

<p><b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b> 1437 Bannock St. Denver, CO 80203</p>	<p>DATE FILED: November 10, 2023 5:30 PM</p> <p>▲ COURT USE ONLY ▲</p>
<p><b>Petitioners:</b> NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAUFER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN,</p> <p>v.</p> <p><b>Respondent:</b> JENA GRISWOLD, in her official capacity as Colorado Secretary of State,</p> <p>and</p> <p><b>Intervenors:</b> COLORADO REPUBLICAN STATE CENTRAL COMMITTEE, and DONALD J. TRUMP.</p>	
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**PETITIONERS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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On September 6, 2023, Petitioners Norma Anderson, Michelle Priola, Claudine Cmarada, Krista Kafer, Kathi Wright, and Christopher Castilian brought this action under C.R.S. § 1-4-1204(4) and § 1-1-113(1) to challenge the listing of Intervenor Donald J. Trump as a candidate on the 2024 Republican presidential primary election ballot. Petitioners claim Trump is disqualified from public office under Section 3 of the Fourteenth Amendment to the Constitution of the United States and therefore ineligible to appear on Colorado’s ballots. The Court held a five-day evidentiary hearing from October 30 through November 3, 2023, with closing arguments on November 15, 2023. Based on the evidence and argument presented, Petitioners respectfully propose that the Court adopt the following findings of fact and conclusions of law.

## **PROPOSED FINDINGS OF FACT**

### **I. The Parties**

1. Petitioners Norma Anderson, Michelle Priola, Claudine Cmarada, and Krista Kafer are each registered voters affiliated with the Republican Party who reside in Colorado. Joint Stipulated Facts (“Stipulation”) ¶¶ 1–4. Petitioners Kathi Wright and Christopher Castilian are each registered voters unaffiliated with any political party who reside in Colorado. *Id.* ¶¶ 5–6. Each are eligible electors as defined in C.R.S. § 1-1-104(16).

2. Respondent Jena Griswold is the Secretary of State of Colorado (the “Secretary”) and is sued solely in her official capacity. *Id.* ¶ 7.

3. Intervenor Donald J. Trump served as 45th President of the United States from January 20, 2017, to January 20, 2021. *Id.* ¶ 8. On January 20, 2017, Trump took the Presidential Oath of Office, swearing to “faithfully execute the Office of President of the United States,” and “to the best of [his] Ability, preserve, protect and defend the Constitution of the United States.” U.S. Const. art. II § 1, cl. 8; Stipulation ¶ 9.

4. Trump was a candidate for re-election in 2020. Stipulation ¶ 10.

5. On November 15, 2022, Trump publicly announced his 2024 presidential campaign. *Id.* ¶ 16.

6. On October 11, 2023, the Secretary received a notarized statement of intent from Trump to appear on the presidential primary ballot, along with the required filing fee and the Colorado Republican Party’s approval of his candidacy as required under C.R.S. § 1-4-1204(1). *Id.* ¶ 17.

7. Intervenor Colorado Republican State Central Committee (“CRSCC”) is an unincorporated nonprofit association and political party committee in the state of Colorado, operating under Colorado law. State Party’s Verified Petition in Intervention ¶ 5.

## **II. Proceedings**

8. On September 6, 2023, Petitioners filed their Verified Petition under C.R.S. §§ 1-4-1204, 1-1-113, 13-51-105 and C.R.C.P. 57(a). Petitioners alleged two claims for relief. First, they asserted a claim against the Secretary pursuant to C.R.S. § 1-4-1204 and § 1-1-113, alleging that it would be a breach or neglect of duty for her to place Donald J. Trump on the presidential primary election ballot based on his disqualification under Section 3 of the Fourteenth Amendment. Second, they requested declaratory relief against both Respondent Griswold and then-Respondent Donald J. Trump declaring Trump constitutionally ineligible under Section 3.

9. At the September 18, 2023 status conference, Petitioners argued that C.R.S. § 1-4-1204(4) requires a hearing to be held within five days after the challenge is filed, and that they were ready to proceed in an expedited manner to meet the statutory deadline for ballot certification. Trump disputed the applicability of the expedited timeline. Secretary Griswold noted that primary ballots must be certified by January 5, 2024, sixty days before the primary election on March 5, 2024, to comply with both state and federal law. The Court set a five-day hearing to begin on October 30, 2023, with briefings for motions to dismiss in the interim.

10. The Court granted the CRSCC’s motion to intervene. The parties later stipulated to the dismissal of Petitioners’ declaratory relief claim, and the Court dismissed the claim while granting Trump’s motion to intervene.

11. On September 22, 2023, Trump filed a special motion to dismiss under Colorado’s anti-SLAPP statute, C.R.S. § 13-20-1101. By Order dated October 11, 2023, the Court denied that motion. On October 26, 2023, Trump filed a Motion to Dismiss Based on the First Amendment that repeats the First Amendment arguments raised in his anti-SLAPP motion. Those arguments are addressed in this decision. Petitioners have filed an opposition.

12. On September 22, 2023, Trump separately moved to dismiss Petitioners’ claims on state law grounds. By Order dated October 20, 2023, the Court denied that motion.

13. On September 22, 2023, the CRSCC moved to dismiss. By Order dated October 20, 2023, the Court denied that motion.

14. On September 22, 2023, Petitioners moved to dismiss CRSCC’s First Claim for Relief. By Order dated October 20, 2023, the Court granted that motion.

15. On September 29, 2023, CRSCC filed a motion for judgment on the pleadings. By Order dated October 20, 2023, the Court denied that motion.

16. On September 29, 2023, Trump filed another motion to dismiss Petitioners’ claims on federal law grounds. By Order dated October 25, 2023, the Court denied that motion.

17. The Court held a five-day bench trial beginning October 30, 2023.

18. Petitioners called eight witnesses: D.C. Metropolitan Police Officer Daniel Hodges, U.S. Representative Eric Swalwell, former U.S. Capitol Police Officer Winston Pingeon, Professor Peter Simi, Professor William Banks, Professor Gerard Magliocca, the Secretary of State’s Deputy Elections Director Hilary Rudy, and former Chief Investigative Counsel for the January 6 Committee Timothy Heaphy.

19. Trump called seven witnesses: former Chief of Staff to the Acting Secretary of Defense Kash Patel, Trump campaign adviser Katrina Pierson, Women for America First founder Amy Kremer, U.S. Representative Paul Gosar’s Chief of Staff Tom Van Flein, Colorado Republican Party Treasurer Tom Bjorklund, U.S. Representative Ken Buck, and Professor Robert Delahunty. Trump did not testify.<sup>1</sup>

20. The CRSCC and Secretary Griswold called no witnesses.

21. On November 15, 2023, the Court heard the parties’ closing arguments.

### **III. Trump Lays the Groundwork to Undermine the 2020 Presidential Election and Uses that Planning to Disrupt the Constitutional Transfer of Power**

#### **A. Trump Learns How His Followers Respond to Calls for Political Violence**

22. Trump often used inflammatory rhetoric with his supporters. *See, e.g.*, P159 (Video from Speech by Donald Trump in Wilmington, NC, commenting on Hillary Clinton Aug. 9, 2016); P052 (Video from Speech by Donald Trump in Las Vegas, NV telling supporters that, in the “old days” a protester would be “carried out on a stretcher,” Feb. 22, 2016); 10/31/2023 Tr. 214:6–24 (Simi). After hearing this rhetoric, his supporters would often respond with violence against political opponents. *See, e.g.*, P050 (video from Speech by Donald Trump in Birmingham, AL, Nov. 21, 2015); P048 (video from Fox News Interview of Donald Trump, Nov. 22, 2015); 10/31/2023 Tr. 70:1–4; 71:1–4, 71:13–72:1, 235:3–10 (Simi). Trump observed this pattern and repeatedly encouraged political violence by his supporters against political enemies. *See* 10/31/2023 Tr. 66:7–17, 173:19–174:3, 212:3–19, 213:10–215:12, 215:22–219:18 (Simi).<sup>2</sup>

23. Petitioners called an expert in political extremism, Professor Peter Simi. Professor Simi has a Ph.D. in Sociology, teaches at Chapman University, and has spent his 27-year career focused on political violence and extremism. 10/31/23 Tr. 11:15–12:12 (Simi). He has written two books on political violence and extremism—“American Swastika” and “Out of Hiding”—and published over 60 peer-reviewed articles or book chapters on different facets of political violence and extremism. 10/31/23 Tr. 21:15–23:2 (Simi). He has provided training on political extremism and violence to the FBI, Department of Homeland Security, the Federal Bureau of Prisons, the Department of Justice, and a number of state and local law enforcement agencies across the country. 10/31/23 Tr. 23:20–24:6 (Simi). Professor Simi has been qualified as an expert on

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<sup>1</sup> Petitioners had previously sought leave to conduct a trial preservation deposition to obtain testimony from Trump. The Court denied that request by Order on October 22, 2023.

<sup>2</sup> Citations to the trial transcript will identify the date, page, and line number of the cited transcript followed by a parenthetical identifying the testifying witness, where applicable.

political extremism and violence several times, including in *Sines v. Kessler*, the civil suit about the deadly 2017 Unite the Right rally in Charlottesville, Virginia. 10/31/23 Tr. 20:9–21:14 (Simi).

24. Professor Simi teaches dedicated classes on research methods and used the well-accepted methods he teaches in his work in this case. 10/31/23 Tr. 12:1–16:20 (Simi). These methods included interviews, fieldwork, and archival research. *Id.* Professor Simi used all three of these methodologies in his work here. 10/31/23 Tr. 19:20–23 (Simi). Professor Simi has interviewed 217 right-wing extremists, including 14 members of the Proud Boys, Oath Keepers, and Three Percenters. 10/31/23 Tr. 18:5–12 (Simi). He has spent thousands of hours doing fieldwork—spending time with people in their natural environments to learn from their perspective and their lives in their natural settings—including with members of these same three groups involved in January 6. 10/31/23 Tr. 12:19–14:1; 17:7–18 (Simi). In addition, Professor Simi conducted extensive archival research in this case, including on the groups involved in the Capitol attack. 10/31/23 Tr. 18:13–19:19 (Simi).

25. Professor Simi reviewed Trump’s relationship with his supporters over the years, identified a pattern of calls for violence that his supporters responded to, and explained how that long experience allowed Trump to know how his supporters responded to his calls for violence using a shared language that allowed him to maintain plausible deniability with the wider public. 10/31/23 Tr. 56:23–59:17; 200:22–203:12 (Simi).

26. After reviewing the testimony, including cross-examination, and the examples of Trump’s communications with his supporters that Professor Simi identified, the Court finds Professor Simi to be an expert on political extremism, including how extremists communicate and how the events leading up to and including the January 6 attack relate to longstanding patterns of behavior and communication by political extremists. 10/31/23 Tr. 34:1–13; 11/3/23 Tr. 269:21–270:19. The Court also finds Professor Simi’s testimony to be credible. Trump himself agrees that his supporters “listen to [him] like no one else” and his own witness, Amy Kremer, testified that Trump’s supporters are “very reactive” to his words. P134 (video of Trump town hall in May 2023); 11/2/2023 Tr. 49:4–6 (Kremer). Highlighted below are examples of the observable pattern of call-and-response that Trump developed and used to incite violence by his supporters.

27. At an October 23, 2015 rally, Trump said to his supporters in response to protestors disrupting the rally, “See, the first group, I was nice ... The second group, I was pretty nice. The third group ... I’ll be a little more violent. And the fourth group I’ll say, get the hell outta here!” P127 (video of Trump Oct. 23, 2015 campaign rally). The next month, Trump used this very language, telling his supporters to “get [a protester] the hell out of here” and the protester was then assaulted. When asked about the attack the next day, Trump said “maybe [the protester] should have been roughed up.” P050 (video from Speech by Donald Trump in Birmingham, AL, Nov. 21, 2015); 10/31/2023 Tr. 70:1–4; 235: 3–10 (Simi). This use of the specific phrase to call for violence and the after-the-fact praise of his supporters’ violence towards a political opponent show Trump’s intention that using violence for political ends was appropriate. 10/31/2023 Tr. 71:13–72:1 (Simi).

28. At a February 2016 rally, Trump told his supporters to “knock the crap out of” any protesters who threw tomatoes and promised to pay the legal fees of anyone carrying out the assault. P051 (Video from Speech by Donald Trump in Cedar Rapids, IA, Feb. 1, 2016); 10/31/2023 Tr. 213:14–25 (Simi).



29. At another February 2016 rally, Trump told his supporters that, in the “old days” a protester would be “carried out on a stretcher,” and that he would like to “punch him in the face.” P052 (Video from Speech by Donald Trump in Las Vegas, NV, Feb. 22, 2016); 10/31/2023 Tr. 214:6–25 (Simi).

30. When asked about his supporters’ violent acts in March 2016, Trump said the violence was “very, very appropriate” and what “we need a little bit more of,” after falsely blaming protesters for initiating the violence. P053 (Video from Speech by Donald Trump in Palm Springs, FL, Mar. 11, 2016); 10/31/2023 Tr. 67:6–25 (Simi).

31. At an August 2016 rally, Trump noted “Second Amendment people” might be able to prevent Hillary Clinton (if elected President) and judges appointed by her from interpreting the Constitution in unfavorable ways, seemingly sanctioning the use of firearms against government officials. P159 (Video from Speech by Donald Trump in Wilmington, NC, Aug. 9, 2016).

32. In August 2017, when asked about the white supremacist “Unite the Right” rally in Charlottesville, Virginia, where a counter-protester was murdered, Trump defended the white supremacists, stating there “was blame on both sides ... some very fine people on both sides.” P056 (Video from Press Conference of Donald Trump, Aug. 15, 2017); 10/31/2023 Tr. 68:12–20 (Simi). Far-right extremists, including David Duke, Richard Spencer, and Daily Stormer founder Andrew Anglin, thanked Trump for his comments and took them as an endorsement, notwithstanding Trump’s condemnation of neo-nazis and white supremacists in the same speech, which they understood were insincere statements intended to create plausible deniability. 10/31/2023 Tr. 68:21–69:4, 69:6–16, 74:18–21, 75:2–9, 166:9–20, 226:11–227:7 (Simi).

33. At an October 2018 rally, Trump referred to a candidate who body slammed a reporter as “my kind of guy.” The crowd erupted in applause. P057 (Video from Speech by Donald Trump in Montana, Oct. 18, 2018); 10/31/2023 Tr. 215:22–216:5 (Simi).

34. At a May 2019 rally, when one of his supporters suggested shooting migrants, Trump minimized the overt call for violence, stating: “That’s only in the panhandle you can get away with that statement.” The crowd cheered. P058 (Video from Speech by Donald Trump in Panama City, FL, May 8, 2019).

35. In a May 2020 tweet referring to an armed occupation of the Michigan State Capitol by anti-government extremists, Trump tweeted that the attackers were “very good people” and that the Michigan Governor should respond by appeasing them. P148 at 3 (Compilation of Trump tweets).

36. On May 29, 2020, President Trump threatened to deploy “the Military” to Minneapolis to shoot “looters” amid protests over the police killing of George Floyd, tweeting “when the looting starts, the shooting starts.” P148 at 5 (Compilation of Trump tweets).

37. During a presidential debate on September 29, 2020, Trump refused to denounce white supremacists and violent extremists and instead told the Proud Boys to “stand back and stand by,” later adding that “somebody’s got to do something about Antifa and the left.” Ex. 1083 (Video from Presidential Debate, Sept. 29, 2020).

38. Trump’s words electrified the Proud Boys, causing their membership to triple. P109 (Exhibit VC12 to Final Report, Select Committee to Investigate the January 6th Attack on the United States Capitol); 10/31/2023 Tr. 77:13–21 (Simi). Proud Boys Chairman Enrique Tarrio wrote on the far-right social media site Parler, “Standing by sir.” P109 (Exhibit VC12 to Final Report, Select Committee to Investigate the January 6th Attack on the United States Capitol). The Proud Boys and other extremists understood this as a directive to be prepared for future violence. 10/31/2023 Tr. 78:21–23 (Simi)

39. Trump also regularly endorsed incendiary figures connected with far-right extremists, including Alex Jones, Ali Alexander, Steve Bannon, and Roger Stone. Katrina Pierson, a senior advisor to the Trump campaign who helped to organize the Ellipse rally, testified that Trump “likes the crazies” (referring to individuals like Alexander and Jones, whose speeches are often “incendiary” and “inflammatory”) “who viciously defended him in public.” 11/1/23 Tr. 287:2–12; 299:4–16 (Pierson); *see also* 11/2/23 Tr. 57:15–58:3 (Kremer) (calling Jones and Alexander “flamethrowers” and “agitators” who “want to get everyone riled up”). Trump retained Bannon and Stone as advisers, two individuals with very close relationships with far-right extremists. 10/31/2023 Tr. 199:23–200:8, 222:21–22, 224:2–13 (Simi). Trump would eventually issue a presidential pardon to Bannon. 10/31/2023 Tr. 223:1–3 (Simi). He had courted these fringe figures for many years, such as by endorsing far-right conspiracy theories like birtherism. 10/31/2023 Tr. 56:23–58:17 (Simi).

40. On October 30, 2020, a convoy of Trump supporters driving dozens of trucks (calling themselves a “Trump Train”) surrounded a Biden-Harris campaign bus on a Texas highway and forced it to slow to a crawl, came within inches of hitting it, and slammed into a campaign staffer’s follow car. On October 31st, Trump tweeted a stylized video of the Trump Train confrontation and stated, “I LOVE TEXAS!” P148 at 8 (Compilation of Trump tweets); P071 (Video retweeted by @realDonaldTrump, Oct. 31, 2020). On November 1st, in response to news that the FBI was investigating the incident, Trump tweeted, “In my opinion, these patriots did nothing wrong” and indicated they should not be investigated. P148 at 9 (Compilation of Trump tweets). Later that day at a rally in Michigan, Trump again celebrated the incident, falsely stating his supporters were “protecting [Biden’s] bus ..., because they’re nice,” and boasting “they had hundreds of cars, Trump, Trump. Trump. Trump and the American flag.” P067 (Video from Speech by Donald Trump in MI, Nov. 1, 2020).

41. Throughout these events, Trump endorsed or failed to credibly condemn violence by his supporters and knowingly confirmed his supporters’ violent interpretations of his directives. Professor Simi testified that through these repeated interactions, Trump developed and employed a coded language based in doublespeak that was understood between himself and far-right extremists, while maintaining a claim to ambiguity among a wider audience. 10/31/2023 Tr. 53:2–6, 53:10–54:12, 65:20–66:20, 76:9–23, 211:13–215:12, 215:22–218:24 (Simi). For example, violent far-right extremists understood that Trump’s calls to “fight,” which most politicians would mean only symbolically, were, when spoken by Trump, literal calls to violence by these groups, while Trump’s statements negating that sentiment were insincere and existed to obfuscate and create plausible deniability. 10/31/2023 Tr. 49:14–21, 59:7–17, 101:20–102:6 (Simi). The Court finds that Trump knew his violent supporters understood his statements this way, and Trump knew

he could influence his supporters to act violently on his behalf. 10/31/2023 Tr. 126:11–19, 221:10–21 (Simi).<sup>3</sup>

## **B. Trump Inflames Supporters with False Claims of Election Fraud**

42. Echoing doubts he cast on earlier elections, Trump claimed well before the 2020 election that any loss would be fraudulent. 10/31/2023 Tr. 61:15–62:1, 63:3–11 (Simi). He portrayed the election as being “stolen” in a way that “resonate[d]” with far-right extremists and aligned with their “perspective that...there’s this corrupt system that’s preventing them from electing somebody that they support, that the system is rigged.” 10/31/2023 Tr. 64:6–16, 168:20–169:6 (Simi).

43. In a July 30, 2020 tweet, Trump proposed unlawfully delaying the 2020 election to prevent anticipated voter fraud, writing: “With Universal Mail-In Voting (not Absentee Voting, which is good), 2020 will be the most INACCURATE & FRAUDULENT Election in history. It will be a great embarrassment to the USA. Delay the Election until people can properly, securely and safely vote????” P148 at 6 (Compilation of Trump tweets).

44. At an August 17, 2020 campaign rally in Wisconsin, Trump stated, “the only way we’re going to lose this election is if the election is rigged. Remember that. It’s the only way we’re going to lose this election . . . The only way they’re going to win is that way. And we can’t let that happen.” P061 (Video from Speech by Donald Trump in Wisconsin, Aug. 17, 2020).

45. While speaking at the Republican National Convention on August 24, 2020, Trump called mail-in voting “the greatest scam in the history of politics,” accused Democrats of “stealing millions of votes” and repeated the lie that “the only way they can take this election away from us is if this is a rigged election.” P062 (Video from Speech by Donald Trump in Charlotte, NC, Aug. 24, 2020).

46. On September 23, 2020, when asked at a White House press briefing about riots that occurred earlier in the year and whether he would commit to a peaceful transfer of power after the election, President Trump refused, stating, “Well, we’re going to have to see what happens. . . . I’ve been complaining very strongly about the ballots, and the ballots are a disaster . . . Get rid of the ballots and you’ll have a very trans—we’ll have a very peaceful—there won’t be a transfer, frankly; there’ll be a continuation. The ballots are out of control. You know it.” P064 (Video from White House Press Briefing, Sept. 23, 2020).

47. On November 2, 2020, the day before Election Day, Trump criticized the U.S. Supreme Court for allowing Pennsylvania to extend the time for receiving mail-in ballots, tweeting that the Court’s decision was “VERY dangerous,” “will allow rampant and unchecked cheating

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<sup>3</sup> The Court’s finding is consistent with other judicial findings about the capacity of Trump’s words to cause violence. *See, e.g., United States v. Trump*, slip. op. 2, No. 23-CR-257 (TSC) (D.D.C. Oct. 17, 2023) (“Undisputed testimony cited by the government demonstrates that when Defendant has publicly attacked individuals, including on matters related to this case, those individuals are subsequently threatened and harassed.”).

and will undermine our entire systems of laws,” and “will also induce violence in the streets,” imploring that “[s]omething must be done!” P148 at 10 (Compilation of Trump tweets).

48. On election night, Trump falsely claimed victory, asserting from the White House: “This is a fraud on the American public. This is an embarrassment to our country. We were getting ready to win this election. Frankly, we did win this election. We did win this election.” P047 (Video of Speech by Donald Trump from the White House, Nov. 4, 2020).

49. On November 4, based on incomplete early returns, President Trump tweeted: “We are up BIG, but they are trying to STEAL the Election. We will never let them do it.” P148 at 10 (Compilation of Trump tweets).

50. On November 5, with his chances of victory dwindling, Trump tweeted “STOP THE COUNT!” Halting the counting of votes at that point would have disenfranchised millions and violated federal and state laws. P148 at 12 (Compilation of Trump tweets).

51. On November 7, the Associated Press called the presidential election for Joe Biden. P078 (Compilation of Findings Contained in Final Report, Select Committee to Investigate the January 6th Attack on the United States Capitol (“January 6 Select Committee Finding”) # 162).

52. On November 8, Trump tweeted, “We believe these people are thieves. The big city machines are corrupt. This was a stolen election. Best pollster in Britain wrote this morning that this clearly was a stolen election” P148 at 12 (Compilation of Trump tweets).

53. In the ensuing weeks, Trump’s advisors (within his administration, his campaign, and his legal team) repeatedly told him he had virtually no chance of victory, and that there was no evidence of widespread election fraud sufficient to change the election results. P078 (January 6 Select Committee Finding # 30, 36, 77).

54. Trump issued scores of tweets containing false allegations that the election was stolen and asserted those same allegations repeatedly in speeches to his supporters. *See, e.g.*, P148 at 13 (Nov. 9, 2020, 2:54 pm); 13 (Nov. 10, 2020, 9:37 pm); 14 (Nov. 12, 2020, 11:34 am); 15 (Nov. 13, 2020, 7:50 pm); 18 (Nov. 16, 2020, 8:26 am); 20 (Nov. 19, 2020, 8:46 am); 24 (Nov. 30, 2020, 6:39 pm); 30 (Dec. 5, 2020, 5:33 pm); 38 (Dec. 13, 2020, 5:49 pm); 47 (Dec. 22, 2020, 10:29 am) (Compilation of Trump tweets); P099 (Video from Speech by Donald Trump from the White House, Dec. 2, 2020); P100 (Video from Speech by Donald Trump from the White House, Dec. 22, 2020).

55. Trump filed dozens of meritless lawsuits seeking to overturn the results of the election in various states. P078 (January 6 Select Committee Finding # 164). Of the 62 lawsuits Trump filed, courts rejected 61 of them, and Trump’s partial victory on a procedural issue in the remaining case had no impact on the outcome of any election. P078 (January 6 Select Committee Finding # 164); *see, e.g., Donald J. Trump for President, Inc. v. Sec’y of Pennsylvania*, 830 F. App’x 377, 381, 391 (3d Cir. 2020) (“Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”); *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 906 (M.D. Pa. 2020) (“[T]he Trump Campaign . . . ask[s] this Court to disenfranchise almost seven million voters. . . . [T]his Court has been

presented with strained legal arguments without merit and speculative accusations, . . . unsupported by evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populated state.”); *Law v. Whitmer*, 477 P.3d 1124, \*18 (Nev. 2020) (unpublished) (attaching and affirming district court decision) (Trump’s allies “did not prove under any standard of proof that illegal votes were cast and counted, or legal votes were not counted at all, due to voter fraud”).<sup>4</sup>

56. A federal district judge in California found that President Trump likely made knowingly false claims of voter fraud, under oath, in an election suit filed in federal court in Georgia. The California court cited an email in which Trump adviser John Eastman stated that “the President” had been “made aware that some of the allegations (and evidence proffered by the experts) has been inaccurate [sic],” and that Trump signing a “verification” of the complaint “with that knowledge . . . would not be accurate.” *Eastman v. Thompson*, 636 F. Supp. 3d 1078, 1091 (C.D. Cal. 2022). Yet Trump and his attorneys then filed the complaint with the same inaccurate information, and Trump “signed a verification swearing under oath that the . . . inaccurate numbers ‘are true and correct’ or ‘believed to be true and correct’ to the best of his knowledge and belief.” *Id.* at 1091–92. The court found that the evidence showed “President Trump knew that the specific numbers of voter fraud were wrong but continued to tout those numbers, both in court and to the public.” *Id.* at 1092.

57. Trump’s efforts to overturn the election through the courts effectively ended on December 11, 2020, when the Supreme Court issued a one-paragraph order rejecting a lawsuit filed by the State of Texas to invalidate the election results in four other states. *See Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020). Trump responded by issuing tweets asserting that “[t]he Supreme Court really let us down. No wisdom, No Courage!,” complaining that the Court threw his suit out “without even looking at the many reasons it was brought. A Rigged Election, fight on!,” and telling his supporters that “[t]he Supreme Court had ZERO interest in the merits of the greatest voter fraud ever perpetrated on the United States of America.” P148 at 34–36 (Compilation of Trump tweets).

58. This Court finds that, by no later than December 14, 2020, Trump knew that his claims of election fraud sufficient to overturn the results of the 2020 election were false. In the weeks following the election, President Trump’s campaign experts and senior Justice Department staff had repeatedly informed Trump that there was no genuine evidence of substantial election fraud. P078 (January 6 Select Committee Finding #31, 36). Courts across the country had repeatedly rejected his claims of fraud, which included 22 judges appointed by Republican presidents and 10 judges appointed by Trump himself. *Id.* (# 164, 171); *see, e.g., Donald J. Trump for President, Inc.*, 830 F. App’x at 391; *Donald J. Trump for President*, 502 F. Supp. 3d at 906. Given Trump’s intense public focus on these issues during the weeks leading up to January 6, the Court infers that Trump knew the result of these court cases. The Court also infers that, if Trump had any actual evidence of substantial voter fraud at this time, he would have presented it in one or more of his many lawsuits. Moreover, no evidence has been presented in this case to show that

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<sup>4</sup> The Court takes judicial notice of pertinent court decisions and filings in other cases. *See* C.R.E. 201; *People v. Sena*, 2016 COA 161, ¶ 27, 395 P.3d 1148, 1153 (“existence of a [court] record” is subject to judicial notice).

Trump genuinely believed his claims of election fraud at the time. And by December 14, 2020, the certified electors had cast their votes for President Biden. Stipulation ¶ 12.

### **C. Trump’s Multi-Part Scheme To Obstruct The Constitutional Transfer of Power**

59. Article II of the Constitution, as modified by the Twelfth Amendment, governs election of the President. Article II created the Electoral College, providing that the states would select presidential electors in the manner provided by state legislatures, and those electors would in turn vote for the President. *See* U.S. Const. art. II, § 1, amend. XII. Every state selects presidential electors by popular vote, and each state’s laws provide for procedures to resolve election disputes, including through lawsuits if necessary. After any election issues are resolved in state or federal court, each state’s Governor transmits a “certificate of the ascertainment” of the duly chosen Electoral College electors to the National Archives for inspection and counting by Congress. 3 U.S.C. §§ 6, 15. The Electoral College meets in mid-December to cast their votes, which are then sent to and counted by Congress on January 6th. 3 U.S.C. §§ 7, 15.

60. Article II limits the President to a four-year term of office. U.S. Const. art. II, § 1, cl. 1 (“He shall hold his Office during the Term of four Years.”). And the Twentieth Amendment provides that “[t]he terms of the President and the Vice President shall end at noon on the 20th day of January . . . of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.” *Id.* amend. XX, § 1.

61. The day before the Electoral College was scheduled to meet to cast their votes in the 2020 election, President Trump pressured states not to certify the election results, tweeting that “[s]wing States that have found massive VOTER FRAUD, which is all of them, CANNOT LEGALLY CERTIFY these votes as complete & correct without committing a severely punishable crime.” P148 at 38 (Compilation of Trump tweets).

62. On December 14, 2020, the Electoral College met and cast their votes in the 2020 election. Stipulation ¶ 12. The certified electors voted as follows: 306 for Joe Biden and 232 for Donald Trump. *Id.* The certified Electoral College votes were then submitted to Congress. *Id.* ¶ 13. The election was over, and Trump had lost.

63. Rather than accept his electoral defeat, Trump pursued a multi-part scheme to illegally overturn the election results, keep himself in office, and stop the constitutional transfer of power.

64. Trump and his allies prepared their own fake slates of electors in seven states that Trump lost, and those fake electors also met on December 14, 2020, to cast putative “votes” for Trump—even though each of the seven states had already certified their election results for Biden, and no State legislature had agreed to appoint a different slate of electors. P078 (January 6 Select Committee Finding # 208, 210). Trump and his allies then submitted slates of fake electors to Congress and the National Archives, and President Trump pressured Vice President Pence to unlawfully obstruct the January 6th certification proceeding based on those fake electoral slates. P078 (January 6 Select Committee Finding # 50, 57, 58, 147, 208, 210); *see, e.g.*, P148 at 75 (Jan.

5, 2021, 11:06 am), 80 (Jan. 6, 2021, 1:00 am, Jan. 6, 2021, 8:17 am) (Compilation of Trump tweets).

65. President Trump further sought to corruptly overturn the election results through direct pressure on Republican officeholders in various states both before and after the Electoral College met and voted in their respective states. P078 (January 6 Select Committee Finding # 5, 185); P148 at 14 (Nov. 11, 2020, 9:03 am); 15 (Nov. 13, 2020, 7:50 p.m); 16 (Nov. 14, 2020, 9:29 am); 20 (Nov. 19, 2020, 8:46 am); 23 (Nov. 30, 2020, 8:59 am); 24 (Nov. 30, 2020, 6:39 pm); 25 (Nov. 30, 2020, 6:40 p.m); 27 (Dec. 1, 2020, 10:27 pm); 29 (Dec. 5, 2020, 4:35 pm); 30 (Dec. 5, 2020, 5:33 pm); 30 (Dec. 7, 2020, 10:37 am); 31 (Dec. 7, 2020, 7:50 pm); 45 (Dec. 21, 2020, 10:30 am Part 1 and 2); 47 (Dec. 23, 2020, 12:08 p.m); 57 (Dec. 29, 2020, 5:55 pm); 60 (Dec. 30, 2020, 9:26 am); 61 (Dec. 30, 2020, 4:38 pm); 70 (Jan. 3, 2021, 8:29 am); 70 (Jan. 3, 2021, 8:57 am) (Compilation of Trump tweets). This effort included Trump’s infamous call to Georgia Secretary of State Brad Raffensperger, in which he demanded that Raffensperger “find 11,780 votes, which is one more than we have,” and threatened that his refusal to throw the election to Trump would be a “criminal offense.” P078 (January 6 Select Committee Finding # 180). Trump also pressured public officials in other states, including Pennsylvania, Michigan, and Arizona. P148 at 30 (Compilation of Trump Tweets); P078 (January 6 Select Committee Finding # 75, 185, 196).

66. Many of the state officials targeted by Trump’s campaign of intimidation were subject to a barrage of harassment and violent threats by Trump’s supporters—prompting Georgia election official Gabriel Sterling to issue a public warning to Trump to “stop inspiring people to commit potential acts of violence” or “[s]omeone’s going to get killed.” Trump saw and retweeted a video of that press conference with a message repeating the very rhetoric Sterling warned would cause violence. P148 at 27 (Compilation of Trump Tweets); P126 (Video from Press Conference by Gabriel Sterling, Dec. 1, 2020). Far-right extremists understood Trump’s refusal to condemn the violence cited in the video and his doubling down on the motivation for that violence as an endorsement of the use of violence to prevent the transfer of presidential power. 10/31/2023 Tr. 92:8–15, 93:24–94:6 (Simi).

67. Alongside Trump’s legal efforts, the fake elector scheme, and pressure and harassment campaign, Trump propelled the “Stop the Steal” movement and cross-country rallies in the lead-up to January 6 with continued false assertions of election fraud. P078 (January 6 Select Committee Finding # 263); 10/31/2023 Tr. 60:5–25 (Simi); *see, e.g.*, P148 at 13 (Nov. 9, 2020, 2:54 pm); 13 (Nov. 10, 2020, 9:37 pm); 14 (Nov. 12, 2020, 11:34 am); 15 (Nov. 13, 2020, 7:50 pm); 18 (Nov. 16, 2020, 8:26 am); 20 (Nov. 19, 2020, 8:46 am); 24 (Nov. 30, 2020, 6:39 pm); 30 (Dec. 5, 2020, 5:33 pm); 38 (Dec. 13, 2020, 5:49 pm); 47 (Dec. 22, 2020, 10:29 am); 64 (Jan. 1, 2021, 3:34 pm); 69 (Jan. 2, 2021, 9:04 pm) (Compilation of Trump tweets).

68. Between Election Day 2020 and January 6, Stop the Steal organizers held dozens of rallies around the country, inflaming Trump supporters with election disinformation and recruiting them to travel to Washington, D.C. for January 6. The rallies brought together many groups, including violent extremists such as the Proud Boys, Oath Keepers, and Three Percenters; QAnon conspiracy theorists; and white nationalists. While these groups had differing goals and ideologies, their common denominator was support for President Trump and his lie of a stolen election. P078 (January 6 Select Committee Finding # 263); 10/31/2023 Tr. 61:4–14 (Simi).

69. These same Stop the Steal leaders joined two “Million MAGA Marches” in Washington, D.C. on November 14, 2020, and December 12, 2020. Tens of thousands of Trump supporters attended the events, with protests focused on the Supreme Court building. 11/2/23 Tr. 20:20–22:17, 37:22–38:21 (Kremer). At that time, the Court was considering election challenges by Trump allies. P078 (January 6 Select Committee Finding # 263, 267, 268); 10/31/2023 Tr. 88:12–24 (Simi); 11/1/2023 Tr. 272:25–273:4 (Pierson). After the November rally turned violent, Trump acknowledged his supporters’ violence, but justified it as self-defense against “ANTIFA SCUM.” P148 at 17 (Compilation of Trump tweets). Far-right extremists understood Trump’s statement as another endorsement of the use of violence against his political opponents. 10/31/2023 Tr. 91:10–23 (Simi).

70. As the crowds gathered in Washington on December 12th, President Trump publicly assailed the Supreme Court for refusing to hear his fictitious claims of election fraud. P078 (January 6 Select Committee Finding # 267); P148 at 32 (Dec. 9, 2020, 8:39 am); 33 (Dec. 10, 2020, 9:24 am); 33 (Dec. 11, 2020, 3:28 pm); 34 (Dec. 11, 2020, 11:50 pm); 35 (Dec. 12, 2020, 12:24 pm); 36 (Dec. 12, 2020, 11:04 am) (Compilation of Trump tweets). Stop the Steal organizers Alex Jones, Owen Shroyer, and Ali Alexander understood his communications as a call to action and thereafter led a march on the Supreme Court, where the crowd chanted slogans such as “Stop the Steal!”, “1776!!”, “Our revolution!”, and “The fight has just begun!!” P078 (January 6 Select Committee Finding # 268).

71. Trump made sure to let the protesters at the Million MAGA Marches know that he approved of their mission. During the November rally, President Trump passed through the crowd in his presidential motorcade. 11/1/23 Tr. 306:8–24 (Pierson). Then, on the morning of December 12, President Trump tweeted: “Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn’t know about this, but I’ll be seeing them! #MAGA.” P148 at 36 (Compilation of Trump tweets). Later that day, President Trump flew over the protestors in Marine One. P148 at 37 (Compilation of Trump tweets); 11/1/23 Tr. 306:8–24 (Pierson).

#### **D. Trump Summons the Mob For January 6th**

72. After his legal challenges had all been rejected, Trump sent a tweet at 1:42 am on December 19, 2020, urging his supporters to travel to Washington for January 6: “Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6. Be there, will be wild!” P148 at 41 (Compilation of Trump tweets).

73. With this tweet, Trump’s scheme to overturn the election shifted focus to the idea that Vice President Pence could unilaterally keep Trump in power. The illegal plot posited that during the ceremonial counting of electoral votes on January 6, Pence could simply choose to reject the true electors who voted for Biden and instead recognize Trump’s fake slate of electors or return the slates to states for further proceedings. P078 (January 6 Select Committee Finding #50); P148 at 75 (Jan. 5, 2021, 11:06 am); 80 (Jan. 6, 2021, 1:00 am); 80 (Jan. 6, 2021, 8:17 am) (Compilation of Trump tweets).

74. Under the Twelfth Amendment and the Electoral Count Act, 3 U.S.C. § 15 (2018), electoral votes are sent to Congress for a joint session on January 6, meaning both houses sit in the same chamber, where Congress counts the votes from the states. If a Representative objects to the



counting of electoral votes from a state, they need a Senator to join in the objection. If that happens, the joint session recesses and goes back to each chamber. The Vice President has no role in the objections other than presiding over the proceedings. Prior certifications have not involved demands that the Vice President return the slates of electoral votes to states for further proceedings or violent mob attacks on the Capitol. 10/30/2023 Tr. 134:11-16 (Swalwell); 11/2/23 Tr. 187:3–188:15 (Buck).

75. The Court finds that, when he issued his tweet, Trump knew Vice President Pence had no lawful basis to obstruct the January 6 certification proceeding. First, as explained above, Trump knew no later than December 14, 2020, that his claims of election fraud sufficient to overturn the election were baseless, and that his legal challenges had run their course. Second, Trump knew that the states’ certified electors had voted in favor of Biden. P148 at 74 (1/4/2021 tweet, 10:07 am); 80–81 (1/6/2021 tweets). Third, the Court infers that Trump knew Vice President Pence had no authority to reject the lawfully certified electors. *See* P078 (January 6 Select Committee Finding # 50) (Trump was repeatedly told, including by attorney John Eastman, that the scheme would violate the Electoral Count Act). It is obvious that the Vice President lacks authority to unilaterally decide a presidential election, contrary to the votes cast by the certified electors selected by the American people.

76. Trump’s December 19 “will be wild” tweet focused the anger of his supporters on Congress and the joint session on January 6, overseen by the Vice President, providing them with a single date, a rallying point, and a mission: “Stop the Steal.” P078 (January 6 Select Committee Finding # 254); 11/3/23 Tr. 200:3–21 (Heaphy). The tweet was immediately disseminated and discussed by his followers. 10/31/2023 Tr. 80:1–12, 80:20–22, 85:15–19, 86:16–25, 87:20–88:2, 88:7–9, 205:5–11 (Simi).

77. Trump’s December 19 tweet had an immediate effect on far-right extremists and militias such as the Proud Boys, the Oath Keepers, and the Three Percenters, who viewed the tweet as a “call to arms” and began to plot seditious activities to disrupt the January 6 joint session. P078 (January 6 Select Committee Finding # 254, 275, 276, 280, 289); 10/31/2023 Tr. 104:18–105:4 (Simi); 11/3/23 Tr. 200:3–21(Heaphy). After his other efforts had failed, this was the last avenue for Trump to stop the constitutional transfer of power to President-Elect Joe Biden.

78. Also on December 19, 2020, Trump retweeted a video that exhorted supporters to “Fight for Trump! Save America - Save the World.” P148 at 43 (Compilation of Trump Tweets); P073 (Video retweeted by @realDonaldTrump, Dec. 19, 2020). The video was reposted from the website TheDonald.win, a “hotbed for violent far-right extremists,” and its choice of language and militaristic imagery conveyed to those groups “the need to commit violence to fend off” an “existential threat” posed by the end of the Trump administration. *Id.*; 10/31/2023 Tr. 81:21–25, 83:16–84:7, 85:10–14 (Simi).

79. Alex Jones of InfoWars told his viewers that Trump’s December 19 tweet was “the most important call to action on American soil since Paul Revere and his ride in 1776,” and asked “[w]here were you when history called?” One commentator on InfoWars stated the tweet was a call to “storm the Capitol” and another said it was a call for a “red wedding,” a pop-culture reference to a bloody massacre. 10/31/2023 Tr. 80:1–12 (Simi).

80. Trump’s invitation on December 19 was followed by over a dozen other times when he used Twitter to encourage supporters to rally for him in Washington, D.C. on January 6. For example:

- a. On December 27, 2020, Trump sent a tweet saying, “See you in Washington, DC, on January 6th. Don’t miss it. Information to follow.” P148 at 55 (Compilation of Trump Tweets).
- b. On December 30, 2020, he sent out a tweet saying: “JANUARY SIXTH, SEE YOU IN DC!” P148 at 60 (Compilation of Trump Tweets).
- c. On January 1, 2021, he reposted a tweet from Kylie Jane Kremer, an organizer of March for Trump on January 6, saying “The calvary is coming, Mr. President! JANUARY 6th, Washington, DC.” Trump added, “A great honor!” P148 at 64 (Compilation of Trump Tweets).
- d. The same day, Trump tweeted: “The BIG Protest Rally in Washington, D.C., will take place at 11:00 A.M. on January 6th. Locational details to follow. StopTheSteal!” and “[m]assive amounts of evidence will be presented on the 6th. We won, BIG!” P148 at 62–63 (Compilation of Trump Tweets).
- e. On January 3, 2021, Trump sent a tweet in response to another March for Trump tweet, saying “I will be there. Historic day!” P148 at 72 (Compilation of Trump Tweets).
- f. On January 5, 2021, he sent a tweet saying, “See you in D.C.,” another saying, “Washington is being inundated with people who don’t want to see an election victory stolen by emboldened Radical Left Democrats. Our country has had enough, they won’t take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!,” and another saying, “I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early—doors open at 7AM Eastern. BIG CROWDS!” P148 at 75, 76, 78 (Compilation of Trump Tweets).

81. Meanwhile, from December 19, 2020 to January 5, 2021, Trump continued to accuse Democrats and government officials of committing fraud, assert the Supreme Court was ignoring its duties when it denied hearing his claims, pressure Republicans to help him steal the election, accuse election workers of conjuring fake ballots, and claim repeatedly that Vice President Pence could refuse to certify electoral votes on January 6.

- a. On December 20, 2020, Trump tweeted: “GREATEST ELECTION FRAUD IN THE HISTORY OF OUR COUNTRY!!!” P148 at 44 (Compilation of Trump Tweets).
- b. On December 22, 2020, he tweeted: “THE DEMOCRATS DUMPED HUNDREDS OF THOUSANDS OF BALLOTS IN THE SWING STATES LATE IN THE EVENING. IT WAS A RIGGED ELECTION!!!” P148 at 47 (Compilation of Trump Tweets).

- c. On December 23, 2020, he tweeted: “This was the most corrupt election in the history of our Country, and it must be closely examined!” P148 at 48 (Compilation of Trump Tweets).
- d. On Christmas Eve, 2020, he tweeted: “VOTER FRAUD IS NOT A CONSPIRACY THEORY, IT IS A FACT!!!” P148 at 49 (Compilation of Trump Tweets).
- e. On December 26, 2020, he tweeted: “The U.S. Supreme Court has been totally incompetent and weak on the massive Election Fraud that took place in the 2020 Presidential Election. We have absolute PROOF, but they don’t want to see it – No ‘standing’, they say. If we have corrupt elections, we have no country!” P148 at 50 (Compilation of Trump Tweets).
- f. On December 30, 2020, he tweeted: “The United States had more votes than it had people voting, by a lot. This travesty cannot be allowed to stand. It was a Rigged Election, one not even fit for third world countries!” P148 at 61 (Compilation of Trump Tweets).
- g. On January 2, 2021, he tweeted: “An attempt to steal a landslide win. Can’t let it happen!” P148 at 69 (Compilation of Trump Tweets).
- h. On January 3, 2021, he tweeted: “The Swing States did not even come close to following the dictates of their State Legislatures. These States ‘election laws’ were made up by local judges & politicians, not by their Legislatures, & are therefore, before even getting to irregularities & fraud, UNCONSTITUTIONAL!” P148 at 73 (Compilation of Trump Tweets).
- i. On January 5, 2021, he tweeted: “The Vice President has the power to reject fraudulently chosen electors.” P148 at 75 (Compilation of Trump Tweets).

82. Trump also used violent rhetoric in the leadup to January 6th, faulting Republicans for their unwillingness to “fight to the death” to illegally keep him in power. In a December 26 tweet, Trump wrote: “If a Democrat Presidential Candidate had an Election Rigged & Stolen, with proof of such acts at a level never seen before, the Democrat Senators would consider it an act of war, and fight to the death. Mitch & the Republicans do NOTHING, just want to let it pass. NO FIGHT!” P148 at 49 (Compilation of Trump Tweets).

83. As the nation’s “Commander-in-Chief and Chief Law Enforcement Officer . . . , President Trump had control over the sharing of any intelligence concerning a potential riot” on January 6th. *Trump v. Thompson*, 20 F.4th 10, 42 (D.C. Cir. 2021), *cert. denied*, 142 S. Ct. 1350 (2022).

84. Federal agencies that President Trump oversaw as the Chief Executive Officer of the Executive Branch—including the Secret Service—identified significant threats of violence ahead of January 6th, including threats to storm the U.S. Capitol and kill elected officials. Such threats were made openly online and widely reported in the press. *See* P032 at 18–26, 102–105 (U.S. Government Accountability Office (“GAO”) Report, Feb. 2023). Agency threat assessments stated domestic violent extremists or militia groups planned for violence on January 6th, with weapons including firearms, and enough ammunition to “win a small war.” *See id.* at 103.

85. The FBI received many tips regarding the potential for violence on January 6 following Trump’s “will be wild” tweet. One such tip said, “They think they will have a large enough group to march into DC armed and will outnumber the police so they can’t be stopped . . . They believe that since the election was ‘stolen’ that it’s their constitutional right to overtake the government and during this coup no US laws apply . . . Their plan is to literally kill. Please please take this tip seriously and investigate further.” 11/3/2023 Tr. 218:7–16 (Heaphy).

86. Federal law enforcement agencies under the control of President Trump and other authorities involved in securing the Capitol were unaware that President Trump would instruct the crowd to march to the Capitol or send a tweet targeting Vice President Pence while an attack was underway, and what impact such actions would have on the violence and lawlessness that would ensue. P078 (January 6 Select Committee Finding # 15); 10/31/2023 Tr. 286:11–287:17 (Banks).

87. On the night of January 5th, President Trump told his staff that he knew the crowd was going to be “fired up” and “angry” the next day because they believed the election had been stolen and was rigged. P078 (January 6 Select Committee Finding # 312). President Trump knew his supporters were angry because he could hear them protesting from the Oval Office. He tweeted at 5:05 pm that night: “We hear you (and love you) from the Oval Office.” P148 at 76 (Compilation of Trump tweets).

88. In another tweet at 5:12 pm on January 5, Trump previewed the mob intimidation Congress would face the next day, writing: “I hope the Democrats, and even more importantly, the weak and effective RINO section of the Republican Party, are looking at the thousands of people pouring into D.C. They won’t stand for a landslide election victory to be stolen.” He tagged in the tweet Republican Senate leaders Mitch McConnell, John Cornyn, and John Thune. P148 at 76 (Compilation of Trump tweets).

89. Trump witness and Ellipse rally organizer Katrina Pierson learned before the rally that there were plans for Ali Alexander and Alex Jones, who fellow Ellipse rally organizer and Trump witness, Amy Kremer, testified were “flamethrowers” and “agitators” who “want to get everyone riled up,” to speak at the rally. 11/1/2023 Tr. 281:1–11 (Pierson); 11/2/23 Tr. 57:15–58:3 (Kremer). Pierson testified that Trump liked these “crazies” “who viciously defend him in public.” 11/1/2023 Tr. 299:6–16 (Pierson). Pierson shared with Chief of Staff Mark Meadows and Deputy Chief of Staff Dan Scavino her concerns that Alexander and Jones wanted “chaos,” used “incendiary” or “inflammatory rhetoric,” and had put on events that involved violence. 11/1/2023 274:23–275:2, 287:2–289:14 (Pierson). Pierson expressed her concerns about the rally and its potential speakers directly to the President in a meeting on January 4, 2021. 11/1/23 Tr. 292:3–7 (Pierson). Trump decided that he wanted the rally to be principally about him rather than other speakers, but there is no evidence that Trump discouraged the attendance of Jones or Alexander at the Ellipse rally or plans to have them speak at other pro-Trump rallies in Washington on January 5. 11/1/2023 Tr. 277:19–278:11 (Pierson).

90. The Court finds that by January 5 at the latest, Trump knew his supporters were angry and prepared to use violence or the threat of violence to prevent Vice President Pence and Members of Congress from performing their constitutional duties on January 6th.

## E. Trump Incites the Mob to Violence at His January 6th Rally

91. At 1:00 am on January 6, 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!” P148 at 80 (Compilation of Trump Tweets). Then at 8:17 am, Trump ended a tweet rehashing claims of election fraud with, “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!” *Id.*

92. In the early morning of January 6, tens of thousands of Trump supporters began gathering in the area of the Ellipse for Trump’s speech and “wild” protest he had promoted. P133 at 1–7 (Compilation of photographs); 11/2/23 Tr. 56:22–57:10 (Kremer); 11/2/2023 Tr. 152:3–13, 326:11–17 (Bjorklund) (“[H]e asked people to show up to his last speech, and that’s why they were there. That’s why I was there.”).

93. To enter the Ellipse itself, attendees were required by the Secret Service to pass through magnetometers and to be checked for weapons. 11/2/23 Tr. 44:2–45:18, 57:5–14 (Kremer). Around 28,000 rally attendees passed through the security checkpoints to enter the Ellipse. P078 (January 6 Select Committee Finding # 107, 338).

94. From only the attendees who went through security checkpoints at the Ellipse, the Secret Service confiscated hundreds of weapons and prohibited items, including 269 knives or blades, 242 canisters of pepper spray, 18 brass knuckles, 18 tasers, 6 pieces of body armor, 3 gas masks, 30 batons or blunt instruments, and 17 miscellaneous items like scissors, needles, or screwdrivers. P078 (January 6 Select Committee Finding # 107, 338).

95. About 25,000 additional attendees purposely remained outside the Secret Service perimeter at the Ellipse and avoided the magnetometers. 11/2/23 Tr. 57:5–14 (Kremer); P078 (January 6 Select Committee Finding # 107). They formed into a large crowd that extended to the National Mall and Washington Monument. 11/2/2023 Tr. 151:18–152:2 (Bjorklund); Ex. 1003 (Bjorklund video). Those attendees were not subject to any security screening. P078 (January 6 Select Committee Finding # 323); 11/2/23 Tr. 44:19–24; 57:5–13 (Kremer).

96. Some individuals who remained outside the magnetometers brought firearms. Three men brandished AR-15s. P078 (January 6 Select Committee Finding # 108). MPD advised that another man was possibly armed with a “Glock” and another with a “rifle” at other locations near the National Mall. The National Park Service detained another individual carrying a rifle. *Id.* That individuals were armed at Trump’s Ellipse rally was known before Donald Trump took the stage at the Ellipse. *Id.*; 11/3/23 Tr. 217:9–18 (Heaphy).

97. Some members of the crowd wore tactical gear, including ballistic helmets similar to those worn by riot police, goggles, gas masks, armored gloves, tactical boots, earpieces for radios, and military-grade backpacks with additional gear unknown to police. 10/30/2023 Tr. 70:6–11 (Hodges); 11/2/2023 Tr. 328:19–329:1 (Bjorklund).

98. By the time the Ellipse rally had begun, it was widely known from intelligence reports, the confiscation of weapons at the security checkpoints at the Ellipse, and the purposeful avoidance of the magnetometers by large numbers of attendees, that the assembled crowd was prepared for potential violence. P078 (January 6 Select Committee Finding # 107, 108); 11/3/23 Tr. 217:9–18 (Heaphy).

99. By the time Trump took the stage at the Ellipse rally at noon, he knew the crowd was prepared for imminent violence, knew enough to cancel the rally, and certainly knew enough not to call on his supporters to march on the Capitol. Trump had been briefed on the risk of violence before he left the White House. P078 (January 6 Select Committee Finding # 105, 109); 11/3/23 Tr. 217:9–18 (Heaphy). Trump knew that elements of the crowd were armed and had prohibited items, and that many thousands would not pass through the magnetometers for that reason. P078 (January 6 Select Committee Finding # 109); 11/3/23 Tr. 217:9–18 (Heaphy). The President had received an earlier security briefing, and the Secret Service mentioned the prohibited items again as they drove President Trump to the Ellipse. P078 (January 6 Select Committee Finding # 109); 11/3/23 Tr. 217:9–18 (Heaphy). While at the Ellipse immediately before speaking, Trump became enraged because nearly half of the 53,000 people assembled from the Ellipse to the National Mall refused to walk through the magnetometers and be screened for weapons, causing the Ellipse to look half-empty on television. P078 (January 6 Select Committee Finding # 323); *see also* 11/3/23 Tr. 217:9–18 (Heaphy).

100. Trump addressed the crowd from just before noon until about 1:10 pm P022 at 22 (*Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6*, Senate Committee on Homeland Security and Governmental Affairs and Senate Committee on Rules and Administration (June 2021) (“January 6 Senate Report”)).<sup>5</sup> His speech repeatedly directed the crowd’s anger toward Vice President Pence and Congress, claimed that Democrats had stolen the election, that “RINOs” (a political slur meaning “Republicans In Name Only”) in Congress were letting them get away with it, that the crowd could “never give up,” and that “we” (referring to himself and to the assembled crowd of thousands) could “stop the steal” by descending on the Capitol:

- “All of us here today do not want to see our election victory stolen by emboldened radical-left Democrats, which is what they’re doing. And stolen by the fake news media. That’s what they’ve done and what they’re doing. *We will never give up, we will never concede. It doesn’t happen. You don’t concede when there’s theft involved.*”
- “*Our country has had enough. We will not take it anymore* and that’s what this is all about. And to use a favorite term that all of you people really came up with: We will stop the steal. Today I will lay out just some of the evidence proving that we won this election and we won it by a landslide. This was not a close election.”
- “*Because if Mike Pence does the right thing, we win the election.* All he has to do, all

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<sup>5</sup> The Court notes that both Petitioners and Trump have relied on the January 6 Senate Report. Counsel for Trump vouched for it as a “bipartisan report” and moved for its admission in evidence. 10/31/2023 Tr. 276:21–25, 283:17–23.

this is, this is from the number one, or certainly one of the top, Constitutional lawyers in our country. He has the absolute right to do it.”

- “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.*”
- “We're gathered together in the heart of our nation's capital for one very, very basic reason: to save our democracy.”
- “We want to go back and we want to get this right because we're going to have somebody in there that should not be in there and *our country will be destroyed and we're not going to stand for that.*”
- “For years, *Democrats have gotten away with election fraud and weak Republicans.* And that's what they are. There's so many weak Republicans. And we have great ones. Jim Jordan and some of these guys, they're out there fighting. The House guys are fighting.”
- “*If this happened to the Democrats, there'd be hell all over the country going on.* There'd be hell all over the country. But just remember this: You're stronger, you're smarter, you've got more going than anybody. And they try and demean everybody having to do with us. *And you're the real people, you're the people that built this nation. You're not the people that tore down our nation.*”
- “Republicans are constantly fighting like a boxer with his hands tied behind his back. It's like a boxer. And we want to be so nice. We want to be so respectful of everybody, including bad people. *And we're going to have to fight much harder.*”
- “*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.”
- “Now, it is up to Congress to confront this egregious assault on our democracy. And after this, we're going to walk down, and I'll be there with you, we're going to walk down, we're going to walk down.”
- “Anyone you want, but I think right here, we're going to walk down to the Capitol, and we're going to cheer on our brave senators and congressmen and women, and we're probably not going to be cheering so much for some of them. Because you'll never take back our country with weakness. You have to show strength and you have to be strong. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated, lawfully slated.”
- “But think of what happens. Let's say they're stiffs and they're stupid people, and they say, well, we really have no choice . . . You will have a president who lost all of these states. Or you will have a president, to put it another way, who was voted on by a bunch of stupid people who lost all of these states. You will have an illegitimate president. That's what you'll have. *And we can't let that happen.*”

- “The radical left knows exactly what they’re doing. They’re ruthless and it’s time that somebody did something about it. And Mike Pence, I hope you’re going to stand up for the good of our Constitution and for the good of our country. And if you’re not, I’m going to be very disappointed in you. I will tell you right now. I’m not hearing good stories.”
- “*The Republicans have to get tougher.* You’re not going to have a Republican Party if you don’t get tougher. They want to play so straight. They want to play so, sir, yes, the United States. The Constitution doesn’t allow me to send them back to the States. Well, I say, yes it does, because the Constitution says you have to protect our country and you have to protect our Constitution, and you can’t vote on fraud. *And fraud breaks up everything, doesn’t it?’ When you catch somebody in a fraud, you’re allowed to go by very different rules. 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.*”
- “We won in a landslide. This was a landslide. They said it’s not American to challenge the election. *This the most corrupt election in the history, maybe of the world.* You know, you could go third-world countries, but I don’t think they had hundreds of thousands of votes and they don’t have voters for them. I mean no matter where you go, nobody would think this. In fact, it’s so egregious, it’s so bad that a lot of people don’t even believe it. It’s so crazy that people don’t even believe it. It can’t be true. So they don’t believe it. This is not just a matter of domestic politics — *this is a matter of national security.*”
- “And we fight. We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore.”

P022 at Appendix B (January 6 Senate Report) (Transcript of Ellipse speech) (emphasis added); P049 (Video of Ellipse speech).

101. Trump’s speech called out Vice President Pence by name eleven times, adding lines not included in his written remarks. P022 at Appendix B (January 6 Senate Report) (Transcript of Ellipse speech); P049 (Video of Ellipse speech). The teleprompter draft of the speech released by the National Archives contained only one reference to Vice President Pence. P157 at 34 (teleprompter draft of Trump Ellipse speech).

102. Trump used the word “fight” or variations of it 20 times during his Ellipse speech. P022 at Appendix B (January 6 Senate Report) (Transcript of Ellipse speech); P049 (video of Ellipse speech). Again, Trump ad-libbed these lines; the teleprompter draft contained only one mention of the word fight. P157 at 29.

103. Trump also repeatedly insisted that the crowd cannot let the certification happen:
- a. “You will have an illegitimate president. ... *we can’t let that happen*”;
  - b. “*We can’t let this stuff happen.* We won’t have a country if it happens”;



- c. “And then we’re stuck with a president who lost the election by a lot and we have to live with that for four more years. *We’re just not going to let that happen*”;
- d. “They want to come in again and rip off our country. *Can’t let it happen*”; and
- e. “We will never give up, we will never concede. *It doesn’t happen*. You don’t concede when there’s theft involved.”

P022 at Appendix B (January 6 Senate Report) (Transcript of Ellipse speech); P049 (Video of Ellipse speech). The teleprompter draft contained no mention of such rhetoric. *See* P157.

104. Trump also ad-libbed his claim that alleged voter fraud “allowed” his supporters “to go by very different rules,” an implicit call to violence. P022 at Appendix B (January 6 Senate Report) (Transcript of Ellipse speech); P049 (Video of Ellipse speech). The teleprompter draft contained no such language. *See* P157.

105. Knowing many in the crowd were angry and armed, Trump called on them to march to the Capitol and vowed to join them: “[A]fter this, we’re going to walk down, and *I’ll be there with you . . .* We’re going to walk down to the Capitol, and we’re going to cheer on our brave senators and congressmen and women, and we’re probably not going to be cheering so much for some of them . . .” P022 at Appendix B (January 6 Senate Report) (Transcript of Ellipse speech) (emphasis added). He repeated the call towards the end of his speech: “So we’re going to, we’re going to walk down Pennsylvania Avenue. I love Pennsylvania Avenue. And we’re going to the Capitol, and we’re going to try and give. The Democrats are hopeless — they never vote for anything. Not even one vote. But we’re going to try and give our Republicans, the weak ones because the strong ones don’t need any of our help. We’re going to try and give them the kind of pride and boldness that they need to take back our country.” P022 at Appendix B (January 6 Senate Report) (Transcript of Ellipse speech); P049 (Video of Ellipse speech). Rally attendees took Trump at his word and thought he would join them at the Capitol. 11/2/2023 Tr. 166:21–24 (Bjorklund).

106. The crowd at the Ellipse responded to Trump’s words in real time with calls for violence. After Trump instructed his supporters to march to the Capitol, members of the crowd responded with shouts of “storm the Capitol!” “invade the Capitol Building!” and repeated chants of “take the Capitol!” P166 (Video from Ellipse rally).

107. Trump’s speech took place in the context of a longstanding pattern of Trump’s knowing “encouragement and promotion of violence” to develop and deploy a shared coded language with his violent supporters. 10/31/2023 Tr. 221:10–21 (Simi). Trump’s speech contains “doublespeak,” a “specific kind of deceptive style of communication that often involves using words that have multiple meanings” and insincere negations to convey statements with “one meaning [meant] for insiders and [another] for outsiders.” 10/31/2023 Tr. 37:19–38:3, 48:24–49:8, 65:25–66:20 (Simi). Trump spent years cultivating the support of far-right extremists and becoming a key figure in far-right extremist culture. As part of this cultivation, an understanding developed between Trump and his supporters that his encouragement, for example, to “fight” were not metaphorical, referring to a political “fight,” but rather as a literal “call to violence” against those working to ensure the transfer of Presidential power. 10/31/2023 Tr. 66:7–20, 101:8–16, 101:20–102:6 (Simi). While Trump’s Ellipse speech did mention “peaceful” conduct in his

command to march to the Capitol, Trump placed far greater emphasis on aggressive action like fighting, communicating through negation and an attempt to establish plausible deniability. 10/31/2023 Tr. 101:16–19, 102:7–21 (Simi).

108. Trump and his most ardent allies understood the power that Trump had over his supporters. When called at trial by Trump, Amy Kremer, one of the permit holders for the Ellipse rally, testified that “when [Trump] does these speeches, he plays off the crowd. And they’re very reactive.” 11/2/2023 Tr. 49:4–6 (Kremer). She also acknowledged that the rally attendees were there because they believed the lie that the election was stolen. 11/2/2023 Tr. 47:23–48:2, 69:11–16 (Kremer). While Ms. Kremer attempted to downplay the effect of Trump’s violent rhetoric on the crowd at the Ellipse, when asked during her direct examination what the crowd’s reaction was to Trump’s “statements about fighting,” she said, “I mean, I can’t remember.” 11/2/2023 Tr. 50:6–10 (Kremer). On cross examination, she acknowledged that she remained by the event stage throughout the rally, did not interact with anyone outside the security perimeter at the rally, was unaware that in response to Trump’s speech, some in the crowd yelled “storm the Capitol,” “take the Capitol,” and “take the Capitol right now,” did not walk with the crowd to the Capitol, and did not go to the Capitol. 11/2/2023 Tr. 55:6–7, 56:10–14, 61:3–8 (Kremer).

109. The Court finds that Trump’s Ellipse speech both explicitly and implicitly incited imminent lawless violence. Trump did so explicitly by telling the crowd repeatedly to “fight” and to “fight like hell,” to “walk down to the Capitol,” and that they needed to “take back our country” through “strength.” He did so implicitly by exhorting the crowd to go beyond the normal rules of lawful politics, telling them that fraud allows them to go by “very different rules.” In the context of the speech as a whole, as well as the broader context of Trump’s efforts to inflame his supporters through false claims of voter fraud in the weeks leading up to January 6, 2021 and his long-standing call-and-response pattern of encouraging political violence among his supporters, the Court finds that the call to “fight” and “fight like hell” were intended as, and were understood by many in the crowd as, a call to literal rather than metaphorical violence. The Court further finds, based on the testimony and documentary evidence presented, that Trump’s conduct and words were the factual cause of, and a substantial contributing factor to, the January 6, 2021 attack on the United States Capitol. *See also* 11/3/2023 Tr. 203:20–22 (Heaphy); 11/2/2023 278:2–12 (Buck).

## **F. Trump’s Mob Attacks the Capitol**

110. While Trump was speaking, large portions of the crowd began moving from the Ellipse rally toward the Capitol building. P022 at 22 (January 6 Senate Report); 10/30/2023 Tr. 71:9–14 (Hodges); 11/2/2023 Tr. 331:22–332:15 (Bjorklund); Ex. 1007 (Bjorklund video). They were perceived by Officer Daniel Hodges, who is trained to and has for years policed public demonstrations as a member of the D.C. Metropolitan Police Department’s Civil Disturbance Unit, as moving with purpose toward the Capitol. 10/30/2023 Tr. 67:11–68:7, 71:15–21 (Hodges).

111. By 12:45 pm, a “wall of people” had arrived about a block west of the Capitol. P022 at 22 (January 6 Senate Report).

112. Around 12:53 pm, the mob overran United States Capitol Police officers at a police barricade near the Peace Circle, breaching the Capitol’s security perimeter. 10/30/2023 Tr. 194:16–195:7 (Pigeon); P133 at 9 (Compilation of photographs). The Proud Boys, who in the

moments before led the mob in chants of “1776,” led this initial breach. P078 (January 6 Select Committee Finding # 83, 347); 10/31/2023 Tr. 54:24–55:3 (Simi).

113. Shortly before 1:00 pm, Vice President Pence released a letter asserting that his “role as presiding officer is largely ceremonial” and dismissed the arguments that he could take unilateral action to overturn the election or return the Electoral College votes to the states as contrary to his oath to the Constitution. 10/30/2023 Tr. 161:5–162:15 (Swalwell); P078 (January 6 Select Committee Finding # 247). It was well known among members of Congress that Trump was saying that Pence had the ability to reject electoral votes submitted by states. 10/30/2023 Tr. 162:4–8 (Swalwell). Congressman Swalwell testified that he had never heard anyone before President Trump suggest that the Vice President could reject certification of a state’s electoral slate. 10/30/2023 Tr. 133:13–19 (Swalwell).

114. By about 1:00 pm, the mob had advanced to the Capitol steps and began attacking Capitol police officers there. 10/30/2023 Tr. 201:22–202:5 (Pingeon). At 1:00 pm, the joint session of Congress convened to count the electoral votes. Stipulation ¶ 14. After Congressman Gosar and Senator Cruz objected to the certification of Arizona’s electoral votes, the House and Senate split into their respective chambers to debate them. 10/30/2023 Tr. 139:21–140:6 (Swalwell); 11/2/23 Tr. 190:24–193:9 (Buck).

115. Trump’s speech ended at or around 1:10 pm. P022 at 22 (January 6 Senate Report). Shortly thereafter, thousands more marched toward the Capitol down Pennsylvania Avenue as Trump had instructed. 10/30/2023 Tr. 199:8–200:8 (Pingeon); P049 (Video of Trump Ellipse speech); P163 (Map of Capitol Grounds); P022 at Appendix B (January 6 Senate Report) (Transcript of Ellipse speech). The size of the mob grew by the minute. 10/30/2023 Tr. 197:8–13 (Pingeon). The mob occupied the entire West Plaza by 1:14 pm. P133 at 11–12 (Compilation of photographs).

116. At 2:13 pm, the Capitol was breached for the first time when the Proud Boys smashed a window in the Senate wing and the mob began entering the building. P078 (January 6 Select Committee Finding # 361).

117. The Senate recessed at 2:13 pm, and the House suspended debate on the objections to certification at 2:18 pm, halting the process of the electoral certification. Stipulation ¶ 14; P078 (January 6 Select Committee Finding # 374).

118. The mob moved immediately toward its target—the certification of the election—and reached the House and Senate chambers within minutes, menacing the members and staff inside. P078 (January 6 Select Committee Finding # 374); 10/30/2023 Tr. 142:9–10, 142:20–143:2, 144:11–23, 146:16–17 (Swalwell); 11/2/2023 Tr. 192:10–194:3, 195:17–24 (Buck). Some Members of Congress removed their Congressional pins so they would not be identified by the encroaching mob, others prepared to fight off the mob 10/30/2023 Tr. 144:11–23 (Swalwell)

119. The mob brought a variety of weapons to the Capitol, including guns, knives, tasers, sharpened flag poles, scissors, hockey sticks, pitchforks, bear spray, pepper spray, and other chemical irritants. P078 (January 6 Select Committee Finding # 342, 346, 382); P133 (Compilation of photographs); 10/30/2023 Tr. 74:4–10; 75:15–76:4, 105:25–106:24 (Hodges); P016 (Hodges

body camera video showing knife retrieval); 10/30/23 Tr. 201:22–202:5, 220:23–221:2, 224:25–225:2 (Pingeon); 11/2/2023 Tr. 334:17–23 (Bjorklund); Ex. 1018 (Bjorklund picture). Members of the mob also stole objects at the Capitol to use as weapons, including metal bars from police barricades, pieces of scaffolding and construction equipment ripped from the scaffolding built for President-elect Biden’s upcoming inauguration, trash cans, and various objects stolen from police officers defending the Capitol, including batons and riot shields. 10/30/2023 Tr. 74:4–10, 75:15–76:4 (Hodges); 10/30/2023 Tr. 201:22–202:5 (Pingeon); P016 (Video of attack on Capitol).

120. Many in the mob came to the Capitol prepared for violence, adorned in tactical and paramilitary gear, like that witnessed by law enforcement at the Ellipse rally. 10/30/2023 Tr. 70:4–17, 76:5–11 (Hodges); 10/30/2023 Tr. 200:14–17 (Pingeon); P092 (Video of mob inside Capitol); P133 (Photographs from outside Capitol on January 6th). Many in the mob did not react at all when they heard police radio calls that gunshots had been fired inside the Capitol. 10/30/2023 Tr. 222:14–223:6 (Pingeon).

121. The mob assaulted police officers defending the Capitol in an effort to force its way into the building. Throughout the day, police officers were tased, crushed in metal door frames, punched, kicked, tackled, shoved, sprayed with chemical irritants, struck with objects thrown by the crowd, dragged, hit with objects thrown by the crowd, gouged in the eye, attacked with sharpened flag poles, and beaten with weapons and objects that the mob brought to the Capitol or stole on site. 10/30/2023 Tr. 73:19–74:10, 87:18–88:6; 103:14–104:10 (Hodges); 10/30/2023 Tr. 201:22–202:5, 208:8–15, 212:14–17, 220:23–221:2, 224:25–225:2 (Pingeon); P078 (January 6 Select Committee Finding # 382). Police deployed tear gas, pepper spray, flash bangs, and a loudspeaker with a pre-recorded message instructing the mob to disperse, but the mob defied those orders and remained at the Capitol. 10/30/2023 Tr. 94:20–97:2 (Hodges); 11/2/2023 176:16–22, 177:1–4, 336:10–337:5 (Bjorklund).

122. Members of law enforcement defending the Capitol from the mob feared for their lives as well as the lives of their fellow officers, the Vice President, and the Members and staff inside the Capitol. 10/30/2023 Tr. 74:22–75:4 (Hodges); 10/30/2023 Tr. 210:25–211:2, 222:14–19 (Pingeon). The attacks were deadly, resulting in the line-of-duty death of Capitol Police Officer Brian Sicknick. 10/30/2023 Tr. 224:23–225:2 (Pingeon). Many other law enforcement officers were injured, some requiring hospitalization for their injuries. 10/30/2023 Tr. 230:11–14 (Pingeon).

123. Even though not everyone in the mob was violent, the mob’s sheer size was its greatest weapon. 10/30/2023 Tr. 79:9–20 (Hodges). Officers were both unable to escape and unable to get reinforcements. 10/30/2023 Tr. 79:9–20 (Hodges) Officers could not differentiate between which members of the mob were violent and which were not because members of the mob attacked them and then retreated into the cover provided by the mob. 10/30/2023 Tr. 79:9–20 (Hodges). The mob’s tactics required the police to treat every member of the mob as a potential threat, dividing the officers’ attention so thinly that it was difficult to protect themselves. 10/30/2023 Tr. 80:8–17 (Hodges).

124. The mob’s size prevented the police from carrying out arrests for fear of the safety of officers and prisoners. 10/30/2023 Tr. 81:9–22 (Hodges). The mob’s size prevented law enforcement from using firearms or employing lethal force. 10/30/2023 Tr. 80:20–81:6 (Hodges).

The chaos created by the mob made it futile for police to place distress calls when they were individually under attack. 10/30/2023 Tr. 209:11–20 (Pingeon). The mob’s size made it nearly impossible for first responders to reach those in medical distress and when first responders attempted to provide such aid, they were harassed by the mob and assaulted. 10/30/2023 Tr. 198:20–199:7 (Pingeon). The presence of nonviolent members of the mob, who refused demands to leave, contributed to these problems. 10/30/2023 Tr. 82:9–11; 90:2–93:13 (Hodges); P011 (Hodges body camera footage).

125. The Court finds that, by increasing the mob’s numbers through his actions and words, Trump materially aided the attack on the Capitol.

126. Members of the mob made multiple statements evincing their intent to breach the Capitol to stop the constitutionally mandated certification of the presidential election, their willingness to use violence to achieve that goal, and their understanding that in attacking the Capitol they were taking direction from Trump himself. For instance, members of the mob told officers, “Trump sent us,” “we don’t want to hurt you but we will, we’re getting into that building,” “you look scared and you might need your baton,” and “[t]ake off your badges, take off your helmets, and show solidarity with we the people or we’re going to run over you . . . Do you think your little pea shooter guns are going to stop this crowd,” and “[i]t’s going to turn bad man, we have to get you out of here. The others are coming up from the back.” P011 (Hodges body camera footage); P014 (Hodges body camera footage); 10/30/2023 Tr. 200:25–201:11, 202:24–203:5 (Pingeon). The mob chanted “fight for Trump” and members yelled into bullhorns “this is not a peaceful protest!” P021 (video of attack). These types of statements were repeated at multiple locations around the Capitol during the attack where the mob faced resistance to law enforcement. P011 (Hodges body camera footage); P014 (Hodges body camera footage); 10/30/2023 Tr. 200:25–201:11, 212:3–13 (Pingeon).

127. The mob’s chants, flags, banners, signs, and clothing also show its purpose was to disrupt the certification of the election within the Capitol, by violence if necessary. The mob referenced war, revolution, Donald Trump, and stopping the election certification. Members of the mob carried flags from the Revolutionary War and the Confederate Battle Flag. 10/30/2023 Tr. 99:13–100:1 (Hodges); P013 (Hodges body camera); P133 (photographs from the Capitol). Their flags and signs said, among other things, “Liberty or Death,” “Certify Honesty Not Fraud,” and “Over Turn Biden Win,” “Pence has the power,” “Mike Pence is a bitch,” and “Lynch the [sic] Rhinos,” evoking Trump’s references to “RINOS” (Republicans in Name Only) at the Ellipse speech. P133 (photographs from Capitol). They chanted “fight for Trump,” “Stop the Steal,” and “1776.” 10/30/2023 Tr. 77:25–78:11 (Hodges); P078 (January 6 Select Committee Finding # 347). A makeshift gallows was displayed. 10/31/2023 Tr. 120:22–121:18 (Simi) (addressing significance of noose to far-right extremists as call for political violence).

128. The mob also threatened and taunted officers using language that indicated that the mob believed that by defending the Capitol and the constitutional transfer of power occurring within, law enforcement was acting illegitimately. They yelled at law enforcement, among other things: “traitors,” “you swore an oath,” “oath breakers,” “you’re on the wrong team,” “you’re not wanted here,” “what about your oath,” and “you’re going against our country.” 10/30/2023 Tr. 73:14–18, 86:5–10 (Hodges); 10/30/2023 Tr. 200:25–201:11; 212:3–13 (Pingeon); P010 (Hodges body camera footage).

129. The mob that attacked the Capitol expressed a unity of purpose through contemporaneous expressions commonly understood and used by political extremists to convey the intent to use violence to achieve political goals. For example, repeated references to 1776, “revolution,” and the Confederate flag, are consistent with far-right extremists’ use of the terms as literal calls for violent revolution. 10/31/2023 Tr. 94:21–95:7; 107:4–12; 107:24–108:8; 109:3–8; 120:25–121:18 (Simi). The presence of weaponry and defensive gear among a significant portion of the crowd confirmed this expressed purpose. 10/31/2023 Tr. 109:16–21 (Simi). The mob also worked in concert by, for example, coordinating through “Heave! Ho!” chants to create a human battering ram against police officers guarding the Capitol. 10/31/2023 Tr. 115:20–116:3 (Simi); P020 (Video of Officer Hodges crushed in the West Terrace tunnel); P021 (Video from Upper West Terrace of Capitol, Jan. 6, 2021 at 2:27 PM).

130. A government report, which Trump’s counsel acknowledged was “bipartisan,” found that the mob that launched the “violent and unprecedented attack on the U.S. Capitol, the Vice President, Members of Congress and the democratic process” on January 6, 2021, were “intent on disrupting the Joint Session, during which Members of Congress were scheduled to perform their constitutional obligation to count the electoral votes[.]” 10/31/2023 Tr. 276:21–277:2 (Banks); P022 at 1 (January 6 Senate Report). Trump witness and organizer of the Ellipse rally Amy Kremer acknowledged that the attack on the Capitol was a “horrifying” event and “an awful, awful attack on the seat of our democracy.” 11/2/23 Tr. 65:14–20, 69:3–7 (Kremer). Trump witness Congressman Ken Buck similarly testified that the attack by the mob was “meant to disturb” Congress’s “electoral vote count.” 11/2/2023 Tr. 230:3–7, 341:24–342:6 (Buck). The Court finds that this was the objective of the mob as a whole.

131. Testimony claiming that the attack on the Capitol was carried out by “Antifa” or “agent provocateurs” is neither credible nor corroborated. Mr. Bjorklund’s testimony that Antifa was involved in the attack lacked foundation and he was unable on cross-examination to explain how he could identify members of Antifa or if any appeared in footage of the attack. 11/2/2023 Tr. 351:1–353:22 (Bjorklund). The January 6 Committee investigated such claims and concluded that there was no evidence that “Antifa” or other left-wing groups were involved to any material extent in the attack. P078 (January 6 Select Committee Finding # 14).

### **G. Trump Further Incites and Exacerbates The Attack**

132. By no later than 1:21 pm, Trump was informed the Capitol was under assault. P078 (January 6 Select Committee Finding # 316). Indeed, it is common sense that the President of the United States must have been informed of the attack on the Capitol shortly after concluding his speech.

133. As detailed *infra*, Trump took no action to stop the attack or otherwise render aid to those under attack at the Capitol. But he did take action to exacerbate the violence.

134. By January 6, 2021, Trump had seen and harnessed the power of his tweets to mobilize his supporters, and throughout the day, Trump’s tweets reached those at the Capitol including members of the mob. *See, e.g.*, P148 at 36 (Dec. 12, 2020, 9:59 pm), 37 (Dec. 12, 2020, 1:56 pm), 41 (Dec. 19, 2020, 1:42 pm), 55 (Dec. 27, 2020, 5:51 pm), 64 (Jan. 1, 2021, 3:34 pm) (Compilation of Trump tweets); 11/2/2023 Tr. 302:15–303:3 (Bjorklund); 10/30/2023 Tr. 147:21–

24 (Swalwell); P078 (January 6 Select Committee Finding # 120). Members of Congress also monitored Trump’s tweets from the House chamber because they connected his tweets with their “own safety in the chamber, and also the integrity of the proceedings that were taking place.” 10/30/2023 Tr. 147:21–24 (Swalwell).

135. At 2:24 pm, 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!” P148 at 83 (Compilation of Trump Tweets).

136. This statement, when taken in context of the attack at the Capitol of which Trump was aware when he issued the tweet, implicitly encouraged imminent lawless violence by singling out Vice President Pence (who was in the building at the time) and implying that the attacking mob was doing the right thing by “demand[ing] the truth.” Members of Congress interpreted President Trump’s 2:24 pm tweet as painting a “target” on the Capitol, threatening the Vice President and their “personal safety and the proceedings” to certify the election. 10/30/2023 Tr. 149:2–11 (Swalwell).

137. Trump’s 2:24 pm tweet almost immediately caused extreme violence at the Capitol, provoking the mob to surge and further overwhelm police officers. *See* P006 (Video showing mob surging minutes after 2:24pm); P078 (January 6 Select Committee Finding # 56). Specifically:

- a. Within a minute of Trump’s tweet, the mob breached the Capitol’s East Rotunda doors. P078 (January 6 Select Committee Finding # 150).
- b. At 2:25 pm, the Secret Service determined that it could no longer protect President Pence—who had already been evacuated from the Senate chamber to his Senate office—and evacuated him and his family to a more secure location, missing the advancing mob by a mere 40 feet. P078 (January 6 Select Committee Finding # 56).
- c. Between 2:25 and 2:28 pm, the mob breached the police line in the Capitol Crypt, Leader Kevin McCarthy had to be evacuated from his office, and the mob violently breached a police line on the West Terrace, causing the first fighting withdrawal in the history of the D.C. Metropolitan Police Department. P078 (January 6 Select Committee Finding # 56, 150); 10/30/2023 Tr. 103:14–104:5 (Hodges); P015 (Hodges body camera video of mob breaking police line).
- d. Around 2:30 pm, the mob attacked Officer Pingeon in the Northwest Courtyard where they had breached the Capitol, forcing him to the ground, and stealing his PR 24 baton. 10/30/2023 Tr. 208:8–210:8 (Pingeon).
- e. Around the same time, both the Senate chamber and House floor had to be evacuated, though some members of the House remained trapped in the gallery. 10/30/2023 Tr. 152:22–153:2 (Swalwell); P078 (January 6 Select Committee Finding # 119).

138. At 2:38 pm, with knowledge that the mob was in the midst of a violent attack on the Capitol and the officers defending it, Trump tweeted “Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!” P148 at 83 (Compilation of Trump tweets); P078 (January 6 Select Committee Finding # 316).

139. At 3:13 pm, Trump similarly tweeted: “I am asking for everyone at the U.S. Capitol to remain peaceful. No violence! Remember, WE are the Party of Law & Order—respect the Law and our great men and women in Blue. Thank you!” P148 at 84 (Compilation of Trump tweets).

140. Neither Trump’s 2:38 pm tweet nor his 3:13 pm tweet told the mob to leave the Capitol or to stop targeting Pence and members of Congress. Nor did they condemn the mob’s conduct. Trump’s words falsely implied the mob was “peaceful,” even though he learned of the ongoing violence at 1:21 pm, he was watching reports of the attack on television, and he was being implored by his closest advisors inside and outside the White House to act. P078 (January 6 Select Committee Finding # 316, 326, 329). Neither of Trump’s tweets appeared to be taken seriously or had any appreciable impact on the mob’s violence. P078 (January 6 Select Committee Finding # 134).

141. After the Columbus Doors to the Rotunda were breached at 2:38 pm, additional members of the Proud Boys entered through the breach, as did members of the Oath Keepers, who entered using a military-style “stack” formation. P078 (January 6 Select Committee Finding # 367).

142. The mob’s violence continued to escalate after Trump’s 2:24 pm tweet. By around 2:55 pm, the mob was engaged in a sustained, coordinated, and violent attack on the West Tunnel leading from the West Terrace to the Crypt. 10/30/2023 Tr. 111:13–113:4; 116:5–14 (Hodges); P078 (January 6 Select Committee Finding # 382). During its attack, the mob crushed Officer Hodges against a metal door frame in the West Terrace tunnel with a police shield and, while he was trapped there, stole his baton, beat him with it, and forcibly ripped off his gas mask. 10/30/2023 Tr. 114:25–116:4 (Hodges); P020 (Video of mob attacking Officer Hodges). The mob dragged D.C. Metropolitan Police Officer Michael Fanone into the crowd, tased him in the neck, beat him, robbed him, and dragged him down the steps to the inaugural stage, while members of the mob yelled, “Kill him with his own gun!” P078 (January 6 Select Committee Finding # 382).

143. Similarly, in the Senate wing, the mob continued to attack police through a makeshift police barricade at the original breach point, shoving sharpened flagpoles through the barricade and nearly killing Officer Pigeon. 10/30/2023 Tr. 219:18–221:18 (Pigeon).

144. The mob’s conduct within the Capitol confirmed that its common purpose was to prevent the constitutional transfer of power, in part by targeting Vice President Pence, House Speaker Nancy Pelosi, and other elected officials perceived to be obstacles to Trump’s retention of power inside the Capitol building, with some voicing plans to harm or kill them. As described *supra*, right after the first breach of the Capitol at 2:13 pm, the mob moved to the Senate and House chambers where the certification was being debated and Pence and Pelosi were expected to preside, reaching them in minutes. The Senate gallery was breached and the mob made a concerted and violent effort to break into the House chamber, resulting in a fatal shooting. 10/30/2023 Tr. 155:14–16, 155:19–21 (Swalwell); P078 (January 6 Select Committee Finding # 119). The mob



called out Pelosi with menacing chants of “Nancy, Nancy, Nancy” as they moved toward her office and, once there, called to others. P092 (Video from Capitol on January 6).

145. After hours of violence, Trump finally released a video instructing the mob to “go home” at 4:17 pm. In that video, Trump said:

I know your pain. I know you’re hurt. We had an election that was stolen from us. It was a landslide election and everyone knows it, especially the other side. But you have to go home now. We have to have peace. We have to have law and order. We have to respect our great people in law and order. We don’t want anybody hurt. It’s a very tough period of time. There’s never been a time like this where such a thing happened, where they could take it away from all of us, from me, from you, from our country. This was a fraudulent election. But we can’t play into the hands of these people. We have to have peace. So go home, we love you. You’re very special. You’ve seen what happens. You see the way others are treated that are so bad and so evil. I know how you feel, but go home and go home in peace.

P068.

146. By the time Trump released his 4:17 pm video, it was obvious that the mob would not stop the election certification. P078 (January 6 Select Committee Finding #331). By roughly 3:00 pm, the last members of Congress had been evacuated from the chambers. P022 at 26 (January 6 Senate Report). At the same time, additional reinforcements from other federal agencies had begun to arrive, including from DHS, the FBI, and police departments from surrounding jurisdictions. *Id.* Beginning at 3:00 pm the Capitol Police, with the help of these reinforcements, made significant progress in pushing the mob out of the Capitol building, including the areas immediately adjacent to the House and Senate chambers. *Id.*; P078 (January 6 Select Committee Finding #392, 393, 394, 395). Given that the Commander in Chief was undoubtedly receiving regular updates concerning the security situation at the Capitol, the Court infers that, by 4:17 pm, it was clear to Trump that although the mob had succeeded in delaying the certification, it would not achieve its objective of stopping the certification altogether.

147. Trump’s 4:17 pm video endorsed the mob’s common cause, openly sympathized with them, and repeated his stolen election conspiracy theory. *See* P068. The Court finds that the substance and timing of the 4:17 pm video are further proof that Trump shared the mob’s goal of disrupting the election certification on January 6th.

148. The mob reacted to Trump’s direct message to them and immediately began to disperse and leave the Capitol. P078 (January 6 Select Committee Finding # 120); 10/31/2023 Tr. 121:19-21 (Simi). The statement was understood as a clear directive to cease the attack. 10/31/2023 122:9–17, 122:20–23, 220:21–221:4 (Simi).

149. The situation in the Capitol gradually improved after Trump’s 4:17 pm message to the mob. The law enforcement officers defending the Capitol were reinforced by other law enforcement agencies and later by the National Guard. 10/30/2023 Tr. 228:12–229:18 (Pigeon). In total, the Capitol Police were forced to call in more than 2,000 reinforcements from 19 federal, state, and local agencies. P030 at 20 (GAO Report, Feb. 2022).

150. The Congressional proceedings suspended by the attack could not resume until the Capitol grounds were cleared of *all* trespassers within the restricted perimeter of the building and the grounds were declared secure. P022 at 26 (January 6 Senate Report). The Capitol was not declared secure until 8:00 pm. *Id.* The Senate reconvened at 8:06 pm and the House reconvened at 9:02 pm. Stipulation ¶ 14. In the early morning hours of January 7, 2021, at around 3:00 am, Congress certified the results of the 2020 Presidential Election. Stipulation ¶ 15; 10/30/2023 Tr. 169:14–15 (Swalwell); 11/2/23 Tr. 269:2–12, 269:17–270:1 (Buck).

151. The total damage caused by the mob’s attack on the Capitol was considerable. Over the course of about 7 hours, more than 2,000 attackers breached the Capitol, resulting in assaults on at least 174 police officers, at least seven deaths, and about \$2.7 billion in estimated costs. P032 at 1 (GAO Report, Feb. 2023). Officer Brian Sicknick, who was attacked and sprayed with chemical irritants by the mob on January 6, died on January 7 in what the United States Capitol Police deemed a line-of-duty death. 10/30/2023 Tr. 224:17–225:2 (Pigeon).

152. Trump’s last tweet of the day, at 6:01 pm, attempted to justify the violence rather than condemn it: “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!” P148 at 84 (Compilation of Trump Tweets). Trump’s tweet justified the violent attack on the Capitol, lauded the attackers as “patriots,” and reinforced his stolen election conspiracy by centering the deadly attack on the theft of a fictitious “sacred landslide election victory.” 10/31/2023 122:9–17, 122:20–23 (Simi); P148 at 84 (Trump Tweet, Jan. 6, 2021 at 6:01 pm). As Professor Simi testified, this tweet bookended a consistent pattern of communication related to political violence: Trump called on his supporters, including far-right extremists with extensive violent histories, to travel to Washington, D.C. and take action; his supporters responded in kind; and Trump endorsed them with praise. 10/31/2023 Tr. 123:12–15 (Simi). The Court finds that the 6:01 pm tweet is further proof of Trump’s intent to disrupt the election certification on January 6th.

153. There is no evidence before the Court, and Trump offered none, that Trump disapproved of the mob’s common purpose or its invocation of his name and words either during or after the attack on the Capitol. To the contrary, the evidence demonstrates that Trump has expressed only sympathy for and approval of the attackers and their goal of disrupting Constitutional processes. *See* P068 (Video of Trump statement on January 6), P148 at 84. (Trump Tweet, Jan. 6, 2021 at 6:01 pm).

154. The Court further finds that Trump’s words nearly two years later provided additional evidence that Trump intended to disrupt the constitutionally mandated certification on January 6. On December 3, 2022, Trump repeated allegations of voter fraud from the 2020 election on Truth Social, and asked, “do you throw the Presidential Election Results of 2020 OUT and declare the RIGHTFUL WINNER, or do you have a NEW ELECTION? A Massive Fraud of this type and magnitude allows for the termination of all rules, regulations, and articles, even those found in the Constitution.” P074 (Truth Social Post). This expresses direct support for “termination” of the constitutional rules for the transfer of power in response to allegations of voter fraud in the 2020 election—precisely the goal the insurrectionists were seeking to achieve.

155. Those familiar with the President and his relationship with his supporters said at the time that Trump caused the insurrection with his rhetoric. For example, Brad Parscale, President Trump’s former campaign manager, in a text exchange with Katrina Pierson, one of the organizers of the January 6 rally, said on January 6, 2021, that Trump was “a sitting president asking for civil war.” P263 at 76; 11/1/2023 Tr. 311:12–17 (Pierson). In that same conversation, Parscale said he said he would regret it “if I was [T]rump and knew my rhetoric killed someone.” P263 at 78. Pierson responded to Parscale that “it wasn’t the rhetoric,” to which Parscale replied “Katrina. Yes it was,” and “he is pushing it.” P263 at 79. Pierson also said in that exchange that the “The only reason it didn’t happen sooner was because he gave them hope,” and that “it was stolen, The one hope that had left.” P263 at 79.

#### **H. President Trump Did Not Act to Stop the Attack on the Capitol**

156. By 1:21 pm, President Trump was informed that the Capitol was under attack. He could have interceded immediately in several ways. But he did not. P078 (January 6 Select Committee Finding # 316, # 330); *see, e.g.*, 10/31/2023 Tr. 247:1, 249:9, 250:8–13, 252:4–10, 259:25–260:20, 262:11–21, 263:3–18, 282:12–283:1 (Banks). Rather, for nearly three hours, President Trump took no action to stop the attack or tell his supporters to leave the Capitol. P078 (January 6 Select Committee Finding # 325); 10/31/2023 245:24–246:9 (Banks).

157. ***Failure to Call Off the Mob.*** At any moment in the afternoon, it would have been easy for President Trump to get before cameras and call off the attack. P078 (January 6 Select Committee Finding # 330). The White House Press Briefing Room is just down the hallway from the Oval Office and is outfitted with cameras that are constantly “hot,” meaning that they are on and ready to go live at a moment’s notice. *Id.* However, it was not until nearly three hours after the violence began that President Trump finally agreed to film a video telling the mob to go home. *Id.*

158. Trump ignored pleas to intervene. Instead, Trump watched the violence on television from a dining room adjacent to the Oval Office, calling Senators to urge them to help him delay the electoral count, exactly what the mob was seeking to accomplish. P078 (January 6 Select Committee Finding # 120). When told that the mob was chanting “Hang Mike Pence,” Trump responded that perhaps the Vice President deserved to be hanged. P078 (January 6 Select Committee Finding # 150). And Trump rebuffed pleas from Leader McCarthy to ask that his supporters leave the Capitol stating, “Well, Kevin, I guess these people are more upset about the election than you are.” *Id.*

159. When asked in May 2023 why he waited nearly three hours to call off the mob on January 6th, Trump did not dispute his inaction prior telling the mob to leave the Capitol at 4:17 pm and “agree[d]” that his supporters “listen to [him] like no one else.” P134 (Video from CNN Town Hall with Donald Trump, May 10, 2023). Trump then sought to shift blame to others for failing to act in his stead. *Id.*

160. ***Failure to Deploy a Federal Response.*** Petitioners offered the expert testimony of Professor William Banks on the authorities President Trump had at his disposal, but did not use, to respond to or prevent the attack on the Capitol. Professor Banks has taught National Security law at Syracuse University for over 30 years. 10/31/23 Tr. 237:23–238:7, 243:9–13 (Banks). He

founded the Institute for National Security and Counterterrorism at Syracuse, has co-authored a national security law textbook that is in its eighth edition and used at over 100 U.S. law schools, and has authored more than 30 books and articles related to the authorities available to the President to respond to a domestic attack, including a book titled, *Soldiers on the Home Front: The Domestic Role of the American Military*, published by Harvard Press in 2016. 10/31/23 Tr. 238:8–16, 240:21–241:2, 241:10–22 (Banks). He has served two terms as the Chair of the ABA’s Standing Committee on National Security and is the past president of the Association of American Law School’s section on national security. 10/31/23 Tr. 242:5–16 (Banks).

161. The Court finds Professor Banks to be an expert on national security and the presidential powers to respond to a domestic attack, and that his testimony was credible. As Professor Banks testified, President Trump had the direct authority to ensure the peaceful transfer of power, through the authorization of law enforcement and other assets once violence was underway at the Capitol. 10/31/2023 Tr. 259:20–264:11 (Banks).

162. Trump had various law enforcement entities at his disposal to quell the attack on the Capitol once he was aware that violence was underway. The President serves as the Commander of the D.C. National Guard. 10/31/2023 Tr. 247:1 (Banks). The President can deploy the D.C. National Guard without any authorization from the D.C. mayor or any other person. 10/31/2023 Tr. 249:9 (Banks).

163. There were 340 National Guard troops already activated in Washington, D.C. to assist with traffic and other duties on January 6. The group of 340 was available to the President on January 6, and President Trump could have immediately ordered it to supplement law enforcement officials defending the Capitol. 10/31/2023 Tr. 259:20–260:8 (Banks); Ex. 1027 (DoD Timeline). This group could have rapidly responded because riot gear was already stored at convenient locations near their places of deployment throughout the city. 10/31/2023 Tr. 260:7–8 (Banks); Ex. 1027 (DoD Timeline); Ex. 1031 at 37 (DoD IG Report). There is no evidence that Trump made any effort on January 6 to redeploy these troops to the Capitol once he knew the attack was underway. 10/31/23 Tr. 259:25–260:11 (Banks).

164. Former Chief of Staff to the Acting Secretary of Defense Kash Patel’s testimony that Trump had pre-authorized 10,000 to 20,000 National Guard troops and that D.C. Mayor Muriel Bowser and the U.S. Capitol Police rejected the Department of Defense’s offer to deploy those troops on January 6 is uncorroborated by documentary evidence and not credible. Patel’s various statements about when the President had purportedly given the authorization were inconsistent and directly contradicted by Acting Secretary of Defense Christopher Miller. 11/1/2023 Tr. 254:20–255:18 (Patel). On cross-examination, Patel gave contradictory testimony and was unsure when this meeting, which he claimed was meant to trigger the potential deployment of thousands of National Guard troops onto the streets of Washington, had occurred. 11/1/2023 Tr. 252:23–253:6 (Patel). Patel’s credibility is further undercut by the fact that he currently works as Trump’s National Security advisor consulting on a potential second term, is being paid \$15,000 per month by Trump’s Save America PAC, has written two books about Trump which Trump has promoted, sells pro-Trump merchandise on his website, and is serving on the Board of Directors of the Trump Media and Technology Group with President Trump. 11/1/23 Tr. 255:19–22, 256:1–3, 256:14–23, 257:11–258:23, 260:20–261:4, 261:9–23 (Patel).

165. Any pre-authorization like that described by Mr. Patel would have been recorded by both the Department of Defense and the National Guard Bureau for adjoining states. 10/31/2023 Tr. 254:6–20 (Banks). There is no evidence that such documentation exists. *Id.*; 11/3/23 Tr. 165:1–8 (Heaphy). The scope of the January 6 Select Committee’s document requests to the Department of Defense included any such documentation. The Department of Defense did not object to providing the requested documents and made a fulsome production, but that production included no documents referencing the pre-authorization. P078 (January 6 Select Committee Finding # 139); 11/3/2023 Tr. 165:7–8 (Heaphy). This fact directly contradicted Mr. Patel’s assertion that the reason he did not have documents reflecting the authorization was because they remained with the Department of Defense. 11/1/23 Tr. 246:12–247:2 (Patel). The documentation that the Department of Defense did produce, and on which Mr. Patel relied during his testimony, also contained no reference to that authorization. 11/1/23 Tr. 243:21–244:5 (Patel).

166. Patel has no first-hand knowledge about the President’s actions on January 6. He was neither at the White House nor spoke to Trump that day. 11/1/2023 Tr. 231:21–22, 232:5–7 (Patel).

167. Trump may have mentioned 10,000 National Guards during his January 4 meeting with Katrina Pierson, but any claim that he *authorized* such a deployment is not corroborated by documentary evidence and is not credible. To the contrary, Pierson’s text messages with Max Miller after the meeting indicate that she and Miller “killed” any idea of deploying the National Guard on January 6 and she confirmed during cross-examination that Trump’s references to the National Guard were not focused on protecting the Capitol. 11/1/23 Tr. 303:15–24 (Pierson); P265 (Pierson and Miller text messages). At most, Trump mentioned the possibility of deploying the National Guard while speaking to Pierson, who met with Trump as an event planner, and Miller, who was on Trump’s advance staff and had no role in the potential deployment of the National Guard. 11/1/2023 Tr. 276:19–277:2, 282:19–291:17 (Pierson). The conversation did not include any Department of Defense officials or Chief of Staff Mark Meadows. 11/1/2023 Tr. 300:21–301:7 (Pierson). In any event, as discussed above, Acting Secretary of Defense Christopher Miller testified before the January 6 Select Committee that there was no order authorizing 10–20,000 National Guard troops to be ready on January 6. 11/1/23 Tr. 254:20–255:10, 255:14–16 (Patel).

168. In addition to the 340 National Guard troops that had already been activated for traffic control duty or as a quick reaction force, President Trump could have ordered deployment of additional D.C. National Guard troops once he knew about the attack on the Capitol. 10/31/2023 Tr. 252:4–10 (Banks); Ex. 1027 (Department of Defense Timeline). The D.C. National Guard consists of around 2,000 troops, of which roughly 1,100 were available that day. 10/31/2023 Tr. 247:16–19 (Banks). Trump could have deployed all of these troops to assist with law enforcement within the District of Columbia as soon as he knew the attack was underway. 10/31/2023 Tr. 250:8–13 (Banks).

169. Trump had additional authorities at his disposal. He could have spoken with the governors of Virginia and Maryland to allow them to authorize their state National Guards within the District of Columbia. 10/31/2023 Tr. 260:12–20 (Banks).

170. Trump could have declared a national emergency which would have provided him additional emergency powers. Presidents have declared a national emergency within hours of the occurrence of large-scale violence “many times.” 10/31/2023 Tr. 282:12–283:1 (Banks).

171. Trump had authority over the Department of Justice and could have ordered that the Department of Justice deploy rapid response teams to the Capitol “very quickly.” 10/31/2023 Tr. 262:11–16 (Banks); 11/1/2023 Tr. 262:17–20 (Patel).

172. Trump also could have authorized the Department of Homeland Security’s rapid response team which could have deployed “in a matter of minutes from headquarters to the Capitol.” 10/31/2023 Tr. 262:17–21 (Banks).

173. Trump could have called on Secretary Bernhardt, the Secretary of the Interior, who had authority of the National Parks Service, which includes the U.S. Park Police. The Ellipse Speech took place within the jurisdiction of the National Parks Service. 10/31/2023 Tr. 263:3–7 (Banks).

174. Trump had authority over the United States Secret Service, which protects many important personnel, including Vice President Pence, one of the primary targets of the mob. 10/31/2023 Tr. 263:8–13 (Banks); *see* P078 (January 6 Select Committee Finding # 56).

175. Trump also could have called on the FBI, who are the “first personnel that the Attorney General would have contacted if there was a call from the President.” 10/31/2023 Tr. 263:15–18 (Banks).

176. Trump knew he had all these authorities at his disposal to respond to an attack on the Capitol. On the evening of January 5, 2021, Trump tweeted: “Antifa is a Terrorist Organization, stay out of Washington. Law enforcement is watching you very closely!” and tagged the Department of Defense (@DeptofDefense), the Department of Justice (@TheJusticeDept), the Department of Homeland Security (@DHSgov) and Secretary of Homeland Security Chad Wolf (@DHS\_Wolf), the Secretary of the Interior (@SecBernhardt), the Secret Service (@SecretService), and the Federal Bureau of Investigations (@FBI). P148 at 77 (Compilation of Trump tweets). He had also deployed the National Guard and other federal law enforcement authorities less than a year earlier in response to the Black Lives Matter protests in Lafayette Square in Washington, D.C. 10/31/23 Tr. 250:19–251:6 (Banks).

177. Trump was the only individual in the world who had all these authorities available to him on January 6. 10/31/2023 Tr. 264:9–11 (Banks). There is no evidence that Trump took any action to deploy any of these authorities after learning of the attack on the Capitol. 10/31/2023 Tr. 264:5–8 (Banks); 11/1/2023 Tr. 234:7–235:8 (Patel).

#### **IV. Trump Intended to Enable His Supporters’ Use of Force to Prevent the Transfer of Presidential Power**

178. The Court finds that, when on December 19, 2020, Trump tweeted to summon supporters for a “wild” protest on January 6th and retweeted the “Fight For Trump” video, Trump intended to summon supporters who would be ready to use force or threat of force to prevent the certification of the electoral college votes and the transfer of presidential power if needed.

179. The Court finds that, when Trump took the stage at the Ellipse on the morning of January 6, 2021, to deliver his speech calling his supporters to go “to the Capitol” and “fight like hell,” Donald Trump intended his speech to further the use of force or threat of force by his supporters to prevent the certification of the electoral college votes and the transfer of presidential power.

180. The Court finds that, when Trump tweeted at 2:24 pm about Vice President Pence’s lack of courage for not carrying out Trump’s illegal scheme, Donald Trump intended to further the use of force or threat of force by his supporters to prevent the certification of the electoral college votes and the transfer of presidential power.

181. The Court finds that, by failing to instruct the mob to leave the Capitol for nearly three hours or to exercise his presidential powers to quell the attack as the Capitol lay under siege, Trump intended to further the use of force or threat of force by his supporters to prevent the certification of the electoral college votes and the transfer of presidential power.

182. The Court bases each of these findings of intent on the totality of the evidence discussed in these Findings of Fact, but finds the following facts particularly salient.

183. First, by December 19, 2020, Trump knew that his claims of widespread election fraud were false, and that he no longer had any lawful means available to seek to overturn the results of the election because the certified electors had voted. Findings of Fact (“FOF”) ¶¶ 53, 57, 58, 75. That Trump refused to concede, and summoned a large crowd to Washington, D.C., on January 6 to continue opposing the certification, supports the conclusion that Trump intended a resort to unlawful means to achieve his goals of staying in power.

184. Second, the Court relies on Trump’s long-standing pattern of call-and-response with right-wing extremists and his willingness to call for violence and to fabricate false claims of voter fraud to instill anger in his supporters. 10/31/2023 Tr. 49:14–21, 53:2–54:10, 59:7–17 65:20–66:20, 76:9–23, 101:20–102:6, 126:11–19, 215:22–218:24, 221:10–21 (Simi); FOF ¶¶ 26–41. The Court also relies on the fact that Trump received and disregarded warnings about election-related violence shortly before January 6, and testimony that Trump “loves the crazies,” referring to far-right extremists like Ali Alexander and Alex Jones whose followers would be present on January 6. FOF ¶¶ 39, 83–89. This provides important context for understanding what Trump intended by his words in the lead-up to, and on, January 6.

185. Third, the Court relies on Trump’s own words on January 5, where he referred to the size of the crowd to intimidate lawmakers and Vice President Pence, and on January 6 when he used violent rhetoric and words of incitement. P022 at Appendix B (January 6 Senate Report) (Transcript of Ellipse speech); P049 (Video of Ellipse speech); P148 at 80, 82–84 (Compilation of Trump Tweets); FOF ¶¶ 80, 88, 100–04. By the time he gave his speech on the Ellipse, Trump knew many of his supporters were armed and would not go through the magnetometers, which would have given Trump reason not to use violent rhetoric unless he intended to unleash violence. 11/3/23 Tr. 217:9–18 (Heaphy); P078 (January 6 Select Committee Finding # 105, 107, 109, 150, 312, 316, 326, 338). By the time Trump issued his 2:24 pm tweet, he knew the Capitol was under violent attack and that the officials inside, including Vice President Pence, were in danger. FOF ¶ 132. The only conceivable reason to issue such a tweet while Vice President Pence was in a

building that was under siege was to deliberately inflame the mob. That Trump continued to pressure members of Congress to overturn the election results during the attack also demonstrates that Trump sought to use the mob to achieve his goal of obstructing the certification. P078 (January 6 Select Committee Finding # 120).

186. Fourth, Trump’s choice to do nothing to stop the attack until it was clear the attack would not succeed (despite knowing that he had ample authority to call in reinforcements and despite receiving repeated requests to do so) provides a powerful indication that Trump intended the mob to disrupt the certification. *See* 10/31/2023 Tr. 264:5–8 (Banks); 11/1/2023 Tr. 234:7–235:8 (Patel); 10/31/2023 Tr. 122:11–17, 122:20–23 (Simi); P148 at 77 (Compilation of Trump tweets). Indeed, the evidence shows that Trump chose not to take action because he believed that Vice President Pence “deserved” to be hung. P078 (January 6 Select Committee Finding # 150). Trump has offered no evidence from which the Court could infer that this failure to act was about anything other than a desire to see the mob succeed.

187. Fifth, Trump’s words of praise for the attackers in the evening of January 6 confirmed that he agreed with both their goals and their methods. P148 at 84 (Compilation of Trump Tweets); P068 (Trump video statement 1/6/2021 at 4:17 pm). His Truth Social post shows that Trump continues to believe “termination” of the Constitution was an appropriate response to the 2020 Presidential Election even two years later. P074 (Truth Social Post).

## **V. Historical Evidence Regarding Section 3 of the Fourteenth Amendment**

188. Section 3 of the Fourteenth Amendment, passed in 1866 and ratified by the states in 1868, provides that “No Person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.” U.S. Const. amend. XIV, § 3.

189. Petitioners provided expert testimony on the history of Section 3 from Professor Gerard Magliocca. He has been a professor at Indiana University Robert H. McKinney School of Law for 22 years, with a scholarly focus on constitutional history. 11/1/23 Tr. 10:9–21 (Magliocca). Magliocca is on the board of editors of the *Journal of American Constitutional History* and has written five books and roughly 20 law review articles on subjects related to constitutional history, including the history of the Fourteenth Amendment. 11/1/23 Tr. 10:22–11:8 (Magliocca). Magliocca has written several articles on the history of Section 3 in particular, including one that he wrote before the events of January 6, and his scholarly work on the history of Section 3 has previously been cited by courts and government agencies. 11/1/23 Tr. 12:3–13:16



(Magliocca). The Court finds Magliocca to be an expert in the history of the Fourteenth Amendment and his testimony to be credible.<sup>6</sup>

190. Section 3 of the Fourteenth Amendment was primarily written to prevent officials who left to join the Confederacy from returning to office. When many former confederates sought to be seated as if nothing happened, Republicans in Congress found it necessary to act and exclude them from positions of authority unless they deserved repentance or forgiveness. 11/1/23 Tr. 21:11–23 (Magliocca). Congressional debates surrounding Section 3 make clear that it was intended not as a punishment for crime, but to add an additional qualification for public office. 11/1/23 Tr. 22:2–6 (Magliocca).

191. The oath is central to Section 3. 11/1/23 Tr. 22:9–25 (Magliocca). It served a limiting function, because Section 3 only applies to those who had betrayed a previously sworn oath to the Constitution—which included those most responsible for the Civil War. 11/1/23 Tr. 22:9–25 (Magliocca) Supporters of Section 3 believed that such oathbreakers could not again take office and swear the oath without committing “moral perjury.” 11/1/23 Tr. 22:9–25 (Magliocca).

192. The history of Section 3 and its passage indicate that the provision is not limited to the events of the Civil War. The language of Section 3 refers generally to insurrection or rebellion, and senators in the debate made clear their intent for it to apply to future insurrections. 11/1/23 Tr. 23:4–10 (Magliocca); *accord* 11/3/23 Tr. 42:9–43:1 (Delahunty).

193. In the years following ratification of the Fourteenth Amendment, Section 3 was enforced by various entities. In some states under martial law, the Union Army enforced Section 3. On other occasions, state officials and state courts, such as those in North Carolina and Louisiana, enforced Section 3. These enforcements came before the enactment of federal implementing legislation in 1870. Later, federal courts were also tasked with enforcing Section 3 when Congress enacted federal enforcement legislation. 11/1/23 Tr. 23:18–24:21 (Magliocca).

194. Congress was inundated with applications to waive ex-Confederates’ disqualification as soon as the Fourteenth Amendment was ratified. Congress has the power to remove the disability by a two-thirds vote, and Congress passed a series of measures that would give amnesty to people by name, then afterwards a general amnesty to all the people then covered by Section 3. Both the applicants and Congress, in other words, did not think that legislation was needed before the disability of Section 3 takes effect. 11/1/23 Tr. 25:4–12 (Magliocca).

195. The Court credits Magliocca’s testimony that the historical understanding of “insurrection” when the Fourteenth Amendment was ratified included “any public use of force or threat of force by a group of people to hinder or prevent the execution of law.” 11/1/23 Tr. 26:19–23 (Magliocca). This finding is supported by (1) historical examples of insurrection (the Whiskey

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<sup>6</sup> The Court’s findings as to historical evidence concerning the meaning of Section 3 are factual findings, though they inform the Court’s legal conclusions. *See New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2130 & n.6 (2022); *see also United States v. Daniels*, 77 F.4th 337, 360 n.16 (5th Cir. 2023) (Higginson, J., concurring) (citing post-*Bruen* cases in which courts engaged in fact-finding on historical questions relevant to legal issues).

Insurrection and the Fries Insurrection) which would have been familiar to those who ratified the Fourteenth Amendment, 11/1/23 Tr. 27:14–30:6 (Magliocca); (2) multiple dictionaries from prior to the civil war that defined insurrection as “a rising against civil or political authority, the open and active opposition of a number of persons to the execution of law in a city or state,” and distinguished “insurrection” from “rebellion,” 11/1/23 Tr. 30:20–32:2 (Magliocca); (3) jury and grand jury charges containing similar definitions, 11/1/23 Tr. 32:19–33:23 (Magliocca); and (4) the legal code issued to the Union Army during the civil war by Francis Lieber, who was one of the “leading legal scholar[s] of his day” and an authoritative source on the law of war. 11/1/23 Tr. 34:3–35:18 (Magliocca).

196. The Court credits Magliocca’s testimony that there was no serious disagreement during Reconstruction about the meaning of “insurrection.” Contemporary scholarship on Section 3 of the Fourteenth Amendment addressing the meaning of “insurrection” is also basically in agreement with Professor Magliocca’s historical survey. 11/1/23 Tr. 35:19–36:6 (Magliocca).

197. Section 3 further qualifies “insurrection” by the phrase “against the same,” referring to the Constitution of the United States to which the oath was sworn. That limits the scope of the provision by excluding insurrections against state or local law, and including only insurrections against the Constitution, which officials have sworn an oath to support and have now broken. 11/1/23 Tr. 36:10–37:15 (Magliocca).

198. Trump’s expert witness, Robert Delahunty, offered an opinion that the meaning of “insurrection” at the time was less clear. 11/3/23 Tr. 43:15–51:7 (Delahunty). The Court does not credit this testimony. First, Delahunty, by his own admission, is “not claiming to be an expert in the history of Section 3 of the Fourteenth Amendment,” 11/3/23 Tr. 114:6–11 (Delahunty), and he has never written a peer reviewed book or article on the history of the Fourteenth Amendment, much less about Section 3, 11/3/23 Tr. 121:6–13 (Delahunty). Delahunty’s opinions in this case also suffer from a lack of detailed support from primary historical sources and appear to be drawn principally from secondary sources. *See, e.g.*, 11/3/23 Tr. 122:11–19, 125:7–23 (Delahunty). Magliocca has considerably more qualifications and expertise to provide helpful testimony on the relevant history. Second, while various historical sources about “insurrection” appear to use slightly different language, the essence of the concept appears to have been well-understood. *See, e.g.*, 11/3/23 Tr. 136:7–137:1 (Delahunty) (Delahunty expert report citing a Supreme Court of Georgia case from 1868 referring to “insurrection” as “armed resistance of some of the citizens of the state to its laws or the laws of the federal government”). The sources cited in Magliocca’s testimony were in general agreement, and Delahunty did not identify any historical sources that appeared to adopt a materially different view. Third, Mr. Delahunty acknowledges that “insurrection need not rise to the level of a rebellion” or to “the level of a civil war,” which supports Magliocca’s definition of “insurrection.” 11/3/23 Tr. 133:8–23 (Delahunty).

199. The Court credits Magliocca’s testimony that during Reconstruction, the phrase “engaged in” insurrection was “understood broadly to include any voluntary act in furtherance of an insurrection against the Constitution, including words of incitement.” 11/1/23 Tr. 37:16–25 (Magliocca). Opinions of the United States Attorney General during Reconstruction interpreting the Fourteenth Amendment support this view. Former confederate states were placed under martial law in 1867, and Congress ordered these states to hold elections for conventions to write new state constitutions and ratify the Fourteenth Amendment, in which the Union army is directed to exclude

people who would be disqualified under the language of the proposed Section 3 of the Fourteenth Amendment from voting. Attorney General Stanbery was tasked to provide instructions on these directives, and Andrew Johnson's Cabinet approved of Stanbery's opinions and directed the military to follow them. 11/1/23 Tr. 38:10–40:17 (Magliocca).

200. Stanbery's first opinion described "engaged" as "a direct, overt act done with intent" to further the confederacy, and the act must be voluntary. Charity is not included, nor is forced contribution, but one need not have taken up arms to have engaged in an insurrection. A second opinion further explains that the overt and voluntary act must be done with the intent of "aiding and furthering the common unlawful purpose, namely, the insurrection," and while "disloyal sentiments, opinions, or sympathies would not qualify," a person who "by speech or by writing incited others to engage in rebellion" must fall under the disqualification. Early judicial cases around the time, as well as antebellum treason cases, are consistent with this view that one need not personally have taken up arms to be disqualified, and that words of incitement can be sufficient to constitute engagement in insurrection. 11/1/23 Tr. 40:23–45:18 (Magliocca). Historical evidence, however, does not inform one way or the other about whether an omission in the face of a legal duty to act would be covered by Section 3. 11/1/23 Tr. 49:17–50:3 (Magliocca).

201. Congress also refused to seat Members based on their engagement in rebellion. John Young Brown was precluded from taking his seat in the House of Representatives in 1868 because he wrote a letter to the editor advocating for violence against Union troops that might enter Kentucky. In 1867, Philip Thomas was not seated in the Senate because he gave \$100 to his son before his son went off to join the confederate army. These cases happened before ratification of Section 3 and were pursuant to the power of the houses to judge the qualifications of their own members. However, they are relevant historical evidence of a contemporary understanding that words alone, or other conduct falling far short of taking up arms, would have been understood to constitute aid and support for rebellion. 11/1/23 Tr. 46:15–49:16 (Magliocca).

202. The Court does not credit Delahunty's contrary testimony. First, as previously explained, the Court finds that he lacks qualifications or other basis to opine on this issue compared to Magliocca. Second, Delahunty's opinion that "engaged in" excludes speech appears to be based largely on the fact that the Second Confiscation Acts expressly included incitement, but Section 3 did not use the same words. 11/3/23 Tr. 56:11–59:6 (Delahunty). However, it is not surprising that a constitutional provision would lack the same level of detail as a criminal statute, and there is no evidence that Congress intended to exclude "incitement" from the scope of "engaged in" insurrection when it drafted Section 3. 11/1/23 Tr. 73:6–75:3 (Magliocca). For that reason, the historical evidence cited by Magliocca is more compelling.

203. The Court also credits Magliocca's testimony that, during Reconstruction, the Presidency was understood as an "office, civil or military, under the United States" such that disqualified individuals could not assume the Presidency. 11/1/23 Tr. 59:17–62:6 (Magliocca). This issue came up explicitly in a colloquy between Senators Morrill and Johnson during the Congressional debates over Section 3, resulting in agreement that the Presidency was covered by the phrase "hold any office, civil or military, under the United States." 11/1/23 Tr. 59:17–62:6 (Magliocca). Moreover, in debates about amnesty at the end of reconstruction, it was widely understood that Jefferson Davis would be ineligible to serve as president of the United States unless he received blanket amnesty—and that the idea that amnesty might make Jefferson Davis

eligible to the presidency was seen as “preposterous.” 11/1/23 Tr. 59:17–62:6 (Magliocca). Trump’s own expert refused to commit as to whether the Presidency was understood to be an “office . . . under” the United States but agreed the colloquy between Senators Morrill and Johnson “may tend to show that the presidency is an office” under the United States. 11/3/23 Tr. 244:8–16 (Delahunty).

204. Finally, the Court credits Magliocca’s testimony that, during Reconstruction, the President of the United States was understood to be an “officer of the United States.” Attorney General Stanbery’s first opinion made clear that the phrase “officer of the United States” was used “in its most general sense and without any qualification” in Section 3. 11/1/23 Tr. 53:12–54:4 (Magliocca). His second opinion further said that “officers of the United States” applied “without limitation” to *any* “person who has, at any time prior to the rebellion held any office, civil or military, under the United States and has taken an official oath to support the Constitution of the United States.” 11/3/23 Tr. 256:22–257:13 (Delahunty). In other words, because the Presidency is an “office,” the person who holds that office and swears an oath was understood to be an “officer.” The second opinion later goes on to say that the president is an “executive officer.” 11/1/23 Tr. 59:11–16 (Magliocca). Contemporary usage overwhelmingly supports the view that the President is an “officer of the United States”: Andrew Johnson repeatedly referred to himself as such in presidential proclamations, members of Congress both during the 39th Congress that ratified the Fourteenth Amendment and during Johnson’s impeachment several years later repeatedly referred to the President the same way, and earlier presidents in the Nineteenth Century were referred to the same way. 11/1/23 Tr. 56:3–59:16; 69:21–71:21 (Magliocca). There is no indication in any of the Congressional debates about Section 3 that anyone intended to exclude the President or the Presidency, and the historical purpose of Section 3 as intending to cover those in high office who broke their oaths would suggest an intent to include the President. 11/1/23 Tr. at 62:7–25, 69:8–12 (Magliocca).

205. The Court also finds that the historical evidence shows that the oath need not be in the precise words “to support the Constitution” to fall under Section 3, and that the President’s oath “to preserve, protect, and defend” the Constitution encompasses an obligation to “support” it. 11/1/23 Tr. 54:14–56:2 (Magliocca) (discussing grand jury charge that “[t]he oath which shall have been taken need not be in the precise words of the Amendment, ‘to support the Constitution of the United States’” but that any oath that “substantially, even if not literally” imposes such obligation would qualify for Section 3); 11/3/23 Tr. 248:7–249:7 (Delahunty) (Samuel Johnson’s dictionary, the “gold standard”, according to Delahunty, in the late 1700s, defined “defend” to include “to support”).

206. The Court does not credit Delahunty’s contrary testimony regarding whether the President was understood during Reconstruction to be an “officer” or whether his oath was understood as one “to support” the Constitution. First, as previously explained, the Court finds that he lacks qualifications and experience to opine on this issue compared to Magliocca. Second, Delahunty appears to have disregarded much of the historical evidence about the original meaning of “officer of the United States” during the 1860s as “irrelevant” because of his view that this phrase as used in the original constitution in the 1780s was a legal term of art. 11/3/2023 Tr. 258:10–264:16 (Delahunty). However, the meaning of words can change over time, and Delahunty offers no evidence to suggest that any such technical term-of-art meaning that may or may not have existed in the 1780s was still in use at the time the Fourteenth Amendment was ratified.

Petitioners have presented substantial historical evidence suggesting that, if such technical meaning had once existed, it no longer did by the time the Fourteenth Amendment was ratified. *See* 11/1/23 Tr. 50:13–62:25 (Magliocca). Additionally, Delahunty testified that “as a practical matter” the President’s obligation to “defend” the Constitution includes the obligation to “support” it. 11/3/23 Tr. 246:18–248:6 (Delahunty).

## **VI. The Secretary of State’s Historical Practice in Ballot Access Disputes**

207. The Secretary of State’s Deputy Elections Director, Hilary Rudy, provided testimony on the Secretary’s historical practice in overseeing ballot access for federal and state candidates, including presidential candidates. The Court finds that Rudy’s testimony was credible, unrebutted by contrary evidence, and accurately described the practices and procedures of the Secretary of State. Based on Rudy’s testimony and documentary evidence, the Court finds that the Secretary “is responsible for ensuring that only qualified candidates are placed on the ballot and must give effect to applicable federal and state law unless a court has held such law to be invalid.” 11/1/2023 Tr. 107:6–108:3 (Rudy); P107 (Letter from Colorado Sec. of State to Abdul Hassan, Aug. 12, 2011).

208. The Secretary’s office will not certify a candidate to the ballot where it has “affirmative knowledge” that the candidate is constitutionally ineligible to assume the office they seek, or where the candidate’s ineligibility is based on an “objective, knowable fact.” 11/1/2023 Tr. 99:14–16, 105:5–12, 158:2–4 (Rudy). But courts in C.R.S. § 1-1-113 actions are ultimately empowered to make eligibility determinations *de novo*, including where investigation is needed beyond the candidate’s paperwork. As Rudy testified, “the Secretary’s Office is never the final arbiter of eligibility because the Secretary’s decision to either certify a candidate or not can be challenged in court.” 11/1/2023 Tr. 108:7–10 (Rudy). And “when there is an ongoing legal challenge to [the Secretary’s] determination about a candidate’s qualification[s],” the Secretary’s “practice” is to “wait for that outcome.” 11/1/2023 Tr. 118:18–21 (Rudy).

209. The Secretary’s ballot access team has the authority to and does create ballot access forms, including the presidential primary statement of intent form. 11/1/2023 Tr. 129:9–130:6 (Rudy). In creating the form, the ballot access team gives effect to the federal qualifications for office. 11/1/2023 Tr. 133:17–20, 155:20–156:2, 157:2–14 (Rudy).

210. The qualifications listed on the statement of intent for presidential primary candidates is not “intended to be an exhaustive list” and the affirmation signed by a candidate that they “meet all qualifications for the office prescribed by law” is considered a catchall affirmation that includes all constitutional qualifications for the presidency. 11/1/2023 Tr. 113:21–114:22, 135:12–136:15 (Rudy).

211. The Secretary has previously refused to certify candidates to presidential election ballots, including one candidate, Abdul Hassan, who was constitutionally ineligible to serve as President. 11/1/2023 Tr. 105:13–108:23, 151:24–153:13 (Rudy); P107 (Letter from Colorado Sec. of State to Abdul Hassan, Aug. 12, 2011).

212. The Secretary’s ballot access team does not do any investigation of the presidential primary application packet beyond review of the paperwork to ensure it is accurate and complete. 11/1/2023 Tr. 145:2–6 (Rudy).

213. The Secretary would likely deny ballot access to a hypothetical candidate who submitted complete presidential primary paperwork but was disqualified by the Twenty-Second Amendment. 11/1/2023 Tr. 157:15–158:4 (Rudy). But if a candidate completely fills out the candidate intent form and signs the affidavit, and if no court challenge is filed to challenge the candidate’s eligibility, then the Secretary will certify the candidate to the ballot. 11/1/23 Tr. 147:8–17 (Rudy).

214. The Secretary’s position is that the paperwork submitted by Trump, including the statement of intent and the state party presidential primary approval forms, is “complete and final,” but, due to this litigation, Trump will not be certified to the ballot until this Court issues a decision on his qualifications. 11/1/2023 Tr. 123:6–12 (Rudy).

215. The Secretary does not certify candidates to the ballot until the certification deadline. 11/1/2023 Tr. 145:10–146:23 (Rudy). The deadline for the Secretary to certify names to the 2024 presidential primary ballot is January 5, 2024. 11/1/2023 Tr. 97:6–9 (Rudy).

## PROPOSED CONCLUSIONS OF LAW

### I. Admissibility of January 6 Select Committee Report And Other Evidentiary Issues

1. The Court incorporates by reference its October 27 and October 29, 2023 Orders regarding Trump's motion *in limine*, its October 28, 2023 Omnibus Ruling on Pending 702 Motions, and all evidentiary rulings made at trial.

2. In its October 27, 2023 Order, the Court conditionally denied Intervenor Donald J. Trump's motion *in limine* to exclude the Final Report, Select Committee to Investigate the January 6th Attack on the United States Capitol, H.R. 117-663, 117th Cong., 2d Sess. (Dec. 22, 2022) ("January 6th Report") pending further trial testimony.

3. Upon consideration of the trial testimony of Timothy J. Heaphy, Chief Investigative Counsel for the January 6 Select Committee, and Representative Ken Buck, as well as the declaration of Representative Troy Nehls, the Court finds that Intervenor Trump did not rebut the January 6th Report's presumption of admissibility under C.R.E. 803(8). *See Barry v. Tr. of Int'l Ass'n Full-Time Salaried Officers & Emps. of Outside Local Unions & Dist. Counsel's (Iron Workers) Pension Plan*, 467 F.Supp.2d 91, 96 (D.D.C. 2006) ("[T]he party challenging the admissibility of a public or agency report . . . bears the burden of demonstrating that the report is not trustworthy.") (citing *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 167 (1988)).

4. C.R.E. 803(8) excludes from the hearsay rule "factual findings resulting from an investigation made pursuant to authority granted by law." Because C.R.E. 803(8) is nearly identical to its federal counterpart, F.R.E. 803(8), federal law is instructive when interpreting C.R.E. 803(8). *See Leiting v. Mutha*, 58 P.3d 1049, 1052 (Colo. App. 2002) ("Cases interpreting a similar federal rule of evidence are instructive" in Colorado).

5. There is no doubt, and Trump does not meaningfully dispute, that the January 6 Select Committee Report is a "record or statement of a public office," namely a Congressional Special Committee, containing "factual findings resulting from an investigation made pursuant to authority granted by law." C.R.E. 803(8); Establishing the Select Committee to Investigate the January 6th Attack on the United States Capitol, H. Res. 503, 117th Cong. (June 30, 2021). Citing a declaration by Representative Nehls, who was not made available for cross-examination at trial, Trump argues that the Committee was not properly constituted because it had no "ranking member." Decl. of Congressman Troy Nehls, October 17, 2023, ¶ 3, 4. But a "ranking member" is simply "the most senior . . . member of the minority party on a committee." *Republican Nat. Committee v. Pelosi*, 602 F. Supp. 3d 1, 29 (D.D.C. 2022). Republican Rep. Liz Cheney, who was appointed as Vice-Chair of the Select Committee by Chairman Bennie Thomson, Nehls Decl. ¶¶ 10, was thus the "ranking member" of the January 6 Select Committee. *Id.*; *see also Eastman v. Thompson*, No. 822CV00099DOCFM, 2022 WL 1407965, at \*6 (C.D. Cal. Jan. 25, 2022) (rejecting the same argument and holding that "the Select Committee is properly constituted"). As such, even if a challenge to the composition of the Committee were relevant to the applicability of C.R.E. 803(8), the January 6 Select Committee's investigation underlying the January 6 Select Committee Report was "made pursuant to authority granted by law" within the meaning of C.R.E. 803(8)(A)(iii).

6. To assess the January 6 Select Committee Report’s reliability, consistent with its October 27 Order adopting the legal test proposed by Trump, the Court applies the test for assessing a report’s trustworthiness set out in *Barry*, which expands on the four factors first articulated in *Beech Aircraft*, 488 U.S. at 167 n. 11, and the Federal Advisory Committee Notes to C.R.E. 803(8)’s federal analogue: “(1) the timeliness of the investigation; (2) the special skill or expertise of the investigating official; (3) whether a hearing was held and the level at which it was conducted; and (4) possible motivation problems.” *Barry*, 467 F. Supp. 2d at 97. Upon consideration of further evidence at trial, the Court continues to find that the first three factors weighed heavily in favor of admissibility. At trial, Trump offered no additional evidence against reliability on the basis of *Barry*’s first three factors. Trump offered no evidence that the Committee coerced testimony or disregarded exculpatory evidence, or conducted its investigation in a negligent or improper fashion.

7. The Court finds that Trump’s allegation that the January 6 Select Committee “doctored evidence” is meritless. Decl. of Rep. Troy Nehls, ¶¶ 22–23. Trump cites only the declaration of Rep. Troy Nehls, who was not a member of the Committee and has no personal knowledge of the activities of the Committee. Decl. of Rep. Troy Nehls, ¶ 2. In one of Trump’s examples, the January 6 Select Committee played a video at a hearing from Capitol security cameras showing the mob breaking into the Capitol by shattering exterior windows. The video, which had no audio, was played alongside audio from the same scene but from a different source. 11/3/2023 Tr. 157:22–158:20 (Heaphy). Trump does not allege that the video inaccurately depicted the events shown in the video. In Trump’s other example, the January 6 Select Committee used a demonstrative exhibit with an excerpt from a text message Rep. Jim Jordan sent to Trump’s Chief of Staff Mark Meadows. The excerpted text message erroneously ended in a period, rather than an ellipses that would have made clear the cited passage was only an excerpt. The January 6 Select Committee’s staff acknowledged the inadvertent error and apologized for the incorrect punctuation. 11/3/2023 Tr. 157:22–158:20 (Heaphy).

8. The Court credits Representative Buck’s testimony that the delayed release of interview transcripts, “if at all” released, is consistent with his experience as a staffer on the Iran-Contra investigation. 11/2/2023 Tr. 254:12–18 (Buck). This is consistent with Mr. Heaphy’s testimony regarding the importance of preventing public release of interview transcripts during an investigation to ensure that witnesses are providing personal knowledge, rather than something they heard from other sources. 11/3/2023 Tr. 162:7–163:3 (Heaphy).

9. The bulk of Trump’s arguments challenging the admissibility of the January 6 Select Committee Report continue to go to bias and *Barry*’s fourth factor, “possible motivation problems.” 467 F. Supp. 2d at 97.

10. This Court is not naive to the political realities of Congressional investigations. 11/2/2023 Tr. 229:4–10 (Buck). However, the legislature of this state, following the lead of Congress, has determined that Congressional reports are “presumptively admissible” unless the party opposing their admission is able to show “circumstances indicat[ing]” that the report in question lacks “trustworthiness.” C.R.E 803(8)(B), F.R.E 803(8)(B); *see, e.g., Beech Aircraft Corp. v. Rainey*, 488 U.S. at 170.



11. Trump has shown that the members of the January 6 Select Committee had preexisting views regarding Trump's role in the events on January 6, 2021. Every member of the Committee had voted to impeach Trump for inciting an insurrection and issued statements regarding their then-existing belief in Trump's culpability for the attack. 11/3/23 Tr. 196:12–19 (Heaphy).

12. However, the Court notes that the members of the Committee had personal knowledge of the events of January 6, 2021, and thus would have had some basis prior to the formation of the Select Committee (including during impeachment proceedings) to form opinions on the matter based on fact. Investigators often have an initial theory about who was responsible for the events under investigation (particularly if they have first-hand information about the events), and that does not render the process inherently untrustworthy. 11/3/23 Tr. 209:16–210:10 (Heaphy).

13. Petitioners presented un rebutted evidence that the Committee and its investigative staff constantly assessed whether evidence gathered during the investigation called into question or was inconsistent with the initial hypothesis regarding Trump's culpability. Heaphy testified that Chairman Thompson told him, at the outset and reinforced throughout, to “follow the facts and circumstances, wherever they lead.” 11/3/23 Tr. 210:11–22 (Heaphy). To that end, Heaphy testified that if the Committee or its staff had found evidence that was inconsistent with Trump's culpability, they would have said so. 11/3/23 Tr. 210:11–22 (Heaphy). But they never found such evidence, despite interviewing over 1,000 witnesses, reviewing over 1,000,000 documents, and watching hundreds of hours of video. The evidence instead confirmed Trump's culpability. 11/3/23 Tr. 210:23–211:23 (Heaphy); Ex. 1032 ¶ 17 (Heaphy Declaration).

14. Trump's bias argument also ignores the makeup of the investigative staff, which comprised seasoned investigators and prosecutors, most of whom had worked at the Department of Justice and some of whom were Republican. 11/3/23 Tr. 151:12–154:20 (Heaphy). It ignores that the vast majority of witnesses interviewed, deposed, and presented by the Committee at public hearings were Republicans and members of the Trump administration, many of whom were testifying against their own self-interest and all of whom testified under oath or subject to criminal prosecution pursuant to 18 U.S.C. § 1001 if they provided materially false or misleading testimony to Congress. Ex. 1032 ¶¶ 17–18 (Heaphy Declaration); 11/2/23 Tr. 255:6–256:1 (Buck).

15. The Court credits Heaphy's testimony regarding the Committee's and investigative staff's conduct of the investigation. Heaphy's trial testimony was largely un rebutted and consistent with his previously submitted declarations and public reporting on the activities of the Committee. 11/3/2023 Tr. 150:14–15, 146:21–150:4, 150:7–13, 155:8–13, 151:12–152:3, 154:7–20, 153:24–154:6 (Heaphy). Trump has failed to show that any alleged bias caused the Select Committee to ignore relevant evidence, or to issue findings that were unsupported by the extensive evidence presented to the Select Committee.

16. In addition to bias, Trump argues the Report's findings are unreliable because there was effectively no minority party participation and therefore evidence was not subject to the adversarial process. Both Petitioners' and Trump's witnesses confirmed that the composition of the committee was a result of Senate Republicans' refusal to vote for an independent and bipartisan

commission and Republicans' decision to boycott the Select Committee altogether when Speaker of the House Nancy Pelosi refused to seat two of the five choices Leader Kevin McCarthy put forth to sit on the Committee. 11/2/2023 Tr. 235:13–236:13, 236:14–238:2, 239:14–240:1 (Buck). In fact, Trump's witness Representative Buck sought to serve on the Committee because of his background as a prosecutor but was not permitted by then-Leader McCarthy. 11/2/2023 Tr. 213:3–14 (Buck). That the Congressional Republicans chose not to seat the three Republican members that Speaker Pelosi was agreeable to seating or to nominate a new slate of potential members, and instead chose to not participate, is not a valid reason to reject the January 6th Report out of hand. Indeed, as Congressman Buck acknowledged, Representative Jordan's participation as both a member and material witness may have presented "a conflict," given his admitted conversations with President Trump and Rudolph Giuliani on January 6, 2021. 11/2/2023 Tr. 240:4–243:10 (Buck).

17. Because Representative Buck testified that he did not attend January 6 Select Committee meetings, did not participate in the investigation, has no knowledge of the details of the investigation's day to day operations or staff other than what he has read in public reporting, the Court does not credit Representative Buck's testimony regarding the reliability or trustworthiness of the January 6 Select Committee Report, findings, or its underlying investigation. 11/2/2023 Tr. 227:7–14; 247:3–252:22 (Buck). The Court further notes that Representative Buck could neither identify a single witness, other than Representative Jordan, or document that should have been, but was not, considered by the Select Committee, nor a single disagreement with the factual findings of the January 6 Select Committee Report. 11/2/2023 Tr. 256:19–257:7; 260:9–16 (Buck). As Representative Buck testified, "The January 6th investigation was not a court proceeding," 11/2/2023 Tr. 241:24–242:3 (Buck), and the heightened evidentiary requirements required by the State of Colorado in this proceeding do not bind Congress. The Court further finds it immaterial that the January 6 Select Committee Report did not provide exhaustive findings on other topics, such as the security preparedness of the Capitol on January 6, both because those topics were irrelevant to the causes of the attack and were examined in a bipartisan Senate report from June 2021, which both Petitioners and Trump relied upon at trial. *See* P022. This Court must, and has, weighed the evidence provided in the admissible portions of the January 6 Select Committee Report in light of the whole record, including the testimony provided over the course of a one-week trial.

18. The Court finds that all four *Barry* factors weigh in favor of admissibility of findings in the January 6 Select Committee Report. However, as the U.S. Supreme Court recognized in *Beech Aircraft*, the rules of evidence provide trial courts "with additional means of scrutinizing and, where appropriate, excluding evaluative reports or portions of them." 488 U.S. at 167–68. While factual findings in Congressional reports are admissible under the public records exception to the hearsay rule, direct quotations and mere summaries of out-of-court statements offered for the truth of the matter asserted will not be considered by this Court in reaching its decision. *See, e.g., U.S. v. Ortiz*, 125 F.3d 630 (8th Cir. 1997), *cert. denied*, 118 S. Ct. 1087 (1998) (holding report prepared by an agent of the Drug Enforcement Administration containing statements made by an informant inadmissible under F.R.E. 803(8)(C) because it was essentially a transcript of what the informant told the DEA agent and did not present "factual findings").

19. Petitioners initially sought admission of 411 findings excerpted from the January 6 Select Committee Report. In two pretrial decisions, the Court ruled that 143 of those findings were inadmissible, in whole or in part, for various reasons. *See* Order Re: Intervenor Trump’s Objections to Specific Findings Contained in the January 6th Report (Oct. 29, 2023); Order Re: Donald J. Trump’s Motion in limine to Exclude Petitioners’ Anticipated Exhibits (Oct. 27, 2023). Petitioners have submitted as Exhibit 78 a revised, shortened set of 98 findings, which they argue are admissible in light of my rulings and the evidence presented at trial. The Court has reviewed Exhibit 78 and admits as evidence and credits only those findings that have been cited in this decision.

## II. Petitioners’ Cause of Action under Colorado Law

20. The Court incorporates by reference its October 20, 2023 Omnibus Ruling on Pending Dispositive Motions, in which the Court denied Trump’s motion to dismiss on state law grounds, denied CRSCC’s motion to dismiss and motion for judgment on the pleadings, and granted Petitioners’ motion to dismiss CRSCC’s first claim for relief. The Court also incorporates by reference its October 28, 2023 Order holding that Petitioners’ burden of proof in this proceeding is “preponderance of the evidence,” as prescribed by C.R.S. § 1-4-1204(4).

21. The Court reserved for trial the question of whether the Secretary has the authority to investigate and exclude a candidate from the ballot based on Section 3 of the Fourteenth Amendment. Omnibus Ruling on Pending Dispositive Motions, at 16–17 (Oct. 20, 2023). Trump argues the “General Assembly did not charge either the Secretary or the Petitioners with the authority to investigate or presumably enforce Section 3 of the Fourteenth Amendment,” and that the Secretary’s only role in assessing candidate qualifications is “to verify that the candidate made the appropriate affirmation” in their statement of intent. *Id.* at 16. Petitioners respond that, regardless of whether the Secretary has the power to investigate candidate qualifications, C.R.S. § 1-4-1204(4) and § 1-1-113 authorize eligible electors to seek a *court order* barring the Secretary from placing on the ballot a candidate who is constitutionally ineligible to assume the office they are seeking and that, in such a proceeding, the court evaluates the candidate’s qualifications de novo.

22. The Court agrees with Petitioners. In *Hanlen v. Gessler*, the Colorado Supreme Court made clear that “the election code requires a court, not an election official, to determine the issue of eligibility” of a candidate. 2014 CO 24, ¶ 40. Two years later, the Colorado Supreme Court reaffirmed that holding and again declared, “when read as a whole, the statutory scheme evidences an intent that challenges to qualifications of a candidate be resolved only by the courts.” *Carson v. Reiner*, 2016 CO 38, ¶ 8. Two years after that, the Colorado Supreme Court noted that even where the paper record submitted to an election official appears sufficient on its face, courts retain the power to review extrinsic evidence in eligibility challenges. *Kuhn v. Williams*, 2018 CO 30M, ¶¶ 39–46. The Court held that “judicial review” under § 1-1-113 is “de novo” and “includes the taking of evidence” and that the challengers there could “present evidence demonstrating that a petition actually fails to comply with the Election Code, even if it ‘appear[ed] to be sufficient’ in a paper review.” *Id.* ¶¶ 39, 41, 42. This trio of cases make clear that courts, not elections officials, are the ultimate arbiters of candidate qualification challenges in Colorado.

23. The history of C.R.S. § 1-4-1204 reinforces this conclusion. As originally enacted in 2016, § 1-4-1204(4) charged the Secretary with initially adjudicating any “challenge to the listing of any candidate on the presidential primary election ballot,” with the “secretary of state’s decisions upon matters of substance . . . open to review, if prompt application is made, as provided in section 1-1-113.” CO Laws 2016, I.P. 140 (Proposition 107), § 2, eff. Dec. 27, 2016. In 2017, however, the General Assembly amended the statute to require that challenges be made directly with the district court rather than the Secretary. *See* CO Laws 2017, Ch. 216, § 4, eff. Aug. 9, 2017. The legislative history shows that the 2017 amendment was intended to make presidential primary challenges conform with other types of election challenges, which are filed directly in the district court under C.R.S. § 1-1-113. *See* CO Senate State, Veterans, & Military Aff’s. Comm. (May 3, 2017), at 12:24:38–12:25:50, <https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20230224/-1/8615#agenda>.

24. Moreover, Deputy Election Director Rudy testified that the Secretary’s office is responsible for ensuring that only candidates who meet federal and state qualifications for office are placed on the ballot, including presidential primary ballots. FOF ¶¶ 207, 209, 210. She further testified that the office has historically understood the courts to be the final arbiters of candidate eligibility challenges—particularly where a candidate’s ineligibility is not affirmatively disclosed or readily verifiable. FOF ¶ 208. Rudy recognized that the Secretary historically has followed (and will follow) any judicial determination of a candidate’s constitutional eligibility to appear on a ballot. FOF ¶¶ 207, 208, 213, 214.

25. Thus, Colorado law empowers this Court to adjudicate whether Trump is disqualified from public office under Section 3 of the Fourteenth Amendment. *See* C.R.S. § 1-4-1204(4) (“[T]he district court shall hear the challenge and assess the validity of *all alleged improprieties*” and “issue findings of fact and conclusions of law”) (emphasis added). If the Court determines that Trump is not qualified to be on the ballot, then it “would certainly ‘commit a breach or neglect of duty or other wrongful act’” for the Secretary “to nonetheless certify [him] . . . to the ballot.” *Kuhn*, ¶ 38 (quoting C.R.S. § 1-1-113).

### **III. Trump is Disqualified from Public Office under Section 3 of the Fourteenth Amendment**

26. To determine whether Trump is disqualified from office under Section 3 of the Fourteenth Amendment, the Court must consider three questions. First, did Trump swear an oath “to support the Constitution” as “an officer of the United States” (and, relatedly, is the Presidency an “office . . . under the United States” that disqualified individuals may not hold)? Second, was there an “insurrection or rebellion against” the “Constitution of the United States”? And third, did Trump “engag[e] in” that insurrection? *See New Mexico ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, at \*16 (N.M. Dist. Ct. Sept. 6, 2022). The Court concludes that the answer to each of these questions is yes.

#### **A. Section 3 Covers the President and the Presidency**

27. Trump argues that his taking of the Presidential Oath of Office did not trigger Section 3’s application to him because: (1) the President does not take an oath to “support” the

Constitution as Section 3 requires; and (2) the President is not an “officer of the United States.” Trump Mot. to Dismiss at 13–19 (Sept. 29, 2023). The Court rejects both arguments.

**i. Trump Swore an Oath to Support the Constitution**

28. On January 20, 2017, Trump took the Presidential Oath of Office, swearing to “faithfully execute the Office of President of the United States,” and “to the best of [his] Ability, preserve, protect and defend the Constitution of the United States.” U.S. Const. art. II § 1, cl. 8; FOF ¶ 3.

29. By swearing this stronger oath to “preserve, protect and defend the Constitution,” Trump necessarily also swore to undertake the lesser duty to “support” the Constitution. This conclusion follows from the Constitution’s plain text: by definition, one who “defends” something “supports” it. FOF ¶ 205; Samuel Johnson, *A Dictionary of the English Language* (5th ed. 1773) (defining “defend” as “to stand in defense of; to protect; to support”);<sup>7</sup> FOF ¶ 206 (Trump’s expert testifying that “as a practical matter” the obligation to “defend” the Constitution includes the obligation to “support” it). And as previously explained, the historical record shows that Section 3 is not limited to those whose oaths used the “precise words of the amendment: ‘to support the Constitution of the United States,’” but covers all oaths that “substantially, though not literally” provide such obligation. *See* FOF ¶ 205; *The Public Ledger*, December 2, 1870, at 3 (newspaper reprinting a federal grand jury charge in Tennessee). Moreover, Section 3 refers to “an” oath to support the Constitution, not *the specific oath* set out in Article VI, Clause 3, as Trump incorrectly argues. *See* Trump Mot. to Dismiss at 16–17 (Sept. 29, 2023).

30. Given Section 3’s focus on constitutional oaths, it would make no sense to exempt from disqualification the officer who takes the *strongest* oath to defend the Constitution. *See Mapp v. Ohio*, 367 U.S. 643, 657 (1961) (“There is no war between the Constitution and common sense.”). Trump’s argument that the President’s oath does not count as one to support the Constitution is atextual, ahistorical, and absurd.

**ii. The Presidency is an Office Under, and the President is an Officer Of, the United States**

31. When interpreting the Constitution’s text, courts are “guided by the principle that ‘the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.’” *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)). “The simplest and most obvious interpretation of a Constitution, if in itself sensible, is the most likely to be that meant by the people in its adoption.” *Whitman v. Nat’l Bank of Oxford*, 176 U.S. 559, 563 (1900). Applying this principle in connection with the historical evidence presented in

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<sup>7</sup> The Supreme Court frequently cites Samuel Johnson’s Dictionary in construing constitutional terms. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 581 (2008); *Torres v. Madrid*, 141 S. Ct. 989, 995 (2021).

this case makes clear that the Presidency is an “office under,” and the President is an “officer of,” the United States.

32. ***The Constitution’s Text.*** Section 3 applies to presidents because they are “officer[s] of,” and hold “office ... under,” the United States. U.S. Const. amend. XIV, § 3. The Constitution refers to the President holding an “Office” 25 times, including in the Oath of Office Clause. See U.S. Const. art. II, § 1 (“[The President] shall hold his Office during the Term of four Years ... No Person except a natural born Citizen ... shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.”); *see also id.* art. I, § 3; art. II, § 4; amends XII, XXII, XXV. Because the President’s “Office” is within the federal executive branch, it is necessarily an office “of the United States.” See U.S. Const. art. I, § 3, cl. 5 (President holds an office “of the United States”); *id.* art. II, § 1, cl. 8 (same). And one who holds an “office” is an “officer,” as Section 3’s framers clearly understood.

33. ***Original Public Meaning of the Phrase “Officer of the United States.”*** The Constitution’s plain text is bolstered by the original public meaning of the phrase “officer of the United States” at the time the Fourteenth Amendment was adopted, as leading scholars have confirmed. William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section 3*, 172 U. Pa. L. Rev. (forthcoming 2024) (manuscript at 104–12), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4532751](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751); Gerard N. Magliocca, *Background as Foreground: Section 3 of the Fourteenth Amendment and January 6th*, 25 U. Penn. J. Con. L. (forthcoming 2023) (manuscript at 10 n.48), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4306094](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4306094); John Vlahoplus, *Insurrection, Disqualification, and the Presidency*, 13 Brit. J. Am. Legal Stud. (forthcoming 2023) (manuscript at 13–22), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4440157](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4440157); Mark A. Graber, *Section Three of the Fourteenth Amendment: Our Questions, Their Answers*, 17–24 (Univ. of Md. Legal Studies Research Paper No. 2023-16), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4591133](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4591133); Ilya Somin, *Why President Trump is an “Officer” who Can be Disqualified From Holding Public Office Under Section 3 of the 14th Amendment*, The Volokh Conspiracy (Sept. 16, 2023), <https://reason.com/volokh/2023/09/16/why-president-trump-is-an-officer-who-can-be-disqualified-from-holding-public-office-under-section-3-of-the-14th-amendment/>.

34. As originally understood during Reconstruction, an “officer” of the United States for Section 3 purposes was one who held an “office,” civil or military, that required an oath to support the Constitution. FOF ¶ 204. *see Tanzin v. Tanvir*, 141 S. Ct. 486, 491 (2020) (looking to provision’s “plain meaning at the time of enactment”). This is clear from the opinions of Attorney General Stanbery. *See* 12 U.S. Op. Atty. Gen. 141, 158 (1867) (phrase ““officer of the United States’ within the meaning of [Section 3] . . . is used in its most general sense, and without any qualification, as legislative, executive, or judicial” and includes “all officers of the United States”); 12 U.S. Op. Att’y Gen. 182, 196 (1867) (phrase “Officers of the United States” describes, “without limitation,” any “person who has at any time prior to the rebellion held any office, civil or military, under the United States, and has taken an official oath to support the Constitution of the United States”). “[T]he reason is apparent for including *all* officers of the United States” because they stand “in direct relation and trust to the United States.” 12 U.S. Op. Atty. Gen. at 158 (emphasis added).

35. It is also clear from judicial decisions at the time. The North Carolina Supreme Court drew “the distinction between an officer and a mere placeman . . . by making his oath the test. Every officer is required to take not only an oath of office, but an oath to support the Constitution . . . of the United States. . . . [T]he oath to support the Constitution is the test.” *Worthy v. Barrett*, 63 N.C. 199, 202, 204 (1869) (mandamus), *appeal dismissed sub nom. Worthy v. Comm’rs*, 76 U.S. 611 (1869). Similarly, the Florida Supreme Court in an opinion construing Section 3 as incorporated through the Florida Constitution defined “[a]n officer of the State” as “a person in a public charge or employment, commissioned or authorized to perform any public duty, under an oath to support the Constitution and Government, and to perform the duty faithfully.” *In the Matter of the Executive Communication of the 14th October, 1868*, 12 Fla. 651, 651–62 (1868). As previously explained, the President holds an “office” and he swears an oath to support the Constitution. For that reason, he is an “officer of the United States” as that term was defined and understood when the Fourteenth Amendment was ratified.

36. Frequent references to the President as an “officer of the United States” during Reconstruction reinforce this conclusion. FOF ¶ 204. Nineteenth century presidents were frequently referred to as “chief executive officer of the United States.” President Andrew Johnson repeatedly referred to himself as such in presidential proclamations that laid out his authority to adopt reconstruction measures. FOF ¶ 204; 6 James D. Richardson, *A Compilation of the Messages and Papers of the Presidents* 312–31 (1897). During his impeachment in 1868 (the year the Fourteenth Amendment was ratified), members of Congress referred to him the same way. FOF ¶ 204; *see also* Cong. Globe., 40th Cong., 2d Sess. Supp. 236 (1868) (statement of Rep. Evarts); Cong. Globe., 40th Cong., 2d Sess. 513 (1868) (statement of Rep. Bingham). Other nineteenth century presidents, including Jefferson, Jackson, Van Buren, Harrison, Polk, Taylor, Fillmore, Buchanan, Lincoln, Grant, and Garfield, were referred to using the same phrase. FOF ¶ 204; Vlahoplus, *supra*, at 17–20.

37. Members of the 39th Congress who enacted the Fourteenth Amendment repeatedly referred to the President as an officer. FOF ¶ 204; *see also* Graber, *supra*, at 17–24. For example, Representative Rufus Spalding of Ohio spoke of the presidency as “this high officer of the Government.” Cong. Globe, 39th Cong., 1st Sess. 132 (1866) (statement of Rep. Spalding). Senator James Dixon referred to the president as an “officer of the Government.” Cong. Globe, 39th Cong., 2d Sess. 1505 (1867). Senator Benjamin Wade of Ohio noted that “[t]he President is a mere executive officer.” Cong. Globe, 39th Cong., 1st Sess. 1800 (1867). And members of the Thirty-Ninth Congress repeatedly referred to the President as the “chief executive officer of the United States.” *See* Cong. Globe, 39th Cong., 1st Sess. 335 (statement of Rep. Guthrie), 775 (statement of Rep. Conkling (quoting Attorney General James Speed)), 915 (statement of Sen. Saulsbury), 1318 (statement of Rep. Holmes (quoting President Johnson)), 2914 (statement of Sen. Dolittle) (1866).

38. Attorney General opinions at the time were along the same lines. Stanbery’s second opinion on the Reconstruction Acts referred to the President as an “executive officer.” FOF ¶ 204; *see also* *Claims for the Use of Turnpikes in Time of War*, 13 U.S. Op. Att’y Gen. 106, 109 (1869) (calling the President the “ultimate superior officer”); *Compromise of Internal-Revenue Cases*, 13 U.S. Op. Atty. Gen. 479, 480 (1871) (referring to “any officer but the President”).

39. The Congressional debates over Section 3 reflect a conscious decision to cover the President and the Presidency. *See* FOF ¶¶ 203–04. In the Senate debate, Senator Reverdy Johnson of Maryland asked why former officials who were Confederates “may be elected President and Vice-President of the United States, and why did you omit to exclude them?” Senator Lot Morrill of Maine responded: “Let me call the Senator’s attention to the words ‘or hold any office, civil or military, under the United States.’” Senator Johnson replied: “Perhaps I am wrong as to the exclusion from the presidency; no doubt I am.” Cong. Globe, 39th Cong, 1st Sess. 2899 (1866); FOF ¶ 203. Trump’s expert, Delahunty, agreed that this colloquy “may tend to show that the presidency is an office” under the United States within Section 3’s list of excluded offices. FOF ¶ 203.

40. Other parts of the legislative debates similarly made clear that it would apply to “the election of the next or any future President of the United States.” Cong. Globe, 39th Cong, 1st Sess. 2728 (1866) (statement of Sen. Howard). Representative Thaddeus Stevens, who introduced the first draft of what became Section 3, argued that the Fourteenth Amendment should be carried out “both in reference to the presidential and all other elections.” *Id.* at 2544. And congressmen identified Aaron Burr as the type of target intended by the provision—Burr was the Vice President at the time of his conspiracy and thus not among those offices expressly enumerated in Section 3. *Id.* at 2534–35 (statement of Rep. Eckley).

41. Contemporaneous sources also show a clear consensus that Section 3 disqualified Jefferson Davis from holding any office, including the Presidency, unless he received amnesty. FOF ¶ 203. In debates about blanket amnesty legislation after Reconstruction, one major objection was that it would remove Jefferson Davis’s disqualification for the Presidency of the United States, which was seen by supporters of the Fourteenth Amendment as an absurd outcome. *Id.* *See* Vlahoplus, *supra*, at 7–10; 4 Cong. Rec. 325 (1876) (statement of Rep. Blaine).

42. **Judicial Decisions.** No court has specifically addressed whether the President qualifies as an “officer of the United States” under Section 3 of the Fourteenth Amendment. But a contemporaneous Supreme Court case referred to the President as an “officer,” stating “[w]e have no officers in this government, from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority.” *The Floyd Acceptances*, 74 U.S. (7 Wall.) 666, 676–77 (1868). Lower courts likewise referred to the President as an officer, including in one case affirmed by the Supreme Court. *See, e.g., United States ex rel. Stokes v. Kendall*, 26 F. Cas. 702, 752 (C.C.D.D.C. 1837) (“The president himself ... is but an officer of the United States[.]), *aff’d*, 37 U.S. (12 Pet.) 524 (1838); *Ex parte Merryman*, 17 F. Cas. 144, 152 (C.C.D. Md. 1861) (calling the President “that high officer”).

43. Trump relies on several cases suggesting that “officers of the United States” must be appointed rather than elected. The Court does not find these cases relevant here because they interpret the President’s power to appoint “other Officers of the United States” for purposes of the Appointments Clause. Of course officers who are appointed by the President are not elected. Because the President does not appoint himself, language in cases such as *Free Enterprise Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 497–98 (2010), addressing the Appointment Clause’s phrase “other officers” has no bearing on whether the President himself is an officer. In fact, Trump previously acknowledged as much in arguing in another case that the President *is* an



“officer of the United States.” *See* President Donald J. Trump’s Mem. of Law. in Opp. to Mot. to Remand, *New York v. Trump*, 1:23-cv-3773-AKH, ECF No. 34, at 2–9 (S.D.N.Y., filed June 15, 2023).

44. While the Appointments Clause cases do not bear directly on whether the President is an officer, they do establish a general test: to be an officer of the United States, an “individual must occupy a ‘continuing’ position established by law,” and must “exercis[e] significant authority pursuant to the laws of the United States.” *Lucia v. SEC*, 138 S. Ct. 2044, 2051 (2018). The President indisputably satisfies both requirements: the Presidency is a “continuing” position established and limited by the Constitution, *see, e.g.*, U.S. Const. art. II; *id.* amend. XII; *id.* amend. XXII, and the President not only exercises “significant authority pursuant to the laws of the United States”—the “entire ‘executive Power’ belongs to the President alone” and his “subordinate officers” merely “wield executive power on [the President’s] behalf.” *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2191–92, 2197 (2020) (emphasis added); *see also* Officers of the U.S. Within the Meaning of the Appointments Clause, 31 Op. O.L.C. 73, 78 (2007) (“The text and structure of the Constitution reveal that officers are persons to whom the powers ‘delegated to the United States by the Constitution,’ U.S. Const. amend. X, are in turn delegated in order to be carried out. The President himself is said to ‘hold [an] Office,’ and the Constitution provides that ‘[t]he executive Power shall be vested in’ that office. *Id.* art. II, § 1, cl. 1.”).

45. ***Reading “Officer” in Section 3 To Exclude The President Would Have Absurd Results.*** Reading “officer of the United States” to exclude the President would have absurd results incompatible with Section 3’s purposes. *See Alden v. Maine*, 527 U.S. 706, 724 (1999) (considering absurd results in construing the Eleventh Amendment). An ex-President who leads a violent rebellion against the United States could hold the Presidency again, but a county sheriff who provided mere assistance to the rebel ex-President would be forever barred from even low-level state office. Such a result disregards Section 3’s historical focus on ex-Confederate *leaders*, such as Jefferson Davis, Zebulon Vance, and others. While “faithful readings of the Constitution sometimes yield counterintuitive outcomes,” that “does not mean we should close our eyes to plausibility and common sense, especially when the proposed textual reading is such a stretch.” Baude & Paulsen, *supra*, at 108 & n.395. Given that Section 3 was intended to “stri[k]e at those who have heretofore held high official position, and who therefore may be presumed to have acted intelligently,” it would make little sense to exclude the very highest office from its coverage. Cong. Globe, 39th Cong, 1st Sess. 3036 (1866) (statement of Sen. Henderson); *see also* FOF ¶ 204.

## **B. The Events On and Surrounding January 6, 2021, Were an Insurrection Against the Constitution**

46. As the Supreme Court declared during the Civil War, “[i]nsurrection against a government may or may not culminate in an organized rebellion, but a civil war always begins by insurrection against the lawful authority of the Government.” *The Prize Cases*, 67 U.S. (2 Black) 635, 666 (1862); *see also* FOF ¶ 195. The Court finds that an “insurrection” at the time of ratification of the Fourteenth Amendment was understood to refer to “any public use of force or threat of force by a group of people to hinder or prevent the execution of law.” *Id.*

47. This understanding of “insurrection” comports with the historical examples of insurrection before the Civil War, with dictionary definitions from before the Civil War, with judicial opinions during the same time, and with other authoritative legal sources. *Id.*; *see also*, e.g., *Case of Fries*, 9 F. Cas. 924, 930 (C.C.D. Pa. 1800) (Chase, J.) (“[A]ny insurrection or rising of any body of people, within the United States, to attain or effect, by force or violence any object of a great public nature, or of public and general (or national) concern, is a levying war against the United States[.]”); *United States v. Hanway*, 26 F. Cas. 105, 127–28 (C.C.E.D. Pa. 1851) (similar); *Chancely v. Bailey*, 37 Ga. 532, 548–49 (1868) (“If the late war had been marked merely by the armed resistance of *some* of the citizens of the State to its laws, or to the laws of the Federal Government, as in the cases in Massachusetts in 1789, and in Pennsylvania in 1793, it would very properly have been called an *insurrection*[.]”).

48. In the context of Section 3, and in accordance with the historical understanding, the Court finds that such insurrection must be “against” the “Constitution of the United States” and therefore must be (1) a public use of force or threat of force, (2) by a group of people, (3) to hinder or prevent execution of the Constitution of the United States. The Court concludes that the events on and around January 6, 2021, easily satisfy this definition of “insurrection.” *See also Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, at \*16 (N.M. Dist. Ct. Sept. 6, 2022).

49. There was a public use of force or threat of force by a group of people. FOF ¶¶ 110–30, 137, 141–44. As detailed at length above, a mob of thousands of individuals descended on the United States Capitol. FOF ¶¶ 110–24. Many of them were armed with weapons, or had prepared for violence in other ways such as bringing gas masks, body armor, tactical vests, and pepper spray. FOF ¶¶ 119–20. The attackers repeatedly and brutally assaulted law enforcement officers, engaging them in hours of hand-to-hand combat and using weapons such as tasers, batons, riot shields, flagpoles, poles broken apart from metal barricades, and knives against them. FOF ¶¶ 121–22, 142–43. The movements of the mob were often coordinated, demonstrating a unity of purpose. FOF ¶ 129. Over 170 law enforcement officers were injured, and several lost their lives. FOF ¶ 151. The mob overran police lines outside the Capitol, broke into the Capitol by force through multiple entrances, and came within feet of members of Congress and the Vice President who were still inside the Capitol building. FOF ¶¶ 112, 116, 118, 137. They marched through the building chanting in a manner that made clear they were seeking to inflict violence against members of Congress and Vice President Pence. FOF ¶¶ 122, 126, 127, 144.

50. The mob’s evident purpose was to hinder or prevent execution of the Constitution to ensure Donald Trump remained the President. FOF ¶¶ 126–30, 144. In particular, the mob sought to obstruct the counting of the electoral votes as set out in the Twelfth Amendment. FOF ¶¶ 59, 126–30, 144. They also sought to interfere with the transfer of Presidential power to the winner of the 2020 election, which by operation of Article II and the Twentieth Amendment was to take place on January 20, 2021. FOF ¶¶ 60, 126–30, 144; U.S. Const. art. II; *id.* amend. XX. As previously laid out in detail, the mob’s banners, attire, and statements during the attack, the heavy involvement of right-wing extremist groups that planned to attack the Capitol in advance of January 6, the overall context of the attack occurring during Congress’s certification of electoral results, and Trump’s speech encouraging the crowd to go to the Capitol precisely to “fight” against this certification, leave no doubt as to what the mob’s overall goals were. FOF ¶¶ 77–79, 84, 100–09, 126–30, 144. The mob achieved its goals of obstructing the certification of the electoral results,

at least temporarily. FOF ¶¶ 117, 137, 144, 150. By any reasonable construction of the phrase, this was an insurrection against the Constitution.

### C. Trump Engaged in the January 6, 2021 Insurrection

51. Historically, the phrase “engaged in” insurrection for purposes of Section 3 was “understood broadly to include any voluntary act in furtherance of an insurrection against the Constitution, including words of incitement.” FOF ¶¶ 199–202; *see* 12 Op. Att’y Gen. 141, 164 (1867) (“engaged in rebellion” required only “some direct overt act, done with the intent to further the rebellion”); 12 U.S. Op. Att’y Gen. 182, 205 (1867) (“Disloyal sentiments, opinions, or sympathies would not disqualify . . . [but] when a person has, by speech or by writing, incited others to engage in rebellion, [h]e must come under the disqualification.”). Judicial decisions have similarly confirmed that “engaged in insurrection” means “[v]oluntarily aiding the [insurrection or] rebellion, by personal service, or by contributions, other than charitable, of anything that was useful or necessary.” *Worthy*, 63 N.C. at 203; *see also United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D. N.C. 1871) (“engaged” in insurrection or rebellion included any “voluntary effort to assist the Insurrection or Rebellion, and to bring it to a successful termination”).

52. To be “engaged in” insurrection, one need not have personally taken up arms against the government. FOF ¶ 200. Attorney General Stanbery’s opinions made clear that “voluntary acts” in furtherance of insurrection could include indirect assistance, such as the purchase of confederate bonds, as well as words that “incited others.” 12 Op. Att’y Gen. 141, 164 (1867); *see also id.* at 161 (“[T]aking it to be clear, that in the sense of this law persons may have engaged in rebellion without having actually levied war or taken arms.”). Congressional cases excluding prospective members of Congress from their seats while Section 3 was pending ratification further supports this conclusion. FOF ¶ 201; 1 Asher C. Hinds, *Hinds’ Precedents of the House of Representatives of the United States*, ch. 14, 445–49 (1907). While mere “[d]isloyal sentiments, opinions, or sympathies would not disqualify,” 12 U.S. Op. Att’y Gen. 182, 205 (1867), the Court concludes that specific acts of engagement, including through speech, can work disqualification for Section 3 purposes. *Id.*; *Griffin*, 2022 WL 4295619, at \*19–22 (officeholder engaged in January 6th insurrection by helping to “mobilize” and “incite” the mob); *Rowan v. Greene*, No. 222582-OSAH-SECSTATE-CE-57-Beaudrot, at 13–14 (Ga. Off. Admin. Hr’gs May 6, 2022) (“words can constitute an ‘overt act’” for purposes of Section 3).

53. Antebellum treason cases also provide evidence that engaging in insurrection was not understood to be limited to taking up arms, and could include encouragement, planning, or incitement. “They who have the wickedness to plan and incite and aid, and who perform any part however minute, are justly deemed guilty of this offense, though they are not present at the immediate scene of violence.” *In re Charge to Grand Jury*, 30 F. Cas. 1032, 1026 (C.C.S.D. N.Y. 1861). Thus, treason by “levying war” includes “inciting and encouraging others to engage in or aid the traitors in any way.” *Id.* at 1033–34; *see also In re Charge to Grand Jury-Treason*, 30 F. Cas. 1047, 1048–49 (C.C.E.D. Pa. 1851) (“If it has been thought safe, to counsel and instigate others to acts of forcible oppugnation to the provisions of a statute . . . the mistake has been a grievous one. . . . [S]uccessfully to instigate treason, is to commit it.”); *Ex parte Bollman*, 8 U.S. 75, 126 (1807) (Marshall, C.J.) (“[I]f a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or

however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors.”). These cases are helpful historical context for interpreting the phrase “engaged in” insurrection. FOF ¶ 200.

54. The parties agree that to have “engaged in” insurrection requires intent, though they adopt slightly different formulations for what intent is required. The Court adopts the standard from Attorney General Stanbery’s opinion interpreting the language of Section 3: to have “engaged in” insurrection or rebellion requires “an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose.” 12 U.S. Op. Atty. Gen. 182, 204 (1867). Trump argues instead that he must have “consciously intended to engage in an insurrection on January 6.” Trump Br. 10/25/2023, at 3. The Court disagrees. Section 3 does not contain a separate intent element; the concept of intent is inherent in the meaning of “engaged in,” and not a separate element. Moreover, the sources Trump cites in his own brief largely support Petitioners’ interpretation, not Trump’s. *See, e.g., id.* at 2 (citing Stanbery language requiring “an overt and voluntary act done with the intent of aiding or furthering the common unlawful purpose”). Nevertheless, the Court does not observe a difference between these two proposed standards that would affect the outcome here, and the result in this case is the same under either standard.

55. Trump harbored the requisite intent to aid the common unlawful purpose of the insurrection: to obstruct and prevent the constitutionally-mandated certification of the electoral vote count, and the peaceful transition of presidential power. FOF ¶¶ 178–87. With that intent, Trump engaged in insurrection through a multi-faceted scheme of voluntary acts in furtherance of this purpose, including: coordination and mobilization of violent extremists; spearheading an unlawful plot to stop the constitutionally-mandated certification of the electoral results; instigating and inflaming a violent mob through words of incitement; and obstructing the federal response to the insurrection once it began. FOF ¶¶ 61, 63–73, 75–78, 80–91, 99–109, 132–36, 138–40, 147, 152–77.

56. ***Coordination and Mobilization:*** In the years leading up to January 6, 2021, Trump developed a relationship with far-right extremists in which he would call for them to commit acts of violence using either coded or overt language and then praised them for doing so. FOF ¶¶ 25–41. He also publicly cultivated close ties to far-right extremists who trafficked in conspiracy theories and advocacy of violence. FOF ¶¶ 37–39, 68–69, 77–79, 89. In doing so, Trump galvanized extremists and prepared them to commit acts of political violence. FOF ¶¶ 76–79, 84, 85. This pattern provides crucial context that informs Trump’s actions and intentions in the lead-up to and on January 6, 2021. FOF ¶¶ 75, 90, 107–09, 152–55, 178–87.

57. On December 19, 2020, and in the weeks that followed, Trump repeatedly called on his supporters to descend on the Capitol on January 6, 2021. FOF ¶¶ 72, 80. The same day he issued his initial call for a “wild” protest on January 6, he retweeted a video with chants of “Fight For Trump,” replete with militaristic imagery and taken from a right-wing extremist website, which sent a message that he was calling on his supporters to prepare for violence if need be. FOF ¶ 78. He continued to use violent imagery to reinforce the message that his supporters should come to D.C. prepared for violence, telling them that if the Republicans had “Stolen” an election, Democrats would “consider it an act of war, and fight to the death.” FOF ¶ 82. Many right-wing extremists viewed these messages as a call to action, and the result was to coordinate the efforts of

a number of disparate groups, mobilizing them to prepare for violence around the singular date of January 6, 2021. FOF ¶¶ 77, 79, 84, 85.

58. These voluntary acts by Trump were taken with the intent to summon supporters who were ready, on January 6, 2021, to use force or threat of force to prevent the certification of the electoral college votes and the transfer of presidential power. FOF ¶ 90. Trump intended to (and indeed did, through tweets on January 5, 2021 and through his speech and his tweets on January 6, 2021) use the presence of this large and angry crowd to intimidate or coerce Vice President Pence or members of Congress to subvert the Constitution and refuse to count the electoral votes as required by the Twelfth Amendment. FOF ¶¶ 107–09, 152–55, 178, 183–87. Trump thus acted voluntarily with the intent to further the common unlawful purpose of the insurrection.

59. ***Providing the Mob’s Common Unlawful Purpose:*** Well before the 2020 election, Trump fabricated false claims that the only way he could lose the election would be through fraud. FOF ¶¶ 42–47. The night of the election, and in the weeks that followed, Trump repeatedly asserted false claims of election fraud. FOF ¶¶ 48–54. He repeated these claims over and over again, with incendiary language that inspired fury and threats of violence from those who believed his words. FOF ¶¶ 48–54, 66, 81–82. He pressured state legislators unlawfully to overturn the election, and after receiving explicit warnings that his rhetoric was “going to get [someone] killed,” he retweeted the warning and repeated the very same false claims that were precipitating calls for violence by his supporters. FOF ¶ 66. He continued to make these claims in the weeks leading up to, and on, January 6, 2021, despite knowing, no later than December 14, 2020, that the election was over, that there was no evidence of voter fraud sufficient to change the outcome of the election, and that there were no *lawful* mechanisms left to turn the results in his favor. FOF ¶¶ 55–58

60. After the real electors voted to certify the electoral vote for Joe Biden on December 14, 2020, Trump spearheaded a campaign to unlawfully pressure Vice President Pence and members of Congress to reject the votes of the certified electors, in violation of the Twelfth Amendment. FOF ¶¶ 63–64, 73–75. He and his advisors devised a scheme to present fake slates of electors to Congress, and in fact did so, fraudulently representing that Trump had won states that he in fact lost. FOF ¶¶ 63–64. Trump repeatedly made public statements falsely asserting that Vice President Pence had authority to reject the votes from the state’s certified electors and either send the election back to the States or to adopt the votes from the fake electors that Trump and his team had fabricated. FOF ¶¶ 81, 100–101.

61. The claim that Vice President Pence had the power to throw out the votes of the duly certified electors on January 6, 2021 was obviously false—“a coup in search of a legal theory.” *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1198 (C.D. Cal. 2022); FOF ¶¶ 73–75. The Twelfth Amendment provides that, at the joint session of Congress, “[t]he 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.” U.S. Const. amend. XII. Nothing in that amendment remotely suggests that the Vice President, as the President of the Senate, has the authority to reject votes by the certified electors sent by the states. Here, there was only one legitimate slate of electors in each state, and thus the counting of the votes on January 6, 2021 was purely ministerial. *Id.*; FOF ¶¶ 64, 73–75. Our Constitutional system for selecting the President is designed around the States, and the

people thereof, selecting electors for president—not around giving that choice to the incumbent Vice President who often has a personal interest in the outcome. Despite this, Trump repeatedly asserted the claim, which he knew to be false, that Vice President Pence had unilateral authority to overturn the election results. FOF ¶¶ 73–75, 81, 100–01.

62. By spearheading the fraudulent “fake elector” scheme, and by perpetuating the lie that Vice President Pence had authority to overturn the results of the election, Trump intentionally and fraudulently coordinated his supporters around a common unlawful purpose to disrupt the constitutionally mandated counting of the real presidential electoral votes. FOF ¶¶ 73–79, 100–09, 126–29, 144. Trump thus acted voluntarily with the intent to further the common unlawful purpose of the insurrection.

63. *Words of Incitement at the Ellipse:* Trump’s Ellipse speech both explicitly and implicitly encouraged imminent lawless violence by his assembled supporters. FOF ¶¶ 100–09. Trump repeatedly told the crowd to “fight” and “fight like hell,” to “walk down to the Capitol” (where, he claimed, he would join them) and that they needed to “take back our country” through “strength.” FOF ¶¶ 100, 102, 105. He repeatedly recited false allegations of voter fraud, and told the crowd that fraud allows them to go by “very different rules,” which in context refers to violence rather than normal political advocacy. FOF ¶¶ 100, 109. He repeatedly invoked Vice President Mike Pence and members of Congress with incendiary language that singled them out as targets for the crowd’s anger. FOF ¶¶ 100, 101, 105. He repeatedly referred to “we” (including the assembled crowd), saying things like “we’re just not going to let that happen” and “we’re not going to stand for that.” FOF ¶¶ 100, 103. Because there were no lawful or peaceful means left to prevent the certification by that time, these statements implicitly called for violence against the Capitol to disrupt the certification. FOF ¶¶ 55–58, 75, 109. The Court concludes that these statements, when taken in combination and situated in the overall context of Trump’s words and deeds in the lead-up to that day, were intended as, and were understood by many in the crowd as, explicit and implicit literal calls to imminent lawless violence against lawmakers and against Vice President Pence. FOF ¶¶ 55–58, 75, 109, 178–187.

64. Trump’s Ellipse speech was likely to, and did, incite imminent lawless violence. The crowd was already agitated by repeated claims of voter fraud, intelligence reports had warned of the danger of violence at the Capitol, and Trump knew much of the crowd had refused to go through the magnetometers because some were armed. FOF ¶¶ 91–109. During Trump’s exhortation, members of the crowd exclaimed “Invade the Capitol!” and “Storm the Capitol!” FOF ¶ 106. And many in the crowd indeed reacted by marching toward the Capitol, intensifying the violence that had begun to unfold during his speech and increasing the size of the mob that overwhelmed law enforcement. FOF ¶¶ 110–115, 123–125.

65. These words of incitement were voluntary acts undertaken with the purpose of inciting the use of force or threat of force by his supporters to prevent the certification of the electoral college votes and the transfer of presidential power. FOF ¶¶ 99–109, 179, 182–87. Trump thus acted voluntarily with the intent to further the common unlawful purpose of the insurrection.

66. Both as a factual and legal matter, the Court rejects Trump’s claim that his single reference to “peacefully” marching immunizes his words of incitement. FOF ¶¶ 100–09. While he

did say “peacefully” once in his speech, he referred to “fight” or some variant of it 20 times, along with a host of other incendiary and inciting language. FOF ¶¶ 100, 102. I further credit the testimony of Professor Simi, who explained the frequent use by right-wing extremists of patterns such as empty “negation” to include words like “peacefully” which, based on repeated interactions, extremists know to disregard as insincere efforts to establish plausible deniability. FOF ¶¶ 25–41, 107–09. The detailed factual record in this case demonstrates that Trump’s use of “peacefully” fits the pattern of empty negation and does not detract from the overall command to violence inherent in his speech. FOF ¶¶ 25–41, 100–09, 183–87; *see, e.g., United States v. White*, 610 F.3d 956, 961 (7th Cir. 2010) (noting that a defendant’s “attempts to distance himself from any illegal actions with statements such as ‘I’m gonna fight within the law’ and ‘I can’t take any steps to further anything illegal’” are not sufficient to overturn a solicitation conviction) (citing *United States v. Hale*, 448 F.3d 971, 984–85 (7th Cir. 2006)); *Robinson v. Perales*, 894 F.3d 818, 829 (7th Cir. 2018) (discussing use of rhetorical techniques “emphasizing the subject while maintaining plausible deniability” and holding that a reasonable factfinder could find defendant’s goal was “to distance himself from liability while still deriving the desired effect of disturbing the listener”). The Court cannot “allow for a thinly-sliced dissection of syntax to create ‘plausible deniability’ after the fact,” ignore the “reasonable meaning communicated,” and immunize otherwise unlawful speech. *In re Judicial Disciplinary Proceedings Against Gableman*, 784 N.W.2d 605, 613–14 (Wis. 2010); *see also Bongo Prods., LLC v. Lawrence*, 548 F. Supp. 3d 666, 682 (M.D. Tenn. 2021) (“[C]ourts, when considering First Amendment challenges, are permitted to exercise ordinary common sense to evaluate the content of a message in context to consider its full meaning, rather than simply robotically reading the message’s text for plausible deniability.”).

67. **Words of Incitement at 2:24 PM:** Trump’s tweet at 2:24 pm, an hour after he learned that the violence was underway at the Capitol, implicitly encouraged imminent lawless violence. FOF ¶¶ 132, 134–143, 180, 183–87. Trump’s attack on Pence that he “didn’t have the Courage” to de-certify the election, and his declaration that “USA Demands the Truth!”, in the context of an ongoing attack on the Capitol, implicitly suggests that the attacking mob was right to bang down the doors of the Capitol to “demand the truth.” FOF ¶¶ 136–137. The Court concludes that this statement, when taken in combination and situated in the overall context of his words and deeds in the lead-up to that day, was intended as, and were understood by many in the crowd as, an implicit literal call to imminent lawless violence against Vice President Pence. FOF ¶¶ 136, 180, 183–87.

68. Trump’s 2:24 pm tweet was likely to, and did, incite imminent lawless violence. FOF ¶¶ 134–143, 180, 183–87. When he issued the tweet, he knew the Capitol was under violent attack and that the goal of the mob was to stop the certification of the election. *Id.* By tweeting incendiary comments toward the Vice President at that moment, Trump poured fuel on the fire. *Id.* The result was a nearly immediate surge of violence in the assembled crowd. *Id.*

69. These words of incitement were voluntary acts undertaken with the purpose of inciting violence to obstruct the certification of the electoral vote count. FOF ¶¶ 180, 183–87. Trump thus acted voluntarily with the intent to further the common unlawful purpose of the insurrection.

70. *Abdication of Duty to Defend the Constitution*: Once Trump learned of the violence at the Capitol, he refused to deploy a federal response to stop the violence or to call for the mob to leave the Capitol for roughly three hours. FOF ¶¶ 156–177. He did so deliberately, because he intended to further the goals of the mob seeking to stop the certification and because he believed that Vice President Pence “deserved” to be hanged. FOF ¶¶ 158, 181–187. This intentional dereliction of duty in the face of a violent insurrection that Trump personally helped unleash was a voluntary act undertaken with the purpose of helping the insurrectionists achieve their goal to obstruct the certification of the electoral vote count. *Id.* This is an additional and independent basis to find that Trump engaged in insurrection.

71. An omission to take certain action when there is a legal duty to act is not mere “inaction,” but a form of action that gives rise to substantive liability. *United States v. Scott*, 990 F.3d 94, 109–10 (2d Cir. 2021) (“‘omission’ has a special meaning at law, which equates not to *inaction* but to *action* supporting criminal culpability”); *United States v. Harrison*, 54 F.4th 884, 889 (6th Cir. 2022) (discussing the “general principle” that in criminal law, “omission in the face of a legal duty is a type of action”). Here, a combination of two circumstances gave Trump a legal duty to act to stop the insurrection.

72. *First*, as sitting president at the time, Trump was bound by his oath to “preserve, protect, and defend” the Constitution, and had a legal duty to “take Care that the Laws be faithfully executed.” *See* U.S. Const. Art. II. He also served as the “Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States[.]” *Id.* Mobilizing law enforcement resources within his control to stave off a violent attack on the Capitol is squarely within the scope of these legal duties, and Trump failed to do so. FOF ¶¶ 161–177. Through his purposeful omission, Trump violated his oath to “preserve, protect and defend the Constitution of the United States.” U.S. Const. art. II, § 1.

73. Civil War-era cases establish that the President is uniquely empowered and obligated to act to protect the American people in periods of national emergency. *See Prize Cases*, 67 U.S. 635, 668 (1862) (“The Constitution confers on the President the whole Executive power. He is bound to take care that the laws be faithfully executed. He is Commander-in-chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States. ... he is authorized to called out the militia and use the military and naval forces of the United States ... to suppress insurrection against the government of a State or of the United States.”); *The Amy Warwick*, 1 F. Cas. 799, 804 (D. Mass.), *aff’d*, 67 U.S. 635 (1862) (“If a hostile power, either from without or within our territory, shall assail and capture our forts, and raise armies to overthrow our government, and invade its soil, and menace the capital of the nation, and shall issue commissions to public and private armed ships to depredate on our commerce, the president is *bound* to use the army and navy to carry on the war effectively against such an enemy...”) (emphasis added); *id.* (The President is “clothed with all the power appertaining to that high office; and he is not only authorized, but bound, to exert it when the exigency for which it was given shall arise.”). President Lincoln’s Attorney General, Edward Bates, argued that the President’s “duty to suppress the insurrection” was “obvious and imperative” and that President Lincoln could utilize authorities granted to him by Congress “to



suppress the insurrection and execute the laws.” Edward Bates, “Suspension of the Privilege of the Writ of Habeas Corpus,” 10 Ops. of Att. Gens., 74–92 (1861); Bates letter, July 5, 1861.

74. *Second*, a legal duty to act arises when the person created the peril of the injury or unlawful act. *See* Paul H. Robinson, 1 Crim. L. Def. § 86(c)(2)(F) (2023 ed. 1981) (“A person who may otherwise have no duty to act, may have a duty imposed upon him if he is the cause of the conditions resulting in the victim’s peril.”); Oliver Wendell Holmes, *The Common Law* 278 (1881) (“Although a man has a perfect right to stand by and see his neighbor’s property destroyed, or, for the matter of that, to watch his neighbor perish for want of his help, yet if he once intermeddles he no longer has the same freedom . . . The same reasoning applies to civil liability.”); *Sutton v. Utah State Sch. for Deaf & Blind*, 173 F.3d 1226, 1237 (10th Cir. 1999) (holding that the “‘danger creation’ theory” is an exception to the rule that there is no constitutional duty to protect citizens from violence and that “officials may be liable for injuries caused by a private actor where those officials created the danger that led to the harm”); *Uhlrig v. Harder*, 64 F.3d 567, 572 (10th Cir. 1995) (same). Here, Trump summoned a large and angry crowd of supporters to Washington D.C. on January 6, 2021, and then inspired them to violence against the Capitol. He therefore created the peril of the insurrection and was duty-bound to suppress it.

75. Certainly, not all failures to put down an insurrection count as engaging in an insurrection. Section 3 is not about commanding the outcome of policy disagreements about the use of force, nor does it disqualify an official for mere negligence. However, when a sitting president sets in motion an insurrection in violation of his sworn oath to defend the Constitution, even if (contrary to the Court’s finding in this case) he somehow did so unintentionally, he is duty bound to at least *attempt* to put an end to it. If the President abdicates that duty, and does so with the intent that his abdication will help the insurrectionists achieve their goal, then he has “engaged in” that insurrection through purposeful omission.

76. The Court finds that Trump deliberately refused to take any action to stop the insurrection, including failing to mobilize law enforcement or military resources, or even to issue a tweet or video statement telling the mob to leave the Capitol, for nearly three hours. FOF ¶¶ 156–177, 181–187. He issued his message to “go home” only after it was clear that the insurrection would not achieve the goal of stopping the certification of the election. FOF ¶ 146. This omission was a deliberate abdication of duty rather than the product of a policy disagreement about the appropriate response. FOF ¶¶ 181–187. Trump rebuffed uniform calls to take action because he believed that Vice President Pence “deserved” to be hanged, and because he wanted to aid the insurrectionists in achieving their goal of stopping the electoral count. *Id.* This dereliction of duty was a voluntary act taken with the intent to further the common unlawful purpose of the insurrection.

77. Both as a factual and legal matter, the Court rejects Trump’s claim that his two tweets asking the crowd to “[s]tay peaceful” or “remain peaceful” immunize his abdication of duty. FOF ¶¶ 138–40; *see also* COL ¶ 66 (citing cases). Given that the Capitol was under violent attack at the time, his words falsely suggested that the mob was *currently* peaceful. *Id.* Moreover, the tweets warned against violence toward law enforcement, but did not expressly discourage violence toward the Vice President or members of Congress. *Id.* The tweets did not demand that the mob disperse, nor did they have an appreciable effect on the mob. *Id.*

78. **Conclusion on Engaged in Insurrection:** For all of these reasons, both individually and in combination, Trump took voluntary acts with the intent to further the insurrection’s common unlawful purpose of obstructing the certification of the electoral count. By doing so, Trump engaged in insurrection within the meaning of Section 3.

79. Because Trump has strenuously argued against the admissibility of the January 6 Select Committee Report, the Court wishes to address the effect of that evidence specifically on the Court’s conclusions. The findings of that report lend additional support to the conclusion that Trump engaged in insurrection, but are not necessary to the Court’s decision. The essence of Petitioners’ case here comes from the testimony of eyewitnesses, from authenticated video evidence and photographs of the attack, from other public records that Trump does not dispute, and from Trump’s own words and actions. Even if the Court were to disregard the findings of the January 6 Committee, it would still conclude by a preponderance of the evidence that Trump engaged in insurrection—a fact which is proven by his long-standing observable pattern of call-and-response encouraging violence, by his own words in the lead-up to, during, and after the insurrection, and by his purposeful refusal to put down the insurrection during the attack. This was an insurrection that Trump organized, mobilized, encouraged, and incited in broad daylight, for all to see.

#### **D. Trump’s Other Defenses Are Meritless**

##### **i. State Courts Can Enforce Section 3 under State Law**

80. Trump argues that Section 3 of the Fourteenth Amendment is not “self-executing” and thus cannot be enforced in this suit. Trump Mot. to Dismiss at 8–11 (Sept. 29, 2023). As the Court explained in its October 25, 2023 Order, which is incorporated by reference here, this argument is irrelevant because Petitioners seek to enforce Section 3 under a state law cause of action. Order Re: Trump’s Mot. to Dismiss Filed Sept. 29, 2023, at 19–20 (Oct. 25, 2023).

81. At trial, Trump’s expert Delahunty claimed the terms “insurrection” and “engagement” are too ambiguous to be interpreted by courts absent federal legislation. 11/3/23 Tr. 43:15–51:7, 56:11–59:6 (Delahunty). The Court disagrees. Courts regularly interpret ambiguous language, whether in statutes or in the Constitution itself. Section 3 is no different. As the Court previously stated, it is “exactly the job of the Court . . . to interpret the Constitution.” 11/3/2023 Tr. 76:2–3. Delahunty could not point to a single case where a court declared: “the Constitution’s too hard for me to interpret; therefore, I’m going to let Congress tell me what it means.” 11/3/2023 Tr. 75:21–76:12. Such a notion is incompatible with the judiciary’s “duty to say what the law is.” *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) at 177)).

82. Nor does the Court agree that Section 3’s language is ambiguous. As outlined above, using standard tools of constitutional interpretation—focusing on Section 3’s text, structure, history, purpose, and precedent—yields a discernible meaning of commonly used legal terms such as “insurrection,” “officer,” and “engage.”

83. Trump also claims that Section 5 of the Fourteenth Amendment vests Congress with the exclusive authority to enforce Section 3. Trump’s Br. Regarding 3 U.S.C. § 15, at 9 (Oct. 26, 2023). The Court disagrees. Section 5 says “Congress shall have the power to enforce” the Fourteenth Amendment “through appropriate legislation,” but nowhere does it purport to *remove* the coordinate power of the states to do so as well. *See Consumer Crusade, Inc. v. Affordable Health Care Sols., Inc.*, 121 P.3d 350, 353 (Colo. App. 2005) (the Supremacy Clause explicitly “charges state courts with a coordinate responsibility to enforce [federal] law according to their regular modes of procedure’ . . . unless Congress dictates otherwise.”). And the Supreme Court has rejected the argument that Section 5 means federal legislation is the only way to enforce the Fourteenth Amendment, holding that the “power to interpret the Constitution in a case or controversy remains in the Judiciary.” *Boerne*, 521 U.S. at 524; *see also Civil Rights Cases*, 109 U.S. 3, 20 (1883) (the Fourteenth Amendment “is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances”). Congress’s power in Section 3 to “remove such disability” also implies that federal legislation is not needed to impose the disability because it already exists by operation of Section 3. The Court need not decide whether Section 3 is “self-executing” in the sense of providing a free-standing, affirmative cause of action to remove an ineligible officer in the absence of any statutory right of action. Rather, the Court decides only that Section 3’s disability can be enforced in state courts through state causes of action, and that federal legislation is not the *exclusive* vehicle to enforce it. Chief Justice Chase’s non-binding opinion in *In re Griffin*, 11 F. Cas. 7 (C.C.D. Va. 1869), is not to the contrary because the case only addressed whether Section 3 could be enforced collaterally through a federal habeas petition, and did not address whether states have authority to enforce Section 3 through their own ballot-access laws.

## ii. Section 3 Can Be Enforced at the Ballot Access Stage

84. Trump argues that Colorado may not exclude him from the presidential primary or general election ballots because disqualification under Section 3 only exists at the time he holds office and does not apply to a candidate running for office. Trump’s Br. Regarding 3 U.S.C. § 15, at 6–10 (Oct. 26, 2023). Again, the Court disagrees.

85. By Section 3’s plain language, “[n]o person shall” hold public office if they have previously engaged in insurrection after taking a qualifying oath. U.S. Const. amend. XIV, § 3. That mandatory language imposes a *present* disqualification from officeholding. That Congress “may by a vote of two-thirds of each House, remove such disability” does not undermine this conclusion. *Id.* To the contrary, this removal power makes clear that the disability *exists from the moment* of disqualifying conduct, unless and until it is removed. *See Cawthorn v. Amalfi*, 35 F.4th 245, 258 (4th Cir. 2022) (the word “removed” in Section 3 “generally connoted taking away something that already exists rather than forestalling something yet to come”); FOF ¶ 194 (finding that ex-Confederates inundated Congress with Section 3 amnesty requests during Reconstruction, demonstrating that they understood themselves to be disqualified even without a formal adjudication); *Griffin*, 2022 WL 4295619, at \*25 (holding that officeholder’s Section 3 disqualification was effective immediately upon his engagement in the January 6th insurrection).

86. Thus, Trump is disqualified under Section 3 *at this moment*. The hypothetical possibility that Congress could in the future “remove[]” Trump’s disability does not negate his

present disqualification. Any constitutional qualification (including those based on age, citizenship, and residency) could theoretically be changed by amending the Constitution under the Article V amendment process; that does not render the qualification *unenforceable* prior to election day. Nor does Trump’s argument have any factual basis: he points to nothing suggesting any prospect of supermajorities of both houses of Congress voting to grant him or any other January 6th participant Section 3 amnesty, or even any pending amnesty request to Congress.

87. Because Trump is currently ineligible to be President, Colorado may exclude him from the ballot. States have broad authority to “protec[t] the integrity and practical functioning of the political process” by “exclud[ing] from the ballot candidates who are,” at the time of listing, “constitutionally prohibited from assuming [the] office” they seek. *Hassan v. Colorado*, 495 F. App’x 947, 948 (10th Cir. 2012) (Gorsuch, J.) (upholding exclusion of naturalized citizen from presidential primary ballot); *Lindsay v. Bowen*, 750 F.3d 1061, 1063 (9th Cir. 2014) (upholding exclusion of a 27-year-old from presidential primary ballot based on the state’s “interest in protecting the integrity of the election process and avoiding voter confusion” (quotation omitted)). These interests apply with full force in the Section 3 context. *See Greene v. Raffensperger*, 599 F. Supp. 3d 1283, 1319 (N.D. Ga. 2022) (recognizing, in Section 3 case, the states’ “legitimate interest” in “enforcing existing constitutional requirements to ensure that candidates meet the threshold requirements for office and will therefore not be subsequently disqualified, thereby causing the need for new elections”); *Louisiana ex rel. Sandlin v. Watkins*, 21 La. Ann. 631, 632 (1869) (“the State has obviously a great interest in” enforcing Section 3 “and a clear right to” do so).

88. For presidential elections, the states’ authority is particularly broad: the Constitution expressly grants state legislatures the power to “direct” the “manner” of appointing presidential electors. U.S. Const. art. II, § 1, cl. 2. This clause gives the states “far-reaching authority” to run presidential elections, “absent some other constitutional constraint.” *Chiafalo v. Washington*, 140 S. Ct. 2316, 2324 (2020). This broad power includes the lesser power to ensure that only constitutionally eligible *candidates* appear on general election or primary ballots. *Cf. Cawthorn*, 35 F.4th at 262 (Wynn, J., concurring) (noting states have “typically enjoyed broad powers to regulate *candidates*” for federal office, including through ballot access laws enabling enforcement of federal qualifications for office).

89. Nor would enforcing Trump’s existing disqualification “strip” Congress of its amnesty power. To the contrary, “[i]f this Court were to disqualify Intervenor Trump, there would be nothing standing in the way of Congress immediately removing that disability.” Order Re: Trump’s Mot. to Dismiss Filed Sept. 29, 2023, at 17 n.4 (Oct. 25, 2023). But Colorado has an election to run, and a legitimate interest in protecting the integrity of the state’s ballots and election processes. Trump has no right to override that weighty state interest now based on unsupported speculation that a supermajority of Congress *might* remove his Section 3 disqualification.

90. The cases cited by Trump are not to the contrary. They addressed, under state law, whether to remove a *currently* qualified candidate after the election because they were disqualified during the election. *Privett v. Bickford*, 26 Kan. 52, 54–55 (1881) (as a matter of state public policy, concluding that the “better doctrine” was to seat a candidate who won an election while disqualified but whose disqualification was “removed or cured” before he entered office); *Sublett*

*v. Bedwell*, 47 Miss. 266, 274 (1872) (addressing whether, as a matter of state law, a defeated candidate could assume the office if the victorious candidate were disqualified); *Smith v. Moore*, 90 Ind. 294, 303 (1883) (interpreting state constitutional provision and noting Congress’s practice to seat those who “were ineligible at the date of the election, but whose disabilities had been subsequently removed”). None of these cases addressed states’ authority to exclude constitutionally ineligible candidates from the ballot *before* an election, let alone did the cases hold that states are *powerless* to exclude such candidates.

91. Trump’s comparison to the residency qualification for members of Congress is unpersuasive. The Constitution’s residency qualification for members of Congress includes a temporal trigger: it is tied to a person’s residency status “when elected.” Section 3, by contrast, provides for immediate and continual disqualification once a covered officeholder engages in proscribed conduct. Compare U.S. Const. art. I, § 2, cl. 2 (“No person shall be a Representative” if an out-of-state resident “*when elected*”) (emphasis added), § 3, cl. 3 (“No person shall be a Senator” if an out-of-state resident “*when elected*”) (emphasis added), with amend. XIV, § 3 (“No person shall be ... or hold office” after they “have engaged in insurrection or rebellion”). Accordingly, Colorado is not imposing an *extra-constitutional* qualification on candidates by examining their Section 3 qualification at the ballot access stage; it is enforcing an existing disability imposed by the Constitution itself. Cf. *Campbell v. Davidson*, 233 F.3d 1229 (10th Cir. 2000); *Schaefer v. Townsend*, 215 F.3d 1031, 1036 (9th Cir. 2000).

92. For similar reasons, enforcing Section 3 at the ballot access stage does not run afoul *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). There, the Supreme Court invalidated a state constitutional amendment that impermissibly imposed an “additional qualification” (a term limit) for Congressional candidates beyond those in the Constitution. *Id.* at 835–36. The Court made clear it was *not* opining on the states’ ability to enforce qualifications *in* the Constitution, including Section 3 of the Fourteenth Amendment. *See id.* at 787 n.2 (noting that Section 3 and other provisions that “are part of the text of the Constitution ... have little bearing on whether Congress and the States may add qualifications to those that appear in the Constitution”); *Cawthorn*, 35 F.4th at 264 (Wynn, J., concurring) (noting that *Term Limits* did not “hold[] that States are completely powerless to police *candidates* using the qualifications *in* the Constitution”).

### **iii. Political Question and Preemption**

93. The Court previously rejected Trump’s political question and preemption arguments and incorporates those rulings by reference here. *See* Order Re: Trump’s Mot. to Dismiss Filed Sept. 29, 2023, at 3–18, 21 (Oct. 25, 2023). The Court stated it would revisit its political question ruling “to the extent that there is any evidence or argument at trial that provides the Court with additional guidance on whether the issue of presidential eligibility has been delegated to the United States Congress.” *Id.* at 18. Trump presented no such evidence or argument at trial. And Trump concedes that neither 3 U.S.C. § 15 nor the Twentieth Amendment have any bearing on this question. *See* Trump’s Br. Regarding 3 U.S.C. § 15, at 9–10 (Oct. 26, 2023) (claiming these “provisions are entirely beside the point”). The Court thus adheres to its initial ruling.

94. Moreover, while Trump has forfeited any argument to the contrary, the Court agrees with Petitioners that Section 3 of the Twentieth Amendment does not render Petitioners' claim non-justiciable. See *Lindsay v. Bowen*, 750 F.3d 1061, 1065 (9th Cir. 2014) (“[N]othing in the Twentieth Amendment states or implies that Congress has the *exclusive* authority to pass on the eligibility of candidates for president”); *Peace and Freedom Party v. Bowen*, 912 F. Supp. 2d 905, 911–12 (E.D. Cal. 2012) (holding that “state election officials can and do prohibit certain candidates from appearing on a ballot” and that “[n]othing in the legislative history of Section 3 suggests Congress intended to limit” that power).

#### **iv. The First Amendment Does Not Bar Trump’s Disqualification Under the Fourteenth Amendment**

95. The First Amendment confers no right to engage in insurrection in violation of the Fourteenth Amendment. The First Amendment and Section 3 stand on equal footing. See *Prout v. Starr*, 188 U.S. 537, 543 (1903). The Court must “harmoniz[e]” the two “constitutional provisions” even if they may “appear, separately considered, to be conflicting.” *Reid v. Covert*, 354 U.S. 1, 54 (1957) (Frankfurter, J., concurring). Accordingly, the Constitution may require or prohibit speech that a state may otherwise not regulate consistent with the First Amendment. See, e.g., *Cole v. Richardson*, 405 U.S. 676, 680–82 (1972) (despite First Amendment’s ban on compelled oaths, Constitution may compel oaths to hold office).

96. As discussed above, Section 3 disqualifies a covered officeholder if, among other things, such person voluntarily engaged in insurrection against the Constitution through speech. See *supra* COL ¶ 52. Section 3’s primary targets are “the leaders of any rebellion” or insurrection. Cong. Globe, 39th Cong., 1st Sess. 3035–36 (1866) (statement of Sen. Henderson); see also Act of May 22, 1872, ch. 193, 17 Stat. 142 (1872) (granting wide amnesty but excluding senior officeholders). Such leaders rarely take up arms themselves, but rather, like Jefferson Davis, betray the Nation through speech that organizes or orders others who take up arms.

97. Because Section 3 is limited to those who engage in insurrection or rebellion, it poses no great risk to the First Amendment as it does not cover the “mere abstract teaching ... of the moral propriety or even moral necessity for a resort to force and violence” that the First Amendment protects. *Brandenburg v. Ohio*, 395 US. 444, 448 (1969). That risk is even further reduced by the fact that Section 3 imposes no penalty, is limited in application to only those who have already voluntarily accepted the responsibilities and limits imposed by an oath to support the Constitution, and its burdens may be removed through a two-thirds vote of each House of Congress. A finding that Trump engaged in insurrection is therefore sufficient to allay any First Amendment concerns.

98. While that should be the end of the First Amendment question, the Court is mindful of the near-total absence of precedent on the interplay of Section 3 and the First Amendment. *But see Griffin*, 2022 WL 4295619, at \*23–24 (rejecting argument that the First Amendment precluded Section 3 disqualification of government official based on his conduct and words). The Court therefore addresses, in the alternative, Trump’s arguments on the assumption that the First Amendment applies here as if to a statute passed by Congress. Even were the First Amendment to

apply with full force, the Court concludes it would not prevent Trump’s disqualification under Section 3 on the record presented.

99. Because the alleged disqualifying conduct involves speech, Trump argues that Petitioners must satisfy the “incitement” standard in *Brandenburg v. Ohio*, 395 U.S. 444 (1969) to withstand First Amendment scrutiny. The Court disagrees. First, Petitioners do not rely solely on Trump’s speech to show engagement in insurrection. For instance, Petitioners point to Trump’s nearly three hours of purposeful dereliction of duty during the attack on the Capitol despite his duty to preserve, protect and defend the Constitution. As discussed *supra*, that is not speech, or “lack of speech.” Second, *Brandenburg*’s incitement standard is not the only First Amendment exception applicable here.

100. Section 3 imposes a disability for office, including a great number of offices that are by appointment. Accordingly, it is akin to an employment qualification, and the government “has broader discretion to restrict speech when it acts in its role as employer.” *Garcetti v. Ceballos*, 547 U.S. 410, 417–18 (2006). Thus, if an employee’s speech, even if it involves “private political beliefs,” “interfere[s] with the discharge of his public duties, his First Amendment rights may be required to yield.” *Branti v. Finkel*, 445 U.S. 507, 517 (1980) (citation omitted); *see also, e.g., Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 475–76 (2022) (noting that “elected bodies in this country have long exercised the power to censure their members” and surveying historical precedent). Requiring that leaders who take an oath to support the Constitution not exhibit disloyalty through insurrection or rebellion serves “the State’s vital interest in maintaining governmental effectiveness and efficiency” and does not offend the First Amendment. *Branti*, 445 U.S. at 517. That is especially so where, as here, the country has gone through the painstaking process of amending the Constitution to bar from future office those who betrayed an oath to the Constitution by engaging in insurrection against it. As Senator John Henderson (MO) stated during the Congressional debates over Section 3:

If [the people] had the power to originally declare [qualifications for the Presidency and Congress set forth in the Constitution of 1787] . . . [h]ave not the people the right, by a constitutional amendment, to enact [Section 3]? . . . [T]his is an act fixing the qualifications for officers and not an act for the punishment of crime. . . . Office is the creature of Government. . . . The right is not absolute. . . . The Government created it and the Government can take it away.

Cong. Globe, 39th Cong., 1st Sess. 3036 (1866) (statement of Sen. Henderson). That is correct. The people may add qualifications for public office through constitutional amendment without somehow running afoul of earlier constitutional provisions. *See also Griffin v. White*, 2022 WL 2315980, at \*12 (D.N.M. June 28, 2022) (“Section Three of the Fourteenth Amendment narrows the First Amendment right to run for office....”).

101. Employment context aside, even where “the state may not criminalize the expression of views,” it “may nonetheless outlaw encouragement, inducement, or conspiracy to take violent action.” *United States v. Rahman*, 189 F.3d 88, 115 (2d Cir. 1999). To that end, the Supreme Court has expressly rejected “the contention that conduct [that is] otherwise unlawful is always immune from state regulation [merely] because an integral part of that conduct is carried

on by” means of speech. *Giboney v. Emp. Storage & Ice Co.*, 336 U.S. 490, 498 (1949). It is likewise not an “abridgement of freedom of speech” to penalize unlawful conduct that “was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.” *Cox v. Louisiana*, 379 U.S. 559, 563 (1965). “Put another way, speech is not protected by the First Amendment when it is the very vehicle of the crime itself,” *United States v. Rowlee*, 899 F.2d 1275, 1278 (2d Cir. 1990) (quotation omitted), or of civilly sanctionable conduct, *see Rumsfeld v. FAIR*, 547 U.S. 47, 62 (2006). Many criminal offenses pass muster under the First Amendment despite being “characteristically committed through speech,” *Rahman*, 189 F.3d at 117, including the use of “conspiratorial or exhortatory words” to facilitate “preparatory steps towards criminal action.” *Id.* at 116. An insurrection—by definition a collective action carried out for a shared purpose—will by necessity involve speech to coordinate those actions and unify those purposes. Trump’s speech here was integral to the commission of the insurrection, particularly given his long running relationship with the extremists involved and the development of shared understandings between them. His speech solicited its participants to come to Washington D.C., coordinating their actions on January 6, directed their efforts against the Capitol, and gave them common purpose, with the requisite intent, and as such does not enjoy protection under the First Amendment.

102. In any event, even if *Brandenburg* alone applied, the First Amendment would not prevent Trump’s disqualification. “[A]dvocacy [that] is directed to inciting or producing imminent lawless action and is likely to incite or produce such action” is unprotected. *Brandenburg*, 395 U.S. at 447. The Court finds that Trump’s Ellipse speech satisfies this standard.

103. According to Trump, to satisfy the *Brandenburg* standard, the words at issue must expressly *or implicitly* encourage the use of violence or lawless action. *See* President Trump’s Mot. to Dismiss Based on the First Amendment at 3–4 (Oct. 26, 2023) (emphasis added); *see also Thompson v. Trump*, 590 F. Supp. 3d 46, 115 (D.D.C. 2022) (“Federal appellate courts have understood the *Brandenburg* exception to reach implicit encouragement of violence acts.” (citing *Bible Believers v. Wayne Cnty., Mich.*, 805 F.3d 228, 246 (6th Cir. 2015) (*en banc*))). A federal district court has already held, even without the help of the evidentiary record here, that Trump’s January 6 rally speech “plausibly [contains] words of incitement not protected by the First Amendment.” *Thompson*, 590 F. Supp. 3d at 115. That is so even though the court believed “[t]he President’s words on January 6th did not explicitly encourage the imminent use of violence or lawless action” because it concluded his words “implicitly encourage[d] violence or lawlessness.” *Id.*

104. Based on the far more fulsome record here, the Court finds that President Trump’s speech at the Ellipse and his 2:24 pm tweet about Vice President Pence, both implicitly and explicitly, encouraged the use of violence and lawless action. Professor Simi testified at length that the language used by Trump at the Ellipse was a direct call to violence to right wing extremist groups who had gathered in Washington, D.C. on January 6 in response to Trump’s repeated demands following his December 19, 2020, tweet. *See* FOF ¶¶ 25–41, 107–109. Trump’s speech contained more than suggestion and persuasion to his intended audience; it invoked language understood among that audience in explicit terms based on Trump’s long-standing relationship with him. Incitement does not earn protection under the First Amendment simply because it is expressed “implicit[ly]” or by “cod[e].” *United States v. White*, 610 F.3d 956, 960 (7th Cir. 2010); *see also Hess v. Indiana*, 414 U.S. 105, 109 (1973) (speech may be proscribed where “rational



inference from the import of the language” show “words were intended to produce, and likely to produce, imminent disorder”); *Bible Believers*, 805 F.3d at 246 (*Brandenburg* does not protect speech that “explicitly or implicitly encouraged the use of violence or lawless action”); *United States v. Hale*, 448 F.3d 971, 983–84 (7th Cir. 2006) (gang leader’s suggestion to member to do “whatever you wanna do” was sufficient to support charge of soliciting crime of violence given context and relationship in which it was made).

105. The overall context of Trump’s speech, including the history in which it was made, confirms that it includes explicit and implicit calls to violence. FOF ¶¶ 99–109, 179, 182–187. He used the term “fight” some 20 times. FOF ¶ 100, 102. He framed the stakes at issue: “We’re gathered together in the heart of our nation’s capital for one very, very basic reason: to save our democracy.” FOF ¶ 100. He told his supporters that if Congress certifies the election results, “[y]ou will have an illegitimate president. . . . And we can’t let that happen.” FOF ¶ 100. He focused the crowd’s anger on Vice President Mike Pence and members of Congress who were at the Capitol to certify the election results. FOF ¶¶ 100, 105. He told them that “the Constitution says you have to protect our country and you have to protect our Constitution and you can’t vote on fraud, and fraud breaks up everything, doesn’t it? When you catch somebody in a fraud, you’re allowed to go by very different rules.” FOF ¶ 100. And he exhorted his supporters to action: “You’ll never take back our country with weakness,” FOF ¶ 100, and, “If you don’t fight like hell, you’re not going to have a country anymore,” FOF ¶ 100.

106. The 2:24 pm tweet was also clear incitement. FOF ¶¶ 132, 134–143, 180, 183–87. After training his supporters on Congress and Vice President Pence during the Ellipse speech, and while knowing the Capitol was under attack, Trump ratified his supporters’ violence. Rather than tell them to go home, he tweeted that “Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution . . . USA demands the truth!” FOF ¶ 135. There is no possible explanation for that tweet other than to encourage further violence and lawlessness.

107. There is no doubt that Trump’s speech encouraged “imminent” violent action. FOF ¶¶ 105–109, 134–143, 180, 183–87. He was finishing his speech just as Congress was beginning to certify the election results. FOF ¶ 114. He instructed his supporters to march to the Capitol building, telling them that he would march with them. FOF ¶ 105. The attack on the Capitol began while Trump was giving his speech. FOF ¶ 112. And Trump sent the 2:24 pm tweet while violence was not only imminent, but ongoing.

108. Trump argues his words cannot meet the “imminence” requirement because many of his statements that Petitioners rely upon were too remote from the events of January 6. Petitioners do not contend that Trump’s pre-January 6 speeches each separately incited the January 6 insurrection or separately, for that matter, any other violence. *Cf. Nwanguma v. Trump*, 903 F.3d 604, 611 (6th Cir. 2018) (holding Trump’s entreaty to “get [a counter-protester] out of here” did not incite violence when viewed in isolation). Nor do they contend that Trump’s audience’s “moral discomfort with violence” was “gradually undermined” by Trump’s speeches, unknown to him. *Cf. James v. Meow Media, Inc.*, 300 F.3d 683, 698 (6th Cir. 2002). Rather, beyond organizing the January 6 rally and assembling the mob, Trump’s prior statements evidence the pattern and relationship established between Trump and his violent extremist supporters and the language

Trump could, at the time of his choosing, use to incite them to attack. This evidence serves as crucial context for understanding the meaning, intent, and likely effect of Trump's words on January 6.

109. Finally, the Court concludes that Trump acted with the specific intent of encouraging violent or lawless action. FOF ¶¶ 178–187. Trump had engaged in a months-long scheme to remain in power in violation of the Constitution. He started before the election by casting doubt on any result where he did not win, saying the only way he could lose would be if the election was rigged. FOF ¶¶ 44, 45. On election night, he told the country the election had been stolen. FOF ¶ 48. He filed scores of frivolous lawsuits, including with the U.S. Supreme Court, all but one of which were ultimately rejected with the one having no bearing on the outcome of the election. FOF ¶¶ 55–57. After his legal challenges had been rejected, despite being told repeatedly by advisors that he had lost the election, he turned his sights on Congress's certification of electoral votes on January 6. He and his allies created fake slates of electors and sent them to the National Archives. FOF ¶ 64. In the meantime, he summoned his supporters to Washington, D.C. for a “wild” protest on January 6, repeatedly telling them that Vice President Pence had the power to reject electors from swing states and declare Trump president. FOF ¶¶ 72–73, 81. Once it was clear that Vice President Pence would not participate in Trump's scheme, the only avenue left was to stop and delay the certification using the mob. He used his speech and the 2:24 pm tweet to mobilize that mob. Trump understood and intended the effect his words would and did have on his supporters that day. FOF ¶¶ 178–187.

110. The *Thompson* court correctly recognized that “[t]he ‘import’ of the President's words must be viewed within the broader context in which the Speech was made and against the Speech as a whole”: his creation of “an air of distrust and anger among his supporters by creating a false narrative that the election literally was stolen,” leading to “threats against state election officials” and “clash[es] with police in Washington, D.C., following pro-Trump rallies” of which “[t]he President would have known,” leading to the “reasonable ... infer[ence] that the President would have known that some supporters viewed his invitation [to Washington, D.C.] as a call to action.” *Thompson*, 590 F. Supp. 3d at 115 (relying on the Supreme Court's decision in *Hess*, which “signaled that there is no safe haven under *Brandenburg* for the strategic speaker who does not directly and unequivocally advocate for imminent violence or lawlessness, but does so through unmistakable suggestion and persuasion”). And despite the likelihood that “when the President stepped to the podium on January 6th, . . . he would have known that some in the audience were prepared for violence” based on his certain knowledge of threats and plans for violence that his supporters shared in the days before, he “delivered a speech he understood would only aggravate an already volatile situation.” *Id.* at 116.

111. Trump's intent is further corroborated by his actions after the attack was underway. His refusal to deploy the National Guard or federal law enforcement authorities is strong evidence that he intended the attack to succeed in stopping the certification process. FOF ¶¶ 160–177. And, rather than doing anything to stop the attack, he sent the 2:24 pm tweet further inflaming the mob while continuing to call members of Congress lobbying for them to vote against certification. FOF ¶¶ 132, 134–143, 185. These are not the actions of somebody who inadvertently unleashed a mob on the Capitol. And the fact that Trump told the mob to “go home” only *after* it was clear they would fail to stop the election certification is further proof of Trump's intent.

112. This case is distinguishable from both *Nwanguma v. Trump* and *Bible Believers v. Wayne Cnty., Mich.*, the two principal First Amendment cases cited by Trump. The plaintiff in *Nwanguma* was assaulted by participants at a Trump rally after Trump said, on five different occasions, to “get ‘em out of here” while also saying “don’t hurt ‘em.” *Nwanguma*, 805 F.3d at 606, 608. The Court held that Trump’s statements did not constitute incitement under *Brandenburg* because they did not expressly or implicitly call for violence, even when viewed in context as courts must do when evaluating speech under the First Amendment. *Id.* at 610–11. Petitioners here have presented far more evidence and context regarding the meaning of Trump’s words on January 6 than the plaintiff in *Nwanguma*. Trump said far more than merely “get ‘em out of here” on the Ellipse; the plaintiff in *Nwanguma* did not present expert testimony about communication patterns that inform the meaning of Trump’s words; and Trump’s statements at the rally in *Nwanguma* were not made in the context of a months-long effort to stay in power unlawfully where the last remaining option was to stop or delay the certification of valid electoral votes.

113. *Bible Believers* is even further afield. There, members of an evangelical group called the Bible Believers hurled verbal religious insults at attendees of Dearborn’s Arab National Festival, which caused some attendees to become violent. The group sued officials who had removed them from the festival for violating their First Amendment rights. The Court sided with Bible Believers, concluding that the group’s messages, “however offensive, do not advocate for, encourage, condone, or even embrace imminent violence or lawlessness.” *Bible Believers*, 805 F.3d at 244. Indeed, to the extent the group’s words had a tendency to cause violence, it was violence against the speaker because of the offensive nature of the speech, not others. Here, by contrast, we are not dealing with offensive speech that riles up a crowd against the speaker. Trump’s speech was a direct call to violence or lawlessness in service of an insurrection against the Constitution.

#### **IV. The CRSCC’s Claims**

114. The Court previously dismissed the CRSCC’s first claim for relief and rejected its First Amendment argument. *See Omnibus Ruling on Pending Dispositive Motions*, at 17–23 (Oct. 20, 2023). The CRSCC’s remaining two claims turn on the merits of Petitioners’ claim and whether Petitioners have a cause of action under Colorado law to prevent the Secretary from listing Trump on the ballot based on his disqualification under Section 3. *See CRSCC’s Verified Petition in Intervention* ¶¶ 40-47. Because the Court has ruled for Petitioners on those points, the CRSCC’s remaining claims fail and must be dismissed.

Date: November 10, 2023

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## **[PROPOSED] ORDER**

For the reasons stated in these Findings of Fact and Conclusions of Law, the Court ORDERS, ADJUDGES, and DECREES as follows:

1. Intervenor Donald J. Trump is disqualified under Section 3 of the Fourteenth Amendment to the Constitution of the United States and is therefore constitutionally ineligible to appear on any Colorado ballot as a candidate for federal or state office;

2. Due to Trump's constitutional disqualification under Section 3, any action by Respondent Secretary of State allowing Trump to access the 2024 Republican presidential primary election ballot or any future primary or general election ballot in Colorado will be "improp[er]," C.R.S. § 1-4-1204(4), and "a breach or neglect of duty or other wrongful act," *id.* § 1-1-113(1);

3. The Secretary is ordered to substantially comply with the Colorado Election Code and is permanently enjoined and prohibited from taking any action that would allow Trump to access the 2024 Republican presidential primary election ballot or any future primary or general election ballot in Colorado, absent a two-thirds vote by each House of Congress to remove Trump's disqualification under Section 3 of the Fourteenth Amendment;

4. Trump's Motion to Dismiss Based on the First Amendment is denied, as are Trump's other motions to dismiss to the extent any issues raised in those motions were previously left undecided; and

5. Intervenor CRSCC's remaining claims are denied.

## CERTIFICATE OF SERVICE

I served this document on November 10, 2023, by Colorado Courts E-filing and/or via electronic mail as follows:

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