

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

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Santa Fe County  
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KATHLEEN VIGIL CLERK OF THE COURT  
Marina Sisneros

STATE OF NEW MEXICO, ex rel.,  
MARCO WHITE, MARK MITCHELL,  
and LESLIE LAKIND,

Plaintiffs,

vs.

Case No. D-101-CV-2022-00473

COUY GRIFFIN,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

THIS MATTER having come before the Court for a trial on the merits of the Complaint filed herein, the Plaintiffs Marco White, Mark Mitchell, and Leslie Lakind being represented by Freedman Boyd Hollander & Goldberg, P.A. (Joseph Goldberg, Esq.), Dodd Law Office, LLC (Christopher A. Dodd, Esq.), Law Office of Amber Fayerberg (Amber Fayerberg, Esq.), Citizens for Responsibility and Ethics in Washington (Noah Bookbinder, Esq., Donald Sherman, Esq., Nikhel Sus, Esq., and Stuart McPhail, Esq.) and Cohen Milstein Sellers & Toll PLLC ( Daniel A. Small, Esq.); the Defendant Couy Griffin appearing pro se and Amici Curiae, Floyd Abrams, Erwin Chemerinsky, Martha Minow, Laurence H. Tribe, Maryham Ahranjani, Lynne Hinton, National Council of Jewish Women, NAACP New Mexico State Conference, NAACP Otero County Branch and Common Cause filing Amici Curiae Briefs, and the Court having taken the evidence, reviewed arguments of Counsel, reviewed the pleadings and all matters of record and being otherwise fully advised in the premises, enters the following Findings of Facts, Conclusions of Law and Order.

At the outset, it is appropriate to quote in pertinent part the Judge's charge to the grand jury in *In re Charge to Grand Jury*, 62 F. 828, 829-830 (D.C.N.D. Ill. 1894):

Gentlemen of the Grand Jury: You have been summoned here to inquire whether any of the laws of the United States within this judicial district have been violated. You have come in an atmosphere and amid occurrences that may well cause reasonable men to question whether the government and laws of the United States are yet supreme. Thanks to resolute manhood, and to that enlightened intelligence which perceives the necessity of a vindication of law before any other adjustments are possible, the government of the United States is still supreme.

You doubtless feel, as I do, that the opportunities of life, under present conditions, are not entirely equal, and that changes are needed to forestall some of the dangerous tendencies of current industrial tendencies. But neither the torch of the incendiary, nor the weapon of the insurrectionist, nor the inflamed tongue of him who incites to fire and sword is the instrument to bring about reforms. To the mind of the American people; to the calm, dispassionate sympathetic judgment of a race that is not afraid to face deep changes and responsibilities, there has, as yet, been no appeal. Men who appear as the champions of great changes must first submit them to discussion, discussion that reaches, not simply the parties interested, but the outer circles of society, and must be patient as well as persevering until the public intelligence has been reached, and a public judgment made up. An appeal to force before that hour is a crime, not only against government of existing laws, but against the cause itself; for what man of any intelligence supposes that any settlement will abide which is induced under the light of the torch or the shadow of an overpowering threat?

With the questions behind present occurrences, therefore, we have, as ministers of the law and citizens of the republic, nothing now to do. The law as it is must first be vindicated before we turn aside to inquire how law or practice, as it ought to be, can be effectually brought about. Government by law is imperiled, and that issue is paramount.

The government of the United States has enacted laws designed, first, to protect itself and its authority as a government, and, secondly, its control over those agencies to which, under the constitution and laws, it extends governmental regulation. For the former purpose,— namely, to protect itself and its authority as a government,— it has enacted that every person who incites, sets on foot, assists, or engages in, any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, 'and any two or more persons in any state or territory who conspire to overthrow, put down, or destroy by force the government of the United States, or to levy war against them, or to oppose by force the authority thereof; or by force to prevent, hinder or delay the execution of any law of the United States contrary to the authority thereof, ' shall be visited with certain penalties therein named.

Insurrection is a rising against civil or political authority,— the open and active opposition of a number of persons to the execution of law in a city or state. Now, the laws of the United States forbid, under penalty, any person from obstructing or retarding the passage of the mail, and make it the duty of the officers to arrest such offenders, and bring them before the court. If, therefore, it shall appear to you that any person or persons have willfully obstructed or retarded the mails, and that their attempted arrest for such offense has been opposed by such a number of persons as would constitute a general uprising in that particular locality, then the fact of an insurrection, within the meaning of the law, has been established; and he who by speech, writing, or other inducement assists in setting it on foot, or carrying it along, or gives it aid or comfort, is guilty of a violation of law. It is not necessary that there should be bloodshed; it is not necessary that its dimensions should be so portentous as to insure probable success, to constitute an insurrection. It is necessary, however, that the rising should be in opposition to the execution of the laws of the United States, and should be so formidable as for the time being to defy the authority of the United States. When men gather to resist the civil or political power of the United States, or to oppose the execution of its laws, and are in such force that the civil authorities are inadequate to put them down, and a considerable military force is needed to accomplish that result, they become insurgents; and every person who knowingly incites, aids, or abets them, no matter what his motives may be, is likewise an insurgent. The penalty for the offense is severe, and, as I have said, is designed to protect the government and its authority against direct attack. ....

Mr. Griffin's attempts by his arguments, including his closing argument, to sanitize his actions are without merit and contrary to the evidence produced by the Plaintiffs, bearing in mind that he produced no evidence himself in his own defense. His protestations and his characterizations of his actions and the events of January 6, 2021 are not credible and amounted to nothing more than attempting to put lipstick on a pig.

The irony of Mr. Griffin's argument that this Court should refrain from applying the law and consider the will of the people in District Two of Otero County who retained him as a county commissioner against a recall effort as he attempts to defend his participation in an insurrection by a mob whose goal, by his own admission, was to set aside the results of a free, fair and lawful election by a majority of the people of the entire country (the will of the people) has not escaped this Court.

In this *quo warranto* action, Plaintiffs seek to remove Otero County Commissioner Couy Griffin from office and disqualify him from any future public office pursuant to Section Three of the Fourteenth Amendment to the Constitution of the United States and NMSA 1978, Sections 44-3-4 and 44-3-14, based on his participation in the January 6, 2021 insurrection at the United States Capitol and related events.

## **FINDINGS OF FACT**

### **I. The Parties.**

1. Plaintiff Marco White is a private citizen and resident of Santa Fe County, New Mexico. 8/15/22 Tr. 9:21–22;<sup>1</sup> Complaint (“Compl.”) ¶ 3.

2. Plaintiff Mark Mitchell is a private citizen and resident of Los Alamos County, New Mexico. 8/15/22 Tr. 9:21–22; Compl. ¶ 4.

3. Plaintiff Leslie Lakind is a private citizen and resident of Santa Fe County, New Mexico. 8/15/22 Tr. 9:21–22; Compl. ¶ 5.

4. Defendant Couy Griffin currently serves as the District 2 Commissioner on the Otero County Board of County Commissioners (“Otero County Commission”). 8/15/22 Tr. 46:15–17 (Griffin). His term ends on December 31, 2022. *Id.* 46:18–19.

5. The Otero County Commission was created pursuant to the Constitution and statutes of New Mexico. N.M. Const. art. X, § 1; NMSA 1978, §§ 4-38-1 to 4-38-42.

6. As a county commissioner, Mr. Griffin performs “executive functions,” including on spending, personnel, and election matters. 8/15/22 Tr. 52:18–57:23 (Griffin); 8/16/22 Tr.

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<sup>1</sup> Citations to the trial transcript will identify the date, page, and line number of the cited transcript followed by a parenthetical identifying the testifying witness, where applicable.

19:12–24, 20:15–23 (Graber); Plaintiffs’ Exhibit (“PX”) 2–11 (Otero County Commission Resolutions and Agendas).

7. As a county commissioner, Mr. Griffin implements state law. 8/15/22 Tr. 57:3–23 (Griffin); 8/16/22 Tr. 19:12–19 (Graber); PX 2–11 (Otero County Commission Resolutions and Agendas).

8. State law required Mr. Griffin to take an oath to support the Constitution of the United States before assuming office, and Mr. Griffin did so. 8/15/22 Tr. 51:13–18 (Griffin); PX 1 (Dec. 28, 2018 Oath of Office); N.M. Const. art. XX, § 1 (requiring “[e]very person elected or appointed to any office” to take an oath “that he will support the constitution of the United States”).

9. Mr. Griffin’s actions as a county commissioner have had a statewide impact. 8/16/22 Tr. 19:12–24 (Graber); *see also* Br. of *Amicus Curiae* Common Cause at 6–9 (Aug. 24, 2022) (explaining how Griffin’s election denialism and defiance of the law have impacted the State); 8/15/22 Tr. 14:10–15:11 (Court recognizing that Mr. Griffin’s “refusal to certify election results” and resulting “mandamus action” in the New Mexico Supreme Court “affected the entire state of New Mexico”).

10. Mr. Griffin is the founder and leader of “Cowboys for Trump,” a political advocacy organization established in 2019 to support former President Donald Trump and his policies. 8/15/22 Tr. 47:1–7, 49:17–21 (Griffin).

## **II. The “Stop the Steal” Movement to Block the Lawful Transfer of Presidential Power.**

11. On November 7, 2020, the major news networks projected Joe Biden as the winner of the 2020 presidential election. PX 12 at 21 (June 2021 Senate Report).

12. President Trump did not accept the election results and pursued multiple avenues to remain in power through legal and extra-legal means. 8/16/22 Tr. 96:19–21 (Kleinfeld). The Trump campaign and its supporters filed and lost dozens of frivolous lawsuits challenging the election results based on alleged voter fraud. PX 12 at 21 (June 2021 Senate Report). A federal judge called one such case “a historic and profound abuse of the judicial process” meant to “undermin[e] the People’s faith in our democracy.” *King v. Whitmer*, 556 F. Supp. 3d 680, 688–89 (E.D. Mich. 2021) (sanctioning attorneys).

13. On December 14, 2020, the Electoral College met and confirmed Joe Biden’s victory in the 2020 presidential election. PX 12 at 21 (June 2021 Senate Report). President Trump thereafter continued to falsely claim the election was stolen from him. *Id.* at 22.

14. As their strategy failed in the courts, Trump’s team turned their focus to January 6, 2021, the date on which a joint session of Congress (with Vice President Mike Pence serving as presiding officer) would convene to certify the results of the election as required by the Twelfth Amendment and the Electoral Count Act, 3 U.S.C. § 15. PX 12 at 22 (June 2021 Senate Report). They ultimately devised and carried out an extra-legal scheme to pressure Vice President Pence—both privately and publicly—to take the unconstitutional action of refusing to count electoral votes from several states during the January 6 proceedings. *See Eastman v. Thompson*, 2022 WL 894256, at \*1–\*7 (C.D. Cal. Mar. 28, 2022); *see also* PX 12 at 1, 22 (June 2021 Senate Report) (describing the process for objections and the goal of disrupting the electoral vote count). A federal judge has held it is “more likely than not” these efforts amounted to criminal obstruction of the Joint Session of Congress on January 6, 2021 in violation of 18 U.S.C. § 1512(c)(2). *Eastman*, 2022 WL 894256, at \*20–\*23.

15. The public-facing component of this pressure campaign was carried out through the “Stop the Steal” movement, which championed the lie that the election was stolen and that the constitutionally-mandated transfer of presidential power needed to be stopped. *See* 8/16/22 Tr. 96:19–97:2 (Kleinfeld); Initial Decision at 4, *Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off. Admin. Hr’gs May 6, 2022), <https://perma.cc/M93H-LA7X> (“May 2022 *Greene* Decision”).

16. Leaders of the Stop the Steal movement undertook an expansive effort to mobilize Trump supporters across the country to travel to Washington, D.C. to intimidate Vice President Pence and Congress to not certify the election on January 6. 8/16/22 Tr. 96:21–97:7, 98:8–16 (Kleinfeld). Participants in these efforts planned to use mob intimidation and violence to stop the transfer of presidential power. *Id.* 96:21–23. Ahead of January 6, they held Stop the Steal rallies in various states, including New Mexico, where they ginned up support for the movement with violent and inflammatory rhetoric. *Id.* 103:25–105:22.

17. These state-level Stop the Steal rallies brought together a variety of groups, including “violence specialist[]” militia groups such as the Oath Keepers and Proud Boys, groups that could rally and mobilize an armed intimidatory presence, and individuals who could simply add to the size of the mob. 8/16/22 Tr. 97:10–20 (Kleinfeld).

18. President Trump later announced his own Stop the Steal rally at the White House Ellipse on January 6. PX 12 at 22 (June 2021 Senate Report). The rally was arranged in part by Women for American First, a leading Stop the Steal rally organizer. *Id.* at 44, 45; 8/16/22 Tr. 107:3–6 (Kleinfeld); PX 40.

### **III. Mr. Griffin’s Mobilization of the Stop the Steal Movement Ahead of January 6, 2021.**

19. Mr. Griffin and his organization Cowboys for Trump played a key role in the Stop the Steal movement's mobilization efforts ahead of the January 6, 2021 attack on the United States Capitol ("January 6 Attack"). 8/16/22 Tr. 100:4–7, 103:23–104:5 (Kleinfeld); *see also* 8/15/22 Tr. 69:13–21 (Griffin). Like other participants in the Stop the Steal movement, Mr. Griffin believed (and still believes) the 2020 election was fraudulent and Joe Biden was not legitimately elected President. 8/15/22 Tr. 40:7–8, 50:16–51:7, 79:1–8 (Griffin).

20. Cowboys for Trump participated in Stop the Steal rallies where Mr. Griffin spoke and spread lies about the election being stolen. 8/16/22 Tr. 103:23–104:5 (Kleinfeld); PX 245 (Nov. 7, 2020 Santa Fe New Mexican article).

21. On November 14, 2020, Mr. Griffin appeared at a Stop the Steal rally in Albuquerque along with the New Mexico Civil Guard, which had been sued as an illegal militia by the State of New Mexico. 8/16/22 Tr. 104:22–105:1 (Kleinfeld); PX 248 (Nov. 14, 2020 Albuquerque Journal article). This continued a series of appearances by Griffin at the same events as the New Mexico Civil Guard and other "violent specialist groups" in the leadup to January 6. 8/16/22 Tr. 103:9–105:8, 134:9–18, 159:19–160:16 (Kleinfeld); PX 246 (Sept. 14, 2020 KUNM article).

22. On social media and in public speeches, Mr. Griffin and Cowboys for Trump spent months normalizing that violence may be necessary to keep President Trump in office, and urged their followers to come to Washington, D.C. on January 6 to answer President Trump's call. *E.g.*, PX 63, 80, 127, 165.

23. In the days preceding the January 6 Attack, Mr. Griffin was a featured speaker on a multi-city bus tour to Washington, D.C. organized by Women for America First, 8/15/22 Tr.

63:14–16, 69:13–17 (Griffin); PX 40 (video of Griffin describing bus tour), the same Stop the Steal group involved in President Trump’s January 6 rally, *supra* Prop. Findings of Fact ¶ 18. The goal of the bus tour was to rally and inflame crowds and recruit them to come to Washington, D.C. to stop certification of the election on January 6. 8/16/22 Tr. 107:7–9 (Kleinfeld); 8/15/22 Tr. 69:18–21 (Griffin).

24. On this tour, Mr. Griffin aided the Stop the Steal mobilization and recruitment efforts with increasing fervor, calling on crowds to come to Washington, D.C. on January 6 to join the “war” and “battle” over the presidential election results. *E.g.*, PX 162.

25. Mr. Griffin’s friend, Matthew Struck, recorded videos of Griffin speaking during the pre-January 6 bus tour. *See* 8/15/22 Tr. 65:4–8 (Griffin); PX 67, 162, 164, 165, 166, 167, 168, 170, 171, 172, 173, 207 (Struck videos).

26. Mr. Griffin brought three firearms and ammunition with him on this cross-country trip to Washington, D.C. 8/15/22 Tr. 67:12–69:12 (Griffin); PX 154, 155 (videos showing Griffin loading his car with a gun and a different gun on the car’s dashboard).

27. At a January 1, 2021 speech in the Woodlands, Texas, Mr. Griffin told the crowd, “We have everything to lose right now. And this is a battle and a war that we cannot lose ... We have to march into this charge with a no, no, no lose, no surrender ... If any of you all need a lesson on what it takes to stand, read the lesson of the Alamo ... Those were men that drew a hard line. They stood on it. ... Meet us in Washington, D.C. Be there. Let’s stand together and let’s get ‘er done.” PX 162.

28. At a later January 1 speech in West Monroe, Louisiana, Mr. Griffin insisted that President Trump would “continue and remain in office,” that “we need our President ... to be

confirmed through the states on the sixth,” and that “right after that we’re gonna have to declare martial law.” PX 164. He then urged the crowd to “meet us” on “the streets of Washington, D.C. on January 6.” *Id.* Griffin invoked the legitimacy of his elected office as an Otero County Commissioner and his relationship with President Trump while trying to rally the crowd. *Id.*

29. At a January 3 speech in Bowling Green, Kentucky, Mr. Griffin said, “If we allow this election to be stolen from us, we will become a third world country overnight ... The elitist, gross, wicked, vile people that are in place will continue to wage war on America. Because there is a war, mind you, I promise you that.” PX 167. He added, “we got to get our country back. There’s no other way, there’s no other option.” *Id.* Mr. Griffin indicated that he expected violence to take place in Washington, D.C. on January 6, acknowledging that “there might be some of us that might lose our lives.” *Id.*; *see also* 8/16/22 Tr. 110:11–14 (Kleinfeld). He then invoked faith as support for the cause, stating “there is nobody that really truly ever loses when you trust in the lord Jesus Christ as your personal savior.” PX 167; *see also* 8/16/22 Tr. 110:14–17 (Kleinfeld).

30. At a later January 3 speech in Franklin, Tennessee, Mr. Griffin declared that “we’re a nation at war right now ... If we lose this election, everything is on the line.” PX 168. He insisted “We’re not gonna surrender to them. We’re gonna charge forward.” *Id.* He implored the crowd to come “to D.C. on January 6,” explaining that “the reason why I’m going to Washington D.C. is because my president called me there and I’m gonna be there.” *Id.*

31. In a January 4 video recorded in Atlanta, Georgia, Mr. Griffin stated, “We want to win it through our democratic process, but losing is not an option. We’ll win it ... in the ballot box or we’ll win it in the street. That’s where I stand.” PX 67. In those remarks, Mr. Griffin also

directed a warning to the “sellouts,” the “RINOs,” and the “turncoats,” stating that “[t]hey’re the first ones that we’re going to hunt down.” *Id.*

32. In another January 4 video recorded in Atlanta, Mr. Griffin again anticipated possible violence in Washington D.C. on January 6, calling “men from across our nation to come to Washington, D.C. on January 6, because it might be a battle. ... If it comes down to a fight, if it boils down to what it could come to, we’re gonna need men standing strong shoulder to shoulder. ... I encourage you to come, don’t let the media try to keep you home ... Whenever you’re in battle ... that’s a man’s place. ... If it comes down to ... those kind of instances.” PX 171.

33. In a January 4 video recorded in Birmingham, Alabama, Mr. Griffin urged Vice President Pence to “step up” and “do what’s right for our nation” because “we will never acknowledge a Biden presidency.” PX 170. Mr. Griffin threatened Republican officials, indicating he and others would “come to your places first” and “be after” them if they “sell out” Trump supporters. *Id.*

34. In a January 5 video recorded with a group of Trump supporters on his way to Washington, D.C., Mr. Griffin again called upon Vice President Pence “to do the right thing and call this election the fraud that it is, because we won’t take anything less.” PX 173. He added, “Losing is not an option. ... Every card is on the table. Every option is available. And we feel that we are a nation at war right now and we are men that are answering the call.” *Id.*

35. While Mr. Griffin inflamed and mobilized crowds across the country to join the “war” in Washington, D.C. on January 6, threats of violence to stop certification of the election were widespread on social media and reported in the press. PX 13 at 1 (May 2022 U.S.

Government Accountability Office (“GAO”) Report). Based on open-source data collection, federal agencies generated “26 threat products” identifying potential violence tied to planned “Stop the Steal” and other demonstrations in Washington, D.C. on January 6, with some predicting a “potentially violent uprising could take place at the U.S. Capitol.” PX 13 at 21, 24, 39, 40.

#### **IV. The January 6, 2021 Attack on the United States Capitol.**

36. On January 6, 2021, the joint session of Congress convened to certify the presidential election. PX 12 at 23 (June 2021 Senate Report).

37. Just before noon, President Trump took the stage at his Stop the Steal rally at the White House Ellipse, where he repeated his false claims that the election was “rigged” and “stolen,” and urged Vice President Pence to “do[] the right thing” by unconstitutionally refusing to certify the election. PX 12 at B-1–B-2 (June 2021 Senate Report). President Trump then told the crowd to march to the Capitol to “demand that Congress do the right thing and only count the electors who have been lawfully slated,” insisting “we must stop the steal.” *Id.* at B-5, B-20. He pushed them to “fight like hell,” warning that, “if you don’t fight like hell, you’re not going to have a country anymore.” *Id.* at B-22.

38. Before the speech ended, thousands of Trump supporters began marching to the Capitol, some armed with weapons and wearing full tactical gear. PX 12 at 22–23, 27–29 (June 2021 Senate Report). “They were wearing helmets, goggles, gas masks, and respirators. They were in tactical vests, exterior load bearing vests that appeared to be designed to be capable of holding within it a ballistic panel which would protect the wearer from firearms. Many had padded gloves, tactical boots and backpacks with equipment [law enforcement] could not

observe.” 8/15/22 Tr. 150:12–17 (Hodges).

39. The mob, including Mr. Griffin, illegally breached security barriers surrounding the Capitol complex on the Capitol’s West Front grounds, ignoring clear signage prohibiting entry. PX 12 at 23 (June 2021 Senate Report); 8/15/22 Tr. 113:4–9 (Gowdy); PX 40, PX 152, PX 159 (videos of Mr. Griffin admitting he knowingly breached a restricted area). The mob that Mr. Griffin joined then quickly and violently breached other barricades around the Capitol perimeter, overwhelmed law enforcement, and scaled walls. PX 12 at 24–25. By 2:11 p.m., the mob breached the Capitol building, where they confronted law enforcement, smashed windows, and wreaked further havoc. *Id.*; *see also* PX 15 at 14 (Mar. 2022 GAO Report) (timeline of attack); PX 136 (January 6 Select Committee compilation video); PX 53 (Capitol Police surveillance video compilation).

40. The mob also utilized “classical form[s] of intimidation,” 8/16/22 Tr. 41:17–42:5 (Graber), including displaying a noose and gallows and chanting “hang Mike Pence” on the Capitol grounds, PX 136. In another act of intimidation, members of the mob charged toward the office of Speaker of the House Nancy Pelosi, chanting menacingly, “Nancy! Nancy! Nancy!” PX 136.

41. The mob brutally attacked police officers with a variety of actual and improvised weapons, engaged them in hand-to-hand combat, and sprayed them with chemical irritants. 8/15/22 Tr. 156:3–9, 172:4–19 (Hodges); PX 147 (Officer Hodges’ body camera video); 8/15/22 Tr. 118:25–119:1 (Gowdy); PX 253 at 148–49 (Erickson Crim. Trial Testimony). Officers were shocked with cattle prods, bludgeoned with flag poles and metal poles broken apart from security barricades, and beaten with their own stolen batons and riot shields. 8/15/22 Tr. 155:11–20,

156:3–9 (Hodges).

42. The mob crushed Plaintiffs' witness Officer Daniel Hodges of the D.C. Metropolitan Police Department in a metal door frame and bashed in his face with his own baton while he was trapped there. 8/15/22 Tr. 179:1–10 (Hodges). The mob, including Mr. Griffin, chanted "Heave! Ho!" as they synchronized their movement in an attempt to ram through Officer Hodges and other police officers guarding an entrance tunnel on the Capitol's West Terrace. *Id.* 179:15–20; PX 148 (video of Officer Hodges attacked in West Terrace Tunnel); PX 153 (video of Griffin describing his chanting of "Heave! Ho!"); 8/15/22 Tr. 96:2–11 (Griffin).

43. Some officers lost their lives, others suffered broken bones, contusions, lacerations, and psychological trauma. 8/15/22 Tr. 155:11–20 (Hodges). All told, the attack led to seven deaths, injuries to more than one hundred police officers, and millions of dollars in damage to the Capitol complex. PX12 at 1, 26 (June 2021 Senate Report).

44. The "size of the mob is what enabled them to achieve the level of success that they did." 8/15/22 Tr. 157:12–14 (Hodges) ("The size of the mob was the mob's greatest weapon."). The thousands of individuals in the mob overwhelmed and outnumbered law enforcement by approximately 50 or 75 to 1. *Id.* 157:4–7. Because of the mob's size and the chaotic atmosphere it created, law enforcement could not use their firearms, make arrests, or freely move around the Capitol grounds. *Id.* 157:25–159:13, 173:21–174:2; PX 147 (Officer Hodges' body camera video).

45. Law enforcement's efforts to secure the Capitol building were impeded by violent and non-violent members of the mob alike. 8/15/22 Tr. 159:14–25 (Hodges). Police officers could not tell in the moment which individuals were going to be violent; every trespasser within

the restricted area was a potential threat and needed to be treated as such. *Id.* 157:16–21, 159:14–160:3. Non-violent members of the mob camouflaged violent members of the mob and contributed to law enforcement being overwhelmed by a “sea of potential threats.” *Id.* 157:12–24, 159:14–25. Every trespasser took up space and made it harder for law enforcement to defend the Capitol building and disperse the mob away from Capitol grounds. *Id.*

46. The mob also made it clear—through their words, chants, flags, banners, and clothing—that they came to the Capitol for the explicit purpose of stopping the certification of the 2020 election and the transfer of presidential power by force. 8/15/22 Tr. 156:16–157:3, 162:2–13, 169:7–171:19, 181:16–22 (Hodges); PX 147 (Officer Hodges’ body camera video); 8/15/22 Tr. 119:10–12, 132:25–133:20 (Gowdy); PX 208–243 (Nathaniel Gowdy pictures); PX 136 (January 6 Select Committee compilation video); PX 53 (Capitol Police surveillance video compilation).

47. The mob forced Vice President Pence and Congress to halt their constitutional duties and flee to more secure locations, PX 12 at 25 (June 2021 Senate Report), disrupting the peaceful transfer of presidential power for the first time in American history, 8/16/22 Tr. 148:3–5 (Kleinfeld). The Secret Service evacuated Vice President Pence to a secure loading dock and kept him there for several hours. PX 253 at 222–23, 258 (Hawa Crim. Trial Testimony); PX 55 (Capitol Police surveillance video of Vice President Pence’s evacuation). Once the “Capitol went into lockdown,” that meant “everything ha[d] to stop,” including the election-certification proceedings over which Vice President Pence was the presiding officer. PX 253 at 224 (Hawa Crim. Trial Testimony). The Vice President could not return to the Senate chamber and the constitutionally mandated proceedings could not resume until all trespassers in the restricted area

were removed. *See id.* at 225, 258.

48. To clear the mob and regain control of the Capitol, the Capitol Police called in more than 2,000 reinforcements from 19 federal, state, and local agencies. PX 14 at 20 (Feb. 2022 GAO Report). Officers used chemical spray and munitions, flash bangs, tactical teams with firearms, riot shields, and batons to fight back the mob. PX 15 at 26–33 (Mar. 2022 GAO Report); PX 14 at 21 (Feb. 2022 GAO Report); PX 253 at 148–49 (Erickson Crim. Trial Testimony); 8/15/22 Tr. 168:2–6, 176:15–16, 177:13–17 (Hodges). Even with this significant show of force, the Capitol grounds were not deemed secure until 8:00 p.m. PX 12 at 26 (June 2021 Senate Report).

49. The mob forced both chambers of Congress to go into recess by 2:18 p.m. The Senate did not reconvene until 8:00 p.m., with the House reconvening approximately an hour later. PX 12 at 25–26 (June 2021 Senate Report). It was not until 3:42 a.m. on January 7 that Congress completed its business and certified the election. *Id.* at 26.

50. Mr. Griffin disputed none of these facts at trial; instead, he blamed law enforcement for not being “better prepared” for the more than “a million ... disgruntled Trump supporters” who collectively “descend[ed]” on Washington, D.C. that day. 8/15/22 Tr. 197:14–18.

51. After January 6, insurrectionists sought to mobilize violence for President-elect Biden’s inauguration on January 20 in a final effort to block the transfer of presidential power required by the Twentieth Amendment. 8/16/22 Tr. 97:4–9 (Kleinfeld). The threat was so significant that the government called in 25,000 National Guardsmen to Washington, D.C.—nearly “two and a half times the number that would normally go to an inauguration.” *Id.* 130:5–

8. The “law enforcement presence ultimately fizzled out the plan.” *Id.* 130:11–12.

**V. Mr. Griffin’s Participation in the January 6 Attack.**

52. Mr. Griffin traveled to Washington, D.C. for the events of January 6 because he shared the goal of stopping the constitutionally-mandated certification of the 2020 presidential election. 8/16/22 Tr. 151:4–8 (“[W]e went to Washington, D.C. on January 6 ... so our voices would be heard by Mike Pence so Mike Pence would vote no on the certification of the election ....”); *id.* 73:21–25 (similar); *id.* 167:8–10 (similar); PX 173 (similar).

53. Video from early in the morning of January 6 shows Mr. Griffin working up Trump supporters in Washington, D.C. by telling them Vice President Pence is “gonna have to find a real deep hole to crawl into” and that “we’ll all be lining up at his house if he doesn’t come through.” PX 38. Later in the video, someone near Mr. Griffin says, “storm the Capitol.” *Id.* Griffin also asked a man, “Where’s your gun at? That’s what I want to know.” *Id.*

54. Videos from later on January 6 show Mr. Griffin illegally breaching multiple security barriers and occupying restricted Capitol grounds from at least 2:31 p.m. to 4:48 p.m.—actions for which he was later criminally convicted. PX 45 at 326:22–327:23 (Crim. Trial Bench Ruling); PX 47 (Crim. Case Judgment).

55. Around 2:31 p.m., just 20 minutes after the mob breached the Capitol building and seven minutes after President Trump tweeted that Vice President Pence had not done what he needed him to do, Mr. Griffin climbed over the Olmstead Wall and entered restricted Capitol grounds. PX 42; PX 253 at 143 (Erickson Crim. Trial Testimony) (describing restrictions); 8/16/22 Tr. 119:3–10 (Kleinfeld) (describing Trump tweet).

56. By this point in the day, law enforcement “had a loud speaker set up that was

telling [the mob], in no uncertain terms, that their assembly was unlawful and that they needed to disperse” and law enforcement had deployed “[p]epper spray and tear gas” to make the crowd disperse. 8/15/22 Tr. 167:15–168:6 (Hodges); *see also* PX 253 at 149 (Erickson Crim. Trial Testimony).

57. Around 2:41 p.m., Mr. Griffin approached the Capitol building amid shouts of “let’s fight like crazy for our country” and “this is civil f\*cking war.” PX 25. He used a metal security barrier that the mob had repurposed into a ladder to scale another wall. *Id.* He proceeded to fist bump other members of the mob and declare “this is our house!” and “we could all be armed.” *Id.* He then helped a member of the mob climb up a makeshift ramp to breach another security barrier and ran over the ramp himself. *Id.*

58. Mr. Griffin made his way to just below the inaugural stage and the Capitol’s West Terrace, where he said he would wait until the mob got “this door broke down” to enter an enclosed staircase. PX 139.

59. By 2:56 p.m., the mob had broken the door and Griffin walked up to the inaugural stage on the West Terrace, where he covered his mouth presumably from the acrid smell of tear gas and pepper spray and stated gleefully “I love the smell of napalm in the air.” PX 26; *see also* 8/15/22 Tr. 168:2–6 (Hodges) (describing law enforcement’s deployment of tear gas and pepper spray); PX 253 at 149 (Erickson Crim. Trial Testimony) (similar).

60. Once he reached the inaugural stage, Mr. Griffin filmed a speech for social media promoting the attack. PX 27. He exhorted, “It’s a great day for America! The people [are] showing that they’ve had enough. People are ready for fair and legal elections, or this is what you’re going to get, and you’re going to get more of it.” *Id.* As the mob brutally attacked Officer

Hodges and other law enforcement in a tunnel a short distance away from him, Mr. Griffin threatened into the camera, “We’re not going anywhere. We’re not gonna take ‘no’ for an answer ... Anything to get our country back.” *Id.*

61. Mr.Griffin then assumed a leadership role in the mob by using a bullhorn to gain the crowd’s attention. PX 141. As he attempted to lead the mob in prayer, he riled them further. *Id.*

62. Eyewitness testimony of Plaintiffs’ witness Nathaniel Gowdy confirms that Griffin’s attention-seeking behavior energized the mob when violence had already been ongoing for hours. 8/15/22 Tr. 122:25–123:1 (Gowdy) (“[Griffin] was attempting to insert himself in a leadership role.”); *id.* 123:3–5 (“He appeared to be reveling in everything that was happening, smiling, pumping his fists, laughing, just having a good time.”); *id.* 123:14–16 (Q. Was Mr. Griffin’s conduct such that it was advancing the goal and purpose of the mob? A. Yes. It was very encouraging, was my impression.”); *see also* 8/16/22 Tr. 121:18–122:20 (Kleinfeld) (observing that by addressing the mob with a bullhorn from “high ground,” Griffin increased the “emotional arousal of the crowd” when “violence” had been “going on for two hours”).

63. Video shows Mr. Griffin on the inaugural platform from 2:57 p.m. until 4:24 p.m. PX 54. At this time, Griffin was near attackers beating police officers, stealing their riot shields, forming a human battering ram to break through Officer Hodges and other officers in the West Terrace tunnel, and breaking windows. *E.g.*, PX 34, PX 148, PX 152.

64. By 4:27 p.m., Mr. Griffin had walked back down to the area below the West Terrace, where he sought to normalize the ongoing violence. PX 35. He is heard stating, “What a historical day, you know?” to which someone responded, “This is horrible.” *Id.* Griffin replied,

“It’s unfortunate, but sometimes these sorts of things need to happen in order to send a signal that we’re going to quit putting up with their bull crap, you know?” *Id.*

65. Mr. Griffin later confirmed that he saw and egged on the violence at the Capitol on January 6. In one video recorded while driving from Washington, D.C., Mr. Griffin stated with laughter, “It was funny, whenever those guys -- all those guys were down there on that one line where they were trying to push into the Capitol, and everybody that was gathered in the dome area, we were all screaming ‘Heave! Ho! Heave! Ho!’” PX 153. Mr. Griffin appeared to be describing joining the attackers in screaming “Heave! Ho!” as they brutally crushed Officer Hodges in a metal doorframe in the West Terrace tunnel. PX 148.

66. In another video from later in January, Griffin boasted, “I watched it all. ... I saw some windows getting broken out of the Capitol and I saw some people pushing on police officers down below.” PX 152.

67. In a video posted to Facebook on January 7 that Mr. Griffin recorded in Roanoke, Virginia, he acknowledged that the events at the Capitol the preceding day were violent and celebrated them. He gloated that he “climbed up on top of the Capitol building” and “saw a little bit of that action on ... the inside.” PX 37. He characterized the mob as “unleashing [the] whirlwinds” and a “shot over the bow.” *Id.* He explained the purpose of the attack was to stop the transfer of presidential power and threatened further action to achieve that goal, stating, “[y]ou saw America rise up. ... You saw a people that had had enough ... because we will not lose. And Joe Biden will never be President ... you thought yesterday was a big day? It’ll be nothing like -- compared to like the next one.” *Id.* Mr. Griffin previewed a more brutal attack to prevent Biden from taking office, stating “You want to say that was violence? ... No, we could

have a Second Amendment rally on those same steps that we had that rally yesterday, you know, and if we do, then it's going to be a sad day because there's going to be blood running out of that building." *Id.*

68. In the same video on January 7, Mr. Griffin again insisted that Joe Biden "will never be president." PX 37; *see also* PX 62 (January 11, 2021 video where Griffin declared there "will never be a Biden presidency"). By this point, the presidential election had already been certified, so the only way to prevent Biden's inauguration as president would be physical violence. 8/16/22 Tr. 127:22–128:4 (Kleinfeld).

69. At an Otero County Commission meeting on January 14, 2021, Mr. Griffin confirmed that he knowingly breached restricted Capitol grounds on January 6, stating he saw "some fencing up and they were saying that you could not go any further because this was being reserved for Joe Biden and his inauguration," and that he breached the area anyway. PX 40; *see also* PX 152 (making similar admission); PX 159 (same). Mr. Griffin also conveyed his continued support for the insurrection and his plans to return to the Capitol with firearms on January 20 for the presidential inauguration. PX 40.

70. Mr. Griffin then traveled to Washington, D.C. for the presidential inauguration, but was arrested there on January 17, 2021 for his involvement in the January 6 Attack. Returned Arrest Warrant, *United States v. Griffin*, No. 21-cr-00092-TNM (D.D.C. Jan. 21, 2021), ECF No. 4.

71. Following a bench trial, Mr. Griffin was convicted on March 22, 2022 of entering and remaining on restricted grounds in violation of 18 U.S.C. § 1752(a)(1), and acquitted of disorderly conduct under 18 U.S.C. § 1752(a)(2). PX 45 at 324:9–337:25 (Crim. Trial Bench

Ruling); PX 47 (Crim. Case Judgment).

## **VI. This Lawsuit and Related Federal Proceedings.**

72. On March 21, 2022, Plaintiffs commenced this action against Mr. Griffin under New Mexico's *quo warranto* statute, NSMSA 1978, Section 44-3-4. Compl. at 1.

73. Plaintiffs' Complaint asserts that Mr. Griffin is disqualified from federal and state office under Section Three of the Fourteenth Amendment based on his engagement in the January 6 Attack and surrounding events. Compl. ¶¶ 97–99. The Complaint further alleges that, by taking action resulting in his disqualification under Section Three of the Fourteenth Amendment, Mr. Griffin “work[ed] a forfeiture of his office,’ NMSA 1978, § 44-3-4(B), and is presently ‘unlawfully hold[ing] ... public office’ in the State, *id.* § 44-3-4(A).” *Id.* ¶ 100.

74. As relief, the Complaint seeks a declaratory judgment that the January 6 Attack and surrounding events were an “insurrection” within the meaning of Section Three and that Mr. Griffin is disqualified from federal and state office for having engaged in that insurrection. Compl., Prayer for Relief ¶ 1.

75. The Complaint also seeks injunctive relief removing Mr. Griffin from his current position as an Otero County Commissioner, barring him from performing any official acts as a county commissioner, and barring him from holding any future state or federal office. Compl., Prayer for Relief ¶¶ 2–4.

76. After being timely served with the Complaint and summons on March 26, 2022, Mr. Griffin, through counsel, removed the case to federal court on April 17, 2022.

77. On May 10, 2022, Mr. Griffin, through counsel, filed a collateral federal suit against Plaintiffs under 42 U.S.C. § 1983, seeking to enjoin Plaintiffs from pursuing this *quo*

*warranto* case on the grounds that it violates his purported First Amendment right to run for political office, his Fourteenth Amendment due process rights, and the Amnesty Act of 1872. *Griffin v. White*, No. 22-cv-0362-KG-GJF (D.N.M.).

78. On May 27, 2022, Chief Judge William P. Johnson granted Plaintiffs' motion to remand this case back to this Court for lack of federal subject-matter jurisdiction. *State ex rel. White v. Griffin*, 2022 WL 1707187, at \*1 (D.N.M. May 27, 2022).

79. On June 10, 2022, this Court held an initial scheduling conference. Although Mr. Griffin was represented at that hearing by counsel, his counsel moved to withdraw and the Court granted that motion at the hearing, with the caveat that counsel would assist Griffin in a limited capacity to assist in the filing of a proposed scheduling order. *See* June 14, 2022 Order Granting Motion to Withdraw.

80. On June 14, 2022, the Court entered the parties' jointly-proposed scheduling order, setting forth various pretrial deadlines and a trial date of August 15, 2022. Since that time, Mr. Griffin has proceeded *pro se* in this case.

81. On June 28, 2022, Judge Kenneth J. Gonzales denied Mr. Griffin's motion for a preliminary injunction in his parallel Section 1983 suit and dismissed the case for lack of subject-matter jurisdiction. *Griffin v. White*, 2022 WL 2315980, at \*12 (D.N.M. June 28, 2022). Griffin did not appeal that ruling.

82. On July 22, 2022, this Court held a pretrial conference pursuant to the parties' jointly-proposed scheduling order. Despite being a party to the jointl-proposed scheduling order and otherwise receiving ample notice, Mr. Griffin did not attend.

83. On July 27, 2022, the Court entered a pretrial order supplementing the deadlines

and details set forth in the June 14, 2022 scheduling order.

84. On August 12, 2022, the Court held a final pretrial conference.

85. On August 15 and 16, 2022, the Court held a bench trial. Plaintiffs called five witnesses and presented the prior testimony of two witnesses from Mr. Griffin's federal criminal trial. Mr. Griffin cross-examined each of Plaintiffs' witnesses and provided his own testimony on cross-examination as a witness in Plaintiffs' case-in-chief. Mr. Griffin called no witnesses and offered no evidence apart from his own testimony.

## **VII. Mr. Griffin's Lack of Credibility as a Trial Witness.**

86. In making the factual findings set forth above, the Court did not find Griffin to be a credible witness at trial.

87. Video evidence of Mr. Griffin's statements from January 2021 contradict key aspects of his trial testimony, including his testimony that he did not witness violence on January 6. *Compare* PX 152 (Mr. Griffin admitting he "watched it all," he "saw some windows get broken out of the Capitol," and "saw some people pushing on police officers down below," and indicating the violence he saw was justified to prevent our "country" from "get[ting] hijacked by China"); PX 149 (Mr. Griffin admitting he saw "those guys were down there on that one line where they were trying to push into the Capitol" and stating "everybody that was gathered in the dome area, we were all screaming 'Heave! Ho! Heave! Ho!'"); PX 37 (Mr. Griffin admitting he "climbed up on top of the Capitol building" and "saw a little bit of that action on ... the inside"), *with* 8/15/22 Tr. 83:1–4 (Griffin) (testifying that "[e]verywhere where I was [on January 6], all around me in my direct vicinity, was peaceful. I didn't see one violent act inside of my area the whole time I was there"); *id.* 87:10 ("It was a big peaceful crowd."); *id.* 99:7–9 ("[M]y

assessment during the time ... was that it was a totally peaceful protest.”).

88. Mr. Griffin’s testimony with respect to his characterization of the events at the United States Capitol on January 6 and his witnessing any violence that day has evolved over time in this litigation and is fundamentally inconsistent.

89. At his deposition, Mr. Griffin characterized the events at the Capitol on January 6 while he was there only as “peaceful” and denied seeing any violence, even in the face of video evidence to the contrary. PX 250 at 146:10–13 (Griffin Dep.) (“I wanted to be in D.C. for a peaceful protest, which it was.”); *id.* 181:6–13 (“[I]t’s all peaceful ... Q. You’re saying you see this as a peaceful event? A. Absolutely, it was.”); *id.* 185:18–24 (“I thought it was all just part of a celebration.”); *id.* 186:5–8 (“Because we were peacefully protesting.”); *id.* 187:5–16 (“[I]n my area, it was always peaceful ... Q. ... [W]hat you see is a peaceful protest? A. Absolutely.”); *id.* 189:6–8 (“It looks consistently peaceful ... I don’t see anything violent. I don’t see anything aggressive.”).

90. In his (unsworn) answers to written discovery, Mr. Griffin changed his story and stated that “[a]t the time I did not know there had been any violence. Now seeing the documented evidence I would admit that there was violence. I did not know that at the time though.” PX 143 at 4 (Response to Request for Admission 101); *see also id.* (Response to Request for Admission 103) (similar).

91. At trial, Mr. Griffin’s testimony was inconsistent. At times he testified that “where I was, it ... was peaceful. Everywhere where I was, all around me in my direct vicinity, was peaceful.” 8/15/22 Tr. 82:24–83:4. Later, he testified that he had seen “chaos” but it was in the distance. *Id.* 83:7–11. After repeatedly being confronted with his acknowledgements at the

time that he had seen violence, Mr. Griffin conceded he had witnessed violence and force but stated he did not participate in the violence, *id.* 83:18–19, 87:22–88:9; or blamed the violence on “Antifa,” *id.* 94:15–23; or sought to minimize the violence, *id.* 95:3–10 (comparing violent mob pushing into the tunnel to a happy crowd after a basketball victory); or characterized his statements as “emotionally driven,” *id.* 103:23–25, or manifestations of “frustrations,” *id.* 104:20–22.

92. Similarly, Mr. Griffin’s prior videotaped statements and other evidence contradict his trial testimony that he did not knowingly breach and remain within restricted Capitol grounds on January 6. *Compare* PX 40 (Griffin admitting he saw and ignored signage warning he was entering a restricted area); PX 152 (similar); PX 159 (similar); PX 26 (Griffin at the Capitol covering his mouth and stating “I love the smell of napalm in the air,” seemingly referencing tear gas and pepper spray in the air); 8/15/22 Tr. 167:15–168:6 (Hodges) (describing law enforcement’s use of loudspeakers and chemical irritants to disperse the crowd), *with* 8/15/22 Tr. 87:7–10 (Griffin) (“There was nobody telling us to leave. There was no signage telling us we couldn’t be there. There was no loud speaker telling [us] to vacate the area. Nothing of the sort.”).

93. The Court does not find credible Mr. Griffin’s claim that he thought a security barricade the mob used as a makeshift ladder to climb over a wall was, in his words, “steps.” 8/15/22 Tr. 86:23–87:7; *see* PX 25 (video of Mr. Griffin climbing up security barricade).

94. Nor does the Court find credible Mr. Griffin’s attempts to characterize violent and inflammatory statements he made in January 2021—in which he repeatedly referred to an impending “war” in Washington, D.C. on January 6 that “we cannot lose”—as referring only to

peaceful political activity. *See, e.g.*, 8/15/22 Tr. 69:13–21, 74:10–75:12, 76:10–82:19, 99:25–100:19 (Griffin). At the time Mr. Griffin made these statements, he did not clarify he was referring only to lawful activity, and the language and context of his statements strongly indicates his intent was to mobilize a violent mob for the events of January 6. *See id.* The Court finds that Mr. Griffin’s after-the-fact characterizations of his prior statements were self-serving and not credible.

95. Mr. Griffin’s trial testimony also referenced a number of January 6 conspiracy theories that he failed to substantiate with credible evidence. *E.g.*, 8/15/22 Tr. 94:19–23 (Griffin) (“I saw a guy that was dressed [as] Antifa hit a window ... and I saw him immediately get stopped by what looked like a Trump supporter.”); *id.* 104:3–5 (“It’s not any secret that there was FBI informants that were involved in January 6th. ... like Ray Epps ....”); *id.* 42:18–25 (describing a purported video showing a “Capitol Police officer taking down the barricades” and “waving people in”).

## CONCLUSIONS OF LAW

### I. Legal Framework.

#### A. New Mexico’s *Quo Warranto* Statute.

1. A *quo warranto* action may be brought against a person who “unlawfully hold[s] ... any public office” in the State, NMSA 1978, § 44-3-4(A), or “any public officer, civil or military, [who] shall have done or suffered an act which, by the provisions of law, shall work a forfeiture of his office,” *id.* § 44-3-4(B).

2. “[W]hen the office usurped pertains to a county,” any “private person” has standing to bring a *quo warranto* action “on his own complaint,” and need not first file a

complaint with the Attorney General or a district attorney. NMSA 1978, § 44-3-4; *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, ¶ 8, 94 N.M. 431, 434.

3. Any private citizen of New Mexico has standing to bring a *quo warranto* action and need not demonstrate any direct injury traceable to the defendant. *See Martinez*, 1980-NMSC-064, ¶ 8 (permitting *quo warranto* suit by two private persons without addressing any injury to them); *Clark v. Mitchell*, 2016-NMSC-005, ¶ 8, 363 P.3d 1213, 1216 (stating private persons may bring a *quo warranto* action against state official upon refusal of district attorney without discussing standing). This reflects the breadth of standing doctrine in New Mexico courts, where standing “is not derived from the state constitution,” is “not jurisdictional,” and can be freely conferred by statute. *Gandydancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-021, ¶ 7, 453 P.3d 434, 437 (internal quotation marks omitted).

4. If the defendant is “adjudged guilty of usurping or intruding into or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise or privilege.” NMSA 1978, § 44-3-14.

5. “One of the primary purposes of *quo warranto* is to ascertain whether one is constitutionally authorized to hold the office he claims, whether by election or appointment, and [courts] must liberally interpret the *quo warranto* statutes to effectuate that purpose.” *Clark*, 2016-NMSC-005, ¶ 8.

6. The *quo warranto* statute authorizes courts to make a “judicial finding” that an official has engaged in conduct resulting in their “forfeiture” of office due to constitutional disqualification. *Martinez*, 1980-NMSC-064, ¶¶ 5–6. No prior criminal conviction is necessary if the constitutional qualification at issue does not require one. *See id.*

**B. Section Three of the Fourteenth Amendment.**

7. Section Three of the Fourteenth Amendment provides:

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

U.S. Const. amend. XIV, § 3.

8. Section Three thus disqualifies any person from being a “Senator or Representative in Congress, or elector of President and Vice-President, or hold[ing] any office, civil or military, under the United States, or under any State” if that person took an “oath ... to support the Constitution of the United States” as an “executive or judicial officer of any State,” and then “engaged in insurrection ... against” the Constitution, unless Congress “remove[s] such disability” by a two-thirds vote.

9. State courts have adjudicated Section Three challenges through *quo warranto* or similar state-law proceedings. *See, e.g., Louisiana ex rel. Sandlin v. Watkins*, 21 La. Ann. 631 (La. 1869) (*quo warranto*); *Worthy v. Barrett*, 63 N.C. 199, 205 (1869) (mandamus); *In re Tate*, 63 N.C. 308, 309 (1869) (same).

10. Section Three imposes a qualification for public office, much like an age or residency requirement. It is not a criminal penalty, and neither the courts nor Congress have ever required a prior criminal conviction for a person to be disqualified under Section Three. *See infra* Concl. of Law ¶¶ 61–64. Section Three is thus akin to New Mexico constitutional disqualifications that do not require a prior criminal conviction. *See Martinez*, 1980-NMSC-064,

**II. Mr. Griffin is Disqualified from Public Office Under Section Three of the Fourteenth Amendment.**

11. Based on the trial evidence and argument, the Court concludes that (1) Mr. Griffin took an “oath ... to support the Constitution of the United States” as an “executive ... officer of a[] State,” (2) the January 6 Attack and surrounding planning, mobilization, and incitement were an “insurrection” against the Constitution of the United States, and (3) Mr. Griffin “engaged in” that insurrection.

12. The Court therefore concludes that, effective January 6, 2021, Mr. Griffin became disqualified under Section Three of the Fourteenth Amendment from serving as a “Senator or Representative in Congress, or elector of President and Vice-President, or hold[ing] any office, civil or military, under the United States, or under any State,” including his current office as an Otero County Commissioner.

**A. Mr. Griffin Took an Oath as a State Officer to Support the Constitution of the United States.**

13. Section Three applies to county officials required by state law to take an oath to support the Constitution of the United States. *See Worthy*, 63 N.C. at 202–04 (county official was subject to disqualification because state law required him to take the oath), *In re Tate*, 63 N.C. at 309 (disqualifying county official); *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (finding that county official who took the oath was subject to disqualification and that Section Three is “broad enough to embrace every officer in the state”); *Op. of Att’y Gen. Stanbery under the Reconstruction Laws*, at 16 (Wash. Gov’t Print. Off. June 12, 1867),

<https://perma.cc/U4C3-4T8D> (concluding that “county officers” who are “required to take ... the oath to support the Constitution of the United States” are “subject to disqualification”); 8/16/22 Tr. 17:2–18:6 (Graber) (describing “broad consensus” among knowledgeable nineteenth-century people that Section Three applies to county officials).

14. New Mexico constitutional and statutory law required Mr. Griffin to take an oath to support the Constitution of the United States before assuming office as an Otero County Commissioner. *See* N.M. Const. art. XX, § 1; NMSA 1978, 10-1-13(B).

15. Mr. Griffin took that oath on December 28, 2018. Findings of Fact ¶ 8.

16. Because state law required Mr. Griffin to take an oath to support the Constitution as a county official and he did so, the Court concludes he is subject to disqualification under Section Three.

17. The Court further concludes that Otero County Commissioners are “executive officers” of the State within the meaning of Section Three. Mr. Griffin testified that as a county commissioner he performs “executive functions,” including on spending, personnel, and election matters. Findings of Fact ¶ 6; *see also* Br. of *Amicus Curiae* Common Cause at 2–6 (explaining why county commissioners qualify as “executive officers” under New Mexico law). And knowledgeable nineteenth-century Americans, including Section Three’s drafters, would have considered New Mexico county commissioners “executive officers” since their offices are created by state constitutional and statutory law, the state constitution refers to them as “officers,” they perform traditional executive functions, and they exercise discretionary authority. 8/16/22 Tr. 18:16–20:23 (Graber). It follows that Mr. Griffin took an “oath ... to support the Constitution of the United States” as an “executive ... officer of [a] State.” *See* U.S.

**B. The January 6 Attack and Surrounding Events Were an “Insurrection” Against the Constitution of the United States.**

**1. Definition of “Insurrection”**

18. The term “insurrection,” as understood by knowledgeable nineteenth-century Americans and Section Three’s framers, referred to an (1) assemblage of persons, (2) acting to prevent the execution of one or more federal laws, (3) for a public purpose, (4) through the use of violence, force, or intimidation by numbers. 8/16/22 Tr. 26:1–5 (Graber); *see also, e.g., Case of Fries*, 9 F. Cas. 924 (C.C.D. Pa. 1800) (Chase, J.); John Catron, Robert W. Wells & Samuel Treat, *Charge to the Grand Jury By the Court, July 10, 1861* (St. Louis: Democratic Book and Job Office, 1861) (“*Charge to the Grand Jury*, July 1861”); “Insurrection,” *Webster’s Dictionary* (1828), <https://perma.cc/9YPA-XN8J>.

19. Judges, members of Congress, presidents, and legal experts from the era described as insurrections events such as the Whiskey Insurrection (1794) and Fries’ Insurrection (1799), which involved efforts to resist the federal government’s right to impose or collect certain taxes. 8/16/22 Tr. 22:23–23:3, 26:7–10 (Graber). This reflected the common understanding that an insurrection need not rise to the level of trying to overthrow the government or secede from the Union; resisting the government’s authority to execute a single law sufficed. *Id.* 24:2–8, 30:24–31:5.

20. Section Three’s framers and nineteenth-century Americans did not understand an insurrection to require actual violence; intimidation by numbers sufficed. 8/16/22 Tr. 27:18–28:2 (Graber); *Charge to the Grand Jury*, July 1861. Thus, Fries’ Insurrection was considered an

insurrection even though there was only intimidation and not actual violence. A tax collector fled when marched upon by angry Pennsylvania farmers, but “there was no evidence that anyone fired a shot, anyone threw a stone, anyone threw a punch.” 8/16/22 Tr. 27:15–28:2 (Graber).

21. Nor did the nineteenth-century definition of insurrection depend on the truth or morality of the insurrectionists’ cause: an uprising could be an insurrection even if the participants sincerely believed their cause was just. 8/16/22 Tr. 29:11–22 (Graber). Efforts to rescue fugitive slaves were considered insurrections even though many believed the Fugitive Slave Act of 1850 was unconstitutional and freeing slaves was a moral obligation. *Id.* 29:11–22. That participants “firmly believe[d]” they “were acting for the good of [their] country” was “not a defense to insurrection,” but rather was proof they were acting for an insurrectionary “public purpose.” *Id.* 29:11–22, 53:1–7.

**2. The January 6 Attack and Surrounding Events Meet the Definition of an “Insurrection.”**

22. The Court concludes that the January 6, 2021 attack on the United States Capitol and the surrounding planning, mobilization, and incitement constituted an “insurrection” within the meaning of Section Three of the Fourteenth Amendment.

23. The transfer of presidential power is governed by the Twelfth and Twentieth Amendments and the Electoral Count Act, among other laws. The Twelfth Amendment requires electors to meet after the election in their respective states to cast their votes, which are then transmitted to Congress to be “open[ed]” by the Vice President (in his capacity as the President of the Senate) and “counted” in a joint congressional session. U.S. Const. amend. XII. The Electoral Count Act establishes procedures for electoral votes to be opened and counted on the sixth day of January following any presidential election in a joint session of Congress, in which

the Vice President “shall be the[] presiding officer.” 3 U.S.C. § 15. The Twentieth Amendment provides that a President’s term “shall end at noon on the 20th day of January” and “the term[] of [his or her] successor[] shall then begin.” U.S. Const. amend. XX, § 1.

24. The January 6 Attack followed a weeks-long campaign to stop—through extra-legal means—certification of the 2020 presidential election and the transfer of power as mandated by federal law. Findings of Fact ¶¶ 12, 14–16. Participants in these efforts did not hide their objective: they called their movement “Stop the Steal” based on the false premise that the 2020 election was stolen and that the lawful transfer of power needed to be stopped. *Id.* ¶ 15.

25. The Stop the Steal movement successfully mobilized and incited thousands of people from across the country to form a violent mob in Washington, D.C. to intimidate Vice President Pence and Congress so that they would not certify the 2020 presidential election and thus block the lawful transfer of power. Findings of Fact ¶¶ 16, 38.

26. The mob that arrived at the Capitol on January 6 was an assemblage of persons who engaged in violence, force, and intimidation by numbers. The mob numbered at minimum in the thousands. Many came prepared for violence in full tactical gear. They used a variety of weapons, brutally attacked and injured more than one hundred police officers, sought to intimidate the Vice President and Congress, and called for the murder of elected officials, including the Vice President. Findings of Fact ¶¶ 38, 40–43.

27. The mob was unified by the common public purpose of opposing the execution of federal law—namely, the Twelfth and Twentieth Amendments and the Electoral Count Act. Through their chants, flags, banners, and clothing, the mob made clear they came to the Capitol to stop Vice President Pence and Congress from carrying out their constitutional duties to certify

the election by force and intimidation. Findings of Fact ¶ 46. That some of the January 6 attackers may have believed that the 2020 presidential election was stolen does not negate their insurrectionary purpose. 8/16/22 Tr. 35:4–6 (Graber).

28. The mob ultimately achieved what even the Confederates never did during the Civil War: they breached the Capitol building and seized the Capitol grounds, forcing the Vice President and Congress to halt their constitutional duties and flee to more secure locations. Findings of Fact ¶¶ 47, 49.

29. The mob succeeded in delaying the constitutionally-mandated counting of electoral votes by several hours and, for the first time in our Nation’s history, disrupted the peaceful transfer of presidential power. Findings of Fact ¶ 49. To clear the mob and regain control of the Capitol, the Capitol Police called in more than 2,000 reinforcements from 19 agencies. *Id.* ¶ 48. Officers used chemical spray and munitions, flash bangs, tactical teams with firearms, riot shields, and batons to fight back the mob. *Id.* Even with this significant show of force, the Capitol grounds were not deemed secure and the congressional proceedings did not resume until 8:00 p.m. *Id.* ¶49. It was not until 3:42 a.m. on January 7 that Congress completed its business and certified the election. *Id.*

30. After January 6, there was a continuing effort to violently prevent Biden from taking office on January 20 as required by the Twentieth Amendment. Findings of Fact ¶ 51. The threat subsided only after the government deployed nearly two and a half times the number of National Guardsmen that would normally attend a presidential inauguration. *Id.*

31. Knowledgeable nineteenth-century Americans including Section Three’s framers would have regarded the events of January 6, and the surrounding planning, mobilization and

incitement, as an insurrection. 8/16/22 Tr. 43:2–15 (Graber) (“We saw an assemblage, acting in concert, chanting ‘hang Mike Pence’ in concert, attacking police officers in concert. We saw that they were there to prevent the execution of those laws that would have certified that Joe Biden won the Presidential election. We saw that they were there was because they believed in the public purpose, that the election had been fraudulent, had been stolen. ... And we saw ... substantial violence, force and intimidation.”).

32. Reinforcing the evidence presented at trial, each branch of the federal government has referred to the January 6 Attack as an “insurrection” and the participants as “insurrectionists,” including bipartisan majorities of both chambers of Congress,<sup>2</sup> more than a dozen federal courts,<sup>3</sup> President Biden,<sup>4</sup> and the Department of Justice under former President Trump.<sup>5</sup> Former President Trump’s own impeachment defense lawyers acknowledged “everyone agrees” there was “a violent insurrection of the Capitol” on January 6. 167 Cong. Rec. 5717, 5733 (Feb. 13, 2021).

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<sup>2</sup> E.g., 167 Cong. Rec. H191 (daily ed. Jan. 13, 2021); 167 Cong. Rec. S733 (daily ed. Feb. 13, 2021); H. Res. 503, 117th Cong., 1st Sess. (2021); S. 35, 117th Cong. (2021); H.R. 3325, 117th Cong. (2021).

<sup>3</sup> E.g., *United States v. Munchel*, 991 F.3d 1273, 1281 (D.C. Cir. 2021); *United States v. DeGrave*, 539 F. Supp. 3d 184 (D.D.C. 2021); *Noem v. Haaland*, 542 F. Supp. 3d 898, 906 (D.S.D. 2021); *Alsaada v. City of Columbus*, 536 F. Supp. 3d 216, 274 (S.D. Ohio), *modified in nonrelevant part by* 2021 WL 3375834 (2021); *United States v. Brogan*, 2021 WL 2313008, at \*2 (E.D.N.Y. June 7, 2021); *United States v. Brockhoff*, 2022 WL 715223, at \*1 (D.D.C. Mar. 10, 2022); *United States v. Hunt*, 573 F. Supp. 3d 779, 807 (E.D.N.Y. 2021); *United States v. Puma*, 2022 WL 823079, at \*2 (D.D.C. Mar. 19, 2022); *O’Rourke v. Dominion Voting Sys. Inc.*, 552 F. Supp. 3d 1168, 1199 (D. Colo.), *modified in nonrelevant part by* 2021 WL 5548129, at \*2 (D. Colo. 2021); *United States v. Randolph*, 536 F. Supp. 3d 128, 132 (E.D. Ky. 2021); *United States v. Little*, 2022 WL 768685, at \*2 (D.D.C. Mar. 14, 2022); *O’Handley v. Padilla*, 2022 WL 93625, at \*5 (N.D. Cal. Jan. 10, 2022); *Amalgamated Transit Union Local 85 v. Port Auth. of Allegheny Cnty.*, 2021 WL 719671, at \*2 (W.D. Pa. Feb. 24, 2021).

<sup>4</sup> E.g., Statement By President Joe Biden On the Six-month Anniversary of the January 6th Insurrection On the Capitol (July 6, 2021), <https://perma.cc/VS89-CC3B>.

<sup>5</sup> Gov’t Br. in Supp. of Det. at 1, *United States v. Chansley*, No. 21-cr-00003, ECF No. 5 (D. Ariz. Jan. 14, 2021).

**C. Mr. Griffin “Engaged in” the Insurrection.**

33. The case law holds that a person “engage[s]” in an insurrection within the meaning of Section Three by “[v]oluntarily aiding the [insurrection], by personal service, or by contributions, other than charitable, of anything that [is] useful or necessary” to the insurrectionists’ cause. *Worthy*, 63 N.C. at 203; *see also Powell*, 27 F. Cas. at 607 (defining “engage” as a “a voluntary effort to assist the Insurrection ... and to bring it to a successful termination” from the insurrectionists’ perspective).

34. Consistent with this case law, knowledgeable nineteenth-century Americans understood that a person “engaged in” insurrection whenever they were “leagued” with insurrectionists—either by acting in concert with others knowing that the group intended to achieve its purpose in part by violence, force, or intimidation by numbers, or by performing an “overt act” knowing that act would “aid or support” the insurrection. 8/16/22 Tr. 43:22–44:22 (Graber). Under the nineteenth-century understanding, “there [were] no accessories” in an insurrection; rather, “[e]verybody ... involved” was a “principal actor.” *Id.* 15:8–10.

35. One need not personally commit acts of violence to “engag[e] in” insurrection. *See Powell*, 27 F. Cas. at 607 (defendant “engaged in” rebellion if he voluntarily provided a substitute to avoid serving in Confederate Army); *Worthy*, 63 N.C. at 203 (individual “engaged in” rebellion by holding office of county sheriff under the Confederacy); 8/16/22 Tr. 52:10–19 (Graber). Engagement thus can include non-violent overt acts or words in furtherance of the insurrection. *See May 2022 Greene Decision* at 14; 8/16/22 Tr. 135:13–24 (Kleinfeld) (explaining “there are a lot of roles in an insurrection,” some of which do not involve violence).

36. Under the nineteenth-century understanding, “an overt act is not measured by how much it contributes” to the insurrection; in the context of a violent insurrection such as the January 6 Attack, just “[o]ne more person closer to the Capitol” or “one more voice” encouraging violence would be “one more person” engaged in the insurrection. 8/16/22 Tr. 51:17–52:9 (Graber).

37. Applying these principles, the Court concludes that Mr. Griffin “engaged in” the January 6 insurrection.

38. Ahead of the January 6 Attack, Mr. Griffin voluntarily aided the insurrectionists’ cause by helping to mobilize and incite thousands across the country to join the mob in Washington, D.C. on January 6 to intimidate and threaten Vice President Pence and Congress so they would not certify the election. Prop. Findings of Fact ¶¶ 16, 19–35. Griffin was a featured speaker on a multi-city bus tour organized by a leading Stop the Steal rally organizer, during which Mr. Griffin urged crowds to join the “war” and “battle” in “the streets” of Washington, D.C. on January 6 to stop certification of the election and the peaceful transfer of power. *Id.* ¶¶ 23–24, 28. The mob’s size was their “greatest weapon” and what enabled them to achieve the level of success that they did on January 6. *Id.* ¶ 44. The pre-January 6 mob mobilization and incitement efforts by Mr. Griffin and others helped make the insurrection possible.

39. Mr. Griffin further aided the insurrection when he joined and incited the mob that attacked and seized the Capitol grounds on January 6. Griffin illegally breached the Capitol grounds and remained there between at least 2:31 p.m. to 4:48 p.m.—the height of the attack. Prop. Findings of Fact ¶¶ 54–55. He knowingly crossed multiple layers of security barricades and helped insurrectionists do the same, ultimately ascending all the way to the inaugural stage

on the Capitol's West Terrace. Findings of Fact ¶¶ 55–59, 69. He remained there, and incited the mob, even after seeing members of the mob a short distance away attack police officers and violently try to break into the Capitol building. Findings of Fact ¶¶ 60–63, 65–67. And he remained even after law enforcement ordered the mob to disperse and deployed tear gas, pepper spray, and chemical munitions to make them do so. Findings of Fact ¶¶ 56, 59. The Court finds that Mr. Griffin knew he should not have been at the Capitol, but that he stayed in support of the insurrection.

40. The Court concludes that Mr. Griffin's crossing of barricades to approach the Capitol were overt acts in support of the insurrection, as Griffin's presence closer to the Capitol building increased the insurrectionists' intimidation by numbers. Mr. Griffin's marching with the mob all the way to the inaugural stage, knowing the mob's insurrectionary purpose, likewise constitutes an overt act. The Court's conclusions are consistent with how knowledgeable nineteenth-century Americans would view Mr. Griffin's actions. 8/16/22 Tr. 51:3–21 (Graber).

41. Mr. Griffin aided the insurrection even though he did not personally engage in violence. By joining the mob and trespassing on restricted Capitol grounds, Mr. Griffin contributed to delaying Congress's election-certification proceedings. The constitutionally-mandated proceedings could not resume until *all* members of the mob, including Mr. Griffin, were removed from the restricted area. Findings of Fact ¶¶ 47, 49. The presence of Mr. Griffin and other purportedly non-violent members of the mob also contributed to law enforcement being overwhelmed. Findings of Fact ¶¶ 44–45.

42. Mr. Griffin also incited, encouraged, and helped normalize the violence on January 6. He joined insurrectionists in chanting "Heave! Ho!" as they synchronized their

movement to crush Officer Hodges and other police officers in the West Terrace tunnel to break into the Capitol. Findings of Fact ¶ 65. He filmed a speech for social media promoting the attack as it was ongoing, threatening “this is what you’re going to get, and you’re going to get more of it.” *Id.* ¶ 60. He fist-bumped insurrectionists and chanted “this is our house!” and “we could all be armed” as he approached the West Terrace. *Id.* ¶ 57. And he minimized concerns about the ongoing violence raised by those around him, stating “sometimes these sorts of things need to happen in order to send a signal that we’re going to quit putting up with their bull crap, you know?” *Id.* ¶ 64. Eyewitness testimony confirms that Mr. Griffin’s boisterous, attention-seeking behavior had the effect of energizing the insurrectionist mob. *Id.* ¶ 62.

43. The Court concludes that Mr. Griffin’s encouragement and normalization of other insurrectionists’ violent activities were additional overt acts in support of the insurrection. *See* 8/16/22 Tr. 52:3–9 (Graber) (“[L]egally knowledgeable people of the Nineteenth Century said one more voice is one more person who is involved in the insurrection.”).

44. Mr. Griffin also repeatedly aligned himself with the insurrectionists. In videos recorded before, during, and after the January 6 Attack, Griffin used the first-person plural to describe how “we” could not permit Joe Biden to steal the 2020 presidential election, “we” took over the Capitol grounds because it was “our” house, and “we” shouted “Heave! Ho!” in support of attackers breaking into the Capitol building. Findings of Fact ¶¶ 27–34, 57, 65–67. Mr. Griffin knew the individuals he was acting in concert with during the January 6 Attack were engaged in violence and force to stop certification of the election, and he proudly associated himself with them. *Id.*; *see also* 8/16/22 Tr. 46:1–48:20 (Graber).

45. After the attack, Mr. Griffin took to social media to justify and normalize the

violence he acknowledged witnessing on January 6. Consistent with the insurrectionists' post-January 6 focus on the presidential inauguration, *see* Findings of Fact ¶ 51, Mr. Griffin vowed a more brutal attack to prevent Biden from taking office on January 20, when he threatened there would be “blood running out” of the Capitol building, *id.* ¶ 67. Mr. Griffin later conveyed specific plans to attend Biden’s inauguration with firearms. *Id.* ¶ 69.

46. Nineteenth-century Americans would have regarded Mr. Griffin as being “leagued” with the January 6 insurrectionists because he acted in concert with those insurrectionists and committed several overt acts supporting the insurrection. *See* 8/16/22 Tr. 44:23–53:22 (Graber).

47. Mr. Griffin’s actions normalized and incited violence. 8/16/22 Tr. 99:15–21, 101:16–103:19, 135:13–136:1 (Kleinfeld). By calling on “men” to join him in “battle,” telling crowds they were in the midst of a “war,” dehumanizing the opposition as “wicked” and “vile,” warning that “losing [was] not an option,” and associating as an elected official with “violent specialist” groups, Griffin lowered inhibitions of others to engage in violence. *Id.* 108:14–109:12, 113:11–17, 114:12–115:3, 115:11–18 (explaining that placing violence in a sanctioned context, like war, and dehumanizing people are means of lowering inhibitions to violence). And by using language that goes outside of democratic norms, like urging supporters take to “the streets” rather than the “ballot box,” Mr. Griffin suggested that the use of violence to prevent the transfer of presidential power was legitimate. *Id.* 113:11–17. Political violence predictably occurred at the Capitol on January 6 and Griffin helped make that happen. *Id.* 99:24–100:2.

**D. Mr. Griffin Became Constitutionally Disqualified from Any Federal or State Office, Including His Current Office, Effective January 6, 2021.**

48. For the foregoing reasons, the Court concludes Mr. Griffin is constitutionally

disqualified from serving as a “Senator or Representative in Congress, or elector of President and Vice-President,” or from “hold[ing] any office, civil or military, under the United States, or under any State.” U.S. Const. amend. XIV, § 3.

49. The Court further concludes that Mr. Griffin’s current office of Otero County Commissioner qualifies as “any office ... under a[] State” from which Mr. Griffin is now disqualified. Section Three’s list of offices from which one is disqualified (“Senator or Representative in Congress, or elector of President and Vice-President, or ... any office, civil or military, under the United States, or under any State”) is facially broader than the offices eligible for disqualification (“member of Congress,” “an officer of the United States,” or “a member of any State legislature, or as an executive or judicial officer of any State”). Because the Otero County Commission falls into Section Three’s narrower list of disqualification-eligible offices, *see* Prop. Concl. of Law ¶¶ 13–17, it follows that it is also an office from which Mr. Griffin is now disqualified, *see Powell*, 27 F. Cas. at 607 (Section Three is “broad enough to embrace every officer in the state”).

50. Under the *quo warranto* statute, the “effective date” of a disqualified official’s forfeiture of office is the date on which the disqualifying condition occurred. *See State ex rel. King v. Sloan*, 2011-NMSC-020, ¶¶ 13–14, 149 N.M. 620, 623–24 (official’s “forfeiture of ... office” was “automatic” upon occurrence of constitutionally-disqualifying condition and the Court’s the *quo warranto* judgment “simply operated to enforce that which had already occurred”). For Mr. Griffin, that date was January 6, 2021.

51. The Court concludes that Mr. Griffin became constitutionally disqualified from federal and state office and forfeited his current office as an Otero County Commissioner

effective January 6, 2021.

### **III. Mr. Griffin's Defenses Are Meritless.**

52. The Court concludes that none of the defenses Mr. Griffin raised before this Court have merit.

53. While the Court “regard[s] pleadings from *pro se* litigants” such as Mr. Griffin “with a tolerant eye,” a “*pro se* litigant is not entitled to special privileges because of his *pro se* status.” *Bruce v. Lester*, 1999-NMCA-051, ¶ 4, 127 N.M. 301, 302. Rather, a *pro se* litigant “is held to the same standard of conduct and compliance with court rules, procedures, and orders as are members of the bar.” *Newsome v. Farer*, 1985-NMSC-096, ¶ 18, 103 N.M. 415, 419.

54. Accordingly, the Court need not consider defenses Mr. Griffin asserted in the related federal proceedings but failed to raise in this Court, as those arguments are deemed forfeited. And while the Court must “review the arguments of self-represented litigants to the best of its ability,” it “cannot respond to unintelligible arguments” raised by Mr. Griffin. *Brooks v. Brooks*, 2015 WL 4366711, at \*1 (N.M. June 30, 2015) (unpublished) (citing *Clayton v. Trotter*, 1990-NMCA-078, ¶¶ 16–17, 110 N.M. 369).

#### **A. Mr. Griffin's First Amendment Defense Fails.**

55. Mr. Griffin has claimed that disqualifying him under Section Three of the Fourteenth Amendment would violate his First Amendment rights. *See, e.g.*, 8/15/22 Tr. 10:8–10; 104:9–15. Whether construed as asserting his First Amendment right to run for political office, his right to freedom of speech, or his right to the free exercise of religion, Mr. Griffin's argument fails.

56. Despite Mr. Griffin’s objections to his own words being used against him in this case, “[t]he First Amendment ... does not prohibit the evidentiary use of speech.” *Wisc. v. Mitchell*, 508 U.S. 476, 489 (1993).

57. Mr. Griffin also overlooks that Section Three of the Fourteenth Amendment is just as much a part of the Constitution as the First Amendment. Griffin’s “unconstitutional constitutional amendment” theory has never succeeded in American courts and was specifically rejected by Section Three’s drafters. *See Br. of Amici Curiae Floyd Abrams et al.* at 8–13 (Aug. 1, 2022).

58. Even if a constitutional amendment could somehow be deemed unconstitutional as Mr. Griffin claims, Section Three poses no genuine threat to First Amendment rights; the two provisions can and must be harmonized. *See Br. of Amici Curiae Floyd Abrams et al.* at 13–28. Section Three affects the qualified right to run for political office—a right that has always been limited by qualifications such as age, citizenship, and residency. *See Thournir v. Meyer*, 909 F.2d 408, 412 (10th Cir. 1990) (“Candidacy itself is not a fundamental right ....”); *Griffin*, 2022 WL 2315980, at \*12 (“Section Three of the Fourteenth Amendment narrows the First Amendment right to run for office ....”). Moreover, Section Three serves compelling interests in “protecting the integrity and practical functioning of the political process” by excluding candidates due to their disloyalty to the Constitution. *Hassan v. Colorado*, 495 F. App’x 947, 948 (10th Cir. 2012) (Gorsuch, J.); *see Sandlin*, 21 La. Ann. at 632 (recognizing “the State has obviously a great interest” in enforcing Section Three “and a clear right to do” so).

59. Nor can Mr. Griffin’s free speech or free exercise rights immunize him from disqualification, even if his insurrectionary activities are entangled with speech and prayer.

“[F]reedom of speech and of religion do not extend so far as to bar prosecution of one who uses a public speech or a religious ministry to commit crimes” or other illegal conduct. *United States v. Rahman*, 189 F.3d 88, 116–17 (2d Cir. 1999). Rather, Mr. Griffin could be held to violate even a statute pursuant to traditional First Amendment exceptions, such as speech integral to illegal conduct, *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949); *Rumsfeld v. FAIR, Inc.*, 547 U.S. 47, 62 (2006); true threats, *Virginia v. Black*, 538 U.S. 343, 359–60 (2003); and incitement, *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Here, Mr. Griffin is accused of violating the Fourteenth Amendment, which, as noted, must be “be read together and harmonized” with the First Amendment, *State v. Sandoval*, 1980-NMSC-139, ¶ 8, 95 N.M. 254, 257, to ensure Section Three is not rendered “without effect,” *Marbury v. Madison*, 5 U.S. 137, 174 (1803).

60. Moreover, courts have uniformly rejected arguments by Mr. Griffin and other insurrectionists that their conduct on January 6 was constitutionally-protected protest activity. *See* Br. of *Amici Curiae* NAACP New Mexico Conference and NAACP Otero County Branch at 3–8 (Aug. 23, 2022) (compiling cases). Courts have likewise rejected January 6 insurrectionists’ attempts to compare their conduct to that of Black Lives Matters protesters. *See id.* at 8–11; *see also* 8/16/22 Tr. 161:12–18, 163:21–164:7, 148:3–5 (Kleinfeld) (explaining that while some Black Lives Matter protests “caused a lot of property damage,” January 6 was an unprecedented use of “violence and intimidation” to “affect the orderly transition of power” as mandated by federal law).

**B. Mr. Griffin Can Be Disqualified Under Section Three Regardless of Whether He Has Been Convicted of Any Crime.**

61. Mr. Griffin has also argued he cannot be disqualified under Section Three because

he was acquitted of disorderly conduct under 18 U.S.C. § 1752(a)(2) and has not been charged with the crime of insurrection under 18 U.S.C. § 2483. *See* 8/15/2 Tr. 10:4–6; 8/16/22 Tr. 146:10–13, 146:25–147:16. But Mr. Griffin is conflating a Section Three disqualification suit with a criminal prosecution. *See* 8/15/22 Tr. 105:19–21 (“THE COURT: Just to clarify, this isn’t a criminal proceeding. It’s a civil proceeding. So you mentioned criminal conduct before. That’s not this trial.”).

62. Section Three imposes a qualification for public office, much like an age or residency requirement; it is not a criminal penalty. *See Sandlin*, 21 La. Ann. at 632–33 (Section Three suit was brought “not to inflict punishment or to impose penalties or disabilities,” but “to inquire legally into [defendant’s] right to hold ... office”); Cong. Globe, 39th Cong., 1st Sess. 2918 (1865–66) (Section Three is “not ... penal in its character, it is precautionary”).

63. Nor is a criminal conviction (for any offense) a prerequisite for disqualification. Indeed, neither the courts nor Congress have ever required a criminal conviction for a person to be disqualified under Section Three. *See, e.g., Sandlin*, 21 La. Ann. 631; *Worthy*, 63 N.C. 199; *In re Tate*, 63 N.C. 309; May 2022 *Greene* Decision at 13.

64. Nor is Mr. Griffin’s acquittal for disorderly conduct legally relevant here. Unlike 18 U.S.C. § 1752(a)(2), Section Three does not require proof that Mr. Griffin engaged in “disorderly or disruptive conduct.” Instead, Griffin is disqualified under Section Three if he “[v]oluntarily aid[ed] the [insurrection], by personal service, or by contributions, other than charitable, of anything that [is] useful or necessary” to the insurrectionists’ cause,” or if he otherwise “leagued” with insurrectionists. Concl. of Law ¶¶ 33–34. The judge in Mr. Griffin’s criminal case had no occasion to apply this standard. The quantum of proof also differs

significantly: to secure a § 1752 conviction, the United States had to prove each element beyond a reasonable doubt. In this civil action, the standard of proof is, at most, preponderance of the evidence. Finally, Plaintiffs presented substantial evidence at this trial that the federal government may not have presented at Mr. Griffin's criminal trial, making the conclusions at the criminal trial inapplicable to the evidence in this case.

**C. Mr. Griffin's Other Arguments Are Similarly Meritless.**

65. At trial, Mr. Griffin incorrectly claimed an insurrection must involve a “collaborated effort to overthrow the government” and “replace” it. *E.g.*, 8/15/22 Tr. 41:10–12. He cited no authority supporting that definition and, as outlined *supra*, it is refuted by historical evidence. Prop. Concl. of Law ¶ 18–19. Not even the Civil War—the event that precipitated the Fourteenth Amendment—would meet Griffin's definition of insurrection. 8/16/22 Tr. 55:1–10 (Graber).

66. Mr. Griffin also suggested he cannot be removed through a *quo warranto* suit because a recall effort against him failed. 8/16/22 Tr. 186:23–188:5. The case law forecloses this argument. *See Martinez*, 1980-NMSC-064, ¶ 6 (affirming *quo warranto* judgment and rejecting argument that recall election was the “exclusive means” for removing disqualified officials).

67. The Court also rejects Mr. Griffin's argument that his removal and disqualification pursuant to the Constitution of the United States would “subvert the will of the people.” 8/15/22 Tr. 11:1. Mr. Griffin disregards that the Constitution *itself* reflects the will of the people and is “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2; *see also* N.M. Const. art. II, § 1. And he overlooks that his own insurrectionary conduct on January 6 sought to subvert

the results of a free and fair election, which would have disenfranchised millions of voters. *See* Br. of *Amici Curiae* NAACP New Mexico Conference and NAACP Otero County Branch at 13–15 (refuting Griffin’s “disenfranchisement” argument).

### **ORDER GRANTING *QUO WARRANTO* RELIEF**

For the reasons stated in these Findings of Fact and Conclusions of Law, the Court ORDERS, ADJUDGES, and DECREES as follows:

1. Defendant Couy Griffin is disqualified under Section Three of the Fourteenth Amendment to the Constitution of the United States because (1) he took an oath to support the Constitution of the United States as an “executive ... officer of any State,” (2) the January 6, 2021 attack on the United States Capitol and surrounding planning, mobilization, and incitement were an “insurrection” against the Constitution of the United States, and (3) Defendant “engaged in” that insurrection after taking his oath.

2. Due to his disqualification under Section Three of the Fourteenth Amendment, Defendant is constitutionally ineligible and barred for life from serving as a “Senator or Representative in Congress, or elector of President and Vice-President,” or from “hold[ing] any office, civil or military, under the United States, or under any State,” including his current office as an Otero County Commissioner.

3. Defendant became constitutionally disqualified from the federal and state positions specified above in Paragraph 2 and forfeited his current office as an Otero County Commissioner effective January 6, 2021.

4. Defendant shall be removed from his position as an Otero County Commissioner effective immediately.

5. Defendant is permanently enjoined and prohibited from performing any official acts in his purported capacity as an Otero County Commissioner or on behalf of the Board of County Commissioners of Otero County.

6. Defendant is permanently enjoined and prohibited from seeking or holding any federal or state position specified above in Paragraph 2.



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Francis J. Mathew  
District Court Judge

xc: Counsel, e-served  
Cousy Griffin