

C A M P A I G N F O R

ACCOUNTABILITY

January 11, 2021

BY EMAIL: oce@mail.house.gov

Omar Ashmawy
Staff Director and Chief Counsel
Office of Congressional Ethics
U.S. House of Representatives
425 3rd Street, S.W. Suite 1110
Washington, D.C. 20024

RE: Request for Investigation of Representative Morris “Mo” Brooks

Dear Mr. Ashmawy:

Campaign for Accountability (“CfA”) respectfully requests that the Office of Congressional Ethics (“OCE”) investigate whether Representative Morris “Mo” Brooks (R-AL) violated federal law by inciting a riot as part of a seditious conspiracy to use force to prevent Congress from carrying out its constitutional and statutory duties to count the votes of the Electoral College.

Factual Background

On January 6, 2021, the U.S. Senate and House of Representatives met in joint session in accordance with the Twelfth Amendment to the U.S. Constitution and the Electoral Count Act of 1887,¹ to count the votes of the Electoral College and certify the election of Joseph R. Biden and Kamala Harris as the next President and Vice President of the United States.

Earlier that day, President Donald J. Trump and his allies, including Representative Morris “Mo” Brooks (R-AL), held a rally (the so-called “Save America March”) to urge President Trump’s supporters to march to the U.S. Capitol and use force to prevent Congress from carrying out its duty to count the votes of the Electoral College.

Representative Brooks was one of the speakers at the Save America March. His speech was carried live and broadcast nationally by the C-SPAN cable TV network.² His speech was largely devoted to attacking Republican members of Congress for carrying out their constitutional and statutory duty of counting the votes of the Electoral College and certifying the election of President-Elect Joe Biden. Rep. Brooks’ speech concluded with the following call to action to President Trump’s supporters:

America does not need and cannot stand, cannot tolerate, any more weakling, cowering, wimpy Republican Congressman and Senators who covet the power and prestige the Swamp has to offer while groveling at the feet and the knees of the special interest group masters.

As such, today is important in another way.

¹ U.S. Const., Amend. XII; 3 U.S.C. § 15.

² See generally Rally on Electoral College Vote Certification, C-SPAN (January 6, 2021) (available at <https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification> 37:55).

*Today is the day American patriots start taking down names and kicking ass!
Now our ancestors sacrificed their blood, their sweat, their tears, their fortunes and sometimes
their lives to give us, their descendants, an America that is the greatest nation in world history.
Are you willing to do the same?
My answer is yes!
Louder!
Are you willing to do what it takes to fight for America?
Louder!
Will you fight for America?³*

Following a similarly inflammatory speech by President Trump urging those congregated to “fight,” the people attending the Save America March began marching up Pennsylvania Avenue to the U.S. Capitol, where they and others stormed barricades erected by the U.S. Capitol Police, broke windows and pushed through doors to enter the Capitol Building, and then used force to try and gain entry to the chambers of both the House of Representatives and the Senate, where representatives and senators were debating an objection to the electoral college votes submitted by the state of Arizona. Both chambers had to be evacuated - temporarily achieving the rioters’ goal of preventing Congress from carrying out its constitutional and statutory duty to count the votes of the Electoral College.⁴

After the Members of Congress were evacuated, the rioters occupied both the Senate and House chambers, ransacking desks and offices in both bodies and destroying and stealing federal property. The U.S. Capitol Police received reinforcements from the District of Columbia Metropolitan Police, the Secret Service, and the National Guards of the District of Columbia, Maryland and Virginia and eventually, the rioters were ejected from the Capitol Building and the grounds of the U.S. Capitol. The House of Representatives and the Senate reconvened later that day and completed the counting of the Electoral College votes in the early morning hours of January 7, 2021.⁵

The riot incited by President Trump and Representative Brooks, among others, resulted in five deaths, including the murder of a U.S. Capitol Police officer.⁶

Potential Violations

18 U.S.C. § 2101 (Riot)

Federal law makes it a crime for anyone to use any “any facility of interstate or foreign commerce, including, but not limited to, the mail, telegraph, telephone, radio, or television” to (1) incite a riot, (2) organize, promote, encourage, participate in, or carry on a riot, or (3) aid or abet any person in inciting or participating in or carrying on a riot.⁷

³ *Id.*

⁴ See generally Mob Attack, Incited By Trump, Delays Certification, *The New York Times* (January 6, 2021)(available at <https://www.nytimes.com/live/2021/01/06/us/electoral-vote>).

⁵ See generally Marc Fisher, Megan Flynn, Jessica Contrera and Carol D. Leonning, The Four-Hour Insurrection - How a Trump Mob Halted American Democracy, *The Washington Post* (January 7, 2021)(available at <https://www.washingtonpost.com/graphics/2021/politics/trump-insurrection-capitol/>).

⁶ Capitol Police Officer Brian Sicknick Dies From Injuries in Pro-Trump Riot, *The New York Times* (January 8, 2021)(available at <https://www.nytimes.com/2021/01/08/us/brian-sicknick-police-capitol-dies.html>).

⁷ 18 U.S.C. § 2101(a).

Representative Brooks' speech to the Save America March was broadcast live on the C-SPAN cable TV network. In his speech, Representative Brooks told listeners that "Today is the day American patriots start taking down names and kicking ass!" He compared the listeners to America's founding generation and asked them if they were willing to sacrifice their lives for America. He then continued to whip his audience into a frenzy by asking them – repeatedly - if they were willing to "fight" for America. In light of these inflammatory calls for violent action, it is hardly surprising that listeners responded by descending on the U.S. Capitol and began to riot – using force to storm the building and prevent the Congress from carrying out its duty to count the Electoral College votes.

Accordingly, by appearing on the C-SPAN cable TV network and exhorting his audience to use violence to stop the counting of the Electoral College vote, it appears that Representative Brooks may have violated 18 U.S.C. § 2101 by (1) inciting a riot, (2) encouraging others to participate in or carry on a riot, or (3) aiding or abetting others, including President Trump, in inciting a riot.

18 U.S.C. § 2384 (Seditious Conspiracy)

Federal law makes it a crime for two or more persons to conspire to use "force to prevent, hinder, or delay the execution of any law of the United States," or to conspire to use "force to seize, take, or possess any property of the United States contrary to the authority thereof"⁸

Here it appears that Representative Brooks may have conspired with others, including President Trump, to use force to "prevent, hinder or delay" the House of Representatives and the Senate from carrying out their duty to execute the law to count the Electoral College votes pursuant to the Twelfth Amendment to the U.S. Constitution and the Electoral Count Act of 1887.⁹

In addition, by appearing with President Trump at the Save America March and exhorting his listeners to march to the U.S. Capitol and start "taking names and kicking ass," Representative Brooks may have conspired with others, including President Trump, to use force to "seize, take or possess property of the United States" – the U.S. Capitol Building itself as well as its contents.

U.S. Constitution

Section three of the 14th Amendment to the U.S. Constitution provides, in part:

No Person shall be a Senator or Representative or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State who, having previously taken an oath. . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.

This prohibition, enacted in the wake of the Civil War, was crafted to keep both federal and state governments free of those who had torn the country apart. Here, if the OCE finds that by encouraging an angry mob to "fight", Representative Brooks may have engaged in insurrection or rebellion, absent a two-thirds vote of the House, he is disqualified from remaining in the House of Representatives.

⁸ 18 U.S.C. § 2384.

⁹ U.S. Const., Amend. XII; 3 U.S.C. § 15.

Conduct Not Reflecting Creditably on the House

Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves at all times in a manner that reflects creditably on the House.¹⁰ This ethics standard is considered to be the most comprehensive provision of the code.¹¹ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with flagrant violations of the law that reflect on Congress as a whole, and that might otherwise go unpunished.¹² This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,¹³ making false statements to the Committee,¹⁴ criminal convictions for bribery,¹⁵ accepting illegal gratuities,¹⁶ and accepting gifts from persons with interest in legislation in violation of the gift rule.¹⁷

There can be no action that brings greater discredit to the House of Representatives than a member of Congress – who has sworn an oath to uphold the Constitution – inciting an angry mob to violently protest against the legitimate results of a democratic election.

Conclusion

The potential violations here – incitement to riot and seditious conspiracy – are among the most serious crimes in the U.S. Criminal Code. Seditious conspiracy is literally a crime against democracy itself. In addition, the facts here are especially egregious. The riot at the Capitol resulted in the loss of five lives, including the death of a U.S. Capitol Police officer, the terrorization of countless members of Congress, congressional staff, journalists and members of the Capitol Police who feared for their lives as the mob patrolled the Capitol, as well as the destruction of federal property, including numerous historical artifacts. The American people's faith in the ability of its government institutions to function has been shaken by some the very individuals elected to run the government.

¹⁰ Rule 23, clause 1.

¹¹ House Comm. on Standards of Official Conduct, *House Ethics Manual*, p. 12.

¹² House Comm. on Standards of Official Conduct, *Report Under the Authority of H. Res. 418*, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

¹³ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

¹⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743 (Counts 3-4).

¹⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

¹⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

¹⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

Omar Ashmawy
January 11, 2020
Page 5

If you determine that there is substantial reason to believe that Representative Brooks violated either 18 U.S.C. § 2101, 18 U.S.C. § 2384, or House Rule XXIII you should recommend to the House Ethics Committee that he be expelled from the House of Representatives.

Sincerely,

A handwritten signature in black ink that reads "Michelle Koppersmith". The signature is written in a cursive style and is contained within a light gray rectangular border.

Michelle Koppersmith
Executive Director