

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DAVID ROWAN, DONALD GUYATT,
ROBERT RASBURY, RUTH DEMETER,
AND DANIEL COOPER,

PETITIONERS,

VS.

BRAD RAFFENSPERGER, SECRETARY OF
THE STATE OF GEORGIA,

RESPONDENT,

AND

MARJORIE TAYLOR GREENE,

INTERVENOR-RESPONDENT.

CIVIL ACTION FILE

NO. 2022CV364778

TRANSCRIPT OF JUDICIAL REVIEW PROCEEDINGS BEFORE
THE HONORABLE CHRISTOPHER S. BRASHER, JUDGE,
FULTON COUNTY COURTHOUSE, COURTROOM 8-E,
HYBRID PROCEEDINGS VIA ZOOM VIDEOCONFERENCE,
ATLANTA JUDICIAL CIRCUIT, JULY 18, 2022,
COMMENCING AT 9:30 A.M.

CARL R. FORTÉ, RMR, CRR, CRC
OFFICIAL COURT REPORTER
SUITE T-8905, JUSTICE CENTER TOWER
185 CENTRAL AVENUE, S.W.
ATLANTA, GEORGIA 30303
404-612-4344

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A P P E A R A N C E S:

ON BEHALF OF THE
PETITIONERS:

BRYAN LUDINGTON SELLS, ESQ.
THE LAW OFFICE OF BRYAN L. SELLS, LLC
P.O. BOX 5493
ATLANTA, GEORGIA 31107-0493

RONALD FEIN, ESQ. (VIA ZOOM)
FREE SPEECH FOR PEOPLE
SUITE 405
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NEWTON, MASSACHUSETTS 02459

ON BEHALF OF
THE RESPONDENT:

ELIZABETH MARIE WILSON VAUGHAN, ESQ.
RUSSELL DAVID WILLARD, ESQ.
OFFICE OF THE ATTORNEY GENERAL
40 CAPITOL SQUARE, S.W.
ATLANTA, GEORGIA 30334

ON BEHALF OF THE
INTERVENOR-RESPONDENT:

DAVID F. GULDENSCHUH, ESQ.
DAVID F. GULDENSCHUH, P.C.
512 EAST 1ST STREET
ROME, GEORGIA 30162-0003

JAMES BOPP, JR., ESQ. (VIA ZOOM)
MELENA S. SIEBERT, ESQ.
THE BOPP FIRM
1 SOUTH 6TH STREET
TERRA HAUTE, INDIANA 47807

- - -

1 THE COURT: GOOD MORNING, EVERYONE, WHO ARE
2 APPEARING VIRTUALLY. HOPE YOU-ALL ARE DOING WELL TODAY.

3 MR. BOPP: GOOD MORNING, YOUR HONOR.

4 THE COURT: I SEE MR. BOPP, MR. FEIN, AND MELENA --
5 I'M SORRY. I DON'T KNOW YOUR LAST NAME.

6 MS. SIEBERT: I'M SO SORRY. I DON'T HAVE IT ON
7 THERE. IT'S SIEBERT.

8 MR. FEIN: VERY GOOD.

9 THE COURT: GOOD TO SEE YOU.

10 ALL RIGHT. WE ARE HERE ON AN APPEAL, RECORD APPEAL,
11 OF THE DECISION BY THE OFFICE OF STATE ADMINISTRATIVE
12 HEARINGS, SO I'LL TURN TO THE PETITIONERS FIRST. HERE'S
13 MY PROPOSED ORDER OF ARGUMENT: I'LL ASK THE PETITIONERS
14 TO GIVE US THE BENEFIT OF THEIR ORAL ARGUMENT FIRST, AND
15 THEN I'LL HEAR FROM THE SECRETARY, AND THEN THE
16 INTERVENOR, AND THEN GIVE YOU THE LAST WORD.

17 FAIR ENOUGH?

18 MR. SELLS: THAT'S FINE, YOUR HONOR. DO YOU INTEND
19 TO KEEP TIME IN ANY WAY OR ARE WE JUST GOING TO --

20 THE COURT: AS THE ORDER SAID, AN HOUR AND A HALF.
21 I HOPE THAT'S FAR TOO GENEROUS, GIVEN THE FACT THAT THIS
22 IS A RECORD APPEAL.

23 JUST TO BRING YOU UP TO SPEED, I'VE REVIEWED THE
24 RECORD, I'VE READ ALL THE PLEADINGS THAT YOU-ALL FILED,
25 INCLUDING SOME OF THE THINGS THAT I GOT AFTER CLOSE OF

1 BUSINESS, BUT -- AND I KNOW THERE ARE SOME PRO HAC VICE
2 ADMISSIONS THAT NEED TO BE SIGNED AND SOME OTHER THINGS.
3 AS FAR AS I'M CONCERNED, FOR TODAY'S PURPOSES, THEY'RE
4 ALL GRANTED, SO YOU MAY PROCEED AS YOU NEED TO IN THAT
5 REGARD.

6 BUT I HOPE THAT YOU'LL TAKE ME AT MY WORD THAT I AM
7 PREPARED AND HAVE REVIEWED THE RECORD, AND VIEW THAT AS
8 THE JUMPING-OFF POINT. WITH THAT IN MIND, I'M HAPPY TO
9 HEAR FROM YOU.

10 MR. FEIN: YOUR HONOR, BEFORE MR. SELLS BEGINS, MAY
11 I RAISE ONE VERY MINOR LOGISTICAL POINT?

12 THE COURT: YES, SIR.

13 MR. FEIN: THE PUBLIC LIVESTREAM DOES NOT APPEAR TO
14 HAVE BEGUN YET.

15 THE COURT: OKAY. I WILL START THAT. I APOLOGIZE.

16 OH. SO I DIDN'T INTEND TO -- I'M SORRY. I DIDN'T
17 INTEND TO DO A PUBLIC LIVESTREAM BECAUSE THE COURTROOM IS
18 OPEN. THE REASON WE DO LIVESTREAMS IS BECAUSE THAT WOULD
19 KEEP US IN COMPLIANCE WITH THE GEORGIA OPEN COURTS
20 REQUIREMENT.

21 BUT THE COURTROOM IS OPEN, AND SO I DON'T INTEND TO
22 DO A LIVESTREAM.

23 MR. FEIN: YOUR HONOR, IF I MAY BE HEARD VERY
24 BRIEFLY. I KNOW THERE ARE REPORTERS WHO ARE INTENDING TO
25 WATCH THE LIVESTREAM, SO IT'S --

1 THE COURT: WHY?

2 MR. FEIN: BECAUSE IT'S A CASE OF INTEREST.

3 THE COURT: OH, NO. I MEAN, WHY WOULD THEY BE
4 INTENDING TO WATCH A LIVESTREAM AS OPPOSED TO BEING
5 PRESENT?

6 I'VE SIGNED A RULE 22 ORDER THIS MORNING FOR A TV
7 STATION FROM CHATTANOOGA. SO NOT ALL THE REPORTERS ARE
8 INTENDING TO WATCH A LIVESTREAM, APPARENTLY.

9 IS THERE SOME -- ARE YOU PROFESSING TO ME THAT YOU
10 BELIEVE THERE'S SOME REQUIREMENT THAT IT NEEDS TO BE VIA
11 LIVESTREAM?

12 MR. FEIN: I'M NOT AWARE OF THAT, YOUR HONOR. I
13 WOULD DEFER TO MR. SELLS TO ADDRESS THAT. I JUST WANTED
14 TO RAISE THE ISSUE THAT IT IS CURRENTLY NOT LIVESTREAMED
15 AND THAT THERE ARE -- THERE IS INTEREST IN HAVING IT
16 AVAILABLE BY THAT, IF YOUR HONOR WOULD GRANT THAT.

17 THE COURT: I UNDERSTAND. I USE LIVESTREAM
18 REGULARLY, BUT I DO THAT SO THAT I MAY -- SO THAT THE
19 COURT'S PROCEEDINGS CAN BE IN CONFORMITY WITH THE OPEN
20 COURTS REQUIREMENT. I DON'T DO THAT AS A MATTER OF
21 COURSE BECAUSE I DON'T BELIEVE THAT'S APPROPRIATE.

22 BUT BE THAT AS IT MAY, I HAVE -- WE'VE DONE IT VIA
23 ZOOM SO THAT THOSE WHO WISH TO PARTICIPATE REMOTELY CAN
24 DO SO. THE COURTROOM IS OPEN, AND WE'RE READY TO
25 PROCEED.

1 SO, YOU MAY PROCEED.

2 MR. SELLS: OKAY. YOUR HONOR, I DON'T WANT TO BEAT
3 THAT DEAD HORSE.

4 THE COURT: OKAY.

5 MR. SELLS: BUT WHAT I WOULD SAY IS THAT I'M NOT
6 SURE THAT YOUR DISTINCTION AS TO THE COURTROOM BEING OPEN
7 AND CLOSED IS APPARENT FROM THE FULTON COUNTY SUPERIOR
8 COURT'S WEBSITE THAT LISTS ALL THE ZOOMS OF THE
9 COURTROOMS -- I MEAN, NOT ALL THE ZOOMS, ALL THE YOUTUBE
10 CHANNELS OF THE COURTROOMS. AND SO WE KNOW THAT THERE
11 ARE REPORTERS WHO ARE AWARE THAT THERE'S A YOUTUBE
12 CHANNEL FOR THIS COURTROOM AND ARE PLANNING TO WATCH THIS
13 MORNING.

14 THE COURT: SOUNDS LIKE THEY MAY HAVE MADE AN
15 ASSUMPTION. ALL I DID IS LOOK AT WHAT THE NOTICE SAYS,
16 WHICH IS, IT'S GOING TO OCCUR IN COURTROOM 8-E, AT 9:30.

17 MR. SELLS: OKAY.

18 THE COURT: SO, AGAIN --

19 MR. SELLS: I'M READY TO GO EITHER WAY.

20 THE COURT: OKAY. GOOD. LET'S PROCEED.

21 MR. SELLS: SO, GOOD MORNING, CHIEF JUDGE BRASHER.
22 MAY IT PLEASE THE COURT, MY NAME IS BRYAN SELLS, AND I
23 REPRESENT FIVE ELIGIBLE VOTERS IN THIS CHALLENGE TO
24 REPRESENTATIVE MARJORIE TAYLOR GREENE'S QUALIFICATIONS TO
25 BE A CANDIDATE FOR UNITED STATES REPRESENTATIVE IN

1 GEORGIA'S 14TH CONGRESSIONAL DISTRICT. WITH ME ON ZOOM
2 IS MY COLLEAGUE, RON FEIN, FROM THE ORGANIZATION FREE
3 SPEECH FOR PEOPLE.

4 YOUR HONOR, SECTION 3 OF THE FOURTEENTH AMENDMENT IS
5 KNOWN AS THE DISQUALIFICATION CLAUSE. IT PROVIDES, IN
6 RELEVANT PART, THAT NO PERSON SHALL BE A REPRESENTATIVE
7 IN CONGRESS WHO, HAVING PREVIOUSLY TAKEN AN OATH AS A
8 MEMBER OF CONGRESS TO SUPPORT THE CONSTITUTION OF THE
9 UNITED STATES, SHALL HAVE ENGAGED IN INSURRECTION OR
10 REBELLION AGAINST THE SAME.

11 IT WAS RATIFIED BY THE STATES IN THE WAKE OF THE
12 CIVIL WAR, AND ITS IMMEDIATE PURPOSE WAS TO PREVENT THE
13 PEOPLE FROM ELECTING POPULAR CONFEDERATES TO PUBLIC
14 OFFICE IN THE NEWLY-RESTORED UNION. BUT ITS PROVISIONS
15 ARE TIMELESS.

16 ON MARCH 24TH, 2022, MY CLIENTS FILED WITH THE
17 SECRETARY OF STATE A TIMELY CHALLENGE UNDER GEORGIA LAW
18 TO REPRESENTATIVE GREENE'S QUALIFICATIONS BASED ON THE
19 DISQUALIFICATION CLAUSE. THEY ALLEGED THAT
20 REPRESENTATIVE GREENE, HAVING TAKEN AN OATH OF OFFICE ON
21 JANUARY 3RD, 2021, TO SUPPORT AND DEFEND THE CONSTITUTION
22 OF THE UNITED STATES AGAINST ALL ENEMIES, FOREIGN AND
23 DOMESTIC, VIOLATED THAT OATH BY ENGAGING IN THE
24 INSURRECTION THAT CULMINATED WITH THE ATTACK ON THE
25 UNITED STATES CAPITOL ON JANUARY 6TH, 2021.

1 AND THIS CASE IS NOW BEFORE YOU ON MY CLIENTS'
2 PETITION FOR JUDICIAL REVIEW OF THE SECRETARY OF STATE'S
3 FINAL DECISION UNDER O.C.G.A. SECTION 21-2-5 THAT
4 REPRESENTATIVE GREENE IS QUALIFIED TO APPEAR ON THE
5 BALLOT. THE SECRETARY OF STATE ADOPTED THE INITIAL
6 DECISION OF THE ADMINISTRATIVE LAW JUDGE AT THE OFFICE OF
7 STATE ADMINISTRATIVE HEARINGS, WHICH WE'LL CALL THIS
8 MORNING OHSA -- I THINK THAT TERM WILL COME UP A LOT.

9 THE COURT: A WELL-WORN TERM HERE IN GEORGIA.

10 MR. SELLS: RIGHT. AS I'M SURE IT IS -- BUT MY
11 ARGUMENTS TODAY ARE MOSTLY GOING TO FOCUS ON THE ERRORS
12 MADE BY THE ALJ.

13 MY CLIENTS' PETITION FOR JUDICIAL REVIEW RAISES FOUR
14 ISSUES: NUMBER (1), WHETHER THE ALJ ERRED BY SHIFTING
15 THE BURDEN OF PROOF FROM THE CANDIDATE TO THE
16 PETITIONERS; NUMBER (2), WHETHER THE ALJ ERRED BY
17 QUASHING THE PETITIONERS' NOTICE TO PRODUCE; NUMBER (3),
18 WHETHER THE ALJ ERRED BY APPLYING THE WRONG LEGAL
19 STANDARD TO REPRESENTATIVE GREENE'S PRE-OATH CONDUCT; AND
20 (4), WHETHER THE ALJ ERRED BY APPLYING THE WRONG LEGAL
21 STANDARD FOR ENGAGING IN INSURRECTION.

22 NOW, THIS MORNING, I PLAN TO FOCUS MOSTLY ON ISSUES
23 1 AND 2. I MAY TOUCH ON ISSUES 3 AND 4, IF TIME PERMITS.
24 AND I CERTAINLY WELCOME ANY QUESTIONS THAT YOU HAVE ON
25 THOSE ISSUES OR ANY OTHER AS THEY COME UP. THAT'S THE --

1 IN MY VIEW, THE PURPOSE OF THIS ARGUMENT, IS TO ANSWER
2 YOUR QUESTIONS.

3 THE COURT: UNDERSTOOD.

4 MR. SELLS: WE'RE GOING TO ASK THIS COURT, AT THE
5 END OF OUR ARGUMENT, TO REVERSE OR, AT A MINIMUM, TO
6 VACATE AND REMAND THE SECRETARY'S DECISION BACK TO OHS
7 FOR FURTHER PROCEEDINGS UNDER THE CORRECT LEGAL
8 STANDARDS. SO LET ME TURN TO ISSUE 1, THE
9 BURDEN-SHIFTING ISSUE.

10 IN *HAYNES V. WELLS*, THE GEORGIA SUPREME COURT HELD
11 THAT THE ENTIRE BURDEN OF ESTABLISHING ONE'S ELIGIBILITY
12 TO RUN FOR PUBLIC OFFICE IS ON THE CANDIDATE. AND THE
13 BASIS FOR THE SUPREME COURT'S HOLDING IS THAT THE ONE
14 SEEKING TO RUN FOR PUBLIC OFFICE -- EXCUSE ME. THE BASIS
15 FOR THE SUPREME COURT'S HOLDING THAT THE ENTIRE BURDEN IS
16 ON THE CANDIDATE IS GROUNDED IN THE ELECTION CODE, AND
17 SPECIFICALLY IN O.C.G.A. 21-2-153, SUBSECTION (E), WHICH
18 REQUIRES THE INDIVIDUAL SEEKING TO RUN FOR PUBLIC OFFICE
19 TO AFFIRMATIVELY FILE AN AFFIDAVIT ATTESTING THAT THEY
20 ARE QUALIFIED TO HOLD THE OFFICE HE OR SHE IS SEEKING.

21 THIS COURT, AS I'M SURE YOU'RE AWARE, IS BOUND BY
22 THE GEORGIA CONSTITUTION TO FOLLOW THE RULINGS OF THE
23 GEORGIA SUPREME COURT. AND SO WAS THE ALJ. BUT THE ALJ,
24 IN THIS CASE, DID NOT FOLLOW *HAYNES V. WELLS* AND THE
25 RULING OF THE SUPREME COURT. THE ALJ DISTINGUISHED

1 *HAYNES V. WELLS* BY SAYING THAT THIS IS NOT YOUR TYPICAL
2 CASE.

3 AND THAT DISTINCTION IS NOT PERSUASIVE HERE FOR TWO
4 REASONS: NUMBER 1, THE SUPREME COURT USED VERY BROAD
5 LANGUAGE IN ITS DECISION. IT SAYS THE ENTIRE BURDEN OF
6 PROVING ONE'S QUALIFICATIONS RESTS WITH THE CANDIDATE.
7 THERE IS NO QUALIFICATION IN THAT LANGUAGE.

8 BUT PERHAPS MORE IMPORTANTLY IS THE RATIONALE FOR
9 THE SUPREME COURT'S DECISION, WHICH IS BASED IN THE
10 ELECTION CODE, THAT PROVISION I JUST CITED, 21-2-153,
11 SUBSECTION (E). THAT PROVISION CONTAINS NO EXCEPTION FOR
12 THE DISQUALIFICATIONS CLAUSE, AND IN FACT IT REQUIRES THE
13 CANDIDATE -- IN THIS CASE, REPRESENTATIVE GREENE -- TO
14 TESTIFY -- TO FILE AN AFFIDAVIT ATTESTING THAT SHE IS
15 QUALIFIED TO RUN FOR OFFICE. AND SO THE RATIONALE OF
16 *HAYNES* APPLIES WITH FULL FORCE HERE, AND IT WAS THEREFORE
17 ERROR FOR THE ALJ NOT TO FOLLOW *HAYNES V. WELLS* IN THIS
18 CASE.

19 IN THE BRIEFING, THE SECRETARY OF STATE ARGUES THAT
20 THIS WAS A HARMLESS ERROR. AND THAT'S DIFFICULT TO
21 SQUARE WITH THE ALJ'S EMPHASIS IN THE CASE IN HIS INITIAL
22 DECISION THAT THE PETITIONERS HAD FAILED TO MEET THEIR
23 BURDEN OF PROOF. HE SAYS IT OVER AND OVER AGAIN. AND
24 THERE'S NOTHING IN THE ALJ'S INITIAL DECISION FROM WHICH
25 ONE COULD CONCLUDE THAT HE WOULD HAVE REACHED THE SAME

1 DECISION IF THE BURDEN HAD BEEN ON REPRESENTATIVE GREENE.

2 NOW, THE SECRETARY OF STATE ALSO SUGGESTS THAT THIS
3 MAY NOT HAVE AFFECTED A SUBSTANTIAL RIGHT OF THE CLIENTS,
4 AND WE BELIEVE THAT THE SUPREME COURT'S CASE IN *HANDEL V.*
5 *POWELL*, 284 GA. 550, FORECLOSES THAT ARGUMENT. WHERE
6 THERE IS AN ERROR OF LAW IN THE ALJ'S DECISION OR THE
7 SECRETARY'S DECISION, THAT NECESSARILY PREJUDICES
8 SUBSTANTIAL RIGHTS. SO THE ERROR HERE WAS NOT HARMLESS,
9 AND IT PREJUDICED SUBSTANTIAL RIGHTS UNDER O.C.G.A.
10 21-2-5 TO BRING THIS CHALLENGE AGAINST REPRESENTATIVE
11 GREENE.

12 LET ME TURN NEXT TO REPRESENTATIVE GREENE'S ARGUMENT
13 IN HER BRIEF. SHE ARGUES THAT TO APPLY THE BURDEN TO HER
14 WOULD BE UNCONSTITUTIONAL; IT WOULD VIOLATE DUE PROCESS.
15 AND SHE RELIES PRIMARILY ON THE *SPEISER* CASE, A UNITED
16 STATES SUPREME COURT CASE FROM THE 1950s, IF I HAVE THAT
17 DATE RIGHT. IT'S AN OLD CASE. AND IT'S NOT AN ELECTION
18 CASE. AND, NOWADAYS, THE COURTS APPLY WHAT IS KNOWN AS
19 THE *ANDERSON-BURDICK* TEST TO CONSTITUTIONAL CHALLENGES TO
20 ELECTION LAWS.

21 REPRESENTATIVE GREENE DOESN'T ARGUE *ANDERSON-BURDICK*
22 HERE, BUT WE CAN STILL LOOK AT *SPEISER* WITHIN THE CONTEXT
23 OF THE *ANDERSON-BURDICK* TEST.

24 NOW, *SPEISER* IS DISTINGUISHABLE HERE FOR ANOTHER
25 REASON -- TWO OTHER REASONS, ACTUALLY. THAT CASE

1 INVOLVED A LOYALTY OATH TO QUALIFY FOR A TAX EXEMPTION.
2 AND *SPEISER*'S DISTINGUISHABLE BECAUSE REPRESENTATIVE
3 GREENE'S RIGHT TO BECOME A CANDIDATE IS NOT ON PAR WITH
4 AVOIDING CRIMINAL JEOPARDY IN AN UNRELATED POLITICAL
5 ACTIVITY WHILE APPLYING FOR A TAX CREDIT.

6 SO THERE'S TWO ASPECTS OF THAT: NUMBER 1, AVOIDING
7 CRIMINAL LIABILITY IS DIFFERENT THAN ACHIEVING ONE'S
8 PLACE ON THE BALLOT, AND THE CRIMINAL LIABILITY WEIGHS
9 HEAVIER; AND THE OTHER ASPECT OF IT IS THAT A TAX
10 EXEMPTION IS COMPLETELY UNRELATED TO THE OATH THAT WAS AT
11 ISSUE IN *SPEISER*, WHEREAS, IN THIS CASE, REPRESENTATIVE
12 GREENE'S QUALIFICATIONS TO RUN FOR OFFICE ARE THE ISSUE.
13 IT'S NOT AN UNRELATED THING THAT SHE WOULD BE ASKED TO BE
14 PROVED -- TO PROVE HERE IF THE BURDEN WERE ON HER.

15 OTHER THAN *SPEISER*, REPRESENTATIVE GREENE HAS
16 IDENTIFIED NO PRACTICAL BURDENS OF ESTABLISHING HER
17 ELIGIBILITY TO RUN FOR OFFICE, AND THE STATE'S -- THE
18 MINIMAL BURDENS THAT MIGHT EXIST FROM THE INCONVENIENCE
19 OF HAVING TO OFFER THAT PROOF ARE MORE THAN JUSTIFIED BY
20 THE STATE'S INTEREST IN PREVENTING INELIGIBLE CANDIDATES
21 FROM APPEARING ON ITS BALLOTS. AND THAT INTEREST IS WELL
22 ESTABLISHED IN THE CASES WE CITE IN OUR BRIEF,
23 PARTICULARLY *BULLOCK V. CARTER* AND THE *HASSAN* CASE,
24 WRITTEN BY NOW-JUSTICE GORSUCH.

25 UNLESS YOU HAVE FURTHER QUESTIONS, I'M GOING TO TURN

1 TO ISSUE 2.

2 THE COURT: PLEASE PROCEED.

3 MR. SELLS: ISSUE 2 IS WHETHER THE ALJ ERRED BY
4 QUASHING THE PETITIONERS' NOTICE TO PRODUCE. AND A
5 NOTICE TO PRODUCE, AS I'M SURE YOU KNOW, IS
6 ADMINISTRATIVE PROCEDURE SPEAK FOR A REQUEST FOR
7 PRODUCTION OF DOCUMENTS.

8 THE RULES OF OHSА PERMIT AN ADMINISTRATIVE LAW JUDGE
9 TO QUASH A NOTICE TO PRODUCE UNDER FOUR CIRCUMSTANCES:
10 NUMBER (1), IF THE NOTICE TO PRODUCE IS UNREASONABLE OR
11 OPPRESSIVE; NUMBER (2), IF THE MATERIAL SOUGHT IS
12 IRRELEVANT, IMMATERIAL, OR CUMULATIVE; NUMBER (3), IF THE
13 MATERIAL SOUGHT IS UNNECESSARY TO A PARTY'S PREPARATION
14 AND PRESENTATION OF ITS POSITION AT THE HEARING; OR (4),
15 IF BASIC FAIRNESS DICTATES THAT THE NOTICE SHOULD BE
16 QUASHED.

17 THE PETITIONERS HERE, MY CLIENTS, ISSUED A NOTICE TO
18 PRODUCE TO REPRESENTATIVE GREENE ON MARCH 28TH, FOUR
19 WEEKS BEFORE THE HEARING DATE AND MORE THAN A MONTH
20 BEFORE THE CLOSE OF THE RECORD, AND THE NOTICE TO PRODUCE
21 SEEKS COMMUNICATIONS REGARDING THE EVENTS OF JANUARY 6TH,
22 AND PARTICULARLY REPRESENTATIVE GREENE'S COMMUNICATIONS
23 WITH SPECIFIC INDIVIDUALS KNOWN TO HAVE BEEN INVOLVED IN
24 THE ATTACK ON THE UNITED STATES CAPITOL ON JANUARY 6TH.

25 THE ADMINISTRATIVE LAW JUDGE HERE QUASHED THE NOTICE

1 TO PRODUCE TO GREENE IN ITS ENTIRETY, NOT FOR ANY OF THE
2 REASONS PERMITTED UNDER THE OHSA RULES BUT ON THE SOLE
3 GROUND THAT IT WAS, QUOTE, IMPRACTICABLE AND UNREALISTIC
4 TO REQUIRE A RESPONDENT TO DELIVER A SIGNIFICANT VOLUME
5 OF MATERIAL PRIOR TO THE SCHEDULED HEARING DATE.

6 NOW, THE SECRETARY OF STATE, IN HIS BRIEFING,
7 CONCEDES THAT THE STATED REASON WAS NOT ONE OF THE FOUR
8 PERMISSIBLE REASONS UNDER THE OHSA RULES, BUT HE ARGUES
9 THAT THERE IS NO RIGHT TO DISCOVERY AND NO PREJUDICE IN
10 ANY EVENT FROM THE ALJ'S DECISION TO QUASH THE NOTICE TO
11 PRODUCE. AND OUR RESPONSE TO THAT IS THE RIGHT TO
12 DISCOVERY IS RIGHT THERE IN THE OHSA RULES. THAT'S WHY
13 THE OHSA RULES EXIST, TO ESTABLISH A RIGHT TO SOME
14 LIMITED DISCOVERY.

15 AND THE OHSA RULES FURTHER PROVIDE PENALTIES FOR
16 FAILURE TO COMPLY WITH DISCOVERY PROPOUNDED UNDER THE
17 OHSA RULES. AND, FURTHER, FINDING THAT THERE'S NO RIGHT
18 TO DISCOVERY IN STATE ADMINISTRATIVE HEARINGS WOULD BE A
19 BIG DEAL KIND OF RULING. IT WOULD UPSET THE APPLE CART
20 OF OUR STATE'S ADMINISTRATIVE PROCEDURE.

21 NOW, AS TO WHETHER THIS WAS A HARMLESS ERROR, WE
22 THINK THE PREJUDICE IS OBVIOUS, GIVEN THE JUDGE'S
23 RELIANCE ON THE ABSENCE OF DOCUMENTARY EVIDENCE. AGAIN,
24 HE SAYS IT OVER AND OVER AGAIN THAT WE HAVE PRODUCED NO
25 CONNECTION -- NO DOCUMENTS SHOWING A CONNECTION BETWEEN

1 REPRESENTATIVE GREENE AND ALI ALEXANDER, FOR EXAMPLE, OR
2 ANTHONY AGUERO, FOR EXAMPLE, TWO OF THE MOST NOTORIOUS
3 ORGANIZERS OF THE EVENTS ON JANUARY 6TH. AND THE NOTICE
4 TO PRODUCE ASKED SPECIFICALLY FOR COMMUNICATIONS BETWEEN
5 REPRESENTATIVE GREENE AND THOSE TWO INDIVIDUALS BETWEEN
6 NOVEMBER OF 2020 AND JANUARY OF 2021, A THREE-MONTH
7 PERIOD.

8 BOTH THE SECRETARY OF STATE AND MARJORIE TAYLOR
9 GREENE SUGGESTS THAT THE ALJ COULD HAVE QUASHED THE
10 NOTICE TO PRODUCE FOR ONE OF THE FOUR REASONS THAT ARE IN
11 THE OHSR RULES, BUT HE DIDN'T. THERE WAS, FOR EXAMPLE,
12 NO SHOWING THAT THE MATERIAL WE WERE REQUESTING WAS SO
13 VOLUMINOUS THAT IT WOULD HAVE CONSTITUTED A BURDEN. THE
14 ALJ SAID IT WOULD BE IMPRACTICABLE AND UNREALISTIC TO
15 REQUIRE RESPONDENT TO DELIVER A SIGNIFICANT VOLUME OF
16 MATERIAL.

17 WELL, THERE'S NO SHOWING, FOR EXAMPLE, THAT
18 REPRESENTATIVE GREENE HAD A SIGNIFICANT NUMBER OF
19 COMMUNICATIONS WITH ALI ALEXANDER, OR THAT ANY OF OUR
20 NOTICES TO PRODUCE OR REQUESTS WOULD HAVE RETURNED A
21 LARGE NUMBER OF DOCUMENTS. WE MIGHT BE IN A DIFFERENT
22 POSITION TODAY IF, FOR EXAMPLE, REPRESENTATIVE GREENE'S
23 ATTORNEYS HAD REPRESENTED TO THE ALJ THAT OUR REQUESTS
24 WOULD HAVE CALLED FOR HUNDREDS OF THOUSANDS OF DOCUMENTS,
25 OR MAYBE EVEN TENS OF THOUSANDS OF DOCUMENTS.

1 THEY WOULDN'T HAVE, BECAUSE THEY WERE LASER FOCUSED
2 IN ON THE EVENTS OF JANUARY 6TH. BUT THE POINT HERE IS
3 THERE WAS NO SHOWING -- THERE WAS NO SHOWING THAT THERE
4 WAS A SIGNIFICANT VOLUME OF MATERIALS THAT WOULD HAVE
5 BEEN RESPONSIVE TO THE REQUEST.

6 EVEN IF THERE HAD BEEN THAT SHOWING, WE THINK THE
7 LAW SUGGESTS THAT THE ALJ SHOULD HAVE NARROWED THE NOTICE
8 TO PRODUCE RATHER THAN QUASHING IT ALTOGETHER. IN FACT,
9 IN THE HEARING ON THE NOTICE TO PRODUCE, WE OFFERED TO DO
10 JUST THAT AND LIMIT OUR REQUEST TO THE ONES THAT WE FELT
11 WERE MOST IMPORTANT. AND THOSE WOULD HAVE INCLUDED, FOR
12 EXAMPLE, THE COMMUNICATIONS WITH ALI ALEXANDER.

13 BUT THE JUDGE DECIDED TO QUASH THE NOTICE IN ITS
14 ENTIRETY, AND THAT WAS ERROR.

15 AND THE COMBINED EFFECT OF THE ERRORS IN ISSUE 1 AND
16 ISSUE 2, THE SHIFTING OF THE BURDEN ONTO THE PETITIONERS
17 AND DENYING US ALL DISCOVERY, IS PARTICULARLY
18 PRESIDENTIAL -- EXCUSE ME -- PREJUDICIAL. AND THE
19 EXCEPTIONAL NATURE OF THIS CASE WAS USED IN BOTH OF THOSE
20 INSTANCES AS A SWORD AND AS A SHIELD.

21 IT WAS USED AS A SWORD TO SHIFT THE BURDEN OF PROOF.
22 THE ALJ SAID, THIS IS NOT YOUR TYPICAL CASE. I'M GOING
23 TO SHIFT THE BURDEN OF PROOF.

24 AND IT WAS USED AS A SHIELD WITH RESPECT TO THE
25 NOTICE TO PRODUCE. HE SAID, WELL, IN TYPICAL CASES, WE

1 DON'T DO MUCH DISCOVERY. AND SO I'M GOING TO CONSIDER
2 THIS, FOR THE NOTICE TO PRODUCE, A TYPICAL CASE.

3 WELL, WHICH IS IT?

4 THE RESULT OF THAT DUALITY OR DUPLICITY WAS AN
5 UNFAIR PROCESS. AND IT MADE REPRESENTATIVE GREENE'S
6 STONEWALLING STRATEGY AT THE HEARING POSSIBLE, AND IT
7 LEFT THE PETITIONERS WITH TWO HANDS TIED BEHIND THEIR
8 BACKS. THAT LEVEL OF UNFAIRNESS REQUIRES THAT THIS
9 COURT, AT A MINIMUM, VACATE AND REMAND TO THE ALJ FOR A
10 HEARING WITH A FAIR PROCESS UNDER THE OHSА RULES.

11 NOW, I'VE FINISHED ISSUES 1 AND 2, BUT LET ME JUST
12 TOUCH ON ISSUES 3 AND 4 QUICKLY. I THINK I CAN TALK
13 ABOUT THEM BOTH KIND OF IN ONE FELT SWOOP BECAUSE THEY
14 INVOLVE THE ALJ NOT APPLYING THE RIGHT STANDARD AFTER HE
15 HAS ANNOUNCED THE RIGHT STANDARD.

16 HE RECITED THE CORRECT STANDARD FOR DEALING WITH
17 REPRESENTATIVE GREENE'S PRE-OATH STATEMENTS AND CONDUCT.
18 HE SAID THAT THEY'RE RELEVANT TO THE EXTENT THAT THEY
19 EXPLAIN HER CONDUCT AFTER TAKING THE OATH OF OFFICE.

20 WE AGREE WITH THAT. BUT WHEN IT CAME TIME TO APPLY
21 THOSE STANDARDS, HE ADDED SOME EXTRA VERBIAGE THAT MAKES
22 IT IMPOSSIBLE TO TELL WHETHER HE WAS CHANGING THE
23 STANDARD OR APPLYING THE ONE THAT HE SET OUT EARLIER IN
24 HIS DECISION.

25 SO, WITH REGARD TO THE PRE-OATH CONDUCT, ONE EXAMPLE

1 IS THE EVIDENCE SHOWED THAT REPRESENTATIVE GREENE MADE A
2 PRE-OATH STATEMENT THAT, QUOTE, YOU CAN'T ALLOW IT TO
3 JUST TRANSFER POWER PEACEFULLY, LIKE JOE BIDEN WANTS, AND
4 ALLOW HIM TO BECOME OUR PRESIDENT.

5 THAT APPEARS IN THE RECORD AT PAGE 1789. AND THERE
6 ARE LOTS OF OTHER EXAMPLES OF PRE-OATH STATEMENTS LIKE
7 THAT. AND ALL OF THESE STATEMENTS SUPPORT AN INFERENCE
8 THAT REPRESENTATIVE GREENE'S POST-OATH CONDUCT WAS
9 ENGAGING IN AN INSURRECTION, BUT THE ALJ MENTIONS NONE OF
10 IT IN HIS OPINION AND SIMPLY SAYS THAT THE PRE-OATH
11 CONDUCT AND STATEMENTS ARE NOT ENGAGING IN AN
12 INSURRECTION.

13 NOW, WITH REGARD TO THE LEGAL STANDARD FOR ENGAGING
14 IN INSURRECTION, AGAIN, WE AGREE THAT THE ALJ RECITED THE
15 CORRECT STANDARD. HE MENTIONED *UNITED STATES V. POWELL*
16 AND *WORTHY V. BARRETT*, TOGETHER KNOWN AS THE
17 *POWELL-WORTHY* OR *WORTHY-POWELL* STANDARD. AND HE RECITES
18 THAT. BUT WHEN IT CAME TIME TO APPLY THAT STANDARD, HE
19 SAID THAT WE HAD FAILED TO SHOW MONTHS OF PLANNING AND
20 PLOTTING TO BRING ABOUT THE INVASION, A MONTHS-LONG
21 ENTERPRISE CULMINATING IN A CALL TO ARMS FOR CONSUMMATION
22 OF A PREPLANNED VIOLENT REVOLUTION.

23 IN BOTH INSTANCES, THE SECRETARY OF STATE AND
24 REPRESENTATIVE GREENE SUGGEST THAT THE ALJ APPLIED THE
25 CORRECT STANDARD. AND MAYBE HE DID, BUT ONE CAN'T TELL

1 THAT FROM THE DECISION. AND SO, UNDER THOSE
2 CIRCUMSTANCES WHERE IT'S IMPOSSIBLE TO TELL WHETHER THE
3 ALJ IS APPLYING THE RIGHT STANDARD OR THE WRONG STANDARD,
4 IT'S APPROPRIATE TO REMAND SO THAT THE JUDGE CAN CLARIFY
5 WHAT STANDARD, IN FACT, HE WAS APPLYING.

6 I THINK THE LAST THING I WANT TO SAY THIS MORNING IS
7 TO ADDRESS THE COUNTERCLAIMS AND CROSS-CLAIMS THAT
8 REPRESENTATIVE GREENE ASSERTED IN HER ANSWER TO THE
9 PETITION. AS YOU HAVE READ, I'M SURE, WE FILED A MOTION
10 TO STRIKE THOSE -- THE ANSWER AND THE COUNTERCLAIMS AND
11 CROSS-CLAIMS.

12 THE SECRETARY OF STATE HAS FILED OBJECTIONS TO THEM,
13 WHICH I THINK AMOUNTS TO THE SAME THING. AND I WANT TO
14 SAY THAT THEY SHOULD BE STRICKEN BECAUSE, ON A PETITION
15 FOR REVIEW, CROSS-CLAIMS AND COUNTERCLAIMS ARE OUT OF
16 BOUNDS. AND THOSE -- THESE CROSS-CLAIMS AND
17 COUNTERCLAIMS IN PARTICULAR ARE ASKING THIS COURT TO
18 VACATE THE SECRETARY OF STATE'S DECISION BECAUSE EVEN
19 GOING THROUGH THE PROCESS WAS UNCONSTITUTIONAL.

20 AND IF THAT IS THEIR AIM, THEY WERE UNDER THE
21 BURDEN -- REPRESENTATIVE GREENE WAS UNDER THE BURDEN OF
22 APPEALING WITHIN TEN DAYS, WHICH SHE DIDN'T. AND SO
23 THOSE COUNTERCLAIMS AND CROSS-CLAIMS ARE PROCEDURALLY
24 BARRED.

25 I COULD PROBABLY TALK FOR ANOTHER HALF AN HOUR ABOUT

1 ALL OF THOSE, BUT I THINK I'LL LEAVE IT THERE FOR NOW AND
2 SAY THAT THAT'S OUR POSITION WITH RESPECT TO
3 REPRESENTATIVE GREENE'S CONSTITUTIONAL CROSS-CLAIMS AND
4 COUNTERCLAIMS.

5 THE COURT: UNDERSTOOD.

6 MR. SELLS: AND WITH THAT, WE WOULD ASK THAT THIS
7 COURT REVERSE OR, AT A MINIMUM, VACATE AND REMAND FOR --
8 TO THE ALJ FOR ANOTHER HEARING IN FRONT OF OHSA.

9 THE COURT: UNDERSTOOD. THANK YOU. APPRECIATE IT.
10 ON BEHALF OF THE SECRETARY?

11 MS. VAUGHAN: YES, YOUR HONOR.

12 THE COURT: GOOD MORNING.

13 MS. VAUGHAN: GOOD MORNING. MAY IT PLEASE THE
14 COURT, MY NAME IS ELIZABETH VAUGHAN, AND I REPRESENT THE
15 SECRETARY OF STATE IN THIS MATTER.

16 THE ALJ'S DECISION FOR REPRESENTATIVE GREENE TO
17 REMAIN ON THE BALLOT IS SUPPORTED BY THE RECORD AND BY
18 THE CONCLUSIONS OF LAW THAT THE ALJ DREW FROM HIS
19 FINDINGS OF FACT, WHICH ARE SOUND.

20 THIS COURT IS OPERATING, AS YOUR HONOR RECOGNIZED,
21 AS AN APPELLATE COURT IN THIS MATTER. THIS COURT CANNOT
22 SUBSTITUTE ITS JUDGMENT FOR THAT OF THE SECRETARY AS TO
23 THE WEIGHT OF THE EVIDENCE ON QUESTIONS OF FACT, AND IN
24 ORDER TO REVERSE OR MODIFY THE SECRETARY'S DECISION, THIS
25 COURT MUST FIND THAT THE SUBSTANTIAL RIGHTS OF THE

1 APPELLANT HAVE BEEN PREJUDICED BASED ON THE ERRORS OF LAW
2 THAT THE PETITIONERS CITED, ALLEGEDLY, IN THEIR PETITION.

3 I'M GOING TO BEGIN WITH WORKING THROUGH THE ISSUES
4 THAT WERE RAISED BY THE PETITIONERS IN THEIR BRIEFING AND
5 IN ORAL ARGUMENT HERE TODAY, AND TIME PERMITTED, WE'LL
6 TRY TO TOUCH ON SOME ADDITIONAL ISSUES REGARDING
7 REPRESENTATIVE GREENE'S ARGUMENTS.

8 AS A PRELIMINARY MATTER, I WANT TO CLARIFY SOME
9 THINGS THAT THE PETITIONER SAID IN TERMS OF OUR
10 PARTICULAR ARGUMENT. THE ALJ ACKNOWLEDGED, AS WE ALL
11 AGREE, THE STANDARD IN *HAYNES V. WELLS* REGARDING THE
12 BURDEN BEING ON THE CANDIDATE TO PROVE THEIR ELIGIBILITY.
13 BUT THE ALJ NOTED THAT THIS CASE IS DISTINGUISHABLE. WE
14 ARE LOOKING AT A CASE IN WHICH A OTHERWISE ELIGIBLE
15 CANDIDATE WOULD BE DISQUALIFIED PURSUANT TO THE
16 DISQUALIFICATION CLAUSE OF THE FOURTEENTH AMENDMENT.

17 *HAYNES V. WELLS* DEALT WITH STRAIGHTFORWARD ISSUES
18 REGARDING ELIGIBILITY, THE INFORMATION REGARDING THE
19 ELIGIBILITY OF THAT CANDIDATE. AND THAT PARTICULAR CASE
20 WAS REGARDING WHETHER HE COULD VOTE WITHIN THAT
21 PARTICULAR COUNTY. THAT INFORMATION IS BEST KEPT AND
22 BEST PROVIDED BY THE CANDIDATE. HE KNOWS WHERE HE'S
23 REGISTERED. HE HAS HIS DOCUMENTATION TO REFLECT THAT.

24 THERE IS NO DISPUTE HERE THAT REPRESENTATIVE GREENE
25 IS ELIGIBLE TO RUN FOR OFFICE BASED ON THE CRITERION OF

1 THE U.S. CONSTITUTION REGARDING HER AGE AND HER
2 CITIZENSHIP. THIS IS A NOVEL QUESTION HERE REGARDING
3 WHETHER THE CANDIDATE SHOULD BEAR THE BURDEN OF PROVING
4 THAT SHE IS NOT DISQUALIFIED UNDER SECTION 3 OF THE
5 FOURTEENTH AMENDMENT.

6 SO THIS IS REALLY A NOVEL ISSUE THAT DOES NOT FIT
7 FRAMELY [SIC] WITHIN THE *HAYNES V. WELLS* CONCEPTS. AND
8 THE ALJ ACKNOWLEDGED THAT IN HIS OPINION AND
9 APPROPRIATELY SHIFTED THE BURDEN OF PROOF TO THE
10 PETITIONERS, PURSUANT TO THE OHSA RULES.

11 ESSENTIALLY, THE PETITIONERS ARE ASKING THAT
12 REPRESENTATIVE GREENE SHOULD BE REQUIRED AND BEAR THE
13 BURDEN OF PROVING THAT SHE DID NOT COMMIT A CRIME THAT
14 WOULD DISQUALIFY HER FROM OFFICE. AND THAT IS CERTAINLY
15 BEYOND THE BOUNDS OF JUSTICE, AS THE ALJ NOTED AND THEN
16 THE SECRETARY ADOPTED IN HIS DECISION.

17 FURTHERMORE, EVEN IF THERE WERE AN ERROR HERE IN THE
18 SHIFTING OF THE BURDEN, THE AMPLE EVIDENCE IN THE RECORD
19 REFLECTS THAT THIS WOULD HAVE BEEN A HARMLESS ERROR. THE
20 PETITIONERS' COUNSEL ACKNOWLEDGED IN THE PARALLEL FEDERAL
21 COURT PROCEEDING, IN WHICH REPRESENTATIVE GREENE SOUGHT
22 TO ENJOIN THE UNDERLYING OHSA PROCEEDING, THAT IT IS NOT
23 CLEAR HOW REPRESENTATIVE GREENE WOULD NOT MEET HER
24 INITIAL BURDEN BY SIMPLY PROVIDING AN AFFIDAVIT STATING
25 UNDER OATH THAT SHE DID NOT ENGAGE IN INSURRECTION.

1 SHE PROVIDED OVER THREE HOURS OF TESTIMONY DURING
2 THE OHSA PROCEEDINGS, AND THE ONLY EVIDENCE THAT WAS IN
3 THE RECORD REGARDING ANY POTENTIAL CONNECTION TO
4 POST-OATH STATEMENTS WAS THE 1776 MOMENT STATEMENT, WHICH
5 WE DISCUSS IN OUR BRIEF AND WHICH IS DISCUSSED AT LENGTH
6 IN THE ALJ'S DECISION.

7 SO, GIVEN THE UNIQUE CIRCUMSTANCES OF THIS CASE,
8 THAT THIS IS NOT A TYPICAL ELIGIBILITY ASSESSMENT, IT IS
9 A QUESTION OF DISQUALIFYING AN OTHERWISE ELIGIBLE
10 CANDIDATE, WE BELIEVE THAT THE ALJ WAS CORRECT IN HIS
11 DETERMINATION THAT JUSTICE REQUIRED SHIFTING THE BURDEN
12 TO THE PETITIONERS AND THIS IS NOT IN VIOLATION OF THE
13 GEORGIA SUPREME COURT PRECEDENT IN *HAYNES V. WELLS*.

14 I WOULD LIKE TO ADDRESS SOMETHING THAT PETITIONERS'
15 COUNSEL RAISED TODAY IN ORAL ARGUMENT AND ALSO IN HIS
16 BRIEFING. HE INDICATED THAT THE GEORGIA SUPREME COURT
17 HAS HELD THAT AN ERROR OF LAW WOULD NECESSARILY PREJUDICE
18 SUBSTANTIAL RIGHTS IN A CANDIDATE QUALIFICATION
19 CHALLENGE.

20 THAT'S NOT SPECIFICALLY WHAT THE COURT WAS SAYING IN
21 *HANDEL V. POWELL*. IN THAT PARTICULAR CASE, THE ALJ FOUND
22 THAT THE CANDIDATE SHOULD REMAIN ON THE BALLOT, THAT THE
23 CANDIDATE HAD MET THE RESIDENCY REQUIREMENT. THE
24 SECRETARY DISAGREED AND RELIED ON A HOMESTEAD EXEMPTION
25 AS BEING, ESSENTIALLY, A BAR TO FINDING RESIDENCY IN ANY

1 OTHER LOCATION.

2 IN THAT PARTICULAR SITUATION, THE ERROR OF LAW WAS
3 DEPRIVING THE CITIZEN OF THEIR STATUTORY RIGHT UNDER
4 O.C.G.A. 1-2-6 TO HOLD OFFICE UNLESS DISQUALIFIED BY THE
5 CONSTITUTION AND THE LAWS OF THIS STATE. SO IN A
6 SITUATION IN WHICH AN ERROR OF LAW IS DEPRIVING SOMEONE
7 OF A STATUTORY RIGHT, THAT WOULD BE A SUBSTANTIAL RIGHT
8 THAT HAS BEEN PREJUDICED BY THE ERROR OF LAW.

9 IT'S A SPECIFIC SITUATION IN *HANDEL V. POWELL*. IT'S
10 NOT A BLANKET STATEMENT THAT ANY ERROR WOULD BE
11 PREJUDICIAL BECAUSE, AS WE NOTED BEFORE, IT REALLY COULD
12 BE A HARMLESS ERROR IN THIS CASE, GIVEN THE TOTALITY OF
13 THE EVIDENCE.

14 MOVING ON TO THE NEXT MAJOR ISSUE THAT PETITIONERS
15 ARE FOCUSED ON, THE ALJ DID NOT ERR BY SUSTAINING
16 REPRESENTATIVE GREENE'S OBJECTION TO THE NOTICE TO
17 PRODUCE. AS THE ALJ NOTED, GIVEN THE EXPEDITED NATURE OF
18 THIS MATTER, IT IS IMPRACTICABLE AND UNREALISTIC TO
19 REQUIRE REPRESENTATIVE GREENE TO DELIVER A SIGNIFICANT
20 VOLUME OF MATERIAL PRIOR TO THE SCHEDULED HEARING DATE.

21 THE PETITIONERS CONTEND THAT THE SECRETARY'S OFFICE
22 HAS CONCEDED THAT THE DECISION BY THE ALJ TO QUASH THE
23 NOTICE TO PRODUCE WAS NOT WITHIN THE REASONS PROVIDED BY
24 THE OHSR RULES. WE DID NO SUCH THING. WE SPECIFICALLY
25 STATED IN OUR BRIEF THAT THE DECISION THAT IT WOULD BE

1 IMPRACTICABLE AND UNREALISTIC TO REQUIRE HER TO RESPOND
2 TO THE NOTICE TO PRODUCE COULD FALL WITHIN REASON (1),
3 THE SUBPOENA IS UNREASONABLE OR OPPRESSIVE, OR (4), BASIC
4 FAIRNESS DICTATES THAT THE SUBPOENA COULD NOT BE
5 ENFORCED.

6 THIS WAS AN EXPEDITED CASE. THE ALJ WAS ACTING
7 WITHIN HIS DISCRETION TO MARSHAL THE GROUNDS FOR WHAT
8 DISCOVERY COULD BE. AND REPRESENTATIVE GREENE DID
9 SPECIFICALLY RAISE OBJECTIONS TO THE ALJ REGARDING
10 OVERBREADTH.

11 SO THIS WAS NOT AN ISSUE THAT THE ALJ JUST PULLED
12 OUT OF THE HAT AND SAID NO DISCOVERY EVER. IN FACT, HE
13 SPECIFICALLY ADVISED THE PETITIONERS THAT, IN OHSA
14 PROCEEDINGS, A NOTICE TO PRODUCE IS TO BE USED MORE LIKE
15 A SUBPOENA DUCES TECUM.

16 AND INSTEAD OF SEEKING OTHER MEANS TO OBTAIN THE
17 DOCUMENTS THEY WANTED, INSTEAD OF MODIFYING THE SUBPOENA
18 TO REPRESENTATIVE GREENE TO TAILOR TO WHAT THEY
19 SPECIFICALLY WANTED, INSTEAD OF SUBPOENAING ADDITIONAL
20 WITNESSES, THE PETITIONERS ONLY HAD TWO WITNESSES AT THE
21 HEARING: REPRESENTATIVE GREENE, AND THEN THEIR OWN
22 EXPERT REGARDING ISSUES INVOLVING THE AMNESTY ACT AND THE
23 FOURTEENTH AMENDMENT.

24 AND AS WE DISCUSSED AT LENGTH IN OUR BRIEFING,
25 DISCOVERY UNDER THE CIVIL PRACTICE ACT DOES NOT APPLY TO

1 A PROCEEDING BEFORE AN OHSA JUDGE. THESE ARE MEANT TO BE
2 STREAMLINED, EXPEDITED PROCEEDINGS, ESPECIALLY IN A
3 SITUATION INVOLVING A CANDIDATE QUALIFICATION CHALLENGE.
4 EVERYONE IS WORKING AGAINST THE CLOCK TO GET THE BALLOT
5 TOGETHER AND TO ENSURE THAT THE STATE CAN EXERCISE ITS
6 IMPORTANT INTEREST TO MAKE SURE THAT ONLY QUALIFIED
7 CANDIDATES ARE ON THE BALLOT.

8 TO TOUCH ON, VERY BRIEFLY, THE ADDITIONAL ISSUES
9 RAISED BY THE PETITIONER, THE ALJ DID SPECIFICALLY STATE
10 THAT THE PRE-OATH CONDUCT WOULD BE CONSIDERED, BUT IT
11 WOULD BE PROVIDING CONTEXT FOR THE POST-OATH CONDUCT.
12 THERE IS A REQUIREMENT, PURSUANT TO THE FOURTEENTH
13 AMENDMENT, THAT THERE WOULD HAVE TO BE SOMETHING DONE
14 AFTER REPRESENTATIVE GREENE TOOK THE OATH.

15 AND HE REFERENCED THAT. HE DID NOT HAVE TO GET INTO
16 EVERY PIECE OF EVIDENCE THAT HE LOOKED AT. IT WAS REALLY
17 UP TO THE PETITIONERS.

18 AND, FRANKLY, EVEN LOOKING AT THE TOTALITY OF THE
19 RECORD, WITHOUT CONSIDERING THE BURDEN OF PROOF, THERE'S
20 JUST NO LOGICAL CONNECTION BETWEEN THE AMPLE EVIDENCE IN
21 THE RECORD AND THIS SPECIFIC ARGUMENT THAT THE 1776
22 MOMENT STATEMENT WAS A CALL TO ARMS OR A MARCHING ORDER.

23 FURTHERMORE, THE PETITIONERS ARGUED THAT THE ALJ
24 EMPLOYED AN INCORRECT LEGAL STANDARD REGARDING THE
25 CONCEPT OF ENGAGING AN INSURRECTION. THEY CITE

1 SPECIFICALLY TO ONE STATEMENT THE ALJ MAKES REGARDING THE
2 LACK OF EVIDENCE OF A MONTHS-LONG -- EVIDENCE OF
3 MONTHS-LONG PLANNING TO BUILD UP TO THE INSURRECTION.

4 THAT STATEMENT REALLY COMES FROM THE PETITIONERS'
5 OWN THEORY OF THE CASE. THEY HAVE BEEN MAKING THIS
6 ARGUMENT THAT REPRESENTATIVE GREENE HAS BEEN FOMENTING
7 FOR MONTHS AND MONTHS THESE PLANS TO OVERTHROW THE
8 ELECTION, AND THEN THE POST-OATH STATEMENT ABOUT 1776
9 MOMENT LIT THE FUSE AND PULLED THE TRIGGER.

10 AND SO THAT CONCEPT COMES FROM THEM, NOT FROM THE
11 ALJ, SAYING THAT IT WOULD REQUIRE MONTHS OF PLANNING IN
12 EVERY CASE TO SHOW THAT SOMEONE ENGAGED IN INSURRECTION.
13 THAT IS A SPECIFIC STATEMENT AS TO THE PETITIONERS'
14 THEORY OF THE CASE THAT THEY FAILED TO MAKE.

15 I WOULD LIKE TO ADDRESS SOME OF THE ARGUMENTS THAT
16 HAVE BEEN RAISED BY REPRESENTATIVE GREENE AS WELL. AS A
17 PRELIMINARY MATTER, WE WOULD ENCOURAGE THE COURT TO
18 DECIDE THIS CASE ON STATUTORY, RATHER THAN
19 CONSTITUTIONAL, GROUNDS.

20 HERE WE SEE A STRAIGHTFORWARD PATH TO AN AFFIRMATION
21 OF THE SECRETARY'S DECISION. THERE IS AMPLE EVIDENCE IN
22 THE RECORD SUPPORTING THE DECISION THE ALJ'S LEGAL
23 FINDINGS WERE CORRECT.

24 BUT EVEN IF THIS COURT WERE TO MOVE ON TO WANT TO
25 CONSIDER REPRESENTATIVE GREENE'S ARGUMENTS, SHE,

1 ESSENTIALLY, HAS MADE AN UNTIMELY APPEAL. IF SHE WANTED
2 TO APPEAL THE SECRETARY'S DECISION TO ADOPT THE ALJ'S
3 FINDINGS AND, YOU KNOW, ESSENTIALLY FINDING THAT THIS WAS
4 A CONSTITUTIONAL PROCEEDING AND THAT SHE SHOULD REMAIN ON
5 THE BALLOT, THEY COULD HAVE MADE THAT APPEAL WITHIN THE
6 TEN-DAY WINDOW. IT WOULD HAVE, PERHAPS, BEEN A CROSS
7 APPEAL, WITH PETITIONERS ARGUING THAT SHE SHOULD HAVE
8 BEEN REMOVED FROM THE BALLOT.

9 BUT HAVING FAILED TO DO SO, SHE IS BARRED FROM
10 TRYING TO CREATE A NEW APPEAL AFTER THAT DEADLINE HAS
11 PASSED. BUT EVEN IF THIS COURT WERE TO CONSIDER HER
12 UNTIMELY APPEALS, EVEN IF THIS COURT WERE TO GET PASSED
13 THE STATUTORY FRAMEWORK AND MOVE ON TO THE CONSTITUTIONAL
14 ISSUES, REPRESENTATIVE GREENE'S ARGUMENTS SIMPLY HAVE NO
15 MERIT.

16 SHE CONTENDS THAT THE CHALLENGE STATUTE VIOLATES THE
17 FIRST AND FOURTEENTH AMENDMENT; THAT UNDER THE
18 *ANDERSON-BURDICK* FRAMEWORK, IT'S A BALANCING TEST THAT
19 WEIGHS THE CHARACTER AND THE MAGNITUDE OF THE ASSERTED
20 INJURY AGAINST THE STATE'S INTEREST; AND WHEN THOSE
21 RIGHTS ARE SUBJECTED TO SEVERE RESTRICTIONS, THE
22 REGULATION MUST BE NARROWLY DRAWN TO ADVANCE A COMPELLING
23 STATE INTEREST, BUT LESSER BURDENS WOULD TRIGGER A LESS
24 EXACTING REVIEW.

25 AS JUDGE TOTENBERG NOTED IN HER DECISION REGARDING

1 REPRESENTATIVE GREENE'S MOTION FOR A PRELIMINARY
2 INJUNCTION, WHICH WAS DENIED, IT'S A VERY MINIMAL BURDEN
3 TO BE INVOLVED IN THE CHALLENGE PROCEEDING. AND THE
4 STATE DOES HAVE AN IMPORTANT INTEREST, YOUR HONOR, IN
5 ENSURING THAT ONLY QUALIFIED CANDIDATES ARE ON THE BALLOT
6 TO AVOID CONFUSION, TO AVOID UNNECESSARY EXPENSE FROM
7 HAVING TO HAVE ADDITIONAL SPECIAL ELECTIONS OR OTHER
8 PROCEEDINGS THAT COULD BE AVOIDED IF UNQUALIFIED
9 CANDIDATES COULD BE REMOVED PRIOR TO THE ELECTION.

10 REPRESENTATIVE GREENE HAS ARGUED THAT THE CHALLENGE
11 STATUTE USURPS CONGRESS'S AUTHORITY TO JUDGE THE
12 QUALIFICATIONS OF ITS MEMBERS. BUT AS APPLIED HERE IN
13 THE CHALLENGE PROCEEDING, WE'RE NOT LOOKING AT REMOVING A
14 MEMBER OF CONGRESS. WE ARE DISCUSSING WHETHER A
15 CANDIDATE FOR CONGRESS IS QUALIFIED. AND, AGAIN, THE
16 STATES HAVE THE POWER TO EXCLUDE FROM THE BALLOT
17 UNCONSTITUTIONALLY -- OR CONSTITUTIONALLY UNQUALIFIED
18 CANDIDATES.

19 REPRESENTATIVE GREENE HAS RAISED CONCERNS THAT THE
20 CHALLENGE STATUTE WOULD RUN AFOUL OF THE AMNESTY ACT OF
21 1872. THIS COURT WOULD REALLY ONLY HAVE TO REACH THIS
22 ISSUE IF AMNESTY WOULD BE REQUIRED, IF THERE WAS A
23 FINDING THAT REPRESENTATIVE GREENE IS DISQUALIFIED.
24 WHICH, RETURNING TO OUR MAIN POINT, AMPLE EVIDENCE IN THE
25 RECORD TO SUSTAIN KEEPING HER ON THE BALLOT.

1 BUT EVEN SO, IF WE WERE TO GET TO THE POINT WHERE
2 THE AMNESTY ACT COULD BE INVOKED, THE FOURTH CIRCUIT HAS
3 PROPERLY REJECTED SIMILAR ARGUMENTS THAT WERE RAISED BY
4 REPRESENTATIVE CAWTHORN. THE AMNESTY ACT WAS NOT
5 PROVIDING A BLANKET PROTECTION FOR ANY FUTURE
6 INSURRECTIONS; IT WAS BACKWARD-LOOKING. AND WE BELIEVE
7 THAT THE REASONING IN THAT CASE IS SOUND.

8 I KNOW YOUR HONOR HAS HEARD US TALK FOR A WHILE, SO
9 I WILL JUST -- IF YOU HAVE NO QUESTIONS, I WILL JUST SUM
10 UP WITH OUR MAIN POINTS HERE. THIS COURT SHOULD AFFIRM
11 THE DECISION MADE BY THE ALJ. IT IS SUPPORTED BY THE
12 RECORD. THE CONCLUSIONS OF LAW MADE BASED ON THE
13 EVIDENCE ARE SOUND.

14 THE PETITIONERS HAVE FAILED TO SHOW THAT THEIR
15 SUBSTANTIAL RIGHTS WERE PREJUDICED. AND AS SUCH, THIS
16 COURT SHOULD NOT REVERSE THE SECRETARY'S DECISION.

17 FURTHERMORE, REMAND WOULD BE INAPPROPRIATE HERE
18 BECAUSE, IN LIGHT OF THE SUBSTANTIAL EVIDENCE IN THE
19 RECORD, ANY ALLEGED ERROR REGARDING THE STANDARD FOR THE
20 BURDEN OF PROOF OR REGARDING ALLEGED DISCOVERY THAT
21 SHOULD HAVE OCCURRED OR -- WAS A HARMLESS ERROR,
22 ESPECIALLY IN LIGHT OF THE FACT THAT THE PETITIONERS HAD
23 OTHER MECHANISMS AVAILABLE TO THEM TO POTENTIALLY
24 SUBPOENA OTHER WITNESSES OR USE OTHER MECHANISMS UNDER
25 THE OHSА RULES TO OBTAIN WHAT THEY WANTED TO PROVE THEIR

1 CASE.

2 THIS COURT SHOULD ALSO AVOID ADDRESSING THE
3 CONSTITUTIONAL ISSUES IF WE CAN RESOLVE THIS CASE BASED
4 ON THE STATUTORY FRAMEWORK, WHICH WE BELIEVE WE CAN, IN
5 LIGHT OF THE CORRECT DECISION MADE BY THE SECRETARY.

6 AND REPRESENTATIVE GREENE'S ATTEMPTS TO APPEAL THE
7 SECRETARY'S DECISION ARE UNTIMELY AND SHOULD NOT BE
8 CONSIDERED. BUT EVEN IF THIS COURT WERE TO CONSIDER
9 THEM, THEY ARE WITHOUT MERIT FOR THE REASONS WE HAVE
10 DISCUSSED AT LENGTH IN OUR BRIEF.

11 AND IF YOU HAVE NO FURTHER QUESTIONS, I WILL RECUSE
12 MYSELF FROM THE PODIUM.

13 THE COURT: I DO NOT. THANK YOU.

14 MS. VAUGHAN: THANK YOU.

15 THE COURT: MR. BOPP, I UNDERSTAND YOU'RE GOING TO
16 PRESENT ARGUMENTS ON BEHALF OF REPRESENTATIVE GREENE?

17 MR. BOPP: I AM, YOUR HONOR. THANK YOU. AND I WANT
18 TO THANK YOU FOR ALLOWING MY LAW FIRM AND ME TO PRACTICE
19 IN YOUR COURT. THANK YOU FOR GRANTING THE INTERVENTION
20 FOR REPRESENTATIVE GREENE.

21 AND, ALSO, I INTENDED TO BE AT THE HEARING TODAY.
22 HOWEVER, WHEN I RETURNED FROM MORE THAN A WEEK IN
23 PHILADELPHIA, AT THE UNIFORM LAW COMMISSION, I WAS A
24 LITTLE BIT UNDER THE WEATHER. AND YOU'LL PROBABLY NOTICE
25 THAT IN MY VOICE AND MAYBE OTHER THINGS. AND I THOUGHT

1 IT WOULD BE PRUDENT NOT TO APPEAR IN PERSON. SO THANK
2 YOU FOR THE OPPORTUNITY TO DO THIS BY ZOOM. I KNOW IT'S
3 A LITTLE AWKWARD, AND I SURE WISH I COULD HAVE BEEN
4 THERE.

5 WE, OF COURSE, WOULD JOIN IN THE ARGUMENTS BY THE
6 SECRETARY OF STATE REGARDING THE FACTS AND THE FACTUAL
7 DETERMINATIONS BY THE ALJ, AND WE WILL ADDRESS OUR
8 CONSTITUTIONAL CLAIMS IN A MOMENT. BUT FIRST, THIS IS A
9 VERY SERIOUS MATTER. THE RIGHT TO VOTE IS AT STAKE.
10 REPRESENTATIVE GREENE WON HER PRIMARY BY ALMOST 70
11 PERCENT OF THE VOTE. AND BY ALL ACCOUNTS, SHE'LL BE
12 REELECTED TO CONGRESS IN NOVEMBER IF THIS CHALLENGE DOES
13 NOT REMOVE HER FROM THE BALLOT. THIS WOULD DENY THE
14 VOTERS THEIR RIGHT TO VOTE AND THEIR CHOICE IN THIS
15 ELECTION.

16 SECONDLY, AS A RESULT, OUR DEMOCRACY IS AT STAKE.
17 VOTERS ARE THE ONES WHO SHOULD BE CHOOSING OUR LEADERS.
18 AND IT SHOULD BE VOTERS -- NOT LAWYERS, JUDGES, OR
19 GOVERNMENT EMPLOYEES -- THAT DECIDE OUR ELECTIONS EXCEPT
20 UNDER THE MOST EXTRAORDINARY CIRCUMSTANCES AND WITHOUT
21 THE MOST PROFOUND JUSTIFICATION, NEITHER OF THE WHICH
22 EXISTS HERE.

23 FURTHERMORE, THE FIRST AMENDMENT RIGHTS ARE AT
24 STAKE. REPRESENTATIVE GREENE HAS THE SAME FIRST
25 AMENDMENT RIGHTS THAT WE ALL ENJOY TO SPEAK ABOUT THE --

1 HER VIEWS ON LEGAL AND POLITICAL ISSUES THAT ARE AFOOT IN
2 OUR COUNTRY. AND THAT FIRST AMENDMENT RIGHT TO VOTE
3 PROTECTS ROBUST POLITICAL SPEECH, AND THERE -- AND CANNOT
4 BE -- THE SPEECH THAT IS PROTECTED BY THE FIRST AMENDMENT
5 CANNOT BE EVIDENCE OF, QUOTE, ENGAGING IN INSURRECTION,
6 END OF QUOTE.

7 HOWEVER, THIS CASE IS REplete -- AND REplete JUST
8 DOESN'T SEEM ADEQUATE TO DESCRIBE THE INSTANCES OF FIRST
9 AMENDMENT PROTECTED POLITICAL SPEECH BY REPRESENTATIVE
10 GREENE AND OTHERS THAT PETITIONERS WANT TO USE AS
11 EVIDENCE OF ENGAGING IN INSURRECTION. THIS SHOULD NOT BE
12 ALLOWED.

13 AND FINALLY, THE CONDUCT ALLEGED ALSO CONSTITUTES A
14 FEDERAL CRIME OF THE MOST SEVERE NATURE. THUS, THIS --
15 THE REVIEW OF THIS MATTER SHOULD BE BASED UPON THE LAW,
16 WITH PROPER RECOGNITION OF THE CONSTITUTIONAL RIGHTS
17 INVOLVED -- AND, REGRETTABLY, I'M THE FIRST ONE TO
18 MENTION THOSE IN OUR ARGUMENT -- BASED ON COMPETENT AND
19 ADMISSIBLE EVIDENCE -- WHICH, OF COURSE, THE RECORD IS
20 ALSO REplete AS THE COURT -- THE ALJ, WITHIN HIS
21 DISCRETION, DID NOT APPLY THE GEORGIA RULES OF EVIDENCE.
22 AND SO THE RECORD IS REplete WITH NEWSPAPER ARTICLES,
23 HEARSAY ON HEARSAY, THAT WAS INTRODUCED BY THE
24 PETITIONERS.

25 NOW, WE ARE CONFIDENT THIS COURT WILL DO WHAT HIS

1 DUTY IS.

2 NOW, THIS APPEAL REALLY CONSTITUTES A CHALLENGE TO
3 THE FACTUAL FINDINGS OF THE COURT, OF THE ALJ, AND
4 AFFIRMED BY THE SECRETARY OF STATE. THEIR COMPLAINT AND
5 THEIR EVIDENCE IS LONG ON WHAT REPRESENTATIVE GREENE
6 CONSIDERS TO BE A POLITICAL SMEAR, THAT SHE WOULD SEEK TO
7 OVERTURN THE UNITED STATES GOVERNMENT, OVERTURN THE
8 CONSTITUTION OF THE UNITED STATES -- BOTH OF WHICH SHE
9 REVERES -- AS A RESULT OF SOMETHING SHE HAD NOTHING TO DO
10 WITH AND, IN FACT, WAS A VICTIM OF. AND THAT WAS THE
11 DESPICABLE ATTACK ON THE U.S. CAPITOL ON JANUARY 6TH.

12 YOU KNOW, THIS SMEAR HAS, OF COURSE, BEEN PRESENTED
13 TO THE VOTERS WITH NO EFFECT. THIS SMEAR SHOULD NOT BE
14 THE BASIS FOR DISQUALIFYING HER FROM OFFICE.

15 NOW, THE PROCEDURE -- AND PETITIONERS REALLY DIDN'T
16 GIVE A FULL EXPLANATION OF THE PROCEDURE HERE UNDER
17 GEORGIA LAW 21-2-5. IT PERMITS A CANDIDATE CHALLENGE IN
18 TWO CIRCUMSTANCES. THEY ONLY MENTIONED ONE, WHICH WAS
19 ACTUALLY NOT RELEVANT.

20 THE FIRST IS WHETHER A -- IF A CANDIDATE IS NOT
21 QUALIFIED TO SEEK OFFICE. THAT'S THE ONE THEY REPEATED
22 OFTEN. BUT THE SECOND IS WHEN THE CANDIDATE IS NOT
23 QUALIFIED TO HOLD OFFICE.

24 YOU KNOW, THAT'S A CRITICAL DIFFERENCE. AND, IN
25 FACT, THERE'S CONSTITUTIONAL PROVISIONS THAT MAKE THAT

1 DIFFERENCE; THAT IS, BETWEEN ELIGIBILITY TO RUN FOR
2 OFFICE AND ELIGIBILITY TO ACTUALLY HOLD OFFICE. AND, OF
3 COURSE, THE GEORGIA CASES SO FAR HAVE DEALT WITH THE
4 FIRST PRONG, WHICH IS QUALIFICATION TO SEEK OFFICE. AND,
5 OF COURSE, SECTION 3 IS CALLED -- NOT THE QUALIFICATIONS
6 CLAUSE, BUT THE DISQUALIFICATION CLAUSE, BECAUSE IT IS
7 DIFFERENT.

8 THERE ARE QUALIFICATIONS IN OTHER PROVISIONS OF THE
9 CONSTITUTION FOR ONE TO RUN FOR CONGRESS. SECTION 3 IS
10 NOT THERE. SECTION 3 IS PROPERLY CALLED A
11 DISQUALIFICATION CLAUSE BECAUSE IT PROVIDES -- AND,
12 THEREFORE, FALLS UNDER THE SECOND PRONG OF THE CHALLENGES
13 THAT CAN BE MADE UNDER GEORGIA LAW, BECAUSE SECTION 3
14 PROVIDES THAT, ONCE HAVING TAKEN THE OATH OF OFFICE, IF
15 THAT PERSON THEN ENGAGES IN INSURRECTION OR REBELLION,
16 THEY ARE THEN DISQUALIFIED FROM TAKING A SUBSEQUENT OATH
17 OF OFFICE.

18 AND THIS IS CRITICAL DIFFERENCE IN SEVERAL
19 MANIFESTATIONS THAT I WILL DISCUSS, BOTH THAT IT IS A
20 DISQUALIFICATION AND THAT WE WILL NOT KNOW UNTIL JANUARY
21 3RD, 2023, WHETHER OR NOT REPRESENTATIVE GREENE IS
22 QUALIFIED TO TAKE THE OATH OF OFFICE. WE WON'T KNOW
23 UNTIL THEN WHETHER THAT -- SHE WOULD BE QUALIFIED TO DO
24 THAT. AND THAT IS SIMPLY BECAUSE THE LAST SENTENCE OF
25 SECTION 3 PROVIDES THAT CONGRESS, AT ANY TIME, MAY REMOVE

1 A DISABILITY IMPOSED BY SECTION 3.

2 THEY HAVE DONE SO THOUSANDS OF TIMES. AND IN
3 ADDITION, IN TWO ACTS, IN 1872 AND 1898, PROVIDED GENERAL
4 AMNESTY FOR NUMEROUS PEOPLE. AND SO THIS IS A POWER WELL
5 EXERCISED BY CONGRESS THAT THEY COULD EXERCISE LITERALLY
6 THE SECOND BEFORE REPRESENTATIVE GREENE IS ASKED TO TAKE
7 THE OATH, BY A TWO-THIRDS VOTE OF CONGRESS, PASS AN
8 AMNESTY FOR HER UNDER SECTION 3.

9 WE DON'T KNOW NOW, AND CANNOT POSSIBLY KNOW NOW,
10 WHETHER CONGRESS WILL EXERCISE THIS POWER ANYTIME BETWEEN
11 NOW AND JANUARY 3RD. AND, THEREFORE, IT IS IMPOSSIBLE TO
12 KNOW, UNDER THE SECOND PRONG, THAT THE -- THAT SHE IS
13 DISQUALIFIED FROM HOLDING OFFICE UNDER GEORGIA LAW.

14 NOW, OF COURSE, UNDER SECTION 3, THERE ARE OTHER KEY
15 ELEMENTS. AND THE PHRASE IS: ENGAGE IN INSURRECTION OR
16 REBELLION. I WILL USE INSURRECTION AS ENCOMPASSING BOTH
17 INSURRECTION AND REBELLION, AND ENGAGE HAS PARTICULAR
18 MEANING.

19 NOW, PETITIONERS REPEATEDLY ADD IN CONCEPTS INTO
20 SECTION 3 THAT SIMPLY AREN'T THERE. ONE IS THEIR
21 REPEATED STATEMENT THAT AIDING AND ENGAGING -- WELL,
22 AIDING ISN'T IN SECTION 3 -- AND INSURRECTION OR
23 REBELLION. AND THEN THEY SAY, OR INTERRUPTION OF A, YOU
24 KNOW, CONSTITUTIONAL PROCEDURE, WHICH, OF COURSE, WAS
25 INTERRUPTED ON JANUARY 6TH. THAT'S NOT IN IT EITHER, IN

1 SECTION 3, BUT ARE IN OTHER CONCEPTS, SUCH AS IN U.S.
2 CODE 18, SECTION 2383.

3 THIS IS THE CRIMINAL PENALTY FOR REBELLION OR
4 INSURRECTION. AND IT SAYS AS FOLLOWS: WHOEVER INCITES,
5 COMMA, SETS ON FOOT, COMMA -- AND I HAVE NO IDEA WHAT
6 THAT MEANS AND DIDN'T GOOGLE IT -- ASSISTS, COMMA, OR
7 ENGAGES IN ANY REBELLION OR INSURRECTION AGAINST THE
8 AUTHORITY OF THE UNITED STATES -- THAT'S THE PERTINENT
9 LANGUAGE -- COMMITS A FELONY.

10 WELL, AS WE KNOW, A SERIES SUCH AS THIS, IN ORDER
11 FOR THESE WORDS NOT TO BE CONSIDERED REDUNDANT, REALLY
12 INSTRUCTS THE COURT ON INTERPRETATION OF THE LANGUAGE IN
13 THIS SERIES AS BEING SEPARATE AND DISTINCT WITH DIFFERENT
14 MEANINGS. FOR IF ENGAGES, ENCOMPASS, ASSISTS, OR
15 INCITES, THEN THOSE WORDS, AS THEY OFTEN ARGUE,
16 THEY'RE -- THOSE WORDS WOULD BE REDUNDANT. AND, OF
17 COURSE, THEY'RE NOT REDUNDANT. THEY HAVE SEPARATE AND
18 DISTINCT MEANINGS, LIMITING ENGAGE TO A VERY NARROW SET
19 OF CIRCUMSTANCES, OVERWHELMINGLY CONDUCT, AND ONLY
20 SPEECH -- SPEECH BROADLY DEFINED, SUCH AS ORDERING TROOPS
21 TO ATTACK THE ENEMY, NOT SIMPLY OTHER FORMS OF ROBUST
22 SPEECH THAT HAD BEEN STATED AS BEING PROTECTED BY THE
23 FIRST AMENDMENT BY THE UNITED STATES SUPREME COURT.

24 NOW, OF COURSE, INCITE, HAVING A DIFFERENT MEANING
25 THAN ENGAGE, IS ALSO A VERY NARROW TERM. IN *BRANDENBURG*

1 V. OHIO, THE COURT EXPLAINED THAT INCITEMENT REQUIRES
2 SPEECH DIRECTED TO INCITING OR PRODUCING IMMINENT LAWLESS
3 ACTION THAT IS LIKELY TO INCITE OR PRODUCE SUCH ACTION.
4 THE COURT IN THE NA -- IN THE KU KLUX KLAN CASE SAID THAT
5 SPEECH BY A KU KLUX KLAN LEADER, QUOTE, ADVOCATING THE
6 DUTY, NECESSITY, OR PROPRIETY OF CRIME, SABOTAGE,
7 VIOLENCE, OR UNLAWFUL METHODS OF TERRORISM AS A MEANS OF
8 ENCOMPASSING INDUSTRIAL OR POLITICAL REFORM, END OF
9 QUOTE, WAS ADVOCACY PROTECTED BY THE FIRST AMENDMENT, NOT
10 INCITEMENT.

11 AND THEN, IN THE NAACP CASE, A REPRESENTATIVE OF THE
12 NAACP STATED, QUOTE, IF WE CATCH ANY OF YOU DOING -- OR,
13 EXCUSE ME -- IF WE CATCH ANY OF YOU GOING TO ANY OF THEM
14 RACIST STORES, WE'RE GOING TO BREAK YOUR DAMN NECK, END
15 OF QUOTE. THERE COULD HARDLY BE A MORE DIRECT, MORE
16 SPECIFIC THREAT OF VIOLENCE THAN THAT, AND THE SUPREME
17 COURT HELD THAT WAS FIRST AMENDMENT PROTECTED ADVOCACY,
18 NOT INCITEMENT FOR VIOLENCE, BECAUSE IT DID NOT MEET THE
19 VERY LIMITED TEST UNDER BRANDENBURG.

20 WELL, REPRESENTATIVE GREENE SAID NOTHING WITHIN
21 LIGHT YEARS OF ANYTHING LIKE THAT. THREATENING SPECIFIC
22 VIOLENCE ON SPECIFIC PEOPLE FOR DOING SPECIFIC THINGS,
23 EVEN THAT WAS PROTECTED BY THE FIRST AMENDMENT. SO NOT
24 ONLY DID SHE NOT INCITE, SHE DID NOT ENGAGE, HAVING
25 DIFFERENT MEANING EVEN MORE NARROW THAN INCITEMENT.

1 AND, OF COURSE, WE CAN FIND THAT DEFINITION, I
2 THINK, MOST PERSUASIVELY, FRANKLY, IN AN OPINION OF THE
3 U.S. ATTORNEY GENERAL IN 1867. THAT OPINION WAS GIVING A
4 EXPLANATION AND INSTRUCTION AND INTERPRETATION OF A
5 RECENTLY-ENACTED LAW IN CONGRESS WHICH DISENFRANCHISED
6 PEOPLE THAT HAD ENGAGED IN INSURRECTION OR REBELLION.

7 AND AFTER A REALLY CAREFUL EXAMINATION OF THE
8 THEN-MEANING OF THOSE WORDS -- PARTICULARLY, ENGAGE WAS
9 ONE OF THE WORDS HE LOOKED AT. HE ALSO LOOKED AS
10 INSURRECTION AND REBELLION. BUT AS TO ENGAGE, HE SAID
11 THAT IT REQUIRED, QUOTE, SOME DIRECT OVERT ACT DONE WITH
12 THE INTENT TO FURTHER THE REBELLION, END OF QUOTE. AND
13 SAID SPECIFICALLY THAT THAT DID NOT INCLUDE ANY DISLOYAL
14 SENTIMENTS OR EXPRESSIONS. THEY WERE NOT ENGAGING IN
15 INSURRECTION OR REBELLION.

16 AND, OF COURSE, THE *WORTHY-POWELL* LINE OF CASES, I
17 THINK, INCORPORATE THAT CONCEPT OF THE ATTORNEY GENERAL.
18 AND THE ADMINISTRATIVE LAW JUDGE ADOPTED IT WITH, I
19 THINK, THE PROPER GLOSS, WHICH IS, ON OCCASION, WORDS CAN
20 CONSTITUTE DIRECT OVERT ACTION, BUT AGAIN, IN EXTREMELY
21 NARROW CIRCUMSTANCES, SUCH AS ORDERING TROOPS TO ATTACK
22 THE ENEMY. SO WE'RE IN A SITUATION HERE WHERE THIS IS
23 INTENTIONALLY, PURPOSEFULLY, VERY NARROW DISQUALIFICATION
24 UNDER THE CONSTITUTION, ENGAGING.

25 NOW, IT IS ALSO TRUE THAT THERE IS NO INSURRECTION.

1 THE ALJ CALLS IT -- BECAUSE HE PURPOSELY DID NOT DECIDE
2 THIS QUESTION, BUT HE CALLED IT AN INVASION. I WOULD
3 CALL IT A DESPICABLE INVASION OF THE CAPITOL OF THE
4 UNITED STATES. I HAVE NO PROBLEM WITH THAT TERM.

5 BUT INSURRECTION WAS ALSO A VERY NARROW TERM. IT
6 WASN'T MEANT TO, YOU KNOW, ENCOMPASS WHAT ANTIFA RIOTS OR
7 BLM RIOTS THAT TERRORIZED AND DESTROYED MAJOR CITIES
8 ACROSS THE UNITED STATES FOR MONTHS IN 2020 -- IT WASN'T
9 INTENDED TO ENCOMPASS EVEN THAT SORT OF VIOLENT, ARSONIST
10 ACTIVITY THAT OCCURRED IN MANY OF OUR STATES AND CITIES.

11 AND NOBODY CALLED THAT -- EVEN THOUGH IT WAS
12 OCCURRING FOR A LONG TIME IN MANY CITIES AND HAD SERIOUS
13 CONSEQUENCES TO BOTH LIFE AND LIMB AND PROPERTY, NOBODY
14 CALLED THAT AN INSURRECTION, NOR SHOULD THEY HAVE.
15 BECAUSE WHILE IT HAD MANY HIDEOUS CONSEQUENCES, IT WAS
16 NOT AN ATTEMPT OF A -- TO DO A BONA FIDE INSURRECTION.

17 NOW, YOU CAN FIND OUT WHAT INSURRECTION MEANS BY
18 LOOKING AT THE TWO PRINCIPLE CASES WHICH WE CITE IN OUR
19 BRIEFS: *PAN AMERICAN WORLD AIRLINES* AND *HOME INSURANCE*
20 *COMPANY OF NEW YORK*. INSURRECTION REQUIRES, QUOTE, AN
21 INTENT TO OVERTHROW A LAWFULLY CONSTITUTED REGIME, OR,
22 QUOTE, SPECIFICALLY INTENDED TO OVERTHROW THE
23 CONSTITUTIONAL GOVERNMENT AND TO TAKE POSSESSION OF THE
24 INHERENT POWERS THAT THERE IS.

25 THE PETITIONERS HAVEN'T EVEN ALLEGED THAT. AND

1 THERE IS NO EVIDENCE OF THAT AS -- REALLY, DESPICABLE AS
2 IT WAS, IT JUST DIDN'T REACH THAT LEVEL OF ACTIVITY THAT
3 WOULD DISQUALIFY -- OR CAUSE SOMEONE TO COMMIT THE
4 FEDERAL CRIME OF REBELLION OR INSURRECTION.

5 NOW, OF COURSE, WE HAVE OTHER EXAMPLES OF WHAT
6 INSURRECTION IS. THE ATTORNEY GENERAL OPINION IN 1867,
7 HE DESCRIBED IT AS, QUOTE, DOMESTIC WAR, END OF QUOTE.
8 AND, OF COURSE, THEY HAD JUST GONE THROUGH A DOMESTIC
9 WAR. THEY KNEW EXACTLY WHAT THAT MEANT.

10 A COMBINATION TOO POWERFUL TO BE SUPPRESSED BY THE
11 ORDINARY COURSE OF JUDICIAL PROCEEDINGS OR BY MARSHALS.
12 OF COURSE, THAT WASN'T THE CASE IN THIS SITUATION. IT
13 WAS SUPPRESSED BY PROPER OFFICIALS.

14 A RISING SO FORMIDABLE AS, FOR THE TIME BEING, TO
15 DEFY THE AUTHORITY OF THE UNITED STATES IN SUCH FORCE
16 THAT CIVIL AUTHORITIES ARE INADEQUATE TO PUT THEM DOWN
17 AND A CONSIDERABLE MILITARY FORCE IS NEEDED TO ACCOMPLISH
18 THAT RESULT. AN ARMED INSURRECTION TOO STRONG TO BE
19 CONTROLLED BY CIVIL AUTHORITIES.

20 WE, OF COURSE, ACKNOWLEDGE THAT THAT HAS NOT BEEN
21 REACHED, NOR NEED YOU REACH THAT QUESTION UNLESS YOU FIND
22 FOR THE PETITIONERS ON OTHER MATTERS, SUCH AS THAT
23 REPRESENTATIVE GREENE ENGAGED IN SOMETHING. WELL, YOU
24 WOULD HAVE TO FIND WHETHER SHE ENGAGED IN AN INSURRECTION
25 OR REBELLION IN ORDER TO MEET SECTION 3.

1 NOW -- SO, WHAT DO WE HAVE IN THE RECORD HERE?

2 THE ALJ, WITH RESPECT TO PRE-JANUARY 3RD CONDUCT --
3 AND REMEMBER, UNDER SECTION 3, REQUIRES FIRST TAKING THE
4 OATH. SO YOU CAN'T PRE-VIOLATE SECTION 3 BY CONDUCT,
5 ACTIVITIES, PRIOR TO TAKING THE OATH, NO MATTER HOW
6 EGREGIOUS THEY MAY BE. YOU HAVE TO TAKE THE OATH AND
7 THEN ENGAGE IN INSURRECTION OR REBELLION.

8 NOW, THE ALJ SAID THAT PRE-JANUARY 3RD ACTIVITIES OR
9 SPEECH WAS ONLY RELEVANT AND CAN ONLY BE CONSIDERED TO
10 THE EXTENT THEY EXPLAIN HER CONDUCT OCCURRING AFTER
11 TAKING THE OATH, AND THAT THAT CONDUCT PRIOR TO JANUARY
12 3RD, STANDING ALONE, MAY NOT DISQUALIFY GREENE, BUT MAY
13 BE USED TO SHOW THAT CONDUCT AFTER JANUARY 3RD AMOUNTED
14 TO ENGAGING IN INSURRECTION OR REBELLION.

15 NOW, THE PROBLEM THAT THE PETITIONERS HAVE THAT THEY
16 NOW, FOR A SECOND TIME, SEEK TO OVERCOME IS THE PROBLEM
17 THAT THEY HAVE NO EVIDENCE. THEY JUST HAVE NO EVIDENCE
18 OF THE SCANDALOUS CONDUCT THAT THEY ALLEGE ABOUT
19 REPRESENTATIVE GREENE. THEY HAVE NO EVIDENCE.

20 THAT DOESN'T STOP THEM FROM MAKING THE POLITICAL
21 SMEAR, YOU KNOW, IN FILING THEIR COMPLAINT AND THEIR
22 PRESS RELEASES --

23 THE COURT: MR. BOPP?

24 MR. BOPP: -- AT THE HEARING --

25 THE COURT: MR. BOPP, I'M GOING TO GIVE YOU FIVE

1 MINUTES TO WRAP IT UP. OKAY?

2 MR. BOPP: ALL RIGHT. THANK YOU.

3 BUT HE PROPERLY TOOK INTO ACCOUNT THE FACT THAT
4 THERE WAS SIMPLY NO EVIDENCE OF ANY OF THE ALLEGATIONS
5 THAT WERE MADE; NO EVIDENCE OF COMMUNICATIONS WITH THE
6 PEOPLE INVOLVED, ALLEGEDLY INVOLVED, NO PARTICIPATION IN
7 THE EVENT. AND IN A STUNNING ARGUMENT, IN MY OPINION,
8 WITH RESPECT TO THE PROTECTIONS OF THE FIRST AMENDMENT,
9 WOULD TAKE -- STRIP 1776, THE MOST CONSEQUENTIAL YEAR IN
10 THE HISTORY OF OUR COUNTRY, THE YEAR OF OUR INDEPENDENCE,
11 WOULD NOW STRIP THAT OF THAT MEANING TO NOW MEAN A SECRET
12 CODE WORD FOR LAUNCHING A INSURRECTION OR REBELLION.

13 THE PROBLEM IS NO EVIDENCE. AND WHETHER
14 BURDEN-SHIFTING IS AN ERROR OR NOT -- AND WE ARGUE IT IS
15 NOT, BOTH ON STATUTORY AND CONSTITUTIONAL GROUNDS -- IT
16 IS SURELY HARMLESS, BECAUSE THE FACTS ARE BEFORE THE
17 COURT. YOU CAN INTERPRET THEM -- YOU CAN APPLY THOSE
18 FACTS ON WHETHER OR NOT REPRESENTATIVE GREENE MET HER
19 BURDEN BASED ON HER TESTIMONY AND THE LACK OF EVIDENCE
20 THAT SHE DID ANYTHING. NOTHING. NO ACTS, NO
21 COMMUNICATIONS, NO ANYTHING.

22 NOW, FINALLY, WITH RESPECT TO DISCOVERY, YOU KNOW,
23 THE PETITIONERS DECIDED HOW TO PURSUE THIS. YOU KNOW,
24 THEY DECIDED THAT THEY WANTED TO APPLY THE GEORGIA RULES
25 OF CIVIL PROCEDURE TO AN ALJ PROCEEDING AND ENGAGE IN THE

1 DISCOVERY BASED UPON THEIR UTTER LACK OF EVIDENCE.

2 OF COURSE, THEY ARGUE THAT THEY HAVE IT NOW. WHAT,
3 I'M NOT SURE. THEY DIDN'T HAVE IT WHEN THEY NEEDED
4 DISCOVERY, BUT NOW THEY HAVE IT TO HAVE YOU OVERTURN THE
5 DECISION.

6 BUT THE CRITICAL DECISION THAT THEY MADE IS TO NOT
7 SUBPOENA, NOT SEEK DOCUMENTS AT THE HEARING FROM THESE
8 OTHER PEOPLE THAT DO -- THAT WOULD HAVE, JUST AS
9 REPRESENTATIVE GREENE HAD, COMMUNICATIONS IF
10 REPRESENTATIVE GREENE HAD COMMUNICATED WITH THEM. SO
11 WHEN THEY SAY ONLY REPRESENTATIVE GREENE HAS THE
12 COMMUNICATIONS WITH THIS PERSON ALEXANDER, THAT'S NOT
13 TRUE. HE WOULD HAVE THE COMMUNICATION TOO, BY HER OR
14 FROM HIM TO HER, THAT THEY ARE SEEKING FROM HER.

15 SO WHY WAS IT THAT THEY DIDN'T SUBPOENA FOR THE
16 HEARING DUCES TECUM THE PEOPLE THEY CLAIM THAT SHE,
17 WITHOUT EVIDENCE, COMMUNICATED WITH IN ORDER TO DETER --
18 TO PROVE SOMETHING THEY'VE ALLEGED BUT HAVE NO EVIDENCE
19 FOR?

20 THAT WAS THEIR CHOICE. SO THEY ARE HARDLY
21 PREJUDICED FOR NOT GETTING FROM GREENE WHAT IS AVAILABLE
22 TO THEM FROM OTHER WITNESSES.

23 THE FINAL THING -- AND I THANK YOU FOR YOUR
24 INDULGENCE, YOUR HONOR. THE FINAL THING IS WE HAVE
25 RAISED CONSTITUTIONAL AND LEGAL DEFENSES THAT WE WERE

1 NEVER ABLE TO RAISE BEFORE THE ALJ. WE'VE RAISED THOSE
2 BOTH AS A DEFENSE TO THE PETITION, BUT ALSO AS A CLAIM OR
3 COUNTERCLAIMS, THAT WE'VE ADDRESSED THAT ISSUE IN OUR
4 RESPONSE ON THE MOTION TO STRIKE, ET CETERA.

5 BUT WE ALSO ASSERT CONSTITUTIONAL AND FEDERAL LAW
6 DEFENSES, DEFENSES AGAINST THIS -- YOUR FINDING -- A
7 PROPOSED FINDING THAT REPRESENTATIVE GREENE ENGAGED IN
8 INSURRECTION OR REBELLION. I MEAN, THAT INCLUDES --
9 WHICH YOU WOULD HAVE TO REACH IF YOU DECIDED THAT THE
10 EVIDENCE DEMONSTRATES THAT OR YOU WANT TO REMAND TO
11 PERMIT THE ALJ TO APPLY A DIFFERENT STANDARD OR WHATEVER.
12 AND THAT IS THERE IS NO PRIVATE CAUSE OF ACTION -- THE
13 U.S. SUPREME COURT HAS HELD THAT, THAT THERE IS NO
14 PRIVATE CAUSE OF ACTION FOR A PRIVATE INDIVIDUAL TO
15 ENFORCE ARTICLE 3.

16 THERE IS -- THE AMNESTY ACT HAS REMOVED THE
17 DISQUALIFICATION. CONGRESS HAS THE SOLE POWER TO JUDGE
18 THE QUALIFICATIONS OF ITS MEMBERS. AND AS I'VE ALREADY
19 MENTIONED, SECTION 3 CANNOT BE DEEMED TO HAVE BEEN
20 VIOLATED UNTIL, LITERALLY, REPRESENTATIVE GREENE TAKES
21 OFFICE, BECAUSE CONGRESS COULD, IN THE MEANTIME, PASS AN
22 AMNESTY ACT.

23 AND YOU WILL HAVE TO REACH ALL OF THOSE IF YOU GO SO
24 FAR AS TO FIND THAT THE -- THERE WERE ERRORS BY THE ALJ.
25 WE AGREE WITH THE SECRETARY OF STATE THAT YOU CAN SETTLE

1 THIS CASE BASED UPON NO ERRORS; THAT IF YOU -- BUT IF YOU
2 DON'T, THAT YOU WILL NEED TO REACH THOSE CONSTITUTIONAL
3 DEFENSES.

4 THANK YOU, YOUR HONOR.

5 THE COURT: THANK YOU, MR. BOPP.

6 LAST WORD ON BEHALF OF THE PETITIONERS?

7 MR. SELLS: YOUR HONOR, I THINK I'VE ONLY GOT MAYBE
8 FOUR OR FIVE POINTS. I'LL TRY TO KEEP THEM BRIEF.

9 THE COURT: NO WORRIES.

10 MR. SELLS: I WANT TO START WITH ONE OF MR. BOPP'S
11 LAST POINTS. HE SAYS THERE'S NO EVIDENCE OF ANY
12 COMMUNICATIONS BETWEEN REPRESENTATIVE GREENE AND ALI
13 ALEXANDER. HE'S RIGHT. BECAUSE WE ASKED REPRESENTATIVE
14 GREENE THAT QUESTION.

15 DID SHE SAY, NO, I NEVER HAD ANY COMMUNICATIONS WITH
16 HIM?

17 SHE DID NOT. ON PAGE 129 OF THE TRANSCRIPT, SHE
18 SAYS, I DON'T REMEMBER IF I HAD ANY COMMUNICATIONS WITH
19 ALI ALEXANDER.

20 AND THAT WAS HER STRATEGY AGAIN AND AGAIN.

21 DID YOU HAVE COMMUNICATIONS WITH ANTHONY AGUERO?

22 I DON'T REMEMBER.

23 I'M NOT SURE THAT SHE WAS ASKED THAT SPECIFIC
24 QUESTION. BUT AGAIN AND AGAIN SHE WAS ASKED DIRECT
25 QUESTIONS THAT COULD HAVE BEEN ANSWERED WITH THE

1 DOCUMENTS WE REQUESTED, AND SHE SAYS, I DON'T RECALL.

2 THE COURT: MAY I ASK A QUESTION ABOUT THE OHSA RULE
3 THAT YOU'VE RELIED ON FOR A MOTION -- EXCUSE ME -- A
4 NOTICE TO PRODUCE?

5 FIRST OF ALL, I'VE ALWAYS UNDERSTOOD A NOTICE TO
6 PRODUCE, BECAUSE IT APPEARS IN THE EVIDENCE CODE, TO BE A
7 TRIAL DEVICE, NOT A DISCOVERY DEVICE. I KNOW THAT YOU
8 CO-DEFINED THOSE THINGS IN YOUR PREVIOUS STATEMENT. I'M
9 NOT SURE THAT GEORGIA LAW BACKS THAT UP.

10 BUT PRETERMITTING THAT, ISN'T THE NOTICE TO PRODUCE
11 RULE AND OHSA'S RULES CONTAINED WITHIN THE SUBPOENA
12 SECTION?

13 SO, IN OTHER WORDS, APPEARS THAT THE AGENCY, WHEN IT
14 MADE THAT RULE PROVIDING THAT TOOL, WAS USING IT AS AN
15 ALTERNATIVE TO A SUBPOENA, WHICH WOULD NECESSARILY MEAN
16 THAT THOSE DOCUMENTS WOULD BE PRODUCED AT A HEARING AND
17 NOT IN ADVANCE. SO I'M CURIOUS AS TO WHY -- I MEAN,
18 OBVIOUSLY, THE JUDGE DEALT WITH IT, SAID DISCOVERY IN
19 OHSA PROCEEDINGS IS UNUSUAL, IN RULING ON THE NOTICE TO
20 PRODUCE.

21 BUT I GUESS I'M CURIOUS AS TO WHETHER YOU HAVE AN
22 ARGUMENT REGARDING THE PROPRIETY IN THE FIRST INSTANCE OF
23 USING A NOTICE TO PRODUCE AS A DISCOVERY TOOL, GIVEN THE
24 PARAMETERS OF ITS DESCRIPTION AND THE RULES AND THE
25 ANALOGOUS PROVISIONS IN GEORGIA LAW.

1 MR. SELLS: I AGREE WITH YOU ABOUT HALFWAY --

2 THE COURT: OKAY.

3 MR. SELLS: -- YOUR HONOR.

4 THE COURT: UNDERSTOOD.

5 MR. SELLS: YOU'RE CORRECT THAT THE NOTICE TO
6 PRODUCE IS IN THE SAME RULE AS A SUBPOENA. I DON'T THINK
7 THAT EITHER ONE OF THEM SAYS OR GIVES ANY INDICATION THAT
8 IT MAY NOT BE USED TO OBTAIN MATERIALS BEFORE A HEARING.

9 THE COURT: WELL, CERTAINLY GEORGIA LAW'S PRETTY
10 CLEAR. YOU CAN'T USE A SUBPOENA DUCES TECUM TO OBTAIN
11 DOCUMENTS IN ADVANCE OF A HEARING. IN FACT, I THINK
12 THERE'S SOME ETHICS DECISIONS THAT SAY IT WOULD BE
13 UNETHICAL FOR A LAWYER TO DO THAT.

14 BUT PRETERMITTING THAT, I UNDERSTAND YOUR ARGUMENT.
15 IT DOESN'T SPECIFICALLY DELINEATE THAT IN THE OHSA --

16 MR. SELLS: RIGHT. BUT WHAT I WOULD SAY IN
17 RESPONSE, THE BOTTOM LINE IS, IF WE'D GOTTEN THE
18 DOCUMENTS AT THE HEARING, THAT WOULD HAVE BEEN GREAT.

19 THE COURT: UNDERSTOOD. YOUR ARGUMENT WITH THE OHSA
20 JUDGE'S DECISION IS THAT IT WAS JUST DENIED. NOT THAT IT
21 WAS DENIED AS BEING INAPPROPRIATELY USED TO GET IT BEFORE
22 THE HEARING, JUST THAT IT WAS DENIED IN A --

23 MR. SELLS: I DON'T REACH -- READ JUDGE BEAUDROT'S
24 DECISION AS SAYING WE WERE TRYING TO DO SOMETHING BEFORE
25 THE HEARING. IT WAS JUST, I'M NOT GOING TO GIVE IT TO

1 YOU AT ALL BECAUSE THIS IS AN UNUSUAL CASE --

2 THE COURT: UNDERSTOOD.

3 MR. SELLS: -- OR BECAUSE THIS IS NOT AN UNUSUAL
4 CASE.

5 THE COURT: I APPRECIATE YOU CLARIFYING YOUR --

6 MR. SELLS: YEAH.

7 THE COURT: -- POSITION. THANK YOU.

8 MR. SELLS: BOTH REPRESENTATIVE GREENE AND THE
9 SECRETARY OF STATE SAID, WELL, WE SHOULD HAVE JUST
10 SUBPOENAED ALI ALEXANDER AND ANTHONY AGUERO AND ALL THESE
11 PEOPLE, SOME OF WHOM ARE IN JAIL, TO APPEAR AT THE
12 HEARING. AND I DON'T THINK THAT MAKES ANY REALISTIC
13 SENSE, YOUR HONOR. IT'S -- THEY SHOULDN'T HAVE GONE
14 ABOUT IT THE HARD WAY WHEN THE EASY WAY WAS AVAILABLE TO
15 THEM.

16 IT'S CERTAINLY TRUE THAT, IF WE'D HAD SUBPOENA POWER
17 OVER ALI ALEXANDER, WE COULD HAVE SUBPOENAED HIS
18 DOCUMENTS. BUT IN THAT MONTHLONG TIME FRAME, THAT WAS
19 UNREALISTIC TO SUGGEST THAT WE SHOULD HAVE SUBPOENAED
20 THESE PEOPLE WHO ARE NOT WITHIN THE BORDERS OF GEORGIA,
21 AS I SAY, AND SOME OF WHOM ARE CURRENTLY IN JAIL.

22 I WANT TO ADDRESS MR. BOPP'S POINT. HE WENT ON AT
23 LENGTH ABOUT HOW THIS -- THE EVENTS OF JANUARY 6TH DO NOT
24 CONSTITUTE AN INSURRECTION. I THINK HE CONCEDED THAT
25 THAT DOESN'T APPEAR IN HIS BRIEF.

1 AND THE ONLY THING I WANT TO SAY ABOUT THAT IS THAT
2 THAT ARGUMENT, TOO, IS WAIVED, TO THE EXTENT THAT HE'S
3 ASKING YOU TO MODIFY THE SECRETARY OR THE ALJ'S DECISION.
4 THAT SHOULD HAVE BEEN PART OF HIS APPEAL AS WELL IN THIS
5 CASE.

6 I'M NOT GOING TO DEBATE WHETHER IT WAS AN
7 INSURRECTION BECAUSE THE ALJ FOUND THAT IT WASN'T. IF
8 YOU SEND THIS CASE BACK DOWN, HE MAY CHANGE HIS MIND ON
9 THAT OR HE MAY FIND THAT HE HAS TO RULE ON THAT QUESTION.
10 BUT AT THIS POINT, I DON'T THINK MR. BOPP CAN ARGUE THAT
11 YOU SHOULD CHANGE THAT ASPECT OF THE ALJ'S RULING,
12 BECAUSE REPRESENTATIVE GREENE DID NOT APPEAL IN A TIMELY
13 FASHION.

14 MR. BOPP ALSO WENT ON AT SOME LENGTH ABOUT HOW FREE
15 SPEECH CANNOT BE THE BASIS OF A DISQUALIFICATION UNDER
16 THE DISQUALIFICATION CLAUSE, AND WE RESPECTFULLY DISAGREE
17 WITH THAT. I THINK THE ALJ GOT IT RIGHT ON THAT POINT.
18 HE NOTED THAT JEFFERSON DAVIS NEVER FIRED A SHOT AND WAS
19 CLEARLY THE INTENDED RECIPIENT OF THE DISQUALIFICATION
20 CLAUSE.

21 BUT, ALSO, THE OTHER FOLKS -- SOME OF THE OTHER
22 FOLKS IN THE EARLY DAYS -- MR. WORTHY IN THE WORTHY CASE,
23 AND THERE'S A CASE WE CITE IN OUR BRIEFS, IN RE: TATE, SO
24 MR. TATE, THEY WERE BOTH NOT ACTIVE PARTICIPANTS IN THE
25 CIVIL WAR. THEY JUST HELD POSITIONS -- I THINK ONE WAS A

1 SHERIFF -- WORTHY WAS A SHERIFF IN THE CONFEDERACY. AND
2 THAT WAS DEEMED SUFFICIENT TO FORM THE BASIS OF A
3 DISQUALIFICATION.

4 AND WE THINK THAT'S RIGHT, THAT REPRESENTATIVE
5 GREENE NEED NOT HAVE BROKEN A WINDOW AT THE CAPITOL. WE
6 KNOW THAT SHE WAS ON THE FLOOR OR NEAR THE FLOOR DURING
7 THE TIME OF THE ACTUAL INVASION. BUT THAT DOES NOT MEAN
8 THAT SHE DID NOT ENGAGE IN INSURRECTION WITHIN THE
9 MEANING OF DISQUALIFICATION CLAUSE.

10 SIMILARLY, BOTH MR. BOPP AND MS. VAUGHAN SUGGESTED
11 THAT, ON THE BURDEN-OF-PROOF ISSUE, IT WAS APPROPRIATE TO
12 SHIFT THE BURDEN OF PROOF BECAUSE REPRESENTATIVE GREENE
13 WAS BEING ASKED TO PROVE THAT SHE HAD NOT COMMITTED A
14 CRIME. AND WE WANT TO SUGGEST THAT THERE'S A DIFFERENCE
15 BETWEEN THE ENGAGING IN INSURRECTION THAT IS
16 DISQUALIFYING UNDER THE DISQUALIFICATION CLAUSE AND --
17 THAT WOULD CONSTITUTE A CRIME.

18 AND WE KNOW THAT BECAUSE NEITHER MR. WORTHY NOR
19 MR. TATE WERE EVER CHARGED WITH A CRIME. MOST PEOPLE WHO
20 WERE DISQUALIFIED UNDER THE DISQUALIFICATION CLAUSE WERE
21 NEVER CHARGED WITH A CRIME. AND SO SHE NEED NOT DISPROVE
22 CRIMINAL ACTIVITY IN ORDER TO PROVE THAT SHE'S ELIGIBLE
23 FOR OFFICE UNDER THE DISQUALIFICATION CLAUSE.

24 AND LASTLY, I WANT TO ADDRESS MS. VAUGHAN'S
25 DISCUSSION OF *HANDEL V. POWELL* AND THE SUBSTANTIAL RIGHT.

1 MS. VAUGHAN'S CORRECT THAT IN THAT CASE THE SUPREME COURT
2 FOUND A SUBSTANTIAL RIGHT TO RUN FOR OFFICE. AND THAT
3 WAS BASED IN A SPECIFIC PROVISION THAT MS. VAUGHAN CITED
4 IN THE GEORGIA CODE.

5 BUT IN THIS CASE, WE ALSO HAVE A STATUTORY RIGHT.
6 AND THAT IS THE RIGHT TO CHALLENGE REPRESENTATIVE
7 GREENE'S ELIGIBILITY FOR OFFICE UNDER 21-2-5. SO THAT'S
8 OUR SUBSTANTIAL RIGHT THAT WE'RE BEING DENIED IF WE DON'T
9 HAVE THE APPROPRIATE BURDEN OF PROOF ON REPRESENTATIVE
10 GREENE UNDER *HAYNES V. WELLS*.

11 SO WHILE I UNDERSTAND AND RESPECT MS. VAUGHAN'S
12 DISTINCTION THERE, I DON'T THINK IT ESTABLISHES THAT WE
13 HAVE NO SUBSTANTIAL RIGHT AT ISSUE HERE IN THIS CASE.

14 THE RIGHT TO BE REPRESENTED BY QUALIFIED CANDIDATES
15 AND REPRESENTATIVES IS A RIGHT THAT BELONGS TO ALL
16 GEORGIANS. AND WE HAVE EXERCISED THAT RIGHT HERE BY
17 FILING THE APPROPRIATE CHALLENGE, AND SO A -- AN ERROR OF
18 LAW THAT IS PREJUDICIAL, I.E., NOT HARMLESS, DOES INDEED
19 AFFECT A SUBSTANTIAL RIGHT UNDER THE LAW AND UNDER, WE
20 BELIEVE, THE SUPREME COURT'S INTERPRETATION OF THAT IN
21 *HANDEL V. POWELL*.

22 SO, WITH THAT, UNLESS YOU HAVE OTHER QUESTIONS, I
23 WANT TO ASK AGAIN THAT YOU REVERSE OR, AT A MINIMUM,
24 VACATE AND REMAND TO THE ALJ FOR A HEARING UNDER THE
25 CORRECT LEGAL STANDARDS.

1 THE COURT: UNDERSTOOD. THANK YOU. I APPRECIATE
2 YOUR ARGUMENTS.

3 THANK YOU ALL, COUNSEL, FOR YOUR PRESENTATIONS. I
4 APPRECIATE IT. GOOD TO HAVE YOU-ALL HERE TODAY IN PERSON
5 OR VIRTUALLY. AND WITH THAT, WE'LL CLOSE THE HEARING.
6 THANK YOU.

7 (PROCEEDINGS CONCLUDED AT 11:01 A.M.)
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1
2 C E R T I F I C A T E
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4 STATE OF GEORGIA:

5 COUNTY OF FULTON:
6

7 I DO HEREBY CERTIFY THAT THE FOREGOING PAGES ARE A
8 TRUE, COMPLETE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS
9 REPORTED BY ME IN THE CASE AFORESAID (AND EXHIBITS
10 ADMITTED, IF APPLICABLE).

11 THIS CERTIFICATION IS EXPRESSLY WITHDRAWN AND DENIED
12 UPON THE DISASSEMBLY OR PHOTOCOPYING OF THE FOREGOING
13 TRANSCRIPT, OR ANY PART THEREOF, INCLUDING EXHIBITS,
14 UNLESS SAID DISASSEMBLY OR PHOTOCOPYING IS DONE BY THE
15 UNDERSIGNED OFFICIAL COURT REPORTER AND ORIGINAL
16 SIGNATURE AND SEAL IS ATTACHED THERETO.

17 THIS, THE 21ST DAY OF JULY 2022.
18

19 

20 /s/ CARL R. FORTÉ
21

22 CARL R. FORTÉ, RMR, CRR, CRC, CCR-A-597
23 OFFICIAL COURT REPORTER
24 SUPERIOR COURT OF FULTON COUNTY
25 ATLANTA JUDICIAL CIRCUIT