



AN INSURRECTIONIST IN THE STATEHOUSE:

THE CASE FOR EXPELLING

DOUG MASTRIANO

FROM OFFICE

CREW



Table of Contents

- 2** **There is compelling evidence that Mastriano is disqualified under Section 3 of the 14th Amendment**
- 3 Mastriano took an “oath... to support the Constitution of the United States”
- 3 January 6th was an “insurrection”
- 6 There is sufficient evidence to show that Mastriano likely engaged in insurrection in violation of Section 3 of the Fourteenth Amendment
- 18** **Mastriano should be investigated and held accountable by the Pennsylvania Senate**
- 19** **The Pennsylvania Senate has a range of disciplinary options it can impose on a member who has engaged in unethical conduct**
- 20** **There is ample evidence to suggest that Mastriano should be expelled under Section 3 of the 14th Amendment for his misdeeds**
- 21** **Censure is an ethical sanction for serious violations—a standard that Mastriano’s conduct satisfies**
- 22** **Mastriano’s conduct overwhelmingly surpasses admonishment or reprimand**
- 23** **For the sake of democracy Mastriano must be investigated and held accountable**



The January 6th attack on the U.S. Capitol was the culmination of an unprecedented and concerted attempt to prevent the peaceful transition of presidential power through extra-legal and violent means, and it left our fragile democracy in peril. Among those involved in that effort was Pennsylvania State Senator Doug Mastriano, who swore multiple oaths to defend the United States Constitution before the insurrection. His apparent participation in and work to plan, mobilize, and incite the attack on the U.S. Capitol is compelling evidence that Senator Mastriano is likely constitutionally ineligible to serve in office under Section 3 of the 14th Amendment to the United States Constitution. His conduct and continued presence in government is a threat to the institution he serves and to our democracy. That is why we believe that Senator Mastriano should be investigated by the Pennsylvania State Senate Ethics Committee for his role in the insurrection and be held accountable by the State Senate through its disciplinary process be it by admonishment, censure, or expulsion.

Expelling an elected official, even for planning, aiding, and participating in an insurrection, is a serious step. But accountability for those who engaged in the insurrection on January 6, 2021 is our country's best path forward—our democracy demands that state legislatures examine whether members like Doug Mastriano are unfit to serve in the democracy they sought to overthrow.

After the Civil War, our democracy faced the daunting task of protecting itself from people who had staged a rebellion against it. Facing that existential crisis, the country responded by ratifying Section 3 of the 14th Amendment, commonly known as the Disqualification Clause. This clause bars any person from holding federal or state office who took an “oath...to support the Constitution of the United States” and then “engaged in insurrection or rebellion” against the Constitution. Because the Disqualification Clause is part of the Constitution, it is the “supreme Law of the Land.” It establishes a basic qualification for office, no different than the

qualifications of age, citizenship, and residency imposed elsewhere in the Constitution.¹ It is also the only qualification for state office mandated by the U.S. Constitution.

One way to enforce the Disqualification Clause is through state legislatures or the U.S. Congress, which can either refuse to seat individuals who are constitutionally ineligible or expel them from the chamber.

The available facts provide a strong argument that Doug Mastriano is disqualified from holding public office under Section 3 of the 14th Amendment. As detailed below, those facts indicate Mastriano: (1) helped to mobilize and incite the mob ahead of January 6th, including by spending thousands of dollars in campaign funds to charter buses to transport Trump supporters to Washington, D.C. for the day's events; (2) played a pivotal role in the "fake electors" scheme, a plot which the U.S. House of Representatives' bipartisan January 6th Select Committee concluded "led directly to the violence" on January 6th;² and (3) personally joined the mob within the restricted area of the Capitol grounds on January 6th before ultimately leaving. His colleagues therefore can—and should—investigate his conduct to develop additional facts and, if it is determined that he does not meet the constitutional qualifications for office, refer the matter to the Senate Ethics Committee to consider the appropriate penalties available under the rules of the Pennsylvania Senate and the Pennsylvania Constitution.

There is compelling evidence that Mastriano is disqualified under Section 3 of the 14th Amendment. He should be investigated and, if the evidence is substantiated, held accountable by the Pennsylvania Legislature, including possible expulsion from the Chamber.

Individuals who participated in or supported the January 6th insurrection are currently serving in all levels of government. But legislators throughout the country have the power and the duty to enforce their constitutional disqualification and keep them from continuing to serve in the government they tried to overthrow if there is sufficient evidence to prove that they engaged in insurrection. There is substantial evidence that Senator Mastriano is one such insurrectionist, and his conduct must be investigated by the Pennsylvania Senate's Ethics Committee. This is not a matter of politics—the January 6th attack on the U.S. Capitol followed coordinated violent protests in state capitals across the country. Accountability is not only essential to

¹ H. R. Rep. No. 117-663 (2022) [hereinafter Select Committee Report].

² Select Committee Report, *supra* note 1, at 342-343.

maintaining the United States' position as a beacon of democracy around the world, but to ensure the safety of state capitals and our U.S. Capitol from future political violence.

Mastriano took an “oath... to support the Constitution of the United States” first as an “officer of the United States” and then “as a member of [a] State legislature”

To be subject to the Disqualification Clause, an individual must have previously taken an “oath... to support the Constitution of the United States.” Doug Mastriano has served as a senator for Pennsylvania’s 33rd District since 2019 when he was first elected in a special election.³ Mastriano was reelected to that seat in 2020, with his current term expiring in January 2024. Before assuming office in 2019 and again on January 5, 2021, Mastriano took an oath to “support, obey and defend the Constitution of the United States and the Constitution [of the Commonwealth of Pennsylvania]” and “to discharge the duties of [the office of senator] with fidelity.”⁴ Prior to his political career, Mastriano also took an oath to support the Constitution of the United States as a military officer in the Army.⁵ The text and history of Section 3 of the 14th Amendment make clear that the oath taken by former military officers meets the standard for disqualification if they participate in an insurrection and then seek civil office in the future.⁶

Because he took oaths to support the Constitution both as a state legislator and a military officer, Mastriano is unquestionably subject to the Disqualification Clause.

January 6th was an “insurrection”

There is ample evidence that the events of January 6th were an insurrection as contemplated under Section 3 of the 14th Amendment.

The U.S. House of Representatives’ bipartisan Select Committee to Investigate the January 6th Attack (“Select Committee”) concluded that the January 6th attack on the U.S. Capitol was an insurrection within the meaning of the 14th Amendment and in its final report endorsed the applicability of Section Three against those individuals who are covered by the clause’s prohibition against engaging in insurrection.⁷ Even prior to the Select Committee’s investigation, a bipartisan majority of the House impeached former President Donald Trump

3 Jossie Carbonare, *Republican candidate Doug Mastriano wins 33rd District State Senate seat*, Fox 43 (May 22, 2019), <https://www.fox43.com/article/news/local/contests/republican-candidate-doug-mastriano-wins-33rd-district-state-senate-seat/521-9c47191d-6b78-46bo-9e90-4ace9dabcd52>.

4 Sen. Doug Mastriano, *Doug Mastriano Takes Oath of Office* (June 10, 2019), <https://senatormastriano.com/2019/06/10/senator-doug-mastriano-takes-oath-of-office>; Sen. Doug Mastriano, *Mastriano Takes Oath for Second Term* (Jan. 5, 2021), <https://senatormastriano.com/2021/01/05/mastriano-takes-oath-for-second-term>.

5 Sen. Doug Mastriano, *Biography*, (2023), <https://senatormastriano.com/biography>.

6 Gerard Magliocca, *The 14th Amendment’s Disqualification Provision and the Events of Jan. 6*, Lawfare (Jan. 19, 2021), <https://www.lawfareblog.com/14th-amendments-disqualification-provision-and-events-jan-6>.

7 Select Committee Report, *supra* note 1, at 690.

for his role in the events of January 6th, which they described as an “insurrection.”⁸ A bipartisan majority of the Senate voted to convict Trump based on the same characterization.⁹ More than a dozen federal courts have called January 6th an “insurrection” and the participants “insurrectionists,”¹⁰ as has President Biden.¹¹ The Department of Justice (DOJ) under President Trump characterized January 6th as an “insurrection” in court filings.¹² The DOJ has also brought charges and secured convictions of key players in the attack for “seditious conspiracy”—a charge that closely tracks the definition of an insurrection.¹³ And finally, former President Trump’s own impeachment lawyers admitted that January 6th was an insurrection.¹⁴

CREW recently represented a group of New Mexico residents seeking to enforce the Disqualification Clause. In that case, *State v. Griffin*, which removed former Otero County Commissioner Couy Griffin from office for violating the Disqualification Clause, a New Mexico court found that the January 6th attack was an “insurrection” within the meaning of Section 3 of the 14th Amendment.¹⁵ In particular, the *Griffin* court found that the events on and surrounding January 6th were an attempt to interfere with the lawful presidential transfer of power which “is governed by the Twelfth and Twentieth Amendments and the Electoral Count Act, among other laws.”¹⁶ The court explained that the events surrounding January 6th were an attempt “to prevent the execution of one or more federal laws.”¹⁷ On February 16, 2023, the New

8 See H. R. Res. 24, 117th Cong. (2021) (impeaching Donald Trump for “incitement of insurrection”).

9 Barbara Sprunt, *7 GOP Senators Voted to Convict Trump. Only 1 Faces Voters Next Year*, NPR (Feb. 15, 2021), <https://www.npr.org/sections/trump-impeachment-trial-live-updates/2021/02/15/967878039/7-gop-senators-voted-to-convict-trump-only-1-faces-voters-next-year>.

10 See, e.g., *United States v. Munchel*, 993 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 2021), modified in non-relevant part by 2021 WL 3375834 (2021); *United States v. Brogan*, 2023 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 3168, 1199 (D. Colo. 2021), modified in non-relevant part by 2021 WL 5548129, at *2 (D. Colo. 2021); *United States v. Randolph*, 536 F. Supp. 3d 328, 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).

11 E.g., President Joe Biden, *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>.

12 *United States v. Chansley*, No. 21-cr-00003, ECF No. 5 (D. Ariz. filed Jan. 14, 2021), <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/Jacob%20Chansley%20Detention%20Memo.pdf>.

13 See *Oath Keepers Indictment* ¶¶14-134; see also *Four Oath Keepers Found Guilty of Seditious Conspiracy Related to U.S. Capitol Breach*, Department of Justice, Office of Public Affairs (Jan. 23, 2023), <https://www.justice.gov/opa/pr/four-oath-keepers-found-guilty-seditious-conspiracy-related-us-capitol-breach>.

14 See Cong. Rec., 117th Cong., Vol. 167, No. 28, 5717, 5733 (Feb. 13, 2021) (“[E]veryone agrees” that there was “a violent insurrection of the Capitol” on January 6th”).

15 *State v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, at *17 (N.M. Dist. Sept. 06, 2022).

16 *Id.* at *18 (citing to U.S. Const. amend. XII (requiring the Vice President, in his capacity as the President of the Senate to “open all the certificates” and “the votes shall then be counted”); U.S. Const. amend. XX § 1 (providing that President’s term “shall end at noon on the 20th day of January” and “the term[] of [his or her] successor[] shall then begin.”); 3 U.S.C. § 15 (establishing procedures for the opening and counting of electoral votes)).

17 *Id.* at *17.

Mexico Supreme Court rebuffed Griffin's appeal, allowing the trial court decision removing him under the Disqualification Clause to stand.¹⁸

The *Griffin* court rejected attempts by Griffin to claim that his conduct on January 6th was constitutionally protected protest activity. The court cited an amicus brief from the NAACP State Conference of New Mexico in dismissing Griffin's attempts to compare the conduct of insurrectionists to that of Black Lives Matter protesters.¹⁹ The *Griffin* court also credited expert testimony explaining that "while some Black Lives Matter protests 'caused a lot of property damage,' January 6th was an unprecedented use of 'violence and intimidation' to 'affect the orderly transition of power' as mandated by federal law."²⁰ The court also noted the "irony" of Griffin's citing his own election as a defense to removal from office after seeking to disenfranchise millions of voters on January 6th.²¹

In its analysis, the court heavily relied on historical analysis and expert testimony presented by the plaintiffs demonstrating the central role that pre-Civil War rebellions in Pennsylvania, including the Whiskey Rebellion and Fries' Insurrection, played in the 14th Amendment's framers' understanding of "insurrection." Pennsylvania's legacy as the birthplace of freedom in America has long been recognized. Its history as it relates to combating insurrections and disciplining insurrectionists is an integral part of that legacy.

The court also heard testimony from Dr. Rachel Kleinfeld, an expert on contemporary political violence in the United States and abroad, who concluded that Griffin was an insurrectionist based upon his participation in a multifaceted effort in the lead-up to January 6th to prevent the transfer of power through violence and the threat of violence.²² She based her opinion on the fact that his comments and actions in advance of January 6th demonstrated that he likely knew there was a substantial threat of violence, and he helped to create that threat by normalizing and justifying the use of political violence in the lead-up to and on January 6th.²³

The *Griffin* court concluded that the events of January 6th meet the original public meaning of the term "insurrection" as understood at the time that the 14th Amendment was ratified. The court credited expert testimony describing how leading thinkers from that time defined "insurrection," noting that the Whiskey Rebellion of 1794 and Fries' Insurrection of 1799—both of which occurred in Pennsylvania—were described as insurrections because they were coordinated, violent efforts specifically aimed at obstructing the federal government's ability to impose or collect taxes.²⁴ The court also credited Dr. Kleinfeld's aforementioned testimony

18 See *Griffin v. State of New Mexico*, Case: S-1-SC-39571, Order Denying Motion for Rehearing (N.M. Feb. 16, 2023).

19 *State v. Griffin* at *24 (citing Br. of Amici Curiae NAACP New Mexico Conference and NAACP Otero County Branch (Aug. 23, 2022)).

20 *Id.* (citing Trial Tr. (Aug. 16, 2022) (Test. of Rachel Kleinfeld, 161:12-18, 163:21-164:7, 148:3-5)).

21 *Id.* at *24.

22 See Trial Tr. (Aug. 16, 2022) (Test. of Dr. Rachel Kleinfeld).

23 *Id.* at *100.

24 *Id.*

as employing a more contemporary understanding of how Griffin and others engaged in insurrection.

There is sufficient evidence to show that Mastriano likely engaged in insurrection in violation of Section 3 of the Fourteenth Amendment

The *Griffin* court relied on Reconstruction-era case law holding that “a person ‘engage[s] in an insurrection...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.”²⁵ The court further found that a person engages in insurrection whenever they are “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.”²⁶ Importantly, engagement can include “non-violent overt acts or words in furtherance of the insurrection.”²⁷

The bipartisan Select Committee’s final report concluded that an individual does not have to personally commit acts of violence in order to engage in or incite an insurrection. Indeed, the committee made a criminal referral of former President Trump and John Eastman to the DOJ for inciting, assisting, or aiding and comforting an insurrection under 18 U.S.C. § 2383, even though they did not engage in any physical violence at the Capitol.²⁸ The Committee went even further in its recommendations, finding that those who took an oath to protect and defend the Constitution and then engaged in insurrection on January 6th can “appropriately be disqualified and barred from holding government office—whether federal or state, civilian or military...” under Section 3 of the 14th Amendment.²⁹

Based on the available evidence and case law, Mastriano’s actions in the weeks before and on January 6th likely constituted planning, mobilization, and incitement of an insurrection.

The evidence shows that Mastriano likely engaged in insurrection in the lead-up to the January 6th attack on the U.S. Capitol

In the lead-up to January 6th, Senator Mastriano was one of former President Trump’s most important state allies in his failed effort to overturn Pennsylvania’s presidential election results. The day after the Pennsylvania Department of State certified the general election results declaring Joe Biden the winner of the Commonwealth’s electoral votes, Mastriano and other GOP lawmakers hosted Trump lawyers Jenna Ellis and Rudy Giuliani at a “hearing” in

25 *Id.* at *19 quoting *Worthy v. Barrett*, 63 N.C. 199, 203 (1869); see also *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (defining “engage” as a “voluntary effort to assist the Insurrection...and to bring it to a successful termination” from the insurrectionists’ perspective).

26 *Id.* at *20.

27 *Id.*

28 Select Committee Report, *supra* note 1, at 109.

29 *Id.* at 690.

Gettysburg, Pennsylvania.³⁰ The hearing—which in reality was a town hall-type meeting—gave Giuliani, Mastriano, and former President Trump (who appeared by phone) the opportunity to perpetuate false claims that the general election had been rigged due to so-called voting irregularities in Pennsylvania and other swing states.³¹ These claims became part of the larger movement known as “Stop the Steal,” which was based on the false premise that the 2020 election was stolen and that the certification of the 2020 election and the transfer of presidential power needed to be stopped. This movement successfully mobilized and incited thousands of people from across the country to form a violent mob in Washington, D.C. to attempt to intimidate Vice President Pence and Congress to “stop the steal” on January 6, 2021.³²

Mastriano also served as the Trump campaign’s “point person” in the Pennsylvania fake electors scheme, meaning he was the person the Trump campaign and Republican National Committee were in touch with about selecting a “fake” slate of electors.³³ The fake electors scheme was vital to Donald Trump’s extra-legal January 6th strategy to pressure Vice President Pence to reject the legitimate Electoral College results. The idea was that by receiving multiple slates of electors from so-called disputed states, Pence would be able to falsely claim the results were in dispute and therefore either accept the fake Republican slates or send the issue back to the state legislatures for resolution.³⁴

As the Select Committee found in its final report, the “fake elector effort was an unlawful, unprecedented, and destructive break from the electoral college process” and it “led directly to the violence that occurred on January 6th.”³⁵

Dr. Kleinfeld offered expert testimony during the *Griffin* trial regarding how a state-level focus on fake electors was critical to the “Stop the Steal” insurrection movement. She testified that President Trump was attempting “multiple methods to remain in power through the courts and legal challenges and so on.”³⁶ The Stop the Steal movement was part of that effort, using “mob intimidation and violence in order to not allow the transfer of presidential power.”³⁷ According to Dr. Kleinfeld, the Stop the Steal movement “was really mobilized for three ends. It was mobilized at the state level to try to get states to rerun their elections, to declare their elections fraudulent, [and] send a fake slate of electors.”³⁸ Dr. Kleinfeld explained that, throughout November and December 2020, the national Stop the Steal movement called for state-level protests in order to “intimidat[e]...[and] put pressure on state officials” to reject legitimate election results.³⁹ Describing the state-level protests that took place during this period, she explained, “[t]hey’re trying to put pressure on for decertifying the election,

30 *Id.* at 277.

31 *Id.*

32 *Transcript of Trump’s speech at rally before US Capitol riot*, AP News (Jan. 13, 2021), <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>.

33 Maggie Haberman and Luke Broadwater, ‘Kind of Wild/Creative’: Emails Shed Light on Trump Fake Electors Plan, NY Times (July 26, 2022), <https://www.nytimes.com/2022/07/26/us/politics/trump-fake-electors-emails.html>.

34 See *Eastman v. Thompson*, 2022 WL 894256, at *3 (C.D. Cal. Mar. 28, 2022) (citing to *READ Trump lawyer’s memo on six-step plan for Pence to overturn the election*, CNN (Sept. 21, 2021), perma.cc/LP48-JRAF (“Eastman Short Memo”)).

35 Select Committee Report, *supra* note 1, at 342-343.

36 Trial Tr. at 96 (Aug. 16, 2022) (Test. of Dr. Rachel Kleinfeld).

37 *Id.*

38 *Id.* at 96-97.

39 *Id.* at 104.

declaring it fraudulent, asking for a fake slate of electors.”⁴⁰ Dr. Kleinfeld explained further that when those efforts failed, the movement “redirected toward January 6th, the last legal day of changing the direction of the transfer of presidential power,” preparing to deploy “pressure” and “mobilize violence” for their cause.⁴¹

Mastriano was not only involved in the fake elector scheme, but also intimately involved in Trump’s pressure campaign on the DOJ and other extra-legal efforts to overturn the election, his participation in which continued all the way up until January 6th.⁴² He was responsible for transmitting several letters to Trump which were intended to pressure Vice President Mike Pence to delay certification, and was in close contact with President Trump during this time period.⁴³

Much like former Commissioner Couy Griffin, Senator Mastriano “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.”⁴⁴ As the *Griffin* court explained, “helping to mobilize and incite thousands across the country to join the mob in Washington, D.C. on January 6th to intimidate and threaten Vice President Pence and Congress so they would not certify the election” constituted voluntarily aiding the insurrectionists’ cause.⁴⁵ And Mastriano’s inflammatory rhetoric leading up to January 6th echoes statements made by Griffin—statements which the New Mexico court found persuasive enough to determine Griffin had engaged in insurrection.⁴⁶ The *Griffin* decision cited Griffin’s statements recruiting “men” to join him in Washington, D.C. on January 6th for a “battle” as evidence that his rhetoric was not simply related to a metaphorical fight or struggle to protect their rights, but instead a “suggest[ion] that the use of violence to prevent the transfer of presidential power was legitimate.”⁴⁷ Accordingly, Mastriano’s mobilization and incitement efforts, when combined with others, aided in making the insurrection possible.

In the lead-up to January 6th, Mastriano worked to incite Trump supporters by using inflammatory rhetoric evoking war and religion both on social media and at virtual and in-person rallies. Mastriano mobilized his “army” of online supporters—a large social media presence of over 350,000 followers who referred to themselves as “Mastriano’s Army”—to further the “Stop the Steal” cause.⁴⁸ He participated in the Jericho March in Washington on

40 *Id.* at 105.

41 *Id.* at 97.

42 See Staff of S. Comm. On the Judiciary, 117th Cong., Rep. on Subverting Justice (Oct. 7, 2021), <https://www.judiciary.senate.gov/imo/media/doc/Interim%20Staff%20Report%20FINAL.pdf>; Select Committee Final Report, *supra* note 1, at 15.

43 Select Committee Report, *supra* note 1, at 295.

44 *State v. Griffin*, *supra* note 15, at *5.

45 *Id.* at *20.

46 *Id.*

47 *Id.* at *22.

48 Kelly Weill, *Heir to Election Audit Freak Show Throne Has ‘Army’ Behind Him*, *The Daily Beast* (July 19, 2021), <https://www.thedailybeast.com/doug-mastriano-heir-to-election-audit-freak-show-throne-in-pennsylvania-has-army-behind-him> (describing Mastriano’s serving as the administrator for more than 40 Facebook pages and his building of a large social media following); see also Twitter Account, @SenMastriano <https://twitter.com/SenMastriano> (with a following of 201,600 accounts); Twitter Account, @dougmastriano <https://twitter.com/dougmastriano> (with a following of 170,400 accounts).

December 12, 2020, which included QAnon followers and far-right militia groups.⁴⁹ During the December 12th Jericho March, Mastriano called on his supporters to “do what George Washington asked us to do in 1775. Appeal to Heaven. Pray to God. We need an intervention.”⁵⁰

Mastriano’s evocation of war and religion took on its most problematic tones when he participated in a Christian nationalist Zoom call a week before the insurrection.⁵¹ This Zoom call was one of nearly two dozen calls that were part of a series called the “Global Prayer for Election Integrity.”⁵² This Zoom series took place between the election and January 6th and was organized by Jim Garlow, a prominent figure in the far-right New Apostolic Restoration movement.⁵³ During the Zoom call, Mastriano described January 6th in biblical terms, laying out the existential stakes of Trump’s purported victory in the election, stating, “We remember the promises of old [. . .] We know we overcome Satan by the blood of the Lamb and the word of our testimony and not loving our lives unto death.”⁵⁴ He also told them, “We remember 1776, our Declaration of Independence, speaking God’s Truth and Word over what would become the United States of America.”⁵⁵ He also brought up how a “strong Christian man” confronted hijackers on 9/11.⁵⁶ Speaking of the upcoming protest on January 6th, Mastriano stated “I pray that... we’ll seize the power that we had given to us by the Constitution, and as well by you, providentially. I pray for the leaders also in the federal government, God, on the Sixth of January that they will rise up with boldness.”⁵⁷

Mastriano’s invocation of “1776” echoes many of his “Stop the Steal” partners, and has been a slogan used by right-wing extremists in years past to evoke violence aimed at the government. Use of “1776” as a slogan grew in popularity significantly during the Trump years, as Trump supporters and conspiracy theorists continue to use it to hint at a revolution in response to what they deem an illegitimate election.⁵⁸ It would be hard for Mastriano to argue that he did not intend to invoke violence by using “1776” rhetoric; as we are all taught in school, 1776 was a violent year for the United States—one in which the colonists began a violent overthrow of the British government’s control of the American colonies. “In 1776, the men who justified, organized, and directed that revolution...were insurrectionists; they were at war—literal, violent war—with their own government.”⁵⁹ A recent legal study found that Second

49 Eliza Griswold, *A Pennsylvania Lawmaker and the Resurgence of Christian Nationalism*, *The New Yorker* (May 9, 2021), <https://www.newyorker.com/news/on-religion/a-pennsylvania-lawmaker-and-the-resurgence-of-christian-nationalism>.

50 *Id.*

51 Tim Dickinson, *Caught on Tape: Doug Mastriano Prayed for MAGA to ‘Seize the Power’ Ahead of Jan. 6*, *Rolling Stone* (Sept. 9, 2022), <https://www.rollingstone.com/politics/politics-features/doug-mastriano-donald-trump-christian-right-1234589455/>; Griswold, *supra* note 49.

52 Tim Dickinson, *Caught on Tape: Doug Mastriano Prayed for MAGA to ‘Seize the Power’ Ahead of Jan. 6*, *Rolling Stone* (Sept. 9, 2022), <https://www.rollingstone.com/politics/politics-features/doug-mastriano-donald-trump-christian-right-1234589455>.

53 *Id.*

54 *Id.*

55 *Id.*

56 *Id.*

57 *Id.*

58 Washington Post Staff, *Identifying Far-Right Symbols That Appeared at the U.S. Capitol Riot*, *Washington Post* (Jan. 15, 2021), <https://www.washingtonpost.com/nation/interactive/2021/far-right-symbols-capitol-riot/>.

59 Andrew G. Celli Jr., *Taking History Seriously: Marjorie Taylor Green, Reflections on Progressive Lawyering and Section 3 of the Fourteenth Amendment*, 1 *Fordham Voting Rts. & Democracy F.* 59 (2022) at 73.

Amendment advocates have also used “1776” as shorthand for the alleged constitutional right to use guns against one’s own government.⁶⁰ According to the same report, by November and December of 2020, invocation of “1776” became synonymous with an alleged right “to use violence to block *any* government action deemed inimical to individual ‘freedom’—including certifying then-candidate Joseph R. Biden as the winner of the 2020 election.”⁶¹

On January 4th, Mastriano mentioned on the Eric Metaxas Radio Show that a march to the Capitol was planned for after Trump’s rally speech, directly refuting reports that the events on January 6th were spontaneous.⁶² In that same video he also stated that “this is an essential fight here and if we fail to uphold the rule of law in ensuring one vote per person counted we’re going to lose our republic. It’s that serious.” In that same interview, he characterized the sentiment of the “Save America” demonstrations as Republicans “basically...in this deathmatch with the Democrat Party.”⁶³ Again, Mastriano’s political rhetoric mirrors that of other insurrectionists like Couy Griffin, who in the spring of 2020 was featured in a video Trump tweeted where Griffin told a crowd of supporters that “the only good Democrat is a dead Democrat.”⁶⁴ Mastriano’s rhetoric remains indistinguishable from Griffin’s statements calling for Trump supporters to join him in a real, rather than metaphorical, “battle” to prevent the election being “stolen” and to keep Trump in power.

Then, on January 5, 2021, Mastriano addressed a crowd of approximately 200 people gathered to protest the certification of the state’s presidential election results at the “Hear Us Roar” rally in Harrisburg, Pennsylvania.⁶⁵ During his remarks, Mastriano called on Governor Tom Wolf to order an investigation and forensic audit of the results.⁶⁶ He spread lies about the election being stolen and repeatedly urged supporters to fight, including making multiple references to the American Revolution and comparing the efforts to keep Trump in office to the fight against Nazi Germany during World War II.⁶⁷ Standing outside of Pennsylvania’s capitol building, he pointed at a number of pride flags hanging from the building and claimed they were against the law.⁶⁸ The crowd responded with a chant of “tear them down, tear them down.”⁶⁹ Given

60 *Id.* at 71.

61 *Id.* at 72.

62 The Eric Metaxas Radio Show, *Doug Mastriano on the Eric Metaxas Radio Show*, Media Matters for America, <https://www.mediamatters.org/media/3922326>.

63 *Id.*

64 Aaron Blake, *Trump promoted N.M. official’s comment that ‘the only good Democrat is a dead Democrat.’ Now the man is arrested in the Capitol riot.*, Washington Post (Jan. 18, 2021), <https://www.washingtonpost.com/politics/2021/01/18/trump-promoted-his-comment-that-only-good-democrat-is-dead-democrat-now-he-is-arrested-storming-capitol/>.

65 Steve Marroni, *‘Hear Us Roar’ rally attendees call for decertification of vote in Pa.*, PennLive (Jan. 5, 2021), <https://www.pennlive.com/news/2021/01/hear-us-roar-rally-attendees-call-for-decertification-of-vote-in-pa.html>; Mark Pynes, *‘Hear Us Roar’ rally in Harrisburg*, Lehigh Valley Live, <https://www.lehighvalleylive.com/galleries/ZW7QANXTZBAEBL7TEO3IHCCNMY/>.

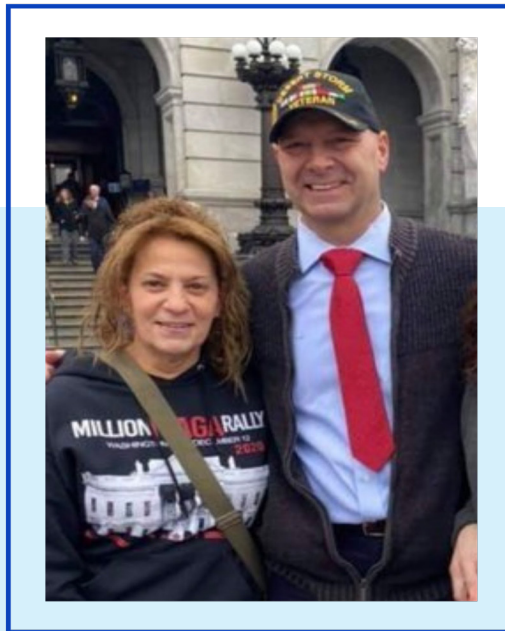
66 *Id.*

67 Gumbass and Taste of Sicily, *Doug Mastriano Speech from 5 Jan 2021 (deleted from his archives)*, YouTube (Aug. 2, 2022), https://www.youtube.com/watch?v=_Vfu6EWDQuY.

68 *Id.*

69 *Id.*

the context—standing in front of a state capitol building the day before the insurrection—Mastriano’s speech takes on additional meaning.



Sandra Weyer with Mastriano at the January 5, 2021 “Hear Us Roar” rally.

Just as the *Griffin* court concluded that Griffin’s actions and rhetoric normalized and incited violence, the same can be said about Mastriano. By characterizing January 6th in terms of “war” and a “deathmatch with the Democrat[s]” Mastriano contributed to the atmosphere of political violence and the notion that it can be warranted in a sanctioned context, like war. Mastriano utilized language that went outside of democratic norms by encouraging his supporters to “seize the power that we had given to us by the Constitution” and invoking the violence required to overthrow the 9/11 hijackers and the “us versus them” mentality that inherently lends itself to 9/11. “Political violence predictably occurred at the Capitol on January 6th,” to prevent the peaceful transfer of presidential power, and Mastriano’s actions and words helped make that happen.⁷⁰ Mastriano’s actions and escalating rhetoric make clear that his language was not aimed at encouraging peaceful protest or a metaphorical “fight” for votes, but instead explicitly contemplated a violent effort to, in his words, “seize the power” on January 6th.

It is important to note that based on prior legislative and court action related to the January 6th attack, application of the Disqualification Clause or sanction by the Pennsylvania Senate against Mastriano arising from his actions and rhetoric detailed above does not pose a threat to First Amendment rights. National First Amendment advocates supported Donald Trump’s

70 *State v. Griffin*, *supra* note 15, at *21.

second impeachment based on his conduct and statements leading to the January 6th attack.⁷¹ Advocates cited Trump's repeated knowingly false statements about voter fraud, aimed at undermining public faith in the election results; his support of frivolous election lawsuits; his pressure campaign on election officials in several states, including Pennsylvania, to interfere with the results of the election; his seeking to disenfranchise people of color by targeting his efforts to overturn legitimate election results in jurisdictions with predominantly Black or Brown populations; and his urging a mob to attack the United States Capitol on January 6, in an effort to prevent the election certification process and to intimidate the vice president and members of Congress from carrying out their constitutional duties.⁷²

First Amendment scholars also flatly rejected Trump's First Amendment defense as "legally frivolous" during his Senate impeachment trial, explaining that the constitutional protection does not apply in an impeachment proceeding.⁷³ In the *Griffin* case, some of these same scholars submitted an amicus brief cited by the court, noting that a First Amendment defense to removal under the Disqualification Clause "ignores the fact that the drafters of the Clause possessed full knowledge of the First Amendment, yet provided no First Amendment defense to disqualification."⁷⁴ The brief referred to Griffin's argument as an "inherently implausible theory," noting that the Disqualification Clause "poses no threat to speech or expression protected by the First Amendment."⁷⁵ Instead, the provision applies only to a "unique category of persons who assumed their positions voluntarily—namely, current and former officeholders who violated their oath—and it directly affects only their limited and qualified right to hold office."⁷⁶ As a part of the Constitution, the Disqualification Clause is the "supreme law of the land" and it must "be read together and harmonized" with the First Amendment so that "Section Three is not rendered 'without effect.'"⁷⁷

Mastriano's offending conduct extends well beyond speech, but First Amendment experts and federal judges have repeatedly rejected these defenses in cases arising from the attack.⁷⁸

71 See, e.g. *ACLU Again Calls for Impeachment of Donald Trump*, ACLU (Jan. 10, 2021), <https://www.aclu.org/press-releases/aclu-again-calls-impeachment-president-trump>; *People for the American Way: Trump Must be Held Accountable*, People for the American Way (Jan. 25, 2021), <https://www.pfaw.org/press-releases/people-for-the-american-way-trump-must-be-held-accountable/>.

72 *Id.*

73 See, e.g. Nicholas Fandos, Michael S. Schmidt, and Maggie Haberman, *144 Constitutional Lawyers Call Trump's First Amendment Defense 'Legally Frivolous'*, *The New York Times* (Feb. 5, 2021), <https://www.nytimes.com/2021/02/05/us/politics/trump-impeachment-defense.html>; Ian Milliser, *Trump's false claim that impeachment violates the First Amendment, explained*, *Vox Media* (Feb. 12, 2021), <https://www.vox.com/22272734/trump-impeachment-first-amendment-lies-incitement-brandenburg-new-york-times-sullivan-bond>.

74 Br. of Amici Curiae Floyd Abrams et al., in Support of the Plaintiffs' Action for Quo Warranto Relief p. 5, *State v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619 (N.M. Dist. Sept. 06, 2022).

75 *Id.*

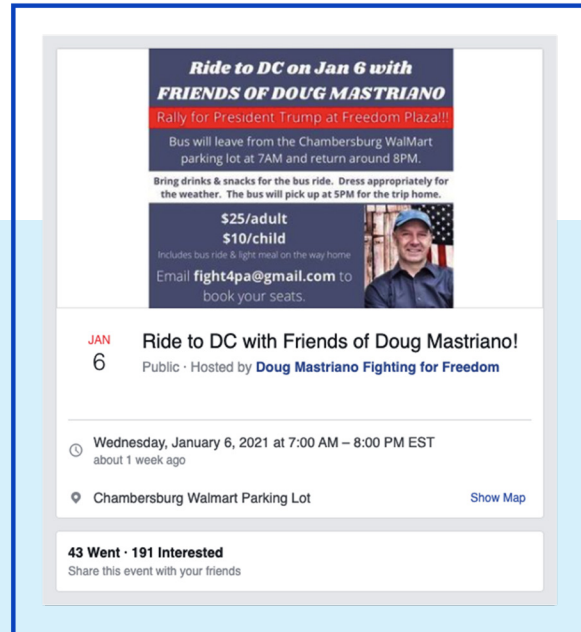
76 *Id.*

77 *Id.* at 17; *State v. Griffin*, *supra* note 15, at *24, *25.

78 See *State v. Griffin*, *supra* note 15; see also Br. of Amici Curiae Floyd Abrams et al., in Support of the Plaintiffs' Action for Quo Warranto Relief, *State v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619 (N.M. Dist. Sept. 06, 2022); Br. of Amici Curiae NAACP New Mexico Conference and NAACP Otero County Branch in Support of the Plaintiffs' Action for Quo Warranto Relief, *State v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619 (N.M. Dist. Sept. 06, 2022).

The evidence shows that Mastriano likely engaged in insurrection on January 6th during the attack on the U.S. Capitol

Perhaps Mastriano’s most consequential act to aid the insurrectionists’ cause came in the form of chartering and paying for buses to take Trump supporters to Washington, D.C. on January 6, 2021.⁷⁹ He created a Facebook event advertising bus tickets to the rally on December 28, 2020.⁸⁰ According to campaign finance reports, Mastriano’s campaign committee paid \$3,354 to secure three buses.⁸¹ It was later reported that Mastriano’s campaign actually paid for six buses.⁸² As the *Griffin* court explained, “The mob’s size was their ‘greatest weapon’ and what enabled them to achieve the level of success that they did on January 6” and “[t]he pre-January 6 mob mobilization and incitement efforts [. . .] helped make the insurrection possible.”⁸³ The trial featured the compelling account of D.C. Metropolitan Police Officer Daniel Hodges who testified that the size of the mob prevented him and his fellow officers from making arrests, and removing insurrectionists from the grounds and from inside the building.⁸⁴ Officer Hodges described in chilling detail how the mob made it impossible to move as they attempted to crush him and other law enforcement officers in a Capitol tunnel while he screamed in pain.⁸⁵ His account confirmed expert testimony describing how the size of the mob, and each additional person in it, enabled the insurrection to disrupt the



Mastriano’s Facebook event advertising bus tickets from Pennsylvania to the “Save America” rally.

79 Staff of S. Comm. On the Judiciary, 117th Cong., Rep. on Subverting Justice (Oct. 7, 2021), at 15, <https://www.judiciary.senate.gov/imo/media/doc/Interim%20Staff%20Report%20FINAL.pdf>; Select Committee Final Report, *supra* note 1, at 294.

80 Katie Meyer et al., *Sen. Doug Mastriano Campaign Spent Thousands on Buses Ahead of D.C. Insurrection*, WITF (Jan. 13, 2021), <https://www.witf.org/2021/01/13/sen-doug-mastriano-campaign-spent-thousands-on-buses-ahead-of-d-c-insurrection/>.

81 Staff of S. Comm. On the Judiciary, 117th Cong., Rep. on Subverting Justice (Oct. 7, 2021), at 16, <https://www.judiciary.senate.gov/imo/media/doc/Interim%20Staff%20Report%20FINAL.pdf> (citing to Pennsylvania Dep’t of State, Campaign Finance Report: Doug Mastriano Year 2020 Cycle 7 (Sept. 20, 2021) at 33-34).

82 Eliza Griswold, *How Election Subversion Went Mainstream in Pennsylvania*, *New Yorker* (Oct. 31, 2022), <https://www.newyorker.com/magazine/2022/11/07/how-election-subversion-went-mainstream-in-pennsylvania>.

83 *State v. Griffin*, *supra* note 15, at *4.

84 *Id.* at *8 (citing Mr. Hodges testimony).

85 *Id.*

peaceful transition of presidential power for the first time in American history—a feat not even accomplished during the Civil War.

Mastriano’s charter buses may have contributed to the mob violence and intimidation that unfolded on January 6th. The number of attendees contributed to the size of the mob that overran, beat, and intimidated law enforcement officers who responded to the Capitol complex on January 6th. Mastriano’s influence on the protestors was felt through the presence of his supporters and his campaign paraphernalia at the insurrection—signs bearing his “Walk as Free People” slogan, a reference to the Gospel of John, were found around the Capitol grounds after January 6th.⁸⁶ In addition, at least two of the attendees who were later arrested in connection with the January 6th attack and attempts to secure the District of Columbia in the aftermath of the violence may have traveled to Washington D.C. on one of the buses that Mastriano organized.⁸⁷ One, Jim Sinclair, was arrested for possessing brass knuckles and violating the curfew put into effect by D.C. Mayor Muriel Bowser following the January 6th attack.⁸⁸ During the attack on the Capitol, Sinclair posted on Facebook, “Freedom!!!!!!...It’s 1776, the American people have ears and eyes. We will not accept this fraudulent election.”⁸⁹ This social media post was consistent with another from December 2020 where Sinclair stated that it was time to spill the “blood of tyrants.”⁹⁰ The other, Sandra Weyer, was charged by the FBI for breaching the Capitol and engaging in obstructive conduct while inside, which included the encouragement of an assault against a *New York Times* photographer.⁹¹ The *New Yorker* reported that both rode the buses to Washington D.C.⁹² Mastriano denies that Weyer rode one of his buses, and “disavowed” her.⁹³

Videos and photos also show that Mastriano joined the mob within the restricted area beyond police barricades at the Capitol despite his statements otherwise.⁹⁴ Mastriano’s participation

86 Torsten Ove, *Accused Capitol rioter from Pa. who called for members of Congress to be hanged shouldn't be allowed to present alibi, feds say*, Pittsburgh Post Gazette (Apr. 24, 2022), <https://www.post-gazette.com/news/crime-courts/2022/04/24/capitol-rioter-trial-pauline-bauer-pennsylvania-mckean-county-nancy-pelosi-william-blauser-january-6-insurrection/stories/202204240149>.

87 Griswold, *supra* note 49.

88 William Bender, et al., *A Bucks County Trump supporter posted about a 1776-style revolution during Capitol riot. Then, he was arrested*, Philadelphia Inquirer (Jan. 7, 2021), <https://www.inquirer.com/news/capitol-riot-arrests-pennsylvania-new-jersey-trump-20210107.html&outputType=app-web-view>.

89 *Id.*

90 *Id.*

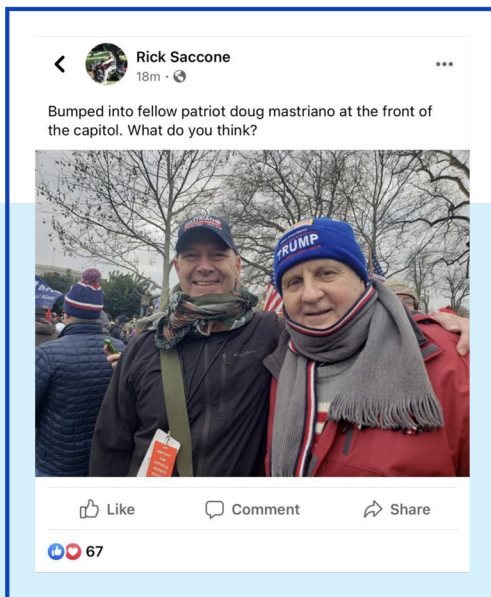
91 Tammie Gitt, *Mechanicsburg woman faces multiple charges related to Capitol riot on Jan. 6*, The Sentinel (June 28, 2021), https://cumberlink.com/news/local/crime-and-courts/mechanicsburg-woman-faces-multiple-charges-related-to-capitol-riot-on-jan-6/article_7c4d0033-057c-5fe7-aeb8-030782d76f64.html; see Aff. in Supp. of Crim. Compl. and Arrest Warrant, *United States v. Weyer*, No. 21-mj-00483-RMM, ECF No. 1-1 (D.D.C. June 24, 2021), <https://www.justice.gov/usao-dc/case-multi-defendant/file/1407556/download>.

92 Griswold, *supra* note 49.

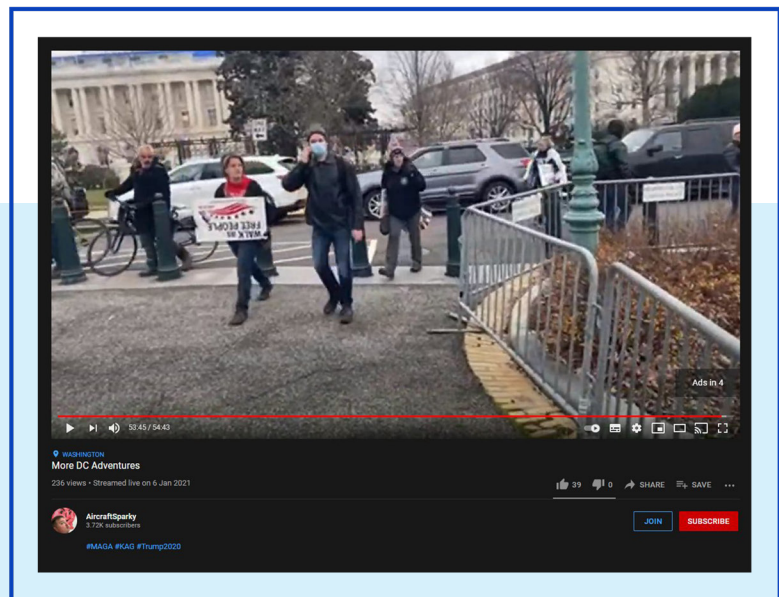
93 Weill, *supra* Note 48.

94 Sen. Doug Mastriano, *Mastriano Condemns Huffington Post Attack Article* (May 25, 2021), <https://senatormastriano.com/2021/05/25/mastriano-condemns-huffington-post-attack-article/>; Jeremy Roebuck and Andrew Seidman, *Pa. GOP lawmaker Doug Mastriano says he left the Capitol area before the riot. New videos say otherwise*, The Philadelphia Inquirer (May 25, 2021), <https://www.inquirer.com/news/doug-mastriano-capitol-riot-pennsylvania-video-20210525.html&outputType=app-web-view>; Ryan J. Reilly (@ryanjreilly), Twitter (May 25, 2021, 6:09 PM), <https://twitter.com/ryanjreilly/status/1397313790773956616?>; American Patriot, *PA Senator Doug Mastriano and wife, Rebbie, cross police lines at Jan 6 attack on the US Capitol*, YouTube (May 22, 2021), <https://www.youtube.com/watch?v=MfWCKE14jXY>.

on January 6th began with his attendance at the “Stop the Steal” rally at the White House Ellipse.⁹⁵ He was given “VIP” status, which included golf cart transportation⁹⁶ and was included on a list advertising “Invited Speakers and Featured Guests.”⁹⁷ According to communications obtained from other individuals by the Select Committee revealing email exchanges between the January 6th rally organizers, Mastriano was both scheduled to speak on the main stage on January 6th—although he never did—and was one of only a small number of people on the list of “POTUS SPEECH SHOUTOUT REQUESTS” alongside figures like Roger Stone, Rudy Giuliani, and Mike Lindell.⁹⁸ After Trump’s call to his supporters to march to the Capitol and “fight like hell,” Mastriano marched with legions of Trump supporters to the Capitol complex and breached police barriers outside the building.⁹⁹ Later that day, Mastriano released a statement claiming that “[w]hen it was apparent that this was no longer a peaceful protest, my wife and I



Mastriano on the east side of the Capitol posing for a picture with former state representative Rick Saccone who posted it to his Facebook page.



Weyer seen on video carrying a “Walk as Free People” sign on the afternoon of January 6.

95 See Colby Itkowitz and Rosalind D. Helderman, *Leading GOP candidates in Pennsylvania were in Washington on Jan. 6*, Wash. Post (May 15, 2022), <https://www.washingtonpost.com/politics/2022/05/15/leading-gop-candidates-pennsylvania-were-washington-jan-6/>.

96 Ruby Cramer, *‘His Street Cred Went Up’: The Unintended Consequences of Outing the GOP Lawmakers at Jan. 6*, Politico Magazine (Oct. 18, 2021), <https://www.politico.com/news/magazine/2021/10/18/democrats-outing-republican-lawmakers-january-6-insurrection-516109>.

97 Screenshot of WildProtest.com, <https://archive.ph/6RzUY#selection-1439.0-1454.0>.

98 H. Rept. 117-663 (2022), H.R. Doc. No. CTRL0000015971 - (Katrina Pierson Production), KPierson0180, Emails (Jan. 4, 2021), <https://www.govinfo.gov/content/pkg/GPO-J6-DOC-CTRL0000015971/pdf/GPO-J6-DOC-CTRL0000015971.pdf>.

99 Brian Naylor, *Read Trump’s Jan. 6 Speech, A Key Part Of Impeachment Trial*, NPR (Feb. 10, 2021), <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>; Roebuck, *supra* note 93.

left the area and made our way out of the area” and that he did not “go beyond police lines.”¹⁰⁰ Video and photo evidence, however, contradict these claims.¹⁰¹

One video shows Mastriano advancing through breached police lines.¹⁰² Another video shows Mastriano at the base of the Capitol building’s steps, far beyond the police lines he claimed not to have crossed.¹⁰³ In response to these videos, Mastriano released a statement, explaining that “[e]ven disingenuous internet sleuths know that police lines did shift throughout the course of the day. I followed those lines as they existed.”¹⁰⁴ Mastriano’s explanation is, at best, misleading. As another video shows, one so-called “shift” in the police lines, which Mastriano witnessed from only a few feet away, involved police officers clearly trying to hold the line while the mob pushed them back and one man in particular forcefully removed police barricades.¹⁰⁵ It is significant that the “shifts” that Mastriano refers to were not the result of intentional, strategic decisions made by Capitol police, but rather due to the force of the mob pushing against the police who were trying to protect the Capitol from further violence.

In an interview on January 13, 2021, Mastriano stated that he observed “agitators” clashing with police officers and attempting to remove bicycle rack barriers on the Capitol’s west side and that he continued to the east side of the Capitol where he saw more “agitators” pushing police officers up the building’s steps.¹⁰⁶ It therefore seems to be implausible to argue that Mastriano was unaware that the mob was engaged in violence and illegal activity as he made his way to the other side of the Capitol to join them. The Select Committee subpoenaed Mastriano to testify about his involvement in the events of January 6th and his interactions with President Trump leading up to it.¹⁰⁷ Mastriano did not comply; he logged in to a virtual deposition but promptly logged out before answering any substantive questions or even taking the oath.¹⁰⁸ His failure to comply with the Select Committee’s subpoena not only suggests consciousness of guilt, but also demonstrates why the Pennsylvania Ethics Committee, which has direct jurisdiction over Mastriano, must investigate his conduct and, if the allegations

100 Sen. Doug Mastriano, *Mastriano Condemns Violence in Washington, D.C.* (Jan. 6, 2021), <https://senatormastriano.com/2021/01/06/mastriano-condemns-violence-in-washington-d-c/>.

101 Roebuck, *supra* note 93.

102 American Patriot, *supra* note 93; Sam Dunklau, *Pennsylvania Sen. Doug Mastriano Unlikely To Face Consequences Over Newly Released Jan. 6 Videos At The Capitol*, 90.5 WESA (May 28, 2021), <https://www.wesa.fm/politics-government/2021-05-28/pennsylvania-sen-doug-mastriano-unlikely-to-face-consequences-over-newly-released-jan-6-videos-at-the-capitol>.

103 American Patriot, *PA Senator Doug Mastriano and wife, Rebbie, in front of the US Capitol at Jan 6 Attack*, YouTube (May 23, 2021), https://www.youtube.com/watch?app=desktop&v=rxhoob6NfaY&ab_channel=AmericanPatriot; Roebuck, *supra* note 93.

104 Sen. Doug Mastriano, *Mastriano Condemns Huffington Post Attack Article* (May 25, 2021), <https://senatormastriano.com/2021/05/25/mastriano-condemns-huffington-post-attack-article/>.

105 Ryan J. Reilly (@ryanjreilly), Twitter (May 25, 2021, 6:09 PM), <https://twitter.com/ryanjreilly/status/1397313790773956616?>.

106 *Tracking Doug Mastriano's Movements During the Insurrection: A Timeline*, Pennsylvania Spotlight (May 9, 2021), <http://www.paspotlight.org/2021/tracking-doug-mastrianos-movements-during-the-insurrection-a-timeline/>.

107 Select Committee Report, *supra* note 1, at 295.

108 *Id.*

Mastriano sightings on January 6, 2021

K2theSky @K2theSky · May 22, 2021

Replying to @K2theSky

Why wouldn't you think you should enter? Especially when you have #ZZTopPB opening the gates for you. #Mastriano #SenMastriano #SeditionHunters #SeditionHasConsequences

[instagram.com/p/CJwosuKhzok/...](https://www.instagram.com/p/CJwosuKhzok/)

33 replies, 239 retweets, 373 likes

K2theSky @K2theSky

PA State Sen. Mastriano taking his wife on an insurrection tour of the NW Lawn. #Mastriano #SenMastriano #SeditionHasConsequences

12:06 AM · May 22, 2021 · Twitter Web App

K2theSky @K2theSky · May 23, 2021

This vid is showing the group now moving towards the East Steps. #Mastriano is visible at 0:04s. You'll see the steps have not yet been breached. Parler timestamp is 1:59pm

#Mastriano #SenMastriano #SeditionHunters #IamDougMastriano #IamJeremyOliver

web.archive.org/web/2021011106...

17 replies, 121 retweets, 212 likes

K2theSky @K2theSky · Jun 30

Here are officers struggling to stop rioters on the East steps while @SenMastriano watched, filmed, and chit chatted with friends.

#SeditionHunters #January6thHearings #Jan6th #IamDougMastriano @Dougmastriano #TheBigLie

2 replies, 22 retweets, 24 likes

K2theSky @K2theSky · Jun 29, 2021

A reference for how they looked from behind on J6.

4 replies, 21 retweets, 43 likes

are substantiated, hold him accountable for his insurrectionist actions, including through admonishment, censure, or potentially expulsion.

Mastriano's presence in the mob contributed to the insurrection even if he did not personally attack police officers or engage in violence. As the *Griffin* court explained, just "[o]ne more person closer to the Capitol" as part of the mob or "one more voice" encouraging violence would be "one more person" engaged in the insurrection, particularly when, as noted above, the size of the mob was crucial to its ability to disrupt the proceedings.¹⁰⁹ Federal judges presiding over January 6th criminal trials have similarly found that "mere presence" in the January 6th mob "disturb[ed] the normal and peaceful condition of the Capitol grounds and buildings, its official proceedings, and the safety of its lawful occupants."¹¹⁰ The evidence that Mastriano was beyond police lines demonstrates that he was "one more person closer to the Capitol" and that his presence contributed to the "mob's size and the chaotic atmosphere it created."¹¹¹ Much like Griffin and others, Mastriano's participation in the lead-up to and on January 6th seems to amount to the planning, mobilization, and incitement of an insurrection and as such, he is likely constitutionally disqualified from holding office under the U.S. Constitution.

Mastriano should be investigated and held accountable by the Pennsylvania Senate

Mastriano is an election denier who, despite taking an oath to defend the U.S. Constitution, supported and appears to have engaged in an insurrection against it. His continued service in the Pennsylvania Senate poses an acute and ongoing threat to democratic institutions in the Commonwealth of Pennsylvania. Mastriano has expressed no remorse for his participation in the events on and leading up to January 6th and in fact has claimed the people who stormed the Capitol "did nothing wrong."¹¹² During his run for governor in 2022 he continued to embrace the "Big Lie" that the 2020 presidential election was somehow fraudulent and vowed to appoint a secretary of state who would reverse election results that he disagreed with.¹¹³ His continued presence in the Pennsylvania Senate is not only in tension with the United States

¹⁰⁹ *State v. Griffin*, *supra* note 15, at *20.

¹¹⁰ *United States v. MacAndrew*, 2023 WL 196132, at *8 (D.D.C. Jan. 17, 2023); *accord. United States v. Grider*, 2022 WL 17829149, at *12 (D.D.C. Dec. 21, 2022); *United States v. Rivera*, 2022 WL 2187851, at *5 (D.D.C. June 17, 2022).

¹¹¹ *Id.*

¹¹² Lauren Rude, *Mastriano on Jan. 6 subpoena: "There are no legal issues"*, ABC27 News (Apr. 28, 2022), <https://www.abc27.com/pennsylvania-governor-election-2022/mastriano-on-jan-6-subpoena-there-are-no-legal-issues/>.

¹¹³ Eliza Griswold, *An Insurrectionist Could be the Next Governor of Pennsylvania*, *The New Yorker* (May 21, 2022), <https://www.newyorker.com/news/daily-comment/an-insurrectionist-could-be-the-next-governor-of-pennsylvania>.

Constitution's Disqualification Clause, it also threatens the American people's continued faith in democracy and the rule of law necessary to maintain a peaceful, constitutional order.

The Pennsylvania Senate has a range of disciplinary options it can impose on a member who has engaged in unethical conduct

The Pennsylvania Senate has a range of potential disciplinary actions that it can take against Senator Mastriano, or any senator, for ethical misconduct up to and including expulsion.

Ethics complaints against sitting members of the Pennsylvania Senate are investigated by the Pennsylvania Senate Committee on Ethics. The Ethics Committee is composed of "six members appointed by the Senate Pro Tempore," in this case, Senator Kim Ward.¹¹⁴ The Ethics Committee is not a standing committee of the Senate, but rather is established on an ad hoc basis as the need arises.¹¹⁵ Under Senate Rule 34(c) it is empowered to "receive complaints against any Senator alleging unethical conduct in violation of a Senate Rule, statute or constitutional provision governing the ethical conduct of a Senator."¹¹⁶ By its very terms, engaging in insurrection in violation of Section Three of the Fourteenth Amendment would qualify as a "violation of a...constitutional provision" within the Ethics Committee's jurisdiction under Senate Rule 34(c).

The Senate Rules lay out the process for investigations in detail. The Ethics Committee's meetings, deliberations, and investigations are private, unless the complainant chooses to divulge the proceedings under Senate Rule 34(g). If the Committee so chooses, it can hire an independent counsel to conduct a formal investigation.¹¹⁷ Following an investigation, the Ethics Committee produces a report detailing its conclusions and recommendations. That report, which is then transmitted to the Senate as a whole, can recommend a range of potential

114 Pa. S. Rule 34; Member Information, *Senator Kim L. Ward*, Pennsylvania State Senate, https://www.legis.state.pa.us/cfdocs/legis/home/member_information/senate_bio.cfm?id=1188.

115 Pa. S. Rule 41.

116 Pa. S. Rule 34(c).

117 Pa. S. Rule 34(k).

sanctions including admonishment, censure, and expulsion.¹¹⁸ Each of these have been used by the Pennsylvania Senate in the past.

Expulsion is the most serious sanction that a legislature can impose for ethical misconduct, and there is ample evidence to suggest that Mastriano should be expelled under Section 3 of the 14th Amendment for his misdeeds

There is ample evidence suggesting that Senator Mastriano engaged in the planning, incitement, and mobilization of the January 6th insurrection and in the insurrection itself; as a result, he is likely disqualified from public office under Section 3 of the 14th Amendment. He should be investigated, and the Pennsylvania Senate should consider expelling him.

Expulsion is the most severe sanction that the Ethics Committee can recommend. Unlike other ethics sanctions which require a simple majority vote, expulsion requires a two-thirds majority. Historically it has been used sparingly at both the state and federal level, usually after a criminal conviction or in response to attempts to dismantle our democracy like when the U.S. Congress expelled 10 southern U.S. senators in 1861 for treasonous Civil War conduct.¹¹⁹

Article 2 § 11 of Pennsylvania's Constitution governs expulsion of a member of its legislature and provides:

Powers of each house; expulsion. Each House shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against violence or offers of bribes or private solicitation, and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the Legislature of a free State.¹²⁰

The process to expel a member of the Pennsylvania legislature under Article 2 § 11 is relatively simple, and the history of its use is informative as it has been used only in the most extraordinary of circumstances. The first time a Pennsylvania senator was expelled was Frank Mazzei on June 2, 1975, after being convicted of extortion charges.¹²¹ Pennsylvania State Senator Wayne Ewing raised a "constitutional point of order" that Mr. Mazzei should

118 O. of Legis. Rsch. Rep., *Disciplinary Actions in Other States' Legislative Bodies That Involved Criminal Conduct* (Conn. 2007), <https://www.cga.ct.gov/2007/rpt/2007-R-0716.htm>.

119 *July 11, 1861: Senate Expels Ten Southern Members*, United States Senate, https://www.senate.gov/artandhistory/history/common/civil_war/July10_TallySheet_FeaturedDoc.htm.

120 Pa. Const. Art. 2, § 11.

121 Frank Mazzei, *A Senator Expelled in Pennsylvania*, New York Times (Sept. 27, 1977), <https://www.nytimes.com/1977/09/28/archives/frank-mazzei-a-senator-expelled-in-pennsylvania.html>.

be expelled for failing to meet the Pennsylvania Constitution's qualifications for office (in particular, Article 2, § 7 of the Pennsylvania Constitution which states that members cannot be convicted of an infamous crime).¹²² After a lengthy debate, Senator Ewing's constitutional question was ruled out of order because a resolution for Senator Mazzei's expulsion was already before the Committee on Rules and Executive nominations.¹²³ The resolution was heard by the Committee on Rules and Executive Nominations, submitted to the Senate as a whole and ultimately approved by two thirds of the Senate, thereby expelling Senator Mazzei.¹²⁴ Although Senator Mazzei was arrested and jailed for his crimes, criminal conviction is not necessary for constitutional disqualification or expulsion from the Pennsylvania Senate.¹²⁵

While this procedural background is instructive, the process has changed slightly during the intervening four decades. As explained above, under current Pennsylvania Senate Rule 34, a resolution to expel a sitting member would be referred to the Pennsylvania Senate Ethics Committee for investigation and would only be brought to the full Senate for its consideration if the Committee's report recommended expulsion.¹²⁶

Censure is an ethical sanction for serious violations—a standard that Mastriano's conduct satisfies

Doug Mastriano's efforts to overturn the 2020 presidential election, as well as his participation in the January 6th insurrection, represent a serious ethical violation and thus are worthy of an official censure.¹²⁷

A censure is a formal statement of disapproval. Used for serious ethical violations, censure is one "traditional way[] in which parliamentary bodies have disciplined their members and maintained order and dignity in their proceedings."¹²⁸ Although a censure is reserved for these more serious ethical violations, a member need not be indicted or convicted of a criminal

122 Commw. Pa. Leg. J., 159th Leg., Reg. Sess., Vol. 1, No. 23 (Apr. 21, 1975).

123 *Id.* at 254.

124 Commw. Pa. Leg. J., 159th Leg., Reg. Sess., Vol. 1, No. 27, at p. *334, (June 2, 1975).

125 *Mazzei*, *supra* note 120.

126 Pa. S. Rule 34(c).

127 *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, CRS Report (June 27, 2016), https://www.everycrsreport.com/files/20160627_RL31382_8b0e5d7921411e047eee6a9a7bba38e6c389a172.pdf (describing "censure" in the context of the U.S. House of Representatives).

128 *Id.* at 10 (citing to BLACK'S LAW DICTIONARY, at 224, 6th Edition (1990) (defining "censure" as: "The formal resolution of a legislative, administrative, or other body reprimanding a person, normally one of its own members, for specified conduct.")).

offense to be censured.¹²⁹ Similar to an admonishment, a censure is implemented through a majority vote by the legislative body as a whole.

The censure of Pennsylvania Senator William Duffield is instructive. Senator Duffield was a lawyer from Fayette County. In 1975, Duffield voluntarily surrendered his law license because he had misappropriated approximately \$11,000 of his client's estate funds.¹³⁰ In October 1975, the Pennsylvania Supreme Court accepted the surrender of his law license. A few days later, the Senate Pro Tempore Martin Murray appointed a Senate Select Committee to investigate Duffield's disbarment and the underlying conduct that led to the surrender of his law license.¹³¹

In investigating Senator Duffield's underlying unethical conduct, the Select Committee concluded that the Senator's conduct "constitute[d] a grave and serious matter" amounting to "conduct unbecoming [of] any public official."¹³² The committee found that his conduct "[v]iolated the trust of his profession by the misuse of private funds entrusted to him," that he "[e]ngaged in a course of conduct abhorrent to the oath and trust of public office to which he entered upon his inauguration as a member of the Senate," that he "[w]ilfully engaged in acts which are contrary to accepted morals," and that he "[c]onducted himself in a manner that tends to bring the Senate into dishonor and disrepute."¹³³ In addition to recommending censure, the Select Committee also recommended that he be stripped of his chairmanship of committees and be barred from serving on any standing committees for the remainder of his term in office.¹³⁴ The Pennsylvania Senate unanimously adopted the Select Committee's recommendations by a vote of 49-0.¹³⁵ Importantly, at the time of his censure Senator Duffield had neither been indicted or convicted of any crimes.

Admonishment or reprimand is an ethical sanction used for less serious violations—a bar that Mastriano's conduct overwhelmingly surpasses

Doug Mastriano's efforts to overturn the 2020 presidential election, as well as his participation in the January 6th insurrection, overwhelmingly constitute conduct that brings the

129 Commw. Pa. Leg. J., 159th Leg., Reg. Sess., Vol. 1, No. 65, at p. *1020 (Nov. 5, 1975), <https://www.legis.state.pa.us/WU01/LI/SJ/1975/0/Sj19751125.pdf#page=27>.

130 Robin Action, *Pa. senator experienced success, failure*, Trib Total Media (Jan. 15, 2001), <https://archive.triblive.com/news/pa-senator-experienced-success-failure/>.

131 Commw. Pa. Leg. J., *supra* note 128.

132 *Id.* at 1020.

133 *Id.* at 997.

134 *Id.* at 1020.

135 *Id.* at 997.

Pennsylvania Senate and its members into disrepute and thus is worthy of an admonishment or reprimand.¹³⁶

An admonishment or reprimand is appropriate when a legislator engages in conduct that “give[s] the appearance of impropriety” and consists of unethical use of one’s office.¹³⁷ Frequently used for less serious ethical violations, admonishments are implemented through legislative resolutions that the body, as a whole, must vote on. Although admonishments are frequently used for ethical violations related to official actions, they are not limited to official actions. Admonishments have been considered by the Pennsylvania Senate as recently as 1994, when resolutions seeking to admonish Pennsylvania Senators Robert Mellow and Roy Afflerbach were introduced for campaign finance related improprieties—Senator Mellow allegedly used Senate caucus funds to pay for the legal expenses of a candidate who had been removed from office and Senator Afflerbach used the assistance he gave to constituents in his official capacity to solicit campaign funds.¹³⁸ Both resolutions concluded that the conduct in question “impeache[d] the honor and integrity of the Senate” and gave “the appearance of impropriety.”¹³⁹

For the sake of democracy Mastriano must be investigated and held accountable

More than 150 years ago, members of Congress, state legislatures, and courts met the post-Civil War challenge of ensuring that those who engaged in a violent insurrection against our country were not permitted to turn around and return to government by passing and ratifying Section 3 of the 14th Amendment, and enforcing that mandate through disqualification, expulsion, and removal actions, among others. Only by holding insurrectionists accountable can we hope to prevent future violent attacks on the U.S. Capitol and state capitals like Harrisburg. Accountability has always been a key defining feature of democracy, and one that is more crucial than ever today. Holding Doug Mastriano accountable for his reprehensible actions surrounding January 6th is necessary to effectively move forward. He should be investigated and, if allegations are substantiated, held accountable by the Pennsylvania Senate, up to and including potential expulsion.

¹³⁶ *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, CRS Report (June 27, 2016), https://www.everycrsreport.com/files/20160627_RL31382_8boe5d7921411e047eee6a9a7bba38e6c389a172.pdf (describing admonishment and reprimand in the context of the U.S. House of Representatives).

¹³⁷ See Cmmw. Pa. S. Res. No. 165, Reg. Sess. (Pa. 1994), <https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=1993&sessInd=0&billBody=S&billTyp=R&billNbr=0165&pn=2484>.

¹³⁸ *Id.*; see also Cmmw. Pa. S. Res. No. 164, Reg. Sess. (Pa. 1994), <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=1993&sessInd=0&billBody=S&billTyp=R&billNbr=0164&pn=2483>.

¹³⁹ *Id.*

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