

DEFENDING AMERICAN  
DEMOCRACY

ROUTLEDGE



# How Autocrats Seek Power

Resistance to Trump and Trumpism

Richard L. Abel



a GlassHouse Book

# HOW AUTOCRATS SEEK POWER

Chronicling and analyzing resistance to the threat that autocracy poses to American liberal democracy, this book provides the definitive account of the rise of Trump's populist support in 2016, and his failed efforts to nullify the result of the 2020 election.

This book is about the threat of autocracy, which antedated Donald Trump and will persist after he leaves the stage. Autocracy negates both liberalism—which includes the protection of fundamental rights, the rule of law, separation of powers, and respect for specialist expertise—and democracy—which requires that the state be responsible to an electorate composed of all eligible voters—by concentrating unconstrained power in a single individual. Anticipating defeat in the 2016 election, Trump attacked suggestions that he had sought, or even benefited from, Russian assistance despite the evidence, and he made repeated claims of election fraud. In 2020, fearful that his mishandling of the pandemic had alienated voters, he intensified the allegations of fraud, demanding recounts, pressuring state legislatures and state election officials, advancing bizarre conspiracy theories, and finally, calling for a massive demonstration, urging protesters to march to the Capitol to pressure Congress, promising to accompany them. But as this book documents, Trump's efforts to nullify the result of the 2020 election failed. As the courts rejected his numerous challenges, state election officials loyally performed their statutory duties, the Justice Department found no evidence of fraud, and politicians from all sides certified Biden's victory, this book traces the many, and varied, forms of the defense of liberal democracy located within both the state and civil society, including law (judges, government lawyers, and private practitioners), the media, NGOs, science (and other forms of expertise), and civil servants (in federal, state, and local government). Evaluating their efficacy, the book maintains, is vital if—as history has repeatedly taught us—the price of liberal democracy, like that of liberty itself, is eternal vigilance.

This definitive account and analysis of Trumpism and the resistance to it will appeal to scholars, students, and others with interests in politics, populism, and the rule of law and, more specifically, to those concerned with resisting the threat that autocracy poses to liberal democracy.

**Richard L. Abel** is Michael J. Connell Distinguished Professor of Law Emeritus and Distinguished Research Professor, UCLA, USA.

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# HOW AUTOCRATS SEEK POWER

Resistance to Trump and Trumpism

*Richard L. Abel*

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# FOREWORD BY CONGRESSMAN JAMIE RASKIN

“The past is never dead. It isn’t even past,” wrote William Faulkner. The book in your hands will give you flashbacks to our dizzying national march into Trumpian chaos and fascistic politics. And yet it is not at all a despairing book. Indeed, if you are feeling politically lost and disoriented after years of extremism, fanaticism, lying, plague, political coup, and violent insurrection, you will find a lot of hope in this book. There is hope in the immediate outspoken resistance that meets every step toward autocracy. There is hope in the way so many Americans have found a place in their own lives to stand strong for civil rights, civil liberties, and civil society against authoritarianism and its main weapon, fear. There is hope in how the essential incompetence of our authoritarian tyrants often saves us from their sinister malice.

But above all, I found tremendous hope in the writing of this book itself, a staggering and monumental achievement and a remarkable labor of love. The elemental act of resistance to fascism is active memory, recording and remembering the ominous and sinister events that break from the ethical, moral, and social norms of liberal democracy. Professor Abel calmly demonstrates the indignation of a true-blue patriot and the patience of a saint as he registers in encyclopedic fashion the shattering events of the Trump–Pence administration and the profound ruptures they have caused to democracy, the rule of law, our constitutional order, and sanity in public life.

The codification of recent but precarious political memory in this book is a veritable triumph and an antidote to the choreographed amnesia and indifference which prop up authoritarian regimes. If you are experiencing political fatigue and malaise, this sharply drawn history will bring your sense of outrage and activism roaring back, and you will be ready for the struggles ahead.

Professor Abel is a shining patriot and has brought all his prodigious academic and legal skills to the monumental task of recording the derangement of the Trump period. His book is an indispensable aid to the eternal vigilance necessary for these dangerous times.

—Jamie Raskin

\* \* \* \* \*

Jamie Raskin is a member of the United States House of Representatives (MD-8), the ranking member of the House Committee on Oversight and Accountability, the former lead impeachment manager in the second impeachment trial of Donald Trump, and a former member of the House Select Committee to Investigate the January 6 Attack on the United States Capitol.

## PREFACE

This book has a long genesis. In February 1989, after meeting South African lawyers in the United States, Canada, and England and securing the blessing of the African National Congress (because of the cultural boycott), I made my first visit to that country. Following two more extended field trips in 1990 and 1991, I published *Politics by Other Means: Law in the Struggle against Apartheid, 1980–1994* (Routledge 1995), documenting the extraordinary contributions of activists, lawyers, judges, journalists, and NGOs to the creation of a nonracial democracy.

A decade later—on Saturday morning, May 2, 2004—I was driving home to Santa Monica after several days of hiking in the Grand Canyon. To stay awake on the long straight empty stretches of Interstate 10, I turned on NPR's *Weekend Edition* and heard Seymour Hersh expose the torture of Iraqi detainees by American prison guards at Abu Ghraib. That broadcast had particular resonance for me because I vividly remembered when, a quarter century earlier, Sy, my brother-in-law, had broken the news about Lt. William Calley's role in the massacre of My Lai villagers, a story that contributed to ending the Vietnam War. By the time I heard the interview repeated several more times, I resolved to examine how the United States would respond to this most basic violation of the rule of law—expecting that our nation's 2-century-old democracy would be far more faithful to that ideal than South Africa's threatened White-minority regime had been. I spent the next 14 years analyzing the role of law and lawyers in torture, detention in Guantánamo Bay, electronic surveillance, civilian casualties of warfare, criminal prosecutions of alleged terrorists, courts-martial for war crimes, military commissions for Guantánamo detainees, habeas corpus petitions by those detainees, civil damages actions by victims of both terrorism and torture,

and civil liberties violations. The results were my two books *Law's Wars* and *Law's Trials* (Cambridge 2018).

When I gave talks about them, the most common question was whether I was going to write another about the Trump administration. I strongly demurred: Trump's shameless appeals to racism and his utter contempt for the law, professional expertise (in the administration's disastrous response to the COVID-19 pandemic), and the integrity of elections raised very different issues from the actions of the Bush and Obama administrations in the "war on terror" (however much I deplored them). But like so many others, I was transfixed and appalled by Trump's words and actions, first as a candidate and then in office. Therefore, I continued taking contemporaneous notes (as I had done for the "war on terror" books). After Trump lost the 2020 election, I read through the hundreds of pages I had accumulated and began to see patterns. Because I believed then, and still do, that Trump and Trumpism represent the greatest threat to American liberal democracy in my lifetime, I wrote the present book and two others analyzing Trump's actions and the resistance they provoked with respect to immigration and criminal justice (Abel, 2024a) and the pandemic (Abel, 2024b) and am completing a fourth book on the efforts to hold Trump accountable since the January 6 insurrection (Abel, 2025).

If journalism is a first draft of history, this is a second. I have mined the writings of journalists, participants in the events, and academics to offer the most comprehensive account I have been able to construct of the last seven years. I believe that level of detail is necessary both to understand what Trump and his supporters did to undermine the essential elements of liberal democracy and to identify and evaluate the efficacy of the forms of resistance this provoked. Two great writers have eloquently explained their own reasons for immersing readers in a richly described world. In the preface to his novel *Roderick Hudson*, Henry James wrote:

[R]elations stop nowhere, and the exquisite problem of the artist is eternally but to draw, by a geometry of his own, the circle within which they shall happily *appear* to do so. He is in the perpetual predicament that the continuity of things is the whole matter, for him, of comedy and tragedy; that this continuity is never, by the space of an instant or an inch, broken, and that, to do anything at all, he has at once intensely to consult and intensely to ignore it.<sup>1</sup>

A century later, Aleksandr Solzhenitsyn wrote in the preface to his historical novel *March 1917: The Red Wheel*: "I do understand that I am overloading the *Wheel* with detailed historical material—but it is that very material that's needed for categorical proof."<sup>2</sup> Rather than seeking to prove, I, too, offer readers as much evidence as possible to let them draw their own conclusions.

In the seven years I have been working on this book, I have been helped by many. Even though I have been emeritus for many years, the UCLA Law Library located elusive materials and generously provided student research assistants who identified the lawyers who brought the cases I discuss in the following chapters. My UCLA colleague Rick Hasen read and commented on part of the present book, a subject about which he is far more expert than I am. I continue to benefit from an ongoing collaboration organized by Fabio Costa Morais de Sa e Silva and David Trubek involving scholars from or writing about autocratic legalism in India, South Africa, Brazil, Hungary, Russia, and China. And most of all, I am grateful to my wife, Emily, who listened to me rail against Trump's assault on liberal democracy through more than 2,500 dinners and unfailingly provided the encouragement I needed to persevere.

## Notes

- 1 Henry James, *Roderick Hudson* (London: Macmillan, 1875).
- 2 Aleksandr Solzhenitsyn, *March 1917: The Red Wheel/Node III (8 March-31 March): Book 3*, translated by Marian Schwartz (Notre Dame, IN: University of Notre Dame Press, 2017), quoted in Gary Saul Morson, "What Solzhenitsyn Understood," LXIX(8) *New York Review of Books*, 35, 37 (5.12.22).

# ACRONYMS

<b>AAG</b>	assistant attorney general
<b>ABC</b>	American Broadcasting Company (network)
<b>ACLU</b>	American Civil Liberties Union
<b>AG</b>	attorney general
<b>AP</b>	Associated Press
<b>ASOG</b>	Allied Security Operations Group
<b>AUSA</b>	assistant US attorney
<b>BLM</b>	Black Lives Matter
<b>CBS</b>	CBS Broadcasting Inc.
<b>CEO</b>	chief executive officer
<b>CISA</b>	Cybersecurity and Infrastructure Security Agency
<b>CNN</b>	CNN Media Company (formerly Cable News Network)
<b>CNP</b>	Council for National Policy
<b>COVID-19</b>	severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2)
<b>CPA</b>	certified public accountant
<b>CPAC</b>	Conservative Political Action Coalition
<b>DA</b>	district attorney
<b>DCI</b>	director of central intelligence
<b>DDC</b>	US District Court for the District of Columbia
<b>DHHS</b>	Department of Health and Human Services
<b>DHS</b>	Department of Homeland Security
<b>DIA</b>	Defense Intelligence Agency
<b>DNC</b>	Democratic National Committee
<b>DNI</b>	director of national intelligence
<b>DoD</b>	Department of Defense
<b>DoJ</b>	Department of Justice

DoS	Department of State
ED Va	US District Court for the Eastern District of Virginia
EO	executive order
EPA	Environmental Protection Agency
FBI	Federal Bureau of Investigation
FDA	Food and Drug Administration
FTCA	Federal Tort Claims Act
G	<i>The Guardian</i>
GBI	Georgia Bureau of Investigations
GHWB	George H.W. Bush
GOP	Grand Old Party (Republican Party)
GP	The Gateway Pundit
GWB	George W. Bush
HASC	House Armed Services Committee
HPSCI	House Permanent Select Committee on Intelligence
HSC	House Select Committee to Investigate the January 6 Attack on the United States Capitol
IC	US Immigration Court; Intelligence Community
LGBT	lesbian, gay, bisexual, transsexual
MSNBC	television channel
ICE	Immigration and Customs Enforcement
IG	inspector general
IRS	Internal Revenue Service
IT	information technology
JCS	Joint Chiefs of Staff
KJ	Key Judgment (in NIE)
LG	lieutenant general
MAGA	Make America Great Again (Trump slogan)
NBA	National Basketball Association
NBC	National Broadcasting Company
NCSC	National Counterintelligence and Security Center (DNI)
NEC	National Economic Council
NIE	National Intelligence Estimate
NLJ	<i>National Law Journal</i>
NPR	National Public Radio
NPS	National Park Service
NSA	national security adviser or National Security Agency
NSC	National Security Council
NYPD	New York City Police Department
NYS	New York State
NYT	<i>The New York Times</i>
OANN	One America News Network
ODNI	Office of the Director of National Intelligence

**xiv** Acronyms

<b>OK</b>	Oath Keepers
<b>OLC</b>	Office of Legal Counsel
<b>OMB</b>	Office of Management and Budget
<b>OSC</b>	Office of Special Counsel
<b>PDB</b>	President's Daily Brief
<b>POTUS</b>	president of the United States
<b>QAnon</b>	a Far Right conspiracy theory
<b>RAGA</b>	Republican Attorneys General Association
<b>RNC</b>	Republican National Committee or Republican National Convention
<b>SCOTUS</b>	Supreme Court of the United States
<b>SJC</b>	Senate Judiciary Committee
<b>SSCI</b>	Senate Select Committee on Intelligence
<b>TRO</b>	temporary restraining order
<b>USPS</b>	United States Postal Service
<b>WH</b>	White House
<b>WP</b>	<i>The Washington Post</i>
<b>WSJ</b>	<i>The Wall Street Journal</i>

# DRAMATIS PERSONAE

Greg Abbott: Republican Texas governor  
Ali Alexander: #StopTheSteal creator and head  
Lamar Alexander: former Republican Tennessee Senator  
Bret Baier: Fox News chief political correspondent  
Stephen K. Bannon: chief strategist in Trump White House  
William Barr: Trump's attorney general  
Maria Bartiromo: Fox News anchor  
Kerry Benninghoff: Pennsylvania's Republican House majority leader  
Jocelyn Benson: Democratic Michigan secretary of state  
Andy Biggs: Republican Arizona Representative  
Marsha Blackburn: Republican Tennessee Senator  
Roy Blunt: Republican Missouri Senator  
Christina Bobb: Trump lawyer and OANN anchor  
Lauren Boebert: Republican Colorado Representative  
David Boies: chairman of Boies Shiller Flexner (law firm)  
Shawna Bolick: Republican Arizona state House member  
John Bolton: national security adviser to GWB and Trump  
Pam Bondi: former Republican Florida attorney general and Trump lawyer  
Dan Bongino: conservative media commentator (Fox News and others)  
Kathy Boockvar: Democratic Pennsylvania secretary of state  
Thomas Bossert: Trump's homeland security adviser  
David Bossie: Trump's deputy campaign manager  
Russell "Rusty" Bowers: Arizona's Republican state House Speaker  
Matt Braynard: Trump's campaign director of technology  
John Brennan: Obama's DCI  
Mark Brnovich: Arizona's Republican attorney general

Michael Bromwich: lawyer  
Mo Brooks: Republican Alabama Representative  
Richard Burr: Republican North Carolina Senator  
Jeb Bush: former Republican Florida governor  
Patrick Byrne: Overstock founder  
Alex Cannon: Trump campaign lawyer  
Tucker Carlson: Fox News host  
Neil Cavuto: Fox News host  
Lee Chatfield: Michigan's Republican House Speaker  
Dick Cheney: GWB's vice president  
Liz Cheney: former Republican Wyoming Representative  
Kenneth Chesebro: Trump lawyer  
Chris Christie: former Republican New Jersey governor  
James Clapper: Obama's DNI  
Jeffrey Clark: Trump's assistant attorney general for the Environment and  
Natural Resources Division and acting head of the Civil Division  
Justin Clark: Trump's campaign lawyer  
Daniel Coats: Trump's DNI  
Ezra Cohen-Watnick: Trump's acting undersecretary of defense for intelligence  
Gary Cohn: Trump's NEC director and chief economic adviser  
Susan Collins: Republican Maine Senator  
James Comey: Trump's first FBI director  
Kellyanne Conway: Trump White House counselor  
Jake Corman: Pennsylvania's Republican Senate majority leader  
John Cornyn: Republican Texas Senator  
Tom Cotton: Republican Arkansas Senator  
Ted Cruz: Republican Texas Senator  
Kenneth Cuccinelli: senior officer performing the duties of Trump's DHS  
deputy secretary  
Brian Cutler: Pennsylvania's Republican House Speaker  
Judd Deere: Trump White House deputy press secretary  
Louis DeJoy: Trump's postmaster general  
Oleg Deripaska: Russian oligarch close to Putin  
Andriy Derkach: Member of pro-Russia Party of Regions in Ukrainian Parlia-  
ment and suspected Russian agent  
Ron DeSantis: Republican Florida governor  
Betsy DeVos: Trump's secretary of education  
Mike DeWine: Republican Ohio governor  
Joe diGenova: lawyer on Giuliani's team  
Lou Dobbs: Fox Business host  
Richard Donoghue: Trump's principal associate deputy attorney general  
Peter Doocy: Fox News White House correspondent  
Douglas Ducey: Republican Arizona governor

Geoff Duncan: Republican Georgia lieutenant governor  
John Durham: D Connecticut US Attorney and Special Counsel  
Ainsley Earhardt: *Fox & Friends* co-host  
John Eastman: Trump lawyer  
John Eisenberg: Trump lawyer  
Jenna Ellis: Trump campaign lawyer  
Tom Emmer: Republican Minnesota Representative and National Republican Congressional Committee chair  
Steven Engel: Trump's deputy assistant attorney general for OLC  
Boris Epshteyn: Trump campaign lawyer  
Jeffrey Epstein: financier convicted of sexual crimes; committed suicide in prison  
Joni Ernst: Republican Iowa Senator  
Mark T. Esper: Trump's secretary of defense  
William Evanina: Trump's director of the National Counterintelligence and Security Center  
Karen Fann: Republican Arizona state Senate president  
Alyssa Farrah: Trump's assistant and director of strategic communications  
Mark Finchem: Arizona Republican state representative and unsuccessful candidate for secretary of state  
Tom Fitton: president of Judicial Watch  
George Floyd: killed by Minneapolis police, May 2020  
Michael Flynn: briefly Trump's national security adviser  
Ruby Freeman: Fulton County, Georgia, election worker  
Jordan Fuchs: Republican Georgia deputy secretary of state  
Nicholas Fuentes: White supremacist  
Michael Gableman: retired Republican Wisconsin Supreme Court Justice and chair of the 2020 election audit  
Matt Gaetz: Republican Florida Representative  
Bill Gates: Republican Maricopa County (Arizona) board of supervisors chair  
Robert Gates: DCI under GHWB and defense secretary under GWB and Obama  
Ryan Germany: general counsel to Georgia's secretary of state  
Newt Gingrich: former Republican House Speaker and Trump supporter  
Benjamin Ginsberg: Republican election adviser  
Rudy Giuliani: former NYC mayor and Trump adviser and lawyer  
Louie Gohmert: Republican Texas Representative  
Sebastian Gorka: Trump deputy assistant  
Paul Gosar: Republican Arizona Representative  
Lindsey Graham: South Carolina Republican Senator  
Charles Grassley: Republican Iowa Senator  
Marjorie Taylor Greene: Republican Georgia Representative

Richard Grenell: Trump's acting DNI  
Couy Griffin: Republican Otero County (New Mexico) commissioner  
Stephanie Grisham: Trump press secretary  
Jena Griswold: Democratic Colorado secretary of state  
Sean Hannity: Fox News host  
Kamala Harris: Biden's vice president  
Gina Haspel: Trump DCI  
Josh Hawley: Republican Missouri Senator  
Michael Hayden: former director of the CIA and NSA and deputy DNI under Clinton, GWB, and Obama  
Pete Hegseth: Fox News host  
Jaime Herrera Beutler: Republican Washington Representative  
Eric Herschmann: Trump senior adviser and lawyer  
Clint Hickman: Republican Maricopa County (Arizona) board of supervisors chairman  
Hope Hicks: White House communications director  
Katie Hobbs: Arizona's Democratic secretary of state  
Steny Hoyer: Democratic Maryland Representative and House majority leader  
Cassidy Hutchinson: assistant to Mark Meadows  
Laura Ingraham: Fox News host  
James Inhofe: Republican Oklahoma Senator  
Greg Jacob: Pence's counsel  
Bradley Johnson: a right-wing journalist  
Mike Johnson: Republican Louisiana Representative  
Ron Johnson: Republican Wisconsin Senator  
Alex Jones: conspiracy propagator  
Jim Jordan: Republican Ohio Representative  
Keith Kellogg: retired lieutenant general, Pence's national security adviser  
John Kelly: Trump's homeland security secretary and chief of staff (and retired Marine Corps general)  
Megyn Kelly: former Fox News host  
Brian Kemp: Republican Georgia governor  
Bernard Kerik: former NYPD commissioner and Giuliani associate  
Konstantin Kilimnik: Russian intelligence officer  
Brian Kilmeade: *Fox & Friends* co-host  
Adam Kinzinger: Republican Illinois Representative  
Charlie Kirk: head of Turning Point USA  
Kenneth Klukowski: lawyer under Jeffrey Clark  
Christopher Kobach: former Republican Kansas secretary of state; Republican Kansas attorney general  
Charles Koch: libertarian and Republican major donor  
Christopher Krebs: head of DHS CISA

Larry Kudlow: Trump's NEC chair  
 Jared Kushner: Trump's son-in-law  
 Kari Lake: unsuccessful Republican Arizona gubernatorial candidate  
 James Lankford: Republican Oklahoma Senator  
 Mike Lee: Republican Utah Senator  
 Mark Levin: Fox News host  
 Rush Limbaugh: conservative political commentator  
 Mike Lindell: MyPillow CEO  
 Kelly Loeffler: former Republican Georgia Senator  
 Nicholas Luna: assistant to the president, Trump's "body man," and director of Oval Office Operations  
 J. Michael Luttig: former Fourth Circuit Court of Appeals judge, for whom Eastman had clerked  
 Derek Lyons: White House staff secretary and counselor to the president  
 Marsha MacCallum: Fox News host  
 Joseph Maguire: Trump's acting DNI  
 Paul Manafort: Republican campaign consultant and lobbyist  
 Douglas V. Mastriano: Pennsylvania Republican state senator  
 Sarah Matthews: White House deputy press secretary  
 John McCain: Republican Arizona secretary  
 Kevin McCarthy: Republican California Representative and House Speaker  
 Michael McCaul: Republican Texas Representative  
 Mitch McConnell: Republican Kentucky Senator and majority/minority leader  
 Ronna McDaniel: RNC chair  
 Kayleigh McEnany: Trump press secretary  
 Johnny McEntee: White House director of the Presidential Personnel Office  
 Donald McGahn: Trump's White House counsel  
 H.R. McMaster: Trump's first national security adviser  
 William H. McRaven: former commander, Special Operations Command  
 Mark Meadows: White House chief of staff  
 Joshua Merritt: Sidney Powell's "expert" witness  
 Jason Miller: Trump senior campaign adviser  
 Max Miller: associate director, Presidential Personnel Office  
 Stephen Miller: Trump senior adviser  
 Mark A. Milley: Trump's JCS chair  
 Cleta Mitchell: Trump campaign lawyer  
 Steven Mnuchin: Trump's treasury secretary  
 John Moran: Deputy Attorney General Rosen's chief of staff  
 Matt Morgan: Trump campaign general counsel  
 Wandrea "Shaye" Moss: Fulton County (Georgia) election worker  
 Mick Mulvaney: Trump's chief of staff  
 Lachlan Murdoch: Fox News senior vice president

**xx** Dramatis Personae

Rupert Murdoch: Owner of Fox, *WSJ*, *New York Post*, *Times of London*

Lisa Murkowski: Republican Alaska Senator

Brian Murphy: Trump's DHS head of intelligence and analysis

Tim Murtagh: Trump campaign communications director

Peter Navarro: Trump's trade adviser

Dana Nessel: Michigan's Democratic attorney general

Kristi Noem: Republican South Dakota governor

Robert C. O'Brien: Trump's national security adviser

Matt Oczkowski: Trump campaign data analyst

Kurt Olsen: Georgia lawyer

William Olson: Virginia lawyer

Bill O'Reilly: Fox News anchor

Anthony Ornato: White House deputy chief of staff for operations

Jon Ossoff: Democratic Georgia Senator

Byung Jin "Bjay" Pak: ND Georgia US attorney

Leon Panetta: Obama's DCI and defense secretary

Kash Patel: chief of staff to Acting Defense Secretary Miller

Rand Paul: Republican Kentucky Senator

Kenneth Paxton: Republican Texas attorney general

Nancy Pelosi: Democratic Speaker of the House

Michael Pence: vice president

David Perdue: Republican Georgia Senator

Scott Perry: Republican Pennsylvania Representative

Patrick Philbin: White House deputy counsel

Katrina Pierson: Trump campaign adviser and organizer of January 5 "Save America" rally

Michael Pompeo: Trump's secretary of state

Rob Porter: Trump's White House staff secretary

Matthew Pottinger: Trump's deputy national security adviser

Sidney Powell: Trump campaign lawyer

Reince Priebus: Trump's White House chief of staff

Brad Raffensperger: Republican Georgia secretary of state

John Ratcliffe: Trump's DNI

Trish Regan: Fox Business Network host

Stewart Rhodes: Oath Keepers founder and head

Tom Ridge: Bush's homeland security secretary

Justin Riemer: RNC chief counsel

Denver Riggleman: Republican Virginia Representative

Chanel Rion: OANN White House correspondent

Mitt Romney: Republican Utah Senator

Jeffrey A. Rosen: Trump's deputy attorney general and attorney general after Barr

Karl Rove: Republican political consultant

Marco Rubio: Republican Florida Senator  
 Christopher Ruddy: Newsmax CEO  
 Paul Ryan: Republican House Speaker under Obama and Trump  
 Bill Sammon: Fox News Washington bureau chief  
 Sarah Huckabee Sanders: Trump's deputy press secretary  
 Ben Sasse: Republican Nebraska Senator  
 Eugene Scalia: Trump's labor secretary  
 Steve Scalise: Republican House majority leader  
 Dan Scavino: White House director of social media  
 Al Schmidt: Republican Philadelphia commissioner and member of the Board  
     of Elections  
 Debbie Wasserman Schultz: DNC chair  
 Chuck Schumer: Democratic Senate majority/minority leader  
 Jay Sekulow: Trump's personal lawyer  
 Josh Shapiro: Democratic Pennsylvania attorney general  
 Norm Shinkle: Michigan's Republican Board of State Canvassers member  
 Mike Shirkey Michigan Republican state Senate majority leader  
 Marc Short: Pence's chief of staff  
 Elissa Slotkin: Democratic Michigan Representative  
 George Soros: philanthropist  
 Bill Stepien: Trump campaign manager  
 Gabriel Sterling: chief operating officer for Georgia Secretary of State  
     Raffensperger  
 Chris Stirewalt: Fox News editor  
 Roger Stone: Republican political consultant  
 Virginia "Ginni" Thomas: conservative activist (and wife of Justice Clarence  
     Thomas)  
 Victoria Toensing: Trump campaign lawyer  
 Patrick Toomey: Republican Pennsylvania Senator  
 Gregory F. Treverton: chair of the National Intelligence Council  
 James Troupis: Trump's lawyer in Wisconsin  
 Donald Trump Jr.: Trump's eldest son (sometimes Don or Donald Jr.)  
 Tommy Tuberville: Republican Alabama Senator  
 Michael Vickers: Obama's undersecretary of defense for intelligence  
 Robin Vos: Wisconsin's Republican Assembly Speaker  
 Phil Waldron: retired Army colonel  
 Chris Wallace: Fox News host  
 Kelli Ward: Arizona's GOP chair  
 Kim Ward: Pennsylvania's Republican Senate president pro tem  
 Raphael Warnock: Democratic Georgia Senator  
 Elizabeth Warren: Democratic Massachusetts Senator  
 Frances Watson: chief investigator for the Georgia secretary of state  
 Gretchen Whitmer: Democratic Michigan governor

**xxii** Dramatis Personae

Jack Wilenchik: Phoenix lawyer representing election deniers

Fani Willis: Fulton County (Georgia) district attorney

Chad Wolf: Trump's acting DHS secretary

L. Lin Wood: Georgia lawyer

Christopher Wray: Trump's FBI director

John Yoo: UC–Berkeley law professor

Mark Zuckerberg: Facebook founder

# 1

## THE ORIGINS OF AUTOCRACY

Throughout its nearly 250-year history, the United States has stimulated observers to identify and analyze challenges to the core values of its liberal democracy. Within decades of the nation's founding, Alexis de Tocqueville—writing from the perspective of post-revolutionary France—voiced both concern about the excesses of democracy and egalitarianism and hope that lawyers, whom he saw as a surrogate aristocracy, would offer a salutary counterweight.<sup>1</sup> A half century later, Edward Bellamy took the opposite view in a novel that prophesied a socialist utopia in the 21st century.<sup>2</sup> Writing in the depths of the Great Depression and the shadow of Nazism, Sinclair Lewis anticipated an American dictator in his ironically titled novel *It Can't Happen Here*.<sup>3</sup> The victory over fascism, disillusion with the Soviet Union's version of communism, and the rise of the United States to hegemonic power led Daniel Bell to predict *The End of Ideology: On the Exhaustion of Political Ideas in the Fifties*.<sup>4</sup> Cheering the collapse of communism in 1989, Francis Fukuyama prematurely pronounced the permanent triumph of Western liberal democracy in *The End of History and the Last Man*.<sup>5</sup> Yet just four years later, Samuel Huntington predicted that the end of the Cold War would be followed by “the clash of civilizations and the remaking of world order” (in a book with that title)—eerily anticipating the 9/11 attack and quite possibly contributing to George W. Bush's decision to declare a “war on terror” against the “axis of evil” (an improbable grouping of Sunni-ruled Iraq, Shi'a Iran, and communist North Korea).<sup>6</sup> And less than a decade after that, in *The Plot Against America*, Philip Roth imagined an alternative narrative in which Charles Lindbergh—a fan of Hitler (eerily foreshadowing Trump's enthusiasm for Putin)—defeated FDR in 1940.<sup>7</sup>

Given history's demonstrated capacity both to confound our most confident predictions and to fulfill our greatest fears, it might seem foolhardy to offer my own. But there is an emerging consensus—and concern—among scholars that liberal democracy, whose dominion had been widening and deepening in the decades before and after the millennium, is now under attack, not just in countries where it is relatively new and vulnerable—the Global South (Brazil, South Africa, the Philippines, Nicaragua, Tunisia) and former communist regimes (Hungary, Poland, Russia)—but also in nations with longer democratic traditions (Venezuela, Israel, India).<sup>8</sup> The Economist Intelligence Unit reported in 2022 that 59 countries, with 37 percent of the global population, were authoritarian.<sup>9</sup> The United States dropped from 16th in its rankings in 2006 to 26th in 2020.<sup>10</sup> It fell from 7th to 18th in the Freedom House rankings between 2010 and 2020.<sup>11</sup>

All this has convinced me (and many others) that “It Can Happen Here”—indeed, it has happened and still is happening.<sup>12</sup> Donald Trump and his followers presented—and continue to pose—the greatest domestic threat to American liberal democracy I have witnessed in my 80+ years.<sup>13</sup> He sought to undermine political liberalism by defying our Constitution and laws, Congress, the courts, the civil service, and federalism. He attacked civil society, especially the media and professionals, including those coping with the tragic COVID-19 pandemic. He scapegoated minorities and targeted immigrants. Most fundamentally, he sought to undermine elections, which constitute the ultimate foundation of democracy. He hoped the resulting chaos would cement his hold on power.<sup>14</sup> Journalists have documented his transgressions; insiders have written exposés; psychologists have speculated about his motivations; social scientists have analyzed his actions. Regardless of what the future holds for Trump—the possibilities range from prison to the White House—the autocratic turn in American politics will survive him, as sadly demonstrated by the numerous acolytes and imitators seeking office at all levels of federal and state government, with and without his endorsement.<sup>15</sup>

Because so many commentators are preoccupied with Trump,<sup>16</sup> this book focuses instead on resistance to autocracy.<sup>17</sup> Just as the military draws “lessons learned” from each enemy engagement and the Federal Reserve performs stress tests during economic downturns to assess whether banks are adequately capitalized, I probe the deeply unfortunate experience of the years since 2016 to document and understand the resilience of American liberal democracy in the face of attacks by autocrats. I analyze the many diverse ways in which people and institutions have defended the essential elements of liberal democracy and evaluate the efficacy of those efforts. The present chapter mines the large and growing literature on autocracy in many countries, including the United States, to address an essential preliminary question: How do autocrats gain power?<sup>18</sup> This lays the foundation for the rest of

the book, which chronicles and analyzes forms of resistance to autocracy in the context of the 2016 and 2020 presidential elections.

Autocrats tend to arise in polarized societies.<sup>19</sup> While partisanship is inherent in democratic pluralism, it can become severe or pernicious when “the normal multiplicity of differences in the society increasingly align along a single dimension, cross-cutting differences become reinforcing, and people increasingly perceive and describe politics and society in terms of ‘us’ versus ‘them.’”<sup>20</sup> Extreme polarization affects both leaders and followers, is often rooted in class, race, ethnicity or religion, and is binary and sustained.<sup>21</sup> Although Trump is the first American autocrat to capture the presidency, numerous precursors exploited polarization to seek political power, including Father Charles Coughlin, Louisiana governor Huey Long, Wisconsin Senator Joseph McCarthy, Alabama governor George Wallace, President Richard Nixon (the Southern strategy), and Republican presidential aspirants Barry Goldwater and Patrick Buchanan.<sup>22</sup> In 1994, Rep. Newt Gingrich (poised to become House Speaker) circulated a memo to Republican leaders titled “Language: A Key Mechanism of Control,” urging the GOP to describe Democrats with words like “betray, bizarre, decay, destroy, devour, greed, lie, pathetic, radical, selfish, shame, sick, steal and traitors”—many of which became part of Trump’s playbook.<sup>23</sup>

The United States, which is unusual in having just two parties rather than a multiplicity that must join coalitions to form governments, has seen those parties progressively polarize since the post–World War II period (when political scientists actually deplored their bland similarity).<sup>24</sup> In 1952, the makeup of those two parties differed less than 10 percent across all major demographic categories.<sup>25</sup> But between 1948 and 2016, the voting behavior of Democrats in Congress became 16 points more liberal, while that of Republicans became 24 points more conservative.<sup>26</sup> The percentage of Democrats who identified as liberal increased from 25 to 51 from 1994 to 2020, while that of Republicans who called themselves conservative increased from 58 to 75.<sup>27</sup> A Pew survey found that the “average partisan gap [between the parties] increased from 15 percentage points to 36” between 1994 and 2017.<sup>28</sup> Votes in Congress are increasingly explained by party rather than inter- or intra-state differences.<sup>29</sup> At the same time, states themselves are polarized by party (into red and blue, with just a few purple).<sup>30</sup> A recent YouGov poll found that 60 percent of Democrats saw Republicans as “a serious threat to the United States,” and nearly 70 percent of Republicans reciprocated the sentiment; a Pew survey found that more than half of Republicans and nearly half of Democrats saw the other party as “immoral.”<sup>31</sup> Nearly three-quarters of the members of each party view members of the other as “bullies who want to impose their political beliefs” and “untruthful and pushing disinformation.”<sup>32</sup> On a feeling thermometer with a 0–100 degree scale, positive affect toward opposing partisans fell from 48 degrees in the 1970s to

#### 4 The Origins of Autocracy

20 today.<sup>33</sup> A 2016 poll found that, for the first time in 20 years, majorities of each party held very unfavorable views of the other.<sup>34</sup> Members of each party also view the other as more extreme.<sup>35</sup> Partisans exaggerate each other's differences: Republicans believe 32 percent of Democrats are LGBT (6 percent are); Democrats think that 38 percent of Republicans earn over \$250,000 a year (2 percent do).<sup>36</sup> Trump has driven polarization to extremes never before seen: in his first year, 83 percent of Republicans but just 8 percent of Democrats approved his performance; the gap widened to 87–8 during the second half of his term, reaching 91–5 at the mid-term elections.<sup>37</sup> Polarization has been growing more rapidly among adolescents—the nation's future voters.<sup>38</sup> This divide, however, does not mean the parties are mirror images. Since 2013, partisan animosities have been moving in opposite directions: 11 percent more Republicans have come to view Democrats as too extreme, while 5 percent fewer Democrats felt that way about Republicans, which may partly explain why Republicans are more drawn to autocracy.<sup>39</sup> And this is reproduced in Congress, where three out of five Republicans were “ideologically extreme,” compared to just one out of five Democrats.<sup>40</sup>

Although there is ongoing debate about whether ideological polarization has intensified over time,<sup>41</sup> there is convincing evidence of growing affective polarization.<sup>42</sup>

[P]olitical scientists have repeatedly demonstrated that the vast majority of the public does not think about parties in ideological terms and that their ties to the political world are instead affective, based on a primordial sense of partisan identity that is acquired very early in life and persists over the entire life cycle.<sup>43</sup>

Expressive partisan identity has more influence on political behavior than does investment in issues.<sup>44</sup> Such strong affective loyalties can easily overwhelm attachment to core democratic values.<sup>45</sup> This social psychological evidence confirms earlier studies of crowd behavior<sup>46</sup> and experiments revealing irrationality in human judgments and actions.<sup>47</sup> There is also increasing interest in and evidence of belief polarization, which is visible in conflicts over subjects as diverse as elections (discussed in Chapters 2 and 3) and COVID-19 (see Abel, 2024b).

Polarization becomes more pronounced—and consequential—when political sentiments<sup>48</sup> are aligned with other identities,<sup>49</sup> as has been happening in the United States in recent decades.<sup>50</sup> Whites who share the same ethnic, religious, occupational, and recreational identities are less accepting of cultural diversity and affirmative action and less tolerant of out-groups.<sup>51</sup> White identity is more important to those living in largely non-White areas (where their historically unprecedented minority status intensifies status anxiety).<sup>52</sup> Those participating in the January 6 insurrection were more likely to live in

counties where Whites were declining as a proportion of the population.<sup>53</sup> While the non-White share of the Democratic vote rose from 7 to 44 percent between the 1950s and 2012, Republicans have remained nearly 90 percent White<sup>54</sup> and almost uniformly Christian.<sup>55</sup> Each party increasingly sees its adversary as the “other.” In 1960, only 4 percent of Democrats and 5 percent of Republicans said they would be “displeased” if a child of theirs married someone from the other party. A half century later, 33 percent of Democrats and 49 percent of Republicans said they would be “somewhat or very unhappy.”<sup>56</sup> A poll found that respondents favored members of their own party in awarding a hypothetical scholarship, dwarfing the effects of GPA and even race.<sup>57</sup> In 2016, 49 percent of Republicans and 55 percent of Democrats saw the other party as frightening; among those politically engaged, the proportions were even higher (70 and 62 percent, respectively).<sup>58</sup> The Vanderbilt Unity Index of political consensus has exhibited a steady decline from 1981, reaching a low point after Trump praised the “very fine people” at the August 2017 “Unite the Right” White supremacist rally in Charlottesville.<sup>59</sup>

Polarization, however, measures only the growing divide between the two parties. We need to understand why one faction chooses autocrats. Like most fundamental questions about social behavior, this one is difficult to answer, in part because it is overdetermined.<sup>60</sup> Much of the literature deals with countries where autocracy triumphed or was increasing. Umberto Eco (1932–2016), who grew up under Mussolini, proposed an inventory of preconditions, which presciently capture much of Trump’s appeal to his followers.<sup>61</sup> There is an emphasis on tradition: “truth has been already spelled out once and for all, and we can only keep interpreting its obscure message.” Christian fundamentalists proclaim biblical inerrancy (and 40 percent of Americans embrace creationism).<sup>62</sup> Catholics believe in papal infallibility. Conservative American lawyers embrace an “originalist” interpretation of the Constitution.<sup>63</sup> Southerners defend statues of Confederate leaders and the Confederate flag. Trump promised to “Make America Great Again” through a return to a mythic past.<sup>64</sup> Change is frightening, especially to those whose limited formal education renders them poorly equipped for a job market that has been rapidly transformed by globalization and technological change.<sup>65</sup> Nostalgia for tradition combines with rejection of the Enlightenment’s age of reason—“seen as the beginning of modern depravity”—in favor of “*irrationalism*.” Trump boasted in 2018: “I have a gut, and my gut tells me more sometimes than anybody’s brain can ever tell me.”<sup>66</sup> Eco observed that for Ur-Fascists, “thinking is a form of emasculation.” (In a different context, Shakespeare has Hamlet fear that “the native hue of resolution is sicklied o’er with the pale cast of thought.”) For Ur-Fascists, “universities are a nest of reds.” In 2020, Trump accused universities of “Radical Left Indoctrination” and threatened to withdraw their tax-exempt status.<sup>67</sup> (Republican governors Ronald Reagan (California), Scott Walker (Wisconsin), and Ron DeSantis

(Florida) similarly attacked their states' public universities.) Ur-Fascism permits, even invites, a *mélange* of political perspectives in a syncretism that "tolerate[s] contradictions" (as shown by Trump's ideological indifference and incoherence).

"Ur-fascism is racist by definition," seeking "consensus by exploiting and exacerbating the natural *fear of difference*" through "appeal[s] against intruders." In the speech announcing his candidacy in 2015, Trump blamed Mexico for "sending people that have lots of problems. . . . They're bringing drugs. They're bringing crime. They're rapists."<sup>68</sup> Declaring that "all [Haitian immigrants] have AIDS," and warning that Nigerian immigrants would never "go back to their huts," he asked rhetorically: "Why are we having all of these people from shithole countries come here?"<sup>69</sup> About a third of Obama voters with negative feelings toward immigrants chose Trump over Clinton.<sup>70</sup> Ur-Fascism speaks to a "*frustrated middle class* . . . suffering from an economic crisis or feelings of political humiliation." Such people resent "the ostentatious wealth and [power] of their enemies." (One of the many conundrums is why Trump did not provoke such resentment, especially since so much of his wealth was inherited.) "[T]o people who feel deprived of a clear social identity, Ur-Fascism says that their only privilege is the most common one, to be born in the same country," hence the "appeal to xenophobia."<sup>71</sup> "Every citizen belongs to the best people in the world." (Trump supporters chant: "USA, USA, USA.") There are "*obsessions with a plot*" by both external and internal foes (the Red Scare after World War I, Joseph McCarthy in the 1950s, Trump's election fraud claims, and more generally, conspiracy theories like QAnon), which are related to political alienation and anomie.<sup>72</sup> (During the Republican primaries, Trump claimed without evidence that Ted Cruz's father had conspired with fellow Cuban Americans to assassinate JFK.)<sup>73</sup> Conspiracy thinking is related to a willingness to engage in illegal actions.<sup>74</sup> The belief that "*life is permanent warfare* . . . brings about an Armageddon complex" and a "cult of death." (Retweeting a #StopTheSteal supporter declaring in December 2020 that "I am willing to give my life for this fight," the Arizona GOP challenged its members: "He is. Are you?")<sup>75</sup> The percentage of Americans who said violence is sometimes necessary to achieve political goals increased from 6 to 28 between 1978/79 and 2018; the percentage who said it was never appropriate decreased from 71 to 49 between 1998 and 2018.<sup>76</sup> Near the anniversary of the January 6 insurrection, 40 percent of Republicans, 41 percent of Independents, and even 23 percent of Democrats believed that political violence could be justified.<sup>77</sup>

But because "both permanent war and heroism are difficult games to play" (and Trump evaded the draft), "the Ur-Fascist transfers his will to power to sexual matters." (On the notorious "Access Hollywood" tape, Trump bragged: "Just kiss. I don't even wait. And when you're a star, they let you do it. . . . Grab 'em by the pussy. You can do anything.")<sup>78</sup> However,

“since even sex is a difficult game to play, the Ur-Fascist hero tends to play with weapons—doing so becomes an ersatz phallic exercise.” After North Korea’s Kim Jong-un claimed to have a nuclear launch button “on his desk at all times,” Trump upped the ante: “I too have a Nuclear Button, but it is a much bigger & more powerful one than his, and my Button works!”<sup>79</sup> (You can’t get much more phallic than that.) And after blaming Iran for an attack on Saudi oil facilities, Trump threatened: “[W]e were cocked and loaded to retaliate” (a telling Freudian slip for “locked and loaded”).<sup>80</sup>

“Ur-Fascism must be *against* ‘rotten’ parliamentary governments.” (Trump repeatedly attacked the “Deep State.”<sup>81</sup> When he forced the longest federal government shutdown in history, he tweeted smugly that “most of the people not getting paid are Democrats.”<sup>82</sup>) While Mussolini harangued the masses in Rome’s Piazza Venezia and Hitler did so in the Nuremberg Stadium, Eco accurately predicted a future of “TV or Internet populism.” Trump garnered more television coverage than all the other Republicans combined during the 2016 primary and more coverage than Clinton during the election campaign.<sup>83</sup> He tweeted about 8,000 times during that campaign and more than 25,000 times as president, to a following that reached 80 million.

“Ur-Fascism speaks [Orwell’s ‘1984’] Newspeak,” using “an impoverished vocabulary, and an elementary syntax.” (An analysis of the first 30,000 words Trump spoke in office found that he employed a restricted rather than an elaborated code, sounding like a 9-year-old in the middle of fourth grade—far more childishly than the previous 15 presidents.)<sup>84</sup> W. H. Auden captured the autocrat’s inarticulacy in a poem about Soviet tanks crushing the Prague spring in 1968:

The Ogre does what ogres can  
Deeds quite impossible for man,  
But one prize is beyond his reach  
The Ogre cannot master speech.<sup>85</sup>

In his classic 1964 article “The Paranoid Style in American Politics,” Richard Hofstadter reflected on the sway of demagogues throughout US history.<sup>86</sup> In 1835, Rev. Lyman Beecher (whose daughter, Harriet Beecher Stowe, later wrote the wildly popular anti-slavery novel *Uncle Tom’s Cabin*) warned in *A Plea for the West* that “the potentates of Europe” were sending thousands of immigrant voters to “lay their inexperienced hand upon the helm of our power.” (He was reflecting and inflaming anti-Catholic sentiment against Irish and Germans. This anticipated Renaud Camus’s “great replacement theory” about French Muslims (2021), later adapted to the United States by White nationalists.) In 1855, a Texas newspaper warned that “the Monarchs of Europe and the Pope of Rome are at this very moment plotting our destruction and threatening the extinction of our political, civil

and religious institutions.” The Populist Party’s 1895 manifesto declared: “as early as 1865–66 a conspiracy was entered into between the gold gamblers of Europe and America.” William Jennings Bryan won the Democratic nomination for president in 1896 with a speech famously declaring: “[Y]ou shall not crucify mankind upon a cross of gold.” (He was also nominated by the Populist Party.) The United States has experienced decades of nativist, anti-Masonic, and anti-Catholic tirades; Greenback and Populist movements against international bankers; attacks on African Americans by the Ku Klux Klan and White Citizens Councils; anti-Chinese riots, expulsions, and massacres; the internment of Japanese Americans during World War II; Zoot Suit anti-Mexican riots in Los Angeles; and the virulent anti-communism of Sen. Joseph McCarthy and Robert Welch’s John Birch Society.<sup>87</sup> Hofstadter’s analysis of these American proto-fascists closely resembles Eco’s account of Mussolini’s Italy:

America has been largely taken away from them and their kind, though they are determined to try to repossess it and to prevent the final destructive act of subversion. The old American virtues have already been eaten away by cosmopolitans and intellectuals; the old competitive capitalism has been gradually undermined by socialistic and communistic schemers; the old national security and independence have been destroyed by treasonous plots, having as their most powerful agents not merely outsiders and foreigners as of old but major statesmen who are at the very centers of American power.

Hofstadter concluded:

Perhaps the central situation conducive to the diffusion of the paranoid tendency is a confrontation of opposed interests which are (or are felt to be) totally irreconcilable, and thus by nature not susceptible to the normal political processes of bargain and compromise. The situation becomes worse when the representatives of a particular social interest—perhaps because of the very unrealistic and unrealizable nature of its demands—are shut out of the political process.

Xavier Márquez (a New Zealand political scientist) recently described “the mechanisms of cult production,” which include “loyalty signaling,” “emotional amplification,” and “flattery inflation.”<sup>88</sup> Artifacts “signal, express, or recognize the ruler’s exceptional qualities or individual status, his ‘charisma’”: Trump’s luxury hotels and golf courses (all emblazoned with his name), his multiple trophy wives, and the gold escalator on which he descended from the heavens (ironically, if appropriately, to the basement) in June 2015 to announce his candidacy to “thousands” (actually just a few

dozen).<sup>89</sup> (None of Trump’s evangelical Christian supporters were disturbed by the uncomfortable parallel between his life-sized gold statue, displayed at the 2021 CPAC Conference, and Israelites’ worship of the golden calf, anathematized in Exodus 32:1.)<sup>90</sup> Adulation of his person is inextricably tied to vicious attacks on state institutions: “lock her up” calls about Hillary Clinton (and later Biden), condemnation of the FBI, CIA, DoJ, civil servants, and courts. Every critic is labeled a “never Trumper.” Leaders “encourage ever more elaborate displays of flattery . . . increasing the ‘cost’ people must pay to signal their loyalty” or risk of being condemned as RINOs. (Republicans make pilgrimages to abase themselves at the shrine of Mar-a-Lago.) The reward is patronage—jobs in the state apparatus or endorsements as a political candidate. There is a “decentralized process” for producing “communicative cult artifacts”—the millions of MAGA baseball caps, T-shirts with Trump’s photo, and other swag. Trump groupies compete to display their adoration, attending every rally, arriving hours or even days early to ensure a front-row place.<sup>91</sup>

Contemporary social scientists have proposed a wide variety of explanations for the rise of right-wing populism, which almost doubled its share of the vote worldwide between the 1960s and the 2010s.<sup>92</sup> The United States has experienced rapidly growing inequality of income and wealth.<sup>93</sup> The Gini index of income inequality rose from 0.351 in 1968 to 0.471 in 2017,<sup>94</sup> making the United States the 54th highest country.<sup>95</sup> By contrast, most European countries ranged from 0.32 to 0.36, while the Scandinavian and Benelux countries fell below 0.30. The net worth of the top 1 percent of US households grew from \$10 trillion in 1989 to \$34.7 trillion in 2020, and that of the next 9 percent from \$15.9 to \$43.7 trillion (both nearly tripling), while that of the bottom half rose just \$1.6 trillion to \$2.1 trillion (less than a third), with the result that the shares of these three groups changed by +7.0, +1.2, and -1.9 percent.<sup>96</sup> Between 1979 and 2016, the top 0.1 percent increased their share of household wealth from 7 to 20 percent and now own as much as the bottom 90 percent.<sup>97</sup> Economists have documented relationships between right-wing populism and both local job loss<sup>98</sup> and the effects of trade<sup>99</sup> with China<sup>100</sup> and Mexico.<sup>101</sup> Other studies found that nations were internally divided by a broader definition of precarity, including natural disasters, environmental vulnerability, scarce natural resources, high disease and mortality rates, and external threats.<sup>102</sup> And precarity correlates with politics: nearly half of extreme conservatives agreed that “the world is becoming a more and more dangerous place,” compared with less than a fifth of extreme liberals.<sup>103</sup>

Nevertheless, there is evidence that “demography and culture, not economic and political developments, hold the key to understand the populist movement.”<sup>104</sup> Political parties emphasize cultural issues as inequality increases.<sup>105</sup> Trump supporters are found across the economic spectrum. An analysis of 377 people arrested in the January 6 insurrection found that most

were middle-class White men; 40 percent had white-collar jobs, and only 9 percent were unemployed.<sup>106</sup> Social scientists have identified a “need for chaos” personality trait that seeks to “burn down” the political order and is associated with feelings of social marginalization and status-oriented personalities.<sup>107</sup> Populism also is associated with the rise of Christian nationalism.<sup>108</sup> Three-quarters of a pool of 5,400 respondents who identified as Christian nationalists agreed that the government should declare the United States a Christian nation.<sup>109</sup> And 80 percent of evangelicals voted for Trump, just 16 percent for Clinton.<sup>110</sup>

Although some polls do not find a correlation between educational level and populism,<sup>111</sup> White voters without a college education did swing toward Trump.<sup>112</sup> Shortly before the 2016 election, 65 percent of Whites without college degrees believed that America’s culture and way of life had changed for the worse since the 1950s and that “we need a leader who is willing to break some rules if that’s what it takes to set things right.” In-depth qualitative studies uncovered similar feelings in rural Louisiana,<sup>113</sup> Wisconsin,<sup>114</sup> Kentucky,<sup>115</sup> and Pennsylvania.<sup>116</sup> These voters have reason to feel disrespected. In 2008, Obama patronized the “bitter” people who “cling to guns or religion or antipathy to people who aren’t like them or anti-immigrant sentiment or anti-trade sentiment as a way to explain their frustrations.”<sup>117</sup> Eight years later, Hillary Clinton, seeking to succeed Obama, referred to Trump supporters as a “basket of deplorables” who were “racist, sexist, homophobic, xenophobic, Islamophobic.”<sup>118</sup> (Both tried to walk back those unfortunate remarks.) Half of the nearly 2,000 adults surveyed in Idaho, Montana, Nevada, Utah, and Wyoming believed that “everyday people” and those in rural areas were treated unfairly by the federal government (though they actually receive a disproportionate share of government benefits).<sup>119</sup>

These views correlate with political orientation: cities trend Democrat, and rural areas Republican.<sup>120</sup> A multivariate analysis of the 2016 election found that education, sex, and race explained 21 percent of the difference between Clinton and Trump voters, and cultural values and religiosity added 37 percent, while economics added only 14 percent more.<sup>121</sup> The American National Election Survey found that the percentage of those who said government operated “for the benefit of a few big interests” rose from 48 to 64 between 2002 and 2020, while the percentage of those who said it operated “for the benefit of all” fell from 51 to 16 and trust in government fell from 43 to 17.<sup>122</sup>

Sociologists offer a complementary explanation for such populist sentiments, emphasizing fear of status loss.<sup>123</sup> Although few contemporary writers cite him, this approach derives from Max Weber,<sup>124</sup> who sought to understand the behavior of *Stände* or status groups, which he defined as “people who successfully claim . . . a special social esteem” based on a “conception of what is correct and proper and, above all, of what affects the individual’s

sense of honor and dignity”—conceptions that derive from “the conviction of the excellence of one’s own customs and the inferiority of alien ones.” (Social psychologists have constructed an analogous concept of social identity: “those aspects of an individual’s self-image that derive from the social categories to which he perceives himself as belonging.”)<sup>125</sup> Weber found that “every slowing down of the change [i.e., decrease] in economic stratification leads, in due course, to the growth of status structures and makes for a resuscitation of the important role of social honor.”<sup>126</sup> (The federal minimum hourly wage in 1968 was \$1.50; adjusted for inflation, that would now be \$12.50. The current federal minimum wage of \$7.25 is just 58 percent of that figure.)

Seymour Martin Lipset characterized the American radical Right in the 1950s and 1960s as “political movements whose appeal is to the not uncommon resentments of individuals or groups who express a desire to maintain or improve their social status.”<sup>127</sup> Richard Hofstadter saw McCarthyism as “projective rationalizations arising from status aspirations” grounded in “faith and morals, tone and style, freedom and coercion.”<sup>128</sup> Joseph Gusfield used a similar framework to explain the early 20th-century American temperance movement as an expression of status anxiety among previously dominant Protestants about the growing number of Catholic immigrants from Ireland and Italy and Jews from Eastern Europe.<sup>129</sup> (By 1920, more than 4 million Italians and 2 million Eastern European Jews had immigrated to the United States.)<sup>130</sup> I borrowed heavily from Weber and Gusfield in analyzing the culture wars of the 1990s.<sup>131</sup> Similarly, Pippa Norris and Ronald Inglehart seek to understand the cultural backlash in terms of “an intergenerational shift from materialist to post-materialist values in relatively secure high-income societies.”<sup>132</sup> Those feelings are even more intense today in part because immigrants increased from 9.6 million, or 4.7 percent of the population, in 1970 to 44.9 million, or 13.7 percent, in 2019.<sup>133</sup>

Social scientists have found strong evidence that status anxieties contributed to right-wing populism and support for Trump.<sup>134</sup> Status anxiety leads to stronger religious identification,<sup>135</sup> more extreme political positions,<sup>136</sup> and denigration of out-groups.<sup>137</sup> “White Christian nationalists sincerely believe that whites and Christians are the most persecuted groups in America.”<sup>138</sup> Unlike market competition, status competition is a zero-sum game; there is no way of growing the pie to be shared.<sup>139</sup> When status groups compete, “*it is the winning that seems more important to them*” than any material benefits.<sup>140</sup> Increasing concerns about the status of one’s race in the United States, and of one’s nation in the world, together with a social dominance orientation, predicted defection to Trump, as did the feeling that the “American way of life is threatened.”<sup>141</sup> The appeal of Trump’s Republican precursor, the Tea Party, was best captured by one adherent’s plaintive cry: “we need to take our country back.”<sup>142</sup> Although low levels of education were related to

both a sense of status threat and negative attitudes toward racial and ethnic diversity,<sup>143</sup> high-status groups that believed they suffered discrimination (for instance, from affirmative action or feminist challenges to patriarchy) also supported Trump.<sup>144</sup> The racial divide widened under Obama, the first Black president,<sup>145</sup> and drove economic anxiety.<sup>146</sup> On a scale of 0–1, White Republicans had a racial resentment score of 0.71 compared to 0.28 for White Democrats; this was the strongest predictor of moral disengagement differences between the parties.<sup>147</sup> Districts whose Representatives voted against certifying the 2020 election experienced much greater declines in the proportion of the population that was White.<sup>148</sup> Feelings of resentment and anger are more powerful than enthusiasm in motivating political action.<sup>149</sup> Cable news exacerbates those feelings by voicing them to attract viewers.<sup>150</sup> Anger levels among voters have increased, sorting populations along other sociocultural dimensions also increases anger, and angry voters tended to vote for Trump, whose every word, gesture, and perpetual scowl proclaimed his rage and validated theirs.<sup>151</sup>

This was the deeply divided political terrain on which Trump waged his presidential campaigns in 2016 and 2020. The next three chapters examine how his actions threatened the integrity of elections and how resistance preserved democracy—at least for now.

## Notes

### Abbreviations

CNN	Cable News Network
G	<i>The Guardian</i>
NYT	<i>The New York Times</i>
WP	<i>The Washington Post</i>

- 1 de Tocqueville (1835, [1840]).
- 2 Bellamy (1888).
- 3 Lewis (1935).
- 4 Bell (1960).
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# 2

## FROM TRUMP'S 2016 CAMPAIGN THROUGH THE NOVEMBER 2020 ELECTION

Elections are the bedrock of representative democracy. They ensure that the government has been chosen by and is responsible to the governed. Elections must conform to the Constitution and laws and be seen as legitimate. This chapter examines the questions that were raised in the aftermath of Trump's 2016 win and in anticipation of the 2020 election.

### 2.1 The Russian Connection

Trump repeatedly exhibited a troubling favoritism toward Russia.<sup>1</sup> The Senate Select Committee on Intelligence (SSCI) report (discussed later) found that two decades earlier, he had met and might have had a relationship with the then–Miss Moscow. Leon D. Black (a wealthy investor with ties to Jeffrey Epstein) recalled that he “might have been in a strip club” with Trump on that trip. Another witness said Trump might have brought women to a meeting with Moscow’s mayor. After *Time* magazine named Putin “Person of the Year” in 2007, Trump sent an unsolicited mash note: “You definitely deserve it. As you probably have heard, I am a big fan of yours.” In 2008, Donald Trump Jr. boasted to real estate executives: “Russians make up a pretty disproportionate cross-section of a lot of our assets.” In 2013, Eric Trump said: “We don’t rely on American banks. We have all the funding we need out of Russia.” (Trump denied owing any money to Russian individuals or institutions.) According to an executive with Marriott (which owned the Moscow Ritz-Carlton, where Trump stayed during the 2013 Miss Universe contest, which he had organized for a fee of \$20 million), two hotel workers had discussed a video showing Trump with women in the hotel elevator. Before the event, he tweeted: “Do you think Putin will be going to The

Miss Universe Pageant in November in Moscow—if so, will he become my new best friend?” The controversial Christopher Steele dossier, leaked by BuzzFeed News in January 2017, contained other unverified “kompromat.” All this could expose Trump to Russian blackmail. Michael Cohen (Trump’s lawyer and “fixer”) wrote in his 2020 book that Trump had made “overt and covert attempts to get Russia to interfere in the 2016 election.” Trump liked Putin because—as the ultimate kleptocrat—he was “the richest man in the world by a multiple.” And Trump fantasized about building a 120-story hotel in Red Square (which would be the tallest building in Europe) and giving Putin the penthouse. (Negotiations for this project continued during Trump’s 2016 campaign but did not lead to a deal.)

At the end of 2015, Putin called Trump a “very talented” man who “wants to move to . . . a deeper level of relations with Russia. . . . Of course, we welcome that.” Trump responded that because Putin was “a man so highly respected within his own country and beyond . . . Russia and the United States should be able to work well with each other.” Putin further pandered to Trump’s narcissism in February 2016 by calling him a “genius.” In his first interview as a candidate, with Fox News’ Bill O’Reilly, Trump said: “I would be willing to bet I would have a great relationship with Putin. It’s about leadership.” This was “based on a feel. I would be able to get along, in my opinion, with Putin.” But Trump also insisted he had “no relationship” with Putin and had claimed otherwise only “because he has said nice things about me over the years.” Trump told the RNC: “I don’t know that we have a right to lecture [Russia].” “How are we going to lecture when people are shooting our policemen in cold blood?” His foreign policy adviser pleased Russia by blocking a Republican platform committee resolution in favor of supplying lethal weapons to Ukraine.

A January 22, 2016, meeting of Putin and his national security council, spy chief, and senior ministers concluded that “it is acutely necessary to use all possible force” to ensure a victory by Trump, the “most promising candidate,” in order to help secure Russia’s preferred “theoretical political scenario.”<sup>2</sup> The minutes described Trump as an “impulsive mentally unstable and unbalanced individual who suffers from an inferiority complex” and mentioned “certain events” that occurred during his earlier trips to Moscow (described earlier). A Trump presidency “will definitely lead to the destabilization of the US’s sociopolitical system.” When this was reported in July 2021, Trump called it “disgusting.”

It’s fake news, just like RUSSIA, RUSSIA, RUSSIA was fake news. It’s just the Radical Left crazies doing whatever they can to demean everybody on the right. It’s fiction, and nobody was tougher on Russia than me, including on the pipeline, and sanctions. At the same time we got along with Russia. Russia respected us, China respected us, Iran respected us, North

Korea respected us. And the world was a much safer place than it is now with mentally unstable leadership.

But Trump revived these suspicions by praising Putin as “savvy” after Russia invaded Ukraine on February 24, 2022. Sounding just like a real estate mogul, Trump said, “[Putin had] taken over a country for two dollars’ worth of sanctions, I’d say that’s pretty smart. He’s taking over a country—a vast, vast location, a great piece of land with a lot of people—just walking in.” (A year later, there had been an estimated 300,000 military casualties on both sides and nearly 20,000 Ukrainian civilian casualties. Trump’s offhand comment about Ukraine echoed his August 2019 proposal that the United States buy Greenland, which he also described as “a large real estate deal.”)<sup>3</sup>

In March 2016, Wikileaks released tens of thousands of pages of DNC emails it had obtained from a source believed to be a Russian government hacker.<sup>4</sup> Wikileaks may have been motivated by the anger of its founder, Julian Assange, at Hillary Clinton’s efforts as Obama’s secretary of state to secure Assange’s extradition from Britain to stand trial in the United States for earlier disclosures of government documents. (Wikileaks subsequently wrote Donald Jr.: “If your father ‘loses’ we think it’s more interesting if he DOES NOT concede and spends his time CHALLENGING the media.” The suggestion was just four years premature.) On July 5, FBI director James Comey announced that Clinton and her aides had been “extremely careless” in their electronic communications, but the Bureau was ending its investigation because “no reasonable prosecutor” would charge her. Matt Miller, a former DoJ spokesman, wrote in a *Washington Post* op-ed that Comey should either have brought charges or said nothing. On July 26, Trump said: “Russia, if you’re listening, I hope you’re able to find the 30,000 [Clinton] emails that are missing. I think you will probably be mightily rewarded by our press.” Hours later, Russian intelligence accepted the challenge, making its first attempt to hack Clinton’s personal email. In a September 2016 presidential debate, Clinton accused Russia of giving Wikileaks the DNC emails. Trump blew this off: “it could be Russia, but it could also be China. It could also be lots of other people. It also could be somebody sitting on their bed that weighs 400 pounds, OK?” On October 28, less than two weeks before the election, Comey told Congress the FBI was reopening its investigation because of emails it had found on the computer of Anthony Weiner, the husband of Clinton aide Huma Abedin; the decision immediately became public. Comey (who later expressed regret for his action) closed the investigation a second time on November 6, the day before the election. In June 2017, supporters of the two parties held radically different views about the intelligence consensus that Russia had interfered in the election: 76 percent of Democrats agreed, compared with just 42 percent of Republicans. A year later, 74 percent of Democrats but just 14 percent of Republicans said Russia had helped Trump win.<sup>5</sup>

In August 2020, SSCI issued a nearly 1,000-page report finding that Wikileaks “very likely” knew the Democratic Party emails came from Russian intelligence and that Roger Stone (who had launched the “Stop the Steal” campaign in April 2016—seven months before the election) boasted to Trump and campaign staff that he had Wikileaks connections and advance knowledge of the release.<sup>6</sup> SSCI also found extensive contacts between Paul Manafort (who became Trump’s campaign manager on June 20) and Konstantin Kilimnik, a Russian intelligence officer, including meetings in Washington in May and August 2016 at which Manafort “briefed Kilimnik on sensitive campaign polling data and the campaign’s strategy for beating Hillary Clinton.” Manafort told Rick Gates (his deputy) to give the data to Kilimnik, who, Gates understood, “would share the information with [Oleg] Deripaska,” an oligarch close to Putin, who acted “as a proxy for the Russian state and intelligence services.” (Not coincidentally, Deripaska was helping Manafort collect millions of dollars allegedly owed him by Ukraine. In September 2022, Deripaska was indicted for conspiracy to evade US sanctions, though he was out of the country and could not be prosecuted.)<sup>7</sup> There was evidence that Kilimnik had been involved in hacking the emails released by Wikileaks. SSCI also found that Natalia Veselnitskaya and another person with “significant connections to the Russian government, including the Russian intelligence services,” met with Manafort, Jared Kushner, and Donald Trump Jr. at Trump Tower on June 9, 2016 (see Abel, 2024a). The two parties drew predictably opposed conclusions. Democrats said the “bipartisan report unambiguously shows that members of the Trump campaign cooperated with Russian efforts to get Trump elected.” The Republicans concluded that “we can say with no doubt, there was no collusion.” *The New York Times* editorialized on August 20, 2020: “The Trump Campaign Accepted Russian Help to Win in 2016. Case Closed.”

At an intelligence transition briefing two weeks before his January 20 inauguration, Trump dismissed DNI Clapper’s account of Russian interference in the election, saying: “Anybody’s going to tell you what they think you want to hear.”<sup>8</sup> Outgoing DCI Brennan remembered Trump speculating that “it could have been the Chinese” and saying, “Anyone will say anything if you pay them enough.” Reince Priebus, Trump’s chief of staff, wanted ODNI to issue a press statement asserting that “Russian interference had no impact on the outcome of the election,” but Clapper resisted: “[W]e didn’t have the authority to make that judgment. The only thing we said was that we saw no evidence of tampering with the votes.” In a private meeting after the intelligence briefing, Comey told Trump about the Steele dossier. When it was published by BuzzFeed the next day, Trump tweeted: “Intelligence agencies should never have allowed this fake news to ‘leak’ out into the public. One last shot at me. Are we living in Nazi Germany?” Clapper refused Trump’s request that he refute the dossier.

After Putin won re-election in March 2018, Trump's national security advisers gave him a briefing book beginning: "DO NOT CONGRATULATE ON ELECTION WIN!"<sup>9</sup> Nevertheless, the Kremlin accurately reported: "Donald Trump congratulated Vladimir Putin on his victory in the presidential election." Following his meeting with Putin in Helsinki that July, Trump said that DNI "Dan Coats came to me and some others and they said they think it's Russia" that interfered in the 2016 election. (Later that day, Coats reaffirmed "our assessments of Russian meddling in the 2016 election.") Trump was dismissive: "President Putin was extremely strong and powerful in his denial today." "He just said it's not Russia. I will say this: I don't see any reason why it would be." Sen. McCain denounced this as "one of the most disgraceful performances by an American president in memory." "No prior president has ever abased himself more abjectly before a tyrant." Trump unsuccessfully sought to undo the damage by claiming, implausibly, that he had meant to say: "I don't see any reason why it wouldn't be Russia." After former DCI Brennan called Trump's statement "nothing short of treasonous," the president retaliated by withdrawing Brennan's security clearance and prohibiting the intelligence community from sharing information with him. Ret. Adm. William McRaven, who had been JSOC commander in Afghanistan, responded by asking Trump to revoke his own security clearance as well. When David Glawe, the top DHS intelligence official, testified in a classified hearing that Moscow had favored Trump in the 2016 election, the president ordered DHS secretary Nielsen to fire Glawe.

Republican House Speaker Paul Ryan supported the intelligence community, declaring there was "no question" about whether Moscow had interfered in the election. Sen. Graham called the summit a "missed opportunity . . . to firmly hold Russia accountable for 2016 meddling." DNI Coats said the intelligence community had been clear about Russia's "ongoing, pervasive attempts" to undermine US democracy. Trump replied that he had "great confidence in my intelligence people," but "in order to build a brighter future we cannot exclusively focus on the past—as the world's two largest nuclear powers, we must get along."

Trump also said "[a] Pakistani gentleman" (Imran Awan, an IT specialist who worked for Democratic House members) could have stolen the emails. The previous month, Trump had tweeted:

Our Justice Department must not let Awan & [DNC Chair] Debbie Wasserman Schultz off the hook. The Democrat I.T. scandal is key to much of the corruption we see today. They want to make a "plea deal" to hide what is on their server. Where is Server? Really bad!"

But the DoJ exonerated Awan of the allegations, and the House ended its own inquiry by settling Awan's FTCA case for \$850,000. Rep. Ted Deutch

(D-Fla.), who had employed Awan, said: “[I]t is tragic and outrageous the way right-wing media and Republicans all the way up to President Trump attempted to destroy the lives of an immigrant Muslim-American family based on scurrilous allegations.”

On January 29, 2019, the intelligence community gave SSCI its annual National Intelligence Estimate (NIE), reiterating that Russia continued to meddle in elections.<sup>10</sup> Trump tweeted the next day: “Perhaps Intelligence should go back to school.” After meeting Coats and DCI Gina Haspel a day later, Trump tweeted: “Just concluded a great meeting with my Intel team in the Oval Office who told me that what they said on Tuesday at the Senate Hearing was mischaracterized by the media. . . . We are all on the same page!” In early July, the first draft of the 2020 NIE included a Key Judgment (KJ) that Russia again was favoring Trump in the forthcoming election. DNI Coats later said: “[O]ne of my staffers who was aware of the controversy requested that I modify that assessment. But I said, ‘No, we need to stick to what the analysts have said.’” On July 28, Trump tweeted that he was replacing Coats with John Ratcliffe on August 15. But though Ratcliffe’s confirmation was stalled when he was found to have padded his résumé (and Trump made Joseph Maguire acting director, bypassing the customary successor, Deputy Director Susan M. Gordon), Trump stuck by Ratcliffe (whom he renominated the following year): “I think we need somebody like that that’s strong and can really rein in [the intelligence community]. As you’ve all learned, the intelligence agencies have run amok. They’ve run amok.” In September, the KJ was watered down to read: “Russian leaders probably assess that chances to improve relations with the U.S. will diminish under a different U.S. president.”

On February 3, 2020, Fox News’ Bill O’Reilly asked Trump: “Do you respect Putin?”<sup>11</sup> He replied: “It’s better to get along with Russia than not.” When O’Reilly objected, “He’s a killer, though. Putin’s a killer,” Trump brushed him off: “We’ve got a lot of killers. What you think our country’s so innocent?” O’Reilly persisted: “I don’t know of any government leaders that are killers in America.” But Trump was unmoved: “Welllllll, take a look at what we’ve done too. Made a lot of mistakes.”

On February 13, Shelby Pierson (whom Coats had named “election threats executive” nine days before being fired) testified about the NIE to the HPSCI, which rebuffed White House efforts to have an employee attend the closed hearing.<sup>12</sup> In response to a question by chair Adam Schiff, Pierson said Russia preferred Trump in the forthcoming election. The FBI official present concurred. After Republican ranking minority member Devin Nunes breached secrecy by reporting this to Trump, he angrily challenged acting DNI Maguire: “I understand that you briefed Adam Schiff and that you told him that Russia prefers me. Why did you tell that to Schiff?” Six days later, he replaced Maguire with Richard Grenell, a former Fox News commentator with no

intelligence experience. Three days after that, national security adviser Robert O'Brien loyally told ABC's *This Week*: "I haven't seen any evidence that Russia is doing anything to get President Trump elected."

US Cyber Command head Gen. Paul M. Nakasone told a House committee in March that Russia's "willingness to launch destructive cyber operations and pervasive influence campaigns . . . remains the top concern when it comes to the 2020 elections."<sup>13</sup> But Brian Murphy, DHS head of intelligence and analysis, said acting secretary Chad Wolf ordered him in May to stop producing intelligence assessments of Russia and focus instead on China and Iran, following "instructions [that] specifically originated from White House national security adviser Robert O'Brien."<sup>14</sup> Fearing this would "put the country in substantial and specific danger," Murphy refused and instead made two classified disclosures to Kenneth Cuccinelli (number two at DHS). A draft of the DHS annual threat assessment titled "Russia likely to denigrate health of U.S. candidates to influence 2020 election" was submitted to the department's Legislative and Public Affairs Office on July 7 for release two days later. (Russia was echoing Trump's repeated lies that the 77-year-old Biden had dementia.) The draft said Russia "probably will be the primary covert foreign influence actor and purveyor of disinformation and misinformation in the Homeland."

An hour later, the DHS chief of staff wrote: "[P]lease hold on sending this one out until you have a chance to speak to [acting secretary Wolf]." The next day, Wolf ordered the report "held" because it "made the President look bad." Although the assessment was characterized as "high confidence," DHS blocked it, claiming it failed to meet agency standards. Murphy complained to the DHS IG. (Wolf later "explained" to the DHS OIG: "The product I saw in July was written at the Fifth-Grade level. I expect more out of our component leaders. There were sentences that did not make sense. There was no cohesive argument. It lacked citations and context.") HPSCI chair Schiff said Murphy's complaint "outlines grave and disturbing allegations that senior White House and DHS officials improperly sought to politicize, manipulate, and censor intelligence in order to benefit President Trump politically." Murphy also said that to bolster support for the border wall, senior Trump administration officials pressured him to provide misleading information about suspected terrorists crossing from Mexico. Although the HPSCI sought Murphy's testimony, his lawyers would not let him appear until they got access to "relevant classified documents," which DHS had refused to provide. Murphy was transferred at the end of July following allegations that DHS had improperly collected intelligence on peaceful BLM protesters in Portland and elsewhere, although he was neither involved in nor aware of those activities. Wolf denied he had "attempted to influence or retaliate against any individual." "[T]he underlying intelligence did not change. . . . I was focused on the quality of the product itself." When the report finally

appeared in September, it still detailed Russian efforts to interfere in the election and undermine Biden.

In June, *The New York Times* reported that Trump had been briefed about, and NSC had discussed, claims that Russia had paid bounties to Taliban-linked militants to kill Coalition forces in Afghanistan, including US troops.<sup>15</sup> Some Republicans expressed concern. Sen. Todd C. Young (Ind., a former Marine intelligence officer) said Trump should rescind the invitation to Russia to rejoin the Group of 7 and impose sanctions on Putin. Sen. Ben Sasse (Neb.) asked: “[D]id the commander in chief know?” Rep. Mac Thornberry (Tex., HASC’s ranking Republican, who was retiring at the end of his term) said the intelligence “should have been briefed immediately to the commander in chief and a plan [developed] to deal with that situation.” Republican Representatives Adam Kinzinger (Ill., an Air Force veteran of the Iraq war), Liz Cheney (Wy.), and Dan Crenshaw (Tex., a former Navy SEAL) demanded more information. Two people said the intelligence had been included in a February PDB. Then–national security adviser John Bolton told others at the White House he had briefed Trump in a meeting in which this was the sole topic.

But Rep. Michael McCaul (the ranking Republican on the Foreign Affairs Committee) said: “there was a very strong dissenting view from another agency within the intelligence community.” Trump tweeted: “Intel just reported to me that they did not find this info credible, and therefore did not report it to me or @VP.” “Fake News . . . wanting to make Republicans look bad!!!” “The Russia Bounty story is just another made up Fake News Hoax tale.” “You know, it’s interesting. Nobody ever brings up China. They always bring up Russia, Russia, Russia.” He brushed off a statement by a former commanding general of US forces in Afghanistan that Russia was arming the Taliban, saying “we did that too” in the 1980s and declaring that “Russia doesn’t want anything to do with Afghanistan.” National security adviser O’Brien said: “[A]t the time of these allegations they were uncorroborated. As a result, the president’s career CIA briefer decided not to brief him because it was unverified intelligence. . . . I certainly support her decision.” But Republican Senator Pat Toomey (Pa.) said he had reviewed “classified information” that “raises many questions and administration officials should come before the Senate and provide a classified briefing.” Instead, DoD investigated the media leaks. Although Defense Secretary Esper told HASC he had never heard the word “bounty,” he later admitted having been briefed on “payments” to kill American troops. Trump explained that he did not ask Putin about bounties because it “never reached my desk.” Yet Secretary of State Pompeo warned Russian foreign minister Lavrov about them in a phone call.

In August, William Evanina, director of the National Counterintelligence and Security Center, said Russia, China, and Iran were trying to influence the

election.<sup>16</sup> ODNI said Andriy Derkach (a member of the pro-Russia Party of Regions in the Ukrainian Parliament and suspected Russian agent) was part of a Russian effort to “spread[] claims about corruption—including through publicizing leaked phone calls—to undermine Vice President Biden’s candidacy and the Democratic Party.” When Trump had sent Rudy Giuliani to Ukraine in December 2019 to get information on the Bidens, US intelligence warned the White House in writing that Giuliani was communicating with Russian assets. Although national security adviser O’Brien told Trump that Giuliani’s information could be contaminated by Russia, Trump just “shrugged his shoulders,” saying, “[T]hat’s Rudy.” Giuliani met Derkach in Kyiv on December 5, 2019, and again in New York two months later, hosting him on a podcast and calling him “very helpful.” (During his first impeachment trial, Trump denied sending Giuliani to Ukraine to get dirt on the Bidens, but after being acquitted, he admitted having done so.) Giuliani claimed he had never been told Derkach was a Russian intelligence asset. On August 18, Trump retweeted a post (by a Twitter user later banned) with a 2016 audio tape from Derkach that purported to show Biden speaking with then-Ukrainian president Petro Poroshenko; but the conversation had been doctored. Derkach also gave the material to Republican Senators Johnson and Grassley, who declared: “Hunter Biden’s position on Burisma’s board was problematic and did interfere in the efficient execution of policy with respect to Ukraine.” Still, they conceded that “the extent to which Hunter Biden’s role on Burisma’s board affected U.S. policy toward Ukraine is not clear.” Rep. Schiff said: “this whole smear on Joe Biden comes from the Kremlin . . . and the president is only too happy to have Kremlin help and try to amplify it.” DNI Ratcliffe retorted: “[T]he people that complained the most about intelligence being politicized are the ones politicizing intelligence and unfortunately in this case, it is Adam Schiff.” Republican Representatives Biggs and Gosar and nine others urged Attorney General Barr to appoint a special counsel to investigate allegations against Biden. (In December 2022, the DoJ charged Derkach with money laundering in the purchase of two Beverly Hills apartments, bank fraud conspiracy, sanctions violations, and other crimes; since he was not in the United States, he could not be prosecuted.)

Parroting Trump, DNI Ratcliffe (who had no prior intelligence experience) called China a more serious threat than Russia, although other intelligence officials disagreed.<sup>17</sup> DHS warned federal and state law enforcement that it had “high confidence” that “Russian malign influence actors” had targeted the absentee voting process “by spreading disinformation.” Trump maintained his silence about the August poisoning of Alexei Navalny, instead boasting he had kept the United States “out of wars.” “If I get along with Russia, is that a good thing or a bad thing? I think it’s a good thing.” “These maniacs always talk about Russia. They never talk about China. It is always Russia. I heard it starting again. They said somebody spoke to Russia, Russia,

Russia, Russia. The total maniacs—shifty Schiff is a total maniac.” Attorney General Barr (whose remit and expertise was law, not intelligence) echoed Trump’s claim that China was interfering more than Russia. Schiff called that “flat-out false.” Trump tweeted a Breitbart article quoting Gordon Chang (who had been predicting the imminent collapse of China for 20 years) claiming that the Chinese Communist Party was “trying to make life very difficult” for Trump by “fueling” BLM protests and “seems to be favoring Vice President Biden.”

On August 31, the CIA Worldwide Intelligence Review concluded:

President Vladimir Putin and the senior most Russian officials are aware of and probably directing Russia’s influence operations aimed at denigrating the former U.S. Vice President, supporting the U.S. President and fueling public discord ahead of the U.S. election in November.<sup>18</sup>

These efforts involved Derkach. On September 10, Treasury Secretary Steven Mnuchin said: “Derkach and other Russian agents employ manipulation and deceit to attempt to influence elections in the United States and elsewhere around the world.” “Russian disinformation campaigns targeting American citizens are a threat to our democracy.” Treasury sanctioned Derkach for running an “influence campaign” against Biden and subsequently sanctioned seven other Ukrainians as part of “a Russia-linked foreign influence network” that spread “fraudulent and unsubstantiated allegations” about Biden.

Ratcliffe, however, continued to push Trump’s line.<sup>19</sup> He sent Sen. Graham (ranking member of the Committee on Foreign Relations) snippets of a previously classified report suggesting that Russian intelligence claimed Hillary Clinton had approved a plan in 2016 to “stir up a scandal” by tying Trump to the Russians, who had hacked DNC servers. Ratcliffe gave Graham a classified briefing; no Democratic senators attended, and staffers for Sens. Feinstein and Warner were denied entry. Four hours after Graham released the information, declaring it “not far-fetched to believe the Clinton campaign would do something like this,” a Ratcliffe aide contacted Capitol Hill staffers for the first time and offered to brief them 40 minutes later in the SSCI secure facility; but many working remotely because of the pandemic could not attend. Ratcliffe later released another thousand pages of the report.

On October 15, Ratcliffe asked the Intelligence Community IG to declassify additional documents at the request of Rep. Nunes. (Just before leaving office, Trump awarded Nunes the Medal of Freedom; after the election, Nunes left Congress to head Trump’s new social media operation.) DCI Haspel and NSA director Nakasone opposed the release, fearing the information was selective and could reveal methods, jeopardize the ability to gather intelligence, and endanger sources. Although Ratcliffe had previously said “the Russian intelligence analysis may reflect exaggeration or fabrication,”

he now maintained “this is not Russian disinformation and has not been assessed as such by the intelligence community.” However, both the reports by the SSCI and Mueller (see Abel, 2024a) had rejected the information. Michael Morrell (deputy and acting DCI under both Bush and Obama) called Ratcliffe’s behavior “the most politicized act I’ve ever seen by a senior intelligence official” and “a blatant attempt to get votes for Donald Trump before the election.” He and Michael Vickers (Obama’s Undersecretary of Defense for Intelligence) called for Ratcliffe’s resignation. Marc Polymeropoulos (former head of CIA clandestine operations in Europe and Russia) said: “we have never seen a senior intelligence official so politicized as Ratcliffe.” Retired LG H.R. McMaster (Trump’s first national security adviser) said the president was “aiding and abetting Putin’s efforts by not being direct about this. This sustained campaign of disruption, disinformation and denial is aided by any leader who doesn’t acknowledge it.” Joseph Maher (head of DHS Intelligence and Analysis) agreed with Schiff that Russia was interfering in the election and concurred with NCSC head Evanina that it was trying to denigrate Biden. Republican SSCI Member Susan Collins said the opposition of the intelligence community “certainly raises questions. . . about the appropriateness of publicly releasing” the documents. Sen. Ron Wyden said: “Ratcliffe is abusing his position exactly as I feared he would, and the abuse is accelerating as we near the election.” Nevertheless, Donald Trump Jr. insisted the documents showed that Hillary was behind “the Russia Hoax.”

In December (conveniently after the election), Secretary of State Pompeo acknowledged that at least five agencies “clearly” had been hacked by Russia in “a very significant effort.”<sup>20</sup> Thomas Bossert (Trump’s homeland security adviser until April 2018) said this “attribution is a very important step.” Trump retorted:

The Cyber Hack is far greater in the Fake News Media than in actuality. I have been fully briefed and everything is well under control. Russia, Russia, Russia is the priority chant when anything happens because Lamestream [media] is, for mostly financial reasons, petrified of discussing the possibility that it may be China (it may!).

Gregory F. Treverton (former chair of the National Intelligence Council, which provides long-term strategic analysis to the intelligence community) said Trump “behaves so much like a paid Russian agent. If you look at the string of his actions and pronouncements, the only consistent interpretation that you can logically draw is that he’s in their thrall.” White House officials had planned to release a statement on December 18 accusing Russia of a months-long cyber intrusion, but it was blocked. In January, however, a task force of the FBI, DHS, CISA, ODNI, and NSA issued a report declaring that Russia was “likely” behind the major ongoing cyber hacks of federal

agencies. President-elect Biden complained that “the Defense Department won’t even brief us” about the Russian hack, blaming Trump’s “irrational downplaying of the seriousness of this attack.”

John Brennan later wrote in his memoir that the CIA and FBI had had high confidence in the finding that Putin had tried to help Trump in 2016 by discrediting Clinton.<sup>21</sup> “The accuracy of the information” Ratcliffe released “is very much in doubt and is questionable.” Ratcliffe “is trying to give Trump any shiny object they can to distract from problems Trump is encountering on a daily basis.” Although the new NSA director, Michael S. Rogers, lowered his Agency’s rating of the intelligence to confidence, all three intelligence agencies had high confidence that Putin preferred Trump.

## 2.2 Anticipatory Delegitimation

Trump’s history of delegitimizing and contesting elections long antedated 2020.<sup>22</sup> When his television show *The Apprentice* lost an Emmy to *The Amazing Race* in 2004, Trump complained: “We were robbed!” In preparation for the 2012 election, he told CPAC on February 10, 2011: “Our current president [Obama] came out of nowhere. . . . The people who went to school with him, they never saw him—they don’t know who he is.” Trump repeated his birtherism lies on March 23 and April 7. Prefiguring the January 6, 2021, riot he later incited, Trump said on Election Day 2012: “We can’t let this [Obama victory] happen. We should march on Washington and stop this travesty.” After Republicans lost, Trump called the election “a total sham.” Between 2012 and June 30, 2020, he questioned the integrity of elections 713 times. When he lost the February 2016 Iowa Republican caucus to Sen. Cruz, Trump again revealed what he would do four years later, proclaiming: “Based on the fraud committed by Senator Ted Cruz during the Iowa caucus, either a new election should take place or Cruz results nullified.” “Ted Cruz didn’t win Iowa, he stole it. That is why all of the polls were so wrong and why he got far more votes than anticipated. Bad!” After Trump lost caucuses to Cruz in Wyoming and Colorado, he said in Indiana: “It’s all rigged by the professionals, it’s all rigged by the bosses, and it’s a disgrace.” When he learned that winning the March 5 Louisiana primary did not guarantee him all the state’s delegates, he accused the RNC of creating a “sham system,” tweeting that the party system was in a “shambles” and Louisiana GOP leaders were a bunch of “crooks.”

### 2.2.1 The 2016 Election

After securing the Republican nomination, he warned an August 1 rally in Ohio in typically ambiguous language: “Nov. 8, we’d better be careful, because that election is going to be rigged. People are going to walk in and

they're going to vote 10 times, maybe, who knows?"<sup>23</sup> "When I say 'watch,' you know what I'm talking about." He repeated this on Fox News that evening: "I'm telling you, Nov. 8, we better be careful because that election is going to be rigged and I hope the Republicans are watching closely, or it's going to be taken away from us." On Breitbart the same week, Roger Stone revealed Trump's strategy:

I think we have widespread voter fraud, but the first thing that Trump needs to do is begin talking about it constantly. He needs to say for example . . . "I am leading in Florida. The polls show it. If I lose Florida, we will know that there's voter fraud. If there's voter fraud, this election will be illegitimate, the election of the winner will be illegitimate, we will have a constitutional crisis, widespread civil disobedience, and the government will no longer be the government."

Campaigning in Colorado in October, Trump said: "They even want to try and rig the election at the polling booths, where so many cities are corrupt. . . . Take a look at Philadelphia . . . Chicago . . . St. Louis." He repeated at an October 10 rally in Pennsylvania: "So important that you watch other communities, because we don't want this election stolen from us. We don't want this election stolen from us. We don't want this election stolen." The same day, he said in Wilkes-Barre:

I just hear such reports about Philadelphia. . . . I hear these horror shows and we have to make sure that this election is not stolen from us and is not taken away from us. And everybody knows what I'm talking about.

He tweeted on October 16: "The election is absolutely being rigged by the dishonest and distorted media pushing Crooked Hillary—but also at many polling places—SAD." He harped on that theme the next day: "Of course there is large scale voter fraud happening on and before election day. Why do Republican leaders deny what is going on? So naive!" At a campaign rally that evening, he reiterated: "[R]emember, we're competing in a rigged election. This is a rigged election." He claimed that "we have voters all over the country where they're not even citizens of the country and they're voting." He attributed Obama's 2008 win in North Carolina to undocumented immigrants and claimed (without evidence) that 1.8 million "people who died 10 years ago are still voting."

Asked during the third presidential debate if he would accept the election results, Trump hedged: "I will look at it at the time. I'm not looking at anything now. . . . What I've seen, what I've seen, is so bad."<sup>24</sup> (He meant the polls favoring Clinton.)<sup>25</sup> "I will keep you in suspense." The next day, he "joked" at a rally in Ohio: "I would like to promise and pledge to all of my

voters and supporters, and to all the people of the United States, that I will totally accept the results of this great and historic presidential election—if I win.” “Of course, I would accept a clear election result, but I would also reserve my right to contest or file a legal challenge in the case of a questionable result.” On Election Day, he said with typical vagueness: “There are reports that, when people vote for Republicans, the entire ticket switches over to Democrats—you’ve seen that—it’s happening at various places today, it’s been reported.”

On his first full working day in office, Trump claimed (again without evidence): “I won the popular vote [because] five million immigrants voted illegally . . . and I’m not even counting California.” (Clinton had nearly 3 million more votes than Trump). When challenged, he said Bernard Langer, a friend in Florida, told him he had seen people who did not seem to be citizens lining up to vote. But Langer’s daughter denied her father was a friend of Trump, and the White House admitted that Langer, a non-citizen who could not vote, was just relating a story he had heard. On January 25, Trump called for an investigation of why Clinton had received more popular votes. Mitt Romney recalled that when he was interviewed for secretary of state after the 2016 election, Trump had said: “You know, I won the popular vote because of all the illegals that voted in California.” “I won New Hampshire . . . there were hundreds of buses from Massachusetts that took people to New Hampshire, and they voted up there.” Trump made similar unfounded claims before the 2018 mid-term: “There are a lot of people . . . that try and get in [to the country] illegally and actually vote illegally.” Before the results of the Florida mid-term elections were known, he said:

[I]t should be called in favor of Rick Scott and Ron DeSantis in that large numbers of new ballots showed up out of nowhere, and many ballots are missing or forged. An honest vote count is no longer possible—ballots massively infected. Must go with Election Night [thereby excluding mail ballots]!

When Republicans lost the House that year, Trump said: “Just out—in Arizona, Signatures don’t match. Electoral corruption—Call for new Election? We must protect our Democracy!”

After Democrats failed to applaud his first State of the Union address on January 3, 2018, Trump asked rhetorically: “Can we call that treason? Why not? I mean, they certainly didn’t seem to love our country very much.”<sup>26</sup> Although his press secretary said he had been “clearly joking,” she added that it was “un-American not to be excited.” “Do [Democrats] hate this president more than they love this country?”

Trump created the Presidential Commission on Electoral Administration, appointing Pence as chair, Chris Kobach as vice-chair, and four other

Republicans who embraced the voter fraud myth.<sup>27</sup> When Kobach had been Kansas secretary of state, a federal court suspended the requirement he had imposed that voters prove citizenship, fined him \$1,000 for misleading the court, and required him to take CLE courses and the state to pay the attorneys' fees of the ACLU (which had represented the plaintiffs). The Commission met just twice and dissolved without submitting a report.

### 2.2.2 *The 2020 Election*

Trump and his allies reprised all this behavior in the run-up to the 2020 presidential election.<sup>28</sup> In January 2019, Texas Attorney General Ken Paxton tweeted, "VOTER FRAUD ALERT," claiming that 95,000 noncitizens were on voter rolls and 58,000 had voted. This was retweeted nearly 35,000 times and liked nearly 83,000 times. Trump himself tweeted it, claiming that "these numbers are just the tip of the iceberg. All over the country, especially in California, voter fraud is rampant. Must be stopped. Strong voter ID! @foxandfriends." After being sued, however, Texas withdrew the allegation and paid nearly \$450,000 in attorneys' fees. Nevertheless, Trump said a month later: "there was just a case where they found a million fraudulent votes" in California, repeating a false Facebook post claiming 1.7 million unregistered had voted. In a special May 2020 election for a congressional district north of Los Angeles, he cautioned: "Turn your Ballots in now and track them, watching for dishonesty. Report to Law Enforcement." The Republican candidate Mike Garcia claimed that sending all registered voters mail ballots because of the pandemic would "magnify or potentially open up the opportunity for more fraud than already existed." Christie Smith, the Democrat, obtained a plurality (36–25 percent), but Garcia won the runoff and then squeaked through in the November election.

In April, Trump pronounced: "[M]ail ballots, they cheat. . . . Mail ballots are a very dangerous thing for this country, because they're cheaters."<sup>29</sup> Democrats "go and collect them. They're fraudulent in many cases. . . . You get thousands and thousands of people sitting in somebody's living room, signing ballots all over the place." The next day, he tweeted that there was "tremendous potential for voter fraud" in "statewide mail-in voting," which, "for whatever reason, doesn't work out well for Republicans." Later in May, after Michigan's Democratic secretary of state announced that absentee ballot applications would be mailed to all 7.7 million registered voters, Trump objected: "[T]his was done illegally and without authorization by a rogue Secretary of State. I will ask to hold up funding to Michigan if they want to go down this Voter Fraud Path!" (He could not do this.) He tweeted: "The United States cannot have all Mail In Ballots. It will be the greatest Rigged Election in history. People grab them from mailboxes, print thousands of

forgeries and 'force' people to sign. Also, forge names." After Nevada's Republican secretary of state also introduced mail voting in response to the pandemic, Trump said:

State of Nevada "thinks" that they can send out illegal vote by mail ballots, creating a great Voter Fraud scenario for the State and the U.S. They can't! If they do, "I think" I can hold up funds to the State. Sorry, but you must not cheat in elections.

(He could not do this either.) He later acknowledged that Michigan had sent applications, not ballots, and while continuing to insist that the state had acted illegally, he backed off the threat to withhold funding illegally. The following month, Attorney General Barr, who had earlier declared (without evidence) that foreign countries could counterfeit "millions" of mail ballots, now called mail ballot security "primitive" and an obvious target: "[Y]ou don't have to be a rocket scientist to figure that one out." A month later, he repeated: "[I]f you have wholesale mail-in voting, it substantially increases the risk of fraud." On June 22, Trump tweeted: "MILLIONS OF MAIL-IN BALLOTS WILL BE PRINTED BY FOREIGN COUNTRIES, AND OTHERS. IT WILL BE THE SCANDAL OF OUR TIMES!" In September, he tweeted that mail ballots were "a GIFT to foreign interference into our elections!!!"

Paula White, a televangelist, gave the opening prayer at Trump's official campaign launch in Florida on June 18:<sup>30</sup>

We're not wrestling against flesh and blood, but against principalities, powers, against rulers of darkness of this world, against spiritual wickedness in high places. So right now let every demonic network that has aligned itself against the purposes, against the calling of President Trump, let it be broken, let it be torn down in the name of Jesus, let the counsel of the wicked be spoiled right now. According to Job 12:17, I declare that President Trump will overcome every strategy from hell and every strategy from the enemy . . . and he will fulfill his calling and his destiny.

Trump boasted he had defeated "the greatest witch hunt in political history." The Russia investigation had been "an illegal attempt to overturn the results of the election" and "subvert our democracy." He added:

[The Mueller team] tried to erase your vote, erase your legacy of the greatest campaign and the greatest election, probably in the history of our country. And they wanted to deny you the future that you demanded and the future that America deserves.

He concluded with a warning about Democrats, eerily anticipating his own behavior after November 3: “This election is a verdict on whether we want to live in a country where the people who lose an election refuse to concede and spend the next two years trying to shred our Constitution and rip your country apart.”

On May 26, Trump tweeted: “There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. This will be a Rigged Election. No way!”<sup>31</sup> When Twitter added a fact check, Trump tweeted in response: “We will strongly regulate, or close down [Twitter], before we can ever allow this to happen.”

On June 23, he said at the conservative Turning Point USA student convention:<sup>32</sup>

The Democrats are also trying to rig the election by sending out tens of millions of mail-in ballots using the China virus as the excuse for allowing people not to go to the polls. Hey, we have a virus. Come. We have to send—think of it. California. He’s [sic] going to be sending out millions and millions of ballots. Well, where are they going? Where are these ballots going? Who is getting them? Who is not getting them? A little section that’s Republican.

Will they be stolen from mailboxes as they get put in by the mailmen? Will they be taken from the mailmen and the mailwomen. Will they be forged? Who is signing them? Who’s signing them? What, are they signed in [sic] a kitchen table and sent in? Will they be counterfeited by groups inside our nation? Will they be counterfeited maybe by the millions by foreign powers who don’t want to see Trump win because nobody has been tougher on trade or making our country great again. Nobody.

No, mail-in ballots as [sic—“are”] a disaster for our country. It’s going to end up in a big fight. . . . They send out millions of ballots. Who’s getting them? How are they delivered? Who is not getting them? Think of it. It’s going to be fraud all over the place. . . . [L]ook at all of the disputes they’re having on mail-in ballots. A friend of mine who is a great guy had a son who passed away seven years ago. Seven years ago. He came to see me the other day. He said they just sent to my son Robert a mail-in ballot. He died seven years ago. There’s no way they can control that. . . . This will be, in my opinion, the most corrupt election in the history of our country and we cannot let this happen. They want it to happen so badly.

But while Trump railed against mail ballots, other Republicans promoted them.<sup>33</sup> The Iowa GOP sent out mail-in ballots without waiting for requests; the Pennsylvania GOP website said, “[V]ote safe: by mail. From Home.” The Ohio GOP sent mailers with Trump’s photo, declaring: “Join President Trump and Vote by Absentee Ballot.” Utah Republican state officials sent

ballots to every voter; the Alabama GOP planned to urge absentee voting; and Arizona governor Doug Ducey denied that mail voting was fraudulent.

Prominent Republicans, including George Bush, Mitt Romney, and Colin Powell, repudiated Trump.<sup>34</sup> They were followed by other Republicans: Jeff Flake, Justin Amash, Bob Corker, Carlos Curbelo, and Charlie Dent. Christine Todd Whitman (former NJ governor and Bush's EPA director), Meg Whitman (former California Senate candidate), Susan Molinari (former NY congresswoman and 1996 RNC keynote speaker), and John Kasich (former Ohio governor) joined the DNC in supporting mail ballots. Defending-DemocracyTogether.org, which was spending \$20 million, released a letter from leading Republican national security officials endorsing Biden. Two former DHS officials formed the Republican Political Alliance for Integrity and Reform (REPAIR), funded by Republican Voters against Trump (founded by conservative Bill Kristol). The Lincoln Project (formed by moderate Republicans) wrote in *The Washington Post*: "Republicans, it's time to choose between autocracy and a republic" in this "most consequential election of our generation." It erected billboards in Times Square, one showing a smiling Ivanka gesturing toward national and state tallies of COVID deaths, and another of Jared Kushner with a pile of body bags, saying New Yorkers "are going to suffer and that's their problem." Republican Voters against Trump organized a letter by five Reagan White House lawyers, who endorsed Biden because "Trump's lawless, amoral and dishonorable methods make a mockery of the democratic accountability that is fostered through respect for law and our constitutional principles." Other Republican anti-Trump groups included Reclaim Our Party, Bravery Project, Stand Up Republic, Christians Against Trumpism and Political Extremism, and 43 Alumni for Joe Biden. Four-hundred and ninety-eight former senior military and political leaders signed a public letter organized by National Security Leaders for Biden. Michael Morell (former DCI) and David Kris (former assistant attorney general for national security) wrote in *The Washington Post* that "if the president were a normal applicant for a job requiring access to classified information, any adjudicator we know would have rejected him over concerns that his high levels of debt would create an unacceptable counterintelligence risk." Biden was endorsed by more than a hundred former McCain aides and his widow, as well as Education Secretary Betsy DeVos's former chief of staff and 25 other former Trump administration officials.

In May, Jared Kushner casually told *Time* magazine: "I'm not sure I can commit one way or the other [about the date of the presidential election]."<sup>35</sup> "Hopefully by the time we get to September, October, November, we've done enough work with testing and with all the different things we're trying to do to prevent a future outbreak of the magnitude that would make us shut down again." (Trump could not change Election Day, which is fixed by Congress.) Kushner later sought to walk back his gaffe: "I have not been involved in, nor

am I aware of, any discussions about trying to change the date of the presidential election.” But in a July 20 meeting with his pollsters, Trump floated the idea of using COVID to justify a delay, contending that “people can’t get to the polls. It’s a national emergency.” Meadows said Trump could not do this. Nevertheless, the president told Chris Christie a week later: “I’m thinking about calling it off.” Christie, too, said Trump could not declare martial law. Undeterred, the president tweeted at the end of July:

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???

Senate majority leader McConnell responded: “[N]ever in the history of the country, through wars, depressions and the Civil War, have we ever not had a federally scheduled election on time. We’ll find a way to do that again this Nov. 3.”<sup>36</sup> Republican Senators Barrasso, Rubio, and Graham and House minority leader McCarthy also criticized Trump. Arkansas’s Republican governor Asa Hutchinson said: “it’s not helpful for the president to think out loud in a public fashion.” Henry Olsen, one of *The Washington Post*’s most loyal Trump supporters, called it “the most anti-democratic thing any president ever said.” It was “more than reckless and irresponsible” and “should be immediately, forcefully and vocally repudiated by every conservative and Republican.” Northwestern University law professor Steven Calabresi, co-founder of the Federalist Society, wrote in a *New York Times* op-ed that “Trump might try to postpone the election,” but it was “unconstitutional,” “fascistic,” and “grounds for the president’s immediate impeachment.”

The next day, Trump explained: “I want to have the election. But I also don’t want to wait for three months and find out that all the ballots are missing and the election won’t mean anything. That’s what’s going to happen, and everyone knows it.”<sup>37</sup> Rep. Liz Cheney (the number three House Republican) declared: “[W]e are not moving the date of the election. The resistance to this idea among Republicans is overwhelming.” RNC chair Ronna McDaniel said the president “obviously” understood that he lacked authority to postpone the election. *The Washington Post* accurately observed: “Trump cannot move the vote. But he can undermine our trust in it.” Trump had attacked mail voting nearly 70 times between late March and the end of July. Mark Dimondstein, president of the American Postal Workers Union, said there was “essentially no fraud” in mail balloting. “It’s a tremendous insult for the president [to] be railing against vote by mail over and over and over and over, railing against the Post Office.”

Noting that “there was a question mark” in Trump’s July tweet (actually three), Meadows warned that if we “start mailing in ballots all across

the country, all 50 states, what we will see is a delay because they're just not equipped to handle it."<sup>38</sup> Trump tweeted the same day: "Must know Election results on the night of the Election, not days, months or even years later!" (although waits of days had been commonplace). Pointing to delays in tabulating votes in the June 23 primary for New York's 12th Congressional District, Trump's press secretary, Kayleigh McEnany, warned that states "are responsible for creating what's unfolding now and that is certain to get worse in November." Trump said: "I think you have to rerun that race because it's a mess. Nobody knows what's happening with the ballots and the lost ballots and the fraudulent ballots, I guess." Stephen Miller, his senior adviser, claimed falsely: "Nobody who mails in a ballot has their identity confirmed. Nobody checks to see if they're even a U.S. citizen." Trump declared: "I have the right [to prohibit all mail ballots]." (He did not.) "We haven't gotten there yet. We'll see what happens." In response to the Nevada law allowing universal mail ballots, he tweeted: "In an illegal late night coup, Nevada's clubhouse Governor made it impossible for Republicans to win the state. Post Office could never handle the Traffic of Mail-In Votes without preparation. Using Covid to steal the state." He ended with a threat he carried out repeatedly: "See you in Court!"

Trump had said in July: "You guys like to talk about Russia and China and other places. They'll be able to forge ballots. They'll forge them. They'll do whatever they have to do."<sup>39</sup> Loyalloyally echoing his boss, Barr asserted that this "is not disinformation." But officials at ODNI, DHS, and the FBI said: "[W]e have no information or intelligence that any nation-state threat actor is engaging in any activity to undermine the mail-in vote or ballots." And Deputy Attorney General Jeffrey Rosen said: "[W]e have yet to see any activating [sic] to prevent voting or to change votes, and we continue to think it would be extraordinarily difficult for foreign adversaries to change vote tallies." Michael Chertoff (Bush's homeland security secretary) said: "I actually don't think the White House has credibility in this because President Trump has gone out of his way to come up with claims that are totally unsubstantiated and downplaying [sic] the Russians." DNI Coats wrote in *The New York Times*:

Our democracy's enemies, foreign and domestic, want us to concede in advance that our voting systems are faulty or fraudulent. . . . No American, and certainly no American leader, should want such an outcome. Total destruction and sowing salt in the earth of American democracy is a catastrophe well beyond simple defeat and a poison for generations. An electoral victory on these terms would be no victory at all. The judgment of history, reflecting on the death of enlightened democracy, would be harsh.

Trump tweeted on August 14: “The Democrats know the 2020 Election will be a fraudulent mess. Will [sic—he meant ‘we’ll’] maybe never know who won!”<sup>40</sup> Asked a few days later whether the president was saying “if he doesn’t win this election, then he will not accept the results unless he wins,” McEnany equivocated: “The president has always said he’ll see what happens and make a determination in the aftermath.” She ignored the follow-up question: “[D]oes the president believe there is any circumstance under which he could lose the campaign fairly?” The next day, Trump said: “[W]e’re going to have sheriffs, and we’re going to have law enforcement, and we’re going to have, hopefully, US Attorneys, and we’re going to have everybody and Attorney Generals [at polling places on Election Day].” (A consent decree had limited RNC observation of polling places after Republicans used off-duty police to patrol minority areas in New Jersey in 1981, but after repeated extensions because of additional violations, the decree had expired.) DoJ said US attorneys and FBI agents needed its approval before any “intrusion by federal investigators into the area immediately surrounding an open polling place.” Federal law did not let the government station “armed men” near the polls. DHS acting secretary Wolf said he lacked authority to send agents to polling places. But the RNC hoped to recruit at least 30,000 poll watchers in 15 states, and the conservative group True the Vote enlisted ex-military to observe polls, warning that “radicalized leftist organizations are hard at work exploiting the weaknesses of our electoral process.” Trump said again on August 17: “The only way we’re going to lose this election is if the election is rigged.”

Biden vowed to protect America’s “most sacred Democratic exercise—voting.”<sup>41</sup> Hillary Clinton urged people to make a “voting plan” and cast their ballots early. Obama said at the Democratic National Convention: “Do not let them take away your power. Do not let them take away your democracy.” Trump lashed back at Obama: “HE SPIED ON MY CAMPAIGN, AND GOT CAUGHT!” (That lie had repeatedly been refuted.) Katrina Pierson, a Trump campaign spokesperson, pronounced: “[W]e are NOT a democracy! Not understanding this simple, yet critical fact, is likely the root cause of Trump Derangement Syndrome! The United States is a Republic.” (Robert Welch Jr., founder of the reactionary John Birch Society, popularized that dangerous lie in a 1961 speech: “Republics and Democracies.”<sup>42</sup> Pierson later helped organize the January 6 demonstration that led to the invasion of the Capitol.)

On August 11, two retired Army officers wrote an open letter to JCS chair Mark A. Milley on the Defense One website:

In a few months’ time, you may have to choose between defying a lawless president or betraying your constitutional oath. If Donald Trump refuses to leave office at the expiration of his constitutional term, the

United States military must remove him by force, and you must give that order.<sup>43</sup>

DoD replied that this would be the responsibility of the US Marshals or Secret Service. But Milley offered a more straightforward answer to a congressional query:

I believe deeply in the principle of an apolitical U.S. military. In the event of a dispute over some aspect of the elections by law, U.S. courts and the U.S. Congress are required to resolve any disputes, not the U.S. military. I foresee no role for the U.S. armed forces in this process.

And in response to a letter from Democratic Representatives Elissa Slotkin and Mikie Sherrill asking for assurances that the military (in which both had served) would respect the results of the election, Milley said: "I recognize that there is only one legitimate President of the United States at a time."

On August 23, Trump tweeted:

So now the Democrats are using Mail Drop Boxes, which are a voter security disaster. Among other things, they make it possible for a person to vote multiple times. Also, who controls them, are they placed in Republican or Democrat areas? They are not Covid sanitized. A Big fraud!<sup>44</sup>

At the RNC days later, he accused Democrats of

trying to steal the election. Now we're in courts all over the country, and hopefully we have judges that are going to give it a fair call. Because if they give it a fair call, we're going to win this election. The only way they can take this election away from us is if this is a rigged election.

His family piled on. Don Jr. said: "Joe Biden is basically the Loch Ness monster of the Swamp. This election is shaping up to be church, work and school versus rioting, looting and vandalism." His girlfriend, Kimberly Guilfoyle, claimed Democrats "want to destroy this country and everything that we have fought for and hold dear. They want to steal your liberty, your freedom. They want to control what you see and think and believe, so they can control how you live." Eric Trump declared Democrats "want to destroy the monuments of our forefathers" and disrespect traditions, including the Pledge of Allegiance. His wife, Tiffany, attacked the media: "[W]hy are we prevented from seeing certain information?" (The last two spoke from inside federal buildings—Hatch Act violations, discussed later.)

Trump misused federal assets throughout the campaign.<sup>45</sup> During the Convention, he violated long-standing precedent by accepting the

nomination from the White House, while Melania spoke from the Rose Garden, and Ivanka and White House aide Ja'Ron Smith did so elsewhere on the grounds. The White House said falsely that Trump "has every right to address the American people on any subject at any time from any location." *The Washington Post* disagreed: "Trump desecrates a public monument in the finale to a convention of lies." He had previously exploited the SpaceX rocket launch and his walk to St. John's Church (see Abel, 2024a) for campaign purposes. The White House website streamed an overtly political "Obamagate" video. At the White House, Trump had signed a pardon for Jon Ponder (a prisoners' advocate) and presided over a naturalization ceremony for immigrants with acting DHS secretary Wolf and two Marines in dress uniform; both events were clearly campaign functions. After the second presidential debate was cancelled, Trump spoke from the White House balcony to an event billed as a "peaceful protest for law & order," whose attendees sported Trump campaign garb. He exhorted them to vote "into oblivion" what he called "the radical socialist left" and "communists" and attacked Biden by name.

On an official trip to Israel, Secretary of State Pompeo exploited Jerusalem's Old City as a dramatic backdrop for his RNC speech.<sup>46</sup> DoS claimed he did so "in his personal capacity," and "no State Department resources will be used" (except, of course, the cost of transportation, housing, and security on his trip to Israel!). Pompeo tweeted in advance: "Looking forward to sharing with you how my family is more SAFE and more SECURE because of President Trump." DoS guidelines stated that officials may not "speak for or against a partisan candidate" at a convention and "may not even attend a political party convention." Pompeo himself had signed a cable directing DoS appointees not to "engage in any partisan political activity in concert with a partisan campaign, political party, or partisan political group, even on personal time and outside of the federal workplace." Deputy Secretary of State Stephen Biegun had issued a guidance on February 18: "as a Senate-confirmed Department official, I will be sitting on the sidelines of the political process this year and will not be attending any political events, to include the national conventions." The House Foreign Affairs Committee threatened to bring contempt proceedings against Pompeo for refusing to comply with its subpoena for records concerning his "transparently political misuse" of department resources. But the acting assistant secretary of state for legislative affairs agreed to respond only if the committee investigated "identical or very similar corruption issues involving Ukraine and corrupt influence related to U.S. foreign policy" (Republicans' false allegations against the Bidens). Pompeo pledged to "get the information out that needs to get out" about Ukraine and called Hillary Clinton's actions (about her emails) "unacceptable behavior." "This isn't about politics." "We're continuing to work to identify whether there are any more [emails] that are potentially available."

The Office of Special Counsel (OSC), which polices the civil service, investigated but found no wrongdoing.

OSC did find that agriculture secretary Sonny Perdue had improperly used his office to support Trump's re-election.<sup>47</sup> In August in North Carolina, he promised that the Farmers to Families Food Box Program was "going to continue to happen—four more years—if America gets out and votes for this man, Donald J. Trump." OSC ordered him to reimburse the government for the cost of attending that event. The Agriculture Department falsely maintained that Perdue did not "encourage attendees to vote for a candidate or party or advocate for a partisan political group." Other officials were equally brazen in misusing government resources to promote Republicans' electoral chances. In Pennsylvania (a battleground state), ICE paid for WANTED billboards with photos of undocumented immigrants arrested in Philadelphia and Pittsburgh. David Lapan, a former DHS press secretary under Trump, said "the placement and the timing . . . make it clear that this is a political move, not related to operational matters." After leaving the confirmation hearing for Supreme Court nominee Amy Coney Barrett, Sen. Graham appeared on television from the Hart Senate Office Building: "[I]f you want to help me close the gap, lindseygraham.com, a little bit goes a long way." His campaign spokesman said Graham was "confident any reasonable person can see that any [Hatch Act] violation—if one even occurred—was unintentional and does not represent a pattern of behavior."

Sen. Warren issued a report finding that 14 administration officials had violated the Hatch Act 54 times and another 22 were being investigated for nearly 100 violations, but the law was toothless.<sup>48</sup> After OSC special counsel Henry Kerner recommended removal of White House senior adviser Kellyanne Conway for numerous violations, including appearances at political rallies, she blithely blew it off: "[B]lah, blah, blah. If you're trying to silence me through the Hatch Act, it's not going to work. Let me know when the jail sentence starts." (That is precisely the problem: there is no criminal penalty.) Trump defended Conway: "[I]t looks like they're trying to take away her right of free speech." OSC investigated the Department of Education's distribution of a video by secretary DeVos criticizing Biden, calling his school policies "shameful," and saying he had "turned his back on the kids" and "turned his face in favor of the teachers union." OSC also reprimanded trade adviser Peter Navarro for political activity during official media appearances and on Twitter, as well as UN ambassador Nikki Haley and White House social media director Dan Scavino. Ivanka Trump posed with uniformed law enforcement officers in Wisconsin; Pompeo attended political events in Minnesota and Wisconsin; O'Brien did so in Texas. Although Kerner (a Trump appointee) cited at least eight other high-level officials for violations, nothing happened to them. Indeed, Trump promised to pardon aides who suffered civil penalties for Hatch Act violations (as he did immigration officials; see

Abel, 2024a). Meadows said: “[N]obody outside of the Beltway really cares. This is a lot of hoopla that is being made about things mainly because the [Republican] convention has been so unbelievably successful.” Other officials made the campaign their priority. EPA administrator Andrew Wheeler spent 40 days in swing states but only 10 in others; DHS acting secretary Wolf and his acting deputy Cuccinelli also travelled to swing states. Interior secretary David Bernhardt released a campaign-style video on his official Twitter account. Lynne Patton, an African American who had worked for HUD and was a personal assistant to the Trump family, produced a video of NYC public housing tenants praising Trump and bashing Mayor de Blasio, which was screened on the last night of the RNC. OSC found a Hatch Act violation, which Patton admitted, paying a \$1,000 civil penalty (the maximum) and agreeing not to hold any federal government employment for four years. That was the only time the Act was enforced.

The administration sought to have pharmaceutical manufacturers pay for cards displaying Trump’s name and redeemable for \$100 in drugs, which would be mailed to seniors before the election.<sup>49</sup> When PhRMA (the trade association) opposed this, Trump retaliated with an executive order tying Medicare drug prices to prices abroad, and Meadows threatened to tell the media that the White House “came close to an agreement with the industry [about drug pricing] but the agreement fell apart due to [PhRMA’s] opposition to ‘share the savings’ with seniors.” Facing resistance from officials, even some in the White House, Meadows acknowledged “a concern that there might have been a look that this was done for political motivation.” But though he protested unpersuasively—“That’s not the case”—the cards were not mailed until after the election.

Doing something “we have never done before,” *The New York Times* published “a series of editorials on the damage this president has caused—and the danger he would pose in a second term. And we will unabashedly urge you to do your civic duty and vote. . . .”<sup>50</sup> Analogizing Trump to other autocrats—Putin, Xi, al-Sissi, Bolsonaro, Orbán, Duda, and Duterte—*The Washington Post* concurred: “Global freedom would suffer grievous harm in a second Trump term.” It added that by failing to draft a policy platform, “the Republicans are announcing that they stand for nothing. The party’s only reason for being is to gain and retain power for itself and its comparably unprincipled leader.” The *Post* endorsed Biden “in order to expel the worst president of modern times” and respond to “a 21st-century, high-tech authoritarianism ascendant in the world, with democracy in retreat.” It later wrote that “a vote for a second Trump term is a vote for an America in decline and an American democracy in danger.” US prosperity depended on “a predictable rule of law; a professional civil service . . . a broadly shared commitment to fairness and equal treatment . . . attracting talented, entrepreneurial and ambitious immigrants from all over the world.” Trump “replaces

rule of law with presidential whim, picking and choosing corporate favorites and twisting the criminal system to favor his friends.” “This is politicizing, corrupting and sapping the morale of our government—our foreign service, our health and scientific agencies, our keepers of statistics. . . science and truth are treated with contempt.” The *Post* said Biden “would begin his term by restoring competence to the federal government’s senior ranks . . . quickly halt some of Mr. Trump’s most severe depredations . . . the constant pressure on the Justice Department to prosecute Mr Trump’s political enemies on bogus charges, while pardoning the criminal acts of his friends.” Even the conservative Drudge Report, which had supported Trump, now repudiated him. After endorsing Biden, *The New York Times* editorialized: “End Our National Crisis: The Case against Donald Trump” and “A Nation Adrift,” declaring that his campaign “poses the greatest threat to American democracy since World War II.” It also published criticisms by eight columnists. The *Times* wrote that the Republican Party’s “ideology has been reduced to a slurry of paranoia, white grievance and authoritarian populism.” Republicans “have stood by, slack-jawed, in the face of the president’s assault on checks and balances.” “[C]ongressional bootlickers, channeling Mr. Trump’s rantings about the Deep State, have used their power to target those who dared to investigate him.”

Reprising his “birther” lies about Obama, Trump asserted (incorrectly) on September 3 that Kamala Harris “doesn’t meet the requirements” for vice president because her parents were immigrants.<sup>51</sup> (As president, he had attacked birthright citizenship; see Abel, 2024a.) After Henderson, Nevada, warned that a rally Trump planned to hold there would violate the state’s COVID regulations, Democratic governor Sisolak accused the president of “taking reckless and selfish actions that are putting countless lives in danger.” Trump responded by claiming to be exempt from the regulations (he was not), promising to support violators “all the way” (as an accessory after the fact?), and accusing the governor—who was “gonna be in charge of the ballots”—of planning a “Rigged Election!” (The secretary of state was in charge, not the governor.) “I’m winning the state easily but the one thing we can’t beat, if they cheat on the ballots. Now he will cheat on the ballots, I have no doubt about it.” (Trump had earlier railed against the state’s adoption of universal mail ballots. In November, he lost by almost 34,000 votes.) Roger Stone had recently said the ballots should “be seized by federal marshals and taken from the state” because “they are completely corrupted” and urged Trump to declare “martial law” and invoke the Insurrection Act to arrest opponents (strategies Trump entertained after November 3 at the suggestion of others).

Trump levelled equally unfounded accusations against other states. He said in Wisconsin in August: “The only way we’re going to lose this election is if the election is rigged. Remember that. It’s the only way we’re going

to lose this election, so we have to be very careful.” He warned in North Carolina: “Watch it. Be poll watchers when you go there. Watch all the thieving and stealing and robbing they do.” “The only way” Democrats can win is by “doing very bad things.” He declared at another rally in Minden, Nevada, that he was going to win, adding, “[A]nd then, after that, we’ll negotiate, right? Because we’re probably—based on the way we were treated—we’re probably entitled to another four [years] after that.” When the audience chanted “[F]our more years” at the RNC in August, Trump said: “If you really want to drive them crazy, you say ‘12 more years.’” (In April 2019, despite the 22nd Amendment, he had floated the idea of remaining president “at least for 10 or 14 years.” Two months later, he said supporters might “demand that I stay longer.” He continued, “[Xi Jinping was] now president for life. President for life. No, he’s great. And look, he was able to do that. I think it’s great. Maybe we’ll have to give that a shot someday.”)

Trump said again on September 12: “It’s a rigged election. It’s the only way we’re going to lose.”<sup>52</sup> He tweeted on September 17 that though “Solicited Ballots (absentee) are OK,” the election results “may NEVER BE ACCURATELY DETERMINED” because of the “new and unprecedented massive amount of unsolicited ballots.” Don Jr. called for poll watchers, warning that the Democrats’ “plan is to add millions of fraudulent ballots that can cancel your vote and overturn the election.” Attorney General Barr had told the *Chicago Tribune*: “Someone will say the president just won Nevada. ‘Oh, wait a minute! We just discovered 100,000 ballots! Every vote will be counted!’ Yeah, but we don’t know where these freaking votes came from.” He accused “liberals” of “creating an incendiary situation where there will be loss of confidence in the vote” by promoting mail voting. Trump said with calculated ambiguity on September 22: “What this country has going for it more than anything else is the peaceful transfer of power, and that is accomplished through elections that people have confidence in. And so we should be doing everything to support that confidence.”

When asked at a September 23 press conference whether he would agree to a peaceful transition if he lost, Trump again raised the specter of defiance:<sup>53</sup>

You know that I’ve been complaining very strongly about the [mail] 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. And you know who knows it better than anybody else? The Democrats know it better than anybody else.

White House press secretary McEnany characteristically hedged: “[Trump] will accept the results of a free and fair election.” But he promptly undercut

her: “We want to make sure the election is honest, and I’m not sure that it can be.”

Many prominent Republican Senators were appalled:

The winner of the November 3rd election will be inaugurated on January 20th. There will be an orderly transition just as there has been every four years since 1792.

*(Majority Leader McConnell)*

Republicans believe in the rule of law, we believe in the Constitution, and that’s what dictates what happens in our election process.

*(Thune, the Senate’s number two Republican)*

Any suggestion that the president might not respect this constitutional guarantee is both unthinkable and unacceptable.

*(Romney)*

I don’t know what his thinking was, but we have always had a controlled transition between administrations. . . . The peaceful transfer of power is a fundamental tenet of our democracy, and I am confident that we will see it occur again.

*(Collins)*

Of course we’re going to have a peaceful transition of power. We’re the United States of America. We’re not a banana republic.

*(Sullivan)*

I can assure you, it will be peaceful. I promise you as a Republican, if the Supreme Court decides that Joe Biden wins, I will accept the result.

*(Graham)*

Rep. Cheney said: “The peaceful transfer of power is enshrined in our Constitution and fundamental to the survival of our Republic. America’s leaders swear an oath to the Constitution. We will uphold that oath.” But Sen. Cruz sounded more like Trump:

I think there will be a peaceful transfer of power, and I think the real concern in terms of the election is that Joe Biden has been explicit that if he doesn’t win on Election Day, he intends to challenge the legitimacy of the election. [Hillary Clinton had said Biden would not concede until all ballots were counted.] That threat to challenge the election is one of the real reasons why it is so important that we confirm the Supreme Court nominee so that there’s a full Supreme Court on the bench to resolve any election challenge.

Democrats struck back. Sen. Coons warned presciently: “[W]hen a leader with authoritarian tendencies tells you they intend to do something outrageous, like not accept a peaceful transition after an election, as President Trump said, you should believe them.” House Majority Leader Pelosi advised caustically:

You are not in North Korea; you are not in Turkey. You are in the United States of America. It is a democracy, so why don't you just try for a moment to honor your oath of office to the Constitution of the United States.

Sen. Schumer called Trump “the greatest threat to democracy.” The Senate unanimously passed a resolution introduced by Joe Manchin (D-WV) declaring its “commitment to the orderly and peaceful transfer of power called for in the Constitution of the United States.” “There should be no disruptions by the president or any person in power to overturn the will of the people of the United States.” *The Washington Post* observed presciently: “Americans must take every such utterance as more evidence of the president’s underlying goal: to discredit and deny their choice, if they dare to eject Mr. Trump from the White House.”

A day later, after Trump told reporters that ballots had been found “in a wastepaper basket in some location,” David J. Freed (MD Pa US Attorney) said the Luzerne County DA had asked the FBI to investigate.<sup>54</sup> Freed’s office disclosed that all nine ballots had been cast for Trump, releasing this information because of “the limited amount of time before the general election and the vital public importance of these issues.” Luzerne County said it had immediately begun an internal inquiry, fired the independent contractor responsible, and had not known for whom the ballots were cast until Freed’s announcement. (Legal commentators assailed his disclosure as irrelevant to any criminal investigation, politically motivated, and totally improper.) Barr had personally informed Trump, who declared on Fox News Radio:

These ballots are a horror show. They found six [sic] ballots in an office yesterday in a garbage can. They were Trump ballots—eight [sic] ballots in an office yesterday in—but in a certain state and they were—they had Trump written on it [sic], and they were thrown in a garbage can.

He again refused to commit to a peaceful transition: “I think we have a long way before we can get there.” A Trump campaign spokesman tweeted: “BREAKING: FBI finds military mail-in ballots discarded in Pennsylvania. 100% of them were cast for President Trump. Democrats are trying to steal the election.” This was deleted only after going viral. A White House spokesman called the report “concerning to say the least. President @realDonaldTrump is the only one fighting for a free and fair election.” Trump then

said: “[W]e want to make sure the election is honest, and I’m not sure that it can be. I don’t know that it can be with this whole situation—unsolicited ballots. They’re unsolicited, millions being sent to everybody. And we’ll see.” (Ballots were sent automatically to all military serving abroad; these nine had been discarded accidentally.) Meadows sneered: “[W]ith all due respect to Director Wray, he has a hard time finding emails in his own F.B.I., let alone figuring out whether there’s any kind of voter fraud.”

This furor prompted a reprise of the earlier reactions. Some Republicans made light of Trump’s comments. Sen. Sasse noted: “[T]he president says crazy stuff. We’ve always had a peaceful transition of power. It’s not going to change.” Sen. Cramer conceded that Trump speaks in “very extreme manners [sic] occasionally.” Others offered reassurance:

[A peaceful transition was] a hallmark of our democracy.

*(Sen. Gardner)*

We have always had a controlled transition between administrations. And I’m certain that if there’s a change in the administration, that we have the calmness as well. It’s fundamental to our democracy.

*(Sen. Collins)*

[There was] no question that all the people sworn to support the Constitution would assure that there would be a peaceful transition of power.

*(Sen. Romney)*

Republicans believe in the rule of law, we believe in the Constitution, and that’s what dictates what happens.

*(Sen. Thune)*

America’s leaders swear an oath to the Constitution. We will uphold that oath.

*(Rep. Cheney)*

But Sen. Cruz again sought to turn the tables: “[W]hat I’m much more concerned about is Joe Biden’s stated intention to challenge the legitimacy of the election if he doesn’t win.” (Biden had made no such threat.) Just four of 168 RNC members and one of the 26 Republican governors responded to a *New York Times* inquiry about Trump’s remark. Arkansas governor Hutchinson said: “[O]ur common commitment to democracy and the rule of law is not dependent upon the actions of any one individual.” The RNC accused Democrats of seeking to “turn our election into an out-of-control all-mail-based election.” It opposed “a rushed and forcibly implemented nationwide vote-by-mail experiment that would eliminate . . . safeguards, invite fraud

and weaken the integrity of our elections.” *The Washington Post* remained troubled: “The White House Says Trump Will Accept Election Results. Feel Better? You Shouldn’t.”

Less than two months before the election, the Senate Committee on Homeland Security and Foreign Affairs voted 8–6 along party lines to subpoena more than three dozen officials in its investigation of Biden and Ukraine.<sup>55</sup> Sen. Johnson, the chair, shamelessly acknowledged that the investigation “would certainly help Donald Trump win reelection and certainly be pretty good, I would say, evidence about not voting for Vice President Biden.” “Stay tuned. In about a week we’re going to learn a whole lot more of Vice President Biden’s fitness for office.” Sen. Romney replied that the investigation “has the earmarks of a political exercise.” It was “not the legitimate role of government, for Congress or for taxpayer expense, to be used in an effort to damage political opponents.” (Nothing happened before Democrats won control of the Senate.)

FBI director Wray said in September: “[T]he intelligence community consensus is that Russia continues to try to influence our elections.”<sup>56</sup> They were trying “to denigrate Vice President Biden and what the Russians see as a kind of anti-Russian establishment.” “I think Americans can and should have confidence in our election system and our democracy.” Facebook and Twitter deleted fake Russian accounts after being alerted by Wray. HPSCI chair Schiff said Russia had “been amplifying Trump’s false attacks on absentee voting.” A week later, Wray told the Senate Homeland Security Committee: “[W]e have not seen historically any kind of coordinated national voter fraud effort in a major election, whether it’s by mail or otherwise.” Changing the outcome “would be a major challenge for an adversary.” Democratic Senators Schumer, Warner, Peters, Klobuchar, and Wyden demanded that DHS release a September 3 report warning of election interference; it had been widely distributed and was not classified. (In March 2021, ODNI accused Russia and Iran of having sought to influence the 2020 elections, finding that Russia had used Ukrainians to “launder” unsubstantiated allegations against Biden and Putin “had purview” over Ukrainian lawmaker Andriy Derkach, from whom Giuliani had sought “evidence.”)

Acting with “wicked speed” (like Hamlet’s mother, Gertrude), Trump declared less than a week after Justice Ginsburg’s death: “We need nine justices. You need that with the unsolicited millions of ballots they’re sending. It’s a scam, it’s a hoax, and the Democrats know it better than anyone else.”<sup>57</sup> Confirming a new Justice “before the election would be a very good thing because you’re probably going to see litigation because what they’re doing is they are trying to sow confusion and everything else.” (A week earlier, Sen. McConnell had told a right-wing radio host: “[T]he Democrats are doing the Chinese and the Russians’ work for them by sowing doubts about our democracy, by trying to divide us against ourselves.”) Days later, Democratic

Senator Sanders warned that the election presented a “nightmare scenario.” The question was whether “the United States of America will continue to be a democracy and a nation ruled by law and our constitution.”

My main focus is to prevent Donald Trump from staying in office if he loses the election, to prevent him from delegitimizing the election results. To make sure that every vote is counted, to make sure that the voters are not intimidated.

Trump continued to insist he would welcome “a smooth, beautiful transition” but could lose only if Democrats cheated, and “[Republicans were] not going to stand for it.”<sup>58</sup> “This is a disaster waiting to happen.”

I could be leading, and then they’ll just keep getting ballots and ballots and ballots and ballots. They’re talking about five, six, seven states that have this problem. So if we’re waiting for one state, does that mean the whole nation, the whole world is going to wait for one state? . . . I like watching television, and have, “The winner is . . .” Right? You might not hear it for months because this is a mess.

It would be “very hard to watch” the counting of large numbers of mail ballots. “That’s the only way we’re going to lose, is if there’s mischief.” (This inevitable “blue shift” and Trump’s efforts to counter it had been predicted in April.)

In a campaign rally, Trump hinted at his post-defeat game plan:<sup>59</sup>

I don’t want to end up in the Supreme Court, and I don’t want to go back to Congress, even though we have an advantage if we go back to Congress. Does everyone understand that? I think it’s 26 or [sic—he meant “to”] 22 or something. . . . It’s counted one vote per state. So we actually have an advantage. Oh. They’re going to be thrilled to hear that. I’m sure they’re trying to figure out, “how can we break that one?”

(He was referring to a procedure under the Electoral Count Act of 1887 giving each state legislature one vote if Electoral College votes were contested; 26 states were dominated by Republicans.) A few days later, he tweeted: “Many things are already going very wrong!” Thomas Friedman commented in *The New York Times* that Trump would “muddy the results so that the outcome can be decided only by the Supreme Court or the House of Representatives.” “Our democracy is in . . . more danger than it has been since the Civil War, more danger than after Pearl Harbor, more danger than during the Cuban missile crisis and more danger than during Watergate.” Two weeks later, Nancy Pelosi presciently warned Democrats that GOP-dominated

legislatures in states with narrow margins or unfinished counts would try to appoint their own electors.

At the first presidential debate on September 29, Trump said:<sup>60</sup>

There was a big problem. In Philadelphia, they went in to watch, they were called poll watchers, a very safe, very nice thing. They were thrown out, they weren't allowed to watch. You know why? Because bad things happen in Philadelphia, bad things. . . . I am urging my supporters to go into the polls and watch very carefully, because that's what has to happen. . . . I'll tell you what it means—it means you have a fraudulent election. . . . If it's a fair election, I am 100 percent on board. But if I see tens of thousands of ballots being manipulated, I can't go along with that.

Donald Jr. told supporters to join an “Army for Trump” poll watching brigade: “The radical left are laying the groundwork to steal this election from my father, President Donald Trump.” Justin Clark, a lawyer, said the campaign planned to “leverage about 50,000 volunteers all the way through, from early vote through Election Day, to be able to watch the polls.” The head of the Pennsylvania GOP promised at least 1,600 poll watchers, several at every site. A Trump spokeswoman explained: “Democrats have proven their lack of trustworthiness time and again this election cycle.” After the debate, Trump's campaign manager, Bill Stepien, accused Commission on Presidential Debate leaders of bias. Jason Miller, a senior campaign adviser, claimed that “for the most part, these are permanent swamp monsters” (although Commission co-chair Frank J. Fahrenkopf Jr. had been RNC chair in the 1980s). Trump called Fox News's Chris Wallace (one of the debate moderators) “a disaster” who favored Biden.

Trump refused to participate in the second debate because it was virtual: “that's not what debating is all about,” and “they cut you off whenever they want.”<sup>61</sup> Stepien called the Commission decision to make that debate virtual “a sad excuse to bail out Joe Biden.” After the Commission said it would mute one candidate's microphone when the other was speaking (because Trump interrupted 71 times in the first debate, Biden just 22), the Trump campaign denounced “last-minute rule changes from the biased commission in their latest attempt to provide advantage to their favored candidate.” John C. Danforth (a three-term Republican Senator from Missouri, who had served on the Commission since 1994) wrote in *The Washington Post* that “Trump's attack on the Debate Commission is an attack on the election itself.” Although all Commission members had preserved “a strict vow of silence,” he felt compelled to respond. “The president's apparent strategy is to challenge the validity of the election should he lose.”

The day after the October 7 vice presidential debate, *The Washington Post* wrote: “Every Republican running for office should be asked about the

question Pence dodged”: “[W]hat would he do if Mr. Trump refused to accept a peaceful transfer of power, should Mr. Biden win the election?”<sup>62</sup> “Mr. Pence inflamed fears that he and Mr. Trump would conjure outlandish excuses for a loss . . . and encourage their supporters to deny the election’s legitimacy.” (The momentousness of this question became clear a month later.)

Trump promised voters the media would break a major story tying Joe Biden to his son Hunter’s illegal actions in Ukraine.<sup>63</sup> The campaign gave the material to two of its media cheerleaders, Rupert Murdoch’s *New York Post* and *The Wall Street Journal*. At the second presidential debate, Trump read a six-minute statement to the press, saying to Biden: “You’re the big man [referred to in the allegedly incriminatory emails], I think. I don’t know, maybe you’re not.” But the authenticity of the emails had been challenged, and Biden said he had never met the Ukrainian named in them. The *Post* took the bait, publishing a front-page story headlined: “Smoking-Gun Email Reveals How Hunter Biden Introduced Ukrainian Businessman to Vice President Dad.” But Facebook and Twitter blocked or demoted posts and tweets about it. And *The Wall Street Journal* ran only a brief statement that its review of the material revealed no role by the candidate.

On October 7, DoJ announced an “exception to the general non-interference with elections policy” when

the integrity of any component of the federal government is implicated by election offenses within the scope of the policy, including, but not limited to, misconduct by federal officials or employees administering an aspect of the voting process through the USPS, the DoD, or any other federal department or agency.<sup>64</sup>

Suggesting that he had directed Barr to make the change, the president told Fox News’s Hannity the same day: “We have people watching. We have U.S. Attorneys watching. We have sheriffs watching. We have U.S. marshals watching [for voter fraud].” The same day, D NJ US Attorney Craig Carpenito (whom Trump had wanted to appoint to replace SDNY US Attorney Geoffrey Berman; see Abel, 2024a) announced the arrest of a postal worker for including dozens of ballots among 1,900 pieces of discarded mail. (They were later recovered and delivered.) The next day, Trump told Fox Business News that US Marshals and US attorneys were “watching” officials in Nevada and New Mexico. “We’ve got people watching nobody ever had.”

It’s going to be a disaster the likes of which we’ve never seen. We will never have seen an election like what’s going to take place, thousands of ballots all over the country are being reported, some thrown in garbage cans with my name on them. Some thrown in trays in a river. What’s going on is absolutely crazy.

Mark Dimonstein (American Postal Workers Union president) said:

[T]he DoJ is feeding the narrative that somehow this election is rigged. They are making postal workers—dedicated, hard-working public servants out here on the front lines of this pandemic—the scapegoats; the DoJ should be ashamed of themselves feeding into this narrative.

On October 10, Trump warned Meadows:

It's these mail-in ballots. This isn't going to be right. You can't have all these mail-in ballots, most of them going to voters who don't have any energy and enthusiasm, and not know where they're coming from. I don't know what's going to happen here. But it is not going to be good.<sup>65</sup>

After Fox News covered a Biden rally in Florida on October 29 instead of Trump's contemporaneous rally in nearby Tampa, Meadows angrily complained to Bill Sammon, managing editor of Fox's Washington Bureau.<sup>66</sup> Sammon replied: "I do not answer to the president's chief of staff, and your opinion on Fox's programming is not important to me. . . . [I]t's really the producers of the individual shows who make these play calls." Meadows pushed back:

One, I do not believe that this decision was made by an individual producer at the Dana Perino show. And two, if it was, I will make sure that not a single White House official shows up on the Dana Perino show from now until the election.

Right-wing conspiracy theorists filled social media with claims that the Left planned to block a Trump victory.<sup>67</sup> There were at least 938 Facebook groups, 279 Facebook pages, 33 YouTube videos (viewed by 1.2 million, September 7–October 14), and hundreds of tweets. Dan Bongino told his 3.6 million followers that the bipartisan Transition Integrity Project was planning a coup. The day after the two representatives urged Milley to be prepared for Trump's refusal to leave (discussed earlier), a Facebook post falsely said they had "suggest[ed] a violent military coup." The same day, Infowars accused retired military officers of planning a coup. A Facebook post by a former Trump national security adviser claiming that "Democrats are laying the groundwork for revolution" reached 4.9 million people. A video falsely purporting to show ballot fraud in Montgomery County, Maryland, went viral. On September 25, *The Gateway Pundit* (GP) published: "EXCLUSIVE: California Man Finds THOUSANDS of What Appear to be Unopened Ballots in Garbage Dumpster—Workers Quickly Try to Cover Them Up—We are Working to Verify." These turned out to be empty ballot envelopes legally

discarded in 2018, but GP corrected the headline only after it had gone viral. On October 7, the *Right Scoop* headlined: “DESTROYED Tons of Trump mail-in ballot applications SHREDDDED in back of tractor-trailer headed for Pennsylvania.” The material actually was printing waste from a direct mail company. On September 24, the *Daily Wire* headlined: “FEDS: Military Ballots Discarded in ‘Troubling’ Discovery. All Opened Ballots were cast for Trump.” (This is the discredited Pennsylvania anecdote earlier, which Trump kept recycling.) *The Washington Times* published a similar story and op-ed. Neither ran the Pennsylvania election chief’s correction. In August, the *New York Post* published an anonymous Democratic operative’s claim that he had engaged in voter fraud for decades. *The Blaze*, Breitbart, *Daily Caller*, FoxNews.com, and the *Washington Examiner* disseminated versions of the article, which was endorsed by Don Jr. and Eric Trump, the campaign communications team, *Fox & Friends*, and Tucker Carlson’s Fox News. Breitbart published nearly 30 articles on “voter fraud.” Trump posted links to Breitbart articles, including a Republican poll challenger’s estimate that up to 20,000 absentee primary ballots were improperly counted in Detroit. Election officials later denied any fraud. In September, GP, the *Washington Examiner*, and Breitbart followed a Wisconsin Fox Affiliate’s account of mail found in a ditch, allegedly including absentee ballots. The story was promoted by Jason Miller, Kayleigh McEnany, Tucker Carlson, and Trump. But the *Milwaukee Journal Sentinel* correctly reported that the mail did not include any absentee ballots. It is unlikely, however, that many (if any) of those who read the original articles saw the corrections and changed their minds.

On October 18, Trump returned to an earlier grievance:<sup>68</sup>

They say, “if you lose, will you have a friendly transition?” I say, “I want a fair election. . . . [W]hen I won, you spied on my campaign, we caught you trying to overthrow the President of the United States. You’re crooked as hell. And we caught you and let’s see what happens to them. But you’re crooked as hell.” And to me that didn’t exactly look like a friendly transition.

The next week he said: “It would be very, very proper and very nice if a winner were declared on Nov. 3, instead of counting ballots for two weeks, which is totally inappropriate and I don’t believe that that’s by our laws.” When Philadelphia election officials excluded Republican poll watchers a few days later, Trump said that:

[Democratic governor Tom Wolf] shut us out and he tried shutting us out of two other venues. I’ll remember it, Tom. I’m going to remember it, Tom. “Hello, Mr. President, this is Governor Wolf. I need help. I need help.” You know what? These people are bad.

Some Trump supporters resorted to blatantly illegal tactic.<sup>69</sup> On October 17, Steven F. Hotze, a major GOP donor, told the SD Texas US Attorney that his group, Liberty Center for God and Country, was tailing a white van moving phony ballots around Houston. Mark Aguirre (Hotze's investigator) had threatened: "I'm going to run into him and I'm gonna make a citizen's arrest [if federal officials did not do so]." (Hotze paid more than \$250,000 to Aguirre, who had resigned from the Houston Police Department after ordering mass arrests of innocent people; the Department settled their lawsuits for more than \$840,000.) Two days later, Aguirre did run the van off the road and held the driver, David Lopez-Zuniga, at gunpoint. When police responded to the crash, Aguirre told them Lopez-Zuniga was part of a massive voter fraud scheme involving 750,000 mail-in ballots forged by undocumented Hispanic children, used because their fingerprints could not be traced. But a search of the van and Lopez-Zuniga's home found only the air-conditioning equipment he sold. The Houston DA prosecuted Hotze and Aguirre for assault with a deadly weapon and unlawful restraint; Lopez-Zuniga sued Hotze. In a separate incident in November, nearly 100 cars surrounded Biden's campaign bus in Texas, forcing him to cancel the day's events. Trump tweeted: "I LOVE TEXAS" and "In my opinion, these patriots did nothing wrong." When the FBI investigated, he complained: "The FBI & Justice should be investigating the terrorists, anarchists, and agitators of ANTIFA."

In response to Trump's dangerous antics, a wide variety of commercial organizations encouraged voting, including the NBA, Fashion Our Future 2020, Dover Street Market, Saks Fifth Avenue, Nordstrom, and H&M USA.<sup>70</sup> NBA players wore VOTE T-shirts before games, held drive-in registration events, installed ballot drop boxes, offered their own sites as polling places, and gave employees a paid vacation on Election Day. Best Buy closed its stores until noon that day, and PayPal offered a half-day's pay to employees who volunteered at polling places. Time to Vote, founded in 2018 by about 400 corporations, claimed more than 1,700 by 2020; A Day for Democracy had more than 350. ElectionDay.org, sponsored by Vote.org, enrolled more than 800 companies promising paid leave to vote. Goldman Sachs gave a half day off; Diageo North America (owner of Guinness and Smirnoff) offered time off; Citi and Gap Inc. increased paid leave. Shake Shack gave French fries to anyone who voted early. Coca-Cola urged early in-person voting in Georgia (its headquarters and a battleground state). Old Navy paid employees to be poll watchers. Meghan Markle joined her husband, Prince Harry, to urge Americans to vote in "the most important election of our lifetime." The Leadership Now Project (prominent business figures) declared: "The health of our economy and markets depends on the strength of our democracy." The National Task Force on Election Crises (including Michael Chertoff, Bush's second DHS secretary, and Jim Baker, FBI general counsel under Obama and Trump) mobilized leading politicians in both parties, military figures, athletes, faith

leaders, and business executives. Tom Ridge (Bush's first DHS secretary and now co-chair of VoteSafe) said: "[W]e have the unprecedented situation of a man who took the oath of office to support the Constitution but is directly challenging the result of the election prior to the outcome." Issue One (which seeks to reduce the role of money in politics) was working with VoteSafe, the League of Women Voters, Represent Us, and Protect Democracy. VoteSafe launched a \$1.7 million campaign to increase trust in voting. Facebook sent every voting-age American on its platform information about voting, hoping to register four million more voters. Mark Zuckerberg and Priscilla Chan donated \$300 million to support voting infrastructure and security, adding another \$100 million a few weeks later. Arnold Schwarzenegger (the former Republican governor of California) announced grants to "local and state election officials who want to reopen polling stations they closed because of lack of funding." All this produced predictable pushback: the (conservative) Thomas More Society sued to block grants to the Wisconsin Election Commission; when the case was dismissed, it filed similar lawsuits in Michigan, Minnesota, and Pennsylvania and four other states. (These and all similar challenges were dismissed.) The percentage of the eligible population who voted had fallen from 62.5 in Obama's first election to 58 in 2012 and 59.2 in 2016 but jumped to 66.9 in 2020, perhaps because of these efforts (as well as strong feelings about Trump).

Two days before the election, *The New York Times* maintained that "the group most responsible for making voting harder, if not impossible, for millions of Americans is the Republican Party."<sup>71</sup> "One of the two major political parties is convinced it cannot win on a level playing field—and will not even try." The same day, educators bought a full-page "Democracy Declaration" in the *Times*, asserting that "every freedom depends upon the freedom to vote. Each vote counts; count each vote." But that day, Trump threatened: "We're going to go in the night of, as soon as that election's over, we're going in with our lawyers." The night before the election, he said at a rally in Wisconsin: "It's going to be cheating." By November 3, he had called the election "rigged" nearly 200 times. The day before the election, Rep. McCarthy said presciently that if Trump lost, "of course he's going to want to say the thing was stolen and the whole thing was rigged." He added: "There will come a point where McConnell and I would need to come out and issue a joint statement." (But characteristically hedging his bets, he never joined McConnell's statement that Biden had won.)

On Election Day, Eric H. Holder Jr. (Obama's attorney general) and Michael B. Mukasey (GWB's attorney general) wrote an unusual bipartisan op-ed in *The Washington Post*, declaring that political leaders should not "stoke or condone violence" or conduct "a campaign of litigation that obstructs more than it resolves," making "charges that have nothing to support them other than an accuser's invitation to us to hallucinate evil."<sup>72</sup> The

*Post* wrote that Trump was “closing his campaign for reelection in much the same way he has conducted his disreputable presidency: with lies and contempt for the rule of law.”

### 2.3 Mail Ballots

Because Trump's principal strategy for delegitimizing the election was to attack mail ballots, he quickly started weaponizing the US Postal Service (USPS).<sup>73</sup> In March 2018, he tweeted that “Amazon must pay real costs” of its mailings. (Jeff Bezos, Amazon's founder and largest shareholder, also owned *The Washington Post*, which harshly criticized Trump.) Two weeks later, Trump put treasury secretary Mnuchin in charge of a Postal Reform Task Force with authority over appointments. David C. Williams (a former USPS IG who had resigned as USPS board vice chair in April) said Mnuchin required new board members to “kiss the ring” before being confirmed. S. David Fineman (a former board chair) called Mnuchin's involvement “absolutely unprecedented.” Under Clinton and Bush, there was “certainly no communication regarding the hiring of the Postmaster General.” Mnuchin met privately with board chair Robert Duncan (who sat on the boards of two Republican super PACs supporting Trump), urging him to oust Postmaster General Megan Brennan, who had worked her way up from a letter carrier. Duncan did so and expanded the list of candidates to include Louis DeJoy, who had not been proposed by the two search firms USPS had retained. Despite Williams's request, there had been no serious background check on DeJoy (who had been accused of illegally pressuring employees to contribute to the GOP and then compensating them with bonuses). DeJoy's interviews were a disaster; after the second “went especially badly,” John M. Barger (the board member charged with selection) had to clarify the candidate's words.

DeJoy—the first postmaster in two decades who had never worked in USPS—was a major GOP fundraiser and donor, having given \$1.2 million to the party since 2016 and another \$1.2 million to the 2020 campaign of Trump, who had nominated DeJoy's wife as ambassador to Canada.<sup>74</sup> The couple had \$30–75 million invested in USPS competitors or contractors (including New Breed Logistics, where DeJoy had been CEO). DeJoy immediately removed two top USPS executives overseeing daily operations, reassigned or displaced 23 others, froze hiring, sought voluntary early retirements, and ended overtime and extra trips to deliver mail. Declaring that giving USPS more money would perpetuate “one of the greatest frauds in history,” Trump gloated that “if we don't make a [budget] deal, that means they don't get the money. That means they can't have universal mail-in voting.” Thomas J. Marshall (USPS general counsel and executive vice president) warned 46 states that postal ballots might not arrive in time to be

counted. USPS mothballed 671 high-speed sorting machines (reducing processing capacity by 21.4 million pieces/hour) and began what it claimed was a routine elimination of public collection boxes in California, New York, Pennsylvania, Oregon, and Montana (mostly blue states).

Six Democratic senators urged the board to undo DeJoy's changes and fire him.<sup>75</sup> After nearly half the states filed or planned lawsuits (discussed later), he suspended the service restrictions, ban on overtime hours, and removal of mail sorting machines and collection boxes "to avoid even the appearance of any impact on election mail." But hours later, his director of maintenance operations wrote to subordinates: "Please message out to your respective Maintenance Managers tonight. They are not to reconnect/reinstall machines that have been previously disconnected without approval from HQ Maintenance, no matter what direction they are getting from their plant manager." House Speaker Pelosi said DeJoy

frankly admitted that he had no intention of replacing the sorting machines, blue mailboxes and other key mail infrastructure that had been removed, and that plans for adequate overtime, which is critical for the timely delivery of mail, are not in the works.

DeJoy replied that the mail sorting machines were "not needed," insisting: "I am not engaged in sabotaging the election." Nearly 100 House Democrats called for his dismissal. But Trump told the RNC that Democrats were "using COVID to steal the election" and tweeted:

All the Radical Left Democrats are trying to do with the Post Office hearings is blame the Republicans for the FRAUD that will occur because of the 52 Million Ballots that are being sent to people who have not even requested them. They are setting the table for a BIG MESS!

A robocall (presumably Republican) falsely warned mail voters in Detroit, Pittsburgh, and Philadelphia (cities with large Democratic majorities and many Black voters) that their addresses would go to police departments enforcing open warrants and credit card companies collecting debts. Beginning in the summer and intensifying in October, 10 million robocalls to 280 of the 317 US area codes falsely told mail voters that a "typographical error" required those who "intended on voting for Joe Biden" to select Trump instead.

In the lawsuit filed by 14 states, ED Wash Chief Judge Stanley Bastian (Obama) ordered prompt document production:

I hope at some point we'll be hearing from the Postal Service not a bunch of procedural or jurisdictional arguments, but some assurances to the

American public that the postal service is up to the challenge to deliver ballots to the voters and back to the states so they can be counted.<sup>76</sup>

He found that Trump and DeJoy were “involved in a politically motivated attack on the efficiency of the Postal Service,” which was “likely to irreparably harm the states’ ability to administer the 2020 election.” “It is easy to conclude that the recent Postal Services changes is [sic] an intentional effort on the part of the Administration to disrupt and challenge the legitimacy of upcoming local, state, and federal elections.” He issued a nationwide TRO, directing USPS to reverse any instructions that mail carriers leave mail at postal facilities, stop requiring trucks to depart at set times whether or not mail was ready, allow return trips to distribution centers, treat all election mail as first-class, replace and restore the necessary equipment, and seek court approval for other changes. D NJ Judge Michael A. Shipp (Obama) dismissed a Trump campaign lawsuit seeking to block mail ballots.

USPS workers also resisted DeJoy’s efforts to reduce postal services.<sup>77</sup> After mechanics in New York staged a go-slow on dismantling and removing mail sorting machines, their supervisor abandoned the effort. Michigan letter carriers disregarded a supervisor’s instruction to leave election mail behind, starting routes late to sift through it. Ohio postal clerks, some working without pay, ensured that prescriptions and benefit checks were delivered. Pennsylvania postal workers found excuses to make time to finish their rounds. USPS responded with a memo warning employees not to speak to journalists and be wary of customers asking “a series of questions.”

The USPS board declared itself “thrilled” by DeJoy’s performance.<sup>78</sup> Board member William Zollars insisted DeJoy “has 100 percent board support.” Barger said he “is doing a tremendous job.” But a report by Senate Democrats found that DeJoy’s policies delayed 7 percent of first-class mail, and on-time delivery dropped from 90 to 83 percent—even more in Northern Ohio, Detroit, and Central Pennsylvania (all contested districts). An October report found that on-time delivery of first-class mail in 17 postal districts in 10 battleground states was 2 percent slower than the national average and 7.8 percent slower than it had been in January. The on-time delivery rate was 72.5 percent in Detroit (dominated by Democrats) compared with 84.3 percent for the entire state, and it was 74.7 percent in a North Carolina postal district with many Black voters compared with 85.1 percent statewide. (In close races, Biden won Michigan; Trump won North Carolina.)

USPS sent 161 million postcards encouraging prospective mail voters to request ballots and return them early.<sup>79</sup> Colorado’s Democratic secretary of state Griswold sued, objecting that, because the state automatically sent all voters mail ballots, the postcards would “disenfranchise Colorado voters,

including its uniformed military and overseas voters; mislead them about Colorado's election procedures; infringe Colorado's constitutional right to conduct elections; and interfere with the Secretary of State's ability to oversee Colorado elections." D Colo Judge William Martinez (Obama) issued a TRO because the postcard "provides false or misleading information about the manner of Colorado's elections," could "sow confusion amongst voters by delivering a contradictory message," and "likely interferes with Colorado citizens' fundamental right to vote." USPS said that because 200,000 postcards "had already been partially processed for delivery," it would be "extraordinarily difficult" to comply with the injunction. Five other states considered similar lawsuits. Washington's Democratic secretary of state Kim Wyman tweeted:

You may soon receive a mailer from USPS encouraging you to request your mail-in ballot. WA voters DO NOT need to request an absentee ballot. Ballots are automatically mailed to all active registered voters at least 18 days prior to election day.

A top Maryland election official also tried to block the mailing "because it's only going to cause mass confusion." DeJoy apologized to the states for failing to "give you a heads-up to see the mailer in advance."

DeJoy said defensively that he had "never spoken to the president about the postal service, other than to congratulate me when I accepted the position."<sup>80</sup> He promised to prioritize mail ballots and "deploy processes and procedures that advance any election mail, in some cases ahead of first-class mail." But Trump warned:

[Y]ou'll have double voting—where they send in a ballot, then they'll go and vote. That's going to be a big problem. . . . [W]hat are the chances that some states so efficient [sic] run—"oh, gee, you can't vote, we just got your ballot last night at seven o'clock." I mean think of how ridiculous it is, right?

Less than two weeks later, however, he seemingly endorsed double voting, saying in North Carolina: "Let them send [the mail ballot] in and let them go vote." "And if the system is as good as they say it is, then obviously they won't be able to vote." Later that day, he repeated: "[S]end it in early, and then go and vote" (parroting the apocryphal mantra "vote early and often," sometimes attributed to mobster Al Capone). Trump advised: "These people are playing dirty politics. So if you have an absentee ballot . . . you send it in, but I'd check it, follow it and go vote." As always, Barr loyally backed his boss, asserting without any evidence that

mail voting “is very open to fraud and coercion, is reckless and dangerous, and people are playing with fire.”

Elections that have been held with mail have found substantial fraud and coercion. For example, we indicted someone in Texas, 1,700 ballots he collected . . . from people who could vote, he made them out and voted for the person he wanted to.

Like Trump's own lies, Barr's statement perpetrated multiple falsehoods. The DoJ had not been involved because this was a state prosecution concerning a city council election. The local assistant DA said: “[W]e didn't find any evidence of widespread voter fraud, and instead the ballots that were returned were consistent with the voter's choice.” Just one person was charged with altering a single ballot. The DoJ tried to cover for Barr, explaining that “prior to his interview, the Attorney General was provided a memo prepared within the Department that contained an inaccurate summary about the case.” (That hardly restored confidence in the DoJ.)

After the North Carolina Board of Elections warned that it was a class 1 felony to intentionally vote twice and illegal to urge another to do so, Trump issued a “clarification”:

On Election Day, or Early Voting, go to your Polling Place to see whether or not your Mail In Vote has been Tabulated (Counted). If it has you will not be able to vote & the Mail In System worked properly. If it has not been Counted, VOTE (which is a citizen's right to do).

Jena Griswold (Colorado's Democratic secretary of state) expressed dismay: “I never imagined . . . I would have to inform both the president and the U.S. Attorney General that it is illegal to vote twice.” The office of Ohio's Republican secretary of state said: “Ohio voters are encouraged to choose one way to vote, as any additional effort to cast a ballot will not be counted and unnecessarily burdens election officials.”

Benjamin L. Ginsberg, who had practiced election law for Republicans for 38 years and co-chaired the bipartisan 2013 Presidential Commission on Election Administration, wrote in a *Washington Post* op-ed:<sup>81</sup>

Legions of Republican lawyers have searched in vain over four decades for fraudulent double voting. At long last, they have a blatant example of a major politician urging his supporters to illegally vote twice. The only hitch is that the candidate is President Trump. . . . Calling elections “fraudulent” and results “rigged” with almost nonexistent evidence is antithetical to being the “rule of law” party.

Susan M. Gordon (an intelligence officer for 31 years and Trump's principal deputy DNI 2017–19) said:

When intelligence assessments are described as biased, when federal institutions are decried as inept or corrupt, when vague fears of widespread tampering with our physical election infrastructure are advanced, and when disagreement over policy and approach turns to accusations of illegitimacy, our enemies' destructive goals are advanced as we busily attack ourselves.

Miles Taylor (who had resigned as DHS secretary Nielsen's chief of staff) said "the president himself is undermining election security through a combination of willful ignorance and outright attacks on the system." But Trump just kept repeating his lies, tweeting:

The Unsolicited Mail In Ballot Scam is a major threat to our Democracy, & the Democrats know it. Almost all recent elections using this system, even though much smaller & with far fewer Ballots to count, have ended up being a disaster. Large numbers of missing Ballots & Fraud!

A week before the deadline to send absentee ballots to voters, the Wisconsin Supreme Court (voting 4–3 along party lines) blocked the mailing while it decided whether to add Green Party candidate Howie Hawkins.<sup>82</sup> The Court demanded the names and addresses of everyone who had received a ballot and the names of officials who had requested they be printed. The Wisconsin Election Commission (5–1) had already found that Kanye West missed the deadline for submitting his ballot petition, and a state judge upheld the ruling. County clerks were unable to complete producing ballots before the September 16 deadline and might have to reprint millions; 73,000 had already been mailed. The Court ultimately ruled (4–3, one Republican now joining the three Democrats) that Hawkins was ineligible, clearing the way for ballots to be printed and mailed.

Although WD Texas Judge Samuel Biery Jr. (Clinton) had found in May that Texas's limitation of mail voting to those over 64 violated the 26th Amendment (which extended votes to those over 18 and prohibited age discrimination), the Fifth Circuit reversed (King (Carter) and Southwick (GWB), with Stewart (Clinton) dissenting).<sup>83</sup> A state judge in Houston allowed the Harris County Clerk to send absentee ballots to all 2.4 million registered voters; an appeals court affirmed, but the Texas Supreme Court (all Republicans) reversed. The Texas GOP sued to prevent the Harris County Clerk from allowing votes in person from a car or at the curb. SD Texas Judge Andrew N. Hanen (GWB) found the plaintiffs lacked standing but observed in dicta

that he would have issued an injunction: “[I]f I were voting tomorrow . . . I would not vote in a drive-through just out of my concern as to whether that’s legal or not.” The Texas Supreme Court refused to enjoin such voting, and the US Supreme Court denied an emergency application, permitting 127,000 people to vote at the ten such centers (although only one remained open on Election Day).

After the Republican-controlled North Carolina legislature overrode the Democratic governor’s veto of a law requiring a photo ID for voting, MD NC Judge Loretta C. Biggs (Obama) enjoined the law because of its disproportionate impact on African American voters.<sup>84</sup> (A state court also enjoined the law, which was suspended during the election.) After the election, the 4th Circuit reversed (Harris (Obama), with Richardson and Quattlebaum (both Trump)). A Michigan state court overturned a ban on paying people to transport voters to polling places and extended the period during which late mail ballots could be counted. The Pennsylvania Supreme Court ruled that ballots arriving by 5:00 p.m. on Election Day could be counted if postmarked before Election Day, and it rejected an effort to bar absentee voters from using drop boxes.

## 2.4 Judicial Oversight

The 2020 presidential election prompted an unprecedented number of judicial challenges (some discussed earlier). As of December 23, 2020, UCLA law professor Richard Hasen’s Election Law Blog listed 335 cases in 45 states, DC, and Puerto Rico.<sup>85</sup> I analyzed the pre-election cases in two ways. First, I selected 123 federal judges’ votes (see Table 2.1).

I chose votes as my unit of analysis rather than judgments (which represent a majority vote of three-judge Courts of Appeal, en banc circuits, and the nine Supreme Court Justices) because I am interested in whether the judge’s political preference (represented by the party of the appointing president, a highly plausible if imperfect measure) is correlated with the outcome (which I coded as for or against voters). I excluded state court cases (more than twice

**TABLE 2.1** Federal Election Cases before November 3, 2020

<i>Appointing President</i>	<i>For Voters (%)</i>	<i>Against Voters (%)</i>
Obama	40 (77%)	12 (23%)
Clinton	18 (95%)	1 (5%)
Carter	0 (0%)	1 (100%)
All Democrats	58 (81%)	14 (19%)
Trump	11 (48%)	12 (52%)
GWB	8 (40%)	12 (60%)
GHWB	2 (67%)	1 (33%)
Reagan	1 (20%)	4 (80%)
All Republicans	22 (43%)	29 (57%)

**TABLE 2.2** Analysis by Party of Appointing President

<i>Appointing President</i>	<i>For Voters</i>	<i>Against Voters</i>
Democrat	58	14
Republican	22	29

*Note:* Chi-square is 18.383  $p = 0.000018$ .

as numerous as federal) because there were no readily available data about judges' political preferences. Since I focused on the disenfranchisement of voters, I excluded cases seeking to qualify candidates (frequently from third parties) or ballot initiatives.

I found an extraordinarily strong correlation (see Table 2.2). I am confident that tests of statistical significance would survive any disagreements about my selection of cases and coding of the judge's political preference and case outcome. It is interesting that although 81 percent of Democratic appointees sided with voters, so did 43 percent of Republican appointees and a surprising 48 percent of Trump appointees. Differences by political preference were far greater in judges' decisions about the pandemic (97 percent of Democrats supported science, compared with 33 percent of Republicans and 21 percent of Trump appointees; see Abel, 2024b) and immigrants (95 percent of Democrats sided with immigrants, compared with 34 percent of Republicans and 25 percent of Trump appointees; see Abel, 2024a). There are several possible reasons for this. Many election cases turned not on substance but procedure: standing, timeliness, proximity to the election, jurisdiction over the defendant, state rather than federal questions, etc. And one category of complaint—about monetary donations to under-funded election offices—was so obviously groundless that every judge dismissed it.

What judges said is even more revealing than what they did, as illustrated by the following examples.<sup>86</sup> ND Alabama Judge Abdul K. Kallon (Obama) began his opinion with two quotes: "Voting is the beating heart of democracy. It is a fundamental political right, because it is preservative of all rights" and "[E]ven one disenfranchised voter . . . is too many." In a lawsuit brought by six states, SDNY Judge Victor Marrero (Clinton) ordered Postmaster General DeJoy to restore mail service: "The right to vote is too vital a value in our democracy to be left in a state of suspense in the minds of voters weeks before a presidential election, raising doubts as to whether their votes will ultimately be counted." In another lawsuit—about absentee ballots—Judge Marrero wrote:

Nothing is more essential to a true democracy than the right to vote. Where that right is constitutionally guaranteed and exercised by citizens through free and fair elections protected by government authority, democratic rule thrives. Conversely, impairing the franchise, or imposing undue burdens

on the ability of voters to cast ballots for their elected leaders, necessarily threatens democracy and erodes the underpinnings of a republican form of government. . . .

One of the evident ways by which our society fosters and guarantees voting rights is by absentee balloting. . . . Protecting the franchise of such citizens, and enforcing effective rules to do so, should be no less an essential obligation of the government than is securing voting in person.

DDC Judge Emmet Sullivan (Clinton) decided several cases involving complaints against the USPS, declaring in one: “[I]t is clearly in the public interest to mitigate the spread of Covid-19, to ensure safe alternatives to in-person voting, and to require that USPS comply with the law.”<sup>87</sup> He quoted precedents: “[I]t is beyond cavil that ‘voting is of the most fundamental significance under our constitutional structure.’” “Obviously included within the right to choose, secured by the constitution, is the right of qualified voters within a state to cast their ballots and have them counted.” During a hearing the day after the election, Sullivan said: “It just leaves a bad taste in everyone’s mouth for the clock to run out—game’s over—and then to find out there was no compliance with a very important court order.” He contrasted the chaos of the election with the clarity of federal income tax deadlines: “postmarks matter, postmarks don’t matter . . . delivery matters, delivery after a date doesn’t matter. Why can’t there be one set of rules?”

Commenting skeptically on DeJoy’s actions, ED Pennsylvania Judge Gerald Austin McHugh (Obama) found it

curious, at a minimum, that a major initiative would be implemented, in the middle of a public health crisis, four months before a national election where mail-in voting is expected to increase dramatically. . . . [I]t might even be considered reckless.<sup>88</sup>

ED Washington Judge Stanley Bastian (Obama) was more explicit:

Although not necessarily apparent on the surface, at the heart of DeJoy’s and the Postal Service’s actions is voter disenfranchisement. This is evident in President Trump’s highly partisan words and tweets, the actual impact of the changes on primary elections that resulted in uncounted ballots, and recent attempts and lawsuits by the Republican National Committee and President Trump’s campaign to stop the States’ efforts to bypass the Postal Service by utilizing ballot drop boxes, as well as the timing of the changes. It is easy to conclude that the recent Postal Services’ changes is [sic] an intentional effort on the part of the current Administration to disrupt and challenge the legitimacy of upcoming local, state, and federal elections, especially given that 72% of the decommissioned high speed mail sorting

machines that were decommissioned [sic] were located in counties where Hillary Clinton receive [sic] the most votes in 2016. Moreover, the fact that fourteen States, members of the United States House of Representatives, members of the United States Senate, and various local and tribal governments have asked this court to intervene to prevent the Postal Service and others from disenfranchising citizens . . . suggest [sic] that the Postal Service's actions are not the result of any legitimate business concerns.

By contrast, Republican appointees dismissed challenges as mere disagreements about policy or politics, not law. Refusing to require voting materials in Spanish, ND Georgia Judge William M. Ray II (Trump) wrote that though this might

well be the best public policy . . . it is not the law. And it is not the job of this Court to write the law or to decide this case in favor of the party who articulates the most desirable outcome.<sup>89</sup>

His colleague ND Georgia Judge Timothy C. Batten Sr. (GWB) wrote similarly: “whether the executive branch has done enough” to adapt the election to the pandemic “is a classic political question involving policy choices. . . . Even if the court could address the question, answering it with any degree of certainty would be impossible, as there are no judicially discoverable and manageable standards for resolving it.”

With the decisive loss of the election, Trump turned to other, more extreme tactics to reverse that result.

## Notes

### Abbreviations

AP	Associated Press
CNN	Cable News Network
G	<i>The Guardian</i>
NPR	National Public Radio
NYT	<i>The New York Times</i>
PNAS	Proceedings of the National Academy of Sciences
WP	<i>The Washington Post</i>

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# 3

## ELECTION DAY TO THE ELECTORAL COLLEGE VOTE

Trump’s efforts to overturn the election result extended over two months. I have organized that momentous and chaotic period into roughly chronological sections. This chapter deals with the period between Election Day and the Electoral College vote on December 14: 3.1, “Denial”; 3.2, “Pressuring State Officials” (with details on Georgia, Michigan, Arizona, Pennsylvania, and Wisconsin); 3.3, “Litigating the Election”; and 3.4, “Continuing the Contests.” Chapter 4 extends that story through the January 6 insurrection.

### 3.1 Denial

Throughout 2020, the polls showed Biden ahead by a gap that had increased to 8 percent on Election Eve. Trump prepared supporters for defeat by proclaiming “FRAUD like you’ve never seen” on his website, which had a pre-checked box making any campaign contribution continuous “to ensure we have the resources to protect the results and keep fighting even after Election Day.”<sup>1</sup> Two days before the election, he said in Charlotte: “We’re going to go in the night of, as soon as that election is over, we’re going in with our lawyers.” He attacked the Supreme Court for “a terrible decision . . . a very dangerous decision” that Pennsylvania and North Carolina could keep counting ballots after Election Day and warned that Democratic governors in Pennsylvania and Nevada would interfere with the count. He declared that “[t]he Election should end on November 3rd,” and hoped courts would not let ballots be counted afterward. RNC chief counsel Justin Riemer concurred: “[T]hose ballots shouldn’t be counted.”

Steve Bannon had anticipated how Trump would evade the outcome, perhaps because Bannon had written script. He told an associate on

October 31: “What Trump’s gonna do is just declare victory. Right? He’s gonna declare victory. But that doesn’t mean he’s a winner. He’s just gonna *say* he’s a winner.”<sup>2</sup> Bannon later elaborated: “As it sits here today, at 10 or 11 o’clock Trump’s gonna walk in the Oval [Office], tweet out, ‘I’m the winner. Game over. Suck on that.’” Because in-person ballots would be counted first, Republicans would “have a natural advantage.”

And Trump’s going to take advantage of it. That’s our strategy. He’s gonna declare himself a winner. . . . So when you wake up Wednesday morning, it’s going to be a firestorm. You’re going to have antifa, crazy. The media, crazy. The courts are crazy. And Trump’s gonna be sitting there mocking, tweeting shit out: “You lose. I’m the winner. I’m the king.” . . . [Any chance of a] peaceful resolution of this is probably gone. Because the other three alternatives [are], either Biden’s up slightly and Trump says he stole it, right, and he’s not leaving. Or it’s undefined and we can’t figure out who’s leading, and Trump’s saying he’s stealing it, and he’s not leaving. Or, Trump’s leading, which is the one where they’re gonna burn the city down. . . . This is a revolution. This election just triggers more fighting. . . . If Trump is losing by 10 or 11 o’clock at night, it’s going to be even crazier. No, because he’s gonna sit right there and say, “they stole it. I’m directing the attorney general to shut down all ballot places in all 50 states.” He’s not going out easy. If Biden is winning, Trump is going to do some crazy shit.

Roger Stone said the same thing to an associate on November 1:

I really do suspect [the election] will be up in the air. When that happens, the key thing to do is to claim victory. Possession is nine-tenths of the law. No, we won. Fuck you, Sorry. Over. We won. You’re wrong. Fuck you.

Judicial Watch president Tom Fitton sent a Trump assistant a draft victory statement in which the president would declare: “We had an election today—and I won.” Concerned about this, Pence counsel Greg Jacob sent Pence chief of staff Marc Short an email on Election Day: “[I]t is essential that the Vice President not be perceived by the public as having decided questions concerning disputed electoral votes prior to the full development of all relevant facts.”

Trump moved his “victory party” from Trump International Hotel (where DC pandemic regulations limited gatherings to 50) to the White House (violating a long-standing norm against using it for political purposes).<sup>3</sup> When Fox called Arizona for Biden at 11:20 p.m., Trump exploded: “What the fuck is Fox doing?” He had Mark Meadows, Jason Miller, and Kayleigh McEnany phone the network. Meadows told Fox Washington Bureau chief

Bill Sammon, “There is no information that you could have at this time that would make this call possible.” Sammon replied, “Our models say that President Trump is going to lose Arizona.” Jared Kushner called Rupert Murdoch, Kellyanne Conway talked to Bret Baier and Martha MacCallum on the air, and Hope Hicks contacted Lachlan Murdoch, Fox’s senior vice president. Rudy Giuliani echoed Trump: “They’re stealing it from us.” “Where do all the votes come from? We need to go say that we won.” They should declare victory in Michigan and Pennsylvania. Senior campaign adviser Jason Miller (who later observed that Giuliani was “definitely intoxicated”) advised Trump, “[I]t’s far too early to be making any proclamation like that.” But Trump derided Miller, Bill Stepien, and others as weak and wrong. Karl Rove urged Trump to “hang in there. There’s a lot of ballots to be counted and it’s not going to be done for some time.” At 12:45 a.m., Trump tweeted: “I will be making a big statement tonight. A big WIN!” Four minutes later, he tweeted: “We are up BIG, but they are trying to STEAL the Election. We will never let them do it. Votes cannot be cast after the Poles [sic] are closed!” Twitter hid this with a warning; Facebook left it up longer but added: “[F]inal results may be different from the initial vote counts, as ballot counting will continue for days or weeks.” Soon after 2:00 a.m., Trump told guests: “We were winning everything and all of a sudden it was just called off. Literally, we were just all set to get outside and just celebrate something that was so beautiful, so good.”

At 2:30 a.m., he held a news conference, which his campaign tweeted live:

Millions and millions of people voted for us tonight, and, uh, a very sad group of people is trying to disenfranchise that group of people, and we won’t stand for it. . . . It’s also clear that we have won Georgia. . . . They’re never gonna catch us. . . . Most importantly, we’re winning Pennsylvania by a tremendous amount of votes. . . . [W]e’re up 690,000. . . . [I]t’s gonna be almost impossible to catch. . . . We’re winning Michigan. . . . We’re winning Wisconsin. . . . We won states, and all of a sudden, I said, “What happened to the election? It’s off.” . . . Because you know what happened? They knew they couldn’t win, so they said, “let’s go to court.” . . . I’ve been saying this from the day I heard they were going to send out tens of millions of ballots. . . . Because either they were gonna win, or if they didn’t win, they’ll take us to court. . . . 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. So our goal now is to ensure the integrity for the good of this nation. This is a very big moment. This is a major fraud in our nation. We want the law to be used in a proper manner. So we’ll be going to the U.S. Supreme Court. We want all voting to stop. We don’t want them to find any ballots at four o’clock in the morning and add them to the list, okay?

It's a very sad moment. To me, this is a very sad moment, and we will win this. And as far as I'm concerned, we already have won it.

Between midnight on Election Day and the following noon, the Trump campaign sent 9 million text messages: "I need you to defend America! We can't let Democrats undermine our election." "FIGHT BACK!"<sup>4</sup> #StopTheSteal had more than 360,000 members; Facebook banned it but continued to promote at least 60 of its events. John McLaughlin, a Trump pollster, wrote the campaign: "We need to prove fraud." "We should treat the leads as victory in AK, ME2 [a Maine elector], NC and GA so our electoral count is 248 and higher than Biden's." James O'Keefe, a conservative activist, produced a video showing a pro-Trump poll watcher mistakenly excluded in Philadelphia; it received 187 million likes, retweets, and views. Giuliani said more than 125,000 Philadelphia ballots should be disqualified because poll watchers did not see them counted. Bannon asked provocatively whether it was "Game-on for the Coup" and declared "The Fight is Now." Twitter removed anti-Biden conspiracy theories attributed to Bannon's friend Guo Wengui, an expatriate Chinese billionaire. It also removed an Instagram screenshot of someone falsely claiming to be an Erie, Pennsylvania, poll worker who had discarded hundreds of Trump ballots—but only after this was shared tens of thousands of times. It took 12 hours to remove Stand up for Michigan, which urged followers to swarm the Detroit tabulation center. Richard Hopkins, an Erie, Pennsylvania, letter carrier, claimed his postmaster, Robert Weisenbach, had instructed workers to backdate ballots. Sen. Graham cited this in a letter to the DoJ, prompting Barr to authorize an investigation. But the House Oversight Committee said Hopkins had submitted an affidavit to the USPS OIG recanting his claims, "eventually stating that he had not heard a conversation about ballots at all—but rather he saw the postmaster and supervisor having a discussion and assumed it was about fraudulent ballot backdating." Hopkins then produced a YouTube video declaring, "I did not recant my statements." But Weisenbach called the allegations "100% false" and said Hopkins "was recently disciplined multiple times" and suspended from his job. Hopkins had been recruited by Project Veritas, whose founder, James O'Keefe, called him "an American hero" and claimed to have recordings of agents pressuring Hopkins to sign a document he did not understand. (Project Veritas fired O'Keefe in February 2023, following allegations that he had abused staff and misused funds.)<sup>5</sup> Hopkins launched a GoFundMe page, which had raised more than \$136,000 by November 10 but was removed after his recantation was disclosed.

At 10:04 a.m. on November 4, Trump began tweeting again that he had won Pennsylvania and pronounced, "[W]e hereby claim the State of Michigan."<sup>6</sup>

Last night I was leading, often solidly, in many key States, in almost all instances Democrat run & controled [sic]. Then one by one, they started

to magically disappear as surprise ballot dumps were counted. VERY STRANGE, and the “pollsters” got it completely & historically wrong!

He repeated this throughout the day. At 10:17 a.m.: “How come every time they count Mail-In ballot dumps they are so devastating in their percentage and power of destruction?” At 10:35 a.m.: “WHAT IS THIS ALL ABOUT.” At 11:55 a.m.: “They are finding Biden votes all over the place—in Pennsylvania, Wisconsin, and Michigan. So bad for our Country!” At 12:01 p.m.: “They are working hard to make up [sic] 500,000 vote advantage in Pennsylvania disappear—ASAP. Likewise, Michigan and others.” At 1:43 p.m.: “Wow! It looks like Michigan has now found the ballots necessary to keep a wonderful young man, John James, out of the U.S. Senate. What a terrible thing is happening!” Then at 4:46 p.m.:

We have claimed, for Electoral Vote purposes the Commonwealth of Pennsylvania (which won’t allow legal observers) the State of Georgia, and the State of North Carolina, each one of which has a BIG Trump lead. Additionally, we hereby claim the State of Michigan if, in fact . . . there was a large number of secretly dumped ballots as has been widely reported!

At 6:24 p.m.: “Our lawyers have asked for ‘meaningful access,’ but what good does that do? The damage has already been done to the integrity of our system, and to the Presidential Election itself. This is what should be discussed!” And at 7:01 p.m.: “Detroit Absentee Ballot Counting Chaos, Blocked Windows and Observers.”

He resumed the next day.<sup>7</sup> At 10:09 a.m.: “ANY VOTE THAT CAME IN AFTER ELECTION DAY WILL NOT BE COUNTED.” At 10:37 a.m.: “Fmr [former] NV AG Laxalt: ‘No Question’ Trump Would Have Won Nevada ‘Convincingly’ Without Mail-in Voting.” At 11:22 a.m.: “[A]ll of the recent Biden claimed States will be legally challenged by us for Voter Fraud and State Election Fraud. Plenty of proof—just check out the media. WE WILL WIN! America First!” At 12:21 p.m.: “STOP THE FRAUD!” Reviving a false claim he had made before the election and would later become his last resort, he tweeted: “REMINDER TO THE REPUBLICAN STATE LEGISLATURES, YOU HAVE THE FINAL SAY OVER THE CHOOSING OF ELECTORS, NOT ANY BOARD OF ELECTIONS, SECRETARY OF STATE, GOVERNOR, OR EVEN COURT. YOU HAVE THE FINAL SAY.” He posted 550 tweets in the three weeks between Election Day and November 23, about three-fourths devoted to the election.

On November 4, energy secretary Rick Perry seconded Trump’s ultimate strategy, texting Meadows:

HERE’S an AGRESSIVE [sic] STRATEGY: Why can t [sic] the states of GA, NC PENN and other R controlled state houses declare this is BS

(where conflicts and election not called that night) and just send their own electors to vote and have it go to the SCOTUS.<sup>8</sup>

The next day, Don Jr. wrote Meadows: “It’s very simple. We have multiple paths. We control them all.” “We either have a vote WE control and We win OR it gets kicked to Congress 6 January 2021.” Just before that he texted Meadows: “This is what we need to do please read it and please get it to everyone that needs to see it because I’m not sure we’re doing it.” He was referring to lawsuits, recounts, and having Republican-dominated legislatures pick “Trump electors,” failing which Republicans in Congress could choose Trump on January 6. “We have operational control. Total leverage. Moral High Ground. POTUS must start 2nd term now.” “Republicans control Pennsylvania, Wisconsin, Michigan, North Carolina etc. we get Trump electors.” “Republicans control 28 states Democrats 22 states. Once again Trump wins.” “Fire Wray; Fire Fauci.” “Make Rick Grenell interim FBI director.” “[Have Barr] select Special prosecutor on HardDrivefromHell Biden crime family.”

That afternoon, Trump met with his advisers.<sup>9</sup> Kushner said there was “still a statistical chance” but warned, “[I]t’s an uphill fight.” When Trump insisted “we’re winning,” Jared replied, “[O]ur margins are not large enough.” Trump resisted: “Tell me how that goes? Because they’re stealing it. . . . They’ve got to stop counting right now!” When campaign data analyst Matt Oczkowski said “[W]e’re just not likely at this point to pick up any of these contested states,” Trump just repeated his mantra: “Get them to stop counting these illegal votes.”

Trump ranted at length in a November 5 press conference, making numerous vague, unsubstantiated allegations:<sup>10</sup>

If you count the legal votes, I easily win. If you count the illegal votes, they can try to steal the election from us. If you count the votes that came in late, we’re looking to them very strongly, but a lot of votes came in late. I’ve already decisively won many critical states. . . . We won these and many other victories despite historic election interference from big media, big money, and big tech. As everybody saw, we won by historic numbers, and the pollsters got it knowingly wrong. . . . They thought there was going to be a big blue wave. That was false. That was done for suppression reasons. . . . I won the largest share of non-White voters of any Republican in 60 years, including historic numbers of Latino, African American, Asian American and Native American voters, the largest ever in our history. . . . [M]edia polling was election interference in the truest sense of that word by powerful special interests. These really phony polls, I have to call them phony polls. Fake polls were designed to keep our voters at home, create the illusion of momentum for Mr. Biden

and diminish Republicans' ability to raise funds. They were what's called suppression polls. . . . There are now only a few states yet to be decided in the presidential race. The voting apparatus of those states are [sic] run in all cases by Democrats. We were winning in all key locations by a lot, actually, and then our numbers started miraculously getting whittled away in secret and they wouldn't allow legally permissible observers. We went to court in a couple of instances and we were able to get the observers put in. And when the observers got there, they wanted them 60, 70 feet away, 80 feet, 100 feet away or outside the building to observe people inside the building. And we won a case, a big case, and we have others happening. . . . There's a tremendous amount of litigation generally because of how unfair this process was, and I predicted that. I've been talking about mail-in voting for a long time. It's really destroyed our system. It's a corrupt system and it makes people corrupt even if they aren't by nature, but they become corrupt. It's too easy. They want to find out how many votes they need and then they seem to be able to find them. They wait and wait, and then they find them, and you see that on Election Night . . . they're finding ballots all of a sudden. "Oh, we have some mail-in ballots." It's amazing how those mail-in ballots are so one-sided too. . . . We were up by nearly 700,000 votes in Pennsylvania. I won Pennsylvania by a lot and that gets whittled down to—I think they said now we're up by 90,000 votes—and they'll keep coming and coming and coming. They find them all over and they don't want us to have any observers. . . . We won a case that we want people to watch and we want to observe and they're actually appealing, which is sort of interesting. . . . Likewise in Georgia, I won by a lot, a lot, with a lead of over getting close to 300,000 votes on Election Night in Georgia. And by the way, got whittled down . . . a pipe burst in a far away location . . . and they stopped counting for four hours. And a lot of things happened. The election apparatus in Georgia is run by Democrats. We also had margins of 300,000 in Michigan . . . and won the state and in Wisconsin, we did likewise fantastically well. And that got whittled down in every case. They got whittled down. Today, we're on track to win Arizona. We only need to carry, I guess, 55 percent of the remaining vote, 55 percent margins. . . . Our goal is to defend the integrity of the election. We'll not allow the corruption to steal such an important election, or any election for that matter. And we can't allow silence, anybody to silence our voters and manufacture results. . . . People know what's happening and they see what's happening and just before their eyes, and there are many instances which will be reported very shortly. There's tremendous litigation going on, and this is a case where they're trying to steal an election, they're trying to rig an election, and we can't let that happen. Detroit and Philadelphia, known as two of the most corrupt political places in

our country easily, cannot be responsible for engineering the outcome of a presidential race, a very important presidential race. In Pennsylvania, Democrats have gone to the State Supreme Court to try and ban our election observers. . . . They don't want anybody watching them as they count the ballots, and I can't imagine why. There's absolutely no legitimate reason. . . . [T]hey're trying obviously to commit fraud. There's no question about that. In Philadelphia, observers have been kept far away, very far away. So far that people are using binoculars to try and see. . . . They put a paper on all of the windows so you can't see in, and the people that are banned are very unhappy and become somewhat violent. . . . Democrat officials never believe they could win this election. Honestly, I really believe that. That's why they did the mail-in ballots, where there's tremendous corruption and fraud going on. That's why they mailed out tens of millions of unsolicited ballots without any verification measures whatsoever. . . . This was by design. . . . People are walking in there, they have no idea. . . . They're writing down things, the workers, and doing a lot of bad things. And we have a lot of information coming and litigation that you'll see that will shake even you people up, and you've seen it all. The officials overseeing the counting in Pennsylvania and other key states are all part of a corrupt Democrat machine. . . . I went to school there and I know a lot about it. . . . It has gotten worse. There have been a number of disturbing irregularities across the nation. Our campaign has been denied access to observe any counting in Detroit. . . . Poll workers in Michigan were duplicating ballots. But when our observers attempted to challenge the activity, those poll workers jumped in front of the volunteers to block their views . . . and it became a little bit dangerous. One major hub for counting ballots in Detroit covered up the windows again with large pieces of cardboard. . . . In Detroit, there were hours of unexplained delay in delivering many of the votes for counting. The final batch did not arrive until 4:00 in the morning . . . and nobody knew where they came from. . . . In multiple swing states, counting was halted for hours and hours on Election Night. With results withheld from major Democrat run locations only to appear later, and they certainly appeared and they all had the name Biden on them . . . which is a little strange. . . . I want every legal vote counted. We want openness and transparency, no secret count rooms, no mystery ballots, no illegal votes being cast after Election Day. . . . We think there's going to be a lot of litigation because we have so much evidence . . . and it's going to end up perhaps at the highest court in the land . . . because we can't have an election stolen like this. . . . We're hearing stories that are horror stories, absolute horror stories. . . . [U]ltimately I have a feeling judges are going to have to rule. But there's been a lot of shenanigans and we can't stand for that in our country.

That day, he tweeted: “STOP THE COUNT!” Then an hour later: “ANY VOTE THAT CAME IN AFTER ELECTION DAY WILL NOT BE COUNTED!” And an hour after that: “All of the recent Biden claimed States will be legally challenged by us for Voter Fraud and State Election Fraud. Plenty of proof—just check out the Media. WE WILL WIN!”

*USA Today* removed the live stream of the press conference from its website because “our job is to spread truth—not unfounded conspiracies.” ABC, CBS, and NBC interrupted it; MSNBC did not carry it. Even Fox News was skeptical: White House correspondent John Roberts said, “[W]e haven’t seen any evidence [of fraud]”; anchor Bret Baier agreed; Chris Wallace called for evidence; Neil Cavuto said those who doubted the election’s integrity “would have to prove that illegality”; and politics editor Chris Stirewalt said, “[L]awsuits, shmawsuits—we haven’t seen any evidence yet that there’s anything wrong.” Nevertheless, the network continued to back Trump. Laura Ingraham had said on November 4 it was a big mistake

for the Democrats to have a kind of a “burn-it-all-down” approach to destroy the integrity of our election process with this mail-in, day-of-registration efforts [sic], counting after the election’s over—dumping batches of votes a day, two days, maybe even three days after the election.

Newt Gingrich said on her show, “I think as they watch Joe Biden’s Democratic Party steal the election in Philadelphia, steal the election in Atlanta, steal the election in Milwaukee, I think the more information that comes out, the greater the rage is going to be.” Business anchor Maria Bartiromo asked if the administration “has the policing in place to make sure that America will feel that we have gotten a safe and fair election.” Tucker Carlson declared that “the outcome of our presidential election was seized from the hands of voters” and delivered to “clearly corrupted city bureaucrats.” Pam Bondi maintained, “[W]e know that ballots have been dumped.” Sean Hannity asked, “[D]o you trust what happened in this election? Do you believe these election results are accurate? Do you believe this was a free and fair election? I have a lot of questions.” He said on November 5, “[E]very American should be angry, outraged and worried and concerned about what happened in the election and the lead-up to the election.” On the same program, Bill O’Reilly suggested sending the FBI to stop the count. Asserting that “Philadelphia’s elections are crooked as a snake,” Sen. Graham declared he was open to the Pennsylvania legislature choosing its own electors. Sen. Cruz agreed the Pennsylvania legislature should “invalidate” the results and conduct a “do-over” election, offering what became a Republican mantra: “[The outcome that I want to see, is to count every vote that was legally cast and for the president to win.” Sen. McConnell echoed this: “[E]very legal vote should be counted. And illegally-submitted ballots must not.” Alabama

senator-elect Tuberville replayed his glory years as football coach: “[T]he election results are out of control. It’s like the whistle has blown, the game is over and the players have gone home, but the referees are suddenly adding touchdowns to the other team’s side of the scoreboard.” Florida governor DeSantis said that if Trump had been denied a “fair” count, state legislatures should consider “remedies,” including directing electors to vote for Trump. All this propaganda had the desired effect on Trump supporters: just before the election, 62 percent expected it to be conducted fairly and accurately; a week after it, just 29 percent believed this had happened, and only 35 percent of Republicans were confident their votes had been counted, compared with 82 percent of Democrats. (The following month, 78 percent of Republicans said Biden was not the legitimate president.)

Some Republicans refused to join the chorus.<sup>11</sup> Chris Christie said “we heard nothing today about evidence,” and “all these votes have to be counted that are in now.” Tweeting that “the votes will be counted and you will either win or lose,” Rep. Kinzinger told Trump to “STOP spreading debunked misinformation.” Rep. Riggleman urged Trump to “respect the democratic process that makes America great.” Sen. Toomey observed that Trump’s “allegations of large-scale fraud and theft of the election are just not substantiated.” Sen. Romney called Trump “wrong to say that the election was rigged, corrupt or stolen.” Sen. Rubio characteristically hedged that “taking days to count legally cast votes is NOT fraud,” but “court challenges to votes cast after the legal voting deadline is [sic] NOT suppression.” Twenty Republican former US Attorneys criticized “President Trump’s premature, baseless, and reckless comments about the vote in Pennsylvania and elsewhere.” *The New York Times*, *The Washington Post*, and CNN condemned his charges.

The January 6 Committee (discussed in Abel, forthcoming 2025) heard extensive testimony that Trump knew he had lost.<sup>12</sup> Jason Miller recalled that a few days after the election, “I was in the Oval Office. At some point in the conversation, Matt Oczkowski, who was the lead data person, was brought on, and I remember he delivered to the President in pretty blunt terms that he was going to lose,” based on “the data team’s assessment of this sort of county-by-county, state-by-state results as reported.” Bill Stepien said Trump’s chances of success were “5, maybe 10 percent.” Alex Cannon, a campaign lawyer, said that in mid- to late November, he told Meadows: “[W]e weren’t finding anything that would be sufficient to um change the results in any of the key states.” Matt Morgan, the campaign’s general counsel, concurred. Pence said he told Trump “many times” he had lost the election. Attorney General Barr said:

I repeatedly told the President in no uncertain terms that I did not see evidence of fraud, you know, that would have affected the outcome of the

election. And frankly, a year and a half later, I haven't seen anything to change my mind on that.

"I saw absolutely zero basis for the allegations" against Dominion. Ivanka Trump told the Committee: "I respect Attorney General Barr so I accepted what he was saying." Miller himself had "said . . . to the president on multiple occasions" that he agreed with Barr that there was no significant fraud. Meadows acquiesced: "[S]o there's no 'there' there."

Early on November 6, Trump tweeted:

I easily Win the Presidency of the United States with LEGAL VOTES CAST. The OBSERVERS were not allowed in any way, shape or form, to do their job and therefore, votes accepted during this period must be determined to be ILLEGAL VOTES. U.S. Supreme Court should decide!<sup>13</sup>

Contradicting what he later told the January 6 Committee, Matt Morgan was "confident we will find ballots improperly harvested" in Georgia and "many irregularities in Pennsylvania." "There appear to be thousands of individuals who improperly cast mail ballots" in Nevada. House minority leader McCarthy asserted on Ingraham's Fox News program that "President Trump won this election," and demanded "that the legal votes be protected." At a White House meeting, Giuliani claimed he had 8, then 27, and ultimately 80 affidavits proving fraud. The same day, Sidney Powell told Fox Business host Lou Dobbs there was a "likelihood that 3 percent of the total vote was changed in the pre-election, voting ballots that were collected digitally," which "explains a lot of what we're seeing."

In October, the *New York Post* had loyally called Trump "an invincible hero, who not only survived every dirty trick the Democrats threw at him, but the Chinese virus as well," and it was the only mainstream newspaper to publish a contested story about Hunter Biden's laptop. Now, however, it changed course 180 degrees, headlining one article: "Downcast Trump Makes Baseless Election Fraud Claims in White House Address." And another: "Panic-stricken Donald Trump Jr. Calls for 'Total War' in Clueless Tweet."<sup>14</sup> *The Washington Post* wrote:

Never in modern times has an apparently outgoing president behaved so disgracefully, fanning baseless claims of election fraud rather than preparing to concede, as anyone who cared about democracy would. As the president spreads lies, social media lights up with wild conspiracy theories backed by no evidence. . . . [T]here can be no excusing the politicians who cynically amplify Mr. Trump's baseless, inflammatory conspiracy theories, nor those who cower in what they imagine to be a middle ground. There is no middle ground between the truth and Mr. Trump's lies.

Four days later, the newspaper warned that “President Trump and his allies started priming supporters to doubt our democracy before anyone’s ballot had been cast.” The president of Freedom House (correctly) feared that “by convincing a large part of the population that there was widespread fraud, [Trump] is seeding a myth that could endure for years and contribute to an erosion of public confidence in our electoral system.” Three members of *The New York Times* editorial board voiced similar concerns: the Republican Party’s “weapons are baseless insinuation and evidence-free charges, deployed solely to sow chaos and undermine the results of a free and fair election” (Jesse Wegman); Trump “poses a potentially grave danger to American democracy” (Thomas B. Edsall); “Only Truth Can Save Our Democracy” (Thomas Friedman). John Bolton (Trump’s first national security adviser) deplored “the grievous harm [the president] is causing to public trust in America’s constitutional system.” David Boies and Theodore B. Olson wrote in *The Washington Post*: “We opposed each other in Bush v. Gore. Now we agree: Biden won.” Obama said on *60 Minutes*:

[A] president is a public servant. They are temporary occupants of the office by design. And when your time is up, then it is your job to put the country first and think beyond your own ego, and your own interests, and your own disappointments.

On November 7, an hour before the media called the election for Biden, Trump tweeted: “I WON THIS ELECTION BY A LOT!”<sup>15</sup> At his golf course afterward, he accused Biden of trying to “falsely pose” as the winner. “We’ve got a long way to go.” “The simple fact is this election is far from over. Beginning Monday, our campaign will start prosecuting our case in court to ensure election laws are fully upheld and the rightful winner is seated.” Two hours after returning from golf, he tweeted: “MILLIONS OF MAIL-IN BALLOTS WERE SENT TO PEOPLE WHO NEVER ASKED FOR THEM!” “I WON THE ELECTION, GOT 71,000,000 LEGAL VOTES. BAD THINGS HAPPENED WHICH OUR OBSERVERS WERE NOT ALLOWED TO SEE.” “THE OBSERVERS WERE NOT ALLOWED INTO THE COUNTING ROOMS.” Twitter flagged some of those tweets. That day, Bill Stepien, Justin Clark, Stephen Miller, Eric Herschmann, and David Bossie told Trump the chances of successfully challenging the election were little more than 5 percent. But that just goaded him to further defiance: “You’ve got to fight harder.” When Chris Christie told Trump the same day, “[Y]ou need to put [an] end to this,” the president refused: “They stole votes all over the country.” At a news conference, Giuliani yelled that the networks could be wrong. Cleta Mitchell, a campaign lawyer, said: “We’re already double checking and finding dead people having voted. We’re going to be finding people have

voted across state lines, voted in two states, illegal voting, noncitizens and that sort of thing. So we are building that case.”<sup>16</sup> She tweeted on November 11: “GA. Recount is A FAKE!!! (See Video). . . . Call The Office of Brad Raffensperger.” “The Georgia ‘recount’ is a sham. Total sham. It is cover for the SOS [Secretary of State].” She was “happy to be considered a nut job because I believe in the rule of law.”

On November 7, Giuliani held a press conference in the Four Seasons Total Landscaping parking lot, located in a gritty neighborhood along I-95, near a prison and between an adult bookstore and a crematorium. A campaign official had mistaken it for the prestigious Four Seasons Hotel in downtown Philadelphia, perhaps attracted by the landscapers’ motto: “Make America Rake Again.” In a Fox News broadcast to 1.7 million viewers, Jenna Ellis called Giuliani, Powell, and herself an “elite strike force.” Giuliani accused the city of “a sad history of voter fraud,” including ballots cast by the dead.<sup>17</sup> “Those mail-in ballots could have been written the day before by the Democratic Party hacks that were all over the Convention Center.”

Steve Scalise (the second-ranked House Republican) said “the election isn’t over until all legal votes are counted and certified.”<sup>18</sup> Sen. Hawley agreed: “[W]hen all lawful votes have been counted, recounts finished, and allegations of fraud addressed, we will know who the winner is.” Sen. McConnell said Trump was

100 percent within his rights to look into allegations of irregularities and weigh his legal options. Let’s not have any lectures about how the president should immediately, cheerfully accept preliminary election results from the same characters who just spent four years refusing to accept the validity of the last election. . . . [A] few legal inquiries from the president do not exactly spell the end of the republic.

Rep. Mike Johnson tweeted: “[S]tay strong and keep fighting, sir!” Even Sen. Toomey said “a final outcome will be reached . . . after all legal votes have been counted, litigation is resolved, and any recounts are completed.” Many other Republicans encouraged Trump to fight: Meadows, Pam Bondi, former campaign director Corey Lewandowski, and deputy campaign manager David Bossie. *The Washington Post* criticized them for “enabling [Trump’s] dishonest slander against American democracy.”

On November 9, Trump fired defense secretary Mark T. Esper by tweet.<sup>19</sup> In June 2022, Esper recalled that Trump’s “inclination was to use the military too often. And it was enabled by others around him in the White House, around the NSC, who kind of kept pushing this use-of-force type of approach to solving problems.” Trump “decapitate[s] the Pentagon in terms of knocking out undersecretaries” and, within 48 hours, “calls a meeting to discuss a

possible attack on Iran.” Esper had stayed because otherwise he would have thought, “Could I have been there to make a difference?”

I hope people will say [of me] that he stood up and did the right thing. He went before the public on June 3rd and mourned the tragic murder of George Floyd, spoke about the apolitical role the military holds in our society, and announced that he would not support invocation of the Insurrection Act.

The same day, Trump insisted to Barr, “[T]he election was stolen. I assume you’re out there looking at this stuff.”<sup>20</sup> Although the attorney general confirmed this, Trump was unappeased: “[T]here are people saying the Justice Department isn’t doing enough.” Barr explained, “[W]hat the people are saying about the [election] machines is just silly.” Hope Hicks told Trump, “The networks have called it. You’re not going to be able to win it back.” After attending Trump’s meeting with Giuliani, Powell, Flynn, and Mike Lindell, Secretary of State Pompeo confided in JCS chair Milley, “[T]he crazies are taking over.” Milley worried that Trump was having mental health problems. Pompeo agreed: “[H]e’s in a very dark place right now.” “We’ve got to stand shoulder to shoulder. We’re the last of the Mohicans” (a bizarre metaphor). The two initiated daily morning phone calls with Meadows. But the next day, when asked about the transition, Pompeo said flippantly: “There will be a smooth transition to a second Trump administration.” The day after that, DCI Haspel warned Milley: “We are on the way to a right-wing coup. The whole thing is insanity. He is acting out like a six-year-old with a tantrum.” At a Veterans Day ceremony on November 11, Milley said:

We do not take an oath to a king, or a queen, to a tyrant or a dictator. We do not take an oath to an individual. . . . We take an oath to the Constitution. Each of us will protect and defend that document, regardless of personal price.

The same day, Barr refused to let Meadows appoint Kash Patel deputy director of the FBI, and DCI Haspel refused to accept him as her deputy.

On November 11, Reps. Perry and Jordan met with Meadows, Stephen Miller, Stepien, and McEnany to launch a campaign to declare the election fraudulent.<sup>21</sup> At a news conference that day, McEnany said: “This election is not over. Far from it.” Rep. Brooks declared he would not vote to certify Biden’s win. Jordan told Fox News that the Pennsylvania count violated state law. Rep. Gohmert alleged “rampant” voter fraud in Philadelphia and asserted (falsely) that the US military had seized computer servers in Germany used to flip US votes. Rep. Gosar pressed Arizona governor Ducey to investigate Dominion voting equipment. Perry circulated a letter from

Pennsylvania state legislators asking McConnell and McCarthy to delay certification. That day, Stepien, Miller, Clark, and Herschmann met with Pence and Short to discuss outreach to state legislatures, with which Pence had good relations. They planned to invite Republican legislators to the White House to meet Trump, who would show them Giuliani's "evidence." The same day, Trump tweeted a lie he had seen on OANN: "REPORT: DOMINION DELETED 2.7 MILLION TRUMP VOTES NATIONWIDE. DATA ANALYSIS FINDS 221,000 PENNSYLVANIA VOTES SWITCHED FROM PRESIDENT TRUMP TO BIDEN, 941,000 TRUMP VOTES DELETED. STATES USING DOMINION VOTING SYSTEMS SWITCHED 435,000 VOTES FROM TRUMP TO BIDEN."

On November 12, Trump listened to Giuliani (on speaker phone) tell John Moran (Deputy Attorney General Rosen's chief of staff): "You have to file a suit in Georgia."<sup>22</sup> Justin Clark objected that it would be dismissed if filed before the state certified the result, which Trump had delayed by requesting a recount. Giuliani shouted: "They are lying to you, Mr. President." Clark walked out after retorting, "Jesus, Rudy, you are such a fucking asshole." Although the campaign lawyers debunked Giuliani's claims of Dominion fraud, he ignored them.

But an increasing number of Republicans refused to join the Trump bandwagon.<sup>23</sup> George W. Bush congratulated Biden, as did Ari Fleischer (Bush's former press secretary) and Gary Cohn (Trump's NEC director and chief economic adviser). Mike Leavitt (former Republican governor of Utah) and Josh Bolten (Bush's chief of staff) said "the outcome is sufficiently clear that the transition process must now begin." Govs. Baker (Mass), Hogan (Md), and Scott (Vt) and Reps. Rooney (Fl), Reed (NY), Upton (Mi), Kinzinger (Ill), Mitchell (De), and Rigglesman (Va) acknowledged Biden's victory. Ben Ginsberg, who had advised Republicans on election law for decades and was instrumental in Bush's 2000 win, said: "I know there's no evidence for systemic fraud because I had spent the better part of every election for four decades working in Republican poll-watcher programs and Election Day operations." Conservative billionaire Charles Koch told Biden he wanted to work with him. *The Las Vegas Review-Journal*, which had endorsed Trump in 2016 and 2020 and was owned by Sheldon Adelson, another conservative billionaire, published an editorial titled: "President Donald Trump Seeks to Delay the Inevitable." Ruth Johnson (chair of the Michigan Senate Elections Committee and a former Michigan secretary of state), who had signed an affidavit challenging the election results, now said: "I don't believe that enough votes are in question in Michigan to change the outcome." Arkansas governor Hutchinson said "it's important that we accept the outcome of the election." After John Bolton (Trump's former national security adviser) said that "Donald Trump lost what, by any evidence we have so far, was a fair and free election," Trump maligned him as "one of the dumbest people in

government . . . a sullen dull and quiet guy.” When Ohio governor DeWine conceded that “Joe Biden is going to be the next President of the United States,” Trump promptly threatened a primary challenge if DeWine ran in 2022. (He was re-elected.) Even Trump’s current national security adviser, Robert O’Brien, said: “If the Biden–Harris ticket is determined to be a winner and obviously things look that way now, we’ll have a very professional transition from the National Security Council.” Kay Bailey Hutchinson, Trump’s ambassador to NATO, referred to Biden as “the incoming administration.” Karl Rove wrote a *Wall Street Journal* op-ed titled “The Election Result Won’t Be Overturned.”

Putin had loyally sent Trump a congratulatory telegram when early projections showed him winning; even after the media called the election for Biden, the Russian president declined to congratulate him until there were “official results” and “legal procedures” were completed.<sup>24</sup> On November 21, Putin remained deliberately ambiguous:

We will work with anyone who has the confidence of the American people. But that confidence can only be given to a candidate whose victory has been recognized by the opposing party, or after the results are confirmed in a legitimate, legal way.

Turkish president Erdoğan, however, congratulated Biden.

Right-wing commentators continued to support Trump.<sup>25</sup> Michele Bachmann (a former Minnesota Representative who unsuccessfully sought the Republican presidential nomination in 2012) invoked God: “Smash the delusion, Father, of Joe Biden is our president. He is not.” Msgr. Richard Antall wrote in *Crisis* magazine that claims of a Biden victory were a “coup d’état.” Matt Staver, chair of Liberty Counsel (a right-wing law firm), said: “What we are witnessing only happens in communist or repressive regimes.” Donald Harris Jr. of the Falkirk Center at Liberty University exhorted those who “believe God appointed Donald J. Trump to run this country . . . to harden your heart . . . we are at war.” The website Everylegalvote.com showed Trump with 232 Electoral College votes against Biden’s 214; “without voter fraud,” the margin was 318–220. Todd Starnes, *The Federalist*, and Sean Hannity took similar positions. Newsmax host Greg Kelly (the son of Raymond W. Kelly, a former NYPD commissioner and friend of Giuliani) got 1.1 million views when he said: “[T]his whole idea of a president-elect, it is a media fabrication. . . . This could turn.” Trump congratulated Newsmax CEO Christopher Ruddy (a member of Mar-a-Lago): “[I]t’s just incredible, the ratings you’re getting.” Ruddy boasted that the network’s average prime-time ratings had risen from 58,000 before Election Day to 1.1 million after because “people want something that tends to affirm their views and opinions.” (Some left Fox after it called the election for Biden.) Ruddy added oxymoronicly:

“We’re reporting on factual evidence of anecdotal vote fraud. . . . It’s so close, let [Trump] have his day in court.”

But on November 15, Sen. Rubio joined Republican Senators Romney, Murkowski, Collins, and Sasse in calling Biden “president-elect.”<sup>26</sup> Even Sen. Cornyn conceded: “[C]ome January the 20th, we’re going to inaugurate a new president. And I think it will probably be Joe Biden.” The Michigan Freedom Fund, supported by the family of Betsy DeVos (Trump’s secretary of education), said he had lost. The US Chamber of Commerce CEO called Biden “president-elect”; the National Association of Manufacturers urged “the Trump administration to work cooperatively with President-elect Biden and his team.” Major corporations recognized Biden’s victory: Boeing, PayPal, CVS Health, United Airlines, Goldman Sachs, McDonald’s, JPMorgan Chase, Walmart, the American Bankers Association, the Securities Industry and Financial Markets Association, and the law firm Paul, Weiss. One hundred and sixty-four business leaders from Partnership for NYC, including current and former senior partners of leading law firms and the current president and 23 past presidents of the NYS Bar Association, asked Trump to concede. Pence wrote in his memoir that 13 days after the election, he told Trump at a private lunch he should accept defeat and prepare for 2024 if his legal challenges failed. Complaining that the next election was “so far off,” Trump insisted he had other options.<sup>27</sup>

Indeed, he amplified his Twitter rants.<sup>28</sup> “Since when does the Lamestream Media call who our next president will be? We have all learned a lot in the last two weeks!” Twitter flagged several of his tweets and one by a campaign spokesman who altered a photo to fabricate a November 2000 *Washington Post* headline: “PRESIDENT GORE.” Twitter flagged a Giuliani tweet: “Tweet me your guess, while I go prove it in court.” Trump recirculated Gingrich’s Fox News statement: “I think that it is a corrupt, stolen election.” Sen. Graham exhorted, “[D]o not accept the media’s declaration of Biden. Do not concede, Mr. President. Fight Hard,” repeating at the end of November, “[K]eep it up.” “I’m very worried about [mail ballots] too, myself, quite frankly.” Sen. Cornyn backtracked: “[T]here is a process that is available and I don’t begrudge the president for availing himself of that process.” Two days after conceding it was “unlikely” that lawsuits would change the result, Sen. Blunt hedged: “[T]he president wasn’t defeated by huge numbers. In fact, he may not have been defeated at all.” Even after calling Biden “president elect,” Sen. Rubio said: “President Trump is well within his legal rights to pursue all these things under these laws now.” When it was reported that Jared Kushner had advised Trump to accept his loss, campaign spokesman Jason Miller walked it back: “Jared has advised @realDonaldTrump to pursue all available legal remedies to ensure accuracy.” After Mike Pompeo tweeted, “[T]here will be a smooth transition to a second Trump administration,” Trump gloated, “[T]hat’s why Mike was number one in his class at

West Point!” But on November 26, Pompeo said the transition was “a legal requirement, and we’ll always honor that promise.”

Kayleigh McEnany said at a press conference on November 9:<sup>29</sup>

There is only one party in America trying to keep observers out of the count room, and that party, my friends, is the Democratic Party. You don’t oppose an audit of the vote because you want an accurate count. . . . [Y]ou take these positions because you are welcoming fraud and you are welcoming illegal voting.

Fox News anchor Neil Cavuto cut away:

Whoa, whoa, whoa. I just think we have to be very clear that she’s charging the other side as welcoming fraud and welcoming illegal voting. Unless she has more details to back that up, I can’t in good countenance continue showing you this. I want to make sure that maybe they do have something to back that up but that’s an explosive charge to make, that the other side is effectively rigging and cheating.

McEnany later maintained Republican poll watchers had been excluded. But Fox News reporter Eric Shawn had repeatedly refuted that claim the previous week. And Fox News division head Bret Baier told RNC Chair McDaniel, “[W]e are not seeing any evidence of widespread fraud.” Although Fox stalwarts Sean Hannity, Mark Levin, and Tucker Carlson continued to support Trump, the November 10 front page of Murdoch’s *New York Post* shouted that “IT’S JOE TIME” and called Trump’s fraud claims misguided. Murdoch’s *Wall Street Journal* also dismissed those claims, and its op-ed page urged Trump to concede. On November 17, it said: “[T]here’s no good evidence of voting problems that would come close to Mr. Biden’s lead of 73,000 votes in Pennsylvania or 145,000 in Michigan.” The same day, even Carlson said on Fox News that “the election is over.” When Fox News opinion host Pete Hegseth insisted a day later that “there is no president-elect yet,” anchor Harris Faulkner disagreed. And *Fox & Friends* co-host Brian Kilmeade said Trump should coordinate with the Biden transition team.

In the week after the election, Trump’s Facebook postings were 10 of the most engaged status updates in the United States and 22 of the top 25.<sup>30</sup> “I WON THIS ELECTION, BY A LOT!” was the most popular. On November 10, he tweeted: “BALLOT COUNTING ABUSE.” “Ballot Corruption will be exposed tonight [by Sean Hannity].” “WE ARE MAKING BIG PROGRESS. RESULTS START TO COME IN NEXT WEEK. MAKE AMERICA GREAT AGAIN!” “WE WILL WIN!” Pence urged Republican senators to support Trump but was dissuaded by his chief of staff from appearing with Giuliani and others to claim fraud in Pennsylvania. Meadows, McDaniel, and

Lewandowski were skeptical about Trump’s claims. Michigan state courts dismissed three of the four post-election lawsuits. After Pennsylvania GOP chair Lawrence Tabas asserted in *The Atlantic* that “one of the available legal options set forth in the Constitution” was for state legislators to appoint electors, the Republican majority leaders of the state House and Senate disagreed, and Democratic Attorney General Josh Shapiro said “there is no legal mechanism for the General Assembly to act alone and appoint electors.” When Arizona’s Republican state senate president Karen Fann made a public records request in light of the “current controversy,” Democratic secretary of state Katie Hobbs responded: “[T]here is no ‘current controversy’ . . . outside of theories floated by those seeking to undermine our democratic process for political gain.”

### 3.2 Pressuring State Officials

Trump supporters had already started trying to persuade state legislators to create “alternative” pro-Trump Electoral College slates.<sup>31</sup> Meadows discussed the idea with Georgia state senator Marty Harbin, Arizona representative Biggs, and former energy secretary Rick Perry. Vince Haley, the deputy assistant to the president for policy, strategy, and speechwriting, advocated the plan to Johnny McEntee, the director of personnel policy, who enthusiastically agreed. Newsmax CEO Ruddy urged it on Trump. Gingrich suggested that Trump encourage “GOP legislatures elect not to send in electors,” forcing a House vote Trump would win (since each state would have one vote, and Republicans controlled 28 of them). At Cleta Mitchell’s insistence, John Eastman wrote a memo, “The Constitutional Authority of State Legislatures to Choose Electors,” which was circulated widely. Morgan Warstler (a Texas businessman with connections to Perry) said that on November 9, he had “told the whole Trump team in Oval [Office]” that “State legislatures can choose the electors—no matter what current state law OR state courts say.” John Robison (another Texas businessman at the meeting) sent a follow-up email claiming that Trump “liked the plan we presented to use a parallel path of state legislators.” Trump and his allies sought to persuade hundreds of state legislators to create false slates of electors. On November 9, Virginia “Ginni” Thomas (Justice Clarence Thomas’s wife) emailed 20 members of the Arizona House, including Speaker Russell Bowers and Shawwna Bolick, and seven state senators, urging them to choose “a clean slate of electors” and “stand strong in the face of political and media pressure.” The responsibility to choose electors was “yours and yours alone.” (The day before the Electoral College vote, Thomas wrote again, “[C]onsider what will happen to the nation we all love if you don’t stand up and lead.” The email had been drafted by FreeRoots, an anti-trafficking organization.) The same day, Robert Sinners, Trump campaign election operations director for Georgia,

sent an email instructing the state's 16 Republican electors to vote for Trump (even though Biden had won the state) while pledging them to "complete secrecy and discretion." "Please, at no point should you mention anything to do with Presidential Electors or speak to the media." In June 2022, he said he had done this at the direction of senior campaign officials and the Georgia GOP chairman because lawyers had advised "that this was necessary in order to preserve the pending legal challenge."

Giuliani said at a December 11 press conference on Fox News:<sup>32</sup>

The president was ahead on election night, 700–800,000 in Pennsylvania, somehow we lost Pennsylvania. We have statisticians willing to testify that that's almost statistically impossible for that to happen in the period of time that it happened, but of course that's just speculation. . . . [T]his is not a singular voter fraud in one state, this pattern repeats itself in a number of states, almost exactly the same pattern, which, to any experienced investigator, prosecutor, would suggest that there was a plan from a centralized place to execute these various acts of voter fraud, specifically focused on big cities . . . controlled by Democrats, and . . . that have a long history of corruption. The number of voter fraud cases in Philadelphia could fill a library. Just a few weeks ago there was a conviction for voter fraud, and only two weeks before that, and I've often said, I guess sarcastically, but it's true, is the only surprise I would have found in this is if Philadelphia hadn't cheated in this election, because for the last 60 years they've cheated in about every single election. You could say the same thing about Detroit. Each one of these cities are cities that are controlled by Democrats, which means they can get away with anything they wanna do. It means they have a certain degree of control, certainly control the election board completely, and they control law enforcement and unfortunately they have some friendly judges who will issue ridiculously irrational opinions just to come out in their favor.

He claimed that Dominion, which made voting machines, was controlled by George Soros:

It's . . . a very, very dangerous foreign company that did the votes in 27 states, a company that's not American, a company that's foreign, a company that has close ties with Venezuela and, therefore, China and uses a Venezuelan company software that's been used to steal elections in other countries. This Dominion company is a radical-left company. One of the people there is a big supporter of antifa and has written horrible things about the president for the last three or four years. . . . The software that they use is done by a company called Smartmatic, a company that was founded by [Hugo] Chavez and by Chavez's two allies, who still own it.

And it's been used to cheat in elections in South America. It was banned by the United States several—about a decade ago. It's come back now as a sub-contractor to other companies. It sort of hides in the weeds but Dominion sends everything to Smartmatic. Can you believe it? Our votes are sent overseas. They are sent to someplace else, some other country. Why do they leave our country? . . . The chairman of Smartmatic is a close business associate of George Soros . . . and this company has tried-and-true methods for fixing elections by calling a halt to the voting when you're running too far behind. They have done that in prior elections. . . . Dominion is a company that's owned by another company called Smartmatic through an intermediary company named Indra. . . . Now, what happened on election night? He was ahead by 800,000 votes in Pennsylvania. Impossible to catch up, unless you're cheating, and the same thing in Michigan, Wisconsin. He was ahead in all those states by numbers that, in prior times—and I can show this to you—networks would have called for him but they didn't call for him.

(Al Schmidt, a Republican city commissioner on the three-person board overseeing the Philadelphia election, told the January 6 Committee that Giuliani had claimed 8,000 dead people had voted.<sup>33</sup> “Not only was there not evidence of 8,000 dead voters voting in Pennsylvania, there wasn't evidence of eight.” “After the president tweeted at me by name, calling out the way that he did, the threats became much more specific, much more graphic.” Schmidt's wife got an email that he would “BE FATALLY SHOT” and “COPS CANT HELP YOU . . . HEAD ON SPIKES, TREASONOUS SCHMIDTS.”) In Denver, Giuliani kept pushing the fraud claim: “We have a couple of extraordinary witnesses, one of whom was a Democrat who worked for 30 years for the city of Detroit, who will explain that she started getting trained in how to cheat in September 2020.” “We have evidence that 100,000 ballots were brought in at 4:30 in the morning . . . in trucks that had out-of-state license plates.”

On November 12, Trump retweeted a tweet from @ChanelRion @OANN, which Twitter had labeled disputed.<sup>34</sup>

REPORT: DOMINION DELETED 2.7 MILLION TRUMP VOTES NATIONWIDE. DATA ANALYSIS FINDS 221,000 PENNSYLVANIA VOTES SWITCHED FROM PRESIDENT TRUMP TO BIDEN. 941,000 TRUMP VOTES DELETED. STATES USING DOMINION VOTING SYSTEMS SWITCHED 435,000 VOTES FROM TRUMP TO BIDEN.

(Dominion software was used in just two of the five Michigan and Georgia counties that had problems, most of which were attributable to human error; software did not affect vote counts.) The US Election Assistance Commission

issued a statement responding to repeated “baseless claims of voter fraud that none of us have seen any evidence of.”

Trump tweeted that Biden

won because the Election was Rigged. NO VOTE WATCHERS OR OBSERVERS allowed, vote tabulated by a Radical Left privately owned company, Dominion, with a bad reputation & bum equipment that couldn't even qualify for Texas (which I won by a lot!), the Fake & Silent Media, & More!<sup>35</sup>

Twitter flagged this. Concerned that his use of the word “won” might be seen as conceding defeat, Trump then tweeted that Biden “only won in the eyes of the FAKE NEWS MEDIA. I conceded NOTHING! We have a long way to go. This was a RIGGED ELECTION!” He shared a video clip of hackers probing voting machines sold by Dominion and Election Systems and Software, but there was no evidence they had been manipulated. Fifty-nine leading computer scientists responded that “no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise.”

Trump said in a phone call on November 13:<sup>36</sup>

We're going to win Wisconsin. Arizona—it'll be down to 8,000 votes, and if we can do an audit of the millions of votes, we'll find 8,000 votes easy. . . . Georgia, we're going to win, because now we're down to about 10,000, 11,000 votes, and we have hand-counting. Hand-counting is the best. To do a spin of the machine doesn't mean anything. . . . When are they going to put in the new votes in North Carolina? When are they going to find a batch from Charlotte? . . . They wouldn't let our poll watchers and observers watch or observe [in Michigan or Pennsylvania]. That's a big thing. They should throw those votes out that went through during those periods when [Trump observers] weren't there. We went to court, and the judge ordered [the observers] back, but that was after two days, and millions of votes could have gone through, millions. And we're down 50,000. . . . [F]ive days ago, I thought, “maybe.” But now I see evidence, and we have hundreds of affidavits.

He predicted it would turn around in “probably two weeks, three weeks” and warned: “Never bet against me.”

Trump campaign lawsuits sought to delay vote certification so states could declare a “failed” election, letting their legislatures choose Trump electors.<sup>37</sup> Fox News's Mark Levin urged state legislators, “GET READY TO DO YOUR CONSTITUTIONAL DUTY.” Donald Trump Jr. retweeted this. Florida governor DeSantis urged Michigan and Pennsylvania voters to call their

legislators, who could “provide remedies.” The Republican-dominated Pennsylvania General Assembly moved to review the election, asking the Democratic governor to postpone certification. But Georgia’s Republican governor, lieutenant governor, and House Speaker refused to call a special session for this purpose.

Trump tweeted on November 11:<sup>38</sup>

Heartwarming to see all of the tremendous support out there, especially the organic Rallies that are springing up all over the Country, including a big one on Saturday in DC. I may even try to stop by and say hello. This Election was Rigged, from Dominion all the way up & down.

That Saturday (November 13), he drove down Pennsylvania Avenue in a motorcade to support the approximately 5,000 demonstrators, including Proud Boys. The conspiracy promoter Alex Jones and Georgia representative-elect Marjorie Taylor Greene harangued the crowd. McEnany indulged in typical hyperbole: “More than one MILLION marchers for President @realDonaldTrump descend on the swamp in support.” (The media estimated “thousands.”) Afterward, Trump tweeted:

ANTIFA SCUM ran for the hills today when they tried attacking the people at the Trump Rally, because those people aggressively fought back. Antifa waited until tonight, when 99% were gone to attack innocent #MAGA People. DC Police, get going—do your job and don’t hold back!!!

The same day (in a phone call shared with campaign counsel Justin Clark, Pence, White House counsel Pat Cipollone, and director of presidential personnel Johnny McEntee), Giuliani told Trump that he could win and other advisers were lying to him.

On November 14, Giuliani accused Dominion of voting fraud in Michigan, Arizona, Georgia, and other states, calling the company “a front for SMARTMATIC, who was really doing the computing” and whose CEO, Antonio Mugica, was a Venezuelan software engineer.<sup>39</sup> Giuliani said he was getting anxious inquiries from governments around the world about Mugica’s work for them. Newsmax host Chris Salcedo said on November 18: “Sidney Powell is out there saying that states like Texas, they turned away from Dominion machines because really there’s only one reason why you buy a Dominion machine and you buy this Smartmatic software, so you can easily change votes.” Maria Bartiromo alleged on Fox News on November 15: “[O]ne source says that the key point to understand is that the Smartmatic system has a backdoor.” Fox News and Fox Business had mentioned *Dominion* 792 times, and *Smartmatic* 118. Mugica’s lawyer sent cease-and-desist demands to Fox News, Newsmax, and OANN.

Trump named Giuliani and Jenna Ellis to lead his legal and public relations effort.<sup>40</sup> Ellis had never appeared in federal court or handled an election case. She claimed in the *Wall Street Journal* that she had been fired by the Weld County (Colorado) DA's office in 2013 for refusing to bring an unethical prosecution; but her unemployment benefits application showed she was discharged for "unsatisfactory performance." Although Trump's lawyers had withdrawn the claim in their Pennsylvania lawsuit that observers had been blocked from watching polls, Giuliani denied doing this and attacked *The Washington Post* and others for accurately reporting it. Trump called the report "fake news," insisting that the blocked observers remained "a very big deal in the complaint" and "a big part of our case." Tim Murtagh, the campaign's communications director, said the *Post* was "erroneously claiming the campaign had dropped the claim of nearly 700,000 ballots processed illegally and in secret." Sidney Powell upped the ante: "President Trump won by not just hundreds of thousands of votes, but by millions of votes, that were shifted by this software that was designed expressly for that purpose." She accused the CIA of ignoring complaints about the voting software, "which makes me wonder how much the C.I.A. has used it for its own benefit in different places."

On November 19, Trump tweeted: "Important news conference today by lawyers on a very clear and viable path to victory. Pieces are very nicely falling into place [for re-election]."<sup>41</sup> Biden retorted that "it's just outrageous what [Trump] is doing." His "incredibly damaging messages are being sent to the rest of the world about how democracy functions." Trump would be remembered as "one of the most irresponsible presidents in American history." Declaring that "President Trump lied on Twitter on Sunday," *The New York Times* deplored Republicans' "pathetic display of cowardice." *The Washington Post* said Trump's efforts "grow more brazen" and "other so-called leaders of the Republican Party grow more complicit in this banana-republic style assault on our democracy."

At the November 18 press conference at RNC headquarters, Powell vowed to "release the Kraken" (the lawsuit she named after an imaginary sea monster), declaring:<sup>42</sup>

The massive influence of communist money to Venezuela, Cuba, and likely China and the interference in the elections here in the United States, the Dominion Voting Systems, the Smartmatic software and the software that goes in other computerized voting systems as well, not just Dominion, were created in Venezuela at the direction of Hugo Chavez to make sure he never lost an election after one constitutional referendum came out the way he did not want it to come out. We have one very strong witness who has explained how it all works. His affidavit is attached to the pleadings of Lin Wood and the lawsuit he filed in Georgia. It is a stunning detailed

affidavit because he was with Hugo Chavez when he was being briefed on how it worked, he was with Hugo Chavez when he saw it operate to make sure the election came out his way. That was the express purpose for creating the software. He has seen it operate and as soon as he saw the multiple states shut down the voting efforts on the night of the election he knew the same thing was happening here that that was what had gone on.

Powell's "evidence" was three screenshots of an affidavit by a former Venezuelan military official (without a name or signature) who said the US election was "eerily reminiscent" of Venezuela in 2013 and asserted that Dominion software "can set and run an algorithm that probably ran all over the country to take a certain percentage of votes from President Trump and flip them to President Biden." Powell also claimed that Dominion had ties to the Clinton Foundation and Soros. "It is the 1775 of our generation." "Globalists, dictators, corporations, you name it—everybody's against us except President Trump."

Powell described her expert witness, Joshua Merritt, as an "electronic intelligence analyst under the 305th Military Intelligence."<sup>43</sup> Retired LG Thomas McNerney confirmed that Trump and Powell had "got the 305th Military Intelligence Battalion working with them." But Merritt had never completed his intelligence course, instead spending most of his ten years in the Army as a wheeled vehicle mechanic. After Powell's misrepresentation, Merritt left the legal campaign. Dismissing one of Powell's Arizona cases, which relied on Merritt's affidavit, the judge said allegations "that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court" and "most certainly cannot be the basis for upending Arizona's 2020 general election." Powell also used an affidavit by Terpsichore Maras-Lindeman, claiming that Dominion and Scytl (a software firm) had switched votes from Trump to Biden.<sup>44</sup> Powell concealed the affiant's identity to protect her "reputation, professional career and personal safety." But there may have been other reasons. Maras-Lindeman had falsely claimed to be a medical doctor and have eight academic degrees, including a PhD and an MBA; in fact, she had only a BA from the University of Kentucky. She also said she was a "trained cryptolinguist" and had been a lieutenant who served in combat zones and was awarded multiple medals, including a Purple Heart; in fact, she had served in the Navy for less than a year two decades earlier and had no awards.

She was not the only one with mud on her face. At the RNC news conference, Giuliani, characteristically, basked in the spotlight, causing his black hair dye to drip down his cheek (to the disgust of Trump).<sup>45</sup> Giuliani echoed Powell: "Our votes are counted in Germany and in Spain, by a company owned by affiliates of George Soros and Maduro." "The secretary of state of Michigan never bothered to find out that the votes in her state were being

counted in Germany, by a Venezuelan company.” Giuliani explained that the campaign had withdrawn the Michigan case after achieving its goal of forcing the Wayne County (Detroit) Board to decertify its results “because the over-vote was so high.” Ellis said this was “because 71% of the counties have inconsistent data.” But Wayne County never decertified. Giuliani also declared that more than 600,000 votes in Pennsylvania “weren’t inspected which renders the ballots that are null and void [sic].” He boasted that as a former US attorney:

I know crimes. . . . I can smell ’em. . . . We cannot allow these crooks—’cause that’s what they are—to steal an election from the American people. They elected Donald Trump; they didn’t elect Joe Biden. Joe Biden is in the lead because of the fraudulent ballots, the illegal ballots that were produced and that were allowed to be used after the election was over. Give us an opportunity to prove it in court and we will.

Trump said afterward that Biden had directed a “national conspiracy,” relying on officials in “big cities controlled by Democrats . . . that have a long history of corruption.” “There was a plan from a scheme. It comes right directly from the Democrat [sic] Party, and it comes from the candidate.” He tweeted that afternoon:

THE OBSERVERS WERE NOT ALLOWED INTO THE COUNTING ROOMS. I WON THE ELECTION, GOT 71,000,000 LEGAL VOTES. BAD THINGS HAPPENED WHICH OUR OBSERVERS WERE NOT ALLOWED TO SEE. NEVER HAPPENED BEFORE. MILLIONS OF MAIL-IN BALLOTS WERE SENT TO PEOPLE WHO NEVER ASKED FOR THEM.

But even Karl Rove warned on Fox news that “they had better come up with proof.” Tucker Carlson invited Sidney Powell to his Fox News show but complained that “she never sent us any evidence.”<sup>46</sup> “She never demonstrated that a single actual vote was moved illegitimately by software from one candidate to another.” Sen. Sasse noted that “when Trump campaign lawyers have stood before courts under oath, they have repeatedly refused to actually allege grand fraud—because there are legal consequences for lying to judges.” Rep. Hoyer declared: “[T]his borders on treason.” Sen. Romney warned: “[T]he president has now resorted to overt pressure on state and local officials to subvert the will of the people and overturn the election. It is difficult to imagine a worse, more undemocratic action by a sitting American president.” Sen. Ernst called Powell’s claim of a rigged election “an offensive comment,” an effort to “confuse the voters of the United States.” And Mick Mulvaney (who had been Trump’s acting White House chief of staff from

January 2019 to March 2020) expressed doubts about Giuliani: “[T]his is the most important lawsuit in the history of the country, and they’re not using the most well-noted [sic] election lawyers.”

(A week before the RNC press conference, Zach Parkinson, the Trump campaign’s deputy director of communications, had asked subordinates to “substantiate or debunk” the allegations against Dominion.<sup>47</sup> The next day, he got a staff memo, based on news articles and public fact-checking services, showing the company did not use Smartmatic in the 2020 election and had no direct ties to Venezuela or Soros or connections to antifa. Powell and Giuliani had based their allegations on Joe Oltmann, a right-wing podcast host. Giuliani said he had not seen the Parkinson memo before the news conference and accused those who prepared it of “want[ing] Trump to lose because they could raise more money.”)

On November 22, Chris Christie said on ABC’s *This Week*: “[T]he president’s legal team has been a national embarrassment.”<sup>48</sup> When Giuliani called his old friend to complain, Christie retorted: “[I]f there’s all this evidence, what are you waiting for? . . . Time to put it out there.” That day, Ellis tweeted a “Trump Campaign Statement on Legal Team”: “Sidney Powell is practicing law on her own. She is not a member of the Trump Legal Team. She is also not a lawyer for the President in his personal capacity.” Ellis described herself as “Constitutional Law Attorney. Senior Legal Adviser @TeamTrump and Counsel to @realDonaldTrump. Senior Fellow @Falkirk Center. Special Counsel @ThomasMoreSoc.” (But in December, the Thomas More Society said Ellis “has no association or involvement with our Amistad efforts,” adding that it was not “at all connected with the Trump campaign.”) Ellis had been paid more than \$172,000 by the campaign. She listed an address at ProActive Communications, which had received more than \$2.4 million from the campaign. She filed defamation lawsuits against major news organizations (which were dismissed). Trump’s 46-minute video (following) called itself “a Jenna production.”

Undiscouraged by the cold rebuff from Ellis (an inexperienced lawyer little more than half her age), Powell continued to promise a “biblical” lawsuit about voter fraud in Georgia.<sup>49</sup> “Georgia’s probably going to be the first state I’ll blow up.” “There’s no telling how many Congressional candidates should have won that lost by the addition of . . . the algorithm that they were running against whoever they wanted.” The previous day, she had accused Georgia’s Gov. Kemp and Secretary of State Raffensperger of taking payoffs and falsely claimed Rep. Douglas Collins had won his Senate race against Kelly Loeffler. A week earlier, she maintained on Rush Limbaugh that voting machines had been designed to rig elections. The day before that, she said on Fox Business that the conspiracy involved “dead people” who had voted “in massive numbers,” as well as fraudulent paper ballots. Trump had complained to advisers about Powell’s performance at the RNC news conference

(which explained Ellis’s statement, earlier). As Michael Flynn’s lawyer, Powell had accused the FBI of committing “atrocities” against her client (see Abel, 2024a). She promoted QAnon and self-published a 2014 book exposing the “deep state.” Trump had retweeted an interview in which she told Lou Dobbs that the Dominion software used in 28 states was designed to let Venezuelan president Chávez manipulate elections. On November 27, the ND Ga website displayed a 104-page complaint in “District Court, Northern Cistrcoict of Georgia” [sic] by Powell, Wood, and two others, claiming that Dominion was “founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed” to elect Chávez. In late November or early December, Powell phoned Ezra Cohen-Watnick (then acting undersecretary of defense for intelligence and a Flynn protégé) to tell him that DCI Haspel “has been hurt and taken into custody in Germany. You need to launch a special operations mission to get her.” Powell was repeating a wholly fictitious scam circulating on social media.

On November 21 Trump tweeted:

Why is Joe Biden so quickly forming a Cabinet when my investigators have found hundreds of thousands of fraudulent votes, enough to “flip” at least four States, which in turn is more than enough to win the election? Hopefully the Courts and/or Legislatures will have the COURAGE to do what has to be done to maintain the integrity of our Elections, and the United States of America. THE WORLD IS WATCHING!!!

Summoned to the White House by Cipollone on November 23, Barr was told by Trump: “[W]e won by a lot. And you know, it’s fraud. . . . This is stealing the election. I hear you guys are hanging back.”<sup>50</sup> The attorney general tried to appease his boss:

The Justice Department can’t take sides, as you know. . . . That’s what we have elections to decide. But if there’s a crime of sufficient magnitude, of specific and credible information indicating potential fraud on a scale that could affect the outcome, I’m willing to take a look.

He had asked US Attorneys in Arizona, Wisconsin, Michigan, Georgia, and Pennsylvania for a preliminary assessment but added that FBI director Wray had told him a week earlier: “[T]his stuff about the voting machines is just bullshit.” “Giuliani and the rest of these people” were “out there promising fraud and they’re empty-handed. . . . [T]he problem isn’t the absence of [the Department of] Justice, the problem is the absence of evidence.” This was just “crazy stuff,” “complete nonsense,” which was “doing [a] great, great disservice to the country.” Nevertheless, on November 29, Trump insisted to Maria Bartiromo on Fox News: “This is total fraud. And how the FBI and

Department of Justice—I don't know—maybe they're involved . . . where are they with Comey, McCabe and all these other people.”

The Trump campaign focused its challenges on five states whose electoral votes could change the outcome.

### 3.2.1 Georgia

After calling for hand recounts, Trump tweeted that Georgia's “is a scam, means nothing. Must see fraudulent signatures which is prohibited by stupidly signed & unconstitutional consent decree.”<sup>51</sup> Twitter flagged this, but Trump just repeated that the recount was “fake.” “Georgia Secretary of State, a so-called Republican (RINO), won't let the people checking the ballots see the signatures for fraud. Why? Without this the whole process is very unfair and close to meaningless. Everyone knows that we won the state.” Secretary of State Raffensperger explained why signatures could not be seen: “[I]t doesn't matter what political party or which campaign does that. The secrecy of the vote is sacred.” Sen. Graham had telephoned him about the signature matching law and the possibility that political bias might have induced poll workers to accept ballots with nonmatching signatures, asking if Raffensperger could throw out all the mail ballots in counties with higher rates of nonmatching signatures. The secretary of state felt pressure to do this: “[I]t was just an implication of, ‘look hard and see how many ballots you could throw out.’” “[I]t sure looked like he was wanting to go down that road.” Graham called that “ridiculous.” “If he feels threatened by that conversation, he's got a problem. I actually thought it was a good conversation.” The same day, L. Lin Wood filed a lawsuit to block Georgia's certification of the election, challenging the way officials checked signatures and let voters correct errors. (The 11th Circuit dismissed it on December 5.)

Raffensperger reported that he had been threatened: “You better not botch this recount. Your life depends on it.” He called Rep. Douglas A. Collins (leading Trump's efforts in Georgia) a “liar” and “charlatan.” *The Washington Post* said “the Republican Party's national leadership now stands squarely against fair and secure elections—or accepting results for that matter.” Gabriel Sterling, Raffensperger's chief operating officer, said “the majority of the counties right now are finding zero deviations from the original number of ballots.” But Trump simply repeated: “[T]heir recount is a scam, means nothing. . . . Georgia won't let us look at the all important signature match. Without that the recount is MEANINGLESS. Open up unconstitutional Consent Decree, NOW!”

On November 13, Giuliani phoned Raffensperger. Sterling (who heard part of the call) said Trump's lawyer asked:

[I]f there was a percentage of signatures that weren't really truly matching, is there some point we could get to—we could say, somebody went to a

courtroom could say, “well, let’s throw [out] all these ballots because we have no way of knowing because the ballots were separated.”

Giuliani later defended the call:

What I’m trying to find out was, how do you verify signatures on mail-in ballots in these states that are the center of attention? So, like, when you mail in a ballot, you’ve got to have some way to verify that the signature on the envelope actually matches the person who requested the ballot. It seems to me that Georgia has some protections that maybe other states don’t have, where you go into the portal to get your ballot. But I thought it was a good conversation.

After this, Raffensperger said there was “zero” chance he would take a phone call from Trump or his advisers. But Trump tweeted at Gov. Kemp: “Republicans must get tough!”

Although the hand recount changed the results by just 0.0099 percent, the Trump campaign simply called for a machine recount of that hand recount.<sup>52</sup> Raffensperger defended himself in a *Washington Post* op-ed. “[P]eople made wild accusations about the voting systems that we have in Georgia. They were asking, ‘How do we get to 270? How do you get it to Congress so they can make a determination?’” “[But] I’m not supposed to put my thumb on the Republican side.” “It’s time to stand up and be counted. Are you going to stand for righteousness? Are you going to stand for integrity? Or are you going to stand for the wild mob?” Raffensperger told the January 6 Committee:

[T]he numbers are the numbers. Numbers don’t lie. We had many allegations and we investigated every single one of them. . . . They said that there was over 66,000 underage voters. We found that there was actually zero. . . . They said that there was 2,423 nonregistered voters. There were zero. They said that there was 2,056 felons. We identified less than 74 or less [sic] that were actually still on a felony sentence.

Gov. Kemp certified the state results on November 20, declaring on television: “As governor I have a solemn responsibility to follow the law, and that is what I will continue to do. We must all work together to ensure citizens have confidence in future elections in our state.” But RNC chair McDaniel claimed misleadingly that “there are now THREE counties in Georgia where the auditing process has produced a net gain of votes for @realDonaldTrump. . . . [E]veryone should want a fair and accurate vote count.” And Trump continued to press Georgia, claiming:<sup>53</sup>

I’m not fighting for me. I’m fighting for the 74,000,000 million [sic] people (not including the many Trump ballots that were “tossed”), a record

for a sitting President, who voted for me! . . . Why won't Governor @BrianKempGA, the hapless Governor of Georgia, use his emergency powers, which can be easily done, to overrule his obstinate Secretary of State, and do a match of signatures on envelopes. . . . It will be a "goldmine" of fraud, and we will easily WIN the state.

State officials replied this was impossible because envelopes with signatures were separated from ballots during the count to ensure anonymity.

In response to Trump's latest demand and his earlier tweet that the "governor's done nothing," Kemp said: "Georgia law prohibits the Governor from interfering in elections. The Secretary of State, who is an elected Constitutional officer, has oversight over elections that cannot be overridden by executive order."<sup>54</sup> Kemp said he "continued to follow the law" but also encouraged Raffensperger to conduct a limited comparison of signatures on envelopes with those on file in order to "restore trust and address serious issues that have been raised." On November 30, the Trump campaign made its fifth request for a signature-matching audit. The next day, Trump tweeted: "Do something @BrianKempGA. You allowed your state to be scammed. We must check signatures and count signed ballots against ballots. Then call off the election. It won't be needed. We will all WIN!" His campaign issued a news release urging Raffensperger to audit signatures, claiming that tens of thousands of ballots should have been disqualified for nonmatching signatures. Republican lieutenant governor Geoff Duncan praised Kemp's "steadfast and strong" leadership and called Raffensperger a "rock star conservative." "I'm very concerned about the amount of misinformation that continues to fly around. It troubles me that some folks are willing, just for the sole intent of flipping an election, of spreading [sic] misinformation."

In her "Kraken" lawsuit, Powell had filed an affidavit by Ron Watkins, who called himself a "network and information defense analyst" with nine years' experience.<sup>55</sup> But that was limited to his father Jim's extreme right-wing website 8kun, and Watkins was a strong QAnon proponent. Based on a reading of Dominion software's online user guide, Watkins pronounced it "within the realm of possibility" for a poll worker to switch votes. (After Watkins made similar allegations on OANN, Trump retweeted them on November 18: "Dominion-izing the Vote." "Cyber Analyst on Dominion Voting: Shocking Vulnerabilities. A cyber analyst shares alarming insights into the scandal ridden voting software Dominion.") On December 2, Watkins posted what he claimed was a "smoking-gun video" allegedly showing a Dominion worker manipulating Georgia voting data by "plugging an elections USB drive into an external laptop . . . then suspiciously walking away." After others shared the worker's name and LinkedIn profile containing his phone numbers, home address, and personal details, there were calls for his imprisonment, torture, and execution. Sterling explained

that the employee had been uploading a report to a county computer so he could read it:

This 20-year-old contractor for a voting system company [was] just trying to do his job. . . . They tracked his family and started harassing them. And [a tweet] said, “his name, you have committed treason. May god have mercy on your soul, with a slowly swinging noose. At that point, I just said, “I’m done.” . . . Mr. President, you have not condemned these actions or this language. Senators, you have not condemned this language or these actions. This has to stop. . . . This is elections. This is the backbone of democracy. And all of you who have not said a DAMN WORD are complicit in this. . . . Someone’s going to get hurt, someone’s going to get shot, someone’s going to get killed, and it’s not right.

Trump tweeted in response: “Rigged Election. Show signatures and envelopes. Expose the massive voter fraud in Georgia. What is Secretary of State and @BrianKempGA afraid of. They know what we’ll find!!!!” Jordan Fuchs, Deputy Secretary of State, said Raffensperger’s wife had received “sexualized death threats.” Far-right groups had trespassed at their house; someone broke into the home of their widowed daughter-in-law. Raffensperger’s office received thousands of emails saying, “[Y]ou should be shot” and “[Y]ou should be hanged.” Fuchs expostulated: “[N]ow they’ve actually gone after people, been following . . . young poll workers and election workers in Gwinnett County and also our folks at one of our offices. And so, you’re seeing just irrational, angry behavior. It’s unpatriotic.” If the legislature held a special session, “they would be then nullifying the will of the people.” (A Brennan Center survey found that one in three election workers felt unsafe and one in six had been threatened. Election officials were quitting in large numbers.)

On December 3, Giuliani told Georgia state legislators “there is more than ample evidence to conclude that this election was a sham” and “you are the final arbiter of who the electors should be.”<sup>56</sup> “State law doesn’t in any way prevent you, the legislature, from immediately taking this over and deciding this.” But Democratic state senator Elena Parent said at the hearing: “According to the law of the state of Georgia, we do not have the power to submit alternate electors. The provision in the old law is quite clear.” She received death threats before and after the hearing. A week later, Giuliani told legislators that the governor, lieutenant governor, and secretary of state were engaged in a “cover up” of “a crime in plain sight,” and it was their duty to “vindicate the honor of the state.”

Testifying at a Georgia State Senate hearing on December 10, Giuliani screened a video which, he claimed, showed election workers Wandrea “Shaye” Moss and her mother, Ruby Freeman, who were African American,

obviously surreptitiously passing around USB ports as if they are vials of heroin or cocaine. . . . They look like their [sic] passing out dope, not just ballots. . . . [I]t's obvious to anyone who's a criminal investigator or prosecutor . . . and they're still walking around Georgia lying. . . . [T]hey should have been . . . questioned. . . . [T]heir places of work, their homes, should have been searched for evidence of ballots . . . evidence of USB ports, for evidence of voter fraud.

What Giuliani called a USB port was actually a ginger mint candy. But Giuliani told the Senate:

And when you look at what you saw on the video, which to me was a smoking gun, powerful smoking gun. Well, I don't . . . have to be a genius to figure out what happened . . . that those votes are not legitimate votes. You don't put legitimate votes under a table. . . . Wait until you throw the opposition out and, in the middle of the night, count them. We would have to be fools to think that.

He tweeted it was “now beyond doubt” that the election had been stolen.

However, Gabriel Sterling explained: “[T]he work you see is the work you would expect to see, which is you take the sealed suitcase-looking things in, you place the ballots on the scanner in manageable batches and you scan them.” “@GaSecofState investigators” found that it “shows normal ballot processing.” “What’s really frustrating is the president’s attorneys had this same videotape. They saw the exact same things the rest of us see, and they chose to mislead state senators and the public about what was on the video.” Another election official agreed that ballots were in the usual containers, no one was told to leave the room, and a State Election Board monitor was present. The Fulton County director of registration and elections confirmed that the alleged “suitcases” were ballot bins, stored under the table because there was no room elsewhere.

Sterling later told the January 6 Committee his office had “reviewed approximately 48 hours” of surveillance tape for that night:

[Y]ou saw that these were election workers who were under the impression they were going to get to go home. . . . They're putting ballots that are prepared to be scanned into ballot carriers that are then sealed with tamper proof seals. . . . [T]hey're taking these ballot carriers and putting them under . . . the table.

Then, however, Raffensperger ordered that the counting continue “so we could get to the results.” Ralph Jones, who took Raffensperger’s phone

call, told the election workers, “OK, y’all, we got to keep on counting.” Raffensperger explained to the Committee:

[T]hen you see them take their coats off, get the ballots out. And then a secondary thing . . . you’ll have people who are counting ballots who [sic] a batch will go through, they will take them off and run that through again. What happens there is a standard operating procedure [to detect a missed scan].

They then did a hand tally, which “got us to a .1053 percent off of the total votes cast and .0099 percent on the margin, which is essentially dead on accurate. Most academic studies say on a hand tally you will have between one and two percent.”

Moss, who had been a Fulton County election worker for more than ten years, said to the January 6 Committee: “I’ve always been told by my grandmother how important it is to vote and how people before me, a lot of people, older people in my family, did not have that right [because they were Black].” “So what I loved most about my job were the older voters.”<sup>57</sup> “I was excited always about sending out all the absentee ballots for the elderly, disabled people.” Trump supporters had forced their way into her grandmother’s home, seeking to arrest Moss. “I’ve never even heard [my grandmother] or seen her cry ever in my life, and she called me screaming at the top of her lungs.”

During Trump’s phone call to Raffensperger (which follows), the president had said: “We had at least 18,000 . . . voters having to do with the [sic] Ruby Freeman. . . . [S]he’s a vote scammer, a professional vote scammer and hustler.” He named her 18 times. Moss said her mother and she had received “a lot of threats wishing death upon me, telling me that . . . I’ll be in jail with my mother, and saying things like be glad it’s 2020 and not 1920.” Her mother, proudly known in the community as Lady Ruby, said, “Now I won’t even introduce myself by my name anymore.” Shaye felt the same: “I don’t want anyone knowing my name.” She resigned as an election worker. “I just don’t do nothing anymore.” On the FBI’s advice soon after January 6, both went into hiding for two months. Moss said, “There is nowhere I feel safe.” Freeman added:

Do you know how it feels to have the President of the United States to [sic] target you? . . . [H]e targeted me, Lady Ruby, a small business owner, a mother, a proud American citizen who stand [sic] up to help Fulton County run an election in the middle of the pandemic.

OANN also screened the video showing poll workers pulling bins from under tables and starting to count ballots.<sup>58</sup> Claiming there were enough

to overturn the election, the narrator (a major GOP donor) asked accusingly, “[W]hat are these ballots doing there, separate from all the other ballots, and why are they only counting them whenever the place is cleared out with no witnesses?” On Fox News, Laura Ingraham quoted the narrators: “[T]hey will wait until the witnesses over there . . . the press and the observers, leave the room, then you will see them move into action and begin scanning ballots.” Sean Hannity agreed: “[M]ysterious suitcases potentially filled, we believe, with ballots rolled out from under a table after partisan election observers were asked to leave the room.” Tucker Carlson called it “unbelievable.” “We know that fraud took place. We know ballots just kind of showed up in various places.” Trump uploaded the video to his personal YouTube account and invoked it at a December 5 “Defend the Majority” rally, declaring: “You know we won Georgia.”<sup>59</sup> “We’ve never lost an election. We’re winning this election.” “If I lost I’d be a very gracious loser. . . . But you can’t ever accept when they steal and rig and lie.” “I got more votes than any sitting president in history.” “You know, you’re angry because so many votes were stolen. It was taken and the communists win, they win.” Votes were “coming out of ceilings and coming out of leather bags.” Kemp “needs to be a lot tougher.” “Your governor could stop it easily if he knew what the hell he was doing.” Trump warned that the January 5 runoff (between David Perdue and Jon Ossoff, Kelly Loeffler and Raphael Warnock, which would decide control of the Senate) was also likely to be corrupt. He tweeted: “Between Governor @DougDucey of Arizona and Governor @BrianKempGA of Georgia, the Democrat [sic] Party could not be happier.” “Republicans will NEVER forget this.” RNC chair McDaniel said: “[W]e’re going to continue to fight for our president, Donald Trump.” Pence also promised to fight “until every legal vote is counted.”

Shortly after midnight on December 7, Corey Amundson, head of the DoJ Public Integrity Section overseeing voter fraud investigations, expressed concern that FBI agents planned to interview those in the video. Georgia secretary of state “investigators have already conducted recorded interviews of the individuals,” which “revealed nothing to suggest nefarious activity. . . . The FBI ‘re-interviewing’ those individuals at this point and under current circumstances risks great damage to the Department’s reputation, including the possible appearance of being motivated by partisan concerns.” Later that morning, however, David Bowdich (FBI deputy associate director) emailed Richard Donoghue (principal associate deputy attorney general):

[T]his is putting us in a bad spot. . . . [W]e are operating under an antiquated thought process here. Everyone understood before the election we should not do these types of inquiries, but we are in a place right now in this election cycle in which these types of allegations are important to vet out, particularly when many in the country are still questioning the results.

Donoghue agreed: “It is antiquated indeed.” Public Integrity Section lawyers had resisted Barr’s November 9 memo letting the FBI investigate voter fraud allegations more quickly. Barr had told Donoghue the FBI should conduct its own interviews rather than rely on the Georgia secretary of state because “millions of Americans have come to believe (rightly or wrongly) that something untoward took place and it is incumbent on the Department to timely conduct a limited investigation.” Bowdich told Donoghue: “[G]iven that the AG has specifically directed that the FBI conduct some interviews here (he leaves the number and depth of the interviews entirely up to the FBI), the decision has been made.”

On December 4, Trump again asked Kemp to order an audit of absentee ballot signatures and call a special legislative session to appoint electors for Trump.<sup>60</sup> After the governor refused, Trump tweeted:

I will easily & quickly win Georgia if Governor @BrianKempGA or the Secretary of State permit a simple signature verification. Has not been done and will show large scale discrepancies. Why are these two “Republicans” saying no? If we win Georgia, everything else falls in place.

Kemp tweeted back: “As I told the President this morning, I’ve publicly called for a signature audit three times (11/20, 11/24, 12/3) to restore confidence in our election process and to ensure that only legal votes are counted in Georgia. #gapol.” Unappeased, Trump retorted: “But you never got the signature verification! Your people are refusing to do what you ask. What are they hiding? At least immediately ask for a Special Session of the Legislature. That you can easily, and immediately, do #Transparency.” The general counsel for the secretary of state’s office said signature matching could be done only in response to specific complaints.

Although some Republican state lawmakers called for a special session, Kemp and top state GOP leaders opposed it. Lt. Gov. Duncan said on CNN’s *State of the Nation* that he was “absolutely” sure Kemp would not call a special session.<sup>61</sup> “We’re certainly not going to move the goal posts at this point in the election.” He, too, had received death threats. Nevertheless, Kayleigh McEnany claimed on Fox News that “there is plenty” Kemp could do, such as “call for the special legislative session. Governor Kemp can also threaten the budget of the Secretary of State.” But Kemp and Duncan issued a joint statement that “convening a special session of the General Assembly . . . in order to select a separate slate of presidential electors is not an option that is allowed under state or federal law.” “Any attempt by the legislature to retroactively change that process for the Nov. 3rd election would be unconstitutional and immediately enjoined by the courts, resulting in a long legal dispute and no short-term resolution.”

Trump accused Kemp of “disloyalty”: “I put this guy in office. He’s there because of me.” The president said at a rally that day:

We’re all deeply disturbed and upset by the lying, cheating, robbing, stealing that’s gone on with our elections. We know the Democrats will have dead people voting. . . . You wouldn’t believe how many illegal aliens from out of state . . . they have people signing their own name over and over. . . . [I]t’s a fraud. It’s overwhelming. And again, I’m going to ask you to look up at the very, very powerful and very expensive [video] screen. [This was the video described above, which Trump claimed showed fraud.] . . . [I]f you just take the crime of what those Democrats—workers were doing—and by the way there was no water main break. . . . That’s ten times more than I need to win this state.

Raffensperger said on December 7: “We have now counted legally cast ballots three times and the results remain unchanged.” He later told the January 6 Committee he had “wanted President Trump to win the 2020 election.”<sup>62</sup> “We had a successful election from the standpoint of the administration and the operation of the election.” “President Biden carried the state of Georgia by approximately 12,000 votes.” “[T]he first tabulation would be scanned. Then when we did our 100 percent hand audit of . . . all five million ballots . . . they came remarkably close to the first count.” Because Trump was within half a percent, he was entitled to a recount, “and then we recounted them again through the scanner, so we got remarkably the same count. Three counts, all remarkably close.”

ND Ga US Attorney Byung Jin “BJay” Pak later told the January 6 Committee he had reported to Barr:

[W]e looked into it [the fraud allegations]. We’ve done several things including interviewing the witnesses. I . . . reviewed the videotape myself and that there was nothing there. Giuliani was wrong in representing that this was a suitcase full of ballots.<sup>63</sup>

After Pak resigned (under pressure), his replacement, Bobby Christine, agreed and dismissed the complaint. Barr confirmed this:

We took a look—a hard look at this ourselves. And based on our review of it, including the interviews of the key witnesses, the Fulton County allegations were—had no merit. . . . [T]he ballots under the table were legitimate ballots. They weren’t in a suitcase. They had been pre-opened for eventually feeding into the machine, all the stuff about the water leak . . . there was no evidence of a subterfuge to create an opportunity to feed things

into the count. And so, we didn't see any evidence of . . . fraud . . . in the Fulton County episode.

Donoghue said the same thing:

They kept fixating on this suitcase . . . rolled out from under the table. And I said no, Sir. There is no suitcase. You can watch that video over and over. . . . There is a wheeled bin where they carry the ballots.

Nevertheless, Trump repeated the lie in his January 6 speech at the Ellipse:

In Fulton County, Republican poll watchers were rejected [sic—"ejected"] in some cases physically from the room under the false pretense of a pipe burst—water main burst. Everybody leave [sic—"left"]. Which we now know was a total lie. Then election officials pulled boxes, Democrats, and suitcases of ballots out from under a table, you all saw it on television, totally fraudulent, and illegally scanned them for nearly two hours, totally unsupervised. Tens of thousands of votes. This act coincided with a mysterious vote dump of up to 100,000 votes for Joe Biden, almost none for Trump. Oh, that sounds fair. That was at 1:34 a.m.

Sterling said of Trump's claim that at least 18,000 fake Biden ballots had been smuggled in: "[T]here's no physical way he can know who those ballots were for." Because Fulton County was under a consent decree, the secretary of state had an on-site monitor who "noted how many ballots had been counted on each one of the machines" before he left the State Farm Arena. "And when he came back after we found out they were working again, he took note again when they closed. And I believe the final number was something around 8,900 total ballots." Trump claimed that "they dropped a lot of votes in their [sic] late at night." But Raffensperger said "there were no additional ballots accepted after 7 pm." Trump claimed that "dead people voted. . . . [T]he number is in the close to 5,000 people." Trump's lawsuit actually alleged 10,315 dead voters, but Raffensperger had found only two by January 6 and two more thereafter.

At a December 7 press briefing about "what I'm going to call disinformation Monday about what had happened at State Farm Arena," Sterling recapitulated the truth:

[W]hat you saw, the secret suitcases of magic ballots, were actually ballots that had been packed into those absentee ballot carriers by the workers in plain view of the monitors and the press. And what's really frustrating is the President's attorneys had this same videotape. . . . And they chose to

mislead state Senators and the public. . . . They knew it was untrue and they continue to do things like this.

He later compared his efforts to rebut Trump’s false narrative to “a shovel trying to empty the ocean.” “[O]ur job from our point of view was to get the facts out, do our job, tell the truth, follow the Constitution, follow the law, and defend the institutions. And the institutions held.”

Nineteen prominent Georgia Republicans, including a former governor and two former senators, warned that focusing on fraud could “detract” from the Senate runoffs.<sup>64</sup> But at a December 2 rally in Alpharetta, L. Lin Wood and Sidney Powell questioned using equipment and rules from the November 3 election in the runoff and encouraged the audience to protest at Kemp’s house, demanding that he call a special legislative session and resign. Wood said, “[A]s far as I’m concerned, lock [Kemp] up.” “We will not let them steal our freedom. Every lie will be revealed! And on January the 20th of 2021, Donald J. Trump will be sworn in as President of the United States of America.” Powell demanded an election with paper ballots “that are signed and have a thumbprint on them” (which would compromise secrecy and violate state law). Unconsciously re-enacting Ibsen’s play, Trump called Raffensperger an “enemy of the people.” But Lawrence “Lane” Flynn, Chair of the DeKalb County (Atlanta) GOP, said of Wood and Powell: “[Y]ou’ve got these lunatics out there . . . just inventing absolute fiction.” And Raffensperger protested:

Even after this office requested that President Trump try and quell the violent rhetoric, being born out of his continuing claims of winning states where he obviously lost, he tweeted out: “Expose the massive voter fraud in Georgia.” That is exactly the kind of language that is at the base of growing threat environments of election workers who are simply doing their jobs.

Less than 90 minutes into a December 6 hearing, ND Ga Judge Timothy C. Batten (GWB) dismissed Powell’s “Kraken” lawsuit: plaintiffs “ask the court to order the Secretary of State to decertify the election results as if such a mechanism even exists, and I find that it does not.”<sup>65</sup> “They want this court to substitute its judgment for that of 2.5 million Georgia voters who voted for Joe Biden, and this I am unwilling to do.” Powell had requested “perhaps the most extraordinary relief ever sought in any federal court in connection with an election.” But she lacked standing and should have sued in state court: “[F]ederal courts don’t entertain post-election . . . contests about vote counting misconduct.” The next day, a Fulton County Superior Court judge dismissed another lawsuit alleging widespread fraud because the plaintiff’s lawyers had neither paid the filing fee nor completed the paperwork correctly.

Yet Trump persisted, declaring at a December 7 Georgia rally:<sup>66</sup>

We will find that hundreds of thousands of ballots were illegally cast in your state and all over the country, by the way, more than enough to give us a historic victory. . . . This is our country. . . . [T]hey are trying to take it from us through rigging, fraud, deception and deceit. . . . Hopefully, our legislatures and the U.S. Supreme Court will step forward and save our country.

The RNC sued on December 8, complaining that poll watchers could not observe adequately and challenging drop boxes. The Trump campaign and the Georgia GOP separately filed a 1,585-page complaint, asking the court to decertify the election and prohibit electors from voting for Biden. It relied on testimony by Matt Braynard (a Republican agitator) that “the number of ballots that are strongly indicated as illegally cast surpasses the margin of victory in the presidential election.” But a Democratic state representative found that eight of the first ten alleged out-of-state voters lived in Georgia. On December 12, Raffensperger announced an investigation into allegations that Cobb County election officials had improperly accepted mail ballots with signatures that did not match those on file.<sup>67</sup>

At a Georgia Senate Judiciary Committee hearing on December 20, Phil Waldron (a retired Army colonel) claimed that Dominion voting machines were controlled by Venezuelan communists.<sup>68</sup> Powell again showed the video of workers in Atlanta counting “suitcases” full of alleged phony ballots. Giuliani declared that “every single vote should be taken away from Biden.” “You had 10,315 people that we can determine from obituaries were dead when they voted. So, right away, that number you submitted to Washington is a lie.” Democratic state senator Parent interjected: “[S]ince this has been debunked repeatedly, what evidence can you give to us that counters what our elections officials presented us with only an hour ago?” The Republican chair just cut her off.

Trump tweeted on December 23: “They are slow walking the signature verification in Georgia. They don’t want results to get out prior to January 6th. They know what they are trying hard to hide. Terrible people!”<sup>69</sup> But Raffensperger’s signature audit, which reviewed 15,118 ballot envelopes, found no fraud and just two signatures that did not match those on file: a signature was in the wrong place, and a woman signed for her husband, who confirmed he had filled out the ballot. Trump tweeted on December 29: “@BrianKempGA should resign from office. He is an obstructionist who refuses to admit that we won Georgia, BIG! Also won the other Swing States.” “I love the Great State of Georgia, but the people who run it, from the Governor @BrianKempGA, to the Secretary of State, are a complete disaster and don’t have a clue, or worse. Nobody can be this stupid.”

“Now it turns out that Brad R[affensperger]’s brother works for China and they definitely don’t want Trump. So disgusting!” He urged supporters to watch the state Senate election fraud hearings. He tweeted the next day: “@BrianKempGA, his puppet Lt. Governor @GeoffDuncanGA, and Secretary of State, are disasters for Georgia. Won’t let professionals get anywhere near Fulton County for signature verifications, or anything else. They are virtually controlled by @staceyabrams & the Democrats. Fools!” (This narrative continues in Chapter 4, Section 4.4.)

### 3.2.2 Michigan

The Wayne County (Detroit) Board of Canvassers deadlocked 2–2 along party lines over certifying the election results to the Board of State Canvassers.<sup>70</sup> Before the meeting, Wayne County Republican board member Monica Palmer questioned Biden’s lead on social media, asking if Republican poll challengers had been denied access. William Hartmann (another Republican County board member) had filled his Facebook page with false allegations and conspiracy theories about vote manipulation; earlier posts contained racist depictions of Obama, whom he called the “Muslim President.” Jenna Ellis pronounced: “[I]f the state board follows suit, the Republican state legislator [sic—“legislature”] will select the electors. Huge win for @realDonaldTrump.” But after two more hours of discussion—including objections from Democratic governor Whitmer, the Democratic Michigan House minority leader, and others—the Board unanimously certified the results, though it asked Secretary of State Jocelyn Benson to conduct an independent audit.

Palmer said, “I appreciate putting our heads together to come to a solution.” Ellis denounced this “mob rule,” claiming the two GOP members “were accused of racism and they were threatened.” Palmer disclosed:

I did receive a call from President Trump, late Tuesday evening, after the meeting. He was checking in to make sure I was safe after hearing the threats and doxing that had occurred. . . . His concern was about my safety and that was really touching.

Asked if they discussed the vote count, she replied:

It’s hard for me to describe. There was a lot of adrenalin and stress going on. There were general comments about different states. But we really didn’t discuss the details of the certification. . . . It was not pressure. It was genuine concern for my safety.

Nevertheless, she and Hartmann wrote affidavits they had been improperly pressured into certification and accused Democrats of renegeing on their

promise to audit Detroit. Benson said she did not view the Wayne County Board's request for an audit as binding.

Norm Shinkle, a Republican on the Board of State Canvassers, reported enormous pressure to vote against certification. "Every time someone calls they tell me about a new problem."<sup>71</sup> "I do think with all of the potential problems if any of them are true, an audit is appropriate. . . . [I]f we can get more information, why not?" Trump tweeted on November 18: "The Great State of Michigan, with votes being far greater than the number of people who voted, cannot certify the election. The Democrats cheated big time, and got caught. A Republican WIN!" He issued an invitation to the White House to Senate Majority Leader Mike Shirkey and House Speaker Lee Chatfield (both Republicans). Shirkey had previously said the legislature was "not going" to appoint its own slate of electors; after meeting Trump, the two confirmed that "we have not yet been made aware of any information that would change the outcome of the election in Michigan" and were "going to follow the law." But Trump was adamant: "Hopefully the courts and or legislatures will have the courage to do what has to be done to maintain the integrity of our elections and the United States of America itself. The world is watching." He posted on Facebook, "Demand a vote on decertification," and included Shirkey's personal phone number. Shirkey reported that this had led to angry demonstrations outside his home and 4,000 texts "asking for changes in the electors" and asserting: "'You guys can do this.' Well, they were believing things that were untrue." Angela McCallum phoned state legislators from Trump campaign headquarters, declaring, "You do have the power to reclaim your authority and send a— a slate of electors that will support President Trump and Vice President Pence." RNC chair McDaniel and the Michigan GOP chair asked the Board of State Canvassers to adjourn for 14 days for a "full audit and investigation" but identified only a 450-vote difference in Wayne County, which Biden had won by 150,000 votes. Benson said an audit could be conducted only after the Board had certified the election. Trump retweeted Republican state senator Aric Nesbitt calling for "a full, independent audit," but only 10 of the 70 Republican state legislators had requested it. On November 20, the Michigan State Bureau of Elections formally recommended that the Board of State Canvassers call Biden the winner, which it did, with Shinkle abstaining and one Republican dissenting. State senator Edward McBroom (Republican), who chaired the Oversight Committee, excluded Giuliani from a members-only meeting because the Committee had "found no evidence of widespread or systematic fraud." Permitted to testify the next day, Giuliani said there was "nothing wrong with putting pressure on your state legislators." He called the election a "con job," presenting a witness who criticized voter verification because "Chinese all look alike. . . . If some Chow shows up, you can be anybody and you can vote." Giuliani told legislators, "[Y]ou can take [the election result] back

tonight. You can take it back the day before the electors go down to Washington.” Jenna Ellis advised them: “What the Constitution obligates you to do is to take back your plenary power.”

Melissa Carone, a contractor providing IT support for Dominion machines, had worked a 24-hour shift in Detroit’s TCF Center on Election Day.<sup>72</sup> She wrote an affidavit on November 10 claiming to have seen ballots screened multiple times and vans intended to transport meals hiding tens of thousands of ballots. But when it was filed, Wayne County circuit Judge Timothy Kenny found that her and other witnesses’ “interpretation of events is incorrect and not credible.” On December 2, Carone told a hearing of the state House and Senate Oversight Committees that 30,000 votes were counted multiple times: “Everything that happened at that TCF Center was fraud. Every single thing.” But even Giuliani (who was coordinating her testimony) audibly hushed her. Rep. Steven Johnson (Republican) said, “[W]e’re not seeing the poll book off by 30,000 votes.” Carone retorted, “What’d you guys do, take it and do something crazy to it?” There were “zero registered voters” in the poll book and 100,000 fraudulent ballots. She refused to testify under oath because “I am a mother, I have two children. I have two degrees. . . . You can go to prison for this.” She had received death threats and had to move and change her phone number.

Armed protesters surrounded the home of Secretary of State Benson.<sup>73</sup> (This was particularly frightening because two months earlier, the FBI had charged 13 men, half belonging to the Wolverine Watchmen paramilitary militia, with seeking to kidnap Gov. Whitmer over her COVID policies; all were later convicted, and some were sentenced to long terms.) Benson decried the fact that

through blatantly false press releases, purely political legislative hearings, bogus legal claims and so-called “affidavits” that fail to allege any clear or cogent evidence of wrongdoing, those unhappy with the results of this election have perpetuated an unprecedented, dangerous, egregious campaign to erode the public’s confidence in the results of one of the most secure, accessible and transparent elections in our state’s history.

During a demonstration near her house, she worried: “[A]re they coming with guns? Are they going to attack my house? I’m in here with my kid. I’m trying to put him to bed.” Michigan Attorney General Dana Nessel and Wayne County prosecutor Kym Worthy (both Democrats) said “this mob-like behavior is an affront to basic morality and decency.” “Terrorizing children and families at their homes is not activism.” Nessel warned that Trump’s false narrative “gets people to a place where they are now livid because they believe that their democracy has been ripped away from them and that the election has actually been stolen. And it causes them to commit these desperate acts.”

### 3.2.3 Arizona

Clint Hickman, Republican chair of the Board of Supervisors for Maricopa County (which contains Phoenix and 62 percent of the state's population), said "there is no evidence of fraud or misconduct or malfunction."<sup>74</sup> He assured county residents that "vote counting is not a Republican or a Democrat issue; everyone should want all the votes to be counted, whether they were mailed or cast in person." Accusing Republicans of using a lawsuit to delay certification, Democratic secretary of state Katie Hobbs moved to dismiss. Maricopa County Superior Court Judge John Hannah did so, noting that Republicans had waited until the outcome was known before questioning the hand count procedure. The supervisors (4 Republicans and 1 Democrat) unanimously certified the results. Mohave County supervisor Ron Gould moved to delay the canvass of his county's election results. Hildy Angius, another supervisor, explained that the motion "has nothing to do with our results. It's more of a big picture sort of thing" to support Trump. Board chairwoman Jean Bishop candidly admitted: "[W]e're trying to make a statement to support the state party. . . . I guess it is political."

Republican House Speaker Rusty Bowers said courts had debunked Trump's claims, and the legislature could not interfere.<sup>75</sup> He resisted the "enormous amount of pressure" on lawmakers to choose electors. Giuliani had phoned him on December 4, alleging: "[W]e have 200,000 illegal immigrants [voting] . . . five or 6,000 dead people, et cetera. And I said, do you have their names?" Trump, who was on the call, said, "[G]ive the man what he needs, Rudy." Jenna Ellis, also on the call, explained, "[I]t's not with me, but we can get it to you." Giuliani said, "[W]e've got a lot of theories. We just don't have the evidence." Bowers said he and the other Arizona legislators on the call "remembered that specifically, and afterwards we kind of laughed about it." Giuliani asserted, "[T]here is a legal theory or a legal ability in Arizona that you can remove the—the electors of President Biden and replace them." Bowers replied, "I've never heard of any such thing." When Giuliani "pressed the point," Bowers retorted:

Look, you are asking me to do something that is counter to my oath, when I swore to the Constitution to uphold it. And I also swore to the Constitution and the laws of the state of Arizona. . . . I would never do anything of such magnitude without deep consultation with qualified attorneys. . . . As a conservative Republican, I don't like the results of the presidential election. . . . But I cannot and will not entertain a suggestion that we violate current law to change the outcome of a certified election.

As a Mormon, “it is a tenet of my faith that the Constitution is divinely inspired, [one] of my most basic foundational beliefs. And so, for me to do that because somebody just asked me to is foreign to my very being.” Bowers asked if it had ever been done before. Giuliani said, “[W]ell, I’m not familiar with Arizona law or any other laws, but . . . I don’t think so.” Bowers then released a statement about the “breathtaking request” by Trump and Giuliani “that the Arizona legislature overturn the certified results of last month’s election and deliver the state’s Electoral College votes to President Trump.” He told the January 6 Committee:

We have no legal pathway, both in state law nor [sic] to my knowledge in federal law, for us to execute such a request. And I am not allowed to walk or act beyond my authority if I’m not specifically authorized as a legislature [sic—“legislator”].

I have lived in [an]other country for a period of time and have visited a few countries and during election times. The fact that we allow an election, support an election, and stand behind the election, even in the past when there have been serious questions about the election and then move on without disturbance and with acceptance. . . . [W]e choose to follow the outcome of the will of the people.

“It means a lot to me and I know it meant a lot” to Ronald Reagan, for whom Bowers had “a lot of admiration.”

The pressure just intensified. When Trump phoned again in late December, Bowers told the president he had “voted for him, but [was not] going to do anything illegal for him.” John Eastman (a lawyer advising Trump) called Bowers on January 4 and asked “that we decertify the electors . . . because we had plenary authority to do so,” citing Article II, Section 1. “I said, again, I took an oath.” Eastman replied:

[J]ust do it, and let the court sort it out. And I said you’re asking me to do something that’s never been done in . . . the history of the United States. . . . And I’m not going to put my state through that without sufficient *proof*?

“I can’t even call the legislature into session without a two-thirds majority vote. We’re [i.e., Republicans] only 30 plus one.” Rep. Andy Biggs phoned on the morning of January 6 “and asked if I would sign on both to a letter that had been sent from my state and/or that I would support the decertification of the electors. And I said I would not.”

Ellis and Giuliani convened a “fact-finding hearing” on election fraud, attended by nine state legislators as well as Arizona Representatives Gosar

and Biggs.<sup>76</sup> It was held in a Phoenix hotel because Bowers refused to authorize use of the Capitol:

[T]he circus . . . had been brewing with lots of demonstrations both at the counting center, at the Capitol, and other places. And I didn't want to have that in the House. . . . I did not feel that the evidence . . . merited a hearing. And I didn't want to be used as a pawn.

Beforehand, Republican state representative Mark Finchem asserted that “the U.S. Constitution empowers lawmakers to decide on their own, whether the election was valid and, if not, to select the electors of their choice.” Giuliani urged the legislature to choose its own electors, likening such bravery to “losing your life on a battlefield.” “Let’s say there were 5 million illegal aliens in Arizona.” (With a state population of just 7.5 million, that was unlikely.) “It is beyond credulity [sic—“credibility”] that a few hundred thousand didn’t vote.” Jenna Ellis tweeted: “[T]he certification of Arizona’s FALSE results is unethical and knowingly participating in the corruption that has disenfranchised Az voters. BUT, this in no way impacts the state legislature’s ability to take back the proper selection of delegates.” Phil Waldron (who had also testified in Georgia) claimed to be an expert on “how to get in and corrupt these [voting] machines to conduct strategic influence operations.” They were “vulnerable everywhere.” “If there’s software, it can be corrupted, it can be manipulated with a device as small and simple as a USB device, which these machines are booted up and runoff of [sic].” That was false, as was his claim that voting machines were connected to the Internet while being used. He offered an email allegedly from a Pima County resident about a Democratic plan to “embed votes,” distributing them across counties to make them look like minor errors. He falsely said mail-in ballot signatures were not verified. Giuliani alleged incorrectly that ballots were sealed in two envelopes. Judith Burns, a legislator who attended the meeting, conceded she did not know which signatures were accepted or how many ballots were questionable but nevertheless declared: “I was truly astounded at what I saw.” Anna Orth, a poll worker and observer, was concerned that another poll worker looked about 85 years old. Orth acknowledged that her own ballot had been counted but asked, “[H]ow do we know who we voted for?” Trump phoned into the meeting, calling the election the “greatest scam ever perpetrated against our country.” The Arizona GOP had exhorted the legislature on November 30: “DO NOT CERTIFY A FALSE ELECTION!” After it did so, Gov. Ducey said proudly: “[W]e do elections well here in Arizona. The system is strong and that’s why I have bragged on it so much.” Trump tweeted: “Why is he rushing to put a Democrat in office, especially when so many horrible things concerning voter fraud are being revealed at the hearing going on right now.” He retweeted a post that “Gov. Ducey has betrayed the people of Arizona,”

adding “TRUE!” Ducey replied: “[W]e have some of the strongest election laws in the country.” “That’s the law. I’ve sworn an oath to uphold it, and I take my responsibility seriously.”

The Arizona GOP retweeted Ali Alexander’s #StopTheSteal tweet—“I am willing to give my life for this fight”—adding, “He is, Are you?”<sup>77</sup> GOP state chair Kelli Ward tweeted Gov. Ducey to “#STHU” (shut the hell up), provoking him to respond: “[T]he feeling’s mutual to her, and practice what you preach.” When Rep. Biggs said Ducey “intends to coerce vaccinations,” the governor’s chief of staff tweeted back: “[W]e always knew you were nuts, but you’ve now officially confirmed it for the whole world to see. Congratulations. Enjoy your time as permanent resident of Crazytown.” Twenty-eight current and incoming state Republican lawmakers called for decertification of the election. On December 15, Trump tweeted:

Tremendous problems being found with voting machines. They are so far off it is ridiculous. Able to take a landslide victory and reduce it to a tight loss. This is not what the USA is all about. Law enforcement shielding machines. DO NOT TAMPER, a crime. Much more to come!

Ward tried to connect Hickman (and other Maricopa County officials) to Trump.<sup>78</sup> She told Hickman on November 13 that the president would probably telephone, but he did not try until New Year’s Eve and then again four days later. Hickman let both calls go to voicemail: “I told people, ‘Please don’t have the president call me.’” Before the second call, he had read the transcript of Trump’s phone call to Raffensperger (see Chapter 4, Section 4.4): “I was like, ‘I want no part of this madness and the only way I enter into this is I call the president back.’” Giuliani also called Hickman and three other Maricopa supervisors in November and December; Hickman let those go to voicemail as well. After the audit showed that Biden had won Maricopa County by even more than the original count, Hickman said, “I don’t like how [Trump] has punched down on local officials . . . just trying to do their job.”

### 3.2.4 *Pennsylvania*

A week before the election, Al Schmidt, a Republican on the Philadelphia County Board of Elections, started getting death threats from Trump supporters, as did Seth Bluestein, Schmidt’s (Republican) chief of staff.<sup>79</sup> The day after the election, Giuliani, Pam Bondi, and Eric Trump held a news conference in the city. The president tweeted: “We have claimed for Electoral Vote purposes, the Commonwealth of Pennsylvania (which won’t allow legal observers).” (The Pennsylvania Supreme Court rejected the state lawsuit making this claim.) He accused Democratic governor Wolf of “flagrantly violating” the Constitution and pronounced: “ANY VOTE THAT CAME

IN AFTER ELECTION DAY WILL NOT BE COUNTED.” Giuliani said: “It is very, very sad that we’re here in the city that’s really the birthplace of our democracy, and this is among one of the most antidemocratic things I’ve ever seen or encountered.” “Not a single Republican has been able to look at any one of these mail ballots.” Bondi accused Bluestein of wearing a badge “the size of a baseball. . . . [I]t looks like intimidation to me, with a police barricade.” (The Philadelphia Office of Emergency Management had issued the badge; the “barricade” consisted of bicycle racks placed to ensure social distance during the pandemic.) Trump tweeted: “Al Schmidt, a Philadelphia and so-called Republican (RINO), is being used big time by the Fake News Media. . . . He refuses to look at a mountain of corruption & dishonesty. We win!” The next morning, Schmidt got another death threat. On November 5, two men with loaded pistols were arrested near the Philadelphia Convention Center (where votes were being counted). Their car contained an AR-15-style rifle, 160 rounds, and QAnon stickers. They had texted: “Going to Pennsylvania. Have a truckload of fake ballots. We are going to raid.”

Seventy-five Republican state legislators called on Congress to reject the Biden electors. The Republican majority leaders of the state Senate and House, Jake Corman and Kerry Benninghoff, had written an op-ed in October: “Pennsylvania lawmakers have no role to play in deciding the presidential election.”<sup>80</sup> But after the election, Corman said the legislature could be involved “if there was no certification of results.” When the legislature did certify them, Giuliani asked Corman to call a special session to replace the electors. Corman said he lacked authority to do so and had his lawyers talk to Giuliani. When Giuliani and Ellis subsequently told Corman his lawyers were “terrible,” he hung up. Trump made the same pitch to state House Speaker Bryan Cutler, whom he had invited to a Christmas tour of the White House, but Cutler also said the legislature had no power to overturn the choice of electors, he could not call a special session without an order from the (Democratic) governor, and he could not appoint new electors without a court order. Armed protesters demonstrated at his home, and his office got 20,000 emails and “tens of thousands” of voicemails.

It is the new pattern . . . in our lives, to worry what will happen on Saturdays. Because we have various groups come by and they have had video panel trucks with videos of me proclaiming me to be a pedophile and a pervert and a corrupt politician and blaring loudspeakers in my neighborhood and leaving literature.

They also threatened Cutler and his neighbors. Cutler, Corman, Benninghoff, and Senate president Pro Tem Kim Ward issued a statement that the legislature “lacks the authority . . . to overturn the popular vote,” an action that would “violate our Election Code and Constitution.” In response, Trump retweeted

a post by Bernard Kerik: “PROFILES IN COWARDICE! The Pennsylvania legislators will allow the fraudulent certification of their election! #liars, #cowards, #traitors.”<sup>81</sup> (Kerik had been appointed NYPD commissioner by Giuliani and later worked for his firms; Giuliani had gotten Trump to pardon Kerik’s eight felony convictions.) Giuliani tweeted: “Republican legislature let down America. . . . All of us Republicans let them know what we think of them.” After Judge Brann dismissed the Pennsylvania lawsuit (Section 3.3 later), Trump tweeted: “It’s all a continuation of the never ending Witch Hunt. Judge Brann, who would not even allow us to present our case or evidence, is a product of Senator Pat ‘No Tariffs’ Toomey of Pennsylvania. No friend of Mine & Obama [appointee].” “No wonder. 900,000 Fraudulent Votes!” “WILL APPEAL!” But Pennsylvania secretary of state Boockvar and Gov. Wolf (both Democrats) certified Biden’s win.

Leah Hoopes and Greg Stenstrom asked Delaware County Court of Common Pleas Judge John Capuzzi to hold the county board of election officials in contempt and order the county to turn over the ballots for an audit.<sup>82</sup> He dismissed the case, finding that their claims “lack a scintilla of legal merit,” and accused their lawyer of “dereliction of duty” for failing to notice that other courts had dismissed the claims. Plaintiffs “come before this court with unclean hands and they themselves are the ones whose conduct is contemptible.”

### 3.2.5 Wisconsin

Trump tweeted on November 18 that in Milwaukee, Biden got a “dump of 13,379 votes at 3:42AM, when they learned he was losing badly.”<sup>83</sup> But the Republican State Assembly majority leader said that was “NOT a surprise.” These were absentee ballots, which could not be counted until the polls closed. Robin Vos, the Republican Assembly speaker, said, “[I]t’s very unlikely that we’re going to find 20,000 cases of fraud,” and “[W]e have no part in the process [of choosing electors].” After the (Democratic) governor certified Biden’s win, Trump tweeted that his campaign would sue, which it did the next day, challenging more than 170,000 ballots cast both early and in-person in Milwaukee and Dane (Madison) Counties, claiming that the mail ballot application form, which had been used throughout the state for years, was defective and contesting the practice of letting clerks correct minor errors and older and infirm voters declare they were “indefinitely confined” so they could vote without a photo ID.

The Wisconsin Supreme Court (4–3) dismissed the remaining election challenge.<sup>84</sup> Judge Brian Hagedorn (a Republican, writing for the three Democrats) found it “meritless on its face.” “The relief being sought by the petitions is the most dramatic invocation of judicial power I have ever seen. Judicial acquiescence to such entreaties built on so flimsy a foundation would

do indelible damage to every future election.” Hagedorn (who had been chief legal counsel for the previous Republican governor) had also voted with the three Democrats to stop the purge of 130,000 voters, block two third-party candidates (Howie Hawkins from the Green Party and Kanye West), and reject two efforts to overturn Biden’s win. He explained: “I was just following the law.” “The hard thing to do, the courageous thing to do, is to fulfill your oath, especially when you know it’s going to make your political supporters unhappy.” “I’ve been called a traitor . . . liar . . . fraud. I’ve been asked if I’m being paid off by the Chinese communist party. I’ve been told I might be tried for treason by a military tribunal.” On December 21, Trump attacked Hagedorn, tweeting: “Great Republicans in Wisconsin should take these 3 strong decisions to their State Legislators and overturn this ridiculous State Election. We won in a LANDSLIDE!” But at an unofficial hearing of a joint legislative committee, Dean Knudson, a former chair of the state elections commission and lifelong conservative, testified:

I have not seen credible evidence of large-scale voter fraud in Wisconsin during the November election . . . there were no dumps of ballots during the night. . . . There is no evidence of any fraud related to Dominion voting machines.

### 3.3 Litigating the Election

As Trump had threatened, Republicans did rush to court.<sup>85</sup> Some lawyers tried their cases in the media. One of the most egregious was Giuliani, who was representing the campaign after the withdrawal of the 200-lawyer DC firm Porter Wright Morris & Arthur. Although he alleged “widespread nationwide voter fraud” in Pennsylvania, Giuliani then admitted “this is not a fraud case” but rather a “scheme.” (Matt Morgan, the campaign’s general counsel, had withdrawn the fraud claim, explaining to White House colleagues: “I am not going to lose my mucking [sic] law license because of these idiots.”) Giuliani continued: “The place where it happens all happened to be big cities controlled by Democrats, who all of a sudden decided we don’t have a right to examine absentee ballots.” “As far as we’re concerned, Your Honor, those ballots could’ve been from Mickey Mouse.” MD Pennsylvania Judge Matthew Brann (Obama) noted that “the poll-watching claims were deleted.” Giuliani denied this but then admitted it while asserting he would file a third amended complaint. Judge Brann said: “You’re alleging that the two individual plaintiffs were denied the right to vote, but, at bottom, you’re asking this court to invalidate more than 6.8 million votes, thereby disenfranchising every single voter in the Commonwealth.” Challenged by Brann to describe the appropriate standard of review, Giuliani said “the normal one” but conceded: “Maybe I don’t understand what you mean by strict scrutiny.”

(Any law student would.) On another occasion, he acknowledged: “I’m not quite sure what ‘opacity’ means. It probably means you can see.” The judge corrected him: “[I]t means you can’t.” Without offering evidence, Giuliani asserted that ballot counting machines conspired to fix the election and that mail ballots counted after Election Day had been faxed. He filed an amended complaint seeking “the remedy of Trump being declared the winner of the legal votes cast in Pennsylvania . . . and, thus, the recipient of Pennsylvania’s electors,” asserting that 1.5 million mail or absentee ballots in seven counties “should not be counted” because “disparate treatment between Pennsylvania counties created a textbook example of an Equal Protection violation, prohibited by the United States Supreme Court (*Bush v. Gore*).” Giuliani admitted it had been “four or five years” since he had tried a case; in fact, his last federal court appearance had been in 1992. An email from his partners’ account, sent to at least three Trump campaign officials, proposed that instead of charging his usual \$2,000 an hour, “we will contract for \$20,000 a day which will include all of the expenses of Mr. Giuliani and his staff.” Despite the email, Giuliani twice denied requesting this.

Judge Brann dismissed the action, calling it a “Frankenstein’s Monster . . . haphazardly stitched together.” The campaign had used “strained legal arguments without merit and speculative accusations unpled in the operative complaint and unsupported by evidence.” This “cannot justify the disenfranchisement of a single voter, let alone all of the voters of its sixth most populated state.” In maintaining that “ballot curing” was illegal, the plaintiffs had misstated a Pennsylvania Supreme Court decision that “declined to explicitly answer whether such a policy is necessarily forbidden.” The judge denied a motion to amend the third complaint to restore allegations that observers had been excluded. He found that plaintiffs lacked standing but added that he would have dismissed the case even if they had standing. Giuliani and Ellis denounced Brann as an “Obama-appointed judge,” but he was a former member of the Federalist Society, whom Republican Senator Toomey claimed was “a longtime conservative Republican.” The Third Circuit (Bibas (Trump), Chagares (GWB), and Smith (GWB)) denied an emergency motion to block certification of the votes pending the appeal. “[C]alling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.” Most of the claims rested on state law and had been rejected by state courts. The allegations of unconstitutional discrimination were “vague and conclusory.” “The number of ballots it specifically challenges is far smaller than the roughly 81,000-vote margin of victory.” “[T]ossing out millions of mail-in ballots would be drastic and unprecedented, disenfranchising a huge swath of the electorate and upsetting all down-ballot races too.” “Voters, not lawyers, choose the President. Ballots, not briefs, decide elections.” Although all three judges had been appointed by Republicans (one by Trump), Ellis tweeted: “The activist judicial machinery

in Pennsylvania continues to cover up the allegations of massive fraud. . . . On to SCOTUS!”

The Montgomery County (Pennsylvania) Court of Common Pleas dismissed a case after the plaintiff’s lawyer replied “no” when the judge asked: “[A]re you claiming that there is any fraud in connection with these 592 disputed ballots?”<sup>86</sup> ED Pa Judge Paul Diamond (GWB) rejected an attempt to stop the ballot count in Philadelphia for alleged exclusion of poll watchers when the plaintiff’s lawyer admitted Republicans had “a nonzero number of people in the room.” Wayne County (Michigan) Third Judicial Circuit Chief Judge Timothy M. Kenny dismissed as “mere speculation” the GOP’s voter fraud claims that election officials had “coached” people to vote, because plaintiffs failed to specify where, when, and how this supposedly had occurred. In one Michigan lawsuit, “plaintiffs’ affiants did not have a full understanding” of ballot counting because they had missed the walk-through of the process. In another, the campaign mistakenly sued in the US Court of Claims (in DC) rather than the Michigan Court of Claims (in Lansing). Michigan First District Court of Appeals Judge Cynthia Stephens rejected hearsay evidence that late ballots were being counted improperly in Detroit. ED Mich. Judge Linda Parker (Obama) held that claims of “massive election fraud” were “nothing but speculation and conjecture.” “Plaintiffs ask this court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters. This, the court cannot, and will not, do.” “This lawsuit seems to be less about achieving the relief plaintiffs seek . . . and more about the impact of their allegations on people’s faith in the democratic process and their trust in government.” A federal judge called Powell’s complaint “void of plausible allegations” and “sorely wanting of [sic] relevant or reliable evidence.” A Michigan judge said Powell’s belief that voting machines changed outcomes was “an amalgamation of theories, conjecture, and speculation.” Michigan state court judges held in one case that plaintiffs “offered no evidence to support their assertions” and in another that their “interpretation of events is incorrect” and “decidedly contradicted” by “highly respected” election experts. ED Wisconsin Judge Brett H. Ludwig (whom Trump had just appointed in September) had a “very, very hard time” seeing why the case was in his court, calling the request to “remand” the election to the state legislature “bizarre.” “Plaintiff ‘asks that the Rule of Law be followed.’ It has been.”

Sen. Graham had said in November on *Fox & Friends* that the Clark County, Nevada, signature verification machine accepted “every signature whether it was fraudulent or not,” and people were seen filling out fraudulent ballots on “a Biden Harris truck.”<sup>87</sup> But Carson County District Judge James T. Russell dismissed a lawsuit on December 4, finding that the machine simply had sent 70 percent of queried signatures for human verification, and the allegation of false ballots on the truck was “not credible.” The witness

declarations were “self-serving statements of little or no evidentiary value,” and the expert testimony “was of little to no value.” He received death threats. A week later, the Nevada Supreme Court unanimously affirmed. The Nevada GOP complained, “[W]e were not afforded any opportunity to write our brief or argue the case,” which was “truly unprecedented, shocking and extraordinary.” L. Lin Wood challenged the certification of votes in Georgia, but his expert witness filed an affidavit about districts in Michigan—and then mistakenly named towns and counties in Minnesota. Wood’s former law partners (who were suing him for unpaid compensation) said he called himself “Almighty Lin” and had seen a “prophecy” on YouTube that he would be named chief justice of the United States. He wrote them: “I have assessed my mental health. I am a little crazy, but I’m also mainly sane and possess a healthy mind.” Wood was no more successful before a Trump appointee, ND Ga Judge Steven Grimberg, who said that “to halt the certification at literally the 11th hour would breed confusion and potential disenfranchisement that, I find, has no basis in fact or law.” No candidate was a party, and Wood lacked standing. Delaware Superior Court Judge Craig A. Krasnitz revoked Wood’s pro hac vice admission because of his conduct as plaintiff in the Georgia case and because his Wisconsin lawsuit had “multiple deficiencies.” ED Wi Judge Pamela Pepper (Obama) dismissed Powell’s Wisconsin case: “Federal judges do not appoint the president of this country. One wonders why the plaintiffs came to federal court and asked a federal judge to do so.”

A Nevada state court judge held that plaintiffs “did not prove under any standard of proof that illegal votes were cast and counted.” A Republican-appointed Georgia state court judge dismissed a complaint alleging that tens of thousands of ballots had been cast by out-of-state residents or had invalid signature matches, finding that the allegations “rest on speculation rather than duly pled facts.” Arizona Republicans insisted that election workers and Democratic officials overseeing the election “could” have perpetrated a fraud, but D Az Judge Diane J. Humetewa (Obama) said “these innuendos fail to meet” the standards of proof.

Remarkably, these cases were typical. An analysis determined that only 1 of the 44 federal judges who decided post-election challenges found for Trump.<sup>88</sup> *The New York Times* said that despite some 60 lawsuits, there was “not a single case of an undocumented immigrant casting a ballot, a citizen double voting, nor any credible evidence that legions of the voting dead gave Mr. Biden a victory that wasn’t his.” In 62 cases, Trump and his supporters won only one (involving too few votes to affect the outcome). Consequently, the strong statistical correlation I found in other chapters between the party of the appointing president, and the judge’s decision was absent in these cases (see Table 3.1).

Even among state court judges, only 27 of the 150 decided for Trump (18 percent); the proportions were higher in Wisconsin (39 percent) and

**TABLE 3.1** Federal Judges' Decisions on Election Cases

<i>Appointing President's Party</i>	<i>Decision for Trump</i>	<i>Decision against Trump</i>
Republican	1	29
Democratic	0	14

*Note:* Chi-square = 0.2616;  $p = .609$  (not significant at  $p < .05$ ) (I had to do the analysis based on one Democratic judge deciding for Trump because the online calculator would not accept 0.)

**TABLE 3.2** State Judges' Decisions on Election Cases

<i>Judge's Party</i>	<i>Decision for Trump</i>	<i>Decision against Trump</i>
Republican	26	49
Democrat	1	51
Unknown	0	23

*Note:* Chi-square = 19.6679;  $p = .00001$ .

Pennsylvania (29 percent), but lower in Michigan (16 percent) and zero in Georgia, Arizona, Minnesota, and Nevada. Among state judges, however, the correlation between politics and outcome was highly significant (see Table 3.2).

One reason for the Trump campaign's dismal litigation record is that it relied on lawyers with no expertise in election law (or sometimes any law) because its establishment law firms had distanced themselves, presumably out of concern for their reputations.<sup>89</sup> Jones Day (whose 2,500 lawyers made it one of the largest firms in the country) had earned more than \$20 million from the campaign but declared it was not representing Trump in "any litigation alleging voter fraud." Snell & Wilmer (one of the largest firms on the West Coast, with more than 450 lawyers) withdrew from the Maricopa County lawsuit. After one lawyer left Porter Wright Morris & Arthur because it represented the campaign and two others objected to working for Trump, the 200-lawyer Columbus, Ohio, firm withdrew from the lawsuits it had filed in Pennsylvania. Three lawyers at Kirkland & Ellis (the world's largest firm by revenue) also withdrew from a Pennsylvania case. Another lawyer quit a Philadelphia case after January 6 because his services were being used to "perpetuate [sic—"perpetrate"] a crime." Two lawyers left Fox Rothschild (nearly a thousand lawyers) in order to keep representing Trump in Georgia after the firm prohibited involvement in the 2020 election contests. Over 3,000 lawyers signed a statement by Lawyers Defending American Democracy, calling for an investigation of Trump's campaign lawyers. Twenty-five former DC Bar presidents opined:

The period since the election has seen a destructive and unwarranted series of abusive lawsuits filed by some members of the American legal

profession. While lawyers must represent their clients with determination and zeal, no lawyer may seek, on behalf of any client, to subvert democratic institutions or burden the courts with claims that the lawyer knows are frivolous.

### 3.4 Continuing the Contests

Democratic state officials staunchly defended their election procedures.<sup>90</sup> Nevada Attorney General Aaron Ford said: “[W]e have people here who know how to run fair, safe and secure elections, and voter fraud is a very minimal occurrence.” Arizona secretary of state Katie Hobbs said “there is absolutely no merit to any claims of widespread voter fraud in Arizona.” After the Arizona GOP said people with out-of-state addresses had voted, the Clark County Registrar of Voters explained: “[Y]ou don’t have to live here in order to be eligible to vote here.” Washington secretary of state Kim Wyman said fraud allegations were “just throwing grass at the fence at this point. See what sticks.” Pennsylvania secretary of state Kathy Boockvar said there had been only one incident of attempted fraud. Michigan Attorney General Dana Nessel was “very confident that the election was conducted appropriately.” Although Michigan lawmakers approved subpoenas for documents related to “election irregularities,” Secretary of State Jocelyn Benson said, “[W]e have not seen any evidence of fraud or foul play.” Minnesota secretary of state Steve Simon said, “I don’t know of a single case where someone argued that a vote counted where it shouldn’t have or didn’t count when it should.”

Some Republicans took similar positions. Secretary of State Scott Schwab said, “Kansas did not experience any widespread, systematic issues with voter fraud, intimidation, irregularities or voting problems.” Ohio secretary of state Frank LaRose dismissed the fraud allegations: “[T]here’s a great human capacity for inventing things that aren’t true about elections.” After RNC chair McDaniel claimed that 2,000 ballots had been “found” in Michigan on November 5, the Republican Rochester Hills City Clerk said this was an “isolated mistake that was quickly rectified.”

I have spent 15 years building my reputation of being a good election official—not only a good one, but a great one—and to have someone make a statement that we committed fraud of some kind . . . I couldn’t stand by and not respond.

Outgoing Montana secretary of state Corey Stapleton, who had supported Trump, now urged him, “[T]ip your hat, bite your lip, and congratulate @JoeBiden.” Arizona Attorney General Mark Brnovich told Fox News his office had investigated more than 1,000 complaints about the use of Sharpie pens disqualifying ballots and found none was credible.

Georgia Republicans were divided.<sup>91</sup> Secretary of State Raffensperger said his 159 election directors and employees “are not involved in voter fraud.” When Sens. Loeffler and Perdue (facing January 5 runoffs with Democratic opponents) called for Raffensperger’s resignation, he dismissed their allegations as “laughable.” “The voters of Georgia hired me, and the voters will be the one [sic] to fire me.” “People are just going to have to accept the results.” The Trump campaign and the Georgia GOP demanded a recount, alleging there were “hundreds of reports of voting discrepancies,” including “tens of thousands of ballots being unlawfully counted.” A spokesman for Gov. Kemp said the “close outcome and the record number of mail-in and absentee ballots” were “a wake-up call to the Secretary of State’s office to take a serious look at any and all voting irregularity allegations that have been made.” But former US Senator Saxby Chambliss said, “[T]here was no wholesale fraudulent scheme or device in any of these states where the votes were close that could potentially change the results of the election,” and Sens. Loeffler and Purdue should not have attacked Raffensperger.

Nevertheless, many Republicans continued to back Trump.<sup>92</sup> His sons led the charge. Don Jr. said there was “infinitely more evidence of voter fraud than there ever was of ‘Russia Collusion.’” Eric tweeted: “I truly hope the @FBI@DOJ engages immediately.” Newt Gingrich called for jailing poll workers. True the Vote launched a \$1 million “Whistleblower Defense Fund” to “incentivize” witnesses to testify. Rep. Dan Crenshaw (Texas) said: “irregularities have been flagrant.” After he conceded that Republicans “must accept the final results,” Georgia representative-elect Marjorie Taylor Greene admonished him to “STAND UP for Trump.” Sen. Johnson declared “there are enough irregularities.” Sen. Marsha Blackburn thought it “a shame that we have to fight for a fair election . . . but we do.” House Minority Leader McCarthy exhorted Republicans: “[D]o not be quiet, do not be silent about this.” Texas governor Abbott warned that “what is happening in some states undermines trust in elections.” Wisconsin Assembly speaker Robin Vos directed a legislative committee to “use its investigator powers” to review the election. Pennsylvania Republican legislators urged Democratic governor Wolf to conduct an “immediate audit.” But in response to conservative pundits who maintained that state legislatures could direct electors to vote for Trump, Pennsylvania Senate leader Corman said: “[W]e want to stay in the tradition that the popular vote winner wins the election.”

Later in November, however, there were more Republican defections.<sup>93</sup> Sen. Kevin Cramer (ND) said the transition should have begun at least a week earlier. Sen. Murkowski (Alaska) tweeted on November 22: “President Trump has had the opportunity to litigate his claims, and the courts have thus far found them without merit. A pressure campaign on state legislators to influence the electoral outcome is not only unprecedented but inconsistent with our democratic process.” More than a hundred Republican national

security experts, including Tom Ridge (Bush's first homeland security secretary), Michael Hayden (who had directed both the CIA and NSA), and John Negroponte (Bush's DNI), called on "Republican leaders—especially those in Congress—to publicly demand that President Trump cease his anti-democratic assault on the integrity of the presidential election." John Bolton (Trump's former national security adviser) said on CNN's *State of the Nation*: "We need all of our leaders to come out and say, 'the election is over.'" Rep. Liz Cheney (Mont., Dick's daughter) tweeted that Trump should respect "the sanctity of our electoral process" if he could not prove fraud claims. The president brushed off the advice, tweeting: "[C]an't accept the results of an election with hundreds of thousands of fraudulent votes, enough to easily flip the Election." Twitter flagged it.

Right-wing media continued to echo Trump's false claims.<sup>94</sup> *Epoch Times* headlined on November 8: "Election Outcome Unclear Amid Pending Recounts and Legal Challenges." *The Gateway Pundit* said on November 9: "Overall right now President Trump is leading in the presidential race. This race is not close to being over." It alleged "massive Democrat fraud in Nevada, Wisconsin, Michigan, Georgia, and Pennsylvania." John Nolte wrote in Breitbart News the same day: "Joe Biden is not 'president-elect.'" Fox News's Dan Bongino said on November 10: "There's nothing to concede." That day, *The Federalist* declared there was "increasingly good evidence of large-scale voter fraud in key states." One America News Network put a video on YouTube claiming Biden had lost and "Democrats were trying to take the White House by manipulation and the force of the media." YouTube tagged it. Brent Bozell said on NewsBusters: "It is an indisputable fact that the media stole the election."

Social media disseminated similar falsehoods.<sup>95</sup> After a right-wing internet journalist claimed that dead people had voted in Michigan, Candace Owens shared this with her 2.7 million Twitter followers; refutations by Michigan officials were shared less than 450 times. A Texas Republican's tweet that Biden had received 100 percent of newly counted ballots in Michigan was shared hundreds of thousands of times. His retraction was shared just 3,600 times, and Trump kept citing the lie. When he tweeted "I WON THIS ELECTION, BY A LOT!" Twitter added a warning but did not remove the post. A tweet falsely alleging that an impersonator had stolen a Michigan mother's vote by using her maiden name was reposted 75,000 times and spread to Facebook, YouTube, and "Stop the Steal" groups. Rep. Gosar endorsed it, tweeting: "Ladies, if you changed your name and moved locations in the last couple years you might want to see if 'you' voted somewhere else." But there was no evidence for this, and Twitter suspended the account. Zignal Labs said lies about fraud received 4.7 million mentions between November 3 and 9. The top 20 Facebook and Instagram accounts with false election claims had more interactions than the mainstream media.

The rumor that the news site Real Clear Politics had “rescinded” its call for Biden in Pennsylvania was promoted by Pam Bondi and Rudy Giuliani and posted to YouTube by The Next News Network, garnering 900,000 views in 12 hours despite RCP’s denial. A fraudulent video showing an election official destroying a Trump ballot got tens of thousands of views on Twitter and YouTube and hundreds of thousands on Instagram, although the originator admitted on Facebook it was a joke. The director of Trump’s Election Day operations tweeted a video captioned: “Literally STUFFING the ballot box in Philly! . . . Trying to STEAL THE ELECTION in broad daylight.” It got more than 300,000 views in ten days even though Twitter flagged it. A video showed someone burning alleged Trump ballots in Virginia Beach. Even though election officials said the absence of bar codes showed the ballots were samples, Eric Trump tweeted it, producing 40,000 retweets and 300,000 views. Trump tweeted: “WATCH: Suitcases and Coolers Rolled into Detroit Voting Center at 4AM, Brought Into Secure Counting Area.” A WXYZ television reporter explained that the person involved “was my photographer. He was bringing down equipment of our 12-hour shift.” A Diamond and Silk Facebook post about alleged ineligible voters was shared more than 300 times. Mark Levin’s Facebook post falsely claiming that Rev. Warnock (the Democratic candidate in the runoff for Georgia Senator) had once welcomed Fidel Castro to his church was shared more than 3,000 times. A post on Instagram and Facebook by Lara Trump and the Hodge twins about suitcases of ballots hidden under tables in Georgia was shared tens of thousands of times, even though it had been conclusively refuted. Eric Trump and Sebastian Gorka also disseminated misinformation about the Georgia election. A *Georgia Star News* article claiming that Dominion voting machines flipped ballots to Biden was shared more than 2,000 times on Facebook, reaching up to 650,000 people.

Christopher Krebs, head of the DHS Cybersecurity and Infrastructure Security Agency (CISA), wrote on its “Rumor Control” website that “election integrity measures protect” against dead voters, numerous ballots for a candidate “do not by themselves indicate fraud,” and a “hammer computer” and “Scorecard” program that allegedly switched votes from Trump to Biden (Sidney Powell’s fabrication) was “a hoax.”<sup>96</sup> CISA issued a joint statement from the Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector of the Coordinating Executive Committees: “The November 3rd election was the most secure in American history.” “There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised. . . . [W]e have the utmost confidence in the security and integrity of our elections.” Krebs also retweeted two statements. David Becker (executive director of the Center for Election Innovation and Research) wrote: “Please don’t retweet wild and baseless claims about voting machines, even if they’re made by the president. These fantasies

have been debunked many times.” And Matt Blaze (a leading election security expert) said: “No serious evidence has yet been found or presented that suggests that the 2020 election outcome in any state has been altered through technical exploitation.” The White House, which had sought to edit or delete Rumor Control content, fired Krebs and two assistants the day after they quoted a statement about election integrity by 59 election security experts. Trump tweeted:

The recent statement by Chris Krebs on the security of the 2020 Election was highly inaccurate, in that there were massive improprieties and fraud—including dead people voting, Poll Watchers not allowed into polling locations, “glitches” in the voting machines which changed votes from Trump to Biden, late voting, and many more. Therefore, effective immediately Chris Krebs has been terminated as director of the Cybersecurity and Infrastructure Security Agency.

After DHS acting secretary Chad Wolf overruled CISA’s succession plan, under which Krebs’s deputy would have become acting director, the deputy resigned. Rep. Rigglesman, a Republican and former intelligence officer who had lost his reelection bid, said the firing was “ludicrous” “because [Krebs] did his job.” Sen. Cornyn warned that Krebs’s departure “adds to the confusion and chaos.” John Bolton called it a “bad mistake” to “decapitate” the national security team during a transition.

After Krebs said on CBS News’s *60 Minutes* that “the American people should have 100 percent confidence in their vote,” Trump tweeted:

@60Minutes never asked us for a comment about their ridiculous, one sided story on election security which is an international joke. Our 2020 election from poorly rated Dominion to a country FLOODED with unaccounted for Mail-In ballots, was probably our least secure EVER! NO WAY WE LOST THIS ELECTION.<sup>97</sup>

Joe diGenova (part of Giuliani’s legal team representing Trump, and a law partner of Victoria Toensing) said on the radio that the “idiot moron” Krebs should be “drawn and quartered, taken out at dawn and shot.” “Mail-in balloting is inherently corrupt, and this election proved it. This was not a coincidence. This was all planned.” (He later said, “[O]f course, I wish Mr. Krebs no harm. This was hyperbole in a political discourse.”) Krebs wrote in a *Washington Post* op-ed:

The Secretaries of State in Georgia, Michigan, Arizona, Nevada, Pennsylvania, as well as officials in Wisconsin, all worked overtime to ensure there was a paper trail that could be audited or recounted by hand, independent

of any allegedly hacked software or hardware. That's why Americans' confidence in the security of the 2020 election is entirely justified. . . . [T]he 2020 election was the most secure in U.S. history. This success should be celebrated by all Americans, not undermined in the service of a profoundly un-American goal.

He repeated on *Face the Nation* on December 6 that Trump's claims were "corrosive to confidence in the election and democracy." "It is time for leaders in the national security community and in the Republican Party to stand up to accept the results and move forward."

In order for Biden's transition team to function and receive government funds, General Services Administration head Emily M. Murphy had to certify the election results as final.<sup>98</sup> Earlier in her tenure, GSA had denied Democrats documents about Trump International Hotel and the FBI's plan to vacate its headquarters across the street (which could be used by a potential competitor). The GSA IG had found that GSA had "improperly" ignored concerns in letting Trump's company retain the hotel's lease. Murphy falsely told Congress she had not discussed this with White House officials. Five days before the election, the GSA general counsel was replaced by a lawyer from the White House Counsel's Office. Murphy delayed certification, and Trump's political appointees throughout the government told staffers to ignore Biden staff inquiries. DoS blocked foreign leaders' messages to Biden. ODNI refused to brief him, although Sens. Cornyn, Grassley, Graham, Collins, and Lankford said he should receive classified briefings. One hundred and fifty former national security, senior military, and elected officials and 160 top corporate executives urged Murphy to certify the election. Claire McCaskill (who had been Missouri's Republican Senator in 2007–19 and was a friend of Murphy's family) said the administrator's "refusal to do her duty when the facts are so clear is brazenly political." Three weeks after the election, Murphy finally certified the results, insisting she was "never directly or indirectly pressured by any executive branch official." Jay Sekulow (Trump's personal lawyer) and White House counsel Pat Cipollone (among others) had persuaded the president to accept this. But he tweeted: "Our case STRONGLY continues, we will keep up the good fight, and I believe we will prevail!"

What does GSA being allowed to preliminarily work with the Democrats have to do with continuing to pursue our various cases on what will go down as the most corrupt election in American history? We are moving full speed ahead. Will never concede to fake ballots & "Dominion." . . . Remember, the GSA has been terrific, and Emily Murphy has done a great job, but the GSA does not determine who the next President of the United States will be.

Trump continued to fight in the states.<sup>99</sup> Giuliani, his point person, tweeted on November 22: “In 70% of Wayne County, Detroit, there were PHANTOM VOTERS. There were more votes than registered voters. 120%, 150%, 200%, even 300%.” He had said at a November 19 news conference:

The overvote was so high, monstrously high in about two-thirds of the precincts in the city of Detroit, which means, magically, two and three times the number of registered voters turned out to vote. In fact, we have precincts in which two times the number of people who live there, including children, voted. That’s absurd.

But the affidavit making this claim was based on precincts in Minnesota, not Michigan. L. Lin Wood, who filed it, admitted, “[W]e are imperfect.” Investigators found that even in those Minnesota precincts, the number of votes cast matched the number of registered voters because of same-day registration. The affidavit also quoted Princeton professor Andrew Appel raising questions about Dominion machines allegedly used in Wayne and other Michigan counties. But those counties did not use Dominion machines. Appel himself wrote that Michigan used paper ballots. Nevertheless, Trump repeated Giuliani’s lies, tweeting: “In certain swing states, there were more votes than people who voted, and in big numbers. Does that not really matter? Stopping Poll watchers, voting for unsuspecting people, fake ballots and so much more. Such egregious conduct. We will win!” Twitter flagged this. Trump also tweeted that a lawsuit would soon be filed to document “in great detail all the ballot fraud and more.” Retweeting actor Randy Quaid urging a new in-person, paper-only vote whenever “flagrant irregularities” were discovered, Trump added: “Are you listening Republicans?” He tweeted on November 24: “We cannot let the Democrats STEAL this Election from your all-time favorite president. . . . I’m calling on You to FIGHT BACK. We need to bolster our critical Election Defense Fund if we’re going to keep going.” His claims were embraced by Republican candidates who had lost catastrophically: Kimberly Klacik in Maryland (28 to 72 percent) and Gene Rehtzigel in Minnesota (by more than 30 points).

Calling for a recount in Wisconsin, Trump tweeted on November 24: “[S]omebody has to be indefinitely confined in order to vote absentee. In the past there were 20,000 people. This past election there were 120,000 . . . and Republicans were locked out of the vote counting process.”<sup>100</sup> After the recount, however, Biden’s lead increased by 87 votes. Trump’s principal Wisconsin Attorney, James Troupis, voted both early and in-person and then argued that his own vote was illegal. Trump tweeted on November 28:

The Wisconsin recount is not about finding mistakes in the count, it is about finding people who have voted illegally, and that case will be

brought after the recount is over. . . . We have found many illegal votes. Stay tuned!

Jenna Ellis claimed that the recounts “revealed serious issues regarding the legality of ballots cast.” Trump said on Maria Bartiromo’s Fox News *Sunday Morning Futures* that Democrats had organized a “big, massive dump” of hundreds of thousands of illegal votes. “This is total fraud. And how the FBI and the Department of Justice—I don’t know—maybe they’re involved, but how people are getting away with this stuff—it’s unbelievable.” “We’re trying to put the evidence in and the judges won’t allow us to do it.” “The Dominion machines . . . had ‘glitches’ where they moved thousands of votes from my account to Biden’s account.” In Philadelphia, “they cheat like crazy.” He had “hundreds and hundreds of affidavits.” “We won the election easily.” He warned ominously: “My mind will not change in six months.” Trump was “going to use 125 percent of my energy” to pursue the litigation. “Joe Biden did not get 80 million votes.” Unnamed foreign leaders had told him this was the most “messed-up” election they had ever seen.

The problem is, it’s hard to get into the Supreme Court. I have the best Supreme Court advocates, lawyers, that want to argue the case, if it gets there. But they said it’s very hard to get a case up there. Can you imagine? Donald Trump, President of the United States, files a case, and I probably can’t get a case . . . and we have tremendous proof.

On November 25, the Pennsylvania GOP held a rally in Gettysburg with Giuliani and Ellis.<sup>101</sup> Giuliani declared that 1,823,148 mail ballots had been sent out and 2,589,242 returned. (But the lower number pertained to the primary; 3,087,524 mail ballots had been sent out in the general election.) It was the legislature’s “power” and “responsibility” to pick an alternative slate of electors. Ellis said, “[Y]ou can take that power back at any time. You don’t need a court to tell you that.” Trump changed his mind about attending the rally when he learned that participants had associated with people who tested positive for COVID. He phoned in instead, declaring, “[W]e have to turn the election over.”

This was an election that we won easily. . . . This election was rigged, and we can’t let that happen. . . . This election was lost by the Democrats. They cheated. It was a fraudulent election. . . . We won Pennsylvania by a lot, and we won all of these swing states by a lot. . . . I was called by the biggest political people, “Congratulations, sir, on a big win.” And all of a sudden ballots were dumped all over the place. . . . We have poll watcher affidavits piled up to the ceiling. They’re all over. They were treated horribly all over this. . . . The poll watchers weren’t allowed to watch. They

were, in many cases, whisked out of the room, not only in pens that were 20, 30, 40, 60, 100 feet away where you couldn't even see. . . . If you were a Republican poll watcher, you were treated like a dog. And the Democrats have no problem. But they were rough. They were literally pushed out. . . . We have many, many case, many many cases of people walking in. A woman, an elderly woman, walks in looking forward to voting November 3rd and says "Oh, good, where would I go about voting?" "I'm sorry, you've already voted. Your ballot is in." She said, "No I didn't vote." "No, your ballot is in. You've already voted." In all cases for Biden, by the way . . . and then they gave her a provisional ballot to sign, which goes nowhere. . . . We won this election by a lot. We got 74 million votes. . . . We got many more votes than Ronald Reagan had when he won 49 states. [There were more than 100 million more Americans than there had been 36 years earlier.] . . . All you have to do is take a look at the numbers at 10 o'clock in the evening, when everybody thought the election was virtually over. And very weird things happen. But they're not weird to professionals, and they're not weird to Dominion and other people that operate machines. . . . They're not weird to the people that handle the ballots where they were flooding the market. People were getting two and three and four ballots in their home. . . . People that were dead were signing up for ballots. Not only were they coming in and putting in a ballot, but then people were requesting ballots, and they were dead for years, and they were requesting valid ballots. . . . We have judges that are afraid to make a decision. . . . Why wouldn't they overturn an election? . . . You look at the things that happened in Detroit, where you have a voter, but you have more votes than you have voters. . . . They went absolutely wild because we got far more votes than they thought possible. And they've just stepped on the gas, and they got caught, just like they got caught spying on my campaign.

Immediately after the rally, at least 29 Pennsylvania legislators visited the president at the White House to discuss holding a special session to choose Trump electors.

Trump preserved a studied ambiguity about his intentions.<sup>102</sup> If the Electoral College chose Biden, "certainly I will [concede]," "and you know that." But "it's going to be a very hard thing to concede because we know that there was massive fraud." "[In Georgia] we were robbed. I won that by hundreds of thousands of votes. Everybody knows it." "If the media were honest and big tech was fair, it wouldn't even be a contest. And I would have won by a tremendous amount . . . and I did win by a tremendous amount." His efforts to overturn the election were going "very well." "Shocking" new evidence of fraud would surface. "I don't think it's right [that Biden was] trying to pick a cabinet." Trump was "very worried" about the Georgia runoff, warning

Sens. Perdue and Loeffler: “[Y]ou have a fraudulent system.” He tweeted on December 1:

As I said on @LouDobbs, if the issues we raised are not resolved, the nation cannot have confidence that @JoeBiden is the deserved winner. If he is inaugurated under these circumstances, he cannot be considered “president” but instead referred to as the #presidential occupant.

The Electoral College vote marked the beginning of the final chapter of Trump’s desperate campaign to hold on to power.

## Notes

### Abbreviations

AP	Associated Press
CNN	Cable News Network
G	<i>The Guardian</i>
NPR	National Public Radio
NYT	<i>The New York Times</i>
WP	<i>The Washington Post</i>
WSJ	<i>The Wall Street Journal</i>

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- 101 Kessler, “Fact-checking Trump’s cellphone rant of election falsehoods,” WP (11.25.20); Karl (2021: 210–11), HSC (2022b: 276–77).
- 102 Dawsey, “Trump commits to stepping down if Electoral College votes for Biden,” WP (11.26.20); Crowley, “Trump, still claiming victory, says he will leave if electors choose Biden,” *NYT* (11.27.20); Baker, “Trump’s final days of rage and denial,” *NYT* (12.6.20).

# 4

## FROM THE ELECTORAL COLLEGE TO THE INSURRECTION

Once it was clear the Electoral College would choose Biden, Trump and his advisers resorted to other, even more autocratic strategies. This chapter divides them into five sections: 4.1, “‘Alternative’ Slates of Electors”; 4.2, “Weaponizing the DoJ”; 4.3, “After the Electoral College Vote”; 4.4, “Last-Ditch Efforts in Georgia”; and 4.5, “The January 6 Insurrection.”

### 4.1 “Alternative” Slates of Electors

On November 18, Kenneth Chesebro wrote James Troupis, proposing alternative slates of Trump electors (both were pro-Trump lawyers, apparently sole practitioners):<sup>1</sup>

It may seem odd that electors pledged to Trump and Pence might meet and cast their votes on Dec. 14 even if, at that juncture, the Trump–Pence ticket is behind in the vote count, and no certificate of election has been issued in favor of Trump and Pence. However, a fair reading of the federal statutes suggests that it is a reasonable course of action.

Such a strategy would preserve the campaign’s options so that “a court decision (or, perhaps, a state legislative determination) rendered after December 14 in favor of the Trump–Pence slate of electors should be timely.” Chesebro repeated this on December 9, explaining that “the aim is to ensure that all 79 electoral votes [in six swing states] are properly cast and transmitted” (emphasis in original). The scheme was “unproblematic” in Arizona and Wisconsin, “slightly problematic” in Michigan, “somewhat dicey” in Georgia and Pennsylvania, and “very problematic” in Nevada. In early December,

Troupis filed a lawsuit challenging the Milwaukee and Dane County votes. In the Wisconsin Supreme Court, Justice Rebecca Dallet observed that Troupis had sought to invalidate votes only in the “most nonwhite, urban” parts of the state, not the other 70 counties. Justice Jill Karofsky also felt the lawsuit “smacks of racism.”

Cassidy Hutchinson, a Meadows aide, told the January 6 Committee that around Thanksgiving, Giuliani and several associates met with her boss and Republican members of Congress to discuss alternative electors.<sup>2</sup> RNC chair McDaniel remembered a call from Trump in which John Eastman talked “about the importance of the RNC helping the campaign gather these contingent electors in case any of the legal challenges that were ongoing changed the result of any states.” But Justin Clark recalled telling Chesebro that “unless we have litigation pending . . . in these states . . . I don’t think this is appropriate” to appoint alternate electors: “I’m out.” And Matt Morgan (a Trump campaign lawyer) had his colleague Joshua Finley email Chesebro that “you are responsible for the Electoral College issues moving forward,” explaining that “this was my way of taking that responsibility to zero.” On December 13, Chesebro emailed Giuliani and others with a plan to have Pence recuse himself from Congress’s January 6 certification so that Sen. Grassley or another senior Republican would preside and set aside the Electoral College vote. Chesebro wrote that Pence “alone, is charged with the constitutional responsibility not just to open the votes, but to count them—including making judgments about what to do if there are conflicting votes”; he should not count those from the seven states with such conflicts. A few days later, Eastman wrote that Pence could just declare Trump the winner.

J. Michael Luttig (a former Court of Appeals judge, for whom Eastman had clerked) later told the January 6 Committee: “[T]here was no support whatsoever and [sic—“under”] either the Constitution of the United States nor [sic] the laws of the United States.” Pence’s chief of staff Marc Short testified that Meadows also understood that the vice president “doesn’t have any broader role.” Senior campaign adviser Jason Miller said White House counsel Pat Cipollone “thought the idea was . . . nutty, and had at one point confronted Eastman basically with the same sentiment.” Miller said Assistant Attorney General Jeffrey Clark agreed Eastman “was crazy.” Patrick Philbin (in the White House Counsel’s office) called it one of the “Whac-A-Mole” “bad theories.” Senior Trump adviser Eric Herschmann (also a lawyer) testified that “it made no sense to me” that the power “to choose the next president would be . . . with the vice president.” He asked Eastman:

[A]re you out of your effing mind? . . . [Y]ou’re completely crazy. You’re going to turn around and tell 78 plus million people in this country that . . . this is how you’re going to invalidate their votes. . . . [Y]ou’re going to cause riots in the streets.

Eastman's response was flip: "[T]here has been violence in the history of our country, Eric, to protect the democracy or protect the republic." But Sean Hannity warned Meadows against pursuing this strategy: "We can't lose the entire White House counsel's office."

Robert Sinners, one of the alternative Georgia electors, said, "[W]e were just, you know . . . kind of useful idiots or rubes at that point." He "absolutely would not have" participated "had I known that the three main lawyers for the campaign that I'd spoken to in the past and were leading up [the effort] were not on board." Andrew Hitt, an alternative Wisconsin elector, said he "was told that these would only count if a court ruled in our favor. . . . [I]t would have been using our electors in ways that we weren't told about and we wouldn't have supported." A Michigan alternative elector reported:

[A Mr. Norton] said he was working with the President's campaign. He told me that the Michigan Republican electors were planning to meet in the [state] Capitol and hide overnight so that they could fulfill the role of casting their vote . . . per law in the Michigan chambers. And I told him in no uncertain terms that that was insane and inappropriate.

Nevertheless, fake electors did meet on December 14 in Arizona, Georgia, Michigan, Pennsylvania, New Mexico, Nevada, and Wisconsin to sign documents declaring themselves "duly elected electors," which they submitted to the National Archives and Pence. (Fourteen of those listed as potential electors bowed out.) Arizona House Speaker Bowers said that when he learned about this, "I thought of the book 'The Gang That Couldn't Shoot Straight.' And I just thought . . . this is a tragic parody." He told the January 6 Committee:

I do not want to be a winner by cheating. I will not play with laws I swore allegiance to, with any contrived desire towards deflection of my deep foundational desire to follow God's will as I believe He led my conscience to embrace. How else will I ever approach Him in the wilderness of life?

After Trump publicized Bowers's opposition, he was targeted by more than 20,000 angry emails and tens of thousands of voicemails and texts. On weekends, demonstrators would go to his home with a truck showing "videos of me proclaiming me to be a pedophile and a pervert and a corrupt politician and blaring loudspeakers in my neighborhood and leaving literature." A Three-Percenter with a pistol "was threatening my neighbor."

On December 19, Eastman warned that "unless those [alternative slates of] electors get a certification from their State Legislators," they "will be dead on arrival in Congress." Yet four days later, he wrote a memo on "Wargaming out several scenarios," declaring that "the fact that we have multiple

slates of electors demonstrates the uncertainty of either. That should be enough.” Trump supporters “should demand normal rules (which includes the filibuster),” thereby creating a “stalemate,” giving “the state legislatures more time to weigh in to formally support the alternate slate of electors.” In late December, Chesebro and Troupis asked the US Supreme Court to consider whether competing slates of electors from Wisconsin and six other states could be considered on January 6; the Court said no.

Election officials were threatened in Arizona, Vermont, Minnesota, and Colorado.<sup>3</sup> Trey Grayson, Kentucky’s former Republican secretary of state and former president of the National Association of Secretaries of State, said: “[T]he fact that folks [who] are either volunteering or are not getting paid very much are receiving death threats is horrible . . . and it really bothers me because the threats are coming from my political party.” He wrote in a *New York Times* op-ed: “Republicans should be celebrating Mr. Raffensperger for running an election that was free of widespread malfeasance. . . . [B]y attacking Mr. Raffensperger, Republicans are sending the message . . . that Republicans in office tolerate election fraud.” The web disseminated “enemies” lists of state and federal officials who had rejected fraud claims, including swing-state governors, voting system employees, and Christopher Krebs. Michigan closed its legislative offices for the December 14 electors meeting because of “credible threats of violence.” A Michigan Democratic state representative got an email: “[B]e prepared to take your last meal” and “[W]e’re looking forward to bring [sic] back firing squads.” The Michigan House Oversight Committee chair received racist lynching threats. Michigan state representative Cynthia Johnson (a Democrat and African American) also had been threatened with lynching. In Georgia, Gabriel Sterling said: “We have people stalking outside of our election offices in Cobb County. We’ve had a warehouse manager, he was simply taking trash out to the dumpster, and he had somebody follow him with a camera telling him he’s going to prison.” Photographs of the home of the Wisconsin Election Commission chair were posted on Twitter. Pennsylvania’s Democratic legislators received threats.

At the end of November, Dominion CEO John Poulos wrote a *Wall Street Journal* op-ed rebutting Republican falsehoods:<sup>4</sup>

The wild allegations of recent weeks have fueled the harassment of election officials and Dominion employees across the country—including stalking and death threats. The lies and smears have no basis in fact, but they do real damage to our democracy by casting doubt on the legitimacy of the electoral process. . . . Dominion is an American company, now headquartered in Denver. Dominion is not and has never been a front for communists. It has no ties to Hugo Chavez, the late dictator of Venezuela. It has never been involved in Venezuelan elections. None of Dominion’s systems

use the Smartmatic software that has come under attack. . . . There is no secret “vote flipping” algorithm.

In December, Dominion demanded that Sidney Powell retract her “wild, knowingly baseless and false accusations,” including the claim that it had paid kickbacks to Georgia officials for “no-bid contracts” and manipulated votes in “an effort to rig the 2020 elections.” After Smartmatic demanded that Fox News, Newsmax, and One America News retract their accusations, Lou Dobbs hired an expert to debunk his own allegations about election fraud.

But on Dobbs’s Fox Business News, Powell was unrepentant: “the system was set up to shave and flip different votes in different states. It’s really the most massive and historical, egregious fraud the world has ever seen.”<sup>5</sup> Voting machines “ran an algorithm that shaved votes from Trump and awarded them to Biden.” Companies “used machines to trash large batches of votes that should have been awarded to President Trump” and “used the machine to inject and add massive quantities of votes for Mr. Biden.” Dobbs suggested that Kemp and Raffensperger should be prosecuted. After clashing with Tucker Carlson (earlier), Powell retweeted Lin Wood: “Fox News is now part of the propaganda arm of the leftists/Communists who think they are going to overthrow our Constitution.” On November 30, she tweeted her one million followers:

Dear Mr. President. WE will not stand by and watch Foreign and Domestic enemies further destroy our Constitutional Republic. Eighty and more million of us request that you use the Insurrection Act. Suspend the December Electoral College Vote, and set up Military Tribunals immediately to properly investigate and resolve the cyber warfare 11–3–2020 election issue. Further, we request you suspend the Jan 6 [sic] GA Senate Runoff Race, and the January Inauguration until this issue is resolved. Respectfully, We The People.

Wood tweeted that Trump should declare martial law, referring to an online article urging the military to “oversee a national re-vote.” He tweeted on November 29: “Sidney Powell @SidneyPowell1 & I won, then lost, but ended up winning. We will never give up the pursuit of TRUTH to achieve justice.” Rep. Kinzinger tweeted on December 3: “As a former @usairforce officer and proud mustang, I condemn calls for martial law from @GenFlynn (and L Lin Wood) and the incoherent and dangerous conspiracy ramblings of Gen. McInerney.” (Kinzinger and other Republicans opposing Trump, including Sen. Toomey and Reps. Paul Mitchell and Francis Rooney, were retiring from Congress.)

After talking to Sen. Cotton about invoking the Insurrection Act in response to BLM demonstrations, Trump had threatened at the end of August: “Our country’s going to change. We’re not supposed to go in unless we call it an insurrection. But you know what we’re going to do? We’re going to have a look at it.”<sup>6</sup> William Todd Wilson (an Oath Keeper who pleaded to riot charges for his actions on January 6 and agreed to cooperate with prosecutors) later said that on November 5, OK founder Stewart Rhodes threatened in an online meeting, “We aren’t getting through this without a civil war.”

[Rhodes] outlined a plan to stop the lawful transfer of power, including preparations for the use of force, and he urged his audience to participate: “You’re from Oath Keepers. You got a responsibility and duty. You raised your freaking right hand. . . . [Y]ou got to fight.”

On November 9, Rhodes said on Infowars that Trump should invoke the Insurrection Act to “suppress the deep state,” boasting that Oath Keepers had men “stationed outside D.C. as a nuclear option.” Rhodes added on December 12 that Trump “needs to use that now, he needs to invoke the Insurrection Act and suppress this insurrection.” Rhodes called for release of secret government files to “show the world who the traitors are, and then use the Insurrection Act to drop the hammer on them.” “If he does not do it now, while he is commander in chief, we are going to have to do it ourselves later, in a much more desperate, much more bloody war.”

In a plea for donations, which had raised more than \$150 million since the election for a non-existent Official Election Defense Fund (75 percent of which would go to Trump’s new Save America Leadership PAC), Pence said in late November:<sup>7</sup>

The Recount Results were BOGUS. Our democracy and freedom is [sic] at risk like never before, which is why I’m reaching out to you now with an URGENT request. . . . President Trump and I need our STRONGEST supporters, like YOU to join the Election Defense Task Force. This group will be responsible for DEFENDING the Election from voter fraud, and we really need you to step up to the front lines of this battle.

Trump repeated on Fox News that election machines switched thousands of votes, dead people voted, mail-in ballots were “phony,” and poll watchers “weren’t allowed.” Sen. Blunt agreed that, though the election was not “rigged,” “there may have been ballots that shouldn’t have been cast” in Georgia, “and I think there was some element of voter fraud.”

Trump maintained he had “won Michigan by a lot,” the results in Nevada were “fake,” and those in Arizona were “impossible.”<sup>8</sup> On November 26, he said it would be a “mistake” if the Electoral College voted for

Biden. “This election was a fraud.” “I know one thing, Joe Biden did not get 80 million votes.”

Biden can only enter the White House as President if he can prove that his ridiculous “80,000,000 votes” were not fraudulently or illegally obtained. When you see what happened in Detroit, Atlanta, Philadelphia & Milwaukee, massive voter fraud, he’s got a big unsolvable problem.

But asked if he would leave the White House on January 20, Trump replied: “[C]ertainly I will, you know that.”

In his first television interview since the election, on Fox News on November 29, Trump pronounced the DoJ “missing in action.” “You would think if you’re in the F.B.I. or Department of Justice, this is the biggest thing you could be looking at,” but the Department “hasn’t been looking very hard” at voting fraud. “This is very bad, criminal stuff.”<sup>9</sup> (The Department had summarily barred Heidi Stirrup, a Stephen Miller protégé appointed as White House liaison to DoJ several months earlier, after she improperly tried to obtain information about ongoing election fraud cases, which is never released.)

The next day, stung by Trump’s attack, Barr arranged an interview with the AP in which he publicly disagreed with his boss for the first time. He had “not seen fraud on a scale that could affected [sic] a different outcome in the election.”

There’s been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far we haven’t seen anything to substantiate that. . . . Most claims of fraud are very particularized to a particular set of circumstances or actors or conduct. They are not systemic allegations. And those have been run down; they are being run down. Some have been broad and potentially cover a few thousand votes. They have been followed up on.

Trump promptly called him on the carpet: “You didn’t have to say that. You could have just said no comment.”<sup>10</sup> Barr replied: “[T]he reporter asked me what we’d found, and I told him what we found, which is, so far, nothing.” Trump retorted (speaking of himself in the third person, like Julius Caesar and Charles de Gaulle): “You must have said that because you hate Trump, you must really hate Trump.” Barr denied this. “[Y]ou had five weeks for your lawyers to mount a strategy . . . whereby you can turn around the election,” but “it’s been a clown show.” He told Trump that “the stuff that his people were shoveling out to the public was bullshit . . . crazy stuff . . . complete nonsense.” The allegations against Dominion were “idiotic claims.”

What you needed was a team of crackerjack lawyers. . . . Every self-respecting lawyer in the country has run for the hills. Your team is a bunch

of clowns. They are unconscionable in the firmness and detail they present as if it is unquestionable fact. It is not. You have wasted four weeks on the one theory that is demonstrably crazy, which is these machines.

Barr proceeded to demolish the Trump lawyers' other claims. Asked when John Durham would report, Barr said it would not be until the first six months of the Biden administration, provoking Trump to explode again: "You didn't indict Comey when you could have." Barr explained that he did not prosecute because "there was no case." He added: "I know that you're dissatisfied with me and I'm glad to offer my resignation. And [Trump] pounded the table very hard and everyone sort of jumped in, and he said, accepted." After Jonathan Karl recounted this in June 2021, Nicholas Luna issued Trump's rebuttal:

It takes a very strong and special person to go against the "mob." Bill Barr was not that person. Despite evidence of tremendous Election Fraud, he just didn't want to go there. He was afraid, weak, and, frankly, now that I see what he is saying, pathetic.

Cassidy Hutchinson later told the January 6 Committee she had heard "noise coming down from the hallway" after the December 1 confrontation.<sup>11</sup> Trump's valet summoned Meadows to the dining room. When Hutchinson went there soon after, the valet was changing the tablecloth and showed her "catsup dripping down the wall and . . . a shattered porcelain plate on the floor," explaining that "the President was extremely angry at the Attorney General's AP interview and had thrown his lunch against the wall"—like a 2-year-old having a tantrum.

Barr later told the January 6 Committee:<sup>12</sup>

I was somewhat demoralized because I thought, boy . . . [Trump] has become detached from reality if he really believes this stuff. . . . When I went into this and would tell them how crazy some of these allegations were, there was never an indication of interest in what the actual facts were. . . . After the election, he didn't seem to be listening. . . . My opinion then and my opinion now is that the election was not stolen by fraud, and I haven't seen anything since the election that changes my mind on that including the "2000 Mules" movie [described below].

Trump had replied something like: "[W]ell, we could get to the bottom . . . if the department seizes the machines." Barr retorted: "[A]bsolutely not. There's no probable cause and I'm not going to seize any machines." Pat Cipollone told the Committee: "I agreed . . . with Attorney General Barr's conclusion."

Giuliani and Ellis loyally backed Trump:

There hasn't been any semblance of a DoJ investigation . . . we will continue our pursuit of the truth through the judicial system and state legislatures. . . . [The Attorney General's] opinion appears to be without any knowledge or investigation of the substantial irregularities and evidence of systemic fraud.

Rep. Gohmet asserted “there’s widespread evidence of fraud” and warned that “Durham and Barr will deserve a big notation in history . . . if they don’t clean up this mess.” Rep. Gosar asked, “[H]ow pathetic are the courts?” Rep. Gaetz said the DoJ “has a lot of egg on their face having not discovered a lot of fraud as it was occurring.” “Democracy is left undefended if we accept the results of a stolen election.” Rep. Jordan declared, “[W]hen something is done in an unconstitutional fashion, which happened in several of these states, we have a duty to step forward and . . . have this vote on the 6th of January.” Fox News’s Lou Dobbs accused Barr of being “a liar or a fool or both” and “perhaps compromised.” Barr “appeared to join in with the radical Democrats and the deep state and the resistance.” The right-wing media piled on. Emerald Robinson of Newsmax tweeted it was “obvious now that Bill Barr came out of retirement to protect the DoJ/FBI from accountability for its role in Spycgate” (overlooking the fact that Trump had picked Barr to do just the opposite). Mark Levin tweeted that “the DoJ has been very passive.” *The Gateway Pundit*, *the Right Scoop*, and the *Washington Times* said the “DOJ is reluctant to investigate election fraud.” Trump tweeted the next day: “Hope everybody is watching @OANN right now. Other media afraid to show. People coming forward like never before. Large truck carrying hundreds of thousands of fraudulent (FAKE) ballots to a voting center. TERRIBLE—SAVE AMERICA!” He repeated those claims in a news conference.

On December 1, Trump posted a 46-minute video of “the most important speech I’ve ever made”—an endless, incoherent repetition of his unsubstantiated fraud allegations:<sup>13</sup>

[The] results of the individual swing states must be overturned immediately . . . hopefully, the courts, in particular, the Supreme Court of the United States, will see it, and, respectfully, hopefully, they will do what’s right for our country. . . . This election is rigged. Everybody knows it. I don’t mind if I lose an election, but I want to lose an election fair and square. What I don’t want to do is have it stolen from the American people. . . . We already have the evidence, and it’s very clear. Many people in the media—and even judges—so far have refused to accept it. They know it’s true . . . but they refuse to say you’re right.

Sens. Cruz and Hawley (graduates of Harvard and Yale Law Schools, respectively) agreed the Supreme Court should hear the challenge. But Sen. Graham (also a lawyer) expressed skepticism about the campaign's lawsuits: "[W]e're one for 33. . . . I told the president to keep fighting, but time matters. You've got to have a very coherent theory of the law. The burden of proof is on the plaintiff." Complaining that "a lot of time is being wasted in court," Rep. Brooks planned to challenge electoral votes himself because "this election was stolen by the socialists engaging in extraordinary voter fraud and election theft measures." Asked if Trump should concede after the December 14 Electoral College vote, Rep. Jordan was defiant: "No way." "We should figure out exactly what took place here" and hold "debates on the House floor—potentially on January 6. . . . [W]e should be debating what took place in Pennsylvania. . . . [Y]ou had all kinds of crazy things happening in Georgia, Michigan, Wisconsin, all these in Nevada." Rep. Gaetz did not "believe that 10 hours of debate on that subject [on January 6] would impair the union." Rep. Biggs "disputed the presidential results." Rep. Scalise wanted to "let the process run through." Rep. Carter "applauded the president for what he's doing." But Sen. Barraso (the third highest Republican) said "I haven't heard anybody in the Senate talking about" contesting certification on January 6. And Senate Majority Whip Thune agreed: "I can't imagine that would ever happen"; "[if it does,] I doubt that it goes anywhere."

When 25 congressional Republicans acknowledged Biden's win, Trump was unpleasantly "surprised there are so many." "We have just begun to fight. Please send me a list of the 25 RINOS."<sup>14</sup> He used his presentation of the Medal of Freedom to a former wrestler to declare, "[I]t was a rigged election. The election was totally rigged. It was like a third-world country." On December 8, anticipating the Supreme Court's ruling in a challenge to Pennsylvania's results (which the state Supreme Court had rejected because it was filed too late), Trump said in a news conference:

[L]et's see whether or not somebody has the courage, whether it's a legislator or legislatures or whether it's a justice of the Supreme Court or a number of justices of the Supreme Court—let's see if they have the courage to do what everybody in this country knows is right.

But later that day, the Court dismissed the case without opinion.

The same day, Texas Attorney General Paxton filed another challenge (*Texas v. Pennsylvania*), invoking the Court's original jurisdiction (in cases between the states) to ask it to overturn the election in Pennsylvania, Michigan, Wisconsin, and Georgia because government officials "using the COVID-19 pandemic as a justification" had "usurped their legislatures'

authority and unconstitutionally revised their state's election statutes" and "flooded" the states with "millions of ballots." Paxton urged the Court to extend the Electoral College vote deadline (which was six days later) and either disallow electors from those states or vacate the certifications and let state legislatures appoint electors. Seventeen state attorneys general joined the lawsuit (Alabama, Arkansas, Florida, Indiana, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and West Virginia), although eight other Republican attorneys general refused. Rep. Mike Johnson (Louisiana) filed an amicus brief arguing that modifications of election laws in response to the pandemic were unconstitutional; 126 of the 196 House Republicans (including Minority Leader McCarthy) signed on, but 20 states and DC, Guam, and the Virgin Islands filed a motion to dismiss. The Republican attorney general of Georgia explained that his state did not join the case because it had conducted three ballot counts, "including a historic 100 percent manual recount." "Respect for federalism and the constitutional design prohibits that transfer" of "Georgia's electoral powers to the federal judiciary." Texas Senator Cornyn (a lawyer and a strong conservative) said: "I frankly struggle to understand the legal theory." Jeb Bush (the former governor of Florida, which joined the case) thanked Cornyn, agreeing that "there is no legal theory."

Trump moved to intervene, calling this "the big one."<sup>15</sup> Sen. Cruz jumped at the chance to represent him. Trump tweeted on December 9:

We will soon be learning about the word "courage," and saving our Country. I received hundreds of thousands of legal votes more, in all of the Swing States, than did my opponent. ALL Data taken after the vote says that it was impossible for me to lose, unless FIXED!

He exhorted the Court to "save our Country from the greatest Election abuse in the history of the United States." "78% of the people feel (know!) the Election was RIGGED." "WISDOM & COURAGE!!!" "If somebody cheated in the Election, which the Democrats did, why wouldn't the Election be immediately overturned? How can a country be run like this?" Echoing John Eastman, he added: "No candidate has ever won both Florida and Ohio and lost. I won them both, by a lot! #SupremeCourt." He invited the 18 state attorneys general who filed the case to lunch at the White House. At a large Hannukah party the next day, he said: "[A]ll I ask for is people with wisdom and with courage, that's all. Because if certain very important people, if they have wisdom and if they have courage, we're going to win this election in a landslide." He retweeted calls from 27 Republican members of Congress for Barr to appoint a special counsel to investigate "election irregularities."<sup>16</sup>

But on December 11, just three days after the case was filed, the Court unanimously dismissed it for lack of standing.<sup>17</sup> Writing for himself and Justice Thomas, Justice Alito quibbled:

We do not have discretion to deny the filing of a bill of complaint in a case that falls within our original jurisdiction. . . . I would therefore grant the motion to file the bill of complaint but would not grant any other relief.

Trump tweeted his fury: “The Supreme Court really let us down. No Wisdom, no Courage!” Many people “after careful study and consideration” had joined the lawsuit, “but, within a flash, it is thrown out and gone, without even looking at the many reasons it was brought. A Rigged Election, fight on!” He added, “Thank you, Justice Alito. Thank you, Justice Thomas,” quoting Sean Hannity’s misrepresentation that “they say they would have allowed Texas to proceed with its election lawsuit.” Trump continued: “This is a great and disgraceful miscarriage of justice. The people of the United States were cheated, and our country disgraced. Never even given our day in Court!” It was “a legal disgrace, an embarrassment to the USA!!!” No court had decided any challenge “on its merit.” “WE HAVE JUST BEGUN TO FIGHT!!!” Trump privately told Meadows: “I don’t want people to know we lost, Mark. This is embarrassing. Figure it out.” Kayleigh McEnany (a Harvard law graduate) assailed the justices:

There’s no way to say it other than they dodged. . . . [T]hey hid behind procedure and refused to use their authority to enforce the Constitution. . . . None of the Justices gave a view on the facts of the case.

Meadows said in his memoir: “If [the president] didn’t have standing, I wondered, who did? [Trump wasn’t a party.] Would they have made the decision if things had gone the other way, and Joe Biden was the one bringing the challenge?”

Early the next day, Trump tweeted: “I WON THE ELECTION IN A LANDSLIDE, but remember I only think in terms of legal votes, not all the fake voters and fraud that miraculously floated in from everywhere. What a disgrace!”<sup>18</sup> “Who is worse, @BrianKempGA or @dougducey of Arizona??? These two RINO Republicans who fought against me and the Republican Party harder than any Democrat. They allowed states that I won easily to be stolen. Never forget, vote them out of office.” (Ducey was termed out; Kemp won re-election in 2022.) Giuliani postured on Newsmax: “We’re not finished, believe me.” His team planned “four or five separate cases.” Nancy Pelosi said the 126 Republicans who endorsed the lawsuit “brought dishonor to the House.” Michael Steele (a former RNC

chair) called them “an affront to the country . . . an indelible stain.” Christine Todd Whitman (former Republican governor of New Jersey) compared her party’s behavior to the Jonestown mass suicide: “They’ve all drunk the Kool Aid.” Reps. Rigglesman and Mitchell (Republicans who were leaving the House) were critical, as were the outgoing and incoming Republican governors of Utah. A few states that had signed the amicus brief now conceded defeat: the North Dakota attorney general said “all reasonably arguable legal challenges have been exhausted.” The Kansas attorney general said “it is time to put this election behind us.” Louisiana’s Republican Senator Cassidy said that “at some point, we have to be that nation of laws.” Televangelist Pat Robertson, who three years earlier had condemned Trump opponents for revolting against God, now felt “it would be well to say, ‘you’ve had your day and it’s time to move on.’” *The New York Times* said that by

questioning the integrity of an election . . . without offering any evidence, Mr. Paxton and his collaborators have disgraced themselves. . . . [T]hose who refuse to accept [Biden’s] victory are undermining the rule of law. Those who stand silent are complicit.

Charles Blow wrote in his *New York Times* column: “Donald Trump’s continued effort to overturn the result of the election . . . is nothing short of an attempt at a bloodless coup.” *The Washington Post* said “a large majority” of Republicans had “faced a simple choice: for or against democracy” and “failed the test.” But Texas GOP chair Allen West said: “[P]erhaps law-abiding states should bond together and form a Union of states that will abide by the Constitution.” And Rush Limbaugh agreed: “[W]e’re trending toward secession. I see more and more people asking what in the world do we have in common with the people who live in, say, New York?”

Chapman University law professor John C. Eastman became the primary apologist for the “alternative” elector strategy. He had said in a filing:<sup>19</sup>

President Trump prevailed on nearly every historical indicia [sic] of success in presidential elections. For example, he won both Florida and Ohio; no candidate in history—both Republican or [sic] Democrat—has ever lost an election after winning both States. . . . These things just don’t normally happen, and a large percentage of the American people know that something is deeply amiss. . . . It is only necessary to demonstrate that the elections in the defendant states materially deviated from the “manner” of choosing electors established by their respective state legislatures. . . . The constitutional issue is not whether voters committed fraud but whether state officials violated the law by systematically loosening the measures for ballot integrity so that fraud becomes undetectable.

Eastman had earlier published a *Newsweek* op-ed claiming that Kamala Harris might not be a natural-born citizen (and thus eligible to be vice president) even though she was born in Oakland because her parents were immigrants. He had urged Trump to end birthright citizenship (which would violate the Constitution). He also testified to the Georgia legislature that it

could do what the Florida legislature was prepared to do, which is to adopt a slate of electors yourselves. And when you add in the mix of the significant statistical anomalies in sworn [affidavits] and video evidence of outright election fraud, I don't think it's just your authority to do that. But quite frankly, I think you have a duty to do that, to protect the integrity of—of the election here in Georgia.

On December 4, Eastman had advised Pennsylvania state representative Russell H. Diamond that, at public hearings, Trump's legal team had presented "ample evidence of sufficient anomalies and illegal votes to have turned the election from Trump to Biden."<sup>20</sup> (Eastman had not attended the hearings.) He suggested that a mathematical equation could be applied to reject mail ballots for candidates at "a prorated amount."

Having done the math, you'd be left with a significant Trump lead that would bolster the argument for the legislature adopting a slate of Trump electors—perfectly within your authority to do anyway, but now bolstered by the untainted popular vote. That would help provide some cover.

Diamond replied: "Honestly, the Trump legal team was not exactly stellar at PA's hearing, failed to provide the affidavits of their witnesses and made a glaring error by purporting [sic] that more ballots had been returned than mailed out." But Eastman persisted, emailing Diamond on December 13:

The electors absolutely need to meet. Then, if the legislature gets some spine, AND (politically) proofs of fraud and/or illegal votes sufficient to have altered the results of the election is [sic] forthcoming, those electoral votes will be available to be certified by the legislature.

Pennsylvania House majority leader Benninghoff credited Eastman with "opening my eyes to our ability to exercise our plenary authority to decertify presidential electors (without ANY 'evidence' of retail 'voter fraud')."

On December 8, Jason Miller learned about a booklet, "Five States and the Illegal Votes: Why the November 3, 2020, General Election Was Not Won by Biden," written by Cleta Mitchell but circulated under Miller's name.<sup>21</sup> After he told his team to check the facts, the booklet disappeared. The same day, Jack Wilenchik, a Phoenix lawyer, explained to Boris Epshteyn (a Trump

campaign lawyer): “[W]e would just be sending in ‘fake’ electoral votes to Pence so that ‘someone’ in Congress can make an objection when they start counting votes, and start arguing that the ‘fake’ votes should be counted.”<sup>22</sup> Later that day, Wilenchik wrote ruefully: “[A]lternative’ votes is probably a better term than ‘fake’ votes.”

[I]t sounds like [Arizona GOP chair] Kelli Ward and the rest of the electors would be very much into the idea. Kelli’s thought it [sic—“is”] to try to keep it under wraps until Congress counts the vote January 6th (so we can try to “surprise” the Dems and the media with it)—I tend to agree with her.

(In March 2021, Wilenchik, his firm, and the Arizona GOP were ordered to pay more than \$18,000 in attorneys’ fees for filing a bad-faith lawsuit challenging Maricopa County’s vote tabulation practices.)<sup>23</sup> After Trump had hosted Pennsylvania state legislators in late November to discuss reversing the election, Epshteyn wrote Jenna Ellis: “The WH meeting hasn’t been made public, which is both shocking and great.” Wilenchik told other lawyers he had discussed the idea with Chesebro:

His idea is basically that all of us (GA, WI, AZ, Pa, etc.) have our electors send in their votes (even though the votes aren’t legal under federal law—because they’re not signed by the Governor); so that members of Congress can fight about whether they should be counted on January 6th. (They could potentially argue that they’re not bound by federal law because they’re Congress and make the law, etc.) Kind of wild/creative. . . . My comment to him was that I guess there’s no harm in it (legally at least).

The lawyers chose a point person to sign the false documents in each of the seven states. Christina Bobb, one of the participants, said that state senator Douglas V. Mastriano (the Pennsylvania point person) was worried this was illegal. “Mastriano needs a call from the mayor [Giuliani]. . . . Talk to him about legalities of what they are doing. Electors want to be reassured that the process is \*legal\* essential for greater strategy.” After Giuliani and Ellis made multiple phone calls to Pennsylvania House Speaker Bryan Cutler, Stephen Bannon announced: “We’re getting on the road and we’re going down to Cutler. We’re going to start going to offices. And if we have to we’re going to go to homes and we’re going to let them know what we think of them.”<sup>24</sup> Cutler said there had been at least three protests at his district office and home. “All of my personal information was doxed online. . . . [W]e had to disconnect our home phone for about three days because it would ring all hours of the night.”

When it became clear that no state legislature would act, Troupis wrote Epshteyn on December 7 that there was “no need for legislators to act,” citing Chesebro:

The second slate just shows up at noon on Monday [Dec. 14] and votes and then transmits the results. It is up to Pence on Jan 6 to open them. Our strategy, which we believe is replicable in all 6 contested states, is for the electors to meet and vote so that an interim decision by a Court to certify Trump the winner can be executed on [sic] by the Court ordering the Governor to issue whatever is required to name the electors. . . . The key nationally would be for all six states to do it so the election remains in doubt until January.

Chesebro wrote Wilenchik and the other lawyers on December 11 that Arizona GOP chair Ward and state senator Townsend “are concerned it could appear **treasonous** for the AZ electors to vote on Monday if there is no pending court proceeding that might, eventually, lead to the electors being ratified as the legit ones. Which is a valid point.” Wilenchik had earlier conceded that the votes “aren’t legal under federal law.” The rush to seek certiorari in the Supreme Court was intended “to give legal ‘cover’ for the electors in AZ to ‘vote.’” But he no longer saw “cause for concern” because the petition was “at the printer,” and the Court considered an action as docketed when it was mailed. (The Court denied certiorari in February.) On December 13, Chesebro asked Giuliani to encourage Pence to “firmly take the position that he, and he alone, is charged with the constitutional responsibility not just to open the votes, but to count them—including making judgments about what to do if there are conflicting votes.” On December 17, Epshteyn wrote Giuliani that Peter Navarro’s analysis “appears to be the most comprehensive summary of voter fraud from this election season.” On December 23, Bruce Marks (a Pennsylvania lawyer and former state senator) warned the other lawyers: “[Y]ou folks are getting killed in the media on litigation strategy, even on Fox and among conservatives.” On December 24, Chesebro consulted Eastman about whether to file legal papers that might prompt four Supreme Court Justices to vote to grant certiorari to hear the Wisconsin case, arguing that the “odds of action before Jan. 6 will become more favorable if the justices start to fear that there will be ‘wild’ chaos on Jan. 6 unless they rule by then either way.” The same day, Eastman sent Epshteyn an email from a woman imploring him to ask Trump “to put out what he would like his 74 million followers to do to help.” “We need to be one voice, with laser focus.” Eastman commented: “Let’s figure out a targeted way to deploy them. Rolling thunder? One legislature at a time? The others can see it coming.” On December 27, Epshteyn wrote that Trump had “liked” an aggressive approach proposed by the lawyers and that Eastman and Giuliani

would be the “face of the media strategy.” Eastman had “already been out/liked by POTUS.”

On December 17, Michael Flynn asserted on Newsmax that Trump could declare martial law and seize voting machines because he “won on the third of November.”<sup>25</sup> “Clearly there is a foreign influence that is tied to this system and it goes back to China, likely goes to Russia, likely goes to Iran.” Trump “could take military capabilities and he could place them in those [swing] states and basically rerun an election. . . . It’s not unprecedented. . . . Martial law has been instituted sixty-four times.” The next day, Flynn, Powell, Giuliani, and Patrick Byrne (Overstock CEO) held an unplanned chaotic six-hour meeting with Trump and Meadows to consider an executive order they had drafted two days earlier, proposing that the defense secretary seize voting machines and Trump appoint Powell as special counsel. Trump declared: “I want to get these machines and I have the right to do so under the [National Emergencies] Act.” Powell said Trump “was very interested in hearing particularly about the CISA [Cybersecurity and Infrastructure Security Agency] findings and the terms of [EO] 13848 that apparently nobody else had bothered to inform him of.” (That executive order, which Trump had signed in September 2018, addressed foreign interference in elections, for which there was no evidence other than Russia’s on behalf of Trump.) Meadows objected: “You got to do it the right way. You got to run it through the Department of Justice.”

Derek Lyons (White House staff secretary and counselor to the president) described “people shouting at each other hurling insults at each other” during the meeting. Cipollone, who had rushed to join it, “was not happy to see the people who were in the Oval Office.” “I don’t think any of these people were providing the President with good advice.” Cipollone told the January 6 Committee: “I didn’t think [Powell] should have been appointed to anything.” “To have the federal government seize voting machines? That’s a terrible idea for the country. . . . There’s no legal authority to do that. And there is a way to contest elections.” Eric Herschmann asked if the meeting conveners were “claiming the Democrats were working with Hugo Chavez” (who was dead!). He said “Flynn took out a diagram that supposedly showed IP addresses all over the world” and “who was communicating with whom via the machines and some comment about like Nest thermostats being hooked up to the Internet.” Powell accused Cipollone, Herschmann, and Lyons of “show[ing] nothing but contempt and disdain for the President.” “If it had been me sitting in [Trump’s] chair, I would have fired all of them that night and had ‘em escorted out of the building.” After Cipollone confirmed that Trump had authority to appoint her special counsel, the president said: “I’m naming her that and I’m giving her security clearance.” Cipollone, Herschmann, and Lyons warned: “[Y]ou can name her whatever you want to name her, and no one’s going to pay any attention to it.” Trump expostulated: “[S]ee what I deal with. I deal

with this all the time.” Cipollone told the January 6 Committee: “[I]n my view, she hadn’t been appointed to anything and ultimately wasn’t appointed to anything, because there had to be other steps taken.” But over the next few days, she “was seeking to . . . get that done.” Powell, Flynn, and Byrne “were really sort of attacking” the three of us, “and we were pushing back and we were asking one simple question. . . . Where is the evidence?” Their response was: “I can’t believe you would say something like . . . this. . . . What do you mean where’s the evidence? You should know.” They displayed “a general disregard for the importance of actually backing up what you say with facts.” Lyons added that Powell, Flynn, and Byrne said: “[W]ell, you know, we don’t have it now but we will have it.” Powell countered that “the judges are corrupt.” Herschmann replied incredulously: “[E]very one? Every single case that you’ve done in the country you guys lost, every one of them is corrupt? Even the ones we appointed?” “[I]t got to the point where the screaming was completely, completely out there. . . . [W]hat they were proposing I thought was nuts.” Giuliani shouted: “[Y]ou guys are not tough enough. . . . You’re a bunch of pussies.” Herschmann said: “Flynn screamed at me that I was a quitter . . . kept on standing up and turning around and screaming at me. . . . I yelled back . . . ‘better sit your effing ass back down.’” Cassidy Hutchinson wrote that eventually Meadows escorted Giuliani out of the White House grounds to “make sure he didn’t wander back into the mansion.” At 1:42 a.m., after the meeting ended, Trump tweeted his invitation to the January 6 demonstration (discussed next).

On December 21, Barr repeated to reporters what he had said three weeks earlier: there was no evidence of “systemic or broad-based” fraud. “If I thought a special counsel at this stage was the right tool and was appropriate, I would name one, but I haven’t, and I’m not going to.” He also refused to appoint a special counsel to investigate Hunter Biden. Even Trump’s advisers acknowledged the lack of evidence. Bernard Kerik’s lawyer wrote the January 6 Committee: “It was impossible for Mr. Kerik and his team to determine conclusively whether there was widespread fraud or whether that widespread fraud would have altered the outcome of the election.”<sup>26</sup> Justin Clark (deputy campaign manager) confirmed that Giuliani had never “produced evidence of election fraud.” Jason Miller agreed:

There are some very, very general documents, as far as . . . here are the handful of dead people in several different states. Here are explanations on a couple of the legal challenges as far as . . . the rules were changed in an unconstitutional manner. But . . . to say that it was spin is probably an understatement.

Because the Joint Congressional Committee on Inaugural Ceremonies deadlocked 3–3 along party lines, it could not prepare for the event.<sup>27</sup> Sen.

Blunt said “it is not the job” of the Committee “to get ahead of the electoral process and decide who we are inaugurating.” Trump did not invite Biden’s transition team to his “vaccine summit” because the election had been stolen and the president expected to serve another term. Sen. Johnson said he would hold a hearing about the election two days after the Electoral College vote and contemplated challenging the results on January 6. “A large percentage of the American public does not view the 2020 election results as legitimate because of apparent irregularities that have not been fully examined.” On December 8, Sen. Lee texted Meadows that the path to victory was through state legislatures appointing alternative electors. Meadows assured him, “I am working on that as of yesterday.” But Lee also told McConnell, “[W]e have no more authority than the Queen of England to overturn the Electoral College vote,” and McConnell agreed. Before Christmas, Lee also talked to Cruz (both had been Supreme Court clerks, Lee for Alito, Cruz for Rehnquist); they came to the same conclusion. And on December 30, Lee texted Cleta Mitchell: “[I]t cannot be true that we can object to any state’s presidential electors simply because we don’t think they handled their election well or suspect illegal activity.” “[W]ill you please explain to me how this doesn’t create a slippery slope problem for all future presidential elections?”

On December 12, Trump supporters, including Proud Boys, demonstrated in Washington with Alex Jones, Roger Stone, and Michael Flynn.<sup>28</sup> Jones threatened that “Joe Biden will be removed one way or another.” Flynn assured them “there are still . . . avenues to approach.” Trump ordered a flyover by the Marine One helicopter and exulted: “Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. . . . I’ll be seeing them! #MAGA.” He declared:

[I]t’s not over. . . . We have numerous local cases. We’re you know, in some states that got rigged and robbed from us. We won every one of them. We won Pennsylvania. We won Michigan. We won Georgia by a lot. . . . We’re going to speed it up as much as we can but you can only go so fast. They give us very little time. . . . I worry about the country having an illegitimate president. . . . A president that lost and lost badly. . . . I didn’t lose. The election was rigged.

In a clash between Proud Boys and counterdemonstrators near BLM Plaza, at least four people were stabbed (one critically), nearly three dozen were arrested (ten charged), and eight officers were injured (two hospitalized). BLM banners were torn down from two historic Black churches. Flynn boasted: “We decide the election. We’re waging a battle across America.” Rep. Gaetz said: “The House may be the last forum available for us to present our arguments.” Rep. Brooks agreed: “We have a superior role under the Constitution than the Supreme Court does, than any federal court judge

does, than any state court judge. What we say, goes. That’s the final verdict.” Rep. Perry supported them. Rep. Scalise said the next day that even after the Electoral College voted, it would be too early to call the election. “[I]f you want to restore trust by [sic] millions of people who are still very frustrated and angry about what happened, that’s why you’ve got to have the whole system play out.”

Trump tweeted the day before the Electoral College vote:<sup>29</sup>

MOST CORRUPT ELECTION IN U.S. HISTORY! . . . Swing 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. Everybody knows that dead people, below age people, illegal immigrants, fake signatures, prisoners and many others voted illegally. Also, machine “glitches” (another word for FRAUD), ballot harvesting, non-resident voters, fake ballots, “stuffing the ballot box,” votes for pay, roughed up Republican Poll Watchers, and sometimes even more votes than people voting, took place in Detroit, Philadelphia, Milwaukee, Atlanta, Pittsburgh, and elsewhere. In all Swing State cases, there are far more votes than are necessary to win the State, and the Election itself. Therefore, VOTES CANNOT BE CERTIFIED. THIS ELECTION IS UNDER PROTEST!

After Michigan GOP co-chair Meshawn Maddock said “[W]e fought to seat the [Trump] electors. The Trump campaign asked us to do that,” the attorneys general of Michigan and New Mexico asked the DoJ to investigate the fake Trump slates of electors, as did Rep. Mark Pocan for Wisconsin.<sup>30</sup> Stephen Miller had said on Fox News that lawmakers in several “contested states” were sending “an alternate slate of electors,” which “will ensure that all of our legal remedies will remain open.” Ian Northon, a lawyer for the Amistad Project of the conservative Thomas More Society, tried to deliver a false slate to the Michigan legislature but was stopped by state troopers. Phil Kline, the Project director, declared that only state lawmakers could decide who should be electors, “not governors or local election officials or even the Congress of the United States.” On December 22, the Amistad Project sued, claiming that lawmakers whose alternative slates had been rejected had been “prohibited from fulfilling their constitutional responsibilities.” The case was dismissed.

#### 4.2 Weaponizing the Department of Justice

Trump publicly and privately pressured the DoJ to overturn the election (as he had to protect his cronies from criminal penalties; see Abel, 2024a). He tweeted on December 12: “Why didn’t Bill Barr reveal the truth to the public,

before the Election, about Hunter Biden. Joe Biden was lying on the debate stage that nothing was wrong, or going on—Press confirmed. Big disadvantage for Republicans at the polls!”<sup>31</sup> Undoubtedly remembering what Comey had done to Hillary Clinton in 2016 (by flip-flopping about alleged missing emails), Trump told Fox News that Barr “should have stepped up” Hunter’s investigation. “All he had to do is say an investigation’s going on. When you affect an election, Bill Barr, frankly did the wrong thing.” After Barr resigned two days later, Trump tweeted:

Just had a very nice meeting with Attorney General Bill Barr at the White House. Our relationship has been a very good one, he has done an outstanding job! as per letter, Bill will be leaving just before Christmas to spend the holidays with his family. Deputy Attorney General Jeff Rosen, an outstanding person, will become Acting Attorney General. Highly respected Richard Donoghue will be taking over the duties of Deputy Attorney General.

Barr had written an obsequious resignation letter:

Your 2016 victory speech in which you reached out to your opponents and called for working together for the benefit of the American people was immediately met by a partisan onslaught against you in which no tactic, no matter how abusive and deceitful, was out of bounds. The nadir of this campaign was the effort to cripple, if not oust, your administration with frenzied and baseless accusations of collusion with Russia.

On December 15, Trump summoned Rosen to the Oval Office, telling him that DoJ should file a brief supporting the lawsuits challenging the election.<sup>32</sup> According to Donoghue’s notes, Trump called Rosen almost daily between Barr’s resignation and January 6 to urge DoJ action on the election results. Rosen confirmed that Trump daily expressed “his dissatisfaction that the Justice Department in his view had not done enough to investigate election fraud. . . . [A]t one point he had raised the question of having a special counsel for election fraud.” Trump also asked Rosen “that I meet with his campaign counsel, Mr. Giuliani.” Donoghue said “much of the conversation focused on a report that had been recently released relating to Antrim County in Michigan,” alleging that “the Dominion voting machines in that county had a 67 percent error rate.” Trump “was adamant that the report must be accurate, that it proved that the election was defective, that he in fact won the election.” Rosen and Donoghue refused to intervene because they believed (correctly) there was neither evidence nor standing; White House counsel Cipollone and deputy counsel Philbin also opposed the filing. Trump pressed Rosen to appoint special counsels to investigate voter fraud and Dominion

Voting Systems; but Rosen again refused, saying he made decisions based on the facts and the law, and DoJ had found no evidence of widespread fraud. Donoghue later recalled that the campaign had a hotline for fraud allegations. “When you gave [Trump] a very direct answer on one of them, he wouldn’t fight us on it. But he would move to another allegation.” After DoJ rebutted the story about wheeled suitcases containing ballots in Atlanta, Trump asked about “double voting” and “dead people” voting and alleged that “Indians are getting paid” to vote on reservations. When DoJ refuted those claims, he asked why he wasn’t winning in court. Rosen told Trump he was “free to bring lawsuits” himself, but DoJ could not be involved. At a White House meeting on December 15, DoJ lawyers warned Trump that “people are telling you things that are not right.” In a December 27 phone call, Donoghue again told Trump “in very clear terms” that DoJ had done “dozens of investigations, hundreds of interviews” in “Georgia, Pennsylvania, Michigan, Nevada” and concluded “the major allegations are not supported by the evidence.”

On December 20, the Trump campaign said it was filing another lawsuit in the Supreme Court about Pennsylvania.<sup>33</sup> Rep. Gaetz had spoken to Alabama senator-elect Tuberville (famous as a former Auburn University football coach), who complained, “[W]e are doing running plays from the establishment’s losing playbook. It is time to stand and fight.” Gaetz extended the sports metaphor: “The odds may be tough, it may be 4th and long, but we’re going for it on January 6.” On December 24, Eastman wrote Chesebro about the likelihood that the Supreme Court would hear the new election challenge.

So the odds are not based on the legal merits but an assessment of the justices’ spines, and I understand that there is a heated fight underway. For those willing to do their duty, we should help them by giving them a Wisconsin cert petition to add into the mix.

He and Chesebro were “of similar” minds, and the legal arguments were “rock solid.” Chesebro agreed: “getting this on file gives more ammo to the justices fighting for the court to intervene.”

I think the odds of action before Jan. 6 will become more favorable if the justices start to fear that there will be ‘wild’ chaos on Jan. 6 unless they rule by then, either way. Though that factor could go against us on the merits. Easiest way to quell chaos would be to rule against us—our side would accept that result as legitimate.

I don’t have the personal insight that John [Eastman] has into the four justices likely to be most upset about what is happening in the various

states, who might want to intervene, so I should make it clear that I don't discount John's estimate.

(Eastman had clerked for Justice Thomas.) Switching the sports metaphor, Chesebro concluded: "You miss 100 percent of the shots you don't take. A campaign that believes it really won the election would file a petition as long as it's plausible and the resource constraints aren't too great."

On December 21, two days before leaving office, Barr said (in a news conference announcing charges in the 1988 Lockerbie bombing case) that he was "sure there was fraud in this election" but no evidence of "systemic or broad-based" fraud that would change the result.<sup>34</sup> There also was "no basis right now for seizing machines by the federal government." Therefore, he declined to name a special counsel to investigate either election fraud or Hunter Biden, since the latter matter was "being handled responsibly and professionally" by DoJ prosecutors. *The Washington Post* called on "Republican lawmakers who are cowering before Mr. Trump" to "find the self-respect that Mr. Barr, Pentagon officials and others have summoned over the past several days."

The same day, Trump met with Pence, Meadows, Giuliani, and Reps. Brooks, Babin, Biggs, Gaetz, Gohmert, Gosar, Harris, Hice, Jordan, and Perry and Rep.-Elect Greene to discuss January 6 and Eastman's theory that Pence could delay the count or return the vote to state legislatures.<sup>35</sup> Cipollone later told the January 6 Committee he thought the idea was "nutty" and "the vice president did not have the authority to do what was being suggested under a reading of the law"; Philbin and Pence's counsel Greg Jacob also rejected it. Cipollone later said of Pence:

I think he did the courageous thing. I have a great deal of respect for Vice President Pence. I've worked with him very closely. I think he understood my opinion. . . . I think he did a great service to this country. And I think I suggested to somebody that he should . . . be given the Presidential Medal of Freedom for his actions.

After that meeting, Meadows tweeted that "[s]everal members of Congress just finished a meeting in the Oval Office with President @realDonaldTrump," the purpose of which was "preparing to fight back against mounting evidence of voter fraud. Stay tuned."<sup>36</sup> Trump told CPAC: "[W]e need a party that's going to fight. . . . [W]e won this in a landslide. . . . [W]e need backing from, like the Justice Department."

The next day, Perry brought Jeffrey Clark (head of DoJ's Environment and Natural Resources Division and acting head of its Civil Division) to meet Trump. Giuliani later remembered "saying to people that somebody should be put in charge of the Justice Department who isn't frightened of what's going to be done to their reputation, because Justice Department was filled

with people like that.” After Clark repeated Flynn’s wild claim that wireless thermostats made in China for Nest Labs could manipulate voting machines, Trump asked DNI Ratcliffe to investigate.

Trump tweeted on Christmas Eve: “VOTER FRAUD IS NOT A CONSPIRACY THEORY.”<sup>37</sup> And two days later, he tweeted:

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!

The “Justice” Department and the FBI have done nothing about the 2020 Presidential Election Voter Fraud, the biggest SCAM in our nation’s history, despite overwhelming evidence. They should be ashamed. History will remember. Never give up. See everyone in D.C. on January 6th.

Rosen recalled that on Christmas Eve, his first day as acting attorney general, Trump phoned to reiterate that “the election had been stolen or . . . was corrupt and that there was widespread fraud. And I had told him that our reviews had not shown that to be the case.”<sup>38</sup> Rosen was surprised when Trump mentioned Clark and asked Clark on December 26 why Trump had done so. His subordinate “was defensive,” claiming (unconvincingly) that the meeting with Trump “had been unplanned” and “unbeknownst to him . . . he found himself at the Oval Office.” “[H]e was apologetic for that.” Rosen told Clark angrily: “You didn’t tell me about [the meeting] in advance. You didn’t get authorization. You didn’t tell me about it after the fact. This can’t happen.” Clark “was contrite and said it had been inadvertent and it would not happen again.” This was not Clark’s first questionable action: he had tried unsuccessfully to have DoJ sue Stephanie Winston Wolkoff for writing a tell-all memoir about Melania (for whom she had been an unpaid adviser) and to have “acting” removed from his title.

Rosen explained to the January 6 Committee:

[F]or a long period of time, there’s a policy that, particularly with regard to criminal investigations, restricts, at both the White House and in the Justice Department and those more sensitive issues, to the highest ranks. So, for criminal matters, the policy for a long time has been that only the attorney general and the deputy attorney general . . . can have conversations about criminal matters with the White House, or . . . authorize someone for a specific item with their permission.

OLC head Steven Engel agreed: “it’s critical that the Department of Justice conducts its criminal investigations free from either the reality or any

appearance of political interference.” Cipollone and Philbin also told Clark to stop interfering. But the same day, Perry urged Meadows to have Clark made acting attorney general, saying principal deputy attorney general “won’t work.” Meadows responded: “I got it.”

On December 27, Perry, who had been given Donoghue’s phone number by Trump, called “at the behest of the president” and said, “I think Jeff Clark is great, and I think he’s the kind of guy who could get in there and do something about this stuff.”<sup>39</sup> Perry explained “why he in particular doesn’t trust the FBI” and urged Donoghue to investigate Pennsylvania, alleging that the secretary of state “had certified more votes than were actually cast.” Donoghue told Perry to send him the evidence, which Donoghue transmitted to the US Attorney for WD Pa, Scott Brady, with a note observing: “[F]or whatever it may be worth.” Brady “got back in relatively short order with a pretty clear explanation for why there was no foundation for concern,” saying the allegations were “not well founded.”

In a conference call that day, Trump told Rosen that “people are very mad with the Justice Department” for not investigating voter fraud, and repeated Perry’s false claim that there were fewer registered voters than ballots cast in Pennsylvania.<sup>40</sup> Rosen replied: “Should be able to check on that quickly, but understand that the D.O.J. can’t and won’t snap its fingers and change the outcome of the election, doesn’t work that way.” Trump persisted: DoJ should “just say the election was corrupt + leave the rest to me and the R. Congressmen,” noting approvingly that Rep. Jordan was a “fighter” and Rep. Perry and Sen. Johnson were “getting to the bottom of things.” Trump kept insisting that the Department was “obligated to tell people that this was an illegal corrupt election.” Donoghue said he and Rosen “tried to explain to the President . . . that the Justice Department has a very important . . . but very limited role in these elections.” “[T]he one and only client of the United States Justice Department is the United States Government,” which “does not have standing” to challenge state election practices. Rosen also refused Trump’s request to announce a voter fraud investigation at a press conference. At one point, Donoghue told Trump: “Much of the information you’re getting is false.” After conducting “dozens of investigations, hundreds of interviews,” DoJ had found no evidence of fraud. “We look at allegations but they don’t pan out.” “We are not in a position based on the evidence. We can only act on the actual evidence developed.” Trump insisted that “thousands of people called” their US Attorney’s Offices to complain, and “nobody trusts the F.B.I.” “People are angry—blaming D.O.J. for inaction.” “You guys may not be following the internet the way I do.” When DoJ lawyers presented evidence showing no fraud that would change the results in Michigan, Pennsylvania, and Georgia, the president just replied: “OK fine—but what about the others?” He asked Donoghue to go to Fulton County to verify ballot signatures. The people “saying that the election isn’t corrupt are corrupt.”

DoJ had to act now: “not much time left.” “People tell me Jeff Clark is great, I should put him in.” “People want me to replace D.O.J. leadership.” Donoghue agreed that “you should have the leadership you want” but maintained that would not change the Department’s evaluation of the evidence.

Donoghue told the January 6 Committee: “I felt that being very blunt in that conversation might help make it clear to the President these allegations were simply not true.”<sup>41</sup>

One that was very clear at that point was the Antrim County [Michigan]. . . . Allied Security Operations Group released this report that said 60 percent error rate. There was in fact in Antrim County a hand recount. . . . [T]here was one error [in more than 15,000 votes] . . . [a] .0063 percent error rate, which is well within tolerance.

“The truck driver who claimed to have moved an entire tractor trailer of ballots from New York to Pennsylvania. That was also incorrect.”

Donoghue said that he, Rosen, and other DoJ officials warned Clark against investigating election fraud.<sup>42</sup> It was not “the department’s role to suggest or dictate to state legislatures how they select their electors but, more importantly, this was not based on fact.” It would have “grave consequences for the country.” “I wanted to make sure that [Clark] understood the gravity of the situation because he didn’t seem to really appreciate it.”

We thought perhaps once it was explained to him that there was no basis for that part of his concern, that he would retreat. But instead he doubled down and said, “Well, okay, so there’s no foreign interference, I still think there are enough allegations out there that we should go ahead.”

“He got very defensive.”

On Christmas Day, William J. Olson, a lawyer in a very small suburban Virginia firm, had phoned Trump with a plan and, three days later, sent him a memo titled “Preserving Constitutional Order.”<sup>43</sup> Olson proposed that the DoJ file “an original action in the U.S. Supreme Court based on *Texas v. Pennsylvania*.” He believed that “the Attorney General is attempting to discourage filing such an action, or is slow-walking his response to you” because Olson had heard “the shameful and dismissive attitude of the lawyer from the White House Counsel’s office [presumably Cipollone] toward you personally.” The Court might “come to its senses and issue an Order that would disqualify the designation of electors selected by processes not authorized by state legislatures.” “However, even if it results in another loss in the Supreme Court, this suit would serve an important function in exposing to the diminishing number of Americans who still have faith in government, the true depth of corruption.” Replacing Rosen with Clark “would create

what the press would call a ‘constitutional crisis,’ yet we are already in such a crisis brought on by corruption at the highest levels of government.” “Constitutionally, the President truly is the chief law enforcement [officer] of the United States—not the Attorney General whose position is not mentioned in the Constitution.” “You have a duty to prevent this electoral fraud on the American people.” He urged Trump to appoint Kurt Olsen as White House counsel, tasked

with identifying how the powers of the Presidency can be used to ensure that the People receive a fair election count, if that can be one. Through use of sampling from lists of registered voters it should not take long to accomplish this. . . . The media will call this martial law, but it [sic] that is “fake news”—a concept with which you are well familiar.

(Olsen had been a partner at Klafter, Olsen & Lesser, a small New York firm he founded 18 years earlier. After he helped Paxton file *Texas v. Pennsylvania*, the firm dropped him from the partnership.)

On December 28, Clark (or his subordinate, Kenneth Klukowski) drafted a letter intended for Georgia’s governor, House speaker, and Senate president pro tem: “The Department of Justice is investigating various irregularities in the 2020 election” and has “identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia.” DoJ believed “the Governor of Georgia should immediately call a special session to consider this important and urgent matter.” If he refused, “the Georgia General Assembly has implied authority under the Constitution of the United States to call itself into special session for [t]he limited purpose of considering issues pertaining to the appointment of Presidential Electors.” Clark sent it to Rosen and Donoghue with a note:

I think we should get it out as soon as possible. Personally, I see no valid downsides [sic] to sending out the letter. I put it together quickly and would want to do a formal cite check before sending but I don’t think we should let unnecessary moss grow on this.

Donoghue read it “twice to make sure I really understood what he was proposing, because it was so extreme to me,” and responded several days later that the letter was “wildly inappropriate and irresponsible . . . nothing less than the department meddling in the outcome of a presidential election.” He informed the Committee he had told Clark: “[T]his is not the department’s role to suggest or dictate to state legislatures how they should select their electors.” “This was actually contrary to the facts as developed by department investigations over the last several weeks and months.” “[F]or the department to insert itself into the political process this way,

I think would have had grave consequences for the country. It may very well have spiraled us into a constitutional crisis.” He wrote Clark firmly:

There is no chance that I would sign this letter or anything remotely like this. While it may be true that the Department “is investigating various irregularities in the 2020 election for President” (something we typically would not state publicly) the investigations that I am aware of relate to suspicions of misconduct that are of such a small scale that they simply would not impact the outcome of the Presidential Election.

“[F]rom where I stand, this is not even within the realm of possibility.” Barr had stated publicly that the Department had found no fraud significantly affecting the election, and no subsequent information changed that assessment. “Given that, I cannot imagine a scenario in which the Department would recommend that a State assemble its legislature to determine whether already-certified election results should somehow be overridden by legislative action.” The assurance that DoJ would update recipients on investigatory progress was “dubious as we do not typically update non-law enforcement personnel on the progress of any investigations.” Later that day, Rosen told Clark and Donoghue: “I confirmed again today that I am not prepared to sign such a letter.” He admonished Clark: “What you are doing is nothing less than the United States Justice Department meddling in the outcome of a presidential election.”

At a White House meeting with Rosen on December 29, Meadows mentioned a lawsuit against six crucial states, drafted by a campaign lawyer, which Meadows wanted DoJ to file.<sup>44</sup> Rosen replied that “it’s not viable” and told Trump the next day it was a “bad idea, doesn’t work.” On December 31, Meadows sent Rosen an email from Cleta Mitchell about Georgia voting irregularities and took Rosen to meet Trump, who was angry that the DoJ had not found fraud. On January 1, Meadows emailed Rosen about “allegations of signature match anomalies” in Fulton County. Rosen forwarded this to Donoghue with the comment: “Can you believe this? I am not going to respond to the message below.”

Donoghue recalled that at the White House meeting on New Year’s Eve, “the president was a little more agitated than he had been . . . on the 15th.”<sup>45</sup> “He did say this sounds like the kind of thing that would warrant appointment of a Special Counsel,” mentioned DHS secretary Cuccinelli, and “said something about why don’t you guys seize machines.” Rosen told Trump: “[W]e had seen nothing improper with regard to the voting machines.” “The real experts that had been at DHS . . . looked at it and that there was nothing wrong with the voting machines.” “I don’t think there was legal authority either.” Donoghue said that “since DHS had been mentioned, the President yelled out to his Secretary to get Ken Cuccinelli on the phone.” “Toward the

end of the meeting the President again was getting very agitated and he said people tell me I should just get rid of both of you . . . put Jeff Clark in, maybe something will finally get done.” Donoghue repeated what he had said several days earlier:

Mr. President you should have the leadership that you want. But understand, the United States Justice Department functions on facts, evidence, and law, and those are not going to change. So you can have whatever leadership you want, but the Department’s position is not going to change.

Cipollone “was extremely supportive of the Justice Department.”

On December 14, an hour before Trump announced Barr’s resignation, a Trump assistant had urged Rosen (who would succeed Barr) to investigate the alleged Dominion voting machine fraud in Antrim County, declaring that “we believe it has happened everywhere.”<sup>46</sup> On December 29, the same assistant wrote Rosen, enclosing a brief Trump wanted DoJ to file in the Supreme Court (resembling the unsuccessful case filed by Paxton), which relied on a video claiming Dominion machines had been hacked. Republican officials in Georgia had rejected a similar video as doctored. That day, after several failed efforts to reach Rosen or John Moran (his chief of staff), Kurt Olsen (a lawyer challenging the vote in Georgia) called a lawyer in the antitrust division and then emailed Moran at night, claiming falsely he was doing so at Rosen’s request. Rosen later told Donoghue:

I learned that [Brad] Jo[h]nson is working with Rudy Giuliani, who regarded my comments as an “insult.” [see below] Asked if I would reconsider [filing the lawsuit], I refused, said I would not be giving any special treatment to Giuliani or any of his “witnesses,” and reaffirmed yet again that I will not talk to Giuliani about any of this.

The back story was that on December 30, Meadows had asked Rosen to examine election fraud in Georgia.<sup>47</sup> Meadows included a translated letter from Italian aerospace engineer Carlo Goria about an alleged plot to rig an Italian election, based on a December article in *La Verità* by Daniele Capezzone claiming that the Trump campaign was investigating whether a US Embassy official had conspired with an Italian defense contractor to hack Dominion machines. On New Year’s Day, Meadows emailed Rosen several times.<sup>48</sup> First, he asked Rosen to send Clark to Fulton County. Rosen ignored this but saw it as “the first corroboration” of Clark’s claim that Trump was considering making him acting attorney general by January 4. Second, Meadows asked Rosen to have DoJ lawyers investigate alleged fraud in New Mexico. Rosen refused because “it was really not our role to function as . . . an arm of any campaign,” which was also why he would not meet

Giuliani. Rosen thought “it was a rehash of things that had been debunked previously.”

The third email had a YouTube link about the alleged Italian conspiracy, which Rep. Perry had sent Meadows the previous day, with the message: “Why can’t we just work with the Italian government?” The video (which YouTube had removed) showed Bradley Johnson (a right-wing journalist who claimed to be a retired CIA officer but, according to co-workers, had been fired for “unprofessional” conduct)<sup>49</sup> describing a plot involving “a certain State Department guy” in the US embassy in Rome “running the operation of changing the votes . . . with some support from MI6, the CIA, and this Leonardo group” (the Italian defense contractor), using satellites to hack voting machines. Rosen forwarded it to Donoghue, who called it “pure insanity . . . patently absurd.” Asked by Meadows to meet with Johnson, Rosen replied: “[T]his whole thing about Italy had been debunked and that should be the end of it.” “[I]f [Johnson] has real evidence which this video doesn’t show, he can walk into an FBI field office anywhere in the United States.” Meadows initially said:

OK. But then he called me back a few minutes later and complained. . . . [T]his fellow Johnson is working with Rudy Giuliani. And Mr. Giuliani is really offended that you think they have to go to an FBI field office. That’s insulting.

Rosen told the Committee, “[B]y then I was somewhat agitated and told them that there was no way on Earth that I was going to do that” and “[D]on’t raise this with me again. . . . [I]t was, you know, 7:13 on a Friday night of New Year’s Day, I had run out of patience.” The same day, Donoghue got a call from Kash Patel (chief of staff to Acting Defense Secretary Miller), who asked “what this [Italy thing] is all about.” Donoghue said DoJ had “run the name” of the Italian defense contractor mentioned by Meadows and found that he “had been arrested for a cyber offense” in Italy for “exfiltrating data from his company.” “[T]he whole thing was very, very murky at best, and the video was absurd.” “I made it clear to him that I didn’t think it was anything worth pursuing.” Nevertheless, Miller called the defense attaché at the Rome embassy, who confirmed it was entirely untrue.

The plot turned out to be even more bizarre.<sup>50</sup> On January 4, Maria Strollo Zack, a Republican operative from Georgia, said Giuliani had called to discuss the conspiracy after she described it to Trump at Mar-a-Lago on Christmas Eve. She claimed on a conference call with her Florida-based nonprofit Nations in Action that she had given documents about it to Peter Navarro (who denied this). On January 6, her nonprofit claimed it had conducted an election fraud investigation with the Institute for Good Governance (IGG), which “yielded the long awaited proof that a flawless plot to take down

America was executed with extraordinary resources and global investment.” The news release included a sworn statement by an Italian lawyer who knew from a “high level army security services official” that a hacker in an unrelated case had flipped votes from Trump to Biden at the direction of US embassy officials. Both IGG and USAerospace Partners (a Virginia company on whose letterhead the original Goria missive had been written) were led by Michele Roosevelt Edwards (who had changed her name from Michele Ballarin in 2020). The day after the 2020 election, she told Iceland television that North Wales Farm—a 22-bedroom Virginia property on sale for just under \$30 million—was IGG headquarters and her personal home. The actual owner had never heard of Edwards.<sup>51</sup>

Donoghue said that between December 28 and January 2, Clark “continued to . . . move down this path. He began calling witnesses and apparently conducting investigations on his own, and he got a briefing from DNI about purported foreign intelligence interference.” Confronted by Rosen and Donoghue, Clark “doubled down” and said, “[W]ell, OK. So, there’s no foreign interference. I still think there are enough allegations out there that we should go ahead and send this letter.” On January 1, Clark told Rosen that “the President had asked him to consider whether he would be willing to replace [Rosen] supposedly on a timetable by Monday the fourth.” Rosen warned Clark “he was making a colossal error of judgment.” But Clark “continued to express the view that he thought there was fraud even though he had not been a participant in the department’s review of that” evidence. He also “acknowledged that he had had further . . . discussion with the President despite having . . . earlier said” he “wouldn’t do that and . . . if he got an invitation to do that [i.e., replace Rosen] he would let Richard Donoghue or me [Rosen] know.” “[I]t was a contentious meeting where we were chastising him that he was insubordinate.” At the January 2 meeting, Clark said “the President had asked him to let [Trump] know if he’d be willing to” become acting attorney general. He offered to decline if Rosen signed the letter to Georgia, but Rosen refused. When Rosen and Donoghue insisted there was no evidence of fraud, Clark “was defensive.” When Donoghue repeated that this was “nothing less than Justice Department meddling in an election, [Clark’s] reaction was: ‘I think a lot of people have meddled in this election.’”

On January 3, Clark told Rosen “the President had offered him the job and that he was accepting it.” “[Rosen] wasn’t willing to be fired by my subordinate. So I wanted to talk to the President directly.” “I did not want for the Department of Justice to be put in a posture where it would be doing things that were not consistent with the truth . . . its own appropriate role, or . . . the Constitution.” After Clark left, Rosen “called Mark Meadows and said I need to see the President right away.” Meadows arranged a meeting for two hours later, 6:15 p.m. Rosen called Cipollone, who agreed to

attend, saying “he would be supporting the Justice Department’s position as he had been doing consistently.” Rosen called OLC head Steven Engel, who also agreed to attend. And Rosen asked Donoghue to alert “the department’s senior leadership.” Donoghue and his chief of staff, Patrick Hovakimian, contacted all the assistant attorneys general (except one who could not be reached), and all “said they would resign.” (But Donoghue told John Demers, National Security Division AAG, that he needed “to stay in place.”) Eric Herschmann called Rosen “to tell me [Rosen] that he was going to go to the meeting and that he would be supporting the Department of Justice position as well.”

Trump and Clark had been communicating throughout the day, at 7:07 a.m., 7:38 a.m., and 1:13 p.m.; by their 4:19 p.m. phone call, the White House was referring to Clark as “acting attorney general.” At the beginning of the 6:15 p.m. meeting, Rosen recalled, Clark said that as attorney general, he would “conduct real investigations that would, in his view, uncover widespread fraud.”<sup>52</sup>

History is calling. This is our opportunity. We can get this done. . . . [T]his was the last opportunity to sort of set things straight with this defective election, and that he could do it, and he had the intelligence and the will and the desire to pursue these matters in the way that the president thought most appropriate.

Donoghue remembered that Clark “got even more confrontational.” Rosen said Trump “turned to me and he said, well, one thing we know is you, Rosen, you aren’t going to do anything. You don’t even agree with the claims of election fraud, and this other guy at least might do something.” Trump dressed down Rosen and Donoghue: “You two haven’t done anything. You two don’t care. You haven’t taken appropriate actions. Everyone tells me I should fire you.” Rosen replied:

Well, Mr. President, you’re right that I’m not going to allow the Justice Department to do anything to try to overturn the election. That’s true. But the reason for that is because that’s what’s consistent with the facts and the law and that’s what’s required under the Constitution. So that’s the right answer and a good thing for the country. And therefore, I submit it’s the right thing for you, Mr. President.

“[I]f the Justice Department gets out of the role that it’s supposed to play, that’s really bad for our country. . . . And when you damage our fundamental institutions, it’s not easy to repair them.” “[E]veryone in the room was . . . supportive of my approach for the Justice Department and critical of Mr. Clark.” Told by Trump he could remain as Clark’s deputy, Rosen replied,

“[T]here was no universe where I was going to do that.” Donoghue said, “[E]veryone in the room I think understood that that meant that letter would not go out.” Cipollone was “unmistakably angry”; he, Herschmann, and Donoghue “forcefully challenged Mr. Clark to produce evidence of his election fraud theories.” Donoghue said that Clark

repeatedly said to the President that if he was put in the seat, he would conduct real investigations that would in his view uncover widespread fraud. He would send out the letter that he had drafted and that this was a last opportunity to sort of set things straight with this defective election and that he could do it. . . . I made the point that Jeff Clark is not even competent to serve as the Attorney General. He’s never been a criminal attorney. He’s never conducted a criminal investigation in his life. . . . And he kind of retorted by saying, well, I’ve done a lot of very complicated appeals in civil litigation. . . . And I said, that’s right. You’re an environmental lawyer, how about you go back to your office and we’ll call you when there’s an oil spill.

Herschmann sarcastically said to Clark: “Congratulations. You just admitted your first step or act as attorney general would be committing a felony. . . . You’re clearly the right candidate for this job.” He told Trump that “Clark’s proposal was nuts” and said to Clark, “Best I can tell is the only thing you know about environmental and elections challenges is they both start with an ‘E.’ And based on your answers tonight, I’m not even certain you know that.” Trump asked, “[W]hat do I have to lose?” Donoghue replied, “[A] great deal,” explaining “what he had to lose and what the country had to lose and what the department had to lose.” “Everyone chimed in with their own thoughts, all of which were consistent about how damaging this would be.”

Donoghue “point[ed] out to the president that Jeff Clark” was “telling you [Trump] he’s going to . . . turn the place on a dime and conduct nationwide criminal investigations that will produce results in a matter of days. It’s impossible. It’s absurd.”

I said [to Clark] at one point, if you walked into Chris Wray’s office, one, would you know how to get there? And two . . . would he even know who you are? And do you really think that the FBI is going to suddenly start following your order? It’s not going to happen.

Trump said, “Suppose I replace . . . Jeff Rosen, with . . . Jeff Clark? What would you do?” Donoghue replied, “Mr. President, I would resign immediately. I’m not working one minute for this guy, who I had just declared was completely incompetent.” “Within 24, 48, 72 hours, you could have

hundreds and hundreds of resignations in the leadership of your entire Justice Department because of your actions. What's that going to say about you?" "Jeff Clark will be left leading a graveyard." "[T]hese aren't bureaucratic leftovers from another administration. You picked them. This is your leadership team." Trump "immediately turned to Mr. Engel. And he said, Steve, you wouldn't resign, would you? And he said absolutely I would." Engel explained:

Mr. President, I've been with you through four attorneys general . . . but I couldn't be part of this. . . . All anyone is going to think is that you went through two attorneys general in two weeks until you found the environmental guy to sign this thing. And so, the story is not going to be that the Department of Justice has found massive corruption that would have changed the result of the election. It's going to be the disaster of Jeff Clark.

Cipollone told Trump:

That letter that this guy [Clark] wants to send—that letter is a murder-suicide pact. It's going to damage everyone who touches it. And we should have nothing to do with that letter. I don't ever want to see that letter again.

Donoghue told Trump, "I don't know what the United States Attorneys are going to do [but] . . . my guess would be that many of them would have resigned. And that would have led to resignations across the department in Washington." All Clark was doing "by putting himself forward was blowing himself up." Cipollone said "Engel's response had a noticeable impact on the president that this was a turning point in the conversation."

After nearly three hours, Trump announced he would leave Rosen in place, explaining to Clark:

The reality is, you're not going to get anything done. These guys are going to quit. Everyone else is going to resign. It's going to be a disaster. The bureaucracy will eat you alive. And no matter how much you want to get things done in the next few weeks, you won't be able to get it done, and it's not going to be worth the breakage.

Clark asked if Engel could provide a formal OLC opinion about Pence's authority "when it comes to opening the votes" on January 6. Engel called this an "absurd idea." Even Trump said "nobody should be talking to the vice president here except him" (presumably because Trump still believed he could bully Pence into blocking the certification). Clark "tried to scrape his way back and asked the president to reconsider." But Trump refused and

asked Rosen “what happens” to Clark. “Are you going to fire him?” After Rosen said only Trump could do that, the president declined. Despite all this, Trump phoned Donoghue later that night, claiming “information about a truck supposedly full of shredded ballots in Georgia that was in the custody of an ICE agent whose name he had.” When Donoghue explained that was the responsibility of DHS, Trump told him to call Ken Cuccinelli. (Of course, there was nothing to the story.)

Clark later said:<sup>53</sup>

I categorically deny that I “devised a plan . . . to oust” Jeff Rosen. . . . Nor did I formulate recommendations for action based on factual inaccuracies gleaned from the Internet. My practice is to rely on sworn testimony to assess disputed factual claims. There were no “maneuver” [sic]. There was a candid discussion of options and pros and cons with the president. It is unfortunate that those who were part of a privileged legal conversation would comment in public about such internal deliberations, while also distorting any discussions. . . . Observing legal privileges, which I will adhere to even if others will not, prevent [sic] me from divulging specifics regarding the conversation.

But others confirmed Donoghue’s account, adding that Clark had initiated the contact with Trump, saying he felt fraud affected the election results. In August 2021, Rosen told a closed-door hearing of the Senate Judiciary Committee: “The president was persistent with his inquiries, and I would have strongly preferred that he had chosen a different focus in the last month of his presidency.” “I disagreed with things that President Trump suggested the Justice Department do with regard to elections. So we did not do them,” and Trump “acquiesced to the department’s position.” Clark’s actions were “inexplicable.”

Engel described the

draft lawsuit that apparently was prepared by people outside the Department. It would be styled as brought by the United States and . . . the Acting Solicitor General as an original jurisdiction matter in the Supreme Court. It was a meritless lawsuit that was not something that the Department could or would bring.

“[T]he Department of Justice . . . doesn’t have any standing to bring such a lawsuit.” It “would have been untimely.” “[T]he person who drafted this lawsuit didn’t really understand . . . the law or how the Supreme Court works or the Department of Justice.” It “was certainly an unusual request.” Engel was also asked about appointing Louisiana Attorney General Jeff Landry as special counsel, but Louisiana state law precluded this. Furthermore, a

special counsel is appointed when “the Department essentially has a conflict of interest,” and neither Barr nor Rosen “ever believed that was appropriate or necessary in this case.” Barr had said on December 21: “I have not seen a reason to appoint a Special Counsel and I have no plan to do so before I leave.” Yet two days later, Trump tweeted: “After seeing the massive voter fraud in the 2020 Presidential election, I disagree with anyone that thinks a strong, fast, and fair Special Counsel is not needed immediately.” “This was the most corrupt election in the history of our country and it must be closely examined.” On December 18, he had promised to appoint Sidney Powell, who said:

[Trump] had asked me to be Special Counsel to address the election issues and to collect evidence. And he was extremely frustrated with the lack of, I would call it law enforcement, by any of the government agencies that are supposed to act to protect the rule of law in our republic.

### 4.3 After the Electoral College Vote

On December 14, the Electoral College voted for Biden, 306–232.<sup>54</sup> Biden said Trump’s position was “so extreme, we’ve never seen it before—a position that refused to respect the will of the people, refused to respect the rule of law and refused to honor our Constitution.” The election “was honest, it was free and it was fair.” He had won “the same number of electoral votes that Donald Trump and Vice President Pence received when they won in 2016. At the time, President Trump called his Electoral College tally a landslide.” (Biden also won the popular vote by 7 million, whereas Trump had lost the 2016 popular vote by 3 million.) Presidents Putin and Obrador finally recognized Biden’s victory. Trump immediately called McConnell, who said “the Electoral College has spoken. That’s the way we pick a president in this country.” Trump just spewed expletives, calling McConnell disloyal and weak and claiming credit for his re-election. (In fact, McConnell won by just under 20 percent, compared to over 26 percent six years earlier.) McConnell just repeated, “[Y]ou lost the election,” and hung up. He congratulated Biden, saying he “is no stranger to the Senate” (where the two had been colleagues for 24 years) and had “devoted himself to public service for many years.”

Yesterday, electors met in all 50 states. So as of this morning, our country has officially a President-elect and a Vice President-elect. Many millions of us had hoped the Presidential election would yield a different result. But our system of government has processes to determine who will be sworn in on January the 20th. The Electoral College has spoken.

Many Republicans accepted the result. Sen. Braun said “we must put aside politics and respect the constitutional process.” Sen. Blunt promised “we’ll deal with Vice President Biden as the president-elect.” Sen. Capito acknowledged his win. Sen. Graham concurred. Sen. Grassley declared: “I follow the Constitution.” Sen. Thune also “believe[d] in following our Constitution.” A challenge on January 6 was “not going anywhere. It’s going down like a shot dog.” Sen. Cornyn agreed it “would be a bad mistake . . . futile and it’s unnecessary.” A day later, Trump tweeted:

Republicans in the Senate so quickly forget. Right now they would be down 8 seats without my backing them in the last Election. RINO John Thune, “Mitch’s boy,” should just let it play out. South Dakota doesn’t like weakness. He will be primaried in 2022, political career over!!!

(Thune was re-elected with an overwhelming 72 percent of the vote.) Even some Trump loyalists abandoned him (if in more guarded language). Sen. Johnson said he would not object on January 6. Labor secretary Eugene Scalia told Trump:

I thought that it was time for him to acknowledge that President Biden had prevailed in the election. . . . [O]nce those legal processes were run, if fraud had not been established that had affected the outcome of the election, then unfortunately, I believed that what had to be done was concede the outcome.

Attorney General Barr recalled to the January 6 Committee: “December 14th . . . was the end of the matter.” Kayleigh McEnany said, “[T]he conclusion of the litigation was when I began to plan for life after the administration.” Ivanka Trump claimed that even before December 14, she had accepted the outcome. Judd Deere (White House deputy press secretary) told Trump “the means for him to pursue litigation was [sic] probably closed” by the Electoral College vote.

But Sen. Barrasso complained that asking if he would call Biden president-elect was a “gotcha question.”<sup>55</sup> Sen. Cramer said, “[T]he big race is really between the inaugural committee and the Justice Department.” Jenna Ellis tweeted: “FALSE certification!”

MILLIONS of Americans who love our country have now seen the TRUTH about the corruption and total disregard for the rules in our elections. It is a VICTORY for election integrity and the TRUTH will PREVAIL because Americans are courageous and will not back down!!

Victoria Toensing asked: “How can you certify an election with all this fraud going on?” Steven Miller outlined Trump’s game plan:

We have more than enough time to right the wrong of this fraudulent election and certify Donald Trump as the winner of the election. As we speak today, an alternate slate of electors in the contested states is going to vote, and we’re going to send those results up to Congress. . . . Congress has the opportunity as well to do the right thing.

Virginia state senator Amanda Chase said Biden “never will be” her president, and “President Trump should declare martial law as recommended by General Flynn,” “suspend the Constitution,” and “have the military implement national revote that reflects the true will of the people.” (She was seeking the Republican nomination for governor but lost to Glenn Youngkin.) Rep-elect Greene declared that Republicans who failed to contest the election were supporting “the Chinese Communist Party takeover of America.” Charlie Kirk said “there are still plenty of legal challenges.” “You typically don’t use the term ‘congratulations’ when someone just stole [sic—“robbed”] a bank.” Fox News reporters Brian Kilmeade and Ainsley Earhardt declined to call Biden president-elect. But their colleague Geraldo Rivera warned: “The longer we drag this out, the more we damage the fabric of our democracy.” “You have to stop this!” Newsmax declared Biden president-elect, but OANN said it “will not recognize Biden as President-Elect as all of our investigations indicate there was fraud in voting.”

Litigation persisted. In a lawsuit about a referendum to permit a marijuana dispensary in Central Lake Township (population 2,000) in Antrim County, Michigan, 13th Circuit Court Judge Kevin Elsenheimer (a Republican former lawmaker who had donated to the Trump campaign) had ordered “forensic imaging” of Dominion Voting Systems machines and software in late November.<sup>56</sup> (The plaintiff was represented by Daniel DePerno, who unsuccessfully ran for attorney general in 2022.) Based on that, the Allied Security Operations Group (ASOG) issued a report on December 14 claiming that Dominion machines were “intentionally and purposefully designed” to manipulate votes. Giuliani (who was involved in the litigation) called the report “nothing short of mind-blowing”: the evidence of fraud was “undisputable [sic—“indisputable”]” and grounds for state lawmakers to “halt any further approval of presidential electors until all these machines have been seized for auditing and analysis.” Trump tweeted exultantly: “WOW This report shows massive fraud! Election changing result” “This is BIG NEWS. Dominion Voting Machines are a disaster all over the Country. Changed the results of a landslide election. Can’t let this happen. Thanks for the

genius bravery, and patriotism of the Judge. Should get a medal!” Trump told Barr the report was “absolute proof that the Dominion machines were rigged,” which meant he was “going to have a second term.” After Fox News reported the story, Trump tweeted again: “Many Trump votes were routed to Biden. The Highly respected Michigan Judge released this epic report. True all over the Country. This Fake Election can no longer stand. Get moving Republicans. Big Swing State Win. 75,000,000 votes.” He retweeted a tweet headlined: “DOMINION-NEVADA. The error rate scanning ballots in Antrim County, Michigan, was 68.05%. Dominion Voting Systems are also used in Clark County, Nevada. Clark County, Nevada elections officials also HAPPENED to report an error scanning ‘ABOUT 70% OF BALLOTS.’” (They actually said about 70 percent were flagged for review, not that they were counted wrongly.) He shared another tweet: “Election Status: Trump is in the process of proving he won, and Biden is pretending he did.” *The Gateway Pundit* declared: “BOMBSHELL.” “Will a Small County in Northern Michigan Be the Key to Overturning the Nation’s Election Results?” It posted an *Epoch Times* interview in which Sidney Powell claimed that “one of our experts” uncovered how Dominion created tallies that led to “5 percent higher votes for Biden across the board, everywhere.” Trump tweeted: “Tremendous evidence pouring in on voter fraud. There has never been anything like this in our Country!”

“Study: Dominion Machines shifted 2–3% of Trump Votes to Biden. Far more votes than needed to sway election.” Florida, Ohio, Texas and many other states were won by even greater margins than projected. Did just as well with Swing States, but bad things happened.

Kayleigh McEnany “explained” that a “forensic analysis” of the voting machines

shows that the machines had a very high error rate. So what these forensic experts found is that when you have a 60 percent error rate, what that meant is the ballots then went to adjudication. And in the process, that’s where the poll workers needed the safeguards, the signature-matching, the address verification.

But in May 2021, Judge Elsenheimer dismissed the last remaining case, and the state Supreme Court affirmed in December 2022.<sup>57</sup>

Trump retweeted Rep. Brooks: “Trump Won the Electoral College—I Can Be a Part of the ‘Surrender caucus’ or I Can Fight for Our Country.”<sup>58</sup> Trump then tweeted: “Trump’s allies slam Mitch McConnell for congratulating Biden. . . . Mitch, 75,000,000 VOTES, a record for a sitting President

(by a lot). Too soon to give up. Republican Party must finally learn to fight. People are angry!” He retweeted Lin Wood:

Mitch McConnell @senatemajldr is NOT a Patriot. Ask his wife [Transportation Secretary Elaine Chao]. She knows. McConnell just wants power, influence & money. He is willing to sell America to get what he wants. McConnell is a traitor to American Patriots. His day of judgment is coming.

Trump also retweeted Michael Flynn:

@realDonaldTrump millions & millions & millions of Patriots stand behind, alongside & in front of you during this crucible [sic] moment in US History where our very Republic is on the line. We won't fail or cower like some in the Republican party have shown [sic].

Education secretary Betsy DeVos told her department: “Resist. Be the resistance against forces that will derail you from doing what’s right for students.” North Carolina state senator Bob Steinberg said: “President Trump must declare a national emergency,” “invoke the Insurrection Act,” and suspend habeas corpus. He claimed FBI and CIA agents in his district had told him the Supreme Court declined to hear the Texas case because “somebody’s got something” on the justices—and then protested defensively, “I’m not nuts. I’m not a conspiracy theory person,” and offered to take a psychological evaluation.

Sidney Powell and others drafted an executive order dated December 16, titled “Presidential Findings to Preserve Collect and Analyze National Security Information Regarding the 2020 Election.” It was based on the ASOG “forensic report” and claimed to find “evidence of international and foreign interference in the November 3, 2020 election” by “Dominion Voting Systems and related companies that are owned or heavily controlled and influenced by foreign agents, countries and interests.” “The system intentionally generates an enormously high number of ballot errors,” which “lead to bulk adjudication of ballots with no oversight, no transparency, and no audit trail.” “The report found the election management system to be wrought [sic—“fraught”] with unacceptable and unlawful vulnerabilities.” “There is also probable cause to find that Dominion Voting Systems, Smartmatic, Electronic Systems & Software, and Hart Inter Civic, Clarity Election Night Reporting, Edison Research, Sequoia, Scytl, and similar related entities, agents or assigns have the same flaws.” “Effective immediately, the Secretary of Defense shall seize, collect, retain and analyze all machines, equipment, electronically stored information, and material records.”

Michael Flynn had twice contacted Ezra Cohen-Watnick, acting undersecretary of defense for intelligence, who had served with Flynn at DIA and NSC, urging DoD to seize ballots and voting machines and rerun the election.<sup>59</sup> When Cohen-Watnick replied, “[T]he election is over. It’s time to move on,” Flynn yelled, “This is not over! Don’t be a quitter!” Meadows prevented Flynn from talking to DNI Ratcliffe. (Powell and Giuliani also called Ratcliffe, asserting that a CIA supercomputer named “HAMMER” used “SCORECARD” software to change votes. Ratcliffe determined there was no such supercomputer and their informant, presumably Bradley Johnson, had only briefly been a CIA contractor nearly 20 years earlier before being terminated for allegedly using sham technology.) Undaunted, Flynn declared on Newsmax on December 17 that Trump “could order the, within the swing states, if he wanted to, he could take military capabilities, and he could place those in states and basically rerun an election in each of those states.” The next day, Flynn, Powell, and Overstock founder Patrick Byrne discussed this plan with Trump, Giuliani participating by phone. They presented a memo in the names of CDR (Ret) Frank Colon (described as senior legal counsel to the Army; but he held no military rank and was assigned to the 780th Military Intelligence Brigade), Richard Higgins (a former NSC member dismissed for claiming Trump was being attacked by deep-state forces), and Michael Del Rosso (an unsuccessful congressional candidate for Virginia):

A group of former DoD and IC analysts collected, analyzed, and organized into a work product substantial evidence suggesting foreign involvement in both the violent “Color Revolution” the U.S. is presently undergoing and specifically the 2020 Election fraud and *their involvement in altering the vote counts in the 2020 Election*. Expert DOD legal opinion of this work product is that it provides sufficient predicate to form search inquiries against NSA unprocessed raw signals data *under the existing authorities of NSPM [National Security Presidential Memo]-13. Those targeted inquiries will likely identify hard evidence of foreign involvement in DOD data which will support all other efforts to reverse the fraud.* [all emphasis in original] If evidence of foreign interference is found the team would generate a classified DOD legal finding to support next steps to defend the Constitution. . . . This inquiry would be done confidentially. . . . We are requesting POTUS instruct acting Secretary of Defense Christopher C. Miller to bring in these three, cleared individuals to form a core advisory team.

Ret. Army Col. Phil Waldron claimed ASOG had found that the Chinese Communist Party had shifted votes on Dominion machines from Trump to Biden; but DHS, ODNI, and CISA rebuffed his offer of information.<sup>60</sup> The memo writers wanted to have DNI Ratcliffe blame China in

the report he had to give Congress by December 18. The memo proposed that Trump replace DCI Haspel with Kash Patel (a Trump loyalist) and national security adviser Robert O'Brien with Colon. Byrne later wrote in his book that this "beautiful operational plan" needed just "one signature from the president." US Marshals would seize the voting machines, and Trump would "have the National Guard rerun the elections in those six states." "[I]f he signed the paperwork we had brought with us, we could have the first stage (recounting the Problematic 6 counties [sic—"states"]) finished before Christmas." Cipollone, who attended the meeting, said Trump "does not have the authority to do this" without evidence of foreign interference. Powell claimed to have it, but even Giuliani resisted, warning that "we would all end up in prison," and Trump agreed with him. After Waldron amended Powell's draft EO to have DHS seize the machines, Trump had Giuliani ask Cuccinelli to do it, but the DHS secretary refused. Trump himself called Cuccinelli, said Rosen had advised it was Cuccinelli's job to seize the machines, and accused him of "not doing your job." Trump also considered making Powell White House special counsel for election fraud. Cipollone and Meadows strongly opposed both ideas. Byrne accused Cipollone of being a leaker and complained that Trump was surrounded by "mendacious mediocrities" who wanted him to lose. After the meeting, Trump tweeted: "Martial law = Fake News. Just more knowingly bad reporting!" The memo was also sent to Sens. Cramer and Johnson (who were unimpressed) and presented at a January 4 meeting with several dozen Republican senators, organized by MyPillow CEO Mike Lindell.

At his Governmental Affairs Committee hearing on December 16, Sen. Johnson (the chair) said, "[W]e're not going to be able to just move on without bringing up these irregularities, examining them and providing an explanation."<sup>61</sup> There were "legitimate concerns" about "violations of election laws," "fraudulent votes and ballot stuffing," and "corruption of voting machines and software that might be programmed to add or switch votes." Trump tweeted: "Senate Hearings going on LIVE @OANN, as to the Fraudulent 2020 Election that took place. @SenRonJohnson doing an excellent job. Nevada must be flipped based on testimony!" Sen. Paul asserted at the hearing that "the election in many ways was stolen" and complained that courts found an "excuse" to reject cases on procedural grounds. Trump tweeted this was "TRUE." Sen. Hawley said he had spoken to 30 constituents, and "every single one of them . . . told me that they felt that they had been disenfranchised, that their votes didn't matter, that the election had been rigged. These are normal, reasonable people. These are not crazy people." They had been told, "[Y]ou need to sit down and shut up," but "74 million Americans are not going to shut up." Sen. Lankford said: "We spent millions and millions of dollars investigating [Russian interference]. . . . Now, amazingly after this election, all kinds of issues have come up and there are potentials

for problems, and everyone seems to be saying move on.” Sen. Romney boycotted the hearing.

Despite this intransigence, pivotal Republicans had begun planning their post-Trump futures.<sup>62</sup> On December 17, campaigning in the Georgia senatorial runoff, Pence had said: “I promise you, we will keep fighting.” He repeated this on December 22:

As our election contest continues, I’ll make you a promise: We’re going to keep fighting until every legal vote is counted. We’re going to keep fighting until every illegal vote is thrown out. We’re going to win Georgia, we’re going to save America, and we’ll never stop fighting to make America great again. You watch.

At the same time, however, he was looking for new housing. Meadows had discussed opening a consulting firm. NEC director Larry Kudlow planned to return to broadcasting. White House staff secretary Derek Lyons and communications director Alyssa Farah had already left. Jared and Ivanka bought a \$30 million property in Florida. On December 18, Army secretary Ryan McCarthy and Gen. James C. McConville (the highest-ranking army officer) issued a joint statement: “There is no role for the U.S. military in determining the outcome of an American election.”<sup>63</sup>

Nevertheless, Trump tweeted the next day:

Peter Navarro releases 36-page report alleging election fraud “more than sufficient” to swing victory to Trump. [washex.am/3nwaBCe](https://www.washex.am/3nwaBCe). A great report by Peter. Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild!

Women for America First immediately changed its application for a permit to demonstrate in Washington from January 22–23 (after Biden’s inauguration) to January 6. Far Right groups circulated Trump’s tweet on social media. Ali Alexander, organizer of Stop the Steal, registered Wildprotest.com, which provided information about that day’s events. Alex Jones told his followers that Trump “wants the American people to march on Washington DC on January 6th.” “The time for games is over. The time for action is now. . . . Where were you when you and your children’s destiny and future was on the line?” Matt Bracken (a right-wing author) declared: “We’re going to only be saved by millions of Americans moving to Washington, occupying the entire area, if necessary storming right into the Capitol.” He said defiantly (and accurately): “If you have enough people, you can push down any kind of a fence or a wall.” Tim Pool (a Trump supporter) pronounced: “[I]t’s now or never.” Salty Cracker (a right-wing YouTuber) predicted: “[T]here’s going to be a red wedding [a massacre in *Game of Thrones*] going down

January 6th.” “Kick that fucking door open look down the street. They’re gonna be a million plus geed up armed Americans.” One person posted, “We will be building a gallows right in front of the Capitol, so the traitors know the stakes.” (It was built.)

Guy Wesley Reffitt wrote his fellow Texas Three Percenters: “Our President will need us. ALL OF US . . . !! On January 6th. We the People owe him that debt.” Comparing Trump to Jesus, Reffitt added: “He Sacrificed for us and we must pay that debt.” Reffitt made arrangements to arrive in time for “Armageddon all day,” driving rather than flying because of “all the battle rattle” he planned to bring. When a member wrote, “[T]he only way you will be able to do anything in DC is if you get the crowd to drag the traitors out,” Reffitt agreed: “I don’t think anyone going to DC has any other agenda.” (He later was sentenced to 7.25 years for his role in the insurrection.)<sup>64</sup> On December 16, the national council of Three Percenters Original had said members were “standing by to answer the call from our president.” Florida Oath Keeper leader Kelly Meggs wrote on Facebook on December 22: “He wants us to make it WILD that’s what he’s saying. He called us all to the Capitol and wants us to make it wild!!! Sir Yes Sir!!!” (He was convicted of seditious conspiracy for his actions that day and sentenced to 12 years.)<sup>65</sup> The same day, OK founder Stewart Rhodes said there would be “a massively bloody revolution” if Biden took office. On December 23, he wrote members that “tens of thousands of patriot Americans” would be in DC on January 6, many with their “mission-critical gear” positioned outside the city. Members might have to “take arms in defense of our God-given liberty.” (He also was convicted of seditious conspiracy and sentenced to 18 years.)<sup>66</sup> On New Year’s Eve, an Arizona Oath Keeper wrote that his men were ready: “Everyone coming has their own technical equipment and knows how to use it.” Rhodes replied: “[T]here is no standard political or legal way out of this.” On December 24, Joseph Biggs wrote Proud Boys chair Henry “Enrique” Tarrío: “Let’s get radical and get real men.” The next day, Tarrío picked “hand-selected members” for a Ministry of Self-Defense. Days later, a MOSD member wrote: “Time to stack those bodies in front of Capitol Hill.” Tarrío said Proud Boys would “turn out in record numbers,” but “we will be incognito and . . . we will be spread across downtown DC in smaller teams.” Others wrote: “Get into Capitol Building,” “Surround every building with a tunnel entrance/exit,” “Bring guns. It’s now or never.” (Biggs and Tarrío were convicted of seditious conspiracy and sentenced to 17 and 22 years, respectively.)<sup>67</sup> Trump tweeted again on December 27, “See you in Washington, D.C. on January 6th. Don’t miss it. Information to follow,” adding three days later: “The BIG Protest Rally in Washington, D.C. will take place at 11 a.m. on January 6th. Locational details to follow. StopTheSteal!”<sup>68</sup>

During the Christmas holidays, Marc Short asked Jared Kushner, “[C]an you help us with this?” referring to plans to prevent Congress from certifying

the election.<sup>69</sup> Kushner replied: “Look, when Rudy [Giuliani] got involved, I stopped being involved.” Pence “is a big boy.” If he disagreed with Trump, he should involve his own lawyers. “I’m too busy working on Middle East peace right now, Marc.” In late December, Pence had phoned Dan Quayle (another Indiana Republican who had been vice president and was a friend of Pence and a lawyer), who said he had read the 12th Amendment: “Mike, you have no flexibility on this. None.” “I . . . know the position you’re in. I also know what the law is. You listen to the parliamentarian. That’s all you do. You have no power.”<sup>70</sup> “There’s no evidence” of election fraud. When Pence raised “some stuff out in Arizona,” Quayle responded: “Mike, I live in Arizona. There’s nothing here.” Former House Speaker Paul Ryan had a similar conversation with Pence. Greg Jacob, Pence’s lawyer, later told the January 6 Committee:

The Vice President’s first instinct was that the Framers of the Constitution, who abhorred concentrated power, would never have entrusted any one person with unilateral authority to alter the outcome of a presidential election—particularly not a person who is on the ticket. The Vice President never wavered from that view. . . . We successfully resisted, with the assistance of the United States Department of Justice, two lawsuits against the Vice President that sought to compel him to exercise imagined extra-constitutional authority to personally determine whether duly ascertained electoral votes should be counted.

Short said Pence had told Trump this “many times” and had been “very consistent.” Short himself had “been clear with Mark Meadows.”

On December 28, Rupert Murdoch’s *New York Post* (which had been fervently pro-Trump) headlined: “Stop the Insanity.”<sup>71</sup> “Mr. President, it’s time to end this dark charade.” In Georgia, “ballots were counted *by hand*, which alone debunks the claims of a Venezuelan vote-manipulating Kraken conspiracy. Sidney Powell is a crazy person.” “[Y]ou’re cheering for an undemocratic coup.” “Michael Flynn suggesting martial law is tantamount to treason. It is shameful.” Trump was behaving like “the King Lear of Mar-a-Lago, ranting about the corruption of the world.” “If you insist on spending your final days in office threatening to burn it all down, that will be how you are remembered. Not as a revolutionary, but as the anarchist holding the match.” The same day, Biden complained that his transition team had encountered “roadblocks” and “obstruction from political leadership” at OMB and DoD. “Right now, we’re not getting all the information that we need from the outgoing administration in key national security areas. It’s nothing short, in my view, of irresponsible.”

That day, Rep. Gohmert and 11 would-be Trump Arizona electors (including GOP state chair Kelli Ward) sued Pence before ED Texas Judge Jeremy

Kernodle (Trump), seeking a declaration that the Electoral Count Act was unconstitutional and an order under the 12th Amendment that Pence appoint pro-Trump electors.<sup>72</sup> Ward tweeted the next day: “It’s all on the shoulders of Vice President Mike Pence, and we have this lawsuit to assist him in being able to do his job and to do it well.” Pence moved to dismiss on the ground that his role was merely procedural. DoJ argued that plaintiffs were “not sufficiently adverse to the legal interests of the vice president to ground a case or controversy.” “A suit to establish that the vice president has discretion over the count, *filed against the vice president*, is a walking legal contradiction.” Plaintiffs had not yet suffered an injury and failed to address the Constitution’s Speech and Debate clause. Even Eastman wrote that the chances of success were “[close] to zero.” Less than 12 hours after the plaintiffs accused the government of trying to “hide behind procedural arguments,” Judge Kernodle dismissed the lawsuit:

Plaintiffs presuppose what the vice president will do on January 6, which electoral votes the vice president will count or reject from contested states, whether a Representative and a Senator will object under section 15 of the Electoral Count Act, how each member of the House and Senate will vote on any such objections, and how each state delegation in the House would potentially vote under the twentieth amendment absent a majority electoral vote. All that makes Congressman Gohmert’s alleged injury far too uncertain to support standing.

Gohmert claimed that seven states had sent “dueling slates of electors” to Washington.

We continue to hold out hope that there is a federal judge who understands that the fraud that stole this election will mean the end of our republic, and this suit would insure [sic—“ensure”] that the Vice-President will only accept electors legitimately and legally elected.

Trump phoned Pence to express his anger that DoJ was opposing the action. But hours after Judge Kernodle’s decision, the 5th Circuit dismissed the plaintiffs’ appeal. (Another conservative group filed an equally flawed lawsuit against the Electoral College, which does not exist as a permanent body.)

On December 28, Trump retweeted a tweet: “It’s not election fraud, it’s treason!”<sup>73</sup> The next day he tweeted: “New Lott study estimates 11,350 absentee votes lost to Trump in Georgia. Another 289,000 ‘excess (fraudulent) votes’ across GA, AZ, MI, NV, PA and WI. Check it out! Papers. [ssrn.com/sol/pa](https://ssrn.com/sol/pa).” (SSRN did not recognize the url; John Lott, the author, was a gun advocate and conservative economist.) “The Wall Street Journal’s very boring & incoherent Editorial fails to mention my big & easy wins in

Texas, Florida, Ohio, Iowa & many other states that the @WSJ & other joke polls said I would lose.” (A December 20 editorial in *The Wall Street Journal*, Murdoch’s other New York newspaper, titled “Trump’s Bad Exit,” had warned that “his sore loser routine is beginning to grate even on millions who voted for him.”) Trump also tweeted: “WE NEED NEW & ENERGETIC REPUBLICAN LEADERSHIP. This can not [sic] stand.” “Can you imagine if the Republicans stole a Presidential Election from the Democrats—All hell would break out.” Party members should not “let the Democrats steal the Presidential Election.” “Get tough.”

Sen. Hawley (a Yale Law School graduate who had clerked for Supreme Court Justice Roberts) announced he would contest the electoral vote certification on January 6 “to highlight the failure” of states “to follow their own election laws as well as the unprecedented interference of Big Tech monopolies in the election.”<sup>74</sup> Sen. Cramer promised: “I will listen intently—and with an open mind—to the arguments brought before the Senate.” Representatives-Elect Greene and Barry Moore said they would join Rep. Brooks in the January 6 challenge. Seven Pennsylvania House Republicans jointly announced they would contest their state’s results, claiming that the Democratic governor and secretary of state, joined by a “rogue Pennsylvania Court,” had usurped the legislature’s power to run the election. But Sen. Sasse said, “[W]hen we talk in private, I haven’t heard a single Congressional Republican allege that the election results were fraudulent.”

Trump tweeted on December 30: “JANUARY SIXTH, SEE YOU IN DC!”<sup>75</sup> *The Washington Post* wrote the next day: “Trump is inciting chaos on Jan. 6, both in and outside the Capitol.” “Disorder, turmoil, uncertainty, lies and misinformation are all marks of dictatorships and authoritarian regimes.” A *Wall Street Journal* editorial titled “Trump’s embarrassing Electoral College hustle” called the January 6 vote a “kamikaze mission.”

On December 31, Sen. McConnell told a conference call of Republican senators that his January 6 vote would be the “most consequential” of his life.<sup>76</sup> He pressed Hawley to explain his plan, but Hawley had skipped the call. Thune said, “[I]n the end, I don’t think it changes anything.” Toomey expressed “strong” disagreement with Hawley, who later emailed the Republican Conference that he intended to insist on the two-hour debate and then vote. Cornyn was “curious to see” the evidence. Four members of the Missouri House delegation promised to follow Hawley but added, “[W]e have no illusions about the outcome.” Sens. Cruz, Johnson, Lankford, Daines, Kennedy, Blackburn, Braun, Lummis, Marshall, Hagerty, and Tuberville wrote they would not certify electors without an audit:

Congress should immediately appoint an Electoral Commission with full investigatory and fact-finding authority to conduct an emergency 10-day audit of the election returns in the disputed states. Once completed,

individual states would evaluate the Commission's findings and could convene a special legislative session to certify a change in their vote, if needed.

The senators claimed that 40 percent of Americans believed the election had been rigged: “[T]hat deep distrust of our democratic processes will not magically disappear. It should concern us all. And it poses an ongoing threat to the legitimacy of any subsequent administrations.” But Sen. Graham said that “proposing a commission at this late date—which has zero chance of becoming reality—is not effectively fighting for President Trump. It appears to be more of a political dodge than an effective remedy.” And Sen. Thune said he would vote to certify. Trump immediately retaliated, tweeting the next day:

I hope to see the great governor of South Dakota @KrisNoem run against RINO @SenJohnThune, in the upcoming 2022 Primary. She would do a fantastic job in the US. Senate, but if not Kristi, others are already lining up. South Dakota wants strong leadership, NOW!

Noem had tweeted ten days earlier she would not run against Thune, “a friend of mine.” He won re-election with almost 70 percent of the vote. Sen. Toomey repeated: “I intend to vigorously defend our form of government by opposing this effort to disenfranchise millions of voters in my state and others.” Sen. Romney warned that the challenge “continues to spread the false rumor that somehow the election was stolen.”

The same day, Trump tweeted that the Georgia runoff was “illegal and invalid.”<sup>77</sup>

Before even discussing the massive corruption which took place in the 2020 Election, which gives us far more votes than is necessary to win all of the Swing States (only need three), it must be noted that the State Legislatures were not in any way responsible for the massive changes made to the voting process, rules and regulations, many made hastily before the election, and therefore the whole State Election is not legal or Constitutional. Additionally, the Georgia Consent Decree is Unconstitutional & the State 2020 President Election is therefore both illegal and invalid, and that would include the two current Senatorial Elections. In Wisconsin Voters not asking for applications invalidates the Election. All of this without even discussing the millions of fraudulent votes that were cast or altered!

On New Year's Eve, Meadows sent Pence's senior staff a document titled “Constitutional Analysis of the Vice President's Authority for January 6, 2021, Vote Count.”<sup>78</sup> It included a memo from Jenna Ellis claiming that Pence could declare the electoral votes in Arizona, Georgia, Michigan, Pennsylvania, Nevada, and Wisconsin in dispute (because of the false assertion

that they had sent two slates, although only the Biden slate had the requisite certification by the governor) and return them for clarification.

The Vice President should require a response from each state legislature no later than 7pm Eastern Standard Time on January 15th 2021. If any state legislature fails to provide a timely response, no electoral votes can be opened and counted from that state.

“The Constitution provides that if no candidate for president receives a majority of electoral votes,” because those six states had been excluded, then “Congress shall vote by state delegation. This will provide two and a half days for Congress to meet and vote by delegation prior to January 20 at noon for the inauguration.” “This is a meritorious request because the Vice President has taken an oath to support the Constitution. He is not exercising discretion nor establishing a new precedent.” Herschmann and Jay Sekulow (Trump lawyers) objected that Ellis lacked the “qualifications or the experience to be giving advice on this.” On New Year’s Day, Johnny McEntee (Trump’s former “body man,” now director of the Presidential Personnel Office, whose qualification was a BA in communications from the University of Connecticut) sent Pence’s senior staff another memo, egregiously misrepresenting what Thomas Jefferson had done in 1801 and declaring: “This proves, that the VP has, at a minimum, a substantial discretion to address issues with the electoral process.” In another memo, he proposed that Pence accept half the electoral votes from the six disputed states, telling Trump, “[T]his is probably our only realistic option because it would give Pence an out.” (In March 2021, Trump repeated McEntee’s lie to Jonathan Karl: “There would be nothing wrong with doing what Thomas Jefferson did, he kept the votes. So Mike, in theory, could say well, I’m going to keep the votes because it’s all mixed up. . . . Unfortunately, Mike was not Thomas Jefferson.”)

On New Year’s Eve, Bernard Kerik (who was working with Giuliani but was not a lawyer) released a 22-page strategic communications plan, declaring: “We Have 10 Days To Execute This Plan & Certify President Trump!”<sup>79</sup> “GOAL: Nationwide communications outreach campaign to educate the public on fraud numbers, and inspire citizens to call upon legislators and Members of Congress to disregard the fraudulent vote count and certify the duly-elected President Trump.” He had prepared (but did not release) a December 17 “Draft Letter from POTUS to Seize Evidence in the Interest of National Security for the 2020 Elections” (apparently another version of Powell’s December 16 draft EO).

On New Year’s Day, L. Lin Wood tweeted: “If Pence is arrested @SecPompeo will save the election.” (This was bizarre; the order of succession to the presidency is vice president, House Speaker (Pelosi), Senate president pro tem

(McConnell), and only then secretary of state.) “Pence will be in jail awaiting trial for treason. He will face execution by firing squad. He is a coward & will sing like a bird & confess ALL.”<sup>80</sup> Soon thereafter, Trump reiterated his call to “The BIG Protest Rally,” claiming “massive amounts of evidence will be presented” and retweeting Sen. Hawley’s promise to object to certification. Jenna Ellis tweeted later that day: “I do not support the statements from Attorney Lin Wood. I support the rule of law and the U.S. Constitution.”

The same day (and a day before Trump’s phone call to Raffensperger, discussed in Section 4.4 later), the Berkeley Research Group submitted its “Project 2020” report to the Trump campaign, for which it had been paid over \$600,000.<sup>81</sup> It found with “high confidence” that only nine dead people had voted in Fulton County and believed only 23 had done so statewide, 4,977 fewer than the “minimum” Trump claimed. Trump’s lawyers had said in court that 1,506 dead people voted in Nevada, but the report found a “high end potential exposure” of just 20 votes statewide. The campaign claimed that 42,284 had voted twice in Nevada, but the report found a “high end” of 9,063. Trump lost the state by 33,000. The report concluded: “Our analysis of Pennsylvania, Georgia, Michigan, Wisconsin and Nevada concluded that in each state the final tabulated result was mathematically possible given absentee request rates.” The campaign also paid more than \$750,000 to Simpatico Software Systems for a similar investigation, the last payment around Thanksgiving, presumably when it submitted its report. Ken Block, the firm’s founder, said, “[N]o substantive voter fraud was uncovered . . . nor was I able to confirm any of the outside claims of voter fraud that I was asked to look at.”

In a January 2 phone call organized by “Got Freedom?” Trump urged nearly 300 legislators in Michigan, Pennsylvania, and Wisconsin to decertify the election results, telling them, “You are the real power.” “You’re more important than anything because the courts keep referring to you, and you’re the ones that are going to make the decision.”<sup>82</sup> Giuliani, Eastman, Navarro, and Lott were on the call. Michigan state senator Ed McBroom remembered that “I didn’t need any convincing about our plenary powers. I was listening to hear whether they had any evidence to substantiate claims” of fraud in Michigan, but he concluded they did not. On his “War Room: Pandemic” podcast later that day, Bannon declared the vice president was “hardwired in” and an “actual decision-maker” whose role was not “ministerial.” But he accused Pence of having “spit the bit.” Eastman said, “It’s the duty of these legislatures to fix this, this egregious conduct, and make sure they’re not putting in the White House some guy that didn’t get elected.” Because there were “multiple slates of ballots from seven states,” Pence and Congress “gotta decide which is the valid slate to count.” “I think they have that authority to make that determination on their own.” “It would certainly be

helped immensely if the legislatures in the states looked at what happened in their own states and weigh[ed] in.” Eastman, Giuliani, and Boris Epshteyn (White House special assistant) discussed the “all-hands meeting with state legislators that the Trump campaign and also others are putting on.” “Got Freedom” then sent a follow-up email urging legislators to “sign on to a joint letter . . . to Vice President Mike Pence to demand that he call for a 12-day delay on ratifying the election.” Three days later, dozens of state lawmakers from Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin did just that, asking Pence to delay certification for ten days to allow “our respective bodies to meet, investigate, and as a body vote on certification or decertification of the election.” Acting on Eastman’s advice, Giuliani urged the creation of “competing” slates of presidential electors. Pennsylvania and New Mexico made them contingent on Trump winning his January 6 challenges in Congress, but the Arizona, Georgia, Michigan, Nevada, and Wisconsin slates were unconditional. Because Wisconsin’s slate was delayed, Sen. Johnson and Rep. Kelly tried to deliver it to Pence’s office, but an aide refused to accept it. Greg Jacob had advised Pence on January 2 that “none of the slates that had been sent in would qualify as an alternate slate,” and the Senate Parliamentarian “was in agreement” because they had not been approved by the governors.

Epshteyn said in October 2021:

I firmly believed then, as I believe now, that the vice president—as president of the Senate—had the constitutional power to send the issue back to the states for 10 days to investigate the widespread fraud and report back well in advance of Inauguration Day, January 20th.

The same month, Eastman wrote in *The Sacramento Bee* that he had advised Pence to delay counting electoral votes so states could resolve fraud concerns. And he told talk show host Peter Boyles that on January 5–6, 2021, “we had a war room at the Willard [Hotel] . . . kind of coordinating all of the communications.” Phil Waldron led the team that provided analyses to Kerik, whose firm billed the Trump campaign more than \$55,000 for the hotel rooms; team members included William Ligon, a Georgia state senator who chaired two hearings in which Giuliani raised fraud claims, and Preston Haliburton, who represented a Coffee County (Georgia) Republican leader claiming to have evidence of Dominion fraud. Kerik said in October 2021:

I believed until Inauguration Day that something could be done—that’s why the fight was still going on. There were a lot of people who thought on the 6th that it was over, but I didn’t believe that because the evidence seemed so overwhelming to me.

However, the conservative UC–Berkeley law professor John Yoo said in October 2021:

I advised that there was no factual basis for Mike Pence to intervene and overturn the results of the election. There are certain limited situations where I thought the vice president does have a role, for example in the event that a state sends two different electoral results. . . . But none of those were present here.

J. Michael Luttig said Eastman’s advice was wrong “at every turn . . . the most calamitous failure in both legal and political judgment in American history.”

Marc Short, Pence’s chief of staff, said on January 2 that the vice president “shares the concerns of millions of Americans about voter fraud and irregularities in the last election” and “welcomes the efforts of members of the House and Senate to use the authority they have under the law to raise objections and bring forward evidence before the Congress and the American people on January 6th.”<sup>83</sup> But having reviewed all the evidence of fraud provided by Matt Morgan, Pence’s lawyer, Greg Jacob, told the vice president that “most allegations of substantive voter fraud . . . are either relatively small in number, or cannot be verified.” The Lincoln Project had earlier run an ad claiming that Pence was “running away” from Trump. “The end is coming, Donald. Even Mike Pence knows.” Trump wanted to issue a cease-and-desist letter against the ad (which of course would be unconstitutional).

That day, Sen. Lee received Eastman’s memo from the White House. It began: “January 6 scenario: 7 states have transmitted dual slates of electors to the President of the Senate.”

3. At the end, he [Pence] announces that because of the ongoing disputes in the 7 States, there are no electors that can be deemed validly appointed in those States. That means the total number of “electors appointed”—the language of the 12th Amendment—is 454. . . . A “majority of the electors appointed” would therefore be 228. There are at this point 232 votes for Trump, 222 votes for Biden. Pence then gavels President Trump as re-elected.
4. Howls of course, from the Democrats, who now claim . . . that 270 is required. So Pence says, fine. Pursuant to the 12th Amendment, no candidate has achieved the necessary majority. That sends the matter to the House, where the “the [sic] votes shall be taken by states, the representation from each state having one vote. . . .” Republicans currently control 26 of the state delegations, the bare majority needed to win that vote. President Trump is re-elected there as well.

The same day, Meadows arranged a White House meeting for Giuliani to brief Graham, chair of the Senate Judiciary Committee.<sup>84</sup> Giuliani said a computer expert had a mathematical formula proving that Biden's win had been a near impossibility. Graham dismissed that as too abstract. Giuliani claimed to have proof of votes by people who were dead, under 18, or convicted of felonies. Graham asked for names and evidence in writing. He got two memoranda from Giuliani on January 4 and sent them to the SJC chief counsel Lee Holmes. After checking the alleged 789 dead people who voted in Georgia, Holmes found that nearly all had received their ballots before they died. One memo claimed that "independent analysis conducted by expert CPAs and Ivy League statisticians show [sic] . . . there were at least 27,713 illegal votes cast and counted in Georgia's election," more than twice Biden's 11,779 vote margin. But Holmes concluded there was no way Giuliani's investigators could have examined the 7.6 million Georgians who voted. Much of the "data" came from Christina Bobb of One America News Network. Holmes could find no public records to confirm the claims that in Nevada "42,284 registered voters voted more than once," "8,111 voters had registered with non-existent addresses," 1,506 were listed as "deceased by the Social Security Administration Master Death File, Consumer Data Vendors, Public Obituary Data Matches, Credit Bureau Deceased Data," and "15,164 out-of-state voters voted." Giuliani asserted that in Arizona "there were 26,473 individuals who could not establish citizenship, but whose ballots were accepted and counted." Holmes knew, however, that citizenship checks were not permitted in federal elections. The memo claimed there had been 11,676 "overvotes" (i.e., votes for more than the permissible number of candidates), but Holmes found that only 180 occurred in the presidential election. The memo alleged fraud in Wisconsin and Pennsylvania but offered no evidence. Holmes told Graham the data were worthless. After looking at the memos, Graham pronounced them "third grade." When Holmes said some of the claims were based on affidavits, Graham was dismissive: "I can get an affidavit tomorrow saying the world is flat."

On January 3, Eastman wrote a memo asserting that because the "Trump electors" met and transmitted their votes, "there are thus dual slates of electors from 7 [S]tates."<sup>85</sup> Pence should act "without asking for permission—either from a vote of the joint session or from the Court" because "the Constitution assigns this power to the Vice President as ultimate arbiter." If Pence failed to act, "the sovereign people no longer control the direction of their government, and we will have ceased to be a self-governing people." The plan was "BOLD, Certainly," but because "this Election was Stolen by a strategic Democrat plan to systematically flout existing election laws for partisan advantage . . . we're no longer playing by Queensbury Rules." (All the capitals were in the original.)

On January 4, Rep. Cheney circulated a 21-page memo urging Republicans to confirm the Electoral College vote two days later:<sup>86</sup>

By objecting to electoral slates, members are unavoidably asserting that Congress has the authority to overturn elections and overrule state and federal courts. Such objections set an exceptionally dangerous precedent, threatening to steal states' explicit constitutional responsibility for choosing the President and bestowing it instead on Congress. This is directly at odds with the Constitution's clear text and our core beliefs as Republicans.

That day, Trump invited Pence to the Oval Office for an hour-long meeting with Eastman, who argued that the vice president had the power to reject the Electoral College vote.<sup>87</sup> (Before the meeting, Cipollone told Eastman his scheme was "not something that is consistent with the appropriate reading of the law." And Pence's national security adviser, retired LG Keith Kellogg, told his boss: "Sir, you've got to end this here and here's how you end it. Walk in there and say, 'I ain't going to do it.' Not just that you can't do it, you won't do it.") Pence told Trump, "I've been getting guidance that says I can't." Eastman retorted, "Well, you can." Trump said to Pence, "You really need to listen to John. He's a respected constitutional scholar." Pence's counsel, Greg Jacob, recalled that Eastman "came in and said, 'I'm here asking you to reject the electors.'" Eastman "thought that it was more politically palatable" and would be a "relatively minor violation of federal law."

Mr. Eastman was opining that there were two legally viable arguments as to authorities that the Vice President could exercise two days later on January 6th. One of them was that he could reject electoral votes outright. The other was that he could use his capacity as presiding officer to suspend the proceedings and declare essentially a 10 day recess during which [the 5–7] states that he deemed to be disputed . . . the Vice President could sort of issue a demand to the state legislatures in those states to reexamine the election and declare who had won each of those states.

Jacob "raised the problem that both of Mr. Eastman's proposals would violate several provisions of the Electoral Count Act." Eastman "acknowledged that" but declared that "the Electoral Act was unconstitutional." When Jacob objected that such an argument "would likely lose in court [Eastman's] view was that the court simply wouldn't get involved. They would invoke the political question doctrine." By the end of the meeting, however, Eastman conceded that he could "not recommend that the Vice President assert that he has the authority unilaterally to decide which of the competing slates of electors should be counted." According to Jacob, Eastman "all but admitted that it [his plan] didn't work." "[N]o reasonable person would actually

want that clause [of the 12th Amendment] read that way because if indeed it did mean that the Vice President had such authority, you could never have a party switch thereafter” because the vice president would always certify the president’s re-election. After the meeting, Cipollone asked Eastman about his plan: “[D]o you really think this could happen?” Eastman replied, “Theoretically, maybe.” Cipollone pressed him: “[Y]ou just told the president of the United States this is a doable thing.” Eastman temporized: “Well, worth a shot.”

(Eastman later said the meeting “started with the president talking about how some of the legal scholarship that had been done, saying under the 12th amendment, the Vice President has the ultimate authority to reject invalid electoral votes and he asked me what I thought about it.”<sup>88</sup> Eastman had commented: “It’s a little bit more complicated than that, that’s certainly one of the arguments that’s been put out there, it’s never been tested.” Pence asked: “[D]o you think I have such power?” Eastman said he might but should not exercise it until states certified new slates of electors. Pence turned to Trump: “[D]id you hear that, Mr. President?” Eastman now said, “[W]hat we asked [Pence] to do was delay the proceedings at the request of these state legislatures so they could look into the matter.”) Disregarding Pence’s resistance, Trump tweeted immediately after the meeting: “The Vice President has the power to reject fraudulently chosen electors.”

During a nearly two-hour discussion the next day, Jacob recalled that Eastman revived the position he had rejected, now arguing that Pence should reject the Electoral College vote and return the decision to state legislatures.<sup>89</sup> Jacob had countered, “[W]e’re conservatives, we’re small government people. We believe in originalism.” Eastman “acknowledged by the end that there was no historical practice whatsoever that supported his position.” “Republican leaders across those legislatures . . . had put out statements . . . that the people had spoken in their states and that they had no intention of reversing the outcome of the election.” “[N]o state had any legislative house that indicated that it had any interest in” Eastman’s proposal, leading him to warn the others that “the issue might well then have to be decided in the streets,” that is, by mob action. Jacob had said, “[I]f the Vice President did what you were asking him to do, we would lose nine to nothing in the Supreme Court, wouldn’t we?” Eastman first conceded that “maybe he would lose only seven to two,” but “we went through a few Thomas opinions and, finally, he acknowledged, ‘Yeah, all right, it would be 9–0.’” (Eastman claimed to have special insight because he had clerked for Thomas and remained in touch with the justice.) Although Eastman agreed with Jacob that “Al Gore did not have a basis [to overturn the election] in 2000” and “Kamala Harris shouldn’t be able to do it in 2024,” he nevertheless insisted, “[Y]ou should do it today.” Invoking the alma mater (University of Chicago Law School) he shared with Jacob, Eastman said, “[T]he underlying legal

theory of plenary vice presidential authority is what you have to have to get there,” that is, Pence’s power to reject the Electoral College vote. Eastman himself had rejected that idea in commenting on a draft letter from Bruce Colbert to Trump dated October 17:

[T]he 12th Amendment only says that the President of the Senate opens the ballots in the joint session. And then in the passive voice that the votes shall then be counted. . . . [N]owhere does it suggest that the President of the Senate gets to make the determination on his own.

Yet on December 5, Eastman wrote Colbert: “[T]he 12th Amendment confers dispositive authority on the President of the Senate [i.e., the vice president] to decide which slate to count.” At the end of the meeting, Eastman said: “They’re going to be really disappointed that I wasn’t able to persuade you.”

Trump tweeted on January 2: “[A]t least 12 GOP senators set to vote against accepting Biden’s Electoral College win . . . and after they see the facts, plenty more to come. . . . Our Country will love them for it! #StopTheSteal.”<sup>90</sup> The Biden campaign retorted: “[T]hese baseless claims have already been examined and dismissed by Trump’s own Attorney General, dozens of courts and election officials from both parties.” Sen. Murkowski declared, “I swore an oath to support and defend the Constitution of the United States and that is what I will do Jan. 6.” But Sen. Cruz said on Fox News on January 3: “We’ve seen in the last two months unprecedented allegations of voter fraud. And that’s produced a deep, deep distrust of our democratic process across the country. I think we in Congress have an obligation to do something about that.”<sup>91</sup> He was not “suggesting setting aside the results of an election, just because the candidate that we supported didn’t happen to prevail.”

We are going to vote to object to the electors—not to set aside the election . . . press for the appointment of an electoral commission that can hear the claims of voter fraud, hear the evidence and make a determination as to what the facts are and the extent to which the law was complied with.

Sen. Braun planned to cast a “protest vote” against certification even though there was “zero chance that anything can come from it.” Sen. Lankford was going to do so as a “statement” to voters who believed the vote was rigged. Tennessee Senators Blackburn and Hagerty were “taking a united stand against the tainted electoral results,” even though their predecessors (Lamar Alexander and Bob Corker) disagreed.

The conservative *Washington Post* columnist George Will wrote on January 5: “Hawley, Cruz and their Senate cohort are the Constitution’s most dangerous domestic enemies.”<sup>92</sup> The *Post* editorialized: “Mr. Trump’s

post-election campaign is not about uncovering election fraud. It is about perpetuating fraud.” *The Wall Street Journal* criticized Trump, Cruz, Hawley, and other Republicans for pursuing a “populist strategy to drive America even farther apart by promoting conspiracy theories and stoking grievances.” “Lending credence to Trump’s false claim that the election was stolen is a highly destructive attack on our constitutional government.” On *Fox & Friends* on January 4, Brian Kilmeade warned against “the type of anarchy that doesn’t work for anybody, Republicans or Democrats, in the big picture.” His co-host, Steve Doocy, said, “[S]o far we haven’t seen the evidence [of fraud].” *The Atlantic*, *The New Yorker*, *The Nation*, *Vanity Fair*, *NY Magazine*, and the BBC all warned that Trump’s actions threatened a coup.

That was just what right-wing commentators had been advocating. Glenn Beck said on talk radio on January 4: “[I]t is time to rip and claw and rake. It is time to go to war, as the left went to war four years ago.”<sup>93</sup> Trump had showed that “you don’t have to cower anymore, you don’t have to back down when ridiculed into oblivion. You can fight back.” During Christmas week, Mark Levin had declared that stealing elections “is becoming the norm for the Democratic Party” and called on listeners to “crush them, crush them. We need to kick their ass.” Rush Limbaugh said on December 16 that Biden “didn’t win this thing fair and square, and we are not going to be docile like we’ve been in the past, and go away and wait till the next election.” Sean Hannity said two days later, “[T]here’s no doubt this was stolen.” Nick Fuentes, the White racist, said in late December: “[W]e’re only getting angrier and angrier, and pretty soon that’s going to metastasize in ways that the elites don’t like.” Fox News’s Dan Bongino said on January 5 that Democrats “rigged the rules to make sure that any potential outcome would go their way.”

On January 5, Rep. Jordan forwarded Meadows a text message from a lawyer and former DoD IG:<sup>94</sup>

On January 6, 2021, Vice President Mike Pence, as President of the Senate, should call out all electoral votes that he believes are unconstitutional as no electoral votes at all—in accordance with guidance from founding father Alexander Hamilton and judicial precedence [sic—“precedents”].

Meadows replied at 7:30 a.m. the next day: “I have pushed for this. Not sure it is going to happen.”

Before the end of Trump’s term, apparently concerned about the legal advice he had given, Eastman emailed Giuliani, saying, “I’ve decided that I should be on the pardon list, if that is still in the works.”<sup>95</sup> Although Trump issued 143 pardons and commutations on his last night in office, he did not include Eastman. Cassidy Hutchinson and John McEntee said Reps. Gaetz, Brooks, Biggs, Gohmert, and Perry also asked for pardons. Hutchinson

revealed that Patrick Philbin (in the White House Counsel's office) said Rep. Greene had sought one as well, as had Meadows and Giuliani himself. Perry denied doing this: "At no time did I speak with Miss Hutchinson, a White House scheduler, nor any White House staff about a pardon for myself or any other Member of Congress—this never happened." Biggs also called Hutchinson "mistaken." Gohmert said he sought pardons for "other deserving individuals" but not himself. Jordon dismissed this as "100% fake news."

#### 4.4 Last-Ditch Effort in Georgia

On December 22, Meadows had tried to observe the tabulation of mail-in ballots outside Atlanta.<sup>96</sup> He was blocked by Deputy Secretary of State Jordan Fuchs but managed to meet Frances Watson, the office's chief investigator, and got her phone number. Trump phoned her the next day, declaring, "I won Georgia . . . by a lot and the people know it and something bad happened." "You are going to find things that are unbelievable, the dishonesty."

[I]f we win Georgia—first of all if we win you're gonna have two wins . . . because the people of Georgia are so angry at what happened to me. They know I won, won by hundreds of thousands of votes. It wasn't close.

He urged her to check envelope signatures against those on file (despite the fact they might not match because of the passage of time):

I hope you're going back two years as opposed to just checking, you know, one against the other because that would just be sort of a signature check that didn't mean anything. But if you go back two years, and if you get to Fulton [County], you're going to find things that are going to be unbelievable, the dishonesty that we've heard from just good sources, really good sources. . . . Do you think you'll be working after Christmas to keep it going fast? Because, you know, we have that date of the 6th, which is a very important date. . . . When the right answer comes out, you'll be praised.

Watson would be a "national hero" if she would just "find the fraud."

People will say great. Because that's what it's about, that ability to check and to . . . make it right. Because everyone knows it's wrong. . . . You have the most important job in the country right now. . . . Whatever you can do, Frances, it would be—it's a great thing. It's an important thing for the country. So important. You've no idea. So important. And I very much appreciate it.

Watson replied:

Well, Mr. President, I appreciate your comments. And I can assure you that our team and the GBI [Georgia Bureau of Investigation], that we're only interested in the truth and finding the information that is based on the facts. . . . I know that you're a very, very busy, very important man. And I'm very honored that you called. Quite, quite frankly, I'm shocked that you, that you would take time to do that. But I am very appreciative.

The January 6 Committee had text messages revealing that Meadows wanted to send some of Watson's staff "a shitload of POTUS stuff, including coins, actual autographed MAGA hats." Raffensperger objected to the call: "[T]his was an ongoing investigation. I don't believe that an elected official should be involved in that process." He later concluded that the Cobb County envelope signatures matched those on file. (Trump also phoned House Speaker David Ralston, who said the next day that the president "would like a special session of the Georgia General Assembly," which could convene itself by a three-fifths vote. Former Senator Purdue made a similar request of Kemp at a December meeting attended by former Senator Loeffler.)<sup>97</sup>

Trump had failed to reach Raffensperger at least 18 times because the calls had gone to press office interns, who thought they were a prank.<sup>98</sup> On January 2, Trump had heard the secretary of state declare on Fox News that, as a Republican, he wished Trump had won Georgia but multiple recounts confirmed Biden's win. Later that day, Meadows finally arranged the call after getting cell phone numbers for all the participants (including Raffensperger's general counsel Ryan Germany and Trump campaign lawyer Cleta Mitchell) and connecting them directly. On the hour-long call, Trump told Raffensperger:

We won very substantially in Georgia. You even see it by rally size. . . . [A]nywhere from 250 to 300,000 ballots were dropped mysteriously into the rolls. . . . [Y]ou'll find at least a couple of hundred thousand of forged signatures . . . in the 50s of thousand . . . [of] people that went to vote and they were told they can't vote because they've already been voted for. . . . 4,502 who voted, but they weren't on the voter registration roll . . . 18,325 vacant address voters . . . they're not allowed to be counted . . . 904 who only voted where they had just a P.O. . . . and that's not allowed . . . 18,000 voters having to do with [Ruby Freeman]. She's a vote scammer . . . it's been reported that they said there was a major water main break. Everybody fled the area. And then they came back, [Freeman] and her daughter . . . they pulled out the votes . . . [from] what looked to be suitcases . . . you had out-of-state voters . . . 4,825 . . .

absentee ballots sent . . . to vacant addresses . . . 2,326 . . . dropboxes that were picked up. . . . A lot of the political people said that there's no way they beat me. . . . We won every statehouse in the country. . . . we won Congress . . . dead people voted . . . close to 5,000 people . . . when you add it all up . . . 300,000 fake ballots . . . this just came up this morning, that they are burning their ballots, that they are shredding, shredding ballots . . . 3,000 pounds of ballots . . . and removing equipment. They're changing the equipment on the Dominion machines . . . in Detroit . . . 139 percent of the people voted. . . . In Pennsylvania, they had well over 200,000 more votes than they had people voting . . . in Michigan, a tremendous number of dead people that voted . . . 18,000 . . . there's nothing wrong with saying that, you know, that you've recalculated.

Raffensperger explained that he had rebutted all those allegations during hours of testimony to the Georgia House and Senate and a Congressional delegation. At those meetings, Matt Braynard (Trump's campaign director of technology) had claimed that "upward of 5,000" dead people voted, but "the actual number were [sic] two." But Trump just repeated that Ruby Freeman "stuffed the ballot." Raffensperger said Giuliani "sliced and diced that video and took it out of context." Raffensperger had shown "the full run of tape" on television. Trump retorted that Freeman was "known all over the Internet." When Raffensperger offered to send the entire tape, Trump replied, "I don't care about the link. I don't need it." Mitchell also dismissed it: "[T]hey made everybody leave—we have sworn affidavits saying that." Trump declared that "you'd have to be a child to think anything other than that" they were stuffing the voting machines. "You have your never-Trumper U.S. Attorney there" (Byung Jin Pak). When Germany said the GBI interviewed everyone, Trump was contemptuous: "They're either dishonest or incompetent." When Trump claimed 20,000 non-residents voted, Germany replied: "[E]very one we've been through are people that lived in Georgia, moved to a different state, but then moved back to Georgia legitimately." He also denied that Dominion had moved any machinery out of Fulton County. Cobb County had been doing "normal office shredding" from "past elections." He added, "[T]he problem you have with social media they—people can say anything." But Trump insisted Cobb County had shredded ballots.

[W]hich is totally illegal—it is more illegal for you than it is for them because, you know, what they did and you're not reporting it. That's a . . . criminal offense . . . that's a big risk to you and to Ryan. . . . I just want to find 11,780 votes, which is one more than we have [sic—"need"] because we won the state. . . . [W]e need only 11,000 votes.

He complained that “a large batch” of overseas ballots

came in, and it was, quote, 100 percent for Biden. And that is criminal. . . . When you talk about no criminality, I think it’s very dangerous for you to say that. . . . Fellas, I need 11,000 votes. Give me a break.

He repeated that “every single ballot [Ruby Freeman] did went to Biden.” “[W]hy do you keep fighting this thing? It just doesn’t make sense.” Raffensperger responded: “Mr. President, you have people that submit information, and we have our people that submit information. And then it comes before the court, and the court then has to make a determination. We have to stand by our numbers.” Trump objected: “[W]e can play this game with the courts, but . . . they don’t even assign us a judge.”

Hey, Brad, why wouldn’t you want to check out [Ruby Freeman]? And why wouldn’t you want to say, hey, if in fact, President Trump is right about that, then he wins the state of Georgia. . . . You just say, you stick by, I mean I’ve been watching you, you know, you don’t care about anything. “Your numbers are right.” But your numbers aren’t right. They’re really wrong . . . this phone call is going nowhere other than . . . ultimately, I win, okay? Because you guys are so wrong. . . . You treated the population of Georgia so badly. . . . [B]etween you and your governor . . . like a schmuck, I endorsed him. . . . [H]e is a disaster. . . . [W]hy wouldn’t you want to find the right answer, Brad, instead of keep saying that the numbers are right?

When Germany explained “there’s things that under law, we are not allowed to give out,” Trump retorted: “[U]nder law, you’re not allowed to give faulty election results . . . and that’s what you done [sic].” “And you would be respected, really respected, if this can be straightened out before the election.” “And everyone’s going to look very good if the truth comes out.”

Trump tweeted the next day:

I spoke to Secretary of State Brad Raffensperger yesterday about Fulton County and voter fraud in Georgia. He was unwilling, or unable, to answer questions such as the “ballots under the table” scam, ballot destruction, out of state “voters”, dead voters, and more. He has no clue.<sup>99</sup>

“Republicans in Georgia must be careful of the political corruption in Fulton County, which is rampant. The Governor @BrianKempGA, and his puppet Lt. Governor, @GeoffDuncanGA, have done less than nothing. They are a disgrace to the great people of Georgia!” Newsmax headlined its story: “Trump Ga. Transcript Shows Case for Vote Fraud. President Acted Properly.” After

the call, Foley and Lardner (Mitchell’s law firm) said it had a policy against its lawyers representing “any parties seeking to contest the results of the presidential election.” She resigned, subsequently joining FreedomWorks in its \$10 million drive to tighten voting laws in seven states.

David Perdue (facing a January 5 Senate runoff with Jon Ossoff, which he lost) claimed to be shocked that a fellow Republican would “tape a sitting president and then leak that.”<sup>100</sup> (But Raffensperger wisely had made that an explicit condition of the phone call.) Charlie Kirk (MAGA youth leader and co-founder of Turning Point USA) said: “Brad Raffensperger should be immediately investigated.” Newt Gingrich called him “anti-Republican.” OANN White House correspondent Chanel Rion declared there were “traitors in our midst.” Rep. McCarthy defended Trump’s call: “[T]he president believes that there are things that happened in Georgia, and he wants to see accountability for it.” But Sen. Toomey said of Raffensperger: “I commend Republican election officials across the country who have discharged their duties with integrity over the past two months while weathering relentless pressure, disinformation and attacks from the president and his campaign.” Rep. Kinzinger said to Trump: “[Y]ou cannot—in light of this [call]—[object to the election results] with a clean conscience.” Sen. Blackburn said Trump’s request to “find” enough votes was “not a helpful call.” David J. Worley (the only Democrat on the Georgia State Election Board) wrote Raffensperger that there was “probable cause” to believe Trump’s call violated the Georgia election code. Michael Moore, a former US Attorney for Georgia, had filed a complaint against Sen. Graham after Raffensperger said Graham had been pressuring him to exclude ballots. Michael Bromwich, a former DoJ IG, said the call was “probably the most serious political crime I’ve ever heard of.” Fulton County DA Fani Willis said she might investigate Trump’s “disturbing” phone call.

After learning what Trump had said about him, ND Georgia US Attorney Pak abruptly resigned.<sup>101</sup> (Donoghue had told Pak earlier about Trump’s dissatisfaction with the Georgia voter fraud investigation, and Rosen had given Pak’s phone number to Clark, who cranked up the pressure. This may be why *The Wall Street Journal* falsely reported that a top DoJ official had called Pak and forced him to resign.) Trump bypassed the normal succession (the office’s top career prosecutor) to appoint Bobby Christine (whom he had previously appointed as SD Georgia US Attorney). (Trump had unsuccessfully tried to do this in SDNY; see Abel, 2024a.) In January, Christine said he had expected a “dump truck full” of election files but found “very, very few” cases and dismissed two the first day. “There’s just nothing” to the claims of election fraud. The campaign had sued in federal court on December 31 (the lawsuit referenced in Trump’s phone call to Raffensperger). ND GA Judge Mark Cohen (Obama) scheduled a hearing for January 5 and denied an injunction. Trump vowed to appeal any decision to the Supreme Court

before January 6, but of course that was impossible. He boasted to a rally: “I’m going to be here in a year and a half, and I’m going to be campaigning against your Governor and your crazy Secretary of State.” (Both were re-elected.)

At a Dalton, Georgia, rally for Loeffler and Perdue on January 4, Trump repeated the same lies Raffensperger and Germany had rebutted two days earlier:<sup>102</sup>

There’s no way we lost Georgia, there is no way. This was a rigged election. . . . I’ve had two elections. I won both of them. . . . And I actually did much better on the second one. . . . Right here in Georgia, there were tens of thousands of illegal votes cast and counted. You know that. . . . 10,315 ballots were cast by individuals whose name and date of birth matches a Georgia resident who died in 2020 prior to the election. And your wacky secretary of state said two people, two people. 66,000 votes in Georgia were cast by people under the legal voting age. At least 15,000 ballots were cast by individuals who moved out of the state prior to the Nov. 3 election. . . . Georgia’s absentee ballot rejection rate went from an average of 3 percent in 2016 and then went down very low to almost zero. . . . [I]f you multiply that out and this is with many, many more ballots pouring, it went to almost zero. . . . [T]hese absentee ballot rejection rates prove that the tens of thousands of illegitimate ballots were counted. . . . Officials egregiously violated state laws in order to solicit, facilitate and promote cheating and theft on a scale never seen before. These crooked and incompetent officials suspended signature verification. . . . I said, I want you to go to Fulton County to check the signatures because hundreds of thousands of ballots came in. I want you to check the signature to see if it compared to somebody that lived there two years, four years or six years ago. . . . They put these drop boxes there and in a number of cases, they’d be gone for three days. . . . Where are they? They were gone. . . . Georgia’s Secretary of State agreed to a litigation settlement, which is something that nobody’s ever seen. One like this. I want to tell you that Stacey Abrams took him to the cleaners, that drastically and illegally changed the state’s election procedures. . . . When you win in a landslide and they steal it and it’s rigged, it’s not acceptable. Not acceptable. When we got ballots in from the military with Trump all over it and they got thrown into a river. . . . We want Trump, boom, goes into the river.

He added: “I hope Mike Pence comes through for us, I have to tell you. Of course, if he doesn’t come through, I won’t like him quite as much.” He tweeted the next day: “The Vice President has the power to reject fraudulently chosen electors.” Trump’s executive assistant wrote Sens. Hawley and Cruz and Rep. Jordan, repeating the false claims about “Suitcase Gate.”

At the rally that day, Sen. Lee met Trump's legal team, who again claimed they had evidence of fraud.<sup>103</sup> Lee asked:

[W]hy aren't you in court at this moment arguing for a temporary restraining order? . . . Or making this pitch to the election officials in Georgia? . . . To the governor or the attorney general or your legislature. Why are you making it to me? You might as well make your case to Queen Elizabeth II, Congress can't do this.

After encountering Lee at the rally, Trump said: "I'm a little angry at him today. I just want Mike Lee to listen to what we're talking about, because you know what, we need his vote." Over the next two days, Lee investigated the claims about Georgia, Pennsylvania, Michigan, Wisconsin, and Arizona and talked to their Republican legislative leaders, all of whom maintained their states would not decertify their electors.

#### 4.5 The January 6 Insurrection

Katrina Pierson, an organizer of the January 6 Ellipse rally, told the January 6 Committee she had worried that Trump "likes the crazies . . . people who viciously defended him in public." She wrote Meadows on January 2: "Things have gotten crazy and I desperately need some direction, please."<sup>104</sup> She named Ali Alexander and Alex Jones, citing "some of the rhetoric that they were doing," which "had already caused trouble at other [state] capitols—or at the previous event," when they and their supporters had invaded the Georgia State Capitol to protest the election result. Pierson then emailed the other Ellipse rally organizers: "POTUS expectations are to have something intimate at the Ellipse, and call on everyone to march to the Capitol." Scott Johnston, who helped plan the Ellipse rally, said he had been on a phone call with Pierson, Kyle Kramer (executive director of Women for America, which also sponsored the rally), and Meadows: "They were very open about how there was going to be a march" to the Capitol. They planned to "direct the people down there and make it look like they went down there on their own." Trump had seen an undated draft tweet in which he would say: "I will be making a big speech at 10 a.m. on January 6 at the Ellipse south of the White House. Please arrive early. Massive crowds expected. March to the Capitol after. Stop the steal." Another rally organizer wrote Mike Lindell on January 4:

You know, this stays between us. We're having a second stage at the Supreme Court again, after the Ellipse. POTUS is going to have us march there/the Capitol. . . . It can also not get out about the march because I will

be in trouble with the National Park Services and all the agencies. But POTUS is going to just call for it, quote, unexpectedly.

(The NPS permit did not include the march to the Capitol.) On January 5, Alexander emailed a conservative journalist: “Tomorrow: Ellipse, then US Capitol. Trump is supposed to order us to the Capitol at the end of his speech, but we will see.”

In anticipation of the January 6 certification vote, the ten living secretaries of defense appointed by presidents from both parties (Ashton Carter, Dick Cheney, William Cohen, Mark Esper, Robert Gates, Chuck Hagel, James Mattis, Leon Panetta, William Perry, and Donald Rumsfeld) wrote in *The Washington Post* that all DoD employees were

bound by oath, law and precedent to facilitate the entry into office of the incoming administration. . . . They must also refrain from any political actions that undermine the results of the election or hinder the success of the new team.<sup>105</sup>

Former Republican House Speaker Paul Ryan said the effort to overturn the election strikes “at the foundation of our republic.” Almost 200 business leaders signed a letter organized by the Partnership for New York City, declaring that “attempts to thwart or delay this process run counter to the essential tenets of our democracy.” More than 170 business executives urged Congress to certify Biden’s win, as did the head of the US Chamber of Commerce.

Four Republican Senators (Collins, Cassidy, Murkowski, and Romney) joined six Democratic Senators and seven House Republicans in vowing to reject the election challenge.<sup>106</sup> Other Republican Senators later joined them (Blunt, Burr, Capito, Cornyn, Cotton, Fischer, Grassley, McConnell, Portman, Rounds, Sasse, Shelby, Thune, Toomey, and Wicker; but Cotton also supported a commission). Trump tweeted back: “The ‘Surrender Caucus’ within the Republican Party will go down in infamy as weak and ineffective ‘guardians’ of our Nation, who were willing to accept the certification of fraudulent presidential numbers!”

How can you certify an election when the numbers being certified are verifiably WRONG. You will see the real numbers tonight during my speech, but especially on JANUARY 6th. @SenTomCotton Republicans have pluses & minuses, but one thing is sure, THEY NEVER FORGET!

Rep. Brooks said “Kevin McCarthy’s part of the team” and had “told that to the president of the United States.” Brooks also supported the call for an audit: “[W]hat’s wrong with bringing the information back so people have

all the information to make those decisions?” Asked whether Trump should concede if he lost on January 6, Brooks said, “[A]bsolutely not. . . . [Y]ou should never concede because you didn’t lose. It was stolen.” But Republican Representatives Massie, Armstrong, Buck, Gallagher, Mace, McClintock, and Roy opposed the challenge: “We must respect the states’ authority here.” Roy (who had been Cruz’s chief of staff before winning his House seat in 2018 and was a member of the House Freedom Caucus) persuaded the others by reminding them that Republicans “depended on the Electoral College” because they had lost the popular vote in seven of the last eight elections. Buck (Colorado) said the Electoral College “balanced a desire to allow individuals across the nation to vote for president while also ensuring that small states’ voters would not be ignored.”

The 37 House Republicans who had joined the failed Supreme Court lawsuit said they would object to certification because Congress is “the last bulwark in a presidential election to ensure the Constitution has been followed.” But many other Republicans resisted Trump’s plan.<sup>107</sup> Jay Sekulow (who had represented Trump in his first impeachment) said:

Some have speculated that the vice president could simply say, “I’m not going to accept these electors,” that he has the authority to do that under the Constitution. I actually don’t think that’s what the Constitution has in mind. . . . [I]f that were the case, any vice president could refuse any election.

And Rep. Cheney said:

We have sworn an oath under God to defend the Constitution. We uphold that oath at all times, not only when it is politically convenient. Congress has no authority to overturn elections by objecting to electors. Doing so steals power from the states & violates the Constitution.

Former Arizona Republican Senator Flake wrote a *New York Times* op-ed accusing his party of acting “for the basest of reasons—sheer survival and rank opportunism.”

Longtime Trump critics were appalled. If the president had “actually used some 11th-hour legislative maneuver and nullified Biden’s victory,” *New York Times* columnist Thomas L. Friedman melodramatically declared, he himself would have joined “many of the 81,283,485 Americans who voted for Biden” and “taken to the streets . . . and probably stormed the White House, the Capitol and the Supreme Court.” “If you see [Hawley, Cruz, Johnson and their friends] on the street, in a restaurant, on your college campus, politely ask them: ‘you were one of the coup plotters, weren’t you? Shame on you.’” *The New York Times* called Trump’s challenge “an

existential crisis.” Republicans are “a political party that is no longer committed to representative democracy.” “There is a strong argument that Mr. Trump—perhaps the most lawless and least qualified chief executive in the nation’s history—should be not only impeached for a second time but also convicted and disqualified from ever again holding public office.”

At the “Rally to Save America” in Freedom Plaza (two blocks from the White House) on the evening of January 5, Donald Trump Jr. said: “[T]he people who did nothing to stop the steal—this gathering should send a message to them. This isn’t their Republican Party anymore. This is Donald Trump’s Republican Party.”<sup>108</sup>

These guys better fight for Trump, because if they’re not, guess what? I’m going to be in your backyard in a couple of months! . . . [I]f you’re going to be the zero and not the hero we’re coming for you, and we’re going to have a good time doing it.

Eric Trump asked the rally: “Is there any person here that actually thinks Joe Biden won this election?” Other speakers said: “[I]t is time for war.” Couy Griffin, a Republican Otero County (NM) commissioner, said presciently: “[A]t the end of the day, you mark my word, we will plant our flag on the desk of Nancy Pelosi and Chuck Schumer.” (He was convicted of trespassing in the Capitol on January 6, sentenced to 14 days’ time served, and removed from office for participating in the insurrection.) Alex Jones, who claimed that on January 3 the White House had invited him to “lead the [January 6] march” and paid him nearly \$500,000 to organize the demonstration at the Ellipse, told the Freedom Plaza rally: “I don’t know how all this is all going to end, but if they want to fight, they better believe they’ve got one.”

Roger Stone declared:

This is nothing less than an epic struggle for the future of this country, between dark and light, between the Godly and the godless, between good and evil. And we will win this fight or America would step off into a thousand years of darkness.

He was guarded by six Oath Keepers, some of whom broke into the Capitol the next day (and were later convicted). OK founder Stewart Rhodes had told members on November 9:

We’re going to defend the president, the duly elected president, and we call on him to do what needs to be done to save our country. Because if you don’t guys, you’re going to be in a bloody, bloody civil war and a bloody—you can call it an insurrection or you can call it a war or fight. . . . Our posture’s gonna be that we’re posted outside of D.C. awaiting the president’s

orders . . . we hope he will give us the orders. We want him to declare an insurrection, and to call us up as the militia.

Rhodes had said on January 4:

It is CRITICAL that all patriots who can be in DC get to DC to stand tall in support of President Trump's fight to defeat the enemies foreign and domestic who are attempting a coup, through the massive vote fraud and related attacks on our Republic.

A week earlier, Jessica Watkins (an Ohio OK member) wrote: "If Trump activates the Insurrection Act, I'd hate to miss it." Kelly Meggs, head of Florida OK, declared Trump would stay in power and "claim the Insurrection Act." (Both were convicted of participating in the insurrection and sentenced to 8.5 and 12 years, respectively.) But on January 6, a frustrated Stewart Rhodes, the OK head, messaged the OK leadership group: "All I see Trump doing is complaining. I see no attempt by him to do anything. So the patriots are taking it in their own hands. They've had enough." About an hour later, some Oath Keepers who got the message invaded the Capitol. (In February 2021, Rhodes said Oath Keepers had stashed weapons outside the city and would use them "only if the president calls us up." "We thought antifa might try to storm the White House." He claimed that DC gun restrictions would not apply to Oath Keepers because "we would have been part of the military.")

Michael Flynn said at the Freedom Plaza rally:

Tomorrow, tomorrow, trust me, the American people that are standing on the soil that we are standing on tonight, and they're going to be standing on this soil tomorrow, this is soil that we have fought over, fought for, and we will fight for in the future.

Americans were ready to "bleed" for freedom. He advised members of Congress:

[T]hose of you who are feeling weak tonight, those of you that don't have the moral fiber in your body, get some tonight because tomorrow we the people are going to be here. And we want you to know that we will not stand for a lie.

The January 5 rallies were planned by the Republican Attorneys General Association (RAGA), Turning Point Action, Tea Party Patriots, and the Council for National Policy (CNP).<sup>109</sup> RAGA had made a robocall before January 6 urging "patriots like you" to "march on the Capitol building and

call on Congress to stop the steal.” The same day, the Democratic Attorneys General Association said:

[T]he claim by Senator Josh Hawley, a former state Attorney General and others in Congress that the presidential election process allows Congress—or anyone—to overturn the results is wrong. They know better—and they are choosing to further divide our nation and ignore the Constitution for perceived political gain.

Ali Alexander, a former CNP fellow, had tweeted that unless Congress refused to certify, “everyone can guess what me and 500,000 others will do to that building.” “1776 is \*always\* an option.” (The Arizona GOP retweeted his tweet—“I am willing to give up my life for this fight”—asking, “He is. Are you?”) Declaring at the rally that “these degenerates in the deep state are going to give us what we want or we are going to shut this country down,” he led a chant of “victory or death.” Alex Jones echoed him: “It’s 1776, 1776, 1776, 1776.” Red State Secession posted on Facebook on January 5, “If you are not prepared to use force to defend civilization, then be prepared to accept barbarism,” encouraging its 8,000 followers to share the addresses of “enemies,” including federal judges, members of Congress, and progressives. Some responded with photos of weapons they planned to bring and talked about “occupying” the Capitol. During the 30 days before January 6, “Storm the Capitol” was mentioned hundreds of thousands of times on social media. At other pro-Trump rallies on the evening of January 5 and the following morning, DC Police arrested ten people, two with guns and ammunition.

Reps. Greene and Boebert called January 6 the Republicans’ 1776 moment.<sup>110</sup> Rep. Gosar said Biden was an “illegitimate usurper” and Trump the victim of an attempted “coup.” Gosar had written in an op-ed: “Be ready to defend the Constitution and the White House.” He tweeted: “Biden should concede. I want his concession on my desk tomorrow morning. Don’t make me come over there. #StopTheSteal2021.” (Ali Alexander later claimed he had planned the January 6 rally with Brooks, Gosar, and Biggs: “We four schemed up putting maximum pressure on Congress while they were voting so that—who we couldn’t lobby—we could change the hearts and minds of Republicans who were in that body hearing our loud roar from outside.” Brooks had “no recollection of any kind of organizational activity regarding the speeches on Jan. 6” or “ever communicating in any way with whoever Ali Alexander is.” Biggs was “not aware of hearing of or meeting Mr. Alexander at any point.” Boebert and Greene also denied any role in planning the event.)<sup>111</sup> At a Turning Point USA event in December, Rep. Cawthorn had urged the audience to “call your Congressman and feel free—you can lightly threaten them.”

Trump and Pence were in the White House the night of January 5, listening to the Freedom Plaza demonstrators cheering for the president. Sarah Matthews (White House deputy press secretary) recalled that Trump was “in a very good mood.” “And I say that because he had not been in a good mood for weeks.”<sup>112</sup> He asked the staff for ideas “that we could make the RINOs do the right thing.” Judd Deere (another deputy press secretary) said Trump was excited that crowd members “were fired up. They were angry. They feel like the election’s been stolen, the election was rigged.” Trump “asked if members of Congress would be with him tomorrow,” meaning, “not voting to certify the election.” Shealah Craighead (chief official White House photographer) said Trump was “talking about we should go up to the Capitol, what’s the best route to go to the Capitol.”

Trump said exultantly that the demonstrators loved him.<sup>113</sup> Pence loyally agreed but then hedged: “Of course, they’re here to support you. They love you, Mr. President. But they also love our Constitution.” Trump again asked Pence to throw out the contested electoral votes and return them to the state legislatures. The vice president repeated that he lacked the authority. Trump invoked the demonstrators: “If these people say you had the power, wouldn’t you want to?” Pence replied: “I wouldn’t want any one person to have that authority.” Trump persisted: “[W]ouldn’t it be almost cool to have that power?” Pence demurred:

No. Look, I’ve read this [Eastman memo], and I don’t see a way to do it. We’ve exhausted every option. I’ve done everything I could and then some to find a way around this. It’s simply not possible. My interpretation is: No. I’ve met with all these people, they’re all on the same page. I personally believe these are the limits to what I can do. So, if you have a strategy for the 6th, it really shouldn’t involve me because I’m just there to open the envelopes. You should be talking to the House and Senate . . . about what kind of evidence they’re going to present.

Trump shouted: “No, no, no! You don’t understand, Mike. You *can* do this. I don’t want to be your friend anymore if you don’t do this” (the classic grade-school put-down). But Pence was adamant:

You’re not going to be sworn in on the 20th. There is not a scenario in which you can be sworn in on the 20th. We need to figure out how to deal with it, how we want to handle it. How we want to talk about it.

Trump assailed Pence as weak, saying he lacked courage. “You’ve betrayed us. I made you. You were nothing. Your career is over if you do this.” After Pence left, Trump invited staffers into the Oval Office, leaving the exterior door open so he could hear the cries of the crowd. “Isn’t that great? Tomorrow

is going to be a big day. It's so cold and they're out there by the thousands." When someone expressed a hope that the day would be peaceful, Trump demurred: "[T]here is a lot of anger out there right now." "The vice president, the members of Congress, all of them should do the right thing!" He phoned Cruz, who assured Trump that he and ten other Republican senators planned to object to Arizona, Pennsylvania, and Georgia. Trump said they should object to all the states that could be challenged in the House, but Cruz explained that he needed to preserve the group's unity.

After *The New York Times* reported at 7:36 p.m. that "Pence Said to Have Told Trump He Lacks Power to Change Election Result," the president talked to Pence by phone for eight minutes and then denounced the "fake news," claiming Pence "never said that." "The vice-president and I are in total agreement that the vice-president has the power to act."<sup>114</sup> Trump parroted Eastman's theories:

[Pence] can decertify the results or send them back to the [S]tates for change and certification. He can also decertify the illegal and corrupt results and send them to the House of Representatives for the one vote for one [S]tate tabulation.

Marc Short called Jason Miller, who was with Giuliani and Bannon at the Willard Hotel command center, and "expressed displeasure that a statement could have gone out that misrepresented the vice president's viewpoint without consultation," denouncing this grave breach of "protocol." He had warned Pence against blocking or delaying the Electoral College results.

In a best-case scenario in which the courts refused to get involved, the vice president would likely find himself in an isolated standoff against both houses of Congress, as well as most or all of the applicable state legislatures, with no neutral arbiter available to break the impasse.

Miller was unmoved: "[T]he vice president has the ability to do this, he needs to be loyal." On a phone call that night with Giuliani, Eastman, Epshteyn, and Bannon (in the Willard "war room"), Trump discussed his January 4 meeting, complained that Pence was "very arrogant," and asked the lawyers how to stop the joint session from certifying Biden. Bannon said later that night:

All hell is going to break loose tomorrow. It's all converging and now we're on, as they say, the point of attack, right, the point of attack tomorrow. I'll tell you this, it's not going to happen like you think it's going to happen, Ok? It's going to be quite extraordinarily different. And all I can say is strap in.

At 1:00 a.m., Trump tweeted:

If Vice President @MikePence 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!

Trump tweeted again at 8:17 a.m. on January 6:

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

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

He phoned Pence at 11:20 a.m.<sup>115</sup> The vice president said: “I’m heading to the Capitol soon. I told you I’d sleep on it, I’d take a look with my team. We’ll hear any objections and evidence. But when I go to the Capitol, I’ll do my job.” Trump expostulated: “Mike, this is not right! Mike, you can do this. I’m counting on you to do it. If you don’t do it, I picked the wrong man four years ago.” “You’re going to wimp out!” Trump cursed Pence, saying, “[Y]ou can either go down in history as a patriot, or you can do down in history as a pussy.” (Two months later, Trump told Jonathan Karl he “wouldn’t dispute” having said that.) Jacob recalled that when Pence “came back into the room” after the call, “he was steely, determined, grim.” Trump retaliated by restoring the criticism of Pence he had drafted for his Ellipse speech but Herschmann had removed (see later text).

Hershmann recalled talking to Giuliani that morning.<sup>116</sup> “We had an intellectual discussion about . . . the VP’s role. And he was asking me my view and analysis about the practical implications of it. And when we finished, he said, ‘Look, I believe that you’re probably right’ [that the proposal to have states create alternative slates of electors was illegal].” Giuliani realized “you couldn’t interpret or sustain the argument, long term.” Just hours later, however, Giuliani declared at the rally that “every single thing that has been outlined as the plan for today is perfectly legal.” “Given the questionable constitutionality” of the Electoral Count Act, it was “perfectly appropriate” for the vice president to “cast it aside.”

The day before the January 6 rally, Rep. Brooks had tweeted that Trump asked him “personally to speak & tell the American people about the

election system weaknesses that Socialist Democrats exploited to steal this election.”<sup>117</sup> Brooks said at the Ellipse:

Today is the day American patriots start taking down names and kicking ass. Now, our ancestors sacrificed their blood, their sweat, their tears, their fortunes and sometimes their lives. . . . Are you willing to do what it takes to fight for America? My answer is yes. Louder! Are you willing to do what it takes to fight for America?

(He later claimed that “no one at the rally interpreted my remarks to be anything other than what they were: a pep talk after the derriere kicking conservatives suffered in the dismal 2020 elections.”) Alex Jones told the crowd: “[W]e’re under attack and we need to understand this is 21st-century warfare and get on a war footing.” As the mob moved toward the Capitol, however, he cautioned: “[L]et’s not fight the police and give the system what they want.”

Giuliani said at the Ellipse:<sup>118</sup>

It is perfectly appropriate given the questionable constitutionality of the Election Counting [sic—“Electoral Count”] Act of 1887 that the vice president can . . . decide on the validity of these crooked ballots, or he can send it back to the legislators. . . . They’re asking us. Georgia, Pennsylvania, Arizona, Wisconsin, and one other coming in . . . the Democrats and their allies have not allowed us to see one machine, or one paper ballot. . . . Who hides evidence? Criminals hide evidence. Not honest people. Over the next 10 days, we get to see the machines that are crooked, the ballots that are fraudulent, and if we’re wrong, we will be made fools of. But if we’re right, a lot of them will go to jail. Let’s have trial by combat. . . . [O]ne of the experts that has examined these crooked Dominion machines has absolutely what he believes is conclusive proof that in the last ten percent, fifteen percent of the vote counted, the votes were deliberately changed.

Eastman told the crowd that election officials put ballots “in a secret folder in the machines” and then could “match those unvoted ballots with an unvoted voter and put them together in the machine” to produce a Biden win:<sup>119</sup>

We know there was fraud. We know that dead people voted. All we are demanding of Vice President Pence is that this afternoon at 1 o’clock, he let the legislatures of the states look into this so we can get to the bottom of it and the American people know whether we have control of the direction of our government or not! . . . We no longer live in a self-governing

republic if we can't get the answer to this question. . . . This is bigger than President Trump. It is a very essence of our republican form of government and it has to be done! . . . [A]nybody that is not willing to stand up to do it, does not deserve to be in the office.

Trump told the rally he would “never give up . . . never concede.”<sup>120</sup>

We will not take it anymore. . . . [W]e will stop the steal. . . . We fight like hell. And if you don't fight like hell, you're not going to have a country anymore. . . . I hope Mike is going to do the right thing. . . . I hope so, because if Mike Pence does the right thing we win the election. . . . All Vice President Pence has to do is send it back to the states to recertify, and we become president. . . . 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. . . . [W]e'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 sad day for our country because you're sworn to uphold our Constitution. . . . [A]fter this, we're going to walk down [to the Capitol] and I'll be there with you. . . . Because you'll never take back our country with weakness. . . . Mike Pence has to agree to send it back [to the state legislatures]. . . . You will have an illegitimate president. . . . And we can't let that happen. . . . 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 fight like hell. And if you don't fight like hell, you're not going to have a country anymore. . . . So we're going to, we're going to walk down Pennsylvania Avenue . . . and we're going to the Capitol.

He repeated (in typically confused, garbled, and incoherent fashion) all the lies he had previously propagated about the “steal.” He complained that Barr had “changed because he did not want to be considered my personal attorney,” and the Supreme Court ruled against him “so much” because “the story . . . that they're my puppets” was “not good in the social circuit.” Eastman—“one of the most brilliant lawyers in the country”—had “looked at this and he said, ‘What an absolute disgrace that this could be happening to our Constitution.’” Georgia “should find those votes. They should absolutely find that. Just over 11,000 votes, that's all we need. They defrauded us out of our win in Georgia, and we're not going to forget it.” “We're going to march to the Capitol. I'll be there with you. Fight for me.” (Reprising his defense of his phone call with Zelensky, Trump told Jonathan Karl two

months later his speech had been “perfectly fine” and “mild-mannered.”<sup>121</sup> It was “a very beautiful time with extremely loving and friendly people.”)

There had been ample warnings of violence on encrypted services like Telegram and Parler.<sup>122</sup> More than half the top 50 posts on TheDonald.win homepage called for it. (The website had been banned from Reddit for advocating violence.) Some posts described tunnels under the Capitol, named members of Congress to target, and termed January 6 a “once in a lifetime event.” Jason Miller wrote Meadows with a link to TheDonald.win site, boasting: “I got the base FIRED UP.” The link included “Gallows don’t require electricity” and threats that if Congress did not certify Trump, members could leave “in a bodybag.” Robert Morss wrote that January 6 was the moment when “1776 Will Commence Again.” Kenneth Grayson wrote: “IF TRUMP TELLS US TO STORM THE FUKIN CAPITAL IMA DO THAT THEN!” (They were convicted of invading the Capitol and sentenced to 5.5 years and 2 months, respectively.) Flyers declared “#OccupyCongress.” California Patriots–DC Brigade boasted they were “ready and willing to fight” as though it were “1776.” Lin Wood said on Parler: “Get the firing squads ready. Pence goes FIRST.” One post explained that smuggling guns into DC was “illegal, but this is war and we’re clearly in a post-legal phase of our society.” Others advised demonstrators to come “ARMED WITH RIFLE, HANDGUN, 2 KNIVES AND AS MUCH AMMO AS YOU CAN CARRY”; “LIVE AS A FREE AMERICAN AND BRING YOUR ARMS!”; do not let them “disarm someone without stacking bodies.” Tweets urged demonstrators to bring handcuffs and zip ties, body armor, knuckles, shields, bats, and pepper spray and exhorted them to join the Proud Boys. Even religious leaders used inflammatory language. Greg Locke, who founded the Global Vision Bible Church, wrote in a September 2020 book titled *This Means War*: “[W]e are one election away from losing everything we hold dear.” On January 5, he tweeted: “[M]ay the fire of the Holy Spirit fall upon Washington DC today and tomorrow. . . . Let God arise and His enemies be brought low.”<sup>123</sup>

Dr. Donell Harvin, DC chief of homeland security and intelligence, had received “derogatory information from OSINT [open-source intelligence] suggesting that some very, very violent individuals were organizing to come to DC,” and “these nonaligned groups were aligning” and exchanging “pre-operational intelligence.” Hours after Trump’s December 19 tweet declaring that the January 6 demonstration would “be wild,” Florida OK head Kelly Meggs had announced an alliance with the Proud Boys and Florida Three Percenters “to work together and shut this shit down.” Soon thereafter, Meggs called Proud Boys leader Enrique Tarrío. The next day, Proud Boys launched an encrypted chat site, the “Ministry of Self-defense.” A week earlier, Michael Flynn and Patrick Byrne had met with Stewart Rhodes, after which the OK leader urged Trump to invoke the Insurrection Act. That day (December 12), Proud Boys engaged in violence in DC, insulting the police. The previous

night, Alex Jones had warned: “We will be back in January.” Roger Stone also regularly communicated with Proud Boys and Oath Keepers. Rhodes urged Friends of Stone (a group that included Tarrío and Ali Alexander) to organize demonstrations at state capitols. One Trump follower asked, “[I]s the 6th D-Day?” Others said Trump directed everyone to come armed because his statement that “[i]t will be wild means we need volunteers for the firing squad.” Posts included: “[W]hy don’t we just kill them, every last Democrat, down to the last man, woman, and child”; “[I]t’s time for the day of the rope”; “White revolution is the only solution”; “I’m ready to die for my beliefs. Are you ready to die, police?”; “Cops don’t have standing if they’re laying [sic—“lying”] on the ground in a pool of their own blood.” Oath Keepers were ready to use “lethal force if necessary against anyone who tried to remove President Trump from the White House, including the National Guard.”

Jason Van Tatenhove, a former OK spokesman and close associate of Rhodes, described a plan for the “stacked military formation going up the stairs of our Capitol.”<sup>124</sup> Rhodes wanted Trump to invoke the Insurrection Act to “give him a sense of legitimacy” and the opportunity “to become a paramilitary force.” One of Van Tatenhove’s first assignments was to create “a deck of cards” identifying “the key players on the other side that they wanted to take out,” such as “politicians, judges, including up to Hillary Clinton as the queen of hearts.” (This was modeled on the deck of cards the US military gave soldiers in 2003 to help them find and neutralize Iraqi leaders.) “There was always the push for military training including . . . explosives training.” Stephen Ayres, who described himself as “a family man and a working man,” said he had not initially intended to march to the Capitol. But “the President got everybody riled up and told everybody to head on down. So we basically was [sic—‘were’] just following what he said.” “Everybody was kind of like in the hope that . . . Vice President Pence was not going to certify the election.” “Everybody thought [Trump] was going to be coming down” to the Capitol. “He said it in his speech . . . he’s going to be there with us.” After January 6, Ayres said Trump’s continuing claim of election fraud “makes me mad because I was hanging on every word he was saying. . . . [I]f I was doing it, hundreds of thousands or millions of other people are doing it.” In the subsequent criminal prosecutions of January 6 defendants, several affirmed having been inspired by Trump.<sup>125</sup> Ronald Sandlin had written on December 23: “I’m going to be there to show support for our president and to do my part to stop the steal and stand behind Trump when he decides to cross the [R]ubicon.” Garret Miller “believed I was following the instructions of former President Trump,” who “had me believing the election was stolen from him.” John Douglas Wright organized busloads of demonstrators because Trump “called me there, and he laid out what is happening in our government.” (They were convicted and sentenced to 63, 38 and 49 months, respectively.)

Before January 6, the Secret Service intelligence division had sent Tony Ornato and Robert Engel (Trump's security detail) several emails about the potential for violence.<sup>126</sup> Capitol Police warned that Proud Boys and other groups would be targeting Congress. National security adviser Robert O'Brien also feared violence. Hutchinson heard Ornato tell Meadows, "[W]e had intel reports saying that there could potentially be violence on the 6th," and demonstrators had rifles, pistols, knives, brass knuckles, bear spray, spears, flagpoles, and other weapons. Meadows was dismissive: "[Y]eah, yeah, I know. And then he looked up and said have you talked to the President? And Tony said, yes, Sir. He's aware. And [Meadows] said Alright. Good." Trump wanted the magnetic metal detectors and security checks surrounding the Ellipse demonstration removed to increase the crowd size, declaring:

You know, I don't fucking care that they have weapons. They aren't here to hurt me. Take the fucking mags away. Let my people in. They can march to the Capitol from here. Let the people in. Take the fucking mags away.

(Secret Service confiscated 242 canisters of pepper spray, 269 knives, 18 brass knuckles, 18 tasers, 6 pieces of body armor, 3 gas masks, and 30 batons from those who passed through the magnetometers.) Trump

was furious because he wanted the area that we had on the ellipse to be maxed out at capacity for all attendees. The advance team had relayed to him that the mags were free flowing. Everybody who wanted to come in had already come in. [Others stayed outside because they wanted to keep their weapons.] But he still was angry about the extra space and wanted more people to come in.

"He was very concerned about the shot, meaning the photograph that we would get, because the rally space wasn't full." (In a reprise of his fury about reports of low attendance at his inauguration, Trump began his rant at the Ellipse by assailing the media for not showing the size of the crowd and returned to that grievance repeatedly, claiming there were "hundreds of thousands"; the media estimated 10,000.) On a planning call for January 6, including Meadows, Giuliani, Jordan, and other Freedom Caucus members, Rep. Perry endorsed the idea of a march, and no one objected. Meadows had told Hutchinson: "[W]e're going to have this big rally. People are talking about it on social media. They're going to go to the Capitol." On the evening of January 2, Giuliani had told Hutchinson that on January 6 "we're going to the Capitol."

It's going to be great. The president's going to be there. He's going to look powerful. . . . [H]e's going to be with the members [of Congress]. He's

going to be with the Senators. Talk to the chief [Meadows] about it. . . . He knows about it.

Hutchinson told Meadows that evening:

[I]t sounds like we're going to go to the Capitol. He didn't look up from his phone and said something to the effect of, there's a lot going on Cass, but I don't know. Things might get real, real bad on January 6th.

(Perhaps his reaction to Katrina Pierson's warning earlier that day.)

Knowing that Meadows had proposed marching to the Capitol, Cipollone told Hutchinson on January 3: “[W]e need to make sure that this doesn't happen. This would be legally a terrible idea for us.”<sup>127</sup> He urged her to tell that to Meadows and repeated the warning to her on the morning of January 6: “[M]ake sure we don't go up to the Capitol. . . . We're going to get charged with every crime imaginable if we make that movement happen.” He had earlier enumerated possible charges, like obstructing justice, inciting a riot, and defrauding the electoral count. Max Miller (associate director of the Presidential Personnel Office and special assistant to the president) recalled that on the morning of January 6, Trump said: “I want to go down to the Capitol.” Nicholas Luna (Trump's “body man”) learned during the Ellipse rally about “the desire of the president to potentially march . . . or accompany rally attendees to the Capitol.” The National Security Council log recorded that the president was “going to the Capitol” and “they are finding the best route now.” Rep. McCarthy phoned Hutchinson and “explained the president just said he's marching to the Capitol,” angrily complaining, “You told me this whole week you aren't coming up here. Why would you lie to me?” Trump had “just said it on stage.” McCarthy told Hutchinson, “Don't come up here.” She immediately called Ornato to confirm they were not going to the Capitol and texted that to McCarthy. But she also remembered discussions Meadows had with Perry and Giuliani about Trump “having another speech outside of the Capitol before . . . going into the House chamber.”

Kayleigh McEnany confirmed that when Trump returned to the motorcade after his Ellipse speech, she “overheard Mr. Meadows say to him then, as I had prior to Mr. Trump taking the stage that morning, that he was still working on getting an off-the-record [i.e., unscheduled] movement to the Capitol.” McEnany had already told Meadows that Ornato said “the movement was still not possible. Mr Meadows said, Ok.” But “then as they proceeded to go to the motorcade . . . Mr. Meadows had reiterated, we're going to work on it, Sir. Talk to Bobby [Robert Engel]. Bobby has more information.” “[W]hen we got back to the White House he [i.e., Trump] said he wanted to physically walk with the marchers” but would “be fine with just writing the piece [sic—“riding the beast”—the armored presidential

limousine]. . . . He wanted to be a part of the march in some fashion.” McEnany remembered that “the President wasn’t happy that Bobby didn’t pull it off for him, and that Mark [Meadows] didn’t work hard enough to get the movement on the books.”

After the Secret Service conferred with the DC Police, Ornato decided against the walk. Trump later complained, “Secret Service wouldn’t let me. I wanted to go. I wanted to go so badly.”<sup>128</sup> Hutchinson recalled that after she returned to the White House, Ornato pulled her into his office with Engel and said, “[D]id you f’ing hear what happened in the beast?”<sup>129</sup> “[W]hen the president got in the beast he was under the impression from Mr. Meadows that the off the record movement to the Capitol was still possible and likely to happen.” “[W]hen Bobby had related to him we’re not, we don’t have the assets to do it, it’s not secure, we’re going back to the West Wing, the president had a very strong, a very angry response to that.” He said something like, “I’m the f’ing president, take me up to the Capitol now.” Engel replied, “Sir, we have to go back to the West Wing.” “[T]he president reached up towards the front of the vehicle to grab at the steering wheel.” Engel seized Trump’s arm and said, “‘Sir, you need to take your hand off the steering wheel. We’re going back to the West Wing. We’re not going to the Capitol’. Mr. Trump then used his free hand to lunge towards Bobby Engel . . . his clavicles.” (Trump later retorted: “Her Fake story that I tried to grab the steering wheel of the White House Limousine in order to steer it to the Capitol Building is ‘sick’ and fraudulent, very much like the Unselect [January 6] Committee itself.”) While Trump was speaking at the Ellipse, Ornato told Hutchinson the demonstrators were getting close to the Capitol and police were “having trouble stacking bodies.” “It was becoming clear to us and the Secret Service that Capitol Police officers were getting overrun at the security barricades.” She wanted to warn Meadows, but he shut his car door on her twice. When he finally listened to her, “he almost had a lack of reaction, saying only ‘how much longer does the President have left in his speech?’” Mark W. Robinson, a retired DC police officer in the motorcade’s lead car, heard through Secret Service communications that Trump “was upset. And he adamantly wanted to go to the Capitol. . . . [I]t was a heated argument in the limo.”<sup>130</sup>

Before Congress convened, House Minority Whip Scalise asserted that “in a number of states,” election procedures had been established by officials, not the legislature.<sup>131</sup>

We cannot turn a blind eye to states selectively choosing which election laws to follow. . . . [T]he only remaining recourse, as laid out in the Constitution, is through Congressional action. For these reasons, I will vote in favor of objections to the certification of electoral votes from certain states where there have been serious questions about the integrity of the electoral process.

But Pence (who had practiced law) issued a written statement.<sup>132</sup> Before preparing it, Jacob had consulted John Yoo, who said, “Vice President Pence has no discretion anymore. It’s not something to worry about or even think about.” Richard Cullen, a former ED Va US Attorney who now was Pence’s personal lawyer, agreed. That morning, Cullen sought the opinion of J. Michael Luttig (a retired Fourth Circuit Court of Appeals judge, for whom Eastman had clerked), who said, “I believe [Pence] has to certify the Electoral College vote today,” and quickly sent Cullen a written opinion to that effect, posting it on Twitter within minutes. Luttig later denounced Eastman’s erroneous theory as “the centerpiece of the plan to overturn the 2020 election” and called it “the highest honor of my life” to play a role in preserving the Constitution. Jacob also talked to Sen. Graham, who concurred: “I’m no constitutional lawyer, but common sense tells you you can’t do this.”

When Congress convened at 1:00 p.m., Pence released and tweeted his statement (incorporating Luttig’s reasoning):

My oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not. My role as presiding officer is largely ceremonial. . . . Some believe that as vice president, I should be able to accept or reject electoral votes unilaterally. Others believe that electoral votes should never be challenged in a Joint Session of Congress. After a careful study of our Constitution, our laws and our history I believe neither view is correct. . . . As a student of history who loves the Constitution and reveres its Framers, I do not believe that the Founders of our country intended to invest the Vice President with unilateral authority to decide which electoral votes should be counted during the Joint Session of Congress, and no Vice President in American history has ever asserted such authority.

As he read aloud each of the 50 states’ electoral slates, he added: “[T]he parliamentarians advise me [this] is the only certificate of vote from that State . . . that has annexed to it a certificate from an authority of that State purporting to appoint or ascertain electors.” At 1:35 p.m., Sen. McConnell pronounced:

The Constitution gives us here in Congress a limited role. We cannot simply declare ourselves a National Board of Elections on steroids. The voters, the courts and the states have all spoken. . . . If we overrule them it would damage our republic forever.

Trump’s actions on January 6 remain opaque because of a gap in White House phone log records during the crucial 7 hours and 37 minutes between

11:17 a.m. and 6:54 p.m.<sup>133</sup> Although he was at the Ellipse for some of this time, he had conversations with at least 8 people before the gap and 11 after it, suggesting he had others during it.

Minutes after he returned to the White House, a staffer informed him that “they’re rioting down there at the Capitol.” Trump responded, “Oh really? All right, let’s go see,” and then spent the rest of the afternoon watching the insurrection on television.<sup>134</sup> After McEnany sought his reaction to Pence’s statement, the president reiterated his desire to go to the Capitol, on foot or in the beast. At 1:11 p.m., Sen. Lee got a phone call from Trump, who had meant to call Sen. Tuberville to ask him to expand the challenges and slow the vote count.<sup>135</sup> Tuberville later reported, “I said Mr. President, we’re not doing much work here right now because they just took our Vice President out. And matter of fact I’m gonna have to hang up on you. I’ve got to leave.” In the Capitol, Sen. Hawley had “raised his fist in solidarity with the protesters” and “riled up the crowd,” but he also had to flee. At 1:49 p.m., nearly an hour after Capitol Police had requested backup from DC Police, Trump tweeted a video of his speech at the Ellipse, adding: “Our country has had enough, we will not take it anymore, and that’s what this is all about.” Rioters at the Capitol were recorded saying Pence was “nothing but a traitor, and he deserves to burn with the rest of em.”<sup>136</sup> “Mike Pence has betrayed the United States of America. Fuck you, Mike Pence.” “I’m telling you, if Pence caved, we’re going to drag motherfuckers through the streets. You fucking politicians are going to get fucking drug through the streets.”

Yes, I guess the hope is that there’s such a show of force here that Pence will decide to just do his job. Do the right thing, according to Trump. . . . Bring out Pence. . . . Hang Mike Pence.

A gallows had been erected outside.

At about 2:00 p.m., Hutchinson went into Meadows’s office and asked if he was watching the riot on television. “He was like, ‘yeah.’ I said, ‘the rioters are getting really close. Have you talked to the President?’ And he said, ‘no, he wants to be alone right now.’” Hutchinson “started to get frustrated. . . . I remember pointing at the TV and I said, ‘the rioters are getting close. They might get in.’ And [Meadows] looked at me and said something to the effect of, ‘Alright, I’ll give [Rep. Jordan] a call.’” “No more than a minute, minute and a half,” after rioters breached the Capitol, Hutchinson saw “Pat Cipollone barreling down the hallway towards our office and rush right in” and tell Meadows

something to the effect of “the rioters have gotten to the Capitol, Mark. We need to go down and see the President now.” And Mark looked up at him and said, “[Trump] doesn’t want to do anything, Pat.” And Pat

said . . . something to the effect of, “Mark, something needs to be done or people are going to die and the blood is going to be on your f’ing hands. This is getting out of control. I’m going down there.”

The two went to the dining room, where Trump was watching the riot on television. When they returned, Cipollone said

something to the effect of, “Mark, we need to do something more. They’re literally calling for the vice president to be f’ing hung.” But Meadows replied “You heard him, Pat, he thinks Mike Pence deserves it. He doesn’t think they’re doing anything wrong.”

Cipollone later commented: “[F]or anyone to suggest such a thing of the vice president of the United States, for people in that crowd to be chanting that, I thought it was outrageous and wrong, and I expressed that very clearly.” Hutchinson told the January 6 Committee:

As a staffer that worked to always represent the administration to the best of my ability and to showcase the good things that [Trump] had done for the country, I remember feeling frustrated and disappointed . . . really sad. As an American, I was disgusted. It was unpatriotic. It was un-American. We were watching the Capitol building get defaced over a lie.<sup>137</sup>

While the insurrection was in full swing, Biden said:<sup>138</sup>

This is not dissent. It’s disorder. It’s chaos. It borders on sedition, and it must end now. I call on this mob to pull back and allow the work of democracy to go forward. The words of a president matter, no matter how good or bad that president. At their best, the words of a president can inspire. At their worst, they can incite. I call on President Trump to go on national television, now, to fulfill his oath and defend the Constitution and demand an end to this siege. To storm the Capitol, to smash windows, to occupy offices, the floor of the United State Senate, rummaging through desks. . .threatening the safety of duly elected officials. It’s not protest. It’s insurrection. . . . At this hour, our democracy is under unprecedented assault, unlike anything we’ve seen in modern times, an assault on the citadel of liberty, the Capitol itself; an assault on the people’s representatives, the Capitol Hill police, sworn to protect them; the public servants who work at the heart of our republic; an assault on the rule of law like few times we’ve ever seen it.

Obama said, “[H]istory will rightly remember today’s violence at the Capitol, incited by a sitting president who has continued to baselessly lie about

the outcome of a lawful election, as a moment of great dishonor and shame for our nation.”

Former Trump officials were equally censorious.<sup>139</sup> Mark Esper (recently fired as secretary of defense) said: “The perpetrators who committed this illegal act were inspired by partisan misinformation and patently false claims about the election.” John Kelly (Trump’s former homeland security secretary and chief of staff) said: “[W]e need to look infinitely harder at who we elect to any office in our land. At the office seeker’s character, at their morals, at their ethical record, their integrity, their honesty.” The RNC said, “[T]hese violent scenes we have witnessed do not represent acts of patriotism, but an attack on our country and its founding principles.” An RNC spokesman said:

[W]hat happened today was domestic terrorism. Our soldiers have died carrying the American flag into battle for our freedom. To see that flag used in the name of unfounded conspiracy theories is a disgrace to the nation, and every decent American should be disgusted by it.

Barr (who had quit as attorney general just two weeks earlier) said: “[T]he violence at the Capitol building is outrageous and despicable. Federal agencies should move immediately to disperse it.” The next day, he added: “Orchestrating a mob to pressure Congress is inexcusable. The President’s conduct yesterday was a betrayal of his office and supporters.” Other prominent lawyers condemned it, including the chairs of Paul Weiss, Akin Gump, Dentons US, and Jenner & Block, the New York State Bar Association president, Walter Dellinger (former solicitor general), and the ED Va US Attorney. The American Bar Association condemned “in the strongest terms today’s assault on the U.S. Capitol by protesters during the process. . . . [I]t is not a peaceful protest. It is criminal conduct. . . . President Trump has a duty to restore and protect the rule of law.”

At 2:24 p.m. (11 minutes after live television showed police rushing Pence off the Senate floor), Meadows reported that Trump commented: “Maybe Mr. Pence should be hanged” or “Maybe our supporters have the right idea. [Mike Pence] deserves it.” (Trump told Jonathan Karl on November 1, 2021, “I NEVER said, or even thought of saying, ‘Hang Mike Pence.’ This is either a made up story by somebody looking to become a star, or FAKE NEWS!” He had not been worried about Pence because “I thought he was well protected. . . . I had heard he was in very good shape.” “The people were very angry” and saying, “Hang Mike Pence,” just “because it’s common sense. . . . [I]f you know a vote is fraudulent, right, how can you pass on a fraudulent vote to Congress?”)<sup>140</sup> Pence later recalled that Trump “had made no effort to contact me in the midst of the rioting or any point afterward.”

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.

Deputy national security adviser Matthew Pottinger (an ex-Marine) said:

[I] was disturbed and worried to see that the President was attacking Vice President Pence for doing his constitutional duty. . . . [I]t looked like fuel being poured on the fire. So that was the moment that I decided I was going to resign.

As a White House official, he had taken an oath “to support and defend the Constitution.” “[I]t is a sacred oath. It's an oath that we take before our families. We take that oath before God. And I think that we have an obligation to live by that oath.” Pottinger decided to resign.

Ben Williamson (Meadows's senior communications adviser) texted his boss: “Would recommend POTUS put out a tweet about respecting the police over at the Capitol.” Pressured by Meadows, Trump tweeted at 2:30 p.m.: “Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!” (He had resisted the last phrase.) About 3:00 p.m., staff produced the draft of another message calling the riot “illegal” and saying: “ANYONE WHO ENTERED THE CAPITOL WITHOUT PROPER AUTHORITY SHOULD LEAVE IMMEDIATELY!” But Trump refused to issue it.<sup>141</sup> Hutchinson said Ivanka “wanted her dad to send [the rioters] home.” (She had gone into the Oval Office three times to talk to him, the first at the urging of LG Kellogg, Pence's national security adviser.) Don Jr. had tweeted at 2:17 p.m.: “[T]his is wrong and not who we are. Be peaceful and use your 1st amendment rights, but don't start acting like the other side. We have a country to save and this doesn't help anyone.” He texted Meadows at 2:53 p.m.: “We need an Oval address. [Trump] has to lead now. It has gone too far and gotten out of hand. He's got to condemn this shit ASAP. The captiol [sic] police tweet is not enough.” Meadows responded: “I'm pushing it hard. I agree.” Don Jr. wrote back: “[T]his is one you go to the mattresses on. They will try to fuck his entire legacy if this—on this if it gets worse.”

Meadows was besieged with pleas from Trump supporters for the president to do more. Many were Fox News reporters. Laura Ingraham:

Hey, Mark, the president needs to tell people in the Capitol to go home. . . . [T]his is hurting all of us. . . . [H]e's destroying his legacy and playing into

every stereotype. We lose all credibility against the BLM/Antifa crowd if things go south.

Brian Kilmeade: “Please get him on tv. Destroying everything you have accomplished.” Sean Hannity texted Meadows at 3:31 p.m.: “Can [Trump] make a statement? I saw the tweet. Ask people to leave the [Capitol].” Meadows said he was “on it.” Later, Hannity texted Meadows with a link to a tweet reporting that cabinet members were considering invoking the 25th Amendment. Punchbowl News founder Jake Sherman texted Meadows: “Do something for us. . . . We are under siege in the [C]apitol . . . . There’s an armed standoff at the [H]ouse chamber door. . . . We’re all helpless.”

Former Trump officials also contacted Meadows. Mick Mulvany (a former chief of staff): “Mark: he needs to stop this now.” Reince Priebus (another former chief of staff): “TELL THEM TO GO HOME!!!” Alyssa Farah Griffin (former special assistant): “Potus has to come out firmly and tell protestors to dissipate. Someone is going to get killed.” And the besieged legislators themselves begged for intervention. Rep. Timmons: “The president needs to stop this ASAP.” Rep. Duncan: “POTUS needs to calm this shit down.” Rep. Greene: “Mark, I was just told there is an active shooter on the first floor of the Capitol. Please tell the President to calm people This isn’t the way to solve anything.” Rep. Roy: “Fix this now.” Rep. Gallagher:

Mr. President, you have got to stop this. You are the only person who can call this off. Call it off. The election is over. . . . This is bigger than you. It’s bigger than any member of Congress. It is about the United States of America which is more important than any politician.

Sen. Cassidy tweeted: “@realDonaldTrump please appear on TV, condemn the violence and tell people to disband.” Rep. Herrera Beutler: “We need to hear from the president. On TV. I hate that Biden jumped him on it.” House minority leader McCarthy told CBS News anchor Norah O’Donnell:

I completely condemn the violence in the Capitol. What we’re currently watching unfold is un-American. . . . I’m disappointed. I’m sad. This is not what our country should look like. This is not who we are. This is not the First Amendment. This has to stop and this has to stop now.

“I conveyed to the president what I think is best to do, and I’m hopeful the president will do it.” Rep. Perry wrote: “Hey, Mark, protestors are literally storming the Capitol. Breaking windows on doors. Rushing in. Is Trump going to say something?”

At 3:13 p.m., Trump 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!”<sup>142</sup> At 3:30 p.m., McCarthy told CBS News he had phoned Trump and said the president “needed to talk to the nation. I told him what was happening right then.” Rep. Herrera Beutler later reported that McCarthy had told Trump: “[Y]ou have to get on TV, you’ve got to get on Twitter, you’ve got to call these people off.” The president replied: “Well, Kevin, these aren’t my people. You know these are Antifa.” McCarthy retorted: “No, they’re your people. They literally just came through my office windows and my staff are running for cover . . . for their lives. You need to call them off.” Trump was unmoved: “Well, Kevin, I guess they’re just more upset about the election, you know, theft than you are.” Herrera Beutler recalled: “That’s when the swearing commenced, because the president was basically saying, ‘nah, I’m okay with this.’” An enraged McCarthy shouted: “[W]ho the fuck do you think you’re talking to?” McCarthy phoned Jared Kushner and told him “it was getting really ugly over at the Capitol and said, ‘please, you know, anything you could do to help.’” Herrera Beutler “got the sense that . . . they were scared.” When Trump refused to take Chris Christie’s call, the former governor said on television: “[T]he president caused this protest to occur. He’s the only one who can make it stop. The president has to come out and tell his supporters to leave the Capitol grounds and to allow the Congress to do their business peacefully.”

At 3:29 p.m., Rep. Elissa Slotkin (a former CIA analyst and Pentagon official under Obama) reached JCS Chair Milley, who assured her the National Guard was on the way.<sup>143</sup> He had consulted Pence, but not Trump, explaining to Slotkin: “I think [Trump] wanted this. I think that he likes this. I think that he wants that chaos. He wants his supporters to be fighting to the bitter end.” But Milley acknowledged: “I don’t know.” Soon after 4:00 p.m., Pence phoned acting defense secretary Miller, who offered a similar assurance. Milley said “there were two or three calls with Vice President Pence. He was very animated and he issued very explicit, very direct, unambiguous orders . . . to Secretary Miller, ‘get the military down here, get the guard down here, put down this situation.’” When nothing happened, Meadows added his own pressure, and Kellogg called Miller’s chief of staff, Kash Patel. Meadows cautioned Milley: “[W]e have to kill the narrative that the Vice President is making all the decisions. We need to establish the narrative that . . . the President is still in charge and that things are steady or stable.” Milley “immediately interpreted that as politics, politics, politics. Red flag for me personally. . . . I don’t do political narratives.” At 4:45 p.m., Sen. McConnell also called Miller:

We’re not going to let these people keep us from finishing our business. So we need you to get the building cleared . . . so we can go back in session and finish up the people’s business as soon as possible.

Miller replied “Amen, sir.” In response to a call from Sen. Schumer, Miller said the “best case” scenario would be clearing the building in 4–5 hours. Despite Trump’s later claims to the contrary, Kellogg said the president never called for the National Guard or any law enforcement response.<sup>144</sup> Miller and Nicholas Luna confirmed that. Trump declined a Pentagon phone call about coordinating a response to the riot.

Although staffers had prepared a script, the president ad-libbed the video he posted on Twitter at 4:17 p.m.:

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. . . . There’s never been a time like this when such a thing happened when 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.

Deputy press secretary Judd Deere said the tweet “was the absolute bare minimum of what could have been said.” He wanted “a more forceful dismissal of the violence, a more forceful command to go home, a more forceful respect for law enforcement . . . an acknowledgement” of “the US Capitol building itself. What it’s a symbol of.” McEnany said: “I would have loved if the go home message would have happened earlier in the day.”

At 6:00 p.m., Trump posted his final tweet of the day:

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!<sup>145</sup>

It further inflamed some rioters in the Capitol: “There is no safe place in the United States for any of these motherfuckers right now.” “[Trump] didn’t say not to do anything to the Congressmen. He didn’t ask them to stand down.” “[Trump] is not leaving office. I don’t give a shit what they say.” “Do your shit. This is what we fucking lived up for, everything we fucking trained for. Took over the Capitol.”

McEnany told Matthews that “the president did not want to include any sort of mention of peace in that tweet, and that it took some convincing on the part of those who were in the room.” “It wasn’t until Ivanka Trump

suggested the phrase ‘stay peaceful’ that he finally agreed to include it.” “A [press office] colleague suggested that the president shouldn’t condemn the violence because they thought it would be ‘handing a win’ to the media if he were to condemn his supporters.” Matthews recalled that she had “motioned up at the TV and . . . said, ‘do you think it looks like we’re effing winning? Because I don’t think it does.’” By then she

had already made the decision to resign. And this tweet just further cemented my decision. I thought that January 6th, 2021 was one of the darkest days in our nation’s history and President Trump was treating it as a celebratory occasion with that tweet.

His “refusal to act and call off the mob that day and his refusal to condemn the violence was indefensible.” “I thought that the tweet about the Vice President was the last thing that was needed in that moment. . . . [I]t was essentially him giving the green light to these people.” “He should have been telling these people to go home and to leave and to condemn the violence.” “I’ve seen the impact that his words have on his supporters. . . . [T]hey truly latch on to every word and every tweet that he says.” “It was him pouring gasoline on the fire and making it much worse.” That evening, she wrote in her letter of resignation: “[O]ur nation needs a peaceful transfer of power.” Tim Murtaugh (Trump campaign communications manager) also repudiated the president’s language: “I have no idea how to characterize the people other than they trespassed, destroyed property, and assaulted the US Capitol. I think calling them patriots is . . . a stretch to say the least.” Pat Cipollone said, “What happened at the Capitol cannot be justified in any form or fashion. . . . It was a terrible day for this country.” As soon as he heard about the riot, “I was pretty clear. There needed to be an immediate and forceful. . . public statement that people need to leave the Capitol now.” Inside the White House that day, “many people felt the same way,” including Ivanka, Herschmann, Philbin, and Meadows. “I can’t think of anybody . . . on that day who didn’t want people to get out of the Capitol once the . . . violence started.” Greg Jacob said “it was a day that should be remembered in infamy” (paraphrasing FDR on Pearl Harbor).

About 7:00 p.m., Giuliani left a message (intended for Tuberville) on Lee’s phone, reiterating Trump’s phone call six hours earlier: “I want to discuss with you how they’re trying to rush this hearing and how we need you, our Republican friends, to try to just slow it down so we can get these legislatures to get more information to you.”

The only strategy we can follow is to object to numerous states and raise issues so that we get ourselves into tomorrow—ideally until the end of

tomorrow. . . . It would give us the opportunity to get the legislators who are very, very close to pulling their vote.

McConnell was “doing everything he can to rush it, which is kind of a kick in the head.” Giuliani also called Rep. Jordan and Sens. Blackburn, Haggerty, Graham, Hawley, and Cruz. McEnany gave Trump a list of senators he could call to sway their votes on certification.<sup>146</sup>

After Pence was rushed out of the Senate, Jacob wrote Eastman about their January 5 meeting: “Thanks to your bullshit, we are now under siege.”<sup>147</sup> Later he wrote: “It was gravely, gravely irresponsible for you to entice the president with an academic theory that had no legal viability.” Eastman was unrepentant: “The ‘siege’ is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so that the American people can see for themselves what happened.” Trump was right to use “every legal means” to challenge the result and expose fraud. “Are you supposed to not do anything about that?” He repeated what he had said in his memo. Jacob asked: “[D]id you advise the President that in your professional judgment, the Vice President does not have the power to decide things unilaterally?” Eastman said he had but added: “[Y]ou know him. Once he gets something in his head, it’s hard to get him to change course.” After Congress reconvened, Eastman emailed Jacob at 11:44 p.m. that Pence had violated the Electoral Count Act because debate on Arizona had not been completed in two hours (omitting the fact that this was caused by the riot) and the majority and minority leaders’ speeches had not been counted against debate time:

[S]o now that the precedent has been set that the Electoral Count Act is not quite so sacrosanct as was previously claimed, I implore you to consider one more relatively minor violation and adjourn for ten days to allow the legislatures to finish their investigations.

When Jacob showed that to Pence two days later, the vice president said, “[T]hat’s rubber room stuff,” that is, crazy. (The two “violations” were hardly equivalent.)

When Herschmann earlier warned Eastman, “You’re going to cause riots in the streets,” the latter had been dismissive: “There’s been violence in the history of our country to protect the democracy or protect the Republic.” On January 7, Eastman wrote Herschmann, shamelessly proposing a new way to contest the Georgia result. Herschmann replied: “Are you out of your effin’ mind?” “I said I only want to hear two words coming out of your month from now on: orderly transition.” After several repetitions, Eastman “eventually said” those words. Herschmann continued: “Now I’m going to give you the best free legal advice you’re ever getting in your life. Get a great effing criminal

defense lawyer. You're going to need it." (Eastman subsequently was charged with 11 disciplinary counts by the California State Bar and investigated by special counsel Jack Smith.) and charged with nine counts in Georgia.<sup>148</sup>

Jacob drafted but did not publish an op-ed accusing Eastman of "a shocking lack of awareness of how those practical implications were playing out in real time." Eastman and Giuliani were part of a "cadre of outside lawyers" who had "spun a web of lies and disinformation" to get Pence to betray his oath of office.

Now that the moment of immediate crisis has passed, the legal profession should dispassionately examine whether the attorneys involved should be disciplined for using their credentials to sell a stream of snake oil to the most powerful office in the world, wrapped in the guise of a lawyer's advice.

Eastman had conceded in the January 5 meeting that "not a single member of the Supreme Court would support his position," "230 years of historical practice were firmly against it," and "no reasonable person would create a rule that invested a single individual with unilateral authority to determine the validity of disputed electoral votes for President of the United States." "If the courts stayed out of a standoff between the Vice President and Congress over the fate of the presidency, then where would the issue be decided? In the streets?" "What lawyers did not tell the crowd—and to the best of my knowledge, never told the president—is that they were pushing an abstract legal theory that had overwhelming drawbacks and limitations." In October 2021, Eastman denied telling Pence to reject the electors: "That is false" and was "distorting the conversation, which depends heavily on what scenario was being discussed."

I did not push for electors to be thrown out, but for the disputes to be referred to state legislatures, as had been requested by key legislators in several states, for assessment of the impact of the acknowledged illegality in the conduct of the election.

Despite pressure from the Secret Service, Pence never left the Capitol complex.<sup>149</sup> Jacob said Pence

did not want to take any chance the world would see the Vice President of the United States fleeing the United States Capitol. He was determined that we would complete the work that we had set out to do that day, that it was his constitutional duty to see it through.

Reconvening the Senate, Pence said:

[T]he world will witness the resilience and strength of our democracy, for . . . the elected representatives of the people of the United States have

assembled again on the very same day to support and defend the Constitution of the United States.

Sen. Romney said: “[W]hat happened here today was an insurrection, incited by the president of the United States.” On behalf of 60 others, Rep. Gosar objected to certifying the Arizona result because votes “were not, under all of the known circumstances, regularly given.” Sen. Cruz joined him. Rep. Scalise said “the constitutional process was not followed” in some states and criticized the Supreme Court’s “punt” of the case brought by “over a hundred of my colleagues.” After the two chambers divided to debate, Senate majority leader McConnell said:

I’ve served 36 years in the Senate—this will be the most important vote I’ve ever cast. . . . Nothing before us proves illegality anywhere near the massive scale—the massive scale—that would have tipped the entire election. Nor can public doubt alone justify a radical break when the doubt itself was incited without any evidence. Voters, the courts, and the states have all spoken—they’ve all spoken. If we overrule them, it would damage our republic forever. . . . Our democracy would enter a death spiral.

(He told others he was furious with Trump and would never talk to him again.) Speaking next, minority leader Schumer said:

The Congress does not determine the outcome of elections, the people do. By the end of the proceedings today, it will be confirmed once again . . . the American people elected Joe Biden and Kamala Harris to be the next president and vice president of the United States. [Republicans] are going to object to the counting of the vote anyway, and in the process, they will embarrass themselves, they will embarrass their party, and worst of all, it will embarrass our country. . . . [T]hese were rioters and insurrectionists, goons and thugs, domestic terrorists. They should be provided no leniency. This mob was in good part President Trump’s doing, indicted [sic—he must have said “incited”] by his words, his lies. This violence is in good part his responsibility, his everlasting shame.

Sen. Cruz countered that Congress had a “responsibility” to acknowledge that many did not believe the election was legitimate. “This is a profound threat to this country and to the legitimacy of any administrations that will come in the future.” But Sen. Booker blamed the violence on a “cultish personality.” Brandishing the Constitution, Sen. Lee (a lawyer) said: “We each have to remember that we have sworn an oath to uphold, protect, and defend this document,” whose words “confine, define and constrain every scrap of authority that we have in this process.”

I have spent an enormous amount of time reaching out to state government officials in those states, but in none of the contested states . . . did

I discover any indication that there was any chance that any state legislature, or secretary of state, or governor or lieutenant governor, that had any intention to alter the slate of electors. Our job is to convene, to open the ballots, and to count them. That's it.

Sen. Graham said Trump had been “a consequential president, but today first thing that you'll see in his obituary” would be January 6.

All I can say is, “Count me out.” Enough is enough. They said there's 66,000 people in Georgia under 18 voted. . . . I asked, “Give me ten,” and they had one. They said 8,000 felons in prison in Arizona voted. “Give me 10.” I hadn't gotten one.

Sen. Sasse said the Capitol “was ransacked while the leader of the free world covered behind his keyboard—tweeting against his vice president for fulfilling the duties of his oath to the Constitution.” But he characteristically equivocated: objecting to certification “is not going to do any good, is going to delay, and gives credibility to a dark chapter of our history. That's why I'm not with you. But I will fight to my death for your ability to object.”<sup>150</sup>

When the House resumed, Rep. Rodgers (R-Wa) switched her vote to certification.<sup>151</sup> Rep. Gallagher (R-Pa) said: “Call it off, Mr. President.” Tell supporters “it's over. Please go home.” Minority leader McCarthy urged Trump to “calm” his supporters and bring the “un-American” protest to an end. Rep. Lamb (D-Pa) said Republican objectors should not “strip this Congress of its dignity” after the rioters.

We know that the attack today it didn't materialize out of nowhere, it was inspired by lies—the same lies that you're hearing in this room tonight. The members who are repeating those lies should be ashamed of themselves, their constituents should be ashamed of them.

As he talked, Reps. Harris (R-Md) and Allred (D-Tx) yelled at each other to “sit down,” leading to a confrontation in the aisle until others intervened. Rep. Griffith (R-Va) tried to have Lamb's words stricken. Rep. Williams (R-Tx) (an objector) declared: “I'm not ashamed and neither are my colleagues. We're actually proud of what we're doing over here.” Rep. McCarthy said: “[T]he violence, destruction and chaos we saw earlier was unacceptable, undemocratic and un-American. It was the saddest day I've ever had serving as a member of this institution.” Rep. Neguse (D-Co) read a statement from George W. Bush condemning “reckless behavior” since the election. Although some House Republicans voted to challenge the Georgia runoff, no senator joined them. The same happened in Michigan and Nevada.

The Senate voted 92–7 to certify (Cruz, Hawley, Hyde-Smith, Lummis, Marshall, Scott, and Tuberville disagreed; Blackburn, Daines, and Loeffler withdrew their objections after the riot; Lankford and Braun had done so earlier); the House concurred 282–138. At 3:32 a.m., Pence declared Biden the winner, saying, “[T]o those who wreaked havoc in our Capitol today, you did not win. Violence never wins. Freedom wins. This is still the people’s house.”<sup>152</sup> Just after midnight, Trump had tweeted:

Even though I totally disagree with the outcome of the election, and the facts bear me out, nevertheless there will be an orderly transition on January 20th. I have always said we would continue our fight to insure [sic—“ensure”] that only legal votes were counted.

Later that morning, Philbin, Cipollone, and Hershmann drafted a speech for the president. But Hutchinson said: “Trump didn’t necessarily think he needed to do anything more on the 7th than what he had already done on the 6th.” Meadows, Ivanka, Jared, Hershmann, Cipollone, and Philbin persuaded him to speak by warning that “otherwise this will be your legacy” and “there’s already talk about invoking the 25th amendment. You need this as cover.” Hannity had texted McEnany that day: “No more stolen election talk. Yes, impeach [sic] and 25th Amendment are real. Many people will quit.” After resisting for hours, Trump capitulated but cut

several lines . . . about prosecuting the rioters or calling them violent. He wanted to put in there that he wanted to potentially pardon them. . . . [H]e didn’t think that they did anything wrong. . . . [T]he person who did something wrong that day was Mike Pence by not standing with him.

Drafts of the video revealed his continuing reservations:

I would like to begin by addressing the heinous attack yesterday. And to those who broke the law, you will pay. You do not represent our movement. You do not represent our country. And if you broke the law—I can’t say that, I’m not gonna—I already said you will pay. The demonstrators who infiltrated the Capitol have defied the seat of—it’s defiled, right? . . . [T]his election is now over. Congress has certified the results. I don’t want to say the election’s over. I just want to say Congress has certified the results without saying the election’s over.

Ivanka interjected: “[B]ut Congress has [said this].” Trump balked: “I didn’t say over. . . . I would like to begin by addressing the heinous attack yesterday. Yesterday is a hard word for me. [He took it out.] . . . My only goal was to ensure the integrity of the vote.”

He eventually posted a 2.5 minute video.<sup>153</sup>

America is and must always be a nation of law and order. The demonstrators who infiltrated the Capitol have defiled the seat of American democracy. To those who engaged in the acts of violence and destruction: you do not represent our country. And to those who broke the law: you will pay.

He falsely claimed he had immediately deployed the National Guard.

Now, Congress has certified the results, and a new administration will be inaugurated on January 20th. My focus now turns to ensuring a smooth, orderly and seamless transition of power. This moment calls for healing and reconciliation. . . . It will require a renewed emphasis on the civil [sic] values of patriotism, faith, charity, community and family. We must revitalize the sacred bonds of love and loyalty that bind us together as one national family. . . . And all of my wonderful supporters, I know that you are disappointed, but I also want you to know that our incredible journey is only just beginning.

## Notes

### Abbreviations

AP	Associated Press
CNN	Cable News Network
G	<i>The Guardian</i>
NPR	National Public Radio
NYT	<i>The New York Times</i>
WP	<i>The Washington Post</i>
WSJ	<i>The Wall Street Journal</i>

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# 5

## SAVING DEMOCRACY

In all his election campaigns, Trump pursued the same transactional approach he had used as a real estate and entertainment entrepreneur, just as he did with respect to immigration (issuing executive orders that flouted the law; see Abel, 2024a), the criminal justice system (politicizing prosecutions, pardoning cronies and supporters; see Abel, 2024a), and the pandemic (distorting or disregarding science; see Abel, 2024b). As an avid golfer, he embraced the sports maxim that “winning is the only thing” (variously attributed to “Red” Sanders and Vince Lombardi). His instructor at New York Military Academy said Trump “always had to be number one in everything. He was a conniver even then. . . . He would do anything to win.” Tony Schwartz, who “co-authored” (i.e., wrote) *The Art of the Deal* with Trump, said he “treated every encounter as a contest he had to win . . . whatever the collateral damage. . . . You either dominate or you submitted.”<sup>1</sup> In the 2012 election and 2016 primaries, Trump foreshadowed his readiness to delegitimize elections in order to win them (reprising the observation about Ben Tre during the Vietnam War: “It became necessary to destroy the town to save it”).<sup>2</sup> Because the polls in 2016 and 2020 consistently showed him trailing his Democratic rivals, Trump raised doubts about the integrity of elections anticipatorily, seeking both to draw the sting of a loss and to lay the foundation for overturning it. (Roger Stone, Trump’s dirty tricks impresario, launched the “Stop the Steal” campaign months before the 2016 election.) Trump ignored the fact that such ploys risked delegitimizing his own wins and those of other Republicans, perhaps confident that “a week is a long time in politics” (a saying attributed to Harold Wilson).<sup>3</sup> Two weeks before the 2020 election, he whined to an interviewer: “Could you imagine if I lose? My whole life—what am I going to do? I’m going to say I lost to the worst candidate in the history of politics.”<sup>4</sup>

Although the evidence of Trump's explicit collusion with Russia is inconclusive (because hidden), two things are incontestable. First, Russia strongly preferred Trump in 2016, hacked the DNC computers, delivered their contents to Wikileaks in order to damage Hillary Clinton, tried to hack her emails, and supported Trump again in 2020 through extensive covert propaganda, including social media and in-person events. Given the GOP's traditionally hawkish stance toward Russia, this cozy relationship troubled many establishment Republicans. Even Mnuchin, Trump's loyal treasury secretary, warned him against Derkach, whom Treasury sanctioned as a Russian asset. Trump sought to distract attention from Wikileaks's release of the stolen DNC emails by harping on Hillary Clinton's "lost" emails and the (fictitious) "missing" DNC server. Second, Trump openly welcomed Russia's illegal actions, refused to confront it after intelligence reported that it paid Taliban to kill US military, and repeatedly lavished praise on Putin, whom Trump envied as the world's wealthiest man and autocrat for life, sought to emulate (and perhaps enlist in constructing Europe's tallest building, in Red Square), and chose to believe over his own DNI. (Having said "I don't see any reason why" Russia would interfere in the election, Trump then did an about-face and claimed that Russia would forge ballots for Biden—a nonsensical accusation demonstrating Trump's total contempt for truth.) This exchange of favors without any visible agreement was Trump's preferred *modus operandi*, also exemplified by the way he secured the silence of accomplices like Stone, Flynn, and Manafort in exchange for pardons (see Abel, 2024a).

Because US intelligence agencies repeatedly documented this Russian interference, Trump had to disparage them as the "deep state," just as he did judges who issued adverse rulings, as well as the FBI, DoJ, CDC, and FDA (see Abel, 2024a, 2024b). He believed he could order every government official to do his bidding, fired those who refused to comply (like DNIs Coats and Maguire), and appointed yes-men, like DNI Ratcliffe (who had no intelligence background) and national security adviser O'Brien—just as he had done in business and on television (notably *The Apprentice*). He dismissed all unfavorable media coverage as "fake news" while propagating his own lies: a doctored audio tape purporting to show Biden talking to Ukraine's Poroshenko, a video of migrants in Morocco misrepresented as a surge across the Mexican border. He said at his first news conference in February 2017: "[I]t's all fake news."<sup>5</sup> (*The Washington Post* adopted the motto "Democracy Dies in Darkness" shortly thereafter.) A day later, he escalated his attack: "The FAKE NEWS media (failing @nytimes @CNN, @NBCNews and many more), is not my enemy, it is the enemy of the American people. SICK!" (*The New York Times* circulation, print and digital, increased from 1.6 to 2.3 million during Obama's second term and then tripled to 6.9 million in 2020, reaching 10 million in 2023.) Asked why he attacked the media, Trump made a rare candid confession: "I do it to discredit you all and demean you all

so when you write negative stories about me, no one will believe you.” At the same time, he cultivated a symbiotic relationship with Fox News (which had long ago retired its motto: “fair and balanced”), giving it 49 interviews compared with just 13 for all the other networks combined and tweeting something from Fox 657 times. Just as Trump intended, his constant attacks left audiences confused and increasingly skeptical about all media. Having learned from his favorite lawyer, Roy Cohn, that the best defense is an offense, Trump turned every accusation against his accusers: it was Hillary Clinton, not he, who collaborated with Russia; it was Democrats, not Republicans, who were undermining the legitimacy of the elections (Sens. Cruz and McConnell took the same line); it was Ukraine that interfered in the 2020 election on behalf of Biden, not Russia on behalf of Trump (who hoped—in vain—that an unsubstantiated story about Joe’s son Hunter would replicate the damage Comey had done to Hillary in 2016 through his two bungled disclosures about her emails). Sen. Johnson tried to do the same thing by using the Committee on Homeland Security and Governmental Affairs to investigate the Bidens just before the election. Sen. McConnell echoed Trump, accusing Democrats of “sowing doubts about our democracy” by disseminating Intelligence Community statements about Russian interference in elections when it was Republicans, especially Trump, who were sowing such doubts.

Trump’s political advisers warned that, though he might be ahead when early, in-person votes were reported, he would fall behind as mail ballots were counted—a red wave followed by a blue wave—because many states did not begin tabulating the latter until the polls closed and included ballots postmarked through Election Day. Reframing that accurate prediction as an invitation to commit fraud, Trump waged a relentless war against mail voting, which surged as states facilitated it in response to the COVID-19 pandemic. This provoked resistance from fellow Republicans because the elderly, who favor the GOP,<sup>6</sup> tend to vote by mail (just as business—which traditionally supported the GOP—opposed Trump’s attacks on immigrants, whose labor it needed; see Abel, 2024a). Kushner remembered “people arguing that . . . mail ballots could be a good thing for us,” and Bill Stepien said McCarthy was “of like mind.” But Trump insisted that the results be final on Election Night, although there was no legal requirement to do this, and it often was impossible (as in Bush’s 2000 “victory” over Gore).

Trump not only fabricated stories of mail vote fraud by others (to delegitimize unfavorable results); he even urged his own supporters to vote twice—in-person and by mail—a criminal act in every state. His loyal henchman, treasury secretary Mnuchin, engineered the appointment of DeJoy (a major GOP donor with no USPS experience) as postmaster general, who turned the proudly apolitical Postal Service into a campaign tool and nearly frustrated the distribution and collection of mail ballots by starving the Service of essential resources. (Trump similarly sought to weaponize other government

entities—DHS and the Census, see Abel, 2024a: 2; DoJ, see Abel, 2024a; and DHHS, see Abel, 2024b—reprising Nixon’s use of the independent IRS against his “enemies.”<sup>7</sup> Yet these efforts to suppress the vote had the unintended effect of stimulating get-out-the-vote campaigns by celebrities, the business establishment, and even prominent Republicans (who feared suppression would hurt their own electoral chances), which may have helped dramatically boost the percentage of the eligible population who voted from 59.2 in 2016 to 66.9 in 2020 (an all-time high) and give Biden his 7 million popular vote margin. (Fear and loathing of Trump undoubtedly contributed to this upswell.) And just as some Census officials opposed a citizenship question (see Abel, 2024a), some federal prosecutors refused to participate in Trump’s misuse of the DoJ (see Abel, 2024a), some government scientists insisted on fidelity to the evidence in the face of Trump’s politicization of the pandemic response (see Abel, 2024b), and some state and local government officials defended pandemic precautions against Republican attacks (see Abel, 2024b), so postal workers were loyal to their historic creed that “the mail must go through,”<sup>8</sup> some intelligence officials (like John Nakasone) and analysts (like Brian Murphy) refused to propagate Trump’s lies about Russia, some state election workers faithfully complied with the law, and the military refused to interfere in politics.

Trump’s symbiotic relationship with right-wing news commentators and social media ensured continuous widespread circulation of false electoral fraud allegations (e.g., the “discarded” ballots); even when corrections were made, few saw them, and these doubts created fertile ground for Trump’s efforts to overturn the election after November 3. He was the most prolific of the 21 right-wing propagandists disseminating misinformation.<sup>9</sup> His loyal acolyte, Barr, sought to involve the DoJ in investigating and disseminating false rumors of election fraud and backed up Trump’s lies (without offering any evidence). Trump’s DNI, Ratcliffe, similarly sought to transform the Intelligence Community into a campaign tool.

Trump and his apparatchiki flouted the toothless Hatch Act, blatantly misusing public property and government resources to promote his campaign, just as Trump blithely violated the Constitution’s emoluments clause, exploiting the presidency throughout his term to reap profits from his hotels and golf courses. The Department of State predictably refused to police Pompeo, its boss. The Office of Special Counsel was powerless. Known for his litigiousness as a businessman,<sup>10</sup> Trump, and his supporters, launched an unprecedented number of legal challenges against voting procedures, especially mail ballots. As early as July–August 2020, he threatened to “see you in court.” But he lost most of those cases: 80 of the 123 judges’ decisions in pre-election cases favored voters. He brazenly packed the Supreme Court by rushing through Barrett’s confirmation, thereby supplementing his appointment of two other Federalist Society faithful—Gorsuch and Kavanaugh—in

anticipation of snatching a judicial victory from the jaws of electoral defeat (as George Bush had done to Al Gore in 2000). Trump understood all too well that “th’ Supreme Court follows th’ illiction returns” (as Finley Peter Dunne had Mr. Dooley observe in 1901)<sup>11</sup>—as do other federal judges. There was an extraordinarily strong correlation between the party of the appointing president and the judge’s decision for or against voters in these cases; but even so, 43 percent of Republican appointees and nearly half of Trump appointees sided with voters, perhaps because Republican electoral stratagems were so patently illegal.

Trump urged Republicans to flood electoral venues with poll watchers, both to intimidate Democratic voters and to lay the groundwork for subsequent challenges if those partisan observers were excluded or constrained. He targeted big cities, whose minority voters were known to favor Democrats, and blamed his defeat on immigrants, both legal and undocumented, further inflaming racial prejudice (see also Abel, 2024a). Trump threatened many other clearly unlawful tactics: prematurely publicizing federal investigations of alleged fraud (which Barr complicitly authorized a month before the election and some Trump-appointed US Attorneys were eager to conduct); directing federal and state law enforcement officials to “observe” the polls; postponing the election; refusing to accept the result (by invoking the Electoral Count Act of 1887 and counting on Pence to hand the decision to Republican-dominated state legislatures) while saying confidently, “[T]here won’t be a transfer, frankly. There’ll be a continuation”; and even hinting at an unconstitutional third term because of “the way we were treated.” It is unclear why he floated such bizarre ideas: he never followed through on most of them; they provoked predictable resistance from the DoJ and DHS and widespread outrage, even among the Republican and conservative establishments; and the military consistently disavowed such actions. (Like accusing a Gold Star family (see Abel, 2024a), pardoning his own crimes (see Abel, 2024a), and pressuring the FDA to approve the COVID vaccine before the election (see Abel, 2024b), these turned out to be red lines, which even Trump could not cross with impunity.) Such rhetorical trial balloons exemplified his favorite trope—“we’ll see what happens”—which deployed a characteristic *mélange* of ambiguity, imprecision, vagueness, uncertainty, incoherence, and contradiction to leave listeners free to draw their own conclusions (without holding him accountable) while making it harder to expose his lies (for instance, Trump’s speculation that the person who stole the DNC emails “could be somebody sitting on their bed that weighs 400 pounds”). Rhetorical questions were another such device, placing responsibility on his audience to give answers. Yet even before the election, leading Republicans (including Sens. McConnell, Thune, Romney, Collins, Sullivan, and Graham) pushed back against Trump’s fraud claims, demonstrating a rare loyalty to process over partisanship. And before there was an outcome for Trump to

challenge, the Senate unanimously passed a resolution calling for an orderly and peaceful transfer of power.

Trump's obsessive focus on electoral fraud—which every reputable study of the United States has found to be negligible and never large enough to affect the outcome,<sup>12</sup> and for which he offered no evidence—had an even more serious consequence. It successfully distracted attention from a fundamental problem of American democracy: failure to vote. The US Census Bureau has estimated that more than a third of those eligible to vote are not registered.<sup>13</sup> Just 56 percent of the US voting-age population participated in the most recent national election, compared to 91 percent in Luxembourg and Australia, 87 percent in Belgium, 83 percent in Sweden, 76 percent in Israel, 69 percent in Germany, 68 percent in France, 63 percent in the UK, 62 percent in Canada, and 61 percent in Spain.<sup>14</sup> It is one of the many ironies that a president who claimed to be a “populist” was elected in 2016 by little more than a quarter of potential voters.

From the moment on Election Night when it became clear Trump had lost (a conclusion his own advisers kept repeating to him), he began a relentless two-month campaign to overturn that outcome. (Barr told him there had been no significant fraud. Researchers commissioned by the Trump campaign briefed him and Meadows in December that they had found no fraud.)<sup>15</sup> He sought to cloak his efforts in the garb of election integrity, even while undermining that integrity. He accused Democrats of “disenfranchising” Republicans, whose mantra became: count every “legal vote,” exclude every “illegal vote”—weasel words chosen to allow creative interpretation. Republicans invoked process values, constantly demanding more vote counts and appealing to the courts no matter how often they lost. He had been warned in advance that, though he might enjoy an early lead of in-person votes, this would be reversed as mail ballots were counted (a red wave followed by a blue wave). He conflated mail ballots legally counted after Election Day (because they had been postmarked by the state's deadline) with ballots illegally cast after Election Day (there weren't any). (This strategy provoked some resistance from down-ticket Republicans, whose wins were threatened.) Trump and his supporters justified their challenges with numerous wild claims utterly devoid of evidentiary support: voting by the dead, non-residents, the underaged, and felons; multiple votes by the same person; “suitcases” of ballots; multiple scanning of ballots; and especially, votes by the undocumented (an allegation that built on and further inflamed xenophobia and racial hatred; see Abel, 2024a). Trump focused his fraud accusations on big cities like Philadelphia, Milwaukee, and Detroit—which just happened to have large numbers of minority voters who favored Democrats. Republicans flooded voting precincts with poll watchers and then sought to invalidate votes cast there whenever those observers were excluded or had difficulty seeing.

Trump subsumed these scattershot allegations under one of his typically vague, all-embracing claims that “bad things happened,” encouraging supporters to conclude that the entire election was fraudulent. Like all conspiracy theories, this one was impervious to disproof: each falsification simply was treated as evidence of a cover-up and another opportunity to elaborate new theories of election fraud—like the Ptolemaic epicycles that kept the Earth (in this case Trump) at the center of the universe. Republicans promptly rounded up the usual suspects: foreign countries (“Italygate,” Venezuela, China, Iran, Ukraine—but never Russia), wealthy Democrats like Soros (conveniently a Jewish immigrant) and Zuckerberg (also Jewish), “foreign” companies like Dominion and Smartmatic (which made computers and software people did not understand and feared), and statistics (which people believe could be manipulated, having internalized Disraeli’s attack on “lies, damn lies, and statistics”). Trump’s rhetoric appealed to deductive reasoning—because he had to win, people should just find the evidence to prove it (like the 11,780 votes in Georgia)—rather than the inductive methodology of science and the law, which starts from the evidence and follows where it leads (as doctors insisted on doing in response to the pandemic; see Abel, 2024b).

Trump and his supporters concentrated their efforts on a few states for a good reason. Biden’s Electoral College victory turned on his winning four states by relatively small margins: Wisconsin (20,546 votes), Arizona (10,900), Georgia (14,152), and Nevada (35,453)—a total of 80,051, just 0.05 percent of the nation’s popular vote.<sup>16</sup> Trump turned the screws on officials in those states. He had Sen. Graham and Rudy Giuliani telephone Georgia secretary of state Raffensperger. (Both accomplices maintained it was a “good conversation”—just what Trump had said about his phone call pressuring Zelensky to investigate the Bidens; see Abel, 2024a). Giuliani sought to paint Raffensperger as a tool of Stacey Abrams (thereby appealing to both sexism and racism). Trump misrepresented (and predictably misunderstood) the consent decree under which Georgia elections operated. He sent Meadows to pressure Raffensperger’s chief investigator, Frances Watson, and observe ballot signature checks (but predictably failed to do the latter because such checks threaten essential voter anonymity). Trump followed up these interventions with his own phone call to Watson. He urged Georgia governor Kemp to use imaginary “emergency” powers to overrule Raffensperger (as Trump was contemplating abusing his own powers to declare martial law and seize voting machines). And shortly before January 6, Trump made his notorious call to urge Raffensperger to “find” the necessary 11,780 votes to give him Georgia. Trump and his supporters also telephoned election officials in Pennsylvania, Michigan, and Arizona and invited state legislators to the White House (as he had invited the SDNY US attorney and held two tête-à-tête dinners with FBI director Comey; see Abel, 2024a). Fortunately,

however, he exercised less control over elections than he did over immigration, criminal justice, and public health (see Abel, 2024a, 2024b) because states traditionally conduct elections, and the conservative Supreme Court has further limited federal power over them.<sup>17</sup>

As the prospects for changing the vote count dimmed, Trump's advisers devised new strategies. Even before the election, he had been told that Republican electors could disregard the popular vote in casting their ballots and Republican-dominated state legislatures could appoint alternative slates of electors. Lawyers (including Kenneth Chesebro and John Eastman) elaborated this theory (which no reputable lawyer accepted) to suggest that Trump declare martial law, invoke the Insurrection Act, suspend the Electoral College vote and Georgia's January 5 Senatorial runoff, direct the military to seize voting machines and oversee a "revote," and postpone the inauguration. (Trump had earlier considered "suspending" and rescheduling both the Census and the election—neither of which he could do.) Eastman acknowledged that creating alternative slates would violate the Electoral Count Act but dismissed that as a "relatively minor violation of federal law" (an astonishing admission for a lawyer and law professor). He claimed to believe the Act was unconstitutional but then reluctantly conceded the Supreme Court would uphold it unanimously (including Justice Thomas, whose views Eastman claimed to know as a former clerk). Even lawyers with impeccable conservative credentials like John Yoo and Michael Luttig (for whom Eastman had also clerked) repudiated Eastman's theory. Yet Trump was sufficiently convinced by these arguments to invite the Republican leaders of the two Houses of the Michigan legislature to the White House; flattered, they accepted but remained unconvinced that Trump's proposal was legal. Nevertheless, Republicans persuaded supporters in seven states to constitute themselves alternative electors and cast their votes for Trump (possibly illegal acts, which remain under investigation). The hope, apparently, was that Congress would find those slates contested, devolving the election to the House of Representatives, with each state having one vote (giving Republican-dominated state legislatures a majority of 28–22, or at least 26–24), and that any further dispute would be decided by the Supreme Court, where conservatives had a comfortable 6–3 majority (including three Trump appointees). But after the Electoral College vote, at least ten Republican senators agreed it was final (McConnell, Braun, Blunt, Capito, Graham, Grassley, Thune, Cornyn, Sasse, and Toomey).

Trump's efforts had their predictable, and intended, effect on public opinion. The belief that the election would not be or had not been free and fair rose from 35 percent of Republicans before the election to 70 percent afterward, while it fell from 48 to 10 percent of Democrats.<sup>18</sup> Another poll found that Republican confidence in the election process declined from 55 percent beforehand to 22 percent afterward. Other post-election polls of Republicans

agreed: only 20 percent (November 29), 23 percent (December 10), and 18 percent (December 11) believed Biden had legitimately won.

After falsely accusing Democrats of threatening to go to court, Trump and his supporters carried out their own repeated threats to do so following the election—but these efforts were fruitless. Federal courts declined to hear many challenges because they raised only questions of state law (which federal courts cannot hear) or plaintiffs lacked standing (a fundamental prerequisite, which Trump, with his usual mix of arrogance and ignorance, cavalierly dismissed as an illegitimate pretext). The few state courts that decided for challengers did not change the outcomes of those races. Trump had placed his hopes in the Supreme Court, especially following the last-minute confirmation of his third appointee, who joined his two others and the three conservatives appointed by Republican predecessors. (He seemed oblivious to the fact that it is called the Supreme Court because it hears appeals.) Texas Attorney General Paxton invoked the Court's narrowly defined original jurisdiction on behalf of 17 other Republican state attorneys general; and 126 of the 196 House Republicans signed an amicus brief. But 8 Republican state attorneys general refused to join them. And 20 states filed a motion to dismiss, which the Supreme Court promptly did—unanimously. Trump fulminated about being denied his “day in court” (he actually got three days between filing and dismissal), disparaged the decision as based on a technicality (lack of standing), and falsely claimed that the concurrence by Thomas and Alito was a vote for him. Even after that ignominious defeat, he continued to entertain the possibility that a decision by Congress on January 6 not to certify the election would be the first step on the path back to “his” Court.

The failure of Trump's litigation strategy was partly attributable to the abysmal quality of his lawyers. After November 3, the large firms that had eagerly—and lavishly—profited from his litigiousness terminated their representation, leaving him with incompetents and conspiracy mongers, none of whom was expert in the highly technical area of election law. Giuliani had not appeared in federal court in decades; Ellis had virtually no legal experience; Wood was a laughingstock in Georgia, where he was being sued by his former partners; and Powell was eventually disavowed by Giuliani. These lawyers kept using the same “expert” witnesses in multiple jurisdictions, even after they were discredited (Phil Waldron testified in Arizona, Pennsylvania, and Georgia). Paxton was fighting a state felony indictment as well as discipline by the Texas State Bar for his conduct in the failed election challenge.<sup>19</sup> In February 2023, he apologized and agreed to pay \$3.3 million to four whistleblowers he fired after they accused him of crimes.<sup>20</sup> Like Eastman, some of these lawyers should have known better: Giuliani had been US Attorney in the pre-eminent SDNY; Powell had been the youngest AUSA; and Toensing, another former AUSA, had practiced for four decades. Kayleigh McEnany, Trump's press secretary, had been in the top 1 percent of her

first-year class at University of Miami Law School before transferring to and graduating from Harvard Law School. Laura Ingraham, the Fox News host who broadcast many of those lawyers' frivolous claims, had clerked for 2nd Circuit Judge Ralph Winter and Supreme Court Justice Thomas. Stephen Miller, a non-lawyer, continued to offer Trump "legal" advice about sending alternative slates of electors to Congress on January 6 (as he had disastrously advised Trump about immigration; see Abel, 2024a). Even Johnny McEntee, Trump's former "body man," felt qualified to give the president legal advice. Trump's desperation led him to grasp at straws, pushing any fraud accusation, embracing any legal theory, no matter how far-fetched.

Perhaps recognizing the flimsiness of their legal arguments, the lawyers appealed to the "court of public opinion," devoting most of their energy to grandstanding in outrageous out-of-court appearances. When he lost in court, Giuliani (like his client, Trump) attacked "friendly judges who will issue ridiculously irrational opinions." Although courts were reluctant (and perhaps unable) to address such extra-judicial behavior, these antics led to the suspension of Giuliani in New York and DC and Wood in Delaware, discipline of Ellis in Colorado, and sanctions and disciplinary proceedings against other lawyers (some still pending). Even Giuliani came to see Powell as a loose cannon (perhaps motivated by jealousy), although that did not discourage Trump from proposing to make her a special counsel to pursue his groundless election fraud claims. But Texas District Court Judge Andrew Bouressa (appointed by Gov. Abbott) dismissed the State Bar of Texas's Commission for Lawyer Discipline complaint against Powell, having considered only two of its exhibits because the others were improperly labeled.<sup>21</sup>

Given the preceding information, it is unsurprising that just one of the 44 federal judges who heard post-election challenges found for Trump (and that case did not alter the electoral outcome). Consequently, unlike the extraordinarily strong statistical correlations I found between the appointing president's party and federal judges' decisions in cases involving immigration, the pandemic, and pre-election voting cases (see Chapter 2 and Abel, 2024a, 2024b), there was no significant correlation in post-election cases. Even in state courts, only 27 of the 150 judges decided for Trump (none in Georgia, Arizona, Minnesota, or Nevada), although the correlation with the judge's political leaning remained highly significant.

Trump tried to have the DoJ influence the 2020 election, just as Comey had done in 2016 (through his equivocations about Hillary Clinton's emails), hoping the Department would dig up dirt about the actions of Hunter and Joe Biden in Ukraine and China. Trump earlier had demonstrated his demand for unconditional loyalty by firing Attorney General Sessions for recusing himself from the Mueller investigation (as Sessions clearly was required to do). During his 20 months in office, Attorney General Barr had displayed absolute fealty to the president. He twice changed Department policy to

permit election fraud investigations just before and after the election (the period when they had been barred out of concern about their political influence). But when Trump sought to have the Department act as his personal lawyer in challenging the election, Barr finally balked. He infuriated Trump by arranging a press interview on December 1 to announce that he had not found fraud sufficient to change the outcome. And he resigned on December 14, the day of the Electoral College vote. This was no Damascene conversion: Barr knew he would be out of office in a month and perhaps hoped to recover some moral stature or at least avoid further taint (despite writing a fawning resignation letter). Trump seemed to expect the new DoJ officials to be more compliant, calling Acting Attorney General Rosen “outstanding” and his deputy Donoghue “highly respected.” Indeed, Rosen’s profile was just as conservative as Barr’s: Bush had nominated him to the DDC; as Barr’s handpicked deputy, he had intervened to prevent Paul Manafort from being detained in the infamous Rikers Island prison; and after leaving government, Rosen became a nonresident fellow at the American Enterprise Institute. Nevertheless, Rosen and Donoghue were equally unwilling to be complicit in Trump’s wild schemes to retain power. And when Trump proposed to make Clark acting AG (adding insult to injury by suggesting that Rosen remain as Clark’s deputy), Rosen and Donoghue threatened to resign and persuaded the other top DoJ officials to join them—creating the prospect of a repetition of Nixon’s notorious Saturday Night Massacre, after the Watergate scandal broke. Other Trump legal advisers also opposed the president’s last-ditch efforts—Cipollone, Herschmann, Lyons, Philbin, Engel—as did his own campaign officials, Justin Clark and Jason Miller, and lower-level DoJ lawyers: ND Ga US Attorney Byung Jin Pak and his replacement, Bobby Christine, and WD Pa US Attorney Scott Brady. It is important to note, however, that all of them knew that they, too, would soon be out of a job.

Other branches of the federal government also resisted Trump. CISA director Krebs resolutely documented Russian interference in the election, knowing he would lose his job. Acting DHS secretaries Chad Wolf and Kenneth Cuccinelli rightly declared they lacked authority to seize voting machines. The military consistently refused to get involved in politics, whether that meant suppressing civil unrest during the BLM demonstrations or seizing voting machines; and ten living defense secretaries strongly concurred. Yet GSA administrator Emily Murphy deliberately delayed certifying Biden’s victory—a *pro forma* action essential to a smooth transition.

Republican officeholders were split. Pence remained Trump’s strong supporter to the very end—which is why the president thought he could persuade his vice president not to let Congress certify the election on January 6. But ultimately, Pence’s lawyer, chief of staff, and national security adviser, as well as Dan Quayle (his fellow Hoosier and predecessor as vice president), counseled that his function was purely ministerial. Republican Senators Lee

and Cruz—both former Supreme Court clerks—agreed (although Cruz voted against certification). So did former president Bush and his chief of staff and press secretary as well as other former establishment Republicans: New Jersey governor Whitman, House Speaker Ryan. Some prominent legislators, like Sens. Graham and Cruz, publicly demonstrated their loyalty to Trump, recognizing that he retained grassroots support, remained central to the party, and was very likely to run again in 2024 and secure the Republican nomination. Sen. McConnell sought a middle ground, affirming Trump’s procedural rights without taking a position on election fraud. But Republican governors (Baker, Hogan, Scott, DeWine, Hutchinson), Representatives (Rooney, Reed, Upton, Kinzinger, Mitchell, Riggleman), and Senators (Toomey, Murkowski, Romney, Collins, Sasse) urged certification. So did major Republican donors (Charles Koch, Sheldon Adelson) and the lawyers on both sides of the 2000 Supreme Court Florida vote case (David Boies, Theodore Olson). A large number of House Republicans, if fewer senators, voted against certification on January 6, often invoking false process arguments, such as the need to investigate irregularities (even though the courts and Attorney General Barr had found that none was sufficient to overturn the outcome). Republicans who had left government or were politically secure were more likely to stand up to Trump. Republican state officeholders also were divided. Some election officials (in Michigan and Arizona, for example) promoted Trump’s fraud claims. But others defended the integrity of their state’s election procedures, notably Georgia governor Kemp, lieutenant governor Duncan, and especially secretary of state Raffensperger and his subordinates, Sterling, Fuchs, and Germany, and election workers Freeman and Moss; Arizona governor Ducey, House Speaker Bowers, and Maricopa County Board of Supervisors member Hickman; Michigan Senate and House majority leaders Shirkey and Chatfield; Pennsylvania Senate and House majority leaders Benninghoff and Corman, Senate president pro tem Ward, and House Speaker Cutler, and Philadelphia Board of Elections member Al Schmidt; and Wisconsin Assembly speaker Vos. Democrats naturally rejected Trump’s empty fraud claims.

Trump also tried to make the media a tool of his election challenges. He accused pollsters of interfering with elections by conducting what he claimed were phony surveys, thereby contributing to voter suppression by showing him behind. When the establishment press reported the news accurately and editorialized against him, Trump denounced the “lamestream” media for disseminating “fake news,” confident that few, if any, of his supporters read those newspapers (or any). He sought to appropriate the media’s role by calling the outcome in many states—as though he were an independent, objective source of information. He expressed outrage and betrayal when Fox News called Arizona for Biden on election night and Murdoch’s other US outlets—*The Wall Street Journal* and *New York Post*—turned against the president. Major networks and *USA Today* refused to broadcast Trump’s

press conference falsehoods, and even Fox News cut away when McEnany kept lying. But Newsmax and OANN eagerly seized this opportunity to capture more of the right-wing audience. And Trump made effective use of social media, accusing it of censorship when it tried to counter his disinformation. In any case, comments and corrections by Twitter and Facebook reached a much smaller, and more skeptical, audience.

Immediately after Election Day, right-wing groups began planning to demonstrate against the results, with Trump cheering them on. His tweets about January 6 expressed his hope that a huge number of protesters might convince, indeed frighten, members of Congress into voting against certification and persuade Pence to block certification. (Chesebro and Eastman, both lawyers, even discussed using the threat of violence to pressure the Supreme Court to hear their latest challenge after it had dismissed the Texas case.) Trump's refusal to denounce the violence while transfixed by it on television confirmed his support and hopes for the insurrection. After hearing shouts to "hang Mike Pence," he told Meadows: "[M]aybe Pence deserves it." Even allies like his son and daughter, Fox News, Rep. Perry, and Sen. Graham could not persuade him to intervene. He rebuffed McCarthy, saying, "[The rioters were] more upset about the election, you know, theft than you are." When he finally did speak, he told the rioters, "[W]e love you. You're very special" and "[R]emember this day forever."

Threats and episodes of violence had been increasing well before the Insurrection. A right-wing militia planned to kidnap the Democratic Michigan governor (the perpetrators were convicted and given long prison sentences), and there were threats of violence against state election officials (as there had been against public health workers during the pandemic; see Abel, 2024b). Trump regularly encouraged violence: declaring there were "very fine people" on both sides at the Charlottesville "Unite the Right" demonstration when it was a White racist who had killed a peaceful counterdemonstrator; advising the Proud Boys to "stand back and stand by" after they attacked BLM protesters in Portland, Oregon; endorsing the Proud Boys' November 13 DC demonstration (which ended in violence); having his Marine One helicopter fly over the December 12 demonstration (which led to more violence); and promising his followers that the January 6 demonstration "will be wild" (immediately after which violent groups began planning to converge on DC with weapons). The right-wing media echoed the calls for violence that day. A confidential witness embedded in the Oath Keepers later revealed its plans to kill Pence and Pelosi. Trump knew that many demonstrators at the Ellipse were armed (which is why they refused to go through the magnetic detectors). Giuliani called for "trial by combat." Trump declared: "[I]f you don't fight like hell, you're not going to have a country anymore," "[Y]ou'll never take back our country with weakness," "[W]hen you catch somebody in a fraud, you're allowed to go by very different rules," and finally, "We're going

to march to the Capitol. I'll be there with you. Fight for me." And there was evidence that he angrily ordered the Secret Service take him there, even grabbing the steering wheel.

Trump's efforts to overturn the 2020 election ultimately failed because of the combined resistance of state election officials and other state officeholders (proud of their public service), state electors (who complied with the law requiring them to follow the popular vote), federal and state judges (Republican as well as Democrat), federal civil servants, top Justice Department officials and line prosecutors, the military, Capitol and DC Police, the mainstream media, the united Democratic members of Congress and some Republicans, and ultimately, Vice President Pence.

At the end of the day, elections are—and must be—the foundation of liberal democracy. Although Biden won the popular vote by more than 7 million and the Electoral College by 273–214, a switch of just over 40,000 votes in four states (Wisconsin, Arizona, Nevada, and Georgia) would have given Trump a second Electoral College victory (like the one he won in 2016).<sup>22</sup> What can Democrats do to prevent this from happening in 2024 and after? It seems unlikely they can make significant inroads into Trump's base. The loyalty of White evangelicals to a man whose entire life displays utter contempt for their values is further evidence that those values function politically as markers of social status.<sup>23</sup> The constantly escalating culture wars, fueled by Republican rhetoric and legislation (scapegoating transsexuals and critical race theory), are widening the chasm between the values of White evangelical Christians and many other Americans. The status anxieties of White evangelical Christians are grounded in reality.<sup>24</sup> Demographically, they are a shrinking proportion of the population as a result of immigration and differential birth rates. They rightly fear further displacement down the status hierarchy, even if not the apocalyptic "great replacement" foretold by conservative Cassandras. In an increasingly information-based service economy, formal education will only grow more important as a status marker, as well as the best, sometimes the only, route to a well-paid job. Those who are more dependent on government benefits—because their skills (hand rather than head work) and residence (rural rather than urban) disadvantage them in the labor market—are, paradoxically, more hostile to the very programs on which they depend and the Democratic administrations that seek to defend and expand those programs.<sup>25</sup> Working-class Republicans supported Trump's tax cuts, even though the bottom fifth of the income distribution (where they were situated) gained less than half a percent in after-tax personal income, while the top 1 percent (Trump and other plutocrats) saw a 3.5 percent increase.<sup>26</sup> Polarization and partisanship will only intensify, leaving a dwindling number of "independents" whose votes can be swayed by arguments and actions.<sup>27</sup> Republicans continue trying to limit the franchise. Cleta Mitchell, who directs FreedomWorks's \$10 million operation, said in

May 2023: “I think you have got to figure out what we have to do, where to fix the system that gives a Republican candidate a potential chance to win.”<sup>28</sup> Vivek Ramaswamy, who promised to spend \$100 million of his own money to win the Republican presidential nomination, proposed to raise the voting age to 25 except for those who were in the military or first responders or passed the civics test for immigrants.

The only strategy that offers real hope for Democrats, therefore, is to ensure that the largest proportion of eligible voters actually cast their votes (a third of them failed to do so in 2020), fighting efforts to restrict the franchise (e.g., purges of voter registration rolls, onerous voter ID requirements, limits on mail-in or drop box voting) and to deter voters from exercising that fundamental right (e.g., poll watchers threatening voters, filming drop box voters). Without the clear majority in both Houses of Congress necessary to pass federal election reform, that means engaging in politics, litigation, and organizing at the state and local levels, where the battles are myriad, low-visibility, unglamorous, technical, and endless and the victories incremental, often ambiguous, and subject to reversal.<sup>29</sup> Sadly, that illustrates the (apocryphal, if rightly popular) admonition: “eternal vigilance is the price of liberty.”<sup>30</sup>

## Notes

### Abbreviations

CNN	Cable News Network
NYT	<i>The New York Times</i>
PNAS	Proceedings of the National Academy of Sciences
WP	<i>The Washington Post</i>

- 1 Mayer, “Donald Trump’s ghostwriter tells all,” *New Yorker* (7.25.16); Schwartz (2017), Dean & Altemeyer (2020: 31, 43).
- 2 “Major describes move,” *NYT* (2.8.68).
- 3 Knowles (2014).
- 4 Collins, “Trump jokes he might leave the country if he loses to Joe Biden in November 3 election,” *USA Today* (10.16.20).
- 5 Baker & Glasser (2022: 44–47, 51–53); Robertson, “The New York Times passes 10 million subscribers,” *NYT* (11.8.23).
- 6 January 6 Select Committee, Hearings (10.13.22). In 2020, Trump won only those over 64, 51% to 48%. Statista, “Exit polls of the 2020 Presidential Election in the United States on November 3, 2020, share of votes by age,” [www.statista.com/statistics/1184426/presidential-election-exit-polls-share-votes-age-us/](http://www.statista.com/statistics/1184426/presidential-election-exit-polls-share-votes-age-us/).
- 7 Senate Select Committee on Presidential Campaign Activities (1974).
- 8 “Neither snow nor rain nor heat nor gloom of night stays these couriers from the swift completion of their appointed rounds.” Charles W. Eliot’s, “The Letter,” inscribed on New York City’s General Post Office Building, <https://about.usps.com/who/profile/history/pdf/mission-motto.pdf>.
- 9 Election Integrity Partnership, “The Long Fuse: Misinformation and the 2020 Election” (2021).
- 10 Zirin (2019).

- 11 Ellis (1941: 160–62).
- 12 Brennan Center for Justice, “Debunking the voter fraud myth,” [www.brennancenter.org/sites/default/files/analysis/Briefing\\_Memo\\_Debunking\\_Voter\\_Fraud\\_Myth.pdf](http://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Debunking_Voter_Fraud_Myth.pdf); Eggers, Garro & Grimmer, “No evidence for systematic voter fraud: A guide to statistical claims about the 2020 election,” *PNAS* (11.2.21), <https://doi.org/10.1073/pnas.2103619118>.
- 13 US Census Bureau, “Who Votes? Congressional Elections and the American Electorate: 1978–2014” (7.16.14). The Pew Charitable Trusts reanalyzed this and found it was slightly more than a fifth. Pew Charitable Trusts, “Why are millions of citizens not registered to vote?” (6.21.17), [www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/06/why-are-millions-of-citizens-not-registered-to-vote](http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/06/why-are-millions-of-citizens-not-registered-to-vote).
- 14 <https://worldpopulationreview.com/country-rankings/voter-turnout-by-country>.
- 15 Dawsey, “Trump campaign paid researchers to prove 2020 fraud but kept findings secret,” *WP* (2.10.23).
- 16 Fowers, Mirza & Emamdjomeh, “The votes that won Joe Biden the presidency,” *WP* (11.13.20).
- 17 *Shelby County v. Holder*, 570 U.S. 529 (2013) (Voting Rights Act); *Rucho v. Common Cause*, 129 S.Ct. 2484 (2019) (gerrymandering).
- 18 Kim, “Poll: 70 percent of Republicans don’t think the election was free and fair,” *Politico* (11.9.20); Hohmann, “The corrosive consequences of GOP leaders humoring Trump as he sows doubt in democracy,” *WP* (11.19.20); Badger, “Most Republicans say they doubt the election. How many really mean it?” *NYT* (11.30.20); Rutenberg & Corasaniti, “‘An indelible stain’: How the G.O.P. tried to topple a pillar of democracy,” *NYT* (12.12.20); Sonmez, “After Supreme Court dismisses Texas case, Trump says his efforts to challenge election results are ‘not over,’” *WP* (12.13.20); Tavernise, “What’s next for Trump voters who believe the election was stolen,” *NYT* (12.14.20); see also Waldman, “Will Republicans ever accept that Joe Biden won the election?” *WP* (12.17.20); Barry, “‘Loser’: How a lifelong fear bookended Trump’s presidency,” *NYT* (11.27.20).
- 19 Scarcella & Thomsen, “Judge says Texas Attorney General Paxton must face ethics lawsuit,” *Reuters* (1.31.23).
- 20 Barragan, “Attorney General Ken Paxton agrees to apologize and pay \$3.3 million to whistleblowers in settlement,” *Texas Tribune* (2.10.23).
- 21 Sneed, “Judge tosses out disciplinary action against Sidney Powell for work on Trump election reversal bid,” *CNN* (2.24.23).
- 22 One account says that Biden’s margin in those four states was 81,139 votes, which means that only half of those would have had to switch. Fowers, Mirza & Emamdjomeh, “The votes that won Joe Biden the presidency,” *WP* (11.13.20).
- 23 Jones, “Trump can’t reverse the decline of White Christian America,” *The Atlantic* (7.4.17).
- 24 Cohen (2019).
- 25 Pew Research Center, “General opinions about the federal government” (11.23.15).
- 26 Investopedia (2020) cited in Campbell (2023: 173).
- 27 But see Levendusky (2018, 2023); see also Broockman et al. (2022); Voelkel et al. (2022, 2023).
- 28 Corasaniti & Berzon, “Under the radar, right-wing push to tighten voting laws persists,” *NYT* (5.9.23); Bump, “A long-shot GOP candidate wants to limit voting by younger Americans,” *WP* (5.11.23).
- 29 Mayer, “Goodbye, Columbus,” *The New Yorker* 22 (8.15.22).
- 30 The original phrasing, by the Irish politician John Philpot Curran in 1790, was “the condition upon which God hath given liberty to man is eternal vigilance.” The version I quoted was by the abolitionist Wendell Phillips in 1852, [www.thisdayinquotes.com/2011/01/eternal-vigilance-is-price-of-liberty.html](http://www.thisdayinquotes.com/2011/01/eternal-vigilance-is-price-of-liberty.html).

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