

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Randall Kowalke, )  
 )  
 Plaintiff, )  
 v. )  
 )  
 David Eastman, )  
 State of Alaska, Division of Elections, )  
 and Gail Fenumiai, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. 3AN-22-07404 CI

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. INTRODUCTION**

Plaintiff Randall Kowalke has alleged that Defendant David Eastman is disqualified from holding public office under Article XII, § 4 of the Alaska Constitution because of Rep. Eastman's membership in the Oath Keepers. Kowalke also asserted in his complaint that the Division of Elections and its Director, Gail Fenumiai,<sup>1</sup> improperly determined that Rep. Eastman was eligible to appear on the August 16, 2022 primary ballot.

The court held a 6-day bench trial that began on December 13, 2022 and concluded on December 21. Following closing arguments on December 21, the court took the matter under advisement. After considering the evidence offered at trial and the law applicable to this case, the court makes the following Findings of Fact and Conclusions of Law.<sup>2</sup>

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<sup>1</sup> Ms. Fenumiai was sued in her official capacity and is no longer the Director. The Division will move to amend the caption to this action when a new Director is named.

<sup>2</sup> This decision is intended as the findings of fact and conclusions of law required by Civil Rule 52.

## II. FINDINGS OF FACT

The court heard the testimony of multiple witnesses during trial. Both Kowalke and Rep. Eastman presented testimony by expert witnesses.<sup>3</sup> The court also received documents, photographs, and video recordings into evidence. The parties also entered into a stipulation regarding actions taken by the Division in relation to this case as well as documents that could be admitted into evidence. The Division did not present any other testimony or submit additional exhibits.

### A. Kowalke's Witnesses

#### 1. *Jonathon Lewis*

Jonathan Lewis was presented by the plaintiff as an expert witness in the field of researching and studying violent extremist groups in the United States, the evolution of those groups in the United States, and the federal response to those groups. Mr. Lewis is a research fellow at the Program on Extremism at George Washington University. As part of his job, Mr. Lewis maintains a repository of court records encompassing all publicly available court records for criminal prosecutions in the District of Columbia related to the events that took place on January 6, 2021 at the United States Capitol. He also reviews other sources of information as part of his research. He has published numerous articles on the Oath Keepers and testified to the Alaska legislature about that group.<sup>4</sup> This was his first time testifying as an expert in court.

Mr. Lewis explained that his work uses the terms defined by the United States Government. That framework recognizes a distinction between domestic violent extremism and homegrown violent extremism. Domestic violent extremism describes groups who commit violence based upon a domestic agenda. Homegrown violent extremists, on the other hand, engage in similar activity to support a foreign terrorist

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<sup>3</sup> Neither party asked the court to make a specific finding that the witnesses presented were experts in their field. However, it was clearly the parties' intent for the court to make that ruling. The court will therefore treat the identified witnesses as experts subject to further discussion herein.

<sup>4</sup> See Exhibit 46, Mr. Lewis's report published on the Alaska Legislature's website.

organization or other international agenda. Domestic violent extremist groups who engage in off-line acts are typically categorized into racially-ethnically motivated violent extremists ("REMVE") and anti-government or anti-authority violent extremists ("AGAAVE"). Mr. Lewis included the Oath Keepers in the AGAAVE category of domestic violent extremist groups.

Regarding the Oath Keepers, Mr. Lewis looked at both online activities by the group as well as their offline activities. He distinguished between online speech and rhetoric by a group that may be protected by the First Amendment and real-world offline activities. His opinion was that both before and on January 6, 2021, the Oath Keepers attempted to execute a plan that would have resulted in the overthrow of the United States Government. He said that the Oath Keepers called for specific activities and concrete action focused on that date with the intent to stop the peaceful transfer of presidential power.

In forming this opinion, Mr. Lewis relied upon the documents filed in the federal prosecutions related to January 6, video footage of the events in the Capitol on that date, statements made by Elmer Stewart Rhodes, and his background research into the organization.<sup>5</sup> He testified that materials such as these are routinely relied upon by experts in his field.

Regarding the group's history, Mr. Lewis testified that the Oath Keepers were formed in 2009 by Mr. Rhodes. The Oath Keepers were started as an anti-government militia focused on what they viewed as an inevitable conflict with the United States Government. Mr. Lewis said that the Oath Keepers' central beliefs were an extension of Mr. Rhodes's which included conspiratorial beliefs that the group would eventually need to combat the "deep state", Chinese-Communist agents, groups allegedly funded by George Soros, and fears that the Obama administration would take away all firearms. Mr. Lewis stated that Mr. Rhodes's views and the group's focus shifted over time to new conspiracy theories under the Trump administration, eventually taking up the "stop the steal" cause.

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<sup>5</sup> See Exhibits 18—39, 42, and 43.

The Oath Keepers were incorporated in Nevada in 2009. Mr. Lewis testified that the group was named in part to leverage the patriotism associated with an oath to uphold the constitution taken by many Americans as part of their jobs. The group actively recruited active and former members of the armed forces, police departments, and other first responders. In total, the group had about 38,000 members, but that number may be inflated.

Mr. Lewis testified to the criminal prosecutions of Oath Keepers members for their actions on January 6, 2021. He relied upon the indictments in *U.S. v. Rhodes, et al.*,<sup>6</sup> a transcript admitted during a bail hearing in one of the prosecutions,<sup>7</sup> and the corresponding guilty verdict in that case.<sup>8</sup> He also relied upon the charging documents and guilty pleas in other cases brought against Oath Keepers members.<sup>9</sup> In all, 33 members of the Oath Keepers were charged for their actions at the Capitol on January 6, 2021. Of those, Mr. Rhodes and Kelly Meggs were convicted of Seditious Conspiracy and other charges following a jury trial.<sup>10</sup> Another three members, William Todd Wilson, Joshua James, and Brian Ulrich, pled guilty to that same charge.<sup>11</sup> Other members were convicted of obstructing an official proceeding.<sup>12</sup>

Mr. Lewis summarized the Oath Keepers' communications and plans leading up to January 6. Prior to the election, Mr. Rhodes stated in interviews that armed conflict was inevitable. On November 3, 2021 Mr. Rhodes sent an email to the Oath Keepers membership list. The email reiterated his views that the election represented "an ongoing life and death struggle between liberty and a totalitarian nightmare future" in which the "Deep State, the Marxist controlled Democratic Party, and all their allies" were trying to "steal the election, take power, and destroy the nation once and for all."<sup>13</sup>

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<sup>6</sup> Exhibits 13, 20, and AA.

<sup>7</sup> See Exhibit 21, not admitted for the truth of the matters asserted in the transcript.

<sup>8</sup> Exhibit 42.

<sup>9</sup> Exhibits 22—39.

<sup>10</sup> Exhibit 42.

<sup>11</sup> Exhibits 22, 24, and 26.

<sup>12</sup> Exhibits 22—39.

<sup>13</sup> Exhibit 6.

Following the general election, Mr. Rhodes believed that the election was not legitimate. According to Mr. Lewis's testimony, Mr. Rhodes hoped that President Trump would invoke the Insurrection Act and call the Oath Keepers up as an organized militia. Mr. Lewis pointed to an "Open Letter to President Trump" posted December 14, 2020 on the Oath Keepers' official website.<sup>14</sup> Mr. Rhodes believed at that time that the election had been rigged, that President-Elect Biden was a Chinese-Communist agent, and that President Trump must take all steps to stop the election being certified. He therefore believed that the Oath Keepers would have to act.

On December 23, 2020, Mr. Rhodes posted to the Oath Keepers' website another letter titled "Open Letter to President Trump, Part II: Act Now! Do NOT Wait for Jan 6."<sup>15</sup> The letter repeated many of the themes of the previous letter, but identified January 6 as the deadline for action.

On January 4, 2021, Mr. Rhodes sent an emailed letter titled "CALL TO ACTION" to the Oath Keepers' membership list.<sup>16</sup> The letter called on all Oath Keepers members to go to Washington D.C. The letter repeated many of the earlier claims that President Trump should invoke the Insurrection Act and release documents showing the existence of a "deep state" and prosecute those involved. The letter also asserted that Oath Keepers were needed to protect people from Antifa and other communist agents. In the letter, Mr. Rhodes stated that members should not be armed but that an armed Quick Reaction Force ("QRF") would be on standby outside of the District of Columbia in case President Trump invoked the Insurrection Act or "the worst" happened.

Consistent with the "Call to Action" email, Mr. Rhodes had members cache weapons at a hotel in Virginia where a Quick Reaction Force ("QRF") could retrieve them and bring them to the Capitol. He also hoped that President Trump would order the government to release all files he believed were in its possession on the existence of the "deep state". Mr. Lewis explained that Mr. Rhodes did not believe that Mr. Trump would actually invoke the act and so had a "Plan B" in place. Under that scenario, Mr.

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<sup>14</sup> Exhibit 18.

<sup>15</sup> Exhibit 19.

<sup>16</sup> Exhibit 14.

Rhodes believed that the Oath Keepers must be prepared to use force to stop the transfer of power to then President-Elect Biden.

Mr. Lewis also testified that Mr. Rhodes had additional communications with a core group of Oath Keepers leadership and members via an encrypted Signal group chat. The leadership group chat included Mr. Meggs, Mr. Wilson, Mr. Harrelson, Mr. Seekerman, and Mr. Simmons. The chat was used to coordinate activities on January 6 and portions were quoted in the Statements of Offense executed as part of various plea agreements.<sup>17</sup> Mr. Lewis testified that on the chat it was clear that the members believed that it was a foregone conclusion that they would need to use force to "stop the steal" and that the members would not "get through this without a civil war" or a "bloody" fight.<sup>18</sup>

Mr. Lewis also testified regarding a transcript of an Oath Keepers virtual meeting held on November 9, 2020. That meeting was video recorded by a member who was concerned about the tone of the meeting and turned the recording over to the FBI. Mr. Lewis relied on this transcript in forming his opinion. In that meeting, Mr. Rhodes stated that the letter showed Mr. Rhodes's embrace of conspiracy theories such as QAnon and that he believed that a revolution was needed, such as what had occurred in Serbia when Slobodan Milosevic was overthrown. Based upon the statements at the meeting, Mr. Lewis concluded that Mr. Rhodes and by extension the core group of members who were present on January 6 believed that Congress had become an enemy to be stopped and a legitimate target for their actions.

Mr. Lewis then explained that members coordinated their travel plans to arrive in Washington D.C. prior to January 6. Most drove in order to avoid having to fly with firearms and stayed at three hotels in Washington D.C. and one hotel in Virginia. The hotel in Virginia was where firearms were stored to be used by the QRF and so as to not violate D.C. firearms laws.

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<sup>17</sup> See Exhibits 22—39.

<sup>18</sup> Exhibits 23, 25, and 27.

Mr. Lewis then testified about the Oath Keepers' actions on January 6. To form his opinion, he viewed hours of video from inside the Capitol, audio recordings, open source information such as documents filed in federal prosecutions, and trials. Following the speech by President Trump and others at the Ellipse, Mr. Rhodes and the other Oath Keepers members went to the Capitol. The group continued to use the Signal chat to communicate. Following the rioters' breach of the building, Mr. Rhodes called the Oath Keepers members to the south side of the Capitol. Mr. Rhodes characterized the people entering the Capitol as "pissed off Patriots" and not members of Antifa. At that point, Mr. Rhodes believed that Vice President Pence was not going to stop the certification of President-Elect Biden and so force was needed to stop Mr. Biden from becoming president. Following a phone call, members of the Oath Keepers, wearing helmets, vests, and Oath Keepers insignia, assembled into two "stacks" and entered the Capitol.<sup>19</sup> "Stack One" forcefully breached the Capitol and searched for Speaker of the House Nancy Pelosi with the goal of stopping, or at least delaying, the election being certified. Mr. Lewis explained that the stacks included Mr. James and Mr. Wilson and both admitting to using force as part of their plea agreements.<sup>20</sup>

Following law enforcement expelling the mob from the Capitol, Mr. Rhodes (who did not enter the Capitol) told the members to assemble near the Supreme Court building and then to return to a hotel. The group, including Mr. Rhodes, Mr. Meggs, and Ms. SoRelle, then reconvened at an Olive Garden restaurant. Mr. Lewis said that Mr. Rhodes realized at that point that he was likely to face prosecution, and so members of the group attempted to delete messages and other evidence.

Mr. Rhodes returned to his home in Texas where he continued to make plans to oppose Mr. Biden's inauguration. On January 14, 2021, Mr. Rhodes wrote a letter to

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<sup>19</sup> Mr. Lewis explained that a "stack" was a military-style formation in which the members walked in a single-file line with a hand on the person in front of them so as to not get separated. The term was used in the indictments filed in *U.S. v. Rhodes, et al.* Exhibit 20.

<sup>20</sup> See Exhibit 23.

President Trump and shared it over the Signal leadership chat.<sup>21</sup> The final version was posted on the Oath Keepers' website.

Mr. Rhodes was charged with multiple federal offenses and convicted of Seditious Conspiracy, Obstruction of an Official Proceeding, and Tampering with Documents or Proceedings.<sup>22</sup> Mr. Rhodes was acquitted of charges of Conspiracy to Obstruct an Official Proceeding and Conspiracy to Prevent Members of Congress from Discharging Their Duties.<sup>23</sup>

Mr. Lewis said that his research showed that the Oath Keepers members acted at Mr. Rhodes's behest and direction and that Mr. Rhodes had brought the members to the Capitol to stop the election's certification. He said that there were no Oath Keepers mobilizations without Mr. Rhodes's approval. Mr. Lewis also said that Mr. Rhodes had not been expelled from the Oath Keepers and that the Oath Keepers were still an active organization that had not been officially disbanded.

On cross examination, Mr. Lewis acknowledged that 33 Oath Keepers members were charged for their role on January 6, but that many more Oath Keepers members were at the Capitol and were not charged. He also stated that he could not give an exact number of members in the organization, but that 38,000 seemed roughly accurate. He also acknowledged that state-level groups had some degree of autonomy, but he said that there was no evidence that the groups who entered the Capitol were "splinter groups." Mr. Lewis also acknowledged that the Signal chats were not shared with the entire member list, and that only emails that were sent to the list or posted on the website would have been viewable to everyone. Mr. Lewis also stated that he did not have any data on how many people viewed the letters posted on the website or received member emails.

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<sup>21</sup> Exhibit 43.

<sup>22</sup> Exhibit 42.

<sup>23</sup> *Id.*



Regarding Mr. Lewis's opinions on what occurred on January 6, he stated that he had reviewed "hours" of video footage. In that footage he had seen 50 or 60 Oath Keepers members in gear or apparel that identified them as members of the group.

Mr. Lewis also testified about the Oath Keepers' by-laws.<sup>24</sup> He acknowledged that nothing in the by-laws was explicitly anti-government. He also acknowledged that several provisions restricted membership and made individual members responsible for their own actions. But he also said that the by-laws did not accurately reflect the group's true purpose.

Mr. Lewis stated that he did not interview any Oath Keepers as part of his research or in forming his opinion. He also stated that while he did not know what individual Oath Keepers thought, he did know what Stewart Rhodes's beliefs were. He stated that the name Oath Keepers was chosen as cover for the group's true purpose. The naming of the group therefore represented twisting the ideals of patriotism to provide a first line of defense against any criticism. He said that anyone who has done even a modicum of research on the group would know that the group's actual goals were set by Mr. Rhodes.

Mr. Lewis also said that on January 6 the group had a clear hierarchical structure with each "stack" and the QRF having team leaders who reported to Mr. Rhodes.

Mr. Lewis stated that no members of the Oath Keepers from Alaska had been charged with a crime. He also did not know if any Alaskan members had participated in other activities by the Oath Keepers at the Bundy Ranch, the Malheur National Wildlife Refuge, or in Ferguson, Missouri.

Mr. Lewis stated that Mr. Rhodes was incarcerated and still the leader of the Oath Keepers.

Mr. Lewis also acknowledged that the charging documents related to the January 6 events did not explicitly state the words "overthrow the government." But he said that

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<sup>24</sup> Exhibit U.

the totality of the evidence he saw showed a conspiracy to stop the peaceful transfer of presidential power. He also stated that while Mr. Rhodes claimed that the goal was to uncover vote fraud, the intent of the group was to use force to stop the certification— noting that the Oath Keepers who were searching for Nancy Pelosi on January 6 were “not going to ask [her] nicely” to delay the vote. Mr. Lewis equated violence directed at members of Congress and specifically the speaker of the house with the goal of achieving a political end with attempting to overthrow the government.

Mr. Lewis also explained that while the Oath Keepers had permits to be on portions of the Capitol grounds that day, they did not have a permit to enter the restricted areas of the building.

Mr. Lewis acknowledged that after January 6 some Oath Keepers state organizations, such as Arizona, had broken away from the national group. Mr. Lewis said this distancing from the national brand could be real or could be a ploy to avoid federal investigations. He opined that the national group's core ideology had not changed.

Regarding state group's degree of autonomy, Mr. Lewis said that they were independent in some areas, such as the types of training to schedule. He described the group as a “disorganized” with a hierarchy that allowed for national mobilization when called upon by Mr. Rhodes. For example, several dozen members mobilized to the Bundy Ranch, Malheur, and Ferguson when called by Mr. Rhodes. After the “Call to Action” prior to January 6, about 50 or 60 members mobilized.

Mr. Lewis said he did not have any information on humanitarian work performed by the Oath Keepers. He also said that he was not familiar with Oath Keepers members escorting officers out of the Capitol and protecting them from rioters.

Mr. Lewis said that Mr. Rhodes's plan to stop the certification began in October or November, 2020 and then culminated on January 6, 2021.

He also said that there was no evidence that the FBI had incited the violence on January 6. He said that allegations related to Ray Epps had been discredited.

On re-direct examination, Mr. Lewis said that it was common in domestic violent extremist groups for a "small subset" of the overall membership to mobilize at particular events. By way of comparison, about 80 to 100 Proud Boys (another domestic violence extremist group) were present on January 6 out of the group's overall membership which numbers in the tens of thousands.

Mr. Lewis also noted that in the Oath Keepers' by-laws, Mr. Rhodes had the defined status of founder and lifetime chairman.<sup>25</sup> He also stated that for January 6, Mr. Rhodes specifically reached out to chapters from Florida, North Carolina, and Georgia. He said that the January 6 date "crystallized" as the deadline for action. Mr. Lewis explained that while Mr. Rhodes hoped that President Trump would invoke the Insurrection Act, Mr. Rhodes was actually pessimistic that would happen and so developed a "Plan B". That plan was to establish the QRF that could ferry weapons into D.C. Mr. Lewis emphasized that the Oath Keepers' overt acts in carrying out that plan were the basis for his overall opinion.

## *2. Matthew Kriner*

Matthew Kriner is a Senior Research Scholar at the Middlebury Institute of International Studies' Center on Terrorism, Extremism, and Counterterrorism. His focus of study is on violent extremism within the United States, but that study necessarily involves looking at trans-national groups. He also conducts briefings for the State Department's counter-terrorism section on those subjects and has provided analysis of the events on January 6 to the Department of Justice. As part of his work he has researched the Oath Keepers. He described them as an anti-government and anti-authority extremist organization. He has testified on their activities before the United States House of Representatives and the Alaska legislature.

The Oath Keepers have been a subject of persistent study as part of his work for the last three or four years. Over the group's existence it has consistently viewed the United States Government as infringing on various rights. In the lead up to and after the

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<sup>25</sup> Exhibit U, section 2.01.

2020 election, the group's focus coalesced on alleged vote fraud. This focus culminated on January 6 when multiple members of the Oath Keepers actively sought out members of Congress to disrupt the election's certification.

Mr. Kriner explained the group's history. It was founded in 2009 by Mr. Rhodes as a legal entity registered in Nevada. He believed the group to still be active but the last public record he had found was in 2011. He also stated that the group had not formally dissolved after the events of January 6 or Mr. Rhodes's conviction.

Mr. Kriner testified that the Oath Keepers' name derived from the oath to uphold and defend the Constitution taken by many in public service, the military, or law enforcement. He said that based upon his research many members of the group had a unique view of the oath that elevated an individual's understanding of what was constitutional over the normal system of checks and balances usually recognized in American law. In order to determine what the Oath Keepers viewed as constitutional he therefore looked to their statements on social media, in interviews, and on blogs. These sources showed that the group and its founder viewed the Oath Keepers' central role as resisting tyranny, as they defined it. He described their world view as contradictory in that they saw the United States Government as bloated and an aggressor in an ongoing civil war while also casting themselves as defenders of the Republic. Mr. Kriner said that the Oath Keepers therefore believed that violence was a legitimate and inevitable tool as part of that struggle.

Mr. Kriner described the Oath Keepers' structure as being semi-autonomous. Small groups of the larger organization would respond to specific calls for action made by Mr. Rhodes. But Mr. Kriner said that it was not a "command and control" framework. As an example, Mr. Kriner said that a member was involved in the standoff at the Malheur National Wildlife Refuge against Mr. Rhodes's wishes. That member was dissociated from the group. In sum, members had limited autonomy but everything ultimately flowed through Mr. Rhodes.

The national group had a board of directors. Mr. Rhodes was chair for life.<sup>26</sup> Other members served 36-month-terms on the board and rotated through. Mr. Rhodes would communicate with members through various platforms such as the website, email, Twitter, FaceBook, podcasts, and YouTube. Communications were usually disseminated from Mr. Rhodes at the national level.

Mr. Kriner stated that it was difficult to distinguish the Oath Keepers' views as an organization from Mr. Rhodes's personal views. He explained that Mr. Rhodes was essentially the group's fulcrum and was aware of and would weigh in on all major actions taken by the Oath Keepers. He set the tone for both online and offline communications.

Mr. Kriner gave several examples of times that members of the group mobilized at Mr. Rhodes's request to engage in standoffs with law enforcement agencies. Oath Keepers would flank protestors, ostensibly to protect them, but in actuality the Oath Keepers' presence would intimidate protestors and complicate law enforcement's job. He gave the example of the "March Against Sharia" at which the group assembled while armed and unnecessarily marched through neighborhoods to intimidate those communities. Mr. Kriner stated that events at which the Oath Keepers mobilized were more likely to turn violent than any other group he studied. The mobilizations would also be accompanied by public statements to elected officials talking about "civil war."

Regarding January 6, Mr. Kriner stated that the response that day was indicative of prior events. It was preceded by a sustained outreach campaign by Mr. Rhodes to mobilize members.

Mr. Kriner also explained that the commonly-used membership figure of 38,000 was likely somewhat off the mark. He said that was an overall number for the lifetime of the group with active membership waxing and waning over time. The fact that only 50 or 60 members mobilized on January 6 was common for domestic violent extremist groups. That number roughly reflects the average sustained rate of engagement for domestic violent extremist groups.

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<sup>26</sup> Exhibit U.

Mr. Kriner said that his research showed that Mr. Rhodes's views had radicalized and his desire for action had become more brazen over time. He gave the examples of the Malheur Refuge and the "Clashes for Berkeley" as early incidents in which Mr. Rhodes wanted the Oath Keepers to play a more restrained role. But in 2016, Mr. Rhodes became more antagonistic towards the United States Government as he adopted more conspiracy theories into his world view.

Mr. Kriner said that that purpose of the Oath Keepers' actions on January 6 was to disrupt the proper transition of power and that Mr. Rhodes had made clear that he would never accept a Biden presidency as legitimate. Thus, on January 6 the conditions were met that, in Mr. Rhodes's mind, justified the use of force to stop the election's certification.

On cross-examination, Mr. Kriner stated that while the Oath Keepers hoped to be called up under the Insurrection Act, that was largely a "ruse" in that the group members had a "predetermined mentality" that they needed to act to stop a Biden presidency. When asked about whether the group only sought to delay the certification to allow for more investigation into alleged fraud, Mr. Kriner responded that the post-election court cases had all failed to show any significant fraud that would have affected the election. Instead of seeking delay through legitimate means, the group used paramilitary gear in order to try to intimidate elected officials and disrupt Congress.

Regarding the guns that had been stored at the hotel in Virginia to be used by the QRF, Mr. Kriner stated that they were there in part in case the Insurrection Act was invoked by President Trump. But the guns were also present in case the conditions were met under which the Oath Keepers present thought they would be needed to stop a Biden presidency. Mr. Kriner said that it was clear from the emails sent by Mr. Rhodes and the interviews that he gave prior to January 6 that the group's presence on January 6 related most directly to their belief that Biden's election was illegitimate. But Mr. Kriner acknowledged that he was not aware of any written communications stating that the weapons were for any other purpose than to be used by the QRF in the event the Insurrection Act was invoked.

Mr. Kriner was also asked about the Oath Keepers' by-laws and he said that the group's true goals were best judged by the actions and statements of its founder. He said that Mr. Rhodes was the arbiter of the Oath Keepers actions. He further said that Mr. Rhodes had not relinquished control of the group and that he did not know of any actions taken by the group to remove him as chairman of the board.

Mr. Kriner said that some state-level groups had disassociated themselves from Mr. Rhodes after January 6, such as the North Carolina chapter and the Arizona chapter. Other individuals had also disassociated from the Oath Keepers. But he said that most groups and members had not disassociated themselves and so had tacitly endorsed the Oath Keepers' actions on that day.

Regarding communications, Mr. Kriner stated that he did not know who specifically was included in the encrypted Signal group chats. But it was clear that the chats did not go to all Oath Keepers members and that there was not a mass email that had shared the contents of those chats with members. He also explained that the Oath Keepers as an organization used multiple methods to communicate with members, including interviews with media, interviews with sites such as InfoWars, social media postings, emails, and posts on the members' online forum.

Mr. Kriner said that one could categorize members of the Oath Keepers, and other domestic violent extremist groups, based upon the person's level of participation and engagement. He said that in these types of groups there was usually a "core 50" members who would be most involved in offline activity. The particular composition of that core group ebbs and flows drawing from the overall membership of the group depending on the conditions or event at the time. Separate from that group, are the formal members who are not active in offline activities but who identify as members and provide other types of support—such as monetary contributions. Finally, there were informal members, who never officially joined but still associated with the group. Mr. Kriner said that any member who "doubles-down" on their membership after an event such as January 6 showed a true commitment to the group's cause that day. Mr. Kriner

said that after reviewing Rep. Eastman's letters supporting the group after January 6 he viewed him as a committed member of the Oath Keepers.

Mr. Kriner also explained why it could potentially be dangerous for persons, such as law enforcement officers, to believe that they could interpret the constitution for themselves independent of the normal functioning of government and the courts. He said that if law enforcement members or other individuals believe that their interpretation is more valid than the lawful system in place then that presents a danger to the normal functioning of society. He distinguished situations in which an officer in the military had to disobey orders by pointing out that the United States is not a war zone. Instead, he emphasized that public servants must follow the law and established pathways for interpreting the law.

Finally, Mr. Kriner stated that he had not interviewed any members of the Oath Keepers as part of his research.

On re-direct examination, Mr. Kriner clarified that he had reviewed the Oath Keepers emails provided in discovery.<sup>27</sup> He did not know if any other emails were sent to the Oath Keepers membership. He also said that he had reviewed the InfoWars interview that Mr. Rhodes had given and that all communications to the national membership came from Mr. Rhodes. That included the group's Twitter account as well as Mr. Rhodes's individual Twitter account—between which he said there was little distinction.

Mr. Kriner also gave two examples of times that Mr. Rhodes had chosen to expel an Oath Keepers member. In one stance, a member had criticized the group and ripped up his membership card. Mr. Rhodes rebuked him in a video posted on YouTube. Second, a member who had stated he was a recruiter for the group was arrested for possessing child sexual exploitation images. Mr. Rhodes disavowed him and removed him from the Oath Keepers.

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<sup>27</sup> Exhibits 6, 7, and 14.



Mr. Kriner said that since January 6 there had not been any statements by the national Oath Keepers organization condemning the actions taken by those arrested on that date. Nor had other board members or other members speaking for the national organization disavowed or rebuked Mr. Rhodes, Mr. Meggs, or any of the other members convicted of federal offenses.

### *3. David Eastman*

Rep. Eastman testified after being called to the stand by the plaintiff. He stated that he was a founding lifetime member of the Oath Keepers. He explained that he joined because of the group's stated mission and commitment to honoring an oath to protect the United States Constitution. He said that he initially joined the group in 2009 or 2010 when he paid \$30 and bought a tee shirt. He later renewed his membership in 2011. In 2014 he bought a lifetime membership and paid \$1000.00 in monthly \$50 installments.<sup>28</sup> He received a membership certificate.<sup>29</sup> In 2018, he was asked by the Oath Keepers via email for additional money to renew his membership, and he responded by pointing out that he had already paid for a lifetime membership.<sup>30</sup> With membership, Rep. Eastman got access to the Oath Keepers online forum and a username. He did not follow the group's national FaceBook page, but he thought that did follow an Alaska-specific Oath Keepers page. He also received emails as part of his membership as well as flyers and bumper stickers.

Rep. Eastman stated that he intended to join the organization, but not to join a "parallel organization" that apparently had a different mission. He said that he had sent letters and emails to the board members of the Oath Keepers to try to get more information on the group's response to the convictions of Mr. Rhodes and others related to their actions on January 6.<sup>31</sup> Rep. Eastman said that he wanted to know if the organization was going to enforce its by-laws.

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<sup>28</sup> Exhibit 5.

<sup>29</sup> Exhibit 3.

<sup>30</sup> Exhibit 7.

<sup>31</sup> Exhibit Z. Also discussed below when Rep. Eastman testified again later in the trial.

Rep. Eastman believes that he is still a member of the Oath Keepers. He has not renounced or resigned his membership. He said that since the indictment and subsequent conviction of Mr. Rhodes, he has not received any communications from the Oath Keepers. He also had not received any indication that Mr. Rhodes, who under the group's by-laws was the Founder and Chairman for Life,<sup>32</sup> had resigned. When Rep. Eastman was testifying on December 14, he still had not decided whether to resign.

Rep. Eastman was also aware that several Oath Keepers members had pled guilty to seditious conspiracy charges. He said that he eventually became aware that Oath Keepers had gone inside the Capitol on January 6.

Rep. Eastman acknowledged receiving a November 3, 2020 email sent by Mr. Rhodes to the Oath Keepers members.<sup>33</sup> He also acknowledged receiving and forwarding on to a friend, Patrick Martin, an email from Mr. Rhodes that was sent on January 4, 2021.<sup>34</sup>

Rep. Eastman also testified that he traveled to Washington, D.C. and was at the Grant Memorial near the U.S. Capitol on January 6. He said that he thought that there had been laws violated during the election and that it was appropriate for there to be an investigation.

Rep. Eastman also acknowledged authoring an article titled, "Trump Lost and Jeffery Epstein Killed Himself."<sup>35</sup> He explained that in the article he was trying to draw a distinction between "political truths" and actual "truth", and that it was not allowed in current society to question what he called "political truths."

Rep. Eastman said that the jury verdict in the United States' prosecution of Mr. Rhodes had caused him to reach out to the Oath Keepers' board members. But he was not willing to resign at this point because he "understood" that the conviction would be

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<sup>32</sup> Exhibit U, sections 1.05 and 2.01.

<sup>33</sup> Exhibit 6.

<sup>34</sup> Exhibit 14. The "call to action" email.

<sup>35</sup> Exhibit 51.

appealed and so was not yet final. He believed that a person has a duty to refuse to follow a law that they believe to be unconstitutional.

Rep. Eastman denied that he wanted the vote delayed. Instead, he said that he wanted members of Congress to take seriously the objections being raised and to do their due diligence before certifying the election. He emphasized that he wanted the Congressional process to be followed. He acknowledged that in the article he wrote titled "Trump Lost..." that he had written there had been election abuse and that he had called on the Congress to not certify the election.

Rep. Eastman also stated that he knew that Oath Keepers would be in D.C. for various events. He also knew that Mr. Rhodes had said that all patriots needed to be in D.C. Rep. Eastman said that he did not know about the QRF. When it was pointed out that the QRF was mentioned in the January 4 email that he had forwarded to Mr. Martin he said that he did not remember it.<sup>36</sup> He also said that he did not go to D.C. because of the email.

Rep. Eastman said that after hearing President Trump's speech at the Ellipse he and his friend went to the Grant Memorial. There they met others for a group photo. Rep. Eastman did not march to the Capitol with others from the speech by President Trump and instead took a different route. He believed that he arrived at the Grant Memorial after the Capitol had been breached. He stayed there near the Capitol until a curfew was announced in the D.C. area by text message. Rep. Eastman could not exactly recall the time that he left the Grant Memorial or when the text announcing the curfew was received.

Rep. Eastman said that he was not particularly happy with the delayed certification. He wanted Congress to follow its process and hear the objections being raised. He said that he did not want the Oath Keepers to use violence to delay the certification. Rep. Eastman learned after the event that Oath Keepers entered the Capitol illegally. He did not know whether they had used violence and believed that

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<sup>36</sup> Exhibit 14.

they had protected law enforcement officers from the rioters while inside. He said that he had seen video of Oath Keepers entering the Capitol to rescue police officers.

Rep. Eastman said that he was aware that members of the Oath Keepers had pled guilty to seditious conspiracy, but that he had not reviewed the charging documents or plea agreements. He said that he did not attribute the actions of some Oath Keepers to all members of the group. He also said that he would not characterize the events on January 6 as a "peaceful" demonstration.

Rep. Eastman also said that in his position as an elected official he communicated with his constituents and others by FaceBook, Twitter, his website, and opinion pieces in media. He had posted pictures of his trip to D.C. on his FaceBook page. He stated that the picture at the Grant Memorial was "relatively" close to the Capitol. He also acknowledged that he had not condemned the Oath Keepers or individuals in the organization for their actions on January 6. He suggested that Antifa was involved in those events and condemned them in a post he authored on FaceBook on January 7, 2021.<sup>37</sup> He also stated that he had tweeted on January 15, 2021 that anyone who broke the law at the Capitol should be prosecuted for their actions as well as anyone who violated the country's election laws.<sup>38</sup> He said that both are violations of the law and both should be prosecuted.

## B. Rep. Eastman's Witnesses

### *1. John Guandolo*

John Guandolo is the founder and president of Understanding the Threat, a private company that provides various private and government groups training on security threats. He has previously served as a Marine after graduating from the United States Naval Academy. He was later an FBI Agent from 1996 until 2008 and then worked at the Department of Defense. In those positions he worked in counter-

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<sup>37</sup> Exhibit AG.

<sup>38</sup> Exhibit AB.

terrorism units, focusing on jihadi organizations and communist threats. He also regularly provided briefings on his assessments to members of the government.

In preparation for his testimony he reviewed the discovery produced in this case, listened to significant portions of expert depositions in this case, interviewed Mr. Rhodes, and read dozens of articles. He also said that he has spoken to hundred of Oath Keepers members at various events. Mr. Guandolo was also present near the Capitol on January 6.

Mr. Guandolo stated that Mr. Kriner and Mr. Lewis's use of the term "violent extremism" raised concerns for him about the professional of their analysis because that term came into usage through what he characterized as an information operation perpetrated against the British and United States governments. Mr. Guandolo said that the term was adopted by U.S. governmental entities based upon work done in Britain. He said that after 911, the Muslim Brotherhood convinced security agencies in Britain to adopt the term and focus on the "wrong area". In his opinion, the "Countering Violent Extremism" program related to the DVE term was an abysmal failure. He stated that the term "violent extremism" as used by the plaintiff's experts did not have a legal definition, swept in too many people and groups not appropriately considered to be threats, and brought about the nation's adversary's intended result to disrupt American security agencies.

Mr. Guandolo said that based upon his research, the Oath Keepers were not anti-government. Rather they were anti-tyranny and against government officials violating their oaths of office. He believed that the plaintiffs' experts had not looked at all the facts in reaching their conclusions. For example, he said that the experts had not been aware of information showing that the Anti-Defamation League was not a credible organization. He also said their discussion of the Oath Keepers actions in Ferguson, Missouri was deficient for not mentioning that the unrest there was organized by Liberation Road, a Chinese Communist organization. He said that the Oath Keepers mission in Ferguson was to provide security. Mr. Guandolo also criticized Mr. Lewis and Mr. Kriner for not including the Oath Keepers' humanitarian work in their opinions.

Regarding the events of January 6, Mr. Guandolo said that he was present at the Capitol that day in a "legal spot." He said that he did not go inside the building. He characterized the atmosphere where he was "jovial" and likened it to a tailgate part at a football game.

He also stated that the Oath Keepers did not pose a threat to national security, and that only a small fraction of the organization was present on January 6. Mr. Guandolo faulted Mr. Lewis and Mr. Kriner for minimizing the importance of Antifa and Black Lives Matter to what happened on January 6. He characterized BLM as a Chinese-Communist organization and Antifa as being a Russian-backed organization. He said that based on his training he recognized many Antifa members in the crowd. He explained that in his opinion someone wearing black clothing, black backpacks, and black facemasks was indicative of communist groups not "operating on the friendly side." He also said that he witnessed other events that day that led him to believe that the entire riot was orchestrated by foreign, communist powers.

Mr. Guandolo stated that in his opinion, the Oath Keepers were not a threat to the United States. He said that he had spoken to many Oath Keepers at various patriot events. He also interviewed Mr. Rhodes earlier in the week on which he testified. He stated that only three percent of the persons arrested on January 6 were Oath Keepers. Also, he said that Mr. Rhodes thought that Oath Keepers who entered the Capitol were "stupid" for doing so. Mr. Guandolo also emphasized that the weapons for the QRF were only to be used if the Insurrection Act was invoked. He said that if the Oath Keepers really intended to engage in an insurrection they would not have left the weapons elsewhere. Instead, he said the Oath Keepers were "contingency planning" when the weapons were left nearby.

Mr. Guandolo also reiterated that people had a duty to not follow unconstitutional orders or laws and that the "Constitutional Sherriff" movement was not appropriately discussed in Mr. Kriner's or Mr. Lewis's reports. He did not believe that the Oath Keepers were a "militia" or terrorist group, and that the group's by-laws made clear that it was not either of the things.

Mr. Guandolo also emphasized that the Oath Keepers who were convicted of federal charges were not trying to overthrow the government. He said that delay was not "tantamount to overthrow." He also pointed out that none of the members who were indicted for seditious conspiracy were charged under the subsection that mentions overthrow of the government.

Mr. Guandolo further testified that the organization may have had a structure, but it did not exhibit top-down, absolute control. He also criticized their reports for not mentioning other organizations in the United States that focus on overthrowing the government.

Mr. Guandolo said that based on his personal observations on January 6, he did not see any Oath Keepers inciting violence. He did say that he was shocked that the plaintiff's experts had not seen a video that allegedly showed Ray Epps inciting violence.

The Oath Keepers by-laws, according to Mr. Guandolo, proved that the organization was not an extension of Mr. Rhodes. He emphasized that the by-laws prevented felons from being members and that the explicit goals in the document were contrary to the opinion expressed by Mr. Kriner and Mr. Lewis. The Oath Keepers were therefore not a threat to the United States government and did not harbor white-supremacists or anti-Semitic persons.

On cross examination, Mr. Guandolo denied leaving the FBI because of an investigation into an inappropriate relationship he had with a witness. He said that he left because he received a better job elsewhere and prior to the internal investigation into his actions.

Mr. Guandolo listed a number of organizations that he believed posed true threats to the United States, including Chinese-Communist organizations, Jihadi Organizations, BLM, and Antifa. He also said that he believed that both Senator Mitch McConnell and Beto O'Rourke, a candidate for office in Texas, were agents of the Chinese Communist Party. He said that the communist groups that he was discussing

were much more dangerous than the Oath Keepers and that Mr. Kriner and Mr. Lewis should have addressed them. He also opined that every component of the government currently has communist agents trying to bring it down. He also alleged that President Jimmy Carter had reached out to the KGB for help with defeating Ronald Reagan, that Secretary of the Interior Deb Haaland was a communist, and that former FBI Director James Comey was a communist.

Mr. Guandolo acknowledged that he is friends with Rep. Eastman and that the two have been friends since the time they were at the Claremont Institute together.

Mr. Guandolo also said that when he was at the Capitol on January 6 the atmosphere was "peaceful and jovial" throughout the day. But that obviously did not apply to the people who he acknowledged were assaulted or killed. He did say that he saw people he believed to be Antifa going into the building, but that he did not see any Oath Keepers. He believed the events that day were a "color revolution". Mr. Guandolo said that he personally witnessed capitol police officers wave people through open doors and into the Capitol.

In forming his opinion, Mr. Guandolo did not review all of the plea agreements or statements of offense for the Oath Keepers convicted following January 6. He also acknowledged that the United States government uses the term "violent extremism", but he believed that term is ineffectual.

Mr. Guandolo acknowledged that on January 7 he said that what happened at the Capitol on January 6 was "restrained" and that it was "amazing that patriots hadn't strung up these traitors already." He later explained that he was using intemperate language as was his wont as a former Marine, but did not actually advocate rioters stringing up members of Congress.

Mr. Guandolo also stated that around the time of the events of January 6 he was regularly providing briefings to legislators and other officials. He said that after briefings the person listening would often say, "How is it possible that I don't know this" and that no one else had ever given them the information that Mr. Guandolo passed along.



## 2. *Michael Nichols*

Michael Nichols is a member of the Oath Keepers who lives in New York state. He was present in D.C. on the January 6. He said that in his experience, the organization was not a militia. He went to D.C. in order to attend President Trump's speech on January 6. He was concerned at the time about safety and so he reached out to people on the Oath Keepers website to enquire whether it would be safe to go to D.C. He did not go to D.C. because of Mr. Rhodes's call to action.

He said that at the rally by the Ellipse at which President Trump spoke the people were polite. After the speech he tried to leave the area with his wife, but ended up being re-directed by crowds towards the Capitol. He said that he and his wife ended up outside the Capitol and watched the events unfold. After the riot started, he said that he approached a police lieutenant and asked if he could help. He said the lieutenant asked him and some others to help get a group of officers out of the Capitol building. Mr. Nichols said that they went inside and there was a group of officers who looked exhausted. He said that he, another Oath Keepers member named Steve, and the rest of the people who had come in escorted the officers out of the building past persons who were trying to get in. A video of Mr. Nichols leaving the building with the officers was played.<sup>39</sup> Mr. Nichols also was aware of weapons being ready for the QRF, but did not believe that the weapons would be used unless the Insurrection Act was invoked by President Trump.

On cross examination, Mr. Nichols said that he only remembered receiving the "Jericho March" email in December and then receiving another email about the events on January 6. He did not participate in any online meetings, like the "GoToMeeting" event, or remember seeing the open letters posted on the Oath Keepers website. He also was not a part of the Signal chats. At the Capitol on January 6, he saw people on scaffolding waving flags. He was not aware of any other Oath Keepers being present. He explained that in the video discussed above, the 20 to 25 people closest to the door were "not friendly" but once they passed that immediate area the crowd was not hostile

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<sup>39</sup> Exhibit AO.

to the officers. He said that the officers looked like they had been "battling for quite some time."

On re-direct examination, Mr. Nichols said that he was not aware of any chain of command within the Oath Keepers.

### *3. Patrick Martin*

Patrick Martin testified that he traveled to Washington D.C. with Rep. Eastman to attend the events there. He said that he is a friend of Rep. Eastman's and so he went along to protect him in case there was any violence. Mr. Martin also said that he had seen Rep. Eastman smeared by untrue allegations in the past and so went to act as a witness for Rep. Eastman's actions in case there were any accusations later about anything that happened in D.C. Finally, he said that they went because it was a historic occasion and he had questions about the election.

Mr. Martin is not a member of the Oath Keepers. He said he first learned that Rep. Eastman was a member of the organization when Rep. Eastman forwarded him the January 4 email sent by Mr. Rhodes.<sup>40</sup> He said he did not receive the email until after they had already traveled to D.C. Mr. Martin explained that he shared Rep. Eastman's concerns about incongruities with results in Pennsylvania and other states during the 2020 general election. He said that he was concerned that peoples' voices would not be heard prior to a decision by Congress on whether to certify the results of the presidential election.

Mr. Martin explained that he had safety concerns about the trip based on what he had witnessed during the May Day parade in Seattle in 2013. There, he saw Antifa members blending into the legitimate march to incite the crowd. That experience caused him to be concerned about Rep. Eastman's safety in D.C. on and around January 6. He said that a friend pestered him into bringing a backpack that had a protective plate, but that he and Rep. Eastman thought the backpack was unnecessary and left it at the house they were renting.

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<sup>40</sup> Exhibit 14.

Mr. Martin explained that the two of them arrived in D.C. on the afternoon of January 4 and went to their rental. They then spent January 5 in Virginia meeting up with various people. On January 6, the two of them took a train to the Ellipse to see President Trump speak. Mr. Martin took a photograph of Rep. Eastman going through security at the rally.<sup>41</sup> He described the atmosphere at the rally as "festive." Mr. Martin also took videos of the large crowd at the event and the PA system playing "YMCA" by the Village People.<sup>42</sup>

After the speeches, Mr. Martin and Rep. Eastman left separately from the marchers and took a train to get near the Capitol. They then went to the Grant Memorial where they had planned to meet up with other Alaskans for a group photograph. He said that Rep. Eastman led the way because he was more familiar with D.C. At the memorial, the two met with some of Rep. Eastman's constituents and stayed there until the curfew announcement was made. Mr. Martin said that he saw a few Antifa members walk by while they were at the Grant Memorial.

Regarding the election, Mr. Martin said that he was upset about the irregularities and wanted a lawful election. But he emphasized that the process for investigating the irregularities should be lawful. He said that the unlawful events on January 6 made him angry. Mr. Martin said that Rep. Eastman was essentially with him at the Grant Memorial the entire time until they left. They returned to Alaska on January 7. He also said that he heard a man on the flight back bragging about entering the Capitol. He said that also made him angry.

On cross-examination, Mr. Martin stated that he did not think that the election was rigged but that there had been massive fraud. He did expect there to be violence in D.C. and large crowds around the Capitol. He did not know that any Oath Keepers were going to be at the Capitol until he read the January 4 email after his arrival in

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<sup>41</sup> Exhibit AQ.

<sup>42</sup> Exhibit AP.

D.C.<sup>43</sup> He said that he did not follow the Oath Keepers and did not know anything about the QRF mentioned in the email.

He also said that he did not think the point of President Trump's speech on January 6 was to delay the certification. He also said that the speech ended with "YMCA" playing and that it did not feel to him like an attempt to incite the crowd to violence.

Mr. Martin said that the Grant Memorial was about a quarter of a mile from the Capitol and that he had a clear line of site to the building. He said that he could not see any violence, only people waving flags while standing where they should not be. He said that people around him were concerned about what was going on and that they heard rumors that people had breached the Capitol.

#### *4. Stephen Horn*

Stephen Horn is an independent journalist. He was near the rotunda in the Capitol on January 6. He said that he saw about 5 or 6 people in a room with Oath Keepers gear on. Mr. Horn said that the Oath Keepers were standing between several police officers and a crowd of people. The Oath Keepers were trying to deescalate the situation. He took a photograph of what was happening.<sup>44</sup>

#### *5. Stewart Rhodes*

Elmer Steward Rhodes testified as the founder of the Oath Keepers. Mr. Rhodes had recently been convicted of seditious conspiracy for his role in the events on January 6, and he was testifying from the Alexandria Detention Center in Virginia. Mr. Rhodes had been in the United States Army and then attended Yale Law School. He said that he founded the Oath Keepers initially because of his concerns about abuses committed by the second Bush Administration during the War on Terror. He thought that the illegal actions undertaken by that administration, such as at Abu Ghraib prison, echoed the government's illegal internment of Japanese Americans during World War II. He also

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<sup>43</sup> Exhibit 14.

<sup>44</sup> Exhibit A.

said that he founded the organization because of the government's failure to protect people during and after Hurricane Katrina. Mr. Rhodes said that he learned in the military the importance of not following unconstitutional orders.

He said that the organization's by-laws define the group's purpose. The mission statement is to defend the constitution and someone cannot be a member if they advocate to overthrow the Constitution, if they discriminate against other people based on race, or if they are a felon.<sup>45</sup> Mr. Rhodes said that he had enforced the membership restrictions in the past. He said that state level organizations were supposed to perform background checks on "vetted" members. He said that he kicked out anyone who was a felon, a racist, or anti-police. Mr. Rhodes also said that he thought that in the fall of 2019 the group would have had roughly 38,000 to 40,000 members. He said the number would fluctuate up and down but that 40,000 was about the peak.

Mr. Rhodes described his leadership of the group. He said that local chapters had wide latitude to work in their communities. But he also said that if there was a problem, he would step in and put a stop to it. He also described the Oath Keepers' humanitarian and security work in response to hurricanes and other natural disasters. He said that he kept the Oath Keepers away from any rallies at which white supremacists would be present. He said that during the Trump administration his group began to provide security by escorting people to and from events. He said that Antifa would not attack his group and that he told his members to avoid violence.

In the Fall of 2020, Mr. Rhodes said that he sent out a message to members encouraging them to watch for election fraud. He said that the group also provided security at rallies in November and December. He estimated that about 20 or 30 Oath Keepers responded to each security event.

On January 5, 2021, the Oath Keepers provided security for Roger Stone at an event in Virginia. On January 6, the Oath Keepers had two security teams. One was assigned to Roger Stone and the other was assigned to the Ali Alexander "Stop the

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<sup>45</sup> Exhibit U.

Steal" event. Both groups went "off mission" when they entered the Capitol building. The group assigned to Mr. Alexander was made of 14 members of the Florida and Ohio chapters. The group assigned to Mr. Stone had five Oath Keepers members. Mr. Rhodes denied directing them to enter the Capitol.

Mr. Rhodes emphasized that his goal after the election was to get President Trump to invoke the Insurrection Act and that was the purpose of the QRF. He also wanted President Trump to release confidential information that Mr. Rhodes believed would expose the criminal corruption endemic in the United States government. He believed that the "data dump" would put pressure on the Supreme Court to review the election. He pointed to language in his various "open letters" and emails to the Oath Keepers that outlined these plans.<sup>46</sup> He denied that he wanted to disrupt Congress. After January 6 and when he believed that President Trump was not going to invoke the insurrection act he still focused his efforts on convincing President Trump to declassify documents.<sup>47</sup>

Mr. Rhodes confirmed that he had multiple Signal chat groups on January 6. There was an "operational chat", a "rally organizers / VIP" chat, an "intelligence gathering" chat group, and a "general chat."

He said that he was convicted after the court allowed the jury to consider an "implied plan" based upon his chats, posts, emails, and other statements. But he asserted that he never crossed the line to incitement and said that he planned to appeal his conviction.

Mr. Rhodes said that he had been in solitary confinement and was essentially incapacitated for purposes of leading the Oath Keepers. He thought his vice president had taken over. He said that if his appeal was unsuccessful then he would be a felon and his membership in the Oath Keepers would have to be revoked.

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<sup>46</sup> Exhibits 9, 14, and 43.

<sup>47</sup> Exhibit AR.

On cross-examination Mr. Rhodes acknowledged his conviction and the convictions of the other Oath Keepers members who had been tried with him. He said that Mr. James was the Oath Keepers leader from Alabama and had been the leader for the Roger Stone team. He said that Mr. Wilson was the county leader of his chapter. He acknowledged that his testimony at the trial in this case was essentially what he told the jury in his own trial.

Mr. Rhodes said that he had urged the Oath Keepers to not accept President Biden's election. He said that President Biden and Vice President Harris are Chinese-Communist ("Chi-Comm") puppets. He said that prior to January 6 he did not have a plan to keep President Trump in power so much as to have President Trump invoke the Insurrection Act and then have the Supreme Court throw out the election. He thought that the election was illegal and so other processes should be followed.

Mr. Rhodes confirmed that the Oath Keepers held a meeting on November 9, 2020 via the GoToMeeting app. He said that the meeting was supposed to be for "vetted" members only, but that an un-vetted person recorded the meeting. He acknowledged that he said at the meeting, "There's no such thing as another election if you let this stand." He also acknowledged saying that the group needed to act while President Trump was in office and that they were in the same situation as the founding fathers in March, 1775. He also acknowledged that he was calling for what he termed a "counter-revolution against an insurrection by the left." He said that those words were not advocacy, just a prediction.

Mr. Rhodes also explained that he made references to Serbia at the November meeting because in that country the people had not accepted an illegitimate election. He said he was not advocating for people to enact a specific plan or emulate specific actions from what happened in Serbia. He also acknowledged saying that the Oath Keepers needed to "get ready to fight." He also acknowledged saying, "I want my fighters, my bikers, to be ready to brawl." He explained that he made these comments because he expected violence from Antifa in D.C.

Mr. Rhodes also said that he used the "old leaders chat group" on Signal. He acknowledged writing in the chat that the Oath Keepers needed to "get their gear ready" and that the "final defense is us and our rifles." He also acknowledged writing, "Trump will need us and our rifles." He explained that these statements referred to his plan to have President Trump invoke the Insurrection Act. He also acknowledged posting a link to a video of an explanation of how the uprising in Serbia was carried out. He said that he was not advocating for that as a plan, rather his plan was already laid out in the Open Letters that he had published. In the first Open Letter, he said that he believed the election was rigged and that the moment was an existential event for the nation. He acknowledged writing to President Trump, "Will you fail to act and leave us to fight a civil war?"<sup>48</sup> He also concluded the letter with a reference to the upcoming "bloody civil war."<sup>49</sup> In the second Open Letter, he said that he was again asking President Trump to invoke the Insurrection Act and perform the requested "data dump." He said that he was not trying to keep President Trump in power, but rather to have a new election. But he acknowledged writing in the open letter to the President, "You will not step down."<sup>50</sup>

Mr. Rhodes said that on December 10, he sent a text to Kelly SoRelle, the Oath Keepers general counsel, that read, "Either Trump uses the Insurrection Act or we will have to rise up."

Mr. Rhodes said that January 6 was an important date because it was the "hard constitutional line" for certification. Mr. Rhodes said that he did not believe that Republicans in Congress would act to address the alleged vote fraud, and so he wanted President Trump to take action as soon as possible. He did not think Senator McConnell would act because he was a Chinese-Communist agent.

He acknowledged that on December 31, he wrote in the "Old Leaders" chat, "On the 6th, they are going to put the final nail in the coffin of this republic, unless we fight our way out. With Trump (preferably) or without him, we have no choice."

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<sup>48</sup> Exhibit 18, page 2.

<sup>49</sup> Exhibit 18, page 4.

<sup>50</sup> Exhibit 19, page 3.



As to the command structure on January 6, Mr. Rhodes said that he prefers that his security teams act together under the command of the people that he puts in charge. He said that Mr. Green was the overall operation lead on January 6. Each team leader then had their own mission that day. He said that he did not learn until 1:45 p.m. on that day that people had stormed the Capitol. He said that Mr. Green called him and so he went to "area 8" to try to meet up with his teams as had previously been arranged. He also acknowledged saying that the people storming the Capitol were not Antifa, rather they were patriots taking things into their own hands.

He reiterated that it was "stupid" for the Oath Keepers members to go into the Capitol because it exposed them and the group to criminal liability. He said that he did not know the second team entered the Capitol until days later. The first team had been led by Mr. Meggs and had been assigned to provide security for Mr. Alexander. He said the second team was led by Mr. James and had been the team assigned to Roger Stone.

Mr. Rhodes also acknowledged writing in the signal chat, "Patriots entering their own Capitol to send a message to the traitors is nothing compared to what's coming if Trump doesn't take decisive action right now. It helped to send that message to him. He was the most important audience today. I hope he got the message." He also wrote in the "Old Leaders" chat at 11:30 p.m. on January 6, "Patriots, it was a long day but a day when patriots began to stand. Stand now or kneel forever. Honor your oaths. Remember your legacy."

Mr. Rhodes said that he did not know the current number of active board members.

On re-direct, Mr. Rhodes emphasized that when he used the word "fight" he did not mean to advocate violence. Rather, the word was just rhetoric. He also pointed to a link to a video in one of his open letters that allegedly depicts a professor in China insinuating that the Chinese Communist Party had a role in "getting rid of Trump."<sup>51</sup> Mr.

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<sup>51</sup> Exhibit 19, page 4.

Rhodes also explained that the "GoToMeeting" in November was supposed to be only for vetted members. The state groups were supposed to do background checks and only share the link with people who qualified.

Mr. Rhodes reiterated that there was no plan to storm the Capitol on January 6. He did not direct anyone to go inside or to delay or obstruct the certification.

#### *6. John Eastman*

Dr. John Eastman is an attorney and former constitutional law professor at Chapman University School of Law. He testified as an expert witness. During testimony it came out that, in addition to being retained as an expert, Dr. Eastman's law firm had been retained by Rep. Eastman to assist in his defense and his firm had drafted pleadings for Rep. Eastman. To that extent, while Dr. Eastman did not enter an appearance, he was essentially testifying as co-counsel because his firm also represented the defendant. The court will therefore treat his testimony as additional argument by the defendant and make its own determination as to the law to apply in this case.

#### *7. Rep. Eastman*

Rep. Eastman testified again as part of his case. He graduated from West Point and was a military police officer. He served at JBER, in Afghanistan, and in D.C. where he worked with the Capitol Police on the second Obama inauguration. He is now a state representative and volunteer firefighter and EMT.

He stated that he is an Oath Keeper in both the "lowercase and uppercase" sense. He first took an oath to support and defend the Constitution in 1995. He also took the oath multiple times each time he was sworn in as an elected representative.<sup>52</sup> He said he would take that oath again without reservation if sworn in for another term.

When asked whether he would resign from the Oath Keepers, he said that he was glad to be a part of any organization that will assist in supporting and defending the

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<sup>52</sup> Exhibit A1.

Constitution. He said that he first joined the Oath Keepers in 2010—at least that was when the payment went through and the date on his membership certificate. He said that he joined after looking at the group’s website in late 2009, reading their by-laws, and the article on 10 orders that a person should not obey.

According to Rep. Eastman, the group is defined by its name and its by-laws. The core is to be loyal to the oath. He said that if the group was found to be one that had sought to overthrow the government then the members would have to leave it. Rep. Eastman expressed a concern that others in public positions could face losing their jobs based upon their membership in the group.

He also said that he had faced criticism and gone through hearings in the Alaska Legislature based upon his presence at the Grant Memorial on January 6. He said that he did not resign from the Oath Keepers because he was concerned about his freedom of association. He said that he did not believe that the United States government or Alaska state government should be overthrown. He said that he thought much of the concern over his actions and membership were a result of “cancel culture.”

He said that he did not know any of the Oath Keepers who were charged or convicted based upon their actions on January 6. He also was not a part of any signal chats or other meetings that the group held.

Rep. Eastman testified that he did not believe that the Oath Keepers promoted violence and that they did not have an active presence in Alaska. He also only had a general awareness of their humanitarian work.

Rep. Eastman further explained his reasons for travelling to D.C. on January 6. He said that he saw a tweet from President Trump announcing a speech and so he decided to go.<sup>53</sup> He travelled to Washington D.C. on January 4 and returned on

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<sup>53</sup> Exhibit AE.

January 7.<sup>54</sup> He did not forward the January 4 Oath Keepers email to his friend Mr. Martin until after they had arrived in D.C.

He said that Mr. Martin accurately described the atmosphere on January 6. He said that while riding the trains people were more talkative than the average commute crowd. Rep. Eastman also explained that part of the reason for going to the Grant Memorial was to meet up with other Alaskans for a group photo. The meeting was arranged through posts on FaceBook.<sup>55</sup> He said that he really could not see what was happening at the Capitol all that well from the Grant Memorial. He did not know about any altercations or assaults and their cell phones were having connection issues because of the crowds. He learned about the events later on while walking to the Metro station. He later posted a message on FaceBook that those who planned and committed the violent acts that day should be prosecuted.<sup>56</sup>

Rep. Eastman eventually sent letters to members of the Oath Keepers' board enquiring whether they were going to take any action against the members convicted of federal crimes.<sup>57</sup> He explained that he sent the letters to find out if the Board would respond to the convictions but he had not heard anything back. Rep. Eastman stated that if Mr. Rhodes's conviction stands and he is not kicked out of the group then Rep. Eastman will leave the Oath Keepers. He said that if the group does not care about its own laws then he does not want to be a part of them. He also said that he does not support the Oath Keepers if their do want to overthrow the government.

On cross examination, Rep. Eastman acknowledged writing the "Trump lost" article.<sup>58</sup> He said his goal after the election was to ask Alaska's congressional delegation to do their due diligence and look into alleged election fraud. He said he did not want to stop or delay certification. He said that he just wanted the proper process to

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<sup>54</sup> Exhibit AM.

<sup>55</sup> Exhibit AG, page 4, 5, and 6.

<sup>56</sup> Exhibit AG, page 1.

<sup>57</sup> Exhibit Z.

<sup>58</sup> Exhibit 51.

be followed. But he acknowledged that in the article he authored he wrote that Congress should not certify the election.

Rep. Eastman also acknowledged emailing congressional staffers in an attempt to set up a meeting. As part of that email chain, he collaborated with another individual on an "open letter" to the Alaskan congressional delegation. He said that the version in the emails was not the final message and he did not sign the open letter. Instead, he reiterated that his goal leading up to the certification was to ask the delegation to listen to the objections that were being raised and follow the proper procedure.

Rep. Eastman also reiterated that he had not heard any response from the Oath Keepers board members to the letters he sent.<sup>59</sup> Some letters were emailed and other mailed. He also said that he did not try to call any members for whom he had phone numbers. Rep. Eastman said that it was his understanding that Colonel John Siemens had taken over as president, but that he had not heard from him. Rep. Eastman said that he did not know how long he would wait before concluding that the Oath Keepers' board was not going to act. He also said that he had not received any membership emails from the organization in about 18 months. He believed the organization to be "dormant."

Rep. Eastman also stated that he had no opinion on Mr. Rhodes or his actions. He thought that there were a lot of laws broken on January 6 and that the people who rioted did not follow a lawful, constitutional approach. But he also said that he could not say exactly what happened that day because he stayed at the Grant Memorial. He said that he did not believe that the Oath Keepers planned or carried out the January 6 attack or that it was planned by Mr. Rhodes.

Rep. Eastman said that he went to D.C. in order to see President Trump speak. He said that while he heard the President say that the election had been "rigged" and that the President said that the crowd should march to the Capitol he did not go to the Capitol with the crowd. Instead he took a separate route to the Grant Memorial. He

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<sup>59</sup> Exhibit Z.

also said that he did not take any actions based on the President's words. He already had planned to go to the Grant Memorial prior to the speech at the Ellipse.

Rep. Eastman also referred to his plan to meet with the Alaskan delegation to Congress. He said that he asked all of them to not set aside the concerns that they had and to listen to the objections that were being raised. He said that the allegations of election fraud were an important issue to his constituents and so he was raising them with the delegation. Rep. Eastman emphasized that he did not have any intent to delay or obstruct the certification process.

### C. Judicial Notice and Stipulation

The court took judicial notice of the convictions entered against Mr. Rhodes and Mr. Meggs in their federal case.<sup>60</sup> The court also took judicial notice of the relevant charging documents to those convictions. The court took notice of the convictions and plea agreements for multiple Oath Keepers. The pleas were admitted for the purpose of explaining the conviction. The statements of offense were admitted and any statements against penal interest by the defendant who executed the plea agreement were admitted for the truth of the matter asserted.<sup>61</sup>

The court also received into evidence by stipulation a series of facts agreed to between the Division, Kowalke and Eastman as well as the documents attached to the stipulation.<sup>62</sup>

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<sup>60</sup> Exhibits 13, 20, and 42.

<sup>61</sup> See Exhibits 22-39.

<sup>62</sup> Stipulation and exhibits 9, 10, 11, and 12.

### III. CONCLUSIONS OF LAW

#### A. The Scope of Article XII, § 4.

1. *The Original Intent of Article XII, § 4 was to disqualify a person from public office based on mere membership in an organization.*

The language in Article XII, § 4 originated from a bill related to Hawaii's pursuit of statehood. In 1950, the Senate Committee on Interior and Insular Affairs amended a bill related to the Hawaii statehood act to include language identical to what became Alaska's Disqualification for Disloyalty clause.<sup>63</sup> The language was meant to address concerns held by members of the committee about alleged communist activity in Hawaii at the time.<sup>64</sup> When Alaska sought statehood, the disloyalty language in the Hawaii bill was also included in Alaska's enabling act.<sup>65</sup>

The disloyalty language was the subject of very little discussion during Alaska's constitutional convention. The delegates believed that the clause was required for Alaska to be admitted to the Union.<sup>66</sup> There was also a brief discussion on where a comma should be placed. However, no substantive conversations or debate took place on the meaning of the provision.

Based upon the historical context for the provision and the provision's plain language, Article XII, § 4 bars a person from public office membership in a "party or organization or association which advocates . . . the overthrow by force or violence of the government of the United States or of the State." There are no cases in Alaska

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<sup>63</sup> Committee on Interior and Insular Affairs, Statehood for Hawaii, S. Rep. No. 1928, at 2 (1950), cited in Division's Motion for Summary Judgment at 9.

<sup>64</sup> *Id.* at 8-9.

<sup>65</sup> S.49, 84<sup>th</sup> Cong. §§ 102, 103 (1955).

<sup>66</sup> See Alaska Constitutional Convention Part 1, Proceedings: November 8—December 12, 1955 at 2791 ("Section 3 is the standard clause which states that no person who does not agree with our ideals and our institutions, and our form of government shall attempt to overthrow the government by violence or support any organization or association which advocates such overthrow. Now, while it is easy to say those things, it is very hard to determine, as you all know, by actual practice what would be considered either subversive or treason, so the clause, however, is the one that is mandatory and required in the constitution.").

interpreting or applying this provision. Under that reading, mere membership is enough to bar someone from office under this clause of the Alaska constitution.

2. *The First Amendment to the United States Constitution requires that a person's otherwise lawful association with an organization may not be burdened by state action unless the person has a specific intent to further the illegal aims of that organization.*

Article XII, § 4 of the Alaska constitution must comply with the United States Constitution.<sup>67</sup> The First Amendment to the United States Constitution prohibits laws abridging the freedom of speech.<sup>68</sup> Included within the right to free speech is the right to associate with others to engage in protected speech.<sup>69</sup>

The Supreme Court of the United States has examined when state law may restrict association with groups who engage in both protected and unprotected speech or conduct. In *Healy v. James*, the Court held that a student group could not be denied recognition at a state-supported college merely because of its affiliation with a national organization associated with disruptive and violent campus activity.<sup>70</sup> The Court wrote that it "has consistently disapproved governmental action imposing criminal sanctions or denying rights and privileges solely because of a citizen's association with an unpopular organization."<sup>71</sup> The Court went on to hold that in order for state law to restrict First Amendment rights based upon a person's association with a group, there must be a

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<sup>67</sup> *Allen v. State, Dep't of Health & Soc. Servs., Div. of Pub. Assistance*, 203 P.3d 1155, 1161 (Alaska 2009) ("[W]here state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.").

<sup>68</sup> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S.Const., Amdt. 1. First Amendment freedoms are protected by the Fourteenth Amendment from invasion by the States. *Edwards v. South Carolina*, 372 U.S. 229, 235, 83 S.Ct. 680, 683, 9 L.Ed.2d 697.

<sup>69</sup> *Citizens Against Rent Control Coalition for Fair Housing v. Berkeley*, 454 U.S. 290, 294 (1981)("the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process.").

<sup>70</sup> 408 U.S. 169 (1972).

<sup>71</sup> 408 U.S. at 185-86.



"knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims."<sup>72</sup>

The Court reached a similar conclusion in the earlier case of *De Jonge v. Oregon* when it held that an individual could not be penalized simply for assisting in the conduct of an otherwise lawful meeting held under the auspices of the Communist Party, an organization that was alleged to have advocated "criminal syndicalism."<sup>73</sup>

In *N.A.A.C.P. v. Claiborne Hardware Co.*, the Court reiterated that "[t]he right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected."<sup>74</sup> The Court went on to write that, "Civil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence. For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims."

Here, Article XII, § 4 applies to members of organizations regardless of whether they have themselves advocated for the overthrow of the government or intended to advance an illegal aim within the organization to which they belong. The clause therefore applies to protected speech. When analyzing whether a law that burdens speech is constitutional, "Courts apply three levels of scrutiny to laws that affect First Amendment rights - rational basis, intermediate scrutiny, and strict scrutiny. Courts apply rational basis review to non-speech regulations of commerce and non-expressive conduct. Regulations of First Amendment-protected speech are subject to strict or intermediate scrutiny depending on whether the regulation is content-based or content-neutral. A regulation that restricts protected expression based on the content of the speech is constitutional only if it withstands strict scrutiny, meaning that it is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. A content-neutral regulation is constitutional if it is justified without reference to

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<sup>72</sup> *Id.* at 186.

<sup>73</sup> 299 U.S. 353 (1937).

<sup>74</sup> 458 U.S. 886, 908 (1982).

the content of the regulated speech, ... [is] narrowly tailored to serve a significant governmental interest, and ... leave[s] open ample alternative channels for communication of the information."<sup>75</sup>

Kowalke argues that state laws that define qualifications to hold public office are given more deferential review than the laws analyzed in *Healy* and *N.A.A.C.P.* "The authority of the state to determine the qualifications of their most important governmental officials is an authority that lies at the heart of representative government."<sup>76</sup> Further, "a candidate's right to appear on the ballot does not rise to the level of a fundamental constitutional right, nor does a challenge to a candidate's qualifications necessarily equate to a severe burden on that candidate's First Amendment rights."<sup>77</sup> Plaintiff therefore argues that the State of Alaska has a legitimate interest in restricting who may serve in public office and it may bar a person from public office for mere membership in an organization that has advocated concrete imminent action to overthrow the government.

Even under rational basis review, interpreting Article XII, § 4 to bar a person from office for mere membership in an organization violates the First Amendment. Rational basis review requires the court "to determine the reasonableness of the legislature's belief in the existence of evils and in the effectiveness of the remedy provided."<sup>78</sup> But even under this most deferential standard of review, there is no rational basis to bar a person from public office who has not intentionally supported unprotected speech or conduct by an organization to which that person belongs. Barring a person from public

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<sup>75</sup> *Mitchell v. Newsom*, 509 F. Supp. 3d 1195, 1200–01 (C.D. Cal. 2020) (internal citations and quotations omitted).

<sup>76</sup> *Rawls v. Zamora*, 107 Cal. App. 4th 1110, 1117 (2003) citing *Gregory v. Ashcroft* (1991) 501 U.S. 452, 463, 111 S.Ct. 2395, 115 L.Ed.2d 410.)

<sup>77</sup> *Greene v. Raffensperger*, No. 22-CV-1294-AT, 2022 WL 1136729, at \*16 (N.D. Ga. Apr. 18, 2022) citing *Clements v. Fashing*, 457 U.S. 957, 963, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982) ("Far from recognizing candidacy as a 'fundamental right,' we have held that the existence of barriers to a candidate's access to the ballot 'does not of itself compel close scrutiny.' ") (quoting *Bullock v. Carter*, 405 U.S. 134, 143, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972)); see also *Timmons*, 520 U.S. at 359, 117 S.Ct. 1364 ("That a particular individual may not appear on the ballot as a particular party's candidate does not severely burden that party's associational rights.").

<sup>78</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262, 286–287 (1932) (dissenting opinion).

office based merely on their protected associational rights is the type of “guilt by association” that the Supreme Court disapproved of in the cases above.

Based upon the discussion above, the standard discussed in *Healy* and *N.A.A.C.P.* must be applied to limit the application of Article XII, § 4 of the Alaska Constitution. In order for a person to be barred from public office under that clause, there must be “knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims.”<sup>79</sup> Notably, the Court in *Healy* also reiterated that “[t]he critical line heretofore drawn for determining the permissibility of regulation is the line between mere advocacy and advocacy ‘directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action.’”<sup>80</sup> Thus, incorporating the court’s previous holding limiting the application of Article XII, § 4 to only unprotected speech, the court holds that Article XII, § 4 bars from public office any person who knowingly affiliates themselves with an organization that, through concrete words or actions calls for the imminent violent overthrow of the United States Government or the State of Alaska. Additionally, the person must have a specific intent to further the unprotected words or conduct.

Applying this standard, the court will now turn to the specifics of this case.

B. The Oath Keepers are an organization that, through words and conduct, have advocated imminent, concrete action to violently overthrow the United States government and have engaged in conduct to that end.

The Oath Keepers are a national organization incorporated in Nevada with by-laws and an organizational structure.<sup>81</sup> The group had a loose hierarchy under which state and local chapters had a degree of autonomy related to local matters. However, the evidence showed that the local chapters answered to Mr. Rhodes on matters of membership and what actions or positions would be contrary to the overall organization’s aims. The group had a national membership of roughly 38,000 members

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<sup>79</sup> *Id.* at 186.

<sup>80</sup> 408 U.S. at 188, quoting *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

<sup>81</sup> Exhibit U.

in 2019. However, the evidence also showed that active members who participated in events or operations was much lower. Mr. Rhodes testified that roughly 20 to 30 members would “mobilize” for security operations at various events. This categorization of members into “active” members who would respond to calls to action and more passive members who provided financial and other support supports Mr. Kriner’s testimony that this type of categorization is common for organizations such as the Oath Keepers.

The Oath Keepers, at least on a national level and for events to which the membership mobilized, were directed by Mr. Rhodes. Mr. Rhodes held a special status within the Oath Keepers as “Founder” and was entitled to serve as Chairman of the Oath Keepers’ board.<sup>82</sup> Mr. Rhodes’ control over membership and his statements that he would remove people from the organization further supports Mr. Kriner’s and Mr. Lewis’s opinion that the Oath Keepers were controlled by Mr. Rhodes and the organization’s philosophy and aims were largely an extension of Mr. Rhodes’s viewpoints. Mr. Rhodes also acknowledged in this testimony that he would set up a loose command structure at each “operation” and the team leaders would report back to him. These facts support a finding that Mr. Rhodes spoke for the organization.

The court will now address the words and conduct at issue. First, Mr. Rhodes was convicted in Count I of seditious conspiracy in violation of 18 U.S.C. § 2384. The specific language in the verdict found that he engaged in a conspiracy to “oppose by force the authority of the Government of the United States.”<sup>83</sup> Mr. Rhodes was acquitted of Count II, conspiring to obstruct an official proceeding. Mr. Rhodes was convicted in Count III, obstruction of an official proceeding. He was found not guilty in Count IV of conspiring to prevent members of congress from discharging their duties. He was found guilty in Count VII of tampering with document or proceedings. Kelly Meggs, who led one of the teams of Oath Keepers who illegally entered the Capitol,

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<sup>82</sup> Exhibit U at 2.01.

<sup>83</sup> Exhibit 42.

was also found guilty in Count I of seditious conspiracy in that he engaged in a conspiracy to "oppose by force the authority of the Government of the United States."<sup>84</sup>

Mr. James, who led the other team to enter the Capitol, pled guilty to seditious conspiracy in violation of 18 U.S.C. § 2384.<sup>85</sup> In the Statement of Offense accompanying the plea, Mr. James detailed his own actions and statements leading up to January 6. Mr. James also admitted to going to the Capitol building on January 6 with his team. He further admitted that he "entered the Capitol in part to hinder or delay the certification of President-Elect Joseph R. Biden as President of the United States."<sup>86</sup>

The admissions to specific actions made by each individual as to their own actions in the statements of offense paint a clear picture of the members' actions that day. When those actions are viewed in context with the structure of the Oath Keepers, Mr. Rhodes' multiple emails and public statements, Mr. Rhodes's statements made in the "GoToMeeting" members-only event, and Mr. Rhodes's statements on the Signal chats, the totality of the evidence points to a concerted plan and effort by the Oath Keepers to use force or violence to prevent the certification of the 2020 presidential election. It is also clear that Mr. Rhodes and the other Oath Keepers who illegally entered the Capitol on January 6 did so using the organizational structure of the organization and acted on behalf of the organization.<sup>87</sup>

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<sup>84</sup> *Id.*

<sup>85</sup> Exhibit 24.

<sup>86</sup> Exhibit 25 at page 8.

<sup>87</sup> Alaska law lends some support to looking to the actions of an organization's agents in the scope of their duties to ascribe liability to the organization as a whole. For example, an organization may face criminal liability under AS 11.16.130 based upon the conduct of its agents. This is not a criminal case and so that standard is not controlling. The court merely notes it as providing some guidance. See AS 11.16.130. "(a) Except as otherwise expressly provided, an organization is legally accountable for conduct constituting an offense if the conduct (1) is the conduct of its agent and (A) within the scope of the agent's employment and in behalf of the organization; or (B) is solicited, subsequently ratified, or subsequently adopted by the organization; or (2) consists of an omission to discharge a specific duty of affirmative performance imposed on organizations by law. (b) In this section "agent" means a director, officer, or employee of an organization or any other person who is authorized to act in behalf of the organization."

Rep. Eastman argues that the Oath Keepers as an organization cannot be judged based on the actions of only 33 members who were convicted of federal crimes. However, the evidence showed that whenever the Oath Keepers mobilized to various humanitarian or security events, roughly 20 to 30 members would show up.<sup>88</sup> That was a smaller number than the 50 to 60 Oath Keepers who mobilized to D.C. on January 6. If the Oath Keepers are to be viewed, as Rep. Eastman urges the court, as an organization that provides humanitarian relief and security at events on the basis of what 20 to 30 members do, then it may also be viewed as an organization that engaged in criminal conduct based on the actions of the same or greater number of members. Additionally, the number of members who showed up was consistent with Mr. Kriner's testimony that there was a core group that would actively show up at events.

Rep. Eastman also argues that the Oath Keepers cannot be an organization that advocates for the overthrow of the government because that purpose is expressly against the group's by-laws.<sup>89</sup> This argument is unconvincing. A group's by-laws are certainly helpful for understanding its purpose. But a group's public statements and actions are just as, if not more, convincing.

Rep. Eastman also argues that the organization is now dormant. But the fact that no emails have been sent to the membership since Mr. Rhodes's incarceration further supports the conclusion reached above that Mr. Rhodes was essentially the driving force behind the organization and set its agenda. If the Oath Keepers were truly a national organization with goals and aims apart from its founder, it would have continued to act and communicate on a national level since his incarceration.

Rep. Eastman further argues through Dr. Eastman's advocacy that all of the statements attributed to Mr. Rhodes were either protected speech or not sufficiently imminent exhortations to action. The court largely agrees with Dr. Eastman's analysis that the statements he addressed in isolation are either directed at legal activity or are not imminent exhortations to violence. However, when the totality of Mr. Rhodes's

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<sup>88</sup> See Testimony of Mr. Rhodes.

<sup>89</sup> Exhibit U.

statements is examined in context with the Oath Keepers' subsequent actions on January 6, it becomes clear that Mr. Rhodes's calls for a civil war or insurrection were heeded and acted upon by his members.

Rep. Eastman also presented the testimony of Mr. Guandolo to undercut the opinions of Kowalke's expert witnesses. Mr. Guandolo did not personally witness what occurred inside the Capitol and he did not witness the relevant actions by members of the Oath Keepers. Mr. Guandolo is also a personal friend of Rep. Eastman's. The court did not find his expert testimony compelling and did not rely upon it.

Finally, Rep. Eastman argues that merely delaying the certification of the election was not the same as overthrowing the United States government. However, the fact that they did not succeed does not change their ultimate aim. The democratic process and the peaceful transfer of power are cornerstones of the country's system of government. Any imminent incitement or action that seeks to subvert those processes through violence strikes at the very heart of the country. Furthermore, the statements made by Mr. Rhodes make it clear that his and the other Oath Keepers' aim was not just to delay the certification, but to nullify through violent means the election's results altogether. That result would bring about the overthrow of the United States' system of constitutional government.

In light of the evidence discussed above, the court finds by a preponderance of the evidence that the Oath Keepers as an organization advocated concrete, imminent action directed at the violent overthrow of the United States government and engaged in conduct that attempted to bring about that aim.

C. Representative Eastman is a member of the Oath Keepers, but he did not have a specific intent to further the Oath Keepers' unprotected speech or conduct.

The court finds that Rep. Eastman is a member of the Oath Keepers. This fact was not disputed at trial and Rep. Eastman directly acknowledged and affirmed his membership multiple times. He therefore knowingly associated with the organization.

The court further finds by a preponderance of the evidence that Rep. Eastman did not have a specific intent to further the Oath Keepers' unprotected conduct and speech. The evidence discussed above showed that Rep. Eastman received limited communications from the Oath Keepers in the form of membership emails. He was not part of any closed meetings or signal chats. Other than donating over \$1000 to the organization and buying merchandise, there is no evidence that he otherwise took an active role in either the Oath Keepers national organization or the Alaska chapter. He also testified that he went to D.C. on January 6 to see President Trump speak and to try to meet with Alaska's congressional delegation. Once in D.C., he did not interact or communicate with Mr. Rhodes or any other Oath Keepers. Following the rally at the Ellipse, he made his way separately from the marchers to the Grant Memorial where he had a prearranged meeting to take a group photograph. Rep. Eastman stayed at the Grant Memorial and did not approach or enter the Capitol building. Based upon the evidence presented at trial, the court does not find that Rep. Eastman had a specific intent to aid the Oath Keepers in planning for January 6. Nor does the court find that Rep. Eastman had a specific intent to aid the Oath Keepers' actions on January 6.

#### D. Claims against the Division

The court's interpretation of the scope of Article XII, § 4 and factual findings above resolve the plaintiff's claims against the Division regardless of whether the action against the Division is an administrative appeal or an original action for injunctive relief.

#### **IV. CONCLUSION AND FINAL ORDER**

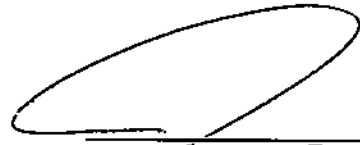
The court holds that Alaska's Disqualification for Disloyalty clause must be interpreted in harmony with the First Amendment to the United States Constitution. Article XII, § 4 therefore disqualifies from public office any person who knowingly affiliates themselves with an organization that, through concrete words or actions calls for the violent overthrow of the United States Government or the State of Alaska. Additionally, the person must have a specific intent to further the unprotected words or conduct of that organization.



In this case, the court finds that the Oath Keepers are an organization that has, through words and conduct, taken concrete action to attempt to overthrow by violence the United States government. The court further finds that Rep. Eastman is a member of that organization, but that he does not and did not possess a specific intent to further the Oath Keeper's words or actions aimed at overthrowing the United States government. The court therefore finds that he is not disqualified from holding public office by Article XII, § 4.

This is the court's final order. Implementation of this order is stayed pending appeal. The preliminary injunction remains in effect until the stay of this order is lifted. The court will hold a status hearing on January 4, 2023 at 11:30 a.m. to address whether an appeal has been filed and other issues that may arise.<sup>90</sup>

Done this 23rd day of December, 2022, at Anchorage, Alaska.



Jack R. McKenna  
Superior Court Judge

I certify that on 12/23/22  
a copy of the above was mailed to  
each of the following at their  
addresses of record:

W Dudukgian, S Fletcher,  
J Davis, T Flynn,  
L Harrison, J Miller  
C. Ferntheil  
Judicial Assistant

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<sup>90</sup> The hearing may be rescheduled by the parties if an appeal has been filed in the case and that appeal is still pending. The stay issued in this appeal shall remain in effect while any appeal is pending unless lifted by the Alaska Supreme Court.