority.

**H. The Fall of the United States Capitol.**

213. At around 2:13 PM, Pence — who had been presiding over the Senate as its President — and his family were rushed from the Capitol by their Secret Service details.

214. Because of this and the increasingly dire threat to Senators’ safety, the Senate was forced to go into an emergency recess.

215. Senate staffers hurriedly collected and took with them the certificates of ascertainment submitted by the lawful authorities of the several states certifying the respective winner of each state’s Electoral College votes as

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<sup>171</sup> Smith & Caldwell, *supra* note 15.

<sup>172</sup> Hymes & McDonald, *supra* note 15.

<sup>173</sup> 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>.

they evacuated to ensure the documents did not fall into the hands of the attackers.<sup>174</sup>

216. At around 2:25 PM, attackers who had breached the east side of the Capitol entered the Rotunda.

217. At around 2:29 PM, the House was forced to go into an emergency recess.

218. Thus, by approximately 2:29 PM, the attack successfully stopped the constitutional process for counting and certifying electoral votes for the nation's highest office.<sup>175</sup>

219. At around 2:43 PM, attackers broke the glass of a door leading to the Speaker's lobby, which, if breached, would have given them direct access to the House chamber and several legislators. Terrified legislators and staffers were huddled under desks and chairs in the chamber and had donned emergency gas masks while the assailants pressed towards their position.

220. In the House chamber, officers constructed makeshift barricades from furniture and drew their weapons to prevent the attackers' entry. This ultimately proved unsuccessful, and officers and legislators were forced to retreat.

221. Approximately ten minutes later, attackers successfully breached the Senate chamber.

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<sup>174</sup> *Id.*

<sup>175</sup> Alemany, *supra* note 15; *see also* Day 1 Transcript, *supra* note 15, at 141:3-143:2 (Ex. I) (Swalwell Testimony).

222. At this point, both the House and Senate chambers — the nerve centers of the federal bicameral Legislative Branch, were under the control of the attackers.

223. Due to the ongoing assault, Congress was unable to function or exercise its constitutional obligations and authorities. The attack successfully obstructed Congress from certifying the votes, temporarily blocking the peaceful transition of power from one President to the next by way of a planned assault on a co-equal branch designed to achieve this end.

224. Throughout the attack, Senators, Representatives, and staffers were forced to flee or seclude themselves as the attackers rampaged through the building.

225. Even at the height of the Civil War, the Confederate Army never succeeded in conquering the U.S. Capitol or any other portion of Washington, D.C., nor in preventing Congress from meeting to exercise its constitutional obligations.

**I. Trump Reveled in, and Deliberately Refused to Stop, the Insurrection.**

226. Early during the attack — by approximately 1:21PM — Trump was informed by staffers in the White House that television broadcasts of his speech had been cut to instead show the violence at the Capitol.<sup>176</sup>

227. Trump immediately began watching the Capitol attack unfold on live news in the private dining room of the White House.<sup>177</sup>

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<sup>176</sup> See January 6th Report, *supra* note 9, at 592 (Ex. H).

<sup>177</sup> *Id.* at 593.

228. Shortly after, White House Acting Director of Communications Ben Williamson sent a text to Meadows recommending that Trump tweet about respecting the Capitol Police.<sup>178</sup> He refused.

229. At 2:24 PM, the height of violence, Trump made his first public statement during the attack. Against his advisors' recommendations, he Tweeted:

Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!<sup>179</sup>

230. Trump knew, consciously disregarded the risk, or specifically intended that this tweet would exacerbate the violence at the Capitol.

231. Trump's 2:24 PM tweet "immediately precipitated further violence at the Capitol." Immediately after it, "the crowds both inside and outside of the Capitol building violently surged forward."<sup>180</sup>

232. Thirty seconds after the tweet, attackers who were already inside the Capitol opened the East Rotunda door. And thirty seconds after that, attackers breached the crypt one floor below Pence.<sup>181</sup>

233. At 2:25 PM, the Secret Service determined it needed to evacuate the Vice President to a more secure location. At one point during this process, attackers were within forty feet of him.<sup>182</sup>

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<sup>178</sup> *Id.* at 595.

<sup>179</sup> 2:24 PM-2:24 PM, *supra* note 19; *see* January 6th Report, *supra* note 9, at 429 (Ex. H).

<sup>180</sup> *See* January 6th Report, *supra* note 9, at 86 (Ex. H); Day 1 Transcript, *supra* note 15, at 103:14-104:18 (Ex. I) (Hodges Testimony).

<sup>181</sup> *See* January 6th Report, *supra* note 9, at 466 (Ex. H).

<sup>182</sup> *Id.*

234. Shortly after this tweet, Cassidy Hutchinson (a top aide to Meadows) and White House Counsel Pat Cipollone expressed to Meadows their urgent concerns that the attack was getting out of hand and that Trump needed to act to stop it.

235. Meadows responded, “You heard him, Pat. . . He thinks Mike deserves it. He doesn’t think they’re doing anything wrong.”<sup>183</sup>

236. At around 2:26 PM, Trump made a call to Republican leaders trapped within the Capitol. He did not ask about their safety or the escalating situation but instead asked whether any objections had been lodged against the electoral count.<sup>184</sup>

237. Around the same time, Trump called House Minority Leader Kevin McCarthy to encourage any such objections. McCarthy urged Trump on the phone to make a statement and to instruct the attackers to cease and withdraw.

238. Trump declined to make a statement telling the attackers to withdraw.

239. Instead, Trump responded with words to the effect of, “Well, Kevin, I guess they’re just more upset about the election theft than you are”<sup>185</sup>

240. Within ten minutes after Trump’s tweet, thousands of attackers “overran the line on the west side of the Capitol that was being held by the

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<sup>183</sup> *Id.* at 596.

<sup>184</sup> *Id.* at 597.

<sup>185</sup> *Id.*

Metropolitan Police Force’s Civil Disturbance Unit, the first time in history of the DC Metro Police that such a security line had ever been broken.”<sup>186</sup>

241. Throughout the attack, as Trump sat watching it unfold in real-time on the news, multiple relatives, staffers, and officials pleaded with Trump to make a statement directly urging the attackers to leave the Capitol. For example:

A. McCarthy, on the phone, told Trump he must make a public statement to end the attack.

B. Trump’s daughter, Ivanka, and Herschmann entered the room where Trump sat watching the attack on television. They suggested he make a public statement about being peaceful.

242. At 2:38 PM, Trump tweeted: “Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!”<sup>187</sup>

243. Many attackers saw this tweet but understood it *not* to be an instruction to withdraw from the Capitol.<sup>188</sup>

244. The attack raged on as Trump idly watched.

245. Around 3:05 PM, Trump was informed that a Capitol Police officer had fatally shot one of the attackers, Ashli Babbitt. Babbitt had been

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<sup>186</sup> *Id.* at 86.

<sup>187</sup> See Trump Twitter Collection, *supra* note 6, at 9 (Group Ex. E) (Jan 6, 2021 at 2:38 PM). <https://twitter.com/realDonaldTrump/status/1346904110969315332?lang=en>.

<sup>188</sup> See, e.g., Day 2 Transcript, *supra* note 9, at 102:7-21 (Ex. J) (Simi Testimony).

attempting to breach a door that led to legislative leaders and refused police commands to stop.<sup>189</sup>

246. Around this time, House and Senate leaders (including Pence) directly contacted senior law enforcement and military leaders in an effort to arrange for the deployment of reinforcements.

247. Although the force and ferocity of the assault overwhelmed the U.S. Capitol Police, Trump, in dereliction of his duties as Commander in Chief, never ordered any additional federal military or law enforcement personnel to help regain control over the Capitol.<sup>190</sup>

248. After 3:00 PM, the Department of Homeland Security, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the FBI, and reinforcements from Virginia and Maryland, joined the Capitol Police to help regain control of the Capitol.<sup>191</sup>

249. Shortly after 4:00 PM, President-elect Biden addressed the nation and said:

I call on President Trump to go on national television now, to fulfill his oath and defend the Constitution and demand an end to this siege...It's not a protest—it's insurrection.<sup>192</sup>

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<sup>189</sup> See January 6th Report, *supra* note 9, at 91 (Ex. H); Alemany, *supra* note 15.

<sup>190</sup> See January 6th Report, *supra* note 9, at 595 (Ex. H); see Trump Daily Diary, *supra* note 20 (Ex. G); *READ: Transcript of CNN's town hall with former President Donald Trump*, *supra* note 20.

<sup>191</sup> Alemany, *supra* note 15.

<sup>192</sup> *Biden condemns chaos at the Capitol: 'It's not protest, it's insurrection'*, NBC NEWS (Jan. 6, 2021), <https://www.nbcnews.com/video/biden-condemns-chaos-at-the-capitol-as-insurrection-98957381507>.

250. Throughout this period, Trump knew that if he issued a public statement directing the attackers to disperse, most or all would have heeded his instruction.

251. In fact, when he finally did issue such a statement, it had precisely that effect.

252. At 4:17 PM, nearly 187 minutes after attackers first broke into the Capitol, Trump released a video on Twitter directed to those currently at the Capitol. In this video, he stated:

I know your pain. I know your hurt. . . We love you. You're very special, you've seen what happens. You've seen the way others are treated. . . I know how you feel, but go home, and go home in peace.

253. Herschmann had suggested that Trump make a more direct statement that attackers leave the Capitol in the video.<sup>193</sup>

254. Trump refused.<sup>194</sup>

255. Immediately after Trump uploaded the video to Twitter, the attackers began to disperse from the Capitol and cease the attack.<sup>195</sup>

256. Attackers were streaming the video. One attacker, Jacob Chansley, announced into a bullhorn, "I'm here delivering the president's message: Donald

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<sup>193</sup> Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Nicholas Luna, at 181 (Mar. 21, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000060749/pdf/GPO-J6-TRANSCRIPT-CTRL0000060749.pdf> [hereinafter Luna Dep. Transcript]; *see also* Day 2 Transcript, *supra* note 9, at 121:19-24, 122:9-23, 220:21-221:4 (Ex. J) (Simi Testimony).

<sup>194</sup> Luna Dep. Transcript, *supra* note 193.

<sup>195</sup> January 6th Comm., *07/21/22 Select Committee Hearing*, at 1:58:30, YOUTUBE (July 21, 2022), <https://www.youtube.com/watch?v=pbRVqWbHGuo>. (testimony of Stephen Ayres) (“[A]s soon as that come [*sic*] out, everybody started talking about it and that’s—it seemed like it started to disperse.”).

Trump has asked everybody to go home.” Other attackers acknowledged, “That’s our order” or “He says go home. He says go home.”<sup>196</sup>

257. Group leaders from the Proud Boys texted each other saying, “Gentlemen our commander in chief has just ordered us to go home.”<sup>197</sup>

258. Around 5:20 PM, the D.C. National Guard began arriving.<sup>198</sup>

259. This was not because Trump ordered the National Guard to the scene; he never did. Rather, Pence — who was not actually in the chain of command — ordered the National Guard to assist the beleaguered police and rescue those trapped at the Capitol.<sup>199</sup>

260. By 6:00 PM, the attackers had been flushed out from the Capitol Building, though some continued to commit sporadic acts of violence through the night.<sup>200</sup>

261. At 6:01 PM, Trump issued his final Tweet of the day, in which he stated:

These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!

262. Congress was not able to reconvene until 8:06 PM, nearly six hours after the process had been obstructed.<sup>201</sup>

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<sup>196</sup> *Id.* at 1:58:40.

<sup>197</sup> *See* January 6th Report, *supra* note 9, at 579 (Ex. H).

<sup>198</sup> *See* Rules & Admin. Review, *supra* note 15, at 26 (Ex. F).

<sup>199</sup> *See* January 6th Report, *supra* note 9, at 578, 724 (Ex. H).

<sup>200</sup> Alemany, *supra* note 15.

<sup>201</sup> *Id.*

263. Around 9:00 PM, Eastman again attempted to argue to Pence’s Counsel via email that Pence should refuse to certify Biden’s victory by not counting certain states’ votes.<sup>202</sup>

264. Pence’s Counsel ignored it.<sup>203</sup>

265. Congress was required under the Electoral Count Act to debate the objections to electoral results from Arizona and Pennsylvania filed by Senators and Members of Congress. Despite six Senators and 121 Representatives voting to reject Arizona’s electoral results,<sup>204</sup> and despite seven Senators and 138 Representatives voting to reject Pennsylvania’s results,<sup>205</sup> — all at Trump’s urging — Biden’s victory was ultimately certified at 3:14 AM, January 7, 2021.<sup>206</sup>

266. In total, five people died,<sup>207</sup> and more than 150 police officers suffered injuries, including broken bones, lacerations, and chemical burns.<sup>208</sup> Four Capitol Police officers on-duty during January 6 have since died by suicide.<sup>209</sup>

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<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> 167 Cong. Rec. H77 (daily ed. Jan. 6, 2021), <http://bit.ly/Jan6CongRec>.

<sup>205</sup> *Id.* at H98.

<sup>206</sup> Alemany, *supra* note 15; 167 Cong. Rec. H114–15.

<sup>207</sup> Jack Healy, *These Are the 5 People Who Died in the Capitol Riot*, N.Y. TIMES (Jan. 11, 2021), <https://nyti.ms/3pTyN5q>.

<sup>208</sup> Kaplan & McDonald, *supra* note 173; 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>.

<sup>209</sup> Luke Broadwater & Shaila Dewan, *Congress Honors Officers Who Responded to Jan. 6 Riot*, N.Y. TIMES (Aug. 3, 2021), <https://nyti.ms/3EURwlp>.

**IV. MULTIPLE JUDGES AND GOVERNMENT OFFICIALS HAVE DETERMINED THAT JANUARY 6 WAS AN INSURRECTION AND THAT TRUMP WAS RESPONSIBLE.**

267. Since the mob overtook the Capitol on January 6, 2021, government officials, judges, and other authorities have repeatedly characterized the event as an insurrection, including in evaluations of electoral challenges pursuant to Section 3 of the Fourteenth Amendment such as this one.

268. On December 19, 2023, the Colorado Supreme Court concluded that Donald Trump is disqualified from holding office under Section 3 of the Fourteenth Amendment. As part of its analysis, the court held that the January 6 attack constituted an “insurrection” under section 3 of the Fourteenth Amendment.<sup>210</sup>

269. Prior to that decision, scores of others also recognized the events of January 6, 2021, constituted an insurrection. For example, just days after the attack, the U.S. Department of Justice characterized the events of January 6 as “a violent insurrection that attempted to overthrow the United States Government” in *United States v. Chansley*.<sup>211</sup>

270. A federal magistrate judge in Phoenix, Arizona, agreed and ordered Chansley (also known as “QAnon Shaman”) to be detained pending trial for being “an active participant in a violent insurrection that attempted to

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<sup>210</sup> *Griswold*, 2023 WL 8770111, at \*37-39 (Ex. A).

<sup>211</sup> Government’s Br. in Supp. of Detention, *supra* note 2.

overthrow the United States government,” and who thus posed a danger to the community and flight risk.<sup>212</sup>

271. On January 13, 2021, bipartisan majorities of the House and Senate voted for articles of impeachment against Trump describing the attack as an “insurrection.” The Resolution declared:

The Constitution provides that the House of Representatives ‘shall have the sole Power of Impeachment’ and that the President ‘shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors’. Further, section 3 of the 14th Amendment to the Constitution prohibits any person who has ‘engaged in insurrection or rebellion against’ the United States from ‘hold[ing] any office ... under the United States’. In his conduct while President of the United States—and in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed—Donald John Trump engaged in high Crimes and Misdemeanors by inciting violence against the Government of the United States...<sup>213</sup>

272. On February 13, 2021, during Trump’s impeachment trial, Senate Majority Leader Mitch McConnell stated on the floor of the Senate that the people who entered the Capitol on January 6 had “attacked their own government.” He further stated that the attackers:

used terrorism to try to stop a specific piece of domestic business they did not like. . . fellow Americans beat and bloodied our own police. They stormed the Senate floor. They tried to hunt down the Speaker of the House. They built gallows and chanted about murdering the Vice President.”

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<sup>212</sup> Brad Heath et al., *Judge Calls Capitol Siege ‘Violent Insurrection,’ orders man who wore horns held*, REUTERS (Jan. 15, 2021), <https://www.reuters.com/article/us-usa-trump-capitol-arrests/judge-calls-capitol-siege-violent-insurrection-orders-man-who-wore-horns-held-idUSKBN29K0K7>.

<sup>213</sup> 167 Cong. Rec. H191 (daily ed. Jan. 13, 2021), <https://www.congress.gov/117/crec/2021/01/13/167/8/CREC-2021-01-13-pt1-PgH165.pdf>; 167 Cong. Rec. S733.

273. During the trial, Trump’s defense lawyer stated that “the question before us is not whether there was a violent insurrection of [sic] the Capitol. On that point, everyone agrees.”<sup>214</sup>

274. A bipartisan majority of the Senate voted to convict Trump on this charge, with the affirmative votes falling just ten short of the constitutional two-thirds threshold.<sup>215</sup>

275. On August 5, 2021, Congress passed Public Law 117-32, which granted four congressional gold medals to Capitol Police officers who defended the Capitol on that day. The law declared that:

a mob of insurrectionists forced its way into the U.S. Capitol building and congressional office buildings and engaged in acts of vandalism, looting, and violently attacked Capitol Police officers.<sup>216</sup>

276. On September 6, 2022, Judge Francis J. Matthew of New Mexico’s First District permanently enjoined Otero County Commissioner and “Cowboys for Trump” founder Couy Griffin from holding office under Section 3 of the Fourteenth Amendment.<sup>217</sup> The court held that the January 6 attack constituted an “insurrection” under section 3 of the Fourteenth Amendment.<sup>218</sup>

277. Since the January 6, 2021 attack on the Capitol, various judges have issued opinions describing it as an “insurrection.” For example:

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<sup>214</sup> 167 Cong. Rec. S729 (emphasis added).

<sup>215</sup> 167 Cong. Rec. S733 (daily ed. Feb. 13, 2021).

<sup>216</sup> Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322.

<sup>217</sup> *State ex rel. White v. Griffin*, 2022 WL 4295619, at \*17-19.

<sup>218</sup> *Id.*

A. In *United States v. Little*, the judge held in a sentencing memorandum that:

contrary to [defendant’s] Facebook post and the statements he made to the FBI, the riot was not ‘patriotic’ or a legitimate ‘protest,’ . . . it was an insurrection aimed at halting the functioning of our government.<sup>219</sup>

B. In *United States v. Munchel*, the judge granted an application for access to exhibits and wrote, “defendants face criminal charges for participating in the unsuccessful insurrection at the Capitol on January 6, 2021.”<sup>220</sup>

C. In *United States v. Bingert*, the judge denied a motion to dismiss and indictment and again called January 6 an “unsuccessful insurrection.”<sup>221</sup>

D. In *United States v. Brockhoff*, the judge issued an order denying a motion for pretrial release, stating that “[t]his criminal case is one of several hundred arising from the insurrection at the United States Capitol on January 6, 2021.”<sup>222</sup>

E. In *United States v. Grider*, the judge denied a motion to dismiss indictment, stating that “[t]his criminal case is one of several hundred arising from the insurrection at the United States Capitol on January 6, 2021.”<sup>223</sup>

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<sup>219</sup> 590 F. Supp. 3d 340, 344 (D.D.C. 2022).

<sup>220</sup> 567 F. Supp. 3d 9, 13 (D.D.C. 2021).

<sup>221</sup> 605 F. Supp. 3d 111, 115-16 (D.D.C. 2022).

<sup>222</sup> 590 F. Supp. 3d 295, 298-99 (D.D.C. 2022).

<sup>223</sup> 585 F. Supp. 3d 21, 24 (D.D.C. 2022).

F. In *United States v. Puma*, the judge characterized the January 6, 2021, attack as an “insurrection” repeatedly in an order denying a motion to dismiss the indictment.<sup>224</sup>

G. In *United States v. Rivera*, the judge characterized the January 6, 2021, attack as an “insurrection” repeatedly in an opinion after bench trial.<sup>225</sup>

H. In *United States v. DeGrave*, the judge characterized the January 6, 2021, attack as an “insurrection” repeatedly in an order on pretrial detention.<sup>226</sup>

I. In *United States v. Randolph*, the judge characterized the January 6, 2021, attack as an “insurrection” repeatedly in an order on pretrial detention.<sup>227</sup>

J. In *Matter of Giuliani*, a state appellate court referred to “violence, insurrection and death on January 6, 2021, at the U.S. Capitol” in an order suspending Trump’s lawyer from the practice of law.<sup>228</sup>

278. Multiple leaders and members of the extremist groups that played key roles in the insurrection have also been convicted of seditious conspiracy

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<sup>224</sup> 596 F. Supp. 3d 90 (D.D.C. 2022).

<sup>225</sup> 607 F. Supp. 3d 1 (D.D.C. 2022).

<sup>226</sup> 539 F. Supp. 3d 184 (D.D.C. 2021).

<sup>227</sup> 536 F. Supp. 3d 128 (E.D. Ky. 2021).

<sup>228</sup> 197 A.D.3d 1, 25 (2021); *see also O'Rourke v. Dominion Voting Sys. Inc.*, 571 F. Supp. 3d 1190, 1202 (D. Colo. 2021); *United States v. Hunt*, 573 F. Supp. 3d 779, 806 (E.D.N.Y. 2021); *Rutenburg v. Twitter, Inc.*, No. 4:21-CV-00548-YGR, 2021 WL 1338958, at \*1 (N.D. Cal. Apr. 9, 2021); *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1172, 1175-76 (N.D. Cal. 2022); *United States v. Munchel*, 991 F.3d 1273, 1275 (D.C. Cir. 2021).

under 18 U.S.C. § 2384, which requires the government to prove that two or more persons:

conspire[d] to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, 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, or by force to seize, take, or possess any property of the United States contrary to the authority thereof.

279. The Department of Justice maintains a growing list of defendants charged in federal court in Washington, D.C. who took direction from Trump on January 6, 2021, and breached the U.S. Capitol.<sup>229</sup>

280. For example:

A. In April 2022, a member of the Oath Keepers named Brian Ulrich pleaded guilty to seditious conspiracy.<sup>230</sup>

B. In May of 2022, Oath Keepers member William Todd Wilson pleaded guilty to seditious conspiracy.<sup>231</sup>

C. In October 2022, former leader of the Proud Boys Jeremy Bertino pleaded guilty to seditious conspiracy.<sup>232</sup>

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<sup>229</sup> *Capitol Breach Cases*, DEP'T OF JUSTICE, <https://www.justice.gov/usao-dc/capitol-breach-cases>.

<sup>230</sup> Ryan Lucas, *A second Oath Keeper pleaded guilty to seditious conspiracy in the Jan. 6 riot*, NPR (Apr. 29, 2022), <https://www.npr.org/2022/04/29/1095538077/a-second-oath-keeper-pleaded-guilty-to-seditious-conspiracy-in-the-jan-6-riot>.

<sup>231</sup> Michael Kunzelman, *Oath Keeper from North Carolina pleads guilty to seditious conspiracy during Jan. 6 insurrection*, PBS (May 4, 2022), <https://www.pbs.org/newshour/politics/oath-keeper-from-north-carolina-pleads-guilty-to-seditious-conspiracy-during-jan-6-insurrection>.

<sup>232</sup> *Former Leader of the Proud Boys Pleads Guilty to Seditious Conspiracy for Efforts to Stop Transfer of Power Following 2020 Presidential Election*, DEP'T. OF JUSTICE (Oct. 6, 2022), <https://www.justice.gov/opa/pr/former-leader-proud-boys-pleads-guilty-seditious-conspiracy-efforts-stop-transfer-power>.

D. On January 23, 2023, four members of the Oath Keepers were found guilty of seditious conspiracy.<sup>233</sup>

E. Around May 4, 2023, four members of the Proud Boys, including their former leader Tarrio, were convicted of seditious conspiracy.<sup>234</sup>

F. Both the Oath Keepers and the Proud Boys were instrumental in mobilizing in response to Trump's December 19 "will be wild!" Tweet. Both acted as vanguards in the attack. And both withdrew after Trump belatedly ordered them to do so.

281. In a published opinion, one federal judge in the District of Columbia stated:

For months, the President led his supporters to believe the election was stolen. When some of his supporters threatened state election officials, he refused to condemn them. Rallies in Washington, D.C., in November and December 2020 had turned violent, yet he invited his supporters to Washington, D.C., on the day of the Certification. They came by the thousands. And, following a 75-minute speech in which he blamed corrupt and weak politicians for the election loss, he called on them to march on the very place where Certification was taking place....

President Trump's January 6 Rally Speech was akin to telling an excited mob that corn-dealers starve the poor in front of the corn-dealer's home. He invited his supporters to Washington, D.C., after telling them for months that corrupt and spineless politicians were to blame for stealing

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<sup>233</sup> Kyle Cheney, *4 more Oath Keepers found guilty of seditious conspiracy tied to Jan. 6 attack*, POLITICO (Jan. 23, 2023), <https://www.politico.com/news/2023/01/23/oath-keepers-guilty-seditious-conspiracy-jan-6-00079083>.

<sup>234</sup> Alan Feuer, Zach Montague, *Four Proud Boys Convicted of Sedition in Key Jan 6. Case*, N.Y. TIMES (May 4, 2023), <https://www.nytimes.com/2023/05/04/us/politics/jan-6-proud-boys-sedition.html>.

an election *from them*; retold that narrative when thousands of them assembled on the Ellipse; and directed them to march on the Capitol building—the metaphorical corn-dealer’s house—where those very politicians were at work to certify an election that he had lost. The Speech plausibly was, as [John Stuart] Mill put it, a “positive instigation of a mischievous act.”<sup>235</sup>

282. On December 19, 2023, the Colorado Supreme Court held that Trump “engaged” in insurrection under Section 3 of the Fourteenth Amendment. *See Griswold*, 2023 WL 8770111, at \*37-44 (Ex. A).

283. On December 28, 2023, the Maine Secretary of State, evaluating election challenges following an evidentiary hearing, determined that Trump “engaged in insurrection,” under Section 3 of the Fourteenth Amendment.

284. At least eight other federal judges — in published opinions and in sentencing decisions — have explicitly assigned responsibility for the January 6 insurrection to Trump.

285. For example:

- A. “Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021.”<sup>236</sup>
- B. “The fact remains that [the defendant] and others were called to Washington, D.C. by an elected official; he was prompted to walk to the Capitol by an elected official. . . [the defendant was] told lies, fed falsehoods, and told that our election was stolen when it clearly was not.”<sup>237</sup>

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<sup>235</sup> *Thompson*, 590 F. Supp. 3d at 104, 118.

<sup>236</sup> *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1193 (C.D. Cal. 2022).

<sup>237</sup> Tr. of Sentencing at 55, *United States v. Lolos*, No. 1:21-cr-00243 (D.D.C. Nov. 19, 2021).

- C. “The steady drumbeat that inspired defendant to take up arms has not faded away. . . not to mention, the near-daily fulminations of the former President.”<sup>238</sup>
- D. “Defendant’s promise to take action in the future cannot be dismissed as an unlikely occurrence given that his singular source of information, . . . (‘Trump’s the only big shot I trust right now’), continues to propagate the lie that inspired the attack on a near daily basis.”<sup>239</sup>
- E. “At the end of the day the fact is that the defendant came to the Capitol because he placed his trust in someone [Donald Trump] who repaid that trust by lying to him.”<sup>240</sup>
- F. “And as for the incendiary statements at the rally detailed in the sentencing memo, which absolutely, quite clearly and deliberately, stoked the flames of fear and discontent and explicitly encouraged those at the rally to go to the Capitol and fight for one reason and one reason only, to make sure the certification did not happen, those may be a reason for what happened, they may have inspired what happened, but they are not an excuse or justification.”<sup>241</sup>
- G. “[B]ut we know, looking at it now, that they were supporting the president who would not accept that he was defeated in an election.”<sup>242</sup>
- H. “And you say that you headed to the Capitol Building not with any intent to obstruct and impede congressional proceedings; but because the then-President, Trump, told protesters at the “stop the steal” rally -- and I quote: After this, we’re going to walk down; and I will be there with you. We’re going to walk down. We’re going to walk down. I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard. And you say that you wanted to

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<sup>238</sup> Mem. Op. at 24, *United States v. Meredith, Jr.*, No. 1:21-cr-00159, ECF No. 41 (D.D.C. May 26, 2021).

<sup>239</sup> *United States v. Dresch*, No. 1:21-cr-00071, 2021 WL 2453166, \*8 (D.D.C. May 27, 2021).

<sup>240</sup> Tr. of Plea and Sentence at 30, *United States v. Dresch*, No. 1:21-cr-00071 (D.D.C. Aug. 4, 2021).

<sup>241</sup> Tr. of Sentencing at 22, *United States v. Peterson*, No. 1:21-cr-00309, ECF No. 32 (D.D.C. Dec. 1, 2021).

<sup>242</sup> *United States v. Tanios*, No. 1:21-mj-00027, ECF No. 30 at 107 (N.D.W. Va. Mar. 22, 2021).

show your support for and join then-President Trump as he said he would be marching to the Capitol; but, of course, didn't.”<sup>243</sup>

I. “[A]t the “Stop the Steal” rally, then-President Trump eponymously exhorted his supporters to, in fact, stop the steal by marching to the Capitol. . . [h]aving followed then-President Trump’s instructions, which were in line with [the defendant’s] stated desires, the Court therefore finds that Defendant intended her presence to be disruptive to Congressional business.”<sup>244</sup>

J. Moreover, four sentencing cases of January 6 defendants included statements by a judge that, “The events of January 6th involved the rather unprecedented confluence of events spurred by then President Trump. . .”<sup>245</sup>

#### **V. TRUMP ACKNOWLEDGES THAT HE WAS IN COMMAND OF INSURRECTIONISTS AND CALLS THEM PATRIOTS.**

286. On May 10, 2023, during a CNN town hall, Trump maintained his position that the 2020 presidential election was a “rigged election.”

287. When CNN moderator Kaitlin Collins asserted that it was not a stolen election and offered Trump “a chance to acknowledge the results,” Trump responded:

If you look at what happened in Pennsylvania, Philadelphia, if you look at what happened in Detroit, Michigan. . . all you have to do is take a look at

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<sup>243</sup> Tr. of Sentencing at 36, *United States v. Gruppo*, No. 1:21-cr-00391 (D.D.C. Oct. 29, 2021).

<sup>244</sup> Findings of Fact and Conclusions of Law at 15, *United States v. MacAndrew*, No. 1:21-cr-00730, ECF No. 59 (D.D.C. Jan. 17, 2023). [https://storage.courtlistener.com/recap/gov.uscourts.dcd.238421/gov.uscourts.dcd.238421.59.0\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.238421/gov.uscourts.dcd.238421.59.0_2.pdf).

<sup>245</sup> Tr. of Sentencing at 38, *United States v. Prado*, No. 1:21-cr-00403 (D.D.C. Feb. 7, 2022); Tr. of Sentencing at 28, *United States v. Barnard, et al.*, No. 1:21-cr-00235 (D.D.C. Feb 4, 2022); Tr. of Sentencing at 68, *United States v. Stepakoff*, No. 1:21-cr-00096 (D.D.C. Jan. 20, 2022); Tr. of Sentencing at 28, *United States v. Williams*, No. 1:21-cr-00388 (D.D.C. Feb. 7, 2022).

government cameras. You will see them, people going to 28 different voting booths to vote, to put in seven ballots apiece.<sup>246</sup>

288. Collins asked Trump: “Will you pardon the January 6th rioters who were convicted of federal offenses?” Trump responded: “I am inclined to pardon many of them. I can’t say for every single one because a couple of them, probably, they got out of control.”<sup>247</sup>

289. Collins asked Trump: “When it was clear [attackers] weren’t being peaceful, why did you wait three hours to tell them to leave the Capitol? They listen to you like no one else.” Trump responded, “They do. I agree with that.”<sup>248</sup>

290. Trump then asserted he thought it was Pelosi’s and the mayor’s “job” to do so. He also stated that the video he posted 187 minutes after the initial break in “was a beautiful video.”<sup>249</sup>

291. When Collins mentioned Babbitt, who was shot by police while attempting to break into the Capitol, Trump praised her and responded: “That thug [the police officer] killed her, there was no reason to shoot her at blank range. . . And she was a good person. She was a patriot.”<sup>250</sup>

292. When Collins told Trump that Pence “says that you endangered his life on that day,” Trump responded: “I don’t think he was in any danger.”<sup>251</sup>

Trump said this notwithstanding violent chants among the crowd to “Hang Mike

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<sup>246</sup> *READ: Transcript of CNN’s town hall with former President Donald Trump, supra note 20.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

Pence!” and active Tweets by Trump during the attack that Pence lacked courage to unlawfully reject certification of the election.

293. Collins then asked Trump if he feels that he owes Pence an apology. Trump replied:

No, because he did something wrong. He should have put the votes back to the state legislatures and I think we would have had a different outcome.<sup>252</sup>

## **VI. TRUMP REMAINS UNREPENTANT AND WOULD DO IT AGAIN.**

294. To this day, Trump has never expressed regret that his supporters violently attacked the U.S. Capitol, threatened to assassinate the Vice President and other key leaders, and obstructed congressional certification of the electoral votes. Nor has he condemned any of them for these actions.

295. Trump has never expressed regret for any aspect whatsoever of his own conduct in the days leading up to January 6, 2021, nor those on January 6 itself.

296. Trump has not offered personal condolences to any of the law enforcement personnel or their families who were injured or died as a result of the January 6 attack.

297. Trump has not apologized to anyone, either on his own behalf or on behalf of his supporters, for the January 6 attack.

298. To the contrary, Trump has continued to defend and praise the attackers.

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<sup>252</sup> *Id.*

299. Around December 20, 2022, after the bipartisan House committee established to investigate the attack voted unanimously to recommend that the Justice Department bring criminal charges against Trump, Trump posted on his website Truth Social: “these folks don't get it that when they come after me, the people who love freedom rally around me.”<sup>253</sup>

300. Trump has endorsed and appeared at multiple fundraisers for the “Patriot Freedom Project,” an organization that provides support for January 6 attackers.

301. As recently as November 2023, Trump decried the prison sentences received by January 6 attackers for their criminal activity, referring to them as “hostages.” At a 2024 presidential campaign event, he stated: “I call them the J6 hostages, not prisoners. I call them the hostages, what’s happened. And it’s a shame.”<sup>254</sup>

302. Trump has not petitioned Congress to remove his disability from holding public office under Section 3 of the Fourteenth Amendment, and Congress has not granted it.

303. To the contrary, Trump has demonstrated that the purpose of Section 3 of the Fourteenth Amendment — to prevent insurrectionists from holding power because of the danger they pose to the Republic — applies with undiminished vigor.

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<sup>253</sup> Steve Peoples, *Republicans’ usual embrace of Trump muted following criminal referral*, PBS (Dec. 20, 2022), <https://www.pbs.org/newshour/politics/republicans-usual-embrace-of-trump-muted-following-criminal-referral>.

<sup>254</sup> *Former President Trump Campaigns in Houston*, at 5:05, C-SPAN (Nov. 2, 2023), <https://www.c-span.org/video/?531400-1/president-trump-campaigns-houston>.

304. For example, on December 3, 2022, Trump called for “termination of all rules, regulations, and articles, even those found in the Constitution.”<sup>255</sup>

305. And on September 22, 2023, Trump stated that General Mark Milley, Chairman of the Joint Chiefs of Staff, had committed “an act so egregious that, in times gone by, the punishment would have been DEATH!”<sup>256</sup>

## **VII. THE CONSTITUTION DISQUALIFIES INSURRECTIONISTS FROM OFFICE.**

306. Under Section 3 of the Fourteenth Amendment to the U.S. Constitution, known as the Disqualification Clause:

No Person shall . . . hold any office, civil or military, under the United States . . . who, having previously taken an oath . . . as an officer of the United States . . . or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same.

U.S. Const. amend. XIV, § 3.

307. Persons who trigger this provision are disqualified from public office, just as those who fail to meet the age or citizenship requirements of Article I, section 2 of the Constitution are disqualified from the presidency:

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

*Worthy*, 63 N.C. at 204.

308. Under Section 3, to “engage” merely requires “a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from insurrectionists’

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<sup>255</sup> Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Dec. 3, 2022, 6:44 AM), <https://truthsocial.com/@realDonaldTrump/posts/109449803240069864>.

<sup>256</sup> Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Sept. 22, 2023, 6:59 PM), <https://truthsocial.com/@realDonaldTrump/posts/11111513207332826>.

perspective] termination”). *Powell*, 27 F. Cas. at 607; *Worthy*, 63 N.C. at 203 (defining “engage” under Section 3 to mean “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary”).

309. Planning or helping to plan an insurrection or rebellion satisfies the definition of “engag[ing]” under Section 3 of the Fourteenth Amendment. So does planning a demonstration or march upon a government building that the planner knows is substantially likely to (and does) result in insurrection or rebellion, as it constitutes taking voluntary steps to contribute, “by personal service,” a “thing that was useful or necessary” to the insurrection or rebellion. And knowing that insurrection or rebellion was likely makes that aid voluntary.

#### **VIII. TRUMP ENGAGED IN INSURRECTION OR REBELLION.**

310. The allegations of all previous paragraphs are incorporated by reference.

311. On January 20, 2017, Trump took an oath to support the United States Constitution.

312. Trump took that oath as an “officer of the United States” within the meaning of Section 3 of the Fourteenth Amendment.

313. During his 2020 re-election campaign, and after the results made clear that he had lost the election, Trump intentionally inflamed his supporters with claims that the 2020 presidential election had been rigged.

314. Over the course of November and December 2020, and continuing into January 2021, Trump attempted a series of unlawful schemes to overturn the election. These schemes included pressuring state legislators to appoint fraudulent

pro-Trump electors in states he had lost; the submission of fake electoral certificates by these electors in states he had lost; pressuring Pence to discard electoral votes from states he had lost; and seizing voting machines as a pretext for other unlawful means to retain power.

315. Trump’s lawyers and aides, and Pence himself, had repeatedly advised Trump that Pence had no lawful authority to reject electoral votes.

316. After various other schemes to overturn the 2020 election failed, Trump summoned his supporters to Washington, D.C., on January 6, 2021, telling them that it would be “wild.”

317. Trump knew that some of his supporters on January 6, 2021, were armed and had plans to commit violence on that day.

318. Still, Trump incited his supporters and insisted they must “fight” so he could retain the presidency in light of supposed theft.

319. After enraging his supporters further, telling them, “you’re allowed to go by very different rules,” and to “fight like hell,” Trump sent them to the Capitol.

320. Trump’s supporters defeated civilian law enforcement, captured the United States Capitol, and prevented Congress from certifying the 2020 presidential election, just as Trump had intended.

321. Although they did not succeed, many of the attackers threatened to assassinate Pence, Pelosi, and other leaders whom Trump had urged them to target.

322. During the hours-long attack, and despite pleas from his own family and aides, Trump refused to call off the attack. Nor did he use his presidential authority to order reinforcements for the beleaguered police. Instead, he goaded the attackers on.

323. As a result, the certification of the 2020 presidential election could not take place until the next day.

324. The events of January 6, 2021, constituted an insurrection or a rebellion under Section 3.

325. The effort to overthrow the results of the 2020 election by unlawful means, from on or about November 3, 2020, through at least January 6, 2021, constituted a rebellion under Section 3 as this effort was an attempt to overturn or displace lawful government authority by unlawful means.

326. Trump knew of, consciously disregarded the risk of, and/or specifically intended the attackers' unlawful actions described in the preceding allegations.

327. Trump knew of, consciously disregarded the risk of, and/or specifically intended each of the following:

A. Angry and armed supporters would amass in Washington, D.C., on January 6, 2021.

B. These supporters would, at his command, march on the U.S. Capitol.

C. These supporters would disrupt, delay, or obstruct Congress from certifying the electoral votes.

D. His 2:24 PM Tweet would goad and encourage his supporters to continue their attack.

E. His refusal to issue a public statement directing the attackers to disperse would encourage the attackers to continue.

F. His refusal to order federal law enforcement to the scene would enable the attackers to continue.

328. Trump summoned the attackers to Washington, D.C. to “be wild” on January 6; ensured that his armed and angry supporters were able to bring their weapons; incited them against Pence, Congress, the certification of electoral votes, and the peaceful transfer of power; instructed them to march on the Capitol for the purpose of preventing, obstructing, disrupting, and/or delaying the electoral vote count and peaceful transfer of power; encouraged them during their attack; used the attack as an opportunity to further pressure and intimidate the Vice President and Members of Congress; provided material support to the insurrection by refraining from mobilizing federal law enforcement or National Guard assistance; and otherwise fomented, facilitated, encouraged, and aided the insurrection.

329. None of this conduct was undertaken in performance of Trump’s official duties, in his official capacity, or under color of his office. Under Article II of the Constitution, the Twelfth Amendment, and statutes in effect then or now, the President is not involved in counting or certifying votes. Rather, Trump engaged in insurrection solely in his personal or campaign capacity. In fact, when he did contemplate the unlawful use of executive power to further his unlawful

schemes (such as seizing voting machines), government aides and lawyers advised him that it would be illegal and/or refused his orders.

330. Despite having sworn an oath to support the Constitution of the United States, Trump “engaged in insurrection or rebellion against the same, or [gave] aid or comfort to the enemies thereof” within the meaning of section 3 of the Fourteenth Amendment.

**IX. TRUMP GAVE “AID OR COMFORT TO THE ENEMIES OF” THE U.S. CONSTITUTION.**

331. The allegations of all previous paragraphs are incorporated by reference.

332. In addition to disqualifying persons who violate their oath by engaging in insurrection or rebellion, Section 3 disqualifies persons who violate their oath by giving “aid or comfort to enemies of” the Constitution. As used in Section 3, “enemies” applies to domestic, as well as foreign, enemies of the Constitution. The concept of a “domestic” enemy became part of American constitutional thinking no later than 1862 — just six years before the Fourteenth Amendment was ratified — when Congress enacted the Ironclad Oath to “support and defend the Constitution of the United States, against all enemies, foreign *and domestic*.” Act of July 2, 1862, Ch. 128, 12 Stat. 502 (emphases added).

333. Aid or comfort to enemies of the Constitution includes indirect assistance such as supporting, encouraging, counseling, or promoting the enemy, even where such conduct might fall short of “engaging” in insurrection. *See* Baude & Paulsen, *supra*, at 67-68.

334. By his conduct described herein, beginning before January 6, 2021, and continuing to the present time, Trump gave aid and comfort to enemies of the Constitution by, among other things: encouraging and counseling the insurrectionists; deliberately failing to exercise his authority and responsibility as President to quell the insurrection; praising the insurrectionists, including calling them “very special,” “good persons,” and “patriots;” and promising or suggesting that he would pardon many of the insurrectionists if reelected to the presidency.

**X. TRUMP IS PRECLUDED FROM CONTESTING THE FEDERAL ISSUES LITIGATED AND DECIDED BY THE COLORADO SUPREME COURT.**

335. After extensive briefing and consideration of a voluminous evidentiary record produced in a five-day trial, the Colorado Supreme Court in *Anderson v. Griswold* determined, among other things, that:

A. Congress does not need to pass implementing legislation for Section Three's disqualification provision to attach, and Section Three is, in that sense, self-executing.

B. Judicial review of President Trump's eligibility for office under Section Three is not precluded by the political question doctrine.

C. Section Three encompasses the office of the Presidency and someone who has taken an oath as President.

D. President Trump's speech inciting the crowd that breached the U.S. Capitol on January 6, 2021, was not protected by the First Amendment.<sup>257</sup>

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<sup>257</sup> 2023 WL 8770111 at \*2–3

336. The court further affirmed the state trial court’s conclusions:

A. “[T]hat the events at the U.S. Capital on January 6, 2021, constituted an ‘insurrection’; and,

B. “[T]hat President Trump ‘engaged in’ that insurrection through his personal actions.”<sup>258</sup>

337. Resultantly, Trump is barred by principles of issue preclusion from relitigating the issues decided by the Colorado Supreme Court and the factual findings of the Colorado District Court, which establish as a matter of law that he engaged in insurrection after taking the oath to support the Constitution and is therefore disqualified from the presidency under Section 3 of the Fourteenth Amendment.

## **XI. TRUMP IS DISQUALIFIED FROM PUBLIC OFFICE.**

338. Trump is disqualified from holding “any office, civil or military, under the United States.”

339. Congress has not removed this disability from Trump.

340. The presidency of the United States is an “office . . . under the United States” within the meaning of Section 3 of the Fourteenth Amendment.

341. Consequently, Donald John Trump is disqualified from, and ineligible to hold, the office of President of the United States. Resultantly, this Commission is duty-bound to order that his name not appear on the Massachusetts ballot for the Commonwealth’s March 5, 2024, presidential primary election.

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<sup>258</sup> *Id.* at \*3.

## PRAYER FOR RELIEF

WHEREFORE, Objectors request that this Commission enter the following relief:

1. Determine that, under controlling principles of collateral estoppel, the issues decided by the Colorado Supreme Court in *Anderson v. Griswold* are binding in this proceeding and establish as a matter of fact and law that Donald John Trump is disqualified from the presidency under Section 3 of the Fourteenth Amendment;
2. Alternatively, if the Commission believes it is appropriate to allow Trump the opportunity to present any factual evidence he may wish to offer here, that the Commission hold a hearing on the objection contained herein, take notice of the record established in *Anderson*, and allow the parties here to supplement that record;
3. Find that Donald John Trump is disqualified from holding the Office of President of the United States pursuant to Section 3 of the Fourteenth Amendment to the United States Constitution;
4. Order the Secretary of the Commonwealth to remove Donald John Trump's name as a candidate for the Republican nomination for President from the Massachusetts ballot; and
5. Order such other relief within the power of the Commission as the Commission deems just and proper.

Respectfully submitted,

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By their attorneys and authorized  
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