

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. D-101-CV-2022-00473

COUY GRIFFIN,

Defendant.

PLAINTIFFS' POST-TRIAL BRIEF

PRELIMINARY STATEMENT

The Constitution of the United States imposes only one qualification for state-level office: Section Three of the Fourteenth Amendment. Adopted in the wake of the Civil War, Section Three embodies the judgment of the Reconstruction framers that officials at *any* level of government who betray their constitutional oaths by engaging in insurrection or rebellion should be barred for life from public office. “*The oath to support the Constitution is the test.* The idea being that one who had taken an oath to support the Constitution and violated it, ought to be excluded from taking it again, until relieved by Congress.” *Worthy v. Barrett*, 63 N.C. 199, 204 (1869) (emphasis in original).

Couy Griffin has failed this test. He violated his constitutional oath by mobilizing, inciting, and then joining a violent insurrection at the United States Capitol to stop the constitutionally-mandated certification of the 2020 presidential election—an attack that disrupted the peaceful transfer of power for the first time in American history. At trial, Plaintiffs presented testimony from seven witnesses establishing each element for disqualification under Section Three: (1) Commissioner Griffin took an “oath ... to support the Constitution of the United States” as an “executive ... officer of a[] State,” (2) the January 6, 2021 attack on the United States Capitol (“January 6 Attack”) and surrounding events were an “insurrection,” and (3) Griffin “engaged in” that insurrection. Griffin called no witnesses and presented no evidence other than his own testimony as a witness in Plaintiffs’ case-in-chief.

Based on the trial evidence and argument summarized below, the Court should enter judgment for Plaintiffs and adopt their Proposed Findings of Fact and Conclusions of Law.

I. Griffin Took an Oath as a State Officer to Support the Constitution of the United States.

Griffin did not dispute at trial that he is subject to Section Three. Nor could he: the case law and historical understanding make clear that Section Three applies to county officials required by state law to take an oath to support the Constitution of the United States. *See Worthy*, 63 N.C. at 202–04; *In re Tate*, 63 N.C. 308, 309 (1869); *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871); *see also Op. of Att’y Gen. Stanbery under the Reconstruction Laws*, at 16 (Wash. Gov’t Print. Off., June 12, 1867), <https://perma.cc/U4C3-4T8D>; 8/16/22 Tr. 17:2–18:6 (Graber).¹ New Mexico law required Griffin to take an oath to support the Constitution before assuming office as a county commissioner. N.M. Const. art. XX, § 1; NMSA 1978, 10-1-13(B). He took that oath on December 28, 2018. 8/15/22 Tr. 51:13–18 (Griffin); Prop. Findings of Fact ¶ 8. Griffin is therefore subject to disqualification under Section Three.

The trial evidence also showed that Otero County Commissioners are “executive officers” of the State within the meaning of Section Three. Griffin testified that he performs “executive functions” as a county commissioner, including on spending, personnel, and election matters. 8/15/22 Tr. 52:18–57:23 (Griffin); Prop. Findings of Fact ¶ 6. And Plaintiffs’ expert of constitutional history, Professor Mark Graber, opined that knowledgeable nineteenth-century Americans, including Section Three’s drafters, would have considered New Mexico county commissioners “executive officers” since their offices are created by state constitutional and statutory law, the state constitution refers to them as “officers,” they perform traditional executive functions, and they exercise discretionary authority. 8/16/22 Tr. 18:16–20:23 (Graber).

¹ Citations to the trial transcript will identify the date, page, and line number of the cited transcript followed by a parenthetical identifying the testifying witness, where applicable.

II. The January 6 Attack and Surrounding Events Were an “Insurrection.”

The term insurrection, as commonly understood by knowledgeable nineteenth-century Americans, referred to an (1) assemblage of persons, (2) acting to prevent the execution of one or more federal laws, (3) for a public purpose, (4) through the use of violence, force, or intimidation by numbers. 8/16/22 Tr. 26:1–5 (Graber); *see also Case of Fries*, 9 F. Cas. 924 (C.C.D. Pa. 1800) (Chase, J.); John Catron, Robert W. Wells, & Samuel Treat, *Charge to the Grand Jury By the Court, July 10, 1861* (St. Louis: Democratic Book and Job Office, 1861) (“*Charge to the Grand Jury*, July 1861”). Judges, members of Congress, presidents, and legal experts from the era described as insurrections events such as the Whiskey Insurrection (1794) and Fries’ Insurrection (1799), which involved efforts to resist the federal government’s right to impose or collect certain taxes. 8/16/22 Tr. 22:23–23:3, 26:7–10 (Graber). This reflected the common understanding that an insurrection need not rise to the level of trying to overthrow the government or secede from the Union; resisting the government’s authority to execute a single law sufficed. *Id.* 24:2–8, 30:24–31:5.

The nineteenth-century definition of insurrection did not require actual violence; intimidation by numbers sufficed. 8/16/22 Tr. 27:18–28:2 (Graber); *Charge to the Grand Jury*, July 1861. That participants “firmly believe[d]” they “were acting for the good of [their] country” was “not a defense to insurrection,” but rather was proof they were acting for an insurrectionary “public purpose.” 8/16/22 Tr. 29:11–22, 53:1–7 (Graber).

Applying these principles, the trial evidence established that the January 6 Attack and surrounding events were an insurrection within the meaning of Section Three. The attack followed a weeks-long campaign to stop—through extra-legal means—certification of the 2020 presidential election and the transfer of power as mandated by the Twelfth and Twentieth

Amendments and the Electoral Count Act. Prop. Findings of Fact ¶¶ 12, 14–16. Participants in these efforts did not hide their objective: they called their movement “Stop the Steal” based on the false premise that the 2020 election was fraudulent and stolen and that the lawful transfer of power needed to be stopped. *Id.* ¶ 15. The Stop the Steal movement mobilized and incited thousands of people across the country to form a violent mob in Washington, D.C. to intimidate Vice President Pence and Congress so that they would not certify the election and thus block the lawful transfer of presidential power. *Id.* ¶¶ 16, 38.

The mob that arrived at the Capitol on January 6 was an assemblage of persons who engaged in force, violence, and intimidation by numbers. The mob numbered at minimum in the thousands. Prop. Findings of Fact ¶ 38. Many came prepared for violence, adorned in full tactical gear. *Id.* They used a variety of weapons, brutally attacked and injured more than one hundred police officers, breached security barriers to illegally access restricted Capitol grounds, smashed in windows of the Capitol building, forced their way inside, and called for the murder of elected officials. *Id.* ¶ 39–43. The mob also utilized “classical form[s] of intimidation,” 8/16/22 Tr. 41:17–42:5 (Graber), including displaying a noose and gallows and chanting “hang Mike Pence” on the Capitol grounds. Prop. Findings of Fact ¶ 40. Griffin disputed none of these facts at trial; instead, he blamed law enforcement for not being “better prepared” for the more than “a million ... disgruntled Trump supporters” who collectively “descend[ed]” on Washington, D.C. that day. 8/15/22 Tr. 197:14–18.

The mob was unified by the common public purpose of opposing the execution of federal law—namely, the Twelfth and Twentieth Amendments and the Electoral Count Act. Through their chants, flags, banners, and clothing, the mob made clear they came to the Capitol to stop Vice President Pence and Congress from carrying out their constitutional duties. Prop. Findings

of Fact ¶ 46. Griffin acknowledged as much at trial. *See* 8/16/22 Tr. 151:4–8 (“[W]e went to Washington, D.C. on January 6 ... so our voices would be heard by Mike Pence so Mike Pence would vote no on the certification of the election ...”); *id.* 167:8–10 (similar). That the January 6 attackers may have believed that the 2020 presidential election was “stolen” is not a defense but rather reinforces that their shared “purpose was a public one.” 8/16/22 Tr. 35:4–6 (Graber).

The mob ultimately achieved what even the Confederates never did during the Civil War: they breached the Capitol building and seized the Capitol grounds. Prop. Findings of Fact ¶¶ 47, 49. They outnumbered law enforcement by approximately 50 or 75 to 1. *Id.* ¶ 44. And they successfully forced the Vice President and Congress to delay the constitutionally-mandated counting of electoral votes for several hours, disrupting the peaceful transfer of presidential power for the first time in our Nation’s history. *Id.* ¶ 49. The Capitol Police required more than 2,000 reinforcements from 19 agencies and, even with these significant countermeasures, did not declare the Capitol grounds secure until 8:00 p.m. *Id.* ¶¶ 48–49. It was not until 3:42 a.m. on January 7 that Congress completed its business and certified the election. *Id.* ¶ 49.

After January 6, insurrectionists sought to mobilize further violence and intimidation for President-elect Biden’s inauguration on January 20 to stop the transfer of power required by the Twentieth Amendment. 8/16/22 Tr. 97:4–9 (Kleinfeld). The threat was so significant that the government called in 25,000 National Guardsmen to Washington, D.C.—nearly “two and a half times the number that would normally go to an inauguration.” *Id.* 130:5–8. The “law enforcement presence ultimately fizzled out the plan.” *Id.* 130:11–12.

These facts—established by multiple witnesses, including Griffin himself—demonstrate that the January 6 Attack and surrounding events were an insurrection under Section Three. *See* 8/16/22 Tr. 34:23–35:8, 43:2–15 (Graber) (so opining).

III. Griffin “Engaged in” the Insurrection.

The trial evidence further established that Commissioner Griffin “engaged in” the January 6 insurrection. A person “engage[s]” 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 [is] useful or necessary” to the insurrectionists’ cause. *Worthy*, 63 N.C. at 203; *see also Powell*, 27 F. Cas. at 607 (defining “engage” as a “a voluntary effort to assist the Insurrection ... and to bring it to a successful termination” from the insurrectionists’ perspective). Knowledgeable nineteenth-century Americans understood that a person “engaged in” insurrection whenever they were “leagued” with insurrectionists—either by acting in concert with others knowing that the group intended to achieve its purpose in part by violence, force, or intimidation by numbers, or by performing an “overt act” knowing that act would “aid or support” the insurrection. 8/16/22 Tr. 43:22–44:22 (Graber). There were “no accessories” in an insurrection; rather, “[e]verybody ... involved” was a “principal actor.” *Id.* 15:8–10.

One need not personally commit acts of violence to “engag[e] in” insurrection. *See Powell*, 27 F. Cas. at 607; *Worthy*, 63 N.C. at 203; 8/16/22 Tr. 52:10–19 (Graber). Rather, engagement can include non-violent overt acts or words in furtherance of the insurrection. *See* Initial Decision at 14, *Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off. Admin. Hr’gs May 6, 2022), <https://perma.cc/M93H-LA7X>.²

At trial, Plaintiffs presented substantial evidence that Griffin “[v]oluntarily aid[ed the [insurrection] by personal service[)]” and “by contributions, other than charitable, of ... thing[s]

² “[A]n overt act is not measured by how much it contributes” to the insurrection; the act could suffice even if it contributed only in a “minute sense.” 8/16/22 Tr. 51:17–52:9 (Graber) (testifying that “[o]ne more person closer to the Capitol” or “one more voice” encouraging violence would be “one more person ... involved in the insurrection”). As explained *infra*, there is ample evidence that Griffin’s contributions to the insurrection were much more than minimal.

that [were] useful or necessary” to the insurrectionists’ cause, *Worthy*, 63 N.C. at 203, and that he was otherwise “leagued” with the insurrectionists, 8/16/22 Tr. 44:23–45:8 (Graber). Ahead of the January 6 Attack, Griffin and his organization Cowboys for Trump helped to mobilize and incite thousands across the country to join the mob in Washington, D.C. to intimidate Vice President Pence and Congress to not certify the election. Prop. Findings of Fact ¶¶ 16, 19–35. Griffin was a featured speaker on a multi-city bus tour organized by Women for American First—a leading Stop the Steal rally organizer—to recruit people to come to Washington, D.C. in the days leading up to January 6. *Id.* ¶ 23. On this tour, Griffin urged crowds to join the “war” and “battle” in “the streets” of D.C. on January 6. *Id.* ¶ 23. Griffin came armed with three guns on this cross-country trip to D.C. *Id.* ¶ 26.

Griffin’s pre-January 6 mobilization efforts aided the insurrectionists’ cause. As Officer Daniel Hodges of the D.C. Metropolitan Police Department testified, the mob’s size was their “greatest weapon” and “what enabled them to achieve the level of success that they did.” 8/15/22 Tr. 157:12–14 (Hodges); Prop. Findings of Fact ¶ 44. Griffin’s efforts to mobilize and incite the mob helped make the insurrection possible and contributed to its success in delaying the constitutionally-mandated transfer of presidential power.

Griffin further aided the insurrection when he joined the mob that attacked and seized the Capitol grounds on January 6. Griffin illegally breached the Capitol perimeter and remained there from at least 2:31 p.m. to 4:48 p.m.—the height of the attack. Prop. Findings of Fact ¶¶ 54–55. He knowingly crossed multiple layers of security barricades and helped fellow insurrectionists do the same, ultimately ascending all the way to the inaugural stage on the Capitol’s West Terrace. *Id.* ¶¶ 55–59, 69. He remained there even after he saw the mob a short distance away attack police officers and violently break into the Capitol building, and he

encouraged that mob by joining them in chanting “Heave! Ho!” *Id.* ¶¶ 60–63, 65–67. And he remained even after law enforcement ordered the mob to disperse and deployed tear gas, pepper spray, and chemical munitions to make them do so. *Id.* ¶¶ 56, 59.

Griffin aided the insurrection even though he did not personally engage in violence. Just by joining the mob and trespassing on Capitol grounds, Griffin contributed to delaying the election-certification proceedings. The proceedings could not resume until *all* members of the mob, including Griffin, were removed from the restricted area. Prop. Findings of Fact ¶¶ 47, 49. Non-violent members of the mob, including Griffin, camouflaged violent members of the mob and contributed to law enforcement being overwhelmed by a “sea of potential threats.” 8/15/22 Tr. 157:12–24, 159:14–25 (Hodges); Prop. Findings of Fact ¶ 45. The mob’s size prevented law enforcement from being able to use firearms, make arrests, and freely move around the Capitol grounds. 8/15/22 Tr. 157:25–159:13, 173:21–174:2 (Hodges); Prop. Findings of Fact ¶¶ 44.

But Griffin did more than just join the mob: he incited, encouraged, and helped normalize the mob’s violence on January 6. He joined insurrectionists in chanting “Heave! Ho!” as they synchronized their movement to crush Officer Hodges and other police officers in an attempt to break into the Capitol. Prop. Findings of Fact ¶¶ 42, 65. He filmed a speech for social media promoting the attack as it was ongoing, threatening “this is what you’re going to get, and you’re going to get more of it.” *Id.* ¶ 60. He fist-bumped insurrectionists and chanted “this is our house!” and “we could all be armed” as he approached the West Terrace. *Id.* ¶ 57. Eyewitness testimony showed that Griffin took on a “leadership role” in the mob and that his attention-seeking behavior roused the mob when violence had been ongoing for hours. 8/15/22 Tr. 122:18–123:16 (Gowdy); *see also* 8/16/22 Tr. 121:18–122:7 (Kleinfeld); Prop. Findings of Fact ¶ 62.

After the attack, Griffin took to social media to justify and normalize the violence he acknowledged witnessing on January 6. Prop. Findings of Fact ¶¶ 65–67. Consistent with the insurrectionists’ post-January 6 focus, *id.* ¶ 51, Griffin vowed a more brutal attack to prevent Biden from taking office on January 20, when he threatened there would be “blood running out” of the Capitol building. *Id.* ¶ 67. He later conveyed specific plans to attend Biden’s inauguration with firearms. *Id.* ¶ 69. And he expressed solidarity with the insurrectionists, repeatedly using the word “we” to align himself with their actions, goals, and plans for further violence. *Id.* ¶ 27–34, 57, 65–67.

As Professor Graber testified, nineteenth-century Americans would have regarded Griffin as being “leagued” with the January 6 insurrectionists because he acted in concert with them and committed several overt acts supporting the insurrection. 8/16/22 Tr. 44:23–53:22 (Graber).

Dr. Rachel Kleinfeld, Plaintiffs’ expert on political violence, contextualized Griffin’s actions and explained how he filled a role often seen in insurrectionary movements: that of mob mobilizer and violence inciter and normalizer. 8/16/22 Tr. 99:15–21, 101:16–103:19, 135:13–136:1 (Kleinfeld). While helping to mobilize a mob in the days before January 6, Griffin called on “men” to join him in “battle,” told crowds they were in the midst of a “war,” dehumanized the opposition as “wicked” and “vile,” and declared that “losing [was] not an option”; by taking these actions, Griffin lowered inhibitions to engage in violence. *Id.* 108:14–109:12, 113:11–17, 114:12–115:3, 115:11–18. Political violence predictably occurred at the Capitol on January 6 and Griffin helped make that happen. *Id.* 99:24–100:2.

IV. Griffin’s Defenses Are Meritless.

Plaintiffs previously refuted Griffin’s First Amendment defenses, his various state-law defenses, and his claim that he cannot be disqualified under Section Three because he was

acquitted of disorderly conduct under 18 U.S.C. § 1752(a)(2) and has not been charged with the crime of insurrection under 18 U.S.C. § 2483. *See* Pls.’ Pre-Trial Br. at 17–19 (July 29, 2022); Pls.’ Opp. to Def’s Mot. to Quash & Dismiss (July 29, 2022). *Amici* have reinforced Plaintiffs’ arguments.³ The Court denied Griffin’s motion to dismiss. 8/15/22 Tr. 9:9–17:6.

At trial, Griffin incorrectly claimed an insurrection must involve a “collaborated effort to overthrow the government” and “replace” it. 8/15/22 Tr. 41:10–12. He cited no authority supporting that definition and, as outlined *supra*, it is refuted by historical evidence. Not even the Civil War—the event that precipitated the Fourteenth Amendment—would meet Griffin’s definition of insurrection. 8/16/22 Tr. 55:1–10 (Graber).

Griffin also argued he cannot be removed through a *quo warranto* suit because a recall effort against him failed. 8/16/22 Tr. 186:23–188:5. The case law forecloses this argument. *See State ex rel. Martinez v. Padilla*, 1980-NMSC-064, ¶ 6, 94 N.M. 431, 434.

CONCLUSION

The trial evidence established that Commissioner Griffin became disqualified from public office under Section Three of the Fourteenth Amendment effective January 6, 2021. Plaintiffs therefore respectfully request that the Court enter judgment in their favor and adopt the Proposed Findings of Fact and Conclusions of Law affixed hereto as Attachment A.

Date: August 29, 2022

FREEDMAN BOYD HOLLANDER
& GOLDBERG, P.A.

/s/ Joseph Goldberg

³ *See* Br. of *Amici Curiae* Floyd Abrams *et al.* (Aug. 1, 2022) (refuting Griffin’s First Amendment defenses); Br. of *Amici Curiae* NAACP New Mexico State Conference and NAACP Otero County Branch (Aug. 23, 2022) (compiling cases rejecting January 6 insurrectionists’ First Amendment defenses and their efforts to compare their conduct to Black Lives Matters protesters); Br. of *Amicus Curiae* Common Cause (Aug. 24, 2022) (explaining that Section Three applies to New Mexico county commissioners and how Griffin’s post-January 6 conduct threatens the rule of law in New Mexico).

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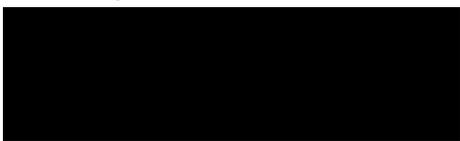
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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2022, I filed the foregoing Plaintiffs' Post-Trial Brief through the New Mexico Odyssey File & Serve system, which caused all counsel of record to be served by electronic means.

Defendant Griffin was served the foregoing via e-mail and by U.S. Postal First Class Mail to the following address:

Couy Griffin



/s/ Joseph Goldberg _____
Joseph Goldberg

Counsel for Plaintiffs

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PLAINTIFFS' PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

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In this *quo warranto* action, Plaintiffs seek to remove Otero County Commissioner Couy Griffin from office and disqualify him from any future public office pursuant to Section Three of the Fourteenth Amendment to the Constitution of the United States and NMSA 1978, Sections 44-3-4 and 44-3-14, based on his participation in the January 6, 2021 insurrection at the United States Capitol and related events. The Court held a bench trial on August 15 and 16, 2022. Based on the evidence and argument presented, Plaintiffs respectfully propose that the Court adopt the following findings of fact and conclusions of law.

PROPOSED FINDINGS OF FACT

I. The Parties.

1. Plaintiff Marco White is a private citizen and resident of Santa Fe County, New Mexico. 8/15/22 Tr. 9:21–22;¹ Complaint (“Compl.”) ¶ 3.

2. Plaintiff Mark Mitchell is a private citizen and resident of Los Alamos County, New Mexico. 8/15/22 Tr. 9:21–22; Compl. ¶ 4.

3. Plaintiff Leslie Lakind is a private citizen and resident of Santa Fe County, New Mexico. 8/15/22 Tr. 9:21–22; Compl. ¶ 5.

4. Defendant Couy Griffin currently serves as the District 2 Commissioner on the Otero County Board of County Commissioners (“Otero County Commission”). 8/15/22 Tr. 46:15–17 (Griffin). His term ends on December 31, 2022. *Id.* 46:18–19.

5. The Otero County Commission was created pursuant to the Constitution and statutes of New Mexico. N.M. Const. art. X, § 1; NMSA 1978, §§ 4-38-1 to 4-38-42.

6. As a county commissioner, Griffin performs “executive functions,” including on

¹ Citations to the trial transcript will identify the date, page, and line number of the cited transcript followed by a parenthetical identifying the testifying witness, where applicable.

spending, personnel, and election matters. 8/15/22 Tr. 52:18–57:23 (Griffin); 8/16/22 Tr. 19:12–24, 20:15–23 (Graber); Plaintiffs’ Exhibit (“PX”) 2–11 (Otero County Commission Resolutions and Agendas).

7. As a county commissioner, Griffin implements state law. 8/15/22 Tr. 57:3–23 (Griffin); 8/16/22 Tr. 19:12–19 (Graber); PX 2–11 (Otero County Commission Resolutions and Agendas).

8. State law required Griffin to take an oath to support the Constitution of the United States before assuming office, and Griffin did so. 8/15/22 Tr. 51:13–18 (Griffin); PX 1 (Dec. 28, 2018 Oath of Office); N.M. Const. art. XX, § 1 (requiring “[e]very person elected or appointed to any office” to take an oath “that he will support the constitution of the United States”).

9. Griffin’s actions as a county commissioner have had a statewide impact. 8/16/22 Tr. 19:12–24 (Graber); *see also* Br. of *Amicus Curiae* Common Cause at 6–9 (Aug. 24, 2022) (explaining how Griffin’s election denialism and defiance of the law have impacted the State); 8/15/22 Tr. 14:10–15:11 (Court recognizing that Griffin’s “refusal to certify election results” and resulting “mandamus action” in the New Mexico Supreme Court “affected the entire state of New Mexico”).

10. Commissioner Griffin is the founder and leader of “Cowboys for Trump,” a political advocacy organization established in 2019 to support former President Donald Trump and his policies. 8/15/22 Tr. 47:1–7, 49:17–21 (Griffin).

II. The “Stop the Steal” Movement to Block the Lawful Transfer of Presidential Power.

11. On November 7, 2020, the major news networks projected Joe Biden as the winner of the 2020 presidential election. PX 12 at 21 (June 2021 Senate Report).

12. President Trump did not accept the election results and pursued multiple avenues

to remain in power through legal and extra-legal means. 8/16/22 Tr. 96:19–21 (Kleinfeld). The Trump campaign and its supporters filed and lost dozens of frivolous lawsuits challenging the election results based on alleged voter fraud. PX 12 at 21 (June 2021 Senate Report). A federal judge called one such case “a historic and profound abuse of the judicial process” meant to “undermin[e] the People’s faith in our democracy.” *King v. Whitmer*, 556 F. Supp. 3d 680, 688–89 (E.D. Mich. 2021) (sanctioning attorneys).

13. On December 14, 2020, the Electoral College met and confirmed Joe Biden’s victory in the 2020 presidential election. PX 12 at 21 (June 2021 Senate Report). President Trump thereafter continued to falsely claim the election was stolen from him. *Id.* at 22.

14. As their strategy failed in the courts, Trump’s team turned their focus to January 6, 2021, the date on which a joint session of Congress (with Vice President Mike Pence serving as presiding officer) would convene to certify the results of the election as required by the Twelfth Amendment and the Electoral Count Act, 3 U.S.C. § 15. PX 12 at 22 (June 2021 Senate Report). They ultimately devised and carried out an extra-legal scheme to pressure Vice President Pence—both privately and publicly—to take the unconstitutional action of refusing to count electoral votes from several states during the January 6 proceedings. *See Eastman v. Thompson*, 2022 WL 894256, at *1–*7 (C.D. Cal. Mar. 28, 2022); *see also* PX 12 at 1, 22 (June 2021 Senate Report) (describing the process for objections and the goal of disrupting the electoral vote count). A federal judge has held it is “more likely than not” these efforts amounted to criminal obstruction of the Joint Session of Congress on January 6, 2021 in violation of 18 U.S.C. § 1512(c)(2). *Eastman*, 2022 WL 894256, at *20–*23.

15. The public-facing component of this pressure campaign was carried out through the “Stop the Steal” movement, which championed the lie that the election was stolen and that

the constitutionally-mandated transfer of presidential power needed to be stopped. *See* 8/16/22 Tr. 96:19–97:2 (Kleinfeld); Initial Decision at 4, *Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off. Admin. Hr’gs May 6, 2022), <https://perma.cc/M93H-LA7X> (“May 2022 *Greene* Decision”).

16. Leaders of the Stop the Steal movement undertook an expansive effort to mobilize Trump supporters across the country to travel to Washington, D.C. to intimidate Vice President Pence and Congress to not certify the election on January 6. 8/16/22 Tr. 96:21–97:7, 98:8–16 (Kleinfeld). Participants in these efforts planned to use mob intimidation and violence to stop the transfer of presidential power. *Id.* 96:21–23. Ahead of January 6, they held Stop the Steal rallies in various states, including New Mexico, where they ginned up support for the movement with violent and inflammatory rhetoric. *Id.* 103:25–105:22.

17. These state-level Stop the Steal rallies brought together a variety of groups, including “violence specialist[.]” militia groups such as the Oath Keepers and Proud Boys, groups that could rally and mobilize an armed intimidatory presence, and individuals who could simply add to the size of the mob. 8/16/22 Tr. 97:10–20 (Kleinfeld).

18. President Trump later announced his own Stop the Steal rally at the White House Ellipse on January 6. PX 12 at 22 (June 2021 Senate Report). The rally was arranged in part by Women for American First, a leading Stop the Steal rally organizer. *Id.* at 44, 45; 8/16/22 Tr. 107:3–6 (Kleinfeld); PX 40.

III. Commissioner Griffin’s Mobilization of the Stop the Steal Movement Ahead of January 6, 2021.

19. Commissioner Griffin and his organization Cowboys for Trump played a key role in the Stop the Steal movement’s mobilization efforts ahead of the January 6, 2021 attack on the

United States Capitol (“January 6 Attack”). 8/16/22 Tr. 100:4–7, 103:23–104:5 (Kleinfeld); *see also* 8/15/22 Tr. 69:13–21 (Griffin). Like other participants in the Stop the Steal movement, Griffin believed (and still believes) the 2020 election was fraudulent and Joe Biden was not legitimately elected President. 8/15/22 Tr. 40:7–8, 50:16–51:7, 79:1–8 (Griffin).

20. Cowboys for Trump participated in Stop the Steal rallies where Commissioner Griffin spoke and spread lies about the election being stolen. 8/16/22 Tr. 103:23–104:5 (Kleinfeld); PX 245 (Nov. 7, 2020 Santa Fe New Mexican article).

21. On November 14, 2020, Griffin appeared at a Stop the Steal rally in Albuquerque along with the New Mexico Civil Guard, which had been sued as an illegal militia by the State of New Mexico. 8/16/22 Tr. 104:22–105:1 (Kleinfeld); PX 248 (Nov. 14, 2020 Albuquerque Journal article). This continued a series of appearances by Griffin at the same events as the New Mexico Civil Guard and other “violent specialist groups” in the leadup to January 6. 8/16/22 Tr. 103:9–105:8, 134:9–18, 159:19–160:16 (Kleinfeld); PX 246 (Sept. 14, 2020 KUNM article).

22. On social media and in public speeches, Commissioner Griffin and Cowboys for Trump spent months normalizing that violence may be necessary to keep President Trump in office, and urged their followers to come to Washington, D.C. on January 6 to answer President Trump’s call. *E.g.*, PX 63, 80, 127, 165.

23. In the days preceding the January 6 Attack, Commissioner Griffin was a featured speaker on a multi-city bus tour to Washington, D.C. organized by Women for America First, 8/15/22 Tr. 63:14–16, 69:13–17 (Griffin); PX 40 (video of Griffin describing bus tour), the same Stop the Steal group involved in President Trump’s January 6 rally, *supra* Prop. Findings of Fact ¶ 18. The goal of the bus tour was to rally and inflame crowds and recruit them to come to Washington, D.C. to stop certification of the election on January 6. 8/16/22 Tr. 107:7–9

(Kleinfeld); 8/15/22 Tr. 69:18–21 (Griffin).

24. On this tour, Griffin aided the Stop the Steal mobilization and recruitment efforts with increasing fervor, calling on crowds to come to Washington, D.C. on January 6 to join the “war” and “battle” over the presidential election results. *E.g.*, PX 162.

25. Griffin’s friend, Matthew Struck, recorded videos of Griffin speaking during the pre-January 6 bus tour. *See* 8/15/22 Tr. 65:4–8 (Griffin); PX 67, 162, 164, 165, 166, 167, 168, 170, 171, 172, 173, 207 (Struck videos).

26. Griffin brought three firearms and ammunition with him on this cross-country trip to Washington, D.C. 8/15/22 Tr. 67:12–69:12 (Griffin); PX 154, 155 (videos showing Griffin loading his car with a gun and a different gun on the car’s dashboard).

27. At a January 1, 2021 speech in the Woodlands, Texas, Griffin told the crowd, “We have everything to lose right now. And this is a battle and a war that we cannot lose ... We have to march into this charge with a no, no, no lose, no surrender ... If any of you all need a lesson on what it takes to stand, read the lesson of the Alamo ... Those were men that drew a hard line. They stood on it. ... Meet us in Washington, D.C. Be there. Let’s stand together and let’s get ‘er done.” PX 162.

28. At a later January 1 speech in West Monroe, Louisiana, Commissioner Griffin insisted that President Trump would “continue and remain in office,” that “we need our President ... to be confirmed through the states on the sixth,” and that “right after that we’re gonna have to declare martial law.” PX 164. He then urged the crowd to “meet us” on “the streets of Washington, D.C. on January 6.” *Id.* Griffin invoked the legitimacy of his elected office as an Otero County Commissioner and his relationship with President Trump while trying to rally the crowd. *Id.*

29. At a January 3 speech in Bowling Green, Kentucky, Griffin said, “If we allow this election to be stolen from us, we will become a third world country overnight ... The elitist, gross, wicked, vile people that are in place will continue to wage war on America. Because there is a war, mind you, I promise you that.” PX 167. He added, “we got to get our country back. There’s no other way, there’s no other option.” *Id.* Griffin indicated that he expected violence to take place in Washington, D.C. on January 6, acknowledging that “there might be some of us that might lose our lives.” *Id.*; *see also* 8/16/22 Tr. 110:11–14 (Kleinfeld). He then invoked faith as support for the cause, stating “there is nobody that really truly ever loses when you trust in the lord Jesus Christ as your personal savior.” PX 167; *see also* 8/16/22 Tr. 110:14–17 (Kleinfeld).

30. At a later January 3 speech in Franklin, Tennessee, Griffin declared that “we’re a nation at war right now ... If we lose this election, everything is on the line.” PX 168. He insisted “We’re not gonna surrender to them. We’re gonna charge forward.” *Id.* He implored the crowd to come “to D.C. on January 6,” explaining that “the reason why I’m going to Washington D.C. is because my president called me there and I’m gonna be there.” *Id.*

31. In a January 4 video recorded in Atlanta, Georgia, Griffin stated, “We want to win it through our democratic process, but losing is not an option. We’ll win it ... in the ballot box or we’ll win it in the street. That’s where I stand.” PX 67. In those remarks, Griffin also directed a warning to the “sellouts,” the “RINOs,” and the “turncoats,” stating that “[t]hey’re the first ones that we’re going to hunt down.” *Id.*

32. In another January 4 video recorded in Atlanta, Griffin again anticipated possible violence in Washington D.C. on January 6, calling “men from across our nation to come to Washington, D.C. on January 6, because it might be a battle. ... If it comes down to a fight, if it boils down to what it could come to, we’re gonna need men standing strong shoulder to shoulder.

... I encourage you to come, don't let the media try to keep you home ... Whenever you're in battle ... that's a man's place. ... If it comes down to ... those kind of instances." PX 171.

33. In a January 4 video recorded in Birmingham, Alabama, Griffin urged Vice President Pence to "step up" and "do what's right for our nation" because "we will never acknowledge a Biden presidency." PX 170. Griffin threatened Republican officials, indicating he and others would "come to your places first" and "be after" them if they "sell out" Trump supporters. *Id.*

34. In a January 5 video recorded with a group of Trump supporters on his way to Washington, D.C., Griffin again called upon Vice President Pence "to do the right thing and call this election the fraud that it is, because we won't take anything less." PX 173. He added, "Losing is not an option. ... Every card is on the table. Every option is available. And we feel that we are a nation at war right now and we are men that are answering the call." *Id.*

35. While Commissioner Griffin inflamed and mobilized crowds across the country to join the "war" in Washington, D.C. on January 6, threats of violence to stop certification of the election were widespread on social media and reported in the press. PX 13 at 1 (May 2022 U.S. Government Accountability Office ("GAO") Report). Based on open-source data collection, federal agencies generated "26 threat products" identifying potential violence tied to planned "Stop the Steal" and other demonstrations in Washington, D.C. on January 6, with some predicting a "potentially violent uprising could take place at the U.S. Capitol." PX 13 at 21, 24, 39, 40.

IV. The January 6, 2021 Attack on the United States Capitol.

36. On January 6, 2021, the joint session of Congress convened to certify the presidential election. PX 12 at 23 (June 2021 Senate Report).

37. Just before noon, President Trump took the stage at his Stop the Steal rally at the White House Ellipse, where he repeated his false claims that the election was “rigged” and “stolen,” and urged Vice President Pence to “do[] the right thing” by unconstitutionally refusing to certify the election. PX 12 at B-1–B-2 (June 2021 Senate Report). President Trump then told the crowd to march to the Capitol to “demand that Congress do the right thing and only count the electors who have been lawfully slated,” insisting “we must stop the steal.” *Id.* at B-5, B-20. He pushed them to “fight like hell,” warning that, “if you don’t fight like hell, you’re not going to have a country anymore.” *Id.* at B-22.

38. Before the speech ended, thousands of Trump supporters began marching to the Capitol, some armed with weapons and wearing full tactical gear. PX 12 at 22–23, 27–29 (June 2021 Senate Report). “They were wearing helmets, goggles, gas masks, and respirators. They were in tactical vests, exterior load bearing vests that appeared to be designed to be capable of holding within it a ballistic panel which would protect the wearer from firearms. Many had padded gloves, tactical boots and backpacks with equipment [law enforcement] could not observe.” 8/15/22 Tr. 150:12–17 (Hodges).

39. The mob, including Griffin, illegally breached security barriers surrounding the Capitol complex on the Capitol’s West Front grounds, ignoring clear signage prohibiting entry. PX 12 at 23 (June 2021 Senate Report); 8/15/22 Tr. 113:4–9 (Gowdy); PX 40, PX 152, PX 159 (videos of Griffin admitting he knowingly breached a restricted area). The mob that Griffin joined then quickly and violently breached other barricades around the Capitol perimeter, overwhelmed law enforcement, and scaled walls. PX 12 at 24–25. By 2:11 p.m., the mob breached the Capitol building, where they confronted law enforcement, smashed windows, and wreaked further havoc. *Id.*; *see also* PX 15 at 14 (Mar. 2022 GAO Report) (timeline of attack);

PX 136 (January 6 Select Committee compilation video); PX 53 (Capitol Police surveillance video compilation).

40. The mob also utilized “classical form[s] of intimidation,” 8/16/22 Tr. 41:17–42:5 (Graber), including displaying a noose and gallows and chanting “hang Mike Pence” on the Capitol grounds, PX 136. In another act of intimidation, members of the mob charged toward the office of Speaker of the House Nancy Pelosi, chanting menacingly, “Nancy! Nancy! Nancy!” PX 136.

41. The mob brutally attacked police officers with a variety of actual and improvised weapons, engaged them in hand-to-hand combat, and sprayed them with chemical irritants. 8/15/22 Tr. 156:3–9, 172:4–19 (Hodges); PX 147 (Officer Hodges’ body camera video); 8/15/22 Tr. 118:25–119:1 (Gowdy); PX 253 at 148–49 (Erickson Crim. Trial Testimony). Officers were shocked with cattle prods, bludgeoned with flag poles and metal poles broken apart from security barricades, and beaten with their own stolen batons and riot shields. 8/15/22 Tr. 155:11–20, 156:3–9 (Hodges).

42. The mob crushed Plaintiffs’ witness Officer Daniel Hodges of the D.C. Metropolitan Police Department in a metal door frame and bashed in his face with his own baton while he was trapped there. 8/15/22 Tr. 179:1–10 (Hodges). The mob, including Griffin, chanted “Heave! Ho!” as they synchronized their movement in an attempt to ram through Officer Hodges and other police officers guarding an entrance tunnel on the Capitol’s West Terrace. *Id.* 179:15–20; PX 148 (video of Officer Hodges attacked in West Terrace Tunnel); PX 153 (video of Griffin describing his chanting of “Heave! Ho!”); 8/15/22 Tr. 96:2–11 (Griffin).

43. Some officers lost their lives, others suffered broken bones, contusions, lacerations, and psychological trauma. 8/15/22 Tr. 155:11–20 (Hodges). All told, the attack led

to seven deaths, injuries to more than one hundred police officers, and millions of dollars in damage to the Capitol complex. PX12 at 1, 26 (June 2021 Senate Report).

44. The “size of the mob is what enabled them to achieve the level of success that they did.” 8/15/22 Tr. 157:12–14 (Hodges) (“The size of the mob was the mob’s greatest weapon.”). The thousands of individuals in the mob overwhelmed and outnumbered law enforcement by approximately 50 or 75 to 1. *Id.* 157:4–7. Because of the mob’s size and the chaotic atmosphere it created, law enforcement could not use their firearms, make arrests, or freely move around the Capitol grounds. *Id.* 157:25–159:13, 173:21–174:2; PX 147 (Officer Hodges’ body camera video).

45. Law enforcement’s efforts to secure the Capitol building were impeded by violent and non-violent members of the mob alike. 8/15/22 Tr. 159:14–25 (Hodges). Police officers could not tell in the moment which individuals were going to be violent; every trespasser within the restricted area was a potential threat and needed to be treated as such. *Id.* 157:16–21, 159:14–160:3. Non-violent members of the mob camouflaged violent members of the mob and contributed to law enforcement being overwhelmed by a “sea of potential threats.” *Id.* 157:12–24, 159:14–25. Every trespasser took up space and made it harder for law enforcement to defend the Capitol building and disperse the mob away from Capitol grounds. *Id.*

46. The mob also made it clear—through their words, chants, flags, banners, and clothing—that they came to the Capitol for the explicit purpose of stopping the certification of the 2020 election and the transfer of presidential power by force. 8/15/22 Tr. 156:16–157:3, 162:2–13, 169:7–171:19, 181:16–22 (Hodges); PX 147 (Officer Hodges’ body camera video); 8/15/22 Tr. 119:10–12, 132:25–133:20 (Gowdy); PX 208–243 (Nathaniel Gowdy pictures); PX 136 (January 6 Select Committee compilation video); PX 53 (Capitol Police surveillance video

compilation).

47. The mob forced Vice President Pence and Congress to halt their constitutional duties and flee to more secure locations, PX 12 at 25 (June 2021 Senate Report), disrupting the peaceful transfer of presidential power for the first time in American history, 8/16/22 Tr. 148:3–5 (Kleinfeld). The Secret Service evacuated Vice President Pence to a secure loading dock and kept him there for several hours. PX 253 at 222–23, 258 (Hawa Crim. Trial Testimony); PX 55 (Capitol Police surveillance video of Vice President Pence’s evacuation). Once the “Capitol went into lockdown,” that meant “everything ha[d] to stop,” including the election-certification proceedings over which Vice President Pence was the presiding officer. PX 253 at 224 (Hawa Crim. Trial Testimony). The Vice President could not return to the Senate chamber and the constitutionally mandated proceedings could not resume until all trespassers in the restricted area were removed. *See id.* at 225, 258.

48. To clear the mob and regain control of the Capitol, the Capitol Police called in more than 2,000 reinforcements from 19 federal, state, and local agencies. PX 14 at 20 (Feb. 2022 GAO Report). Officers used chemical spray and munitions, flash bangs, tactical teams with firearms, riot shields, and batons to fight back the mob. PX 15 at 26–33 (Mar. 2022 GAO Report); PX 14 at 21 (Feb. 2022 GAO Report); PX 253 at 148–49 (Erickson Crim. Trial Testimony); 8/15/22 Tr. 168:2–6, 176:15–16, 177:13–17 (Hodges). Even with this significant show of force, the Capitol grounds were not deemed secure until 8:00 p.m. PX 12 at 26 (June 2021 Senate Report).

49. The mob forced both chambers of Congress to go into recess by 2:18 p.m. The Senate did not reconvene until 8:00 p.m., with the House reconvening approximately an hour later. PX 12 at 25–26 (June 2021 Senate Report). It was not until 3:42 a.m. on January 7 that

Congress completed its business and certified the election. *Id* at 26.

50. Griffin disputed none of these facts at trial; instead, he blamed law enforcement for not being “better prepared” for the more than “a million ... disgruntled Trump supporters” who collectively “descend[ed]” on Washington, D.C. that day. 8/15/22 Tr. 197:14–18.

51. After January 6, insurrectionists sought to mobilize violence for President-elect Biden’s inauguration on January 20 in a final effort to block the transfer of presidential power required by the Twentieth Amendment. 8/16/22 Tr. 97:4–9 (Kleinfeld). The threat was so significant that the government called in 25,000 National Guardsmen to Washington, D.C.—nearly “two and a half times the number that would normally go to an inauguration.” *Id.* 130:5–8. The “law enforcement presence ultimately fizzled out the plan.” *Id.* 130:11–12.

V. Commissioner Griffin’s Participation in the January 6 Attack.

52. Griffin traveled to Washington, D.C. for the events of January 6 because he shared the goal of stopping the constitutionally-mandated certification of the 2020 presidential election. 8/16/22 Tr. 151:4–8 (“[W]e went to Washington, D.C. on January 6 ... so our voices would be heard by Mike Pence so Mike Pence would vote no on the certification of the election”); *id.* 73:21–25 (similar); *id.* 167:8–10 (similar); PX 173 (similar).

53. Video from early in the morning of January 6 shows Griffin working up Trump supporters in Washington, D.C. by telling them Vice President Pence is “gonna have to find a real deep hole to crawl into” and that “we’ll all be lining up at his house if he doesn’t come through.” PX 38. Later in the video, someone near Griffin says, “storm the Capitol.” *Id.* Griffin also asked a man, “Where’s your gun at? That’s what I want to know.” *Id.*

54. Videos from later on January 6 show Griffin illegally breaching multiple security barriers and occupying restricted Capitol grounds from at least 2:31 p.m. to 4:48 p.m.—actions

for which he was later criminally convicted. PX 45 at 326:22–327:23 (Crim. Trial Bench Ruling); PX 47 (Crim. Case Judgment).

55. Around 2:31 p.m., just 20 minutes after the mob breached the Capitol building and seven minutes after President Trump tweeted that Vice President Pence had not done what he needed him to do, Griffin climbed over the Olmstead Wall and entered restricted Capitol grounds. PX 42; PX 253 at 143 (Erickson Crim. Trial Testimony) (describing restrictions); 8/16/22 Tr. 119:3–10 (Kleinfeld) (describing Trump tweet).

56. By this point in the day, law enforcement “had a loud speaker set up that was telling [the mob], in no uncertain terms, that their assembly was unlawful and that they needed to disperse” and law enforcement had deployed “[p]epper spray and tear gas” to make the crowd disperse. 8/15/22 Tr. 167:15–168:6 (Hodges); *see also* PX 253 at 149 (Erickson Crim. Trial Testimony).

57. Around 2:41 p.m., Griffin approached the Capitol building amid shouts of “let’s fight like crazy for our country” and “this is civil f*cking war.” PX 25. He used a metal security barrier that the mob had repurposed into a ladder to scale another wall. *Id.* He proceeded to fist bump other members of the mob and declare “this is our house!” and “we could all be armed.” *Id.* He then helped a member of the mob climb up a makeshift ramp to breach another security barrier and ran over the ramp himself. *Id.*

58. Griffin made his way to just below the inaugural stage and the Capitol’s West Terrace, where he said he would wait until the mob got “this door broke down” to enter an enclosed staircase. PX 139.

59. By 2:56 p.m., the mob had broken the door and Griffin walked up to the inaugural stage on the West Terrace, where he covered his mouth presumably from the acrid smell of tear

gas and pepper spray and stated gleefully “I love the smell of napalm in the air.” PX 26; *see also* 8/15/22 Tr. 168:2–6 (Hodges) (describing law enforcement’s deployment of tear gas and pepper spray); PX 253 at 149 (Erickson Crim. Trial Testimony) (similar).

60. Once he reached the inaugural stage, Griffin filmed a speech for social media promoting the attack. PX 27. He exhorted, “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, and you’re going to get more of it.” *Id.* As the mob brutally attacked Officer Hodges and other law enforcement in a tunnel a short distance away from him, Griffin threatened into the camera, “We’re not going anywhere. We’re not gonna take ‘no’ for an answer ... Anything to get our country back.” *Id.*

61. Griffin then assumed a leadership role in the mob by using a bullhorn to gain the crowd’s attention. PX 141. As he attempted to lead the mob in prayer, he riled them further. *Id.*

62. Eyewitness testimony of Plaintiffs’ witness Nathaniel Gowdy confirms that Griffin’s attention-seeking behavior energized the mob when violence had already been ongoing for hours. 8/15/22 Tr. 122:25–123:1 (Gowdy) (“[Griffin] was attempting to insert himself in a leadership role.”); *id.* 123:3–5 (“He appeared to be reveling in everything that was happening, smiling, pumping his fists, laughing, just having a good time.”); *id.* 123:14–16 (Q. Was Mr. Griffin’s conduct such that it was advancing the goal and purpose of the mob? A. Yes. It was very encouraging, was my impression.”); *see also* 8/16/22 Tr. 121:18–122:20 (Kleinfeld) (observing that by addressing the mob with a bullhorn from “high ground,” Griffin increased the “emotional arousal of the crowd” when “violence” had been “going on for two hours”).

63. Video shows Griffin on the inaugural platform from 2:57 p.m. until 4:24 p.m. PX 54. At this time, Griffin was near attackers beating police officers, stealing their riot shields,

forming a human battering ram to break through Officer Hodges and other officers in the West Terrace tunnel, and breaking windows. *E.g.*, PX 34, PX 148, PX 152.

64. By 4:27 p.m., Griffin had walked back down to the area below the West Terrace, where he sought to normalize the ongoing violence. PX 35. He is heard stating, “What a historical day, you know?” to which someone responded, “This is horrible.” *Id.* Griffin replied, “It’s unfortunate, but sometimes these sorts of things need to happen in order to send a signal that we’re going to quit putting up with their bull crap, you know?” *Id.*

65. Commissioner Griffin later confirmed that he saw and egged on the violence at the Capitol on January 6. In one video recorded while driving from Washington, D.C., Griffin stated with laughter, “It was funny, whenever those guys -- all those guys were down there on that one line where they were trying to push into the Capitol, and everybody that was gathered in the dome area, we were all screaming ‘Heave! Ho! Heave! Ho!’” PX 153. Griffin appeared to be describing joining the attackers in screaming “Heave! Ho!” as they brutally crushed Officer Hodges in a metal doorframe in the West Terrace tunnel. PX 148.

66. In another video from later in January, Griffin boasted, “I watched it all. ... I saw some windows getting broken out of the Capitol and I saw some people pushing on police officers down below.” PX 152.

67. In a video posted to Facebook on January 7 that Griffin recorded in Roanoke, Virginia, he acknowledged that the events at the Capitol the preceding day were violent and celebrated them. He gloated that he “climbed up on top of the Capitol building” and “saw a little bit of that action on ... the inside.” PX 37. He characterized the mob as “unleashing [the] whirlwinds” and a “shot over the bow.” *Id.* He explained the purpose of the attack was to stop the transfer of presidential power and threatened further action to achieve that goal, stating,

“[y]ou saw America rise up. ... You saw a people that had had enough ... because we will not lose. And Joe Biden will never be President ... you thought yesterday was a big day? It’ll be nothing like -- compared to like the next one.” *Id.* Griffin previewed a more brutal attack to prevent Biden from taking office, stating “You want to say that was violence? ... 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 going to be a sad day because there’s going to be blood running out of that building.” *Id.*

68. In the same video on January 7, Griffin again insisted that Joe Biden “will never be president.” PX 37; *see also* PX 62 (January 11, 2021 video where Griffin declared there “will never be a Biden presidency”). By this point, the presidential election had already been certified, so the only way to prevent Biden’s inauguration as president would be physical violence. 8/16/22 Tr. 127:22–128:4 (Kleinfeld).

69. At an Otero County Commission meeting on January 14, 2021, Griffin confirmed that he knowingly breached restricted Capitol grounds on January 6, stating he saw “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,” and that he breached the area anyway. PX 40; *see also* PX 152 (making similar admission); PX 159 (same). Griffin also conveyed his continued support for the insurrection and his plans to return to the Capitol with firearms on January 20 for the presidential inauguration. PX 40.

70. Griffin then traveled to Washington, D.C. for the presidential inauguration, but was arrested there on January 17, 2021 for his involvement in the January 6 Attack. Returned Arrest Warrant, *United States v. Griffin*, No. 21-cr-00092-TNM (D.D.C. Jan. 21, 2021), ECF No. 4.

71. Following a bench trial, Griffin was convicted on March 22, 2022 of entering and remaining on restricted grounds in violation of 18 U.S.C. § 1752(a)(1), and acquitted of disorderly conduct under 18 U.S.C. § 1752(a)(2). PX 45 at 324:9–337:25 (Crim. Trial Bench Ruling); PX 47 (Crim. Case Judgment).

VI. This Lawsuit and Related Federal Proceedings.

72. On March 21, 2022, Plaintiffs commenced this action against Commissioner Griffin under New Mexico’s *quo warranto* statute, NSMSA 1978, Section 44-3-4. Compl. at 1.

73. Plaintiffs’ Complaint asserts that Griffin is disqualified from federal and state office under Section Three of the Fourteenth Amendment based on his engagement in the January 6 Attack and surrounding events. Compl. ¶¶ 97–99. The Complaint further alleges that, by taking action resulting in his disqualification under Section Three of the Fourteenth Amendment, Griffin “‘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).” *Id.* ¶ 100.

74. As relief, the Complaint seeks a declaratory judgment that the January 6 Attack and surrounding events were an “insurrection” within the meaning of Section Three and that Commissioner Griffin is disqualified from federal and state office for having engaged in that insurrection. Compl., Prayer for Relief ¶ 1.

75. The Complaint also seeks injunctive relief removing Griffin from his current position as an Otero County Commissioner, barring him from performing any official acts as a county commissioner, and barring him from holding any future state or federal office. Compl., Prayer for Relief ¶¶ 2–4.

76. After being timely served with the Complaint and summons on March 26, 2022, Griffin, through counsel, removed the case to federal court on April 17, 2022.

77. On May 10, 2022, Griffin, through counsel, filed a collateral federal suit against Plaintiffs under 42 U.S.C. § 1983, seeking to enjoin Plaintiffs from pursuing this *quo warranto* case on the grounds that it violates his purported First Amendment right to run for political office, his Fourteenth Amendment due process rights, and the Amnesty Act of 1872. *Griffin v. White*, No. 22-cv-0362-KG-GJF (D.N.M.).

78. On May 27, 2022, Chief Judge William P. Johnson granted Plaintiffs' motion to remand this case back to this Court for lack of federal subject-matter jurisdiction. *State ex rel. White v. Griffin*, 2022 WL 1707187, at *1 (D.N.M. May 27, 2022).

79. On June 10, 2022, this Court held an initial scheduling conference. Although Commissioner Griffin was represented at that hearing by counsel, his counsel moved to withdraw and the Court granted that motion at the hearing, with the caveat that counsel would assist Griffin in a limited capacity to assist in the filing of a proposed scheduling order. *See* June 14, 2022 Order Granting Motion to Withdraw.

80. On June 14, 2022, the Court entered the parties' jointly-proposed scheduling order, setting forth various pretrial deadlines and a trial date of August 15, 2022. Since that time, Commissioner Griffin has proceeded *pro se* in this case.

81. On June 28, 2022, Judge Kenneth J. Gonzales denied Commissioner Griffin's motion for a preliminary injunction in his parallel Section 1983 suit and dismissed the case for lack of subject-matter jurisdiction. *Griffin v. White*, 2022 WL 2315980, at *12 (D.N.M. June 28, 2022). Griffin did not appeal that ruling.

82. On July 22, 2022, this Court held a pretrial conference. Despite receiving ample notice, Commissioner Griffin did not attend.

83. On July 27, 2022, the Court entered a pretrial order supplementing the deadlines

and details set forth in the June 14, 2022 scheduling order.

84. On August 12, 2022, the Court held a final pretrial conference.

85. On August 15 and 16, 2022, the Court held a bench trial. Plaintiffs called five witnesses and presented the prior testimony of two witnesses from Griffin's federal criminal trial. Commissioner Griffin cross-examined each of Plaintiffs' witnesses and provided his own testimony on cross-examination as a witness in Plaintiffs' case-in-chief. Griffin called no witnesses and offered no evidence apart from his own testimony.

VII. Commissioner Griffin's Lack of Credibility as a Trial Witness.

86. In making the factual findings set forth above, the Court did not find Griffin to be a credible witness at trial.

87. Video evidence of Griffin's statements from January 2021 contradict key aspects of his trial testimony, including his testimony that he did not witness violence on January 6. *Compare* PX 152 (Griffin admitting he "watched it all," he "saw some windows get broken out of the Capitol," and "saw some people pushing on police officers down below," and indicating the violence he saw was justified to prevent our "country" from "get[ting] hijacked by China"); PX 149 (Griffin admitting he saw "those guys were down there on that one line where they were trying to push into the Capitol" and stating "everybody that was gathered in the dome area, we were all screaming 'Heave! Ho! Heave! Ho!')"; PX 37 (Griffin admitting he "climbed up on top of the Capitol building" and "saw a little bit of that action on ... the inside"), *with* 8/15/22 Tr. 83:1-4 (Griffin) (testifying that "[e]verywhere where I was [on January 6], all around me in my direct vicinity, was peaceful. I didn't see one violent act inside of my area the whole time I was there"); *id.* 87:10 ("It was a big peaceful crowd."); *id.* 99:7-9 ("[M]y assessment during the time ... was that it was a totally peaceful protest.").

88. Griffin's testimony with respect to his characterization of the events at the United States Capitol on January 6 and his witnessing any violence that day has evolved over time in this litigation and is fundamentally inconsistent.

89. At his deposition, Griffin characterized the events at the Capitol on January 6 while he was there only as "peaceful" and denied seeing any violence, even in the face of video evidence to the contrary. PX 250 at 146:10–13 (Griffin Dep.) ("I wanted to be in D.C. for a peaceful protest, which it was."); *id.* 181:6–13 ("[I]t's all peaceful ... Q. You're saying you see this as a peaceful event? A. Absolutely, it was."); *id.* 185:18–24 ("I thought it was all just part of a celebration."); *id.* 186:5–8 ("Because we were peacefully protesting."); *id.* 187:5–16 ("[I]n my area, it was always peaceful ... Q. ... [W]hat you see is a peaceful protest? A. Absolutely."); *id.* 189:6–8 ("It looks consistently peaceful ... I don't see anything violent. I don't see anything aggressive.").

90. In his (unsworn) answers to written discovery, Griffin changed his story and stated that "[a]t the time I did not know there had been any violence. Now seeing the documented evidence I would admit that there was violence. I did not know that at the time though." PX 143 at 4 (Response to Request for Admission 101); *see also id.* (Response to Request for Admission 103) (similar).

91. At trial, Griffin's testimony was inconsistent. At times he testified that "where I was, it ... was peaceful. Everywhere where I was, all around me in my direct vicinity, was peaceful." 8/15/22 Tr. 82:24–83:4. Later, he testified that he had seen "chaos" but it was in the distance. *Id.* 83:7–11. After repeatedly being confronted with his acknowledgements at the time that he had seen violence, Griffin conceded he had witnessed violence and force but stated he did not participate in the violence, *id.* 83:18–19, 87:22–88:9; or blamed the violence on "Antifa," *id.*

94:15–23; or sought to minimize the violence, *id.* 95:3–10 (comparing violent mob pushing into the tunnel to a happy crowd after a basketball victory); or characterized his statements as “emotionally driven,” *id.* 103:23–25, or manifestations of “frustrations,” *id.* 104:20–22.

92. Similarly, Griffin’s prior videotaped statements and other evidence contradict his trial testimony that he did not knowingly breach and remain within restricted Capitol grounds on January 6. *Compare* PX 40 (Griffin admitting he saw and ignored signage warning he was entering a restricted area); PX 152 (similar); PX 159 (similar); PX 26 (Griffin at the Capitol covering his mouth and stating “I love the smell of napalm in the air,” seemingly referencing tear gas and pepper spray in the air); 8/15/22 Tr. 167:15–168:6 (Hodges) (describing law enforcement’s use of loudspeakers and chemical irritants to disperse the crowd), *with* 8/15/22 Tr. 87:7–10 (Griffin) (“There was nobody telling us to leave. There was no signage telling us we couldn’t be there. There was no loud speaker telling [us] to vacate the area. Nothing of the sort.”).

93. The Court does not find credible Griffin’s claim that he thought a security barricade the mob used as a makeshift ladder to climb over a wall was, in his words, “steps.” 8/15/22 Tr. 86:23–87:7; *see* PX 25 (video of Griffin climbing up security barricade).

94. Nor does the Court find credible Griffin’s attempts to characterize violent and inflammatory statements he made in January 2021—in which he repeatedly referred to an impending “war” in Washington, D.C. on January 6 that “we cannot lose”—as referring only to peaceful political activity. *See, e.g.*, 8/15/22 Tr. 69:13–21, 74:10–75:12, 76:10–82:19, 99:25–100:19 (Griffin). At the time Griffin made these statements, he did not clarify he was referring only to lawful activity, and the language and context of his statements strongly indicates his intent was to mobilize a violent mob for the events of January 6. *See id.* The Court finds that

Griffin’s after-the-fact characterizations of his prior statements were self-serving and not credible.

95. Griffin’s trial testimony also referenced a number of January 6 conspiracy theories that he failed to substantiate with credible evidence. *E.g.*, 8/15/22 Tr. 94:19–23 (Griffin) (“I saw a guy that was dressed [as] Antifa hit a window ... and I saw him immediately get stopped by what looked like a Trump supporter.”); *id.* 104:3–5 (“It’s not any secret that there was FBI informants that were involved in January 6th. ... like Ray Epps”); *id.* 42:18–25 (describing a purported video showing a “Capitol Police officer taking down the barricades” and “waving people in”).

PROPOSED CONCLUSIONS OF LAW

I. Legal Framework.

A. New Mexico’s *Quo Warranto* Statute.

1. A *quo warranto* action may be brought against a person who “unlawfully hold[s] ... any public office” in the State, NMSA 1978, § 44-3-4(A), or “any public officer, civil or military, [who] 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).

2. “[W]hen the office usurped pertains to a county,” any “private person” has standing to bring a *quo warranto* action “on his own complaint,” and need not first file a complaint with the Attorney General or a district attorney. NMSA 1978, § 44-3-4; *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, ¶ 8, 94 N.M. 431, 434.

3. Any private citizen of New Mexico has standing to bring a *quo warranto* action and need not demonstrate any direct injury traceable to the defendant. *See Martinez*, 1980-NMSC-064, ¶ 8 (permitting *quo warranto* suit by two private persons without addressing any

injury to them); *Clark v. Mitchell*, 2016-NMSC-005, ¶ 8, 363 P.3d 1213, 1216 (stating private persons may bring a *quo warranto* action against state official upon refusal of district attorney without discussing standing). This reflects the breadth of standing doctrine in New Mexico courts, where standing “is not derived from the state constitution,” is “not jurisdictional,” and can be freely conferred by statute. *Gandydancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-021, ¶ 7, 453 P.3d 434, 437 (internal quotation marks omitted).

4. If the defendant is “adjudged guilty of usurping or intruding into or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise or privilege.” NMSA 1978, § 44-3-14.

5. “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.” *Clark*, 2016-NMSC-005, ¶ 8.

6. The *quo warranto* statute authorizes courts to make a “judicial finding” that an official has engaged in conduct resulting in their “forfeiture” of office due to constitutional disqualification. *Martinez*, 1980-NMSC-064, ¶¶ 5–6. No prior criminal conviction is necessary if the constitutional qualification at issue does not require one. *See id.*

B. Section Three of the Fourteenth Amendment.

7. 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.

8. Section Three thus disqualifies any person from being a “Senator or Representative in Congress, or elector of President and Vice-President, or hold[ing] any office, civil or military, under the United States, or under any State” if that person took an “oath ... to support the Constitution of the United States” as an “executive or judicial officer of any State,” and then “engaged in insurrection ... against” the Constitution, unless Congress “remove[s] such disability” by a two-thirds vote.

9. State courts have adjudicated Section Three challenges through *quo warranto* or similar state-law proceedings. *See, e.g., Louisiana ex rel. Sandlin v. Watkins*, 21 La. Ann. 631 (La. 1869) (*quo warranto*); *Worthy v. Barrett*, 63 N.C. 199, 205 (1869) (mandamus); *In re Tate*, 63 N.C. 308, 309 (1869) (same).

10. Section Three imposes a qualification for public office, much like an age or residency requirement. It is not a criminal penalty, and neither the courts nor Congress have ever required a prior criminal conviction for a person to be disqualified under Section Three. *See infra* Prop. Concl. of Law ¶¶ 61–64. Section Three is thus akin to New Mexico constitutional disqualifications that do not require a prior criminal conviction. *See Martinez*, 1980-NMSC-064, ¶ 5.

II. Commissioner Griffin is Disqualified from Public Office Under Section Three of the Fourteenth Amendment.

11. Based on the trial evidence and argument, the Court concludes that (1) Commissioner Griffin took an “oath ... to support the Constitution of the United States” as an

“executive ... officer of a[] State,” (2) the January 6 Attack and surrounding planning, mobilization, and incitement were an “insurrection” against the Constitution of the United States, and (3) Commissioner Griffin “engaged in” that insurrection.

12. The Court therefore concludes that, effective January 6, 2021, Griffin became disqualified under Section Three of the Fourteenth Amendment from serving as a “Senator or Representative in Congress, or elector of President and Vice-President, or hold[ing] any office, civil or military, under the United States, or under any State,” including his current office as an Otero County Commissioner.

A. Griffin Took an Oath as a State Officer to Support the Constitution of the United States.

13. Section Three applies to county officials required by state law to take an oath to support the Constitution of the United States. *See Worthy*, 63 N.C. at 202–04 (county official was subject to disqualification because state law required him to take the oath), *In re Tate*, 63 N.C. at 309 (disqualifying county official); *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (finding that county official who took the oath was subject to disqualification and that Section Three is “broad enough to embrace every officer in the state”); *Op. of Att’y Gen. Stanbery under the Reconstruction Laws*, at 16 (Wash. Gov’t Print. Off. June 12, 1867), <https://perma.cc/U4C3-4T8D> (concluding that “county officers” who are “required to take ... the oath to support the Constitution of the United States” are “subject to disqualification”); 8/16/22 Tr. 17:2–18:6 (Graber) (describing “broad consensus” among knowledgeable nineteenth-century people that Section Three applies to county officials).

14. New Mexico constitutional and statutory law required Griffin to take an oath to support the Constitution of the United States before assuming office as an Otero County

Commissioner. *See* N.M. Const. art. XX, § 1; NMSA 1978, 10-1-13(B).

15. Griffin took that oath on December 28, 2018. Prop. Findings of Fact ¶ 8.

16. Because state law required Griffin to take an oath to support the Constitution as a county official and he did so, the Court concludes he is subject to disqualification under Section Three.

17. The Court further concludes that Otero County Commissioners are “executive officers” of the State within the meaning of Section Three. Griffin testified that as a county commissioner he performs “executive functions,” including on spending, personnel, and election matters. Prop. Findings of Fact ¶ 6; *see also* Br. of *Amicus Curiae* Common Cause at 2–6 (explaining why county commissioners qualify as “executive officers” under New Mexico law). And knowledgeable nineteenth-century Americans, including Section Three’s drafters, would have considered New Mexico county commissioners “executive officers” since their offices are created by state constitutional and statutory law, the state constitution refers to them as “officers,” they perform traditional executive functions, and they exercise discretionary authority. 8/16/22 Tr. 18:16–20:23 (Graber). It follows that Griffin took an “oath ... to support the Constitution of the United States” as an “executive ... officer of [a] State.” *See* U.S. Const. amend. XIV, § 3.

B. The January 6 Attack and Surrounding Events Were an “Insurrection” Against the Constitution of the United States.

1. Definition of “Insurrection”

18. The term “insurrection,” as understood by knowledgeable nineteenth-century Americans and Section Three’s framers, referred to an (1) assemblage of persons, (2) acting to

prevent the execution of one or more federal laws, (3) for a public purpose, (4) through the use of violence, force, or intimidation by numbers. 8/16/22 Tr. 26:1–5 (Graber); *see also, e.g., Case of Fries*, 9 F. Cas. 924 (C.C.D. Pa. 1800) (Chase, J.); John Catron, Robert W. Wells & Samuel Treat, *Charge to the Grand Jury By the Court, July 10, 1861* (St. Louis: Democratic Book and Job Office, 1861) (“*Charge to the Grand Jury, July 1861*”); “Insurrection,” *Webster’s Dictionary* (1828), <https://perma.cc/9YPA-XN8J>.

19. Judges, members of Congress, presidents, and legal experts from the era described as insurrections events such as the Whiskey Insurrection (1794) and Fries’ Insurrection (1799), which involved efforts to resist the federal government’s right to impose or collect certain taxes. 8/16/22 Tr. 22:23–23:3, 26:7–10 (Graber). This reflected the common understanding that an insurrection need not rise to the level of trying to overthrow the government or secede from the Union; resisting the government’s authority to execute a single law sufficed. *Id.* 24:2–8, 30:24–31:5.

20. Section Three’s framers and nineteenth-century Americans did not understand an insurrection to require actual violence; intimidation by numbers sufficed. 8/16/22 Tr. 27:18–28:2 (Graber); *Charge to the Grand Jury, July 1861*. Thus, Fries’ Insurrection was considered an insurrection even though there was only intimidation and not actual violence. A tax collector fled when marched upon by angry Pennsylvania farmers, but “there was no evidence that anyone fired a shot, anyone threw a stone, anyone threw a punch.” 8/16/22 Tr. 27:15–28:2 (Graber).

21. Nor did the nineteenth-century definition of insurrection depend on the truth or morality of the insurrectionists’ cause: an uprising could be an insurrection even if the participants sincerely believed their cause was just. 8/16/22 Tr. 29:11–22 (Graber). Efforts to rescue fugitive slaves were considered insurrections even though many believed the Fugitive

Slave Act of 1850 was unconstitutional and freeing slaves was a moral obligation. *Id.* 29:11–22. That participants “firmly believe[d]” they “were acting for the good of [their] country” was “not a defense to insurrection,” but rather was proof they were acting for an insurrectionary “public purpose.” *Id.* 29:11–22, 53:1–7.

2. The January 6 Attack and Surrounding Events Meet the Definition of an “Insurrection.”

22. The Court concludes that the January 6, 2021 attack on the United States Capitol and the surrounding planning, mobilization, and incitement constituted an “insurrection” within the meaning of Section Three of the Fourteenth Amendment.

23. The transfer of presidential power is governed by the Twelfth and Twentieth Amendments and the Electoral Count Act, among other laws. The Twelfth Amendment requires electors to meet after the election in their respective states to cast their votes, which are then transmitted to Congress to be “open[ed]” by the Vice President (in his capacity as the President of the Senate) and “counted” in a joint congressional session. U.S. Const. amend. XII. The Electoral Count Act establishes procedures for electoral votes to be opened and counted on the sixth day of January following any presidential election in a joint session of Congress, in which the Vice President “shall be the[] presiding officer.” 3 U.S.C. § 15. The Twentieth Amendment provides that a President’s term “shall end at noon on the 20th day of January” and “the term[] of [his or her] successor[] shall then begin.” U.S. Const. amend. XX, § 1.

24. The January 6 Attack followed a weeks-long campaign to stop—through extra-legal means—certification of the 2020 presidential election and the transfer of power as mandated by federal law. Prop. Findings of Fact ¶¶ 12, 14–16. Participants in these efforts did not hide their objective: they called their movement “Stop the Steal” based on the false premise

that the 2020 election was stolen and that the lawful transfer of power needed to be stopped. *Id.* ¶ 15.

25. The Stop the Steal movement successfully mobilized and incited thousands of people from across the country to form a violent mob in Washington, D.C. to intimidate Vice President Pence and Congress so that they would not certify the 2020 presidential election and thus block the lawful transfer of power. Prop. Findings of Fact ¶¶ 16, 38.

26. The mob that arrived at the Capitol on January 6 was an assemblage of persons who engaged in violence, force, and intimidation by numbers. The mob numbered at minimum in the thousands. Many came prepared for violence in full tactical gear. They used a variety of weapons, brutally attacked and injured more than one hundred police officers, sought to intimidate the Vice President and Congress, and called for the murder of elected officials, including the Vice President. Prop. Findings of Fact ¶¶ 38, 40–43.

27. The mob was unified by the common public purpose of opposing the execution of federal law—namely, the Twelfth and Twentieth Amendments and the Electoral Count Act. Through their chants, flags, banners, and clothing, the mob made clear they came to the Capitol to stop Vice President Pence and Congress from carrying out their constitutional duties to certify the election by force and intimidation. Prop. Findings of Fact ¶ 46. That some of the January 6 attackers may have believed that the 2020 presidential election was stolen does not negate their insurrectionary purpose. 8/16/22 Tr. 35:4–6 (Graber).

28. The mob ultimately achieved what even the Confederates never did during the Civil War: they breached the Capitol building and seized the Capitol grounds, forcing the Vice President and Congress to halt their constitutional duties and flee to more secure locations. Prop. Findings of Fact ¶¶ 47, 49.

29. The mob succeeded in delaying the constitutionally-mandated counting of electoral votes by several hours and, for the first time in our Nation’s history, disrupted the peaceful transfer of presidential power. Prop. Findings of Fact ¶ 49. To clear the mob and regain control of the Capitol, the Capitol Police called in more than 2,000 reinforcements from 19 agencies. *Id.* ¶ 48. Officers used chemical spray and munitions, flash bangs, tactical teams with firearms, riot shields, and batons to fight back the mob. *Id.* Even with this significant show of force, the Capitol grounds were not deemed secure and the congressional proceedings did not resume until 8:00 p.m. *Id.* ¶49. It was not until 3:42 a.m. on January 7 that Congress completed its business and certified the election. *Id.*

30. After January 6, there was a continuing effort to violently prevent Biden from taking office on January 20 as required by the Twentieth Amendment. Prop. Findings of Fact ¶ 51. The threat subsided only after the government deployed nearly two and a half times the number of National Guardsmen that would normally attend a presidential inauguration. *Id.*

31. Knowledgeable nineteenth-century Americans including Section Three’s framers would have regarded the events of January 6, and the surrounding planning, mobilization and incitement, as an insurrection. 8/16/22 Tr. 43:2–15 (Graber) (“We saw an assemblage, acting in concert, chanting ‘hang Mike Pence’ in concert, attacking police officers in concert. We saw that they were there to prevent the execution of those laws that would have certified that Joe Biden won the Presidential election. We saw that they were there was because they believed in the public purpose, that the election had been fraudulent, had been stolen. ... And we saw ... substantial violence, force and intimidation.”).

32. Reinforcing the evidence presented at trial, each branch of the federal government has referred to the January 6 Attack as an “insurrection” and the participants as

“insurrectionists,” including bipartisan majorities of both chambers of Congress,² more than a dozen federal courts,³ President Biden,⁴ and the Department of Justice under former President Trump.⁵ Former President Trump’s own impeachment defense lawyers acknowledged “everyone agrees” there was “a violent insurrection of the Capitol” on January 6. 167 Cong. Rec. 5717, 5733 (Feb. 13, 2021).

C. Griffin “Engaged in” the Insurrection.

33. The case law holds that a person “engage[s]” 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 [is] useful or necessary” to the insurrectionists’ cause. *Worthy*, 63 N.C. at 203; *see also Powell*, 27 F. Cas. at 607 (defining “engage” as a “a voluntary effort to assist the Insurrection ... and to bring it to a successful termination” from the insurrectionists’ perspective).

34. Consistent with this case law, knowledgeable nineteenth-century Americans understood that a person “engaged in” insurrection whenever they were “leagued” with insurrectionists—either by acting in concert with others knowing that the group intended to

² *E.g.*, 167 Cong. Rec. H191 (daily ed. Jan. 13, 2021); 167 Cong. Rec. S733 (daily ed. Feb. 13, 2021); H. Res. 503, 117th Cong., 1st Sess. (2021); S. 35, 117th Cong. (2021); H.R. 3325, 117th Cong. (2021).

³ *E.g.*, *United States v. Munchel*, 991 F.3d 1273, 1281 (D.C. Cir. 2021); *United States v. DeGrave*, 539 F. Supp. 3d 184 (D.D.C. 2021); *Noem v. Haaland*, 542 F. Supp. 3d 898, 906 (D.S.D. 2021); *Alsaada v. City of Columbus*, 536 F. Supp. 3d 216, 274 (S.D. Ohio), *modified in nonrelevant part by* 2021 WL 3375834 (2021); *United States v. Brogan*, 2021 WL 2313008, at *2 (E.D.N.Y. June 7, 2021); *United States v. Brockhoff*, 2022 WL 715223, at *1 (D.D.C. Mar. 10, 2022); *United States v. Hunt*, 573 F. Supp. 3d 779, 807 (E.D.N.Y. 2021); *United States v. Puma*, 2022 WL 823079, at *2 (D.D.C. Mar. 19, 2022); *O’Rourke v. Dominion Voting Sys. Inc.*, 552 F. Supp. 3d 1168, 1199 (D. Colo.), *modified in nonrelevant part by* 2021 WL 5548129, at *2 (D. Colo. 2021); *United States v. Randolph*, 536 F. Supp. 3d 128, 132 (E.D. Ky. 2021); *United States v. Little*, 2022 WL 768685, at *2 (D.D.C. Mar. 14, 2022); *O’Handley v. Padilla*, 2022 WL 93625, at *5 (N.D. Cal. Jan. 10, 2022); *Amalgamated Transit Union Local 85 v. Port Auth. of Allegheny Cnty.*, 2021 WL 719671, at *2 (W.D. Pa. Feb. 24, 2021).

⁴ *E.g.*, Statement By President Joe Biden On the Six-month Anniversary of the January 6th Insurrection On the Capitol (July 6, 2021), <https://perma.cc/VS89-CC3B>.

⁵ Gov’t Br. in Supp. of Det. at 1, *United States v. Chansley*, No. 21-cr-00003, ECF No. 5 (D. Ariz. Jan. 14, 2021).

achieve its purpose in part by violence, force, or intimidation by numbers, or by performing an “overt act” knowing that act would “aid or support” the insurrection. 8/16/22 Tr. 43:22–44:22 (Graber). Under the nineteenth-century understanding, “there [were] no accessories” in an insurrection; rather, “[e]verybody ... involved” was a “principal actor.” *Id.* 15:8–10.

35. One need not personally commit acts of violence to “engag[e] in” insurrection. *See Powell*, 27 F. Cas. at 607 (defendant “engaged in” rebellion if he voluntarily provided a substitute to avoid serving in Confederate Army); *Worthy*, 63 N.C. at 203 (individual “engaged in” rebellion by holding office of county sheriff under the Confederacy); 8/16/22 Tr. 52:10–19 (Graber). Engagement thus can include non-violent overt acts or words in furtherance of the insurrection. *See May 2022 Greene Decision* at 14; 8/16/22 Tr. 135:13–24 (Kleinfeld) (explaining “there are a lot of roles in an insurrection,” some of which do not involve violence).

36. Under the nineteenth-century understanding, “an overt act is not measured by how much it contributes” to the insurrection; in the context of a violent insurrection such as the January 6 Attack, just “[o]ne more person closer to the Capitol” or “one more voice” encouraging violence would be “one more person” engaged in the insurrection. 8/16/22 Tr. 51:17–52:9 (Graber).

37. Applying these principles, the Court concludes that Commissioner Griffin “engaged in” the January 6 insurrection.

38. Ahead of the January 6 Attack, Griffin voluntarily aided the insurrectionists’ cause by helping to mobilize and incite thousands across the country to join the mob in Washington, D.C. on January 6 to intimidate and threaten Vice President Pence and Congress so they would not certify the election. Prop. Findings of Fact ¶¶ 16, 19–35. Griffin was a featured speaker on a multi-city bus tour organized by a leading Stop the Steal rally organizer, during

which Griffin urged crowds to join the “war” and “battle” in “the streets” of Washington, D.C. on January 6 to stop certification of the election and the peaceful transfer of power. *Id.* ¶¶ 23–24, 28. The mob’s size was their “greatest weapon” and what enabled them to achieve the level of success that they did on January 6. *Id.* ¶ 44. The pre-January 6 mob mobilization and incitement efforts by Griffin and others helped make the insurrection possible.

39. Commissioner Griffin further aided the insurrection when he joined and incited the mob that attacked and seized the Capitol grounds on January 6. Griffin illegally breached the Capitol grounds and remained there between at least 2:31 p.m. to 4:48 p.m.—the height of the attack. Prop. Findings of Fact ¶¶ 54–55. He knowingly crossed multiple layers of security barricades and helped insurrectionists do the same, ultimately ascending all the way to the inaugural stage on the Capitol’s West Terrace. Prop. Findings of Fact ¶¶ 55–59, 69. He remained there, and incited the mob, even after seeing members of the mob a short distance away attack police officers and violently try to break into the Capitol building. Prop. Findings of Fact ¶¶ 60–63, 65–67. And he remained even after law enforcement ordered the mob to disperse and deployed tear gas, pepper spray, and chemical munitions to make them do so. Prop. Findings of Fact ¶¶ 56, 59. The Court finds that Griffin knew he should not have been at the Capitol, but that he stayed in support of the insurrection.

40. The Court concludes that Griffin’s crossing of barricades to approach the Capitol were overt acts in support of the insurrection, as Griffin’s presence closer to the Capitol building increased the insurrectionists’ intimidation by numbers. Griffin’s marching with the mob all the way to the inaugural stage, knowing the mob’s insurrectionary purpose, likewise constitutes an overt act. The Court’s conclusions are consistent with how knowledgeable nineteenth-century Americans would view Griffin’s actions. 8/16/22 Tr. 51:3–21 (Graber).

41. Griffin aided the insurrection even though he did not personally engage in violence. By joining the mob and trespassing on restricted Capitol grounds, Griffin contributed to delaying Congress’s election-certification proceedings. The constitutionally-mandated proceedings could not resume until *all* members of the mob, including Griffin, were removed from the restricted area. Prop. Findings of Fact ¶¶ 47, 49. The presence of Griffin and other purportedly non-violent members of the mob also contributed to law enforcement being overwhelmed. Prop. Findings of Fact ¶¶ 44–45.

42. Griffin also incited, encouraged, and helped normalize the violence on January 6. He joined insurrectionists in chanting “Heave! Ho!” as they synchronized their movement to crush Officer Hodges and other police officers in the West Terrace tunnel to break into the Capitol. Prop. Findings of Fact ¶ 65. He filmed a speech for social media promoting the attack as it was ongoing, threatening “this is what you’re going to get, and you’re going to get more of it.” *Id.* ¶ 60. He fist-bumped insurrectionists and chanted “this is our house!” and “we could all be armed” as he approached the West Terrace. *Id.* ¶ 57. And he minimized concerns about the ongoing violence raised by those around him, stating “sometimes these sorts of things need to happen in order to send a signal that we’re going to quit putting up with their bull crap, you know?” *Id.* ¶ 64. Eyewitness testimony confirms that Griffin’s boisterous, attention-seeking behavior had the effect of energizing the insurrectionist mob. *Id.* ¶ 62.

43. The Court concludes that Griffin’s encouragement and normalization of other insurrectionists’ violent activities were additional overt acts in support of the insurrection. *See* 8/16/22 Tr. 52:3–9 (Graber) (“[L]egally knowledgeable people of the Nineteenth Century said one more voice is one more person who is involved in the insurrection.”).

44. Griffin also repeatedly aligned himself with the insurrectionists. In videos

recorded before, during, and after the January 6 Attack, Griffin used the first-person plural to describe how “we” could not permit Joe Biden to steal the 2020 presidential election, “we” took over the Capitol grounds because it was “our” house, and “we” shouted “Heave! Ho!” in support of attackers breaking into the Capitol building. Prop. Findings of Fact ¶¶ 27–34, 57, 65–67. Griffin knew the individuals he was acting in concert with during the January 6 Attack were engaged in violence and force to stop certification of the election, and he proudly associated himself with them. *Id.*; *see also* 8/16/22 Tr. 46:1–48:20 (Graber).

45. After the attack, Griffin took to social media to justify and normalize the violence he acknowledged witnessing on January 6. Consistent with the insurrectionists’ post-January 6 focus on the presidential inauguration, *see* Proposed Findings of Fact ¶ 51, Griffin vowed a more brutal attack to prevent Biden from taking office on January 20, when he threatened there would be “blood running out” of the Capitol building, *id.* ¶ 67. Griffin later conveyed specific plans to attend Biden’s inauguration with firearms. *Id.* ¶ 69.

46. Nineteenth-century Americans would have regarded Griffin as being “leagued” with the January 6 insurrectionists because he acted in concert with those insurrectionists and committed several overt acts supporting the insurrection. *See* 8/16/22 Tr. 44:23–53:22 (Graber).

47. Griffin’s actions normalized and incited violence. 8/16/22 Tr. 99:15–21, 101:16–103:19, 135:13–136:1 (Kleinfeld). By calling on “men” to join him in “battle,” telling crowds they were in the midst of a “war,” dehumanizing the opposition as “wicked” and “vile,” warning that “losing [was] not an option,” and associating as an elected official with “violent specialist” groups, Griffin lowered inhibitions of others to engage in violence. *Id.* 108:14–109:12, 113:11–17, 114:12–115:3, 115:11–18 (explaining that placing violence in a sanctioned context, like war, and dehumanizing people are means of lowering inhibitions to violence). And by using language

that goes outside of democratic norms, like urging supporters take to “the streets” rather than the “ballot box,” Griffin suggested that the use of violence to prevent the transfer of presidential power was legitimate. *Id.* 113:11–17. Political violence predictably occurred at the Capitol on January 6 and Griffin helped make that happen. *Id.* 99:24–100:2.

D. Griffin Became Constitutionally Disqualified from Any Federal or State Office, Including His Current Office, Effective January 6, 2021.

48. For the foregoing reasons, the Court concludes Griffin is constitutionally disqualified from serving as a “Senator or Representative in Congress, or elector of President and Vice-President,” or from “hold[ing] any office, civil or military, under the United States, or under any State.” U.S. Const. amend. XIV, § 3.

49. The Court further concludes that Griffin’s current office of Otero County Commissioner qualifies as “any office . . . under a[] State” from which Griffin is now disqualified. Section Three’s list of offices from which one is disqualified (“Senator or Representative in Congress, or elector of President and Vice-President, or . . . any office, civil or military, under the United States, or under any State”) is facially broader than the offices eligible for disqualification (“member of Congress,” “an officer of the United States,” or “a member of any State legislature, or as an executive or judicial officer of any State”). Because the Otero County Commission falls into Section Three’s narrower list of disqualification-eligible offices, *see Prop. Concl. of Law ¶¶ 13–17*, it follows that it is also an office from which Griffin is now disqualified, *see Powell*, 27 F. Cas. at 607 (Section Three is “broad enough to embrace every officer in the state”).

50. Under the *quo warranto* statute, the “effective date” of a disqualified official’s forfeiture of office is the date on which the disqualifying condition occurred. *See State ex rel.*

King v. Sloan, 2011-NMSC-020, ¶¶ 13–14, 149 N.M. 620, 623–24 (official’s “forfeiture of ... office” was “automatic” upon occurrence of constitutionally-disqualifying condition and the Court’s the *quo warranto* judgment “simply operated to enforce that which had already occurred”). For Commissioner Griffin, that date was January 6, 2021.

51. The Court concludes that Griffin became constitutionally disqualified from federal and state office and forfeited his current office as an Otero County Commissioner effective January 6, 2021.

III. Commissioner Griffin’s Defenses Are Meritless.

52. The Court concludes that none of the defenses Griffin raised before this Court have merit.

53. While the Court “regard[s] pleadings from *pro se* litigants” such as Griffin “with a tolerant eye,” a “*pro se* litigant is not entitled to special privileges because of his *pro se* status.”¹ *Bruce v. Lester*, 1999-NMCA-051, ¶ 4, 127 N.M. 301, 302. Rather, a *pro se* litigant “is held to the same standard of conduct and compliance with court rules, procedures, and orders as are members of the bar.” *Newsome v. Farer*, 1985-NMSC-096, ¶ 18, 103 N.M. 415, 419.

54. Accordingly, the Court need not consider defenses Griffin asserted in the related federal proceedings but failed to raise in this Court, as those arguments are deemed forfeited. And while the Court must “review the arguments of self-represented litigants to the best of its ability,” it “cannot respond to unintelligible arguments” raised by Griffin. *Brooks v. Brooks*, 2015 WL 4366711, at *1 (N.M. June 30, 2015) (unpublished) (citing *Clayton v. Trotter*, 1990-NMCA-078, ¶¶ 16–17, 110 N.M. 369).

A. Griffin’s First Amendment Defense Fails.

55. Commissioner Griffin has claimed that disqualifying him under Section Three of

the Fourteenth Amendment would violate his First Amendment rights. *See, e.g.*, 8/15/22 Tr. 10:8–10; 104:9–15. Whether construed as asserting his First Amendment right to run for political office, his right to freedom of speech, or his right to the free exercise of religion, Griffin’s argument fails.

56. Despite Griffin’s objections to his own words being used against him in this case, “[t]he First Amendment ... does not prohibit the evidentiary use of speech.” *Wisc. v. Mitchell*, 508 U.S. 476, 489 (1993).

57. Griffin also overlooks that Section Three of the Fourteenth Amendment is just as much a part of the Constitution as the First Amendment. Griffin’s “unconstitutional constitutional amendment” theory has never succeeded in American courts and was specifically rejected by Section Three’s drafters. *See Br. of Amici Curiae Floyd Abrams et al.* at 8–13 (Aug. 1, 2022).

58. Even if a constitutional amendment could somehow be deemed unconstitutional as Griffin claims, Section Three poses no genuine threat to First Amendment rights; the two provisions can and must be harmonized. *See Br. of Amici Curiae Floyd Abrams et al.* at 13–28. Section Three affects the qualified right to run for political office—a right that has always been limited by qualifications such as age, citizenship, and residency. *See Thournir v. Meyer*, 909 F.2d 408, 412 (10th Cir. 1990) (“Candidacy itself is not a fundamental right”); *Griffin*, 2022 WL 2315980, at *12 (“Section Three of the Fourteenth Amendment narrows the First Amendment right to run for office”). Moreover, Section Three serves compelling interests in “protecting the integrity and practical functioning of the political process” by excluding candidates due to their disloyalty to the Constitution. *Hassan v. Colorado*, 495 F. App’x 947, 948 (10th Cir. 2012) (Gorsuch, J.); *see Sandlin*, 21 La. Ann. at 632 (recognizing “the State has obviously a great

interest” in enforcing Section Three “and a clear right to do” so).

59. Nor can Griffin’s free speech or free exercise rights immunize him from disqualification, even if his insurrectionary activities are entangled with speech and prayer. “[F]reedom of speech and of religion do not extend so far as to bar prosecution of one who uses a public speech or a religious ministry to commit crimes” or other illegal conduct. *United States v. Rahman*, 189 F.3d 88, 116–17 (2d Cir. 1999). Rather, Griffin could be held to violate even a statute pursuant to traditional First Amendment exceptions, such as speech integral to illegal conduct, *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949); *Rumsfeld v. FAIR, Inc.*, 547 U.S. 47, 62 (2006); true threats, *Virginia v. Black*, 538 U.S. 343, 359–60 (2003); and incitement, *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Here, Griffin is accused of violating the Fourteenth Amendment, which, as noted, must be “be read together and harmonized” with the First Amendment, *State v. Sandoval*, 1980-NMSC-139, ¶ 8, 95 N.M. 254, 257, to ensure Section Three is not rendered “without effect,” *Marbury v. Madison*, 5 U.S. 137, 174 (1803).

60. Moreover, courts have uniformly rejected arguments by Griffin and other insurrectionists that their conduct on January 6 was constitutionally-protected protest activity. *See Br. of Amici Curiae NAACP New Mexico Conference and NAACP Otero County Branch at 3–8* (Aug. 23, 2022) (compiling cases). Courts have likewise rejected January 6 insurrectionists’ attempts to compare their conduct to that of Black Lives Matters protesters. *See id.* at 8–11; *see also* 8/16/22 Tr. 161:12–18, 163:21–164:7, 148:3–5 (Kleinfeld) (explaining that while some Black Lives Matter protests “caused a lot of property damage,” January 6 was an unprecedented use of “violence and intimidation” to “affect the orderly transition of power” as mandated by federal law).

B. Griffin Can Be Disqualified Under Section Three Regardless of Whether He

Has Been Convicted of Any Crime.

61. Griffin has also argued he cannot be disqualified under Section Three because he was acquitted of disorderly conduct under 18 U.S.C. § 1752(a)(2) and has not been charged with the crime of insurrection under 18 U.S.C. § 2483. *See* 8/15/2 Tr. 10:4–6; 8/16/22 Tr. 146:10–13, 146:25–147:16. But Griffin is conflating a Section Three disqualification suit with a criminal prosecution. *See* 8/15/22 Tr. 105:19–21 (“THE COURT: Just to clarify, this isn’t a criminal proceeding. It’s a civil proceeding. So you mentioned criminal conduct before. That’s not this trial.”).

62. Section Three imposes a qualification for public office, much like an age or residency requirement; it is not a criminal penalty. *See Sandlin*, 21 La. Ann. at 632–33 (Section Three suit was brought “not to inflict punishment or to impose penalties or disabilities,” but “to inquire legally into [defendant’s] right to hold ... office”); Cong. Globe, 39th Cong., 1st Sess. 2918 (1865–66) (Section Three is “not ... penal in its character, it is precautionary”).

63. Nor is a criminal conviction (for any offense) a prerequisite for disqualification. Indeed, neither the courts nor Congress have ever required a criminal conviction for a person to be disqualified under Section Three. *See, e.g., Sandlin*, 21 La. Ann. 631; *Worthy*, 63 N.C. 199; *In re Tate*, 63 N.C. 309; May 2022 *Greene* Decision at 13.

64. Nor is Griffin’s acquittal for disorderly conduct legally relevant here. Unlike 18 U.S.C. § 1752(a)(2), Section Three does not require proof that Griffin engaged in “disorderly or disruptive conduct.” Instead, Griffin is disqualified under Section Three if he “[v]oluntarily aid[ed] the [insurrection], by personal service, or by contributions, other than charitable, of anything that [is] useful or necessary” to the insurrectionists’ cause,” or if he otherwise “leagued” with insurrectionists. Prop. Concl. of Law ¶¶ 33–34. The judge in Griffin’s criminal

case had no occasion to apply this standard. The quantum of proof also differs significantly: to secure a § 1752 conviction, the United States had to prove each element beyond a reasonable doubt. In this civil action, the standard of proof is, at most, preponderance of the evidence. Finally, Plaintiffs presented substantial evidence at this trial that the federal government did not present at Griffin’s criminal trial, making the conclusions at the criminal trial inapplicable to the evidence in this case.

C. Griffin’s Other Arguments Are Similarly Meritless.

65. At trial, Griffin incorrectly claimed an insurrection must involve a “collaborated effort to overthrow the government” and “replace” it. *E.g.*, 8/15/22 Tr. 41:10–12. He cited no authority supporting that definition and, as outlined *supra*, it is refuted by historical evidence. Prop. Concl. of Law ¶ 18–19. Not even the Civil War—the event that precipitated the Fourteenth Amendment—would meet Griffin’s definition of insurrection. 8/16/22 Tr. 55:1–10 (Graber).

66. Griffin also suggested he cannot be removed through a *quo warranto* suit because a recall effort against him failed. 8/16/22 Tr. 186:23–188:5. The case law forecloses this argument. *See Martinez*, 1980-NMSC-064, ¶ 6 (affirming *quo warranto* judgment and rejecting argument that recall election was the “exclusive means” for removing disqualified officials).

67. The Court also rejects Griffin’s argument that his removal and disqualification pursuant to the Constitution of the United States would “subvert the will of the people.” 8/15/22 Tr. 11:1. Griffin disregards that the Constitution *itself* reflects the will of the people and is “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2; *see also* N.M. Const. art. II, § 1. And he overlooks that his own insurrectionary conduct on January 6 sought to subvert the results of a free and fair election, which would have disenfranchised millions of voters. *See Br. of Amici Curiae NAACP New Mexico Conference and NAACP Otero County Branch* at 13–15 (refuting

Griffin's "disenfranchisement" argument).

[PROPOSED] ORDER GRANTING *QUO WARRANTO* RELIEF

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

1. Defendant Couy Griffin is disqualified under Section Three of the Fourteenth Amendment to the Constitution of the United States because (1) he took an oath to support the Constitution of the United States as an "executive ... officer of any State," (2) the January 6, 2021 attack on the United States Capitol and surrounding planning, mobilization, and incitement were an "insurrection" against the Constitution of the United States, and (3) Defendant "engaged in" that insurrection after taking his oath.

2. Due to his disqualification under Section Three of the Fourteenth Amendment, Defendant is constitutionally ineligible and barred for life from serving as a "Senator or Representative in Congress, or elector of President and Vice-President," or from "hold[ing] any office, civil or military, under the United States, or under any State," including his current office as an Otero County Commissioner.

3. Defendant became constitutionally disqualified from the federal and state positions specified above in Paragraph 2 and forfeited his current office as an Otero County Commissioner effective January 6, 2021.

4. Defendant shall be removed from his position as an Otero County Commissioner effective immediately.

5. Defendant is permanently enjoined and prohibited from performing any official acts in his purported capacity as an Otero County Commissioner or on behalf of the Board of County Commissioners of Otero County.

6. Defendant is permanently enjoined and prohibited from seeking or holding any federal or state position specified above in Paragraph 2.

Date: August 29, 2022

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