

HEARING ON THE JANUARY 6TH INVESTIGATION

HEARING

BEFORE THE

SELECT COMMITTEE TO
INVESTIGATE THE JANUARY 6TH
ATTACK ON THE
UNITED STATES CAPITOL

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

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HEARING ON THE JANUARY 6TH INVESTIGATION

Thursday, June 16, 2022

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH
ATTACK ON THE UNITED STATES CAPITOL,
Washington, DC.

The Committee met, pursuant to notice, at 1:02 p.m., in room 390, Cannon House Office Building, Hon. Bennie G. Thompson [Chairman of the Committee] presiding.

Present: Representatives Thompson, Cheney, Lofgren, Schiff, Aguilar, Murphy, Raskin, Luria, and Kinzinger.

Chairman THOMPSON. The Select Committee to Investigate the January 6th Attack on the United States Capitol will be in order.

Without objection, the Chair is authorized to declare the Committee in recess at any point.

Pursuant to House Deposition Authority Regulation 10, the Chair announces the Committee's approval to release the deposition material presented during today's hearing.

Good afternoon.

"There is no idea more un-American than the notion that any one person could choose the American President."

"No idea more un-American." I agree with that—which is unusual because former Vice President Mike Pence and I don't agree on much.

These are his words, spoken a few months ago about Donald Trump's attempt to pressure the former Vice President—pressure him into going along with an unlawful and un-Constitutional scheme to overturn the 2020 election and give Donald Trump a second term in office that he did not win.

Today, the Select Committee is going to reveal the details of that pressure campaign.

But what does the Vice President of the United States even have to do with a Presidential election? The Constitution says that the Vice President of the United States oversees the process of counting the electoral college votes, a process that took place on January 6, 2021.

Donald Trump wanted Mike Pence to do something no other Vice President has ever done. The former President wanted Pence to reject the votes and either declare Trump the winner or send the votes back to the States to be counted again.

Mike Pence said no. He resisted the pressure. He knew it was illegal. He knew it was wrong. We are fortunate for Mr. Pence's

courage on January 6th. Our democracy came dangerously close to catastrophe.

That courage put him in tremendous danger. When Mike Pence made it clear that he wouldn't give in to Donald Trump's scheme, Donald Trump turned a mob on him—a mob that was chanting “Hang Mike Pence,” a mob that had built a hangman's gallows just outside the Capitol.

Thanks in part to Mike Pence, our democracy withstood Donald Trump's scheme and the violence of January 6th. But the danger hasn't receded. Led by my colleague Mr. Aguilar, today we will lay out the facts for the American people.

But, first, I will recognize my colleague from Wyoming, Ms. Cheney, for any opening statement she would care to offer.

Vice Chair CHENEY. Thank you very much, Mr. Chairman.

Let me take just a few minutes today to put the topic of our hearing in broader context.

In our last hearing, we heard unequivocal testimony that President Trump was told his election fraud allegations were complete nonsense. We heard this from members of the Trump campaign. We heard this from President Trump's campaign lawyers. We heard this from President Trump's former Attorney General, Bill Barr. We heard this from President Trump's former Acting Attorney General, Jeff Rosen. We heard this from President Trump's former Acting Deputy Attorney General, Richard Donoghue. We heard from members of President Trump's White House staff as well.

Today, we are focusing on President Trump's relentless effort to pressure Mike Pence to refuse to count electoral votes on January 6th.

Here, again, is how the former Vice President phrased it in a speech before the Federalist Society, a group of conservative lawyers.

Vice President PENCE. I heard this week that President Trump said I had the right to overturn the election. But President Trump is wrong. I had no right to overturn the election. The Presidency belongs to the American people and the American people alone. And frankly, there is no idea more un-American than the notion that any one person could choose the American President.

Vice Chair CHENEY. What the President wanted the Vice President to do was not just wrong; it was illegal and un-Constitutional.

We will hear many details in today's hearing, but please consider these two points:

First, President Trump was told repeatedly that Mike Pence lacked the Constitutional and legal authority to do what President Trump was demanding he do.

This is testimony from Marc Short, the Vice President's chief of staff, who served in the Trump administration in multiple positions over 4 years.

Mr. HEAPHY. But just to pick up on that, Mr. Short, is it—was it your impression that the Vice President had directly conveyed his position on these issues to the President, not just to the world through a Dear Colleague letter, but directly to President Trump?

Mr. SHORT. Many times.

Mr. HEAPHY. And he'd been consistent in conveying his position to the President?

Mr. SHORT. Very consistent.

Mr. HEAPHY. Okay.

Vice Chair CHENEY. But President Trump plotted with a lawyer named John Eastman to pressure Pence to do so anyway.

As a Federal court has explained, “Based on the evidence, the Court finds that it is more likely than not that President Trump and Dr. Eastman dishonestly conspired to obstruct the Joint Session of Congress on January 6, 2021.”

What exactly did President Trump know? When exactly did President Trump know that it would be illegal for Mike Pence to refuse to count electoral votes?

Here is one sample of testimony given by one of the witnesses before us today, the Vice President’s general counsel.

Mr. WOOD. Did John Eastman ever admit, as far as you know, in front of the President that his proposal would violate the Electoral Count Act?

Mr. JACOB. I believe he did on the 4th.

Vice Chair CHENEY. That was January 4th, 2 days before the attack on Congress.

A second point: Please listen to testimony today about all of the ways that President Trump attempted to pressure Vice President Pence, including Donald Trump’s tweet at 2:24 p.m. condemning Vice President Mike Pence when President Trump already knew a violent riot was under way at the Capitol.

In future hearings, you will hear from witnesses who were present inside the White House, who were present inside the West Wing on that day. But, today, we focus on the earnest efforts of Mike Pence, who was determined to abide by his oath of office.

As Vice President Pence prepared a statement on January 5th and 6th explaining that he could not illegally refuse to count electoral votes, he said this to his staff:

Mr. JACOB. I mean, the Vice President had said, “This may be the most important thing I ever say.”

Mr. HEAPHY. “This,” meaning the statement?

Mr. JACOB. The statement. And he really wanted to make sure that it was just so.

Vice Chair CHENEY. You will hear today that President Trump’s White House Counsel believed that the Vice President did exactly the right thing on January 6th, as did others in the White House, as did Fox News Host Sean Hannity.

Vice President Pence understood that his oath of office was more important than his loyalty to Donald Trump. He did his duty. President Trump unequivocally did not.

Thank you, Mr. Chairman. I yield back.

Chairman THOMPSON. Without objection, I recognize the gentleman from California, Mr. Aguilar, for an opening statement.

Mr. AGUILAR. Thank you, Mr. Chairman.

Today we intend to show the American people that January 6th was not an isolated incident. In the weeks culminating before, it was a legal scheme and deception.

We have already learned that President Trump knew he lost the 2020 election. Shortly after, he began to look for a way to circumvent our country’s most fundamental civic tradition: The peaceful transfer of power.

The President latched on to a dangerous theory and would not let go, because he was convinced it would keep him in office.

We witnessed first-hand what happened when the President of the United States weaponized this theory. The Capitol was overrun. Police officers lost their lives. The Vice President was taken to a secure location because his safety was in jeopardy.

Let's take a look at the effect of Donald Trump's words and actions. I want to warn our audience that the video contains explicit content.

President TRUMP. Mike Pence is going to have to come through for us. And if he doesn't, that will be a—a sad day for our country.

And Mike Pence, I hope you're going to stand up for the good of our Constitution and for the good of our country. And if you're not, I'm going to be very disappointed in you, I will tell you right now.

VOICE. I'm telling you what, I'm hearing that Pence—hearing that Pence just caved.

VOICE. No.

VOICE. Is that true?

VOICE. I didn't hear it.

VOICE. I'm hear—I'm hearing reports that Pence caved.

VOICE. No way.

VOICE. I'm telling you, if Pence caved, we're going to drag motherfuckers through the streets. You fucking politicians are going to get fucking drug through the streets.

VOICE. Yes.

VOICE. I guess the hope is that there's such a show of force here that Pence will decide to—

VOICE. Just do his job.

VOICE [continuing]. Do the right thing, according to Trump.

CROWD. Where is Pence? Bring him out! Bring out Pence! Bring him out! Bring out Pence! Bring him out! Bring out Pence!

CROWD. Hang Mike Pence! Hang Mike Pence! Hang Mike Pence! Hang Mike Pence! Hang Mike Pence! Hang Mike Pence! Hang Mike Pence! Hang Mike Pence! Hang Mike Pence! Hang Mike Pence!

Mr. AGUILAR. How did we get to this point? How did we get to the point where President Trump's most radical supporters led a violent attack on the Capitol and threatened to hang President Trump's own Vice President?

You will hear from witnesses that Donald Trump pressured Mike Pence to adopt a legally and morally bankrupt idea that the Vice President could choose who the next President can be.

You will hear about how the Vice President, the White House Counsel, and others told Donald Trump that the Vice President had no such authority, but President Trump would not listen.

You will hear how Vice President Pence withstood an onslaught of pressure from President Trump, both publicly and privately—a pressure campaign that built to a fever pitch with a heated phone call on January 6th.

You will also hear that the President knew there was a violent mob at the Capitol when he tweeted at 2:24 p.m. that the Vice President did not have the “courage” to do what needed to be done.

Let me be clear: Vice President Pence did the right thing that day. He stayed true to his oath to protect and defend the Constitution.

I look forward to hearing from our witnesses this afternoon.

Mr. Chairman, I yield back.

Chairman THOMPSON. Thank you, Mr. Aguilar.

We are honored to have two distinguished witnesses who advised the Vice President regarding his role on January 6th.

Judge J. Michael Luttig is one of the leading conservative legal thinkers in the country. He served in the administrations of President Ronald Reagan and George H.W. Bush. He was appointed by the latter to serve on the U.S. Court of Appeals for the Fourth Circuit, where he served from 1991 to 2006.

He provided critical advice for Vice President Pence regarding the role of the Vice President in the joint session of Congress shortly before that fateful moment.

He has written that the Vice President does not have the power to select the next President of the United States. He has also written that the contrary theory, espoused by one of his own former law clerks, was “incorrect at every turn.”

We are also joined today by one of the people who was with Vice President Pence on January 6th. Greg Jacob was counsel to Vice President Pence.

He conducted a thorough analysis of the role of the Vice President in the joint session of Congress under the Constitution, the Electoral Count Act, and 230 years of historical practice.

But he also has first-hand information about the attack on the Capitol because he lived through it. He was with the Vice President, and his own life was in danger.

I will now swear in our witnesses. The witnesses will please stand and raise their right hands.

[Witnesses sworn.]

Chairman THOMPSON. Thank you. You may be seated.

Let the record reflect the witnesses answered in the affirmative.

I now recognize myself for questions.

In the United States, the people choose our representatives, including the highest official in the land, the President of the United States. The American people did this on November 3, 2020.

But President Trump did not like the outcome. He did everything he could to change the result of the election.

He tried litigation—62 cases, in fact—and that failed.

He tried to pressure State legislatures to reverse the results of the election in their States, but they refused.

He tried to enlist the Department of Justice in his efforts to overturn election results, but officials leading the Department refused to comply.

So, eventually, he latched on to a completely nonsensical and antidemocratic theory that one man, his own Vice President, could determine the outcome of the election. He wanted the Vice President to unilaterally select the President.

This theory, that the Vice President could unilaterally select the President, runs completely contrary to our Constitution, our laws, and the entirety of our American experience. But that didn't matter to President Trump.

I would now like to explore how President Trump came to latch onto this ridiculous legal theory that the Vice President can select the President of the United States.

Mr. JACOB, how did this theory first come to your attention?

Mr. JACOB. The first time that I had a conversation with the Vice President about the 12th Amendment and the Electoral Count Act was in early December, around December 7th.

The Vice President called me over to his West Wing office and told me that he had been seeing and reading things that suggested that he had a significant role to play on January 6th in announcing the outcome of the election.

He told me that he had been first elected to Congress in 2000 and that one of his earliest memories as a Congressman was sitting in on the 2001 certification, and he recalled that Al Gore had gavelled down a number of objections that had been raised to Florida.

He asked me, “Mechanically, how does this work at the joint session? What are the rules?”

I told the Vice President that, in fact, I had a fairly good idea of how things worked, that actually there aren’t rules that govern the joint session, but what there is is a provision of the Constitution that is just one sentence long and then an Electoral Count Act that had been passed in 1887.

I told the Vice President that I could put a memo together for him overnight that would explain the applicable rules.

Chairman THOMPSON. So, Mr. Jacob, when you looked at this theory, what did you conclude?

Mr. JACOB. So, we concluded that what you have is a sentence in the Constitution that is inartfully drafted. But the Vice President’s first instinct, when he heard this theory, was that there was no way that our Framers, who abhorred concentrated power, who had broken away from the tyranny of George III, would ever have put one person—particularly not a person who had a direct interest in the outcome because they were on the ticket for the election—in a role to have decisive impact on the outcome of the election.

Our review of text, history, and, frankly, just common sense, all confirmed the Vice President’s first instinct on that point. There is no justifiable basis to conclude that the Vice President has that kind of authority.

Chairman THOMPSON. Thank you, Mr. Jacob.

We will hear more today about how, despite this conclusion by you and other top legal advisors, the former President used this discredited theory in his campaign to pressure the Vice President to decide the outcome of the Presidential election.

I now recognize the gentlewoman from Wyoming, Ms. Cheney, for questions.

Vice Chair CHENEY. Thank you very much, Mr. Chairman.

Judge Luttig, thank you, as well, for being here with us today.

You issued a very important statement earlier today, which I urge all Americans to read. I would like to ask you, Judge, about one of the sentences in your statement and ask if you could explain to us the significance of it.

You say, “Had the Vice President of the United States obeyed the President of the United States, America would immediately have been plunged into what would have been tantamount to a revolution within a paralyzing Constitutional crisis.”

Would you elaborate on that for us, Judge?

Judge LUTTIG. Thank you, Madam Vice Chair.

That passage in my statement this morning referenced the most foundational concept in America, which is the rule of law. Thus, as

I interpret your question, you are asking about that foundational truth of these United States which we call “America.”

The foundational truth is the rule of law. That foundational truth is, for the United States of America, the profound truth.

But it is not merely the profound truth for the United States; it is also the simple truth, the simple foundational truth of the American Republic.

Thus, in my view, the hearings being conducted by this Select Committee are examining that profound truth—namely, the rule of law in the United States of America.

The specific question, of course, before you and before the Nation—not before me—is whether that foundational rule of law was supremely violated on January 6, 2021.

Now, to the question specifically that you asked, Madam Vice Chair, I believe that had Vice President Pence obeyed the orders from his President—and the President of the United States of America—during the joint session of the Congress of the United States on January 6, 2021, and declared Donald Trump the next President of the United States, notwithstanding that then-President Trump had lost the electoral college vote as well as the popular vote in the 2020 Presidential election, that declaration of Donald Trump as the next President would have plunged America into what I believe would have been tantamount to a revolution within a Constitutional crisis in America, which, in my view—and I am only one man—would have been the first Constitutional crisis since the founding of the Republic.

Vice Chair CHENEY. Thank you very much, Judge, for your solemn attention to these issues and for your appearance here today.

We are going to describe and discuss in detail what happened, and, as we do, I am going to describe a few of the details now of some of the actions taken by a gentleman named Kenneth Chesebro.

After the electoral college met and cast their votes on December 14th—actually, the day before they met—Kenneth Chesebro sent a memo to Rudy Giuliani, the President’s lead outside counsel.

Mr. Chesebro wrote to Mayor Giuliani that the Vice President is charged with, “making judgments about what to do if there are conflicting votes.”

Mr. Chesebro wrote that, when the joint session of Congress got to Arizona in the alphabetical list of States, the Vice President should not count the Biden votes, “because there are two slates of votes.”

His justification, which we will learn more about in our next hearing, was that a group of Trump supporters in Arizona and other swing States decided to proclaim themselves the true electors for the State, creating two sets of electors—the official electors selected by the State and a group of fake electors.

This document was ordered to be produced to the Select Committee by a Federal district court judge. As you will see on the screen shortly, Judge David Carter wrote, “The draft memo pushed a strategy that knowingly violated the Electoral Count Act”

The judge concluded that “the memo is both intimately related to and clearly advanced the plan to obstruct the joint session of Congress on January 6, 2021.”

A few days later, Professor John Eastman took up this cause. Eastman was at the time a law professor at Chapman University Law School.

He prepared a memo outlining the nonsensical theory that the Vice President could decide the outcome of the election at the joint session of Congress on January 6th. You will see portions of this memo on the screen.

In the first line, he wrote, "7 States have transmitted dual slates of electors to the President of the Senate."

But Dr. Eastman goes on to rely on those so-called "dual slates of electors" to say that Vice President Pence could simply declare President Trump the winner of the 2020 election.

Mr. Jacob, were there, in fact, dual slates of electors from 7 States?

Mr. JACOB. No, there were not.

Vice Chair CHENEY. Just a few days after that, Dr. Eastman wrote another memo, this one "war gaming" out several scenarios. He knew the outcome he wanted, and he saw a way to go forward if he simply pretended that fake electors were real.

You will see that memo up on the screen now.

Here, Dr. Eastman says the Vice President can reject the Biden electors from the States that he calls "disputed." Under several of the scenarios, the Vice President could ultimately just declare Donald Trump the winner, regardless of the vote totals that had already been certified by the States.

However, this was false. Dr. Eastman knew it was false. In other words, it was a lie.

In fact, on December 19, 2020, just 4 days before Dr. Eastman sent this memo, Dr. Eastman himself admitted in an email that the fake electors had no legal weight, referring to the fake electors as "dead on arrival in Congress," because they did not have a certification from their States.

Judge Luttig, did the Trump electors in those 7 States, who were not certified by any State authority, have any legal significance?

Judge LUTTIG. Congresswoman, there was no support whatsoever in either the Constitution of the United States nor the laws of the United States for the Vice President, frankly, ever to count alternative electoral slates from the States that had not been officially certified by the designated State official in the Electoral Count Act of 1887.

I did notice in the passage from Mr. Eastman's memorandum, and I took a note on it. Correct me if I am wrong, but he said in that passage that there was both legal authority as well as historical precedent.

I do know what Mr. Eastman was referring to when he said that there was historical precedent for doing so. He was incorrect. There was no historical precedent from the beginning of the founding in 1789, even as mere historical precedent, as distinguished from legal precedent, that would support the possibility of the Vice President of the United States "counting" alternative electoral slates that had not been officially certified to the Congress pursuant to the Electoral Count Act of 1887.

I would be glad to explain that historical precedent if the Committee wanted, but it would be a digression.

Vice Chair CHENEY. Thank you very much, Judge. I know my colleagues will be pursuing that issue in more depth.

Now I would like to yield back, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

Pursuant to section 5(c)(8) of House Resolution 503, the Chair recognizes the gentleman from California, Mr. Aguilar, and staff counsel, Mr. John Wood, for questioning.

Mr. AGUILAR. Thank you, Mr. Chairman.

We are fortunate to have a bipartisan staff. Senior Investigative Counsel John Wood previously served as United States attorney in Missouri under President George W. Bush. He and I will share today's lines of questioning.

Mr. Wood.

Mr. WOOD. Thank you, Mr. Aguilar.

Judge Luttig, I had the incredible honor of serving as one of your law clerks. Another person who did was John Eastman.

You have written that Dr. Eastman's theory that the Vice President could determine who the next President of the United States is is, in your words, "incorrect at every turn."

Could you please explain briefly your analysis?

Judge LUTTIG. It was my honor, Mr. Wood, to have you serve as my law clerk.

I could answer that question perfectly if I had at my disposal either Mr. Eastman's tweet or my own analytical tweet of September 21st, but I don't.

But, that said, let me try to remember Mr. Eastman's analysis.

Mr. WOOD. Judge, I can read to you and to the audience I think what was really a key passage from your very insightful analysis, when you wrote, "I believe(d) that Professor Eastman was incorrect at every turn of the analysis in his January 2 memorandum, beginning with his claim that there were legitimate, competing slates of electors presented from 7 States."

You have already addressed that issue.

But your next sentence said: ". . . continuing to his conclusion that the Vice President could unilaterally decide not to count the votes from the 7 States from which competing slates were allegedly presented."

So, what was your basis for concluding that Dr. Eastman was incorrect in his conclusion that the Vice President could unilaterally decide not to count the votes from these disputed States?

Judge LUTTIG. I understand.

As I previously stated in response to Congresswoman Cheney, there was no basis in the Constitution or laws of the United States at all for the theory espoused by Mr. Eastman—at all. None.

With all respect to my co-panelist, he said, I believe in partial response to one of the Select Committee's questions, that the single sentence in the 12th Amendment was, he thought, inartfully written.

That single sentence is not inartfully written. It was pristine clear that the President of the Senate on January 6th, the incumbent Vice President of the United States, had little substantive Constitutional authority, if any at all.

The 12th Amendment, the single sentence that Mr. Jacob refers to, says in substance that, following the transmission of the certifi-

cates to the Congress of the United States and, under the Electoral Count Act of 1887, the Archivist of the United States, that the presiding officer shall open the certificates in the presence of the Congress of the United States in joint session.

It then says, unmistakably, not even that the Vice President himself shall count the electoral votes. It clearly says merely that the electoral count votes shall then be counted.

It was the Electoral Count Act of 1887 that filled in, if you will, the simple words of the 12th Amendment in order to construct for the country a process for the counting of—the sacred process for the counting of—the electoral votes from the States that neither our original Constitution nor even the 12th Amendment had done.

The irony, if you will, is that, from its founding until 1887, when Congress passed the Electoral Count Act, the Nation had been in considerable turmoil during at least 5 of its Presidential elections, beginning as soon thereafter from the founding as 1800. So, it wasn't for almost 100 years later until the Electoral Count Act was passed.

So that is why, in my view, that piece of legislation is not only a work in progress for the country but, at this moment in history, an important work in progress that needs to take place.

That was long-winded, I understand.

Mr. WOOD. Well, Judge Luttig, at the risk of oversimplifying for the non-lawyers who are watching, is it fair to say that the 12th Amendment basically says two things happen: the Vice President opens the certificates, and the electoral votes are counted.

Is it that straightforward?

Judge LUTTIG. I would not want that to be my testimony before the Congress of the United States. The language of the 12th Amendment is that simple.

Mr. WOOD. Thank you, Judge.

Mr. Jacob, I have a question for you. I believe during your deposition before this Committee you said something to the effect of you had read every word written about the 12th Amendment, the Electoral Count Act, and historical practice.

I know in response to the Chairman's earlier question you gave your bottom-line conclusion, but can you tell us a little bit about the process that you and your colleagues went through of researching this issue and what conclusion you came to after your thorough research?

Mr. JACOB. So, as a lawyer who is analyzing a Constitutional provision, you start with the Constitutional text, you go to structure, you go to history.

So, we started with the text. We did not think that the text was quite as unambiguous as Judge Luttig indicated. In part, we had a Constitutional crisis in 1876 because, in that year, multiple slates of electors were certified by multiple States, and, when it came time to count those votes, the antecedent question of which ones had to be answered.

That required the appointment of an independent commission. That commission had had to resolve that question. The purpose of the Electoral Count Act of 1887 had been to resolve those latent ambiguities.

Now, I am in complete agreement with Judge Luttig; it is unambiguous that the Vice President does not have the authority to reject electors. There is no suggestion of any kind that it does. There is no mention of rejecting or objecting to electors anywhere in the 12th Amendment. So the notion that the Vice President could do that certainly is not in the text.

But the problem that we had, and that John Eastman raised in our discussions was, we had all seen that in Congress, in 2000, in 2004, in 2016, there had been objections raised to various States, and those had even been debated in 2004. So here you have an amendment that says nothing about objecting or rejecting and yet we did have some recent practice of that happening within the terms of the Electoral Count Act.

So, we started with that text. I recall, in my discussion with the Vice President, he said, "I can't wait to go to heaven and meet the Framers and tell them, 'The work that you did in putting together our Constitution is a work of genius. Thank you. It was divinely inspired. There is one sentence that I would like to talk to you a little bit about.'"

So, then we went to structure. Again, the Vice President's first instinct here is so decisive on this question. There is just no way that the Framers of the Constitution, who divided power and authority, who separated it out, who had broken away from George III and declared him to be a tyrant—there was no way that they would have put in the hands of one person the authority to determine who was going to be President of the United States.

Then we went to history. We examined every single electoral vote count that had happened in Congress since the beginning of the country. We examined the Electoral Count Act. We examined practice under the Electoral Count Act.

Critically, no Vice President in 230 years of history had ever claimed to have that kind of authority, hadn't claimed authority to reject electoral votes, had not claimed authority to return electoral votes back to the States. In the entire history of the United States, not once had a joint session ever returned electoral votes back to the States to be counted.

In the crisis of 1876, Justice Bradley of the U.S. Supreme Court, who supplied the decisive final vote on that commission, had specifically looked at that question and said, first, the Vice President clearly doesn't have authority to decide anything and, by the way, also does not have authority to conduct an investigation by sending things back out for a public look at things.

So, the history was absolutely decisive.

Again, part of my discussion with Mr. Eastman was, if you were right, don't you think Al Gore might have liked to have known in 2000 that he had authority to just declare himself President of the United States? Did you think that the Democrat lawyers just didn't think of this very obvious quirk that he could use to do that? Of course, he acknowledged Al Gore did not and should not have had that authority at that point in time.

But so text, structure, history. I think what we had was some ambiguous text that common sense and structure would tell you the answer cannot possibly be that the Vice President has that authority—as the Committee already played the Vice President's re-

marks, there is almost no idea more un-American than the notion that any one person would choose the American President—and then unbroken historical practice for 230 years that the Vice President did not have such an authority.

Mr. WOOD. Thank you.

I reserve the remainder of my time.

Mr. AGUILAR. Mr. Jacob, you weren't the only one who knew that the legal theory was wrong, though. Here is what various advisors to the President thought about that theory.

Mr. HEAPHY. Had you been clear repeatedly with Mr. Meadows about you and the Vice President having a different view about his authority on January 6th?

Mr. SHORT. I believe I had.

Mr. HEAPHY. Did Mr. Meadows ever explicitly or tacitly agree with you, or say, "Yeah, that makes sense, okay"?

Mr. SHORT. I believe that—that Mark did agree.

Mr. HEAPHY. What makes you say that?

Mr. SHORT. I believe that's what he told me. But, as I mentioned, I think Mark had told so many people so many different things that it was not something that—I would necessarily accept as okay, well, that means that's resolved.

Mr. HEAPHY. I see. Tell me more what—what he told you on this topic.

Mr. SHORT. Well, I think it was that, you know, the Vice President doesn't have any broader role. I think he was understanding of that.

Mr. HEAPHY. So, despite the fact that he may have said other things to the President or others, to you he said he understands the Vice President has no role.

Mr. SHORT. Yes.

Mr. HEAPHY. Okay. Did he say that to you several times?

Mr. SHORT. A couple of times, um-hmm.

Mr. HEAPHY. Before January 6th?

Mr. SHORT. Yes.

Mr. JASON MILLER. The way it was communicated to me was that Pat Cipollone thought the idea was—was nutty and had at one point confronted Eastman basically with the same sentiment.

Mr. SHORT. Pat expressed his admiration for the Vice President's actions on the day of the 6th and said that he concurred with the legal analysis that—that our team had—had put together to reach that point.

Mr. HERSCHMANN. It made no sense to me that, in all the protections that were built into the Constitution for a President to get elected and steps that had to be taken, that the—or to choose the next President would be sitting at—with the Vice President.

Mr. GEORGE. Do you know if Mr. Clark or Mr. Morgan—is it Morgan—viewed about that—thought about that, Mr. Eastman's advice?

Mr. JASON MILLER. Yeah, they thought he was crazy.

Mr. GEORGE. Do you know if they ever expressed an opinion on whether they thought the Vice President had the power that John Eastman said he did?

Mr. JASON MILLER. I know for a fact I heard both say that his theory was crazy, that there was no validity to it in any way, shape, or form.

Mr. GEORGE. And did they express that before January 6th?

Mr. JASON MILLER. Yes.

Mr. GEORGE. To whom?

Mr. JASON MILLER. I think anyone who would listen.

Mr. WOOD. Okay. What were your prior interactions with Eastman?

Mr. HERSCHMANN. He described for me what he thought the ambiguity was in the statute, and he was walking through it at that time. And I said, "Hold on a second. I want to understand what you're saying. You're saying that you believe the Vice President, acting as President of the Senate, can be the sole decision maker as to, under your theory, who becomes the next President of the United States."

And he said, "Yes."

And I said, "Are you out of your effing mind?" Right? And I—you know, that was pretty blunt.

I said, "You're completely crazy."

I said, "You're going to turn around and tell 78-plus million people in this country that your theory is this is how you're going to invalidate their votes, because you think the election was stolen?"

And I said, "They're not going to tolerate that." Said: "You're going to cause riots in the streets."

And he said words to the effect of: There has been violence in the history of our country, Eric, to protect the democracy or protect the Republic.

Mr. AGUILAR. In fact, there was a risk that the lawyers in the White House Counsel's Office would resign.

For example, Fox News Host Sean Hannity expressed concern that the entire White House Counsel's Office could quit. As you can see from these texts, Mr. Hannity wrote to White House Chief of Staff Mark Meadows that, "we can't lose the entire WH counsels office. I do NOT see January 6 happening the way he is being told."

A few days later, on January 5th, Mr. Hannity wrote to Mr. Meadows that, "I'm very worried about the next 48 hours." "Pence pressure. WH counsel will leave."

While Sean Hannity was apparently very concerned about the possibility that the White House Counsel would resign in protest of the President's effort to force the Vice President to violate the Constitution, some others close to the President were more dismissive of the White House Counsel's position.

Here is what Trump's son-in-law and senior advisor, Jared Kushner, said during his deposition regarding White House Counsel Pat Cipollone's threats to resign.

Vice Chair CHENEY. Jared, are you aware of instances where Pat Cipollone threatened to resign?

Mr. KUSHNER. I—I kind-of—like I said, my interest at that time was on trying to get as many pardons done. And I know that, you know, he was always—to him and the team were always saying, Oh, we're going to resign. We're not going to be here if this happens, if that happens. So, I kind-of took it up to just be whining to be honest with you.

Mr. AGUILAR. The President's own lead outside counsel, Rudy Giuliani, also seemed to concede that the Vice President did not have the authority to decide the outcome of the election or send it back to the States.

Here is what White House attorney Eric Herschmann said about his call with Mayor Giuliani on the morning of the 6th.

Mr. HERSCHMANN. The morning of January 6th, I think he called me out of the blue, right? And I was like getting dressed. And we had an intellectual discussion that—about Eastman's—I don't know if it's Eastman's theory per se, but the VP's role. And, you know, he was asking me my view and analysis and then the practical implications of it. And when we finished, he said, like, "I believe that, you know, you're probably right."

I think he thought, when we were done, that it would be something he'd have to consider if he was sitting on the bench, but he'd probably come down in that, you know, you couldn't interpret it or sustain the argument long-term.

Mr. AGUILAR. Of course, the fact that Mayor Giuliani seemed to admit that the theory was wrong did not stop him from going before the crowd just a few hours later on January 6th and saying the exact opposite.

Here is Mayor Giuliani's speech at the Ellipse rally on January 6th.

Mr. GIULIANI. We're here just very briefly to make a—very important two points. No. 1, every single thing that has been outlined as the plan for today is perfectly legal. I have Professor Eastman here with me to say a few words about that. He's one of the preeminent constitutional scholars in the United States.

It is perfectly appropriate, given the questionable constitutionality of the Election Counting Act of 1887, that the Vice President can cast it aside, and he can do what a President called Jefferson did when he was Vice President. [applause]

He can decide—he can decide on the validity of these crooked ballots, or he can send it back to the legislatures, give them 5 to 10 days to finally finish the work.

Mr. AGUILAR. Here is what Dr. Eastman said in his speech at the Ellipse on January 6th.

Mr. EASTMAN. And all we are demanding of Vice President Pence is this afternoon at 1 o'clock he let the legislatures of the State look into this, so we get to the bottom of it and the American people know whether we have control of the direction of our Government or not. [applause]

Mr. AGUILAR. Even Dr. Eastman knew his theory didn't hold water.

Mr. Jacob, you discussed and even debated this theory at length with Dr. Eastman. Did Dr. Eastman ever tell you what he thought the U.S. Supreme Court would do if it had to decide this issue?

Mr. JACOB. Yes. We had an extended discussion, an hour-and-a-half to 2 hours, on January 5th. When I pressed him on the point, I said, "John, if the Vice President did what you are asking him to do, we would lose 9 to nothing in the Supreme Court, wouldn't we?"

He initially started, "Well, I think maybe you would lose only 7-2," and after some further discussion acknowledged, "Well, yes, you are right, we would lose 9-nothing."

Mr. AGUILAR. I appreciate that.

In our investigation, the Select Committee has obtained evidence suggesting that Dr. Eastman never really believed his own theory. Let me explain.

On the screen, you can see a draft letter to the President from October 2020. In this letter, an idea was proposed that the Vice President could determine which electors to count at the joint session of Congress. But the person writing in blue eviscerates that argument.

The person who wrote the comments in blue wrote, "The 12th Amendment only says that the President of the Senate opens the ballots in the joint session and then, in the passive voice, that the votes shall then be counted."

The comments in blue further state, "Nowhere does it suggest that the President of the Senate gets to make the determination on his own."

Judge Luttig, does it surprise you that the author of those comments in blue was, in fact, John Eastman?

Judge LUTTIG. Yes, it does, Congressman.

But let me—watching this unfold, let me try to unpack what was at the root of what I have called "the blueprint to overturn the 2020 election," and it is this. I foreshadowed this answer in my earlier testimony to Congresswoman Cheney.

Mr. Eastman, from the beginning, said to the President that there was both legal as well as historical precedent for the Vice President to overturn the election. What we have heard today, I believe, is what happened within the White House and elsewhere as all the players, led by Mr. Eastman, got wrapped around the axle by the "historical evidence" claim by Mr. Eastman.

Let me explain very simply. This is what I have said would require a digression that I would be glad to undertake if you wish.

In short, if I had been advising the Vice President of the United States on January 6th, and even if then-Vice President Jefferson and even then-Vice President John Adams and even then-Vice President Richard Nixon had done exactly what the President of

the United States wanted his Vice President to do, I would have laid my body across the road before I would have let the Vice President overturn the 2020 election on the basis of that historical precedent.

But what this body needs to know—and now America needs to know—is that that was the centerpiece of the plan to overturn the 2020 election. It was the historical precedent in the years and with the Vice Presidents that I named, as Congressman Raskin understands well.

The effort by Mr. Eastman and others was to drive that historical precedent up to and under that single sentence, single pristine sentence, in the 12th Amendment to the United States Constitution, taking advantage of, if you will, what many have said is the inartful wording of that sentence in the 12th Amendment.

Scholars before 2020 would have used that historical precedent to argue not that Vice President Pence could overturn the 2020 election by accepting noncertified State electoral votes, but they would have made arguments as to some substantive, not merely procedural, authority possessed by the Vice President of the United States on the statutorily prescribed day for counting the electoral college votes.

This is Constitutional mischief.

Mr. AGUILAR. Judge, I think that is a good point. I think it kind of begs the question that if the Vice President had this power to determine the outcome of a Presidential election, why hasn't it ever been used before? Why hasn't that ever happened? Why hasn't a Vice President simply rejected the outcome of an election and declared someone else the winner?

Instead, as the Chairman mentioned in his opening, for over two centuries Vice Presidents have presided over the joint sessions of Congress in a purely ceremonial role.

This even includes, as Mr. Jacob mentioned, Vice President Al Gore. For those of us who are old enough to remember, the 2000 election came down to one State: Florida. There were weeks of recounts and litigation after the election, and Al Gore conceded.

Of course, Al Gore was the Vice President at the time, but he never suggested that he could simply declare himself the winner of the 2000 election when he presided over the counting of the electoral votes.

Let's hear what Vice President Gore said when he described the situation he faced in 2000.

Vice President GORE. [I]mportance of the United States of America in all of human history, in Lincoln's phrase, we still are the last best hope of humankind. And the choice between one's own disappointment in your personal career and upholding the—the noble traditions of America's democracy, it's a pretty easy choice when it comes down to it.

Mr. AGUILAR. Mr. Jacob, did Dr. Eastman say whether he would want other Vice Presidents, such as Al Gore after the 2000 election, or Kamala Harris after the 2024 election, to have the power to decide the outcome of the election?

Mr. JACOB. So, this was one of the many points that we discussed on January 5th. He had come into that meeting trying to persuade us that there was some validity to his theory. I viewed

it as my objective to persuade him to acknowledge he was just wrong.

I thought this had to be one of the most powerful arguments: “I mean, John, back in 2000, you weren’t jumping up and saying Al Gore had this authority to do that. You would not want Kamala Harris to be able to exercise that kind of authority in 2024 when I hope Republicans will win the election, and I know you hope that too, John.”

He said, “Absolutely. Al Gore did not have a basis to do it in 2000. Kamala Harris shouldn’t be able to do it in 2024. But I think you should do it today.”

Mr. AGUILAR. Marc Short told the Select Committee that Vice President Pence consulted with one of his predecessors, Vice President Dan Quayle, regarding the role of the Vice President. Vice President Quayle confirmed Pence’s view that the role was purely ceremonial.

Mr. Short also told the Committee that he, Mr. Short, received a call from former House Speaker Paul Ryan. Here is Mr. Short’s description of his conversation with Speaker Ryan.

Mr. SHORT. Speaker Ryan wanted to call and say, “You know, you don’t have any greater authority.” And I—I said to him, “Mr. Speaker you—you know, Mike, you know he doesn’t—you know, he recognizes that.” And we sort-of laughed about it, and he said, “I get it.” And he later spoke to the Vice President, too, to I think have the same conversation.

Mr. AGUILAR. Fortunately for the fate of our Republic, Vice President Pence refused to go along with President Trump’s demands that he determine the outcome of the Presidential election.

Mr. Jacob, what was the Vice President’s reaction when you discussed with him the theory that the Vice President could decide the outcome of the election?

Mr. JACOB. Congressman, as I have testified, the Vice President’s first instinct was that there was no way that any one person, particularly the Vice President, who is on the ticket and has a vested outcome in the election, could possibly have the authority to decide it, by rejecting electors, or to decisively alter the outcome by suspending the joint session for the first time in history in order to try to get a different outcome from State legislatures.

Mr. AGUILAR. Despite the fact that the Vice President had a strongly held and correct view that he could not decide the outcome of the election, President Trump launched a multi-week campaign of both public and private pressure to get Vice President Mike Pence to violate the Constitution.

Here are some examples of the intense pressure the Vice President faced from all sides and what his chief of staff thought of it.

President TRUMP. And I hope Mike Pence comes through for us. I have to tell you. [applause] I hope that our great Vice President—our great Vice President comes through for us. He’s a great guy. Of course, if he doesn’t come through, I won’t like him quite as much. [laughter]

Mr. HEAPHY. Was it your impression that the Vice President had directly conveyed his position on these issues to the President, not just to the world through a Dear Colleague letter, but directly to President Trump?

Mr. SHORT. Many times.

Mr. HEAPHY. And he’d been consistent in conveying his position to the President?

Mr. SHORT. Very consistent.

Mr. GIULIANI. I am—I am aware of the fact that the President was upset with the way Pence acted.

Mr. BANNON. Are we to assume that this is going to be a climactic battle?

Mr. EASTMAN. Well, I think a lot of that depends on the courage and the spine of the individuals involved.

Mr. BANNON. That would be a nice way to say a guy named Mike—Vice President Mike Pence?

Mr. EASTMAN. Yes.

Mr. SHORT. I think we'd been clear as to what the Vice President's role was. I think the Vice President made clear with the President. And I think I'd been clear with Mark Meadows.

Mr. JASON MILLER. I think the Vice President is going to throw down tomorrow and do the right thing because, Lou, like I said before, this is a time for choosing. People are going to look back at this moment tomorrow and remember where every single one of their elected officials were.

Did they vote for the rule of law in getting these elections right? Or did they give it away to the Democrats and the people who cheated and stole their way through this election?

Definitely the—you know, I got back into town approximately like the 5th and the 6th. The President was, you know, all the attention was on what Mike would do or what Mike wouldn't do.

Mr. SHORT. The Vice President really was not wavering in his commitment to what he—what his responsibility was. And so, yeah, was it painful? Sure.

Mr. AGUILAR. The President's pressure campaign started in December. For example, although the Vice President made his views clearly and unmistakably known to the President and others in the White House on December 23rd, President Trump retweeted a memo from an individual named Ivan Raiklin, entitled "Operation Pence Card," that called on the Vice President to refuse the electoral college votes from certain States that had certified Joe Biden as the winner.

President Trump started his pressure campaign in December, but he dialed up the pressure as January 6th approached.

The testimony we have received in our investigation indicates that by the time January 4th arrived, President Trump had already engaged in a "multi-week campaign" to pressure the Vice President to decide the outcome of the election.

This had included private conversations between the two leaders, Trump's tweets, and at least one meeting with Members of Congress.

We understand that the Vice President started his day on January 4th with a rally in Georgia for the Republican candidates in the U.S. Senate runoff.

When the Vice President returned to Washington, he was summoned to meet with the President regarding the upcoming joint session of Congress.

Mr. Jacob, who attended that meeting?

Mr. JACOB. The attendees were the Vice President, the President, Marc Short, the chief of staff to the Vice President, myself, and John Eastman. There was about a 5-minute period where Mark Meadows came in on a different issue.

Mr. AGUILAR. Let's show a photo of that meeting.

Mr. Jacob, during that meeting between the President and the Vice President, what theories did Dr. Eastman present regarding the role of the Vice President in counting the electoral votes?

Mr. JACOB. During the meeting on January 4th, Mr. Eastman was opining that there were two legally viable arguments as to authorities that the Vice President could exercise 2 days later on January 6th.

One of them was that he could reject electoral votes outright. The other was that he could use his capacity as presiding officer to suspend the proceedings and declare essentially a 10-day recess, during which States that he deemed to be disputed—there was a list of 5 to 7 States that the exact number changed from conversation to conversation—but that the Vice President could sort-of issue a demand to the State legislatures in those States to reexamine the election and declare who had won each of those States.

So, he said that both of those were legally viable options. He said that he did not recommend, upon questioning, he did not recommend what he called the more aggressive option, which was reject outright, because he thought that that would be less politically palatable, that the imprimatur of State legislature authority would be necessary to ultimately have public acceptance of an outcome in favor of President Trump.

So, he advocated that the preferred course of action would be the procedural route of suspending the joint session and sending the election back to the States.

Mr. AGUILAR. Mr. Jacob, I know you won't discuss the direct conversations between the President and the Vice President, so rather than asking you what the Vice President said in that meeting, I will ask you a more general question.

Did the Vice President ever waver in his position that he could not unilaterally decide which electors to accept?

Mr. JACOB. The Vice President never budged from the position that I have described as his first instinct, which was that it just made no sense, from everything that he knew and had studied about our Constitution, that one person would have that kind of authority.

Mr. AGUILAR. Did the Vice President ever waver in his position that he could not delay certification and send it back to the States?

Mr. JACOB. No, he did not.

Mr. AGUILAR. Did Dr. Eastman admit in front of the President that his proposal would violate the Electoral Count Act?

Mr. JACOB. So, during that meeting on the 4th, I think I raised the problem that both of Mr. Eastman's proposals would violate several provisions of the Electoral Count Act.

Mr. Eastman acknowledged that that was the case, that even what he viewed as the more politically palatable option would violate several provisions, but he thought that we could do so because in his view the Electoral Count Act was unconstitutional.

When I raised concerns that that position would likely lose in court, his view was that the court simply wouldn't get involved. They would invoke the political question doctrine and therefore we could have some comfort proceeding with that path.

Mr. AGUILAR. Mr. Wood.

Mr. WOOD. But just to reiterate, he told you—maybe this was in a later conversation—but he told you at some point that if, in fact, the issue ever got to the Supreme Court, his theory would lose 9–0, correct?

Mr. JACOB. The next morning, starting around 11 or 11:30, we met for an hour-and-a-half to 2 hours. In that meeting, I have already described the text, structure, history conversation, but we started walking through all of that.

I said, “John, basically what you have is some texts that may be a little bit ambiguous, but then nothing else that would support it, including the fact that nobody would ever want that to be the rule. Wouldn’t we lose 9 to nothing in the Supreme Court?”

Again, he initially started, “Well, maybe you would only lose 7–2,” but ultimately acknowledged that, no, we would lose 9–0, no judge would support his argument.

Mr. AGUILAR. After his meeting with the Vice President, Donald Trump flew to Georgia for a rally in support of the Republican candidates in the U.S. Senate runoff.

Even though the Vice President had been steadfast in resisting the President’s pressure, President Trump continued to publicly pressure Vice President Pence in his Georgia speech.

Rather than focusing exclusively on the Georgia Senate runoff, Trump turned his attention to Mike Pence. Here is what the President said during that rally in Georgia.

President TRUMP. [Pence comes through for us. I have to tell you. [applause] I hope that our great Vice President—our great Vice President comes through for us. He’s a great guy. Of course, if he doesn’t come through, I won’t like him quite as much. [laughter]

Mr. AGUILAR. So, the President had been told multiple times that the Vice President could not affect the outcome of the election, but he nonetheless publicly pressured Mike Pence to do exactly that by saying, “If he doesn’t come through, I won’t like him as much.”

Let’s turn now to January 5th.

Mr. Wood.

Mr. WOOD. Thank you.

That morning, meaning January 5th, the President issued a tweet expressly stating that the Vice President had the power to reject electors.

Let’s look at what the President wrote. “The Vice President has the power to reject fraudulently chosen electors.”

Mr. Jacob, you have already told us about your meeting with Dr. Eastman and the President on January 4th, and you briefly made reference to the meeting you had with Dr. Eastman the next day, January 5th.

Can you tell us a little bit more about that meeting with Dr. Eastman on January 5th? For example, where was the meeting? Who was there?

Mr. JACOB. So, at the conclusion of the meeting on the 4th, the President had asked that our office meet with Mr. Eastman the next day to hear more about the positions he had expressed at that meeting, and the Vice President indicated that—offered me up as his counsel to fulfill that duty.

So, we met in Marc Short’s office in the Executive Office Building across the way from the White House. Dr. Eastman had a court hearing by Zoom that morning, so it didn’t start first thing, but rather started around 11.

That meeting went for about an hour-and-a-half, 2 hours. Chief of Staff Marc Short was at that meeting most of the time. There were a few times that he left. Essentially, it was an extended discussion.

What most surprised me about that meeting was that when Mr. Eastman came in, he said, "I am here to request that you reject the electors."

So on the 4th, that had been the path that he had said, "I am not recommending that you do that," but on the 5th, he came in and expressly requested that.

I grabbed a notebook because I was heading into the meeting. I didn't hear much new from him to record, but that was the first thing I recorded in my notes, was, "Request that the VP reject."

Mr. WOOD. Just to be clear, you are saying that Dr. Eastman urged the Vice President to adopt the very same approach that Dr. Eastman appeared to abandon in the Oval Office meeting with the President the day before. Is that correct?

Mr. JACOB. He had recommended against it the evening before, and then on the 5th came in—and I think it was probably his first words after introductions and as we sat down were, "I am here to request that you reject the electors in the disputed States."

Mr. WOOD. You referenced a moment ago some handwritten notes, which you have provided to the Select Committee. I would now like to show you those notes.

As you can see, you wrote there at the top—the writing is a little bit faint in the copy—but you wrote, "Requesting VP reject."

Does that accurately reflect what Dr. Eastman asked of you in your meeting on January 5th?

Mr. JACOB. Yes.

Mr. WOOD. What was your reaction when Dr. Eastman said on January 5th that he was there to ask the Vice President of the United States to reject electors at the joint session of Congress?

Mr. JACOB. I was surprised, because I had viewed it as one of the key concessions that we had secured the night before from Mr. Eastman, that he was not recommending that we do that.

Mr. WOOD. So what did you say to him?

Mr. JACOB. Well, as I indicated, to some extent it simplified my task because there are more procedural complexities to the "send it back to the States" point of view. I actually had spent most of my evening the night before writing a memorandum to the Vice President explaining all of the specific provisions of the Electoral Count Act that that plan would violate.

So instead, since he was pushing the sort-of robust unilateral power theory—I have already walked the Committee through the discussions that we had—again, I started out with our points of commonality—or what I thought were our points of commonality—we are conservatives, we are small government people, we believe in originalism as the means by which we are going to interpret this.

So we walked through the text, we walked through the history. The Committee has shown footage of Mr. Eastman on the stage on the 6th claiming that Jefferson supported his position in a historical example of Jefferson.

In fact, he conceded in that meeting Jefferson did not at all support his position, that in the election of 1800 there had been some small technical defect with the certificate in Georgia. It was absolutely undisputed that Jefferson had won Georgia.

Jefferson did not assert that he had any authority to reject electors. He did not assert that he had any authority to resolve any issue during the course of that.

So, he acknowledged by the end that there was no historical practice whatsoever that supported his position. He had initially tried to push examples of Jefferson and Adams.

He ultimately acknowledged they did not work, as we have covered. He acknowledged it would lose 9–0 in the Supreme Court.

He again tried to say, “But I don’t think the courts will get involved in this. They will invoke the political question doctrine. So if the courts stay out of it, that will mean that we will have the 10 days for the States to weigh in and resolve it. Then they will send back the Trump slates of electors, and the people will be able to accept that.”

I expressed my vociferous disagreement with that point. I did not think that this was a political question.

Among other things, if the courts did not step in to resolve this, there was nobody else to resolve it. You would be in a situation where you have a standoff between the President of the United States and, counterfactually, the Vice President of the United States, saying that we have exercised authorities that, Constitutionally, we think we have by which we have deemed ourselves the winners of the election.

You would have an opposed House and Senate disagreeing with that. You would have State legislatures that, to that point, I mean, Republican leaders across those legislatures had put together—had put out statements—and we collected these for the Vice President as well—that the people had spoken in their States and that they had no intention of reversing the outcome of the election.

We did receive some signed letters that Mr. Eastman forwarded us by minorities of leaders in those States, but no State had any legislative house that indicated that it had any interest in it.

So, you would have had just an unprecedented Constitutional jump ball situation with that stand-off. As I expressed to him, that issue might well then have to be decided in the streets. Because if we can’t work it out politically, we have already seen how charged up people are about this election. So, it would be a disastrous situation to be in.

So, I said I think the courts will intervene. I do not see a commitment in the Constitution of the question whether the Vice President has that authority to some other actor to resolve. There are arguments about whether Congress and the Vice President jointly have a Constitutional commitment to generally decide electoral vote issues.

I don’t think that they have any authority to object or reject them. I don’t see it in the 12th Amendment. But nonetheless.

I concluded by saying, “John, in light of everything that we have discussed, can’t we just both agree that this is a terrible idea?”

He couldn’t quite bring himself to say yes to that, but he very clearly said, “Well, yes, I see we are not going to be able to persuade you to do this.”

That was how the meeting concluded.

Mr. WOOD. You just described a terrifying scenario. It sounds like there could have been chaos under the Eastman approach. You

have described it as it potentially could be decided in the streets. You described several concessions that Dr. Eastman made throughout that discussion or even debate that you had with him.

At some point during that meeting on January 5th, did Dr. Eastman seem to admit that both of the theories that he had presented to the United States the day before—so the theory that the Vice President could reject electors outright and declare Donald Trump the winner, and his less aggressive theory that the Vice President could simply send it back to the States—at some point in that conversation on the 5th, did Dr. Eastman seem to admit that both of these theories suffered from similar legal flaws?

Mr. JACOB. So I had at least one, possibly two other conversations with Dr. Eastman later that day.

In the earlier meeting, we really were focused, because his request that he made had been reject the electors outright, on why that theory was wrong, and why we certainly would not be doing that.

Later that day, he pivoted back to, “Well, we hear you loud and clear, you are not going to reject. But remember last night, I said that there was this more prudent course where you could just send it back to the States. Would you be willing to do that?”

During the course of our discussion about his renewed request that we consider that option, he acknowledged to me—he put it—both Mr. Eastman and myself are graduates of the University of Chicago Law School, and he said, “Look, as graduates of that august institution, you and I will mutually understand that the underlying legal theory of plenary Vice Presidential authority is what you have to have to get there.”

Because this new theory, as I was pointing out to him—or the procedural theory—still violates several provisions of the Electoral Count Act, as he acknowledged. The only way that you could ever be able to ignore several provisions of statutory law is if it was pretty clear that they were unconstitutional.

The only way they could be unconstitutional is if the Vice President had the plenary authorities that formed the basis for the reject the votes as well.

So, he acknowledged in those conversations that the underlying legal theory was the same. He just thought that the “send it back to the States” option would be more politically palatable and he hoped more palatable to the Vice President for that reason.

Mr. WOOD. In fact, when Dr. Eastman made this concession during that meeting, according to your earlier deposition, Dr. Eastman said, “Just between us University of Chicago chickens.” Is that right?

Mr. JACOB. I don’t think that the University of Chicago is going to start a Chicago chickens fundraising fund. But, yes, that is the terminology that he used. He said, you know, “Just between us Chicago chickens, we will understand, as lawyers who have studied the Constitution, that the underlying basis really is the same.”

Mr. WOOD. I reserve the remainder of my time.

Mr. AGUILAR. Thank you, Mr. Wood.

Mr. Jacob, the President and the Vice President meet again on that same topic the next day, January 5th, correct?

Mr. JACOB. After my extended meeting with Mr. Eastman that morning, during that time the Vice President had been back at his residence working on his statement to the Nation that we released the next day.

He got down to the White House some point between 1 o'clock and 2 o'clock as my meeting with Mr. Eastman was wrapping up. When we, Marc Short and I, went over to meet with the Vice President and—actually, we thought maybe we had good news. We felt like we had sort-of defeated Mr. Eastman. He was sort-of acknowledging that there was no “there” there.

But the Vice President was then asked down to the Oval Office, and he went down to the Oval Office while Marc and I stayed back in the Vice President’s office.

Mr. AGUILAR. You weren’t in that meeting?

Mr. JACOB. I was not.

Mr. AGUILAR. In the book “Peril” journalists Bob Woodward and Robert Costa write that the President said, “If these people say you have the power, wouldn’t you want to?”

The Vice President says, “I wouldn’t want any one person to have that authority.”

The President responds, “But wouldn’t it almost be cool to have that power?”

The Vice President is reported to have said, “No. Look, I have read this, and I don’t see a way to do it. We have exhausted every option. I have done everything I could and then some to find a way around this. It is simply not possible. My interpretation is no.”

To which the President says, “No, no, no, you don’t understand, Mike. You can do this. I don’t want to be your friend anymore if you don’t do this.”

We asked Marc Short about this during his deposition.

Mr. SHORT. [A]n understanding that I would have. In other conversations with the Vice President, he articulated to me that, no, he wouldn’t want that power bestowed upon any one person.

Mr. AGUILAR. Mr. Jacob, did you, Mr. Short, and the Vice President have a call later that day again with the President and Dr. Eastman?

Mr. JACOB. So, yes, we did.

Mr. AGUILAR. What did Dr. Eastman request on that call?

Mr. JACOB. On that phone call, which I believe was around 5 o'clock that afternoon, Mr. Eastman stated that he had heard us loud and clear that morning, we were not going to be rejecting electors, but would we be open to considering the other course that we had discussed on the 4th, which would be to suspend the joint session and request that State legislatures reexamine certification of the electoral votes.

Mr. AGUILAR. That same day, January 5th, *The New York Times* ran a story about the disagreement between the President and the Vice President about whether the Vice President could determine the outcome of the election.

Even though *The New York Times* story was indisputably correct, Donald Trump denied it. Trump issued a statement claiming that the Vice President had agreed that he could determine the outcome of the election, despite the fact that the Vice President had consistently rejected that position.

Let's look at what the President said in his statement. "The New York Times report regarding comments Vice President Pence supposedly made to me today is fake news. He never said that. The Vice President and I are in total agreement that the Vice President has the power to act."

Mr. Jacob, how did the Vice President's team react to this statement from the President that the Vice President could take an active role in determining the winner of the Presidential election?

Mr. JACOB. So, we were shocked and disappointed, because whoever had written and put that statement out, it was categorically untrue.

Mr. AGUILAR. The Vice President's Chief of Staff, Marc Short, had an angry phone call with Trump campaign senior advisor Jason Miller about this statement. Here is what Mr. Short and Mr. Miller told the Committee about that call.

Mr. HEAPHY. Okay. Tell me about the conversation you had with Jason.

Mr. SHORT. It was brief. I was irritated and expressed displeasure that a statement could have gone out that misrepresented the Vice President's viewpoint without consultation.

Mr. HEAPHY. The statement says the Vice President and I are in total agreement, that the Vice President has the power to act. Is that incorrect?

Mr. SHORT. I think the record shows that that's incorrect.

Mr. HEAPHY. Yeah.

Mr. SHORT. I mean, we've—we've been through many documents that clarify that this is not where the Vice President was.

Mr. HEAPHY. Right. So, essentially, the President is sending out a baldly false statement about being in alignment, purported alignment, with the Vice President despite all of the predicate that you indicated had gone before about their respective positions. Is that effectively what happened?

Mr. SHORT. I interpret the statement is false. I'll let you figure out who sent it out.

Mr. GEORGE. When Marc Short contacted you, he—he was upset. Is that what you said?

Mr. JASON MILLER. He clearly was not pleased.

Mr. GEORGE. Tell us what he said.

Mr. JASON MILLER. What's the process for putting out a statement for a meeting where only two people were in the room?

Mr. GEORGE. Did he ask you to retract the statement?

Mr. JASON MILLER. No, he just—I think it went right to what's the process for putting out a statement for a meeting when only two people were in the room.

Mr. GEORGE. And he clearly disagreed with the substance though, right, because he said that—he said the Vice President doesn't agree with this.

Mr. JASON MILLER. I'm trying to think what exactly he said. I mean, the—the tone was very clearly that he'd—that he'd used some language to strongly infer that the Vice President disagreed with—with that take, but I don't remember what that language was.

Mr. HEAPHY. Did he dictate this statement?

Mr. JASON MILLER. We—he dictated—he dictated most of it. I mean, typically on these—typically on these, I might have a couple of wording suggestions, or maybe I'd, you know, have a—a sense or a rough framework or something of that. But I—I know with—specifically on this one that it was me and him on the phone talking through it, and ultimately the way this came out was the way that he wanted to.

Mr. AGUILAR. The dispute between the President and the Vice President had grown to the point where the Vice President's Chief of Staff, Marc Short, was concerned that the President could, in Mr. Short's words, "lash out" at the Vice President on January 6th.

In fact, Mr. Short was so concerned about it that he talked with the head of the Vice President's Secret Service detail on January 5th. Here is Mr. Short.

Mr. SHORT. Concern was for the Vice President's security, and so I wanted to make sure the head of the Vice President's Secret Service was aware that—that

likely, as these disagreements became more public, that the President would lash out in some way.

Mr. AGUILAR. After the recess, we will hear that Marc Short's concerns were justified. The Vice President was in danger.

Mr. Chairman, I reserve.

Chairman THOMPSON. Pursuant to the order of the Committee of today, the Chair declares the Committee in recess for a period of approximately 10 minutes.

[Accordingly, at 2:41 p.m., the Committee recessed until 2:53 p.m., when it was called to order by the Chairman.]

Chairman THOMPSON. The gentleman from California, Mr. Aguilar, is recognized.

Mr. AGUILAR. I would now like to turn to the events of January 6, 2021, which turned out to be a fateful day in our Nation's history.

Despite the fact that the Vice President consistently told the President that he did not have and would not want the power to decide the outcome of the Presidential election, Donald Trump continued to pressure the Vice President, both publicly and privately.

As you will hear, things reached a boiling point on January 6th, and the consequences were disastrous.

In the middle of the night on January 5th, into the morning of the 6th, around 1 a.m., President Trump tweeted "at" the Vice President, meaning that the comments in response to the President's tweet would also show up on the Vice President's Twitter feed.

The tweet stated that the Vice President could "come through for us" and "send it back" to the States.

Then, around 8 a.m. on January 6th, President Trump again tweeted, this time to say that the Vice President could send it back to the States and "We win," and that "this is the time for extreme courage."

Mr. Short told us during his deposition that the Vice President started a meeting on January 6th in prayer. Here is what Mr. Short said.

Mr. HEAPHY. You arrived at the Vice President's residence.

Mr. SHORT. As would often be the case, I recall, that knowing it would be an important day, we gathered in prayer. And often that would be something the staff member would—would lead. So, it would have just been at that time, I believe, the Vice President, myself, Greg, and Chris.

And we would have just asked for guidance and wisdom, knowing that the day was going to be a challenging one.

Mr. AGUILAR. Mr. Jacob, did you go to the Vice President's Residence on the morning of January 6th?

Mr. JACOB. Yes.

Mr. AGUILAR. Who else was with you?

Mr. JACOB. Marc Short, Devin O'Malley, our communications director, and Chris Hodgson, our legislative affairs director.

Mr. AGUILAR. Did the Vice President have a call with the President that morning?

Mr. JACOB. He did.

Mr. AGUILAR. Were you with the Vice President during the call?

Mr. JACOB. So, we had been putting—the Vice President had finalized his statement overnight. We were in the process of proofing it so that we could get that out. We were told that a call had come

in from the President. The Vice President stepped out of the room to take that call, and no staff went with him.

Mr. AGUILAR. The President had several family members with him in the Oval that morning for that call. I would like to show you what they and others told the Select Committee about that call, along with never-before-seen photographs of the President on that call from the National Archives.

Mr. HERSCHMANN. When I got in, somebody called me and said that the family and others were in the Oval. And do I want to come up. So I—I went upstairs.

Mr. WOOD. And who do you recall being in the Oval Office?

Mr. HERSCHMANN. Don, Jr., Eric, Lara, Kimberly. I believe Meadows was there. At some point, Ivanka came in.

Ms. TRUMP. It wasn't a specific, formal discussion. It was very sort-of loose and casual.

Mr. WOOD. So, then you said at some point there's a telephone conversation between the President and the Vice President. Is that correct?

Mr. HERSCHMANN. Yes.

Ms. TRUMP. When I entered the office the second time, he was on the telephone with who I later found out to be was the—the Vice President.

Mr. WOOD. Could you hear the Vice President or only hear the President's end? Mr. HERSCHMANN. Only hear the President's end. And at some point, it started off as a calmer tone, and everything, and then it became heated.

Ms. TRUMP. The conversation was—was pretty heated.

Mr. HERSCHMANN. I think 'til it became somewhat, you know, louder tone, I don't think anyone was paying attention to it initially.

Mr. GEORGE. Did you hear any part of the phone call, even if just this—the end that the President was speaking from?

Mr. LUNA. I did. Yes.

Mr. GEORGE. All right. And what did you hear?

Mr. LUNA. So, as I was dropping off the note, I—my memory—I remember hearing the word “wimp.”

Either he called him a wimp—I don't remember if he said, “You are a wimp,” “You'll be a wimp.” “Wimp” is the word I remember.

Mr. GEORGE. It's also been reported that the President said to the Vice President that—something to the effect of, “You don't have the courage to make a hard decision.”

General KELLOGG. Worse. I don't remember exactly either, but it was something like that. Yeah.

Mr. GEORGE. Do you—

General KELLOGG [continuing]. Being—you're—you're not tough enough to make the call.

Ms. TRUMP. It was a different tone than I'd heard him take with the Vice President before.

Mr. TONOLLI. Did Ms. Trump share with you any more details about what had happened or any details about what had happened in the Oval Office that morning?

Ms. RADFORD. That her dad had just had an upsetting conversation with the Vice President.

Mr. ROSELMAN. Do you recall anything about her demeanor either during the meeting or when you encountered her in Dan Scavino's office?

Mr. HERSCHMANN. I don't remember specifically. I mean, I think she was uncomfortable over the fact that there was obviously that type of interaction between the two of them.

Mr. LUNA. Something to the effect this is—the wording is wrong. I made the wrong decision 4 or 5 years ago.

Mr. TONOLLI. And the—the word that she related to you that the President called the Vice President, I apologize for being impolite, but do you remember what she said her father called him?

Ms. RADFORD. The P-word.

Mr. AGUILAR. Mr. Jacob, how would you describe the demeanor of the Vice President following that call with the President?

Mr. JACOB. When he came back into the room, I would say that he was steely, determined, grim.

Mr. AGUILAR. Of course, the most dangerous part of what Donald Trump did on January 6th was what he did himself. As will be dis-

cussed in detail in a future hearing, our investigation found that early drafts of the January 6th Ellipse speech prepared for the President included no mention of the Vice President. But the President revised it to include criticism of the Vice President and then further ad-libbed.

Here is what the President said on January 6th after his call with Vice President Pence.

President TRUMP. 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.

All Vice President Pence has to do is send it back to the States to recertify, and we become President. And you are the happiest people. 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. And then we’re stuck with a President who lost the election by a lot, and we have to live with that for 4 more years. We’re just not going to let that happen.

And Mike Pence is going to have to come through for us. And if he doesn’t, that will be a—a sad day for our country.

And they want to recertify their votes. They want to recertify. But the only way that can happen is if Mike Pence agrees to send it back.

So, I hope Mike has the courage to do what he has to do. And I hope he doesn’t listen to the RINOs and the stupid people that he’s listening to.

Mr. AGUILAR. Of course, we all know what happened next. The President’s words had an effect. President Trump’s supporters became angry. When the Vice President issued his public letter, the crowd at the Capitol erupted in anger. The rioters, who had erected makeshift gallows, began chanting, “Hang Mike Pence!”

Testimony in our investigation has made clear what the target of the rioters’ ire was: Vice President Mike Pence.

The rioters breached the Capitol at 2:13 p.m.

[Video shown.]

Mr. AGUILAR. Now, let’s take a look at what was going on at the White House at this time.

We received testimony that the President’s Chief of Staff, Mark Meadows, was notified of the violence at the Capitol by 2 p.m. and likely earlier.

The testimony further establishes that Mr. Meadows quickly informed the President and that he did so before the President issued his 2:24 p.m. tweet criticizing Vice President Pence for not having “courage” to do what needed to be done.

Here is what the President wrote in his 2:24 p.m. tweet while the violence at the Capitol was going on. Here is what the rioters thought.

VOICE. [N]othing but a traitor, and he deserves to burn with the rest of ‘em.

VOICE. So this—so this all escalated after Pence—what—what happened? Did Pence—Pence, yeah, Pence didn’t do what we wanted.

VOICE. Pence voted against Trump.

VOICE. Okay. And that’s when all this started?

VOICE. Yup. That’s when we marched on the Capitol. We’ve been shot at with rubber bullets, tear gas.

Mr. FUENTES. We just heard that Mike Pence is not going to reject any fraudulent electoral votes.

CROWD. Boo!

VOICE. You’re a traitor!

Mr. FUENTES. That’s right. You’ve heard it here first. Mike Pence has betrayed the United States of America.

CROWD. Boo!

VOICE. Fuck you, Mike Pence!

Mr. FUENTES. Mike Pence has betrayed this President, and he has betrayed the people of the United States, and we will never, ever forget.

VOICE. It's real simple. Pence betrayed us, which apparently everybody knew he was going to, and the President mentioned it like five times when he talked. You can go back and watch the President's video.

VOICE. This is our Capitol. Let's be respectful to it.

VOICE. There's four million people coming in. So, there's a lot of—

VOICE. We love you guys. We love the cops.

VOICE. [inaudible]

VOICE. It's only a matter of time. Justice is coming.

Mr. AGUILAR. Although the President's Chief of Staff, Mark Meadows, has refused to testify before this Committee, Mr. Meadows's aide, Ben Williamson, and White House Deputy Press Secretary Sarah Matthews testified that Mr. Meadows went to the dining room near the Oval Office to tell the President about the violence at the Capitol before the President's 2:24 p.m. tweet.

In future hearings you will hear more about exactly what was happening in the White House at that time. But here is what some White House staff told the Select Committee.

Mr. GEORGE. Do you know where he went?

Mr. WILLIAMSON. Yes, I followed him down the hallway, and I followed him into the Outer Oval corridor, which is the hallway between the Oval Office hallway and the Outer Oval section of the Oval Office. I followed him into that little corridor hallway. I saw him walk into Outer Oval. I maybe took a step into Outer Oval and then left. And I don't know where he went outside of that, but it looked like he was headed in the direction of the Oval Office.

Ms. MATTHEWS. You know, we had all talked about—at that point—about how it was bad and the, you know, situation was getting out of hand. And I—I know Ben Williamson and I were conferring, and we thought that the President needed to tweet something and tweet something immediately. And I think when Kayleigh gave us that order of don't say anything to the media, I told her that I thought the President needed to tweet something.

And then I remember—then I remember getting a notification on my phone. And I was sitting in a room with Roma and Ben, and we all got a notification. So, we knew it was a tweet from the President, and we looked down and it was a—a—a tweet about Mike Pence.

Mr. WILLIAMSON. I believe I had sent him a text saying that we may want to put out some sort of statement because the situation was—was getting a little hairy over at the Capitol. And then it was common for after I would text him, I would just go down and—and see him in person.

Mr. GEORGE. You went down to speak with Mark Meadows after this. What was that conversation?

Mr. WILLIAMSON. Very brief. I went down and told him the same thing I have in the text that I can recall. And I—I don't remember anything that was said between us other than I told him that and to my recollection he immediately got up and—and left his office.

Mr. AGUILAR. Our investigation found that immediately after the President's 2:24 p.m. tweet, the crowds, both outside the Capitol and inside the Capitol, surged.

The crowds inside the Capitol were able to overwhelm the law enforcement presence, and the Vice President was quickly evacuated from his ceremonial Senate office to a secure location within the Capitol complex.

CROWD. Whose house?

CROWD. Our house!

Mr. AGUILAR. By 2:24 p.m., the Secret Service had moved Vice President Pence from the Senate Chamber to his office across the hall.

Mr. HODGSON. The noise from the rioters became audible, at which point we recognized that maybe they had gotten into the building.

Mr. AGUILAR. Then President Trump tweeted, "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution,

giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!"

VOICE. Bring out Pence!

VOICE. Bring him out!

Ms. MATTHEWS. It was clear that it was escalating and escalating quickly.

CROWD. Hang Mike Pence. Hang Mike Pence.

Ms. MATTHEWS. So then when that tweet—the Mike Pence tweet—was sent out, I remember us saying that that was the last thing that needed to be tweeted at that moment. The situation was already bad, and so it felt like he was pouring gasoline on the fire by tweeting that.

Mr. AGUILAR. Thirty seconds later, rioters already inside the Capitol opened the East Rotunda door just down the hall. And just 30 seconds after that, rioters breached the Crypt one floor below the Vice President.

Mr. HODGSON. The Secret Service couldn't control the situation and do their job of keeping him safe.

Mr. AGUILAR. At 2:26 p.m., Secret Service rushed Vice President Pence down the stairs.

Mr. JACOB. I think they had been trying to figure out whether they had a clear route to get us to where they—it was that they wanted to move us to.

Mr. HODGSON. We moved pretty quickly down the stairs and through various hallways and tunnels to the secure location. Upon arriving there, there was further discussion as to whether or not we were going to leave the Capitol complex or stay where we were.

Mr. AGUILAR. Vice President Pence and his team ultimately were led to a secure location where they stayed for the next 4½ hours, barely missing rioters a few feet away.

Mr. AGUILAR. Approximately 40 feet, that is all there was, 40 feet between the Vice President and the mob.

Mr. JACOB, you were there. Seeing that for the first time, does it surprise you to see how close the mob was to the evacuation route that you took? Forty feet is the distance from me to you, roughly.

Mr. JACOB. I could hear the din of the rioters in the building while we moved, but I don't think I was aware that they were as close as that.

Mr. AGUILAR. Make no mistake about the fact that the Vice President's life was in danger. A recent court filing by the Department of Justice explains that a confidential informant from the Proud Boys told the FBI that the Proud Boys would have killed Mike Pence if given a chance.

This witness, whom the FBI affidavit refers to as "W-1," "stated that other members of the group talked about things they did that day, and they said that anyone they got their hands on they would have killed, including Nancy Pelosi."

W-1 further stated that members of the Proud Boys said that they would have killed Mike Pence if given a chance.

We understand that Congressional leaders and others were evacuated from the Capitol complex during the attack. We would like to show you what happened after the Vice President was evacuated from the Senate.

Mr. AGUILAR. The Select Committee has obtained never-before-seen photos from the National Archives that show Vice President Pence sheltering in a secure, underground location as rioters overwhelmed the Capitol.

At 4:19 p.m., Vice President Pence is seen looking at a tweet the President had just sent, a tweet asking the rioters to leave the Capitol.

After 4½ hours spent on working to restore order, the Vice President returned to the Senate floor to continue the certification of electors.

Mr. AGUILAR. So, Vice President Pence was a focus of the violent attack.

Mr. Jacob, did the Vice President leave the Capitol complex during the attack?

Mr. JACOB. He did not.

Mr. AGUILAR. Could you please explain why the Vice President refused to leave the Capitol complex?

Mr. JACOB. When we got down to the secure location the Secret Service directed us to get into the cars, which I did. Then I noticed that the Vice President had not. So, I got out of the car that I had gotten into, and I understood that the Vice President had refused to get into the car.

The head of his Secret Service detail, Tim, had said, "I assure you; we are not going to drive out of the building without your permission." The Vice President had said something to the effect of, "Tim, I know you, I trust you, but you are not the one behind the wheel."

The Vice President did not want to take any chance that the world would see the Vice President of the United States fleeing the United States Capitol. He was determined that we would complete the work that we had set out to do that day that it was his Constitutional duty to see through, and that the rioters who had breached the Capitol would not have the satisfaction of disrupting the proceedings beyond the day on which they were supposed to be completed.

Mr. AGUILAR. Let me see if I understand this right. You were told to get in the cars. How many of the Vice President's staff got in the cars while he did not?

Mr. JACOB. Most of us.

Mr. AGUILAR. During our investigation, we received testimony that while the Vice President was in a secure location within the Capitol complex, he continued the business of Government.

We understand that the Vice President reached out to Congressional leaders, like the Acting Secretary of Defense and others, to check on their safety and to address the growing crisis.

In addition, the Vice President's Chief of Staff, Marc Short, made several calls to senior Government officials.

Here is Mr. Short's testimony regarding his call with Representative Kevin McCarthy.

Mr. SHORT. He indicated that he had had some conversation. I don't recall whether it was with the President or somebody at the White House, but I think he expressed frustration that—not taking the circumstances seriously as they should at that moment.

Mr. HEAPHY. So, Mr. McCarthy indicated he'd been in touch with someone at the White House, and he conveyed to you that they weren't taking this as seriously as they should. You have to answer. Yes or no?

Mr. SHORT. Yes, yes.

Mr. HEAPHY. Okay.

Mr. AGUILAR. While the Vice President made several calls to check on the safety of others, it was his own life that was in great danger.

Mr. Jacob, did Donald Trump ever call the Vice President to check on his safety?

Mr. JACOB. He did not.

Mr. AGUILAR. Mr. Jacob, how did Vice President Pence and Mrs. Pence react to that?

Mr. JACOB. With frustration.

Mr. WOOD. Mr. Jacob, immediately before you and the Vice President were evacuated to a secure location within the Capitol, you hit “send” on an email to John Eastman explaining why his legal theory about the Vice President’s role was wrong.

You ended your email by stating that, “thanks to your bullshit, we are now under siege.” We will take a look at that email.

Dr. Eastman replied—and this is hard to believe—but his reply back to you was, “The ‘siege’ is because you and your boss,” presumably referring to the Vice President of the United States, “did not do what was necessary to allow this to be aired in a public way so the American people could see for themselves what happened.”

Mr. Jacob, later that day you wrote again to Dr. Eastman. Let’s show that email on the screen.

In that email you wrote, and I quote, “Did you advise the President that in your professional judgement the Vice President DOES NOT have the power to decide things unilaterally?” You ended that email saying, “[I]t does not appear that the President ever got the memo.”

Dr. Eastman then replied, “He has been so advised.” He ends his email with, “But you know him. Once he gets something in his head, it is hard to get him to change course.”

Mr. Jacob, when Dr. Eastman wrote, “Once he gets something in his head, it is hard to get him to change course,” did you understand the “he” in that email to refer to the President of the United States?

Mr. JACOB. I did.

Mr. WOOD. Mr. Jacob, did you hear from Dr. Eastman further after the riot had been quelled? If so, what did he ask?

Mr. JACOB. Late that evening, after the joint session had been reconvened, the Vice President had given a statement to the Nation saying that violence was not going to win, freedom wins, and that the people were going to get back to doing their work.

Later that evening, Mr. Eastman emailed me to point out that, in his view, the Vice President’s speech to the Nation violated the Electoral Count Act, that the Electoral Count Act had been violated because the debate on Arizona had not been completed in 2 hours—of course, it couldn’t be, since there was an intervening riot of several hours—and that the speeches that the Majority and Minority leaders had been allowed to make also violated the Electoral Count Act, because they hadn’t been counted against the debate time.

Then he implored me: Now that we have established that the Electoral Count Act isn’t so sacrosanct as you have made it out to be, I implore you one last time, can the Vice President please do what we have been asking him to do these last 2 days, suspend the joint session, send it back to the States?

Mr. WOOD. We will show you the text of that email, which Dr. Eastman wrote at 11:44 p.m. on January 6th.

So, after the attack on the Capitol and after law enforcement had secured the Capitol, he still wrote, as you described, “So now that the precedent has been set that the Electoral Count Act is not quite so sacrosanct as was previously claimed, I implore you to consider one more relatively minor violation and adjourn for 10 days to allow the legislatures to finish their investigations”

So, even after the attack on the Capitol had been quelled, Dr. Eastman requested, in writing no less, that the Vice President violate the law by delaying the certification and sending the question back to the States.

Is that correct, Mr. Jacob?

Mr. JACOB. It is.

Mr. WOOD. Did you eventually share Dr. Eastman's proposal with Vice President Pence?

Mr. JACOB. Not right at that time, because the Vice President was completing the work that it was his duty to do. But a day or two later, back at the White House, I did show him that final email from Mr. Eastman.

Mr. WOOD. What was Vice President Pence's reaction when you showed him the email where Dr. Eastman, after the attack on the Capitol, still asked that the Vice President delay certification and send it back to the States?

Mr. JACOB. He said, "That's rubber room stuff."

Mr. AGUILAR. I am sorry, Mr. Wood.

He said it is "rubber room stuff"?

Mr. JACOB. Yes, Congressman.

Mr. AGUILAR. What did you interpret that to mean?

Mr. JACOB. I understood it to mean that, after having seen play out what happens when you convince people that there is a decision to be made in the Capitol legitimately about who is to be the President and the consequences of that, that he was still pushing us to do what he had been asking us to do for the previous 2 days, that that was certifiably crazy.

Mr. AGUILAR. We know that the Vice President did not do what Dr. Eastman requested, because he presided over the completion of the counting of electoral votes late in that evening.

Vice President PENCE. The number of electors appointed to vote for President of the United States is 538. Within that whole number, a majority is 270. The votes for President of the United States are as follows: Joseph R. Biden, Jr., of the State of Delaware has received 306 votes. Donald J. Trump of the State of Florida has received 232 votes.

The whole number of electors appointed to vote for Vice President of the United States is 538. Within that whole number, a majority is 270. The votes for Vice President of the United States are as follows: Kamala D. Harris of the State of California has received 306 votes. Michael R. Pence of the State of Indiana has received 232 votes.

The announcement of the state of the vote by the President of the Senate shall be deemed a sufficient declaration of the persons elected President and Vice President of the United States, each for the term beginning on the 20th day of January, 2021, and shall be entered, together with the list of the votes, on the Journals of the Senate and the House of Representatives.

Mr. AGUILAR. Mr. Jacob, we heard earlier that you and the Vice President and the team started January 6th with a prayer. You faced a lot of danger that day. This is a personal question, but how did your faith guide you on January 6th?

Mr. JACOB. My faith really sustained me through it. I, down in the secure location, pulled out my Bible, read through it, and just took great comfort.

Daniel 6 was where I went. In Daniel 6, Daniel has become the second in command of Babylon, a pagan nation that he completely faithfully serves. He refuses an order from the king that he cannot

follow, and he does his duty, consistent with his oath to God. I felt that that is what had played out that day.

Mr. AGUILAR. It spoke to you.

Mr. JACOB. Yes.

Mr. AGUILAR. At the end of the day, Marc Short sent the Vice President a text message with a Bible verse. Here is what he told the Select Committee.

Mr. SHORT. At 3:50 in the morning, when we finally adjourned and headed our ways, I remember texting the Vice President a passage from 2 Timothy, chapter 4, verse 7 about, "I fought the good fight, I finished the race, I have kept the faith."

Mr. AGUILAR. He started his day with a prayer and ended his day with a Bible verse: "I have fought the good fight, I have finished the race, I have kept the faith."

White House attorney Eric Herschmann testified that the next day, January 7th, he received a call from Dr. Eastman. Here is Mr. Herschmann's account of that call.

Mr. HERSCHMANN. The day after, Eastman—I don't remember why—he called me—or he texted me or called me, wanted to talk with me, and he said he couldn't reach others. And he started to ask me about something dealing with Georgia and preserving something potentially for appeal.

And I said to him, "Are you out of your f-ing mind?"

I said—I said I only want to hear two words coming out of your mouth from now on, "Orderly transition." And I said I don't want to hear any other f-ing words coming out of your mouth no matter what other than "orderly transition." Repeat those words to me.

Mr. WOOD. What did he say?

Mr. HERSCHMANN. Eventually he said, "Orderly transition."

I said, "Good, John. Now I'm going to give you the best free legal advice you're ever getting in your life. Get a great f-ing criminal defense lawyer. You're going to need it." And then I hung up on him.

Mr. AGUILAR. In fact, just a few days later, Dr. Eastman emailed Rudy Giuliani and requested that he be included on a list of potential recipients of a Presidential pardon. Dr. Eastman's email stated, "I've decided that I should be on the pardon list, if that is still in the works."

Dr. Eastman did not receive his Presidential pardon. So, let's see what Dr. Eastman did as a result when he was deposed by this Committee.

Mr. EASTMAN. I assert my Fifth Amendment right against being compelled to be a witness against myself.

Mr. WOOD. Did the Trump legal team ask you to prepare a memorandum regarding the Vice President's role in the counting of electoral votes at the joint session of Congress on January 6, 2021?

Mr. EASTMAN. Fifth.

Mr. WOOD. Dr. Eastman, did you advise the President of the United States that the Vice President could reject electors from 7 States and declare that the President had been reelected?

Mr. EASTMAN. Fifth.

Mr. WOOD. Dr. Eastman, the first sentence of the memo starts off by saying 7 States have transmitted dual slates of electors to the President of the Senate. Is that statement in this memo true?

Mr. EASTMAN. Fifth.

Mr. WOOD. Has President Trump authorized you to discuss publicly your January 4, 2021, conversation with him?

Mr. EASTMAN. Fifth.

Mr. WOOD. Are—so, is it your position that you can discuss in the media direct conversations you had with the President of the United States, but you will not discuss those same conversations with this Committee?

Mr. EASTMAN. Fifth.

Mr. AGUILAR. Dr. Eastman pled the Fifth 100 times.

Finally, let's hear from a Federal court judge, the only one to date who has opined on whether the President was involved in criminal activity.

Page 36 of Judge Carter's ruling says, "Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021."

Page 40 of the ruling says, "Based on the evidence, the Court find that it is more likely than not that President Trump and Dr. Eastman dishonestly conspired to obstruct the Joint Session of Congress on January 6, 2021."

Page 44: "Dr. Eastman and President Trump launched a campaign to overturn a democratic election, an action unprecedented in American history. Their campaign was not confined to the ivory tower—it was a coup in search of a legal theory."

Mr. Jacob, what would have happened to our democracy if Vice President Pence had gone along with this plan and certified Donald Trump as the winner of the 2020 election?

Mr. JACOB. So, there would have been short-term and long-term effects.

The short term I have previously described: A Constitutional jump-ball situation, political chaos in Washington, lawsuits, and who knows what happening in the streets. You would have had the Vice President of the United States having declared that the outcomes of these State elections were incorrect.

So, for all of those reasons, there would have been significant short-term consequences.

But in the long term, we would have established a situation where a Vice President would have asserted that one person could have the authority to determine the outcome of an election—which is antithetical to everything in our democracy, antithetical to the rule of law.

So, it would have been significant impacts both in the short and the long term.

Mr. AGUILAR. Judge Luttig, in the statement you released earlier today, you wrote that the efforts by President Trump to overturn the 2020 election were, "the most reckless, insidious, and calamitous failures in both legal and political judgment in American history."

What did you mean by that?

Judge LUTTIG. Exactly what I said, Congressman.

Mr. AGUILAR. Thank you, Judge.

Thank you, Mr. Jacob.

Mr. Chairman, this was an informative hearing, a powerful hearing. I am grateful for your leadership and the leadership of the distinguished Vice Chair.

Donald Trump knew he lost the 2020 election, but he could not bring himself to participate in the peaceful transfer of power. So, he latched on to a scheme that, once again, he knew was illegal. When the Vice President refused to go along with it, he unleashed a violent mob against him.

When we began, I asked how we got to this place. I think the answer to that question starts with the fact that people in positions

of power put their political party before their country. It cannot be allowed to continue.

I will yield back now, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

Without objection, the Chair recognizes the gentlewoman from Wyoming, Ms. Cheney, for a closing statement.

Vice Chair CHENEY. Thank you very much, Mr. Chairman.

Thank you to my colleague, Representative Aguilar.

Thank you very much to our witnesses today, Mr. Jacob and Judge Luttig. Thank you for being here with us.

We have seen so far in our hearings that President Trump knew that his claims of a stolen election were false. You have seen that he knew that Mike Pence could not legally refuse to count electoral votes. You have seen what President Trump did to pressure Mike Pence into taking illegal action.

Over the course of our next hearings, you will see information about President Trump's efforts, John Eastman's efforts, the Trump legal team's efforts to apply pressure to Republican State legislatures, State officials, and others.

Judge Carter has recently written, "Dr. Eastman's actions in these few weeks indicate that his and President Trump's pressure campaign to stop the electoral count did not end with Vice President Pence. It targeted every tier of Federal and State elected officials."

We will examine all of those threats. We will examine the Trump team's determination to transmit materially false electoral slates from multiple States to officials of the Executive and Legislative branches of our Government. We will examine the pressures put on State legislatures to convene to reverse lawful election results.

An honorable man receiving the information and advice that Mr. Trump received from his campaign experts and his staff, a man who loved his country more than himself, would have conceded this election. Indeed, we know that a number of President Trump's closest aides urged him to do so.

This Committee will address all of these issues in greater detail in the coming weeks.

Mr. Chairman, I yield back.

Chairman THOMPSON. The gentlelady yields back.

Judge Luttig and Mr. Jacob, our Nation owes you a great debt for your knowledge, integrity, and your loyalty to our Constitution. You and Vice President Pence are exactly the people our Nation needed at a critical time. You had the courage to do what was right.

In the weeks leading up to January 6th, many people failed this test when they had to choose between their oath to the country or the demands of Donald Trump. But there were others who, like you, stood tall in the face of intimidation and put our democracy first.

They include the judges who rejected the bogus claims of election fraud, the senior Justice Department officials who stood up to Donald Trump, and the State officials whom we will hear from at our next hearing.

We are deeply grateful for your courage and devotion to our country.

There are some who think the danger has passed, that even though there was violence and a corrupt attempt to overturn the Presidential election, the system worked. I look at it another way: Our system nearly failed and our democratic foundation destroyed but for people like you.

Judge Luttig, I want to give you an opportunity to share your thoughts on the on-going threat.

You have written, "The clear and present danger to our democracy now is that former President Donald Trump and other political allies appear prepared . . . to seize the Presidency in 2024 if Mr. Trump or one of his anointed candidates is not elected by the American people."

What do you mean by this?

Judge LUTTIG. Mr. Chairman, I am honored beyond words by your words. I was honored on January 6, 2021, then also honored beyond words, to have been able to come to the aid of Vice President Mike Pence.

I prayed that day, just like the Vice President prayed that day. I believe we may have prayed the same prayer to the same God. I prayed that same prayer with my wife this morning before I came into these hearings.

I have written, as you said, Chairman Thompson, that, today, almost 2 years after that fateful day in January 2021, that, still, Donald Trump and his allies and supporters are a clear and present danger to American democracy.

That is not because of what happened on January 6th. It is because, to this very day, the former President, his allies and supporters pledge that, in the Presidential election of 2024, if the former President or his anointed successor as the Republican Party Presidential candidate were to lose that election, that they would attempt to overturn that 2024 election in the same way that they attempted to overturn the 2020 election but succeed in 2024 where they failed in 2020.

I don't speak those words lightly. I would have never spoken those words ever in my life except that that is what the former President and his allies are telling us.

As I said in that *New York Times* op-ed wherein I was speaking about the Electoral Count Act of 1887, the former President and his allies are executing that blueprint for 2024 in open and plain view of the American public.

I repeat: I would have never uttered one single one of those words unless the former President and his allies were candidly and proudly speaking those exact words to America.

Chairman, thank you for the opportunity to appear here today for these proceedings.

Chairman THOMPSON. Thank you again, Judge Luttig.

As a part of the Select Committee's charge to make recommendations that are informed by other investigative findings, we will be reviewing the views shared by Judge Luttig and other experts on potential improvements to the Electoral Count Act, among a range of other initiatives.

I know the information we have presented over the last week is shocking—the idea that a President of the United States would or-

chestrate a scheme to stay in power after the people have voted him out of office.

We are able to present this information because so many witnesses have cooperated with our probe. But the fact is, there are more people with direct knowledge, with evidence germane to our investigation. I ask those who might be on the fence about cooperating to reach out to us.

The Committee's website address is being displayed behind me: *january6th.house.gov*. There, you can view the evidence we presented in our hearings and find a tip line to submit any information you might think would be helpful for our investigation. Despite how you might not think it is important, send us what you think.

I thank those who have sent us evidence for their bravery and patriotism.

Without objection, Members will be permitted 10 business days to submit statements for the record, including opening remarks and additional questions for the witnesses.

The Chair requests those in the hearing room remain seated until the Capitol Police have escorted Members from the room.

Without objection, the Committee stands adjourned.

[Whereupon, at 3:45 p.m., the Committee was adjourned.]

