

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

KIRK C. BANGSTAD, DOUGLAS
R. SMITH AND THE MINOCQUA
BREWING COMPANY
SUPERPAC;

Plaintiffs,

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

-vs-

Case No.

DONALD J. TRUMP,
THE REPUBLICAN PARTY
OF WISCONSIN, AND THE
WISCONSIN ELECTIONS
COMMISSION

Defendants,

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs KIRK C. BANGSTAD, DOUGLAS R. SMITH and the MINOCQUA BREWING COMPANY SUPERPAC, by and through their attorney of record, Frederick Melms, bring their COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF against Defendants, DONALD J. TRUMP, THE WISCONSIN ELECTIONS COMMISSION and THE REPUBLICAN PARTY OF WISCONSIN. Plaintiffs bring this action seeking declarations that Defendant DONALD J TRUMP is disqualified from serving as the President of the United States of America under Section Three of the Fourteenth Amendment to the Constitution of the United States of America and is therefore also disqualified from appearing on the ballot in the 2024 Wisconsin Republican presidential preference primary election. Plaintiffs KIRK C. BANGSTAD, DOUGLAS R. SMITH and the MINOCQUA BREWING COMPANY SUPERPAC also seek an

injunction enjoining the WISCONSIN ELECTIONS COMMISSION from including DONALD J. TRUMP on the 2024 Republican presidential preference primary ballot.

INTRODUCTION

1. Despite the President being the highest-ranking government official in the United States and arguably the most important head of state in the world, there are very few constitutional requirements that a candidate must meet to serve as President of the United States of America. They must be a natural born citizen, have lived in the United States for at least 14 years, be over the age of 35, have not previously served two terms as President of the United States, and have never engaged in an insurrection after taking an oath of office.

DONALD TRUMP (hereinafter TRUMP) fails to meet those requirements and may not serve as President of the United States of America.

2. Section Three of the Fourteenth Amendment to the Constitution of the United States explains.

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;

3. Adopted in the wake of the Civil War, Section Three of the Fourteenth Amendment imposes a qualification for holding public office in the United States. It bars

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

4. Section 3 is a “measure of self-defense” designed to preserve and protect American democracy. Cong. Globe, 39th Cong., 1st Sess. 2918 (May 31, 1866) (statement of Sen. Willey). It embodies the Fourteenth Amendment’s framers’ recognition of the grave threat that insurrection against the Constitution poses to the existence and integrity of our Union. “The oath to support the Constitution is the test. The idea being that one who had taken an oath to support the Constitution and violated it, ought to be excluded from taking it again, until relieved by Congress.” *Worthy v. Barrett*, 63 N.C. 199, 204 (1869), appeal dismissed sub nom. *Worthy v. Comm’rs*, 76 U.S. 611 (1869).

5. Like other constitutional qualifications based on age, citizenship, and residency, Section Three is enforceable through civil suits in state court to challenge a candidate’s eligibility to hold public office, including the Office of the President. Neither Section Three’s text nor precedent require a criminal conviction for “insurrection” before a candidate is disqualified.

6. TRUMP disqualified himself and forfeited his right to serve as President of the United States by choosing power over the oath he took to uphold the Constitution of the United States and engaging in an insurrection against the country he swore to protect.

7. TRUMP’s insurrection against the United States of America occurred on multiple fronts and spanned several months. In fact, TRUMP and his co-conspirators started preparing to illegally overturn the election results as early as the summer of 2020, with

TRUMP and his seditious accomplices sowing the seeds of discord among his supporters. They took to TV cable news and social media to begin questioning the legitimacy of America's elections before a single ballot had even been cast. TRUMP knew he was going to lose the 2020 elections months before November 3, 2020, and began plotting to remain in power by any means necessary.

8. After losing the election on November 3, 2020, TRUMP put his seditious scheme into action. It began with a media blitz, with TRUMP and his top advisors knowingly spreading lies about voting machines, mail in ballots, and falsely declaring the election was rigged. TRUMP further demanded that elected officials across the country, find him ballots and overturn election results.

9. Unfortunately, TRUMP and his fellow insurrectionists were not just telling lies about the election and demanding that state election officials break their oaths of office. TRUMP was also engaged in a conspiracy to submit false and fraudulent slates of electors to the President of the Senate (Vice President Pence), the Senate, and the House of Representatives to the Joint Session of Congress on January 6, 2021, in order to overturn the election.

10. Wisconsin was front and center of TRUMP'S fraudulent elector's scheme. Ten fraudulent presidential electors met in our State Capitol on December 14, 2020, where they knowingly prepared criminally false documents which asserted that they were duly and lawfully chosen electors from Wisconsin whose votes were entitled to be tallied in the Joint Session on January 6, 2021. The fraudulent electors then compounded their illegal conduct by sending their forged electoral votes to Pence in his capacity as President of the Senate,

without any reservation or condition stating the truth: that the fraudulent electors were not in fact duly and lawfully chosen pursuant to Wisconsin law.

11. The conspiracy to put forth fraudulent electors was devised by TRUMP'S inner circle and carried out by TRUMP'S devoted supporters on TRUMP'S orders. The ultimate goal of the fraudulent elector scheme was to have Mike Pence unilaterally reject the legitimate electoral votes of Wisconsin and six other states for the Biden-Harris ticket and instead count the illegal, fraudulent electoral votes criminally submitted by the fake electors. TRUMP is currently under indictment for his role in the Fraudulent Electors Plot. *See generally*, Exhibit 1, Trump Federal D.C. Indictment.

12. Fortunately for the rule of law and the survival of the Republic, Vice President Pence refused to buckle under the relentless pressure applied by TRUMP and his fellow insurrectionists, and he counted the electoral votes according to law, exactly as it had been done for every other presidential election in the nation's history.

13. While TRUMP'S co-conspirators were trying to defraud the American electorate inside the house chambers, TRUMP was outside with his followers who had been enraged by flagrant lies and one of the most shameful scenes in the history of the United States played out on TRUMP's orders.

14. Until the January 6, 2021, the peaceful transition of presidential power had served as a hallmark of America's great democracy. For 231 years, even amidst the Civil War, no candidate for president had ever attempted to remain in power by ordering his followers to violently take control of the United States government. TRUMP ended that tradition.

15. Just shy of four years after taking an oath to "preserve, protect and defend" the Constitution as President of the United States, U.S. Const. art. II, § 1, TRUMP tried to

overthrow the results of the 2020 election, leading to a violent insurrection at the United States Capitol to stop the lawful transfer of power to his successor. By instigating this unprecedented assault on the American constitutional order, TRUMP violated his oath and disqualified himself from holding public office, including the Office of the President, under Section Three of the Fourteenth Amendment.

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

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

18. Before January 6, 2021, TRUMP was told repeatedly by lawyers and top officials that Pence could not lawfully overturn the election results. And Pence rebuked Trump’s coercive demands to do so. Undeterred, TRUMP continued to exert public pressure on Pence

on January 6th. He put his own Vice President in the crosshairs of what became a violent mob, stressing that “if Mike Pence does the right thing, we win the election.”

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

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

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

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

23. It was only after three hours of barbaric violence broadcast on television and repeated pleas from his senior staff and family that TRUMP posted a video at 4:17 p.m. instructing his mob to “go home,” adding that he “love[d]” them and understood their “pain” over an “election that was stolen from us.” Many in the mob did not leave the Capitol grounds until Trump told them to. And TRUMP called off the mob only after it seemed clear they would not achieve his goal of stopping Congress’s certification of the election results. Later that night, the President of the United States justified this deadly attack on the seat of his own government, tweeting at 6:01 p.m.: “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots. ... Remember this day forever!”

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

25. President TRUMP’S weaponized mob carried out the most significant breach of the Capitol building since the War of 1812. Their attack led to seven deaths, injuries to more than one hundred law enforcement officers, and more than \$2.7 billion in property damage and losses. A Capitol Police officer whom the mob had attacked died the next day, and four other officers died by suicide in the following months.

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

27. Although Section 3 disqualification does not require a criminal conviction or impeachment for any offense, a federal grand jury has indicted TRUMP on four criminal counts relating to his efforts to subvert the 2020 election results: (1) conspiracy to defraud the United States in violation of 18 U.S.C. § 371; (2) conspiracy to obstruct an official proceeding in violation of 18 U.S.C. § 1512(k); (3) obstruction of, and attempt to obstruct, an official proceeding in violation of 18 U.S.C. § 1512(c)(2), 2; and (4) conspiracy against citizens' constitutional right to vote and to have one's vote counted in violation of 18 U.S.C. § 241, a statute originally codified after the Civil War to counteract political violence against newly enfranchised Black citizens, *see* First Ku Klux Klan Act, 16 Stat. 140 (May 31, 1870).

28. Separately, a Georgia grand jury has indicted Trump on 13 criminal charges relating to a sweeping “conspiracy to unlawfully change the outcome of the [2020] election in favor of Trump” through false statements, forgery, solicitation of public officers to violate their oaths to the Constitution, and other state felonies. *See generally*. Exhibit 2, Indictment from *The State of Georgia v. Donald J. Trump, et al.*

29. A bipartisan majority of the House of Representatives impeached TRUMP for “incitement of insurrection,” and a bipartisan majority of the Senate voted to convict him,

with several Senators voting against conviction (and the final vote falling below the requisite two thirds supermajority) based “on the theory that the Senate lacked jurisdiction to try a former president.”⁶ The bipartisan January 6th Select Committee and numerous federal judges have likewise recognized TRUMP’S central role in the insurrection. *See generally* Exhibit 3, January 6th Report.

30. Since January 6, 2021, TRUMP has publicly affirmed his disloyalty to the Constitution and his allegiance to the insurrectionists who seized the Capitol for him. He has called the insurrectionists “patriots,”¹ vowed to give many “full pardons with an apology” if he becomes President again,² financially supported them,³ and hugged on camera a convicted January 6th defendant who has said that Pence and Members of Congress who voted to certify Biden’s victory should be executed for treason.⁴

31. TRUMP also continues to propagate the lie he used to summon the mob to Washington: that the 2020 election was stolen. In December 2022, he disturbingly called for the “termination of ... the Constitution” to correct “Massive Fraud” in the election.⁵ And he continues to fan the flames of political violence among his supporters against judges, prosecutors, and other government officials.⁶ He is precisely the threat to American

¹ David Cohen, *Trump on Jan. 6 insurrection: ‘These were great people’*, Politico, July 11, 2021, <https://www.politico.com/news/2021/07/11/trump-jan-6-insurrection-these-were-great-people499165>.

² Mariana Alfaro, *Trump vows pardons, government apology to Capitol rioters if elected*, Washington Post, Sept. 1, 2022, <https://www.washingtonpost.com/nationalsecurity/2022/09/01/trump-jan-6-rioters-pardon/>.

³ *Id.*

⁴ Ryan J. Reilly and Olympia Sonnier, *Donald Trump embraces Jan. 6 defendant who wants Mike Pence executed*, NBC News, Apr. 28, 2023, <https://www.nbcnews.com/politics/donaldtrump/donald-trump-embraces-jan-6-defendant-wants-pence-executed-rcna81958>.

⁵ Kristen Holmes, *Trump calls for the termination of the Constitution in Truth Social post*, CNN, Dec. 4, 2022, <https://www.cnn.com/2022/12/03/politics/trump-constitution-truthsocial/index.html>.

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

democracy the Fourteenth Amendment’s framers had in mind when they adopted Section Three’s prohibition on constitutional oath-breakers holding office.

32. TRUMP swore an oath to “preserve, protect and defend” the Constitution upon assuming the Office of the President on January 20, 2017, and then engaged in insurrection against the Constitution on and around January 6, 2021, he is disqualified under Section 3 of the Fourteenth Amendment from “hold[ing] any office ... under the United States,” including the Office of the President.

33. Despite his constitutional disqualification, TRUMP is presently a “candidate” under Wisconsin and federal law for the 2024 Republican presidential primary election.

34. There is an urgent public interest in promptly resolving whether TRUMP is constitutionally eligible to serve as president in advance of the approaching primary election.

Absent timely relief, Petitioners and other voters will be irreparably harmed.

35. Plaintiffs, KIRK C. BANGSTAD, DOUGLAS R. SMITH and the MINOCQUA BREWING COMPANY SUPERPAC bring their Complaint for Declaratory and Injunctive Relief seeking a declaration that Defendant DONALD J. TRUMP is disqualified from serving as the President of the United States under Section Three of the Fourteenth Amendment to the United States Constitution and is therefore also disqualified from participating in the 2024 Wisconsin Republican presidential preference primary election.

36. Plaintiffs, KIRK C. BANGSTAD, DOUGLAS R. SMITH and the MINOCQUA BREWING COMPANY SUPERPAC also request an injunction enjoining the WISCONSIN ELECTIONS COMMISSION from including Defendant DONALD J. TRUMP on the ballot for the 2024 Republican presidential preference primary election.

JURISDICTION AND VENUE

37. Jurisdiction is proper as Plaintiffs are requesting declarations and subsequent injunctive relief related to TRUMP’S qualification to participate in the 2024 Wisconsin presidential preference primary, which is governed by state law. Similarly, some of the acts and omissions giving rise to this complaint occurred in Dane County in the state of Wisconsin and the relief sought in this complaint arises from Wisconsin statutes and case law.

38. Jurisdiction is also proper as Defendant, as DONALD J. TRUMP is engaged in substantial and not isolated activities within Wisconsin, i.e. running his Presidential Election Campaign, conferring jurisdiction to this court under Wis Stat. § 801.05(d).

39. Venue is proper as the Republican Party of Wisconsin and the Wisconsin Elections Commission are headquartered in Madison Wisconsin

40. Venue is also proper under Wis Stat. § 801.50(c) as both TRUMP, through his presidential campaign, and the Republican Party of Wisconsin conduct “substantial business” in Dane County, and further, some of the acts and omissions giving rise to this complaint occurred in Dane County.

PARTIES

41. Plaintiff, KIRK C. BANGSTAD, (hereinafter BANGSTAD) is a resident of Dane County and a qualified Dane County Elector. He is also the owner, operator, and chief executive officer of the Minocqua Brewing Company and the founder of the MINOCQUA BREWING COMPANY SUPERPAC.

42. Plaintiff, the MINOCQUA BREWING COMPANY SUPERPAC, (hereinafter MBC) is an independent expenditure-only committee that regularly expends funds to advocate for progressive causes and candidates. The MINOCQUA BREWING COMPANY SUPERPAC will be incredibly active during the 2024 campaign season advocating against the election of TRUMP if he is found to be qualified to serve as President of the United States. In past election years MBC has spent hundreds of thousands of dollars advocating for and against various candidates and issues.

43. The Plaintiff, DOUGLAS R. SMITH (hereinafter SMITH) is a resident of Waukesha County and a qualified Waukesha County elector. He considered himself a lifelong Republican until the election of DONALD J. TRUMP and has regularly participated in Republican primary elections over the course of the last 40 plus years.

44. Defendant DONALD J. TRUMP is a resident of Florida, the former President of the United States, and an insurrectionist. He is currently indicted on 17 felony counts related to his attempts to illegally overturn the 2020 presidential election by fraud and force, and is also the front runner for the 2024 Republican Presidential nomination.

45. The REPUBLICAN PARTY OF WISCONSIN (hereinafter WISGOP) is the Wisconsin branch of the Republican Party and headquartered in Madison, Wisconsin.

46. The WISCONSIN ELECTIONS COMMISSION (hereinafter WEC) is a bipartisan regulatory body which administers chapters 5-10 and 12 of the Wisconsin Statutes as well as other laws relating to elections and election campaigns, other than laws relating to campaign finance. The WEC is headquartered in Madison Wisconsin.

THE PRESIDENTIAL ELECTION PROCESS IN WISCONSIN

47. The presidential election process in Wisconsin is incredibly informal and provides almost complete control of ballot access to the Republican and Democratic Parties.

48. The election process begins on the second Tuesday in December before a presidential election year. By 5pm on that date “the state chairperson of each recognized political party listed on the official ballot at the last gubernatorial election whose candidate for governor received at least 10 percent of the total votes cast for that office may certify to the commission that the party will participate in the presidential preference primary”. Wis Stat. § 8.12(1)(a).

49. Then on the first Tuesday in January of each Presidential election year, a committee is convened at the capitol from each party certified under Wis Stat. § 8.12(1)(a). The committees are comprised of various elected officials and party leaders who select which candidates will appear on the presidential preference primary ballots. “The committee shall place the names of all candidates whose candidacy is generally advocated or recognized in the national news media throughout the United States” as well as any other candidates the committee believes would be appropriate. Wis Stat. § 8.12(1)(b).

50. There are also avenues for candidates to nominate themselves to appear on a presidential preference primary ballot for one of the parties certified under Wis Stat. § 8.12(1)(a) and avenues for independent and third-party candidates to participate in the Wisconsin Presidential elections.

51. Once an individual is selected to appear on a presidential preference primary ballot, they then have the opportunity to affirmatively opt out of participating in the presidential preference primary, but absent their affirmative decision to opt out, they will appear on the ballot. Wis Stat. § 8.12(1)(d)

52. Ergo, if a presidential candidate is generally advocated or recognized in the national news media throughout the United States, they never file a declaration of candidacy with the WEC or any governmental agency within the state of Wisconsin; instead, they are automatically placed on the ballot.

53. On January 2, 2024, the committee for the WISGOP convened and selected, among other candidates, DONALD J. TRUMP to appear on the Republican presidential preference primary ballot.

54. The WEC will now create, print, and distribute those ballots for the Republican presidential preference primary scheduled for April 2, 2024.

55. Both the Republican and Democratic presidential preference primaries will take place on April 2, 2024. Wisconsin has an “open” primary system, and as such, any voter can vote in either primary without having to officially register as a Republican or Democrat.

56. The WEC must report the results to each party by May 15, 2024. Wis Stat. § 8.12(3). These results are not legally binding on either the Republican National Committee or the Democratic National Committee. Instead, they each hold a convention to choose their party’s respective nominee based on party rules.

57. The 2024 Republican National Convention will take place in Milwaukee, Wisconsin, from July 15-18, 2024.

58. Rule 16(a)(1) for the 2024 Republican National Convention states “Any statewide presidential preference vote that permits a choice among candidates for the Republican nomination for President of the United States in a primary, caucuses, or a state convention must be used to allocate and bind the state’s delegation to the national convention in either a proportional or winner-take-all manner for at least one round of balloting.” Exhibit 4 CALL OF THE 2024 REPUBLICAN NATIONAL CONVENTION P3.

59. National polls suggest that TRUMP will win the Republican presidential nomination by a landslide⁷.

60. Wisconsin statutes explains that “Nominees chosen at a national convention ... shall be the party's candidates for president, vice president and presidential electors”. Wis Stat. § 8.16(7)

61. As Per Article 2, Section 1, Clause 3 of the Constitution of the United States of America, the President is elected by the electoral college, and as such, when one votes for the Presidential candidate listed on the ballot in Wisconsin, they are actually voting for Presidential electors designated for that party and that nominee. Wis Stat. § 8.25(1).

62. Every year in which a presidential election is to be held Presidential electors are nominated in a process outlined by Wis Stat. §§ 8.18(1) and 8.18 (2) on the first Tuesday in October.

⁷ Five Thirty Eight, *Latest Polls*, <https://projects.fivethirtyeight.com/polls/president-primary-r/2024/national/> (last accessed 1/3/2024)

63. The 2024 Presidential election will be held on November 5, 2024, Wisconsinites will cast their votes, a winner will be declared, and the winning candidate's presidential electors will be elected.

64. The electors for president will then meet at the state capitol December 16, 2024, to cast their votes. Wisconsin employs a winner takes all system for their presidential electors, and accordingly whichever candidate wins the popular vote receives all ten of Wisconsin's electoral college votes.

65. Wis Stat § 7.75(1) further explains that "when all electors are present, or the vacancies filled, they shall perform their required duties under the constitution and laws of the United States."

The Insurrection

66. For the last 233 years, the United States has been held together by its Constitution. However, "[t]he Constitution is not self-executing. It is given life and sustained by our institutions of government, by checks and balances so as not to become the tyranny we overthrew in our revolution. These institutions – the congress, the agencies of government, the courts, and the media who watch over them – are not buildings. They are the men and women who work in them and devote their professional lives to the rule of law and keeping us secure." (Jeffrey H. Smith, *Of Laws, Not Men*, June 9, 2017.)

67. Because people are responsible for ensuring the rule of law, the United States has at times fallen short of achieving this ideal. But until the November 3, 2020, presidential election, and its aftermath, where TRUMP, his followers and his co-conspirators, sought to upend the rule of law, the United States had always witnessed the orderly transition of

presidential power with the will and providence of a free people seeking to maintain self-governance.

68. Public insurrections brought about by distrust in government don't just happen. Before the November 3, 2020, presidential election, TRUMP and his surrogates repeatedly laid the groundwork to cast doubts on the results. They went on TV news shows and used social media to suggest that the election was going to be "rigged" against him. The purpose of this public campaign by TRUMP and others was to lay the groundwork to attack various state voting procedures around the United States as being fraudulent and not trustworthy in the event he lost. TRUMP had decided well before the election that he would be staying in power regardless of the will of the people.

69. When the polls closed on November 3, 2020, TRUMP falsely stated that he had prevailed and called on states to stop counting.

70. On November 4, 2020, election officials called Wisconsin for Biden, and Defendants and others with connections to the state began to examine approaches to contest that result.

71. On Saturday, November 7, 2020, President Biden was declared the winner of the election and identified in the media as the next President of the United States by all major networks and news sources, including conservative outlets like Fox News.

72. When the results were announced that Saturday, Trump tweeted the first of what would be variations of an onslaught that continued uninterrupted until the January 6, 2021, insurrection at the U.S. Capitol: "THE OBSERVERS WERE NOT ALLOWED INTO THE COUNTING ROOMS. I WON THE ELECTION, GOT 71,000,000 LEGAL VOTES. BAD THINGS HAPPENED WHICH OUR OBSERVERS WERE NOT ALLOWED TO SEE.

NEVER HAPPENED BEFORE. MILLIONS OF MAIL-IN BALLOTS WERE SENT TO PEOPLE WHO NEVER ASKED FOR THEM!”

73. Within a day (or perhaps earlier) of Biden being declared the winner, TRUMP, in association with others initiated through express and/or tacit agreement a plot to overturn the 2020 election results, By falsely claiming election fraud and a lack of integrity in the election in the battleground states, creating and implementing illegal schemes to put forth fraudulent electors for President Trump in Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin, pressuring federal agencies to find irregularities in the election, including the Department of Justice (“DOJ”), the Cybersecurity & Infrastructure Security Agency (“CISA”) of the Department of Homeland Security (“DHS”), and the National Security Agency (“NSA”); and using public statements about the illegitimacy of the election process in various states to incite Trump voters to anger and push Vice President Mike Pence and Congress to ignore the requirements of the Electoral Count Act of 1887, 3 U.S.C. § 1 et seq., and the Twelfth Amendment of the U.S. Constitution to keep President TRUMP in power when the Electoral College ballots were opened and counted at a Joint Session of Congress on January 6, 2021.

74. In the ensuing days, TRUMP’S campaign team repeatedly told President Trump that there was no evidence the election had been “stolen” and that he had simply lost. Exhibit 3, Jan. 6th Report at 204–06. TRUMP campaign manager Bill Stepien and his team served as the “truth telling squad” to the President, debunking false claims that “didn’t prove to be true.” *Id.* at 204. TRUMP campaign lawyer Alex Cannon informed Vice President Pence and White House Chief of Staff Mark Meadows that he was not finding any evidence of fraud sufficient to change the results in any state. *Id.*

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

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

77. In the six weeks that followed the November 3, 2020, election, TRUMP and certain of his supporters took their allegations of voter fraud and misconduct to court, having benefitted from the planning the Election Integrity Working Group had focused on before the election. During this period, President Trump and his surrogates proceeded to lose more than 60 legal challenges that they filed to contest the election results. The President and his team focused their efforts primarily on six states that President Biden won: Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin.

78. Nearly all these suits were dismissed by the courts or dropped by the parties who brought them. Judges, lawyers, and other observers described many of the lawsuits as “frivolous” and “without merit.” In one instance, the Trump Campaign and other groups challenging the election results collectively lost multiple cases in six states on a single day.

Only one ruling was in President TRUMP’S favor: the timing within which first-time Pennsylvania voters must provide proper identification if they wanted to “cure” their ballots. This ruling affected very few votes.

79. Beginning in December 2020 and with greater frequency as January 6th approached, President TRUMP pressured Vice President Pence in private and public to obstruct the January 6th proceeding based on his illegal “President of the Senate strategy.”

80. At a December 21st White House meeting with President TRUMP and Vice President Pence, several Members of Congress urged the Vice President to reject Biden electors from one or more of the seven contested states. *Id.* at 355.

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

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

83. At a January 4th Oval Office meeting with Vice President Pence, President TRUMP and Eastman sought to convince Pence that he had the power to disregard certified electors from states Biden won. Exhibit 3 at 444. Eastman acknowledged, in President TRUMP’S presence, “that his proposal violated the Electoral Count Act,” that it “was not supported by precedent,” that “the Supreme Court would never endorse it,” and that the fake electoral slates upon which his plan depended were invalid. *Id.* at 446–47. TRUMP and Eastman nonetheless pressed Pence to carry out the unlawful scheme; Pence refused. *Id.* at 448.

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

85. That same day, TRUMP summoned Pence for a one-on-one meeting at the White House, where he again pressured Pence to overturn the election on January 6th. *Id.* at 452–53. Pence, again, refused. *Id.* TRUMP grew frustrated and told Pence he would have to publicly criticize him. Upon learning this, the Vice President’s Chief of Staff Marc Short was concerned for Pence’s safety and alerted the head of the Vice President’s Secret Service detail. Exhibit 1 ¶ 97.

86. Later on, January 5th, TRUMP, Pence, Jacob, and Eastman held a call, during which Eastman asked if the Vice President would at least be willing to “consider sending the

electors back to the States.” Exhibit 3 at 453. Pence said, “I don’t see it,” while stating his counsel would continue to hear out Eastman’s theories. *Id.*

87. TRUMP allies, including political advisor Steve Bannon, amplified the public pressure on Pence in the leadup to January 6th. *Id.* at 454–55.

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

89. The violence on January 6, 2024, was not spontaneous and had been planned by TRUMP and others in the weeks leading up to the Joint session of Congress and the Electoral College vote count.

90. At 1:42 a.m. on December 19th, TRUMP announced: “Big protest in D.C. on January 6th. Be there, will be wild!”

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

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

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

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

95. TRUMP’S tweets, along with Trump’s other lies about election fraud, led tens of thousands to travel to Washington, D.C. to intimidate Vice President Pence and, when he did not succumb, to storm the Capitol and call for his murder.

96. In fact, nearly 200 January 6th criminal defendants from 37 states have confirmed in court filings, guilty pleas, and public statements that they traveled to Washington, D.C. because President Trump called them there.

97. The violence on January 6th was fueled by President TRUMP spreading the lie that the election outcome had not yet been determined and that Vice President Pence had the power to deliver victory for him based on his slates of fake electors. *Id.* at 342–43.

98. TRUMP was also well aware that his followers would commit acts of violence on his command. For years TRUMP encouraged and endorsed political violence and the consequences were predictable: it normalized the idea of using violence, force, and intimidation against political foes in the minds of TRUMPS followers.

99. At a March 9, 2016, rally in Fayetteville, North Carolina, police were escorting a protester out of the rally when a TRUMP supporter sucker-punched the protester (a Black man) in the face. The same day, TRUMP stated such violence against protesters was “very, very appropriate” and that “we need a little bit more of” it. When asked again about the attack at a March 15, 2016, presidential debate, TRUMP acknowledged his supporters “have anger that’s unbelievable” while denying any responsibility for their violent acts.

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

101. At a February 1, 2016, rally in Cedar Rapids, Iowa, TRUMP instructed the crowd to “knock the crap out of” protesters who may try to throw tomatoes at him, promising to “pay for the legal fees” for anyone who did.

102. On May 28, 2020, President TRUMP retweeted a video of Couy Griffin—founder of “Cowboys for Trump” and then a county commissioner in New Mexico—saying “the only good Democrat is a dead Democrat” to a cheering crowd. In retweeting this incendiary video to his millions of followers, Trump wrote, “Thank you Cowboys. See you in New Mexico!” A state court later removed and disqualified Griffin from office under the Fourteenth Amendment for helping to mobilize and joining TRUMP’S mob on January 6th.

103. President TRUMP’S words electrified the Proud Boys, causing the group’s membership to triple. *Id.* at 507–08. Proud Boys Chairman Enrique Tarrío wrote on the far-right social media site Parler, “I will stand down sir!!! ... Standing by sir.” Senior Proud Boy Joseph Biggs posted on the same site, “TRUMP basically said to go fuck them up. This makes me so happy.”

104. The Proud Boys quickly embraced TRUMP’S “stand back and stand by” directive as a slogan and started selling merchandise with it that same night. *Id.* at 508. Tarrío, Biggs, and two other Proud Boys leaders were later convicted of seditious conspiracy to oppose by force the lawful transfer of presidential power on January 6th.

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

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

107. The group, whom President Trump had instructed about three months earlier to “stand back and stand by,” reacted immediately to TRUMP’S December 19th tweet and began planning an attack. *Id.* at 56. They restructured their chain-of-command and created

encrypted group chats entitled “Ministry of Self Defense” and “Boots on the Ground” to coordinate their January 6th plan. *Id.* at 510.

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

109. The Proud Boys would go on to lead the January 6th attack at key breach points, penetrate the Capitol building, and lead hundreds of others inside. *Id.* at 56. As the attack unfolded, Tarrío claimed credit in a private chat, writing: “We did this.” *Id.* at 500

110. TRUMP’S “will be wild” tweet also galvanized the Oath Keepers. The Oath Keepers are an anti-government militia group that focuses on recruiting former and current military, law enforcement, and other public servants who have taken an oath to support the U.S. Constitution. *Id.* at 512. Like the Proud Boys, the Oath Keepers have a nationwide presence.

111. Days before TRUMP’S tweet, on December 10, 2020, Rhodes vowed that if President TRUMP did not invoke the Insurrection Act, the Oath Keepers would “rise up in insurrection (rebellion) against the ChiCom puppet Biden.” *Id.* at 514.

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

113. The Three Percenters are another violent militia that viewed President TRUMP'S December 19th tweet as a call to arms. *Id.* at 521.

114. Three Percenters across the country immediately began planning for violence after TRUMP'S "be wild" tweet, which tapped into a well of anti-government extremism already prevalent among the group's members.

115. The Three Percenters used President TRUMP'S "will be wild" tweet as a recruitment tool to encourage others to answer TRUMP'S call. *Id.* at 524. In late December, the Three Percenters issued a letter to its members announcing "this organization will be answering that call!" *Id.*

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

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

118. Ali Alexander, a Stone ally, quickly organized a new "Stop the Steal" campaign, establishing Stop the Steal, LLC, in Alabama on November 10, 2020. *Id.* at 503. Other key players in the coalition included Alex Jones, the conspiracy theorist and host of InfoWars;

Nick Fuentes, leader of the white nationalist group Groypers; and Amy and Kylie Kremer, pro-Trump rally organizers and founders of Women for America First. *Id.* at 503, 530.

119. Between Election Day 2020 and January 6th, Stop the Steal organizers held dozens of rallies around the country, including in Colorado, inflaming Trump supporters with election disinformation and recruiting them to travel to Washington, D.C. for January 6th. *Id.* at 530. The rallies brought together many groups, including violent extremists such as the Proud Boys, Oath Keepers, and Three Percenters; QAnon conspiracy theorists; white nationalists; and anti-vaccine activists. Jan. 6th Report at 502–07. While these groups had differing goals and ideologies, their common denominator was support for President Trump and his lie of a stolen election.

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

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

122. Between November 18 and 21, 2020, Stop the Steal participants gathered outside of the Georgia state capitol and the governor’s mansion, including for armed protests. *Id.* at 504. Leading Stop the Steal proponents—including Ali Alexander, Roger Stone, Alex Jones, Nick Fuentes, and members of the Proud Boys and Oath Keepers—used inflammatory

rhetoric and sought to intimidate lawmakers to overturn the election results in Georgia, which was required to certify Biden’s victory by the end of that week. *Id.* at 505. Alexander exhorted supporters to “storm the [state] capitol” and vowed “we’ll light the whole shit on fire.” *Id.* at 504–05.

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

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

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

126. Federal agencies also identified significant threats of violence ahead of January 6th, including threats to storm the U.S. Capitol and kill elected officials. Such threats were

made openly online and widely reported in the press. President Trump continued to urge his supporters to come to Washington, D.C. even after these threats.

127. From December 1, 2020, through January 6, 2021, seven federal agencies—including Executive Branch agencies that President Trump oversaw—developed 27⁸ threat products warning of potential violence in Washington, D.C. on January 6th. Agencies relayed some of these threats to the White House and the Secret Service. *Id.* at 63.

128. As the nation’s “Commander-in-Chief and Chief Law Enforcement Officer . . . , President Trump had control over the sharing of any intelligence concerning a potential riot” on January 6th.

129. Each agency threat product concerned Congress’s counting of electoral votes, with some predicting a violent assault on the U.S. Capitol. Some noted that January 6th attendees planned to use actual and improvised weapons, including firearms, explosive devices chemical weapons and irritants, knives, baseball bats, and fireworks. All seven agencies issued threat products indicating that domestic violent extremists or militia groups planned for violence on January 6th.⁹

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

⁸ U.S. Gov’t Accountability Off., *Capitol Attack: Federal Agencies Identified Some Threats, But Did Not Fully Process And Share Information Prior to January 6, 2021*, GAO-23-106625, at 24, Feb. 2023, <https://www.gao.gov/assets/gao-23-106625.pdf>.

⁹ U.S. Gov’t Accountability Off., *Capitol Attack: Federal Agencies Identified Some Threats, But Did Not Fully Process And Share Information Prior to January 6, 2021*, GAO-23-106625, at 24, Feb. 2023, <https://www.gao.gov/assets/gao-23-106625.pdf>.

Be ready to fight. Congress needs to hear glass breaking, doors being kicked in, and blood from their BLM and Pantifa slave soldiers being spilled. Get violent. ... stop calling this a march, or rally, or a protest. Go there ready for war. We get our President, or we die. NOTHING else will achieve this goal.¹⁰

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

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

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

¹⁰ FBI, Norfolk Division, *Situational Information Report, Jan. 5, 2021*, <https://www.govinfo.gov/content/pkg/GPO-J6-DOC-CTRL0000001532.0001/pdf/GPO-J6DOC-CTRL0000001532.0001.pdf>.

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

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

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

137. DOJ attorney Jeffrey Clark and Trump advisor John Eastman said violence may be necessary to keep TRUMP in office. On January 3rd, a Deputy White House Counsel told Clark there would be “riots in every major city in the United States” if TRUMP remained in office, to which Clark responded, “that’s why there’s an Insurrection Act,” a statute that allows the president to deploy the military within the United States and use it against Americans. Exhibit 1 ¶ 81. On January 4th, after a senior White House advisor told Eastman that his plan would “cause riots in the streets,” Eastman responded that there had been points in the nation’s history where violence was necessary to protect the republic. *Id.* ¶ 94.

138. Based on intelligence from law enforcement, the statements and prior violent conduct of his supporters, and the and threats widely circulated in the public domain and known and reported to President TRUMP, TRUMP knew or consciously disregarded the risk that his supporters were angry and prepared for violence on January 6th. But that was the point: TRUMP wanted his supporters to commit violence on his behalf and he shared their goal of stopping the transfer of power by any means necessary, including the use of violence.

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

140. Ali Alexander, founder of Stop the Steal, LLC, quickly launched a new website invoking the President’s tweet, “WildProtest.com.” Exhibit 3 at 530. The site advertised planned January 6th events under a banner that read: “President Trump Wants You in DC January 6.” *Id.*

141. Alex Jones devoted much of his December 20th InfoWars show to TRUMP’S “will be wild” announcement, telling his audience: “[Trump’s] calling you, he needs your help, we need your help,” “we need 10 million people there.” *Id.* at 506. InfoWars co-host Matt Bracken urged viewers to “occupy[] the entire area” and “if necessary storm[] right into the Capitol.” *Id.* at 507. He also previewed the strategy—successfully deployed on January

6th—of using the mob itself as a weapon: “If you have enough people, you can push down any kind of fence or a wall.” *Id.*

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

143. From December 27th through January 6th, WFAF led a cross-country bus tour in which speakers inflamed rallygoers with election lies and urged them to answer President Trump’s call to travel to Washington, D.C. and “apply[] pressure to members of Congress to contest the electoral college.” A website advertising the event prominently displayed Trump’s “will be wild” tweet and stated “THE PRESIDENT IS CALLING ON US TO COME BACK TO WASHINGTON ON JANUARY 6TH FOR A BIG PROTEST - ‘BE THERE, WILL BE WILD.’”

144. Couy Griffin—the former county commissioner whom a New Mexico state court removed under Section Three of the Fourteenth Amendment for his role in the January 6th insurrection—was a “featured speaker” on WFAF’s “multi-city bus tour.” On this tour, “Mr. Griffin urged crowds to join the ‘war’ and ‘battle’ in ‘the streets’ of Washington, D.C. on

January 6 to stop certification of the election and the peaceful transfer of power.” He told one crowd “the reason why I’m going to Washington D.C. is because my president called me there and I’m gonna be there,” and he implored them to do the same. The New Mexico court found that these pre-January 6 mob mobilization and incitement efforts by Mr. Griffin and others helped make the insurrection possible.

145. WFAF bussed TRUMP supporters to Washington D.C. for the violent protests and coordinated with Trump allies. *Id.* at 531–32. In a December 29th tweet, Alexander announced that “new charter buses to bring people FOR FREE to #JAN6 #STOPTHESTEAL for President Trump,” closing the tweet with “STAND BACK & STAND BY!”—a reference to Trump’s directive to the Proud Boys. *Id.* at 532.

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

147. On January 4th, during an internal meeting, TRUMP also indicated to staffers his desire to march to the Capitol personally—and to summon 10,000 National Guardsmen, not to protect the Capitol from any potential violence by the mob he was summoning, but to

protect Trump himself from supposed threats by “left-wing counter-protestors.” *Id.* at 233–34.

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

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

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

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

152. At 5:43 p.m., President TRUMP tweeted a final advertisement for his January 6th rally, stating, “I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early – doors open at 7AM Eastern. BIG CROWDS!”

153. That evening, President TRUMP acknowledged to White House staff that his supporters would be “fired up” and “angry” the next day because they believed the election was stolen. Exhibit 3 at 539. Trump knew they were angry that night because he could hear them from the Oval Office. *Id.* But this was not news to Trump: he knew well before January 6th that his supporters were coming to Washington angry and prepared for violence.

January 6, 2021.

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

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

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

157. Later that morning, TRUMP asked speechwriters to revise his rally speech to call out Pence by name. Exhibit at 581. The line was later removed at the request of White House legal staff. *Id.* at 582.

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

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

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

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

162. At 8:07 a.m., Secret Service agents reported to the agency's Protective Intelligence Division that crowd members were "wearing ballistic helmets, body armor and carrying radio equipment.

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

Id.

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

165. Several January 6th criminal defendants have pleaded guilty or been convicted of carrying firearms on or near the Capitol grounds. *Id.* at 640–41. Other January 6th assailants brought axes, tasers, cattle prods, bear spray, pepper spray, pitch forks, hockey sticks, and sharpened flag poles. *Id.* at 642.

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

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

168. From a tent backstage at the Ellipse, President TRUMP looked out at the crowd of around 53,000 supporters and became enraged when he saw that about half of them refused to walk through magnetometers and be screened for weapons. *Id.* at 585.

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

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

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

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

Building on months of inflammatory lies, TRUMP continued to falsely claim the election was stolen and that Vice President Pence had the power to keep him in office. He repeatedly targeted “weak Republicans” and “RINOs” in Congress.¹¹ And he called out Vice President Pence by name eleven times, ad-libbing several lines not included in his written remarks:

- a. “I hope Mike is going to do the right thing. I hope so. I hope so. Because if Mike Pence does the right thing, we win the election”;
- b. “The states got defrauded ... Now they want to recertify. ... All Vice President Pence has to do is send it back to the states to recertify and we become president and you are the happiest people”;
- c. “I just spoke to Mike. I said: ‘Mike, that doesn’t take courage. What takes courage is to do nothing. That takes courage.’ And then we’re stuck with a president who lost the election by a lot and we have to live with that for four more years. We’re just not going to let that happen”;
- d. “And Mike Pence is going to have to come through for us, and if he doesn’t, that will be a, a sad day for our country because you’re sworn to uphold our Constitution”;
- e. “And Mike Pence, I hope you’re going to stand up for the good of our Constitution and for the good of our country. And if you’re not, I’m going to be

¹¹ *Transcript of Trump’s speech at rally before US Capitol riot*, Associated Press, Jan. 13, 2021, <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-mediae79eb5164613d6718e9f4502eb471f27>.

very disappointed in you. I will tell you right now. I'm not hearing good stories"; and

- f. "So I hope Mike has the courage to do what he has to do. And I hope he doesn't listen to the RINOs and the stupid people that he's listening to."¹²

173. TRUMP'S statements had the intended effect of producing substantial anger against Vice President Pence—anger the mob acted on that day. Exhibit 3 at 37. During TRUMP'S speech, rallygoers could be heard shouting "storm the Capitol!" "invade the Capitol building!" and "take the Capitol!"

174. Knowing his supporters were angry and armed, President TRUMP used the word "fight" or variations of it 20 times during his Ellipse speech. Nearly every mention was improvised: the word "fight" appears only once in a teleprompter draft of the speech. TRUMP claimed, from the perch of the presidency, that the very existence of our country depended on his supporters' willingness to fight: "And we fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore."¹³

175. TRUMP also pushed them to display strength, stating "You'll never take back our country with weakness. You have to show strength and you have to be strong. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated."¹⁴

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

176. President TRUMP insisted “[w]e must stop the steal” and stated repeatedly that “we can’t let” the election certification happen.¹⁵

177. President TRUMP exhorted his supporters to march to the Capitol and claimed he would join them: “[A]fter this, we’re going to walk down, and I’ll be there with you, ... we’re going to walk down to the Capitol, and we’re going to cheer on our brave senators and congressmen and women, and we’re probably not going to be cheering so much for some of them,” he stated. He repeated that call at the end of his speech, while again targeting “weak” Republicans: “[W]e’re going to walk down Pennsylvania Avenue. ... And we’re going to the Capitol, and we’re going to ... give our Republicans, the weak ones[,] ... the kind of pride and boldness that they need to take back our country. So, let’s walk down Pennsylvania Avenue.”¹⁶

178. Around 12:53 p.m., toward the end of President TRUMP’S speech, the Proud Boys led the initial breach of the Capitol perimeter and created a path for the rest of the mob to follow. Exhibit 3 at 645. A minute later, the mob pushed Capitol Police officers to the ground, removed fencing, and made their way toward the Capitol building. *Id.* at 646. The Proud Boys led the charge in removing the next layer of security barriers as others breached barricades surrounding the Capitol. *Id.*

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

¹⁵ *Id.*

¹⁶ *Id.*

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

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

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

183. At 1:03 p.m., as police officers fought back the mob behind security barriers outside the Capitol, Vice President Pence gaveled in the joint session of Congress.¹⁷

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

185. At 1:49 p.m., the D.C. Metropolitan Police Department declared a riot at the Capitol. Exhibit 3 at 651. The mob overwhelmed and brutalized police officers, continued to breach barricades, climbed scaffolding, and ascended closer to the Capitol from multiple angles. *Id.* at 651–52.

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

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

188. Members of extremist groups, white supremacists, neo-Nazis, and neo-Confederates were among the first to forcibly breach the Capitol. *Id.* at 653–55. Delaware man Kevin Seefried paraded a Confederate battle flag—a symbol of white supremacy and violent rebellion against the United States—through the halls of the Capitol building. *Id.* He

¹⁷ Staff Rep. of S. Comm. on Homeland Sec. & Govt'l Affs. & S. Comm. on Rules & Admin., *Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6, 117th Cong.*, at 23–24, June 8, 2021, <https://www.rules.senate.gov/imo/media/doc/Jan%206%20HSGAC%20Rules%20Report.pdf>

was not alone, many of TRUMPS supporters who stormed the Capitol displayed the symbols of symbols of America's enemies.

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

190. At 2:30 p.m., the Senate was evacuated, and senators were rushed to a more secure location. *Id.* at 665.

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

192. By 1:21 p.m., mere minutes after finishing his speech, President TRUMP was informed that the Capitol was under assault. *Id.* at 592. From then until 4:03 p.m., he sat in the presidential dining room and watched the attack on live television. *Id.* at 592–93.

At no point on January 6th did President Trump contact his Cabinet or military leaders to marshal a defense of the Capitol and put down the insurrection. But he did act to exacerbate the violence.

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

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

195. White House staff expected TRUMP’S tweet to incite further violence. Exhibit 3 at 87–88. Deputy Press Secretary Sarah Matthews stated that “it was obvious that the situation at the Capitol was violent and escalating quickly,” that she knew “the impact [Trump’s] words have on his supporters,” and that “in that moment for [Trump] to tweet out the message about Mike Pence, it was him pouring gasoline on the fire and making it much worse.” *Id.*

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

197. As anticipated, President TRUMP’S 2:24 p.m. tweet immediately caused the mob to surge both inside and outside the Capitol, intensifying the violence that Trump knew was underway. *Id.* at 38, 86. Minutes after the tweet, the mob broke through a security line of the D.C. Metropolitan Police Department. *Id.* at 38.

198. One minute after the tweet, at 2:25 p.m., the Secret Service determined they could no longer protect the Vice President in his ceremonial office and evacuated him and his family to a secure loading dock, where he remained for the next four and a half hours. *Id.* at

38–39, 466. The violent mob, which was calling for Pence’s murder, came within 40 feet of the Vice President as he was evacuated. *Id.* at 466.

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

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

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

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

203. At no point on January 6th did President TRUMP contact top officials in his administration such as the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Attorney General, the Secretary of Homeland Security, or the FBI Director to ensure they were working to quell the violence. *Id.* at 94. He took no action to deploy the D.C. National

Guard, which falls under the President’s direct command. *Id.* at 724. Nor did he contact Vice President Pence to check on his safety. *Id.* at 94.

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

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

206. President Trump’s inaction in the face of a violent assault on the Capitol by a mob of his supporters stood in stark contrast to his hyper-aggressive, militarized response to nationwide racial justice protests in 2020, including the forceful clearing of peaceful protesters from Lafayette Square in June 2020.

207. President TRUMP’S senior staff, family, and close allies repeatedly urged him to issue a statement instructing the mob to leave the Capitol, but he refused. *Id.* at 592-606.

208. Minutes after the mob breached the Capitol building at 2:13 p.m., White House Counsel Pat Cipollone told Chief of Staff Mark Meadows that “rioters have gotten to the Capitol” and that they needed to “go down and see the President now.” *Id.* at 595. Meadows responded: “He doesn’t want to do anything, Pat.” *Id.* at 595. Cipollone replied, “something

needs to be done, or people are going to die and the blood's going to be on your [fucking] hands." *Id.*

209. President TRUMP'S first public statement after the attack began was his 2:24 p.m. tweet targeting Vice President Pence, which intensified the violence.

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

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

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

213. At 2:38 p.m., TRUMP tweeted: "Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!" At 3:13 p.m., he sent a similar tweet urging the crowd to "remain peaceful."¹⁸⁴ Both tweets falsely implied his supporters were "peaceful," when in fact TRUMP knew of the ongoing violence at the Capitol. Neither of Trump's tweets condemned the mob's violence or told them to leave the Capitol building.

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

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

216. In the video, President TRUMP did not condemn the attack—he justified it. He repeated his lie of a “stolen” election, empathized with the attackers, and told them, “we love you” and “[y]ou’re very special.” *Id.*

217. Throughout the evening of January 6th, TRUMP and Giuliani continued to try and exploit the violence and chaos at the Capitol by calling Members of Congress and urging them to further delay the election certification. *Id.* at 608–10. At 7:01 p.m., as Giuliani was calling U.S. Senators on TRUMP’S behalf, White House Counsel Pat Cipollone asked President Trump to withdraw any objections and allow the certification; TRUMP refused. Exhibit 1 ¶ 120.

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

219. With TRUMP refusing to call off his mob, Capitol Police were forced to call in more than 2,000 reinforcements from 19 federal, state, and local agencies, including the D.C.

National Guard (whom Vice President Pence and others had called in, but not President Trump). Officers had to use chemical spray and munitions, flash bangs, tactical teams with firearms, riot shields, and batons to fight back the mob.

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

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

222. TRUMP now again seeks the office of the President but is not qualified to serve as the office of President of the United States.

Section Three provides:

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

U.S. Const. amend. XIV, § 3

223. DONALD J. TRUMP having previously taken an oath as an officer of the United States disqualified himself from ever again serving as President of the United States by engaging in an insurrection against the same, on and for some time leading up to, the January

6, 2021, attack on the United States Capitol building. TRUMP called his supporters to Washington D.C., anticipating they would commit acts of violence in his name to prevent the transition of power. He then encouraged those acts of violence, ordered tens of thousands of his followers to attack the Capitol building, encouraged their violence while the attack was unfolding, and only ordered them home when his plan to install himself as President of the United State failed.

PLAINTIFFS' FIRST CLAIM FOR RELIEF
Declaratory Judgment Under Wis Stat. 806.04 Against All Defendants.

224. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 223 of this Complaint with the same force and effect as if fully set forth herein.

225. U.S. Const. amend. XIV, § 3 states

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.

226. Section Three imposes a qualification for holding the office of President of the United States. It is a constitutional limitation on who can run for President, no less than the requirements that the President be at least 35 years of age, a natural-born U.S. citizen, a U.S. resident for at least 14 years, and one who has not served two prior presidential terms.

227. As with other constitutional qualifications, Section Three challenges can be adjudicated through civil suits and administrative proceedings.

228. No federal statute is required to activate Section Three, just as no federal statute is required to activate other sections of the Fourteenth Amendment or other constitutional qualifications for office. Section Three is a constitutional command with independent legal force.

229. On January 20, 2017, DONALD J. TRUMP took an oath as officer of the United States at his inauguration when he was sworn in as President of the United States.

230. As detailed in the previous paragraphs of this complaint, TRUMP engaged in an insurrection against the United States that began sometime in the Summer of 2020 and came to head on January 6, 2021, when on TRUMPS's implicit and explicit orders, his supporters violently attacked and took control of the Capitol in an effort to install him as President of the United States for a second term.

231. Because of his role in the insurrection TRUMP is no longer qualified to serve as President of the United States under Section Three of the Fourteenth Amendment to the Constitution of the United States.

232. Further, on December 19, 2023, the Colorado Supreme Court found TRUMP to be disqualified under U.S. Const. amend. XIV, § 3 and the Maine Secretary of State made a similar finding on December 28, 2023. TRUMP will be removed from the Republican primary ballots in both Maine and Colorado pending US Supreme Court action.

233. The individual states are responsible for regulating their own elections, and in Wisconsin, that task falls upon the WISCONSIN ELECTIONS COMMISSION. The WEC is responsible for the administration of all election laws not related to campaign finance under Wis Stat. § 5.05(1).

234. On December 28, 2023, BANGSTAD, believing that TRUMP would be unconstitutionally allowed to participate in Wisconsin's Republican presidential preference primary, filed a complaint with the WEC under Wis Stat. § 5.06. The complaint was sworn against each of the six WEC Commissioners and demanded that the WEC conform their conduct to the law by finding that DONALD J. TRUMP was disqualified from serving as President of the United States by Section Three of the Fourteenth Amendment to the United States Constitution. Further, BANGSTAD demanded that the WEC commissioners conform their conduct to law by refusing TRUMP ballot access for the 2024 Republican presidential preference primary.

235. BANGSTAD'S complaint was denied as the WEC does not consider complaints made against the commission itself. The WEC explained in a letter dismissing the complaint that "Additionally, the lead opinion of the Wisconsin Supreme Court in *Teigen et al v. Wisconsin Elections Commission et al*, stated that "it would be nonsensical to have WEC adjudicate a claim against itself under § 5.06(1)." 2022 WI 64, 33, 403 Wis. 2d 607, 976 N.W.2d 519. Justice Hagadorn's concurrence further stated that "the better reading is that the § 5.06 complaint process does not apply to complaints against acts of WEC as a body."

236. On January 2, 2024, a committee of Wisconsin Republicans convened to determine which candidates would appear on the Republican presidential preference primary ballot pursuant to Wis Stat. § 8.12. Among the candidates chosen was DONALD J. TRUMP, and TRUMP intends to seek the Republican nomination and run for the office of the President of the United States.

237. The WEC will create, print, and distribute the ballots containing DONALD J. TRUMP'S name sometime before the April 2, 2024, Presidential preference primary.

238. DONALD J. TRUMP is anticipated to secure the Republican nomination at the Republican National Convention on July 15-18, 2024.

239. The WEC has abused its discretion by failing to find that DONALD J. TRUMP is not qualified to serve as President of the United States of American under Section Three of the Fourteenth Amendment to the United States Constitution and will abuse its discretion by placing TRUMP on the Republican presidential preference primary ballot.

240. The WEC further abused its discretion by allowing the Republican committee convened under Wis Stat. § 8.12(b) to submit constitutionally disqualified candidate for Wisconsin's Republican presidential preference primary.

241. Wis Stat. § 5.06 creates a private right of action for Wisconsin's electors to challenge the qualifications of a candidate. Similarly, Wisconsin's electors have a legally protectable interest in keeping unqualified candidates off Wisconsin's ballots.

242. Plaintiff, KIRK C. BANGSTAD, is a resident of Dane County and a qualified Dane County elector. As a qualified elector KIRK C. BANGSTAD has a legally protectable interest in keeping unqualified candidates off Wisconsin's ballots and/or a legally protectable interest in a judicial determination of TRUMP'S qualification to serve as President of the United States of America. BANGSTAD intends to vote in the 2024 presidential preference primary and the 2024 general election.

243. Plaintiff, DOUGLAS R. SMITH, is a resident of Waukesha County and a qualified Waukesha County elector. As a qualified elector SMITH has a legally protectable interest in keeping unqualified candidates off Wisconsin's ballots and/or a legally protectable interest in a judicial determination of TRUMP'S qualification to serve as President of the

United States of America. SMITH intends to vote in the 2024 presidential preference primary and the 2024 general election.

244. Plaintiff, MINOCQUA BREWING COMPANY SUPERPAC, is a Wisconsin based SuperPAC that has previously spent hundreds of thousands of dollars during Wisconsin election cycles advocating for progressive candidates and intends to do the same this election cycle. MBC currently intends to focus the bulk of their expenditures on defeating TRUMP in Wisconsin, provided TRUMP is qualified to serve as President of the United States. If he is not qualified to serve as President of the United States, MBC will focus their expenditures on down ballot races. Ergo, the uncertainty around TRUMP'S qualification is and will continue to cause MBC financial injuries. MBC has a legally protectable interest in a judicial determination on TRUMP'S qualification to serve as President of the United States.

For Press Release Only

245. Wisconsin Courts, through a declaratory judgment under Wis Stat. § 806.04, are empowered to determine if DONALD J. TRUMP is qualified to serve as President of the United States under Section Three of the Fourteenth Amendment to the United States Constitution.

246. Plaintiffs therefore request a declaration under Wis Stat. § 806.04, that Defendant, DONALD J. TRUMP, after previously taking the oath of office as President of the United States, engaged in an insurrection against the country he swore to protect and is therefore disqualified from again serving as President of the United States by Section Three of the Fourteenth Amendment to the United States Constitution.

PLAINTIFFS' SECOND CLAIM FOR RELIEF
**Declaratory Judgment Under Wis Stat. § 806.04 and Injunction against Defendant
Wisconsin Elections Commission.**

247. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 246 of this Complaint with the same force and effect as if fully set forth herein.

248. The individual states are responsible for regulating their own elections, and in Wisconsin, that task falls upon the WISCONSIN ELECTIONS COMMISSION which is responsible for the administration of all election laws not related to campaign finance under Wis Stat. § 5.05(1).

249. On December 28, 2023, BANGSTAD, believing that TRUMP would be unconstitutionally allowed to participate in Wisconsin's Republican presidential preference primary, filed a complaint with the WEC under Wis Stat. § 5.06. The complaint was sworn against each of the six WEC Commissioners and demanded that the WEC conform their conduct to the law by finding that DONALD J. TRUMP was disqualified from serving as President of the United States by Section Three of the Fourteenth Amendment to the United States Constitution. Further, BANGSTAD demanded that the WEC commissioners conform their conduct to law by refusing TRUMP ballot access for the 2024 Republican presidential preference primary.

250. BANGSTAD'S complaint was denied as the WEC does not consider complaints made against the commission itself. The WEC explained in a letter dismissing the complaint that "Additionally, the lead opinion of the Wisconsin Supreme Court in *Teigen et al v. Wisconsin Elections Commission et al*, stated that "it would be nonsensical to have WEC adjudicate a claim against itself under § 5.06(1)." 2022 WI 64, 33, 403 Wis. 2d 607, 976

N.W.2d 519. Justice Hagadorn’s concurrence further stated that “the better reading is that the § 5.06 complaint process does not apply to complaints against acts of WEC as a body.”

251. Section Three of the Fourteenth Amendment to the United States Constitution is an election law, and therefore the WEC has the responsibility for its administration in Wisconsin.

252. Further, Wis Stat. § 7.75(1) instructs Wisconsin’s Presidential Electors “When all electors are present, or the vacancies filled, they shall perform their required duties under the constitution and laws of the United States”

253. When Wis Stat. § 7.75(1) is read with Section Three of the Fourteenth Amendment to the Constitution of the United States it becomes clear that an unqualified candidate cannot receive Wisconsin’s ten electoral votes.

254. The WEC has a legal and constitutional obligation to keep unqualified candidates off Wisconsin’s ballots.

255. Wis Stat. § 5.06 creates a private right of action for Wisconsin’s electors to demand that election officials be required to conform their conduct to the law.

256. Wis Stat. § 8.12(b) states:

On the first Tuesday in January of each year, or the next day if Tuesday is a holiday, in which electors for president and vice president are to be elected, there shall be convened in the capitol a committee consisting of, for each party filing a certification under this subsection, the state chairperson of that state party organization or the chairperson's designee, one national committeeman and one national committeewoman designated by the state chairperson; the speaker and the minority leader of the assembly or their designees, and the president and the minority leader of the senate or their designees. All designations shall be made in writing to the commission. This committee shall organize by selecting an additional member who shall be the chairperson and shall determine, and certify to the commission, no later than on the Friday following the date on which the committee convenes under this paragraph, the names of all candidates of the political parties represented on the committee for the office of president of the

United States. The committee shall place the names of all candidates whose candidacy is generally advocated or recognized in the national news media throughout the United States on the ballot, and may, in addition, place the names of other candidates on the ballot. The committee shall have sole discretion to determine that a candidacy is generally advocated or recognized in the national news media throughout the United States.

257. While Wis Stat. § 8.12(b) states “The committee shall place the names of all candidates whose candidacy is generally advocated or recognized in the national news media throughout the United States on the ballot” it must be read to state that the committee shall place the names of all **qualified** candidates so as not to violate Article II, Section 1, Clause 5 of the United States Constitution, Section three of the Fourteenth Amendment to the United States Constitution or the Twenty Second Amendment to the United States Constitution. “It is a cardinal rule of statutory construction that conflicts between statutes are not favored and will be held not to exist if the statutes may otherwise be reasonably construed.” *Wyss v. Albee*, 193 Wis. 2d 101, 110 (Wis. 1995).

258. Plaintiff, KIRK C. BANGSTAD, is a resident of Dane County and a qualified Dane County elector. As a qualified elector KIRK C. BANGSTAD has a legally protectable interest in keeping unqualified candidates off Wisconsin’s ballots and/or a legally protectable interest in a judicial determination of TRUMP’S qualification to serve as President of the United States of America.

259. Plaintiff, DOUGLAS R. SMITH, is a resident of Waukesha County and a qualified Waukesha County elector. As a qualified elector SMITH has a legally protectable interest in keeping unqualified candidates off Wisconsin’s ballots and/or a legally protectable interest in a judicial determination of TRUMP’S qualification to serve as President of the United States of America.

260. As detailed in the previous paragraphs of this complaint, DONALD J. TRUMP engaged in an insurrection against the United States, after previously taking an oath as an officer of the United States and is therefore no longer qualified to serve as President of the United States.

261. As electors, Plaintiffs will be harmed by TRUMP'S inclusion on the 2024 Republican presidential preference primary ballot.

262. The WEC has abused its discretion by failing to find that DONALD J. TRUMP is not qualified to serve as President of the United States of American under Section Three of the Fourteenth Amendment to the United States Constitution and will abuse its discretion by placing TRUMP on the Republican presidential preference primary ballot.

263. The WEC further abused its discretion by allowing the Republican committee convened under Wis Stat. § 8.12(b) to submit DONALD J. TRUMP, a constitutionally disqualified candidate, to the WEC for access to Wisconsin's Republican presidential preference primary ballot.

264. Wisconsin Courts, through a declaratory judgment action under Wis Stat. § 806.04, are empowered to declare that DONALD J. TRUMP may not appear on Wisconsin's Presidential preference primary ballot, because of his constitutional disqualification.

265. Plaintiffs therefore request a declaration under Wis Stat. § 806.04 that Defendant DONALD J. TRUMP is disqualified from serving as President of the United States of America by Section Three of the Fourteenth Amendment to the United States Constitution and therefore may not appear on Wisconsin's presidential preference primary ballot.

266. Plaintiffs further request an injunction enjoining the Wisconsin Election Commission from placing DONALD J. TRUMP on the Presidential preference primary ballot.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs KIRK C. BANGSTAD, DOUGLAS R. SMITH and The MINOCQUA BREWING COMPANY SUPERPAC request an entry of judgment in their favor and against Defendants DONALD J. TRUMP, The REPUBLICAN PARTY OF WISCONSIN, and The WISCONSIN ELECTIONS COMMISSION:

- A. For a declaratory judgment under Wis Stat. § 806.04 declaring that Defendant DONALD J. TRUMP is disqualified from serving as President of the United States of America by Section Three of the Fourteenth Amendment to the United States Constitution.
- B. For a declaratory judgment under Wis Stat. § 806.04 declaring that Defendant DONALD J. TRUMP is disqualified from serving as President of the United States of America by Section Three of the Fourteenth Amendment to the United States Constitution and therefore may not appear on Wisconsin’s presidential preference primary ballot.
- C. For an injunction enjoining the Wisconsin Elections Commission from including Defendant Donald J. Trump on the 2024 Wisconsin presidential preference primary ballot.
- D. Any and all other available remedies under state law.

Dated: January 5, 2024.

Frederick Melms

“Electronically signed by”
Frederick B. Melms

Attorney for Plaintiffs

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