

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

ROY L. PERRY-BEY,  
CARLOS A. HOWARD,

Case No.

1:23CV1165

Petitioners,

v.

DONALD JOHN TRUMP,

Respondent.

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**COMPLAINT AND REQUEST FOR DECLARATORY RELIEF**

Petitioners now come before this honorable Court seeking declaratory relief on the specific issue of whether candidate Donald John Trump is indeed constitutionally prohibited from seeking a second term as President of the United States. Encompassed within this request for declaratory relief is a further determination as to whether candidate Trump is indeed even eligible to participate in the upcoming Virginia Republican Party Primary scheduled for next spring in 2024.

In bringing this request for declaratory relief Petitioners have carefully studied the specific provisions of the Constitution which govern whether an individual who participates in an overt insurrection or rebellion against the U.S. government is effectively disqualified from service in the federal government, whether as a Representative, U.S. Senator, Vice-President or President of the United States.

For purposes of standing, Petitioners "electors" registered voters assert that they had actively participated in past Presidential elections dating back to 1977 when they cast their vote being over the age of eighteen.

It should be noted that in the course of these past Presidential elections, Petitioner has cast their vote for both Democratic and Republican tickets and was a registered Independent for many years. Petitioners are legal residents of the state of Virginia and U.S. citizens by birth.

The facts of this case are undeniably simple. Donald J. Trump served as the 45<sup>th</sup> President of the United States having won the election in 2016 and was inaugurated on January 20, 2017. He served for four years until he lost the 2020 Presidential Election to Joseph R. Biden, Jr. who took office on January 20, 2021. President Trump chose not to appear at the inauguration of his successor. Having left for his estate in South Florida while the ceremony was taking place.

On January 6, 2021, after giving a speech to a throng on the Ellipse near the Capitol, President Trump exhorted the throng to march to the Capitol and told them that he would be right there with them. After he was finished with his speech, Trump returned to the White House and watched the later events unfold on television. As we are well aware, the throng marched on the Capitol, forced their way into the Capitol building, ransacked the rotunda area, and even made their way into several offices of representatives and senators. As the confirmation of the results of the election were being undertaken in the House, alarms went off and the members scurried into safe tunnels and secure rooms in the basement of the Capitol. Of note, Vice President Mike Pence missed being reached by some of the throng by a matter of seconds as he made his way down the stairwell to a secure area. Eventually, several high-ranking members of the government were shuttled to a safe area at Fort McNair in SW Washington.

Of note, President Trump had sent out a tweet the day before claiming that “January 6<sup>th</sup> will be wild”.

**TAKE NOTICE:** “The former president’s efforts to overturn the 2020 presidential election, and resulting attack on the U.S. Capitol, place him squarely within the ambit of the disqualification clause, and he is therefore ineligible to serve as president ever again. J. Michael Lutting, Federal Appellate Judge & Laurence H. Tribe, Law Professor

Trump also later remarked that the insurrectionists who had breached the Capitol were “special” and that “we love you”. He also later remarked that had Vice-President Pence simply done his job and refused to certify the results of the election that everything would have been fine. Not for several hours were the National Guard called in to quell the insurrection as allegedly President Trump refused to do so and had been mesmerized by the events that were taking place on his television at the White House.

Since the events of January 6<sup>th</sup>, hundreds of insurrectionists have been charged and tried and convicted on charges ranging from simple mischief, seditious conspiracy, obstruction of an official proceeding to assault and battery upon Capitol police officers. A number of individuals actually lost their lives that day as a result of the mayhem.

Recently, the Special Counsel, Jack Smith, who had been appointed by the U.S. Attorney General, submitted his findings on the events of January 6<sup>th</sup>, to an empaneled grand jury in D.C. which returned indictments against former President Trump for, among other things, rebellion or insurrection against the U.S. federal government. Trump was arraigned on these charges and now awaits trial March 4, 2024. See: D.C. Grand Jury Returned Indictments Exhibit(s) B.

It should be noted at least cursorily that Trump has also been formally indicted on charges of holding top secret classified documents at his home in Palm Beach, Florida, which is a federal offense, and has also been indicted by the City of Manhattan and State of Georgia for other election related theft crimes, rape, hush money payments, and falsifying business records related to hush money payments he'd made. However none of these other crimes have the effect of preventing former President Trump from seeking reelection in November, 2024. Of note, The Jan. 6 select House committee voted to refer former President Donald John Trump to the Department of Justice for criminal investigation and potential prosecution for trying to overturn the 2020 election. The criminal referral of Trump accuses him of obstructing an official proceeding, conspiracy to defraud the government, and inciting or assisting an insurrection or rebellion.

**THE LAW ON THE MATTER OF INCITING INSURRECTION  
AGAINST THE FEDERAL GOVERNMENT**

The Fourteenth Amendment to the U.S. Constitution was ratified in 1868 in the shadow of the Civil War and was designed to represent a new birth of freedom for previously disenfranchised citizens. Of particular note, Section 3 of the 14<sup>th</sup> Amendment, automatically excludes from future office and position of power in the U.S. government and as well, from any office and position of power in the sovereign states and their many subdivisions, any individual who has previously taken an oath to support and defend our Constitution and after which acts so as to rebel against that charter, either via overt insurrection or by giving aid or comfort to the Constitutions' enemies.

In carefully analyzing this language embedded in the Constitution, numerous legal scholars have wrangled with the preeminent issue of whether an actual conviction is necessary to trigger the prohibition of running for office. This so-called "disqualification clause" has been determined to operate completely independently of any pending criminal proceedings and also independent of any impeachment proceedings or congressional legislation. Former federal judge Michael Luttig of the U.S. Court of Appeals for the Fourth Circuit and noted legal scholar Laurene Tribe have both come to the inescapable conclusion that the "disqualification clause" was designed to operate directly and immediately upon this certain individuals who betray their oaths to the U.S. Constitution, whether by taking up arms to overturn our government or by waging war on our federal government by attempting to overturn the results of a presidential election through a bloodless coup.

President Trump's efforts both in Washington, as well as in Georgia and perhaps other states, as well as the consequential assault on the US Capitol, put Trump at the center of the disqualification clause, and as a result of which, make him ineligible to ever serve in federal



office again. Now given that the facts seem to be crystal clear that Trump was involved to some extent in the rebellion or insurrection that took place on January 6<sup>th</sup>, the sole remaining question is whether American jurists who swear an oath to uphold the US Constitution upon their entry to the bench, will choose to follow the letter of the Constitution in this case. The January 6th 117th U.S. Congress Second Session Final House Report 117-000, and D.C. Grand Jury Indictments that is hereby incorporated herein and made a part hereof by reference as if set forth in full attached hereto as Exhibit(s) A & B.

Of particular note in this regard is that during his one term in office, President Trump had the opportunity to appoint three new Supreme Court justices to the high court. Each of these three jurists, Justice Neil Gorsuch, Justice Brett Kavanaugh and Justice Amy Coney Barrett are viewed as conservative jurists who err on the side of a strict construction of the US Constitution. In their decision to overturn the long standing case law of Roe v. Wade, the justices found that there was no "right of privacy" imbued in the Constitution and none could be fashioned out of whole cloth. Rather the most difficult decisions that the Court is forced to make such as whether a woman has the inherent right to abort her unborn child, is one that must be decided by looking at a very strict construction of the Constitution as our Founding Fathers saw fit to provide.

Interestingly enough, Section 3 of the 14<sup>th</sup> Amendment, which provides for the disqualification of an individual who commits insurrection against our government has remained on the books for some one hundred and fifty plus years without ever facing question as to its legitimacy. While one can certainly argue that it has not been thoroughly tested, that fact is only because we have not faced an insurrection against our federal government such as the one while we faced on January 6, 2021. It should also be noted that President Trump has since made statements to the effect that should he be elected, he would advocate the total elimination of the US Constitution and the creation of a new charter more in line with his personal values.

The 14<sup>th</sup> Amendment was promulgated and subsequently ratified in the context of post Civil War America when even after losing the Civil War, southern states were sending men to

Congress who had held prominent roles in the Confederacy and supported acts of insurrection against the U.S.

Any number of top legal scholars, including but not limited to Judge Luttig and Laurence Tribe conclude that Section 3 requires absolutely no legislation, criminal conviction or other judicial action to enforce its command. In legal terms, Section 3 is completely “self-executing”. They conclude that disqualification subject to Section 3 does not constitute a punishment or a deprivation of any “liberty” or “right” as much as one who fails to satisfy the Constitution’s qualifications does not have an absolute right to serve in a public office much less the presidency. Lastly, the scholars conclude that Section 3 is expansive and all-encompassing is what it regards as “insurrection or rebellion” against the constitutional order of the United States.

Taken along these same lines, had it been conclusively proven that Barack Obama had not been born in Hawaii but rather outside of the U.S., the Constitution would have conclusively barred him from seeking the Presidency. And Petitioner is convinced that there would have been no “wobble room” to allow him to escape that Constitutional requirement. Furthermore, had President Trump merely been thought by many individuals to have engaged in an insurrection against the federal government, that would not have sufficed to trigger Section 3 of the 14<sup>th</sup> Amendment. However, the mere fact that he has been formally indicted for various felonies including insurrection against the federal government mandates that Section 3 of the 14<sup>th</sup> Amendment be triggered.


The bottom line here is that President Trump both engaged in an insurrection and also gave aid and comfort to other individuals who were engaging in such actions, within the clear meaning of those terms as defined in Section Three of the 14<sup>th</sup> Amendment. Assuming that the

public record to date is accurate, and we have no evidence to the contrary, Trump is no longer eligible to seek the office of the President of the United States, or of any other state of the Union. See: U.S. House of Representatives Final Report Select Committee To Investigate January 6th Attack On The United States Capitol Exhibit(s) A


As such, this Court having the innate power to rule as to the tenets of the U.S. Constitution, is abjectly required to find that Donald John Trump's actions with respect to the January 6<sup>th</sup> uprising, and specifically the fact that he has been indicted for said acts, have effectively disqualified him from seeking the office of the President of the United States, and effectively barred him from participation in the Virginia Republican primary for President next spring. While Petitioners fully understand that their seeking this declaratory judgment places great pressure on the jurists who will be tasked with hearing this case, we believe that the law is abundantly clear as to the issues at bar and that if the jurists are ready to follow the specific language of the US Constitution in this regard, the decision should be a relative easy one.

WHEREFORE, Petitioners respectfully asks this honorable Court to enter a declaratory judgment such that Donald John Trump is barred from seeking the office of President of the United States and further, is barred rom participating in the Republican Presidential primary in Virginia in the spring of 2024.

Respectfully submitted,



ROY L. PERRY-BEY  
89 LINCOLN STREET #1772  
HAMPTON, VA 23669



CARLOS A. HOWARD  
4605 Brideshead Ct.  
Virginia Beach, Virginia 23464

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
DIVISION

Roy L. Perry-Bey  
Carlos A. Howard

Plaintiff(s),

v.

Civil Action Number:

2023 AUG 31 P 2:51  
1:23 CV 1165

Donald John Trump

Defendant(s).

LOCAL RULE 83.1(M) CERTIFICATION

I declare under penalty of perjury that:

No attorney has prepared, or assisted in the preparation of DECLARATORY RELIEF.  
(Title of Document)

Roy L. Perry-Bey  
Name of Pro Se Party (Print or Type)

[Signature]  
Signature of Pro Se Party

Executed on: 08/31/23 (Date)

OR

The following attorney(s) prepared or assisted me in preparation of \_\_\_\_\_.  
(Title of Document)

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# FINAL REPORT

Select Committee to Investigate the

## January 6th

Attack on the United States Capitol

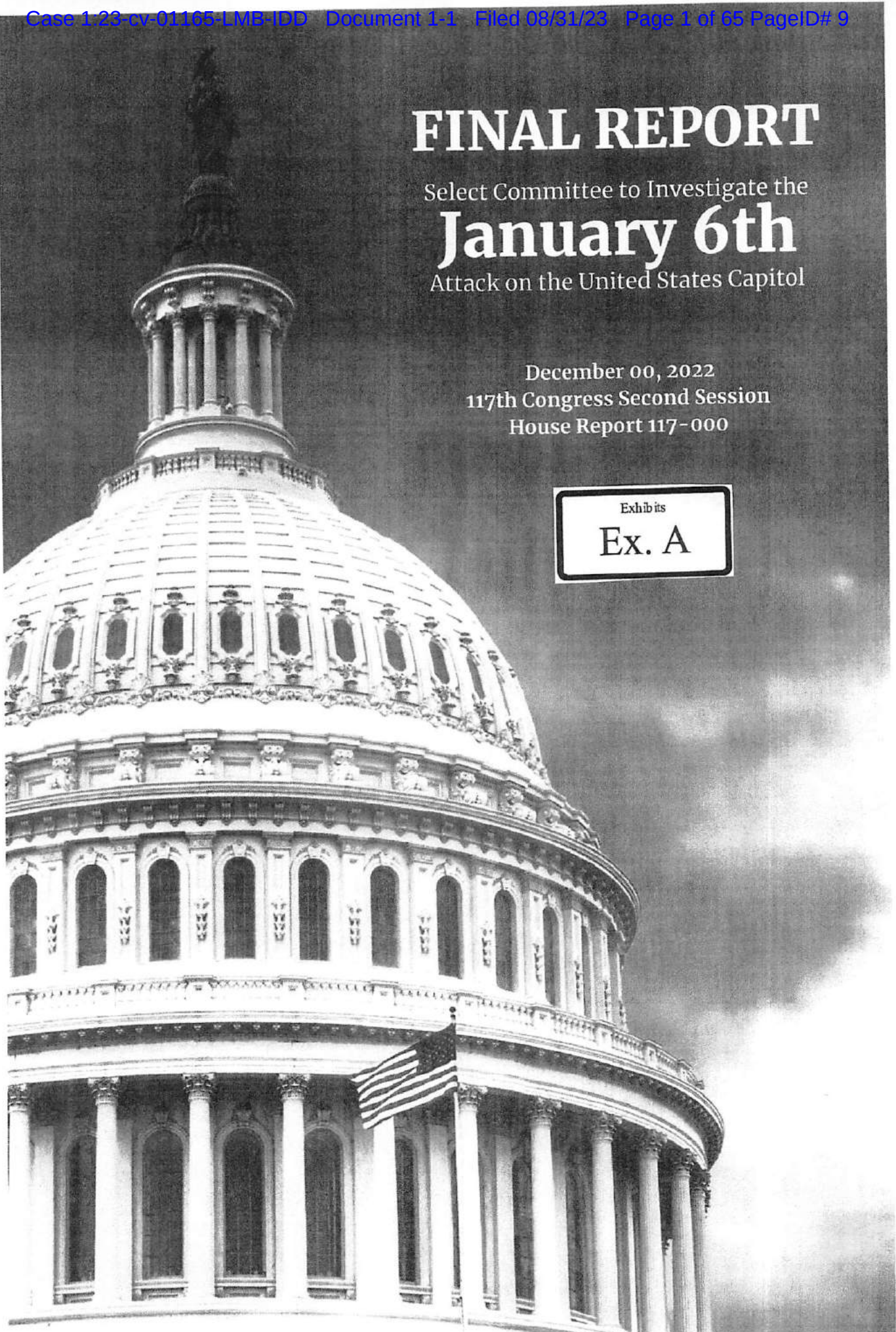
December 00, 2022

117th Congress Second Session

House Report 117-000

Exhibits

Ex. A



**FINAL REPORT**  
**OF THE**  
**SELECT COMMITTEE TO**  
**INVESTIGATE THE**  
**JANUARY 6TH**  
**ATTACK ON THE**  
**UNITED STATES CAPITOL**



December X, 2022

Committed to the Committee of the Whole House on the  
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ii **SELECT COMMITTEE TO INVESTIGATE THE  
JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL**

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**LIZ CHENEY** Wyoming, *Vice Chair*

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**ADAM B. SCHIFF** California

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---

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**LETTER OF TRANSMITTAL**

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HOUSE OF REPRESENTATIVES,  
SELECT COMMITTEE TO  
INVESTIGATE THE  
JANUARY 6TH ATTACK ON THE  
UNITED STATES CAPITOL,  
*Washington, DC,  
December 00, 2022.*

Hon. CHERYL L. JOHNSON,  
*Clerk, U.S. House of Representatives,  
Washington, DC.*

DEAR MS. JOHNSON: By direction of the Select Committee to Investigate the January 6th Attack on the United States Capitol, I hereby transmit its final report pursuant to section 4(a) of House Resolution 503, 117th Congress.

Sincerely,

  
BENNIE G. THOMPSON,  
*Chairman.*

## FOREWORD: SPEAKER OF THE HOUSE

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### “THE LAST BEST HOPE OF EARTH”

**“I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.”**

All Members of the United States Congress take this sacred oath. On January 6, 2021, Democrats and Republicans agreed that we would fulfill this oath—and that we had an obligation to signal to the world that American Democracy would prevail.

In furtherance of fulfilling this duty, the Select Committee to Investigate the January 6th Attack on the United States Capitol was charged with investigating the facts, circumstances and causes that led to this domestic terror attack on the Capitol, the Congress and the Constitution.

We owe a debt of gratitude to Chairman Bennie Thompson, Vice Chair Liz Cheney, the patriotic Members of Congress and dedicated staff—who devoted themselves to this investigation, to uncovering the truth and to writing a report that is a “Roadmap for Justice.”

The Select Committee to Investigate the January 6th Attack has succeeded in bringing clarity and demonstrating with painstaking detail the fragility of our Democracy. Above all, the work of the Select Committee underscores that our democratic institutions are only as strong as the commitment of those who are entrusted with their care.

As the Select Committee concludes its work, their words must be a clarion call to all Americans: to vigilantly guard our Democracy and to give our vote only to those dutiful in their defense of our Constitution.

Let us always honor our oath to, as Abraham Lincoln said, “nobly save, or meanly lose, the last best hope of earth.” So help us God.



*Nancy Pelosi*

NANCY PELOSI  
Speaker of the House



## FOREWORD: CHAIRMAN

We were told to remove our lapel pins. At the start of every new Congress, House Members are presented with lapel pins. They are about the size of a quarter and carry a seal of a bald eagle.

On a routine day in the Capitol, there are thousands of tourists, advocates, and workers. Typically, the pins are an easy way to spot House Members.

However, on January 6, 2021, the pin that once was a badge of honor and distinction turned into a bullseye.

On that day, tear gas fogged the air as gunfire rang out, and a violent mob crashed against the sealed doors. Concerned for our safety, Capitol Police officers told us that our lapel pins would make us a target for rioters.

As the Capitol Police rushed Members of Congress and staff to safety, that simple and, in context, sensible warning stuck with me. On January 6, 2021, my colleagues and I came to work with the intent of fulfilling our oaths of office and constitutional duty to carry out the peaceful transfer of power. We were the people's representatives in the people's House doing the people's business. Sadly, on that day, the danger was too great for our work to continue and for us to remain in the Capitol. It was too dangerous to be identified as a representative of the American people.

I've been a Member of the House for nearly 30 years. In that time, there's not a day that goes by that I don't feel a profound sense of duty and responsibility to the men and women who sent me to Congress to be their voice. After all, I'm from a part of the country where, in my lifetime, Black people were excluded entirely from political processes. Jim Crow laws prevented my father from registering to vote, and tragically during his life, he never cast a vote.

For generations, the people in communities I represent have struggled to have their voices heard by their government. Therefore, I take my duties and responsibilities seriously, advocating for greater economic opportunity, robust infrastructure, better schools, and safer housing for my constituents.

However, that long struggle to overcome oppression and secure basic civil and human rights continues to be my highest priority. I am always mindful of the journey that brought me to Washington as a member of Congress to be the voice of the women and men of Mississippi. As a violent mob stormed the Capitol trying to take away people's votes, rioters carried the battle flag from a failed rebellion of confederate states. This moment resonated deeply with me because of my personal history. Additionally, I continually think about the ongoing struggle to ensure justice and equality for all Americans.

## FOREWORD: CHAIRMAN

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The Capitol building itself is a fixture in our country's history, of both good and bad. After all, this structure is among the most recognizable symbols of American democracy. The Capitol's shining dome, topped with the statue of goddess Freedom, was built partially by the labor of enslaved people in the 18th and 19th centuries. Dark chapters of America's history are written into the building's marble, sandstone, and mortar. And yet in the halls and chambers of this building, leaders of courage passed amendments to our Constitution and enacted the laws that banned slavery, guaranteed equal rights under the law, expanded the vote, promoted equality, and moved our country, and her people, forward. The Capitol Building itself is a symbol of our journey toward a more perfect union. It is a temple to our democracy.

Those great moments in our history have come when men and women put loyalty to our country and Constitution ahead of politics and party. They did the right thing. The work of the Select Committee certainly originates from the same tradition. Our bipartisan membership has moved politics to the side and focused on the facts, circumstances, and causes of January 6th.

When I think back to January 6th, after nearly a year and a half of investigation, I am frightened about the peril our democracy faced. Specifically, I think about what that mob was there to do: to block the peaceful transfer of power from one president to another based on a lie that the election was rigged and tainted with widespread fraud.

I also think about why the rioters were there, besieging the legislative branch of our government. The rioters were inside the halls of Congress because the head of the executive branch of our government, the then-President of the United States, told them to attack. Donald Trump summoned that mob to Washington, DC. Afterward, he sent them to the Capitol to try to prevent my colleagues and me from doing our Constitutional duty to certify the election. They put our very democracy to the test.

Trump's mob came dangerously close to succeeding. Courageous law enforcement officers put their lives on the line for hours while Trump sat in the White House, refusing to tell the rioters to go home, while watching the assault on our republic unfold live on television.

When it was clear the insurrection would fail, Trump finally called off the mob, telling them, "We love you." Afterward, Congress was able to return to this Capitol Building and finish the job of counting the Electoral College votes and certifying the election.

This is the key conclusion of the Select Committee, all nine of us, Republicans and Democrats alike.



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## FOREWORD: CHAIRMAN

But who knows what would have happened if Trump's mob had succeeded in stopping us from doing our job? Who knows what sort of constitutional grey zone our country would have slid into? Who would have been left to correct that wrong?

As required by House Resolution 503, which established the Select Committee, we've explored in great detail the facts, circumstances, and causes of the attack. This report will provide new details that supplement those findings the committee already presented during our hearings.

But there are some questions for which there are still no clear answers, even if all the facts, circumstances, and causes are brought to bear. The "What If?" questions. For the good of American democracy, those questions must never again be put to the test. So, while it's important that this report lays out what happened, it's just as important to focus on how to make sure that January 6th was a one-time event—to identify the ongoing threats that could lead us down that dangerous path again—with hopes and humble prayers that the committee's work is carried on through corrective action.

This report will provide greater detail about the multistep effort devised and driven by Donald Trump to overturn the 2020 election and block the transfer of power. Building on the information presented in our hearings earlier this year, we will present new findings about Trump's pressure campaign on officials from the local level all the way up to his Vice President, orchestrated and designed solely to throw out the will of the voters and keep him in office past the end of his elected term.

As we've shown previously, this plan faltered at several points because of the courage of officials (nearly all of them Republicans) who refused to go along with it. Donald Trump appeared to believe that anyone who shared his partisan affiliation would also share the same callous disregard for his or her oath to uphold the rule of law. Fortunately, he was wrong.

The failure of Trump's plan was not assured. To the contrary, Trump's plan was successful at several turns. When his scheme to stay in power through political pressure hit roadblocks, he relentlessly pushed ahead with a parallel plan: summoning a mob to gather in Washington, DC on January 6th, promising things "will be wild!"

That mob showed up. They were armed. They were angry. They believed the "Big Lie" that the election had been stolen. And when Donald Trump pointed them toward the Capitol and told them to "fight like hell," that's exactly what they did.

Donald Trump lit that fire. But in the weeks beforehand, the kindling he ultimately ignited was amassed in plain sight.



## FOREWORD: CHAIRMAN

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That's why as part of the Select Committee's investigation, we took a hard look at whether enough was done to mitigate that risk. Our investigative teams focused on the way intelligence was gathered, shared, and assessed. We probed preparations by law enforcement agencies and security responses on the day of the attack. We followed the money, to determine who paid for a number of events in the run-up to the attack and to gain a clearer understanding of the way the former President's campaign apparatus cashed in on the big lie. And we pulled back the curtain at certain major social media companies to determine if their policies and protocols were up to the challenge when the President spread a message of violence and his supporters began to plan and coordinate their descent on Washington.

The Select Committee's conclusion on these matters—particularly dealing with intelligence and law enforcement—is consistent with our broader findings about the causes of January 6th. Were agencies perfect in their preparations for January 6th and their responses as the violence unfolded? Of course not. Relevant oversight committees and watchdogs should continue to find efficiencies and improvements, some of which are laid out in Committee's recommendations.

But the shortfall of communications, intelligence and law enforcement around January 6th was much less about what they did or did not know. It was more about what they could not know. The President of the United States inciting a mob to march on the Capitol and impede the work of Congress is not a scenario our intelligence and law enforcement communities envisioned for this country. Prior to January 6th, it was unimaginable. Whatever weaknesses existed in the policies, procedures, or institutions, they were not to blame for what happened on that day.

And so, when I think about the ongoing threats—when I think about how to avoid having to confront those “What-Ifs?” in the future—my concerns are less with the mechanics of intelligence gathering and security posture, as important as those questions are. My concerns remain first and foremost with those who continue to seek power at the expense of American democracy.

What if those election officials had given in to Donald Trump's pressure? What if the Justice Department had gone along with Trump's scheme to declare the 2020 election fraudulent? What if the Vice President had tried to throw out electoral votes? What if the rioters bent on stopping the peaceful transfer of power hadn't been repelled?

To cast a vote in the United States of America is an act of both hope and faith. When you drop that ballot in the ballot box, you do so with the confidence that every person named on that ballot will hold up their end of the bargain. The person who wins must swear an oath and live up to it. The

## FOREWORD: CHAIRMAN

people who come up short must accept the ultimate results and abide by the will of the voters and the rule of law. This faith in our institutions and laws is what upholds our democracy.

If that faith is broken—if those who seek power accept only the results of elections that they win—then American democracy, only a few centuries old, comes tumbling down.

That's the danger.

What's the solution?

The Committee believes a good starting point is the set of recommendations we set forth in our report, pursuant to House Resolution 503. Driven by our investigative findings, these recommendations will help strengthen the guardrails of our democracy.

Beyond what we recommend, in my view and as I said during our hearings, the best way to prevent another January 6th is to ensure accountability for January 6th. Accountability at all levels.

I have confidence in our Department of Justice and institutions at the state and local level to ensure accountability under the law. As this report is released, we see those processes moving forward.

But preventing another January 6th will require a broader sort of accountability. Ultimately, the American people chart the course for our country's future. The American people decide whom to give the reins of power. If this Select Committee has accomplished one thing, I hope it has shed light on how dangerous it would be to empower anyone whose desire for authority comes before their commitment to American democracy and the Constitution.

I believe most Americans will turn their backs on those enemies of democracy.

But some will rally to the side of the election deniers, and when I think about who some of those people are, it troubles me deep inside. White supremacists. Violent extremists. Groups that subscribe to racism, anti-Semitism, and violent conspiracy theories; those who would march through the halls of the Capitol waving the Confederate battle flag.

These are people who want to take America backward, not toward some imagined prior greatness, but toward repression. These are people who want to roll back what we've accomplished. I believe that those who aligned with the scheme to overturn the election heeded Donald Trump's call to march on the Capitol because they thought taking up Donald Trump's cause was a way to advance their vile ambitions.

That is why I did not remove my lapel pin on January 6th.

Our country has come too far to allow a defeated President to turn himself into a successful tyrant by upending our democratic institutions,



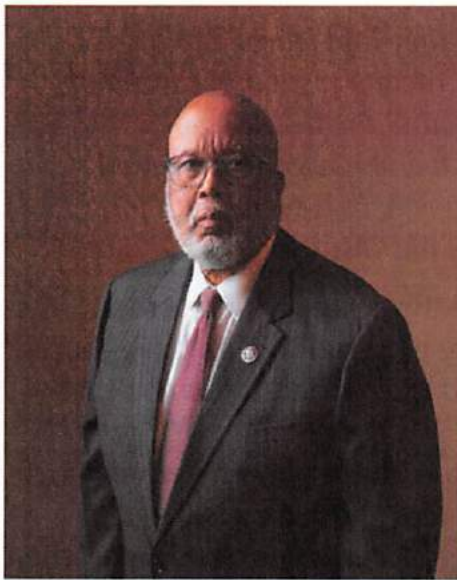
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fomenting violence, and, as I saw it, opening the door to those in our country whose hatred and bigotry threaten equality and justice for all Americans.

We can never surrender to democracy's enemies. We can never allow America to be defined by forces of division and hatred. We can never go backward in the progress we have made through the sacrifice and dedication of true patriots. We can never and will never relent in our pursuit of a more perfect union, with liberty and justice for all Americans.

I pray that God continues to bless the United States of America.



A handwritten signature in blue ink that reads "Bennie G. Thompson".

BENNIE G. THOMPSON  
Chairman

## FOREWORD: VICE CHAIR

In April 1861, when Abraham Lincoln issued the first call for volunteers for the Union Army, my great-great grandfather, Samuel Fletcher Cheney, joined the 21st Ohio Volunteer Infantry. He fought through all four years of the Civil War, from Chickamauga to Stones River to Atlanta. He marched with his unit in the Grand Review of Troops up Pennsylvania Avenue in May 1865, past a reviewing stand where President Johnson and General Grant were seated.

Silas Canfield, the regimental historian of the 21st OVI, described the men in the unit this way:

*Industry had taught them perseverance, and they had learned to turn aside for no obstacle. Their intelligence gave them a just appreciation of the value and advantage of free government, and the necessity of defending and maintaining it, and they enlisted prepared to accept all the necessary labors, fatigues, exposures, dangers, and even death for the unity of our Nation, and the perpetuity of our institutions.<sup>1</sup>*

I have found myself thinking often, especially since January 6th, of my great-great grandfather, and all those in every generation who have sacrificed so much for “the unity of our Nation and the perpetuity of our institutions.”

At the heart of our Republic is the guarantee of the peaceful transfer of power. Members of Congress are reminded of this every day as we pass through the Capitol Rotunda. There, eight magnificent paintings detail the earliest days of our Republic. Four were painted by John Trumbull, including one depicting the moment in 1793 when George Washington resigned his commission, handing control of the Continental Army back to Congress. Trumbull called this, “one of the highest moral lessons ever given the world.” With this noble act, George Washington established the indispensable example of the peaceful transfer of power in our nation.

Standing on the West Front of the Capitol in 1981, President Ronald Reagan described it this way:

*To a few of us here today, this is a solemn and most momentous occasion, and yet in the history of our nation it is a commonplace occurrence. The orderly transfer of authority as called for in the Constitution routinely takes place, as it has for almost two centuries, and few of us stop to think how unique we really are. In the eyes of many in the world, this every-4-year ceremony we accept as normal is nothing less than a miracle.*



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Every President in our history has defended this orderly transfer of authority, except one. January 6, 2021 was the first time one American President refused his Constitutional duty to transfer power peacefully to the next.

In our work over the last 18 months, the Select Committee has recognized our obligation to do everything we can to ensure this never happens again. At the outset of our investigation, we recognized that tens of millions of Americans had been persuaded by President Trump that the 2020 Presidential election was stolen by overwhelming fraud. We also knew this was flatly false, and that dozens of state and federal judges had addressed and resolved all manner of allegations about the election. Our legal system functioned as it should, but our President would not accept the outcome.

What most of the public did not know before our investigation is this: Donald Trump's own campaign officials told him early on that his claims of fraud were false. Donald Trump's senior Justice Department officials—each appointed by Donald Trump himself—investigated the allegations and told him repeatedly that his fraud claims were false. Donald Trump's White House lawyers also told him his fraud claims were false. From the beginning, Donald Trump's fraud allegations were concocted nonsense, designed to prey upon the patriotism of millions of men and women who love our country.

Most Americans also did not know exactly how Donald Trump, along with a handful of others, planned to defeat the transfer of Presidential power on January 6th. This was not a simple plan, but it was a corrupt one. This report lays that plan out in detail—a plan that ultimately had seven parts, anticipating that Vice President Pence, serving in his role as President of the Senate, would refuse to count official Biden electoral slates from multiple states. We understood from the beginning that explaining all the planning and machinations would be complex and would require many hours of public presentations and testimony. We also understood that our presentations needed to be organized into a series of hearings that presented the key evidence for the American public to watch live or streamed over a reasonable time period, rather than rely on second-hand accounts as reported by media organizations with their own editorial biases. We organized our hearings in segments to meet that goal. Tens of millions of Americans watched.

Among the most shameful findings from our hearings was this: President Trump sat in the dining room off the Oval Office watching the violent riot at the Capitol on television. For hours, he would not issue a public statement instructing his supporters to disperse and leave the Capitol, despite urgent pleas from his White House staff and dozens of others to do so. Members of his family, his White House lawyers, virtually all those around him knew that this simple act was critical. For hours, he would not



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do it. During this time, law enforcement agents were attacked and seriously injured, the Capitol was invaded, the electoral count was halted and the lives of those in the Capitol were put at risk. In addition to being unlawful, as described in this report, this was an utter moral failure—and a clear dereliction of duty. Evidence of this can be seen in the testimony of his White House Counsel and several other White House witnesses. No man who would behave that way at that moment in time can ever serve in any position of authority in our nation again. He is unfit for any office.

\* \* \* \* \*

In presenting all of the information in our hearings, we decided that the vast majority of our witnesses needed to be Republicans. They were. We presented evidence from two former Trump Administration Attorneys General, a former White House Counsel, many former Trump-appointed White House, Justice Department, and Trump Campaign staff, a respected former conservative judge, the former Secretary of Labor, and many others.

Like our hearings, this report is designed to deliver our findings in detail in a format that is accessible for all Americans. We do so in an executive summary, while also providing immense detail for historians and others. We are also releasing transcripts and evidence for the public to review, consistent with a small number of security and privacy concerns. A section of this report also explains the legal conclusions we draw from the evidence, and our concerns about efforts to obstruct our investigation.

The Committee recognizes that this investigation is just a beginning; it is only an initial step in addressing President Trump's effort to remain in office illegally. Prosecutors are considering the implications of the conduct we describe in this report. As are voters. John Adams wrote in 1761, "The very ground of our liberties is the freedom of elections." Faith in our elections and the rule of law are paramount to our Republic. Election-deniers—those who refuse to accept lawful election results—purposely attack the rule of law and the foundation of our country.

As you read this report, please consider this: Vice President Pence, along with many of the appointed officials who surrounded Donald Trump, worked to defeat many of the worst parts of Trump's plan to overturn the election. This was not a certainty. It is comforting to assume that the institutions of our Republic will always withstand those who try to defeat our Constitution from within. But our institutions are only strong when those who hold office are faithful to our Constitution. We do not know what would have happened if the leadership of the Department of Justice declared, as Donald Trump requested, that the election was "corrupt," if Jeff Clark's letters to State Legislatures had been sent, if Pat Cipollone, Jeff Rosen, Richard Donoghue, Steve Engel and others were not serving as guardrails on Donald Trump's abuses.

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Part of the tragedy of January 6th is the conduct of those who knew that what happened was profoundly wrong, but nevertheless tried to downplay it, minimize it or defend those responsible. That effort continues every day. Today, I am perhaps most disappointed in many of my fellow conservatives who know better, those who stood against the threats of communism and Islamic terrorism but concluded that it was easier to appease Donald Trump, or keep their heads down. I had hoped for more from them.

The late Charles Krauthammer wrote, “The lesson of our history is that the task of merely maintaining strong and sturdy the structures of a constitutional order is unending, the continuing and ceaseless work of every generation.” This task is unending because democracy can be fragile and our institutions do not defend themselves.

The history of our time will show that the bravery of a handful of Americans, doing their duty, saved us from an even more grave Constitutional crisis. Elected officials, election workers, and public servants stood against Donald Trump’s corrupt pressure. Many of our witnesses showed selfless patriotism and their words and courage will be remembered.

The brave men and women of the Capitol Police, Metropolitan Police and all the other law enforcement officers who fought to defend us that day undoubtedly saved lives and our democracy.

Finally, I wish to thank all who honorably contributed to the work of the Committee and to this Report. We accomplished much over a relatively short period of time, and many of you sacrificed for the good of your nation. You have helped make history and, I hope, helped right the ship.



A handwritten signature in black ink that reads "Liz Cheney". The signature is written in a cursive, flowing style.

LIZ CHENEY  
Vice Chair

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### ENDNOTE

1. Silas S. Canfield, *History of the 21st Regiment Ohio Volunteer Infantry in the War of the Rebellion* (Vrooman, Anderson & Bateman, printers, 1893), p. 10.



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On October 31, 2022, in a Federal courthouse in Washington, DC, Graydon Young testified against Stewart Rhodes and other members of the Oath Keepers militia group. The defendants had been charged with seditious conspiracy against the United States and other crimes related to the January 6, 2021, attack on Congress.<sup>1</sup>

In his testimony that day, Young explained to the jury how he and other Oath Keepers were provoked to travel to Washington by President Donald Trump's tweets and by Trump's false claims that the 2020 Presidential election was "stolen" from him.<sup>2</sup> And, in emotional testimony, Young acknowledged what he and others believed they were doing on January 6th: attacking Congress in the manner the French had attacked the Bastille at the outset of the French Revolution.<sup>3</sup> Reflecting on that day more than a year and half later, Young testified:

Prosecutor: And so how do you feel about the fact that you were pushing towards a line of police officers?

Young: Today I feel extremely ashamed and embarrassed. . . .

Prosecutor: How did you feel at the time?

Young: I felt like, again, we were continuing in some kind of historical event to achieve a goal.

\* \* \*

Prosecutor: Looking back now almost two years later, what would that make you as someone who was coming to D.C. to fight against the government?

Young: I guess I was [acting] like a traitor, somebody against my own government.<sup>4</sup>

Young's testimony was dramatic, but not unique. Many participants in the attack on the Capitol acknowledged that they had betrayed their own country:

- Reimler: "And I'm sorry to the people of this country for threatening the democracy that makes this country so great . . . My participation in the events that day were part of an attack on the rule of law."<sup>5</sup>
- Pert: "I know that the peaceful transition of power is to ensure the common good for our nation and that it is critical in protecting our country's security needs. I am truly sorry for my part and accept full responsibility for my actions."<sup>6</sup>
- Markofski: "My actions put me on the other side of the line from my

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Protestors gather at the Capitol.

(Photo by Samuel Corum/Getty Images)

brothers in the Army. The wrong side. Had I lived in the area, I would have been called up to defend the Capitol and restore order . . . My actions brought dishonor to my beloved U.S. Army National Guard.”<sup>7</sup>

- Witcher: “Every member—every male member of my family has served in the military, in the Marine Corps, and most have saw combat. And I cast a shadow and cast embarrassment upon my family name and that legacy.”<sup>8</sup>
- Edwards: “I am ashamed to be for the first time in my 68 years, standing before a judge, having pleaded guilty to committing a crime, ashamed to be associated with an attack on the United States Capitol, a symbol of American democracy and greatness that means a great deal to me.”<sup>9</sup>

Hundreds of other participants in the January 6th attack have pleaded guilty, been convicted, or await trial for crimes related to their actions that day. And, like Young, hundreds of others have acknowledged exactly what provoked them to travel to Washington, and to engage in violence. For example:

- Ronald Sandlin, who threatened police officers in the Capitol saying, “[y]ou’re going to die,” posted on December 23, 2020: “I’m going to be there to show support for our president and to do my part to stop the



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steal and stand behind Trump when he decides to cross the rubicon. If you are a patriot I believe it's your duty to be there. I see it as my civic responsibility.”<sup>10</sup>

- Garret Miller, who brought a gun to the Capitol on January 6th, explained: “I was in Washington, D.C. on January 6, 2021, because I believed I was following the instructions of former President Trump and he was my president and the commander-in-chief. His statements also had me believing the election was stolen from him.”<sup>11</sup>
- John Douglas Wright explained that he brought busloads of people to Washington, DC, on January 6th “because [Trump] called me there, and he laid out what is happening in our government.”<sup>12</sup>
- Lewis Cantwell testified: If “the President of the United States . . . [is] out on TV telling the world that it was stolen, what else would I believe, as a patriotic American who voted for him and wants to continue to see the country thrive as I thought it was?”<sup>13</sup>
- Likewise, Stephen Ayres testified that “with everything the President was putting out” ahead of January 6th that “the election was rigged . . . the votes were wrong and stuff . . . it just got into my head.” “The President [was] calling on us to come” to Washington, DC. <sup>14</sup> Ayres “was hanging on every word he [President Trump] was saying”<sup>15</sup> Ayres posted that “Civil War will ensue” if President Trump did not stay in power after January 6th.<sup>16</sup>

The Committee has compiled hundreds of similar statements from participants in the January 6th attack.<sup>17</sup>

House Resolution 503 instructed the Select Committee to “investigate and report upon the facts, circumstances, and causes relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex” and to “issue a final report” containing “findings, conclusions, and recommendations for corrective measures.” The Select Committee has conducted nine public hearings, presenting testimony from more than 70 witnesses. In structuring our investigation and hearings, we began with President Trump’s contentions that the election was stolen and took testimony from nearly all of the President’s principal advisors on this topic. We focused on the rulings of more than 60 Federal and State courts rejecting President Trump’s and his supporters’ efforts to reverse the electoral outcome.

Despite the rulings of these courts, we understood that millions of Americans still lack the information necessary to understand and evaluate what President Trump has told them about the election. For that reason, our hearings featured a number of members of President Trump’s inner circle refuting his fraud claims and testifying that the election was not in fact stolen. In all, the Committee displayed the testimony of more than four



## EXECUTIVE SUMMARY

dozen Republicans—by far the majority of witnesses in our hearings—including two of President Trump’s former Attorneys General, his former White House Counsel, numerous members of his White House staff, and the highest-ranking members of his 2020 election campaign, including his campaign manager and his campaign general counsel. Even key individuals who worked closely with President Trump to try to overturn the 2020 election on January 6th ultimately *admitted* that they lacked actual evidence sufficient to change the election result, and they *admitted* that what they were attempting was unlawful.<sup>18</sup>

This Report supplies an immense volume of information and testimony assembled through the Select Committee’s investigation, including information obtained following litigation in Federal district and appellate courts, as well as in the U.S. Supreme Court. Based upon this assembled evidence, the Committee has reached a series of specific findings,<sup>19</sup> including the following:

1. Beginning election night and continuing through January 6th and thereafter, Donald Trump purposely disseminated false allegations of fraud related to the 2020 Presidential election in order to aid his effort to overturn the election and for purposes of soliciting contributions. These false claims provoked his supporters to violence on January 6th.
2. Knowing that he and his supporters had lost dozens of election lawsuits, and despite his own senior advisors refuting his election fraud claims and urging him to concede his election loss, Donald Trump refused to accept the lawful result of the 2020 election. Rather than honor his constitutional obligation to “take Care that the Laws be faithfully executed,” President Trump instead plotted to overturn the election outcome.
3. Despite knowing that such an action would be illegal, and that no State had or would submit an altered electoral slate, Donald Trump corruptly pressured Vice President Mike Pence to refuse to count electoral votes during Congress’s joint session on January 6th.
4. Donald Trump sought to corrupt the U.S. Department of Justice by attempting to enlist Department officials to make purposely false statements and thereby aid his effort to overturn the Presidential election. After that effort failed, Donald Trump offered the position of Acting Attorney General to Jeff Clark knowing that Clark intended to disseminate false information aimed at overturning the election.
5. Without any evidentiary basis and contrary to State and Federal law, Donald Trump unlawfully pressured State officials and legislators to change the results of the election in their States.
6. Donald Trump oversaw an effort to obtain and transmit false electoral certificates to Congress and the National Archives.

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7. Donald Trump pressured Members of Congress to object to valid slates of electors from several States.
8. Donald Trump purposely verified false information filed in Federal court.
9. Based on false allegations that the election was stolen, Donald Trump summoned tens of thousands of supporters to Washington for January 6th. Although these supporters were angry and some were armed, Donald Trump instructed them to march to the Capitol on January 6th to “take back” their country.
10. Knowing that a violent attack on the Capitol was underway and knowing that his words would incite further violence, Donald Trump purposely sent a social media message publicly condemning Vice President Pence at 2:24 p.m. on January 6th.
11. Knowing that violence was underway at the Capitol, and despite his duty to ensure that the laws are faithfully executed, Donald Trump refused repeated requests over a multiple hour period that he instruct his violent supporters to disperse and leave the Capitol, and instead watched the violent attack unfold on television. This failure to act perpetuated the violence at the Capitol and obstructed Congress’s proceeding to count electoral votes.
12. Each of these actions by Donald Trump was taken in support of a multi-part conspiracy to overturn the lawful results of the 2020 Presidential election.
13. The intelligence community and law enforcement agencies did successfully detect the planning for potential violence on January 6th, including planning specifically by the Proud Boys and Oath Keeper militia groups who ultimately led the attack on the Capitol. As January 6th approached, the intelligence specifically identified the potential for violence at the U.S. Capitol. This intelligence was shared within the executive branch, including with the Secret Service and the President’s National Security Council.
14. Intelligence gathered in advance of January 6th did not support a conclusion that Antifa or other left-wing groups would likely engage in a violent counter-demonstration, or attack Trump supporters on January 6th. Indeed, intelligence from January 5th indicated that some left-wing groups were instructing their members to “stay at home” and not attend on January 6th.<sup>20</sup> Ultimately, none of these groups was involved to any material extent with the attack on the Capitol on January 6th.



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15. Neither the intelligence community nor law enforcement obtained intelligence in advance of January 6th on the full extent of the ongoing planning by President Trump, John Eastman, Rudolph Giuliani and their associates to overturn the certified election results. Such agencies apparently did not (and potentially could not) anticipate the provocation President Trump would offer the crowd in his Ellipse speech, that President Trump would “spontaneously” instruct the crowd to march to the Capitol, that President Trump would exacerbate the violent riot by sending his 2:24 p.m. tweet condemning Vice President Pence, or the full scale of the violence and lawlessness that would ensue. Nor did law enforcement anticipate that President Trump would refuse to direct his supporters to leave the Capitol once violence began. No intelligence community advance analysis predicted exactly how President Trump would behave; no such analysis recognized the full scale and extent of the threat to the Capitol on January 6th.
16. Hundreds of Capitol and DC Metropolitan police officers performed their duties bravely on January 6th, and America owes those individuals immense gratitude for their courage in the defense of Congress and our Constitution. Without their bravery, January 6th would have been far worse. Although certain members of the Capitol Police leadership regarded their approach to January 6th as “all hands on deck,” the Capitol Police leadership did not have sufficient assets in place to address the violent and lawless crowd.<sup>21</sup> Capitol Police leadership did not anticipate the scale of the violence that would ensue after President Trump instructed tens of thousands of his supporters in the Ellipse crowd to march to the Capitol, and then tweeted at 2:24 p.m. Although Chief Steven Sund raised the idea of National Guard support, the Capitol Police Board did not request Guard assistance prior to January 6th. The Metropolitan Police took an even more proactive approach to January 6th, and deployed roughly 800 officers, including responding to the emergency calls for help at the Capitol. Rioters still managed to break their line in certain locations, when the crowd surged forward in the immediate aftermath of Donald Trump’s 2:24 p.m. tweet. The Department of Justice readied a group of Federal agents at Quantico and in the District of Columbia, anticipating that January 6th could become violent, and then deployed those agents once it became clear that police at the Capitol were overwhelmed. Agents from the Department of Homeland Security were also deployed to assist.
17. President Trump had authority and responsibility to direct deployment of the National Guard in the District of Columbia, but never gave



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any order to deploy the National Guard on January 6th or on any other day. Nor did he instruct any Federal law enforcement agency to assist. Because the authority to deploy the National Guard had been delegated to the Department of Defense, the Secretary of Defense could, and ultimately did deploy the Guard. Although evidence identifies a likely miscommunication between members of the civilian leadership in the Department of Defense impacting the timing of deployment, the Committee has found no evidence that the Department of Defense intentionally delayed deployment of the National Guard. The Select Committee recognizes that some at the Department had genuine concerns, counseling caution, that President Trump might give an illegal order to use the military in support of his efforts to overturn the election.

\* \* \*

This Report begins with a factual overview framing each of these conclusions and summarizing what our investigation found. That overview is in turn supported by eight chapters identifying the very specific evidence of each of the principal elements of President Trump's multi-part plan to overturn the election, along with evidence regarding intelligence gathered before January 6th and security shortfalls that day.

Although the Committee's hearings were viewed live by tens of millions of Americans and widely publicized in nearly every major news source,<sup>22</sup> the Committee also recognizes that other news outlets and commentators have actively discouraged viewers from watching, and that millions of other Americans have not yet seen the actual evidence addressed by this Report. Accordingly, the Committee is also releasing video summaries of relevant evidence on each major topic investigated.

This Report also examines the legal implications of Donald Trump and his co-conspirators' conduct and includes criminal referrals to the Department of Justice regarding President Trump and certain other individuals. The criminal referrals build upon three relevant rulings issued by a Federal district court and explain in detail how the facts found support further evaluation by the Department of Justice of specific criminal charges. To assist the public in understanding the nature and importance of this material, this Report also contains sections identifying how the Committee has evaluated the credibility of its witnesses and suggests that the Department of Justice further examine possible efforts to obstruct our investigation. We also note that more than 30 witnesses invoked their Fifth Amendment privilege against self-incrimination, others invoked Executive Privilege or categorically refused to appear (including Steve Bannon, who has since been convicted of contempt of Congress).



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Finally, this report identifies a series of legislative recommendations, including the Presidential Election Reform Act, which has already passed the House of Representatives.

### EXECUTIVE SUMMARY: OVERVIEW OF THE EVIDENCE DEVELOPED

In the Committee's hearings, we presented evidence of what ultimately became a multi-part plan to overturn the 2020 Presidential election. That evidence has led to an overriding and straight forward conclusion: the central cause of January 6th was one man, former President Donald Trump, whom many others followed. None of the events of January 6th would have happened without him.

### THE BIG LIE

In the weeks before election day 2020, Donald Trump's campaign experts, including his campaign manager Bill Stepien, advised him that the election results would not be fully known on election night.<sup>23</sup> This was because certain States would not begin to count absentee and other mail-in votes until election day or after election-day polls had closed.<sup>24</sup> Because Republican voters tend to vote in greater numbers on election day and Democratic voters tend to vote in greater numbers in advance of election day, it was widely anticipated that Donald Trump could initially appear to have a lead, but that the continued counting of mail-in, absentee and other votes beginning election night would erode and could overcome that perceived lead.<sup>25</sup> Thus, as President Trump's campaign manager cautioned, understanding the results of the 2020 election would be a lengthy "process," and an initial appearance of a Trump lead could be a "red mirage."<sup>26</sup> This was not unique to the 2020 election; similar scenarios had played out in prior elections as well.<sup>27</sup>

Prior to the 2020 election, Donald Trump's campaign manager Bill Stepien, along with House Republican Leader Kevin McCarthy, urged President Trump to embrace mail-in voting as potentially beneficial to the Trump Campaign.<sup>28</sup> Presidential advisor and son-in-law Jared Kushner recounted others giving Donald Trump the same advice: "[M]ail in ballots could be a good thing for us if we looked at it correctly."<sup>29</sup> Multiple States, including Florida, had successfully utilized mail-in voting in prior elections, and in 2020.<sup>30</sup> Trump White House Counselor Hope Hicks testified: "I think he [President Trump] understood that a lot of people vote via absentee ballot in places like Florida and have for a long time and that it's worked fine."<sup>31</sup> Donald Trump won in numerous States that allowed no-excuse absentee voting in 2020, including Alaska, Florida, Idaho, Iowa, Kansas, Montana, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, and Wyoming.<sup>32</sup>



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On election night 2020, the election returns were reported in almost exactly the way that Stepien and other Trump Campaign experts predicted, with the counting of mail-in and absentee ballots gradually diminishing President Trump's perceived lead. As the evening progressed, President Trump called in his campaign team to discuss the results. Stepien and other campaign experts advised him that the results of the election would not be known for some time, and that he could not truthfully declare victory.<sup>33</sup> "It was far too early to be making any calls like that. Ballots—ballots were still being counted. Ballots were still going to be counted for days."<sup>34</sup>

Campaign Senior Advisor Jason Miller told the Select Committee that he argued against declaring victory at that time as well, because "it was too early to say one way [or] the other" who had won.<sup>35</sup> Stepien advised Trump to say that "votes were still being counted. It's too early to tell, too early to call the race but, you know, we are proud of the race we run—we ran and we, you know, think we're—think we're in a good position" and would say more in the coming days.<sup>36</sup>

President Trump refused, and instead said this in his public remarks that evening: "This is a fraud on the American public. This is an embarrassment to our country. We were getting ready to win this election. Frankly, we did win this election. We did win this election . . . . We want all voting to stop."<sup>37</sup> And on the morning of November 5th, he tweeted "STOP THE COUNT!"<sup>38</sup> Halting the counting of votes at that point would have violated both State and Federal laws.<sup>39</sup>

According to testimony received by the Select Committee, the only advisor present who supported President Trump's inclination to declare victory was Rudolph Giuliani, who appeared to be inebriated.<sup>40</sup> President Trump's Attorney General, William Barr, who had earlier left the election night gathering, perceived the President's statement this way:

[R]ight out of the box on election night, the President claimed that there was major fraud underway. I mean, this happened, as far as I could tell, before there was actually any potential of looking at evidence. He claimed there was major fraud. And it seemed to be based on the dynamic that, at the end of the evening, a lot of Democratic votes came in which changed the vote counts in certain States, and that seemed to be the basis for this broad claim that there was major fraud. And I didn't think much of that, because people had been talking for weeks and everyone understood for weeks that that was going to be what happened on election night . . . .<sup>41</sup>

President Trump's decision to declare victory falsely on election night and, unlawfully, to call for the vote counting to stop, was not a spontaneous decision. It was premeditated. The Committee has assembled a range of



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President Trump declares victory in a speech at an election night party.

(Photo by Chip Somodevilla/Getty Images)

evidence of President Trump's preplanning for a false declaration of victory. This includes multiple written communications on October 31 and November 3, 2020, to the White House by Judicial Watch President Tom Fitton.<sup>42</sup> This evidence demonstrates that Fitton was in direct contact with President Trump and understood that President Trump would falsely declare victory on election night and call for vote counting to stop. The evidence also includes an audio recording of President Trump's advisor Steve Bannon, who said this on October 31, 2020, to a group of his associates from China:

And what Trump's gonna do is just declare victory, right? He's gonna declare victory. But that doesn't mean he's a winner. He's just gonna say he's a winner . . . The Democrats—more of our people vote early that count. Theirs vote in mail. And so they're gonna have a natural disadvantage, and Trump's going to take advantage of it—that's our strategy. He's gonna declare himself a winner. So when you wake up Wednesday morning, it's going to be a firestorm . . . Also, if Trump, if Trump is losing, by 10 or 11 o'clock at night, it's going to be even crazier. No, because he's gonna sit right there and say "They stole it. I'm directing the Attorney General to shut down all ballot places in all 50 states." It's



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going to be, no, he's not going out easy. If Trump—if Biden's winning, Trump is going to do some crazy shit.<sup>43</sup>

Also in advance of the election, Roger Stone, another outside advisor to President Trump, made this statement:

I really do suspect it will still be up in the air. When that happens, the key thing to do is to claim victory. Possession is nine-tenths of the law. No, we won. Fuck you, Sorry. Over. We won. You're wrong. Fuck you.<sup>44</sup>

On election day, Vice President Pence's staff, including his Chief of Staff and Counsel, became concerned that President Trump might falsely claim victory that evening. The Vice President's Counsel, Greg Jacob, testified about their concern that the Vice President might be asked improperly to echo such a false statement.<sup>45</sup> Jacob drafted a memorandum with this specific recommendation: "[I]t is essential that the Vice President not be perceived by the public as having decided questions concerning disputed electoral votes prior to the full development of all relevant facts."<sup>46</sup>

Millions of Americans believed that President Trump was telling the truth on election night—that President Trump actually had proof the election was stolen and that the ongoing counting of votes was an act of fraud.

As votes were being counted in the days after the election, President Trump's senior campaign advisors informed him that his chances of success were almost zero.

Former Trump Campaign Manager Bill Stepien testified that he had come to this conclusion by November 7th, and told President Trump:

Committee Staff: What was your view on the state of the election at that point?

Stepien: You know, very, very, very bleak. You know, I—we told him—the group that went over there outlined, you know, my belief and chances for success at this point. And then we pegged that at, you know, 5, maybe 10 percent based on recounts that were—that, you know, either were automatically initiated or could be—could be initiated based on, you know, realistic legal challenges, not all the legal challenges that eventually were pursued. But, you know, it was—you know, my belief is that it was a very, very—5 to 10 percent is not a very good optimistic outlook.<sup>47</sup>

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Trump Campaign Senior Advisor Jason Miller testified to the Committee about this exchange:

Miller: I was in the Oval Office. And at some point in the conversation Matt Oczkowski, who was the lead data person, was brought on, and I remember he delivered to the President in pretty blunt terms that he was going to lose.

Committee Staff: And that was based, Mr. Miller, on Matt and the data team's assessment of this sort of county-by-county, State-by-State results as reported?

Miller: Correct.<sup>48</sup>

In one of the Select Committee's hearings, former Fox News political editor Chris Stirewalt was asked what the chance President Trump had of winning the election after November 7th, when the votes were tallied and every news organization had called the race for now-President Biden. His response: "None."<sup>49</sup>

As the Committee's hearings demonstrated, President Trump made a series of statements to White House staff and others during this time period indicating his understanding that he had lost.<sup>50</sup> President Trump also took consequential actions reflecting his understanding that he would be leaving office on January 20th. For example, President Trump personally signed a Memorandum and Order instructing his Department of Defense to withdraw all military forces from Somalia by December 31, 2020, and from Afghanistan by January 15, 2021.<sup>51</sup> General Keith Kellogg (ret.), who had been appointed by President Trump as Chief of Staff for the National Security Council and was Vice President Pence's National Security Advisor on January 6th, told the Select Committee that "[a]n immediate departure that that memo said would have been catastrophic. It's the same thing what President Biden went through. It would have been a debacle."<sup>52</sup>

In the weeks that followed the election, President Trump's campaign experts and his senior Justice Department officials were informing him and others in the White House that there was no genuine evidence of fraud sufficient to change the results of the election. For example, former Attorney General Barr testified:

And I repeatedly told the President in no uncertain terms that I did not see evidence of fraud, you know, that would have affected the outcome of the election. And, frankly, a year and a half later, I haven't seen anything to change my mind on that.<sup>53</sup>

Former Trump Campaign lawyer Alex Cannon, who was asked to oversee incoming information about voter fraud and set up a voter fraud tip



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line, told the Select Committee about a pertinent call with White House Chief of Staff Mark Meadows in November 2020:

Cannon: So I remember a call with Mr. Meadows where Mr. Meadows was asking me what I was finding and if I was finding anything. And I remember sharing with him that we weren't finding anything that would be sufficient to change the results in any of the key States.

Committee Staff: When was that conversation?

Cannon: Probably in November. Mid- to late November . . . .

Committee Staff: And what was Mr. Meadows's reaction to that information?

Cannon: I believe the words he used were: "So there is no there there?"<sup>54</sup>

President Trump's Campaign Manager Bill Stepien recalled that President Trump was being told "wild allegations" and that it was the Campaign's job to "track [the allegations] down":

Committee Staff: You said that you were very confident that you were telling the President the truth in your dealings with [him]. And had your team been able to verify any of these allegations of fraud, would you have reported those to the President?

Stepien: Sure.

Committee Staff: Did you ever have to report that—

Stepien: One of my frustrations would be that, you know, people would throw out, you know, these reports, these allegations, these things that they heard or saw in a State, and they'd tell President Trump. And, you know, it would be the campaign's job to track down the information, the facts. And, you know, President Trump, you know—if someone's saying, hey, you know, all these votes aren't counted or were miscounted, you know, if you're down in a State like Arizona, you liked hearing that. It would be our job to track it down and come up dry because the allegation didn't prove to be true. And we'd have to, you know, relay the news that, yeah, that tip that someone told you about those votes or that fraud or, you know, nothing came of it.

That would be our job as, you know, the truth telling squad and, you know, not—not a fun job to be, you know, much—it's an easier job to

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be telling the President about, you know, wild allegations. It's a harder job to be telling him on the back end that, yeah, that wasn't true.

Committee Staff: How did he react to those types of conversations where you [told] him that an allegation or another wasn't true?

Stepien: He was—he had—usually he had pretty clear eyes. Like, he understood, you know—you know, we told him where we thought the race was, and I think he was pretty realistic with our viewpoint, in agreement with our viewpoint of kind of the forecast and the uphill climb we thought he had.<sup>55</sup>

Trump Campaign Senior Advisor Jason Miller told the Committee that he informed President Trump “several” times that “specific to election day fraud and irregularities, there were not enough to overturn the election.”<sup>56</sup>

Vice President Pence has also said publicly that he told President Trump there was no basis to allege that the election was stolen. When a reporter recently asked “Did you ever point blank say to the President [that] we lost this election?” Pence responded that “I did . . . Many times.”<sup>57</sup> Pence has also explained:

There was never evidence of widespread fraud. I don't believe fraud changed the outcome of the election. But the President and the Campaign had every right to have those examined in court. But I told the President that, once those legal challenges played out, he should simply accept the outcome of the election and move on.<sup>58</sup>

The General Counsel of President Trump's campaign, Matthew Morgan, informed members of the White House staff, and likely many others, of the Campaign's conclusion that none of the allegations of fraud and irregularities could be sufficient to change the outcome of the election:

What was generally discussed on that topic was whether the fraud, maladministration, abuse, or irregularities, if aggregated and read most favorably to the campaign, would that be outcome determinative. And I think everyone's assessment in the room, at least amongst the staff, Marc Short, myself, and Greg Jacob, was that it was not sufficient to be outcome determinative.<sup>59</sup>

In a meeting on November 23rd, Barr told President Trump that the Justice Department was doing its duty by investigating every fraud allegation “if it's specific, credible, and could've affected the outcome,” but that “they're just not meritorious. They're not panning out.”<sup>60</sup>

Barr then told the Associated Press on December 1st that the Department had “not seen fraud on a scale that could have effected a different



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outcome in the election.”<sup>61</sup> Next, he reiterated this point in private meetings with the President both that afternoon and on December 14th, as well as in his final press conference as Attorney General later that month.<sup>62</sup> The Department of Homeland Security had reached a similar determination two weeks earlier: **“There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.”**<sup>63</sup>

In addition, multiple other high ranking Justice Department personnel appointed by President Trump also informed him repeatedly that the allegations were false. As January 6th drew closer, Acting Attorney General Rosen and Acting Deputy Attorney General Donoghue had calls with President Trump on almost a daily basis explaining in detail what the Department’s investigations showed.<sup>64</sup> Acting Deputy Attorney General Richard Donoghue told the Select Committee that he and Acting Attorney General Rosen tried “to put it in very clear terms to the President. And I said something to the effect of ‘Sir, we’ve done dozens of investigations, hundreds of interviews. The major allegations are not supported by the evidence developed. We’ve looked in Georgia, Pennsylvania, Michigan, Nevada. We’re doing our job.’”<sup>65</sup> On December 31st, Donoghue recalls telling the President that “people keep telling you these things and they turn out not to be true.”<sup>66</sup> And then on January 3rd, Donoghue reiterated this point with the President:

[A]s in previous conversations, we would say to him, you know, “We checked that out, and there’s nothing to it.”<sup>67</sup>

Acting Attorney General Rosen testified before the Select Committee that “the common element” of all of his communications with President Trump was President Trump urging the Department to find widespread fraud that did not actually exist. None of the Department’s investigations identified any genuine fraud sufficient to impact the election outcome:

During my tenure as the Acting Attorney General, which began on December 24 of [2020], the Department of Justice maintained the position, publicly announced by former Attorney General William Barr, that the Department had been presented with no evidence of widespread voter fraud in a scale sufficient to change the outcome of the 2020 election.<sup>68</sup>

As President Trump was hearing from his campaign and his Justice Department that the allegations of widespread fraud were not supported by the evidence, his White House legal staff also reached the same conclusions, and agreed specifically with what Barr told President Trump. Both White House Counsel Pat Cipollone and White House Senior Advisor Eric Herschmann reinforced to President Trump that the Justice Department was doing its duty to investigate allegations of supposed voter fraud.<sup>69</sup>

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Cipollone told the Select Committee that he “had seen no evidence of massive fraud in the election” and that he “forcefully” made this point “over and over again.” For example, during a late-night group meeting with President Trump on December 18th, at which he and Herschmann urged Trump not to heed the advice of several election conspiracists at the meeting:

Cipollone: They didn’t think that we were, you know—they didn’t think we believed this, you know, that there had been massive fraud in the election, and the reason they didn’t think we believed it is because we didn’t.

Committee Staff: And you articulated that forcefully to them during the meeting?

Cipollone: I did, yeah. I had seen no evidence of massive fraud in the election. . . . At some point, you have to deliver with the evidence. And I—again, I just to go back to what [Barr] said, he had not seen and I was not aware of any evidence of fraud to the extent that it would change the results of the election. That was made clear to them, okay, over and over again.<sup>70</sup>

Similarly, White House Attorney Eric Herschmann was also very clear about his views:

[T]hey never proved the allegations that they were making, and they were trying to develop.<sup>71</sup>

In short, President Trump was informed over and over again, by his senior appointees, campaign experts and those who had served him for years, that his election fraud allegations were nonsense.

How did President Trump continue to make false allegations despite all of this unequivocal information? President Trump sought out those who were not scrupulous with the facts, and were willing to be dishonest. He found a new legal team to assert claims that his existing advisors and the Justice Department had specifically informed him were false. President Trump’s new legal team, headed by Rudolph Giuliani, and their allies ultimately lost dozens of election lawsuits in Federal and State courts.

The testimony of Trump Campaign Manager Bill Stepien helps to put this series of events in perspective. Stepien described his interaction with Giuliani as an intentional “self-demotion,” with Stepien stepping aside once it became clear that President Trump intended to spread falsehoods.

Stepien knew the President’s new team was relying on unsupportable accusations, and he refused to be associated with their approach:



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There were two groups of family. We called them kind of my team and Rudy's team. I didn't mind being characterized as being part of "team normal," as reporters, you know, kind of started to do around that point in time.<sup>72</sup>

Having worked for Republican campaigns for over two decades, Stepien said, "I think along the way I've built up a pretty good -- I hope a good reputation for being honest and professional, and I didn't think what was happening was necessarily honest or professional at that point in time."<sup>73</sup>

As Giuliani visited Campaign headquarters to discuss election litigation, the Trump Campaign's professional staff began to view him as unhinged.<sup>74</sup> In addition, multiple law firms previously engaged to work for the Trump Campaign decided that they could not participate in the strategy being instituted by Giuliani. They quit. Campaign General Counsel Matthew Morgan explained that he had conversations with "probably all of our counsel who [we]re signed up to assist on election day as they disengaged with the campaign."<sup>75</sup> The "general consensus was that the law firms were not comfortable making the arguments that Rudy Giuliani was making publicly."<sup>76</sup> When asked how many outside firms expressed this concern, Morgan recalled having "a similar conversation with most all of them."<sup>77</sup>

Stepien grew so wary of the new team that he locked Giuliani out of his office:

Committee Staff: Yeah. I'm getting the sense from listening to you here for a few hours that you sort of chose to pull back, that you were uncomfortable with what Mr. Giuliani and others were saying and doing and, therefore, you were purposefully stepping back from a day-to-day role as the leader of the campaign. Is that—I don't want to put words in your mouth. Is that accurate?

Stepien: That's accurate. That's accurate. You know, I had my assistant -- it was a big glass kind of wall office in our headquarters, and I had my assistant lock my door. I told her, don't let anyone in. You know, I'll be around when I need to be around. You know, tell me what I need to know. Tell me what's going on here, but, you know, you're going to see less of me.

And, you know, sure enough, you know, Mayor Giuliani tried to, you know, get in my office and ordered her to unlock the door, and she didn't do that, you know. She's, you know, smart about that. But your words are ones I agree with.<sup>78</sup>

Over the weeks that followed, dozens of judges across the country specifically rejected the allegations of fraud and irregularities being advanced

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by the Trump team and their allies. For example, courts described the arguments as “an amalgamation of theories, conjecture, and speculation,” “allegations ... sorely wanting of relevant or reliable evidence,” “strained legal arguments without merit,” assertions that “did not prove by any standard of proof that any illegal votes were cast and counted,” and even a “fundamental and obvious misreading of the Constitution.”<sup>79</sup>

Reflecting back on this period, Trump Campaign Communications Director Tim Murtaugh texted colleagues in January 2021 about a news report that the New York State Bar was considering expelling Rudolph Giuliani over the Ellipse rally: “Why wouldn’t they expel him based solely on the outrageous lies he told for 2 1/2 months?”<sup>80</sup>

This is exactly what ultimately came to pass. When suspending his license, a New York court said that Giuliani “communicated demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump’s failed effort at reelection in 2020.”<sup>81</sup> The court added that “[t]he seriousness of [Giuliani’s] uncontroverted misconduct cannot be overstated.”<sup>82</sup>

Other Trump lawyers were sanctioned for making outlandish claims of election fraud without the evidence to back them up, including Sidney Powell, Lin Wood and seven other pro-Trump lawyers in a case that a Federal judge described as “a historic and profound abuse of the judicial process”:

It is one thing to take on the charge of vindicating rights associated with an allegedly fraudulent election. It is another to take on the charge of deceiving a federal court and the American people into believing that rights were infringed, without regard to whether any laws or rights were in fact violated. This is what happened here.<sup>83</sup>

A group of prominent Republicans have more recently issued a report—titled *Lost, Not Stolen*—examining “every count of every case brought in these six battleground states” by President Trump and his allies. The report concludes “that Donald Trump and his supporters had their day in court and failed to produce substantive evidence to make their case.”<sup>84</sup> President Trump and his legal allies “failed because of a lack of evidence and not because of erroneous rulings or unfair judges . . . . In many cases, after making extravagant claims of wrongdoing, Trump’s legal representatives showed up in court or state proceedings empty-handed, and then returned to their rallies and media campaigns to repeat the same unsupported claims.”<sup>85</sup>

There is no reasonable basis for the allegation that these dozens of rulings by State and Federal courts were somehow politically motivated.<sup>86</sup> The outcome of these suits was uniform regardless of who appointed the judges.



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One of the authors of *Lost, Not Stolen*, longtime Republican election lawyer Benjamin Ginsberg, testified before the Select Committee that “in no instance did a court find that the charges of fraud were real,” without variation based on the judges involved.<sup>87</sup> Indeed, eleven of the judges who ruled against Donald Trump and his supporters were appointed by Donald Trump himself.

One of those Trump nominees, Judge Stephanos Bibas of the U.S. Court of Appeals for the Third Circuit, rejected an appeal by the Trump Campaign claiming that Pennsylvania officials “did not undertake any meaningful effort” to fight illegal absentee ballots and uneven treatment of voters across counties.<sup>88</sup> Judge Bibas wrote in his decision that “calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”<sup>89</sup> Another Trump nominee, Judge Brett Ludwig of the Eastern District of Wisconsin, ruled against President Trump’s lawsuit alleging that the result was skewed by illegal procedures that governed drop boxes, ballot address information, and individuals who claimed “indefinitely confined” status to vote from home.<sup>90</sup> Judge Ludwig wrote in his decision, that “[t]his Court has allowed plaintiff the chance to make his case and he has lost on the merits” because the procedures used “do not remotely rise to the level” of breaking Wisconsin’s election rules.<sup>91</sup>

Nor is it true that these rulings focused solely on standing, or procedural issues. As Ginsberg confirmed in his testimony to the Select Committee, President Trump’s team “did have their day in court.”<sup>92</sup> Indeed, he and his co-authors determined in their report that 30 of these post-election cases were dismissed by a judge after an evidentiary hearing had been held, and many of these judges explicitly indicated in their decisions that the evidence presented by the plaintiffs was wholly insufficient on the merits.<sup>93</sup>

Ultimately, even Rudolph Giuliani and his legal team acknowledged that they had no definitive evidence of election fraud sufficient to change the election outcome. For example, although Giuliani repeatedly had claimed in public that Dominion voting machines stole the election, he admitted during his Select Committee deposition that “I do not think the machines stole the election.”<sup>94</sup> An attorney representing his lead investigator, Bernard Kerik, declared in a letter to the Select Committee that “it was impossible for Kerik and his team to determine conclusively whether there was widespread fraud or whether that widespread fraud would have altered the outcome of the election.”<sup>95</sup> Kerik also emailed President Trump’s chief of staff on December 28, 2020, writing: “We can do all the investigations we want later, but if the president plans on winning, it’s the legislators that have to be moved and this will do just that.”<sup>96</sup> Other Trump lawyers and supporters, Jenna Ellis, John Eastman, Phil Waldron, and Michael Flynn, all invoked their Fifth Amendment privilege against self-incrimination when



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Rudolph Giuliani, Bernard Kerik, and other hold a press conference at Four Seasons Total Landscaping on November 7, 2020 falsely claiming Donald Trump had won the state of Pennsylvania.

(Photo by Chris McGrath/Getty Images)

asked by the Select Committee what supposed proof they uncovered that the election was stolen.<sup>97</sup> Not a single witness--nor any combination of witnesses--provided the Select Committee with evidence demonstrating that fraud occurred on a scale even remotely close to changing the outcome in any State.<sup>98</sup>

By mid-December 2020, Donald Trump had come to what most of his staff believed was the end of the line. The Supreme Court rejected a lawsuit he supported filed by the State of Texas in the Supreme Court, and Donald Trump had this exchange, according to Special Assistant to the President Cassidy Hutchinson:

The President was fired up about the Supreme Court decision. And so I was standing next to [Chief of Staff Mark] Meadows, but I had stepped back . . . The President [was] just raging about the decision and how it's wrong, and why didn't we make more calls, and just this typical anger outburst at this decision . . . And the President said I think--so he had said something to the effect of, "I don't want people to know we lost, Mark. This is embarrassing. Figure it out. We need to figure it out. I don't want people to know that we lost."<sup>99</sup>



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On December 14, 2020, the Electoral College met to cast and certify each State's electoral votes. By this time, many of President Trump's senior staff, and certain members of his family, were urging him to concede that he had lost.

Labor Secretary Gene Scalia told the Committee that he called President Trump around this time and gave him such feedback quite directly:

[S]o, I had put a call in to the President—I might have called on the 13th; we spoke, I believe, on the 14th—in which I conveyed to him that I thought that it was time for him to acknowledge that President Biden had prevailed in the election . . . . But I communicated to the President that when that legal process is exhausted and when the electors have voted, that that's the point at which that outcome needs to be expected . . . . And I told him that I did believe, yes, that once those legal processes were run, if fraud had not been established that had affected the outcome of the election, that, unfortunately, I believed that what had to be done was concede the outcome.<sup>100</sup>

Deputy White House Press Secretary Judd Deere also told President Trump that he should concede. He recalled other staffers advising President Trump at some point to concede and that he “encouraged him to do it at least once after the electoral college met in mid-December.”<sup>101</sup> White House Counsel Pat Cipollone also believed that President Trump should concede: “[I]f your question is did I believe he should concede the election at a point in time, yes, I did.”<sup>102</sup>

Attorney General Barr told the Select Committee this: “And in my view, that [the December 14 electoral college vote] was the end of the matter. I didn't see—you know, I thought that this would lead inexorably to a new administration. I was not aware at that time of any theory, you know, why this could be reversed. And so I felt that the die was cast . . . .”<sup>103</sup>

Barr also told the Committee that he suggested several weeks earlier that the President's efforts in this regard needed to come to an end soon, in conversation with several White House officials after his meeting with Trump on November 23rd:

[A]s I walked out of the Oval Office, Jared was there with Dan Scavino, who ran the President's social media and who I thought was a reasonable guy and believe is a reasonable guy. And I said, how long is he going to carry on with this 'stolen election' stuff? Where is this going to go?

And by that time, Meadows had caught up with me and—leaving the office, and caught up to me and said that—he said, look, I think that he's becoming more realistic and knows that there's a limit to how far he can take this. And then Jared said, you know, yeah, we're working on this, we're working on it.<sup>104</sup>

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Despite all that Donald Trump was being told, he continued to purposely and maliciously make false claims. To understand the very stark differences between what he was being told and what he said publicly and in fundraising solicitations, the Committee has assembled the following examples.

<p><u><i>Then-Deputy Attorney General Jeffrey Rosen (12/15/20):</i></u>          “And so he said, ‘Well, what about this? I saw it on the videotape, somebody delivering a suitcase of ballots.’ And we said, ‘It wasn’t a suitcase. It was a bin. That’s what they use when they’re counting ballots. It’s benign.’”<sup>105</sup></p>	<p><u><i>President Trump one week later (12/22/20):</i></u>          “There is even security camera footage from Georgia that shows officials telling poll watchers to leave the room before pulling suitcases of ballots out from under the tables and continuing to count for hours.”<sup>106</sup></p>
<p><u><i>Acting Deputy Attorney General Richard Donoghue (12/27 &amp; 12/31/20):</i></u>          “I told the President myself that several times, in several conversations, that these allegations about ballots being smuggled in in a suitcase and run through the machine several times, it was not true, that we looked at it, we looked at the video, we interviewed the witnesses, that it was not true . . . . I believe it was in the phone call on December 27th. It was also in a meeting in the Oval Office on December 31st.”<sup>107</sup></p>	<p><u><i>President Trump later that week (1/2/21):</i></u>          “[S]he stuffed the machine. She stuffed the ballot. Each ballot went three times, they were showing: Here’s ballot number one. Here it is a second time, third time, next ballot.”<sup>108</sup></p>
<p><u><i>GA Sec. State Brad Raffensperger (1/2/21):</i></u>          “You’re talking about the State Farm video. And I think it’s extremely unfortunate that Rudy Giuliani or his people, they sliced and diced that video and took it out of context.” . . . “[W]e did an audit of that and we proved conclusively that they were not scanned three times. . . . Yes, Mr. President, we’ll send you the link from WSB.”          [Trump]: “I don’t care about a link. I don’t need it.”<sup>109</sup></p>	<p><u><i>President Trump one day later (1/3/21):</i></u>          “I spoke to Secretary of State Brad Raffensperger yesterday about Fulton County and voter fraud in Georgia. He was unwilling, or unable, to answer questions such as the ‘ballots under table’ scam, ballot destruction, out of state ‘voters’, dead voters, and more. He has no clue!”<sup>110</sup></p>



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<p><b><u>Attorney General Barr (12/1/20):</u></b>  “Then he raised the ‘big vote dump,’ as he called it, in Detroit. And, you know, he said, people saw boxes coming into the counting station at all hours of the morning and so forth.... I said, ‘Mr. President, there are 630 precincts in Detroit, and unlike elsewhere in the State, they centralize the counting process, so they’re not counted in each precinct, they’re moved to counting stations, and so the normal process would involve boxes coming in at all different hours.’ And I said, ‘Did anyone point out to you—did all the people complaining about it point out to you, you actually did better in Detroit than you did last time? I mean, there’s no indication of fraud in Detroit.’”<sup>111</sup></p>	<p><b><u>President Trump one day later (12/2/20):</u></b>  “I’ll tell you what’s wrong, voter fraud. Here’s an example. This is Michigan. At 6:31 in the morning, a vote dump of 149,772 votes came in unexpectedly. We were winning by a lot. That batch was received in horror. . . . In Detroit everybody saw the tremendous conflict . . . there were more votes than there were voters.”<sup>112</sup></p>
<p><b><u>Acting Deputy Attorney General Richard Donoghue (12/27/20):</u></b>  “The President then continued, there are ‘more votes than voters...’. But I was aware of that allegation, and I said, you know, that was just a matter of them ‘comparing the 2020 votes cast to 2016 registration numbers.’ That is ‘not a valid complaint.’”<sup>113</sup></p>	<p><b><u>President Trump ten days later (1/6/21):</u></b>  “More votes than they had voters. And many other States also.”<sup>114</sup></p>
<p><b><u>Acting Deputy Attorney General Richard Donoghue (1/3/21):</u></b>  “[W]e would say to him, you know, ‘We checked that out, and there’s nothing to it. . . . And we would cite to certain allegations. And so—like such as Pennsylvania, right. ‘No, there were not 250,000 more votes reported than were actually cast. That’s not true.’ So we would say things like that.”<sup>115</sup></p>	<p><b><u>President Trump three days later (1/6/21):</u></b>  “In Pennsylvania, you had 205,000 more votes than you had voters. And the number is actually much greater than that now. That was as of a week ago. And this is a mathematical impossibility unless you want to say it’s a total fraud.”<sup>116</sup></p>

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<p><u>GA Sec. State Brad Raffensperger (1/2/21):</u> [Trump]: “[I]t’s 4,502 who voted, but they weren’t on the voter registration roll, which they had to be. You had 18,325 vacant address voters. The address was vacant, and they’re not allowed to be counted. That’s 18,325.” ... [Raffensperger]: “Well, Mr. President, the challenge that you have is the data you have is wrong.”<sup>117</sup></p>	<p><u>President Trump two days later (1/4/21):</u> “4,502 illegal ballots were cast by individuals who do not appear on the state’s voter rolls. Well, that’s sort of strange. 18,325 illegal ballots were cast by individuals who registered to vote using an address listed as vacant according to the postal service.”<sup>118</sup></p>
<p><u>GA Sec. of State Brad Raffensperger (1/2/21):</u> [Trump]: “So dead people voted, and I think the number is close to 5,000 people. And they went to obituaries. They went to all sorts of methods to come up with an accurate number, and a minimum is close to about 5,000 voters.” ... [Raffensperger]: “The actual number were two. Two. Two people that were dead that voted. So that’s wrong.”<sup>119</sup></p>	<p><u>President Trump four days later (1/6/21):</u> “[T]he number of fraudulent ballots that we've identified across the state is staggering. Over 10,300 ballots in Georgia were cast by individuals whose names and dates of birth match Georgia residents who died in 2020 and prior to the election.”<sup>120</sup></p>
<p><u>GA Sec. State General Counsel Ryan Germany (1/2/21):</u> [Trump]: “You had out-of-state voters. They voted in Georgia, but they were from out of state, of 4,925.” ... [Germany]: “Every one we’ve been through are people that lived in Georgia, moved to a different state, but then moved back to Georgia legitimately.” ... “They moved back in years ago. This was not like something just before the election. So there’s something about that data that, it’s just not accurate.”<sup>121</sup></p>	<p><u>President Trump four days later (1/6/21):</u> “And at least 15,000 ballots were cast by individuals who moved out of the state prior to November 3rd election. They say they moved right back.”<sup>122</sup></p>



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<p><u><i>White House Press Secretary Kayleigh McEnany (n.d.):</i></u>  “[T]he one specific I remember referencing was I don’t agree with the Dominion track.” . . . “I specifically referenced waving him off of the Dominion theory earlier in my testimony.” . . .  [Q] “Are you saying you think he still continued to tweet that after you waved him off of it?”  [A] “Yeah . . .”<sup>123</sup></p>	<p><u><i>President Trump:</i></u>  Between mid-November and January 5, 2021, President Trump tweeted or retweeted conspiracy theories about Dominion nearly three dozen times.<sup>124</sup></p>
<p><u><i>Trump Campaign Senior Advisor Jason Miller:</i></u>  “...the international allegations for Dominion were not valid.”  [Q] “Okay. Did anybody communicate that to the President?”  [A]: “I know that that was—I know that was communicated. I know I communicated it”<sup>125</sup></p>	<p><u><i>President Trump:</i></u>  “You have Dominion, which is very, very suspect to start off with. Nobody knows the ownership. People say the votes are counted in foreign countries and much worse...”<sup>126</sup></p>
<p><u><i>Attorney General Barr (11/23/20):</i></u>  “I specifically raised the Dominion voting machines, which I found to be one of the most disturbing allegations— ‘disturbing’ in the sense that I saw absolutely zero basis for the allegations . . . I told him that it was crazy stuff and they were wasting their time on that and it was doing great, great disservice to the country.”<sup>127</sup></p>	<p><u><i>President Trump three days later (11/26/20):</i></u>  “[T]hose machines are fixed, they’re rigged. You can press Trump and the vote goes to Biden. . . . All you have to do is play with a chip, and they played with a chip, especially in Wayne County and Detroit.”<sup>128</sup></p>
<p><u><i>Attorney General Barr (12/1/20):</i></u>  “I explained, I said, look, if you have a machine and it counts 500 votes for Biden and 500 votes for Trump, and then you go back later and you have a—you will have the 1,000 pieces of paper put through that machine, and you can see if there’s any discrepancy . . . there has been no discrepancy.”<sup>129</sup></p>	<p><u><i>President Trump one day later (12/2/20):</i></u>  “In one Michigan County, as an example, that used Dominion systems, they found that nearly 6,000 votes had been wrongly switched from Trump to Biden, and this is just the tip of the iceberg. This is what we caught. How many didn’t we catch?”<sup>130</sup></p>

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<p><u>Attorney General Barr (12/14/20):</u> “‘I will, Mr. President. But there are a couple of things,’ I responded. ‘My understanding is that our experts have looked at the Antrim situation and are sure it was a human error that did not occur anywhere else. And, in any event, Antrim is doing a hand recount of the paper ballots, so we should know in a couple of days whether there is any real problem with the machines.’”<sup>131</sup></p>	<p><u>President Trump one day later (12/15/20):</u>  “‘This is BIG NEWS. Dominion Voting Machines are a disaster all over the Country. Changed the results of a landslide election. Can’t let this happen. . . .’”<sup>132</sup></p>
<p><u>Then-Deputy Attorney General Jeffrey Rosen (12/15/20):</u>  “[O]ther people were telling him there was fraud, you know, corruption in the election. The voting machines were no good. And we were telling him that is inconsistent, by ‘we,’ I mean Richard Donoghue and myself, that that was not what we were seeing.” . . .  “‘There was this open issue as to the Michigan report. And—I think it was Mr. Cuccinelli, not certain, but had indicated that there was a hand recount. And I think he said, ‘That’s the gold standard.’”<sup>133</sup></p>	<p><u>President Trump one day later (12/16/20):</u>  “‘Study: Dominion Machines shifted 2-3% of Trump Votes to Biden. Far more votes than needed to sway election.’  Florida, Ohio, Texas and many other states were won by even greater margins than projected. Did just as well with Swing States, but bad things happened. @OANN”<sup>134</sup></p>
<p><u>National Security Adviser Robert O’Brien (12/18/20):</u>  “‘I got a call from, I think, Molly Michael in outer oval, the President’s assistant, and she said, ‘I’m connecting you to the Oval’ . . . somebody asked me, was there—did I have any evidence of election fraud in the voting machines or foreign interference in our voting machines. And I said, no, we’ve looked into that and there’s no evidence of it.’”<sup>135</sup></p>	<p><u>President Trump one day later (12/19/20):</u>  “. . . There could also have been a hit on our ridiculous voting machines during the election, which is now obvious that I won big, making it an even more corrupted embarrassment for the USA. @DNI-__Ratcliffe @SecPompeo”<sup>136</sup></p>



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<p><u>Acting Deputy AG Richard Donoghue (12/31/20):</u>          “We definitely talked about Antrim County again. That was sort of done at that point, because the hand recount had been done and all of that. But we cited back to that to say, you know, this is an example of what people are telling you and what’s being filed in some of these court filings that are just not supported by the evidence.”<sup>137</sup></p>	<p><u>President Trump two days later (1/2/21):</u>          “Well, Brad. Not that there’s not an issue, because we have a big issue with Dominion in other states and perhaps in yours. . . . in other states, we think we found tremendous corruption with Dominion machines, but we’ll have to see.” . . . “I won’t give Dominion a pass because we found too many bad things.”<sup>138</sup></p>
<p><u>GA Sec. State Brad Raffensperger (1/2/21):</u>          “I don’t believe that you’re really questioning the Dominion machines. Because we did a hand re-tally, a 100 percent re-tally of all the ballots, and compared them to what the machines said and came up with virtually the same result. Then we did the recount, and we got virtually the same result.”<sup>139</sup></p>	<p><u>President Trump four days later (1/6/21):</u>          “In addition, there is the highly troubling matter of Dominion Voting Systems. In one Michigan county alone, 6,000 votes were switched from Trump to Biden and the same systems are used in the majority of states in our country.” . . . “There is clear evidence that tens of thousands of votes were switched from President Trump to former Vice President Biden in several counties in Georgia.”<sup>140</sup></p>

Evidence gathered by the Committee indicates that President Trump raised roughly one quarter of a billion dollars in fundraising efforts between the election and January 6th.<sup>141</sup> Those solicitations persistently claimed and referred to election fraud that did not exist. For example, the Trump Campaign, along with the Republican National Committee, sent millions of emails to their supporters, with messaging claiming that the election was “rigged,” that their donations could stop Democrats from

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Taped footage of William Barr speaking to the January 6th Select Committee is shown at one of its hearings.

(Photo by Mandel Ngan-Pool/Getty Images)

“trying to steal the election,” and that Vice President Biden would be an “illegitimate president” if he took office.

Ultimately, Attorney General Barr suggested that the Department of Justice’s investigations disproving President Trump’s fraud claims may have prevented an even more serious series of events:

[F]rankly, I think the fact that I put myself in the position that I could say that we had looked at this and didn’t think there was fraud was really important to moving things forward. And I sort of shudder to think what the situation would have been if the position of the Department was, “We’re not even looking at this until after Biden’s in office.” I’m not sure we would’ve had a transition at all.<sup>142</sup>

### **RATHER THAN CONCEDE, DONALD TRUMP CHOOSES TO OBSTRUCT THE JANUARY 6TH PROCEEDING**

President Trump disregarded the rulings of the courts and rejected the findings and conclusions and advice from his Justice Department, his campaign experts, and his White House and Cabinet advisors. He chose instead to try to overturn the election on January 6th and took a series of very specific steps to attempt to achieve that result.



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A central element of Donald Trump's plan to overturn the election relied upon Vice President Mike Pence. As Vice President, Pence served as the President of the Senate, the presiding officer for the joint session of Congress on January 6th. Beginning in December, and with greater frequency as January 6th approached, Trump repeatedly and unlawfully pressured Pence in private and public to prevent Congress from counting lawful electoral votes from several States.

To understand the plan President Trump devised with attorney and law professor John Eastman, it is necessary to understand the constitutional structure for selecting our President.

At the Constitutional Convention 233 years ago, the framers considered but rejected multiple proposals that Congress itself vote to select the President of the United States.<sup>143</sup> Indeed the Framers voiced very specific concerns with Congress selecting the President. They viewed it as important that the electors, chosen for the specific purpose of selecting the President, should make the determination rather than Congress:

It was desireable, that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men, chosen by the people for the special purpose, and at the particular conjuncture.<sup>144</sup>

The Framers understood that a thoughtful structure for the appointment of the President was necessary to avoid certain evils: "Nothing was more to be desired, than that every practicable obstacle should be opposed to cabal, intrigue and corruption."<sup>145</sup> They were careful to ensure that "those who from situation might be suspected of too great devotion to the president in office" "were not among those that chose the president."<sup>146</sup> For that reason, "[n]o senator, representative, or other person holding a place of trust or profit under the United States, can be of the number of the electors."<sup>147</sup>

Article II of our Constitution, as modified by the Twelfth Amendment, governs election of the President. Article II created the electoral college, providing that the States would select electors in the manner provided by State legislatures, and those electors would in turn vote for the President. Today, every State selects Presidential electors by popular vote, and each State's laws provide for procedures to resolve election disputes, including through lawsuits if necessary. After any election issues are resolved in State or Federal court, each State's government transmits a certificate of the ascertainment of the appointed electors to Congress and the National Archives.

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The electoral college meets in mid-December to cast their votes, and all of these electoral votes are then ultimately counted by Congress on January 6th. The Vice President, as President of the Senate, presides over the joint session of Congress to count votes. The Twelfth Amendment provides this straight forward instruction: “The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; The person having the greatest number of votes for President shall be the President...” The Vice President has only a ministerial role, opening the envelopes and ensuring that the votes are counted. Likewise, the Electoral Count Act of 1887 provides no substantive role for the Vice President in counting votes, reinforcing that he or she can only act in a ministerial fashion—the Vice President may not choose, for example, to decline to count particular votes. In most cases (*e.g.*, when one candidate has a majority of votes submitted by the States) Congress has only a ministerial role, as well. It simply counts electoral college votes provided by each State’s governor. Congress is not a court and cannot overrule State and Federal court rulings in election challenges.

As January 6th approached, John Eastman and others devised a plan whereby Vice President Pence would, as the presiding officer, declare that certain electoral votes from certain States *could not* be counted at the joint session.<sup>148</sup> John Eastman knew before proposing this plan that it was not legal. Indeed, in a pre-election document discussing Congress’s counting of electoral votes, Dr. Eastman specifically disagreed with a colleague’s proposed argument that the Vice President had the power to choose which envelopes to “open” and which votes to “count.” Dr. Eastman wrote:

I don’t agree with this. The 12th Amendment only says that the President of the Senate opens the ballots in the joint session then, in the passive voice, that the votes shall then be counted. 3 USC § 12 [of the Electoral Count Act] says merely that he is the presiding officer, and then it spells out specific procedures, presumptions, and default rules for which slates will be counted. Nowhere does it suggest that the president of the Senate gets to make the determination on his own. § 15 [of the Electoral Count Act] doesn’t either.<sup>149</sup>

Despite recognizing prior to the 2020 election that the Vice President had no power to refuse to count certain electoral votes, Eastman nevertheless drafted memoranda two months later proposing that Pence could do



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exactly that on January 6th—refuse to count certified electoral votes from Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania and Wisconsin.<sup>150</sup>

Eastman's theory was related to other efforts overseen by President Trump (described in detail below, *see infra*) to create and transmit fake electoral slates to Congress and the National Archives, and to pressure States to change the election outcome and issue new electoral slates. Eastman supported these ideas despite writing two months earlier that:

Article II [of the Constitution] says the electors are appointed “in such manner as the Legislature thereof may direct,” but I don't think that entitles the Legislature to change the rules after the election and appoint a different slate of electors in a manner different than what was in place on election day. And 3 U.S.C. §15 [of the Electoral Count Act] gives dispositive weight to the slate of electors that was certified by the Governor in accord with 3 U.S.C. §5.<sup>151</sup>

Even after Eastman proposed the theories in his December and January memoranda, he acknowledged in conversations with Vice President Pence's counsel Greg Jacob that Pence could not lawfully do what his own memoranda proposed.<sup>152</sup> Eastman admitted that the U.S. Supreme Court would unanimously reject his legal theory. “He [Eastman] had acknowledged that he would lose 9-0 at the Supreme Court.”<sup>153</sup> Moreover, Eastman acknowledged to Jacob that he didn't think Vice President Al Gore had that power in 2001, nor did he think Vice President Kamala Harris should have that power in 2025.<sup>154</sup>

In testimony before the Select Committee, Jacob described in detail why the Trump plan for Pence was illegal:

[T]he Vice President's first instinct, when he heard this theory, was that there was no way that our Framers, who abhorred concentrated power, who had broken away from the tyranny of George III, would ever have put one person—particularly not a person who had a direct interest in the outcome because they were on the ticket for the election—in a role to have decisive impact on the outcome of the election. And our review of text, history, and, frankly, just common sense, all confirmed the Vice President's first instinct on that point. There is no justifiable basis to conclude that the Vice President has that kind of authority.<sup>155</sup>

This is how the Vice President later described his views in a public speech:

I had no right to overturn the election. The Presidency belongs to the American people, and the American people alone. And frankly,

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there is no idea more un-American than the notion that any one person could choose the American President. Under the Constitution, I had no right to change the outcome of our election.<sup>156</sup>

But as January 6th approached, President Trump nevertheless embraced the new Eastman theories, and attempted to implement them. In a series of meetings and calls, President Trump attempted to pressure Pence to intervene on January 6th to prevent Congress from counting multiple States' electoral votes for Joe Biden. At several points in the days before January 6th, President Trump was told directly that Vice President Pence could not legally do what Trump was asking. For example, at a January 4th meeting in the Oval Office, Eastman acknowledged that any variation of his proposal—whether rejecting electoral votes outright or delaying certification to send them back to the States—would violate several provisions of the Electoral Count Act. According to Greg Jacob:

In the conversation in the Oval Office on the 4th, I had raised the fact that . . . [Eastman's] preferred course had issues with the Electoral Count Act, which he had acknowledged was the case, that there would be an inconsistency with the Electoral Count Act[ ]<sup>157</sup>

Jacob recorded Eastman's admission in an internal memo he drafted for Vice President Pence on the evening of January 4th: "Professor Eastman acknowledges that his proposal violates several provisions of statutory law."<sup>158</sup> And, during a phone call with President Trump and Eastman on the evening of January 5, 2021, Eastman *again* acknowledged that his proposal also would violate several provisions of the Electoral Count Act.

[W]e did have an in-depth discussion about [the Electoral Count Act] in the subsequent phone calls as I walked him through provision after provision on the recess and on the fact that . . . Congressmen and Senators are supposed to get to object and debate. And he acknowledged, one after another, that those provisions would—in order for us to send it back to the States, we couldn't do those things as well. We can't do a 10-day, send it back to the States, and honor an Electoral Count Act provision that says you can't recess for more than one day and, once you get to the 5th, you have to stay continuously in session.<sup>159</sup>

As Pence's Chief of Staff, Marc Short, testified that the Vice President also repeatedly informed President Trump that the Vice President's role on January 6th was only ministerial.



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Committee Staff: But just to pick up on that, Mr. Short, was it your impression that the Vice President had directly conveyed his position on these issues to the President, not just to the world through a Dear Colleague Letter, but directly to President Trump?

Marc Short: Many times.

Committee Staff: And had been consistent in conveying his position to the President?

Short: Very consistent.<sup>160</sup>

As the situation grew increasingly acrimonious, Vice President Pence's private counsel Richard Cullen contacted former Fourth Circuit Judge Michael Luttig, a renowned conservative judge for whom Eastman had previously clerked, and asked Luttig to make a public statement. On January 5th, Luttig wrote the following on Twitter: "The only responsibility and power of the Vice President under the Constitution is to faithfully count the electoral college votes as they have been cast."<sup>161</sup> As Judge Luttig testified in the Committee's hearings, "there was no basis in the Constitution or laws of the United States at all for the theory espoused by Eastman—at all. None."<sup>162</sup> Judge Luttig completely rejected Eastman's "blueprint to overturn the 2020 election" as "constitutional mischief" and "the most reckless, insidious, and calamitous failure[ ] in both legal and political judgment in American history."<sup>163</sup>

Contemporaneous written correspondence also confirms both that: (1) Eastman himself recognized Pence could not lawfully refuse to count electoral votes, and (2) President Trump also knew this. While sheltering in a loading dock with the Vice President during the violent January 6th attack, Greg Jacob asked Eastman in an email, "Did you advise the President that in your professional judgment the Vice President DOES NOT have the power to decide things unilaterally?" Eastman's response stated that the President had "been so advised," but then indicated that President Trump continued to pressure the Vice President to act illegally: "But you know him—once he gets something in his head, it is hard to get him to change course."<sup>164</sup>

To be absolutely clear, no White House lawyer believed Pence could lawfully refuse to count electoral votes. White House Counsel Pat Cipollone told the Select Committee this:

I thought that the Vice President did not have the authority to do what was being suggested under a proper reading of the law. I conveyed that, ok? I think I actually told somebody, you know, in the Vice President's—"Just blame me." You know this is—I'm not a politician, you know . . . but, you know, I just said, "I'm a lawyer. This is my legal opinion."<sup>165</sup>



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Greg Jacob and Judge Michael Luttig testify at January 6th Select Committee hearing.  
(Photo by House Creative Services)

Cipollone also testified that he was “sure [he] conveyed” his views.<sup>166</sup> Indeed, other testimony from Cipollone indicates that Trump knew of Cipollone’s view and suggests that Trump purposely excluded Cipollone from the meeting with Pence and Pence’s General Counsel on January 4th.<sup>167</sup> Indeed, at one point, Cipollone confronted Eastman in the hallway outside the Oval Office and expressed his disapproval of and anger with Eastman’s position. According to Jason Miller, “Pat Cipollone thought the idea was nutty and had at one point confronted Eastman basically with the same sentiment” outside the Oval Office.<sup>168</sup> Pat Cipollone did not deny having an angry confrontation with Eastman outside of the Oval Office—though he said he didn’t have a specific recollection, he had no reason to contradict what Jason Miller said and, moreover, said that Eastman was aware of his views.<sup>169</sup>

Likewise, Eric Herschmann, another White House lawyer, expressed the same understanding that Eastman’s plan “obviously made no sense” and “had no practical ability to work.”<sup>170</sup> Herschmann also recounted telling Eastman directly that his plan was “completely crazy”:

And I said to [Eastman], hold on a second, I want to understand what you’re saying. You’re saying you believe the Vice President, acting as President of the Senate, can be the sole decisionmaker as to, under your theory, who becomes the next President of the



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United States? And he said, yes. And I said, are you out of your F'ing mind, right. And that was pretty blunt. I said, you're completely crazy.<sup>171</sup>

Deputy White House Counsel Pat Philbin also had the same understanding.<sup>172</sup> Indeed, as Herschmann testified, even Rudolph Giuliani doubted that Vice President Mike Pence had any legal ability to do what Eastman had proposed.<sup>173</sup>

Despite all this opposition from all White House lawyers, Trump nevertheless continued to exert immense pressure on Pence to refuse to count electoral votes.

The pressure began before the January 4th Oval Office meeting with Pence, Eastman, Jacob, Short and Trump, but became even more intense thereafter. On the evening of January 5, 2021, the New York Times published an article reporting that “Vice President Mike Pence told President Trump on Tuesday that he did not believe he had the power to block congressional certification of Joseph R. Biden, Jr.’s victory in the Presidential election despite President Trump’s baseless insistence that he did.”<sup>174</sup> This reporting was correct—both as to the Vice President’s power and as to Vice President Pence having informed President Trump that he did not have the authority to change the outcome of the election. But in response to that story, late in the evening before the January 6th joint session, President Trump dictated to Jason Miller a statement falsely asserting, “The Vice President and I are in *total agreement* that the Vice President has the power to act.”<sup>175</sup> This statement was released at President Trump’s direction and was false.<sup>176</sup>

Thereafter, Trump continued to apply public pressure in a series of tweets. At 1:00 a.m. on January 6th, “[i]f Vice President @Mike\_Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!”<sup>177</sup> At 8:17 a.m. on January 6th, he tweeted again: “States want to correct their votes, which they now know were based on irregularities and fraud, plus corrupt process never received legislative approval. All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!”<sup>178</sup>

President Trump tried to reach the Vice President early in the morning of January 6th, but the Vice President did not take the call. The President finally reached the Vice President later that morning, shouting from the Oval Office to his assistants to “get the Vice President on the phone.”<sup>179</sup> After again telling the Vice President that he had “the legal authority to send [electoral votes] back to the respective states,” President Trump grew very heated.<sup>180</sup> Witnesses in the Oval Office during this call told the Select



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President Trump speaks with Vice President Pence over the phone in the Oval Office on the morning of January 6th.

(Photo provided to the Select Committee by the National Archives and Records Administration)

Committee that the President called Vice President Pence a “wimp,”<sup>181</sup> told him it would be “a political career killer” to certify the lawful electoral votes electing President Biden,<sup>182</sup> and accused him of “not [being] tough enough to make the call.”<sup>183</sup> As Ivanka Trump would recount to her chief of staff moments later, her father called the Vice President “the p-word” for refusing to overturn the election.<sup>184</sup>

In response, Vice President Pence again refused to take any action other than counting the lawfully certified electoral votes of the States. But President Trump was angry and undeterred. After the conclusion of this call, he edited his speech for the Ellipse to insert language to which his lawyers objected—targeting Vice President Pence directly.<sup>185</sup>

Earlier that morning, Eric Herschmann had tried to remove the reference to Vice President Pence from the speech. As he told speechwriter Stephen Miller, he “didn’t concur with the legal analysis” that John Eastman had advanced and believed it “wouldn’t advance the ball” to discuss it publicly.<sup>186</sup> But after the call with Vice President Pence, speechwriters were instructed to reinsert the line. Although the final written draft of his speech referred to Pence just once—a line President Trump didn’t end up reading<sup>187</sup>—the President went off-script five different times to pressure the Vice President:



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“I hope Mike is going to do the right thing. I hope so. Because if Mike Pence does the right thing, we win the election,” Trump first told the crowd.<sup>188</sup>

“Mike Pence is going to have to come through for us,” Trump later said, “and if he doesn’t, that will be a, a sad day for our country because you’re sworn to uphold our Constitution.”<sup>189</sup>

Addressing Pence directly, Trump told the assembled crowd: “Mike Pence, I hope you’re going to stand up for the good of our Constitution and for the good of our country.” Trump said at another point, “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.”<sup>190</sup>

“So I hope Mike has the courage to do what he has to do. And I hope he doesn’t listen to the RINOs and the stupid people that he’s listening to,” Trump said.<sup>191</sup>

These statements to the assembled crowd at the Ellipse had Trump’s intended effect—they produced substantial anger against Pence. When Pence released a statement confirming that he would not act to prevent Congress from counting electoral votes, the crowd’s reaction was harshly negative.

“I’m telling you what, I’m hearing that Pence—hearing the Pence just caved. No. Is that true? I didn’t hear it. I’m hear — I’m hearing reports that Pence caved. No way. I’m telling you, if Pence caved, we’re going to drag motherfuckers through the streets. You fucking politicians are going to get fucking drug through the streets.”<sup>192</sup>

Pence voted against Trump. [Interviewer: “Ok. And that’s when all this started?”] Yup. That’s when we marched on the Capitol.<sup>193</sup>

“We just heard that Mike Pence is not going to reject any fraudulent electoral votes. [Other speaker: “Boo. You’re a traitor!”] That’s right. You’ve heard it here first. Mike Pence has betrayed the United States of America. [Other speaker: “Fuck you, Mike Pence!”] Mike Pence has betrayed this President and he has betrayed the people of the United States and we will never, ever forget.” [Cheers]<sup>194</sup>

“This woman comes [sic] up to the side of us and she says Pence folded. So it was kind of, like, Ok, well — in my mind I was thinking, well that’s it. You know. Well, my son-in-law looks at me and he says I want to go in.”<sup>195</sup>

“[Q] “What percentage of the crowd is going to the Capitol?” [A] [Oath Keeper Jessica Watkins]: “One hundred percent. It has, it has spread like wildfire that Pence has betrayed us, and everybody’s marching on the Capitol. All million of us. it’s insane.”<sup>196</sup>

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“Bring him out. Bring out Pence. Bring him out. Bring out Pence. Bring him out. Bring out Pence. Bring him out. Bring out Pence.”<sup>197</sup>

“Hang Mike Pence. Hang Mike Pence. Hang Mike Pence. Hang Mike Pence. Hang Mike Pence.”<sup>198</sup>

Once Trump returned to the White House, he was informed almost immediately that violence and lawlessness had broken out at the Capitol among his supporters.<sup>199</sup> At 2:24 p.m., President Trump applied yet further pressure to Pence (*see infra*), posting a tweet accusing Vice President Mike Pence of cowardice for not using his role as President of the Senate to change the outcome of the election: “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>200</sup> Almost immediately thereafter, the crowd around the Capitol surged, and more individuals joined the effort to confront police and break further into the building.

The sentiment expressed in President Trump’s 2:24 p.m. tweet, already present in the crowd, only grew more powerful as the President’s words spread. Timothy Hale-Cusanelli—a white supremacist who expressed Nazi sympathies—heard about the tweet while in the Crypt around 2:25 p.m., and he, according to the Department of Justice, “knew what that meant.” Vice President Pence had decided not to keep President Trump in power.<sup>201</sup> Other rioters described what happened next as follows:

Once we found out Pence turned on us and that they had stolen the election, like officially, the crowd went crazy. I mean, it became a mob. We crossed the gate.<sup>202</sup>

Then we heard the news on [P]ence . . . And lost it . . . So we stormed.<sup>203</sup>

They’re making an announcement right now saying if Pence betrays us you better get your mind right because we’re storming that building.<sup>204</sup>

Minutes after the tweet—at 2:35 p.m.—rioters continued their surge and broke a security line of the DC Metropolitan Police Department, resulting in the first fighting withdrawal in the history of that force.<sup>205</sup>

President Trump issued this tweet after he had falsely claimed to the angry crowd that Vice President Mike Pence could “do the right thing” and ensure a second Trump term, after that angry crowd had turned into a violent mob assaulting the Capitol while chanting, “Hang Mike Pence!”<sup>206</sup> and after the U.S. Secret Service had evacuated the Vice President from the Senate floor.<sup>207</sup> One minute after the President’s tweet, at 2:25 p.m., the Secret Service determined they could no longer protect the Vice President in his



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ceremonial office near the Senate Chamber, and evacuated the Vice President and his family to a secure location, missing the violent mob by a mere 40 feet.<sup>208</sup>

Further evidence presented at our hearing shows the violent reaction following President Trump's 2:24 p.m. tweet and the efforts to protect Vice President Pence in the time that followed.<sup>209</sup>

The day after the attack on the Capitol, Eastman called Eric Herschmann to talk about continuing litigation on behalf of the Trump Presidential Campaign in Georgia. Herschmann described his reaction to Eastman this way:

And I said to him, are you out of your F'ing mind? Right? I said, because I only want to hear two words coming out of your mouth from now on: Orderly transition. I said, I don't want to hear any other F'ing words coming out of your mouth, no matter what, other than orderly transition. Repeat those words to me."<sup>210</sup>

Herschmann concluded the call by telling Eastman: "Now I'm going to give you the best free legal advice you're ever getting in your life. Get a great F'ing criminal defense lawyer, you're going to need it," and hanging up the phone.<sup>211</sup>

In the course of investigating this series of facts, the Select Committee subpoenaed Eastman's emails from his employer, Chapman University.<sup>212</sup> Eastman sued to prevent Chapman from producing the emails, arguing that the emails were attorney-client privileged. Federal District Court Judge David Carter reviewed Eastman's emails *in camera* to determine, among other things, whether the emails had to be produced because they likely furthered a crime committed by one of Eastman's clients or by Eastman himself. In addition to reviewing the emails themselves, Judge Carter reviewed substantial additional evidence presented by the Select Committee and by Eastman.

After reciting a series of factual findings regarding President Trump's multi-part plan to overturn the election, Judge Carter concluded that President Trump likely violated two criminal statutes: 18 U.S.C. § 1512(c) (corruptly obstructing, impeding or influencing Congress's official proceeding to count electoral votes); and 18 U.S.C. § 371 (conspiring to defraud the United States). The Court also concluded that John Eastman likely violated at least one of these criminal laws. As to §1512(c), Judge Carter explained:

Taken together, this evidence demonstrates that President Trump likely knew the electoral count plan had no factual justification.

The plan not only lacked factual basis but also legal justification. . . .

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The illegality of the plan was obvious. Our nation was founded on the peaceful transition of power, epitomized by George Washington laying down his sword to make way for democratic elections. Ignoring this history, President Trump vigorously campaigned for the Vice President to single-handedly determine the results of the 2020 election. . . . Every American—and certainly the President of the United States—knows that in a democracy, leaders are elected, not installed. With a plan this “BOLD,” President Trump knowingly tried to subvert this fundamental principle. Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021.<sup>213</sup>

As to 18 U.S.C. § 371, Judge Carter identified evidence demonstrating that both President Trump and John Eastman knew their electoral count plan was illegal, and knew it could not “survive judicial scrutiny” in any of its iterations:

Dr. Eastman himself repeatedly recognized that his plan had no legal support. . . . Dr. Eastman likely acted deceitfully and dishonestly each time he pushed an outcome-driven plan that he knew was unsupported by the law.<sup>214</sup>

Finally, Judge Carter concluded:

Dr. Eastman and President Trump launched a campaign to overturn a democratic election, an action unprecedented in American history. Their campaign was not confined to the ivory tower—it was a coup in search of a legal theory. The plan spurred violent attacks on the seat of our nation’s government, led to the deaths of several law enforcement officers, and deepened public distrust in our political process.<sup>215</sup>

Judge Luttig reached similar conclusions during his live hearing testimony: “I have written, as you said, Chairman Thompson, that, today, almost two years after that fateful day in January 2021, that, still, Donald Trump and his allies and supporters are a clear and present danger to American democracy.”<sup>216</sup>

During the hearing, Judge Luttig took issue with certain of Greg Jacob’s characterizations of the 12th Amendment’s text, explaining that the applicable text was not ambiguous in any way. The Committee agrees with Judge Luttig: the application of the Twelfth Amendment’s text is plain in this context; it does not authorize Congress to second-guess State and Federal courts and refuse to count State electoral votes based on concerns about



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fraud. *See infra*. Although Jacob did not discuss his position in great detail during the hearing, his private testimony gives more insight on his actual views:

In my view, a lot has been said about the fact that the role of the Vice President in the electoral count on January 6th is purely ministerial, and that is a correct conclusion. But if you look at the constitutional text, the role of Congress is purely ministerial as well. You open the certificates and you count them. Those are the only things provided for in the Constitution.<sup>217</sup>

### **EFFORTS TO PRESSURE STATES TO CHANGE THE ELECTION OUTCOME, AND TO CREATE AND TRANSMIT FAKE ELECTION CERTIFICATES**

Anticipating that the Eastman strategy for January 6th would be implemented, President Trump worked with a handful of others to prepare a series of false Trump electoral slates for seven States Biden actually won. President Trump personally conducted a teleconference with Eastman and Republican National Committee Chair Ronna McDaniel “a few days before December 14” and solicited the RNC’s assistance with the scheme.<sup>218</sup> McDaniel agreed to provide that assistance.<sup>219</sup>

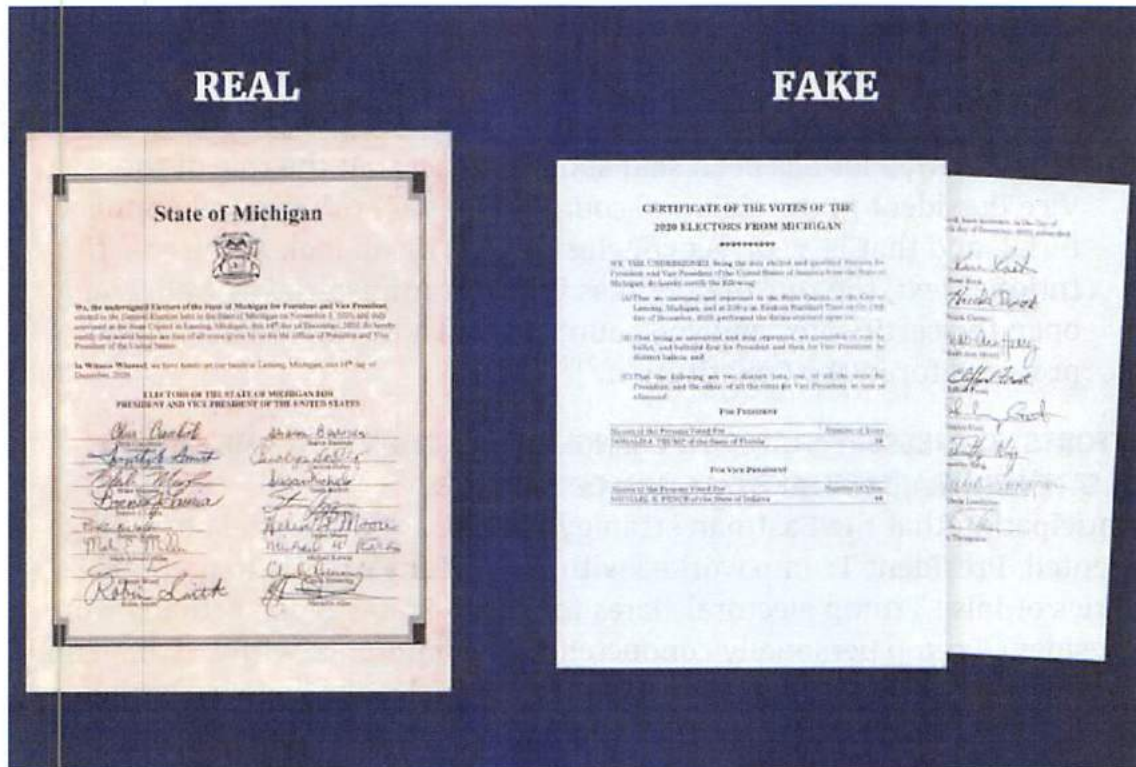
A series of contemporaneous documents demonstrate what President Trump and his allies, including attorney Kenneth Chesebro, were attempting to accomplish: they anticipated that the President of the Senate (which, under the Constitution, is the Vice President) could rely upon these false slates of electors on January 6th to justify refusing to count genuine electoral votes.<sup>220</sup>

The false slates were created by fake Republican electors on December 14th, at the same time the actual, certified electors in those States were meeting to cast their States’ Electoral College votes for President Biden. By that point in time, election-related litigation was over in all or nearly all of the subject States, and Trump Campaign election lawyers realized that the fake slates could not be lawful or justifiable on any grounds. Justin Clark, the Trump Campaign Deputy Campaign Manager and Senior Counsel told the Select Committee that he “had real problems with the process.”<sup>221</sup> Clark warned his colleagues, “unless we have litigation pending like in these States, like, I don’t think this is appropriate or, you know, this isn’t the right thing to do. I don’t remember how I phrased it, but I got into a little bit of a back and forth and I think it was with Ken Chesebro, where I said, ‘Alright, you know, you just get after it, like, I’m out.’”<sup>222</sup>

Matthew Morgan, the Trump Campaign General Counsel, told the Select Committee that without an official State certificate of ascertainment,<sup>223</sup> “the [fake] electors were, for lack of a better way of saying it, no good or not—not valid.”<sup>224</sup>



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Graphic depicting the difference between the real and the fake elector certificates.

The Office of White House Counsel also appears to have expressed concerns with this fake elector plan. In his interview by the Select Committee, White House Counsel Pat Cipollone acknowledged his view that by mid-December, the process was “done” and that his deputy, Pat Philbin, may have advised against the fake elector strategy.<sup>225</sup> In an informal Committee interview, Philbin described the fake elector scheme as one of the “bad theories” that were like “Whac-A-Mole” in the White House during this period.<sup>226</sup> Cipollone agreed with this characterization.<sup>227</sup>

In her testimony, Cassidy Hutchinson testified that she heard at least one member of the White House Counsel’s Office say that the plan was not legal:

Committee Staff: [T]o be clear, did you hear the White House Counsel’s Office say that this plan to have alternate electors meet and cast votes for Donald Trump in States that he had lost was not legally sound?

Hutchinson: Yes, sir.<sup>228</sup>

Multiple Republicans who were persuaded to sign the fake certificates also testified that they felt misled or betrayed, and would not have done so had they known that the fake votes would be used on January 6th without an intervening court ruling. One elector told the Select Committee that he





**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**UNITED STATES OF AMERICA**

**v.**

**DONALD J. TRUMP,**

**Defendant.**

\* **CRIMINAL NO.**  
\*  
\* **GRAND JURY ORIGINAL**  
\*  
\* **VIOLATIONS:**  
\*  
\* **Count 1: 18 U.S.C. § 371**  
\* **(Conspiracy to Defraud the United**  
\* **States)**  
\*  
\* **Count 2: 18 U.S.C. § 1512(k)**  
\* **(Conspiracy to Obstruct an Official**  
\* **Proceeding)**  
\*  
\* **Count 3: 18 U.S.C. §§ 1512(c)(2), 2**  
\* **(Obstruction of and Attempt to**  
\* **Obstruct an Official Proceeding)**  
\*  
\* **Count 4: 18 U.S.C. § 241**  
\* **(Conspiracy Against Rights)**  
\*

**INDICTMENT**

The Grand Jury charges that, at all times material to this Indictment, on or about the dates and at the approximate times stated below:

**INTRODUCTION**

1. The Defendant, **DONALD J. TRUMP**, was the forty-fifth President of the United States and a candidate for re-election in 2020. The Defendant lost the 2020 presidential election.
2. Despite having lost, the Defendant was determined to remain in power. So for more than two months following election day on November 3, 2020, the Defendant spread lies that there had been outcome-determinative fraud in the election and that he had actually won. These claims were false, and the Defendant knew that they were false. But the Defendant repeated and widely

disseminated them anyway—to make his knowingly false claims appear legitimate, create an intense national atmosphere of mistrust and anger, and erode public faith in the administration of the election.

3. The Defendant had a right, like every American, to speak publicly about the election and even to claim, falsely, that there had been outcome-determinative fraud during the election and that he had won. He was also entitled to formally challenge the results of the election through lawful and appropriate means, such as by seeking recounts or audits of the popular vote in states or filing lawsuits challenging ballots and procedures. Indeed, in many cases, the Defendant did pursue these methods of contesting the election results. His efforts to change the outcome in any state through recounts, audits, or legal challenges were uniformly unsuccessful.

4. Shortly after election day, the Defendant also pursued unlawful means of discounting legitimate votes and subverting the election results. In so doing, the Defendant perpetrated three criminal conspiracies:

- a. A conspiracy to defraud the United States by using dishonesty, fraud, and deceit to impair, obstruct, and defeat the lawful federal government function by which the results of the presidential election are collected, counted, and certified by the federal government, in violation of 18 U.S.C. § 371;
- b. A conspiracy to corruptly obstruct and impede the January 6 congressional proceeding at which the collected results of the presidential election are counted and certified (“the certification proceeding”), in violation of 18 U.S.C. § 1512(k); and
- c. A conspiracy against the right to vote and to have one’s vote counted, in violation of 18 U.S.C. § 241.

Each of these conspiracies—which built on the widespread mistrust the Defendant was creating through pervasive and destabilizing lies about election fraud—targeted a bedrock function of the United States federal government: the nation’s process of collecting, counting, and certifying the results of the presidential election (“the federal government function”).



**COUNT ONE**

**(Conspiracy to Defraud the United States—18 U.S.C. § 371)**

5. The allegations contained in paragraphs 1 through 4 of this Indictment are re-alleged and fully incorporated here by reference.

**The Conspiracy**

6. From on or about November 14, 2020, through on or about January 20, 2021, in the District of Columbia and elsewhere, the Defendant,

**DONALD J. TRUMP,**

did knowingly combine, conspire, confederate, and agree with co-conspirators, known and unknown to the Grand Jury, to defraud the United States by using dishonesty, fraud, and deceit to impair, obstruct, and defeat the lawful federal government function by which the results of the presidential election are collected, counted, and certified by the federal government.

**Purpose of the Conspiracy**

7. The purpose of the conspiracy was to overturn the legitimate results of the 2020 presidential election by using knowingly false claims of election fraud to obstruct the federal government function by which those results are collected, counted, and certified.

**The Defendant's Co-Conspirators**

8. The Defendant enlisted co-conspirators to assist him in his criminal efforts to overturn the legitimate results of the 2020 presidential election and retain power. Among these were:

- a. Co-Conspirator 1, an attorney who was willing to spread knowingly false claims and pursue strategies that the Defendant's 2020 re-election campaign attorneys would not.
- b. Co-Conspirator 2, an attorney who devised and attempted to implement a strategy to leverage the Vice President's ceremonial role overseeing the

certification proceeding to obstruct the certification of the presidential election.

- c. Co-Conspirator 3, an attorney whose unfounded claims of election fraud the Defendant privately acknowledged to others sounded “crazy.” Nonetheless, the Defendant embraced and publicly amplified Co-Conspirator 3’s disinformation.
- d. Co-Conspirator 4, a Justice Department official who worked on civil matters and who, with the Defendant, attempted to use the Justice Department to open sham election crime investigations and influence state legislatures with knowingly false claims of election fraud.
- e. Co-Conspirator 5, an attorney who assisted in devising and attempting to implement a plan to submit fraudulent slates of presidential electors to obstruct the certification proceeding.
- f. Co-Conspirator 6, a political consultant who helped implement a plan to submit fraudulent slates of presidential electors to obstruct the certification proceeding.

#### **The Federal Government Function**

9. The federal government function by which the results of the election for President of the United States are collected, counted, and certified was established through the Constitution and the Electoral Count Act (ECA), a federal law enacted in 1887. The Constitution provided that individuals called electors select the president, and that each state determine for itself how to appoint the electors apportioned to it. Through state laws, each of the fifty states and the District of Columbia chose to select their electors based on the popular vote in the state. After election day, the ECA required each state to formally determine—or “ascertain”—the electors who would represent the state’s voters by casting electoral votes on behalf of the candidate who had won the popular vote, and required the executive of each state to certify to the federal government the identities of those electors. Then, on a date set by the ECA, each state’s ascertained electors were required to meet and collect the results of the presidential election—that is, to cast electoral votes based on their state’s popular vote, and to send their electoral votes, along with the state executive’s



certification that they were the state's legitimate electors, to the United States Congress to be counted and certified in an official proceeding. Finally, the Constitution and ECA required that on the sixth of January following election day, the Congress meet in a Joint Session for a certification proceeding, presided over by the Vice President as President of the Senate, to count the electoral votes, resolve any objections, and announce the result—thus certifying the winner of the presidential election as president-elect. This federal government function—from the point of ascertainment to the certification—is foundational to the United States' democratic process, and until 2021, had operated in a peaceful and orderly manner for more than 130 years.

**Manner and Means**

10. The Defendant's conspiracy to impair, obstruct, and defeat the federal government function through dishonesty, fraud, and deceit included the following manner and means:

- a. The Defendant and co-conspirators used knowingly false claims of election fraud to get state legislators and election officials to subvert the legitimate election results and change electoral votes for the Defendant's opponent, Joseph R. Biden, Jr., to electoral votes for the Defendant. That is, on the pretext of baseless fraud claims, the Defendant pushed officials in certain states to ignore the popular vote; disenfranchise millions of voters; dismiss legitimate electors; and ultimately, cause the ascertainment of and voting by illegitimate electors in favor of the Defendant.
- b. The Defendant and co-conspirators organized fraudulent slates of electors in seven targeted states (Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin), attempting to mimic the procedures that the legitimate electors were supposed to follow under the Constitution and other federal and state laws. This included causing the fraudulent electors to meet on the day appointed by federal law on which legitimate electors were to gather and cast their votes; cast fraudulent votes for the Defendant; and sign certificates falsely representing that they were legitimate electors. Some fraudulent electors were tricked into participating based on the understanding that their votes would be used only if the Defendant succeeded in outcome-determinative lawsuits within their state, which the Defendant never did. The Defendant and co-conspirators then caused these fraudulent electors to transmit their false certificates to the

Vice President and other government officials to be counted at the certification proceeding on January 6.

- c. The Defendant and co-conspirators attempted to use the power and authority of the Justice Department to conduct sham election crime investigations and to send a letter to the targeted states that falsely claimed that the Justice Department had identified significant concerns that may have impacted the election outcome; that sought to advance the Defendant's fraudulent elector plan by using the Justice Department's authority to falsely present the fraudulent electors as a valid alternative to the legitimate electors; and that urged, on behalf of the Justice Department, the targeted states' legislatures to convene to create the opportunity to choose the fraudulent electors over the legitimate electors.
- d. The Defendant and co-conspirators attempted to enlist the Vice President to use his ceremonial role at the January 6 certification proceeding to fraudulently alter the election results. First, using knowingly false claims of election fraud, the Defendant and co-conspirators attempted to convince the Vice President to use the Defendant's fraudulent electors, reject legitimate electoral votes, or send legitimate electoral votes to state legislatures for review rather than counting them. When that failed, on the morning of January 6, the Defendant and co-conspirators repeated knowingly false claims of election fraud to gathered supporters, falsely told them that the Vice President had the authority to and might alter the election results, and directed them to the Capitol to obstruct the certification proceeding and exert pressure on the Vice President to take the fraudulent actions he had previously refused.
- e. After it became public on the afternoon of January 6 that the Vice President would not fraudulently alter the election results, a large and angry crowd—including many individuals whom the Defendant had deceived into believing the Vice President could and might change the election results—violently attacked the Capitol and halted the proceeding. As violence ensued, the Defendant and co-conspirators exploited the disruption by redoubling efforts to levy false claims of election fraud and convince Members of Congress to further delay the certification based on those claims.

**The Defendant's Knowledge of the Falsity of His Election Fraud Claims**

11. The Defendant, his co-conspirators, and their agents made knowingly false claims that there had been outcome-determinative fraud in the 2020 presidential election. These prolific



lies about election fraud included dozens of specific claims that there had been substantial fraud in certain states, such as that large numbers of dead, non-resident, non-citizen, or otherwise ineligible voters had cast ballots, or that voting machines had changed votes for the Defendant to votes for Biden. These claims were false, and the Defendant knew that they were false. In fact, the Defendant was notified repeatedly that his claims were untrue—often by the people on whom he relied for candid advice on important matters, and who were best positioned to know the facts—and he deliberately disregarded the truth. For instance:

- a. The Defendant's Vice President—who personally stood to gain by remaining in office as part of the Defendant's ticket and whom the Defendant asked to study fraud allegations—told the Defendant that he had seen no evidence of outcome-determinative fraud.
- b. The senior leaders of the Justice Department—appointed by the Defendant and responsible for investigating credible allegations of election crimes—told the Defendant on multiple occasions that various allegations of fraud were unsupported.
- c. The Director of National Intelligence—the Defendant's principal advisor on intelligence matters related to national security—disabused the Defendant of the notion that the Intelligence Community's findings regarding foreign interference would change the outcome of the election.
- d. The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency ("CISA")—whose existence the Defendant signed into law to protect the nation's cybersecurity infrastructure from attack—joined an official multi-agency statement that there was no evidence any voting system had been compromised and that declared the 2020 election "the most secure in American history." Days later, after the CISA Director—whom the Defendant had appointed—announced publicly that election security experts were in agreement that claims of computer-based election fraud were unsubstantiated, the Defendant fired him.
- e. Senior White House attorneys—selected by the Defendant to provide him candid advice—informed the Defendant that there was no evidence of outcome-determinative election fraud, and told him that his presidency would end on Inauguration Day in 2021.

- f. Senior staffers on the Defendant's 2020 re-election campaign ("Defendant's Campaign" or "Campaign")—whose sole mission was the Defendant's re-election—told the Defendant on November 7, 2020, that he had only a five to ten percent chance of prevailing in the election, and that success was contingent on the Defendant winning ongoing vote counts or litigation in Arizona, Georgia, and Wisconsin. Within a week of that assessment, the Defendant lost in Arizona—meaning he had lost the election.
- g. State legislators and officials—many of whom were the Defendant's political allies, had voted for him, and wanted him to be re-elected—repeatedly informed the Defendant that his claims of fraud in their states were unsubstantiated or false and resisted his pressure to act based upon them.
- h. State and federal courts—the neutral arbiters responsible for ensuring the fair and even-handed administration of election laws—rejected every outcome-determinative post-election lawsuit filed by the Defendant, his co-conspirators, and allies, providing the Defendant real-time notice that his allegations were meritless.

12. The Defendant widely disseminated his false claims of election fraud for months, despite the fact that he knew, and in many cases had been informed directly, that they were not true. The Defendant's knowingly false statements were integral to his criminal plans to defeat the federal government function, obstruct the certification, and interfere with others' right to vote and have their votes counted. He made these knowingly false claims throughout the post-election time period, including those below that he made immediately before the attack on the Capitol on January 6:

- a. The Defendant insinuated that more than ten thousand dead voters had voted in Georgia. Just four days earlier, Georgia's Secretary of State had explained to the Defendant that this was false.
- b. The Defendant asserted that there had been 205,000 more votes than voters in Pennsylvania. The Defendant's Acting Attorney General and Acting Deputy Attorney General had explained to him that this was false.
- c. The Defendant said that there had been a suspicious vote dump in Detroit, Michigan. The Defendant's Attorney General had explained to the Defendant that this was false, and the Defendant's allies in the Michigan



state legislature—the Speaker of the House of Representatives and Majority Leader of the Senate—had publicly announced that there was no evidence of substantial fraud in the state.

- d. The Defendant claimed that there had been tens of thousands of double votes and other fraud in Nevada. The Nevada Secretary of State had previously rebutted the Defendant's fraud claims by publicly posting a "Facts vs. Myths" document explaining that Nevada judges had reviewed and rejected them, and the Nevada Supreme Court had rendered a decision denying such claims.
- e. The Defendant said that more than 30,000 non-citizens had voted in Arizona. The Defendant's own Campaign Manager had explained to him that such claims were false, and the Speaker of the Arizona House of Representatives, who had supported the Defendant in the election, had issued a public statement that there was no evidence of substantial fraud in Arizona.
- f. The Defendant asserted that voting machines in various contested states had switched votes from the Defendant to Biden. The Defendant's Attorney General, Acting Attorney General, and Acting Deputy Attorney General all had explained to him that this was false, and numerous recounts and audits had confirmed the accuracy of voting machines.

### **The Criminal Agreement and Acts to Effect the Object of the Conspiracy**

#### **The Defendant's Use of Deceit to Get State Officials to Subvert the Legitimate Election Results and Change Electoral Votes**

13. Shortly after election day—which fell on November 3, 2020—the Defendant launched his criminal scheme. On November 13, the Defendant's Campaign attorneys conceded in court that he had lost the vote count in the state of Arizona—meaning, based on the assessment the Defendant's Campaign advisors had given him just a week earlier, the Defendant had lost the election. So the next day, the Defendant turned to Co-Conspirator 1, whom he announced would spearhead his efforts going forward to challenge the election results. From that point on, the Defendant and his co-conspirators executed a strategy to use knowing deceit in the targeted states to impair, obstruct, and defeat the federal government function, including as described below.

*Arizona*

14. On November 13, 2020, the Defendant had a conversation with his Campaign Manager, who informed him that a claim that had been circulating, that a substantial number of non-citizens had voted in Arizona, was false.

15. On November 22, eight days before Arizona's Governor certified the ascertainment of the state's legitimate electors based on the popular vote, the Defendant and Co-Conspirator 1 called the Speaker of the Arizona House of Representatives and made knowingly false claims of election fraud aimed at interfering with the ascertainment of and voting by Arizona's electors, as follows:

- a. The Defendant and Co-Conspirator 1 falsely asserted, among other things, that a substantial number of non-citizens, non-residents, and dead people had voted fraudulently in Arizona. The Arizona House Speaker asked Co-Conspirator 1 for evidence of the claims, which Co-Conspirator 1 did not have, but claimed he would provide. Co-Conspirator 1 never did so.
- b. The Defendant and Co-Conspirator 1 asked the Arizona House Speaker to call the legislature into session to hold a hearing based on their claims of election fraud. The Arizona House Speaker refused, stating that doing so would require a two-thirds vote of its members, and he would not allow it without actual evidence of fraud.
- c. The Defendant and Co-Conspirator 1 asked the Arizona House Speaker to use the legislature to circumvent the process by which legitimate electors would be ascertained for Biden based on the popular vote, and replace those electors with a new slate for the Defendant. The Arizona House Speaker refused, responding that the suggestion was beyond anything he had ever heard or thought of as something within his authority.

16. On December 1, Co-Conspirator 1 met with the Arizona House Speaker. When the Arizona House Speaker again asked Co-Conspirator 1 for evidence of the outcome-determinative election fraud he and the Defendant had been claiming, Co-Conspirator 1 responded with words to the effect of, "We don't have the evidence, but we have lots of theories."



17. On December 4, the Arizona House Speaker issued a public statement that said, in part:

No election is perfect, and if there were evidence of illegal votes or an improper count, then Arizona law provides a process to contest the election: a lawsuit under state law. But the law does not authorize the Legislature to reverse the results of an election.

As a conservative Republican, I don't like the results of the presidential election. I voted for President Trump and worked hard to reelect him. But I cannot and will not entertain a suggestion that we violate current law to change the outcome of a certified election.

I and my fellow legislators swore an oath to support the U.S. Constitution and the constitution and laws of the state of Arizona. It would violate that oath, the basic principles of republican government, and the rule of law if we attempted to nullify the people's vote based on unsupported theories of fraud. Under the laws that we wrote and voted upon, Arizona voters choose who wins, and our system requires that their choice be respected.

18. On the morning of January 4, 2021, Co-Conspirator 2 called the Arizona House Speaker to urge him to use a majority of the legislature to decertify the state's legitimate electors. Arizona's validly ascertained electors had voted three weeks earlier and sent their votes to Congress, which was scheduled to count those votes in Biden's favor in just two days' time at the January 6 certification proceeding. When the Arizona House Speaker explained that state investigations had uncovered no evidence of substantial fraud in the state, Co-Conspirator 2 conceded that he "[didn't] know enough about facts on the ground" in Arizona, but nonetheless told the Arizona House Speaker to decertify and "let the courts sort it out." The Arizona House Speaker refused, stating that he would not "play with the oath" he had taken to uphold the United States Constitution and Arizona law.

19. On January 6, the Defendant publicly repeated the knowingly false claim that 36,000 non-citizens had voted in Arizona.

*Georgia*

20. On November 16, 2020, on the Defendant's behalf, his executive assistant sent Co-Conspirator 3 and others a document containing bullet points critical of a certain voting machine company, writing, "See attached – Please include as is, or almost as is, in lawsuit." Co-Conspirator 3 responded nine minutes later, writing, "IT MUST GO IN ALL SUITS IN GA AND PA IMMEDIATELY WITH A FRAUD CLAIM THAT REQUIRES THE ENTIRE ELECTION TO BE SET ASIDE in those states and machines impounded for non-partisan professional inspection." On November 25, Co-Conspirator 3 filed a lawsuit against the Governor of Georgia falsely alleging "massive election fraud" accomplished through the voting machine company's election software and hardware. Before the lawsuit was even filed, the Defendant retweeted a post promoting it. The Defendant did this despite the fact that when he had discussed Co-Conspirator 3's far-fetched public claims regarding the voting machine company in private with advisors, the Defendant had conceded that they were unsupported and that Co-Conspirator 3 sounded "crazy." Co-Conspirator 3's Georgia lawsuit was dismissed on December 7.

21. On December 3, Co-Conspirator 1 orchestrated a presentation to a Judiciary Subcommittee of the Georgia State Senate, with the intention of misleading state senators into blocking the ascertainment of legitimate electors. During the presentation:

- a. An agent of the Defendant and Co-Conspirator 1 falsely claimed that more than 10,000 dead people voted in Georgia. That afternoon, a Senior Advisor to the Defendant told the Defendant's Chief of Staff through text messages, "Just an FYI. [A Campaign lawyer] and his team verified that the 10k+ supposed dead people voting in GA is not accurate. . . . It was alleged in [Co-Conspirator 1's] hearing today." The Senior Advisor clarified that he believed that the actual number was 12.
- b. Another agent of the Defendant and Co-Conspirator 1 played a misleading excerpt of a video recording of ballot-counting at State Farm Arena in Atlanta and insinuated that it showed election workers counting "suitcases" of illegal ballots.



- c. Co-Conspirator 2 encouraged the legislators to decertify the state's legitimate electors based on false allegations of election fraud.

22. Also on December 3, the Defendant issued a Tweet amplifying the knowingly false claims made in Co-Conspirator 1's presentation in Georgia: "Wow! Blockbuster testimony taking place right now in Georgia. Ballot stuffing by Dems when Republicans were forced to leave the large counting room. Plenty more coming, but this alone leads to an easy win of the State!"

23. On December 4, the Georgia Secretary of State's Chief Operating Officer debunked the claims made at Co-Conspirator 1's presentation the previous day, issuing a Tweet stating, "The 90 second video of election workers at State Farm arena, purporting to show fraud was watched in its entirety (hours) by @GaSecofState investigators. Shows normal ballot processing. Here is the fact check on it." On December 7, he reiterated during a press conference that the claim that there had been misconduct at State Farm Arena was false.

24. On December 8, the Defendant called the Georgia Attorney General to pressure him to support an election lawsuit filed in the Supreme Court by another state's attorney general. The Georgia Attorney General told the Defendant that officials had investigated various claims of election fraud in the state and were not seeing evidence to support them.

25. Also on December 8, a Senior Campaign Advisor—who spoke with the Defendant on a daily basis and had informed him on multiple occasions that various fraud claims were untrue—expressed frustration that many of Co-Conspirator 1 and his legal team's claims could not be substantiated. As early as mid-November, for instance, the Senior Campaign Advisor had informed the Defendant that his claims of a large number of dead voters in Georgia were untrue. With respect to the persistent false claim regarding State Farm Arena, on December 8, the Senior Campaign Advisor wrote in an 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."

26. On December 10, four days before Biden's validly ascertained electors were scheduled to cast votes and send them to Congress, Co-Conspirator 1 appeared at a hearing before the Georgia House of Representatives' Government Affairs Committee. Co-Conspirator 1 played the State Farm Arena video again, and falsely claimed that it showed "voter fraud right in front of people's eyes" and was "the tip of the iceberg." Then, he cited two election workers by name, baselessly accused them of "quite obviously surreptitiously passing around USB ports as if they are vials of heroin or cocaine," and suggested that they were criminals whose "places of work, their homes, should have been searched for evidence of ballots, for evidence of USB ports, for evidence of voter fraud." Thereafter, the two election workers received numerous death threats.

27. On December 15, the Defendant summoned the incoming Acting Attorney General, the incoming Acting Deputy Attorney General, and others to the Oval Office to discuss allegations of election fraud. During the meeting, the Justice Department officials specifically refuted the Defendant's claims about State Farm Arena, explaining to him that the activity shown on the tape Co-Conspirator 1 had used was "benign."

28. On December 23, a day after the Defendant's Chief of Staff personally observed the signature verification process at the Cobb County Civic Center and notified the Defendant that state election officials were "conducting themselves in an exemplary fashion" and would find fraud if it existed, the Defendant tweeted that the Georgia officials administering the signature verification process were trying to hide evidence of election fraud and were "[t]errible people!"

29. In a phone call on December 27, the Defendant spoke with the Acting Attorney General and Acting Deputy Attorney General. During the call, the Defendant again pressed the



unfounded claims regarding State Farm Arena, and the two top Justice Department officials again rebutted the allegations, telling him that the Justice Department had reviewed videotape and interviewed witnesses, and had not identified any suspicious conduct.

30. On December 31, the Defendant signed a verification affirming false election fraud allegations made on his behalf in a lawsuit filed in his name against the Georgia Governor. In advance of the filing, Co-Conspirator 2—who was advising the Defendant on the lawsuit—acknowledged in an email that he and the Defendant had, since signing a previous verification, “been made aware that some of the allegations (and evidence proffered by the experts) has been inaccurate” and that signing a new affirmation “with that knowledge (and incorporation by reference) would not be accurate.” The Defendant and Co-Conspirator 2 caused the Defendant’s signed verification to be filed nonetheless.

31. On January 2, four days before Congress’s certification proceeding, the Defendant and others called Georgia’s Secretary of State. During the call, the Defendant lied to the Georgia Secretary of State to induce him to alter Georgia’s popular vote count and call into question the validity of the Biden electors’ votes, which had been transmitted to Congress weeks before, including as follows:

- a. The Defendant raised allegations regarding the State Farm Arena video and repeatedly disparaged one of the same election workers that Co-Conspirator 1 had maligned on December 10, using her name almost twenty times and falsely referring to her as “a professional vote scammer and hustler.” In response, the Georgia Secretary of State refuted this: “You’re talking about the State Farm video. And I think it’s extremely unfortunate that [Co-Conspirator 1] or his people, they sliced and diced that video and took it out of context.” When the Georgia Secretary of State then offered a link to a video that would disprove Co-Conspirator 1’s claims, the Defendant responded, “I don’t care about a link, I don’t need it. I have a much, [Georgia Secretary of State], I have a much better link.”

- b. The Defendant asked about rumors that paper ballots cast in the election were being destroyed, and the Georgia Secretary of State's Counsel explained to him that the claim had been investigated and was not true.
- c. The Defendant claimed that 5,000 dead people voted in Georgia, causing the Georgia Secretary of State to respond, "Well, Mr. President, the challenge that you have is the data you have is wrong. . . . The actual number were two. Two. Two people that were dead that voted. And so [your information]'s wrong, that was two."
- d. The Defendant claimed that thousands of out-of-state voters had cast ballots in Georgia's election, which the Georgia Secretary of State's Counsel refuted, explaining, "We've been going through each of those as well, and those numbers that we got, that [Defendant's counsel] was just saying, they're not accurate. Every one we've been through are people that lived in Georgia, moved to a different state, but then moved back to Georgia legitimately . . . they moved back in years ago. This was not like something just before the election."
- e. In response to multiple other of the Defendant's allegations, the Georgia Secretary of State's Counsel told the Defendant that the Georgia Bureau of Investigation was examining all such claims and finding no merit to them.
- f. The Defendant said that he needed to "find" 11,780 votes, and insinuated that the Georgia Secretary of State and his Counsel could be subject to criminal prosecution if they failed to find election fraud as he demanded, stating, "And you are going to find that they are—which is totally illegal—it's, it's, it's more illegal for you than it is for them because you know what they did and you're not reporting it. That's a criminal, you know, that's a criminal offense. And you know, you can't let that happen. That's a big risk to you and to [the Georgia Secretary of State's Counsel], your lawyer."

32. The next day, on January 3, the Defendant falsely claimed that the Georgia Secretary of State had not addressed the Defendant's allegations, publicly stating that the Georgia Secretary of State "was unwilling, or unable, to answer questions such as the 'ballots under table' scam, ballot destruction, out of state 'voters', dead voters, and more. He has no clue!"

33. On January 6, the Defendant publicly repeated the knowingly false insinuation that more than 10,300 dead people had voted in Georgia.



*Michigan*

34. On November 5, 2020, the Defendant claimed that there had been a suspicious dump of votes—purportedly illegitimate ballots—stating, “In Detroit, there were hours of unexplained delay in delivering many of the votes for counting. The final batch did not arrive until four in the morning and—even though the polls closed at eight o’clock. So they brought it in, and the batches came in, and nobody knew where they came from.”

35. On November 20, three days before Michigan’s Governor signed a certificate of ascertainment notifying the federal government that, based on the popular vote, Biden’s electors were to represent Michigan’s voters, the Defendant held a meeting in the Oval Office with the Speaker of the Michigan House of Representatives and the Majority Leader of the Michigan Senate. In the meeting, the Defendant raised his false claim, among others, of an illegitimate vote dump in Detroit. In response, the Michigan Senate Majority Leader told the Defendant that he had lost Michigan not because of fraud, but because the Defendant had underperformed with certain voter populations in the state. Upon leaving their meeting, the Michigan House Speaker and Michigan Senate Majority Leader issued a statement reiterating this:

The Senate and House Oversight Committees are actively engaged in a thorough review of Michigan’s elections process and we have faith in the committee process to provide greater transparency and accountability to our citizens. We have not yet been made aware of any information that would change the outcome of the election in Michigan and as legislative leaders, we will follow the law and follow the normal process regarding Michigan’s electors, just as we have said throughout this election.

36. On December 1, the Defendant raised his Michigan vote dump claim with the Attorney General, who responded that what had occurred in Michigan had been the normal vote-counting process and that there was no indication of fraud in Detroit.

37. Despite this, the next day, the Defendant made a knowingly false statement that in Michigan, “[a]t 6:31 in the morning, a vote dump of 149,772 votes came in unexpectedly. We were winning by a lot. That batch was received in horror. Nobody knows anything about it. . . . It’s corrupt. Detroit is corrupt. I have a lot of friends in Detroit. They know it. But Detroit is totally corrupt.”

38. On December 4, Co-Conspirator 1 sent a text message to the Michigan House Speaker reiterating his unsupported claim of election fraud and attempting to get the Michigan House Speaker to assist in reversing the ascertainment of the legitimate Biden electors, stating, “Looks like Georgia may well hold some factual hearings and change the certification under ArtII sec 1 cl 2 of the Constitution. As [Co-Conspirator 2] explained they don’t just have the right to do it but the obligation. . . . Help me get this done in Michigan.”

39. Similarly, on December 7, despite still having established no fraud in Michigan, Co-Conspirator 1 sent a text intended for the Michigan Senate Majority Leader: “So I need you to pass a joint resolution from the Michigan legislature that states that, \* the election is in dispute, \* there’s an ongoing investigation by the Legislature, and \* the Electors sent by Governor Whitmer are not the official Electors of the State of Michigan and do not fall within the Safe Harbor deadline of Dec 8 under Michigan law.”

40. On December 14—the day that electors in states across the country were required to vote and submit their votes to Congress—the Michigan House Speaker and Michigan Senate Majority Leader announced that, contrary to the Defendant’s requests, they would not decertify the legitimate election results or electors in Michigan. The Michigan Senate Majority Leader’s public statement included, “[W]e have not received evidence of fraud on a scale that would change



the outcome of the election in Michigan.” The Michigan House Speaker’s public statement read, in part:

We’ve diligently examined these reports of fraud to the best of our ability. . . .

. . . I fought hard for President Trump. Nobody wanted him to win more than me. I think he’s done an incredible job. But I love our republic, too. I can’t fathom risking our norms, traditions and institutions to pass a resolution retroactively changing the electors for Trump, simply because some think there may have been enough widespread fraud to give him the win. That’s unprecedented for good reason. And that’s why there is not enough support in the House to cast a new slate of electors. I fear we’d lose our country forever. This truly would bring mutually assured destruction for every future election in regards to the Electoral College. And I can’t stand for that. I won’t.

41. On January 6, 2021, the Defendant publicly repeated his knowingly false claim regarding an illicit dump of more than a hundred thousand ballots in Detroit.

*Pennsylvania*

42. On November 11, 2020, the Defendant publicly maligned a Philadelphia City Commissioner for stating on the news that there was no evidence of widespread fraud in Philadelphia. As a result, the Philadelphia City Commissioner and his family received death threats.

43. On November 25, the day after Pennsylvania’s Governor signed a certificate of ascertainment and thus certified to the federal government that Biden’s electors were the legitimate electors for the state, Co-Conspirator 1 orchestrated an event at a hotel in Gettysburg attended by state legislators. Co-Conspirator 1 falsely claimed that Pennsylvania had issued 1.8 million absentee ballots and received 2.5 million in return. In the days thereafter, a Campaign staffer wrote internally that Co-Conspirator 1’s allegation was “just wrong” and “[t]here’s no way to defend it.”

The Deputy Campaign Manager responded, “We have been saying this for a while. It’s very frustrating.”

44. On December 4, after four Republican leaders of the Pennsylvania legislature issued a public statement that the General Assembly lacked the authority to overturn the popular vote and appoint its own slate of electors, and that doing so would violate the state Election Code and Constitution, the Defendant re-tweeted a post labeling the legislators cowards.

45. On December 31 and January 3, the Defendant repeatedly raised with the Acting Attorney General and Acting Deputy Attorney General the allegation that in Pennsylvania, there had been 205,000 more votes than voters. Each time, the Justice Department officials informed the Defendant that his claim was false.

46. On January 6, 2021, the Defendant publicly repeated his knowingly false claim that there had been 205,000 more votes than voters in Pennsylvania.

#### *Wisconsin*

47. On November 29, 2020, a recount in Wisconsin that the Defendant’s Campaign had petitioned and paid for did not change the election result, and in fact increased the Defendant’s margin of defeat.

48. On December 14, the Wisconsin Supreme Court rejected an election challenge by the Campaign. One Justice wrote, “[N]othing in this case casts any legitimate doubt that the people of Wisconsin lawfully chose Vice President Biden and Senator Harris to be the next leaders of our great country.”

49. On December 21, as a result of the state Supreme Court’s decision, the Wisconsin Governor—who had signed a certificate of ascertainment on November 30 identifying Biden’s electors as the state’s legitimate electors—signed a certificate of final determination in which he



recognized that the state Supreme Court had resolved a controversy regarding the appointment of Biden's electors, and confirmed that Biden had received the highest number of votes in the state and that his electors were the state's legitimate electors.

50. That same day, in response to the court decision that had prompted the Wisconsin Governor to sign a certificate of final determination, the Defendant issued a Tweet repeating his knowingly false claim of election fraud and demanding that the Wisconsin legislature overturn the election results that had led to the ascertainment of Biden's electors as the legitimate electors.

51. On December 27, the Defendant raised with the Acting Attorney General and Acting Deputy Attorney General a specific fraud claim—that there had been more votes than voters in Wisconsin. The Acting Deputy Attorney General informed the Defendant that the claim was false.

52. On January 6, 2021, the Defendant publicly repeated knowingly false claims that there had been tens of thousands of unlawful votes in Wisconsin.

The Defendant's Use of Dishonesty, Fraud, and Deceit to Organize Fraudulent Slates of Electors and Cause Them to Transmit False Certificates to Congress

53. As the Defendant's attempts to obstruct the electoral vote through deceit of state officials met with repeated failure, beginning in early December 2020, he and co-conspirators developed a new plan: to marshal individuals who would have served as the Defendant's electors, had he won the popular vote, in seven targeted states—Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin—and cause those individuals to make and send to the Vice President and Congress false certifications that they were legitimate electors. Under the plan, the submission of these fraudulent slates would create a fake controversy at the certification proceeding and position the Vice President—presiding on January 6 as President of the Senate—

to supplant legitimate electors with the Defendant's fake electors and certify the Defendant as president.

54. The plan capitalized on ideas presented in memoranda drafted by Co-Conspirator 5, an attorney who was assisting the Defendant's Campaign with legal efforts related to a recount in Wisconsin. The memoranda evolved over time from a legal strategy to preserve the Defendant's rights to a corrupt plan to subvert the federal government function by stopping Biden electors' votes from being counted and certified, as follows:

- a. The November 18 Memorandum ("Wisconsin Memo") advocated that, because of the ongoing recount in Wisconsin, the Defendant's electors there should meet and cast votes on December 14—the date the ECA required appointed electors to vote—to preserve the alternative of the Defendant's Wisconsin elector slate in the event the Defendant ultimately prevailed in the state.
- b. The December 6 Memorandum ("Fraudulent Elector Memo") marked a sharp departure from Co-Conspirator 5's Wisconsin Memo, advocating that the alternate electors originally conceived of to preserve rights in Wisconsin instead be used in a number of states as fraudulent electors to prevent Biden from receiving the 270 electoral votes necessary to secure the presidency on January 6. The Fraudulent Elector Memo suggested that the Defendant's electors in six purportedly "contested" states (Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin) should meet and mimic as best as possible the actions of the legitimate Biden electors, and that on January 6, the Vice President should open and count the fraudulent votes, setting up a fake controversy that would derail the proper certification of Biden as president-elect.
- c. The December 9 Memorandum ("Fraudulent Elector Instructions") consisted of Co-Conspirator 5's instructions on how fraudulent electors could mimic legitimate electors in Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. Co-Conspirator 5 noted that in some states, it would be virtually impossible for the fraudulent electors to successfully take the same steps as the legitimate electors because state law required formal participation in the process by state officials, or access to official resources.



55. The plan began in early December, and ultimately, the conspirators and the Defendant's Campaign took the Wisconsin Memo and expanded it to any state that the Defendant claimed was "contested"—even New Mexico, which the Defendant had lost by more than ten percent of the popular vote. This expansion was forecast by emails the Defendant's Chief of Staff sent on December 6, forwarding the Wisconsin Memo to Campaign staff and writing, "We just need to have someone coordinating the electors for states."

56. On December 6, the Defendant and Co-Conspirator 2 called the Chairwoman of the Republican National Committee to ensure that the plan was in motion. During the call, Co-Conspirator 2 told the Chairwoman that it was important for the RNC to help the Defendant's Campaign gather electors in targeted states, and falsely represented to her that such electors' votes would be used only if ongoing litigation in one of the states changed the results in the Defendant's favor. After the RNC Chairwoman consulted the Campaign and heard that work on gathering electors was underway, she called and reported this information to the Defendant, who responded approvingly.

57. On December 7, Co-Conspirator 1 received the Wisconsin Memo and the Fraudulent Elector Memo. Co-Conspirator 1 spoke with Co-Conspirator 6 regarding attorneys who could assist in the fraudulent elector effort in the targeted states, and he received from Co-Conspirator 6 an email identifying attorneys in Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin.

58. The next day, on December 8, Co-Conspirator 5 called the Arizona attorney on Co-Conspirator 6's list. In an email after the call, the Arizona attorney recounted his conversation with Co-Conspirator 5 as follows:

I just talked to the gentleman who did that memo, [Co-Conspirator 5]. His idea is basically that all of us (GA, WI, AZ, PA,

etc.) have our electors send in their votes (even though the votes aren't legal under federal law -- because they're not signed by the Governor); so that members of Congress can fight about whether they should be counted on January 6<sup>th</sup>. (They could potentially argue that they're not bound by federal law because they're Congress and make the law, etc.) Kind of wild/creative -- I'm happy to discuss. My comment to him was that I guess there's no harm in it, (legally at least) -- i.e. we would just be sending in "fake" electoral votes to Pence so that "someone" in Congress can make an objection when they start counting votes, and start arguing that the "fake" votes should be counted.

59. At Co-Conspirator 1's direction, on December 10, Co-Conspirator 5 sent to points of contact in all targeted states except Wisconsin (which had already received his memos) and New Mexico a streamlined version of the Wisconsin Memo—which did not reveal the intended fraudulent use of the Defendant's electors—and the Fraudulent Elector Instructions, along with fraudulent elector certificates that he had drafted.

60. The next day, on December 11, through Co-Conspirator 5, Co-Conspirator 1 suggested that the Arizona lawyer file a petition for certiorari in the Supreme Court as a pretext to claim that litigation was pending in the state, to provide cover for the convening and voting of the Defendant's fraudulent electors there. Co-Conspirator 5 explained that Co-Conspirator 1 had heard from a state official and state provisional elector that "it could appear treasonous for the AZ electors to vote on Monday if there is no pending court proceeding . . ."

61. To manage the plan in Pennsylvania, on December 12, Co-Conspirator 1, Co-Conspirator 5, and Co-Conspirator 6 participated in a conference call organized by the Defendant's Campaign with the Defendant's electors in that state. When the Defendant's electors expressed concern about signing certificates representing themselves as legitimate electors, Co-Conspirator 1 falsely assured them that their certificates would be used only if the Defendant succeeded in litigation. Subsequently, Co-Conspirator 6 circulated proposed conditional language to that effect



for potential inclusion in the fraudulent elector certificates. A Campaign official cautioned not to offer the conditional language to other states because “[t]he other States are signing what he prepared – if it gets out we changed the language for PA it could snowball.” In some cases, the Defendant’s electors refused to participate in the plan.

62. On December 13, Co-Conspirator 5 sent Co-Conspirator 1 an email memorandum that further confirmed that the conspirators’ plan was not to use the fraudulent electors only in the circumstance that the Defendant’s litigation was successful in one of the targeted states—instead, the plan was to falsely present the fraudulent slates as an alternative to the legitimate slates at Congress’s certification proceeding.

63. On December 13, the Defendant asked the Senior Campaign Advisor for an update on “what was going on” with the elector plan and directed him to “put out [a] statement on electors.” As a result, Co-Conspirator 1 directed the Senior Campaign Advisor to join a conference call with him, Co-Conspirator 6, and others. When the Senior Campaign Advisor related these developments in text messages to the Deputy Campaign Manager, a Senior Advisor to the Defendant, and a Campaign staffer, the Deputy Campaign Manager responded, “Here’s the thing the way this has morphed it’s a crazy play so I don’t know who wants to put their name on it.” The Senior Advisor wrote, “Certifying illegal votes.” In turn, the participants in the group text message refused to have a statement regarding electors attributed to their names because none of them could “stand by it.”

64. Also on December 13, at a Campaign staffer’s request, Co-Conspirator 5 drafted and sent fraudulent elector certificates for the Defendant’s electors in New Mexico, which had not previously been among the targeted states, and where there was no pending litigation on the Defendant’s behalf. The next day, the Defendant’s Campaign filed an election challenge suit in

New Mexico at 11:54 a.m., six minutes before the noon deadline for the electors' votes, as a pretext so that there was pending litigation there at the time the fraudulent electors voted.

65. On December 14, the legitimate electors of all 50 states and the District of Columbia met in their respective jurisdictions to formally cast their votes for president, resulting in a total of 232 electoral votes for the Defendant and 306 for Biden. The legitimate electoral votes that Biden won in the states that the Defendant targeted, and the Defendant's margin of defeat, were as follows: Arizona (11 electoral votes; 10,457 votes), Georgia (16 electoral votes; 11,779 votes), Michigan (16 electoral votes; 154,188 votes), Nevada (6 electoral votes; 33,596 votes), New Mexico (5 electoral votes; 99,720 votes), Pennsylvania (20 electoral votes; 80,555 votes), and Wisconsin (10 electoral votes; 20,682 votes).

66. On the same day, at the direction of the Defendant and Co-Conspirator 1, fraudulent electors convened sham proceedings in the seven targeted states to cast fraudulent electoral ballots in favor of the Defendant. In some states, in order to satisfy legal requirements set forth for legitimate electors under state law, state officials were enlisted to provide the fraudulent electors access to state capitol buildings so that they could gather and vote there. In many cases, however, as Co-Conspirator 5 had predicted in the Fraudulent Elector Instructions, the fraudulent electors were unable to satisfy the legal requirements.

67. Nonetheless, as directed in the Fraudulent Elector Instructions, shortly after the fraudulent electors met on December 14, the targeted states' fraudulent elector certificates were mailed to the President of the Senate, the Archivist of the United States, and others. The Defendant and co-conspirators ultimately used the certificates of these fraudulent electors to deceitfully target the government function, and did so contrary to how fraudulent electors were told they would be used.



68. Unlike those of the fraudulent electors, consistent with the ECA, the legitimate electors' signed certificates were annexed to the state executives' certificates of ascertainment before being sent to the President of the Senate and others.

69. That evening, at 6:26 p.m., the RNC Chairwoman forwarded to the Defendant, through his executive assistant, an email titled, "Electors Recap – Final," which represented that in "Six Contested States"—Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin—the Defendant's electors had voted in parallel to Biden's electors. The Defendant's executive assistant responded, "It's in front of him!"

The Defendant's Attempt to Leverage the Justice Department to Use Deceit to Get State Officials to Replace Legitimate Electors and Electoral Votes with the Defendant's

70. In late December 2020, the Defendant attempted to use the Justice Department to make knowingly false claims of election fraud to officials in the targeted states through a formal letter under the Acting Attorney General's signature, thus giving the Defendant's lies the backing of the federal government and attempting to improperly influence the targeted states to replace legitimate Biden electors with the Defendant's.

71. On December 22, the Defendant met with Co-Conspirator 4 at the White House. Co-Conspirator 4 had not informed his leadership at the Justice Department of the meeting, which was a violation of the Justice Department's written policy restricting contacts with the White House to guard against improper political influence.

72. On December 26, Co-Conspirator 4 spoke on the phone with the Acting Attorney General and lied about the circumstances of his meeting with the Defendant at the White House, falsely claiming that the meeting had been unplanned. The Acting Attorney General directed Co-Conspirator 4 not to have unauthorized contacts with the White House again, and Co-Conspirator 4 said he would not.

73. The next morning, on December 27, contrary to the Acting Attorney General's direction, Co-Conspirator 4 spoke with the Defendant on the Defendant's cell phone for nearly three minutes.

74. That afternoon, the Defendant called the Acting Attorney General and Acting Deputy Attorney General and said, among other things, "People tell me [Co-Conspirator 4] is great. I should put him in." The Defendant also raised multiple false claims of election fraud, which the Acting Attorney General and Acting Deputy Attorney General refuted. When the Acting Attorney General told the Defendant that the Justice Department could not and would not change the outcome of the election, the Defendant responded, "Just say that the election was corrupt and leave the rest to me and the Republican congressmen."

75. On December 28, Co-Conspirator 4 sent a draft letter to the Acting Attorney General and Acting Deputy Attorney General, which he proposed they all sign. The draft was addressed to state officials in Georgia, and Co-Conspirator 4 proposed sending versions of the letter to elected officials in other targeted states. The proposed letter contained numerous knowingly false claims about the election and the Justice Department, including that:

- a. The Justice Department had "identified significant concerns that may have impacted the outcome of the election in multiple States[.]"
- b. The Justice Department believed that in Georgia and other states, two valid slates of electors had gathered at the proper location on December 14, and that both sets of ballots had been transmitted to Congress. That is, Co-Conspirator 4's letter sought to advance the Defendant's fraudulent elector plan by using the authority of the Justice Department to falsely present the fraudulent electors as a valid alternative to the legitimate electors.
- c. The Justice Department urged that the state legislature convene a special legislative session to create the opportunity to, among other things, choose the fraudulent electors over the legitimate electors.



76. The Acting Deputy Attorney General promptly responded to Co-Conspirator 4 by email and told him that his proposed letter was false, writing, “Despite dramatic claims to the contrary, we have not seen the type of fraud that calls into question the reported (and certified) results of the election.” In a meeting shortly thereafter, the Acting Attorney General and Acting Deputy Attorney General again directed Co-Conspirator 4 not to have unauthorized contact with the White House.

77. On December 31, the Defendant summoned to the Oval Office the Acting Attorney General, Acting Deputy Attorney General, and other advisors. In the meeting, the Defendant again raised claims about election fraud that Justice Department officials already had told him were not true—and that the senior Justice Department officials reiterated were false—and suggested he might change the leadership in the Justice Department.

78. On January 2, 2021, just four days before Congress’s certification proceeding, Co-Conspirator 4 tried to coerce the Acting Attorney General and Acting Deputy Attorney General to sign and send Co-Conspirator 4’s draft letter, which contained false statements, to state officials. He told them that the Defendant was considering making Co-Conspirator 4 the new Acting Attorney General, but that Co-Conspirator 4 would decline the Defendant’s offer if the Acting Attorney General and Acting Deputy Attorney General would agree to send the proposed letter to the targeted states. The Justice Department officials refused.

79. The next morning, on January 3, despite having uncovered no additional evidence of election fraud, Co-Conspirator 4 sent to a Justice Department colleague an edited version of his draft letter to the states, which included a change from its previous claim that the Justice Department had “concerns” to a stronger false claim that “[a]s of today, there is evidence of

significant irregularities that may have impacted the outcome of the election in multiple States . . . .”

80. Also on the morning of January 3, Co-Conspirator 4 met with the Defendant at the White House—again without having informed senior Justice Department officials—and accepted the Defendant’s offer that he become Acting Attorney General.

81. On the afternoon of January 3, Co-Conspirator 4 spoke with a Deputy White House Counsel. The previous month, the Deputy White House Counsel had informed the Defendant that “there is no world, there is no option in which you do not leave the White House [o]n January 20th.” Now, the same Deputy White House Counsel tried to dissuade Co-Conspirator 4 from assuming the role of Acting Attorney General. The Deputy White House Counsel reiterated to Co-Conspirator 4 that there had not been outcome-determinative fraud in the election and that if the Defendant remained in office nonetheless, there would be “riots in every major city in the United States.” Co-Conspirator 4 responded, “Well, [Deputy White House Counsel], that’s why there’s an Insurrection Act.”

82. Also that afternoon, Co-Conspirator 4 met with the Acting Attorney General and told him that the Defendant had decided to put Co-Conspirator 4 in charge of the Justice Department. The Acting Attorney General responded that he would not accept being fired by a subordinate and immediately scheduled a meeting with the Defendant for that evening.

83. On the evening of January 3, the Defendant met for a briefing on an overseas national security issue with the Chairman of the Joint Chiefs of Staff and other senior national security advisors. The Chairman briefed the Defendant on the issue—which had previously arisen in December—as well as possible ways the Defendant could handle it. When the Chairman and another advisor recommended that the Defendant take no action because Inauguration Day was

only seventeen days away and any course of action could trigger something unhelpful, the Defendant calmly agreed, stating, “Yeah, you’re right, it’s too late for us. We’re going to give that to the next guy.”

84. The Defendant moved immediately from this national security briefing to the meeting that the Acting Attorney General had requested earlier that day, which included Co-Conspirator 4, the Acting Attorney General, the Acting Deputy Attorney General, the Justice Department’s Assistant Attorney General for the Office of Legal Counsel, the White House Counsel, a Deputy White House Counsel, and a Senior Advisor. At the meeting, the Defendant expressed frustration with the Acting Attorney General for failing to do anything to overturn the election results, and the group discussed Co-Conspirator 4’s plans to investigate purported election fraud and to send his proposed letter to state officials—a copy of which was provided to the Defendant during the meeting. The Defendant relented in his plan to replace the Acting Attorney General with Co-Conspirator 4 only when he was told that it would result in mass resignations at the Justice Department and of his own White House Counsel.

85. At the meeting in the Oval Office on the night of January 3, Co-Conspirator 4 suggested that the Justice Department should opine that the Vice President could exceed his lawful authority during the certification proceeding and change the election outcome. When the Assistant Attorney General for the Office of Legal Counsel began to explain why the Justice Department should not do so, the Defendant said, “No one here should be talking to the Vice President. I’m talking to the Vice President,” and ended the discussion.



The Defendant's Attempts to Enlist the Vice President to Fraudulently Alter the  
Election Results at the January 6 Certification Proceeding

86. As the January 6 congressional certification proceeding approached and other efforts to impair, obstruct, and defeat the federal government function failed, the Defendant sought to enlist the Vice President to use his ceremonial role at the certification to fraudulently alter the election results. The Defendant did this first by using knowingly false claims of election fraud to convince the Vice President to accept the Defendant's fraudulent electors, reject legitimate electoral votes, or send legitimate electoral votes to state legislatures for review rather than count them. When that failed, the Defendant attempted to use a crowd of supporters that he had gathered in Washington, D.C., to pressure the Vice President to fraudulently alter the election results.

87. On December 19, 2020, after cultivating widespread anger and resentment for weeks with his knowingly false claims of election fraud, the Defendant urged his supporters to travel to Washington on the day of the certification proceeding, tweeting, "Big protest in D.C. on January 6th. Be there, will be wild!" Throughout late December, he repeatedly urged his supporters to come to Washington for January 6.

88. On December 23, the Defendant re-tweeted a memo titled "Operation 'PENCE' CARD," which falsely asserted that the Vice President could, among other things, unilaterally disqualify legitimate electors from six targeted states.

89. On the same day, Co-Conspirator 2 circulated a two-page memorandum outlining a plan for the Vice President to unlawfully declare the Defendant the certified winner of the presidential election. In the memorandum, Co-Conspirator 2 claimed that seven states had transmitted two slates of electors and proposed that the Vice President announce that "because of the ongoing disputes in the 7 States, there are no electors that can be deemed validly appointed in those States." Next, Co-Conspirator 2 proposed steps that he acknowledged violated the ECA,

advocating that, in the end, “Pence then gavels President Trump as re-elected.” Just two months earlier, on October 11, Co-Conspirator 2 had taken the opposite position, writing that neither the Constitution nor the ECA provided the Vice President discretion in the counting of electoral votes, or permitted him to “make the determination on his own.”

90. On several private phone calls in late December and early January, the Defendant repeated knowingly false claims of election fraud and directly pressured the Vice President to use his ceremonial role at the certification proceeding on January 6 to fraudulently overturn the results of the election, and the Vice President resisted, including:

- a. On December 25, when the Vice President called the Defendant to wish him a Merry Christmas, the Defendant quickly turned the conversation to January 6 and his request that the Vice President reject electoral votes that day. The Vice President pushed back, telling the Defendant, as the Vice President already had in previous conversations, “You know I don’t think I have the authority to change the outcome.”
- b. On December 29, as reflected in the Vice President’s contemporaneous notes, the Defendant falsely told the Vice President that the “Justice Dept [was] finding major infractions.”
- c. On January 1, the Defendant called the Vice President and berated him because he had learned that the Vice President had opposed a lawsuit seeking a judicial decision that, at the certification, the Vice President had the authority to reject or return votes to the states under the Constitution. The Vice President responded that he thought there was no constitutional basis for such authority and that it was improper. In response, the Defendant told the Vice President, “You’re too honest.” Within hours of the conversation, the Defendant reminded his supporters to meet in Washington before the certification proceeding, tweeting, “The BIG Protest Rally in Washington, D.C., will take place at 11.00 A.M. on January 6th. Locational details to follow. StopTheSteal!”
- d. On January 3, the Defendant again told the Vice President that at the certification proceeding, the Vice President had the absolute right to reject electoral votes and the ability to overturn the election. The Vice President responded that he had no such authority, and that a federal appeals court had rejected the lawsuit making that claim the previous day.

91. On January 3, Co-Conspirator 2 circulated a second memorandum that included a new plan under which, contrary to the ECA, the Vice President would send the elector slates to the state legislatures to determine which slate to count.

92. On January 4, the Defendant held a meeting with Co-Conspirator 2, the Vice President, the Vice President's Chief of Staff, and the Vice President's Counsel for the purpose of convincing the Vice President, based on the Defendant's knowingly false claims of election fraud, that the Vice President should reject or send to the states Biden's legitimate electoral votes, rather than count them. The Defendant deliberately excluded his White House Counsel from the meeting because the White House Counsel previously had pushed back on the Defendant's false claims of election fraud.

93. During the meeting, as reflected in the Vice President's contemporaneous notes, the Defendant made knowingly false claims of election fraud, including, "Bottom line—won every state by 100,000s of votes" and "We won every state," and asked—regarding a claim his senior Justice Department officials previously had told him was false, including as recently as the night before—"What about 205,000 votes more in PA than voters?" The Defendant and Co-Conspirator 2 then asked the Vice President to either unilaterally reject the legitimate electors from the seven targeted states, or send the question of which slate was legitimate to the targeted states' legislatures. When the Vice President challenged Co-Conspirator 2 on whether the proposal to return the question to the states was defensible, Co-Conspirator 2 responded, "Well, nobody's tested it before." The Vice President then told the Defendant, "Did you hear that? Even your own counsel is not saying I have that authority." The Defendant responded, "That's okay, I prefer the other suggestion" of the Vice President rejecting the electors unilaterally.



94. Also on January 4, when Co-Conspirator 2 acknowledged to the Defendant's Senior Advisor that no court would support his proposal, the Senior Advisor told Co-Conspirator 2, "[Y]ou're going to cause riots in the streets." Co-Conspirator 2 responded that there had previously been points in the nation's history where violence was necessary to protect the republic. After that conversation, the Senior Advisor notified the Defendant that Co-Conspirator 2 had conceded that his plan was "not going to work."

95. On the morning of January 5, at the Defendant's direction, the Vice President's Chief of Staff and the Vice President's Counsel met again with Co-Conspirator 2. Co-Conspirator 2 now advocated that the Vice President do what the Defendant had said he preferred the day before: unilaterally reject electors from the targeted states. During this meeting, Co-Conspirator 2 privately acknowledged to the Vice President's Counsel that he hoped to prevent judicial review of his proposal because he understood that it would be unanimously rejected by the Supreme Court. The Vice President's Counsel expressed to Co-Conspirator 2 that following through with the proposal would result in a "disastrous situation" where the election might "have to be decided in the streets."

96. That same day, the Defendant encouraged supporters to travel to Washington on January 6, and he set the false expectation that the Vice President had the authority to and might use his ceremonial role at the certification proceeding to reverse the election outcome in the Defendant's favor, including issuing the following Tweets:

- a. At 11:06 a.m., "The Vice President has the power to reject fraudulently chosen electors." This was within 40 minutes of the Defendant's earlier reminder, "See you in D.C."
- b. At 5:05 p.m., "Washington is being inundated with people who don't want to see an election victory stolen . . . . Our Country has had enough, they won't take it anymore! We hear you (and love you) from the Oval Office."

- c. At 5:43 p.m., "I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early — doors open at 7AM Eastern. BIG CROWDS!"

97. Also on January 5, the Defendant met alone with the Vice President. When the Vice President refused to agree to the Defendant's request that he obstruct the certification, the Defendant grew frustrated and told the Vice President that the Defendant would have to publicly criticize him. Upon learning of this, the Vice President's Chief of Staff was concerned for the Vice President's safety and alerted the head of the Vice President's Secret Service detail.

98. As crowds began to gather in Washington and were audible from the Oval Office, the Defendant remarked to advisors that the crowd the following day on January 6 was going to be "angry."

99. That night, the Defendant approved and caused the Defendant's Campaign to issue a public statement that the Defendant knew, from his meeting with the Vice President only hours earlier, was false: "The Vice President and I are in total agreement that the Vice President has the power to act."

100. On January 6, starting in the early morning hours, the Defendant again turned to knowingly false statements aimed at pressuring the Vice President to fraudulently alter the election outcome, and raised publicly the false expectation that the Vice President might do so:

- a. At 1:00 a.m., the Defendant issued a Tweet that falsely claimed, "If Vice President @Mike\_Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!"
- b. At 8:17 a.m., the Defendant issued a Tweet that falsely stated, "States want to correct their votes, which they now know were based on irregularities and fraud, plus corrupt process never received legislative approval. All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!"

101. On the morning of January 6, an agent of the Defendant contacted a United States Senator to ask him to hand-deliver documents to the Vice President. The agent then facilitated the receipt by the Senator's staff of the fraudulent certificates signed by the Defendant's fraudulent electors in Michigan and Wisconsin, which were believed not to have been delivered to the Vice President or Archivist by mail. When one of the Senator's staffers contacted a staffer for the Vice President by text message to arrange for delivery of what the Senator's staffer had been told were "[a]lternate slate[s] of electors for MI and WI because archivist didn't receive them," the Vice President's staffer rejected them.

102. At 11:15 a.m., the Defendant called the Vice President and again pressured him to fraudulently reject or return Biden's legitimate electoral votes. The Vice President again refused. Immediately after the call, the Defendant decided to single out the Vice President in public remarks he would make within the hour, reinserting language that he had personally drafted earlier that morning—falsely claiming that the Vice President had authority to send electoral votes to the states—but that advisors had previously successfully advocated be removed.

103. Earlier that morning, the Defendant had selected Co-Conspirator 2 to join Co-Conspirator 1 in giving public remarks before his own. When they did so, based on knowingly false election fraud claims, Co-Conspirator 1 and Co-Conspirator 2 intensified pressure on the Vice President to fraudulently obstruct the certification proceeding:

- a. Co-Conspirator 1 told the crowd that the Vice President could "cast [the ECA] aside" and unilaterally "decide on the validity of these crooked ballots[.]" He also lied when he claimed to "have letters from five legislatures begging us" to send elector slates to the legislatures for review, and called for "trial by combat."
- b. Co-Conspirator 2 told the crowd, "[A]ll we are demanding of Vice President Pence is this afternoon at one o'clock he let the legislatures of the state look into this so we get to the bottom of it and the American people know whether we have control of the direction of our government or not. We no



longer live in a self-governing republic if we can't get the answer to this question.”

104. Next, beginning at 11:56 a.m., the Defendant made multiple knowingly false statements integral to his criminal plans to defeat the federal government function, obstruct the certification, and interfere with others' right to vote and have their votes counted. The Defendant repeated false claims of election fraud, gave false hope that the Vice President might change the election outcome, and directed the crowd in front of him to go to the Capitol as a means to obstruct the certification and pressure the Vice President to fraudulently obstruct the certification. The Defendant's knowingly false statements for these purposes included:

- a. The Defendant falsely claimed that, based on fraud, the Vice President could alter the outcome of the election results, stating:

I hope Mike is going to do the right thing. I hope so.  
I hope so.

Because if Mike Pence does the right thing, we win the election. All he has to do—all, this is, this is from the number one, or certainly one of the top, Constitutional lawyers in our country—he has the absolute right to do it. We're supposed to protect our country, support our country, support our Constitution, and protect our Constitution.

States want to revote. The states got defrauded. They were given false information. They voted on it. Now they want to recertify. They want it back. All Vice President Pence has to do is send it back to the states to recertify and we become president and you are the happiest people.

- b. After the Defendant falsely stated that the Pennsylvania legislature wanted “to recertify their votes. They want to recertify. But the only way that can happen is if Mike Pence agrees to send it back,” the crowd began to chant, “Send it back.”

- c. The Defendant also said that regular rules no longer applied, stating, “And fraud breaks up everything, doesn’t it? When you catch somebody in a fraud, you’re allowed to go by very different rules.”
- d. Finally, after exhorting that “we fight. We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore,” the Defendant directed the people in front of him to head to the Capitol, suggested he was going with them, and told them to give Members of Congress “the kind of pride and boldness that they need to take back our country.”

105. During and after the Defendant’s remarks, thousands of people marched toward the Capitol.

The Defendant’s Exploitation of the Violence and Chaos at the Capitol

106. Shortly before 1:00 p.m., the Vice President issued a public statement explaining that his role as President of the Senate at the certification proceeding that was about to begin did not include “unilateral authority to determine which electoral votes should be counted and which should not.”

107. Before the Defendant had finished speaking, a crowd began to gather at the Capitol. Thereafter, a mass of people—including individuals who had traveled to Washington and to the Capitol at the Defendant’s direction—broke through barriers cordoning off the Capitol grounds and advanced on the building, including by violently attacking law enforcement officers trying to secure it.

108. The Defendant, who had returned to the White House after concluding his remarks, watched events at the Capitol unfold on the television in the dining room next to the Oval Office.

109. At 2:13 p.m., after more than an hour of steady, violent advancement, the crowd at the Capitol broke into the building.

110. Upon receiving news that individuals had breached the Capitol, the Defendant’s advisors told him that there was a riot there and that rioters had breached the building. When

advisors urged the Defendant to issue a calming message aimed at the rioters, the Defendant refused, instead repeatedly remarking that the people at the Capitol were angry because the election had been stolen.

111. At 2:24 p.m., after advisors had left the Defendant alone in his dining room, the Defendant issued a Tweet intended to further delay and obstruct the certification: “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!”

112. One minute later, at 2:25 p.m., the United States Secret Service was forced to evacuate the Vice President to a secure location.

113. At the Capitol, throughout the afternoon, members of the crowd chanted, “Hang Mike Pence!”, “Where is Pence? Bring him out!”, and “Traitor Pence!”

114. The Defendant repeatedly refused to approve a message directing rioters to leave the Capitol, as urged by his most senior advisors—including the White House Counsel, a Deputy White House Counsel, the Chief of Staff, a Deputy Chief of Staff, and a Senior Advisor. Instead, the Defendant issued two Tweets that did not ask rioters to leave the Capitol but instead falsely suggested that the crowd at the Capitol was being peaceful, including:

- a. At 2:38 p.m., “Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!”
- b. At 3:13 p.m., “I am asking for everyone at the U.S. Capitol to remain peaceful. No violence! Remember, WE are the Party of Law & Order – respect the Law and our great men and women in Blue. Thank you!”

115. At 3:00 p.m., the Defendant had a phone call with the Minority Leader of the United States House of Representatives. The Defendant told the Minority Leader that the crowd at the Capitol was more upset about the election than the Minority Leader was.



116. At 4:17 p.m., the Defendant released a video message on Twitter that he had just taped in the White House Rose Garden. In it, the Defendant repeated the knowingly false claim that “[w]e had an election that was stolen from us,” and finally asked individuals to leave the Capitol, while telling them that they were “very special” and that “we love you.”

117. After the 4:17 p.m. Tweet, as the Defendant joined others in the outer Oval Office to watch the attack on the Capitol on television, the Defendant said, “See, this is what happens when they try to steal an election. These people are angry. These people are really angry about it. This is what happens.”

118. At 6:01 p.m., the Defendant tweeted, “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!”

119. On the evening of January 6, the Defendant and Co-Conspirator 1 attempted to exploit the violence and chaos at the Capitol by calling lawmakers to convince them, based on knowingly false claims of election fraud, to delay the certification, including:

- a. The Defendant, through White House aides, attempted to reach two United States Senators at 6:00 p.m.
- b. From 6:59 p.m. until 7:18 p.m., Co-Conspirator 1 placed calls to five United States Senators and one United States Representative.
- c. Co-Conspirator 6 attempted to confirm phone numbers for six United States Senators whom the Defendant had directed Co-Conspirator 1 to call and attempt to enlist in further delaying the certification.
- d. In one of the calls, Co-Conspirator 1 left a voicemail intended for a United States Senator that said, “We need you, our Republican friends, to try to just slow it down so we can get these legislatures to get more information to you. And I know they’re reconvening at eight tonight but the only strategy we can follow is to object to numerous states and raise issues so that we get ourselves into tomorrow—ideally until the end of tomorrow.”

- e. In another message intended for another United States Senator, Co-Conspirator 1 repeated knowingly false allegations of election fraud, including that the vote counts certified by the states to Congress were incorrect and that the governors who had certified knew they were incorrect; that “illegal immigrants” had voted in substantial numbers in Arizona; and that “Georgia gave you a number in which 65,000 people who were underage voted.” Co-Conspirator 1 also claimed that the Vice President’s actions had been surprising and asked the Senator to “object to every state and kind of spread this out a little bit like a filibuster[.]”

120. At 7:01 p.m., while Co-Conspirator 1 was calling United States Senators on behalf of the Defendant, the White House Counsel called the Defendant to ask him to withdraw any objections and allow the certification. The Defendant refused.

121. The attack on the Capitol obstructed and delayed the certification for approximately six hours, until the Senate and House of Representatives came back into session separately at 8:06 p.m. and 9:02 p.m., respectively, and came together in a Joint Session at 11:35 p.m.

122. At 11:44 p.m., Co-Conspirator 2 emailed the Vice President’s Counsel advocating that the Vice President violate the law and seek further delay of the certification. Co-Conspirator 2 wrote, “I implore you to consider one more relatively minor violation [of the ECA] and adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the massive amount of illegal activity that has occurred here.”

123. At 3:41 a.m. on January 7, as President of the Senate, the Vice President announced the certified results of the 2020 presidential election in favor of Biden.

124. The Defendant and his co-conspirators committed one or more of the acts to effect the object of the conspiracy alleged above in Paragraphs 13, 15-16, 18-22, 24, 26, 28, 30-33, 35, 37-39, 41, 43-44, 46, 50, 52, 54, 56, 57-64, 67, 71-75, 78-82, 84, 85, 87-97, 99-100, 102-104, 111, 114, 116, 118-119, and 122.

(In violation of Title 18, United States Code, Section 371)

**COUNT TWO**

**(Conspiracy to Obstruct an Official Proceeding—18 U.S.C. § 1512(k))**

125. The allegations contained in paragraphs 1 through 4 and 8 through 123 of this Indictment are re-alleged and fully incorporated here by reference.

126. From on or about November 14, 2020, through on or about January 7, 2021, in the District of Columbia and elsewhere, the Defendant,

**DONALD J. TRUMP,**

did knowingly combine, conspire, confederate, and agree with co-conspirators, known and unknown to the Grand Jury, to corruptly obstruct and impede an official proceeding, that is, the certification of the electoral vote, in violation of Title 18, United States Code, Section 1512(c)(2).

(In violation of Title 18, United States Code, Section 1512(k))



**COUNT THREE**

**(Obstruction of, and Attempt to Obstruct, an Official  
Proceeding—18 U.S.C. §§ 1512(c)(2), 2)**

127. The allegations contained in paragraphs 1 through 4 and 8 through 123 of this Indictment are re-alleged and fully incorporated here by reference.

128. From on or about November 14, 2020, through on or about January 7, 2021, in the District of Columbia and elsewhere, the Defendant,

**DONALD J. TRUMP,**

attempted to, and did, corruptly obstruct and impede an official proceeding, that is, the certification of the electoral vote.

(In violation of Title 18, United States Code, Sections 1512(c)(2), 2)

**COUNT FOUR**  
**(Conspiracy Against Rights—18 U.S.C. § 241)**

129. The allegations contained in paragraphs 1 through 4 and 8 through 123 of this Indictment are re-alleged and fully incorporated here by reference.

130. From on or about November 14, 2020, through on or about January 20, 2021, in the District of Columbia and elsewhere, the Defendant,

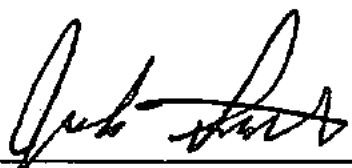
**DONALD J. TRUMP,**

did knowingly combine, conspire, confederate, and agree with co-conspirators, known and unknown to the Grand Jury, to injure, oppress, threaten, and intimidate one or more persons in the free exercise and enjoyment of a right and privilege secured to them by the Constitution and laws of the United States—that is, the right to vote, and to have one’s vote counted.

(In violation of Title 18, United States Code, Section 241)

A TRUE BILL

\_\_\_\_\_  
FOREPERSON

  
\_\_\_\_\_  
JACK SMITH  
SPECIAL COUNSEL  
UNITED STATES DEPARTMENT OF JUSTICE

1:23 cv 1165

CIVIL COVER SHEET

JS 44 (Rev. 04/21)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ROY L. PERRY-BEN  
CARLOS A. HOWARD

(b) County of Residence of First Listed Plaintiff Hampton

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Donald John Trump

County of Residence of First Listed Defendant Florida

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACTS, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, BANKRUPTCY, OTHER STATUTES. Includes codes for various legal categories like Personal Injury, Property Damage, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Section 3 of 14th Amendment
Declaratory Relief

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE





**U.S. District Court**  
**Virginia Eastern - Alexandria**

Receipt Date: Aug 31, 2023 2:53PM

MR. PERRY-BEY

Rcpt. No: 100003638

Trans. Date: Aug 31, 2023 2:53PM

Cashier ID: #JB

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
200	Civil Filing Fee- Non-Prisoner		1	402.00	402.00

CD	Tender	Amt
CC	Credit Card	\$402.00

Total Due Prior to Payment: \$402.00

Total Tendered: \$402.00

Total Cash Received: \$0.00

Cash Change Amount: \$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.