



5

“A COUP IN SEARCH OF A LEGAL THEORY”

On the morning of January 6, 2021, Vice President Michael R. Pence gathered his staff to pray. Vice President Pence and his closest advisors knew the day ahead “would be a challenging one.”¹ They asked God for “guidance and wisdom” in the hours to come.² No Republican had been more loyal to President Donald J. Trump throughout his turbulent presidency than Vice President Pence. The Vice President rarely, if ever, criticized his boss. But as January 6th approached, President Trump turned on his own Vice President.

President Trump was desperate. As described in the previous chapters, the President was searching for a way to stay in power. He had lost the election to former Vice President Biden. He had run out of legal options to overturn the election weeks earlier, when his lawyers lost nearly every court challenge they filed.

The President pursued other means as well. President Trump and his lawyers tried to convince State and local officials to overturn the election, but they met resistance. Those same officials would not break the law or violate their oath to the Constitution. President Trump and his associates tried to convince State legislatures to replace the legitimate electors won by former Vice President Biden with Trump electors. The Trump Campaign even convened their own fake electors who submitted false electoral votes to Washington. But those efforts failed, too.

President Trump also attempted to use the Department of Justice (DOJ) for his own corrupt political purposes. President Trump offered the job of Acting Attorney General to a loyalist. He wanted this same DOJ official, Jeffrey Clark, to send a letter to several States suggesting that they should certify the fake electors convened by the Trump Campaign. President Trump’s effort to subvert the DOJ came to a head on January 3rd, when the Department’s senior personnel and lawyers in the White House Counsel’s Office threatened mass resignations if Clark was installed.

At that point, theories about a role the Vice President could play at the joint session had been circulating in certain corners of the internet and among Trump-supporting attorneys.³ President Trump focused his attention on the man who had loyally served by his side for four years.

On January 4, 2021, President Trump summoned Vice President Pence to a meeting in the Oval Office with John Eastman, a law professor representing President Trump in litigation challenging the election result. Eastman argued, on President Trump's behalf, that the Vice President could take matters into his own hands during the joint session on January 6th. Eastman offered Vice President Pence two options. First, the Vice President could unilaterally reject the certified electors from several States won by former Vice President Biden, thereby handing the presidency to President Trump. Or, according to Eastman, Vice President Pence could delay the joint session to give State legislatures the opportunity to certify new electors loyal to the President. Eastman admitted, in front of the president, that both options violated the Electoral Count Act of 1887, the statute that sets forth the process for counting and disputing electoral votes during the joint session.⁴ Eastman admitted as much in a subsequent conversation with the Vice President's staff as well.⁵

Therefore, President Trump knew, or should have known, that this scheme was illegal—in fact, it violated the Electoral Count Act and the U.S. Constitution. President Trump repeatedly demanded that Vice President Pence go through with it anyway.

Vice President Pence rejected President Trump's demands "many times" on January 4th and in the days that followed.⁶ Vice President Pence correctly pointed out that he had no power to take any action other than counting the certified electoral votes. America's founders could not possibly have contemplated a scenario in which the Vice President could unilaterally reject electoral votes and decide the outcome of a Presidential election. However, instead of backing down, President Trump ratcheted up the pressure even further, relentlessly harassing Vice President Pence both in public and in private.

President Trump used his bully pulpit, at rallies and on Twitter, to lie to his supporters. President Trump told them that Vice President Pence had the power to deliver another 4 years in the White House. It was not true. President Trump's campaign of coercion became so intense that Marc Short, Vice President Pence's Chief of Staff, alerted the head of the Vice President's Secret Service detail to the impending danger. On January 5th, Short warned that as the "disagreements" between President Trump and Vice President Pence "became more public, that the president would lash out in some way."⁷

Indeed, President Trump did. And those around him recognized that his lashing out at the Vice President could have disastrous consequences. On the morning of January 6th, an agent in the Secret Service's intelligence division was alerted to online chatter "regarding the VP being a dead man walking if he doesn't do the right thing."⁸ A few minutes later, another agent made a comment that turned out to be an ominous prediction: "I saw several other alerts saying they will storm the [C]apitol if he [the Vice President] doesn't do the right thing etc."⁹

During his speech at the Ellipse on January 6th, President Trump repeatedly pointed his finger at Vice President Pence. President Trump insisted that "if Mike Pence does the right thing, we win the election."¹⁰ President Trump added: "And Mike Pence is going to have to come through for us, and if he doesn't, that will be a, a sad day for our country because you're sworn to uphold our Constitution."¹¹

President Trump's scheme required Vice President Pence to *break* his oath to the Constitution, not uphold it. By the time President Trump spoke at the Ellipse, he also knew that Vice President Pence had no intention of overturning the election.

President Trump then sent a mob to the U.S. Capitol. He did so even after being informed by the Secret Service that people in the crowd possessed weapons. He wanted his supporters to intimidate Vice President Pence and any other Republican who refused his demands. The President told the crowd assembled before him to march down Pennsylvania Avenue, to "our Republicans, the weak ones" at the U.S. Capitol, "to try and give them the kind of pride and boldness that they need to take back our country."¹²

The mob overran the U.S. Capitol in short order. At 2:24 p.m., while the attack was well underway, 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!*¹³

Again, the opposite was true. Vice President Pence showed courage on January 6th. The Vice President refused to be intimidated by President Trump's mob, even as chants of "Hang Mike Pence!" echoed throughout the halls of the U.S. Capitol and a makeshift gallows was constructed on the Capitol grounds.¹⁴

It is no mystery why the mob turned on Vice President Pence. President Trump told his supporters that the election was stolen, and that Vice President Pence had the power, but lacked the courage, to fix it. None of this was true.

President Trump and Vice President Pence have both reflected on the events of January 6th in the months since then. Vice President Pence has described President Trump's demands as "un-American."¹⁵ President Trump has since insisted that Vice President Pence "could have overturned the Election!"¹⁶ Asked about the calls to hang the Vice President, President Trump said it was "common sense."¹⁷

In early 2022, U.S. District Judge David Carter evaluated the Trump-Eastman scheme to pressure the Vice President. Judge Carter described it as "a campaign to overturn a democratic election, an action unprecedented in American history."¹⁸ It was "a coup in search of a legal theory," Judge Carter found, that likely violated at least two Federal laws.¹⁹ The Trump-Eastman scheme was not a feature of the U.S. Constitution, as President Trump told his supporters. Instead, it "would have permanently ended the peaceful transition of power, undermining American democracy and the Constitution."²⁰

And it all began because President Trump refused to accept the result of the election, expressed through the votes of 81 million Americans.

5.1 PRESIDENT TRUMP AND HIS ALLIES EMBARK ON A DESPERATE GAMBIT TO BLOCK CERTIFICATION OF THE 2020 PRESIDENTIAL ELECTION.

THE INTELLECTUAL FRAMEWORK FOR THE THEORY THAT THE VICE PRESIDENT COULD CHANGE THE OUTCOME OF THE ELECTION AT THE JOINT SESSION EMERGED FROM DISCUSSIONS AMONG THE LAWYERS WORKING WITH THE TRUMP CAMPAIGN AFTER THE 2020 ELECTION.

When the electoral college met to cast votes for the certified winner in each State on December 14, 2020, any possibility of President Trump reversing his defeat came to an end. The contest was decided well before then, but December 14th marked what should have been the formal end of the Trump campaign. Former Vice President Biden had won the election and his victory was cemented by the States' electoral votes. Instead of bowing to this reality, some pro-Trump lawyers had already begun scheming ways to deny the inevitable. Over the course of the post-election period, as their other plans each failed, the importance of January 6th and the need to pressure Vice President Pence increased. These same lawyers concluded that the Vice President could help President Trump subvert the election on January 6th, but they would need Vice President Pence to set aside history and the law to do so. They'd need him to violate the Electoral Count Act of 1887 ("the ECA"). The ECA had governed the joint session for 130 years, but it was an inconvenient barrier for President Trump's plan to stay in office.

KENNETH CHESEBRO ARTICULATED A “PRESIDENT OF THE SENATE” STRATEGY IN EARLY DECEMBER, WHEN THE TRUMP CAMPAIGN WAS CONVENING “ALTERNATE” ELECTORS IN KEY STATES PRESIDENT TRUMP LOST.

On December 13, 2020, Kenneth Chesebro, a pro-Trump lawyer, sent a memo to Rudolph Giuliani, the President’s lead outside counsel, upon request from Trump Campaign official Boris Epshteyn.²¹ Chesebro laid out a “‘President of the Senate’ strategy,” arguing that the “President of the Senate” (“he, and he alone”) is charged with “making judgments about what to do if there are conflicting votes.”²² Chesebro argued that when the joint session met on January 6th, the President of the Senate should not count Arizona’s electoral college votes for former Vice President Biden, “[b]ecause there are two slates of votes.”²³ Of course, there were not two legitimate “slates of votes” from Arizona. There were the official electors, certified by the State, and a group of fake electors convened by the Trump campaign.

Chesebro’s memo set President Trump’s pressure campaign on a course to target the Vice President on January 6.²⁴ Judge Carter found that the “draft memo pushed a strategy that knowingly violated the Electoral Count Act” and “is both intimately related to and clearly advanced the plan to obstruct the Joint Session of Congress on January 6, 2021.”²⁵ That plan was also advanced by John Eastman.²⁶

ON DECEMBER 23, JOHN EASTMAN DRAFTED THE FIRST OF HIS TWO “JANUARY 6TH SCENARIO” MEMOS, ARTICULATING THE ARGUMENT THAT UNDER THE CONSTITUTION THE VICE PRESIDENT IS THE “ULTIMATE ARBITER.”

On December 23, 2020, Eastman wrote a two-page memo summarizing ways to ensure that “President Trump is re-elected.”²⁷ Eastman suggested that Vice President Pence could refuse to count the electoral college votes from seven States: Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin. According to Eastman, Vice President Pence could simply reject these States’ electoral college votes. At that point, President Trump would have 232 electoral college votes compared to former Vice President Biden’s 222. This was sufficient, in Eastman’s view, to guarantee President Trump’s victory, because he would have a majority of the electoral college votes. “Pence then gavels President Trump as re-elected,” Eastman wrote.

Eastman considered the possibility that Democrats in Congress would object, stating the plain truth that 270 electoral college votes are necessary to win. In that event, according to Eastman, the election could be sent to the House of Representatives.²⁸ The Republican-majority of delegations in the House would then re-elect Trump as president. Eastman concluded: “The main thing here is that Pence should do this without asking for

permission—either from a vote of the joint session or from the Court.... The fact is that the Constitution assigns this power to the Vice President as the ultimate arbiter. We should take all of our actions with that in mind.”²⁹

From the start, President Trump was looped in on Eastman’s proposal. The same day Eastman started preparing the memo, he sent an email to President Trump’s assistant Molly Michael, at 1:32 p.m.: “Is the President available for a very quick call today at some point? Just want to update him on our overall strategic thinking.”³⁰ Only five minutes later, Eastman received a call from the White House switchboard; according to his phone records, the conversation lasted for almost 23 minutes.³¹

EASTMAN CHANGED HIS EVALUATION OF THE 12TH AMENDMENT, AND THE ROLE OF THE VICE PRESIDENT, AFTER PRESIDENT TRUMP LOST THE ELECTION.

In Eastman’s theory, which was the foundation of President Trump’s January 6th plot, the Vice President of the United States is the “ultimate arbiter” and could unilaterally decide the victor of the 2020 Presidential election.³² However, just before the 2020 presidential election, Eastman had acknowledged in writing that the Vice President had no such expansive power.

In the course of a lengthy exchange of ideas and emails throughout the pre- and post-election period with an individual named Bruce Colbert, Eastman provided comments on a letter Colbert was drafting to President Trump.³³ The draft letter purported to provide recommendations of “crucial legal actions” for the Trump Campaign to take “to help secure your election victory as President of the United States.”³⁴ One of the draft letter’s recommendations was that “the President of the Senate decides authoritatively what ‘certificates’ from the states to ‘open.’” In response, Eastman wrote on October 17, 2020, “I don’t agree with this” and continued, “[t]he 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. 3 USC § 12 says merely that he is the presiding officer, and then it spells out specific procedures, presumptions, and default rules for which slates will be counted. *Nowhere does it suggest that the President of the Senate gets to make the determination on his own.* § 15 doesn’t, either.”³⁵

By the first week of December, Eastman’s correspondence with this same individual illustrates that he was open to advocating for the very point he had rejected before the election—that is, that “the 12th Amendment confers dispositive authority on the President of the Senate to decide which slate to count.”³⁶ And on December 5, 2020, Eastman wrote to Colbert, “I have spoken directly with folks at the top of the chain of command on this. They are now aware of the issues.”³⁷

The emails also signaled another idea that Eastman would continue to repeat in the coming weeks: that the Vice President could act without getting permission from a court. Specifically, he argued that they could take the position that the Vice President's authority was a "non-justiciable political question"—in other words, that Vice President Pence could just act, and no court would have jurisdiction to rule on the issue.³⁸ As Eastman's emails later in the month make clear, he thought there was an important reason to keep this issue out of the courts—they would rule that the theory was unlawful.

EASTMAN'S "JANUARY 6 SCENARIO" CLEARLY REQUIRED THE VICE PRESIDENT TO VIOLATE THE ELECTORAL COUNT ACT, THE FEDERAL LAW GOVERNING THE CERTIFICATION OF PRESIDENTIAL ELECTIONS.

There are other parts of Eastman's two-page December 23rd memo worthy of attention. Eastman wrote that Vice President Pence could recuse himself from presiding over the joint session of Congress on January 6th. In that event, the session would be overseen by the Senate President *Pro Tempore*, Senator Charles Grassley. Eastman was clearly arguing that Vice President Pence (or Senator Grassley) *should violate the Electoral Count Act*. "When he gets to Arizona, he announces that he has multiple slates of electors, and so is going to defer decision on that until finishing the other States," Eastman wrote.³⁹ "This would be the first break with the procedure set out in the Act."⁴⁰ This "break" with "procedure" that Eastman's memo was openly advocating for was in other words the Vice President breaking the law. When Chesebro read Eastman's memo, he commented favorably, declaring it "[r]eally awesome."⁴¹

At this point, Eastman continued, Congress would likely follow the "process" set forth in the Electoral Count Act, and "the two houses [would] break into their separate chambers" for debate.⁴² But Eastman advised "we should not allow the Electoral Count Act constraint on debate to control" and the Trump team "should demand normal rules (which includes the filibuster)."⁴³ Eastman thought this would create a "stalemate," giving "the state legislatures more time to weigh in to formally support the alternate slate of electors, if they had not already done so."⁴⁴ As discussed previously in this report, at the time he drafted this memo—and throughout the post-election period—Eastman, Giuliani, President Trump and others were simultaneously working to replace certified electors for former Vice President Biden in certain States. Eastman, Giuliani, and President Trump all pressured State legislators to name their own separate electors or to certify the campaign's fake electors.

EASTMAN'S THEORY WAS—IN THE WORDS OF PRESIDENT TRUMP'S SENIOR WHITE HOUSE AND CAMPAIGN OFFICIALS—"INSANE," "CRAZY," "NUTTY" AND IT WOULD NEVER PRACTICALLY WORK.

Eric Herschmann, an attorney working for President Trump in the White House, met with Eastman to discuss his memo. Herschmann thought Eastman's plan was "crazy." Herschmann summarized the conversation to the Select Committee:

And I said to him, hold on a second, I want to understand what you're saying. You're saying you believe the Vice President, acting as President of the Senate, can be the sole decisionmaker 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 F'ing mind, right? And that was pretty blunt. I said, you're completely crazy. 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? I said, they're not going to tolerate that. I said, you're going to cause riots in the streets. And he said words to the effect of there's been violence in this history of our country to protect the democracy or to protect the [R]epublic.⁴⁵

As recounted by Herschmann, Eastman was shockingly unconcerned with the prospect of violence should Vice President Pence follow his and President Trump's recommended course.

Herschmann asked a straightforward question—if the States wanted to recertify their electors, then why weren't they doing it themselves? "Why aren't they already coming into session and saying, we want to change the [S]tates, and why do you need the VP to go down this path[?]"⁴⁶ Eastman had no response. In addition to being "crazy," Herschmann "didn't think there was any chance in the world" that Eastman's plan "could work."⁴⁷

Herschmann pressed Eastman further, asking if he had "any precedent at all for the VP or anyone acting in the capacity as the President of the Senate declaring some statute invalid."⁴⁸ Eastman replied "no," but argued that "these are unprecedented times."⁴⁹ Herschmann was unimpressed, calling this a "ridiculous" answer.⁵⁰

White House Counsel Pasquale Anthony "Pat" Cipollone thought the Eastman plan was "nutty."⁵¹ Trump Campaign official Jason Miller testified that the Campaign's General Counsel, Matt Morgan, and Deputy Campaign Manager, Justin Clark, thought Eastman was "crazy," understood that there was "no validity to [his theory] in any way, shape, or form," and shared their views with "anyone who would listen."⁵²

THE VICE PRESIDENT’S CONCLUSION THAT HE DID NOT HAVE THE ABILITY TO AFFECT THE OUTCOME OF THE ELECTION

Vice President Pence’s counsel, Greg Jacob, was simultaneously researching the role of the Vice President during the joint session. The Office of the Vice President produced a preliminary staff memo on the subject on October 26, 2020.⁵³ Jacob then discussed the matter with Marc Short on election day or the day before.

This wasn’t the first time Jacob would be required to write a memo about the Vice President’s role in the electoral process. Before the election, Short explained to him that some in the White House were encouraging President Trump to prematurely declare victory on election night.⁵⁴ Of course, that is exactly what President Trump did. Jacob and Short wanted to avoid the Vice President getting drawn in to any such declarations, and Jacob pointed to his role in presiding over the counting of the electoral votes on January 6th as a reason not to. Jacob sent a memo to Short on election day reflecting this advice.⁵⁵

Then, on December 7, 2020, the Lincoln Project aired a provocative ad taunting President Trump, saying that Vice President Pence “Will Put the Nail in Your Political Coffin” during the joint session on January 6th.⁵⁶ This prompted a discussion between Jacob and Vice President Pence.⁵⁷ Jacob authored another memo, dated December 8, 2020.⁵⁸ Jacob continued researching the Vice President’s role during the joint session into early January. Jacob told the Select Committee that his view of the matter was not fully formed until then.⁵⁹

Jacob did extensive research on and historical analysis of both the Electoral Count Act of 1887 and the 12th Amendment to the U.S. Constitution.⁶⁰ The 12th Amendment contains a single relevant line: “The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted.”⁶¹ Though Jacob concluded that this line was “inartfully drafted,” it said nothing about resolving disputes over electoral votes.⁶²

Jacob concluded that the Vice President must adhere to the Electoral Count Act.⁶³ The ECA has been followed for 130 years and “every single time that there has been any objection to electors, it has been resolved in accordance with the Electoral Count Act procedures,” Jacob testified.⁶⁴ After reviewing the history and relevant cases, Jacob found that “[t]here is no justifiable basis to conclude that the Vice President has that kind of authority” to affect the outcome of the presidential election.⁶⁵ Jacob stated that his “review of text, history, and, frankly, just common sense” all confirmed that the Vice President had no such power.⁶⁶



Greg Jacob testifies before the Select Committee on June 16, 2022.

Photo by House Creative Services

PRESIDENT TRUMP’S ALLIES FILED LAWSUITS SEEKING A COURT ORDER DIRECTING VICE PRESIDENT PENCE NOT TO COUNT CERTAIN ELECTORAL VOTES.

One of President Trump’s congressional allies, Representative Louie Gohmert (R–TX), pushed a version of Eastman’s theory in the courts. On December 27, 2020, Representative Gohmert and several of the Trump Campaign’s fake electors for the State of Arizona (including Republican Party Chair Kelli Ward) filed suit against Vice President Pence in the U.S. District Court for the Eastern District of Texas.⁶⁷ As Ward explained to Marc Short in a phone call the day the suit was filed, President Trump was aware of the lawsuit and had signed off on it: “We wouldn’t have done that without the president telling us it was okay,” she told him.⁶⁸

In the suit, the Plaintiffs alleged that there were “competing slates” of electors from five States.⁶⁹ They asked the court to rule that portions of the Electoral Count Act of 1887 were unconstitutional and that “the Twelfth Amendment contains the exclusive dispute resolution mechanisms” for determining an objection raised by a Member of Congress to the electors submitted by any State.⁷⁰ Essentially, Representative Gohmert was asking the court to tell Vice President Pence that he was prohibited from following the procedures set forth in the Electoral Count Act. Much like Eastman’s



Representative Louie Gohmert outside the Capitol on March 17, 2021.

(Photo by Chip Somodevilla/Getty Images)

theory, the *Gohmert* plaintiffs asserted that the Vice President has the “exclusive authority and sole discretion” to determine which electoral votes to count.⁷¹

Although the *Gohmert* suit was premised on the same theory Eastman advocated, Eastman did not agree with the decision to file suit. Eastman argued that filing a suit against the Vice President had “close[] to zero” chance of succeeding, and there was a “very high” risk that the court would issue an opinion stating that “Pence has no authority to reject the Biden-certified ballots.”⁷² As highlighted by Judge Carter, Eastman’s theory was that Vice President Pence should take this action “without asking for permission” from Congress or the courts.⁷³ Another attorney, Bill Olson, stated that getting a judicial determination “that Pence is constrained by [the Electoral Count Act]” could “completely tank the January 6 strategy.”⁷⁴ Those who were advocating to press on with the Eastman scheme did not want to bring it before a Federal judge because of the high risk that a court’s determination that the scheme was illegal would stop the plan to overturn the election dead in its tracks.

Eastman himself pushed this cavalier attitude towards the courts and compliance with the law during a call with Arizona House Speaker Rusty



John McEntee, February 28, 2020.

(Photo by Alex Wong/Getty Images)

Bowers on January 4th. During this call, just two days before the joint session, Eastman pressed Speaker Bowers to bring the Arizona House into session to certify Trump electors or decertify the Biden electors.⁷⁵ Speaker Bowers responded as he had previously responded to similar entreaties by Giuliani and President Trump: by explaining that doing so would require him to violate his oaths to the U.S. and Arizona Constitutions and that he “wasn’t going to take such an action.”⁷⁶ Undeterred, Eastman still pushed Speaker Bowers to “just do it and let the courts sort it through.”⁷⁷

Ultimately, Representative Gohmert’s legal gambit failed; a U.S. district judge dismissed the case quickly.⁷⁸ The judge’s ruling was upheld by the Supreme Court, which rejected Gohmert’s appeal without further consideration.⁷⁹

OTHER INDIVIDUALS ADVISING PRESIDENT TRUMP AND HIS CAMPAIGN ALSO ADVOCATED FOR A ROLE FOR THE VICE PRESIDENT AT THE JOINT SESSION.

Other individuals inside and outside the White House also advanced versions of the theory that the Vice President had agency in the joint session. The issue of Vice President Pence’s role came up during a December meeting in the Oval Office. Either President Trump or his chief of staff, Mark Meadows, tasked John McEntee, the director of the Presidential Personnel Office, with researching the matter further.⁸⁰ Though McEntee was one of President Trump’s close advisors, he was not a lawyer and had no relevant experience. Yet, he wrote a one-page memo claiming that “the VP has substantial discretion to address issues with the electoral process.”⁸¹

This wasn’t the only one-page analysis drafted by McEntee before January 6th.⁸² He later proposed a “middle path” in which he envisioned the Vice President accepting *only half* the electoral votes from six disputed States (specifically, Wisconsin, Michigan, Pennsylvania, Georgia, Arizona and Nevada).⁸³ McEntee portrayed this as a way to avoid “disenfranchising” States while still achieving the desired result: delivering a second term to President Trump. McEntee conveyed this memo to the President with a cover note reading, “This is probably our only realistic option because it would give Pence an out.”⁸⁴ McEntee told the Select Committee that this judgment was based on his assessment that “it was, like, pretty obvious [the Vice President] wasn’t going to just reject... the electors or whatever was being asked of him at that time.”⁸⁵

Another advocate of a plan for the Vice President to play a role in the joint session was Jenna Ellis, a lawyer working for the Trump Campaign. She argued in two memos that Vice President Pence had the power to delay the counting of certified electoral votes. In the first memo, addressed to President Trump and dated December 31, 2020, Ellis advised that Vice President Pence should “not open any of the votes” from six States that “currently have electoral delegates in dispute.”⁸⁶ Ellis asserted that this “dispute” provided “sufficient rational and legal basis to question whether the [S]tate law and Constitution was followed.” Ellis proposed a delay of ten days, as the Vice President and Congress awaited a “response from the [S]tate legislatures, which would then need to meet in an emergency electoral session.” If any of the State legislatures “fails to provide a timely response, no electoral votes can be opened and counted from that [S]tate.” Ellis claimed that Vice President Pence would not be “exercising discretion nor establishing new precedent,” but instead “simply asking for clarification from the constitutionally appointed authority.”⁸⁷

Ellis sent the substance of this memorandum in an email to Fox News host Jeanine Pirro on January 1, 2021, under the subject line “Constitutional



Jenna Ellis on December 2, 2020 in Lansing, Michigan.

(Photo by Rey Del Rio/Getty Images)

option.”⁸⁸ And, on January 4, 2021, she sent the same substance to Fox News contributor John Solomon under the subject line “Pence option.”⁸⁹

Ellis addressed a second memo, dated January 5, 2021, to Jay Sekulow, an outside attorney who represented President Trump during his first impeachment proceedings and in other litigation.⁹⁰ Ellis again claimed that Vice President Pence had the power to delay the certification of the vote. Ellis recommended that the Vice President should, when he arrived at the first contested State (Arizona), “simply stop the count” on the basis that the States had not made a “final determination of ascertainment of electors.” “The [S]tates would therefore have to act.”⁹¹

Sekulow clearly disagreed. “Some have speculated that the Vice President could simply say, ‘I’m not going to accept these electors,’ that he has the authority to do that under the Constitution,” Sekulow said during an episode of his radio show.⁹² “I actually don’t think that’s what the Constitution has in mind.” Sekulow added that the Vice President serves a merely “ministerial, procedural function.”⁹³

In addition, Herschmann discussed this memo with Sekulow. They agreed that Ellis did not have the “qualifications or the experience to be giving advice on this” or to be “litigating the challenges” that President

Trump’s team was filing in court.⁹⁴ Herschmann did not think that Sekulow shared the memo with the President.⁹⁵

5.2 PRESIDENT TRUMP AND HIS ALLIES EXERT INTENSE PUBLIC AND PRIVATE PRESSURE ON THE VICE PRESIDENT IN ADVANCE OF THE JOINT SESSION OF CONGRESS ON JANUARY 6TH

JANUARY 2, 2021: THE VICE PRESIDENT MEETS WITH HIS ADVISORS, CEMENTING HIS INTENDED PATH FOR THE JOINT SESSION.

On January 2, 2021, Vice President Pence met with his counsel Greg Jacob, Chief of Staff Marc Short, and Matt Morgan to discuss the joint session.⁹⁶ Morgan was the Trump Campaign’s General Counsel and had previously served as counsel to Vice President Pence. At this point, the Vice President already had a clear understanding of what his role would be in the electoral count.⁹⁷ Vice President Pence was concerned that most people did not understand how the certification of the electoral votes worked. So Jacob began drafting a statement for the Vice President to issue on January 6th. The statement was intended to provide a “civic education” on the joint session, explaining to the American people his actions, including why the Vice President “didn’t have the authorities that others had suggested that he might.”⁹⁸

The men discussed the various points of pressure being applied to the Vice President, including Eastman’s theories, the *Gohmert* suit, Ellis’s arguments, as well as how the electoral count process should work. They also discussed allegations of irregularities and maladministration of the election, concluding that none of the allegations raised was sufficient to reverse President Trump’s defeat.⁹⁹

While Vice President Pence recognized Congress’s authority under the Electoral Count Act to raise objections to the certification, neither he nor his staff were aware of any evidence of fraud that would have had a material effect on the outcome of the election in any State.¹⁰⁰ Because of President Trump’s repetition of election fraud allegations, Jacob and the Vice President’s staff conducted their own evaluation of these claims. Jacob asked Morgan to send the campaign’s best evidence of election “fraud, maladministration, irregularities, [and] abuses in the system.”¹⁰¹ The Vice President’s legal staff memorialized the review they conducted of these materials in a memo to Vice President Pence, which concluded: “most allegations of substantive voter fraud—defined to mean the casting of illegal ballots in violation of prevailing election laws—are either relatively small in number, or cannot be verified.”¹⁰²

Vice President Pence also discussed the Trump Campaign's fake electors with his advisors. Both Jacob and Morgan assured Vice President Pence that there were not dual slates of electors. The electors organized by the Trump Campaign were not valid.¹⁰³ Morgan had already written a memo on the topic in December, concluding that the "alternate" electors—that is, fake—lacked a certificate of ascertainment issued by the State.¹⁰⁴ Without such an ascertainment, the Trump Campaign's fake electors had no standing during the joint session. Jacob had also prepared a "flow chart" memo outlining each of the legal provisions implicated in the joint session on January 6th.¹⁰⁵ Jacob advised Vice President Pence that "none of the slates that had been sent in would qualify as an alternate slate within the meaning of the Electoral Count Act."¹⁰⁶ Vice President Pence was still worried that the fake elector issue was sowing confusion, so he wanted his statement on January 6th to be as transparent as possible.¹⁰⁷

That same day, January 2nd, Marc Short released a brief statement on behalf of the Vice President. "Vice President Pence shares the concerns of millions of Americans about voter fraud and irregularities in the last election," the statement read. "The vice president welcomes the efforts of members of the House and Senate to use the authority they have under the law to raise objections and bring forward evidence before the Congress and the American people on January 6th."¹⁰⁸ Short testified that the statement was consistent with the Vice President's view that he did not have the power to reject electors.¹⁰⁹ Short issued this statement because of the "swirl" regarding the question of "where [Vice President Pence] stood."¹¹⁰

Steve Bannon's podcast, *War Room: Pandemic*, was one of the primary sources of this swirl.

JANUARY 2, 2021: EASTMAN AND BANNON QUESTION THE "COURAGE AND SPINE" OF VICE PRESIDENT PENCE.

Steve Bannon's podcast, *War Room: Pandemic*, was one of the primary sources of this swirl. Eastman was a guest on a January 2nd episode of Bannon's show. Much of their conversation focused on Vice President Pence, and the belief that he had the power to overturn the election.

"[W]e are entering into one of the most, um, important constitutional crisis [sic] the country's ever had," Bannon said.¹¹¹ Bannon complained that Vice President Pence had "spit the bit," meaning he had given up on efforts to keep President Trump in power.¹¹² Eastman claimed that the election had been "illegally conducted," and so the certified votes now "devolved back to the [S]tate legislature[s], and the only other place where it devolved back to is to Congress and particularly the Vice President, who will sit in presiding over a Joint Session of Congress beginning on January 6 to count the ballots."¹¹³ Eastman claimed that the Vice President (and Congress) had the

power to reject the certified electors from several States out-of-hand. “[T]hey’ve got multiple slates of ballots from seven states,” Eastman said. “And they’ve gotta decide [] which is the valid slate to count . . . I think they have that authority to make that determination on their own.”¹¹⁴

Bannon claimed the Vice President of the United States is “hardwired in,” and an “actual decisionmaker.”¹¹⁵ The Vice President’s role is not “ministerial,” Bannon declared.¹¹⁶ Eastman agreed.¹¹⁷ “Are we to assume that this is going to be a climactic battle that’s going to take place this week about the very question of the constitutionality of the Electoral Count Act of 1887?” Bannon asked.¹¹⁸

Eastman replied, “I think a lot of that depends on the courage and the spine of the individuals involved.” Bannon asked Eastman if he meant Vice President Mike Pence. “Yes,” Eastman answered.¹¹⁹

JANUARY 3, 2021: EASTMAN DRAFTS ANOTHER “JANUARY 6 SCENARIO” MEMO “WAR GAMING” THE WAYS THAT VICE PRESIDENT PENCE COULD CHANGE THE OUTCOME OF THE ELECTION.

The next day, January 3, 2021, Eastman drafted a six-page memo that imagined several scenarios for January 6th, only some of which led to President Trump’s victory.¹²⁰ In a section titled, “War Gaming the Alternatives,” Eastman set forth the ways he thought President Trump could remain in power.¹²¹ Importantly, Eastman concluded that President Trump could remain president if—and only if—Vice President Pence followed Eastman’s illegal advice and determined which electoral college ballots were “valid.”¹²² In another scenario, Eastman imagined that President Trump may somehow win re-election in January 2021 if Vice President Pence remanded the electoral votes to State legislatures, such that they could have ten days to investigate President Trump’s baseless claims of fraud. In that case, Eastman allowed that former Vice President Biden may still win, should the State legislatures determine that the evidence was “insufficient to alter the results of the election.”¹²³

Eastman Knew that there Were No Valid “Alternate” Slates, But He Nonetheless Predicated His Advice to the Vice President and President on this Claim. In his six-page memo, consistent with the earlier two-page memo, Eastman states that “the Trump electors” met and transmitted votes, finding that “[t]here are thus dual slates of electors from 7 [S]tates.”¹²⁴ Even since January 6th, Eastman has continued to affirm and defend his assertion that there were dual slates of electors, writing: “Trump electors from seven [S]tates in which election challenges were still pending met (albeit of their own accord) on the date designated by Congress, cast their votes, and transmitted those votes to Congress.”¹²⁵

Eastman used these slates as a premise for his argument that the result of the election was disputed. However, Eastman acknowledged on multiple occasions—both before and after January 6th—that these “dual slates” had no legal significance. In an email sent on December 19, 2020, Eastman wrote that the seven Trump/Pence slates of electors “will be dead on arrival in Congress” “unless those electors get a certification from their State Legislators.”¹²⁶ Of course, this certification never came and there was no basis for any action on the “dual slates.”¹²⁷

Nevertheless, on December 23, 2020, Eastman used the existence of these slates as a justification for the Vice President to act, in an email to Boris Epshteyn, a Trump Campaign lawyer. “The fact that we have multiple slates of electors demonstrates the uncertainty of either. That should be enough.”¹²⁸

Again after January 6th, Eastman acknowledged in an email that the fake electors’ documents were invalid and irrelevant.¹²⁹ “Alas,” he said, “[T]hey had no authority” because “[n]o legislature certified them.”¹³⁰

Eastman concluded his memo by asserting that his plan was “BOLD, Certainly,” but he attempted to justify it, arguing that “this Election was Stolen by a strategic Democrat plan to systematically flout existing election laws for partisan advantage; we’re no longer playing by Queensbury Rules, therefore.”¹³¹

Eastman repeated what he wrote in his earlier, shorter memo, claiming that Vice President Pence should act “without asking for permission—either from a vote of the joint session or from the Court.”¹³² Eastman claimed “that the Constitution assigns this power to the Vice President as the ultimate arbiter.”¹³³ Eastman ended on an especially hyperbolic note. If the election’s results were not upended, “then the sovereign people no longer control the direction of their government, and we will have ceased to be a self-governing people. The stakes could not be higher.”¹³⁴

January 4, 2021: President Trump and Eastman Meet with Pence and His Staff in the Oval Office.

Eastman Argues in an Oval Office Meeting that the Vice President can Reject Electoral Votes or that He Can Delay the Certification, Sending the Electoral Votes Back to the States. Late in the afternoon of January 4, 2021, President Trump summoned Vice President Pence to the Oval Office for a show-down.¹³⁵ President Trump and Eastman sought to convince the Vice President that he had the power to refuse to count the certified electors from several States won by former Vice President Biden.

Short and Jacob attended with the Vice President.¹³⁶ Trump’s chief of staff, Mark Meadows, was only briefly present, leaving as the meeting started.¹³⁷

The White House Counsel is Excluded from the Meeting. One key lawyer was conspicuously absent: Pat Cipollone, the White House Counsel. Cipollone and his deputy, Pat Philbin, were shooting down a series of "terrible" proposals at the time.¹³⁸ Philbin told the Select Committee that he considered resigning every day from approximately November 15 until the end of the administration.¹³⁹ Philbin had researched the Vice President's role in the January 6th joint session and concluded that Vice President Pence had no power to affect the outcome.¹⁴⁰ Cipollone agreed and informed Short and Jacob that this was the opinion of White House Counsel's Office.¹⁴¹

Mark Meadows invited Cipollone to speak with Eastman prior to the Oval Office meeting.¹⁴² Cipollone told Eastman that his scheme was "not something that is consistent with the appropriate reading of the law."¹⁴³ After delivering this assessment directly to Eastman in Meadows' office, Cipollone walked to the Oval Office with the intent to attend the meeting. However, by the time the Vice President and his staff arrived, Cipollone was gone.¹⁴⁴

Cipollone declined to testify as to what he told President Trump or why he did not attend the Oval Office meeting, but he was clear that he didn't end up attending the meeting because of something that happened after he walked into the Oval Office.¹⁴⁵ Whatever happened, Cipollone maintained, was protected by executive privilege, suggesting that he was asked to leave by the President.¹⁴⁶ What is clear, however, is that Cipollone had already shared his view directly with Meadows and Eastman, i.e., that the proposal President Trump and Eastman were about to advocate to the Vice President was illegal.¹⁴⁷

During this Oval Office Meeting, Eastman Admits that Both Paths are Based on the Same Legal Theory and Concedes His Plan Violates the Electoral Count Act. During the Oval Office meeting, Eastman claimed that there were two legally viable options.¹⁴⁸ First, Vice President Pence could reject outright the certified electors submitted by several States, and second, he could suspend the joint session and send the "disputed" electoral votes back to the States.¹⁴⁹ Eastman advised that the Vice President had the "raw authority to determine objections himself," according to Jacob.¹⁵⁰ However, by the end of the meeting Eastman was emphasizing the second option that he argued would be "more politically palatable" than the "more aggressive" option of the Vice President rejecting electoral votes outright.¹⁵¹ If Vice President Pence did not want to reject the electors, Eastman claimed, then the Vice President could send the certified electoral votes back to the States for further deliberation.

Eastman later conceded that both actions were based on the same underlying legal theory of the Vice President's power.¹⁵² Eastman also



admitted—during this meeting with the President and Vice President—that his proposal violated the Electoral Count Act.¹⁵³ Moreover, Eastman eventually acknowledged that the concept of the Vice President unilaterally reject-

ing electors was not supported by precedent and that the Supreme Court would never endorse it.¹⁵⁴

Jacob recorded his reflections on the January 4th meeting in a contemporaneous memo to the Vice President.¹⁵⁵ Jacob's memo confirms that Eastman admitted that his proposal violated the law in the presence of President Trump.

First, Jacob wrote, Eastman acknowledged that "his proposal violates several provisions of statutory law"—namely, the Electoral Count Act of 1887.¹⁵⁶ Jacob's memo explains that the Electoral Count Act calls for all vote certificates to be "acted upon," and any objections to a State's certificates be "finally disposed of." However, as Jacob wrote, Eastman was proposing instead that "no action be taken" on the certificates from the States Eastman asserted were "contested." And, according to the Electoral Count Act, the Vice President (as President of the Senate) is to "call for objections." But Eastman did not want the Vice President to "call for objections" for these States. As Jacob noted, this would have deprived Congress of the ability under the Act to make, debate, and vote on objections.¹⁵⁷

Additionally, the Electoral Count Act contains a provision that requires any "competing slates of electors" to be "submitted to the Senate and House for debate and disposition." As Jacob noted, Eastman conceded that the "alternate" (fake) electors' votes were not proper. But Eastman's proposal still would have refused to count the real electors' votes from those States and instead referred both the real and fake electors' votes to State legislatures "for disposition." Finally, in order for State legislatures to take action to determine which of the slates should be counted, Eastman's proposal called for "an extended recess of the joint session." But this too would have violated the Electoral Count Act, which provides only for very short delays.¹⁵⁸

There was another foundational problem with Eastman's plan. There were no legitimate "competing" or "alternate" slates of electors. President Trump, Eastman and others had manufactured the conditions they needed in order to claim that the election result was "disputed" by convening fake electors who sent fake documents to Washington before January 6th. And their efforts to convince State legislatures to certify Trump electors had already failed.

Jacob noted in his memo that in the Oval Office meeting, Eastman conceded "no legislature has appointed or certified any alternate slate of electors" and that the purported "alternate slates" (fake electors) were illegitimate without what Jacob described as "the imprimatur of approval by a State legislature."¹⁵⁹ Moreover, Eastman acknowledged that "no Republican-controlled legislative majority in any disputed States has

expressed an intention to designate an alternate slate of electors.”¹⁶⁰ In other words, Eastman acknowledged that the fake votes were invalid, that no State legislature had approved them, and no State legislature *would* approve them.¹⁶¹ But President Trump and Eastman still pressed this unlawful scheme on the Vice President. Although Eastman started the January 4th Oval Office meeting maintaining that Vice President Pence had unilateral authority to reject electors, by the end of the meeting he conceded that he would “not recommend that the Vice President assert that he has the authority unilaterally to decide which of the competing slates of electors should be counted.”¹⁶²

Jacob ended his memo with a scathing summary. “If the Vice President implemented Professor Eastman’s proposal, he would likely lose in court,” Jacob wrote. “In a best-case scenario in which the courts refused to get involved, the Vice President would likely find himself in an isolated stand-off against both houses of Congress, as well as most or all of the applicable State legislatures, with no neutral arbiter to break the impasse.”¹⁶³

Following the Oval Office meeting, during the evening of January 4, 2021, Jacob invited Eastman to send along “any written materials on electoral vote counting issues,” including a law review article by Laurence Tribe that Eastman had cited in the Oval Office meeting that day, for Jacob to review on the Vice President’s behalf.¹⁶⁴ Jacob reviewed everything that Eastman submitted; nothing changed the analysis he had already done for the Vice President, indeed much of it did not even support Eastman’s own arguments.¹⁶⁵

The Vice President was Not Persuaded by Eastman’s Theory and Remained Convinced That His Role at the Joint Session would be Merely Ceremonial. Pence did not relent on January 4th, or at any point during the harrowing two days that followed. “[F]rom my very first conversation with the Vice President on the subject, his immediate instinct was that there is no way that one person could be entrusted by the Framers to exercise that authority,” Jacob testified. “And never once did I see him budge from that view, and the legal advice that I provided him merely reinforced it. So, everything that he said or did during [the January 4th meeting in the Oval Office] was consistent with his first instincts on this question.”¹⁶⁶

JANUARY 4, 2021: PRESIDENT TRUMP PUBLICLY PRESSURES THE VICE PRESIDENT DURING A RALLY SPEECH IN GEORGIA.

President Trump did not relent either. His instinct was to increase public pressure on Vice President Pence, despite the Vice President’s consistent message to President Trump about the limits of his authority. That evening, during a Senate campaign rally in Dalton, Georgia, President Trump made it

seem as if the Presidential election hadn't already been decided and projected his unhinged ambitions onto his opponents.¹⁶⁷ President Trump claimed that “there's nothing the radical Democrats will not do to get power that they so desperately crave,” including “the outright stealing of elections, like they're trying to do with us.”¹⁶⁸

“We're not going to let it happen,” President Trump said, adding, “I hope Mike Pence comes through for us, I have to tell you.” President Trump called Vice President Pence a “great vice president,” a “great guy,” as well as a “wonderful” and “smart man.” But he alluded to the Vice President's role, “he's going to have a lot to say about it,” and added an ominous note. “Of course, if he doesn't come through, I won't like him quite as much,” President Trump said.¹⁶⁹

JANUARY 5, 2021: EASTMAN PRESSURES PENCE'S STAFF IN A PRIVATE MEETING WHILE PRESIDENT TRUMP TWEETS.

In a Reversal of Where the Oval Office Meeting Ended the Day Before, Eastman Argues that Pence Should Reject Electors Outright. Eastman met with Jacob and Short again the following day.¹⁷⁰ During the Oval Office meeting the Vice President had made clear that he would not unilaterally reject electors, and, by pivoting to recommend the Vice President send the electors back to the States, Eastman seemed to recognize this. But the following morning, Eastman returned to pressing for the more “aggressive” path.¹⁷¹

Jacob recorded Eastman's request on January 5, 2021, in a handwritten note: “Requesting VP reject.”¹⁷² Jacob later summarized Eastman's remarks as follows: “I'm here asking you to reject the electors.”¹⁷³ This overnight reversal surprised Jacob because Eastman was returning to the more aggressive position he had seemed to abandon in the Oval Office meeting the day before.¹⁷⁴ President Trump's tweets that morning may explain Eastman's reversal. While Eastman was meeting with the Vice President's staff, his client, President Trump, was pressing the argument publicly.

At 11:06 a.m. on the morning of January 5th, President Trump tweeted: “The Vice President has the power to reject fraudulently chosen electors.” As his tweet made clear, President Trump would not be persuaded by reason—or the law. The President made this public statement despite the Vice President's clear and consistent rejection of this theory including during an in-person meeting the day before. During that same meeting, Eastman conceded that this “aggressive” path of rejecting electors was not advisable.

Herschmann briefly participated in the January 5th meeting, seeing it as “an opportunity . . . to just chew [Eastman] out.”¹⁷⁵ Herschmann had already pushed back “brutal[ly]” on Eastman's theory regarding the Vice

President. In this conversation, he emphasized the need to fact check dubious claims of election fraud.¹⁷⁶ Herschmann told Eastman that “someone better make sure” that the allegations Eastman provided to members of Congress were accurate before they objected to the certification of the vote the next day.¹⁷⁷ “[N]othing should come out of someone’s mouth that [isn’t] independently verified and [] reliable.”¹⁷⁸

At the End of the Morning Meeting, Eastman Concedes to Pence’s Counsel That His Theory Has No Historical Support. Jacob then had his own “Socratic” debate with Eastman over the legal merits of his position. According to Jacob, Eastman conceded much ground by the end of the session. Eastman “all but admitted that it [his plan] didn’t work.”¹⁷⁹

For example, Eastman had previously claimed to have found historical support in the actions of John Adams and Thomas Jefferson, who both presided over the counting of electoral votes when they were Vice President. Not so. Jacob told the Select Committee that Eastman conceded in private that the cases of Jefferson and Adams did not serve “as examples for the proposition that he was trying to support of a Vice Presidential assertion of authority to decide disputes[,] because no dispute was raised in either case during the joint session.” Jacob added: “And, moreover, there was no [question] as to the outcomes in those States.”¹⁸⁰

Eastman conceded that there was no historical support for the role that he and President Trump were pushing Vice President Pence to play. No Vice President—before or after the adoption of the Electoral Count Act—had ever exercised such authority. This included then-Vice President Richard Nixon’s handling of the electoral votes of Hawaii following the 1960 election. Though Eastman and other Trump lawyers used this Hawaii example to justify the theory that the Vice President could unilaterally choose which electors to count, Eastman admitted to Jacob that Vice President Nixon had not in fact done what Eastman was recommending Vice President Pence do.¹⁸¹

Eastman also admitted that he would not grant the expansive powers he advocated for Vice President Pence to any other Vice President. Eastman did not think that Vice President Kamala Harris should have such power in 2025, nor did he think that Vice President Al Gore should have had such authority in 2001.¹⁸² He also acknowledged that his theory would lose 9-0 at the Supreme Court.¹⁸³

According to Jacob, Eastman “acknowledged by the end that, first of all, no reasonable person would actually want that clause [of the 12th Amendment] read that way because if indeed it did mean that the Vice President



Judge J. Michael Luttig testifies before the Select Committee on June 16, 2022.

Photo by House Creative Services

had such authority, you could never have a party switch thereafter.” If politicians followed Eastman’s advice, “[y]ou would just have the same party win continuously if indeed a Vice President had the authority to just declare the winner of every State.”¹⁸⁴

The Vice President’s office was unmoved by Eastman’s specious reasoning. As he left Marc Short’s office, Eastman was thinking of his client’s reaction. “They’re going to be really disappointed that I wasn’t able to persuade you,” Eastman said.¹⁸⁵

Former Republican Officials with Executive, Legislative, and Judicial Experience All Agreed with Vice President Pence’s Conclusion about His Limited Role at the Joint Session. As President Trump’s pressure campaign intensified, the Vice President’s outside counsel, Richard Cullen, turned for support to John Michael Luttig, a conservative former judge of the U.S. Court of Appeals for the Fourth Circuit.¹⁸⁶ Eastman had clerked for Luttig—a man with impeccable legal and conservative credentials—more than two decades prior. Luttig rejected Eastman’s so-called legal analysis of the Vice President’s role in no uncertain terms. In a series of tweets, posted at 9:53 a.m. on January 5th, Luttig set forth his legal conclusions.

“The only responsibility and power of the Vice President under the Constitution is to faithfully count the electoral college votes as they have been cast,” Judge Luttig wrote. “The Constitution does not empower the Vice President to alter in any way the votes that have been cast, either by rejecting certain of them or otherwise.”¹⁸⁷

Confusion in the media about where the Vice President stood on this issue prompted former Speaker of the House Paul Ryan to reach out to the Vice President to share his belief that the Vice President had no unilateral authority.¹⁸⁸ Short also spoke with former Speaker Ryan and as he testified to the Select Committee, “I said to him, Mr. Speaker, you know Mike . . . you know he recognizes that. And we sort of laughed about it, and he said, I get it.”¹⁸⁹

The Vice President also consulted with former Vice President Dan Quayle, who reinforced and affirmed Vice President Pence’s consistent understanding of his role.¹⁹⁰

JANUARY 5, 2021: PRESIDENT TRUMP AGAIN PRESSURES VICE PRESIDENT PENCE IN A ONE-ON-ONE MEETING AT THE WHITE HOUSE AND ANOTHER PHONE CALL WITH EASTMAN.

President Trump demanded to see Vice President Pence again that same day. Vice President Pence had canceled a planned lunch with President Trump, intending to work on the statement he planned to issue on January 6th to explain publicly why he wouldn’t bow to the President’s pressure.¹⁹¹ But Pence couldn’t avoid Trump. Vice President Pence had to delay a Coronavirus Task Force meeting later that same day when he was called to the Oval Office to meet with the President.¹⁹²

The two men met alone, without staff present. While we have not developed direct evidence of what was discussed during this one-on-one meeting between the President and Vice President, it did not change the fundamental disagreement between them about the limits of the Vice President’s authority during the joint session. Jacob said the Vice President left the meeting “determined.”¹⁹³ Vice President Pence did tell Marc Short what transpired during the meeting, but Short refused to tell the Select Committee what was said.¹⁹⁴ Short described Vice President Pence’s demeanor as “steady.”¹⁹⁵ Short testified that the below excerpt from the book *Peril* may have been sensationalized but was generally consistent with Short’s understanding of the discussion:

*“If these people say you have the power, wouldn’t you want to?”
Trump asked.*

“I wouldn’t want any one person to have that authority,” Pence said.

"But wouldn't it almost be cool to have that power?" Trump asked.

"No," Pence said. "Look, I've read this, and I don't see a way to do it. We've exhausted every option. I've done everything I could and then some to find a way around this. It's simply not possible. My interpretation is: No...."

"No, no, no!" Trump shouted. "You don't understand, Mike. You can do this. I don't want to be your friend anymore if you don't do this."¹⁹⁶

Later that day, Jacob and Short were both present for a call between President Trump and Vice President Pence.¹⁹⁷ Eastman and at least one other lawyer were with President Trump on the call as well.¹⁹⁸

Eastman recognized that Vice President Pence was not going to change his mind on rejecting electors outright, but he still asked if the Vice President would consider sending the electors back to the States.¹⁹⁹ "I don't see it," Vice President Pence responded, "but my counsel will hear out whatever Mr. Eastman has to say."²⁰⁰

Jacob received other calls from Eastman on January 5th.²⁰¹ Jacob told the Select Committee that he had a detailed discussion with Eastman concerning the ways his proposal would violate the Electoral Count Act.²⁰² Eastman resorted to a ridiculous argument—comparing their current situation to the crisis that faced President Abraham Lincoln during the Civil War. Eastman invoked President Lincoln's suspension of the writ of habeas corpus.²⁰³ He also told Jacob to "stay tuned" because "we" were trying to get some letters from State legislators indicating that they were interested in the Vice President sending the electors back to the States.²⁰⁴

JANUARY 5, 2021: AN ACCURATE NEW YORK TIMES ARTICLE ABOUT THE VICE PRESIDENT PROMPTS A FALSE STATEMENT IN RESPONSE BY PRESIDENT TRUMP.

On the evening of January 5th, *The New York Times* published an article titled, "Pence Said to Have Told Trump He Lacks Power to Change Election Result."²⁰⁵ The *Times* reported on the tension brewing within the White House, citing "people briefed on the conversation" between President Trump and Vice President Pence that had taken place in the Oval Office the previous day. "Vice President Mike Pence told President Trump on Tuesday [January 4th] that he did not believe he had the power to block congressional certification of Joseph R. Biden, Jr.'s victory in the presidential election despite Mr. Trump's baseless insistence that he did," the *Times* reported.²⁰⁶

The *Times*' report was published at approximately 7:36 that evening.²⁰⁷ Jason Miller called President Trump to make sure he had seen it.²⁰⁸ President Trump spoke to Miller at least twice, once at 8:18 p.m. and a second time at 9:22 p.m.²⁰⁹ Immediately after concluding his second call with Jason

Miller, President Trump asked to speak to the Vice President; President Trump and Vice President Pence spoke from 9:33 to 9:41 p.m.²¹⁰ President Trump also spoke with Steve Bannon and Eastman, among others.²¹¹

At 9:58 p.m. on January 5th, President Trump issued a statement that he had dictated to Jason Miller disputing the *Times*' account.²¹² President Trump lied—repeatedly—in his short statement.²¹³ The President claimed the article was “fake news.” It wasn't. President Trump claimed he and Vice President Pence were “in total agreement that the Vice President has the power to act.” They weren't. President Trump claimed the election “was illegal.” It wasn't. President Trump then laid out Vice President Pence's options for the next day, summarizing Eastman's theory:

Our Vice President has several options under the U.S. Constitution. He can decertify the results or send them back to the [S]tates for change and certification. He can also decertify the illegal and corrupt results and send them to the House of Representatives for the one vote for one [S]tate tabulation.²¹⁴

This was also a blatant attempt to mischaracterize the Vice President's position in the hope that public opinion would somehow sway the resolute Vice President. President Trump knew full well at the time that he and Vice President Pence were *not* “in total agreement.” The Vice President's counsel, Greg Jacob, was shocked by the statement.²¹⁵ “[T]he Vice President was not in agreement that the Vice President had the power to take the actions that were being asked of him that day,” Jacob later told the Select Committee.²¹⁶ Marc Short was furious as well and called Jason Miller to forcefully “express [his] displeasure that a statement could have gone out that misrepresented the Vice President's viewpoint without consultation.”²¹⁷

The Vice President was “obviously irritated that a statement putting words in his mouth” was issued by the President and considered issuing his own statement contradicting President Trump's.²¹⁸ Ultimately, Pence and Short concluded that it was not worthwhile since it was already late in the evening and they expected the question to be resolved by Vice President Pence's “Dear Colleague” letter the next day.²¹⁹

JANUARY 5, 2021: BANNON PUBLICLY AMPLIFIES THE PRESSURE ON VICE PRESIDENT PENCE.

While President Trump misrepresented the Vice President's agreement with Eastman's theory, his on-again, off-again political advisor, Steve Bannon, pressed President Trump's campaign against Vice President Pence in public. Bannon echoed the public pressure on Pence that the President continued

to propagate by talking about his purported authority. The Select Committee learned from phone records that Bannon spoke to President Trump at least twice on January 5th.²²⁰

During a January 5, 2021, episode of *War Room: Pandemic*, Bannon and his guests openly berated Vice President Pence. Bannon cited an erroneous news report claiming that Senator Grassley would preside over the certification of the electoral college vote—instead of Vice President Pence.²²¹ Bannon's cohost, Raheem Kassam, took credit for the public pressure placed on Vice President Pence. "I want to remind people who has been sitting here, saying 'Light Pence Up' for the last couple of weeks. Right? That would be Raheem Kassam." They then discussed President Trump's speech in Georgia the previous evening. "I think the President of the United States took your advice last night, wrote a line in there," Bannon said. To which Kasseem responded: "...and yours...hold the line."

Jack Posobiec, an alt-right personality with a large Twitter following, chimed in quoting a member of their audience as saying that "Pence will betray Donald Trump."²²² In response, Bannon stated: "Call the play. Run the play."²²³

The "play" was Bannon's version of the "Green Bay Sweep"—a plan to subvert the transfer of power on January 6th named for a brutally effective power running play developed in the National Football League (NFL) in the 1960's. Steve Bannon's political version of the sweep was intended to undermine the legitimate results of the 2020 presidential election.

One account of Bannon's "Green Bay Sweep" comes from Peter Navarro, Director of the White House Office of Trade and Manufacturing Policy. Navarro refused to cooperate with the Select Committee and was subsequently indicted for contempt of Congress. Although he doesn't fully explain in his book, *In Trump Time: A Journal of America's Plague Year*, how Bannon's sweep was intended to work, Navarro writes that Vice President Pence was envisioned as the "quarterback" who would "assert his constitutional power" to delay certification.²²⁴ Navarro writes that his own role was to "carefully document the fraud and myriad election irregularities," while Bannon's "role was to figure out how to use this information—what he called the 'receipts.'"²²⁵

Navarro's account helps explain why Trump and his loyalists became so fixated on Vice President Pence. They saw Vice President Pence as their last hope for keeping President Trump in office. Navarro writes of Pence's supposed "betrayal."²²⁶ In a telling sentence, Navarro likens Vice President Pence to Brutus, a Roman politician and the most famous assassin of Julius Caesar. Navarro writes:

*On this cold, momentous day, I shiver as I think to myself, “January 6 will be either Mike Pence’s finest hour or the traitorous ‘Et tu, Brute?’ end of both his and Donald Trump’s political careers.”*²²⁷

The goal of these Trump allies was clear: to overturn the election result.²²⁸ Statements by participants in this effort indicate there were several different endgame strategies in mind. One was to get the Vice President to unilaterally reject the Electoral College votes of Arizona, Georgia, Pennsylvania, and other States, then simply declare that Trump had won a majority of the electors actually submitted. The other major possibility was to reject or “return” the Electoral College votes of these States and then declare there was no majority in the Electoral College process, thereby triggering a so-called contingent election under the 12th Amendment.²²⁹ This would have meant that the House of Representatives had chosen the president not on the basis of one-member-one-vote, but on the basis of one-State-one-vote, pursuant to the 12th Amendment. Donald Trump’s strategists emphasized repeatedly that the GOP had a 27-to-22 margin in control of the States’ Congressional delegations, with Pennsylvania being tied at 9-to-9, therefore presumably a non-factor.

5.3 PRESIDENT TRUMP AND HIS ALLIES CONTINUE TO PRESSURE THE VICE PRESIDENT ON JANUARY 6TH, THREATENING HIS LIFE AND OUR DEMOCRACY.

JANUARY 6, 2021: PRESIDENT TRUMP CONTINUED TO FALSELY ASSERT IN MULTIPLE TWEETS POSTED THE MORNING OF JANUARY 6TH THAT THE VICE PRESIDENT HAD A ROLE TO PLAY IN THE OUTCOME OF THE ELECTION.

Despite the public pressure initiated by the President and amplified by Bannon, Navarro and others, there was no ambiguity in the Vice President’s decision. By January 6th, President Trump had been told multiple times that Vice President Pence was not going to reject the certified electors from any State. Nor was Vice President Pence going to move for a delay and send the electors back to the States. Either move would have been illegal, requiring Vice President Pence to break the law, violating his oath to the U.S. Constitution. Pence made his decision clear “[m]any times” to President Trump, and he was “very consistent” in rejecting the President’s demands.²³⁰ President Trump continued to publicly pressure the Vice President anyway.

At 1:00 a.m. on January 6th, President Trump tweeted:

If Vice President @Mike_Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they

made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!²³¹

Later that morning, at 8:17 a.m., President Trump tweeted again:

States want to correct their votes, which they now know were based on irregularities and fraud, plus corrupt process never received legislative approval. All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!²³²

And, at 8:22 a.m., President Trump tweeted again, making a pitch for Congress to choose him, as if people’s votes on election day and the electoral college didn’t matter:

THE REPUBLICAN PARTY AND, MORE IMPORTANTLY, OUR COUNTRY, NEEDS THE PRESIDENCY MORE THAN EVER BEFORE—THE POWER OF THE VETO. STAY STRONG!²³³

President Trump’s tweets made it clear that he thought the Republican State legislatures would simply deliver him victory. President Trump emphasized this point, writing twice that if Vice President Pence gave in, “we win.” However, there was no sign of a change in the Vice President’s position. A moment of truth was looming.

January 6, 2021: President Trump Has a “[H]eated” Conversation with Vice President Pence Before his Rally on the Ellipse. President Trump tried to reach Vice President Pence by phone early that morning.²³⁴ He finally talked to his Vice President at approximately 11:20 a.m.²³⁵ The exchange quickly became contentious.

Eric Herschmann, a lawyer in the White House Counsel’s Office, overheard the conversation. Members of President Trump’s family and other White House officials were present as well.²³⁶ Herschmann recalled that “it started off as a calmer tone, everything, and then it became heated.”²³⁷ Ivanka Trump also described the call as “pretty heated.”²³⁸ Ivanka Trump elaborated: “It was a different tone than I’d heard him take with the Vice President before.”²³⁹ Ivanka Trump told her Chief of Staff, Julie Radford, that “her dad had just had an upsetting conversation with the Vice President.”²⁴⁰ President Trump had even called Vice President Pence the “P Word.”²⁴¹

Nick Luna, President Trump’s personal assistant (commonly known as the “body man”), was also in the Oval Office during the conversation. Luna told the Select Committee that President Trump called Vice President Pence



President Trump on the phone in the Oval Office.

Photo provided to the Select Committee by the National Archives and Records Administration.

a “wimp” on the call, with President Trump adding that he “made the wrong decision” in choosing Pence as his running mate.²⁴²

Keith Kellogg, Vice President Pence’s National Security Advisor, also heard the conversation. President Trump “told the Vice President that, you know, he has legal authority to send these folks [the electors] back to the respective States,” Kellogg told the Select Committee.²⁴³ President Trump insisted that Vice President Pence had the “constitutional authority to” reject certain electoral college votes.²⁴⁴ When Vice President Pence would not budge, President Trump told him “you’re not tough enough to make the call.”²⁴⁵

But Vice President Pence would not be bullied. The Vice President, who was at his residence at the time, had been meeting with Greg Jacob to finalize the statement he would be releasing later that day. When the President called, Pence stepped away to answer the phone. According to Jacob, when Pence returned, he did not say anything about the call—but he looked “steely, determined, [and] grim,” as he reentered the room.²⁴⁶

c. January 6, 2021: Trump, Eastman and Giuliani Continue to Pressure Vice President Pence at the Ellipse Rally. Despite the Vice President's unwavering stance, the President and his outside counsel continued to turn up the heat of public pressure.

At President Trump's urging, thousands had gathered on the morning of January 6th to hear the President and others speak at a rally held at the Ellipse, a park just south of the White House. Before President Trump spoke, Eastman took the stage alongside Giuliani. Both would further amplify the President's public pressure on the Vice President, but when Giuliani spoke on the Ellipse, he already knew that what Eastman had outlined would never practically happen.

At 9:31 a.m. that morning, Giuliani called Eric Herschmann "out of the blue" to ask him for his view and analysis of the practical implications of Eastman's theory.²⁴⁷ According to Herschmann, after an "intellectual discussion about... the VP's role," Giuliani agreed that the "practical implication of [what Eastman had proposed] would be almost impossible."²⁴⁸ Immediately after this 5½ minute conversation with Herschmann, Giuliani had two calls with the White House, at 9:41 a.m. and 9:53 a.m.²⁴⁹

Giuliani recognized Eastman who joined him on stage, claiming that he was "one of the preeminent constitutional scholars in the United States."²⁵⁰

Giuliani said Vice President Pence could either "decide on the validity of these crooked ballots, or he can send it back to the legislat[ures], give them five to 10 days to finally finish the work."²⁵¹ He added that that they had "letters from five legislat[ures] begging us to do that."²⁵² This was not true. At most, what Giuliani, Eastman and other allies of President Trump had managed to procure were letters from individual State legislators or groups of State legislators. None of the letters came from a majority of any State's legislative chamber, let alone a majority of an entire State legislature.²⁵³

For instance, a letter that Eastman described to Jacob as a "[m]ajor new development" on the evening of January 5th contained the signatures of 21 members of the Pennsylvania Senate.²⁵⁴ Eastman claimed that it "now looks like PA Legislature will vote to recertify its electors if Vice President Pence implements the plan we discussed," but the letter asked only for a "delay" in certification to "allow for due process."²⁵⁵ The Select Committee learned from the most senior Pennsylvania Senate Republican that he signed the letter because of pressure he was feeling due to the voluminous post-election outreach from President Trump, Trump allies, and the public.²⁵⁶ And, he only agreed to sign a letter directed to Congressional

leaders—not the Vice President—after raising in a conversation with Vice President Pence’s brother, Congressman Greg Pence, his desire to avoid pressuring the Vice President.²⁵⁷

Moreover, as Jacob explained, “what any of the State legislatures said they did or did not want to do had no impact on the legal analysis of what the Vice President’s authorities were.”²⁵⁸ There was simply no legal path to send any votes back to the States on January 6th.

On the stage at the President’s rally on the Ellipse, Giuliani repeated a conspiracy theory about the “crooked Dominion machines...deliberately” changing votes via an algorithm.²⁵⁹ He explained that the 10-day delay in the certification would be used “to see the machines that are crooked” and “to find criminality there”—demonstrating that his repeated assertions of a stolen election were not based on any real proof, or even evidence, of actual widespread fraud or criminality.²⁶⁰

“Let’s have trial by combat,” Giuliani told the crowd.²⁶¹

Eastman came to the microphone following Giuliani, and he proceeded to repeat proven falsehoods regarding voting machines. He then issued his “demand”:

And all we are demanding of Vice President Pence is this afternoon, at 1:00, 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. We no longer live in a self-governing republic if we can’t get the answer to this question. This is bigger than President Trump. It is a very essence of our republican form of government, and it has to be done. And anybody that is not willing to stand up to do it, does not deserve to be in the office. It is that simple.²⁶²

Eastman told the assembled crowd that nothing less than the fate of the American Republic was in Vice President Pence’s hands.

[President Trump Directs the Angry Mob at the Capitol to Pressure Vice President Pence.](#)

When President Trump later took the stage at the Ellipse, he heaped praise on Giuliani and Eastman. “He’s got guts, unlike a lot of people in the Republican Party,” President Trump said of Giuliani. “He’s got guts. He fights, he fights.”²⁶³ President Trump described Eastman as “one of the most brilliant lawyers in the country.”²⁶⁴ President Trump claimed that Eastman had looked at the election and said, “What an absolute disgrace that this can be happening to our Constitution.”²⁶⁵ Trump falsely argued that the keys to the election were in Vice President Pence’s hands, saying:

*And he [Eastman] looked at Mike Pence, and 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.... [T]his is from the number one, or certainly one of the top, Constitutional lawyers in our country. He has the absolute right to do it.*²⁶⁶

President Trump repeatedly lied, claiming that several States wanted to overturn former Vice President Biden’s victory:

*States want to revoke. The States got defrauded. They were given false information. They voted on it. Now they want to recertify. They want it back. 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.*²⁶⁷

Contrary to the statement President Trump dictated the night before, he all but admitted that Vice President Pence did not agree with him:

*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 four more years. We’re just not going to let that happen.*²⁶⁸

Later in his speech at the Ellipse, President Trump repeated:

*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.*²⁶⁹

This was nothing less than a direct appeal to the large angry crowd to pressure Vice President Mike Pence to change his settled and oft-repeated conclusion about the limits of his authority. It was a shocking attempt to use public opinion to change the Vice President’s position. President Trump launched a mob toward the Capitol with the false hope that there was a scenario in which Vice President Pence would do what Eastman and President Trump had asked him to do, preventing the transfer of authority to President-elect Biden.

VICE PRESIDENT PENCE FULFILLED HIS DUTY ON JANUARY 6TH

The Vice President Waited to Release His Statement Out of Deference to President Trump, Who Was Still Speaking on the Ellipse, and Ultimately Released It Just Minutes Before the Joint Session Convened at 1:00 p.m. President Trump’s speech began late and ran long. He didn’t finish speaking until approximately 1:10 p.m.—after the joint session had begun at 1:00 p.m. Minutes before he gavelled the joint session into order, Vice President Mike Pence released the “Dear Colleague” letter he had been working on for days with

his staff.²⁷⁰ There was never any ambiguity in Vice President Pence's understanding of his role and authority, but he wanted to make it clear for everyone to see. "This may be the most important thing I ever say," Vice President Pence remarked.²⁷¹

"Today it will be my duty to preside when the Congress convenes in Joint Session to count the votes of the Electoral College, and I will do so to the best of my ability," Vice President Pence wrote. Vice President Pence explained that his "role as presiding officer is largely ceremonial" and dismissed the arguments that he could take unilateral action as contrary to his oath to support and defend the Constitution:

As a student of history who loves the Constitution and reveres its Framers, I do not believe that the Founders of our country intended to invest the Vice President with unilateral authority to decide which electoral votes should be counted during the Joint Session of Congress, and no Vice President in American history has ever asserted such authority. Instead, Vice Presidents presiding over Joint Sessions have uniformly followed the Electoral Count Act, conducting the proceedings in an orderly manner even where the count resulted in the defeat of their party or their own candidacy.²⁷²

Vice President Pence Adheres to the U.S. Constitution and Complies with the Law Governing the Certification of the Presidential Election. When Vice President Pence gave the opening of the joint session, he knew that many of his Republican colleagues planned to challenge the election's results based on fictitious claims of fraud. The Vice President took steps to ensure that those objections adhered to the process set forth in the Electoral Count Act.

Every four years, on January 6th, vice presidents read from a script that remains essentially unchanged. Eastman's theory of the Vice President's power and the Trump Campaign's scheme to convene and submit the slates of "alternate" (fake) electors motivated Vice President Pence and his advisors to alter the script and to make sure they were prepared to respond to any unexpected actions in the joint session.²⁷³

Vice President Pence met with the Senate Parliamentarian on January 3rd to discuss the joint session and revised the joint session scripts in consultation with her office.²⁷⁴ Vice President Pence and the Parliamentarian agreed that the Vice President's role is ministerial.²⁷⁵

The Vice President knew that the fake slates of electors organized by the Trump Campaign were not certified by the States and thus were not valid; he revised the script for the joint session to be transparent with the American people about what the Vice President would—and wouldn't—be doing during the joint session.²⁷⁶



Vice President Pence during the Joint Session of Congress.

(Photo by Win McNamee/Getty Images)

One of the most noticeable and important changes to the script was directed specifically at thwarting the fake electors scheme. The Vice President knew, informed by the research and analysis of his staff, that absent certification of the electoral votes by a State authority, the purported “alternate” slates were “not consequential” and would play no role in the certification of the Presidential election at the joint session.²⁷⁷ The Senate Parliamentarian confirmed this understanding.²⁷⁸

For decades, Vice Presidents read a similar simple passage concerning the ascertainment of the vote. Most recently, Vice President Joseph Biden read this passage aloud in 2017, as did his most recent predecessors:

After ascertainment has been had that the certificates are authentic and correct in form, the tellers will count and make a list of the votes cast by the electors of the several States.

On January 6, 2021, Vice President Pence read from a revised script (emphasis added):

After ascertaining that the certificates are regular in form and authentic, tellers will announce the votes cast by the electors for each state, beginning with Alabama, which the parliamentarians

advise me is the only certificate of vote from that State and purports to be a return from the State that has annexed to it a certificate from an authority of that State purporting to appoint or ascertain electors.²⁷⁹

Vice President Pence used the same phrasing for each of the 50 States counted.

The Vice President's attention to this issue was warranted. Trump's allies pushed the fake electors scheme until the very end. Although the Trump Campaign had taken pains to direct the fake electors to send their documents to the appropriate authorities immediately after voting on December 14th, and though the Senate Parliamentarian's and Vice President's offices had been tracking the receipt by mail of both the legitimate and fake certificates, the Trump Campaign apparently became concerned that two States' documents had not been received before the joint session.²⁸⁰

On January 4th, the Trump campaign asked Republican Party officials in Wisconsin to fly their fake electors' documents to Washington, DC.²⁸¹ Shortly after, staffers for Representative Mike Kelly (R-PA) and Senator Ron Johnson (R-WI) reached out to Vice President Pence's Director of Legislative Affairs, apparently seeking to deliver the fake certificates.²⁸² A message from Senator Johnson's staffer was sent just minutes before the beginning of the joint session. This staffer stated that Senator Johnson wished to hand-deliver to the Vice President the fake electors' certificates from Michigan and Wisconsin. The Vice President's aide unambiguously turned him away.²⁸³

Vice President Pence made certain to call for objections as well, in compliance with the Electoral Count Act. After the tellers read off the votes cast for each State, he asked: "Are there any objections to counting the certificate of vote of the state... that the teller has verified, appears to be regular in form and authentic?"²⁸⁴

For most States, there were no objections. Republicans only rose to object to the States that President Trump contested. The first such state was Arizona. At approximately 1:46 p.m., Congressman Paul Gosar (R-AZ) announced his objection.²⁸⁵ "I rise for myself and 60 of my colleagues to object to the counting of the electoral ballots from Arizona," Gosar said.²⁸⁶

Vice President Pence then asked: "Is the objection in writing and Signed by a senator?" It was. Senator Ted Cruz endorsed the unfounded challenge to Arizona's electoral votes.²⁸⁷ Because the objections complied with the law, Vice President Pence directed the House and Senate to withdraw from the joint session so that the House and Senate could separately debate and vote on the objection.²⁸⁸

When the joint session finally resumed after the attack on the Capitol, the clerks announced the results of each chamber’s vote. Just six U.S. Senators voted for the objection to the counting of Arizona’s electoral college votes. The objection was also defeated in the House, though 121 Republican Members voted to reject Arizona’s legitimate electors.²⁸⁹ Pennsylvania was the only other State the chambers debated, after the House’s objection was signed by Senator Josh Hawley (R–Mo.).²⁹⁰

5.4 PRESIDENT TRUMP ENDANGERS PENCE’S LIFE, CAUSING THE VICE PRESIDENT, HIS FAMILY, AND STAFF TO NARROWLY MISS THE RIOTERS AS THEY FLEE THE MOB ATTACKING THE CAPITOL.

As the debate over Arizona’s legitimate electors took place on the Senate floor, the Vice President’s staff could see trouble brewing outside.²⁹¹ From inside the Vice President’s ceremonial office, staffers witnessed the crowds swelling on the east side of the Capitol. Then, the rioters broke through security barriers.²⁹² Jacob told young staffers that they should stand back from the windows, because the Vice President’s office was not “the most popular office on the block right now.”²⁹³

The Vice President was presiding over the Senate debate on the Arizona objection when the noise from the rioters became audible and those in the Senate Chamber realized the rioters had entered the Capitol.²⁹⁴ The Secret Service evacuated Vice President Pence from the Senate floor at 2:12 p.m.²⁹⁵ Twelve minutes later, at 2:24 p.m., President Trump tweeted that Vice President Pence “didn’t have the courage to do what should have been done to protect our country and our Constitution.”²⁹⁶ By that time, the Secret Service had moved the Vice President to his ceremonial office across the hall.²⁹⁷ But the situation was spiraling out of control—and they wouldn’t stay there long. As Sarah Matthews, the Deputy White House Press Secretary, later explained: President Trump’s tweet was like “pouring gasoline on the fire.”²⁹⁸

Thirty seconds after President Trump’s tweet, rioters who were already inside the Capitol opened the East Rotunda door just down the hall. A mere thirty seconds later, rioters breached the crypt one floor below the Vice President.

Though the Vice President refused the Secret Service’s first two attempts to evacuate him from his ceremonial office, the situation quickly became untenable and the Vice President was told that the Secret Service could no longer protect him in this office in the Capitol that was quickly being overrun.²⁹⁹ Marc Short recalls Tim Giebels, the head of the Vice President’s Secret Service protective detail, saying, “At this point, I can’t

protect you behind these glass doors, and so I need to move you.”³⁰⁰ This time, the third, the Secret Service was not asking the Vice President to move; they were stating the fact that the Vice President must be moved.³⁰¹ At 2:20 p.m., NSC staff monitoring radio communications reported that the second floor of the Capitol and the door to the Senate Chamber “ha[ve] now been breached.”³⁰²

At 2:25 p.m., the Secret Service rushed the Vice President, his family, and his senior staff down a flight of stairs, through a series of hallways and tunnels to a secure location.³⁰³ The Vice President and his team stayed in that same location for the next four and a half hours.

The angry mob had come within 40 feet of the Vice President as he was evacuated.³⁰⁴ President Trump never called to check on Vice President Pence’s safety, so Marc Short called Mark Meadows to tell him they were safe and secure.³⁰⁵ Short himself became *persona non grata* with President Trump. The President directed staff to revoke Short’s access to the White House after Vice President Pence refused to betray his oath to the Constitution.³⁰⁶ Marc Short never spoke with President Trump again.³⁰⁷

After arriving at the secure location, the head of the Vice President’s Secret Service detail wanted to move the Vice President away from the Capitol, and staff hurried into the waiting vehicles. But the Vice President refused to get in the car.³⁰⁸ As Greg Jacob explained in his testimony to the Select Committee:

The Vice President wouldn’t get in his car. . . . [H]e was determined that unless there was imminent danger to bodily safety that he was not going to abandon the Capitol and let the rioters have a victory of having made the Vice President flee or made it difficult to restart the process later that day.³⁰⁹

It was an unprecedented scene in American history. The President of the United States had riled up a mob that hunted his own Vice President.

The Vice President’s staff came to believe that the theory “pushed and sold” to the public that the Vice President had a role to play in the joint session was a cause of the attack on the Capitol. “The reason that the Capitol was assaulted was that the people who were breaching the Capitol believed that . . . the election [outcome] had not yet been determined, and, instead, there was some action that was supposed to take place in Washington, D.C., to determine it,” Jacob said.³¹⁰ “I do think [the violence] was the result of that position being continuously pushed and sold to people who ended up believing that with all their hearts.”³¹¹ The people had been “told that the Vice President had the authority” to determine the outcome of the election during the joint session.³¹²



Photo provided to the Select Committee by the National Archives and Records Administration.

Of course, that was President Trump’s and John Eastman’s plan all along—to convince people that the election had been stolen, and that Vice President Pence could take action to change the outcome during the joint session on January 6th.

Jacob was writing an email to Eastman when the Capitol was breached.³¹³ At 2:14 p.m., just before being evacuated, Jacob hurriedly hit send on his email, but not before adding the following: “thanks to your bullshit, we are now under siege.”³¹⁴

Eastman quickly replied to Jacob’s email and, incredibly, blamed Vice President Pence and Jacob for the attack. “The ‘siege’ is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened,” Eastman wrote.³¹⁵ Naturally, Jacob was “somewhere between aghast and livid.”³¹⁶ It was “ridiculous” to blame Vice President Pence for the attack, when he simply followed the law.³¹⁷

THE JOINT SESSION RECONVENES: “LET’S GET BACK TO WORK.”

The Senate reconvened at approximately 8:06 p.m.³¹⁸ Congressional leadership and the Vice President insisted on finishing the work of the people. “Today was a dark day in the history of the United States Capitol,” Vice President Pence said. “But thanks to the swift efforts of U.S. Capitol Police,



Photo provided to the Select Committee by the National Archives and Records Administration.

federal, state and local law enforcement, the violence was quelled. The Capitol is secured, and the people's work continues." The Vice President addressed "those who wreaked havoc in our Capitol today," saying "you did not win." Vice President Pence continued:

Violence never wins. Freedom wins. And this is still the people's house. And as we reconvene in this chamber, the world will again witness the resilience and strength of our democracy, for even in the wake of unprecedented violence and vandalism at this Capitol, the elected representatives of the people of the United States have assembled again on the very same day to support and defend the Constitution of the United States.

"Let's get back to work," Vice President Pence concluded.³¹⁹

Despite the violence that had unfolded at the Capitol, Eastman kept agitating for further delay. At 11:44 p.m. on January 6th, Eastman sent yet another email to Greg Jacob.³²⁰ In a shockingly tone-deaf manner, Eastman claimed that the Electoral Count Act had been violated already, by allowing debate beyond two hours, so—he argued—Vice President Pence should no longer be concerned that what President Trump and Eastman had pressured

him to do also would violate it.³²¹ “Of course,” as Jacob pointed out, the debate couldn’t have been completed in two hours due to the “intervening riot of several hours.”³²²

Eastman argued that Vice President Pence should “adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the massive amount of illegal activity that has occurred here.”³²³ Eastman described this—a delay in the certification of the vote and the peaceful transfer of power with no legal or historical precedent or support, based on entirely specious and disproven allegations of election fraud, following on a violent attack on the seat of American democracy—as a “relatively minor violation.”³²⁴

Vice President Pence later described Eastman’s email as “rubber room stuff,” meaning it was certifiably crazy.³²⁵

5.5 AFTERMATH OF THE ATTACK.

Eastman called Herschmann on January 7th to discuss litigation on behalf of the Trump Campaign in Georgia.³²⁶ This gave Herschmann another opportunity to lay into Eastman. “[Are] you out of your F’ing mind?” Herschmann asked. “I only want to hear two words coming out of your mouth from now on: orderly transition.” Herschmann said. After some berating, Eastman repeated after Herschmann: “Orderly transition.” “Now I’m going to give you the best free legal advice you’re ever getting in your life,” Herschmann said. “Get a great F’ing criminal defense lawyer, you’re going to need it.”³²⁷ Days afterward, Eastman sent an email to Giuliani, making a request that tacitly acknowledged just how much trouble he was in: “I’ve decided that I should be on the pardon list, if that is still in the works.”³²⁸

Vice President Pence and his team never bowed to President Trump’s relentless pressure. They began January 6, 2021, with a prayer. The attack on the U.S. Capitol delayed the peaceful transfer of power. The joint session did not end until early in the morning on January 7th.

At 3:50 a.m. that morning, Short texted Vice President Pence a passage from Second Timothy, chapter 4, verse 7: “I fought the good fight. I finished the race. I have kept the faith.”³²⁹

ENDNOTES

1. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 10–11.
2. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 10–11.
3. See, e.g., Ivan E. Raiklin (Former Green Beret Commander) (@Raiklin), Twitter, Dec. 22, 2020, available at <https://web.archive.org/web/2020122232155/https://twitter.com/Raiklin/>

[status/1341520753984942081](https://twitter.com/realDonaldTrump/status/1341520753984942081) (archived) (“America, @VP @Mike_Pence MUST do this, tomorrow!”); Donald J. Trump (@realDonaldTrump), Twitter, Dec. 23, 2020 7:40:30 p.m. ET, available at <https://web.archive.org/web/20201224033528/http://twitter.com/realDonaldTrump> (archived).

4. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 95, (“[T]he Vice President mostly asked a series of questions in that meeting of Mr. Eastman”), 130 (Q: “Did John Eastman ever admit, as far as you know, in front of the President that his proposal would violate the Electoral Count Act?” A: “I believe he did on the 4th.” Q: “Okay. And can you tell us what the President’s reaction was?” A: “A I can’t.”); Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000107 (Greg Jacob memo to Vice President Pence, titled “Analysis of Professor Eastman’s Proposals”).
5. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 96 (Eastman acknowledging that the legal basis for his proposed paths was the same and, as recounted by Greg Jacob, “[y]ou couldn’t get there either way unless you . . . set aside a number of the positions of the Electoral Count Act”).
6. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 26–27 (“But just to pick up on that, Mr. Short, 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?” A: “Many times.” Q: “And had been consistent in conveying his position to the President?” A: “Very consistent.”).
7. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 18–20.
8. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (U.S. Secret Service Production), CTRL0000092958 (January 6, 2021, message at 10:39 a.m. ET).
9. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (US Secret Service Production), CTRL0000092978 (January 6, 2021, message at 10:43 a.m. ET).
10. “Transcript of Trump’s Speech at Rally Before US Capitol Riot,” *Associated Press*, (Jan. 13, 2021), available at <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>.
11. “Transcript of Trump’s Speech at Rally Before US Capitol Riot,” *Associated Press*, (Jan. 13, 2021), available at <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>.
12. “Transcript of Trump’s Speech at Rally Before US Capitol Riot,” *Associated Press*, (Jan. 13, 2021), available at <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>.
13. Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021 2:24 p.m. ET, available at <https://web.archive.org/web/20210106192450/https://twitter.com/realdonaldtrump/status/1346900434540240897> (archived).
14. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>; Rebecca Shabad, “Noose Appears Near Capitol; Protesters Seen Carrying Confederate Flags,” NBC News, (Jan. 6, 2021), available at <https://www.nbcnews.com/politics/congress/live-blog/electoral-college-certification-updates-n1252864/ncrd1253129#blogHeader>.

15. See Quint Forgy, "‘Almost No Idea More Un-American’: Pence Breaks with Trump on Jan. 6," *Politico*, (June 25, 2021), available at <https://www.politico.com/news/2021/06/25/pence-trump-jan-6-496237>.
16. Statement by Donald J. Trump, 45th President of the United States of America, Jan. 30, 2022, available at <https://web.archive.org/web/20220131171840/https://www.donaldjtrump.com/news/news-8nkdvtad7g1481> (archived) ("If the Vice President (Mike Pence) had ‘absolutely no right’ to change the Presidential Election results in the Senate, despite fraud and many other irregularities, how come the Democrats and RINO Republicans, like Wacky Susan Collins, are desperately trying to pass legislation that will not allow the Vice President to change the results of the election? Actually, what they are saying, is that Mike Pence did have the right to change the outcome, and they now want to take that right away. Unfortunately, he didn’t exercise that power, he could have overturned the Election!") (emphasis added).
17. Mike Allen, "Exclusive Audio: Trump Defends Threats to ‘Hang’ Pence," *Axios*, (Nov. 12, 2021), available at <https://www.axios.com/2021/11/12/trump-hang-mike-pence-january-6-audio> ("Jonathan Karl: ‘Were you worried about him during that siege? Were you worried about his safety?’ Trump: ‘No, I thought he was well-rotected, and I had heard that he was in good shape. No. Because I had heard he was in very good shape. But, but, no, I think—’ Karl: ‘Because you heard those chants—that was terrible. I mean—’ Trump: ‘He could have—well, the people were very angry.’ Karl: ‘They were saying ‘hang Mike Pence.’ Trump: ‘Because it’s common sense, Jon. It’s common sense that you’re supposed to protect. How can you—if you know a vote is fraudulent, right?—how can you pass on a fraudulent vote to Congress? How can you do that?’) (emphasis added).
18. Order Re Privilege of Documents Dated January 4-7, 2021 at 44, *Eastman v. Thompson et al.*, 594 F. Supp. 3d 1156, (C.D. Cal. Mar. 28, 2022) (No. 8:22-cv-99-DOC-DFM).
19. Order Re Privilege of Documents Dated January 4-7, 2021 at 36, 40, 44, *Eastman v. Thompson et al.*, 594 F. Supp. 3d 1156, (C.D. Cal. Mar. 28, 2022) (No. 8:22-cv-99-DOC-DFM) ("Based on the evidence, the Court finds that it is more likely than not that President Trump and Eastman dishonestly conspired to obstruct the Joint Session of Congress on January 6, 2021.").
20. Order Re Privilege of Documents Dated January 4-7, 2021 at 44, *Eastman v. Thompson et al.*, 594 F. Supp. 3d 1156, (C.D. Cal. Mar. 28, 2022) (No. 8:22-cv-99-DOC-DFM).
21. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman004708. This document was ordered to be produced to the Select Committee by Judge Carter over Eastman’s assertion of attorney-client privilege and upon a finding that the crime-fraud exception to the attorney-client privilege applied. Order Re Privilege of Documents Dated January 4-7, 2021 at 41-42, *Eastman v. Thompson et al.*, 594 F. Supp. 3d 1156, (C.D. Cal. Mar. 28, 2022) (No. 8:22-cv-99-DOC-DFM).
22. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman004708.
23. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman004708.
24. Neither Eastman nor Chesebro provided substantive answers in response to the Select Committee’s questions about the development of this strategy. See Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of John Eastman, (Dec. 9, 2021); Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Kenneth Chesebro, (Oct. 25, 2022). It is thus difficult to determine who first suggested this concept. Evidence obtained by the Select Committee suggests that key players like Eastman, Giuliani, and Epshteyn were starting to discuss the Vice President’s role at the joint session in late November or early December. See, e.g., Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Cassidy Hutchinson, (Feb. 23, 2022), pp. 71-73 (discussing conversations

involving Mark Meadows, Rudolph Giuliani's legal team, and Members of Congress in late November or early December); Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman023534 (December 5, 2020 email from John Eastman remarking that "folks at the top of the chain of command on this . . . are now aware of the issues"). See also Michael Wolff, *Landslide: The Final Days of the Trump Presidency* (New York: Henry Holt and Company, 2021), p. 135 (describing post-Thanksgiving outreach from Boris Epshteyn to the White House regarding the Vice President theory).

25. Order Re Privilege of Documents Dated January 4-7, 2021 at 41-42, *Eastman v. Thompson et al.*, 594 F. Supp. 3d 1156, (C.D. Cal. Mar. 28, 2022) (No. 8:22-cv-99-DOC-DFM) ("Because the memo likely furthered the crimes of obstruction of an official proceeding and conspiracy to defraud the United States, it is subject to the crime-fraud exception and the Court ORDERS it to be disclosed.").
26. The Select Committee's investigation found that Eastman was communicating about the joint session with Kenneth Chesebro in December 2020. See e.g., Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman053460, Chapman053475 (December 23, 2020, emails between John Eastman, Kenneth Chesebro, and Boris Epshteyn regarding procedural proposals for joint session).
27. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976. This memo was originally obtained by the *Washington Post's* Bob Woodward and Robert Costa and subsequently published by CNN. "READ: Trump Lawyer's Memo on Six-Step Plan for Pence to Overturn the Election," CNN, (Sept. 21, 2021), available at <https://www.cnn.com/2021/09/21/politics/read-eastman-memo/index.html>.
28. Under the Constitution, if no candidate receives a majority of electoral college votes, this triggers a process where the House of Representatives decides the president. When that happens, each State gets one vote for President, chosen by the Representatives from that state. The candidate who receives a majority of the 50 State votes becomes the president. At the time, there were more Republicans than Democrats in 26 of the 50 State House delegations, leading Eastman to predict that "President Trump [would be] re-elected" under that scenario. See Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976.
29. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976. Note that Eastman has acknowledged the authenticity of a publicly disclosed version of this document, describing it as "a preliminary, incomplete draft" of "the legal memo [he] wrote in January." John C. Eastman, "Trying to Prevent Illegal Conduct from Deciding an Election Is Not Endorsing a 'Coup,'" *American Greatness*, (Sept. 30, 2021), available at <https://amgreatness.com/2021/09/30/trying-to-prevent-illegal-conduct-from-deciding-an-election-is-not-endorsing-a-coup/> (linking to two-page document titled "PRIVILEGED AND CONFIDENTIAL, January 6 scenario, available at <http://cdn.cnn.com/cnn/2021/images/09/20/eastman.memo.pdf>).
30. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman053561 (December 23, 2020, email from John Eastman to Molly Michael).
31. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol, (Verizon Production, July 11, 2022) (Dec. 23, 2020 cellular data records from John Eastman). The morning that Eastman began preparing the memo, he received a call from Boris Epshteyn at 8:58 am. Eleven minutes later, Eastman called Chesebro, and the two spoke for over 41 minutes. Eastman continued to trade calls with Epshteyn and Chesebro throughout the day. See Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol, (Verizon Production, July 11, 2022) (December 23, 2020, phone records for John Eastman)

32. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976, p. 2 (Memo regarding January 6 scenario).
33. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman003226.
34. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman003228. Note that this letter refers to, and purports to supplement, the recommendations of what Eastman described in his correspondence with Mr. Colbert as "a major war game simulation" that he claimed—on October 24, 2020—was "already before the President and his team." Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman031983. The war game exercise in which Eastman participated is reflected in a report issued by the Claremont Institute and the Texas Public Policy Foundation. "79 Days Report", (Oct. 20, 2020), available at <https://www.texaspolicy.com/79-days-to-inauguration-taskforce-report/>.
35. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman003228 (emphasis added).
36. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman031983.
37. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman023534.
38. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman031983.
39. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976 (memo regarding January 6 scenarios).
40. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976 (memo regarding January 6 scenarios).
41. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052966 (December 23, 2020, email from Kenneth Chesebro).
42. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976 (memo regarding January 6 scenarios).
43. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976 (memo regarding January 6 scenarios).
44. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976 (memo regarding January 6).
45. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 26; *see also id.*, at 36-377 (stating that he did not understand Eastman's statement to be suggesting that violence would be justified to keep President Trump in office).
46. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 28.
47. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), pp. 26, 28-29.
48. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 29.

49. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 29.
50. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 29.
51. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Jason Miller, (Feb. 3, 2022), p. 157.
52. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Jason Miller, (Feb. 3, 2022), pp. 142, 152.
53. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), 079P-R0000731. Neither this memo, nor a December 8, 2020, memo that followed, reflects the full advice that Greg Jacob ultimately gave to the Vice President regarding the joint session. See Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 10–11, 32. The OVP Legal Staff memo, dated October 26, 2020, is titled “The Unconstitutionality of the Electoral Count Act.” This memo adopts certain legal academics’ criticism of the Electoral Count Act and introduces several concepts that would later be cited by proponents of the theory of an expansive view of the Vice President’s power. Greg Jacob’s legal memo to the Vice President, dated December 8, 2020, notes that the Electoral Count Act prescribes the process for counting electoral votes “to the extent it is constitutional” and seems to allow for the possibility of the Vice President “assert[ing] a constitutional privilege.” Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), 079P-R0000785. Through his extensive research and analysis, Greg Jacob’s understanding developed both as to the legal and historical precedent for the joint session and ultimately led him to the unavoidable conclusions that, one, the Electoral Count Act governed the joint session and, two, its procedures had never been deviated from since it was passed.
54. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob Deposition, (Feb. 1, 2022), pp. 11–13, 25–26 (noting that Marc Short didn’t “name names” of the people he was concerned would encourage the President to prematurely declare victory).
55. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), 079VP-R000011579_0001, 079VP-R000011579_0002 (November 3, 2020, Greg Jacob memo to Marc Short, titled “Electoral Vote Count”). The Election Day memo identifies the 12th Amendment and the Electoral Count Act as the relevant legal framework, but leaves open “whether it is the Vice President, or Congress, that has ultimate constitutional authority to decide electoral vote disputes.” It also represents an incomplete understanding of the factual precedents, describing then-Vice President Nixon’s conduct in January 1961 as “single-handedly resolv[ing] a dispute over competing slates of electors that were submitted by the State of Hawaii.” (In fact, after additional research Jacob concluded the opposite was true.) As addressed elsewhere in this chapter, this memo does not reflect Greg Jacob’s full legal analysis or ultimate advice, nor the Vice President’s conclusion, about the authority of the Vice President at the joint session.
56. Daniel Villarreal, “Lincoln Project Ad Tells Trump That Pence ‘Will Put the Nail in Your Political Coffin,’” *Newsweek*, (Dec. 8, 2020), available at <https://www.newsweek.com/lincoln-project-ad-tells-trump-that-pence-will-put-nail-your-political-coffin-1553331>.
57. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 13; Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (Jun. 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 135–36 (noting the ad buy was limited to “D.C. and Palm Beach”).

58. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), 079P-R0000785_0001, 079P-R0000785_0002, 079P-R0000785_0003, 079P-R0000785_0004 (December 8, 2020, Greg Jacob memo to Vice President Pence, titled "January 6 Process for Electoral Vote Count"); see also, Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 32. This December 8, 2020, memo reflects Jacob's more detailed understanding of the mechanics of "modern practice" under the Electoral Count Act, including the process by which the House and Senate separate to debate a member of the House's objection if it is signed by a Senator, but not the full analysis of the precedent that Jacob would ultimately do before January 6, 2021.
59. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 102.
60. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 33, 102.
61. U.S. Const. art. II, § 1, cl 3; U.S. Const., Amend. XII.
62. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
63. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 14–16.
64. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 14–16.
65. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>. In testimony given at a Select Committee hearing, Judge Luttig disagreed with Jacob's characterization of the sentence carried through from the Constitution to the 12th Amendment, describing it instead as "pristine[ly] clear," but the witnesses were in agreement that there was "no basis in the Constitution or laws of the United States at all for the theory espoused by Mr. Eastman." *Id.*; see Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>. ("I am in complete agreement with Judge Luttig; it is unambiguous that the Vice President does not have the authority to reject electors."). Note that Vice President Pence apparently agreed with Jacob regarding the clarity of the Constitutional language, as Jacob testified that he joked, "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.'" *Id.*
66. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
67. Complaint, *Gohmert et al. v. Pence*, 510 F. Supp. 3d 435, (No. 6:20-cv-0660), (E.D. Tex. Dec. 27, 2020), ECF No. 1.
68. Mike Pence, *So Help Me God* (New York: Simon & Schuster, 2022), p. 443.
69. Complaint, *Gohmert et al. v. Pence*, 510 F. Supp. 3d 435, (No. 6:20-cv-0660), (E.D. Tex. Dec. 27, 2020), ECF No. 1.
70. Complaint, *Gohmert et al. v. Pence*, 510 F. Supp. 3d 435, (No. 6:20-cv-0660), (E.D. Tex. Dec. 27, 2020), ECF No. 1.
71. Complaint, *Gohmert et al. v. Pence*, 510 F. Supp. 3d 435, (No. 6:20-cv-0660), (E.D. Tex. Dec. 27, 2020), ECF No. 1.

72. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman055337 (December 22, 2020, John Eastman email to William Olson, Larry Joseph, Mark Martin, Kurt Olson, Kris Kobach, Phillip Jauregui, Pat McSweeney, and Don Brown, titled "Re: Draft Complaint").
73. Order Re Privilege of Documents Dated January 4-7, 2021 at 6, *Eastman v. Thompson et al.*, 594 F. Supp. 3d 1156 (C.D. Cal. 2022) (No. 8:22-cv-99-DOC-DFM).
74. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman055337 (December 22, 2020, William Olson email to Larry Joseph, Mark Martin, Kurt Olson, Kris Kobach, John Eastman, Phillip Jauregui, Pat McSweeney, and Don Brown, titled "Re: Draft Complaint").
75. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Russell "Rusty" Bowers, (June 19, 2022), pp. 42–45; Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman003584, (January 4, 2021, emails between John Eastman and Andrew Pappas, coordinating the call between Eastman and Speaker Bowers). Eastman also asked Speaker Bowers to sign a letter drafted by Arizona Rep. Mark Finchem directed to Vice President Pence asking him not to certify the election on January 6th; Bowers refused. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Russell "Rusty" Bowers, (June 19, 2022), at p. 45–46.
76. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Russell "Rusty" Bowers, (June 19, 2022), at p. 46. Speaker Bowers had already addressed publicly both the pressure he was receiving to overturn the result of the election as well as his firm belief that doing so would violate his oath of office. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Rusty Bowers Production), CTRL0000062389 (Nov. 18, 2020, Dear Colleague letter with attached "Post-Election Frequently Asked Questions"), Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Rusty Bowers Production), CTRL0000071098_00069 (December 4, 2020, Press Release titled "Speaker Bowers Addresses Calls for the Legislature to Overturn 2020 Certified Election Results").
77. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Russell "Rusty" Bowers, (June 19, 2022), at p. 46. Speaker Bowers also received a call on the morning of January 6th from Representative Andy Biggs in which Rep. Biggs asked Speaker Bowers to sign a letter being sent by other Arizona legislators and/or to support decertification of Arizona's electors; Speaker Bowers again refused. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 21, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
78. *Gohmert et al. v. Pence*, 510 F. Supp. 3d 435, 443 (E.D. Tx. 2021).
79. *Gohmert et al. v. Pence*, 141 S. Ct. 972 (2021).
80. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of John McEntee, (Mar. 28, 2022), pp. 132–34.
81. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (John McEntee Production), McEntee0001 (document titled "JEFFERSON USED HIS POSITION AS VP TO WIN").
82. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), P-R000236-000238 (John McEntee note and drafted analysis, titled "PENCE CAN LET THE STATES DECIDE"). Note that the Select Committee received both documents from the National Archives in a format consistent with the documents having been torn apart and taped back together.
83. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), P-R000236-237 (John McEntee note and drafted analysis, titled "PENCE CAN LET THE STATES DECIDE").

84. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), P-R000237; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of John McEntee, (Mar. 28, 2022), p. 147.
85. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of John McEntee, (Mar. 28, 2022), pp. 147-48.
86. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Short production), J6C-TSM-0001, J6C-TSM-0002. Note that the file name of the document ("MEMO_POTUS_January6VPAAction.pdf") is visible in an email in which Marc Short forwards to Greg Jacob the memo received from Mark Meadows. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000033, VP-R0000034.
87. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000034.
88. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Jenna Ellis Production), J.007206Ellis.
89. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Jenna Ellis Production), J.007472Ellis.
90. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Jenna Ellis Production), CTRL0000916457_00002, (January 5, 2021, memo from Jenna Ellis to Jay Sekulow). This document was published by *Politico* on December 10, 2021. Betsy Woodruff Swan and Kyle Cheney, "Trump Campaign Lawyer Authored 2 Memos Claiming Pence Could Halt Biden's Victory," *Politico*, (Dec. 10, 2021), available at <https://www.politico.com/news/2021/12/10/trump-lawyer-pence-biden-524088>. In response to a Select Committee subpoena, Ellis produced a privilege log reflecting several communications from Ellis to Sekulow on January 5 and 6, 2021, each of which was described as "[e]mail discussion of internal legal strategy for possible pending litigation."
91. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Jenna Ellis Production), CTRL0000916457_00002 (January 5, 2021, memo from Ellis to Jay Sekulow).
92. Politico (@politico), Twitter, Jan. 5, 2021 2:31 p.m. ET, available at <https://twitter.com/politico/status/1346539955724681221> ("I actually don't think that's what the Constitution has in mind," Jay Sekulow, the chief counsel of the American Center for Law & Justice, says about the possibility of Pence rejecting the Electoral College results").
93. Politico (@politico), Twitter, Jan. 5, 2021 2:31 p.m. ET, available at <https://twitter.com/politico/status/1346539955724681221>.
94. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 208.
95. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 208.
96. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 68; Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed of Matt Morgan, (Apr. 25, 2022), pp. 19, 113. Matt Morgan was at the time a lawyer with Elections, LLC serving as General Counsel of the Trump Campaign and also acting as counsel to Vice President Pence's leadership PAC.
97. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Matthew Morgan, (Apr. 25, 2022), pp. 117, 125 ("I had no question about what he was going to do on January 6th.").

98. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 68. *See also* Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), p. 179 (stating that the reasons why Vice President Pence wanted to issue a public statement included the public discourse, letters from State legislators, and reporting about communications between the President and Vice President).
99. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Matthew Morgan, (Apr. 25, 2022), pp. 114, 116.
100. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 166-68 (“I’m not aware of any evidence that the campaign had, and I’m not aware of any evidence the campaign shared with our office that would have again provided specific evidence of theft or fraud that would have had a material change in any of the States.”).
101. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Matt Morgan, (Apr. 25, 2022), pp. 99-00; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 36-37.
102. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), 079P-R0000745; *see also* Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 38. Following the meeting on January 2, 2021, Greg Jacob shared the following memo with Matt Morgan. *See* Documents on file with the Select Committee to Investigate the January 6th Attack, (Matt Morgan Production), AGSC16-000103.
103. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 61-62.
104. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Matt Morgan Production), AGSC16-000066; Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Matt Morgan, (Apr. 25, 2022), p. 74 (“My view, for an electoral count vote to count, you need a certificate of ascertainment and then the vote of the elector itself, that the vote of an elector without a certificate of ascertainment would not be validly submitted.”).
105. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), 079P-R0000698; *see also* Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chris Hodgson Production), 00131; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), p. 128 (stating that as of the date of this memo, January 2, 2021, “there were no open questions at that point that I’m aware of.”).
106. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 52.
107. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 68-69. Jacob shared a draft version of the statement with Matt Morgan. *See* Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Matt Morgan, (Apr. 25, 2022), pp. 119-120. This draft version clearly set forth Vice President Pence’s position, “I Preside, Congress Decides.” The draft statement read: I cannot believe that the Framers, who above all else feared the concentrated power of a Caesar, intended to appoint a single individual, often directly interested in the outcome, to unilaterally determine the validity of electoral votes. In the wrong hands, such a power would be the undoing of the Republic.” Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Matt Morgan Production), AGSC16-000149.

108. Philip Rucker, Josh Dawsey, "Growing Number of Trump Loyalists in the Senate Vow to Challenge Biden's Victory," *Washington Post*, (Jan. 2, 2021), available at https://www.washingtonpost.com/politics/senators-challenge-election/2021/01/02/81a4e5c4-4c7d-11eb-a9d9-1e3ec4a928b9_story.html.
109. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 166–68.
110. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 165–66.
111. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription), CTRL0000082311, p. 7 (January 2, 2021, Steve Bannon War Room Transcript).
112. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription), CTRL0000082311, p. 3 (January 2, 2021, Steve Bannon War Room Transcript).
113. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription), CTRL0000082311, p. 6 (January 2, 2021, Steve Bannon War Room Transcript).
114. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription), CTRL0000082311, p. 7 (January 2, 2021, Steve Bannon War Room Transcript).
115. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription), CTRL0000082311, p. 7 (January 2, 2021, Steve Bannon War Room Transcript).
116. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription), CTRL0000082311, p. 7 (January 2, 2021, Steve Bannon War Room Transcript).
117. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription), CTRL0000082311, p. 8 (January 2, 2021, Steve Bannon War Room Transcript).
118. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription), CTRL0000082311, p. 7 (January 2, 2021, Steve Bannon War Room Transcript).
119. Andrew Kaczynski, Em Steck, "Trump Lawyer John Eastman Said 'Courage and the Spine' Would Help Pence Send Election to the House in Comments before January 6," CNN, (Oct. 30, 2021), available at <https://www.cnn.com/2021/10/30/politics/kfile-john-eastman-said-pence-could-throw-election-to-house/index.html>.
120. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Public Source), CTRL00000923171 (January 3, 2021, 6-page Eastman memo). Note that Eastman publicly disclosed this document, describing it as "the final version of [his] memo" and embedding it with a filename "Jan 3 Memo on Jan 6 Scenario." John C. Eastman, "Trying to Prevent Illegal Conduct From Deciding an Election Is Not Endorsing a 'Coup,'" *American Greatness*, (Sept. 30, 2021), available at <https://amgreatness.com/2021/09/30/trying-to-prevent-illegal-conduct-from-deciding-an-election-is-not-endorsing-a-coup/>. Eastman has also tried to rewrite history with regard to this memo, arguing that it noted that Congress has the power to make the final determination regarding electoral votes, even though the memo concludes, "[t]he fact is that the Constitution assigns this power to the Vice President as the ultimate arbiter. We should take all of our actions with that in mind." See John McCormack, "John Eastman vs. the Eastman Memo," *National Review*, (Oct. 22, 2021), available at <https://www.nationalreview.com/2021/10/john-eastman-vs-the-eastman-memo> (emphasis added).

121. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Public Source) CTRL0000923171, pp. 4-5 (January 3, 2021, 6-page Eastman memo).
122. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Public Source) CTRL0000923171, (January 3, 2021, 6-page Eastman memo) (describing the majority of the “TRUMP WINS” scenarios as resulting from the Vice President unilaterally determining “which” electoral slate from a State is valid, after “asserting that the authority to make that determination under the 12th Amendment . . . is his alone (and anything in the Electoral Count Act to the contrary is therefore unconstitutional).”).
123. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Public Source) CTRL0000923171, (January 3, 2021, 6-page Eastman memo) p. 5.
124. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Public Source) CTRL0000923171, (January 3, 2021, 6-page Eastman memo) p. 2; Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976 (December 23, 2020, 2-page Eastman memo).
125. John C. Eastman, “Constitutional Statesmanship,” *Claremont Review of Books*, (Fall 2021) available at <https://claremontreviewofbooks.com/constitutional-statesmanship/>.
126. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman043035 (December 19, 2020, email from John Eastman to Bruce Colbert, re: Latest draft). It is not clear what relationship or connection existed between John Eastman and Bruce Colbert before the election; documents produced to the Select Committee demonstrate that Eastman and Mr. Colbert exchanged dozens of emails during the time period covered by the Select Committee’s subpoena to Chapman University (November 3, 2020, to January 20, 2021).
127. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (Jun. 16, 2022), available at [<https://www.govinfo.gov/committee/house-january6th/>] (Judge Luttig testifying, “[T]here 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.”).
128. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman053475, (December 23, 2020, email from John Eastman to Boris Epshteyn and Kenneth Chesebro, “FW: Draft 2, with edits”); Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman053476 (December 23, 2020, 2-page Eastman memo).
129. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman063984 (January 10, 2021, email from John Eastman to Valerie Moon, re: Tell us in layman’s language, what the heck happened with the dual electors? Please?). This email appears to be a response by Eastman to an unsolicited email from a member of the public.
130. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman063984 (January 10, 2021, email from John Eastman to Valerie Moon, re: Tell us in layman’s language, what the heck happened with the dual electors? Please?).
131. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Public Source) CTRL0000923171, p. 5 (January 3, 2021, 6-page Eastman memo).

132. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Public Source), CTRL0000923171, p. 5 (January 3, 2021, 6-page Eastman memo).
133. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Public Source), CTRL0000923171, p. 5 (January 3, 2021, 6-page Eastman memo).
134. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Public Source), CTRL0000923171, p. 5 (January 3, 2021, 6-page Eastman memo).
135. The pressure placed on the Vice President by the President was a "multiweek campaign" that reached a crescendo in the days before January 6th. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 33. The Vice President's Chief of Staff, Marc Short, saw the separation between the President and the Vice President building for weeks. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 34-35, 216-17.
136. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 191, 204-05; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 82; Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
137. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 191, 204-05.
138. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Pasquale Antony "Pat" Cipollone, (July 8, 2022), pp. 49 (regarding the declaration of martial law), 56 (regarding the appointment of Sidney Powell as special counsel), 58-59, 66 (regarding the seizure of voting machines), 110 (regarding the elevation of Jeff Clark to Acting Attorney General).
139. Select Committee to Investigate the January 6th Attack on the United States Capitol, Informal Interview of Patrick Philbin, (Apr. 13, 2022), p. 5. Philbin told the Select Committee that in the end he decided not to resign out of a sense of obligation: "All of the pilots can't jump off the plane because there's still a lot of passengers in the back and we need to land the plane."
140. Select Committee to Investigate the January 6th Attack on the United States Capitol, Informal Interview of Patrick Philbin, (Apr. 13, 2022).
141. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Pasquale Antony "Pat" Cipollone, (July 8, 2022), pp. 79 ("My view was that the Vice President didn't have the legal authority to do anything except what he did."), 81 (testifying that his views on the role of the Vice President were "extremely aligned" with the Vice President's staff), 88 ("I thought that the Vice President did not have the authority to do what was being suggested under a proper reading of the law."); See also Select Committee to Investigate the January 6th Attack on the United States Capitol, Informal Interview of Patrick Philbin, (Apr. 13, 2022).
142. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Pasquale Antony "Pat" Cipollone, (July 8, 2022), pp. 85-86.
143. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Pasquale Antony "Pat" Cipollone, (July 8, 2022), p. 85.
144. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Pasquale Antony "Pat" Cipollone, (July 8, 2022), p. 94 (testifying that

the privileged interaction that resulted in his exclusion from the meeting took place in the presence of Meadows and Eastman, but before the Vice President, Short, and Jacob arrived).

145. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Pasquale Antony “Pat” Cipollone, (July 8, 2022), pp. 85–86 (“I did walk to that meeting and I did go into the Oval Office with the idea of attending that meeting, and then I ultimately did not attend the meeting.”).
146. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Pasquale Antony “Pat” Cipollone, (July 8, 2022), pp. 86, 94. Cipollone refused to describe further why he didn’t attend the meeting—“[t]he reasons for that are privileged”—and would not tell the Select Committee whether he voluntarily decided not to attend or was told not to.
147. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Pasquale Antony “Pat” Cipollone, (July 8, 2022), pp. 85, 88.
148. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 88–89 (“[A]t the meeting on the 4th, Eastman expressed the view that both paths were legally viable.”).
149. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
150. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 89. *See also* Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 90 (“I think that was threaded throughout, that, again, both were legally viable but that the preferred course would be to send it back to the States.”), 91 (“... he [Eastman] thought that the more prudent course was a procedural send it back to the States, rather than reject electors.”), 93 (“On the 4th, I think that he said that both were legally viable options. But I do think that he said that he was not saying that that was the one that the Vice President should do.”).
151. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 89, 91 (“[H]e thought that the more prudent course was a procedural send it back to the states, rather than reject electors”), 96 (“[M]y impression was he was thinking more acceptance [by] the country of the action taken”). *See also* Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearings on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
152. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 96; Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
153. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 95, 130 (Q: “Did John Eastman ever admit, as far as you know, in front of the President that his proposal would violate the Electoral Count Act?” A: “I believe he did on the 4th.” Q: “Okay. And can you tell us what the President’s reaction was?” A: “A I can’t.”); Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000107 (Greg Jacob writing after the Oval Office meeting on January 4th, “Professor Eastman acknowledges that his proposal violates several provisions of statutory law.”).
154. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 202–03.

155. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000107. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 127.
156. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000107 ("Professor Eastman acknowledges that his proposal violates several provisions of statutory law"); Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 127–28.
157. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000107.
158. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol, (National Archives Production), VP-R0000107. Jacob notes in his memo that Eastman's proposal also "contradicted the opinion authored by Republican Supreme Court Justice Joseph Bradley as the decided vote on the Electoral Commission of 1877." Whereas Eastman wanted the Vice President to refer the manufactured dispute over slates of electors back to the State legislatures, Justice Bradley wrote that the President of the Senate (the Vice President) "is not invested with any authority for making any investigation outside of the joint meeting of the two Houses."
159. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000107 ("[Professor Eastman] stated that in his view, the imprimatur of approval by a State legislature is important to the legitimacy of counting any slate of electors other than the one initially certified by the State's executive.").
160. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000107.
161. When pressed by Eric Herschmann on whether states really wanted to certify an alternate slate, and why they hadn't taken steps to do so on their own, Eastman had no explanation or response. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), pp. 28–29.
162. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000107 ("Professor Eastman does not recommend that the Vice President assert that he has the authority unilaterally to decide which of the competing slates of electors should be counted"); Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 127.
163. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000107.
164. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000085.
165. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000182, VP-R0000183, VP-R0000180, VP-R0000181; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 102–03 ("[I]n fact, there were no materials, new materials that were actually presented to me by Mr. Eastman . . . I was open to receiving anything that anybody wanted to give me that might bear on that question . . . But I also correctly was of the view that I had already looked at everything and that we knew [] where we stood.").
166. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 95.
167. "Donald Trump Rally Speech Transcript Dalton, Georgia: Senate Runoff Election," Rev, (Jan. 4, 2021), available at <https://perma.cc/VAD2-TWVQ> ("Hello, Georgia, by the way. There's no

way we lost Georgia. There's no way. That was a rigged election, but we're still fighting it and you'll see what's going to happen. We'll talk about it.”).

168. “Donald Trump Rally Speech Transcript Dalton, Georgia: Senate Runoff Election,” Rev, (Jan. 4, 2021), available at <https://perma.cc/VAD2-TWVQ>.
169. “Donald Trump Rally Speech Transcript Dalton, Georgia: Senate Runoff Election,” Rev, (Jan. 4, 2021), available at <https://perma.cc/VAD2-TWVQ>.
170. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 96, 105; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 201; Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000182.
171. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short Deposition (Jan. 26, 2022) p. 201; see also, Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob (Feb. 1, 2022) pp. 92, 94, 106; Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (Jun. 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
172. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Greg Jacobs Production), CTRL0000070421, p. 1 (Jan. 5, 2021, Greg Jacob handwritten notes).
173. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>; See also Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 92 (“He, again, came into the meeting saying, ‘What I’m here to ask you to do is to reject the electors.’”).
174. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 93–95. Eastman acknowledged to Jacob that the previous day’s discussions had included the “send it back to the states” path, but he reaffirmed that the ask on the morning of January 5th was to reject electors outright. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 105; Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th> (“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.”).
175. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), pp. 24–25.
176. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), pp. 26–27.
177. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 24.
178. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 24.
179. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 107, 117.
180. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 107–08. Jacob debated with Eastman all of the historical examples, concluding that in “the 130 years of practice” the Electoral Count Act had been followed “every single time”; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 109–10.

181. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 108. What Jacob found when he looked into the Nixon example is that first, there were no competing slates of electors from Hawaii. In fact, a Republican slate was originally certified by the outgoing Governor, but after a judicially ordered recount, it was clear that the Democratic candidate had won, and the incoming Governor certified a new slate consistent with the outcome of the election after the recount. Then-Vice President Nixon, when he arrived at Hawaii in the joint session, "mag-nanimously" acknowledged that it was clear that Hawaii's votes for Kennedy were the cor-rect votes and called for objections (of which there were none). This precedent was therefore an example of the Vice President complying with the Electoral Count Act's proce-dures regarding objections to electors. See Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 15-16.
182. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Greg Jacob, (Feb. 1, 2022), p. 110.
183. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Greg Jacob, (Feb. 1, 2022), p. 110 ("[H]e ultimately acknowledged that none of [the Justices] would actually back this position when you took into account the fact that what you have is a mildly ambiguous [constitutional provision], a nonsensical result that has all kinds of terrible policy implications, and uniform historical practice against it").
184. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Greg Jacob, (Feb. 1, 2022), p. 110.
185. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Greg Jacob, (Feb. 1, 2022), p. 111. Jacob told the Select Committee he did not know to whom Eastman was referring when he indicated "they" would be disappointed that Vice President Pence had not been convinced it was appropriate to reject electors.
186. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Marc Short, (Jan. 26, 2022), pp. 95-96, 210-11.
187. J. Michael Luttig (@judgeluttig), Twitter, Jan. 5, 2021 9:53 a.m. ET, *et seq.*, available at <https://twitter.com/judgeluttig/status/1346469787329646592> ("The only responsibility and power of the Vice President under the Constitution is to faithfully count the electoral col-lege votes as they have been cast,").
188. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Marc Short, (Jan. 26, 2022), pp. 151-52.
189. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Marc Short, (Jan. 26, 2022), pp. 151-52.
190. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Marc Short, (Jan. 26, 2022), pp. 152, 209; *see also* Tom Hamburger, Josh Dawsey, and Jacqueline Alemany, "Jan. 6 Panel Grapples with How to Secure Testimony from Law-makers, Pence," *Washington Post*, (Jan. 15, 2022), available at <https://www.washingtonpost.com/politics/2022/01/15/jan-6-subpoenas-committee> ("I did not notice any hesitation on his part," Quayle said of his conversation with Pence. 'I inter-preted his questions as looking for confirmation that what he was going to do was right and that he had no flexibility. That's the way I read it. Given the pressure he was under, I thought it was perfectly normal, very smart on his part to call me.'").
191. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Greg Jacob, (Feb. 1, 2022), p. 157.
192. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Greg Jacob, (Feb. 1, 2022), p. 158; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 215-17.
193. Select Committee to Investigate the January 6th Attack on the United States Capitol, Depo-sition of Greg Jacob, (Feb. 1, 2022), pp. 157-58.

194. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 215.
195. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 216.
196. Bob Woodward and Robert Costa, *Peril*, (New York: Simon & Schuster, 2021), p. 229; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 215-16.
197. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 160.
198. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 220-22; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 116, 120. Note that Marc Short recalled that it was this afternoon phone call that led to the in-person meeting between Eastman and Jacob, however, documents received by the Select Committee and Jacob's more detailed recollection of his interactions with Eastman establishes that the in-person meeting occurred in the morning of January 5, 2021.
199. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>. (describing the message on this phone call between the Vice President and President Trump with Eastman's participation as, "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[?]"); see also Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 96-97, 120.
200. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 121.
201. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 121-22 (describing calls from Eastman and at least one other lawyer (likely either Kurt Olsen or Bill Olson)).
202. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 122-23.
203. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 123 (recounting Eastman's argument that election fraud was resulting in the Constitution being "shredded across all these different states" and comparing it to the Civil War).
204. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 122-24.
205. Maggie Haberman and Annie Karni, "Pence Said to Have Told Trump He Lacks Power to Change Election Result," *New York Times*, (Jan. 5, 2021), available at <https://web.archive.org/web/20210106003845/https://www.nytimes.com/2021/01/05/us/politics/pence-trump-election-results.html>. The same *Times* reporters had also published on January 4th an article again accurately reporting that President Trump "had directly pressed Mr. Pence to find an alternative to certifying Mr. Biden's win." Annie Karni and Maggie Haberman, "Pence's Choice: Side with the Constitution or His Boss," *New York Times*, (Jan. 4, 2021), available at <https://www.nytimes.com/2021/01/04/us/politics/pence-trump.html>.
206. Maggie Haberman and Annie Karni, "Pence Said to Have Told Trump He Lacks Power to Change Election Result," *New York Times*, (Jan. 5, 2021), available at <https://www.nytimes.com/2021/01/05/us/politics/pence-trump-election-results.html>.
207. Maggie Haberman and Anne Karni, "Pence Said to Have Told Trump He Lacks Power to Change Election Result," *New York Times*, (Jan. 5, 2021), available at <https://>

web.archive.org/web/20210106003845/https://www.nytimes.com/2021/01/05/us/politics/pence-trump-election-results.html (archived version showing original publication date of Jan. 5, 2021, at 7:36 p.m. ET).

208. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Jason Miller, (Feb. 3, 2022), pp. 169-70.
209. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), 076P-R000007439, (CTRL0000082597) (January 5, 2021, White House Presidential call log).
210. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), 076P-R000007439, (CTRL0000082597) (January 5, 2021, White House Presidential call log).
211. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), 076P-R000007439, (CTRL0000082597) (January 5, 2021, White House Presidential call log).
212. Meredith Lee (@meredithllee), Twitter, Jan. 5, 2021, 9:58 p.m. ET, available at <https://twitter.com/meredithllee/status/1346652403605647367?lang=en> (emphasis added); Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Jason Miller, (Feb. 3, 2022), p. 175 (“[T]ypically on these, I might have a couple of wording suggestions . . . ultimately the way this came out was the way he wanted [it] to.”); see *id.* at 174-76.
213. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 224; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), pp. 184-85.
214. Meredith Lee (@meredithllee), Twitter, Jan. 5, 2021, 9:58 p.m. ET, available at <https://twitter.com/meredithllee/status/1346652403605647367?lang=en>.
215. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 161 (“[W]hoever drafted the statement it was not accurate.”).
216. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 161.
217. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 224; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 163.
218. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 223.
219. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 223.
220. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), CTRL0000082597, (reflecting calls with Mr. Stephen Bannon on Jan. 5, 2021, from 8:57 a.m. to 9:08 a.m. and from 9:46 p.m. to 9:52 p.m.).
221. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription), CTRL0000082317 (Jan. 5, 2021, Steve Bannon War Room Transcript) (Bannon: “All hell is going to break loose tomorrow. Just understand this: All hell is going to break loose tomorrow. It’s going to be quick . . . It’s the fog of war.” Bannon discussed putting Sen. Grassley’s number on the screen, and suggested they encourage users at TheDonald.win to contact the Senator. (At the time, users at TheDonald.win were openly planning for violence and to surround the U.S. Capitol on

- January 6. See Chapter 6.) Bannon told his audience. “I’ll tell you this, it’s not going to happen like you think it’s going to happen, Ok? It’s going to be quite extraordinarily different. And all I can say is strap in.”).
222. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription) CTRL0000082317, (Jan. 5, 2021) (Steve Bannon War Room Transcript).
 223. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee Transcription) CTRL0000082317, (Jan. 5, 2021) (Steve Bannon War Room Transcript).
 224. Peter Navarro, *In Trump Time: A Journal of America’s Plague Year* (St. Petersburg, FL: All Seasons Press, 2021), p. 252.
 225. Peter Navarro, *In Trump Time: A Journal of America’s Plague Year* (St. Petersburg, FL: All Seasons Press, 2021), p. 263.
 226. Peter Navarro, *In Trump Time: A Journal of America’s Plague Year* (St. Petersburg, FL: All Seasons Press, 2021), p. 271.
 227. Peter Navarro, *In Trump Time: A Journal of America’s Plague Year* (St. Petersburg, FL: All Seasons Press, 2021), p. 252.
 228. Peter Navarro, *In Trump Time: A Journal of America’s Plague Year* (St. Petersburg, FL: All Seasons Press, 2021), p. 263.
 229. See e.g., Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman052976.
 230. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 26-27 (“But just to pick up on that, Mr. Short, 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?” A: “Many times.” Q: “And had been consistent in conveying his position to the President?” A: “Very consistent.”); see also Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 102 (“[T]hat’s where the Vice President started. That’s where he stayed the entire way.”); Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), p. 181 (“I believe that the Vice President was consistent in his understanding of the law and the precedent and his belief as to what his authority was and was not on January 6th.”).
 231. Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021 1:00 a.m. ET, available at <https://web.archive.org/web/20210106072109/https://twitter.com/realdonaldtrump/status/1346698217304584192> (archived).
 232. Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021 8:17 a.m. ET, available at <https://web.archive.org/web/20210106131747/https://twitter.com/realdonaldtrump/status/1346808075626426371> (archived).
 233. Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021 8:22 a.m. ET, available at <https://web.archive.org/web/20210106132244/https://twitter.com/realdonaldtrump/status/1346809349214248962> (archived).
 234. At 9:02 a.m., President Trump instructed the White House operator to call back with the Vice President; the operator instead informed the President at 9:15 a.m. that a message was left for the Vice President. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), P-R000261 (Presidential Call Log, White House Switchboard), P-R000255 (Daily Diary).
 235. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), P-R000285 (“11:20 –c w/ VPOTUS”); Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), P-R000255 (“The President talked on

- a phone call to an unidentified person"); *see also* Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 12 (stating that a military aide interrupted Pence's meeting with staff to inform the Vice President that the President was holding to speak with him).
236. Present in the Oval Office during the call with the Vice President were Melania Trump, Donald Trump, Jr., Ivanka Trump, Eric Trump, Kimberly Guilfoyle, and Lara Trump, as well as Mark Meadows, Stephen Miller, Eric Herschmann, and Gen. Keith Kellogg. *See* Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Ivanka Trump, (Apr. 5, 2022), pp. 30-32, 37.
237. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 47.
238. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Ivanka Trump, (Apr. 5, 2022), p. 39.
239. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Ivanka Trump, (Apr. 5, 2022), p. 41.
240. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Julie Radford, (May 24, 2022), pp. 17-18.
241. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Julie Radford, (May 24, 2022), p. 19 ("And the word that she relayed to you that the President called the Vice President—apologize for being impolite—but do you remember what she said her father called him?" "The 'P'word."). *See also* Peter Baker, Maggie Haberman, and Annie Karni, "Pence Reached His Limit with Trump. It Wasn't Pretty," *New York Times*, (Jan. 12, 2021), available at <https://www.nytimes.com/2021/01/12/us/politics/mike-pence-trump.html>; Jonathan Karl, *Betrayal: The Final Act of the Trump Show*, (New York: Dutton, 2021), at pp. 273-74 ("[Y]ou said, 'You can be a patriot or you can be a pussy.' Did you really say that or is that an incorrect report? 'I wouldn't dispute it,' [President Trump] answered.").
242. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Nicholas Luna, (Mar. 21, 2022), p. 127.
243. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Keith Kellogg, (Dec. 14, 2021), p. 90; *see also* Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Donald J. Trump, Jr., (May 3, 2022), p. 84 ("I know the line of questioning was about sending it back to the States, but that's about the extent of my recollection.").
244. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Keith Kellogg, (Dec. 14, 2021), p. 91 ("Q: [Y]ou said he told the Vice President that he has the legal authority to reject certain votes. Is that what you said? A: That he had the constitutional authority to do that, yes."); *see also* Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann (Apr. 6, 2022), p. 48 (describing it as "a general discussion about the legal and constitutional authority of the VP").
245. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Keith Kellogg, (Dec. 14, 2021), p. 92.
246. Select Committee to Investigate the January 6th Attack on the United States Capitol, Hearing on the January 6th Investigation, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 169.
247. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), p. 40; Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol, (AT&T Production, Feb. 9, 2022).

248. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), pp. 40–41.
249. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol, (AT&T Production, Feb. 9, 2022).
250. “Rudy Giuliani Speech Transcript at Trump’s Washington, D.C. Rally: Wants ‘Trial by Combat,’” Rev, (Jan. 6, 2021), available at <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>.
251. “Rudy Giuliani Speech Transcript at Trump’s Washington, D.C. Rally: Wants ‘Trial by Combat,’” Rev, (Jan. 6, 2021), available at <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>.
252. “Rudy Giuliani Speech Transcript at Trump’s Washington, D.C. Rally: Wants ‘Trial by Combat,’” Rev, (Jan. 6, 2021), available at <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat> (“We now have letters from five legislators begging us to do that. They’re asking us. Georgia, Pennsylvania, Arizona, Wisconsin, and one other coming in.”).
253. See, e.g., Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Marc Short Production), J6C-TSM-0003, J6C-TSM-0004, (January 6, 2021, email from Molly Michael to March Short containing subject line “2057Rayburn_20210106_002040.pdf” and an attached letter). The letter bore the signatures of 19 of the 60 members of the Arizona House and 4 of the 30 members of the Arizona Senate.
254. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman005235, Chapman005236, (January 5, 2021, email from John Eastman to Greg Jacob with an attached letter dated January 4, 2021). In an interview given after January 6th, Eastman argued that the Vice President still should have acted on the basis of the statement of a minority of the Pennsylvania legislature because “it was over Christmas, and they were having trouble getting ahold of people to sign the letter.” John McCormack, “John Eastman vs. the Eastman Memo,” *National Review*, (Oct. 22, 2021), available at <https://www.nationalreview.com/2021/10/john-eastman-vs-the-eastman-memo/>.
255. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman005235, Chapman005236.
256. Select Committee to Investigate the January 6th Attack on the United States Capitol, Informal Interview of Jake Corman, (Jan. 25, 2022).
257. Select Committee to Investigate the January 6th Attack on the United States Capitol, Informal Interview of Jake Corman, (Jan. 25, 2022). Corman told the Select Committee that he understood the Vice President’s role at the joint session was not substantive.
258. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 167–68; see also Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 14; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), pp. 166–67.
259. “Rudy Giuliani Speech Transcript at Trump’s Washington, D.C. Rally: Wants ‘Trial by Combat,’” Rev, (Jan. 6, 2021), available at <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>.
260. “Rudy Giuliani Speech Transcript at Trump’s Washington, D.C. Rally: Wants ‘Trial by Combat,’” Rev, (Jan. 6, 2021), available at <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>.
261. “Rudy Giuliani Speech Transcript at Trump’s Washington, D.C. Rally: Wants ‘Trial by Combat,’” Rev, (Jan. 6, 2021), available at <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>.

262. "Rudy Giuliani Speech Transcript at Trump's Washington, D.C. Rally: Wants 'Trial by Combat'," Rev, (Jan. 6, 2021), available at <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat> (emphasis added). Note in particular Eastman's assertions regarding voting machines, for example, "They put those ballots in a secret folder in the machines. Sitting there waiting until they know how many they need." Eastman would later describe what he was calling on the Vice President to do as merely "to pause the proceedings." John C. Eastman, "Setting the Record Straight on the POTUS 'Ask,'" *The American Mind*, (Jan. 18, 2021), available at <https://americanmind.org/memo/setting-the-record-straight-on-the-potus-ask/>.
263. Brian Naylor, "Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial," NPR, (Feb. 10, 2021), available at <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.
264. Brian Naylor, "Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial," NPR, (Feb. 10, 2021), available at <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.
265. Brian Naylor, "Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial," NPR, (Feb. 10, 2021), available at <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.
266. Brian Naylor, "Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial," NPR, (Feb. 10, 2021), available at <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.
267. Brian Naylor, "Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial," NPR, (Feb. 10, 2021), available at <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.
268. Brian Naylor, "Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial," NPR, (Feb. 10, 2021), available at <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.
269. Brian Naylor, "Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial," NPR, (Feb. 10, 2021), available at <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.
270. Mike Pence (@Mike_Pence), Twitter, Jan. 6, 2021 1:02 p.m. ET, available at https://twitter.com/Mike_Pence/status/1346879811151605762. Between 12:45 and 1:00 p.m., Vice President Pence processed with the Senate to the House Chamber. See Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), pp. 202-03. The Vice President's statement was issued publicly and distributed on the House floor before the Vice President convened the joint session at approximately 1:05 p.m. See Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 173; see also Donna Casata and Felicia Sonmez, "Congress Meets in Joint Session to Confirm Biden's Win, Over the Objections of Dozens of Republicans," *Washington Post*, (Jan. 6, 2021), available at <https://www.washingtonpost.com/politics/2021/01/06/congress-electoral-college-vote-live-updates/#link-DUX3QUF3TVDNZDEGO7KIK2JSYE>.
271. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 164.
272. Mike Pence (@Mike_Pence), Twitter, Jan. 6, 2021 1:02 p.m. ET, available at https://twitter.com/Mike_Pence/status/1346879811151605762; see also Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000121, (January 6, 2021, Dear Colleague letter issued by Vice President Pence).
273. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 27-28 (testifying that, in consultation with the Senate Parliamentarian, the Vice President purposefully revised the standard language used by previous vice presidents at the joint session of Congress because of efforts by the

Trump Campaign and allies to create the public perception that there were “other slates of electors that were being considered or [] being put forward.”).

274. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 186-88; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 53-54; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), pp. 50-51. The Senate Parliamentarian offers advice and guidance on compliance with the Senate’s rules. See CRS Report, The Office of the Parliamentarian in the House and Senate, (Nov. 28, 2018) RS20544. The Office of the Secretary of the Senate, on behalf of the Senate Parliamentarian and her staff, declined requests for information about this topic, as well as other January 6-related topics, from the Select Committee citing the independent relationship of the Senate and House as well as “historical congressional norms.”
275. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 64; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), pp. 54-56 (testifying that the Vice President’s understanding of his role as explained in the Dear Colleague letter he released on January 6th was set as of his meeting with the Parliamentarian on January 3rd).
276. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 68-70; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 2728; Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chris Hodgson Production), 00163, (Vice President Superscript for Joint Session to Count Electoral Ballots January 6, 2021), 00181, (Response to Submissions NOT Certified by a State); Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000103_0001 (Pence joint session scripted responses).
277. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 42. Jacob learned through the media that Trump electors had met and purported to cast electoral votes but, seeing no indication that any of the groups that met had “an imprimatur of State authority,” he concluded that they would not qualify as competing slates under the Electoral Count Act. See Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 51; see also Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 54 (“I’m sure I, either in my oral conversation with Elizabeth [MacDonough] or in looking at this spreadsheet, confirmed my conclusion that none of these had the requisite State authority.”).
278. The Senate Parliamentarian and her staff tracked the receipt of legitimate electoral votes from the states as well as the private citizen submissions (including the fake slates submitted by Trump electors) and identified the many deficiencies of the fake documents. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP R0000323_0001 (Jan. 3, 2021 email exchange with Senate Parliamentarian), VP R0000417_0001 (Jan. 2 and 3, 2021 email exchange with Senate Parliamentarian), VP R0000418_0001 (list of deficiencies in alternate elector slates); Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chris Hodgson Production), 00094, (list of deficiencies in alternate elector slates). The Senate Parliamentarian reviewed each purported slate of electoral votes to separate those in regular form and authorized by a State from those submitted by private citizens—the Trump Campaign’s fake electors fell into this latter category. See Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 53–54; see also Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), pp. 44-45.

279. "House Chamber During Joint Session," C-SPAN, at 11:07–11:37, Jan. 6, 2021, available at <https://www.c-span.org/video/?507748-1/house-chamber-joint-session> (emphasis added).
280. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Andrew Hitt, (Feb. 28, 2022), pp. 94–95. *See also* Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000076, VP-R0000417, VP-R0000418, (January 3, 2021, emails and spreadsheet showing OVP staff tracking the arrival of fake electors' certificates).
281. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Andrew Hitt Production), Hitt000090 (text messages exchanged between Republican officials in Wisconsin, including statement that "[f]reaking trump idiots want someone to fly original elector papers to the Senate President.").
282. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chris Hodgson Production), 00012, (message from Rep. Kelly's Chief of Staff, Matt Stroia, to Chris Hodgson on Jan. 6, 2021, at 8:41 am), 00058, (messages from Senator Johnson's Chief of Staff, Sean Riley, to Chris Hodgson on Jan. 6, 2021, around 12:37 pm).
283. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chris Hodgson Production), 00058 (Chris Hodgson responding to Sean Riley, "Do not give that to him. He's about to walk over to preside over the joint session, those were supposed to come in through the mail[.]" And, "The VP absolutely should not receive any mail that hasn't been screened.").
284. *See, e.g.*, "House Chamber During Joint Session," C-SPAN, at 15:33–15:59, Jan. 6, 2021, available at <https://www.c-span.org/video/?507748-1/house-chamber-joint-session>.
285. Karoun Demirjian, "GOP Members Object to Arizona's Electoral Votes for Biden," *Washington Post*, (Jan. 6, 2021), available at <https://www.washingtonpost.com/politics/2021/01/06/congress-electoral-college-vote-live-updates/#link-TSWL74F2SVHBHET7GQR5IEP6FI>.
286. "House Chamber During Joint Session," C-SPAN, at 15:59–17:16, Jan. 6, 2021, available at <https://www.c-span.org/video/?507748-1/house-chamber-joint-session>.
287. "House Chamber During Joint Session," C-SPAN, at 17:16–18:01, Jan. 6, 2021, available at <https://www.c-span.org/video/?507748-1/house-chamber-joint-session>.
288. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 29.
289. House vote on Arizona (Roll No. 10): 167 Cong. Rec. H93 (daily ed. Jan. 6, 2021): 121–303; House vote on PA (Roll No. 11): 167 Cong. Rec. H112 (daily ed. Jan. 6, 2021): 138–282; Senate vote on Arizona (Rollcall Vote No. 1 Leg.): 167 Cong. Rec. S31–32 (daily ed. Jan. 6, 2021): 6–93; Senate vote on PA (Rollcall Vote. No. 2 Leg.): 167 Cong. Rec. S38 (daily ed. Jan. 6, 2021): 7–92.
290. Katie Meyer, "Congress Certifies Pa. Results, Biden's Victory After Chaotic Day of Violent Insurrection," *WHYY*, (Jan. 6, 2021), available at <https://whyy.org/articles/casey-fitzpatrick-condemn-violent-insurrection-as-congress-moves-toward-certifying-biden/>.
291. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 173–74.
292. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 173–75.
293. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 193.
294. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), pp. 208–09.
295. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), pp. 208–10; Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), P-R001019–P-R001020 (Jan. 6, 2021, NSC Chat Log).

296. Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021 2:24 p.m. ET, available at <https://web.archive.org/web/20210106192450/https://twitter.com/realdonaldtrump/status/1346900434540240897>.
297. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), P-R001019–P-R001020 (NSC Chat Log).
298. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Sarah Matthews, (Feb. 8, 2022), pp. 37-38.
299. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 30-31.
300. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 30-31.
301. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 30-31.
302. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), P-R001019–P-R001020 (NSC Chat Log).
303. See Chapter 8; see also Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 31-32.
304. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
305. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 63-65.
306. On the evening of January 6, 2021, the President's Military Aide told the Vice President's Military Aide (who relayed it to the Secret Service) that Marc Short's access to the White House complex had been cancelled. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Secret Service Production), CTRL0000513149 (January 6-7, 2021), CTRL0000673145 (January 6, 2021). Several people relayed to Marc Short that "some who instigated the President"—possibly Peter Navarro—suggested to the President that "Marc was responsible for leading the Vice President on the path he took," which resulted in the President exclaiming that Mr. Short should be locked out of the White House. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 236-37; see also Biba Adams, "Pence's Chief of Staff Denied Entry into WH: Trump 'Blaming Me'," *Yahoo News*, (Jan. 7, 2021), available at <https://www.yahoo.com/video/pence-chief-staff-denied-entry-173848235.html>.
307. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 238.
308. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), p. 31, 45 ("The reason was he felt like, for the world's greatest democracy, to see a motorcade, a 15-car motorcade fleeing the Capitol would send all the wrong signals. So he was adamant to say: I want to stay here in the Capitol."); see also Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
309. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 29-31, 44-45; Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 176-77; Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.

310. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 198.
311. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 198-99.
312. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 198-99.
313. Jacob told the Select Committee that he recognized that January 6 was going to be "an historically important day" and he wanted to memorialize exactly what he thought of the arguments made by Eastman on January 5th, to supplement the memo he wrote to Vice President Pence reflecting the arguments Eastman made on January 4th. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), pp. 200-01.
314. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman005370 (January 6, 2021, emails between Greg Jacob and John Eastman).
315. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman005379 (January 6, 2021, emails between Greg Jacob and John Eastman).
316. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 200.
317. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 200.
318. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), pp. 246-47.
319. "READ: Mike Pence's Statement to the Senate on the Storming of the Capitol," *U.S. News*, (Jan. 6, 2021), available at <https://www.usnews.com/news/elections/articles/2021-01-06/read-mike-pences-statement-to-the-senate-on-the-storming-of-the-capitol>; see also Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Chris Hodgson, (Mar. 30, 2022), p. 246 (testifying that the Vice President wrote his remarks himself in his ceremonial office after the Capitol was cleared).
320. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000155, (January 6, 2021, emails between Greg Jacob and John Eastman).
321. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol, (National Archives Production), VP-R0000155, p. 1, (January 6, 2021, emails between Greg Jacob and John Eastman).
322. Select Committee to Investigate the January 6th Attack on the United States Capitol, Hearing on the January 6th Investigation, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
323. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000155, (January 6, 2021, emails between Greg Jacob and John Eastman). Note that Greg Jacob's testimony establishes that this email was likely received on January 6, 2021, at 11:44 p.m., not at 4:44 a.m. the following morning as shown on the face of this document as produced. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 205. As noted in the Executive Summary, the Select Committee also received certain documents in UTC time, which is five hours ahead of EST.
324. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman005479 (January 6, 2021, emails between Greg Jacob and John Eastman). This email represents John Eastman again encouraging, in writing and just after the violent attack on the Capitol had been quelled,

that the Vice President use this as a justification for a further and much more serious violation of the law—delaying the certification. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>. Eastman attempted to minimize what he was doing by calling the Electoral Count Act a “minor procedural statute.” Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Greg Jacob, (Feb. 1, 2022), p. 133. In an email sent at 1:33 p.m., just before the Capitol was breached, Eastman wrote, “I’m sorry Greg, but this is small minded. You’re sticking with minor procedural statutes while the Constitution is being shredded.” Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (National Archives Production), VP-R0000166.

325. Select Committee to Investigate the January 6th Attack on the United States Capitol, *Hearing on the January 6th Investigation*, 117th Cong., 2d sess., (June 16, 2022), available at <https://www.govinfo.gov/committee/house-january6th>.
326. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), pp. 43-44.
327. Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Eric Herschmann, (Apr. 6, 2022), pp. 43-44.
328. Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Chapman University Production), Chapman0064047, (January 11, 2021, email from John Eastman to Rudy Giuliani).
329. Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Marc Short, (Jan. 26, 2022), pp. 35-36.