

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

1437 Bannock St.
Denver, CO 80203

Petitioners:

NORMA ANDERSON, MICHELLE PRIOLA,
CLAUDINE CMARADA, KRISTA KAHER,
KATHI WRIGHT, and CHRISTOPHER
CASTILIAN,

v.

Respondents:

JENA GRISWOLD, in her official capacity as
Colorado Secretary of State, and
DONALD J. TRUMP.

▲ COURT USE ONLY ▲

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**Pro hac vice* admission pending

VERIFIED PETITION
UNDER C.R.S. § 1-4-1204, § 1-1-113, § 13-51-105, and C.R.C.P. 57(a)

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Petitioners Norma Anderson, Michelle Priola, Claudine Cmarada, Krista Kafer, Kathi Wright, and Christopher Castilian, eligible Colorado electors, bring this action under C.R.S. § 1-4-1204(4), § 1-1-113(1), § 13-51-105, and C.R.C.P. 57(a), to challenge the listing of Respondent Donald J. Trump as a candidate on the 2024 Republican presidential primary election ballot and any future election ballot, based on his disqualification from public office under Section 3 of the Fourteenth Amendment to the Constitution of the United States. Petitioners seek an order declaring Trump disqualified under the Fourteenth Amendment and enjoining Respondent Secretary of State Jena Griswold (the “Secretary”) from taking any action that would allow him to access the ballot. Under C.R.S. §1-4-1204(4) and C.R.C.P. 57(m), Petitioners respectfully request and are entitled to an expedited hearing on this Petition.

INTRODUCTION

1. Donald Trump tried to overthrow the results of the 2020 presidential election. Before the election, he made plans to cast doubt on and undermine confidence in our nation’s election infrastructure. After the election, he knowingly sought to subvert our Constitution and system of elections through a sustained campaign of lies. His efforts culminated on January 6, 2021, when he incited, exacerbated, and otherwise engaged in a violent insurrection at the United States Capitol by a mob who believed they were following his orders, and refused to protect the Capitol or call off the mob for nearly three hours as the attack unfolded.

2. Trump’s efforts to overturn the 2020 election and interfere with the peaceful transfer of power were part of an insurrection against the Constitution of the United States. Because Trump took these actions after he swore an oath to support the Constitution, Section 3 of the Fourteenth Amendment prohibits him from being President and from qualifying for the Colorado ballot for President in 2024. Petitioners bring this action now to protect the rights of Republican and Independent voters to fully participate in the upcoming primary election by ensuring that votes cast will be for those constitutionally qualified to hold office, that a disqualified candidate does not siphon off support from their candidates of choice, and that voters are not deprived of the chance to vote for a qualified candidate in the general election.

3. Adopted in the wake of the Civil War, Section 3 of the Fourteenth Amendment imposes a qualification for holding public office in the United States. It bars from office any person who swore an “oath ... to support the Constitution of the United States” as a federal or state officer and then “engaged in insurrection or rebellion against the same, or [gave] aid or comfort to the enemies thereof,” unless Congress “remove[s] such disability” by a two-thirds vote. U.S. Const. amend XIV, § 3.

4. Like other constitutional qualifications based on age, citizenship, and residency, Section 3 is enforceable through civil suits in state court to challenge a candidate’s eligibility to hold public office, including the Office of the President. Neither Section 3’s text nor precedent require a criminal conviction for “insurrection” or any other offense for a person to be adjudged

disqualified, as leading constitutional scholars have confirmed.¹ Rather, Section 3 “operates independently of any ... criminal proceedings and, indeed, also independently of impeachment proceedings and of congressional legislation”; it applies “directly and immediately upon those who betray their oaths to the Constitution.” Luttig & Tribe, *supra* note 1.

5. Section 3 is a “measure of self-defense” designed to preserve and protect American democracy. Cong. Globe, 39th Cong., 1st Sess. 2918 (May 31, 1866) (statement of Sen. Willey). It embodies the Fourteenth Amendment’s framers’ recognition of the grave threat that insurrection against the Constitution poses to the existence and integrity of our Union. Section 3 “functions as a sort of constitutional immune system,” meant “to keep those who have fundamentally betrayed the constitutional order from keeping or reassuming power.” Baude & Paulsen, *supra* note 1, at 35. “*The oath to support the Constitution is the test.* The idea being that one who had taken an oath to support the Constitution and violated it, ought to be excluded from taking it again, until relieved by Congress.” *Worthy v. Barrett*, 63 N.C. 199, 204 (1869), *appeal dismissed sub nom. Worthy v. Comm’rs*, 76 U.S. 611 (1869).

6. Donald Trump has failed this test. Four years after taking an oath to “preserve, protect and defend” the Constitution as President of the United States, U.S. Const. art. II, § 1, Trump tried to overthrow the results of the 2020 election, leading to a violent insurrection at the United States Capitol to stop the lawful transfer of power to his successor. By instigating this unprecedented assault on the American constitutional order, Trump violated his oath and disqualified himself under the Fourteenth Amendment from holding public office, including the Office of the President.²

¹ *E.g.*, William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. (forthcoming 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751; J. Michael Luttig & Laurence H. Tribe, *The Constitution Prohibits Trump From Ever Being President Again*, *The Atlantic*, Aug. 19, 2023, <https://www.theatlantic.com/ideas/archive/2023/08/donald-trump-constitutionally-prohibited-presidency/675048>; Steven Calabresi, *Trump Is Disqualified from Being on Any Election Ballots*, *The Volokh Conspiracy*, Aug. 10, 2023, <https://reason.com/volokh/2023/08/10/trump-is-disqualified-from-being-on-any-election-ballots/>; *accord Litigation of Criminal Prosecutions for Treason, Insurrection, and Seditious Conspiracy*, 179 Am. Jur. Trials 435 § 17 (2023).

² In this Petition, each photograph and accompanying caption are part of the preceding numbered paragraph.



Jan. 20, 2017: Trump takes an oath to support the Constitution
Photo by Jim Bourg/Getty Images



Jan. 6, 2021: Trump causes an insurrection against the Constitution
Photo by Evelyn Hockstein/Getty Images

7. The core facts demonstrating Trump’s disqualification are a matter of public record. He dishonestly and unlawfully tried to overturn the 2020 election results through multiple avenues. When that failed, he summoned tens of thousands of enraged supporters for a “wild” protest in Washington, D.C. on January 6, 2021—the date that Congress and the Vice President would meet to certify the results of the 2020 presidential election under the Twelfth Amendment to the Constitution and the Electoral Count Act, 3 U.S.C. § 15.

8. Among those Trump mobilized for January 6th were violent extremists and now-convicted seditious whom he earlier instructed to “stand back and stand by.” Others were supporters Trump had inflamed for months with the lie that the 2020 election would be “rigged” and was being “stolen” *from them*. Once his supporters were assembled at the White House Ellipse, President Trump repeated that incendiary lie and directed them to march on the Capitol, knowing many were armed and prepared for violence. He urged them to “fight like hell” to “Stop the Steal”—*i.e.*, stop Vice President Mike Pence and Congress from lawfully certifying the Electoral College votes designating Joseph R. Biden, Jr. the 46th President of the United States.

9. Before January 6th, Trump was told repeatedly by lawyers and top officials that Pence could not lawfully overturn the election results. And Pence rebuked Trump’s coercive demands to do so. Undeterred, Trump continued to exert public pressure on Pence on January 6th. He put his own Vice President in the crosshairs of what became a violent mob, stressing that “if Mike Pence does the right thing, we win the election.”

10. President Trump’s mob went on to violently storm and seize the United States Capitol, a feat even the Confederacy never achieved during the Civil War. The mob forced Vice President Pence and Members of Congress to flee for their lives and halt their constitutional duties. Their attack disrupted the peaceful transfer of presidential power for the first time in American history.



Trump addresses supporters before directing them to march on the Capitol
Photo by Jim Bourg/Reuters



Trump's mob attacks the Capitol
Photo by Shannon Stapleton/Reuters

11. By 1:21 p.m., President Trump knew the Capitol was under attack, and Vice President Pence had announced publicly he would not overturn the election results. While watching the assault unfold on television, Trump poured fuel on the fire. He sent a tweet at 2:24 p.m. targeting Pence for lacking the “courage” to overturn the election. The tweet caused the mob to surge and chant “hang Mike Pence!” It predictably exacerbated the violence that Trump knew was underway, something Trump knew full well would happen in response to the tweet.

12. President Trump failed to take any action to stop the attack for nearly three hours as his mob ransacked the United States Capitol, brutally assaulted police officers, and called for the murder of elected officials. He refused to deploy a federal response or call off his mob despite his affirmative constitutional duty to “take Care that the Laws be faithfully executed” and his role as Commander-in-Chief of the military, U.S. Const. art. II, §§ 2, 3, including the D.C. National Guard.

13. Rather than defending the Capitol, President Trump exploited the violence and leveraged it to pressure Members of Congress to further delay the election certification.

14. It was only after three hours of barbaric violence broadcast on television and repeated pleas from his senior staff and family that Trump posted a video at 4:17 p.m. instructing his mob to “go home,” adding that he “love[d]” them and understood their “pain” over an “election that was stolen from us.” Many in the mob did not leave the Capitol grounds until Trump told them to. And Trump called off the mob only after it seemed clear they would not achieve his goal of stopping Congress’s certification of the election results.

15. Later that night, the President of the United States justified this deadly attack on the seat of his own government, tweeting at 6:01 p.m.: “These are the things and events that

happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots. ... Remember this day forever!”

16. President Trump was the mob’s leader, and the mob was his weapon. The mob traveled from throughout the country to Washington because the President summoned them there. He instructed the mob to march on the Capitol and they complied. Many in the mob left the Capitol grounds only when, after hours of violence against police officers and interference with Congress’s constitutionally-mandated duties, Trump belatedly told them to leave. Through their flags, banners, clothing, and chants, the mob made clear they were there for Trump.

17. Racism and white supremacy—the same virulent ideologies that led to the Civil War and, in its wake, the Fourteenth Amendment—pervaded Trump’s insurrection and the movement surrounding it. Ahead of January 6th, Trump and his allies directed their false claims of election fraud at cities with large Black populations, targeting and specifically identifying “urban” areas in Detroit, Philadelphia, Milwaukee and Atlanta. They sought to coerce and intimidate officials in those jurisdictions to invalidate the votes of millions of Black Americans. They falsely accused Black election workers of ballot tampering, causing them to face threats of lynchings and other racialized violence. And on January 6th, neo-Confederates and neo-Nazis were among the first in Trump’s mob to breach the Capitol building, where they terrorized Black police officers with racial slurs and jabbed one such officer with a Confederate flag—a symbol of white supremacy and another failed insurrection against the United States.



Kevin Seefried carries a Confederate Battle Flag inside the U.S. Capitol
Photo by Saul Loeb/Getty Images

18. President Trump’s weaponized mob carried out the most significant breach of the Capitol building since the War of 1812. Their attack led to seven deaths, injuries to more than

one hundred law enforcement officers, and more than \$2.7 billion in property damage and losses. A Capitol Police officer whom the mob had attacked died the next day, and four other officers died by suicide in the following months.

19. The January 6th attack was the culmination of a multi-part scheme to use lies, coercion, intimidation, and violence against government officials to overturn the 2020 election results. The threat was broad. It was directed at Republicans and Democrats alike. Targets included the Vice President of the United States, federal and state legislators, election officials, and the Supreme Court. The goal was to unlawfully keep Trump in office, invalidating the votes of more than 81 million Americans who cast ballots for Biden in the 2020 election.

20. This scheme to obstruct the peaceful transfer of power—carried out under the public banner of the “Stop the Steal” movement—unfolded in multiple states in the leadup to January 6th, including Colorado. The election denialism and political violence championed by that movement continue to pose an existential threat to democracy in this State and throughout the country. Indeed, a Department of Justice investigation found that election workers in Colorado received among the highest number of potentially criminal threats in the nation in the wake of the 2020 election.³

21. Voluminous public evidence and legal authorities establish that the January 6th mob attack on the Capitol and surrounding events constituted an “insurrection” against the Constitution within the meaning of Section 3 of the Fourteenth Amendment. The evidence further shows that Trump not only “engaged in” the insurrection but was its “central cause.” *Final Report of the U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol*, H. Rep. 117-663, 117th Cong., 2d Sess., at 8, (Dec. 22, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf> (“Jan. 6th Report”). “None of the events of January 6th would have happened without him.” *Id.*; see also *id.* at 690 (recommending enforcement of Section 3 of the Fourteenth Amendment against public officials who engaged in the January 6th insurrection).

22. Although Section 3 disqualification does not require a criminal conviction or impeachment for any offense, a federal grand jury has indicted Trump on four criminal counts relating to his efforts to subvert the 2020 election results: (1) conspiracy to defraud the United States in violation of 18 U.S.C. § 371; (2) conspiracy to obstruct an official proceeding in violation of 18 U.S.C. § 1512(k); (3) obstruction of, and attempt to obstruct, an official proceeding in violation of 18 U.S.C. § 1512(c)(2), 2; and (4) conspiracy against citizens’ constitutional right to vote and to have one’s vote counted in violation of 18 U.S.C. § 241, a

³ *Readout of Election Threats Task Force Briefing with Election Officials and Workers*, U.S. Dep’t of Justice, Aug. 1, 2022, <https://www.justice.gov/opa/pr/readout-election-threats-task-force-briefing-election-officials-and-workers>.

statute originally codified after the Civil War to counteract political violence against newly enfranchised Black citizens, *see* First Ku Klux Klan Act, 16 Stat. 140 (May 31, 1870).⁴

23. Separately, a Georgia grand jury has indicted Trump on 13 criminal charges relating to a sweeping “conspiracy to unlawfully change the outcome of the [2020] election in favor of Trump” through false statements, forgery, solicitation of public officers to violate their oaths to the Constitution, and other state felonies.⁵

24. A bipartisan majority of the House of Representatives impeached Trump for “incitement of insurrection,” and a bipartisan majority of the Senate voted to convict him, with several Senators voting against conviction (and the final vote falling below the requisite two-thirds supermajority) based “on the theory that the Senate lacked jurisdiction to try a former president.”⁶ The bipartisan January 6th Select Committee and numerous federal judges have likewise recognized Trump’s central role in the insurrection.

25. Courts have disqualified officials under the Fourteenth Amendment who played far less substantial roles in insurrections, and who, like Trump, did not personally commit violent acts. This includes Couy Griffin, a former New Mexico county commissioner who was a grassroots mobilizer, inciter, and member of Trump’s mob on January 6th (but did not commit violent acts or breach the Capitol building), and Kenneth Worthy, who served as a sheriff in a Confederate state (but did not take up arms in the Confederate army).⁷ If these individuals’ conduct warranted Section 3 disqualification, then surely Trump’s does as well.

⁴ Indictment, *United States v. Trump*, 23-cr-257-TSC, ECF No. 1 (D.D.C. filed Aug. 1, 2023), https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf (“Trump Federal D.C. Indictment”).

⁵ Indictment, *Georgia v. Trump*, No. 23SC188947 (Ga. Super. Ct. filed Aug. 14, 2023), <https://www.politico.com/f/?id=00000189-f730-dc32-ab89-f7fc1f760000> (“Trump Georgia Indictment”).

⁶ Ryan Goodman and Josh Asabor, *In Their Own Words: The 43 Republicans’ Explanations of Their Votes Not to Convict Trump in Impeachment Trial*, Just Security, Feb. 15, 2021, <https://www.justsecurity.org/74725/in-their-own-words-the-43-republicans-explanations-of-their-votes-not-to-convict-trump-in-impeachment-trial/>.

⁷ *See New Mexico ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619 (N.M. Dist. Ct. Sep. 6, 2022), *appeal dismissed*, No. S-1-SC-39571 (N.M. Nov. 15, 2022); *Worthy*, 63 N.C. 199; *see also The Precedent for 14th Amendment Disqualification*, Citizens for Responsibility and Ethics in Washington, July 7, 2023, <https://www.citizensforethics.org/reports-investigations/crew-reports/past-14th-amendment-disqualifications/>.

26. Since January 6, 2021, Trump has publicly affirmed his disloyalty to the Constitution and his allegiance to the insurrectionists who seized the Capitol for him. He has called the insurrectionists “patriots,”⁸ vowed to give many “full pardons with an apology” if he becomes President again,⁹ financially supported them,¹⁰ released a song with a choir of convicted January 6th defendants called “Justice for All,”¹¹ and hugged on camera a convicted January 6th defendant who has said that Pence and Members of Congress who voted to certify Biden’s victory should be executed for treason.¹²



Apr. 27, 2023: Trump hugs convicted January 6th defendant Micki Larson-Olson, who called for Mike Pence’s execution
Photo by Jabin Botsford/Getty Images

⁸ David Cohen, *Trump on Jan. 6 insurrection: ‘These were great people’*, Politico, July 11, 2021, <https://www.politico.com/news/2021/07/11/trump-jan-6-insurrection-these-were-great-people-499165>.

⁹ Mariana Alfaro, *Trump vows pardons, government apology to Capitol rioters if elected*, Washington Post, Sept. 1, 2022, <https://www.washingtonpost.com/national-security/2022/09/01/trump-jan-6-rioters-pardon/>.

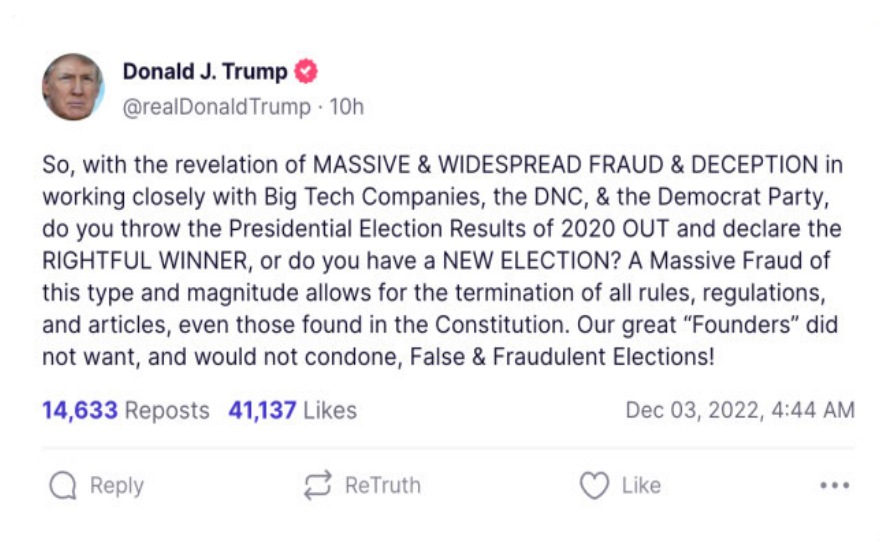
¹⁰ *Id.*

¹¹ Charna Flam, *January 6 Prison Choir’s ‘Justice for All’ Single, Featuring Donald Trump, Reaches No. 1 on iTunes*, Variety, Mar. 11, 2023, <https://variety.com/2023/digital/news/january-6-prisoners-choir-song-number-one-itunes-donald-trump-1235550422/>.

¹² Ryan J. Reilly and Olympia Sonnier, *Donald Trump embraces Jan. 6 defendant who wants Mike Pence executed*, NBC News, Apr. 28, 2023, <https://www.nbcnews.com/politics/donald-trump/donald-trump-embraces-jan-6-defendant-wants-pence-executed-rcna81958>.

27. Trump has blamed former Vice President Pence repeatedly for the attack, because Pence refused to violate federal law and his own oath to the Constitution.¹³

28. Trump also continues to propagate the lie he used to summon the mob to Washington: that the 2020 election was stolen. In December 2022, he disturbingly called for the “termination of ... the Constitution” to correct “Massive Fraud” in the election.¹⁴ And he continues to fan the flames of political violence among his supporters against judges, prosecutors, and other government officials.¹⁵ He is precisely the threat to American democracy the Fourteenth Amendment’s framers had in mind when they adopted Section 3’s prohibition on constitutional oath-breakers holding office.



29. Because Trump swore an oath to “preserve, protect and defend” the Constitution upon assuming the Office of the President on January 20, 2017 and then engaged in insurrection against the Constitution on and around January 6, 2021, he is disqualified under Section 3 of the

¹³ Isaac Arnsdorf and Maeve Reston, *Trump claims violence he inspired on Jan. 6 was Pence’s fault*, Washington Post, Mar. 13, 2023, <https://www.washingtonpost.com/politics/2023/03/13/trump-pence-iowa/>.

¹⁴ Kristen Holmes, *Trump calls for the termination of the Constitution in Truth Social post*, CNN, Dec. 4, 2022, <https://www.cnn.com/2022/12/03/politics/trump-constitution-truth-social/index.html>.

¹⁵ See, e.g., Eric Garcia, *Trump attacks judge’s family and calls Alvin Bragg a ‘criminal’ at Mar-a-Lago despite court warning*, The Independent, Apr. 6, 2023, <https://www.independent.co.uk/news/world/americas/us-politics/donald-trump-alvin-bragg-wife-speech-b2315221.html>.

Fourteenth Amendment from “hold[ing] any office ... under the United States,” including the Office of the President.

30. Despite his constitutional disqualification, Trump is presently a “candidate” under Colorado and federal law for the 2024 Republican presidential primary election.

31. The Secretary has the power and duty to exclude constitutionally ineligible candidates from the ballot. Despite this duty, the Secretary has not committed to excluding Trump from the presidential primary ballot based on his disqualification under Section 3. Based on historical practice, the Secretary will not independently investigate Trump’s constitutional eligibility under Section 3 and exclude him from the ballot on that basis absent a judicial order to that effect.

32. Due to Trump’s candidacy combined with his constitutional ineligibility, the Secretary is “about to commit,” C.R.S. § 1-1-113(1), absent relief by this Court, multiple actions in the process of granting Trump access to the ballot that are “improp[er],” C.R.S. § 1-4-1204(4), and constitute “a breach or neglect of duty or other wrongful act,” C.R.S. § 1-1-113(1), in violation of the U.S. Constitution and Colorado law.

33. There is an urgent public interest in promptly resolving whether Trump is constitutionally eligible to serve as president in advance of the approaching primary election. Absent timely relief, Petitioners and other voters will be irreparably harmed.

34. Accordingly, under C.R.S. § 1-4-1204(4), § 1-1-113(1), § 13-51-105, and C.R.C.P. 57(a), Petitioners seek an order declaring Trump constitutionally disqualified from public office under Section 3 of the Fourteenth Amendment and enjoining the Secretary from taking any action to grant Trump access to the ballot for the presidential primary or any other election.

PARTIES

35. Petitioner Norma Anderson is a registered voter affiliated with the Republican Party who resides in Colorado. She is an “eligible elector” within the meaning of C.R.S. § 1-1-104(16), § 1-1-113(1), and § 1-2-101(1).

36. Petitioner Michelle Priola is a registered voter affiliated with the Republican Party who resides in Colorado. She is an “eligible elector” within the meaning of C.R.S. § 1-1-104(16), § 1-1-113(1), and § 1-2-101(1).

37. Petitioner Claudine Cmarada is a registered voter affiliated with the Republican Party who resides in Colorado. She is an “eligible elector” within the meaning of C.R.S. § 1-1-104(16), § 1-1-113(1), and § 1-2-101(1).

38. Petitioner Krista Kafer is a registered voter affiliated with the Republican Party who resides in Colorado. She is an “eligible elector” within the meaning of C.R.S. § 1-1-104(16), § 1-1-113(1), and § 1-2-101(1).

39. Petitioner Kathi Wright is a registered voter unaffiliated with any political party who resides in Colorado. She is an “eligible elector” within the meaning of C.R.S. § 1-1-104(16), § 1-1-113(1), and § 1-2-101(1).

40. Petitioner Christopher Castilian is a registered voter unaffiliated with any political party who resides in Colorado. He is an “eligible elector” within the meaning of C.R.S. § 1-1-104(16), § 1-1-113(1), and § 1-2-101(1).

41. As “eligible electors,” Petitioners have standing under Colorado law to challenge the constitutional eligibility of candidates in the 2024 Republican presidential primary election. If an ineligible candidate appears on the ballot that Petitioners will cast in the election, Petitioners will suffer an injury in fact to a legally protected interest under Colorado law because the election would not be among eligible candidates, the Secretary of State would have violated her duties under the U.S. Constitution and Colorado law, the ineligible candidate would have affected the integrity and fairness of the election, and the party could end up with an ineligible nominee in the general election. Petitioners do not support Trump and will vote for another candidate on the ballot. If Trump is on the ballot, voters who would otherwise vote for Petitioners’ candidates of choice will instead vote for Trump, reducing the likelihood that Petitioners’ candidates of choice will win the election. And Republican voters could be deprived of the chance to vote for a qualified candidate in the general election.

42. Respondent Jena Griswold is the Secretary of State of Colorado and is sued solely in her official capacity. As the State’s chief election officer, the Secretary is responsible for overseeing ballot access for presidential primary candidates, including by accepting a major political party’s form designating a candidate “as a bona fide candidate for president of the United States” who is “affiliated with [the] major political party,” C.R.S. § 1-4-1204(1)(b); accepting a “notarized candidate’s statement of intent together with either a nonrefundable filing fee of five hundred dollars or a petition signed by at least five thousand eligible electors,” *id.* § 1-4-1204(1)(c), § 1-4-903; and, ultimately, “certif[ying] and “listing” the “names and party affiliations of the candidates to be placed on any presidential primary election ballots,” *id.* §§ 1-4-1204(1), (4).

43. Respondent Donald J. Trump is a private citizen and a “candidate” under Colorado and federal law for the 2024 Republican presidential primary election. *See* Colo. Const. art. XXVIII, § 2 (defining “candidate” as one who “has publicly announced an intention to seek election to public office ... and thereafter has received a contribution or made an expenditure in support of the candidacy”); C.R.S. § 1-4-905.5(1)(a) (same); 52 U.S.C. § 30101(2) (defining

“candidate” as “an individual who seeks nomination for election ... to Federal office” and has “received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000”). Trump publicly announced his 2024 presidential campaign on November 15, 2022.¹⁶ He has filed with the Federal Election Commission a Statement of Candidacy¹⁷ and a candidate Public Financial Disclosure Report.¹⁸ To date, Trump’s campaign has raised at least \$35,987,476 and spent at least \$13,471,085.¹⁹ In Colorado, Trump’s campaign has raised at least \$476,302 in individual contributions.²⁰

44. Trump previously served as the 45th President of the United States from January 20, 2017, to January 20, 2021. He was a candidate for re-election in 2020.

45. Trump appeared on the Colorado presidential primary ballot in 2020. To gain access to that ballot, the Colorado Republican Party submitted to the Secretary (and the Secretary accepted), a presidential primary approval form affirming that Trump was a “bona fide” candidate who was “affiliated with the party.”²¹ Trump thereafter submitted to the Secretary (and the Secretary accepted) a notarized candidate’s statement of intent, together with a non-refundable filing fee of five hundred dollars, in which Trump affirmed he met “all qualifications for the office prescribed by law.”²²

¹⁶ *Former President Trump Announces His 2024 Presidential Campaign*, C-SPAN, Nov. 15, 2022, <https://www.c-span.org/video/?c5041264/president-trump-announces-2024-presidential-campaign>.

¹⁷ FEC Form 2, Statement of Candidacy, Donald J. Trump, Dec. 8, 2022, <https://docquery.fec.gov/pdf/377/202212089550119377/202212089550119377.pdf>.

¹⁸ OGE Form 278e, Executive Branch Personnel Public Financial Disclosure Report, Donald J. Trump, Apr. 14, 2023, <https://www.citizensforethics.org/wp-content/uploads/2023/04/Disclosure-Report-Part-1-4-14-23.pdf>.

¹⁹ Federal Election Commission, Financial Summary: Donald J. Trump for President 2024, Inc., https://www.fec.gov/data/candidate/P80001571/?cycle=2024&election_full=true.

²⁰ Federal Election Commission, Presidential Candidate Map, <https://www.fec.gov/data/candidates/president/presidential-map/>.

²¹ State Party 2020 Presidential Primary Approval for Donald J. Trump, <https://www.citizensforethics.org/wp-content/uploads/2023/08/2020-State-Primary-Approval.pdf>.

²² Major Party Candidate Statement of Intent for 2020 Presidential Primary by Donald J. Trump, <https://www.citizensforethics.org/wp-content/uploads/2023/08/2019.11.18-Trump-Statement-of-Intent-for-2020-Primary.pdf>.

JURISDICTION AND VENUE

46. This Court has jurisdiction over this action under C.R.S. § 1-4-1204(4), § 1-1-113(1), § 13-51-106, and C.R.C.P. 57.

47. Venue is proper in this Court under C.R.C.P. 98(b)(2) because the Secretary's office is in the City and County of Denver, Colorado.

FACTUAL BACKGROUND

I. Before the 2020 election, Donald Trump lays the groundwork to reject the election results if he loses and deploy political violence to stay in power.

A. Trump encourages political violence repeatedly during his 2016 campaign and his presidency.

48. Encouraging and normalizing violence against his perceived enemies has been a hallmark of Donald Trump's political career dating back to his 2016 presidential campaign. Trump's persistent promotion of political violence helped set the stage for the January 6th attack.

49. During his 2016 campaign, Trump encouraged supporters to physically assault protesters at his rallies and, often, they did.

50. At a rally in Birmingham, Alabama, on November 21, 2015, Trump demanded the removal of a protester, shouting: "Get him the hell out of here, will you please? Get him out of here! Throw him out!"²³ Video captured by a CNN reporter shows that, as Trump shouted from the stage, Trump supporters swarmed the protester (a Black man), knocking him to the ground and then punching and kicking him.²⁴ When asked about the assault on Fox News the next day, Trump justified the violence: "Maybe he should have been roughed up, because it was absolutely disgusting what he was doing."²⁵

51. At a February 1, 2016 rally in Cedar Rapids, Iowa, Trump instructed the crowd to

²³ *Trump to black activist: 'Get him the hell out of here'*, Washington Post, Nov. 22, 2015, https://www.washingtonpost.com/video/politics/trump-to-black-activist-get-him-the-hell-out-of-here/2015/11/22/57a055ba-9134-11e5-befa-99ceebcbb272_video.html.

²⁴ Jeremy Diamond (@JDiamond1), Twitter, Nov. 21, 2015, <https://twitter.com/JDiamond1/status/668168739100172289>.

²⁵ Jeremy Diamond, *Trump on protester: 'Maybe he should have been roughed up,'* CNN, Nov. 23, 2015, <https://www.cnn.com/2015/11/22/politics/donald-trump-black-lives-matter-protester-confrontation/index.html>.

“knock the crap out of” protesters who may try to throw tomatoes at him, promising to “pay for the legal fees” for anyone who did.²⁶

52. At a February 22, 2016 rally in Las Vegas, Nevada, Trump commented on a protester and lamented, “We’re not allowed to punch back anymore. I love the old days. You know what they used to do to guys like that when they were in a place like this? They’d be carried out on a stretcher, folks. ... I’d like to punch him in the face, I’ll tell ya.” The crowd erupted in applause.²⁷

53. A few weeks after Trump conveyed his desire to “punch [a protester] in the face,” one of his supporters did exactly that. At a March 9, 2016 rally in Fayetteville, North Carolina, police were escorting a protester out of the rally when a Trump supporter sucker-punched the protester (a Black man) in the face.²⁸ The same day, Trump stated such violence against protesters was “very, very appropriate” and that “we need a little bit more of” it.²⁹ When asked again about the attack at a March 15, 2016 presidential debate, Trump acknowledged his supporters “have anger that’s unbelievable” while denying any responsibility for their violent acts.³⁰

54. After taking office in 2017, Trump continued to encourage and normalize violence against perceived political enemies—now from the Office of the President.

55. On August 11 and 12, 2017, white supremacists descended on Charlottesville, Virginia for the “Unite the Right” rally, where neo-Nazis, neo-Confederates, and other extremists protested the removal of Confederate statues and menaced residents with racist and anti-semitic chants. A self-identified white supremacist deliberately rammed his car into a crowd

²⁶ *Trump: ‘Knock the crap’ out of tomato throwers*, Washington Post, Feb. 1, 2016, https://www.washingtonpost.com/video/politics/trump-knock-the-crap-out-of-tomato-throwers/2016/02/01/1d1fe1e2-c92b-11e5-b9ab-26591104bb19_video.html.

²⁷ *Donald Trump Says He’d Like to Punch a Protester in the Face*, YouTube, Feb. 22, 2016, <https://youtu.be/1es9MZyyPOA>.

²⁸ Justin Wm. Moyer, Jenny Starrs, and Sarah Larimer, *Trump supporter charged after sucker-punching protester at North Carolina rally*, Washington Post, Mar. 11, 2016, <https://www.washingtonpost.com/news/morning-mix/wp/2016/03/10/trump-protester-sucker-punched-at-north-carolina-rally-videos-show/>.

²⁹ Eric Levitz, *Trump on His Supporters Attacking Protesters: ‘That’s What We Need More of’*, New York Magazine, Mar. 11, 2016, <https://nymag.com/intelligencer/2016/03/trump-punching-protesters-is-very-appropriate.html>.

³⁰ *Transcript of Republican debate in Miami, full text*, CNN, Mar. 15, 2016, <https://www.cnn.com/2016/03/10/politics/republican-debate-transcript-full-text/index.html>.

of counter-protesters, killing 32-year-old Heather Heyer. When asked about these events at an August 15 press conference, Trump responded that some of the white supremacists were “fine people,” stating there “was blame on both sides . . . some very fine people on both sides.”³¹

56. At an October 18, 2018 rally in Montana, Trump celebrated then-Congressman Greg Gianforte for violently body slamming a reporter in 2017, telling the cheering crowd, “Any guy who can do a body-slam, that’s my kind of guy.”³²

57. At a May 9, 2019 rally in Florida, Trump asked “how do you stop” migrants from coming to the United States. A supporter shouted, “shoot them.” Trump laughed and minimized the overt call for violence, stating, “That’s only in the Panhandle, you can get away with that statement.” The crowd cheered.³³

58. President Trump’s violent rhetoric against his perceived political enemies escalated in 2020—a tumultuous year in which the country grappled with the COVID-19 pandemic, nationwide racial justice protests against police brutality, and the 2020 presidential campaign.

59. On April 17, 2020, President Trump sent a series of tweets calling on his supporters to “liberate” three states with Democratic governors amid backlash to their COVID-19 policies. He first tweeted, “LIBERATE MINNESOTA!”³⁴ A minute later, he tweeted, “LIBERATE MICHIGAN!”³⁵ Minutes after that, he tweeted, “LIBERATE VIRGINIA, and save your great 2nd Amendment. It is under siege!”³⁶

60. On April 30, in what was a clear harbinger for the January 6th attack on the U.S.

³¹ *President Donald Trump On Charlottesville: You Had Very Fine People, On Both Sides*, CNBC, Aug. 15, 2017, <https://www.youtube.com/watch?v=JmaZR8E12bs>.

³² Emily Cochrane, *That’s My Kind of Guy, Trump Says of Republican Lawmaker Who Body-Slammed a Reporter*, New York Times, Oct. 19, 2018, <https://www.nytimes.com/2018/10/19/us/politics/trump-greg-gianforte-montana.html>.

³³ *Trump laughs after audience member suggests shooting migrants*, YouTube, May 9, 2019, <https://www.youtube.com/watch?v=C9AXGPo1vvM>.

³⁴ Donald J. Trump (@realDonaldTrump), Apr. 17, 2020, Twitter, <https://twitter.com/realDonaldTrump/status/1251168994066944003>.

³⁵ Donald J. Trump (@realDonaldTrump), Apr. 17, 2020, Twitter, <https://twitter.com/realDonaldTrump/status/1251169217531056130>.

³⁶ Donald J. Trump (@realDonaldTrump), Apr. 17, 2020, Twitter, <https://twitter.com/realDonaldTrump/status/1251169987110330372>.

Capitol, hundreds of extremists swarmed the Michigan State Capitol to prevent the legislature from lawfully extending Governor Gretchen Whitmer’s COVID-19 stay-at-home order.³⁷ The extremists—many wearing pro-Trump merchandise and some armed with assault rifles and wearing tactical gear and battle fatigues—stormed the capitol building and chanted “Our House!” and “Let us in!” as they tried to breach the legislative chamber, but were held back by police.³⁸ Among those in attendance were the Proud Boys, a far-right extremist group with a history of violence against political opponents.³⁹ Extremists likened Governor Whitmer to Adolf Hitler, carried signs that read “TYRANTS GET THE ROPE,” and displayed Confederate flags, nooses, and a doll depicting Governor Whitmer being hanged.⁴⁰

61. Instead of condemning this armed mob that threatened violence against the governor during its intimidating occupation of the Michigan Capitol, President Trump took the side of the extremists. He tweeted on May 1, 2020: “The Governor of Michigan should give a little, and put out the fire. These are very good people, but they are angry. They want their lives back again, safely! See them, talk to them, make a deal.”⁴¹ Several anti-government extremists were later charged and convicted of conspiring to kidnap Governor Whitmer just before the 2020 election.⁴²

62. As detailed *infra*, in the year leading up to January 6, 2021, far-right extremists staged at least nine similar events inside state capitol buildings across the country. Jan. 6th

³⁷ Jason Slotkin, *Protesters Swarm Michigan Capitol Amid Showdown Over Governor's Emergency Powers*, NPR, May 1, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/05/01/849017021/protestors-swarm-michigan-capitol-amid-showdown-over-governors-emergency-powers>.

³⁸ Lois Becket, *Armed protesters demonstrate against Covid-19 lockdown at Michigan capitol*, The Guardian, <https://www.theguardian.com/us-news/2020/apr/30/michigan-protests-coronavirus-lockdown-armed-capitol>.

³⁹ Tom Batchelor, *Hundreds of Heavily-Armed Gun Activists Surround Michigan State Capitol*, Newsweek, Sept. 18, 2020, <https://www.newsweek.com/hundreds-armed-gun-activists-surround-michigan-state-capitol-1532865>.

⁴⁰ *Id.*; Kathleen Gray, *In Michigan, a Dress Rehearsal for the Chaos at the Capitol on Wednesday*, New York Times, Jan. 9, 2021, <https://www.nytimes.com/2021/01/09/us/politics/michigan-state-capitol.html>.

⁴¹ Donald J. Trump (@realDonaldTrump), Twitter, May 1, 2020, <https://twitter.com/realDonaldTrump/status/1256202305680158720>.

⁴² Joey Cappelletti and Corey Williams, *Co-leader of Whitmer kidnapping plot gets 16 years in prison*, Associated Press, Dec. 27, 2022, <https://apnews.com/article/gretchen-whitmer-politics-michigan-dd8c0cf8d7bb48e01c3befd4ed8db3ea>.

Report at 503. Members of the Proud Boys, Oath Keepers, and other violent groups joined these events. Participants in at least four of these state capitol incursions (in Michigan, Idaho, Arizona, and Oregon) later joined Trump’s mob in attacking the U.S. Capitol on January 6th. *Id.*

63. On May 28, 2020, President Trump retweeted a video of Couy Griffin—founder of “Cowboys for Trump” and then a county commissioner in New Mexico—saying “the only good Democrat is a dead Democrat” to a cheering crowd.⁴³ In retweeting this incendiary video to his millions of followers, Trump wrote, “Thank you Cowboys. See you in New Mexico!”⁴⁴ A state court later removed and disqualified Griffin from office under the Fourteenth Amendment for helping to mobilize and joining Trump’s mob on January 6th. *See New Mexico ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619 (N.M. Dist. Ct. Sept. 6, 2022), *appeal dismissed*, No. S-1-SC-39571 (N.M. Nov. 15, 2022).

64. On May 29, 2020, President Trump threatened to deploy “the Military” to Minneapolis to shoot “looters” amid protests over the police murder of George Floyd, tweeting “when the looting starts, the shooting starts.”⁴⁵

65. When asked at a September 29, 2020 presidential debate to denounce white supremacists and violent extremists such as the Proud Boys, Trump refused and instead told the Proud Boys to “stand back and stand by,” later adding that “somebody’s got to do something about Antifa and the left.”⁴⁶ In making these comments, Trump disregarded his advisers’ prior recommendations that he publicly denounce violent actors such as the Proud Boys.

66. President Trump’s words electrified the Proud Boys, causing the group’s membership to triple. Jan. 6th Report at 507–08. Proud Boys Chairman Enrique Tarrío wrote on the far-right social media site Parler, “I will stand down sir!!! ... Standing by sir.”⁴⁷ Senior Proud Boy Joseph Biggs posted on the same site, “Trump basically said to go fuck them up. This makes

⁴³ Jason Silverstein, *Trump shares video of supporter saying “the only good Democrat is a dead Democrat”*, CBS News, May 28, 2020, <https://www.cbsnews.com/news/president-trump-shares-video-of-supporter-saying-the-only-good-democrat-is-a-dead-democrat/>.

⁴⁴ Donald J. Trump (@realDonaldTrump), Twitter, May 28, 2020, <https://twitter.com/realDonaldTrump/status/1265855459719892993>.

⁴⁵ Donald J. Trump (@realDonaldTrump), Twitter, May 29, 2020, <https://twitter.com/realDonaldTrump/status/1266231100780744704>.

⁴⁶ *Trump tells Proud Boys: ‘Stand back and stand by’*, YouTube, Sept. 30, 2020, https://www.youtube.com/watch?v=qIHhB1ZMV_o.

⁴⁷ *Asked to Denounce White Supremacists, President Trump Tells Far-Right Extremist Group to ‘Stand By’*, Anti-Defamation League, Sept. 30, 2020, <https://www.adl.org/resources/blog/asked-denounce-white-supremacists-president-trump-tells-far-right-extremist-group>.

me so happy.”⁴⁸

67. The Proud Boys quickly embraced Trump’s “stand back and stand by” directive as a slogan and started selling merchandise with it that same night. Jan. 6th Report at 508. Tarrio, Biggs, and two other Proud Boys leaders were later convicted of seditious conspiracy to oppose by force the lawful transfer of presidential power on January 6th.⁴⁹



Nov. 7, 2020: Proud Boy wears a “stand back stand by” facemask

Photo by Nathan Howard/Getty Images

68. On October 30, 2020, a convoy of Trump supporters driving dozens of trucks (calling themselves a “Trump Train”) surrounded a Biden-Harris campaign bus on a Texas highway and forced it to slow to a crawl, came within inches of hitting it, and slammed into a campaign staffer’s follow car. The confrontation led Texas Democrats to cancel three scheduled

⁴⁸ David Gilbert, *‘Trump Basically Said to Go Fuck Them Up’: Here’s How the Proud Boys Reacted to Trump’s Comments*, Vice, Sept. 30, 2020, <https://www.vice.com/en/article/n7wxxk/trump-basically-said-to-go-fuck-them-up-heres-how-the-proud-boys-reacted-to-trumps-comments>.

⁴⁹ *Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. Attorney’s Office for the Dist. of Columbia, May 4, 2023, <https://www.justice.gov/usao-dc/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach>.

campaign events due to safety concerns.⁵⁰ Two of the Trump Train’s participants later settled a lawsuit for political intimidation under the Second Ku Klux Klan Act, 42 U.S.C. § 1985.⁵¹

69. Trump immediately celebrated this dangerous act of political intimidation. On October 31st, he tweeted a stylized video of the Trump Train confrontation and stated “I LOVE TEXAS!”⁵² On November 1st, in response to news that the FBI was investigating the incident, Trump tweeted, “In my opinion, these patriots did nothing wrong” and indicated they should not be investigated.⁵³ Later that day at a rally in Michigan, Trump again celebrated the incident, falsely stating his supporters were “protecting [Biden’s] bus . . . , because they’re nice,” and boasting “they had hundreds of cars, Trump, Trump. Trump. Trump and the American flag.”⁵⁴

70. Years of President Trump’s encouragement and endorsement of political violence had predictable consequences: it normalized for his supporters the idea of using violence, force, and intimidation against political foes. It also demonstrated Trump’s knowledge of and support for threats and acts of violence by his supporters against his perceived political enemies, as well as the power of Trump’s words to inspire such acts. Trump would later use that same call-and-response dynamic to mobilize a violent mob to attack Congress on January 6th.

B. Trump sows the seeds of election denialism before the 2020 election.

71. At the heart of the January 6th insurrection was the inflammatory lie of a “stolen” presidential election: it is what motivated the nationwide “Stop the Steal” movement and mobilized tens of thousands of enraged Trump supporters to descend on Washington, D.C. to violently disrupt the transfer of power. Donald Trump was—and remains—the leading source of that lie. And he laid the groundwork for it well before the 2020 election.

72. When asked at an October 19, 2016 presidential debate if he would accept the

⁵⁰ Aliyya Swaby, “*These patriots did nothing wrong,*” *Trump says of supporters who surrounded Biden bus*, Texas Tribune, Nov. 1, 2020, <https://www.texastribune.org/2020/11/01/trump-biden-bus/>.

⁵¹ *Two Defendants in the Texas “Trump Train” Lawsuit Agree to Settlement*, Protect Democracy, Apr. 27, 2023, <https://protectdemocracy.org/work/two-defendant-settle-trump-train/>.

⁵² Donald J. Trump (@realDonaldTrump), Twitter, Oct. 31, 2020, <https://twitter.com/realDonaldTrump/status/1322700188624932869>.

⁵³ Donald J. Trump (@realDonaldTrump), Twitter, Nov. 1, 2020, <https://twitter.com/realDonaldTrump/status/1323072051402350592>.

⁵⁴ *‘These patriots did nothing wrong’: Trump says Texas trucks were ‘protecting’ Biden bus*, CBS Austin, Nov. 1, 2020, <https://cbsaustin.com/news/local/trump-says-protesters-were-protecting-the-biden-campaign-bus>.

2016 election results, Trump refused to answer; instead, he said, “I will look at it at the time. ... I will keep you in suspense” and made unsubstantiated claims about the integrity of voter rolls.⁵⁵

73. Even after winning the 2016 presidential election but losing the popular vote, Trump falsely asserted he would have won the popular vote “if you deduct the millions of people who voted illegally.”⁵⁶ Throughout his presidency, Trump repeated the lie that widespread voter fraud cost him the popular vote.⁵⁷

74. During the 2018 midterm elections, President Trump falsely claimed four key races were being “rigged” against the Republican party.⁵⁸ In a November 9th tweet, he called for “a new Election” in Arizona based on fictitious “Electoral corruption.”⁵⁹

75. President Trump’s anti-democratic rhetoric intensified as the 2020 presidential election approached.⁶⁰ He used the bully pulpit of the presidency, including his heavily trafficked Twitter feed, to inflame his followers with one election lie after another. *See* Jan. 6th Report at 201–02 (collecting examples).

76. During a July 19, 2020 interview on *Fox News Sunday*, Trump falsely claimed that mail-in voting, which several states expanded due to the COVID-19 public health crisis and that Trump himself used, “is going to rig the election.”⁶¹ When asked if he would accept the

⁵⁵ *Trump Won't Say if He'll Accept Election Results | Third Presidential Debate*, YouTube, Oct. 19, 2016, <https://www.youtube.com/watch?v=pAru83kBtnw>.

⁵⁶ Tim LoBianco, *Trump falsely claims ‘millions of people who voted illegally’ cost him popular vote*, CNN, Nov. 28, 2016, <https://www.cnn.com/2016/11/27/politics/donald-trump-voter-fraud-popular-vote/index.html>.

⁵⁷ Emily Olson, *Trump’s Endgame*, ABC News, Nov. 7, 2020, <https://www.abc.net.au/news/2020-11-08/us-election-donald-trump-endgame-in-plain-sight-for-months/12858094>.

⁵⁸ David Smith, *Trump accused of stifling democracy as midterm races remain on knife edge*, The Guardian, Nov. 10, 2018, <https://www.theguardian.com/us-news/2018/nov/10/trump-midterm-recount-election-rigging-arizona-georgia-florid>.

⁵⁹ Donald J. Trump (@realDonaldTrump), Twitter, Nov. 9, 2018, <https://twitter.com/realDonaldTrump/status/1060993836984324096>.

⁶⁰ *See* Kevin Liptak, *A List of the Times Trump Has Said He Won’t Accept the Election Results or Leave Office if He Loses*, CNN, Sept. 24, 2020, <https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html>.

⁶¹ Ron Blitzer, *Trump pushes back against critics on coronavirus, addresses whether he will accept election results in exclusive interview*, Fox News, July 19, 2020,

election results, Trump said, “No, I’m not going to just say yes. I’m not going to say no, and I didn’t last time either.”⁶²

77. Amid polling showing Biden with a double-digit lead over Trump,⁶³ Trump sent a tweet on July 30th proposing to delay the 2020 election to prevent anticipated voter fraud, writing “With Universal Mail-In Voting (not Absentee Voting, which is good), 2020 will be the most INACCURATE & FRAUDULENT Election in history. It will be a great embarrassment to the USA. Delay the Election until people can properly, securely and safely vote???”⁶⁴

78. At an August 17, 2020 campaign rally in Wisconsin, Trump stated “the only way we’re going to lose this election is if the election is rigged. Remember that. It’s the only way we’re going to lose this election. ... The only way they’re going to win is that way. And we can’t let that happen.”⁶⁵

79. While speaking at the Republican National Convention at the White House on August 24, 2020, Trump called mail-in voting “the biggest scam in the history of politics,” accused Democrats of “using COVID to steal an election” and “defraud the American people—all the American people—of a fair and free election,” and repeated the lie that “the only way they can take this election away from us is if this is a rigged election.”⁶⁶

80. When asked at a September 23, 2020 White House press briefing if he would commit to a peaceful transfer of power after the election, President Trump refused, stating “We’re going to have to see what happens. ... I’ve been complaining very strongly about the ballots. The ballots are a disaster ... Get rid of the ballots and you’ll have a very trans—we’ll have a very peaceful—there won’t be a transfer, frankly; there’ll be a continuation. The ballots

<https://www.foxnews.com/politics/trump-pushes-back-against-critics-on-coronavirus-addresses-whether-he-will-accept-election-results-in-exclusive-interview>.

⁶² *Id.*

⁶³ Grace Sparks, *CNN Poll of Polls: Biden maintains double-digit lead over Trump nationally, with coronavirus a top issue*, CNN, July 20, 2020, <https://www.cnn.com/2020/07/20/politics/poll-of-polls-july-trump-biden-coronavirus/index.html>.

⁶⁴ Donald J. Trump (@realDonaldTrump), Twitter, July 30, 2020, <https://twitter.com/realDonaldTrump/status/1288818160389558273>.

⁶⁵ *Donald Trump: “The only way we’re going to lose this election, is if the election is rigged,”* YouTube, Aug. 18, 2020, <https://www.youtube.com/watch?v=IFzi5TmAjRE>.

⁶⁶ *Donald Trump accuses Democrats of plot to ‘steal’ election at Republican convention – video*, The Guardian, Aug. 24, 2020, <https://www.theguardian.com/us-news/video/2020/aug/24/donald-trump-accuses-democrats-of-plot-to-steal-election-at-republican-convention-video>.

are out of control. You know it.”⁶⁷

81. On November 2, 2020, the day before Election Day, Trump criticized the U.S. Supreme Court for allowing Pennsylvania to extend the time for receiving mail-in ballots, tweeting that the Court’s decision was “VERY dangerous,” “will allow rampant and unchecked cheating and will undermine our entire systems of laws,” and “will also induce violence in the streets,” imploring that “[s]omething must be done!”⁶⁸

II. After the 2020 election, President Trump refuses to admit defeat and inflames his supporters with the lie that the election was stolen from them.

82. From November 3, 2020, through January 6, 2021, President Trump continued to inflame his supporters with false claims of election fraud. He did so even after he exhausted legal challenges, the Electoral College formalized President Biden’s victory on December 14, 2020, and Trump was told repeatedly—by the Department of Justice (“DOJ”), his White House lawyers, and his campaign advisors—that there was no widespread fraud sufficient to change the election outcome.

A. President Trump falsely declares victory prematurely and pervasively spreads election disinformation.

83. On election night 2020, despite guidance from his campaign advisors that the race was far too early to call, President Trump falsely declared victory while repeating baseless claims of election fraud. In a speech from the White House, he stated: “This is a fraud on the American public. This is an embarrassment to our country. We were getting ready to win this election. Frankly, we did win this election. We did win this election. ... This is a major fraud on our nation.”⁶⁹

84. President Trump’s decision to declare victory falsely on election night was a premeditated strategy. Before Election Day, Counsel to Vice President Pence Greg Jacob learned of the plan and drafted a memo on Election Day to Pence’s Chief of Staff Marc Short, advising against Pence’s involvement in it. Jan. 6th Report at 435. On Election Day, Trump’s outside advisor Tom Fitton said he had spoken to Trump about a draft statement, sent to White House Deputy Chief of Staff Dan Scavino on October 31, declaring victory and demanding that all vote

⁶⁷ *Trump won’t commit to peaceful transfer of power*, YouTube, Sept. 23, 2020, <https://www.youtube.com/watch?v=6XD2oUG5WGQ>.

⁶⁸ Donald J. Trump (@realDonaldTrump), Twitter, Nov. 2, 2020, <https://twitter.com/realDonaldTrump/status/1323430341512622080>.

⁶⁹ *President Trump Remarks on Election Status*, C-SPAN, Nov. 3, 2020, <https://www.c-span.org/video/?477710-1/president-trump-remarks-election-status>.

counting stop. *Id.* at 10.

85. This strategy was meant to take advantage of the so-called “Red Mirage”—the illusion of a Republican (Red) victory in the early stages of vote counting because Republican voters are more likely to vote in person and those votes are typically counted first, including in swing states. Jan. 6th Report at 196–203. This phenomenon was widely known prior to the 2020 election, as it has played out in nearly every modern election. *Id.* at 197–98. In an October 31 audio recording, Trump advisor Steve Bannon described the strategy to a group of his associates as follows:

And what Trump’s gonna do is just declare victory, right? He’s gonna declare victory. But that doesn’t mean he’s a winner. He’s just gonna say he’s a winner ... The Democrats—more of our people vote early that count. Theirs vote in mail. And so they’re gonna have a natural disadvantage, and Trump’s going to take advantage of it—that’s our strategy. He’s gonna declare himself a winner. ... [I]f Trump is losing ... he’s gonna ... say ‘They stole it.’”

Id. at 10.

86. As more mail-in votes were counted and election results shifted toward Democrats, the Red Mirage faded, and Trump supporters became increasingly agitated by the President’s false claims of election fraud.

87. On November 4th, based on incomplete early returns, President Trump tweeted: “We are up BIG, but they are trying to STEAL the Election. We will never let them do it.”⁷⁰

88. On November 5th, with his chances of victory dwindling, Trump tweeted “STOP THE COUNT!”⁷¹ Halting the counting of votes at that point would have disenfranchised millions and violated federal and state laws. Jan. 6th Report at 9.

89. On November 7th, the Associated Press, Fox News, and other major news networks called the presidential election for Joe Biden.⁷² President Trump refused to accept this

⁷⁰ Donald J. Trump (@realDonaldTrump), Twitter, Nov. 4, 2020, <https://twitter.com/realDonaldTrump/status/1323864823680126977>.

⁷¹ Donald J. Trump (@realDonaldTrump), Twitter, Nov. 5, 2020, <https://twitter.com/realDonaldTrump/status/1324353932022480896>.

⁷² Jonathan Lemire, Zeke Miller, and Will Weissert, *Biden defeats Trump for White House, says ‘time to heal’*, Associated Press, Nov. 7, 2020, <https://apnews.com/article/joe-biden-wins-white-house-ap-fd58df73aa677acb74fce2a69adb71f9>; Paul Steinhauser, *Biden wins presidency, Trump*

reporting. On November 8th, he tweeted, “We believe these people are thieves. The big city machines are corrupt. This was a stolen election. Best pollster in Britain wrote this morning that this clearly was a stolen election.”⁷³

90. In the ensuing days, Trump’s campaign team repeatedly told President Trump that there was no evidence the election had been “stolen” and that he had simply lost. Jan. 6th Report at 204–06. Trump campaign manager Bill Stepien and his team served as the “truth telling squad” to the President, debunking false claims that “didn’t prove to be true.” *Id.* at 204. Trump campaign lawyer Alex Cannon informed Vice President Pence and White House Chief of Staff Mark Meadows that he was not finding any evidence of fraud sufficient to change the results in any state. *Id.*

91. Similarly, Attorney General Bill Barr, Acting Attorney General Jeffrey Rosen, and other top Justice Department officials repeatedly told President Trump in the weeks after the election that their investigations uncovered no evidence of fraud or irregularities sufficient to change the outcome of the election. *Id.* at 14–15. Attorney General Barr relayed that finding to the press on December 1st. *Id.*

92. President Trump’s White House Counsel Pat Cipollone reached the same conclusion and “forcefully” told this to Trump “over and over again.” *Id.* at 15–16.

93. Undeterred, Trump continued to tweet out false claims of election fraud at a steady clip. For example, on November 9, 2020, he tweeted: “Nevada is turning out to be a cesspool of Fake Votes. @mschlapp & @AdamLaxalt are finding things that, when released, will be absolutely shocking!”⁷⁴ The next day, he tweeted: “People will not accept this Rigged Election!”⁷⁵

94. Trump and his allies frequently directed their false claims of election fraud at cities with large Black populations, including Detroit (78% Black), Atlanta (48% Black), Philadelphia (41% Black), Milwaukee (39% Black), and Pittsburgh (23% Black). In a November 27th tweet, Trump took aim at the “politically corrupt” cities of Detroit, Philadelphia, Atlanta

denied second term in White House, Fox News projects, Fox News, Nov. 7, 2020, <https://www.foxnews.com/politics/biden-wins-presidency-trump-fox-news-projects>.

⁷³ Donald J. Trump (@realDonaldTrump), Twitter, Nov. 8, 2020, <https://twitter.com/realDonaldTrump/status/1325442336957018112>.

⁷⁴ Donald J. Trump (@realDonaldTrump), Twitter, Nov. 9, 2020, <https://twitter.com/realDonaldTrump/status/1325889532840062976>.

⁷⁵ Donald J. Trump (@realDonaldTrump), Twitter, Nov. 10, 2020, <https://twitter.com/realDonaldTrump/status/1326353226749386757>.

and Milwaukee.⁷⁶ On December 13th, Trump tweeted that “dead people, below age people, illegal immigrants, fake signatures, prisoners, and many others voted illegally” in “Detroit, Philadelphia, Milwaukee, Atlanta, Pittsburgh, and elsewhere.”⁷⁷ Meanwhile, Trump campaign attorney Rudy Giuliani called for throwing out all votes in Detroit and falsely claimed Trump would have won Wisconsin if not for voter fraud in Madison and Milwaukee.⁷⁸

95. On November 12th, the Election Infrastructure Government Coordinating Council, led by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (“CISA”), announced that the 2020 election “was the most secure in American history” and there was “no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.”⁷⁹ Five days later, President Trump fired his appointed CISA Director Christopher Krebs.⁸⁰

96. In November and December 2020, the Trump campaign paid about \$1.5 million in total to two research firms, Berkeley Research Group and Simpatico Software Systems, to investigate allegations of election fraud.⁸¹ Berkeley Research Group investigated fraud allegations in six key states and found no evidence that would have affected the election

⁷⁶ Donald J. Trump (@realDonaldTrump), Nov. 27, 2020, Twitter, <https://twitter.com/realDonaldTrump/status/1332407714304110597>.

⁷⁷ Donald J. Trump (@realDonaldTrump), Dec. 13, 2020, Twitter, <https://twitter.com/realDonaldTrump/status/1338254787675041802?s=20>.

⁷⁸ *LIVE: Rudy Giuliani and Trump Campaign Officials Hold News Conference at the RNC*, YouTube, Nov. 19, 2020, at 23:42; 28:15, <https://www.youtube.com/watch?v=sq7TeUJwQD4&t=2682s>.

⁷⁹ Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees*, Nov. 12, 2020, <https://www.cisa.gov/news-events/news/joint-statement-elections-infrastructure-government-coordinating-council-election>.

⁸⁰ Ben Fox, *Trump fires agency head who vouched for 2020 vote security*, Associated Press, Nov. 18, 2020, <https://apnews.com/article/donald-trump-fires-christopher-krebs-dhs-5e63923e0c11c9155eb5af2362d78548>.

⁸¹ Josh Dawsey and Amy Gardner, *Trump-funded studies disputing election fraud are focus in two probes*, Washington Post, June 5, 2023, <https://www.washingtonpost.com/nation/2023/06/05/trump-funded-studies-disputing-election-fraud-are-focus-two-probes/>.

results.⁸² Berkeley Research Group employees personally briefed Trump on these findings in December 2020.⁸³ Simpatico Software Systems investigated over a dozen voter fraud theories and likewise reported to the Trump campaign that the theories were unsupported.⁸⁴

97. President Trump disregarded the findings of his campaign advisors, the Department of Justice, senior administration officials, and the White House Counsel's office. He instead turned to a new team of legal advisors willing to promote his outright lies and conspiracy theories, including Giuliani, Jenna Ellis, John Eastman, Sidney Powell, and Cleta Mitchell. Jan. 6th Report at 203–04, 209–10. They immediately went to work to try to overturn the election. In a November 14, 2020 strategy session with Trump loyalists, Giuliani announced planned litigation “to invalidate upwards of 1M ballots.” *Id.* at 210.

B. Dozens of courts reject Trump's frivolous election lawsuits, leading to disciplinary action and sanctions against his attorneys.

98. In their effort to overturn the election in the courts, President Trump's campaign and allies filed 62 lawsuits in battleground states between November 4, 2020, and January 6, 2021. Jan. 6th Report at 210. They lost 61. *Id.* Their single victory affected few votes, did not confirm any claim of voter fraud, and did not change the outcome of the election in any state. *Id.*

99. Judges appointed by Republicans and Democrats alike, including several appointed by President Trump, found no credible evidence of widespread election fraud or irregularities. *Id.* at 210–13. And they did not mince words in calling out the frivolous litigation for what it was: a dangerous attempt to invalidate a free and fair election. *See, e.g., Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania*, 830 F. App'x 377, 381, 391 (3d Cir. 2020) (“Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”); *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 910 (M.D. Pa. 2020) (“[T]he Trump Campaign ... ask[s] this Court to disenfranchise almost seven million voters. This Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated. ... [T]his Court has been presented with strained legal arguments

⁸² Josh Dawsey, *Trump campaign paid researchers to prove 2020 fraud but kept findings secret*, Washington Post, Feb. 11, 2023, <https://www.washingtonpost.com/politics/2023/02/11/trump-campaign-report-electoral-fraud/>.

⁸³ *Id.*

⁸⁴ Josh Dawsey and Amy Gardner, *Trump-funded studies disputing election fraud are focus in two probes*, Washington Post, June 5, 2023, <https://www.washingtonpost.com/nation/2023/06/05/trump-funded-studies-disputing-election-fraud-are-focus-two-probes/>.

without merit and speculative accusations, ... unsupported by evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populated state.”); *Law v. Whitmer*, 477 P.3d 1124, *19 (Nev. 2020) (unpublished) (attaching and affirming district court decision) (Trump’s allies “did not prove under any standard of proof that illegal votes were cast and counted, or legal votes were not counted at all, due to voter fraud”).

100. Trump’s attorneys ultimately faced stiff sanctions and disciplinary action for peddling Trump’s lies. A New York court suspended Giuliani’s law license based on “uncontroverted evidence that [he] communicated demonstrably false and misleading statements to courts, lawmakers, and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign,” and that he made these “false statements” to “improperly bolster [his] narrative that due to widespread voter fraud, victory in the 2020 United States presidential election was stolen from his client.”⁸⁵

101. The Presiding Disciplinary Judge of the Colorado Supreme Court approved a stipulation to discipline Jenna Ellis (Giuliani’s deputy), in which Ellis admitted that “[w]hile serving as a senior legal advisor to [Trump] and as counsel for his reelection campaign,” she “repeatedly made misrepresentations on national television and on Twitter, undermining the American public’s confidence in the 2020 presidential election.” *People v. Ellis*, 526 P.3d 958, 958–59 (Colo. O.P.D.J. 2023).

102. A federal district judge in Michigan sanctioned and referred for bar discipline Sidney Powell, Lin Wood, and seven other Trump-allied attorneys for bringing a suit the court called “a historic and profound abuse of the judicial process” meant to “deceiv[e] a federal court and the American people into believing that rights were infringed.” *King v. Whitmer*, 556 F. Supp. 3d 680, 688 (E.D. Mich. 2021), *aff’d in relevant part*, 71 F.4th 511 (6th Cir. 2023).

103. The California State Bar has brought disciplinary charges against Trump attorney John Eastman for “engag[ing] in a course of conduct to plan, promote, and assist then-President Trump in executing a strategy, unsupported by facts or law, to overturn the legitimate results of the 2020 presidential election by obstructing the count of electoral votes of certain states.”⁸⁶

⁸⁵ *In the Matter of Rudolph W. Giuliani*, No. 2021-00506, slip op at *2, 22 (N.Y. App. Div. May 3, 2021), [https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

⁸⁶ News Release, *Attorney John Eastman Charged with Multiple Disciplinary Counts by the State Bar of California*, State Bar of California, Jan. 26, 2023, <https://www.calbar.ca.gov/About-Us/News/News-Releases/attorney-john-eastman-charged-with-multiple-disciplinary-counts-by-the-state-bar-of-california>.

104. A federal district judge in California found that President Trump himself likely made knowingly false claims of voter fraud, under oath, in an election suit filed in federal court in Georgia. The California court cited an email in which Eastman stated that “the President” had been “made aware that some of the allegations (and evidence proffered by the experts) has been inaccurate [sic],” and that Trump signing a “verification” of the complaint “with that knowledge ... would not be accurate.” *Eastman v. Thompson*, 636 F. Supp. 3d 1078, 1091 (C.D. Cal. 2022). Yet Trump and his attorneys proceeded to file the complaint with the same inaccurate information, and Trump “signed a verification swearing under oath that the ... inaccurate numbers ‘are true and correct’ or ‘believed to be true and correct’ to the best of his knowledge and belief.” *Id.* at 1091–92. The court found that the evidence showed “President Trump knew that the specific numbers of voter fraud were wrong but continued to tout those numbers, both in court and to the public.” *Id.* at 1092.

105. Trump’s legal effort to overturn the election effectively ended on December 11, 2020, when the Supreme Court issued a one-paragraph order rejecting a long-shot lawsuit filed by the State of Texas to invalidate the election results in four other states. *See Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020).

106. President Trump was “fired up about the Supreme Court decision” and was “raging about” it. Jan. 6th Report at 20. In private, Trump acknowledged that the decision confirmed his electoral loss, stating to White House Chief of Staff Mark Meadows, “This is embarrassing. ... We need to figure it out. I don’t want people to know that we lost.” *Id.* But in public, Trump continued to spread the lie that he won the election, tweeting the next day:

So, you’re the President of the United States, and you just went through an election where you got more votes than any sitting President in history, by far - and purportedly lost. You can’t get “standing” before the Supreme Court, so you “intervene” with wonderful states ... but, within a flash, it is thrown out and gone, without even looking at the many reasons it was brought. A Rigged Election, fight on!⁸⁷

107. These court decisions prompted President Trump and his supporters, including violent extremists, to target the courts themselves. As detailed *infra*, the Supreme Court was the target of several “Stop the Steal” demonstrations in the leadup to January 6th, some of which followed Trump’s tweets criticizing the Court. And Proud Boys Chairman Enrique Tarrio considered a detailed plan, titled “1776 Returns,” to storm and seize control of the “Supreme Court of the United States” and other federal buildings in Washington, D.C. until “demands” for

⁸⁷ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 12, 2020, <https://twitter.com/realDonaldTrump/status/1337629305405321216?s=20>.

a “new election” were fulfilled. Jan. 6th Report at 511.⁸⁸

III. President Trump leads a broad-based effort to pressure, coerce, and intimidate state and local officials to unlawfully overturn the 2020 election results.

A. Trump continues to seek to overturn the election results after the Electoral College formalizes his loss on December 14, 2020.

108. Article II of the Constitution, as modified by the Twelfth Amendment, governs election of the President. Article II created the Electoral College, providing that the states would select presidential electors in the manner provided by state legislatures, and those electors would in turn vote for the President. *See* U.S. Const. art. II, § 1, amend. XII.

109. Every state selects presidential electors by popular vote, and each state’s laws provide for procedures to resolve election disputes, including through lawsuits if necessary. After any election issues are resolved in state or federal court, each state’s Governor transmits a “certificate of the ascertainment” of the duly chosen Electoral College electors to the National Archives for inspection and counting by Congress. 3 U.S.C. §§ 6, 15.

110. The Electoral College meets in mid-December to cast their votes, which are then sent to and counted by Congress on January 6th. 3 U.S.C. §§ 7, 15. The Vice President, as President of the Senate, presides over the joint session of Congress on January 6th. *See* U.S. Const. amend. XII; 3 U.S.C. § 15. The Vice President’s role is ceremonial: he merely oversees the opening and counting of Electoral College votes provided by each state’s governor. *See* U.S. Const. amend XII (“The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted.”).

111. By design, the President plays no role in the Electoral College vote or certification process. Nor is securing or perpetuating incumbency a “function of the presidency.” *Thompson v. Trump*, 590 F. Supp. 3d 46, 82 (D.D.C. 2022), *appeal pending*, No. 22-5069 (D.C. Cir.). Rather, “Article II of the Constitution, which defines the powers and duties of the President, is agnostic as to whether a sitting President is elected to a new term.” *Id.*

112. On December 14, 2020, the Electoral College met and cast each State’s electoral votes for the 2020 presidential election. President Trump lost. The election was over. There was no longer a lawful avenue for President Trump to overturn the election results.

113. Senior Trump administration officials and family members urged President

⁸⁸ Def. Zachary Rehl’s Mot. to Reopen Detention H’rg, Ex. 1, “1776 Returns,” *United States v. Nordean, et al.*, No. 21-cr-175, ECF No. 401-1 (D.D.C. June 15, 2022), <https://s3.documentcloud.org/documents/22060615/1776-returns.pdf>.

Trump to concede, but he refused. *See* Jan. 6th Report at 499.

114. Instead of accepting the Electoral College’s vote, President Trump doubled down on delegitimizing the election results and sought to obstruct the transfer of power by any means necessary.

B. Trump pressures Republican officials in states he lost to illegally replace Biden electors with illegitimate Trump electors and to “find” votes for him.

115. Even before the 2020 election, President Trump’s campaign developed plans to unlawfully circumvent the election results if Trump lost and appoint “loyal electors” in battleground states with Republican-controlled legislatures. Jan. 6th Report at 266.

116. After it had become clear his loss seemed all but certain, Trump and his allies began pursuing their state-focused plan in earnest. *Id.* at 267–70. Trump personally led outreach to many officials in states he lost with Republican-controlled legislatures, including Georgia, Michigan, Pennsylvania, and Arizona. *Id.* at 270–71. These efforts included Trump and his allies using false claims of election fraud to target communities where Black and Latino Americans voted in large numbers and falsely accusing Black election workers of ballot tampering.

117. A key component of Trump’s pressure plan was to chastise uncooperative Republican officials as disloyal and even traitorous. *Id.* at 298.

118. Between the November election and January 6th, Trump and his inner circle engaged in at least 200 acts of public or private outreach, pressure, or condemnation targeting Republican governors, state legislators, and state and local election administrators to prevent them from certifying his loss. *Id.* at 271. Trump’s main targets were top Republican officials in Georgia, Michigan, Pennsylvania, and Arizona. *Id.* at 282–96.

119. President Trump personally pressured many Republican lawmakers and election officials in states he lost to convene special legislative sessions to illegally replace Biden electors with fraudulent Trump electors. *Id.* at 281–91. On Twitter, Trump publicly pressured individual legislators to “demand a vote on decertification,” *id.* at 283, referring to those who resisted his efforts as “[t]raitors,” *id.* at 286.

120. Georgia was a central focus of Trump’s pressure campaign. In a December 7, 2020 statement, Georgia Governor Brian Kemp rejected Trump’s calls to convene a special legislative session in Georgia “to select a separate slate of presidential electors” for Trump, explaining that such an action would be “unconstitutional and immediately enjoined by the

courts.”⁸⁹ President Trump responded by escalating social media attacks against Kemp. In December 2020, Trump posted an average of one tweet per day either criticizing Governor Kemp or pressuring him to help him overturn the election. Jan. 6th Report at 290. For instance, on December 14th, Trump tweeted, “What a fool Governor @BrianKempGA of Georgia is. ... Demand this clown call a Special Session and open up signature verification, NOW.”⁹⁰ On December 18th, he tweeted, “Governor @BrianKempGA of Georgia still has not called a Special Session. So easy to do, why is he not doing it? It will give us the State. MUST ACT NOW!”⁹¹

121. President Trump’s pressure campaign on Georgia Secretary of State Brad Raffensperger was even worse. Prior to January 2nd, Trump tried calling Raffensperger 18 times, but Raffensperger avoided the calls because of ongoing litigation against Trump’s campaign. *Id.* at 292. When Raffensperger finally took the President’s call on January 2nd, Trump repeated his false claims of election fraud and asked Raffensperger to “find” precisely the number of votes he needed to overturn the election results in Georgia, stating “I just want to find 11,780 votes, which is one more than we have because we won the State.” *Id.* He reiterated that request in other ways, such as stating “fellas, I need 11,000 votes. Give me a break.” *Id.* When Raffensperger refused, President Trump accused him of committing crimes and threatened possible prosecution:

the ballots are corrupt. ... which is totally illegal. ... it is more illegal for you than it is for them because, you know, what they did and you’re not reporting it. That’s a criminal, that’s a criminal offense. And you can’t let that happen. That’s a big risk to you and to Ryan, your lawyer... I’m notifying you that you’re letting it happen.

Id. at 293.

122. Reviewing the evidence surrounding the January 2nd call, a federal district judge ruled that Trump’s “repeated pleas” to Raffensperger “clearly demonstrate that his justification was not to investigate fraud, but to win the election” through unlawful means. *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1191–92 (C.D. Cal. 2022).

123. Trump unsuccessfully tried to enlist the Department of Justice to help overturn the election results in Georgia and other states. After striking out with Attorney General Barr, Acting

⁸⁹ *Gov. Kemp, Lt. Gov. Duncan Issue Statement on Request for Special Session of General Assembly*, Office of Governor Brian Kemp, Dec. 7, 2020, <https://gov.georgia.gov/press-releases/2020-12-07/gov-kemp-lt-gov-duncan-issue-statement-request-special-session-general>.

⁹⁰ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 14, 2020, <https://twitter.com/realDonaldTrump/status/1338348880182829061?s=20>.

⁹¹ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 18, 2020, <https://twitter.com/realDonaldTrump/status/1339938332223139840?s=20>.

Attorney General Rosen, and Acting Assistant Attorney General Donoghue, Trump enlisted the help of lower-level DOJ official Jeffrey Clark to do his bidding. After at least two meetings with Trump (which he did not disclose to DOJ leadership in advance), Clark drafted a proposed letter to the Georgia legislature falsely stating that the Department had identified “significant concerns” of election fraud in the state (it had not) and recommending a special legislative session to investigate the matter. Jan. 6th Report at 49–51. After DOJ leadership refused to sign the letter, Trump sought to sideline them by offering Clark the position of Acting Attorney General. *Id.* at 52–53. Trump rescinded Clark’s offer only after DOJ leadership vowed to resign en masse if Clark were appointed. *Id.* at 54.

124. State officials who resisted Trump’s coercive demands made clear that Trump and his allies were urging them to violate their oaths to the Constitution. For instance, Arizona House Speaker Rusty Bowers stated: “I and my fellow legislators swore an oath to support the U.S. Constitution and the constitution and laws of the state of Arizona. It would violate that oath, the basic principles of republican government, and the rule of law if we attempted to nullify the people’s vote based on unsupported theories of fraud.”⁹²

125. A Georgia grand jury has indicted Trump on 13 criminal counts, along with 18 co-conspirators including Rudy Giuliani, Sidney Powell, and John Eastman, relating to a sweeping “conspiracy to unlawfully change the outcome of the [2020] election in favor of Trump.” Trump Georgia Indictment at 14. Among those charges are three counts of “Solicitation of Violation of Oath by Public Officer,” which assert that Trump unlawfully solicited Secretary Raffensberger and Speaker of the Georgia House of Representatives David Ralston to violate their oaths to the U.S. Constitution by illegally overturning the election results in Georgia. *Id.* at 74, 87.

C. Trump causes waves of violent threats and intimidation against state and local election officials.

126. President Trump’s state-level pressure campaign ultimately failed, but the fallout was considerable. Officials who resisted Trump’s coercive tactics and election workers across the country who simply did their jobs became targets of violent threats, armed intimidation, stalking, harassment, public demonization, spamming, and doxing. Jan. 6th Report at 300–05. They and their families faced explicit threats of murder, bombings, and sexual assault. *Id.* Black election officials were frequently targeted with threats of lynchings and other racialized violence. *Id.*

127. A striking example of this terror campaign came in Georgia, where Black election

⁹² News Release, *Speaker Bowers Addresses Calls for the Legislature to Overturn 2020 Certified Election Results*, Ariz. House of Reps., Dec. 4, 2020, <https://www.azleg.gov/press/house/54LEG/2R/201204STATEMENT.pdf>.

workers Ruby Freeman and Shaye Moss (mother and daughter) were inundated with violent and racist threats after President Trump and Giuliani falsely accused them of vote tampering. *Id.* at 305–06. (The Georgia Board of Elections later confirmed these allegations were “false and unsubstantiated,”⁹³ and a federal court entered a default judgment against Giuliani in Freeman and Moss’s defamation suit against him.⁹⁴). After Trump touted these false claims about Freeman at a December 5, 2020 rally in Georgia, strangers came to her home and tried to lure her outside with threatening emails and text messages. *Id.*

128. On advice from the FBI, Freeman fled from her home and did not move back for months. *Id.* The concern was well-founded: A member of the Oath Keepers militia who was later convicted of multiple offenses for his role in the January 6th attack had a document in his home with the words “DEATH LIST” written across the top—the only two names listed were Ruby Freeman and Shaye Moss. *Id.* at 307.

129. Ralph Jones, a Black election official who oversaw voter registration in Fulton County, Georgia, received death threats following the election including one calling him a “n[igger] who should be shot,” with another threatening “to kill him by dragging his body around with a truck.” *Id.* at 305–06.

130. Another Black election worker in Georgia, Lawrence Sloan, was forced to go into hiding after President Trump and his adult sons falsely accused him of destroying ballots.⁹⁵

131. Michigan state representative Cynthia Johnson, a Black woman, was threatened with lynching after she challenged witnesses that Rudy Giuliani presented to her committee. Jan. 6th Report at 304.

132. Secretary Raffenperger, one of Trump’s top targets, frequently received hostile messages directed toward him and his wife, some in the form of “sexualized attacks.” *Id.* at 305. The Secretary’s wife canceled visits from grandchildren after someone broke into their daughter-in-law’s house, and after police found self-identified members of the Oath Keepers outside the

⁹³ *State Election Board Clears Fulton County “Ballot Suitcase” Investigation; Report Finds No Evidence of Conspiracy, No Fraud*, Georgia Sec. of State, June 20, 2023, <https://sos.ga.gov/news/state-election-board-clears-fulton-county-ballot-suitcase-investigation-report-finds-no>.

⁹⁴ Mem. Op., *Freeman v. Giuliani*, No. 21-cv-3354, ECF No. 94 (D.D.C. Aug. 30, 2023), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2021cv3354-94.

⁹⁵ Nicole Carr, *Election worker forced into hiding speaks out on video that falsely claimed he destroyed ballot*, WSB-TV, Dec. 4, 2020, <https://www.wsbtv.com/news/politics/election-worker-forced-into-hiding-speaks-out-video-that-falsely-claimed-he-destroyed-ballot/NF7VRBTRY5CCBH4HAARGX5SHDA/>.

Raffenspergers' home. *Id.*

133. Another official targeted by Trump, Arizona House Speaker Rusty Bowers, faced armed protests at his home, with protesters honking horns, shouting into bullhorns, and calling him a pedophile. *Id.* at 303.

134. Election administration offices in ten Georgia counties received emailed threats of bombings that they were warned would “make the Boston bombings look like child’s play” and that “death and destruction” would persist until “Trump is guaranteed to be POTUS.” *Id.* at 305.

135. State and county election officials in Colorado were inundated with violent threats after the 2020 election and continue to face them. After publicly opposing President Trump’s 2020 election lies, Colorado Secretary of State Jena Griswold received hundreds of threats on social media, including a Facebook message that read, “Watch your back. I KNOW WHERE YOU SLEEP, I SEE YOU SLEEPING. BE AFRAID, BE VERY AFRAID,” and an Instagram comment that read, “Penalty for treason? Hanging or firing squad. You can pick Griswold.”⁹⁶ Two men have been criminally charged and convicted for making violent threats to the Secretary.⁹⁷ She now travels with a security detail.⁹⁸

136. On November 5th, President Trump tweeted “STOP THE COUNT!”⁹⁹ During this same period, the Proud Boys and other Trump supporters held armed and intimidatory protests outside of ballot counting centers as poll workers counted votes for the 2020 election, including in Nevada, Arizona, and Michigan.¹⁰⁰ At one ballot-counting center in Detroit,

⁹⁶ Cat Zakrzewski, *Election workers brace for a torrent of threats: ‘I KNOW WHERE YOU SLEEP’*, Washington Post, Nov. 8, 2022, <https://www.washingtonpost.com/technology/2022/11/08/election-workers-online-threats/>.

⁹⁷ Margery A. Beck, *Man gets prison for threatening Colorado election official*, Associated Press, Oct. 6, 2022, <https://apnews.com/article/elections-social-media-colorado-presidential-b4218eebcde7b96f186be3c72078c1bf>; Logan Smith, “*The angel of death is coming*”: Littleton man sentenced for threats made to state office, CBS Colorado, Apr. 17, 2023, <https://www.cbsnews.com/colorado/news/kirk-wertz-sentence-angel-of-death-is-coming-jena-griswold-threats-secretary-of-state-office/>.

⁹⁸ Rosalind Hederman, *With violent rhetoric and election denial, podcaster becomes GOP force*, Washington Post, Jun. 27, 2022, <https://www.washingtonpost.com/politics/2022/06/27/with-violent-rhetoric-election-denial-podcaster-becomes-gop-force/>.

⁹⁹ Donald J. Trump (@realDonaldTrump), Twitter, Nov. 5, 2020, <https://twitter.com/realDonaldTrump/status/1324353932022480896>.

¹⁰⁰ Michael Scherer, *To build a crowd for a pro-Trump rally, Nevada GOP consultant sought help from Proud Boys*, Washington Post, June 2, 2021,

demonstrators angrily pounded on doors and shouted “Let us in” and “Stop the count,” but were held back by police.¹⁰¹

137. President Trump was aware of the violent threats he was inspiring—which were widely reported in the media—and ignored pleas to condemn them. At a December 1, 2020 press conference, the Georgia Secretary of State’s Chief Operating Officer, Gabriel Sterling, made an impassioned plea calling out President Trump by name and warning his rhetoric was “going to get [someone] killed.” Sterling said:

A 20 something tech in Gwinnett County today has death threats and a noose put out, saying he should be hung for treason because he was transferring a report on batches from an EMS to a county computer so he could read it.

It has to stop.

Mr. President, you have not condemned these actions or this language. ... This has to stop. We need you to step up. ...

My boss, Secretary Raffensperger, his address is out there. They have people doing caravans in front of their house. They’ve had people come onto their property. Tricia, his wife of 40 years, is getting sexualized threats through her cellphone.

It has to stop.

This is elections. This is the backbone of democracy. And all of you who have not said a damn word are complicit in this. ... Death threats, physical threats, intimidation, it’s too much. It’s not right. ...

Mr. President, it looks like you likely lost the state of Georgia. ... [Y]ou need to step up and ... stop inspiring people to commit potential acts of violence. Someone’s going to get hurt. Someone’s going to get shot. Someone’s going to get

https://www.washingtonpost.com/politics/proud-boys-nevada-republican/2021/06/01/60da2a58-be5f-11eb-b26e-53663e6be6ff_story.html; Tim Sullivan and Adam Geller, *Increasingly normal: Guns seen outside vote-counting centers*, Associated Press, Nov. 7, 2020, <https://apnews.com/article/protests-vote-count-safety-concerns-653dc8f0787c9258524078548d518992> .

¹⁰¹ Trea Bladas, Kristen Jordan Shamus, Niraj Warikoo, and Evan Petzold, *Chaos erupts at TCF Center as Republican vote challenges cry foul in Detroit*, Detroit Free Press, Nov. 4, 2020, <https://www.freep.com/story/news/politics/elections/2020/11/04/tcf-center-challengers-detroit-michigan/6164715002/>.

killed.¹⁰²

138. President Trump saw a video of Sterling’s statement on Twitter and, in a retweet of the video, doubled down on the very lies that Sterling warned would get someone killed: “Rigged Election. Show signatures and envelopes. Expose the massive voter fraud in Georgia. What is Secretary of State and @BrianKempGA afraid of. They know what we’ll find!!!”¹⁰³



¹⁰² Georgia Election Official Gabriel Sterling: “Someone’s Going to Get Killed” Transcript, Rev, Dec. 1, 2020, <https://www.rev.com/blog/transcripts/georgia-election-official-gabriel-sterling-someones-going-to-get-killed-transcript>.

¹⁰³ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 1, 2020, <http://web.archive.org/web/20201203173245/https://mobile.twitter.com/realDonaldTrump/status/1333975991518187521>.

IV. President Trump oversees a scheme to send fake slates of presidential electors to Congress and pressures Vice President Pence to unlawfully obstruct the January 6th certification proceeding based on those fake electoral slates.

139. As his litigation and state-level strategies failed, President Trump turned his focus to January 6, 2021. That was the date on which a joint session of Congress, with Vice President Pence presiding as President of the Senate, would count the electoral votes cast on December 14, 2020, and certify the election results under the Twelfth Amendment and the Electoral Count Act, 3 U.S.C. § 15.

140. Trump’s January 6th strategy depended on Vice President Pence. Trump lawyers Kenneth Chesebro and John Eastman devised an unlawful plan in which the Vice President would—contrary to established legal authority and precedent—refuse to count certified electoral votes from seven states that Trump lost: Nevada, Arizona, Georgia, Michigan, New Mexico, Pennsylvania, and Wisconsin. Under this plan, Vice President Pence would point to so-called “competing” or “dual” slates of Electoral College electors from those seven states to justify either disregarding those states’ legitimate electors in counting the votes or halting the vote count and sending the slates back to the states. Jan. 6th Report at 341–44.

141. But there were no valid competing slates of electors from the seven states. Instead, Republican officials sent false slates of Trump electors to Congress and the National Archives as a pretext for Vice President Pence to unlawfully disregard the real electoral college votes for Biden. Trump privately and publicly pressured Pence to carry out this plan, despite being told repeatedly it was unlawful. *Id.*

142. Reviewing the evidence surrounding the fake elector scheme, a federal district judge found it is “more likely than not that President Trump” committed two federal crimes: (1) “corruptly attempt[ing] to obstruct the Joint Session of Congress on January 6, 2021,” in violation of 18 U.S.C. § 1512(c)(2), and (2) “conspir[ing] to defraud the United States by disrupting the electoral, in violation of 18 U.S.C. § 371.” *Eastman*, 594 F. Supp. 3d at 1193, 1195.

143. Federal and Georgia grand juries have criminally charged Trump for his role in the fake elector plot, including his unlawful solicitation of Vice President Pence to violate the U.S. Constitution and federal law by rejecting valid Electoral College votes. *See Trump Federal D.C. Indictment; Trump Georgia Indictment.*

144. The Michigan Attorney General has charged sixteen of Trump’s Michigan fake electors with various election law and forgery felonies.¹⁰⁴

¹⁰⁴ *Michigan Attorney General Dana Nessel Charges 16 ‘False Electors’ with Election Law and Forgery Felonies*, Mich. Dep’t of Att’y Gen., July 18, 2023,

145. The fake elector plan “was an unlawful, unprecedented and destructive break from the electoral college process” that “led directly to the violence that occurred on January 6th.” Jan. 6th Report at 342–43.

A. Trump oversees the fake elector plan.

146. The fake elector plan emerged from a series of legal memoranda written by Trump campaign lawyer Kenneth Chesebro, with Trump lawyer John Eastman later taking on a more prominent role. *Id.* at 343–45.

147. Trump’s White House staff and his campaign began operationalizing the fake elector plan in early December 2020, the week before the Electoral College would meet on December 14th. *Id.* at 345.

148. By December 8th, President Trump was pursuing and driving the fake elector plan. *Id.* at 346. He personally enlisted the Republican National Committee’s (“RNC”) assistance. *Id.* White House Chief of Staff Mark Meadows confirmed in a December 8th text message that they planned to convene Trump electors in key states that Trump lost and transmit false electoral certificates to Washington, D.C. *Id.* at 345.

149. The Trump campaign filed lawsuits in certain states to supply a pretext for convening the fake electors in those states. *Id.* In later litigation, a federal district judge found that Trump filed these lawsuits “not to obtain legal relief, but to disrupt or delay the January 6th congressional proceedings through the courts.” *Eastman*, 636 F. Supp. 3d at 1090–91.

150. On December 14th—the date when the true, certified electors were meeting to cast their electoral votes for Biden in Nevada, Wisconsin, Arizona, Georgia, Michigan, New Mexico, and Pennsylvania—the fake Trump electors convened in those states to sign false electoral certificates. Jan. 6th Report at 352–53. In some states, those orchestrating the fake electors engaged in acts of subterfuge by meeting in secret, lying to security guards about what they were doing, and instructing participants to keep details confidential. *Id.* at 354.

151. The fake electoral certificates signed in Nevada, Wisconsin, Arizona, Georgia, and Michigan falsely declared the Trump electors to be “the duly elected and qualified Electors” from their state. *Id.* at 352–53. This declaration was false because the signatories had not been granted official status by their state government in the form of a certificate of ascertainment. *Id.* at 353.

<https://www.michigan.gov/ag/news/press-releases/2023/07/18/michigan-attorney-general-dana-nessel-charges-16-false-electors>.

152. On the evening of December 14th, RNC Chairwoman Ronna Romney McDaniel forwarded an “Elector Recap” email to President Trump’s executive assistant, conveying that the illicit scheme had been formalized. *Id.* at 354. She wrote, “President Trump’s electors voted in the contested states,” to which President Trump’s assistant replied, “It’s in front of him!” *Id.*

153. Five of the fake Trump elector certificates were then transmitted to Congress and the National Archives, who later deemed them invalid. *Id.* at 354–55. The fake Michigan and Wisconsin electoral certificates never made it to the Vice President, despite failed attempts by Trump’s team to deliver them through Members of Congress. *Id.* at 358.

B. Trump exerts intense public and private pressure on Vice President Pence to rely on fake electors to unlawfully obstruct the January 6th proceeding.

154. Beginning in December 2020 and with greater frequency as January 6th approached, President Trump pressured Vice President Pence in private and public to obstruct the January 6th proceeding based on his illegal “President of the Senate strategy.” *Id.* at 341–42.

155. At a December 21st White House meeting with President Trump and Vice President Pence, several Members of Congress urged the Vice President to reject Biden electors from one or more of the seven contested states. Jan. 6th Report at 355.

156. On December 25th, when Pence called Trump to wish him a Merry Christmas, Trump pushed Pence to reject electoral votes from certain states on January 6th. Pence resisted, stating “You know I don’t think I have the authority to change the outcome.” Trump Federal D.C. Indictment ¶ 90.

157. By early January 2021, Vice President Pence’s counsel, Greg Jacob, concluded that under the Electoral Count Act of 1887 and the Twelfth Amendment “[t]here is no justifiable basis to conclude that the Vice President has ... authority’ to affect the outcome of the presidential election.” Jan. 6th Report at 435. Pence agreed with that view. *Id.* at 448. As Jacob later testified, “the Vice President’s first instinct, when he heard this theory, was that there was no way that our Framers, who abhorred concentrated power, who had broken away from the tyranny of George III, would ever have put one person—particularly not a person who had a direct interest in the outcome because they were on the ticket for the election—in a role to have decisive impact on the outcome of the election. And our review of text, history, and, frankly, just common sense, all confirmed the Vice President’s first instinct on that point.” *Id.* at 31. Indeed, if the theory were correct, a recalcitrant vice president could single-handedly decide who becomes president. On January 6, 1993, Dan Quayle could have kept George H.W. Bush in office. Or, on January 6, 2001, Al Gore could have made himself the president.

158. Despite Vice President Pence’s opposition, Trump and his allies exerted intense

pressure on him to unilaterally overturn the election results on January 6th.

159. On January 1st, Trump called Pence and berated him for opposing a lawsuit seeking a judicial declaration that the Vice President had the constitutional power to reject or return votes to the states. Pence responded that there was no constitutional basis for such authority and that it was improper. Trump replied, “You’re too honest.” Trump Federal D.C. Indictment ¶ 90.

160. At a January 4th Oval Office meeting with Vice President Pence, President Trump and Eastman sought to convince Pence that he had the power to disregard certified electors from states Biden won. Jan. 6th Report at 444. Eastman acknowledged, in President Trump’s presence, “that his proposal violated the Electoral Count Act,” that it “was not supported by precedent,” that “the Supreme Court would never endorse it,” and that the fake electoral slates upon which his plan depended were invalid. *Id.* at 446–47. Trump and Eastman nonetheless pressed Pence to carry out the unlawful scheme; Pence refused. *Id.* at 448.

161. President Trump then resorted to public pressure. At a January 4th rally in Georgia, Trump accused “radical Democrats” of trying to “steal[]” the election, adding that “we’re not going to let it happen.” He then shifted focus to the Vice President: “I hope Mike Pence comes through for us ... [I]f he doesn’t come through, I won’t like him quite as much.” *Id.* at 448–49.

162. At 11:06 a.m. on January 5th, President Trump tweeted to his tens of millions of followers, amid a flurry of other tweets spreading election lies, that “[t]he Vice President has the power to reject fraudulently chosen electors.”¹⁰⁵

163. That same day, Trump summoned Pence for a one-on-one meeting at the White House, where he again pressured Pence to overturn the election on January 6th. *Id.* at 452–53. Pence, again, refused. *Id.* Trump grew frustrated and told Pence he would have to publicly criticize him. Upon learning this, the Vice President’s Chief of Staff Marc Short was concerned for Pence’s safety and alerted the head of the Vice President’s Secret Service detail. Trump Federal D.C. Indictment ¶ 97.

164. Later on January 5th, Trump, Pence, Jacob, and Eastman held a call, during which Eastman asked if the Vice President would at least be willing to “consider sending the electors back to the States.” Jan. 6th Report at 453. Pence said, “I don’t see it,” while stating his counsel would continue to hear out Eastman’s theories. *Id.*

¹⁰⁵ Donald J. Trump (@realDonaldTrump), Twitter, Jan. 5, 2021, <https://twitter.com/realDonaldTrump/status/1346488314157797389>.

165. That evening, the *New York Times* published an article titled “Pence Said to Have Told Trump He Lacks Power to Change Election Result.” The article accurately reported that “Vice President Mike Pence told President Trump on Tuesday [January 4th] that he did not believe he had the power to block congressional certification of Joseph R. Biden Jr.’s victory in the presidential election despite Mr. Trump’s baseless insistence that he did.”¹⁰⁶

166. Later that night, President Trump issued a statement disputing the *Times*’ report. The statement was filled with lies: Trump falsely claimed the “Vice President and I are in total agreement that the Vice President has the power to act” and that “[o]ur Vice President has several options under the U.S. Constitution” to unilaterally overturn the “illegal and corrupt” election results.¹⁰⁷ Yet again, Trump used falsehoods and public pressure to try to sway the Vice President, who Trump knew was not “in total agreement” with him.

167. Trump allies, including political advisor Steve Bannon, amplified the public pressure on Pence in the leadup to January 6th. Jan. 6th Report at 454–55.

168. The pressure campaign on Vice President Pence came to a head on January 6th, when tens of thousands of enraged Trump supporters from across the country answered President Trump’s call to assemble in Washington, D.C. to “Stop the Steal.” As detailed *infra*, Trump repeatedly directed his supporters’ anger toward Vice President Pence that day, including after he knew his mob was attacking the Capitol and threatening the lives of Pence and others.

169. The violence on January 6th was fueled by President Trump spreading the lie that the election outcome had not yet been determined and that Vice President Pence had the power to deliver victory for him based on his slates of fake electors. Jan. 6th Report at 342–43. That lie, along with Trump’s other lies about election fraud, led tens of thousands to travel to Washington, D.C. to intimidate Vice President Pence and, when he did not succumb, to storm the Capitol and call for his murder.

V. President Trump summons tens of thousands of enraged supporters, including violent extremists, to travel to Washington, D.C. for a “wild” protest on January 6th to “Stop the Steal.”

170. After the December 14th Electoral College vote, the election was over. President Trump had lost and there was no lawful avenue to overturn the election results.

¹⁰⁶ Maggie Haberman and Annie Karni, *Pence Said to Have Told Trump He Lacks Power to Change Election Result*, *New York Times*, Jan. 5, 2021, <https://www.nytimes.com/2021/01/05/us/politics/pence-trump-election-results.html>.

¹⁰⁷ Meredith Lee Hill (@meredithllee), Twitter, Jan. 5, 2021, <https://twitter.com/meredithllee/status/1346652403605647367>.

171. On December 18th, Trump held a highly contentious meeting at the White House in which Sidney Powell and other election conspiracists proposed seizing voting machines and other extreme measures. Jan. 6th Report at 222. The proposals were ultimately rejected after strong opposition by White House lawyers. *Id.*

172. Undeterred, President Trump summoned a violent mob to stop the transfer of power by force.

173. At 1:42 a.m. on December 19th, President Trump tweeted a report filled with false claims of election fraud and announced: “Big protest in D.C. on January 6th. Be there, will be wild!”¹⁰⁸



Donald J. Trump ✓
@realDonaldTrump



Peter Navarro releases 36-page report alleging election fraud 'more than sufficient' to swing victory to Trump washex.am/3nwaBCe. A great report by Peter. Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild!

1:42 AM · Dec 19, 2020

36.5K Retweets 7,398 Quotes 143.2K Likes 1,026 Bookmarks

174. President Trump’s December 19th tweet galvanized tens of thousands of his supporters across the country. He had been inflaming them for months with the lie of a “stolen” election, and now, he focused their anger on the joint session of Congress in Washington, D.C. on January 6th.

175. Trump’s call to action was highly unusual. Never before had an American president or presidential candidate summoned supporters to Washington for a “protest” of Congress’s constitutionally-mandated certification of a presidential election, let alone a “wild” protest. Historically, Congress’s January 6th proceedings were ceremonial events during which electoral votes were counted and the election results formalized without disruption, even when objections and debate occurred.

176. According to Twitter personnel, President Trump’s “will be wild” tweet generated

¹⁰⁸ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 19, 2020, <https://twitter.com/realDonaldTrump/status/1340185773220515840>.

a “fire hose” of calls to overthrow the U.S. government by Trump supporters who felt “as if their Commander in Chief” had summoned them. Jan. 6th Report at 499.

177. An analyst at the National Capital Region Threat Intelligence Consortium observed that Trump’s tweet led to “a tenfold uptick in violent online rhetoric targeting Congress and law enforcement” and noticed “violent right-wing groups that had not previously been aligned had begun coordinating their efforts.” *Id.* at 694.

178. In the ensuing weeks, President Trump posted more than a dozen other tweets to his more than 86 million Twitter followers encouraging them to come to Washington, D.C. to “#stopthesteal” on January 6th. *Id.* at 55.

179. As he knew they would, President Trump’s tweets and other communications mobilized and coalesced a constellation of groups involved in the January 6th attack, including violent far-right extremists, anti-government militia groups, white nationalists, conspiracy theorists, rally organizers, and others who Trump knew closely followed his social media posts and whose presence could add to the size of the mob. With the President’s unifying call to action, these disparate groups now had a single date, a rallying point, and a mission: “Stop the Steal.”

180. Nearly 200 January 6th criminal defendants (and counting) from 37 states have confirmed in court filings, guilty pleas, and public statements that they traveled to Washington, D.C. because President Trump called them there.¹⁰⁹ Former county commissioner Couy Griffin—who was recently disqualified from office under the Fourteenth Amendment for participating in the January 6th insurrection—likewise said he traveled to Washington “to answer President Trump’s call” and urged others to do the same. *Griffin*, 2022 WL 4295619, at *5.

181. Based on threats widely circulated in the public domain and within the Executive Branch that President Trump led, and based on his prior experience with his supporters engaging in violence, Trump knew or consciously disregarded the risk that his supporters were angry and prepared for violence on January 6th.¹¹⁰ That was the point: He shared their goal of stopping the

¹⁰⁹ “*Trump has called all patriots*”: 174 Jan. 6th criminal defendants say Trump incited them, Citizens for Responsibility and Ethics in Washington, July 6, 2023, <https://www.citizensforethics.org/reports-investigations/crew-reports/trump-incited-january-6-defendants/>; January 6th Select Committee, Select Committee Chart Compiling Defendant Statements Supporting Materials Referenced in H. Rept. 117-663, Dec. 22, 2022, <https://www.govinfo.gov/content/pkg/GPO-J6-DOC-DEFENDANT-STATEMENTS-CHART/xls/GPO-J6-DOC-DEFENDANT-STATEMENTS-CHART.xlsx>.

¹¹⁰ In this Petition, allegations of Respondent Trump’s knowledge encompass both actual knowledge and conscious disregard of a risk.

transfer of power by any means necessary, including the use of violence.

A. Trump mobilizes violent extremists ahead of January 6th.

182. Violent far-right extremists who long supported President Trump—including the Proud Boys, the Oath Keepers, the Three Percenters, and others—predictably viewed his December 19th “will be wild” tweet as a call to arms. Leaders of the Proud Boys and Oath Keepers have since been convicted on charges of seditious conspiracy to oppose by force the lawful transfer of presidential power.

183. Although the Proud Boys and Oath Keepers historically were not allies, Trump’s tweet conveyed a sense of urgency that motivated the two extremist rivals to work together for a common goal: stopping the lawful transfer of power. Jan. 6th Report at 514. Senior Oath Keeper Kelly Meggs announced an alliance with the Proud Boys and Florida Three Percenters, stating “We have decided to work together and shut this shit down.” *Id.*

184. Founded in 2016, the Proud Boys are self-proclaimed “Western chauvinists” who embrace white supremacy, misogyny, antisemitism, and the use of violence against political foes. Jan. 6th Report at 507. The group soon established a nationwide presence, including in Colorado, where Proud Boys have instigated violence at protests.¹¹¹

185. The group, whom President Trump had instructed about three months earlier to “stand back and stand by,” reacted immediately to Trump’s December 19th tweet and began planning an attack. Jan. 6th Report at 56. They restructured their chain-of-command and created encrypted group chats entitled “Ministry of Self Defense” and “Boots on the Ground” to coordinate their January 6th plan. *Id.* at 510.

186. On December 30, 2020, Proud Boys Chairman Enrique Tarrío received a document titled “1776 Returns” from cryptocurrency investors in Florida, which included detailed plans to storm and occupy key federal buildings in Washington, D.C., including congressional office buildings and the Supreme Court.¹¹² *Id.* at 511. The plan called for “the masses to rush the building[s],” distract law enforcement in the area by pulling fire alarms around the city, target specific senators’ offices, and disguise participants’ identities with COVID masks. *Id.* The Proud Boys later adopted aspects of the plan on January 6th. *Id.*

¹¹¹ Jason Wilson, *Proud Boys are a dangerous ‘white supremacist’ group say US agencies*, The Guardian, Oct. 1, 2020, <https://www.theguardian.com/world/2020/oct/01/proud-boys-white-supremacist-group-law-enforcement-agencies>.

¹¹² Def. Zachary Rehl’s Mot. to Reopen Detention H’rg, Ex. 1, “1776 Returns,” *United States v. Nordean, et al.*, No. 21-cr-175, ECF No. 401-1 (D.D.C. June 15, 2022), <https://s3.documentcloud.org/documents/22060615/1776-returns.pdf>.

187. By late December 2020, Tarrío determined the Proud Boys' actions on January 6th would be "centered around the Capitol." *Id.* at 56. On social media, Tarrío referenced "revolt" and "[r]evolution" and asked on Telegram "What if we invade it?" *Id.* at 56. On January 4th, Tarrío told his men they should "storm the Capitol." *Id.* at 500.

188. The Proud Boys would go on to lead the January 6th attack at key breach points, penetrate the Capitol building, and lead hundreds of others inside. *Id.* at 56. As the attack unfolded, Tarrío claimed credit in a private chat, writing: "We did this." *Id.* at 500. Tarrío, who was not in Washington, D.C. on January 6th, was later convicted along with three other Proud Boys leaders for seditious conspiracy and other felonies.¹¹³ Proud Boy leaders Joseph Biggs and Zachary Rehl were sentenced to 17 years in prison and 15 years in prison, respectively, with Biggs receiving a sentencing enhancement "for a federal crime of terrorism."¹¹⁴ At trial, prosecutors stated the Proud Boys saw themselves as "Donald Trump's army."¹¹⁵

189. Jeremy Bertino, a Proud Boy who pleaded guilty to seditious conspiracy, admitted as part of his plea agreement that the group's leaders "agreed that the election had been stolen, that the purpose of traveling to Washington, D.C., on January 6, 2021, was to stop the certification of the Electoral College Vote, and that the [Proud Boys] leaders were willing to ... us[e] force against police and others[] to achieve that objective."¹¹⁶

190. Trump's "will be wild" tweet also galvanized the Oath Keepers. Founded in 2009 by Elmer Stewart Rhodes, the Oath Keepers is an anti-government militia group that focuses on recruiting former and current military, law enforcement, and other public servants who have taken an oath to support the U.S. Constitution. Jan. 6th Report at 512. Like the Proud Boys, the

¹¹³ *Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. Attorney's Office for the Dist. of Columbia, May 4, 2023, <https://www.justice.gov/usao-dc/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach>.

¹¹⁴ *Two Leaders of the Proud Boys Sentenced to 17 and 15 Years in Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, U.S. Dep't of Justice, Aug. 31, 2023, <https://www.justice.gov/opa/pr/two-leaders-proud-boys-sentenced-17-and-15-years-prison-seditious-conspiracy-and-other>.

¹¹⁵ Holmes Lybrand and Hannah Rabinowitz, *Proud Boys were 'Donald Trump's army,' prosecutor says in closing arguments of seditious conspiracy trial*, CNN, Apr. 24, 2023, <https://www.cnn.com/2023/04/24/politics/proud-boys-seditious-conspiracy-trial-closing-arguments/index.html>.

¹¹⁶ Statement of Offense ¶ 10, *United States v. Bertino*, 22-cr-329-TJK, ECF No. 5 (D.D.C. Oct. 6, 2022), <https://www.justice.gov/usao-dc/case-multi-defendant/file/1541236/download>.

Oath Keepers have a nationwide presence. In Colorado alone, the group reportedly has more than 950 members, including two elected officials and fourteen members of law enforcement.¹¹⁷

191. Days before Trump’s tweet, on December 10, 2020, Rhodes vowed that if President Trump did not invoke the Insurrection Act, the Oath Keepers would “rise up in insurrection (rebellion) against the ChiCom puppet Biden.” Jan. 6th Report at 514.

192. After Trump’s tweet, on December 22nd, leader of the Oath Keepers Florida chapter Kelly Meggs echoed the tweet in a Facebook message, writing: “Trump said It’s gonna be wild!!!!!! It’s gonna be wild!!!!!! He wants us to make it WILD that’s what he’s saying. He called us all to the Capitol and wants us to make it wild!!! Sir Yes Sir!!! Gentlemen we are heading to DC pack your shit!!” *Id.* at 515.

193. In the leadup to January 6th, Rhodes and other Oath Keepers created a “Quick Reaction Force” operating out of hotels in Virginia, just outside of Washington, D.C. They amassed an arsenal of assault weapons and equipment, hoping President Trump would invoke the Insurrection Act and deputize the Oath Keepers as his own militia. *Id.* at 514–15.

194. On January 6th, members of the Oath Keepers formed two military “stacks,” marched up the Capitol’s East Plaza steps, and forced their way inside the building. *Id.* at 658. Fourteen Oath Keepers, including Rhodes and Meggs, were later convicted of felonies including seditious conspiracy relating to their efforts to “oppose by force the execution of the laws governing the transfer of presidential power.”¹¹⁸ Like the Proud Boys’ Tarrío, Rhodes was convicted for his leadership role in the January 6th attack; he was not accused of breaching the Capitol building or personally committing violent acts on January 6th. A federal judge sentenced Rhodes to 18 years in prison and, as with the Proud Boys’ Biggs, applied a sentencing

¹¹⁷ *The Oath Keepers Data Leak: Unmasking Extremism in Public Life*, ADL, Sept. 6, 2022, <https://www.adl.org/resources/report/oath-keepers-data-leak-unmasking-extremism-public-life>.

¹¹⁸ *Leader of Oath Keepers and Oath Keepers Member Found Guilty of Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, U.S. Dep’t of Justice, Nov. 29, 2022, <https://www.justice.gov/opa/pr/leader-oath-keepers-and-oath-keepers-member-found-guilty-seditious-conspiracy-and-other>; *Four Oath Keepers Found Guilty of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. Dep’t of Justice, Jan. 23, 2023, <https://www.justice.gov/opa/pr/four-oath-keepers-found-guilty-seditious-conspiracy-related-us-capitol-breach>; *Six Additional Oath Keepers Members and Affiliates Found Guilty of Charges Related to Capitol Breach*, U.S. Dep’t of Justice, Mar. 21, 2023, <https://www.justice.gov/opa/pr/six-additional-oath-keepers-members-and-affiliates-found-guilty-charges-related-capitol>.

enhancement for terrorism.¹¹⁹

195. The Three Percenters are another violent militia that viewed President Trump’s December 19th tweet as a call to arms. Jan. 6th Report at 521. Like the Proud Boys and Oath Keepers, the Three Percenters have a nationwide presence and are active in Colorado.¹²⁰

196. Three Percenters across the country immediately began planning for violence after Trump’s “be wild” tweet, which tapped into a well of anti-government extremism already prevalent among the group’s members. *Id.* at 521–22.

197. Robert Gieswein, a Coloradan affiliated with the Three Percenters who was among the first to breach the Capitol building on January 6th, said he came to Washington, D.C. “to keep President Trump in.” *Id.* at 56. He later pleaded guilty to two felony counts for assaulting police officers with an aerosol irritant.¹²¹

198. Lucas Denney, a Three Percenter from Texas who later pleaded guilty to assaulting officers on January 6th, repeatedly cited Trump’s December 19th tweet. On December 21st, he told a fellow Three Percenter “Trump himself is calling for a big protest in DC on January 6th. I’m not going to miss this one.” Jan. 6th Report at 56. In a December 30th Facebook message, he wrote, “Trump has called this himself. For everyone to come. It’s the day the electoral college is suppose [sic] to be certified by congress to officially elect Biden. But, Pence is in charge of this and he’s going to throw out all the votes from States that were proved to have fraud. ... That’s why he’s called this rally for support. ... Trump will stay President.” *Id.* at 522.

199. Numerous Three Percenters used President Trump’s “will be wild” tweet as a recruitment tool to encourage others to answer Trump’s call. *Id.* at 524. In late December, the Three Percenters Original issued a letter to its members announcing “this organization will be answering that call!” *Id.*

200. The Three Percenters coordinated with the Proud Boys, Oath Keepers, and other

¹¹⁹ *Court Sentences Two Oath Keepers Leaders to 18 Years in Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, U.S. Dep’t of Justice, May 25, 2023, <https://www.justice.gov/usao-dc/pr/court-sentences-two-oath-keepers-leaders-18-years-prison-seditious-conspiracy-and-other>.

¹²⁰ Elise Schmelzer, “Aggressive” rise of Colorado’s extremist militia groups follow long history in state, Lamar Ledger, Jan. 24, 2021, <https://www.lamarledger.com/2021/01/24/colorado-militia-three-percenter/>.

¹²¹ *Colorado Man Pleads Guilty to Felony Charges For Actions During Jan. 6 Capitol Breach*, U.S. Attorney’s Office for the Dist. of Columbia, Mar. 6, 2023, <https://www.justice.gov/usao-dc/pr/colorado-man-pleads-guilty-felony-charges-actions-during-jan-6-capitol-breach>.

militia groups both before and on January 6th. They used Zello (a walkie-talkie app) to share intelligence after President Trump’s December 19th tweet and while in Washington, D.C. on January 6th. *Id.* at 525.

B. Trump propels the “Stop the Steal” movement and cross-country rallies in the leadup to January 6th.

201. Violent extremists were not the only ones electrified by Trump’s promise of a “wild” protest on January 6th. The “Stop the Steal” movement—a coalition of rally organizers, far-right provocateurs, and Trump allies who helped him amplify the lie of a “stolen” election—also acted swiftly to answer the President’s call. That coalition helped to mobilize thousands of Trump supporters to form a violent mob in Washington, D.C. on January 6th to do exactly what their deceptive slogan promised: “Stop the Steal.”

1. Stop the Steal’s origins and activities prior to Trump’s December 19th “will be wild” tweet.

202. “Stop the Steal” is a phrase originally coined by longtime Trump political advisor Roger Stone during the 2016 election to dispute the election results if Trump lost. Jan. 6th Report at 502. When Trump won, the phrase went dormant. *Id.* On November 5, 2020, when the failure of Trump’s re-election bid seemed imminent, Stone told associates he planned to reconstitute “Stop the Steal.” *Id.*

203. Ali Alexander, a Stone ally, quickly organized a new “Stop the Steal” campaign, establishing Stop the Steal, LLC, in Alabama on November 10, 2020. *Id.* at 503. Other key players in the coalition included Alex Jones, the conspiracy theorist and host of *InfoWars*; Nick Fuentes, leader of the white nationalist group Groypers; and Amy and Kylie Kremer, pro-Trump rally organizers and founders of Women for America First. *Id.* at 503, 530.

204. Between Election Day 2020 and January 6th, Stop the Steal organizers held dozens of rallies around the country, including in Colorado, inflaming Trump supporters with election disinformation and recruiting them to travel to Washington, D.C. for January 6th. *Id.* at 530.¹²² The rallies brought together many groups, including violent extremists such as the Proud Boys, Oath Keepers, and Three Percenters; QAnon conspiracy theorists; white nationalists; and

¹²² See Amber Jo Cooper, Kate Singh, and Courtney Fromm, *Trump supporters gather for ‘Stop the Steal’ rally in Colorado Springs*, Fox 21, Nov. 7, 2020, <https://www.fox21news.com/top-stories/trump-supporters-gather-for-stop-the-steal-rally-in-colorado-springs/>; David Mullen, *Pro-Trump demonstrators take the streets on Saturday to protest the election*, Colorado Politics, Nov. 28, 2020, https://www.coloradopolitics.com/2020-election/pro-trump-demonstrators-take-the-streets-on-saturday-to-protest-the-election/article_91381461-e957-540e-a206-8317bd01fa2d.html.

anti-vaccine activists. Jan. 6th Report at 502–07. While these groups had differing goals and ideologies, their common denominator was support for President Trump and his lie of a stolen election.

205. Trump adviser Roger Stone served as a link between several of these groups. *Id.* at 517–19. The Oath Keepers provided security for Stone at Stop the Steal rallies, and Proud Boys leaders had long-standing relationships with Stone. *Id.* Stone maintained a chat group on the encrypted messaging app Signal called “F.O.S.” (or Friends of Stone) that included Ali Alexander, Enrique Tarrío, and Stewart Rhodes, in which they coordinated on Stop the Steal strategy and events between the election and January 6th. *Id.* at 519.

206. The state-level Stop the Steal rallies built critical momentum for January 6th. Far-right extremists protested at or inside state capitols or other government buildings at least 49 times after the 2020 election through January 6th. *Id.* at 503. Some participants in these events would later join Trump’s mob in attacking the U.S. Capitol on January 6th. *Id.*

207. Previewing the mob’s tactics on January 6th, some Stop the Steal events focused on intimidating government officials to overturn the election results in their states. This was the case in Georgia, a focal point of President Trump’s election subversion efforts.

208. Between November 18 and 21, 2020, Stop the Steal participants gathered outside of the Georgia state capitol and the governor’s mansion, including for armed protests. *Id.* at 504. Leading Stop the Steal proponents—including Ali Alexander, Roger Stone, Alex Jones, Nick Fuentes, and members of the Proud Boys and Oath Keepers—used inflammatory rhetoric and sought to intimidate lawmakers to overturn the election results in Georgia, which was required to certify Biden’s victory by the end of that week. *Id.* at 505. Alexander exhorted supporters to “storm the [state] capitol” and vowed “we’ll light the whole shit on fire.” *Id.* at 504–05.

209. These same Stop the Steal leaders joined two “Million MAGA Marches” in Washington, D.C. on November 14th and December 12th. *Id.* at 505. Tens of thousands of Trump supporters attended the events, with protests focused on the Supreme Court building.¹²³ At that time, the Court was considering long-shot election challenges by Trump allies. Both the November 14th and December 12th events turned violent at night.¹²⁴

¹²³ Written Testimony of USCP Former Chief of Police Steven A. Sund, Staff Rep. of S. Comm. on Homeland Sec. & Govt’l Affs. & S. Comm. on Rules & Admin., at 2, Feb. 23, 2021, https://www.rules.senate.gov/imo/media/doc/Testimony_Sund.pdf.

¹²⁴ Marissa J. Lang, et al., *After thousands of Trump supporters rally in D.C., violence erupts when night falls*, Washington Post, Nov. 15, 2020, <https://www.washingtonpost.com/dc-md-va/2020/11/14/million-maga-march-dc-protests/>; Tom Jackman, et al., *Proud Boys sparked clashes during pro-Trump rally, D.C. officials say*, Washington Post, Dec. 14, 2020,

210. Many speakers at the November 14th and December 12th Stop the Steal events inflamed crowds and used violent rhetoric, often directed at government offices and officers.

211. At the November 14th Million MAGA March, Nick Fuentes called for President Trump to rule for life and urged followers to “storm every State capitol until January 20, 2021, until President Trump is inaugurated for 4 more years.” *Id.* at 520.

212. The December 12th Million MAGA March coincided with the Jericho March, a Christian nationalist rally named after the biblical battle of Jericho. *Id.* In that story, “God orders his followers to march around the city of Jericho” and then “brings the walls down and orders his followers to violently sack the defenseless city ... and murder every living being” within.¹²⁵ The Jericho March co-founder said God wanted Americans to hold a similar march around the “spiritual walls of this country”—that is, the Capitol, the Supreme Court, and other government buildings in Washington.¹²⁶

213. At the December 12th Jericho March, Stewart Rhodes urged President Trump to invoke the Insurrection Act and warned that, if he did not, they would be forced to wage “a much more desperate [and] much more bloody war.” *Id.* at 505. Alex Jones vowed, “Joe Biden will be removed, one way or another!” *Id.*

214. Meanwhile, President Trump directed the December 12th rallygoers’ anger toward the Supreme Court. A day earlier, the Court summarily dismissed a frivolous election challenge filed by the State of Texas, *see Texas*, 141 S. Ct. 1230, which President Trump had touted as a “very strong” vehicle for overturning the election results.¹²⁷ Trump had publicly lobbied the Court to “show[] great Wisdom and Courage”¹²⁸ by taking the case and “sav[ing] our

https://www.washingtonpost.com/local/public-safety/trump-rally-violence-proud-boys/2020/12/14/bf2f5826-3e26-11eb-8bc0-ae155bee4aff_story.html.

¹²⁵ Written Testimony of Andrew L. Seidel, *Christian Nationalism and the Capitol Insurrection*, January 6th Select Committee, App. A at 3, Mar. 18, 2022, <https://www.govinfo.gov/content/pkg/GPO-J6-DOC-CTRL0000062431/pdf/GPO-J6-DOC-CTRL0000062431.pdf>.

¹²⁶ *Id.*

¹²⁷ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 9, 2020, <https://twitter.com/realDonaldTrump/status/1336666810742149120?s=20>.

¹²⁸ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 11, 2020, <https://twitter.com/realDonaldTrump/status/1337494507756072961?s=20>.

Country from the greatest Election abuse in the history of the United States”¹²⁹—echoing his later pressure campaign on Vice President Pence to show “courage” on January 6th.

215. After the Supreme Court dismissed Texas’s case, President Trump assailed the Court on Twitter throughout December 11th and 12th, including after he knew thousands of his supporters were gathering in Washington for the second Million MAGA March. Jan. 6th Report at 505.

216. At 11:50 p.m. on December 11th, Trump wrote “The Supreme Court really let us down. No Wisdom, No Courage!”¹³⁰ At 11:04 a.m. on December 12th, he added “[t]he Supreme Court had ZERO interest in the merits of the greatest voter fraud ever perpetrated on the United States of America.”¹³¹ He sent numerous tweets critical of the Court that day.

217. Following Trump’s tweets on December 12th, the Stop the Steal coalition led a march on the Supreme Court. Jan. 6th Report at 505. Amassed on the Court’s front steps, the crowd chanted “Stop the Steal!”; “1776!”; “Our revolution!”; and “The fight has just begun!!” *Id.* That night, the Proud Boys instigated violence in downtown Washington.¹³²

218. President Trump made sure the Million MAGA March attendees knew he personally endorsed their mission to “Stop the Steal.” At the November 14th event, he drove through the crowd in his presidential motorcade, waving to them.¹³³ On the morning of December 12th, he tweeted: “Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn’t know about this, but I’ll be seeing them! #MAGA.”¹³⁴ Later that day, he flew

¹²⁹ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 10, 2020, <https://twitter.com/realDonaldTrump/status/1337040387349893121?s=20>.

¹³⁰ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 11, 2020, <https://twitter.com/realDonaldTrump/status/1337620892139081728?s=20>.

¹³¹ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 12, 2020, <https://twitter.com/realDonaldTrump/status/1337790419875352576?s=20>.

¹³² Tom Jackman, et al., *Proud Boys sparked clashes during pro-Trump rally, D.C. officials say*, Washington Post, Dec. 14, 2020, https://www.washingtonpost.com/local/public-safety/trump-rally-violence-proud-boys/2020/12/14/bf2f5826-3e26-11eb-8bc0-ae155bee4aff_story.html.

¹³³ *Donald Trump waves to supporters at ‘Million MAGA March’ in DC*, USA Today, Nov. 14, 2020, <https://www.usatoday.com/videos/news/nation/2020/11/14/donald-trump-waves-supporters-million-maga-march-dc/6294751002/>.

¹³⁴ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 12, 2020, <https://twitter.com/realDonaldTrump/status/1337774011376340992>.

over rallygoers in Marine One and then tweeted a video of the crowd’s reaction on the ground.¹³⁵

2. Trump’s December 19th “will be wild” tweet focuses the Stop the Steal coalition’s efforts on Congress’s January 6th proceedings.

219. President Trump’s December 19th “will be wild” tweet further galvanized the burgeoning Stop the Steal movement and focused their nationwide efforts on a single date and location: January 6th in Washington, D.C. Prior to that tweet, the Stop the Steal coalition was not planning any large-scale demonstration in Washington for January 6th. But after Trump’s December 19th tweet, Stop the Steal rally planners immediately set out to do two things: mobilize Trump supporters around the country to travel to Washington for January 6th, and prepare for a “wild” rally to coincide with the joint session of Congress.

220. Ali Alexander, founder of Stop the Steal, LLC, quickly launched a new website invoking the President’s tweet, “WildProtest.com.” Jan. 6th Report at 530. The site advertised planned January 6th events under a banner that read: “President Trump Wants You in DC January 6.” *Id.*

221. Alex Jones devoted much of his December 20th *InfoWars* show to Trump’s “will be wild” announcement, telling his audience: “[Trump’s] calling you, he needs your help, we need your help,” “we need 10 million people there.” *Id.* at 506. *InfoWars* co-host Matt Bracken urged viewers to “occupy[] the entire area” and “if necessary storm[] right into the Capitol.” *Id.* at 507. He also previewed the strategy—successfully deployed on January 6th—of using the mob itself as a weapon: “If you have enough people, you can push down any kind of fence or a wall.” *Id.*

222. Women for America First (“WFAF”), leading pro-Trump rally organizers, moved to secure a rally permit for January 6th mere hours after President Trump’s “will be wild” tweet. *Id.* at 530. On December 19th, WFAF co-founder Kylie Kremer amplified the President’s call on Twitter: “The calvary [sic] is coming, President! JANUARY 6th | Washington, DC TrumpMarch.com #MarchForTrump #StopTheSteal.” *Id.* On January 1st, President Trump retweeted Kremer’s December 19th “calvary” tweet, stating “A great honor!”¹³⁶ WFAF later hosted the Stop the Steal rally on the Ellipse where President Trump directed the crowd to march on the Capitol. *Id.*

223. From December 27th through January 6th, WFAF led a cross-country bus tour in

¹³⁵ Donald J. Trump (@realDonaldTrump), Twitter, Dec. 12, 2020, <https://twitter.com/realDonaldTrump/status/1337833603309465600?s=20>.

¹³⁶ Donald J. Trump (@realDonaldTrump), Twitter, Jan. 1, 2021, <https://twitter.com/realDonaldTrump/status/1345106078141394944>.

which speakers inflamed rallygoers with election lies and urged them to answer President Trump’s call to travel to Washington, D.C. and “apply[] pressure to members of Congress to contest the electoral college.”¹³⁷ A website advertising the event prominently displayed Trump’s “will be wild” tweet and stated “THE PRESIDENT IS CALLING ON US TO COME BACK TO WASHINGTON ON JANUARY 6TH FOR A BIG PROTEST - ‘BE THERE, WILL BE WILD.’”

224. WFAF’s nationwide tour traversed the southern half of the United States and ended in Washington, D.C., as shown in the map below:



¹³⁷ Women for America First, *March for Trump Bus Tour*, [trumpmarch.com](https://web.archive.org/web/20201226001527/https://trumpmarch.com/), (archived on Dec. 26, 2020).

225. Couy Griffin—the former county commissioner whom a New Mexico state court removed under Section 3 of the Fourteenth Amendment for his role in the January 6th insurrection—was a “featured speaker” on WFAF’s “multi-city bus tour.” *Griffin*, 2022 WL 4295619, at *5, *20. On this tour, “Mr. Griffin urged crowds to join the ‘war’ and ‘battle’ in ‘the streets’ of Washington, D.C. on January 6 to stop certification of the election and the peaceful transfer of power.” *Id.* at *20. He told one crowd “the reason why I’m going to Washington D.C. is because my president called me there and I’m gonna be there,” and he implored them to do the same. *Id.* at *6. The New Mexico court found that these “pre-January 6 mob mobilization and incitement efforts by Mr. Griffin and others helped make the insurrection possible.” *Id.* at *20.

226. WFAF secured a multimillion dollar budget from Publix supermarket heiress Julie Fancelli to “get as many people [to Washington] as possible.” Jan. 6th Report at 531–32. The budget allocated \$500,000 to a busing program and centralized ad campaign to promote the event. *Id.* at 532. Caroline Wren, a Trump fundraiser enlisted by WFAF coordinated with Stop the Steal leader Ali Alexander on paying for charter buses. *Id.* In a December 29th tweet, Alexander announced that “new charter buses to bring people FOR FREE to #JAN6 #STOPTHESTEAL for President Trump,” closing the tweet with “STAND BACK & STAND BY!”—a reference to Trump’s directive to the Proud Boys. *Id.* at 532.

227. By late December, the White House took on a direct role in coordinating the January 6th Stop the Steal rally. *Id.* at 533. President Trump participated in selecting the speaker lineup, *id.* at 536, and Trump’s campaign and joint fundraising committees made direct payments of \$3.5 million to rally organizers.¹³⁸ White House staff and Stop the Steal organizers understood that President Trump planned to speak at the rally and direct his supporters to march to the Capitol at the end of his speech. Jan. 6th Report at 533. Trump wanted a crowd at the Capitol to force Congress to stop the electoral college certification and send it back to the states. *Id.*

228. On January 4th, during an internal meeting, Trump also indicated to staffers his desire to march to the Capitol personally—and to summon 10,000 National Guardsmen, not to protect the Capitol from any potential violence by the mob he was summoning, but to protect Trump himself from supposed threats by “left-wing counter-protestors.” *Id.* at 233–34.

229. On January 5th, the Stop the Steal coalition hosted rallies in front of the U.S. Capitol, the Supreme Court, Freedom Plaza, and other prominent locations in downtown Washington, D.C. With the election certification looming, the tone at the rallies became increasingly desperate and extreme. Speakers openly called for “war,” “revolution,” and “battle” and led chants of “1776,” a reference to the Revolutionary War.

¹³⁸ Anna Massoglia, *Trump’s political operation paid more than \$3.5 million to Jan. 6 organizers*, Open Secrets, Feb. 10, 2021, <https://www.opensecrets.org/news/2021/02/jan-6-protests-trump-operation-paid-3p5mil/>.

230. At a rally hosted by Virginia Women for Trump in front of the Supreme Court, Ali Alexander said “we are here to stop a coup that’s going on in our country. It’s happening in this building behind me [points to the Supreme Court]. These cowards think that they don’t want to destroy norms. They’ve already been destroyed... this is our country one way or another. One way or another, we outnumber them.”¹³⁹ Alexander then led the crowd in chanting “1776!” and “Stop the Steal!”¹⁴⁰ Another speaker referred to an impending “revolution” on January 6th.¹⁴¹

231. At the same rally, members of a Three Percenter-linked group told the crowd, “We are at war,” promised to “fight” and “bleed,” and vowed that “patriot[s]” would “not return to our peaceful way of life until this election is made right.” Jan. 6th Report at 537.

232. At a separate rally in front of the U.S. Capitol, Alexander told the crowd “We must rebel. I’m not even sure if I’m going to leave D.C. We might make this ‘Fort Trump,’ right?” Jan. 6th Report at 537. At a rally that evening, Alexander said “1776 is always an option.” *Id.* at 537–38.

233. That evening at 5:05 p.m., Trump tweeted that he could “hear” his supporters “from the Oval Office,” adding that “Our Country has had enough, they won’t take it anymore!”¹⁴²

234. In another tweet sent minutes later, Trump tagged Republican congressional leadership and previewed the mob intimidation they would face the next day: “I hope the Democrats, and even more importantly, the weak and ineffective RINO section of the Republican Party, are looking at the thousands of people pouring into D.C. They won’t stand for a landslide election victory to be stolen. @senatemajldr @JohnCornyn @SenJohnThune.”¹⁴³

235. At 5:43 p.m., President Trump tweeted a final advertisement for his January 6th rally, stating, “I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at

¹³⁹ *Virginia Women for Trump rally at Supreme Court*, Feb. 26, 2021, <https://muse.ai/v/5LpNJhz-Virginia-Women-for-Trump-rally-at-Supreme-Court>.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Donald J. Trump (@realDonaldTrump), Jan. 5, 2021, <https://twitter.com/realDonaldTrump/status/1346578706437963777?s=20>.

¹⁴³ Donald J. Trump (@realDonaldTrump), Jan. 5, 2021, <https://twitter.com/realDonaldTrump/status/1346580318745206785>.

11AM Eastern. Arrive early – doors open at 7AM Eastern. BIG CROWDS!”¹⁴⁴

236. That evening, President Trump acknowledged to White House staff that his supporters would be “fired up” and “angry” the next day because they believed the election was stolen. Jan. 6th Report at 539. Trump knew they were angry that night because he could hear them from the Oval Office. *Id.* But this was not news to Trump: he knew well before January 6th that his supporters were coming to Washington angry and prepared for violence.

C. Credible threats of violence were widely circulated ahead of January 6th, including to the White House.

237. Federal agencies identified significant threats of violence ahead of January 6th, including threats to storm the U.S. Capitol and kill elected officials. Such threats were made openly online and widely reported in the press. President Trump continued to urge his supporters to come to Washington, D.C. even after these threats.

238. From December 1, 2020 through January 6, 2021, seven federal agencies—including Executive Branch agencies that President Trump oversaw—developed 27 threat products warning of potential violence in Washington, D.C. on January 6th.¹⁴⁵ Agencies relayed some of these threats to the White House and the Secret Service. Jan. 6th Report at 63.

239. As the nation’s “Commander-in-Chief and Chief Law Enforcement Officer . . . , President Trump had control over the sharing of any intelligence concerning a potential riot” on January 6th. *Trump v. Thompson*, 20 F.4th 10, 42 (D.C. Cir. 2021), *cert. denied*, 142 S. Ct. 1350 (2022). President Trump routinely received oral briefings from White House and Secret Service officials on threats of potential violence at his own speaking events and at demonstrations in Washington, D.C.

240. Each agency threat product concerned Congress’s counting of electoral votes, with some predicting a violent assault on the U.S. Capitol.¹⁴⁶ Some noted that January 6th attendees planned to use actual and improvised weapons, including firearms, explosive devices,

¹⁴⁴ Donald J. Trump (@realDonaldTrump), Jan. 5, 2021, <https://twitter.com/realDonaldTrump/status/1346588064026685443>.

¹⁴⁵ U.S. Gov’t Accountability Off., *Capitol Attack: Federal Agencies Identified Some Threats, But Did Not Fully Process And Share Information Prior to January 6, 2021*, GAO-23-106625, at 24, Feb. 2023, <https://www.gao.gov/assets/gao-23-106625.pdf>.

¹⁴⁶ U.S. Gov’t Accountability Off., *Capitol Attack: Federal Agencies’ Use of Open Source Data and Related Threat Products Prior to January 6, 2021*, GAO-22-105963, at 21–25, May 2022, <https://www.gao.gov/assets/gao-22-105963.pdf>.

chemical weapons and irritants, knives, baseball bats, and fireworks.¹⁴⁷ All seven agencies issued threat products indicating that domestic violent extremists or militia groups planned for violence on January 6th.¹⁴⁸

241. For example, a December 22nd threat assessment by the U.S. Postal Inspection Service found a high potential for individuals to incite civil unrest on January 6th, noting a threat on the social media site Parler urging others to “take up your arms” and “Hang EVERY TRAITOR ON JAN 6Th! [sic]”¹⁴⁹

242. A December 30th intelligence brief by the Secret Service’s Protective Intelligence & Assessment Division, titled “Wild Protest,” highlighted that Stop the Steal rally promoters had adopted the President’s December 19th “will be wild” tweet as a tagline, marketing the January 6th rally as the “Wild Protest” and “widely us[ing]” the “hashtag #WildProtest to discuss and promote the event.”¹⁵⁰ The brief added that the hashtags “#WeAreTheStorm, #1[7]76Rebel, #OccupyCapitols have gained attention,” and that “President Trump supporters have proposed a movement to occupy Capitol Hill.”¹⁵¹

243. A January 3rd special event assessment by the Capitol Police noted that Trump supporters saw January 6th as their last opportunity to overturn the election results and predicted that their desperation could lead a violent attack on Congress. Jan. 6th Report at 696.¹⁵²

244. A January 5th situational information report from the FBI’s Norfolk Field Office, titled “Potential for Violence in Washington, D.C. Area in Connection with Planned ‘StopTheSteal’ Protest on 6 January 2021,” identified “specific calls for violence” online, including one that read:

Be ready to fight. Congress needs to hear glass breaking, doors being kicked in, and blood from their BLM and Pantifa slave soldiers being spilled. Get violent. ... stop calling this a march, or rally, or a protest. Go there ready for war. We get our

¹⁴⁷ *Id.* at 22–23.

¹⁴⁸ *Id.* at 23.

¹⁴⁹ *Id.* at 23–24.

¹⁵⁰ U.S. Secret Service, Protective Intelligence Brief, *Wild Protest*, at 1, Dec. 30, 2020, <https://www.govinfo.gov/content/pkg/GPO-J6-DOC-CTRL0000101135.0001/pdf/GPO-J6-DOC-CTRL0000101135.0001.pdf>.

¹⁵¹ *Id.* at 3.

¹⁵² *Id.*

President or we die. NOTHING else will achieve this goal.¹⁵³

245. The Secret Service received many indications of potential violence on January 6th. On December 24th, the agency received a compilation of threatening social media posts: one urged protesters to “march into the chambers”; another highlighted President Trump’s “will be wild” tweet and said Trump “can’t exactly openly tell you to revolt” and that this was “the closest he’ll ever get”; and others construed the President’s tweet as encouraging supporters to come to Washington “armed” or otherwise prepared for violence. Jan. 6th Report at 695.

246. On December 26th, the Secret Service received a tip that the Proud Boys were planning to have a “large enough group to march into DC armed and will outnumber the police so they can’t be stopped.” *Id.* “Their plan is to literally kill people,” the informant warned. *Id.*

247. On December 29th, Secret Service agents forwarded to Capitol Police warnings that pro-Trump demonstrators were being urged to “occupy federal building[s],” “march into the capital building [sic] and make them quake in their shoes by our mere presence.” *Id.* at 695–96.

248. Senior Trump administration officials anticipated violence on January 6th. Acting Deputy Attorney General Richard Donoghue testified that DOJ leadership “knew that if you have tens of thousands of very upset people showing up in Washington, DC, that there was potential for violence.” *Id.* at 61. He added: “Everyone knew that there was a danger of violence. Everyone knew that the Capitol and other facilities were potential targets.” *Id.* at 698.

249. Chairman of the Joint Chiefs of Staff General Mark Milley similarly said that “everybody knew” during interagency January 6th preparation calls that “there was a probability, more than a possibility, a probability of violence.” *Id.* Deputy Secretary of Defense David Norquist said, “the greatest threat is a direct assault on the Capitol.” *Id.* at 61.

250. Director of DHS Special Operations Christopher Tomney recalled “broad discussion/acknowledgment that folks were calling for bringing weapons into the city on that day ... [N]o one disagreed that there was going to be the high likelihood that there could be some violence on January 6.” *Id.* at 698.

251. Director of National Intelligence John Ratcliffe expressed concern to White House aide Cassidy Hutchinson that events on January 6th could spiral out of control and potentially be dangerous. *Id.* at 65.

¹⁵³ FBI, Norfolk Division, Situational Information Report, Jan. 5, 2021, <https://www.govinfo.gov/content/pkg/GPO-J6-DOC-CTRL0000001532.0001/pdf/GPO-J6-DOC-CTRL0000001532.0001.pdf>.

252. On January 2nd, Chief of Staff Mark Meadows told Hutchinson that “things might get real, real bad on the 6th.” *Id.* at 64.

253. White House Deputy Chief of Staff Anthony Ornato had access to intelligence suggesting violence at the Capitol on January 6th, and it was his job to relay such threats to Meadows and President Trump. *Id.* at 68.

254. Trump White House and campaign staff posted, amplified, and closely monitored content on far-right websites such as TheDonald.win, where users openly discussed attacking the Capitol and other violence on January 6th. *Id.* at 527-29. On December 30th, Trump campaign Senior Advisor Jason Miller sent Meadows a text boasting “I got the base FIRED UP,” linking to a post on TheDonald.win in which, in response to Miller’s post, users stated that “gallows don’t require electricity” and millions will “bust in through the doors if they try to stop Pence from declaring Trump the winner.” *Id.* at 529.

255. Trump’s staff routinely made him aware of this type of content from far-right websites and social media posted by his most extreme supporters, whom President Trump and White House Social Media Director Dan Scavino called “basement dwellers.”

256. DOJ attorney Jeffrey Clark and Trump advisor John Eastman said violence may be necessary to keep Trump in office. On January 3rd, a Deputy White House Counsel told Clark there would be “riots in every major city in the United States” if Trump remained in office, to which Clark responded, “that’s why there’s an Insurrection Act,” a statute that allows the president to deploy the military within the United States and use it against Americans. Trump Federal D.C. Indictment ¶ 81. On January 4th, after a senior White House advisor told Eastman that his plan would “cause riots in the streets,” Eastman responded that there had been points in the nation’s history where violence was necessary to protect the republic. *Id.* ¶ 94.

257. Top White House aides Eric Herschmann and Hope Hicks urged President Trump to make a preemptive public statement calling for no violence on January 6th; he never did. Jan. 6th Report at 578.

258. By January 6th, the stage was set for President Trump’s “wild” protest. Tens of thousands of his supporters had descended on the nation’s capital, angry and prepared for battle. Heeding the President’s call, they came to “Stop the Steal” and keep Trump in power by any means necessary.

VI. A violent mob summoned, incited, and aided by President Trump attacks the U.S. Capitol to stop the lawful transfer of presidential power.

A. Trump continues to publicly pressure Pence early on January 6th.

259. Early on January 6th and throughout the day, Trump continued to tell his supporters that Vice President Pence was the last hope for overturning the election. He did so even though Pence told the President “[m]any times” he would not unlawfully reject the certified electors from any state. Jan. 6th Report at 456.

260. At 1:00 a.m. on January 6th, Trump tweeted, “If Vice President @Mike_Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!”¹⁵⁴

261. At 8:17 a.m., Trump tweeted, “All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!”¹⁵⁵

262. Later that morning, Trump asked speechwriters to revise his rally speech to call out Pence by name. Jan. 6th Report at 581. The line was later removed at the request of White House legal staff. *Id.* at 582.

263. Around 11:20 a.m., President Trump and Vice President Pence had a heated phone conversation in which Pence again refused to overturn the election results. *Id.* at 457–58. Trump called Pence a “wimp,” said he “was not tough enough,” and that he “made the wrong decision” by choosing Pence as his running mate. *Id.* at 458.

264. After that call, President Trump’s speechwriting team was instructed to “REINSERT THE MIKE PENCE LINES” in Trump’s speech. *Id.* at 583.

B. Trump’s mob assembles for his “Stop the Steal” rally, armed, angry, and prepared for violence.

265. In the early morning of January 6th, tens of thousands of Trump supporters began gathering at the Ellipse and the Washington Monument for the President’s speech and “wild” protest. Jan. 6th Report at 639.

¹⁵⁴ Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021, <https://twitter.com/realDonaldTrump/status/1346698217304584192>.

¹⁵⁵ Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021, <https://twitter.com/realDonaldTrump/status/1346808075626426371>.

266. The Secret Service set up magnetometers outside the Ellipse to screen for weapons and other contraband. Many rallygoers chose to remain outside to avoid the screening. *Id.* at 640.

267. From the approximately 28,000 rallygoers who went through security, the Secret Service confiscated hundreds of weapons and prohibited items, including 269 knives or blades, 242 canisters of pepper spray, 18 brass knuckles, 18 tasers, 6 pieces of body armor, 3 gas masks, 30 batons or blunt instruments, and 17 miscellaneous items like scissors, needles, or screwdrivers. *Id.* This was no ordinary political rally; the President’s supporters came ready for violence.

268. At 8:07 a.m., Secret Service agents reported to the agency’s Protective Intelligence Division that crowd members were “wearing ballistic helmets, body armor and carrying radio equipment and military grade backpacks.” *Id.*

269. Later that morning, rallygoers threatened National Park Service officers who tried to make arrests, forcing the officers to flee and lock themselves in a security box for safety. *Id.*

270. Men in combat fatigues brandished AR-15s in front of police officers near the National Mall, and officers detained a man with a rifle. *Id.* at 640–41.

271. Several January 6th criminal defendants have pleaded guilty or been convicted of carrying firearms on or near the Capitol grounds. *Id.* at 640–41. One man traveled to D.C. with multiple handguns and other firearms, hundreds of rounds of ammunition, large-capacity ammunition feeding devices, and 11 mason jars with ignitable ingredients for Molotov cocktails.¹⁵⁶ Another brought an AR-15 style rifle and a Smith & Wesson .40 caliber pistol to D.C. (the latter of which he brought to the Capitol grounds).¹⁵⁷ Another brought a Taurus revolver loaded with three shotgun shells and two hollow point bullets to the Capitol.¹⁵⁸ Another brought a 9-millimeter pistol loaded with 13 bullets, as well as a separate holster containing

¹⁵⁶ *Alabama Man Pleads Guilty to Firearms Offenses*, U.S. Dep’t of Justice, Nov. 12, 2021, <https://www.justice.gov/opa/pr/alabama-man-pleads-guilty-firearms-offenses>.

¹⁵⁷ *Texas Man Sentenced to 87 Months in Prison For Actions Related to Capitol Breach*, U.S. Attorney’s Office for the Dist. of Columbia, Aug. 1, 2022, <https://www.justice.gov/usao-dc/pr/texas-man-sentenced-prison-actions-related-capitol-breach>.

¹⁵⁸ *Indiana Man Pleads Guilty to Carrying a Gun and Assaulting Law Enforcement Officers in Jan. 6 Capitol Breach*, U.S. Attorney’s Office for the Dist. of Columbia, June 17, 2022, <https://www.justice.gov/usao-dc/pr/indiana-man-arrested-carrying-gun-and-assaulting-law-enforcement-jan-6-capitol-breach>.

another 12 rounds of ammunition.¹⁵⁹ Another brought a loaded 9-millimeter pistol.¹⁶⁰

272. Other January 6th assailants brought axes, tasers, cattle prods, bear spray, pepper spray, pitch forks, hockey sticks, and sharpened flag poles. Jan. 6th Report at 642.

273. Many, including those who brought firearms, traveled to Washington hoping to kill elected officials. Mark Mazza of Indiana told authorities that he intended to target House Speaker Nancy Pelosi and that “you’d be here for another reason” if he had found her inside the Capitol. *Id.* at 641. Texan Garrett Miller threatened to assassinate Congresswoman Alexandria Ocasio-Cortez. *Id.* at 642. Trevor Hallgren stated, “[t]here’s no escape Pelosi, Schumer, Nadler. We’re coming for you. ... Even you AOC. We’re coming to take you out. To pull you out by your hairs.” *Id.* And Texan Guy Reffitt stated on the morning of January 6th, “I just want to see Pelosi’s head hit every fucking stair on the way out. ... And Mitch McConnell too. Fuck em all.” *Id.* at 652.

274. The Proud Boys, who had been planning an attack since Trump’s December 19th “will be wild” tweet, made the tactical decision to march on the Capitol early, at 10:30 a.m. Jan. 6th Report at 642–43. Led by senior members Joseph Biggs, Ethan Nordean, and Zachary Rehl, about 200 to 300 Proud Boys arrived at the west side of the Capitol shortly after 11:00 a.m. *Id.* at 643–44. They walked the perimeter of the Capitol grounds and remained at nearby food trucks until shortly before 1:00 p.m., when they would lead the attack. *Id.* at 645.

¹⁵⁹ *Maryland Man Convicted of All Charges for Actions During Capitol Breach*, U.S. Attorney’s Office for the Dist. of Columbia, Apr. 20, 2023, <https://www.justice.gov/usao-dc/pr/maryland-man-convicted-all-charges-actions-during-capitol-breach>.

¹⁶⁰ *Missouri Man Pleads Guilty to Felony Charge for Actions During Jan. 6 Capitol Breach*, U.S. Attorney’s Office for the Dist. of Columbia, June 9, 2023, <https://www.justice.gov/usao-dc/pr/missouri-man-pleads-guilty-felony-charge-actions-during-jan-6-capitol-breach>.



Proud Boys gather on the Capitol's East Front

Photo by Jon Cherry/Getty Images

C. Knowing his supporters are armed and ready for violence, Trump directs them to march on the Capitol to “fight like hell” and “Stop the Steal.”

275. From a tent backstage at the Ellipse, President Trump looked out at the crowd of around 53,000 supporters and became enraged when he saw that about half of them refused to walk through magnetometers and be screened for weapons. Jan. 6th Report at 585.

276. Earlier that morning, Deputy Chief of Staff Ornato told Trump that the onlookers did not want to go through security screening because “[t]hey have weapons that they don’t want confiscated by the Secret Service.” *Id.*

277. Upon learning that his supporters refused to go through security because they were armed, Trump shouted to his advance team: “I don’t [fucking] care that they have weapons. They’re not here to hurt *me*. Take the [fucking] mags away. Let my people in. They can march to the Capitol from here. Take the [fucking] mags away.” *Id.*

278. Rudy Giuliani and John Eastman spoke before Trump, repeating their bogus election fraud claims with heightened fervor and desperation. Giuliani called for “trial by combat.” *Id.* at 460.

279. President Trump took the stage from noon until 1:10 p.m. *Id.* at 585, 587.

Building on months of inflammatory lies, Trump continued to falsely claim the election was stolen and that Vice President Pence had the power to keep him in office. He repeatedly targeted “weak Republicans” and “RINOs” in Congress.¹⁶¹ And he called out Vice President Pence by name eleven times, ad-libbing several lines not included in his written remarks:

- a. “I hope **Mike** is going to do the right thing. I hope so. I hope so. Because if **Mike Pence** does the right thing, we win the election”;
- b. “The states got defrauded ... Now they want to recertify. ... All **Vice President Pence** has to do is send it back to the states to recertify and we become president and you are the happiest people”;
- c. “I just spoke to **Mike**. I said: ‘**Mike**, that doesn’t take courage. What takes courage is to do nothing. That takes courage.’ And then we’re stuck with a president who lost the election by a lot and we have to live with that for four more years. We’re just not going to let that happen”;
- d. “And **Mike Pence** is going to have to come through for us, and if he doesn’t, that will be a, a sad day for our country because you’re sworn to uphold our Constitution”;
- e. “[Pennsylvania] want[s] to recertify. But the only way that can happen is if **Mike Pence** agrees to send it back. **Mike Pence** has to agree to send it back”;
- f. “And **Mike Pence**, I hope you’re going to stand up for the good of our Constitution and for the good of our country. And if you’re not, I’m going to be very disappointed in you. I will tell you right now. I’m not hearing good stories”; and
- g. “So I hope **Mike** has the courage to do what he has to do. And I hope he doesn’t listen to the RINOs and the stupid people that he’s listening to.”¹⁶²

¹⁶¹ *Transcript of Trump’s speech at rally before US Capitol riot*, Associated Press, Jan. 13, 2021, <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>.

¹⁶² *Id.* (emphases added).



Trump addresses tens of thousands of supporters before directing them to the Capitol
Photo by Robert Nickelsberg/Getty Images

280. Trump’s statements had the intended effect of producing substantial anger against Vice President Pence—anger the mob acted on that day. Jan. 6th Report at 37. During Trump’s speech, rallygoers could be heard shouting “storm the Capitol!” “invade the Capitol building!” and “take the Capitol!”¹⁶³

281. Knowing his supporters were angry and armed, President Trump used the word “fight” or variations of it 20 times during his Ellipse speech.¹⁶⁴ Nearly every mention was improvised: the word “fight” appears only once in a teleprompter draft of the speech.¹⁶⁵ Trump claimed, from the perch of the presidency, that the very existence of our country depended on his supporters’ willingness to fight: “And we *fight*. We *fight like hell*. And if you don’t *fight like*

¹⁶³ Dylan Stableford, *New video shows Trump rally crowd cheering call to ‘storm the Capitol’*, Yahoo News, Jan. 25, 2021, <https://www.yahoo.com/video/trump-jan-6-rally-crowd-storm-the-capitol-video-184828622.html>.

¹⁶⁴ *Transcript of Trump’s speech at rally before US Capitol riot*, Associated Press, Jan. 13, 2021, <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>.

¹⁶⁵ Jan. 6th Report at 584, 615 n.50; January 6th Select Committee, Documents on File with the Committee, (National Archives Production), 076P-R000007557_0001–34, <https://www.govinfo.gov/content/pkg/GPO-J6-DOC-CTRL0000082715/pdf/GPO-J6-DOC-CTRL0000082715.pdf>

hell, you're not going to have a country anymore.”¹⁶⁶

282. Trump also pushed them to display strength, stating “You’ll never take back our country with weakness. You have to show *strength* and you have to be *strong*. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated.”¹⁶⁷

283. President Trump insisted “[w]e must stop the steal” and stated repeatedly that “we can’t let” the election certification happen:

- a. “You will have an illegitimate president. ... *[W]e can’t let that happen*”;
- b. “*We can’t let this stuff happen*. We won’t have a country if it happens”;
- c. “And then we’re stuck with a president who lost the election by a lot and we have to live with that for four more years. *We’re just not going to let that happen*”;
- d. “They want to come in again and rip off our country. *Can’t let it happen*”; and
- e. “We will never give up, we will never concede. *It doesn’t happen*. You don’t concede when there’s theft involved.”¹⁶⁸

284. President Trump exhorted his supporters to march to the Capitol and claimed he would join them: “[A]fter this, we’re going to walk down, and I’ll be there with you, ... we’re going to walk down to the Capitol, and we’re going to cheer on our brave senators and congressmen and women, and we’re probably not going to be cheering so much for some of them,” he stated.¹⁶⁹ He repeated that call at the end of his speech, while again targeting “weak” Republicans: “[W]e’re going to walk down Pennsylvania Avenue. ... And we’re going to the Capitol, and we’re going to ... give our Republicans, the weak ones[,] ... the kind of pride and boldness that they need to take back our country. So let’s walk down Pennsylvania Avenue.”¹⁷⁰

¹⁶⁶ *Transcript of Trump’s speech at rally before US Capitol riot*, Associated Press, Jan. 13, 2021, <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27> (emphases added).

¹⁶⁷ *Id.* (emphasis added).

¹⁶⁸ *Id.* (emphases added).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

D. Trump’s mob breaches and seizes the United States Capitol, disrupting the peaceful transfer of power.



Trump’s mob attacks the Capitol

Photo by John Minchillo/AP Photo

1. The initial attack.

285. Around 12:53 p.m., toward the end of President Trump’s speech, the Proud Boys led the initial breach of the Capitol perimeter and created a path for the rest of the mob to follow. Jan. 6th Report at 645. A minute later, the mob pushed Capitol Police officers to the ground, removed fencing, and made their way toward the Capitol building. *Id.* at 646. The Proud Boys led the charge in removing the next layer of security barriers as others breached barricades surrounding the Capitol. *Id.*

286. Between 12:45 p.m. until shortly after 1:00 p.m., law enforcement responded to reports of pipe bombs at the Republican National Committee and Democratic National Committee headquarters.¹⁷¹ The bomb threats diverted law enforcement resources away from the Capitol. Jan. 6th Report at 708.

¹⁷¹ Staff Rep. of S. Comm. on Homeland Sec. & Govt’l Affs. & S. Comm. on Rules & Admin., *Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6*, 117th Cong., at 22–23, June 8, 2021, <https://www.rules.senate.gov/imo/media/doc/Jan%206%20HSGAC%20Rules%20Report.pdf> (“Capitol Attack Senate Report”).

287. By 12:58 p.m., the mob filled the lower West Terrace of the Capitol just below the inauguration stage that had been constructed for President-Elect Biden’s inauguration on January 20th. *Id.* at 646. Police contained the mob temporarily, but attendees from President Trump’s rally would soon add to the mob’s size and give them the momentum to overwhelm law enforcement. *Id.* at 647.

288. Meanwhile, just before 1:00 p.m., Vice President Pence released a “Dear Colleague” letter publicly rejecting Trump’s calls to overturn the election results. Jan. 6th Report at 462. Pence explained: “It is my considered judgment that my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not. . . . I do not believe that the Founders of our country intended to invest the Vice President with unilateral authority to decide which electoral votes should be counted during the Joint Session of Congress, and no Vice President in American history has ever asserted such authority.” *Id.*

289. News of Pence’s letter spread quickly. Ryan Nichols, who traveled from Texas and was later charged with eight felonies, live-streamed a diatribe stating, “I’m hearing that Pence just caved. . . . I’m telling you if Pence caved, we’re gonna drag motherfuckers through the streets.” *Id.* at 647. Oath Keeper Jessica Watkins, who traveled from Ohio, wrote to others in a Zello group that “‘100%’ of the Ellipse crowd was ‘marching on the Capitol’ because ‘it has spread like wildfire that Pence has betrayed us.’” *Id.* Watkins was later convicted of four felonies and sentenced to eight and a half years in prison for her role in the insurrection.¹⁷²

290. At 1:03 p.m., as police officers fought back the mob behind security barriers outside the Capitol, Vice President Pence gavelled in the joint session of Congress. *Capitol Attack Senate Report* at 23–24.

291. At 1:12 p.m., while the mob continued pushing toward the building, the two chambers separated and began debating objections to the certification of Arizona’s Electoral College votes. *Id.* at 24.

292. At 1:49 p.m., the D.C. Metropolitan Police Department declared a riot at the Capitol. Jan. 6th Report at 651. The mob overwhelmed and brutalized police officers, continued to breach barricades, climbed scaffolding, and ascended closer to the Capitol from multiple angles. *Id.* at 651–52.

¹⁷² *Two More Oath Keepers Members Sentenced on Felony Charges Related to U.S. Capitol Breach*, U.S. Atty.’s Off. for the Dist. of Columbia, May 26, 2023, <https://www.justice.gov/usao-dc/pr/two-more-oath-keepers-members-sentenced-felony-charges-related-us-capitol-breach>.

293. At 2:13 p.m., the Senate went into recess. *Capitol Attack* Senate Report at 25. Around that time, Vice President Pence was evacuated to his ceremonial Senate office and congressional leadership were evacuated to secure locations. January 6th Report at 664–65.

294. Also at 2:13 p.m., attackers breached the Capitol building, with Proud Boy Dominic Pezzola smashing a window on the Senate wing using a riot shield he stole from a police officer. *Id.* at 653. Others entered the window and opened doors from the inside, allowing more of the mob to enter the building. *Id.*

295. Members of extremist groups, white supremacists, neo-Nazis, and neo-Confederates were among the first to forcibly breach the Capitol. *Id.* at 653–55. Delaware man Kevin Seefried paraded a Confederate battle flag—a symbol of white supremacy and violent rebellion against the United States—through the halls of the Capitol building. *Id.* Seefried used the flag to threaten and jab Capitol Police Officer Eugene Goodman, a Black man.¹⁷³ Seefried was later convicted on five charges, including obstruction of an official proceeding, and sentenced to three years in prison.¹⁷⁴ Many others in Trump’s mob carried Confederate flags and battle flags from the Revolutionary War.



Kevin Seefried carries a Confederate Battle Flag inside the U.S. Capitol
Photo by Saul Loeb/Getty Images

Trump’s mob displays flags from the Civil War and Revolutionary War
Photo by Joseph Prezioso/Getty Images

¹⁷³ Daniel Barnes, *Man who carried a Confederate flag in the Capitol on Jan. 6 is sentenced to 3 years*, NBC News, Feb. 9, 2023, <https://www.nbcnews.com/politics/justice-department/kevin-seefried-confederate-flag-capitol-jan-6-sentenced-rcna69784>.

¹⁷⁴ *Id.*

296. Black police officers defending the Capitol faced a torrent of racial epithets. A crowd of around twenty people screamed at Capitol Police Officer Harry Dunn, “Boo! Fucking nigger!”¹⁷⁵ Another Black police officer was told, “Put your gun down and we’ll show you what kind of nigger you really are!”¹⁷⁶

297. At 2:18 p.m., the House went into recess as hundreds of attackers confronted Capitol Police officers inside the Capitol’s Crypt. *Id.* at 660.

298. At 2:30 p.m., the Senate was evacuated and senators were rushed to a more secure location. *Id.* at 665. Minutes earlier, the mob came within feet of the Senate chamber, but Officer Goodman successfully diverted them away.¹⁷⁷

299. At 2:38 p.m., Members of Congress on the House floor were evacuated and rushed to a more secure location. Jan. 6th Report at 665. But 28 Members remained trapped in the gallery as the mob roamed the halls surrounding the House chamber. *Id.* at 666. The Capitol Police emergency response team eventually cleared the hallways with long rifles and evacuated the remaining Members at 3:00 p.m. *Id.*

2. Knowing the attack was underway, President Trump pours fuel on the fire and endangers Vice President Pence’s life.

300. By 1:21 p.m., mere minutes after finishing his speech, President Trump was informed that the Capitol was under assault. Jan. 6th Report at 592. From then until 4:03 p.m., he sat in the presidential dining room and watched the attack on live television. *Id.* at 592–93. As explained *infra*, at no point on January 6th did President Trump contact his Cabinet or military leaders to marshal a defense of the Capitol and put down the insurrection. But he did act to exacerbate the violence.

301. President Trump had primed his supporters for violence by targeting Vice President Pence in his Ellipse speech. After Pence publicly rebuked Trump’s pressure tactics in his “Dear Colleague” letter and throughout the afternoon, the mob chanted: “Hang Mike Pence!”; “Bring him out. Bring out Pence.”; and referred to Pence as a “traitor.” *Id.* at 37–38.

¹⁷⁵ Written Statement of Harry A. Dunn, Private First Class, U.S. Capitol Police, Hearing Before the January 6th Select Committee, Jan. 27, 2021, <https://www.congress.gov/117/meeting/house/113969/witnesses/HHRG-117-IJ00-Wstate-DunnO-20210727.pdf>.

¹⁷⁶ *Id.*

¹⁷⁷ Kat Lonsdorf, et al., *A timeline of how the Jan. 6 attack unfolded — including who said what and when*, NPR, June 9, 2022, <https://www.npr.org/2022/01/05/1069977469/a-timeline-of-how-the-jan-6-attack-unfolded-including-who-said-what-and-when>.

302. At 2:24 p.m., when he knew the Capitol was under assault and that Vice President Pence would not carry out his demands, President Trump poured fuel on the fire. He tweeted: “Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!”¹⁷⁸



303. White House staff expected Trump’s tweet to incite further violence. Jan. 6th Report at 87–88. Deputy Press Secretary Sarah Matthews stated that “it was obvious that the situation at the Capitol was violent and escalating quickly,” that she knew “the impact [Trump’s] words have on his supporters,” and that “in that moment for [Trump] to tweet out the message about Mike Pence, it was him pouring gasoline on the fire and making it much worse.” *Id.*

304. Secret Service agents in the Protective Intelligence Division predicted the tweet was “probably not going to be good for Pence” and noted it garnered “over 24K likes in under 2 min[utes].” *Id.* at 597.

305. As anticipated, President Trump’s 2:24 p.m. tweet immediately caused the mob to surge both inside and outside the Capitol, intensifying the violence that Trump knew was underway. *Id.* at 38, 86. Minutes after the tweet, the mob broke through a security line of the D.C. Metropolitan Police Department, resulting in the first ever fighting withdrawal in that force’s 160-year history. *Id.* at 38.

306. One minute after the tweet, at 2:25 p.m., the Secret Service determined they could

¹⁷⁸ Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021, <https://web.archive.org/web/20210106192450/https://twitter.com/realdonaldtrump/status/1346900434540240897>.

no longer protect the Vice President in his ceremonial office and evacuated him and his family to a secure loading dock, where he remained for the next four and a half hours. *Id.* at 38–39, 466. The violent mob, which was calling for Pence’s murder, came within 40 feet of the Vice President as he was evacuated. *Id.* at 466.

307. Pence later recounted that Trump’s “reckless” tweet “endangered my family and all those serving at the Capitol.” *Id.* at 94.

3. Trump’s mob overwhelms and brutally attacks police officers defending the Capitol.

308. By 2:36 p.m., the mob had seized control of the Senate chamber and pushed past a line of Capitol Police officers guarding the House chamber. *Id.* at 661. The mob proceeded to breach the Capitol from other entry points, viciously assaulting and overwhelming police officers within and outside the building. *Id.*

309. Members of the mob attacked police officers with a variety of actual and improvised weapons and engaged them in hand-to-hand combat. *Id.* at 662. Officers were crushed in metal doors, attacked with tasers, shocked with cattle prods, sprayed with pepper spray, bludgeoned with flag poles and metal poles broken apart from security barricades, and beaten with their own stolen batons and riot shields. *Id.*

310. The mob’s size was their greatest weapon. *Griffin*, 2022 WL 4295619, at *8 (citing trial testimony of D.C. police officer Daniel Hodges). The thousands in the mob vastly outnumbered law enforcement by approximately 50 or 75 to 1. *Id.* Because of their sheer numbers and the chaos the mob created, police officers could not use their firearms, make arrests, or freely move around the Capitol grounds to successfully neutralize the threat. *Id.*

311. Some of the most brutal fighting happened in a tunnel on the Capitol’s West Terrace, where officers fought hand to hand for more than two hours to keep the mob out of the Capitol building. Jan. 6th Report at 662.



Trump's mob assaults police officers outside of the Capitol's West Terrace tunnel
Photo by Lev Radin/Getty Images

312. The mob formed a human battering ram, chanting “Heave! Ho!” as they coordinated their movement to break through the police line guarding the tunnel. *Id.* They crushed D.C. police officer Daniel Hodges in a metal door frame and, while he was trapped there, bashed in his face with his own baton.¹⁷⁹



Trump's mob crushes D.C. police officer Daniel Hodges in the Capitol's West Terrace tunnel

¹⁷⁹ Written Statement of Officer Daniel Hodges, Hearing Before the January 6th Select Committee, Jan. 27, 2021, <https://www.congress.gov/117/meeting/house/113969/witnesses/HHRG-117-IJ00-Wstate-HodgesO-20210727.pdf>.

313. D.C. police officer Michael Fanone was dragged into the crowd on the West Terrace, tased in the neck, beaten, and robbed, while members of the mob yelled: “Kill him!” “Get his gun!” and “Kill him with his own gun!” Jan. 6th Report at 663.



Trump's mob attacks D.C. police officer Michael Fanone on the Capitol's West Terrace

314. One of Officer Fanone’s attackers, Daniel Rodriguez, later told the FBI that he traveled to Washington because “Trump called us to DC ... he’s the commander in chief and the leader of the country, and ... I thought he was calling for help.” *Id.* at 663–64. Rodriguez was convicted of conspiracy and obstruction of an official proceeding, obstruction of justice, and assaulting a law enforcement officer with a deadly or dangerous weapon, and sentenced to more than 12 years in prison.¹⁸⁰

4. President Trump fails to defend the Capitol.

315. Between learning of violence at the Capitol at 1:21 p.m. and 4:03 p.m., President Trump took no action to defend the Capitol.

¹⁸⁰ *California Man Sentenced to Prison for Felony Charges, Including Conspiracy and Assaulting Police Officer During Capitol Breach*, U.S. Attorney’s Office for the Dist. of Columbia, June 21, 2023, <https://www.justice.gov/usao-dc/pr/california-man-sentenced-prison-felony-charges-including-conspiracy-and-assaulting-police>.

316. At no point on January 6th did President Trump contact top officials in his administration such as the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Attorney General, the Secretary of Homeland Security, or the FBI Director to ensure they were working to quell the violence. Jan. 6th Report at 94. He took no action to deploy the D.C. National Guard, which falls under the President’s direct command. *Id.* at 724. Nor did he contact Vice President Pence to check on his safety. *Id.* at 94.

317. Chairman of the Joint Chiefs of Staff General Mark Milley confirmed that President Trump did “[n]othing,” “[z]ero” to marshal a federal response to the assault on the Capitol. *Id.* at 578. Instead, it was Vice President Pence who issued “very explicit, very direct orders” to “get the [National] [G]uard down” to the Capitol, even though he lacked constitutional power to issue such orders. *Id.* Acting Secretary of Defense Christopher Miller likewise confirmed that Trump had no involvement—“none”—in “the Department of Defense efforts on January 6.”¹⁸¹

318. General Milley was struck by President Trump’s inaction:

You know, you’re the Commander in Chief. You’ve got an assault going on on the Capitol of the United States of America, and there’s nothing? No call? Nothing? Zero? ... [N]o attempt to call the Secretary of Defense? No attempt to call the Vice President of the United States of America, who’s down on the scene?

Jan. 6th Report at 578.

319. Instead of mounting a federal response to defend the Capitol, President Trump watched the attack on live television. He failed to act for nearly three hours as his mob ransacked the seat of American democracy, brutally assaulted police officers, and called for the murder of elected officials, including his own Vice President. *Id.* at 593.

320. President Trump’s inaction in the face of a violent assault on the Capitol by a mob of his supporters stood in stark contrast to his hyper-aggressive, militarized response to

¹⁸¹ Written Statement of Christopher C. Miller, *The Capitol Insurrection: Unexplained Delays and Unanswered Questions*, Hearing Before the H. Comm. on Oversight and Reform, 117th Cong. (2021), <https://www.justsecurity.org/wp-content/uploads/2021/12/january-6-clearinghouse-house-oversight-hearing-chris-christopher-testimony-may-2021.pdf>.

nationwide racial justice protests in 2020, including the forceful clearing of peaceful protesters from Lafayette Square in June 2020.¹⁸²

321. President Trump’s senior staff, family, and close allies repeatedly urged him to issue a statement instructing the mob to leave the Capitol, but he refused. Jan. 6th Report at 592–606.

322. Minutes after the mob breached the Capitol building at 2:13 p.m., White House Counsel Pat Cipollone told Chief of Staff Mark Meadows that “rioters have gotten to the Capitol” and that they needed to “go down and see the President now.” *Id.* at 595. Meadows responded: “He doesn’t want to do anything, Pat.” *Id.* at 595. Cipollone replied, “something needs to be done, or people are going to die and the blood’s going to be on your [fucking] hands.” *Id.*

323. President Trump’s first public statement after the attack began was his 2:24 p.m. tweet targeting Vice President Pence, which intensified the violence.

324. Shortly after the incendiary 2:24 p.m. tweet, Cipollone and Meadows emerged from a meeting with President Trump. *Id.* at 596. Cipollone said to Meadows, “Mark, we need to do something. They’re literally calling for the Vice President to be [fucking] hung.” *Id.* Meadows responded: “You heard him, Pat. He thinks Mike deserves it. He doesn’t think they are doing anything wrong.” *Id.*

325. Rather than intervening to defend the Capitol, President Trump tried to enlist congressional allies to keep delaying the election certification. *Id.* at 577, 597–98. He made one such call to Senator Tommy Tuberville at 2:26 p.m., two minutes after his inflammatory tweet targeting Pence. *Id.* at 598.

326. Between 2:26 p.m. and 3:06 p.m., President Trump had a heated phone call with then-House Minority Leader Kevin McCarthy. *Id.* McCarthy told Trump to “call ... off” his mob. Trump replied, “Kevin, I guess they’re just more upset about the election theft than you are.” *Id.*

327. At 2:38 p.m., Trump tweeted: “Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!”¹⁸³ At 3:13 p.m., he sent

¹⁸² Kriston Capps, *The Double Standard for Policing Capitol Rioters and BLM Protesters*, Bloomberg, Jan. 7, 2021, <https://www.bloomberg.com/news/articles/2021-01-07/trump-rioters-weren-t-policed-like-blm-protesters>.

¹⁸³ Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021, <https://twitter.com/realDonaldTrump/status/1346904110969315332>.

a similar tweet urging the crowd to “remain peaceful.”¹⁸⁴ Both tweets falsely implied his supporters were “peaceful,” when in fact Trump knew of the ongoing violence at the Capitol. Neither of Trump’s tweets condemned the mob’s violence or told them to leave the Capitol building.

328. At some point after 3:05 p.m., President Trump was informed that an individual had been shot at the Capitol; that person was later revealed to be Ashli Babbitt. Jan. 6th Report at 91.

329. In the nearly three hour period between 1:21 p.m. and 4:03 p.m., President Trump could have walked just down the hallway from the Oval Office to record a statement instructing the mob to go home from the White House Press Briefing Room, where cameras are ready to go live at a moment’s notice. *Id.* at 604. He did not.

330. Following nearly three hours of barbaric violence and desperate pleas for the President to intervene, and only after it was clear that the attack would fail to stop the election certification, Trump finally filmed a video statement at 4:03 p.m. telling the mob to “go home.” *Id.* at 606. The video was released at 4:17 p.m. *Id.*

331. In the video, President Trump did not condemn the attack—he justified it. He repeated his lie of a “stolen” election, empathized with the attackers, and told them, “we love you” and “[y]ou’re very special.” His full statement read:

I know your pain. I know you’re hurt. We had an election that was stolen from us. It was a landslide election and everyone knows it, especially the other side. But you have to go home now. We have to have peace. We have to have law and order. We have to respect our great people in law and order. We don’t want anybody hurt. It’s a very tough period of time. There’s never been a time like this where such a thing happened where they could take it away from all of us, from me, from you, from our country. This was a fraudulent election. But we can’t play into the hands of these people. We have to have peace. So go home, we love you. You’re very special. You’ve seen what happens. You see the way others are treated that are so bad and so evil. I know how you feel, but go home and go home in peace.

Id.

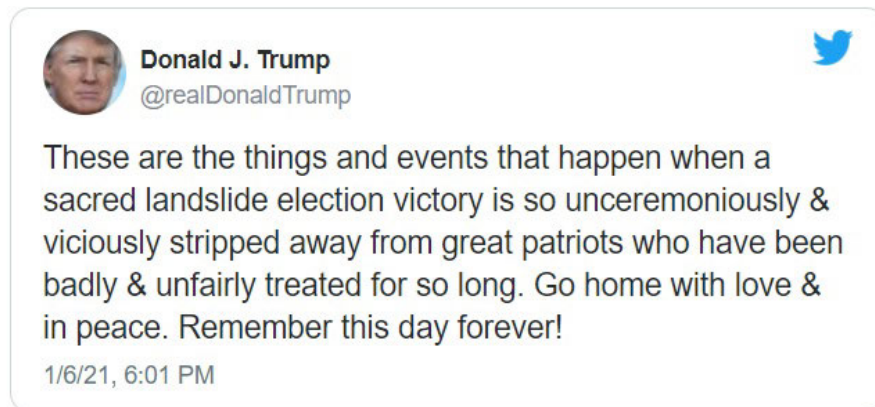
332. At the Capitol and on the grounds, attackers streamed President Trump’s video on their phones and heeded his command to go home. *Id.* at 606. Members of the mob relayed the

¹⁸⁴ Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021, <https://twitter.com/realDonaldTrump/status/1346912780700577792>.

message: “Donald Trump has asked everybody to go home. ... That’s our order,” they told each other. *Id.* The mob then began to disperse. *Id.*

333. After releasing the 4:17 p.m. video, Trump joined others in the outer Oval Office to watch the attack on television and said, “See, this is what happens when they try to steal an election. These people are angry. These people are really angry about it. This is what happens.” Trump Federal D.C. Indictment ¶ 117.

334. At 6:01 p.m., after the violence, first of several deaths, and destruction were widely reported, President Trump sent a tweet justifying the attack and repeating the lies he used to incite it: “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots. ... Remember this day forever!”¹⁸⁵



335. Throughout the evening of January 6th, Trump and Giuliani continued to try and exploit the violence and chaos at the Capitol by calling Members of Congress and urging them to further delay the election certification. Jan. 6th Report at 608–10. At 7:01 p.m., as Giuliani was calling U.S. Senators on Trump’s behalf, White House Counsel Pat Cipollone asked President Trump to withdraw any objections and allow the certification; Trump refused. Trump Federal D.C. Indictment ¶ 120.

¹⁸⁵ Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021, <https://web.archive.org/web/20210106230114/https://twitter.com/realdonaldtrump/status/1346954970910707712>.

5. Law enforcement clears the Capitol with thousands of reinforcements from the D.C. National Guard and federal, state, and local law enforcement agencies.

336. As detailed *supra*, the mob forced both chambers of Congress to go into recess by 2:18 p.m. The Vice President could not return to the Senate chamber and the election certification proceedings could not resume until all trespassers in the restricted area were removed and the Capitol complex was deemed secure.

337. Starting before 3:00 p.m., law enforcement spent approximately three hours clearing the mob out of the Capitol building and off the grounds. Jan. 6th Report at 666.

338. With Trump refusing to call off his mob, Capitol Police were forced to call in more than 2,000 reinforcements from 19 federal, state, and local agencies, including the D.C. National Guard (whom Vice President Pence and others had called in, but not President Trump).¹⁸⁶ Officers had to use chemical spray and munitions, flash bangs, tactical teams with firearms, riot shields, and batons to fight back the mob.¹⁸⁷

339. Even with this significant show of force, the Capitol grounds were not deemed secure until 8:00 p.m. *Capitol Attack* Senate Report at 26. The Senate proceedings resumed at 8:06 p.m. and the House proceedings resumed at around 9:00 p.m. Jan. 6th Report at 467; *Capitol Attack* Senate Report at 26. It was not until 3:42 a.m. on January 7th that Congress completed its business and certified the election. *Id.*

340. The fallout from the attack was considerable. Some police officers lost their lives, others suffered broken bones, contusions, lacerations, and psychological trauma. All told, the attack led to seven deaths, injuries to more than one hundred police officers, and more than \$2.7 billion in property damage and losses.¹⁸⁸

¹⁸⁶ U.S. Gov't Accountability Off., *Capitol Attack: The Capitol Police Need Clearer Emergency Procedures and a Comprehensive Security Risk Assessment Process*, GAO-22-105001, at 20, Feb. 2022, <https://www.gao.gov/assets/gao-22-105001.pdf>.

¹⁸⁷ *Id.* at 21; U.S. Gov't Accountability Off., *Capitol Attack: Additional Actions Needed to Better Prepare Capitol Police Officers for Violent Demonstrations*, GAO-22-104829, at 26–33, Mar. 2022, <https://www.gao.gov/assets/gao-22-104829.pdf>.

¹⁸⁸ U.S. Gov't Accountability Off., *Capitol Attack: Federal Agencies Identified Some Threats, But Did Not Fully Process And Share Information Prior to January 6, 2021*, GAO-23-106625, at 1, Feb. 2023, <https://www.gao.gov/assets/gao-23-106625.pdf>.

SECTION 3 OF THE FOURTEENTH AMENDMENT

341. The Civil War and Reconstruction marked America's second founding. The Constitution's Reconstruction Amendments abolished slavery, restored the Union, and "forged a new constitutional relationship between individual Americans and the national state." Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*, Preface (2019). Section 3 of the Fourteenth Amendment played a key role in that transformation by barring from public office ex-Confederates and future officials who violated an oath to support the Constitution by engaging in insurrection or rebellion against it.

342. Section 3, also known as the Disqualification Clause, provides:

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

U.S. Const. amend. XIV § 3 (emphasis added).

343. Section 3 imposes a qualification for holding federal or state office. *See Cawthorn v. Amalfi*, 35 F.4th 245, 265 (4th Cir. 2022) (Wynn, J., concurring); *id.* at 275 (Richardson, concurring in the judgment); *Griffin*, 2022 WL 4295619, at *16; *Greene v. Raffensperger*, 599 F. Supp. 3d 1283, 1316 (N.D. Ga. 2022); Cong. Globe, 39th Cong., 1st Sess. 3036 (June 8, 1866) (statement of Sen. Henderson). It is a constitutional limitation on who can run for President, no less than the requirements that the President be at least 35 years of age, a natural-born U.S. citizen, a U.S. resident for at least 14 years, and one who has not served two prior presidential terms. *See* U.S. Const. art. II, § 1, amend. XXII.

344. As with other constitutional qualifications, Section 3 challenges can be adjudicated through civil suits and administrative proceedings. *See, e.g., Griffin*, 2022 WL 4295619 (quo warranto); *Louisiana ex rel. Sandlin v. Watkins*, 21 La. Ann. 631 (La. 1869) (quo warranto); *Worthy*, 63 N.C. 199 (mandamus); *In re Tate*, 63 N.C. 308, 309 (1869) (mandamus); *Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off Admin. Hr'gs May 6, 2022), <https://perma.cc/M93H-LA7X> (administrative proceeding); *see also Litigation of Criminal Prosecutions for Treason, Insurrection, and Seditious Conspiracy*, 179 Am. Jur. Trials 435, § 17 (2023) (Section 3 disqualification "can be asserted through a variety of channels," including "state statutes permitting voters to challenge candidate qualifications."); Baude & Paulsen, *supra* note 1, at 22–23 (Section 3 "must be followed ... by anyone whose job it is to

figure out whether someone is legally qualified for office,” including “state elections officials” and “state and federal judges deciding cases where such legal rules apply”).

345. Section 3 can be enforced against presidential candidates in state courts under state ballot access laws. As then-Judge Neil Gorsuch wrote for the Tenth Circuit, “a state’s legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office.” *Hassan v. Colorado*, 495 F. App’x 947, 948 (10th Cir. 2012) (upholding exclusion of constitutionally ineligible presidential candidate from the ballot); *Lindsay v. Bowen*, 750 F.3d 1061 (9th Cir. 2014) (same); *see also Elliott v. Cruz*, 137 A.3d 646 (Pa. Commw. Ct. 2016) (adjudicating the merits of challenge to presidential primary candidate Ted Cruz’s constitutional eligibility), *aff’d*, 635 Pa. 212 (2016); *Ankeny v. Governor of Indiana*, 916 N.E.2d 678 (Ind. Ct. App. 2009) (same, in suit challenging constitutional eligibility of Barack Obama and John McCain). Indeed, “the State[s] ha[ve] obviously a great interest” in enforcing Section 3 “and a clear right to do” so. *Sandlin*, 21 La. Ann. at 632.

346. No federal statute is required to activate Section 3, just as no federal statute is required to activate other sections of the Fourteenth Amendment or other constitutional qualifications for office. Section 3 is a constitutional command with independent legal force, dictating that “[n]o person *shall*” hold public office if the disqualifying conditions are met. U.S. Const. amend. XIV § 3 (emphasis added); *see also id.* art. II § 1 (using similar “No Person ... shall” language in imposing other qualifications for the presidency); *id.* amend. XXII (“No person shall be elected to the office of the President more than twice...”); Baude & Paulsen, *supra*, at 18 (Section 3 “does not *grant a power* to Congress (or any other body) to enact or effectuate a rule of disqualification”; it instead “directly adopts a constitutional rule of disqualification from office”).

347. Where, as here, state law authorizes lawsuits challenging presidential candidates’ constitutional eligibility, state courts are constitutionally obligated to adjudicate such claims. *See* U.S. Const. art. VI cl. 2 (“This Constitution ... shall be the supreme Law of the Land; *and the Judges in every State shall be bound thereby.*”) (emphasis added); *see also id.* art. VI cl. 3 (“[A]ll ... judicial Officers ... of the several States, shall be bound by Oath or Affirmation, to support this Constitution.”).

348. Modern and historical precedent reinforce that state courts do not need Congress’s permission to enforce the Fourteenth Amendment. *See, e.g., Griffin*, 2022 WL 4295619 (adjudicating Section 3 challenge under state law); *Worthy*, 63 N.C. 199 (same); *In re Tate*, 63 N.C. 308 (same); *Town of Dillon v. Yacht Club Condos. Home Owners Ass’n*, 325 P.3d 1032 (Colo. 2014) (adjudicating Fourteenth Amendment Due Process Clause claim brought directly under the Constitution); *San Isabel Elec. Ass’n v. Pub. Utils. Comm’n*, 487 P.3d 665 (Colo. 2021) (same); *Alliance for Retired Americans v. Sec’y of State*, 240 A.3d 45 (Me. 2020) (same); *see also Rowan*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (adjudicating Section 3

challenge in state administrative proceeding). Leading scholars have confirmed this conclusion. *E.g.*, Baude & Paulsen, *supra* note 1, at 17–49.

349. Section 3’s text and precedent also make clear that a criminal conviction for “insurrection” or any other offense is not necessary for a person to be adjudged disqualified. *See, e.g., Griffin*, 2022 WL 4295619, at *16; *Worthy*, 63 N.C. 199; *Sandlin*, 21 La. Ann. 631; *In re Tate*, 63 N.C. 308.¹⁸⁹

350. The standard of proof in civil disqualification suits is preponderance of the evidence. *See, e.g., Griffin*, 2022 WL 4295619, at *24; *see also* C.R.S. § 1-4-1204(4). This standard reflects that Section 3 merely “fix[es] a qualification for office” and is not a “punishment mean[t] to take away life, liberty, or property.” Cong. Globe, 39th Cong., 1st Sess. 3036 (June 8, 1866) (statement of Sen. Henderson); *see also Sandlin*, 21 La. Ann. at 632-33 (Section 3 suit was brought “not to inflict punishment or to impose penalties or disabilities,” but “to inquire legally into [defendant’s] right to hold ... office”).

FORMER PRESIDENT TRUMP IS DISQUALIFIED UNDER SECTION 3 OF THE FOURTEENTH AMENDMENT

351. Respondent Trump is disqualified under Section 3 because: (1) he took an “oath ... as an officer of the United States ... to support the Constitution of the United States” on January 20, 2017; (2) the January 6, 2021 mob attack on the U.S. Capitol and the preceding mob mobilization and incitement constituted an “insurrection” against the Constitution of the United States; and (3) Trump “engaged in” that insurrection.

352. It follows that Trump is constitutionally ineligible to “hold any office, civil or military, under the United States,” including the Office of the President.

¹⁸⁹ *Accord* Baude & Paulsen, *supra* note 1, at 68; Luttig & Tribe, *supra* note 1; Calabresi, *supra* note 1; *Litigation of Criminal Prosecutions for Treason, Insurrection, and Seditious Conspiracy*, 179 Am. Jur. Trials 435, § 17 (2023); *see also The Precedent for 14th Amendment Disqualification*, Citizens for Responsibility and Ethics in Washington, July 7, 2023, <https://www.citizensforethics.org/reports-investigations/crew-reports/past-14th-amendment-disqualifications/>.

I. Former President Trump took an “oath ... as an officer of the United States ... to support the Constitution of the United States” on January 20, 2017.

353. On January 20, 2017, Trump took the Presidential Oath of Office, swearing to “faithfully execute the Office of President of the United States,” and “to the best of [his] Ability, preserve, protect and defend the Constitution of the United States.” U.S. Const. art. II § 1, cl. 8.

354. Taking this oath made Trump subject to disqualification because the President of the United States is an “officer of the United States” within the meaning of Section 3.

355. The conclusion that the President is an officer of the United States follows from the Constitution’s plain text. The Constitution refers to the President holding an “Office” 25 times, including in the Oath of Office Clause. *See* U.S. Const. art. I, § 3, art. II, §§ 1, 4, amends. XII, XXII, XV. Because that “Office” is within the federal executive branch, it is necessarily an office “of the United States.” And one who holds an “office” is an “officer.”

356. The Constitution’s plain text is bolstered by the original public meaning of the phrase “officer of the United States” and Section 3’s legislative history,¹⁹⁰ as well as two opinions of U.S. Attorney General Henry Stanbery interpreting federal statutes enforcing Section 3 prior to its ratification. *See The Reconstruction Acts*, 12 U.S. Op. Att’y Gen. 182, 203 (1867) (construing “officers of the United States” broadly to cover “without limitation” anyone who “held any office, civil or military, under the United States, and has taken an official oath to support the Constitution of the United States”); *The Reconstruction Acts*, 12 U.S. Op. Atty. Gen. 141, 158 (1867) (“Here the term officer is used in its most general sense, and without any qualification. ... [T]he reason is apparent for including all officers of the United States, and for making the disfranchisement more general and comprehensive as to them, standing, as they do, in ... direct relation and trust to the United States...”).

357. Trump himself has conceded in court filings that “[t]he President of the United States” is an “officer ... of the United States.” President Donald J. Trump’s Mem. of Law. in Opp. to Mot. to Remand, *People v. Trump*, 1:23-cv-3773-AKH, ECF No. 34, at 2–10 (S.D.N.Y., filed June 15, 2023); *see also K&D LLC v. Trump Old Post Off. LLC*, 951 F.3d 503 (D.C. Cir. 2020).

¹⁹⁰ *See* John Vlahoplus, *Insurrection, Disqualification, and the Presidency*, 13 Brit. J. Am. Legal Stud. (forthcoming 2023), at 13–22 <https://ssrn.com/abstract=4440157>; Mark A. Graber, *Disqualification From Office: Donald Trump v. the 39th Congress*, Lawfare, Feb. 23, 2023, <https://www.lawfaremedia.org/article/disqualification-office-donald-trump-v-39th-congress>; Gerard N. Magliocca, *Background as Foreground: Section Three of the Fourteenth Amendment and January 6th*, J. Con. L., Vol. 25:5, at n.48, Feb., 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4306094; Baude & Paulsen, *supra* note 1, at 107–11.

358. Thus, Trump became subject to disqualification under Section 3 when he took an “oath ... to support the Constitution of the United States” upon assuming the Office of the President.

II. The January 6, 2021 mob attack on the U.S. Capitol and surrounding events constituted an “insurrection” against the U.S. Constitution.

A. It is a matter of public record that January 6th was an “insurrection.”

359. That an event constitutes an “insurrection” can be proven by widespread governmental recognition alone. A Civil War era jury charge by Supreme Court Justice Stephen Field, sitting as a circuit justice, explained that the “existence of the [Confederate] rebellion [was] a matter of public notoriety, and like matters of general and public concern to the whole country, may be taken notice of by judges and juries.” *United States v. Greathouse*, 26 F. Cas. 18, 23 (C.C.N.D. Cal. 1863). Justice Field explained that “public documents” such as “proclamations of the president” and “acts of congress” were “sufficient proof” of the Confederate rebellion’s existence for purposes of charges under a statute criminalizing participation in “rebellion or insurrection.” *Id.*

360. The existence of the January 6th insurrection is similarly a “matter of public notoriety” supported by bipartisan acts of Congress, congressional reports, presidential statements, judicial decisions, and other “public documents.”

361. All three branches of the federal government have referred to the January 6th attack as an “insurrection” and the participants as “insurrectionists,” including bipartisan majorities of both Houses of Congress during Trump’s impeachment and in legislation honoring

police officers who defended the Capitol,¹⁹¹ President Biden,¹⁹² the Department of Justice under former President Trump,¹⁹³ and more than a dozen federal courts.¹⁹⁴

¹⁹¹ See 167 Cong. Rec. H191 (daily ed. Jan. 13, 2021); 167 Cong. Rec. S733 (daily ed. Feb. 13, 2021); S. Con. Res. 14, 117th Congress (2021-2022); H. Res. 503, 117th Cong., 1st Sess. (2021-2022); S. 35, 117th Cong. (2021); H.R. 3325, 117th Cong. (2021-2022).

¹⁹² E.g., Remarks by President Biden at Presentation of the Presidential Citizens Medal, Jan. 6, 2023, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/01/06/remarks-by-president-biden-at-presentation-of-the-presidential-citizens-medal/>; Statement by President Joe Biden on the Six-Month Anniversary of the January 6th Insurrection on the Capitol, July 6, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/06/statement-by-president-joe-biden-on-the-six-month-anniversary-of-the-january-6th-insurrection-on-the-capitol/>; Letter from Dana A. Remus, Counsel to the President, to David Ferriero, Archivist of the United States, Oct. 8, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/12/letter-from-dana-a-remus-counsel-to-the-president-to-david-ferriero-archivist-of-the-united-states-dated-october-8-2021/>; Remarks by President Biden at Signing of H.R. 3325, Awarding Congressional Gold Medals to Those Who Protected the U.S. Capitol on January 6, Aug. 5, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/05/remarks-by-president-biden-at-signing-of-h-r-3325-awarding-congressional-gold-medals-to-those-who-protected-the-u-s-capitol-on-january-6/>; Remarks by President Biden on Protecting the Sacred, Constitutional Right to Vote, July 13, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/13/remarks-by-president-biden-on-protecting-the-sacred-constitutional-right-to-vote/>.

¹⁹³ *United States v. Chansley*, No. 21-cr-00003, ECF No. 5 (D. Ariz. filed Jan. 14, 2021), <https://extremism.gwu.edu/sites/g/files/zaxdzs5746/files/Jacob%20Chansley%20Detention%20Memo.pdf>.

¹⁹⁴ E.g., *United States v. Munchel*, 991 F.3d 1273, 1281 (D.C. Cir. 2021); *United States v. DeGrave*, 539 F. Supp. 3d 184 (D.D.C. 2021); *Noem v. Haaland*, 542 F. Supp. 3d 898, 906 (D.S.D. 2021); *Alsaada v. City of Columbus*, 536 F. Supp. 3d 216, 274 (S.D. Ohio 2021); *United States v. Brogan*, 2021 WL 2313008, at *2 (E.D.N.Y. June 7, 2021); *United States v. Brockhoff*, 590 F. Supp. 3d 295, 298-99 (D.D.C. 2022); *United States v. Hunt*, 573 F. Supp. 3d 779, 807 (E.D.N.Y. 2021); *United States v. Puma*, 596 F. Supp. 3d 90, 94 (D.D.C. 2022); *O'Rourke v. Dominion Voting Sys. Inc.*, 552 F. Supp. 3d 1168, 1199 (D. Colo. 2021); *United States v. Randolph*, 536 F. Supp. 3d 128, 132 (E.D. Ky. 2021); *United States v. Little*, 590 F. Supp. 3d 340, 342 (D.D.C. 2022); *O'Handley v. Padilla*, 579 F. Supp.3d 1163, 1172 (N.D. Cal. 2022); *Amalgamated Transit Union Local 85 v. Port Auth. of Allegheny Cnty.*, 2021 WL 719671, at *2 (W.D. Pa. Feb. 24, 2021).

362. The Justice Department has charged more than 1,100 participants in the January 6th attack from nearly all 50 states and the District of Columbia.¹⁹⁵ The government has secured convictions or guilty pleas of more than a dozen Oath Keepers and Proud Boys for seditious conspiracy to oppose by force the lawful transfer of power,¹⁹⁶ charges which are similar to the definition of an insurrection. *See infra* Part II.B; *Litigation of Criminal Prosecutions for Treason, Insurrection, and Seditious Conspiracy*, 179 Am. Jur. Trials 435 (2023).

363. Trump’s own impeachment counsel admitted “everyone agrees” there was “a violent insurrection of the Capitol” on January 6th. Cong. Rec., 117th Cong., Vol. 167, No. 28, S717, S733 (Feb. 13, 2021) (statement of Michael van der Veen).

364. The January 6th Select Committee—a bipartisan congressional committee established to “investigate and report upon the facts, circumstances, and causes relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex ... and ... interference with the peaceful transfer of power,” H. Res. 503, 117th Cong. § 3(1)—concluded in its final report that the January 6th attack was an insurrection within the meaning of Section 3 of the Fourteenth Amendment. *See* Jan. 6th Report at 690.

365. The Select Committee further recommended that “those who took an oath to protect and defend the Constitution and then, on January 6th, engaged in insurrection can appropriately be disqualified and barred from holding government office—whether federal or state, civilian or military—absent at least two-thirds of Congress acting to remove the disability pursuant to Section 3 of the Fourteenth Amendment.” *Id.*

366. The only court to consider the specific question of whether the January 6th attack was an “insurrection” within the meaning of the Fourteenth Amendment—the New Mexico state court in *Griffin*—held that it was. *See Griffin*, 2022 WL 4295619, at **17–19 (“The Court concludes that the January 6, 2021 attack on the United States Capitol and the surrounding

¹⁹⁵ *31 Months Since the Jan. 6 Attack on the Capitol*, U.S. Attorney’s Office for the Dist. of Columbia, Aug. 6, 2023, <https://www.justice.gov/usao-dc/31-months-jan-6-attack-capitol>.

¹⁹⁶ *See Leader of Oath Keepers and Oath Keepers Member Found Guilty of Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, U.S. Dep’t of Justice, Nov. 29, 2022, <https://www.justice.gov/opa/pr/leader-oath-keepers-and-oath-keepers-member-found-guilty-seditious-conspiracy-and-other>; *Four Oath Keepers Found Guilty of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. Dep’t of Justice, Jan. 23, 2023, <https://www.justice.gov/opa/pr/four-oath-keepers-found-guilty-seditious-conspiracy-related-us-capitol-breach>; *Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. Attorney’s Office for the Dist. of Columbia, May 4, 2023, <https://www.justice.gov/usao-dc/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach>.

planning, mobilization, and incitement constituted an ‘insurrection’ within the meaning of Section Three of the Fourteenth Amendment.”).

367. In so holding, the *Griffin* court explained that the attack involved thousands of people using “violence, force, and intimidation by numbers” to stop the constitutionally mandated certification of the 2020 presidential election; that the attack “led to seven deaths, injuries to more than one hundred police officers, and millions of dollars in damage to the Capitol complex”; and that the “mob succeeded in delaying the constitutionally mandated counting of electoral votes by several hours and, for the first time in our Nation’s history, disrupted the peaceful transfer of presidential power.” *Id.* at *8, *18.

368. Leading constitutional scholars from across the ideological spectrum agree that the January 6th attack and surrounding events were an insurrection within the meaning of Section 3. *See, e.g.*, Baude & Paulsen, *supra* note 1, at 112–16 & n.412 (so concluding and compiling “public authorities” and statements of “other scholars” who “agree[] that January 6th was an insurrection”); Luttig & Tribe, *supra* note 1; Calabresi, *supra* note 1.

B. The January 6th attack and preceding mob mobilization and incitement constituted an “insurrection” against the Constitution within the meaning of Section 3 of the Fourteenth Amendment.

369. The phrase “insurrection ... against the [Constitution],” as used in Section 3 of the Fourteenth Amendment, refers to (1) an assemblage of persons, (2) acting with the purpose to oppose the continuing authority of the United States Constitution, (3) by force. These elements derive from Section 3’s text and original public meaning, historical context, case law, and leading dictionary definitions of “insurrection.”¹⁹⁷

370. Judges, members of Congress, presidents, and legal experts in the 19th century described as insurrections events such as the Whiskey Insurrection (1794) and Fries’ Insurrection

¹⁹⁷ *See, e.g.*, *In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894) (“Insurrection is a rising against civil or political authority” by “a number of persons” to “resist the civil or political power of the United States.”); *Griffin*, 2022 WL 4295619, at *1 (citing foregoing definition in Section 3 case); *Webster’s Dictionary*, “Insurrection” (1828), https://books.google.com/books?id=699BAQAAMAAJ&newbks=1&newbks_redir=0&pg=PT474#v=onepage&q&f=false (“A rising against civil or political authority.”); *Black’s Law Dictionary*, “Insurrection” (1891), https://books.google.com/books?id=jLtDAQAAMAAJ&newbks=1&newbks_redir=0&dq=black's%20law%20dictionary&pg=PA633#v=onepage&q&f=false (“combined resistance to ... lawful authority ... with intent to the denial thereof”); *Merriam-Webster Dictionary*, “Insurrection,” (2023), <https://www.merriam-webster.com/dictionary/insurrection> (“[A]n act or instance of revolting against civil authority or an established government.”).

(1799), which were “anti-tax revolt[s]” that involved “concerted acts of forcible interference with federal officials’ ability to perform their duties under law.” Baude & Paulsen, *supra* note 1, at 88–89; *see also Case of Fries*, 9 F. Cas. 924 (C.C.D. Pa. 1800) (Chase, J.); *Griffin*, 2022 WL 4295619, at *17. These pre-Civil War insurrections were referenced in the legislative debates over Section 3. *E.g.*, Cong. Globe, 39th Cong. 1st Sess. 2534 (May 10, 1866) (statement of Sen. Eckley) (discussing the “whiskey insurrection”). They provide “informative context for understanding ‘insurrection’” as used in Section 3. Baude & Paulsen, *supra* note 1, at 88.

371. The text ultimately adopted in the Fourteenth Amendment refers not just to any insurrection, but an “insurrection ... against the same.” U.S. Const. amend. XIV § 3. The “same” refers back to the immediately preceding clause—*i.e.*, “the Constitution of the United States.” *Id.*; *see also* Luttig & Tribe, *supra* note 1. This choice of language reflects a core concern animating Section 3: constitutional loyalty.

372. Section 3’s framers aimed to disqualify those who violated an oath to support the U.S. Constitution by engaging in efforts to forcibly oppose the federal government’s authority *to be and function as our government* under that Constitution. Such conduct is fundamentally disloyal to the United States and poses precisely the type of existential threat that warrants exclusion from future access to political power. As U.S. Senator Waitman Willey (W. Va.), a leading Section 3 proponent, explained:

[Section 3] is a measure of self-defense. ... [L]ooking to the future peace and security of this country, I ask whether it would be just or right to allow men who have thus proven themselves faithless to be again intrusted with the political power of the State. I think not; and upon that ground I think this exclusion is wise ... [W]e would be faithless to our trust if we allowed the interests of the country and its future peace and welfare to be again disturbed by men who have shown themselves faithless in the past ... [through] their insane efforts to destroy this Government. ... Shall we again trust men of this character, who, while acting under the obligation of the oath to support the Constitution of the United States, thus betrayed their country and betrayed their trust?

Cong. Globe, 39th Cong., 1st Sess. 2918 (May 31, 1866); *see also id.* at 2897–98 (statement of Sen. Hendricks) (“[T]he theory of” Section 3 is “that persons who have violated the oath to support the Constitution of the United States ought not to be allowed to hold any office.”); *id.* at 3010 (statement of Sen. Davis) (noting “the Constitution” itself “had been attacked” during the Civil War); *id.* at 2916 (statement of Sen. Grimes) (Section 3 “is intended as a prevention against the future commission of offenses, the presumption being ... that the man who has once violated his oath will be more liable to violate his fealty to the Government in the future”).

373. A similar understanding of “insurrection” is reflected in President Lincoln’s Proclamations during the Civil War, which consistently expressed concern with the “insurrection against the United States,” Proclamation 98, Suspension of Commercial Trade with Certain States in Rebellion (April 2, 1863), and its “endangering the existence of the Constitution and Government of the United States,” Proclamation 113, Declaring Martial Law and a Further Suspension of the Writ of Habeas Corpus in Kentucky (July 5, 1864); *see also, e.g.*, Proclamation 86, Prohibiting Commercial Trade with States in Rebellion (Aug. 16, 1861) (describing “an insurrection against the laws, Constitution, and Government of the United States”); Proclamation 94, Suspending the Writ of Habeas Corpus (Sept. 24, 1862) (describing “disloyal persons” aiding “insurrection” and subjecting to martial law “anyone engaged in “any disloyal practice . . . against the authority of the United States”).

374. To constitute an insurrection, an uprising’s “dimensions” need not “be so portentous as to insure probable success.” *In re Charge to Grand Jury*, 62 F. at 830. Nor must it rise to the level of civil war or secession from the Union. *See Griffin*, 2022 WL 4295619, at *17. “Insurrection against a government may or may not culminate in an organized rebellion, but a civil war always begins by insurrection against the lawful authority of the Government.” *Prize Cases*, 67 U.S. 635, 666 (1862). Prohibitions on insurrectionist activity are precautionary: they are “designed to protect the government and its authority against direct attack.” *In re Charge to Grand Jury*, 62 F. at 830.

375. While “[i]t is not necessary that there should be bloodshed,” *id.* at 829, American insurrections have typically involved violence. *See, e.g.*, Proclamation 15, Warning All Persons on Lake Champlain and Adjacent County to Cease Violence and Disperse (April 19, 1808); Proclamation, Authorizing Military Intervention to End Violence and Obstruction of Justice in Protest of Liquor Laws in Pennsylvania (Sept. 26, 1794).

376. The overpowering of ordinary law enforcement is likewise a strong indicator (though not a requirement) of insurrectionist activity. *See In re Charge to Grand Jury*, 62 F. at 830 (“When men gather to resist the civil or political power of the United States . . . and are in such force that the civil authorities are inadequate to put them down, and a considerable military force is needed to accomplish that result, they become insurgents.”). If the uprising is “so formidable as for the time being to defy the authority of the United States,” *id.*, then this reinforces it is an insurrection.

377. Under these standards, the January 6th mob attack on the U.S. Capitol, as well as the preceding mob mobilization and incitement, plainly qualifies as a constitutional insurrection.

378. As detailed *supra*, the January 6th attack was the culmination of a months-long effort by President Trump and his allies to block the certification of the 2020 election results and prevent the duly elected government from taking office. Their insurrectionary purpose was self-evident: they called their movement “Stop the Steal” based on the lie that the 2020 election was

stolen and that the lawful transfer of power, as mandated by the Constitution, needed to be stopped.

379. The Stop the Steal movement successfully inflamed and mobilized tens of thousands of Trump supporters from across the country to come to Washington, D.C., many of whom formed a violent mob to pressure, intimidate, and coerce by force Vice President Pence and Congress to unlawfully refuse to certify the election results.

380. The mob that arrived at the Capitol on January 6th was an assemblage of persons who engaged in actual violence and made threats of imminent violence. The mob numbered in the thousands. Many came prepared for battle, adorned in body armor and tactical gear. Some came to Washington with specific plans to assault and kill elected officials. Members of the mob brought, improvised, and used many weapons, including guns, knives, tasers, cattle prods, brass knuckles, and pepper spray. They brutally attacked and injured police officers, and called for the murder of Vice President Pence and other officials working to certify the election results inside the Capitol building.

381. The mob assembled gallows on the Capitol grounds as an intimidatory display. Later, as they stormed the Capitol building, they chanted, “Hang Mike Pence!”



Trump's mob displays a noose and gallows on the Capitol grounds

Photo by Shay Horse/Getty Images

382. In another act of intimidation, members of the mob charged toward the office of Speaker of the House Nancy Pelosi, chanting menacingly, “Nancy! Nancy! Nancy!”

383. The mob was there to oppose the government’s authority to carry out the transfer of presidential power under the Constitution and federal law—specifically, Article II, Section 1 of the Constitution, the Twelfth Amendment, and the Electoral Count Act. Through their chants, flags, banners, and clothing, the mob made clear that they went to the Capitol on behalf of President Trump to “Stop the Steal”; that is, to obstruct Congress’s certification of the election results and unlawfully keep Trump in office.

384. The mob sought to oppose by force the federal government’s sovereign authority and coerce elected officials to bend to their will. As they illegally breached the Capitol grounds and building, the mob chanted, “Our house!”—demonstrating their denial of the government’s authority and their belief they had a right to disrupt the election certification.

385. The mob made overt references to rebellion, revolution, and war. Many carried battle flags from the Confederate Army and Revolutionary War, including within the Capitol building. Others dressed as Continental Army soldiers. They erupted in chants of “1776!” and widely believed January 6th was their “1776 moment.”

386. The mob ultimately achieved what even the Confederacy never did during the Civil War: the violent seizure of the United States Capitol and disruption of the peaceful transfer of power. They forced the Vice President and Members of Congress to flee for their lives and halt their constitutional duties until the mob’s leader, President Trump, ordered them to leave after it appeared they would not achieve their goal of stopping the certification.

387. The attack disrupted Congress’s election certification proceedings for around six hours. The proceedings could not resume until every member of the mob was removed from the restricted area. Thus, the attack was “so formidable” that it did in fact “defy the authority of the United States” for “the time being.” *In re Charge to Grand Jury*, 62 F. at 830.

388. The mob overpowered ordinary police forces. The thousands in the mob outnumbered police officers by about 50 or 75 to 1. *Griffin*, 2022 WL 4295619, at *8. The U.S. Capitol Police and D.C. Metropolitan Police Department were overwhelmed despite fully activating their personnel for January 6th. Jan. 6th Report at 700–01. To clear the mob and regain control of the Capitol, the Capitol Police had to call in more than 2,000 reinforcements from 19 federal, state, and local agencies, and used chemical spray and munitions, flash bangs, tactical teams with firearms, riot shields, and batons to fight back the mob.

389. The attack “marked the most significant assault on the Capitol since the War of 1812.” *Trump*, 20 F.4th at 18–19. “The building was desecrated, blood was shed, and several individuals lost their lives.” *Id.* at 19. “In the aftermath, workers labored to sweep up broken glass, wipe away blood, and clean feces off the walls.” *Id.* More than one hundred law

enforcement officers were injured, a Capitol Police officer who had been attacked died the next day, and four other officers died by suicide in the ensuing months.¹⁹⁸

390. The mob's attack posed a dangerous threat to the federal government's continuing authority and operations. As the incumbent President of the United States has stated, the "insurrectionists['] ... violent and deadly assault on the people's house, on the people's representatives, and on the Capitol police sworn to protect them ... posed an existential crisis and a test of whether our democracy could survive,"¹⁹⁹ and it marked "the most serious attack on the operations of the Federal Government since the Civil War."²⁰⁰ The U.S. Senate Republican Leader has similarly stated that "January 6th ... was a violent insurrection for the purpose of trying to prevent the peaceful transfer of power after a legitimately certified election, from one administration to the next. That's what it was."²⁰¹ If the insurrection prevailed, "it would have permanently ended the peaceful transition of power, undermining American democracy and the Constitution." *Eastman*, 594 F. Supp. 3d at 1198.

391. Thus, the January 6th mob attack on the U.S. Capitol was (1) an assemblage of persons, (2) acting with the purpose to oppose the continuing authority of the United States Constitution, (3) by force. The attack, as well as the preceding mob mobilization and incitement that made it possible, constituted an "insurrection" within the meaning of the Fourteenth Amendment.

¹⁹⁸ Chris Cameron, *These Are the People Who Died in Connection With the Capitol Riot*, New York Times, Jan. 5, 2022, <https://www.nytimes.com/2022/01/05/us/politics/jan-6-capitol-deaths.html>.

¹⁹⁹ Statement by President Joe Biden on the Six-Month Anniversary of the January 6th Insurrection on the Capitol, July 6, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/06/statement-by-president-joe-biden-on-the-six-month-anniversary-of-the-january-6th-insurrection-on-the-capitol/>.

²⁰⁰ Letter from Dana A. Remus, Counsel to the President, to David Ferriero, Archivist of the United States, Oct. 8, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/12/letter-from-dana-a-remus-counsel-to-the-president-to-david-ferriero-archivist-of-the-united-states-dated-october-8-2021/>.

²⁰¹ Sahil Kapur, *McConnell calls Jan. 6 a 'violent insurrection,' breaking with RNC*, NBC News, Feb. 8, 2022, <https://www.nbcnews.com/politics/congress/mcconnell-calls-jan-6-violent-insurrection-breaking-rnc-rcna15404>.

III. Former President Trump “engaged in” the January 6th insurrection.

392. President Trump was indisputably the leader of the January 6th mob. Without his false claims of election fraud, coercive tactics, inflammatory rhetoric, mob mobilization, promotion of political violence, instructions to march on the Capitol, and decision to pour fuel on the fire rather than tell the mob to disperse, the attack on the Capitol would not have happened.

393. Federal authorities have repeatedly attributed responsibility to Trump for the January 6th insurrection, including the following:

- a. The “overriding ... conclusion” of the bipartisan January 6th Select Committee, following its 18-month investigation, was that “the central cause of January 6th was one man, former President Donald Trump, whom many others followed. None of the events of January 6th would have happened without him.” Jan. 6th Report at 8.
- b. The U.S. Senate Committee on Homeland Security and Governmental Affairs similarly concluded that “former President Trump was the primary cause of the [January 6th] insurrection.”²⁰²
- c. A bipartisan majority of the House of Representatives impeached Trump for “incitement of insurrection,” and a bipartisan majority of the Senate voted to convict him, with several Senators voting against conviction solely “on the theory that the Senate lacked jurisdiction to try a former president.”²⁰³
- d. Numerous federal judges have cast blame on Trump for instigating the insurrection.²⁰⁴

²⁰² Staff Rep. of S. Comm. on Homeland Sec. & Govt’l Affs., *Planned in Plain Sight: A Review of the Intelligence Failures in Advance of January 6th, 2021*, 118th Cong., at 104, June 2023, https://www.hsgac.senate.gov/wp-content/uploads/230627_HSGAC-Majority-Report_Jan-6-Intel.pdf.

²⁰³ Ryan Goodman and Josh Asabor, *In Their Own Words: The 43 Republicans’ Explanations of Their Votes Not to Convict Trump in Impeachment Trial*, Just Security, Feb. 15, 2021, <https://www.justsecurity.org/74725/in-their-own-words-the-43-republicans-explanations-of-their-votes-not-to-convict-trump-in-impeachment-trial/>.

²⁰⁴ *Nine different federal judges have blamed Trump for January 6th*, Citizens for Responsibility and Ethics in Washington, May 18, 2023, <https://www.citizensforethics.org/reports-investigations/crew-investigations/nine-different-federal-judges-have-blamed-trump-for-january-6th/> (collecting cases).

- e. Although Section 3 disqualification does not require a criminal charge or conviction for any offense, a federal grand jury and a Georgia grand jury have indicted Trump on a total of 17 felony charges arising out of his efforts to obstruct the lawful certification of the 2020 election results. *See* Trump Federal D.C. Indictment; Trump Georgia Indictment.

394. Trump’s conduct easily qualifies as “engag[ing]” in insurrection within the meaning of Section 3 of the Fourteenth Amendment.

395. A person “engage[s]” in an insurrection by “[v]oluntarily aiding the [insurrection], by personal service, or by contributions, other than charitable, of anything that [is] useful or necessary” to the insurrectionists’ cause. *Worthy*, 63 N.C. at 203; *see also United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (defining “engage” as a “a voluntary effort to assist the Insurrection ... and to bring it to a successful termination” from the insurrectionists’ perspective); *Griffin*, 2022 WL 4295619, at *19 (adopting *Worthy-Powell* standard for engagement); *Rowan*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot, at 13–14 (same).

396. A person “‘engage[s] in’ insurrection whenever they [are] ‘leagued’ with insurrectionists—either by acting in concert with others knowing that the group intended to achieve its purpose in part by violence ... or by performing an ‘overt act’ knowing that act would ‘aid or support’ the insurrection.” *Griffin*, 2022 WL 4295619, at *20.

397. “One need not personally commit acts of violence to ‘engag[e] in’ insurrection.” *Id.* at **20–21 (“Mr. Griffin aided the [January 6th] insurrection even though he did not personally engage in violence”); *Powell*, 27 F. Cas. at 607 (defendant “engaged in” rebellion if he voluntarily provided a substitute to avoid serving in the Confederate Army). During Reconstruction, individuals were disqualified for previously holding local office in Confederate states, even though they did not take up arms in the Confederate army. *E.g.*, *Worthy*, 63 N.C. 199 (Confederate county sheriff).

398. Engagement can include “non-violent overt acts or words in furtherance of the insurrection,” including words that incite, provoke, encourage, or command others to engage in insurrectionary conduct. *Griffin*, 2022 WL 4295619, at **20–21. In an opinion construing federal statutes enforcing Section 3 prior to its ratification, Attorney General Henry Stanbery wrote that “where a person has, by speech or by writing, incited others to engage in rebellion [or insurrection], he must come under the disqualification.” *The Reconstruction Acts*, 12 U.S. Op. Atty. Gen. 182, 205 (1867). He added that mere “[d]isloyal sentiments, opinions, or sympathies would not disqualify.” *Id.* President Andrew Johnson and his Cabinet approved Stanbery’s interpretation, and President Johnson directed officers commanding the Southern military

districts to follow it.²⁰⁵

399. The only January 6th participant disqualified to date, Couy Griffin, was held to have engaged in insurrection both by “helping to mobilize and incite thousands across the country to join the mob” ahead of January 6th and by “incit[ing], encourag[ing], and help[ing to] normalize the violence” on January 6th. *Griffin*, 2022 WL 4295619, at **20–21. Griffin, like Trump, did not personally commit violent acts or breach the Capitol building. *See id.*

400. To a far greater degree than Griffin, President Trump aided and incited the insurrection both before and on January 6th.

A. Trump knowingly and voluntarily aided and incited the insurrection before January 6th.

401. Ahead of January 6th, President Trump personally led a broad-based effort to coerce, pressure, and intimidate government officials at all levels to unlawfully overturn the election results in violation of their own oaths to the U.S. Constitution. As part of those efforts, Trump used the bully pulpit of the presidency and his massive social media following to summon tens of thousands of his supporters—including violent extremists and now-convicted seditionists—to travel to Washington, D.C. for a “wild” protest of Congress’s certification proceedings on January 6th. Trump’s December 19th “will be wild” tweet and other communications set in motion a chain of events that led directly to the January 6th attack on the Capitol.

402. President Trump inflamed, incited, and angered his supporters for months by pervasively spreading false claims of a “stolen” and “rigged” election.

403. President Trump persistently encouraged, promoted, and normalized violence and intimidation by his supporters against perceived political enemies, including by retweeting to his tens of millions of followers on May 28, 2020 a video of Trump supporter Couy Griffin saying “the only good Democrat is a dead Democrat” to a cheering crowd, and by celebrating the dangerous “Trump Train” highway confrontation carried out by his supporters against Biden campaign staff on October 30, 2020, just four days before the presidential election.

404. President Trump repeatedly misled his supporters to believe that Vice President Pence had the legal authority to deliver victory for him on January 6th. To advance those efforts,

²⁰⁵ *See* 6 James D. Richardson, *Joint Committee on Printing of the House and Senate, A Compilation of the Messages and Papers of the Presidents* 528-31 (1898), https://books.google.com/books?id=1UEPAAAAYAAJ&newbks=1&newbks_redir=0&pg=PA528#v=onepage&q&f=false (*In Cabinet*, June 18, 1867, summary item 16); *id.* at 552-56 (*War Dep’t, Adjutant-General’s Office*, Washington, June 20, 1867).

President Trump personally oversaw a scheme to create and transmit fake slates of presidential electors to Congress and the National Archives. Relying on those fake electoral slates, President Trump repeatedly pressured Vice President Pence, publicly and privately, to unlawfully refuse to certify the election results on January 6th.

405. Before January 6th, President Trump knew or consciously disregarded the risk that the supporters he was summoning to Washington, D.C. were angry and prepared to use violence and threats of imminent violence to stop the lawful transfer of presidential power on January 6th.

406. President Trump did in fact incite, provoke, influence, or otherwise cause supporters to come to Washington, D.C. to stop, obstruct, delay, or otherwise disrupt the lawful transfer of presidential power on January 6th, including nearly 200 January 6th criminal defendants who have confirmed they traveled to Washington, D.C. or marched to the Capitol because President Trump called on them to do so.

407. President Trump's pre-January 6th efforts materially aided the insurrection by mobilizing the mob around a single rallying date and location: January 6, 2021, in Washington, D.C. The mob's size was their greatest weapon and enabled them to achieve the level of success that they did on January 6th. President Trump's recruitment efforts increased the mob's size and, in turn, furthered the insurrectionists' goal of disrupting the lawful transfer of presidential power.

408. Not only did President Trump's "pre-January 6 mob mobilization and incitement efforts ... help[] make the insurrection possible," *Griffin*, 2022 WL 4295619, at *20, they caused it to happen.

B. Trump knowingly and voluntarily aided and incited the insurrection on January 6th.

1. The "Stop the Steal" rally.

409. Once his tens of thousands of supporters were assembled in Washington for his January 6th rally and "wild" protest, President Trump continued to inflame them with the lie that the election was being stolen from them. He repeatedly directed their anger toward government officials, including Vice President Pence, who were meeting to certify the election results less than two miles away at the Capitol building. President Trump exhorted his supporters to "fight like hell" and instructed them to march on the Capitol to "Stop the Steal." He used the word "fight" or variations of it 20 times, urged the crowd to show "strength," and repeatedly insisted they "can't let" the election certification happen. Trump summoned, primed, and deployed the mob as a weapon to attack Congress.

410. President Trump knew or consciously disregarded the risk that many in the crowd

were enraged, armed, and prepared to engage in violence or threats of imminent violence against individuals at the Capitol. Before his speech, Trump told his advance team: “I don’t [fucking] care that they have weapons. They’re not here to hurt *me*. Take the [fucking magnetometers] away. Let my people in. They can march to the Capitol from here. Take the [fucking] mags away.”

411. President Trump knew or consciously disregarded the risk that his words were likely to incite, provoke, influence, or otherwise cause supporters to march to the Capitol grounds, illegally breach the restricted perimeter, or illegally breach the Capitol building.

412. President Trump did in fact incite, provoke, influence, or otherwise cause supporters to march to the Capitol grounds, illegally breach the restricted perimeter, or illegally breach the Capitol building.

413. President Trump knew or consciously disregarded the risk that his words were likely to incite, provoke, influence, or otherwise cause his supporters to engage in violence or threats of imminent violence against individuals at the Capitol.

414. President Trump did in fact incite, provoke, influence, or otherwise cause supporters to engage in violence or threats of imminent violence against individuals at the Capitol.

415. President Trump’s rally speech materially aided the insurrection and furthered the insurrectionists’ goal of disrupting the lawful transfer of presidential power by arousing his supporters’ anger and desperation, making them a more formidable obstacle to law enforcement, and increasing the size of the mob that attacked the Capitol.

2. The 2:24 p.m. tweet.

416. With full knowledge that the Capitol was under violent attack, President Trump sent a tweet at 2:24 p.m. that targeted Vice President Pence for lacking the “courage” to overturn the election results and appeared to sanction the mob’s ongoing invasion of the Capitol by declaring “USA demands the truth!”

417. President Trump knew or consciously disregarded the risk that his 2:24 p.m. tweet was likely to incite, provoke, influence, or otherwise cause his supporters to engage in further violence or further threats of imminent violence against individuals at the Capitol.

418. President Trump’s 2:24 p.m. tweet did in fact incite, provoke, influence, or otherwise cause his supporters to engage in further violence or further threats of imminent violence against individuals at the Capitol, including in these ways:

- a. Throughout the afternoon, members of the mob chanted, “Hang Mike Pence!”; “Bring him out. Bring out Pence.”; and referred to Pence as a “traitor.”
- b. One minute after Trump’s tweet, at 2:25 p.m., the Secret Service determined they could no longer protect the Vice President in his ceremonial office and evacuated him and his family to a secure loading dock. The mob came within 40 feet of the Vice President as he was evacuated.
- c. Minutes after the 2:24 p.m. tweet, the mob broke through a security line of the D.C. Metropolitan Police Department, resulting in the first ever fighting withdrawal in that force’s 160-year history.

419. President Trump’s 2:24 p.m. tweet materially aided the insurrection and furthered the insurrectionists’ goal of disrupting the lawful transfer of presidential power by exacerbating the mob’s anger and desperation, causing them to surge, intensifying their violence, and making them a more formidable obstacle to law enforcement.

3. Exploitation of the violence and chaos at the Capitol.

420. After learning by 1:21 p.m. that the Capitol was under attack and throughout the evening of January 6th, Trump exploited the violence and chaos at the Capitol and leveraged it to pressure Members of Congress to keep delaying the election certification, including in these ways:

- a. Around 2:26 p.m., he called Senator Tommy Tuberville of Alabama, who was then trapped in the Capitol building, to urge him to object to the electoral count.
- b. Immediately after that call, Trump spoke by phone with then-House Minority Leader Kevin McCarthy while McCarthy was sheltering in the Capitol, during which Trump refused to call off his mob and repeated his lies of “election theft” to justify the mob’s violence.
- c. Between around 5:00 and 8:00 p.m., Trump lawyer Giuliani called several Members of Congress on Trump’s behalf and urged them to keep delaying the election certification.

421. By attempting to pressure, coerce, influence, or otherwise cause Members of Congress to keep delaying the election certification, Trump acted in furtherance of the insurrectionists’ goal of disrupting the lawful transfer of presidential power.

4. Failure to authorize or deploy a federal response.

422. After learning by 1:21 p.m. that the Capitol was under attack, President Trump

refused to act to authorize or deploy a federal response to protect the Capitol, despite his affirmative constitutional duty to “take Care that the Laws be faithfully executed” and his role as Commander-in-Chief of the military, including the D.C. National Guard. U.S. Const. art. II, §§ 2, 3.

423. President Trump knew or consciously disregarded the risk that using his presidential powers on January 6th would have quelled, alleviated, or otherwise reduced the severity of the insurrection and the violence at the Capitol. Trump had multiple options at his disposal, including but not limited to ordering large-scale deployment of federal law enforcement, calling a snap cabinet meeting to better understand his options, ordering the D.C. National Guard to provide support in the area surrounding the Capitol grounds, authorizing deployment of out-of-state National Guard troops, and coordinating with the D.C. Metropolitan Police Department and U.S. Capitol Police. He did none of these things. Instead, he watched the insurrection unfold on television and ignored his advisors’ pleas to intervene to stop the violence.

424. President Trump’s refusal to act, despite his legal duty to act, materially aided the insurrection and furthered the insurrectionists’ goal of disrupting the lawful transfer of presidential power by allowing the mob to advance unimpeded by federal forces that President Trump, as Chief Executive Officer and Commander-in-Chief, was uniquely empowered to authorize and deploy.

5. Failure to timely instruct the mob to leave the Capitol.

425. After learning by 1:21 p.m. that the Capitol was under attack, President Trump did not issue a statement instructing the insurrectionists to leave the Capitol until 4:17 p.m., when he posted a video telling the mob to “go home.” During this nearly three-hour period, Trump could have easily walked down the hallway from the Oval Office Dining Room to record such a statement in the White House Press Briefing Room, where cameras are ready to go live at a moment’s notice. Trump refused to do so, despite repeated pleas from his staff and family.

426. While Trump watched the attack unfold on television, law enforcement officers engaged in hours of hand-to-hand combat, resulting in about 140 D.C. Metropolitan Police and U.S. Capitol Police officers suffering injuries and one death, as well as additional deaths in the ensuing weeks. Members of Congress, their staff, members of the press, and many others were forced to flee for their lives. Some called loved ones to say goodbye, fearing imminent death.

427. President Trump knew that instructing the insurrectionists to leave the Capitol prior to 4:17 p.m. would have quelled, alleviated, or otherwise reduced the severity of the insurrection and the violence at the Capitol.

428. President Trump’s failure to act, despite his legal duty to act, materially aided the insurrection and furthered the insurrectionists’ goal of disrupting the lawful transfer of

presidential power.

429. Through each of the acts and omissions alleged above in paragraphs 401–28, Trump “[v]oluntarily aid[ed] the [insurrection], by personal service” and “contributions” of things that were both “useful” and “necessary” to the January 6th insurrectionists’ cause. *Worthy*, 63 N.C. at 203.

IV. The Office of the President is an “office ... under the United States” from which Trump is disqualified.

430. As alleged above in paragraphs 353–58, the President of the United States is an “officer of the United States” and one who takes a constitutional oath in that position is subject to Section 3 disqualification.

431. For similar reasons, the Office of the President qualifies as “any office, civil or military, under the United States” from which a disqualified individual is barred. *See* Vlahoplus, *supra* note 190, at 6–13 (compiling authorities); Baude & Paulsen, *supra* note 1, at 107–111; *see also Griffin*, 2022 WL 4295619, at *22 (“Section Three’s list of offices from which one is disqualified ... is facially broader than[] the offices” in which taking an oath makes one subject to disqualification).

432. Thus, due to his disqualification under Section 3, Trump is constitutionally ineligible to assume the Office of the President.

CLAIMS FOR RELIEF

COUNT I

(Relief Under C.R.S. § 1-4-1204 and § 1-1-113 – Respondent Griswold)

433. Petitioners repeat and incorporate by reference all preceding paragraphs.

434. Under Colorado’s presidential primary elections statute, the Secretary is responsible for overseeing ballot access for presidential primary candidates, including by accepting a major political party’s form designating a candidate “as a bona fide candidate for president of the United States” who is “affiliated with [the] major political party,” C.R.S. § 1-4-1204(1)(b); accepting a “notarized candidate’s statement of intent together with either a nonrefundable filing fee of five hundred dollars or a petition signed by at least five thousand eligible electors,” *id.* § 1-4-1204(1)(c), § 1-4-903; and, ultimately, “certif[ying] and “listing” the “names and party affiliations of the candidates to be placed on any presidential primary election ballots,” *id.* §§ 1-4-1204(1), (4).

435. The legislature has declared that “it is the intent of the People of the State of

Colorado that the provisions of [the presidential primary elections statute] conform to the requirements of federal law,” *id.* § 1-4-1201, including the U.S. Constitution.

436. As part of her duties “[t]o supervise the conduct of primary” and “general ... elections in this state,” *id.* § 1-1-107(1)(a), the Secretary is “responsible for ensuring the qualifications of candidates for statewide and federal elections,” including presidential candidates, *Hassan v. Colorado*, 870 F. Supp. 2d 1192, 1195 (D. Colo. 2012), *aff’d*, 495 F. App’x 947 (10th Cir. 2012) (Gorsuch, J.) (upholding the Secretary’s exclusion of a constitutionally ineligible presidential candidate from the ballot); C.R.S. § 1-4-1203(3) (“The election officers ... have the same powers and shall perform the same duties for presidential primary elections as they provide by law for other primary elections and general elections.”).

437. Under Colorado law, “[n]o person is eligible to be a designee or candidate for office unless that person fully meets the qualifications of that office as stated in the constitution and statutes of this state on or before the date the term of that office begins.” C.R.S. § 1-4-501.

438. Section 3 of the Fourteenth Amendment, as part of the U.S. Constitution, “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.” U.S. Const. art. VI cl. 2; *see also* Colo. Const. art. II, § 2 (recognizing supremacy of the “[C]onstitution of the United States”).

439. Both the Secretary and this Court are required by law to take an oath to support the U.S. Constitution, including Section 3 of the Fourteenth Amendment. *See* U.S. Const. art. VI cl. 3 (“[A]ll executive and judicial Officers ... of the several States, shall be bound by Oath or Affirmation, to support this Constitution.”); Colo. Const. art. XII, § 8 (“Every civil officer ... shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation to support the constitution of the United States ... and to faithfully perform the duties of the office upon which he shall be about to enter.”); *id.* art. IV, § 1 (“The executive department shall include the ... secretary of state,” who “shall perform such duties as are prescribed ... by law.”); C.R.S. § 24-12-101 (specifying form and requirements of the oath).

440. The Secretary has a mandatory duty to support, obey, consider, apply, and enforce the U.S. Constitution, including Section 3 of the Fourteenth Amendment, in executing her official duties.

441. To gain access to a presidential primary election ballot, a major party candidate must submit to the Secretary (and the Secretary must accept) “a notarized candidate’s statement of intent,” C.R.S. § 1-4-1204(1)(c), in which the candidate must expressly “affirm” to the

Secretary that the candidate “meet[s] all qualifications for the office prescribed by law.”²⁰⁶

442. Any action by the Secretary to provide ballot access to a presidential primary candidate who fails to meet all constitutional qualifications for the Office of President is an “impropriety,” *id.* § 1-4-1204(4), and “a breach or neglect of duty or other wrongful act,” *id.* § 1-1-113(1).

443. As “eligible electors,” *id.*, Petitioners have standing under state law to prospectively “challenge” as “improp[er]” the “listing of any candidate on the presidential primary election ballot ... in accordance with section 1-1-113(1),” so long as the challenge is brought “no later than five days after the filing deadline for candidates,” *id.* § 1-4-1204(4). Such a challenge is ripe for adjudication as soon as a person qualifies as a “candidate” for a presidential primary election.

444. Trump is presently a “candidate” under Colorado and federal law for the 2024 Republican presidential primary election.

445. Because Trump is disqualified from public office under Section 3 of the Fourteenth Amendment, he does not “meet all qualifications for the office [of the President] prescribed by law.”

446. Despite the Secretary’s power and duty to exclude constitutionally ineligible candidates from the presidential primary ballot, the Secretary has not committed to excluding Trump from the presidential primary ballot based on his disqualification under Section 3. Based on historical practice, the Secretary will not independently investigate Trump’s constitutional eligibility under Section 3 and exclude him from the ballot on that basis absent a judicial order to that effect.

447. Due to Trump’s constitutional ineligibility to serve as president, any action by the Secretary allowing Trump ballot access—including accepting the Colorado Republican Party’s form designating Trump “as a bona fide candidate for president of the United States,” C.R.S. § 1-4-1204(1)(b); accepting Trump’s “notarized candidate’s statement of intent together with either a nonrefundable filing fee of five hundred dollars or a petition signed by at least five thousand eligible electors,” *id.* § 1-4-1204(1)(c); or “certify[ing]” and “listing” his name on the primary election ballot, *id.* §§ 1-4-1204(1), (4)—will be “improp[er],” *id.* § 1-4-1204(4), and “a breach or neglect of duty or other wrongful act” that, absent relief by this Court, the Secretary is “about to commit,” *id.* § 1-1-113(1), in violation of the U.S. Constitution and Colorado law.

²⁰⁶ Colorado Sec. of State, Major Party Candidate Statement of Intent for Presidential Primary, <https://www.coloradosos.gov/pubs/elections/Candidates/files/MajorPartyCandidateStatementOfIntentForPresidentialPrimary.pdf>.

448. There is an urgent public interest in promptly resolving whether Trump is constitutionally eligible to serve as president in advance of the approaching primary election. Absent timely relief, Petitioners and other voters will be irreparably harmed.

COUNT II

(Declaratory Relief Under C.R.S. § 13-51-105 and C.R.C.P. 57(a) – All Respondents)

449. Petitioners repeat and incorporate by reference all preceding paragraphs.

450. “District and superior courts within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” C.R.C.P. 57(a); *accord* C.R.S. § 13-51-105. Although Rule 57 enumerates certain examples of cases where declaratory relief is appropriate, “[t]he enumeration in sections (b), (c), and (d) of this Rule does not limit or restrict the exercise of the general powers conferred in section (a) of this Rule, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.” C.R.C.P. 57(e); *accord* C.R.S. § 13-51-105.

451. Petitioners seek declaratory relief to “terminate the controversy or remove an uncertainty” about whether Trump is constitutionally eligible for the office of the presidency and whether the Secretary may lawfully certify him as a candidate for that office.

452. Because Trump is disqualified to serve as president under Section 3 of the Fourteenth Amendment, Petitioners are entitled to declaratory relief that Trump is disqualified from office and that the Secretary may not take any action to allow Trump access to the 2024 Republican presidential primary ballot.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court issue an order:

1. Setting an expedited hearing on this Petition under C.R.S. §1-4-1204(4) and C.R.C.P. 57(m);
2. Declaring that Trump is disqualified under Section 3 of the Fourteenth Amendment to the Constitution of the United States and is therefore constitutionally ineligible to appear on any Colorado ballot as a candidate for federal or state office;
3. Declaring that any action by the Secretary allowing Trump to access the 2024 Republican presidential primary election ballot or any future primary or general election ballot in Colorado will be “improp[er],” C.R.S. § 1-4-1204(4), and “a breach or neglect of duty or other

wrongful act,” *id.* § 1-1-113(1);

4. Enjoining the Secretary from taking any action that would allow Trump to access the 2024 Republican presidential primary election ballot or any future primary or general election ballot in Colorado;

5. Awarding Petitioners their reasonable attorneys’ fees and costs incurred in prosecuting this action; and

6. Granting any other relief that this Court deems just and proper.

Date: September 6, 2023

Respectfully submitted,

Mario Nicolais, Atty. Reg. # 38589
KBN Law, LLC



Martha M. Tierney, Atty. Reg. # 27521
Tierney Lawrence Stiles LLC



Eric Olson, Atty. Reg. # 36414
Sean Grimsley, Atty. Reg. # 36422
Jason Murray, Atty. Reg. # 43652
Olson Grimsley Kawanabe Hinchcliff & Murray
LLC



Donald Sherman*
Nikhel Sus*

Jonathan Maier*
Citizens for Responsibility and Ethics in
Washington



**Pro hac vice* admission pending

Counsel for Petitioners

VERIFICATION OF KRISTA KAFER

I, Krista Kafer, being first duly sworn, state and affirm that the factual allegations set forth in this Petition are true and correct to the best of my knowledge, information, and belief.

Krista Kafer
Krista Kafer

9/4/23
Date

STATE OF COLORADO)
) SS.
COUNTY OF Denver)

Subscribed and sworn to before me, Coneise Clark, in the county of Denver, state of Colorado, on this 4 day of September, 2023.

Witness my hand and official seal.

My commission expires: 9/17, 2027

Coneise Clark

Notary Public

CONEISE CLARK
Notary Public
State of Colorado
Notary ID # 20194035701
My Commission Expires 09-17-2027

VERIFICATION OF KATHI WRIGHT

I, Kathi Wright, being first duly sworn, state and affirm that the factual allegations set forth in this Petition are true and correct to the best of my knowledge, information, and belief.

Kathi Wright
Kathi Wright

9-4-23
Date

STATE OF COLORADO)
) SS.
COUNTY OF Boulder)

Subscribed and sworn to before me, Coneise Clark, in the county of Boulder, state of Colorado, on this 4 day of September, 2023.

Witness my hand and official seal.

My commission expires: 9/17, 2023.

[Signature]

Notary Public

CONEISE CLARK
Notary Public
State of Colorado
Notary ID # 20194035701
My Commission Expires 09-17-2027

VERIFICATION OF CHRISTOPHER CASTILIAN

I, Christopher Castilian, being first duly sworn, state and affirm that the factual allegations set forth in this Petition are true and correct to the best of my knowledge, information, and belief.

Christopher Castilian
Christopher Castilian

09/05/2023
Date

STATE OF COLORADO)
) SS.
COUNTY OF Denver)

Subscribed and sworn to before me, Phillip Wilson a Notary Public, in the county of Denver, state of Colorado, on this 5 th day of September, 2023 by Christopher Castilian.

Witness my hand and official seal.

My commission expires: NOV 17, 2024.

Notarized online using audio-video communication

Phillip Wilson
Electronic Notary Public
State of Colorado
Commission #: 20204040417
Commission Expires: 11/17/2024

Phillip Wilson
Notary Public