

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
(MILWAUKEE DIVISION)**

NANCY A. STENCIL, DANIEL C. RUSSLER, LISA C. MUELLER, CHERYL L. MARANTO, GERARD D. LISI, JAMES B. KURZ, MARGARET L. DEMUTH, PAUL DEMAIN, JAMES R. BOTSFORD AND RICHARD BECHEN,

Case No. _____

Plaintiffs,

vs.

RONALD H. JOHNSON, THOMAS P. TIFFANY, AND SCOTT L. FITZGERALD,

Defendants.

COMPLAINT

Plaintiffs Nancy A. Stencil, Daniel C. Russler, Lisa C. Mueller, Cheryl L. Maranto, Gerard D. Lisi, James B. Kurz, Margaret L. DeMuth, Paul DeMain, James R. Botsford, and Richard Bechen (“Plaintiffs”), by their attorneys Laffey, Leitner & Goode LLC, complain against Ronald H. Johnson, Thomas P. Tiffany, and Scott L. Fitzgerald (“Defendants”), as follows.

NATURE OF THE ACTION

1. The Disqualification Clause of the U.S. Constitution, ratified in 1868, is found in Section 3 of the Fourteenth Amendment:

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; emphasis added.

2. This action seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 establishing that Senator Ron Johnson and Representatives Tom Tiffany and Scott Fitzgerald, having previously taken oaths as members of Congress and/or the Wisconsin Legislature, engaged in insurrection or rebellion against the United States of America during the period between November 8, 2020 and January 6, 2021 and all other times hereafter proved by Plaintiffs at trial. Plaintiffs are 10 citizen-voters residing in Wisconsin who are domiciled throughout the state and are constituents of the Defendants. The question before the Court arises solely under the United States Constitution and does not directly implicate any state law issue.

3. Until the November 3, 2020 presidential election between Donald J. Trump and Joseph R. Biden, the peaceful transition of presidential power had served as a hallmark of America's great democracy. For 231 years, even amidst the Civil War, no candidate for president had refused to acknowledge the legitimacy of an opponent's Electoral College victory¹. But in 231 years, this Country has never had a president quite like President Trump. Love him, or hate him, the implications of the decision of the President and his surrogates (including Defendants) to attack the legitimacy of the results of the 2020 election without legal or factual basis are significant, because they require answers to two crucial questions: (a) were the events of the January 6, 2021 Joint Session of Congress and those leading up to it an "insurrection" within the meaning of the

¹ Even the disputed 1876 presidential election between Samuel Tilden and Rutherford B. Hayes was peacefully resolved through bipartisan compromise and existing political processes in place at the time. In fact, that election contest prompted the Electoral Count Act of 1887, which was enacted to ensure that similar confusion over how electoral votes should be counted did not plague future presidential elections.

Fourteenth Amendment; and (b) did Defendants engage or otherwise assist in the insurrection through the conduct alleged in this Complaint and their actions that will be revealed in discovery?

4. Although the immediate target of Section 3 of the Fourteenth Amendment was to exclude former Confederates from holding office in Federal or State post-war governments, the framers and ratifiers of Section 3 deliberately employed broader language, extending the prohibition well beyond those who had associated themselves with the Confederacy. By 1872, Congress passed an Amnesty Act removing the “disability” for all state officers then affected by the provision, as Section 3 straightforwardly provides. In 1898, comparable supermajorities in Congress removed a few remaining disabilities for Confederates as a gesture of national unity during the Spanish-American War. Only a handful of cases have been decided under the Disqualification Clause and the most notable, *U.S. v. Powell*, 65 N.C. 709 (1871), was decided three years after its ratification in 1868.

5. Notwithstanding its age and limited use over the last 154 years, Section 3 of the Fourteenth Amendment remains a part of the U.S. Constitution. It has never been altered or removed. Its language is precise and exists not just as a reminder of America’s bloody Civil War and its aftermath but as a check on the radicalization of individuals who choose individual interests over those of the Country and then seek to be elected to office and effectuate that self-interest to the detriment of the nation.

6. The falsehoods of Johnson, Fitzgerald, and Tiffany about the integrity of Wisconsin’s election procedures began even before citizens were allowed to cast their ballots in the 2020 Presidential Election and continued long after their lies were disproven. The Defendants, along with hundreds or even thousands of President Trump’s surrogates, and most prominently President Trump himself, repeatedly proclaimed lies about the election and its results, and those

lies increased in frequency and intensity as January 6, 2021 approached – despite three different Wisconsin courts rejecting the Trump campaign’s legal challenges because President Trump had presented no specific evidence of misconduct or fraud by Wisconsin voters. (*See infra*, ¶¶ 104, 106, 108.)

7. Unfortunately, Defendants and their fellow Trump acolytes were not just telling lies about the election results and voting processes in Wisconsin and elsewhere. While they were spreading their malicious falsehoods about a “rigged election” through regular and social media and at public appearances, Johnson, Tiffany, Fitzgerald, President Trump, and many others identified in this Complaint or still unknown to the public and the Plaintiffs were also engaged in a conspiracy whose illegal objective was to hijack the Joint Session on January 6, 2021 in order to permit the presentation of knowingly false and fraudulent slates of electors to the President of the Senate (Vice President Pence), the Senate, and the House of Representatives.

8. In fact, the ten fraudulent electors from Wisconsin met at the State Capitol on December 14, 2020, the date designated by law, in a room procured for them by Fitzgerald, and committed multiple crimes by preparing and signing documents that falsely asserted that they were duly and lawfully chosen electors from Wisconsin whose votes were entitled to be tallied in the Joint Session on January 6, 2021. The fraudulent electors then compounded their illegal conduct by sending their forged electoral votes to Pence in his capacity as President of the Senate, without any reservation or condition stating the truth: that the fraudulent electors were not in fact duly and lawfully chosen pursuant to Wisconsin law.

9. Had Vice President Pence gone along with the plot, the conspirators would have had him unilaterally reject the legitimate electoral votes of Wisconsin and six other states for the Biden-Harris ticket and instead count the illegal, fraudulent electoral votes criminally submitted

by the phony electors. To meet the aim of their conspiracy, ensuring that President Biden not be elected President, the conspirators contemplated an alternative plan where Vice President Pence would refuse to count any electoral votes from the seven states in which there were "competing" presidential electors and then determine that our next President had to be chosen by a vote of the delegations of each state in the House of Representatives, which similarly would have resulted in President Trump being declared the "winner" even though he clearly and lawfully lost the election in each of the seven states at issue. With the object of the conspiracy (the Biden-Harris ticket not being declared the winning ticket on January 6, 2021) plainly understood among the conspirators and knowing the constitutional crisis that would develop from either of these scenarios, the conspirators had a backup plan: delay the tabulation of electoral votes on January 6, 2021 and have the legislatures in the seven states choose new presidential electors.

10. Fortunately for the rule of law and the survival of the Republic, Vice President Pence refused to buckle under the relentless pressure being applied by the conspirators, and, with one extremely significant exception discussed below, conducted the opening and counting of the electoral votes according to law, exactly as it had been done for every other presidential election in the nation's history.

11. The one exception to Pence's performance of his traditional duties arose from one of the most shameful scenes in the history of the United States. After having been egged on relentlessly by the flagrant lies and distortions put forth by President Trump, Johnson, Tiffany, Fitzgerald, and their co-conspirators, known and unknown, over the previous months, thousands of people took the law into their own hands and stormed the U.S. Capitol during the Joint Session of Congress. These violent insurrectionists forced the members of the Senate and House and their staff to flee the Capitol. They caused millions of dollars in damage to the building and grounds.

Worst of all, five people died in the violence, and more than 110 Capitol Police officers were injured. It took seven hours to remove the violent insurrectionists from the Capitol and the grounds and restore order sufficient to allow Congress to return and complete the tallying of electoral votes. Of course, the ultimate counting of lawful electoral votes confirmed the result that everyone knew all along: Joe Biden defeated Donald Trump in the 2020 Presidential election.

12. This case is brought to hold Johnson, Tiffany, and Fitzgerald accountable for their actions in supporting the insurrection by imposing on them the consequences dictated by Section 3 of the Fourteenth Amendment. Their goal was to overturn the results of the 2020 Presidential Election by inducing or forcing Vice President Pence to reject the votes of the 10 Wisconsin electors pledged to Biden. They aimed to do this through an array of illegal conduct, from Fitzgerald's procuring space in the State Capitol on December 10, 2014 for the 10 fraudulent electors to meet and purport to cast their contrived electoral votes to all three Defendants' incessant lies about the integrity and fairness of the election in Wisconsin.

13. All of this was directed toward one illegal end: disrupting and displacing the orderly counting of the electoral votes on January 6, 2021 to allow Trump to usurp President-Elect Biden's legitimate right to assume the office. Much of the Defendants' conduct presently known consists of words, and the law has long recognized that words integral to criminal conduct fall outside the scope of First Amendment protection, because those words effectuate criminal actions that assault the integrity of governmental processes. Such an assault was not merely the effect of Defendants' conduct – it was their purpose.

PARTIES

14. Plaintiff Nancy A. Stencil ("Stencil") is a resident of the State of Wisconsin and a registered voter eligible and intending to vote in Wisconsin's August 9, 2022 Primary and

November 8, 2022 General Election. Stencil is domiciled in Wisconsin's Seventh Congressional District.

15. Plaintiff Daniel C. Russler ("Russler") is a resident of the State of Wisconsin and a registered voter eligible and intending to vote in Wisconsin's August 9, 2022 Primary and November 8, 2022 General Election. Russler is domiciled in Wisconsin's Fifth Congressional District.

16. Plaintiff Lisa C. Mueller ("Mueller") is a resident of the State of Wisconsin and a registered voter eligible and intending to vote in Wisconsin's August 9, 2022 Primary and November 8, 2022 General Election. Mueller is domiciled in Wisconsin's Third Congressional District.

17. Plaintiff Cheryl L. Maranto ("Maranto") is a resident of the State of Wisconsin and a registered voter eligible and intending to vote in Wisconsin's August 9, 2022 Primary and November 8, 2022 General Election. Maranto is domiciled in Wisconsin's Fourth Congressional District.

18. Plaintiff Gerard D. Lisi ("Lisi") is a resident of the State of Wisconsin and a registered voter eligible and intending to vote in Wisconsin's August 9, 2022 Primary and November 8, 2022 General Election. Lisi is domiciled in Wisconsin's Seventh Congressional District.

19. Plaintiff James B. Kurz ("Kurz") is a resident of the State of Wisconsin and a registered voter eligible and intending to vote in Wisconsin's August 9, 2022 Primary and November 8, 2022 General Election. Kurz is domiciled in Wisconsin's Seventh Congressional District.

20. Plaintiff Margaret L. DeMuth (“DeMuth”) is a resident of the State of Wisconsin and a registered voter eligible and intending to vote in Wisconsin’s August 9, 2022 Primary and November 8, 2022 General Election. DeMuth is domiciled in Wisconsin’s Fifth Congressional District.

21. Plaintiff Paul DeMain (“DeMain”) is a resident of the State of Wisconsin and a registered voter eligible and intending to vote in Wisconsin’s August 9, 2022 Primary and November 8, 2022 General Election. DeMain is domiciled in Wisconsin’s Seventh Congressional District.

22. Plaintiff James R. Botsford (“Botsford”) is a resident of the State of Wisconsin and a registered voter eligible and intending to vote in Wisconsin’s August 9, 2022 Primary and November 8, 2022 General Election. Botsford is domiciled in Wisconsin’s Seventh Congressional District.

23. Plaintiff Richard Bechen (“Bechen”) is a resident of the State of Wisconsin and a registered voter eligible and intending to vote in Wisconsin’s August 9, 2022 Primary and November 8, 2022 General Election. Bechen is domiciled in Wisconsin’s Second Congressional District.

24. Defendant Ronald H. Johnson (“Johnson”) is a resident of the State of Wisconsin and a duly elected member of the U.S. Senate for Wisconsin. Johnson was first elected to the Senate in 2010 and re-elected for an additional six-year term in 2016. He has announced his intention to run for a third term and seeks to have his name placed on the ballots for Wisconsin’s August 9, 2022 Primary and, should he win the Primary, the November 8, 2022 General Election.

25. Defendant Thomas P. Tiffany (“Tiffany”) is a resident of the State of Wisconsin and a duly elected member of the U.S. House of Representatives for Wisconsin’s Seventh

Congressional District. Tiffany was first elected to Congress in a special election on May 12, 2020 and re-elected for an additional two-year term in the November 3, 2020 General Election. He has announced his intention to run for a third term and seeks to have his name placed on the ballots for Wisconsin's August 9, 2022 Primary and, should he win the Primary, the November 8, 2022 General Election.

26. Defendant Scott L. Fitzgerald ("Fitzgerald") is a resident of the State of Wisconsin and a duly elected member of the U.S. House of Representatives for Wisconsin's Fifth Congressional District. Fitzgerald was first elected to Congress in the November 3, 2020 General Election after serving as Majority Leader in the Wisconsin Senate. He has announced his intention to run for a second term and seeks to have his name placed on the ballots for Wisconsin's August 9, 2022 Primary and, should he win the Primary, the November 8, 2022 General Election.

JURISDICTION AND VENUE

27. Plaintiffs ask this Court to apply Section 3 of the Fourteenth Amendment to the U.S. Constitution to the facts of this case. The Court has jurisdiction over the subject matter and parties pursuant to 28 U.S.C. § 1331, because the case involves issues of federal law. The action seeks a declaratory judgment and presents a constitutional question pursuant to 28 U.S.C. § 2201. Personal jurisdiction is proper as all parties are residents of the State of Wisconsin.

28. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because Johnson and Fitzgerald reside in the Eastern District and all defendants are residents of Wisconsin, where the Eastern District is located. In addition, venue is appropriate pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim asserted below occurred in this judicial district.

FACTUAL BACKGROUND

The Rule of Law in the United States

29. On the eve of his November 4, 1980 election, Ronald Reagan gave a historic speech to the American electorate, borrowing from Massachusetts Bay Colony Governor John Winthrop and reminding the voters about the promise of America:

These visitors to that city on the Potomac do not come as white or black, red or yellow; they are not Jews or Christians; conservatives or liberals; or Democrats or Republicans. They are Americans awed by what has gone before, proud of what for them is still **a shining city on a hill**. At this very moment, some young American, coming up along the Virginia or Maryland shores of the Potomac is seeing for the first time the lights that glow on the great halls of our government and the monuments to the memory of our great men. Let us resolve tonight that young Americans will always see those Potomac lights; that they will always find there a city of hope in a country that is free. And let us resolve they will say of our day and our generation that we did keep faith with our God, that we did act worthy of ourselves; that we did protect and pass on lovingly that shining city on a hill.

(Ronald Reagan, *A Vision for America*, November 3, 1980; emphasis added.) President Reagan was not the first to use Winthrop's words for political purposes and certainly not the last. John F. Kennedy, Mitt Romney, Barack Obama, and Mike Pompeo all gave speeches during their careers using Winthrop's vision for a free and bustling society as a model for all the world to see.

30. Central to freedom and that "shining city" is the rule of law. The Founding Fathers understood this reality. In drafting the Massachusetts Constitution in 1780, for example, John Adams laid down this vision: "In the government of the commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; **to the end that it may be a government of laws and not of men.**" Mass. Const., Art. XXX; emphasis added. Adams ruminated on this

philosophy in various essays that pre-date the formal adoption of the Massachusetts Constitution, having studied the writings of various European political philosophers. To Adams, the rule of law was the glue that enabled self-government of a free people.

31. The Founding Fathers modeled much of the U.S. Constitution on Adams' words as adopted and ratified by Massachusetts seven years earlier. The concept of the rule of law thus took hold in our young nation and, for the last 233 years, the United States has been held together by its Constitution. However, "[t]he Constitution is not self-executing. It is given life and sustained by our institutions of government, by checks and balances so as not to become the tyranny we overthrew in our revolution. These institutions – the congress, the agencies of government, the courts, and the media who watch over them – are not buildings. They are the men and women who work in them and devote their professional lives to the rule of law and keeping us secure." (Jeffrey H. Smith, *Of Laws, Not Men*, June 9, 2017.)

32. Because people are responsible for ensuring the rule of law, the United States has at times fallen short of achieving this ideal. But until the November 3, 2020 presidential election and its aftermath, where President Trump, Defendants Johnson, Tiffany, Fitzgerald, and others, known and unknown, sought to upend the rule of law, the United States had always witnessed the orderly transition of presidential power with the will and providence of a free people seeking to maintain self-governance.

33. The orderly transition of presidential power in the United States took hold near the very beginning of our constitutional order. As the beloved George Washington announced in his *Farewell Address* of 1796:

To the efficacy and permanency of your Union, a government for the whole is indispensable. No alliances, however strict, between the parts can be an adequate substitute. They must inevitably experience the infractions and interruptions which all alliances in all times have

experienced. Sensible of this momentous truth, you have improved upon your first essay by the adoption of a Constitution of government better calculated than your former for an intimate Union and for the efficacious management of your common concerns. This government, the offspring of our own choice uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. **Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty.** The basis of our political systems is the right of the people to make and to alter their constitutions of government. **But the Constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government presupposes the duty of every individual to obey the established government.**

All obstructions to the execution of the laws, all combinations and associations under whatever plausible character with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle and of fatal tendency. They serve to organize faction; to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common councils and modified by mutual interests. **However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion.**

(George Washington, *Farewell Address*, September 19, 1796; emphasis added.) Every president since Washington has taken seriously his duty to ensure the orderly and peaceful transition of presidential power – until 2020, that is, when President Trump and others set in motion a

conspiracy to defraud the United States, alter the certified electoral results from the November 3, 2020 election, and engage or assist in insurrection.

34. While President Trump is central to the failed conspiracy, this lawsuit is about the roles Johnson, Tiffany, and Fitzgerald played in assisting the insurrection and criminal conspiracy put in motion on or shortly after November 7, 2020 to illegally alter the results of the 2020 presidential election. Joined by others, known and unknown, Johnson, Tiffany, and Fitzgerald engaged in overt acts in furtherance of a conspiracy meant to foment public distrust in the outcome of the 2020 election, undermine the rule of law, and assist an insurrection against the United States with the illegal goal of reversing the results of the election that made Joseph R. Biden the 46th President of the United States.

Sowing Doubt About Election Procedures Before the Election

35. Public insurrections brought about by distrust in government don't just happen. Before the November 3, 2020 presidential election, President Trump and his surrogates repeatedly laid the groundwork to cast doubts on the results. (See Kevin Liptak, *A List of the Times Trump has Said He Won't Accept the Election Results or Leave Office if He Loses*, CNN (September 24, 2020), <https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html>, last accessed on March 4, 2022.) For example, in a September 23, 2020 Press Conference, President Trump stated, “[w]ell, we’re going to have to see what happens. You know that. I’ve been complaining very strongly about the ballots. And the ballots are a disaster ... We want to have -- get rid of the ballots and you’ll have a very trans- -- we’ll have a very peaceful -- there won’t be a transfer, frankly; there’ll be a continuation. The ballots are out of control. You know it.” In various public statements (in campaign speeches, interviews, tweets, and press events) between July 19, 2020 (if not earlier) and the election, President Trump publicly expressed similar falsities about election procedures and process and claimed if Biden won it would be the

result of a “rigged” election. All told, President Trump used the word “rigged” 75 times between May and November in connection with the 2020 election and a potential Biden win. (See <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>, last accessed on March 4, 2022.) The purpose of this public campaign by President Trump and others was to lay the groundwork to attack various state voting procedures around the United States as being fraudulent and not trustworthy in the event he lost.

36. Fitzgerald, who was the Majority Leader of the Wisconsin Senate prior to the 2020 election and was at the time running for Wisconsin’s Fifth Congressional District in the House of Representatives, spent the early part of 2020 specifically attacking Wisconsin election procedures and the municipal clerks who run our elections. Many lawsuits had been filed to ensure fair access to voting due to the COVID-19 pandemic related shutdowns. Fitzgerald and other state lawmakers like Assembly Speaker Robin Vos (“Vos”) had little interest in promoting fair voting and making it easy and safe for people to vote during the pandemic. Instead, Fitzgerald and Vos worked aggressively to undermine the right of citizens to vote safely and easily during the most serious public health crisis experienced in the United States for more than a century.

37. Often, they challenged election approaches that had historically been used without objection in Wisconsin. But persist they did. For example, on March 27, 2020, Fitzgerald published a joint statement with Vos about Wisconsin’s Spring Election on what he described as a “clear violation of the law” by the clerks in Dane and Milwaukee County. Similarly, on March 31, 2020, Fitzgerald tweeted: “Today, a unanimous Wisconsin Supreme Court decision soundly rejected the far-left politics of **clerks** in our state who were trying to **undermine an election**. I am glad to see the court upholding the rule of law.” (Emphasis added.) The narrow decision in reality

only gave guidance on what it means to be “indefinitely confined” in the face of the COVID-19 pandemic in advance of the election.

38. On July 30, 2020, on the heels of President Trump calling for a delay in the November 3, 2020 election based on the President’s contrived claims of imminent fraud and concerns over inaccurate results given widespread use of mail-in-voting, Fitzgerald tweeted: “I don’t think we should move election dates-but I get the President’s larger point on **election security issues**. The liberal media is full of hypocrites.” (Emphasis added.) On September 26, 2020, Fitzgerald (again with Vos) had the legislature's lawyer threaten the City of Madison with a “cease and desist” letter for running “Democracy in the Park” where they falsely accused the municipality of ballot harvesting and violating state election laws. Fitzgerald continued sowing the false seeds of a problem with “election integrity” in Wisconsin through a statement about Democracy in the Park that month: “The threat that this procedure poses to ballot integrity is manifestly obvious.”

39. In August 2020, President Trump retained Foley & Lardner, LLP attorney Clela Mitchell (“Mitchell”) to explore post-election scenarios in the event he lost the election to Biden, which scenarios would extensively on the frauds that had already been pursued by President Trump and his surrogates. On September 3, 2020 – two months before Trump lost the election – John Eastman, a California attorney who is central to the conspiracy alleged in this action and who stood on stage with President Trump at The Ellipse on January 6, 2022 hours before the insurrectionists stormed the Capitol, was invited by Mitchell to join the President’s “Election Integrity Working Group” to begin preparing for anticipated postelection litigation. This demonstrates that the Trump Campaign had engaged lawyers before the election and could have addressed any alleged infirmities of Wisconsin law before the election. Its failure to do so is one reason (of the many)

that President Trump and his surrogates were so unsuccessful in their post-election legal challenges.

The November 3, 2020 Election

40. Because ballots were still being counted, neither Trump nor Biden was declared the winner of the presidential election when the polls closed on November 3, 2020. On election night, President Trump nevertheless falsely stated that he had prevailed and called on states to stop counting. He said: “This is a fraud on the American public. This is an embarrassment to our country. We were getting ready to win this election. Frankly, we did win this election.” (*See President Trump Remarks on Election Status*, C-SPAN (November 4, 2020), <https://www.c-span.org/video/?477710-1/president-trump-remarks-election-status>, last accessed March 4, 2022.)

41. At 6:37 a.m. the following morning, November 4, 2020, with other races having been decided, Fitzgerald endorsed through a re-tweet Republican Minority Leader Kevin McCarthy’s brag that “Republicans defied the odds and grew our party last night. In districts all over the country, Americans rejected socialism and voted for freedom. Nancy Pelosi: you’ve been put on notice.” Not once since November 3, 2020 has anyone (including Johnson, Tiffany, or Fitzgerald) explained how the contrived fraud that allegedly caused President Trump’s 2020 loss did not carry over to the down ballot races, where Republicans won an additional 9 seats from the Democrats. This is a “tell” about Defendants’ overt acts in furtherance of the conspiracy asserted in this Complaint, because it suggests knowledge of the falsity of the claims that the Wisconsin election was fraudulent as to the presidential race but no others.

42. Later in the day on November 4, 2020, election officials called Wisconsin for Biden, and Defendants and others with connections to the state began to examine approaches to contesting that result.

43. On Saturday, November 7, 2020, President Biden was declared the winner of the

election and identified in the media as the next President of the United States by all major networks and news sources, including conservative outlets like Fox News. After President Biden was declared the winner of the electoral college vote on January 6, 2021 and after all popular votes were tabulated, the popular vote turned out as follows:

Candidate	Popular Vote	Percentage	Electoral Votes
Joseph R. Biden	81,283,361	51.3%	306
Donald J. Trump	74,222,960	46.8%	232
Other	2,924,869	1.8%	0

(See <https://www.nbcnews.com/politics/2020-elections/president-results>, last accessed on March 4, 2022.) Had the conspiracy alleged in this Complaint been successful (it need not have been to be actionable), these results obviously would have been different.

44. When the results were announced that Saturday, Trump tweeted the first of what would be variations of an onslaught that continued uninterrupted until the January 6, 2021 insurrection at the U.S. Capitol: “THE OBSERVERS WERE NOT ALLOWED INTO THE COUNTING ROOMS. I WON THE ELECTION, GOT 71,000,000 LEGAL VOTES. BAD THINGS HAPPENED WHICH OUR OBSERVERS WERE NOT ALLOWED TO SEE. NEVER HAPPENED BEFORE. MILLIONS OF MAIL-IN BALLOTS WERE SENT TO PEOPLE WHO NEVER ASKED FOR THEM!” (All-caps in original.)

45. In the six weeks that followed the November 3, 2020 election, President Trump and certain of his supporters took their allegations of voter fraud and misconduct to court, having benefitted from the planning the Election Integrity Working Group had focused on before the election. During this period, President Trump and his surrogates proceeded to lose more than 60 legal challenges that they filed to contest the election results. The President and his team focused their efforts primarily on six states that President Biden won: Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. Upon information and belief, this litigation plan resulted from the

efforts of President Trump's working group and was set in motion by Mitchell, Eastman, and others when the group formed in August 2020.

46. Nearly all these suits were dismissed by the courts or dropped by the parties who brought them. Judges, lawyers, and other observers described many of the lawsuits as "frivolous" and "without merit." In one instance, the Trump Campaign and other groups challenging the election results collectively lost multiple cases in six states on a single day. Only one ruling was in President Trump's favor: the timing within which first-time Pennsylvania voters must provide proper identification if they wanted to "cure" their ballots. This ruling affected very few votes.

The Conspiracy

47. Within a day (or perhaps earlier) of Biden being declared the winner, President Trump, in association with others, known and unknown, including, upon information and belief, Johnson, Tiffany, and Fitzgerald, initiated through express and/or tacit agreement a plot to overturn the 2020 election results, which included four main elements: (a) falsely claiming election fraud and a lack of integrity in the election in the battleground states; (b) creating and implementing illegal schemes to put forth fraudulent electors for President Trump in Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin; (c) pressuring federal agencies to find irregularities in the election, including the Department of Justice ("DOJ"), the Cybersecurity & Infrastructure Security Agency ("CISA") of the Department of Homeland Security ("DHS"), and the National Security Agency ("NSA"); and (d) using their public statements about the illegitimacy of the election process in various states to incite Trump voters to anger and push Vice President Mike Pence and Congress to ignore the requirements of the Electoral Count Act of 1887, 3 U.S.C. § 1 *et seq.*, and the Twelfth Amendment of the U.S. Constitution to keep President Trump in power when the Electoral College ballots were opened and counted at a Joint Session of Congress on January 6, 2021.

48. Like all conspiracies, not every member played every role; some performed overt acts instrumental to commencement of the illegal enterprise, while others joined along the way in furtherance of the scheme, or even at the end. In fact, it is plausible that some of the conspirators never met to discuss or expressly agree to the conspiracy. It is enough under the law for there to be tacit or even implied agreement to conspire; for this reason, this Complaint demonstrates the existence of these agreements through coordinated action, common, scripted talking points, and aligned behavior and conduct. For certain, though, the actors in this story all agreed on the same objective of the conspiracy: ensuring that when Vice President Pence presided over the Joint Session of Congress on January 6, 2021, Biden would not be declared the winner of the 2020 election that day.

49. Between November 8, 2020 and January 6, 2021, and, upon information and belief, during other periods presently unknown, Johnson, Tiffany, and Fitzgerald used their public positions of authority to illegally foment an atmosphere meant to intimidate and pressure Vice President Pence and Congress to take actions inconsistent with the facts and with their duties under the Electoral Count Act and the U.S. Constitution. Defendants' role was to use their powers as public officials and their respective bully pulpits to undermine public trust in the outcome of the election and to enable a criminal scheme to institute fraudulent electors (in Wisconsin and elsewhere) to manufacture a constitutional crisis on January 6, 2021 over how to count the electoral ballots. As explained in this Complaint, while many lies do not have legal consequences, lies used to promote or further a criminal conspiracy are treated differently under the law.

50. The common conspiratorial objective Defendants and their co-conspirators had was to ensure Biden not be declared the winner at the Joint Session on January 6, 2021, contrary to the duly certified votes of the presidential electors and the duties of the Vice President and Congress.

That illegal object of the conspiracy was coordinated and pursued in several ways, including (a) having the Vice President **unilaterally** choose the fraudulent elector slates for Trump-Pence over the certified slates for Biden-Harris; (b) sending the vote to the House of Representatives under 3 U.S.C. § 15 whereby President Trump would have prevailed because the one vote per state rule in the Twelfth Amendment favored Republicans; or (c) de-certifying the Electoral College ballots sent from the seven states in which fraudulent electors had been submitted and requesting each state legislature to identify and certify new electors consistent with the legal theories and results demanded by President Trump and his surrogates.

The First Amendment Does Not Protect Speech Integral to Criminal Conduct

51. Every day, people all over the United States commit crimes using words. The most vivid example might be the armed robber who points a gun at his victim and demands “Your money or your life!”

52. There are many other examples of such “word crimes” in both federal and state law. Federal statutes, for example, establish that it is a crime to make a false statement to a government official in any matter related to government business; to make a false claim that a terrorist attack has happened or will happen; to make a materially false statement while under oath (*i.e.*, perjury); falsely asserting that one is speaking on behalf of the federal government; and making false statements about the origin of goods or services. There is even a federal statute prohibiting certain unauthorized uses of the word “Olympic.” All told, there are more than 100 federal criminal statutes that punish the making of false statements.

53. State statutes likewise criminalize perjury, false or fraudulent charitable solicitations, and other forms of fraudulent statements. For example, the state of Michigan has a statute that makes it illegal to make a false claim that a political candidate is an incumbent.

54. These laws are united by one common theme: all have been upheld as valid exercises of governmental power to impose criminal punishments despite the First Amendment's guarantee of freedom of speech. Sometimes courts have held that the First Amendment is not implicated at all in this situations, while in other contexts courts rule that First Amendment protection does not extend to false statements made with the knowledge that they are false or with reckless disregard for the truth.

55. Significantly, statutes that criminalize the utterance of words when those words are integral to criminal conduct are upheld not merely to prevent the spread of falsehoods. Making false statements under oath is prohibited because perjury undermines the function and province of the law and threatens the integrity of legal judgments. Similarly, criminal statutes that forbid false assertions that a person is speaking on behalf of the federal government are upheld because they protect the integrity of government processes.

56. Other state and federal laws establish criminal prohibitions forbidding much of the very conduct that gives rise to this case, notwithstanding the fact that many of the crimes were accomplished primarily using words. Many of the state laws trampled upon by the fraudulent electors are summarized in Paragraph 114 of this Complaint.

57. Those laws demonstrate, for example, that the fraudulent electors' phony certificates sent to Congress violate Wisconsin's forgery statute.

58. By making false assertions of their status as presidential electors, the fraudulent electors similarly violated the Wisconsin statute that provides for felony charges against anyone who falsely assumes to act as a public officer, as well as the Wisconsin statute that makes it illegal to commit misconduct in public office.

59. The submission of the false certificates to various government officials also violated Wisconsin's criminal statute that prohibits simulating legal process.

60. As described more fully in this Complaint, the fraudulent electors, the Defendants, and many other individuals across the country conspired to commit all the criminal acts detailed in this pleading.

61. Perhaps most significant in this case, the Defendants and all others involved in the illegal effort to subvert the counting of electoral votes on January 6, 2021 conspired to violate the federal statute that prohibits obstruction of an official proceeding, because they made an agreement that had the effect of obstructing, influencing, or impeding, or attempting to impede, an official proceeding of the United States, and that they did so corruptly.²

62. The overarching legal principle before the Court is clear: the utterance of false words that are integral to criminal conduct has a corrosive effect on society, government, and the rule of law. This case presents a prime example of the dangers that are threatened when people come to believe they can violate the law with impunity simply because they use words to accomplish their criminal deeds. Sometimes lies matter.

The Conspiracy's Efforts to Baselessly Describe the 2020 Election as Fraudulent

63. At 3:15 p.m. on November 6, 2020, a day before Biden was declared the winner of the election by the media, Tiffany tweeted: "Americans want a transparent process that counts every legally cast ballot." This was in response to a tweet from @HouseGOP saying: "We must: Count every **legal** vote. Have a **transparent** process. Ensure **integrity** in our election system." (Emphasis in original.) Tiffany was clearly trying to sow doubt in the public's mind about the

² Under this statute, "corruptly" means "with consciousness of wrongdoing." See 18 U.S.C. § 1515(b). As is alleged with in this Complaint, the Defendants and their co-conspirators knew from the beginning that the fraudulent certifications were illegal and that any effort to present them to Congress for tabulation by the Vice President was likewise a violation of the law.

election results in Wisconsin and other states that had been called for Biden. Put simply, Tiffany was messaging to the public that President Biden won Wisconsin with an **opaque** process and **illegal** votes in a system that **lacked integrity**. And with that, Tiffany entered the conspiracy with his first overt act in furtherance of the scheme.

64. On the morning of November 8, 2020, Fitzgerald entered the conspiracy. That day, he gave a television interview on ABC affiliate WISN-TV in Milwaukee. When asked about a potential canvass and/or recount of the presidential election in Wisconsin, Fitzgerald stated: “We have never experienced an election like we have just been through. I am still blown away by the number of mail-in ballots and in-person ballots that were completed prior to November 3. We are in uncharted territory when it comes to an election. I don’t care what side of the aisle you are on I have seen elections change as a result of recounts. Some say it is still a high margin to change but it can happen **and it is a result of many, many, thousands of mail-in ballots that we have never seen in this state before.**” (Emphasis added.) When asked in the WISN interview if he had “heard of or seen any evidence for fraud in the state of Wisconsin,” Fitzgerald stated: “Go back to what we saw in the spring election in which a lot of those mail-in ballots simply did not include a signature of witness. That was a simple example of ballots that needed to be reconsidered as a result of that.”

65. Fitzgerald repeated these statements and the need for “safeguards” on the alleged ballot problems throughout the interview even though there was no factual basis for suggesting that the Wisconsin election had been conducted without integrity. Consistent with the scheme, Fitzgerald said these things to cast doubts in the eyes of the public over the legitimacy of the outcome as part of the larger plan to alter the outcome of the race when the electoral college ballots were presented to Congress on January 6, 2021.

66. On November 9, 2020, Tiffany continued in furtherance of the plot. At 9:02 a.m. that morning, he tweeted: “Let’s halt the premature rush to declare a winner in the presidential race to ensure that every **legal** vote is counted and that every legitimate legal challenge is heard and addressed by our independent judiciary.” (Emphasis added.) Tiffany immediately followed it up with another tweet: “This election is **not over**, and it is bigger than President Trump or Joe Biden –it is crucial **to have transparency** so the American people have **confidence in the integrity** of our election system.” (Emphasis added.) The implication of Tiffany’s statements was that Biden had won the election unfairly, using illegal votes in a non-transparent way.

67. On November 9, 2020, President Trump spent the afternoon and evening tweeting dozens of false voter and fraud claims in the states that Biden won by smaller margins. Just as with the down-ballot races where Republicans made large gains but somehow were not affected by voter fraud, the Trump Campaign and its surrogates saw no reason to be concerned about election integrity in states that President Trump won. The President also started his attack on Dominion Voting Systems, one of the manufacturers of the voting machines used in some of the contested states. That day, each state President Trump sought to contest got its own shout out, including Wisconsin, which the President said “is looking very good. Needs a little time statutorily. Will happen soon! @Reince @SeanDuffyWI.”

68. That same day, Fitzgerald appeared on “UpFront with Mike Gousha” in association with WisPolitics.com. In that interview, Fitzgerald renewed his call for a statewide canvass of the votes in Wisconsin and alluded to a recount being done depending on what the canvass showed. Specifically, much as he had done earlier in 2020, Fitzgerald alluded to local election officials running the election improperly, suggesting that it would be “much more difficult” to do a recount if the “local election officials did everything right,” the implicit suggestion being that they had not

done everything right. Fitzgerald then repeated what he had said the day before, namely that the “massive number of mail-in absentee ballots” would require “safeguards” from “lawmakers” in the future. The clear implication of these statements was to falsely impugn how Wisconsin ran its election in 2020, nefariously suggesting that it was feasible that the local election officials had not run the election according to the rules, and that the sheer volume of ballots received by mail made the legitimacy of those ballots questionable.

69. On November 9, 2020, as President Trump and his proxies spread their venomous lies of election fraud, Attorney General William Barr issued a memorandum to all U.S. Attorneys, Assistant U.S. Attorneys, and the Director of the FBI (Christopher A. Wray). Barr first reminded the recipients of the Department of Justice’s longstanding policy and general practice of counseling that “overt investigative steps ordinarily should not be taken until the election in question has been concluded, its results certified, and all recounts and election contests concluded.” He then offered qualifications to the policy and authorized his staff “to pursue substantial allegations of voting and vote tabulation irregularities prior to the certification of elections in your jurisdiction in certain cases, as I have already done in specific instances. Such inquiries and reviews may be conducted if there are clear and apparently-credible allegations of irregularities that, if true, could potentially impact the outcome of a federal election in an individual state.” (11/9/20 Barr Memorandum, pp. 1-2.) Upon information and belief, President Trump ordered Barr to investigate what the President viewed as a “stolen” election, and the memorandum was the result.

70. Barr’s memorandum had immediate consequences. With the Attorney General now suggesting a potential need to investigate the election that President Trump, the Defendants, and others were publicly and fraudulently challenging as lacking in integrity, Richard Pilger, the

Director of the DOJ's Election Crimes Branch, resigned the evening of November 9, 2020. In his resignation letter, Pilger said:

Having familiarized myself with the new policy and its ramifications, and in accord with the best tradition of the John C. Keeney Award for Exceptional Integrity and Professionalism (my most cherished Departmental recognition), I must regretfully resign from my role as Director of the Election Crimes Branch. I have enjoyed very much working with you for over a decade to aggressively and diligently enforce federal criminal election law, policy and practice without partisan fear or favor. I thank you for your support in that effort.

(11/9/20 Pilger Letter, p. 1.) Pilger told the public that Barr's memorandum undermined a 40-year-old policy on how the DOJ approached election integrity. The implication is that Barr's memorandum appeared to improperly validate what President Trump and others had contrived about the 2020 election and its lack of integrity, which clearly bothered Pilger.

71. Johnson began to actively promote the conspiracy on November 10, 2020. When asked by a reporter if he had congratulated President Biden on his victory, Johnson said he had not done so because there was "nothing to congratulate him about." The message to the public was clear: the election is not over, and Biden did not win. Much like Fitzgerald's and Tiffany's remarks from the previous days, Johnson made this statement to sow doubt in the results of the 2020 election as part of the scheme to illegally undermine the election. The next day, Johnson tweeted a request: "anyone who knows of irregularities related to mail-in or absentee ballots to contact our confidential whistleblower hotline: whistleblower@ronjohnson.senate.gov."

The Criminal Plan to Appoint Fraudulent Electors

72. Within days of President Biden having been declared the winner, Assembly Speaker Vos sought the opinion of Wisconsin's Legislative Reference Bureau (the "LRB") on two matters: (a) an overview of the process for selecting presidential electors in Wisconsin; and (b) whether the Wisconsin Legislature, after a presidential election, may affect the selection or actions

of the state’s presidential electors. In two written memoranda provided to Vos on November 16, 2020 by LRB Senior Coordinating Attorney Michael Gallagher, the LRB provided answers to the questions Vos posed. Upon information and belief, Vos requested these opinions after consultation with members and surrogates of the Trump Campaign, including Fitzgerald, who in November 2020 was Wisconsin Senate Majority Leader, to inform them and others, known and unknown, about the viability of the Republican-controlled Wisconsin Legislature altering the Wisconsin results for the election.

73. The LRB’s first memorandum (the “Electoral Process Memo”) explained to Vos in plain terms the way presidential electors are appointed, how they convene and vote, and the procedures the electors must follow when they do so. Specifically, Vos was told that the U.S. Constitution vests the Wisconsin Legislature “with the power to direct how the state’s presidential electors are appointed” and that the legislature had exercised that power by enacting statutes to govern how Wisconsin appoints electors. The LRB also reminded Vos that the Twelfth Amendment to the U.S. Constitution “dictates the procedures these electors must follow when they convene and vote.” As LRB explained, legislatures maintain the plenary power to appoint presidential electors and how those appointments occur. And while there was a time shortly after ratification of the U.S. Constitution that certain state legislatures reserved to themselves the choosing of the electors, LRB concluded that every state today (including Wisconsin) now allows its citizens to directly chose their electors.

74. Vos further also learned in the Electoral Process Memo how Wisconsin approaches these issues. Specifically, the Wisconsin Legislature has directed by statute:

- a. The manner of appointment of Wisconsin’s presidential electors shall be by a vote of the people of the state.
- b. Consistent with Article II, Section 1, Clause 2 of the U.S. Constitution, Wisconsin presently has 10 electoral college

votes (equal to the number of senators and representatives that Wisconsin has in Congress).

- c. The state (as with all but two others) is a “winner-take-all” state, meaning all 10 electoral votes go to the presidential candidate who wins the popular vote in Wisconsin.
- d. On the first Tuesday of October in each presidential election year, representatives of each political party appearing on the ballot meet in the Wisconsin Capitol to nominate their presidential electors, with one elector coming from each congressional district and two being nominated to represent the state at large, which nominations are then certified to the Chairperson of the Wisconsin Elections Commission (“WEC”).
- e. On election day, people cast their ballots for their candidates, but by statute those votes are deemed to have been cast for the slate of presidential electors for their candidate nominated a month earlier in Madison.
- f. After the election, the WEC prepares a certificate that certifies the results, which the Governor then signs, seals with the great seal of Wisconsin, and transmits to the U.S. General Services Administration and certain others.
- g. The Governor further prepares six duplicate originals of the certificate and delivers them to one of the presidential electors on or before the date to convene to cast their votes for president and vice president.
- h. The winning candidates’ slate of electors convenes at the state capitol in Madison “at 12:00 noon the first Monday after the 2nd Wednesday in December,” which the LRB told Vos was December 14, 2020 for the 2020 election cycle.
- i. The slate of electors (or any alternates chosen by the statutory process dealing with vacancies) so chosen by the people then are statutorily required to vote for their candidates for president and vice president.
- j. The Twelfth Amendment then requires the electors to cast separate ballots for president and vice president, identify the number of elector votes for each, and sign, certify, and transmit the results under seal fashion to Washington D.C., directed to the President of the U.S. Senate (that is, the Vice President) who thereafter ceremoniously opens and reads the

electoral college votes of each state before a joint session of Congress.

75. The LRB's second memorandum sent to Vos on November 16, 2020 (the "Power of the Legislature Memo"), expressly informed Vos that "the legislature may determine the manner of selection of presidential electors but may **not** affect the selection or actions of presidential electors after the election." (Emphasis added.) Vos also learned that because Wisconsin law vests the power to appoint presidential electors in the people of the state, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution "would prevent any government entity or official from interfering with a duly elected presidential elector's legitimate exercise of his or her statutory duties with respect to voting for a presidential and vice presidential candidate."

76. After summarizing the contents of the Electoral Process Memo, the LRB explained in the Power of the Legislature Memo that the Wisconsin Legislature's role with respect to the appointment of presidential electors was "couched in the lawmaking process" and that Article II, Section 1, Clause 2 of the U.S. Constitution gave each state legislature the power to establish those laws, including reserving for itself the ability to choose presidential electors (as some states did initially after ratification) or vesting that ability in the people (as is the case in every state in the United States today). Critically, for purposes of this litigation, Vos was told by the LRB in the Power of the Legislature Memo that when, as in Wisconsin, the power of appointment has been vested in the people, "the legislature **has no unilateral authority** to reverse the choice of the people of the state." (Emphasis added.) The LRB summarized constitutional law and reminded Vos that legislative action taking the appointment power back from the people after an election would violate the one person, one vote rule embedded in the Equal Protection Clause. In other words, just nine days after Biden was declared the winner of the presidential election in Wisconsin,

the LRB told Wisconsin's Assembly Speaker in no uncertain terms that the Wisconsin Legislature had no authority to alter the outcome of the election.

77. Two days later, on November 18, 2020, the Trump Campaign paid WEC \$3 million to initiate recounts of the Wisconsin vote in Milwaukee and Dane Counties. He was represented in those lawsuits by James R. Troupis ("Troupis"), a Wisconsin attorney and former judge. Troupis was once a partner in Milwaukee-based Michael, Best & Friedrich LLP ("MBF"), a large, national law firm with deep and established ties to Republican politics, who was asked to leave the firm due to the way he and others at MBF handled Wisconsin's redistricting process for Republican lawmakers in 2011.

78. MBF's lobbying affiliate is Michael Best Strategies, LLC, which is run by President Trump's former Chief of Staff Reince Priebus ("Priebus"), and Andrew Hitt ("Hitt"), the former Chairman of the Wisconsin GOP who, as described later in this Complaint, served a critical role as a fraudulent elector for President Trump in the 2020 election and whose conduct (along with the other nine fraudulent electors) has been referred to state and federal criminal authorities.

79. Conspiracies are borne by intention, common interest, relationships, and realities. Priebus and Vos were college roommates at the University of Wisconsin-Whitewater. They are old friends who have risen to the pinnacle of power in Republican politics. The notion that they would work together behind the scenes to assist President Trump and his co-conspirators to achieve a nefarious, illegal result takes no stretch of the imagination, as an article about the Vos-Priebus relationship from 2012 told us:

Now, Priebus is running the Republican Party, and the GOP Convention in Tampa. At a recent speech, Priebus made sure to acknowledge one person by name. "One of my best buddies, Robin Vos, has been just a great friend and one of these guys where I could call and say 'hello' to and run something past him and get a text here and there. When he thinks I'm doing a decent job, he gives me an

‘attaboy’ which is always fun coming from Robin,” Priebus said. “He has this youthful enthusiasm that has literally been contagious to almost anyone he talks to,” Vos said. At the same time Priebus and Vos were in school at UW-Whitewater, so was Andy Speth – Paul Ryan’s chief of staff and Jim Ladwig – the Racine County Executive. It has some asking, was there something in the water at UW-Whitewater? “They say it’s something in the water. As Reince would say, it’s definitely something in the beer,” Vos said. Vos’ rise in state politics continues. He will likely become the next Speaker of the Wisconsin Assembly, now that Jeff Fitzgerald has stepped aside.

(See <https://www.fox6now.com/news/reince-priebus-robin-vos-roommates-at-uw-whitewater>, last accessed on March 6, 2022.)

80. On November 18, 2020, the same day Troupis asked the WEC for the recount in Wisconsin, Troupis received a memorandum from Kenneth Chesebro (“Chesebro”), an appellate lawyer in Boston whose role in the conspiracy to overturn the results of the presidential election has recently been scrutinized by the Select Committee to Investigate the January 6th Attack on the United States Capitol (the “January 6 Committee”). Chesebro, a Wisconsin native, knew Troupis through previous work they had done together for shared clients. Chesebro’s advice was integral to the conspiracy because it outlined a plan to thwart the true outcome of the election using the fraudulent electors scheme, which criminal scheme was supported through Defendants’ words and actions.

81. Chesebro is important to the events that unfolded at the U.S. Capitol when Congress and Vice President Pence met to tabulate the electoral votes. We know this because, on March 1, 2022, the January 6 Committee issued a subpoena to him seeking documents and testimony. In his cover letter accompanying the subpoena, Chairman Bennie G. Thompson informed Chesebro as follows:

The Select Committee’s investigation has revealed **credible evidence** that you participated in attempts to disrupt or delay the certification of the results of the 2020 presidential election. Between

November 2020 and January 6, 2021 (and thereafter), you actively promoted legal theories within the Trump campaign **supporting the use of alternate slates of electors** in states that former President Trump had lost. You also participated in efforts that you told the Trump campaign would “bolster[]” the argument for delaying the electoral certification and **make the public “believ[e] that the election in [Wisconsin] was likely rigged, and stolen by Biden and Harris,** who were not legitimately elected.

(3/1/22 Thompson Letter, p. 1 (citations omitted; emphasis added).)

82. Chesebro’s November 18, 2020 memorandum to Troupis (the “Real Deadline Memo”) came on the heels of a conference call between the two men and resulted from Troupis’s request that Chesebro provide a written summary of his views on what the memo called “The Real Deadline for Settling a State’s Electoral Votes.” The putative basis for the Real Deadline Memo was to provide Troupis with ammunition for President Trump’s Wisconsin recount proceedings that there was “ample time” for judicial proceedings (even if a remand occurred due to errors that might turn up in the recount). In the Real Deadline Memo, Chesebro asserted these conclusions that set the stage for the conspirators’ plan to name fraudulent electors:

- a. The real deadline for a finding by the Wisconsin courts (or, possibly by its Legislature) on the outcome of the election is January 6, 2021 (the date the Senate and House meet for the counting of electoral votes and not December 8, 2020 (the “safe harbor” deadline in the Electoral Count Act) or December 14, 2020 (the date on which the electors must vote in their respective states).
- b. Assuming the presidential electors pledged to President Trump and Vice President Pence end up meeting **at the Wisconsin Capitol** on December 14, cast their votes for Trump-Pence, and send their ballots to the President of the Senate in the manner prescribed by state law and the U.S. Constitution, any court determination (or one by the Wisconsin Legislature) after December 14 would be compatible with federal law provided those determinations are made by January 6, 2021.
- c. Pursuant to 3 U.S.C. § 7 (part of the Electoral Count Act), Congress has mandated that the electors “shall meet and give

their votes on the first Monday after the second Wednesday in December” “at such place in each State as the legislature of such State shall direct.” In 2020, that date was December 14.

- d. Wis. Stat. § 7.75(1) directs that “[t]he electors for president and vice president shall meet at the state capitol” at noon on December 14.
- e. Prudence “dictates” that the ten electors pledged to Trump and Pence meet and cast their votes on December 14 (unless by then the race has been conceded) as it is “highly uncertain” given the language of Article II to the U.S. Constitution requiring that all electoral voting occur on the same day, that electoral votes cast on a later date could be validly counted by Congress.
- f. Even if “at that juncture” President Trump was behind in the vote count in Wisconsin and no certificate of election had issued in favor of the Trump-Pence ticket, it is a fair reading of the Electoral Count Act for the Trump electors to engage in this “reasonable course of action.”
- g. The electors’ legal obligations to make and sign six certificates of votes given by them, to seal those certificates, and to forward them to the President of the Senate involve no involvement of state officials.
- h. If before the electors cast their votes on December 14 the candidates for whom they are voting have been issued certificates of election, the Governor must issue those certificates prior to when the electors must meet such that the electors are to attach the certificates to their electoral votes submitted to the Senate.
- i. Nothing in federal law requires states to resolve controversies over electoral votes prior to the meeting of the electors and there is no “set deadline” for the transmittal of the certification to the President of the Senate.
- j. The Biden Campaign may try to create urgency by insisting with various courts that the election must be resolved by the December 8, 2020 “safe harbor” deadline imposed by the Electoral Count Act because a result reached in a state by the “safe harbor” deadline “shall be conclusive” when votes are counted in Congress.

- k. There are “substantial reasons to doubt that the Electoral Count Act, enacted by the 50th Congress in 1877, can have any binding effect on the 117th Congress which will convene on January 3, regarding its authority and obligation to count electoral votes as it sees fit.”
- l. Based on state statutes, while a valid petition for recount is filed, neither the Governor nor WEC can issue a certificate of election until the recount has been completed and the time to allow for appeal has passed, or if appealed until the appeal is decided.

83. The Real Deadline Memo, which was released to the public only recently, corroborates reports President Trump’s legal team oversaw and facilitated the election of fraudulent electors pledged to the Trump-Pence ticket in an attempt to present Vice President Pence with conflicting slates of electors during the congressional certification so that he could, as one of several options suggested by lawyers advising the conspirators, unilaterally pick the fraudulent electors, send the election to a vote in the House of Representatives, which would have handed the election to President Trump based on the then-existing makeup of that body, or delay the outcome for consideration by state legislatures who would be called to de-certify the Biden-Harris electors.

Magnifying Public Distrust Through Lawsuits

84. Wisconsin finished its recount of the results in Milwaukee County and Dane County (largely "blue" counties and not surprisingly the only ones where President Trump had requested a recount) on Sunday, November 30, 2020. The recount confirmed Biden’s victory over President Trump in Wisconsin. Having paid \$3 million for the recount, President Trump gained a mere 45 votes in Dane County from what was reported on November 4, 2020, while Biden gained 132 votes in Milwaukee. In short, the recount gave President Biden a net gain of 87 votes in Wisconsin, bringing his margin of victory to more than 20,000 votes. At the completion of the recount, the Chairperson of the WEC, pursuant to statute, certified the results of the November 3,

2020 election and presented the Certificate of Ascertainment for the slate of electors for President Biden and Vice President Harris to Governor Evers, who signed and sealed the certificate as required by Wisconsin election law.

85. On December 1, 2020, the day after the recount results were finalized, William Feehan (“Feehan”), who played a critical role in the plot as a fraudulent elector for the Trump-Pence ticket as described below, filed a lawsuit in the United States District Court for the Eastern District of Wisconsin through attorney Sidney Powell.³ Feehan sought three things from the district court: (a) an order requiring state officials to de-certify the election results that had been certified a day earlier by the Governor and WEC; (b) an order prohibiting Governor Evers from transmitting to the Electoral College Wisconsin’s certified results; and (c) an order requiring Wisconsin’s Governor to transmit to the Electoral College a certification that President Trump won the election in Wisconsin. *See Feehan v. Wis. Elections Comm’n*, Case No. 2:20-cv-1771 (E.D. Wis. 2020).

86. The same day that Feehan filed his federal lawsuit, President Trump filed an original action in the Wisconsin Supreme Court against Governor Evers and state and local election officials. In it, he alleged that Wisconsin election officials had illegally counted more than 200,000 defective, absentee, and mail-in ballots on November 3-4, 2020. *Trump v. Evers*, Case No. No. 2020AP1971-OA. President Trump used the suit to blast over Twitter his views about

³ Sidney Powell is assuredly known to the Court for her aggressive, frivolous, and often confused legal work on President Trump’s behalf. Responsible for the “Kraken,” Powell has faced lawsuits, ethics charges, and sanctions motions since January 6, 2021. (*See e.g.*, <https://www.washingtonpost.com/politics/2022/02/08/sidney-powells-legal-team-perhaps-kraken-wasnt-real-after-all/>, last accessed on March 8, 2022.) In fact, Governor Evers’ motion for sanctions against Ms. Powell remains pending in the *Feehan* case.

the supposed election irregularities in Wisconsin. Two days later, the Wisconsin Supreme Court voted against taking the case and declined the original jurisdiction President Trump sought.⁴

87. Disputing President Trump’s and Defendants’ persistent, baseless claims, Attorney General Barr declared the same day that Feehan filed his lawsuit that the Department of Justice had found no evidence of widespread voter fraud that could change the outcome of the 2020 election. Barr’s comments, in an interview with The Associated Press, contradicted the concerted and ongoing effort by President Trump, his allies, and certain members of Congress and other public officials, including Johnson, Tiffany, and Fitzgerald, to subvert the results of the November 3, 2020 presidential election. In the interview, Barr declared that the U.S. Attorneys and FBI agents he had tasked with investigating potential fraud in his November 9, 2020 memo (*see supra*, ¶¶ 69-70) had been working to follow up specific complaints and information they had received, but “to date, we have not seen fraud on a scale that could have effected a different outcome in the election.” In an interview on the topic that aired on March 6 2022, Barr told NBC’s Lester Holt, that he “quickly came to the conclusion that the initial stuff that was pointed to, like the Dominion machines and all these other conspiracy theories, were nonsense.” Barr further stated, “this idea of

⁴ This Complaint focuses on the litigation filed by President Trump. But Wisconsin was inundated with other lawsuits filed by Trump surrogates that fall. On November 12, 2020, *Langenhorst v. Pecore*, Case No.: 1:20-cv-01701-WCG, arrived in a Wisconsin circuit court. The plaintiffs Michael Langenhorst, Michael D. LeMay, and Stephen Fifrick alleged that invalid ballots in Milwaukee, Menominee, and Dane Counties led to vote-dilution disenfranchisement. Plaintiffs sought to invalidate all votes from those counties before Wisconsin certified the results. The case was voluntarily dismissed by Plaintiffs on November 20, 2020. On November 23, 2020, *Wisconsin Voters Alliance v. Wisconsin Election Commission*, Case No.: 2020AP1930-OA, was filed as an original action in the Wisconsin Supreme Court. Plaintiff filed suit against state election officials seeking to block certification results alleging that thousands of illegal ballots were cast. The Wisconsin Supreme Court denied the petition on December 4, 2020, holding that issues of material fact prevented the court from addressing the legal issues presented. Justice Hagedorn, in his concurrence, explained that the petition “falls far short of the kind of compelling evidence and legal support we would undoubtedly need to countenance the court-ordered disenfranchisement of every Wisconsin voter.” On November 27, 2020, Dean Mueller, a Chippewa Falls resident, filed *Mueller v. Jacobs*, Case No.: No. 2020AP1958-OA, as an original action with the Wisconsin Supreme Court. Mueller argued that ballots collected from drop boxes were illegal and should not be counted. He asked the court to nullify the election results and give the Wisconsin Legislature the power of either holding a new election or appointing electors. The Wisconsin Supreme Court denied the petition in a 4-3 decision issued on December 3, 2020. All these suits were dismissed with relief denied.

some inner-city boiler room where people are cranking out false ballots is a fantasy.” It’s clear from this exchange that what the Department of Justice had found was flatly inconsistent with President Trump’s claims of a “rigged” election.

88. On the afternoon of December 1, 2020, Johnson took further overt actions in furtherance of the conspiracy by attacking Barr. In an interview with Manu Raju on CNN, Johnson forcefully discredited the Attorney General's conclusions, saying that Barr should “show everybody” his evidence that there was no mass fraud because “there’s enough suspicions” and “irregularities” there. When asked if he was not satisfied with Barr’s conclusion, Johnson added: “I think there is still enough questions outstanding.” That Johnson would make such reckless and politically self-serving statements is not surprising given his role in seeking to overturn the results from the election. Of course, as a host of people pointed out, Johnson was requiring Barr to prove a negative.

89. Consistent with the wrongdoing asserted against Johnson in this Complaint, there is a factual disconnect between Johnson’s ongoing misrepresentations to the public about voter fraud and what he told friends in private. On November 14, 2020, Johnson called Mark Becker, the former chairman of the Brown County (Wisconsin) Republican Party. In an article Becker wrote for *The Bulwark* published on December 2, 2020, he recounted a 30 minute and 32 second phone call he had with Johnson on November 14, 2020 (seven days after Biden had been declared the winner) that Becker described as “nothing short of surreal.” Although Becker’s Republican bona fides are well established in Wisconsin, he felt it necessary to write about the call “given what was discussed” and “given the war that leaders of the GOP such as Senator Johnson are waging on the very foundation of our democracy.” In his article, *My Call with Ron Johnson: He Knows Biden Won but Won’t Admit It*, Becker stated several things that demonstrate Johnson’s

role in the conspiracy to spread lies about the 2020 election. Becker summed up the call with his old friend this way:

- a. The “TL;DR [too long; didn’t read] of the call was Johnson knew that President Biden “won a free and fair election” but that he was “refusing to admit it publicly and stoking conspiracies that undermine our democracy solely because it would be ‘political suicide’ to oppose Trump.”
- b. Johnson “knew and accepted the fact that Joe Biden had won.” When asked by Becker “why he wouldn’t say so at a moment when Trump was taking a sledgehammer to the very foundation of our democracy,” Johnson replied that the “institutions of our democracy are strong enough to withstand what is going on.” This shocked Becker, because “it suggested that the truth was ultimately unimportant, and that Sen. Johnson viewed what the president was doing as someone else’s problem.”
- c. From Becker’s perspective, Johnson “knows that this is BS” and the reason was that five years earlier Johnson “said so.” In 2015, according to Becker, Johnson introduced legislation streamlining the transition process, telling people at the time: “. . . the peaceful transition of power is one of the **hallmarks of our democracy**. It is also an enormous undertaking requiring months of planning in order to be successful.” (Emphasis added.)
- d. Becker concluded that Johnson was wrong to attack Attorney General Barr the day before over his conclusion at DOJ that there was no substantial evidence of voter fraud in that Johnson was requiring Barr to show a “negative.”

(See <https://www.thebulwark.com/my-call-with-ron-johnson-he-knows-biden-won-but-wont-admit-it/>, last accessed on March 8, 2022.)

90. On December 2, 2020, the same day as Johnson’s old friend Mark Becker published his account of Johnson’s actual views (contrasted with the falsities he was publicly spreading), President Trump filed a lawsuit in the United States District Court for the Eastern District of Wisconsin seeking injunctive relief and asserting that the defendants (a host of local and state

government actors) had violated the constitutional rights of the President, tainted more than 50,000 ballots, and asking the district court to allow the Wisconsin Legislature to remedy the problem.

91. The next day, December 3, 2020, President Trump filed an appeal in Milwaukee County Circuit Court of the recount decisions in Milwaukee County and Dane County that the WEC had certified three days earlier. The recount numbers and errors assigned were baseless – the **real purpose** was to further establish discord in the public over the Wisconsin election. Indeed, filing baseless lawsuits was a long-established tactic of the President who historically has used litigation to divert, hinder, and obstruct fact-finding and truth.

92. On December 8, 2020, Texas Attorney General Ken Paxton filed an original action on behalf of the State of Texas in the U.S. Supreme Court contesting the administration of the 2020 presidential election in Georgia, Michigan, Pennsylvania, and Wisconsin. *See Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020). Paxton alleged that these four states had violated the U.S. Constitution by changing election procedures through non-legislative means. The suit sought to temporarily withhold the certified vote count from these four states before the selection of presidential electors on December 14, 2020. Paxton agreed to file the case after other state attorneys general declined to do so. Unsurprisingly, given the frivolous nature of the claim, the Solicitor General of Texas, Kyle D. Hawkins, objected to the suit and refused to let his name be added, forcing Paxton to hire a special counsel to push the frivolous theory. President Trump referred to the case as “the big one.”

93. At 10:17 a.m. on December 9, 2020, the President tweeted: “We will soon be learning about the word ‘courage’, and saving our Country. I received hundreds of thousands of legal votes more, in all of the Swing States, than did my opponent. ALL Data taken after the vote says that it was impossible for me to lose, unless FIXED!” President Trump continued spreading

these falsehoods as part of the scheme to foment distrust in the electorate over the outcome and to pressure Congress and Vice President Pence into adopting the slates of fraudulent electors or taking other measures unsupported by law to enable President Trump to claim victory.

94. The “courage” that President Trump alluded to in his tweet the morning of December 9, 2020 was the fact that the President, over 100 Republican Representatives, and 18 Republican attorneys general from various states were about to file *amicus curiae* briefs in the U.S. Supreme Court supporting the Texas suit. Consistent with the other overt acts alleged in this Complaint implemented to push the contrived claim of a fraudulent Wisconsin election, Tiffany joined the *amicus curiae* brief of the Republican House members expressing support for the Texas suit. The four states named as defendants, joined in briefs submitted by their counterparts from twenty other states, two territories, and the District of Columbia, asked the Supreme Court to reject the original action, with Pennsylvania calling it a “seditious abuse of the judicial process.”

95. In response to his involvement in the suit, Tiffany consistently pushed the same narrative, to both Wisconsin Public Radio, WQOW-News 18, and on his Twitter: “This is about the integrity of our system. Every legal vote must be counted, credible complaints of fraud and irregularities must be investigated, and legitimate legal challenges must be heard and addressed by our independent judiciary.” (See, e.g., <https://www.wpr.org/tiffany-johnson-align-presidents-efforts-overturn-biden-victory>, last accessed March 8, 2022.) As they had been doing since shortly after the election was called in favor of Biden, Tiffany and others used their positions of authority and power to spread misinformation about the 2020 election to maximize pressure on Vice President Pence and Congress in carrying out their legally mandated duties on January 6, 2021. By early December, the “independent judiciary” Tiffany referenced had dismissed or otherwise rejected more than 50 challenges by the Trump Campaign and its surrogates, and the Attorney

General of the United States had reported the result of DOJ's investigation, determining that there was no evidence of fraud that would have altered the outcome of the election.

The Wisconsin Fraudulent Elector Scheme and the End of the Wisconsin Litigation

96. On December 9, 2020, in direct proximity to the day that Tiffany was publicly promoting Texas's "seditious abuse of the judicial process" in the U.S. Supreme Court, Troupis received a second memorandum from Chesebro, which sought to advance the concrete object of the conspiracy – namely, changing the results of the election in favor of President Trump. In Chesebro's memorandum he proposed a plan to send a slate of fraudulent electors totaling 79 electoral votes for President Trump to the President of the Senate before the January 6, 2021 counting of the electoral ballots. Chesebro's memorandum (the "Fraudulent Elector Memo") discussed in detail the requirements of federal law and the laws of the six states (including Wisconsin) where the 79 electoral votes would be created to place the fraudulent electors' ballots before Congress and the Vice President. In so doing, Chesebro acted overtly and outlined a criminal scheme whereby individuals from each state would be active participants in violating federal and state laws to overturn the election in President Trump's favor.

97. In the Fraudulent Elector Memo, Chesebro focused on the specific acts needed for the conspirators to achieve their desired outcome before Congress on January 6. Before outlining those federal and state requirements, Chesebro offered this assessment of the plot:

It appears that even though none of the Trump-Pence electors are currently certified as having been elected by the voters of their State, most of the electors (with the possible exception of the Nevada electors) will be able to take the essential steps needed to validly cast and transmit their votes, so that the votes might be eligible to be counted if later recognized (by a court, the state legislature, or Congress) as the valid ones that actually count in the presidential election And they can do so without any involvement by the governor or any other state official (except, in some States, where access to the Capitol Building is or might be needed, or where the

Governor must approve a substitute elector or, in Nevada, where the Secretary of State is involved.

(12/9/20 Fraudulent Elector Memo, p. 1.)

98. In Chesebro's assessment, "voting by an alternate slate of electors is **unproblematic** in Arizona and Wisconsin; **slightly problematic** in Michigan (requiring access to the senate chamber); **somewhat dicey** in Georgia and Pennsylvania in the event that one or more electors don't attend (require gubernatorial ratification of alternates); and **very problematic** in Nevada (given the role accorded to the Secretary of State)." (12/9/20 Fraudulent Elector Memo, p. 5; emphasis added.) In outlining the scheme for Wisconsin's fraudulent electors, Chesebro identified the only two requirements he saw to enable the criminal conduct of the 10 fraudulent electors on December 14, 2020:

Under Wisconsin law, the electors "shall meet at the state capitol," which presumably means the Capitol Building ("state capitol" being a term more specific than "seat of government"), at 12:00 noon." [Citation omitted.]

Any absent elector may readily be replaced. [Citation omitted.] ("if there is a vacancy in the office of an elector due to death, refusal to act, failure to attend or other cause, the electors present shall immediately proceed to fill by ballot, by a plurality of votes, the electoral college vacancy.")

(12/9/20 Fraudulent Elector Memo, p. 5.) The Fraudulent Elector Memo (or a summary thereof) circulated among various members of the conspiracy, including, among others, Fitzgerald and, upon information and belief, Johnson, and Tiffany.

99. On the same day that Chesebro circulated the Fraudulent Elector Memo, Johnson announced that he planned to hold a hearing the following week on election irregularities. As reported by *The Hill* that day:

Sen. Ron Johnson (R-Wis.) on Wednesday did not rule out challenging the results of the Electoral College next month when Congress formally certifies the vote. Johnson, who is chairman of

the Senate Homeland Security and Governmental Affairs Committee, announced the same day that he would hold a hearing next week on the “irregularities” of the 2020 election. When asked if he plans to challenge the election results, Johnson told reporters: “I would say it depends on what we found out. I need more information. The American people need more information. I’m not ready to just close and slam the book on this thing and go ‘OK, let’s walk away from it.’” Johnson’s comments about the election results came as he announced that he had scheduled a committee hearing for next week to “examine irregularities” of the Nov. 3 election. Johnson, who has stuck closely to Trump, said the goal was “full transparency and awareness.” “The fact remains that a large percentage of the American public does not view the 2020 election result as legitimate because of apparent irregularities that have not been fully examined,” Johnson said in a statement. The hearing will come after the Electoral College convenes to formally vote on Monday.

(See <https://thehill.com/homenews/senate/529480-gop-senator-wont-rule-out-challenging-electoral-college-results-in-congress>, last accessed on March 6, 2022.)

100. On December 9, 2020, United States District Judge Pamela Pepper dismissed Feehan’s lawsuit. In her decision, the judge questioned why Feehan asked a federal court to grant the relief sought given that “[f]ederal judges do not appoint the president in this country.” 506 F. Supp. 3d 596, 600 (E.D. Wis. 2020). Concluding the district court had no jurisdiction to hear Feehan’s baseless suit, Judge Pepper dismissed the case.

101. On December 10, 2020, less than 24 hours after Chesebro issued the Fraudulent Elector Memo to Troupis and consistent with what Chesebro said would be required to effectuate the scheme for the Trump-Pence electors to cast their ballots in Wisconsin, Fitzgerald, using his existing authority as the Majority Leader of the Wisconsin State Senate, reserved meeting space in the State Capitol on December 14, 2020 for the Republican Party of Wisconsin (“RPW”). Records recently received from an open records request directed to the office of the State Senate Sergeant at Arms establish that staff from Fitzgerald’s state senate office reserved meeting space from 10:00 a.m. to 2:00 p.m. in the Senate Parlor and Room 201SE on behalf of the RPW.

102. Upon information and belief, Fitzgerald personally instructed his staff to reserve the space. At the time, the State Capitol in Madison was closed to the public to mitigate the spread of COVID-19. In yet another overt act in furtherance of the plot to present fraudulent electors to Congress and Vice President Pence, Fitzgerald planned to provide a room in the Capitol wherein the slate of ten Republicans illegally purporting to be the authorized presidential electors from Wisconsin could meet and sign certified documents falsely claiming that the 2020 Election in Wisconsin was won by President Trump.

103. On December 11, 2020, the U.S. Supreme Court declined to hear the original action filed by Texas. While the Court quickly shot down a lawsuit that would have invalidated millions of votes in the four states at issue, the lawsuit had its desired effect—the plan hatched between President Trump, the Defendants, and others. Indeed, just hours before the U.S. Supreme Court dismissed the case, Tiffany issued this tweet: “This is about the integrity of our system. Every legal vote must be counted, credible complaints of fraud and irregularities must be investigated, and legitimate legal challenges must be heard and addressed by our independent judiciary.” Tiffany wanted his followers to believe that he had noble goals, but the opposite was true. The conspirators have still provided no viable evidence of evidence of fraud or irregularities.

104. For a second time on the same day, President Trump lost. After an expedited hearing in the Milwaukee County Circuit Court over Trump’s recount challenge, Reserve Judge Stephen Simanek determined on December 11, 2020 that “there is no credible evidence of misconduct or wide-scale fraud.” *Trump v. Biden*, Case No. 20-CV-007092 (Milwaukee County Circuit Court, State of Wisconsin). President Trump appealed Judge Simanek’s decision, obtained the right to bypass the Court of Appeals, and on December 12, 2020, argued why Judge Simanek’s decision should be reversed before the Wisconsin Supreme Court.

105. The contrast between the false claims repeatedly asserted by President Trump, Johnson, Tiffany, Fitzgerald, and others about the election, and the findings of courts throughout the country repeatedly rejecting those claims could not be starker. Nevertheless, Defendants and the President (and others) continued to persist in their assertions that their claims had support in the facts and the law when neither was true.

106. On December 12, 2020, United States District Judge Brett Ludwig dismissed President Trump's lawsuit against the WEC and others that he had filed on December 2, 2020. In dismissing the case, the district court found: "This is an *extraordinary* case. A sitting president who did not prevail in his bid for reelection has asked for federal court help in setting aside the popular vote based on disputed issues of election administration, issues he plainly could have raised before the vote occurred. This Court has allowed the plaintiff the chance to make his case and he has lost on the merits." 506 F.Supp.3d 620, 639 (E.D. Wis. 2020). The President appealed this decision and the Seventh Circuit affirmed. He then sought review in the U.S. Supreme Court, which denied the President's request for expedited consideration on January 11, 2021 and dismissed the appeal altogether on March 8, 2021.

107. On December 13, 2020, the day before the presidential electors were to meet pursuant to state law to cast their ballots, President Trump sought to further the scheme involving the fraudulent electors, tweeting at 5:49 p.m.: "Swing States that have found massive VOTER FRAUD, which is all of them, CANNOT LEGALLY CERTIFY these votes as complete & correct without committing a severely punishable crime. Everybody knows that dead people, below age people, illegal immigrants, fake signatures, prisoners, and many others voted illegally. Also, machine 'glitches' (another word for FRAUD), ballot harvesting, non-resident voters, fake ballots, 'stuffing the ballot box', votes for pay, roughed up Republican Poll Watchers, and sometimes even

more votes than people voting, took place in Detroit, Philadelphia, Milwaukee, Atlanta, Pittsburgh, and elsewhere. In all Swing State cases, there are far more votes than are necessary to win the State, and the Election itself. Therefore, VOTES CANNOT BE CERTIFIED. THIS ELECTION IS UNDER PROTEST!”

108. On December 14, 2020, at approximately 10:59 a.m., an hour before the Biden-Harris presidential electors were to meet in the Wisconsin Capitol, the Wisconsin Supreme Court issued its decision in President Trump’s appeal challenging the results of the Milwaukee County and Dane County recounts, affirming Judge Simanek’s conclusion that the Trump campaign had presented no evidence of voter misconduct or fraud: “In each category of ballot challenge, voters followed every procedure and policy communication to them, and election officials in Dane and Milwaukee Counties followed the advice of WEC where given.” *Trump v. Biden*, 2020 WI at ¶ 31. That loss, along with the one before Judge Ludwig two days earlier (and all the cases that had been dismissed in Wisconsin and elsewhere), meant that all court challenges to the Wisconsin election results had been resolved against President Trump, so there were no meaningful obstacles preventing the Biden-Harris electors from meeting in the Capitol at the designated time and casting their 10 electoral votes for President Biden and Vice President Harris.

109. The Biden-Harris presidential electors met as they were obligated to do, cast their electoral ballots, and signed the election certificates. They did so in an open meeting broadcast on *Wisconsin Eye*. From there, Governor Evers and Secretary of State Douglas LaFollette provided their certification, and the documentation of Wisconsin’s electoral college balloting was forwarded to the President of the Senate, federal archivists in Washington, DC, and the Chief Judge of the Western District of Wisconsin consistent with state and federal law.

110. Because Fitzgerald had facilitated their access to the Wisconsin Capitol four days earlier, the fraudulent electors constituting the Trump-Pence slate (Hitt, Feehan, Kelly Ruh, Carol Brunner, Edward Scott Grabins, Robert F. Spindell, Jr., Kathy Kiernan, Darryl Carlson, Pam Travis, and Mary Buestrin) were able to act in furtherance of the conspiracy alleged in this Complaint to create a competing slate of presidential electors in favor of President Trump, which would be opened by Vice President Pence before Congress on January 6, 2021. In a podcast broadcast long after the events of January 6, 2021, Feehan admitted that the fraudulent electors met on December 14, 2020 in the State Capitol (at the same time as the actual electors) with full knowledge that the Wisconsin Supreme Court had hours earlier dismissed President Trump's appeal challenging the ballot issues in Wisconsin and that Judge Ludwig had days earlier refused to set aside the results from the Wisconsin election. Feehan alludes in the podcast to preparing and coordinating with others in relation to the meeting that day and to the great "privilege" it was to participate in what he called an "historic moment." Few are so bold as to call their criminal conduct a "historic moment."

111. Notwithstanding the reality that not a single court in Wisconsin had found in favor of President Trump or his surrogates, the ten fraudulent electors used the access provided by Fitzgerald to meet in the Wisconsin Capitol at the same time as the Biden-Harris electors, executed a competing and fraudulent set of documents purporting to cast electoral ballots for President Trump and Vice President Pence, and thereafter (on December 16, 2020) transmitted the fraudulent papers through the U.S. Mail to the President of the U.S. Senate, the Wisconsin Secretary of State, the Archivist of the United States and the Chief Judge of the United States District Court for the Western District of Wisconsin – consistent with Chesebro's instructions to Troupis five days earlier.

112. Unlike the fraudulent electors from the other states instrumental to the scheme, who expressly stated in their fraudulent electoral ballots that their votes were conditioned on court or legislative decisions that overturned or negated the duly certified results in those states, the fraudulent electors in Wisconsin falsely certified without qualification that they were “duly elected and qualified electors” for Wisconsin and did not mention in the documents they prepared that their ballot (which did not have the accompanying Certificate of Ascertainment required by law) was to be considered only if specific conditions were met.

113. The fraudulent electors met with a purpose to subvert the rule of law and to place their own political will, as well as that of Defendants and other conspirators, known and unknown, ahead of the decision made by the people of Wisconsin who cast more votes for Biden than Trump. In stark contrast to the duly elected Biden-Harris electors, the fraudulent electors met without advance notice to the public, public access at the event, or media attention, but with a security detail that Fitzgerald, upon information and belief, had also facilitated on their behalf.

114. Among other crimes, the fraudulent electors appear to have violated multiple provisions of Wisconsin’s criminal code, including (a) forgery (a Class H felony) in violation of Wis. Stat. § 943.38(1); (b) falsely assuming to act as a public officer (a Class I felony) in violation of Wis. Stat. § 946.69(2); (c) misconduct in public office (a Class I felony) in violation of Wis. Stat. § 946.12(4); (d) simulating legal process (a Class I felony) in violation of Wis. Stat. § 946.68; and (e) conspiracy to commit criminal acts (class dependent) in violation of Wis. Stat. § 939.31; (f) aiding and abetting or otherwise providing counsel as a party to a crime not committed directly (class dependent) in violation of Wis. Stat. § 939.05; and (g) attempts to commit a felony or other crime (class dependent) in violation of Wis. Stat. § 939.32.

115. Wisconsin Congressman Mark Pocan recently referred the conduct of the fraudulent electors to U.S. Attorney General Merrick B. Garland for prosecution based on violations of federal law. Shortly thereafter, the DOJ announced that it had launched an investigation into what Deputy Attorney General Lisa Monaco called the “fraudulent elector certifications.” At least one individual (Paul Sickel, the Executive Director of SEIU’s State Council) has made criminal referrals to the Milwaukee County District Attorney, the Dane County District Attorney, and the Wisconsin Department of Justice. Because Hitt is a licensed member of the Wisconsin State Bar, his conduct in participating as a fraudulent elector has also resulted in a complaint from SEIU to Wisconsin’s Office of Lawyer Regulation.

116. As the fraudulent electors were preparing to meet at noon in Madison on December 14, 2020, Stephen Miller, a Senior Policy Advisor for President Trump, appeared on Fox News to boast that fraudulent electors were meeting and casting their illegal electoral votes in accordance with federal and state law in various contested states. In talking about the plan, Miller told the listeners: “We have more than enough time to **right the wrong of this fraudulent election result** and certify Donald Trump as president. As we speak, an alternate slate of electors in the contested states is going to vote and we are going to send those results up to Congress. This will ensure that all of our legal remedies remain open.” (See Fox News clip, tweeted by @AndrewFeinberg on

December 14, 2020,

https://twitter.com/AndrewFeinberg/status/1338482805299351552?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1338482805299351552%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.msnbc.com%2Fopinion%2Ftrump-s-fake-electors-plan-was-never-just-political-stunt-n1287955, last accessed on March 9, 2021; emphasis added.) This

demonstrates that the conspiracy over the fraudulent electors went to the very top and wiggled its

way into each of the seven states who offered up the competing slates for use in the conspiratorial objectives laid out in this Complaint.

117. While the scheme to establish fraudulent elector ballots got underway, the White House announced on December 14, 2020 that Attorney General Barr resigned, which resignation would become effective the following week. News reports at the time suggested that President Trump sought to fire Barr the previous weekend and that insiders at the White House pushed the President to avoid doing so. The White House specifically denied asking Barr to submit his resignation. In the weeks leading up to the filing of this Complaint, the former Attorney General has been interviewed in relation to a memoir he recently published about his time in the Trump Administration. In the interview that aired on March 6, 2022 with NBC's Lester Holt, Barr admitted that he had told President Trump, that "all this stuff about election fraud was bullshit" and after truthfully answering a series of questions from the President about the contrived claims, Barr offered to tender his resignation. Barr recalls that President Trump pounded his desk loudly twice, each time saying that Barr's resignation was "accepted," before telling Barr to go home and not to return to his office.

118. Notwithstanding Barr's conclusions about the absence of election fraud and his apparent statement to President Trump that he and his surrogates were spewing "bullshit" to the American public, on the very evening of Barr's resignation Special Assistant to the President Molly Michaels emailed Deputy Attorney General Jeffrey Rosen (who assumed the position of Acting Attorney General at DOJ after Barr resigned) two documents she described as "from POTUS." Those two documents were (1) a set of talking points alleging voter fraud in Antrim County, Michigan; and (2) a purported "forensic report" by Allied Operations Group on Dominion Voting Systems' work in Antrim County.

119. The forensic report, which was used in a defamation case brought by Dominion Voting Systems' Director of Product Strategy and Security, was introduced during a deposition of the corporate representative for Donald J. Trump for President, Inc. on August 9, 2021. The document shows that the campaign was aware that the voting systems were working correctly, and no fraud was found, despite Trump, his campaign, and his surrogates saying otherwise at the time.

120. According to the January 6 Commission, on December 15, 2020, the day after the presidential electors cast their ballots in favor of the Biden-Harris ticket and the fraudulent electors in seven states had engaged in their criminal misconduct, President Trump summoned Jeffrey Rosen and Principal Associate Deputy Attorney General Richard Donoghue to the Oval Office to ask the Department of Justice why it was not "doing more to look at" the Antrim County allegations and the "bad things" President Trump claimed had occurred in Georgia and Pennsylvania.

121. At 5:27 p.m. that same evening, Johnson issued this tweet: "We are holding an oversight hearing tomorrow to examine the irregularities in the 2020 election. A large percentage of Americans simply don't think this was a legitimate election. That's an unsustainable state of affairs for our country."

122. Johnson held his hearing on "election irregularities" on December 16, 2020. Before commencing, in a tweet posted at 9:09 a.m., Johnson fomented more public unrest by broadcasting false claims about the November 3, 2020 election: "They called it dangerous. They want to sweep it under the rug. But when Americans don't have confidence in the legitimacy of the election, that's a problem we need to solve. #ElectionIntegrity <https://hsgac.senate.gov/examining-irregularities-in-the-2020-election>." Of course, missing from Johnson's text is an acknowledgment that he, along with Tiffany, Fitzgerald, President Trump, and

a host of others were the sole reason that some voters believed that the results were illegitimate. To compound the false narrative, Johnson invited Troupis to testify at the hearing to continue to advocate the ballot problems in Wisconsin, even though the Wisconsin Supreme Court had rejected those claims two days earlier. Before the hearing, Johnson was briefed by retired Army colonel Phil Waldron, whose role in the conspiracy is described in more detail later in this Complaint.

123. As Johnson continued his charade about election integrity on December 16, 2020, President Trump and others known and unknown set about that day to draft an Executive Order titled, “Presidential Findings to Preserve Collect and Analyze National Security Information Regarding the 2020 General Election.” Never executed, the Order is consistent with bogus claims advanced by Trump attorney Sidney Powell, who is now facing disciplinary action over her conduct as a lawyer during post-election litigation, about how Dominion Voting Systems machines were used in some of the contested states to perpetrate election fraud. On Dec. 18, 2020, Powell, former Trump national security adviser Michael Flynn, former Trump administration lawyer Emily Newman, and former Overstock.com CEO Patrick Byrne met with Trump in the Oval Office. In that meeting, Powell urged Trump to seize voting machines and to appoint her as a special counsel to investigate the election.

124. The draft Executive Order:

- a. Empowered the defense secretary to “seize, collect, retain and analyze all machines, equipment, electronically stored information, and material records required for retention under” a U.S. law that relates to preservation of election records.
- b. Gave the defense secretary 60 days to write an assessment of the 2020 election, suggesting it was a gambit to keep President Trump in power until at least mid-February of 2021.

- c. Cited a host of presidential authorities to permit the steps that President Trump would take, including the U.S. Constitution, Executive Order No. 12333, a well-known order governing the intelligence community, and two classified documents, National Security Presidential Memoranda Nos. 13 and 21, suggesting that whoever participated in the drafting had access to top secret information (because Memorandum No. 21 is not known to most White House staff).
- d. Enabled “the appointment of a Special Counsel to oversee this operation and institute all criminal and civil proceedings as appropriate based on the evidence collected and provided all resources necessary to carry out her duties consistent with federal laws and the Constitution.”

(See <https://www.politico.com/news/2022/01/21/read-the-never-issued-trump-order-that-would-have-seized-voting-machines-527572>, last accessed on March 7, 2022.) To bolster support for the Executive Order, its author cited the Antrim County allegations that, by then, had already been disproven in court.

125. On December 17, 2020, President Trump tweeted: “We won Wisconsin big. They rigged the vote! <https://t.co/TRBRmBiMtv>“. Troupis, whose work for the President should have ended with the loss in the Wisconsin Supreme Court, retweeted: ““Three million people properly voted in the state of Wisconsin. More than 200,000 identified during this recount did not. But those votes got counted. Our statute says they should not have been. That in our view is a taint on our election in Wisconsin.’ -- Attorney James Troupis”

126. On December 18, 2020, an unsigned memorandum titled “Counter-Election Fraud NSPM-13 Request” was, upon information and belief, distributed among certain participants in the conspiracy. The memorandum states that a “group of former DoD and IC analysts collected, analyzed, and organized into a work product substantial evidence suggesting foreign involvement in both the present ‘Color Revolution’ the U.S. is presently undergoing and specifically the 2020 Election fraud *and their involvement in altering the vote counts in the 2020 Election.*” (Emphasis

in original). The memorandum called on President Trump to instruct Acting Secretary of Defense Christopher C. Miller to bring in a core advisory team of three cleared individuals to the White House regarding foreign interference and manipulation of vote totals in the 2020 presidential election. The memorandum, which circulated publicly and was used to further undermine the public's faith in the election, promoted the use of NSA data to overturn the election results. As the Trump Campaign continued to mount legal losses challenging the election, the schemes and buy-in from surrogates of the President became more and more outlandish.

127. On December 19, 2020 at 1:42 a.m. in the morning, President Trump tweeted: "Peter Navarro releases 36-page report alleging election fraud 'more than sufficient' to swing victory to Trump <https://t.co/D8KrMHnFdK>. A great report by Peter. Statistically impossible to have lost the 2020 Election. **Big protest in D.C. on January 6th. Be there, will be wild!**" (Emphasis added.) This is the first known reference to a protest on the day Vice President Pence was set to count the electoral ballots sent in by the states. Navarro, President Trump's Director of the Office of Trade and Manufacturing Policy who has no known knowledge or experience related to election law, purported to examine six issues that he claimed existed in varying forms in all six of the contested states: (a) outright voter fraud; (b) ballot mishandling; (c) contestable process fouls; (d) Equal Protection Clause violations; (e) voting machine irregularities; and (f) significant statistical anomalies. The purpose of the Navarro report, titled *The Immaculate Deception: Six Key Dimensions of Election Irregularities*, was to promote under the guise of legitimacy the fraudulent claims being asserted in Wisconsin and elsewhere.

128. A few days after Navarro's report was published, President Trump lambasted the results from his litigation before the Wisconsin Supreme Court. In a tweet at 4:48 p.m. on December 21, 2020, the President stated: "Two years ago, the great people of Wisconsin asked me

to endorse a man named Brian Hagedorn for State Supreme Court Justice, when he was getting destroyed in the Polls against a tough Democrat Candidate who had no chance of losing. After my endorsement, Hagedorn easily won! WOW, he just voted against me in a Big Court Decision on voter fraud (of which there was much!), despite many pages of dissent from three highly respected Justices. One thing has nothing to do with another, but we ended up losing 4-3 in a really incorrect ruling! Great Republicans in Wisconsin should take these 3 strong decisions to their State Legislators and overturn this ridiculous State Election. We won in a LANDSLIDE!”

129. Johnson began to amplify the Big Lie less than three hours after Trump’s tweet, mischaracterizing the hearing he had convened and tweeting: “There is a lot more to the story of Wisconsin’s 2020 election and recount. 3 million people in our state voted properly. But @JudgeTroupis testified that over 200,000 votes were not valid.” Johnson’s tweet reiterated – with no supporting evidence and in pursuit of the object of the conspiracy – conclusions that had been summarily rejected by the Wisconsin Supreme Court: namely, the substitution of the fraudulent electors’ ballots for the lawful electoral votes to be cast in favor of the Biden-Harris ticket.

130. Johnson continued his Twitter storm the following day, on December 22, 2020, when he questioned why President Trump’s attorney in Nevada had been denied access to review paper ballots and whether mailing a ballot to everyone in a state (even those who did not ask for one) provides an opportunity for fraud. At 9:09 p.m., Johnson tweeted: “As @JudgeTroupis powerfully said, “One of the reasons people are doubting the election is because the Biden campaign’s primary defense is ‘don’t hear the evidence. The American people’s Senate should never hesitate to hear the evidence.’”

131. The next day Johnson and President Trump went even farther in promoting their false claims, suggesting in a series of tweets that a Special Counsel should be appointed to

investigate “the most corrupt election in the history of our Country” (Trump); that Senator Rick Scott from Florida rightly proposed a need for election reform to “increase confidence and reduce fraud in our elections” (Johnson); that President Trump was “prevented” from hiring lawyers at “large law firms” in an effort to contest election irregularities (Johnson); and the need for greater voter identification to ensure that “people who vote are who they purport to be” (Johnson). All these tweets were overt acts with no factual or legal basis in furtherance of the conspiracy to place massive public pressure on Congress and Vice President Pence to take deliberate action on January 6, 2021 to substitute the slates of fraudulent electors from the contested states for the Biden-Harris slates duly and properly prepared in accordance with the rule of law.

132. On Christmas Eve in 2020, Eastman, a principal architect of the plot to alter how January 6, 2021’s Joint Session of Congress would proceed, wrote a two-page memorandum that was distributed to President Trump and others, including, upon information and belief, Johnson, Tiffany, and Fitzgerald. After summarizing his views on the nonexistent election irregularities in the six contested states (Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin), suggesting that illegal acts had occurred with state and federal election officials in those six states (and in New Mexico), and asserting that in some states even judicial officials acted illegally, Eastman justified the use of fraudulent elector slates having been sent to Washington D.C. in lieu of the certified slates done according to law.

133. In the December 24, 2020 memorandum, Eastman offered legal opinions about the situation over the contested states:

- a. Only Vice President Pence could act on January 6, 2021 pursuant to the Twelfth Amendment of the U.S. Constitution. All Congress could do in the Joint Session was watch.
- b. The Electoral Count Act of 1887 was “likely unconstitutional” because it contemplates the two chambers

of Congress “acting separately” to decide questions when the Twelfth Amendment provides only for activity in a Joint Session.

- c. Despite the fact that the 134-year-old federal statute had never been challenged in any prior presidential election, the statute was unconstitutional because its “safe harbor” provision, by which certifications from state executives would conclusively determine which slate of the state’s electors were to be opened by the Vice President in the Joint Session, was in conflict with the Twelfth Amendment because it required the “safe harbor” slate to be accepted “regardless of the evidence that exists regarding the election, and regardless of whether there was ever a fair review of what happened in the election, by judges and/or state legislatures.”

134. Eastman’s memorandum then outlined the plan necessary to ensure President Trump’s re-election on January 6, 2021

- a. First, Vice President Pence would oversee the Joint Session of Congress (or Senate Pro Tempore Chuck Grassley would, if Pence recused himself) “starting with Alabama (without conceding that the procedure, specified by the Electoral Count Act, of going through the States alphabetically is required).”
- b. Second, when the Vice President got to Arizona (the first of the contested states alphabetically), he would “announce[] that he has multiple slates of electors, and so is going to defer decision on that until finishing the other States” – what Eastman concluded would be the “first break with the procedure set out in the Act.”
- c. At the conclusion, after deferring on all seven of the contested states, Vice President Pence would declare “there are no electors that can be deemed validly appointed in those States.” As such, the total number of “electors appointed” (the language of the Twelfth Amendment) would be 454 electoral votes such that a majority of electors would be 228. In this scenario, Eastman concluded that President Trump by then would have 232 elector votes to 222 for President Biden. He would then be instructed to gavel President Trump as re-elected.

- d. From there, Eastman acknowledged that Democrats in the Joint Session would object and insist that the 270 electoral vote-majority is required. Vice President Pence, according to Eastman, would then declare that, pursuant to the Twelfth Amendment, no candidate has achieved the necessary majority and the election would be sent to the House of Representatives where “the votes shall be taken by states, the representation from each state having one state.” Eastman determined that Republicans currently control 26 of the state delegations and that vote would result in President Trump’s re-election.
- e. Eastman had an alternative plan if Congress and Vice President Pence insisted on compliance with the Electoral Count Act of 1887. When the Joint Session got to Arizona, the rules on debate should be challenged and someone (Eastman suggests Ted Cruz or Rand Paul) should demand normal rules for debate (which, in Eastman’s view were suspended by the Electoral Count Act) and then filibuster to create a stalemate to give the state legislatures time to weigh in and support the slates of fraudulent electors.

135. On December 26, 2020, President Trump renewed in earnest his contrived fraud theories over the election. In a tweet at 8:14 a.m., the President said: “‘Justice’ Department and the FBI have done nothing about the 2020 Presidential Election Voter Fraud, the biggest SCAM in our nation’s history, despite overwhelming evidence. They should be ashamed. History will remember. Never give up. See everyone in D.C. on January 6th.”

136. The following day, December 27, 2020, President Trump again invited people to the protest that he was planning for January 6, 2021, which itself was part of the high stakes public pressure campaign the conspirators pursued to achieve the results they sought. At 5:51 p.m. that day, he again reminded the public by tweet: “See you in Washington, DC, on January 6th. Don’t miss it. Information to follow!” The President kept it up even though that day, according to the January 6 Committee, Acting Deputy Attorney General Richard Donoghue, via telephone, personally informed President Trump, much like Barr had done earlier in the month, that the allegations of voter fraud were not supported by the evidence.

137. On December 29, 2020, President Trump had Oval Office Coordinator Molly Michael email Rosen, Donoghue, and Acting Solicitor General Jeffrey Wall a draft complaint seeking to invoke the U.S. Supreme Court’s original jurisdiction in a suit against Arizona, Georgia, Nevada, Michigan, Pennsylvania, and Wisconsin. Its stated purpose: to overturn the presidential election results. The complaint was never filed or pursued.

138. On December 30, 2020, President Trump again reminded people of the January 6 protest he was coordinating. At 2:06 p.m., he exclaims by tweet: “JANUARY SIXTH, SEE YOU IN DC!”

139. Johnson appeared on CNBC’s *Squawk Box* on December 31, 2020. Undeterred by the fact that more than 60 courts had previously ruled against President Trump or otherwise refused to hear factually or legally ungrounded suits over the 2020 election, or the fact that all 50 states had by this point certified their election results in accordance with the U.S. Constitution and the Electoral Count Act, Johnson stated, “[t]here’s this feeling that this election was stolen, that it’s not fair, that there’s all kind of fraud.” Later in the interview, Johnson said: “It wasn’t a totally clean election, let’s be honest about this and not be afraid of gathering information.” Much like President Trump, Johnson, and others like him understood the psychological concept of the illusion of truth: “repeat a lie often enough and it becomes the truth.”

140. On January 1, 2021, five days from the required Joint Session of Congress where Vice President Pence would perform his largely ceremonial duty of counting the electoral ballots, President Trump, Johnson, Tiffany, Fitzgerald, Eastman, and others, began their final push to promote the object of the conspiracy. It started with a tweet from the President at 6:27 p.m. focused on Wisconsin:

Before even discussing the massive corruption which took place in the 2020 Election, which gives us far more votes than is necessary

to win all of the Swing States (only need three), it must be noted that the State Legislatures were not in any way responsible for the massive changes made to the voting process, rules and regulations, many made hastily before the election, and therefore the whole State Election is not legal or Constitutional. Additionally, the Georgia Consent Decree is Unconstitutional & the State 2020 Presidential Election is therefore both illegal and invalid, and that would include the two current Senatorial Elections. In Wisconsin, Voters not asking for applications invalidates the Election. All of this without even discussing the millions of fraudulent votes that were cast or altered!

None of these assertions about alleged defects or fraud were legally or factually accurate. Believing that public pressure on Congress and Vice President Pence was the path to victory, Trump then tweeted his now open invitation: “January 6th. See you in D.C.”

141. On Saturday, January 2, 2021, Johnson, along with Senators Ted Cruz (R-Texas), James Lankford (R-Oklahoma), Steve Daines (R-Montana), John Kennedy (R-Louisiana), Marsha Blackburn (R-Tennessee), and Mike Braun (R-Indiana), and Senators-Elect Cynthia Lumis (R-Wyoming), Roger Marshall (R-Kansas), Bill Hagerty (R-Tennessee), and Tommy Tuberville (R-Alabama) issued a joint statement about the upcoming electoral vote count and called for an “Electoral Commission with full investigatory and fact-finding authority, to conduct an emergency 10-day audit of the election returns in the disputed states.” In their statement, all 10 of them stated that they “intend to vote on January 6 to reject the electors from disputed states as not ‘regularly given’ and ‘lawfully certified’ (the statutory requisite) unless and until that emergency 10-day audit is completed.”

142. The same day, approximately 300 state legislators from the contested states appeared on a Zoom video conference hosted by President Trump, his Chief of Staff Mark Meadows, Eastman, and others. It was organized by Phil Kline, the former Attorney General of Kansas, whose Amistad Project pursued the fraudulent elector strategy in Michigan. Kline was

recently issued a subpoena from the January 6 Commission, along with Chesebro and election lawyers Cleta Mitchell and Sidney Powell.

143. On January 3, 2020, Eastman released a longer memorandum, building upon what he had distributed on Christmas Eve, to President Trump and others, including, upon information and belief, Johnson, Tiffany, and Fitzgerald or their agents. Repeating his conclusions about the Vice President's sole power at the counting session and his views on the unconstitutionality of the Electoral Count Act, Eastman then laid out four "war game" alternatives where President Trump or President Biden could claim victory depending on how each chamber approached disputes over the seven slates of fraudulent electors and how Vice President Pence approached his duties on January 6.

144. Eastman's plot looks structurally like what Chesebro had earlier conveyed to Troupis on November 18, 2020 and December 9, 2020. This is not surprising, because just like Troupis, Eastman and Chesebro had worked together previously and had a relationship.

145. The strategy laid out in Eastman's January 3, 2021 memorandum required that Vice President Pence cooperate with the scheme, that Congress and the Vice President ignore the Electoral Count Act of 1887, and that each chamber take political action inconsistent with the will of the voters as expressed in the certified ballots. Eastman summed it up this way:

The main thing here is that VP Pence should exercise his 12th Amendment authority **without asking for permission** – either from a vote of the joint session or from the Court. Let the other side challenge his actions in court, where Tribe (who in 2001 conceded the President of the Senate might be in charge of counting the votes) and others who would press a lawsuit would have their past position -- that these are nonjusticiable political questions – thrown back at them, to get the lawsuit dismissed. **The fact is that the Constitution assigns this power to the Vice President as the ultimate arbiter. We should take all of our actions with that in mind.**

I have outlined the likely results of each of the above scenarios, but I should also point out that we are facing a constitutional crisis much

bigger than the winner of this particular election. If the illegality and fraud that demonstrably occurred here is allowed to stand—and the Supreme Court **has** signaled unmistakably that it will not do anything about it—then the sovereign people no longer control the direction of their government, and we will have ceased to be a self-governing people. The stakes could not be higher.

(1/3/21 Eastman Memorandum, pp. 1-4; emphasis added.)

146. At 12:08 p.m. on January 3, 2021, the President tweeted about his video conference with state legislators the day before and linked an article titled, “President Trump Joins Call Urging State Legislators to Review Evidence and Consider Decertifying ‘Unlawful’ Election Results.” (See <https://www.breitbart.com/politics/2021/01/03/president-trump-joins-call-urging-state-legislators-to-review-evidence-and-consider-decertifying-unlawful-election-results/>, last accessed on March 7, 2022.) Upon information and belief, by this point, Eastman’s memoranda from December 24, 2020 and January 3, 2021 had been circulated among certain of the conspirators and their agents and the idea was to have the state legislators in the contested states de-certify their previously certified results if Vice President Pence chose not to act as they wanted on January 6. Upon information and belief, this was why Johnson and his nine colleagues in the Senate sought a 10-day adjournment of the count with their proposed “Electoral Commission”, namely, to enable time for those state legislatures able to act consistent with the Eastman idea to do so.

147. As Eastman laid forth his scheme on behalf of the conspirators, the 117th Congress was sworn in on January 3, 2021, and Johnson, Tiffany, and Fitzgerald all became members of that body.

148. On January 4, 2021, President Trump, and Vice President Pence, along with various members of their staffs, met with Eastman in the Oval Office to discuss the Vice President’s authority to certify and/or de-certify electoral college votes. In that meeting, Eastman outlined his

views of how the January 6, 2021 Joint Session should work consistent with his memoranda from December 24, 2020 and January 3, 2021. At 10:07 a.m., President Trump tweeted: “How can you certify an election when the numbers being certified are verifiably WRONG. You will see the real numbers tonight during my speech, but especially on JANUARY 6th. @SenTomCotton Republicans have pluses & minuses, but one thing is sure, THEY NEVER FORGET!” Emboldened by Johnson’s overt actions in furtherance of the conspiracy, the President re-tweeted Johnson: “We are not acting to thwart the Democratic process, we are acting to protect it.’ @SenRonJohnson”.

149. Johnson, for his part, had a busy January 4, tweeting and speaking to the media about election fraud:

- a. At 4:29 p.m., Johnson tweeted: “As I said to @VickiMcKenna today, the ONLY solution to this election mess is transparency. We need sunlight and information about the 2020 election” (includes YouTube link to his appearance on McKenna’s show).
- b. At 7:47 p.m., Johnson tweeted: “We cannot dismiss the concerns of tens of millions of Americans who have suspicions about this election. We are in an unsustainable state of affairs in this country” (includes clip from Fox News segment upon which he appeared).
- c. At 9:23 p.m., Johnson tweeted: “Why will there be objections on #JAN6? Because election irregularities demand investigation. @newsmax @stinchfield1776” (includes clip of his Stinchfield appearance on Newsmax).
- d. At 9:45 p.m., Johnson tweeted: “I share the concern of my Republican colleagues that we don’t want Congress coming in here and overturning the election or disenfranchising voters. I understand that. But we also can’t just dismiss these legitimate concerns” (includes clip of his Fox News appearance).
- e. During a radio interview that day on Josh Dukelow’s *Fresh Take*, Johnson exclaimed: “70 million people are pretty

ticked off, are frustrated, are concerned, and have real legitimate suspicions that this election was stolen.”

150. Johnson’s overt acts pushing the fraudulent election lies were not all that Johnson did on January 4, 2021. Also on this date, he, along with Senators Cynthia M. Lummis of Wyoming and Kevin Cramer of North Dakota, participated in a meeting at the Trump International Hotel in Washington, D.C. to discuss potentially delaying Biden’s election certification. The meeting was arranged by President Trump’s friend Mike Lindell (of My Pillow fame), an election conspiracy theorist. During the meeting, which Johnson appeared at virtually with Senators Lummis and Cramer appearing in person, roughly two dozen attendees saw presentations about unfounded claims of election fraud—including false claims of international interference.

151. Johnson in later statements to the press did not deny attending the meeting and said discussions focused on what “machines might have done” to alter the outcome of the election. As alleged above, the Trump Campaign knew the machines played no role in fraudulently affecting the outcome. In her recounting, Senator Cramer told the Washington Post, “they wanted to get the machines” and the attendees heard “a lot of theories but not a lot of evidence” about international interference in the election. Lindell, for his part, claims that he does not recall “talking about wanting access to voting machines.” He claims to have called the meeting, a few people presented on what they had on “election fraud,” and “that was it.” Johnson’s appearance at the January 4 meeting is consistent with the reported fact that he had also obtained (but allegedly not read) the NSA memorandum discussed in Paragraph 126 of this Complaint.

152. The agitation pursued by President Trump, Johnson, Tiffany, Fitzgerald, and others was building to its desired climax. On January 4, 2021 Tiffany issued a joint statement on “Election Integrity” with some of his Republican colleagues from Wisconsin in the House of Representatives, calling on a need to repair Wisconsin’s election procedures whatever the outcome

of the 2020 election would be. In the statement, which reiterated as concerns many of the court-rejected ideas that had been litigated by the Trump Campaign and others throughout 2020, Tiffany and his colleagues sought to promote unrest over the election and place an asterisk on President Biden's victory.

153. On January 5, 2021, Tiffany announced he would object to the certification of electoral college votes when Congress was gaveled into the Joint Session. Because it demonstrates how well President Trump, Eastman, Chesebro, Troupis, and others were pushing an overthrow of the constitutional order to members of Congress, Plaintiffs recite the entirety of Tiffany's public statement on his objection:

Ballots cast in violation of the procedures set forth in state statute "may not be included in the certified result of any election." That is the law, and that is why I must support tomorrow's objection. And while I take no pleasure in casting this vote, this is the last option that remains to protect the rights of millions of Wisconsin voters who cast legal ballots.

Wisconsin's legislature did their job by enacting common-sense laws to safeguard the integrity of our elections system which I supported as a State Senator. Unfortunately, our state supreme court failed in their responsibility to uphold them, and a handful of county clerks chose to subvert them.

While most Wisconsin clerks complied with the law and administered free and fair elections in November, officials in Dane County and Milwaukee County took active steps to undermine and circumvent those laws. By allowing hundreds of thousands of illegal votes to be cast and counted, these unscrupulous officials have disenfranchised the great majority of Wisconsin voters who followed the law.

Milwaukee and Dane officials openly defied the state ban on ballot harvesting, and intentionally misinterpreted a law designed to allow voting by those under 'indefinite confinement' – reserved for the severely disabled and elderly nursing home residents – in order to sidestep voter ID requirements. These clerks also illegally altered absentee voting forms on a massive scale by 'curing' incomplete or incorrectly filed mail-in applications and envelopes – a practice not permitted under state statute.

Taken together, these violations alone affected some 200,000 ballots in Wisconsin – nearly 10 times the 20,000-vote margin that now separates President Trump and Joe Biden in the state. As a result, Wisconsin voters will never truly know who actually won our state in November.

Tomorrow’s objection is not an effort to nullify or undermine our democracy, quite the contrary, this process is rooted in the constitution and recent precedent. In fact, it is the same process used by Democrat lawmakers after the 2000 and 2004 elections seeking to, in the words of Speaker Nancy Pelosi, “speak up for their aggrieved constituents.”

By failing to act to address these irregularities and violations, we risk further degrading public trust in our democratic institutions and subverting our cherished system of representative government – and that is something no one in American can afford to let happen.

(1/5/21 Tiffany Statement on Objection.)

154. Tiffany also summarized his statement in a Facebook Post that has since been deleted but that was captured by Congresswoman Zoe Lofgren in “Social Media Review: Members of the U.S. House of Representatives Who Voted to Overturn the 2020 Presidential Election”, <https://lofgren.house.gov/sites/lofgren.house.gov/files/Wisconsin2.pdf>:

Ballots cast that violate procedures set forth in state statute “may not be included in the certified result of any election.” That is the law and why I will support tomorrow’s objection. This is the last option to protect the rights of Wisconsin voters who cast legal Ballots. Tomorrow’s objection is not an effort to nullify or undermine our democracy. This process is rooted in the constitution and recent precedent. It is the same process used by Democrat lawmakers after the 2000 and 2004 elections. Failing to address these irregularities and violations, we risk further degrading public trust in our democratic institutions – and that is something no one in American can afford to let happen. Read my full statement here: [link](#).

155. Tiffany also reiterated these views propagating Eastman’s unlawful legal theory in a tweet thread at 3:42 p.m. on January 5, 2021, all in an ongoing attempt to sow discord and put pressure on Vice President Pence and Congress to ignore the U.S. Constitution and the Electoral Count Act of 1887 when they gathered the following day:

Ballots cast that violate procedures set forth in state statute “may not be included in the certified result of any election.” That is the law and why I will support tomorrow’s objection. This is the last option to protect the rights of Wisconsin voters who cast legal ballots.” [1/3]

Tomorrow’s objection is not an effort to nullify or undermine our democracy. This process is rooted in the constitution and recent precedent. It is the same process used by Democrat lawmakers after the 2000 and 2004 elections. [2/3]

Failing to address these irregularities and violations, we risk further degrading public trust in our democratic institutions – and that is something no one in American can afford to let happen. Read my full statement here: [included link to Tiffany’s official statement]. [3/3]

156. Also, a day before the insurrection, on January 5, 2021, Retired Army Colonel Philip Waldron distributed a PowerPoint, titled “Election Fraud, Foreign Interference & Options for 6 JAN.” The PowerPoint, much like the other factually and legally groundless schemes worked out in backrooms by people like Eastman and Chesebro and then implemented by Trump and the Defendants, summarized options for how to overturn the 2020 election. Waldron has stated that he briefed lawmakers in Congress before January 6, 2021 on the content of the PowerPoint and met with President Trump’s Chief of Staff Mark Meadows several times in relation to it. Significantly, Waldron claims he briefed Johnson and Senator Lindsey Graham on its contents before the January 6, 2021 uprising.

157. The January 6 Committee has asserted, based on records it has obtained, that briefing related to Waldron’s PowerPoint was to be provided “on the hill,” which conclusion was reached by the committee after Meadows provided documents pursuant to a subpoena. Waldron’s memorandum, among other things, asserted:

- a. The Chinese systematically gained control over our election system constituting a national security emergency.

- b. Vice President Pence could either reject electors from “states where fraud occurred” or replace them entirely with Republican electors who would support President Trump.
- c. There was a need to declare a “national security emergency” due to alleged “foreign influence and control of electronic voting systems” by China, the purpose of which would be to delay the certification of President Biden’s victory.
- d. That “electronic voting in all states” should be deemed “invalid” because the machines were “compromised and cannot be trusted to provide an accurate vote count.”
- e. The only way to trust the outcome would be for a review of the paper ballots.

There was and is no factual basis for any of the assertions in Waldron’s presentation.

158. While Waldron’s PowerPoint circulated through Congress, President Trump and his allies were meeting on January 5, 2021 as a “War Council” at the Trump International Hotel in Washington D.C. The 23-member council who met that day included members of the President’s family, legal team, campaign staff, advisory corps, donor class, circle of friends, allies in Congress, and presidential administration. Upon information and belief, those who met at the hotel to discuss how to approach the Joint Session of Congress and the planned protest for the following day included Donald Trump Jr., Eric Trump, Kimberly Guilfoyle, Corey Lewandowski, David Bossie, Michael Flynn, Peter Navarro, Adam Piper, Tuberville, Nebraska GOP gubernatorial candidate Charles Herbster, Rudy Giuliani, Lindell, Eduardo Bolsonaro, Doyle Beck, Daniel Beck, Layne Bangerter, two additional unnamed U.S. senators, one of whom is believed to have been Ted Cruz, Ali Alexander (via phone), Alex Jones, Sidney Powell, Patrick Byrne, and Waldron, who billed himself as Giuliani’s cybersecurity expert.

159. A second group met at The Willard Hotel, a short distance from President Trump’s hotel, on January 5, 2021, to discuss the next day’s events. Upon information and belief, attendees included Roger Stone, Steve Bannon, Eastman, Robert Hyde, Russell Ramsland Jr., Jim Penrose,

Sal Greco, Jennifer Lynn Lawrence, Dustin Stockton, and Victoria Toensing.

160. For his part, President Trump tweeted throughout the day things like: “The Vice President has the power to reject fraudulently chosen electors.” He did so at 11:06 a.m. and throughout the day thereafter. Bannon, on his podcast that day, issued an ominous warning: “. . . all hell is going to break loose tomorrow. Just understand this. All hell is going to break loose tomorrow. It’s gonna be moving. It’s going to be quick.” At 1:00 a.m. on January 6, President Trump tweeted: “If Vice President @Mike_Pence comes through for us, we will win the Presidency . . . Mike can send it back.” This is the best expression of what the Trump Campaign, the President, Johnson, Tiffany, and Fitzgerald, and others, known and unknown, sought to do when they started to falsely assert on November 8, 2020 that the election that resulted in President Biden winning had been tainted by fraud: use public pressure to ensure that the Vice President and Congress would act to overthrow the duly certified election results.

161. The stage for the events of January 6, 2021 had been set with months of loaded rhetoric, repeated contrived claims of voter fraud and election irregularities, and a plan to obstruct the counting of the certified electoral ballots and replace them with illegal, fraudulent electoral votes. Now it was time for the conspirators to implement what they sought to accomplish.

162. At 8:17 a.m. on the morning the electoral votes were to be counted at the U.S. Capitol, President Trump tweeted: “States want to correct their votes . . . All Mike Pence has to do is send them back to the States, AND WE WIN. DO it Mike, this is a time for courage.” Later in the morning, the President called Vice President Pence. In the call, witnessed by General Keith Kellogg and others in the room, President Trump pressured the Vice President to take actions during the Joint Session that would result in de-certification of the certified results.

163. At Noon, President Trump began speaking to his supporters at the planned event at The Ellipse near the White House. He told the crowd, “We will never give up . . . we will never concede.” In the speech, the President called on Vice President Pence to reject President Biden’s win and send the electoral votes back to the states: “Mike Pence, I hope you’re going to stand up for the good of our Constitution and for the good of our country. And if you’re not, I’m going to be very disappointed in you.” Others spoke at The Ellipse that day, including Eastman, one of the primary architects of the scheme of the President pushing Vice President Pence to enforce Congress later that day. Rudy Giuliani joined them on stage, grinning from ear to ear.

164. As insurrectionists began to congregate around the U.S. Capitol, the Vice President released a letter speaking to the alleged election irregularities, the process that was about to unfold allowing for objections, calling his role in the certification process “largely ceremonial,” and disposing of the idea that he would act as President Trump and those promoting the specious theory of the Vice President’s significant power had been insisting:

Our Founders created the Electoral College in 1787, and it first convened in 1789. With the advent of political parties, the Electoral College was amended in 1804 to provide that Electors vote separately for President and Vice President. Following a contentious election in 1876, with widespread allegations of fraud and malfeasance, Congress spent a decade establishing rules and procedures to govern the counting of electoral votes and the resolution of any objections.

During the 130 years since the Electoral Count Act was passed, Congress has, without exception, used these formal procedures to count the electoral votes every four years.

* * *

Our Founders were deeply skeptical of concentrations of power and created a Republic based on separation of powers and checks and balances under the Constitution of the United States. Vesting the Vice President with unilateral authority to decide presidential contests would be entirely antithetical to that design. As a student of history who loves the Constitution and reveres its Framers, I do not believe that the Founders of our country intended to invest the Vice

President with unilateral authority to decide which electoral votes should be counted during the Joint Session Congress, and no Vice President in American history has ever asserted such authority. Instead, Vice Presidents presiding over Joint Sessions have uniformly followed the Electoral Count Act, conducting the proceedings in an orderly manner even where the count resulted in the defeat of their party or their own candidacy.

As Supreme Court Justice Joseph Bradley wrote following the contentious election of 1876, “the powers of the President of the Senate are merely ministerial He is not invested with any authority for making any investigation outside of the Joint Meeting of the two Houses . . . [I]f any examination at all is to be gone into, or any judgment exercised in relation to the votes received, it must be performed and exercised by the two Houses.” More recently, as the former U.S. Court of Appeals Judge J. Michael Luttig observed, “[t]he only responsibility and power of the Vice President under the Constitution is to faithfully count the Electoral College votes as they have been cast,” adding “[t]he Constitution does not empower the Vice President to alter in any way the votes that have been cast, either by rejecting certain votes or otherwise.”

It is my considered judgment that my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not.

(1/6/21 Pence Letter, pp. 1-2.)

165. Speaker of the House Nancy Pelosi called the Joint Session of Congress to order at 1:05 p.m. on January 6, 2021. At approximately 1:30 p.m., insurrectionists outside the U.S. Capitol broke through police barricades. At 2 p.m., some insurrectionists broke windows at the Capitol and climbed into the building; they then proceeded to open the doors for others to follow. By 2:20 p.m., with the insurrection under way, Vice President Pence and Speaker of the House Nancy Pelosi had been ushered to safe locations and both the Senate and House were called into recess. At 2:24 p.m., President Trump tweeted: “Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a

corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!”

166. While the President continued to incite the insurrectionists, Eastman was engaged in an extensive email exchange with Greg Jacob, the Vice President’s Chief Counsel. Eastman and Jacob had been communicating before January 6, 2021 as Jacob sought to understand Eastman’s theory on the unconstitutional nature of the Electoral Count Act of 1887 and why his client (Vice President Pence) should simply set it aside as Eastman was pushing him to do.

167. Once the insurrectionists had breached the U.S. Capitol, Jacob, who clearly had a hand in the Vice President’s just-released letter, emailed Eastman as he and the Vice President were shuttled out of the Capitol to avoid becoming victims of the uprising, telling him:

John, very respectfully, **I just don’t in the end believe that there is a single justice on the United States Supreme Court, or a single judge on any of our Courts of Appeals, who is as “broad minded” as you when it comes to the irrelevance of statutes enacted by the United States Congress, and followed without exception for more than 130 years.** They cannot be set aside except when in direct conflict with the Constitution that our revered Framers handed us. And very respectfully, **I don’t think a single one of those Framers would agree with your position either. Certainly, Judge Luttig has made clear he does not.** And there is no reasonable argument that the Constitution directs or empowers the Vice President to set [aside] a procedure followed for 130 years before it has even been resorted to.

Lincoln suspended the writ when the body entrusted with that authority was out of session, and submitted it to them as soon as it returned. I understand your argument that several state legislatures were out of **session**. But the role for state legislatures has for our entire history ended at the time that electoral certificates are submitted to Congress. Congress has debated submissions, including competing submissions. It has never once referred them out to state legislatures to decide.

I respect your heart here. I share your concerns about what Democrats **will** do once in power. I want election integrity fixed. **But I have run down every legal trail placed before me to its conclusion, and I respectfully conclude that as a legal**

framework, it is a results oriented position that you would never support if attempted by the opposition, and essentially entirely made up.

And thanks to your bullshit, we are now under siege.

(1/6/21 Jacob Email, p. 1; emphasis added.)

168. Eastman responded to Jacob immediately that afternoon: “My ‘bullshit’ – seriously? You think you can’t adjourn the session because the [Electoral Count Act] says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming. The ‘siege’ is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened.”

169. After apologizing for “that particular language” which he characterized as “unbecoming of me,” Jacob went on: “But the advice provided has, whether intended or not, functioned as a serpent in the ear of the President of the United States, the most powerful office in the world . . . Respectfully, it was gravely, gravely irresponsible for you to entice the President with an academic theory that had no legal viability, and that you well know we would lose before any judge who heard or decided the case . . . And if the courts declined to hear it, I suppose it could only be decided in the streets. The knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are. I do not begrudge academics debating the most far-flung theories. I love doing it myself, and I view the ferment of ideas as a good and helpful thing. But advising the President of the United States, in an incredibly constitutionally fraught moment, requires a seriousness of purpose, an understanding of the difference between abstract theory and legal reality, and an appreciation of both the office and the bully pulpit that, in my judgment, was entirely absent here.”

170. Late in the evening on January 6, 2021, with the violence at the Capitol having subsided, Eastman took advantage of Jacob's apology and urged him to consider "one more **relatively minor** violation" of the Electoral Count Act: a ten-day adjournment "to allow state legislatures to continue their work," calling it "the most prudent course" while at the same time acknowledging that he was asking Vice President Pence to violate federal law.

171. Since January 6, 2021, Eastman has attempted to deny that he ever wanted (or that he and others ever promoted) Vice President Pence to unilaterally select the electors. But in their email exchange, Jacob specifically asked: "Did you advise the President that in your professional judgment the Vice President DOES NOT have the power to decide things unilaterally? Because that was pushed publicly, repeatedly, by the President and by his surrogates this week. And without apparent legal correction" Indeed, President Trump was talking about the Vice President's power to unilaterally choose electors late into the evening of January 5, 2021. Eastman answered that President Trump had "been so advised" but offered an excuse: "But you know him – once he gets something in his head, it is hard to get him to change course."

172. Eastman now claims (when he may have criminal exposure for his conduct) that the more extreme position outlined in his memorandum of Christmas Eve did not accurately reflect his views, which are better summarized in his January 3, 2021 memorandum. What is more likely the case is that Eastman realized on January 6, 2021 that words matter, that the President of the United States and his surrogates (including Johnson, Tiffany, and Fitzgerald) saw a path to alter the election results through unilateral choices of the Vice President, and only now, after the insurrection and violence, Eastman suggests that he was only kidding.

173. And despite his protests to the contrary, Eastman is still working together with Trump's allies to undermine the 2020 Presidential Election. For example, on December 30, 2021,

Eastman provided a legal opinion to Wisconsin Assembly Representative and current Wisconsin gubernatorial candidate Timothy Ramthun on “whether a state legislature has the constitutional authority to decertify previously certified electoral votes for a candidate for the office of President of the United States upon a definitive showing of illegality and/or fraud sufficient to have altered the election.” Answering the question affirmatively, Eastman provided Ramthun with the following opinions:

- a. It is not “*legally* necessary for the Wisconsin Legislature to re-assume its plenary authority over the appointment of presidential electors, . . . it is *politically* necessary, or at least strongly advised as a matter of prudent statesmanship.” (Emphasis in original.)
- b. State legislatures like the one in Wisconsin “which exercise plenary power under Article II of the U.S. Constitution” do have the authority “to de-certify the election . . . upon a definitive showing of illegality and/or fraud sufficient to have altered the election.”
- c. The U.S. Supreme Court (most recently in *Bush v. Gore*) determined that it would be illegal for a legislature to pick its own slate of electors after the result of a legal and fair election which had been conducted pursuant to the legislature’s existing statutory procedures on the grounds that the legislature would have preferred a different outcome.
- d. But this concern is set aside when the existing election laws, the “manner” chosen by the legislature, are altered, or ignored.
- e. In any state that fails to make a choice by the time set in the Electoral Count Act of 1887, “the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.”
- f. “The intermingling of illegal with legal ballots in significant numbers that the election cannot be validly certified, means the State ‘has failed to make a choice on election day, and the appointment devolves back on the Legislature of the State, which has the plenary power to decide whether to

exercise that appointment power itself, or to craft some other mechanism for appointing the State’s slate of electors.”

- g. Multiple violations of Wisconsin’s election laws occurred during the November 3, 2020 election, those violations were material to the outcome, and the legislature is well within its power (whenever it chooses) to take back its plenary power to determine the manner of choosing electors, even adopting its own slate.
- h. “[A]cknowledged illegality in the conduct[] of the election invalidates a certification[]” and “Article II’s plenary grant of power to the legislature is therefore revived in such circumstances, to be exercised as a majority of the legislature determines.”

174. At 3:11 p.m. on January 6, 2021, as protestors looted, defecated on, and destroyed property in the U.S. Capitol, Wisconsin Congressman Mike Gallagher tweeted a video while sheltering in his office, stating “this is the cost of telling people they could overturn the election.” He then called on President Trump to act: “The election is over. Call it off.”

175. Despite the pleas of Congressman Gallagher, President Biden, and a host of others during the siege, President Trump muddled his messaging to the insurrectionists and continued to promote his election fraud theories. At 7:02 p.m., Twitter removed the President’s tweets from January 6, 2021 and shut down his account for 12 hours. Thereafter, he was banned permanently from Twitter because of his misuse of the platform.

176. Just after 8:00 p.m., Vice President Pence reopened the Senate, and it resumed the process begun earlier in the day of counting the certified votes of the electors. Speaker Pelosi brought the House of Representatives back into session an hour later. Before the insurrectionists had interrupted the affair, objections had been raised in the Senate (by Johnson and others) over the results in Arizona and Pennsylvania; Tiffany and Fitzgerald voted in favor of those objections when they arrived in the House of Representatives.

177. At 11:32 p.m., the Joint Session resumed, as did the counting of the electoral ballots. Johnson, who only days earlier had committed to objecting to the results in the contested states, backtracked and made no further objections beyond the ones for Arizona and Pennsylvania made earlier in the day. On January 7, 2021, at 3:42 a.m., Congress determined a majority of the Electoral College votes had been cast for President Biden, and the election was over.

178. While the violence of that day clearly caused many members of Congress (including Defendants) to temporarily reconsider their positions because, Plaintiffs suspect, they were shocked by the violence that their words had caused, it did not take long for Johnson, Tiffany, and Fitzgerald to resume their false and fraudulent assertions about the election results in Wisconsin. When asked by NBC News if he, his colleagues in the Senate, or President Trump bore any responsibility for what happened, Johnson said “No, no, absolutely not . . . None.” Indeed, despite all this, Tiffany, and Fitzgerald, for their part, relayed on January 7, 2021 that, had someone in the U.S. Senate objected to the Wisconsin results, they would have rejected the certification sent after the December 14, 2020 meeting of the Biden-Harris electors.

179. As President Biden prepared for his inauguration, Johnson pivoted to a new position, publicly downplaying the January 6 insurrection. On January 14, 2021, he asserted on Fox News that some of the electors were chosen and certified **over the objection of their own state legislatures**. Then, on January 17, 2021, in a WTMJ radio interview with Jay Weber and multiple times since, Johnson altogether downplayed the violence of the insurrection, suggesting, despite video evidence of the insurrectionists erecting gallows, deploying pepper spray, carrying zip ties to bind members of Congress, hurling a fire extinguisher, using baseball bats to smash windows, and throwing flags like spears at police officers, that events of January 6, 2021 “didn’t seem like an armed insurrection to me.” In a very Trumpian moment, on or about February 23,

2021, Johnson stated that the insurrectionists – who he conceded were indeed insurrectionists – who committed the horrific acts that day were actually not supporters of President Trump but “left-wing agitators who were impersonating Trump supporters” even though by that point more than 250 people had been indicted for their conduct, and many of the insurrectionists had made statements that they believed they were simply following President Trump’s orders.

180. In a further homage to the former president, Johnson suggested in a radio interview with Joe Pagliarulo on March 13, 2021, that those who breached the Capitol on January 6, 2021 were “people who love this country, that truly respect law enforcement, who would never do anything to break the law” such that he “wasn’t concerned.” Never one to not use speech to stir unrest, Johnson then said he “might have been a little concerned” had “President Trump won the election and tens of thousands of Black Lives Matter and antifa” stormed the capitol.

181. For his part, Tiffany is also unrepentant of his role in bringing about the events of January 6, which events (the day of and before) stand in stark contrast to the view of John Adams that we are a government of law, not of men. Indeed, within days of the uprising at the U.S. Capitol, Tiffany participated in a closed-door rally in Wausau, Wisconsin that, upon information and belief, featured inflammatory speeches from right-wing radio host Vicki McKenna and other Republicans. Building on a Congressional newsletter he released on January 8, 2021, Tiffany also continued to spread false and baseless assertions about Wisconsin’s election integrity. Parts of the Wausau rally were livestreamed on Facebook by the Marathon County Republican Party. One of the Rally’s spokesmen, Kevin Hermening, said: “What the Congressman had to say really resonated with the people who were there. He told us that so long as he was our member of Congress that he was going to fight to uphold the constitution and to defend the interests of election integrity.” Since the insurrection, Tiffany has condemned the violence of January 6, while at the

same time standing beside right-wing provocateurs from talk radio and local parties in an event to fuel the fraud that he assisted in spreading after the November 3, 2020 election had been called for President Biden.

182. Fitzgerald has been no different since the insurrection. He stands by the objection he made to the Arizona and Pennsylvania results and insists it would have been proper for him to object to the certified elector votes for Wisconsin had the matter been presented to them through objections in the Senate. As Fitzgerald said in a WISN interview on January 9, 2021, his suspicions about voting fraud and irregularities make him stand by his objections to the electoral votes.

183. These overt acts after the fact, designed to legitimize and justify criminal behavior, are simply further evidence of Fitzgerald's lack of qualifications to sit in Congress.

CLAIM FOR RELIEF
Declaratory Judgment
Pursuant to 28 U.S.C. § 2201(a)

184. Plaintiffs repeat and reallege the allegations in Paragraphs 1-183 of this Complaint as if fully set forth herein.

185. This action seeks declaratory relief pursuant to 28 U.S.C. § 2201(a). That statute provides: "Any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

186. Plaintiffs allege that the events alleged in this Complaint leading up to, and pursued on, January 6, 2021 constitute an "insurrection or rebellion against the United States" as that phrase is used in Section 3 of the Fourteenth Amendment of the U.S. Constitution. They further assert that the conduct attributed to the Defendants in this Complaint (and that which will be learned in

discovery) constitutes engagement in the insurrection and/or the voluntary effort to assist the insurrection.

187. As voters and citizens of the State of Wisconsin, Plaintiffs have an interest in the outcome of this action for, among other reasons, their franchise is affected by the answer to the questions posed to the Court.

Dated this 10th day of March 2022.

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