

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DIVISION, COUNTY DEPARTMENT**

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2024COEL000013
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STEVEN DANIEL ANDERSON,)
CHARLES J. HOLLEY, JACK L. HICKMAN,)
RALPH E. CINTRON, and)
DARRYL P. BAKER,)

Petitioners-Objectors,)

v.)

DONALD J. TRUMP, the ILLINOIS)
STATE BOARD OF ELECTIONS sitting as)
the State Officers Electoral Board, and its)
Members CASSANDRA B. WATSON,)
LAURA K. DONAHUE,)
JENNIFER M. BALLARD CROFT,)
CRISTINA D. CRAY, TONYA L. GENOVESE)
CATHERINE S. MCCRORY,)
RICK S. TERVIN, SR., and JACK VRETT,)

Respondents.)

Case No. 2024COEL000013

PETITION FOR JUDICIAL REVIEW

Petitioners-Objectors Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker (“Objectors”) hereby file this Petition for Judicial Review pursuant to 10 ILCS 5/10-10.1, and, in support thereof, state as follows:

1. Objector Steven Daniel Anderson resides at [REDACTED] and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

2. Objector Charles J. Holley resides at [REDACTED] and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

3. Objector Jack L. Hickman resides at [REDACTED] and is a duly qualified, legal, and registered voter at this same address within the State of

Illinois.

4. Objector Ralph E. Cintron resides at [REDACTED] and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

5. Objector Darryl P. Baker resides at [REDACTED] and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

6. On January 4, 2024, Respondent-Candidate Donald J. Trump (“Candidate”) filed nomination papers to appear on the ballot in the March 19, 2024 General Primary Election as a candidate for the Republican Nomination for the Office of President of the United States.

7. That same day, Objectors timely filed their petition objecting to the validity of Candidate’s nomination papers on the basis that Candidate is disqualified from holding the Office of the President of the United States under Section 3 of the Fourteenth Amendment of the United States Constitution for having “engaged in insurrection or rebellion against the [United States Constitution], or given aid or comfort to the enemies thereof” after having sworn an oath to support the Constitution. *See* Exhibit 1 (Objectors’ Petition without Exhibits, which will be filed by the State Board of Elections with the Record).

8. Respondent Illinois State Board of Elections was duly called to convene as the State Officers Electoral Board (the “Electoral Board”) to hear Objectors’ petition objecting to Candidate’s nominating papers. The Electoral Board’s members were Cassandra B. Watson (Chair), Laura K. Donahue (Vice Chair), Jennifer M. Ballard Croft, Cristina D. Cray, Tonya L. Genovese, Catherine S. McCrory, Rick S. Tervin, Sr., and Jack Vrett.

9. On January 19, 2024, Candidate filed a motion to dismiss Objectors’ Petition (“Candidate’s Motion to Dismiss”) and Objectors filed a motion to grant their petition or, in the

alternative, for summary judgment (“Objectors’ Motion for Summary Judgment”). After briefing, the presentation of written evidence, and oral argument, Hearing Officer Judge Clark Erickson issued a Report and Recommended Decision on January 27, 2024, recommending that the Electoral Board deny Objectors’ Motion for Summary Judgment and grant Candidate’s Motion to Dismiss based on his finding that the Electoral Board does not have statutory authority to address issues that involve “constitutional analysis.” *See* Exhibit 2.

10. The Hearing Officer further recommended that if the Board were to decline the Hearing Officer’s recommendation to grant Candidate’s Motion to Dismiss, the Board should find that Candidate’s name *should not be printed* on the March 19, 2024 General Primary Election ballot as a candidate for the Republican Nomination for the Office of President of the United States because the preponderance of the evidence presented by the parties established that Candidate engaged in insurrection and is therefore disqualified from office under Section 3 of the Fourteenth Amendment. *See id.*

11. On January 29, 2024, General Counsel for the Electoral Board, Marni Malowitz, issued a recommendation that concurred with the Hearing Officer’s recommendation that Candidate’s Motion to Dismiss be granted but recommended that the Board dismiss the Objectors’ Petition on a different basis: that Candidate’s nominating papers were not invalid because, even if Candidate were unqualified for the presidency under Section 3 of the Fourteenth Amendment, his Statement of Candidacy attesting to his qualifications was not “knowingly false.”

12. On January 30, 2024, the Electoral Board voted to dismiss Objectors’ Petition, adopting the General Counsel’s conclusion that Candidate’s nominating papers were not invalid because his Statement of Candidacy was not “knowingly false” and adopting, in the alternative, the Hearing Officer’s conclusion that the Electoral Board lacks the authority to address issues

involving “constitutional analysis.”

13. The Electoral Board’s decision should be reversed because the General Counsel’s adoption of a scienter requirement for objections based on a candidate’s failure to meet the requisite qualifications for office has no statutory basis under the Illinois Election Code or other legal basis and is unworkable in practice. In addition, Illinois law clearly establishes that the Electoral Board is not only permitted, but is *required*, to evaluate objections like this one, which are based on whether a candidate meets the qualification for the office he or she is seeking as attested to in their statutorily required statement of candidacy. *See Goodman v. Ward*, 241 Ill.2d 398, 409-10 (2011). The conclusion that the Electoral Board is somehow precluded from addressing any issue involving “constitutional analysis” has no basis in law or logic, and indeed, the Electoral Board has addressed issues involving “constitutional analysis” in the past—to resolve objections based on a presidential candidate’s failure to satisfy the natural-born-citizenship or age requirements for office set forth in section 1 of Article II of the U.S. Constitution. *See, e.g., Graham v. Rubio*, No. 15 SOEB GP 528 (evaluating objection that candidate did not meet natural born citizen requirement of U.S. Constitution); *Graham v. Rubio*, No. 16 SOEB GP 528 (Feb. 1, 2016) (adoption by Electoral Board); *Freeman v. Obama*, No. 12 SOB GP 103 (Feb. 2, 2012) (evaluating objection that candidate did not meet qualifications for office of President of the United States set out in Article II, Section 1 of the United States Constitution); *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012) (same); *see also Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (approving Electoral Board’s decision not to place presidential candidate who did not meet constitutional age qualification on ballot and denying motion for preliminary injunction to enjoin decision). This is consistent with other electoral board decisions that have required boards to *apply* constitutional provisions. *See Harned v. Evanston Mun. Officers Electoral*

Bd., 2020 IL App (1st) 200314, ¶ 23 (“While petitioner is correct that electoral boards do not have authority to declare statutes unconstitutional, they are required to decide, in the first instance, if a proposed referendum is permitted by law, even where constitutional provisions are implicated.”).

14. Thus, the Court should reverse the Board’s dismissal of Objector’s petition and determine—as the Hearing Officer did, based on the voluminous evidence presented in the record—that Candidate is not qualified for the presidency and cannot be placed on the ballot because he is ineligible under Section 3 of the Fourteenth Amendment, for having engaged in insurrection having previously sworn an oath to uphold the U.S. Constitution. *See Phelan v. Cnty. Officers Electoral Bd.*, 240 Ill. App. 3d 368, 373, 608 N.E.2d 215, 218 (1st Dist. 1992) (upon review of Electoral Board, court may determine matters not considered by the Board where the record presented “permits a fair determination of such issues), *rev’d on other grounds sub nom. Bonaguro v. Cnty. Officers Electoral Bd.*, 158 Ill. 2d. 391 (1994).

15. In the alternative, even if the Electoral Board did lack authority to determine whether a candidate meets the constitutional qualifications for office, this Court certainly does not lack that authority. *See id.* (“[W]here the administrative agency’s decision gives rise to pleaded issues which could not have been considered by the agency, but the record presented to the circuit court permits a fair determination of such issues, then *the scope of review by a court of original jurisdiction extends to all questions of law and fact presented under the pleadings by that record.*”) (emphasis added); *Troutman v. Keys*, 156 Ill. App. 3d 247, 253 (1st Dist. 1987) (same); *see also* Ill. Const. art. VI, § 9 (“Circuit Courts shall have original jurisdiction of all justiciable matters . . . [and] shall have such power to review administrative action as provided by law.”). Thus, even if this Court determines the Electoral Board lacked authority to address the merits of Objectors’ Petition, this Court should still proceed to address the issue and determine—as the Hearing Officer

did below—that Candidate is not qualified for the office he seeks and cannot be placed on the ballot because he is ineligible under Section 3 of the Fourteenth Amendment, for having engaged in insurrection having previously sworn an oath to uphold the U.S. Constitution.

16. Objectors request that the Electoral Board timely submit the record and evidence from the Electoral Board proceeding to this Court.

WHEREFORE, Objectors respectfully request that this Court overrule the decision of the Illinois State Board of Elections and find that Candidate’s nomination papers are not valid because Section 3 of the Fourteenth Amendment of the U.S. Constitution renders Candidate ineligible and thus not qualified for the office he seeks. Objectors further request that this Court issue an Order that Candidate Donald J. Trump’s name not appear on the ballot as a candidate for the Republican Nomination for the Office of President of the United States in the March 19, 2024 General Primary Election.

Dated: January 30, 2024

PETITIONERS-OBJECTORS

By: /s/ Ed Mullen
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EXHIBIT 1

**BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE STATE OFFICERS
ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE CERTIFICATES OF NOMINATION AND NOMINATION PAPERS OF
CANDIDATES FOR THE REPUBLICAN NOMINATION FOR THE OFFICE OF
PRESIDENT OF THE UNITED STATES TO BE VOTED UPON AT THE MARCH 19,
2024 GENERAL PRIMARY ELECTION**

**Steven Daniel Anderson; Charles J. Holley;
Jack L. Hickman; Ralph E. Cintron;
Darryl P. Baker,**

Petitioners-Objectors,

v.

Donald J. Trump,

Respondent-Candidate.

ORIGINAL ON FILE AT
STATE BD OF ELECTIONS
ORIGINAL TIME STAMPED
AT 1/4/24, 8:44am SS

Case No.

OBJECTORS' PETITION

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Petitioners-Objectors Steven Daniel Anderson, Charles Holley, Jack L. Hickman, Ralph Cintron, and Darryl Baker (“Objectors”) hereby file this Objectors’ Petition pursuant to Article 10 of the Election Code and 10 ILCS 5/10-8 challenging the legal and factual sufficiency of the nomination papers of Respondent-Candidate Donald J. Trump (“Candidate” or “Trump”) as a candidate for the Republican Nomination for the Office of the President of the United States, and in support of their Petition state the following:

OBJECTORS’ NAME, ADDRESS, LEGAL VOTER STATUS, INTEREST, AND RELIEF REQUESTED

1. Objector Steven Daniel Anderson resides at [REDACTED] and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

2. Objector Charles J. Holley resides at [REDACTED] and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

3. Objector Jack L. Hickman resides at [REDACTED] and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

4. Objector Ralph E. Cintron resides at [REDACTED] and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

5. Objector Darryl P. Baker resides at [REDACTED] and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

6. The Objectors’ interest in filing this objection is that of citizens and voters desirous of seeing to it that the election laws of Illinois are properly complied with and that only duly

qualified candidates for the Republican Nomination for the Office of the President of the United States shall appear on the ballot for the General Primary Election on March 19, 2024.

7. Objectors request the following: (a) a hearing on the objection set forth herein; (b) a determination that the Nomination Papers of Candidate are legally and factually insufficient; and (c) a decision that the name of Candidate “Donald J. Trump” shall not be printed on the official ballot as a candidate for the Republican Nomination for the Office of the President of the United States for the March 19, 2024 General Primary or the November 5, 2024 General Election.

NATURE OF OBJECTION

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

U.S. Const. amend. XIV, § 3.

8. Candidate’s nomination papers are not valid because when he swore in his Statement of Candidacy that he is “qualified” for the office of the presidency as required by 10 ILCS 5/7-10, he did so falsely. Trump cannot satisfy the eligibility requirements for the Office of the President of the United States established in Section 3 of the Fourteenth Amendment of the U.S. Constitution.

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

States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.”

10. As set forth below, after having sworn an oath to support the Constitution of the United States,¹ Trump has “engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof” and is therefore disqualified from public office under Section 3 of the Fourteenth Amendment.

11. On December 19, 2023, the Colorado Supreme Court decided, in a detailed 133-page opinion, a case presenting nearly identical legal and factual issues as this challenge. *See Anderson v. Griswold*, __ P.3d __, 2023 CO 63, 2023 WL 8770111 (Colo. Dec. 19, 2023). (The Colorado Supreme Court decision is attached as Exhibit A, and the trial court’s Final Order dated Nov. 17, 2023 is attached as Exhibit B.) Candidate Trump was a party to that proceeding and participated fully both in the trial court proceedings (including a five-day bench trial) and on appeal. The Court held that:

- a. “Congress does not need to pass implementing legislation for Section Three’s disqualification provision to attach, and Section Three is, in that sense, self-executing.”
- b. “Judicial review of President Trump’s eligibility for office under Section Three is not precluded by the political question doctrine.”
- c. “Section Three encompasses the office of the Presidency and someone who has taken an oath as President.”
- d. The trial court did not err in concluding that “the events at the U.S. Capitol on January 6, 2021, constituted an ‘insurrection.’”
- e. The trial court did not err in concluding that Trump “‘engaged in’ that insurrection through his personal actions.”
- f. “President Trump’s speech inciting the crowd that breached the U.S. Capitol on January 6, 2021, was not protected by the First Amendment.”

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

Thus, it concluded, “Trump is disqualified from holding the office of President under Section Three; because he is disqualified, it would be a wrongful act under [Colorado law] for the Secretary to list him as a candidate on the presidential primary ballot.” *Griswold*, 2023 WL 8770111, at *2-3 (Ex. A).

12. On December 28, 2023, the Maine Secretary of State also determined, following briefing and an evidentiary hearing, that Candidate Trump’s Maine “primary petition is invalid” based on his false declaration that he is qualified to hold office when he, in fact, is constitutionally disqualified under Section 3 of the Fourteenth Amendment. *See* Ruling of the Secretary of State, *In re: Challenges to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States*, (Dec. 28, 2023) (“Maine Sec. of State Ruling,” attached as Exhibit C). The decision recognized:

- a. The administrative authority of the Secretary of State to assess whether a candidate is “qualified” for office, and thus can be included on the state ballot, encompasses constitutional qualifications, including under Section 3.
- b. Section Three is self-executing without Congressional action and applies to the office of President.
- c. The “events of January 6, 2021 were an insurrection.”
- d. “Trump engaged in the insurrection of January 6, 2021.”
- e. There is no precedent to support Trump’s argument that the First Amendment can “override” Section 3 or any other qualification for public office.
- f. Trump’s speech, in any case, “is unprotected by the First Amendment,” because it was intended to incite lawless action.

Like in Colorado, Trump was a party to the proceeding and fully participated, including through the opportunity to present evidence; call witnesses; cross-examine; and argue legal and factual issues. *Id* at 17.

13. Thus, the only two decisions evaluating Section 3 challenges that reached the *merits* of the challenge and assessed evidence from both Candidate Trump and objectors, determined that Trump is constitutionally barred from office.

14. “*The oath to support the Constitution is the test.* The idea being that one who had taken an oath to support the Constitution and violated it, ought to be excluded from taking it again, until relieved by Congress.” *Worthy v. Barrett*, 63 N.C. 199, 204 (1869). Persons who are disqualified by Section 3 are thus ineligible to hold the presidency, just like those who fail to meet the age, residency, or natural-born citizenship requirements of Article II, Section 1 of the Constitution, or those who have already served two terms, as provided by the Twenty-Second Amendment.

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

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

17. Candidate Trump, during his impeachment proceedings, admitted the events of January 6 constituted “insurrection”: his defense lawyer acknowledged “everyone agrees,” “there was a violent insurrection of the Capitol.”² Indeed, by overwhelming majorities, both chambers of Congress declared those who attacked the Capitol on January 6, 2021 “insurrectionists.” Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322. Just days afterward, the U.S. Department of Justice under the Trump administration labeled it an “insurrection” in federal court.³ So have at least

² 167 Cong. Rec. S729 (daily ed. Feb. 13, 2021), <https://www.govinfo.gov/content/pkg/CREC-2021-02-13/pdf/CREC-2021-02-13.pdf>.

³ Government’s Br. in Supp. of Detention at 1, *United States v. Chansley*, No. 2:21-MJ-05000-DMF, ECF No. 5 (D. Ariz. Jan. 14, 2021).

fifteen federal judges.⁴ And both courts that have addressed the question of whether the January 6 attack constituted an “insurrection” within the meaning of Section 3 have held that it did. *See Griswold*, 2023 WL 8770111, at *37-39 (Ex. A); *State ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, at *17-19 (N.M. 1st Jud. Dist., Sept. 6, 2022), appeal dismissed, No. S-1-SC-39571 (N.M. Nov. 15, 2022), cert. filed May 18, 2023.

18. Under Section 3, to “engage” means “a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from the insurrectionists’ perspective] termination.” *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871); *Worthy*, 63 N.C. at 203 (defining “engage” under Section 3 to mean “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary”); Att’y Gen. Henry Stanbery, *The Reconstruction Acts*, 12 U.S. Op. Att’y. Gen. 141, 161-62 (1867) (defining “engage” in similarly-worded statute to include “persons who . . . have done any overt act for the purpose of promoting the rebellion”); Att’y Gen. Henry Stanbery, *The Reconstruction Acts*, 12 U.S. Op. Att’y. Gen. 182, 204 (1867) (defining “engage” in similarly-worded statute to require “an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose”).

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

20. All three modern judicial decisions to construe “engage” under Section 3 have adopted this standard. *See Griswold*, 2023 WL 8770111, at *39-45 (Colorado Supreme Court summarizing definition as “an overt and voluntary act, done with the intent of aiding or furthering

⁴ *See infra* notes 219-228.

the common unlawful purpose”); *White*, 2022 WL 4295619, at *19; *Rowan v. Greene*, Case No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off. of State Admin. H’gs, May 6, 2022), slip op. at 13-14. The only courts and election officials that have addressed the merits of a Section 3 challenge to Trump’s eligibility have concluded that Trump “engaged” in the January 6 insurrection.

21. “Engagement” does not require previous conviction, or even charging, of any criminal offense. *See, e.g., Griswold*, 2023 WL 8770111, at *23, *39-40 (Ex. A) (recognizing charging and conviction is not required and defining standard for “engage”); *Powell*, 27 F. Cas. at 607 (defendant not charged with any prior crime); *Worthy*, 63 N.C. at 203 (defendant not charged with any crime); *In re Tate*, 63 N.C. 308 (1869) (defendant not charged with any crime); *see also* Gerard N. Magliocca, *Amnesty and Section 3 of the Fourteenth Amendment*, 36 Const. Comment. 87, 98-99 (2021) (describing special congressional action in 1868 to enforce Section 3 and remove Georgia legislators, none of whom had been charged criminally); William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. __ (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751, at 16-22.

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

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

24. Modern authority agrees that no evidence or authority suggests that a prior criminal conviction—whether under 18 U.S.C. § 2383 (insurrection) or any other statute—was ever

considered necessary to trigger Section 3. *Griswold*, 2023 WL 8770111, at *23 (Ex. A); *White*, 2022 WL 4295619, at *16, *24; *Greene, supra* ¶ 20, slip op., at 13.

25. As set forth in detail below and in the reports of publicly available investigations, in the months leading up to January 6, 2021, then-President Donald Trump, who was a candidate for re-election in 2020, plotted to overturn the 2020 presidential election outcome. Indeed, as detailed below, Trump has repeatedly admitted that he actively sought to prevent the certification of the results of that election.

26. First, he disseminated false allegations of fraud and challenged election results through baseless litigation. When his and his allies' 62 separate election lawsuits failed, he attempted unlawful schemes, including repeatedly pressuring then-Vice President Mike Pence to discard electoral votes from states that had voted for President-elect Biden.

27. After votes in the 2020 election were cast, Trump repeatedly exhorted his followers to "stop the fraud" and "stop the count" and falsely told them that he had won the election.⁵

28. On December 14, 2020, presidential electors convened in all 50 states and in D.C. to cast their official electoral votes. They voted 306-232 against Trump.⁶

29. To pressure then-Vice President Mike Pence to discard electoral votes from states that had voted for then-President-elect Biden, Trump summoned tens of thousands of supporters

⁵ See, e.g., Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 4, 2020 at 12:49 AM ET), <https://twitter.com/realDonaldTrump/status/1323864823680126977>, attached hereto as part of a Group Exhibit E, which is also referred to hereinafter as "Trump Tweet Compilation." See also *id.* at 2 (Nov. 5, 2020 at 12:21 PM ET), <https://twitter.com/realDonaldTrump/status/1324401527663058944?lang=en>; *id.* at 1 (Nov. 5, 2020 at 9:12 AM ET), <https://twitter.com/realDonaldTrump/status/1324353932022480896>; *id.* at 2 (Nov. 7, 2020 at 10:36 AM ET), <https://twitter.com/realDonaldTrump/status/1325099845045071873>.

⁶ National Archives, *2020 Electoral College Results*, <https://www.archives.gov/electoral-college/2020>.

to Washington for a violent protest on January 6, 2021, the day that Congress would count and certify the electoral votes.

30. Trump encouraged his supporters to dispute the election results, and on December 19, 2020, he tweeted: “Big protest in D.C. on January 6th. Be there, will be wild!”⁷

31. Armed and militant supporters, including the Proud Boys and Oath Keepers, mobilized in response to Trump’s “wild” tweet and reported for duty at the Capital on January 6, 2021.⁸

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

33. His campaign was directly involved in organizing and selecting speakers for a demonstration at a park near the Capitol on January 6, 2021.⁹

34. As his supporters assembled at the Ellipse, Trump learned that approximately 25,000 people refused to walk through the magnetometers at the entrance—because they had weapons that they did not want confiscated by the Secret Service. In response, Trump ordered his team to remove the magnetometers shouting “I don’t [fucking] care that they have weapons.

⁷ See Trump Tweet Compilation, *supra* note 5, at 6 (Group Ex. E) (Dec. 19, 2020 at 1:42 AM ET), <https://twitter.com/realDonaldTrump/status/1340185773220515840>.

⁸ Indictment at 9, *U.S. v. Thomas Caldwell et al.*, 21-cr-28-APM (2021), <https://www.justice.gov/usao-dc/case-multi-defendant/file/1369071/download>; Indictment at 7-8, *U.S. v. Hostetter et al.*, 1:21-cr-00392, (D.D.C. 2021), <https://www.justice.gov/opa/press-release/file/1403191/download>; Affidavit in Support of Criminal Complaint and Arrest Warrant at 7, *U.S. v. Derrick Evans*, 1:21-cr-337, <https://www.justice.gov/usao-dc/press-release/file/1351946/download>. (pleaded guilty 3/18/22); *see also* Ex. H, H.R. REP. NO. 117-663, at 500-15 (2022) [hereinafter January 6th Report]; Ex. M, Proceedings Day 5 Tr., at 200:3-21 (Nov. 3, 2023) [hereinafter Day 5 Transcript] (Heaphy Testimony); *see also* Ex. J, Proceedings Day 2 Tr., at 79:5-80:22 (Oct. 31, 2023) [hereinafter Day 2 Transcript] (Simi Testimony).

⁹ See January 6th Report, *supra* note 8, at 533-36 (Ex. H); Anna Massoglia, *Trump’s political operation paid more than \$3.5 million to Jan. 6 organizers*, OPEN SECRETS (Feb. 10, 2021), <https://www.opensecrets.org/news/2021/02/jan-6-protests-trump-operation-paid-3p5mil/>.

They're not here to hurt me. . . . Let my people in. They can march to the Capitol from here. Take the [fucking] mags away.”¹⁰

35. The speakers who preceded Trump on the stage at this demonstration prepped the crowd with violent rhetoric. Trump’s lawyer, Rudy Giuliani, called for “trial by combat,”¹¹ and Representative Mo Brooks of Alabama urged the crowd to “start taking down names and kicking ass” and to be prepared to sacrifice their “blood” and “lives” and “do what it takes to fight for America” by “carry[ing] the message to Capitol Hill,” since “the fight begins today.”¹²

36. During Trump’s speech at the demonstration, he said, “We fight. We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore.”¹³ Trump then instructed the crowd to march on the Capitol.¹⁴

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

¹⁰ See January 6th Report, *supra* note 8, at 585 (Ex. H).

¹¹ Wash. Post, *Trump, Republicans incite crowd before mob storms Capitol*, YOUTUBE (Jan. 6, 2021), <https://youtu.be/mh3cbd7niTQ>.

¹² The Hill, *Mo Brooks gives FIERY speech against anti-Trump Republicans, socialists*, YOUTUBE (Jan. 6, 2021), <https://youtu.be/ZKHwV6sdrMk>.

¹³ *Rally on Electoral College Vote Certification*, at 4:41:25, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification>; see also *Donald Trump Speech “Save America” Rally Transcript January 6*, at 1:12:43, REV (Jan. 6, 2021), <https://bit.ly/3GheZid> [hereinafter *Donald Trump Speech*]; Brian Naylor, *Read Trump’s Jan. 6 Speech, A Key Part Of Impeachment Trial*, NPR (Feb. 10, 2021), <https://n.pr/3G1K2ON>.

¹⁴ *Rally on Electoral College Vote Certification*, *supra* note 13, at 3:46:55; *Donald Trump Speech*, *supra* note 13, at 16:25; Naylor, *supra* note 13.

and ultimately overwhelming law enforcement and successfully seizing control of the Capitol building.¹⁵

38. The insurrectionists shared the common purpose of preventing Congress from certifying the electoral vote.¹⁶ And the attack forced members of Congress and Vice President Pence to flee and suspended Congress' count of the electoral vote.¹⁷

39. Trump watched on television as the insurrectionists demanded Pence's murder (chanting "hang Mike Pence!"),¹⁸ Trump then goaded them further. Knowing that his supporters' violent attack on the Capitol was underway and knowing that his words would aid and encourage the insurrectionists and induce further violence, at 2:24 PM Trump sent a widely-read social media

¹⁵ Ex. F, Staff of S. Comm. on Rules & Admin., 117th Cong., A Review of the Security, Planning, and Response Failures on January 6, at 28 (June 1, 2021) [hereinafter Rules & Admin. Review]; see January 6th Report, *supra* note 8, at 651-59 (Ex. H); Ex. I, Proceedings Day 1 Tr., at 142:9–143:2, 144:11–23, 146:16–18 (Oct. 30, 2023) [hereinafter Day 1 Transcript] (Swalwell Testimony); see also Day 1 Transcript, *supra* at 197:8-13, 199:8-200:8 (Ex. I) (Pingeon Testimony); Ex. L, Proceedings Day 4 Tr., at 192:10–195:24 (Nov. 2, 2023) [hereinafter Day 4 Transcript] (Buck Testimony); H.R. REP. NO. 117-2, at 16 (2021), <https://www.govinfo.gov/app/details/CRPT-117hrpt2/CRPT-117hrpt2>; Audie Cornish et al., *Transcript: 2 reporters who were in the Capitol on Jan. 6 talk about media coverage of the attack*, NPR (Jan. 5, 2022), <https://www.npr.org/2022/01/05/1070700663/2-reporters-who-were-in-the-capitol-on-jan-6-talk-about-media-coverage-of-the-at>; Jacqueline Alemany et al., *What Happened on Jan. 6*, WASH. POST (Oct. 31, 2021), <https://wapo.st/3eSdf2y>; Kelsie Smith & Travis Caldwell, *Disturbing video shows officer crushed against door by mob storming the Capitol*, CNN (Jan. 9, 2021), <https://cnn.it/3eAmdSc>; Clare Hymes & Cassidy McDonald, *Capitol riot suspect accused of assaulting cop and burying officer's badge in his backyard*, CBS NEWS (Mar. 13, 2021), <https://cbsn.ws/3eFAaxS>.

¹⁶ See *Rally on Electoral College Vote Certification*, *supra* note 13, at 4:34:53; *Donald Trump Speech*, *supra* note 13, at 1:05:43; Naylor, *supra* note 13; see also Day 4 Transcript, *supra* note 15, at 230:3-7, 341:24-342:8 (Ex. L) (Buck Testimony); Day 1 Transcript, *supra* note 15, at 197:8-13, 199:8-200:8 (Ex. I) (Pingeon Testimony).

¹⁷ See January 6th Report, *supra* note 8, at 466 (Ex. H); Martha Mendoza & Juliet Linderman, *Officers maced, trampled: Docs expose depth of Jan. 6 chaos*, ASSOCIATED PRESS (Mar. 10, 2021), <https://bit.ly/3F2Hi26>; Alemany, *supra* note 15.

¹⁸ See January 6th Report, *supra* note 8, at 449 n.171 (Ex. H).

message publicly condemning Pence. He said, “Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution.”¹⁹

40. During the attack, contrary to his staff’s urging, Trump did not order any federal law enforcement or the D.C. National Guard to help retake the Capitol or protect Pence or Congress from the attackers.²⁰

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

42. When he finally made a public statement at 4:17 PM, he said: “we love you, you’re very special, you’ve seen what happens, you’ve seen the way others are treated . . . I know how you feel, but go home, and go home in peace.”²¹

43. The insurrection overwhelmed and defeated the forces of civilian law enforcement; forced the United States Congress to go into recess; stopped the fundamental and essential constitutional process of certifying electoral votes; forced the Vice President, Senators, Representatives, and staffers into hiding; occupied the United States Capitol, a feat never before

¹⁹ This tweet was removed. It is archived on the American Oversight website. 2:24 PM-2:24 PM, AMERICAN OVERSIGHT, <https://www.americanoversight.org/timeline/224-p-m> (archived); see also Trump Tweet Compilation, *supra* note 5, at 9 (Group Ex. E) (Jan. 6, 2021 at 2:24 PM ET); January 6th Report, *supra* note 8, at 429, 596 (Ex. H).

²⁰ See January 6th Report, *supra* note 8, at 6-7, 595 (Ex. H); Ex. G, The Daily Diary of President Donald J. Trump, January 6, 2021 [Hereinafter Trump Daily Diary]; *READ: Transcript of CNN’s town hall with former President Donald Trump*, CNN (May 11, 2023), <https://www.cnn.com/2023/05/11/politics/transcript-cnn-town-hall-trump/index.html>; see also Day 2 Transcript, *supra* note 8, at 245:19-250:16, 259:20-260:11 (Ex. J) (Banks Testimony).

²¹ See January 6th Report, *supra* note 8, at 579-80 (Ex. H); *President Trump Video Statement on Capitol Protestors*, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?507774-1/president-trump-video-statement-capitol-protesters>.

achieved in the history of our country, by the Confederate rebellion or otherwise; held the Capitol for hours; and blocked the peaceful transition of power in the United States of America, another feat never achieved by the Confederate rebellion.

44. The Colorado Supreme Court recently confirmed that Trump’s action and inaction during the January 6, 2021 insurrection met the definition of “engag[ing]” in “insurrection” as set out in Section 3 of the Fourteenth Amendment. *Griswold*, 2023 WL 8770111 at *37-44 (Ex. A). The Maine Secretary of State did the same, finding that Trump engaged in insurrection and was thus disqualified from the office of presidency and could not appear on the Maine presidential primary ballot. *See* Ex. C.

45. Donald J. Trump, through his words and actions, after swearing an oath as an officer of the United States to support the Constitution, engaged in insurrection or rebellion, or gave aid and comfort to its enemies, as defined by Section 3 of the Fourteenth Amendment. He is disqualified from holding the presidency or any other office under the United States unless and until Congress provides him relief, which it has not done.

AUTHORITY AND DUTY OF BOARD TO HEAR OBJECTION

46. The Electoral Board’s authority and mandatory statutory duty indisputably includes determinations of whether candidates meet the eligibility requirements for their office. As dictated by the Illinois Election Code, “[t]he electoral board *shall* take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, . . . and in general *shall* decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained . . .” 10 ILCS 5/10-10 (emphasis added).

47. Under the Illinois Election Code, presidential primary candidates, like candidates for other offices, *must include* with their nomination papers a statement of candidacy that, among other things, states that the candidate “is qualified for the office specified.” 10 ILCS 5/7-10. The Election Code specifies candidate qualifications, as do the constitutions of the State of Illinois and the United States. *See, e.g., Goodman v. Ward*, 241 Ill. 2d 398, 407 (2011) (holding electoral board erred in denying objection and striking candidate’s name from ballot where candidate falsely stated he was “qualified” for office despite not meeting eligibility requirements set forth in Illinois Constitution); U.S. Const. art. II, § 1, cl. 5 (specifying age, residency, and citizenship qualifications for Office of President); U.S. Const. Amend. XXII, § 1 (forbidding the election of a person to the office of President more than twice); U.S. Const. Amend. XIV, § 3 (requiring disqualification of candidates for public office who took an oath to uphold the Constitution and then engaged in or supported insurrection against the United States or gave aid or comfort to those who have).

48. The Illinois Supreme Court in *Goodman* directed that objections based on constitutionally-specified qualifications *must be evaluated*, including objections that a candidate has improperly sworn that they meet constitutional qualifications for the office for which they seek candidacy. *Goodman*, 241 Ill. 2d at 409-10 (“The statutory requirements governing statements of candidacy and oaths are mandatory If a candidate’s statement of candidacy does not substantially comply with the statute, the candidate is not entitled to have his or her name appear on the primary ballot”).

49. Decisions of other Illinois courts track *Goodman* and recognize that electoral boards *must apply* constitutional criteria governing ballot placement. *See Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23 (“While petitioner is correct that electoral boards do not have authority to declare statutes unconstitutional, they are required to decide, in the

first instance, if a proposed referendum is permitted by law, even where constitutional provisions are implicated”); *Zurek v. Peterson*, 2015 IL App (1st) 150456, ¶ 33-35 (unpublished) (recognizing that while “the Board does not have the authority to declare a *statute* unconstitutional[, this] does not mean that the Board had no authority to consider the constitutionally-based challenges” and that to determine whether the referendum “was valid and whether the objections should be sustained or overruled, the Board was required to determine if the referendum was authorized by a statute or the constitution”).

50. Consistent with these decisions, Illinois electoral boards have frequently evaluated objections based on constitutional candidacy requirements. *See, e.g., Freeman v. Obama*, No. 12 SOB GP 103 (Feb. 2, 2012) (evaluating objection that candidate did not meet qualifications for office of President of the United States set out in Article II, Section 1 of the U.S. Constitution); *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012) (same); *Graham v. Rubio*, No. 16 SOEB GP 528 (February 1, 2016) (State Officers Electoral Board determining eligibility based on whether facts presented about candidate established he met natural born citizen requirement of U.S. Constitution); *Graham v. Rubio*, No. 16 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board, determining that the Electoral Board was acting within the scope of its authority in reviewing the adequacy of the Candidate’s Statement of Candidacy and evaluating whether it was “invalid because the Candidate is not legally qualified to hold the office of President” based on criteria in the U.S. Constitution); *see also Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (approving Electoral Board’s decision not to place presidential candidate who did not meet constitutional age qualification on ballot and denying motion for preliminary injunction to enjoin decision). (Electoral board decisions cited here are attached hereto as part of Group Exhibit D.)

51. Article II, Section 1, Clause 5 of the U.S. Constitution requires the President to be a natural-born citizen, at least thirty-five years of age, and a resident of the United States for at least fourteen years. Section 1 of the Twenty-Second Amendment provides that no person can be elected President more than twice. Section 3 of the Fourteenth Amendment disqualifies from public office any individual who has taken an oath to uphold the U.S. Constitution and then engages in insurrection or rebellion against the United States, or gives aid or comfort to those who have. Objections to a candidate's inclusion on the primary ballot, asking the Electoral Board to apply these constitutional requirements, fall directly within the Electoral Board's jurisdiction and mandatory duties.

52. The Board's evaluation of this objection to the Candidate's constitutional eligibility criteria follows the Election Code and the Illinois Supreme Court's direction in *Goodman* that the board *must* evaluate a candidate's statement of candidacy that they are "qualified" for the office at the time the nomination papers are filed because "statutory requirements governing statements of candidacy and oaths are mandatory." 241 Ill. 2d at 409-10; *see also Delgado v. Bd. of Election Comm'rs of City of Chicago*, 224 Ill. 2d 481, 485-86 (2007) (differentiating the impermissible action of an electoral board's "question[ing] its validity" of underlying legal prerequisites from the required action of an electoral board *applying* a constitutional provision). *Accord* Maine Sec. of State Ruling, Ex. C at 12-13 (evaluating Section 3 challenge and recognizing that the statutory obligation to determine if a candidate's nomination petition meets election code requirements requires limiting ballot access to qualified candidates under the U.S. Constitution).

53. To do so, the Electoral Board has the ability, and indeed the clear obligation, when necessary to evaluate evidence and resolve complex factual issues. The Board is obligated to "decide whether or not the certificate of nomination or nominating papers or petitions on file are

valid or whether the objections thereto should be sustained” 10 ILCS 5/10-10. To fulfill that responsibility, the Board “shall have the power to administer oaths and to subpoena and examine witnesses” and to require “the production of such books, papers, records, and documents as may be evidence of any matter under inquiry” *Id.* Electoral boards and their hearing officers indeed utilize this power to hear and evaluate the credibility of high volumes of witness testimony and documentary evidence in an expedited manner whenever necessary to fulfill their mandate. *See, e.g., Raila v. Cook Cnty. Officers Electoral Bd.*, 2018 IL App (1st) 180400-U, ¶¶ 17-27 (unpublished) (“the hearing officer heard testimony from over 25 witnesses and the parties introduced over 150 documents and a short video clip” and “issued a 68-page written recommendation that contained his summary of the testimony and documentary evidence”); *Muldrow v. Barron*, 2021 IL App (1st) 210248, ¶¶ 28-30 (electoral board properly made factual finding of widespread fraud based on determinations as to the credibility of witnesses’ testimony). *Accord* Maine Sec. of State Ruling, Ex. C at 16-17 (recognizing that determining the validity of a nomination petition can range from straightforward to complex, and may require review of evidentiary records and application of governing law).

54. This Objection asks the Electoral Board to fulfill its obligation to enforce candidate qualification requirements spelled out in the U.S. Constitution, a task for which it has both the authority and duty to undertake. 10 ILCS 5/10-10; *Goodman*, 241 Ill. 2d at 409-10.

STATEMENT OF FACTS

55. The facts set out below clearly show that the Candidate cannot meet the eligibility requirements for office as set out in Section 3 of the Fourteenth Amendment because he: (1) was an officer of the United States; (2) took an oath to support the Constitution of the United States, and (3) engaged in insurrection or rebellion or gave aid or comfort to insurrectionists.

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

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

57. On that day, Trump swore the presidential oath of office required by Article II, section 1, of the Constitution: “I, Donald John Trump, do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my Ability preserve, protect, and defend the Constitution of the United States.”²²

58. After taking the oath, Trump gave an inaugural speech, in which he stated, “Every four years, we gather on these steps to carry out the orderly and peaceful transfer of power.”²³ Less than four years later, he sought to do exactly the opposite.

II. TRUMP’S SCHEME TO OVERTURN THE GOVERNMENT.

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

59. On June 18, 2019, at a rally in Florida, Trump officially launched his campaign for election to a second term as President.²⁴

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

²² Trump White House Archived, *supra* note 1, at 26:36; *see also* U.S. Const. art. II, § 1, cl. 8.

²³ Trump White House Archived, *supra* note 1, at 29:52; *see also* Ex. K, Proceedings Day 3 Tr., at 59:17-62.6 (Nov. 1, 2023) (Magliocca Testimony) (testimony that Presidency is historically understood as an “office” within the scope of the Fourteenth Amendment).

²⁴ *Donald Trump formally launches 2020 re-election bid*, BBC (June 18, 2019), <https://www.bbc.com/news/world-us-canada-48681573>.

- a. On August 17, 2020, Trump spoke to a crowd in Oshkosh, Wisconsin and stated: “The only way we’re going to lose this election is if the election is rigged.”²⁵
- b. On August 24, 2020, during his Republican National Convention acceptance speech, Trump stated: “The only way they can take this election away from us is if this is a rigged election.”²⁶
- c. On September 24, 2020, Trump stated: “We want to make sure the election is honest, and I’m not sure that it can be. I don’t know that it can be with this whole situation [of] unsolicited ballots.”²⁷

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

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

63. For example, on September 29, 2020, Trump was asked if he would disavow the Proud Boys. Instead, he stated: “Proud Boys, stand back and *stand by*,” later adding “somebody’s got to do something about Antifa and the left.”²⁸

64. The Proud Boys celebrated this as a call to “stand by” to be ready for future action:

²⁵ Kevin Liptak, *Trump warns of ‘rigged election’ as he uses conspiracy and fear to counter Biden’s convention week*, CNN (Aug. 18, 2020), <https://www.cnn.com/2020/08/17/politics/donald-trump-campaign-swing/index.html>.

²⁶ *RNC 2020: Trump warns Republican convention of ‘rigged election’*, BBC (Aug. 25, 2020), <https://www.bbc.com/news/election-us-2020-53898142>.

²⁷ *President Trump Departs White House*, C-SPAN (Sept. 24, 2020), <https://www.c-span.org/video/?476212-1/president-trump-departs-white-house#>.

²⁸ Associated Press, *Trump tells Proud Boys: ‘Stand back and stand by’*, YOUTUBE (Sept. 29, 2020), https://www.youtube.com/watch?v=qIHhB1ZMV_o.

- a. On the social media site Parler, Proud Boys leader Henry “Enrique” Tarrío responded, “Standing by sir.”²⁹ (Tarrío was convicted of seditious conspiracy on May 4, 2023 and sentenced to 22 years in prison for his role on January 6.³⁰)
- b. Another Proud Boys leader, Joseph Biggs, posted, “President Trump told the proud boys to stand by because someone needs to deal with ANTIFA...well sir! We’re ready!!” and “Trump basically said to go fuck them up! this makes me so happy.”³¹ (Biggs was convicted of seditious conspiracy and sentenced to 17 years in prison for his role on January 6.³²)
- c. That same night, the Proud Boys began making and selling merchandise with the slogan “Stand Back and Stand By.”

65. Meanwhile, before November 3, 2020 (“Election Day”), Trump was advised by his campaign manager William Stepien not to prematurely declare victory while lawful votes, including mail-in and absentee ballots, were still being counted.³³

²⁹ See January 6th Report, *supra* note 8, at 507-08 (Ex. H); Mike Baker (@ByMikeBaker), TWITTER (Sept. 29, 2020 at 9:28 PM), <https://twitter.com/ByMikeBaker/status/1311130735584051201> [hereinafter Baker Tweet].

³⁰ *Proud Boys Leader Sentenced to 22 Years in Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, DEP’T. OF JUSTICE (Sept. 5, 2023), <https://www.justice.gov/usao-dc/pr/proud-boys-leader-sentenced-22-years-prison-seditious-conspiracy-and-other-charges>.

³¹ See January 6th Report, *supra* note 8, at 507-08 (Ex. H); Baker Tweet, *supra* note 29.

³² *Two Leaders of the Proud Boys Sentenced to Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, DEP’T. OF JUSTICE (Aug. 31, 2023), <https://www.justice.gov/usao-dc/pr/two-leaders-proud-boys-sentenced-prison-seditious-conspiracy-and-other-charges-related-us>.

³³ Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 7 (June 13, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg48999/pdf/CHRG-117hrg48999.pdf> [hereinafter Second Jan. 6 Hearing Transcript].

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

- a. On November 1, 2020, Trump told close associates that he would declare victory on election night if it looked as if he was “ahead.”³⁴
- b. Around the same time, Steve Bannon, former White House strategist and advisor to Trump told a group of associates: “And what Trump’s going to do is just declare victory, right? He’s gonna declare victory, but that doesn’t mean he’s the winner. He’s just gonna say he’s a winner.”³⁵

67. On November 3, 2020, the United States held its fifty-ninth presidential election.

68. That evening, media outlets projected Biden was in the lead.³⁶

69. Trump falsely and without any factual basis alleged that widespread voter fraud had compromised the validity of such results. For example:

- a. On November 4, 2020, he tweeted: “We are up BIG, but they are trying to STEAL the Election. We will never let them do it. Votes cannot be cast after the Polls are closed!”³⁷

³⁴ Jonathan Swan, *Scoop: Trump’s plan to declare premature victory*, AXIOS (Nov. 1, 2020), <https://www.axios.com/2020/11/01/trump-claim-election-victory-ballots>.

³⁵ Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 38 (July 21, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhrg49356/pdf/CHRG-117hhrg49356.pdf>.

³⁶ Meg Wagner et al., *Election 2020 presidential results*, CNN (Nov. 5, 2020), <https://www.cnn.com/politics/live-news/election-results-and-news-11-04-20/index.html>.

³⁷ See Trump Tweet Compilation, *supra* note 5, at 1 (Group Ex. E) (Nov. 4, 2020 at 12:49 AM ET), <https://twitter.com/realDonaldTrump/status/1323864823680126977>.

- b. On November 5, 2020, he tweeted: “STOP THE FRAUD!” and, “STOP THE COUNT!”³⁸

70. On November 7, 2020, news organizations across the country declared that Joseph Biden won the 2020 presidential election.³⁹

71. That same day, Trump falsely tweeted: “I WON THIS ELECTION, BY A LOT!”⁴⁰

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

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

- a. Days after the election, lead data expert Matt Oczkowski informed Trump that he would lose because not enough votes were in his favor.⁴¹
- b. At approximately the same time, former Attorney General William Barr told Trump he did not agree with the idea of saying the election was stolen.⁴²
- c. On November 23, 2020, Barr again informed Trump that his claims of fraud were not meritorious.⁴³

³⁸ *Id.* (Nov. 5, 2020 at 9:12 AM ET), <https://twitter.com/realDonaldTrump/status/1324353932022480896>; *id.* at 2, (Nov. 5th, 2020 at 12:21 PM ET), <https://twitter.com/realDonaldTrump/status/1324401527663058944?lang=en>.

³⁹ *See, e.g.*, Bo Erickson, *Joe Biden projected to win presidency in deeply divided nation*, CBS NEWS (Nov. 7, 2020), <https://www.cbsnews.com/news/joe-biden-wins-2020-election-46th-president-united-states/>; Scott Detrow & Asma Khalid, *Biden Wins Presidency, According to AP, Edging Trump in Turbulent Race*, NPR (Nov. 7, 2020), <https://www.npr.org/2020/11/07/928803493/biden-wins-presidency-according-to-ap-edging-trump-in-turbulent-race>.

⁴⁰ *See* Trump Tweet Compilation, *supra* note 5, at 2 (Group Ex. E) (Nov. 7, 2020 at 10:36 AM ET), <https://twitter.com/realDonaldTrump/status/1325099845045071873>.

⁴¹ Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, No. 117-2, at 6 (June 9, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhr48998/pdf/CHRG-117hhr48998.pdf> [hereinafter First Jan. 6 Hearing Transcript].

⁴² Second Jan. 6 Hearing Transcript, *supra* note 33, at 13.

⁴³ Select Comm. to Investigate the Jan. 6 Attack on the U.S. Capitol, Transcribed Interview of William Barr, at 18 (June 2, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT->

d. In mid to late November, campaign lawyer Alex Cannon told Trump's Chief of Staff Mark Meadows that he had not found evidence of voter fraud sufficient to change the results in any of the key states.⁴⁴

73. On December 1, 2020, Attorney General William Barr publicly declared that the U.S. Justice Department found no evidence of voter fraud that would warrant a change of the election result.⁴⁵

74. Sometime between the election and December 14, 2020, Trump asked Barr to instruct the Department of Justice to seize voting machines.⁴⁶

75. Barr refused, citing a lack of legal authority.⁴⁷

76. Around December 6, 2020, Trump called the Chairwoman of the Republican National Committee Ronna Romney McDaniel to enlist the Committee's support in gathering a slate of electors for Trump in states where President-elect Biden had won the election but legal challenges to the election results were underway.⁴⁸

77. On December 8, 2020, a senior campaign advisor to Trump wrote in an internal campaign email: "When our research and campaign legal team can't back up any of the claims made by our Elite Strike Force Legal Team, you can see why we're 0-32 on our cases. I'll

CTRL0000083860/pdf/GPO-J6-TRANSCRIPT-CTRL0000083860.pdf [hereinafter Interview of William Barr].

⁴⁴ First Jan. 6 Hearing Transcript, *supra* note 41, at 6.

⁴⁵ Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, ASSOCIATED PRESS (June 28, 2022), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

⁴⁶ Interview of William Barr, *supra* note 43, at 40-41.

⁴⁷ *Id.*

⁴⁸ Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Ronna Romney McDaniel, at 8 (June 1, 2022), <https://www.documentcloud.org/documents/23559939-transcript-of-ronna-mcdaniels-interview-with-house-january-6-committee>.

obviously hustle to help on all fronts, but it's tough to own any of this when it's all just conspiracy shit beamed down from the mothership."⁴⁹

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

79. On December 14, 2020, at Trump's direction, fraudulent electors convened sham proceedings in seven targeted states where President-elect Biden had won a majority of the votes (Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin) and cast fraudulent electoral ballots in favor of Trump.

80. Also on December 14, 2020, Attorney General Barr resigned as head of the Department of Justice ("DOJ") and Trump appointed Jeffrey Rosen as acting attorney general and Richard Donoghue as acting deputy attorney general.⁵¹

81. During Rosen's term, Trump requested that the DOJ file a lawsuit challenging the election before the U.S. Supreme Court as an exercise of its original jurisdiction.⁵²

82. The DOJ declined because it did not have legal authority to challenge state electoral procedures.⁵³

83. On December 18, 2020, at a meeting in the Oval Office which included Trump, Sidney Powell, Mike Flynn, Patrick Byrne, Rudy Giuliani, Mark Meadows, and other Trump advisors, Powell, Flynn, and Byrne attempted to persuade Trump to issue an executive order that

⁴⁹ Indictment at 13-14, *U.S. v. Trump*, Case No. 1:23-cr-00257-TSC, ECF No. 1 (D.D.C., Aug. 1, 2023), https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf [hereinafter August 1, 2023 Indictment].

⁵⁰ National Archives, *supra* note 6.

⁵¹ Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 1, 7 (June 23, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg49353/pdf/CHRG-117hrg49353.pdf> [hereinafter Fifth Jan. 6 Hearing Transcript].

⁵² *Id.* at 8-9.

⁵³ *Id.*

would, among other things, direct the seizure of voting machines by either the Department of Homeland Security or the Department of Defense.

84. White House Counsel Pat Cipollone, Eric Herschmann (a lawyer in the White House Counsel’s office and senior advisor to Trump), and Giuliani dissuaded Trump from ordering the seizure of voting machines using his official authority.

85. However, as the meeting continued, Giuliani and others stated in Trump’s presence that they could instead obtain access to voting machines through “voluntary” means.⁵⁴

86. On December 31, 2020, Trump asked Rosen and Donoghue to direct the Department of Justice to seize voting machines.⁵⁵

87. Rosen and Donoghue rejected Trump’s request, again for lack of authority.⁵⁶

88. Meanwhile, just as Giuliani and others had told Trump, teams coordinated by Powell, Giuliani, and other Trump advisors illegally accessed or attempted to illegally access voting machines in multiple battleground states. These included:

89. Fulton County, Pennsylvania (successfully breached Dec. 31, 2020);

90. Coffee County, Georgia (successfully breached Jan. 7, 2021); and

91. Cross County, Michigan (attempted breach Jan. 14, 2021).

⁵⁴ Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Derek Lyons, at 113-116 (Mar. 17, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000055541/pdf/GPO-J6-TRANSCRIPT-CTRL0000055541.pdf>; Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Deposition of Rudolph Giuliani, at 179-181 (May 20, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000083774/pdf/GPO-J6-TRANSCRIPT-CTRL0000083774.pdf>.

⁵⁵ Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 23-24.

⁵⁶ *Id.*

92. A purpose of these illegal breaches or attempted breaches was to support Trump's efforts to overturn the 2020 election by generating supposed "proof" of "fraud," even (in the Coffee County, Georgia and Cross County, Michigan instances) after the violent January 6, 2021 attack.⁵⁷

93. Between December 23, 2020, and early January 2021, Trump attempted to speak with Rosen on the matter of purported election fraud nearly every day.⁵⁸

94. According to Rosen, "the President's entreaties became more urgent," and Trump "became more adamant that we weren't doing our job."⁵⁹

95. On December 25, 2020, Trump called Pence to wish him a Merry Christmas and to request that Pence reject the electoral votes on January 6, 2021.⁶⁰

96. Pence responded, "You know I don't think I have the authority to change the outcome."

97. On December 27, 2020, Rosen told Trump that "DOJ can't and won't snap its fingers and change the outcome of the election."⁶¹

98. Trump responded to Rosen along the lines of, "just say [the election] was corrupt and leave the rest to me [Trump] and the Republican Congressmen."⁶²

99. On January 2, 2021, Jeffrey Clark, the acting head of the Civil Division and head of the Environmental and Natural Resources Division at the DOJ, and who had met with Trump

⁵⁷ See, e.g., Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Christina Bobb, at 96-97 (Apr. 21, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000071088/pdf/GPO-J6-TRANSCRIPT-CTRL0000071088.pdf>.

⁵⁸ Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 8-9.

⁵⁹ *Id.* at 10; see also Katie Benner, *Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General*, N.Y. TIMES (Jan. 22, 2021), <https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justice-department-election.html>.

⁶⁰ August 1, 2023 Indictment, *supra* note 49, at 33.

⁶¹ Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 13.

⁶² *Id.*

without prior authorization from the DOJ, told Rosen and Donoghue that Trump was prepared to fire them and to appoint Clark as the acting attorney general.⁶³

100. Clark asked Rosen and Donoghue if they would sign a draft letter to state officials recommending that the officials send an alternate slate of electors to Congress, and if they did so, then Clark would turn down Trump's offer and Rosen would remain in his position.⁶⁴

101. Rosen refused.⁶⁵

102. On January 3, 2021, Clark—again without authorization—met with Trump and accepted Trump's offer to become Acting Attorney General in light of Rosen and Donoghue's refusal to sign the draft letter.⁶⁶

103. That afternoon, Clark attempted to fire Rosen, but Rosen refused to be fired by a subordinate.⁶⁷

104. That evening, when told that Rosen's departure would result in mass resignations at the DOJ and his own White House Counsel, Trump relented on his plan to replace Rosen with Clark.⁶⁸

105. Trump's efforts to coerce public officials to assist in his scheme to unlawfully overturn the election were not limited to federal officials. Following his election loss, Trump publicly and privately pressured state officials in various states around the country to unlawfully overturn the election results. For example, on January 2, 2021, in a recorded telephone

⁶³ See January 6th Report, *supra* note 8, at 397 (Ex. H).

⁶⁴ Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 28-29.

⁶⁵ *Id.*

⁶⁶ See January 6th Report, *supra* note 8, at 398 (Ex. H).

⁶⁷ Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 28.

⁶⁸ Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Richard Peter Donoghue, at 125-27 (Oct. 1, 2021), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000034600/pdf/GPO-J6-TRANSCRIPT-CTRL0000034600.pdf>.

conversation, Trump pressured Georgia Secretary of State Brad Raffensperger to “find 11,780 votes” for him, and thereby fraudulently and unlawfully turn his electoral loss in Georgia to an electoral victory.

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

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

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

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

110. On January 3, 2021, Trump again told Pence that Pence had the right to reject the electoral vote on January 6.⁶⁹

111. Pence again rejected Trump’s request.⁷⁰

112. On January 4, 2021, Trump and his then-attorney John Eastman met with then-Vice President Mike Pence and his attorney Greg Jacob to discuss Eastman’s legal theory that Pence

⁶⁹ August 1, 2023 Indictment, *supra* note 49, at 33.

⁷⁰ *Id.*

might either reject votes on January 6 during the certification process, or suspend the proceedings so that states could reexamine the results.⁷¹

113. Later, Trump admitted that the decision to continue seeking to overturn the election after the failure of legal challenges was his alone. On a September 17, 2023 broadcast of NBC's "Meet the Press," moderator Kristen Welker asked Trump: "The most senior lawyers in your own administration and on your campaign told you that after you lost more than 60 legal challenges that it was over. Why did you ignore them and decide to listen to a new outside group of attorneys?" Trump responded, "I didn't respect them as lawyers. . . . You know who I listen to? Myself."⁷² When Welker asked, "Were you calling the shots, though, Mr. President, ultimately?", Trump replied, "As to whether or not I believed it was rigged? Oh, sure. It was my decision."⁷³

114. On January 5, 2021, Eastman met privately with Jacob.⁷⁴

115. Eastman expressly requested that Pence reject the certification of election results.⁷⁵

116. During that meeting, Eastman acknowledged that what he was requesting that Pence do for Trump was clearly unlawful, stating that vice presidents both before and after Pence would not have the legal authority to do so under the Electoral Count Act, and that this purported legal theory would lose in the Supreme Court without a single justice in agreement.⁷⁶

⁷¹ Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, No. 117-4, at 17-18 (June 16, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhr49351/pdf/CHRG-117hhr49351.pdf> [hereinafter Third Jan. 6 Hearing Transcript]; *see also* Order Re Privilege of Documents, *Eastman v. Thompson*, No. 8:22-cv-00099, ECF No. 260 at 7 (C.D. Cal. March 28, 2022).

⁷² *Full transcript: Read Kristen Welker's interview with Trump*, NBC NEWS (Sept. 17, 2023), <https://www.nbcnews.com/meet-the-press/transcripts/full-transcript-read-meet-the-press-kristen-welker-interview-trump-rcna104778>.

⁷³ *Id.*

⁷⁴ Third Jan. 6 Hearing Transcript, *supra* note 71, at 19-20.

⁷⁵ *Id.*

⁷⁶ *Id.* at 15-16, 21.

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

- a. On December 4, 2020, Trump tweeted: “RIGGED ELECTION!”⁷⁷
- b. On December 10, 2020, Trump tweeted: “How can you give an election to someone who lost the election by hundreds of thousands of legal votes in each of the swing states. How can a country be run by an illegitimate president?”⁷⁸
- c. On December 15, 2020, Trump tweeted: “Tremendous evidence pouring in on voter fraud. There has never been anything like this in our Country!”⁷⁹
- d. On December 23, 2020, Trump retweeted a memo titled “Operation ‘PENCE’ CARD,” which falsely asserted that the Vice President could disqualify legitimate electors.⁸⁰
- e. On January 5, 2021, Trump tweeted: “The Vice President has the power to reject fraudulently chosen electors.”⁸¹

⁷⁷ See Trump Tweet Compilation, *supra* note 5, at 3 (Group Ex. E) (Dec. 4, 2020 at 8:55 AM ET), <https://twitter.com/realDonaldTrump/status/1334858852337070083>.

⁷⁸ *Id.* (Dec. 10, 2020 at 9:26 AM ET), <https://twitter.com/realDonaldTrump/status/1337040883988959232>.

⁷⁹ *Id.* at 5 (Dec. 15, 2020 at 10:41 AM ET), <https://twitter.com/realDonaldTrump/status/1338871862315667456>.

⁸⁰ Mike Pence, *Mike Pence: My Last Days With Donald Trump*, WALL STREET JOURNAL (Nov. 9, 2022) <https://www.wsj.com/articles/donald-trump-mike-pence-jan-6-president-rally-capitol-riot-protest-vote-count-so-help-me-god-stolen-election-11668018494?st=rna6xw1pmjmaoss>.

⁸¹ See Trump Tweet Compilation, *supra* note 5, at 7 (Group Ex. E) (Jan. 5, 2021 at 11:06 AM ET), <https://twitter.com/realDonaldTrump/status/1346488314157797389?s=20>.

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

118. On December 11, 2020, the Supreme Court rejected a lawsuit brought by the State of Texas alleging that election procedures in four states had resulted in illegitimate votes.⁸²

119. The next morning, on December 12, 2020, Trump tweeted that the Supreme Court order was “a great and disgraceful miscarriage of justice,” and “WE HAVE JUST BEGUN TO FIGHT!!!”⁸³

3. That same day, Ali Alexander of Stop the Steal, and Alex Jones and Owen Shroyer of Infowars led a march on the Supreme Court.⁸⁴

120. The crowd at the march chanted slogans such as “Stop the Steal!” “1776!” “Our revolution!” and Trump’s earlier tweet, “The fight has just begun!”⁸⁵

121. On that day, Trump tweeted: “Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn’t know about this, but I’ll be seeing them! #MAGA.”⁸⁶

122. Later that day, Trump flew over the crowd in Marine One.⁸⁷

123. On December 18, 2020, Trump tweeted: “.@senatemajldr and Republican Senators have to get tougher, or you won’t have a Republican Party anymore. We won the Presidential Election, by a lot. FIGHT FOR IT. Don’t let them take it away!”⁸⁸

⁸² *Texas v. Pennsylvania, et al.*, No. 22-155, Order (U.S. Sup. Ct., Dec. 11, 2020).

⁸³ See Trump Tweet Compilation, *supra* note 5, at 4, (Group Ex. E) (Dec 12, 2020 at 7:58 AM ET), <https://twitter.com/realDonaldTrump/status/1337743516294934529>; *id.* (Dec 12, 2020 at 8:47 AM ET), <https://twitter.com/realDonaldTrump/status/1337755964339081216>.

⁸⁴ See January 6th Report, *supra* note 8, at 505 (Ex. H).

⁸⁵ *Id.*

⁸⁶ See Trump Tweet Compilation, *supra* note 5, at 5 (Group Ex. E) (Dec. 12, 2020 at 9:59 AM ET), <https://twitter.com/realDonaldTrump/status/1337774011376340992>.

⁸⁷ See January 6th Report, *supra* note 8, at 506 (Ex. H).

⁸⁸ See Trump Tweet Compilation, *supra* note 5, at 6 (Group Ex. E) (Dec 18, 2020 at 9:14 AM ET), <http://www.twitter.com/realDonaldTrump/status/1339937091707351046>.

124. On December 19, 2020, Trump tweeted “Big protest in D.C. on January 6th. Be there, will be wild!”⁸⁹

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

125. In response to Trump’s “wild” tweet, Twitter’s Trust and Safety Policy team recorded a “‘fire hose’ of calls to overthrow the U.S. government.”⁹⁰

126. Other militarized extremist groups began organizing for January 6 after Trump’s “will be wild” tweet. These include the Oath Keepers, the Proud Boys, the Three Percenter militias, and others.⁹¹

127. An analyst at the National Capital Region Threat Intelligence Consortium observed that Trump’s tweet led to “a tenfold uptick in violent online rhetoric targeting Congress and law enforcement” and noticed “violent right-wing groups that had not previously been aligned had begun coordinating their efforts.”⁹²

128. For example:

- a. Kelly Meggs of the Oath Keepers Florida Chapter read Trump’s tweet and commented in a Facebook post: “Trump said It’s gonna be wild!!!!!! It’s gonna be wild!!!!!! He wants us to make it WILD that’s what he’s saying. He called us all to the Capitol and wants us to make it wild!!! Sir Yes Sir!!! Gentlemen we are heading to DC pack your shit!”⁹³

⁸⁹ *Id.* (Dec. 19, 2020 at 1:42 AM ET), <https://twitter.com/realDonaldTrump/status/1340185773220515840>.

⁹⁰ See January 6th Report, *supra* note 8, at 499 (Ex. H).

⁹¹ See Day 5 Transcript, *supra* note 8, at 200:3-21, 200:5-202:22, 218:7-16 (Ex. M) (Heaphy Testimony).

⁹² See January 6th Report, *supra* note 8, at 694 (Ex. H).

⁹³ Third Superseding Indictment at ¶ 37, *United States v. Crowl et al.*, No. 1:21-cr-28, ECF No. 127 (D.D.C. Mar. 31, 2021); see also January 6th Report, *supra* note 8, at 515 (Ex. H).

- b. Meggs was later convicted by a federal jury for seditious conspiracy under 18 U.S.C. § 2384 after the January 6 attack, and sentenced to 12 years in prison.⁹⁴
- c. Oath Keepers from various states had established a “Quick Reaction Force” plan where they cached weapons for January 6, 2021 at hotels in Ballston and Vienna in Virginia.⁹⁵
- d. Henry “Enrique” Tarrío, a leader of the Proud Boys, sent encrypted messages to others that they should “storm the Capitol.”⁹⁶
- e. The Proud Boys received and had been in possession of a document titled “1776 Returns” where the initial authors divided their plan to overtake federal government buildings into five parts: “Infiltrate,” “Execution,” “[D]istract,” “Occupy,” and “Sit In.”⁹⁷
- f. Members of the Proud Boys were also convicted of seditious conspiracy after the January 6 attack.⁹⁸

⁹⁴ *United States v. Rhodes, III et al.*, No. 1:22-cr-00015, ECF No. 626 (D.D.C. Nov. 29, 2022).

⁹⁵ Superseding Indictment at ¶ 45, *United States v. Rhodes, III et al.*, No. 1:22-cr-15, ECF No. 167 (D.D.C. June 22, 2022); Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Frank Anthony Marchisella, at 34 (Apr. 29, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000071096/pdf/GPO-J6-TRANSCRIPT-CTRL0000071096.pdf>.

⁹⁶ Second Superseding Indictment at ¶ 50, *United States v. Nordean, et al.*, No. 1:21-cr-00175, ECF No. 305 (D.D.C. Mar. 7, 2022).

⁹⁷ Zachary Rehl’s Motion to Reopen Detention Hearing and Request for a Hearing, Ex. 1: “1776 Returns,” *United States v. Nordean, et al.*, No. 1:21-cr-00175-TJK, ECF No. 401-1 (D.D.C. June 15, 2022), <https://s3.documentcloud.org/documents/22060615/1776-returns.pdf>.

⁹⁸ *Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. DEP’T OF JUSTICE (May 4, 2023), <https://www.justice.gov/opa/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach>.

- g. Matt Bracken, a host for Infowars, a website specializing in disinformation and false election fraud theories, told viewers that it may be necessary to storm the Capitol, and that “we’re going to only be saved by millions of Americans . . . occupying the entire area, if—if necessary storming right into the Capitol. . . we know the rules of engagement. If you have enough people, you can push down any kind of a fence or a wall.”⁹⁹
- h. QAnon, an online false theory group, shared online a digital banner of “Operation Occupy the Capitol,” which depicted the U.S. Capitol being torn in two.¹⁰⁰
- i. The Three Percenter militias, a far-right, anti-government movement, tried to share online “#OccupyCongress” memes with text that say, “If they Won’t Hear Us” and “They Will Fear Us.”¹⁰¹

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

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

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

⁹⁹ The Alex Jones Show, “January 6th Will Be a Turning Point in American History,” BANNED.VIDEO, at 16:29 (Dec. 31, 2020), <https://www.bitchute.com/video/XBllZYTRfaIB/>; See January 6th Report, *supra* note 8, at 507 (Ex. H).

¹⁰⁰ Ben Collins & Brandy Zadrozny, *Extremists made little secret of ambitions to ‘occupy’ Capitol in weeks before attack*, NBC (Jan. 8, 2021), <https://www.nbcnews.com/tech/internet/extremists-made-little-secret-ambitions-occupy-capitalweeks-attack-n1253499>.

¹⁰¹ Criminal Complaint, Statement of Facts at 10-11, *United States v. Hazard*, No. 1:21-mj-00686, ECF No. 1-1 (D.D.C. Dec. 7, 2021).

¹⁰² See Trump Tweet Compilation, *supra* note 5, at 7 (Group Ex. E) (Jan. 1, 2021 at 3:34 PM ET), <https://twitter.com/realDonaldTrump/status/1345106078141394944>.

¹⁰³ *Id.*

- a. Kylie and Amy Kremer, a mother-daughter pair involved with Women for America First, planned a demonstration on the Ellipse (“Ellipse Demonstration”), a park south of the White House fence and north of Constitution Avenue and the National Mall in Washington, D.C.¹⁰⁴
- b. Ali Alexander, an extremist associated with the Stop the Steal, planned an assemblage immediately outside the Capitol, on the court side and the steps of the building.¹⁰⁵

132. On December 29, 2020, Alexander tweeted, “Coalition of us working on 25 new charter buses to bring people FOR FREE to #JAN6 #STOPTHESTEAL for President Trump. If you have money for more buses or have a company, let me know. We will list our buses sometime in the next 72 hours. STAND BACK & STAND BY!”¹⁰⁶

133. Meanwhile, by late December, Trump, his White House staff, and his campaign became directly involved in planning the Ellipse Demonstration. Trump personally helped select the speaker lineup, and his campaign and joint fundraising committees made direct payments of \$3.5 million to rally organizers.¹⁰⁷

¹⁰⁴ Women For America First Ellipse Public Gathering Permit, NAT’L PARK SERV. (Jan. 5, 2021), https://www.nps.gov/aboutus/foia/upload/21-0278-Women-for-America-First-Ellipse-permit_REDACTED.pdf.

¹⁰⁵ *President Trump Wants You in DC January 6*, WILDPROTEST.COM (2020), <https://web.archive.org/web/20201223062953/http://wildprotest.com/> (archived).

¹⁰⁶ See January 6th Report, *supra* note 8, at 532 (Ex. H).

¹⁰⁷ See January 6th Report, *supra* note 8, at 533-36 (Ex. H); Massoglia, *supra* note 9.

134. By December 29, 2020, Trump had formed and conveyed to allies a plan to order his supporters to march to the Capitol at the end of his speech.¹⁰⁸ His goal was to force Congress to stop the certification of electoral votes.¹⁰⁹

135. Between January 2 and 4, 2021, Kremer and other organizers of the Ellipse Demonstration became aware that Trump intended to “order [the crowd] to the [C]apitol at the end of his speech.” These organizers messaged each other that “POTUS is going to have us march there [the Supreme Court]/the Capitol,” and that the President was going to “call on everyone to march to the [C]apitol.”¹¹⁰

136. These organizers received this information from White House Chief of Staff Mark Meadows.¹¹¹

137. In early January 2021, Trump and extremists began publicly referring to January 6 using increasingly apocalyptic terminology. Some referred to a “1776” plan or option for January 6, suggesting by analogy to the American Revolution that their plans for the January 6 congressional certification of electoral votes included violent rebellion.¹¹²

138. On January 4, 2021, at a rally in Dalton, Georgia, Trump stated: “If you don’t fight to save your country with everything you have, you’re not going to have a country left.”¹¹³

¹⁰⁸ See January 6th Report, *supra* note 8, at 533 (Ex. H).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See, e.g., Day 2 Transcript, *supra* note 8, at 29:2-9, 54:13-55:12 (Ex. J) (Simi Testimony).

¹¹³ Bloomberg Quicktake, *LIVE: Trump Stumps for Georgia Republicans David Perdue, Kelly Loeffler Ahead of Senate Runoff*, YOUTUBE (Jan. 4, 2021), <https://www.youtube.com/watch?v=9HisWmJJ3oE>.

139. During the rally, Trump asserted that the transfer of power set for January 6, 2021 would not take place and insinuated that powerful events would later occur.¹¹⁴ For example, he stated:

- a. “If the liberal Democrats take the Senate and White House. . . . And they’re not taking this White House. We’re going to fight like hell, I’ll tell you right now.”
- b. “We’re going to take it back.”
- c. “There’s no way we lost Georgia. There’s no way. That was a rigged election, but we’re still fighting it and you’ll see what’s going to happen.”
- d. “We can’t let that happen. The damage they do will be permanent and will be irreversible. Can’t let it happen.”
- e. “We will never give in. We will never give up. We will never back down. We will never, ever surrender.”
- f. “We have to go all the way and that’s what’s happening. You watch what happens over the next couple of weeks. You watch what’s going to come out. Watch what’s going to be revealed. You watch.”

140. At the rally, the crowd chanted “Fight for Trump! Fight for Trump!” several times.¹¹⁵

141. By early January 2021, Trump anticipated that the crowd that was preparing to amass on January 6 at his behest would be large and violent.¹¹⁶

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Letter from Donald J. Trump to The Select Committee to Investigate the January 6th Attack on the U.S. Capitol, at 2-3 (Oct. 13, 2022), <https://s3.documentcloud.org/documents/23132276/830-am-final-january-6th-committee-letter14446.pdf>.

142. On January 5, 2021, several events were held across D.C. on behalf of Stop the Steal, an entity formed in early November 2020 to mobilize around Trump’s claim that the election had been rigged.¹¹⁷ Speakers during these events made remarks about the event to be held at the Capitol the next day. For example:

- a. Ali Alexander from Stop the Steal said: “We must rebel We might make this ‘Fort Trump’ We’re going to keep fighting for you, Mr. President.” He stated further, “1776 is always an option. . . . These degenerates in the deep state are going to give us what we want, or we are going to shut this country down.”¹¹⁸
- b. Roger Stone stated: “This is a fight for the future of Western Civilization as we know it. . . we dare not fail.”¹¹⁹
- c. Several members of the Phoenix Project, a Three-Percenter-linked group, told the January 5 crowd, “We are at war,” promising to “fight” and “bleed,” and that they will “not return to our peaceful way of life until this election is made right.”¹²⁰

143. On January 5, in response to these extremist demonstrations, Trump tweeted: “Our Country has had enough, they won’t take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!”¹²¹

¹¹⁷ On information and belief, this “Stop the Steal” entity is distinct from an identically named organization founded in 2016 by Roger Stone.

¹¹⁸ See January 6th Report, *supra* note 8, at 537-38 (Ex. H).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See Trump Tweet Compilation, *supra* note 5, at 8 (Group Ex. E) (Jan. 5, 2021 at 5:05 PM ET), <http://www.twitter.com/realDonaldTrump/status/1346578706437963777>.

144. That same evening, President Trump told White House staff that his supporters would be “fired up” and “angry” the next day.¹²²

145. Also on January 5, 2021, Trump met alone with Pence and again asked him to obstruct the certification.¹²³

146. Pence again informed Trump that he did not have the authority to unilaterally reject electoral votes and consequently would not do so.¹²⁴

147. Trump informed Pence that if he did not reject the votes, then Trump would publicly criticize Pence for it.¹²⁵

148. Later that night, Trump authorized his campaign to issue a false public statement that: “The Vice President and I are in total agreement that the Vice President has the power to act.”¹²⁶

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

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

¹²² See January 6th Report, *supra* note 8, at 539 (Ex. H).

¹²³ August 1, 2023 Indictment, *supra* note 49, at 36.

¹²⁴ Jim Acosta & Kaitlan Collins, *Pence informed Trump that he can’t block Biden’s win*, CNN (Jan. 5, 2021), <https://cnn.it/3FH4gx9>.

¹²⁵ August 1, 2023 Indictment, *supra* note 49, at 36.

¹²⁶ *Id.*

150. On December 24, 2020, the Secret Service received from a private intelligence group a list of responses to Trump’s December 19 “will be wild” tweet.¹²⁷ Those responses included:

- a. “I read [the President’s tweet] as armed.”¹²⁸
- b. “[T]here is not enough cops in DC to stop what is coming.”
- c. “[M]ake sure they know who to fear,” and “[W]aiting for Trump to say the word.”

151. On December 26, 2020, the Secret Service received a tip that the Proud Boys had plans to enter Washington, D.C. armed. The Secret Service forwarded this tip to the Capitol Police.¹²⁹

152. On December 29, 2020, the Secret Service again forwarded warnings that pro-Trump demonstrators were being urged to occupy the federal building.¹³⁰

153. On December 30, 2020, the Secret Service held a briefing that highlighted how the President’s December 19 “will be wild!” tweet was found alongside hashtags such as #OccupyCapitols and #WeAreTheStorm.¹³¹

154. Also on December 30, 2020, Jason Miller—a senior advisor to Trump—texted White House Chief of Staff Mark Meadows a link to the donald.win website and stated, “I got the

¹²⁷ See January 6th Report, *supra* note 8, at 61, 695 (Ex. H).

¹²⁸ *Id.*

¹²⁹ *Id.* at 61-62.

¹³⁰ *Id.*

¹³¹ *Id.*

base FIRED UP.” The link was to a page with comments like “Gallows don’t require electricity” and “if the filthy commie maggots try to push their fraud through, there will be hell to pay.”¹³²

155. Federal Bureau of Investigation received many tips regarding the potential for violence on January 6. One tip said:

They think they will have a large enough group to march into D.C. armed and will outnumber the police so they can’t be stopped. . . . They believe that since the election was stolen, that it’s their constitutional right to overtake the government, and during this coup, no U.S. laws apply. Their plan is to literally kill. Please, please take this tip seriously and investigate further.¹³³

156. On January 5, 2021, an FBI office in Norfolk, Virginia issued an alert to law enforcement agencies titled, “Potential for Violence in Washington, D.C., Area in Connection with Planned ‘StopTheSteal’ Protest on 6 January 2021.”¹³⁴

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

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

III. THE JANUARY 6, 2021 INSURRECTION.

A. The Two Demonstrations.

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

160. By 11:00 AM (Eastern Time), the United States Capitol Police (“USCP”) reported “‘large crowd[s]’ around the Capitol building,” including approximately 200 members of the

¹³² *Id.* at 63.

¹³³ See Day 5 Transcript, *supra* note 8, at 218:7-16 (Ex M) (Heaphy Testimony).

¹³⁴ See January 6th Report, *supra* note 8, at 62 (Ex. H).

Proud Boys.¹³⁵ Some of the people gathering in Washington were “equip[ped] . . . with communication devices and donning reinforced vests, helmets, and goggles.”¹³⁶

B. Trump’s Preparations as the Demonstrations Began.

161. On January 6, at 1:00 AM, Trump tweeted: “If Vice President @Mike_Pence comes through for us, we will win the Presidency. . . . Mike can send it back!”¹³⁷

162. On the morning of January 6, at approximately 10:00 AM, White House Deputy Chief of Staff Tony Ornato briefed Chief of Staff Mark Meadows over concerns that members of the crowd were armed with weapons, such as knives and guns. Ornato confirmed with Meadows that he had spoken with Trump about this.¹³⁸

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

164. Trump personally added the text, “[W]e will see whether Mike Pence enters history as a truly great and courageous leader. All he has to do is refer the illegally-submitted electoral votes back to the states that were given false and fraudulent information where they want to recertify.”¹³⁹

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

¹³⁵ U.S. Senate Comm. On Homeland Security & Gov’t Affairs, *Examining The U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6 (Staff Report)*, at 22 (June 8, 2021), https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/HSGAC&RulesFullReport_Examining_U.S.CapitolAttack.pdf (alteration in original).

¹³⁶ *United States v. Caldwell*, 581 F. Supp. 3d 1, 8 (D.D.C. 2021).

¹³⁷ See Trump Tweet Compilation, *supra* note 5, at 8 (Group Ex. E) (Jan. 6, 2021 at 1:00 AM ET), <https://twitter.com/realDonaldTrump/status/1346698217304584192>.

¹³⁸ Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 8-9 (June 28, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhr49354/pdf/CHRG-117hhr49354.pdf> [hereinafter Sixth Jan. 6 Hearing Transcript].

¹³⁹ January 6th Report *supra* note 8, at 581-82.

166. Eric Herschmann, a lawyer in the White House Counsel’s office and senior advisor to Trump, had tried to remove the lines and advised against advancing Eastman’s legal theory that Pence should reject electoral votes because, he stated, he “didn’t concur with the legal analysis.”¹⁴⁰

C. The Increasingly Apocalyptic Demonstration at the Ellipse.

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

- a. Representative Mo Brooks of Alabama urged the crowd to “start taking down names and kicking ass” and be prepared to sacrifice their “blood” and “lives” and “do what it takes to fight for America” by “carry[ing] the message to Capitol Hill,” since “the fight begins today.”¹⁴¹
- b. Trump’s lawyer Rudy Giuliani called for “trial by combat.”¹⁴²
- c. Trump’s lawyer John Eastman perpetuated claims of voter fraud and said: “all that we are demanding of Pence is this afternoon at 1 o’clock he let the legislators of the states look into this so we get to the bottom of it.”¹⁴³

168. Trump and Meadows were aware of the line-up of speakers at the Ellipse Demonstration.¹⁴⁴

¹⁴⁰ *Id.*

¹⁴¹ The Hill, *supra* note 12.

¹⁴² Wash. Post, *supra* note 11.

¹⁴³ *Rally on Electoral College Vote Certification, supra* note 13, at 2:27:00.

¹⁴⁴ Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Deposition of Max Miller, at 81-83, 129-30 (Jan. 20, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000038857/pdf/GPO-J6-TRANSCRIPT-CTRL0000038857.pdf>; *see also* Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Katrina Pierson (Mar. 25, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000060756/pdf/GPO-J6-TRANSCRIPT-CTRL0000060756.pdf>.

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

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

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

172. Around 10:57 AM, the organizers of the demonstration played a two-minute pro-Trump video.¹⁴⁵ The video reflected flashing images of Joseph Biden and Nancy Pelosi while Trump voiced over, “For too long, a small group in our nation’s capital has reaped the rewards of government, while the people have borne the cost.” The video emphasized that the government had been compromised by sinister powers.

173. Around 11:39 AM, Trump left the White House by motorcade and drove to the Ellipse.¹⁴⁶

174. At the Ellipse, an estimated 25,000 people refused to walk through the magnetometers at the entrance.¹⁴⁷

175. White House Deputy Chief of Staff Tony Ornato informed Trump that these people were unwilling to pass through the monitors because they had weapons that they did not want confiscated by the Secret Service.¹⁴⁸

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

177. Trump ordered his team to remove the magnetometers.

¹⁴⁵ Ryan Goodman, Trump Film Ellipse Jan. 6, 2021, VIMEO (Feb. 3, 2021), <https://vimeo.com/508134765>.

¹⁴⁶ Alemany, *supra* note 15.

¹⁴⁷ See January 6th Report, *supra* note 8, at 585 (Ex. H).

¹⁴⁸ *Id.*

178. He shouted at his advance team words to the effect of, “I don’t [fucking] care that they have weapons. They’re not here to hurt *me*. Take the [fucking] mags away. Let my people in. They can march to the Capitol from here. Take the [fucking] mags away.”¹⁴⁹

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

D. Insurrectionists Prepared for Battle at the Capitol.

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

181. Around 11:30 AM, a large group of Proud Boys arrived at the Capitol, moving in loosely organized columns of five across. The crowd made way for them.¹⁵⁰

182. At the same time, Washington, D.C. police had to leave Capitol grounds to respond to reports of violence throughout the city, including a man with a rifle, and a vehicle loaded with weaponry.¹⁵¹ For example:

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

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

¹⁴⁹ *Id.*

¹⁵⁰ Alemany, *supra* note 15.

¹⁵¹ *Id.*

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

184. Around 11:57 AM, Trump began his speech at the Ellipse.¹⁵²

185. For the first 15 minutes of his speech, he falsely repeated that he had been defrauded of the presidency, which he had won “by a landslide,” and that “we will never give up, we will never concede. It doesn’t happen. You don’t concede when there’s theft involved.”¹⁵³

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

187. As his speech continued, the mob became audibly and increasingly angry at Pence and Congress. During Trump’s speech, demonstrators shouted “Storm the Capitol!”, “Invade the Capitol Building!”, “Fight like Hell!”, “Fight for Trump!” and “Take the Capital Right Now!”.¹⁵⁴

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

¹⁵² *Id.*

¹⁵³ See *Rally on Electoral College Vote Certification*, *supra* note 13; *Donald Trump Speech*, *supra* note 13; Naylor, *supra* note 13.

¹⁵⁴ Dylan Stableford, *New video shows Trump rally crowd cheering call to ‘storm the Capitol’*, YAHOO NEWS (Jan. 25, 2021), https://news.yahoo.com/trump-jan-6-rally-crowd-storm-the-capitol-video-184828622.html?fr=sycsrp_catchall; *Thompson v. Trump*, 590 F. Supp. 3d 46, 100 (D.D.C. 2022).

189. Immediately after this remark, approximately 10,000-15,000 demonstrators began the roughly 30-minute march to the Capitol just as Trump had directed, where they joined a crowd of 300 members of the violent extremist group, the Proud Boys.¹⁵⁵

190. Nearly halfway through the speech, Trump again called on Pence to reject the certification, stating: “I hope you’re [Mike Pence] going to stand up for the good of our Constitution and for the good of our country. And if you’re not, I’m going to be very disappointed in you. I will tell you right now. I’m not hearing good stories.”

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

- a. “And then we’re stuck with a president who lost the election by a lot, and we have to live with that for four more years. We’re just not going to let that happen.”
- b. “We want to go back and we want to get this right because we’re going to have somebody in there that should not be in there and our country will be destroyed and we’re not going to stand for that.”
- c. “And we’re going to have to fight much harder.”
- d. “And you know what? If they do the wrong thing, we should never, ever forget that they did. Never forget. We should never ever forget.”
- e. “You will have an illegitimate president. That’s what you’ll have. And we can’t let that happen.”
- f. “And we fight. We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore.”

¹⁵⁵ Mendoza & Linderman, *supra* note 17.

- g. “When you catch somebody in a fraud, you’re allowed to go by very different rules.”

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

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

- a. “So we’re going to, we’re going to walk down Pennsylvania Avenue. . . And we’re going to the Capitol, and we’re going to try and give.”
- b. “But we’re going to try and give our Republicans, the weak ones because the strong ones don’t need any of our help. We’re going to try and give them the kind of pride and boldness that they need to take back our country. So let’s walk down Pennsylvania Avenue.”

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

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

195. On January 6, at approximately 1:17 PM, Trump was seated within his motorcade and asked to be transported to the Capitol.¹⁵⁶

196. When it was clear that Trump could not be taken to the Capitol for security reasons, Trump became irate with those who prevented him from going to the Capitol.¹⁵⁷

¹⁵⁶ See January 6th Report, *supra* note 8, at 587 (Ex. H); NBC News, *supra* note 72 (Trump stating, “I wanted to go down peacefully and patriotically to the Capitol.”).

¹⁵⁷ See January 6th Report, *supra* note 8, at 587-91 (Ex. H).

197. On the drive to the White House, Trump attempted to seize control of the steering wheel of the presidential limousine in hopes of driving to the Capitol.¹⁵⁸

198. Around approximately 1:19 PM, Trump arrived at the White House and sat in the private dining room to watch the news coverage unfold.¹⁵⁹

199. At around 1:25 PM, the Secret Service communicated internally that “[THE PRESIDENT] IS PLANNING ON HOLDING AT THE WHITE HOUSE FOR THE NEXT APPROXIMATE [sic] TWO HOURS, THEN MOVING TO THE CAPITOL.”¹⁶⁰

200. Around 1:55 PM, the motorcade finally disbanded on orders from the Secret Service that Trump’s plan to go to the Capitol had been nixed.¹⁶¹

G. Pro-Trump Insurrectionists Violently Attacked the Capitol.

201. Before Trump ended his speech at the Ellipse, attackers had already begun swarming the Capitol building.¹⁶²

202. The attackers, following directions from Trump and his allies, shared the common purpose of preventing Congress from certifying the electoral vote.¹⁶³ Many of them also expressed a desire to assassinate Vice President Pence, the Speaker of the House, and other Members of Congress.

¹⁵⁸ Sixth Jan. 6 Hearing Transcript, *supra* note 138, at 16.

¹⁵⁹ Alemany, *supra* note 15.

¹⁶⁰ See January 6th Report, *supra* note 8, at 592 (Ex. H).

¹⁶¹ *Id.*

¹⁶² See Day 1 Transcript, *supra* note 15, at 142:9-143:2, 144:11-23, 146:16-147:24 (Ex. I) (Swalwell Testimony); see also Day 1 Transcript, *supra* note 15, at 197:8-13; 199:8-200:8 (Ex. I) (Pigeon Testimony); Day 4 Transcript, *supra* note 15, at 192:10-195:24 (Ex. L) (Buck Testimony).

¹⁶³ See *Rally on Electoral College Vote Certification*, *supra* note 13; *Donald Trump Speech*, *supra* note 13; Naylor, *supra* note 13.

203. By 12:53 PM, attackers had breached the outer security perimeter that the Capitol Police (USCP) had established around the Capitol. Many were armed with weapons, pepper spray, and tasers. Some wore full body armor; others carried homemade shields. Many used flagpoles, signposts, or other weapons to attack police officers defending the Capitol.¹⁶⁴ Some moved through the crowd and entered the Capitol in a “stacked” formation, a single file configuration often used by special forces or infantry units during urban combat or close-quarters operations.

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

205. Around 12:55 PM, Capitol Police called on all available units to the Capitol to assist with the breach. Attackers clashed violently with police officers on the scene.¹⁶⁵

206. Around 1:03 PM, Capitol Police found an unoccupied vehicle containing weapons, ammunition, and components to make Molotov cocktails.¹⁶⁶

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

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

¹⁶⁴ Alemany, *supra* note 15; *see also* Day 1 Transcript, *supra* note 15, at 74:4–10; 75:15–76:4, 105:25–106:24 (Ex. I) (Hodges Test); *id.* at 201:22–202:5, 220:23–221:2, 224:25–225:2 (Ex. I) (Pigeon Test).

¹⁶⁵ Alemany, *supra* note 15.

¹⁶⁶ *Id.*

209. Around 1:50 PM, the on-site D.C. Metropolitan Police Department incident commander officially declared a riot at the Capitol.¹⁶⁷

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

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

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

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

214. Many attackers demanded the arrest or murder of various other elected officials who refused to participate in their attempted coup.¹⁶⁸

- a. Some chanted “hang Mike Pence” and threatened to kill Speaker Pelosi.¹⁶⁹
- b. Some taunted a Black police officer with racial slurs for pointing out that overturning the election would deprive him of his vote.¹⁷⁰
- c. Confederate flags and symbols of white supremacist movements were widespread.¹⁷¹

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

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ H.R. REP. NO. 117-2, *supra* note 15, at 20-21.

¹⁷⁰ Alemany, *supra* note 15.

¹⁷¹ *Id.*; *See Rules & Admin. Review, supra* note 15, at 28 (Ex. F).

- a. One police officer was crushed against a door, screaming in agony as the crowd chanted “Heave, ho!”¹⁷²
- b. An attacker ripped off the officer’s gas mask, beat his head against the door, took his baton, and hit his head with it.¹⁷³
- c. Another officer was pulled into a crowd, beaten and repeatedly tased by attackers.¹⁷⁴

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

H. The Fall of the United States Capitol.

217. Around 2:13 PM, Vice President Pence was removed from the Capitol by Secret Service, along with his family, for their physical safety.

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

219. Senate staffers took the electoral college certificates with them when they were evacuated, ensuring they did not fall into the hands of the attackers.¹⁷⁵

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

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

¹⁷² Smith & Caldwell, *supra* note 15.

¹⁷³ Hymes & McDonald, *supra* note 15.

¹⁷⁴ Michael Kaplan & Cassidy McDonald, *At least 17 police officers remain out of work with injuries from the Capitol attack*, CBS NEWS (June 4, 2021), <https://cbsn.ws/3eyXZr8>.

¹⁷⁵ Lisa Mascaro, et al., *Pro-Trump mob storms US Capitol in bid to overturn election*, ASSOCIATED PRESS (Jan. 5, 2021), <https://apnews.com/article/congress-confirm-joe-biden-78104aea082995bbd7412a6e6cd13818>.

222. Thus, by approximately 2:29 PM, the attack stopped the legal process for counting and certifying electoral votes.¹⁷⁶

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

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

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

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

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

228. This was the first time in the nation's history that forces opposed to the continued functioning of the United States government were able to seize any government structures or institutions in the nation's Capitol and stop the functioning of the government. Even at the height of the Civil War, the Confederate Army never succeeded in taking control of the U.S. Capitol or any other portion of Washington, D.C., nor in preventing Congress from meeting to exercise its constitutional obligations.

¹⁷⁶ Alemany, *supra* note 15; *see also* Day 1 Transcript, *supra* note 15, at 141:3-143:2 (Ex. I) (Swalwell Testimony).

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

229. Early during the attack, by approximately 1:21 PM, Trump was informed by staffers in the White House that television broadcasts of his speech had been cut to instead show the violence at the Capitol.¹⁷⁷

230. After this, Trump immediately began watching the Capitol attack unfold on live news in the private dining room of the White House.¹⁷⁸

231. Shortly after, White House Acting Director of Communications Ben Williamson sent a text to Chief of Staff Mark Meadows recommending that Trump tweet about respecting Capitol Police.¹⁷⁹

232. At 2:24 PM, at the height of violence, Trump made his first public statement during the attack. Against the advisors' recommendation above, rather than make any effort to quell the riotous mob, he fanned the flames by tweeting: "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!"¹⁸⁰

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

¹⁷⁷ See January 6th Report, *supra* note 8, at 592 (Ex. H).

¹⁷⁸ *Id.* at 593.

¹⁷⁹ *Id.* at 595.

¹⁸⁰ 2:24 PM-2:24 PM, *supra* note 19; see also Trump Tweet Compilation, *supra* note 5, at 9 (Group Ex. E) (Jan. 6, 2021 at 2:24 PM ET); January 6th Report, *supra* note 8, at 429 (Ex. H).

234. Trump’s 2:24 PM tweet “immediately precipitated further violence at the Capitol.” Immediately after it, “the crowds both inside and outside of the Capitol building violently surged forward.”¹⁸¹

235. Thirty seconds after the tweet, attackers who were already inside the Capitol opened the East Rotunda door. And thirty seconds after that, attackers breached the crypt one floor below Vice President Pence.¹⁸²

236. At 2:25 PM, the Secret Service determined it needed to evacuate the Vice President to a more secure location. At one point during this process, attackers were within forty feet of him.¹⁸³

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

238. Meadows responded, “You heard him, Pat He thinks Mike deserves it. He doesn’t think they’re doing anything wrong.”¹⁸⁴

239. Around 2:26 PM, Trump made a call to Republican leaders trapped within the Capitol. He did not ask about their safety or the escalating situation but instead asked whether any objections had been cast against the electoral count.¹⁸⁵

¹⁸¹ See January 6th Report, *supra* note 8, at 86 (Ex. H); Day 1 Transcript, *supra* note 15, at 103:14-104:18 (Ex. I) (Hodges Testimony).

¹⁸² See January 6th Report, *supra* note 8, at 465 (Ex. H).

¹⁸³ *Id.* at 466.

¹⁸⁴ *Id.* at 596.

¹⁸⁵ *Id.* at 597-98.

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

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

242. Instead, Trump responded with words to the effect of, “Well, Kevin, I guess they’re just more upset about the election theft than you are.”¹⁸⁶

243. Within ten minutes after Trump’s tweet, thousands of attackers “overran the line on the west side of the Capitol that was being held by the Metropolitan Police Force’s Civil Disturbance Unit, the first time in history of the DC Metro Police that such a security line had ever been broken.”¹⁸⁷

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

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

245. At 2:38 PM, Trump tweeted: “Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!”¹⁸⁸

¹⁸⁶ *Id.* at 598.

¹⁸⁷ *Id.* at 86.

¹⁸⁸ See Trump Tweet Compilation, *supra* note 5, at 9 (Group Ex. E) (Jan 6, 2021 at 2:38 PM ET), <https://twitter.com/realDonaldTrump/status/1346904110969315332?lang=en>.

246. Many attackers saw this tweet but understood it *not* to be an instruction to withdraw from the Capitol.¹⁸⁹

247. The attack raged on.

248. Around 3:05 PM, Trump was informed that a Capitol Police officer fatally shot one Ashli Babbitt. Babbitt had been attempting to forcibly enter the Speaker’s Lobby adjacent to the House chamber.¹⁹⁰

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

250. Although the force and ferocity of the assault overwhelmed the U.S. Capitol Police, Trump did not himself order any additional federal military or law enforcement personnel to help retake the Capitol.¹⁹¹

251. After 3:00 PM, the Department of Homeland Security, the Bureau of Alcohol, Tobacco, Firearms, and Explosives and FBI agents, and police from Virginia and Maryland, joined Capitol Police to help regain control of the Capitol.¹⁹²

252. Shortly after 4:00 PM, President-elect Biden addressed the nation and said, “I call on President Trump to go on national television now, to fulfill his oath and defend the Constitution and demand an end to this siege. . . . It’s not protest—it’s insurrection.”¹⁹³

¹⁸⁹ See, e.g., Day 2 Transcript, *supra* note 8, at 102:7-21 (Ex. J) (Simi Testimony).

¹⁹⁰ See January 6th Report, *supra* note 8, at 91 (Ex. H); Alemany, *supra* note 15.

¹⁹¹ See January 6th Report, *supra* note 8, at 6-7, 595 (Ex. H); see Trump Daily Diary, *supra* note 20 (Ex. G); READ: Transcript of CNN’s town hall with former President Donald Trump, *supra* note 20.

¹⁹² Alemany, *supra* note 15.

¹⁹³ Biden condemns chaos at the Capitol: ‘It’s not protest, it’s insurrection’, NBC NEWS (Jan. 6, 2021), <https://www.nbcnews.com/video/biden-condemns-chaos-at-the-capitol-as-insurrection-98957381507>.

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

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

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

256. Erich Herschmann offered a correction to the video and suggested that Trump make a more direct statement that attackers leave the Capitol.¹⁹⁴

257. Trump refused.¹⁹⁵

258. Immediately after Trump uploaded the video to Twitter, the attackers began to disperse from the Capitol and cease the attack.¹⁹⁶

259. Attackers were streaming the video. One attacker, Jacob Chansley, announced into a bullhorn, “I’m here delivering the president’s message: Donald Trump has asked everybody to

¹⁹⁴ Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Nicholas Luna, at 181-82 (Mar. 21, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000060749/pdf/GPO-J6-TRANSCRIPT-CTRL0000060749.pdf> [hereinafter Luna Dep. Transcript]; *see also* Day 2 Transcript, *supra* note 8, at 121:19-24, 122:9-23, 220:21-221:4 (Ex. J) (Simi Testimony).

¹⁹⁵ Anumita Kaur, *Trump didn’t stick to script asking supporters to leave Capitol, Jan. 6 panel says*, L.A. TIMES (July 21, 2022), <https://www.latimes.com/politics/story/2022-07-21/jan-6-hearing-trump-rose-garden-video>; Luna Dep. Transcript, *supra* note 194, at 181-82.

¹⁹⁶ January 6th Comm., *07/21/22 Select Committee Hearing*, at 1:58:30, YOUTUBE (July 21, 2022), <https://www.youtube.com/watch?v=pbRVqWbHGuo>. (testimony of Stephen Ayres) (“[A]s soon as that come [*sic*] out, everybody started talking about it and that’s—it seemed like it started to disperse.”).

go home.” Other attackers acknowledged, “That’s our order” or “He says go home. He says go home.”¹⁹⁷

260. Group leaders from the Proud Boys and members of the Oath Keepers texted about the message. An Oath Keeper texted other members of the group saying, “Gentleman [sic], Our Commander-in-Chief has just ordered us to go home.”¹⁹⁸

261. Around 5:20 PM, the D.C. National Guard began arriving.¹⁹⁹

262. This was not because Trump ordered the National Guard to the scene; he never did. Rather, Vice President Pence—who was not actually in the chain of command—ordered the National Guard to assist the beleaguered police and rescue those trapped at the Capitol.²⁰⁰

263. By 6:00 PM, the attackers had been removed from the Capitol, though some committed sporadic acts of violence through the night.²⁰¹

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

265. Vice President Pence was not able to reconvene Congress until 8:06 PM, nearly six hours after the process had been obstructed.²⁰²

266. Around 9:00 PM, Trump’s counsel John Eastman again argued to Pence’s counsel

¹⁹⁷ *Id.* at 1:58:42.

¹⁹⁸ See January 6th Report, *supra* note 8, at 579 (Ex. H).

¹⁹⁹ See Rules & Admin. Review, *supra* note 15, at 26 (Ex. F).

²⁰⁰ See January 6th Report, *supra* note 8, at 578, 724 (Ex. H).

²⁰¹ Alemany, *supra* note 15.

²⁰² *Id.*

via email that Pence should refuse to certify Biden's victory by not counting certain states.²⁰³

267. Pence's counsel ignored it.²⁰⁴

268. Congress was required under the Electoral Count Act to debate the objections filed by Senators and Members of Congress to electoral results from Arizona and Pennsylvania. Despite six Senators and 121 Representatives voting to reject Arizona's electoral results,²⁰⁵ and seven Senators and 138 Representatives voting to reject Pennsylvania's results,²⁰⁶ Biden's victory was ultimately certified at 3:24 AM, January 7, 2021.²⁰⁷

269. In total, five people died,²⁰⁸ and over 150 police officers suffered injuries, including broken bones, lacerations, and chemical burns.²⁰⁹ Four Capitol Police officers on-duty during January 6 have since died by suicide.²¹⁰

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

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

²⁰³ *Id.*

²⁰⁴ *Id.*

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

²⁰⁶ *Id.* at H98.

²⁰⁷ Alemany, *supra* note 15; 167 Cong. Rec. H114–15.

²⁰⁸ Jack Healy, *These Are the 5 People Who Died in the Capitol Riot*, N.Y. TIMES (Jan. 11, 2021), <https://nyti.ms/3pTyN5q>.

²⁰⁹ Kaplan & McDonald, *supra* note 174; Michael S. Schmidt & Luke Broadwater, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. TIMES (Feb. 11, 2021), <https://nyti.ms/3eN31k2>.

²¹⁰ Luke Broadwater & Shaila Dewan, *Congress Honors Officers Who Responded to Jan. 6 Riot*, N.Y. TIMES (Aug. 3, 2021), <https://nyti.ms/3EURwlp>.

insurrection, including in evaluations of electoral challenges pursuant to Section 3 of the Fourteenth Amendment such as this one.

271. On December 19, 2023, the Colorado Supreme Court concluded that Donald Trump is disqualified from holding office under Section 3 of the Fourteenth Amendment. As part of its analysis, the court held that the January 6 attack constituted an “insurrection” under section 3 of the Fourteenth Amendment.²¹¹

272. Prior to that decision, scores of others also recognized the events of January 6, 2021 constituted an insurrection. For example, just days after the attack, the U.S. Department of Justice characterized the events of January 6 as “a violent insurrection that attempted to overthrow the United States Government” in *United States v. Chansley*.²¹²

273. A federal magistrate judge in Phoenix, Arizona agreed and ordered Chansley (also known as “QAnon Shaman”) to be detained pending trial for being “an active participant in a violent insurrection that attempted to overthrow the United States government,” and who thus posed a danger to the community and flight risk.²¹³

274. On January 13, 2021, bipartisan majorities of the House and Senate voted for articles of impeachment against Trump describing the attack as an “insurrection.”²¹⁴

275. On February 13, 2021, during Trump’s impeachment trial, Senate Majority Leader Mitch McConnell stated on the floor of the Senate that the people who entered the Capitol on

²¹¹ *Griswold*, 2023 WL 8770111, at *37-39 (Ex. A).

²¹² Government’s Br. in Supp. of Detention, *supra* note 3.

²¹³ Brad Health et al., *Judge Calls Capitol Siege ‘Violent Insurrection,’ orders man who wore horns held*, REUTERS (Jan. 15, 2021), <https://www.reuters.com/article/us-usa-trump-capitol-arrests/judge-calls-capitol-siege-violent-insurrection-orders-man-who-wore-horns-held-idUSKBN29K0K7>.

²¹⁴ 167 Cong. Rec. H191 (daily ed. Jan. 13, 2021), <https://www.congress.gov/117/crec/2021/01/13/167/8/CREC-2021-01-13-pt1-PgH165.pdf>; 167 Cong. Rec. S733.

January 6 had “attacked their own government.” He further stated that the attackers “used terrorism to try to stop a specific piece of domestic business they did not like. . . fellow Americans beat and bloodied our own police. They stormed the Senate floor. They tried to hunt down the Speaker of the House. They built gallows and chanted about murdering the Vice President.”

276. During the trial, Trump, through his defense lawyer, stated that “the question before us is not whether there was a violent insurrection of [*sic*] the Capitol. *On that point, everyone agrees.*”²¹⁵

277. On August 5, 2021, Congress passed Public Law 117-32, which granted four congressional gold medals to Capitol Police officers who defended the Capitol on that day. The law declared that “a mob of insurrectionists forced its way into the U.S. Capitol building and congressional office buildings and engaged in acts of vandalism, looting, and violently attacked Capitol Police officers.”²¹⁶

278. On September 6, 2022, Judge Francis J. Matthew of New Mexico’s First District permanently enjoined Otero County Commissioner and “Cowboys for Trump” founder Couy Griffin from holding office under Section 3 of the Fourteenth Amendment.²¹⁷ The court held that the January 6 attack constituted an “insurrection” under section 3 of the Fourteenth Amendment.²¹⁸

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

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

²¹⁵ 167 Cong. Rec. S729 (emphasis added).

²¹⁶ Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322.

²¹⁷ *State ex rel. White v. Griffin*, 2022 WL 4295619, at *25.

²¹⁸ *Id.* at *17-19.

FBI, the riot was not ‘patriotic’ or a legitimate ‘protest,’ . . . it was an insurrection aimed at halting the functioning of our government.”²¹⁹

- b. In *United States v. Munchel*, the judge granted an application for access to exhibits and wrote, “defendants face criminal charges for participating in the unsuccessful insurrection at the Capitol on January 6, 2021.”²²⁰
- c. In *United States v. Bingert*, the judge denied a motion to dismiss indictment and again called it an “unsuccessful insurrection.”²²¹
- d. In *United States v. Brockhoff*, the judge issued an order denying a motion for pretrial release, stating that “[t]his criminal case is one of several hundred arising from the insurrection at the United States Capitol on January 6, 2021.”²²²
- e. In *United States v. Grider*, the judge denied a motion to dismiss indictment, stating that “[t]his criminal case is one of several hundred arising from the insurrection at the United States Capitol on January 6, 2021.”²²³
- f. In *United States v. Puma*, the judge characterized the January 6, 2021 attack as an “insurrection” repeatedly in an order denying a motion to dismiss the indictment.²²⁴

²¹⁹ 590 F. Supp. 3d 340, 344 (D.D.C. 2022).

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

²²¹ 605 F. Supp. 3d 111, 115-16 (D.D.C. 2022).

²²² 590 F. Supp. 3d 295, 298-99 (D.D.C. 2022).

²²³ 585 F. Supp. 3d 21, 24 (D.D.C. 2022).

²²⁴ 596 F. Supp. 3d 90 (D.D.C. 2022).

- g. In *United States v. Rivera*, the judge characterized the January 6, 2021 attack as an “insurrection” repeatedly in an opinion after bench trial.²²⁵
- h. In *United States v. DeGrave*, the judge characterized the January 6, 2021 attack as an “insurrection” repeatedly in an order on pretrial detention.²²⁶
- i. In *United States v. Randolph*, the judge characterized the January 6, 2021 attack as an “insurrection” repeatedly in an order on pretrial detention.²²⁷
- j. In the *Matter of Giuliani*, a state appellate court referred to “violence, insurrection and death on January 6, 2021, at the U.S. Capitol” in an order suspending Trump’s lawyer from the practice of law.²²⁸

280. Multiple leaders and members of the extremist groups that played key roles in the insurrection have also been convicted of seditious conspiracy under 18 U.S.C. § 2384, which requires the government to prove that two or more persons “conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof.”

²²⁵ 607 F. Supp. 3d 1 (D.D.C. 2022).

²²⁶ 539 F. Supp. 3d 184 (D.D.C. 2021).

²²⁷ 536 F. Supp. 3d 128 (E.D. Ky. 2021).

²²⁸ 197 A.D.3d 1, 25 (2021); *see also O'Rourke v. Dominion Voting Sys. Inc.*, 571 F. Supp. 3d 1190, 1202 (D. Colo. 2021); *United States v. Hunt*, 573 F. Supp. 3d 779, 807 (E.D.N.Y. 2021); *Rutenburg v. Twitter, Inc.*, No. 4:21-CV-00548-YGR, 2021 WL 1338958, at *1 (N.D. Cal. Apr. 9, 2021); *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1172, 1175-76 (N.D. Cal. 2022); *United States v. Munchel*, 991 F.3d 1273, 1275-79 (D.C. Cir. 2021).

281. The Department of Justice maintains a growing list of defendants charged in federal court in Washington, D.C. who took direction from Trump on January 6, 2021 and breached the U.S. Capitol.²²⁹

282. For example:

- a. In April 2022, an Oath Keepers member named Brian Ulrich pleaded guilty to seditious conspiracy.²³⁰
- b. In May of 2022, Oath Keepers member William Todd Wilson pleaded guilty to seditious conspiracy.²³¹
- c. In October 2022, former leader of the Proud Boys Jeremy Bertino pleaded guilty to seditious conspiracy.²³²
- d. On January 23, 2023, four Oath Keepers were found guilty of seditious conspiracy.²³³
- e. Around May 4, 2023, four members of the Proud Boys, including their former leader Enrique Tarrío, were convicted of seditious conspiracy.²³⁴

²²⁹ *Capitol Breach Cases*, DEP'T OF JUSTICE, <https://www.justice.gov/usao-dc/capitol-breach-cases>.

²³⁰ Ryan Lucas, *A second Oath Keeper pleaded guilty to seditious conspiracy in the Jan. 6 riot*, NPR (Apr. 29, 2022), <https://www.npr.org/2022/04/29/1095538077/a-second-oath-keeper-pleaded-guilty-to-seditious-conspiracy-in-the-jan-6-riot>.

²³¹ Michael Kunzelman, *Oath Keeper from North Carolina pleads guilty to seditious conspiracy during Jan. 6 insurrection*, PBS (May 4, 2022), <https://www.pbs.org/newshour/politics/oath-keeper-from-north-carolina-pleads-guilty-to-seditious-conspiracy-during-jan-6-insurrection>.

²³² *Former Leader of the Proud Boys Pleads Guilty to Seditious Conspiracy for Efforts to Stop Transfer of Power Following 2020 Presidential Election*, DEP'T. OF JUSTICE (Oct. 6, 2022), <https://www.justice.gov/opa/pr/former-leader-proud-boys-pleads-guilty-seditious-conspiracy-efforts-stop-transfer-power>.

²³³ Kyle Cheney, *4 more Oath Keepers found guilty of seditious conspiracy tied to Jan. 6 attack*, POLITICO (Jan. 23, 2023), <https://www.politico.com/news/2023/01/23/oath-keepers-guilty-seditious-conspiracy-jan-6-00079083>.

²³⁴ Alan Feuer, Zach Montague, *Four Proud Boys Convicted of Sedition in Key Jan 6. Case*, N.Y. TIMES (May 4, 2023), <https://www.nytimes.com/2023/05/04/us/politics/jan-6-proud-boys-sedition.html>.

- f. Both the Oath Keepers and the Proud Boys were instrumental in mobilizing in response to Trump’s December 19 “will be wild!” tweet. Both acted as vanguards in the attack. And both withdrew after Trump belatedly ordered them to do so.

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

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

...

President Trump’s January 6 Rally Speech was akin to telling an excited mob that corn-dealers starve the poor in front of the corn-dealer’s home. He invited his supporters to Washington, D.C., after telling them for months that corrupt and spineless politicians were to blame for stealing an election *from them*; retold that narrative when thousands of them assembled on the Ellipse; and directed them to march on the Capitol building—the metaphorical corn-dealer’s house—where those very politicians were at work to certify an election that he had lost. The Speech plausibly was, as [John Stuart] Mill put it, a “positive instigation of a mischievous act.”²³⁵

284. On December 19, 2023, the Colorado Supreme Court held that Trump “engaged” in insurrection under Section 3 of the Fourteenth Amendment. *Griswold*, 2023 WL 8770111, at *37-44 (Ex. A).

²³⁵ *Thompson*, 590 F. Supp. 3d at 104, 118.

285. On December 28, 2023, the Maine Secretary of State, evaluating election challenges following an evidentiary hearing, determined that Trump “engaged in insurrection,” under Section 3 of the Fourteenth Amendment. Maine Sec. of State Ruling, Ex. C.

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

287. For example:

- a. “Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021.”²³⁶
- b. “The fact remains that [the defendant] and others were called to Washington, D.C. by an elected official; he was prompted to walk to the Capitol by an elected official. . . [the defendant was] told lies, fed falsehoods, and told that our election was stolen when it clearly was not.”²³⁷
- c. “The steady drumbeat that inspired defendant to take up arms has not faded away . . . not to mention, the near-daily fulminations of the former President.”²³⁸
- d. “Defendant’s promise to take action in the future cannot be dismissed as an unlikely occurrence given that his singular source of information, . . . (‘Trump’s the only big shot I trust right now’), continues to propagate the lie that inspired the attack on a near daily basis.”²³⁹

²³⁶ *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1193 (C.D. Cal. 2022).

²³⁷ Tr. of Sentencing at 55, *United States v. Lolos*, No. 1:21-cr-00243 (D.D.C. Nov. 19, 2021).

²³⁸ Mem. Op. at 24, *United States v. Meredith, Jr.*, No. 1:21-cr-00159, ECF No. 41 (D.D.C. May 26, 2021).

²³⁹ *United States v. Dresch*, No. 1:21-cr-00071, 2021 WL 2453166, *8 (D.D.C. May 27, 2021).

- e. “At the end of the day the fact is that the defendant came to the Capitol because he placed his trust in someone [Donald Trump] who repaid that trust by lying to him.”²⁴⁰
- f. “And as for the incendiary statements at the rally detailed in the sentencing memo, which absolutely, quite clearly and deliberately, stoked the flames of fear and discontent and explicitly encouraged those at the rally to go to the Capitol and fight for one reason and one reason only, to make sure the certification did not happen, those may be a reason for what happened, they may have inspired what happened, but they are not an excuse or justification.”²⁴¹
- g. “[B]ut we know, looking at it now, that they were supporting the president who would not accept that he was defeated in an election.”²⁴²
- h. “And you say that you headed to the Capitol Building not with any intent to obstruct and impede congressional proceedings; but because the then-President, Trump, told protesters at the “stop the steal” rally -- and I quote: After this, we’re going to walk down; and I will be there with you. We’re going to walk down. We’re going to walk down. I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard. And you say that you wanted to show

²⁴⁰ Tr. of Plea and Sentence at 31, *United States v. Dresch*, No. 1:21-cr-00071 (D.D.C. Aug. 4, 2021).

²⁴¹ Tr. of Sentencing at 22, *United States v. Peterson*, No. 1:21-cr-00309, ECF No. 32 (D.D.C. Dec. 1, 2021).

²⁴² *United States v. Tanios*, No. 1:21-mj-00027, ECF No. 30 at 107 (N.D.W. Va. Mar. 22, 2021).

your support for and join then-President Trump as he said he would be marching to the Capitol; but, of course, didn't.”²⁴³

i. “[A]t the ‘Stop the Steal’ rally, then-President Trump eponymously exhorted his supporters to, in fact, stop the steal by marching to the Capitol. . . [h]aving followed then-President Trump’s instructions, which were in line with [the defendant’s] stated desires, the Court therefore finds that Defendant intended her presence to be disruptive to Congressional business.”²⁴⁴

j. Moreover, four sentencing cases of January 6 defendants included statements by a judge that, “The events of January 6th involved the rather unprecedented confluence of events spurred by then President Trump. . .”²⁴⁵

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

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

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

²⁴³ Tr. of Sentencing at 36, *United States v. Gruppo*, No. 1:21-cr-00391 (D.D.C. Oct. 29, 2021).

²⁴⁴ Findings of Fact and Conclusions of Law at 15, *United States v. MacAndrew*, No. 1:21-cr-00730, ECF No. 59 (D.D.C. Jan. 17, 2023). https://storage.courtlistener.com/recap/gov.uscourts.dcd.238421/gov.uscourts.dcd.238421.59.0_2.pdf.

²⁴⁵ Tr. of Sentencing at 38, *United States v. Prado*, No. 1:21-cr-00403 (D.D.C. Feb. 7, 2022); Tr. of Sentencing at 28, *United States v. Barnard, et al.*, No. 1:21-cr-00235 (D.D.C. Feb 4, 2022); Tr. of Sentencing at 68, *United States v. Stepakoff*, No. 1:21-cr-00096 (D.D.C. Jan. 20, 2022); Tr. of Sentencing at 28, *United States v. Williams*, No. 1:21-cr-00388 (D.D.C. Feb. 7, 2022).

you have to do is take a look at government cameras. You will see them, people going to 28 different voting booths to vote, to put in seven ballots apiece.”²⁴⁶

290. Collins asked Trump “Will you pardon the January 6th rioters who were convicted of federal offenses?” Trump responded, “I am inclined to pardon many of them. I can’t say for every single one because a couple of them, probably, they got out of control.”²⁴⁷

291. Collins asked Trump, “When it was clear [attackers] weren’t being peaceful, why did you wait three hours to tell them to leave the Capitol? They listen to you like no one else.” Trump responded, “They do. I agree with that.”²⁴⁸

292. Trump then asserted he thought it was Nancy Pelosi’s and the mayor’s “job” to do so. He also stated that the video he posted 187 minutes after the initial break-in “was a beautiful video.”²⁴⁹

293. When Collins mentioned Ashli Babbitt, who was shot by police while attempting to break into the Capitol, Trump praised her and responded, “That thug [the police officer] that killed her, there was no reason to shoot her at blank range. . . . And she was a good person. She was a patriot.”²⁵⁰

294. When Collins told Trump that Mike Pence “says that you endangered his life on that day,” Trump responded, “I don’t think he was in any danger.”²⁵¹

²⁴⁶ *READ: Transcript of CNN’s town hall with former President Donald Trump, supra note 20.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

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

296. Collins then asked Trump if he feels that he owes Pence an apology. Trump replied, “No, because he did something wrong. He should have put the votes back to the state legislatures and I think we would have had a different outcome.”²⁵²

VI. TRUMP REMAINS UNREPENTANT AND WOULD DO IT AGAIN.

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

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

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

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

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

302. Around December 20, 2022, after the bi-partisan House committee voted to recommend that the Justice Department bring criminal charges against Trump, Trump posted on

²⁵² *Id.*

his website Truth Social: “these folks don’t get it that when they come after me, people who love freedom rally around me.”²⁵³

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

304. As recently as November 2023, Trump decried the prison sentences January 6 attackers received for their criminal activity, stating they were “hostages.” At a 2024 presidential campaign event he stated: “I call them the J6 hostages, not prisoners. I call them the hostages, what’s happened. And it’s a shame.”²⁵⁴

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

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

307. For example, on December 3, 2022, Trump called for “termination of all rules, regulations, and articles, even those found in the Constitution.”²⁵⁵

308. And on September 22, 2023, Trump invoked execution as punishment and stated that General Mark Milley, Chairman of the Joint Chiefs of Staff, by making phone calls, explicitly authorized by officials in the administration, to reassure China following January 6 about a

²⁵³ Steve Peoples, *Republicans’ usual embrace of Trump muted following criminal referral*, PBS (Dec. 20, 2022), <https://www.pbs.org/newshour/politics/republicans-usual-embrace-of-trump-muted-following-criminal-referral>.

²⁵⁴ *Former President Trump Campaigns in Houston*, at 5:05, C-SPAN (Nov. 2, 2023), <https://www.c-span.org/video/?531400-1/president-trump-campaigns-houston>.

²⁵⁵ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Dec. 3, 2022, 6:44 AM), <https://truthsocial.com/@realDonaldTrump/posts/109449803240069864>.

threatened attack, had committed “an act so egregious that, in times gone by, the punishment would have been DEATH!”²⁵⁶

VII. THE CONSTITUTION DISQUALIFIES INSURRECTIONISTS FROM OFFICE.

309. Section 3 of the Fourteenth Amendment to the U.S. Constitution provides: “No Person shall . . . hold any office, civil or military, under the United States . . . who, having previously taken an oath . . . as an officer of the United States . . . or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same.”

310. Persons who trigger this provision are disqualified from public office, just as those who fail to meet the age or citizenship requirements of Article I, section 2 of the Constitution are disqualified from the presidency. “*The oath to support the Constitution is the test.* The idea being that one who had taken an oath to support the Constitution and violated it, ought to be excluded from taking it again, until relieved by Congress.” *Worthy*, 63 N.C. at 204.

311. Under Section 3, to “engage” merely requires “a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from the insurrectionists’ perspective] termination”). *Powell*, 27 F. Cas. at 607; *Worthy*, 63 N.C. at 203 (in leading national precedent, defining “engage” under Section 3 to mean “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary”).

312. Planning or helping plan an insurrection or rebellion satisfies the definition of “engag[ing]” under Section 3 of the Fourteenth Amendment. So does planning a demonstration or march upon a government building that the planner knows is substantially likely to (and does)

²⁵⁶ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Sept. 22, 2023, 6:59 PM), <https://truthsocial.com/@realDonaldTrump/posts/11111513207332826>.

result in insurrection or rebellion, as it constitutes taking voluntary steps to contribute, “by personal service,” a “thing that was useful or necessary” to the insurrection or rebellion. And knowing that insurrection or rebellion was likely makes that aid voluntary.

VIII. TRUMP ENGAGED IN INSURRECTION OR REBELLION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

331. Trump summoned the attackers to Washington, D.C. to "be wild" on January 6; ensured that his armed and angry supporters were able to bring their weapons; incited them against Vice President Pence, Congress, the certification of electoral votes, and the peaceful transfer of power; instructed them to march on the Capitol for the purpose of preventing, obstructing, disrupting, or delaying the electoral vote count and peaceful transfer of power; encouraged them during their attack; used the attack as an opportunity to further pressure and intimidate the Vice President and Members of Congress; provided material support to the insurrection by refraining

from mobilizing federal law enforcement or National Guard assistance; and otherwise fomented, facilitated, encouraged, and aided the insurrection.

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

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

IX. TRUMP GAVE “AID OR COMFORT TO THE ENEMIES OF” THE U.S. CONSTITUTION.

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

335. In addition to disqualifying persons who violate their oath by engaging in insurrection or rebellion, Section 3 disqualifies persons who do so by giving “aid or comfort to enemies of” the Constitution. As used in Section 3, “enemies” applies to domestic, as well as foreign enemies of the Constitution. The concept of a “domestic” enemy became part of American constitutional thinking no later than 1862, when Congress enacted the Ironclad Oath to “support and defend the Constitution of the United States, against all *enemies, foreign and domestic.*” Act of July 2, 1862, Ch. 128, 12 Stat. 502 (emphases added).

336. Aid or comfort to enemies of the Constitution includes indirect assistance such as supporting, encouraging, counseling, or promoting the enemy, even where such conduct might fall short of “engaging” in insurrection. *See* Baude & Paulsen, *supra* ¶ 20, at 67-68.

337. By his conduct described herein, beginning before January 6, 2021, and continuing to the present time, Trump gave aid and comfort to enemies of the Constitution by, among other things: encouraging and counseling the insurrectionists; deliberately failing to exercise his authority and responsibility as President to quell the insurrection; praising the insurrectionists, including calling them “very special,” “good persons,” and “patriots”; and promising or suggesting that he would pardon many of the insurrectionists if reelected to the presidency.

X. TRUMP IS DISQUALIFIED FROM PUBLIC OFFICE.

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

339. Congress has not removed this disability from Trump.

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

341. Consequently, Donald J. Trump is disqualified from, and ineligible to hold, the office of President of the United States. Accordingly, his nomination papers are invalid under Illinois law because when Trump swore that he is “qualified” for the presidential office, as required by 10 ILCS 5/7-10, he did so falsely.

WHEREFORE, Objectors request the following: (a) a hearing on the objection set forth herein; (b) a determination that the Nomination Papers of Candidate are legally and factually insufficient; and (c) a decision that the name of Candidate “Donald J. Trump” shall not be printed on the official ballot as a candidate for the Republican Nomination for the Office of the President

of the United States for the March 19, 2024 General Primary Election or the November 5, 2024
General Election.

Submitted By:

Steven Daniel Anderson

[REDACTED]

Charles J. Holley

[REDACTED]

Jack L. Hickman

[REDACTED]

Ralph E. Cintron

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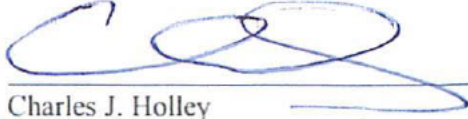
Submitted by:

Steven Anderson

Steven Daniel Anderson



Submitted by:

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Charles J. Holley



Submitted by:

A handwritten signature in black ink, appearing to read "J. L. Hickman", written over a horizontal line.

Jack L. Hickman



Submitted by:

R. E. Cintron

Ralph E. Cintron



Submitted by:

Darryl P. Baker

Darryl P. Baker

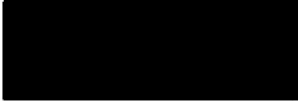


EXHIBIT 2

**BEFORE THE ILLINOIS STATE BOARD OF ELECTIONS
SITTING EX-OFFICIO AS THE STATE OFFICERS ELECTORAL BOARD**

STEVEN DANIEL ANDERSON, CHARLES J.)	
HOLLEY, JACK L. HICKMAN, RALPH E.)	
CINTRON, AND DARRYL P. BAKER,)	
)	
Petitioners-Objectors,)	No. 24 SOEB GP 517
v.)	
)	
DONALD J. TRUMP,)	
)	
Respondent-Candidate.)	

HEARING OFFICER REPORT AND RECOMMENDED DECISION

Background of the Case

This matter commenced with the Objector’s filing of a Petition to Remove the Candidate, Donald J. Trump from the ballot on January 4, 2024. In summary, the Objector’s Petition, and the corresponding voluminous exhibits in support thereof, seek a hearing and determination that Candidate Trump’s Nomination Papers are legally and factually insufficient based on Section 3 of the 14th Amendment and based on 10 ILCS 5/7-10 of the Illinois Election Code. The crux of these allegations center around the violent incidents of January 6, 2021 at the United States Capitol building in Washington D.C. and what Candidate Trump’s involvement and/or participation in those violent events was. The Petition alleges “Candidate's nomination papers are not valid because when he swore in his Statement of Candidacy that he is "qualified" for the office of the presidency as required by 10 ILCS 5/7-10, he did so falsely” based on his participation in the January 6, 2021, events. [See Page 2, Paragraph 8 of Objector’s Petition].

The Petition further asks this Board to determine that President Trump is disqualified under Article 3 of the Fourteenth Amendment which states in relevant part that “No person shall . . . hold any office, civil or military, under the United States, . . . who, having previously taken an oath, . . . as an officer of the United States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.”

The factual determination before the Board therefore is first, whether those January 6, 2021, events amount to an insurrection. Next, if those events do constitute an insurrection, the question that requires addressing is whether the Candidate’s actions leading up to, and on January 6, 2021, amounts to having “engaged” or “given aid” or “comfort” as delineated under Section 3 of the 14th Amendment. However, before the Hearing Officer addresses the factual

determination on the merits, the procedural issues, including the Motions that were filed, must be addressed.

Procedural History

Following the filing of the Petition on January 4, 2024, an Initial Case Management Conference was conducted on January 17, 2024. At the Initial Case Management Conference, the Parties were provided an Initial Case Management Order with corresponding deadlines for certain motions. As part of these proceedings, and in compliance with the Case Management Order, the Candidate filed a timely Motion to Dismiss on January 19, 2024. The Objectors also filed a timely Motion for Summary Judgment. Responses to those Motions were timely filed by the parties on January 23, 2024. Replies to the respective Motions were filed by the parties. Candidate sought a brief extension to file his Reply. The extension was unopposed by the Objectors. The extension was granted without objection and is considered timely. A link to the filings and exhibits is found here for the Board's convenience.

https://1drv.ms/f/s!AiUfM7KmKopbifBCDf_deqdCAMAgrg?e=xhUj5i

The Hearing Officer heard argument on the matter on January 26, 2024. Each party was provided with one hour for their argument. The Hearing Officer commends the attorneys for both Objectors and the Candidate for their cooperation and professionalism. Each of these motions, as well as the merits of the case are addressed in turn. For procedural reasons, we first begin with the Motion to Dismiss. The Hearing Officer further notes that the sufficiency, quality, quantify, and nature of the signatures on the Petition is not challenged and therefore the signatures are deemed sufficient.

Candidate's Motion to Dismiss

The Candidate's Motion to Dismiss states it raises five grounds, but in actuality the Hearing Officer, from the Brief, recognizes six separate arguments raised for dismissal. Those grounds argued by Candidate are as follows:

1. Illinois law does not authorize the SOEB to resolve complex factual issues of federal constitutional law like those presented by the Objectors, especially in light of the United States Supreme Court considering the same issues on an expedited basis.
2. Political questions are to be decided by Congress and the electoral process—not courts or administrative agencies.
3. Whether someone is disqualified under Section Three of the Fourteenth Amendment, is a question that can be addressed only in procedures prescribed by Congress, not by the SOEB.
4. Whether Section Three of the Fourteenth Amendment bars holding office, rather than running for office, and that states cannot constitutionally enlarge the disqualification from the “holding of office stage” to the earlier stage of “running for office.”

5. That “officer of the United States,” under Section 3 of the Fourteenth Amendment excludes the office of the President.
6. Lastly, even if Section Three of the Fourteenth Amendment applied here and the Board was empowered to apply it, Candidate argues that Objectors have not alleged facts sufficient to find that President Trump “engaged in insurrection.”

Candidate’s First Ground

Candidate first argues that “Illinois law does not authorize the [Illinois State Officer’s Electoral Board] SOEB to resolve complex factual issues of federal constitutional law like those presented by the Objections.” Candidate argues that “[10 ILCS 5] Section 10-10 [Of the Illinois Election Code] (and relevant caselaw) makes clear the SOEB’s role is to evaluate the form, timeliness and genuineness of the nominating papers and that the SOEB is not authorized to conduct a broad-ranging inquiry into a candidate’s qualifications under the U.S. Constitution.” [See Candidate’s Motion to Dismiss, Page 4].

Section 10 ILCS 5/10-10, in relevant part, states as follows:

“The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained.”

The Candidate argues that the SOEB does not have the authority to reach such complex issues of fact and law. Specifically, he argues that the questions of whether an insurrection happened, and constitutional application of Section 3 of the Fourteenth Amendment are beyond the purview of the power authorized to the SOEB in Section 10-10. Candidates’ argument is that this is a fact intensive issue, and without proper vehicles of discovery the procedures afforded by the SOEB “are wholly inadequate for the kind of full-scale trial litigation and complex evidentiary presentation.” [See Candidate’s Motion to Dismiss, Pages 5-6].

Objectors, in response to this contention, argue that “There is no authority for the unworkable proposition that the Electoral Board’s authority to hear objections depends on a subjective consideration of where the facts fall on a continuum from simple to complex.” [See Objector’s Response, Page 5]. Objectors also rely on Section 10-10 citing specifically to the language from the statute that the SOEB “shall decide whether or not the certificate of

nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained.” Objector further cites to *Goodman v. Ward*, 241 Ill. 2d 398 (2011) claiming that “the Illinois Supreme Court has clearly directed that determinations of the validity of a candidate’s nominating papers include whether the candidate has falsely sworn that they are qualified for the office specified, and candidate qualifications include constitutional qualifications.”

Candidate’s Second Ground

Candidate next argues that this matter is a political question, for which the Courts must decide. The Candidate contends that “the vast weight of authority has held that the Constitution commits to Congress and the electors the responsibility of determining matters of presidential candidates’ qualifications.”

The political question doctrine bars courts from adjudicating issues that are “entrusted to one of the political branches or involve no judicially enforceable rights.” *Vieth v. Jubelirer*, 541 U.S. 267, 277 (2004). In *Baker v. Carr*, 369 U.S. 186, 217 (1962) the Supreme Court described six circumstances that can give rise to a political question:

“[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.” *Id.*

The *Baker* Court held that, “[u]nless one of these formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence. *Castro v. New Hampshire Sec'y of State*, 2023 WL 7110390, at *7. The question therefore becomes, whether the issue before the SOEB, falls into one of these six categories. More recent United States Supreme Court precedent has seemingly narrowed this to two factors. See *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195, 132 S. Ct. 1421, 1427, 182 L. Ed. 2d 423 (2012) holding that “we have explained that a controversy “involves a political question ... where there is ‘a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.”

Candidate offers precedent that is directly on point. In particular, *Castro*, the United States District Court for the District of New Hampshire, presiding over a nomination issue involving the same candidate, and the same claim for insurrection, found that this is a nonjusticiable political question barring the Courts from intervening. In so determining, the *Castro* Court recognized prior precedent from *Grinols v. Electoral Coll.*, 2013 WL 2294885, at

*6 (E.D. Cal. May 23, 2013) that held “the Twelfth Amendment, Twentieth Amendment, Twenty-Fifth Amendment, and the Article I impeachment clauses, “make it clear that the Constitution assigns to Congress, and not the Courts, the responsibility of determining whether a person is qualified to serve as President. As such, the question presented by Plaintiffs in this case...is a political question that the Court may not answer.” *Castro* at 8.

In response to the precedent cited by Candidate, Objectors contend that the cases involved do not involve a section 3 constitutional challenge. In response, Objectors contend that:

1. Section 3, unlike other Constitutional provisions to which the doctrine applies, is not reserved for Congressional action in its text.
2. Section 3 involves judicially manageable standards, as illustrated by courts that have repeatedly applied and interpreted it.
3. Federal circuit court precedent that the Motion fails to cite demonstrates the inapplicability of the doctrine, as does the Colorado Supreme Court decision giving it close analysis.
4. A host of the cases cited in the Motion do not stand for the propositions relied on and do not hold up against the on-point precedent.

In conflict with *Castro*, is the recent Colorado Supreme Court decision, *Anderson v. Griswold*, 2023 WL 8770111 (Cob. Dec. 19, 2023). The *Anderson* Court “perceive[d] no constitutional provision that reflects a textually demonstrable commitment to Congress of the authority to assess presidential candidate qualifications.” Id at ¶ 112. The decision further notes that state legislatures have developed comprehensive and complex election codes involving the selection and qualification of candidates. See also *Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 1279, 39 L. Ed. 2d 714 (1974). The *Anderson* decision further finds that “Section Three's text is fully consistent with our conclusion that the Constitution has not committed the matter of presidential candidate qualifications to Congress...although Section Three requires a “vote of two-thirds of each House” to remove the disqualification set forth in Section Three, it says nothing about who or which branch should determine disqualification in the first place.”

Candidate's Third Ground

Candidate next argues that the determination of an insurrection can only be made by Congress. In support of this argument, Candidate relies on *In re Griffin*, 11 F Cas 7 (C.C.D. Va. 1869). The *Griffin* Court found that enforcement of Section 3 is limited to Congress. Objectors argue *Anderson v. Griswold* rejected this argument and that the *Griffin* case is wrongly decided.

Candidate's Fourth Ground

Candidate next argues that Section 3 of the Fourteenth Amendment bars holding office, not running for office. In support of this argument Candidate relies on *Smith v. Moore*, 90 Ind. 294,

303 (1883) which allowed Congress to remove disabilities after they were elected. Candidate further argues the Constitution prohibits States from accelerating qualifications for elected office to an earlier time than the Constitution specifies. Candidate gives the example of *Schaefer v. Townsend*, 215 F.3d 1031, 1038 (9th Cir. 2000). In *Shaefer* California once tried to require congressional candidates to be residents of the state at the time when they were issued their nomination papers—rather than “when elected,” as the Constitution says. Candidate also cites *US Term Limits, Inc v Thornton*, 514 US 779, 827, 115 S Ct 1842, 1866 (1995) (States do not “possess the power to supplement the exclusive qualifications set forth in the text of the Constitution.”).

Objectors argue that the cases relied upon by Candidate are inapplicable. Objectors argue that a Candidate can control and can promise that he or she will be a resident of the state for the position that he is running for in the future.

Candidate’s Fifth Ground

Candidate includes the fifth ground within his fourth ground, but this appears to be a separate challenge. Here Candidate argues that the president is not an officer of the United States under the constitution. The Objectors disagree. Both sides cite a litany of sources, including Judges and the Constitution itself in support of their respective positions. This Hearing Officer has no doubt that given infinite resources, even more sources could be found to support both positions.

Candidate’s Sixth Ground

The Candidate’s final argument is that insufficient facts have been pled to amount to an insurrection. Although the section is not mentioned, this is the functional equivalent of a 735 ILCS 5/2-615 or Federal Rule of Civil Procedure 12(b)(6) argument. The Hearing Officer treats it as such. Under this section, Candidate puts forth sub-arguments. First, he contends that an insurrection has not been alleged. Candidate puts forth that “Dictionaries of the time confirm that “insurrection” meant a “rebellion of citizens or subjects of a country against its government,” and “rebellion” as “taking up arms traitorously against the government.

Candidate next argues that he did not engage in the insurrection. Within this argument he says pure speech cannot amount to engaging in an insurrection. Candidate says that incitement alone cannot equal engagement. Both parties concede that Trump himself did not act with violence., The question therefore becomes whether words alone can amount to engaging in an insurrection.

Objectors’ Motion for Summary Judgment

The Hearing Officer now turns his attention to the Motion for Summary Judgment, which also asks for the Petition to be Granted. The request for a ruling on the merits will be addressed separately. First, the Motion for Summary Judgment must be addressed.

In support of the Motion for Summary Judgment, Objectors cite a series of what they claim are undisputed facts. A summary recitation of those facts is warranted. It is clearly undisputed that Candidate Trump took an oath to preserve and protect the Constitution of the United States. It is also clearly undisputed that Candidate Trump ran for re-election. Further, it is alleged that Candidate Trump refused in a September 2020 press conference to acknowledge a peaceful transfer of power if he lost. It is further alleged that Candidate Trump regularly tweeted that if he lost it would be a result of election fraud, and that after he lost, he continued to claim election fraud. It is alleged that Candidate Trump's lawful means of contesting the election results failed. It is alleged that Candidate Trump attempted to convince the Department of Justice to adopt his narrative and failed. It is alleged that Candidate Trump was made aware of plans for violence on January 6, 2021, that despite this information, Trump went ahead with his rally. It is alleged that Candidate Trump had reason to know or believe prior to January 6, that the January 6, 2021, protests would be violent. It is alleged that on January 6, Candidate Trump began to call out Vice-President Pence's name at the demonstration and ask him to reject the election results or that Trump will be "very disappointed in [him]." It is alleged that attacks began on the Capitol, and that Candidate Trump was aware of the attacks taking place on the Capitol. It is alleged that Candidate Trump tweeted, among other things, that "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution." It is alleged that Candidate Trump tweeted this while the attacks were ongoing and knew that the attacks were ongoing, and that this tweet led to increased violence. It is alleged that Candidate Trump subsequently tweeted "Stay peaceful." It is alleged that Candidate Trump did not call the National Guard despite what was happening. Objector's narrative of facts is quite lengthy, and significantly more detailed than what is laid out here. This is not meant to be an exhaustive retelling of the narrative, but rather a quick synopsis.

As Objector's point out, summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c).

Recommendations on Dispositive Motions

A. Objectors' Motion for Summary Judgment.

The Hearing Officer finds that there are numerous disputed material facts in this case, as well wide range of disagreement on material constitutional interpretations. **Hearing Officer recommends that the Board deny the Objectors' Motion for Summary Judgment.**

B. Candidate's Motion to Dismiss.

Candidate argues in his Motion to Dismiss that the Objector's Petition should be dismissed for several reasons. One of particular interest to the Electoral Board is the argument that "As a creature of statute, the Election Board possesses only those powers conferred upon it by law" and "[a]ny power or authority [the Election Board] exercises must find its source within the law pursuant to which it was created." *Delgado v. Bd. of Election Comm'rs*, 224 Ill. 2d 481,485 (Ill. 2007). Candidate's Motion to Dismiss Objector's Petition, page 5.

In *Delgado*, the Illinois Supreme Court found that the Election Board (City of Chicago) exceeded its authority when it overruled the Hearing Officer's recommendation and concluded that a provision of the Illinois Municipal Code was unconstitutional: "Administrative agencies such as the Election Board have no authority to declare a statute unconstitutional or even to question its validity. (Cites omitted). In ruling as it did, the Election Board therefore clearly exceeded its authority." *Id.*, at 485.

A more recent decision of the Illinois Supreme Court, *Goodman v. Ward*, 241 Ill.2d 398 (2011), further illustrates the limits that the Court places upon an Election Board. In *Goodman*, Chris Ward, an attorney licensed to practice law in Illinois, filed a petition with the Will County Officers electoral board to have his name placed on the primary ballot as a candidate for circuit judge. At the time he filed his petition, Ward was not a resident of the subcircuit he wished to run in. Two of the three officers of the electoral board decided that Ward could appear on the ballot because governing provisions of the Illinois Constitution were "arguably ambiguous and uncertain." The Court affirmed the lower court's reversal of the electoral board, holding, " ... the electoral board overstepped its authority when it undertook this constitutional analysis. It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." *Goodman*, at 414-415.

The Illinois Supreme Court in these two decisions has clearly placed a limit upon what an electoral board can consider when ruling on an objection. In *Delgado*, the Court makes it clear that an electoral board may not, in performing its responsibilities in ruling on an objection, go so far as to even question the constitutionality of what it considers to be a relevant statute. The language in *Goodman* extends this prohibition when it uses the language of "constitutional analysis." Thus, an electoral board goes too far not just when it holds a statute unconstitutional but also goes too far when it enters the realm of constitutional analysis. Instead, as the Court wrote, "It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." *Id.*, at 414-415.

The question, then, is whether the Board can decide whether candidate Trump is disqualified by Section 3 of the Fourteenth Amendment, without embarking upon constitutional analysis.

The clear answer is that it cannot.

It is impossible to imagine the Board deciding whether Candidate Trump is disqualified by Section 3 without the Board engaging in significant and sophisticated constitutional analysis.

Section 3 of the Fourteenth Amendment reads as follows:

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Much of the language in Section 3, which is part of the United States Constitution, is the subject of great dispute, giving rise to several separate constitutional issues. These issues are being raised in the case now before the Board, even as these issues in dispute are now pending before the United States Supreme Court, Case No.23-719, Donald J. Trump, Petitioner v. Norma Anderson, et al., Respondents.

A breakdown, by issue, makes clear how the issues in dispute in this case are constitutional issues currently before the United States Supreme Court:

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue in their Motion to Dismiss the Objectors' Petition that Section 3 does not bar President Trump running for office. In their petition in support of their position they argue that Section 3 applies to holding office, not running for office.

That very issue is before the United States Supreme Court: "... section 3 cannot be used to deny President Trump (or anyone else) access to the ballot, as section 3 prohibits individuals only from *holding* office, not from *seeking* or *winning election* to office.

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue in their Motion to Dismiss the Objectors' Petition that the constitutional phrase "officers of the United States" excludes the President.

That issue is also before the United States Supreme Court: "The Court should reverse the Colorado decision because President Trump is not even subject to section 3, as the President is not an "officer of the United States" under the Constitution."

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue that Section 3 of the Fourteenth Amendment Can Be Enforced Only as Prescribed by Congress.

That issue is also before the United States Supreme Court: "...state courts should have regarded congressional enforcement legislation as the exclusive means for enforcing section 3, as Chief Justice Chase held in *In re Griffin*, 11 F. Cas. 7, 26 (C.C.D. Va. 1869) (*Griffin's Case*).

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue that President Trump did not engage in insurrection within the meaning of Section Three.

That issue is also before the United States Supreme Court: "And even if President Trump were subject to section 3 he did not "engage in" anything that qualifies as "insurrection."

There is wisdom in the Illinois Supreme Court fashioning decisions which prohibit electoral boards from engaging in constitutional analysis. As the Candidate argues in his Motion to Dismiss, "The Board can and does resolve disputes about nominations and qualifications on records that are undisputed or (in the Board's estimation) not materially disputed. It does not and cannot hold lengthy and complex evidentiary proceedings of the kind that would be needed to assess objections like these."

The Rules of Procedure adopted by the State Board of Elections provides the following schedule for filing of briefs and motions within a time period between January 19, 2024 and January 25, 2024:

Schedule of Brief and Motion Filing

Candidate's Motion to Strike and/or Dismiss or other similar motion (MTD)

Objector's Motion for Summary Judgment or other similar motion (MSJ)

Must be filed no later than 5:00 p.m. on the second business day, **Friday, January 19, 2024**, following the date of the Initial Meeting of the Board, unless extended by the Board or Hearing Officer for good cause shown.

Objector's Response to Candidate's MTD

Candidate's Response to Objector's MSJ

Must be filed no later than 5:00 p.m. on the second business day following the due date of the Candidate's MTD or Objector's MSJ, **Tuesday, January 23, 2024**, unless extended by the Board or Hearing Officer for good cause shown.

Candidate's Reply to Objector's Response to Candidate's MTD

Objector's Reply to Candidate's Response to Objector's MSJ

Must be filed no later than 5:00 p.m. on the second business day following the due date of the Objector's Response to the Candidate's MTD or the Candidate's Response to the Objector's MSJ, **Thursday, January 25, 2024**, unless extended by the Board or Hearing Officer for good cause shown.

Any memorandum of law in support of any of the above pleadings shall accompany such pleading.

Briefs on any issue(s) shall be filed as directed by the Board or the Hearing Officer.

(APPENDIX A to Rules)

The Rules, as if it were even necessary to do, make it clear to all parties that the hearings are handled in an expedited manner:

1. EXPEDITED PROCEEDINGS

a. Timing. On all hearing dates set by the Board or its designated Hearing Officer (other than the Initial Meeting), the objector and the candidate shall be prepared to proceed with the hearing of their case. Due to statutory time constraints, the Board must proceed as expeditiously as possible to resolve the objections. Therefore, there will be no continuances or resetting of the Initial Meeting or future hearings except for good cause shown.

(Rule 1a.)

The Rules provide for very little discovery, although Rule 8 does allow for request of subpoenas:

Rule 8 provides a procedure for subpoenas:

a. Procedure and deadlines for general subpoenas.

1. Any party desiring the issuance of a subpoena shall submit a written request to the Hearing Officer. Such request for subpoena may seek the attendance of witnesses at a deposition (evidentiary or discovery; however, in objection proceedings, all depositions may be used for evidentiary purposes) or hearing and/or subpoenas *duces tecum* requiring the production of such books, papers, records, and documents as may relate to any matter under inquiry before the Board.

2. The request for a subpoena must be filed no later than **5:00 p.m. on Friday, January 19, 2024**, and shall include a copy of the subpoena itself and a detailed basis upon which the request is based. A copy of the request shall be given to the opposing party at the same time it is submitted to the Hearing Officer. The Hearing Officer shall submit the same to the Board (via General Counsel) no later than **5:00 p.m. on Monday, January 22, 2024**. The Chair and Vice Chair shall consider the request and the request shall only be granted by the Chair and Vice Chair.

3. The opposing party may submit a response to the subpoena request; however, any such response shall be given to the Hearing Officer no later than **4:00 p.m. on Monday, January 22, 2024**, who shall then transmit it to the Chair and Vice Chair (through the General Counsel's office) with the subpoena request. The Hearing Officer shall issue a recommendation on whether the subpoena request should be granted no later than **5:00**

p.m. on Wednesday, January 24, 2024. The Chair and Vice Chair may limit or modify the subpoena based on the pleadings of the parties or on their own initiative.

4. Any subpoena request, other than a Rule 9 subpoena request, received subsequent to **5:00 p.m. on Friday, January 19, 2024**, will not be considered without good cause shown.

5. If approved, the party requesting the subpoena shall be responsible for proper service thereof and the payment of any fees required by Illinois Supreme Court Rule or the Circuit Courts Act. *See* 10 ILCS 5/10-10; S. Ct. Rule 204, 208, and 237; 705 ILCS 35/4.3.

This subpoena procedure leaves little time to serve a person. In addition, there is no room for continuances, as the Board rules on the objections on January 30, the Tuesday following the hearing set on January 26.

All in all, attempting to resolve a constitutional issue within the expedited schedule of an election board hearing is somewhat akin to scheduling a two-minute round between heavyweight boxers in a telephone booth.

It is clear from the Election Code and the Rules of Procedure that the intent is for the Board to handle matters quickly and efficiently to resolve ballot objections so that the voting process will not be delayed as a result of protracted litigation. With the rules guaranteeing an expedited handling of cases, the Election Code is simply not suited for issues involving constitutional analysis. Those issues belong in the Courts.

Objectors point to the decision of the Colorado Supreme Court (now before the United States Supreme Court), and the Maine Secretary of State, both of which did resolve the candidate challenges in favor of the objectors and ordered the name of Donald J. Trump removed from the primary ballot.

It is worth taking a closer look at the Colorado opinion. (The Maine decision relied heavily on that opinion, which was announced during its proceeding.)

In *Anderson v Griswold*, 2023 CO 63, the Colorado Supreme Court case which is the subject of the United States Supreme Court appeal, the Colorado Court concluded “that because President Trump is disqualified from holding the office of President under Section Three, it would be a wrongful act under the Election Code for the Secretary to list President Trump as a candidate on the presidential primary ballot.” In doing so, the Court upheld the rulings of the trial court, but reversed the trial court’s decision that Section 3 did not apply to President Trump.

In their brief, the Objectors in 24 SOEB GP 517 argue that the opinion of the Colorado Supreme Court is a well-reasoned 133-page opinion. What the Objectors fail to say is that the opinion is a four to three decision, with three lengthy dissents.

The Colorado Supreme Court (“The Court”) approved the decision by the trial judge to allow into evidence thirty-one findings from the report drafted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol (“The Report”). The Court based its ruling on Federal Rule of Evidence 803(8) and its mirror rule in the Colorado Rules of Evidence. The Illinois Rules of Evidence contain the same rule in its own 803(8).

The Court found that the expedited proceedings in an election challenge provided adequate due process for the litigants: “... the district court admirably—and swiftly—discharged its duty to adjudicate this complex section 1-1-113 action, substantially complying with statutory deadlines.” *Anderson*, at 85. (reference is to paragraph, not page). Whether there was substantial compliance is a matter of debate- one dissenting justice wrote that “if there was substantial compliance in this case, then that means substantial compliance includes no compliance.” See discussion below.

On the issue of whether Section 3 of the Fourteenth Amendment is self-executing, the Court found that it was: “In summary, based on Section Three's plain language; Supreme Court decisions declaring its neighboring, parallel Reconstruction Amendments self-executing; and the absurd results that would flow from Intervenor's reading, we conclude that Section Three is self-executing in the sense that its disqualification provision attaches without congressional action.” *Id.*, at 106.

In arriving at their decision, the Court was required to analyze the *In re Griffin*, 11 F. Cas. 7 (C.C.D. Va. 1869) (No. 5,815) (“*Griffin's Case*”). *Griffin's Case* is a non-binding opinion written by Chief Justice Salmon Chase while he was riding circuit. Caesar Griffin challenged his criminal conviction because the judge who convicted him had previously served in Virginia's Confederate government. Chief Justice Chase concluded that Section 3 could be applied to disqualify only if Congress provided legislation describing who is subject to disqualification as well as the process for removal from office. Thus, Chief Justice Chase concluded that Section Three was not self-executing. *Griffin's Case*, at 26. Caesar Griffin's conviction and sentence were ordered to stand. Nonetheless, the Court concluded that congressional action was only one means of disqualification, and that Colorado's election process provided another, equally valid, method of determining whether a candidate for office was disqualified under Section 3. *Id.* at 105. That alternative to Congressional action is an election challenge hearing.

The Court went on to address each of the Constitutional issues raised by Candidate Trump, deciding each in favor of the objectors.

For example, the Court, found that “the record amply established that the events of January 6 constituted a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish the peaceful transfer of power in this country. Under any viable definition, this constituted an insurrection.” *Anderson*, at 189.

The Court concluded that the “record fully supported the district court's finding that President Trump engaged in insurrection within the meaning of Section Three,” *Id.* at 225, and ordered that President Trump's name not be placed on the 2024 presidential primary ballot.

Three justices wrote dissenting opinions.

Justice Boatright described in detail that the complexity of the Electors' claims cannot be squared with section 1-1-113's truncated timeline for adjudication. *Id.* at 264-268. He noted that under Colorado election law, a hearing is to be held within five days; in this case, however, it took nearly two months for a hearing to be held, a fact he argues is proof that the election procedures are inadequate for complex constitutional objections. *Id.* at 266.

Justice Samour argued in his opinion Section 3 was not self-executing; further, that the Colorado procedures dictating expedited proceedings denied President Trump due process.

Hearing Officer's Findings and Recommendation re Candidate's Motion to Dismiss

1. While the timeline for conducting a hearing and issuing findings is similar in both the Illinois election code and the Colorado election code, there are substantial differences, at least in terms of handling identical objections involving Section 3 of the Fourteenth Amendment;
2. In Colorado a trial judge hears evidence at a hearing while in Illinois, the Board conducts the hearing, typically through an appointed hearing officer;
3. The instant Illinois case, 24 SOEB GP 517, was called on January 18, 2024, the same day a hearing officer was appointed to handle the case. with hearing set on January 26, 2024. As described in Appendix A, above, a mad scramble of motions, responses and replies then took place, between January 19 and January 25. The hearing was held on the 26th, with an opinion expected to be filed by the hearing officer in advance of the Election Board hearing set for January 30th. There was no opportunity for meaningful discovery or subpoena of witnesses;
4. The Colorado hearing did not take place for nearly two months following the initial filing of the objection. The hearing lasted more than a week, with a full week devoted to taking testimony. At the hearing, several witnesses testified, including an expert witness in Constitutional law by each party; thereafter, closing arguments were held and a decision was rendered several days later;
5. Illinois law, including the Supreme Court decisions of *Goodman* and *Delgado* prohibit the Election Board from addressing issues involving constitutional analysis.

Recommendation on Candidate's Motion to Dismiss

The Hearing Officer finds that there is a legal basis for granting the Candidate's Motion to Dismiss the Objectors' Petition and **recommends** to the Board that the Motion to Dismiss be **granted**.

Hearing Officer's Findings and Recommendation Regarding the Objector's Petition

1. It is a unique feature of the Rules of Procedure that the final decision on dispositive motions, such as the Motion to Dismiss, are to be made by the Board. Inasmuch as the Board may decline to follow the Hearing Officer's recommendation, and that evidence has been received on the Objector's Petition, it is incumbent upon the hearing officer that he makes findings on the evidence received at the hearing and make a **recommendation** to the Board regarding a decision based on the evidence.
2. The Hearing Officer has received into evidence for consideration numerous exhibits. This evidence also includes the trial testimony heard in the case of *Anderson v. Griswold*, 2023 Co 63 (2023).
3. The Hearing Officer, pursuant to the Stipulated Order Regarding Trial Transcripts and Exhibits from the Colorado Action, has reviewed the entire transcript, consisting of several hundred pages, and finds while the hearing/trial did not afford all the benefits of a criminal trial, (e.g., right to trial by jury; proponent bearing a burden of beyond a reasonable doubt), the proceedings was conducted in a fashion that guaranteed due process for President Trump: parties had the benefit of competent counsel, the right to subpoena witnesses and the right to cross-examine witnesses. The proceeding was conducted in an open and fair manner, with no undue time restrictions that would effect the length of testimony on direct or cross. The parties clearly took advantage of the fact that they were not constrained by the typical expedited manner in which election challenges are normally carried out in Colorado. In fact, one dissenting justice on the Supreme Court commented on the greatly relaxed time frame, in response to the majority claim that the hearing was held in substantial compliance with the statute, by stating that if what the majority claimed was substantial compliance, then that

meant that substantial compliance included no compliance at all. In comparison to the Illinois procedure, the parties had several weeks to prepare for hearing. The result was that the witnesses included two constitutional law professors, with specialty in the history of the Fourteenth Amendment. Further, the lead investigator for the House Select Committee investigating the January 6 Attack upon the United States Capitol testified. A signed copy of the stipulation regarding testimony taken at the Colorado hearing has been transmitted to the General Counsel.

4. Hearing Officer finds that the January 6 Report, including its findings, may properly be considered as evidence, as it was by the Colorado trial court, based on Illinois Rule of Evidence 803(8), as well as the relaxed rules of evidence at an administrative hearing. Hearing Officer further finds, after reviewing the Report, that it is a trustworthy report, the result of months of investigation conducted by professional investigators and a staff of attorneys, many of whom with substantial experience in federal law enforcement. The findings of the Report are attached to this opinion.
5. Ultimately, even when giving the Candidate the benefit of the doubt wherever possible, in the context of the events and circumstances of January 6, 2024, the Hearing Officer recommends that the Board find in favor of the Objectors on the merits by a preponderance of the evidence. While the Candidate's tweets to stay peaceful may give the candidate plausible deniability, the Hearing Officer does not find that denial credible in light of the circumstances. Dr. Simi's testimony in the Colorado trial court provides a basis for finding that the language used by the candidate was recognizable to elements attending the January 6 rally at the ellipse as a call for violence upon the United States Capitol, the express purpose of the violence being the furtherance of the President's plan to disrupt the electoral count taking place before the joint meeting of Congress.
6. The evidence shows that President Trump understood the divided political climate in the United States. He understood and exploited that climate for his own political gain by falsely and publicly claiming the election was stolen from him, even though every single piece of evidence demonstrated that his claim was demonstrably false. He used these false claims to garner further political support for his own benefit by inflaming the emotions of his supporters to convince them that the election was stolen from him and that American democracy was being undermined. He understood the context of the events of January 6, 2021 because he created the climate. At the same time he engaged in an elaborate plan to provide lists of fraudulent electors to Vice President Pence for the express purpose of disrupting the peaceful transfer of power following an election.
7. Even though the Candidate may not have intended for violence to break out on January 6, 2021, he does not dispute that he received reports that violence was a likely possibility on January 6, 2021. Candidate does not dispute that he knew violence was occurring at the capitol.. He understood that people were there to support him. Which makes one single piece of evidence, in this context, absolutely damning to his denial of his participation: the tweet regarding Mike Pence's lack of courage while Candidate knew the attacks were going on is inexplicable. Candidate knew the attacks were

occurring because the attackers believed the election was stolen, and this tweet could not possibly have had any other intended purpose besides to fan the flames. While it is true that subsequently, but not immediately afterwards, Candidate tweeted calls to peace, he did so only after he had fanned the flames. The Hearing Officer determines that these calls to peace via social media, coming after an inflammatory tweet, are the product of trying to give himself plausible deniability. Perhaps he realized just how far he had gone, and that the effort to steal the election had failed because Vice President Pence had refused to accept the bag of fraudulent electors. It was time to retreat, with a final tweet telling the nation that he loved those who had assembled and attacked the capitol.

CONCLUSION

In the event that the Board decides to not follow the Hearing Officer's recommendation to grant the Candidate's Motion to Dismiss, the Hearing Officer recommends that the Board find that the evidence presented at the hearing on January 26, 2024 proves by a preponderance of the evidence that President Trump engaged in insurrection, within the meaning of Section 3 of the Fourteenth Amendment, and should have his name removed from the March, 2024 primary ballot in Illinois.

Submitted by

Clark Erickson

Hearing Officer

Date _____

FINDINGS OF THE JANUARY 6 HOUSE SELECT COMMITTEE REPORT

This Report supplies an immense volume of information and testimony assembled through the Select Committee's investigation, including information obtained following litigation in Federal district and appellate courts, as well as in the U.S. Supreme Court. Based upon this assembled evidence, the Committee has reached a series of specific findings,¹⁹ including the following:

1. Beginning election night and continuing through January 6th and thereafter, Donald Trump purposely disseminated false allegations of fraud related to the 2020 Presidential election in order to aid his effort to overturn the election and for purposes of soliciting contributions. These false claims provoked his supporters to violence on January 6th.
2. Knowing that he and his supporters had lost dozens of election lawsuits, and despite his own senior advisors refuting his election fraud claims and urging him to concede his election loss, Donald Trump refused to accept the lawful result of the 2020 election. Rather than honor his constitutional obligation to "take Care that the Laws be faithfully executed," President Trump instead plotted to overturn the election outcome.
3. Despite knowing that such an action would be illegal, and that no State had or would submit an altered electoral slate, Donald Trump corruptly pressured Vice President Mike Pence to refuse to count electoral votes during Congress's joint session on January 6th.
4. Donald Trump sought to corrupt the U.S. Department of Justice by attempting to enlist Department officials to make purposely false statements and thereby aid his effort to overturn the Presidential election. After that effort failed, Donald Trump offered the position of Acting Attorney General to Jeff Clark knowing that Clark intended to disseminate false information aimed at overturning the election.
5. Without any evidentiary basis and contrary to State and Federal law, Donald Trump unlawfully pressured State officials and legislators to change the results of the election in their States.
6. Donald Trump oversaw an effort to obtain and transmit false electoral certificates to Congress and the National Archives.
7. Donald Trump pressured Members of Congress to object to valid slates of electors from several States.

8. Donald Trump purposely verified false information filed in Federal court.
9. Based on false allegations that the election was stolen, Donald Trump summoned tens of thousands of supporters to Washington for January 6th. Although these supporters were angry and some were armed, Donald Trump instructed them to march to the Capitol on January 6th to “take back” their country.
10. Knowing that a violent attack on the Capitol was underway and knowing that his words would incite further violence, Donald Trump purposely sent a social media message publicly condemning Vice President Pence at 2:24 p.m. on January 6th.
11. Knowing that violence was underway at the Capitol, and despite his duty to ensure that the laws are faithfully executed, Donald Trump refused repeated requests over a multiple hour period that he instruct his violent supporters to disperse and leave the Capitol, and instead watched the violent attack unfold on television. This failure to act perpetuated the violence at the Capitol and obstructed Congress’s proceeding to count electoral votes.
12. Each of these actions by Donald Trump was taken in support of a multi-part conspiracy to overturn the lawful results of the 2020 Presidential election.
13. The intelligence community and law enforcement agencies did successfully detect the planning for potential violence on January 6th, including planning specifically by the Proud Boys and Oath Keeper militia groups who ultimately led the attack on the Capitol. As January 6th approached, the intelligence specifically identified the potential for violence at the U.S. Capitol. This intelligence was shared within the executive branch, including with the Secret Service and the President’s National Security Council.
14. Intelligence gathered in advance of January 6th did not support a conclusion that Antifa or other left-wing groups would likely engage in a violent counter-demonstration, or attack Trump supporters on January 6th. Indeed, intelligence from January 5th indicated that some left-wing groups were instructing their members to “stay at home” and not attend on January 6th.²⁰ Ultimately, none of these groups was involved to any material extent with the attack on the Capitol on January 6th.
15. Neither the intelligence community nor law enforcement obtained intelligence in advance of January 6th on the full extent of the ongoing planning by President Trump, John Eastman, Rudolph Giuliani and their associates to overturn the certified election results. Such agencies apparently did not (and potentially could not) anticipate the provocation President Trump would offer the crowd in his Ellipse speech, that President Trump would “spontaneously” instruct the crowd to march to the Capitol, that President Trump would exacerbate the violent riot by sending his 2:24 p.m. tweet condemning Vice President Pence, or the full scale of the violence and lawlessness that would ensue. Nor did law enforcement anticipate that

President Trump would refuse to direct his supporters to leave the Capitol once violence began. No intelligence community advance analysis predicted exactly how President Trump would behave; no such analysis recognized the full scale and extent of the threat to the Capitol on January 6th.

16. Hundreds of Capitol and DC Metropolitan police officers performed their duties bravely on January 6th, and America owes those individuals immense gratitude for their courage in the defense of Congress and our Constitution. Without their bravery, January 6th would have been far worse. Although certain members of the Capitol Police leadership regarded their approach to January 6th as “all hands on deck,” the Capitol Police leadership did not have sufficient assets in place to address the violent and lawless crowd.²¹ Capitol Police leadership did not anticipate the scale of the violence that would ensue after President Trump instructed tens of thousands of his supporters in the Ellipse crowd to march to the Capitol, and then tweeted at 2:24 p.m. Although Chief Steven Sund raised the idea of National Guard support, the Capitol Police Board did not request Guard assistance prior to January 6th. The Metropolitan Police took an even more proactive approach to January 6th, and deployed roughly 800 officers, including responding to the emergency calls for help at the Capitol. Rioters still managed to break their line in certain locations, when the crowd surged forward in the immediate aftermath of Donald Trump’s 2:24 p.m. tweet. The Department of Justice readied a group of Federal agents at Quantico and in the District of Columbia, anticipating that January 6th could become violent, and then deployed those agents once it became clear that police at the Capitol were overwhelmed. Agents from the Department of Homeland Security were also deployed to assist.
17. President Trump had authority and responsibility to direct deployment of the National Guard in the District of Columbia, but never gave any order to deploy the National Guard on January 6th or on any other day. Nor did he instruct any Federal law enforcement agency to assist. Because the authority to deploy the National Guard had been delegated to the Department of Defense, the Secretary of Defense could, and ultimately did deploy the Guard. Although evidence identifies a likely miscommunication between members of the civilian leadership in the Department of Defense impacting the timing of deployment, the Committee has found no evidence that the Department of Defense intentionally delayed deployment of the National Guard. The Select Committee recognizes that some at the Department had genuine concerns, counseling caution, that President Trump might give an illegal order to use the military in support of his efforts to overturn the election.

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