

March 25, 2022

The Honorable Leigh Chapman
Acting Secretary of the Commonwealth
North Office Building
401 North Street, Unit 302
Harrisburg, PA 17120

Sent via email: RA-Elections@pa.gov, ST-NOTARIES@pa.gov

Dear Madame Secretary,

We write you on behalf of Free Speech For People, a national non-partisan public interest organization, and on behalf of a group of Pennsylvania voters, requesting that your office disqualify State Senator Doug Mastriano from appearing on the ballot for election to any state office in Pennsylvania. Mr. Mastriano engaged in the January 6, 2021 insurrection against the United States and therefore is disqualified from holding public office in the Commonwealth of Pennsylvania by Section Three of the Fourteenth Amendment to the U.S. Constitution.

The U.S. Constitution places only one qualification on individuals seeking state office: they must not have broken an oath to support the Constitution by engaging in an insurrection against the United States. Under Section Three 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 any State, who, having previously taken an oath . . . as a member of any State legislature . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same.” The Insurrectionist Disqualification Clause applies in every state, including Pennsylvania. It must be implemented by state officials against insurrectionist office-seekers even if they have not been charged with crimes, and even if Congress has not taken specific action against them.¹

¹ See *Worthy v. Barrett*, 63 N.C. 99 (1869) (holding that a county sheriff who held that office before and during the Civil War was disqualified from office under Section Three); *In re Tate*, 63 N.C. 308 (1869) (holding that a state solicitor who was a county attorney before the Civil War and served in the Confederate Army was disqualified by Section Three).

Persons who trigger this constitutional provision are disqualified from presenting themselves as a candidate for the office of Governor in Pennsylvania, just as persons who fail to meet the age, citizenship, and residency requirements of Article IV, section 5 of the Constitution of Pennsylvania, or persons who fail the term limit requirements of article IV, section 18, are ineligible for the office.

You have the authority and responsibility to determine, as part of the state ballot qualification process, that because Mr. Mastriano engaged in the January 6 insurrection at the U.S. Capitol, Mr. Mastriano is ineligible to appear on the gubernatorial ballot or on any other ballot for office in the state of Pennsylvania.²

Mastriano's Role in the January 6 Insurrection

Before January 6, 2021

Mr. Mastriano first swore an oath to support the Constitution as an Army officer in the 1980s. He was sworn in as a Pennsylvania State Senator and again took the oath to support the Constitution of the United States in June 2019. Thereafter, following the November 2020 elections, Mastriano repeatedly sought to discredit, overturn, or subvert Pennsylvania's election results.³ His efforts included a failed effort to impel the Pennsylvania legislature to overturn state law and authorize the appointment of its own electors to the Electoral College.⁴ He promoted false allegations of voter fraud, organized a post-election "hearing" in Gettysburg where Giuliani and Trump both spread election conspiracies, urged the

² Mastriano recently has been issued a subpoena for records and deposition testimony by the Select Committee to Investigate the January 6th Attack on the United States Capitol. Select Committee Press Release, *Select Committee Demands Information on Efforts to Send False 'Alternate Electors' to Congress and Otherwise Interfere with Election Certification*, Feb. 15, 2022, bit.ly/3tyIKYV. It is not yet known whether he will cooperate with the investigation. However, you need not and should not wait until this investigation concludes. Information already available sufficiently establishes grounds for determining that Mastriano's involvement in the January 6 insurrection renders him unqualified for office.

³ See, e.g., Douglas Mastriano (@SenMastriano), Twitter (Nov. 28, 2020 7:45 AM), <https://twitter.com/SenMastriano/status/1332666825490968578> (tweeting the false and baseless statement that "[t]here is mounting evidence that the PA presidential election was compromised," and urging the legislature to appoint Trump's delegates to the Electoral College); *Fact Check: Post Mixes Pennsylvania Primary and General Election Data to Suggest Vote-By-Mail Irregularities*, REUTERS (Dec. 1, 2020), reut.rs/3D5tXH6 (confirming that Mastriano's claims of vote-by-mail irregularities in another tweet were false).

⁴ See Jon Alexander, *Mastriano Says Legislature Should Overturn Trump Loss*, YORK DISPATCH (Nov. 27, 2020), bit.ly/3quRyvO.

Department of Justice to investigate election fraud using numerous claims that had already been proven false, and maintained close ties with Trump and his team as they developed their strategies to undermine Biden’s victory.⁵

Mastriano’s disinformation efforts were part of a broader movement, often using the slogan “Stop the Steal,” that advanced and promoted the false claim that Donald Trump won the 2020 election. Beginning in November 2020, various persons associated with the movement attempted to block the certification of President-elect Biden’s victory with dozens of lawsuits, including in Pennsylvania. None succeeded, and all were found to be baseless.⁶

After these efforts failed, some people within the “Stop the Steal” movement turned to more aggressive illegal plans to keep Trump in office after his loss. They formulated an unconstitutional scheme to subvert the constitutional process of counting the electoral votes in Congress in order to prevent President-elect Biden from being sworn in as President. Leaders of the scheme—including then-President Trump, his Chief of Staff Mark Meadows, certain Members of Congress, and others outside the government—focused on January 6, the day that Congress counts the presidential electors’ votes, as an opportunity to prevent Congress from certifying President-elect Biden’s victory.

Key leaders and participants in the larger scheme developed plans to pressure or intimidate Congress and then-Vice President Pence into refusing to recognize the votes of electors from certain states that Trump had lost, thus leading to a Trump “victory” in Congress.⁷ But when these attempts failed, they instead planned to obstruct the electoral count certification.⁸

⁵ Andrew Seidman, *A Pa. senator gets a political boost from pushing Trump’s false election claims—with 2022 in sight*, THE PHILADELPHIA INQUIRER (Dec. 5, 2020), <https://bit.ly/3uhU9KK>; Jeremy Herb & Sara Murray, *How a Pennsylvania state senator helped fuel Trump’s election lies*, CNN (Oct. 14, 2021), <https://cnn.it/3DaA4tS>.

⁶ Jacob Shamisian & Sonam Sheth, *Trump and his allies filed more than 40 lawsuits challenging the 2020 election results. All of them failed*, BUSINESS INSIDER (Feb. 22, 2021), <https://bit.ly/3mZYfEf>.

⁷ *Before: Red Flags*, WASH. POST, (Oct. 31, 2021), <https://wapo.st/3JuvTvi>; *READ: Trump lawyer’s full memo on plan for Pence to overturn the election*, CNN (Sept. 21, 2021), <https://cnn.it/3qldg4p>; *Trump pressures Pence to throw out the election results—even though he can’t*, POLITICO (Jan. 5, 2021), <https://politi.co/3961iTx>.

⁸ *READ: Trump lawyer’s full memo on plan for Pence to overturn the election*, CNN (Sept. 21, 2021), <https://cnn.it/3qldg4p>; *Trump pressures Pence to throw out the election results—even though he can’t*, POLITICO (Jan. 5, 2021), <https://politi.co/3961iTx>.

To further their scheme to overturn the presidential election results, in December 2020 and January 2021, organizers planned a “Save America” demonstration at the Ellipse in Washington D.C. on January 6 to coincide with, and seek to block, the certification of electoral votes, as well as a protest at the Capitol itself. During this planning period, on December 19, 2020, then-President Trump endorsed the demonstration, urging his followers: “Be there, will be wild!”, which his supporters understood to be a coded call for violence.⁹ On social media, supporters openly called for weapons to be carried into the District of Columbia, for law enforcement to be murdered if they interfered, and for supporters to storm the Capitol to prevent the certification of President-elect Biden’s victory.¹⁰

During this process, Mastriano organized transportation for people to travel from Pennsylvania to Washington D.C. to participate in the insurrection. His political committee paid more than \$3,000 to Wolf’s Bus Lines for “bus reservations,” to bus people to the Capitol for Trump’s rally, advertised the event on Facebook, and charged attendees fees to reserve a place on the bus.¹¹

On January 6, 2021

At the Ellipse demonstration, speakers urged violence. For example, Trump’s lawyer, Rudy Giuliani, called for “trial by combat”; Representative Mo Brooks urged the crowd to be prepared to sacrifice their “blood” and “lives,” and to “do what it takes to fight for America” by “carry[ing] the message to Capitol Hill,” since “the fight begins today.”¹² Finally, Trump spoke, during which time the crowd chanted “Fight for Trump!”. Trump in turn urged them to march on the Capitol: “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

⁹ *Before: Red Flags*, WASH. POST (Oct. 31, 2021), <https://wapo.st/3JuvTvi>.

¹⁰ Brandy Zadrozny & Ben Collins, *Violent threats ripple through far-right internet forums ahead of protest*, NBC NEWS (Jan. 5, 2021), [nbcnews.com/3NcyxrN](https://www.nbcnews.com/3NcyxrN); Dan Barry & Sheera Frenkel, *‘Be There. Will be Wild!’: Trump all but circled the date*, N.Y. TIMES (Jan. 6, 2021), [nyti.ms/3tyKXSZ](https://www.nytimes.com/2021/01/06/us/politics/trump-jan-6-rally.html); see also *Before: Red Flags*, WASH. POST (Oct. 31, 2021), <https://wapo.st/3JuvTvi>.

¹¹ Katie Meyer et al., *Sen. Doug Mastriano Campaign Spent Thousands on Buses Ahead of D.C. Insurrection*, WITF, Jan. 13, 2021, [bit.ly/3D6KyKH](https://www.witf.com/news/politics/2021/01/13/sen-doug-mastriano-campaign-spent-thousands-on-buses-ahead-of-d-c-insurrection/).

¹² Charles Duncan, *‘This Crowd Has Some Fight In it,’: N.C. Rep Spoke at Rally Before Attack at Capitol*, SPECTRUM NEWS (Jan. 7, 2021), [https://bit.ly/3wroCZe](https://www.spectrumnews.com/news/politics/2021/01/07/nc-rep-spoke-at-rally-before-attack-at-capitol/); WASH. POST, *Trump, Republicans incite crowd before mob storms Capitol*, YouTube (Jan. 6, 2021), [https://youtu.be/mh3cbd7niTQ](https://www.youtube.com/watch?v=mh3cbd7niTQ); The Hill, *Mo Brooks gives FIERY speech against anti-Trump Republicans, socialists*, YouTube (Jan. 6, 2021), <https://www.youtube.com/watch?v=ZKHwV6sdrMk>.

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.”¹³ At that point, 10,000 to 15,000 demonstrators began to march to the Capitol, where they joined a crowd of 300 members of the violent extremist group “Proud Boys.”¹⁴

Around 1:00pm, as the procedural tallying of vote counts began, then-President Trump warned those who remained at the Ellipse that “[i]f you don’t fight like hell, you’re not going to have a country anymore,” and told them: “We are going to walk down Pennsylvania Avenue . . . we are going to the Capitol.”¹⁵ At the Capitol, Proud Boys live-streamed Trump’s speech, and his urging demonstrators to descend on the Capitol was received like an order.¹⁶

The mob moved toward the Capitol, removing physical barriers in order to get closer to the building. Protesters clashed violently with police officers on the scene. By 1:30 p.m., law enforcement retreated as insurrectionists scaled the walls of the Capitol, many of them armed with weapons, pepper spray, and tasers. Some wore full body armor; others carried homemade shields. Many used flagpoles, signposts, and other weapons to attack police officers defending the Capitol.¹⁷

The breach of the Capitol lasted more than three hours. At 2:20 p.m., the House was forced to adjourn during the assault, thereby allowing the insurrectionists to successfully obstruct Congress from certifying the vote and temporarily blocking the peaceful transition of power from one presidential administration to the next.

Members of Congress and staffers were forced to evacuate the House Chamber as insurrectionists sought entry at 2:44 p.m.; Senate staffers took the electoral college certificates with them during the evacuation to ensure that they did not fall into the hands of the insurrectionists. Shortly thereafter, the insurrectionists gained control of both the House Chamber and Senate Chamber. Insurrectionists also obtained access to, and control over, the offices of members of Congress.

¹³ *Donald Trump Speech “Save America” Rally Transcript January 6*, REV (Jan 6, 2021), <https://bit.ly/3GheZid>.

¹⁴ Martha Mendoz & Juliet Linderman, *Officers maced, trampled: Docs expose depth of Jan. 6 chaos*, AP NEWS (Mar. 10, 2021), <https://bit.ly/3F2Hi26>.

¹⁵ *During: Bloodshed*, WASH. POST (Oct. 31, 2021), <https://wapo.st/3JuvTvi>.

¹⁶ *Id.*

¹⁷ *Id.*

During the course of the insurrection, insurrectionists attacked and assaulted police officers. They were not expelled from the Capitol until 6 p.m.; Vice President Pence was not able to reconvene Congress until 8:06 p.m., nearly six hours after the insurrectionists forced its adjournment. Biden’s victory was certified at 3:14 a.m. on January 7.¹⁸ In total, five people died and over 150 police officers suffered injuries, including broken bones, lacerations, and chemical burns.

Mastriano had “VIP” status at the speeches at the Ellipse and subsequently rode a golf cart and marched to the Capitol.¹⁹ Videos and photographs show Mastriano at the Capitol during the insurrection, bypassing police barriers that “moved” only because insurrectionists breached them in Mastriano’s presence.²⁰ Furthermore, just one week after the attack, Mastriano described to a radio interviewer how he was present as insurrectionists breached barricades and physically assaulted police officers by pushing them up the stairs.²¹

At other times, Mastriano spun a different story. He claimed that he left the area “[w]hen it was apparent that this was no longer a peaceful protest,” that he did not “enter the Capitol building, walk on the Capitol steps or go beyond police lines,”²² and that he “followed the directions of the Capitol Police and respected all police lines as he came upon them.”²³ However, photograph and video evidence of the insurrection, as well as his own words just a week after the event, contradict his ineffectual claim to minimize his participation in the insurrection.

¹⁸ *Id.*; Congr. Rec. H77 (daily ed. Jan 6, 2021), <http://bit.ly/Jan6CongRec>.

¹⁹ Ruby Cramer, ‘His Street Cred Went Up’: The Unintended Consequences of Outing the GOP Lawmakers at Jan. 6, POLITICO (Oct 18, 2021), <https://politi.co/3LaLAIx>.

²⁰ Cory Cullington, *Barricade Push | NE Capitol ft. Doug Mastriano*, YouTube (May 25, 2021), https://www.youtube.com/watch?v=_Ybdqd0xkb0; American Patriot, *PA Senator Doug Mastriano and Wife, Rebbie, Cross Police Lines at Jan 6 Attack on the US Captiol [sic]*, YouTube (May 22, 2021), <https://www.youtube.com/watch?v=MfWCkE14JXY>; American Patriot, *PA Senator Doug Mastriano and Wife, Rebbie, in Front of the US Captiol [sic] at Jan 6 Attack*, YouTube (May 23, 2021), https://www.youtube.com/watch?app=desktop&v=rxhoob6NfaY&ab_channel=AmericanPatriot; capitolhunters (@capitolhunters), Twitter (Aug 29, 2021 1:01 PM), <https://twitter.com/capitolhunters/status/1432025661435121669?s=20&t=FP9e29OwzJ06LZ4W aPtxjA>;

Ruby Cramer, ‘His Street Cred Went Up’: The Unintended Consequences of Outing the GOP Lawmakers at Jan. 6, POLITICO (Oct 18, 2021), <https://politi.co/3LaLAIx>.

²¹ *Tracking Doug Mastriano’s Movements During the Insurrection: A Timeline*, Pennsylvania Spotlight (May 9, 2021), <https://bit.ly/36HlvIq>.

²² Mastriano Statement, posted Jan. 6, 2021, <https://senatormastriano.com/2021/01/06/mastriano-condemns-violence-in-washington-d-c/>

²³ Mastriano Statement, posted May 25, 2021,

<https://senatormastriano.com/2021/05/25/mastriano-condemns-huffington-post-attack-article/>

Mastriano Engaged in Insurrection or Rebellion Against the United States.

Under Section Three of the Fourteenth Amendment to the U.S. Constitution, known as the Disqualification Clause, “No Person shall . . . hold any office, civil or military . . . under any State, who, having previously taken an oath . . . as a member of any State legislature . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same.”

The events of January 6 undoubtedly qualify as an “insurrection.” The Supreme Court has explained that while “[i]nsurrection against a government may or may not culminate in an organized rebellion . . . a civil war always begins by insurrection against the lawful authority of the Government.” *The Amy Warwick (The Prize Cases)*, 67 U.S. 635, 666-68 (1862). While the insurrection did not succeed in overturning the presidential election, it still qualifies as an insurrection, and *disqualifies* any office-holding participants from running for public office in the future. *See Homes Ins. Co of N.Y. v. Davila*, 212 F.2d 731, 736 (1st Cir. 1954) (“An insurrection aimed to accomplish the overthrow of the constituted government is no less an insurrection because the chances of success are forlorn.”).

Congress has repeatedly referred to the events of January 6 as an insurrection.²⁴ And the Department of Justice has charged more than ten individuals with seditious conspiracy for their role in the January 6 attack, defined as any incident in which 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.” 18 U.S.C. § 2384.²⁵

²⁴ Bipartisan majorities of the House and Senate voted for articles of impeachment that described the attack as an “insurrection,” and during the impeachment trial Trump’s attorney conceded that January 6 was a “violent insurrection.” Moreover, the Senate and Congress have voted to award Congressional Gold Medals to Eugene Goodman and other Capitol Police via bills that characterize the attacker as “insurrectionists.”

²⁵ Department of Justice Press Release, *Leader of Oath Keepers and 10 Other Individuals Indicted in Federal Court for Seditious Conspiracy and Other Offenses Related to U.S. Capitol Breach* (Jan. 13, 2022), bit.ly/3twSYyp. One of the co-conspirators has pleaded guilty to seditious conspiracy. Department of Justice Press Release, *Leader of Alabama Chapter of Oath Keepers Pleads Guilty to Seditious Conspiracy and Obstruction of Congress* (Mar. 2, 2022), bit.ly/3iru3zo.

Although courts have had few reasons to define engagement within the context of insurrection, those cases that do show that Mastriano has engaged in insurrection against the United States by “voluntar[ily] . . . assist[ing] the Insurrection or Rebellion.” *United States v. Powell*, 65 N.C. 709, 27 F. Cas. 605, 607 (D.C.N.C. 1871). In the aftermath of the Civil War, one leading case defined engagement as occurring where a person is responsible for “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary in the Confederate service.” *Worthy v. Barrett*, 63 N.C. 199, 202 (1869).

Mastriano has provided just such voluntary aid to the January 6 insurrection. After the November 2020 election, he fomented disinformation in a bid to convince the Pennsylvania legislature to appoint its own electors to the Electoral College in order to secure Pennsylvania’s Electoral College votes for Trump even after he lost the state’s popular vote. When this failed—and when other efforts to overturn state election results also failed—he turned toward efforts to block the certification of Biden’s victory by Congress.

Even after it became clear that participants in the demonstration were planning to bring weapons and use violence at the Capitol, Mastriano rented a bus and arranged to transport dozens of people into Washington D.C.²⁶ He and his wife both marched on the Capitol as their fellow insurrectionists broke down police barriers, confronted and attacked police officers, and began the assault on the Capitol itself. Though Mastriano may have left at some point during the insurrection, he was an active participant up to and during the violent breach of police barriers around the Capitol. And he knew, or should have known, that further violence was likely to result from this violent attack on the United States Capitol and (temporarily successful) attempt to subvert constitutional democracy and prevent a peaceful transfer of power.

Moreover, Mastriano is an experienced military veteran who has studied and written on “hybrid warfare” strategies that relies on “ambiguity” and

²⁶ At least one group in Pennsylvania, Berks County Patriots with close ties to the Berks County GOP, also intended to sponsor their own bus to D.C., but withdrew sponsorship and instead handed organization of the bus to three other individuals prior to January 6 “due in part to a concern over rumors of possible violence.” Katie Meyer et al., *Sen. Doug Mastriano Campaign Spent Thousands on Buses Ahead of D.C. Insurrection*, WITF, Jan. 13, 2021, bit.ly/3D6KyKH.

disinformation to create instability.²⁷ Many of these strategies were used during the lead-up to and the execution of the January 6 insurrection. In other words, Mastriano was specifically aware of the consequences that his actions and Trump's actions were likely to have on fomenting and guiding the insurrection and the Stop the Steal movement's ongoing efforts to subvert the 2020 election.

The Secretary of the Commonwealth Should Ensure that Only Eligible Candidates Appear on the Ballot

Candidates for office in Pennsylvania must satisfy state and federal eligibility requirements.²⁸ And where a candidate improperly puts him or herself forward for an office for which he or she is not qualified, then the Secretary of the Commonwealth, as Chief Election Official of the state, is empowered to, and should set aside the nomination petition of that person.²⁹

Douglas Mastriano engaged in an insurrection against the United States within the meaning of the U.S. Constitution's Insurrectionist Disqualification Clause after taking the oath as a state senator to support the Constitution. He is therefore disqualified from office within the state of Pennsylvania and, consequently, ineligible to appear as a candidate on the ballot for governor.

²⁷ Douglas Mastriano & Jeffrey Setser, *Blunting Moscow's Sword of Damocles Policy in the Baltic Region*, FOREIGN POL'Y RESEARCH INST. (June 1, 2016), bit.ly/3LbVvx9; Douglas Mastriano, *Putin's Conundrum: The Baltic Region, Unconventional Threats and a Rising Russia*, FOREIGN POL'Y RESEARCH INST. (Apr. 21, 2016), bit.ly/357VBqu.

²⁸ See, e.g., Pennsylvania Department of State, *General Information About Running For Public Office*, <https://bit.ly/3Jt226i> (last visited Mar. 22, 2022) ("A prospective candidate must also make sure that he or she is qualified to hold the office being sought.").

²⁹ See, e.g., 25 Pa. Stat. § 2621 (setting out Secretary's responsibilities during elections, which include the responsibility to certify the names of candidates and "[t]o receive **and determine . . . the sufficiency** of nomination petitions, certificates, and papers for . . . all state offices" (emphasis added)). Although under state law individual voters may file candidates challenges in court, see, e.g., *Elliot v. Cruz*, 137 A.2d 646 (2016) (assessing challenge to presidential candidate's citizenship); 25 P.S. § 2937 ("All nomination petitions and papers received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last day for filing said nomination petition or paper, a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition or paper be side aside."), as Secretary of the Commonwealth you have your own authority to ensure that the nomination petitions of unqualified candidates be set aside. Even aside from specific state laws, you have taken your own oath to support the U.S. Constitution and are therefore obligated to enforce its requirements, including those of the Fourteenth Amendment.

For these reasons, we respectfully request that you set aside Mastriano's nomination petition. We further request a meeting with you to discuss this matter, as well as to discuss our letter to your office of June 29, 2021 (which can be accessed again [here](#)), addressing why former President Donald Trump, who incited the January 6, 2021 insurrection, is disqualified for future public office under the Insurrectionist Disqualification Clause and must be barred from any future ballot in Pennsylvania.

Sincerely,

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Ben Clements, Chairman and Senior Legal Advisor
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