

117TH CONGRESS }  
*1st Session*

SENATE

{ S. Doc.  
117-3

**PROCEEDINGS OF THE  
UNITED STATES SENATE**

IN THE

**IMPEACHMENT TRIAL OF  
DONALD JOHN TRUMP**

**VOLUME II—VISUAL AIDS FROM THE TRIAL  
AND STATEMENTS OF SENATORS**



VOLUME II OF II

FEBRUARY 13, 2021.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

43-438

WASHINGTON : 2021

UNANIMOUS CONSENT AGREEMENTS RELATED TO  
PRINTING

*In the Senate of the United States*

*February 4, 2021*

Mr. BLUMENTHAL. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized, in relation to the pending impeachment trial of former President Trump, to print as Senate documents those documents filed by the parties to be immediately made available to all parties, and that at the conclusion of the trial, those documents be printed together as a Senate document.

The PRESIDING OFFICER. Without objection, it is so ordered.  
[167 Cong. Rec. S420 (daily ed. Feb. 4, 2021)]

*February 13, 2021*

Mr. SCHUMER. Madam President, I ask unanimous consent that the Secretary be authorized to include statements of Senators explaining their votes, either given or submitted during the legislative sessions of the Senate through March 1 along with the full record of the Senate's proceedings and the filings by the parties in a Senate document printed under the supervision of the Secretary of the Senate that will complete the documentation of the Senate's handling of these impeachment proceedings.

The PRESIDING OFFICER. Without objection it is so ordered.  
[167 Cong. Rec. S739 (daily ed. Feb. 13, 2021)]



## FOREWORD

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By unanimous consent, the United States Senate has directed the creation of this publication, Senate Document 117–3, which contains, in two volumes, the official record of the Senate proceedings in the impeachment trial of former President Donald John Trump in the 117th Congress. The purpose of these volumes is to preserve for future reference the formal record of the fourth presidential impeachment, and third resulting trial in the Nation’s history, and the second impeachment trial of Donald John Trump. Together with the volumes contained in Senate Document 117–4, which includes all publicly available material submitted to the Senate by the House of Representatives and counsel for the former president as their evidentiary record, these two volumes represent the complete official record of the impeachment actions against Donald John Trump in the 117th Congress.

The volumes are:

Volume I: Preliminary and Floor Trial Proceedings

Volume II: Visual Aids from the Trial and Statements of Senators

As with the presidential impeachment trial in the 116th Congress, the use of audio-visual material played a prominent role in the proceedings and in the evidence presented by the House managers and the counsel for the former President through the course of their arguments. In Volume I of this Document, the audio from all recordings has been transcribed and is included in the record. As visual aids are not reproduced in the *Congressional Record*, references have been inserted in this record where such aids were used by the speaker. Those references indicate a slide number and each such slide can be found in Volume II.

### VOLUME I: PRELIMINARY AND FLOOR TRIAL PROCEEDINGS

Volume I contains all preliminary impeachment proceedings as well as a reproduction of the official record of the Senate floor proceedings in the second impeachment trial of Donald John Trump.

On January 13, 2021, by a vote of 232 to 197, the House of Representatives adopted one article of impeachment against President Trump (House Resolution 24, 117th Congress, roll call vote number 17). A subsequent resolution, adopted January 13, appointed managers on the part of the House of Representatives (House Resolution 40, 117th Congress).

On January 19, 2021, then Majority Leader Mitch McConnell announced that, on January 14 while in adjournment, a message was received from the House of Representatives announcing the impeachment of Donald John Trump. The Senate notified the House that the message was received and informed the House that the

Senate was ready to receive the managers appointed by the House for the purpose of exhibiting the article of impeachment against President Trump.

On January 22, 2021, Majority Leader Charles E. Schumer<sup>1</sup> and Republican Leader McConnell addressed the Senate on the issue of impeachment. On January 25, Majority Leader Schumer addressed the Senate on matters related to impeachment. At 7:03 p.m. on January 25, the managers on the part of the House of Representatives appeared at the bar of the Senate to exhibit the article of impeachment, set forth in House Resolution 24. Lead Manager Jamie Raskin read House Resolution 40, appointing managers to conduct the impeachment trial against then former President Donald John Trump, and House Resolution 24, stating the article of impeachment, after which the managers departed the Senate Chamber. The Senate unanimously agreed to Senate Resolution 15, authorizing an official photo of the Senate while sitting as a court of impeachment. The Senate unanimously agreed to proceed, at 2:30 p.m. on January 26, to the consideration of the article of impeachment against the former president.

At 2:30 p.m. on January 26, 2021, President pro tempore emeritus Charles E. Grassley administered the impeachment oath to President pro tempore Patrick J. Leahy, who then administered the oath to all senators. Senator Rand Paul of Kentucky raised the following point of order: “I make a point of order that this proceeding, which would try a private citizen and not a President, a Vice President, or civil officer, violates the Constitution and is not in order.” In conformity with the precedents of the Senate on questions of constitutionality, the President pro tempore submitted the point of order to the Senate for consideration. Majority Leader Schumer addressed the issue of constitutionality, then moved to table the point of order. The yeas and nays were taken, and the Senate tabled the point of order by a vote of 55 yeas to 45 nays (roll call vote number 8).

On January 26, 2021, Majority Leader Schumer introduced Senate Resolution 16 to establish procedures for the trial. Senate Resolution 16 provided that: a summons be issued to Donald John Trump, who had until 12:00 p.m. on February 2, to file an answer; the House of Representatives have until 12:00 p.m. on February 8, to file its replication; if so desired, the House of Representatives have until 10:00 a.m. on February 2, to file a trial brief; if so desired, Donald John Trump have until 10:00 a.m. on February 8, to file a trial brief; and the House of Representatives, if so desired, have until 10:00 a.m. on February 9, to file a rebuttal brief. Senate Resolution 16 also instructed each party to address the question of jurisdiction raised by the preceding point of order. The Senate adopted the resolution by a vote of 83 yeas to 17 nays (roll call vote number 9). Upon motion by Majority Leader Schumer, the Senate, sitting as a court of impeachment, adjourned until February 9, 2021.

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<sup>1</sup>When the 117th Congress convened on January 3, 2021, the Senate was comprised of 51 Republicans and 48 Democrats (including two Independents who caucused with the Democrats), maintaining a Republican majority. On January 20, 2021, due to the results of two run-off elections on January 5 and the swearing in of Vice President Kamala D. Harris who, as President of the Senate, would cast tie-breaking votes, majority control shifted to the Democrats.

On January 27, 2021, Majority Leader Schumer addressed the Senate on the issue of impeachment. On the same day, the Acting Sergeant at Arms was instructed by precept to deliver the precept and writ of summons to Donald John Trump, summoning him to file with the Secretary of the Senate an answer to the article of impeachment no later than 12:00 p.m. on February 2, 2021. The Acting Sergeant at Arms delivered the precept and writ of summons to the former President in Palm Beach, Florida, on January 30. Counsel on behalf of former President Trump submitted their answer to the article of impeachment on February 2. That same day, the House managers submitted their trial memorandum.

On February 4, 2021, Majority Leader Schumer addressed the Senate on the issue of impeachment. The Senate unanimously agreed to authorize the Secretary to print preliminary matters as Senate documents to be made available to all parties, and at the conclusion of the trial, to print those documents together as a Senate document.

On February 8, 2021, the Secretary received the trial memorandum of former President Trump, as well as the replication of the House to the answer of the former president to the article of impeachment. After Majority Leader Schumer and Republican Leader McConnell addressed the Senate on the issue of impeachment, the Senate unanimously agreed to Senate Resolutions 38, 39, 40, and 41, regarding access to the Senate Chamber and galleries, furniture installation, and use of equipment during the impeachment trial.

On February 9, 2021, the House of Representatives submitted its reply memorandum. Majority Leader Schumer again addressed the Senate on the issue of impeachment, then submitted Senate Resolution 47, regarding agreed-upon procedural matters for the impeachment trial, including debate on the issue of jurisdiction, filing of motions by House managers and counsel to the former President, and the question of subpoenaing witnesses. The resolution was adopted by a vote of 89 yeas to 11 nays (roll call vote number 56). Pursuant to Senate Resolution 47, the Senate then heard arguments from House managers and the former President's counsel on the question of whether Donald John Trump was subject to the jurisdiction of the Court of Impeachment for acts committed while President of the United States, notwithstanding the expiration of his term of office. At the conclusion of debate, the Senate voted 56 to 44 to affirm jurisdiction (roll call vote number 57).

On February 10, 2021, the House managers presented their case on behalf of the House of Representatives. At the conclusion of the House managers' presentation for the day, and after a brief debate on evidentiary issues, the Senate, sitting as a court of impeachment, adjourned until February 11, 2021. The managers concluded their arguments on behalf of the House of Representatives on February 11. On February 12, counsel for the former President presented their arguments, after which senators posed questions to House managers and to counsel for the former President.

On February 13, 2021, pursuant to Senate Resolution 47, the Senate considered whether it would be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents. The House managers' argument was pre-

sented first, followed by counsel for the former President. Following arguments, the President pro tempore put the question to the Senate, and by a vote of 55 yeas to 45 nays (roll call vote number 58) the Senate agreed that it was in order to consider and debate such motions. Following a brief recess, the House managers and counsel for the former President agreed to a stipulation that allowed for the introduction of a single statement by Representative Herrera Beutler, but requested no further motions for subpoenas. No depositions were taken during the Senate proceedings and no witnesses appeared at the trial. The House managers and counsel for the former President presented closing arguments on February 13.

Volume I concludes with the February 13, 2021 vote and judgment of the Senate to acquit Donald John Trump, by a vote of 57 guilty to 43 not guilty (roll call vote number 59), on one article of impeachment.

## VOLUME II: VISUAL AIDS FROM THE TRIAL AND STATEMENTS OF SENATORS

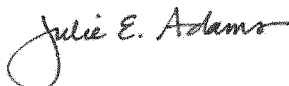
Volume II reproduces the complete set of visual aids used by House managers and counsel for the former President during the preliminary and trial proceedings. A notation indicating the use of a visual aid is imbedded in the transcript of the proceedings (Volume I) with citation information for items included in Volume II.

On February 13, 2021, the Senate unanimously agreed to provide each senator an opportunity through March 1 to place in the *Congressional Record* a statement explaining his or her vote on the article of impeachment, and to include those statements in the official record of the Senate's impeachment proceedings. Those statements are included in Volume II after the section containing visual aids.

The publication of these two volumes, supplemented with Senate Document 117–4, sets forth a complete record of this historic impeachment trial and will provide a fuller understanding of the way in which the Senate conducted these proceedings.

## ACKNOWLEDGMENTS

For their repeated dedication, I thank my staff from the Executive Office, Legislative Offices, Office of the Parliamentarian, Office of Printing and Document Services, Senate Historical Office and Senate Library for their work on both the trial and the execution of this Document.



JULIE E. ADAMS,  
*Secretary of the Senate.*

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<sup>i</sup>For ease of reference, the parties preliminary filings are reprinted herein on the date in which they were submitted to the Secretary of the Senate. These documents are also contained in Senate Document 117-2, which was originally published in four parts as the documents were filed.

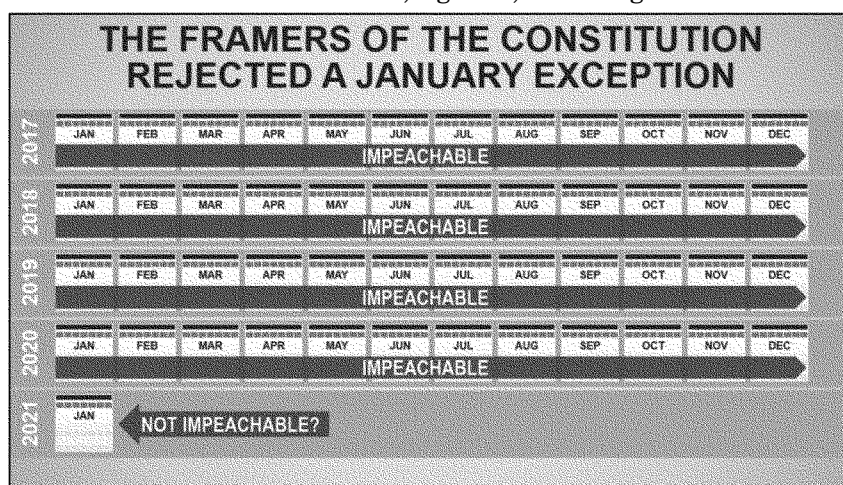
<sup>ii</sup>Slide images are only printed in Volume II. CONGRESSIONAL RECORD pages have been listed for ease of reference.



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**SLIDE 1.** S. Doc. 117–3 Vol. I, Pg. 294; 167 Cong. Rec. S590



**SLIDE 2.** S. Doc. 117–3 Vol. I, Pg. 296/302; 167 Cong. Rec. S591/S593

**ARTICLE I OF THE CONSTITUTION**

*We the People*

“The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.”

“The Senate shall have the sole Power to try all Impeachments.”

U.S. Const., art. I, § 2, § 3.

**SLIDE 3.** S. Doc. 117-3 Vol. I, Pg. 297; 167 Cong. Rec. S591

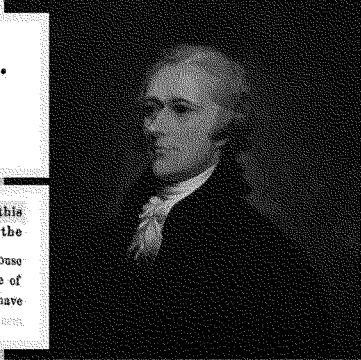
**THE FEDERALIST.**

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**NUMBER LXV.**

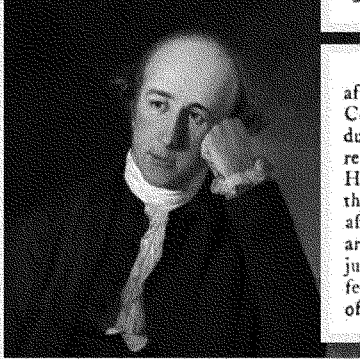
share of the inquiry? The model, from which the idea of this institution has been borrowed, pointed out that course to the convention. In Great Britain, it is the province of the house of commons to prefer the impeachment; and of the house of lords to decide upon it. Several of the state constitutions have followed the example. As well the latter, as the former, seem

**ALEXANDER HAMILTON**



**SLIDE 4.** S. Doc. 117-3 Vol. I, Pg. 297; 167 Cong. Rec. S591

**WARREN HASTINGS**

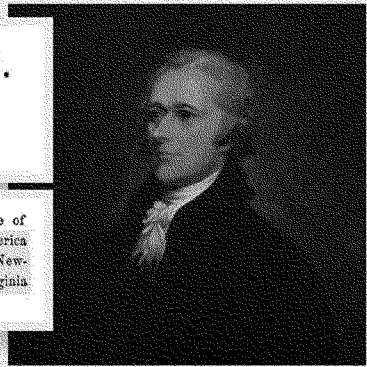


**PHILADELPHIA, June 13**

From a London paper of 3d April, it appears, that after many learned debates in the British House of Commons, upon the subject of Warren Hastings' conduct in the East Indies, a majority of 111 against 64, resolved for the impeachment of the said Warren Hastings, for high crimes and misdemeanors.—To the manly eloquence of a Sheridan, the unremitting assiduities of a Burke, and the able assistance of a Fox, are the inhabitants of India indebted for this proof of justice. What mult the injured family of Nuncomar feel upon the joyful event of satisfaction for the murder of their unhappy chief?

**SLIDE 5.** S. Doc. 117-3 Vol. I, Pg. 297; 167 Cong. Rec. S591

**ALEXANDER HAMILTON**



**THE FEDERALIST.**

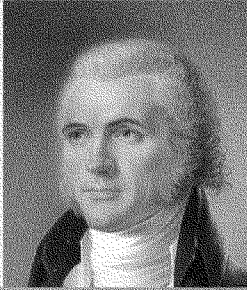
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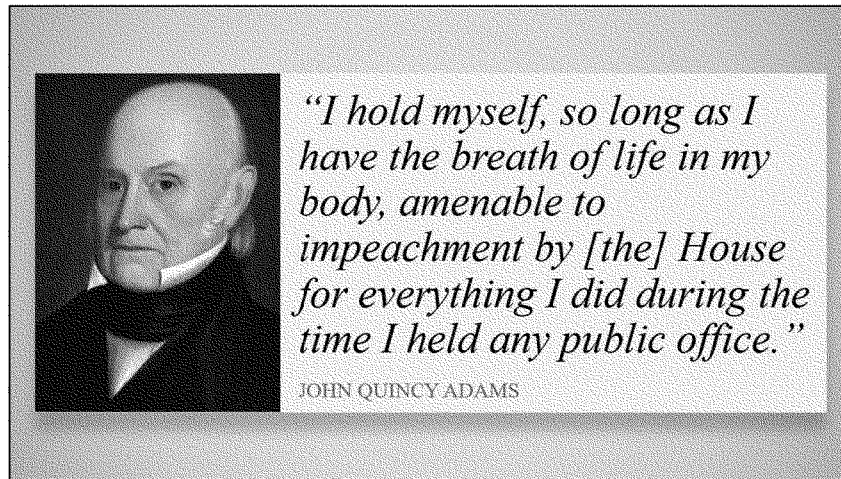
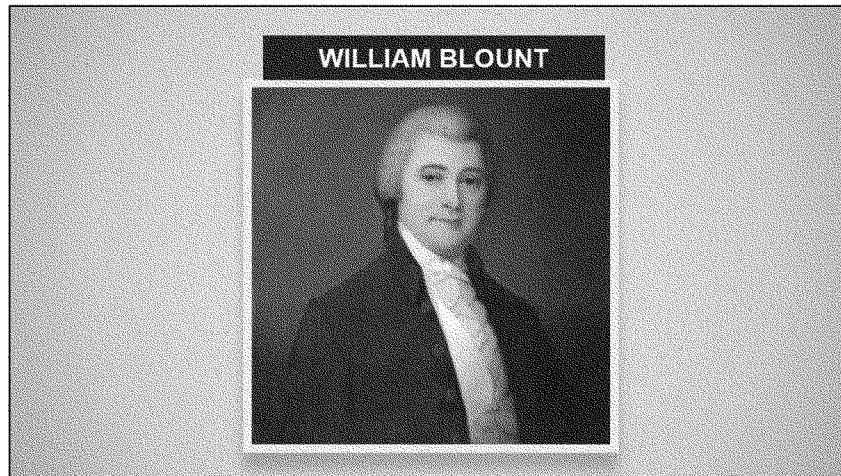
*regulation.* In this delicate and important circumstance of personal responsibility, the president of confederated America would stand upon no better ground than a governor of New-York, and upon worse ground than the governors of Virginia and Delaware.

**SLIDE 6.** S. Doc. 117-3 Vol. I, Pg. 298; 167 Cong. Rec. S591

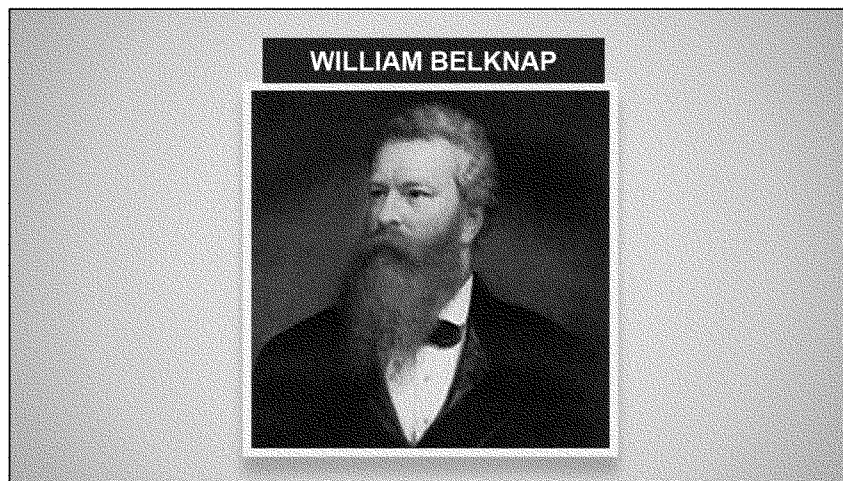
*“If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected.”*

WILLIAM DAVIE



**SLIDE 7.** S. Doc. 117-3 Vol. I, Pg. 298; 167 Cong. Rec. S591**SLIDE 8.** S. Doc. 117-3 Vol. I, Pg. 299; 167 Cong. Rec. S592

**SLIDE 9.** S. Doc. 117-3 Vol. I, Pg. 299; 167 Cong. Rec. S592



**SLIDE 10.** S. Doc. 117-3 Vol. I, Pg. 300/306; 167 Cong. Rec. S592/S594












**SLIDE 11.** S. Doc. 117-3 Vol. I, Pg. 301; 167 Cong. Rec. S592

**Constitutional Law Scholars on Impeaching Former Officers**  
January 21, 2021

We differ from one another in our politics, and we also differ from one another on issues of constitutional interpretation. But despite our differences, our carefully considered views of the law lead all of us to agree that the Constitution permits the impeachment, conviction, and disqualification of former officers, including presidents.

						
<b>Steven Calabresi</b> EDPROMISE THE FEDERALIST SOCIETY	<b>Charles Fried</b> DEPUTY CHIEF OF COURTS REPUBLICAN PARTY FEDERALIST SOCIETY	<b>Ilya Somin</b> LAW PROFESSOR GEORGE MASON UNIVERSITY REPUBLICAN PARTY THE CATO INSTITUTE	<b>Brian Kalt</b> LAW PROFESSOR AT MICHIGAN STATE LEADING SCHOLAR ON IMPEACHMENT	<b>Michael Stokes Paulsen</b> PROFESSOR OF LAW UNIVERSITY OF ST. THOMAS THE FEDERALIST SOCIETY	<b>Johnathan Adler</b> PROFESSOR OF LAW AT CASE WESTERN RESERVE UNIVERSITY THE FEDERALIST SOCIETY	<b>Alexander Volokh</b> ASSISTANT PROFESSOR OF LAW EMORY UNIVERSITY THE FEDERALIST SOCIETY

Letter from Constitutional Law Scholars on Impeaching Former Officials, January 21, 2021

**SLIDE 12.** S. Doc. 117-3 Vol. I, Pg. 301; 167 Cong. Rec. S593

**TENTH CIRCUIT COURT OF APPEALS  
JUDGE MICHAEL MCCONNELL**



"Given that the impeachment of Mr. Trump was legitimate, the text makes clear that the Senate has power to try that impeachment."

Marcus, Ruth. "Opinion: Trump's Senate impeachment trial won't be a waste of time." The Washington Post, February 2, 2021

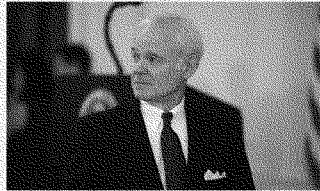


**SLIDE 13.** S. Doc. 117-3 Vol. I, Pg. 301; 167 Cong. Rec. S593

**FEBRUARY 7, 2021: CHUCK COOPER**

THE WALL STREET JOURNAL.

*The Constitution Doesn't Bar Trump's Impeachment Trial*

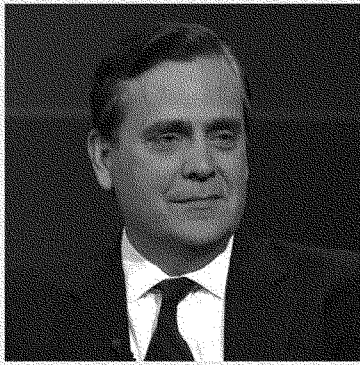


Forty-five Republican senators voted in favor of Sen. Rand Paul's motion challenging the Senate's jurisdiction to try Trump. But scholarship on this question has matured substantially since that vote, and it has exposed the serious weakness of Mr. Paul's analysis.

Cooper, Chuck. "The Constitution Doesn't Bar Trump's Impeachment Trial." Wall Street Journal, February 7, 2021.

**SLIDE 14.** S. Doc. 117-3 Vol. I, Pg. 301; 167 Cong. Rec. S593

**JONATHAN TURLEY**



**SLIDE 15.** S. Doc. 117-3 Vol. I, Pg. 301; 167 Cong. Rec. S593

**THE EXECUTIVE FUNCTION THEORY, THE  
HAMILTON AFFAIR, AND OTHER  
CONSTITUTIONAL MYTHOLOGIES**

The impeachment of former Secretary of War William Belknap represents a critical case in the congressional view of the scope and meaning of impeachment. Since Belknap was no longer in office at the time of his trial, the Belknap case indicates that resignation from office does not prevent trial on articles of impeachment. In this case, there was no need to impeach to protect the public from any additional harm or to assure the proper functioning of government. There was no "threat" to the system in keeping an official in office, as advocates of the executive function theory often emphasize. Instead, the House impeached and the Senate tried Belknap as a political response to a political injury, a corrective measure that helped the system regain legitimacy.<sup>173</sup>

Jonathan Tacey, *The Executive Function Theory, The Hamilton Affair, and Other Constitutional Mythologies*, 77 N.C. L. Rev. 1751 (1989) at 1807

**SLIDE 16.** S. Doc. 117-3 Vol. I, Pg. 301; 167 Cong. Rec. S593

**SENATE TRIALS AND FACTIONAL DISPUTES:  
IMPEACHMENT AS A MADISONIAN DEVICE**

The most important aspect of the Belknap case was not his narrow escape but the trial itself. Members of both parties ultimately concluded that a trial of Belknap was needed as a corrective political measure. If impeachment was simply a matter of removal, the argument for jurisdiction in the Belknap case would be easily resolved against hearing the matter. The Senate majority, however, was correct in its view that impeachments historically had extended to former officials, such as Warren Hastings.<sup>247</sup>

Impeachment, as demonstrated by Edmund Burke,<sup>248</sup> serves a public value in addressing conduct at odds with core values in a society.<sup>249</sup> At a time of lost confidence in the integrity of the government, the conduct of a former official can demand a political response. This

Jonathan Tacey, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 77 Duke Law Journal 49 (October 1999) at 50

**SLIDE 17.** S. Doc. 117-3 Vol. I, Pg. 301; 167 Cong. Rec. S593

**SENATE TRIALS AND FACTIONAL DISPUTES:  
IMPEACHMENT AS A MADISONIAN DEVICE**

The Nixon case is only marginally relevant to this Article since it was not the subject of any Senate action. Yet, this failure to proceed with impeachment and a Senate trial is of some interest. It appears to have been widely assumed after President Nixon's resignation that his impeachment would no longer be appropriate. This assumption is misplaced. Nixon was accused of a variety of criminal acts directed

Jonathan Turley, Senate Trials and Factional Disputes: Impeachment as a Madisonian Device, 77 Duke Law Journal 49 (October 1999) at 94

**SLIDE 18.** S. Doc. 117-3 Vol. I, Pg. 302; 167 Cong. Rec. S593

**SENATE TRIALS AND FACTIONAL DISPUTES:  
IMPEACHMENT AS A MADISONIAN DEVICE**

systems than in the Madisonian system. When used as part of a dialogic political process, impeachment can bring political closure and stability to the system. Had Nixon been tried, it is likely that the process of growing bipartisan consensus that began in the House Judiciary Committee would have continued in the Senate. A bipartisan vote of conviction and disqualification in the Senate would have had both vertical and horizontal effects beneficial to the system. Vertically, the Senate trial would have shown the public that the President would be held to account personally for his acts. Rather than end the

judgment of the public as to his conduct. Horizontally, the Senate trial would also have reinforced the balance of authority with respect to the executive branch. Future Presidents could not assume that mere resignation would avoid a trial of their conduct before the Senate. The legislative branch should have held a trial on the underlying

Jonathan Turley, Senate Trials and Factional Disputes: Impeachment as a Madisonian Device, 77 Duke Law Journal 49 (October 1999) at 95-96

**SLIDE 19.** S. Doc. 117-3 Vol. I, Pg. 302; 167 Cong. Rec. S593

**SENATE TRIALS AND FACTIONAL DISPUTES:  
IMPEACHMENT AS A MADISONIAN DEVICE**

ate. The legislative branch should have held a trial on the underlying conduct as a process of institutional settlement and as a reaffirmation of the principle that, within this system, “no man in no circumstance, can escape the account, which he owes to the laws of his country.”<sup>453</sup>

Jonathan Turley, Senate Trials and Factional Disputes: Impeachment as a Madisonian Device, 77 Duke Law Journal 49 (October 1999) at 96

**SLIDE 20.** S. Doc. 117-3 Vol. I, Pg. 302; 167 Cong. Rec. S593


**TENTH CIRCUIT COURT OF APPEALS  
JUDGE MICHAEL MCCONNELL**

 “Donald Trump was President of the United States at the time he was impeached by the House of Representatives. The impeachment was therefore unquestionably permissible (putting aside any disagreements over the nature of the charges) . . . Given that the impeachment of Mr. Trump was legitimate, the text makes clear that the Senate has power to try that impeachment.”

Marcus Ruth, “Opinion: Trump’s Senate impeachment trial won’t be a waste of time,” The Washington Post, February 2, 2021

**SLIDE 21.** S. Doc. 117-3 Vol. I, Pg. 302; 167 Cong. Rec. S593

**ARTICLE I OF THE CONSTITUTION**



“Judgment in Cases of Impeachment shall not extend **further** than to removal from Office, **and** disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.”

U.S. Const., art. I, § 3, cl. 7


**SLIDE 22.** S. Doc. 117-3 Vol. I, Pg. 302; 167 Cong. Rec. S593

**THREE PART RULE**

- 1** The Senate has the power to impose removal, which applies only to current officials
- 2** The Senate has the power to impose disqualification, which obviously applies to both current and former officers
- 3** The Senate does not have the power to go any further

**SLIDE 23.** S. Doc. 117-3 Vol. I, Pg. 303; 167 Cong. Rec. S593


**ARTICLE I OF THE CONSTITUTION**



“Judgement in Cases of Impeachment shall not extent further than to removal from Office,<sup>followed by</sup> ~~and~~ disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States.”

U.S. Const. art. I § 2, cl. 7

**SLIDE 24.** S. Doc. 117-3 Vol. I, Pg. 303; 167 Cong. Rec. S593




*“A prohibition against doing more than two things cannot be turned into a command to do both or neither.”*

SENATOR GEORGE F. EDMUNDS



**SLIDE 25.** S. Doc. 117-3 Vol. I, Pg. 303; 167 Cong. Rec. S593

### ARTICLE I OF THE CONSTITUTION




"The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no **Person** shall be convicted without the Concurrence of two thirds of the Members present.

"Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the **Party** convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."

U.S. Const., art. I, § 3, cl. 6-7

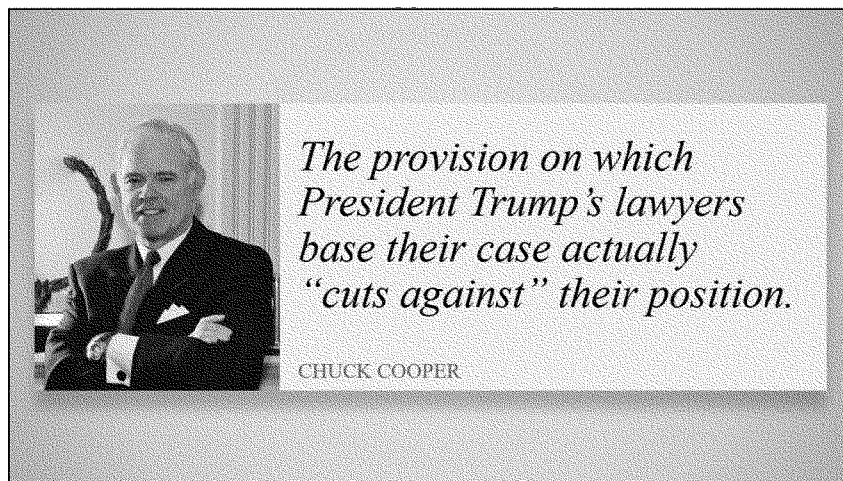
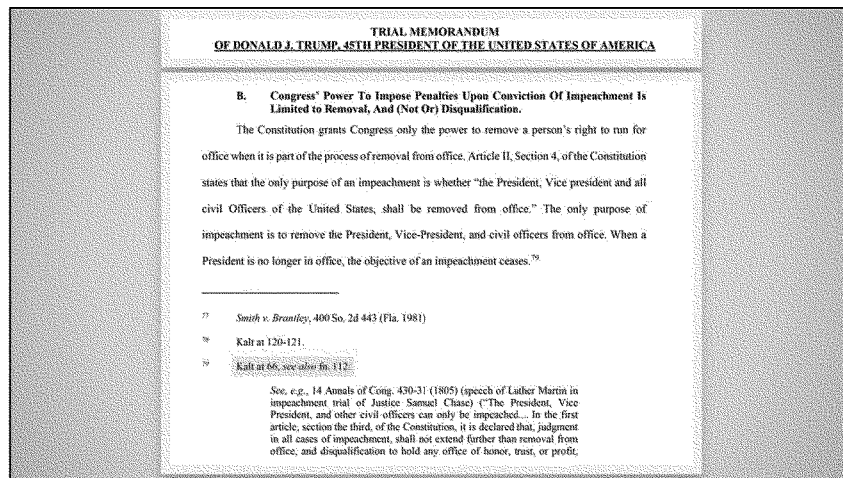
**SLIDE 26.** S. Doc. 117-3 Vol. I, Pg. 304; 167 Cong. Rec. S594

### ARTICLE II OF THE CONSTITUTION



"The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

U.S. Const., art. II, § 4


**SLIDE 27.** S. Doc. 117-3 Vol. I, Pg. 304; 167 Cong. Rec. S594**SLIDE 28.** S. Doc. 117-3 Vol. I, Pg. 304; 167 Cong. Rec. S594



**SLIDE 29.** S. Doc. 117-3 Vol. I, Pg. 304; 167 Cong. Rec. S594

THE CONSTITUTIONAL CASE FOR THE IMPEACHABILITY  
OF FORMER FEDERAL OFFICIALS: AN ANALYSIS OF THE  
LAW, HISTORY, AND PRACTICE OF LATE IMPEACHMENT

Despite its coherence, Interpretation #3 tries to make Article II, Section 4 do too much work. Is the mention of removal meant to restrict the result of impeachment—and thereby the timing of impeachment trials—or is it just meant to limit the terms of malfeasant civil officers who would otherwise serve for fixed terms (the President and Vice President), at the pleasure of the President (executive civil officers), or for life (judges)? If removal were the only possible judgment in impeachment cases, the former interpretation would be more likely. But removal is *not* the only possible judgment mentioned in the text; disqualification is possible too.<sup>24</sup> Removal is a mandatory sentence for sitting officers upon conviction, but it *is not* the sole end of impeachment. While the other parts of Article II, Section 4 look backward to precedent conditions for impeachment, removal looks forward to its results. Thus Article II, Section 4 says “removal requires conviction” and even that “conviction guarantees removal,” but it does not clearly or necessarily say “impeachability equals removability.” In sum, Interpretation #3 is a relatively plausible textual reading of Article II, Section 4, but it is not the only possible one, and it has deep flaws.

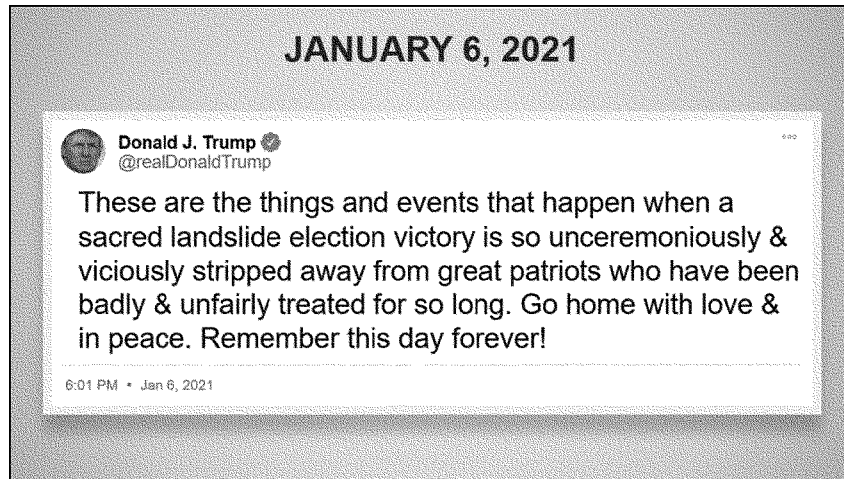
**SLIDE 30.** S. Doc. 117-3 Vol. I, Pg. 304; 167 Cong. Rec. S594


*Trump's brief cites my 2001 article on late impeachment a lot. The article favored late impeachment, but it set out all the evidence I found on both sides—lots for them to use. But in several places, they misrepresent what I wrote quite badly . . . There are multiple examples of such flat-out misrepresentations. . . . They didn't have to be disingenuous and misleading like this.*

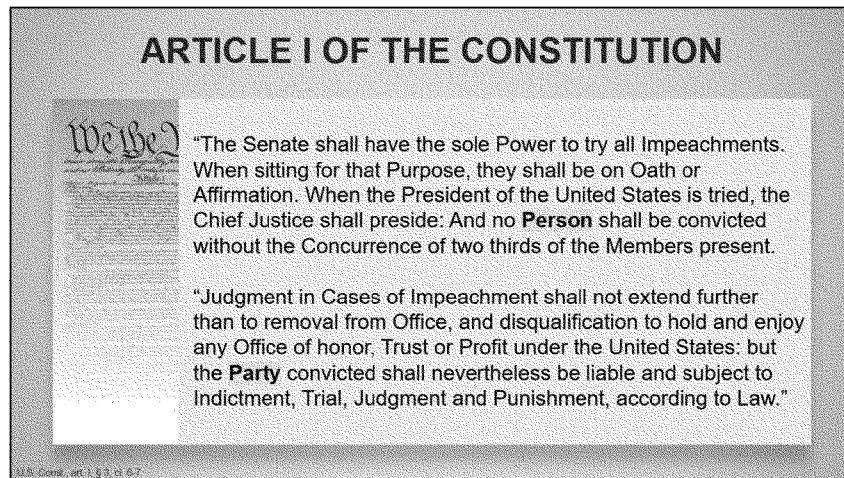
PROFESSOR BRIAN KALT

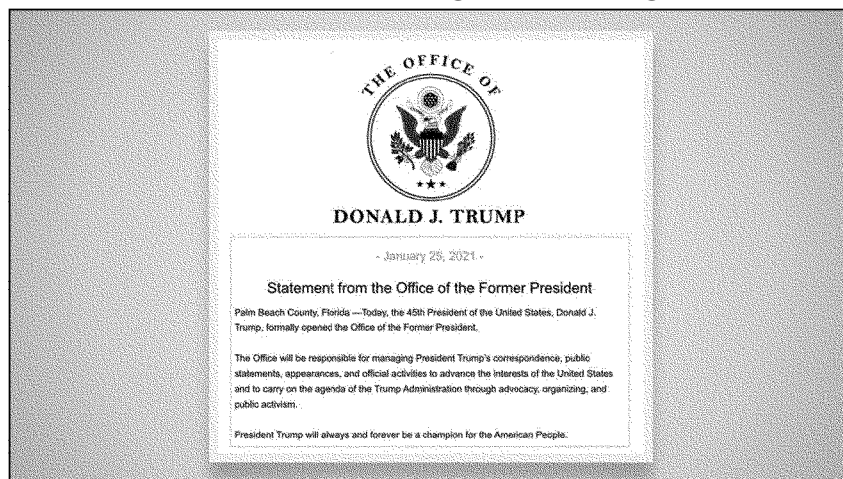
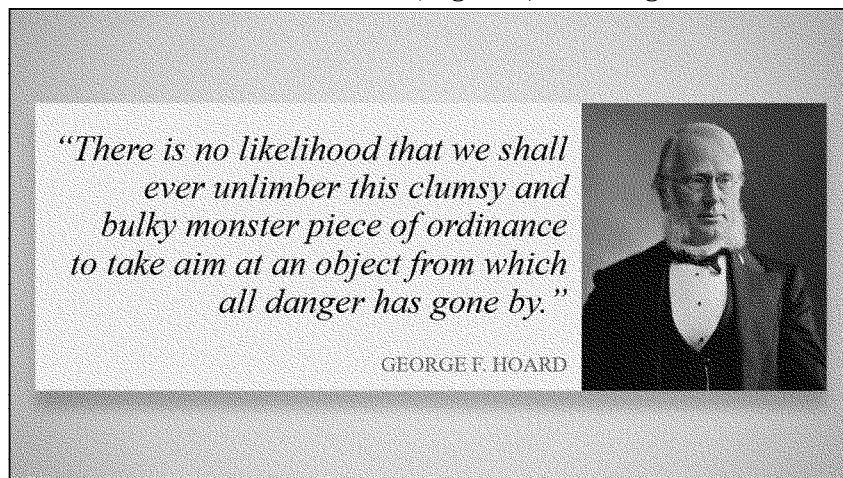
**SLIDE 31.** S. Doc. 117-3 Vol. I, Pg. 305; 167 Cong. Rec. S594**SLIDE 32.** S. Doc. 117-3 Vol. I, Pg. 306; 167 Cong. Rec. S594

**SLIDE 33.** S. Doc. 117-3 Vol. I, Pg. 306; 167 Cong. Rec. S595

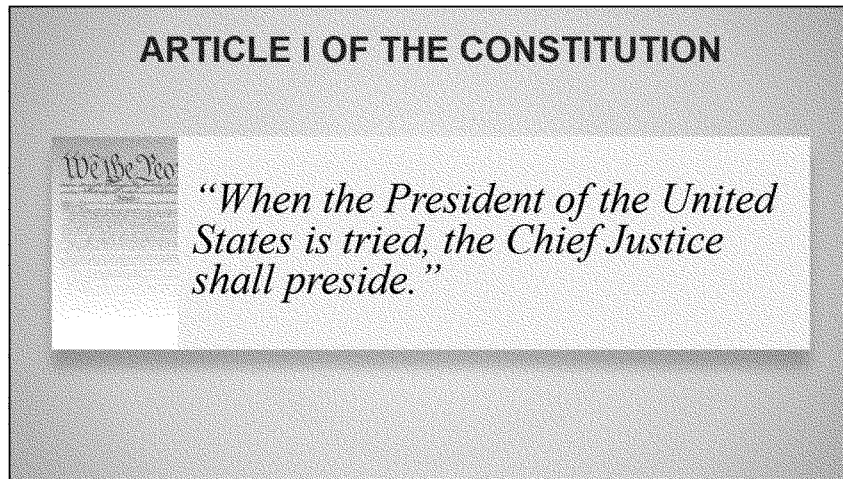


**SLIDE 34.** S. Doc. 117-3 Vol. I, Pg. 306; 167 Cong. Rec. S595

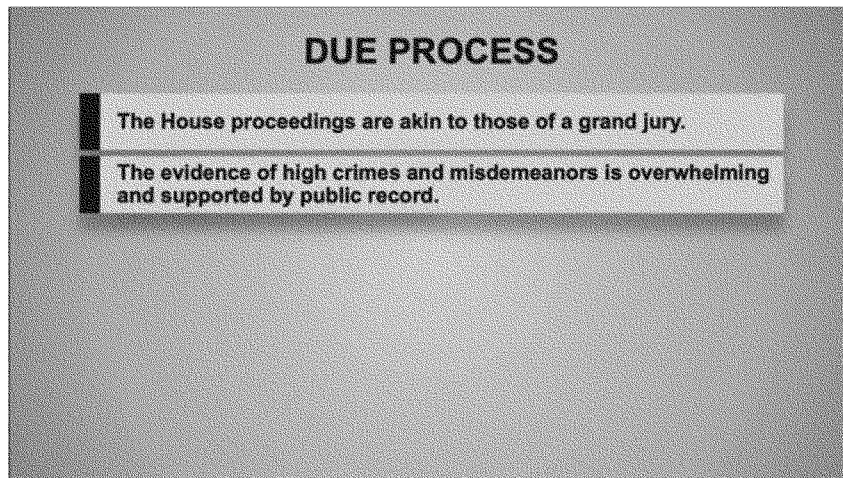


**SLIDE 35.** S. Doc. 117-3 Vol. I, Pg. 306; 167 Cong. Rec. S595**SLIDE 36.** S. Doc. 117-3 Vol. I, Pg. 307; 167 Cong. Rec. S595

**SLIDE 37.** S. Doc. 117-3 Vol. I, Pg. 307; 167 Cong. Rec. S595

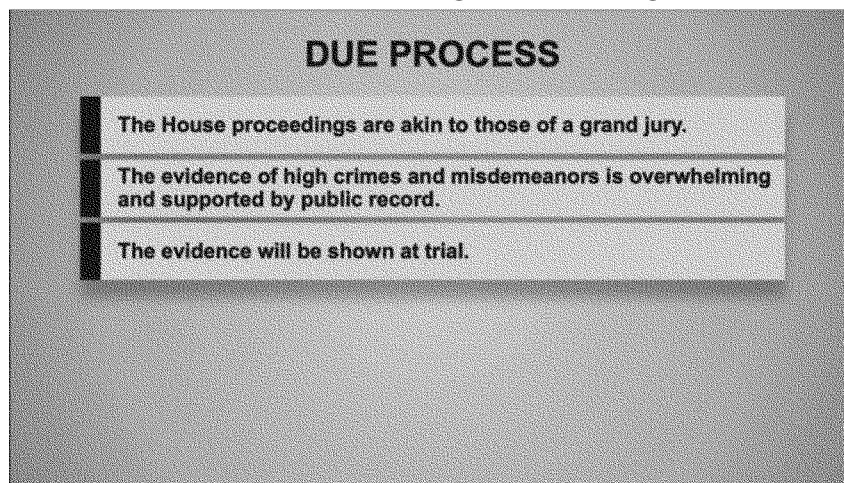


**SLIDE 38.** S. Doc. 117-3 Vol. I, Pg. 308; 167 Cong. Rec. S595

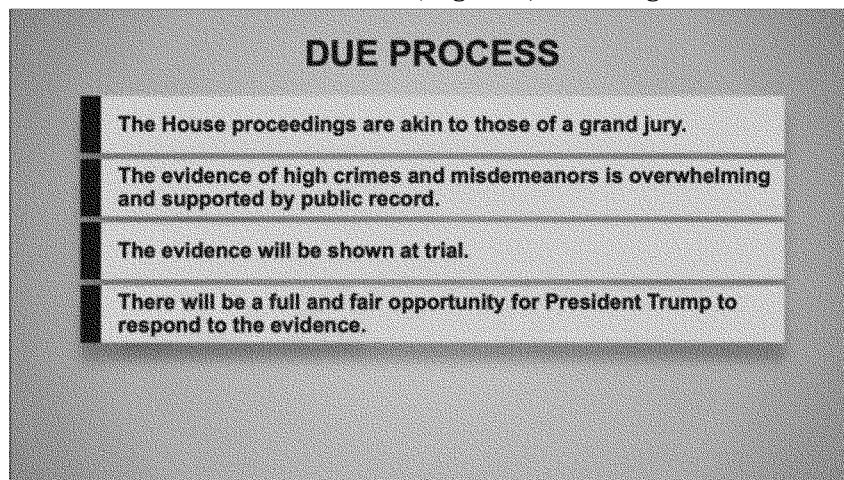




**SLIDE 39.** S. Doc. 117-3 Vol. I, Pg. 308; 167 Cong. Rec. S595



**SLIDE 40.** S. Doc. 117-3 Vol. I, Pg. 308; 167 Cong. Rec. S595



**SLIDE 41.** S. Doc. 117-3 Vol. I, Pg. 308; 167 Cong. Rec. S595

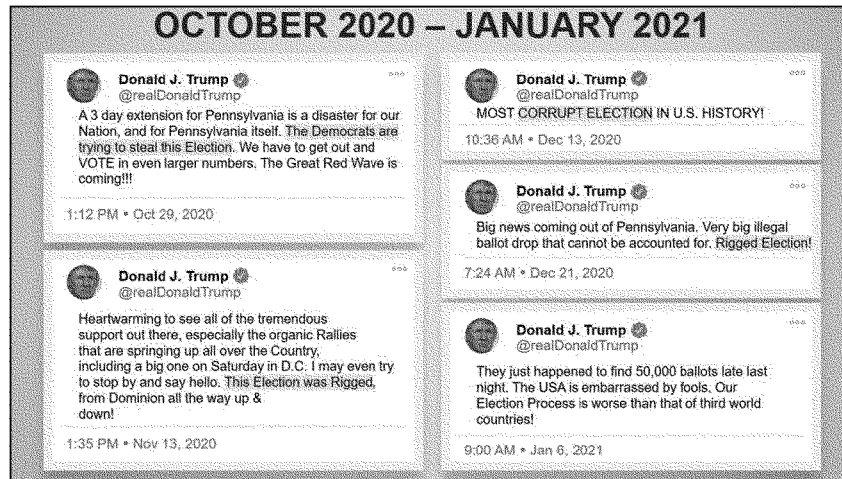
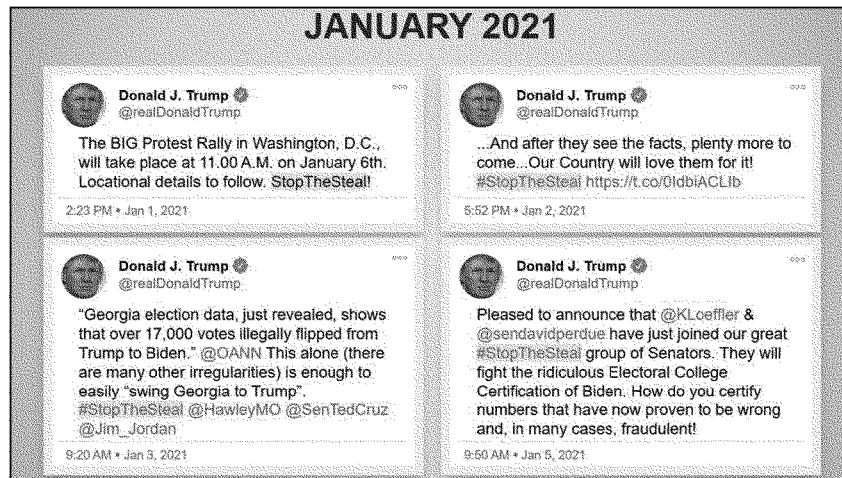
**DUE PROCESS**

- The House proceedings are akin to those of a grand jury.
- The evidence of high crimes and misdemeanors is overwhelming and supported by public record.
- The evidence will be shown at trial.
- There will be a full and fair opportunity for President Trump to respond to the evidence.
- Hundreds of others involved in the events of January 6, 2021 have already been charged.

**SLIDE 42.** S. Doc. 117-3 Vol. I, Pg. 308; 167 Cong. Rec. S595

**DUE PROCESS**

- The House proceedings are akin to those of a grand jury.
- The evidence of high crimes and misdemeanors is overwhelming and supported by public record.
- The evidence will be shown at trial.
- There will be a full and fair opportunity for President Trump to respond to the evidence.
- Hundreds of others involved in the events of January 6, 2021 have already been charged.
- President Trump declined the opportunity to testify.

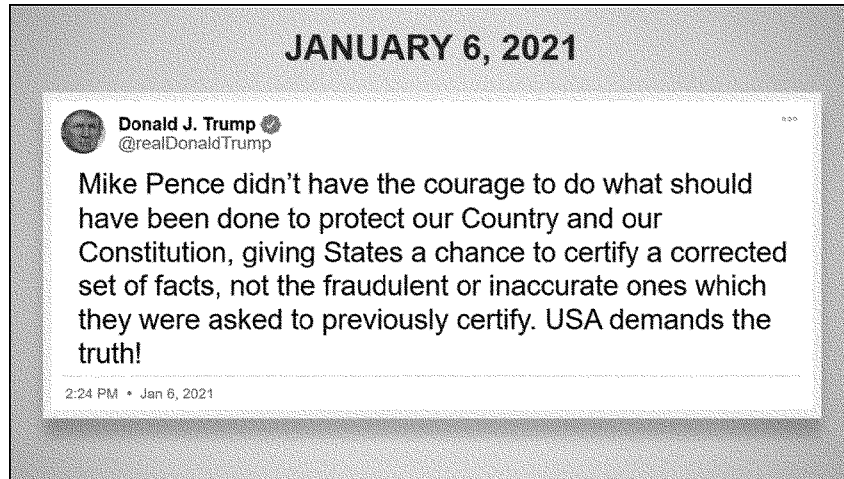
**SLIDE 43.** S. Doc. 117-3 Vol. I, Pg. 309; 167 Cong. Rec. S596**SLIDE 44.** S. Doc. 117-3 Vol. I, Pg. 309; 167 Cong. Rec. S596



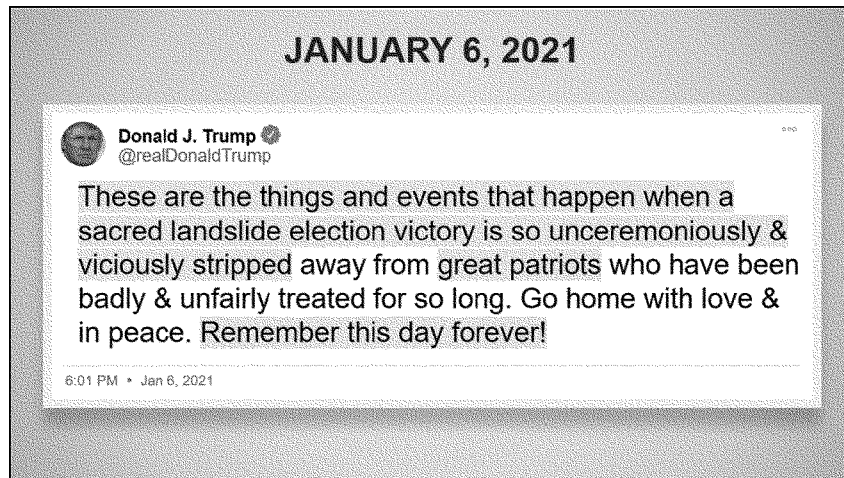
**SLIDE 45.** S. Doc. 117-3 Vol. I, Pg. 309; 167 Cong. Rec. S596**SLIDE 46.** S. Doc. 117-3 Vol. I, Pg. 309; 167 Cong. Rec. S596

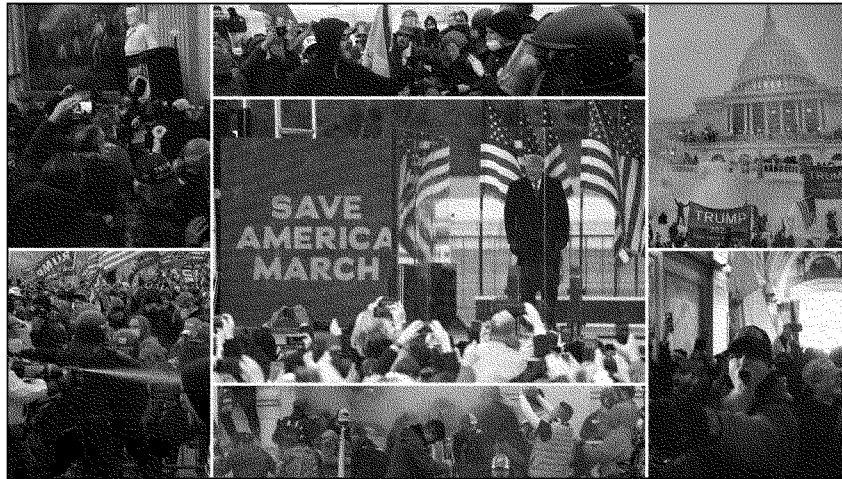
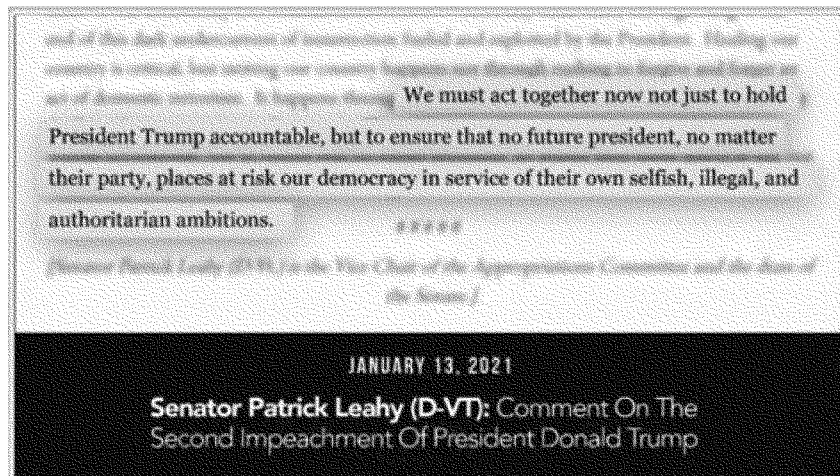
**SLIDE 47.** S. Doc. 117-3 Vol. I, Pg. 309; 167 Cong. Rec. S596**SLIDE 48.** S. Doc. 117-3 Vol. I, Pg. 309; 167 Cong. Rec. S596

**SLIDE 49.** S. Doc. 117-3 Vol. I, Pg. 309; 167 Cong. Rec. S596

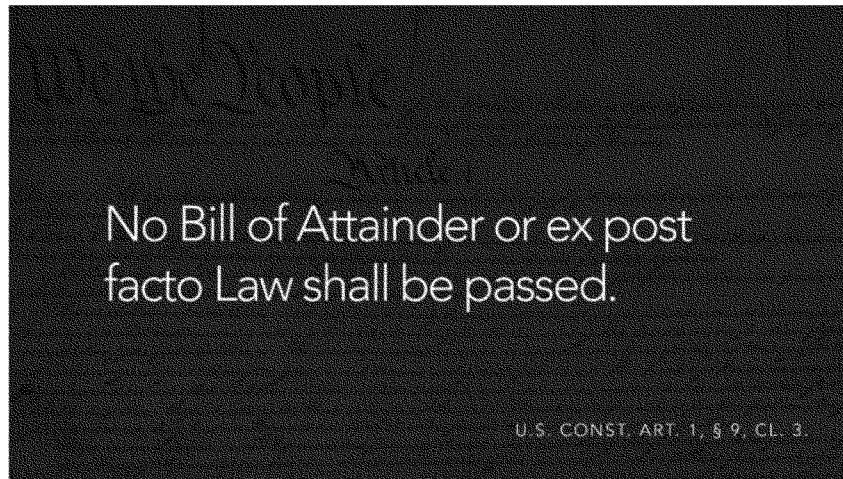


**SLIDE 50.** S. Doc. 117-3 Vol. I, Pg. 309; 167 Cong. Rec. S596

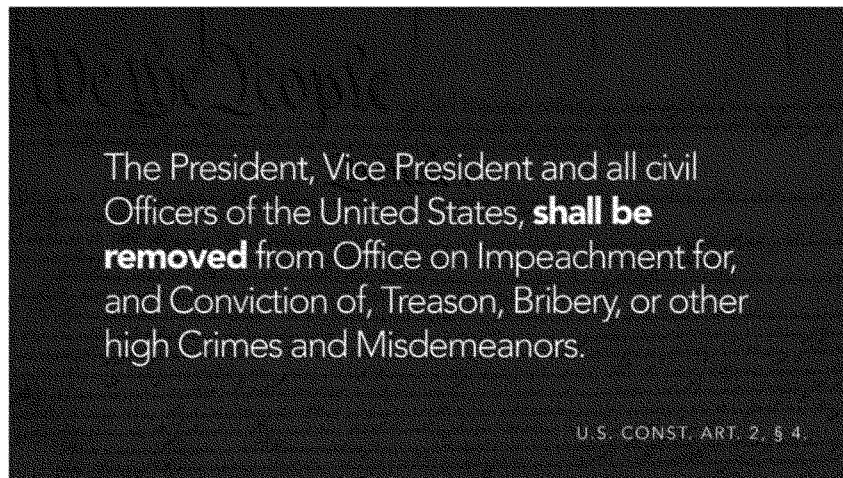


**SLIDE 51.** S. Doc. 117-3 Vol. I, Pg. 310; 167 Cong. Rec. S596**SLIDE 52.** S. Doc. 117-3 Vol. I, Pg. 332; 167 Cong. Rec. S605

**SLIDE 53.** S. Doc. 117-3 Vol. I, Pg. 334; 167 Cong. Rec. S605



**SLIDE 54.** S. Doc. 117-3 Vol. I, Pg. 335; 167 Cong. Rec. S606



**SLIDE 55.** S. Doc. 117-3 Vol. I, Pg. 339; 167 Cong. Rec. S607

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

U.S. CONST. ART. 1, § 3, CL. 7.

**SLIDE 56.** S. Doc. 117-3 Vol. I, Pg. 340; 167 Cong. Rec. S608

Judgment in Cases of Impeachment shall not extend further than to removal from Office, **and** disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States.

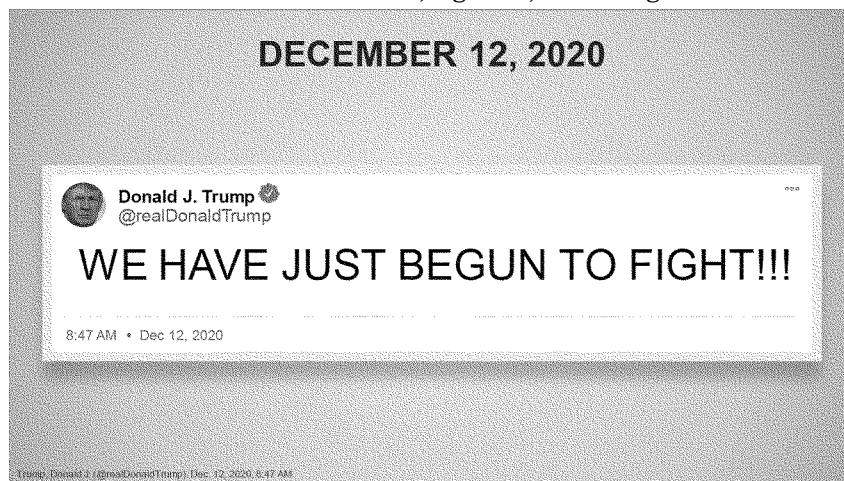
U.S. CONST. ART. 1, § 3, CL. 7.



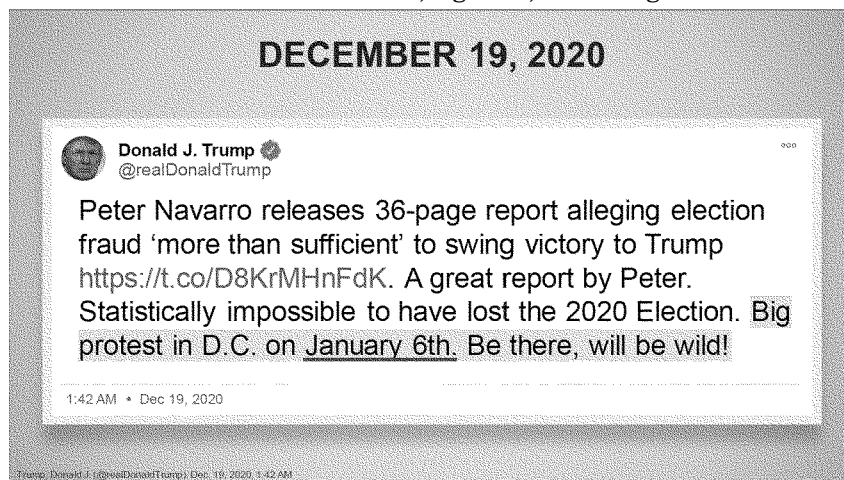
SLIDES 57–208

[167 CONG. REC. S616–643 (DAILY ED. FEB. 10, 2021)]

**SLIDE 57.** S. Doc. 117–3 Vol. I, Pg. 359; 167 Cong. Rec. S616




**SLIDE 58.** S. Doc. 117–3 Vol. I, Pg. 360; 167 Cong. Rec. S616



**SLIDE 59.** S. Doc. 117-3 Vol. I, Pg. 360; 167 Cong. Rec. S616


**JANUARY 6, 2021**



“And we fight. We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore” ... “You’ll never take back our country with weakness. You have to show strength, and you have to be strong.”

**SLIDE 60.** S. Doc. 117-3 Vol. I, Pg. 360; 167 Cong. Rec. S616

**JANUARY 6, 2021**



**Senator Ben Sasse**

“He was delighted”

“confused about why other people on his team weren’t as excited as he was.”

**Senior White House Officials**

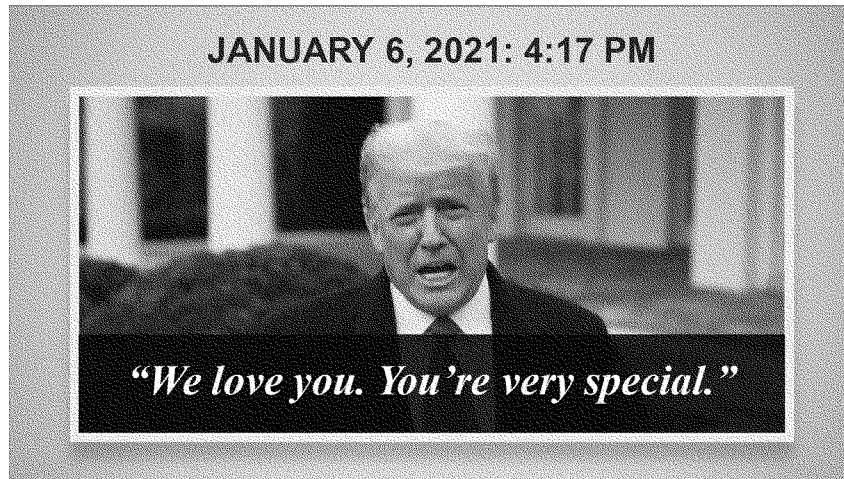
“Borderline enthusiastic”



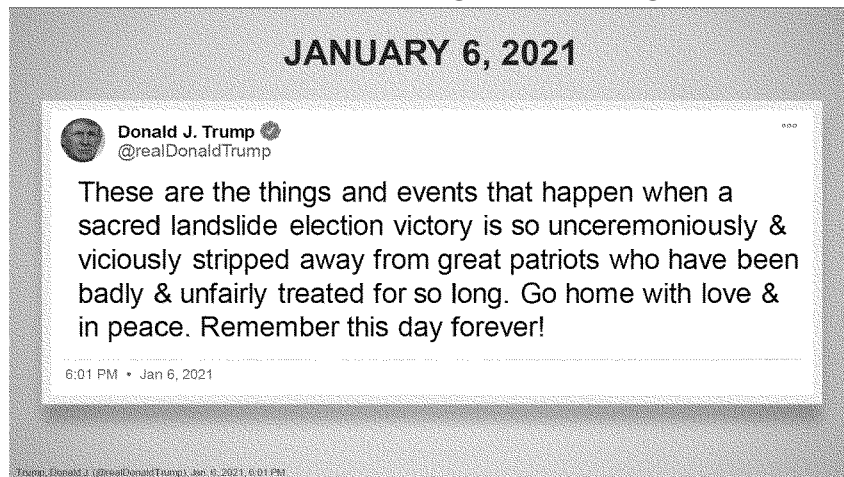
Henell, Hugh. “Senator Ben Sasse On Impeachment and Transition, the GOP in Minority.” *Hugh Henell.com*, January 6, 2021. [Jim Lo Scalzo/EPA-EFE](#)



**SLIDE 61.** S. Doc. 117-3 Vol. I, Pg. 361; 167 Cong. Rec. S616



**SLIDE 62.** S. Doc. 117-3 Vol. I, Pg. 361; 167 Cong. Rec. S617



**SLIDE 63.** S. Doc. 117–3 Vol. I, Pg. 364; 167 Cong. Rec. S618

**JANUARY 9, 2021**

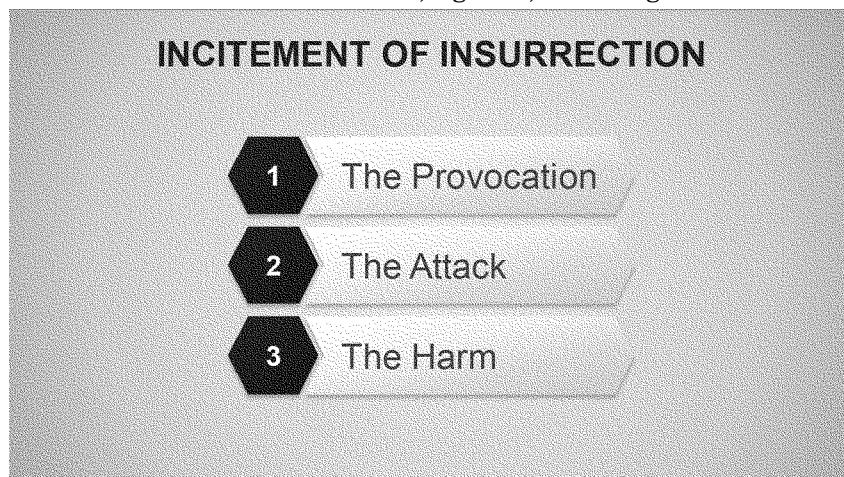
**BuzzFeed News**

**Black Police Officers Describe The Racist Attacks They Faced As They Protected The Capitol**

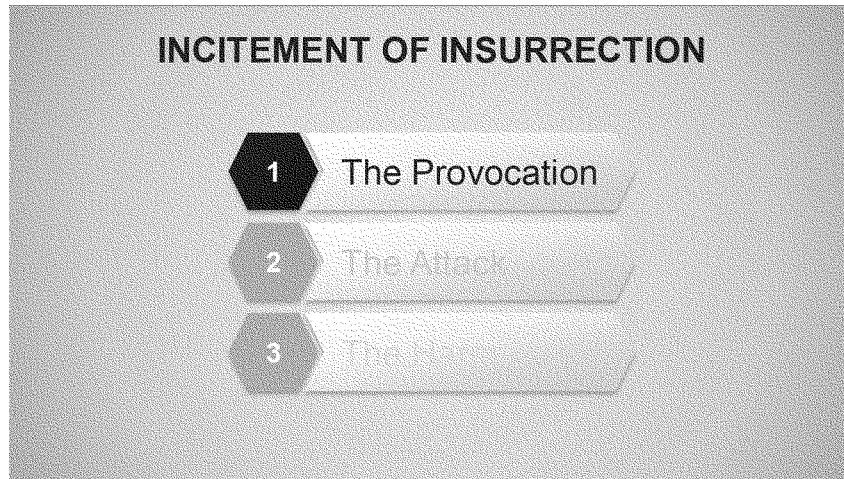
“I sat down with one of my buddies, another Black guy, and tears just started streaming down my face,” he said. “I said, ‘What the fuck, man? Is this America? What the fuck just happened? I’m so sick and tired of this shit.’”

Tellus Erenianur: "Black Police Officers Describe The Racist Attacks They Faced As They Protected The Capitol," BuzzFeed, January 9, 2021

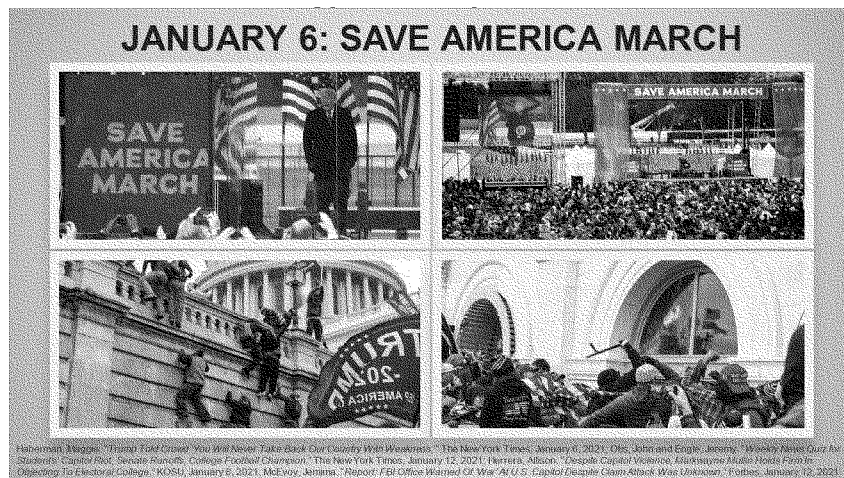
**SLIDE 64.** S. Doc. 117–3 Vol. I, Pg. 364; 167 Cong. Rec. S618



**SLIDE 65.** S. Doc. 117-3 Vol. I, Pg. 364; 167 Cong. Rec. S618



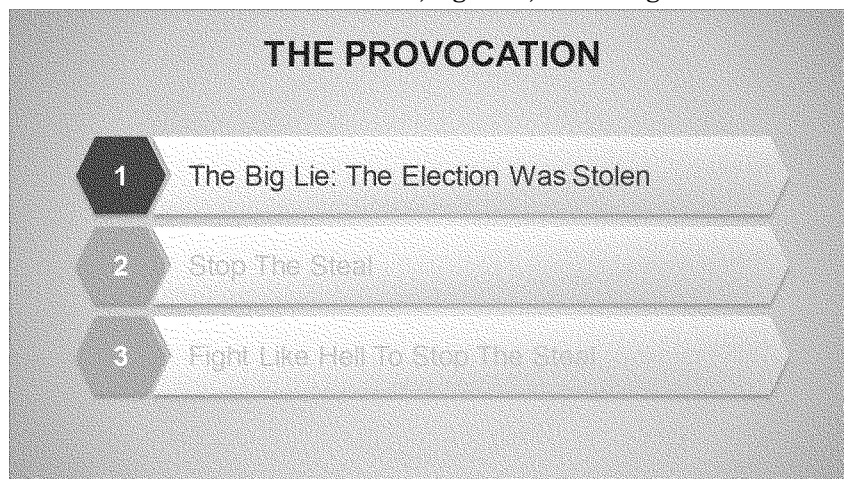
**SLIDE 66.** S. Doc. 117-3 Vol. I, Pg. 365; 167 Cong. Rec. S618



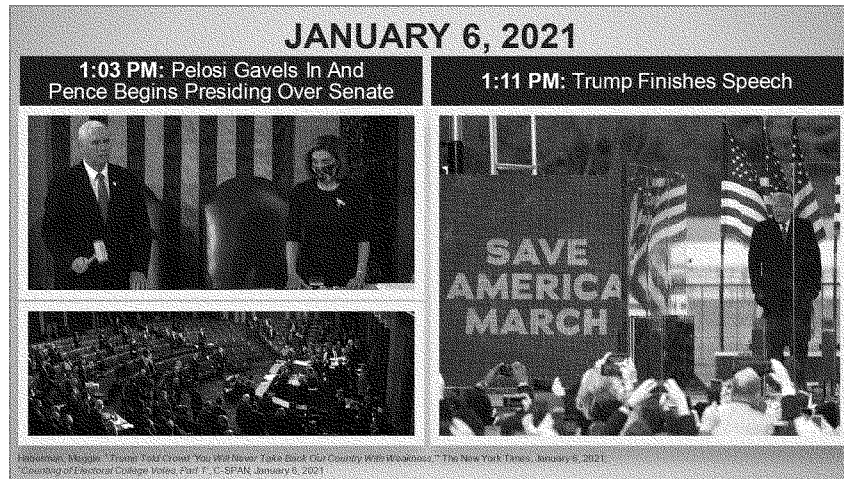
**SLIDE 67.** S. Doc. 117-3 Vol. I, Pg. 365; 167 Cong. Rec. S618



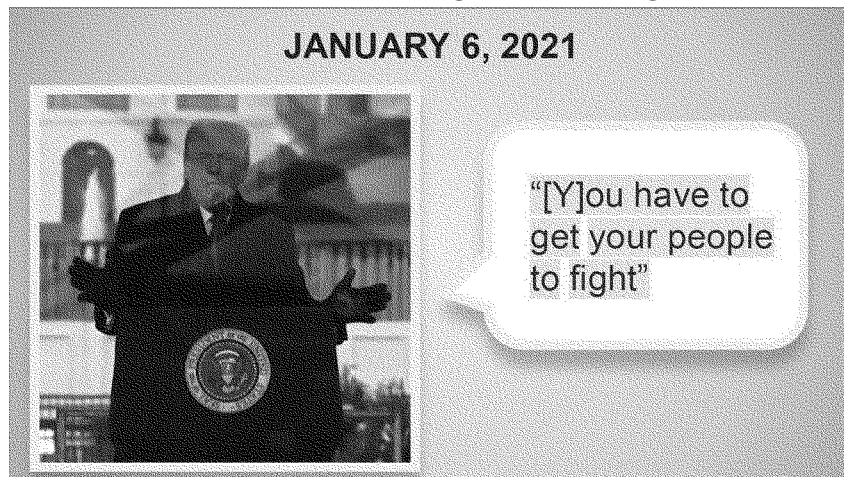
**SLIDE 68.** S. Doc. 117-3 Vol. I, Pg. 365; 167 Cong. Rec. S618



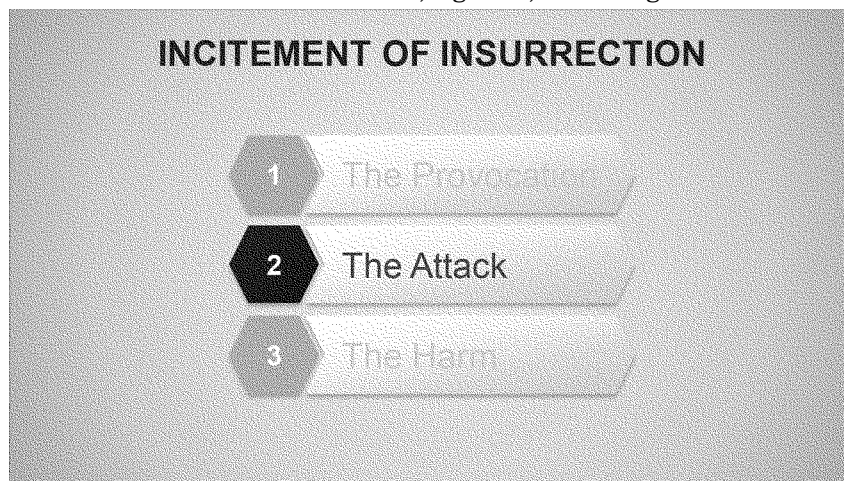
**SLIDE 69.** S. Doc. 117-3 Vol. I, Pg. 367; 167 Cong. Rec. S619



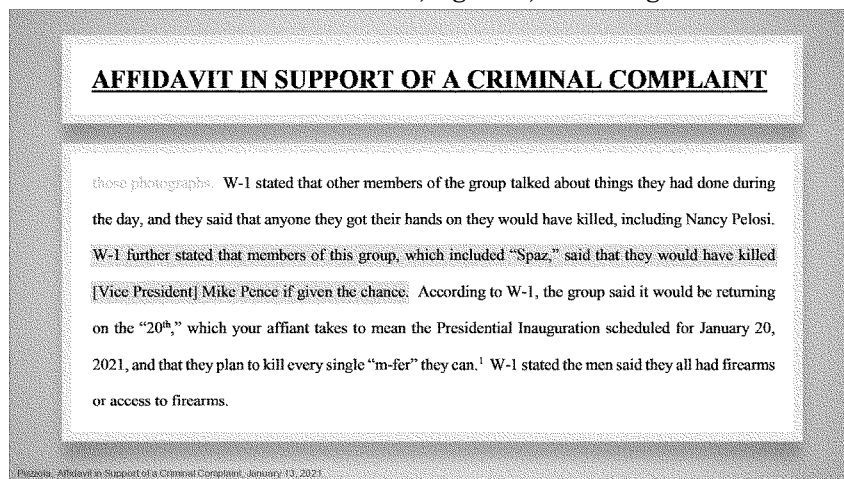
**SLIDE 70.** S. Doc. 117-3 Vol. I, Pg. 368; 167 Cong. Rec. S619



**SLIDE 71.** S. Doc. 117–3 Vol. I, Pg. 368; 167 Cong. Rec. S619



**SLIDE 72.** S. Doc. 117–3 Vol. I, Pg. 369; 167 Cong. Rec. S620





**SLIDE 73.** S. Doc. 117-3 Vol. I, Pg. 369; 167 Cong. Rec. S620

**UNITED STATES DISTRICT COURT**  
for the  
District of Columbia

<p style="text-align: center;">United States of America v. Dawn Bancroft, (DOB: XXXXXXXXX) Diana Santos-Smith, (DOB: XXXXXXXXX)</p>	) ) ) ) )	<p>Case: 1:21-mj-00182 Assigned to: Judge Faruqi, Zia M Assign Date: 1/28/2021 Description: COMPLAINT W/ARREST WARRANT</p>
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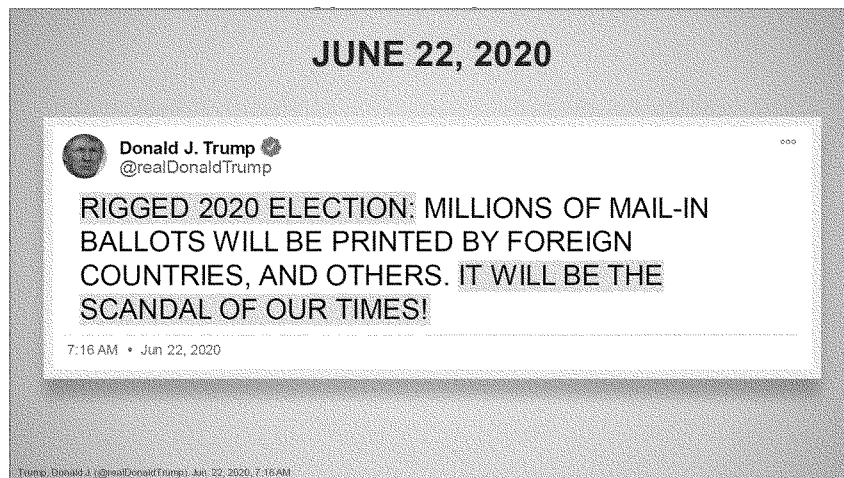
become bottlenecked at a Capitol exit point. During the video, BANCROFT stated, "We broke into the Capitol... we got inside, we did our part." BANCROFT continued, "We were looking for Nancy to shoot her in the friggin' brain but we didn't find her." Your affiant believes that the "Nancy" BANCROFT was referencing is Speaker of the House, Nancy Pelosi. BANCROFT was

Bancroft & Santos-Smith Criminal Complaint, January 28, 2021

**SLIDE 74.** S. Doc. 117-3 Vol. I, Pg. 369; 167 Cong. Rec. S620

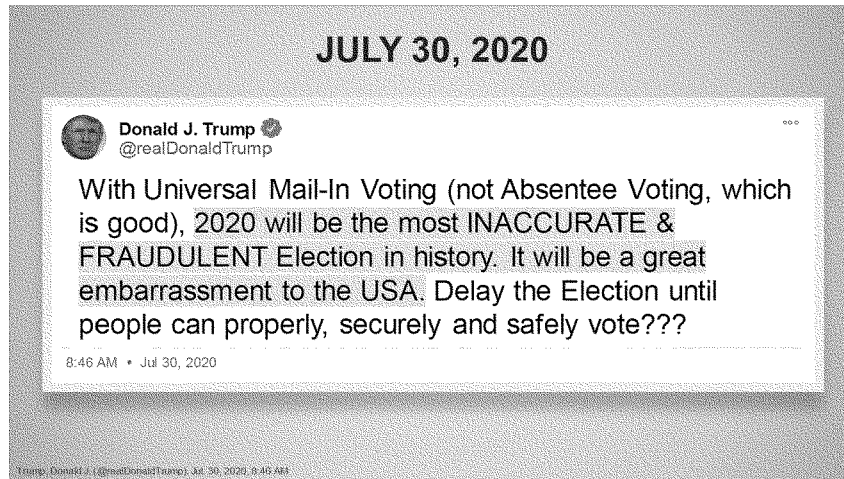
<p> <b>INDICTMENT</b></p> <p><b>Watkins:</b> We plan on going to DC on the 6th, weather permitting.</p> <p><b>Crowl:</b> No.... What's going on on the 6th?</p> <p><b>Watkins:</b> DC. Trump wants all able bodied Patriots to come.</p>	<p> <b>CRIMINAL COMPLAINT</b></p> <p><b>Bruno Cua:</b> "President Trump is calling us to FIGHT!" and "This isn't a joke, this is where and when we make our stand. #January6th, Washington DC."</p>
<p> <b>CBS</b></p> <p><b>Jenna Ryan:</b> "I thought I was following my President. I thought I was following what we were called to do... He asked us to fly there, he asked us to be there, so I was doing what he asked us to do."</p>	<p><b>The New York Times</b></p> <p>"Our President wants us here."</p> <p>"We wait and take orders from our president."</p>

Thomas Cathwaite, Donovan Crowl, and Jessica Marie Watkins Indictment, January 27, 2021; Bruno Cua Criminal Complaint, January 8, 2021; Jenna Ryan Interview CBS, January 15, 2021; Barry, David et al. "Our President Wants Us Here"; "The Mob That Stormed the Capitol"; "The New York Times", January 9, 2021

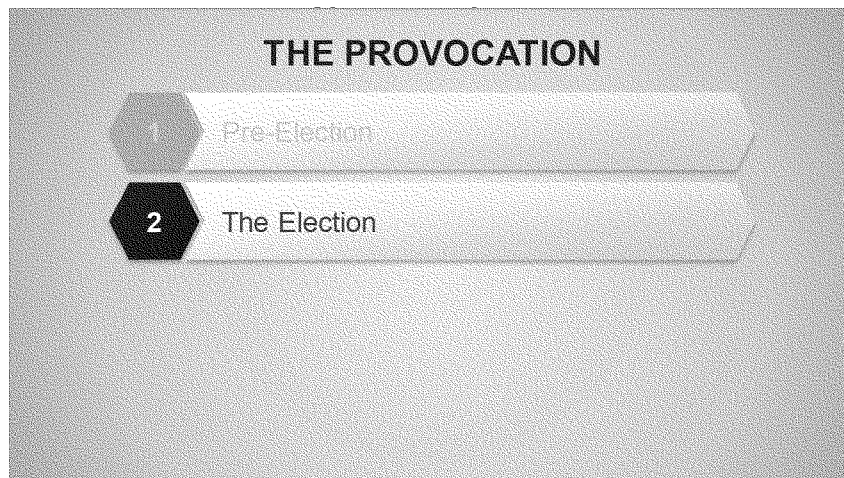
**SLIDE 75.** S. Doc. 117-3 Vol. I, Pg. 371; 167 Cong. Rec. S620**SLIDE 76.** S. Doc. 117-3 Vol. I, Pg. 371; 167 Cong. Rec. S620

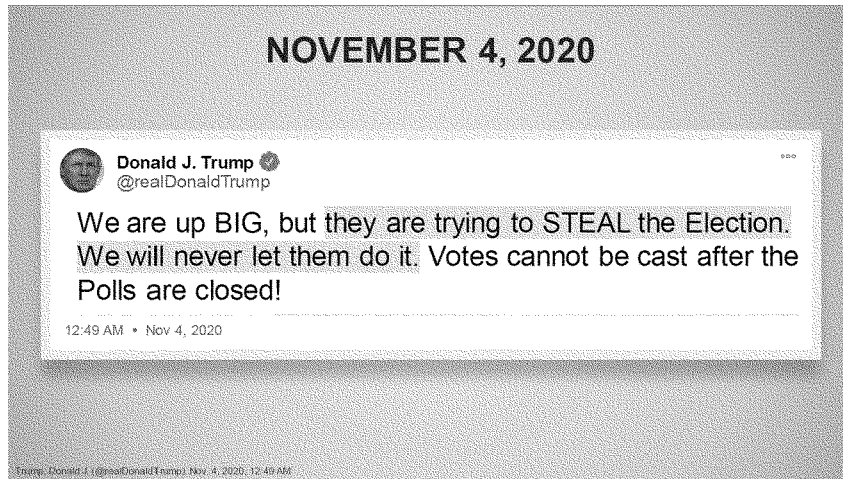
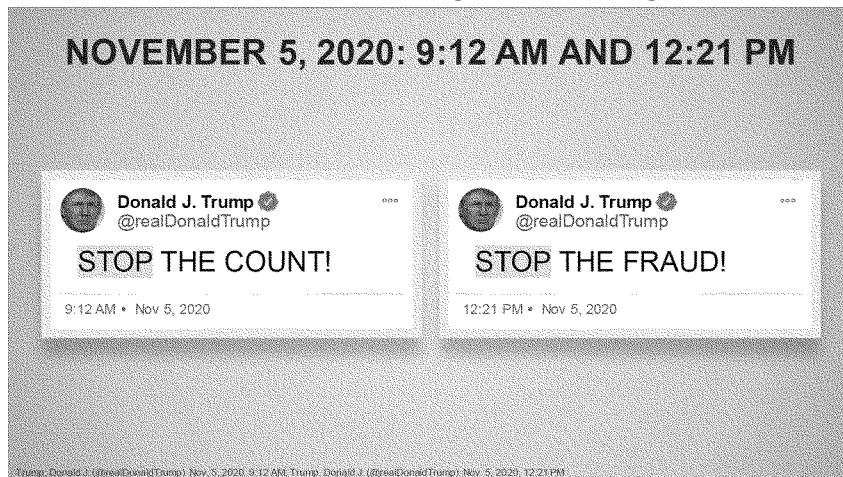


**SLIDE 77.** S. Doc. 117-3 Vol. I, Pg. 371; 167 Cong. Rec. S620

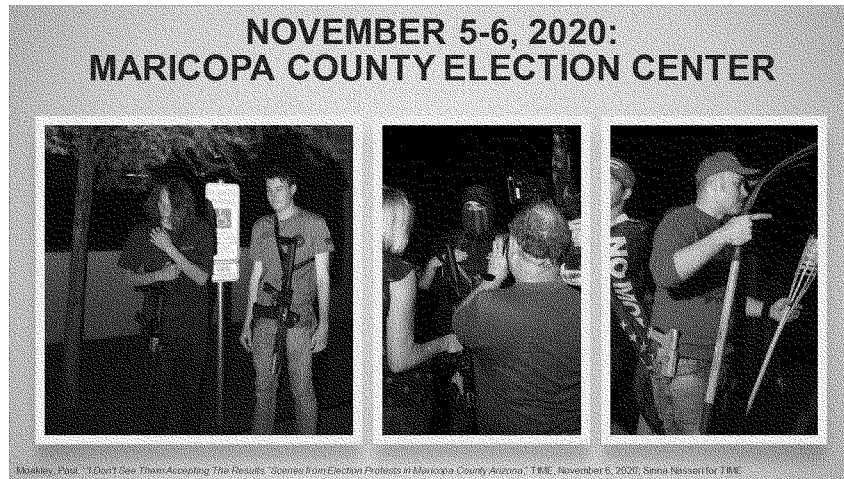


**SLIDE 78.** S. Doc. 117-3 Vol. I, Pg. 372; 167 Cong. Rec. S621



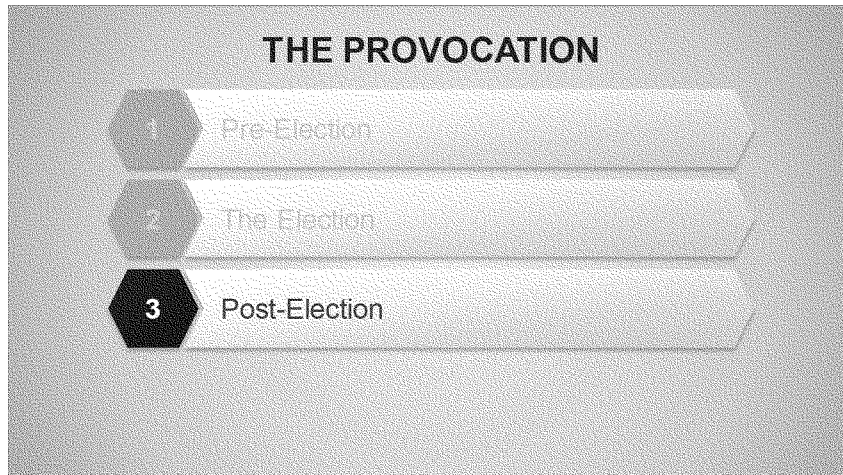
**SLIDE 79.** S. Doc. 117-3 Vol. I, Pg. 373; 167 Cong. Rec. S621**SLIDE 80.** S. Doc. 117-3 Vol. I, Pg. 373; 167 Cong. Rec. S621

**SLIDE 81.** S. Doc. 117-3 Vol. I, Pg. 373; 167 Cong. Rec. S621

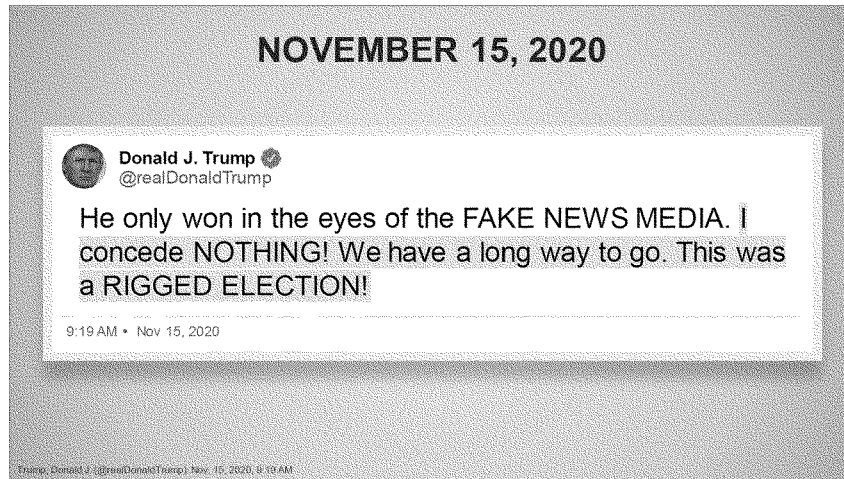


**SLIDE 82.** S. Doc. 117-3 Vol. I, Pg. 373; 167 Cong. Rec. S621

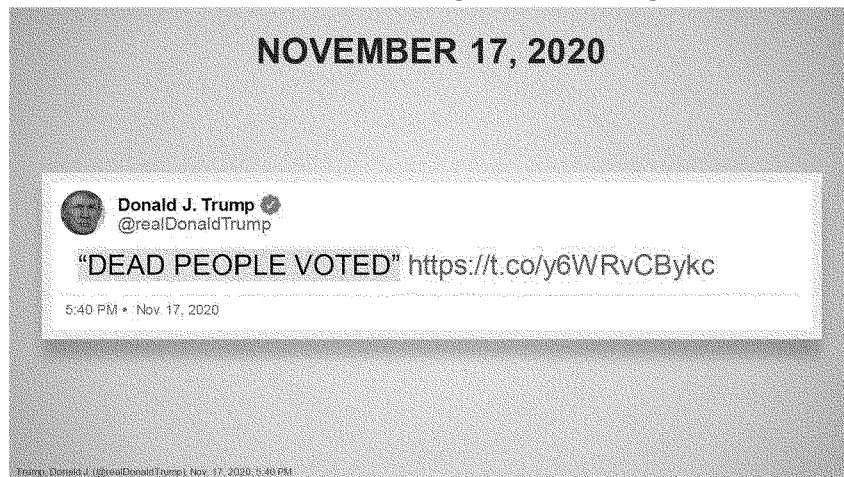


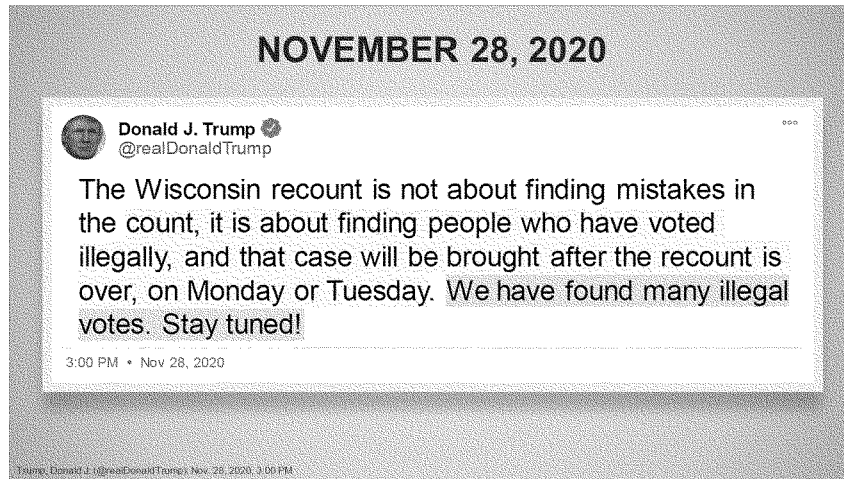
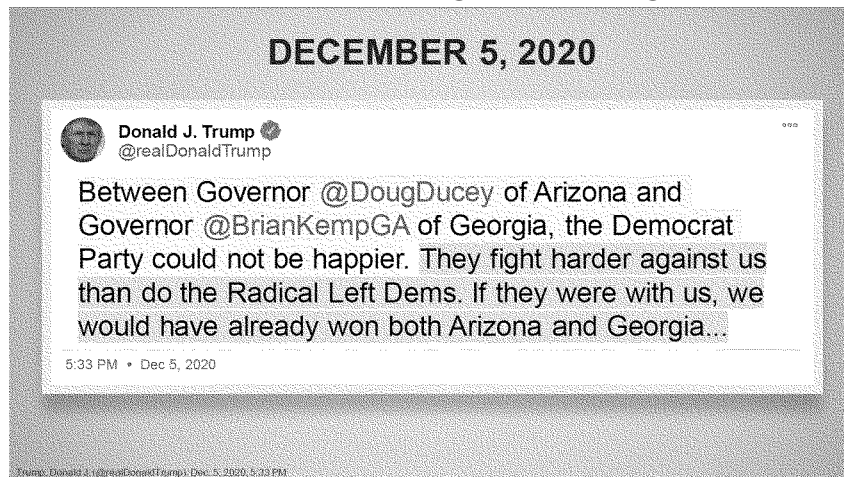
**SLIDE 83.** S. Doc. 117-3 Vol. I, Pg. 373; 167 Cong. Rec. S621**SLIDE 84.** S. Doc. 117-3 Vol. I, Pg. 374; 167 Cong. Rec. S622

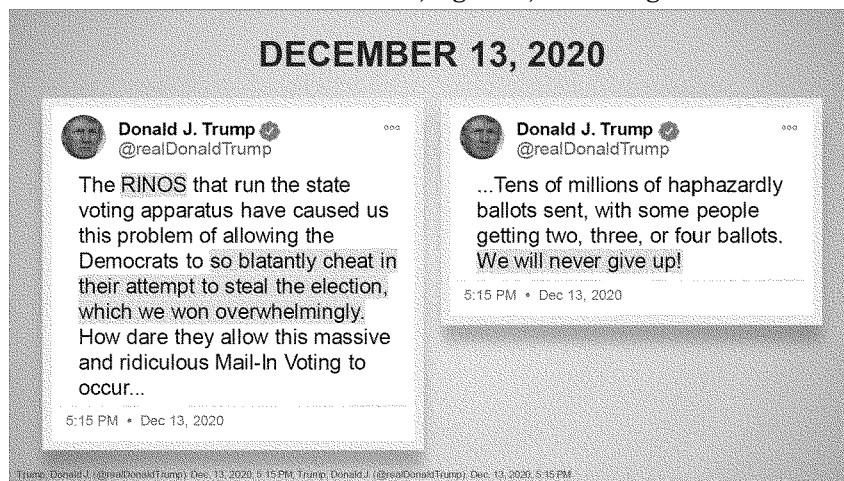
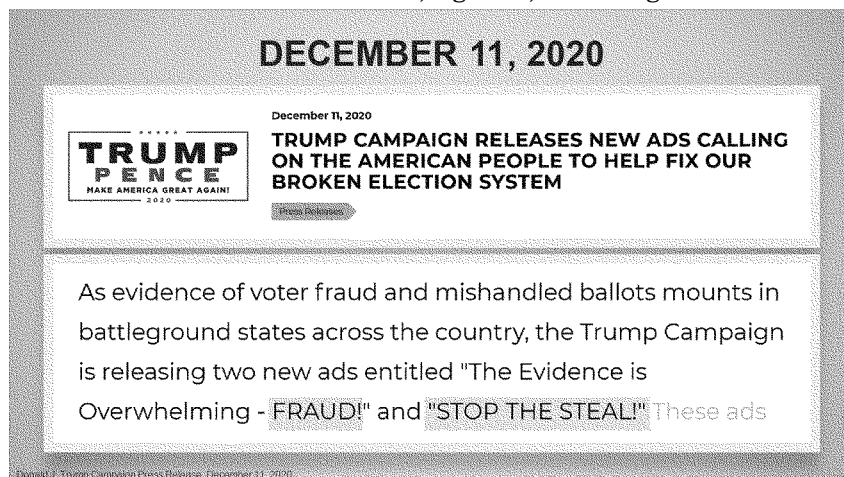
**SLIDE 85.** S. Doc. 117-3 Vol. I, Pg. 375; 167 Cong. Rec. S622



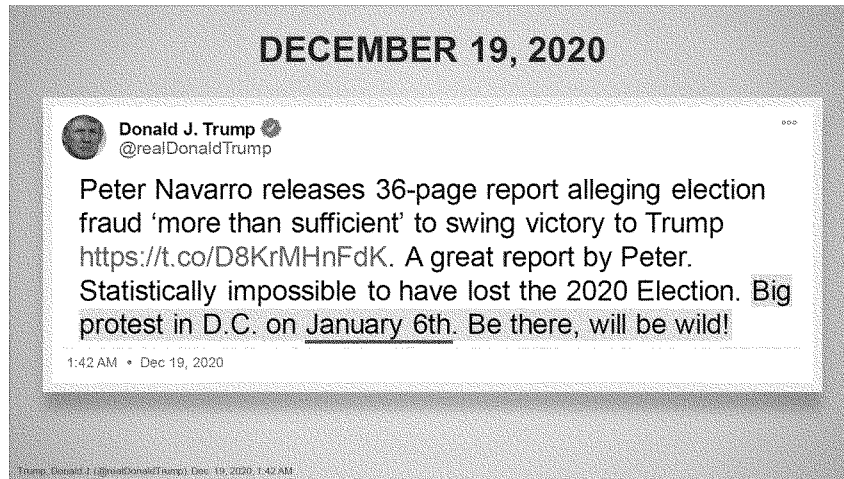
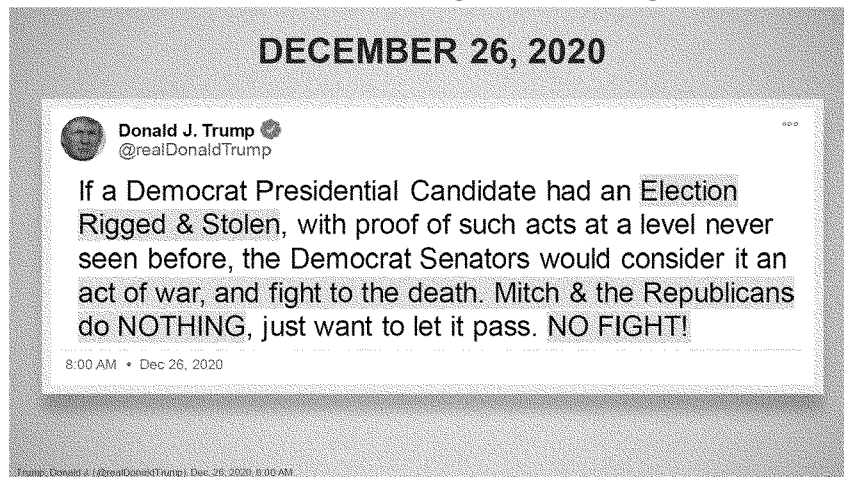
**SLIDE 86.** S. Doc. 117-3 Vol. I, Pg. 375; 167 Cong. Rec. S622



**SLIDE 87.** S. Doc. 117–3 Vol. I, Pg. 375; 167 Cong. Rec. S622**SLIDE 88.** S. Doc. 117–3 Vol. I, Pg. 375; 167 Cong. Rec. S622

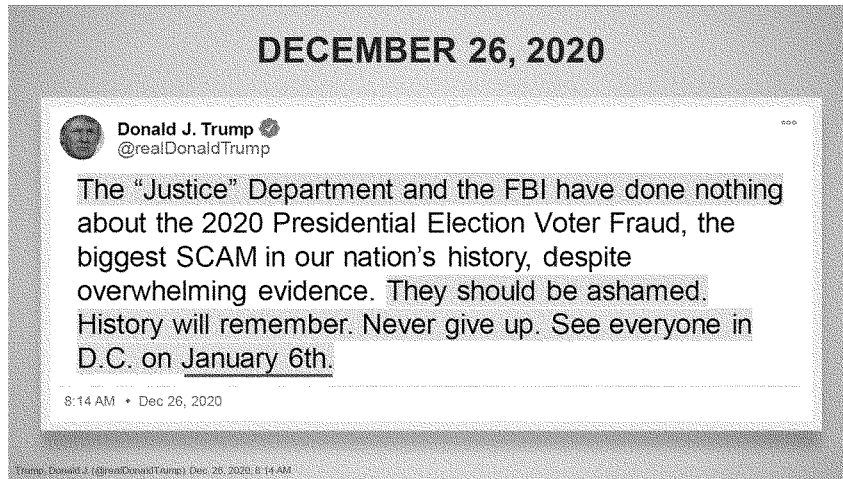
**SLIDE 89.** S. Doc. 117-3 Vol. I, Pg. 376; 167 Cong. Rec. S622**SLIDE 90.** S. Doc. 117-3 Vol. I, Pg. 377; 167 Cong. Rec. S623



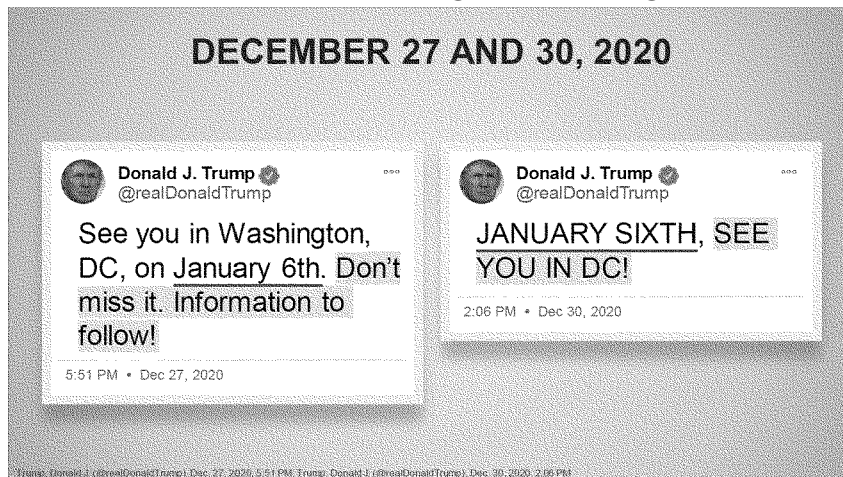
**SLIDE 91.** S. Doc. 117-3 Vol. I, Pg. 378; 167 Cong. Rec. S623**SLIDE 92.** S. Doc. 117-3 Vol. I, Pg. 378; 167 Cong. Rec. S623

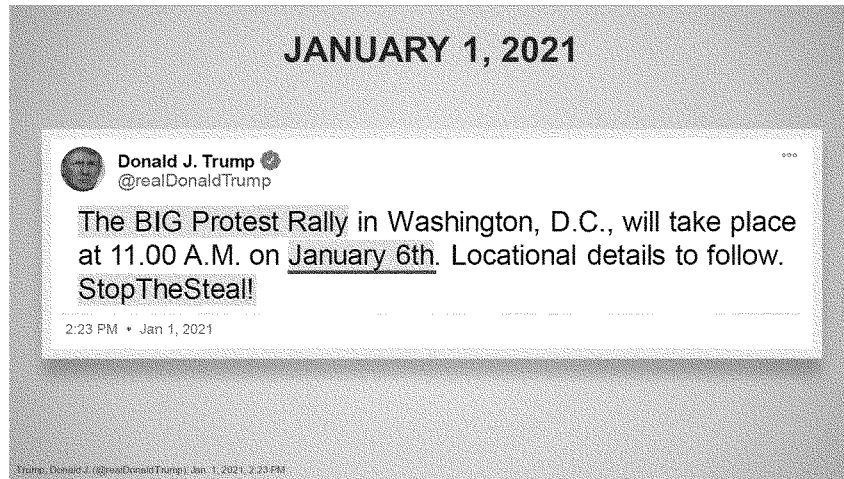
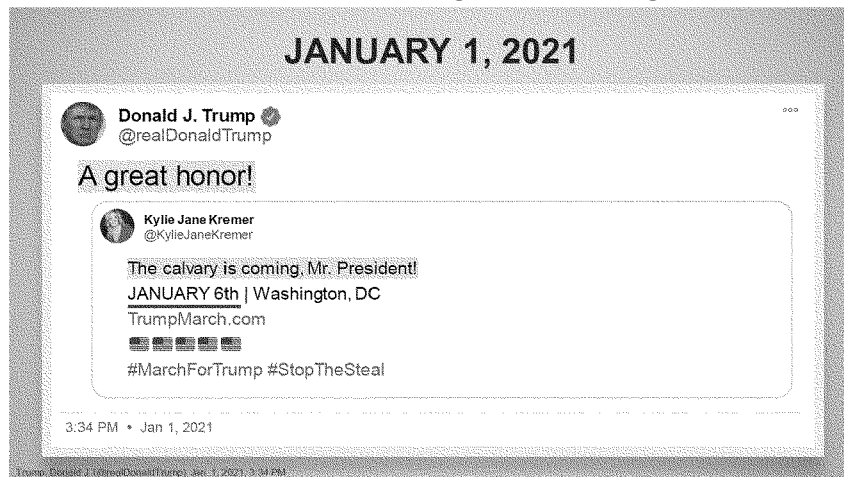


**SLIDE 93.** S. Doc. 117-3 Vol. I, Pg. 378; 167 Cong. Rec. S623

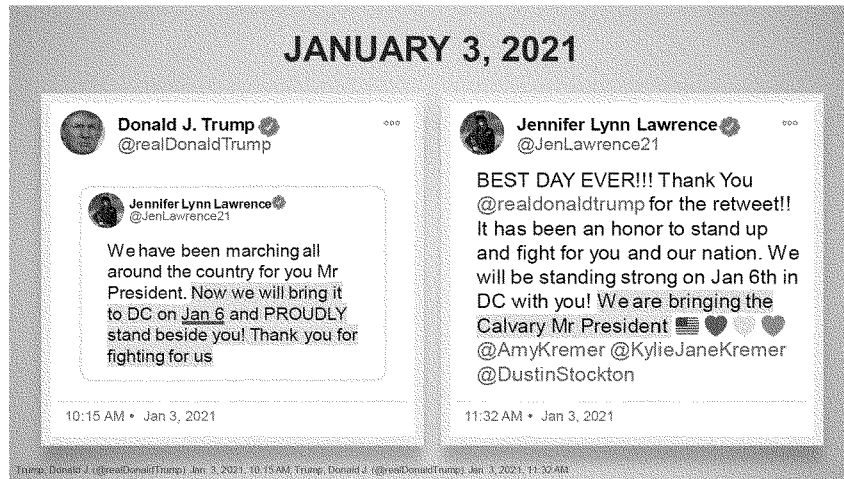


**SLIDE 94.** S. Doc. 117-3 Vol. I, Pg. 378; 167 Cong. Rec. S623

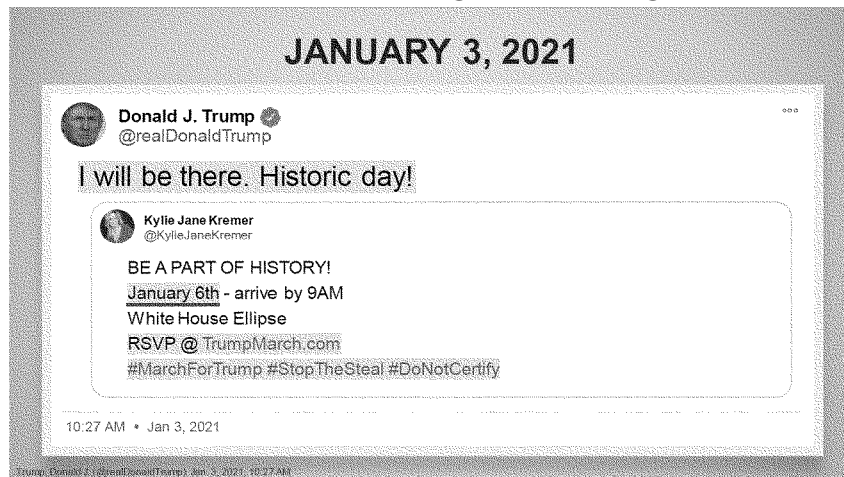


**SLIDE 95.** S. Doc. 117-3 Vol. I, Pg. 378; 167 Cong. Rec. S623**SLIDE 96.** S. Doc. 117-3 Vol. I, Pg. 379; 167 Cong. Rec. S623

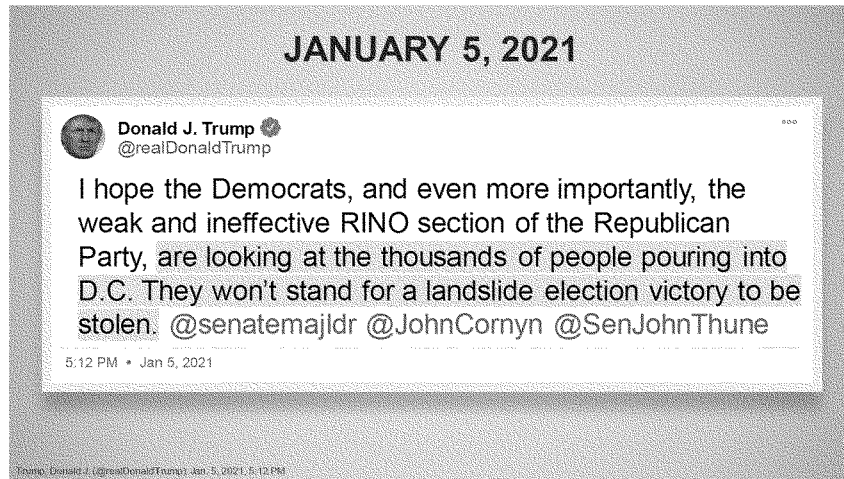
**SLIDE 97.** S. Doc. 117-3 Vol. I, Pg. 379; 167 Cong. Rec. S623



**SLIDE 98.** S. Doc. 117-3 Vol. I, Pg. 379; 167 Cong. Rec. S623



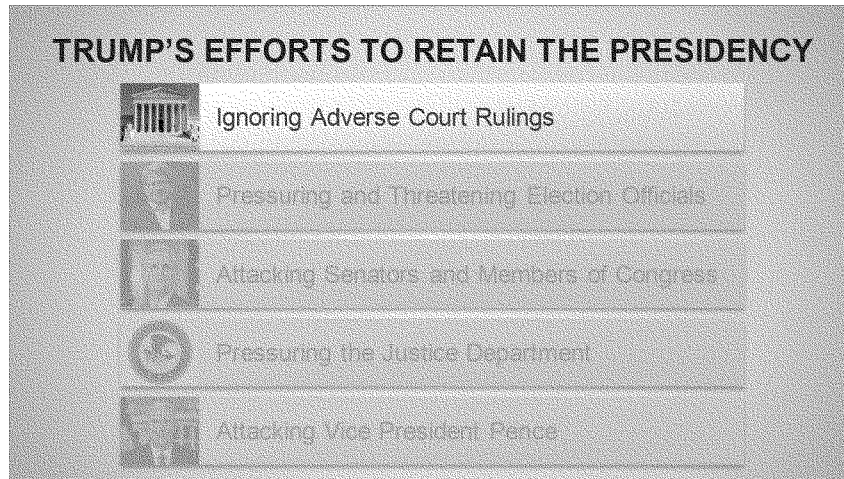
**SLIDE 99.** S. Doc. 117–3 Vol. I, Pg. 379; 167 Cong. Rec. S623



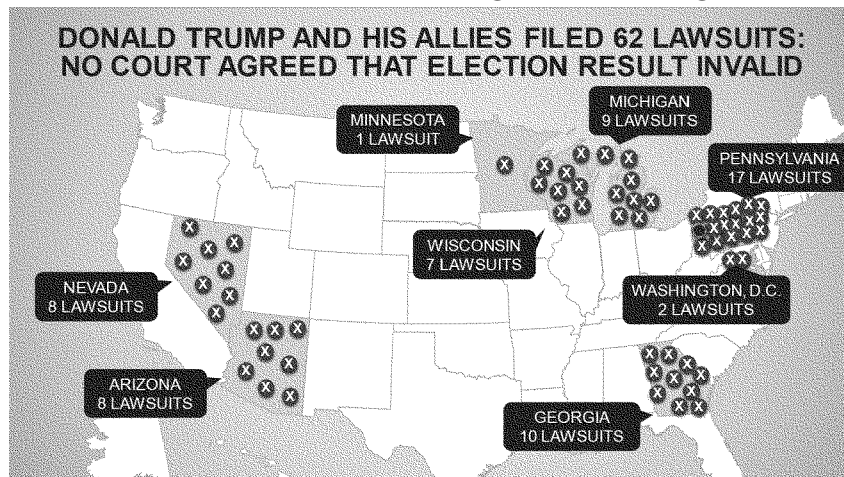
**SLIDE 100.** S. Doc. 117–3 Vol. I, Pg. 381/389; 167 Cong. Rec. S624/627

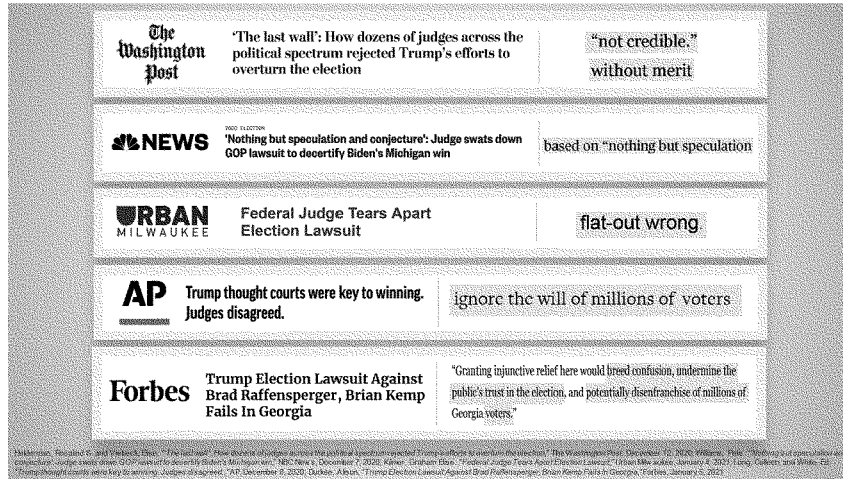
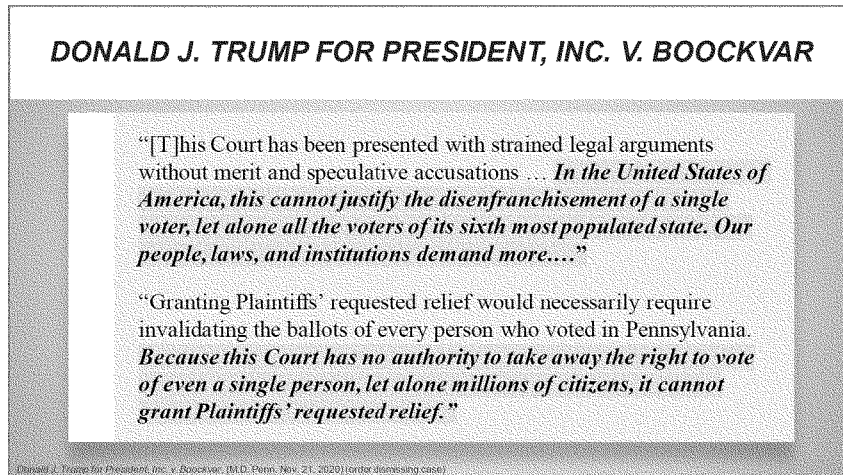


**SLIDE 101.** S. Doc. 117-3 Vol. I, Pg. 381; 167 Cong. Rec. S624



**SLIDE 102.** S. Doc. 117-3 Vol. I, Pg. 381; 167 Cong. Rec. S624



**SLIDE 103.** S. Doc. 117–3 Vol. I, Pg. 381; 167 Cong. Rec. S624**SLIDE 104.** S. Doc. 117–3 Vol. I, Pg. 382; 167 Cong. Rec. S624

**SLIDE 105.** S. Doc. 117-3 Vol. I, Pg. 382; 167 Cong. Rec. S624

**DONALD J. TRUMP FOR PRESIDENT, INC. ET AL., V.  
SECRETARY COMMONWEALTH OF PENNSYLVANIA ET AL.**

**“The Campaign’s claims have no merit. The number of ballots it specifically challenges is far smaller than the roughly 81,000-vote margin of victory. And it never claims fraud or that any votes were cast by illegal voters. Plus, tossing out millions of mail-in ballots would be drastic and unprecedented, disenfranchising a huge swath of the electorate and upsetting all down-ballot races too.”**

Donald J. Trump For President, Inc. et al. v. Secretary Commonwealth of Pennsylvania et al., United States Court of Appeals, 3rd Circuit D.C. No. 4-20-cv-02078 Nov. 27, 2020

**SLIDE 106.** S. Doc. 117-3 Vol. I, Pg. 382; 167 Cong. Rec. S624

**KING V. WHITMER**

**“[s]tunning in its scope and breathtaking in its reach. If granted, *the relief would disenfranchise the votes of the more than 5.5 million Michigan citizens who, with dignity, hope, and a promise of a voice, participated in the 2020 General Election.*”**

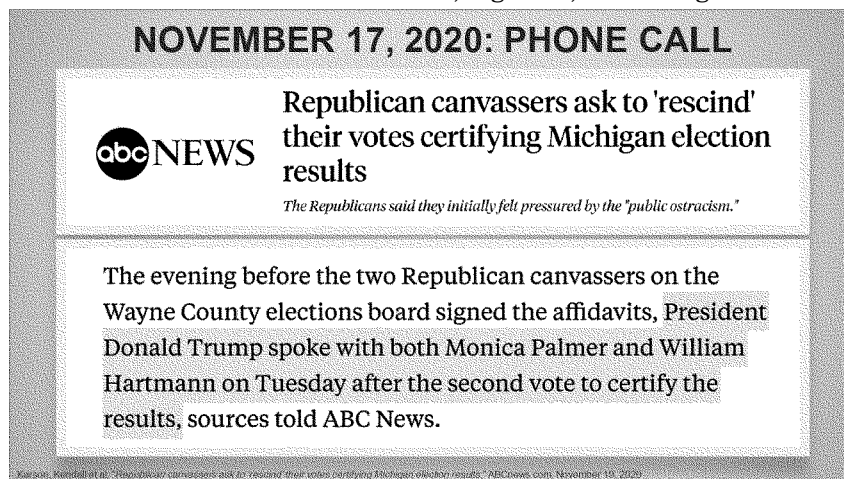
King v. Whitmer, No. 20-13134, Dkt.1902 (E.D. Mich. Dec. 7, 2020) (order denying Plaintiff's emergency motion for injunctive relief)



**SLIDE 107.** S. Doc. 117–3 Vol. I, Pg. 382; 167 Cong. Rec. S624



**SLIDE 108.** S. Doc. 117–3 Vol. I, Pg. 382; 167 Cong. Rec. S624





**SLIDE 109.** S. Doc. 117-3 Vol. I, Pg. 382; 167 Cong. Rec. S624

**NOVEMBER 19, 2020**

**The Washington Post** Trump invites Michigan Republican leaders to meet him at White House as he escalates attempts to overturn election results

DETROIT — President Trump has invited the leaders of Michigan's Republican-controlled state legislature to meet him in Washington on Friday, according to a person familiar with those plans, as the president and his allies continue an extraordinary campaign to overturn the results of an election he lost.

Hannan/Getty Images for Trump. "Trump invites Michigan Republican leaders to meet him at White House as he escalates attempts to overturn election results." The Washington Post, November 19, 2020.

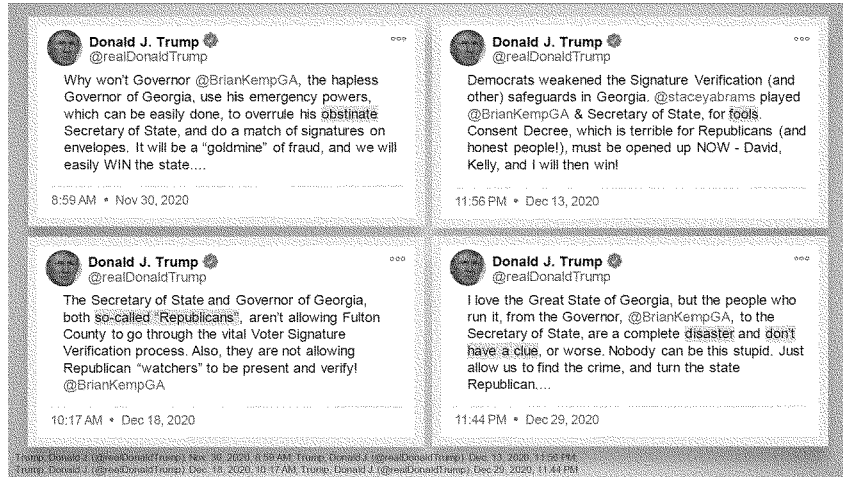
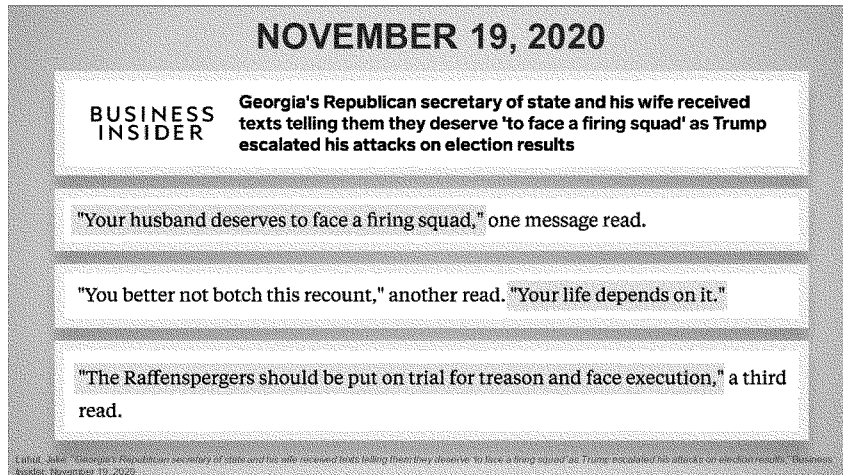
**SLIDE 110.** S. Doc. 117-3 Vol. I, Pg. 383; 167 Cong. Rec. S625

**DECEMBER 9, 2020**

**The New York Times** *Even in Defeat, Trump Tightens Grip on State G.O.P. Lawmakers*


Kim Ward, the Republican majority leader of the Pennsylvania Senate, said the president had called her to declare there was fraud in the voting. But she said she had not been shown the letter to Congress, which was pulled together hastily, before its release.

Gutierrez/Trump. "Even in Defeat, Trump Tightens Grip on State G.O.P. Lawmakers." The New York Times, December 9, 2020.

**SLIDE 111.** S. Doc. 117-3 Vol. I, Pg. 383; 167 Cong. Rec. S625**SLIDE 112.** S. Doc. 117-3 Vol. I, Pg. 383; 167 Cong. Rec. S625

SLIDE 113. S. Doc. 117-3 Vol. I, Pg. 384; 167 Cong. Rec. S625

**NOVEMBER 25, 2020**



**Georgia secretary of state: My family voted for Trump. He threw us under the bus anyway.**  
Brad Raffensperger Opinion contributor

By all accounts, Georgia had a wildly successful and smooth election. We finally defeated voting lines and put behind us Fulton County's now notorious reputation for disastrous elections. This should be something for Georgians to celebrate, whether their favored presidential candidate won or lost. For those wondering, mine lost — my family voted for him, donated to him and are now being thrown under the bus by him.


**Elections are American — not partisan**

Elections are the bedrock of our democracy. They need to be run fairly and, perhaps more important, impartially. That's not partisan. That's just American. Yet some don't seem to see it that way.

Raffensperger, Brad "Georgia secretary of state: My family voted for Trump. He threw us under the bus anyway," USA Today, November 25, 2020

SLIDE 114. S. Doc. 117-3 Vol. I, Pg. 384; 167 Cong. Rec. S625

**DECEMBER 1, 2020:  
GABRIEL STERLING, ELECTION OFFICIAL**




**"Mr. President ... Stop inspiring people to commit potential acts of violence. Someone's going to get hurt, someone's going to get shot, someone's going to get killed."**

Georgia Election Press Conference, Gabriel Sterling, December 1, 2020

**SLIDE 115.** S. Doc. 117–3 Vol. I, Pg. 385; 167 Cong. Rec. S625

**DECEMBER 5, 2020**




**Trump pressured Georgia governor in call to help overturn Biden's win in state**

**(CNN)** — President Donald Trump on Saturday called Georgia Gov. Brian Kemp, pushing him to convince state legislators to overturn President-elect Joe Biden's win in the state, a source familiar with the conversation told CNN.

Konels, Kroten and Stracqualursi/Veronica "Trump pressured Georgia governor in call to help overturn Biden's win in state." CNN, December 5, 2020.

**SLIDE 116.** S. Doc. 117–3 Vol. I, Pg. 385; 167 Cong. Rec. S625

**DECEMBER 23, 2020**

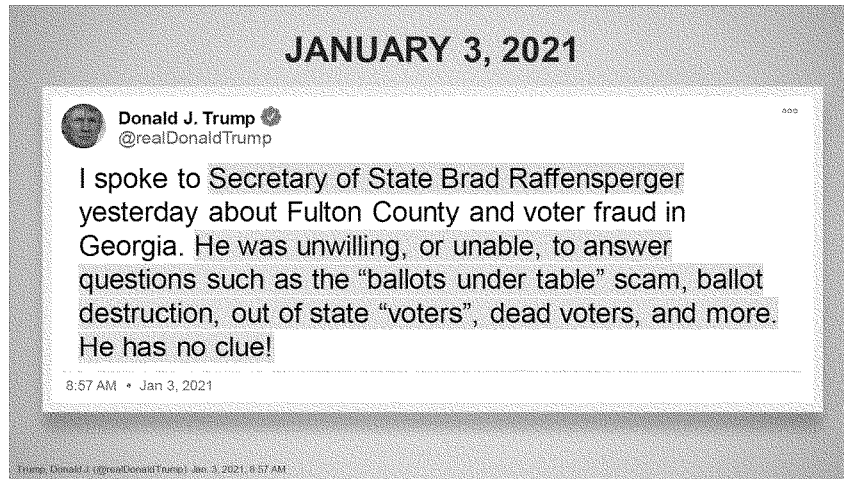


**'Find the fraud': Trump pressured a Georgia elections investigator in a separate call legal experts say could amount to obstruction**

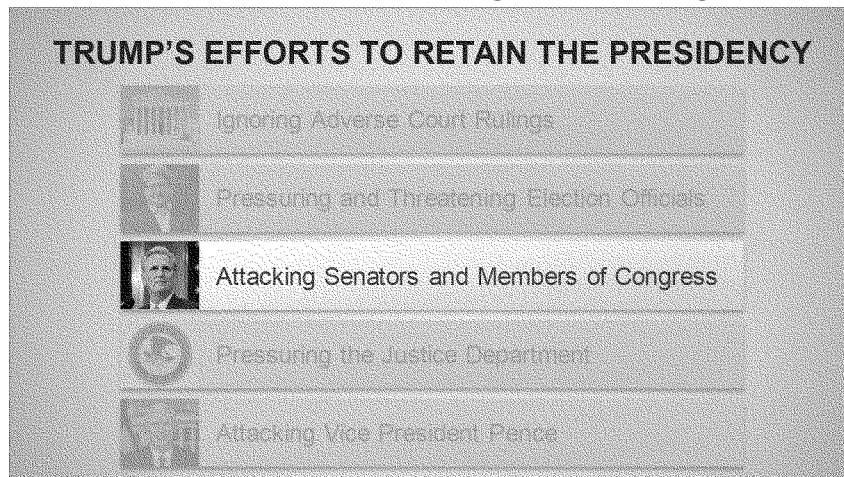
President Trump urged Georgia's lead elections investigator to "find the fraud" in a lengthy December phone call, saying the official would be a "national hero," according to an individual familiar with the call who spoke on the condition of anonymity because of the sensitivity of the conversation.

Saithoff, Amy: "'Find the fraud': Trump pressured a Georgia elections investigator in a separate call legal experts say could amount to obstruction." The Washington Post, January 9, 2021.

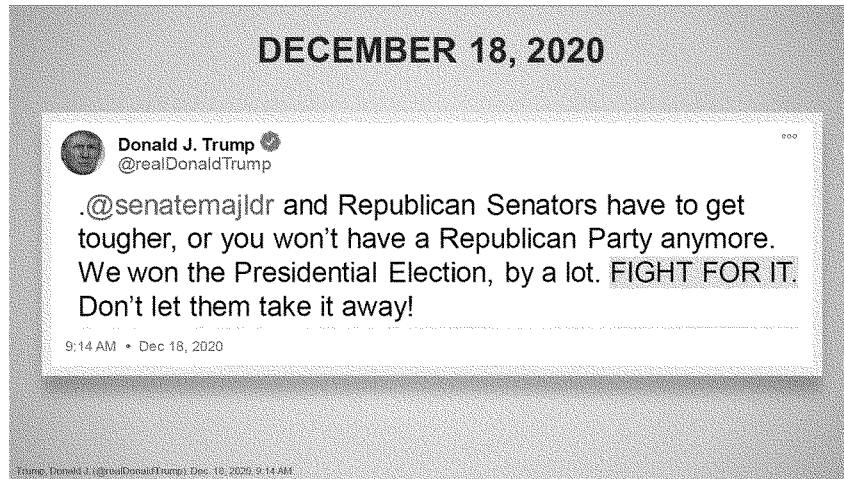
**SLIDE 117.** S. Doc. 117-3 Vol. I, Pg. 385; 167 Cong. Rec. S625



**SLIDE 118.** S. Doc. 117-3 Vol. I, Pg. 386; 167 Cong. Rec. S626



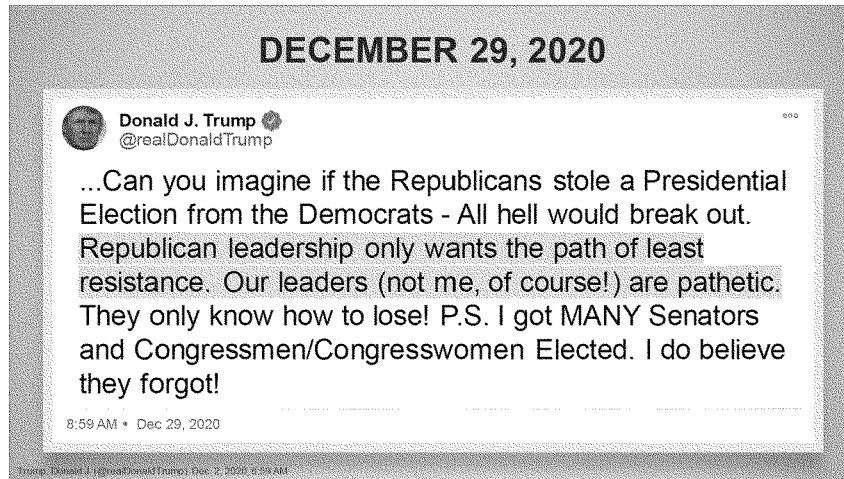
**SLIDE 119.** S. Doc. 117–3 Vol. I, Pg. 386; 167 Cong. Rec. S626



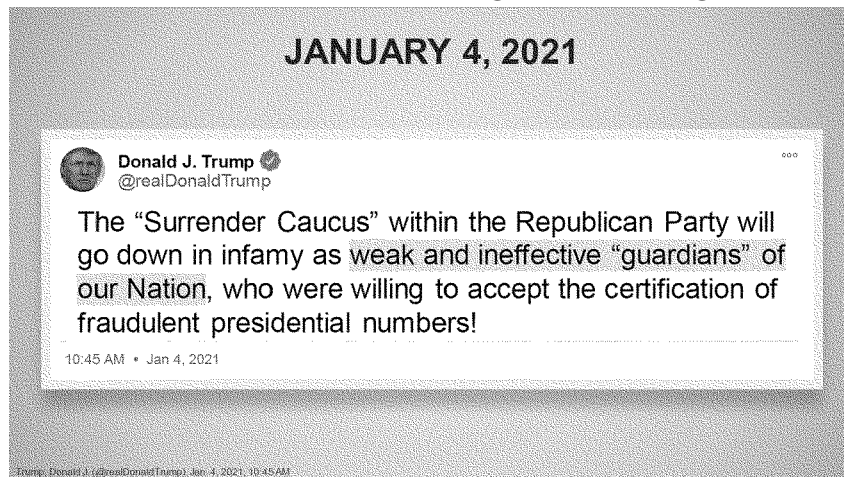
**SLIDE 120.** S. Doc. 117–3 Vol. I, Pg. 386; 167 Cong. Rec. S626



**SLIDE 121.** S. Doc. 117-3 Vol. I, Pg. 387; 167 Cong. Rec. S626



**SLIDE 122.** S. Doc. 117-3 Vol. I, Pg. 387; 167 Cong. Rec. S626

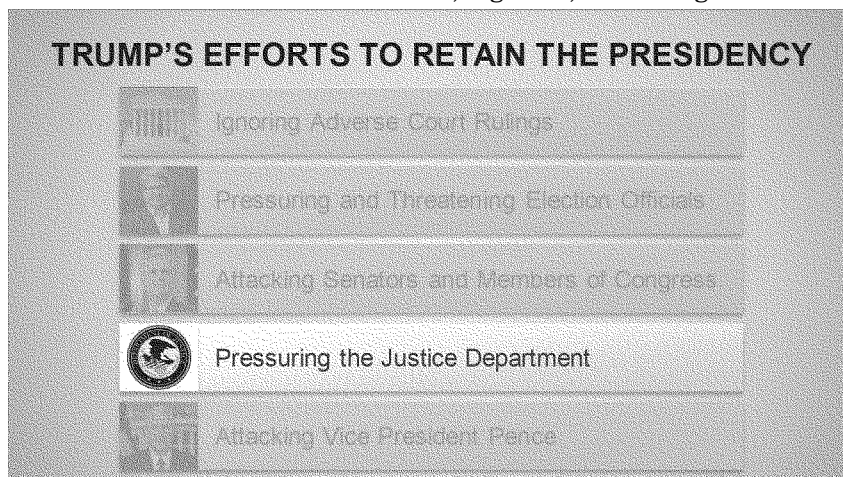




**SLIDE 123.** S. Doc. 117–3 Vol. I, Pg. 387; 167 Cong. Rec. S626



**SLIDE 124.** S. Doc. 117–3 Vol. I, Pg. 387; 167 Cong. Rec. S626



**SLIDE 125.** S. Doc. 117-3 Vol. I, Pg. 387; 167 Cong. Rec. S626

**NOVEMBER 13, 2020**

**The Washington Post** Federal prosecutors assigned to monitor election malfeasance tell Barr they see no evidence of substantial irregularities

Sixteen assistant U.S. attorneys specially assigned to monitor malfeasance in the 2020 election urged Attorney General William P. Barr on Friday to rescind his recent memorandum allowing investigators to publicly pursue allegations of "vote tabulation irregularities" in certain cases before results are certified, saying they had not seen evidence of any substantial anomalies.

Carvin/White, Barr and Venizelos, Tok. "Federal prosecutors assigned to monitor election malfeasance tell Barr they see no evidence of substantial irregularities." The Washington Post, November 13, 2020.

**SLIDE 126.** S. Doc. 117-3 Vol. I, Pg. 387; 167 Cong. Rec. S626

**DECEMBER 1, 2020**

**AP** Disputing Trump, Barr says no widespread election fraud

Barr told the AP that U.S. attorneys and FBI agents have been working to follow up specific complaints and information they've received, but "to date, we have not seen fraud on a scale that could have effected a different outcome in the election."

Polunsky, Michael. "Disputing Trump, Barr says no widespread election fraud." AP, December 1, 2020.

**SLIDE 127.** S. Doc. 117–3 Vol. I, Pg. 388; 167 Cong. Rec. S626

**DECEMBER 1, 2020: CONVERSATION**

**AXIOS** Episode 4: Trump turns on Barr


**Attorney General Bill Barr stood behind a chair** in the private dining room next to the Oval Office, looming over Donald Trump. The president sat at the head of the table. It was Dec. 1, nearly a month after the election, and Barr had some sharp advice to get off his chest. The president's theories about a stolen election, Barr told Trump, were "bullshit."

Screen: Jonathan. "Episode 4: Trump turns on Barr." AXIOS, January 10, 2021.

**SLIDE 128.** S. Doc. 117–3 Vol. I, Pg. 388; 167 Cong. Rec. S626

**JAN. 12, 2021: ARTICLE; DEC. 14 TWEET**

**VANITY FAIR** The then-president apparently saw opportunity in Barr's resignation, as Trump turned to personally pressuring Rosen, Barr's replacement, into authorizing the lawsuit. According to the *Journal*, Rosen refused, maintaining, as senior department officials had, the lack of legal standing for Trump's challenge to the election results.

 **Donald J. Trump**  
@realDonaldTrump

...Deputy Attorney General Jeff Rosen, an outstanding person, will become Acting Attorney General. Highly respected Richard Donoghue will be taking over the duties of Deputy Attorney General. Thank you to all!

5:39 PM • Dec 14, 2020

Kim, Charlotte. "Trump Apparently Faced Risk Of Resignation As Election-Swearing Plot Escalated." Vanity Fair, January 12, 2021.  
Trump, Donald J. (@realDonaldTrump). Dec. 14, 2020, 5:39 PM.

SLIDE 129. S. Doc. 117-3 Vol. I, Pg. 388; 167 Cong. Rec. S626

JANUARY 22, 2021

**The  
New York  
Times** *Trump and Justice Dept. Lawyer Said to Have  
Plotted to Oust Acting Attorney General*

Instead, Mr. Trump summoned Mr. Rosen to the Oval Office the next day. He wanted the Justice Department to file legal briefs supporting his allies' lawsuits seeking to overturn his election loss. And he urged Mr. Rosen to appoint special counsels to investigate not only unfounded accusations of widespread voter fraud, but also Dominion, the voting machines firm.

Bettner, Kelle. "Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General." The New York Times, January 22, 2021.

SLIDE 130. S. Doc. 117-3 Vol. I, Pg. 388; 167 Cong. Rec. S626

JANUARY 22, 2021

**The  
New York  
Times** *Trump and Justice Dept. Lawyer Said to Have  
Plotted to Oust Acting Attorney General*

Mr. Rosen refused. He maintained that he would make decisions based on the facts and the law, and he reiterated what Mr. Barr had privately told Mr. Trump: The department had investigated voting irregularities and found no evidence of widespread fraud.

Bettner, Kelle. "Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General." The New York Times, January 22, 2021.

**SLIDE 131.** S. Doc. 117–3 Vol. I, Pg. 388; 167 Cong. Rec. S627

**JANUARY 22, 2021**






**The New York Times** *Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General*

Mr. Cipollone advised the president not to fire Mr. Rosen and he reiterated, as he had for days, that he did not recommend sending the letter to Georgia lawmakers. Mr. Engel advised Mr. Trump that he and the department's remaining top officials would resign if he fired Mr. Rosen, leaving Mr. Clark alone at the department.

*Source: Katie, "Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General," The New York Times, January 22, 2021*

**SLIDE 132.** S. Doc. 117–3 Vol. I, Pg. 388; 167 Cong. Rec. S627

**TRUMP'S EFFORTS TO RETAIN THE PRESIDENCY**

-  Ignoring Adverse Court Rulings
-  Pressuring and Threatening Election Officials
-  Attacking Senators and Members of Congress
-  Pressuring the Justice Department
-  Attacking Vice President Pence

**SLIDE 133.** S. Doc. 117-3 Vol. I, Pg. 389; 167 Cong. Rec. S627

**JANUARY 11, 2021**


**The Washington Post**      **Inside the remarkable rift between Donald Trump and Mike Pence**

Those putting pressure included lawyers Rudolph W. Giuliani and John Eastman, trade adviser Peter Navarro and conspiracy-minded Trump ally Sidney Powell, officials said, along with other lawyers and outside advisers sent by Chief of Staff Mark Meadows. Trump told "almost anyone who called to tell him he could still win to call Pence," one senior administration official said. Pence at times was in the Oval Office when Trump called people to try to convince the vice president, an official said.

Laweney, Josh and Parker, Ashley. "Inside the remarkable rift between Donald Trump and Mike Pence." The Washington Post, January 11, 2021

**SLIDE 134.** S. Doc. 117-3 Vol. I, Pg. 389; 167 Cong. Rec. S627

**JANUARY 6, 2021**



**Donald J. Trump**

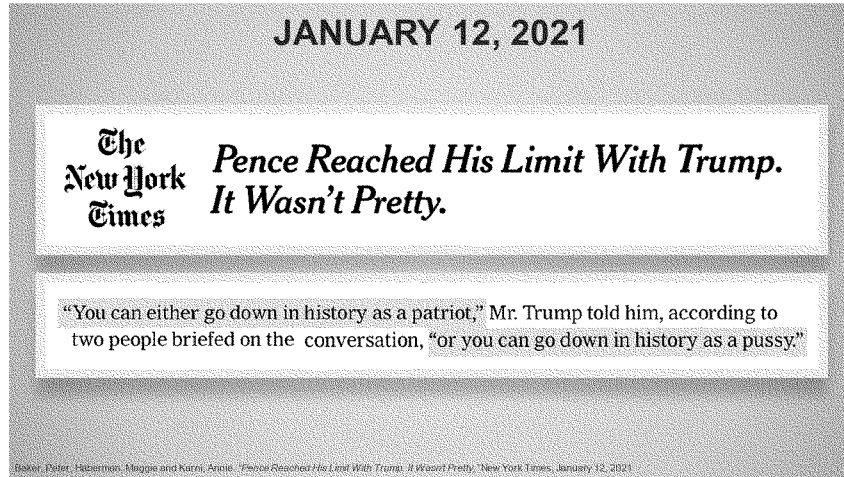
@realDonaldTrump

States want to correct their votes, which they now know were based on irregularities and fraud, plus corrupt process never received legislative approval. 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!

8:17 AM • Jan 6, 2021

Trump, Donald J. (@realDonaldTrump) Jan 6, 2021, 8:17 AM

**SLIDE 135.** S. Doc. 117-3 Vol. I, Pg. 389; 167 Cong. Rec. S627



**SLIDE 136.** S. Doc. 117-3 Vol. I, Pg. 391; 167 Cong. Rec. S628





**SLIDE 137.** S. Doc. 117-3 Vol. I, Pg. 392; 167 Cong. Rec. S628

**SEPTEMBER 7, 2020**

**2 arrested as Trump supporters, Proud Boys gather for Labor Day caravan, Salem rally**

**Sergio Olmos**  
@MrOlmos

Proud boys bull rush BLM, take baseball bat to man, then proud boy punches man on the ground, woman then maces him on the ground

7:06 PM • Sep 7, 2020

Olmos, James and Nakamura, both, 2 arrested as Trump supporters, Proud Boys gather for Labor Day caravan, Salem rally. The Oregonian/OregonLive, September 8, 2020. Sergio Olmos (@MrOlmos), Sep 7, 2020, 7:06 PM

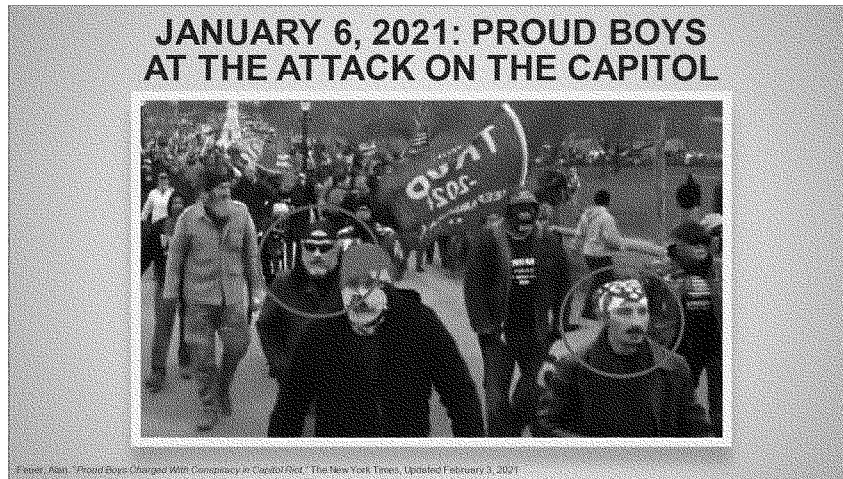
**SLIDE 138.** S. Doc. 117-3 Vol. I, Pg. 392; 167 Cong. Rec. S628

**OCTOBER 25, 2020  
TIMES SQUARE TRUMP RALLY**

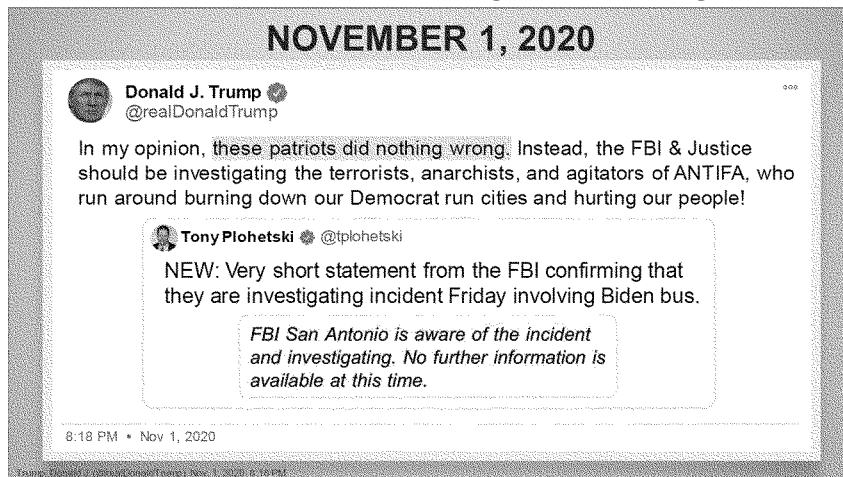
**DECEMBER 12, 2020  
SECOND MILLION MAGA MARCH**

@ashfreakin, Instagram; Tyrone Turner, WABU

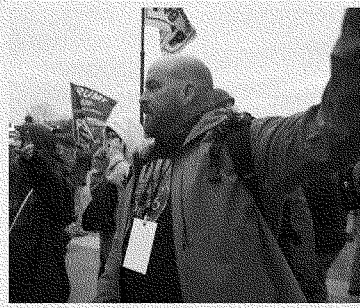
**SLIDE 139.** S. Doc. 117-3 Vol. I, Pg. 392; 167 Cong. Rec. S628



**SLIDE 140.** S. Doc. 117-3 Vol. I, Pg. 393; 167 Cong. Rec. S628



**SLIDE 141.** S. Doc. 117-3 Vol. I, Pg. 394; 167 Cong. Rec. S629

	<p><b>KEITH LEE</b></p> <p><b>ORGANIZER OF TRUMP CARAVAN IN TEXAS</b></p> <p><b>FUNDRAISER FOR JANUARY 6</b></p> <p><b>USED BULLHORN TO DIRECT CROWD: "Y'ALL GET TO THE CAPITOL, WE NEED TO SURROUND THIS PLACE"</b></p>
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Kellogg/Black, David, McIntire, Mike and Triebert, Christian. "Defence the Capitol Riot, Calls for Cash and Talk of Revolution," New York Times, January 18, 2021

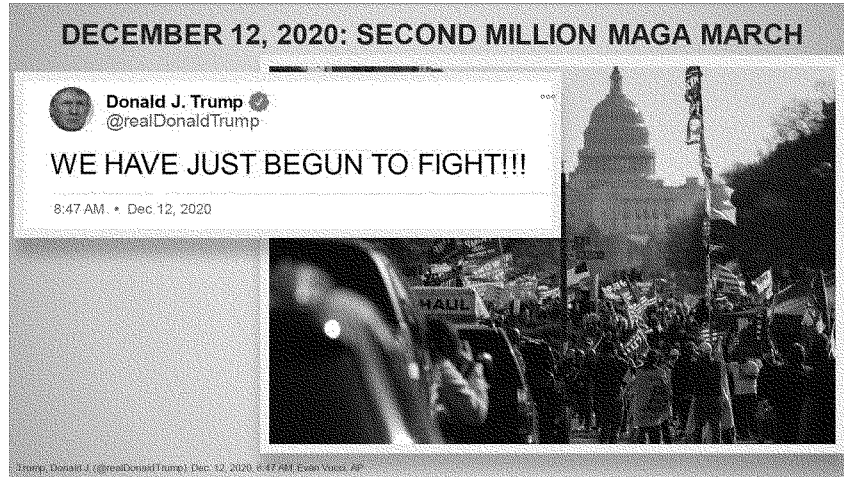
**SLIDE 142.** S. Doc. 117-3 Vol. I, Pg. 394; 167 Cong. Rec. S629

**DECEMBER 12, 2020:  
PROUD BOYS AT SECOND MILLION MAGA MARCH**

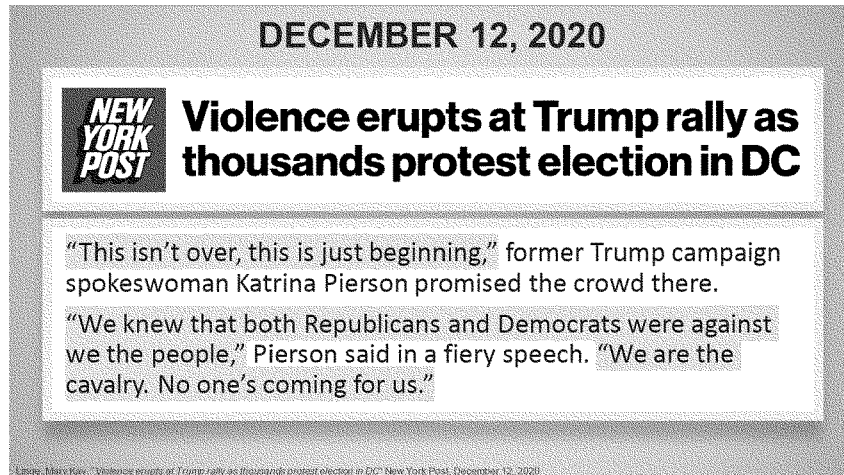
	
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Yvonne Turner (WAME)

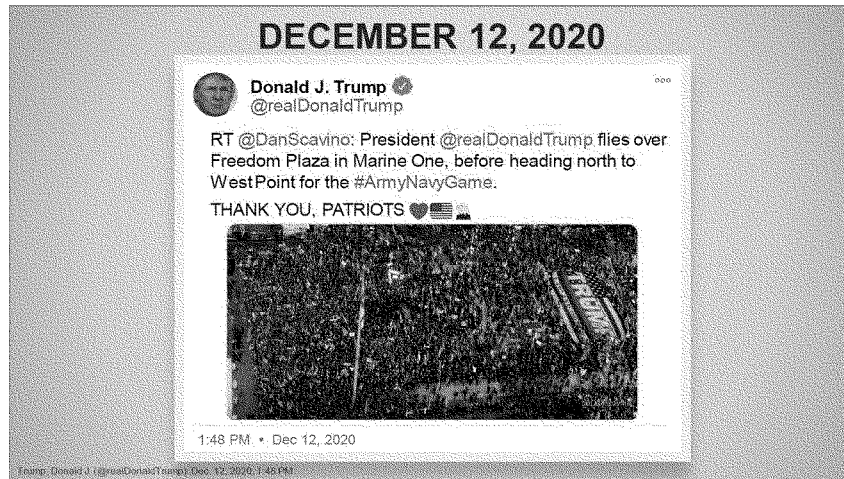
**SLIDE 143.** S. Doc. 117–3 Vol. I, Pg. 394; 167 Cong. Rec. S629



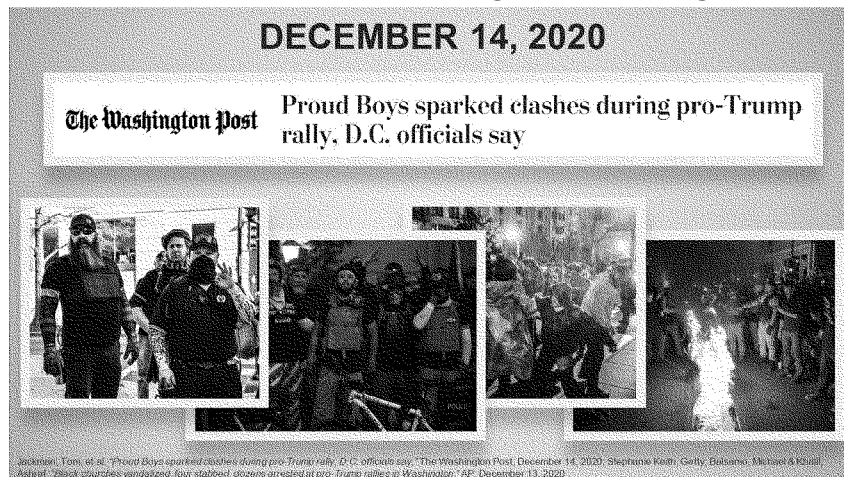
**SLIDE 144.** S. Doc. 117–3 Vol. I, Pg. 395; 167 Cong. Rec. S629



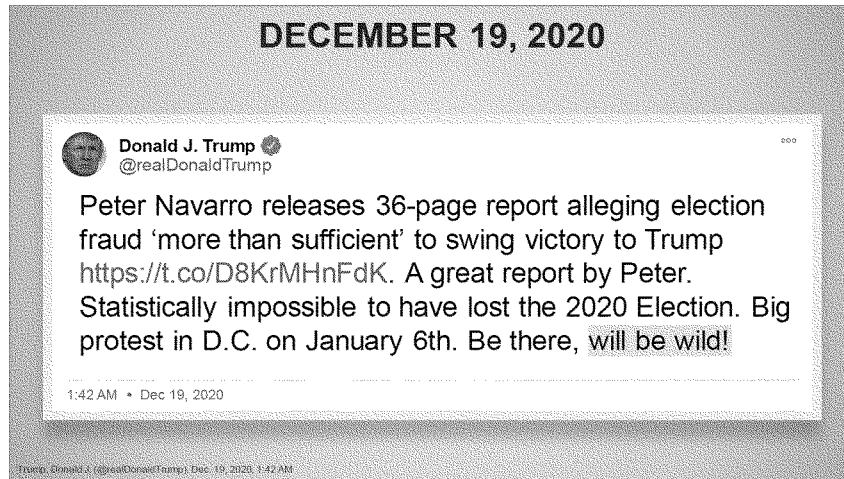
**SLIDE 145.** S. Doc. 117-3 Vol. I, Pg. 395; 167 Cong. Rec. S629



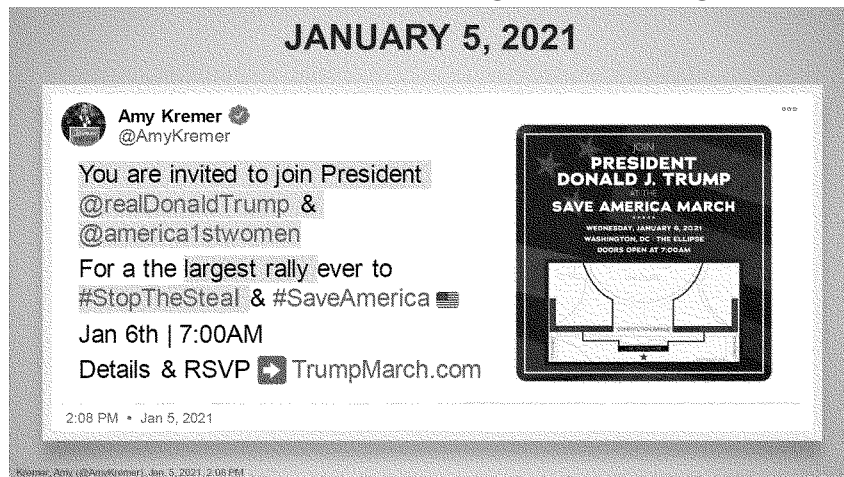
**SLIDE 146.** S. Doc. 117-3 Vol. I, Pg. 395; 167 Cong. Rec. S629



**SLIDE 147.** S. Doc. 117-3 Vol. I, Pg. 395; 167 Cong. Rec. S629



**SLIDE 148.** S. Doc. 117-3 Vol. I, Pg. 396; 167 Cong. Rec. S629





**SLIDE 149.** S. Doc. 117–3 Vol. I, Pg. 396; 167 Cong. Rec. S629

**PERMIT FOR SAVE AMERICA MARCH**

PERMIT #21-0278 (AMENDED)  
 PERMITTEE: WOMEN FOR AMERICA FIRST  
 LOCATION: ELLIPSE, SOUTHWEST QUADRANT, AND SOUTHEAST QUADRANT; SOUTH  
 OF TREE LIGHTING SITE  
 DATE: JANUARY 2-8, 2021 (06:30 AM– 7:30 PM)


**Additional Conditions**

A. This permit authorizes the use of the Ellipse southwest quadrant, west of the vista site line and south of the tree lighting site starting on Saturday, January 2 at 6:30 am until Wednesday, January 8, 2021 at 7:30 pm. This permit does not authorize a march from the Ellipse.

[https://www.hhs.gov/procurement/procurement21-0278-Women-for-America-First-Ellipse-permit\\_REDACTED.pdf](https://www.hhs.gov/procurement/procurement21-0278-Women-for-America-First-Ellipse-permit_REDACTED.pdf)

**SLIDE 150.** S. Doc. 117–3 Vol. I, Pg. 396; 167 Cong. Rec. S630

**JANUARY 13, 2021**

 **INDEPENDENT**


***White House insiders say Trump knew what was about to happen at the Capitol — because of his social media guru Dan Scavino***

The ex-White House and campaign insider, who has known both Scavino and the president for years, said there was no way that Scavino and the Trump social media operation would not have been aware of plans circulating online to storm the Capitol. That's because the operation closely

Fleishberg, Andrew. "White House insiders say Trump knew what was about to happen at the Capitol — because of his social media guru Dan Scavino." Independent, January 13, 2021.



**JANUARY 13, 2021**

 **INDEPENDENT**

***White House insiders say Trump knew what was about to happen at the Capitol — because of his social media guru Dan Scavino***

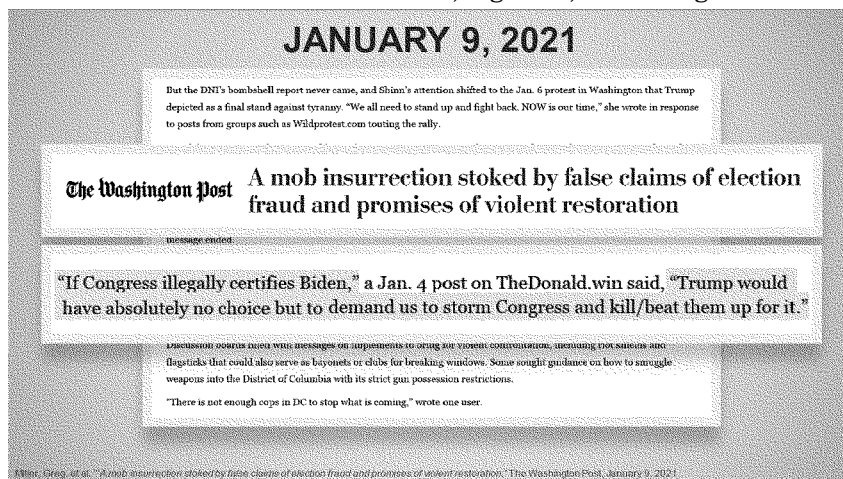
circulating online to storm the Capitol. That's because the operation closely monitored the web's darkest corners, ranging from mainstream sites such as Twitter, Facebook, and Reddit, to fringe message boards like 4chan and 8chan (now called 8kun) to TheDonald.win, an offshoot from a banned Reddit community dedicated to rabidly supporting all things Trump.

The image shows a screenshot of a Facebook post. The main content is a meme with a black and white photograph of the U.S. Capitol building reflected in water. Overlaid on the image is the date "JANUARY 6, 2021" at the top and the text "THE CAPITOL IS OUR GOAL. EVERYTHING ELSE IS A DISTRACTION. EVERY CORRUPT MEMBER OF CONGRESS LOCKED IN ONE ROOM AND SURROUNDED BY REAL AMERICANS IS AN OPPORTUNITY THAT WILL NEVER PRESENT ITSELF AGAIN." at the bottom. Below the image is a comment section with 12 comments, including one from "Angela Lutz" and another from "Jill". To the right of the meme is a screenshot of a website titled "FORNABLE". The website has a navigation bar with "Home", "About", "Contact", and "Privacy Policy". The main content area has a heading "FORNABLE" and a subheading "FORNABLE". The text on the website is partially obscured but appears to be a list of items or a table. The overall image is a composite of these elements, likely used for a research project on the January 6th events.

**SLIDE 153.** S. Doc. 117-3 Vol. I, Pg. 397; 167 Cong. Rec. S630



**SLIDE 154.** S. Doc. 117-3 Vol. I, Pg. 397; 167 Cong. Rec. S630



**SLIDE 155.** S. Doc. 117–3 Vol. I, Pg. 397; 167 Cong. Rec. S630

**JANUARY 5, 2021**

Discussion in the thread followed about how most effectively to sneak guns

**The Washington Post** Pro-Trump forums erupt with violent threats ahead of Wednesday's rally against the 2020 election

"Yes, it's illegal, but this is war and we're clearly in a post-legal phase of our society."

five comments, according to research by *Advance Democracy*, a group headed by former FBI analyst and Senate investigator Daniel J. Jones, who led the review of the CIA's torture program.

Tyeborg, Craig et al. "Pro-Trump forums erupt with violent threats ahead of Wednesday's rally against the 2020 election." The Washington Post, January 5, 2021

**SLIDE 156.** S. Doc. 117–3 Vol. I, Pg. 397; 167 Cong. Rec. S630

**Today I told my kids Goodbye.**

Today I had the very difficult conversation with my children, that daddy might not come home from D.C. As a Veteran this is always something you are prepared to discuss, but it never comes easy.

https://facebook.com/1190000254/today-i-told-my-kids-goodbye/

**SLIDE 157.** S. Doc. 117-3 Vol. I, Pg. 397; 167 Cong. Rec. S630

**JANUARY 8, 2021**

**DAILY BEAST** *'Ready to Die': Two Months of MAGA Mob Warning Signs*

“Find the tunnels. Arrest the worst traitors.”

“there are only around 2k of them,”

“The capitol is our goal. Everything else is a distraction.”

Rosenfeld, Adam et al. "Ready to Die: Two Months of MAGA Mob Warning Signs." The Daily Beast. Updated January 6, 2021.


**SLIDE 158.** S. Doc. 117-3 Vol. I, Pg. 398; 167 Cong. Rec. S630

**AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT**

28. Your affiant has reviewed additional footage from the events inside the U.S. Capitol. In one image, shown below, Pezzola appears to have what I believe to be an earpiece or communication device in his right ear. In my experience, such a device could be used to receive communications from others in real time. Your affiant also notes that multiple individuals were photographed or depicted on videos with earpieces, including other individuals believed to be associated with the Proud Boys. For instance, in the picture of the Proud Boys referenced above

29. Your affiant has also identified certain Proud Boys at the U.S. Capitol on January 6, 2021, who appear to have walkie-talkie style communication devices. For instance, in the previous

**PROUD BOY LEADER  
AT THE CAPITOL**



**EARPIECE**

Joseph R. Buzis: Affidavit in Support of a Criminal Complaint, January 19, 2021

**SLIDE 159.** S. Doc. 117–3 Vol. I, Pg. 398; 167 Cong. Rec. S630

**JANUARY 9, 2021**



**How a Trump Tweet Sparked Plots, Strategizing to "Storm and Occupy" Capitol with "Handcuffs and Zip Ties"**

▲ CuckerCarlson · 6 days ago · +3 / -0

3 correct, but he can order the NAT guard to stand down if needed. unfortunately he has no control over the capitol police... but there are only around 2k of them and a lot are useless fat asses or girls.

permalink parent save report block reply

How a Trump Tweet Sparked Plots, Strategizing to "Storm and Occupy" Capitol with "Handcuffs and Zip Ties," SITE Intelligence, January 9, 2021

**SLIDE 160.** S. Doc. 117–3 Vol. I, Pg. 398; 167 Cong. Rec. S630

**JANUARY 5, 2021**



**Violent threats ripple through far-right internet forums ahead of protest**

In anticipation of possible violence, Washington Mayor Muriel Bowser has asked residents to stay away from the downtown area where protesters will be marching.

**The Washington Post**


**Pro-Trump forums erupt with violent threats ahead of Wednesday's rally against the 2020 election**

Posters respond to Trump's prediction of 'wild' day with discussion of potential bloodshed and advice on sneaking guns into D.C.

Chakraborty, Brandy and Collins, Ben. "Violent threats ripple through far-right internet forums ahead of protest," ABC News, January 5, 2021.  
 Timberg, Craig and Howell, Drew. "Pro-Trump forums erupt with violent threats ahead of Wednesday's rally against the 2020 election," Washington Post, January 5, 2021

SLIDE 161. S. Doc. 117-3 Vol. I, Pg. 398; 167 Cong. Rec. S630

**JANUARY 2, 2021**



**Proud Boys flock to Washington 'incognito' for Jan. 6 protests**

Metropolitan Police brace for massive pro-Trump protests

The far-right, male-only group, the Proud Boys, will descend onto Washington, D.C., in protest the same day Congress plans to certify Electoral College votes, officially confirming President-elect Joe Biden's win.


Though the group will not wear its usual black and yellow colors Jan. 6, the Washington Times first reported that the leader of the group, Enrique Tarrio, said members would dress "incognito," in Antifa's traditional all-black apparel.

Threats of violence, and plans to bring firearms into the District and set up an "armed encampment" on the Mall have surfaced in online forums, reported The Washington Post.

McFall, Caitlin "Proud Boys flock to Washington 'incognito' for Jan. 6 protests" Fox News, January 2, 2021

SLIDE 162. S. Doc. 117-3 Vol. I, Pg. 398; 167 Cong. Rec. S630

**JANUARY 3, 2021**



**Bowser warns D.C. residents to stay away when Trump supporters amass downtown Wednesday**

Some experts who monitor far-right groups have warned that Wednesday's event could be more dangerous, as groups have discussed ways to sneak guns into the District.

Zimmer, Jake "Bowser warns D.C. residents to stay away when Trump supporters amass downtown Wednesday" Washington Post, January 3, 2021

**SLIDE 163.** S. Doc. 117–3 Vol. I, Pg. 398; 167 Cong. Rec. S630

**The Washington Post** Capitol Police intelligence report warned three days before attack that 'Congress itself' could be targeted

Three days before thousands of rioters converged on the U.S. Capitol, an internal Capitol Police intelligence report warned of a violent scenario in which "Congress itself" could be the target of angry supporters of President Trump on Jan. 6, laying out a stark alert that deepens questions about the security failures that day.

"Supporters of the current president see January 6, 2021, as the last opportunity to overturn the results of the presidential election," according to the memo, portions of which were obtained by The Washington Post. "This sense of desperation and disappointment may lead to more of an incentive to become violent. Unlike previous post-election protests, the targets of the pro-Trump supporters are not necessarily the counter-protesters as they were previously, but rather Congress itself is the target on the 6th."

Lawling, Cori. "Capitol Police intelligence report warned three days before attack that 'Congress itself' could be targeted." Washington Post, January 15, 2021

**SLIDE 164.** S. Doc. 117–3 Vol. I, Pg. 398; 167 Cong. Rec. S630

**JANUARY 12, 2021**

**The Washington Post** FBI report warned of 'war' at Capitol, contradicting claims there was no indication of looming violence

A day before rioters stormed Congress, an FBI office in Virginia issued an explicit warning that extremists were preparing to travel to Washington to commit violence and "war," according to an internal document reviewed by The Washington Post that contradicts a senior official's declaration the bureau had no intelligence indicating anyone at last week's demonstrations in support of President Trump planned to do harm.

A situational information report approved for release the day before the U.S. Capitol riot painted a dire portrait of dangerous plans, including individuals sharing a map of the complex's tunnels, and possible rally points for would-be conspirators to meet in Kentucky, Pennsylvania, Massachusetts and South Carolina and head in groups to Washington.

Barrett, David. "FBI report warned of 'war' at Capitol, contradicting claims there was no indication of looming violence." Washington Post, January 12, 2021



**SLIDE 165.** S. Doc. 117-3 Vol. I, Pg. 398; 167 Cong. Rec. S630

**The Washington Post** FBI report warned of 'war' at Capitol, contradicting claims there was no indication of looming violence

"As of 5 January 2021, FBI Norfolk received information indicating calls for violence in response to 'unlawful lockdowns' to begin on 6 January 2021 in Washington, D.C.," the document says. "An online thread discussed specific calls for violence to include stating '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.'"

Barratt, Devin. "FBI report warned of 'war' at Capitol, contradicting claims there was no indication of looming violence." Washington Post, January 12, 2021.

**SLIDE 166.** S. Doc. 117-3 Vol. I, Pg. 399; 167 Cong. Rec. S630

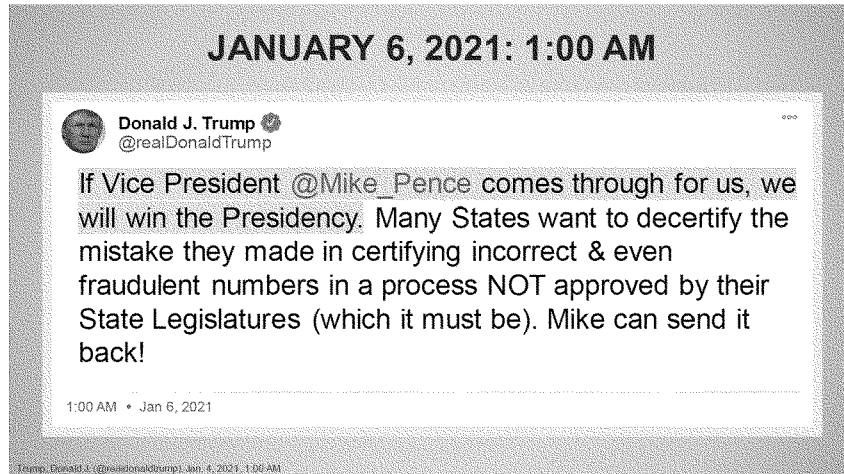
**JANUARY 4, 2021**

**The New York Times** *Leader of Proud Boys, a Far-Right Group, Is Arrested as D.C. Braces for Protests*

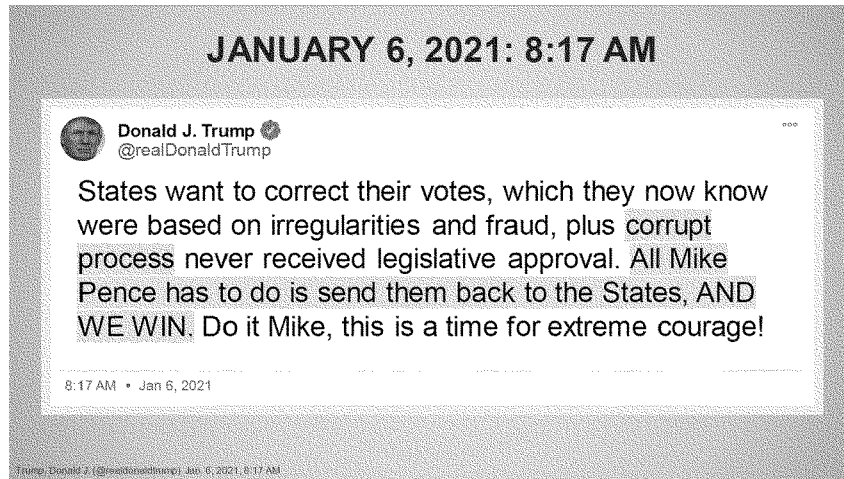
A spokesman for the Metropolitan Police Department confirmed that Mr. Tarrío, 36, had been arrested on charges of destruction of property stemming from an episode in downtown Washington in mid-December. Upon his arrest, he was found to have two high-capacity firearm magazines and charged accordingly with possession.



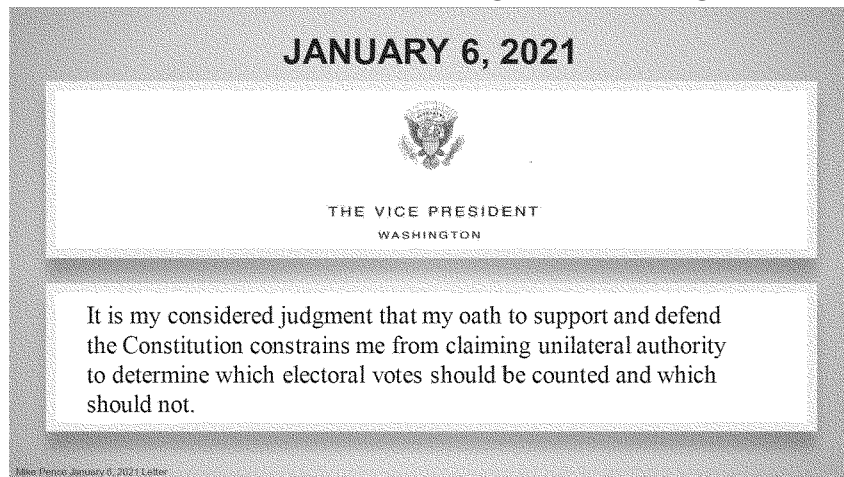
Steinhilber, Jennifer. "Leader of Proud Boys, a Far-Right Group, Is Arrested as D.C. Braces for Protests." New York Times, January 4, 2021.

**SLIDE 167.** S. Doc. 117-3 Vol. I, Pg. 400; 167 Cong. Rec. S631**SLIDE 168.** S. Doc. 117-3 Vol. I, Pg. 400; 167 Cong. Rec. S631

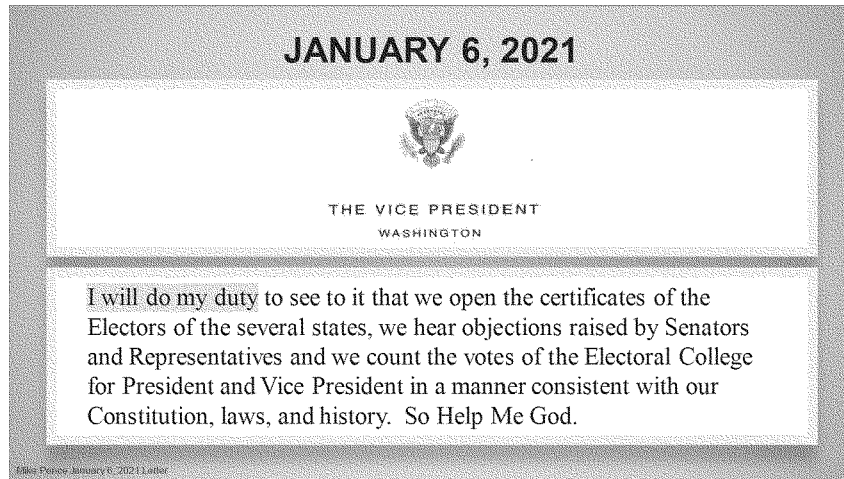
**SLIDE 169.** S. Doc. 117-3 Vol. I, Pg. 401; 167 Cong. Rec. S631



**SLIDE 170.** S. Doc. 117-3 Vol. I, Pg. 406; 167 Cong. Rec. S633



**SLIDE 171.** S. Doc. 117-3 Vol. I, Pg. 406; 167 Cong. Rec. S633



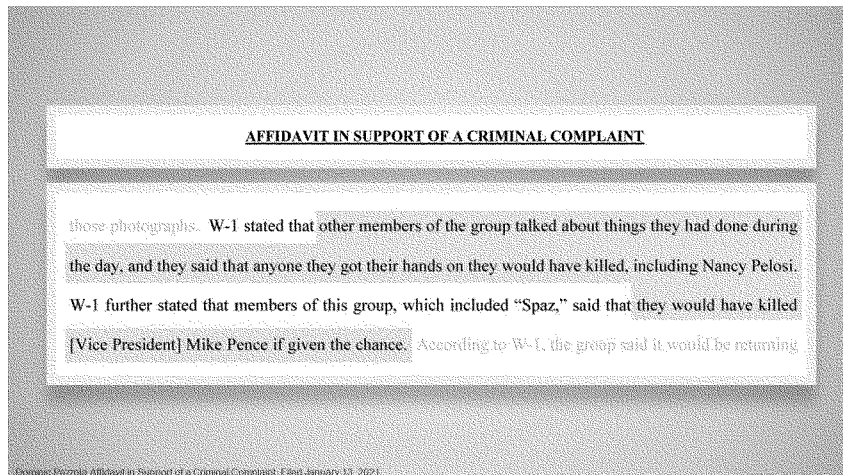
**SLIDE 172.** S. Doc. 117-3 Vol. I, Pg. 410/427; 167 Cong. Rec. S635/S641



**SLIDE 173.** S. Doc. 117-3 Vol. I, Pg. 411; 167 Cong. Rec. S635



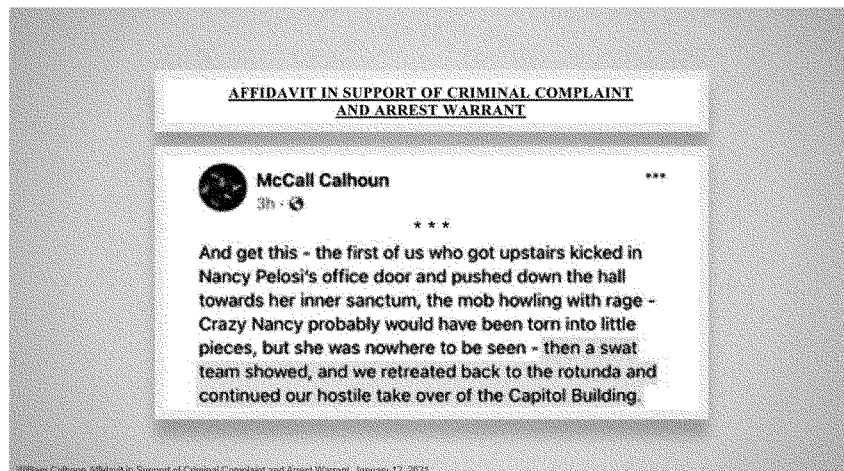
**SLIDE 174.** S. Doc. 117-3 Vol. I, Pg. 411; 167 Cong. Rec. S635



**SLIDE 175.** S. Doc. 117-3 Vol. I, Pg. 412; 167 Cong. Rec. S635




**SLIDE 176.** S. Doc. 117-3 Vol. I, Pg. 412; 167 Cong. Rec. S635





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## DAMAGE TO SPEAKER PELOSI'S OFFICE



The left photograph shows a dark, textured surface, likely a door or wall, with a "60 MINUTES" logo in the top left corner. The right photograph shows a large, ornate mirror reflecting a damaged ceiling with exposed wires and debris, with a "60 MINUTES" logo in the top left corner.

Reilly Pelosi, 60 Minutes interview

# JANUARY 6, 2021: SPEAKER PELOSI'S OFFICE

<https://www.washingtonpost.com/archive/local/2021/01/06/pelosi-office-photos/>  
 photos for photo credit of Pelosi's office were not credited.

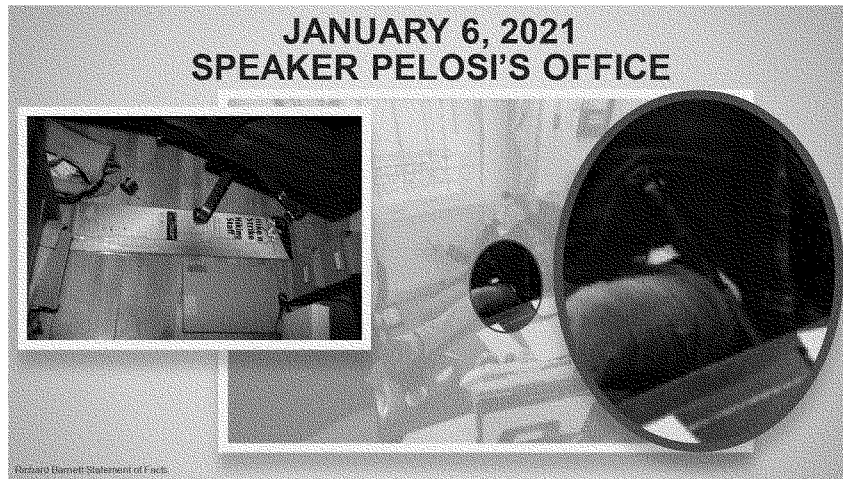
<https://www.cnn.com/2021/01/06/politics/pelosi-office-photos/index.html>

<https://www.washingtonpost.com/archive/local/2021/01/06/pelosi-office-photos/>

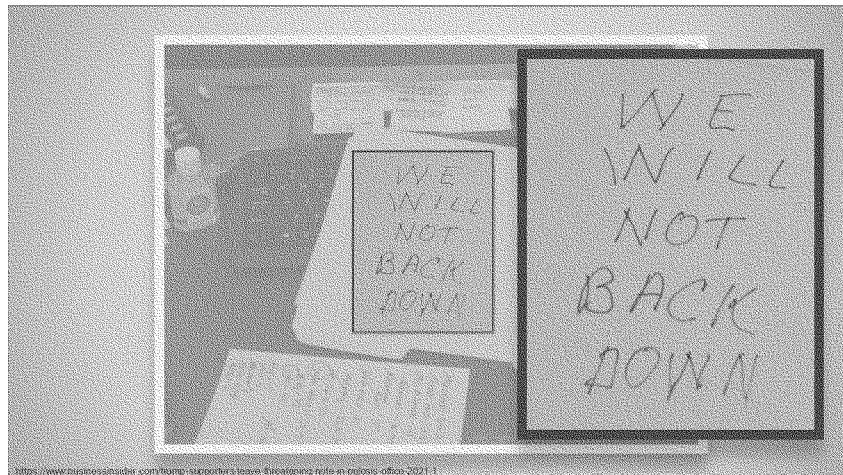
<https://www.washingtonpost.com/archive/local/2021/01/06/pelosi-office-photos/>



**SLIDE 179.** S. Doc. 117-3 Vol. I, Pg. 414; 167 Cong. Rec. S636



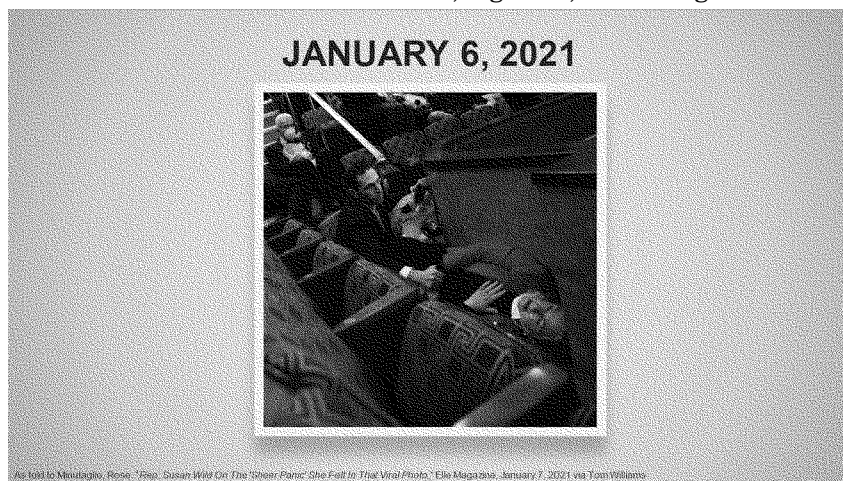
**SLIDE 180.** S. Doc. 117-3 Vol. I, Pg. 414; 167 Cong. Rec. S636



FEBRUARY 10, 2021

709

**SLIDE 181.** S. Doc. 117-3 Vol. I, Pg. 416; 167 Cong. Rec. S637



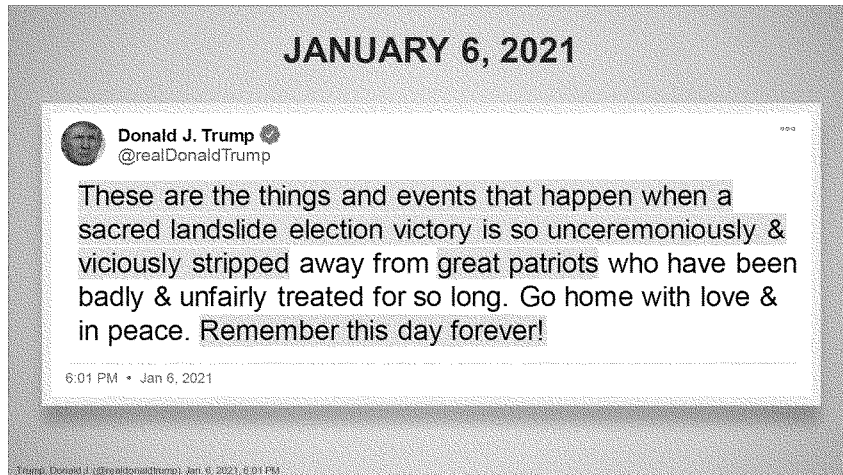
**SLIDE 182.** S. Doc. 117-3 Vol. I, Pg. 418; 167 Cong. Rec. S638



**SLIDE 183.** S. Doc. 117-3 Vol. I, Pg. 418; 167 Cong. Rec. S638



**SLIDE 184.** S. Doc. 117-3 Vol. I, Pg. 421; 167 Cong. Rec. S639



**SLIDE 185.** S. Doc. 117-3 Vol. I, Pg. 422; 167 Cong. Rec. S639

**JANUARY 6, 2021**

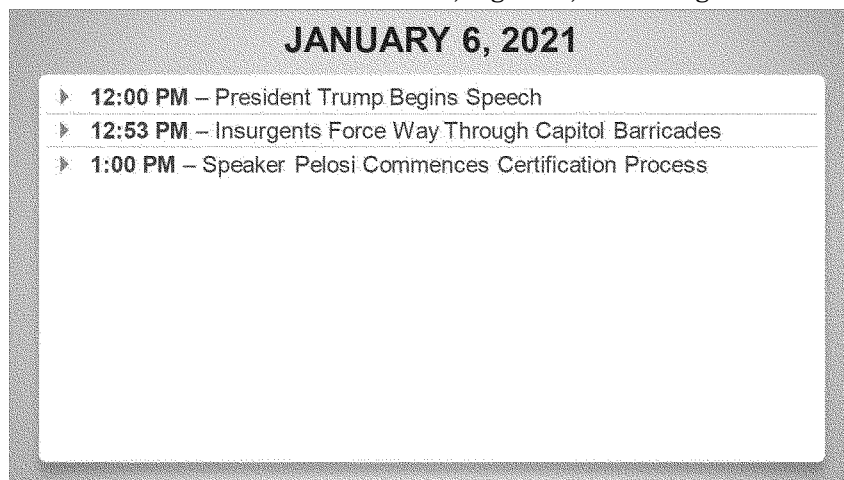
- ▶ 12:00 PM – President Trump Begins Speech

**SLIDE 186.** S. Doc. 117-3 Vol. I, Pg. 422; 167 Cong. Rec. S639

**JANUARY 6, 2021**

- ▶ 12:00 PM – President Trump Begins Speech
- ▶ 12:53 PM – Insurgents Force Way Through Capitol Barricades

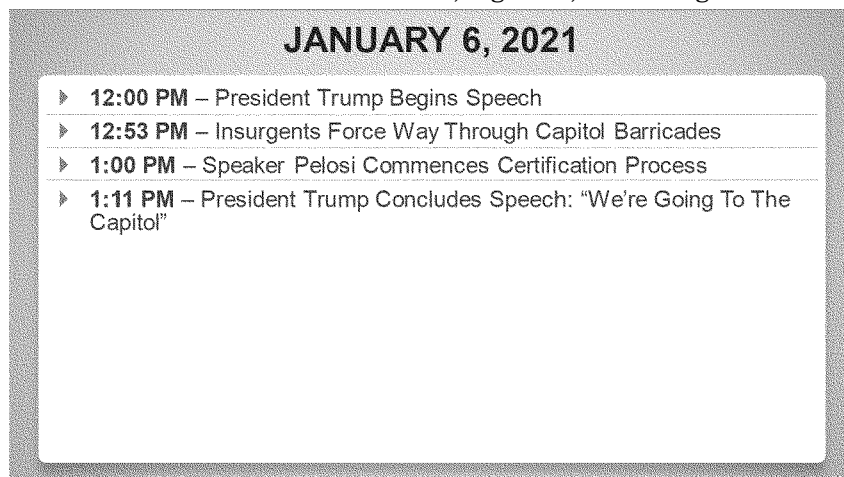
**SLIDE 187.** S. Doc. 117–3 Vol. I, Pg. 422; 167 Cong. Rec. S639



**JANUARY 6, 2021**

- ▶ **12:00 PM** – President Trump Begins Speech
- ▶ **12:53 PM** – Insurgents Force Way Through Capitol Barricades
- ▶ **1:00 PM** – Speaker Pelosi Commences Certification Process

**SLIDE 188.** S. Doc. 117–3 Vol. I, Pg. 422; 167 Cong. Rec. S639



**JANUARY 6, 2021**

- ▶ **12:00 PM** – President Trump Begins Speech
- ▶ **12:53 PM** – Insurgents Force Way Through Capitol Barricades
- ▶ **1:00 PM** – Speaker Pelosi Commences Certification Process
- ▶ **1:11 PM** – President Trump Concludes Speech: "We're Going To The Capitol"

**SLIDE 189.** S. Doc. 117-3 Vol. I, Pg. 422; 167 Cong. Rec. S639

### **JANUARY 6, 2021**


- ▶ **12:00 PM** – President Trump Begins Speech
- ▶ **12:53 PM** – Insurgents Force Way Through Capitol Barricades
- ▶ **1:00 PM** – Speaker Pelosi Commences Certification Process
- ▶ **1:11 PM** – President Trump Concludes Speech: “We’re Going To The Capitol”
- ▶ **~1:15 PM** – President Trump Returns To White House

**SLIDE 190.** S. Doc. 117-3 Vol. I, Pg. 422; 167 Cong. Rec. S639

### **JANUARY 6, 2021**

- ▶ **12:00 PM** – President Trump Begins Speech
- ▶ **12:53 PM** – Insurgents Force Way Through Capitol Barricades
- ▶ **1:00 PM** – Speaker Pelosi Commences Certification Process
- ▶ **1:11 PM** – President Trump Concludes Speech: “We’re Going To The Capitol”
- ▶ **~1:15 PM** – President Trump Returns To White House
- ▶ **1:15 PM** – Explosive Device Reported At DNC (Pipe Bomb Already Reported At RNC)
- ▶ **1:34 PM** – House Sergeant At Arms Called For Help; D.C. Mayor Requests Additional Troops

JANUARY 11, 2021



Kellyanne Conway  
FORMER COUNSELOR TO DONALD TRUMP

## The Washington Post

But if the president didn't appear to understand the magnitude of the crisis, those in his orbit did. Conway immediately called a close personal aide who she knew was with the president, and said she was adding her name to the chorus of people urging Trump to speak to his supporters. He needed to tell them to stand down and leave the Capitol, she told the aide.

Parker, Ashley et al., "Six hours of paralysis: Inside Trump's failure to act after a mob stormed the Capitol," The Washington Post, January 11, 2021



**SLIDE 193.** S. Doc. 117-3 Vol. I, Pg. 423; 167 Cong. Rec. S639

**JANUARY 11, 2021**



**Ivanka Trump**  
FORMER SENIOR ADVISOR TO DONALD TRUMP


**The Washington Post**

Ivanka Trump had gone to the Oval Office as soon as the riot became clear, and Graham reached her on her cellphone and implored her for help. “They were all trying to get him to speak out, to tell everyone to leave,” said Graham, referring to the small group of aides with Trump on Wednesday afternoon.


Parker, Ashley et al. “Six hours of paralysis: Inside Trump’s failure to act after a mob stormed the Capitol.” The Washington Post, January 11, 2021

**SLIDE 194.** S. Doc. 117-3 Vol. I, Pg. 423; 167 Cong. Rec. S639

**JANUARY 11, 2021**



**Jared Kushner**  
FORMER SENIOR ADVISOR TO DONALD TRUMP



**Kevin McCarthy**  
HOUSE MINORITY LEADER

**The Washington Post**

McCarthy also called Kushner, who that afternoon was arriving back from a trip to the Middle East. The Secret Service originally warned Kushner that it was unsafe to venture downtown to the White House. McCarthy pleaded with him to persuade Trump to issue a statement for his supporters to leave the Capitol, saying he’d had no luck during his own conversation with Trump, the adviser said. So Kushner headed to the White House.

Parker, Ashley et al. “Six hours of paralysis: Inside Trump’s failure to act after a mob stormed the Capitol.” The Washington Post, January 11, 2021

**SLIDE 195.** S. Doc. 117-3 Vol. I, Pg. 424; 167 Cong. Rec. S640

**JANUARY 8, 2021**



**Kevin McCarthy**  
HOUSE MINORITY LEADER

**Kyle Griffin** @kylegriffin1

Punchbowl News: Trump and Kevin McCarthy got into a screaming match as the mob of Trump supporters attacked the Capitol, according to a source familiar with the episode.


McCarthy demanded that Trump release a statement denouncing the mob. Initially, Trump would not agree.

12:25 PM • Jan 8, 2021

Griffin, Kyle (@kylegriffin1), Jan 8, 2021, 12:25PM

**SLIDE 196.** S. Doc. 117-3 Vol. I, Pg. 424; 167 Cong. Rec. S640

**TRUMP'S REACTION AS EVENTS UNFOLDED ON JANUARY 6 ACCORDING TO SOURCES WITH HIM**



**Senator Ben Sasse:**

"He was delighted"

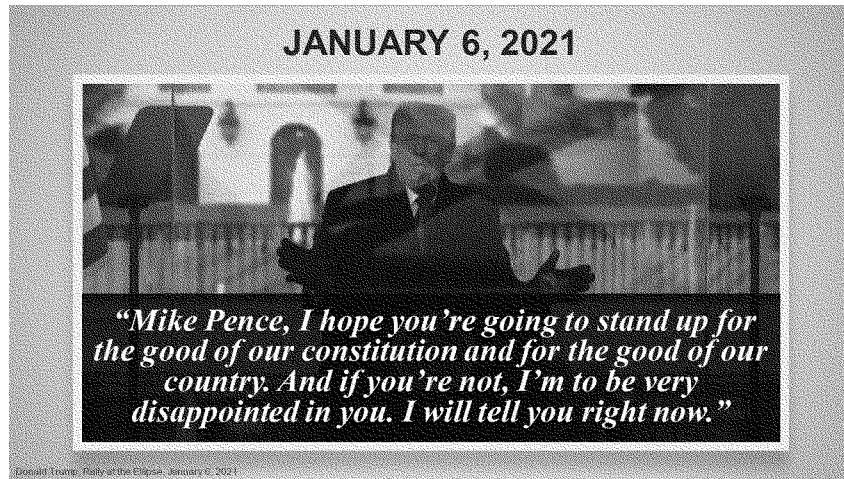
"Walking around the White House confused about why other people on his team weren't as excited as he was."

**Senior White House Officials:**

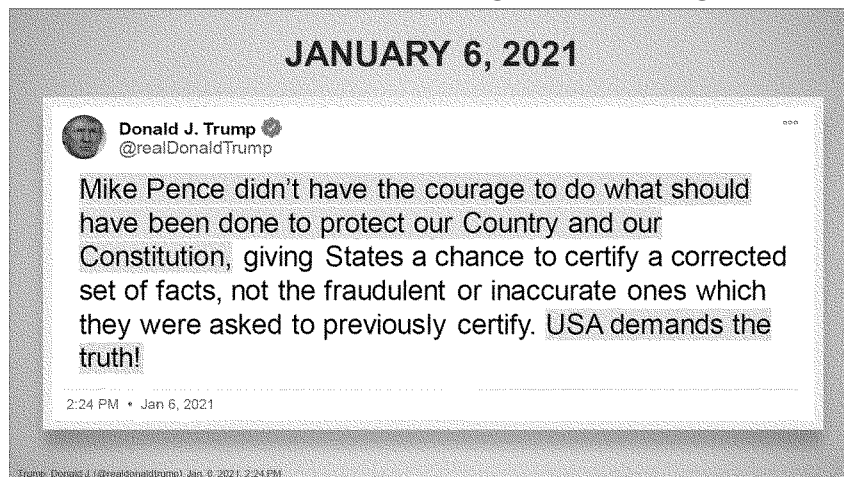
"Borderline enthusiastic because it meant the certification was being derailed."

Reid, Hugh. "Senator Ben Sasse On Inauguration and Transition: the GOP in Minority." *HughReid.com*, January 8, 2021. Collins, Kaitlin (@kiddlancollins), Jan 6, 2021, 10:34PM

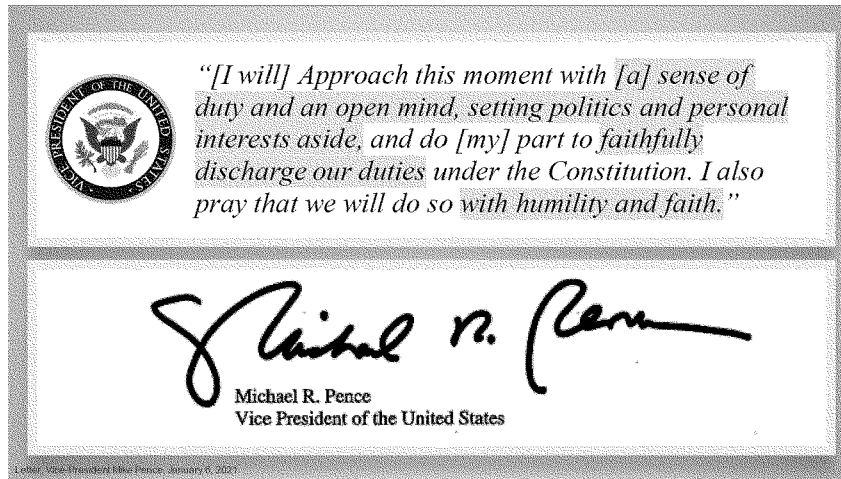
**SLIDE 197.** S. Doc. 117-3 Vol. I, Pg. 426; 167 Cong. Rec. S641



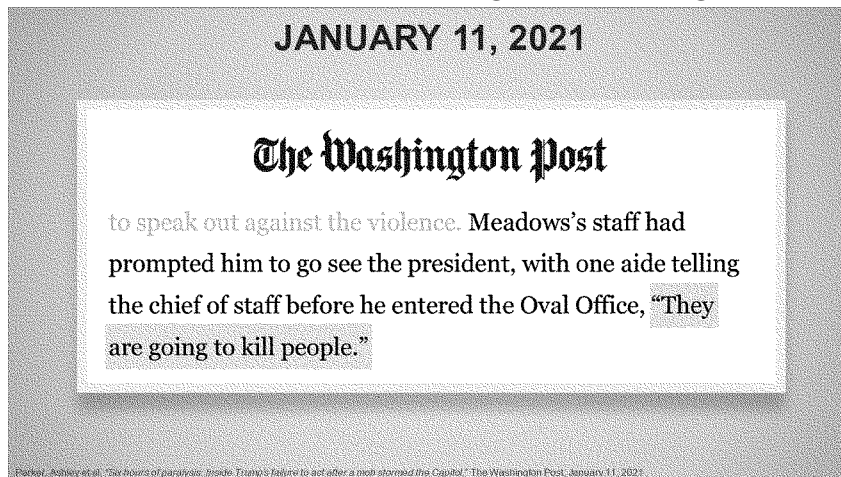
**SLIDE 198.** S. Doc. 117-3 Vol. I, Pg. 427; 167 Cong. Rec. S641



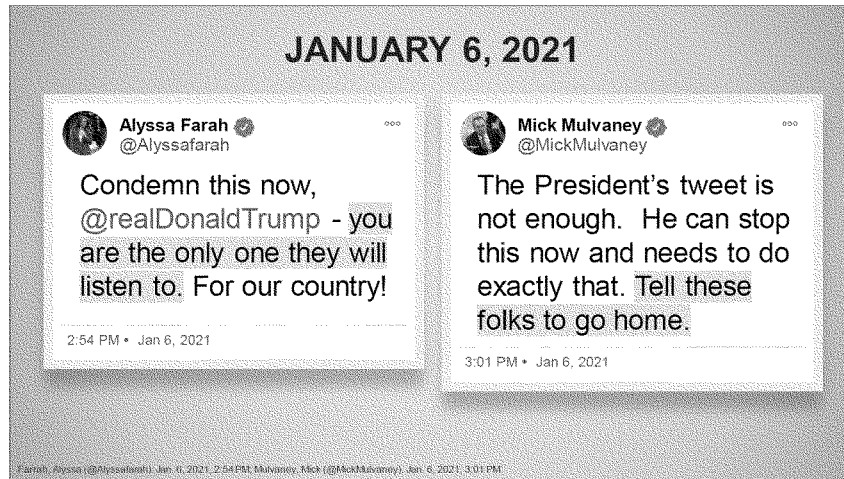
**SLIDE 199.** S. Doc. 117-3 Vol. I, Pg. 428; 167 Cong. Rec. S641



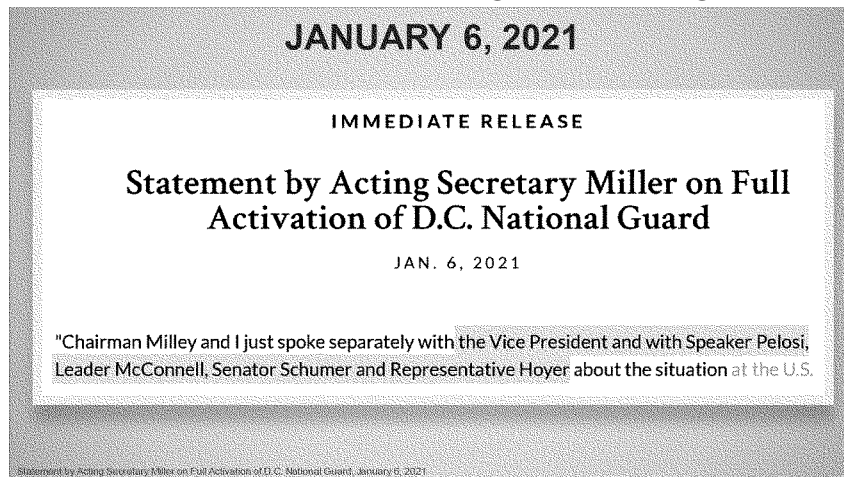
**SLIDE 200.** S. Doc. 117-3 Vol. I, Pg. 428; 167 Cong. Rec. S641



**SLIDE 201.** S. Doc. 117-3 Vol. I, Pg. 429; 167 Cong. Rec. S641



**SLIDE 202.** S. Doc. 117-3 Vol. I, Pg. 431; 167 Cong. Rec. S642



**SLIDE 203.** S. Doc. 117–3 Vol. I, Pg. 431; 167 Cong. Rec. S642

**JANUARY 15, 2021**

**The New York Times**

***Trump Told Crowd ‘You Will Never Take Back Our Country With Weakness’***

Mr. Trump initially rebuffed requests to mobilize the National Guard, according to a person with knowledge of the events. It required intervention from Mr. Cipollone, among other officials, according to the person. About 1,750 National Guard troops from the District of Columbia and Virginia were to deploy Wednesday night, a National Guard spokesman said.

Holgermann, Maggie. "Trump Told Crowd 'You Will Never Take Back Our Country With Weakness.'" The New York Times. Updated January 15, 2021.

**SLIDE 204.** S. Doc. 117–3 Vol. I, Pg. 431; 167 Cong. Rec. S642

**JANUARY 7, 2021**

**The Washington Post**

**After inciting mob attack, Trump retreats in rage. Then, grudgingly, he admits his loss.**

As a mob of Trump supporters breached police barricades and seized the Capitol, Trump was disengaged in discussions with Pentagon leaders about deploying the National Guard to aid the overwhelmed U.S. Capitol Police, according to two people familiar with the talks.

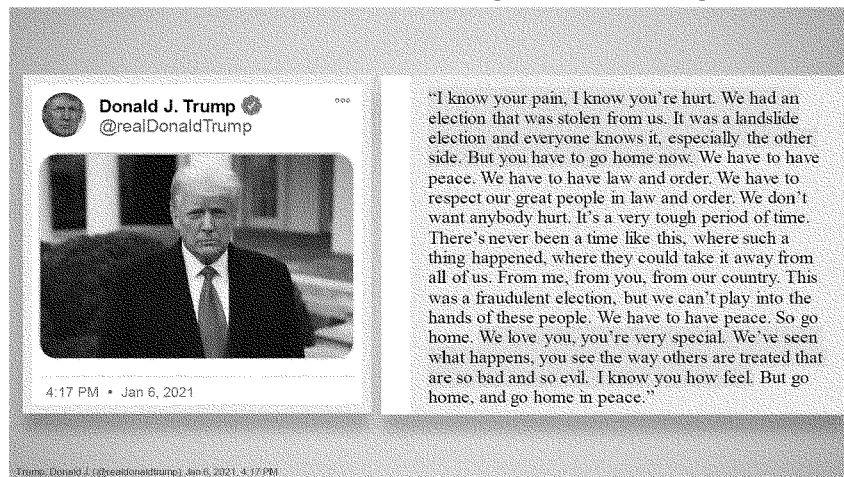
As for Trump, one of the people said, "he was completely, totally out of it." This person added, "He made no attempt to reach out to them."

Holman, Philip et al. "After inciting mob attack, Trump retreats in rage. Then, grudgingly, he admits his loss." The Washington Post, January 7, 2021.

**SLIDE 205.** S. Doc. 117-3 Vol. I, Pg. 432; 167 Cong. Rec. S643

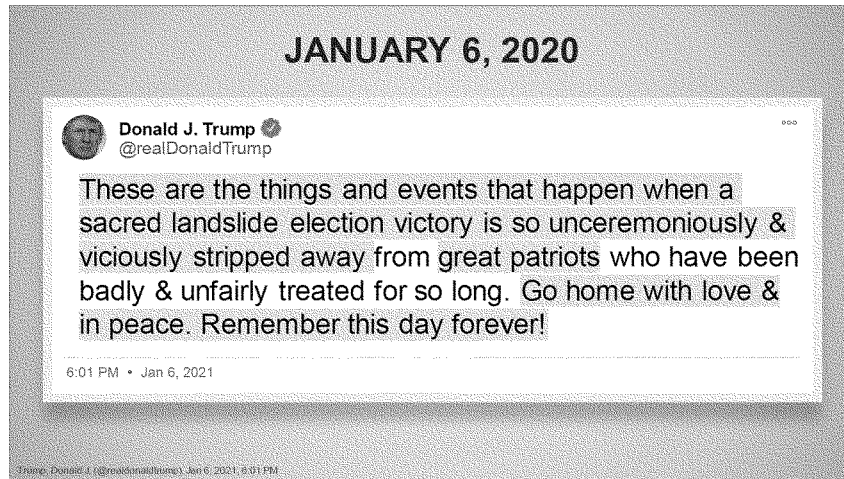


**SLIDE 206.** S. Doc. 117-3 Vol. I, Pg. 432; 167 Cong. Rec. S643





**SLIDE 207.** S. Doc. 117-3 Vol. I, Pg. 433; 167 Cong. Rec. S643



**SLIDE 208.** S. Doc. 117-3 Vol. I, Pg. 434; 167 Cong. Rec. S643




SLIDES 209–306

[167 CONG. REC. S645–664 (DAILY ED. FEB. 11, 2021)]

**SLIDE 209.** S. Doc. 117–3 Vol. I, Pg. 438; 167 Cong. Rec. S645



**SLIDE 210.** S. Doc. 117–3 Vol. I, Pg. 439; 167 Cong. Rec. S646

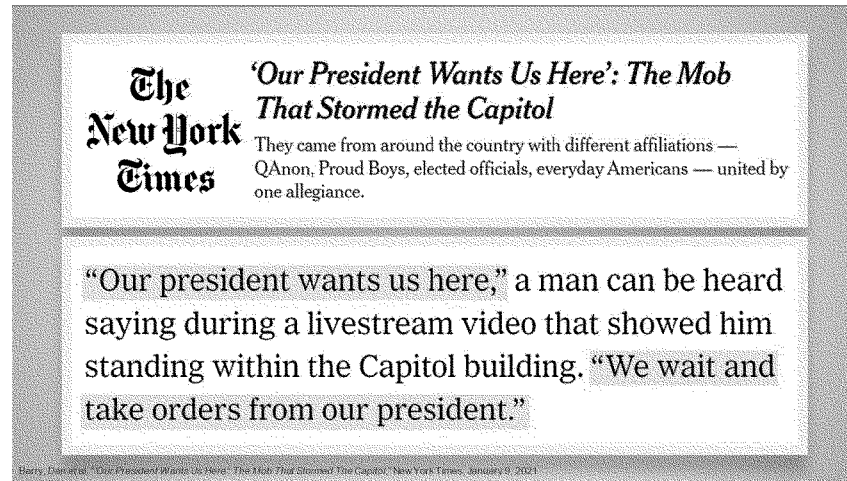
**When Trump started his speech  
before the Capitol riot, talk on  
Parler turned to civil war**

In the minute between 12:15 and 12:16 p.m., Trump told the crowd to head to the Capitol and that “you’ll never take back our country with weakness.” One minute later, a Parler user wrote: “Time to fight. Civil war is upon us.” Another wrote: “We are going to have a civil war. Get ready!!”

During Trump’s speech, mentions of “civil war” on Parler surged to nearly four times the level the phrase was being shared before it. “Civil war” was used 40 times in the hour before 12:15 p.m., the approximate time Trump told supporters they had to “show strength.” In the hour following his words, mentions of “civil war” jumped to 156.

Bajak, Alesca et al., “When Trump started his speech before the Capitol riot, talk on Parler turned to civil war,” USA Today, February 1, 2021

**SLIDE 211.** S. Doc. 117–3 Vol. I, Pg. 440; 167 Cong. Rec. S646



**SLIDE 212.** S. Doc. 117–3 Vol. I, Pg. 440; 167 Cong. Rec. S646



**SLIDE 213.** S. Doc. 117-3 Vol. I, Pg. 441; 167 Cong. Rec. S646

**STATEMENT OF FACTS**

In a recorded interview that also occurred on January 12, 2021, the complainant told FBI Special Agents that SANFORD had told the complainant that SANFORD had travelled to Washington, D.C. on a bus with a group of people. The group had gone to the White House and listened to President Donald J. Trump's speech and then had followed the President's instructions and gone to the Capitol. The complainant indicated that SANFORD had claimed to have been on the Capitol grounds for about 10 minutes before "they" left. SANFORD did not mention to the complainant having thrown any objects, and SANFORD did not elaborate to the complainant about who "they" were. SANFORD acknowledged to the complainant that the photograph of the man in the CFD hat was, in fact, SANFORD. When shown screen captures from Video #2, the complainant identified the Subject in the screen captures as SANFORD.

Robert Sanford Changing Affidavit, January 13, 2021

**SLIDE 214.** S. Doc. 117-3 Vol. I, Pg. 441; 167 Cong. Rec. S646

**The New York Times** *'I Answered the Call of My President': Rioters Say Trump Urged Them On*

His lawyer, Enrique Latoison, said in an interview with The Times that he was still exploring whether blaming Mr. Trump for Mr. Sanford's alleged role in the attack would work in front of a judge.

**"You're being told, 'You gotta fight like hell,'" Mr. Latoison said.**  
**"Does 'fight like hell' mean you can throw stuff at people? Maybe."**

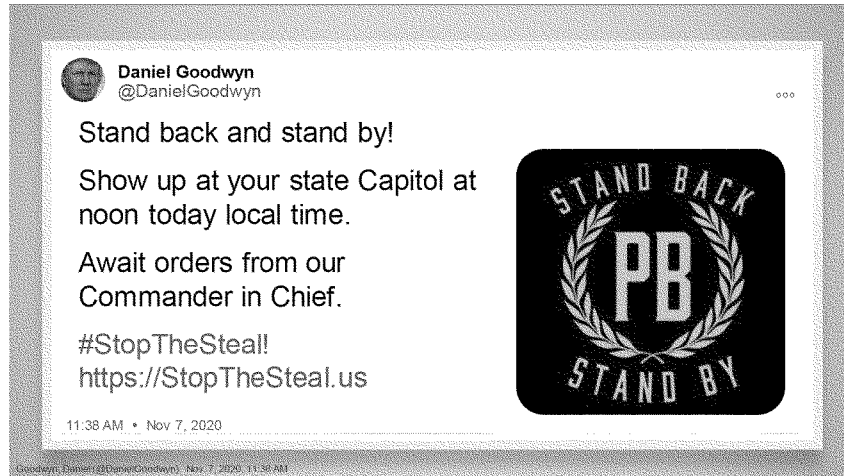
Mr. Latoison noted that the only reason Mr. Sanford was in Washington at all was because of Mr. Trump. **"That man wouldn't have been there if it wasn't for the president," he said.**

Fewer, Allen et al. "I Answered the Call of My President": Rioters Say Trump Urged Them On." The New York Times, January 17, 2021.

**SLIDE 215.** S. Doc. 117-3 Vol. I, Pg. 442; 167 Cong. Rec. S647



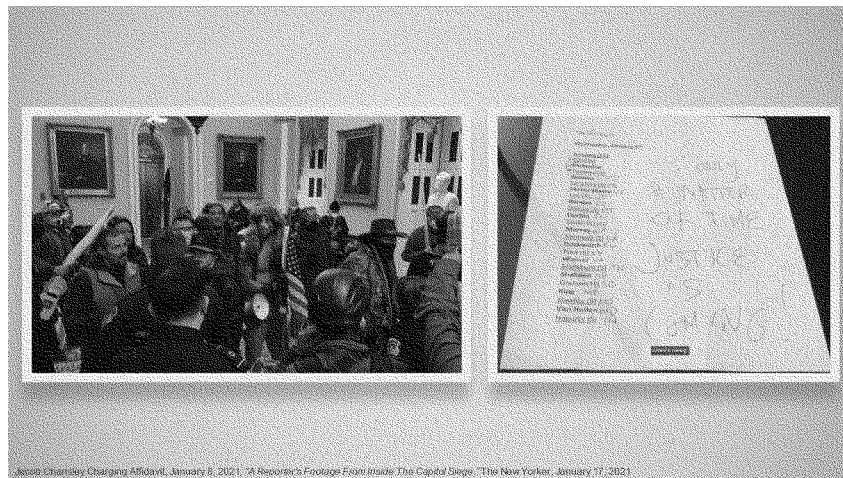
**SLIDE 216.** S. Doc. 117-3 Vol. I, Pg. 442; 167 Cong. Rec. S647



**SLIDE 217.** S. Doc. 117-3 Vol. I, Pg. 442; 167 Cong. Rec. S647



**SLIDE 218.** S. Doc. 117-3 Vol. I, Pg. 442; 167 Cong. Rec. S647



**SLIDE 219.** S. Doc. 117-3 Vol. I, Pg. 442; 167 Cong. Rec. S647

**STATEMENT OF FACTS**

In addition, on January 7, 2021, CHANSLEY called in to the Washington Field Office of the FBI, to voluntarily speak with law enforcement. Your affiant and an FBI agent spoke on the phone with CHANSLEY, who confirmed that he was the male in the face paint and headdress in the Vice President's chair in the Senate. CHANSLEY stated that he came as a part of a group effort, with other "patriots" from Arizona, at the request of the President that all "patriots" come to D.C. on January 6, 2021.


Jacob Chansley Charging Affidavit, January 8, 2021

**SLIDE 220.** S. Doc. 117-3 Vol. I, Pg. 442; 167 Cong. Rec. S647

**Jacob Chansley's Attorney:**

"He was there at the invitation of our President, who said walk down Pennsylvania Avenue with him."

"He regrets very, very much having not just been duped by the president, but by being in a position where he allowed that duping to put him in a position to make decisions he should not have made."



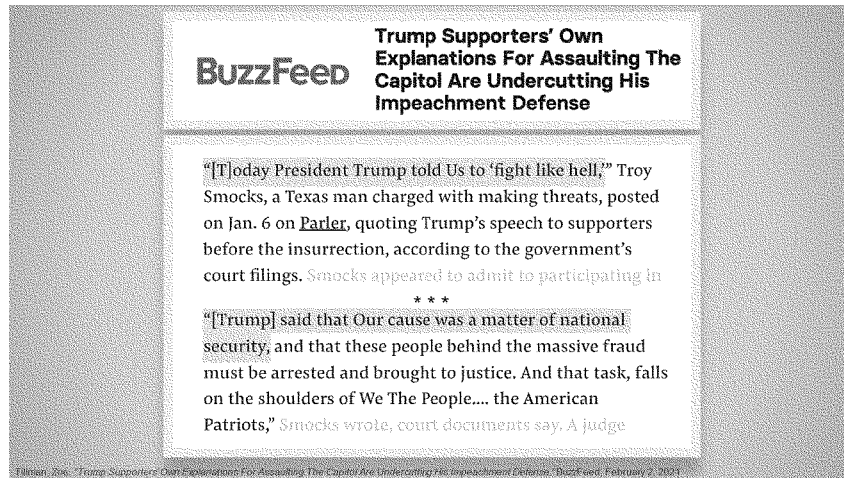
Watkins, Albert (Jacob Chansley Attorney). Interview, Courier Prime Time, January 14, 2021, Rendova, P.U. "Capitol rioters express regret for participating in unrest after not getting a pardon from former President Trump," NBC News, St. Louis, January 22, 2021.




**SLIDE 221.** S. Doc. 117-3 Vol. I, Pg. 443; 167 Cong. Rec. S647



**SLIDE 222.** S. Doc. 117-3 Vol. I, Pg. 443; 167 Cong. Rec. S647



**SLIDE 223.** S. Doc. 117–3 Vol. I, Pg. 443; 167 Cong. Rec. S647

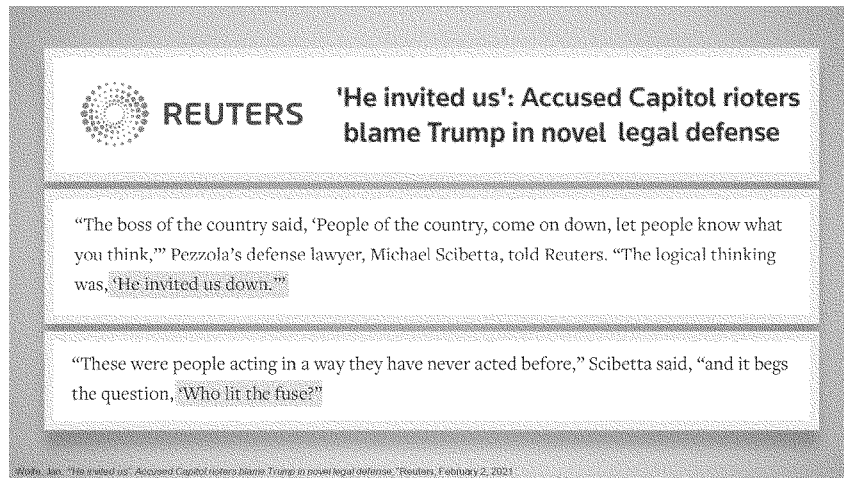


**BuzzFeed** **Trump Supporters' Own Explanations For Assaulting The Capitol Are Undercutting His Impeachment Defense**

Samuel Fisher, a New York man charged with illegally going into the Capitol and disorderly conduct, wrote in a lengthy post on his personal website dated Jan. 6, apparently before the attack, "Trump just needs to fire the bat signal... deputize patriots... and then the pain comes."

Times, Jan. 6. "Trump Supporters' Own Explanations For Assaulting The Capitol Are Undercutting His Impeachment Defense," BuzzFeed, February 2, 2021.

**SLIDE 224.** S. Doc. 117–3 Vol. I, Pg. 443; 167 Cong. Rec. S647



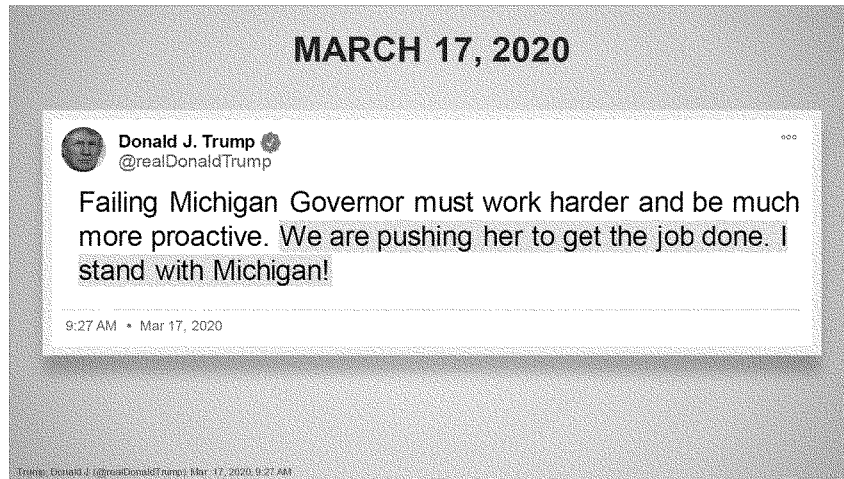
**REUTERS** **'He invited us': Accused Capitol rioters blame Trump in novel legal defense**

"The boss of the country said, 'People of the country, come on down, let people know what you think,'" Pezzola's defense lawyer, Michael Scibetta, told Reuters. "The logical thinking was, 'He invited us down.'"

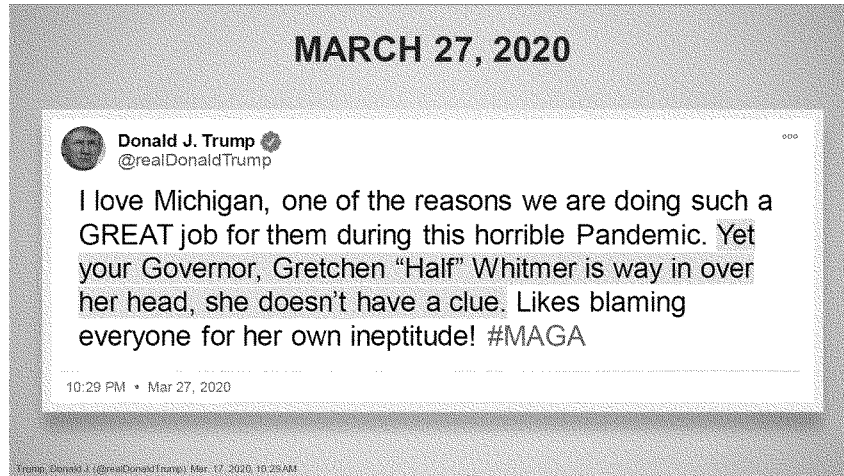
"These were people acting in a way they have never acted before," Scibetta said, "and it begs the question, 'Who lit the fuse?'"

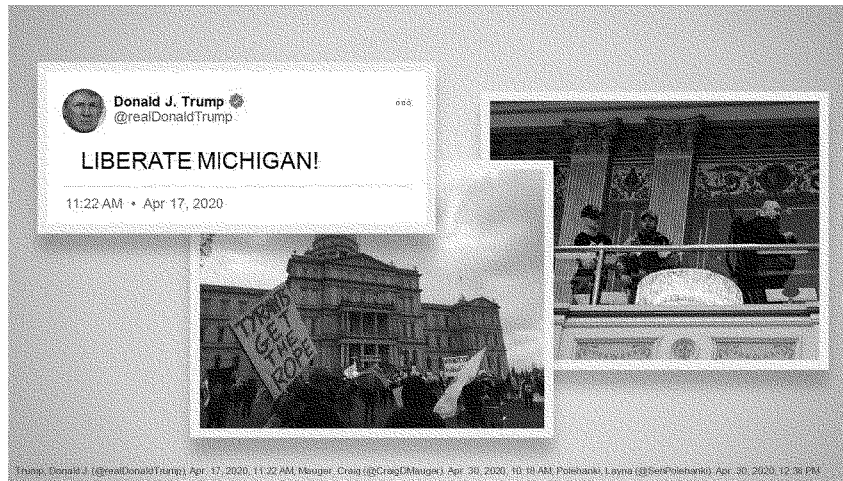
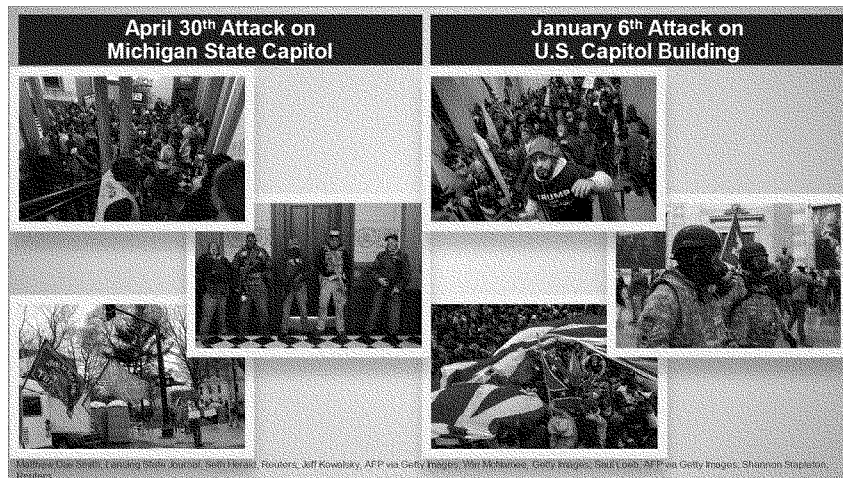
Woto, Jan. 6. "He invited us': Accused Capitol rioters blame Trump in novel legal defense," Reuters, February 2, 2021.

**SLIDE 225.** S. Doc. 117-3 Vol. I, Pg. 446; 167 Cong. Rec. S648

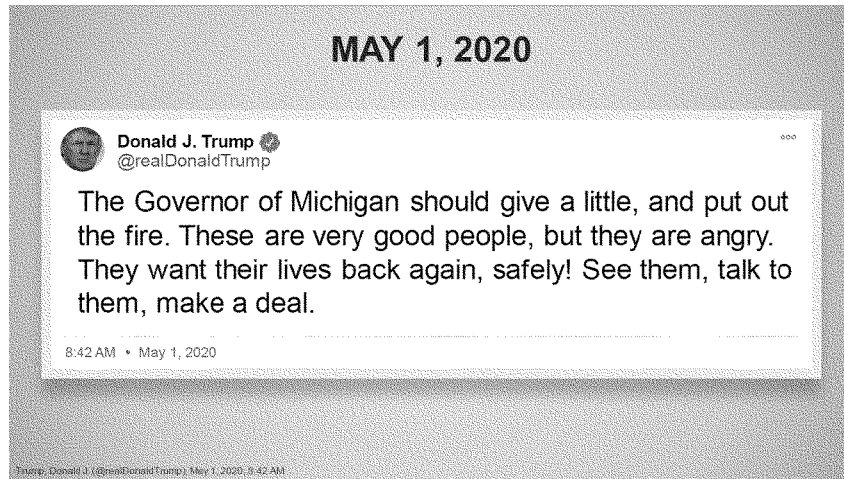


**SLIDE 226.** S. Doc. 117-3 Vol. I, Pg. 446; 167 Cong. Rec. S648



**SLIDE 227.** S. Doc. 117-3 Vol. I, Pg. 446; 167 Cong. Rec. S648**SLIDE 228.** S. Doc. 117-3 Vol. I, Pg. 447; 167 Cong. Rec. S648

**SLIDE 229.** S. Doc. 117-3 Vol. I, Pg. 447; 167 Cong. Rec. S649



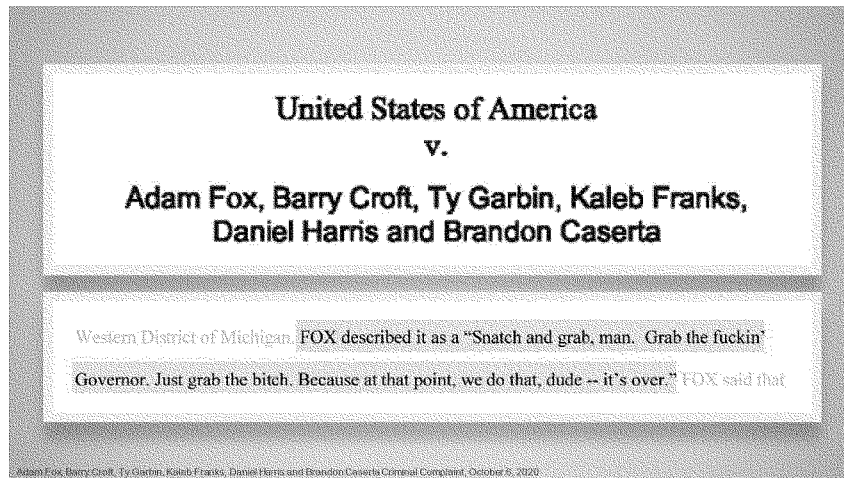
**SLIDE 230.** S. Doc. 117-3 Vol. I, Pg. 447; 167 Cong. Rec. S649



**SLIDE 231.** S. Doc. 117-3 Vol. I, Pg. 448; 167 Cong. Rec. S649



**SLIDE 232.** S. Doc. 117-3 Vol. I, Pg. 448; 167 Cong. Rec. S649



**SLIDE 233.** S. Doc. 117-3 Vol. I, Pg. 448; 167 Cong. Rec. S649


**United States of America**  
**v.**  
**Adam Fox, Barry Croft, Ty Garbin, Kaleb Franks,**  
**Daniel Harris and Brandon Caserta**

CASERTA replied, "When the time comes there will be no need to try and strike fear through presence. The fear will be manifested through bullets." FOX responded, "Copy that boys, loud and clear!"

Adam Fox, Barry Croft, Ty Garbin, Kaleb Franks, Daniel Harris and Brandon Caserta Criminal Complaint, October 6, 2020


**SLIDE 234.** S. Doc. 117-3 Vol. I, Pg. 448; 167 Cong. Rec. S649

**OCTOBER 8, 2020**

 **Donald J. Trump**  
@realDonaldTrump

Governor Whitmer of Michigan has done a terrible job. She locked down her state for everyone, except her husband's boating activities. The Federal Government provided tremendous help to the Great People of Michigan. My Justice Department and Federal Law Enforcement announced...

9:30 PM • Oct 8, 2020

 **Donald J. Trump**  
@realDonaldTrump

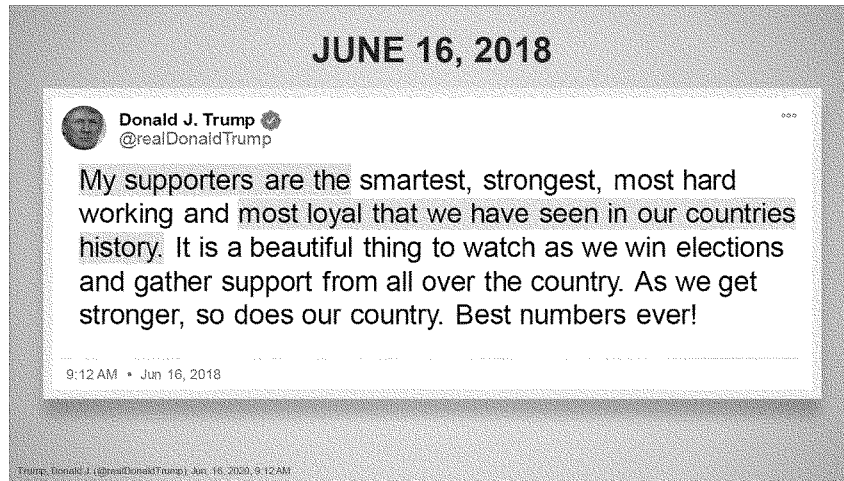
...today that they foiled a dangerous plot against the Governor of Michigan. Rather than say thank you, she calls me a White Supremacist—while Biden and Democrats refuse to condemn Antifa, Anarchists, Looters and Mobs that burn down Democrat run cities...

9:30 PM • Oct 8, 2020

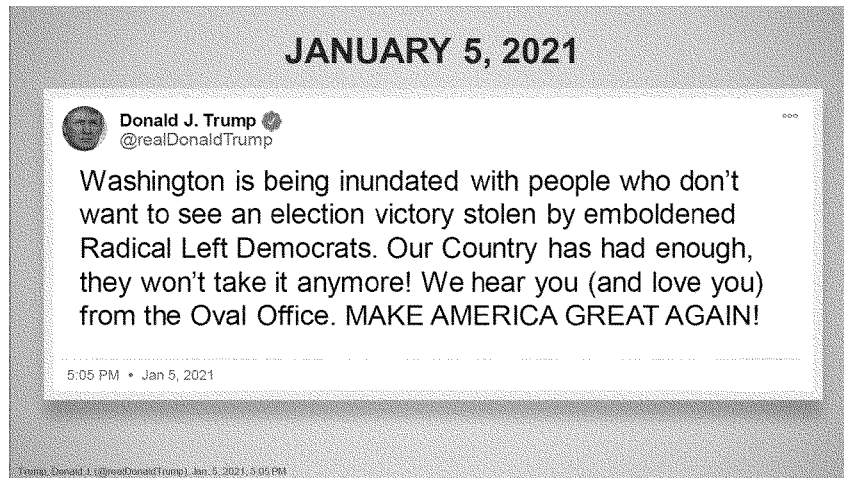
Trump, Donald J. (@realDonaldTrump), Oct 8, 2020, 9:30 PM



**SLIDE 235.** S. Doc. 117-3 Vol. I, Pg. 450; 167 Cong. Rec. S650




**SLIDE 236.** S. Doc. 117-3 Vol. I, Pg. 450; 167 Cong. Rec. S650



**SLIDE 237.** S. Doc. 117-3 Vol. I, Pg. 452; 167 Cong. Rec. S650


**JANUARY 7, 2021**



“And to all of my wonderful supporters, I know you are disappointed, but I also want you to know that our incredible journey is only just beginning.”

**SLIDE 238.** S. Doc. 117-3 Vol. I, Pg. 452; 167 Cong. Rec. S650


**JANUARY 13, 2021**



“I want to be very clear. I unequivocally condemn the violence that we saw last week. Violence and vandalism have absolutely no place in our country and no place in our movement.”

**SLIDE 239.** S. Doc. 117-3 Vol. I, Pg. 453; 167 Cong. Rec. S651

**JANUARY 16, 2021**

**Trump plans big farewell ceremony as Pence does all the work**

convict him, according to one person who speaks with him regularly, and last Wednesday focused his ire on the 10 House Republicans who voted in favour of impeachment, peppering aides with questions about who some of the lawmakers were and what he could do to exact revenge.

Shahid, E. "Trump plans big farewell ceremony as Pence does all the work." The World News, January 16, 2021

**SLIDE 240.** S. Doc. 117-3 Vol. I, Pg. 454; 167 Cong. Rec. S651

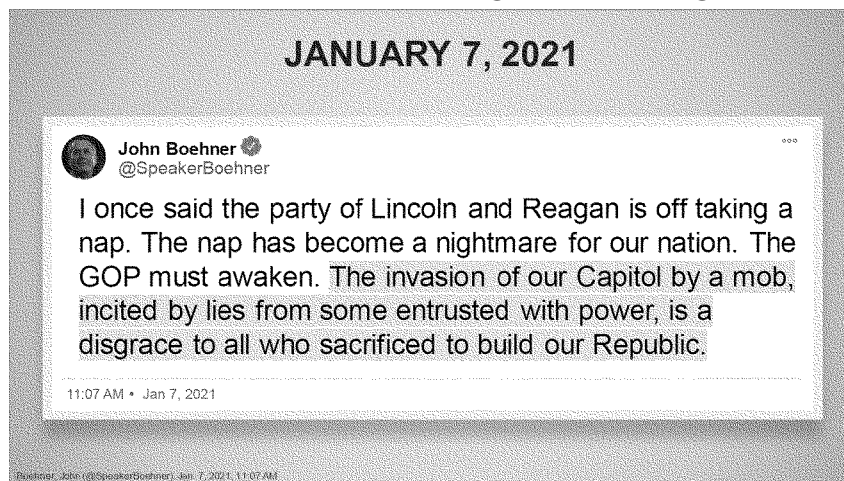
**JANUARY 6, 2021**

**Mattis blames Trump for inciting 'mob rule'**

"Today's violent assault on our Capitol, an effort to subjugate American democracy by mob rule, was fomented by Mr. Trump," Mattis wrote. "His use of the Presidency to destroy trust in our

Seigman, Lisa. "Mattis blames Trump for inciting 'mob rule'." Politico, January 6, 2021




**SLIDE 241.** S. Doc. 117-3 Vol. I, Pg. 454; 167 Cong. Rec. S651



**SLIDE 242.** S. Doc. 117-3 Vol. I, Pg. 454; 167 Cong. Rec. S651




**SLIDE 243.** S. Doc. 117-3 Vol. I, Pg. 455; 167 Cong. Rec. S651

 <p><b>Betsy DeVos</b> SECRETARY OF EDUCATION <small>ADMINISTRATION FOR ENTIRE TERM</small></p>	<p>"There is no mistaking the impact your rhetoric had on the situation, and it is the inflection point for me."</p>
 <p><b>Elaine Chao</b> SECRETARY OF TRANSPORTATION <small>ADMINISTRATION FOR ENTIRE TERM</small></p>	<p>"Yesterday, our country experienced a traumatic and entirely available event as supporters of the President stormed the Capitol building following a rally he addressed. As I'm sure is the case with many of you, it has deeply troubled me in a way that I simply cannot set aside."</p>
 <p><b>John Costello</b> DEPUTY ASSISTANT, DEPARTMENT OF COMMERCE <small>JOINED ADMINISTRATION JUNE 2019</small></p>	<p>The attack was his "breaking point" and, he hoped, "a wake-up call."</p>

Associated Press, "Education Secretary DeVos resigns, calling president's rhetoric 'inflection point,'" January 7, 2021, Meredith Digital Staff, "Transportation Secretary Elaine Chao resigns following Capitol unrest," January 7, 2021; Compiled by Democratic Caucus Staff From Wire Reports, "Resignations by after U.S. turmoil," January 8, 2021.

**SLIDE 244.** S. Doc. 117-3 Vol. I, Pg. 455; 167 Cong. Rec. S652

**JANUARY 12, 2021**

 <p>CONGRESSMAN <b>FRED UPTON</b> <small>Proudly Serving Michigan's 6th District</small></p>	<p><b>Press Releases</b></p> <p>Upton: I will vote to impeach</p>
<p>"Today the President characterized his inflammatory rhetoric at last Wednesday's rally as "totally appropriate," and he expressed no regrets for last week's violent insurrection at the U.S. Capitol. This sends exactly the wrong signal to those of us who support the very core of our democratic principles and took a solemn oath to the Constitution. I would have preferred a bipartisan, formal censure rather than a drawn-out impeachment process. I fear this will now interfere with important legislative business and a new Biden Administration. But it is time to say: Enough is enough."</p>	

Upton, Fred, "Upton, I will vote to impeach," January 12, 2021.

**SLIDE 245.** S. Doc. 117-3 Vol. I, Pg. 455; 167 Cong. Rec. S652

**JANUARY 13, 2021**

**Congressman Gonzalez Statement on Impeachment**





*The President of the United States helped organize and incite a mob that attacked the United States Congress in an attempt to prevent us from completing our solemn duties as prescribed by the Constitution. In doing so, five people have died - including a Capitol Police Officer - many more have been injured, and our democracy has been shaken. The Vice President and both chambers of Congress had their lives put in grave danger as a result of the President's actions in the events leading up to and on January 6th. During the attack itself, the President abandoned his post while many members asked for help, thus further endangering all present. These are fundamental threats not just to people's lives but to the very foundation of our Republic.*

"Congressman Gonzalez Statement on Impeachment" via Twitter, Rep. Gonzalez, Anthony (@RepAGonzalez), Jan. 13, 2021, 11:07 AM

**SLIDE 246.** S. Doc. 117-3 Vol. I, Pg. 457; 167 Cong. Rec. S652

**JANUARY 13, 2021**

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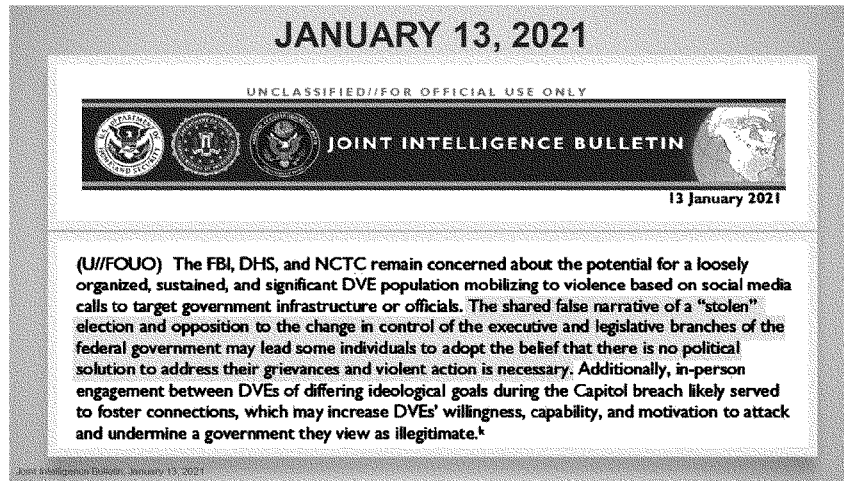



**JOINT INTELLIGENCE BULLETIN**


**13 January 2021**

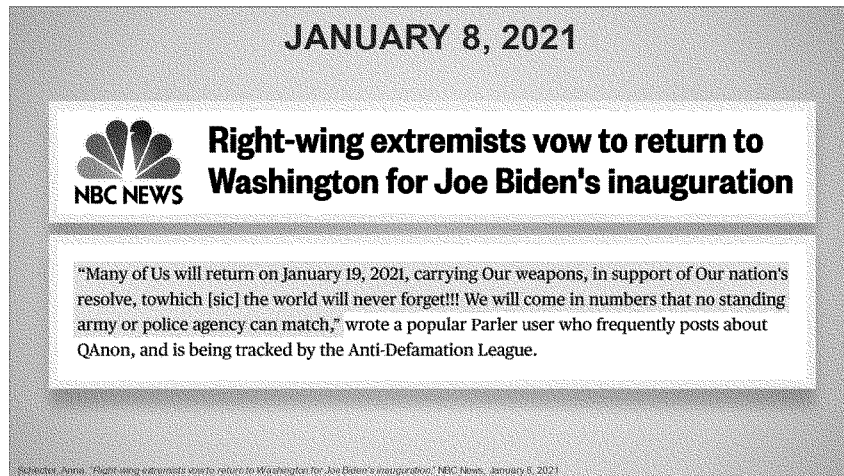
(U//FOUO) Since the 6 January event, violent online rhetoric regarding the 20 January Presidential Inauguration has increased, with some calling for unspecified "justice" for the 6 January fatal shooting by law enforcement of a participant who had illegally entered the Capitol Building, and another posting that "many" armed individuals would return on 19 January, according to open source reporting. The recent removal efforts by social media platforms used by DVEs may push some to revert back to other platforms they perceive as more secure, further challenging our ability to identify and warn of specific threats.

JOINT Intelligence Bulletin, January 13, 2021

**SLIDE 247.** S. Doc. 117-3 Vol. I, Pg. 457; 167 Cong. Rec. S652

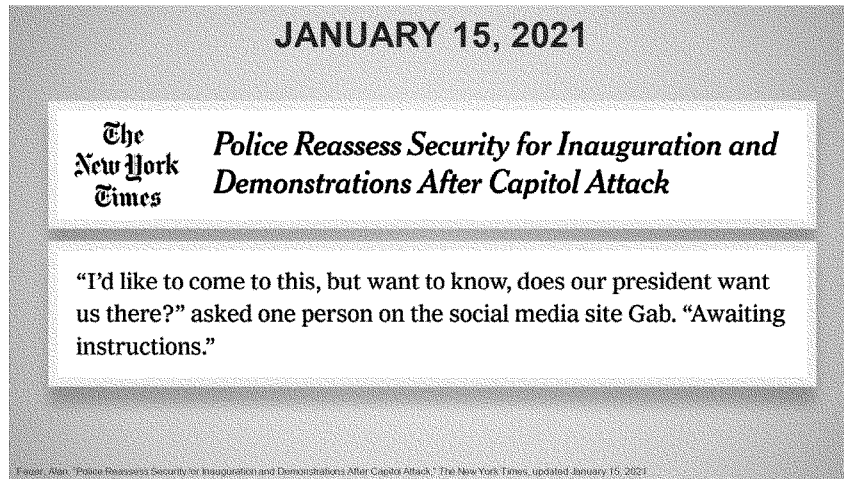


**SLIDE 248.** S. Doc. 117-3 Vol. I, Pg. 457; 167 Cong. Rec. S653

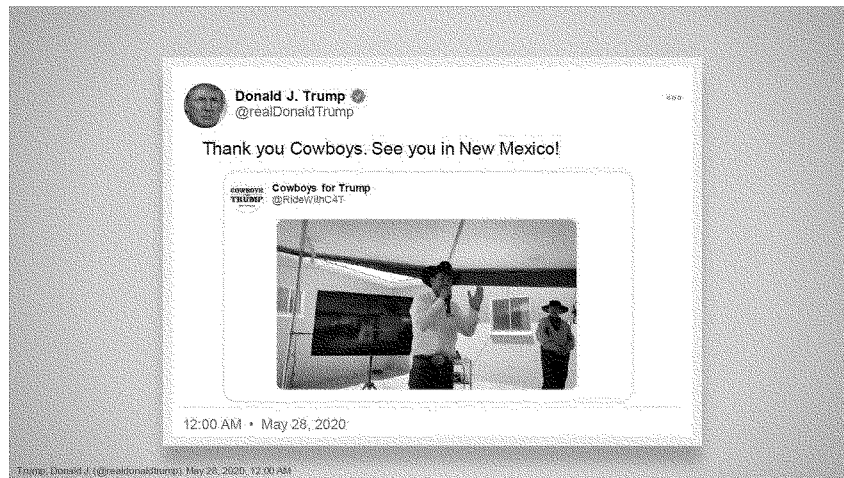




**SLIDE 249.** S. Doc. 117–3 Vol. I, Pg. 458; 167 Cong. Rec. S653



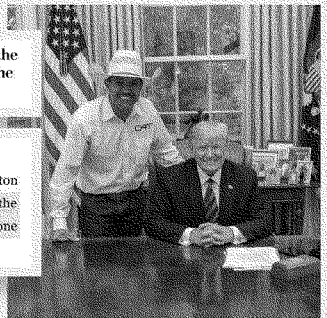
**SLIDE 250.** S. Doc. 117–3 Vol. I, Pg. 458; 167 Cong. Rec. S653



**SLIDE 251.** S. Doc. 117-3 Vol. I, Pg. 458; 167 Cong. Rec. S653

**The Washington Post** Trump promoted N.M. official's comment that 'the only good Democrat is a dead Democrat.' Now the man is arrested in the Capitol riot.

Trump also spoke with Griffin by phone a year earlier, after Cowboys for Trump organized a week-long horseback ride through Maryland to Washington to highlight border security. It wasn't just a brief hello; according to Griffin, the two spoke for 30 minutes. Griffin also said Trump asked for his personal phone number.



Blaker, Aaron. "Trump promotes N.M. official's comment that 'the only good Democrat is a dead Democrat.' Now the man is arrested in the Capitol riot." The Washington Post, January 19, 2021.

**SLIDE 252.** S. Doc. 117-3 Vol. I, Pg. 458; 167 Cong. Rec. S653

**MAY 28, 2020**

**©CBS NEWS** Trump shares video of supporter saying "the only good Democrat is a dead Democrat"

Speaking about President Trump tweeting his video, Griffin said, "It really means a lot to me, because I know that the president of the United States has my back."

Silverstein, Jason. "Trump shares video of supporter saying 'the only good Democrat is a dead Democrat.'" CBS News, May 28, 2020.

**SLIDE 253.** S. Doc. 117-3 Vol. I, Pg. 458; 167 Cong. Rec. S653



**SLIDE 254.** S. Doc. 117-3 Vol. I, Pg. 458; 167 Cong. Rec. S653

**JANUARY 11, 2021**

**AP** FBI warns of plans for nationwide armed protests next week

"Armed protests are being planned at all 50 state capitols from 16 January through at least 20 January, and at the U.S. Capitol from 17 January through 20 January," the bulletin said, according to one official. The officials were not authorized to speak publicly and spoke to the AP on condition of anonymity.

© 2021. Colleen et al. "FBI warns of plans for nationwide armed protests next week." AP News, January 11, 2021.

**SLIDE 255.** S. Doc. 117-3 Vol. I, Pg. 459; 167 Cong. Rec. S653



**SLIDE 256.** S. Doc. 117-3 Vol. I, Pg. 459; 167 Cong. Rec. S653



**SLIDE 257.** S. Doc. 117-3 Vol. I, Pg. 459; 167 Cong. Rec. S653

<b>Costs Associated with Jan. 6 Insurrection and After, Including Pre-Inauguration- and Inauguration-Related Security</b>		
<b>National Guard</b>	Cost of deploying as many as 25,000 troops to Washington through mid-March	<b>At least \$480,000,000</b>
<b>North Carolina</b>	National Guard troops deployed to State Legislative Building	<b>\$605,251</b>
<b>South Carolina</b>	State troopers and Richland County sheriff's deputies deployed to State House ahead of inauguration	<b>\$414,934</b>
<b>Pennsylvania</b>	National Guard troops and state police deployed to Capitol and elsewhere ahead of inauguration	<b>\$565,631</b>
<b>Utah</b>	National Guard troops and state troopers mobilized to Salt Lake City ahead of inauguration	<b>\$585,000</b>
<b>Wisconsin</b>	National Guard troops mobilized to Madison after protests	<b>\$593,000</b>
<b>Ohio</b>	National Guard troops deployed to Statehouse after protests	<b>\$1,225,000</b>
<b>At least \$483,988,816</b>		

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**SLIDE 258.** S. Doc. 117-3 Vol. I, Pg. 459; 167 Cong. Rec. S653

**JANUARY 13, 14, 15, 2021**

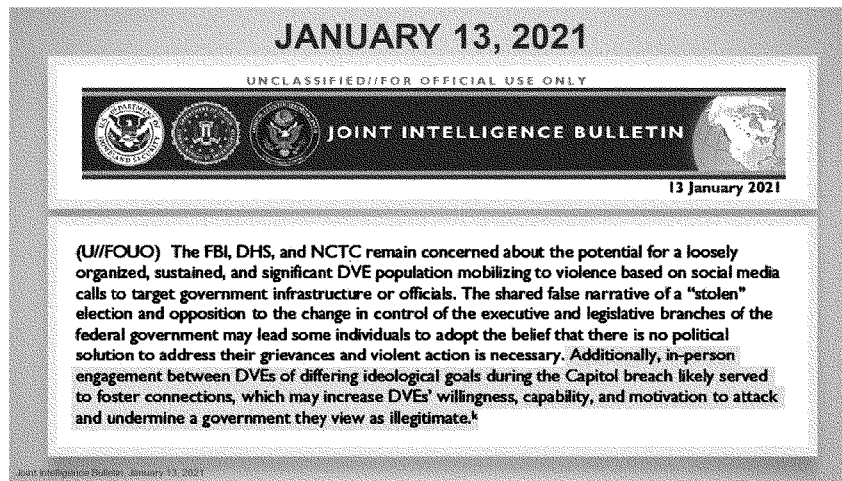
**Bloomberg** **Some Right-Wing Groups Warning Their Members Away From Protests**

**The Washington Post** **The organizer of the "Million Militia March" appears to have abandoned an Inauguration Day demonstration in Washington, warning followers on his personal website to "STAY FAR AWAY FROM DC & ALL STATE CAPITALS . . . IT IS A TRAP."**

**DAILY BEAST** **'It Is a Trap': Far-Right Freaks Out About Rallies It's Organized**

Notes: An, "Some Right-Wing Groups Warning Their Members Away From Protests," Bloomberg, January 15, 2021; Harris, Shane, Mikhennet, Soud and Nakhwa, Razan, "Far-right groups make plans for protests and assaults before and after Inauguration Day," Washington Post, January 14, 2021; Sommer, Will and Veil, Kelly, "It Is a Trap: Far-Right Freaks Out About Rallies It's Organized," Daily Beast, January 13, 2021.

**SLIDE 259.** S. Doc. 117-3 Vol. I, Pg. 459; 167 Cong. Rec. S653




**SLIDE 260.** S. Doc. 117-3 Vol. I, Pg. 460; 167 Cong. Rec. S653



**SLIDE 261.** S. Doc. 117-3 Vol. I, Pg. 460; 167 Cong. Rec. S653

**JANUARY 8, 2021**

 **REUTERS**


**U.S. Capitol siege emboldens motley crew of extremists**

Dunn said boogaloos would be “working overtime” to advance their cause. When asked whether boogaloos had planned to attack the Capitol, he responded: “Just know there is more to come.”

Hessan, Ted et al. "U.S. Capitol siege emboldens motley crew of extremists." Reuters, January 8, 2021.

**SLIDE 262.** S. Doc. 117-3 Vol. I, Pg. 460; 167 Cong. Rec. S653

**JANUARY 16, 2021**

 **The New York Times**

***Capitol Attack Could Fuel Extremist Recruitment For Years, Experts Warn***

“People saw what we can do, they know what’s up, they want in,” boasted one message on a Proud Boys Telegram channel earlier this week.

Nili MacFarquhar, Jack Healy, Mike Baker and Sergei F. Kovalevski. "Capitol Attack Could Fuel Extremist Recruitment For Years, Experts Warn." The New York Times, January 16, 2021.



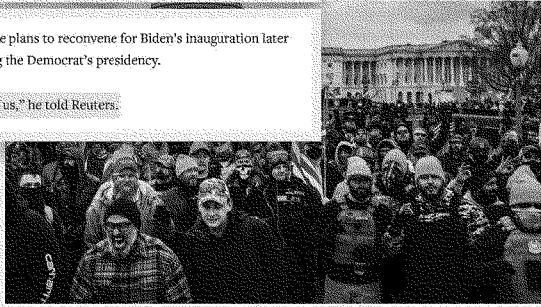
**SLIDE 263.** S. Doc. 117–3 Vol. I, Pg. 460; 167 Cong. Rec. S653

**JANUARY 8, 2021**

**REUTERS** **U.S. Capitol siege emboldens motley crew of extremists**

Tarrio said the Proud Boys did not have plans to reconvene for Biden's inauguration later this month, but would be active during the Democrat's presidency.

"You're definitely going to see more of us," he told Reuters.



Nelson, Ted et al. "U.S. Capitol siege emboldens motley crew of extremists." Reuters. January 8, 2021. Cherry, Jan. Getty.

**SLIDE 264.** S. Doc. 117–3 Vol. I, Pg. 460; 167 Cong. Rec. S654

**JANUARY 8, 2021**

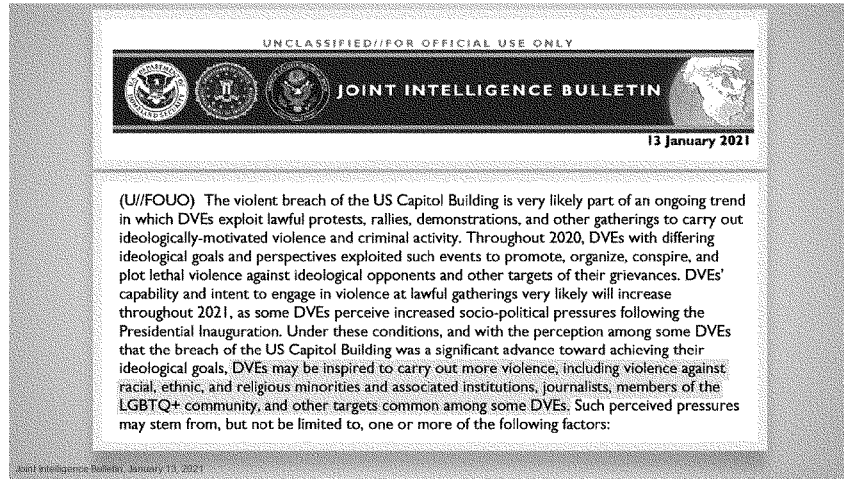
**The Washington Post** **The far-right Trump insurgency just scored a huge propaganda coup**

"By all measurable effects, this was for far-right extremists one of the most successful attacks that they've ever launched," Jared Holt, who tracks far-right groups for the Atlantic Council, added. "This will be lionized and propagandized on likely for the next decade."

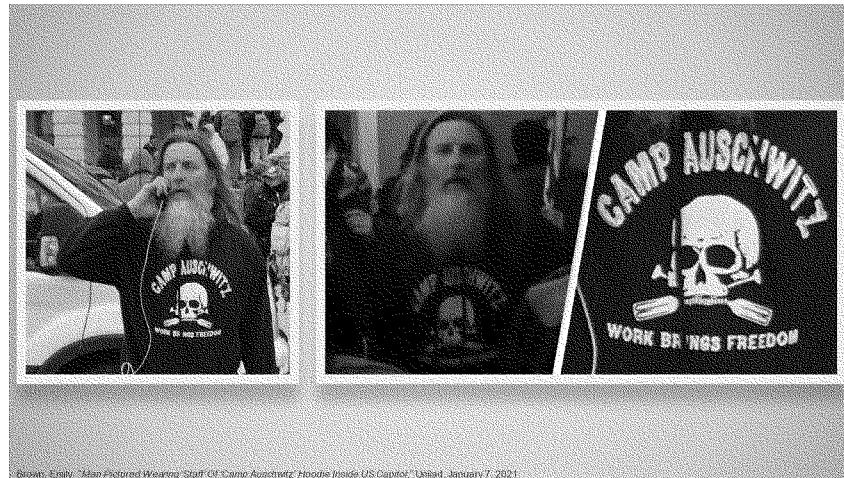
"These communities are discussing the attack as some sort of validation that it actually is possible for them to exert their power like this and achieve results," Holt tells me. "They're talking about this as the first stab in a greater revolution."

Waggener, Greg. "The far-right Trump insurgency just scored a huge propaganda coup." The Washington Post. January 8, 2021.

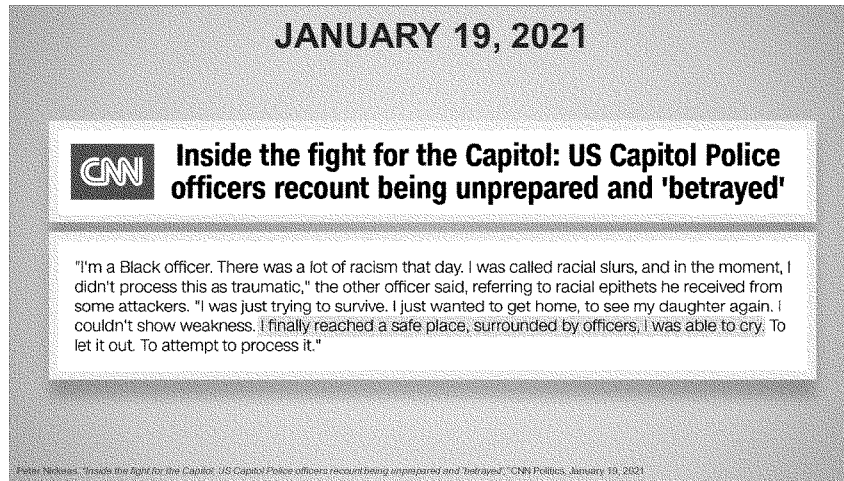
**SLIDE 265.** S. Doc. 117-3 Vol. I, Pg. 460; 167 Cong. Rec. S654



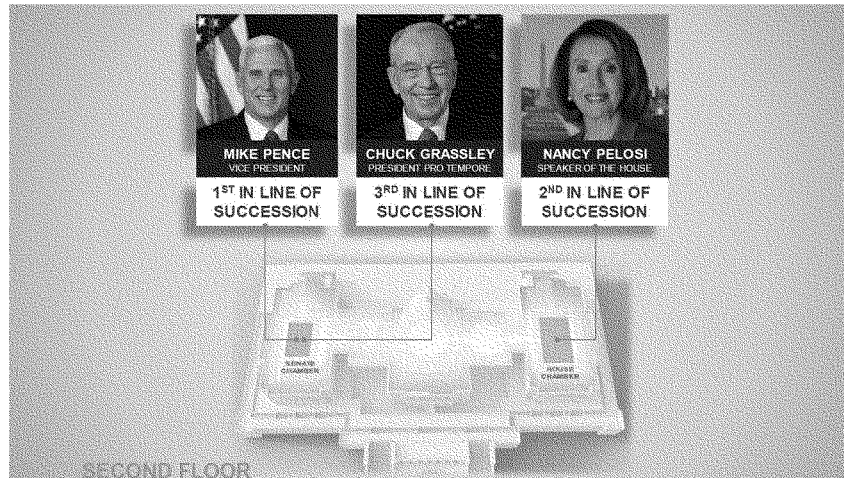
**SLIDE 266.** S. Doc. 117-3 Vol. I, Pg. 461; 167 Cong. Rec. S654



**SLIDE 267.** S. Doc. 117-3 Vol. I, Pg. 461; 167 Cong. Rec. S654



**SLIDE 268.** S. Doc. 117-3 Vol. I, Pg. 462; 167 Cong. Rec. S654



**SLIDE 269.** S. Doc. 117-3 Vol. I, Pg. 462; 167 Cong. Rec. S654

UNITED STATES DISTRICT COURT for the District of Columbia	
United States of America v. Dawn Bancroft, (DOB: XXXXXXXXX) Diana Santos-Smith, (DOB: XXXXXXXXX)	Case: 1:21-mj-00182 Assigned to: Judge Faruqi, Zia M Assign Date: 1/28/2021 Description: COMPLAINT W/ARREST WARRANT

became bottlenecked at a Capitol exit point. During the video, BANCROFT stated, "We broke into the Capitol... we got inside, we did our part." BANCROFT continued, "We were looking for Nancy to shoot her in the friggin' brain but we didn't find her." Your affiant believes that the "Nancy" BANCROFT was referencing is Speaker of the House, Nancy Pelosi. BANCROFT was

Bancroft & Santos-Smith Criminal Complaint, January 28, 2021

**SLIDE 270.** S. Doc. 117-3 Vol. I, Pg. 462; 167 Cong. Rec. S654

UNITED STATES OF AMERICA	
v.  THOMAS EDWARD CALDWELL,  DONOVAN RAY CROWL, and  JESSICA MARIE WATKINS,  Defendants.	Case: 1:21-mj-00119 Assigned To: Faruqi, Zia M. Assign. Date: 1/19/2021 Description: Complaint w/ Arrest Warrant

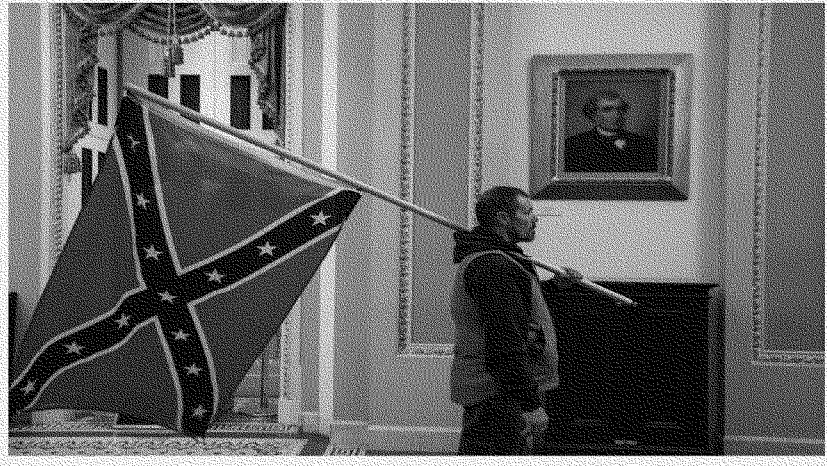
with paint balls. But we are in here." An unknown male responds to WATKINS, telling her to be safe, and states, "Get it, Jess. Do your fucking thing. This is what we fucking [unintelligible] up for. Everything we fucking trained for."

On January 6, 2021, while at the Capitol, CALDWELL received the following Facebook message: "All members are in the tunnels under capital seal them in. Turn on gas". When CALDWELL posted a Facebook message that read, "Inside," he received the following messages, among others: "Tom take that bitch over", "Tom all legislators are down in the Tunnels 3/floors down", "Do like we had to do when I was in the core start tearing out floors go from top to bottom", and "Go through back house chamber doors facing N left down hallway down steps."

Caldwell, Crowl, & Watkins, Affidavit in Support of Amended Criminal Complaint, January 19, 2021

**SLIDE 271.** S. Doc. 117-3 Vol. I, Pg. 465; 167 Cong. Rec. S655**SLIDE 272.** S. Doc. 117-3 Vol. I, Pg. 465; 167 Cong. Rec. S655

**SLIDE 273.** S. Doc. 117-3 Vol. I, Pg. 465; 167 Cong. Rec. S655



**SLIDE 274.** S. Doc. 117-3 Vol. I, Pg. 466; 167 Cong. Rec. S656

**JANUARY 21, 2021**

**Military.com** **DC Guard Chief 'Deeply Troubled' After Nearly 200 Troops Test Positive for COVID-19**

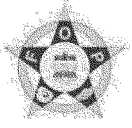
Almost 200 National Guard members have tested positive for COVID-19, the illness caused by the novel coronavirus, said Maj. Gen. William Walker, commander of the District of Columbia National Guard.

Photo: GSA. "DC Guard Chief 'Deeply Troubled' After Nearly 200 Troops Test Positive for COVID-19." Military.com, January 21, 2021.

**SLIDE 275.** S. Doc. 117-3 Vol. I, Pg. 466; 167 Cong. Rec. S656




**SLIDE 276.** S. Doc. 117-3 Vol. I, Pg. 466; 167 Cong. Rec. S656



### United States Capitol Police

#### Labor Committee

1320 G Street, S.E., Washington, D.C. 20003  
Telephone: 202-544-4813 Fax: 202-544-5918  
[www.uscpd.com](http://www.uscpd.com)



Union Chairman, Gus Papathanasiou says, "We have one officer who lost his life as a direct result of the insurrection. Another officer has tragically taken his own life. Between USCP and our colleagues at the Metropolitan Police Department, we have almost 140 officers injured. I have officers who were not issued helmets prior to the attack who have sustained brain injuries. One officer has two cracked ribs and two smashed spinal discs. One officer is going to lose his eye, and another was stabbed with a metal fence stake."

USCP Labor Committee Press Release, January 27, 2021



**SLIDE 277.** S. Doc. 117-3 Vol. I, Pg. 466; 167 Cong. Rec. S656

**JANUARY 27, 2021**

**The Washington Post**      **Police union says 140 officers injured in Capitol riot**

At least 81 Capitol Police officers were assaulted during the siege of the Capitol, according to filings by federal prosecutors. The filings did not detail injuries sustained by officers, and a Capitol Police spokeswoman did not respond to a request for comment on officer injuries.

About 65 D.C. police officers also suffered injuries on Jan. 6, including several concussions from head blows from various objects, including metal poles ripped from inauguration-related scaffolding and even a pole with an American flag attached, D.C. police officials have said. Other injuries included swollen ankles and wrists, bruised arms and legs, and irritated lungs from tear and pepper spray.

Jackson, Tom. "Police union says 140 officers injured in Capitol riot." The Washington Post, January 27, 2021.

**SLIDE 278.** S. Doc. 117-3 Vol. I, Pg. 466; 167 Cong. Rec. S656

**JANUARY 11, 2021**

**The Washington Post**      **Beaten, sprayed with mace and hit with stun guns: police describe injuries to dozens of officers during assault on U.S. Capitol**

"I've talked to officers who have done two tours in Iraq, who said this was scarier to them than their time in combat," acting D.C. police chief Robert J. Contee III said Monday after speaking to an officer who was discharged from the hospital after being beaten and injured with a stun gun.




Gallagher/Jager, Drexler (©GONThelapens) Jan. 8, 2021, 3:39 PM; Hermann, Peter and Zaichner, Julie. "Beaten, sprayed with mace and hit with stun guns: police describe injuries to dozens of officers during assault on U.S. Capitol." Washington Post, January 11, 2021. Shannon Stapleton, Reuters

**SLIDE 279.** S. Doc. 117-3 Vol. I, Pg. 467; 167 Cong. Rec. S656

**JANUARY 9, 2021**

**BuzzFeed News**

**Black Police Officers Describe The Racist Attacks They Faced As They Protected The Capitol**

“I got called a nigger 15 times today,” the veteran officer shouted in the Rotunda to no one in particular. “Trump did this and we got all of these fucking people in our department that voted for him. How the fuck can you support him?”

Pelley, Emmanuel. "Black Police Officers Describe The Racist Attacks They Faced As They Protected The Capitol." BuzzFeed News, January 9, 2021.

**SLIDE 280.** S. Doc. 117-3 Vol. I, Pg. 468; 167 Cong. Rec. S656



FEBRUARY 11, 2021

759

**SLIDE 281.** S. Doc. 117-3 Vol. I, Pg. 468; 167 Cong. Rec. S656



**SLIDE 282.** S. Doc. 117-3 Vol. I, Pg. 469; 167 Cong. Rec. S657

**JANUARY 17, 2021**

Case 1:21-mj-00099-RMM Document	Case: 1:21-mj-00099 Assigned to: Judge Robin M. Meriweather Assign Date: 1/17/2021 Description: COMPLAINT W/ARREST WARRANT
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**STATEMENT OF FACTS**


WILLIAMS taking a laptop computer or hard drive from Speaker Pelosi's office. W1 stated that WILLIAMS intended to send the computer device to a friend in Russia, who then planned to sell the device to SVR, Russia's foreign intelligence service. According to W1, the transfer of the computer device to Russia fell through for unknown reasons and WILLIAMS still has the computer device or destroyed it. This matter remains under investigation.

United States of America v. Riley Jane Williams, Case Number: 1:21-mj-00099-RMM-1

**SLIDE 283.** S. Doc. 117-3 Vol. I, Pg. 470; 167 Cong. Rec. S657

**JANUARY 7, 2021**

**Former Trump Official Elizabeth Neumann**



"Imagine, now overseas you have terrorists who would love to destroy the Capitol. They just saw how easy it was to penetrate. We just exposed a huge vulnerability,"

Tucker, Patrick. "U.S. Capitol Now More Vulnerable As a Result of Wednesday's Mob Attack, Former DHS Official Says," Defense One, January 7, 2021

**SLIDE 284.** S. Doc. 117-3 Vol. I, Pg. 471; 167 Cong. Rec. S657

**JANUARY 8, 2021**



**U.S. foes like China and Iran see opportunity in the chaos of Trump-stoked riot at Capitol**

LONDON – For America's adversaries, there was no greater proof of the fallibility of Western democracy than the sight of the U.S. Capitol shrouded in smoke and besieged by a mob whipped up by their unwillingly outgoing president.

Smith, Alexander and Smith, Sophia. "U.S. foes like China and Iran see opportunity in the chaos of Trump-stoked riot at Capitol," NBC News, January 8, 2021

**SLIDE 285.** S. Doc. 117-3 Vol. I, Pg. 471; 167 Cong. Rec. S658

**JANUARY 7, 2021**

**FORTUNE** Chinese state media is already using Capitol riots in its anti-U.S. narrative

In China, the central government did not issue a formal statement regarding the Capitol Hill events, but reporters asked Hua Chunying, a spokesperson for China's Ministry of Foreign Affairs, about the riot at a daily press briefing on Thursday. She said the incident should spark "deep reflection" among U.S. lawmakers regarding how they discuss the pro-democracy movement in Hong Kong, suggesting that the U.S. is hypocritical in denouncing Beijing's crackdown in the city while it struggles with its own unrest at home.

Miguelo, Grady and Cleggart, Naomi Xu. "Chinese state media is already using Capitol riots in its anti-U.S. narrative." January 7, 2021

**SLIDE 286.** S. Doc. 117-3 Vol. I, Pg. 471; 167 Cong. Rec. S658

**GT Global Times**  
@globaltimesnews

@SpeakerPelosi once referred to the Hong Kong riots as "a beautiful sight to behold" — it remains yet to be seen whether she will say the same about the recent developments in Capitol Hill



HK "heroes" of democracy



"A beautiful sight to behold"  
— Nancy Pelosi



Rioters storm the Capitol




Seat occupied

9:20 PM • Jan 6, 2021

Global Times (@globaltimesnews) Jan 6, 2021, 9:20 PM

**SLIDE 287.** S. Doc. 117-3 Vol. I, Pg. 471; 167 Cong. Rec. S658

**JANUARY 6, 2021**



**REUTERS**


**World shocked by Trump supporters' attack on U.S. democracy**

Konstantin Kosachyov, chairman of the international affairs committee of the Russian upper house: "The celebration of democracy is over. This is, alas, actually the bottom, I say this without a hint of gloating. America is no longer charting the course, and therefore has lost all its rights to set it. And especially to impose it on others."

Reuters Staff. "World shocked by Trump supporters' attack on U.S. democracy." Reuters, January 6, 2021.

**SLIDE 288.** S. Doc. 117-3 Vol. I, Pg. 471; 167 Cong. Rec. S658

**JANUARY 8, 2021**



**NBC NEWS**

**U.S. foes like China and Iran see opportunity in the chaos of Trump-stoked riot at Capitol**

"You are now seeing the situation in the U.S.," Supreme Leader Ayatollah Ali Khamenei said in a live televised speech Friday.

"This is their democracy and human rights, this is their election scandal, these are their values. These values are being mocked by the whole world. Even their friends are laughing at them."

Smith, Alexander et al. "U.S. foes like China and Iran see opportunity in the chaos of Trump-stoked riot at Capitol." NBC News, January 8, 2021.

**SLIDE 289.** S. Doc. 117-3 Vol. I, Pg. 472; 167 Cong. Rec. S658

**JANUARY 14, 2021**

**JOINT THREAT ASSESSMENT**

(U//FOUO) Since the incident at the US Capitol on 6 January, Russian, Iranian, and Chinese influence actors have seized the opportunity to amplify narratives in furtherance of their policy interest amid the presidential transition. We have not identified any specific, credible information indicating that these actors intend to explicitly commit violence. Furthermore, we have not identified any specific, credible cyber threat to critical infrastructure supporting the upcoming Presidential Inauguration nor a specific credible cyber threat to military or law enforcement personnel supporting the event.

Joint Threat Assessment, FBI, January 14, 2021

**SLIDE 290.** S. Doc. 117-3 Vol. I, Pg. 472; 167 Cong. Rec. S658

**JANUARY 15, 2021**

**The Washington Post**      **What the world is saying about  
the U.S. after the Capitol attack  
and Trump's impeachment**

At a news conference on Friday, Canadian Prime Minister Justin Trudeau criticized Trump for inciting the rioters at the Capitol.

"What we witnessed was an assault on democracy by violent rioters, incited by the current president and other politicians," he said. "As shocking, deeply disturbing and frankly saddening as that event remains — we have also seen this week that democracy is resilient in America, our closest ally and neighbor."

Melvin, Ruby and Taylor, Adam: "What the world is saying about the U.S. after the Capitol attack and Trump's impeachment." The Washington Post, January 15, 2021



**SLIDE 291.** S. Doc. 117-3 Vol. I, Pg. 472; 167 Cong. Rec. S658

**JANUARY 15, 2021**

**The Washington Post** **What the world is saying about the U.S. after the Capitol attack and Trump's impeachment**

“This closing of ranks begins with holding those accountable who are responsible for such escalations. That includes the violent rioters and it also includes their instigators,” he said. “Those who agitate bear responsibility.”

Mellen, Ruby and Taylor, Adam. “What the world is saying about the U.S. after the Capitol attack and Trump's impeachment.” The Washington Post, January 15, 2021.

**SLIDE 292.** S. Doc. 117-3 Vol. I, Pg. 472; 167 Cong. Rec. S658

**JANUARY 6, 2021**



**McCaul, Meeks Release a Joint Statement on Today's Violence in the Capitol**

*“America has always been a beacon of freedom to the world; proof that free and fair elections are achievable, and that democracy works. But what happened at the Capitol today has scarred our reputation and has damaged our standing in the world.*

*“Today's violence – an inevitable result when leaders in positions of power misled the public – will certainly empower dictators and damage struggling democracies.*

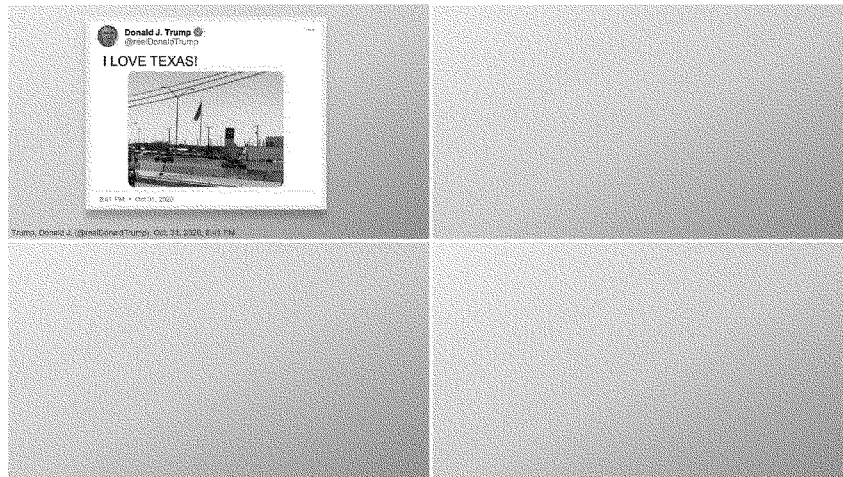
Press Release: “McCaul, Meeks Release a Joint Statement on Today's Violence in the Capitol.” House Committee on Foreign Affairs Republicans, January 6, 2021.

**SLIDE 293.** S. Doc. 117-3 Vol. I, Pg. 483; 167 Cong. Rec. S662

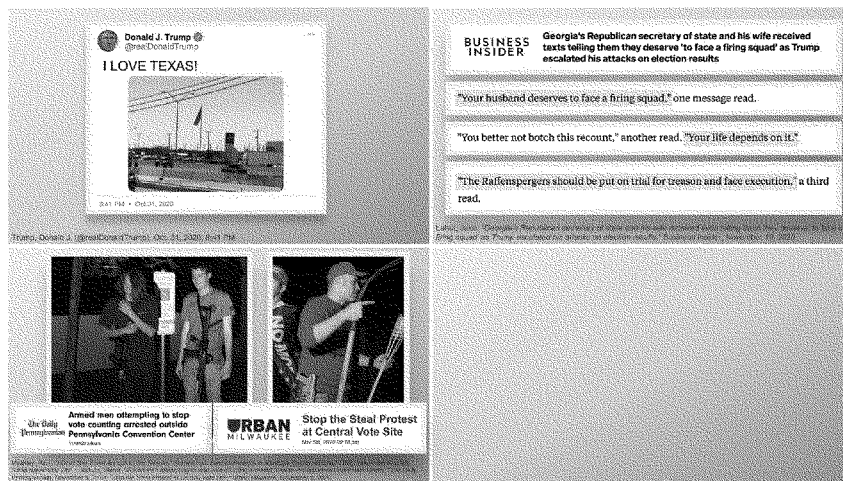


**SLIDE 294.** S. Doc. 117-3 Vol. I, Pg. 483; 167 Cong. Rec. S662

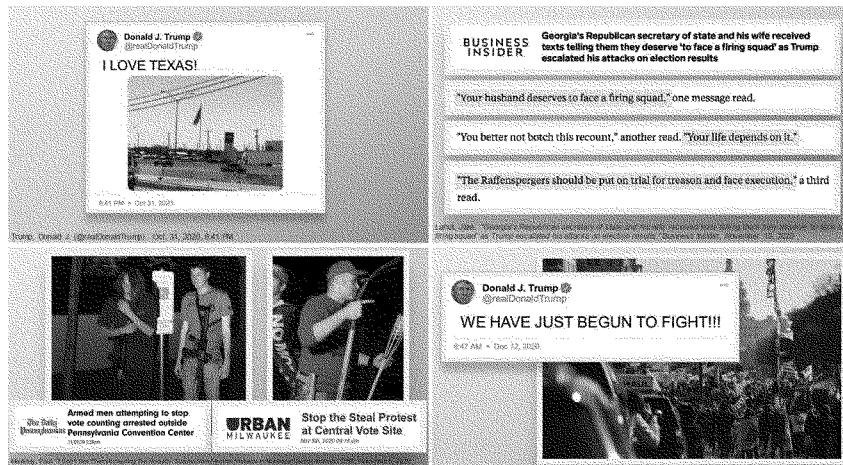


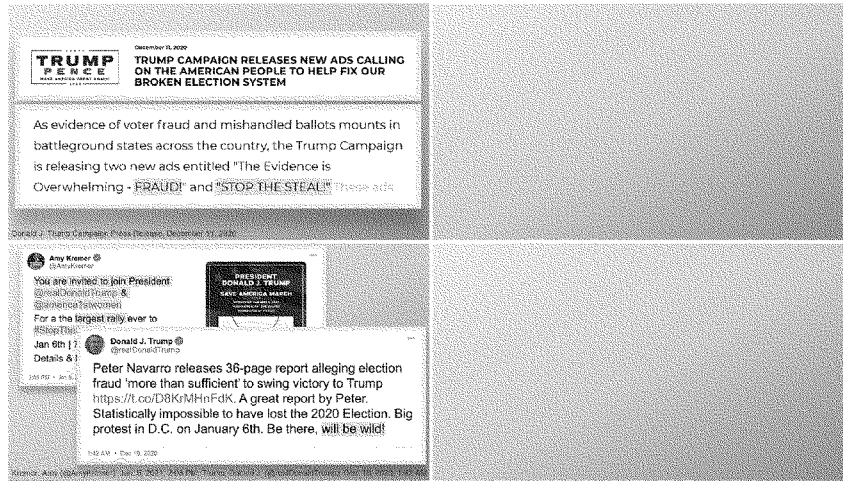
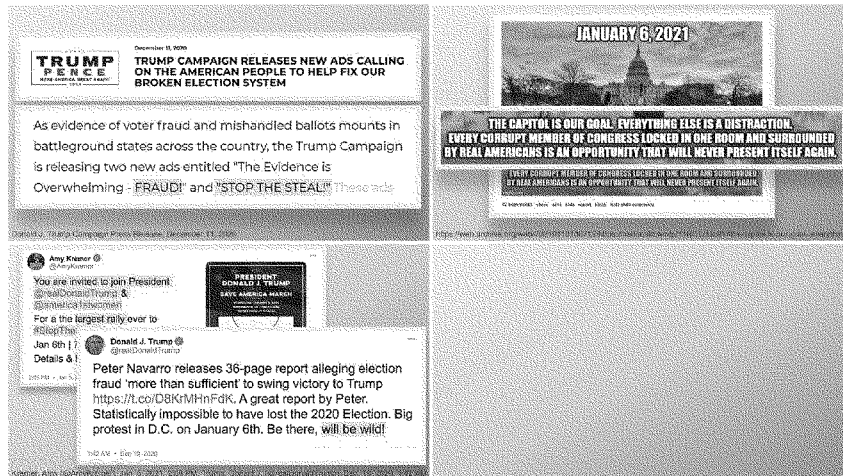
**SLIDE 295.** S. Doc. 117-3 Vol. I, Pg. 484; 167 Cong. Rec. S662**SLIDE 296.** S. Doc. 117-3 Vol. I, Pg. 484; 167 Cong. Rec. S662


## SLIDE 297. S. Doc. 117-3 Vol. I, Pg. 484; 167 Cong. Rec. S662



## SLIDE 298. S. Doc. 117-3 Vol. I, Pg. 484; 167 Cong. Rec. S662




**SLIDE 299.** S. Doc. 117-3 Vol. I, Pg. 484; 167 Cong. Rec. S663**SLIDE 300.** S. Doc. 117-3 Vol. I, Pg. 484; 167 Cong. Rec. S663



December 16, 2020

**TRUMP CAMPAIGN RELEASES NEW ADS CALLING ON THE AMERICAN PEOPLE TO HELP FIX OUR BROKEN ELECTION SYSTEM**

As evidence of voter fraud and mishandled ballots mounts in battleground states across the country, the Trump Campaign is releasing two new ads entitled "The Evidence is Overwhelming - FRAUD!" and "STOP THE STEAL!" These ads



**JANUARY 6, 2021**

**THE CAPITAL IS OUR GOAL. EVERYTHING ELSE IS A DISTRACTION. EVERY CORRUPT MEMBER OF CONGRESS LOCKED IN ONE ROOM AND SURROUNDED BY REAL AMERICANS IS AN OPPORTUNITY THAT WILL NEVER PRESENT ITSELF AGAIN.**


EVERY CORRUPT MEMBER OF CONGRESS LOCKED IN ONE ROOM AND SURROUNDED BY REAL AMERICANS IS AN OPPORTUNITY THAT WILL NEVER PRESENT ITSELF AGAIN.

TELEVISION AD: 30 SEC. 2020. © 2021 TRUMP CAMPAIGN

Credit: J. Trump Campaign, Photo Release, December 16, 2020.

https://theelections.org/press-releases/2020/12/16/trump-campaign-releases-new-ads-for-january-6-2021/

JANUARY 6, 2021



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

Donald Trump, Rally at the Ellipse, January 6, 2021



**SLIDE 303.** S. Doc. 117-3 Vol. I, Pg. 486; 167 Cong. Rec. S663

 <p><b>INDICTMENT</b></p> <p><b>Watkins:</b> We plan on going to DC on the 6th, weather permitting.</p> <p><b>Crowl:</b> No.... What's going on on the 6th?</p> <p><b>Watkins.</b> DC. Trump wants all able bodied Patriots to come.</p>	 <p><b>CRIMINAL COMPLAINT</b></p> <p><b>Bruno Cua:</b> "President Trump is calling us to FIGHT!" and "This isn't a joke, this is where and when we make our stand. #January6th, Washington DC."</p>
 <p><b>Jenna Ryan:</b> "I thought I was following my President. I thought I was following what we were called to do... He asked us to fly there, he asked us to be there, so I was doing what he asked us to do."</p>	<p><b>The New York Times</b></p> <p>"Our President wants us here."</p> <p>"We wait and take orders from our president."</p>

Truman, Crowl, Donovan, Crowl, and Jessica Marie Watkins Indictment, January 27, 2021; Bruno Cua Criminal Complaint, January 6, 2021; Jenna Ryan Interview CBS, January 15, 2021; Bruno, Cua et al. "Our President Wants Us Here: The Mob That Stormed the Capitol," New York Times, January 6, 2021

**SLIDE 304.** S. Doc. 117-3 Vol. I, Pg. 487; 167 Cong. Rec. S663

<b>JANUARY 6: DONALD TRUMP STATEMENTS</b>	
<p><b>4:17 PM</b></p>  <p><b>Donald J. Trump</b> @realDonaldTrump</p>  <p><i>"We had an election that was stolen from us. It was a landslide election and everyone knows it, especially the other side."</i></p> <p>4:17 PM • Jan 6, 2021</p>	<p><b>6:01 PM</b></p>  <p><b>Donald J. Trump</b> @realDonaldTrump</p> <p>These are the things and events that happen when a sacred landslide election victory is so unceremoniously &amp; viciously stripped away from great patriots who have been badly &amp; unfairly treated for so long. Go home with love &amp; in peace. Remember this day forever!</p> <p>6:01 PM • Jan 6, 2021</p>

Trump, Donald J. (@realDonaldTrump), Jan. 6, 2021, 4:17 PM, 6:01 PM



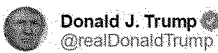
**SLIDE 305.** S. Doc. 117-3 Vol. I, Pg. 487; 167 Cong. Rec. S664

**PRESIDENT TRUMP'S DERELICTION OF DUTY  
ON JANUARY 6**

- 1** Never Condemned The Attack
- 2** Never Condemned The Attackers
- 3** Never Said He Was Sending Help



**SLIDE 306.** S. Doc. 117-3 Vol. I, Pg. 487; 167 Cong. Rec. S664

**JANUARY 6, 2021**



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!

2:24 PM • Jan 6, 2021

Trump, Donald J. (@realDonaldTrump) Jan 6, 2021, 2:24 PM. Groppe, Lena V., et al. "What Peller Saw, During the Attack on the Capitol," January 17, 2021. Shay, Nicole. "A Photo on Getty Images."



SLIDES 307–327

[167 CONG. REC. S668–681 (DAILY ED. FEB. 12, 2021)]

**SLIDE 307.** S. Doc. 117–3 Vol. I, Pg. 496/527; 167 Cong. Rec. S668/S680



**SLIDE 308.** S. Doc. 117–3 Vol. I, Pg. 496; 167 Cong. Rec. S668



**SLIDE 309.** S. Doc. 117-3 Vol. I, Pg. 498; 167 Cong. Rec. S669



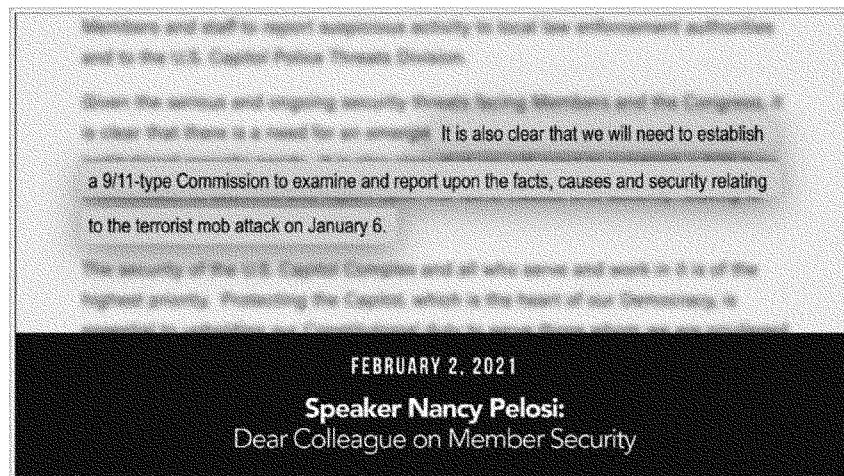
**SLIDE 310.** S. Doc. 117-3 Vol. I, Pg. 499; 167 Cong. Rec. S669

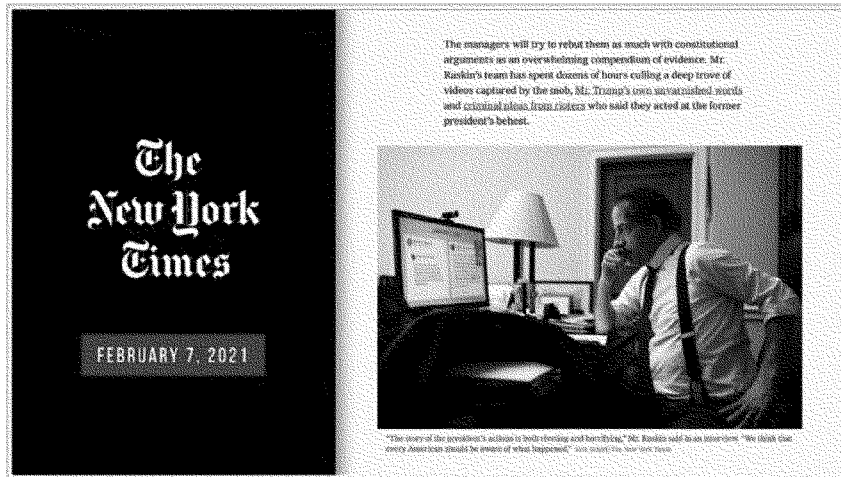
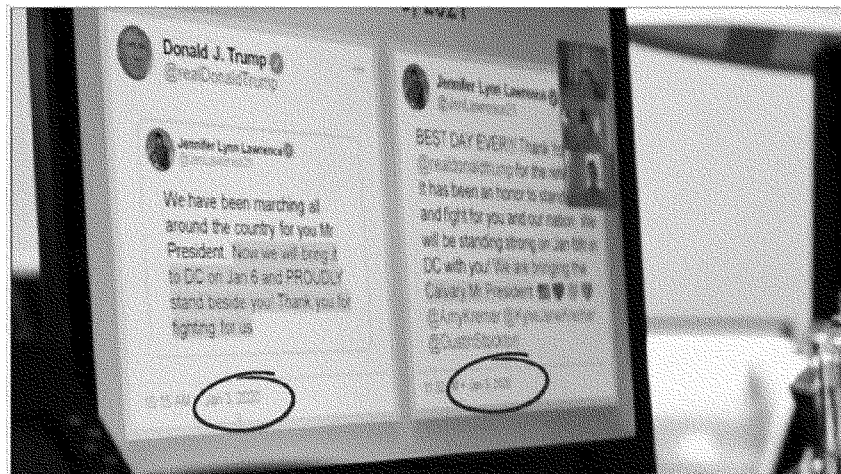


**SLIDE 311.** S. Doc. 117-3 Vol. I, Pg. 500; 167 Cong. Rec. S669



**SLIDE 312.** S. Doc. 117-3 Vol. I, Pg. 500/529; 167 Cong. Rec. S670/S681



**SLIDE 313.** S. Doc. 117-3 Vol. I, Pg. 501; 167 Cong. Rec. S670**SLIDE 314.** S. Doc. 117-3 Vol. I, Pg. 501; 167 Cong. Rec. S670

**SLIDE 315.** S. Doc. 117-3 Vol. I, Pg. 501; 167 Cong. Rec. S670

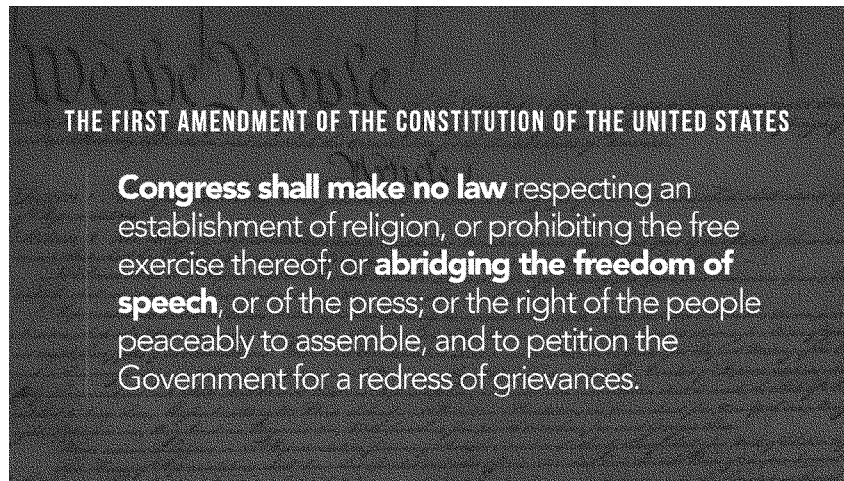


**SLIDE 316.** S. Doc. 117-3 Vol. I, Pg. 502; 167 Cong. Rec. S670

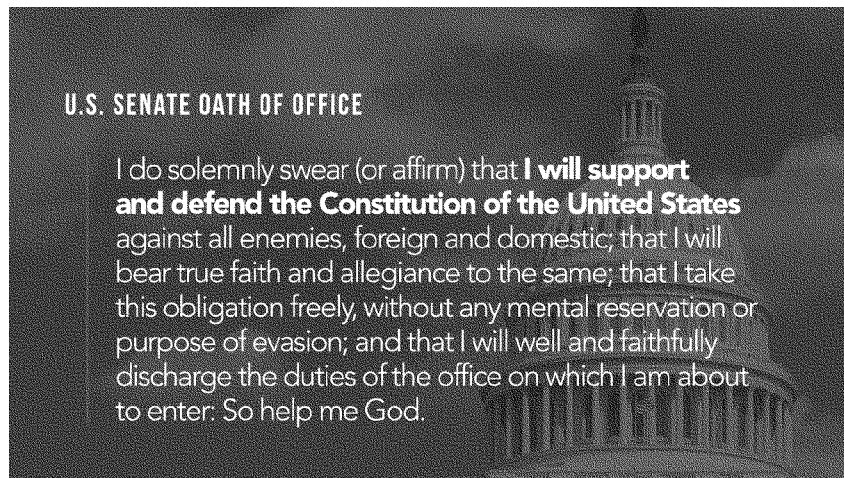




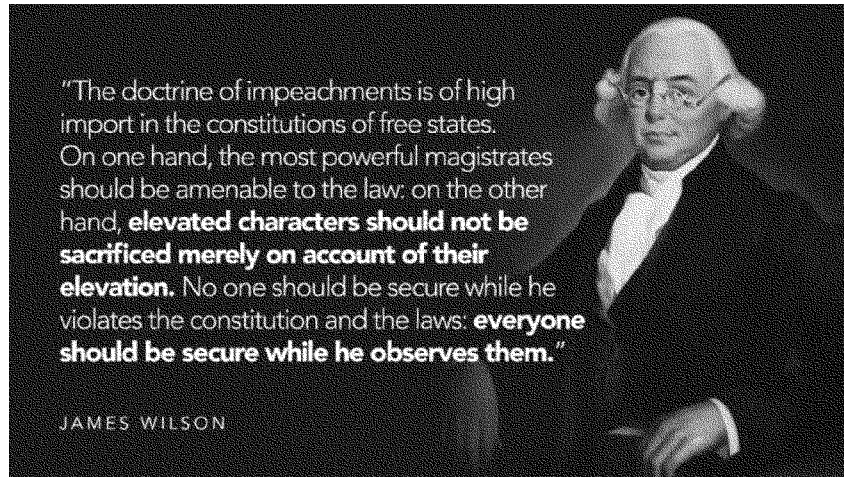
**SLIDE 317.** S. Doc. 117-3 Vol. I, Pg. 514; 167 Cong. Rec. S675



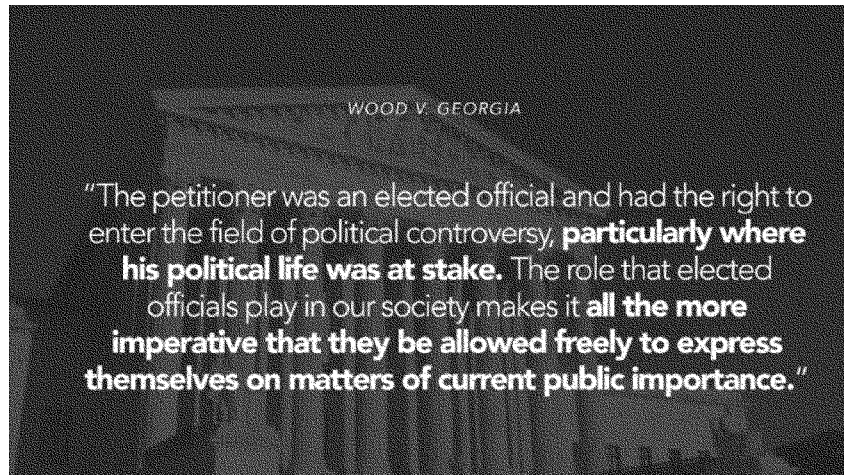
**SLIDE 318.** S. Doc. 117-3 Vol. I, Pg. 514; 167 Cong. Rec. S675



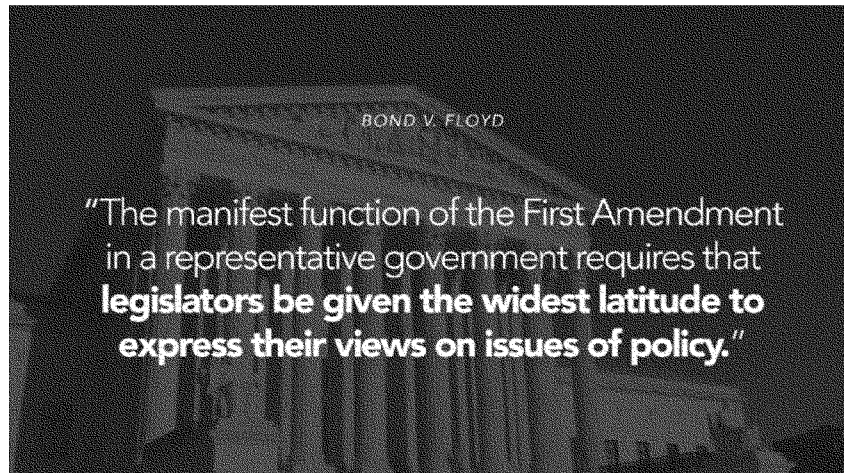
**SLIDE 319.** S. Doc. 117-3 Vol. I, Pg. 515; 167 Cong. Rec. S675



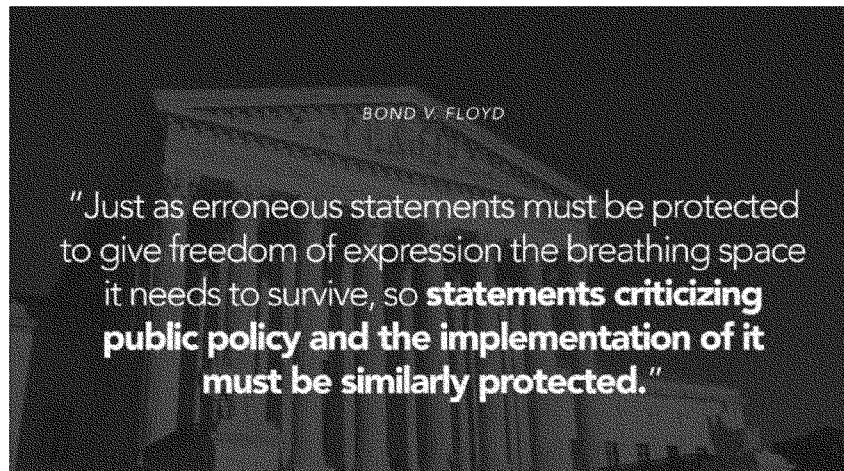
**SLIDE 320.** S. Doc. 117-3 Vol. I, Pg. 517; 167 Cong. Rec. S676



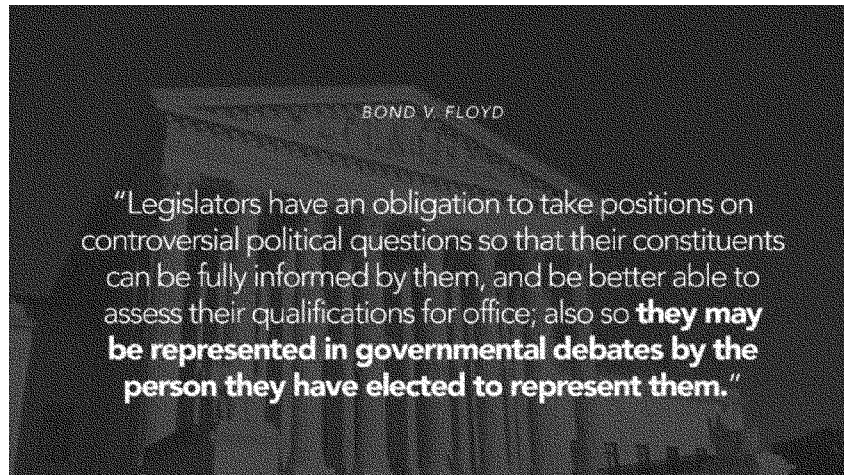
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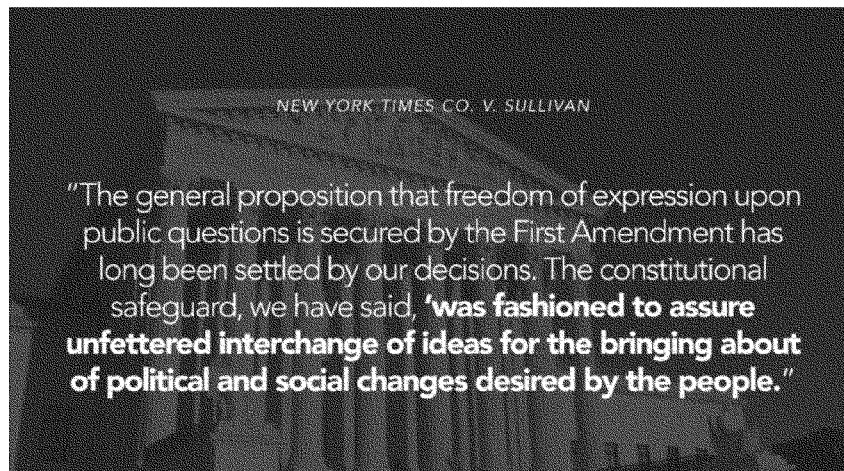
**SLIDE 322.** S. Doc. 117-3 Vol. I, Pg. 517; 167 Cong. Rec. S676



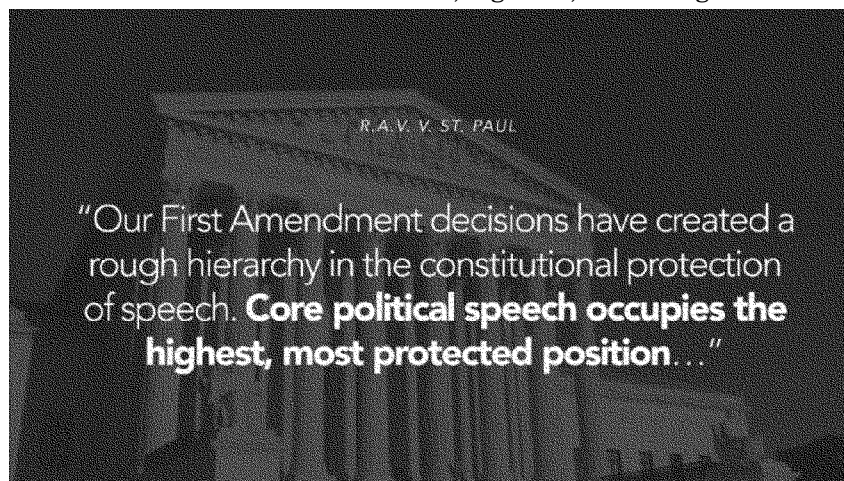
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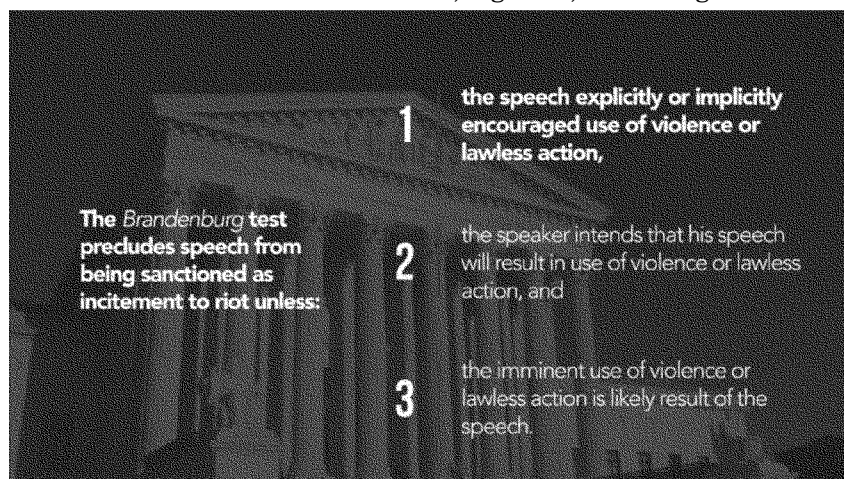
**SLIDE 324.** S. Doc. 117-3 Vol. I, Pg. 518; 167 Cong. Rec. S677



**SLIDE 325.** S. Doc. 117-3 Vol. I, Pg. 518; 167 Cong. Rec. S677

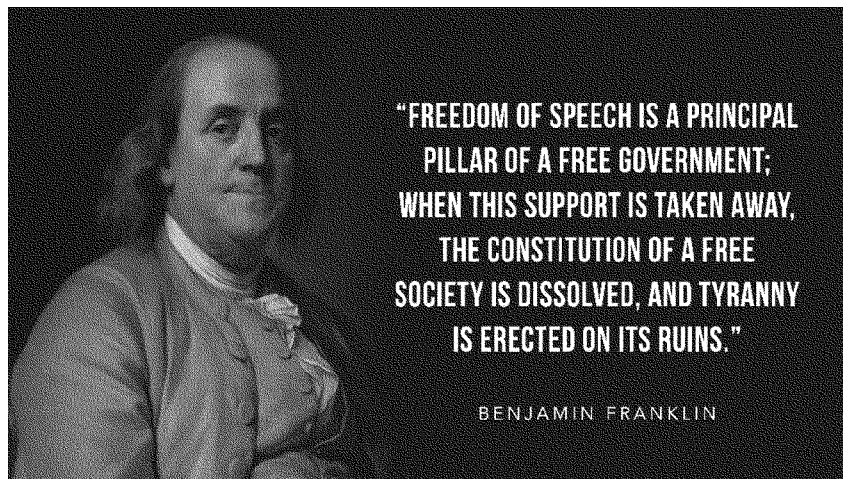


**SLIDE 326.** S. Doc. 117-3 Vol. I, Pg. 519; 167 Cong. Rec. S677





**SLIDE 327.** S. Doc. 117-3 Vol. I, Pg. 522; 167 Cong. Rec. S678







SLIDES 328–335

[167 CONG. REC. S722–724 (DAILY ED. FEB. 13, 2021)]

**SLIDE 328.** S. Doc. 117–3 Vol. I, Pg. 584; 167 Cong. Rec. S722

**JANUARY 6, 2021**

- ▶ ~12pm – President Trump Begins Speech
- ▶ 12:53pm – Insurgents Break Through Capitol Barricades, With President Trump's Speech Playing On Bullhorns
- ▶ 1:11pm – President Trump Ends Speech
- ▶ 1:34pm – Mayor Bowser Formally Requests Assistance
- ▶ 1:49pm – Capitol Police Request National Guard
- ▶ 1:49pm – President Trump Tweets A Video Of His Speech

**SLIDE 329.** S. Doc. 117–3 Vol. I, Pg. 584/584; 167 Cong. Rec. S722/S723

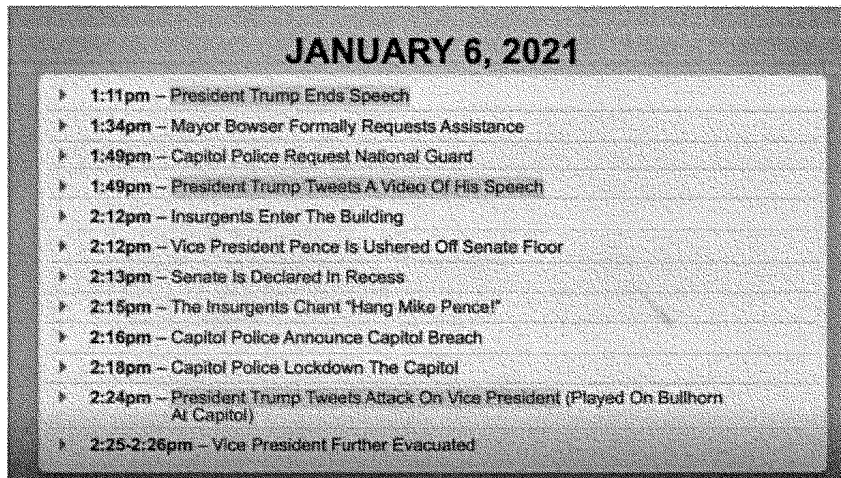
**JANUARY 6, 2021**

- ▶ 1:11pm – President Trump Ends Speech
- ▶ 1:34pm – Mayor Bowser Formally Requests Assistance
- ▶ 1:49pm – Capitol Police Request National Guard
- ▶ 1:49pm – President Trump Tweets A Video Of His Speech
- ▶ 2:12pm – Insurgents Enter The Building
- ▶ 2:12pm – Vice President Pence Is Ushered Off Senate Floor

**SLIDE 330.** S. Doc. 117-3 Vol. I, Pg. 585; 167 Cong. Rec. S723



**SLIDE 331.** S. Doc. 117-3 Vol. I, Pg. 585; 167 Cong. Rec. S723




**SLIDE 332.** S. Doc. 117-3 Vol. I, Pg. 585; 167 Cong. Rec. S723

**JANUARY 6, 2021**

- 1:11pm – President Trump Ends Speech
- 1:34pm – Mayor Bowser Formally Requests Assistance
- 1:49pm – Capitol Police Request National Guard
- 1:49pm – President Trump Tweets A Video Of His Speech
- 2:12pm – Insurgents Enter The Building
- 2:12pm – Vice President Pence Is Ushered Off Senate Floor
- 2:13pm – Senate Is Declared In Recess
- 2:15pm – The Insurgents Chant "Hang Mike Pence!"
- 2:16pm – Capitol Police Announce Capitol Breach
- 2:18pm – Capitol Police Lockdown The Capitol
- 2:24pm – President Trump Tweets Attack On Vice President (Played On Bulthorn At Capitol)
- 2:25-2:26pm – Vice President Further Evacuated
- 2:26pm – President Trump Calls Senator Lee's Cell Phone

**SLIDE 333.** S. Doc. 117-3 Vol. I, Pg. 586; 167 Cong. Rec. S723

**JANUARY 6, 2021: CONVERSATION**



**New details about Trump-McCarthy shouting match show Trump refused to call off the rioters**

**Washington (CNN)** — In an expletive-laced phone call with House Republican leader Kevin McCarthy while the Capitol was under attack, then-President Donald Trump said the rioters cared more about the election results than McCarthy did.

"Well, Kevin, I guess these people are more upset about the election than you are," Trump said, according to lawmakers who were briefed on the call afterward by McCarthy.

CNN, "New details about Trump-McCarthy shouting match show Trump refused to call off the rioters," CNN, February 13, 2021

**SLIDE 334.** S. Doc. 117-3 Vol. I, Pg. 587; 167 Cong. Rec. S723

**JANUARY 6, 2021: CONVERSATION**

**CNN** New details about Trump-McCarthy shouting match show Trump refused to call off the rioters

McCarthy insisted that the rioters were Trump's supporters and begged Trump to call them off.

Trump's comment set off what Republican lawmakers familiar with the call described as a shouting match between the two men. A furious McCarthy told the then-President the rioters were breaking into his office through the windows, and asked Trump, "Who the f--k do you think you are talking to?" according to a Republican lawmaker familiar with the call.

Source: CNN, et al. "New details about Trump-McCarthy shouting match show Trump refused to call off the rioters," CNN, January 18, 2021

**SLIDE 335.** S. Doc. 117-3 Vol. I, Pg. 589; 167 Cong. Rec. S724

**THE PROVOCATION**

- 1** The Big Lie: The Election Was Stolen
- 2** Stop The Steal
- 3** Fight Like Hell To Stop The Steal

[From the CONGRESSIONAL RECORD, February 12, 2021]

STATEMENT OF SENATOR TED CRUZ

Mr. CRUZ. Mr. President, I ask unanimous consent that the following op-ed be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Fox News, Feb. 9, 2021]

SEN. TED CRUZ: SHOULD THE SENATE EXERCISE IMPEACHMENT TRIAL? WHY THE ANSWER MATTERS

(By Ted Cruz)

The constitutional question of whether a former president can be impeached or tried after he has left office is a close legal question. On balance, I believe that the better constitutional argument is that a former president can be impeached and tried—that is, that the Senate has jurisdiction to hold a trial.

However, nothing in the text of the Constitution requires the Senate to choose to exercise jurisdiction. In these particular circumstances, I believe the Senate should decline to exercise jurisdiction—and so I voted to dismiss this impeachment on jurisdictional grounds.

Article I, Section 2 of the Constitution gives the House “the sole Power of impeachment,” and Section 3 gives the Senate “the sole Power to try all impeachments.” At the time the Constitution was adopted, there was meaningful debate over whether impeachment encompassed so-called “late impeachments,” i.e. after the person had left office.

The British common law, which informed the understanding of the Founders, suggests that the better answer is yes.

In the 18th century, there were two English impeachments of note: Lord Chancellor Macclesfield in 1725 and India’s Governor-General Warren Hastings, which extended from 1787 to 1795. Both were late impeachments (after they had left office). Shortly after the Founding, a third British impeachment occurred: Lord Melville in 1806. His impeachment also occurred after he left office.

The American experience is similar. In 1797, the House impeached Sen. William Blount, and in 1876 the House impeached Secretary of War William Belknap. Both had left office by the time articles of impeachment were delivered to the Senate.

With Blount, the Senate voted that it lacked jurisdiction (although principally because he had been a senator and not a member of the executive), and with Belknap, the Senate voted that it had jurisdiction but declined to convict.

To be sure, there is textual ambiguity on the question of whether impeachments of a former president are constitutional.

One can look to other provisions of the Constitution—such as article II, Section 4’s reference to “the President” (not “a President”), and that same section’s language that says an impeached individual who is convicted “shall be removed from office”—and conclude in good faith that late impeachments are not permissible.

However, given the historical underpinnings and the Constitution’s broad textual commitment (“sole power”) of the impeachment power to the House and Senate, I believe the best reading of the Constitution is that the Senate retains jurisdiction. Imagine, for example, that evidence were uncovered that a former president had sold nuclear secrets to the Chinese government. In that instance, where the president had hypothetically committed both treason and bribery (explicit grounds for impeachment in the Constitution), there is little question that both the House and Senate would have exercise jurisdiction to impeach and try those crimes.

Importantly, there are two types of jurisdiction: mandatory and discretionary. With mandatory jurisdiction, the tribunal must hear the case; with discretionary jurisdiction, the tribunal can decide whether to exercise its legal authority to hear the

case. For example, the vast majority of the Supreme Court's caseload arises on discretionary jurisdiction—it has the authority to hear most cases, but it doesn't have to do so.

And nothing in the Constitution makes the Senate's impeachment jurisdiction mandatory. "Sole power" means "sole power"—the Senate can decide whether to hear the case.

The present impeachment is an exercise of partisan retribution, not a legitimate exercise of constitutional authority.

The House impeached President Trump in a mere seven days. It conducted no hearings. It examined no evidence. It heard not a single witness.

For four years, congressional Democrats have directed hatred and contempt at Donald J. Trump, and even greater fury at the voters who elected him.

On the merits, President Trump's conduct does not come close to meeting the legal standard for incitement—the only charge brought against him.

His rhetoric was at times over-heated, and I wish it were not, but he did not urge anyone to commit acts of violence. And if generic exhortations to "fight" or "win" or "take back our country" are now indictable, well, be prepared to arrest every candidate who's ever run for office or given a stump speech.

House Democrats argue that these circumstances are different. The situation was politically charged. The protesters were angry. And what started as a peaceful protest on the Ellipse ended up with some of the protestors engaging in a violent terrorist assault on the Capitol that tragically took the life of a police officer.

If that's the new standard—and if strong rhetoric constitutes "High Crimes and Misdemeanors"—then Congress better prepare to remove House Speaker Nancy Pelosi, D-Calif., Rep. Maxine Waters, D-Calif., Sen. Chuck Schumer, D-N.Y. and former Sen. Kamala Harris, D-Calif., next.

Repeatedly over the past four years, multiple Democrats have engaged in incendiary rhetoric and encouraged civil unrest, including Speaker Nancy Pelosi who expressly compared law enforcement to Nazis, Rep. Waters, who emphatically encouraged a campaign of intimidation and harassment of political opponents, Sen. Schumer, who made threats—by name—to "release the whirlwind" against two sitting justices of the Supreme Court, and then-Sen. Harris, who actively campaigned to provide financial support, in the form of bail, for rioters last summer even after hundreds of law enforcement officers were injured and many people, including retired St. Louis police captain David Dorn, were brutally murdered.

There is no coherent rationale that renders President Trump's remarks "incitement," and somehow exonerates the angry rhetoric of countless Democrats. If Trump's speech at the Ellipse was incitement, so too was Schumer's threat on the steps of the Supreme Court.

The honest answer is both may have been irresponsible, but neither meets the legal standard for incitement.

Accordingly, I voted against the Senate taking jurisdiction in this trial. In different circumstances, the Senate could choose to exercise its constitutional authority to try a former office-holder. But here, when the House has impeached without evidence or Due Process, and when it is petty and vindictive and it fails to meet the legal standard, then the Senate should have declined to exercise jurisdiction.

President Trump is no longer in office, and nothing is served—other than partisan vengeance—by conducting yet another impeachment trial.

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[From the CONGRESSIONAL RECORD, February 13, 2021]

STATEMENT OF SENATOR CHARLES E. SCHUMER

Mr. SCHUMER. Mr. President, the case of Donald Trump's second impeachment trial was open and shut.

President Trump told a lie—a big lie—that the election was stolen and that he was the rightful winner. He laid the groundwork for this big lie in the months before the election. He told the big lie on election night, and he repeated the big lie more than 100 times in the weeks afterward.

He summoned his supporters to Washington, assembled them on the Ellipse, whipped them into a frenzy, and directed them at the Capitol. Then he watched as the violence unfolded and the Capitol

was breached and his own Vice President fled for his life, and President Trump did nothing.

None of these facts were up for debate. We saw it. We heard it. We lived it. This was the first Presidential impeachment trial in history in which all Senators were not only judges and jurors but witnesses to the constitutional crime that was committed. The former President inspired, directed, and propelled a mob to violently prevent the peaceful transfer of power, subvert the will of the people, and illegally keep that President in power. There is nothing—nothing—more un-American than that. There is nothing—nothing—more antithetical to our democracy. There is nothing—nothing—more insulting to the generations of American patriots who gave their lives to defend our form of government.

This was the most egregious violation of the Presidential oath of office and a textbook example, a classic example of an impeachable offense, worthy of the Constitution's most severe remedy.

In response to the incontrovertible fact of Donald Trump's guilt, the Senate was subject to a feeble and sometimes incomprehensible defense of the former President. Unable to dispute the case on the merits, the former President's counsel treated us to partisan vitriol, false equivalence, and outright falsehoods.

We heard the roundly debunked jurisdictional argument that the Senate cannot try a former official, a position that would mean that any President could simply resign to avoid accountability for an impeachable offense, a position which, in effect, would render the Senate powerless to ever enforce the disqualification clause in the Constitution. Essentially, the President's counsel told the Senate that the Constitution was unconstitutional. Thankfully, the Senate took a firm stance, set a firm precedent with a bipartisan vote in favor of our power to try former officials for acts they committed while in office.

We heard the preposterous claim that the former President's incitement to violence was protected by the First Amendment. The First Amendment right to free speech protects Americans from jail, not Presidents from impeachment. If the President had said during World War II, "Germany should attack the United States on Long Island; we have left it undefended," I suspect Congress would have considered that an impeachable offense.

Finally, defense counsel said that President Trump was not directly responsible for the violence at the Capitol:

His words were merely a metaphor; his directions were merely suggestions; and the violent mob was just a spontaneous demonstration.

Yet wind the clock back, and ask yourself, if at any point Donald Trump did not do the things he did, would the attack on the Capitol have happened? There is only one answer to this question: Of course not. If President Trump hadn't told his supporters to march to the Capitol, if he hadn't implored them to come to Washington on January 6 in the first place, if he hadn't repeatedly lied to them that the election was stolen and their country was being taken from them, the attack would not have happened, could not have happened. January 6 would not have happened but for the actions of Donald Trump.

Here is what the Republican leader of the Senate said: The mob that perpetrated the "failed insurrection" on January 6 "was pro-



voked by President Trump.” Do you want another word for “provoke”? How about “incite”? Yet still—still—the vast majority of the Senate Republican caucus, including the Republican leader, voted to acquit former President Trump, signing their names in the columns of history alongside his name forever.

January 6 will live as a day of infamy in the history of the United States of America. The failure to convict Donald Trump will live as a vote of infamy in the history of the U.S. Senate.

Five years ago, Republican Senators lamented what might become of their party if Donald Trump became their Presidential nominee and standard-bearer. Just look at what has happened. Look at what Republicans have been forced to defend. Look at what Republicans have chosen to forgive. The former President tried to overturn the results of a legitimate election and provoked an assault on our own government, and well over half the Senate Republican conference decided to condone it—the most despicable act that any President has ever committed, and the majority of Republicans cannot summon the courage or the morality to condemn it.

This trial wasn’t about choosing country over party, even not that; this was about choosing country over Donald Trump, and 43 Republican Members chose Trump. They chose Trump. It should be a weight on their conscience today, and it shall be a weight on their conscience in the future.

As sad as that fact is, as condemnable as the decision was, it is still true that the final vote on Donald Trump’s conviction was the largest and most bipartisan vote of any Presidential impeachment trial in American history.

I salute those Republican patriots who did the right thing. It wasn’t easy. We know that. Let their votes be a message to the American people because, my fellow Americans, if this Nation is going to long endure, we as a people cannot sanction the former President’s conduct because, if lying about the results of an election is acceptable, if instigating a mob against the government is considered permissible, if encouraging political violence becomes the norm, it will be open season—open season—on our democracy, and everything will be up for grabs by whoever has the biggest clubs, the sharpest spears, the most powerful guns. By not recognizing the heinous crime that Donald Trump committed against the Constitution, Republican Senators have not only risked but potentially invited the same danger that was just visited upon us.

So let me say this: Despite the results of the vote on Donald Trump’s conviction in the Court of Impeachment, he deserves to be convicted, and I believe he will be convicted in the court of public opinion. He deserves to be permanently discredited, and I believe he has been discredited in the eyes of the American people and in the judgment of history.

Even though Republican Senators prevented the Senate from disqualifying Donald Trump for any office of honor, trust, or profit under these United States, there is no question Donald Trump has disqualified himself. I hope, I pray, and I believe that the American people will make sure of that. If Donald Trump ever stands for public office again and after everything we have seen this week, I hope, I pray, and I believe that he will meet the unambiguous rejection by the American people.

Six hours after the attack on January 6, after the carnage and mayhem was shown on every television screen in America, President Trump told his supporters to “Remember this day forever.” I ask the American people to heed his words. Remember that day forever but not for the reasons the former President intended. Remember the panic in the voices over the radio dispatch, the rhythmic pounding of fists and flags at the Chamber doors. Remember the crack of a solitary gunshot. Remember the hateful and racist Confederate flag flying through the halls of our Union. Remember the screams of the bloody officer crushed between the onrushing mob and a doorway to the Capitol, his body trapped in the breach. Remember three Capitol Police officers who lost their lives. Remember that those rioters actually succeeded in delaying Congress from certifying the election. Remember how close our democracy came to ruin.

My fellow Americans, remember that day, January 6, forever, the final, terrible legacy of the 45th President of the United States and undoubtedly our worst. Let it live on in infamy, a stain on Donald John Trump that can never, never be washed away.

On Monday, we will recognize Presidents Day. Part of the commemoration in the Senate will be the annual reading of Washington’s Farewell Address. Aside from winning the Revolutionary War, I consider it his greatest contribution to American civil life, and it had nothing to do with the words he spoke but the example it set.

Washington’s Farewell Address established for all time that no one had the right to the Office of the Presidency, that it belonged to the people. What an amazing legacy. What an amazing gift to the future generations, the knowledge that this country will always be greater than any one person, even our most renowned. That is why Members of both parties take turns reading Washington’s address once a year in full into the RECORD, to pledge common attachment to the selflessness at the core of our democratic system.

This trial was about the final acts of a President who represents the very antithesis of our first President and sought to place one man before the entire country: himself.

Let the record show—let the record show before God, history, and the solemn oath we swear to the Constitution that there was only one correct verdict in this trial: guilty. And I pray that while justice was not done in this trial, it will be carried forward by the American people, who, above any of us in this Chamber, determine the destiny of our great Nation.

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[From the CONGRESSIONAL RECORD, February 13, 2021]

STATEMENT OF SENATOR MITCH MCCONNELL

Mr. MCCONNELL. Mr. President, January 6 was a disgrace. American citizens attacked their own government. They used terrorism to try to stop a specific piece of domestic business they did not like. Fellow Americans beat and bloodied our own police. They stormed the Senate floor. They tried to hunt down the Speaker of the House. They built a gallows and chanted about murdering the Vice President. They did this because they had been fed wild false-

hoods by the most powerful man on Earth because he was angry he lost an election.

Former President Trump's actions preceding the riot were a disgraceful—disgraceful—dereliction of duty.

The House accused the former President of “incitement.” That is a specific term from the criminal law.

Let me just put that aside for a moment and reiterate something I said weeks ago. There is no question—none—that President Trump is practically and morally responsible for provoking the events of the day. No question about it. The people who stormed this building believed they were acting on the wishes and instructions of their President, and having that belief was a foreseeable consequence of the growing crescendo of false statements, conspiracy theories, and reckless hyperbole which the defeated President kept shouting into the largest megaphone on planet Earth.

The issue is not only the President's intemperate language on January 6. It is not just his endorsement of remarks in which an associate urged “trial by combat.” It was also the entire manufactured atmosphere of looming catastrophe; the increasingly wild myths—myths—about a reverse landslide election that was somehow being stolen in some secret coup by our now-President.

Now, I defended the President's right to bring any complaints to our legal system. The legal system spoke. The electoral college spoke. As I stood up and said clearly at that time, the election was settled. It was over. But that just really opened a new chapter of even wilder—wilder—and more unfounded claims.

The leader of the free world cannot spend weeks thundering that shadowy forces are stealing our country and then feign surprise when people believe him and do reckless things.

Now, sadly, many politicians sometimes make overheated comments or use metaphors—we saw that—that unhinged listeners might take literally, but that was different. That is different from what we saw. This was an intensifying crescendo of conspiracy theories, orchestrated by an outgoing President who seemed determined to either overturn the voters' decision or else torch our institutions on the way out.

The unconscionable behavior did not end when the violence actually began. Whatever our ex-President claims he thought might happen that day, whatever reaction he says he meant to produce, by that afternoon, we know he was watching the same live television as the rest of us. A mob was assaulting the Capitol in his name. These criminals were carrying his banners, hanging his flags, and screaming their loyalty to him.

It was obvious that only President Trump could end this. He was the only one who could. Former aides publicly begged him to do so. Loyal allies frantically called the administration. The President did not act swiftly. He did not do his job. He didn't take steps so Federal law could be faithfully executed and order restored. No. Instead, according to public reports, he watched television happily—happily—as the chaos unfolded. He kept pressing his scheme to overturn the election.

Now, even after it was clear to any reasonable observer that Vice President Pence was in serious danger, even as the mob carrying Trump banners was beating cops and breaching perimeters, the

President sent a further tweet attacking his own Vice President. Now, predictably and foreseeably under the circumstances, members of the mob seemed to interpret this as a further inspiration to lawlessness and violence, not surprisingly.

Later, even when the President did halfheartedly begin calling for peace, he didn't call right away for the riot to end. He did not tell the mob to depart until even later. And even then, with police officers bleeding and broken glass covering Capitol floors, he kept repeating election lies and praising the criminals.

In recent weeks, our ex-President's associates have tried to use the 74 million Americans who voted to reelect him as a kind of human shield against criticism—using the 74 million who voted for him as kind of a human shield against criticism. Anyone who decries his awful behavior is accused of insulting millions of voters. That is an absurd deflection. Seventy-four million Americans did not invade the Capitol. Hundreds of rioters did. Seventy-four million Americans did not engineer the campaign of disinformation and rage that provoked it. One person did it—just one.

Now, I have made my view of this episode very plain. But our system of government gave the Senate a specific task. The Constitution gives us a particular role. This body is not invited to act as the Nation's overarching moral tribunal. We are not free to work backward from whether the accused party might personally deserve some kind of punishment.

Justice Joseph Story was our Nation's first great constitutional scholar. As he explained nearly 200 years ago, the process of impeachment and conviction is a narrow tool—a narrow tool—for a narrow purpose. Story explained this limited tool exists to “secure the state against gross official misdemeanors”; that is, to protect the country from government officers.

If President Trump were still in office, I would have carefully considered whether the House managers proved their specific charge. By the strict criminal standard, the President's speech probably was not incitement. However—however—in the context of impeachment, the Senate might have decided this was acceptable shorthand for the reckless actions that preceded the riot. But in this case, the question is moot because former President Trump is constitutionally not eligible for conviction.

Now, this is a close question, no doubt. Donald Trump was the President when the House voted, though not when the House chose to deliver the papers. Brilliant scholars argue both sides of this jurisdictional question. The text is legitimately ambiguous. I respect my colleagues who reached either conclusion.

But after intense reflection, I believe the best constitutional reading shows that article II, section 4 exhausts the set of persons who can legitimately be impeached, tried, or convicted. It is the President. It is the Vice President and civil officers. We have no power to convict and disqualify a former office holder who is now a private citizen.

Here is article II, section 4: “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

Now, everyone basically agrees that the second half of that sentence exhausts the legitimate grounds for conviction. The debates around the Constitution's framing make that abundantly clear. Congress cannot convict for reasons besides those. It therefore follows that the list of persons in that same sentence is also exhaustive. There is no reason why one list—one list—would be exhaustive but the other would not.

Article II, section 4 must limit both why impeachment and conviction can occur and to whom—and to whom. If this provision does not limit impeachment and conviction powers, then it has no limits at all. The House's "sole power of Impeachment" and the Senate's "sole Power to try all Impeachments" would create an unlimited circular logic, empowering Congress to ban any private citizen from Federal office.

Now, that is an incredible claim. But it is the argument the House managers seemed to be making. One manager said the House and Senate have "absolute, unqualified . . . jurisdictional power." Well, that was very honest, because there is no limiting principle in the constitutional text that would empower the Senate to convict former officers that would not also let them convict and disqualify any private citizen—an absurd end result to which no one subscribes.

Article II, section 4 must have force. It tells us the President, the Vice President, and civil officers may be impeached and convicted. Donald Trump is no longer the President.

Likewise, the provision states that officers subject to impeachment and conviction "shall be removed from Office if convicted"—"shall be removed from Office if convicted."

As Justice Story explained, "the Senate, [upon] conviction, [is] bound in all cases, to enter a judgment of removal from office." Removal is mandatory upon conviction. Clearly, he explained, that mandatory sentence cannot be applied to someone who has left office. The entire process revolves around removal. If removal becomes impossible, conviction becomes insensible.

In one light, it certainly does seem counterintuitive that an officeholder can elude Senate conviction by resignation or expiration of term—an argument we heard made by the managers. But this underscores that impeachment was never meant to be the final forum for American justice—never meant to be the final forum for American justice. Impeachment, conviction, and removal are a specific intragovernmental safety valve. It is not the criminal justice system, where individual accountability is the paramount goal.

Indeed, Justice Story specifically reminded that while former officials were not eligible for impeachment or conviction, they were—and this is extremely important—"still liable to be tried and punished in the ordinary tribunals of justice."

Put another way, in the language of today, President Trump is still liable for everything he did while he was in office, as an ordinary citizen—unless the statute of limitations is run, still liable for everything he did while he was in office. He didn't get away with anything yet—yet. We have a criminal justice system in this country. We have civil litigation, and former Presidents are not immune from being accountable by either one.

I believe the Senate was right not to grab power the Constitution doesn't give us, and the Senate was right not to entertain some light-speed sham process to try to outrun the loss of jurisdiction.

It took both sides more than a week just to produce their pretrial briefs. Speaker PELOSI's own scheduling decisions conceded what President Biden publicly confirmed: A Senate verdict before Inauguration Day was never possible.

Now, Mr. President, this has been a dispiriting time, but the Senate has done our duty. The Framers' firewall held up again. On January 6, we returned to our post and certified the election. We were uncowed. We were not intimidated. We finished the job. And, since then, we resisted the clamor to define our own constitutional guardrails in hot pursuit of a particular outcome. We refused to continue a cycle of recklessness by straining our own constitutional boundaries in response.

The Senate's decision today does not condone anything that happened on or before that terrible day. It simply shows that Senators did what the former President failed to do: We put our constitutional duty first.

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[From the CONGRESSIONAL RECORD, February 13, 2021]

STATEMENT OF SENATOR BENJAMIN L. CARDIN

Mr. CARDIN. Mr. President, I take this time to explain why I voted to convict the former President of the United States, Donald Trump, of the Article of Impeachment presented by the House of Representatives in regards to the incitement of insurrection.

Throughout his Presidency, Donald J. Trump has violated his oath of office to preserve, protect, and defend the Constitution of the United States. There are many examples that I can give of how he has violated his oath of office. I could also cite the basis of the first Articles of Impeachment that were tried last year as violating his oath of office. But, by far, the most egregious violation of his oath of office took place in his incitement of insurrection that occurred with the attack on this Capitol on January 6.

But it started well before January 6. The seeds were planted a long time ago and even before the November elections, when President Trump pointed out, when the polls were showing that he might lose in the election, that he refused to acknowledge that he would accept the election results if he lost. He didn't say that once before the November elections, he said it on several occasions. He talked about a rigged election. He talked about a fraudulent election. He talked about the election being "taken away from us"—the victory—with no evidence of voter fraud.

One of the key provisions of our Constitution, of our democracy, is the peaceful transition of power. Donald Trump called that into question prior to the November 3 elections.

Then came the November 3 elections, and, shortly thereafter, Joe Biden was declared to be the winner. Why? Because he had the most votes—most popular votes—over 7 million. But he was declared the winner because of the electoral votes, 306 to 232. By the way, that is the same electoral margin that Donald Trump won 4 years earlier and which Donald Trump called a "landslide."

But then came the legal challenges by President Trump. He didn't accept the electoral vote or the declared elections. And he has his right to contest the elections in the court by asking for recounts or asking for challenges, but in every one of those cases, he could not establish widespread fraud that would have changed the results in any one of the States, let alone enough electoral vote changes to change the outcome of the election.

But did he stop after he was denied relief in all of those legal challenges? The answer is no. He further contested by trying to inappropriately interfere with State election officials and State public officials, urging them to take action to change the certification results.

Now, we have many examples that during this period of time he was talking about a fraudulent election, a stolen election, all the different things about raising questions as to the legitimacy of the voices of people of this Nation. We have so many examples of his interference, but we actually have the tape of his conversation with the Georgia secretary of state that we all heard and heard how the President tried to intimidate and threaten the secretary of state of Georgia in order to change the certified election results from the votes of the people of Georgia—clear examples of how President Trump violated his oath of office to protect and defend the Constitution of the United States.

But that wasn't the end of it. He went to his Department of Justice believing the Department of Justice is his Department of Justice, not the Department of Justice of the United States of America. Now, let's remember that the Department of Justice had found no widespread corruption. In fact, they had determined this was one of the freest elections and one of the least problem elections that we have had. It didn't stop President Trump from trying to intimidate and order his Department of Justice to conduct an additional investigation to find fraud to overturn the will of the people—once again, violating his oath to protect and defend the Constitution of the United States.

He continued to do this, contrary to his constitutional obligations. "Corrupt election," "stop the steal," "rigged elections," "tremendous fraud"—all words that he used after the November 3 election. He knew what he was saying was a lie. He knew there was no widespread fraud, but he continued to use the Office of the Presidency and his voice to promote the big lie, and he knew his followers would believe it. He knew he could convince his loyal followers to believe that this was a rigged election—a stolen election—again, compromising our democracy and the will of the people to determine who our leaders are. And he knew his followers would be motivated to action because he knew he could motivate his followers.

He put himself before the Nation and before his responsibilities as President of the United States. He put his own self-interest above his responsibilities under the Constitution of the United States and to the people of this Nation.

And then he summoned his loyal following to Washington on January 6. He knew they would come. He knew dangerous people were in the group. He knew the Proud Boys were there, to which



he had directly said: “Stand back and stand by.” He knew that they were ready for violent action.

And then he incited the mob to action on January 6. We know the words that he used. We saw the videos as part of the record of the impeachment trial. “We will never surrender,” “we will never concede,” “we will stop the steal,” “stolen election”—all words that he had been using during the entire 2020 election cycle, particularly when he thought he was going to lose.

But the most damning part of the President’s violation of his oath of office—the most serious part—is what he did and did not do after seeing the violence erupt in the United States Capitol. After the Capitol was penetrated, after we saw the violence being committed, where we knew that the Members of Congress were in danger, the Vice President of the United States was in danger, the people that work here were in danger, all the people that were in the Capitol legitimately were in danger—we all saw that—and the President of the United States knew that, and he did nothing to stop the violence. He could have called off his loyalists and told them to get out of the Capitol. He didn’t do that. He could have sent in the National Guard in order to protect us. He didn’t do that. And he never condemned the participants in this mob in penetrating the Capitol for what they did.

I am going to sort of summarize my feeling about that by agreeing with Representative LIZ CHENEY, the House Republican caucus chair, who said it on the floor of the House. Let me just quote her statement:

The President of the United States summoned this mob, assembled this mob, and lit the flame of this attack. Everything that followed was his doing. None of this would have happened without the President. The President could have immediately and forcefully intervened to stop the violence. He did not. There has never been a greater betrayal by a President of the United States of his office and his oath to the Constitution.

I agree with that. President Trump violated his oath of office to protect and defend the Constitution of the United States. He violated that.

But let’s take a look at what he did do after knowing the violence that occurred—his tweet of 2:24 p.m. Now, this is after the Vice President had been removed from presiding in the Chamber, after he knew the violence that was taking place in the Capitol of the United States. He was aware of all that. He knew that we had shut down the operations of the House and the Senate, that there was violence taking place within the Capitol, and that his Vice President was the target of that attack. And what he tweeted at 2:24 p.m.—I am quoting the President: “Mike Pence didn’t have the courage to do what should have been done to protect our country.” He inflamed the group even more to violence after he knew that it was a violent circumstance.

He had known violence had taken place, and we heard put into the record of the impeachment trial today Congresswoman Herrera Beutler’s report of Leader MCCARTHY’s conversation, which, again, is during this period of time. Here we are. The Republican leader of the House of Representatives gets the President on the phone. He says: Mr. President, we are being attacked. My office is being broken into. We need help. Send the Guard. Take care of us.

And then President Trump said something like: Well, it is not my supporters. It is some leftwing group.

And Leader MCCARTHY said: No, Mr. President, these are your supporters who are doing this.

And what did the leader say? What did the President say? I guess, Kevin, these people are more upset about the election than you are.

Here we have the Members of Congress in harm's way, and the President is talking about the support for those who are causing the violence and putting his own interest above the safety of the people whom he is sworn to protect as our Commander in Chief.

And then, at the end of the day, about 6 o'clock, he sends out a tweet that really sums up his feelings about what these people were doing. Now, these are people who came into the Capitol. They killed people. They hurt people. They stole property. They damaged property. They invaded the Capitol of the United States. They hurt law enforcement officers. They hurt all of us. They hurt our democracy. So how does the President sum up the day? His tweet:

These are the things that happen when a sacred landslide victory is so unceremoniously and viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!

He was repeating the big lie and saying the day was a day of celebration when it was one of the bleakest days, dark days in the history of our Nation. That is what President Trump did, rather than bringing in the National Guard, rather than telling his people to go home, rather than being concerned about the safety of the Vice President and the Members of Congress as the President of the United States should have been doing.

He violated his oath of office over and over and over again—a pattern of practice that we have seen for so long. It clearly establishes that he incited an insurrection against our country—that the facts included as a basis for the Article of Impeachment brought to us by the House of Representatives have been proven.

The purpose of impeachment is not just the accountability for the President but also to protect our Constitution and to make sure this conduct never happens again. No one is above the law, including the President of the United States. Everyone who was responsible for the insurrection that occurred on January 6 should be held accountable—from those who broke into the Capitol and caused the harm and damage, to the President of the United States who incited the violence.

That is why I voted to convict President Trump of the Article of Impeachment for inciting an insurrection, and that is why I would have voted for disqualifying him from ever holding an office of trust again.

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[From the CONGRESSIONAL RECORD, February 13, 2021]

STATEMENT OF SENATOR SUSAN M. COLLINS

Ms. COLLINS. Mr. President, the hallmark of our American democracy is the peaceful transfer of power after the voters choose their leaders. In America, we accept election results even if our

candidate does not prevail. If a candidate believes that there is fraud, the courts can hear and decide those issues. Otherwise, the authority to govern is vested in the duly elected officials.

On January 6, this Congress gathered in the Capitol to count the votes of the electoral college, pursuant to the process set forth in the 12th Amendment to the Constitution. At the same time, a mob stormed the Capitol, determined to stop Congress from carrying out our constitutional duty.

That attack was not a spontaneous outbreak of violence. Rather, it was the culmination of a steady stream of provocations by President Trump that were aimed at overturning the results of the Presidential election.

The President's unprecedented efforts to discredit the election results did not begin on January 6. Rather, he planted the seeds of doubt many weeks before votes were cast on November 3. He repeatedly told his supporters that only a rigged election could cause him to lose.

Thus began President Trump's crusade to undermine public confidence in the Presidential election unless he won.

Early in the morning of November 4, as the ballots continued to be counted, President Trump claimed victory and asserted that Democrats were trying to steal the election.

On November 8, the day after several media outlets had declared Joe Biden the apparent winner based on State-by-State results, President Trump tweeted:

This was a stolen election.

With that, his postelection campaign to change the outcome began.

Over the ensuing days and months, the President distorted the results of the election, continuing to claim that he had won, while court after court threw out his lawsuits and States continued to certify their results. President Trump's falsehoods convinced a large number of Americans that he had won and that they were being cheated.

The President also embarked on an incredible effort to pressure State election officials to change the results in their States. The most egregious example occurred on January 2. In an extraordinary phone call, President Trump could be heard alternating between lobbying, cajoling, intimidating, and threatening the election officials in Georgia. "I just want to find 11,708 votes," he stated, seeking the exact number of votes needed to change the outcome in that State. Despite the President's pleas and threats, the Georgia officials refused to yield to the Presidential pressure, as did State officials in other States.

In December, President Trump's postelection campaign became focused on January 6, the day that Congress was scheduled to count the electoral college votes. Although this counting is a ceremonial and administrative act, it is nevertheless the constitutionally mandated final step in the electoral college and the electoral process, and it must occur before a new President can be inaugurated.

On December 19, President Trump tweeted to his supporters:

Big protest in D.C. on January 6th. Be there, will be wild!

In response, some of his campaign supporters changed the date for protest rallies they originally had scheduled to occur after the inauguration to happen instead on January 6.

Having failed to persuade the courts and State election officials, President Trump next began to pressure Vice President Pence to use his role under the 12th Amendment to overturn the election. The President met with Vice President Pence on January 5 and then increased the pressure by tweeting hours later:

If [the Vice President] comes through for us, we will win the Presidency.

That is what his tweet said.

Vice President Pence, however, refused to yield. He issued a public letter on January 6 making clear that his oath to support and defend the Constitution would prevent him from unilaterally deciding which electoral vote should be counted and which should not.

During his speech at the Ellipse on January 6, President Trump kept up that drumbeat of pressure on Vice President Pence. In front of a large, agitated crowd, he urged the Vice President to “stand up for the good of our Constitution.” “I hope Mike has the courage to do what he has to do,” President Trump concluded. Rather than facilitating the peaceful transfer of power, President Trump was telling Vice President Pence to ignore the Constitution and to refuse to count the certified votes. He was also further agitating the crowd, directing them to march to the Capitol.

In this situation, context was everything. Tossing a lit match into a pile of dry leaves is very different from tossing it into a pool of water. And on January 6, the atmosphere among the crowd outside the White House was highly combustible, largely the result of an ill wind blowing from Washington for the past 2 months.

President Trump had stoked discontent with a steady barrage of false claims that the election had been stolen from him. The allegedly responsible officials were denigrated, scorned, and ridiculed by the President, with the predictable result that his supporters viewed any official they perceived to be an obstacle to President Trump’s reelection as an enemy of their cause. That set the stage for the storming of the Capitol for the first time in more than 200 years.

Nearly 30 minutes after the Capitol first came under attack, Members of Congress, law enforcement, and everyone else here in the Capitol waited in vain for the President to unequivocally condemn the violence and tell his misguided supporters to leave the Capitol. Rather than demand an end to the violence, President Trump expressed his frustration once again that the Vice President had not stopped the vote certification as he had urged.

Shortly after the Vice President was whisked away from this very Chamber to avoid the menacing mob chanting “Hang Mike Pence,” President Trump tweeted:

Mike Pence didn’t have the courage to do what should have been done.

Instead of preventing a dangerous situation, President Trump created one.

Rather than defend the constitutional transfer of power, he incited an insurrection with the purpose of preventing that transfer of power from occurring.

Whether by design or by virtue of a reckless disregard for the consequences of his action, President Trump, subordinating the interests of the country to his own selfish interest, bears significant responsibility for the invasion of the Capitol.

This impeachment trial is not about any single word uttered by President Trump on January 6, 2021; it is instead about President Trump's failure to obey the oath he swore on January 20, 2017. His actions to interfere with the peaceful transition of power, the hallmark of our Constitution and our American democracy, were an abuse of power and constitute grounds for conviction.

Two arguments have been made against conviction that deserve comment. The first is that this was a snap impeachment, that the House failed to hold hearings, conduct an investigation, and to interview witnesses, and that is true. Without a doubt, the House should have been more thorough. It should have compiled a more complete record. Nevertheless, the record is clear that the President, President Trump, abused his power, violated his oath to uphold the Constitution, and tried almost every means in his power to prevent the peaceful transfer of authority to the newly elected President.

Second is the contention that the First Amendment protects the President's right to make any sort of outrageous and false claims, no matter the consequences.

But the First Amendment was not designed and must never be construed by any court to bar the impeachment and conviction of an official who violates his oath of office by summoning and inciting a mob to threaten other officials in the discharge of their constitutional obligations.

My vote in this trial stems from my own oath and duty to defend the Constitution of the United States. The abuse of power and betrayal of his oath by President Trump meet the constitutional standard of high crimes and misdemeanors, and for those reasons, I voted to convict Donald J. Trump.

Thank you.

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[From the CONGRESSIONAL RECORD, February 13, 2021]

STATEMENT OF SENATOR DIANNE FEINSTEIN

Mrs. FEINSTEIN. Madam President, the Constitution reserves impeachment for cases of "treason, bribery, or other high crimes and misdemeanors." Congress must never take this action lightly and only in the most extreme circumstances.

On January 13, the House of Representatives voted 232–197 to impeach Donald Trump on a count of inciting the insurrection that took place on January 6.

I have taken care over the past week to fulfill my charge as an impartial juror in this trial. I have listened carefully to the presentations made by both sides. And I believe the House impeachment managers proved the case that Donald Trump bears responsibility for inciting the violence and the insurrection on January 6.

I therefore cast my vote to convict him of the impeachment charge. The argument has been made that Donald Trump is no longer President, thus he cannot be removed from office, as he has

already left. I understand the argument, but it fails on several counts.

First, failure to act would set the precedent that a President can get away with anything at the end of his term. Relying on criminal proceedings in place of impeachment is insufficient; Congress must have the power to impeach, regardless of when actions occur. Indeed, the House approved the Article of Impeachment when Donald Trump was still President.

Second, there is legitimate fear that, if allowed to run for office again, we could see an emboldened Trump wouldn't hesitate to repeat the actions of January 6. If convicted, a simple majority vote would bar him from running for office.

And third, a conviction would send a clear message to Trump's followers, particularly the ones who accept violence as a legitimate means of protest, that perpetrators of insurrection and those who enabled them will be held responsible for their action.

As impeachment manager DIANA DEGETTE said of the mob at the Capitol: "All of these people who have been arrested and charged, they're being accountable, held accountable for their actions. Their leader, the man who incited them, must be held accountable as well."

It is important to understand that Donald Trump's actions on January 6 weren't without precedent. The House impeachment managers made a compelling case that Donald Trump has a long history of urging and supporting violence among his supporters, knowing full well that they would take action.

This is a key matter for this impeachment trial: Did Donald Trump's words inspire violence? Were those carrying out the insurrection following his direction? The House managers gave several examples of Trump's past practice.

After Republican Congressman Greg Gianforte in 2018 pleaded guilty to assaulting a reporter who asked him a question, former President Trump praised him. "Any guy that can do a body slam—he's my guy."

After a 2017 rally of White supremacists and neo-Nazis turned violent in Charlottesville and killed a woman, former President Trump said there were "very fine people on both sides."

Last year, Trump sent a message for his followers to "liberate Michigan." Weeks later, messages threatening violence were directed against Governor Gretchen Whitmer. And later in the fall, a plot to kidnap Governor Whitmer emerged, led by Trump followers. President Trump made a call to action, and his followers responded.

And during the 2020 Presidential debates, when Donald Trump was asked if he would condemn White supremacists and other groups like the Proud Boys, a far-right group that endorses violence, he wouldn't answer, instead saying, "Proud Boys—stand back and stand by."

It is clear that Donald Trump's supporters, including those who participated in the insurrection on January 6, heeded his words and support of violence. The Proud Boys took Trump's words—"stand back and stand by"—and made it their official motto. Rioters at the Capitol told U.S. Capitol Police officers as they were threatening violence that they had been "invited" by President

Trump. While the insurrection was going on, Trump supporters were reading Trump's tweets over a megaphone. The pattern is clear: Donald Trump has no qualms about asking his followers to commit violence. In fact, he celebrates them when they do.

After the November 2020 elections, Donald Trump immediately set out to undermine the results. His lawyers and his supporters filed 60 lawsuits to object to the results, as was his right under the law. But when those cases were tossed out, then-President Trump sought to cheat. He urged the secretary of state for Georgia to "find" enough votes to declare him the victor. When officials rebuffed his efforts to reverse his electoral loss, he led efforts to bring thousands of people to Washington to, in his words, "Stop the Steal."

The day he chose was January 6, the day Congress was meeting to certify the election results. Trump directed his followers to go to the Capitol and to "fight like hell." As was documented extensively in this trial, Trump knew that this group was preparing for violence when he directed them to walk to the Capitol.

What we learned this week is that Donald Trump was also aware of the violence at the Capitol as a frenzied insurrection mob ransacked the Capitol and sought to physically harm Members of Congress and even kill the Vice President. After being told that Vice President had been removed from the Senate Chamber for his safety, Trump tweeted to his supporters that Pence lacked "courage" to reject the electoral college results. This happened precisely as Trump's supporters were building a gallows and chanting "Hang Mike Pence."

Indeed, new information revealed during the course of this trial indicates that President Trump knew the state of violence in the Capitol. One Senator has stated publicly that he told President Trump on the phone that Vice President Pence had been removed from the Senate Chamber by his Secret Service detail.

We have also heard on-the-record reports that in a phone call between President Trump and House Minority Leader KEVIN MCCARTHY while the leader's office was under attack, then-President Trump apparently continued to support those carrying out the violent insurrection. So despite direct pleas from Members of Congress and the former President's closest Republican confidants, Trump refused for hours to call off the mob or urge calm.

As House impeachment manager JAMIE RASKIN said during the presentation, "Donald Trump surrendered his role as commander-in-chief and became the inciter-in-chief of a dangerous insurrection."

Five people, including a U.S. Capitol Police Officer, lost their lives as a result of this insurrection guided by Donald Trump. And nearly 140 officers from the Capitol Police and Washington Metropolitan Police Department were injured, some severely.

The evidence presented this week shows that Donald Trump committed high crimes and misdemeanors and that he should be convicted.

I thank the House managers for their hard work in making a thoroughly compelling, convincing, and fair case, and I hope we can move past this terrible moment in our Nation's history.



[From the CONGRESSIONAL RECORD, February 22, 2021]

STATEMENT OF SENATOR MARIA CANTWELL

Ms. CANTWELL. Mr. President, every President swears an oath to preserve, protect, and defend the Constitution of the United States. Every President has a solemn duty to uphold the rule of law and to preserve our democratic system. No one is above the law, not even a President.

President Trump violated his oath. He promulgated lies about the election, used his office to try to interfere with election officials doing their job, and failed to protect our Capitol from a mob that clearly intended to cause physical harm to elected officials and to stop the lawful certification of election results.

For months, President Trump used his platform as President—at rallies, on Twitter, and in press interviews—to spread disinformation, making unsubstantiated and false claims about voting by mail, vote rigging, and fraud in counting ballots. President Trump pressured State and local officials across the country to reject election results without evidence. He called Georgia Secretary of State Brad Raffensperger to pressure him to find the votes he needed to win the State. Even after President Trump lost 61 election-related cases in State and Federal courts, he continued to insist the election was stolen from him. In the process, President Trump sowed doubt and provoked his supporters.

President Trump summoned his supporters to Washington, DC, on January 6. They included known domestic violent extremists, including the Proud Boys, the Oath Keepers, and other White supremacists and far-right militia groups. Federal law enforcement had warned about the threat of violence from armed members of these groups. Nevertheless, President Trump urged his supporters to march to the U.S. Capitol and to fight and told them they will “never take back our country with weakness.” He said he would march with them.

Instead of trying to stop them, President Trump continued to support actions by the insurrectionists even after they breached the Capitol Building, overwhelmed and unleashed violence against law enforcement, and put at risk the lives of the Vice President, Members of Congress, Capitol Police officers, and staff members. Four insurrectionists died. In all, 140 law enforcement personnel were injured, and one police officer, Capitol Police Officer Brian Sicknick, was killed. Two more police officers later died as a result of the insurrection.

Many of the insurrectionists said they were there at the direction of President Trump. And the President did not call on his followers to stand down or send reinforcements to help the overwhelmed law enforcement at the Capitol. Instead, we know from a statement from Washington Congresswoman JAIME HERRERA BEUTLER entered into the trial record that President Trump refused to help bring an end to the insurrection even after House Republican Leader KEVIN MCCARTHY urged him to act.

In this moment and in the weeks and months leading up to the insurrection, President Trump violated his duty to the Constitution and his oath of office. There must be accountability. Without accountability, we are setting a dangerous precedent—one that says

that the President is above the law and did not uphold his oath to ensure the peaceful transfer of power.

It is also important to recognize that the events that unfolded on January 6 did not occur in isolation. They were the culmination of years of President Trump stoking the flames of racial tension and division, as the House impeachment managers have concisely laid out.

Throughout President Trump's time in office, hate crimes rose to levels not seen in over a decade. The rise in domestic violent extremism has been publicly acknowledged by President Trump's own FBI Director, Christopher Wray, who identified it as the most severe threat to the homeland. Director Wray has testified that racially-motivated violent extremists make up the largest aspect of domestic violent extremist cases, often involving militia groups, such as the ones who were present during the January 6 insurrection.

In the Northwest, we have faced threats from racially-motivated extremists and armed anti-government militia groups for decades, including the siege of Ruby Ridge, ID, in 1992, the Aryan Nations compound near Hayden Lake, ID, and the attempted bombing of Spokane's Martin Luther King, Jr., memorial march in 2011. Groups that were among the insurrectionists on January 6, including the Three Percenters, the Proud Boys, and the Oath Keepers, all have a significant presence in my State. In the last 4 years, their activity has been on the rise. Following the insurrection at the U.S. Capitol, they threatened State capitols around our country, including in my State. An armed mob breached the gates outside of the Governor's mansion in Olympia, surrounding Governor Inslee's residence on the capitol complex while his family was inside. This wasn't the first time, however, that these armed extremist groups have showed up to demonstrations in my State.

As this Senate trial has clearly shown, President Trump has repeatedly inflamed these groups and others. He encouraged violence at his rallies, called White nationalists and neo-Nazis in Charlottesville "very fine people," refused to clearly condemn White supremacy during a Presidential debate, told the Proud Boys hate group to "stand back and stand by," and told the January 6 insurrectionists that he "loves them and they are very special" after they had already laid siege to our Capitol and committed heinous acts of violence. That encouragement has had consequences, as we saw in Charlottesville and on January 6.

President Trump's responsibility is clear. He violated his oath of office and tried to overturn the results of the election. Free and fair elections are the bedrock of democracy. Generations of Americans gave their lives for our freedom, for our right to vote, and for the peaceful transfer of power. I voted to hold President Trump accountable for committing a high crime against our governmental system and to safeguard the future of democracy in the United States of America.

[From the CONGRESSIONAL RECORD, February 22, 2021]

STATEMENT OF SENATOR TIM Kaine

Mr. Kaine. Mr. President, 1 year ago, I said upon the conclusion of President Trump's first impeachment trial, "Unchallenged evil spreads like a virus," and that acquittal would lead to worse behavior. The events of January 6—seven dead, the first siege of our Capitol in over 200 years, the disruption of the peaceful transfer of power—are the direct result of that first acquittal. I voted to convict because seven needlessly died and hundreds were injured by a former President's egregious lies. So many risked all to protect us. The least we can do is protect them by voting to condemn and thus prevent behavior that should never be repeated.

[From the CONGRESSIONAL RECORD, February 22, 2021]

STATEMENT OF SENATOR MARCO RUBIO

Mr. Rubio. Mr. President, just minutes after the attack of January 6 began, I said it was not only unpatriotic, it was un-American. I do not need to be convinced that what happened on that day was the disgraceful work of a treasonous criminal mob. But seeing images of that attack stirred up anger in me, anger that our Nation was embarrassed in the eyes of the world by our own citizens; anger that Capitol Police officers that my family and I know personally had to deal with these low-lives; anger that janitorial and food service staff I have gotten to know—many who came to America to get away from countries with political violence—had to clean up the mess left behind by these cretins.

But, if we have learned anything this week, it should be how dangerous it is to allow anger to influence actions.

The lead House manager argued that this trial isn't about Donald Trump, that it was about our country, and that those who refuse to vote to convict are condoning the actions of a violent mob and failing to defend the honor of our Capitol and the people who work here. This is a ridiculous and insulting argument.

Impeachment is not a way of sending a message or taking symbolic action. Impeachment exists for one principal reason: to remove from office an officeholder guilty of wrongdoing. And claiming that anyone who doesn't vote to convict someone no longer in office is the equivalent of supporting a criminal mob is nothing but hyperpartisan politicians masquerading as highminded prosecutors trying to smear their political opponents.

The Senate does not have the constitutional power to convict a former official, and even if we did, we should be very reluctant to use it. In the 244-year history of our Republic, we have never convicted and disqualified a former official in an impeachment trial. Doing so now would create a new precedent, and it would weaponize impeachment in a way we will come to regret.

The day will come when a future Congress, one with a new majority in the House filled with new Members elected on the promise of holding accountable leaders of the opposite party, will give in to these passions and impeach a former official. The Senate will then find itself conducting a trial of that former official, a trial justified

by the precedent we are asked to set here today, and a Senate tempted to convict by the tantalizing opportunity to disqualify that official from future public office.

My fear of creating dangerous precedents is not new. Two years ago, I was accused by some in my party of being a traitor because I opposed using an emergency declaration to fund a border wall that I supported. I warned then that a future Democratic President would do the same thing to fund a Green New Deal. And now, just 2 years later, leading Democrats are calling for that very thing.

The lead manager admitted today that, for the Democrats and their enablers working in the legacy media, the purpose of this trial was not to hold the former President accountable. The real purpose of this trial was to tar and feather not just the rioters, but anyone who supported the former President and any Senator who refuses to vote to convict.

I voted to acquit former President Trump because I will not allow my anger over the criminal attack of January 6 nor the political intimidation from the left to lead me into supporting a dangerous constitutional precedent.

The election is over. A new President is in the White House, and a new Congress has been sworn in. Let history and, if necessary, the courts judge the events of the past. We should be focused on the serious challenges of the present and preparing our country to confront the serious tests it will face in the future.

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[From the CONGRESSIONAL RECORD, February 22, 2021]

STATEMENT OF SENATOR MARGARET WOOD HASSAN

Ms. HASSAN. Mr. President, during this impeachment trial, our country has re-lived the chilling and un-American assault on the foundations of our democracy. New video footage reinforced both the brutality of the rioters and also the heroism of members of law enforcement who—just barely—prevented further loss of life. The personal threat of that day, however, is not nearly as troubling as the threat to our democracy.

After listening to the arguments from the House managers and former President Donald Trump's defense, I voted to convict the former President. As dangerous as Donald Trump's actions were over the course of the months, days, and hours leading up to the violent insurrection, my vote was less about holding Trump as an individual accountable than it was about protecting our country from similar threats in the future, at his hands or at the hands of others.

Impeachment is not designed to punish—it was included in our Constitution to protect the Republic from abuses of power and tyranny. I voted to protect the America that we know and love because January 6, 2021, will be our future if we tolerate what the impeachment trial showed was Trump's concerted campaign to prevent the peaceful transition of power.

Of all the things former President Trump did, it is actually what he did not do once he knew the Capitol was being attacked and his own Vice President, among others, was being threatened that was most troubling.

Should there be any doubt that Trump intended to disrupt the certification of votes and encourage the violence that desecrated the Capitol, his decision to allow it to continue for hours should dispel that uncertainty.

If he had not intended the violence when it began, his failure to exercise his power to secure the Capitol and protect those inside was itself a violation of his oath of office and merits conviction and disqualification from holding future office.

Before Trump's refusal to engage in the peaceful transfer of power, the public could gather outside the Capitol; families could play soccer on the weekends, and tourists could take photos of this temple of democracy. Before COVID, the public could even walk right in, after being properly screened. But throughout the impeachment trial, we came to work through fences and barbed wire. There was no open space for the public because we have lost the common understanding that the Capitol is place where we spar with words, not physical violence.

It is fitting that the trial concluded right before we mark the birthday of George Washington, who helped establish some of the bedrock principles of our democracy not simply through his service as our first President, but by voluntarily surrendering the office, peacefully.

Our union that Washington helped birth and that Lincoln managed to preserve is still fragile, and it cannot be taken for granted. We will need to continue the work of investigating what led to the grim events of January 6 as well as what happened on that day, and we will need to take steps to make clear that acts of tyranny will not be tolerated in our country.

We have considerable work ahead to bring our country together and strive for greater opportunity for all, both in the face of this pandemic and beyond. I am committed to continuing that work and showing the American people and the world that we are resilient, strong, and willing to renew our commitment to government of, for, and by the people.

Thank you.

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[From the CONGRESSIONAL RECORD, February 23, 2021]

STATEMENT OF SENATOR RICHARD J. DURBIN

Mr. DURBIN. Mr. President, "Remember this day forever." That is what Donald Trump said on January 6, in a tweet to his supporters after they had attacked the U.S. Capitol.

I certainly will never forget what happened that day. I will remember the Vice President being removed from the Chair and whisked off the floor of the Senate by the Secret Service. I will remember the law enforcement officers, holding automatic weapons, standing guard in the well of the Senate while the mob spread through the Capitol building.

The entire country and the world will remember the now infamous images of a murderous mob rushing the barricades, attacking police officers, breaking into this building, and rampaging through these hallowed halls.

We will remember the incredible acts of heroism by Officer Eugene Goodman and others, to protect and defend those who work in this building. And we will remember the lives lost, including Officer Brian Sicknick, and the 140 police officers who were injured in this attack.

On February 3, Officer Sicknick's ashes rested in honor in the Rotunda of this Capitol. He died defending this building and this democracy. I have thought about Officer Sicknick and his family often in the past few weeks.

During the week of February 8, Senators served as jurors in the second impeachment trial of Donald Trump. Former President Trump was impeached on January 13 by the House of Representatives in a bipartisan vote, 10 Republicans joining with Democrats to impeach.

The Senate had a constitutional obligation to conduct a trial on this Article of Impeachment. We also had an obligation to make clear for the record and for history what happened on January 6 and the days leading up to it.

What did the record show over the course of this trial?

First, it showed Donald Trump's big lie: his claim that the only way he could lose an election was if it were stolen. When he lost the 2020 election in a landslide to Joe Biden, Donald Trump refused to accept the will of the American people. He tried to challenge the election in the courts, losing over 60 times. He tried to bully State officials into overturning their States' election results.

And when that failed, he invited his followers to come to Washington, DC, on January 6, the day when Congress would assemble to certify the States' electoral votes. He invited them to come to DC to interrupt that process and, in his words, "stop the steal."

Donald Trump knew what his extremist followers were capable of. Over the summer, when armed extremists stormed and occupied State capitols, demanding an end to COVID-19 safety restrictions, he had cheered them on.

On January 6, he whipped his followers into a frenzy. "We have to fight like hell," he told the crowd he had invited and assembled. "If you don't fight like hell, you're not going to have a country anymore." Then he told his followers—angry, inflamed, many of them armed—to go to the Capitol where the Vice President and Congress were certifying the votes.

Donald Trump was not shocked what happened that day. He was excited. We now know that he ignored pleas from Members of Congress in the Capitol—members of his own party—who begged him to calm the mob and stop the attack.

To this day, Donald Trump has not showed one ounce of remorse or regret. He later described his speech on January 6 as "totally appropriate."

For 5 days, the House managers meticulously laid out an overwhelming case for conviction. The managers had the facts, the law, the Constitution, and a mountain of evidence on their side. The former President's defense team did not have much to work with. They only spent a couple of hours making their case and spent much of that time showing cartoonish videos on repeat. The House managers effectively rebutted all of the former President's defenses. The managers' case was clear, and it was compelling.

That is why I voted to convict Donald Trump for inciting an insurrection against our government.

I regret that more of my Republican colleagues did not join me in voting to convict and disqualify Donald Trump from holding future office. I wish the Senate had sent an unequivocal message that it is unacceptable for Presidents to incite violence in order to stop the peaceful transition of power. But that said, history will show that this was the most bipartisan impeachment vote against a President in American history.

And it should not be lost that a majority of Senators—including seven Senators from the President's own party—voted to convict him. Donald Trump is no longer President of the United States, but the poison he has injected into our national bloodstream remains, and it is still toxic.

As Americans reflect on the horrific, deadly events of January 6 and Donald Trump's role in inciting them, I hope we will remember that democracy and our Constitution do not defend themselves. They must be protected, preserved, and defended by "We the People."

On January 6, that greatest tradition of American democracy, the peaceful transition of power that had taken place in every Presidential transition since George Washington's, was broken. Our democracy, our Constitution, and this Capitol building were attacked on January 6, 2021. Brave Americans were wounded and killed defending them. And thanks to that bravery, our democracy endures.

We must learn our lessons from this. We will remember January 6, 2021, forever. And we must not repeat it.

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[From the CONGRESSIONAL RECORD, February 23, 2021]

STATEMENT OF SENATOR DEBBIE STABENOW

Ms. STABENOW. Mr. President, I rise today to speak about the terrible events of January 6, the impeachment vote, and the need to hold people accountable for their actions.

While the U.S. Senate did not achieve the two-thirds vote necessary to convict former President Donald Trump, this will go down in history as the largest bipartisan vote ever to hold a President accountable for high crimes and misdemeanors under our Constitution.

Former President Donald Trump spent months pushing a big lie—that the November election was stolen from him. He inspired, encouraged, and incited a deadly insurrection at the U.S. Capitol in order to stop the certification of the electoral college vote, and then he did nothing to stop the violence, which caused massive injury and loss of life.

I wish to convey my personal and deep gratitude to all of the Capitol Police officers who courageously put their lives on the line to protect all of us that day, and I join with my colleagues in grieving the loss of life and injuries that so many suffered as a result of this violent insurrection.

This wasn't just an attack on a building. It was an attack on all of the people who work there. It was an attack on our form of gov-



ernment. It was an attack on our Constitution. It was an attack on “We the People.”

This bipartisan vote sent an important message: In America, no President is above the law. And inciting violence against our government is illegal and dangerous.

Now, as a nation, we must move forward. We must do everything we can to bring down the temperature of our debates, find common ground on issues we care about, and reduce the divide in our families and communities. And we must continue to strive for accountability and justice. Our democracy demands no less.

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[From the CONGRESSIONAL RECORD, February 23, 2021]

STATEMENT OF SENATOR MARSHA BLACKBURN

Mrs. BLACKBURN. Mr. President, the first few weeks of the Biden administration produced an absurd number of Executive orders, soft talk on China policy, and the threat of open borders. These actions left the American people confused and diluted their faith in our institutions, but nothing made the American people feel more unsettled than the unprecedented second impeachment and trial of former President Donald J. Trump.

Impeachment is inherently political. The fallout is everything but. Last week, I was able to spend time talking to Tennesseans about what they saw and heard during the trial, and I was struck by how fiercely most of them spoke out against the very idea of it.

The House managers didn’t just fail to prove their case against the former President. They failed to convince the American people that the Members of the House of Representatives who supported impeachment acted in good faith when they drafted their single Article and transmitted it to the Senate for consideration.

Tennesseans saw no serious inquiry into the alleged connection between the former President’s words and the actions of the dangerous rioters who breached the Capitol on January 6, 2021. They remain unpersuaded by the arguments the House managers offered to prove the constitutionality of the trial itself. In fact, the only thing they remain firmly convinced of is that this second impeachment culminated in nothing but a partisan show trial designed to humiliate the former President and wipe the voices of more than 70 million Americans from the pages of history.

The Senate’s vote to acquit the former President of these spurious charges put an end to the House managers’ charade, but it will take more than an entry into the CONGRESSIONAL RECORD to help the country rise above the enmity that fueled it. It is our duty to lead by example and get to work on behalf of the millions of Americans living under this cloud of anxiety, fear, and mistrust. I encourage my colleagues to quiet their hearts in the coming weeks and commit to doing the work that will put us on the path to economic recovery, quality in-person schooling, and a strong national defense. Only then will we be justified in asking those we serve to once again put their faith in us.

I would be remiss if I did not associate myself with the comments of the Republican Leader honoring Officer Eugene Goodman for his

actions during the January 6, 2021, riot at the United States Capitol.

On that day, Officer Goodman found himself alone, facing off against a rushing tide of violence. Without blinking, he lured the mob away from the Senate Chamber, protecting us from what we now know was an all but inevitable tragedy.

I was honored to celebrate these acts of bravery and self-sacrifice by joining the Senate's unanimous vote in support of S. 35, to award Officer Goodman the Congressional Gold Medal. I thank him for his courage and his commitment to duty and for his willingness to continue to serve here in the Capitol.

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[From the CONGRESSIONAL RECORD, February 24, 2021]

STATEMENT OF SENATOR MITT ROMNEY

Mr. ROMNEY. Mr. President, once again, I have listened to the arguments of the respective counsel, studied briefs, and weighed evidence in an impeachment trial of President Donald Trump. This is not a responsibility I sought or expected. I certainly did not anticipate having to serve a second time as a Senator-juror in an impeachment trial.

An initial question shaping the context of this trial was whether or not the Senate has constitutional jurisdiction to try a President who is no longer in office. The Constitution gives the Senate the power to try all impeachments. In this case, where the House impeached the President while he was in office, it is particularly clear that the impeachment is constitutional and therefore that this trial is constitutional. The weight of legal opinion and historical precedent affirms this conclusion. Further, the Senate decided this question in the affirmative. I believe its decision was correct: The Senate must not surrender its power to hold accountable those who abuse their office or threaten our Republic, even in their final days in office.

In following the oath in an impeachment trial and in our deliberations on the final question, I believe it is up to every Senator to determine what to consider and what the Constitution and their conscience require of them. The conclusion I reached on the final verdict will not surprise anyone who read my reasoning in the first impeachment trial: I consider an attempt to corrupt an election to keep oneself in power one of the most reprehensible acts that can be taken by a sitting President. The second impeachment resulted from the President's continued effort to do just that.

His attempt to pressure Georgia's secretary of state to falsify the electoral results was itself a heinous act that merited impeachment. President Trump summoned his supporters to Washington on the very day of the electoral vote count, knowing that among the people he gathered were many who had committed violence in the past and who had violent intent. Despite the obvious and well-known threat of violence, he incited and directed thousands to descend upon the seat of Congress as it was undertaking the constitutionally prescribed process to certify his successor. And then he not only failed to defend the Vice President and the others at

the Capitol whom he saw were in mortal danger, he also incited further violence against the Vice President.

The President's conduct represented an unprecedented violation of his oath of office and of the public trust.

There is a thin line that separates our democratic republic from an autocracy: It is a free and fair election and the peaceful transfer of power that follows it. President Trump attempted to breach that line, again. What he attempted is what was most feared by the Founders. It is the reason they invested Congress with the power to impeach.

Accordingly, I voted to convict President Trump.

We must also consider how we came to a point where a President felt he could do as he did without suffering meaningful consequence.

It has become almost cliché to say that America is divided as never before in modern history. So, too, is the observation that this division is the product of a decline in trust in our governing institutions, of a decline in the social bonds forged in churches and charities and communities, of expanding income inequality, and of trusted news sources replaced by cable and internet algorithms calculated to inflame our prejudices.

Less unanimous are the predictions of where this division will lead. Even so, no one suggests that it will lead to a better future. Some envision an economy buffeted by policies drafted by the extreme wings of the political parties. Others claim that authoritarianism will replace democracy. Some anticipate social unrest and violence. A few even predict civil war. Still others fear that a weakened America will become vulnerable to an opportunistic foreign foe.

We instinctively know that the growing division represents a growing danger. Academics and pundits may promote cures, but in our hearts, we know that their bromides won't heal the rift. People aren't going to return to mainstream media, churches aren't going to experience a resurgence, and income inequality will remain a persistent feature of the global digital economy.

Throughout history, only one thing has been able to unite a divided nation: great leaders—leaders like Churchill who inspired a fearful nation; leaders like Lincoln who mustered the national will to save the Union; and leaders like Reagan who raised our spirits from suffocating malaise. Leaders like these also have been essential in our churches and universities and businesses and charities and, just as importantly, in our homes.

With our Nation so divided, so vulnerable to economic distress or to civil violence or even to foreign adversaries, the need for leadership that unites and uplifts, that calls on our better angels, is as great as we have ever known. The corollary is that the failure of leaders to unite, to speak truth, to place duty above self, is as dangerous as we have ever known.

With the country as divided as it assuredly is, a person in a position of leadership who inflames passions with the purpose of perpetuating untruth commits a singularly dangerous sin against the Republic.

We Senator-jurors did not all vote in the same way in this impeachment trial. Differences in perception of the facts that were

presented are to be expected. So, too, are the differences in our respective estimations of the impact of the outcome of the trial. People of conscience reached different conclusions. National unity does not require unanimity of opinion.

But civic unity does require truth. There is one untruth that divides the Nation today like none other: It is that the election was stolen, that there was a massive conspiracy, more secret and widespread than any in human history, so brilliant in execution that no evidence can be found of it and no observer among the tens of thousands in our intelligence agencies will speak of it.

That lie brought our Nation to a dark and dangerous place. Invented and disseminated by the President, it poisoned our politics and our public discourse.

Like you, I hear many calls for unity. It is apparent that calling for unity while at the same time appeasing the big lie of a stolen election is a fraud. It is the lie that caused the division. It is in the service of that lie that a mob invaded the Capitol on January 6.

Now that the impeachment trial is behind us, it falls to each of us to affirm what we all know: President Biden won the election through the legitimate vote of the American people. The division in America will only begin to heal in the light of this truth, a truth which must now be affirmed by each of us in this Chamber.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR PATRICK J. LEAHY

Mr. LEAHY. Madam President, earlier this month, actually for the first time in—earlier last month, I should say, in February, for the first time in our Nation's history, the Senate convened as a Court of Impeachment to try a former President for a high crime and misdemeanor.

For 5 days, every Member of the Senate was here to hear presentations and arguments from an extraordinarily intelligent group of Congressmen and Congresswomen representing the House of Representatives. We also heard from counsel for former President Donald Trump. After listening to the compelling evidence presented by the House managers, I voted to convict President Trump for inciting the Capitol riots on January 6, and I will have a lot more to say about my vote to convict the former President in a later statement.

Today, though, I am going to speak about the unique role I had in this historic trial as its Presiding Officer. It is unique in the history of the Senate, and I thought for my fellow Senators and, also, for historical purposes I would like you all to know some of my feelings.

Now, I understand why some of my Republican friends were skeptical of a Democratic Senator presiding over the trial of a Republican former President. I noted the Constitution does not contemplate that the Chief Justice would preside over the impeachment trial of a former President, but I also note the impeachment process, no matter who presides, is inherently and often intensely divisive. Presidential impeachments have historically been par-

tisan. Having a member of one particular party in the Chair presiding over the trial could understandably give some pause.

Now, as my fellow Senators know, I did not ask, I did not seek to preside over this trial, but I am occupying the constitutional office of the President pro tempore, and because I am, it was incumbent upon me to do so. A Court of Impeachment is not a civil or a criminal court; it is a constitutional court. And the President pro tempore, as a constitutional officer, has historically presided over impeachment trials of non-Presidents. As President Trump's term had expired before the trial began, the responsibility to preside over this historic trial fell to me, as it would have anybody who would have been President pro tempore. I just happened to be.

I was not going to shirk my duty. My staff and I spent hundreds of hours poring over the constitutional background of these trials. I read transcripts. I read everything. And what I found is, throughout our Nation's history, each President pro tempore has almost without exception belonged to a political party, and each has no doubt had their own personal and political views on the matters before the Senate. But when presiding over the Senate, as I go back through history, I see Presidents pro tempore have historically served as a neutral arbiter, issuing rulings where appropriate and preserving order. I consider holding the Office of the President pro tempore and the responsibilities that come with it as one of the highest honors but also one of the most serious responsibilities of my career here in the Senate.

When presiding over an impeachment trial, the President pro tempore takes an additional—not just his regular role but an additional one to do impartial justice according to the Constitution and the laws. This is an oath that I take extraordinarily seriously.

In fact, to demonstrate my commitment to preside over the trial with fairness and transparency, before the trial, I wrote a letter to every single Senator and the parties to the trial. In it, I made clear my intention and my solemn obligation was to conduct the trial with fairness to all. I committed to adhering to the Constitution and to applicable Senate rules, precedents, and governing resolutions.

I committed to consulting with the Senate's esteemed and non-partisan Parliamentarian, Elizabeth MacDonough, and I committed to being guided by Senate precedent should a motion or an objection or a request or an application be put before me. I reiterated that any decision I made—any decision I made—from the Chair would be subject to the review of the full Senate—every Democratic Senator, every Republican Senator, every Independent Senator. And I stated I would put any matter before the entire Senate in the first instance where appropriate in light of the precedents and practices of the Senate, giving all Senators an equal say in resolving the issue at the outset. I also informed all Senators, though, that I would enforce the Senate rules, and I would enforce the precedent governing decorum and do what I could to ensure the trial reflected the best traditions of the Senate.

Now, with the trial behind us, I believe I made good on those commitments. My job wasn't to shape the trial or to direct or slant it in any particular way but to make sure the rules were followed,

the proceedings were fair to all parties, consistent with the will of the whole Senate, and I believe it was.

I did my best. I followed the advice of the Parliamentarian and enforced our rules and precedents. Where objections were raised, they were ultimately resolved without a vote challenging the rulings I made from the Chair.

While I never faced this situation, before the start of the trial, I had decided—and I had informed the Parliamentarian of my decision—that should a ruling of mine be appealed, I would abstain from voting as a Senator on the question of whether to sustain my own ruling. Now, I know from the Constitution and the practices and the rules of the Senate, the Presiding Officer is fully empowered to do so—to vote—and it happens routinely during legislative sessions. But in going back through all the hundreds of pages—the thousands of pages—I could not find a historical precedent for Presiding Officers doing so during impeachment trials, and I was determined to strictly adhere to precedent, even if it limited my authority as a Senator in this instance.

Now I would note that, on two occasions during the trial, I felt it was necessary to remind counsel—and I did, as did Chief Justice Roberts during President Trump's first trial—to refrain from using language that was not conducive to civil discourse. On the final day of the trial, when it got a little bit heated, I was prepared to do so in stronger terms, if needed. Yet, during closing arguments, I believe neither side gave me reason to do so.

Now, like those who presided over the three prior Presidential impeachment trials in our history, I understood each of my decisions was important historically and would become important precedents to guide those who preside over trials in the future, just as I had read and studied the precedents of past trials.

Since the conclusion of the trial, both Republican and Democratic Senators have thanked me for being fair, and I appreciate that greatly. I may have had a prominent role for this historic trial, but I was committed to not shaping it in any way. I just wanted to give voice to our institution's precedents and rules and to otherwise let the Senate determine the trial's structure and direction, to let each side present its case, and let the chips fall where they may, but let the Senate do its job.

I have now had the opportunity to sit as a judge and juror in numerous impeachment trials, including three trials of Presidents. All were historic moments for the Senate and this country.

I hold no illusion that the Senate was at its best for every moment of every trial, but each has nonetheless increased my respect for our system of government and our Constitution.

I was proud to uphold my oath as a Senator and as a Presiding Officer, my oath to do impartial justice according to our Constitution and the laws during last month's trial. There are some things I consider far more important than allegiance to any person or political party, and my commitment to the Constitution and this great institution of the Senate are listed high among them.

I have felt from the first day I came here that the Senate can be and should be the conscience of the Nation. I wanted to help make sure that conscience was upheld, and I appreciate the fact

that my colleagues elected me President pro tempore and gave me this opportunity.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR CHUCK GRASSLEY

Mr. GRASSLEY. Mr. President, just barely a year ago, I was here making a similar statement. Impeachment is one of the most solemn matters to come before the Senate, but I worry that it's also becoming a common occurrence.

Before getting into the merits of this impeachment, it is important to reiterate that January 6 was a sad and tragic day for America. I hope we can all agree about that.

What happened here at the Capitol was completely inexcusable. It was not a demonstration of any of our protected, inalienable rights. It was a direct, violent attack on our seat of government. Those who plowed over police barricades, assaulted law enforcement, and desecrated our monument to representative democracy flouted the rule of law and disgraced our Nation. Six people, including two U.S. Capitol Police officers, now lie dead in the wake of this assault. The perpetrators must be brought to justice, and I am glad to see that many such cases are progressing around the country.

While the ultimate responsibility for this attack rests upon the shoulders of those who unlawfully entered the Capitol, everyone involved must take responsibility for their destructive actions that day, including the former President. As the leader of the Nation, all Presidents bear some responsibility for the actions that they inspire—good or bad. Undoubtedly, then-President Trump displayed poor leadership in his words and actions. I do not defend those actions, and my vote should not be read as a defense of those actions.

I am a member of a Court of Impeachment. My job is to vote on the case brought by the House managers. I took an oath to render judgment on the Article of Impeachment sent to the Senate by the House of Representatives. We are confined to considering only the Articles charged and the facts presented.

First and foremost, I don't think this impeachment is proper under the Constitution. This is the first time the Senate has tried a former President. Whether or not it can do so is a difficult question. The Constitution doesn't say in black and white "Yes, the Senate can try a former President" or "No, it can't." In contrast, many State constitutions at the time of the founding specified that their legislatures could, so it is notable that our Federal charter did not. In order to answer this question it is therefore necessary to look at the text, structure, and history of the Constitution. That is what I have done. In the end, I do not think we have the ability to try a former President.

I start always with the Constitution, which gives Congress the power of impeachment. As I mentioned, impeachment was a feature in many State constitutions at the time, and it came from a power enjoyed by the English Parliament.

Impeachment in England was a powerful tool whereby Parliament could hold individuals accountable for actions against the



government without having to rely on the King to enforce it. It applied not just to sitting government officials but also to former government officials and even to private individuals. It was not simply a way to remove government officials but a general method of punishing the enemies of Parliament, including with fines, jail time, or even death.

This is not the system established by our Constitution. Our Constitution restricts the power of impeachment in two important ways. First, it says that Congress can't just impeach anyone: Only the President, the Vice President, and "all civil Officers of the United States" can be impeached. It then restricts the penalties for impeachment to removal from office and disqualification.

A former President is not in any of those three categories. He is not the President. In fact, the Constitution also specifies that when the President is impeached, the Chief Justice of the Supreme Court shall preside over the trial. Chief Justice Roberts has not presided over this trial, thus making it clear that it is not the trial of a President. He is obviously not the Vice President. He is not a civil officer of the United States.

Because he does not fall into any of these categories, I don't think that this trial was appropriate.

Moving beyond the text of the Constitution, the history of the Senate confirms this. The U.S. Senate has never convicted a former official in an impeachment. The Senate has tried three individuals who were former officers—William Blount, a former Senator in 1798; William Belknap, a former Secretary of War, in 1876; and Robert Archibald, an incumbent Commerce Court judge, in 1912, tried as well for conduct while a district judge. Belknap is the only executive branch member tried after leaving office. None was convicted for his prior conduct. Archibald was convicted on counts relating to his incumbent judicial service on the Commerce Court. In all three cases, the jurisdictional question loomed large at the trial and was cited as an important argument justifying the acquittals. In other words, Senate practice is consistent: It has never convicted a former official in an impeachment.

Between the text of the Constitution and the consistent practice of the Senate, I am convinced that this is not an appropriate use of our power. While I realize there are arguments on the other side from learned scholars, to me, they do not overcome these problems of text and history.

That is why I voted twice to deal with this impeachment on jurisdictional grounds. But my position didn't prevail, with the majority Democrats voting in lockstep to proceed, and we went to trial. As I have said, even though I think this is inappropriate, I kept an open mind during the process, and I listened to both sides as they presented their evidence.

The House managers tried to prove that President Trump incited an insurrection. That is a difficult argument to make. There were many other Articles over which they could have impeached President Trump, but this is what the House of Representatives chose. They didn't meet their burden.

Before getting to the merits of the charge, I need to point out that this impeachment trial has not aligned with principles of due process of law. Other impeachments have involved significant fact-

finding in the House, where proper legal formalities are followed, witnesses are heard from and cross-examined, and hard evidence is reviewed. Here there were no hearings in the House. The evidence presented was mostly video montages and news reports. We even had the unusual spectacle of voting to call witnesses for the first time as the trial was ending, only to immediately reverse course and call none. Given the seriousness of the situation, I think we should expect better when the House exercises its constitutional duty of impeachment.

This issue involves complicated legal questions. In our legal system, though, it is very difficult for speech to rise to the level of incitement. "Incitement" is a legal term of art. Usually, it takes place in the context of incitement to violence. Incitement, in our legal system, doesn't mean "encouraging" violence or "advocating" violence or even "espousing" violence. It means intentionally causing likely violence. Because the Article of Impeachment uses the word "incitement," I need to evaluate President Trump's actions under the rubrics of the law of incitement, which were set out in the Supreme Court case of *Brandenburg v. Ohio*. In that case the Court held that incitement required speech that, first, encourages "imminent lawless action" and, second, "is likely to incite or produce such action." In other words, in order to succeed, the House managers must have shown that President Trump's speech was intended to direct the crowd to assault the Capitol and that his language was also likely to have that effect.

As I said before, what happened on January 6 was tragic. We can't let it happen again. But the House managers have not sufficiently demonstrated that President Trump's speech incited it. While I will have more to say about President Trump's conduct, the fact is that he said this: "I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard." That speech is not an incitement to immanent lawless action as established in the case law. I wish the crowd would have listened to him.

Just because President Trump did not meet the definition of inciting insurrection does not mean that I think he behaved well.

To be clear, I wanted President Trump to win in November. I gave over 30 speeches on his behalf in Iowa the week before the election. He, like any politician, is entitled to seek redress in the courts to resolve election disputes. President Trump did just that, and there is nothing wrong with it. I supported the exercise of this right in the hopes that allowing the election challenge process to play out would remove all doubt about the outcome. The reality is, he lost. He brought over 60 lawsuits and lost all but 1 of them. He was not able to challenge enough votes to overcome President Biden's significant margins in key States. I wish it would have stopped there.

It didn't. President Trump continued to argue that the election had been stolen, even though the courts didn't back up his claims. He belittled and harassed elected officials across the country to get his way. He encouraged his own loyal Vice President, Mike Pence, to take extraordinary and unconstitutional actions during the electoral college count. My vote in this impeachment does nothing to excuse or justify those actions. There is no doubt in my mind that

President Trump's language was extreme, aggressive, and irresponsible.

Unfortunately, others share the blame in polluting our political discourse with inflammatory and divisive language. As President Trump's attorneys showed, whatever we heard from President Trump, we had been hearing from Democrats for years. National Democrats, up to and including President Biden and Vice President Harris, have become regular purveyors of speech dismissing and even condoning violence. It is not surprising that when they talk about taking the "fight" to "the streets," organizations like antifa actually take to the streets of our cities with shields and bats and fists, destroying lives and livelihoods.

Yes, I think President Trump should have accepted President Biden's victory when it became clear he won. I think Secretary Clinton should have done the same thing in 2016. But as recently as 2019, she questioned the legitimacy of Trump's election, saying "[Trump] knows he's an illegitimate president. I believe he understands that the many varying tactics they used, from voter suppression and voter purging to hacking to the false stories . . . there were just a bunch of different reasons why the election turned out like it did."

If there is one lesson I hope we all learn from not only last year but the last few years, it is that we all need to tone down the rhetoric. Whether it's the destructive riots we saw last summer or the assault on the Capitol, too many people think that politics really is just war by another name. To far too many people, our democracy isn't free people coming together to make life better for our communities. It is a street fight.

We don't need to agree on everything. In fact, part of what makes our democracy great is that we don't agree on everything. But we do need to resolve these differences with debate and with elections, not with violence. Whether the violence comes from the left or the right, it is wrong. The same goes for speech that claims to define enemies by political views or affiliations.

We are all Americans, always trying to form a more perfect union. We have more in common than what divides us. It is high time those of us who have been elected to serve lead by example. We can take the high road. We can tone down the rhetoric. We can be respectful even when we disagree strongly. If we don't, we will be betraying the trust that the American people have placed in us, and we will endanger the democracy and the freedom that so many of us have worked to preserve.

These are difficult issues I have considered over the past week, but in the end, I am confident in what I think is the correct position. We do not have the authority to try a private citizen like former President Trump. Even if we did, he should have been accorded the protections of due process of law in his trial. And even if we assume he has been, the House managers still did not prove that he committed incitement to insurrection, the specific crime of which he stands accused. This does not excuse President Trump's conduct on and around January 6 of this year, it satisfies my oath as a U.S. Senator in this Court of Impeachment. I therefore voted to acquit.

[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR JACK REED

Mr. REED. Mr. President, I ask unanimous consent to have my opinion memorandum in the impeachment trial of President Donald J. Trump be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OPINION MEMORANDUM OF UNITED STATES SENATOR JOHN F. REED IN THE  
IMPEACHMENT TRIAL OF PRESIDENT DONALD JOHN TRUMP

I. FINDINGS

On January 13, 2021, the United States House of Representatives passed House Resolution 24,<sup>1</sup> “Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors.”

Based on the evidence in the record, the arguments of the House Impeachment Managers, and the arguments of President’s Counsel, I conclude as follows: Mr. Trump has violated his oath to take care that the laws be faithfully executed and has acted in a manner that is fundamentally incompatible with the constitutional order. The House Impeachment Managers have proven that Mr. Trump’s incitement of insurrection amounts to the constitutional standard of “high Crimes and Misdemeanors” for which the remedy of conviction and disqualification is warranted.

II. THE CONSTITUTIONAL GROUNDS FOR IMPEACHMENT

“The Senate shall have the sole Power to try all Impeachments.”<sup>2</sup> With these few words, the Framers of the Constitution entrusted the Senate with the most awesome power within a democratic society: whether to remove an impeached president from office.

A. *High Crimes and Misdemeanors*

The Constitution states, “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”<sup>3</sup>

“Treason” and “Bribery” are foundational impeachable offenses. No more heinous example of an offense against the constitutional order exists than betrayal of the nation to an enemy or betrayal of duty for personal enrichment. A President commits treason when he levies war against the United States or gives comfort or aid to its enemies.<sup>4</sup> As the House Judiciary Committee explained, a President engages in impeachable bribery when he “offers, solicits, or accepts something of personal value to influence his own official actions.”<sup>5</sup>

In interpreting “high Crimes and Misdemeanors,” we must not only look to the Federalist Papers and the records of the Constitutional Convention, but also to the contemporary and foundational writings on Impeachment available to the Framers.

Sir William Blackstone, whose influential Commentaries on the Laws of England were published from 1765–1770, discussed a classification of crimes he termed “public wrongs, or crimes and misdemeanors” that he defined as breaches of the public duty an individual owed to their entire community.<sup>6</sup> Blackstone viewed treason, murder, and robbery as “public wrongs,” not only because they cause injury to individuals but also because they “strike at the very being of society.”<sup>7</sup>

Richard Wooddeson, a legal scholar who began giving lectures on English law in 1777, defined impeachable offenses as misdeeds that fail to clearly fall under the jurisdiction of ordinary tribunals. These wrongs were “abuse[s] of high offices of trust” that damaged the commonwealth.<sup>8</sup>

Much the same as Blackstone and Wooddeson, Alexander Hamilton included the dual components of abuse of public trust and national harm in his definition of impeachable crimes and misdemeanors. In Federalist Paper No. 65, Hamilton defined an impeachable offense as “those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.”<sup>9</sup>

*B. The Constitutional Debates*

Adding impressive support to these consistent views of the meaning of the constitutional term, "high Crimes and Misdemeanors," is the history of the deliberations at the Constitutional Convention.

The convention delegates considered limiting Impeachment to treason and bribery. However, they concluded that these enumerated offenses alone could not anticipate every manner of profound misconduct that a future president might engage in.<sup>10</sup> George Mason, a delegate from Virginia, declared that "high crimes and misdemeanors" would be an apt way to further capture "great and dangerous offences" or "[a]ttempts to subvert the Constitution."<sup>11</sup>

This wording would also set the necessarily high threshold for Impeachment that would be proportional to the severe punishment of removing an elected official and disqualification from holding future public office. Further insight is provided by James Iredell, a delegate to the North Carolina Convention that ratified the Constitution, who later served as a Justice of the United States Supreme Court. During the Convention debates, Iredell stated:

The power of impeachment is given by this Constitution, to bring great offenders to punishment . . . This power is lodged in those who represent the great body of the people, because the occasion for its exercise will arise from acts of great injury to the community, and the objects of it may be such as cannot be easily reached by an ordinary tribunal.<sup>12</sup>

Iredell's understanding sustains the view that an impeachable offense must cause "great injury to the community." Private wrongdoing, without a significant, adverse effect upon the nation, cannot constitute an impeachable offense. James Wilson, a delegate to the Federal Constitutional Convention and, like Iredell, later a Supreme Court Justice, wrote that Impeachments are "proceedings of a political nature . . . confined to political characters, to political crimes and misdemeanors, and to political punishments."<sup>13</sup>

Later commentators expressed similar views. In 1833, Justice Joseph Story quoted favorably from the scholarship of William Rawle, who concluded that the "legitimate causes of impeachment . . . can have reference only to public character, and official duty . . . In general, those offenses, which may be committed equally by a private person, as a public officer, are not the subject of impeachment."<sup>14</sup>

This line of reasoning is buttressed by the careful and thoughtful work of the House of Representatives during the Watergate proceedings. The Democratic staff of the House Judiciary Committee concluded that, "[b]ecause impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office."<sup>15</sup>

The deliberations at the Constitutional Convention also demonstrate a conscious movement to narrow the terminology as a means of raising the threshold for the Impeachment process to require an offense against the State.

Early in the debate on the issue of presidential Impeachment in July of 1787, it was suggested that Impeachment and removal could be founded on a showing of "malpractice," "neglect of duty," or "corruption."<sup>16</sup> By September of 1787, the issue of presidential Impeachment had been referred to the Committee of Eleven, which was created to resolve the most contentious issues.

The Committee of Eleven considered whether the grounds for Impeachment should be "treason or bribery."<sup>17</sup> This was significantly more restricted than the amorphous standard of "malpractice," too restricted, in fact, for some delegates. George Mason objected and suggested that "maladministration" be added to "treason and bribery."<sup>18</sup> James Madison opposed this suggestion as being "equivalent to a tenure during pleasure of the Senate."<sup>19</sup> Mason responded by further refining his suggestion and offered the term "other high crimes and misdemeanors against the State."<sup>20</sup> The Mason language was a clear reference to the English legal history of Impeachment. Mason's proposal explicitly narrowed these offenses to those "against the State." The Convention itself further clarified the standard by replacing "State" with the "United States."<sup>21</sup>

At the conclusion of the substantive deliberations on the constitutional standard of Impeachment, it was obvious that only serious offenses against the governmental system would justify Impeachment and subsequent removal from office. However, the Committee of Style applied the final stylistic touches to the Constitution. This Committee had no authority to alter the meaning of the carefully debated language and could only impose a stylistic consistency through, among other things, the elimination of redundancy. In its zeal to streamline the text, the words "against the United States" were eliminated as unnecessary to the meaning of the passage.<sup>22</sup>

The weight of both authoritative commentary and the history of the Constitutional Convention combines to provide convincing proof that the Impeachment process was reserved for serious breaches of the constitutional order that threaten the country in a direct and immediate manner.

*C. An Impeachable Offense is Not Limited to Criminal Liability or a Defined Offense*

Article I, Section 3 of the United States Constitution provides that “Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.”<sup>23</sup> As Delegate James Wilson wrote, “impeachments, and offenses and offenders impeachable [do not come] within the sphere of ordinary jurisprudence. They are founded on different principles, are governed by different maxims, and are directed to different objects: for this reason, the trial and punishment of an offense on an impeachment, is no bar to a trial and punishment of the same offence at common law.”<sup>24</sup> The independence of the Impeachment process from the prosecution of crimes underscores the function of Impeachment as a means to remove a president from office, not only because of criminal behavior, but because the president poses a threat to the constitutional order. Criminal behavior is not irrelevant to an Impeachment, but it only becomes decisive if that behavior imperils the balance of powers established in the Constitution.

The assertion that an impeachable offense must be predicated on a criminal act goes against the well-established consensus of the legal community. For example, Mr. Trump’s former Attorney General, William Barr, wrote in a 2018 memo to the Department of Justice (DOJ) when he was still in private practice, that the President “is answerable for any abuses of discretion and is ultimately subject to the judgment of Congress through the impeachment process [which] means that the president is not the judge in his own cause.”<sup>25</sup> As Mr. Barr makes clear, Impeachment does not need to be based on a crime.

Furthermore, any assertion that an impeachable offense must involve the violation of an “already known or established” law, even if not criminal, is not supported by the constitutional record. In advocating for the inclusion of Impeachment at the Constitutional Convention, James Madison made the case that the country must be protected against any number of abuses that a president could engage in and which might cause permanent damage to the country. Madison wrote that:

[It was] indispensable that some provision should be made for defending the Community [against] the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security[. . .] He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers.<sup>26</sup>

Confining Impeachment to criminal or even codified offenses goes against the mainstream consensus on the meaning of “high Crimes and Misdemeanors” and would fail to capture the universe of harms to the constitutional order in which a President could engage.

*D. Conclusion*

Authoritative commentary on, together with the structure of, the Constitution makes it clear that the term, “other high Crimes and Misdemeanors,” encompasses conduct that involves the president in the impermissible exercise of the powers of his office to upset the constitutional order. Moreover, since the essence of Impeachment is removal from office, rather than punishment for offenses, there is a strong inference that the improper conduct must represent a continuing threat to the American people and the Constitution.

IV. STANDARD OF PROOF

In an Impeachment trial, each Senator has the obligation to establish the burden of proof he or she deems proper.<sup>27</sup> The Founding Fathers believed maximum discretion was critical for Senators confronting the gravest of constitutional choices.<sup>28</sup> Differentiating Impeachment from criminal trials, Alexander Hamilton argued, in Federalist Paper No. 65, that Impeachments “can never be tied down by such strict rules . . . as in common cases serve to limit the discretion of courts in favor of personal security.”<sup>29</sup> In this regard, Hamilton further distinguished Impeachment proceedings from a criminal trial by stressing that an impeached official would be subject to the established rules of criminal prosecution after Impeachment.<sup>30</sup>

However, what exact constitutional standard should be used remains debatable. Practical concerns related to utilizing the Impeachment power should be considered

when determining the standard of proof required. Too low of a standard may lead to removal, even if significant doubts exist. A “. . . high ‘criminal’ standard of proof could mean, in practice, that a man could remain president whom every member of the Senate believed to be guilty of corruption, just because his guilt was not shown ‘beyond a reasonable doubt.’”<sup>31</sup>

When uncertain about the standard of proof to apply, it is worth reviewing the writings of eminent scholars. In doing so, I have found a closer approximation to what the standard should be in many Impeachment trials as compared to those used in general legal practice: “[o]verwhelming preponderance of the evidence’ . . .”<sup>32</sup> Yet, I believe that the severity of removing a president of the United States warrants an even higher bar. As such, a definition slightly modified, but modeled on that proposed standard, is more applicable: overwhelmingly clear and convincing evidence. This standard more closely comports with historical analysis of the Founders’ desire to separate criminal law and Impeachment and the arguments made by scholars, while reflecting the serious constitutional harms alleged in the Article of Impeachment before the Senate.

#### V. CONSTITUTIONALITY OF IMPEACHMENT TRIAL

The President’s Counsel has argued that an Impeachment trial conducted after a president leaves office is unconstitutional. Specifically, they write, in their trial brief, “It is denied that the quoted provision [Article I, Section 4] currently applies to the 45th President of the United States since he is no longer ‘President.’”<sup>33</sup> The President’s Counsel hinge their argument on the wording of Article II, Section 4, which reads, “The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” The President’s Counsel argue that since Mr. Trump is no longer the president,

“[T]he clause ‘shall be removed from Office on Impeachment for . . .’ is impossible for the Senate to accomplish, and thus the current proceeding before the Senate is *void ab initio* as a legal nullity that runs patently contrary to the plain language of the Constitution . . . Since removal from office by the Senate of the President is a condition precedent which must occur before, and jointly with, ‘disqualification’ to hold future office, the fact that the Senate presently is unable to remove from office the 45th President whose term has expired, means that Averment 1 is therefore irrelevant to any matter before the Senate.”<sup>34</sup>

Such logic ignores the historical context in which the Impeachment power was drafted, willfully misinterprets the language of the Constitution, rejects the precedent set by previous Senates, and promotes the dangerous concept of a “January Exception.”<sup>35</sup>

Impeachment was not a revolutionary concept at the time the U.S. Constitution was drafted. The concept had long been part of English political custom, which framed much of the Founder’s understanding of government.<sup>36</sup> Indeed, Alexander Hamilton explicitly stated in *Federalist* No. 65 that the Impeachment power was borrowed from English political history.<sup>37</sup> Thus, we can understand the bounds of the Impeachment power from precedents set in English political history. Two examples from the 18th century are illustrative of the impeachability of former officials. First, “[i]n 1725, former Lord Chancellor Macclesfield was impeached and convicted for acts of bribery committed during his tenure in office.”<sup>38</sup> Second, at the time of the Philadelphia Convention, Parliament was preparing to conduct an Impeachment trial against Warren Hastings, the former Governor General of Bengal. These proceedings commenced after Hastings had retired from his office. “The Framers were acutely aware of the Hastings proceeding, with George Mason raising it as an example during debate on the Impeachment clauses.”<sup>39</sup> If the Framers had misgivings about Impeachment of former officials, a concept that would have been on the public mind given Mr. Hastings’ impending Impeachment trial, surely they would have clarified the wording of the Impeachment power in the U.S. Constitution.

The practice of impeaching former officers was also common in the early state governments. “Between 1776 and 1787, 10 of the newly independent states adopted constitutions that included impeachment provisions. Five specifically permitted late Impeachment; no state explicitly forbade it.”<sup>40</sup> Moreover, some state constitutions only allowed the Impeachment of former officials, meaning that future disqualification from office was central to the very purpose of Impeachment.<sup>41</sup> For example, Thomas Jefferson underwent an Impeachment inquiry in 1781 after his tenure as governor ended.<sup>42</sup> What purpose could such a late inquiry have except to attempt to disqualify a former official from holding office again in the future? The influence of the early state constitutions on the drafting of the U.S. Constitution is widely ac-



cepted. This influence no doubt extended to the Framers' understanding of the Impeachment power as including former officials.<sup>43</sup>

Indeed, the language of the U.S. Constitution proves this out. Article I, Section 3, Clause 6 states, "The Senate shall have the sole Power to try all Impeachments." That is, the Senate has the power to conduct a trial for any Impeachment commenced by the House of Representatives without qualification regarding its timing. The House impeached Mr. Trump, and it is now in the constitutional power of the Senate to conduct an Impeachment trial. Article I further outlines two possible penalties in any Impeachment trial: removal and disqualification. The Senate cannot exceed these penalties, nor are these penalties necessarily linked by the language of the text. The Senate has the power to remove a president without also disqualifying him or her from future office. Likewise, legal scholars assert that disqualification from office need not follow removal from office.<sup>44</sup> Such a reading would neuter the ability of the Senate to disqualify officials from future office upon their resignation. Hence, an official accused of crimes against the political order could simply resign to avoid punishment and potentially retake office in the future. The Framers understood that the power of a demagogic president extends beyond his tenure of office. The disqualification component of the Impeachment power is the constitutional method for addressing this dangerous potentiality, for it establishes "a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country."<sup>45</sup>

In accordance with English political history, the early state constitutions, and the clear language of the U.S. Constitution, the Senate has repeatedly asserted its right to conduct an Impeachment trial of former government officials. The first Impeachment trial concerned Senator William Blount of Tennessee on the charge of conspiracy. After the Senate expelled Blount from the body in July of 1797, the House brought five articles of Impeachment against the former senator in January of 1798 with the intention of disqualifying him from holding office in the future.<sup>46</sup> Most scholars agree that the Senate dismissed the case on the grounds that the Impeachment power does not extend to Members of Congress.<sup>47</sup> The Senate did not, however, dismiss the case on the basis that Blount was a former official.<sup>48</sup> The Senate once again asserted its right to conduct an Impeachment trial of a former official in the 1876 case of ex-Secretary of War William Belknap. The House voted to impeach Belknap after he resigned. The Senate then debated the constitutionality of late impeachment before asserting in a 37–29 vote that it had the power to try an ex-officer.<sup>49</sup> Though Belknap was not ultimately convicted, the Senate had decided that it had the power to convict and disqualify an ex-official. Congress acted once more in the 1926 case of federal judge George English. The House of Representatives chose not to further pursue Impeachment after English's resignation, but the House Managers declared "the resignation of Judge English in no way affects the right of the Senate, sitting as a court of impeachment, to hear and determine [the case]."<sup>50</sup> Several Senators similarly declared the jurisdiction of the Senate in the case of Judge English.<sup>51</sup> As these cases demonstrate, the Senate has repeatedly declared its late-Impeachment powers, though it has rarely chosen to pursue Impeachment.<sup>52</sup>

Finally, the denial of late impeachment promotes the dangerous and unconstitutional idea of a "January Exception." One of the central concerns of the Framers was the diffusion of power across branches in a system of checks and balances to prevent any one branch, but particularly the executive, from gaining too much power. Impeachment is the last line of defense created to hold officials accountable for their abuse of those powers. Hence the time between election and inauguration is not a consequence-free period for an outgoing president. A president who commits an impeachable offense on the night before his term ends is still accountable for those actions when he leaves the Oval Office. After his term as president, John Quincy Adams proclaimed, "I hold myself, so long as I have the breath of life in my body, amendable to impeachment by [the] House for everything I did during the time I held any public office."<sup>53</sup> The Framers of the Constitution did not intend to grant Mr. Trump a January reprieve from accountability. He must be held accountable for his actions during the last weeks of his presidency.

#### VI. DUE PROCESS

The President's Counsel assert that the Impeachment inquiry is defective because of a lack of due process protections for Mr. Trump. However, the Constitution does not provide any guidance about what procedures are proscribed in an Impeachment trial. Article II, Section 3 states, "The Senate shall have the sole power to try all Impeachments."<sup>54</sup> Alexander Hamilton provides context to this in *Federalist Paper* No. 65, saying that Impeachments "can never be tied down by such strict rules . . .

as in common cases serve to limit the discretion of courts in favor of personal security.”<sup>55</sup>

Specifically, President’s Counsel asserts that the Speaker of the House purposefully held onto the Article of Impeachment, passed by the House of Representatives, in order to ensure that Mr. Trump’s term would end before a Senate trial commenced. However, at the time H. Res. 24 passed, the Senate was in recess and not scheduled to return until January 19th. The Senate Minority Leader urged the Senate Majority Leader to bring the Senate back into session immediately in order to receive the Article of Impeachment. However, the Senate Majority Leader rejected this request, meaning that even if the House of Representatives had tried to send the Article to the Senate immediately after passage, it would not have been considered until the Senate was back in session.<sup>56</sup>

President’s Counsel also assert that the House of Representatives did not provide proper due process because it did not hold hearings on the Article of Impeachment. Manager Lieu analogized the present facts to a case where crimes are committed in plain view, and prosecutors do not have to spend a prolonged time investigating before pressing charges.<sup>57</sup> In this case, the events in question—the “Save America” rally, the Electoral Certification, and the ensuing insurrection—were widely broadcast on television and in news publications. Those who took part in the attack also documented their participation over social media including on Twitter, Instagram, and YouTube.<sup>58</sup> In the aftermath of the insurrection, participants were arrested and indicted for their unlawful and violent actions, and their charging documents were available to the public.<sup>59</sup>

In addition, President’s Counsel, throughout this case, has conflated the requirements of an Impeachment proceeding with that of a criminal case, where the Due Process Clause of the Fifth Amendment applies. These claims are spurious at best. As constitutional scholar Michael Gerhardt stated in regards to Mr. Trump first Impeachment, “First, the [Due Process] clause does not apply because none of the interests protected by the due process clause are being denied here—the sanctions are removal and disqualification but not the deprivation of life, liberty, or property, which the clause protects. Second, even if due process applies, it has been satisfied here: The minimal requirements of due process are an impartial decision-maker and notice. The president has had plenty of notice about the impeachment effort, and the Constitution designates senators as the impartial decision-makers.”<sup>60</sup>

“The Supreme Court has explained . . . that due process is not a ‘technical conception with a fixed content unrelated to time, place, and circumstances.’ Instead, the concept is ‘flexible and calls for such procedural protections as the particular situation demands.’”<sup>61</sup> In an Impeachment, the obligation of the Senate is to accord the president, as the accused, the right to conduct his defense fairly, while respecting the House of Representative’s exclusive constitutional prerogative to bring Articles of Impeachment. At the core of the Senate’s task is the fundamental understanding that our system of laws recognizes the rights of defendants and the responsibilities of the prosecution to prove its case.

Based on the above analysis, I find that there is overwhelmingly clear and convincing evidence that Mr. Trump was afforded due process in this Impeachment proceeding.

## VII. INCITEMENT OF INSURRECTION

House Resolution 24 alleges that, in the conduct of his office, Mr. Trump incited an insurrection, in violation of his constitutional duty to take care that the laws be faithfully executed, and in subversion of the constitutional order. I find that there is overwhelmingly clear and convincing evidence that Mr. Trump committed impeachable conduct. As I will further explain, Mr. Trump must be convicted and disqualified from holding office for the conduct described in H. Res. 24.

### A. *Legal Standards for Incitement*

As explained in Section III, Congress is bound neither by civil nor criminal law in determining whether an offense meets the standard of “high Crimes or Misdemeanors.” However, existing legal frameworks for “incitement” are helpful for analyzing and putting Mr. Trump’s words and conduct into context.

Black’s Law Dictionary defines incitement generally as “the act or an instance of provoking, urging on, or stirring up.”<sup>62</sup> Specifically in regards to criminal law, Black’s Law Dictionary defines incitement as “the act of persuading another person to commit a crime.”<sup>63</sup>

A group of constitutional law scholars explained that, for the purposes of Impeachment, a determination of whether a president’s speech or conduct is protected must primarily take into account whether a president’s words are consistent with the Constitution<sup>64</sup> and the oath to “faithfully execute the office of President of the

United States, and . . . preserve, protect and defend the Constitution of the United States.”<sup>65</sup> For example, if a president said “I no longer promise to support and defend the Constitution of the United States” or “I no longer recognize Congress as a co-equal branch of government,” these statements would certainly be inherently antithetical to the constitutional order that the president swore to uphold. While these statements may be lawful and protected by the Constitution in another context, they would certainly be impeachable.

Turning to the definition of “insurrection” itself, the *Corpus Juris Secundum* defines it as “the act of rising in open resistance against established authority or government, or as any open and active opposition of a number of persons to the execution of the laws of the United States of so formidable a character as to deny, for the time being, the authority of the government, even though not accompanied by bloodshed and not of sufficient magnitude to render success probable.”<sup>66</sup>

Based on these sources, I will examine the following questions, in order to determine whether Mr. Trump incited his supporters to commit insurrection,

(1) What was Mr. Trump’s pattern of speech or conduct prior to the January 6th “Save America” rally?

(2) Did Mr. Trump foreseeably or recklessly solicit his supporters to believe his election lies, and know that his supporters would take action based on these lies?

(3) Did Mr. Trump’s speech or conduct drive his supporters to commit unlawful or violent acts on January 6th?

(4) What steps did Mr. Trump take once the rioters had breached the Capitol?

*B. Leading Up to January 6, 2021, Mr. Trump Propagated a False Narrative that the Election Had Been Stolen and Supported Violent Rhetoric*

To determine whether Mr. Trump engaged in incitement, it is instructive to look at a timeline of Mr. Trump’s statements, direct acts, and actions taken at his behest, leading up to January 6th.

*a. Statements and Conduct Regarding Voter Fraud Before the 2020 Election*

Even before the November 2020 election, Mr. Trump gave credence to the idea that mass voter fraud would be inevitable, and the only way he would lose was if the election were stolen. For example, in July, Mr. Trump tweeted “*With Universal Mail-In Voting (not Absentee Voting, which is good), 2020 will be the most INACCURATE & FRAUDULENT Election in history.*”<sup>67</sup> At an August rally in Wisconsin, Trump said “The only way we’re going to lose this election is if the election is rigged, remember that . . . It’s the only way we’re going to lose this election. So we have to be very careful.”<sup>68</sup> In September, he told reporters, from the White House lawn, “I’m not sure that it [the election] can be [honest], I don’t know that it can be with this whole situation, unsolicited ballots, they’re unsolicited, millions being sent to everybody.”<sup>69</sup>

Before the election took place, Mr. Trump also refused to say whether he would accept the election results. In a July interview with Chris Wallace, when asked directly whether he would accept the results of the election, Trump said “Look, you—I have to see. No, I’m not going to just say yes.”<sup>70</sup> In September, when asked by a reporter if he would commit to a peaceful transfer of power, Mr. Trump implied that he would not, saying “Get rid of the ballots and you’ll have a very peaceful—there won’t be a transfer, frankly. There will be a continuation.” In the same month, when asked by a reporter whether the election results would be legitimate only if he won, Mr. Trump did not give a direct answer, saying, “So we have to be very careful with the ballots. The ballots—that’s a whole big scam.”<sup>71</sup>

*b. Statements and Conduct Regarding Voter Fraud After 2020 Election*

Once the 2020 election was over, Mr. Trump made it clear that he would concede under no circumstances, and continued his full-court press urging Americans not to accept the election results. In a statement after Mr. Biden was projected the winner, Mr. Trump said, “*The simple fact is this election is far from over . . . Beginning Monday, our campaign will start prosecuting our case in court to ensure election laws are fully upheld and the rightful winner is seated. The American People are entitled to an honest election: that means counting all legal ballots, and not counting any illegal ballots. This is the only way to ensure the public has full confidence in our election.*”<sup>72</sup>

Mr. Trump escalated his attack on the election results by posting a speech on December 2nd, which he taped from behind the presidential lectern and characterized as potentially “the most important speech I’ve ever made.”<sup>73</sup> Over the course of 46 minutes, Mr. Trump repeated the same baseless claims of voter fraud, and refused to acknowledge his loss. Mr. Trump said the nation’s election system was “under coordinated assault and siege” and declared that it was “statistically impossible” for

him to have lost to Mr. Biden.<sup>74</sup> His overall claim was that, “This election is about great voter fraud, fraud that has never been seen like this before.”<sup>75</sup>

The day after Christmas 2020, Mr. Trump sought to escalate his narrative that there was a mass effort to deprive him of a second term. He sent out a series of tweets attacking executive branch agencies, the federal judiciary, and Senate Republicans, claiming that they had not done enough to prevent voter fraud. He tweeted that the Supreme Court “*has been totally incompetent and weak on the massive Election Fraud that took place.*” He also tweeted that “*The ‘Justice’ Department and the FBI have done nothing about the 2020 Presidential Election Voter Fraud.*” Furthermore, he leveled the claim that “*If a Democrat Presidential Candidate had an Election Rigged & Stolen, with proof of such acts at a level never seen before, the Democrat Senators would consider it an act of war, and fight to the death. Mitch & the Republicans do NOTHING.*”<sup>76</sup>

As late as January 4th, Mr. Trump held a rally before the Georgia Senate runoff saying, “When you win in a landslide and they steal it and it’s rigged, it’s not acceptable. Not acceptable.” The crowd chanted, “Fight for Trump!” and Mr. Trump responded, “They’re not going to take the White House. We’re going to fight like hell.”<sup>77</sup>

In addition to his dishonest rhetoric on election fraud, Mr. Trump took concrete steps to bend reality to match what he wanted. As I will explain in more detail in Section VIII, Mr. Trump used any means necessary to cajole, intimidate, and threaten individuals at all levels of government to use their authority to reject, and in some cases alter, the electoral votes for Mr. Biden.<sup>78</sup>

It is important to note that Mr. Trump forcefully pushed these lies, no matter how divorced from reality they became. In the weeks after the election, it became painfully clear that Mr. Biden was the winner, as states moved to certify his results. In states where the Trump campaign asked for election audits, subsequent recounts provided no compelling evidence that Mr. Trump had won by a landslide.<sup>79</sup> He and his allies filed and lost over 60 lawsuits alleging voting irregularities in state and federal court, including the Supreme Court.<sup>80</sup> His Attorney General attested that the Justice Department discovered no voting fraud “on a scale that could have effected a different outcome in the election.”<sup>81</sup> Top election officials put out a statement saying, “The November 3rd election was the most secure in American history . . . There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.”<sup>82</sup> The day before the Capitol insurrection, even Vice President Mike Pence told Mr. Trump that he had a constitutional duty to certify the true winner of the election, which was Mr. Biden.<sup>83</sup>

Yet, throughout all of this and despite undeniable evidence to the contrary, Mr. Trump doggedly claimed that he had won the election, and that his supporters should help vindicate him. He lied to the American people, and did so knowingly and deliberately.

### *c. Mr. Trump Invoked Violent Means to Further His Re-Election*

Leading up to January 6th, Mr. Trump supported—either tacitly or outright—the use of violent and menacing tactics by his supporters. For example, in the spring of 2020, Mr. Trump embraced the backlash against COVID-19 policies to aid his re-election. Following armed protests over stay-at-home orders, he tweeted “*LIBERATE MINNESOTA!*,” “*LIBERATE MICHIGAN!*” and “*LIBERATE VIRGINIA, and save your great 2nd Amendment. It is under siege!*”<sup>84</sup> During some of the anti-lockdown protests, armed groups attempted to derail the legislative proceedings at statehouses in Michigan, Idaho, and Oregon.<sup>85</sup> These disruptive and aggressive methods were in essence a prelude to what happened during the assault on the Capitol.

This anger boiled over when six men plotted to kidnap Michigan Governor Gretchen Whitmer because they were angry about the state’s coronavirus policies.<sup>86</sup> When the Federal Bureau of Investigation foiled the plot, Mr. Trump added fuel to the fire, and attacked Governor Whitmer over Twitter. He tweeted, “*Governor Whitmer of Michigan has done a terrible job. She locked down her state for everyone, except her husband’s boating activities . . . My Justice Department and Federal Law Enforcement announced . . . today that they foiled a dangerous plot against the Governor of Michigan. Rather than say thank you, she calls me a White Supremacist—while Biden and Democrats refuse to condemn Antifa, Anarchists, Looters and Mobs that burn down Democrat run cities.*”<sup>87</sup>

Furthermore, in November 2020, Mr. Trump embraced a group of his followers who sought to intimidate supporters of his political opponent. He posted a video of his supporters in different cars surrounding a Biden campaign bus in Texas. Mr. Trump cheered this kind of intimidation, tweeting, “*I LOVE TEXAS*” and “*In my opinion, these patriots did nothing wrong.*”<sup>88</sup> At a rally in Michigan, Mr. Trump

even praised his supporters' actions saying, "Did you see the way our people, they were, ya know, protecting this bus . . . because they're nice . . . They had hundreds of cars. Trump! Trump! Trump and the American flag."<sup>89</sup>

After Mr. Biden was declared the winner, Mr. Trump focused his ire in the following weeks on changing the election results in Georgia. Mr. Trump's relentless claims of voter fraud in Georgia were followed by a wave of death threats against state election officials. Gabriel Sterling, an election official in Georgia, pleaded with Mr. Trump to denounce the threats of violence, clearly articulating the risks of failing to do so. Sterling said, "Mr. President, it looks like you likely lost the state of Georgia. We're investigating. There's always a possibility, I get it, and you have the rights to go through the courts. What you don't have the ability to do—and you need to step up and say this—is stop inspiring people to commit potential acts of violence. Someone's going to get hurt. Someone's going to get shot. Someone's going to get killed. And it's not right."<sup>90</sup>

#### *d. Mr. Trump Supported Extremist Groups*

Mr. Trump made statements supporting, or failing to condemn members of extremist groups, many of whom came together to storm the Capitol on January 6th.

Famously, during the first presidential debate on September 29th, when asked to condemn white supremacist groups, like the Proud Boys, Trump refused. Instead, he announced, "Proud Boys—stand back and stand by."<sup>91</sup> The Proud Boys group took this as an explicit endorsement of their violent tactics and ideology.<sup>92</sup> A known social media account associated with the Proud Boys made "Stand back and stand by" its new slogan, and Proud Boys leader Joe Biggs likewise posted that he was "standing by."<sup>93</sup>

Mr. Trump also made statements and used social media to pander to Q'Anon, a conspiracy movement, including by retweeting messages from Q'Anon followers on Twitter hundreds of times before his account was suspended.<sup>94</sup> When pressed on his views on Q'Anon, Mr. Trump appeared to defend the movement. On August 19th, Mr. Trump tacitly endorsed Q'Anon at a press conference, saying, "I don't know much about the movement, other than I understand they like me very much. Which I appreciate."<sup>95</sup> In a town hall on October 15th, Mr. Trump praised Q'Anon members again, this time saying, "Let me just—let me just tell you, what I do hear about it, is they are very strongly against pedophilia. And I agree with that. I mean, I do agree with that. And I agree with it very strongly."<sup>96</sup>

#### *e. Mr. Trump Organized the January 6th "Save America" Rally*

In the days leading up to January 6th, Mr. Trump sent out numerous tweets promoting the "Save America Rally" and gave his supporters specific instructions on when and where to attend. On December 19th, he tweeted, "*Big protest in D.C. on January 6th . . . Be there, will be wild!*"<sup>97</sup> On December 27, he tweeted "*See you in Washington, DC, on January 6th. Don't miss it. Information to follow.*"<sup>98</sup> On January 1, 2021, he tweeted, "*The BIG Protest Rally in Washington, D.C. will take place at 11:00 A.M. on January 6th. Locational details to follow. StopTheSteal!*"<sup>99</sup> The day before, he posted, "*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!*"<sup>100</sup>

Mr. Trump not only knew, but actively coordinated the January 6th rally in order to disrupt the congressional proceedings that day. First, Mr. Trump chose to convene a rally on the same day as the electoral certification, and then explicitly urged his supporters to attend what he predicted would be a "wild" and "historic" day. Manager Plaskett underscored that it was only after Mr. Trump chose that day that the Pro-Trump group, Women for America First, obtained a permit for what became the "Save America" rally at the Ellipse.<sup>101</sup> The day after Women for America First announced the rally, Mr. Trump reposted their invitation and replied "I will be there Historic day!"<sup>102</sup> Manager Plaskett stated that the Trump campaign even "became directly involved with the planning of the event, including the speaking line-up and even the music to be played and brought in the same people who spoke at the second Million MAGA rally to help."<sup>103</sup> Notably, Vice President Pence's sister-in-law is on the advisory board of Women for Trump, which has ties to Women for America First—thus blurring the lines between the Trump administration and the organizers of the January 6th rally.<sup>104</sup>

Manager Plaskett also emphasized that Mr. Trump's top advisors and the Trump communications team were actively monitoring posts from mainstream websites such as Twitter and Facebook, as well as pro-Trump message boards on Reddit and 4Chan.<sup>105</sup> Posters wrote about preparations for the rally in Washington, D.C. to take their election back, by violent means if necessary, on these message boards. His supporters posted hundreds of messages outlining their plans for January 6th.

They discussed how to physically breach the Capitol grounds, which individuals to target once inside, and which weapons and tactical gear to take with them.<sup>106</sup>

In this section, I outlined Mr. Trump's words and actions leading up to the attack on the Capitol. I will now move onto examining whether Mr. Trump foreseeably or recklessly persuaded his supporters into believing his voter fraud lies and taking action at his behest to prevent what he considered a stolen election.

*C. Mr. Trump Foreseeably and Recklessly Persuaded His Supporters That the Election Was Stolen*

Mr. Trump spread lies, conspiracy theories, and incendiary rhetoric before and after the 2020 election. He did so with the understanding that it would inflame his supporters and enlist their aid in helping him disrupt the electoral process. The effect was to foreseeably and recklessly goad his supporters into action. We know this because there is evidence that his supporters were buying into his delegitimizing the election, his encouragement of taking action to overturn the electoral process, and his support for violent tactics.

Mr. Trump's promotion of themes such as "Stop the Count" and "Stop the Steal" served to gin up his supporters. Manager Swalwell pointed out that Mr. Trump spent "millions of dollars to amplify that lie . . . [I]n mid-December, President Trump announced the release of ads, including ones entitled "The Evidence is Overwhelming—FRAUD!" and "STOP THE STEAL." He spent \$50 million from his legal defense fund on these ads to stop the steal and amplify his message. They were released nationally, played in video ads, online advertising, and targeted text messages."<sup>107</sup>

His supporters took these ideas literally—angrily converging upon vote centers on November 5th to protest the continued counting of ballots after Election Day.<sup>108</sup> Trump supporters formed "Stop the Steal" online groups, which became a hotbed for sharing false claims and misleading videos about voter fraud. In November and December, his supporters held "Stop the Steal" rallies around the country. It was widely publicized that, at some of these events, participants were armed and belligerent. Notably, on December 12th, they staged the Second Million MAGA March in Washington, D.C., which resulted in violent clashes between Proud Boy members and counter protestors.<sup>109</sup> Mr. Trump promoted these rallies on his social media, and, in some instances, heaped praise on his supporters for fighting.<sup>110</sup>

The evidence showed that Mr. Trump's promotion of the "Save America" rally succeeded in convincing his supporters to show up at the time and place he named on January 6th. Many of Mr. Trump's supporters said that they felt summoned to Washington, D.C. to take retaliatory action. In a Parler post before the insurrection, a supporter shared one of Mr. Trump's tweets and wrote, "This isn't a joke, this is where and when we make our stand. #January6th, Washington DC. Be there, no matter what. Nothing is more important."<sup>111</sup> In a statement taped on a livestream video taken during the insurrection, a man is heard saying, "Our president wants us here We wait and take orders from our president."<sup>112</sup> In court papers and interviews given after the insurrection, pro-Trump rioters said they joined the march because the president encouraged them to do so.<sup>113</sup>

I find overwhelmingly clear and convincing evidence that Mr. Trump and his allies foreseeably and recklessly solicited his supporters to help him overturn the election results—including most prominently by attending the January 6th rally to disrupt the Electoral College certification.

*D. Mr. Trump's Supporters Committed Unlawful Acts of Insurrection on January 6th*

*a. Trump Speaks at the "Save America" Rally*

After months of fomenting anger over his false claims of election fraud, Mr. Trump gathered his supporters at the "Save America" rally on January 6th. Once there, Mr. Trump told the crowd "We're going to walk down to the Capitol because you'll never take back our country with weakness. You have to show strength and you have to be strong."<sup>114</sup> This was a continuation of a pattern of violent rhetoric by Mr. Trump leading up to the events at the Capitol. For example, Mr. Trump had previously told followers to "Fight like Hell" at rallies. He repeated this language at the rally at noon on January 6th stating, "[W]e fight. We fight like hell."<sup>115</sup> His supporters got the message. By 12:53pm, a large group of Trump supporters approached a fenced off area in front of the Capitol and began to engage with Capitol police officers, many of whom were armed only with mace and their side arms.<sup>116</sup>

*b. The Insurrection Begins*

The crowd pushed past the barricade, knocking down police officers in the process, in an attempt to get closer to the building. Within minutes, protestors began swarming other entrances of the Capitol.<sup>117</sup> Inside the Capitol, Vice President Pence pre-

sided over the joint session of Congress. Contrary to the wishes of Mr. Trump, Vice President Pence began the process of certifying the election results. Outside the Capitol, the crowd of protestors grew more violent. “Rioters wearing Trump paraphernalia shoved and punched Capitol Police officers, gouged their eyes, assaulted them with pepper spray and projectiles, and denounced them as ‘cowards’ and ‘traitors.’”<sup>118</sup> Law enforcement officers were attacked with baseball bats, crutches, hockey sticks, flag poles, and fire extinguishers.<sup>119</sup> Some rioters came armed with handguns, pepper spray, knives, and brass knuckles.<sup>120</sup> Congressional staff and reporters were warned to stay away from windows and doors.<sup>121</sup>

*c. Rioters Storm the Capitol*

Between 2pm and 2:30pm, rioters broke through multiple entrances and began pushing deeper into the Capitol, flooding the Rotunda, Crypt, Statuary Hall, and other locations.<sup>122</sup> Videos captured by rioters show the crowd, many in Trump paraphernalia, chanting “Stop the Steal” and “U.S.A.” as they breached the Capitol and overpowered security.<sup>123</sup>

Meanwhile, the Joint Session had separated into different chambers. The Senate was in the midst of a debate regarding an objection to certifying Arizona’s Electoral College votes.<sup>124</sup> Secret Service rushed Vice President Pence out of the Senate chambers and took him and members of his family to a secure location within the Capitol.<sup>125</sup> Capitol Police officer Eugene Goodman led rioters away from the entrance to the Senate chambers, narrowly avoiding a potentially deadly encounter between Members of the Senate and rioters.<sup>126</sup> Senators were then evacuated from the Chamber.<sup>127</sup>

On the other side of the Capitol, the House went into recess and members were told to lock down and shelter in place.<sup>128</sup> By 2:45 pm, members of the Capitol Security Team were forced to barricade the doors to the Chamber as insurrectionists attempted to break in. House Members were instructed to put on gas masks and some attempted to build makeshift shelters in case the mob broke through the doors.<sup>129</sup> Members who were on the ground level were evacuated through the Speaker’s Lobby as Capitol Security guarded the door with guns.<sup>130</sup> Ashli Babbitt, an Air Force veteran, was fatally shot as she and others tried to break through the barricaded glass door.<sup>131</sup> Members, reporters, and staff in the Gallery remained trapped one floor above the rioters. Videos taken during the events on January 6th show this group sitting and lying down in the aisles in an attempt to shelter behind the chairs.<sup>132</sup> One particularly moving photo shows Representative Jason Crow (D-CO), a former Army Ranger, comforting Representative Susan Wild (D-PA) as the pair sheltered in the Gallery.<sup>133</sup> Rep. Crow recounted that he was doing what any friend would do, telling Rep. Wild “that I was there for her, and that we would get through it.”<sup>134</sup> Another video shows Rep. Lisa Blunt Rochester (D-DE) praying loudly in the Gallery for safety and peace as she and other lawmakers, including Rep. Pramila Jayapal (D-WA), watched Capitol Police officers barricade the door to the Chamber.<sup>135</sup>

*d. The Rioters Target Vice President Pence and Speaker Pelosi*

As members of Congress moved to secure locations or sheltered in place, rioters walked the halls carrying Confederate flags, vandalizing the building, and breaking into congressional offices, including the office of Speaker of the House Nancy Pelosi.<sup>136</sup> One rioter said that he and other rioters “kicked in Nancy Pelosi’s office door” and that “Crazy Nancy probably would have been torn into little pieces but she was nowhere to be seen.”<sup>137</sup> The use of the term “Crazy Nancy” is significant, for this is Mr. Trump’s nickname for the Speaker of the House. Vice President Mike Pence was another primary target for the most violent sections of the mob. “Once we found out Pence turned on us and that they had stolen the election, like, officially, the crowd went crazy,” said one rioter.<sup>138</sup> Rioters called for Pence’s death.<sup>139</sup> Throughout the Capitol, Members and their staff barricaded themselves in offices, hid under tables, called loved ones, and prayed for safety.<sup>140</sup>

*e. The President Fails to Respond to or Condemn the Violence at the Capitol*

President’s Counsel argue that the President did not intend or anticipate for violence to take place. If that were the case, one would expect that—as soon as it was clear that the rioters had begun engaging in unlawful or violent acts—Mr. Trump would quickly and clearly condemn these actions and take every action possible to stop further violence. Arguably, once the lawbreaking began, it was only Mr. Trump that had the most potent power at that point to get his supporters to stop. However, instead of acting expeditiously, it took him more than two hours after the rioters stormed the Capitol to make a statement. In this time, it is reported that lawmakers and Trump advisors pleaded with him to call off the angry mob and denounce the violence.<sup>141</sup> Mr. Trump was seemingly unmoved by these pleas for help,



and it is even reported that he was pleased by the actions of his supporters.<sup>142</sup> Rather than call off his supporters, it is reported that Mr. Trump called a Member of the Senate asking him to raise additional objections to certifying the Electoral College results.<sup>143</sup> Not until 4:15pm did Mr. Trump release a pre-recorded message, telling supporters to go home. The video statement did not condemn the rioters' actions at the Capitol.

Mr. Trump's delay in responding to the insurrection is unsurprising, for many of the rioters thought they were "answer[ing] the call of my President."<sup>144</sup> In a livestreamed video from inside the Capitol, one rioter declared that "[o]ur president wants us here. . . . We wait and take orders from our president."<sup>145</sup> Another rioter claimed that she "thought I was following my President. He asked us to fly there, he asked us to be there, so I was doing what he asked us to do."<sup>146</sup> One supporter, who was later arrested for his actions on January 6th, stated through his lawyer that he, "acted out of the delusional belief that he was a 'patriot' protecting his country . . . He was responding to the entreaties of the-then commander in chief, President Trump. . . . The President maintained that the election had been stolen and it was the duty of loyal citizens to 'stop the steal.'"<sup>147</sup> To paraphrase the House Managers, Mr. Trump sold his followers the big lie of a stolen election and then provoked those followers to violent action to "stop the steal."

In his late statement on the events at the Capitol, Trump urged his followers to "Please support our Capitol Police and law enforcement stay peaceful." Of course, the insurrection was never peaceful, and the Capitol Police were treated cruelly by the mob. Over the course of the insurrection, 140 police officers were injured and one officer, Brian Sicknick, was killed. Four rioters also died. Congressional Leadership offices were trashed, the walls of the Capitol bore the marks of bullets, monuments were destroyed, windows were smashed and broken in, Members and staff were terrorized, Senate desks were ransacked, and smoke hung in the air. Mr. Trump should have pleaded with the crowd to stand down and leave the Capitol as soon as the insurrection began. The fact that he waited to address the rioters, and downplayed the severity of the insurrection to the point of even praising the patriotism of the rioters, was not just dereliction of duty. It was malicious disregard for the lives of Capitol Police, Members of Congress, staff, and Capitol workers threatened by the mob that he incited.

*f. The Capitol is Cleared and the Election Results are Certified*

It took more than four hours after the rioters first entered the building to secure the Capitol and another three hours before the Joint Session could resume.<sup>148</sup> Nevertheless, Joseph R. Biden Jr. was confirmed the winner of the 2020 election at approximately 4am.<sup>149</sup> Democracy prevailed.

*E. The First Amendment Is Not a Defense to Mr. Trump's Incitement of Insurrection*

President's Counsel argued at trial that Mr. Trump was exercising his First Amendment rights in expressing his views at the "Save America" rally, and thus cannot be convicted in this proceeding. I conclude that there is overwhelmingly clear and convincing evidence that the First Amendment does not inoculate him from the current Impeachment charge.

*a. The First Amendment Is Not a Bar to Impeachment*

As I explained in Section II, the relevant standard in an Impeachment trial is whether a president committed impeachable "high Crimes and Misdemeanors." An impeachable offense need not violate a criminal or other established law. Indeed, even an action that is lawful or otherwise protected by the Constitution can still be an impeachable offense. Rather the appropriate standard in this proceeding is whether an offense is "incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office."<sup>150</sup> In addition, as I explained in Section IV, there is no defined standard of proof in an Impeachment, and there are no requirements to adhere to the same standards as in a criminal prosecution.

As a result, in an Impeachment trial, the Senate is simply not bound by a determination of whether Mr. Trump is protected by the First Amendment, nor must the Senate demand a showing that every element of a criminal charge of incitement has been met.

*b. Mr. Trump's Speech Likely Satisfies the Standard of Incitement*

Although I have concluded that the First Amendment does not necessarily serve as a shield in this proceeding, I find it persuasive that the bedrock principle of free speech has a long history in our country. Therefore, I undertook an examination of the governing case precedent regarding incitement. I have concluded that, even if

the First Amendment were to apply in this case, Mr. Trump's overall course of conduct would satisfy the standard for incitement.

The First Amendment prohibits any law "abridging the freedom of speech."<sup>151</sup> However, even at our country's founding, it is clear that the First Amendment was not intended to provide absolute protection for every utterance. Of the fourteen states that ratified the Constitution by 1792, thirteen had laws limiting libelous or blasphemous speech.<sup>152</sup> In addition, the Supreme Court has recognized specific categories of speech that are not protected by the First Amendment and which the government may regulate because of their content. These categories are "obscenity, defamation, fraud, incitement, fighting words, true threats, speech integral to criminal conduct, and child pornography."<sup>153</sup>

The relevant legal framework for incitement was established by the U.S. Supreme Court in the 1969 case of *Brandenburg v. Ohio*.<sup>154</sup> In that case, a Ku Klux Klan leader, Clarence Brandenburg, was convicted after making a speech at a Klan rally that apparently broke an Ohio law against "advocat[ing] crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform."<sup>155</sup> The Supreme Court overturned Brandenburg's conviction and struck down the statute on First Amendment grounds. In doing so, the Court articulated a new test for when advocating for violence or lawbreaking could be criminally prosecuted. The Brandenburg test defines unprotected incitement as speech that is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."<sup>156</sup>

Subsequent cases further clarified the "imminence" standard set out in *Brandenburg*. In the Supreme Court case of *Hess v. Indiana*, Gregory Hess was attending an anti-Vietnam war protest when the police moved a group of protesters from the street onto the sidewalk.<sup>157</sup> Hess said, "We'll take the [effing] street later" and was convicted for disorderly conduct.<sup>158</sup> The Supreme Court reversed Hess' conviction, concluding, "Since the uncontroverted evidence showed that Hess' statement was not directed to any person or group of persons, it cannot be said that he was advocating, in the normal sense, any action. And since there was no evidence, or rational inference from the import of the language, that his words were intended to produce, and likely to produce, imminent disorder, those words could not be punished by the State on the ground that they had 'a tendency to lead to violence.'" <sup>159</sup>

The Supreme Court subsequently explained that a finding of "imminence" also hinged upon the context and timing connecting speech and subsequent acts of lawbreaking. In *NAACP v. Claiborne Hardware Company*, a local branch of the National Association for the Advancement of Colored People (NAACP) organized a boycott of white-owned stores in Mississippi.<sup>160</sup> The boycott was largely supported by impassioned speeches encouraging nonviolent picketing—including by boycott organizer Charles Evers—but some acts and threats of violence did occur.<sup>161</sup> The Court concluded, "There are three separate theories that might justify holding Evers liable . . . First, a finding that he authorized, directed, or ratified specific tortious activity would justify holding him responsible for the consequences of that activity. Second, a finding that his public speeches were likely to incite lawless action could justify holding him liable for unlawful conduct that in fact followed within a reasonable period. Third, the speeches might be taken as evidence that Evers gave other specific instructions to carry out violent acts or threats."<sup>162</sup> In the specific case of Evers' speech, the Court concluded "In the course of [Evers'] pleas, strong language was used. If that language had been followed by acts of violence, a substantial question would be presented whether Evers could be held liable for the consequences of that unlawful conduct. In this case, however the acts of violence identified in 1966 occurred weeks or months after [his] April 1, 1966, speech."<sup>163</sup>

There is overwhelmingly clear and convincing evidence that Mr. Trump's overall course of conduct meets the spirit of the Brandenburg test. As laid out in the *Claiborne* case, a finding of "imminence" should take into account the context and timing of Mr. Trump's January 6th rally speech. After months of fueling the narrative that the election was stolen from him, Mr. Trump asked his supporters to assemble on the day that Congress would be certifying the election results. Once Mr. Trump had gathered his supporters—knowing that they would listen—he directed the crowd to "walk down Pennsylvania Avenue," "fight like hell," and "stop the steal." Unlike the speech in *Claiborne*, which was far removed in time, the lawlessness was imminent because it happened a short distance and short time after Mr. Trump's speech. Unlike the indefinite speech in *Hess*, Mr. Trump's speech was directed at a specific group of persons, and subsequent acts of violence are directly traceable to people who had listened to Mr. Trump's calls to action.

On the issue of Mr. Trump's intent, whether or not Mr. Trump specifically intended every act of violence, he set these events in motion. If Mr. Trump truly did not intend for lawbreaking, what did he expect his supporters would do once they

reached the Capitol? How did he expect his supporters to lawfully achieve the aim of preventing electors from being counted? From this evidence, we can infer that Mr. Trump understood there was a high likelihood that his supporters would break the law once they got to the Capitol.

Further revealing his state of mind, Mr. Trump did not publicly disapprove of the insurrection as it was happening, or take concrete steps to clear the mob. The first public statement he made, once the mob had breached the Capitol, was to disparage Vice President Pence for failing to block the certification. Instead of acting expeditiously, it took him nearly two hours to acknowledge the attack. In his three statements that day, he repeated false claims that the election was stolen and sympathized with his followers. There are reports that he even called a sitting Senator to ask him to object to additional states, as the insurrection was taking place. In addition, there is no evidence that Mr. Trump tried to activate the National Guard, and even rebuffed requests to do so. The question becomes how did Mr. Trump expect these actions—criticizing the Vice President, urging additional electoral objections, and praising his supporters—to calm down tensions? How did he foresee that the overwhelmed Capitol police would be able to push back the mob without additional law enforcement assistance? From this evidence, we can infer that Mr. Trump was satisfied, or at least was not displeased, that his actions had inflamed his supporters to violently disrupt the electoral certification.

*c. Mr. Trump's Speech Was Held to a Higher Standard as a Public Official*

It is further important to note that Mr. Trump was not making statements in his capacity as a private citizen but as president of the United States. In the Supreme Court case, *Garcetti v. Ceballos*, the Court held that “when a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom.”<sup>164</sup> In this case, the respondent was disciplined for a memorandum he wrote as part of his employment in a district attorney’s office, and asserted that his supervisors violated his First Amendment rights.<sup>165</sup> The Court concluded “We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”<sup>166</sup>

In Mr. Trump’s case, it would be difficult to argue that he gave a political speech at the “Save America” rally outside the course of performing his official duties. The purpose of the speech was to use his role as president to urge his supporters to stop the certification of Biden’s electoral win. In addition, there is evidence that members of the crowd had taken Mr. Trump’s invocations to attend the rally, and his insisting that they head to the Capitol, as instructions coming from the president.<sup>167</sup>

Moreover, as Manager Raskin explained, a president takes an oath to uphold the laws, the Constitution, and the principles of our republic.<sup>168</sup> In exchange, the president is given tremendous power and prestige—more so than any other person in the country. That is why, in an instant, a president’s words can calm, agitate, or otherwise change the landscape on issues ranging from foreign affairs, to the economy, to the rule of law. Not only can the president’s words have an expansive ripple effect, they are more likely to succeed in inciting action from the public. These potent powers can be wielded by the president for the good of the country, or can be exploited to subject it to the gravest abuses. That is why—for the protection of our laws and democratic institutions—a president’s primary obligation is to uphold their oath of office, and any freedom of expression must yield to that higher duty.

In this case, Mr. Trump did not have a First Amendment right to fuel a mass disinformation campaign, foreseeably fan the flames of political division, and then direct a mob to disrupt a congressional proceeding.

## VII. OBSTRUCTION OF ELECTORAL COLLEGE

In inciting the insurrection on January 6th and attempting to overturn the 2020 election, Mr. Trump attempted to destroy our democratic system and negate the will of the American people.

The Electoral College process is laid out in the Twelfth Amendment of the Constitution, which states:

“The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least . . . they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted[.]”

Just as the Electoral College has been carried out and affirmed since the first presidential election of President George Washington,<sup>169</sup> the 2020 election took place according to the requirements of the Constitution. Voters in each respective state and territory chose their electors to serve in the Electoral College,<sup>170</sup> with Mr. Biden winning a majority of 306 electoral votes.<sup>171</sup> On December 14, 2020, the appointed electors convened state-by-state to cast their ballots for the President and Vice President of the United States, and certified the results.<sup>172</sup> On January 6th to 7th of 2020, Congress counted the certified votes, and declared Mr. Biden and Kamala Harris the winners.<sup>173</sup>

Throughout the Electoral College process, Mr. Trump attempted to interfere and nullify the outcome. For example, as discussed in Section VII, Mr. Trump was at the head of a mass disinformation campaign to discredit the election results before the election had even gotten underway, and then filed dozens of lawsuits alleging widespread voter fraud.<sup>174</sup> In addition, as I will outline, he wielded his overwhelming power as president to cajole and intimidate members of federal, state, and local government to start investigations, file lawsuits, and reject electoral votes in a bid to overturn the 2020 election.

*A. Mr. Trump Attempted to Use Federal Law Enforcement Agencies to Carry Out Investigations and File Lawsuits*

After losing the 2020 election, Mr. Trump pushed the Justice Department to investigate his meritless allegations of election irregularities.<sup>175</sup> He also pushed the Justice Department to ask the Supreme Court to invalidate Mr. Biden's victory, which his appointees refused to do, citing the lack of evidence.<sup>176</sup> Mr. Trump even disparaged his own FBI and DOJ, implying that they were working against him. In an interview, Mr. Trump said, "This is total fraud. And how the F.B.I. and Department of Justice—I don't know, maybe they're involved—but how people are allowed to get away with this stuff is unbelievable. This election was a total fraud . . . Missing in action . . . Can't tell you where they are."<sup>177</sup>

Succumbing to this pressure, Attorney General William Barr issued a memorandum to U.S. attorneys across the country allowing them to pursue any "substantial allegations" of voting irregularities before the 2020 presidential election was certified.<sup>178</sup> The memorandum gave prosecutors the ability to sidestep longstanding Justice Department policy of not taking overt steps on possible election fraud before results are certified. In response, career DOJ prosecutors called on Mr. Barr to rescind the memo, because it was not based on fact and there was no evidence of widespread voter fraud.<sup>179</sup>

After Mr. Barr stepped down as Attorney General, Mr. Trump then reportedly pressured Barr's successor, Acting Attorney General Jeffrey Rosen, to file legal briefs seeking to overturn his election loss.<sup>180</sup> He wanted Mr. Rosen to appoint special counsels, including a counsel who would look into Dominion Voting Systems—which is at the center of a right-wing conspiracy theory accusing the company of conspiring with the Venezuelan government to tip the election toward Mr. Biden. Mr. Rosen refused the president's entreaties. Mr. Trump then plotted with Jeffrey Clark, a Trump loyalist and the head of the DOJ's civil division, to oust Mr. Rosen as acting attorney general, and replace him with Mr. Clark, who was willing to do Mr. Trump's bidding in trying to overturn the Georgia election results. This plan was only unsuccessful because Mr. Trump's advisors convinced him the move could potentially lead to mass resignations within DOJ's leadership and lead to congressional investigations.<sup>181</sup>

*B. Mr. Trump Exerted Inappropriate Pressure on State Elected Officials*

Article II, Section 1, Clause 2 provides that each state shall appoint electors "in such Manner as the Legislature thereof may direct."<sup>182</sup> However, the decisions on how and when to choose electors is left up to the states. The Electoral Count Act only requires that states be required to certify their elections at least six days before the electors meet to vote.<sup>183</sup> After his loss on Election Day, Mr. Trump sought to exploit the ambiguous language of the Electoral Count Act that gives states discretion in choosing electors. Most state laws require the appointment of electors who vote according to the outcome of the popular vote in each state.<sup>184</sup>

However, Mr. Trump sought to use the weight of his office to persuade and, in some cases, intimidate state officials. For example, he invited GOP members of the Michigan state legislature to the White House, in a brazen bid to get them to throw out the state's election results.<sup>185</sup> He also called two members of the Wayne County Board of Canvassers, including its Republican chairwoman, who had already voted to certify that Joe Biden won their county.<sup>186</sup> Within 24 hours of the call, the Republican chairwoman announced that she wanted to "rescind" her vote.<sup>187</sup> Her reasoning mirrored Mr. Trump's claims that the election may have been rife with

fraud. In another instance, he called the speaker of the Pennsylvania House of Representatives, Bryan Cutler, and inquired about the electoral process. According to Cutler's spokesperson, Mr. Trump blatantly asked, "I'm hearing about all these issues in Philadelphia, and these issues with your law What can we do to fix it?"<sup>188</sup>

Mr. Trump's effort hit its crescendo when the Trump campaign convinced supporters in several states to create an alternate slate of electors to send for the congressional certification.<sup>189</sup> The Trump campaign helped organize alternate Electoral College meetings in Wisconsin, Arizona, Pennsylvania, Georgia, New Mexico, and Nevada.<sup>190</sup> However, election law experts dismissed the validity of these false electors, which had "neither been certified by state executives nor purportedly appointed by state legislators."<sup>191</sup>

Mr. Trump also took extra effort to influence the outcome of the Georgia election, a fierce battleground state. In early December, he called Governor Brian Kemp and asked him to hold a special session of the Georgia legislature to appoint Trump electors to reverse Mr. Biden's win. Mr. Trump also wanted Kemp to order an audit of absentee ballot signatures. When Kemp told the former president he would not be complying with either demand, Mr. Trump told a crowd of supporters at a Georgia rally that, "Your governor could stop it very easily if he knew what the hell he was doing . . . So far we haven't been able to find the people in Georgia willing to do the right thing."<sup>192</sup>

In the most extraordinary example of his inappropriate interactions with state lawmakers, Mr. Trump outright tried to coerce Georgia Secretary of State Brad Raffensperger, "to find" 11,780 votes—which would amount to the one vote margin he needed to win the state.<sup>193</sup> Mr. Trump spent roughly an hour haranguing Raffensperger and Ryan Germany, the Georgia secretary of state's general counsel, about doing another vote count and insisting on baseless conspiracy theories. Even when presented with facts to the contrary by Raffensperger and Germany, who are both Republicans, Mr. Trump did not relent.

Mr. Trump also made veiled threats of how his supporters would punish Republicans if the Georgia election officials did not go along with what he was asking. Specifically, he told Raffensperger, who will be up for reelection in 2022, "[T]hey hate the state, they hate the governor, and they hate the secretary of state. I will tell you that right now. And the only people that like you are people that will never vote for you. You know that, Brad, right?"<sup>194</sup>

Mr. Trump even suggested that Raffensperger and Germany would face criminal consequences if they refused to intervene, saying "[T]he ballots are corrupt. And you're going to find that they are—which is totally illegal, it is more illegal for you than it is for them because, you know what they did and you're not reporting it. That's a criminal—that's a criminal offense. And you can't let that happen. That's a big risk to you and to Ryan, your lawyer."<sup>195</sup>

In the end, Mr. Trump made so many false claims about the Georgia election, a top state official had to publicly debunk the claims one-by-one to restore public trust in the integrity of their election.<sup>196</sup>

#### *C. Mr. Trump Lobbied Vice President Pence to Reject Electoral Votes*

Vice President Pence presided over the January 6th certification of electoral votes. This role is spelled out by Article II, Section 1 of the Constitution, which dictates that "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted."<sup>197</sup> In conducting this duty, the Vice President has no more power than to determine whether the certificates submitted by each state are authentic and then to count the votes.<sup>198</sup>

In the days leading up to and on January 6th, Mr. Trump denied the constitutional reality of the Vice President's role and made it clear that he wanted Vice President Pence to block electoral votes for Mr. Biden. At his behest, a group of Republican lawmakers filed a lawsuit against Vice President Pence. The lawsuit alleged that the Twelfth Amendment gave the Vice President, and not states, unilateral power to determine which among competing slates of electors may be counted.<sup>199</sup> Mr. Trump's own Justice Department stepped in to defend Mr. Pence, and a federal judge tossed out the lawsuit after finding that the Republican lawmakers lacked standing to sue in this case.<sup>200</sup>

Still, Mr. Trump unabashedly and repeatedly tried to coerce Vice President Pence into unilaterally rejecting the election results. On January 2nd, he falsely proclaimed over Twitter that, "The Vice President has the power to reject fraudulently chosen electors."<sup>201</sup> Two days later, Mr. Trump said at a rally in Georgia that, "I hope Mike Pence comes through for us, I have to tell you . . . Of course, if he doesn't come through, I won't like him as much."<sup>202</sup> Trump reportedly met with and called Pence multiple times—plying him to object to Biden's victory, including at

least one time with threatening language.<sup>203</sup> Trump reportedly solicited others in his orbit to put pressure on the Vice President, including Rudy Giuliani and trade adviser Peter Navarro.<sup>204</sup> Despite the enormous pressure, Mr. Pence told Mr. Trump that he planned to certify the election results for Mr. Biden.<sup>205</sup>

In response, Mr. Trump tweeted on the morning of January 6th that, “*All Mike Pence has to do is send [the votes] back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!*”<sup>206</sup> He also 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!”<sup>207</sup> In his remarks at the “Save America” rally itself, Mr. Trump said, “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. . . . And I actually—I just spoke to Mike. I said: ‘Mike, that doesn’t take courage. What takes courage is to do nothing. That takes courage.’”<sup>208</sup>

Once the electoral vote count had begun, it was clear that Vice President Pence was not going to comply with his demands. Mr. Trump attacked him on Twitter writing, “*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!*”<sup>209</sup>

#### *D. Mr. Trump Encouraged Members of Congress to Deny and Overturn the Election Results*

Once it was clear that Mr. Trump had no plans of conceding, even after Mr. Biden had been declared the presumptive winner, Republicans were faced with a choice. Manager Lieu explained that Mr. Trump targeted Members of Congress on social media making it clear he saw their siding with him as a loyalty test. Mr. Trump reminded Republicans that he, in his view, had gotten them elected and he expected their gratitude.<sup>210</sup> Under these threats of retribution, Mr. Trump was successful in getting Republicans to line up with him—in either refusing to acknowledge that Mr. Biden had won or worse, enabling his baseless claims of a rigged election.<sup>211</sup>

In early December, Mr. Trump also identified an ally in the House of Representatives who was circulating a Dear Colleague letter asking Republican members to sign onto an amicus brief supporting a lawsuit filed by the Texas Republican Attorney General in the Supreme Court to void the election results of other states.<sup>212</sup> Mr. Trump began to personally lobby House Republicans asking them to sign the amicus brief.<sup>213</sup> In the end, one hundred and twenty six Republican members of Congress signed on, including the House Minority Leader.<sup>214</sup> The U.S. Supreme Court rejected the lawsuit saying the state of Texas lacked standing to pursue the case.<sup>215</sup>

As an extension of Mr. Trump’s pressure campaign, Republican Members of Congress began to similarly view the certification of the Electoral College as a loyalty test to Mr. Trump. A few days before January 6th, eleven current and then-incoming Republican senators announced that they would vote to reject the Electoral College votes of some states as not “lawfully certified,” unless Congress appointed a commission to conduct an emergency, ten day audit of the election results.<sup>216</sup> One hundred and forty Republican Members of the House planned a similar effort.<sup>217</sup> Together, the Senate and House Members planned to object to the counting of electors from Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin.<sup>218</sup>

The question is not whether these Members had the legal right to object to electors but whether there were facts to support the objections. At that point, the results of the election and lack of substantive voting irregularities was affirmed by dozens of judges, the U.S. Supreme Court, governors, and election officials.<sup>219</sup> In addition, Department of Homeland Security officials put out a statement that said, “The November 3rd election was the most secure in American history.”<sup>220</sup> Attorney General Barr put out a similar statement that said, “[We] have not seen fraud on a scale that could have effected a different outcome in the election.”<sup>221</sup> In the face of all this evidence, the subsequent objections could be seen as little more than a ploy to lend specious legitimacy to Mr. Trump’s allegations of voter fraud and avoid provoking Mr. Trump’s ire.

#### *E. Mr. Trump Sought to Block the Peaceful Transfer of Power*

Mr. Trump’s overall course of conduct embodied the exact kind of behavior that the Framers built constitutional protections to thwart. The Framers knew that an executive who amassed too much power might replicate the abuses of a monarchy. At the Constitutional Convention, James Madison explained the risks of appointing an executive—saying “loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.”<sup>222</sup> An ex-

change between two delegates, William Richardson Davie and James Wilson, highlights the importance of safeguarding against a corrupt president that would cheat to get reelected. Davie stated, “[i]f he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself reelected.” [Davie] considered this as an essential security for the good behaviour of the Executive.”<sup>223</sup> Wilson concurred with Davie “in the necessity of making the Executive impeachable while in office.”<sup>224</sup>

Without mechanisms to keep an out-of-control president in check, there was little binding him to the law. This, in part, prompted the Framers to design the system of checks and balances and Congress’s Impeachment power. Another intentional hallmark of our democracy is the peaceful transfer of power, which is especially important when an incumbent loses re-election.<sup>225</sup> This assures that an executive acquires and maintains power only through lawful means. It also ensures that power is given to a president, and taken back, according to the will of people. It began when President John Adams—defeated by his bitter political rival Thomas Jefferson—quietly left the White House on the morning of the new president’s inauguration.<sup>226</sup> Since then, no president has ever refused to accept an election result or defied the lawful processes for resolving electoral disputes, until Mr. Trump.

Mr. Trump, unable to accept the will of the people, categorically rejected the decision of Americans as expressed in the 2020 election. Even more than refusing, he repeatedly sought to undermine processes at the federal, state, and local level that would advance a peaceful transfer of power. As the House Managers noted, Mr. Trump tried to obstruct the election process through non-violent means.<sup>227</sup> When these attempts failed, he directed a mob to help him wrest power by launching an attack on the legislative branch.

#### IX. VIOLATION OF SEPARATION OF POWERS

One of the key principles rooted in our democratic system is the separation of powers between the co-equal branches of government. This is apparent from the way the Framers devised a system of federal government that diffuses and divides its core functions across the legislative, executive, and judicial branches.

The Doctrine is rooted in a political philosophy that aims to keep the government, as a whole and each branch, both limited and empowered, so that the government can function effectively, while the branches can prevent one another from acting arbitrarily or recklessly. As James Madison explained in Federalist Paper Number 47, “The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny.”<sup>228</sup>

Therefore, when any one branch of government seeks to obstruct an essential function of another branch, it threatens the separation of powers.<sup>229</sup> In a case where a president seeks to derogate the authority of another branch, it can also undermine the president’s constitutional obligation to “take Care that the Laws be faithfully executed.”<sup>230</sup>

In inciting the armed assault on the Capitol on January 6th, Mr. Trump knowingly and recklessly threatened a constitutional proceeding of the Congress. In all this, Mr. Trump gravely endangered the security of the United States and its institutions, and imperiled a coequal branch of government.

#### X. VIOLATION OF OATH OF OFFICE

Manager Castro outlined the numerous ways that Mr. Trump abandoned his post as the insurrection began, and even hours after it was underway.<sup>231</sup> Capitol Police were overwhelmed and violently assaulted by the armed mob. Members of Congress and congressional staff feared for their lives, many of them hiding or barricaded in offices, as the mob wreaked mayhem on the Capitol grounds. It was all unfolding on television, leaving little doubt that Mr. Trump saw it happening in real time.

Manager Castro emphasized that Mr. Trump could have simply told the rioters to stop and leave the Capitol.<sup>232</sup> As I explained in Section VII, Mr. Trump did not acknowledge the attack for nearly two hours, while Republican lawmakers and the people closest to him implored him to call off the attack. Instead, he tweeted out criticism of Vice President Pence. When he finally acknowledged the attack, he did not denounce the mob or rioters, but asked them to “stay peaceful,” even though it was clear that they had undertaken an unlawful siege at the Capitol. At this time, Mr. Trump still did not ask the rioters to stop. Three and half hours in, he released a video reaffirming the same voter fraud lies, and told his supporters, “We love you. You’re very special.” While Mr. Trump did tell the rioters to go home this time, he still refused to disavow the ongoing attack or the attackers themselves.

In addition to inciting the insurrection, Mr. Trump abandoned his duties to defend the American people, even after the events of the day turned deadly. Manager Castro noted that he did not deploy the National Guard, nor any other law enforcement.<sup>233</sup> He was so disengaged from discussions with the Pentagon about deploying the National Guard that Vice President Pence had to intervene to help move the request forward.<sup>234</sup>

Taken together, Mr. Trump's conduct was an astonishing and willful dereliction of duty. He had sworn an oath to "faithfully execute the office of President of the United States and preserve, protect and defend the Constitution of the United States."<sup>235</sup> Yet on that day, he commanded his supporters to inflict grave harm to the constitutional order, by telling them to disrupt the electoral certification and the peaceful transfer of power. He sat back and watched as his supporters took part in an attack on the government institutions that he swore to defend. Then, he entirely failed to stop or condemn the widespread lawbreaking that his supporters took part in. As such, I find that there is overwhelmingly clear and convincing evidence that Mr. Trump violated his oath of office.

#### XI. CONCLUSION: CONVICTION AND DISQUALIFICATION OF MR. TRUMP IS AN APPROPRIATE REMEDY

Conviction and disqualification of a president from office requires a high standard and should only be arrived at when there are no other remedies available.

First, I would refute several assertions by President's Counsel that the Impeachment proceeding, and the remedies thereof, are not the appropriate way to hold Mr. Trump accountable for his actions. President's Counsel and the Senate Minority Leader argue that the more proper forum is a criminal proceeding because of the criminal implications of his offenses. Taken to its logical extreme, their views would absurdly mean that if a president's malfeasance could be prosecuted, the president should be protected from the Impeachment process.

In addition, Manager Raskin correctly differentiated the purpose and independence of the Impeachment process from the prosecution of crimes. As Manager Raskin stated, "[Impeachment] was created to prevent and deter elected officials who swear an oath to represent America but then commit dangerous offenses against our republic."<sup>236</sup> An Impeachment, unlike a criminal case, is not meant to punish the defendant, but to guard the country and the Constitution from an unfit executive. As I have explained, by his conduct, Mr. Trump violated his oath of office and refused to defend the Constitution itself. Therefore, an Impeachment is the most appropriate forum to protect the integrity of the presidency and the constitutional order.

President's Counsel also contend that Impeachment is unnecessary in this case because the 2020 election was the remedy for his conduct. Of course, when Mr. Trump incited a mob to violent action at the U.S. Capitol, it was an attempt to delay the certification of the election results. This followed months of Mr. Trump's public refusal to concede the election on the grounds that it was stolen from him. Clearly, the election process is insufficient in this case because Mr. Trump does not recognize the validity of any election outcome that does not favor him.

Failing to convict the former president would result in several constitutional perils. First, Mr. Trump may once again run for president. If re-elected, there is no reason to believe that he would feel constrained by any limitations. An acquittal essentially would provide him permission to commit the same abuses or worse, without fear of accountability. That includes leveraging all the powers of the presidency to stay in power or wage an assault on a coequal branch of government. Presidents must be held accountable when their lust for power does violence to bedrock principles. Disqualification from public office is the only remedy left to prevent such behavior from Mr. Trump in the future.

A failure to convict would also be a lesson to future presidents with authoritarian tendencies that they can attack our democratic principles and institutions without consequence. Even beyond a "January Exception," a future president might reason that otherwise impeachable conduct will not be challenged during any part of their presidency. In addition to rank abuse of power, a future president may not submit to the peaceful transfer of power and the sacred will of the people. In terms of the legislative branch, Congress would send a message that it is unwilling to use its own oversight powers functionally and effectively, and is unwilling to uphold a meaningful separation of powers. Disqualification is the necessary method for protecting the republic from such democratic decay within the executive and legislative branches.

This chapter in history reminds us that democracy is fragile and we must diligently safeguard its principles. To this end, I have a responsibility to defend the



truth, the rule of law, and our democratic institutions. I am compelled to vote to convict President Donald J. Trump of committing “high Crimes and Misdemeanors” and support his disqualification from ever again holding an office of public trust.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR SUSAN M. COLLINS

Ms. COLLINS. Mr. President, the Senate was asked to decide whether this body has the constitutional jurisdiction to hold an impeachment trial of Donald Trump now that he is no longer President of the United States. While the Constitution does not explicitly address Congress’ jurisdiction when the subject of impeachment is a former President—or any former officer—its text and purpose as applied to the facts in this matter support the conclusion that the trial should proceed.

The question of Senate jurisdiction should start with the text of the Constitution itself. The impeachment process is described in article I, which delineates the respective powers of the House of Representatives and the Senate. Section 2 plainly states that the House “shall have the sole power of impeachment.” In this matter, there is no dispute that impeachment occurred before former President Trump’s term expired, and, therefore, there is no dispute that the House had jurisdiction to impeach him.

What is at issue is whether the impeachment trial can occur in the Senate now that former President Trump is no longer in office. Again, I look to the text of article I. Section 3 states that “the Senate shall have the sole Power to try all Impeachments.” As former Federal circuit court Judge Michael McConnell has observed, the key word here is “all.” Sections 2 and 3 read together lead to the inescapable conclusion that, if the House presents the Senate with a valid impeachment article, the Senate has jurisdiction to conduct the trial.

Some have argued that such an interpretation would put all former Presidents, Vice Presidents, and office holders dating back to the Washington administration at risk of being impeached and convicted, but the facts in this matter do not require such a sweeping conclusion. By asserting its jurisdiction over this trial, the Senate is simply ruling that a President who was impeached while still in office can be tried after he is no longer in office—nothing more.

The former President’s attorneys argue that the Senate does not have jurisdiction to conduct a trial because the penalty prescribed for conviction under article II, section 4, is removal from office. Because former President Trump cannot be removed, they argue that

the Constitution requires he not be tried. But article I, section 4, authorizes the Senate to impose the penalty of permanent disqualification from holding office in the future if it chooses to do so. And, notably, a vote on whether or not to disqualify can only be taken after conviction, at which point any defendant would have been removed and no longer an office holder.

If the defense's argument were to be followed to its logical conclusion, it would lead to a constitutional absurdity—the Senate would have the sole power to apply the disqualification penalty, but it would never have jurisdiction to do so. If the Senate were unable to consider disqualification after a President is no longer in office, the second penalty would lose its meaning. A more sensible reading of article I, section 4, is that both punishments, removal and disqualification, are equally significant, and therefore, the Senate has jurisdiction in this matter.

For all the reasons I have set forth, I believe that the Senate must exercise jurisdiction, and I voted to begin its impeachment proceedings.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR ROBERT P. CASEY, JR.

Mr. CASEY. Mr. President, I ask unanimous consent that the following statement regarding the impeachment trial of the former President be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT ON THE SECOND IMPEACHMENT TRIAL OF THE FORMER PRESIDENT

Mr. CASEY. Mr. President. The former President's conduct during and after the 2020 Presidential election was indefensible and dangerous. By inciting an insurrection against Congress and pressuring government officials across our Nation to overturn the election in his favor, the former President directly "threatened the integrity of the democratic system, interfered with the peaceful transition of power, and imperiled a coequal branch of Government."<sup>1</sup> As long as he is able to hold public office under the United States, he will remain a grave threat to our national security and our Constitution. For these reasons, I again voted to convict the former President on the House of Representatives' Article of Impeachment.

CONSTITUTIONALITY OF THE TRIAL

As a threshold question in this trial, the former President's legal team and several Republican Senators have argued that the Senate cannot hold an impeachment trial against a President who is no longer in office.<sup>2</sup> This argument is just another convenient excuse for some of my Republican colleagues to avoid holding the former President accountable. Not only has the theory been roundly rejected by both liberal and conservative constitutional legal scholars,<sup>3</sup> it would also completely contravene both Senate and historical precedent.<sup>4</sup> In this case, consistent with the prevailing legal theory and historical precedent, the Senate voted to affirm the constitutionality of this current trial—a decision that I fully supported.<sup>5</sup> Thus, after addressing the threshold Constitutional issue, the question before every Senator in this trial became twofold—(1) did the former President do what he is charged with in the Article?; and (2) if so, does that action warrant conviction and disqualification from holding future office?

THE BIG LIE DEBUNKED

The public record demonstrates clearly that the former President engaged in the conduct outlined in the Article of Impeachment put forward by the House of Representatives. We watched his actions with our own eyes. We heard his conspiracy

theories and baseless accusations with our own ears. For months after the election, all of America witnessed the former President's deliberate repetition of the "Big Lie;" he repeatedly claimed—without any evidence—that the 2020 general election was rigged and stolen from him.<sup>6</sup> In furtherance of this falsehood, the former President has made numerous claims, all easily and consistently rebutted, regarding the votes cast in multiple battleground states. As the Senior Senator from Pennsylvania, a state that the former President relentlessly attacked after the election, I believe it is important to debunk the numerous false statements that the former President asserted regarding the Pennsylvania Presidential election.

Prior to the election, it was widely reported that the public should "beware" of early U.S. election tallies because of the unprecedented amount of mail-in voting and the different ways that states were processing ballots due to the COVID-19 pandemic.<sup>7</sup> In Pennsylvania specifically, Democratic voters were outpacing Republican voters by a 3-to-1 ratio in mail-in voting.<sup>8</sup> Since the mail-in votes would be the last to be counted in most counties, experts cautioned voters that the former President might appear to be winning in the early returns on election night (a "Red mirage") only to lose that lead as election officials counted more mail-in ballots in the days after Election Day (a "Blue shift").<sup>9</sup>

Despite these warnings, the former President attempted to sow doubt, even before Election Day, about votes counted after November 3. A week before Election Day, he indicated that "counting ballots for two weeks" after Election Day was "totally inappropriate" and he did not believe it was consistent with our Nation's election laws.<sup>10</sup> To be clear, there is nothing improper or illegal about election officials counting legally cast votes after Election Day. Nonetheless, as election officials in Pennsylvania began to process the heavily Democratic-leaning mail-in ballots in the days following Election Day and the former President's "Red mirage" predictably turned to a "Blue shift" in favor of President Biden, the former President claimed that officials were "finding Biden votes all over the place."<sup>11</sup> In reality, election officials in Pennsylvania were simply counting legally cast votes. As Republican Philadelphia Commissioner Al Schmidt said: "In the birthplace of our Republic, counting votes is not a bad thing. Counting votes cast on or before Election Day by eligible voters is not corruption. It is not cheating. It is democracy."<sup>12</sup>

Relatedly, the former President also claimed that in Pennsylvania, "tens of thousands of votes were illegally received after 8 P.M. on Tuesday, Election Day, totally and easily changing the results."<sup>13</sup> Here again, the former President was lying. In September 2020, the Pennsylvania Supreme Court extended the mail-in ballot receipt deadline in Pennsylvania by three days because of the unprecedented circumstances caused by the COVID-19 pandemic.<sup>14</sup> The Pennsylvania Supreme Court's decision did not permit eligible voters to vote after Election Day. Rather, pursuant to the Free and Equal Elections Clause of the Pennsylvania Constitution, the court explained that ballots mailed by Election Day could still be counted if those ballots were received within three days of Election Day.<sup>15</sup> In addition to lying about whether it was legal to receive ballots after Election Day, the former President drastically overinflated the number of ballots received after Election Day in Pennsylvania. In fact, there were only approximately ten thousand ballots received after Election Day and those ballots were not even included in Pennsylvania's certified election results.<sup>16</sup> Since President Biden won Pennsylvania by over eighty thousand votes, the ballots received after Election Day would not have made any difference in Pennsylvania's Presidential election outcome.<sup>17</sup>

In another tweet, the former President claimed that Pennsylvania prevented his campaign officials "from watching much of the Ballot count."<sup>18</sup> Again, the former President was lying. In fact, in response to a judge's question during one hearing on whether there were election observers in the canvassing room, a lawyer representing the former President offered the seemingly bizarre concession that there was "a non-zero number of people in the room."<sup>19</sup> Furthermore, multiple courts confirmed that the former President's campaign presented no evidence suggesting that his campaign's observers were treated any differently than the observers for the Biden Campaign.<sup>20</sup>

The former President's lies did not stop there. In late November, the former President tweeted that over a million votes in Pennsylvania were "created out of thin air."<sup>21</sup> This is a lie. Here, the former President was referring to a conspiracy theory offered by Republican State Senator Doug Mastriano, who claimed that the Pennsylvania Department of State was reporting an extra 1.1 million mail-in votes in Pennsylvania.<sup>22</sup> Senator Mastriano indicated that Pennsylvania had reported mailing out "1,823,148 ballots, of which 1,462,302 were returned," but he indicated that a dashboard on the Department of State's website recorded over 2.5 mail-in ballots in the general election.<sup>23</sup> While Senator Mastriano did not include sources for his data, it was easy to determine that he was conflating different datasets from the general

election and the June primaries. A dataset from the Pennsylvania Department of State clearly detailed that there were 1,823,148 mail-in ballot request for the June 2020 primaries<sup>24</sup>—the exact number that Senator Mastriano cited—while Pennsylvania’s official returns for the 2020 general election clearly illustrated that over 2.6 million voters cast a ballot by mail in the Presidential election.<sup>25</sup>

In another tweet on December 28, the former President claimed that there were “205,000 more votes than there were voters” in Pennsylvania.<sup>26</sup> This too is another lie. Again, the former President appeared to be referencing yet another conspiracy theory offered by another state legislator, Representative Frank Ryan.<sup>27</sup> Representative Ryan claimed that the official election returns included 205,000 more votes than those listed in Pennsylvania’s voter registration database.<sup>28</sup> Pennsylvania Attorney General Josh Shapiro explained that the voter registration database referenced by Representative Frank “is updated by each county individually, and this updating process can take several weeks following an election.”<sup>29</sup> Thus, the Attorney General explained that it appeared that Representative Ryan was comparing “the official returns with incomplete data from the registration database to justify his baseless claim that there were more votes than voters.”<sup>30</sup>

Unfortunately, the above lies are merely a sampling of the former President’s total lies about the election process in Pennsylvania and across the Nation. In addition to these falsehoods, the former President claimed—without evidence—that there were “900,000 Fraudulent Votes” in Pennsylvania,<sup>31</sup> that Dominion Voting Systems switched 221,000 votes from the former President to Joe Biden in Pennsylvania,<sup>32</sup> and that “Fraud and illegality” were a “big part” of his election lawsuits in Pennsylvania.<sup>33</sup>

The Pennsylvania election was administered safely and securely by thousands of Republican and Democratic election officials and selfless volunteers across the Commonwealth. We know this because as the House Managers highlighted in their trial brief, “[o]ur legal system affords many ways in which a candidate can contest the outcome of an election.”<sup>34</sup> The former President did not merely contest the election in Pennsylvania, but also in Arizona, Georgia, Michigan, Nevada, and Wisconsin.<sup>35</sup> In total, the former President and his allies filed 62 lawsuits in state and federal courts regarding the 2020 election and they lost every case, except for one minor lawsuit in Pennsylvania.<sup>36</sup>

Furthermore, despite the President’s public claims of widespread illegalities, his legal team rarely attempted to allege fraud in his lawsuits.<sup>37</sup> In fact, his own attorney, Rudy Giuliani, explicitly confirmed that the Campaign was not alleging fraud during one high profile case in Pennsylvania by stating “[t]his is not a fraud case.”<sup>38</sup> Despite these facts, the former President continued to spread a different narrative—a Big Lie regarding a rigged election—on Twitter.

United States District Court Judge Matthew Brann of the Middle District of Pennsylvania highlighted the absurdity of some of the former President’s legal arguments in an opinion dismissing one of the Campaign’s lawsuits:

“Plaintiffs ask this Court to disenfranchise almost seven million voters. . . . One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, such that this Court would have no option but to regrettably grant the proposed injunctive relief despite the impact it would have on such a large group of citizens. That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populated state. Our people, laws, and institutions demand more.”<sup>39</sup>

In the Campaign’s appeal to the United States Court of Appeals for the Third Circuit, Judge Stephanos Bibas, a judge appointed by the former President,<sup>40</sup> wrote for a unanimous panel affirming Judge Brann’s initial decision.<sup>41</sup> Judge Bibas wrote: “Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”<sup>42</sup> The Presidential election was fair and lawful notwithstanding the many lies told by the former President.

#### THE FORMER PRESIDENT’S PATTERN OF CONDUCT

Despite losing case after case in federal and state courts, the former President was not deterred in his efforts to spread his Big Lie regarding a stolen election. Instead, he turned his attention to pressuring federal, state and local elections officials to overturn the election. In Georgia, he personally called the Secretary of State,

Brad Raffensperger, and told him to “find 11,780 votes, which is one more than we have because we won the state.”<sup>43</sup>

He also began an aggressive lobbying campaign against Vice President Pence.<sup>44</sup> Pursuant to the Twelfth Amendment, the Vice President counts each state’s certified Electoral College votes for President in a joint session of Congress.<sup>45</sup> However, the former President regularly lied about the constitutional duty of the Vice President. In another attempt to turn the election in his favor through illegitimate means, the former President suggested that Vice President Pence should violate his oath of office by refusing to count certain electoral votes for President Biden during the joint session.<sup>46</sup>

After failing to overturn the election through the courts and his pressure campaign on other elected officials, the former President took aim for one more attack on American democracy. He summoned his mob of insurrectionists to Washington, D.C. on January 6, 2021 for a “Save America Rally” to coincide with the joint session of Congress.<sup>47</sup> He invited them. He incited them over the course of months and on January 6. Finally, he directed this Trump mob to the Capitol to subvert and obstruct Congress from conducting its constitutional obligation to certify the 2020 Presidential election.

On January 6, we heard the former President continue to spread his Big Lie at his rally. As Attorney General Shapiro detailed, the former President “inflamed the crowd by repeating the same debunked allegations about voter fraud in Pennsylvania and elsewhere. In his remarks, he repeated no fewer than eight false statements about Pennsylvania’s elections alone.”<sup>48</sup> He further incited the mob to “stop the steal” by declaring that “we fight, we fight like hell,” because “if you don’t fight like hell you’re not going to have a country anymore.”<sup>49</sup>

The case for incitement is about far more than just the former President’s speech on January 6. This was about a pattern of conduct. It was about the former President’s autocratic leadership and calls for political violence throughout his Presidency. It was about a President who once bragged: “I have the tough people [supporting me], but they don’t play it tough until they go to a certain point, and then it would be very bad, very bad.”<sup>50</sup>

I, as well as public officials in both parties, talk about fighting for public policy goals. We fight for health care. We fight for civil rights. We fight for equity and justice. However, when the former President tells his supporters to fight, it means something different because the former President has regularly condoned and encouraged violence against protestors and members of the press since he became a candidate in 2015. As Lead House Manager Jamie Raskin told us during the trial: “January 6 was a culmination of the President’s actions—not an aberration from them.”<sup>51</sup> It was the former President’s pattern and practice of condoning and encouraging violent action.

For example, during remarks in October 2015, the former President—then a candidate—indicated that he would be a “little more violent” next time protestors interrupted one of his rallies.<sup>52</sup> Video later showed the former President’s supporters forcibly dragging protestors out of the campaign event.<sup>53</sup> In a February 2016 rally in Cedar Rapids, Iowa, we saw the former President tell his supporters to “knock the hell” out of protestors and then promised to pay their legal fees resulting from any altercation.<sup>54</sup>

In March 2016, a supporter of the former President sucker punched a Black man being escorted out of a campaign rally.<sup>55</sup> The former President’s supporter was later recorded as saying “[t]he next time we see him, we might have to kill him.”<sup>56</sup> Just days later, the former President defended those at his rallies assaulting protestors by calling their actions “very, very appropriate.”<sup>57</sup> In another 2016 rally in Las Vegas, the former President commented that he would like to “punch [a protestor] in the face” before reminiscing about the fictional “old days” when violent behavior was allegedly more acceptable.<sup>58</sup> “You know what they used to do to guys like that when they were in a place like this?” he asked the crowd. “They’d be carried out on a stretcher, folks.”<sup>59</sup>

This abhorrent behavior did not change when the former President entered office. In August 2017, after a rally of white supremacists resulted in three deaths and more than 33 other injuries in Charlottesville, Virginia, the former President offered perhaps the most disturbing comments of his Presidency when he suggested that there was “blame on both sides” and that there were “very fine people on both sides.”<sup>60</sup> In October 2018, we saw the former President praise and glorify the actions of current Governor of Montana, Greg Gianforte, after then-candidate Gianforte had body slammed and hospitalized a journalist in May 2017.<sup>61</sup> Mr. Gianforte had already pled guilty to the assault.<sup>62</sup>

In 2020, the former President further glorified violence by indicating that “when the looting starts, the shooting starts” in relation to the civil rights protests occur-

ring after George Floyd's murder at the hands of law enforcement in Minneapolis, Minnesota.<sup>63</sup> Later, we saw the former President direct federal agents to forcibly move hundreds of peaceful protestors outside of the White House so he could pose for a photo op in front of St. John's Church in Washington, D.C.<sup>64</sup>

In April 2020, in what turned out to be a dress rehearsal for the January 6 insurrection, we saw the former President tweet "LIBERATE MICHIGAN!" after the Governor of Michigan implemented several mitigation measures to address the COVID-19 public health crisis.<sup>65</sup> Nearly two weeks later, on April 30, armed protestors dressed in tactical gear sieged the Michigan State Capitol, waving the Confederate flag and wearing MAGA hats.<sup>66</sup> Rather than condemn those who had seized the state capitol waving Confederate flags, the former President encouraged the Governor of Michigan to negotiate with them: "The Governor of Michigan should give a little, and put out the fire. These are very good people, but they are angry. They want their lives back again, safely! See them, talk to them, make a deal."<sup>67</sup> Just a few months following the capitol siege in Michigan, the FBI arrested thirteen men for "plotting to storm the Michigan State capitol building, launch a civil war, kidnap Governor Whitmer, transport her to Wisconsin, and then try and execute her."<sup>68</sup>

The former President's pattern of conduct is indisputable. A reasonable person cannot dispute that the former President knew exactly what he was doing by perpetuating the "Big Lie," summoning his crowd of insurrectionists on January 6 and telling them: "[I]f you don't fight like hell, you're not going to have a country anymore."<sup>69</sup> The former President led his supporters to a breaking point and as he had predicted in the past—it was "very bad, very bad."<sup>70</sup> There is simply no way to excuse the former President's actions in this case.

#### AN ATTACK ON OUR DEMOCRACY

By encouraging his mob of insurrectionists to march on the Capitol and obstruct the Congressional certification of the 2020 election, the former President attacked the foundational principles of our democracy and the peaceful transfer of power. He did not merely endanger another branch of government and the Presidential line of succession. His actions led to at least five deaths, injuries to nearly 140 members of law enforcement and untold collateral damage resulting from the carnage of that day.<sup>71</sup> He endangered the lives of countless Congressional staffers and employees, members of the press and members of Congress. He put a target on the back of his own Vice President and his Vice President's family. His actions jeopardized our Nation's national security by tarnishing the United States' reputation abroad and emboldening violent extremists at home.

Furthermore, he has shown absolutely no remorse for any of it, even going as far to glorify the insurrection in the immediate aftermath of the attack. After the Capitol had been secured in the early evening of January 6 and Congress was making plans to resume its joint session, the former President turned to Twitter to release a statement. He did not denounce the violent insurrection, but rather he chose to continue to spread his Big Lie that the election was stolen from him and to call the insurrectionists "great patriots:"

"These are the things and events that happen when a sacred landslide election victory is so uncereemoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever."<sup>72</sup>

Ultimately, after carefully reviewing all of the evidence put forward in this case, I found that the House Managers more than exceeded their burden of proof. The former President's conduct violated his oath of office, endangered our democracy and jeopardized the United States' national security. Through this conduct, the former President committed a high crime against our Constitution. I voted to convict him in the most bipartisan Presidential impeachment proceedings in our Nation's history.<sup>73</sup>

#### ENDNOTES

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to dismiss the proceeding as unconstitutional because Mr. Trump is no longer in office.”).

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4. IMPEACHMENT PROCEEDINGS II, *supra* note 2, at 48–97 (Trial Memorandum of the United States House of Representatives).

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[From the CONGRESSIONAL RECORD, March 1, 2021]

#### STATEMENT OF SENATOR AMY KLOBUCHAR

Ms. KLOBUCHAR. Mr. President, as Senators in this proceeding, we were bound by two oaths, to support and defend the Constitution and to pursue impartial justice as we considered the Article of Impeachment filed against former President Donald Trump: a charge of incitement of insurrection.

The Framers of our Constitution gave us the tools to respond to a moment like this. Having lived under the tyranny of an unaccountable King, they were well aware of the risks of a President willing to abuse his or her power. William Davie, one of North

Carolina's representatives at the Constitutional Convention, argued that empowering the Congress was necessary to protect against the threat of a President who would spare "no efforts or means whatever to get himself reelected."

Our system of checks and balances as laid out in our Constitution provides that the Congress can impeach a President for committing "Treason, Bribery, or other High Crimes and Misdemeanors." The phrase was meant to encompass any offenses that, as Alexander Hamilton explained in *Federalist* 65, include an "abuse or violation of some public trust" and "injuries done immediately to society itself." Impeachment is a remedy for this public harm.

Some of my colleagues argue that the Senate could not sit as a Court of Impeachment for a former President. But constitutional scholars from across the political spectrum agree that the plain language of the Constitution and the historical precedent are clear that the Senate has the power to hold former officers accountable for offenses committed while in office. The question was debated on the Senate floor, we had a vote, and a bipartisan majority decided that we should proceed. As Manager JAMIE RASKIN said, "[t]he jurisdictional constitutional issue is gone . . . We are having a trial on the facts."

As we were all witnesses to what happened on January 6, the facts are clear. During the trial, we saw evidence that was haunting and chilling. But more than that, collectively, the evidence presented a clear indictment of President Trump's role in threatening not only the lives of those at the Capitol, but the very lifeblood of our democracy.

President Trump's actions on January 6 were consistent with a years-long effort to undermine faith in our democratic system. After spending months trying to delegitimize our elections and despite losing by more than 7 million votes, President Trump filed dozens of lawsuits and called into question the election results across the country. In court after court, the President's claims were rejected. As Judge Bibas, who was appointed by President Trump, wrote for the Third Circuit, "Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here."

In an attempt to delay the certification of the results, President Trump privately pressured State election officials, including asking Georgia's secretary of state to "find" 11,780 votes, a number that would flip the State in his favor. Thankfully, election officials followed the law, and by December 11, 2020, all States had certified the results of the election.

Despite the results being final, however, President Trump convinced his supporters that there was one last opportunity to interrupt the peaceful transfer of power: preventing the Congress from counting the electoral college votes. And they responded to his call. During the trial, we saw a video of a rioter yelling, "We were invited by the President of the United States!" and examples of the rioters' social media posts telling President Trump they were there for him, including a photo of rioters storming the Capitol steps captioned, "This is me."

Law enforcement, sworn to protect the Capitol, were repeatedly assaulted defending our temple of democracy and our very Republic. We will never forget the shrieks of the police officer pinned in between the doors at the hands of the rioters, pleading for help. We will never forget Officer Harry Dunn, who fought against the violent mob for hours and, after it was over, broke down in tears, telling fellow officers he had been called the N-word numerous times that day. He asked: "Is this America?" Or Officer Eugene Goodman who ran to take on a growing group of the rioters by himself, diverting them away from the Senate Chamber and allowing Senators to move to a secure location.

Tragically, the attack on the Capitol also cost the lives of three brave officers, including Officer Brian Sicknick who died from injuries sustained while engaging with rioters. Two other officers died by suicide following the events of January 6: D.C. Metropolitan Police Officer Jeffrey Smith and U.S. Capitol Police Officer Howard Liebengood.

While much of the trial rightfully focused on what President Trump did on and leading up to January 6, in many ways what he did not do was even more dangerous. After he sent the mob to the Capitol, putting law enforcement in danger and threatening the safety of the Vice President, President Trump did nothing to stop the violence. Despite calls from Republican leaders across the country, President Trump did not even send a tweet to defend our democracy. Hours after the rioters first breached the Capitol, he finally released a video and told the rioters: "we love you; you're very special."

President Trump betrayed his oath of office to preserve, protect, and defend the Constitution of the United States. He incited a mob to attack the Capitol and prevent the peaceful transfer of power, and for that, he should be impeached.

On January 6, we were all awakened to our responsibilities as Americans and as Senators. I will never forget walking to the House Chamber around 4 a.m., with shattered glass from broken windows strewn in the hallway, joined by Senator BLUNT, Vice President Pence, and alongside two young women who carried the mahogany boxes holding each State's electoral votes. We knew we had to return to do our jobs, and that night, we made clear to all: Democracy will prevail.

Thank you.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR JEANNE SHAHEEN

Mrs. SHAHEEN. Mr. President, on January 6, 2021, the heart of American democracy was attacked by a violent mob seeking to stop the counting of electoral votes in Congress and the peaceful transition of power. The peaceful transition of power is the hallmark of any healthy democracy and the foundation of our government by the people. That tradition has endured in our country since the "Revolution of 1800" when John Adams lost his election to Thomas Jefferson, marking the first peaceful change of Executive party in the United States. Years later, Jefferson would write

about the “Revolution of 1800” and say, “for that was as real a revolution in the principles of our government as that of 76 . . . not effected indeed by the sword . . . but by the rational and peaceable instrument of reform, the suffrage of the people.” Sadly, the attack on the Capitol was an attempt to return to the “sword,” and it was incited by the President of the United States.

Donald Trump’s actions leading up to and on January 6 demonstrated what I believed following his first impeachment: He was unfit for the Presidency and betrayed his oath to faithfully execute the office of President and preserve, protect, and defend the Constitution. Donald Trump engaged in a months-long campaign of lies and misinformation about voter fraud in the 2020 election to mislead the American people and maintain power. This campaign was waged with a singular purpose: to overturn a free and fair election through any means necessary. It included calls to State election officials in Georgia where he urged them to “find votes” that would allow him to win the State; wild conspiracy theories that voting machines had been rigged against him; and baseless lawsuits that were rejected more than 60 times by Federal courts at all levels. This insidious effort culminated at the “Save America” rally on January 6 when the former President urged his supporters to “fight like hell” and directed them to march on Congress where the counting of electoral votes had begun.

The House managers presented a detailed timeline of the former President’s actions before, during, and after the election that exposed his effort to subvert the Constitution and defy the will of the American people. The evidence presented against the former President demonstrated that he sought to undermine and ultimately overturn the results of the 2020 election. It showed that when his challenges in court had failed and the electoral results had been certified, he turned his attention and all the power of the Presidency to January 6. He encouraged his supporters to come to DC to “stop the steal” and pressured former Vice President Pence to assert power he did not have under the Constitution to overturn the election. Trump amassed a crowd of individuals waiting for his direction, including armed individuals who had planned an attack for weeks in response to the President’s claims that the election was stolen.

The former President’s actions had deadly and destructive consequences. Insurrectionists stormed the Capitol building, desecrating the seat of American Government and the physical manifestation of freedom for people across the world. The insurrectionists viciously beat police officers defending our democracy, vandalized the building, and terrorized those inside. All the while, the mob chanted “hang Mike Pence,” “President Trump sent us,” and “traitor, traitor, traitor.” When the attack was over, hundreds of police officers and others were injured, and five people were dead, including a brave Capitol Police officer who lost his life defending our Capitol. The attack was viewed across the world and has undeniably tarnished America’s reputation as a beacon of freedom and democracy.

What was the former President’s response to this treasonous attack on our constitutional process? It was to repeat the sinister lies that had led to the attack in the first place and refer to the insur-

rectionists as “great patriots” whom he loved. The House managers showed that the President could have stopped the attack, but he chose instead to continue his effort to obstruct the counting of the electoral votes. According to the testimony of Congresswoman HERRERA BEUTLER submitted to evidence, the former President responded to House Minority Leader KEVIN MCCARTHY’s pleas for help by saying, “Well, KEVIN, I guess these people (the insurrectionists) are more upset about the election than you are.” These are not the actions of a President trying to defend the Constitution and uphold his oath of office; they are the actions of an individual intent on retaining power by any means necessary.

The actions of Donald Trump before, during, and after the attack on the Capitol reflected our Constitution’s Framers greatest fear that a President would do anything to retain power contrary to the will of the people. They knew well the dangers of a despot and the capacity of power to corrupt the Republic they had established. That is why I voted to convict the former President to protect our system of government from those who would use their office to undermine our Constitution. Senate precedent, history, and tradition clearly demonstrate that a former President could be convicted having been impeached by the House while still in office.

The former President’s legal team made no persuasive argument as to how his remarks on January 6 would be considered protected speech under the First Amendment or why he could not be convicted as a former President. As House Manager RASKIN said during his argument, “if this is not impeachable conduct then what is?” I believe it fits squarely within the high crimes and misdemeanors identified as an eligible offense for impeachment in the Constitution. Thus, I exercised my responsibility as a juror to vote to convict and ensure that the actions of the former President would not go unchecked.

Donald Trump betrayed his oath of office, and he betrayed the American people. His actions must not go unanswered. The oath that I took and my allegiance to it require that I preserve, protect, and defend the Constitution by voting to convict a former President whose zealous pursuit of unchecked power will forever be remembered as one of the darkest days in American history. As a U.S. Senator, I will continue to take a stand against actions that violates the fundamental norms and ideals of American democracy.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR MICHAEL F. BENNET

Mr. BENNET. Mr. President, for the second time in over a year, events compelled the Senate to hold an impeachment trial for President Donald Trump. By once more acquitting the President despite overwhelming evidence of his guilt, the Senate has again abdicated its responsibility to the American people and our democratic Republic.

The Founders fashioned our constitutional system to at once defy history and reflect its enduring lessons. They understood that since the first human societies, rule of the strong had prevailed across ages of warlords, monarchs, emperors, and tyrants. From the ex-

amples of ancient Greece and Rome, they also knew that rule by the people was the fragile, flickering exception.

To ignite America's experiment in self-government, the Founders handed us a constitutional system unique in human history, with inalienable rights for the people, free and fair democratic elections, the rule of law, and coequal branches of government to check the unbridled ambitions that risked dragging us into tyranny. Our system was never perfect—far from it—but over 234 years, Americans have fought and sacrificed to make it more democratic, more fair, and more free.

The Founders also understood that, however well-crafted the Constitution may be, its fate would inevitably depend on the public officials sworn to protect it. They could give the Senate the unique power to convict a President, but they could not guarantee Senators would exercise that power when the moment required it.

Their fears were realized on February 13, 2021, when the Senate failed to convict President Trump, a man who defied every standard of conduct and decency the Founders expected of public officials.

Months before Americans cast their ballots, Donald Trump made our democracy his enemy—manufacturing false claim after false claim to undermine the 2020 election. He warned the election would be stolen or rigged, dead people would vote, and voting machines were not trustworthy. He repeated these claims incessantly on social media, at his rallies, and in interview after interview on cable news. He repeats these lies to this day.

When Donald Trump lost the election by over 7 million votes, he refused to concede. Instead, he waged a months-long war against the peaceful transition of power. First, he challenged the election results in court. He lost 61 out of the 62 cases, often being howled out of court by Federal judges, many appointed by the President, for failing to produce any evidence of widespread fraud. Former Attorney General William Barr, one of the President's most steadfast allies, confirmed that there was no such evidence.

So the President changed course. He threw the weight of his office against State and local officials hoping he could coerce them into overturning their States' lawfully conducted election. He called election officials in Wayne County, MI. He summoned State senators from Michigan and Pennsylvania to the White House to urge the legislature to intervene. His aides hounded the Governor of Arizona to echo the President's baseless claims about the election. Most notoriously, he browbeat Georgia Secretary of State Brad Raffensperger in a recorded phone call to "find" another 11,780 Trump votes and badgered the Vice President to reject the certification of the electoral results. In my view, these actions alone warranted impeachment. But he didn't stop there.

In the end, President Trump stopped at nothing. As Congress gathered on January 6 to certify the electoral college results, he incited a mob to invade the Capitol and "stop the steal." They scaled, as if it were an enemy rampart, the platform built for President-Elect Biden's inauguration and the peaceful transition of power. They chanted President Trump's name as they smashed doors, broke windows, and looted private offices. They repeated the Presi-

dent's lies as they cursed, speared, and bludgeoned the men and women of law enforcement who defended our democracy.

At virtually every step of the way, our constitutional system held its ground because patriotic Americans fulfilled their obligation to our Republic. From the Capitol Police to the nonpartisan election officials, to the State and Federal judges, to the Vice President of the United States, all refused to bend to the President's lawless demands. We should shudder to think how events would have unfolded if these Americans had made a different choice.

Yet somehow, confronted with these examples of individual patriotism and the overwhelming evidence of the President's impeachable offenses, 43 Senators still voted to acquit, including the Senate minority leader, MITCH MCCONNELL.

The minority leader refused to contest the case laid out by the House managers. He conceded that President Trump was "practically and morally responsible for provoking the events" of January 6, committing what he called "a disgraceful dereliction of duty." Instead, the Senator hid behind a strained reading of history and dodged his duty to hold President Trump accountable on the feeble ground that the Senate lacked jurisdiction. Through this sophist sleight of hand, the minority leader tried to place one foot on the right side of history without taking the hard vote it actually required. In doing so, he provided cover to every Republican Senator who joined him to acquit President Trump, including many who have failed to denounce the former President for anything he has done to undermine American democracy.

The Constitution grants the legislative branch authority to hold accountable any President who would seek to undo our democratic system of government. This Senate's refusal to exercise this authority and convict Donald Trump is a stain on this body. We had the responsibility to serve as a check on his anti-American actions and reassert the standard of government our Founders imagined. We chose otherwise.

With the permission of the Senate's acquittal, Donald Trump refuses to admit his defeat and continues to mislead his supporters that the election was stolen. In so doing, he continues to perpetuate, in another form, the insurrection he unleashed on January 6.

Our democracy stands today, not as a result of our actions, but those of law enforcement officials at the Capitol and State and local officials in Michigan, Pennsylvania, Georgia, Arizona, and Wisconsin—men and women who didn't surrender to President Trump's tyrannical demands.

Nearly 2 months later, the U.S. Capitol remains ringed with razor-wire. As I have walked through the perimeter each morning, I have reflected on those who kept us safe from the President's anti-democratic mob—the law enforcement officials, the people who maintain and clean the Capitol, congressional staff. They risked life and limb, not only to defend Senators and Representatives but to defend basic American principles of our constitutional order: free elections, the peaceful transition of power, the rule of law, and the separation of coequal branches of government.

And then I think about the State and local officials, many Republicans, who held their ground under pressure from the President of the United States, often accompanied by threats from angry citi-



zens caught up in his “Big Lie” that an election he lost by over 7 million votes was somehow stolen from him. These brave men and women did their duty to protect our constitutional system.

They are true patriots no different than the millions of other citizens who have done their part to defend the way of life we share under our Constitution. They join the African-American regiments who defended the Union in the Civil War, the code talkers in World War II, and the sons and daughters of immigrants who have defended our country from Yorktown to Normandy to Kandahar.

The Constitution of the United States is not a machine that runs itself; it is an exercise in self-government. American citizens—including those elected to serve them in the Senate—must keep it working and always ensure that it becomes more democratic, more fair, and more free.

As Americans, we should take comfort that there have been many, from Frederick Douglass and Susan B. Anthony to the other courageous citizens who rose to moments far more difficult than our own to protect the Republic and push it closer still to our highest ideals.

They are why the United States remains, for now, the longest lasting government by the people in human history. But as the Founders understood, democracy will always be vulnerable to demagogues who stop at nothing to hold on to power. History will record the names of those who stood on the side of the Constitution, passing down to the next generation the high standard of citizenship our democracy demands. Hopefully, a future Senate will meet that standard.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR RICHARD BLUMENTHAL

Mr. BLUMENTHAL. Mr. President, in this impeachment trial, every Senator was a juror, but also a witness and victim of the violent insurrection Donald Trump incited. The case was straightforward. Former President Trump instigated an armed riot seeking to overthrow a lawful election and possibly even injure or assassinate elected officials.

I spent most of my career enforcing laws, including two decades as Connecticut’s attorney general. In this role, I learned the power and the significance of accountability. When wrongdoers enjoy impunity for their actions, they and others like them are emboldened.

The first time former President Trump was impeached by the House, he had pressured a foreign government to corrupt the American election process, extorting a vulnerable, fledgling democracy to help him cheat in a Presidential election.

This time, former President Trump’s attack on American democracy was more direct and violent. The insurrectionists forced us to flee for our lives, to place desperate, seemingly final calls to loved ones. A Capitol Police officer died protecting us.

I have the same fear now, only greater, that I felt at the close of former President Trump’s last impeachment. By again refusing to hold former President Trump accountable, the Senate is paving

the way for another would-be tyrant to break laws and norms to retain power.

We in the Senate are obligated to uphold our oaths to support and defend the Constitution against all enemies, foreign and domestic. Our oaths obligate us to hold former President Trump to account for his incitement of a violent attack on the U.S. Capitol, the symbol of American democracy around the world.

The case against Donald Trump was proven convincingly with videos and voice recordings so powerful that this printed word can never capture their force. The former President's offense in this case is as dangerous as it is straightforward. He spent months of his Presidency telling and retelling the "Big Lie." The lie that no matter how the American people voted at the ballot box, he was the only legitimate winner of the 2020 Presidential election, that the election was stolen from him, that anyone who disagrees is un-American, a traitor.

As Manager LIEU explained at trial, at a certain point in his efforts to undermine the 2020 election, "Trump ran out of non-violent options to retain power."

Donald Trump encouraged, emboldened, and even helped build a mob of violent extremists that he invited to Washington, DC, and incited to storm the Capitol. While some Members of Congress were serving the former President in seeking to subvert American democracy by objecting to vote counting, Trump was imploring the mob to do the same. He told supporters to "never give up" on the "Big Lie." He told them that "this election was stolen from you, from me, from the country." He said, "if you don't fight, you are not going to have a country anymore." He told the insurrectionists to go to the Capitol, and he even lied to them that he would be going with them.

The resulting violence, clearly foreseeable, was horrifying. They marched to the Capitol. Rioters broke windows and breached the building. They killed a 42-year-old Capitol Hill Police officer and Air Force veteran, Brian Sicknick. They did stop the vote counting, if only temporarily. They injured many.

Members of Congress removed congressional pins to avoid identification from the mob. Senators ran from the Senate Chamber. They ran for their lives. Rioters flew a Confederate flag, a symbol of hate that did not fly in the Capitol even at the height of the Civil War.

Donald Trump watched this deadly attack unfold with glee from the Oval Office. On national TV, he told the insurrectionists that he loved them. "I know you're hurt," he consoled the rioters. "We love you. You're very special." He did not lift a finger to help anyone threatened with violence, including his Vice President.

As a result of former Donald Trump's incitement, an angry mob stormed the Capitol with every intent to harm elected officials and disrupt the peaceful transfer of power. Not only has the world lost Brian Sicknick, two other Capitol Police officers have died by suicide. Several members of the mob were killed.

The Senate's failure to convict increases the specter of another would-be tyrant, as well as Donald Trump, seeking again to mobilize a mob to overthrow democracy. Violent extremism has been emboldened. It is a present, immediate danger.

My colleagues know that former President Trump lost the 2020 Presidential election. They know that more than 60 courts tossed out his attempts to drum up baseless allegations of voter fraud. They know that the Director of Cybersecurity and Infrastructure Security Agency, a lifelong Republican, certified the election was safe and secure. And they know that former President Trump incited the insurrectionists to attack the Capitol on January 6.

Democracy is not our default state of being. Democracy thrives only so long as the institutions that support it thrive. And democratic institutions will only thrive and persist through hard work, active work, dedicated work of our elected officials. For 4 years, former President Trump continuously attacked our basic norms and institutions of democracy. For 4 years, he normalized chaos. Our job now—Republicans, Democrats, Independents—is to restore. We must dedicate ourselves to restoring the rule of law, the protections of rights, and the integrity of institutions. And that task starts with accountability for all those who perpetrated the damage.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR MAZIE K. HIRONO

Ms. HIRONO. Mr. President, I rise today regarding the second impeachment of Donald Trump.

The House managers made their case. Based on the evidence they presented and the events we all experienced, Donald Trump should be convicted and prohibited for holding office ever again for inciting a violent insurrection at the U.S. Capitol on January 6.

Through video, pictures, and quotes, they outlined how the President of the United States engaged in a months-long campaign to discredit the legitimate election results of the 2020 election—a de-ranged campaign that began before a single vote was cast.

This unprecedented campaign of misinformation, pushing the “Big Lie,” infected a significant contingent of the President’s supporters. They came to Washington, DC, at Trump’s invitation and inciteful rhetoric. They followed his direction on January 6 to storm the Capitol and tried to stop us from carrying out our constitutional duty to certify the election for the lawful winner of the Presidential election, Joe Biden.

The evidence presented by the managers is solid and irrefutable, and the President’s lawyers made almost no effort to try. Given the jury they were facing, I don’t blame them. Almost every Senator in this Chamber was there that day. Senators OSSOFF, WARNOCK, and PADILLA weren’t sworn in until January 20. We all experienced the unthinkable that day, and we are all processing it differently. The violent insurrection shook many of us to the core. For some of us, the events of that day were so chaotic that the full magnitude of what was happening wasn’t clear at the time.

Both as part of the trial evidence and through interviews and statements, we have learned more fully the measure of danger we faced as Donald Trump’s murderous mob assaulted the Capitol campus. The managers’ case and other media has given us all a better picture of the terror.

There are stories of bravery, like that of Officer Eugene Goodman and his U.S. Capitol Police colleagues.

The footage of Officer Goodman misdirecting the mob marauding through these halls is remarkable. Put yourself in his shoes. How many of us would have acted as quickly in the face of a rushing wave of hate? He has rightly been commended for his decisive, nearly superhuman response. All across the complex, his colleagues battled with insurrectionists who assaulted them with bats, bear spray, and other weapons in close quarters—these were scenes from a war zone, not the heart of the U.S. Government. While their bravery is commendable, Capitol Police and the other law enforcement agencies that eventually assisted to restore order should never have been in that position. But for the President of the United States sending a mob of violent insurrectionists to the Capitol, they would not have.

There are other chilling stories that should make every American's heart race. The audio of the Speaker's staff barricaded in their office, whispering into the phone, voices trembling, begging for help. The silent Capitol security footage showing just how close the Vice President, Senators, Representatives, and staff came to harm. The videos of chanting, gleeful, rioters demonstrating their horrifying fealty to Donald Trump's lies as they broke down doors and ransacked offices and the Senate floor. The story that my friend Senator MURRAY has told of being trapped in her office with her husband. The mob pounding on the door while he tried to hold it shut with his foot. The absolute terror she must have felt hoping that the door was locked and that help would come quickly. They were inches away. The rest of us there that day were at least feet away. I am sure that we all called, texted, and thought of loved ones, trying to reassure them but not actually knowing if that was true, feeling from far away their helpless anguish for us and the utter terror and disbelief that something like this could happen in our country, to the U.S. Capitol, of all places.

The U.S. Capitol is the heart of our democratic system of government. While we may disagree vociferously, debate passionately, and represent people and communities with deeply divergent views, Congress exists to find common ground without resorting to violence. This simple fact—that as a country we solve our problems through democratic institutions and debate—is a source of our strength and global leadership. I have strong disagreements with a number of my colleagues. I know many of them disagree with me. But each day, we come to the Senate floor and voice those disagreements without fear for our safety. On January 6, that basic level of understanding—the very thing that separates our country from so many others—was shattered by the assault on the Capitol. And worst of all, that insurrection was incited by a sitting President of the United States.

In some respects, it is difficult to know how best to move forward from that awful day. We came back. We did our jobs. And we are still here doing what our constituents sent us here to do. The Capitol may have been changed indelibly for many of us.

Again, to turn to the words of my friend Senator MURRAY, the bipartisan actions shown in Congress in the wake of the September

11 attacks helped to restore some semblance of safety and security. That common response is absent today.

To begin to heal, we need accountability. We need to live up to our constitutional oaths and the sacred duty our constituents bestowed on us when we were elected: to uphold the law, to stand for their values, and, when necessary, to stand for our own. We can only start to heal when we have accountability and justice for what happened. To achieve this, we need those who are in leadership positions to lead.

Republicans failed to lead last year when they voted to acquit Donald Trump for his corrupt actions in dealing with Ukraine by conditioning military assistance on receiving political dirt on Joe Biden. Their failure to lead, to hold Trump accountable, and frankly to constrain his mania emboldened him to push the boundaries of our political discourse further.

Republicans have another chance to stand up for our democracy and against authoritarianism. They have a chance to accept the reality that has been clearly outlined for them in video, audio, and their own experiences. They can make a strong statement that political violence is unacceptable in the United States. They can—and should—vote to convict Donald Trump and bar him from ever holding office again. This is the real first, meaningful step that we can take to achieve the unity that we all claim to want.

I will vote to convict. I hope that this time, more than one of them will be brave enough to lead by standing up and doing what is right.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR ELIZABETH WARREN

Ms. WARREN. Mr. President, I would like to enter a statement into the Record.

The President swears an oath to faithfully execute the Office of the Presidency and to “preserve, protect, and defend the Constitution of the United States.” At the very core of that oath is a commitment to democracy, to government of the people, for the people, and by the people.

President Trump tested that commitment. Americans endured a pandemic while casting their votes in the November 2020 election. Following that election, the outgoing President baselessly sowed doubt about its legitimacy and refused to commit to a peaceful transition of power. In the days leading up to January 6, 2021, President Trump agitated his most dangerous supporters, who had already shown a propensity for violence, and called on them to interfere with Congress’s duty to formally count the votes of the electoral college. Donald Trump wanted a riot to take place on January 6. We know because he said so. And when police officers defending the Capitol were overrun by his mob, he did nothing. Democracy is at its most fragile at the moment of transition, and that fragility is exactly what the former President sought to exploit.

During President Trump’s second impeachment trial, his defense tried to paint for Americans a picture of a President who called for peaceful protest and who bears no responsibility for the January 6

assault on the People's House. But the President's actions took place before our eyes. His conduct before, during, and immediately after the assault on the Capitol is well known to the American public. He is uniquely responsible for the events of January 6.

Americans spoke clearly and forcefully in November when they elected a new President. Donald Trump's attempt to cling to power through lies and violence is just what the Framers of our Constitution feared. But part of the brilliance of our Constitution's separation of powers is that we, the Congress, have the power and obligation to defend against such gross misconduct through impeachment.

I voted to convict and disqualify former President Donald Trump because he violated his oath of office and because our future leaders must know that such abuses of power will not be tolerated in a free and democratic society. I will continue to call out these abuses and to keep those in power accountable.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR EDWARD J. MARKEY

Mr. MARKEY. Mr. President, the essence of any American President's job is set forth in the oath he or she swears—an oath that the Founders considered so fundamental that they put it in the Constitution. And that job is to preserve, protect, and defend the Constitution of the United States.

A President who violates that oath has committed an impeachable offense. That is a truth. There can be no reasonable dispute that a President who fails at this basic responsibility is unfit to remain in office and cannot and should not be permitted to hold that office again.

Not only did Donald Trump fail to uphold his oath, he took steps intended to violate it. It wasn't mere negligence. It wasn't even recklessness. Donald Trump engaged in an active, willful, intentional attack on our Constitution and our democracy.

Donald Trump incited to violence and riot a mob that attacked the U.S. Capitol and our government. That is a high crime and misdemeanor. We all saw and heard the evidence during the trial: the video, the audio, the tweets, the statements, the affidavits.

Months before the election, Donald Trump laid the groundwork for this insurrection, arguing he would only lose the election if there were fraud. After he lost, he repeated over and over again the "Big Lie" that the election was stolen. He agitated his supporters who falsely and wrongly believed that the election was rigged.

Trump beckoned a mob to Washington for a rally when he knew the Congress would be counting the electoral ballots. Trump's people knew from law enforcement bulletins and intelligence that the mob was armed and dangerous. Yet he riled them up and then sent them up Pennsylvania Avenue to the Capitol. That rally became an orgy of violence and hate. Mayhem and destruction ensued, all in Donald Trump's pursuit of staying in office beyond his term, of ignoring our Constitution, of preventing a peaceful transfer of power, of promulgating the "Big Lie". Donald Trump did not express horror or outrage at the scenes playing out live on television. He did

not quickly and decisively urge his supporters to stop. He did not immediately call out the National Guard. He did not show any concern for the law enforcement officers being beaten, maimed, and even killed at the Capitol. He reportedly delighted in what was happening, unable to comprehend why others were not excited about it like he was. And he has never shown any remorse or an ounce of contrition or taken any responsibility. Instead, he has maintained that he acted perfectly appropriately.

The Senate of the United States sat as an Impeachment Court, with Democrats and Republicans serving as jurors. But the vast majority of those Republicans were more interested in fealty to Donald Trump than loyalty to our country. They were more concerned about Trump's base than basic justice. They were willing to ignore the truth to embrace the "Big Lie."

I had hoped the House managers would call witnesses. Clearly, there were individuals with direct knowledge of Trump's state of mind during the insurrection, the danger at the Capitol as it unfolded, and his support of it. But even before we debated potential witnesses, Republicans had made up their minds. They were unmoving in their fealty to Trump. Republicans were willfully blind to the truth and the facts of the case.

The rioters wanted to kill Vice President Pence and House Speaker PELOSI. They told us so. We know that the west side of the Capitol was breached around 2 p.m. and that the rioters had overrun the Capitol. We know that the mob was approaching the Senate floor when our session was abruptly recessed at 2:13 p.m. We know that Vice President PENCE was whisked off the Senate floor and that he was in mortal danger, as were all Members of Congress in their Chambers doing their constitutional duty. We know that all this was playing out in real time on television and that Donald Trump had to know it was happening. And yet, about 10 minutes later, at 2:24 p.m., knowing all this, Donald Trump tweeted an attack at his own Vice President. "Mike Pence did not have the courage to do what should have been done to protect our Country and our Constitution." And we know that around 2:26 p.m., Donald Trump called Senator TUBERVILLE not to ascertain what was happening, not to ask how the Vice President was or to offer aid and assistance against the insurrection. No, Trump called to ask Senator TUBERVILLE to delay the certification. It is clear whose side Donald Trump was on.

There is no First Amendment defense to what Donald Trump did. The First Amendment has no application in an impeachment proceeding, which does not seek to punish unlawful speech, but to protect the Nation from a President who has violated his oath of office.

But even if the First Amendment applied, even if we bought Trump's lawyers' bogus claims that the First Amendment can be a defense, the argument utterly fails. Trump's lawyers relied on the Supreme Court's decision in *Brandenburg v. Ohio*, but *Brandenburg* explained that the First Amendment protects advocacy, "except where such advocacy is directed to inciting imminent lawless action and is likely to incite or produce such action." Once the Capitol was breached, the lawless action was no longer imminent, it was actual. And Donald Trump was still tweeting words of encour-

agement to the rioters. There was a siege actually happening in the Capitol. There was no longer rhetorical fighting; there was actual fighting, on television, live for everyone to see.

The House managers proved their case with facts and evidence. Donald Trump incited and relished in an effort to violently overthrow our government. He invited. He incited. He delighted.

Anyone who is opposed to abolishing the filibuster need only look at the vote to acquit and see how Republicans willfully blinded themselves to truth and facts in fealty to Trump and their party. Their votes to acquit once again show our hurdles to progress: Republican political calculations and their dereliction to truth and justice.

The final tally on the vote to acquit does nothing to reassure me that Republicans are willing to work together and transcend party politics. Republicans had the opportunity to recognize that faith in the Constitution is a faith that we all share. Instead, they ignored the Constitution for a “Big Lie”. How can we expect them to work in good faith with Democrats to respond to the big challenges facing our Nation when they refuse to accept undeniable facts?

The only reasonable conclusion based on the evidence presented at the trial was that Donald Trump committed an impeachable offense, should have been convicted, and should have been barred from holding future office. Republicans refused to accept or acknowledge that. I fear that with their votes to acquit, they have sown the seeds of another violent attack on our Constitution and our democracy.

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[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR DAN SULLIVAN

Mr. SULLIVAN. Mr. President, the impeachment trial of former President Donald Trump marked the third time in 1 year that the Senate has had to confront significant constitutional and institutional questions with consequences that will undoubtedly reverberate into the future. As always, I am guided by the Constitution, historical precedent, and “a deep responsibility to future times,” as stated by Supreme Court Justice Joseph Story, our Nation’s first great constitutional scholar, two centuries ago. This is what has informed me during last year’s impeachment, the electoral college certification in January, and now another impeachment.

This has been a disheartening episode for a divided America. Make no mistake: I condemn the horrific violence that engulfed the Capitol on January 6. All those who undertook violence on that day should be prosecuted to the fullest extent of the law. I also condemn former President Trump’s poor judgment in calling a rally on that day and his actions and inactions when it turned into a riot. His blatant disregard for his own Vice President, Mike Pence, who was fulfilling his constitutional duty at the Capitol, infuriates me. I will never forget the brave men and women of law enforcement—some of whom lost their lives and were seriously injured—who carried out their patriotic duty to protect members of Congress that day.



However horrible the violence was—and how angry I have been about it—I believe that it is imperative, for the future of our democracy, to examine closely the totality of the precedents, impeachment proceedings, and evidence, and to be as dispassionate and impartial as possible in this case.

That is why I cast my vote, on February 13, 2021, to acquit former President Trump on the single Article of Impeachment, “incitement of insurrection.”

The primary purpose of impeachment in our constitutional system is to remove an official from office—to, according to Justice Story, divest an official “of his political capacity.” The House’s single Article of Impeachment emphasized this need to remove President Trump from office. Regarding this case before the Senate, President Donald Trump had already been removed from office by a vote of the American people this past November. Thus, pursuing impeachment in this case creates a troubling precedent in which former officials—private citizens—can face impeachment and conviction.

Therefore, the fundamental issue in this impeachment trial is not removal from office but whether the Senate has or should accept jurisdiction to try, convict, and disqualify Donald Trump, a private citizen, from any future elected office based on the House’s single Article of Impeachment—incitement of insurrection.

The House and Senate have never before claimed or exercised such impeachment jurisdiction over a former President. I do not believe that the Constitution empowers the Senate to have such impeachment jurisdiction. In his renowned “Commentaries on the Constitution,” Justice Story comes to the same conclusion, although to be fair, there are others who do not. I believe that the precedents set in claiming that the Senate can try former Presidents who are private citizens have the very real potential to do significant long-term damage to our constitutional order, individual liberties, and the proper functioning of our Republic in a way that we will come to regret as a nation.

Additionally in this case, the House undertook a “snap impeachment” in 48 hours with no hearings, no witnesses, no record, and no defenses presented. When asked about this during the Senate trial, the House managers stated that constitutional due process protections for a defendant in an impeachment are “discretionary” or, in other words, not required. This troubling declaration is now a precedent in the House. Combining this “no Due Process/snap impeachment” precedent with the additional power of the Senate to try former officials, who are now private citizens, amounts to a massive expansion of Congress’s impeachment power never contemplated by our Founding Fathers. The temptation to use such power as a regular tool of partisan warfare in the future will be great and has the potential to incapacitate our government.

Those in favor of expanding impeachment jurisdiction to include the former President primarily point to the potential for Presidents or other officials to commit impeachable acts near the end of their term or shortly before resigning. The House managers called this a “January exception” to impeachment. They argued that this would allow such individuals to escape culpability and would frustrate the purpose of impeachment to hold public officials account-

able. This is a legitimate concern. However, there are other remedies available to punish such conduct of a former President through the judicial system, if warranted. The Constitution explicitly provides that former officials can be subject to criminal prosecution for their actions while in office, regardless of impeachment. Moreover, even if such conduct eludes judicial review, the American people are well equipped to judge political conduct and pass their judgement upon it. For that reason, and as I emphasized last year following the previous impeachment trial, I believe it can be left to the wise judgement of the American people on whether or not the former President should be disqualified from future office.

Even if this Senate was empowered by the Constitution to hear this case, I do not believe that the House managers met their burden in proving the critical issue at trial—whether the former President intended there to be violence at the Capitol as a result of his speech at the Ellipse on January 6. Furthermore, the House managers claimed, in arguing their incitement charge, that First Amendment political speech protections do not apply to elected officials in impeachment proceedings. A conviction based on this breathtaking precedent has the potential to significantly further undermine core constitutional protections for Americans and their ability to undertake political speech in the future.

Finally, laced throughout the House managers' presentations were subtle and not so subtle indictments, not just against the Capitol rioters who fully deserve condemnation but against all supporters of the former President, which of course includes many Alaskans. This sentiment is one that cannot and should not be allowed to be perpetuated. In my view, this will not bring about the kind of unity that our Nation needs now. In contrast to what some of the House managers implied at this trial, the vast majority of Americans and Alaskans who had supported President Trump were appalled by the violence on January 6. Such Alaskans supported this President because of his policies that helped our State. I will continue to work to make sure that these Alaskans' voices are not silenced and that this dispiriting chapter in American history won't deter them from speaking out in defense of their beliefs.

This has been a difficult time for our Nation. My vote on February 13 was not in defense of the former President's conduct on January 6, with which I fully disagreed, particularly his twitter attacks on Vice President Pence, as the Vice President undertook his constitutional duties to preside over the electoral college vote at the Capitol.

At the end of the day, my obligation is to rise above the passions of the moment and to carefully consider the decisions we make today and the ramifications they will have for our country's future. I believe that my vote to acquit fulfills that obligation. I want Alaskans and Americans to know that throughout all of this, my guiding light has been both fidelity to Alaska and to our Constitution.

[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR CATHERINE CORTEZ MASTO

Ms. CORTEZ MASTO. Mr. President, during this impeachment trial, I have adhered to the oath I swore at the trial's outset to "do impartial justice," and I have listened with care to the facts and law presented to me as a juror.

These facts compel me to conclude that Donald Trump is guilty of inciting an insurrection against our Republic.

As the evidence presented by the House impeachment managers has made clear, Donald Trump used the powers at his disposal to ensure he could keep his grip on the Presidency even though he lost the election.

As the sitting President and a candidate for reelection, Donald Trump cast doubt on the results of that election for months, arguing that the only way he would lose at the polls was by fraud. Then, after losing to Joe Biden by a margin of 7 million votes in a free and fair election, Donald Trump claimed it was a "fraudulent election."

As our system of government allows, Donald Trump turned to State and Federal courts to hear his allegations of widespread fraud. Some of those courts were presided over by judges who Donald Trump himself had selected. Again and again, those courts rejected the allegations of fraud as baseless.

Even Trump's own Attorney General, William Barr, publicly declared that he had found no evidence of fraud that could have "effected a different outcome in the election."

Faced with defeat in the courts, Mr. Trump nevertheless pressured officials at every level of both State and Federal government, including his own Vice President, Mike Pence, to change the election results.

When those efforts failed, he encouraged his supporters to come to Washington, DC, on January 6, the day when Congress would certify the electoral college votes for Joe Biden. He claimed that the election was stolen and tweeted "We have just begun to fight," promising that on January 6, it would be "wild." On December 11, 2020, Donald Trump released two campaign ads claiming the election was a "fraud" and instructing his supporters to "stop the steal." His campaign paid \$50 million dollars for the ads and ran them up to and until January 5, 2021.

Those who heeded that well-funded call understood what President Trump was asking. They didn't just come with protest signs; they came with handcuffs and rifles, bear spray and tactical gear, Molotov cocktails and crossbows, and walkie-talkies for communication.

On January 6, at a rally just before noon, Donald Trump asked the large crowd assembled before him to march on the Capitol. He asked them to fight "like hell" because "if you don't fight like hell, you're not going to have a country anymore."

Despite knowing that there had been concerns for months about potential violence surrounding the election, Donald Trump urged those at the rally 20 times to "fight." He also called on them to "stop the steal," declaring "you'll never take back our country with weakness."

Inspired by President Trump's words, his supporters began streaming toward the Capitol, where they eventually overwhelmed its defenses and threatened those inside. Those in danger included the Vice President, the Speaker of the House, Members of Congress, countless staffers, and thousands of members of law enforcement.

And when Donald Trump saw that his supporters were battling U.S. Capitol Police officers and D.C. police, he said nothing to stop them for more than 2 hours, even when he knew that Vice President Pence, one of his most loyal political allies, was in danger. More, he tweeted further criticism of Mr. Pence as the Vice President's Secret Service detail was laboring to whisk Mr. Pence to safety.

Donald Trump was willing to do almost anything to convince Vice President Pence to violate his duty to the Constitution, and so the Vice President had a target on his back.

In other words, those who came to Washington at former President Trump's request and attacked the seat of our democracy were trying to do exactly what they believed Donald Trump asked them to: prevent the certification of Joe Biden as President-elect.

That is why they frankly admitted, both during the Capitol riot and later to law enforcement, that they were at the Capitol because "[o]ur president wants us here."

In response to all these facts, Donald Trump argues that the Constitution does not permit ex-Presidents to be tried for impeachment and that the First Amendment protects his right to encourage an attack on our democracy. These arguments are lawyerly fig leaves. Mr. Trump relies on them so heavily because his own behavior is indefensible.

The vast majority of legal scholars agree that the First Amendment does not apply in this instance because the incitement of an insurrection is not protected speech under the Constitution. They also believe the Constitution allows for the impeachment and trial of public officials after they leave office, particularly when, as in this case, the public official was impeached by the House of Representatives while still in office.

Otherwise, all an office-holder would have to do to protect him or herself from punishment would be to resign just before impeachment. The Senate has implicitly or explicitly agreed with this view three times in our Nation's history; first, in the very first impeachment trial against former Senator William Blount of Tennessee, held during the lifetime of the Founders; second, in 1876 when Secretary of War William Belknap resigned just hours before the House voted to impeach him for bribery and corruption; and finally, in this impeachment trial of Donald Trump, when a bipartisan majority of the Senate agreed that this trial could proceed in spite of the defendant's objections to its constitutionality.

My colleagues understand that the Constitution gives Congress the power to impeach, convict, and disqualify a former officeholder. This is true because otherwise, the country would be vulnerable to a President of either party who could flout any law but resign to be insulated from consequences.

As the House managers have argued, if anything is impeachable, it is a President inciting his followers to violence to overturn a legitimate election.

Our Founding Fathers held democracy sacred. They feared a demagogue, a leader who would pervert the Constitution in order to keep power, and they sought to protect the new Republic from such a President.

Donald Trump is the person the Framers feared. He poses an existential threat to American democracy. He has shown himself willing to use almost every measure at his disposal to gain and retain power, even if it means overturning a free and fair election through violence.

We can have no doubt what our Founding Fathers would have made of him: He was exactly the kind of person they wanted to prevent from holding and wielding power.

We have seen over the course of this election the profound risks of trifling with our democracy and undermining the legitimacy of our elections. We cannot let future candidates of either party believe that in America, the way to win is to lie and cheat, to whip a crowd into a frenzy, to turn it on public servants and law enforcement alike. We have to reestablish in our politics our absolute commitment to the idea that we resolve our disputes in our courts and in Congress, not by wielding weapons against lawmakers.

Our Founding Fathers made clear in the very preamble to the Constitution that “We the people . . . in order to form a more perfect union, establish justice, ensure domestic tranquility . . . do ordain and establish this Constitution.” America cannot be tranquil unless its leaders forswear violence and stand up for democracy. That is why I voted to convict Donald J. Trump of high crimes and misdemeanors against the American people.

Unfortunately for our country, many of my colleagues did not agree. I know this is difficult news for many American patriots, who, just as I do, love and cherish our democratic traditions, the rule of law, and the centuries-old tradition of the peaceful transfer of power. To that majority of Americans, I want to say: We must not lose faith in our system of government. We must work all the more diligently to protect it.

Right after Supreme Court decided the Dred Scott case—the most odious case in our long legal history—the great abolitionist and orator Frederick Douglass gave a speech. I turn to this speech whenever I am in need of hope.

Precisely when slavery seemed to have won a decisive victory, Frederick Douglass, himself a former slave, said in that speech that his “hopes were never brighter than now.” He believed that the world would see what a “scandalous tissue of lies” the Supreme Court’s decision in Dred Scott was. And he was right. History holds that Court case as one of the most shameful in our history, and I believe it will likewise condemn Donald Trump’s incitement of the Capitol attack. So today I remain hopeful because the people of Nevada and all Americans have been able to see the truth for themselves, and they understand that Donald J. Trump must never again be trusted to protect our sacred democracy.

[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR TINA SMITH

Ms. SMITH. Mr. President, the facts and the evidence were overwhelming: Former President Donald Trump lied for months to his supporters, summoned them to Washington, and incited a violent insurrection against our government and our democracy. I voted to convict because no reasonable person can listen to all the evidence presented and believe otherwise.

[From the CONGRESSIONAL RECORD, March 1, 2021]

STATEMENT OF SENATOR ROGER MARSHALL

Mr. MARSHALL. Mr. President, I would like to submit this statement for the Record regarding the impeachment trial of former President Donald Trump. The statement reflects my thoughts on this complicated constitutional matter and its implications for future impeachments.

In 1787, the Articles of Confederation were failing, and our young Nation was struggling to address the many challenges it was being confronted with in its infancy. A collection of independent States, the newly formed country experienced much difficulty with the regulation of trade and commerce, foreign affairs, and other basic domestic civil issues. With calls for disunion multiplying, delegates to the Constitutional Convention met to deliberate and forge a new government and with it an Executive to help centralize the powers necessary to form a strong republic. Having just shed the bonds of the British Monarchy and its infringements upon the liberties the delegates so desperately wanted to protect, there was much skepticism toward this idea. In order to abate these concerns, the Constitution's Framers provided for a means of removing an Executive, a Presidential impeachment.

After much debate over particular wording, article II, section 4 of the Constitution adopted by the delegates reads: "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

This is the fundamental impeachment provision contained in the Constitution and provides the primary evidence as to why the lone Article passed out of the House as well as the subsequent trial in the Senate, was unconstitutional. As this section shows, impeachment refers to "the President" and other officials, and it provides that they shall be "removed from Office." Donald J. Trump is no longer the President of the United States and therefore can no longer be removed from office. He is a private citizen.

Further evidence that Donald Trump is no longer the President and therefore that this trial is unconstitutional can be found within the Senate's impeachment authority: Article 1, section 3 provides that "When the President of the United States is tried, the Chief Justice shall preside." Chief Justice John Roberts did not preside over the impeachment trial, and instead that role was filled by the senior Senator from Vermont, PATRICK LEAHY. In a statement, Senator LEAHY himself stated that the President pro tempore of the

Senate “has historically presided over Senate impeachment trials of non-presidents.” These facts demonstrate that Chief Justice Roberts declined to preside over the trial because he did not believe that he had a constitutional role and that Senator LEAHY acknowledged that Donald Trump was no longer an officeholder. Finally, article 1, section 3 provides, “Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor.” This reiterates that removal from office must occur before that person is disqualified from holding an office again. If the Founders had intended that disqualification be a separate judgment, then the Constitution would have clearly stated “or” rather than “and.” The Constitution does not give the Senate the authority to try a private citizen or to remove him from an office that he no longer occupies.

It also does not give the Senate the authority to disqualify him from an office that he was not removed from.

I voted to acquit former President Donald Trump of the charge of inciting an insurrection for the January 6 Capitol riot because of these basic concerns surrounding the constitutionality of the proceeding. The impeachment of a private citizen, driven by political obsession, sets a very dangerous precedent. What would prevent a Republican-controlled Congress from impeaching former President Barack Obama or Secretary of State Hillary Clinton? What about historical Presidents such as George Washington, whose pivotal legacy no longer appears to meet the moral standards of contemporary times? While the political retaliation against the President is certain to continue now that he is out of office, I am proud to have been a part of the minority in the Senate to stand up to this type of unconstitutional behavior and to acquit Donald Trump.