

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.*,
MARCO WHITE, MARK MITCHELL,
and LESLIE LAKIND,

Plaintiffs,

vs.

Case No. _____

COUY GRIFFIN,

Defendant.

COMPLAINT FOR *OUO WARRANTO* RELIEF

Plaintiffs Marco White, Mark Mitchell, and Leslie Lakind, by their undersigned counsel, bring this *quo warranto* complaint to remove Otero County Commissioner Couy Griffin from office and disqualify him from holding any future public office pursuant to Section Three of the Fourteenth Amendment to the Constitution of the United States and NMSA 1978, Section 44-3-4(B) (1919), based on his participation in the January 6, 2021 insurrection at the United States Capitol. As grounds, Plaintiffs state:

1. The Defendant in this matter is Otero County Commissioner Couy Griffin (“Defendant”). Defendant is a resident of Otero County and represents District 2 on the Board of County Commissioners of Otero County (“County Commission”).
2. The Plaintiffs are Marco White, Mark Mitchell, and Leslie Lakind (“Plaintiffs”).
3. Plaintiff Marco White is a resident of Santa Fe County, New Mexico.
4. Plaintiff Mark Mitchell is a resident of Los Alamos County, New Mexico.
5. Plaintiff Leslie Lakind is a resident of Santa Fe County, New Mexico.

6. As private persons and citizens of the State of New Mexico, Plaintiffs have standing to bring this Complaint for *Quo Warranto* Relief, since Defendant's office is a county position. See NMSA 1978, § 44-3-4; *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, ¶ 8, 94 N.M. 431, 434 (explaining that a "private person" may bring a *quo warranto* action "when the office usurped pertains to a county, incorporated village, town or city, or school district").

7. Venue is proper under NMSA 1978, § 38-3-1 (1988).

8. This Court has jurisdiction in *quo warranto* against elected officials in New Mexico under Article VI, Section 13 of the New Mexico Constitution and Chapter 44, Article 3 of the New Mexico Statutes. An action for *quo warranto* may be brought "when any person shall unlawfully hold . . . any public office" in the State, NMSA 1978, § 44-3-4(A), or "when any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall work a forfeiture of his office," *id.* § 44-3-4(B). "One of the primary purposes of *quo warranto* is to ascertain whether one is constitutionally authorized to hold the office he claims, whether by election or appointment, and [courts] must liberally interpret the *quo warranto* statutes to effectuate that purpose." *State ex rel. Anaya v. McBride*, 1975-NMSC-032, ¶ 16, 88 N.M. 244, 247; *see also State ex rel. King v. Sloan*, 2011-NMSC-020, ¶ 6, 149 N.M. 620, 622; *State ex rel. New Mexico Judicial Standards Comm'n v. Espinosa*, 2003-NMSC-017, ¶ 4, 134 N.M. 59, 60. The Defendant bears the burden of proof to justify that he is legally eligible and qualified to hold public office in the State. *See State ex rel. Huning v. Los Chavez Zoning Comm'n*, 1982-NMSC-024, ¶ 10, 97 N.M. 472, 474.

9. Under Section Three of the Fourteenth Amendment to the United States Constitution, known as the Disqualification Clause, "No person shall . . . hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a

member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.”

10. As an elected member of the County Commission, Defendant was required to take an oath to support the Constitution of the United States. *See* N.M. Const. art. 20, § 1; NMSA 1978, 10-1-13(B) (2012). Defendant took that oath on December 28, 2018. *See* Oath of Office of Couy Griffin, attached hereto as Plaintiffs’ Exhibit 1. Defendant remains in office as a County Commissioner.

11. Defendant participated in, encouraged, and promoted the January 6, 2021 attack on the United States Capitol and is presently facing federal criminal charges for his actions that day. The January 6th attack and the events surrounding it constituted an “insurrection” against the Government and Constitution of the United States within the meaning of Section Three of the Fourteenth Amendment.

12. Because Defendant took an oath as an “officer of [a] State” to “support the Constitution of the United States” and then “engaged in insurrection” and/or gave “aid or comfort” to insurrectionists, he is disqualified from federal and state office under Section Three of the Fourteenth Amendment and has forfeited any right to hold such office. As a consequence, Plaintiffs respectfully request that the Court order his immediate removal from office and disqualification from future public office pursuant to NMSA 1978, Sections 44-3-4 and 44-3-14 and Section Three of the Fourteenth Amendment.

FACTUAL BACKGROUND

The Plot to Subvert the 2020 Election and Block the Lawful Transition of Presidential Power

13. Before the 2020 presidential election even took place, then-President Donald J. Trump and his supporters laid the groundwork to subvert the election's results in the event Trump lost. See Kevin Liptak, *A list of the times Trump has said he won't accept the election results or leave office if he loses*, CNN (Sept. 24, 2020), <https://perma.cc/V5QP-LJF2>. As part of these efforts, a movement called "Stop the Steal" was seeded and initially spread through social media between September 2020 and Election Day. See Atlantic Council's Digital Forensic Research Lab, *#StopTheSteal: Timeline of Social Media and Extremist Activities Leading to 1/6 Insurrection*, Just Security (Feb. 10, 2021), <https://perma.cc/5P63-PWB2>.

14. On election night, President Trump falsely claimed that he won the election and called on states to stop counting mail-in and absentee votes. See *President Trump Remarks on Election Status*, C-SPAN, at 7:45 (Nov. 3, 2020), <https://www.c-span.org/video/?477710-1/president-trump-remarks-election-status>. Even after it was clear that Joe Biden won the election, President Trump refused to concede, claiming with no factual basis that the election was "rigged" and invalidated by "tremendous voter fraud and irregularities." *President Trump Statement on 2020 Election Results*, C-SPAN, at 0:34-0:46, 18:11-18:15 (Dec. 2, 2020), <https://www.c-span.org/video/?506975-1/president-trump-statement-2020-election-results>.

15. Motivated by President Trump's lies and inflammatory rhetoric, some of his supporters engaged in a broad-based attack on the country's election machinery, threatening to kill administrators and personnel responsible for counting ballots. For example, police arrested armed Trump supporters in Philadelphia who were threatening to attack the site of ballot counting in Philadelphia, a city President Trump accused of election malfeasance. See Brennan Center for

Justice, *Election Officials Under Attack* (June 16, 2021), <https://perma.cc/5LSP-S7YZ>. Trump supporters swarmed a ballot counting center in Arizona trying to stop the counting of ballots. See Katie Shepherd and Hannah Knowles, *Driven by unfounded ‘SharpieGate’ rumor, pro-Trump protesters mass outside Arizona vote-counting center*, Wash. Post (Nov. 5, 2020), <https://perma.cc/CB3F-8ST6>. Georgia Secretary of State Brad Raffensperger and his family received multiple death threats after he disputed President Trump’s lies about the election. Amy Gardner, *Ga. secretary of state says fellow Republicans are pressuring him to find ways to exclude ballots*, Wash. Post, (Nov. 16, 2020), <https://perma.cc/4U7R-YLUG>. Normalized by Trump’s rhetoric, the death threats and attacks were so prevalent that, according to a recent Brennan Center survey, one in three election officials now feel unsafe in their jobs. See Brennan Center for Justice, *Election Officials Under Attack*.

16. In the weeks following the 2020 election, President Trump and his allies filed a series of frivolous lawsuits seeking to overturn the election based on alleged voter fraud. See *Trump v. Thompson*, 20 F.4th 10, 17 (D.C. Cir. 2021), *cert. denied*, No. 21-932, 2022 WL 516395 (U.S. Feb. 22, 2022). The courts uniformly rejected every claim of voter fraud raised. See *id.* A federal judge described one such suit as an “historic and profound abuse of the judicial process” designed to “deceiv[e] a federal court and the American people into believing that rights were infringed, without regard to whether any laws or rights were in fact violated.” *King v. Whitmer*, No. 20-13134, 2021 WL 3771875, at *1 (E.D. Mich. Aug. 25, 2021) (this case “was about undermining the People’s faith in our democracy and debasing the judicial process to do so”). All told, President Trump’s legal team and supporters litigated and lost more than 60 challenges to the election results. See William Cummings, Joey Garrison, and Jim Sergent, *By the numbers:*

President Donald Trump's failed efforts to overturn the election, USA Today (Jan. 6, 2021), <https://perma.cc/MZ82-XLY5>.

17. As their strategy failed in the courts, President Trump and his allies formulated an extra-judicial scheme to overturn the results of the election and prevent Mr. Biden, the winner of the election, from assuming office. A key component of this scheme was an aggressive misinformation campaign to persuade Americans that the election was stolen and imploring them to “Stop the Steal.” *See, e.g.*, Team Trump, *STOP THE STEAL!*, Facebook (Dec. 23, 2020), <https://perma.cc/HY7E-NWGQ>.

18. On December 14, 2020, the Electoral College met and confirmed Joe Biden’s victory in the 2020 presidential election. *See* Mark Sherman, *Electoral College makes it official: Biden won, Trump lost*, Associated Press (Dec. 14, 2020), <https://bit.ly/3CQXcND>.

19. Undeterred by the Electoral College’s actions, President Trump, his lawyers, and proponents of the Stop the Steal movement turned their focus to January 6, 2021, the date on which a joint session of Congress would convene to certify the results of the election as required by the Twelfth Amendment to the Constitution and the Electoral Count Act, 3 U.S.C. § 15. These election deniers saw January 6th as the final opportunity to block the lawful certification of the election and the presidential transition of power. To that end, President Trump’s team devised an unconstitutional plan to pressure then-Vice President Mike Pence to refuse to count electoral votes from several states during the January 6th election certification proceedings. *See READ: Trump lawyer’s memo on six-step plan for Pence to overturn the election*, CNN (Sept. 21, 2021), <https://perma.cc/EN5X-KQNC>.

20. The plot also entailed calling on Trump supporters across the country to come to Washington, D.C. on January 6th to stop Congress’s constitutionally-mandated counting of

electoral votes and prevent the peaceful transition of presidential power—in their deceptive words, to “Stop the Steal.”

21. On December 19, 2020, President Trump tweeted about a report “alleging election fraud” that he claimed showed it was “[s]tatistically impossible [for him] to have lost the 2020 Election.” He advertised: “Big protest in D.C. on January 6th” and encouraged his supporters to “[b]e there, will be wild!” Donald J. Trump (@realDonaldTrump), Twitter (Dec. 19, 2020), <https://perma.cc/9QUX-AR3Q>. On social media, Trump supporters construed the tweet as “marching orders” to “revolt” against the Government, to bring firearms to Washington, D.C., to shoot police, and to storm the Capitol Building to halt Congress’s counting of electoral votes and prevent the lawful certification of President-Elect Biden’s victory. See Aaron C. Davis, et al., *Red Flags*, Wash. Post (Oct. 31, 2021), <https://perma.cc/F2BY-GUH8>; Dan Barry and Sheera Frenkel, *‘Be There. Will Be Wild!’: Trump All but Circled the Date*, N.Y. Times (July 27, 2021), <https://perma.cc/NB33-D92A>. The tweet “immediately began to shift the intelligence landscape, with the volume of threatening messages about Jan[uary] 6th expanding by the hour.” Davis, *Red Flags*, Wash. Post.

22. Pro-Trump groups planned rallies for January 6th that President Trump promoted, and, on January 5th, President Trump announced he would speak at the “Save America” rally at the White House Ellipse. See Staff Rep. of S. Comm. on Homeland Sec. & Governmental Affs. & S. Comm. on Rules & Admin., 117th Cong., *Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6*, at 22 (June 8, 2021), <https://perma.cc/3QYT-8PRH> (“Capitol Attack Senate Report”), attached hereto as Plaintiffs’ Exhibit 2.

The January 6th Attack on the United States Capitol

23. On January 6, 2021, the joint session of Congress convened at the U.S. Capitol Building to certify the results of the presidential election pursuant to the Twelfth Amendment and the Electoral Count Act.

24. Just before noon on January 6th, President Trump took the stage at the White House Ellipse and gave a 70-minute speech to thousands of supporters. He repeated his false claims that the election was “rigged” and “stolen,” and urged Vice President Pence to “do the right thing” by taking the unconstitutional action of rejecting various states’ electoral votes and refusing to certify the election in favor of Mr. Biden. *See* Donald J. Trump, *Rally on Electoral College Vote Certification*, at 3:33:05-3:33:10, 3:33:32-3:33:54, 3:37:19-3:37:29, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification>. And he insisted, once again, that “[w]e will stop the steal.” *Id.* at 3:34:08.

25. President Trump then urged his supporters to march to the Capitol Building, stating “we’re going to walk down Pennsylvania Avenue . . . to the Capitol and . . . we’re going to try and give our Republicans . . . the kind of pride and boldness that they need to take back our country.” *Id.* at 4:42:00-4:42:32. He pushed them to “demand that Congress do the right thing and only count the electors who have been lawfully slated” and to “fight like hell,” warning them that, “if you don’t fight like hell, you’re not going to have a country anymore.” *Id.* at 3:47:20-3:47:42, 4:41:17-4:41:33.

26. While the speech was ongoing, Trump supporters began marching to the Capitol, some armed with weapons and wearing full tactical gear. *See* Plaintiffs’ Exhibit 2 (Capitol Attack Senate Report) at 22-23, 27-29. Among them were members of extremist militia groups with backgrounds in military or law enforcement and specialized combat training. One such group, the

Oath Keepers, allegedly devised and carried out an elaborate paramilitary operation to breach the Capitol in order “to prevent, hinder and delay the certification of the electoral college vote.” Press Release, *Leader of Oath Keepers and 10 Other Individuals Indicted in Federal Court for Seditious Conspiracy and Other Offenses Related to U.S. Capitol Breach*, U.S. Dep’t of Justice (Jan. 13, 2022), <https://perma.cc/SRQ5-59XT>.

27. By 12:45 p.m., just before Congress’s proceedings began, a “wall of people” had arrived about a block west of the Capitol. Plaintiffs’ Exhibit 2 (Capitol Attack Senate Report) at 22. At 12:53 p.m., the mob illegally breached security barriers on the Capitol’s West Front grounds put into place by U.S. Capitol Police to separate the areas for lawful First Amendment activity from the areas restricted to prevent disruption of the election-certification proceedings. *Id.* at 23. The mob then quickly and violently breached other barricades around the Capitol perimeter, overwhelmed law enforcement, and scaled walls. *Id.* at 24-25. Some in the mob attacked police officers with chemical agents, beat them with flag poles and frozen water bottles, or crushed them between doors. *Id.* at 28-29.

28. By 2:11 p.m., the rioters had breached the Capitol Building, where they wreaked further havoc and called for the murder of elected officials, including Vice President Pence. *Id.* at 25. The attack forced the Vice President, Senators, and Representatives to halt their constitutional duties and flee the House and Senate chambers. *Id.*

29. The perpetrators ultimately succeeded in delaying the constitutionally-mandated electoral vote count by several hours. To regain control of the building, the Capitol Police required reinforcements from the D.C. National Guard; the D.C. Metropolitan Police Department; the Department of Homeland Security (“DHS”); the Federal Bureau of Investigation (“FBI”); the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”); the Montgomery County Police

Department; the Arlington County Police Department; the Fairfax Police Department; and Virginia State Troopers. *Id.* at 26. The Senate did not reconvene until 8:00 p.m., with the House reconvening approximately an hour later. *Id.* It was not until 3:42 a.m. on January 7th that Congress completed its business and officially certified the election. *Id.*

30. “The events of January 6, 2021 marked the most significant assault on the Capitol since the War of 1812.” *Trump*, 20 F.4th at 18-19. “The rampage left multiple people dead, injured more than 140 people, and inflicted millions of dollars in damage to the Capitol.” *Id.* at 15 (citing Capitol Attack Senate Report at 29). “Portions of the building’s historic architecture were damaged or destroyed, including ‘precious artwork’ and ‘[s]tatues, murals, historic benches and original shutters.’” *Id.* at 19 (quoting *Hearing on Health and Wellness of Employees and State of Damages and Preservation as a Result of January 6, 2021 Before the Subcomm. on the Legis. Branch of the H. Comm. on Appropriations*, 117th Cong., at 1:25:40-1:26:36 (Feb. 24, 2021) (statement of J. Brett Blanton, Architect of the Capitol), <https://perma.cc/XS7N-MRG8>). “In the aftermath, workers labored to sweep up broken glass, wipe away blood, and clean feces off the walls.” *Id.*

Defendant’s Involvement in the Events of January 6th

31. Defendant, an outspoken participant in the violent and illegal acts described above, currently serves as an Otero County Commissioner, a position he has held since January 2019.

32. Before assuming office as an Otero County Commissioner, Defendant took an oath of office to support the United States Constitution. *See* Plaintiffs’ Exhibit 1.

33. Defendant is the self-proclaimed leader and founder of “Cowboys for Trump,” an organization established to engage in advocacy to support former President Trump and his policies.

34. On behalf of Cowboys for Trump, Defendant's "advocacy" has been inflammatory, racist, and threatening, including his statement that "the only good Democrat is a dead Democrat." Jessica Onsurez, *Cowboys for Trump founder, Couy Griffin: "The only good Democrat is a dead Democrat,"* Alamogordo Daily News (May 20, 2020), <https://perma.cc/2DZD-Y3EH>.

35. After the 2020 election, Cowboys for Trump participated in pro-Trump rallies where demonstrators "showed off their firearms, spouted unsubstantiated theories of voter fraud and pledged their allegiance to the outgoing president." Matthew Reisen, *Undeterred by lost election, supporters of President Trump demonstrate on West Central*, Albuquerque Journal (Nov. 14, 2020), <https://perma.cc/ZV8A-ZJ49>.

36. On December 28, 2020, Cowboys for Trump replied to a tweet from President Trump calling on his supporters to come to Washington, D.C. on January 6th. Cowboys for Trump tweeted in response: "JAN 6 # MillionMAGAMarch DC KEEP MAKING AMERICA GREAT." Cowboys for Trump (@RideWithC4T), Twitter, <https://bit.ly/3uahQV2>.



37. Days prior to Cowboys for Trump’s tweet promoting the “Million MAGA March,” the U.S. Postal Inspection Service’s Internet Covert Operations Program, known as “iCOP,” issued a “threat assessment” for that same march to federal agencies. The assessment surveyed social media posts in which “[p]otential attendees made inflammatory remarks . . . alluding to potential violence,” and noted two prior “MAGA Marches have resulted in violence.” The analysts therefore “assess[ed] a high potential for individuals to incite civil unrest during the demonstration.” U.S. Postal Inspection Service, “Million MAGA March” Threat Assessment, Dec. 22, 2020, attached hereto as Plaintiffs’ Exhibit 3.

38. Along with Cowboys for Trump videographer Matthew Struck, Defendant traveled across the country to Washington, D.C. for the events of January 6, 2021. While there, Defendant participated in, encouraged, and promoted the insurrection at the United States Capitol.

39. Defendant and Mr. Struck arrived in Washington, D.C. on January 5, 2021. Gov't Tr. Br. at 4, *United States v. Griffin*, No. 21-cr-00092-TNM, ECF No. 90 (D.D.C. Mar. 17, 2022), attached hereto as Plaintiffs' Exhibit 4. Upon their arrival, Mr. Struck took a video of Defendant in a parking lot in front of the U.S. Capitol building. *Id.* Defendant predicted January 6th would be "possibly the most historic day for our country in my lifetime," and stated he and others were praying for Vice President Pence and "trust that [he] will do the right thing." *Id.* Behind Defendant was the West Front of the Capitol grounds, surrounded by bike racks bearing signs saying "Area Closed," cordoning off the perimeter of the area the defendant would breach the next day. *Id.*

40. Like many January 6th perpetrators, Defendant started that day by attending President Trump's rally on the National Mall and then headed toward the Capitol, which he and Mr. Struck reached by approximately 2:30 p.m. *Id.* By that point, many metal barricades had been moved and a large crowd had already breached the restricted area. *Id.*

41. Defendant saw "there was some fencing up and they were saying that you could not go any further because this was being reserved for Joe Biden and his inauguration," but breached the barricades anyway and illegally entered the area around the Capitol. *United States v. Griffin*, 549 F. Supp. 3d 49, 52 (D.D.C. 2021) (summarizing government's allegations in Defendant's criminal prosecution).

42. Defendant and Mr. Struck climbed over a stone wall and entered the lawn on the West Front of the Capitol, within the restricted area. *Id.*; Plaintiffs' Exhibit 4 at 5. The Capitol's West Front grounds was the site of the "initial breach" of the Capitol Police's security perimeter at 12:53 p.m., where crowds first began to flow into restricted areas and "[a]ll available [Capitol Police] units" were deployed. Plaintiffs' Exhibit 2 (Capitol Attack Senate Report) at 23.

43. Once in the restricted area, Defendant turned to another individual and said, “This is our house . . . we should all be armed.” Plaintiffs’ Exhibit 4 at 5.

44. As captured by one still image, Defendant used part of a broken barricade as a ladder to breach the restricted West Front grounds and entered the area below the inauguration platform.



45. Defendant then climbed a hidden stairway to the inauguration stage, where he said, “I love the smell of napalm in the air,” seemingly a reference to the war film *Apocalypse Now*. Plaintiffs’ Exhibit 4 at 5. He appeared to cover his mouth and nose from the acrid smell of pepper spray. *See id.*

46. Defendant then boosted himself up to the front railing of the inaugural stage, turned to Mr. Struck’s camera and said, “can we do it live”? He then asked again, “are we live”? *Id.*

47. Footage captured by Mr. Struck shows Defendant standing on the West Front of the Capitol steps—well within the restricted area—as the violent mob swarmed the building and prevented Congress from certifying the results of the 2020 presidential election. *See* January 6, 2021 Couy Griffin Video, <https://perma.cc/6NX4-JLTN>.

48. The video shows Defendant promoting the insurrectionists' cause and spreading the false narrative of a stolen election. He proclaimed, "It's a great day for America! The people are showing that they've had enough. People are ready for fair and legal elections, or this is what you're going to get, you're going to get more of it." A still image from the video is shown below.



49. As law enforcement struggled to contain the mob and the Capitol was under siege, Defendant threatened, "We're not going anywhere. We're not gonna take no for an answer. We're not going to get our election stolen from us from China. So this is an America that's had enough right here. . . . Anything to get our country back."

50. In addition to participating in and encouraging the insurrection, Defendant attempted to take on a leadership role when he obtained a bullhorn and addressed thousands of people overrunning the Capitol building and overwhelming law enforcement. He confirmed the violent nature of the attack when he told them, "We've been screaming, we've been fighting, but now I want you to pray with me." January 6, 2021 Couy Griffin Video, <https://cnn.it/3qeJT4w>. Defendant then asked the crowd below to kneel and listen as he led them in a prayer, as shown below.



51. Defendant remained on the deck for about an hour and a half before leaving the Capitol grounds with his videographer between approximately 3:30 and 4:00 p.m.

52. A report by Inside Edition, in which Defendant was interviewed, states that Defendant live-streamed the above-described video on Facebook as the insurrection was happening. *See Protester Says He's Not Sorry for Assault on Capitol*, Inside Edition, YouTube (Jan. 11, 2021), <https://bit.ly/3whwsob>.

53. At some point later on January 6th, the Cowboys for Trump Twitter account tweeted a clip of the above-described video to the account's 62,300 Twitter followers. The video garnered at least 7,186 views. *See Cowboys for Trump (@RideWithC4T)*, Twitter, Jan. 6, 2021, <https://bit.ly/36rRPs2>. The accompanying text read: "#Cowboys for Trump fighting till the end!"

COWBOYS TRUMP Cowboys for Trump
@ RideWithC4T Follow ▼

Cowboys for Trump fighting till the end!



16:28 - Jan 6, 2021 from [US Capitol Rotunda Steps](#)

54. Twitter later suspended the Cowboys for Trump account as part of a “far-reaching action against accounts that promote violence” in the wake of January 6th. *Twitter Bans Cowboys for Trump*, The Paper (Jan. 10, 2021), <https://perma.cc/2XCE-HMNP>; Cowboys for Trump (@RideWithC4T), Twitter, <https://perma.cc/6NDL-W4ZX> (noting suspension).

55. On January 7, 2021, the day after the Capitol attack, Defendant recorded and posted a video to the Cowboys for Trump Facebook page, in which he discussed the insurrection and threatened further action to prevent a Biden presidency. *See January 7, 2021 Couy Griffin Video*, <https://perma.cc/94TC-5BCK>.

56. In that video, Defendant affirmed his participation in the January 6th insurrection and praised the actions of his fellow insurrectionists: “I was there. I mean, we climbed up on top of the Capitol building, and I had a first-row seat to what I believe was the most historic and amazing thing that I have ever seen, and that was a group, a populace of Americans that are not going to give up. We’re not gonna quit.” Defendant also warned of further violence: “Chuck Schumer wants to talk about unleashing whirlwinds, well, by god, we can unleash some

whirlwinds too. We're done; we're fed up; we're sick of it, and I hope you could see that yesterday. I hope that was a very clear shot over the bow of what could be next." Defendant even invoked his state office when discussing his actions at the Capitol: "We were there yesterday. You had an elected official from Otero County, New Mexico, Alamogordo, home of Holloman Air Force Base and the beautiful White Sands National Monument, that stood on that Capitol grounds yesterday for you and for our future and for our children and for our kids."

57. In his January 7, 2021 video, Defendant explained that the purpose of the January 6th attack on the Capitol was to ensure that Joe Biden would not become president, and that he and his fellow insurrectionists would take further action to forcefully prevent the peaceful transition of presidential power:

All you patriots out there that were there, you saw what I saw, and don't let any of your friends or anybody around you try to tell you anything different than what you saw. You saw America rise up. You saw the red, white, and blue come alive. You saw a people that had had enough, and yesterday was an historic and a great day for America. Because we will not lose, and Joe Biden will never be president. Kamala Harris will never be president, and the liberals will never take over Washington D.C. China will never take over Washington D.C. Because we will lead a charge in there that, you thought yesterday was a big day, it'll be nothing like compared to the next one.

58. Later in the video, Defendant continued to warn of further violent acts: "Take heed, take note, be on guard, and be ready, because it may get a lot more western than it did yesterday by the time this is all said and done"; "Boy, I'll tell you what, if that didn't make them shake in their boots, I don't know what would, after what they saw yesterday"; "Keep your powder dry, keep your head on a swivel, and mark January 20th down on your books, because we might have another rally on January 20th, just throwing it out there. So, get it on your mind, get it on your

books, and let's get behind this momentum, we can't stop now, even if Trump and Pence want to jump off of it, we can still move it forward. We can do it. We've got to do it."

59. Defendant explained that January 6th was merely the beginning of what he called a "revolution." He promised that he and other insurrectionists would use guns and violence to accomplish their goals, which could end with "blood running out" of the Capitol:

You want to say that that was a mob? You want to say that was violence? No sir. No ma'am. No, we could have a Second Amendment rally on those same steps that we had that rally yesterday. You know, and if we do, then it's gonna be a sad day, because there's gonna be blood running out of that building. But at the end of the day, you mark my word, we will plant our flag on the desk of Nancy Pelosi and Chuck Schumer and Donald J. Trump if it boils down to it. You're messing with the American people, and we're a different animal. You know, you see these uprisings and stuff going on in these eastern European countries like Chechnya and Serbia and those countries, but by god, whenever you see it also shaking loose in America, you're gonna see a whole 'nother revolution, because we still have our Second Amendment and [inaudible] and we will embrace it; we will hang onto it. We're networked; we're connected; we all have the same heart, and losing is not an option.

60. When later interviewed by Special Agents with the FBI, Defendant told the agents that the presidential transition of power may be possible "without a single shot being fired" but noted there was "no option that's off the table for the sake of freedom." Gov't Mem. in Supp. of Pretrial Detention at 4, *United States v. Griffin*, 21-cr-00092-TNM, ECF No. 3 (D.D.C. Jan. 19, 2021).

61. Defendant was also interviewed on television by Inside Edition about his participation in the January 6th insurrection. *See Protester Says He's Not Sorry for Assault on Capitol*, Inside Edition, YouTube (Jan. 11, 2021), <https://bit.ly/3whwsob>. During this interview, a reporter asked about the video Defendant posted to Facebook in which he said there might be "blood running out" of the U.S. Capitol during further demonstrations, and whether he was afraid

that additional people could die. Defendant replied that such violence would be acceptable to accomplish the goals of the insurrectionists, stating “I am more afraid of losing my freedom than I am anything,” and “We are not going to allow it. There will never be a Biden presidency.”

62. On January 14, 2021, Defendant spoke at an Otero County Commission meeting about his participation in the insurrection, using the meeting as an opportunity to broadcast his actions and support for the insurrectionists’ cause. *See Otero County Special Meeting*, YouTube, Jan. 14, 2021, <https://youtu.be/dyOklmYmvr4?t=3760>. He admitted that he knowingly breached the security barricades Capitol Police had put into place to protect the Capitol perimeter, stating “there was some fencing up and they were saying you could not go any further because this was being reserved for Joe Biden and his inauguration. Well, you tell a million Trump supporters that . . . , pretty soon that crowd just pushed through.”

63. At the same meeting, Defendant described plans to return to the Capitol on January 20, 2021 for President-Elect Biden’s inauguration and stated that, this time, he would bring firearms: “I am going to leave either tonight or tomorrow. I’ve got a .357 Henry big boy rifle . . . that I got in the trunk of my car, and I’ve got a .357 single action revolver . . . that I will have underneath the front seat on my right side. And I will embrace my Second Amendment, I will keep my right to bear arms, my vehicle is an extension of my home in regard to the constitution law, and I have a right to have those firearms in my car.”

64. On January 15, 2021, a criminal complaint and sworn statement of facts were filed against Defendant in the U.S. District Court for the District of Columbia. *See Criminal Compl. and Statement of Facts, United States v. Griffin*, No. 21-cr-00092-TNM, ECF Nos. 1 & 1-1 (D.D.C. Jan. 16, 2021), attached hereto as Plaintiffs’ Exhibit 5.

65. As he promised at the January 14, 2021 County Commission meeting, Defendant returned to Washington, D.C. for President-Elect Biden's inauguration. However, prior to the inauguration, police arrested Defendant in D.C. on January 19, 2021 for his involvement in the January 6th attack on the Capitol. *See* Returned Arrest Warrant, *United States v. Griffin*, No. 21-cr-00092-TNM, ECF No. 4 (D.D.C. Jan. 21, 2021), attached hereto as Plaintiffs' Exhibit 6.

66. Defendant is charged with two federal misdemeanors and is scheduled for a one-day bench trial on March 21, 2022. *See* Third Am. Information, *United States v. Griffin*, No. 21-cr-00092-TNM, ECF No. 85 (D.D.C. Mar. 7, 2022), attached hereto as Plaintiffs' Exhibit 7. Count One of the Third Amended Information alleges that “[o]n or about January 6, 2021, within the District of Columbia, [Defendant], did unlawfully and knowingly enter and remain in a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, without lawful authority to do so” in violation of 18 U.S.C. § 1752(a)(1). *Id.* Count Two alleges that “[o]n or about January 6, 2021, within the District of Columbia, [Defendant], did knowingly, and with intent to impede and disrupt the orderly conduct of Government business and official functions, engage in disorderly and disruptive conduct in and within such proximity to, a restricted building and grounds, that is, any posted, cordoned-off, and otherwise restricted area within the United States Capitol and its grounds, where the Vice President was and would be temporarily visiting, when and so that such conduct did in fact impede and disrupt the orderly conduct of Government business and official functions” in violation of 18 U.S.C. § 1752(a)(2). *Id.*

67. On January 19, 2021, the two other Otero County Commissioners called on Defendant to resign from the commission, issuing a press release in which they detailed

Defendant's outrageous actions that had dramatically disrupted county business. *See* Press Release, attached hereto as Plaintiffs' Exhibit 8. The Commissioners stated in part:

Commissioner Griffin has called repeatedly for violence, stating "the only good Democrat is a dead Democrat," which led to threats on county staff. He told a reporter the governors of Virginia and Michigan were traitors who should be hanged. He was one of the rioters who stormed the United States Capitol to stop the counting of the electoral vote, an action for which he has been criminally charged in Federal court. And he has called for violence at the inauguration tomorrow of President Biden.

68. In Defendant's federal criminal proceedings, several judges have stressed the seriousness of his actions on January 6th. U.S. Magistrate Judge Zia Faruqui stated at Defendant's initial appearance and detention hearing that the attack Defendant participated in and promoted "was an organized attempt to stop the lawful administration of the democratic process." Because of the extraordinary nature of January 6th and Defendant's participation in those events, "the nature of [his] offense is not a simple misdemeanor offense. This is an offense that at bottom was an attempt to stop democracy from moving forward because people were unhappy about the results of an election." Tr. of Initial Appearance/Detention Hr'g at 32:1-2, 19-22, *United States v. Griffin*, No. 21-cr-00092-TNM, ECF No. 7 (D.D.C. Jan. 16, 2021), attached hereto as Plaintiffs' Exhibit 9. The Court explained that Defendant "demonstrated that he believes that violence is on the table and that the nature of the offense is exactly what it says it was: This was an attempt to overthrow the government because he did not believe it was legitimate." *Id.* at 36:12-16. "I don't think any reasonable person could believe that, frankly, climbing up on the steps of the Capitol Building and getting where the Defendant did was in any way lawfully permissible. I think the Defendant even understood that it wasn't, but he felt that he was justified because he thought that what he was doing was for a greater good. Unfortunately, that is not the way that our democracy works. You do not get to take things into your own hands. You have to follow the lawful process, just like

everyone else. People have lost elections before and we did not have this sort of response.” *Id.* at 37:9-19. “[I]t was very much an organized attempt to overthrow the government, based on [Defendant’s] statements.” *Id.* at 53:15-17.

69. At a later hearing granting Defendant pretrial release with strict conditions, Chief U.S. District Judge Beryl Howell similarly noted that Defendant was “fairly proud of the fact that he marched on the Capitol” to “stop a constitutionally mandated process,” which “many people would view as a very unpatriotic thing to do.” Mot. Hr’g Tr. at 16:3-10, *United States v. Griffin*, No. 21-cr-00092, ECF No. 16 (D.D.C. Feb. 11, 2021). The Court added, “what happened on January 6, 2021, was not a peaceful protest but, in fact, did result in the disruption, as intended, for hours of the Congress being able to perform its constitutionally mandated task.” *Id.* at 33:21-24. The Court also agreed with the Magistrate Judge that Defendant’s statements “suggesting that the blood of elected officials will be spilled because he is unhappy with the outcome of a presidential election,” as well as his promise to return to Washington, D.C. “with firearms with the intention of, again, being present and armed at the Capitol on January 20th,” were “outrageous,” “highly inflammatory,” and “deeply disconcerting,” especially “for a person who is an . . . elected [official].” *Id.* at 41:20-42:6.

70. U.S. District Judge Trevor McFadden, who will preside over Defendant’s bench trial, has flatly rejected Defendant’s claims of “discriminatory prosecution,” holding that Defendant’s “leadership role in the crowd, position as an elected official, and more blatant conduct at the scene” reasonably merited him “different treatment” than other trespassers that the government chose not to charge. *Griffin*, 549 F. Supp. 3d at 58.

**DEFENDANT IS DISQUALIFIED FROM PUBLIC OFFICE UNDER SECTION THREE
OF THE FOURTEENTH AMENDMENT**

71. Adopted in 1868 as part of the Reconstruction Amendments, Section Three of the Fourteenth Amendment provides:

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

U.S. Const. amend. XIV, § 3.

72. Section Three thus disqualifies from federal or state office any person who (1) took an “oath . . . to support the Constitution of the United States” as an “officer of any State” and then (2) “engaged in insurrection or rebellion” or gave “aid or comfort” to insurrectionists. Each element is met in this case.

Defendant Took an Oath to Support the U.S. Constitution as a State Officer

73. As detailed above, state law required Defendant, as an elected County Commissioner, to take an oath to support the Constitution of the United States. *See* N.M. Const. art. 20, § 1; NMSA 1978, 10-1-13(B) (2012). Defendant took that oath on December 28, 2018. *See* Plaintiffs’ Exhibit 1. Defendant is therefore subject to disqualification under Section Three of the Fourteenth Amendment. *See Worthy v. Barrett*, 63 N.C. 199, 202-04 (1869) (holding that county sheriff was subject to disqualification under Section Three because state law required him to take an oath to support the U.S. Constitution), *appeal dismissed sub nom. Worthy v. Comm’rs*,

76 U.S. 611 (1869); *Op. of Att’y Gen. Stanbery under the Reconstruction Laws*, at 16 (Wash. Gov’t Print. Off., June 12, 1867),

<https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t9k35xk1r&view=1up&seq=20> (“All the executive or judicial officers of any State who took an oath to support the Constitution of the United States, are subject to disqualification, and in these I include county officers . . .”).

***The January 6th Attack on the Capitol and Surrounding Events Constituted an
“Insurrection”***

74. A leading dictionary preceding the adoption of Section Three defined “insurrection” as “[a] rising against civil or political authority; the open and active opposition of a number of persons to the execution of a law in a city or state.” *Webster’s Dictionary* (1828), <https://perma.cc/SJR4-B8LJ?type=image>. The same dictionary defines “rebellion” as “[a]n open and avowed renunciation of the authority of the government to which one owes allegiance; or the take of arms traitorously to resist the authority of lawful government.” *Id.* That dictionary adds that rebellion differs from insurrection in that “[i]nsurrection may be a rising in opposition to a particular act or law, without a design to renounce wholly all subjection to the government.” *Id.*; accord Noah Webster, Joseph Emerson Worcester, and Chauncey Allen Goodrich, *An American Dictionary of the English Language* (1838), <https://bit.ly/3qg1x86> (similarly defining “insurrection”).

75. The 1828 *Webster’s Dictionary* definition of “insurrection” remained in use throughout the remainder of the 19th Century. In 1894, for instance, a federal court used it in a jury charge. *See In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894). The court added:

It is not necessary that there should be bloodshed; it is not necessary that its dimensions should be so portentous as to insure probable success, to constitute an insurrection. It is necessary, however, that the rising should be in opposition to the execution of the laws of the United States, and should be so formidable as for the time being to

defy the authority of the United States. When men gather to resist the civil or political power of the United States, or to oppose the execution of its laws, and are in such force that the civil authorities are inadequate to put them down, and a considerable military force is needed to accomplish that result, they become insurgents; and every person who knowingly incites, aids, or abets them, no matter what his motives may be, is likewise an insurgent.

Id.; accord “Insurrection,” *Bouvier’s Law Dictionary*, Vol. 1 (1897) (“Any open and active opposition of a number of persons to the executive of the laws of the United States, of so formidable a character as to defy, for the time being, the authority of the government, constitutes an insurrection, even though not accompanied by bloodshed and not of sufficient magnitude to make success possible.”).

76. Leading contemporary dictionaries continue to define “insurrection” in similar terms. *E.g.*, “Insurrection,” *Merriam-Webster Dictionary* (2020), <https://perma.cc/WK6K-Z87R> (“an act or instance of revolting against civil authority or an established government”).

77. Legislative debates surrounding adoption of the Fourteenth Amendment show that the drafters intended Section Three to have a far broader application than just the events of the Civil War, and that a formal act of secession from the United States was not required. *See, e.g.*, 69 Cong. Globe, 39 Cong. 1st Sess. 2534 (discussing the “Whiskey Rebellion,” a violent tax protest in which loosely-associated groups of individuals used violence, including murder and attempted murder of federal officials, to resist and obstruct execution of federal tax laws).

78. The January 6th attack on the Capitol and the events surrounding it were plainly a “rising . . . in opposition to the execution of the laws of the United States . . . so formidable as for the time being to defy the authority of the United States.” *In re Charge to Grand Jury*, 62 F. at 830. The insurrectionists planned in advance; were violent and armed; called for the murder of the Vice President, the Speaker of the House, and other elected officials inside the building;

overwhelmed law enforcement; and ultimately carried out “the most significant assault on the Capitol since the War of 1812,” *Trump*, 20 F.4th at 18-19—all for the illegal purpose of stopping the constitutionally-mandated process of counting electoral votes and the peaceful transition of presidential power. “The rampage left multiple people dead, injured more than 140 people, and inflicted millions of dollars in damage to the Capitol.” *Id.* at 15.

79. The attackers did, as intended, obstruct the “execution of the laws of the United States” by forcing Congress to halt its counting of electoral votes as required by the Twelfth Amendment and the Electoral Count Act. *See id.* at 18-19. It took a considerable military and law enforcement response to quell the uprising, with the Capitol Police requiring reinforcements from the D.C. National Guard, the FBI, DHS, ATF, the D.C. Metropolitan Police Department, the Montgomery County Police Department, the Arlington County Police Department, the Fairfax Police Department, and Virginia State Troopers. *See* Plaintiffs’ Exhibit 2 (Capitol Attack Senate Report) at 26. Even with this substantial show of force, the Senate did not reconvene until 8:00 p.m. that night, and it was not until 3:42 a.m. on January 7th that Congress completed its business and certified the 2020 presidential election. *Id.*

80. For these reasons, the events of January 6, 2021, are widely regarded as an insurrection. A bipartisan majority of the House of Representatives voted in favor of articles of impeachment describing the attack as an “insurrection,” for which a bipartisan majority of the Senate voted to convict the former President. *See* 167 Cong. Rec. H191 (daily ed. Jan. 13, 2021); 167 Cong. Rec. S733 (daily ed. Feb. 13, 2021). The House later established a bipartisan Select Committee to investigate the attack and, in doing so, declared January 6th “one of the darkest days of our democracy, during which insurrectionists attempted to impede Congress’s Constitutional mandate to validate the presidential election . . .” H. Res. 503, 117th Cong., 1st Sess. (2021). The

U.S. Department of Justice has called January 6th an “insurrection” in court filings during both the Trump and Biden administrations, and it has charged key players in the attack with “seditious conspiracy”—a charge that closely tracks the definition of an insurrection. *See* Gov’t Br. in Supp. of Detention, *United States v. Chansley*, No. 21-cr-00003, ECF No. 5 (D. Ariz. Jan. 14, 2021); Indictment, *United States v. Rhodes III*, 22-cr-00015, ECF No. 1 (D.D.C. Jan. 12, 2022). President Biden has called January 6th an “insurrection.” Letter from Dana A. Remus, Counsel to the President, to David Ferriero, Archivist of the United States (Oct. 8, 2021), <https://perma.cc/SND5-58EX>. Former President Trump’s own impeachment defense lawyers admitted January 6th was an insurrection. *See* 167 Cong. Rec. 5717, 5733 (Feb. 13, 2021) (“[E]veryone agrees” that there was “a violent insurrection of the Capitol” on January 6th).

Defendant “Engaged in” the January 6th Insurrection and Gave “Aid or Comfort” to Insurrectionists

81. Defendant both engaged in the January 6th insurrection and gave aid or comfort to insurrectionists seeking to prevent the constitutionally-mandated counting of electoral votes.

82. Cases from the Reconstruction era hold that a person “engages” in an insurrection within the meaning of Section Three by “[v]oluntarily aiding the [insurrection], by personal service, or by contributions, other than charitable, of anything that was useful or necessary” to the insurrectionist cause. *Worthy*, 63 N.C. at 203; *see also United States v. Powell*, 65 N.C. 709 (C.C.D.N.C. 1871) (“[T]he word ‘engage’ implies, and was intended to imply, a voluntary effort to assist the Insurrection or Rebellion, and to bring it to a successful termination.”). These cases are in accord with dictionary definitions from the era. *See, e.g.*, Noah Webster, Joseph Emerson Worcester, Chauncey Allen Goodrich, *An American Dictionary of the English Language* (1838), <https://bit.ly/3qg1x86> (defining “engage” as to “embark in an affair”).

83. Leading dictionaries from the era defined aid, comfort, or the two terms together as involving some effort to “help,” “assist,” “support,” “encourage,” “promote,” “invigorate,” “cheer,” or “enliven.” See “Aid,” *Webster’s Dictionary* (1828), <https://perma.cc/ZG8W-SBP4?type=image> (“To help; assist; to support, either by furnishing strength or means to effect a purpose, or to prevent or remove evil.”); “Aid,” *Dictionary of Terms and Phrases Used in American or English Jurisprudence*, Vol. 1 (1879) (“To assist; help; promote.”); “Aid and Comfort,” *Bouvier’s Law Dictionary*, Vol. 1 (1897) (“Help; support; assistance; counsel; encouragement”); “Comfort,” *Webster’s Dictionary* (1828), <https://bit.ly/3iiKjCI> (“To strengthen; to invigorate; to cheer or enliven” or, “[i]n law, to relieve, assist or encourage, as the accessory to a crime after the fact”).

84. Historical events indicate that the scope of Section Three’s “aid or comfort” language is far broader than similar language used in other provisions, such as the Constitution’s Treason Clause, U.S. Const., art. III, § 3, cl. 1. When debating Section Three, the drafters understood individuals would be disqualified from holding office even if they had not been convicted of treason. See 69 Cong. Globe, 39 Cong. 1st Sess. 2534 (discussing Senator John Smith).

85. Actions by Congress to exclude Members of Congress in the two years between the approval of the Fourteenth Amendment and its ratification illustrate the drafters’ broad understanding of “aid or comfort” to “enemies.” In one example from 1868, a member was excluded for providing aid or comfort to the Confederacy by writing a letter to a newspaper declaring that:

Not one man or one dollar will Kentucky furnish Lincoln to aid him in his unholy war against the South. If this northern army shall attempt to cross our borders, we will resist it unto the death; and if one man shall be found in our Commonwealth to volunteer to join

them he ought and I believe will be shot down before he leaves the State.

Asher C. Hinds, 1 *Hinds' Precedents of the House of Representatives of the United States* 445 (1907), <https://perma.cc/6BYL-774T> (discussing exclusion of John Y. Brown). In that case, the House of Representatives declared in the midst of the ratification of the Fourteenth Amendment that “aid and comfort may be given to an enemy by words of encouragement, or the expression of an opinion, from one occupying an influential position.” *Id.*; accord H.R. Rep. No. 40-29, at 2 (1868); see also Cong. Glob, 40th Cong. 2d Sess. 893 (1868) (recognizing Mr. Brown could not be “convicted of treason” for actions, but could be excluded for them); Cong. Globe, 40th Cong. 2d Sess. 3375 (approving exclusion of John D. Young for providing “aid, countenance, counsel, and encouragement” to enemies during the Fourteenth Amendment ratification period); Cong. Globe, 40th Cong., 2d Sess. 3328–29 (1868) (“The committee is of the opinion that no person who . . . has given aid and comfort to its enemies during the late rebellion, ought to be permitted to be sworn as a member of this House” and concluding John D. Young should be excluded because he “declar[ed] himself openly for the rebellion,” “gave food to bands of rebels,” and “pointed out [to confederate forces] where [a] Federal soldier could be found and captured”).

86. In line with these precedents, Section Three has been invoked to disqualify not only individuals who themselves took up arms or conspired with those who did, *Powell*, 65 N.C. at 607; 1 *Hinds' Precedents* 470-71; *id.* at 481, but also those who held office in an insurrectionary movement, *Worthy*, 63 N.C. at 203; cf. *In re Griffin*, 11 F. Cas. 22, 23 (1869); 1 *Hinds' Precedents* 463-64.

87. Applying these principles, Defendant plainly engaged in the January 6th insurrection and, outside of his direct participation, aided and comforted insurrectionists within the meaning of Section Three.

88. Defendant traveled across the country to participate in a demonstration the purpose of which was to stop, impede, and delay the constitutionally-mandated process of counting electoral votes and, in turn, the certification of Joe Biden's election as President. Defendant knowingly breached barricades put in place by the Capitol Police to prevent interference with Congress's election-certification proceedings. He illegally trespassed onto the steps of the Capitol, where he proclaimed that it was a "great day for America!" as fellow Trump supporters assaulted law enforcement, smashed in the windows of the Capitol building, forced their way inside, and halted the electoral vote count. Defendant was then criminally charged for unlawfully breaching and occupying restricted Capitol grounds and engaging in "disruptive conduct" to "impede and disrupt" Congress's certification of the 2020 presidential election.

89. Defendant personally contributed to the overwhelming of law enforcement by entering through the site of the initial breach of the Capitol Police's security perimeter at the Capitol's West Front grounds, where crowds first began to flow into restricted areas and "all available" Capitol Police units were immediately deployed. By breaching these barricades and illegally remaining on restricted Capitol grounds for an hour and a half, Defendant contributed to the chaos that delayed Congress's election-certification proceedings.

90. While at the insurrection, Defendant relished in the violent attack on the heart of American democracy and later threatened further such attacks unless the insurrectionists' false and debunked claims of election fraud were addressed.

91. Defendant also voluntarily aided the insurrectionists by assuming a leadership role in the crowd, addressing them with a bullhorn, and documenting and promoting the events on social media. Defendant's videographer, Matthew Struck, captured footage of him speaking from the Capitol building patio before a sea of people, spouting misinformation about the 2020 election

being “stolen” by “China” and seeking to undermine the impending presidential transition. Amid the assault on the Capitol, Defendant positioned himself as a spokesman for the insurrectionists’ cause, stating “*the people* are showing that they’ve had enough. *People* are ready for fair and legal elections, or this is what you are going to get, you’re going to get more of it.” Defendant’s organization, Cowboys for Trump, then tweeted the video to the account’s 62,300 followers, with the text “#Cowboys for Trump fighting till the end!” The video garnered at least 7,186 views. This was promotional content glorifying a violent insurrection against the United States, obtained through unlawful means and broadcast to thousands. With this social-media promotion, Defendant voluntarily aided the insurrection by personally broadcasting its message and contributing things useful to the insurrectionists’ cause.

PLAINTIFFS’ CLAIM FOR *QUO WARRANTO* RELIEF

92. Plaintiffs incorporate by reference the foregoing paragraphs.

93. An action for *quo warranto* may be brought “when any person shall unlawfully hold . . . any public office” in the State, NMSA 1978, § 44-3-4(A), or “when any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall work a forfeiture of his office,” *id.* § 44-3-4(B).

94. By statute, “[a]ctions of quo warranto shall be set down and summarily tried as soon as the issues are made up” NMSA 1978, § 44-3-2; *id.* § 44-3-8 (“The issue as finally made shall stand for trial forthwith . . .”).

95. Defendant bears the burden of proof to justify that he is legally eligible and qualified to hold public office in the State. *See State ex rel. Huning v. Los Chavez Zoning Comm’n*, 1982-NMSC-024, ¶ 10, 97 N.M. 472, 474.

96. Section Three of the Fourteenth Amendment to the United States Constitution disqualifies from federal or state office any person who (1) took an “oath . . . to support the Constitution of the United States” as an “officer of any State” and then (2) “engaged in insurrection or rebellion” or gave “aid or comfort” to insurrectionists.

97. Defendant took an oath to support the Constitution of the United States as an officer of a State.

98. After taking this oath, Defendant engaged in an insurrection against the Government and Constitution of the United States and aided and comforted insurrectionists.

99. Defendant is therefore disqualified from federal and state office under Section Three of the Fourteenth Amendment.

100. By taking action resulting in his disqualification under Section Three of the Fourteenth Amendment, Defendant “work[ed] a forfeiture of his office,” NMSA 1978, § 44-3-4(B), and is presently “unlawfully hold[ing] . . . public office” in the State, *id.* § 44-3-4(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court issue an order:

(1) Declaring that (i) the January 6, 2021 attack on the United States Capitol and the events surrounding it constituted an “insurrection” under Section Three of the Fourteenth Amendment; (ii) Defendant, having engaged in the foregoing insurrection after taking an oath as a state officer to support the Constitution of the United States, is disqualified from federal and state office under Section Three of the Fourteenth Amendment; and (iii) Defendant, having aided or comforted insurrectionists after taking an oath as a state officer to support the Constitution of the United States, is disqualified from federal and state office under Section Three of the Fourteenth Amendment;

- (2) Removing Defendant from his position as an Otero County Commissioner;
- (3) Enjoining Defendant from performing any official acts in his capacity as an Otero County Commissioner or on behalf of the Board of County Commissioners of Otero County;
- (4) Prohibiting Defendant from holding any future state or federal office; and
- (5) Providing any other relief that this Court deems just and proper.

Respectfully submitted,

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**Pro hac vice applications forthcoming*

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