

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

MARK MEADOWS,

Plaintiff,

v.

NANCY PELOSI, *et al.*,

Defendants.

ORAL ARGUMENT REQUESTED

Case No. 1:21-cv-3217-CJN

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 7(h), Defendants the Honorable Nancy Pelosi, the Honorable Bennie G. Thompson, the Honorable Elizabeth L. Cheney, the Honorable Adam B. Schiff, the Honorable Jamie B. Raskin, the Honorable Susan E. Lofgren, the Honorable Elaine G. Luria, the Honorable Peter R. Aguilar, the Honorable Stephanie Murphy, the Honorable Adam D. Kinzinger, and the United States House Select Committee to Investigate the January 6th Attack on the United States Capitol, by and through their counsel, move for summary judgment on all claims stated in the Plaintiff's Amended Complaint. There are no genuine issues of material fact and, for all the reasons set forth in the accompanying Memorandum of Law in Support of Defendants' Motion for Summary Judgment, the Defendants are entitled to judgment as a matter of law.

A proposed order is submitted herewith.

Respectfully submitted,

April 22, 2022

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* Appearing pursuant to 2 U.S.C. § 5571(a).

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2022, I caused the foregoing document to be filed via the CM/ECF system for the U.S. District Court for the District of Columbia, which I understand caused a copy to be served on all registered parties.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK MEADOWS,)
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 NANCY PELOSI, et al.)
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Defendants.)

Case No. 1:21-cv-3271-CJN

**MEMORANDUM AND POINTS OF AUTHORITIES IN SUPPORT OF DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

The Select Committee to Investigate the January 6th Attack on the United States Capitol (hereinafter “Select Committee”) is investigating the violent attack on our Capitol on January 6, 2021, and efforts by the former President of the United States to remain in office by ignoring the rulings of state and federal courts and disrupting the peaceful transition of power. Plaintiff Mark Meadows was President Trump’s White House Chief of Staff during the events at issue. But Mr. Meadows also played an additional and different role, along with members of the Trump campaign, Rudy Giuliani and others, in the President’s post-election efforts to overturn the certified results of the 2020 election. Mr. Meadows has published a book addressing a number of these issues and has spoken about them publicly on several occasions.

On September 23, 2021, the Select Committee issued a subpoena to Mr. Meadows for deposition testimony and relevant documentation regarding the events at issue. SOMF ¶ 10. President Biden considered but declined to assert executive privilege or any form of immunity with respect to Mr. Meadows’s testimony.

The Select Committee received certain documentation from Mr. Meadows, including 2,319 text messages from Mr. Meadows’s private phone as well as privilege logs claiming executive, attorney-client, and marital privilege for many documents and text messages that Mr. Meadows refused to produce. Although, after much negotiation, Mr. Meadows had agreed to appear for a deposition on December 8, 2021, he informed the Select Committee on December 7, 2021, of a change of heart; he filed this suit instead, seeking to justify his decision to refuse to appear or provide any testimony in response to the Select Committee’s subpoena, either regarding his official activity as Chief of Staff or other activity for the Trump campaign. *See* ECF 13-22 (Am. Compl. Ex. T), Letter from G. Terwilliger to Select Committee (Dec. 7, 2021).

Thereafter, the House of Representatives voted to hold Mr. Meadows in contempt of Congress. *See* 167 Cong. Rec. H7814-15 (daily ed. Dec. 14, 2021) (approving H. Res. 851, 117th Cong. (2021)). The contempt report the House adopted repeatedly noted that Mr. Meadows not only refused to attend a deposition at all but refused to provide even indisputably non-privileged testimony to the Select Committee. *See* H. Rep. No. 117-216, at 2-3 (2021). Since that time, Mr. Meadows has continued to defy the Select Committee’s subpoena and has provided no testimony even as to non-privileged information. SOMF ¶ 22.

In his Amended Complaint, Mr. Meadows asserts a range of legal arguments purporting to justify his refusal to comply with the Select Committee’s subpoena. Each is deeply flawed as a matter of law. For example, Mr. Meadows argues that the Select Committee lacks an appropriate legislative purpose. *See* Am. Compl. ¶¶ 130-46. But the D.C. Circuit in *Trump v. Thompson*, 20 F.4th 10, 37-38 (D.C. Cir. 2021), has already rejected that argument, recognizing “Congress’s uniquely weighty interest in investigating the causes and circumstances of the January 6th attack so that it can adopt measures to better protect the Capitol Complex, prevent similar harm in the future, and ensure the peaceful transfer of power.” 20 F.4th at 35.

Similarly, two other courts have already rejected Mr. Meadows’s arguments that the Select Committee is improperly composed under House Resolution 503 or applicable House Rules, or that the subpoenas issued by the Select Committee are otherwise infirm. *See* Oral Arg. Tr. at 34, *Budowich v. Pelosi*, No. 21-cv-3366 (D.D.C. Jan. 20, 2022), ECF 27; Order at 9 & n.12, *Eastman v. Thompson*, No. 8:22-cv-00099 (C.D. Cal. Jan. 25, 2022), ECF 43. As those and other courts recognize, the Constitution’s Rulemaking Clause compels deference to the House of Representatives’s interpretation and application of its own rules.

Since the Select Committee initially issued its subpoena for documents and testimony to Mr. Meadows, its investigation has progressed significantly. The Select Committee has interviewed or deposed dozens of witnesses who interacted directly with Mr. Meadows, either in the White House or in connection with the Trump campaign to overturn the 2020 election. This information has now allowed the Select Committee to identify with greater precision the subjects upon which it requires information from Mr. Meadows. Consequently, the Select Committee has elected to focus its subpoena more narrowly going forward, to require only that Mr. Meadows give deposition testimony and provide documents regarding *seven discrete topics* that are directly and unambiguously relevant to the events of January 6th and the Select Committee's investigation (addressed in detail below). *See infra* at 28-40.

1. Testimony regarding non-privileged documents (including text and email communications) that Mr. Meadows has already provided to the Select Committee in response to the subpoena, and testimony about events that Mr. Meadows has already publicly described in his book and elsewhere;

2. Testimony and documents regarding post-election efforts by the Trump campaign, the Trump legal team, and Mr. Meadows to create false slates of Presidential electors, or to pressure or persuade state and local officials and legislators to take actions to change the outcome of the 2020 Presidential election;

3. Testimony and documents relating to communications with Members of Congress in preparation for and during the events of January 6th;

4. Testimony and documents regarding the plan, in the days before January 6th, to replace Acting Attorney General Jeffrey Rosen with Mr. Jeffrey Clark so that the Department could corruptly change its conclusions regarding election fraud;

5. Testimony and documents relating to efforts by President Trump to instruct, direct, persuade or pressure Vice President Mike Pence to refuse to count electoral votes on January 6th;

6. Testimony and documents relating to activity in the White House immediately before and during the events of January 6th; and

7. Testimony and documents relating to meetings and communications with individuals not affiliated with the federal government regarding the efforts to change the results of the 2020 election.

Mr. Meadows alleges that his documents and testimony regarding the events of January 6th should be protected by executive privilege. *See* Am. Compl. ¶¶ 170-85. None of Mr. Meadows’s executive privilege arguments should apply as to certain of these topics: 1-4 and 7 above. For other topics, the Select Committee’s interest in these materials outweighs any basis for a general and unspecified assertion of privilege, as the D.C. Circuit has already held in a closely related context in *Trump v. Thompson*.

The *Thompson* court required production of hundreds of pages of documents allegedly covered by executive privilege, concluding that, under any test, “the profound interests in disclosure . . . far exceed [former President Trump’s] generalized concerns for Executive Branch confidentiality.” *Trump v. Thompson*, 20 F.4th at 33. The D.C. Circuit agreed that access to the information was “necessary to address a matter of great constitutional moment for the Republic.” *Id.* at 49. The Supreme Court later rejected the former President’s request to stay that ruling. *Trump v. Thompson*, 142 S. Ct. 680 (2022).

Mr. Meadows also alleges that he is absolutely immune from any obligation to testify on *any* topic—by virtue of his former role as White House Chief of Staff. But no court has ever so

ruled. Even if such an absolute immunity doctrine existed to shield the official activities of a White House official (it does not), much of Mr. Meadows's testimony would relate to President Trump's campaign to overturn the 2020 election. Mr. Meadows's activities in that context were not performed in an official capacity and could not be covered by any conception of "absolute immunity." Indeed, even the Office of Legal Counsel (OLC) memoranda on which Mr. Meadows now apparently relies explicitly do not apply to such "unofficial" activity. Ironically, those OLC memoranda were intended to guard against a perceived threat to the separation of powers. But here, Mr. Meadows is attempting to use them to prevent Congress from fully investigating an attack that posed a dramatically more serious Constitutional threat. Congress must have the ability to uncover exactly what happened on January 6th; and it must take appropriate and focused legislative action to preserve its role as a separate and co-equal branch of government. Congress requires Mr. Meadows's testimony for that purpose.

Finally, Mr. Meadows's Amended Complaint also alleges that another Committee subpoena—to Verizon for records of Mr. Meadows's calls on January 6th and other relevant dates—is unlawful. That subpoena seeks records of whom Mr. Meadows called on January 6th and during other relevant periods and does not seek the content of any of Mr. Meadows's conversations. This motion also seeks a ruling that Mr. Meadows has no legal basis to attempt to prevent Verizon from complying with that subpoena.

Summary judgment is fully warranted. For the reasons set forth herein, the Select Committee seeks a ruling on each of the claims in Plaintiff Meadows's Amended Complaint.

BACKGROUND

A. The January 6th Attack

"On January 6, 2021, as a joint session of Congress convened in the U.S. Capitol to certify the vote count of the Electoral College, thousands of people, many of whom had marched

to the Capitol following a rally at which then-President Donald Trump spoke, gathered outside.” *United States v. Miller*, No. 1:21-cr-00119, 2022 WL 823070, at *1 (D.D.C. Mar. 7, 2022); SOMF ¶ 1. “[A] mob professing support for then-President Trump violently attacked the United States Capitol in an effort to prevent a Joint Session of Congress from certifying the electoral college votes designating Joseph R. Biden the 46th President of the United States. The rampage left multiple people dead, injured more than 140 people, and inflicted millions of dollars in damage to the Capitol. Then-Vice President Pence, Senators, and Representatives were all forced to halt their constitutional duties and flee the House and Senate chambers for safety.” *Trump v. Thompson*, 20 F.4th 10, 15-16 (D.C. Cir. 2021), *cert. denied*, 142 S. Ct. 1350 (2022) (mem.); SOMF ¶ 2. “The events of January 6, 2021 marked the most significant assault on the Capitol since the War of 1812.” *Id.* at 18-19.

B. The Formation of the Select Committee

In response to that unprecedented attack, the House of Representatives adopted House Resolution 503, “establish[ing] the Select Committee to Investigate the January 6th Attack on the United States Capitol.” SOMF ¶ 3. That resolution authorizes the Select Committee to: (1) “investigate the facts, circumstances, and causes relating to the domestic terrorist attack on the Capitol”; (2) “identify, review, and evaluate the causes of and the lessons learned from the domestic terrorist attack on the Capitol”; and (3) “issue a final report to the House containing such findings, conclusions, and recommendations for corrective measures . . . as it may deem necessary.” *Id.* The resolution further describes categories of potential corrective measures—“changes in law, policy, procedure[], rules, or regulations that could be taken”: (1) “to prevent future acts of violence, domestic terrorism, and domestic violent extremism, including acts targeted at American democratic institutions”; (2) “to improve the security posture of the United States Capitol Complex while preserving accessibility of the Capitol Complex for all

Americans”; and (3) “to strengthen the security and resilience of the United States and American democratic institutions against violence, domestic terrorism, and domestic violent extremism.”

H. Res. 503, 117th Cong. § 4(c) (2021).

To carry out those functions, House Resolution 503 authorizes the Speaker of the House to appoint up to thirteen Members to the Select Committee, five of whom were to be appointed “after consultation with the minority leader.” SOMF ¶ 3; H. Res. 503, 117th Cong. § 2(a) (2021). On July 1, 2021, Speaker Pelosi appointed eight Members of the House (seven Democrats and one Republican) to the Select Committee consistent with the resolution. SOMF ¶ 4. The House Minority Leader then presented his recommendations for five additional Republicans to be appointed to the Select Committee. *Id.* The Speaker spoke with the Minority Leader, advised him that she would appoint three of the Members he had recommended, and asked the Minority Leader to recommend two other Republicans.¹ Rather than comply with that request, the Minority Leader declined and, instead, withdrew all five recommendations and refused to participate further in the appointment of members.² *See* Am. Compl. ¶ 58.

The Speaker consulted the House Parliamentarian, considered relevant precedent, and determined an appropriate course of action consistent with both House Resolution 503 and the House Rules. The Speaker concluded that the Minority Leader’s actions, and his refusal to consult further regarding appointments, did not prevent the Select Committee from operating.

¹ SOMF ¶ 5. The members the Speaker declined to appoint were Jim Jordan and Jim Banks. Mr. Jordan was an active participant in the effort to overturn the 2020 election on January 6th. *See* 167 Cong. Rec. H77-79, H98-99 (daily ed. Jan. 6, 2021); *See* 167 Cong. Rec. H77-79, H98-99 (daily ed. Jan. 6, 2021); Letter from Chairman Bennie Thompson to Rep. Jim Jordan (Dec. 22, 2021), <https://perma.cc/S6QY-J9BJ>. *See* Press Release, Jim Banks, McCarthy Taps Banks to Lead Republicans on Jan 6 Committee (July 19, 2021), <https://perma.cc/WVW5-6DDH>

² *See* Press Release, Kevin McCarthy, McCarthy Statement about Pelosi’s Abuse of Power on January 6th Select Committee (July 21, 2021), <https://perma.cc/KFQ7-C7B7> (“McCarthy Press Release”).

This was because the Select Committee already had a quorum of Members under House Resolution 503. *See* H. Res. 503 § 5(c)(3) (“[T]wo Members of the Select Committee shall constitute a quorum for taking testimony or receiving evidence and *one-third of the Members of the Select Committee shall constitute a quorum* for taking any action other than one for which the presence of a majority of the Select Committee is required.”) (emphasis added).

Nevertheless, the Speaker decided to appoint an additional Republican Member to the Select Committee. SOMF ¶ 6. The Select Committee has since operated with seven Democrats and two Republicans, a composition the full House has affirmed repeatedly, first by tabling House Resolution 554—a privileged resolution filed by the Minority Leader contesting the composition of the Select Committee on the grounds similar to those argued here by Mr. Meadows (*see* 167 Cong. Rec. H3885-86)—and also by its adoption of three resolutions holding four individuals in contempt of Congress, one of which specifically addressed Mr. Meadows refusal to comply with the Select Committee’s subpoenas. SOMF ¶ 8.³

C. The Select Committee’s Subpoenas to Mr. Meadows and Verizon

In furtherance of its responsibility to “investigate the facts, circumstances, and causes” of the January 6th attack, on September 23, 2021, the Select Committee issued the subpoena at issue here to Mr. Meadows. SOMF ¶ 9. As the Select Committee explained in its cover letter to the subpoena, its investigation had “revealed credible evidence” of Mr. Meadows’s “involvement

³ H. Res. 1037, 117th Cong. (2022) (Recommending that the House of Representatives find Peter K. Navarro and Daniel Scavino, Jr. in contempt of Congress); H. Res. 851, 117th Cong. (2021) (Recommending that the House of Representatives find Mark Randall Meadows in contempt of Congress) ; H. Res. 730, 117th Cong. (2021) (Recommending that the House of Representatives find Stephen K. Bannon in contempt of Congress); *see also* 168 Cong. Rec. H4217 (daily ed. Apr. 6, 2022) (specifically raising these challenges to the Select Committee’s means of operation before the full House during a debate over whether the House should adopt a contempt resolution).

in events within the . . . Select Committee’s inquiry.” SOMF ¶ 11. Specifically, Mr. Meadows was “with or in the vicinity of President Trump on January 6, had communications with the President and others on January 6 regarding events at the Capitol, and [was] a witness regarding activities of that day.” SOMF ¶ 12. Indeed, at least one press report indicated that Mr. Meadows was in communication with organizers of the January 6th rally. *See id.*

Further, public reports indicated that Mr. Meadows was “engaged in multiple elements of the planning and preparation of efforts to contest the presidential election and delay the counting of electoral votes,” and according to documents provided by the Department of Justice, he “directly communicated with the highest officials” at the Department “requesting investigations into election fraud matters in several states.” SOMF ¶ 13. The Select Committee also understood that in the weeks after the 2020 election, Mr. Meadows “contacted several state officials to encourage investigation of allegations of election fraud, even after such allegations had been dismissed by state and federal courts, and after the Electoral College had met and voted on December 14, 2020.” SOMF ¶ 14.

Accordingly, the Select Committee issued a subpoena seeking documents and deposition testimony regarding these and other matters relevant to the Select Committee’s inquiry, with a document return date of October 7, 2021 and a deposition date of October 15, 2021. ECF 13-3 at 4 (Am. Compl. Ex. A). Chairman Thompson chose to delay these deadlines a number of times in an effort at accommodation.

On November 11, 2021, the Deputy Counsel to the President, writing on behalf of President Biden, sent a letter to Mr. Meadows’s counsel, describing the consideration the President gave in deciding whether to assert absolute testimonial immunity and/or executive privilege with respect to the Select Committee subpoena. *See* SOMF ¶ 15. The President

declined to assert either claim. *Id.* The President determined, “in recognition of [the] unique and extraordinary circumstances,” that “an assertion of executive privilege is not in the public interest, and is therefore not justified, with respect to particular subjects within the purview of the Select Committee.” *See* ECF 13-14 at 2 (Am. Compl. Ex. L), Letter from Jonathan C. Su, Deputy Counsel to the President, to George J. Terwilliger III (Nov. 11, 2021). President Biden also concluded “[f]or the same reasons underlying his decisions on executive privilege” that he would “not assert immunity” to preclude Mark Meadows from testifying before the Select Committee. *Id.* at 3.

D. The Two Separate Roles That Mr. Meadows Played As White House Chief of Staff, and As a Key Player on the Trump Campaign

Federal law expressly prohibits federal officials such as Mr. Meadows (when serving as the Chief of Staff to the President) from acting under their official U.S. government authority and position to affect the outcome of a political election.⁴

Mr. Meadows acted in his non-governmental capacity with regard to numerous post-election campaign efforts, including by traveling to Georgia to observe an audit of absentee ballot signatures, and by lobbying state officials, legislators and others urging changes to state election results, by participating in an effort to create false electoral slates for certain states, and in other ways. SOMF ¶ 18.⁵ Mr. Meadows was also involved in planning with Members of

⁴ *See* 5 U.S.C. § 7323(a) (commonly referred to as the “Hatch Act”); 5 C.F.R. § 734.101 (2022) (defining “political activity”); 5 C.F.R. § 734.302 (prohibiting use of official title while engaged in political activity). *See generally* U.S. Office of Special Counsel, Investigation of Political Activities by Senior Trump Administration Officials during the 2020 Presidential Election, Report of the Office of Special Counsel 17, 22-23, 40 (Nov. 9, 2021), <https://perma.cc/P887-827J>.

⁵ For example, Mr. Meadows participated in a widely publicized call with Georgia Secretary of State Raffensperger, and other related efforts seeking to change the election results in Georgia. *See* Amy Gardner & Paulina Firozi, *Here’s the transcript and audio of the call between Trump and Raffensperger*, Wash. Post (Jan. 5, 2021), <https://perma.cc/5SMX-4FPX>.

Congress and others not in the Executive Branch for the events of January 6th.⁶ Mr. Meadows’s engagement in these activities in his capacity as a member of the Trump campaign has been confirmed by the testimony of multiple witnesses,⁷ by Mr. Meadows’s own book,⁸ and by the non-privileged documents Mr. Meadows himself produced to the Select Committee (for examples, *see infra* at 28-40).⁹ His unofficial role in the Trump campaign is also evident from Mr. Meadows’s privilege logs, which include separate claims of attorney-client privilege and work product protection for hundreds of communications with lawyers acting for the campaign or with other Trump campaign staff. SOMF ¶ 19; Ex. E to Decl. of Timothy Heaphy, Mark Meadows’ Email Privilege Logs.

⁶ Mr. Meadows “received text messages and emails regarding apparent efforts to encourage Republican legislators in certain States to send alternate slates of electors to Congress, a plan which one Member of Congress acknowledged was ‘highly controversial’ and to which Mr. Meadows responded, ‘I love it.’ Mr. Meadows responded to a similar message by saying ‘[w]e are’ and another such message by saying ‘Yes. Have a team on it.’” H. Rep. No. 117-216, at 9. He also participated in a call with President Trump, Members of Congress, attorneys for the President’s campaign, and around 300 state and local officials “to discuss the goal of overturning certain States’ electoral college results on January 6, 2021.” Ex. H to Decl. of Timothy Heaphy, January 6, 2021 Text Messages between Mark Meadows and Donald Trump Jr., H. Rep. No. 117-216, at 9-10 (citing messages produced by Mr. Meadows to the Committee).

⁷ *See, e.g.*, Ex. P to Decl. of Timothy Heaphy, Hutchinson Tr. 47, 72-73; Ex. G to Decl. of Timothy Heaphy, Hutchinson Tr. Contd. 161-63; Ex. Z to Decl. of Timothy Heaphy, Raffensperger Tr. 102-105; Ex. Y to Decl. of Timothy Heaphy, J. Miller Tr. 125-26, 143-45.

⁸ SOMF ¶¶ 25, 26.

⁹ Ex. C to Decl. of Timothy Heaphy, Nov. 30, 2020 Email from Mark Meadows to Jason Miller (email from Mark Meadows’s personal email account to senior campaign advisor authorizing the campaign to issue a press release); Ex. D to Decl. of Timothy Heaphy, Dec. 6, 2020 Email from Mark Meadows to Jason Miller (email from Mark Meadows’s personal email account to senior campaign advisor with information about a suit filed by the campaign).

E. The Select Committee’s Numerous Attempts to Gain Compliance by Mr. Meadows with Its Subpoena

As reflected in the attachments to the Amended Complaint, Mr. Meadows counsel, the White House, and the Select Committee engaged in lengthy correspondence regarding document production and deposition testimony.

Particularly relevant here, on October 11, 2021, counsel for Mr. Meadows wrote to counsel for the White House, asking the White House to “clarify whether you have directed the Archivist to produce privileged materials arising from Mr. Meadows’s tenure as Chief of Staff to Congress, and if so, to clarify the scope of that directive.” ECF 13-5 at 3 (Am. Compl. Ex. C), Letter from G. Terwilliger to D. Remus (Oct. 11, 2021). The letter further represented that former President Trump had expressed the view that “Mr. Meadows is immune from compelled testimony on matters related to his official responsibilities.” *Id.* at 4. The letter stated that Mr. Meadows had “no reason to believe that President Biden has purported to waive testimonial immunity for Mr. Meadows in connection with the Select Committee’s subpoena,” and asked for an opportunity to “discuss these matters” before any decision was made. *Id.* at 4-5.

On November 11, 2021, Deputy Counsel to the President Jonathan Su informed Mr. Meadows’s counsel that President Biden would not claim executive privilege or testimonial immunity with respect to Mr. Meadows’s deposition or regarding any documents that he may possess bearing on the Select Committee’s inquiry. *See* ECF 13-14 at 2-3 (Am. Compl. Ex. L). The letter explained that President Biden had determined “that an assertion of executive privilege is not in the public interest, and is therefore not justified, with respect to particular subjects within the purview of the Select Committee,” including “events within the White House on or about January 6, 2021; attempts to use the Department of Justice to advance a false narrative that

the 2020 election was tainted by widespread fraud; and other efforts to alter election results or obstruct the transfer of power.” *Id.* at 2.

After Mr. Meadows initially refused to testify—contending that “senior aides to the president cannot be compelled to provide [C]ongressional testimony” ECF 13-12 at 2 (Am. Compl. Ex. J), Letter from G. Terwilliger to Select Committee (Nov. 10, 2021)—Mr. Meadows’s counsel wrote to the Select Committee in late November purportedly seeking an “accommodation.”¹⁰ Specifically, in two letters dated November 26, 2021, Mr. Meadows’s counsel agreed that Mr. Meadows would appear at a deposition subject to certain preconditions and agreed to produce 1,139 documents from Mr. Meadows’s personal email account. SOMF ¶ 16. With the document production, counsel for Mr. Meadows provided a privilege log showing that Mr. Meadows was withholding hundreds of documents on the basis of asserted executive, marital, and attorney-client privileges. *See* H. Rep. No. 117-216, at 19.

On December 3, 2021, Mr. Meadows’s counsel produced 2,319 text messages to the Select Committee. *See* ECF 13-20 at 2 (Am. Compl. Ex. R), Letter from M. Francisco to Select Committee (Dec. 3, 2021). Counsel for Mr. Meadows also produced a privilege log showing that Mr. Meadows was withholding over 1,000 text messages from his personal cell phone based on claims of executive, marital, and attorney-client privileges. SOMF ¶ 17.

A date for the deposition was then agreed upon for December 8, 2021, but on the day before the scheduled deposition, cooperation by Mr. Meadows stopped suddenly. SOMF ¶ 20.

¹⁰ The “accommodations” process involves negotiation between the Legislative Branch and the Executive Branch. *See, e.g., Trump v. Mazars USA LLP*, 140 S. Ct. 2019, 2029-31 (2020). Mr. Meadows, however, is not a part of and does not represent the Executive Branch. As described *infra*, the Executive Branch has been consulted on the subpoena to Mr. Meadows and has decided not to assert privileges or otherwise seek an accommodation concerning testimony and documents from Mr. Meadows on subjects within the purview of the Select Committee.

Through counsel, Mr. Meadows wrote to the Select Committee “declin[ing] the opportunity to appear voluntarily for a deposition.” *Id.* During a call with Select Committee staff that same day, Mr. Meadows’s counsel indicated that Mr. Meadows would not appear at all, even to discuss the documents that he had already provided to the Select Committee and that were not covered by any claim of protective privilege. SOMF ¶ 21. On December 8, 2021, Mr. Meadows then failed to appear for his deposition. *See id.*

On December 13, 2021, the Select Committee considered and reported to the full House a contempt of Congress report and recommendation. The contempt report stressed Mr. Meadows’s failure to testify regarding facts and documents not subject to any claim of privilege. *See generally* H. Rep. No. 117-216. During the Select Committee’s business meeting, Vice Chair Liz Cheney reinforced the central claim of the contempt proceedings: “We believe Mr. Meadows is improperly asserting executive and other privileges, but this vote on contempt today relates principally to Mr. Meadows’s refusal to testify about text messages and other communications that he admits are not privileged. He has not claimed and does not have any privilege basis to refuse entirely to testify regarding these topics.”¹¹

The next day the full House debated a resolution holding Mr. Meadows in contempt of Congress and referring him to the Department of Justice for criminal prosecution pursuant to 2 U.S.C. §§ 192, 194. *See* 167 Cong. Rec. H7785-94 (daily ed. Dec. 14, 2021). Although multiple members of the House argued on the House floor that the Select Committee lacked an appropriate legislative purpose, was not appropriately composed, and lacked authority to issue

¹¹ Transcript of Business Meeting on a Report Recommending that the House of Representatives Cite Mark Randall Meadows for Criminal Contempt of Congress at 8, House Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 1st sess., (Dec. 13, 2021) (remarks of Rep. Liz Cheney of Wyoming) (Ex. B).

the subpoena to Mr. Meadows,¹² the full House did not agree, and the contempt resolution was adopted. *See id.* at H7814-15. The Speaker provided the House’s referral to the Department of Justice, which has not yet announced a prosecutorial decision.

Verizon Subpoena

On November 22, 2021, the Select Committee issued a subpoena to Verizon for “subscriber information and cell phone data associated with Mr. Meadows’s personal cell phone number.” SOMF ¶ 23. The subpoena does not request any content of any communications, nor does it request geo-location data. *Id.* To date, Verizon has not produced any of the subpoenaed information to the Select Committee and has advised the Select Committee that it will not provide the requested documents absent a ruling from this Court.

On December 8, 2021, Mr. Meadows filed this action seeking various forms of relief, including a declaratory judgment and/or injunction to prevent the Select Committee from obtaining the documents and testimony sought by the Select Committee’s subpoenas to Mr. Meadows and to Verizon. He filed an amended complaint on April 1, 2022.

STANDARD OF REVIEW

A court may grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). If the moving party has met its burden, the nonmoving party must set forth

¹² The remarks of Rep. Andy Biggs of Arizona are illustrative of criticisms leveled against the Select Committee that the House rejected: “This committee is illegitimate. It has violated its own rules of creation. It has violated its own rules of creation and it says they want to find out this massive truth here about what happened on January 6. You can’t have a committee to find out what happened because you are interested. You can’t do that. And that is what they are doing today.” 167 Cong. Rec. H7793.

“specific facts showing that there is a genuine issue for trial” to defeat the motion. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

ARGUMENT

The Select Committee seeks summary judgment on each claim in Mr. Meadows’s Amended Complaint—and specifically that Mr. Meadows has no valid legal ground to refuse to testify and produce relevant documents regarding the seven topics identified above. The Court need not resolve any triable factual dispute to issue such a ruling.

I. Defendants are Entitled to Summary Judgment on All of Mr. Meadows’s Claims

F. The Select Committee Has a Valid Legislative Purpose

As noted earlier, the D.C. Circuit has already determined that the Select Committee has a valid and “uniquely compelling” legislative purpose. *Trump v. Thompson*, 20 F.4th at 37-38. That decision governs here, and Mr. Meadows’s claims to the contrary fail. *See* Am. Compl. ¶¶ 130-46.

In that case, former President Trump sued the Select Committee and the National Archives to enjoin the latter from producing to the Select Committee Presidential records concerning the January 6th attack. The district court denied the requested injunction, and the D.C. Circuit affirmed. The D.C. Circuit recognized that, “[e]ven under ordinary circumstances, there is a strong public interest in Congress carrying out its lawful investigations, and courts must take care not to unnecessarily halt the functions of a coordinate branch.” *Trump v. Thompson*, 20 F.4th at 48 (internal quotation marks and citations omitted).

As to the Select Committee’s purpose, the D.C. Circuit explained:

The very essence of the Article I power is legislating, and so there would seem to be few, if any, more imperative interests squarely within Congress’s wheelhouse than ensuring the safe and uninterrupted conduct of its constitutionally assigned business. Here, the House of Representatives is investigating the single most deadly attack on the Capitol by domestic forces in the history of the United States.

Id. at 35.

The D.C. Circuit accordingly concluded that “the January 6th Committee plainly has a ‘valid legislative purpose’ and its inquiry concern[s] a subject on which legislation could be had.” *Id.* at 41 (citation omitted). The Supreme Court summarily denied Mr. Trump’s request for an injunction pending review of the D.C. Circuit’s decision, and then denied certiorari. *Trump v. Thompson*, 20 F.4th 10 (D.C. Cir. 2021), *injunction denied*, 142 S. Ct. 680 (2022), *cert. denied*, 142 S. Ct. 1350 (2022) (mem.). Recently, additional courts have likewise ruled that the Select Committee is pursuing legitimate legislative purposes. Oral Arg. Tr. at 34, *Budowich v. Pelosi*, ECF 27; Order at 9 & n.12, *Eastman v. Thompson*, ECF 43. No court has ruled or suggested otherwise.

G. The Select Committee Is Validly Constituted and Has Issued Valid Subpoenas.

Under the Constitution’s Rulemaking Clause, courts cannot override Congress’s interpretation of its own resolutions and rules. Indeed, two courts have already rejected claims that the Select Committee is improperly constituted, or that it is not operating in accordance with its rules.

1. The Rulemaking Clause Prevents Federal Courts from Second-Guessing the Select Committee’s Internal Operations

Under the Rulemaking Clause, “[e]ach House may determine the Rules of its Proceedings.” U.S. Const., Art. I, § 5, cl. 2; *see Baker v. Carr*, 369 U.S. 186, 233 (1962). That provision is a critical aspect of the Legislative Branch’s constitutional design as it “grants the House the power to make its own Rules about its internal proceedings,” *Rangel v. Boehner*, 20 F. Supp. 3d 148, 167 (D.D.C. 2013), which “only empowers Congress to bind itself,” *INS v. Chadha*, 462 U.S. 919, 955 n.21 (1983); *see also Consumers Union of U.S., Inc. v. Periodical Correspondents’ Ass’n*, 515 F.2d 1341, 1343 (D.C. Cir. 1975) (Rulemaking Clause is a “broad

grant of authority”). Both the Rulemaking Clause and separation-of-powers principles have led courts to avoid taking on interpretations of Congressional rules that conflict with Congress’s own interpretations. *See, e.g., Barker v. Conroy*, 921 F.3d 1118, 1130 (D.C. Cir. 2019) (“Accordingly, we accept the House’s interpretation of its own rules ... thus eliminating any risk of running afoul of either the Rulemaking Clause or separation-of-powers principles.”) (citation omitted).

The D.C. Circuit has long emphasized the deference owed to Congress in determining and interpreting its own rules, and that court has reaffirmed this approach in recent years. *See Barker*, 921 F.3d at 1130 (“The Rulemaking Clause of Article I, Section 5 of the Constitution clearly reserves to each House of the Congress the authority to make its own rules, and as we have explained, interpreting a congressional rule differently than would the Congress itself is tantamount to *making* the rules—a power that the Rulemaking Clause reserves to each House alone.”) (emphasis in original; internal quotation marks and citation omitted).

Thus, a court’s authority to interpret internal rules of either chamber of Congress is limited to situations where such interpretation “requires no resolution of ambiguities.” *United States v. Durenberger*, 48 F.3d 1239, 1244 (D.C. Cir. 1995); *accord Metzbaum v. FERC*, 675 F.2d 1282, 1287 (D.C. Cir. 1982) (“To decide otherwise would subject Congressional enactments to the threat of judicial invalidation on each occasion of dispute over the content or effect of a House or Senate rule.”).¹³

In addition to the deference the D.C. Circuit has held must be accorded Congress in determining its own rules, such decisions are also entitled to the “presumption of regularity,”

¹³ *Cf. Yellin v. United States*, 374 U.S. 109, 114-115, 119 (1963) (reversing contempt of Congress conviction because a House committee did not follow that committee’s clear rules on executive session testimony).

which the Select Committee and Members of Congress, like all government officials, enjoy. *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1117 (D.C. Cir. 2007) (internal quotation marks and citation omitted). None of the allegations in the Amended Complaint come close to demonstrating the “clear evidence to the contrary,” required to overcome that presumption. *United States v. Chem. Found., Inc.*, 272 U.S. 1, 14-15 (1926).

Courts that have heard challenges to the Select Committee’s activities have very recently recognized their obligation to defer to the House’s interpretation of its own rules and ruled against parties urging courts to reject the House’s interpretation of its rules. In *Budowich, supra*, the district court indicated that it would reject arguments like the ones Mr. Meadows makes here: the court would “have to defer to Congress in the manner of interpreting its rules,” and that the court would be “usurping Congressional authority” were it to hold that the Select Committee was not validly composed. Jan. 20, 2022 Oral Arg. Tr. 34:1-5, *Budowich v. Pelosi*, No. 21-cv-3366 (JEB) (D.D.C. Jan. 20, 2022). Judge Carter, in Federal District Court for the Central District of California, also recently reached a similar conclusion. *Eastman*, ECF No. 43 at 9 & n. 12 (“A court may interpret internal congressional rules only when such interpretation ‘requires no resolution of ambiguities.’”) (citations omitted); *see also Vander Jagt v. O’Neill*, 699 F.2d 1166, 1175-77 (D.C. Cir. 1982) (rejecting the “startlingly unattractive idea, given our respect for a coequal branch of government, for us to tell the Speaker” whom to appoint to committees).

2. The Select Committee Is Properly Composed

Despite the Rulemaking Clause and the rulings above, Mr. Meadows asks this Court to step in and invalidate the House’s interpretation of its own resolution and rules.

First, Mr. Meadows complains that the Speaker has appointed only nine Members to the Select Committee, rather than the thirteen identified by the Resolution. Am. Compl. ¶¶ 121, 124; H. Res. 503 § 2(a). As indicated above, the current composition of the Select Committee

follows from a decision by the Minority Leader to voluntarily withdraw his own recommendations, and to refuse thereafter to participate further in the consultation process identified in the Resolution. *See supra* at 8-9. After receiving advice from the House Parliamentarian and considering House precedent, the Speaker interpreted and applied House Resolution 503 and the House Rules in this unique set of circumstances. She concluded that the Minority Leader's refusal to consult further and participate in the appointment process would not prevent the Select Committee from operating, so long as it did so with an appropriate quorum. *See supra* at 7-8. Notwithstanding the Minority Leader's withdrawal from the process, the Select Committee has a quorum to do business pursuant to House Resolution 503 and House Rule XI.2(h). SOMF ¶ 7. As the Speaker concluded, nothing in House Resolution 503 enabled the Minority Leader or the House Republican Conference to halt operation of the Select Committee by withdrawing nominees and refusing to participate in the appointment consultation process.

House precedent regarding other select committees directly supports the Speaker's decision here. In the 109th Congress, for instance, the House created the Select Committee to Investigate the Preparation for and Response to Hurricane Katrina, which allowed for twenty Members, using language similar to what is before this Court today. *See* H. Res. 437, 109th Cong. § 2(a) (2005) ("The select committee *shall* be composed of 20 members appointed by the Speaker" (emphasis added)). House Speaker Dennis Hastert appointed only eleven Members, a quorum to do business, all of whom were from the majority Republican Party. *See* SOMF ¶ 7; 151 Cong. Rec. 20873 (bound ed. Sept. 21, 2005). Further, a resignation was accepted, and another majority party Member appointed, pursuant to House Resolution 437, 109th Cong. (2005). *See* 151 Cong. Rec. 21177-78 (bound ed. Sept. 26, 2005). The Katrina Select Committee also issued subpoenas. *See* H. Rep. No. 109-377, at 23 (2006) (noting that the

Katrina Select Committee issued a subpoena to the Department of Defense, and that it was complied with).

Indeed, as the Speaker recognized, nothing in House Resolution 503 requires that *all* thirteen potential Members participate for the Select Committee to function. In fact, House Resolution 503 expressly provides that “one-third of the Members of the Select Committee shall constitute a quorum” to conduct business, and that only two Members constitute a quorum for taking testimony or receiving evidence. H. Res. 503, 117th Cong. § 5(c)(3). The nine Members appointed by the Speaker clearly constitute a quorum consistent with House Resolution 503 and House Rule XI.2(h). House Resolution 503 expressly contemplates the possibility of “vacancies,” but does not provide a specific timeline for filling them. *Id.* at § 2(c). Nor does House Resolution 503 provide that the Select Committee becomes invalid or that it must suspend all action when vacancies arise. *Id.* Committees of the House routinely operate with vacancies. As of April 22, 2022, seven House Committees have at least one vacancy and nevertheless continue to operate normally. It would invite chaos to permit litigants to bring court challenges to any actions of those or other House Committees based on disputes about the House’s application of its own procedural rules. That is precisely what the Rulemaking Clause should prevent. Simply put, nothing in House Resolution 503 enables the Minority Leader to halt operation of the Select Committee by declining to participate in the appointment process.

Second, Mr. Meadows complains that none of the nine Members appointed by the Speaker were “appointed after consultation with the minority member as required by the authorizing resolution.” Am. Compl. ¶¶ 121, 125. But consultation did occur, before the Minority Leader halted his further cooperation and withdrew from the process. The Speaker interpreted and applied House Resolution 503 and the House Rules. The power to appoint House

Members to select committees rests exclusively with the Speaker of the House. *See* House Rule I.11 (“The Speaker shall appoint all select, joint, and conference committees ordered by the House.”); 167 Cong. Rec. H37 (daily ed. Jan. 4, 2021) (authorizing the Speaker to “accept resignations and to make appointments authorized by law or by the House”); H. Res. 503, 117th Cong. § 2 (providing that the Speaker shall appoint the Select Committee members). This is consistent with longstanding House precedent. *See* 8 *Cannon’s Precedents of the U.S. House of Representatives* Ch. 234 § 2172 (1936) (citing “instances in which the majority declined to recognize minority recommendations for committee assignments.”).

Had the House intended to provide the Minority Leader with more authority regarding the appointment of Select Committee members, it could have provided such a requirement, as it has in the past. For example, in the 116th Congress, the House created two Select Committees and required that a portion of the Members be appointed by the Speaker “on the recommendation of the Minority Leader.” *See* H. Res. 6, 116th Cong. § 104(f)(1)(B) (2019) (Select Committee on the Climate Crisis); *id.* at § 201(b)(3) (Select Committee on the Modernization of Congress). Similarly, had the House wanted to delegate appointment power directly to the Minority Leader, it could have done so. *See, e.g.*, H. Res. 24, 110th Cong. § 2(a) (2007) (creating the House Democracy Assistance Commission and allowing nine Members to “be appointed by the Minority Leader of the House of Representatives”).

The language used by House Resolution 503, “after *consultation* with the Minority Leader,” H. Res. 503, 117th Cong. § 2(a) (emphasis added), allows the Speaker greater authority regarding the appointment of all Members. “Consultation” means to “seek[] advice or information of.” *United Keetoowah Band of Cherokee Indians in Okla. v. FCC*, 933 F.3d 728, 750 (D.C. Cir. 2019) (internal quotation marks omitted); *see* Black’s Law Dictionary (11th ed.

2019) (defining “consultation” as “[t]he act of asking the advice or opinion of someone”). This language is consistent with House practice and precedent: The same language was used in the resolutions that created both the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *see supra* at 20, and the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi, *see* H. Res. 567, 113th Cong. § 2(a) (2014).

Here, House Resolution 503 was followed: The Minority Leader *was* consulted. Am. Compl. ¶¶ 55-56. Indeed, as Mr. Meadows admits, the Minority Leader made several suggestions to the Speaker regarding minority party Members to serve on the Select Committee, *see id.* at ¶ 56 (noting that the Minority Leader suggested Reps. Jim Banks of Indiana, Rodney Davis of Illinois, Jim Jordan of Ohio, Kelly Armstrong of North Dakota, and Troy Nehls of Texas). The fact that the Speaker—using the authority provided to her by the House Rules, the January 4, 2021 Order of the House, and House Resolution 503—decided that the Select Committee would go forward with nine members—a quorum—when Representatives Davis, Armstrong, and Nehls were withdrawn and refused to serve does not make the Select Committee improperly constituted, nor does it invalidate any of its actions.

Third, even if there were some genuine reviewable question here regarding the Speaker’s interpretation of the House rules (and there is not), the full House has repeatedly spoken on this precise issue, affirming and ratifying the Speaker’s decision regarding the composition of the Select Committee. For example, on July 26, 2021, Minority Leader McCarthy offered a privileged resolution on the floor the House that began with the following clause, “[w]hereas, Speaker Pelosi’s refusal to seat all five Republican Members directly harms the legitimacy, credibility, and integrity of the proceedings of the Select Committee.” H. Res. 554, 117th Cong. (2021). The privileged resolution would have condemned the Speaker and called on the Speaker

to appoint all of the Minority leader’s choices. The House dismissed, or in parliamentary terms, “tabled,” the Minority Leader’s resolution by a vote of 218 yeas and 197 nays. 167 Cong. Rec. H3885–3886 (daily ed. July 26, 2021). Since that time, the House has ratified the Speakers’ interpretation of House rules regarding the Select Committee’s composition by voting to issue contempt referrals regarding non-compliance with Select Committee subpoenas, despite the same objections regarding Select Committee composition that Mr. Meadows makes again here.¹⁴ Again, the Constitution’s Rulemaking Clause prevents a court from second-guessing the House of Representatives in this context. *Barker*, 921 F.3d at 1130; *see also* ECF 43, *Eastman*, No. 8:22-cv-00099, at 9, n.12; *Vander Jagt*, 699 F.2d at 1175.

Fourth, Mr. Meadows also complains that the subpoena is invalid because the Select Committee “has no ranking minority member” and, therefore, “Chairman Thompson failed to

¹⁴ The House’s affirmation of the Select Committee’s activity has involved thorough and considered processes. For example, before the House voted to adopt the Select Committee’s contempt resolution with respect to Mr. Meadows, the report on his contempt was brought before the Rules Committee of the House. That Committee—which is charged with jurisdiction over the rules and order of business of the House—concluded in its report (H-Rpt. 117-217) that the Select Committee’s report on Mr. Meadows was in keeping with procedural requirements of the House. *See supra* at 15. And when the resolution on Mr. Meadows’s contempt was debated before the full House, several Members of Congress raised the argument about the composition of the Select Committee. *See supra* note 15; *see also* 168 Cong. Rec. H4217 (Apr. 6, 2022) (specifically raising these challenges to the Select Committee’s means of operation before the full House during its debate over whether the House should adopt a contempt resolution relating to Peter Navarro and Dan Scavino). When this issue has been presented to all of these bodies and officials—the Select Committee, the Rules Committee, the Parliamentarian, the Speaker, and the full House of Representatives—the interpretive arguments Mr. Meadows now presents have been rejected. The full House has now approved the Select Committee’s referrals of Stephen Bannon, Mark Meadows, Peter Navarro, and Dan Scavino for contempt of Congress. *See* H. Res. 730, 117th Cong. (2021) (Bannon); H. Res. 851, 117th Cong. (2021) (Meadows); H. Res. 1037, 117th Cong. (2022) (Navarro and Scavino). These resolutions were reported by the Select Committee, approved for floor consideration by the House Rules Committee and approved by the full House. *See* 167 Cong. Rec. H5768-69, 117th Cong. (daily ed. Oct. 21, 2021) (vote on Bannon); *id.* at H7814-15 (daily ed. Dec. 14, 2021) (vote on Meadows); 168 Cong. Rec. H4371-79 (daily ed. Apr. 6, 2022). The full House’s ratification of the referrals reinforces that Mr. Meadows’s objections to its composition cannot be accepted.

make the requisite consultation before issuing the subpoena that compelled Mr. Meadows to appear for a deposition.” Am. Compl. ¶ 128.¹⁵ That argument, too, is wrong. To the extent House Resolution 503 requires consultation with the “ranking minority member” prior to the issuance of a deposition subpoena, that requirement was satisfied by consultation with Vice Chair Liz Cheney. Representative Cheney, by virtue of being the first minority party Member appointed to the Select Committee, is, by definition, the senior ranking minority Member of the Select Committee. Consistent with House practice and precedent, the term “ranking member” means the first Member of the minority party appointed to the Select Committee by the Speaker. *See, e.g.*, H. Res. 10, 117th Cong. (2021) (containing ranking minority member appointments to the standing Committees of the House, colloquially referred to as “ranking members”). That interpretation should not be subject to judicial review. Here, the senior minority Member on the Select Committee (the first minority Member appointed) is Vice Chair Liz Cheney. That is sufficient for purposes of House Resolution 503, as ratified by the full House of Representatives. *See supra* at 25, n.16. The Rulemaking Clause of the Constitution requires that the judiciary defer to the House regarding the interpretation and application of the House’s own rules and procedures.

¹⁵ Notably, Mr. Meadows does not object to the issuance of the subpoena to him for the production of documents. Nor could he. House Resolution 503 does not require consultation with the ranking minority Member before issuing a subpoena for documents; instead, it provides that the “chair of the Select Committee may authorize and issue subpoenas pursuant to clause 2(m) of [House] rule XI.” H. Res. 503, 117th Cong. § 5(c)(4). In turn, House Rule XI.2(m) permits issuance of subpoenas for documents when the power to authorize and issue subpoenas has been “delegated to the chair of the committee under such rules and under such limitations as the committee may prescribe.” *Id.* Because House Resolution 503 specifically delegates to the Chairman of the Select Committee the power to authorize and issue subpoenas, it is consistent with House Rule XI.2(m)(3)(A)(i).

H. Executive Privilege Does Not Authorize Mr. Meadows to Refuse to Appear and Testify or Provide Documents Requested by the Select Committee

Mr. Meadows claims his “conversations with the President, Vice President, and other senior executive officials are covered by executive privilege, as is any information regarding executive officials’ deliberative processes regarding election security.” Am. Compl. ¶ 177. Mr. Meadows appears to rely on a purported invocation of executive privilege by former President Trump, Am. Compl. ¶ 75, but fails to meet the requirements to invoke these qualified privileges.

As an initial matter, former President Trump has not properly invoked privilege over Mr. Meadows’s documents or testimony. He has never directly or formally communicated that position to the Select Committee. As the Supreme Court has recognized, executive privilege “belongs to the Government and must be asserted by it,” and there must be “a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer.” *United States v. Reynolds*, 345 U.S. 1, 7-8 (1953) (upholding invocation of the state secrets privilege involving protection of classified national security information). Mr. Meadows therefore cannot simply rely on former President Trump’s purported instruction to him in refusing to comply with the Select Committee’s subpoena.¹⁶

Indeed, Mr. Meadows has articulated only “generalized concerns for Executive Branch confidentiality.” *Trump v. Thompson*, 20 F.4th at 33. The D.C. Circuit has already held that “[u]nder any of the” potentially applicable tests governing assertions of executive privilege, “the profound interests in disclosure advanced by President Biden and the January 6th Committee far

¹⁶ See Procedures Governing Responses to Congressional Requests for Information, Presidential Memorandum 2-3 (Nov. 4, 1982), <https://www.justice.gov/ola/page/file/1090526/download> (“If the President decides to invoke executive privilege, the Department Head shall advise the requesting Congressional body that the claim of executive privilege is being made with the specific approval of the President.”).

exceed” such “generalized concerns.” *Id.* (emphasis added); *see also id.* at 38-39 (“Nor is such a ‘generalized interest in confidentiality,’ sufficient for a court to cast aside the January 6th Committee’s exercise of core legislative functions, let alone enough for a court to throw a wrench into the ongoing working relationship and accommodations between the Political Branches.”) (citation omitted). Like in *Trump v. Thompson*, “the [Select] Committee has—as President Biden agrees—demonstrated a specific and compelling need for [Mr. Meadows’s] records because they provide a unique and critically important window into the events of January 6th that the [Select] Committee cannot obtain elsewhere.” *Id.* 44-45. Mr. Meadows’s “generalized assertion of privilege” must therefore “yield to the” Select Committee’s “demonstrated, specific need” for the documents. *Id.* at 44.

In such circumstances, Mr. Meadows “bears the burden of at least showing some weighty interest in continued confidentiality that could be capable of tipping the scales back in his favor, and of ‘mak[ing] particularized showings in justification of his claims of privilege[.]’” *Id.* at 38. He has done neither, nor could he. *See id.* (rejecting executive privilege claim because the former President had “not identified any specific countervailing need for confidentiality tied to the documents at issue, beyond their being presidential communications;” nor “made even a preliminary showing that the content of any particular document lacks relevance to the [Select] Committee’s investigation”). Mr. Meadows’s privilege assertions therefore fail at the threshold.

I. The Testimony and Documentary Information at Issue in this Motion

As explained above, the Select Committee’s motion seeks summary judgment as to Mr. Meadows’s refusal to appear for his deposition and produce documents on seven specific topics that the Select Committee identifies and describes briefly.

To illustrate that the Select Committee’s “profound interest in disclosure . . . far exceed[s] [former President Trump’s] generalized concerns for Executive Branch confidentiality,” *see Trump v. Thompson*, 20 F.4th at 33, and to assist the Court in understanding the nature of the information sought from Mr. Meadows and the topics he is seeking to shield through his generalized objections, the Select Committee identifies certain relevant investigative material it has obtained. These investigative materials are offered only to help identify and describe the Select Committee’s interest in the specific information sought from Mr. Meadows—for its investigative purposes. The Court need not address or resolve any of the underlying factual issues in the Select Committee’s investigation to rule that Mr. Meadows lacks a legal basis to defy the Select Committee’s subpoena as to these issues. Thus, none of this illustrative, investigative material could present a genuine issue of material fact precluding summary judgment.

Topic 1: Testimony regarding non-privileged documents (including text and email communications) Mr. Meadows has already provided to the Select Committee in response to his subpoena and related testimony about events Mr. Meadows has already publicly described in his book and elsewhere.

Certain of the text message exchanges Mr. Meadows produced in response to the Select Committee subpoena have already been made public.¹⁷ For example, Ms. Laura Ingraham of the Fox News Channel texted Mr. Meadows repeatedly, urging that the President immediately instruct his supporters to leave the Capitol:

Laura Ingraham: Hey Mark, The President needs to tell people in the Capitol to go home.

¹⁷ Vice Chair Cheney on Recommending Mark Meadows for Criminal Contempt, January 6th Committee, YouTube (Dec. 13, 2021), <https://perma.cc/2JPJ-H6CZ>.

Laura Ingraham: This is hurting all of us.¹⁸

But the President did not take the steps Ms. Ingraham and many others desperately urged (instructing his violent supporters to leave the Capitol) until 4:17 p.m. that afternoon—more than one hour and 45 minutes *after* Ms. Ingraham’s messages. Likewise, President Trump’s son also texted Mr. Meadows:

Don Trump Jr: He’s got to condemn this shit. Asap. The Capitol police tweet is not enough.

Mark Meadows: I am pushing it hard. I agree.¹⁹

Other examples of relevant text messages abound, including a number of messages predating January 6th regarding the Trump campaign’s planning for that day. Again, some of these have previously been made public as well, including two exchanges with Fox News host Sean Hannity. On December 31, 2020, Sean Hannity sent Mr. Meadows the following message:

Sean Hannity: We can’t lose the entire WH counsels office. I do NOT see January 6 happening the way he is being told.²⁰

On January 5, 2021, a similar exchange occurred:

Sean Hannity: I’m very worried about the next 48 hours.

¹⁸ See Ex. F to Decl. of Timothy Heaphy, Text Messages Between Mark Meadows and Laura Ingraham. Mr. Meadows’s text messages and the testimony of other officials show he was in the Oval Office dining room with President Trump that afternoon. See Ex. P to Decl. of Timothy Heaphy, Hutchinson Tr. 134.

¹⁹ See Ex. H to Decl. of Timothy Heaphy. This is one of many similar text message exchanges to or from Mr. Meadows during the violence. In addition, witnesses who were present at the White House during this period confirm that Mr. Meadows was with the President, and multiple White House staff were urging the President to take action to halt the violence. Ex. I to Decl. of Timothy Heaphy, Kellogg Tr. 114-15, 129-30, 139-41.

²⁰ Ex. J to Decl. of Timothy Heaphy, December 31, 2020 Text Message from Sean Hannity to Mark Meadows.

Sean Hannity: Pence pressure. WH counsel will leave.²¹

Mr. Meadows also received text messages from multiple members of the House Freedom Caucus. On January 1, 2021, at 4:17 p.m., Mr. Meadows received this message regarding the planning for the Joint Session of Congress on January 6th:

Rep. Chip Roy: If POTUS allows this to occur . . . we're driving a stake in the heart of the federal republic . . . [ellipses in original]²²

Certain text communications with Members of Congress suggest that Mr. Meadows himself “pushed” for Vice President Pence to take unilateral action to reject the counting of electoral votes on January 6th.²³ And while Mr. Trump’s widely publicized call with Georgia Secretary of State Brad Raffensperger was ongoing, Mr. Meadows exchanged text messages regarding the call with another member of the Georgia government.²⁴ In addition, Mr. Meadows communicated repeatedly by text with Congressman Scott Perry regarding a plan to replace Department of Justice leadership in the days before January 6th.²⁵

²¹ Ex. K to Decl. of Timothy Heaphy, January 5, 2021 Text Messages from Sean Hannity to Mark Meadows.

²² Ex. L to Decl. of Timothy Heaphy, January 1, 2021 Text Message from Rep. Chip Roy to Mark Meadows.

²³ Ex. M to Decl. of Timothy Heaphy, Text Messages Between Mark Meadows and Rep. Jim Jordan (Rep. Jordan: “On January 6, 2021, Vice President Mike Pence, as President of the Senate, should call out all electoral votes that he believes are unconstitutional as no electoral votes at all” Mark Meadows: “I have pushed for this. Not sure it is going to happen.”).

²⁴ Ex. N to Decl. of Timothy Heaphy, January 2, 2021 Text Messages Between Mark Meadows and then-Dep’y Sec. of State Jordan Fuchs.

²⁵ Ex. O to Decl. of Timothy Heaphy, Text Messages Between Mark Meadows and Rep. Scott Perry. Testimony from White House staff demonstrates Mr. Meadows’s important role in that effort. Ex. G to Decl. of Timothy Heaphy, Hutchinson Cont’d Tr. 155-56. Other testimony obtained by the Committee demonstrates the plan contemplated that the new Acting Attorney General would change the Department’s factual conclusions regarding election fraud. Ex. Q to Decl. of Timothy Heaphy, Donoghue Tr. 77-81; *see also*, Ex. R to Decl. of Timothy Heaphy, Draft Letter from DOJ to Georgia Officials dated Dec. 28, 2020.

Mr. Meadows has produced all of this information without any privilege claim and has published his accounts and recollections in a book addressing a number of relevant issues. SOMF ¶¶ 25, 27. In his book, *The Chief's Chief* (which was released immediately before Mr. Meadows abruptly stopped engaging with the Select Committee over his productions and testimony), Mr. Meadows describes specific conversations that he had with Mr. Trump while he was the President. SOMF ¶ 28. These descriptions included, among other things, discussions about fraud in the election and the January 6th attack on the United States Capitol. SOMF ¶ 29. In one passage about the election, Mr. Meadows quotes Mr. Trump directly, and in a passage about January 6, Mr. Meadows describes a conversation he had with Mr. Trump after Mr. Trump spoke to rally goers.²⁶

Topic 2: *Testimony and documents regarding post-election efforts by the Trump campaign, the Trump legal team, and Mr. Meadows to create false slates of Presidential electors, or to pressure or persuade state and local officials and legislators to take actions to change the outcome of the 2020 presidential election.*

As indicated, Mr. Meadows participated, as a functionary of the Trump campaign, in activities intended to result in actions by state officials and legislatures to change the certified results of the election. Thus, under D.C. Circuit precedent, documents and testimony regarding events in this capacity are not subject to claims of executive privilege. *See In re Sealed Case (Espy)*, 121 F.3d 729, 752 (D.C. Cir. 1997) (“Of course, the [presidential communication] privilege only applies to communications that these advisers and their staff author or solicit and receive in the course of performing their function of advising the President on official government matters.”) One such example is the call with Georgia Secretary of State

²⁶ Mark Meadows, *The Chief's Chief* 259, 261 (2021).

Raffensperger, and other related efforts to change the election results in Georgia.²⁷ Other examples are numerous. *See supra* at 10, 30. For example, Mr. Meadows was also involved in an effort to generate so-called alternative slates of electors for certain states which falsely certified that President Trump rather than President Biden had been victorious. *See supra* at 13-14. The Select Committee now has testimony from other White House staff that Mr. Meadows and certain congressmen were advised by White House Counsel that efforts to generate false certificates did not comply with the law:

Q: And so, to 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?

A: Yes, sir.²⁸

Despite that advice, the plan moved forward.

Topic 3: *Testimony and documents relating to communications with Members of Congress in preparation for and during the events of January 6th.*

As indicated, Mr. Meadows engaged in a great number of communications with Congress, both before and *on January 6th* regarding the events of that day. For example, the Select Committee is aware that Mr. Meadows communicated with Congressmen Jim Jordan, Scott Perry, and others repeatedly.²⁹ Mr. Meadows has supplied no basis for his refusal to testify regarding those communications.

²⁷ Amy Gardner & Paulina Firozi, *Here's the full transcript and audio of the call between Trump and Raffensperger*, Washington Post (Jan. 5, 2021), <https://perma.cc/5SMX-4FPX>.

²⁸ Ex. G to Decl. of Timothy Heaphy, Hutchinson Cont'd Tr. 64; *see generally id.* at 61-68.

²⁹ *See, e.g.*, Ex. P to Decl. of Timothy Heaphy, Hutchinson Tr. 45-47, 72-73, 77-78, 142; Ex. G to Decl. of Timothy Heaphy, Hutchinson Cont'd Tr. 146-48.

Topic 4: *Testimony and documents regarding the plan, in the days before January 6th, to replace Acting Attorney General Rosen with Jeffrey Clark so that the Department of Justice could corruptly change its conclusions regarding election fraud.*

Mr. Meadows participated in multiple communications with persons involved in the effort to replace the Acting Attorney General in the days before January 6th. He communicated with Congressman Scott Perry about elevating Assistant Attorney General Jeffrey Clark.³⁰ Other communications relate to issues on which President Trump has not asserted privilege or immunity claims; indeed, the Select Committee has already received testimony regarding the President's communications with White House Counsel and multiple Justice Department officials on these issues.³¹ Evidence shows that Mr. Clark intended, if appointed, to issue a series of letters changing the Department's position and giving credence to President Trump's allegations that the election was stolen.³² The Select Committee believes that such letters using Department of Justice letterhead, would have lent the imprimatur of the Department of Justice to, and appear to legitimize, false claims that the election was stolen if released prior to January 6th

³⁰ See, e.g., Ex. O to Decl. of Timothy Heaphy.

³¹ Ex. S to Decl. of Timothy Heaphy, Rosen Tr. 90 (“I have the luxury today of being able to share conversations with the President, with the President’s counsel, because the Department of Justice on behalf of the current President and the counsel for the past President [are] not objecting.”); see also *id.* at 60, 96-97, 103-11.

³² See Ex. Q to Decl. of Timothy Heaphy, Donoghue Tr. 77-81, 123-24 (discussing the proposed letter to states and Oval Office meeting); Ex. S to Decl. of Timothy Heaphy, Rosen Tr. 128 (“[Clark] advocated not just that the letter be sent but that there be public assertions about the improprieties with regard to the 2020 election.”); *id.* at 127 (confirming that if Clark had been appointed Acting Attorney General, he would have sent the proposed “proof of concept” letter to State officials); See Ex. R to Decl. of Timothy Heaphy (the letters would have falsely stated that the Department of Justice had “identified significant concerns that may have impacted the outcome of the election in multiple states” and encouraged state legislatures to call themselves into special sessions related to the “appointment of Presidential Electors” in advance of the then-approaching January 6, 2021 Joint Session of Congress).

and could thereby have mobilized an even more significant, violent attack. (No subsequent effort by Department of Justice staff to oppose such revelations could likely have put that genie fully back in the bottle in time.)

Topic 5: Testimony and documents relating to efforts by President Trump to instruct, direct, persuade or pressure then Vice President Mike Pence to unilaterally refuse to count electoral votes on January 6th.

The Twelfth Amendment to the U.S. Constitution identifies the role that the Vice President, as President of the Senate, must play in Congress’s proceeding to count electoral votes: “*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....*” (emphases added). No ambiguity in that provision allowed the Vice President to refuse to count or delay the count of the certified electoral slates from any U.S. state on January 6th. Nor could (or did) any provision of the Electoral Count Act. And yet this is exactly what President Trump instructed, directed, pressured, and attempted to persuade the Vice President to do. *See* Order at 32-40, 44, *Eastman v. Thompson*, No. 8:22-cv-00099 (Mar. 28, 2022), ECF No. 260 (“The illegality of the plan was obvious.”) (“Their campaign was not confined to the ivory tower—it was a coup in search of a legal theory.”).³³ When those efforts did not succeed, President Trump issued a tweet about Vice

³³ For example, on January 4, 2021, President Trump met with Vice President Pence and his staff to discuss the Vice President’s ability to alter the electoral count on January 6th. *See* Ex. F to Cong. Defs.’ Br. in Opp. to Pl.’s Privilege Assertions at 82, 95, *Eastman v. Thompson*, No. 8:22-cv-00099 (C.D. Cal. Mar. 3, 2022), ECF No. 164-11. After this meeting, the President continued to pressure the Vice President both publicly and privately. At 1:00 a.m. on January 6th, President Trump tweeted: “If Vice President @Mike_Pence comes through for us, we will win the Presidency ... Mike can send it back!” Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021 1:00 AM), <https://perma.cc/9EV8-XJ7K>. At 8:17 a.m., the President again tweeted: “States

President Pence that resulted in further violence at the Capitol.³⁴ Well after the violence was underway, John Eastman (a lawyer assisting President Trump’s effort to overturn the election) continued to press the Vice President’s team to reject certified electoral votes. (Order at 11, *Eastman v. Thompson*, No. 8:22-cv-00099 (Mar. 28, 2022), ECF No. 260 (“At 11:44 pm, Dr. Eastman sent one final email to persuade Jacob to change his mind: ‘I implore you to consider one more relatively minor violation and adjourn for 10 days’”). Evidence obtained by the Select Committee suggests that Mr. Meadows has knowledge relevant to each of these issues.

Topic 6: Testimony and documents relating to activity in the White House immediately before and during the events of January 6th.

want to correct their votes ... 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!” Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021 8:17 AM), <https://perma.cc/2J3P-VDBV>. The President also called the Vice President personally, again pressuring him to take action. *See* Ex. G to Cong. Defs.’ Br. in Opp. to Pl.’s Privilege Assertions at 87, 90-92, *Eastman v. Thompson*, No. 8:22-cv-00099 (C.D. Cal. Mar. 3, 2022), ECF No. 164-12. And despite the Vice President’s repeated statements that he would not alter or delay the electoral count, the former President raised the issue again to the crowd gathered on January 6th, urging the Vice President to “stand up for the good of our Constitution and for the good of our Country,” and adding that if Pence did not do so, the President was “going to be very disappointed in [him].” Donald J. Trump, President, Speech to the “Save America March” and rally (Jan. 6, 2021), <https://perma.cc/2YNN-9JR3>.

³⁴ *See* Trump supporters threaten to hang Mike Pence at Capitol, YouTube, <https://perma.cc/6KGR-VUE8> (video depicting crowd of Capitol rioters chanting “hang Mike Pence”); *United States v. Marhsall Neefe and Charles Bradford Smith*, <https://perma.cc/4DER-T44C>; Donald J. Trump (@realDonaldTrump), Twitter (Jan. 6, 2021, 2:24 PM), <https://perma.cc/Z9Q5-EANU> (“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!”). *See also* Complaint Affidavit, *United States v. Evans*, No. 21-00016 (D.D.C. Jan. 8, 2021), <https://perma.cc/D7WE-CV2K> (“They’re making an announcement right now saying if Pence betrayed us you better get your mind right because we’re storming that building.”); Grand Jury Indictment, *United States v. Neefe et al.*, No. 21-00567 (D.D.C. Sept. 8, 2021), <https://perma.cc/L5H7-3FJP> (“Then we heard the news on [P]ence ... And lost it ... So we stormed”); Complaint Affidavit, *United States v. Black*, No. 21-127 (D.D.C. Jan. 13, 2021), <https://perma.cc/8KAL-5HEK> (“Once we found 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.”).

The Select Committee has evidence indicating that the violent rioters on January 6th were motivated by President Trump’s repeated claims, over several weeks, that the election was stolen, and his pleas that Americans travel to Washington on January 6th to “StopTheSteal.”³⁵ Mr. Meadows was informed *before* the January 6th proceeding about the potential for violence that day:

Cassidy Hutchinson: I know that there were concerns brought forward to Mr. Meadows. I don’t know—I don’t want to speculate whether or not they perceived them as genuine concerns, but I know that people had brought information forward to him that had indicated that there could be violence on the 6th. But, again, I’m not sure if he—what he did with that information internally.

* * *

³⁵ Donald J. Trump (@realdonaldtrump), Twitter (Jan. 1, 2021 2:53 PM), <https://perma.cc/WW6S-ENNE>. See generally *United States v. Chrestman*, No. 21-00218 (D.D.C. Feb. 11, 2021), <https://perma.cc/Z2AX-3CWT>; Katelyn Polantz, et al., *Sobbing Capitol rioter described his assault of police Officer Michael Fanone: ‘My God. What did I just do?’*, CNN (Dec. 1, 2021), <https://perma.cc/V7HJ-QARJ> (rioter charged with assaulting Metropolitan Police Department Officer Michael Fanone on January 6th with an “electroshock weapon” told investigators: “Trump called us. Trump called us to D.C. ... If he’s the commander in chief and the leader of our country, and he’s calling for help—I thought he was calling for help”); Criminal Complaint, *United States v. Grayson*, No. 21-00163 (D.D.C. Jan. 25, 2021), <https://perma.cc/4FED-5PXB>; Criminal Complaint, *United States v. Cua*, No. 21- 107 (D.D.C. Jan. 29, 2021), <https://perma.cc/8ZX7-E9G8>; Sergeant Aquilino Gonell Testimony, House Select Committee to Investigate the January 6th Attack on the United States Capitol, *The Law Enforcement Experience on January 6th* (July 27, 2021), <https://perma.cc/KG3L-DH65> (Capitol Police Sergeant Aquilino Gonell testifying that during hand-to-hand combat with rioters on the lower west terrace of the Capitol on January 6th “all of them, all of them, were telling us ‘Trump sent us.’”). A number of defendants in pending criminal cases have identified President Trump’s allegations about the “stolen election” as a motivation for their activities at the Capitol; several also specifically cite President Trump’s tweets asking that supporters come to Washington, D.C. on January 6th. See, e.g., Criminal Complaint, *United States v. Sandlin*, No. 21-88 (Jan. 20, 2021), <https://perma.cc/H9G2-G5GC> (“I’m going to be there to show support for our president and to do my part to stop the steal and stand behind Trump when he decides to cross the rubicon.”); Grand Jury Indictment, *United States v. Neefe et al.*, No. 21-00567 (Sept. 8, 2021), <https://perma.cc/NR5Q-HQZC> (“Trump is literally calling people to DC in a show of force. Militias will be there and if there’s enough people they may fucking storm the buildings and take out the trash right there.”).

Cassidy Hutchinson: I just remember Mr. Ornato coming in and saying that we had intel reports saying that there could potentially be violence on the 6th. And Mr. Meadows said: All right. Let's talk about it.³⁶

But despite this and other warnings, President Trump urged the attendees at the January 6th rally to march to the Capitol to “take back your country.”³⁷

Despite urgent pleas from Capitol Hill and from many of President Trump's supporters, President Trump did not act immediately to publicly ask or instruct the violent rioters leave the Capitol. It is also now clear that Mr. Trump never telephoned his Secretary of Defense that day to order deployment of National Guard, and never contacted any federal law enforcement agency to order security assistance to the Capitol Police.³⁸ Information received by the Select Committee indicates that Mr. Trump was in the dining room, watching on his TV, and did not urge his supporters to leave the Capitol for over three hours.³⁹ And even at 4:17 p.m. when he released a video, President Trump told those in the Capitol “we love you. You're very special,” and at 6:01 p.m. he tweeted, “Remember this day forever!”⁴⁰

³⁶ Ex. P to Decl. of Timothy Heaphy, Hutchinson Tr. 37-38.

³⁷ Brian Naylor, *Read Trump's Jan. 6 Speech, A Key Part Of Impeachment Trial*, NPR (Feb. 10, 2021), <https://perma.cc/KS28-JJ3V> (“So we're going to, we're going to walk down Pennsylvania Avenue ... And we're going to the Capitol ... [and] we're going to try and give our Republicans, the weak ones because the strong ones don't need any of our help. We're going to try and give them the kind of pride and boldness that they need to take back our country.”).

³⁸ See Ex. T to Decl. of Timothy Heaphy, C. Miller Tr. 124; Ex. U to Decl. of Timothy Heaphy, McCarthy Tr. 147; Ex. Q to Decl. of Timothy Heaphy, Donoghue Tr. 189-90; Ex. S to Decl. of Timothy Heaphy, Rosen Tr. 190-91.

³⁹ See, e.g., Ex. I to Decl. of Timothy Heaphy, Kellogg Tr. 142-47 (Reflecting on the White House staff's effort on January 6th to persuade President Trump to ask his supporters to leave the Capitol and halt the violence: “I walked up to [Ivanka Trump] on the 7th.... and I told her I appreciated what she did that day and by talking to her dad. And I said: You know, I just thought what you did was to me pretty heroic.”).

⁴⁰ President Trump Video Statement on Capitol Protesters, C-SPAN (Jan. 6, 2021), <https://perma.cc/XCW4-JDA7>; Donald J. Trump (@realDonaldTrump) Twitter (Jan. 6, 2021 6:01 PM), <https://perma.cc/29AH-HZNV>.

Topic 7: Testimony and documents relating to meetings and communications with individuals not affiliated with the federal government regarding the efforts to change the results of the 2020 election.

Finally, the Select Committee seeks Mr. Meadows's testimony regarding communications with individuals not affiliated with the federal government, involving reported efforts to change the results of the 2020 election. Available information indicates that certain of these individuals proposed to the President drastic action invoking some of the Nation's emergency powers provided to the President in statute.⁴¹ Indeed, one of the non-privileged documents that Mr. Meadows provided indicates that he had a meeting to discuss such actions on or about December 21, 2020.⁴² White House Counsel advised that measures like these would be illegal and threatened to resign (this was one of multiple White House Counsel resignation threats preceding January 6th).⁴³

The Select Committee now seeks documents and deposition testimony from Mr. Meadows on these seven discrete topics. Topics 1-4 and 7 do not involve any relevant privilege claims. Indeed, Topic 1 relates to documentation that Mr. Meadows has already voluntarily produced to the Select Committee, without any privilege claim at all. Topics 2 and 3 relate to Mr. Meadows's discussions with persons not within the Executive Branch. Specifically, Topic 2 relates to Mr. Meadows's activities on behalf of the Trump campaign, not as White House Chief

⁴¹ See Memorandum, *Presidential Findings—To Preserve Collect and Analyze National Security Information Regarding the 2020 General Election* (Dec. 16, 2020), <https://s3.documentcloud.org/documents/21185950/never-filed-trump-executive-order-2020.pdf> (purporting to invoke the National Emergencies Act, among others, to justify the Department of Defense seizing ballot machines used by localities in the election).

⁴² Ex. V. to Decl. of Timothy Heaphy, at 2-3.

⁴³ Ex. G to Decl. of Timothy Heaphy, Hutchinson Cont'd Tr. 138.

of Staff.⁴⁴ Topic 3 relates to discussions with Members of Congress—not other White House officials or the President. And Topic 4 involves communications with Members of Congress, Scott Perry, and possibly others outside the Executive Branch.⁴⁵ President Trump has already declined to assert privilege on issues related to Mr. Clark’s potential appointment as Acting Attorney General (Topic 4).⁴⁶ Likewise, Topic 7 also involves communications with people outside the White House, including members of the Trump political campaign and potentially others supporting the campaign, such as General Flynn, Roger Stone, and others. The Select Committee is aware of no valid executive privilege claim as to any of these communications.

With regard to Topic 5 (President Trump’s efforts to get Vice President Pence to refuse to count electoral votes), any executive privilege claim would face further insurmountable hurdles. *First*, the President has no Constitutional role in the count of electoral votes. Any communications on that topic between or on behalf of Mr. Trump and the Vice President necessarily involved Mr. Trump his capacity *as a presidential candidate*, not as President. *Second*, Mr. Meadows’s testimony on that topic involves communications with the Vice President in his role as President of the Senate—which of course is a role within the Legislative and not the Executive Branch. The Vice President served as part of the Legislative Branch when

⁴⁴ As noted earlier, *see* n. 8, the Hatch Act does not allow a federal official to act in his official capacity for the purpose of affecting the outcome of an election. *See* 5 U.S.C. § 7323(a)(1).

⁴⁵ *See also* Dalton Bennett and Jon Swaine, *The Roger Stone Tapes*, Wash. Post (Mar. 4, 2022), <https://perma.cc/UX82-M2ZP> (noting Roger Stone endorsed the effort to install Jeffrey Clark as acting attorney general in January 2021).

⁴⁶ Ex. W to Decl. of Timothy Heaphy, August 2, 2021 Letter from Douglas Collins to Jeffrey Clark. The Select Committee has already gathered testimony on this topic, including testimony on discussions directly with President Trump and President Trump’s White House Counsel. *See, e.g.*, Ex. Q to Decl. of Timothy Heaphy, Donoghue Tr. 123-32.

preparing for and conducting his duties on January 6, 2021.⁴⁷ Therefore, communications about the proceedings on January 6th with the Vice President and his staff fall outside the ambit of any executive privilege claim.

Topic 6, by contrast, does potentially involve issues on which claims of executive privilege *might* conceivably be made. But as the D.C. Circuit recognized in *Thompson*, the failure to identify “any specific countervailing need for confidentiality tied to the documents [or testimony] at issue, beyond their being presidential communications,” 20 F.4th at 38, is outweighed by Congress’ “profound” and “uniquely compelling” interest in pursuing this investigation. *See id.* at 33 (“Under any of the tests advocated by former President Trump, the profound interests in disclosure advanced by President Biden and the January 6th Committee far exceed his generalized concerns for Executive Branch confidentiality.”). That conclusion is binding here. *See id.* at 37-38 (holding that any executive privilege was overcome by the Select Committee’s “uniquely compelling need,” the sitting President’s judgment that release was in the country’s best interest, and the careful compromise negotiated between the two branches of government). And, as noted earlier, the Supreme Court denied former President Trump’s entreaties that it should step in and stop the disclosure of the relevant material to the Select Committee. *Id.*, *injunction denied*, 142 S. Ct. 680 (2022), *cert denied*, No. 21-932 (2022).

⁴⁷ *See, e.g.*, Shannen Coffin, SYMPOSIUM: THE UNITED STATES VICE PRESIDENCY: IN HISTORY, PRACTICE AND THE FUTURE: *Oh, VPOTUS, Where Art Thou? The Constitutional Situs of the Vice Presidency as Surveyed by a Former Vice Presidential Lawyer*, 44 *Pepp. L. Rev.* 583, 588, 613 (2017) (“[i]t may be best to conceive of the vice presidency as part of both political branches of government, with the particular location at any given moment varying depending on whether the Vice President is performing his executive role of advising and assisting the President or his legislative role”); *see also* Ex. X to Decl. of Timothy Heaphy, Engel Tr. 71 (former Assistant Attorney General for OLC explaining that OLC would not advise Vice President Pence on his role on January 6th because “[i]t is not the role of the Department of Justice to provide legislative officials with legal advice on the scope of their duties”).

Such a conclusion is also appropriate as to those documents on Mr. Meadows's privilege log that he has withheld from production on the basis of a claim of executive privilege. (To the extent that *in camera* review is necessary to make that determination as to specific documents on the Meadows log, the Select Committee seeks such review, and will file a specific motion to that effect if needed.)

1. Nor Is Mr. Meadows Entitled to Testimonial Immunity

Mr. Meadows also argues that the Select Committee's subpoena "improperly attempts to compel testimony by a senior Executive Branch official." Am. Compl. ¶ 170. As indicated, only some of the activities at issue involve Mr. Meadows's activities as an Executive Branch official; many, including Topics 2 and 7, involve his role as a campaign functionary. But even for those activities for which Mr. Meadows was serving as Chief of Staff, he is not absolutely immune from testifying before a Congressional committee. The Court should reject any claim of absolute testimonial immunity for several reasons.

First, the current President of the United States has decided that it is not in the best interests of the Executive Branch to assert executive privilege or any form of immunity with respect to Mr. Meadows's deposition testimony on particular subjects within the purview of the Select Committee. ECF 13-14 (Am. Compl. Ex. L). President Biden carefully considered the institutional prerogatives of the Executive Branch and the importance of the Select Committee's investigation. *Id.* "The President believes that the constitutional protections of executive privilege should not be used to shield information reflecting an effort to subvert the Constitution itself, and indeed believes that such an assertion in this circumstance would be at odds with the principles that underlie the privilege." *Id.* "For the same reasons underlying his decisions on

executive privilege, President Biden [] determined that he will not assert immunity to preclude [Mark Meadows] from testifying before the Select Committee.” *Id.*

Even if the Court were to consider Mr. Meadows’s immunity argument without the benefit of the views of the current President and the Congress, Mr. Meadows would still have no compelling basis to assert absolute immunity. The Supreme Court has repeatedly held that the President himself is not absolutely immune from compulsory legal process. *See Trump v. Vance*, 140 S. Ct. 2412, 2431 (2020) (holding President cannot claim immunity from state criminal grand jury subpoenas); *Clinton v. Jones*, 520 U.S. 681, 684 (1997) (holding a sitting President not immune from civil litigation for acts done before taking office and unrelated to the office); *United States v. Nixon*, 418 U.S. 683, 707 (1974) (rejecting claim that absolute immunity protects Presidents from federal criminal subpoenas). Further, the Court has consistently held that compliance with a Congressional subpoena is a legal requirement “which every person within the jurisdiction of the Government is bound to perform when properly summoned.” *See United States v. Bryan*, 339 U.S. 323, 331 (1950).

Neither the Supreme Court nor the D.C. Circuit has decided whether any White House advisors could be immune from compulsory Congressional process in matters involving their official conduct. But the Supreme Court has rejected claims of absolute immunity by Presidential aides in other contexts. *See Harlow v. Fitzgerald*, 457 U.S. 800, 809-10 (1982) (holding that Presidential aides are entitled only to qualified immunity in a suit for damages). And courts in this district have rejected the assertion of absolute immunity from compelled testimony before Congress for senior Presidential advisors.

In *Committee on the Judiciary, U.S. House of Representatives v. Miers*, former White House Counsel Harriet Miers argued that she was absolutely immune from a Congressional

subpoena for testimony. 558 F. Supp. 2d. 53, 100 (D.D.C. 2008). Judge Bates rejected that claim, noting that there is not “a single judicial opinion that recognizes absolute immunity for senior presidential advisors in this or any other context.” *Id.* at 99. The court held that a former White House Counsel must testify before the Congressional committee, reasoning that Supreme Court precedent declined to provide such immunity to the President himself; numerous acts of Congress, such as the Freedom of Information Act, would be rendered a nullity based on such immunity; and the Office of Legal Counsel opinions that claimed such immunity were unpersuasive because they cited no case law and were “hastily issued” and “conclusory.” *See id.* at 103-04.⁴⁸

More recently, building on Judge Bates’s reasoning, Judge Jackson similarly rejected a claim of absolute immunity from compelled testimony by former White House Counsel Don McGahn. Judge Jackson concluded that “the *Miers* court rightly determined not only that the principle of absolute testimonial immunity for senior-level presidential aides has no foundation in law, but also that such a proposition conflicts with key tenets of our constitutional order.” *Comm. on the Judiciary, U.S. House of Representatives v. McGahn*, 415 F. Supp. 3d. 148, 202-03 (D.D.C. 2019).⁴⁹ Specifically, Judge Jackson agreed with Judge Bates that absolute immunity for Presidential aides was “all but foreclosed by” the Supreme Court’s decisions in *United States v. Nixon*, *Clinton v. Jones*, and *Harlow v. Fitzgerald*, *supra*. *Id.* at 202, 207. And, recognizing

⁴⁸ Former White House Counsel Harriet Miers appealed the district court’s decision to the D.C. Circuit, but the appeal was ultimately dismissed on voluntary consent of the parties. *See Comm. on Judiciary of U.S. House of Representatives v. Miers*, No. 08-5357, 2009 WL 3568649 (D.C. Cir. Oct. 14, 2009).

⁴⁹ Judge Jackson’s opinion as to the House Committee’s standing was affirmed by the *en banc* D.C. Circuit. *Comm. on Judiciary of U.S. House of Representatives v. McGahn*, 968 F.3d 755 (D.C. Cir. 2020) (*en banc*). The appeal was ultimately dismissed on voluntary consent of the parties.

that “there may well be circumstances in which certain aides of the President possess confidential, classified, or privileged information,” the court explained that, in the context of compelled Congressional testimony, “such withholding is properly and lawfully executed on a question-by-question basis through the invocation of a privilege, where appropriate.” *Id.* at 213.

Mr. Meadows appears to be relying on historic opinions from the Office of Legal Counsel (“OLC”) to support his position on immunity. But even if they were binding in this forum—which they are not—none addresses a set of circumstances like what the Select Committee is investigating here. None involved a circumstance where the incumbent President has decided not to assert immunity, and none involved a circumstance where a President is alleged to have assembled a violent mob in Washington, D.C., announced that the mob needed to take steps to “take back our country,” and told them to march to the Capitol for that purpose. *Trump v. Thompson*, 20 F.4th at 18, 36 (quoting President Trump). The Select Committee is investigating whether, and exactly how, the former President attempted to overturn the lawful results of an election and attack Congress while Congress was attempting to perform its Constitutional duty to effect the peaceful transition of power. No OLC opinion addresses a situation where the Legislative Branch is attempting to uncover what happened when the Executive Branch provoked a violent attack on the Legislative Branch,⁵⁰ and then failed to provide immediate security assistance.⁵¹ Separation of Powers principles in this context require

⁵⁰ Many defendants in pending criminal cases identified President Trump’s allegation about the “stolen election” as a motivation for their activities at the Capitol. A number also specifically cited President Trump’s tweets asking that supporters come to Washington, D.C., on January 6th. *See supra*, n. 35 (citing Criminal Complaint, *United States v. Sandlin*, No. 21-88 (D.D.C. Jan. 20, 2021); Grand Jury Indictment, *United States v. Neefe et al.*, No. 21-00567 (D.D.C. Sept. 8, 2021)).

⁵¹ OLC opinions have also suggested that subjecting certain Executive Branch officials to public Congressional testimony might unfairly put public pressure on those officials to testify about

that Congress act to preserve its role as a separate and coordinate branch by determining how best to prevent such an attack from ever recurring. To do so, it must understand exactly what happened. Indeed, that is the purpose of the Select Committee investigation, and the Select Committee requires Mr. Meadows's testimony for that purpose.

Second, to the extent that any form of immunity might exist for a high-ranking White House official (it does not), that immunity must only be *qualified immunity* in this context.⁵² And here, the D.C. Circuit has already announced its conclusion (which the Supreme Court refused to enjoin) after balancing the interests of Congress and Donald Trump. *See Trump v. Thompson*, 20 F.4th at 33 (“profound interests” in disclosure “far exceed [Donald Trump’s] generalized concerns for Executive Branch confidentiality”). Mr. Meadows’s attempt to rely on qualified immunity to defy a Congressional subpoena should be rejected.

Finally, as should be clear from the materials cited here and the privilege logs provided by Mr. Meadows, he was not acting as anything like a typical White House Chief of Staff advising the President on official matters of government policy. Mr. Meadows was playing a

matters on which they would otherwise decline to comment. Here, the Select Committee has subpoenaed Mr. Meadows’s deposition testimony, not his testimony in a public hearing. The Select Committee is confident that Mr. Meadows’s counsel can assert any objections he or she deems appropriate in the deposition without feeling undue public pressure.

⁵² The Office of Legal Counsel recognizes that the Supreme Court rejected a claim of absolute immunity made by senior Presidential advisors in the context of a civil suit. *Immunity of the Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. 5, 12-13 (2014); *see also Testimonial Immunity Before Congress of the Former Counsel to the President*, 2019 WL 2315338 (O.L.C.), at *28 (May 20, 2019). But the factors that the Office relied upon to distinguish Supreme Court caselaw are not persuasive here in the circumstances described above. Moreover, those OLC opinions did not consider a situation in which the current President has considered the issue and does not object to the witness providing testimony to a Congressional committee.

campaign role, attempting to facilitate a strategy that would have reversed the certified results of the 2020 election.⁵³

Many of Mr. Meadows's activities (and others of which he has knowledge) were designed to secure the success of one political candidate (Donald Trump) over another candidate (Joe Biden). Because many of the questions that the Select Committee intends to ask Mr. Meadows involve his plainly unofficial conduct, there is no legal basis for Mr. Meadows's refusal to appear for any deposition testimony even under OLC's rejected theories of immunity. *See supra* at 5-15. Indeed, the OLC opinions on which Mr. Meadows likely relies limit their conclusions to "matters that occur during the course of discharging [] official duties." *See, e.g., Immunity of the Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. 5 (2014). This is a longstanding and fundamental limitation in the OLC's formulations of these immunity theories. *See, e.g., Memorandum for the Honorable John W. Dean III, Counsel to the President, from Ralph E. Erickson, Assistant Attorney General, Office of Legal Counsel, Re: Appearance of Presidential Assistant Peter M. Flanigan Before a Congressional Committee* 3 (Mar. 15, 1972) (finding separation of powers does not preclude

⁵³ Dozens of judicial decisions have held that President Trump's claims of election fraud were not supported by evidence or were legally incorrect. William Cummings, J. Garrison & J. Sergeant, *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA Today (Jan. 6, 2021), <https://perma.cc/683S-HSRC>; *see, e.g., Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 906 (M.D. Pa. 2020) ("[T]his Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence."); *Ward v. Jackson*, No. CV-20-0343, 2020 WL 8617817, at *2 (Ariz. Dec. 8, 2020) (plaintiff failed "to present any evidence of 'misconduct,' 'illegal votes' or that the Biden Electors 'did not in fact receive the highest number of votes for office,' let alone establish any degree of fraud or a sufficient error rate that would undermine the certainty of the election results"); *Trump v. Wis. Elections Comm'n*, 506 F. Supp. 3d 620, 639 (E.D. Wis. 2020), *aff'd*, 983 F.3d 919, 927 (7th Cir. 2020); *Wood v. Raffensperger*, 501 F. Supp. 3d 1310, 1331 (N.D. Ga. 2020), *aff'd*, 981 F.3d 1307, 1310 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 1379 (2021).

“Presidential Assistants from appearing before congressional committees” if “the inquiry is related to their private conduct”). In short, Mr. Meadows was acting as a functionary of the Trump campaign and he should not be entitled to any form of immunity at all.

J. The Stored Communications Act Does Not Limit the Select Committee’s Authority to Obtain Non-Content Information from Verizon Pursuant to a Lawful Subpoena

The Amended Complaint asserts that the Select Committee’s subpoena to Verizon violates the Stored Communications Act, 18 U.S.C. § 2701 *et seq.* (“SCA” or the “Act”). *See* Am. Compl. ¶¶ 155-169. That is wrong as a matter of law because nothing in the Act limits the ability of a Congressional committee to obtain non-content records from a “person or entity providing electronic communication service to the public” via a lawful subpoena. 18 U.S.C. § 2702(a)(1).⁵⁴

Mr. Meadows first suggests that the Verizon subpoena seeks the production “of the contents of communication” because it seeks “calls” and “text messages,” Am. Compl. ¶¶ 107, 156. That is incorrect; the Verizon subpoena does *not* in fact seek the contents of any communication. It merely seeks “subscriber information” and “connection records and records of session times and durations.” ECF 13-21 at 4 (Am. Compl. Ex. S). Subscriber information is limited to information about the user of the account, associated phone numbers and other identifying numbers. *See id.* Connection records and records of session times and durations simply mean records of the date and time, duration, and sender and recipient of any call, text message, or other communication.⁵⁵

⁵⁴ The Select Committee agrees with Mr. Meadows that Verizon is such a “person or entity” under the statute.

⁵⁵ Connection Records and Records of Session Times and Durations are defined in the Verizon Subpoena as: “All call, message (SMS & MMS), Internet Protocol (‘IP’), and data-connection

The Stored Communications Act contains no restrictions on Congress obtaining non-content records through a Congressional subpoena. The Act generally allows disclosure of non-content records, although it prohibits (with one exception) voluntary disclosure of non-content records to “governmental entit[ies].” 18 U.S.C. § 2702(a)(3), (c)(4). The definition of the term “governmental entity,” as used in the Act, does not include Congress. *Id.* § 2711(4); *id.* § 6. And the Act expressly *permits* disclosure to “any person other than a governmental entity.” *Id.* § 2702(c)(6).

The statute’s definitional terms make clear that Congress did not intend for the phrase “governmental entity” to include Congress. *See Digital Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 776 (2018) (“When a statute includes an explicit definition, we must follow that definition,’ even if it varies from a term’s ordinary meaning.”). The Act defines “governmental entity” as “a department or agency of the United States or any State or political subdivision thereof.” 18 U.S.C. § 2711(4). The terms “department” and “agency” have particular meanings in Title 18, as defined in Section 6. That provision defines “department” as “one of the *executive* departments enumerated in section 1[now § 101] of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.” *Id.* § 6 (emphasis added). It likewise defines “agency” as “any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.” *Id.* The Select Committee is neither

detail records associated with the Phone Numbers, including all phone numbers, IP addresses, or devices that communicated with the Phone Number via delivered and undelivered inbound, outbound, and routed calls, messages, voicemail, and data connections.” ECF 13-21 at 4 (Am. Compl. Ex. S).

an executive department nor a governmental agency, and no “context” in the Stored Communications Act suggests that those terms apply to Congress.

The Supreme Court addressed a similar issue of statutory interpretation regarding the phrase “any department or agency of the United States” in *Hubbard v. United States*, 514 U.S. 695 (1995). That case concerned the applicability of 18 U.S.C. § 1001, forbidding making false statements to “any department or agency of the United States,” to the Judicial Branch. *Id.* at 698. The Court noted initially that the definitions in Section 6 presumptively applied to “all of Title 18,” including Section 1001. *Id.* at 700. The Court stated it was “incontrovertible” that “agency” did not refer to any court within the Judicial Branch. *Id.* The Court further concluded that nothing in the context of Section 1001 “shows that” the term “department” was intended to apply beyond the Executive Branch. *Id.* (quoting 18 U.S.C. § 6). The Court stated that there is “nothing in the text of the statute, or in any related legislation, that even suggests—let alone ‘shows’—that the normal definition of ‘department’ was not intended.” *Id.* at 701.⁵⁶

As in *Hubbard*, the SCA’s definition of “governmental entity” and the definition contained in Section 6 make plain that the term “governmental entity” does not apply to Congress. There is nothing in the Act that even suggests, let alone “shows,” that Congress intended to include itself in the definition. Moreover, the statute contains other provisions that further reinforce this plain meaning.

⁵⁶ *Hubbard* overruled *United States v. Bramblett*, 348 U.S. 503 (1955), which held that the statute applied to false statements made to the Legislative Branch. The *Hubbard* Court stated that *Bramblett* “erred by giving insufficient weight to the plain language of §§ 6 and 1001,” resulting “in a decision that is at war with the text of not one, but two different Act of Congress.” 514 U.S. at 703, 708. After the ruling in *Hubbard*, Congress amended the statute at issue, 18 U.S.C. § 1001. False Statements Accountability Act of 1996 (FSAA), § 2, Pub. L. No. 104-292.

The Act provides that in the case of willful or intentional violations, the “head of the department or agency” in which the violation occurred may subject the violator to administrative discipline. 18 U.S.C. § 2712(c). But the leadership of Congress and its committees do not constitute a “head” of an agency or department. As the Supreme Court long ago established, “[t]he term ‘head of a Department’ means ... the Secretary in charge of a great division of the *executive branch* of the government, like the State, Treasury, and War, who is a member of the Cabinet.” *Burnap v. United States*, 252 U.S. 512, 515 (1920) (emphasis added); *see also Trump v. Deutsche Bank AG*, 943 F.3d 627, 642 (2d Cir. 2019) (use of term “head of the agency or department” indicated Congress did not intend Right to Financial Privacy Act to apply to Congressional committee), *vacated on other grounds by Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020); *see also* Aaron R. Cooper, *Congressional Surveillance*, 70 Am. U. L. Rev. 1799, 1825-34 (2021) (surveying statutory text, context, and legislative history and concluding that in the Stored Communications Act Congress intended to exempt itself from the term “governmental entity,” *id.* at 1828, 1833).

Accordingly, the plain text of the Stored Communications Act, as well as the overall context and structure of the statute, make clear that Congress is not a “governmental entity” as that term is defined in the Act. As a result, because the Act expressly permits disclosure of non-content records to “any person other than a governmental entity,” 18 U.S.C. § 2702(c)(6), the statute cannot be read to prohibit their disclosure to the Select Committee.

K. The Subpoenas at Issue Do Not Violate the Fourth or the First Amendments

Mr. Meadows further challenges the Select Committee’s subpoenas based on the Fourth and First Amendments. Those constitutional claims fail.

1. The Verizon Subpoena and the Subpoena to Mr. Meadows Do Not Violate Mr. Meadows’s Fourth Amendment Rights

Mr. Meadows makes various arguments that the subpoenas to him and Verizon for his phone records violate the Fourth Amendment’s prohibition on unreasonable searches and seizures. Each of his arguments is flawed.

a. The Subpoenas Are Not Overbroad, and in Any Event, the Select Committee Has Narrowed the Application of the Meadows Subpoena to Seven Discrete Topics.

The D.C. Circuit recently held in *Trump v. Thompson*, 20 F.4th at 24, that “Congress’s power to obtain information is broad and indispensable ... and encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.” (internal punctuation and citations omitted). “[T]he January 6th Committee plainly has a valid legislative purpose and its inquiry concerns a subject on which legislation could be had.” *Id.* at 41 (internal quotation marks and citation omitted).

In light of this holding, Mr. Meadows’s argument that the subpoena violates the Fourth Amendment because it “is so broad and indefinite as to exceed the lawfully authorized purpose of the Select Committee,” Am. Compl. ¶ 204, is mistaken. A subpoena is not impermissibly overbroad if its call for documents or testimony is within the scope of the Congressional inquiry at issue. *See McPhaul v. United States*, 364 U.S. 372, 382 (1960). As described above, the Select Committee’s inquiry includes examining the January 6th attack as well as its “circumstances” and “causes,” to inform a consideration of “changes in law, policy, procedures, rules, or regulations.” H. Res. 503 § (3)(1), 4(c). Given that scope, the subpoena is appropriately tailored to meet the Select Committee’s mandate and is not impermissibly broad. *See Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 509 (1975). And in any event, the Select

Committee has focused its inquiry and narrowed its subpoena to Mr. Meadows as described herein. *See supra* at 14-23.

For the reasons described below, the subpoena to Verizon does not run afoul of the Fourth Amendment, and there is no other basis for Mr. Meadows to challenge the breadth of a Congressional subpoena. Even if he could challenge a Congressional subpoena under some legal standard imposing a scope limitation on Congress, the subpoena to Verizon was reasonable. The Select Committee is not seeking the content of communications with the Verizon subpoena, and its timeframe is appropriately tailored to the necessities of the Select Committee's investigation. The Select Committee operates under a mandate to investigate the facts, circumstances and causes relating to the January 6th attack and relating to the interference with the peaceful transfer of power. The Select Committee is seeking to understand the actions of Mr. Meadows as a central figure in the investigation during several specific months. In this context, the review of this non-content data is reasonable under any standard.

b. The Supreme Court's Decision in *Carpenter v. United States* Does Not Apply to the Verizon Subpoena

Next, Mr. Meadows relies on the Supreme Court's decision in *Carpenter v. United States*, 138 S. Ct. 2206 (2018), to argue that the Select Committee's subpoena to Verizon violates the Fourth Amendment. Am. Compl. ¶ 200. But *Carpenter*, by its own terms, does not apply to the records the subpoena seeks.

In *Carpenter*, the Supreme Court faced the question of whether the Government's collection of historical cell-site location information ("CSLI") from a third-party telecommunications company constituted a "search" under the Fourth Amendment. 138 S. Ct. at 2211. The Court had previously held in *Smith v. Maryland*, 442 U.S. 735 (1979), that recording the numbers that a particular phone number dialed did not constitute a search because, among

other reasons, such records were voluntarily disclosed to the phone company and thus there was no reasonable expectation of privacy in them. *Id.* at 743-44.

In *Carpenter*, although historical CSLI data was in the possession of a third party telecommunications company, the Court “decline[d] to extend” *Smith* to historical CSLI, “[g]iven the unique nature of cell phone *location* records” and their ability to “achieve[] near perfect surveillance.” *Carpenter*, 138 S. Ct. at 2217-18 (emphasis added). In particular, the Court distinguished historical CSLI from the “limited capabilities of a pen register,” which consisted of “telephone call logs [that] reveal little in the way of ‘identifying information.’” *Id.* at 2219 (citation omitted).

As noted above, the Verizon subpoena seeks only subscriber information, connection records, and records of session times and durations. *See* ECF 13-21 at 4(Am. Compl. Ex. S). It does not seek historical CSLI or the contents or substance of any communications associated with Plaintiff’s phone number. *See id.* The records sought by the Select Committee, therefore, are governed squarely by *Smith*, not *Carpenter*. *See Carpenter*, 138 S. Ct. at 2220 (stating that decision is a “narrow one” that “does not disturb the application of *Smith*”).⁵⁷

Courts addressing suppression motions after *Carpenter* have consistently held that the decision does not apply to the kinds of records sought here, such as subscriber information and call-detail records. *See, e.g., United States v. Beverly*, 943 F.3d 225, 239 (5th Cir. 2019)

⁵⁷ Mr. Meadows attempts to elide the distinction between historical CLSI and other phone records that are governed by *Smith*, alleging that the subscriber and call-detail records “*can* be used for historical cell site analysis.” Am. Compl. ¶ 195 (emphasis added). But so can the phone number itself—law enforcement could simply request historical CSLI from a telecommunications carrier for a particular phone number. The additional subscriber and call-detail information would not provide any additional mechanism for obtaining historical CSLI or evading the warrant requirement set forth in *Carpenter*.

(holding *Carpenter* does not apply to subscriber information and call-detail records and declining to assume that such records may be used to track location); *United States v. Searcy*, No. CR 19-135, 2021 WL 3616062, at *5 (W.D. Pa. Aug. 16, 2021) (“Except for CSLI ... Mr. Searcy has no legitimate expectation of privacy in information he voluntarily turns over to third parties[.]”) (internal quotation marks and citation omitted); *Brown v. Sprint Corp. Sec. Specialist*, No. 17-CV-2561, 2019 WL 418100, at *4 (E.D.N.Y. Jan. 31, 2019) (holding *Carpenter* does not apply to subscriber and call-detail records). Thus, *Carpenter* simply does not apply to the third-party Verizon subpoena here, and the Verizon subpoena does not violate Plaintiff’s Fourth Amendment rights.

2. The Verizon Subpoena Does Not Violate Mr. Meadows’s First Amendment Rights

Mr. Meadows also argues that the subpoena to Verizon violates his First Amendment rights, but this argument is squarely foreclosed by *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 509-510 (1975). There, the Supreme Court rejected an organization’s argument that a Congressional subpoena’s purpose was to “harass, chill, punish, and deter” [it] in the exercise of [its] First Amendment rights,” explaining that the typical First Amendment balancing test “plays no part” when a Congressional subpoena is involved. *Id.* at 509 n.16. Here, too, Mr. Meadows’s First Amendment arguments against enforcement of the Select Committee’s subpoena must be rejected.

Even if Mr. Meadows’s claim were subject to a balancing test, it would still fail: the balancing of “the competing private and public interests at stake” here plainly favors the Select Committee. *Barenblatt v. United States*, 360 U.S. 109, 126 (1959). This Court has rejected claims that issuance of a Congressional subpoena violates a respondent’s First Amendment rights. *See Senate Permanent Subcomm. v. Ferrer*, 199 F. Supp. 3d 125 (D.D.C. 2016), *aff’d*,

856 F.3d 1080 (D.C. Cir. 2017). That conclusion is entirely consistent with the Supreme Court’s recognition that the public interest is extremely high when the focus is on ensuring “the free functioning of our national institutions.” *Buckley v. Valeo*, 424 U.S. 1, 66 (1976) (internal quotation marks omitted). The Select Committee is doing precisely that by seeking testimony and records from Mr. Meadows.

Mr. Meadows, by contrast, fails to assert any First Amendment interest that could outweigh the very grave public interest here. His conclusory assertions that “[t]he subpoena of Mr. Meadows’s private cell phone data violates his right to free association and chills the exercise of free speech rights,” Am. Compl. ¶ 208, is too amorphous to be actionable. Courts require far more specificity, which is simply lacking here. *See, e.g., Ferrer*, 199 F. Supp. 3d at 142 (“[I]nvo[cation] of the First Amendment in general terms ... is untenable and without legal support[.]”).⁵⁸

Assuming for purposes of argument that Mr. Meadows were able to substantiate a legitimate interest implicated by the Subpoena, the Select Committee’s interest far outweighs his interest. The Court’s authority to scrutinize the Select Committee’s interest is limited because “so long as Congress acts in pursuance of its constitutional power ... the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power.” *Ferrer*, 199 F. Supp. 3d at 143 (quoting *Barenblatt*, 360 U.S. at 132-33). Here, the Select Committee’s subpoena seeks records relevant to determining the root causes of the violent

⁵⁸*See also Buckley*, 424 U.S. at 74 (stating that showing an associational injury requires demonstrating a “reasonable probability that the compelled disclosure ... will subject them to threats, harassment, or reprisals from either Government officials or private parties”); *see also Brock v. Loc. 375, Plumbers Int’l Union of Am., AFL-CIO*, 860 F.2d 346, 350 n.1 (9th Cir. 1988) (stating that courts have “emphasized in each of those decisions ... the need for objective and articulable facts, which go beyond broad allegations or subjective fears....[A] merely subjective fear of future reprisals is an insufficient showing of infringement of associational rights.”).

January 6th attack on Congress itself and the constitutional responsibility to officially count Presidential electoral votes. To determine the extent of Mr. Trump's and his campaign's efforts to implement the planning for the violent attack and the attack itself, the Select Committee requires a record of relevant communications. This is a paradigmatic example of the governmental interest in the "free functioning of our national institutions." *Buckley*, 424 U.S. at 66. Accordingly, Mr. Meadows's First Amendment claim fails.

CONCLUSION

For the reasons set forth above, this Court should grant summary judgment for the Defendants on all claims in Plaintiff Meadows's Amended Complaint.

Respectfully submitted,

/s/ Douglas N. Letter

DOUGLAS N. LETTER

General Counsel

OFFICE OF GENERAL COUNSEL

U.S. HOUSE OF REPRESENTATIVES

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Douglas.Letter@mail.house.gov

-and-

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* Appearing pursuant to 2 U.S.C. § 5571(a).

Dated: April 22, 2022

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

MARK MEADOWS,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 1:21-cv-3271-CJN
)	
NANCY PELOSI, et al.)	
)	
<i>Defendants.</i>)	
)	

DECLARATION OF TIMOTHY J. HEAPHY

I, Timothy J. Heaphy declare as follows:

1. I am Chief Investigative Counsel, Select Committee to Investigate the January 6th Attack on the U.S. Capitol, U.S. House of Representatives.
2. I make this declaration in support of the Memorandum and Points of Authorities in Support of Defendants’ Motion for Summary Judgment
3. Attached hereto as Exhibit A is a true and accurate copy of an email from a personal email account associated with Mark Meadows to senior Trump re-election campaign official Jason Miller on December 6, 2020 at 4:39:40 PM, produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol with the beginning number MM003769.
4. Attached hereto as Exhibit B is a true and accurate copy of the transcript of the House Select Committee to Investigate the January 6th Attack on the United States Capitol, Business Meeting on a Report Recommending that the House of Representatives Cite Mark Randall Meadows for Criminal Contempt of Congress, 117th Cong., 1st sess., (Dec. 13, 2021) (remarks of Rep. Liz Cheney of Wyoming).

5. Attached hereto as Exhibit C is a true and accurate copy of an email from a personal email account associated with Mark Meadows to senior Trump re-election campaign official Jason Miller on November 30, 2020 at 11:22:39 AM, produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol with the beginning number MM005257.

6. Attached hereto as Exhibit D is a true and accurate copy of an email from a personal email account associated with Mark Meadows to senior Trump re-election campaign official Jason Miller on December 6, 2020 at 9:54:21 AM, produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol with the beginning number MM005596.

7. Attached hereto as Exhibit E are true and accurate copies of the privilege logs relating to emails withheld from production that were provided to Select Committee staff by counsel to Mark Meadows on November 26, 2021, and on December 3, 2021.

8. Attached hereto as Exhibit F is a true and accurate copy of certain text messages produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol as MM014907 and MM014908. Information developed by the Select Committee's investigation indicates that these text messages were exchanged between Mark Meadows and Laura Ingraham, Fox News Channel Host.

9. Attached hereto as Exhibit G is a true and accurate copy certain pages from the transcript of the continued interview of Cassidy Hutchinson by the Select Committee to Investigate the January 6th Attack on the U.S. Capitol on March 7, 2022.

10. Attached hereto as Exhibit H is a true and accurate copy of certain text messages produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol as MM014925 and MM014926.

Information developed by the Select Committee's investigation indicates that these text messages were exchanged between Mark Meadows and Donald Trump, Jr.

11. Attached hereto as Exhibit I is a true and accurate copy of certain pages from the transcript of the deposition of Keith Kellogg, Jr. by the Select Committee to Investigate the January 6th Attack on the U.S. Capitol on December 14, 2021.

12. Attached hereto as Exhibit J is a true and accurate copy of a certain text message produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol as MM014456. Information developed by the Select Committee's investigation indicates that this text message was exchanged between Mark Meadows and Sean Hannity, Fox News Channel Host.

13. Attached hereto as Exhibit K is a true and accurate copy of certain text messages produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol as MM014858 and MM014859. Information developed by the Select Committee's investigation indicates that these text messages were exchanged between Mark Meadows and Sean Hannity, Fox News Channel Host.

14. Attached hereto as Exhibit L is a true and accurate copy of a certain text message produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol as MM014503. Information developed by the Select Committee's investigation indicates that this text message was exchanged between Mark Meadows and Rep. Chip Roy.

15. Attached hereto as Exhibit M is a true and accurate copy of certain text messages produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol as MM014864 and MM014869. Information developed by the Select Committee's investigation indicates that these text messages were exchanged between Mark Meadows and Rep. Jim Jordan.

16. Attached hereto as Exhibit N is a true and accurate copy of certain text messages produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol as MM014567 through MM014571. Information developed by the Select Committee's investigation indicates that these text messages were exchanged between Mark Meadows and Jordan Fuchs, Deputy Secretary of State for Georgia.

17. Attached hereto as Exhibit O is a true and accurate copy of certain text messages produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol as MM014099, MM014100, MM014101, MM014102, MM014103, and MM014178. Information developed by the Select Committee's investigation indicates that these text messages were exchanged between Mark Meadows and Rep. Scott Perry.

18. Attached hereto as Exhibit P is a true and accurate copy of certain pages from the transcript of the interview of Cassidy Hutchinson by the Select Committee to Investigate the January 6th Attack on the U.S. Capitol on February 23, 2022.

19. Attached hereto as Exhibit Q is a true and accurate copy of certain pages from the transcript of the interview of Richard Peter Donoghue by the Select Committee to Investigate the January 6th Attack on the U.S. Capitol on October 1, 2022.

20. Attached hereto as Exhibit R is a true and accurate copy of a document produced to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol by the U.S. Department of Justice with the beginning number HCOR-Pre-CertificationEvents-0762021-000698.

21. Attached hereto as Exhibit S is a true and accurate copy of certain pages from the transcript of the interview of Jeffrey A. Rosen by the Select

Committee to Investigate the January 6th Attack on the U.S. Capitol on October 13, 2021.

22. Attached hereto as Exhibit T is a true and accurate copy of certain pages from the transcript of the interview of Christopher Charles Miller by the Select Committee to Investigate the January 6th Attack on the U.S. Capitol on January 14, 2022.

23. Attached hereto as Exhibit U is a true and accurate copy of certain pages from the transcript of the interview of Ryan McCarthy by the Select Committee to Investigate the January 6th Attack on the U.S. Capitol on February 4, 2022.

24. Attached hereto as Exhibit V is a true and accurate copy of an email from an email account associated with Phil Waldron to a personal email account associated with Mark Meadows on December 22, 2020 at 1:10:39 PM, along with the attachment thereto, produced by Mark Meadows to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol with the beginning numbers of MM002282 and MM002283.

25. Attached hereto as Exhibit W is a true and accurate copy of a letter from Douglas A. Collins to Jeff Clark dated August 2, 2021, which was provided to the Select Committee to Investigate the January 6th Attack on the U.S. Capitol by counsel for Mr. Clark.

26. Attached hereto as Exhibit X is a true and accurate copy of certain pages from the transcript of the interview of Steven A. Engel by the Select Committee to Investigate the January 6th Attack on the U.S. Capitol on January 13, 2022.

27. Attached hereto as Exhibit Y is a true and accurate copy of certain pages from the transcript of the deposition of Jason Miller by the Select Committee to Investigate the January 6th Attack on the U.S. Capitol on February 3, 2022.

28. Attached hereto as Exhibit Z is a true and accurate copy of certain pages from the transcript of the interview of Brad Raffensperger by the Select Committee to Investigate the January 6th Attack on the U.S. Capitol on November 30, 2021.

Executed on April 22, 2022, in Washington, DC.

/s/ Timothy J. Heaphy
Timothy J. Heaphy

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

MARK MEADOWS,)

Plaintiff,)

v.)

NANCY PELOSI, et al.)

Case No. 1:21-cv-3271-CJN

Exhibit A

Message

From: Mark Meadows [congressnc@gmail.com]
Sent: 12/6/2020 4:39:40 PM
To: Jason Miller [jmillier@donaldtrump.com]
Subject: Re: [EXTERNAL]2020-11-20 Chesebro memo on real deadline2.pdf

Got it

Sent from my iPhone

On Dec 6, 2020, at 4:36 PM, Jason Miller <jmillier@donaldtrump.com> wrote:

Nope, we need the meeting/call - was just letting you know we'd been working the PR angle.

Free to talk whenever you are tomorrow, Chief.

On Dec 6, 2020, at 4:34 PM, Mark Meadows <congressnc@gmail.com> wrote:

If you are on it then never mind the meeting. We just need to have someone coordinating the electors for states

Sent from my iPhone

On Dec 6, 2020, at 4:18 PM, Jason Miller
<jmillier@donaldtrump.com> wrote:

You bet. So you know, Justin and I did on-background calls on this very subject with Maria, Levin, Chuck Todd and Margaret Brennan yesterday (I might be missing 1-2 others).

Justin - we should just do a national press call tightly focused on this tomorrow, no?

JM

On Dec 6, 2020, at 4:11 PM, Mark Meadows
<congressnc@gmail.com> wrote:

Let's have a discussion about this tomorrow

Sent from my iPhone

<2020-11-20 Chesebro memo on real
deadline2.pdf>

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

MARK MEADOWS,

Plaintiff,

v.

NANCY PELOSI, et al.

)
)
)
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)
)
)

Case No. 1:21-cv-3271-CJN

Exhibit B

1 RPTR ZAMORA

2 EDTR HOFSTAD

3

4

5 BUSINESS MEETING ON A REPORT RECOMMENDING THAT THE HOUSE
6 OF REPRESENTATIVES CITE MARK RANDALL MEADOWS FOR CRIMINAL CONTEMPT OF
7 CONGRESS

8 Monday, December 13, 2021

9 House of Representatives,

10 Select Committee to Investigate the January 6th Attack

11 on the United States Capitol,

12 Washington, D.C.

13

14

15

16

17 The committee met, pursuant to call, at 7:00 p.m., in Room 390, Cannon House
18 Office Building, Hon. Bennie G. Thompson [chairman of the committee] presiding.

19 Present: Representatives Thompson, Lofgren, Luria, Schiff, Aguilar, Murphy,
20 Raskin, Cheney, and Kinzinger.

1

2 Ms. Cheney. Thank you very much, Mr. Chairman.

3 We are here to address a very serious matter: contempt of Congress by a former
4 chief of staff to a former President of the United States. We do not do this lightly, and,
5 indeed, we had hoped not to take this step at all.

6 For weeks, as the chairman noted, we worked with Mr. Meadows' counsel to
7 reach an agreement on cooperation. But, shortly before his scheduled deposition,
8 Mr. Meadows walked away from his commitment to appear and informed us he would no
9 longer cooperate.

10 We believe Mr. Meadows is improperly asserting executive and other privileges,
11 but this vote on contempt today relates principally to Mr. Meadows' refusal to testify
12 about text messages and other communications that he admits are not privileged. He
13 has not claimed and does not have any privilege basis to refuse entirely to testify
14 regarding these topics.

15 Let me give just three examples.

16 First, President Trump's failure to stop the violence. On January 6th, our Capitol
17 Building was attacked and invaded. The mob was summoned to Washington by
18 President Trump, and, as many of those involved have admitted on videotape, in social
19 media, and in Federal district court, they were provoked to violence by President Trump's
20 false claims that the election was stolen.

21 The violence was evident to all. It was covered in real-time by almost every news
22 channel. But, for 187 minutes, President Trump refused to act, when action by our
23 President was required, essential, and, indeed, compelled by his oath to our Constitution.

24 Mr. Meadows received numerous text messages, which he has produced without
25 any privilege claim, imploring that Mr. Trump take the specific action we all knew his duty

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK MEADOWS,)
)
 Plaintiff,)
)
 v.)
)
 NANCY PELOSI, et al.)
)
)

Case No. 1:21-cv-3271-CJN

Exhibit C

Message

From: Mark Meadows [congressnc@gmail.com]
Sent: 11/30/2020 11:22:39 AM
To: Jason Miller [jmillier@donaldtrump.com]
Subject: Re: Draft release, linked letter

Go for it

Sent from my iPhone

> On Nov 30, 2020, at 11:08 AM, Jason Miller <jmillier@donaldtrump.com> wrote:
>
> Hyperlinks will go to the attached letter, and the revised press release for ASAP approval is below.
>
> Thank you!
>
>
> - November 30, 2020 -
>
> Trump Campaign Sends 5th Request to Georgia Secretary of State for Signature Audit
>
> For the fifth time, the Trump Campaign has requested that the Georgia Secretary of State perform an immediate audit of the signatures on all absentee ballot applications and absentee ballot envelopes received for the November 3rd General Election. The Trump Campaign estimates that between 38,250 and 45,626 illegal votes from the absentee ballots alone were cast in the state of Georgia - far beyond the Biden-Harris ticket's current margin of 12,670 votes.
>
> The Trump Campaign has substantial evidence of other violations of Georgia's Election Code and numerous other serious discrepancies in voting across the state which call into question the validity of the Secretary of State's certification of the presidential election.
>
> Trump Campaign attorneys requested that the Georgia Secretary of State uphold his duty to preserve the legitimacy of his state's elections, saying: "It is not possible for you to accurately certify the results in the presidential race from the November 3, 2020, election until and unless there is a thorough audit of the signatures, which we have now requested four times in writing prior to this request. You cannot in good faith conclude the ongoing statutory recount until you have instituted a signature matching audit," said Ray S. Smith, III, Counsel to Donald J. Trump for President, Inc.
>
> "Until the signatures are matched, the vote count in Georgia is a complete fraud," added former New York City Mayor and Personal Attorney to President Trump, Rudy Giuliani. "There is no way of knowing which ballots are honest and which ballots are fraudulent."
>
> Click here to read the full letter.
>
> CONFIDENTIALITY NOTICE: This message (including any attachments) may contain confidential, proprietary, privileged, and/or private information. This information is intended to be for the use of the individual(s) designated above. If you are not the intended recipient of this message, please notify the sender immediately, and delete the message and any attachments. Any disclosure, reproduction, distribution, or other use of this message or any attachments by an individual or entity other than the intended recipient is prohibited. Copyright and any other intellectual property rights are the sole property of Donald J. Trump for President, Inc.
> <11-30 -2020 Letter to the Hon. Brad Raffensperger RE Fifth Request for Signature Matching Audit_1.pdf>

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

MARK MEADOWS,

Plaintiff,

v.

NANCY PELOSI, et al.

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)
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)

Case No. 1:21-cv-3271-CJN

Exhibit D

Message

From: Mark Meadows [congressnc@gmail.com]
Sent: 12/6/2020 9:54:21 AM
To: Jason Miller [jmillier@donalddtrump.com]
Subject: Fwd: GA --Documents and Talking points re: election contest --
Attachments: December 4, 2020 - Press Statement - R Smith.pdf; Untitled attachment 00028.htm; Exhibit 17 Appendix.pdf; Untitled attachment 00031.htm; Untitled attachment 00034.pdf; Untitled attachment 00037.htm; VERIFIED PETITION TO CONTEST GEORGIA ELECTION.pdf; Untitled attachment 00040.htm; Christian Adams Declaration GA.pdf; Untitled attachment 00043.htm

Sent from my iPhone

Begin forwarded message:

From: "Mitchell, Cleta" <CMitchell@foley.com>
Date: December 6, 2020 at 9:50:07 AM EST
To: Mark Meadows <congressnc@gmail.com>
Subject: Fwd: GA --Documents and Talking points re: election contest --

This is what I prepared and sent to Sen Braun last night to help prepare him for ABC appearance this am. Can the WH press office get and start using??

Cleta Mitchell, Esq.
Foley & Lardner, LLP
cmitchell@foley.com
202.431.1950 (cell)
202.295.4081 (office)
Sent from my iPhone

Begin forwarded message:

From: "Mitchell, Cleta" <CMitchell@foley.com>
Date: December 5, 2020 at 9:42:00 PM EST
To: "Kelley, Joshua (Braun)" <Joshua_Kelley@braun.senate.gov>, Mike Braun <MikeK@meyerdistributing.com>
Subject: GA --Documents and Talking points re: election contest --

Here is the petition filed yesterday in GA -- it details the violations of the GA Election Code during the Nov 3 election. If you read the introduction, it is the summary of the suit. Exh 17 is the list of sworn affidavits from GA citizens about the violations they witnessed. Signed under penalty of perjury. The press statement is good talking points. The memorandum of law is worth reading just to know we are not making up the law. NOTE: there is nothing in this suit regarding Dominion or China or Venezuela or any of that. This is basic factual information, sworn to under penalty of perjury, of GA citizens who witnessed the violations -- along with data experts who examined and analyzed the GA voting records and files.

Here are the key points:

1. the US Constitution gives the authority to state legislatures to appoint

presidential electors.

2. the legislatures determine the manner for choosing the electors.

3. the GA legislature (and other legislatures) have adopted election laws --to ALLOW citizens to participate. But that is not required in the Constitution. in GA the legislature adopted the GA Election Code - allowing the citizens to express their will re the presidential electors.

4. In GA , as in the other states, the left wing groups and the Democratic party went around the legislatures all over the country to get judges and exec branch officials to create election procedures that violate the state laws enacted by the legislatures for choosing presidential electors. See the affidavit of Christian Adams

5. In GA, we have documented literally thousands of illegal votes that were cast, counted, and included in the tabulations - votes that violated the Election Code adopted by the legislature.

6. These illegal votes were outside the margin of victory in GA for Biden. Many times over.

7. The lawsuit filed on Fri by the Trump campaign is a GA election contest, provided in the GA statutes - in the Election Code. Every state has a provision allowing for a candidate or a voter to challenge the outcome of an election. That is what the GA Campaign has filed.

8. the statutory remedy under GA law is a new election - and we have more than met the burden under state law for a new election. And we have asked for a new election.

9 here, because it involves the presidential election, there is a time issue -- but there is also a constitutional remedy.

10. the Constitution vests the plenary power to choose presidential electors in the State Legislatures. If the manner chosen by the legislature is not followed -- which is the case with -the Nov 3 general election -then the legislature must reclaim its constitutional authority and responsibility to do what the constitution requires: appoint the presidential electors.

11. Trump campaign has asked the court -- state court in GA - alternative remedies: 1. Order a new election; OR 2. enjoin the certification, because of all the illegal votes, and the failure of the Secretary of State and these counties to follow the Election Code - and let the legislature reclaim its constitutional authority and just determine the electors.

Look at the press statement also for bullet points re illegal votes. We have a margin in GA of around 12,000 votes (that number keeps changing) - we have many more illegal votes than the margin -- and under GA state law, a new election is the remedy.

POINT: AND THAT'S JUST IN GEORGIA....

I'm also attaching the sworn expert affidavit from Christian Adams - it describes the national plan by the Democrats to do in these key states the same thing they did in GA.

Hope this helps. Talk tomorrow. Cleta

Cleta Mitchell, Esq.
Partner, Foley & Lardner LLP
3000 K Street, N.W. | Suite 600
Washington, DC 20007-5109
P 202.295.4081
C 202.431.1950
cmitchell@foley.com

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK MEADOWS,)
)
Plaintiff,)
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v.)
)
NANCY PELOSI, et al.)
)

Case No. 1:21-cv-3271-CJN

Exhibit E

(Filed under Seal)

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

MARK MEADOWS,

Plaintiff,

v.

NANCY PELOSI, et al.

)
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Case No. 1:21-cv-3271-CJN

Exhibit F

BEGBATES	ENDBATES	All Custodians	MasterDate	Chat Name	Chat Message Type	Chat Direction	From	To	Extracted Text
MM014907	MM014907	Mark Meadows	1/6/2021 14:32	'+12024414487	Message	Incoming	'+12024414487	'+18282002544	Hey Mark, The president needs to tell people in the Capitol to go home.
MM014908	MM014908	Mark Meadows	1/6/2021 14:32	'+12024414487	Message	Incoming	'+12024414487	'+18282002544	This is hurting all of us

1

2

3

4 SELECT COMMITTEE TO INVESTIGATE THE
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

8

9

10

11 CONTINUED INTERVIEW OF: CASSIDY HUTCHINSON

12

13

14

15

Monday, March 7, 2022

16

17

Washington, D.C.

18

19

20

The interview in the above matter was held via Webex, commencing at 12:06 p.m.

21

Present: Representatives Aguilar, Raskin, Cheney, and Kinzinger.

1 entertained externally was being brought to the attention of necessary individuals
2 internally to ensure that there was maximum cooperation and communication between
3 the external and internal interests that were looking into these theories.

4 Mr. George. Okay.

5 In those meetings, did anybody from the White House Counsel's Office express an
6 opinion as to whether it was legal to have the Trump electors meet and cast electoral
7 votes in States that Mr. Trump had lost?

8 Ms. Hutchinson. Could we have one moment, please?

9 Mr. George. Of course.

10 Ms. Hutchinson. Thank you.

11 [Discussion off the record.]

12 Mr. Passantino. Okay. We're back. We had a discussion about the
13 parameters of attorney-client privilege, but ask your question again.

14 Mr. George. Okay.

15 And I'd just note that Mr. Kinzinger is joining now as well.

16 BY MR. GEORGE:

17 Q So my question was: At any of these meetings with individuals from
18 outside the White House or the executive branch, did the White House Counsel's Office
19 express an opinion as to whether the plan to have electors for President Trump meet and
20 cast electoral college votes in States that President Trump had lost was legal?

21 A Yes.

22 And just to be mindful of how extensive certain discussions were, like, those were
23 niche topics as the meetings progressed and other individuals were involved. So there
24 were some meetings where they had expressed something along the lines of, "Let's
25 continue to look at this, make sure you're still coordinating with us, communicating with

1 us, let us know if there's anything worthy of bringing to our attention, we'd be happy to
2 look at it and schedule another meeting," to meetings where their definitive guidance to
3 external interests was more along the lines of, "That's not legal, we're not putting
4 ourselves in that line of fire," or, "Don't raise that to Mr. Trump, it's not appropriate, and
5 it's not a legal theory that we want to entertain right now."

6 Q And, to be clear, what you just said about not being a legal theory they want
7 to entertain right now, not legal, not putting yourself in the line of fire, that was with
8 respect to this alternate electors plan in particular?

9 A I apologize, I'm just trying to be careful, because there was the alternate
10 electors plan, but then there are groups and individuals and people that had slightly
11 different ways of looking at things or slightly different ways of potentially addressing that.
12 And I also don't want my words to be recorded and articulated as being any verbatim
13 conversation, because I'm paraphrasing here.

14 But -- so, as we looked at the alternate electors, it was, broadly speaking,
15 something that they were willing to hear theories about, willing to have the discussions
16 with people.

17 But then there were certain meetings where White House Counsel's Office gave
18 the guidance to external interests of, "This is fine, keep researching, keep your people on
19 this, let's stay in touch, don't do anything, don't elevate this to Mr. Trump without us
20 being read back in first," to meetings where they would give guidance to external
21 participants more along the lines of, "Hey, this isn't legally sound, we have fleshed this
22 out internally, it's fine that you think this but we're not going to entertain this in an
23 official White House capacity on behalf of the President, we're putting a stop to this."

24 Q And just to be clear -- I appreciate that, and thank you for walking through
25 the progression and the various, kind of, instances where it may have come up.

1 But what idea was it that -- what wasn't legally sound and they didn't want to
2 pursue?

3 A I don't recall specifically right now. I just recall there would be certain
4 meetings where individuals would raise ideas or things that they might want to vet to
5 White House Counsel's Office, and they would have a little bit more of an explicit opinion
6 on it, versus other instances in meetings where it was a little easier to not -- I don't want
7 to say "easier" -- it was a little different in context from a legal standpoint of them
8 wanting to vet it and allowing it to kind of progress a little bit more before they put a stop
9 to things.

10 Q Okay. And --

11 A I'm just trying to be careful here with --

12 Mr. Passantino. You're good. You're good.

13 Mr. George. Yep. No, I appreciate you trying to be careful there.

14 I guess I want to distinguish two things on this point. The first is the plan and
15 efforts to have alternate electors meet and cast votes for Mr. Trump in States that he had
16 lost.

17 Is it your understanding that the White House Counsel's Office opinion of that was
18 that it wasn't legally sound and that that opinion was expressed in meetings at which
19 third parties were present?

20 Mr. Passantino. Well, she's only testifying to what she heard people say. She's
21 not able to talk about what they thought.

22 Mr. George. Yep.

23 Mr. Passantino. She did say what she heard them say.

24 You can ask again. I'm not blocking you. But I just want to make that
25 distinction very clear.

1 BY MR. GEORGE:

2 Q And so, to be clear, did you hear the White House Counsel's Office say that
3 this plan to have alternate electors meet and cast votes for Donald Trump in States that
4 he had lost was not legally sound?

5 A Yes, sir.

6 Q And do you remember approximately when that was?

7 A I'm trying to not be overly broad, but, right now, sitting here, I can recall at
8 the time, perhaps early to mid- December. Now, it very well could've been the end of
9 November, but I'm trying to think about benchmark events and dates in my head, and
10 early to mid- December is the safer bet.

11 Q And who was present for that meeting that you remember?

12 A It was in our office. It was Mr. Meadows, Mr. Giuliani, and a few of
13 Mr. Giuliani's, like -- well, I don't know if the correct term is "associates," but
14 Mr. Giuliani's associates.

15 Q Do you remember who from --

16 A Colleagues.

17 Q -- White House Counsel -- oh, I'm sorry. Go ahead.

18 A No, I was -- associates, colleagues, however it might be characterized.

19 Q Do you remember who from White House Counsel's Office was there and
20 delivered that message?

21 A The very first time I heard it, I know Mr. Cipollone. I'm inclined to say
22 Mr. Pat Philbin as well. But, factually speaking, the very first, I am comfortable saying
23 Mr. Cipollone.

24 Q Okay.

25 Do you remember -- bear with me one moment.

1 Were Members of Congress present for that meeting as well, either in person or
2 by phone?

3 A Not at the meeting I'm thinking about.

1

2 [2:09 p.m.]

3 BY MR. GEORGE:

4 Q Did this issue come up again where White House Counsel's Office expressed
5 an opinion on alternate electors where Members of Congress were present?

6 A Yes, sir.

7 Q When was that and what happened?

8 A Sorry. Could you repeat the first part of that question? Sorry.

9 Q Of course, yes. So the question was, were there other meetings where the
10 White House Counsel's Office expressed an opinion on alternate electors came up where
11 Members of Congress were present?

12 A Sorry. I wanted to make sure that we weren't attributing one of the
13 opinions that I previously stated to Members of Congress.

14 Yes. To answer your question broadly, yes, I do recall them raising it in meetings
15 with Members of Congress in early to mid-December likely, though, perhaps -- I say early.
16 Maybe like sometime after, like, December 8th. I don't have the calendar in front of me
17 of the days of the week, but -- and I'm trying to think about when Members of Congress
18 started coming into our office to meet. So first or second week of December.

19 Q Okay. And do you remember which Members of Congress were at the
20 meeting in which White House Counsel's Office expressed their opinion that this alternate
21 electors plan was not legally sound?

22 A The initial meeting that I'm thinking of or generally and broadly speaking
23 about the events?

24 Q How about we start with the initial meeting and then broadly speaking,
25 others who may have received the same message.

1 A Initially -- the initial meeting that I'm thinking about in my head, Mr. Scott
2 Perry was present for, but I don't want to attribute White House counsel's opinion to that
3 meeting being let's entertain this, keep us in the loop versus no. Just I recall their
4 opinions being expressed in the first meeting that I'm thinking about with Mr. Scott Perry.

5 Q How about this: How about, in meetings -- let me back up and rephrase.

6 Which Members of Congress were present during meetings at which the White
7 House Counsel's Office expressed their opinion that this plan related to alternate electors
8 was not legally sound, as opposed to just discussions about followup or further research?

9 Mr. Passantino. You understand --

10 Ms. Hutchinson. Mr. Perry is the member that immediately jumps out to me,
11 and I'm only -- I just want to be cautious because there frequently were Members that
12 would dial into meetings as a presence, but they weren't physically present. And I know
13 that sometimes there were other people on the line that I wasn't aware of. Mr. Perry is
14 one that immediately jumps to mind as me recalling him physically being there and then
15 pushing back on him.

16 Now, Mr. Jordan also would dial into meetings frequently, and I don't want to
17 attribute White House Counsel's Office pushing back on Mr. Jordan because I don't know
18 whether Mr. Jordan was personally pushing for that legal theory, if that makes any sense,
19 or if it was just them broadly speaking in the presence of Mr. Jordan.

20 The only one that immediately jumps out to me as being there and them kind of
21 pushing back a little bit would be both Mr. Perry, Mr. Gaetz -- Matt Gaetz -- Mr. Gohmert,
22 Louie Gohmert of Texas.

23 And it's entirely possible that there was more too. I'm just -- I want to be careful
24 and not attribute any of the actions or words from White House Counsel's Office to
25 Members of Congress or external interests, just because it's difficult for me to look back

1 and recall details of those meetings or conversations that happened where the Members
2 were advocating for those theories personally, if that makes sense.

3 BY MR. GEORGE:

4 Q It does, yes.

5 And there's a meeting on December 21st in the White House at which some of
6 those Members were present. Do you think it was that meeting or a different meeting?

7 A I recall them having conversations with Members that were a part of that
8 meeting, but there also were several Members that participated in that meeting that
9 were frequently present throughout this period that we're discussing.

10 Q I see. Let me ask a follow-on question. It's related but not the same.

11 We just talked about the theory -- or excuse me -- the effort to have alternate
12 electors meet and cast votes for then-President Trump in States that he had lost. I want
13 to fast-forward a little bit. And the kind of follow-on theory that I know you have been
14 trying to distinguish in your mind -- and I appreciate that -- but like the follow-on theory
15 for John Eastman is that, because these votes now exist, because the Republican electors
16 have met and cast their votes, then the Vice President can choose to count those or not
17 count those during the Joint Session of Congress.

18 Do you remember any meetings at which third parties, so not White House
19 personnel or not executive branch members, were present in which the White House
20 Counsel's Office said that that, that use of the theory like that of John Eastman, was not
21 legally sound?

22 A Yes. But I can't attribute a specific meeting just because I don't recall right
23 now. But I do recall --

24 Q It did happen?

25 A Yes.

1 said during the residence portion of that meeting? I believe Mr. Giuliani was there with
2 you -- or was there as well?

3 A The attorneys, Mr. Herschmann, Mr. Lyons, all were very clear, as has been
4 reported, that they would resign if this was approved. And I know that that did factor
5 into Mr. Meadows' decision. He didn't want to lose them.

6 Q When you say "if this was approved, they would resign," what do you mean
7 by "this"?

8 A If Ms. Powell had been appointed special counsel, if they had considered
9 invoking martial law more in depth, which -- I don't know if it was ever even something
10 that was, like, on the table, legitimately on the table.

11 But once it became clear that there would be mass resignations, including lawyers
12 in the White House Counsel's Office, including some of the staff that Mr. Meadows
13 worked closely with, you know, I know that that did factor into his thinking that night.

14 Q And these issues that came up, including seizing voting machines and
15 appointing Ms. Powell as a special counsel and potentially imposing martial law, is it your
16 understanding that those were being considered or proposed in order to change the
17 outcome of the election and have Mr. Trump start a second term on January 20th?

18 A So, like the Mr. Eastman theories, it was something that external individuals
19 felt could potentially be a constitutional and viable option to either stall certification of
20 the election or to delay the inauguration or to assert that Mr. Trump had actually won.
21 And there were theories -- you know, I can't speak to if Mr. Trump -- yeah, I'll leave it
22 there.

23 Q Okay. Fair enough.

24 So, at that time -- I just want to get, we'll call it "atmospherics," but just an
25 understanding of what the discussions were like at the White House.

1 A He was.

2 Q Who else from his team do you remember being there?

3 A I don't remember anybody else that was in there and had accompanied
4 Mr. Giuliani to that meeting.

5 Q Was Phil Waldron there, somebody we talked about earlier, if you
6 remember?

7 A I don't remember if Mr. Waldron was there.

8 Q How about John Eastman? Was he at that meeting, to the best of your
9 knowledge?

10 A To my knowledge, he was not there.

11 Q All right.

12 And then we have a number of House Members. I believe they were from the
13 House Freedom Caucus. Is that right, generally?

14 A That's accurate, generally.

15 Q Okay. So did that include Jim Jordan?

16 A Yes, Mr. Jordan was there.

17 Q Andy Biggs?

18 A Mr. Biggs was there.

19 Q Mo Brooks?

20 A Mr. Brooks was there.

21 Q Matt Gaetz?

22 A Mr. Gaetz was there, although I don't believe Mr. Gaetz is a part of the
23 Freedom Caucus.

24 Q Okay. How about Marjorie Taylor --

25 A [Inaudible.]

1 Q Sure. How about Marjorie Taylor Greene?

2 A Was not at the time a member of the Freedom Caucus, as she was still
3 Congresswoman-elect, but, yes, Ms. Marjorie Taylor Greene was there.

4 Q How about Louie Gohmert? Was he there?

5 A Mr. Gohmert was there.

6 Q Do you remember anybody else who was there from the House or the
7 Congress?

8 A Mr. Hice, Jody Hice; Mr. Gosar, Paul Gosar; I believe Ms. Lesko, Debbie Lesko
9 of Arizona.

10 And there was also a handful of others that were there that I -- Mr. Perry
11 definitely spoke. I can't remember if he was dialed in or if he was physically present
12 though. They dialed in a few Members over the course of that meeting.

13 Q Okay.

14 What do you remember -- were you in that meeting the whole time?

15 A Not the entire time, no.

16 Q Okay. What do you remember from that meeting? What happened?

17 A A few Members expressed their opinions and their thoughts on January 6th,
18 what they believed that the Vice President's role could potentially be --

19 Q Can I stop you there?

20 A Yes.

21 Q On that issue in particular, the Vice President's role and what they thought it
22 would be, what was it? What was the conversation like?

23 A They felt that he had the authority to -- pardon me if my phrasing isn't
24 correct on this, but -- send votes back to the States or the electors back to the States,
25 more along the lines of the Eastman theory. I'm not very well-versed on it, and I

1 apologize for that.

2 Q That's quite all right. That's exactly right. So Mr. Eastman said that the
3 Vice President would have, among other things, the authority to count certain votes or to
4 delay the certification and send votes --

5 A Right.

6 Q -- back to the States.

7 A Okay. To send the votes back to the States, not the delegates or the
8 electors, but, yes, send the votes back.

9 Q Okay.

10 And did both of those things, either the Vice President's power to count or not
11 count and also his power to send the votes back to the States, did they come up in that
12 meeting on the 21st?

13 A They did.

14 Q And did anybody in that meeting disagree with the idea that the Vice
15 President had the authority to do that, either of those options?

16 A I don't recall anybody speaking out and definitively expressing disagreement
17 with that theory. I believe I am not out of line for -- I don't want to say
18 "speculating" -- for saying that the Vice President's team appeared slightly skeptical.

19 But, you know, again, I wasn't present from start to finish, but I don't recall in my
20 presence or immediately afterwards hearing feedback from Members, anybody, you
21 know, saying anything that would have been perceived as controversial, which would've
22 been, "No, actually, the Vice President doesn't have that theory, and here's why."

23 Q Okay.

24 Do you remember the Vice President or Mr. Short saying anything about this idea
25 during the meeting?

1 introduction or would have gave that introduction. Sounds odd to me, but --

2 Q I understand that there's a meeting that Mr. Clark had in the residence with
3 the President and potentially Scott Perry as well. Do you know anything about that
4 meeting?

5 A No.

6 Q Okay. Do you know --

7 A I don't think Mr. Perry ever went to the residence.

8 Q I'm sorry?

9 A I don't think Mr. Perry ever spent time in Mr. Trump's residence.

10 Q Do you know if Mr. Meadows was in touch with Jeff Clark?

11 A Frequently.

12 Q Okay. Do you know how that started or why it started, what the purpose
13 of it was?

14 A No. I just came -- recognized Mr. Clark as somebody that was assisting the
15 efforts with the ongoing election investigation litigation in the White House.

16 Q Do you know if Mr. Clark was working with Mr. Giuliani and his team?

17 A Mr. Clark came to meetings that Mr. Giuliani was also in that also
18 met -- meeting with Mark, Mr. Meadows. And I remember Mr. Clark's frequent
19 presence and his frequent outreach and communications, but I don't remember specific
20 meetings or know who he would have come with for what meeting. He was around a
21 lot of people in a time when there was -- I'm not trying to be vague, but there was a lot of
22 people around and present and were in and out of rooms, so --

23 Q Do you know what Mr. Clark -- or were you present for any meetings
24 between Mr. Clark and the President?

25 A Not in the room, no.

1 Q Okay. Do you know what happened in any meetings between Mr. Clark
2 and the President, other than January 3rd? That was with a lot of leadership with the
3 Department of Justice, and we don't need to get to that one yet.

4 A Yet.

5 I'm sorry. Could you restate your question?

6 Q Yeah, sure. Other than January 3rd, are you aware of any meetings that
7 Mr. Clark had with the President?

8 A I remember him coming to the White House for meetings with Mr. Trump.
9 And, you know, I -- all -- almost all -- almost all, if not all, meetings Mr. Trump had, I had
10 insight on. So, yes, I remember him coming to meetings with Mr. Trump. But, again,
11 just bringing it back to what I previously said, I don't know if it was Mr. Giuliani who had
12 brought him, if it was Mr. Trump who had personally called him, like, who had
13 coordinated all these efforts and who was in the room for these meetings. But I do
14 remember he might have had a meeting with Mr. Trump or Mr. Trump and Mr. Clark
15 having communications because Mr. Meadows was then involved in those conversations.

16 Q Okay. And on that point, how would Mr. Meadows communicate with Jeff
17 Clark, do you know?

18 A Like on cell phone or by snail mail?

19 Q Sure. Cell phone, text messages, Signal application.

20 A I've only known Mr. Meadows to communicate with Mr. Clark on his official
21 work phone and -- definitively his official work phone.

22 Q Okay. And do you know what happened in the meetings between Jeff Clark
23 and the President, or Mr. Meadows, for that matter? And specifically I'm interested in
24 learning why -- or what the President or Mr. Meadows thought Mr. Clark could do in his
25 role at the Department of Justice.

1 You said you don't know what Mr. Meadows did with this letter once he received
2 it, correct?

3 A Correct. That's correct.

4 Q And do you remember, were there any discussions about this letter or the
5 ideas in the letter about having the States call them -- State legislatures call themselves
6 back into session to evaluate issues related to the election at DOJ's request?

7 A I remember the ideas -- that concept being discussed, broadly speaking. I
8 remember Mr. Meadows mentioning it in meetings and once or twice in passerby
9 conversation with me, but nothing that would indicate his opinion on it, just as something
10 that, you know, was outlined in this letter and, you know, was the topic of conversation
11 at the time. But I wasn't privy to any of those conversations extensively.

12 Q Do you know whether the President advocated for this idea to have the
13 Department of Justice send a letter like this?

14 A At the time, I'm not sure whether the President advocated for DOJ to send a
15 letter like this.

16 Mr. George. Any questions on the Department or this letter?

17 BY MR. GEORGE:

18 Q Okay. All right. So on December 22nd, I understand that Mr. Meadows
19 went to Cobb County in Marietta, Georgia, specifically, where an audit was being
20 conducted of signatures related to ballots cast in the 2020 election.

21 Did you go with Mr. Meadows on that trip?

22 A I did not. I was at the White House that day. He asked me to stay behind
23 because he left before Mr. Trump left for Florida, and that way at least I was there in case
24 he needed anything on our behalf and he couldn't get ahold of Mr. Meadows.

25 Q Did you at any point go to Georgia while Mr. Meadows was on this trip in

1 late December?

2 A I did not.

3 Q Do you know what the purpose of Mr. Meadows going to Georgia was during
4 this signature review?

5 A The primary purpose of this trip was to visit family. His son lives in Georgia,
6 and they went down to see his son for Christmas. Conveniently, his son lives in close
7 proximity to Cobb County, and Mr. Meadows had discussed at length coordinating any
8 visits with Georgia State officials during this trip.

9 Q I understand that he did meet with some Georgia officials, including Jordan
10 Fuchs, I believe is how you pronounce her name. What was the purpose -- your
11 understanding of what was the purpose of him meeting with Ms. Fuchs?

12 Mr. Passantino. Which one? Okay.

13 Ms. Hutchinson. He met with Ms. Fuchs at Cobb -- at the Cobb County when he
14 went to see the ballots being counted. I'm trying to pull them up here. There was a
15 few other officials there too.

16 He agreed -- can you guys hear me okay?

17 Mr. George. Yeah, we can hear you.

18 Ms. Hutchinson. Sorry. We got a warning notification.

19 I'm sorry. I lost my train of thought.

20 Mr. Meadows and Mr. Trump had conversations about what Mr. Meadows could
21 potentially do down in Georgia. Now, there was a point where I was going to go with
22 him because he was going to conduct a few more meetings, but then it was decided that
23 he would make it a little bit more informal and casual, which is when he decided to go
24 watch the ballots being counted.

25 I'm not sure if he reached out to Ms. Fuchs directly to coordinate that. However,

1 I got a call from her later that day, and he went there with the intention of speaking to
2 the volunteers and the staff members that were counting the ballots and reevaluating the
3 ballots cast on November 3rd.

4 And then there were a few other Georgia State officials that were present at that
5 time. Now, whether they were present because there was official business going on or
6 because they knew that he was going to be there, thus, they wanted to meet with him,
7 I'm not sure. But that's the overall gist of this particular visit.

8 BY MR. GEORGE:

9 Q What did he think he could accomplish, if you know, by speaking to the
10 people who are doing the signature verification on ballots?

11 A He wanted to do more of a status check to see where they were at with
12 things, if they had thoughts that they needed any more resources, if there was anything
13 that the White House could do to help ease the process along. If they needed, like,
14 bodies, there were campaign officials that had been, you know, off-boarded and were
15 looking for jobs, so -- our campaign officials -- the Trump campaign officials, I should say.
16 But -- and then just had conversations with the Georgia State officials about what they
17 were hearing from the State about status of the election and, you know, if there was
18 significant evidence to their knowledge at that point.

19 Q Significant evidence of fraud or irregularities in the election?

20 A That's correct. I apologize for not specifying.

21 Q No. That's quite all right. That's my job.

22 So if you go to exhibit 27, please.

23 This is a text exchange that you had with somebody named Chris, with the initials
24 CG. Do you know who that is?

25 A Yes. CG, he was the -- I'm trying to remember his appropriate title. He

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK MEADOWS,

Plaintiff,

v.

NANCY PELOSI, et al.

Case No. 1:21-cv-3271-CJN

Exhibit H

BEGBATES	ENDBATES	All Custodians	MasterDate	Chat Name	Chat Message Type	Chat Direction	From	To	Extracted Text
MM014925	MM014925	Mark Meadows	1/6/2021 14:53	+16464833417	Message	Incoming	'+16464833417	'+18282002544	He's got to condemn this shit. Asap. The captiol police tweet is not enough.
MM014926	MM014926	Mark Meadows	1/6/2021 14:54	+16464833417	Message	Outgoing	nccongressman@gmail.com	'+16464833417	I am pushing it hard. I agree

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

MARK MEADOWS,)

Plaintiff,)

v.)

NANCY PELOSI, et al.)

Case No. 1:21-cv-3271-CJN

Exhibit I

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2

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4

5

6 SELECT COMMITTEE TO INVESTIGATE THE
7 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
8 U.S. HOUSE OF REPRESENTATIVES,
9 WASHINGTON, D.C.

10

11

12

13 DEPOSITION OF: KEITH KELLOGG, JR.

14

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16

17

Tuesday, December 14, 2021

18

19

Washington, D.C.

20

21

22 The interview in the above matter was held in Room 4480, O'Neill House Office
23 Building, commencing at 10:02 a.m.

24

Present: Representatives Aguilar and Cheney.

1 went over -- right over to the Oval -- to the West Wing and then into the Oval Office to
2 make sure everybody was tracking what was happening. Because you try as the
3 national security guy making sure everybody has situational awareness. Are you seeing
4 the same thing I'm seeing? Are your TVs on and you're seeing it to make sure?

5 So I was tracking that with the Secret Service. And I can't remember exactly the
6 time because, frankly, I wasn't paying attention to the time. It was more so making sure
7 that everybody was in the loop. Is this actually -- everybody tracking what's happening.

8 Ms. Cheney. And so tell us what happened. You said you went over to the
9 West Wing and walked through the lower lobby there?

10 The Witness. I went -- well, I went -- actually, went right upstairs, the stairs to
11 the left, right up there, checked the national security office to find out was O'Brien in the
12 loop. He was not. Where Matt Pottinger was. He was not in either. And then went
13 from there to the Oval Office.

14 Ms. Cheney. And when you went into the Oval Office, did you stop in the outer
15 Oval?

16 The Witness. I always -- I stopped in the Oval. Molly was there, Nick Luna was
17 there. And, frankly, by that time I wasn't worried about anybody being a palace guard.
18 I just walked in.

19 And I believe Mark -- I believe Mark Meadows was already in the back room in the
20 Presidential dining room. And I think I walked back in there and we were all watching
21 TV at the same -- we were all seeing the TV going on, seeing what's happening.

22 Ms. Cheney. So you and Mark Meadows and the President were back in his
23 private dining room watching TV. Is that what happened?

24 The Witness. I was there and then I walked out of there. The answer's yes and
25 no. I didn't stay the entire time. I walked out of there and walked back out. And I'm

1 not sure exactly the timing, but I think by that time Kayleigh McEnany had come in and I
2 met her in the outer Oval.

3 Ma'am?

4 I think -- because I think -- my point was -- my belief at the time was, based on
5 personal experience, this had gotten out of control. And there was -- and very candidly,
6 ma'am, by this time there was no way to control it. And then -- so you're looking at the
7 next steps going forward.

8 Ms. Cheney. So when you walked into the outer Oval and you saw Molly and
9 Nick Luna, did you say anything to them?

10 The Witness. I probably said I'm going to the back or words -- just to let them
11 know. Like, they obviously knew I was going to. But I didn't ask permission. I mean, I
12 had the walk-in privilege. I just went in.

13 Ms. Cheney. And then when you got back into the back, what did you say?

14 The Witness. Well, I saw the President watching TV. And Mark -- I'm pretty
15 sure, Congresswoman, that -- I'm pretty darn sure Mark was there. And I probably,
16 which I am prone to do, probably said something that was pretty -- like this is really
17 expletive deleted, and probably said something like that. And then at that time I was
18 trying to figure out where do you go to next.

19 Ms. Cheney. So this would have been -- but you don't know exactly what time
20 this was?

21 The Witness. Ma'am, ma'am, I really don't. I don't know at all. I'm not sure.

22 Ms. Cheney. But it's moments -- moments it sounds like after you first saw -- did
23 you -- was the TV on in your office when you sat down to eat your sandwich or you
24 turned it off and sat down?

25 The Witness. Did I see the what?

1 A No. Matt Pottinger did.

2 Q Did you participate in any calls with Homeland Security?

3 A No.

4 Q Did you participate in any calls with the FBI?

5 A No.

6 Q Okay. How about the Department of Justice?

7 A No and --

8 Q All right. And --

9 Mr. George. Did you have a question?

10 BY MR. HEAPHY:

11 Q You were just about to talk about messaging and Kayleigh McEnany.

12 A Uh-huh.

13 Q Was the conversation that you mentioned with her occurring right after
14 Mr. Pottinger picked up the phone?

15 A Yeah, and part of the conversation was, to the best of my recollection, is,
16 what are you -- you get the President out there saying something.

17 Q Yeah.

18 A And the question was, do you do a press conference? I know I very
19 strongly recommended do not.

20 Q Stop for a minute. Who was involved in this conversation?

21 A It was me. It was me and Kayleigh.

22 Q Just the two of you.

23 A Tim, there were other people in the outer Oval.

24 Q Uh-huh.

25 A And I don't know who was there.

1 Q Uh-huh.

2 A You know, there may have been -- Matt was there. Molly was there. Nick
3 Luna was there. Mark Meadows even may have been. And the reason I said that is
4 because press conferences tend to get out of control, and you want to control the
5 message.

6 So I said I didn't think -- I didn't think a tweet was appropriate. And the reason I
7 didn't think a tweet was appropriate, my experience that I had had in riots is most people
8 are not checking their offense. You know, they're trying to do something stupid.

9 So I said you probably ought to put something out that will hit on the news or
10 something that you can relay or people will pick up on there, saying what's happening,
11 going on.

12 Q Okay.

13 A So my point was it needs to be relatively quick. It needs to be visual to get
14 it out there. And then a fallback is always your tweets. But I remember saying very
15 distinctly, boy, I don't recommend a press conference --

16 Q Yeah.

17 A -- because they, are, my experience in 4 years, there wasn't a single clean
18 press conference we had.

19 Q Was Ms. McEnany asking your advice about --

20 A No, I was just making a comment to her because Kayleigh was a really very,
21 very effective and exceptional spokesman. She understood mass media --

22 Q Okay.

23 A -- because she came from mass media --

24 Q Uh-huh.

25 A -- with her time as CNN.

1 A I'm sorry. Yes, I did. I'm sorry. I did talk to her on the 6th and the 7th,
2 and I talked to her both days.

3 Q All right. Let's focus on the 6th and not the early morning stuff but in the
4 afternoon.

5 A Yeah, and I said, my recommendation to her was to go back and talk to her
6 dad.

7 Q Why did you think that was necessary?

8 A Do you see how I phrased it? I didn't say go talk to the President. I said
9 go talk to your dad because -- and I have a daughter. My experience, when daughters
10 talk to dads, generally they listen to daughters more than they listen to their sons. And I
11 think she was very close to her dad.

12 My experience in 2016 during the campaign, when Ivanka Trump would say "the
13 candidate wanted this," you listened. But when she said "my dad wanted this," we
14 really listened.

15 So I knew there was a phrase that we use, and I think you had to make it personal.
16 And I recommended that she go talk to her dad about it.

17 Q What did you want her to talk to her dad about?

18 A Just the whole situation, to basically talk from daughter to father. And I
19 was not present for any of the conversations.

20 Q Understood. So you didn't participate in those conversations --

21 A No.

22 Q -- between Ivanka --

23 A No.

24 Q -- and the President.

25 But, I mean, for you to suggest she go talk to him, there had to have been a reason

1 why. What did you want the outcome of that to be?

2 A Well, the reason is because there's nobody closer to Donald J. Trump than
3 his daughter, Ivanka.

4 Q Understood. Did --

5 A It's daughter to father.

6 Q Did you think that she could help get him to a place where he would make a
7 statement to try to stop this?

8 A Yes.

9 Q And was it your concern that --

10 A No. Dan, you -- there was no way for the President to stop it. This thing
11 was out of control. I don't care if you were God. You couldn't control it. To do
12 something about it is a different story.

13 Q Understood. So you thought that Ivanka could get her father to do
14 something about it.

15 A To take a course of action.

16 Q And what did you think that course of action --

17 A Whatever it was, to put some controls on it.

18 Q And would the course of action have the intended effect of -- I know you say
19 it can't be stopping what was going on but somehow --

20 A Calming the situation down.

21 Q Okay.

22 A You know, do it so -- do it so you don't lose the Capitol, you know. What I
23 mean by losing it, somebody being really stupid. You know, you got Chewbacca running
24 around out there, whatever his name was, you know, getting those guys out the Capitol.
25 You know, do something like that.

1 Q Did she go and talk to her father?

2 A Yes.

3 Q Did she tell you about that conversation?

4 A No. I didn't ask her either.

5 Q All right. How many times did she go talk to him?

6 A I think at least twice.

7 Q And understanding you don't know what was said necessarily, did that cause
8 the President to do anything?

9 A I don't know.

10 Mr. Wood. And did she say anything to you about what she said to her father?

11 The Witness. No. And I didn't ask.

12 Mr. Heaphy. So this is kind of --

13 Ms. Cheney. General Kellogg, what did you say to her?

14 The Witness. Ma'am, I said, when I talked to Ivanka, from my experience with
15 her, I knew she could talk to the President as her dad and say, you know, I think, you
16 know, words to the effect: You know, Ivanka, this is time to go in as a daughter to a dad
17 and go talk to him. That's about all I said.

18 And -- and what I thought was admirable is I know she did it because I saw her
19 walk right by me into the Oval. So I know she did it. And, later on, I know she
20 had -- she had done it again because, as I was wandering to the West Wing, she had come
21 out of the Oval again. So I noticed.

22 That's why I said she did it twice. She may have done it more than twice, but I
23 know she did it twice. And that's the reason -- that's when I think -- for everybody to
24 understand, I thought she was, you know, that day I thought she was -- did everything
25 that you would want somebody like -- something my daughter would do or somebody

1 that would -- had the best interest and everybody to do. I thought she did it.

2 Ms. Cheney. I was really struck by you said she was a hero that day, and I
3 wonder if you could explain that --

4 The Witness. Yeah.

5 Ms. Cheney. -- a little bit more.

6 The Witness. My experience was -- and this goes back to 4 years that, any time
7 you talked to the President, if it was a tough situation, and that you had to have the
8 ability and the courage to go forth and say what you believed to be, even if it went
9 against the grain of happening. You walked in there, and you say this is what's going on.

10 And I think she basically went in there, knowing she was talking to her dad and
11 talked as you would expect a daughter to do, which is talk very hard. And I think,
12 because of that and everything we were watching in the White House, I think she was
13 willing to go to the mat on more than one occasion and basically do a repeat attack. I
14 don't -- maybe that's a bad word to use -- repeat discussion with her father. And I give
15 her, as anybody, I would give people, credit for that.

16 Ms. Cheney. And go to the mat or do a repeat discussion about what? You
17 didn't say to her what you wanted her to go talk to him about?

18 The Witness. No, ma'am. Ma'am, I just said that, you know, I think
19 that -- words to the effect of talk to him about what was going on.

20 Ms. Cheney. And so presumably the first time she went in, it wasn't sufficient or
21 she wouldn't have had to go back at least one more time, I assume. Is that correct?

22 The Witness. Well, yes, ma'am. I think she went back there because Ivanka
23 Trump can be pretty tenacious. And I think she went back in on more than one occasion
24 to try to get a sense of -- sense of what was going on. And I think she just -- that's just,
25 my experience, that's her nature.

1 And, by the way, ma'am, I'm not -- I can only say she went in twice. She may
2 have gone in more, but I wasn't around all the time to watch the goings and comings.
3 That's something that maybe Molly would have seen or Nick Luna would have seen, but I
4 wouldn't have.

5 Ms. Cheney. Okay. Thank you.

6 BY MR. HEAPHY:

7 Q So sounds like a trump card, like -- pardon the pun -- you don't play this card
8 unless it's really necessary or really important. Did you encourage Ivanka to go speak to
9 him because of some resistance that you had either observed yourself or perceived from
10 others about his inaction or what he should be doing on January 6th?

11 A No. I think it was one of those that Ivanka could bring raw truth to an
12 issue. And I thought if there was any advisor in the White House in 4 years that could
13 talk to her dad as a dad, it was Ivanka. It wasn't Jared. It wasn't me. It wasn't
14 anybody. It was a daughter to a dad. I saw it in the campaign --

15 Q Yeah.

16 A -- in 2016. So I knew she was the hold card.

17 Q Yeah, totally appreciate that and appreciate the fact that the daughter can
18 get through in some ways that others can't. But why was it necessary? Why was it
19 that Mark Meadows and Kayleigh McEnany and Keith Kellogg and everybody else who
20 was there, talking to him over the course of the day, weren't enough whereas you had to
21 play the hold card?

22 A We're not blood.

23 Q But what was he not doing, General Kellogg, that you wanted Ivanka to
24 convince him to do?

25 A Nobody -- when you say "not doing," look, we were in uncharted territory.

1 I don't know. I mean, none of us knew really. My only point was, based on what my
2 experience, was that this was a situation that was truly out of control and you couldn't do
3 anything about it, because all of my experience, once you breach security, once they got
4 inside the Capitol, you basically had to let it burn itself out to the most part because,
5 because the control, the police, the law enforcement had been overwhelmed. So
6 there's nothing you could do. So now you're going to mitigation. What do you do
7 next?

8 And what I'm saying by blood is nobody had that blood relationship. We were
9 advisors. Okay. We weren't family, and there's a huge difference.

10 Q Yeah, again, I completely understand. You mentioned that you would send
11 Ivanka in when you needed something against the grain or in a tough situation. Your
12 words 2 minutes ago.

13 A Uh-huh.

14 Q What were you looking for her to do in this situation that was against the
15 grain?

16 A Well, no, I said if -- she -- to go against the grain meaning if -- to develop the
17 situation, advise her father on maybe this is what you need to do going forward that
18 would resonate because she was the daughter.

19 For example, if I would have said, you know, "You need to do A," maybe that was
20 the recommendation as an advisor, nothing happened. Meadows would say, "Do A,"
21 nothing would happen as the chief of staff. She walks in the door and she says, "Dad,
22 you need to do A," it's a different tone. And I saw that in 5 years.

23 Q And is that what you were looking for here?

24 A Yes.

25 Q He didn't say yes to Mark Meadows or Kayleigh McEnany or Keith Kellogg,

1 but he might say yes to his daughter.

2 A Exactly right.

3 Q And what's the yes? What were you looking to get him to do?

4 A Well, to basically the next steps is, how do you control the situation? Calm
5 it down.

6 Q Right.

7 A Do you do it by, you know, a phone call? Do you do it by a tweet? Do you
8 do it by a TV appearance? What do you do to do it? But to do it.

9 Q Right. And it sounds to me --

10 A And, as I say, he did it.

11 Q I understand. I don't mean -- I don't mean to interrupt you.

12 A No.

13 Q But it sounds, General Kellogg, to me like you only need the hold card or the
14 trump card if he's resistant to doing the thing that you want him to do.

15 A But it's understandable because we were in uncharted territory. So the
16 question is: What do you do? And that was, you know, she was the -- when I say the
17 hold card, she was the one to do, move the next step.

18 Q Okay.

19 BY MR. WOOD:

20 Q What was the President resistant to doing?

21 A I didn't say he was resistant.

22 Q I thought in response to my colleague --

23 A No, no, we were saying there was no -- we were in uncharted territory.
24 Nobody knew what was going on. I'm not saying there was resistance. It was, what
25 step do you take next to mitigate the situation?

1 Q And do you know whether Ivanka Trump made a recommendation as to
2 what the next step would be?

3 A I don't. I never talked to her about it.

4 Q But based on your description --

5 A I talked to her about it on the 7th but not on the 6th.

6 Mr. George. Go ahead. Do you want to say?

7 BY MR. WOOD:

8 Q Well, okay. What did she say to you on the 7th then?

9 A Yeah, I walked up to her on the 7th. And I went into her office on the third
10 deck, and I told her I appreciated what she did that day and by talking to her dad. And I
11 said: You know, I just thought what you did was to me pretty heroic.

12 And I said -- and she said: Well, my dad's stubborn.

13 And I said: Your whole family's stubborn.

14 Q You said to Ivanka Trump: I appreciate what you did.

15 What is it that she did?

16 A She went and talked to her dad.

17 Q And said what?

18 A I don't know.

19 Q So you -- you appreciated the mere fact that they spoke to each other
20 without any knowledge of what the content was that they discussed?

21 A Well, later, later, subsequently. Remember there was something that was
22 put out on a tweet or we had a -- I think it was a visual put out, the fact that she did. So
23 something happened.

24 Q So do you draw some inference --

25 A It's an inference, yeah.

1 Q -- that her conversation with the President may have contributed to the
2 President issuing a tweet?

3 A John, it is an inference. The answer is yes.

4 Q Okay. Did anybody to your knowledge ask the President of the United
5 States to make any kind of statement, whether by tweet or otherwise, asking the rioters
6 to leave the Capitol?

7 A I think -- I think they did, John. I don't know. I think -- I would have -- that
8 would be something in Mark Meadows's lane or Kayleigh's lane and to them. It was not
9 in mine, and it was not made to me. But I would assume they did that because
10 something was done later on. There was a tweet, I believe a tweet, put out later. And
11 there was a video taken later that I think he did -- I think he did in the Rose Garden, I
12 think.

13 Ms. Cheney. General Kellogg, you said just a few minutes ago that the President
14 was not resistant. But then you said that, when you thanked Ivanka the next day, she
15 said to you: My father's stubborn.

16 So could you explain to us what the difference is?

17 The Witness. Well, I think the big difference is it takes multiple times to convince
18 him to do something. And I think that's what I was getting at is when -- that was a
19 comment I -- it was -- the comment was I think when she made the comment stubborn is
20 to get him to do something. And that was my follow-on comment about the whole
21 family.

22 Ms. Cheney. So that's why she had to go in multiple times to get him to do
23 something.

24 The Witness. I would assume so, but she went in. I -- and I know she went in a
25 couple of times. I know that.

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

MARK MEADOWS,)

Plaintiff,)

v.)

NANCY PELOSI, et al.)

Case No. 1:21-cv-3271-CJN

Exhibit J

BEGBATES	ENDBATES	All Custodians	MasterDate	Chat Name	Chat Message Type	Chat Direction	From	To	Extracted Text
MM014456	MM014456	Mark Meadows	12/31/2020 8:27	'+19292608777	Message	Incoming	'+19292608777	'+18282002544	We can't lose the entire WH counsels office. I do NOT see January 6 happening the way he is being told. After the 6 th. He should announce will lead the nationwide effort to reform voting integrity. Go to Fl and watch Joe mess up daily. Stay engaged. When he speaks people will listen.

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

MARK MEADOWS,)

Plaintiff,)

v.)

NANCY PELOSI, et al.)

Case No. 1:21-cv-3271-CJN

Exhibit K

BEGBATES	ENDBATES	All Custodians	MasterDate	Chat Name	Chat Message Type	Chat Direction	From	To	Extracted Text
MM014858	MM014858	Mark Meadows	1/5/2021 22:29	'+19292608777	Message	Incoming	'+19292608777	'+18282002544	Im very worried about the next 48 hours
MM014859	MM014859	Mark Meadows	1/5/2021 22:29	'+19292608777	Message	Incoming	'+19292608777	'+18282002544	Pence pressure. WH counsel will leave.

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

MARK MEADOWS,)

Plaintiff,)

v.)

NANCY PELOSI, et al.)

Case No. 1:21-cv-3271-CJN

Exhibit L

BEGBATES	ENDBATES	All Custodians	MasterDate	Chat Name	Chat Message Type	Chat Direction	From	To	Extracted Text
MM014503	MM014503	Mark Meadows	1/1/2021 16:17	'+15127202661	Message	Incoming	'+15127202661	'+18282002544	If POTUS allows this to occur... we're driving a stake in the heart of the federal republic...

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

MARK MEADOWS,)

Plaintiff,)

v.)

NANCY PELOSI, et al.)

Case No. 1:21-cv-3271-CJN

Exhibit M

BGBATES	ENDBATES	All Custodians	MasterDate	Chat Name	Chat Message Type	Chat Direction	From	To	Extracted Text
									On January 6, 2021, Vice President Mike Pence, as President of the Senate, should call out all electoral votes that he believes are unconstitutional as no electoral votes at all -- in accordance with guidance from founding father Alexander Hamilton and judicial precedence. "No legislative act," wrote Alexander Hamilton in Federalist No. 78, "contrary to the Constitution, can be valid." The court in Hubbard v. Lowe reinforced this truth: "That an unconstitutional statute is not a law at all is a proposition no longer open to discussion." 226 F. 135, 137 (SDNY 1915), appeal dismissed, 242 U.S. 654 (1916). Following this rationale, an unconstitutionally appointed elector, like an unconstitutionally enacted statute, is no elector at all.
MM014864	MM014864	Mark Meadows	1/5/2021 23:27	'+19375097356	Message	Incoming	'+19375097356	'+18282002544	
MM014869	MM014869	Mark Meadows	1/6/2021 7:30	'+19375097356	Message	Outgoing	nccongressman@gmail.com	'+19375097356	I have pushed for this. Not sure it is going to happen

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

MARK MEADOWS,

Plaintiff,

v.

NANCY PELOSI, et al.

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Case No. 1:21-cv-3271-CJN

Exhibit N

BGBATES	ENDBATES	All Custodians	MasterDate	Chat Name	Chat Message Type	Chat Direction	From	To	Extracted Text
MM014567	MM014567	Mark Meadows	1/2/2021 15:44	+14049008792	Message	Incoming	+14049008792	+18282002544	Need to end this call
MM014568	MM014568	Mark Meadows	1/2/2021 15:44	+14049008792	Message	Incoming	+14049008792	+18282002544	I don't think this will be productive much longer
MM014569	MM014569	Mark Meadows	1/2/2021 15:44	+14049008792	Message	Outgoing	nccongressman@gmail.com	+14049008792	Ok
MM014570	MM014570	Mark Meadows	1/2/2021 15:44	+14049008792	Message	Incoming	+14049008792	+18282002544	Let's save the relationship
MM014571	MM014571	Mark Meadows	1/2/2021 15:50	+14049008792	Message	Incoming	+14049008792	+18282002544	Thank you. Wow.

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

MARK MEADOWS,

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v.

NANCY PELOSI, et al.

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Case No. 1:21-cv-3271-CJN

Exhibit O

BGBATES	ENDBATES	All Custodians	MasterDate	Chat Name	Chat Message Type	Chat Direction	From	To	Extracted Text
MM014099	MM014099	Mark Meadows	12/26/2020 19:24	+17176485679	Message	Incoming	+17176485679	+18282002544	Mark, just checking in as time continues to count down. 11 days to 1/6 and 25 days to inauguration. We gotta get going!
MM014100	MM014100	Mark Meadows	12/26/2020 19:55	+17176485679	Message	Incoming	+17176485679	+18282002544	Mark, you should call Jeff. I just got off the phone with him and he explained to me why the principal deputy won't work especially with the FBI. They will view it as as not having the authority to enforce what needs to be done.
MM014101	MM014101	Mark Meadows	12/26/2020 20:04	+17176485679	Message	Outgoing	nccongressman@gmail.com	+17176485679	I got it. I think I understand. Let me work on the deputy position
MM014102	MM014102	Mark Meadows	12/26/2020 20:05	+17176485679	Message	Incoming	+17176485679	+18282002544	Roger. Just sent you something on Signal
MM014103	MM014103	Mark Meadows	12/26/2020 21:00	+17176485679	Message	Incoming	+17176485679	+18282002544	Just sent you an updated file
MM014178	MM014178	Mark Meadows	12/28/2020 11:23	+17176485679	Message	Incoming	+17176485679	+18282002544	Did you call Jeff Clark?

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

MARK MEADOWS,

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Case No. 1:21-cv-3271-CJN

Exhibit P

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4 SELECT COMMITTEE TO INVESTIGATE THE
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

8

9

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11 INTERVIEW OF: CASSIDY HUTCHINSON

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Wednesday, February 23, 2022

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17

Washington, D.C.

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The interview in the above matter was held via Webex, commencing at 10:10 a.m.

21

Present: Representatives Luria, Schiff, Murphy, and Cheney.

1 a lot of the time because he would be in meetings. So he had, in casual conversation,
2 said: Oh, we're going to have this big rally. People are talking about it on social media.
3 They're going to go up to the Capitol. Are you seeing any of this on Twitter?

4 And, as I previously stated, I don't frequently use social media, especially in my
5 light of my job there, in my role with Mr. Meadows. So I didn't have any insight or
6 anything to add to that conversation. But, you know, I know that he had heard
7 passer-by conversation either through word of mouth from people that would reach out
8 to him or information he had seen online, but that's the extent of the outreach that I had
9 with him about that matter.

10 BY MR. GEORGE:

11 Q When Mr. Meadows talked about some of the stuff that he had seen online
12 or in talking to other people, did he ever express any concerns about what might happen
13 on January the 6th?

14 A Not to my recollection. Um, not to my recollection right now, but I -- in
15 terms of marching to the Capitol, not to my recollection.

16 Q Or just violence generally on January the 6th, even if unrelated to marching
17 to the Capitol?

18 A I know that there were concerns brought forward to Mr. Meadows. I don't
19 know -- I don't want to speculate whether or not he perceived them as genuine concerns,
20 but I know that people had brought information forward to him that had indicated that
21 there could be violence on the 6th. But, again, I'm not sure if he -- what he did with that
22 information internally.

23 Q Who brought that information to him about the potential for violence on the
24 6th?

25 A I remember Mr. Ornato had talked to him about intelligence reports. I

1 mean, I'm trying to be a little cognizant of -- like the situation here because of, like,
2 intelligence reports that were available at the time.

3 Mr. Passantino. Yeah, I don't think he wants you to talk about anything you
4 believe to be classified. When you're using intelligence, like, there's two different kinds.
5 Right. Could be sort of ground chatter, and then there could be something you know to
6 be classified. They do not want you to be --

7 Ms. Hutchinson. No, I don't know if this is classified or not. I just remember
8 Mr. Ornato coming in and saying that we had intel reports saying that there could
9 potentially be violence on the 6th. And Mr. Meadows said: All right. Let's talk about
10 it.

11 And I believe they went to the office for maybe 5 minutes. It was very quick.
12 Mr. Ornato had stopped him as he was walking out one night to talk about this and --

13 BY MR. GEORGE:

14 Q Can I stop you there, Ms. Hutchinson? When was that, if you recall,
15 date-wise?

16 A Had to be early January because Mr. Ornato was not -- I don't believe he
17 came back until January 2nd or 3rd from Christmas.

18 Q Do you think it was before or after the meeting on January 2nd with Rudy
19 Giuliani?

20 A Likely after because I believe the 2nd was a Saturday. Again, I don't have
21 the calendar in front of me. And I believe that Mr. Ornato's first day back was that
22 Monday.

23 Mr. George. Very helpful.

24 And I see, Ms. Cheney, you have turned on your camera.

25 Ms. Cheney. Yes. Thanks, Dan.

1 Senator Graham. I had gone in a couple of times, just like for documents that Mark had
2 asked me to print out, but I was not in there for any substantive conversation about
3 anything pertaining to the Capitol.

4 Now, Mr. Graham was invited to stay for that phone call, but he had just flown in,
5 and he wanted to go home.

6 Q Do you remember what any of the other Members who were on that call
7 said when this issue of whether to encourage people to march to the Capitol came up?

8 A That was, I think, ordinary banter, people offering their ideas. Nothing that
9 was -- would raise any flags or relating to [inaudible]. I think that the Members that
10 were present on that call were more inclined to go with White House guidance and shoot
11 around their own ideas.

12 I remember Mr. Perry had said that he had been starting to put tweets that night,
13 Congressman Perry, that he was going to start putting out tweets that night, and he was a
14 primary participant in the call. I remember him speaking up a lot.

15 I wasn't in the room for the entire duration of the call, but when I had ducked in, it
16 was either somebody on our end speaking or it was Mr. Perry. I know other Members
17 had chimed in at points, but I wasn't there when they had introduced themselves.

18 Q Did Mr. Perry support the idea of sending people to the Capitol on
19 January the 6th?

20 A He did.

21 Q Did anybody on the call that you remember disagree with the idea of
22 encouraging people to march to the Capitol on January 6th?

23 A Not that I recall.

24 Q Do you remember anybody else on that call who specifically supported the
25 idea of encouraging people to march to the Capitol on January 6th?

1 A I don't think there's a participant on the call that had necessarily discouraged
2 the idea. I wasn't present for the entire duration of the call, so I'm not sure if there was
3 anybody that had expressed any concern, but I also don't know if everybody was
4 necessarily encouraging it.

5 Q Fair enough.

6 Now, one of the things, just to -- this is going to be kind of a long question. But
7 one of the things that had been discussed around that time is having the Joint Session of
8 Congress either delayed so that States could take up the issue of the election or just
9 prevent it from happening on January the 6th at all.

10 Was that delay or idea of preventing the Joint Session from going forward on
11 January 6th a topic that came up in this meeting with Rudy Giuliani and Mr. Meadows?

12 A Not that I was present for.

13 Q Okay. Do you remember it coming up in the call with the House Freedom
14 Caucus members, to the extent that that was any different?

15 A Not specifically on the call, no. Again, I was in and out of the room. No.

16 Mr. George. Okay. I'll stop there and see if anybody else has any questions,
17 any members, including the room.

18 BY MS. APECECHEA:

19 Q Ms. Hutchinson, just a quick question.

20 I think you mentioned something that it was your perception that the Members
21 on the call with the House Freedom Caucus, they were inclined to go along with the
22 White House guidance. And I was just wondering, what did you understand the White
23 House guidance to be on this issue?

24 A You know, during the time of this call, the call was -- we had -- the call was
25 underway because we were talking about events on the 6th. So I believe it was more of

1 an update call just about what we were anticipating. Any strategies that had been
2 discussed, I wasn't involved for any, you know, strategic discussions. You know, I had
3 overheard discussions about what he had anticipated just by nature of, like, the logistical
4 aspects of what I was doing for them at the time. But there wasn't anything that stood
5 out to me as anything that would be a specific answer to your question that had
6 happened on that call that night.

7 Q So you mentioned, like, Representative Perry saying that he would put out
8 some tweets. Do you recall if that was something he just offered on his own or
9 someone had said, "Hey, would anyone, you know, want to put out some tweets about
10 marching"?

11 A It was more -- I understood it as more of him offering his support and
12 helping in any way that he could.

13 Q But this was after it had already been raised about putting it out there about
14 encouraging people to march to the Capitol?

15 A As a topic of conversation on the call, yes.

16 Q Do you recall anyone -- any other Members saying that they wouldn't
17 encourage people to march to the Capitol on the 6th?

18 A No. I mean, I don't recall every single participant on the call that night, but
19 I do recall it was a Freedom Caucus call. But, again, I was present primarily when it was
20 Mr. Meadows speaking, Mr. Giuliani speaking, and I remember going in when Mr. Perry
21 had spoken. You know, Mr. Jordan had chimed in a few times I remember, but it wasn't
22 anything substantive in terms of putting tweets out. It was more of he was one of the
23 lead participants on the call. So he was kind of facilitating the call more from the aspect
24 of I have Mr. Babin in line to have -- he has a comment to say next. But that was -- I
25 don't recall any other Members specifically chiming in on that idea other than Mr. Perry.

1 strategic action that the Vice President could take.

2 Q Okay. And so when then -- just to clarify, when was the first time you
3 remember, to use your phrase, the issue of strategic action the Vice President could take
4 on January 6th coming up?

5 A Again, potentially the end of November-early December.

6 Q Do you remember the context in which it first came up that you recall?
7 Was it a meeting, a phone call, chat during just office drop-ins?

8 A I don't recall specifically the very first time that I had heard about it. I
9 remember general timeframe that I had -- I recall this happening was there were a couple
10 meetings that Mr. Meadows had where meeting participants had come in prepared with
11 information about ways that they think the Vice President could approach certifying the
12 electoral college votes.

13 But I don't -- the very first time, I can't -- I don't recall the very first time I heard
14 about it. But in the earlier stages of it, there were -- it was mostly just meeting readout
15 information.

16 Q Okay. And you just mentioned a couple meetings Mr. Meadows had with
17 various people. Who were the various people who were raising this idea of the Vice
18 President doing anything other than just counting electoral votes on January the 6th?

19 A Campaign officials and a few Members of Congress. I say campaign
20 officials. I don't -- I think the campaign had begun off-boarding people at that point, so I
21 don't -- I don't know if they were private citizens at that point or -- not that campaign
22 officials weren't, but I don't know if they were off-boarded but still involved in the efforts.
23 People that were once involved with the campaign and a handful of Members of
24 Congress.

25 Q Who were those campaign officials or people who had been involved in the

1 campaign?

2 A Mr. Giuliani, Ms. Powell, Ms. Ellis. I'm trying to think specifically about the
3 early stages of this -- stages of this. Those are the ones that I can immediately recall.

4 Members of Congress: Mr. Perry, Mr. Jordan. Mr. Scott Perry, Mr. Jim Jordan.
5 Those are the two that jump to my mind right now about being -- oh, Ms. Marjorie Taylor
6 Greene and Lauren Boebert are the four Members that immediately jump out to me.
7 Again, I'm trying to hone in specifically on the beginning stages of this, these
8 conversations.

9 Q Perfect.

10 Mr. Passantino. And he'll appreciate like if you have a specific recollection of
11 timeline or you don't. He wants to know what your --

12 Ms. Hutchinson. Yeah. I recall those individuals being involved in the earlier
13 stages at this time. I'm sure there were other individuals involved, but those are ones
14 that I remember specifically being involved that Mr. Meadows had outreach to.

15 BY MR. GEORGE:

16 Q Okay. And this is in the late November, maybe early December timeframe.
17 Is that right?

18 A Sometime after Thanksgiving. Definitely before Christmas. Probably the
19 first week of December if not the last week of November.

20 Q And do you remember what their ideas were with respect to the Vice
21 President's authority on January 6th?

22 A I don't. I don't have access to any of my official devices or correspondence.
23 I'm sure I had things in my work email. But specific actions, no. I just remember
24 general -- general correspondence of Vice President may be able to do this. We should
25 look into this. We should explore these ideas. But nothing more specific than that

1 little bit quicker.

2 Q And then the next message is: "Mark is super stressed and Rudy is
3 wandering around with more evidence."

4 What was Mr. Meadows stressed about, if you know?

5 A I don't know specifically. I don't recall specifically what he was stressed
6 about at that time that I sent that message. Sorry.

7 Mr. Meadows had spent probably the first couple minutes of the rally in the tent,
8 and then he -- if you're looking at the build-out of the Presidential motorcade, the chief of
9 staff and typically one other national security representative go in a car called the control
10 car, which is a -- it's technically a SCIF. You can make secure calls from there. But
11 sometimes the chief would just go into the control car to make personal phone calls.
12 And that's where he spent the majority of the rally.

13 I know that he was on several calls during the rally. And I went over to meet
14 with him at one point, and he had just waved me away, which is out of the ordinary.
15 And then he popped out and had mentioned a few things to me.

16 Q What did he mention to you?

17 A But I don't know what he specifically was stressed about. He wanted to
18 speak with Mr. Giuliani. He couldn't get a hold of Mr. Jordan. Little administrative
19 things that he needed help with to streamline the early afternoon so he could continue
20 doing his job with the President.

21 Q Do you know what he wanted to speak with Representative Jordan about?

22 A I don't know. I know that he had spoken with Mr. Jordan about the
23 contents of what Mr. Jordan's floor speech were going to be and -- was going to be and
24 the timing of Mr. Jordan's floor speech, but I don't know any more specifics than that. I
25 don't know if that's what he was trying to get a hold of -- get a hold of him for in that

1 moment.

2 Q Do you know what the significance -- I'm sorry, go ahead.

3 A You're fine.

4 I was not around -- I was not around Mr. Meadows. I probably was around him
5 for maybe 40 to 50 percent of the rally but not the entirety of it.

6 Q Do you remember what the significance of this timing of Representative
7 Jordan's floor speech was to Mr. Meadows?

8 A I think that -- I don't think. He wanted Mr. Jordan to give the floor speech
9 after the rally had ended. And I'm under the impression that the intentions behind that
10 were so when we arrived back at the White House, that staff and the President could
11 watch Mr. Jordan's floor speech live.

12 Q You also say in that message, "Rudy is wandering around with more
13 evidence." What does that mean?

14 A Mr. Giuliani had information that he believed was credible enough to pause
15 the electoral count that morning -- or that afternoon.

16 Q Do you know what happened with that evidence?

17 A I don't.

18 Q Do you know what Mr. Meadows' view on that was, whether there was
19 credible evidence to pause the electoral count during the joint session on January 6th?

20 A Mr. Meadows was always willing to hear ideas, as he never wanted
21 information to go unheard and for it not to be perceived as legitimate information in case
22 it was. But I don't know his specific -- I don't know his specific mindset or opinions on
23 which evidence was seen as more credible to him, if any at all. That's something that
24 you'd have to ask Mr. Meadows.

25 Q Okay. But he never shared his views on whether there was sufficient

1 have been the time roughly that I would have arrived back in.

2 Q Do you know -- do you know where the President went when he returned?

3 A I was a couple cars behind him, so I'm not sure if he made any other
4 movements, if he stopped anywhere between walking from West Executive Avenue up to
5 the Oval Office or the Oval dining room. So when I had got into the West Wing, he was
6 in the Oval dining room.

7 Q How do you know that?

8 A Because I heard it announced on my radio which announces the President's
9 logistical movements.

10 Q Okay. And is that a Secret Service channel on the radio that you heard
11 this?

12 A Yes.

13 Q Did you ever see the President in the dining room that afternoon?

14 A I wasn't present with the President in the dining room that afternoon. It's
15 very possible just by proximity of the layout of the West Wing that I physically saw him,
16 but I saw him in the dining room a lot. I know that might sound like a kind of broad
17 statement to say to you all. I just can't recall if I had eyes on him in the dining room that
18 specific day.

19 Mr. Meadows was in there with him in and out throughout the day, and there was
20 a point where I had walked maybe 25 feet from the main chief of staff office. I had
21 walked down there at one point to relay a message to Mr. Meadows from a Member that
22 had reached out to me on my work phone, and I had asked the President's valet to get
23 Mr. Meadows' attention for me, and he opened the door. So maybe I saw Mr. Trump at
24 that point. But other than that, I wasn't in there with him at any point.

25 Q And other than that, were you -- did you stay in your office that afternoon

1 butler's pantry, and that's where the President's military valet would be, and then the
2 Oval dining room.

3 And so I asked the valet to get the chief of staff for me. The valet opened the
4 door. Chief of staff stepped out. And I had relayed the message from Mr. Jor- -- Jim
5 Jordan, Congressman Jim Jordan at the time. He had called my work cell phone, and
6 brief conversation, Hey, where's Mark? I told him he's down with the President. He
7 said, Can you please have him call me? And I went and asked Mr. Meadows to give Mr.
8 Jordan a call. And he said, All right, I'll do it. And then I went back to my desk.

9 Ms. Cheney. Okay. And we'll walk through exactly the timeframe on that. I
10 just wanted to make sure we got who the Member was and what the message was.

11 But do you recall approximately either what time that would have been or, in
12 terms of what was happening at the Capitol, just a sense of when Mr. Jordan called you?

13 Ms. Hutchinson. I don't. I'm sorry. I'm trying my best to remember. I don't
14 remember right now.

15 Ms. Cheney. Okay. That's --

16 Ms. Hutchinson. It was after I had the conversation with Mr. Meadows when I
17 had seen the security perimeter being breached at the Capitol. You know, I wouldn't -- I
18 would say maybe an hour after that.

19 Ms. Cheney. Okay. And so when you went in and you told him that the
20 security perimeter was breached and, you know, he said thank you, and he said he was
21 going to sort of see what he could see about it, what do you recall him doing after that?

22 Ms. Hutchinson. I just left his office and shut the door behind me.

23 Ms. Cheney. Okay. And do you recall how much longer he stayed in his office
24 after that?

25 Ms. Hutchinson. Not specifically, no. A little while later, there was some

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

MARK MEADOWS,)

Plaintiff,)

v.)

NANCY PELOSI, et al.)

Case No. 1:21-cv-3271-CJN

Exhibit Q

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4 SELECT COMMITTEE TO INVESTIGATE THE
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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12 INTERVIEW OF: RICHARD PETER DONOGHUE

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Friday, October 1, 2021

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Washington, D.C.

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The interview in the above matter was held via Webex, commencing at 10:02 a.m.

21

Present: Representatives Schiff, Lofgren, Murphy, Raskin, and Cheney.

1 But we weren't reporting back to the White House simply because the President
2 mentioned some allegations.

3 Q I see. It wouldn't be consistent with protocol for you to go back to the
4 President every time something that comes up in a discussion is investigated or resolved?

5 A He didn't instruct us to do that, and we weren't going to do it. So.

6 Q Yeah. All right. I want to turn your attention, if you can now to
7 exhibit 10, which we get back into Mr. Clark. The next day, December 28th, you and Mr.
8 Rosen get an email from Mr. Clark, and he is asking for two urgent action items. Tell us
9 about this email, the two actions that he requested, and what your response was.

10 A Right. So DAG Rosen and I spoke, I think, probably several times on the
11 27th and certainly the 28th because that was a Monday. DAG Rosen and Jeff Clark had
12 a long personal and professional relationship. They had known each other for decades.
13 They had worked at the same law firm together. He knew Jeff Clark much better than I
14 did. And, you know, we discussed why Jeff Clark's name was coming up, why it was
15 coming from the President, why it was coming from this Congressman. And Jeff Rosen
16 said: Well, look, I am going to talk to Jeff Clark to find out what's going on here. We
17 got to get to the bottom of this.

18 So I think he had conversations with Jeff Clark earlier on the 28th. They
19 preceded this email, which came fairly late in the day. I did not talk to Jeff Clark before
20 this.

21 So, at 4:40, I received this email from Jeff Clark. I read it. I read the
22 attachment. I had to read it more than once to make sure I really understood what he
23 was proposing. And then I drafted a response. I don't know where Jeff Rosen was at
24 this point, but I went to his office, and he wasn't there. So I didn't get to discuss my
25 response with him before I sent it. But I sent it out. And then I saw him shortly

1 afterward, and he was very upset by Jeff Clark's request. And he said that he had
2 instructed one of his administrative support personnel to get Jeff Clark in his conference
3 room. He was -- he was a little angry. And he said: I want him down here. We
4 need to talk to this guy and find out what's going on.

5 So I think there's some emails that show up.

6 Q Yeah. And I don't want to jump ahead too much, Mr. Donoghue, because I
7 want to get to that conversation. But let's go back to Mr. Clark's email. The first thing
8 he asks of you is: I would like to have your authorization -- "you" meaning you and Mr.
9 Rosen -- to get a classified briefing tomorrow from ODNI led by DNI Ratcliffe on foreign
10 election interference issues. And he mentions activating the IEEPA and 2018 EO powers
11 about the Dominion machine access to the internet through a smart thermostat with a
12 net connection trail leading back to China. He is essentially asking if you can get a
13 briefing about this allegation of Chinese control of Dominion machines through a
14 thermostat. Did that strike you as odd, and what was your reaction to that specific
15 request?

16 A Yes, it struck me as odd. I won't go into details, but we received briefing
17 about what the IC, the intelligence community, knew about the election in advance.
18 This was inconsistent with what we had been told. And I had not heard anything about
19 smart thermostats and internet connections leading back to China and things like that.
20 So the whole thing struck me as very odd.

21 Q Yeah, and that Mr. Clark, the head -- acting head of the Civil Division is asking
22 for a classified briefing with the Director of National Intelligence about this allegation.
23 That also procedurally was odd?

24 A Yes.

25 Q Okay. He also then -- the second ask is this draft letter, which I believe is

1 attached to the email that he sends you and Mr. Rosen. And that letter is a draft letter
2 that you and Mr. Rosen and he, Mr. Clark, would sign to the Governor, the Speaker of the
3 House, and the president pro tempore of the Georgia legislature, essentially asking them
4 to stand down and not certify the results of their election. How did that request strike
5 you, and what did you do about it?

6 A It struck me as very strange and somewhat alarming. And, as I said, I had
7 to read it more than once to make sure I understood what he was proposing here. It
8 was completely inconsistent with the Department's role, generally. And it was
9 inconsistent with what our investigations, to date, had revealed. And so I think I made
10 my views known in the email response I sent to him.

11 Q Yeah, which we'll get to. To be clear, he asks that -- a version of this letter
12 be sent to each relevant State. So was his request to send this letter, drafted for
13 Georgia, not just to Georgia officials but to officials in other States where there had been
14 allegations of election fraud?

15 A Yes. That was my understanding of his proposal.

16 Q All right. He writes that he put it together quickly -- "it" being the
17 letter -- but other messages suggest that it may have been drafted by Ken Klukowski.
18 Do you know Ken Klukowski and what his role may have been within the Department's
19 Civil Division at that time?

20 A No. I don't.

21 Q Okay. Did you know whether or not Mr. Clark was talking to anyone else in
22 the Department about this letter or other election issues?

23 A No. I had no reason to think that.

24 Q All right. So you respond, Mr. Donoghue. We get to your response, which
25 is tab 11. You drafted a pretty comprehensive, specific response reflecting your

1 frustration on the 28th, just about a little over an hour later, at 5:50. I won't ask you to
2 read it to us, but just summarize for us your overall reaction and what's reflected in the
3 email.

4 A I tried to make it clear to him that this is not the Department's role. Again,
5 we don't do quality control for State elections. The States run the elections. We
6 investigate crimes, and we look at civil rights matters. So I tried to make it clear to him
7 that this is simply not our role, to recommend to the States what they do and, secondly,
8 that we have conducted investigations and that the factual claim he was making here was
9 simply not accurate. And so I reminded him that AG Barr had made public statements
10 on this point, less than a week prior, or, I guess, exactly a week prior was the last time he
11 had made some public statements, and that this was just completely unacceptable and
12 not anything that I would ever sign. And I know Jeff Clark -- or Jeff Rosen, rather, had
13 the same response.

14 Q You say in the first paragraph: There's no chance that I would sign this
15 letter or anything remotely like this. You sort of lead with the conclusion. You then, in
16 the first paragraph, challenge his factual assumptions. You said: The investigations
17 that I am aware of relate to suspicions of misconduct that are of such a small scale that it
18 would simply not impact the outcome of the election. AG Barr made that clear to the
19 public only last week, and I am not aware of intervening developments that would change
20 that conclusion.

21 So, setting aside whether it would be appropriate for the Department to tell a
22 State what to do, you're challenging -- is it fair to say you're challenging the factual basis
23 included in his letter to the State official?

24 A That's right. And he himself, Jeff Clark, would have no way of knowing
25 what investigations we had conducted or not because he was not involved in election

1 matters.

2 Q Right. You then, in the second paragraph, Mr. Donoghue, you say: I
3 cannot imagine a scenario in which the Department would recommend that a State
4 would assemble its legislature to determine whether already certified election results
5 should somehow be overridden by legislative action. This would be a grave step for the
6 Department to take and could have tremendous constitutional, political, and social
7 ramifications for the country.

8 Is that your sort of procedural response here that this is just not the Department's
9 role to be quality control for State elections and tell a State legislature what to do?

10 A Yes. That's the point I was making. Yes.

11 Q All right. So, when you and Mr. Rosen get this letter, you compose the
12 response. You indicated previously that Mr. Rosen essentially summons Mr. Clark up to
13 the 5th floor for a face-to-face meeting. Does that meeting then occur?

14 A Yes. He is on the 4th floor. But, yes, in the DAG conference on the 4th
15 floor.

16 Q Okay. So you are personally present, Mr. Donoghue, for that meeting
17 between Clark and Rosen?

18 A Yes. It was the three of us.

19 Q Tell us about the conversation there with Mr. Clark.

20 A Mr. Clark explained that he had been looking at some of these allegations on
21 his own, that he had information, that he had concerns about the reliability of the
22 outcome of the election. He mentioned this smart thermostat thing. It was clear that
23 he had been reading some affidavits that were attached to some of the civil filings in
24 some of the cases that were pending or already dismissed around the country. He had
25 various theories that seemed to be derived from the internet about why the outcome of

1 so when you joined at the President's invitation?

2 A That's right.

3 Q All right. And who was inside the meeting when you got there?

4 A When I entered the Oval Office, the President was behind the desk, and it
5 was Pat Cipollone, Pat Philbin, a White House lawyer named Eric Herschmann, Jeff Clark,
6 Jeff Rosen, Steve Engel, and then me.

7 Q Are you sure Mr. Herschmann was a White House lawyer?

8 A He was a lawyer who worked at the White House. I'm not -- initially I
9 thought he worked in the White House Counsel's Office, but I think later someone told
10 me that wasn't the case. I don't remember. His role was never clear to me. I know
11 he was a lawyer from New York. I know he had been a prosecutor at some point. But I
12 don't know what his title exactly was. I'd seen him in some meetings previously, but I
13 didn't know exactly what his role was.

14 Q Okay.

15 All right. And, again, no notes of this meeting. Is that right? You don't take
16 notes -- you were inside the Oval Office and, you indicated before, didn't take notes when
17 you were in discussions inside that office.

18 A No.

19 Q All right. Well, tell us what you remember, then, about the conversation.

20 What was the topic when you arrived, and how did it evolve from there?

21 A The meeting took about another 2-1/2 hours from the time I entered. It
22 was entirely focused on whether there should be a DOJ leadership change. So the
23 election allegations played into this, but they were more background than anything else.

24 And the President was basically trying to make a decision and letting everyone
25 speak their minds. And it was a very blunt, intense conversation that took several

1 hours. And Jeff Clark certainly was advocating for change in leadership that would put
2 him at the top of the Department, and everyone else in the room was advocating against
3 that and talking about what a disaster this would be.

4 Q What were Clark's purported bases for why it was in the President's interest
5 for him to step in? What would he do, how would things change, according to Mr. Clark
6 in the meeting?

7 A He repeatedly said to the President that, if he was put in the seat, he would
8 conduct real investigations that would, in his view, uncover widespread fraud; he would
9 send out the letter that he had drafted; and that this was a last opportunity to sort of set
10 things straight with this defective election, and that he could do it, and he had the
11 intelligence and the will and the desire to pursue these matters in the way that the
12 President thought most appropriate.

13 Q You said everyone else in the room was against this. That's Mr. Cipollone,
14 Mr. Philbin, Mr. Herschmann, you, and Mr. Rosen. What were the arguments that you
15 put forth as to why it would be a bad idea for him to replace Rosen with Clark?

16 A So, at one point early on, the President said something to the effect of,
17 "What do I have to lose? If I do this, what do I have to lose?" And I said,
18 "Mr. President, you have a great deal to lose. Is this really how you want your
19 administration to end? You're going hurt the country, you're going to hurt the
20 Department, you're going to hurt yourself, with people grasping at straws on these
21 desperate theories about election fraud, and is this really in anyone's best interest?"

22 And then other people began chiming in, and that's kind of the way the
23 conversation went. People would talk about the downsides of doing this.

24 And then -- and I said something to the effect of, "You're going to have a huge
25 personnel blowout within hours, because you're going to have all kinds of problems with

1 resignations and other issues, and that's not going to be in anyone's interest."

2 And so the President said, "Well, suppose I do this" -- I was sitting directly in front
3 of the President. Jeff Rosen was to my right; Jeff Clark was to my left. The President
4 said, "Suppose I do this, suppose I replace him," Jeff Rosen, "with him," Jeff Clark, "what
5 do you do?" And I said, "Sir, I would resign immediately. There is no way I'm serving
6 1 minute under this guy," Jeff Clark.

7 And then the President turned to Steve Engel, and he said, "Steve, you wouldn't
8 resign, would you?" And Steve said, "Absolutely I would, Mr. President. You'd leave
9 me no choice."

10 And I said, "And we're not the only ones. You should understand that your
11 entire Department leadership will resign. Every AAG will resign." I didn't tell him
12 about the call or anything, but I made it clear that I knew what they were going to do.

13 And I said, "Mr. President, these aren't bureaucratic leftovers from another
14 administration. You picked them. This is your leadership team. You sent every one
15 of them to the Senate; you got them confirmed. What is that going to say about you,
16 when we all walk out at the same time? And I don't even know what that's going to do
17 to the U.S. attorney community. You could have mass resignations amongst your
18 U.S. attorneys. And then it will trickle down from there; you could have resignations
19 across the Department. And what happens if, within 48 hours, we have hundreds of
20 resignations from your Justice Department because of your actions? What does that say
21 about your leadership?"

22 So we had that part of the conversation. Steve Engel, I remember, made the
23 point that Jeff Clark would be leading what he called a graveyard; there would be no one
24 left. How is he going to do anything if there's no leadership really left to carry out any of
25 these ideas?

1 I made the point that Jeff Clark is not even competent to serve as the Attorney
2 General. He's never been a criminal attorney. He's never conducted a criminal
3 investigation in his life. He's never been in front of a grand jury, much less a trial jury.

4 And he kind of retorted by saying, "Well, I've done a lot of very complicated
5 appeals and civil litigation, environmental litigation, and things like that." And I said,
6 "That's right. You're an environmental lawyer. How about you go back to your office,
7 and we'll call you when there's an oil spill."

8 And so it got very confrontational at points.

9 And Pat Cipollone weighed in at one point, I remember, saying, you know, "That
10 letter that this guy wants to send, that letter is a murder-suicide pact. It's going to
11 damage everyone who touches it. And we should have nothing to do with that letter.
12 I don't ever want to see that letter again." And so we went along those lines.

13 I remember Eric Herschmann chimed in several times, saying that, whatever Jeff
14 Clark wanted to do or thought he could do, there was no reason to think he could really
15 do it.

16 I remember saying at some point that, you know, Jeff wouldn't even know how to
17 find his way to Chris Wray's office, much less march in there and direct the FBI what to
18 do, and that, if you walked into Chris Wray's office, he wouldn't even know who you are.

19 So we had these conversations that went around and around and were very blunt
20 and direct. And that went on for 2-1/2 hours.

21 Q At one point, did the President disparage Mr. Rosen or talk about
22 Mr. Rosen's inaction or unwillingness to do anything about the election?

23 A He did say several times, "You two," pointing at Mr. Rosen and me, "You two
24 haven't done anything. You two don't care. You haven't taken appropriate actions.
25 Everyone tells me I should fire you," and things of that nature.

1 He came back to that at the very end when he decided against a leadership
2 change. And he announced that, and then he came back to that point and he said, "And
3 I know that these two here, they're not going to do anything. They're not going to fix
4 this. But that's the way it is, and I'm going to let it go anyway."

5 Q Did Mr. Cipollone say anything about what he would do with respect to a
6 potential resignation if the President made this change?

7 A He did at some point. I guess that was on the heels of us talking about how
8 there would be resignations in the Department. And I think Pat Cipollone said, "Well,
9 I'm not going to stand for this, I'm not going to be here if this happens either."

10 Q So he said he would resign or not stand for it, would not be here, if the
11 President made this change.

12 A Right.

13 Q Who, Mr. Donoghue, was, sort of, the primary advocate or voice against the
14 leadership change? Was it you personally, or was it sort of a consensus and everyone
15 was sort of equally chiming in? Or just give me a better sense as to, sort of, who was
16 doing most of the talking and was the most strenuous advocate.

17 A It was definitely a consensus. We were all on the same page except for Jeff
18 Clark. But we played different roles.

19 For one thing, Jeff Rosen was in a bad position because he was defending his own
20 job. So anything he said, obviously, was very self-interested. And so he wasn't in the
21 best position to make some of these arguments. And by demeanor, he just has a
22 different demeanor, as does Pat Cipollone, as does Steve Engel. So everyone played
23 their own role. My demeanor is more aggressive and more blunt, and so I played that
24 role.

25 And so everyone was on the same page, advocating for the same thing in very

1 different ways, and I think that had an impact on the President. I think he likes to see
2 that difference of view and different approach, and I think he lets people speak their
3 mind and fight it out in front of him before he makes a decision.

4 Q I mean, I've heard this meeting described sort of like an "Apprentice"-like
5 meeting, where there's a firing decision at the end. Is that a fair characterization?

6 A I can honestly say I've never seen 1 minute of "The Apprentice" in my life, so
7 I can't opine about that.

8 Q Fair enough.

9 Anyone else threaten to resign? Mr. Philbin or Mr. Herschmann or anyone else
10 who was present? Mr. Meadows?

11 A Meadows was not there.

12 Q I'm sorry, Mr. Meadows wasn't there. Excuse me. My mistake.

13 A Right. I don't remember if anyone else said anything specifically. I think
14 Pat Philbin and Pat Cipollone were always sort of viewed as a package deal, so --

15 Q Yeah.

16 A -- if I thought about it for a moment, I would've thought, if Cipollone is
17 leaving, Philbin's leaving too.

18 But it was more a matter of me saying, "You're going to lose your Department
19 leadership," and then Pat Cipollone stepping in and saying, "And, basically, you're going
20 to lose your White House counsel as well."

21 Q Yeah. Okay.

22 After, I believe, he makes the decision to stay the course and leave Mr. Rosen in,
23 does he then start talking about the U.S. attorney in Atlanta, Mr. Pak?

24 A I think that was actually before that.

25 Q Okay.

1 A I think the President really didn't announce his final decision until probably
2 about the last 15 minutes of the meeting.

3 Q Uh-huh.

4 A But somewhere in the middle of the meeting someone mentioned Atlanta,
5 and the President said, "Oh, yeah, Atlanta, Atlanta." And then he picked up a piece of
6 paper that was on his desk, and he started waving it. And he said, "No wonder nothing's
7 been found in Atlanta, because the U.S. attorney there is a Never Trumper."

8 And I had no idea what he was talking about. I said, you know, "Mr. President, I
9 don't know what you mean." And then he had this piece of paper, and he read a quote
10 from it that was purportedly from B.J. Pak, who was the U.S. attorney in Atlanta. It was
11 critical of the President.

12 And I didn't know where this quote came from. I had no idea what he was
13 talking about. But I just said, look, Mr. President, I don't even know what a Never
14 Trumper is, but I'll tell you, all your U.S. attorneys were vetted, and I doubt B.J. said
15 anything like that. But whatever it was, B.J. has been doing his job.

16 And he said, "No, no, no. He's a Never Trumper." He was very adamant about
17 that at that point. "This guy is a Never Trumper. He should never have been in my
18 administration to begin with. How did this guy end up in my administration?"

19 And then he said, "I want you to fire him," to me. I responded, "Mr. President,
20 I'm not going to fire him. There's no reason to fire him." And he said, "Well, then I'm
21 going to fire him." I said, "Well, you should just know, before you make that decision,
22 that he told me a couple days ago he was submitting his resignation on Monday," which
23 was the next day.

24 So, if you want to fire someone who's resigning -- and then Pat Cipollone stepped
25 in and said, "Well, that's ridiculous. The guy's resigning. We're not going to fire him."

1 And the President said, "Fine. I'm not going to fire him then, but when his
2 resignation comes in tomorrow, it's accepted immediately. Tomorrow's his last day as
3 U.S. attorney." And Pat said, "Fine. We'll deal with that later" and, sort of, took it off
4 the table.

5 Q Uh-huh.

6 A And then the President said, "What do you know about Bobby Christine?"
7 Bobby Christine was the U.S. attorney in the Southern District of Georgia. I was
8 surprised at the question. I didn't know where it was going. I said, "Bobby Christine is
9 an excellent U.S. attorney." He said, "Yes, that's what I've heard. I want Bobby
10 Christine to run the Northern District of Georgia."

11 I said, "Mr. President, Bobby Christine is already running the Southern District of
12 Georgia. B.J. will have a first assistant. When he leaves, the first assistant will step up
13 and be the U.S. attorney." He said, "No. I want Bobby Christine to do it, because if he
14 is really good the way people say, maybe he'll do the job."

15 And then he yelled for one of the administrative assistants to get Bobby Christine
16 on the phone. They did in very short order. Bobby ended up on the phone. He was
17 clearly confused as to what was going on.

18 The President said, "Bobby, this is President Trump. I'm sitting here with Rich,
19 Jeff, and some other people. I want to know, are you able to run the Northern District
20 of Georgia? Because B.J. Pak's going to be leaving."

21 And Bobby was clearly confused and said, "Mr. President, I can do whatever is
22 asked in that regard." He said, "Great, Rich will call you later and explain everything"
23 and hung up. And that was that.

24 So that was left as: B.J. was resigning the next day, his resignation would be
25 accepted same day, and Bobby would take over the Northern District of Georgia for the

1 remaining few weeks of the administration.

2 Q Did he saying anything more about Bobby Christine and why he thought
3 highly of him or thought that he would do something different than B.J. Pak had done?

4 A No, just that he had heard great things about Bobby. I knew that Bobby
5 was a one-star general in the -- I believe it was the Georgia National Guard. And so he
6 had long military history. I know that's something that the President favors. I don't
7 know if that played into his understanding or not.

8 Q Uh-huh.

9 All right. Anything else you remember, Mr. Donoghue, before the last
10 15 minutes, when he says, "Okay, I'm not going to do it, I'm not going to make a change"?
11 Any other name come up, subject matter discussed, or anything else that's noteworthy
12 about the 2-1/2-hour meeting?

13 A There was a lot there. It was certainly a rollercoaster ride of a meeting, so
14 I'm sure there are things I'm not remembering. I think at some point he had asked
15 about names of other U.S. attorneys. You know, what do you think of this guy? What
16 do you think of that guy? And I just said: Good U.S. attorneys, they're solid, they're
17 doing their job.

18 Q Uh-huh.

19 When he announced his decision, did he give a reason why he was not going to
20 follow through with the change to put Clark in as the Acting Attorney General?

21 A So, in about the last 15 minutes, after he'd heard everyone out extensively,
22 he said, "All right, I've heard everyone, and we're not going to do this."

23 He looked at Jeff Clark. He said, "I appreciate your willingness to do it. I
24 appreciate you being willing to suffer the abuse. But the reality is, you're not going to
25 get anything done. These guys are going to quit. Everyone else is going to resign. It's

1 going to be a disaster. The bureaucracy will eat you alive. And no matter how much
2 you want to get things done in the next few weeks, you won't be able to get it done, and
3 it's not going to be worth the breakage."

4 I think someone else had used that term earlier, maybe Pat Cipollone, "Is it really
5 worth the breakage?" And the President said, "It's not going to be worth the breakage
6 to make this change at this point."

7 Q Uh-huh.

8 A And he said again, "These two, I know, are not going to get it done. But
9 that is what it is at this point." He talked about how disappointed he was in us, but said
10 to Clark that, I'm just not going to do this.

11 At that point, Clark began trying to get the President to change his mind. He said
12 a number of things -- you know, history is calling, this is our opportunity, we can get this
13 done, and so on and so forth. And the President then just sort of doubled down and
14 said, "No, we're not going to do it."

15 Q Uh-huh.

16 A At that point, the President looked at me and said, "So now what happens
17 with him?", gesturing toward Jeff Clark. I didn't understand the question. I said, "Sir?"
18 And he said, "Are you going to fire him?"

19 I said, "No, I'm not going to fire him. I don't have the authority to fire him. He's
20 a Senate-confirmed Assistant Attorney General." And the President said, "Well, I'm not
21 going to fire him." I said, "Well, that's fine then, sir. We should all just go back to
22 work."

23 And we all got up and walked out of the Oval Office.

1 What you are doing there is more important. But if you can spare the time, get on these
2 calls so we can hear directly what's going on, on the ground.

3 That might have --

4 Q Is that what led to you --

5 A That might have been before the Chief of Staff called in the car. I can't
6 really remember.

7 Q And is that what led to you, essentially, leading the 18 -- the 1900 call?

8 A Yes. Both the 1800 call and the 1900 call, I was told in advance, at least in
9 one case by the DAG himself, that you're the senior official on the ground in terms of
10 civilian executive branch agencies. And, therefore, when we start this call, we're going
11 to turn it over to you to brief up what the situation is on the ground. And I did that both
12 in the 1800 and 1900 calls.

13 Q And I just want to turn to the page of your handwritten notes where you
14 state: Prepped for the 1800 call.

15 A Right.

16 Q Sorry, we've gone a little bit out of order, but it's completely fine.

17 So we talked about the 1900 call, and you told us what leadership was on that call.
18 I want to clarify in your notes for the 1900 call, it says POTUS and VP.

19 Was the President on that call?

20 A No, I never spoke to the President that day. He was not on any calls that I
21 was on.

22 Q Was there any attempt by the President to contact you that day?

23 A Not that I'm aware of.

24 Q Did you later learn that the President attempted to call you that day after --

25 A No. On January 6th? No, I never heard that the President tried to contact

1 me on January 6th.

2 Q And apart from Mr. Cipollone and Mr. Meadows, did any White House
3 official attempt to call you directly on January 6th?

4 A No. We had a call from the Situation Room, so that was operated out of
5 the White House, but there were no other officials reaching out to me that I'm aware of.

6 Q Who was in the Situation Room at the White House? Do you remember?

7 A I don't. This call, this 1800 call, this did not have the congressional
8 leadership on it. And I don't believe the Vice President was on that call either. It was
9 more of, I think, a law enforcement-level call.

10 Q If we could just go through what you briefed them on in that 1800 call, that
11 would be helpful.

12 A So these notes I have in exhibit 54 titled Prep for 1800 Situation Room Call, I
13 made these notes to myself a few minutes in advance of the 1800 call because I wanted
14 to make sure that I covered each of these points.

15 So I made this list with Dave Bowdich and Ashan Benedict and some of the Capitol
16 Police officers with me to make sure I wasn't missing any key information.

17 I ran through the list. I prepared it. When the 1800 call started out of the
18 Situation Room, they turned it to me first. That's why I have the first entry there as,
19 "See call prep notes." And I, essentially, read this list, and I briefed them on what the
20 situation was.

21 And then the call continued from there with other people chiming in about
22 perimeter fencing. General Hokansen, H-o-k-a-n-s-e-n, talked about the D.C. National
23 Guard role and things like that.

24 Q Before we move on from the 6 p.m. and the 7 p.m. call on January 6th -- and
25 just so I'm clear, you're still at the Capitol at that time. Is that right, Mr. Donoghue?

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK MEADOWS,)

Plaintiff,)

v.)

NANCY PELOSI, et al.)
_____)

Case No. 1:21-cv-3271-CJN

Exhibit R

Pre-Decisional & Deliberative/Attorney-Client or Legal Work Product
Georgia Proof of Concept

[LETTERHEAD]

The Honorable Brian P. Kemp
Governor
111 State Capitol
Atlanta, Georgia 30334

The Honorable David Ralston
Speaker of the House
332 State Capitol
Atlanta, Georgia 30334

The Honorable Butch Miller
President *Pro Tempore* of the Senate
321 State Capitol
Atlanta, Georgia 30334

December 28, 2020

Dear Governor Kemp, Mr. Speaker, and Mr. President *Pro Tempore*:

The Department of Justice is investigating various irregularities in the 2020 election for President of the United States. The Department will update you as we are able on investigatory progress, but at this time we have identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia. No doubt, many of Georgia's state legislators are aware of irregularities, sworn to by a variety of witnesses, and we have taken notice of their complaints. *See, e.g.,* The Chairman's Report of the Election Law Study Subcommittee of the Standing Senate Judiciary Committee Summary of Testimony from December 3, 2020 Hearing, http://www.senatorligon.com/THE_FINAL%20REPORT.PDF (Dec. 17, 2020) (last visited Dec. 28, 2020); Debra, Heine, *Georgia State Senate Report: Election Results Are 'Untrustworthy;' Certification Should Be Rescinded*, THE TENNESSEE STAR (Dec. 22, 2020), available at <https://tennesseestar.com/2020/12/22/georgia-state-senate-report-election-results-are-untrustworthy-certification-should-be-rescinded/> (last visited Dec. 28, 2020).

Pre-Decisional & Deliberative/Attorney-Client or Legal Work Product

In light of these developments, the Department recommends that the Georgia General Assembly should convene in special session so that its legislators are in a position to take additional testimony, receive new evidence, and deliberate on the matter consistent with its duties under the U.S. Constitution. Time is of the essence, as the U.S. Constitution tasks Congress with convening in joint session to count Electoral College certificates, *see* U.S. Const., art. II, § 1, cl. 3, consider objections to any of those certificates, and decide between any competing slates of elector certificates, and 3 U.S.C. § 15 provides that this session shall begin on January 6, 2021, with the Vice President presiding over the session as President of the Senate.

The Constitution mandates that Congress must set the day for Electors to meet to cast their ballots, which Congress did in 3 U.S.C. § 7, and which for this election occurred on December 14, 2020. The Department believes that in Georgia and several other States, both a slate of electors supporting Joseph R. Biden, Jr., and a separate slate of electors supporting Donald J. Trump, gathered on that day at the proper location to cast their ballots, and that both sets of those ballots have been transmitted to Washington, D.C., to be opened by Vice President Pence. The Department is aware that a similar situation occurred in the 1960 election. There, Vice President Richard Nixon appeared to win the State of Hawaii on Election Day and Electors supporting Vice President Nixon cast their ballots on the day specified in 3 U.S.C. § 7, which were duly certified by the Governor of Hawaii. But Senator John F. Kennedy also claimed to win Hawaii, with his Electors likewise casting their ballots on the prescribed day, and that by January 6, 1961, it had been determined that Senator Kennedy was indeed the winner of Hawaii, so Congress accordingly accepted only the ballots cast for Senator Kennedy. *See* Jack M. Balkin, *Bush v. Gore and the Boundary Between Law and Politics*, 110 YALE L.J. 1407, 1421 n.55 (2001).

The Department also finds troubling the current posture of a pending lawsuit in Fulton County, Georgia, raising several of the voting irregularities pertaining to which candidate for President of the United States received the most lawfully cast votes in Georgia. *See Trump v. Raffensperger*, 2020cv343255 (Fulton Cty. Super. Ct.). Despite the action having been filed on December 4, 2020, the trial court there has not even scheduled a hearing on matter, making it difficult for the judicial process to consider this evidence and resolve these matters on appeal prior to January 6. Given the urgency of this serious matter, including the Fulton County litigation's sluggish pace, the Department believes that a special session of the Georgia General Assembly is warranted and is in the national interest.

Pre-Decisional & Deliberative/Attorney-Client or Legal Work Product

The Electors Clause of the U.S. Constitution provides that “[e]ach State shall appoint, in such Manner as the Legislature thereof may direct,” electors to cast ballots for President and Vice President. *See* U.S. Const., art. II, § 1, cl. 2. Many State Legislatures originally chose electors by direct appointment, but over time each State Legislature has chosen to do so by popular vote on the day appointed by Congress in 3 U.S.C. § 1 to be the Election Day for Members of Congress, which this year was November 3, 2020. However, Congress also explicitly recognizes the power that State Legislatures have to appoint electors, providing in 3 U.S.C. § 2 that “[w]henever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by [3 U.S.C. § 1], the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.”

The purpose of the special session the Department recommends would be for the General Assembly to (1) evaluate the irregularities in the 2020 election, including violations of Georgia election law judged against that body of law as it has been enacted by your State’s Legislature, (2) determine whether those violations show which candidate for President won the most legal votes in the November 3 election, and (3) whether the election failed to make a proper and valid choice between the candidates, such that the General Assembly could take whatever action is necessary to ensure that one of the slates of Electors cast on December 14 will be accepted by Congress on January 6.

While the Department of Justice believes the Governor of Georgia should immediately call a special session to consider this important and urgent matter, if he declines to do so, we share with you our view that the Georgia General Assembly has implied authority under the Constitution of the United States to *call itself into special session* for the limited purpose of considering issues pertaining to the appointment of Presidential Electors. The Constitution specifies that Presidential Electors shall be appointed by the *Legislature* of each State. And the Framers clearly knew how to distinguish between a state legislature and a state executive, so their disparate choices to refer to one (legislatures), the other (executive), or both, must be respected.¹ Additionally,

¹ *See, e.g.*, U.S.C., art. IV, § 4 (“The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of *the Legislature, or of the Executive* (when *the Legislature* cannot be convened) against domestic Violence.”) (emphases added); *id.* art. VI (“The Senators and Representatives before mentioned, and the Members of the *several State Legislatures, and all executive and judicial Officers*, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution”) (emphasis added); *id.* XVII amend. (“When vacancies happen in the representation of any State in the Senate, *the executive authority of such State* shall issue writs of election to fill such vacancies: Provided, That *the legislature of any State* may empower

Pre-Decisional & Deliberative/Attorney-Client or Legal Work Product

when the Constitution intends to refer to laws enacted by the Legislature and signed by the Governor, the Constitution refers to it simply as the “State.” *See, e.g.*, U.S. Const., art. I, § 8 (“[Congress may] exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, *by Cession of particular States*, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of *the Legislature of the State* in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings”) (emphasis added) (distinguishing between the “State,” writ large, and the “Legislature of the State”). The Constitution also makes clear when powers are forbidden to any type of state actor. *See, e.g.*, U.S. Const., art. I, § 10, cl. 1 (“No State shall enter into any Treaty, Alliance, or Confederation”). Surely, this cannot mean that a State Governor could enter into such a Treaty but a State Legislature could not, or *vice versa*.

Clearly, however, some provisions refer explicitly to state legislatures — and there the Framers must be taken at their word. One such example is in Article V, which provides that a proposed Amendment to the Constitution is adopted “when ratified by the Legislatures of three fourths of the several States,” which is done by joint resolution or concurrent resolution. Supreme Court precedent makes clear that the Governor has no role in that process, and that his signature or approval is not necessary for ratification. *See, e.g., Coleman v. Miller*, 307 U.S. 433 (1939). So too, Article II requires action only by the Legislature in appointing Electors, and Congress in 3 U.S.C. § 2 likewise recognizes this Constitutional principle.

The Supreme Court has explained that the Electors Clause “leaves it to the legislature exclusively to define the method” of appointing Electors, vesting the Legislature with “the broadest possible power of determination.” *McPherson v. Blecker*, 146 U.S. 1, 27 (1892). This power is “placed absolutely and *wholly* with legislatures.” *Id.* at 34-35 (emphasis added). In the most recent disputed Presidential election to reach the Supreme Court, the 2000 election, the Supreme Court went on to hold that when a State Legislature appoints Presidential Electors—which it can do either through statute or through direct action—the Legislature is not acting “solely under the authority given by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution.” *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S.

the executive thereof to make temporary appointments until the people fill the vacancies by election *as the legislature may direct.*”) (emphases added).

Pre-Decisional & Deliberative/Attorney-Client or Legal Work Product

70, 76 (2000). The State Legislature's authority to appoint Electors is "plenary." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam). And a State Legislature cannot lose that authority on account of enacting statutes to join the National Election. "Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power an any time, for it can neither be taken away nor abdicated." *McPherson*, 146 U.S. at 125.

The Georgia General Assembly accordingly must have inherent authority granted by the U.S. Constitution to come into session to appoint Electors, regardless of any purported limit imposed by the state constitution or state statute requiring the Governor's approval. The "powers actually granted [by the U.S. Constitution] must be such as are expressly given, or given by necessary implication." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 326 (1816). And the principle of necessary implication arises because our Constitution is not prolix and thus does not "provide for minute specification of its powers, or to declare the means by which those powers should be carried into execution." *Id.* Otherwise, in a situation like this one, if a Governor were aware that the Legislature of his State was inclined to appoint Electors supporting a candidate for President that the Governor opposed, the Governor could thwart that appointment by refusing to call the Legislature into session before the next President had been duly elected. The Constitution does not empower other officials to supersede the state legislature in this fashion.

Therefore whether called into session by the Governor or by its own inherent authority, the Department of Justice urges the Georgia General Assembly to convene in special session to address this pressing matter of overriding national importance.

Sincerely,

Jeffrey A. Rosen
Acting Attorney General

Richard Donoghue
Acting Deputy Attorney
General

Jeffrey Bossert Clark
(Acting) Assistant Attorney
General
Civil Division

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

MARK MEADOWS,

Plaintiff,

v.

NANCY PELOSI, et al.

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Case No. 1:21-cv-3271-CJN

Exhibit S

SELECT COMMITTEE TO INVESTIGATE THE
JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: JEFFREY A. ROSEN

Wednesday, October 13, 2021

Washington, D.C.

The interview in the above matter was held in Room 4480, O'Neill House Office Building, commencing at 10:00 a.m.

Present: Representatives Murphy, Luria, and Cheney.

whole pages of the President speaking.

But, as I say, I remember things that are consistent with Rich's notes, and that is part of why I take no exception that, if that's what he wrote, that's what he wrote.

Q You indicated earlier that one of the things that the Department did not do was to hold a press conference.

A That's right.

Q And there was suggestion that you do that, and you --

A Yes.

Q -- appropriately did not.

So, again, what did the President say about why it was important to hold a press conference or to publicly make certain statements about the election?

A Well, I'll give you an example. I don't know if it's on this call or another one, because some of these blur a little bit, but at one point he was saying: Many people are saying the Department of Justice is missing in action. You know, you're not doing anything. No one sees you doing anything. No one sees you having any press conferences. No one sees you denouncing the fraud that I'm hearing is all over the place.

So that would be an illustration where -- again, that's not an exact quote, but that's the way I remember him. He would say, you know, "People are telling me the Justice Department is missing in action." And then we would say, "Mr. President, that's just wrong. The Department of Justice has done its job. Just let us do our job." And he would say, "Well, if you're doing your job, why haven't you found the fraud that everyone tells me is out there?" And we'd say, "Well, some people are giving you bad information. You're listening to the wrong people." And, you know, it would go back and forth like that.

things that, as we sit here today, have been sorted out but back then would not have been, which is the, for example, privilege questions. I have the luxury today of being able to share conversations with the President, with the President's counsel, because the Department of Justice on behalf of the current President and the counsel for the past President not objecting. But there are -- that didn't get resolved, I think, until late July.

So not trying to add complexity where it doesn't exist but what I'm trying to say there are a series of complexities that do exist. And the course we did chart did work out. I think the point you made that I would agree with is it is extremely important in the Senate confirmation process that, at the front end, for the Congress or in that case the Senate, I guess, to help ensure that the people that are appointed to responsible positions are people of principle and character.

And I think it's worth thinking about prospectively the things you're pointing to. But I think those need more thought than I've given instructively, that I can constructively address today.

Mrs. Luria. No. I understand that those are complex issues that are perhaps things we look at in the work of this committee and how we, you know, prevent something like this from happening in the future.

But did want to hear your personal perspective of having been the person in the role, if there were things that went through your mind and actions that you thought you would have liked to have been able to take or kind of what your feeling was as you found yourself in that situation. So I appreciate your feedback and your insight into that.

Ms. Luria. And I yield back.

I don't have any further questions, and thank you for appearing before the committee today?

Mr. Rosen. Thank you.

be, you know, almost equally farfetched.

Q At some point, Mr. Meadows actually emailed you that YouTube link, and Mr. Donoghue's response, upon receipt: "Pure insanity." Is that the same --

A Yes. Yes. You've reminded me of that. That's right.

Q Yeah. And did that accurately characterize your reaction, as well, to this theory, that it just --

A Yes.

Q -- was pure insanity, no basis whatsoever?

A I'm going to understate. It was not corroborated.

Q Yeah. Okay.

So, later that day, Mr. Rosen, after this meeting, the President called you directly. There was a phone conversation, and there's some discussion about the possibility of the Supreme Court -- this is not reflected in notes, but I believe you testified previously that there's a followup phone call with the President himself. Do you remember that?

A So I think Rich and I had a phone call with the President sometime on that Tuesday.

Q Uh-huh.

A I'm trying to remember if the brief came up in that one or not. It wouldn't surprise me if it did.

What I remember better was that, on Wednesday, after the Kurt Olsen incident, I spoke to the President. I think that was just me, or Rich may have been in my office, but I don't think it was on the speakerphone. Some of these were on speakerphone with me and Rich, and some, it was just me, but Rich could've been in my office.

And the way I remember it is, on Wednesday, I wound up telling the President, "This doesn't work. There's multiple problems with it. And the Department of Justice

is not going to be able to do it." And --

Q And what was his reaction?

A He was accepting of it. He didn't actually argue. I didn't know that going into the call --

Q Uh-huh.

A -- so I had prepared. You probably remember these notes that OLC, I guess Steve's office, had prepared for me.

Q Right.

A But the President just acquiesced.

Q Yeah. So you conveyed to him, "Hey, we don't have standing to file this," told him that explicitly, and he acquiesced.

A Yes.

Q Okay.

A And to my best recollection -- I've been asked this before, is, did it come back?

Q Yeah.

A I can't say definitively, but I don't think so. I think that was the end of it.

Q Now, there was one case in which the Department did intervene. Is that right? I think you mentioned --

A Yeah.

Q -- in opening statement there was only one matter in which --

A Yeah.

Q -- there was standing and Department did intervene. And can you tell us about that?

A Well, it didn't intervene. It was -- the Vice President was the defendant.

Q Yeah.

A And so he was at the Sunday night meeting. I think he had called me, that he had heard, I'm assuming from either Mr. Cipollone or Mr. Meadows, that it was happening, and had called me and just told me he was going to come to it.

Q Yeah. Did he say why? It was the only meeting in which he shows up.

A Yeah.

Q Why was he there? Did he or others say?

A I don't remember exactly. But I know what he said at the meeting, and that makes me think that he had indicated something along -- you know, that he had previewed where he was coming from, which was that he thought the Department of Justice should be left to do its work in the way that it thinks is appropriate.

Q Yeah. He's actually quite directly critical of Mr. Clark and his credentials during the meeting with the President. Is that right?

A Absolutely correct.

Q Calls him out, saying, "No experience. You're not qualified for this job."

A Yes.

Q Said all that directly to Mr. Clark and to the President in that meeting?

A Yes.

Q Okay. So it sounds like in the meeting everyone agrees but Mr. Clark that it would be a terrible mistake for the President to make that change.

A That's how I remember it, yes.

Q Yeah.

The one quote that I wanted to ask you about is, at some point it's reported that the President says, "I know you, Jeff," pointing or gesturing toward you, "and you're not going to do anything. You don't even know or agree about the election. I don't know

Jeff Clark, but he'll do something about the election," essentially making this juxtaposition between you represent inaction and Clark represents action. So the discussion is not just who's going to serve, but is the Department going to take action?

Is that accurate? Sort of, you and your status is tied to action versus inaction?

A I would agree with that. I think the dialogue that you recited I think is, in substance, right. Again, I don't have a transcript, but it's consistent with how I remember that playing out.

Q Okay.

And, during the meeting, the lone voice for action or for change is Mr. Clark.

A Correct.

Q Do you remember any argument he put forth specifically as to why he could or should be installed and what action he would or should take as a result?

A Well, he made arguments about why the letter would be effective, that he thought it would -- he said that it would set off multiple reactions.

Q So this is the letter that we talked about a little before --

A Yes.

Q -- that you and Mr. Donoghue had clearly said no factual basis and --

A That's right.

Q -- clearly inappropriate for the Department?

A That's right.

Q The letter was back, and at the meeting it's discussed that he would send such a letter?

A Yes.

Q Okay.

A And so he advocated for that.

He also defended his own credentials against some of the attacks that were being made. He argued that the rest of the room were being self-defeating, you know, that, if you don't try it, you don't know what's going to happen, I think was the nature of that.

Let me think. This was a very, very long meeting.

Q Yeah.

A And everybody spoke at one time or another. Some people spoke repeatedly. The President interjected some places. There were a few places he spoke at greater length, but a lot of the meeting, he let other people talk.

Q Uh-huh.

A And so I'm trying to remember the different places that Jeff Clark spoke. Because he spoke more than once. And I have more the image, that he would get in a debate, you know, that Rich Donoghue and he would have back-and-forth, and Steve Engel and he would have back-and-forth, and Eric Herschmann and he would have back-and-forth --

Q Yeah.

A -- that that occurred numerous times.

But the overall substance was, different people in the room were saying, this is not legally well-founded, this is not the Department's role, this letter is inappropriate. They challenged Jeff Clark's qualifications to even be making these arguments. They challenged both whether he was qualified to be Attorney General but also is he even qualified to address election fraud, you know, even from his current position, let's say.

Q Uh-huh.

A And so there's this range of issues.

Now, at more than one juncture, a number of people do raise that, if this goes ahead, there are going to be resignations. And I think lots of people raised that. I let

other people speak to that, for obvious reasons, that they were speaking in support of me, so it wasn't my place to speak to. Jeff Clark didn't speak to that, but I think almost everybody else did. I remember Pat Cipollone spoke to it, Rich Donoghue.

There was one moment where I remember Steve Engel, and Steve was explaining why he thought it was inappropriate for the Department of Justice to be sending a letter to Georgia and that he had multiple reasons for that. And he commented that, if it went, that there would be resignations. And, again, this is in substance. I don't remember the exact words.

And then Steve Engel, when he was saying that, the President said to him, "Well, Steve, you've been at Justice the whole time. You wouldn't resign." And Steve -- I remember this because it was very vivid -- said, "No, Mr. President. If you replace Jeff Rosen with Jeff Clark and send this letter, I would have no choice. I would have to resign."

And the President looked to me, startled, and said, "Steve, you wouldn't resign." And Engel repeated it. He said, "Mr. President, I would have no choice. I would have to resign."

So that was highly corroborative of what had been said by other folks.

Q Uh-huh.

So the only substantive election-related action that was discussed was the sending of the letter? Was there also a discussion of the special counsel or the press conference or the Supreme Court brief, the litany of possible things that had been considered that you mentioned in your opening statement?

A I don't remember them being discussed in individual -- you know, what about the Supreme Court brief --

Q Yeah.

A -- or what about this? I remember at a higher level of generality, that there are more steps. The focus was on the letter --

Q Uh-huh.

A -- and that the letter would produce multiple steps and would, you know, be connected to some kinds of public statements. Because, by definition, the letter wasn't going to stay secret.

So I don't remember it in terms of going back to that Supreme Court brief or something. I remember it just more, there's this one approach that says, in effect, do nothing, and this other approach that says, start taking steps. And the debate was about that. And I think I agreed with your question earlier, that the approach and the people were effectively merged.

Q Yeah.

Well, I don't want to correct you, but when you say "do nothing," at this point the Department had done a great deal already with respect to evaluating claims of election fraud. That had already occurred --

A No, that's right. "Do nothing" is a shorthand for --

Q For prospectively do nothing?

A For prospectively taking steps that would be critical of the election and its validity.

Q I see.

All right. So the President makes a decision in the meeting, basically decides, I'm going to stay put, I'm not going to replace you, Acting Attorney General Rosen, with Mr. Clark.

Did he explain why? What was the reason, if any, he cited as to why he stayed put with you as the leader of the Department?

A He was very conclusory about that. He just made a declarative statement that, all right, we're just not going to do this, we're not going to make a change, something to that effect.

Q Did he cite the resignations or the damage it would do to make a change?

A No, it wasn't -- you know, in a room full of lawyers, you'll forgive me -- it wasn't like a judge that said, here's my opinion, here's where I come out --

Q And here's the reason?

A -- here's the four reasons. It was more declaratory. You know, we'd been there for a long time, I think 2, 2-1/2 hours at that point, something like that, and he just declared, okay, we're not going to make the change.

Q Without explanation? He doesn't tie it to any specific factor?

A No. As I said, he didn't tie it to a statement of reasons.

Q Yeah.

A As I alluded to, there had been a number of fairly memorable moments during the course of the discussion, so everybody there probably has their own perspectives on which one was the key.

Q Uh-huh.

A You know, there were several that I remember really well. Others, not so well, because it was a very long meeting.

Q Yeah.

A The Engel anecdote that I just mentioned. Eric Herschmann and -- he and others, but Eric Herschmann. It was a very vivid attack on Jeff Clark's qualifications.

Q So the reasons put forth were Mr. Clark's personal lack of qualifications or experience with elections; the letter to State officials, again, would not be appropriate institutionally; and the resignations. "Hey, the Department will empty out if this has

occurred."

Those are sort of the main arguments against a change, as you recall?

A Those, but there were a couple of others.

Q Uh-huh.

A Maybe they were slightly abstract, that this is not the right thing to do, this is not in the best interest of the country.

Q Uh-huh.

A I'm trying to remember some specifics.

I mean, there was some discussion, again, that you're getting bad information, that these episodes of alleged fraud, that people have said this, that, or the other incident, those aren't valid. That was repetitive, to some extent, but it did come up again.

Q Uh-huh. Yeah.

A But those are certainly some of the big ones.

Q I see.

After he announced his decision, did Mr. Clark continue to push, continue to argue his case, despite the fact that the President had announced he wouldn't make a change?

A Not when the President said, look, we're just going to -- we're not going to make the change, when he, in effect, announced a decision.

Earlier on, there were some moments where it wasn't clear if maybe we were done, and so Mr. Clark did make a push then.

But he also did the opposite one time, too. I think, you know, you may recall in the Senate hearing, I pointed out that, at one point, he actually said to the President, "I think it's time to call the question."

So there was some of both, you know, of --

Q And what did the President say when he said it was time to call the question? Did he say, "It's my decision as to when to call the question," or something like that?

A He had a facial expression that said that.

Q "Don't tell me when it's time --

A Yeah.

Q -- to decide"?

A Yeah. And the discussion wound up continuing quite a fair amount after that, too, actually.

Q Okay.

A But when the President announced his bottom line, if I can put it that way, I think Mr. Clark was accepting that the President gets to make the call.

Q Yeah.

A It probably wasn't what he had thought -- what he, Jeff Clark, thought going in. But the President gets to make the call.

Q Yeah.

And did that, Mr. Rosen, essentially end it? When I say "it," I mean pushing you allegations of alleged voter fraud or suggestions that the Department should take certain action. I have a sense that this meeting was sort of the punctuation here, that, okay, Department of Justice is not any longer going to be a source of relief for the President.

A I perceive it the way you just said, that that was the end of it. And I would say that's somewhat corroborated by: The President had been calling me with some regularity in those 2 weeks, and after January 3rd he did not.

Q Yeah. No more contact with him until the very last -- well, did you ever have any more contact with the President after that meeting?

A I think, generally, no, except he called, I think, on the 19th. And I think he was calling various Cabinet officers and just saying, "Thank you for your service."

Q Yeah. I see.

How about Mr. Meadows? Did he continue to call you, talk with you, post- this meeting on January 3rd about anything, in particular about the election?

A To my best recollection as I'm sitting here is that he didn't talk to me about the election but he did contact me about some other stuff --

Q Yeah.

A -- including that oversight issue --

Q Got it.

A -- that had not been resolved.

Q Yeah. Which I'm not -- okay.

[Discussion off the record.]

Mr. Rosen. So just a clarification.

BY MR. HEAPHY:

Q Sure.

A January 6th I think of as being about a riot, but I suppose if you define that as also being about the electoral count -- because that was going on that day --

Q I see.

A -- there was a point in the early afternoon when Mr. Meadows and Mr. Cipollone called me.

Q Uh-huh.

A And we can talk some more about that if you --

Q We will, but Soumya is going to get into that day. I appreciate the clarification.

were discussed, you testified before the Senate that those were tied together. In what way were those two things, meaning the draft letter from Jeff Clark and appointing Jeff Clark as Acting Attorney General tied together?

A So I think this goes back to the discussion we had with Mr. Heaphy, that the personnel and the approach were bound together, that it wasn't -- well, here is maybe a simple way to say it. There was no scenario in which he got to keep me and send a letter to Georgia because I'd resign before that happened. And, likewise, Jeff Clark, if he had been chosen, did not indicate that he would be pleased to be the Acting Attorney General and take no actions with respect to the validity of the election.

Q So I know you're reluctant to speculate on what could have happened, but based on what Jeff Clark had said to you, were you under the impression that, if Jeff Clark had been appointed Acting Attorney General, he would have sent the letter or something like it to State officials in Georgia?

A Yeah. I don't -- I'm not speculating there. He advocated that he wanted to do that.

Q And I believe he referred to it or maybe even labeled it at some point as a proof-of-concept letter. Is that correct?

A Yes.

Q And, from that, did you take it that he wanted to send a similar letter to other States as well?

A Yes, because I think he had said that. I don't know if he said it at the meeting or he said that to me and Rich Donoghue in the earlier conversations. But, at some point, I think he had said that, while Georgia was the focal, that he would think that, as you alluded to, it's a proof of concept to do other places as well.

Q And did Jeff Clark ever indicate that if he were appointed Acting Attorney

General, he would state publicly that the 2020 Presidential election was corrupt?

A Maybe not as blunt as you just said it, but --

Q What's the best way to describe it?

A That he advocated not just that the letter be sent but that there be public assertions about the improprieties with regard to the 2020 election.

Q And did Jeff Clark ever express an opinion whether, if he had been appointed Acting Attorney General, he would have the Department of Justice file an original action in the Supreme Court?

A I don't remember the Supreme Court thing coming up at the Sunday night meeting, so I have to harken back to whether I commented on that later on. As I sit here right now, nothing's coming to mind, but that -- that's one I might need to think about.

Q So, regarding the President's suggestion that he might change the Department of Justice's leadership during one of your meetings with the President, Mr. Donoghue's notes indicated that he said something to the -- that he, Mr. Donoghue, said something to the effect of "fine, but that won't change the Department's position."

Do you remember him saying something along those lines?

A Yes. That -- this is in the early phase, right, where we know that Jeff -- at that early phase, we were aware that Jeff Clark had gone to this meeting at the Oval, but we did not have insight that he had a different path in mind. So, when the President raised that comment that -- again, I'm just paraphrasing, that Jeff -- people tell me Jeff Clark is great or whatever, we somewhat discounted that as in, you know, fine. You -- you've met him once. But, you know, the Department's position is the Department's position.

Q So it's certainly understandable that, given what Mr. Donoghue knew at the

anyone has any questions about the calls that day.

Ms. Cheney. I do, Soumya.

Jeff, can you talk about, over the course of the day, whether it occurred to you at all to think about President Trump and what he was doing?

Mr. Rosen. In some sense. I mean, you can see there is so much going on that there is not a lot of time for what I'll call reflection.

But I think that -- I think I learned at some point he had put out some kind of a statement that was not what we would have wished for. You may have it and refresh me. I don't remember the specifics. But I just remembered thinking that's not what we would have wished for.

And the White House staff were -- at least the ones I dealt with, and they're reflected on this, which, at least to my best recollection, were Pat Cipollone, Robert O'Brien, and Mark Meadows -- they were very much in the same posture we were: Let's get as much help to the Capitol as fast as possible.

So I think that there was at least the hope that somebody in the White House could talk to the President.

Ms. Cheney. And were there any discussions about that?

Mr. Rosen. That's what I'm saying, is I -- it's such a blur, the day is such a blur that I just don't recall that.

Ms. Cheney. Did you -- how did you think about the fact that you had talked to everybody up to the Vice President, but not the President?

Mr. Rosen. Well, I, as I say, I think the initial statement that I had seen put out was not what we would have wished for. And I'm really not -- not really even sure how to respond to that, because we got so focused during the day on what we have to do and what can we do and trying to be in a posture of being part of the solution, trying to be

helpful.

Obviously, the situation was terrible, but once this breach of the Capitol occurred there was this tremendous urgency and just ongoing all day long, you know -- what's happening, what can we do, what else do we know, and what do we hear from DHS, what do we know -- that it just gets caught up in the moment of: Let's do our job. You know, we'll do our job, and let's hope everybody is doing what they're supposed to do. And that's how I remember it.

Ms. Cheney. In terms of the first statement, do you recall the statement that the President put out calling the Vice President a coward?

Mr. Rosen. Yeah. I didn't actually see it, but someone had come into my office and said a variant of, "You will not believe this statement." And it was something similar to what you just said -- again, I don't remember the exact words -- and just being both surprised and disappointed at that statement.

Ms. Cheney. Did you have any reason to believe at any moment that the President was taking action? Did anybody come to you and say, "He's taking action to stop this"?

Mr. Rosen. Not -- no, not in those words or equivalent. Just the fact that Mark Meadows and other White House staff were saying, "Do everything you can to help address this situation."

Ms. Cheney. But they weren't telling you what they are trying to do --

Mr. Rosen. No.

Ms. Cheney. -- internally?

Mr. Rosen. No. At least not that I remember. The thing that just sticks with me is this urgency of, "Can everybody try to get help?"

Ms. Cheney. Okay.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK MEADOWS,

Plaintiff,

v.

NANCY PELOSI, et al.

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Case No. 1:21-cv-3271-CJN

Exhibit T

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4 SELECT COMMITTEE TO INVESTIGATE THE
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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11 INTERVIEW OF: CHRISTOPHER CHARLES MILLER

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Friday, January 14, 2022

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Washington, D.C.

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20 The interview in the above matter was held via Webex, commencing at 10:00 a.m.

21

Present: Representatives Lofgren, Murphy, Raskin, Aguilar, Cheney, and

22

Kinzinger.

1 Did you -- was there any attempt by you to contact anyone at the White House to get the
2 former President to issue a statement to order folks to leave the Capitol?

3 A I was -- I did not, no.

4 Q And did you have any communication with any -- with the President that
5 day?

6 A I did not have any communication with the President that day. I know we
7 had some calls to the White House, so that was kind of my vehicle for -- or they were on
8 our -- on some calls, so I felt like I knew what was going on.

9 Q Apart from the interagency calls that are in the outline later that day around
10 6 or 7, did you have any direct contact with Mark Meadows?

11 A No.

12 Q No?

13 A No.

14 Q Were you aware of Mr. Patel's conversations with Mr. Meadows that day?

15 A No, I was not.

16 Q Did he convey anything to you as far as what the White House was
17 communicating?

18 A No, he did not.

19 Q Publicly, Mr. Patel has stated that he was -- they were -- we, he said we -- I
20 don't know who the we is -- were on the phone with Meadows all day.

21 Would you be included in that?

22 A I was not. No, I was not.

23 Q Did you speak to the Vice President that day?

24 A Yes, and it's in the timeline. I can't remember if he called or I -- he called
25 me.

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

MARK MEADOWS,

Plaintiff,

v.

NANCY PELOSI, et al.

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Case No. 1:21-cv-3271-CJN

Exhibit U

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4 SELECT COMMITTEE TO INVESTIGATE THE
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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11 INTERVIEW OF: RYAN MCCARTHY

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Friday, February 4, 2022

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Washington, D.C.

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20 The interview in the above matter was held in Room 4480, O'Neill House Office
21 Building, commencing at 9:59 a.m.

22

Present: Representative Raskin.

1 timing of the former President's tweets and your approval time of 4:32? There's been
2 some reports that there's a correlation there. I want to give you the chance to respond
3 to that.

4 A It's absurd. It had nothing to do with that.

5 Q Did it have any impact on your team, any --

6 A None.

7 Q We talked a lot about the authorities that happened on that day from the
8 Secretary of Defense down to you. Did you need -- did you or Secretary Miller need any
9 additional authorities from President Trump on January 6th?

10 A It was -- Secretary Miller and General Milley had that discussion on that
11 Sunday that I'd referenced, and it was their understanding that they had the authority
12 delegated down to them, or to the Secretary Miller, excuse me, not General Milley.

13 Q Could President Trump have taken any action that would have increased the
14 response time of the D.C. National Guard?

15 A At that point, it was in Secretary Miller's hands.

16 Q But if President -- you did not have any contact with President Trump,
17 correct?

18 A No.

19 Q Secretary Miller testified he did not have any contact with President Trump.
20 I guess my question is, if Secretary -- if President Trump had called you or Secretary Miller
21 and said, let's go, let's get these folks moving, would it have impacted the response time?

22 A I'd say, we're working on it, Mr. President. We've got to know what we're
23 supposed to do. I mean, that was -- we wanted to be deliberate in how we employed
24 them and make sure we got it right. I mean, there were a lot of people calling us to
25 hurry, the Speaker, a lot of other very senior people, but we wanted to do it the right

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK MEADOWS,)
)
 Plaintiff,)
)
 v.)
)
 NANCY PELOSI, et al.)
)

Case No. 1:21-cv-3271-CJN

Exhibit V

Message

From: OmniTen@omnibuffalo.com [OmniTen@omnibuffalo.com]
Sent: 12/22/2020 1:10:39 PM
To: congressnc@gmail.com
CC: lucy3413@hushmail.com; Rhelen0528@gmail.com
Subject: PIRs_RFIs_for_Election_Fraud_22DEC2020.docx

Mr Meadows,

Reference our conversation in your office yesterday afternoon, this is the National Asset Tasking request to support EO 13848.

The resultant information will be critical for POTUS and ODNI to complete the required investigation.

V/R
Phil Waldron
210-240-7114

Sent from ProtonMail mobile

12/21/2020

Priority Intelligence Requirements **And** **Requests for Information**

Under the Authority vested in the President of the United States in Article 2 of the US Constitution and Cybersecurity Executive Orders of 2017 and 2018, the following Departments and Agencies are hereby directed to search their internal and/or shared databases as well as immediately task collection assets (personnel, tools, resources) to provide detailed information and/or discovery of foreign nation-state adversaries or their proxies attempting to interfere with or influence the United States National Election.

- National Security Agency
- National Reconnaissance Office
- Department of Homeland Security
- Federal Bureau of Investigation
- Department of the Treasury
- Drug Enforcement Agency

Any and all pertinent information will be forwarded to the Hon. John Ratliff, Director of National Intelligence and Acting SECDEF Chris Miller. Department and Agency heads will detail what databases were queried and what actions have been taken to complete the following:

1. Each Agency and their subordinate or affiliate offices, determine if there were any communications between any foreign-based location to servers that were used in the US election from 1 AUG 2020 to receipt of this tasking (with specific focus placed on 03 NOV 2020 0800EST to 4 NOV 2020 0600EST); provide the metadata records (FROM IP, FROM PORT, TO IP, TO PORT, PROTOCOL, DURATION, FILE SIZE) of the communications along with any additional contextual data explaining the nature of the communications, including the duration of the session, and size of the data transfer where available.
2. Conduct deliberate traffic analysis on the IP addresses and domain names below (Appendix A), seeking data transfer to/from the hostname to any foreign based entities.
3. Each Department and Agency is tasked to Coordinate with US Treasury FINCEN or other financial intelligence activities undertaken by the US Government for any contract data (to include bankruptcies, lawsuits, notification of foreign investment or ownership) that indicates foreign sales or involvement in transactional data between Cuban, Venezuelan, and Chinese nationals, Chinese controlled business concerns, or members of the Chinese Communist Party (CCP).
4. Using list from Dominion Systems below (and any in-house databases) conduct database search of Mr. Jorge Rodriguez, former Venezuelan Minister of Communications. Search for connections to Khalil Majid Mazoub (a known front man for Venezuelan intelligence), and possibly Antonio Mugica (Smartmatic CEO) of Caracas, Venezuela.

12/21/2020

5. Telephonic and Email and Meta Data Connections between SGO Corporation, Staple Street, UBS, SVS Holdings, Smartmatic, Sequoia Voting, Dominion, ESS Voting

Each Department and Agency is directed to check their databases for any indication of information on the following entities (see Appendix A). Each Department and Agency is encouraged to conduct inter agency coordination, and foreign partners, where appropriate.

Task to US Treasury Department

Determine, to the greatest extent possible, the ownership, influence, and interference of foreign based Election/Voting Systems companies and their attempts to circumvent CFIUS, as referenced in 2012 Bankruptcy proceedings (see: Case #10-24238 HRT before the US Bankruptcy Court for the District of Colorado, Debtor: SVS Holdings, Inc, Filed: 10/05/2012). Determine, to the greatest extent possible, the use of Venezuela as a proxy for the Chinese Communist Party (CCP) and its global reach with shell corporations and money laundering activities, attempting to gain a foothold in United States national critical infrastructure, as described in subsequent Presidential Executive Orders of 2017 and 2018.

Specifically:

1. On Friday, September 21, 2012, Smartmatic filed two motions seeking alternative relief: (a) authority to prosecute avoidance actions; (b) appointment of a Chapter 11 trustee; or (c) conversion of the case to Chapter 7. Smartmatic's motions are largely designed to increase litigation leverage for a pending action Smartmatic initiated against Dominion Voting Systems, Inc. ("**Dominion**") in Delaware involving allegations of \$20 million in damages.
2. The principal parties in this dispute—Debtor, Smartmatic, Dominion, Sequoia Voting Systems, Inc. ("**Sequoia**"), and Mr. Jack Blaine—were or are engaged in the business of selling voting systems worldwide. While sometimes transacting with one another and attempting to partner with one another in various configurations, the parties have also largely been in direct competition, seeking to sell voting systems to local and national governments worldwide. As with any competitive business, some thrive, and others fail.
3. Debtor and its wholly-owned operating company, Sequoia, failed. Smartmatic thrived, and continues to do so.
4. Debtor filed this bankruptcy hoping to resolve and end a variety of longstanding disputes between itself and Smartmatic. Smartmatic is Debtor's largest creditor. Leading up to and through bankruptcy, Smartmatic has largely dictated Debtor's course.
5. **Debtor is a holding company. Other than officers, it never had any employees, and its only operation was management of its debts, books, and records. Its sole asset was and remains its stock in Sequoia, its wholly-owned subsidiary.**
6. Debtor acquired Sequoia from Smartmatic in 2007. Prior to Smartmatic's ownership, Sequoia's roots stretch back over a century to the introduction of the first lever-action mechanical voting systems. By the 1980s, Sequoia was a pioneer in the area of electronic voting systems. Smartmatic

12/21/2020

purchased Sequoia in 2005. Jack Blaine, a Smartmatic employee at the time, assisted in the acquisition. By 2006, Mr. Blaine was the president of Sequoia, then still owned by Smartmatic.

7. **In 2006, various political issues arose, and United States authorities became aware that Sequoia, through Smartmatic, was indirectly owned by Venezuelan citizens.** The U.S. Committee on Foreign Investment in the United States ("CFIUS") began reviewing Smartmatic's purchase of Sequoia.

8. To resolve potential issues with CFIUS, in 2007, Smartmatic transferred Sequoia to a new company formed for the acquisition, owned by U.S. citizens who were part of Sequoia's management. The new company was Debtor, and Debtor's majority shareholder was Mr. Blaine.

9. Smartmatic has long sought and desired to keep the terms of the Sequoia sale to Debtor confidential. Confidentiality agreements thus prevent disclosure of the specific terms herein. Nevertheless, Debtor can disclose that as a component of the sale terms, Debtor was obligated to make certain payments to Smartmatic, among other obligations.

Designated Individuals and Organizations for National Security Emergency Tasking, Review of Present Holdings, and Tailored Access

Individuals:

1. Khalil Majib Mazoub
Hezbollah and Iran Nexus to Maduro regime – significant DEA holdings on him
2. Jorge Rodriguez Gomez
Former Vice President Venezuela under Chavez
Mastermind of Election Subversion Ops with SGO Corporation Leadership US 2020 possible
3. Delcy Rodriguez Gomez
Current Vice President de la Republica Bolivariana de Venezuela

NOTE: Subjects 2 and 3 hate US because US backed forces killed their father in 1976

4. Omar Jose Montilla Castillo
5. Lord Mark Malloch Brown
Chairman of the Board of Directors of SGO

12/21/2020

6. Sir Nigel Knowles
Global CEO of DLA Piper (Saudi Arabia)
Board of Directors of SGO Corporation
7. David Giampaolo
Board of Directors of SGO
8. Paul Neffenger
Smartmatic USA Board Member
9. Arturo Varona
US Passport 711661612
Only non-Venezuelan employee of Smartmatic Panama
10. Camilo Andres Mendez Chong
Smartmatic Panama
11. Federico Arnao Mila De La Roca
Connections to Dominion, Smartmatic, Sequoia in Canada and USA and Venezuela
DOB 22 SEP 1972
SSAN 652-47-7777
46 North Park Drive
Toronto, ON, Canada
(647)342-4484
(647)907-7905
farnao@gmail.com
McClellan11@hotmail.com
12. Gustavo Reyes (multiple known aliases)
Gustavo Reyes Zumeta
Gustavo Jesus Reyes Zumeta Cordoba
Gustavo Reso
DOB 19 May 1962
US Passport 444730879
Possible Current Address:
11308 Walnut Creek Court
Oakton, VA. 22124
(703) 273-6615
Other possible phones:
(703) 649-1688
(703) 749-0290
(703) 389-7912

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13. Antonia Jose Mujica Rivero
SGO Corporation Limited, UK
Antonia M. Mugica
Affiliated with Smartmatic establishment and creation
Worked with Malloch Brown to stand up SGO Corporation
766-07-2919
amugica@panagroup.com
offman-boca@Smartmatic.com
amugica@Smartmatic.com
571-482-7296
561-862-0747
561-482-7296

14. Roger Pinate
SGO Corporation Limited, UK
Smartmatic Founder
Extensive Travel to US and Worldwide

15. Carlos Rafael Ramirez
Smartmatic Philippines operations
+50762359670
crramirez@gmail.com

16. Eric Coomer (US Person)
Dominion Voting Systems
Affiliated with ANTIFA

17. Gregory Meeks (US Person)
Khalil Majib Mazoub's daily contact in New York City
Meeks conducts CI operations for this network

18. Leopold Jose Martinez Nucete (US Person or Dual Citizen)
LatinVictory
Narco lawyer with ties to Maduro and Chavez regimes
Former Venezuelan Congressman

Organizations:

Smartmatic Panama, S.A. as software coordinator and laundering hub

Smartmatic USA
Boca Raton, Florida
6400 Congress St.

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Boca Raton, FLA

Dominion Voting Systems
Denver and Toronto

Telephonic and Email and Meta Data Connections between SGO Corporation, Staple Street,
UBS, SVS Holdings, Smartmatic, Sequoia Voting, Dominion, ESS Voting

JIATF-South

- Request Threat Network Analysis Cell (TNAC) support
 - Contract for historical data for net flow across the Internet
 - Analyze telco traffic
 - Task JIATF-South to operate on behalf of this effort

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APPENDIX A**Dominion Voting Systems (US Company) <https://www.dominionvoting.com/>**

Hostname	IP Address	Netblock Owner
belgrade.dominionvoting.com	82.117.198.54	SERBIA-BROADBAND-AS Serbia BroadBand-Srpske Kablovske mreze d.o.o. ASN31042 Serbia
colorado.dominionvoting.com	23.236.62.147	GOOGLE ASN15169 United States
denver.dominionvoting.com	204.132.219.214	CENTURYLINK-US-LEGACY-QWEST ASN209 United States
dvsfileshare.dominionvoting.com	204.132.121.11	CENTURYLINK-US-LEGACY-QWEST ASN209 United States
ex2013.dominionvoting.com	206.223.190.87	BEANFIELD ASN21949 Canada
fileshare.dominionvoting.com	204.132.121.10	CENTURYLINK-US-LEGACY-QWEST ASN209 United States
ftp.dominionvoting.com	69.172.237.100	COGECO-PEER1 ASN13768 Canada
online.dominionvoting.com	69.172.237.110	COGECO-PEER1 ASN13768 Canada
toronto.dominionvoting.com	206.223.168.94	BEANFIELD ASN21949 Canada
dominionvoting- com.mail.protection.outlook.com	104.47.70.110	MICROSOFT-CORP-MSN-AS-BLOCK ASN8075 United States

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ES&S (US Company) <https://www.essvote.com/>

Hostname	IP Address	Reverse DNS	Netblock Owner
alwaysonvpn1.essvote.com	66.37.226.5	esstestvpn.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
dashcam.essvote.com	204.16.233.177	204-16-233-177.integratedsolutions.net	INTEGRATEDSOLUTIONS ASN32132 United States
dott.dims.essvote.com	66.60.180.37	037.180-60-66.DIA-subnet.surewest.net	SUREWEST ASN14051 United States
essballottracker.essvote.com	66.37.226.13	essballottracker.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
essconnect.essvote.com	66.37.226.68	essconnect.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
essportalone.essvote.com	66.37.226.24	essportalone.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
essportalthree.essvote.com	66.37.226.29	wsip-66-37-226-29.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
esstestvpn.essvote.com	66.37.226.5	esstestvpn.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
essvote.com	104.24.108.21		CLOUDFLARENET ASN13335 United States
essvote.com	104.24.108.21		CLOUDFLARENET ASN13335 United States
itrak.essvote.com	66.37.226.21	itrak.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
jrapp.essvote.com	66.37.226.32	sp.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
ksvrqa.essvote.com	66.37.226.38	ksvrqa.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
legacy.essvote.com	66.37.226.36	wsip-66-37-226-36.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
m2.essvote.com	66.37.226.14	m2.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
mail1.essvote.com	66.37.226.19	mail1.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
micollab.essvote.com	66.37.226.50	wsip-66-37-226-50.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
mitelmbg.essvote.com	66.37.226.50	wsip-66-37-226-50.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
muca.essvote.com	66.37.226.70	muca.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States

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muca2.essvote.com	66.37.226.74	muca2.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nat0.essvote.com	66.37.226.50	wsip-66-37-226-50.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nat1.essvote.com	66.37.226.51	wsip-66-37-226-51.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nat2.essvote.com	66.37.226.52	wsip-66-37-226-52.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nat3.essvote.com	66.37.226.53	wsip-66-37-226-53.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nat4.essvote.com	66.37.226.54	wsip-66-37-226-54.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nat5.essvote.com	66.37.226.55	wsip-66-37-226-55.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nat6.essvote.com	66.37.226.56	wsip-66-37-226-56.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nat7.essvote.com	66.37.226.57	wsip-66-37-226-57.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nat8.essvote.com	66.37.226.58	wsip-66-37-226-58.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nat9.essvote.com	66.37.226.59	wsip-66-37-226-59.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
nmvrqa.essvote.com	66.37.226.39	nmvrqa.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
ns1.essvote.com	66.37.226.12	wsip-66-37-226-12.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
printmanager.essvote.com	66.37.226.6	printmanager.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
psv.essvote.com	66.37.226.4	wsip-66-37-226-4.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
sft-test.essvote.com	66.37.226.8	sft-test.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
sft.essvote.com	66.37.226.61	sft.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
shop.essvote.com	64.73.195.53	shop.essvote.com	CYBERCON ASN7393 United States
sp.essvote.com	66.37.226.32	sp.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
support.essvote.com	66.37.226.22	support.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
uolsales.essvote.com	66.37.226.72	wsip-66-37-226-72.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States

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vlmviewer.essvote.com	66.37.226.15	vlmviewer.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
vpn1.essvote.com	66.37.226.68	essconnect.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
vpn2.essvote.com	66.37.226.66	vpn2.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
vpn3.essvote.com	66.37.226.2	wsip-66-37-226-2.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
webmail.essvote.com	66.37.226.36	wsip-66-37-226-36.om.om.cox.net	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
webresults.essvote.com	66.37.226.18	webresults.essvote.com	ASN-CXA-ALL-CCI-22773-RDC ASN22773 United States
webstore.essvote.com	67.37.226.11		ATT-INTERNET4 ASN7018 United States

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Hart Intercivic (US Company) <https://www.hartintercivic.com/>

Hostname	IP Address	Reverse DNS	Netblock Owner
cpanel.hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States
cpcalendars.hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States
cpcontacts.hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States
dev17.hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States
hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States
webdisk.hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States
webmail.hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States
whm.hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States
www.dev17.hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States
www.hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States
hartintercivic.com	172.81.117.226	vps34155.inmotionhosting.com	IMH-IAD ASNS4641 United States

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Scytl (Spain-based company) https://www.scytl.com/en/

Hostname	IP Address	Reverse DNS	Netblock Owner
Scytl.com Staging.scytl.com	52.57.209.147	ec2-52-57-209-147.eu-central-1.compute.amazonaws.com	Amazon Technologies Inc. (AT-88-Z) Frankfurt, Germany
agm.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
alm.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
bck.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
bomarkham.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
crl.scytl.com	217.111.178.69		COLT COLT Technology Services Group Limited ASN8220 Spain
demo.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
dmspre.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
edemocracy-experience.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
elections.scytl.com	217.14.38.114	114.38.14.217.t-sysnet.com	T-SYSTEMS-ELTEC ASN30892 Spain
epropagande.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
hrm.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
inside.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
invote.scytl.com	185.166.213.190	f6dcda04-c907-479a-9035-d067f0fcd456.clouding.host	CLOUDING ASN49635 Spain
jira-test.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
levelup.scytl.com	52.20.236.134	ec2-52-20-236-134.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
mail.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
mail3.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
mielectionspro2014.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
mta-sts.owa.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States

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mysite.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
mysitepre.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
ots.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
owa.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
owasp.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
owasppre.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
panoramix.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
pnyx.scytl.com	217.111.179.113		COLT COLT Technology Services Group Limited ASN8220 Spain
ppm.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
premi2014.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
prepnyx.scytl.com	217.111.179.114		COLT COLT Technology Services Group Limited ASN8220 Spain
prototype.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
smtp1.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
smtp2.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
staging.invote.scytl.com	185.166.212.13	a735355b-9fa6-4be6-8acf- f94e085115fb.clouding.host	CLOUDING ASN49635 Spain
stargate.scytl.com	213.229.182.50		COLT COLT Technology Services Group Limited ASN8220 Spain
support.scytl.com	213.27.248.118		COLT COLT Technology Services Group Limited ASN8220 Spain
test.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
vsplunk.scytl.com	205.178.189.131	wf.networksolutions.com	DEFENSE-NET ASN55002 United States
www.scytl.com	52.57.209.147	ec2-52-57-209-147.eu-central- 1.compute.amazonaws.com	AMAZON-02 ASN16509 Germany

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dns102.register.com	207.204.21.62		DEFENSE-NET ASN55002 United States
dns101.register.com	207.204.40.61		DEFENSE-NET ASN55002 United States
scyt1-com.mail.protection.outlook.com	104.47.10.36	mail- db5eur030036.inbound.protection.outlook.com	MICROSOFT-CORP-MSN-AS-BLOCK ASN8075 Ireland

ClarityElections (Part of Scyt1)

Hostname	IP Address	Reverse DNS	Netblock Owner
adams-co.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
arapahoe-co.connect4.clarityelections.com	52.1.225.137	ec2-52-1-225-137.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
bastrop-tx.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
calgary-ab-canada.training.clarityelections.com	13.226.25.68	server-13-226-25-68.ewr53.r.cloudfront.net	AMAZON-02 ASN16509 United States
capemay-nj.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
chatham-ga.training.clarityelections.com	23.21.132.216	ec2-23-21-132-216.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
clarityelections.com	13.226.25.22	server-13-226-25-22.ewr53.r.cloudfront.net	AMAZON-02 ASN16509 United States
clarityelections.com	13.227.76.112	server-13-227-76-112.sfo20.r.cloudfront.net	AMAZON-02 ASN16509 United States
coffee-al.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
contracosta-ca.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
contracostaclerk-ca.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
dallas-tx.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
dallas-tx.staging2.connect4.clarityelections.com	18.213.71.51	ec2-18-213-71-51.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
denton-tx.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
elections-ab-canada.training.clarityelections.com	13.226.25.68	server-13-226-25-68.ewr53.r.cloudfront.net	AMAZON-02 ASN16509 United States
enr2.clarityelections.com	54.225.215.237	ec2-54-225-215-237.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
galveston-tx.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States

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gregg-tx.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
hudson-nj.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
jefferson-tx.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
limestone-al.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
lubbock-tx.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
macoupin-il-new.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
macoupin-il.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
macoupin-il.staging2.connect4.clarityelections.com	18.213.71.51	ec2-18-213-71-51.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
madison-al.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
mchenry-il.connect.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
mchenry-il.connect4.clarityelections.com	3.230.235.41	ec2-3-230-235-41.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
mchenry-il.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
monmouth-nj.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
monmouthclerk-nj.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
morgan-al.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
ns1.clarityelections.com	205.251.193.130	ns-386.awsdns-48.com	AMAZON-02 ASN16509 United States
ns2.clarityelections.com	205.251.193.130	ns-386.awsdns-48.com	AMAZON-02 ASN16509 United States
ns3.clarityelections.com	205.251.193.130	ns-386.awsdns-48.com	AMAZON-02 ASN16509 United States
oneida-ny.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
results.enr.clarityelections.com	13.226.25.59	server-13-226-25-59.ewr53.r.cloudfront.net	AMAZON-02 ASN16509 United States
rockwall-tx.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States

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12/21/2020

sarasota-fl.connect.clarityelections.com	34.230.155.193	ec2-34-230-155-193.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
shasta-ca.connect.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
soe-pre-wds01.soe-ec2.clarityelections.com	23.21.71.240	ec2-23-21-71-240.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
soe-stg-lweb02.soe-ec2.clarityelections.com	184.72.238.54	ec2-184-72-238-54.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
soe-virtuallmail01.soe-ec2.clarityelections.com	54.225.172.157	ec2-54-225-172-157.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
soe-wds01.soe-ec2.clarityelections.com	54.235.159.49	ec2-54-235-159-49.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
stcharles-la.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
support.clarityelections.com	184.72.232.49	ec2-184-72-232-49.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
testbed2.connect4.clarityelections.com	52.1.225.137	ec2-52-1-225-137.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
toronto-on-canada-ws.training.clarityelections.com	52.86.76.81	ec2-52-86-76-81.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
ventura-ca.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
voter-ed.demo.clarityelections.com	18.213.71.51	ec2-18-213-71-51.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
voter-registration-fl.connect.clarityelections.com	52.1.225.137	ec2-52-1-225-137.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
will-il-archive.connect3.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
will-il.connect3.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
wood-tx.connect4.clarityelections.com	3.223.181.65	ec2-3-223-181-65.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
www.clarityelections.com	13.227.76.112	server-13-227-76-112.sfo20.r.cloudfront.net	AMAZON-02 ASN16509 United States
ns1.clarityelections.com	205.251.195.153	ns-921.awsdns-51.net	AMAZON-02 ASN16509 United States
ns2.clarityelections.com	205.251.195.153	ns-921.awsdns-51.net	AMAZON-02 ASN16509 United States
ns3.clarityelections.com	205.251.197.187	ns-1467.awsdns-55.org	AMAZON-02 ASN16509 United States
owa.scytl.com	18.196.162.197	ec2-18-196-162-197.eu-central-1.compute.amazonaws.com	AMAZON-02 ASN16509 Germany

12/21/2020

SmartMatic (US-based company) <https://www.smartmatic.com/us/>

Hostname	IP Address	Reverse DNS	Netblock Owner
biometria.smartmatic.com	34.224.132.178	ec2-34-224-132-178.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
biometric.smartmatic.com	34.224.132.178	ec2-34-224-132-178.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
ciudadesinteligentes.smartmatic.com	34.224.132.178	ec2-34-224-132-178.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
dev.smartmatic.com	104.20.79.36		CLOUDFLARENET ASN13335 United States
elecciones.smartmatic.com	34.224.132.178	ec2-34-224-132-178.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
elections.smartmatic.com	34.224.132.178	ec2-34-224-132-178.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
smartcities.smartmatic.com	34.224.132.178	ec2-34-224-132-178.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
vera.smartmatic.com	34.224.132.178	ec2-34-224-132-178.compute-1.amazonaws.com	AMAZON-AES ASN14618 United States
smartmatic-com.mail.protection.outlook.com	104.47.74.10	mail-bn8nam080010.inbound.protection.outlook.com	MICROSOFT-CORP-MSN-AS-BLOCK ASN8075 United States

KnowInk (US-based company) <https://knowink.com/>

Hostname	IP Address	Reverse DNS	Netblock Owner
knowink.com	192.241.137.228		DIGITALOCEAN-ASN ASN14061 United States
www.knowink.com	157.230.177.115		DIGITALOCEAN-ASN ASN14061 United States
ns-1115.awsdns-11.org	205.251.196.91	ns-1115.awsdns-11.org	AMAZON-02 ASN16509 United States
ns-1798.awsdns-32.co.uk	205.251.199.6	ns-1798.awsdns-32.co.uk	AMAZON-02 ASN16509 United States
ns-485.awsdns-60.com	205.251.193.229	ns-485.awsdns-60.com	AMAZON-02 ASN16509 United States
ns-649.awsdns-17.net	205.251.194.137	ns-649.awsdns-17.net	AMAZON-02 ASN16509 United States

ElectionSource (US-based company) <https://electionsource.com/>

Hostname	IP Address	Reverse DNS	Netblock Owner
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MM002299

12/21/2020

electionsource.com	192.124.249.115	cloudproxy10115.sucuri.net	SUCURI-SEC ASN30148 United States
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MARK MEADOWS,)
)
Plaintiff,)
)
v.)
)
NANCY PELOSI, et al.)
)

Case No. 1:21-cv-3271-CJN

Exhibit W

JAMES C. WEIDNER

ERNEST H. "BUCKY" WOODS, III

DOUGLAS A. COLLINS

WILLIAM R. OLIVER
(OF COUNSEL)



NorthGeorgiaLawyers.com

August 2, 2021

Mr. Jeff Clark:

We represent former President Donald J. Trump and write concerning requests sent to you by the U.S. House of Representatives Committee on Oversight and Reform and the U.S. Senate Judiciary Committee to provide transcribed interviews on matters related to your service as Deputy Attorney General and Acting Attorney General during President Trump's administration. We also understand that, as set forth in its July 26, 2021, letter to you, the U.S. Department of Justice stated that President Biden decided to waive the executive and other privileges that protect from disclosure non-public information concerning those matters and has authorized you to provide such information.

Please be advised that the Department's purported waiver and authorization are unlawful, and that President Trump continues to assert that the non-public information the Committees seek is and should be protected from disclosure by the executive privilege. The executive privilege applicable to communications with President Trump belongs to the Office of the Presidency, not to any individual President, and President Biden has no power to unilaterally waive it. The reason is clear: if a President were empowered unilaterally to waive executive privilege applicable to communications with his or her predecessors, particularly those of the opposite party, there would effectively be no executive privilege. To the extent the privilege would continue to exist at all, it would become yet another weapon to level the kind of unjustifiable partisan political attacks the Democrat-controlled administration and Committees are seeking to level here.

As the Supreme Court held in *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977) – where, like here, the then-current administration did not support a former President's assertion of executive privilege – the executive privilege is crucial to Executive Branch decision-making:

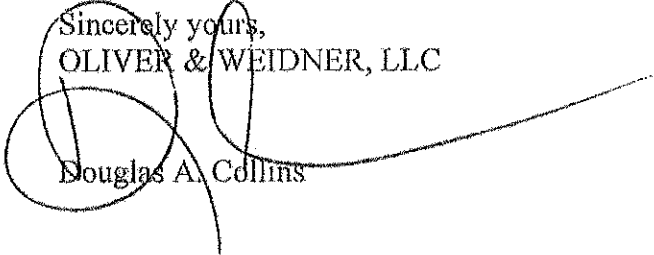
Unless [the President] can give his advisers some assurance of confidentiality, a President could not expect to receive the full and frank submissions of facts and opinions upon which effective discharge of his duties depends. The confidentiality necessary to this exchange cannot be measured by the few months or years between the submission of the information and the end of the President's tenure; the privilege is not for the benefit of the President as an individual, but for the benefit of the Republic.

Nixon v. Administrator of General Services, 433 U.S. 425, 448-49 (1977). The Department's July 26 letter to you quoted this decision but left out the very next sentence in the opinion: "**Therefore, the privilege survives the individual President's tenure.**" Id. at 448-49 (quoting, and adopting, Brief for the Solicitor General on Behalf of Federal Appellees) (emphasis added).

Here, it is clear that even though President Biden and the Department do not know the nature or content of the non-public information the Committees seek, they have not sought or considered the views of the President who does know as to whether the confidentiality of that information at issue should continue to be protected. Such consideration is the minimum that should be required before a President waives the executive privilege protecting the communications of a predecessor. See Office of Legal Counsel Memorandum on Applicability of Post-Employment Restrictions in 18 U.S.C. § 207 to a Former Government Official Representing a Former President or Vice President in Connection with the Presidential Records Act, June 20, 2001, at 5 ("[A]lthough the privilege belongs to the Presidency as an institution and not to any individual President, the person who served as President at the time the documents in question were created is often particularly well situated to determine whether the documents are subject to a claim of executive privilege and, if so, to recommend that the privilege be asserted and the documents withheld from disclosure.").

Nonetheless, to avoid further distraction and without in any way otherwise waiving the executive privilege associated with the matters the Committees are purporting to investigate, President Trump will agree not to seek judicial intervention to prevent your testimony or the testimony of the five other former Department officials (Richard P. Donoghue, Patrick Hovakimian, Byung J. "BJay" Pak, Bobby L. Christine, and Jeffrey B. Clark) who have already received letters from the Department similar to the July 26, 2021 letter you received, so long as the Committees do not seek privileged information from any other Trump administration officials or advisors. If the Committees do seek such information, however, we will take all necessary and appropriate steps, on President Trump's behalf, to defend the Office of the Presidency.

Sincerely yours,
OLIVER & WEIDNER, LLC


Douglas A. Collins

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

MARK MEADOWS,)

Plaintiff,)

v.)

NANCY PELOSI, et al.)

Case No. 1:21-cv-3271-CJN

Exhibit X

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5 SELECT COMMITTEE TO INVESTIGATE THE
6 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
7 U.S. HOUSE OF REPRESENTATIVES,
8 WASHINGTON, D.C.

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12 INTERVIEW OF: STEVEN A. ENGEL

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Thursday, January 13, 2022

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Washington, D.C.

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The interview in the above matter was held via Webex, commencing at 10:08 a.m.

22

Present: Representatives Lofgren and Cheney.

1 know, I'm sorry, Mr. President, I don't think that there is, you know, there is much we can
2 do.

3 There was some discussion -- I don't remember who raised it, but just was simply,
4 you know, the notion that criminal investigative techniques would be effective in a
5 contested election is not really -- it's just not the way criminal investigations work.
6 Criminal investigations are under much slower timeframes.

7 To the extent the question is we should be looking at allegations of election fraud
8 in order to discover the facts that could lead people to change their minds or change their
9 votes or to cancel votes, you know, it's just that the timeframe didn't work. You know,
10 so, while the Department did look into allegations as they were made, ultimately sort of
11 the tool of doing this is not the way elections are contested. They're contested in civil
12 courts, and they're contested by the campaigns. So I think there was some discussion of
13 that.

14 And then, I mean, Mr. Clark suggested that OLC provide a legal opinion to the Vice
15 President with respect to his authority when it comes to opening the votes as the
16 President of the Senate on January 6th.

17 And I shot down that idea, but I said -- I said: That's an absurd idea. The -- you
18 know, the Vice President is acting as the President of the Senate. It is not the role of the
19 Department of Justice to provide legislative officials with legal advice on the scope of
20 their duties. And -- you know, and -- not to mention it was 3 days from the date. OLC
21 doesn't tend to provide the legal opinions, you know, in those cases, you know, in that
22 short timeframe.

23 And the President said: Yeah, no, that's -- that's -- nobody -- nobody should be
24 talking to the Vice President here. And --

25 Q Did you have an understanding as to why the President was saying nobody

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

MARK MEADOWS,)
)
Plaintiff,)
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v.)
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)
)

Case No. 1:21-cv-3271-CJN

Exhibit Y

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4 SELECT COMMITTEE TO INVESTIGATE THE
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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11 DEPOSITION OF: JASON MILLER

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Thursday, February 3, 2022

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Washington, D.C.

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20 The deposition in the above matter was held via Webex, commencing at 10:04
21 a.m.

22

Present: Representatives Aguilar, Lofgren, Murphy, Cheney, and Kinzinger.

1 If we can go to, I believe it's exhibit 76. And this is, again, just trying to refresh
2 your recollection, but there is -- these are text messages that we've obtained.

3 If you could zoom in, these are text messages at the top, the first four lines there.
4 I believe that's your phone number that's ending in 7940, Mr. Meadows' ending in 2544.
5 The white, just for your reference, indicates a message that you received. Blue indicates
6 a message that you sent.

7 So Mr. Meadows on November the 11th says, "Who does the software glitch
8 investigation for the campaign. All of the allegations, to see if they have merit."

9 Do you remember if this was referring to the Dominion issue?

10 A What was the date on that?

11 Q November the 11th.

12 A And that was Wednesday, the 11th? Is that -- or is it --

13 Q I believe so. Yeah.

14 A Boy, I just don't remember that exchange. Not to say that it didn't happen.
15 I just -- not something I remember.

16 Q Do you remember Mr. Meadows expressing an interest in this issue?

17 A Not in great detail at that time. Again, any interaction with the chief I think
18 would've been by phone or text or emails. I think he was still out with COVID.

1

2 [2:20 p.m.]

3 BY MR. GEORGE:

4 Q And, while we're on Mr. Meadows, let me just ask you, there's some text
5 messages with you and him about spending and ad buys. And I believe in late
6 December, so jumping forward a little bit, you mentioned -- you told him about an ad buy
7 that you planned to make on various places: Wisconsin, Georgia, Michigan, national.
8 You said that we had 1.6 million booked on local cable and talking about an overall
9 budget of \$5.5 million.

10 Why would you be talking to Mr. Meadows about ad buys and particularly the
11 amount of money spent on ad buys?

12 A I don't remember that particular conversation with Chief Meadows, and I
13 don't know the context, if he asked me what was happening or if I was proactively letting
14 him know. So I'd need a little bit more context to know why I was discussing that with
15 him at that point.

16 Q Okay. Fair enough. And that's the extent of that message that I have.
17 But was it -- did Mr. Meadows regularly check in on the campaign spending?

18 A I mean, I know at various points I had conversations with him about
19 campaign spending. But, again, I don't know -- that particular exchange, it's just not
20 something that I have great clarity on.

21 Q Do you know why he was interested in campaign spending?

22 A Can you put it back out to see, so I can see again what it was that was said?

23 Q Sure. That's on page 2 of exhibit No. 76.

24 It's that one right in the middle, and if you would zoom in on that big block of text.

25 A Could you possibly make that bigger? I'm sorry.

1 an email exchange. You did not produce this to us, so I'll give you some time to look at
2 it. But starting at the bottom -- actually on the very top of page 2, right there.

3 He sends -- Mr. Meadows, using this Gmail address -- and I'll ask you first, do you
4 recognize that as being Mr. Meadows' address?

5 A At least at that time, yes.

6 Q All right. So he sends you an email and says: Let's have a discussion
7 about this tomorrow and attaches -- you can see on the top of page 2 -- a document
8 called 2020-11-20 Chesbrough Memo on Real Deadline2.pdf.

9 Do you remember getting a memo written by Ken Chesbrough on alternate
10 electors?

11 A I mean, I remember the name just because it's a little bit goofy, but I don't
12 remember the contents necessarily of the memo.

13 Q Okay. So, on December 6, Mr. Meadows sent you that and says: Let's
14 have a discussion.

15 You respond a few minutes later and say: You bet. So you know, Justin and I
16 did on background calls on this very subject with Maria, Levin, Chuck Todd and Margaret
17 Brennan yesterday. I might be missing one or two others.

18 Can you tell us about that background call you did on this issue with those people?

19 A Yeah. I think it was one of the last times, I think, whoever tried something
20 like that where we wanted to communicate that there were still ongoing legal challenges
21 and that the -- I believe that it was around this time that the -- as most of the press corps
22 was saying -- then, again, I think it was the 8th for the safe harbor and maybe the 14th for
23 the electors being certified. I think that's the right terminology. They were saying this
24 is basically coming to an end, and I think we were saying that technically the last time that
25 there can be any issues raised is January 6th because that's when actually they count the

1 electoral ballots at the Capitol.

2 And there was an example, I believe it was Hawaii in 1960, where the -- I might be
3 misstating this somewhat, but where the electors voted for one candidate; they went to
4 the other candidate. So I'm just saying that the final deadline was truly January 6th, as
5 far as any, say, legal issues that might be outstanding, whether it be in the Supreme Court
6 or in other places.

7 Q Okay. And that Hawaii example, is that how it was described to you?

8 A Correct.

9 Q The way you just described it?

10 A Yes.

11 Q Okay. There's a reference in here that says: Justin, we should do a
12 national press call tightly focused on this tomorrow, no?

13 Now, I can't see everybody who's on this just by the way it's produced. So do
14 you think that reference to Justin would have been Justin Clark?

15 A Most likely.

16 Q It sounds like Mr. Clark didn't put too much stock into this idea of alternate
17 electors. So were you guys being told to run with this idea and help coordinate it?

18 A I don't remember where exactly direction was coming from at that point.
19 But there were a number of ongoing legal challenges and legal issues as things were
20 starting to approach, in particular the Federal level or as they were starting to approach
21 the Supreme Court, but I know, based off of the lack of interest from the reporters that
22 we had chatted through about January 6th and anything extending beyond December,
23 there was little to no interest in anything going forward.

24 Q Mr. Meadows' response to your email about 10 or 15 minutes later says: If
25 you are on it, then never mind the meeting. We just need to have somebody

1 coordinating the electors for States.

2 What did he mean by that, or what did you understand that to mean?

3 A Can I see the next up, what my response was?

4 Q It says: Nope, we did the meeting/call. Was just letting you know we'd
5 been working on the PR angle. Free to talk whatever you are tomorrow, Chief.

6 A So, to the best of my memory, I was communicating that we did need to talk
7 about what was happening on the electors because it was a complete swirl, and there
8 didn't appear to be any clear organization.

9 Q Okay. And, as far as coordinating the electors, did you understand that to
10 mean actually getting the electors to meet in their respective States and fill out the
11 paperwork and go through with sending the votes?

12 A I can't speak to what Chief Meadows was specifically saying in that point. I
13 just know that from -- prior to those days, whether that was on the 8th or the 14th, or
14 whenever those people would gather in their respective State capitals, that it was a swirl.
15 No one was in charge. I have no idea how any of the efforts even ended up really
16 coming together. So it was kind of just a -- it was not particularly well organized.

17 Q Did you have a role in organizing those meetings and efforts?

18 A Not as far as a turnout of -- or calling individuals and saying: Can you
19 say -- can you be in charge?

20 I don't remember exactly, say, what I heard during that week or say if I was
21 performing any communication support. But I just remember there's this big -- again, I
22 use the word "swirl" because it wasn't clear who was in charge or who was doing what.
23 And then, in some of the States, some people showed up and said that they were the
24 alternate slate of electors.

25 Q So do you remember anything specific you did do to help make sure that

**IN THE UNITED STATES DISTRICT COURT
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MARK MEADOWS,

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Case No. 1:21-cv-3271-CJN

Exhibit Z

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5 SELECT COMMITTEE TO INVESTIGATE THE
6 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
7 U.S. HOUSE OF REPRESENTATIVES,
8 WASHINGTON, D.C.

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12 INTERVIEW OF: BRAD RAFFENSPERGER

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Tuesday, November 30, 2021

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Washington, D.C.

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21 The interview in the above matter was held in Room 4480, O'Neill House Office
22 Building, commencing at 10:01 a.m.

23

Present: Representatives Schiff, Lofgren, Raskin, Aguilar, Cheney, and Kinzinger.

1 trying to understand the transcript. So thank you.

2 BY MR. WOOD:

3 Q If you then look at exhibit 11 entitled, "3rd Third Strike Against Voter Fraud
4 Claims Means They're Out After Signature Audit Finds No Fraud."

5 This was like a release by your office describing the findings of the Cobb County
6 audit. Feel free to look at that if you want. But, in general, what were the findings of
7 the audit of Cobb County?

8 A We took a random sample of approximately 15,000 ballots of the total
9 150,000 Cobb County ballots, and we found two envelopes that were not handled
10 appropriate, should have been flagged by the county election officials. They were, in
11 both cases, signed by spouses.

12 One of the people that signed, their spouse had a health issue. The other one is
13 just they got confused or what have you, but it should have been picked up.

14 But that turned out that we had a 99 percent confidence, you know, level in that.
15 So, in effect, there was no fraud in the absentee ballot process.

16 Q To your knowledge, when Mr. Meadows went to Cobb County and watched
17 the audit going on, did he express any concerns to your staff about the way they were
18 conducting the audit?

19 A I don't believe I heard any complaints from my -- relayed to me through my
20 staff that Mr. Meadows had.

21 Q So if you look at exhibit 12, these are -- appear to be text messages. First
22 one is an iMessage, Thursday, November 19th, 6:56 a.m. It appears to be to you.

23 "Mr. Secretary, Mark Meadows here. If you could give me a brief call at your
24 convenience. Thank you."

25 Do you remember receiving that?

1 A Yes.

2 Q Did you call him?

3 A No.

4 Q Why not?

5 A I didn't know it was him.

6 Q Okay. Did you think it was somebody else?

7 A It could have been. I had a big spam folder at that time. So all the people
8 sending me nastygrams, you know, that they were in my unknowns, I guess, and they
9 were over there. But I happened to see that, so I just kind of tucked it away.

10 Q Okay. And then the next message is Saturday, December 5th, at 8:16 a.m.,
11 "Mr. Secretary, can you call the White House switchboard at 202-757-6000. For a call.
12 Your voicemail is full," coming again from someone purporting to be Mark Meadows.

13 A Right.

14 Q So do you remember getting that one?

15 A I do.

16 Q And what was your reaction to that one?

17 A Maybe it is him.

18 Q Okay. So what did you do?

19 A I let it sit there.

20 Q For how long?

21 A I never got back to him.

22 Q Okay. So as you sit here today, do you know how many times either
23 Mr. Meadows or people at the White House on behalf of the President tried to reach
24 you?

25 A I believe these two, to me directly. I know that there was calls into our

1 office. But they got left in the general mailbox and, you know, just didn't get picked up,
2 probably because we had so many other calls. But it was just one of those things.

3 Q And was that because people in your office didn't believe it was really the
4 White House or the President calling?

5 A I don't know what their reasons were, but my reason was -- I learned this on
6 city council. It was drilled into our heads that when you're on city council, you don't get
7 involved in policing investigations. If you have any questions, you go to the city
8 manager and you talk to them about any concerns you have.

9 And so we had ongoing investigations. We also had lawsuits with the Trump
10 team and the Trump campaign and all these other organizations, and I just didn't feel that
11 that was the appropriate channel to go. That they had their attorneys, we have our
12 attorneys, and we'll follow the process, we'll follow the law, and the results will be what
13 the results will be.

14 Q So does that mean that you believed that, even if it was, in fact, the
15 President or someone on his behalf trying to reach you, that you did not want to talk to
16 them?

17 A That is correct.

18 Q Okay. But eventually you did.

19 A Yes.

20 Q Okay. Can you tell us how that came about?

1

2 [2:08 p.m.]

3 Mr. Raffensperger. I was on the Neil Cavuto show, and we were talking about
4 the election. And I think -- I shared some data points with FOX News, Neil Cavuto, and I
5 said that there was 20,000 Georgians, Republicans, that voted in the June primary that
6 did not come out and vote in the November election, and I shared that about
7 19,000 -- Senator David Perdue got 19,000 more votes in the metropolitan area than
8 President Trump, and in the Republican congressional areas the Republican Congressmen
9 got about 33,000 more votes than President Trump.

10 And I believe that President Trump was watching FOX News and he didn't care for
11 my comments on those three data points.

12 BY MR. WOOD:

13 Q So what happened?

14 A So my deputy secretary called me, Jordan Fuchs called, and said, "The
15 President wants to talk to you." And so, "Me?" He says, "Yeah, Mark Meadows called.
16 The President wants to talk to you." I don't want to do that. And just tell him, you
17 know, we're just not interested in doing that.

18 So she called him back and said --

19 Q Called who back?

20 A Mark Meadows.

21 Q Okay.

22 A And I gather they had a conversation. And so she called me back and said,
23 "No, they really want to talk to you." I said, "I don't want to." And so she said, "Well,
24 they really want to talk to you." I said, "We have all these lawsuits going on. It's not
25 appropriate for me just to talk to the President by myself. We need to have, you know,

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

MARK MEADOWS,)

)
)
Plaintiff,)

v.)

) Case No. 1:21-cv-3271-CJN

)
NANCY PELOSI, et al.)

)
Defendants,)
)
_____)

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. “On January 6, 2021, as a joint session of Congress convened in the U.S. Capitol to certify the vote count of the Electoral College, thousands of people, many of whom had marched to the Capitol following a rally at which then-President Donald Trump spoke, gathered outside.” *United States v. Miller*, No. 1:21-cr-00119, 2022 WL 823070, at *1 (D.D.C. Mar. 7, 2022).

2. “[A] mob professing support for then-President Trump [then] violently attacked the United States Capitol in an effort to event a Joint Session of Congress from certifying the electoral college votes designating Joseph R. Biden the 46th President of the United States. The rampage left multiple people dead, injured more than 140 people, and inflicted millions of dollars in damage to the Capitol. Then-Vice President Pence, Senators, and Representatives were all forced to halt their constitutional duties and flee the House and Senate chambers for safety.” *Trump v. Thompson*, 20 F.4th 10, 15-16 (D.C. Cir. 2021), *cert. denied*, 142 S. Ct. 1350 (2022) (mem.).

3. In response to that attack, the House of Representatives adopted House Resolution 503, “Establishing the Select Committee to Investigate the January 6th Attack on the United

States Capitol.” That resolution authorizes the Select Committee to: (1) “investigate the facts, circumstances, and causes relating to the domestic terrorist attack on the Capitol”; (2) “identify, review, and evaluate the causes of and the lessons learned from the domestic terrorist attack on the Capitol”; and (3) “issue a final report to the House containing such findings, conclusions, and recommendations for corrective measures ... as it may deem necessary.” H. Res. 503, 117th Cong. § 4(a)(1)-(3) (2021).

3. To carry out those functions, House Resolution 503 authorizes the Speaker of the House to appoint Members to the Select Committee, five of whom “shall be appointed after consultation with the minority leader.” H. Res. 503 § 2(a).

4. On July 1, 2021, pursuant to the resolution, Speaker Pelosi appointed eight Members of the House (seven Democrats and one Republican) to the Select Committee. 167 Cong. Rec. H3597 (daily ed. July 1, 2021). On July 19, 2021, the House Minority Leader presented his recommendations for five additional Republicans to be appointed to the Select Committee. Press Release, Kevin McCarthy, McCarthy Names House Republicans to Serve on Select Committees (July 19, 2021), <https://perma.cc/W3JD-8QED>.

5. The Speaker then spoke with the Minority Leader, advised him that she would appoint three of the Members he had recommended, and asked the Minority Leader to recommend two other Republicans. Rather than comply with that request, the Minority Leader declined and, instead, withdrew all five recommendations and refused to participate further in the appointment of members. Press Release, Kevin McCarthy, McCarthy Statement about Pelosi’s Abuse of Power on January 6th Select Committee (July 21, 2021), <https://perma.cc/V6GG-BALN>.

6. After the Minority Leader declined to make further recommendations, the Speaker interpreted House Resolution 503 and the relevant House Rules, and determined a course of action under House Resolution 503 and the House Rules. She then named an additional Republican to the Select Committee. 167 Cong. Rec. H3885 (daily ed. July 26, 2021); Am. Compl. ¶ 58.

7. The Speaker's appointment of nine Members was in recognition of the quorum requirements for the Select Committee to conduct business and receive witness testimony. *See* Rule XI.2(h), Rules of the U.S. House of Representatives, 117th Cong. (2021); *see also* H. Res. 503§ 5(c)(3).

8. The Select Committee has operated with seven Democrats and two Republicans, and the full House has approved three resolutions of contempt of Congress referred to it by the Select Committee, one of which was addressed to Mr. Meadows specifically. 167 Cong. Rec. H7814-15 (daily ed. Dec. 14, 2021); *id.* at H5768-69, 117th Cong. (daily ed. Oct. 21, 2021); 168 Cong. Rec. H4371-79 (daily ed. Apr. 6, 2022).

9. On September 23, 2021, the Select Committee issued a subpoena to Mr. Meadows for deposition testimony and documentation regarding the events of January 6, 2021, and the facts and circumstances that led to the violent attack on the Capitol that day. ECF 13-3 (Am. Compl. Ex. A).

10. As authorized by Mr. Meadows, an attorney named Scott Gast accepted service of this subpoena on behalf of Mr. Meadows on September 23, 2021. H. Rep. 117-216, at 47 (2021).

11. The Chairman of the Select Committee explained in a cover letter accompanying the subpoena that its investigation had “revealed credible evidence” of Mr. Meadows’s “involvement in events within the scope of the Select Committee’s inquiry.” ECF 13-3 at 4 (Am. Compl. Ex. A).

12. Specifically, the Select Committee’s letter explained that Mr. Meadows was “with or in the vicinity of President Trump on January 6th, had communications with the President and others on January 6 regarding events at the Capitol, and [was] a witness regarding activities of that day.” *Id.*

13. The Select Committee letter also identified public reports indicating that Mr. Meadows was “engaged in multiple elements of the planning and preparation of efforts to contest the presidential election and delay the counting of electoral votes.” *Id.* Further, the Select Committee letter stated that, according to documents provided by the Department of Justice, Mr. Meadows “directly communicated with the highest officials” at the Department “requesting investigations into election fraud matters in several states.” *Id.*

14. The Select Committee letter also indicated the Select Committee’s understanding that, in the weeks after the 2020 election, Mr. Meadows “contacted several state officials to encourage investigation of allegations of election fraud, even after such allegations had been dismissed by state and federal courts, and after the Electoral College had met and voted on December 14, 2020.” *Id.*

15. On November 11, 2021, the Deputy White House Counsel informed Mr. Meadows’s counsel that President Biden had considered but declined to assert executive privilege or any

form of immunity with respect to Mr. Meadows's testimony or production of documents in response to the Select Committee's subpoena. ECF 13-14 at 3 (Am. Compl. Ex. L).

16. On November 26, 2021, Mr. Meadows's counsel wrote that Mr. Meadows would appear at a deposition subject to certain preconditions, ECF 13-17 at 3-4 (Am. Compl. Ex. O), and agreed to produce 1,139 documents from Mr. Meadows's personal email account, ECF 13-18 at 2 (Am. Compl. Ex. P).

17. On December 3, 2021, the Select Committee received certain documentation from Mr. Meadows, including 2,319 text messages from Mr. Meadows's private phone without Mr. Meadows or any executive branch official asserting any claim of privilege over those materials. Mr. Meadows also provided the Select Committee with a privilege log showing Mr. Meadows was withholding over 1,000 text messages from his personal cell phone based on claims of executive, marital, and attorney-client privileges. *See* H. Rep. 117-216, at 19, 130 (2021).

18. In Mr. Meadows's privilege logs where he claimed attorney-client privilege for certain email communications, Mr. Meadows identified more than 200 communications he initiated or participated in based on his role in the Trump campaign with people reported to be members of the Trump campaign legal team or other Trump campaign staff. *See, e.g.*, Ex. A to Decl. of Timothy Heaphy, Dec. 6, 2020 Emails from Mark Meadows to Jason Miller. Mr. Meadows also had a role in post-election Trump campaign efforts, including travelling to Georgia to observe an audit of absentee ballot signatures, communicating with state officials, legislators, and others regarding state election results, and planning with members of Congress and others not in the Executive Branch for the events of January 6th. *See, e.g.*, Amy Gardner &

Paulina Firozi, *Here's the transcript and audio of the call between Trump and Raffensperger*, Wash. Post (Jan. 5, 2021), <https://perma.cc/5SMX-4FPX>.

19. Mr. Meadows's privilege logs also included separate claims of work product protection and executive privilege for dozens of email communications with lawyers acting for the campaign and/or other campaign staff. *See* Ex. E to Decl. of Timothy Heaphy, Mark Meadows Email Privilege Log.

20. Although Mr. Meadows had agreed to appear for a deposition on December 8, 2021, he informed the Select Committee on December 7, 2022, of a change of heart. Instead of appearing for the deposition, he filed this suit and refused to appear before or provide any testimony to the Select Committee, either regarding his activity as Chief of Staff or his other activity for the Trump campaign. ECF 13-22 (Am. Compl. Ex. T).

21. Thereafter, the House of Representatives voted to hold Mr. Meadows in contempt by a vote of 222 yeas and 208 nays. 167 Cong. Rec. H7814-15(daily ed. Dec. 14, 2021). Some members of the House argued before the House Rules Committee and on the House floor that the Select Committee lacked an appropriate legislative purpose, was not appropriately composed, and lacked authority to issue the Meadows subpoena. The House Rules Committee reported a resolution governing floor consideration of the measure and the full House adopted the contempt resolution emanating from the Select Committee's contempt report. The contempt report adopted by the House repeatedly noted that Mr. Meadows not only refused to attend a deposition at all but refused to provide even indisputably non-privileged testimony to the Select Committee. *See, e.g.*, H. Rep. 117-216 at 3 (2021).

22. Since that time, Mr. Meadows has continued to refuse to comply with the Select Committee subpoena's demand for testimony, even with respect to non-privileged information.

23. On November 22, 2021, the Select Committee issued a subpoena to Verizon for "subscriber information and cell phone data associated with Mr. Meadows's personal cell phone number." Am. Compl. ¶ 107. The subpoena does not request any content of any communications, nor does it request geo-location data. *See* ECF 13-21 (Am. Compl. Ex. S). To date, Verizon has not produced any of the subpoenaed information to the Select Committee, and it has advised the Select Committee that it will not provide the requested documents absent a ruling from this Court.

24. On January 30, 2022, former-President Trump issued a press release stating: "Actually, what they are saying, is that Mike Pence did have the right to change the outcome, and they now want to take that right away. Unfortunately, [former-Vice President Pence] didn't exercise that power, he could have overturned the Election!" Press Release, Donald J. Trump, Statement by Donald J. Trump, 45th President of the United States of America (Jan. 30, 2022), <https://perma.cc/9FBB-J7HE>.

25. On December 7, 2021, Mr. Meadows's book about his ten months as White House Chief of Staff, *The Chief's Chief*, was released by All Seasons Press.

26. Former President Trump reviewed the book in advance and did not object to its publication. *See* Statement by Donald J. Trump (October 13, 2021), <https://perma.cc/MGS4-7P6S>.

27. In his book, Mr. Meadows recounts specific conversations he had with the former President.

28. In his book, Mr. Meadows discloses his views and observations of events that occurred on January 6, 2021.

29. Prior to January 6, 2021, Mr. Meadows conducted activities for the Trump presidential campaign. For example, Mr. Meadows stated in his book, “For weeks, we had been campaigning at a herculean pace.” Mark Meadows, *The Chief’s Chief*, at 243 (2021). *See also id.* at 230 (stating, “I had spent most of the day helping the campaign team set up an election command center in the East Wing of the building”); *id.* at 235-37, 241 (describing how Mr. Meadows called the managing editor of Fox News’s Washington division to convey the “problem” of Fox News covering a Biden campaign rally instead of a Trump campaign rally occurring at the same time, and how Mr. Meadows called him again on election night to complain about Fox News “call[ing] Arizona for Joe Biden”).

Respectfully submitted,

/s/ Douglas N. Letter

Douglas N. Letter (D.C. Bar No. 253492)

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April 22, 2022

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

MARK MEADOWS,

Plaintiff,

v.

NANCY PELOSI, *et al.*,

Defendants.

No. 1:21-cv-3217-CJN

[PROPOSED] ORDER

UPON CONSIDERATION OF Defendants' Motion for Summary Judgment, the opposition thereto, any reply in support of the Motion, and the entire record herein, it is hereby ORDERED

That Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Motion for Summary Judgment is DENIED.

Dated: _____

The Honorable Carl J. Nichols
UNITED STATES DISTRICT COURT JUDGE