

STATE OF MINNESOTA
IN SUPREME COURT

No. _____

Joan Growe, Paul Anderson, Thomas
Beer, David Fisher, Vernae Hasbargen,
David Thul, Thomas Welna, and Ellen
Young,

Petitioners,

vs.

Steve Simon, Minnesota Secretary of
State,

Respondent.

**PETITION PURSUANT TO MINN.
STAT. § 204B.44 TO CHALLENGE
PLACEMENT OF DONALD J. TRUMP
ON THE 2024 PRIMARY AND
GENERAL ELECTION BALLOTS**

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TO: The Supreme Court of the State of Minnesota:

Pursuant to Minn. Stat. § 204B.44, Petitioners Joan Growe, Paul Anderson, Thomas Beer, David Fisher, Vernae Hasbargen, David Thul, Thomas Welna, and Ellen Young petition the Supreme Court of the State of Minnesota for an Order prohibiting Respondent Steve Simon, the Minnesota Secretary of State, from including Donald J. Trump as a candidate on the ballot for the 2024 presidential nomination primary election or the general election for the office of the President of the United States. Petitioners state and allege as follows:

INTRODUCTION

1. On November 15, 2022, Donald Trump filed paperwork with the Federal Election Commission as a candidate for president of the United States. That same day, he publicly announced his candidacy in a speech at his Mar-a-Lago property in Florida.

2. As set forth below, Donald Trump is constitutionally ineligible for the office of President of the United States, or for any other public office.

3. Under Section 3 of the Fourteenth Amendment to the U.S. Constitution known as the Insurrectionist Disqualification Clause, “No person shall . . . hold any office, civil or military, under the United States, . . . who, having previously taken an oath, . . . as an officer of the United States, 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.”

4. Persons who trigger this provision are disqualified from public office. “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). Persons who are disqualified by this provision are thus ineligible to hold the presidency, just like those who fail to meet the age, residency, or natural-born citizenship requirements of Article II, section 1 of the Constitution, or those who have already served two terms, as provided by the Twentieth Amendment.

5. The events of January 6, 2021 amounted to an insurrection or a rebellion under Section 3: a violent, coordinated effort to storm the Capitol to obstruct and prevent the Vice President of the United States and the United States Congress from fulfilling their constitutional roles by certifying President Biden’s victory, and to illegally extend then-President Trump’s tenure in office.

6. The effort to overthrow the results of the 2020 election by unlawful means, from on or about November 3, 2020 through at least January 6, 2021, constituted a rebellion under Section 3: an attempt to overturn or displace lawful government authority by unlawful means.

7. By overwhelming majorities, both chambers of Congress declared those who attacked the Capitol on January 6, 2021 “insurrectionists.” Pub. L. 117-32 (Aug. 5, 2021). Just days afterward, the U.S. Department of Justice under the Trump administration labeled it an “insurrection” in federal court. So have at least sixteen federal judges, and Trump’s own defense lawyer in his impeachment proceeding.

8. Under Section 3, to “engage” means “a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from insurrectionists’ perspective]

termination.” *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871); *Worthy*, 63 N.C. at 203 (defining “engage” under Section 3 to mean “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary”).

9. An individual need not personally commit an act of violence to have “engaged” in insurrection. *Powell*, 27 F. Cas. at 607 (defendant paid to avoid serving in Confederate Army); *Worthy*, 63 N.C. at 203 (defendant simply served as county sheriff). Indeed, Jefferson Davis—the president of the Confederacy—never fired a shot.

10. Both modern judicial decisions to construe “engage” under Section 3 have adopted the *Worthy-Powell* standard. *See State ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, *19 (N.M. 1st Jud. Dist., Sept. 6, 2022), appeal dismissed, No. S-1-SC-39571 (N.M. Nov. 15, 2022), cert. filed May 18, 2023; *Rowan v. Greene*, Case No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off. of State Admin. Hg’s, May 6, 2022), slip op. at 13-14.

11. “Engagement” does not require previous conviction, or even charging, of any criminal offense. *See, e.g., Powell*, 27 F. Cas. at 607 (defendant not charged with any prior crime); *Worthy*, 63 N.C. at 203 (defendant not charged with any crime); *In re Tate*, 63 N.C. 308 (1869) (defendant not charged with any crime); *see also* Gerard N. Magliocca, *Amnesty and Section 3 of the Fourteenth Amendment*, 36 Const. Comment. 87, 98-99 (2021) (describing special congressional action in 1868 to enforce Section 3 and remove Georgia legislators, none of whom had been charged criminally); William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L.

Rev. ___ (forthcoming), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751, at 16-22.

12. Most of the House and Senate candidates-elect that Congress excluded from their seats during Reconstruction for engagement in insurrection had never been charged or convicted of any crimes.

13. Indeed, the vast majority of disqualified ex-Confederates were never charged with any crimes.

14. Modern authority agrees that no evidence or authority suggests that a prior criminal conviction—whether under 18 U.S.C. § 2383 (insurrection) or any other statute—was ever considered necessary to trigger Section 3. *White*, 2022 WL 4295619, at *16, *24; *Greene, supra* ¶ 10, slip op., at 13.

15. As set forth in detail below and in the reports of publicly available investigations, in the months leading up to January 6, 2021, then-President Donald Trump plotted to overturn the 2020 presidential election outcome.

16. First, he disseminated false allegations of fraud and challenged election results through litigation.

17. When his election lawsuits failed, he attempted unlawful schemes, including pressuring then-Vice President Mike Pence to discard electoral votes from states that had voted for President-elect Biden.

18. To pressure Pence, Trump summoned tens of thousands of supporters to Washington for what he called a “wild” protest on January 6, 2021, the day that Congress would count and certify the electoral votes.

19. Although Trump knew that these supporters were angry and that many were armed, Trump incited them to a violent insurrection and instructed them to march to the Capitol to “take back” their country.

20. What followed was a searing image of violence Americans will always remember: violent insurrectionists flooding the Capitol, beating law enforcement, breaking into the chambers, and threatening to kill Vice President Pence, Speaker of the House Nancy Pelosi, and other leaders.

21. Even as insurrectionists demanded Pence’s murder, Trump goaded them further. Knowing that his supporters’ violent attack on the Capitol was underway and knowing that his words would aid and encourage the insurrectionists and induce further violence, at 2:24 PM Trump sent a widely-read social media message publicly condemning Pence.

22. Despite knowing that violence was ongoing at the Capitol and that his violent supporters would heed a call from him to withdraw, for 187 minutes, Trump refused repeated requests that he instruct his violent supporters to disperse and leave the Capitol. Instead, he reveled in the violent attack as it unfolded on television.

23. The insurrection defeated the forces of civilian law enforcement; forced the United States Congress to go into recess; stopped the essential constitutional process of certifying electoral votes; forced the Vice President, Senators, Representatives, and staffers into hiding; occupied the United States Capitol, a feat never achieved by the Confederate rebellion; held the Capitol for hours until reinforcements could arrive; and

blocked the peaceful transition of power in the United States of America, another feat never achieved by the Confederate rebellion.

24. Donald J. Trump, through his words and actions, after swearing an oath as an officer of the United States to support the Constitution, engaged in insurrection or rebellion, or gave aid and comfort to its enemies, as defined by Section 3 of the Fourteenth Amendment. He is disqualified from holding the presidency or any other office under the United States unless and until Congress provides him relief.

JURISDICTION

25. This Court has jurisdiction over this matter pursuant to Minn. Stat. § 204B.44, which allows “[a]ny individual” to file a petition directly with this Court asking it to correct “an error . . . in the placement or printing of the name . . . of any candidate . . . on any official ballot, including the placement of a candidate on the official ballot who is not eligible to hold the office for which the candidate has filed,” or any wrongful act, omission, or error by the Secretary of State (or any other individual charged with any duty concerning an election), that is “about to occur.”

26. As set forth in more detail below, on August 23, 2023, counsel for Petitioners, Free Speech For People, wrote to the Secretary of State requesting that he determine that Donald J. Trump is disqualified from holding the office of President, and decline to place his name on the presidential primary and general election ballots. On August 29, 2023, the Secretary responded to Free Speech For People advising that his office did not have the authority to investigate the ineligibility of a candidate. On September 7, 2023, the Secretary issued a public statement reiterating that position. In

both his August 29, 2023 letter and his September 7, 2023 statement, the Secretary acknowledged that Minn. Stat. § 204B.44 allows voters to challenge a candidate's eligibility in court.

27. This action, brought under Minn. Stat. § 204B.44, is necessary to prevent the error of allowing Donald J. Trump, who is disqualified from holding the office of President pursuant to Section 3 of the Fourteenth Amendment to the United States Constitution, from appearing on the ballot for either the 2024 presidential nomination primary or the general election for the office of President of the United States.

PARTIES

28. Petitioner Joan Grove is a Minnesota resident and registered voter. Ms. Grove served six terms as the Minnesota Secretary of State from 1975 to 1999. Prior to running for Secretary of State, Ms. Grove served one term in the Minnesota House of Representatives. Ms. Grove is widely recognized as an expert on voting and elections. Ms. Grove has regularly voted in presidential elections since 1956 and intends to vote in both the presidential nomination primary and presidential general election in 2024.

29. Petitioner Paul Anderson is a Minnesota resident and registered voter. Justice Anderson served as an associate justice of the Minnesota Supreme Court from 1994 to 2013. Justice Anderson has regularly voted in presidential elections since 1964 and intends to vote in both the presidential nomination primary and presidential general election in 2024.

30. Petitioner Thomas Beer is a Minnesota resident and registered voter. Mr. Beer is a retired labor union official and member of the Minneapolis Regional Retiree

Council AFL-CIO. Mr. Beer has regularly voted in presidential elections and intends to vote in both the presidential nomination primary and presidential general election in 2024.

31. Petitioner David Fisher is a Minnesota resident and registered voter. Mr. Fisher retired from the full-time faculty of the University of Minnesota Law School and continues to teach courses in business strategy and ethics at the Law School. Mr. Fisher is an election judge in Hennepin County. Mr. Fisher has regularly voted in presidential elections since 1968 and intends to vote in both the presidential nomination primary and presidential general election in 2024.

32. Petitioner Vernae Hasbargen is a Minnesota resident and registered voter. Ms. Hasbargen has regularly voted in presidential elections and intends to vote in both the presidential nomination primary and presidential general election in 2024.

33. Petitioner David Thul is a Minnesota resident and registered voter. Mr. Thul is an Iraq war veteran and the former co-chair of the Steele County GOP. Mr. Thul has regularly voted in presidential elections since 1992 and intends to vote in both the Republican presidential nomination primary and presidential general election in 2024.

34. Petitioner Thomas Welna is a Minnesota resident and registered voter. Mr. Welna is a long-time Twin Cities non-profit executive and served as Deputy Mayor of St. Paul from 1990 to 1994. Mr. Welna has regularly voted in presidential elections since 1980 and intends to vote in both the presidential nomination primary and presidential general election in 2024.

35. Petitioner Ellen Young is a Minnesota resident and registered voter. Ms. Young has regularly voted in presidential elections and intends to vote in both the presidential nomination primary and presidential general election in 2024.

36. Respondent Steve Simon (“Simon”) is the Minnesota Secretary of State (“Secretary of State”). The Secretary of State is responsible for the administration of elections in the State of Minnesota including the March 5, 2024 presidential nomination primary election and November 5, 2024 general election. Specifically, the Secretary of State is charged with accepting presidential candidate filings and reviewing their compliance with applicable legal requirements, and certifying only those candidates to the county auditors of the state as to whom all statutory requirements have been met. *See e.g.*, Minn. Stat. §§ 207A.13, subd. 2; 208.04, subd. 1. Secretary Simon is named as a respondent in his official capacity.

GENERAL ALLEGATIONS

I. TRUMP TOOK AN OATH TO UPHOLD THE U.S. CONSTITUTION.

37. On January 20, 2017, Donald Trump was sworn in as forty-fifth president of the United States.

38. On that day, Trump swore the presidential oath of office required by Article II, section 1, of the Constitution: “I, Donald John Trump, do solemnly swear that I will

faithfully execute the office of President of the United States, and will to the best of my Ability preserve, protect, and defend the Constitution of the United States.”¹

39. After taking the oath, Trump gave an inaugural speech, in which he stated, “Every four years, we gather on these steps to carry out the orderly and peaceful transfer of power.”²

II. TRUMP’S SCHEME TO OVERTURN THE GOVERNMENT.

A. Trump Sought Re-Election but Prepared to Retain Power Even if He Lost.

40. On January 19, 2019, at a rally in Florida, Trump officially launched his campaign for a second term as President.³

41. During his campaign, Trump stated that fraudulent voting activity would be the only possible reason for electoral defeat (rather than not receiving enough votes). For example:

- a. On August 17, 2020, Trump spoke to a crowd in Oshkosh, Wisconsin and stated: “The only way we’re going to lose this election is if the election is rigged.”⁴

¹ Trump White House Archived, *The Inauguration of the 45th President of the United States*, YOUTUBE (Jan. 20, 2017), <https://www.youtube.com/watch?v=4GNWldTc8VU>; *see also* U.S. Const. art. I, § 2, cl. 8.

² Trump White House Archived, *The Inauguration of the 45th President of the United States*, YOUTUBE (Jan. 20, 2017), <https://www.youtube.com/watch?v=4GNWldTc8VU>.

³ *Donald Trump formally launches 2020 re-election bid*, BBC (June 19, 2019), <https://www.bbc.com/news/world-us-canada-48681573>.

⁴ Kevin Liptack, *Trump warns of ‘rigged election’ as he uses conspiracy and fear to counter Biden’s convention week*, CNN (Aug. 18, 2020), <https://www.cnn.com/2020/08/17/politics/donald-trump-campaign-swing/index.html>.

- b. On August 24, 2020, during his Republican National Convention acceptance speech, Trump stated: “The only way they can take this election away from us is if this is a rigged election.”⁵
- c. On September 24, 2020, Trump stated: “We want to make sure the election is honest, and I am not sure that it can be. I don’t know that it can be with this whole situation of unsolicited ballots.”⁶

42. In particular, Trump claimed that this “fraud” occurred or would occur in cities and states with majority or substantial Black populations.

43. In parallel, Trump aligned himself with violent extremist and white supremacist organizations and suggested they should be prepared to act on his behalf.

44. For example, on September 29, 2020, Trump was asked if he would disavow the Proud Boys. Instead, he stated: “Proud Boys, stand back and *stand by*,” later adding “somebody’s got to do something about Antifa and the left.”⁷

45. The Proud Boys celebrated this as a call to “stand by.”

- a. On the social media site Parler, Proud Boys leader Henry “Enrique” Tarrío responded, “Standing by sir.”⁸ (Tarrío was convicted of

⁵ *RNC 2020: Trump warns Republican convention of ‘rigged election’*, BBC (Aug. 25, 2020), <https://www.bbc.com/news/election-us-2020-53898142>.

⁶ *President Trump Departs White House*, C-SPAN (Sept. 24, 2020), <https://www.c-span.org/video/?476212-1/president-trump-departs-white-house#>.

⁷ YOUTUBE (Sep. 29, 2020), https://www.youtube.com/watch?v=qIHhB1ZMV_o.

⁸ H.R. Rep. No. 117-663 (Dec. 22, 2022), at 507-08; <https://twitter.com/ByMikeBaker/status/1311130735584051201/photo/1> (screenshot).

seeditious conspiracy on May 4, 2023 and sentenced to 22 years in prison for his role on January 6.⁹)

- b. Another Proud Boys leader, Joseph Biggs, posted, “President Trump told the proud boys to stand by because someone needs to deal with ANTIFA...well sir! we're ready!!” and “Trump basically said to go fuck them up! this makes me so happy.”¹⁰ (Biggs was convicted of seeditious conspiracy and sentenced to 17 years in prison for his role on January 6.¹¹)
- c. That same night, the Proud Boys began making and selling merchandise with the slogan “Stand Back and Stand By.”

46. Meanwhile, before November 3, 2020 (“Election Day”), Trump was advised by his campaign manager William Stepien not to prematurely declare victory while lawful votes, including mail-in and absentee ballots, were still being counted.¹²

⁹ *Proud Boys Leader Sentenced to 22 Years in Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, U.S. DEPT. OF JUSTICE (Sept. 5, 2023), <https://www.justice.gov/usao-dc/pr/proud-boys-leader-sentenced-22-years-prison-seditious-conspiracy-and-other-charges>.

¹⁰ H.R. Rep. No. 117-663 (Dec. 22, 2022), at 507-08; <https://twitter.com/ByMikeBaker/status/1311130735584051201/photo/1> (screenshot).

¹¹ *Two Leaders of the Proud Boys Sentenced to Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, U.S. DEPT. OF JUSTICE (Aug. 31, 2023), <https://www.justice.gov/usao-dc/pr/two-leaders-proud-boys-sentenced-prison-seditious-conspiracy-and-other-charges-related-us>.

¹² Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, No. 117-3 (June 13, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg48999/pdf/CHRG-117hrg48999.pdf> (“Second Jan. 6 Hearing Transcript”).

47. Notwithstanding Stepien’s advice, Trump and his associates planned to declare victory before all ballots were counted. For instance:

- a. On November 1, 2020, Trump told close associates that he would declare victory on election night if it looked as if he was “ahead.”¹³
- b. Around the same time, Steve Bannon, former White House strategist and advisor to Trump told a group of associates: “And what Trump’s going to do is just declare victory, right? He’s gonna declare victory, but that doesn’t mean he’s the winner, he’s just gonna say he’s a winner.”¹⁴

48. On November 3, 2020, the United States held its presidential election.

49. That evening, media outlets projected Biden was in the lead.¹⁵

50. Trump falsely alleged that widespread voter fraud had compromised the validity of such results. For example:

- a. On November 4, 2020, he tweeted: “We are up BIG, but they are trying to STEAL the Election. We will never let them do it. Votes cannot be cast after the Polls are closed!”¹⁶

¹³ Jonathan Swan, *Scoop: Trump’s plan to declare premature victory*, AXIOS (Nov. 1, 2020), <https://www.axios.com/2020/11/01/trump-claim-election-victory-ballots>.

¹⁴ Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, No. 117-9, at 38 (July 21, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhr49356/pdf/CHRG-117hhr49356.pdf>.

¹⁵ Meg Wagner, Melissa Mahtani, et al., *Election 2020 presidential results*, CNN (Nov. 5, 2020), <https://www.cnn.com/politics/live-news/election-results-and-news-11-04-20/index.html>.

- b. On November 5, 2020, he tweeted: “STOP THE FRAUD!” and, “STOP THE COUNT!”¹⁷

51. On November 7, 2020, news organizations across the country declared that Joseph Biden won the 2020 presidential election.¹⁸

- 52. That same day, Trump tweeted: “I WON THIS ELECTION, BY A LOT!”¹⁹

B. Trump Attempted to Enlist Government Officials to Illegally Overturn the Election.

53. After Election Day, several aides and advisors close to Trump investigated his election fraud claims and informed Trump that such allegations were unfounded. For example:

- a. Days after the election, lead data expert Matt Oczkowski informed Trump that he would lose because not enough votes were in his favor.²⁰

¹⁶ Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 3, 2020), <https://twitter.com/realDonaldTrump/status/1323864823680126977>.

¹⁷ Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 5, 2020), <https://twitter.com/realDonaldTrump/status/1324401527663058944?lang=en>, and <https://twitter.com/realDonaldTrump/status/1324353932022480896?>.

¹⁸ See, e.g., Bo Erickson, *Joe Biden projected to win presidency in deeply divided nation*, CBS NEWS (Nov. 7, 2020), <https://www.cbsnews.com/news/joe-biden-wins-2020-election-46th-president-united-states/>; Asma Khalid and Scott Detrow, *Biden Wins Presidency, According to AP, Edging Trump in Turbulent Race*, NPR (Nov. 7, 2020), <https://www.npr.org/2020/11/07/928803493/biden-wins-presidency-according-to-ap-edging-trump-in-turbulent-race>.

¹⁹ Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 7, 2020), <https://twitter.com/realDonaldTrump/status/1325099845045071873>.

- b. At approximately the same time, former Attorney General William Barr told Trump he did not agree with the idea of saying the election was stolen.²¹
- c. On November 23, 2020, Barr again informed Trump that his claims of fraud were not meritorious.²²
- d. In mid to late November, campaign lawyer Alex Cannon told Trump’s Chief of Staff Mark Meadows that he had not found evidence of voter fraud sufficient to change the results in any of the key states.²³

54. On December 1, 2020, Attorney General William Barr publicly declared that the U.S. Justice Department found no evidence of voter fraud that would warrant a change of the election result.²⁴

55. Sometime between the election and December 14, 2020, Trump asked Barr to instruct the Department of Justice to seize voting machines.²⁵

²⁰ Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, No. 117-2 (June 9, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg48998/pdf/CHRG-117hrg48998.pdf> (“First Jan. 6 Hearing Transcript”).

²¹ Second Jan. 6 Hearing Transcript, *supra* n.12.

²² Select Comm. to Investigate the Jan. 6 Attack on the United States Capitol, Transcribed Interview of William Barr, at 18 (June 2, 2022), *available at* <https://www.govinfo.gov/app/details/GPO-J6-TRANSCRIPT-CTRL0000083860>.

²³ First Jan. 6 Hearing Transcript, *supra* n.20.

²⁴ *Disputing Trump, Barr says no widespread election fraud*, ASSOCIATED PRESS (Dec. 1, 2020), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

56. Barr refused, citing a lack of legal authority.²⁶

57. On December 6, 2020, Trump called the Chairwoman of the Republican National Committee Ronna Romney McDaniel to enlist the Committee's support in gathering a slate of electors for Trump in states where President-elect Biden had won the election but legal challenges to the election results were underway.²⁷

58. On December 8, 2020, a senior campaign advisor to Trump wrote in an internal campaign email: "When our research and campaign legal team can't back up any of the claims made by our Elite Strike Force Legal Team, you can see why we're 0-32 on our cases. I'll obviously hustle to help on all fronts, but it's tough to own any of this when it's all just conspiracy shit beamed down from the mothership."²⁸

59. On December 14, 2020, presidential electors convened in all 50 states and D.C. to cast their official electoral votes. They voted 306-232 against Trump.²⁹

60. On December 14, 2020, at Trump's direction, fraudulent electors convened sham proceedings in seven targeted states where President-elect Biden had won a

²⁵ Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, No. 117-6 (June 23, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg49353/pdf/CHRG-117hrg49353.pdf> ("Fifth Jan. 6 Hearing Transcript").

²⁶ *Id.*

²⁷ Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Ronna Romney McDaniel, at 9-13 (June 1, 2022), *available at* <https://www.documentcloud.org/documents/23559939-transcript-of-ronna-mcdaniels-interview-with-house-january-6-committee>.

²⁸ Indictment at 13-14, *U.S. v. Trump*, Case No. 1:23-cr-00257-TSC, ECF No. 1 (D.D.C., Aug. 1, 2023), *available at* https://www.justice.gov/storage/US_v_Trupp_23_cr_257.pdf ("August 1, 2023 Indictment").

majority of the votes (Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin) and cast fraudulent electoral ballots in favor of Trump.

61. Also on December 14, 2020, Attorney General Barr resigned as head of the Department of Justice (“DOJ”) and Trump appointed Jeffrey Rosen as acting attorney general and Richard Donoghue as acting deputy attorney general.³⁰

62. During Rosen’s term, Trump requested that the DOJ file a lawsuit challenging the election before the U.S. Supreme Court as an exercise of its original jurisdiction.³¹

63. The DOJ declined because it did not have legal authority to challenge state electoral procedures.³²

64. On December 31, 2020, Trump asked Rosen and Donoghue to direct the Department of Justice to seize voting machines.³³

65. Rosen and Donoghue rejected Trump’s request, again for lack of authority.³⁴

66. Between December 23, 2020, and early January 2021, Trump attempted to speak with Rosen on the matter of election fraud nearly every day.³⁵

²⁹ See National Archives, *2020 Electoral College Results*, <https://www.archives.gov/electoral-college/2020>.

³⁰ Fifth Jan. 6 Hearing Transcript, *supra* n.25.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

67. According to Rosen, “the president’s entreaties became more urgent” and Trump “became more adamant that we weren’t doing our job.”³⁶

68. On December 25, 2020, Trump called Pence to wish him a Merry Christmas and to request that Pence reject the electoral votes on January 6, 2021.³⁷

69. Pence responded, “You know I don’t think I have the authority to change the outcome.”

70. On December 27, 2020, Rosen told Trump “that the DOJ can’t and won’t snap its fingers and change the outcome of the election. It doesn’t work that way.”³⁸

71. Trump responded to Rosen along the lines of, “just say the election was corrupt and leave the rest to me [Trump] and the Republican congressmen.”³⁹

72. On January 2, 2021, Jeffrey Clark, the acting head of the Civil Division and head of the Environmental and Natural Resources Division at the DOJ, and who had met with Trump without prior authorization from the DOJ, told Rosen and Donoghue that Trump was prepared to fire them and to appoint Clark as the acting attorney general.⁴⁰

³⁵ Fifth Jan. 6 Hearing Transcript, *supra* n.25.

³⁶ *Id.*; see also Katie Benner, *Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General*, N.Y. TIMES (Jan. 22, 2021), <https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justicedepartment-election.html>.

³⁷ August 1, 2023 Indictment at 33, *supra* n.28.

³⁸ Fifth Jan. 6 Hearing Transcript, *supra* n.25.

³⁹ *Id.*

⁴⁰ H.R. Rep. No. 117-663, ch. 4 at 397 (Dec. 22, 2022).

73. Clark asked Rosen and Donoghue if they would sign a draft letter to state officials recommending that the officials send an alternate slate of electors to Congress, and if they did so, then Clark would turn down Trump's offer and Rosen would remain in his position.⁴¹

74. Rosen refused.⁴²

75. On January 3, 2021, Clark—again without authorization— met with Trump and accepted Trump's offer to become Acting Attorney General in light of Rosen and Donoghue's refusal to sign the draft letter.⁴³

76. That afternoon, Clark attempted to fire Rosen, but Rosen would not accept being fired by a subordinate.⁴⁴

77. That evening, when told that Rosen's departure would result in mass resignations at the DOJ and his own White House Counsel, Trump relented on his plan to replace Rosen with Clark.⁴⁵

78. Trump's efforts to coerce public officials to assist in his scheme to unlawfully overturn the election were not limited to federal officials. Following his election loss, Trump publicly and privately pressured state officials in various states

⁴¹ Fifth Jan. 6 Hearing Transcript, *supra* n.25.

⁴² *Id.*

⁴³ H.R. Rep. No. 117-663, ch 4 at 398 (Dec. 22, 2022).

⁴⁴ Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess. (June 23, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.

around the country to unlawfully overturn the election results. For example, on January 2, 2021, in a recorded telephone conversation, Trump pressured Georgia Secretary of State Brad Raffensperger to “find 11,780 votes” for him, and thereby fraudulently and unlawfully turn his electoral loss in Georgia to an electoral victory.

79. Trump’s relentless false claims about election fraud and his public pressure and condemnation of election officials resulted in threats of violence against election officials around the country.

80. Trump knew about the threats of violence that he was provoking and, in the face of pleas from public officials to denounce the violence, instead further encouraged it with inflammatory tweets.

81. During the weeks leading up to January 6, 2021, Trump oversaw, directed, and encouraged a “fake elector” scheme under which seven states that Trump lost would submit an “alternate” slate of electors as a pretext for Vice President Pence to decline to certify the actual electoral vote on January 6.

82. Trump’s efforts to unlawfully overturn the results of the 2020 presidential election are the subjects of criminal indictments pending against him in United States District Court for the District of Columbia and in the State of Georgia.

⁴⁵ Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Richard Peter Donoghue, at 125 (Oct. 1, 2021), *available at* <https://www.govinfo.gov/app/details/GPO-J6-TRANSCRIPT-CTRL0000034600> .

83. On January 3, 2021, Trump again told Pence that Pence had the right to reject the electoral vote on January 6.⁴⁶

84. Pence rejected Trump's request.⁴⁷

85. On January 4, 2021, Trump and his then-attorney John Eastman met with then-Vice President Mike Pence and his attorney Greg Jacob to discuss Eastman's legal theory that Pence might either reject votes on January 6 during the certification process, or suspend the proceedings so that states could reexamine the results.⁴⁸

86. On January 5, 2021, Eastman met privately with Jacob.⁴⁹

87. Eastman expressly requested that Pence reject the certification of election results.⁵⁰

88. During that meeting, Eastman acknowledged that vice presidents both before and after Pence would not have the legal authority to do so under the Electoral Count Act. He also stated that this theory would lose in the Supreme Court without a single justice in agreement.⁵¹

⁴⁶ August 1, 2023 Indictment at 33, *supra* n.28.

⁴⁷ *Id.*

⁴⁸ Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, No. 117-4 (June 16, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhrg49351/pdf/CHRG-117hhrg49351.pdf> ("Third Jan. 6 Hearing Transcript"); *see also* Order Re Privilege of Documents, *Eastman v. Thompson*, No. 8:22-cv-00099, ECF No. 260 at 7 (C.D. Cal. March 28, 2022).

⁴⁹ Third Jan. 6 Hearing Transcript, *supra* n.48.

⁵⁰ *Id.*

⁵¹ *Id.*

89. All the while, Trump publicly and falsely maintained that the 2020 presidential election results were illegitimate due to fraud, and set the expectation that Pence had the authority to overturn the election. For example:

- a. On December 4, 2020, Trump tweeted: “RIGGED ELECTION!”⁵²
- b. On December 10, 2020, Trump tweeted: “How can you give an election to someone who lost the election by hundreds of thousands of legal votes in each of the swing states. How can a country be run by an illegitimate president?”⁵³
- c. On December 15, 2020, Trump tweeted: “Tremendous evidence pouring in on voter fraud. There has never been anything like this in our Country!”⁵⁴
- d. On December 23, 2020, Trump retweeted a memo titled “Operation ‘PENCE’ CARD,” which falsely asserted that the Vice President could disqualify legitimate electors.⁵⁵

⁵² Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 4, 2020), <https://twitter.com/realDonaldTrump/status/1334858852337070083>.

⁵³ Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 10, 2020), <https://twitter.com/realDonaldTrump/status/1337040883988959232>.

⁵⁴ Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 15, 2020), <https://twitter.com/realDonaldTrump/status/1338871862315667456>.

⁵⁵ Mike Pence, *Mike Pence: My Last Days With Donald Trump*, WALL STREET JOURNAL (Nov. 9, 2022) <https://www.wsj.com/articles/donald-trump-mike-pence-jan-6-president-rally-capitol-riot-protest-vote-count-so-help-me-god-stolen-election-11668018494?st=rna6xw1pmjmaoss>.

- e. On January 5, 2021, Trump tweeted: “The Vice President has the power to reject fraudulently chosen electors.”⁵⁶

C. Trump Urged his Supporters to Amass at the Capitol.

90. On December 11, 2020, the Supreme Court rejected a lawsuit brought by the State of Texas alleging that election procedures in four states had resulted in illegitimate votes.⁵⁷

91. The next morning, on December 12, 2020, Trump tweeted that the Supreme Court order was “a great and disgraceful miscarriage of justice,” and “WE HAVE JUST BEGUN TO FIGHT!!!”⁵⁸

92. That same day, Ali Alexander of Stop the Steal, and Alex Jones and Owen Shroyer of Infowars led a march on the Supreme Court.⁵⁹

93. The crowd at the march chanted slogans such as “Stop the Steal!” “1776!” “Our revolution!” and Trump’s earlier tweet, “The fight has just begun!”⁶⁰

94. On that day, Trump 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.”⁶¹

⁵⁶ The American Presidency Project, Donald Trump Tweets of January 5, 2021 (archived), <https://www.presidency.ucsb.edu/documents/tweets-january-5-2021>.

⁵⁷ *Texas v. Pennsylvania, et al.*, No. 22-155, Order (U.S. Sup. Ct., Dec. 11, 2020).

⁵⁸ Donald J. Trump (@realDonaldTrump), TWITTER (Dec.12, 2020), <https://twitter.com/realDonaldTrump/status/1337743516294934529>, and <https://twitter.com/realDonaldTrump/status/1337755964339081216>.

⁵⁹ H.R. Rep. No. 117-663, ch. 6 at 505 (Dec. 22, 2022).

⁶⁰ *Id.*

95. Later that day, Trump flew over the crowd in Marine One.⁶²

96. On December 18, 2020, Trump tweeted: “.@senatemajldr and Republican Senators have to get tougher, or you won’t have a Republican Party anymore. We won the Presidential Election, by a lot. FIGHT FOR IT. Don’t let them take it away!”⁶³

97. On December 19, 2020, Trump tweeted “Big protest in D.C. on January 6th! Be there, will be wild!”⁶⁴

D. In Response to Trump’s Call for a “Wild” Protest, Trump’s Supporters Planned Violence.

98. In response to Trump’s “wild” tweet, Twitter’s Trust and Safety Policy team recorded a “fire hose of calls to overthrow the U.S. government.”⁶⁵

99. Other militarized extremist groups began organizing for January 6 after Trump’s “will be wild” tweet. These include the Oath Keepers, the Proud Boys, the Three Percenter militias, and others.

100. 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

⁶¹ Donald J. Trump (@realDonaldTrump), TWITTER (Dec.12, 2020), <https://twitter.com/realDonaldTrump/status/1337774011376340992>.

⁶² H.R. Rep. No. 117-663, ch. 6 at 506 (Dec. 22, 2022).

⁶³ Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 18, 2020), <http://www.twitter.com/realDonaldTrump/status/1339937091707351046>.

⁶⁴ Donald J. Trump (@realDonaldTrump), TWITTER (Dec.18, 2020), <https://twitter.com/realDonaldTrump/status/1340185773220515840>.

⁶⁵ H.R. Rep. No. 117-663, ch. 6 at 449 (Dec. 22, 2022).

Congress and law enforcement” and noticed “violent right-wing groups that had not previously been aligned had begun coordinating their efforts.”⁶⁶

101. For example:

- a. Kelly Meggs of the Oath Keepers Florida Chapter read Trump’s tweet and commented in a Facebook post: “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!!”⁶⁷
- b. Meggs was later convicted by a federal jury for seditious conspiracy under 18 U.S.C. § 2384 after the January 6 attack, and sentenced to 12 years in prison.⁶⁸
- c. Oath Keepers from various states had established a “Quick Reaction Force” plan where they cached weapons for January 6, 2021 at hotels in Ballston and Vienna in Virginia.⁶⁹

⁶⁶ H.R. Rep. No. 117-663, at 694 (Dec. 22, 2022).

⁶⁷ Third Superseding Indictment at ¶ 37, *United States v. Crowl et al.*, No. 1:21-cr-28, ECF No. 127 (D.D.C., Mar. 31, 2021); *see also* H.R. Rep. No. 117-663, at 515 (Dec. 22, 2022).

⁶⁸ *United States v. Rhodes, III et al.*, No. 1:22-cr-00015 (D.D.C. Nov. 29, 2022).

⁶⁹ Superseding Indictment at ¶ 45, *United States v. Rhodes, III et al.*, No. 1:22-cr-15, ECF No. 167 (D.D.C. June 22, 2022); Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Frank Marchisella, at 34 (Apr. 29, 2022), *available at* <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000071096/pdf/GPO-J6-TRANSCRIPT-CTRL0000071096.pdf>.

- d. Henry “Enrique” Tarrío, a leader of the Proud Boys, sent encrypted messages to others that they should “storm the Capitol.”⁷⁰
- e. The Proud Boys received and had been in possession of a document titled “1776 Returns” where the initial authors divided their plan to overtake federal government buildings into five parts: “Infiltrate, Execution, Distract, Occupy and Sit-In.”⁷¹
- f. Members of the Proud Boys were also convicted of seditious conspiracy after the January 6 attack.⁷²
- g. Matt Bracken, a host for Infowars, a website specializing in disinformation and false election fraud theories, told viewers that it may be necessary to storm the Capitol, and that “we’re only going to be saved by millions of Americans. . . occupying the entire area, if—if necessary storming right into the Capitol. . . we know the rules

⁷⁰ Second Superseding Indictment at ¶ 50, *United States v. Nordean, et al.*, No. 1:21-cr-00175, ECF No. 305 (D.D.C. Mar. 7, 2022).

⁷¹ Zachary Rehl’s Motion to Reopen Detention Hearing and Request for a Hearing, Exhibit 1: “1776 Returns,” *United States v. Nordean, et al.*, No. 1:21-cr-00175, ECF No. 401-1 (D.D.C. June 15, 2022), available at <https://s3.documentcloud.org/documents/22060615/1776-returns.pdf>.

⁷² *Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. DEPT. OF JUSTICE (May 4, 2023), <https://www.justice.gov/opa/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach>.

of engagement. If you have enough people, you can push down any kind of fence or a wall.”⁷³

h. QAnon, an online false theory group, shared online a digital banner of “Operation Occupy the Capitol,” which depicted the U.S. Capitol being torn in two.⁷⁴

i. The Three Percenter militias, a far-right, anti-government movement, tried to share online “#OccupyCongress” memes with text that say, “If they Won’t Hear Us” and “They Will Fear Us.”⁷⁵

102. On January 1, 2021, a supporter tweeted to Trump that “The calvary [sic] is coming, Mr. President!”⁷⁶

103. Trump quoted that tweet and wrote back, “A great honor!”⁷⁷

104. Organizers planned two separate demonstrations for January 6, 2021.

⁷³ The Alex Jones Show, “January 6th Will Be a Turning Point in American History,” BANNED.VIDEO, at 16:29 (Dec. 31, 2020), *available at* <https://www.bitchute.com/video/XBIIZYTRfaIB/>; *see also* H.R. Rep. No. 117-663, at 507 (Dec. 22, 2022).

⁷⁴ Ben Collins and Brandy Zadrozny, “Extremists Made Little Secret of Ambitions to ‘Occupy’ Capitol in Weeks Before Attack,” NBC (Jan. 8, 2021), *available at* <https://www.nbcnews.com/tech/internet/extremists-made-little-secret-ambitions-occupy-capitalweeks-attack-n1253499>.

⁷⁵ Criminal Complaint at 10-11, *United States v. Hazard*, No. 1:21-mj-00686, ECF No. 1 (D.D.C. Dec. 7, 2021).

⁷⁶ Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 1, 2021), <https://twitter.com/realDonaldTrump/status/1345106078141394944>.

⁷⁷ Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 1, 2021), <https://twitter.com/realDonaldTrump/status/1345106078141394944>.

- a. Kylie and Amy Kremer, a mother-daughter pair involved with Women for America First, planned a demonstration on the Ellipse (“Ellipse Demonstration”), a park south of the White House fence and north of Constitution Avenue and the National Mall in Washington, D.C.⁷⁸
- b. Ali Alexander, an extremist associated with the Stop the Steal, planned an assemblage immediately outside the Capitol, on the court side and the steps of the building.⁷⁹

105. On December 29, 2020, Alexander tweeted, “Coalition of us working on 25 new charter buses to bring people FOR FREE to #JAN6 #STOPTHESTEAL for President Trump. If you have money for more buses or have a company, let me know. We will list our buses sometime in the next 72 hours. STAND BACK & STAND BY!”⁸⁰

106. Meanwhile, by late December, Trump, his White House, and his campaign became directly involved in planning the Ellipse Demonstration. Trump personally

⁷⁸ Women For America First Ellipse Public Gathering Permit, NTL. PARK SERV. (Jan. 5, 2021), available at https://www.nps.gov/aboutus/foia/upload/21-0278-Women-for-America-First-Ellipse-permit_REDACTED.pdf.

⁷⁹ *President Trump Wants You in DC January 6*, WILDPROTEST.COM (Dec 19.2020), available at <https://web.archive.org/web/20201223062953/http://wildprotest.com/> (archived).

⁸⁰ H.R. Rep. No. 117-663, at 532 (Dec. 22, 2022).

helped select the speaker lineup, and his campaign and joint fundraising committees made direct payments of \$3.5 million to rally organizers.⁸¹

107. By December 29, 2020, Trump had formed and conveyed to allies a plan to order his supporters to march to the Capitol at the end of his speech.⁸² His goal was to force Congress to stop the certification of electoral votes.⁸³

108. Between January 2 and 4, 2021, Kremer and other organizers of the Ellipse Demonstration became aware that Trump intended to “order [the crowd] to the Capitol at the end of his speech.” These organizers messaged each other that “POTUS is going to have us march there [the Supreme Court]/the Capitol,” and that the President was going to “call on everyone to march to the [C]apitol.”⁸⁴

109. These organizers received this information from White House Chief of Staff Mark Meadows.⁸⁵

110. In early January 2021, Trump and extremists began publicly referring to January 6 using increasingly apocalyptic terminology. Some referred to a “1776” plan or option for January 6, drawing a thinly veiled analogy between the American Revolution

⁸¹ H.R. Rep. No. 117-663, at 533-36 (Dec. 22, 2022); 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/>.

⁸² H.R. Rep. No. 117-663, ch. 6 at 533 (Dec. 22, 2022).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

(which forcefully revolted against an oppressive government) and these extremists' plans surrounding the upcoming January 6 congressional certification of electoral votes.

111. On January 4, 2021, at a rally in Dalton, Georgia, Trump stated: "If you don't fight to save your country with everything you have, you're not going to have a country left."⁸⁶

112. During the rally, Trump asserted that the transfer of power set for January 6, 2021 would not take place and insinuated that powerful events would later occur.⁸⁷ For example, he stated:

- a. "If the liberal Democrats take the Senate and White House. . . And they're not taking this White House. We're going to fight like hell, I'll tell you right now."
- b. "We're going to take it back."
- c. "There's no way we lost Georgia. There's no way. That was a rigged election, but we're still fighting it and you'll see what's going to happen."
- d. "We can't let that happen. The damage they do will be permanent and will be irreversible. Can't let it happen."

⁸⁶ Bloomberg Quicktake, *LIVE: Trump Stumps for Georgia Republicans David Perdue, Kelly Loeffler Ahead of Senate Runoff*, YOUTUBE (Jan. 4, 2021), <https://www.youtube.com/watch?v=9HisWmJJ3oE>.

⁸⁷ Bloomberg Quicktake, *LIVE: Trump Stumps for Georgia Republicans David Perdue, Kelly Loeffler Ahead of Senate Runoff*, YOUTUBE (Jan. 4, 2021), <https://www.youtube.com/watch?v=9HisWmJJ3oE>.

- e. “We will never give in. We will never give up. We will never back down. We will never, ever surrender.”
- f. “We have to go all the way and that’s what’s happening. You watch what happens over the next couple of weeks. You watch what’s going to come out. Watch what’s going to be revealed. You watch.”

113. At the rally, the crowd chanted “Fight for Trump! Fight for Trump!” several times.⁸⁸

114. By early January 2021, Trump anticipated that the crowd that was preparing to amass on January 6 at his behest would be large and violent.⁸⁹

115. On January 5, 2021, several events were held across D.C. on behalf of Stop the Steal, an entity formed in early November 2020 to mobilize around Trump’s claim that the election had been rigged.⁹⁰ Speakers during these events made remarks about the event to be held at the Capitol the next day. For example:

⁸⁸ Bloomberg Quicktake, *LIVE: Trump Stumps for Georgia Republicans David Perdue, Kelly Loeffler Ahead of Senate Runoff*, YOUTUBE (Jan. 4, 2021), <https://www.youtube.com/watch?v=9HisWmJJ3oE>.

⁸⁹ Letter from Donald J. Trump to Select Committee to Investigate the January 6th Attack on the U.S. Capitol (Oct. 13, 2022), <https://s3.documentcloud.org/documents/23132276/830-am-final-january-6th-committee-letter14446.pdf>.

⁹⁰ On information and belief, this “Stop the Steal” entity is distinct from an identically named organization founded in 2016 by Roger Stone.

- a. Ali Alexander from Stop the Steal said: “We must rebel. . . we might make this Fort Trump. . . we’re going to keep fighting for you Mr. Trump.”⁹¹
- b. Alex Jones from Infowars stated: “This is a fight for the future of western civilization as we know it. . . we dare not fail,” and “1776 is always an option. . . these degenerates in the deep state are going to give us what we want, or we are going to shut this country down.”⁹²
- c. Several members of the Phoenix Project, a Three-Percenter-linked group, told the January 5 crowd, “We are at war,” promising to “fight” and “bleed,” and that they will “not return to our peaceful way of life until this election is made right.”⁹³

116. On January 5, in response to the noise from these extremist demonstrations, Trump tweeted: “Our Country has had enough, they won’t take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!”⁹⁴

117. That same evening, President Trump told White House staff that his supporters would be “fired up” and “angry” the next day.⁹⁵

⁹¹ H.R. Rep. No. 117-663, ch. 6 at 537 (Dec. 22, 2022).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 5, 2021), <http://www.twitter.com/realDonaldTrump/status/1346578706437963777>.

⁹⁵ H.R. Rep. No. 117-663, at 539 (Dec. 22, 2022).

118. Also on January 5, 2021, Trump met alone with Pence and again asked him to obstruct the certification.⁹⁶

119. Pence informed Trump that he did not have the authority to unilaterally reject electoral votes and consequently would not do so.⁹⁷

120. Trump informed Pence that if he did not reject the votes, then Trump would publicly criticize Pence for it.⁹⁸

121. Later that night, Trump authorized his campaign to issue a false public statement that: “The Vice President and I are in total agreement that the Vice President has the power to act.”⁹⁹

E. Trump and his Administration Knew of Supporters’ Plans to Use Violence and/or to Forcefully Prevent Congress from Certifying the Election Results.

122. Trump, his closest aides, the Secret Service, and the Federal Bureau of Investigations were all aware that Trump supporters—whom Trump had aroused with claims of election fraud and veiled calls for violence—intended to commit violence at the Capitol on January 6 if the vote was certified.

123. On December 24, 2020, the Secret Service received from a private intelligence group a list of responses to Trump’s December 19 “will be wild” tweet.¹⁰⁰

Those responses included:

⁹⁶ August 1, 2023 Indictment at 36, *supra* n.28.

⁹⁷ Kaitlan Collins & Jim Acosta, *Pence informed Trump that he can’t block Biden’s win*, CNN (Jan. 5, 2021), available at <https://cnm.it/3FH4gx9>.

⁹⁸ August 1, 2023 Indictment at 36, *supra* n.28.

⁹⁹ *Id.*

- a. “I read [the President’s tweet] as armed.”¹⁰¹
- b. “There is not enough cops in DC to stop what is coming.”
- c. “Make sure they know who to fear,” and “Waiting for Trump to say the word.”

124. On December 26, 2020, the Secret Service received a tip that the Proud Boys had plans to enter Washington, D.C. armed. The Secret Service forwarded this tip to the Capitol Police.¹⁰²

125. On December 28, 2020, the Secret Service again forwarded warnings that pro-Trump demonstrators were being urged to occupy the federal building.¹⁰³

126. On December 30, 2020, the Secret Service held a briefing that highlighted how the President’s December 19 “will be wild!” tweet was found alongside hashtags such as #OccupyCapitols and #WeAreTheStorm.¹⁰⁴

127. Also on December 30, 2020, Jason Miller—a senior advisor to Trump—texted White House Chief of Staff Mark Meadows a link to thedonald.win website and stated, “I got the base FIRED UP.” The link was to a page with comments like “Gallows don’t require electricity” and “if the filthy commie maggots try to push their fraud through, there will be hell to pay.”¹⁰⁵

¹⁰⁰ H.R. Rep. No. 117-663, Executive Summary at 62 (Dec. 22, 2022).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 63.

128. On January 5, 2021, an FBI office in Norfolk, Virginia issued an alert to law enforcement agencies titled, “Potential for Violence in Washington, D.C., Area in Connection with Planned ‘StopTheSteal’ Protest on 6 January 2021.”¹⁰⁶

129. Trump was personally informed of at least some of these plans for violent action.

130. Trump proceeded with his plans for January 6, 2021.

III. THE JANUARY 6, 2021 INSURRECTION.

A. The Two Demonstrations.

131. On the morning of January 6, 2021, before the joint session of Congress began to count the votes and certify the results, thousands of people began gathering around Washington, D.C. Many of these people headed to the Ellipse, near the White House, where then-President Trump and others were scheduled to speak. Others headed directly to the Capitol building.

132. By 11:00 AM (Eastern time), the United States Capitol Police (“USCP”) reported “large crowds around the Capitol building,” including approximately 200 members of the Proud Boys.¹⁰⁷ Some of the people gathering in Washington were

¹⁰⁶ H.R. Rep. No. 117-663, Executive Summary at 62 (Dec. 22, 2022).

¹⁰⁷ U.S. Senate Comm. On Homeland Security & Gov’t Affairs, *Examining The U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6 (Staff Report)*, at 22 (June 8, 2021), https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/HSGAC&RulesFullReport_ExaminingU.S.CapitolAttack.pdf.

“equipped with communication devices and donning reinforced vests, helmets, and goggles.”¹⁰⁸

B. Trump’s Preparations as the Demonstrations Began.

133. On January 6, at 1:00 AM, Trump tweeted: “If Vice President @Mike_Pence comes through for us, we will win the Presidency. . . Mike can send it back!”¹⁰⁹

134. On January 6, at approximately 10:00 AM, White House Deputy Chief of Staff Tony Ornato briefed Chief of Staff Mark Meadows over concerns that members of the crowd were armed with weapons, such as knives and guns. Ornato confirmed with Meadows that he had spoken with Trump about this.¹¹⁰

135. At approximately 10:30 AM, Trump edited a draft of his speech for that afternoon’s Ellipse Demonstration (also known as the Save America Rally).

136. Trump personally added the text, “[W]e will see whether Mike Pence enters history as a truly great and courageous leader. All he has to do is refer the illegally-submitted electoral votes back to the states that were given false and fraudulent information where they want to recertify.”¹¹¹

137. Before Trump edited the draft, it did not contain any mention of Pence.

¹⁰⁸ *United States v. Caldwell*, 581 F. Supp. 3d 1, 8 (D.D.C. 2021).

¹⁰⁹ Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 6, 2021), <https://twitter.com/realDonaldTrump/status/1346698217304584192> .

¹¹⁰ H.R. Rep. No. 117-663, ch. 7 at 585 (Dec. 22, 2022).

¹¹¹ *Id.* at 582.

138. Eric Herschmann, a lawyer in the White House Counsel’s office and senior advisor to Trump, had tried to remove the lines and advised against advancing Eastman’s legal theory that Pence should reject electoral votes because, he stated, he “didn’t concur with the legal analysis.”¹¹²

C. The Increasingly Apocalyptic Demonstration at the Ellipse.

139. At the Ellipse Demonstration, speakers preceding Trump exhorted the crowd to take forceful action to ensure that Congress and/or Pence rejected electoral votes for Biden. For example:

- a. Representative Mo Brooks of Alabama urged the crowd to “start taking down names and kicking ass” and be prepared to sacrifice their “blood” and “lives” and “do what it takes to fight for America” by “carry[ing] the message to Capitol Hill,” since “the fight begins today.”¹¹³
- b. Trump’s lawyer Rudy Giuliani called for “trial by combat.”¹¹⁴
- c. Trump’s lawyer John Eastman perpetuated claims of voter fraud and said: “all that we are demanding of Pence is this afternoon at 1

¹¹² H.R. Rep. No. 117-663, ch. 7 at 582 (Dec. 22, 2022).

¹¹³ The Hill, *Mo Brooks gives FIERY speech against anti-Trump Republicans, socialists*, YOUTUBE (Jan. 6, 2021), <https://youtu.be/ZKHwV6sdrMk>.

¹¹⁴ Wash. Post, *Trump, Republicans incite crowd before mob storms Capitol*, YOUTUBE (Jan. 6, 2021), <https://youtu.be/mh3cbd7niTQ>.

o'clock he let the legislators of the states look into this so we get to the bottom of it.”¹¹⁵

140. Trump and Meadows were aware of the line-up of speakers at the Ellipse Demonstration.¹¹⁶

141. Trump and Meadows were warned by aides against including known incendiary speakers, like Giuliani and Eastman, who would falsely emphasize claims of election fraud.

142. Trump and Meadows refused to remove Giuliani and Eastman.

143. Meadows himself explicitly directed that Giuliani and Eastman speak at the Demonstration before Trump.

144. Around 10:57 AM, the organizers of the demonstration played a two-minute pro-Trump video.¹¹⁷ The video reflected flashing images of Joseph Biden and Nancy Pelosi while Trump voiced over, “For too long, a small group in our nation’s capital has reaped the rewards of government, while the people have borne the cost.” The video emphasized that the government had been compromised by sinister powers.

¹¹⁵ *Rally on Electoral College Vote Certification*, C-SPAN at 2:26:00 (Jan. 6, 2021), <https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification>.

¹¹⁶ Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Max Miller, at 81-83, 129-30 (Jan. 20, 2022), *available at* <https://www.govinfo.gov/app/details/GPO-J6-TRANSCRIPT-CTRL0000038857>; *see also* Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Katrina Pierson (Mar. 25, 2022), *available at* <https://www.govinfo.gov/app/details/GPO-J6-TRANSCRIPT-CTRL0000060756> .

¹¹⁷ Ryan Goodman, Trump Film Ellipse Jan. 6, 2021, VIMEO (Feb. 3, 2021), <https://vimeo.com/508134765>.

145. Around 11:39 AM, Trump left the White House by motorcade and drove to the Ellipse.¹¹⁸

146. At the Ellipse, an estimated 25,000 people refused to walk through the magnetometers at the entrance.¹¹⁹

147. White House Deputy Chief of Staff Tony Ornato informed Trump that these people were unwilling to pass through the monitors because they had weapons that they did not want confiscated by the Secret Service.¹²⁰

148. Trump became upset that his people were not being allowed to carry their weapons through the entrance.

149. Trump ordered his team to remove the magnetometers.

150. He shouted at his advance team words to the effect of, “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.”¹²¹

151. Around 11:57 AM, Trump took the stage at the Ellipse to give his speech.

D. Insurrectionists Prepared For Battle at the Capitol.

152. Even before Trump gave his speech at the Ellipse Demonstration, crowds had already begun swarming near the Capitol.

¹¹⁸ *What Happened on Jan. 6*, WASH. POST (Oct. 31, 2021), <https://wapo.st/3eSdf2y>.

¹¹⁹ H.R. Rep. No. 117-663, ch. 7 at 585 (Dec. 22, 2020).

¹²⁰ *Id.*

¹²¹ *Id.*

153. Around 11:30 AM, a large group of Proud Boys arrived at the Capitol, moving in loosely organized columns of five across. The crowd made way for them.¹²²

154. At the same time, Washington, D.C. police had to leave Capitol grounds to respond to reports of violence throughout the city, including a man with a rifle, and a vehicle loaded with weaponry.¹²³ For example:

- a. Around 12:33 PM, police detained another individual with a rifle near the World War II Memorial, which was close to where Trump was speaking.
- b. Around 12:45 PM, various security agencies such as the Capitol Police and FBI responded to reports of a pipe bomb outside the Republican National Committee headquarters and suspicious packages found in or around other buildings near the Capitol, such as the Supreme Court and the Democratic National Committee headquarters.

155. On information and belief, Trump was personally informed about the escalating security situation at the Capitol before he began his speech.

E. Trump Directed Supporters to March on the Capitol and Intimidate Pence and Congress.

156. Around 11:57 AM, Trump began his speech at the Ellipse.¹²⁴

¹²² *What Happened on Jan. 6, supra* n.118.

¹²³ *Id.*

¹²⁴ *Id.*

157. For the first 15 minutes of his speech, he falsely repeated that he had been defrauded of the presidency, which he had won “by a landslide,” and that “we will never give up, we will never concede. It doesn’t happen. You don’t concede when there’s theft involved.”¹²⁵

158. Throughout his speech, Trump repeatedly called out Vice President Pence by name, urging Pence to reject electoral votes from states Trump had lost.

159. As his speech continued, the mob became audibly and increasingly angry at Pence and Congress. During Trump’s speech, demonstrators shouted “storm the Capitol!”, “invade the Capitol building!”, and “take the Capitol!”.¹²⁶

160. Around 12:16 PM, Trump made his first call on demonstrators to head towards the Capitol: “After this, we’re going to walk down and I’ll be there with you. We’re going to walk down. We’re going to walk down any one you want, but I think right here. We’re going to walk down to the Capitol, and we’re going to cheer on our brave senators, and congressmen and women. We’re probably not going to be cheering so much for some of them because you’ll never take back our country with weakness. You have to show strength, and you have to be strong.”

¹²⁵ *Donald Trump Speech “Save America” Rally Transcript January 6, REV* (Jan. 6, 2021), <https://bit.ly/3GheZid>; Brian Naylor, *Read Trump’s Jan. 6 Speech, A Key Part Of Impeachment Trial*, NPR (Feb. 10, 2021), <https://n.pr/3G1K2ON>.

¹²⁶ 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-thecapitol-video-184828622.html> .

161. Immediately after this remark, approximately 10,000-15,000 demonstrators began the roughly 30-minute march to the Capitol just as Trump had directed, where they joined a crowd of 300 members of the violent extremist group, the Proud Boys.¹²⁷

162. Nearly halfway through the speech, Trump again called on Pence to reject the certification, stating: “I hope you’re [Mike Pence] 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.”

163. During Trump’s speech, the audience chanted “Storm the Capitol,” “Invade the Capitol Building,” “Take the Capitol Right Now,” “Fight Like Hell,” and “Fight For Trump.”¹²⁸

164. For the remainder of his speech, Trump asserted that Biden’s victory was illegitimate and that the process of transferring power to Biden could not take place. For example:

- a. “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.”
- b. “We want to go back and we want to get this right because we’re going to have somebody in there that should not be in there and our country will be destroyed and we’re not going to stand for that.”

¹²⁷ Martha Mendoza & Juliet Linderman, *Officers maced, trampled: Docs expose depth of Jan. 6 chaos*, ASSOCIATED PRESS (Mar. 10, 2021), <https://bit.ly/3F2Hi26>.

¹²⁸ *Thompson v. Trump*, 590 F. Supp. 3d 46, 100 (D.D.C. 2022).

- c. “And we’re going to have to fight much harder.”
- d. “And you know what? If they do the wrong thing, we should never, ever forget that they did. Never forget. We should never ever forget.”
- e. “You will have an illegitimate president. That’s what you’ll have. And we can’t let that happen.”
- f. “And we fight. We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore.”
- g. “When you catch somebody in a fraud, you’re allowed to go by very different rules.”

165. Around 1:00 PM, towards the end of his speech, Trump again directed the crowd to the Capitol: “After this, we’re going to walk down, and I’ll be there with you,” and “I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard.”

166. Knowing that many in the crowd were armed, Trump gave a final plea and urged that the crowd assemble near the Capitol:

- a. “So we’re going to, we’re going to walk down Pennsylvania Avenue. . . And we’re going to the Capitol, and we’re going to try and give.”
- b. “But we’re going to try and give our Republicans, the weak ones because the strong ones don’t need any of our help. We’re going to

try and give them the kind of pride and boldness that they need to take back our country. So let's walk down Pennsylvania Avenue.”

167. At approximately 1:10 PM, Trump ended his remarks.

F. Trump Intended to March on the Capitol and Capitalize on the Unfolding Chaos.

168. On January 6, at approximately 1:17 PM, Trump was seated within his motorcade and asked to be transported to the Capitol.¹²⁹

169. When it was clear that Trump could not be taken to the Capitol for security reasons, Trump became irate with those who prevented him from going to the Capitol.¹³⁰

170. On the drive to the White House, Trump attempted to seize control of the steering wheel of the presidential limousine in hopes of driving to the Capitol.¹³¹

171. Around approximately 1:19 PM, Trump arrived at the White House and sat in the private dining room to watch the news coverage unfold.¹³²

172. At around 1:25 PM, the Secret Service communicated internally that “The President is planning on holding at the white house for the next approximate two hours, then moving to the Capitol.”¹³³

173. Around 1:55 PM, the motorcade finally disbanded on orders from the Secret Service that Trump's plan to go to the Capitol had been nixed.¹³⁴

¹²⁹ H.R. Rep. No. 117-663, ch. 7 at 587 (Dec. 22, 2022).

¹³⁰ *Id.*

¹³¹ Sixth Jan. 6 Committee Hearing.

¹³² *What Happened on Jan. 6, supra* n.118.

¹³³ H.R. Rep. No. 117-663, ch. 7 at 592 (Dec. 22, 2022).

G. Pro-Trump Insurrectionists Violently Attacked the Capitol.

174. Before Trump ended his speech at the Ellipse, attackers had already begun swarming the Capitol building.

175. The attackers, following directions from Trump and his allies, shared the common purpose of preventing Congress from certifying the electoral vote. Many of them also expressed a desire to assassinate Vice President Pence, the Speaker of the House, and other Members of Congress.

176. By 12:53 PM, attackers had breached the outer security perimeter that the Capitol Police (USCP) had established around the Capitol. Many were armed with weapons, pepper spray, and tasers. Some wore full body armor; others carried homemade shields. Many used flagpoles, signposts, or other weapons to attack police officers defending the Capitol.¹³⁵ Some moved through the crowd and entered the Capitol in a “stacked” formation, a single file configuration often used by special forces or infantry units during urban combat or close-quarters operations.

177. Following the initial breach, the crowd flooded into the Capitol West Front grounds. Attackers began climbing and scaling the Capitol building.

178. Around 12:55 PM, Capitol Police called on all available units to the Capitol to assist with the breach. Attackers clashed violently with police officers on the scene.¹³⁶

¹³⁴ H.R. Rep. No. 117-663, ch. 7 at 592 (Dec. 22, 2022).

¹³⁵ *What Happened on Jan. 6, supra* n.118.

¹³⁶ *Id.*

179. Around 1:03 PM, Capitol Police found an unoccupied vehicle containing weapons, ammunition, and components to make Molotov cocktails.¹³⁷

180. Inside the Capitol, Congress was in session to certify electoral votes in accordance with the Electoral Count Act and the Twelfth Amendment to the U.S. Constitution. At about 1:15 PM, the House and the Senate separated to debate objections to the certification of Arizona's Electoral College votes.

181. Around 1:30 PM, law enforcement retreated as attackers scaled the walls of the Capitol.

182. Around 1:50 PM, the on-site D.C. Metropolitan Police Department incident commander officially declared a riot at the Capitol.¹³⁸

183. At that point, law enforcement still held the building, and Congress was still able to function. But that soon changed.

184. By 2:06 PM, attackers reached the Rotunda steps.

185. By 2:08 PM, attackers reached the House Plaza.

186. By 2:10 PM, the West Front and northwest side of the Capitol had been breached through the barricades. Attackers smashed the first floor windows, which were big enough to climb through. Two individuals kicked open a nearby door to let others into the Capitol.

187. Many attackers demanded the arrest or murder of various other elected officials who refused to participate in their attempted coup.¹³⁹

¹³⁷ *What Happened on Jan. 6, supra* n.118.

- a. Some chanted “hang Mike Pence” and threatened to kill Speaker Pelosi.¹⁴⁰
- b. Some taunted a Black police officer with racial slurs for pointing out that overturning the election would deprive him of his vote.¹⁴¹
- c. Confederate flags and symbols of white supremacist movements were widespread.¹⁴²

188. Throughout the roughly 187 minutes of the attack, police defending the Capitol were viciously attacked. For example:

- a. One police officer was crushed against a door, screaming in agony as the crowd chanted “Heave, ho!”¹⁴³
- b. An attacker ripped off the officer’s gas mask, beat his head against the door, took his baton, and hit his head with it.¹⁴⁴

¹³⁸ *What Happened on Jan. 6, supra* n.118.

¹³⁹ *Id.*

¹⁴⁰ H.R. Rep. No. 117-2, at 16, 12-13 (Jan. 12, 2021), <https://www.govinfo.gov/app/details/CRPT-117hrpt2/CRPT-117hrpt2>

¹⁴¹ *What Happened on Jan. 6, supra* n.118.

¹⁴² *Id.*; Staff of S. Comm. on Rules & Admin., 117th Cong., A Review of the Security, Planning, and Response Failures on January 6, at 28 (June 1, 2021), <https://www.rules.senate.gov/download/hsgac-rules-jan-6-report>.

¹⁴³ Kelsie Smith & Travis Caldwell, *Disturbing video shows officer crushed against door by mob storming the Capitol*, CNN (Jan. 9, 2021), <https://cnm.it/3eAmdSc>.

¹⁴⁴ Clare Hymes & Cassidy McDonald, *Capitol riot suspect accused of assaulting cop and burying officer’s badge in his backyard*, CBS (Mar. 13, 2021), <https://cbsn.ws/3eFAaxS>.

- c. Another officer was pulled into a crowd, beaten and repeatedly tased by attackers.¹⁴⁵

189. While not all who stormed the Capitol personally used violence against law enforcement, the combined mass overwhelmed the police and prevented the execution of lawful authority.

H. The Fall of the United States Capitol.

190. Around 2:13 PM, Vice President Pence was removed from the Capitol by Secret Service, along with his family.

191. Because of this, the Senate was forced to go into recess.

192. Senate staffers took the electoral college certificates with them when they were evacuated, ensuring they did not fall into the hands of the attackers.¹⁴⁶

193. Around 2:25 PM, attackers who had breached the east side of the Capitol entered the Rotunda.

194. At 2:29 PM, the House was forced to go into recess.

195. Thus, by approximately 2:29 PM, the attack stopped the legal process for counting and certifying electoral votes.¹⁴⁷

¹⁴⁵Michael Kaplan & Cassidy McDonald, *At least 17 police officers remain out of work with injuries from the Capitol attack*, CBS NEWS (June 4, 2021), <https://cbsn.ws/3eyXZr8>.

¹⁴⁶ *Id.*

¹⁴⁷ *What Happened on Jan. 6, supra* n.118.

196. Around 2:43 PM, attackers broke the glass of a door to the Speaker's lobby, which would give them direct access to the House chamber. There, officers barricaded themselves with furniture and weapons to prevent the attackers' entry.

197. Around ten minutes later, attackers successfully breached the Senate chamber.

198. By this point, both the House Chamber and Senate Chamber were under the control of the attackers.

199. Due to the ongoing assault, Congress was unable to function or exercise its constitutional obligations. The attack successfully obstructed Congress from certifying the votes, temporarily blocking the peaceful transition of power from one presidential administration to the next.

200. Throughout the attack, Senators, Representatives, and staffers were forced to flee the House chamber and seclude themselves as attackers rampaged through the building.

201. Even at the height of the Civil War, the Confederate Army never succeeded in taking control of the U.S. Capitol or any other portion of Washington, D.C., nor in preventing Congress from meeting to exercise its constitutional obligations.

I. Trump Reveled in, and Deliberately Refused to Stop, the Insurrection.

202. Early during the attack, by approximately 1:21 PM, Trump was informed by staffers in the White House that television broadcasts of his speech had been cut to instead show the violence at the Capitol.¹⁴⁸

203. After this, Trump immediately began watching the Capitol attack unfold on live news in the private dining room of the White House.¹⁴⁹

204. Shortly after, White House Acting Director of Communications Ben Williamson sent a text to Chief of Staff Mark Meadows recommending that Trump tweet about respecting Capitol Police.¹⁵⁰

205. At 2:24 PM, at the height of violence, Trump made his first public statement during the attack. Against the advisors' recommendation above, 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!"¹⁵¹

206. Trump knew, consciously disregarded the risk, or specifically intended that this tweet would exacerbate the violence at the Capitol.

¹⁴⁸ H.R. Rep. No. 117-663, ch. 7 at 592 (Dec. 22, 2022).

¹⁴⁹ *Id.* at 593.

¹⁵⁰ *Id.* at 595.

¹⁵¹ This tweet appears to have been removed. It is archived on the American Oversight website. *2:24 PM-2:24 PM*, AMERICAN OVERSIGHT (Jan 6, 2021), <https://www.americanoversight.org/timeline/224-p-m> (archived).

207. Trump’s 2:24 PM tweet “immediately precipitated further violence at the Capitol.” Immediately after it, “the crowds both inside and outside of the Capitol building violently surged forward.”¹⁵²

208. Thirty seconds after the tweet, attackers who were already inside the Capitol opened the East Rotunda door. And thirty seconds after that, attackers breached the crypt one floor below Vice President Pence.¹⁵³

209. At 2:25 PM, the Secret Service determined it needed to evacuate the Vice President to a more secure location. At one point during this process, attackers were within forty feet of him.¹⁵⁴

210. Shortly after Trump’s tweet, Cassidy Hutchinson (assistant to White House Chief of Staff Mark Meadows) and Pat Cipollone (White House Counsel) expressed to Meadows their concern that the attack was getting out of hand and that Trump must act to stop it.

211. Meadows responded, “You heard him, Pat. . . he thinks Mike deserves it. He doesn’t think they’re doing anything wrong.”¹⁵⁵

212. Around 2:26 PM, Trump made a call to Republican leaders trapped within the Capitol. He did not ask about their safety or the escalating situation but instead asked whether any objections had been cast against the electoral count.¹⁵⁶

¹⁵² H.R. Rep. No. 117-663, at 86 (Dec. 22, 2022).

¹⁵³ *Id.* at 466.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 596.

213. Around the same time, Trump called House Leader Kevin McCarthy regarding any such objections. McCarthy urged Trump on the phone to make a statement and to instruct the attackers to cease and withdraw.

214. Trump declined to make a statement directing the attackers to withdraw.

215. Instead, Trump responded with words to the effect of, “Well, Kevin, I guess they’re just more upset about the election theft than you are.”¹⁵⁷

216. Within ten minutes after Trump’s tweet, thousands of attackers “overran the line on the west side of the Capitol that was being held by the Metropolitan Police Force’s Civil Disturbance Unit, the first time in history of the DC Metro Police that such a security line had ever been broken.”¹⁵⁸

217. Throughout the time Trump sat watching the attack unfold, multiple relatives, staffers, and officials tried to convince Trump to make a direct statement that the attackers must leave the Capitol. For example:

- a. House Minority Leader Kevin McCarthy on the phone told Trump he must make a public statement to end the attack.
- b. Ivanka Trump and Eric Herschmann entered the room where Trump sat watching the attack on television. They suggested he make a public statement about being peaceful.

¹⁵⁶ H.R. Rep. No. 117-663, ch. 7 at 597 (Dec. 22, 2022).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 86.

218. At 2:38 PM, Trump tweeted: “Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!”¹⁵⁹

219. Many attackers saw this tweet but understood it *not* to be an instruction to withdraw from the Capitol.

220. The attack raged on.

221. Around 3:05 PM, Trump was informed that a Capitol Police officer fatally shot one Ashli Babbitt. Babbitt had been attempting to forcibly enter the Speaker’s Lobby adjacent to the House chamber.¹⁶⁰

222. Around this time, Pence, Speaker Pelosi, and Senate leaders directly contacted senior law enforcement leaders and arranged for reinforcements.

223. Although the force and ferocity of the assault overwhelmed the U.S. Capitol Police, Trump did not himself order any additional federal military or law enforcement personnel to help retake the Capitol.¹⁶¹

¹⁵⁹ Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 6, 2021), <https://twitter.com/realDonaldTrump/status/1346904110969315332?lang=en>.

¹⁶⁰ H.R. Rep. No. 117-663, Executive Summary, at 91 (Dec. 22, 2022); *What Happened on Jan. 6*, *supra* n.118.

¹⁶¹ H.R. Rep. No. 117-663, ch. 7 at 595 (Dec. 22, 2022); The Daily Diary of President Donald J. Trump, January 6, 2021, <https://www.washingtonpost.com/wp-stat/graphics/politics/jan-6-call-logs-white-house/daily-diary-of-president-donald-trump.pdf> (demonstrating what calls Trump made or did not make on that day); *READ: Transcript of CNN’s town hall with former President Donald Trump*, CNN (May 11, 2023), <https://www.cnn.com/2023/05/11/politics/transcript-cnn-town-hall-trump/index.html>.

224. After 3:00 PM, the Department of Homeland Security, the Bureau of Alcohol, Tobacco, Firearms, and Explosives and FBI agents, and police from Virginia and Maryland, joined Capitol Police to help regain control of the Capitol.¹⁶²

225. Shortly after 4:00 PM, President-elect Biden addressed the nation and said, “I call on President Trump to go on national television now, to fulfill his oath and defend the Constitution and demand an end to this siege. This is not a protest—it is an insurrection.”¹⁶³

226. Throughout this period, Trump knew that if he issued a public statement directing the attackers to disperse, many or most would have heeded his instruction.

227. In fact, when he finally *did* issue such a statement, it had precisely that effect.

228. At 4:17 PM, nearly 187 minutes after attackers first broke into the Capitol, Trump released a video on Twitter directed to those currently at the Capitol. In this video, he stated: “I know your pain. I know your hurt. . . We love you. You’re very special, you’ve seen what happens. You’ve seen the way others are treated. . . I know how you feel, but go home, and go home in peace.”

¹⁶² *What Happened on Jan. 6, supra* n.118.

¹⁶³ *Biden condemns chaos at the capitol: ‘It’s not protest, it’s insurrection’*, NBC NEWS (Jan. 6, 2021), <https://www.nbcnews.com/video/biden-condemns-chaos-at-the-capitol-as-insurrection-98957381507>.

229. Erich Herschmann offered a correction to the video and suggested that Trump make a more direct statement that attackers leave the Capitol.¹⁶⁴

230. Trump refused.¹⁶⁵

231. Immediately after Trump uploaded the video to Twitter, the attackers began to disperse from the Capitol and cease the attack.¹⁶⁶

232. Attackers were streaming the video. One attacker, Jacob Chansley, announced into a bullhorn, “I’m here delivering the president’s message: Donald Trump has asked everybody to go home.” Other attackers acknowledged, “That’s our order” or “He says go home. He says go home.”¹⁶⁷

233. Group leaders from the Proud Boys texted each other saying, “Gentlemen our commander in chief has just ordered us to go home.”¹⁶⁸

234. Around 5:20 PM, the D.C. National Guard began arriving.¹⁶⁹

¹⁶⁴ Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Nicholas Luna, at 181 (Mar. 21, 2022), *available at* <https://www.govinfo.gov/app/details/GPO-J6-TRANSCRIPT-CTRL0000060749> .

¹⁶⁵ *Id.*

¹⁶⁶ Select Committee to Investigate the January 6th Attack on the United States Capitol, Hearing on the January 6th Investigation, 117th Cong., 2d sess. (July 21, 2022), *available at* <https://www.youtube.com/watch?v=pbRVqWbHGuo> (1:58:30) (testimony of Stephen Ayres) (“[A]s soon as that come [*sic*] out, everybody started talking about it and that’s—it seemed like it started to disperse.”).

¹⁶⁷ Select Committee to Investigate the January 6th Attack on the United States Capitol, Hearing on the January 6th Investigation, 117th Cong., 2d sess. (July 21, 2022), at 1:58:30, *available at* <https://www.youtube.com/watch?v=pbRVqWbHGuo>.

¹⁶⁸ H.R. Rep. No. 117-663, ch. 7 at 579 (Dec. 22, 2022).

¹⁶⁹ Staff of S. Comm. on Rules & Admin., 117th Cong., *A Review of the Security, Planning, and Response Failures on January 6*, at 26 (June 1, 2021), <https://www.rules.senate.gov/download/hsgac-rules-jan-6-report>.

235. This was not because Trump ordered the National Guard to the scene; he never did. Rather, Vice President Pence—who was not actually in the chain of command—ordered the National Guard to assist the beleaguered police and rescue those trapped at the Capitol.¹⁷⁰

236. By 6:00 PM, the attackers had been removed from the Capitol, though some committed sporadic acts of violence through the night.¹⁷¹

237. At 6:01 PM, Trump issued the final tweet of the day in which he stated that: “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!”

238. Vice President Pence was not able to reconvene Congress until 8:06 PM, nearly six hours after the process had been obstructed.¹⁷²

239. Around 9:00 PM, Trump’s counsel John Eastman again argued to Pence’s counsel via email that Pence should refuse to certify Biden’s victory by not counting certain states.¹⁷³

240. Pence’s counsel ignored it.¹⁷⁴

¹⁷⁰ H.R. Rep. No. 117-663, at 578, 724 (Dec. 22, 2022).

¹⁷¹ *What Happened on Jan. 6, supra* n.118.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

241. Congress was required under the Electoral Count Act to debate the objections filed by Senators and Members of Congress to electoral results from Arizona and Pennsylvania. Despite six Senators and 121 Representatives voting to reject Arizona’s electoral results,¹⁷⁵ and seven Senators and 138 Representatives voting to reject Pennsylvania’s results,¹⁷⁶ Biden’s victory was ultimately certified at 3:14 AM, January 7, 2021.¹⁷⁷

242. In total, five people died,¹⁷⁸ and over 150 police officers suffered injuries, including broken bones, lacerations, and chemical burns.¹⁷⁹ Four Capitol Police officers on-duty during January 6 have since died by suicide.¹⁸⁰

IV. MULTIPLE JUDGES AND GOVERNMENT OFFICIALS HAVE DETERMINED THAT JANUARY 6 WAS AN INSURRECTION AND THAT TRUMP WAS RESPONSIBLE.

243. Since the mob overtook the Capitol on January 6, 2021, government officials, judges, and other authorities have repeatedly characterized the event as an insurrection.

¹⁷⁵ 167 Cong. Rec. H77 (daily ed. Jan. 6, 2021), <http://bit.ly/Jan6CongRec>.

¹⁷⁶ *Id.* at H98.

¹⁷⁷ *What Happened on Jan. 6*, *supra* n.118; 167 Cong. Rec. H114–15 (daily ed. Jan. 6, 2021), <http://bit.ly/Jan6CongRec>.

¹⁷⁸ Jack Healy, *These Are the 5 People Who Died in the Capitol Riot*, N.Y. TIMES (Jan. 11, 2021), <https://nyti.ms/3pTyN5q>.

¹⁷⁹ Michael Kaplan & Cassidy McDonald, *At least 17 police officers remain out of work with injuries from the Capitol attack*, CBS (June 4, 2021), <https://cbsn.ws/3eyXZr8>; Michael S. Schmidt & Luke Broadwater, *Officers’ Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. TIMES (Feb. 11, 2021), <https://nyti.ms/3eN31k2>.

¹⁸⁰ Luke Broadwater & Shaila Dewan, *Congress Honors Officers Who Responded to Jan. 6 Riot*, N.Y. TIMES (Aug. 3, 2021), <https://nyti.ms/3EURwlp>.

244. For example, just days after the attack, the U.S. Department of Justice characterized the events of January 6 as “a violent insurrection that attempted to overthrow the United States Government” in *United States v. Chansley*.¹⁸¹

245. A federal magistrate judge in Phoenix, Arizona agreed and ordered Chansley (also known as “QAnon Shaman”) to be detained pending trial for being “an active participant in a violent insurrection that attempted to overthrow the United States government,” and who thus posed a danger to the community and flight risk.¹⁸²

246. On January 13, 2021, bipartisan majorities of the House and Senate voted for articles of impeachment against Trump describing the attack as an “insurrection.”¹⁸³

247. On February 13, 2021, during Trump’s impeachment trial, Senate Majority Leader Mitch McConnell stated on the floor of the Senate that the people who entered the Capitol on January 6 had “attacked their own government.” He further stated that the attackers “used terrorism to try to stop a specific piece of domestic business they did not like. . . fellow Americans beat and bloodied our own police. They stormed the Senate floor. They tried to hunt down the Speaker of the House. They built gallows and chanted about murdering the Vice President.”

¹⁸¹ Government’s Br. in Supp. of Detention at 1, *United States v. Chansley*, No. 2:21-MJ-05000-DMF, ECF No. 5 (D. Ariz. Jan. 14, 2021).

¹⁸² Brad Heath, Sarah N. Lynch, et al., *Judge Calls Siege ‘Violent Insurrection,’ Orders Man Who Wore Horns Held*, REUTERS (Jan. 14, 2021), <https://www.reuters.com/article/us-usa-trump-capitol-arrests/judge-calls-capitol-siege-violent-insurrection-orders-man-who-wore-horns-held-idUSKBN29K0K7>.

¹⁸³ 167 Cong. Rec. H191 (daily ed. Jan. 13, 2021); 167 Cong. Rec. S733 (daily ed. Feb. 13, 2021).

248. During the trial, Trump’s defense lawyer stated that “the question before us is not whether there was a violent insurrection of [*sic*] the Capitol. *On that point, everyone agrees.*”¹⁸⁴

249. On August 5, 2021, Congress passed Public Law 117-32, which granted four congressional gold medals to Capitol Police officers who defended the Capitol on that day. The law declared that “a mob of insurrectionists forced its way into the U.S. Capitol building and congressional office buildings and engaged in acts of vandalism, looting, and violently attacked Capitol Police officers.”¹⁸⁵

250. On September 6, 2022, Judge Francis J. Matthew of New Mexico’s First District permanently enjoined Otero County Commissioner and “Cowboys for Trump” founder Couy Griffin from holding office under Section 3 of the Fourteenth Amendment.¹⁸⁶ The court held that the January 6 attack constituted an “insurrection” under section 3 of the Fourteenth Amendment.¹⁸⁷

251. Since the January 6, 2021 attack on the Capitol, various judges have issued opinions describing it an “insurrection.” For example:

- a. In *United States v. Little*, the judge held in a sentencing memorandum that “contrary to [defendant’s] Facebook post and the

¹⁸⁴ 167 Cong. Rec. S729 (daily ed. Feb. 13, 2021) (emphasis added).

¹⁸⁵ 31 U.S.C. Chapter 51.

¹⁸⁶ *New Mexico v. Griffin*, No. D-101-CV-202200473, 2022 WL 4295619 (N.M. 1st Jud. Dist., Sept. 6, 2022), available at <https://bit.ly/GriffinNM>, appeal dismissed, No. S-1-SC-39571 (N.M. Nov. 15, 2022).

¹⁸⁷ *Id.*

statements he made to the FBI, the riot was not ‘patriotic’ or a legitimate ‘protest,’ . . . it was an insurrection aimed at halting the functioning of our government.”¹⁸⁸

- b. In *United States v. Munchel*, the judge granted an application for access to exhibits and wrote, “defendants face criminal charges for participating in the unsuccessful insurrection at the Capitol on January 6, 2021.”¹⁸⁹
- c. In *United States v. Bingert*, the judge denied a motion to dismiss indictment and again called it an “unsuccessful insurrection.”¹⁹⁰
- d. In *United States v. Brockhoff*, the judge issued an order denying a motion for pretrial release, stating that “[t]his criminal case is one of several hundred arising from the insurrection at the United States Capitol on January 6, 2021.”¹⁹¹
- e. In *United States v. Grider*, the judge denied a motion to dismiss indictment, stating that “[t]his criminal case is one of several hundred arising from the insurrection at the United States Capitol on January 6, 2021.”¹⁹²

¹⁸⁸ No. 1:21-cr-00315, 2022 WL 768685, *2 (D.D.C. Mar. 14, 2022).

¹⁸⁹ 567 F. Supp. 3d 9, 13 (D.D.C. 2021).

¹⁹⁰ No. 1:21-cr-0091, 2022 WL 1659163, *1 (D.D.C. May 25, 2022).

¹⁹¹ 590 F. Supp. 3d 295 (D.D.C. 2022)

¹⁹² No. 1:21-cr-00022, 2022 WL 17829149 (D.D.C. Dec. 21, 2022).

- f. In *United States v. Puma*, the judge characterized the January 6, 2021 attack as an “insurrection” *passim* in an order denying a motion to dismiss the indictment.¹⁹³
- g. In *United States v. Rivera*, the judge characterized the January 6, 2021 attack as an “insurrection” *passim* in an opinion after bench trial.¹⁹⁴
- h. In *United States v. DeGrave*, the judge characterized the January 6, 2021 attack as an “insurrection” *passim* in an order on pretrial detention.¹⁹⁵
- i. In *United States v. Randolph*, the judge characterized the January 6, 2021 attack as an “insurrection” *passim* in an order on pretrial detention.¹⁹⁶
- j. In the *Matter of Giuliani*, a state appellate court referred to “violence, insurrection and death on January 6, 2021 at the U.S. Capitol” in an order suspending Trump’s lawyer from the practice of law.¹⁹⁷

252. Multiple leaders and members of the extremist groups that played key roles in the insurrection have also been convicted of seditious conspiracy under 18 U.S.C.

¹⁹³ 596 F. Supp. 3d 90 (E.D. Ky. Mar. 19, 2022).

¹⁹⁴ No. 1:21-cr-00060, 2022 WL 2187851 (D.D.C. June 17, 2022).

¹⁹⁵ 539 F. Supp. 3d 184, 203 (D.D.C. 2021).

¹⁹⁶ 536 F. Supp. 3d 128, 132 (E.D. Ky. 2021).

§ 2384, which requires the government to prove that two or more persons “conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof.”

253. The Department of Justice maintains a growing list of defendants charged in federal court in Washington, D.C. who took direction from Trump on January 6, 2021 and breached the U.S. Capitol.¹⁹⁸

254. For example:

- a. In April 2022, an Oath Keepers member named Brian Ulrich pleaded guilty to seditious conspiracy.¹⁹⁹
- b. In May of 2022, Oath Keepers member William Todd Wilson pleaded guilty to seditious conspiracy.²⁰⁰
- c. In October 2022, former leader of the Proud Boys Jeremy Bertino pleaded guilty to seditious conspiracy.²⁰¹

¹⁹⁷ 197 A.D.3d 1, 25, 146 N.Y.S.3d 266 (N.Y. App. Div. 2021).

¹⁹⁸ *Capitol Breach Cases*, DEPT OF JUSTICE, <https://www.justice.gov/usao-dc/capitol-breach-cases>.

¹⁹⁹ Ryan Lucas, *A second Oath Keeper pleaded guilty to seditious conspiracy in the Jan. 6 riot*, NPR (Apr. 29, 2022), <https://www.npr.org/2022/04/29/1095538077/a-second-oath-keeper-pleaded-guilty-to-seditious-conspiracy-in-the-jan-6-riot>.

²⁰⁰ Michael Kunzelman, *Oath Keeper from North Carolina pleads guilty to seditious conspiracy during Jan. 6 insurrection*, PBS (May 4, 2022), <https://www.pbs.org/newshour/politics/oath-keeper-from-north-carolina-pleads-guilty-to-seditious-conspiracy-during-jan-6-insurrection>.

- d. On January 23, 2023, four Oath Keepers were found guilty of seditious conspiracy.²⁰²
- e. Around May 4, 2023, four members of the Proud Boys, including their former leader Enrique Tarrio, were convicted of seditious conspiracy.²⁰³
- f. Both the Oath Keepers and the Proud Boys were instrumental in mobilizing in response to Trump’s December 19 “will be wild!” tweet. Both acted as vanguards in the attack. And both withdrew after Trump belatedly ordered them to do so.

255. In a published opinion, one federal judge in the District of Columbia stated:

For months, the President led his supporters to believe the election was stolen. When some of his supporters threatened state election officials, he refused to condemn them. Rallies in Washington, D.C., in November and December 2020 had turned violent, yet he invited his supporters to Washington, D.C., on the day of the Certification. They came by the thousands. And, following a 75-minute speech in which he blamed corrupt and weak politicians for the election loss, he called on them to march on the very place where Certification was taking place.

²⁰¹ *Former Leader of the Proud Boys Pleads Guilty to Seditious Conspiracy for Efforts to Stop Transfer of Power Following 2020 Presidential Election*, DEPARTMENT OF JUSTICE (Oct. 6, 2022), <https://www.justice.gov/opa/pr/former-leader-proud-boys-pleads-guilty-seditious-conspiracy-efforts-stop-transfer-power>.

²⁰² Kyle Cheney, *4 more Oath Keepers found guilty of seditious conspiracy tied to Jan. 6 attack*, POLITICO (Jan. 23, 2023), <https://www.politico.com/news/2023/01/23/oath-keepers-guilty-seditious-conspiracy-jan-6-00079083>.

²⁰³ Alan Feuer, Zach Montague, *Four Proud Boys Convicted of Sedition in Key Jan 6 Case*, N.Y. TIMES (May 4, 2023), <https://www.nytimes.com/2023/05/04/us/politics/jan-6-proud-boys-sedition.html>.

* * *

President Trump’s January 6 Rally Speech was akin to telling an excited mob that corn-dealers starve the poor in front of the corn-dealer’s home. He invited his supporters to Washington, D.C., after telling them for months that corrupt and spineless politicians were to blame for stealing an election *from them*; retold that narrative when thousands of them assembled on the Ellipse; and directed them to march on the Capitol building—the metaphorical corn-dealer’s house—where those very politicians were at work to certify an election that he had lost. The Speech plausibly was, as [John Stuart] Mill put it, a “positive instigation of a mischievous act.”²⁰⁴

256. At least eight other federal judges—in published opinions and in sentencing decisions—have explicitly assigned responsibility for the January 6 insurrection to Trump.

257. For example:

- a. “Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021.”²⁰⁵
- b. “The fact remains that [the defendant] and others were called to Washington, D.C. by an elected official; he was prompted to walk to the Capitol by an elected official. . . [the defendant was] told lies, fed

²⁰⁴ *Thompson*, 590 F. Supp. 3d at 104, 118.

²⁰⁵ *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1193 (C.D. Cal. 2022).

falsehoods, and told that our election was stolen when it clearly was not.”²⁰⁶

- c. “The steady drumbeat that inspired defendant to take up arms has not faded away. . . not to mention, the near-daily fulminations of the former President.”²⁰⁷
- d. “Defendant’s promise to take action in the future cannot be dismissed as an unlikely occurrence given that his singular source of information, . . . (“Trump’s the only big shot I trust right now”), continues to propagate the lie that inspired the attack on a near daily basis.”²⁰⁸
- e. “At the end of the day the fact is that the defendant came to the Capitol because he placed his trust in someone [Donald Trump] who repaid that trust by lying to him.”²⁰⁹
- f. “And as for the incendiary statements at the rally detailed in the sentencing memo, which absolutely, quite clearly and deliberately, stoked the flames of fear and discontent and explicitly encouraged

²⁰⁶ Tr. of Sentencing at 55, *United States v. Lolos*, No. 1:21-cr-00243 (D.D.C. Nov. 19, 2021).

²⁰⁷ Mem. Op. at 24, *United States v. Meredith, Jr.*, No. 1:21-cr-00159, ECF No. 41 (D.D.C. May 26, 2021).

²⁰⁸ *United States v. Dresch*, No. 1:21-cr-00071, 2021 WL 2453166, *8 (D.D.C. May 27, 2021).

²⁰⁹ Tr. of Plea and Sentence at 30, *United States v. Dresch*, No. 1:21-cr-00071 (D.D.C. Aug. 4, 2021).

those at the rally to go to the Capitol and fight for one reason and one reason only, to make sure the certification did not happen, those may be a reason for what happened, they may have inspired what happened, but they are not an excuse or justification.”²¹⁰

g. “[B]ut we know, looking at it now, that they were supporting the president who would not accept that he was defeated in an election.”²¹¹

h. “And you say that you headed to the Capitol Building not with any intent to obstruct and impede congressional proceedings; but because the then-President, Trump, told protesters at the “stop the steal” rally -- and I quote: After this, we’re going to walk down; and I will be there with you. We're going to walk down. We’re going to walk down. I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard. And you say that you wanted to show your support for and join then-President Trump as he said he would be marching to the Capitol; but, of course, didn’t.”²¹²

²¹⁰ Tr. of Sentencing at 22, *United States v. Peterson*, No. 1:21-cr-00309, ECF No. 32 (D.D.C Dec. 1, 2021).

²¹¹ *United States v. Tanios*, No. 1:21-mj-00027, ECF No. 30 at 107 (N.D.W. Va. Mar. 22, 2021).

²¹² Tr. of Sentencing at 36, *United States v. Gruppo*, No. 1:21-cr-00391 (D.D.C. Oct. 29, 2021).

- i. “[A]t the “Stop the Steal” rally, then-President Trump eponymously exhorted his supporters to, in fact, stop the steal by marching to the Capitol. . . [h]aving followed then-President Trump’s instructions, which were in line with [the defendant’s] stated desires, the Court therefore finds that Defendant intended her presence to be disruptive to Congressional business.”²¹³
- j. Moreover, four sentencing cases of January 6 defendants included statements by a judge that, “The events of January 6th involved the rather unprecedented confluence of events spurred by then President Trump. . . .”²¹⁴

V. TRUMP ACKNOWLEDGES THAT HE WAS IN COMMAND OF INSURRECTIONISTS AND CALLS THEM PATRIOTS.

258. On May 10, 2023, during a CNN town hall, Trump maintained his position that the 2020 presidential election was a “rigged election.”

259. When CNN moderator Kaitlin Collins asserted that it was not a stolen election and offered Trump “a chance to acknowledge the results,” Trump responded “If you look at what happened in Pennsylvania, Philadelphia, if you look at what happened

²¹³ Findings of Fact and Conclusions of Law at 15, *United States v. MacAndrew*, No. 1:21-cr-00730, ECF No. 59 (D.D.C. Jan. 17, 2023). https://storage.courtlistener.com/recap/gov.uscourts.dcd.238421/gov.uscourts.dcd.238421.59.0_2.pdf.

²¹⁴ Tr. of Sentencing at 38, *United States v. Prado*, No. 1:21-cr-00403 (D.D.C. Feb. 7, 2022); Tr. of Sentencing at 28, *United States v. Barnard, et al.*, No. 1:21-cr-00235 (D.D.C. Feb 4, 2022); Tr. of Sentencing at 68, *United States v. Stepakoff*, No. 1:21-cr-00096 (D.D.C. Jan. 20, 2022); Tr. of Sentencing at 28, *United States v. Williams*, No. 1:21-cr-00388 (D.D.C. Feb. 7, 2022).

in Detroit, Michigan. . . all you have to do is take a look at government cameras. You will see them, people going to 28 different voting booths to vote, to put in seven ballots apiece.”²¹⁵

260. Collins asked Trump “Will you pardon the January 6th rioters who were convicted of federal offenses?”. Trump responded, “I am inclined to pardon many of them. I can’t say for every single one because a couple of them, probably, they got out of control.”²¹⁶

261. Collins asked Trump, “When it was clear [attackers] weren’t being peaceful, why did you wait three hours to tell them to leave the Capitol? They listen to you like no one else.” Trump responded, “They do. I agree with that.”²¹⁷

262. Trump then asserted he thought it was “Nancy Pelosi’s and the mayor’s job” to do so. He also stated that the video he posted 187 minutes after the initial break in “was a beautiful video.”²¹⁸

263. When Collins mentioned Ashli Babbitt, who was shot by police while attempting to break into the Capitol, Trump praised her and responded, “That thug [the

²¹⁵ *READ: Transcript of CNN’s town hall with former President Donald Trump*, CNN (May 11, 2023), <https://www.cnn.com/2023/05/11/politics/transcript-cnn-town-hall-trump/index.html>.

²¹⁶ *Id.*

²¹⁷ *READ: Transcript of CNN’s town hall with former President Donald Trump*, CNN (May 11, 2023), <https://www.cnn.com/2023/05/11/politics/transcript-cnn-town-hall-trump/index.html>.

²¹⁸ *Id.*

police officer] killed her, there was no reason to shoot her at blank range. . . And she was a good person. She was a patriot.”

264. When Collins told Trump that Mike Pence “says that you endangered his life on that day,” Trump responded, “I don’t think he was in any danger.”

265. Trump said this notwithstanding violent chants among the crowd to “Hang Mike Pence!” and active tweets by Trump during the attack that Pence lacked courage to unlawfully reject certification of the election.

266. Collins then asked Trump if he feels that he owes Pence an apology. Trump replied, “No, because he did something wrong. He should have put the votes back to the state legislatures and I think we would have had a different outcome.”

VI. TRUMP REMAINS UNREPENTANT AND WOULD DO IT AGAIN.

267. To this day, Trump has never expressed regret that his supporters violently attacked the U.S. Capitol, threatened to assassinate the Vice President and other key leaders, and obstructed congressional certification of the electoral votes. Nor has he condemned any of them for these actions.

268. Trump has never expressed regret for any aspect whatsoever of his own conduct in the days leading up to January 6, 2021 or on January 6 itself.

269. Trump has not offered personal condolences to any of the law enforcement personnel or their families who were injured or died as a result of the January 6 attack.

270. Trump has not apologized to anyone, either on his own behalf or on behalf of his supporters, for the January 6 attack.

271. To the contrary, Trump has continued to defend and praise the attackers.

272. Around December 20, 2022, after the bi-partisan House committee voted to recommend that the Justice Department bring criminal charges against Trump, Trump posted on his website Truth Social: “these folks don’t get it that when they come after me, the people who love freedom rally around me.”²¹⁹

273. Trump has endorsed and appeared at multiple fundraisers for the “Patriot Freedom Project,” an organization that provides support for January 6 attackers.

274. Trump has not petitioned Congress for amnesty under Section 3 of the Fourteenth Amendment, nor has Congress granted it.

275. In fact, Trump has demonstrated that the purpose of Section 3 of the Fourteenth Amendment—to prevent insurrectionists from holding power *because of the danger they pose to the Republic*—applies with undiminished vigor.

276. For example, on December 3, 2022, Trump called for “termination of all rules, regulations, and articles, even those found in the Constitution.”²²⁰

VII. THE CONSTITUTION DISQUALIFIES INSURRECTIONISTS FROM OFFICE.

277. Under Section 3 of the Fourteenth Amendment to the U.S. Constitution, known as the Disqualification Clause, “No Person shall . . . hold any office, civil or military, under the United States . . . who, having previously taken an oath . . . as an officer of the United States . . . or as an executive or judicial officer of any State, to

²¹⁹ Steve Peoples, *Republicans’ usual embrace of Trump muted following criminal referral*, PBS (Dec. 20, 2022), <https://www.pbs.org/newshour/politics/republicans-usual-embrace-of-trump-muted-following-criminal-referral>.

²²⁰ Donald J. Trump (@realDonaldTrump) Truth Social, Dec. 3, 2022, 7:44 AM, <https://truthsocial.com/@realDonaldTrump/posts/109449803240069864>.

support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same.”

278. Persons who trigger this provision are disqualified from public office, just as those who fail to meet the age or citizenship requirements of Article I, section 2 of the Constitution are disqualified from the presidency. “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*, 63 N.C. at 204.

279. Under Section 3, to “engage” merely requires “a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from insurrectionists’ perspective] termination”). *Powell*, 65 N.C. 709 (C.C.D.N.C. 1871); *Worthy*, 63 N.C. at 203 (in leading national precedent, defining “engage” under Section 3 to mean “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary”).

280. Planning or helping plan an insurrection or rebellion satisfies the definition of “insurrection” under Section 3 of the Fourteenth Amendment. So does planning a demonstration or march upon a government building that the planner knows is substantially likely to (and does) result in insurrection or rebellion, as it constitutes taking voluntary steps to contribute, “by personal service,” a “thing that was useful or necessary” to the insurrection or rebellion. And knowing that insurrection or rebellion was likely makes that aid voluntary.

VIII. TRUMP ENGAGED IN INSURRECTION OR REBELLION AND IS THUS DISQUALIFIED FROM PUBLIC OFFICE.

281. The allegations of all previous paragraphs are incorporated by reference.

282. On January 20, 2017, Trump took an oath to support the U.S. Constitution.

283. Trump took that oath as an “officer of the United States” within the meaning of Section 3 of the Fourteenth Amendment.

284. During his 2020 re-election campaign, and after the results made clear that he had lost the election, Trump inflamed his supporters with claims that the 2020 presidential election had been rigged.

285. Over the course of November and December 2020, and continuing into January 2021, Trump attempted a series of unlawful schemes to overturn the election. These schemes included pressuring state legislators to appoint pro-Trump electors in states he had lost; the submission of fake electoral certificates by pro-Trump electors in states he had lost; pressuring Pence to discard electoral votes from states he had lost; and seizing voting machines as a pretext for other unlawful means to retain power.

286. Trump’s lawyers and aids and Vice President Pence himself had repeatedly advised Trump that Pence had no lawful authority to reject electoral votes.

287. After various other schemes to overturn the 2020 election failed, Trump summoned his supporters to Washington, D.C., on January 6, 2021, telling them that it would be “wild.”

288. Trump knew that some of his supporters on January 6, 2021 were armed and had plans to commit violence on that day.

289. Still, Trump egged supporters on and insisted they must “fight” and reclaim the presidency from supposed theft.

290. After enraging his supporters further, telling them to “fight like hell” and that “you’re allowed to go by very different rules,” Trump sent them to the Capitol.

291. Trump’s supporters defeated civilian law enforcement, captured the United States Capitol, and prevented Congress from certifying the 2020 presidential election, just as Trump had desired.

292. Although they did not succeed, many of the attackers threatened to assassinate Vice President Pence, Speaker Pelosi, and other leaders whom Trump had urged them to target.

293. During the hours-long attack, and despite pleas from family and aides, Trump did not call off the attack. Nor did he use his presidential authority to order reinforcements for the beleaguered police. Instead, he goaded the attackers on.

294. As a result, the certification of the 2020 presidential election could not take place until the next day.

295. The events of January 6, 2021, constituted an insurrection or a rebellion under Section 3: a violent, coordinated effort to storm the Capitol to obstruct and prevent the Vice President of the United States and the United States Congress from fulfilling their constitutional roles by certifying President Biden’s victory, and to illegally extend then-President Trump’s tenure in office.

296. The effort to overthrow the results of the 2020 election by unlawful means, from on or about November 3, 2020 through at least January 6, 2021, constituted a

rebellion under Section 3: an attempt to overturn or displace lawful government authority by unlawful means.

297. Trump knew of, consciously disregarded the risk of, or specifically intended the attackers' unlawful actions described in the preceding allegations.

298. Trump knew of, consciously disregarded the risk of, or specifically intended each of the following:

- a. Angry and armed supporters would amass in Washington, D.C., on January 6, 2021.
- b. These supporters would, at his command, march on the U.S. Capitol.
- c. These supporters would disrupt, delay, or obstruct Congress from certifying the electoral votes.
- d. His 2:24 PM tweet would goad and encourage his supporters to continue their attack.
- e. His refusal to issue a public statement directing the attackers to disperse would encourage the attackers to continue.
- f. His refusal to order federal law enforcement to the scene would enable the attackers to continue.

299. Trump summoned the attackers to Washington, D.C. to "be wild" on January 6; ensured that his armed and angry supporters were able to bring their weapons; incited them against Vice President Pence, Congress, the certification of electoral votes, and the peaceful transfer of power; instructed them to march on the Capitol for the purpose of preventing, obstructing, disrupting, or delaying the electoral vote count and

peaceful transfer of power; encouraged them during their attack; used the attack as an opportunity to further pressure and intimidate the Vice President and Members of Congress; provided material support to the insurrection by refraining from mobilizing federal law enforcement or National Guard assistance; and otherwise fomented, facilitated, encouraged, and aided the insurrection.

300. None of this conduct was undertaken in performance of Trump’s official duties, in his official capacity, or under color of his office. Under Article II of the Constitution, the Twelfth Amendment, and statutes in effect then or now, the President is not involved in counting or certifying votes. Rather, Trump engaged in insurrection solely in his personal or campaign capacity. In fact, when he did contemplate the unlawful use of executive power to further his unlawful schemes (such as seizing voting machines), government aides and lawyers advised him that it would be illegal and/or refused his orders.

301. Despite having sworn an oath to support the Constitution of the United States, Trump “engaged in insurrection or rebellion against the same, or [gave] aid or comfort to the enemies thereof” within the meaning of section 3 of the Fourteenth Amendment.

302. Trump is disqualified from holding “any office, civil or military, under the United States.”

303. Congress has not removed this disability from Trump.

304. The presidency of the United States is an “office . . . under the United States” within the meaning of Section 3 of the Fourteenth Amendment.

305. Consequently, Donald J. Trump is disqualified from, and ineligible to hold, the office of President of the United States.

RESPONDENT'S ERRORS

306. On August 23, 2023, Free Speech For People sent a letter to Secretary of State Steve Simon requesting that he exclude Donald J. Trump from the ballots for the presidential nomination primary and the general election for the office of President of the United States. The letter described Trump's disqualification from holding the office of President, the self-executing nature of Section 3 of the Fourteenth Amendment, and Secretary Simon's authority to exclude Trump from the ballot. The letter encouraged Secretary Simon to act promptly because time is of the essence to resolve any litigation resulting from the announcement of his intent to exclude Trump from the ballot prior to the preparation of the ballots for the presidential nomination primary.

307. On August 29, 2023, Secretary Simon responded to Free Speech For People, claiming that the Secretary does not have authority to investigate a candidate's ineligibility. The Secretary further acknowledged that "Minnesota law provides a separate legal process, found at Minn. Stat. § 204B.44, which allows one or more people to challenge in court the eligibility of a candidate to appear on a ballot."

308. On September 7, 2023, Secretary Simon issued a public statement, stating:

The Office of the Minnesota Secretary of State does not have legal authority to investigate a candidate's eligibility for office. In the case of presidential candidates, the major political parties will submit names of candidates to our office for the Presidential Nomination Primary by January 2, 2024. Those submissions will appear on the ballot for the March 5, 2024 contest unless a court says otherwise. A similar process

and presumption will apply to the November 5, 2024 election.

Minnesota law (Minn. Stat. 204B.44) allows one or more people to challenge in court the eligibility of a candidate to appear on a ballot. Our office will continue to honor the outcome of that process, as we have in the past.

309. As of the filing of this Petition, Secretary Simon has not taken any action to exclude Trump from the ballot for the presidential nomination primary or the general election for the office of President of the United States nor has he expressed an intention to do so.

310. Minnesota conducts a presidential nomination primary which binds the delegates of each party participating in the election. Minn. Stat. § 207A.12. The chairs of each party must submit the names of the candidates to appear on the ballot for that primary to the Secretary of State. The presidential nomination primary election is conducted, and ballots prepared, in the same manner as provided in law for the state primary. Minn. Stat. §§ 207A.12(a); 207A.13, subd. 1(a). Accordingly, the Secretary of State is responsible for certifying, to the county auditors, the names of the eligible candidates who will appear on the ballot for the presidential nominating primary election. *See* Minn. Stat. § 204D.06 (providing that “the secretary of state shall certify to the county auditors the names of all candidates who have properly filed affidavits of candidacy with the secretary of state and who will be voted for in their respective counties at that primary”).

311. Presidential electors and alternates are chosen at the state general election held in the year preceding the expiration of the President’s term in office. Minn. Stat.

§ 208.02. “When presidential electors and alternates are to be voted for, a vote cast for the party candidates for president and vice president shall be deemed a vote for that party’s electors and alternates as filed with the secretary of state.” Minn. Stat. § 208.04, subd. 1. Prior to the election, the Secretary of State is responsible for certifying to the county auditors of the state only those presidential and vice presidential candidates who have been “duly nominated” under state law. Minn. Stat. § 208.04. In turn, the county auditors are responsible for putting the names of presidential and vice presidential candidates certified by the Secretary of State on the ballot. *Id.*

312. Contrary to the Secretary’s August 29 and September 7 assertions, the Secretary of State has both the authority and responsibility to determine whether a candidate for office is ineligible to appear on the ballot for the presidential nomination primary or the general election. Minn. Stat. §§ 207A.13, subd. 2; 208.04, subd. 2. This authority and responsibility applies regardless of whether the ineligibility results from the purported candidate’s failure to meet the eligibility requirements of the Presidential Eligibility Clause of Article II, section 1 of the Constitution; the fact that the purported candidate has previously served two terms in the office of President of the United States; or the fact that the purported candidate, “having previously taken an oath . . . to support the Constitution of the United States,” proceeded to “engage[] in insurrection or rebellion against the same” in contravention of Section 3 of the Fourteenth Amendment.

313. As the exclusive official in Minnesota responsible for placing the names of the candidates on the ballots for the presidential nomination primary and the general

election for the office of President of the United States, the Secretary of State holds the inherent power to exclude ineligible candidates from the ballot.

314. In any event, the Secretary has conceded, with respect to Trump's eligibility for the ballot, that Minn. Stat. § 204B.44 allows petitioners "to challenge in court the eligibility of a candidate to appear on a ballot."

315. In 2020, the chair of the Minnesota Republican Party included Donald J. Trump's name on the list of candidates submitted to the Secretary under Minn. Stat. § 207A.13 subd. 2. Without a judicial determination to the contrary, the party chair will submit Trump's name to the Secretary on or about January 2, 2024.

316. Based on the foregoing, "an error . . . in the placement or printing of the name . . . of any candidate . . . on any official ballot, including the placement of a candidate on the official ballot who is not eligible to hold the office for which the candidate has filed," or a wrongful act, omission, or error of the Secretary of State, is "about to occur."

CLAIM FOR RELIEF

WHEREFORE, Petitioners respectfully pray for an Order of the Court as follows:

1. Declaring that Donald J. Trump is disqualified from holding the office of President of the United States pursuant to Section 3 of the Fourteenth Amendment to the Constitution of the United States;
2. Directing the Secretary of State to exclude Donald J. Trump from the ballot for the March 5, 2024, presidential nomination primary;

3. Directing the Secretary of State to exclude Donald J. Trump from the ballot for the November 5, 2024, general election as a candidate for the office of President of the United States; and

4. Granting Petitioners such other relief as the Court deems just and appropriate.

Date: September 12, 2023

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/Charles N. Nauen

Charles N. Nauen (#121216)

David J. Zoll (#0330681)

Rachel A. Kitze Collins (#0396555)

100 Washington Avenue South, Suite 2200

Minneapolis, MN 55401-2159

(612) 339-6900

cnauen@locklaw.com

djzoll@locklaw.com

rakitzeollins@locklaw.com

FREE SPEECH FOR PEOPLE

Ronald Fein (*pro hac vice* forthcoming)

Amira Mattar (*pro hac vice* forthcoming)

Courtney Hostetler (*pro hac vice* forthcoming)

John Bonifaz (*pro hac vice* forthcoming)

Ben Clements (*pro hac vice* forthcoming)

1320 Centre St. #405

Newton, MA 02459

(617) 244-0234

rfein@freespeechforpeople.org

amattar@freespeechforpeople.org

chostetler@freespeechforpeople.org

jbonifaz@freespeechforpeople.org

bclements@freespeechforpeople.org

COUNSEL FOR PETITIONERS

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/Charles N. Nauen

Charles N. Nauen (#121216)