MINORITY STAFF REPORT

SENATE JUDICIARY COMMITTEE

RANKING MEMBER CHARLES GRASSLEY

OCTOBER 7, 2021

IN THEIR OWN WORDS:

A FACTUAL SUMMARY OF TESTIMONY FROM SENIOR JUSTICE DEPARTMENT OFFICIALS RELATING TO EVENTS FROM DECEMBER 14, 2020 TO JANUARY 3, 2021

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I. EXECUTIVE SUMMARY

- President Trump listened to his advisors, including high-level DOJ officials and White House Counsel and followed their recommendations.[1]
- President Trump twice rejected sending Jeffrey Clark's, the Acting Assistant Attorney General of the Civil Division, draft letter recommending to some states with reported voter irregularities that they hold a legislative session to choose different electors.[2]
- Clark told Acting Attorney General Jeffrey Rosen regarding his draft letter, [t]hese are my ideas," not the President's.[3]
- President Trump accepted Rosen's recommendations that DOJ not file a draft complaint against some states based on reported voter irregularities and "didn't resist it or deliver an ultimatum or try to overrule [DOJ]."[4]
- Donoghue testified that President Trump had "no impact" on DOJ investigative actions relating to the election.[5]
- President Trump twice rejected firing Rosen.[6]
- President Trump did not fire anyone at the DOJ or FBI relating to his frustration that more wasn't done to investigate election-related allegations.[7]
- President Trump considered Richard Donoghue as Acting Attorney General, Principal Deputy Attorney General and Rosen's deputy, when Bill Barr resigned.[8]
- President Trump told Rosen that he did not expect the DOJ to overturn the election.[9]
- Witnesses testified that they were not pressured by President Trump or the White House to take action with respect to investigating certain election fraud claims.[10]
- Notes of a phone call between Rosen, Donoghue and President Trump show that the President expressed concerns centered on "legitimate complaints and reports of crimes" relating to election allegations.[11]
- Witnesses testified that President Trump's outreach to DOJ officials focused on making sure they were "aware" of election fraud allegations and that they were doing their job to investigate them, rather than issuing orders to take certain action.[12]
- President Trump expressed concerns related to the U.S. electoral system writ large rather than concerns about his campaign or himself personally.[13]

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[1] *See generally*, Introduction.
[2] Transcript of Interview at 77, S. Comm. on the Judiciary, Interview of Jeffrey Rosen (Aug. 7, 2021). [Hereinafter Jeffrey Rosen Testimony]; Transcript of Interview at 50, 158, S. Comm. on the Judiciary, Interview of Richard Donoghue (Aug. 6, 2021). [Hereinafter Richard Donoghue Testimony].
[3] Jeffrey Rosen Testimony at 103.
[4] Jeffrey Rosen Testimony at 117-18.
[5] Richard Donoghue Testimony at 56, 127, 132.
[6] Jeffrey Rosen Testimony at 77; Richard Donoghue Testimony at 50, 158.
[7] Jeffrey Rosen Testimony at 56; Richard Donoghue Testimony at 56.
[8] Richard Donoghue Testimony at 177.
[9] Richard Donoghue Testimony at 62.
[10] *See generally*, Section V. *See also*, Jeffrey Rosen Testimony at 34 saying, about the President, "So he didn't have a specific ask that I remember."
[11] Richard Donoghue Testimony at 58.
[12] *See generally*, Section V.
[13] Richard Donoghue Testimony at 31, 39; Jeffrey Rosen Testimony at 59, 72.

- President Trump referred to the American people, rather than his campaign or himself, in his context.[14]
- Donoghue and BJay Pak testified that it was not unreasonable for President Trump to question what the DOJ and FBI were doing to investigate election allegations.[15]
- BJay Pak testified that it was not unreasonable for President Trump to be concerned about legitimate complaints and reports of crimes.[16]
- BJay Pak testified that President Trump had the duty to set election investigation policy for the DOJ.[17]
- Witnesses testified that Mark Meadows did not pressure them to take action relating to investigating election allegations and was deferential to DOJ's judgment.[18]
- The Public Integrity Unit and Election Crimes Branch were passive with respect to investigating election related allegations.[19]
- Donoghue testified that the Election Crimes Branch was "dragging their feet and maybe more to keep these investigations from going forward."[20]
- Donoghue testified that Pak's employees were "dragging their feet" in investigating election fraud allegations.[21]
- Richard Pilger's resignation after then-Attorney General Barr issued his November 9, 2020, memo directing the Public Integrity Unit to be more aggressive frustrated the DOJ's ability to do its job.[22]
- President Trump wanted to fire – but did not fire – BJay Pak primarily because he believed Pak was a "never-Trumper."[23]
- Some witnesses were unaware if DOJ investigated election allegations relating to Georgia.[24]
- BJay Pak testified that Bobby Christine was ethical and capable of doing the job of U.S. Attorney for the Northern District of Georgia.[25]
- BJay Pak testified that Bobby Christine brought additional employees to work election cases.[26]
- Rosen, Donoghue and Pak testified that it's the president's job to ensure all Departments and agencies operate for the American people.[27]

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[14] Jeffrey Rosen Testimony at 72.
[15] Richard Donoghue Testimony at 58-59; Transcript of Interview at 67, S. Comm. on the Judiciary, Interview of Byung "BJay" Pak (Aug. 11, 2021) [Hereinafter BJay Pak Testimony].
[16] BJay Pak Testimony at 67.
[17] BJay Pak Testimony at 116.
[18] *See generally*, Introduction.
[19] *See* Section VI; BJay Pak Testimony at 57; Richard Donoghue Testimony at 75, 167.
[20] Richard Donoghue Testimony at 66-69, 125-26.
[21] Richard Donoghue Testimony at 167.
[22] Richard Donoghue Testimony at 67.
[23] Richard Donoghue Testimony at 160-61.
[24] BJay Pak Testimony at 65, 68; Richard Donoghue Testimony at 63-64, 125.
[25] BJay Pak Testimony 120.
[26] BJay Pak Testimony 119-20.
[27] Richard Donoghue Testimony at 59-60; BJay Pak Testimony at 46; Jeffrey Rosen Testimony at 62-63.

- Witnesses testified that President Trump's lack of trust with the DOJ and FBI could have impacted his questioning of whether the DOJ was doing enough to investigate election allegations.[28]

II. INTRODUCTION

Three days after President Biden's inauguration, Senate Judiciary Committee Democrats, under the leadership of incoming Chairman Richard J. Durbin, launched an investigation into President Trump's management of the Department of Justice (DOJ) following the 2020 election.[29] Through their investigation, Committee Democrats focused on the weeks from December 14, 2020, to January 3, 2021, and sought to show that during his final days in office, President Trump nearly prompted a constitutional crisis with an alleged plot "to use" and "weaponize DOJ" in order to "subvert the results of the 2020 presidential election."[30] Democrats focused much of their efforts on a January 3, 2021, Oval Office meeting where, despite his expressed concerns that Acting Attorney General Rosen had not adequately performed his job to investigate election fraud allegations, President Trump twice rejected terminating him.[31] Moreover, in that same meeting, President Trump twice rejected DOJ attorney Jeffrey Clark's idea for DOJ to send a letter to state legislatures that recommended they convene to pick electors.[32] In pushing their inaccurate narrative, Chairman Durbin stated, via Twitter, on June 5, 2021, before all evidence had been reviewed and any witnesses interviewed, that:

> What my office found in our investigation is a five alarm fire for democracy, underscoring the depths of the White House's efforts to influence the electoral vote certification. I will demand all evidence of Trump's efforts to weaponize DOJ in his election subversion scheme.[33]

This statement related to documents that were leaked to the *New York Times* and the subject of reporting on June 5, 2020.[34] The *New York Times* article states that the emails were discovered as part of the Senate Judiciary Committee's investigation, and Chairman Durbin is quoted opining about the records.[35] Specifically, the leaked material related to emails Mark Meadows

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[28] Richard Donoghue Testimony at 60; BJay Pak Testimony at 68.
[29] Letter from Senators Richard J. Durbin, Dianne Feinstein, Patrick Leahy, Sheldon Whitehouse, Amy Klobuchar, Christopher A. Coons, Richard Blumenthal, Mazie K. Hirono, and Cory A. Booker, to Monty Wilkinson, Acting Att'y Gen., U.S. Dep't of Justice (Jan. 23, 2021), https://www.durbin.senate.gov/imo/media/doc/January%2023,%202021%20Letter%20to%20Acting%20AG%20Wilkinson.pdf. [Hereinafter January 23 Letter].
[30] Senator Dick Durbin (@SenatorDurbin), Twitter (June 5, 2021 12:13 PM), https://twitter.com/SenatorDurbin/status/1401210633123680260, ("What my office found in our investigation is a five alarm fire for democracy, underscoring the depths of the White House's efforts to influence the electoral vote certification. I will demand all evidence of Trump's efforts to weaponize DOJ in his election subversion scheme."); January 23 Letter.
[31] Richard Donoghue Testimony at 49-50; Jeffrey Rosen Testimony at 48-54, 112.
[32] Richard Donoghue Testimony at 157-58; Exhibit A at 744, 746-50.
[33] Senator Dick Durbin (@SenatorDurbin), Twitter (June 5, 2021 12:13 PM), https://twitter.com/SenatorDurbin/status/1401210633123680260.
[34] Katie Benner, *Meadows Pressed Justice Dept. to Investigate Election Fraud Claims*, THE NEW YORK TIMES (June 5, 2021), https://www.nytimes.com/2021/06/05/us/politics/mark-meadows-justice-department-election.html.
[35] *Id.*

sent to the DOJ asking them to review allegations of voter fraud.[36] Chairman Durbin, via the Judiciary Democrats' Twitter account, said that the documents revealed that "Mark Meadows pressured DOJ to investigate unfounded conspiracy theories about the 2020 presidential election in an attempt to nullify the results."[37] Neither the available documents nor testimony provided to the Committee support such a statement. Richard Donoghue, President Trump's Principal Deputy Assistant Attorney General, gave testimony directly contradicting Chairman Durbin's allegations when Donoghue testified that President Trump's efforts had "no impact" on DOJ's and FBI's actions relating to investigating election fraud allegations.[38] Moreover, with respect to Meadows, Donoghue's testimony contradicts Chairman Durbin's public statement that Meadows "pressured" DOJ to investigate allegations. Donoghue was asked about the emails Meadows sent to DOJ referencing election allegations:[39]

So was Meadows fairly deferential to DOJ in that regard? He's forwarding you things, and is he deferring to your judgment and expertise after he sends this information your way?

A. I think that's a fair characterization.

Donoghue was also asked about steps Meadows took to have DOJ investigate allegations of election irregularities in Pennsylvania, in particular:[40]

Q. Did the Chief of Staff ask you to take any particular actions, or was it just more in the vein of a question about whether you were looking into it?

A No. I think it was more along the lines of, you know, "You guys know about this Pennsylvania claim, right?" And we said yes, because he wasn't on the call with the President. So it was more of an echo of what the President had told us two nights before.

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[36] *Id.* The article states, "The emails were discovered this year as part of a Senate Judiciary Committee investigation into whether Justice Department officials were involved in efforts to reverse Mr. Trump's election loss." The article was retweeted by the Judiciary Democrats' Twitter account.

[37] Senate Judiciary Committee (@JudiciaryDems), Twitter (June 5, 2021 12:11 PM), https://twitter.com/JudiciaryDems/status/1401210061301633026.

[38] Richard Donoghue Testimony at 127. (Q. Now, did Trump's efforts to push the DOJ and FBI to be more aggressive in investigating election fraud and related crimes --- or, excuse me, and election crimes work to make them more aggressive than they would have been absent those efforts from the President? A. No. I would say it had no impact – Q. No impact? A. – on what we were going to do. We did what we were going to do, regardless.).

[39] Richard Donoghue Testimony at 126.

[40] *Id*. at 108-09.

Committee staff also asked Donoghue about requests from Meadows to look into election fraud allegations involving individuals based in Italy.[41] Concerning the nature of Meadows's request, Donoghue testified,[42]

> A. He provided the information. I don't specifically recall him asking me or anyone else to do something specific. I don't think he asked me to run the guy's name. That was, I'm pretty sure, from the Acting Attorney General who said, "Just check this guy out. See what we know about him."

In attempting to establish the basis for their investigation, Democrats drew heavily on reporting in a January 22, 2021, *New York Times* article titled, "Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General", a title which the *New York Times* altered after publication to "Mutiny Halted Trump Scheme in Justice Dept."[43] This article described a chain of events that it characterized as a "long-running effort" by President Trump to "batter the Justice Department into advancing his personal agenda."[44] The article reported that the January 3, 2021, Oval Office meeting with President Trump and his senior advisors, including Rosen, was compared by two officials to an episode of "The Apprentice."[45] In testimony, Rosen said that characterization was not accurate.[46]

Nevertheless, Committee Democrats treated the article as their primary guide, citing to it exclusively in their initial January 23, 2021, letter to Acting Attorney General Monty Wilkinson outlining the basis for their investigation, and as one of only two sources mentioned in a subsequent May 20, 2021, letter to the National Archives and Records Administration requesting additional documents.[47] In request letters and during interviews, Democrats sought documents and asked questions related to various claims mentioned in the article, which bore out facts that showed their narrative to be inaccurate.

The Biden Administration assisted Committee Democrats in their efforts by turning over Trump Administration records, including notes of conversations between President Trump and top DOJ officials, while refusing to produce any responsive records related to Ranking Member Grassley's independent oversight requests. Moreover, during witness interviews, the DOJ counsel objected to questioning by Ranking Member Grassley's staff on numerous occasions and

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[41] An Italian citizen came forward with allegations that an Italian-based company was involved with the CIA to alter votes in the 2020 election. *See* Richard Donoghue Testimony at 109-11.
[42] Richard Donoghue Testimony at 111.
[43] January 23 Letter; Katie Benner, *Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General*, THE NEW YORK TIMES (Jan. 22, 2021), https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justice-department-election.html [Hereinafter January 22 New York Times Article].
[44] January 22 New York Times Article.
[45] *Id*.
[46] Jeffrey Rosen Testimony at 165.
[47] January 23 Letter; Letter from Richard J. Durbin, Chairman, S. Comm. on the Judiciary, to Hon. David S. Ferriero, Archivist of the United States (May 20, 2021).

prevented witnesses from answering questions pertaining to the types and number of election related allegations the DOJ investigated, questions which are critical to better understand what the DOJ did or did not do to investigate election fraud claims.[48] President Biden also carved out a waiver of executive privilege that would ostensibly allow former senior-level DOJ officials to testify before the Committee about private conversations and interactions they had with President Trump; however, based on DOJ's objections during the interviews, it appears the executive privilege waiver only flowed one way.[49]

Notably, the Committee has not received all the records it requested and has only performed three transcribed interviews, yet the Democrats have decided to publicly release a report, records, and transcripts. When Senator Grassley was Chairman of the Judiciary Committee, his standard protocol was to acquire all the evidence and to perform more than just three transcribed interviews in an investigation of this nature before reaching conclusions and making witness transcripts public.

The documentary evidence to-date, once considered in proper context and stripped of political insinuations, shows that the facts differed sharply from the narrative that the Democrats attempted to create. The documentary evidence and witness testimony currently available shows that throughout President Trump's interactions with DOJ officials concerning election matters, he did not abuse his constitutional authority with respect to his conduct toward DOJ.[50] The evidence shows that during his final days as President, he expressed concern with ensuring that DOJ was doing its job of fully investigating allegations of election fraud so that the American people would have confidence in the results of the 2020 election and with particular concern about the people's faith in the Georgia special election.[51]

It is well-known that President Trump did not trust some elements at the DOJ and FBI, which evidently contributed to his concerns that DOJ was not doing enough to investigate allegations of election fraud.[52] Despite his distrust, the President listened to the advice of senior advisors at DOJ and the White House and accepted their recommendations in matters concerning DOJ's handling of election fraud allegations.[53]

For example, Committee Democrats made much of a draft complaint that would have seen the DOJ sue the Commonwealth of Pennsylvania and the states of Georgia, Michigan, Wisconsin, Arizona, and Nevada, and sought to have Electoral College votes from those states invalidated on the basis of widespread allegations of fraud and voting irregularities.[54] During questioning by Committee staff, former Acting Attorney General Rosen testified that the

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[48] *See* Section VII.
[49] Letter from Bradley Weinsheimer, Assoc. Deputy Att'y Gen., to Richard P. Donoghue (July 26, 2021); Letter from Bradley Weinsheimer, Assoc. Deputy Att'y Gen., to Byung J. "BJay" Pak (July 26, 2021); Letter from Bradley Weinsheimer, Assoc. Deputy Att'y Gen., to Jeffrey A. Rosen (July 26, 2021). At the same time, Administration officials selectively applied this waiver by preventing DOJ officials from testifying about the extent of their efforts to investigate allegations of voter fraud raised by President Trump.
[50] Richard Donoghue Testimony at 58-60; Jeffrey Rosen Testimony at 62-63, 72.
[51] Jeffrey Rosen Testimony at 34-35, 39, 58-60, 64, 72, 81-82, 90, 97.
[52] Richard Donoghue Testimony at 60; Jeffrey Rosen Testimony at 63-64.
[53] Richard Donoghue Testimony at 171; Jeffrey Rosen Testimony at 53, 117-18.
[54] Exhibit B.

pressure to file this brief came not from President Trump, but from an outside attorney named Kurt Olsen, who tried to persuade Rosen to file the complaint.[55] Rosen testified that when he discussed the matter with President Trump during a phone call on December 30, 2020, Rosen advised the President that the brief was a bad idea and that DOJ could not file it.[56] In response, President Trump accepted the DOJ's position and "didn't resist it or deliver an ultimatum or try to overrule [DOJ]."[57]

Media reports and Committee Democrats also made much of the aforementioned January 3, 2021, meeting in the Oval Office which included Acting Attorney General Jeffrey Rosen, Principal Deputy Attorney General Richard Donoghue, Acting Assistant Attorney General of the Civil Division, Jeffrey Clark, and several other officials, including White House Counsel Pat Cipollone.[58] During the meeting, President Trump reportedly considered replacing Rosen with Clark.[59] However, President Trump also considered replacing Barr with Donoghue the day then-Attorney General Barr submitted his resignation, illustrating the President's apparent displeasure with Rosen.[60] On January 3, 2021, Clark argued for his path forward, which Rosen testified that Clark told him consisted of "my ideas" and not the President's.[61] According to Rosen, if Clark was installed as Acting Attorney General, he would lead DOJ in sending letters to several states with alleged election irregularities, recommending that they convene special legislative sessions to make decisions concerning the appointment of their states' presidential electors.[62] Rosen, Donoghue, Cipollone, and other DOJ and White House officials vehemently opposed sending the letters and advised President Trump not to replace Rosen and not to move forward with Clark's plan.[63] When interviewed by Committee staff, Donoghue and Rosen testified that President Trump listened to the advice of his senior advisors for over two hours during the January 3, 2021, meeting in the Oval Office and made the decision not to replace Rosen or send Clark's draft letters.[64] Indeed, after the President made his decision, Clark tried to change his mind and President Trump rejected him again.[65] Donoghue added that he did not perceive the President's instructions to involve any illegal activity, and Rosen testified that the decisions President Trump made were "[c]ertainly within the President's authority."[66]

Through their investigation, Committee Democrats attempted to show that President Trump pressured leaders at DOJ to do his "bidding" in a self-serving attempt to overturn the results of the 2020 election.[67] The records reviewed by the Committee do not support this allegation. According to Rosen and Donoghue, throughout December 2020 and January 2021,

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[55] Jeffrey Rosen Testimony at 112-18.
[56] Jeffrey Rosen Testimony 117-18.
[57] Jeffrey Rosen Testimony at 118.
[58] January 22 New York Times Article.
[59] Richard Donoghue Testimony 47-48.
[60] Richard Donoghue Testimony at 176-77.
[61] Jeffrey Rosen Testimony at 103.
[62] Exhibit A.
[63] Richard Donoghue Testimony at 171; Jeffrey Rosen Testimony at 48, 53.
[64] Richard Donoghue Testimony at 171; Jeffrey Rosen Testimony at 48, 53.
[65] Richard Donoghue Testimony at 158.
[66] Richard Donoghue Testimony at 50; Jeffrey Rosen Testimony at 54.
[67] *Sen. Durbin on Trump's 'frightening' push to involve DOJ in election lies*, CNN (Aug. 8, 2021), https://www.cnn.com/videos/politics/2021/08/08/sotu-durbin-full-interview.cnn.

President Trump maintained close contact with leaders at DOJ in order to ensure that they were *aware* of allegations of election fraud that had raised doubts among the American public about the legitimacy of the 2020 election results and that DOJ actually did their job by properly investigating them, not to issue directives for DOJ to take specific action.[68] According to Rosen, on more than one occasion, President Trump raised concerns about the American people having confidence in the Georgia Senate races.[69] To that effect, Rosen quoted the President as saying, "[m]any people around the United States think there's been fraud. This undermines confidence in the elections."[70] Furthermore, notes of a December 27, 2020, call between the President, Rosen, and Donoghue show that President Trump's focus was on "legitimate complaints" and "reports of crimes."[71]

Witnesses testified that it was not unreasonable for President Trump to question what the DOJ was doing to investigate allegations of election fraud.[72] Specifically, Rosen agreed that on a constitutional level, it is the job of any President of the United States to work on behalf of the American people and taxpayers to ensure that Departments and agencies under the President's control are doing what they need to do for the taxpayers.[73] During his Committee interview, U.S. Attorney for the Northern District of Georgia, BJay Pak, went even further and stated that given the voter fraud and election crime allegations President Trump had received and that were being publicly reported on, he did not think it was unreasonable for the President to have concerns regarding potentially legitimate complaints and reports of crimes.[74] Pak also confirmed that he did not think it was unreasonable for President Trump to question what the DOJ and its components were doing to investigate legitimate complaints and reports of crimes.[75] Donoghue likewise testified that it was not unreasonable for the President to question what DOJ was doing to investigate election fraud allegations.[76] Indeed, President Trump's concerns about how the DOJ pursued election allegations appear to be well-founded due to the DOJ Public Integrity Unit's history of passivity with respect to investigating election fraud allegations prior to election certification, as well as some witnesses' inability to answer whether certain claims were in fact investigated, and testimony that Pak's employees were "dragging their feet," and that the Elections Crimes Branch within the Public Integrity Section was also "dragging its feet and maybe more to keep these investigations from going forward."[77]

Based on past experiences, President Trump's skepticism of the DOJ's and FBI's handling of election fraud allegations does not appear unreasonable. During the 2016 election, the FBI used an unsubstantiated research dossier, funded by the Hillary Clinton campaign and

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[68] Richard Donoghue Testimony at 58; Jeffrey Rosen Testimony at 56. Notably, during Donoghue's testimony, he noted that President Trump raised allegations that they hadn't heard before. Richard Donoghue Testimony at 39. Rosen also testified that the President "didn't have a specific ask that I remember." Jeffrey Rosen Testimony at 34.
[69] Jeffrey Rosen Testimony at 59.
[70] Jeffrey Rosen Testimony at 59.
[71] Exhibit C.
[72] Richard Donoghue Testimony at 58-59; BJay Pak Testimony at 67.
[73] Jeffrey Rosen Testimony at 62-63.
[74] BJay Pak Testimony at 67.
[75] *Id*.
[76] Richard Donoghue Testimony at 59.
[77] Exhibit D; Richard Donoghue Testimony at 66-69, 125-26; BJay Pak Testimony at 57, 65, 68, 73-74, 167; Jeffrey Rosen Testimony at 135.

which was known by the FBI to be filled with Russian disinformation, to file a Foreign Intelligence Surveillance Act (FISA) application and to obtain FISA warrants against a Trump campaign volunteer.[78] DOJ neglected to inform the FISA court about the political origins of the dossier that it used to justify the warrant, and the application incorporated information that was deliberately altered by a DOJ attorney who has since pleaded guilty to lying about intentionally falsifying a government document.[79] According to evidence uncovered by the DOJ Office of Inspector General, FBI agent Peter Strzok, who helped lead that investigation, privately told an FBI attorney, Lisa Page, that then-candidate Trump would never become president because "[w]e'll stop it."[80] That same year, FBI agents used an FBI security briefing to surreptitiously gather information on then-candidate Trump and transition officials.[81] Later, after President Trump was in office, former FBI Director James Comey deliberately leaked information to the press to force the appointment of a Special Counsel to investigate President Trump's 2016 presidential campaign and its alleged ties to the Russian government.[82] That investigation dragged on for nearly half of President Trump's term in office and ultimately found no collusion between the Trump campaign and the Russian government. During this investigation, witnesses attested to the possibility that President Trump's distrust of the FBI factored into his concerns that they weren't doing enough to investigate election fraud allegations.[83]

Against this historical backdrop, it is reasonable that President Trump maintained substantial skepticism concerning the DOJ's and FBI's neutrality and their ability to adequately investigate election fraud allegations in a thorough and unbiased manner.

Based on the available evidence and witness testimony, President Trump's actions were consistent with his responsibilities as President to faithfully execute the law and oversee the Executive Branch. It is the duty of the President of the United States ensure that the federal departments and agencies under his control are doing their job on behalf of taxpayers, a position with which all witnesses agreed.[84]

The report's sections follow seriatim.

III. THE AVAILABLE EVIDENCE SHOWS THAT PRESIDENT TRUMP DID NOT USE THE JUSTICE DEPARTMENT TO OVERTURN THE ELECTION.

Democrats and certain liberal media have repeatedly claimed that President Trump used the Department of Justice (DOJ) to try to overturn the 2020 election results; however, the available evidence does not support those assertions. At every opportunity that President Trump had to direct or instruct the DOJ to take steps to overturn the election, he rejected taking those

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[78] U.S. Dep't of Justice Off. of the Inspector Gen., Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane investigation, (Dec. 2019), https://www.justice.gov/storage/120919-examination.pdf.
[79] *Id*.
[80] *Id.*
[81] Press Release, Sen. Charles E. Grassley, "Declassified Records Shed Light On FBI Efforts To Co-Opt Intel Briefings To Spy On 2016 Trump Campaign" (July 23, 2020), https://www.grassley.senate.gov/news/news-releases/declassified-records-shed-light-fbi-efforts-co-opt-intel-briefings-spy-2016-trump.
[82] *Id*.
[83] *Id*.
[84] Jeffrey Rosen Testimony at 62-63; BJay Pak Testimony at 46; Richard Donoghue Testimony at 59-60.

steps. First, President Trump did not fire anyone at the DOJ or FBI, and specifically rejected the idea of firing Acting Attorney General Rosen as a result of his frustration that the DOJ wasn't doing its job to investigate election-related allegations.[85] Second, President Trump rejected Jeff Clark's draft letter and Clark's proposal for DOJ to send it – twice in the same meeting.[86] Third, President Trump accepted Acting Attorney General Rosen's decision that DOJ would not file a draft complaint that could have resulted in the DOJ suing several states with reported voting irregularities.[87] President Trump did not issue orders or make leadership changes at DOJ in order to circumvent Rosen's recommendations not to file the draft complaint. In all known instances where President Trump had the opportunity to direct DOJ to take steps to try and overturn the election – he chose not to do so.

i. President Trump Rejected Sending Clark's Draft Letter and Removing Rosen.

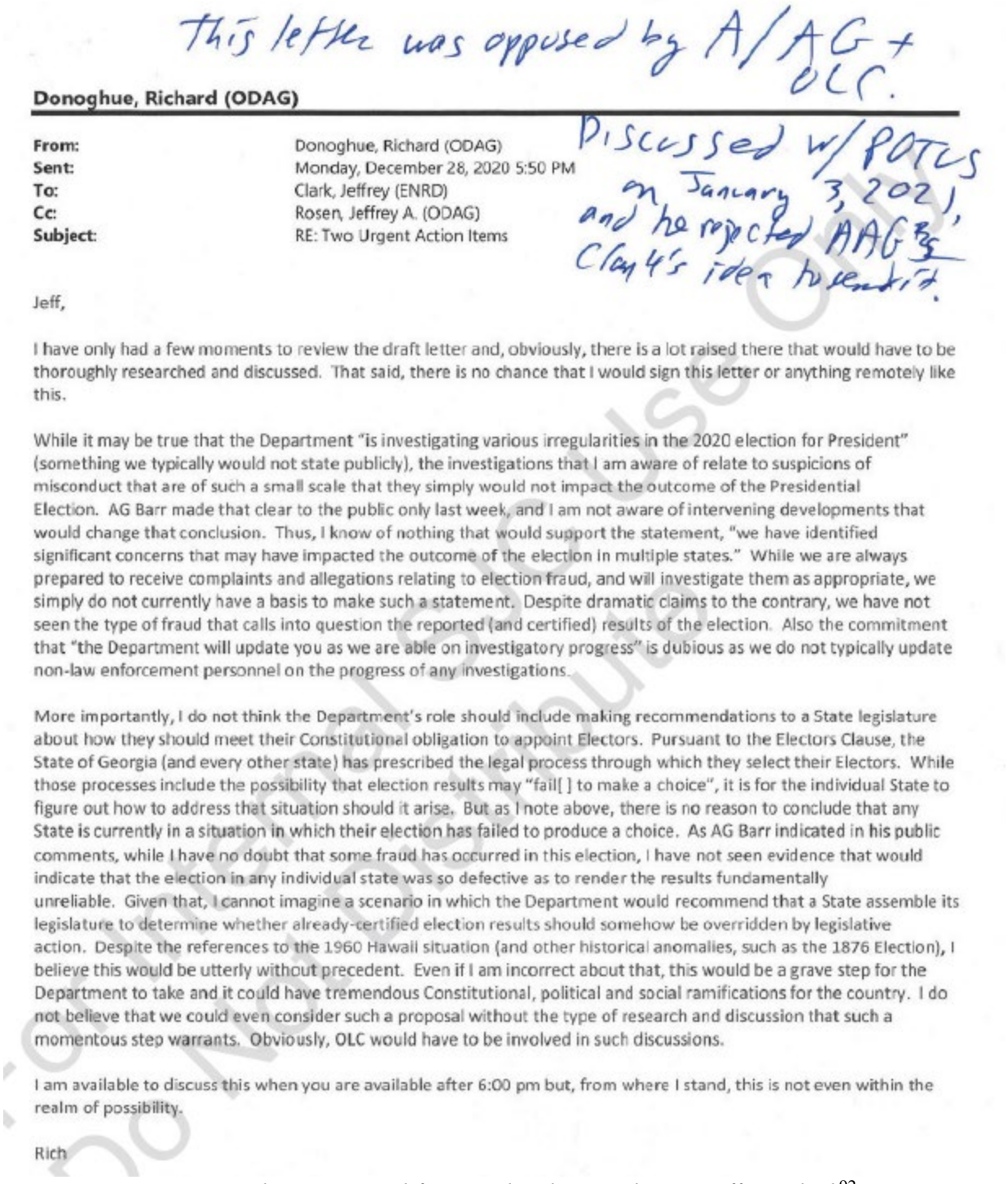
On December 28, 2020, Clark sent an email to Rosen and Donoghue proposing to send his draft letter to states with reported voting irregularities. In that email, Clark said the letter would be sent from DOJ to the relevant states, in part,

> to indicate that in light of time urgency and sworn evidence of election irregularities presented to courts and to legislative committees, the legislatures thereof should each assemble and make a decision about elector appointment in light of their deliberations.[88]

According to Donoghue, Clark had a firmly held belief that this was the right approach in light of what he perceived to be evidence of voter fraud.[89] This email created a chain of events that brought Rosen, Donoghue and Clark into multiple meetings to discuss Clark's proposed path forward and his efforts to get the President to agree to his approach. Specifically, the December 28, 2020, email resulted in a meeting that day with Rosen, Donoghue and Clark. In that meeting, according to Rosen, he questioned Clark about his draft letter, and in response, Clark told him "[t]hese are my ideas" not the President's, and said, "I think these are good ideas."[90] Donoghue also testified that he thought Clark "drafted [the] letter himself."[91] Donoghue and Rosen also responded to Clark's email rejecting his idea to send the letter. That email is copied below,

[85] Richard Donoghue Testimony at 56.
[86] Jeffrey Rosen Testimony at 53; Richard Donoghue Testimony at 50, 158.
[87] Jeffrey Rosen Testimony at 118.
[88] Exhibit A.
[89] Richard Donoghue Testimony at 172.
[90] Jeffrey Rosen Testimony at 103.
[91] Richard Donoghue Testimony at 101.

which includes the notation "This letter was opposed by A/AG + OLC. Discussed with POTUS on January 3, 2021, and he rejected AAG Clark's idea to send it."



This letter was opposed by A/AG + OLC.

Donoghue, Richard (ODAG)

From:	Donoghue, Richard (ODAG)
Sent:	Monday, December 28, 2020 5:50 PM
To:	Clark, Jeffrey (ENRD)
Cc:	Rosen, Jeffrey A. (ODAG)
Subject:	RE: Two Urgent Action Items

Discussed w/ POTUS on January 3, 2021, and he rejected AAG Clark's idea to send it.

Jeff,

I have only had a few moments to review the draft letter and, obviously, there is a lot raised there that would have to be thoroughly researched and discussed. That said, there is no chance that I would sign this letter or anything remotely like this.

While it may be true that the Department "is investigating various irregularities in the 2020 election for President" (something we typically would not state publicly), the investigations that I am aware of relate to suspicions of misconduct that are of such a small scale that they simply would not impact the outcome of the Presidential Election. AG Barr made that clear to the public only last week, and I am not aware of intervening developments that would change that conclusion. Thus, I know of nothing that would support the statement, "we have identified significant concerns that may have impacted the outcome of the election in multiple states." While we are always prepared to receive complaints and allegations relating to election fraud, and will investigate them as appropriate, we simply do not currently have a basis to make such a statement. Despite dramatic claims to the contrary, we have not seen the type of fraud that calls into question the reported (and certified) results of the election. Also the commitment that "the Department will update you as we are able on investigatory progress" is dubious as we do not typically update non-law enforcement personnel on the progress of any investigations.

More importantly, I do not think the Department's role should include making recommendations to a State legislature about how they should meet their Constitutional obligation to appoint Electors. Pursuant to the Electors Clause, the State of Georgia (and every other state) has prescribed the legal process through which they select their Electors. While those processes include the possibility that election results may "fail[ ] to make a choice", it is for the individual State to figure out how to address that situation should it arise. But as I note above, there is no reason to conclude that any State is currently in a situation in which their election has failed to produce a choice. As AG Barr indicated in his public comments, while I have no doubt that some fraud has occurred in this election, I have not seen evidence that would indicate that the election in any individual state was so defective as to render the results fundamentally unreliable. Given that, I cannot imagine a scenario in which the Department would recommend that a State assemble its legislature to determine whether already-certified election results should somehow be overridden by legislative action. Despite the references to the 1960 Hawaii situation (and other historical anomalies, such as the 1876 Election), I believe this would be utterly without precedent. Even if I am incorrect about that, this would be a grave step for the Department to take and it could have tremendous Constitutional, political and social ramifications for the country. I do not believe that we could even consider such a proposal without the type of research and discussion that such a momentous step warrants. Obviously, OLC would have to be involved in such discussions.

I am available to discuss this when you are available after 6:00 pm but, from where I stand, this is not even within the realm of possibility.

Rich

December 28 E-Mail from Richard Donoghue to Jeffrey Clark[92]

[92] Exhibit A.

Even though Rosen and Donoghue made their voices clear, Clark did not give up on his efforts, which ultimately led to the Oval Office meeting on January 3, 2021, with President Trump, Acting Attorney General Rosen, Principal Associate Deputy Attorney General Richard Donoghue, White House Counsel Patrick Cipollone, Deputy White House Counsel Patrick Philbin, White House Senior Advisor Eric Herschmann, Assistant Attorney General for the Office of Legal Counsel Steven Engel, and Acting Associate Attorney General for the Civil Division Jeffrey Clark.[93] These were the individuals involved in providing the President advice and recommendations with respect to the decision-making process related to whether or not Clark's draft letter would be sent and whether Acting Attorney General Rosen would be terminated.[94] However, precipitating this meeting was Clark's claim to Rosen on January 2, 2021, that the President was considering removing Rosen and, if so, would Clark be "willing to be considered as the recipient of the change?"[95] In other words, the President had not offered Clark the job yet; however, the next day around 3:00 p.m. on January 3, 2021, Clark met with Rosen and told him that he allegedly spoke with the President and that he had been offered the job of Acting Attorney General, an allegation which has yet to be confirmed by documents or direct testimony.[96] In that conversation, Rosen alleges that Clark told him he wanted Rosen to stay on as, in effect, his deputy.[97] Accordingly, Rosen called Meadows at 4:00 p.m. that day and asked to meet with the President, and Meadows promptly scheduled the meeting for 6:15 p.m.[98]

This meeting was also the culmination of phone calls, emails and meetings between and among principal staff on this matter. As such, this meeting was called to formally and finally decide the issues at play, which were two-fold: whether to send Clark's draft letter and whether to remove Rosen as Acting Attorney General and replace him with Clark.

In the January 3, 2021, meeting, according to testimony from Rosen and Donoghue, President Trump listened to all seven individuals, allowed them to discuss among each other the benefits and risks to these options, and also actively participated by asking his advisors their thoughts and recommendations on specific issues.[99] The meeting lasted approximately two and a half hours and culminated in President Trump rejecting sending Clark's draft letter and rejecting terminating Rosen:

[93] Jeffrey Rosen Testimony at 47.
[94] *Id*. at 45-47.
[95] *Id*. at 154.
[96] *Id*. at 157-58.
[97] *Id*. at 158.
[98] *Id*. at 159-60.
[99] *Id*. at 52-53; Richard Donoghue Testimony at 48-49.

Q. In the sense of, number one, he rejected sending the draft Clark letter, in agreement with his advisers, you, and others; and two, he rejected terminating you as Acting Attorney General. That was the ultimate one and two decision that was made with respect to this matter; is that correct?

A. Yes. At the conclusion of the discussion, yes.

Testimony by former Acting Attorney General Jeffrey Rosen[100]

Indeed, even though President Trump was frustrated with what he believed to be the DOJ's lackluster efforts to investigate what he perceived as "legitimate complaints" and "reports of crimes" relating to the 2020 election, President Trump did not fire anyone in government according to Rosen and Donoghue.[101] Rosen confirmed this during questioning:

Q. Mr. Rosen, did you take any action to overturn the 2020 election?

A. No.

Q. Did President Trump fire you?

A. He did not.

Q. Did President Trump fire anyone in the Justice Department or FBI related to his frustration that more wasn't being done to investigate election-related allegations?

A. Anyone? Not that I recall.

Testimony by former Acting Attorney General Jeffrey Rosen[102]

[100] Jeffrey Rosen Testimony at 52-53; Richard Donoghue Testimony at 48-49, 56.
[101] Jeffrey Rosen Testimony at 56; Richard Donoghue Testimony at 56.
[102] Jeffrey Rosen Testimony at 56.

Donoghue provided similar testimony:

Q. Mr. Donoghue, did you take any action to overturn the 2020 election results?

A. Absolutely not.

Q. Did President Trump fire you?

A. No.

Q. Did President Trump fire anyone at the Justice Department or FBI relating to his frustration that more wasn't being done to investigate election-related allegations?

A. No, not at all.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue [103]

Moreover, during the course of the January 3, 2021, meeting, President Trump listened to all data points and, according to Rosen's testimony, the President did not present any push-back against the path presented by his advisors which would ensure that Rosen would continue as the Acting Attorney General and that Clark's path would be rejected.[104] Instead, President Trump allowed his principal staff to address the issues together, occasionally asking questions of his own in reference to the topics being discussed as he prepared to make his ultimate decision. [105] Rosen stated, in part,

[103] Richard Donoghue Testimony at 56. At the conclusion of the January 3, 2021, meeting, BJay Pak's employment was raised. President Trump wanted to fire him for allegedly being a "never-Trumper." He was advised against it because Pak had planned to resign anyway and Pak was never fired. Instead, his resignation was accepted immediately on January 4, 2021. During Pak's interview, he stated that his replacement, Bobby Christine, was an "honorable man," confirmed that he was a "capable and very ethical U.S. Attorney," and he was capable of managing Pak's office. In addition, Pak noted that Christine brought additional attorneys to Pak's old office to assist with election cases. BJay Pak Testimony at 61, 119, 120. Notably, in Donoghue's interview he stated that Pak's people had been "dragging their feet" with respect to investigation election fraud allegations. Richard Donoghue Testimony at 102.

[104] Jeffrey Rosen Testimony at 48, 166.

[105] Jeffrey Rosen Testimony at 166.

Q. So President Trump takes in all these data points. He's listening to all of you speak, or is he interjecting in the course of your conversation, or is he letting you -- all of you as principals, as staffers, hash it out and he is just taking in the conversation?

A. Both. He -- some of what you just described. There were considerable parts where people are talking and he was just listening to their points. In some places where he says, "I've heard this or that. What do you guys say about that?"

Testimony by former Acting Attorney General Jeffrey Rosen[106]

Rosen was also asked, "So [the President] explicitly asked for your advice on this matter under discussion?" to which Rosen answered "Yes."[107] Indeed, according to Rosen, President Trump turned to his senior advisors and invited their advice with respect to the matters before them.[108] The advice – and recommendations – that President Trump ultimately decided to follow were provided by Rosen, Donoghue, Cipollone, Philbin, Engel, and Herschmann.[109] When the President solicited their advice, his advisors candidly shared substantive and legal problems put forward by Clark's path.[110] This meeting was also the first time that they discussed and voiced their serious concerns about Clark's plan with the President and they, in particular Rosen and Donoghue, stated that such an approach would be bad for the country.[111] Donoghue noted in his testimony that, until this meeting, President Trump did not fully understand the gravity of his advisors' concerns with Clark's plan, which were serious enough that they and other senior DOJ leaders had stated they would resign if Clark was made Acting Attorney General and his plan was implemented.[112] President Trump then turned to Donoghue and asked if he would resign if Clark became Acting Attorney General, to which he answered in the affirmative. President Trump also asked Steve Engel, to which he also answered in the affirmative. When he had heard all views, President Trump rejected Clark's proposals and accepted his advisors' recommendations. Specifically, on January 3, 2021, President Trump rejected terminating Rosen and rejected sending Clark's draft letter.[113] According to Donoghue, when President Trump made the decision to reject Clark's approach, he said, in part, "We're not going to have mass resignations," and when Clark then tried to dissuade the President from

[106] Jeffrey Rosen Testimony at 52.
[107] Jeffrey Rosen Testimony at 52-53.
[108] Jeffrey Rosen Testimony at 52.
[109] *Id*.
[110] Jeffrey Rosen Testimony at 164.
[111] Richard Donoghue Testimony at 154.
[112] Richard Donoghue Testimony at 155.
[113] Richard Donoghue Testimony at 153-57.

making that decision, President Trump responded with a direct "No" to Clark a second time.[114] In addition, when questioned as to whether Clark was the "one person" in the meeting – which included the president – that recommended taking the approach of sending the draft letter to the relevant legislatures and terminating Rosen, Rosen answered in the affirmative.[115] Donoghue also testified to the fact that, with the exception of Clark, the President gave due weight to everyone's arguments at that January 3, 2021, meeting:

> Q. So during the course of those discussions, did you feel like President Trump took your and your colleagues', with the exception of Jeff Clark, took your concerns very seriously and gave them the due weight that you would have wanted them to be given?
>
> A. He did. And in the end, he made the decision that we felt was appropriate.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue [116]

ii. President Trump Decided Not To File the Lawsuit.

In addition to Mr. Clark's efforts with respect to his draft letter, an outside attorney also shopped to the DOJ a draft complaint purporting to sue the Commonwealth of Pennsylvania and the States of Georgia, Michigan, Wisconsin, Arizona and Nevada to have Electoral College votes from those states invalidated on the basis of widespread allegations of fraud and voting irregularities. When Donoghue was asked by Committee staff about President Trump raising the prospect of the DOJ filing legal briefs based on election irregularities, Donoghue made several claims, including the fact that the President is a non-lawyer and that the President commented that since the court cases up to that point had been dismissed on standing grounds, he believed that since the American people were harmed, maybe DOJ would have standing to protect the people's interests:

[114] Richard Donoghue Testimony at 158.
[115] Jeffrey Rosen Testimony at 49.
[116] Richard Donoghue Testimony at 171.

A. He did raise the prospect of the Department filing, not so much on his behalf or the campaign's behalf -- but, again, as he framed and phrased this throughout, it was that the election has been stolen from the American people, and doesn't the Department represent the American people and shouldn't you guys be doing something.

So I do recall -- these conversations overlap a little bit, so you'll forgive me. But between the 15th and the 31st, the President saying things like, "All these cases are getting dismissed because the judges say we no have standing."

And the President clearly believed that the department would have standing. And I can understand, as a layman, why he would.

So he believed, well, if these elections were not conducted properly in certain states, that means that the American people have been harmed, and, therefore, the Department should be filing things because the Department would have standing. It represents the American people. And then the judges wouldn't dismiss these cases on standing grounds, and you can actually get to the merits.

We explained to the President a number of times why that doesn't work and why the Department did not have standing. There was a particular brief that was forwarded, I think, to Jeff Rosen, probably after AG Barr left. And we asked both the Office of the Solicitor General and the Office of Legal Counsel to take a look at it and give us their views as to whether the Department would have standing to file such a brief, because that was the first issue. That didn't mean we would file the brief; it just meant there was a question about standing.

And both OSG and OLC came back and opined that the Department would not have standing to file such a brief.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue [117]

[117] Richard Donoghue Testimony at 31-32.

When questioned by Committee staff whether any such complaint would have benefitted President Trump personally, Donoghue reiterated that the President's focus was, "Well, you guys represent the American people, and the American people are the victim here. They are the ones being harmed."[118] Donoghue further stated that President Trump did not say, "I want you to file this on my behalf or on behalf of my campaign."[119]

On the afternoon of December 30, 2020, President Trump and Rosen had a phone call that occurred because an outside lawyer, Kurt Olsen, called Rosen and told him that the President wanted the DOJ to file the draft complaint "by noon today."[120] Rosen noted to Olsen, "[h]ow do I know you have ever even spoken with the President? Just because you are saying it?"[121] Based on Rosen's testimony, it does not appear that Olsen provided any proof at that time.[122]

At that point, on December 30, 2020, President Trump and Rosen had not discussed the draft complaint but they eventually did that same day. However, before the call with the President, Rosen had Engel, Chief of the Office of Legal Counsel, summarize the legal issues, which Rosen relied on to present a list of five reasons to the President why DOJ could not file the Supreme Court case.[123] During his conversation with Rosen, President Trump accepted Rosen's recommendation to not file the complaint, did not pressure him to file it, and did not challenge Rosen on his reasoning for not filing it:

> But I spoke to him that afternoon, and I told him this idea of filing the Supreme Court case was a bad idea, doesn't work. The Department of Justice can't do it.
>
> And I had taken the outline that Steve Engel had given me. I didn't use it literally. I relied on it. But I sort of said, "There's five different reasons." I laid those out for him.
>
> And he went "Okay."
>
> So then he accepted it. And that was the

[118] Richard Donoghue Testimony at 33.
[119] *Id*. In addition, Donoghue testified that in a December 31, 2020, meeting with President Trump where the complaint allegedly was discussed, the President did not instruct DOJ to file the action. Richard Donoghue Testimony at 119.
[120] Jeffrey Rosen Testimony at 116-17.
[121] *Id*. at 116.
[122] *Id*.
[123] *Id*. at 115-17.

end. That was kind of the end of that, which is why I think in the earlier conversation I had with your colleague about the December 31 meeting, I think the discussion about the Supreme Court brief had already been resolved. I can't say, definitively, if it came back the next day, but I don't think so. I think it was resolved in that phone call. Things came up, and we just said we're not doing it. And that was it.

Q. So the President yet again took your advice?

A. Well, he accepted the Department's position that we weren't going to do that. He didn't resist it or deliver an ultimatum or try to overrule us.

Q. So after you gave him the list of five reasons against filing the complaint --

A. Yes.

Q -- his literal response was "Okay," or did he say anything else? Did he challenge you on any of the five?

A. No. No. He accepted that we were not going to file that, and that was that.

Q. Was that the last time that you discussed this draft complaint with the President?

A. To the best of my recollection, it was.

Testimony by former Acting Attorney General Jeffrey Rosen[124]

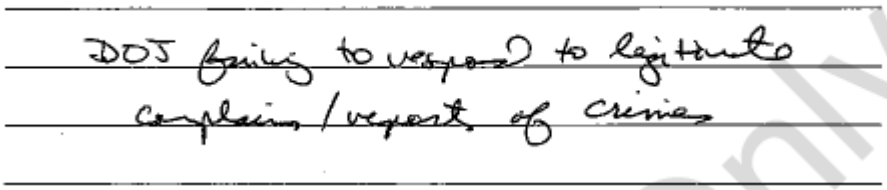
In conclusion, President Trump rejected taking three actions that serve as the centerpiece to arguments that he used the DOJ to do his bidding and overturn the election: (1) he twice rejected sending the Clark letter; (2) he twice rejected terminating Rosen; and (3) he accepted the arguments raised by Rosen and chose not to file the draft complaint. Rosen and Donoghue further testified to the fact that President Trump did not fire anyone at DOJ or FBI with respect to his frustrations that these entities were not doing their job to adequately investigate election fraud allegations.[125]

[124] Jeffrey Rosen Testimony at 117-18.

[125] In addition, testimony indicates that President Trump mentioned the appointment of a special counsel to investigate election fraud allegations. Rosen stated that that was DOJ's call and they decided not to do it. Jeffrey Rosen Testimony at 33-34.

IV. PRESIDENT TRUMP'S CONCERNS CENTERED ON "LEGITIMATE COMPLAINTS" AND "REPORTS OF CRIMES" AND HOW THEY IMPACTED THE AMERICAN PEOPLE AND THE ELECTORAL SYSTEM; WITNESSES STATED HIS CONCERNS WERE NOT UNREASONABLE.

According to the available evidence, President Trump's concerns about the election focused on "legitimate complaints" and "reports of crimes" and Donoghue testified that the President reiterated that focus "several times" during their discussions.[126] For example, on December 27, 2020, President Trump had a call with Rosen and Donoghue to discuss his concerns about fraud in the 2020 election.[127] That call was memorialized in notes by Donoghue, who recorded that President Trump's concerns focused on "DOJ failing to respond to legitimate complaints/reports of crimes" and confirmed during questioning that the president did in fact say that on the call.[128]



Call Notes by former Principal Associate Deputy Attorney General Richard Donoghue[129]

The available evidence shows that the President was bombarded with election fraud allegations after the election and wanted to ensure that the DOJ was doing what it needed to do to investigate these allegations to discern whether or not they had merit. For example, Donoghue testified that President Trump, during the course of his conversations with him, wanted to know whether these allegations were true or not:

[126] Richard Donoghue Testimony at 58.
[127] Jeffrey Rosen Testimony at 56.
[128] Richard Donoghue Testimony at 43, 58.
[129] Exhibit D.

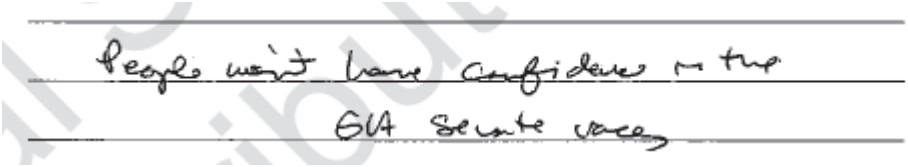
Q. During the course of your conversations with the President, it was -- was it apparent to you that he truly had concerns with respect to the validity of the election, and he did want to run these allegations down?

One way or the other, he wanted to know whether these allegations were true or not. Is that accurate?

A. I think that's a fair characterization of the way he presented these things, yes.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue [130]

According to Rosen, President Trump raised concerns on more than one occasion with respect to the Georgia Senate races that "[m]any people around the United States think there's been fraud. This undermines confidence in the elections."[131] Notes taken by Donoghue during a December 27, 2020, call with Rosen and President Trump show that the President specifically raised concerns that "people won't have confidence in the Georgia Senate races" if the DOJ did not adequately investigate allegations of election fraud.[132] Indeed, in line with President Trump's desire to know one way or the other if allegations were credible, the President wanted Donoghue to personally go to Fulton County, Georgia to perform a signature verification, which Donoghue did not do.[133]



Call Notes by former Principal Associate Deputy Attorney General Richard Donoghue[134]

[130] Richard Donoghue Testimony at 54.
[131] Jeffrey Rosen Testimony at 59.
[132] *Id*. at 58-59; Exhibit D.
[133] Richard Donoghue Testimony at 63.
[134] Exhibit D.

Rosen also testified that President Trump mentioned to him several times after the election that he was concerned about the American people's confidence in the electoral process.[135] Donoghue also testified that during the January 3, 2021, meeting in the Oval Office, the President restated, among other things, his focus on the American people:

> And so the conversation -- everyone just sort of chimed in as we went around the room. And the President would, you know, make comments throughout about the election and how it was stolen, and how the American people had been harmed, and how he can't believe that the Department hasn't done more. And maybe if he put Jeff Clark in, the Department would do more, and back and forth.
>
> And he would say things like, "Well, what do I have to lose? What would I lose at this point if I put Jeff Clark in?"
>
> And I said, "Sir, you have a great deal to lose."

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue[136]

As noted, President Trump did not yet know at that point about the potential mass resignations at DOJ and wide-spread displeasure amongst his senior staff with respect to Clark; however, he listened to his advisors, who stated Clark did not possess the necessary qualifications to be Acting Attorney General and that Clark's approach would harm the country, and twice rejected the idea of terminating Rosen.[137] With respect to President Trump's focus on the "American people," Rosen stated that President Trump referenced that "people are concerned" about the sanctity of the 2020 election and raised those concerns about the American people "more than once":[138]

[135] Jeffrey Rosen Testimony at 60.
[136] Richard Donoghue Testimony at 153.
[137] Jeffrey Rosen Testimony at 53; Richard Donoghue Testimony 50, 158.
[138] Jeffrey Rosen Testimony at 72.

Q.What did he say with regard to the election system in the United States?

A. He said, "The American people are paying great attention to this. You know, people are concerned. I'm hearing that there's fraud in Pennsylvania."

I mean, as I alluded to earlier, this was not uncommon that he would say things to us that he also said publicly on national TV or in some form. I can give you a summary, but you probably have a little bit of the flavor.

Q. Right. So the President constantly referred to the American people in his context?

A. Yeah. I don't mean -- I try not to be semantic with this, but I don't know if he constantly did that, but it was more than once. I mean, he did say that.

Testimony by former Acting Attorney General Jeffrey Rosen[139]

With respect to the President questioning what actions the DOJ had taken to investigate election fraud allegations, during his testimony Donoghue stated that it was not unreasonable for the President to question the DOJ on what they were doing to investigate these types of claims:

Q. So in the same vein, then, was it unreasonable under the circumstances for the President to question what the Justice Department and its components were doing to investigate legitimate complaints and reports of crimes?

A. I don't think it was unreasonable for him to question it. But, again, we tried to allay his concerns by saying, "Yes. We're aware of it. We're doing our job."

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue[140]

[139] Jeffrey Rosen Testimony at 72.
[140] Richard Donoghue Testimony at 59.

During his interview with the committee, Pak supported Donoghue's testimony that it was not unreasonable for the President to question what the DOJ was doing to investigate election fraud allegations. Pak also testified that it was not unreasonable for President Trump to have concerns about potentially legitimate complaints and reports of crimes:

Q. So my question to you is -- I'll just restate it again in full.

With respect to the volume of voter fraud and election crime allegations that the President had received at that time and which were reported on publicly at that time, was it unreasonable under the circumstances for the President to have such concerns regarding potentially legitimate complaints and reports of crimes?

A. No, I don't think it was unreasonable.

Q. Was it unreasonable under the circumstances for the President to question what the Justice Department and its components were doing to investigate legitimate complaints and reports of crimes?

A. I don't know what he understood as to what the Department of Justice was doing, but I don't think it's unreasonable for him to question what we were doing.

Testimony by former Assistant U.S. Attorney, Northern District of Georgia

Byung J. "BJay" Pak[141]

Further, Pak was presented with a press release from the Biden administration which noted that President Biden provided "policy direction" to the DOJ with respect to prohibiting the issuance of subpoenas for reporter information in criminal leak investigations.[142] Committee staff referenced the fact that this was an example of President Biden reaching down into the DOJ to set policy and subsequently asked if President Trump had the same authority and duty with respect to election policy, to which Pak answered in the affirmative:[143]

[141] BJay Pak Testimony at 67.
[142] BJay Pak Testimony at 115-16; *see also* Statement by Press Secretary Jen Psaki on the Department of Justice Leak Investigation Policy (June 5, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/05/statement-by-press-secretary-jen-psaki-on-the-department-of-justice-leak-investigation-policy/.
[143] BJay Pak Testimony at 115-16.

Q. Fair enough. So my question to you, then, sir, is would you agree that any President of the United States has a similar authority to ensure the Department and its components have the right policy with respect to investigating and reviewing voter fraud and election crime allegations?

A. I would agree that the President has that duty.

Testimony by former Assistant U.S. Attorney, Northern District of Georgia

Byung J. "BJay" Pak[144]

In conclusion, the available evidence shows that President Trump was concerned about "legitimate complaints" and "reports of crimes," and that the electoral system writ large had failed the American people. Indeed, testimony from Donoghue illustrates that President Trump wanted to know, one way or the other, if the election allegations were true. Witnesses testified to the fact that President Trump's concerns about how the DOJ and the FBI handled election fraud allegations were not unreasonable. Further, Pak testified that similar to President Biden setting policy for the DOJ, any president has that same duty with respect to election investigation policy.

V. PRESIDENT TRUMP DID NOT EXERT IMPROPER INFLUENCE ON THE JUSTICE DEPARTMENT, HAD NO IMPACT ON THE JUSTICE DEPARTMENT'S ELECTION ACTIVITIES, AND HIS CONCERNS ABOUT THEIR EFFORTS STEMMED FROM A DISTRUST OF JUSTICE DEPARTMENT AND FBI LEADERSHIP.

Based on the available evidence and witness testimony, Donoghue and Pak did not believe it was unreasonable for President Trump to question what the DOJ and its components were doing to investigate election fraud allegations.[145] Rosen also noted that it's reasonable for the DOJ to review election fraud allegations, and in the same line of questioning, when asked whether it's the President's constitutional duty to ensure all departments and agencies work on behalf of the American people and taxpayers, Rosen answered in the affirmative.[146] In light of the testimony about the reasonableness of the President's conduct, none of the witnesses ever testified to any belief that the President exerted any improper influence or direction on the DOJ; rather the testimony indicates that the President was concerned about DOJ being *aware* of allegations and properly doing their job to run them down. For example, on a December 24, 2020, call between Rosen and President Trump, the president said,

[144] BJay Pak Testimony at 116.
[145] Richard Donoghue Testimony at 59; BJay Pak Testimony at 67.
[146] Jeffrey Rosen Testimony 62-63.

> And he then brought up the same kinds of issues he brought up back on December 15. He said, you know, "You, at the Justice Department, you need to be aware lots of people are saying that there's election fraud. And I've heard this about Pennsylvania, and I've heard that about Arizona."

Additional testimony provided examples of where President Trump deferred to the DOJ's review of election fraud allegations, most specifically with respect to the Antrim County, Michigan allegations which centered on allegations that voting machines incorrectly tabulated votes, and that the President's general approach with DOJ was that "I want to make sure you guys were aware of [these allegations]" rather than dictating to DOJ that they proceed with action.[147] Specifically, with respect to the Antrim County allegations, Donoghue stated the following:

> And so there was nothing to be decided or to be done. It was just a matter of the President talking about the possible implications of this, if, in fact, the report was correct. And we all agreed that if there's a 68 percent error rate, then, yes, there's a huge problem for the country. But let's not get ahead of ourselves. The hand recount is underway and let's let that progress. And we should know in a day or two whether there's really anything to this.
>
> He seemed satisfied with that response.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue[148]

[147] Richard Donoghue Testimony at 29.
[148] *Id*. at 28.

Moreover, Donoghue testified to Committee staff that the President was not focused on making decisions with respect to specific allegations, rather the President wanted to ensure DOJ was *aware* of the allegations:

> Is there a way that you can generally speak to your role here?
>
> A. It wasn't so much advice or recommendations on specific allegations, because the President, you know, wasn't looking to make decisions about the specific allegations. He was presenting it as, "Are you guys aware of this, X, this allegation?"

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue[149]

Indeed, with respect to Rudy Giuliani's attempts to meet with DOJ, Rosen was never directed or instructed to do so. Rosen testified "they didn't say, 'You must do this,' or 'You're expected to do it…[a]nd so I never did meet with Mr. Guiliani."[150]

In line with the President not ordering the DOJ to take action, during questioning, Donoghue stated that President Trump's actions with respect to the DOJ and FBI investigating election fraud allegations had no impact on their activity:

> Q. Now, did Trump's efforts to push the DOJ and FBI to be more aggressive in investigating election fraud and related crimes -- or, excuse me, and election crimes work to make them more aggressive than they would have been absent those efforts from the President?
>
> A. No. I would say it had no impact --
>
> Q. No impact?
>
> A. -- on what we were going to do. We did what we were going to do, regardless.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue[151]

Later, during Donoghue's questioning, Democratic Committee staff tried to unwind his testimony by asking whether "repeated outreach" from Mark Meadows and the President changed DOJ's actions; however, Donoghue reaffirmed by stating, "I can say with confidence

[149] Richard Donoghue Testimony at 55.
[150] Jeffrey Rosen Testimony at 149.
[151] Richard Donoghue Testimony at 127.

that it didn't change anything we did."[152] Furthermore, Pak testified that he was not asked by superiors to investigate allegations he didn't think were credible:

25 Q. And on a higher level, were you ever asked to
1 look into allegations that you didn't find credible?
2 A. No.

Testimony by former Assistant U.S. Attorney, Northern District of Georgia

Byung J. "BJay" Pak[153]

Indeed, when DOJ counsel objected to a line of questioning in the Pak interview, the government counsel summarized Pak's testimony and said that Pak already testified to the fact that he "didn't get any pressure from either the White House or DOJ" with respect to certain Georgia election allegations.[154]

The available testimony directly contradicts public statements from Democrats and certain media that the President directly used and exerted improper pressure on DOJ to overturn the election. Media outlets also received from House Democrats a leaked copy of Donoghue's notes of a December 27, 2020, call between Rosen, Donoghue and the President, which read in part: "just say the election was corrupt + leave the rest to me and the R Congressmen."[155] Some media seized on this partisan selection of Donoghue's call notes to suggest the President wanted the DOJ to declare the election was corrupt. In testimony, Donoghue noted that he believed this line referred to President Trump and his allies challenging some electoral votes which, as he noted, "happened in previous elections…I believe that happened in 2004 and 2000," which is when Democrats challenged President Bush's victory.[156] Some outlets also failed to state the notes in full, leaving out the most relevant portion: "Don't expect you to do that."[157] That line was in response to Rosen saying to the President that the DOJ won't change the outcome of the election:

[152] Richard Donoghue Testimony at 132.
[153] BJay Pak Testimony at 33-34.
[154] *Id*. at 81.
[155] Jeremy Herb, *Trump to DOJ last December: 'Just say that the election was corrupt + leave the rest to me'*, CNN POLITICS (July, 31, 2021), https://www.cnn.com/2021/07/30/politics/trump-election-justice/index.html.
[156] Richard Donoghue Testimony at 87.
[157] Exhibit C; Jeremy Herb, *Trump to DOJ last December: 'Just say that the election was corrupt + leave the rest to me'*, CNN POLITICS (July, 31, 2021), https://www.cnn.com/2021/07/30/politics/trump-election-justice/index.html.

So Rosen allegedly said this to the President: "We'll look at whether have more ballots in PA," standing for Pennsylvania, I assume, "than registered voters - should be able to check on that quickly, but understand that the DOJ can't + won't snap its fingers + change the outcome of the election, doesn't work that way."

And then underneath, it has the letter P. "P" responded -- who I presume is the President.

Is that correct?

A. Right.

Q. I'm sorry, can you say that again? The audio popped out.

A. That is correct.

Q. Thank you.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue[158]

Then, when Donoghue was asked about the President's response, "Don't expect you to do that," he stated that it was an exact quote from President Trump.[159] Committee staff then asked Donoghue the following:

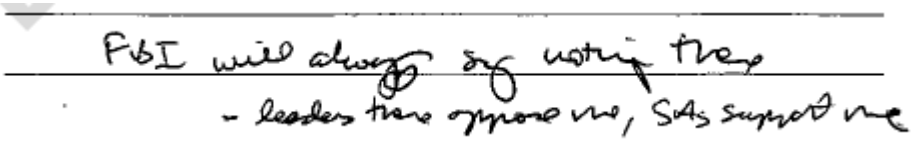
Q. So the President didn't expect the Justice Department to change the outcome of the election, then, based on these notes. Is that your interpretation of these notes?

A. Yes, that's right.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue[160]

[158] Richard Donoghue Testimony at 61-62.
[159] *Id*. at 62.
[160] *Id*.

Furthermore, with respect to the same phone call, Committee staff asked Donoghue about an alleged statement from the President which indicated distrust with the FBI, "FBI will always say nothing there, leaders there oppose me, SAs support me."[161]



Call Notes by former Principal Associate Deputy Attorney General Richard Donoghue[162]

Donoghue agreed that the President maintained a certain level of distrust with FBI leadership.[163] Donoghue was asked whether this distrust could have contributed to the President's concern about how "legitimate complaints" and "reports of crimes" were being handled by the DOJ and FBI. Donoghue answered that it "may have played into his view…"[164] When presented with the same evidence, Rosen stated:

A. Well, as I said before, I don't have any reason to doubt the accuracy of Rich's notes. And it's generally consistent with -- I don't know if it's this call or another time, but the President had some skepticism with the FBI.

Testimony by former Acting Attorney General Jeffrey Rosen[165]

When presented with the same evidence, Pak testified to the following:

Q. With respect to that distrust, do you think that it could have contributed to the President's concern about how legitimate complaints and reports of crimes were being handled by the Justice Department and the FBI?
A. I'm sure that's possible.

Testimony by former Assistant U.S. Attorney, Northern District of Georgia Byung J. "BJay" Pak[166]

[161] Richard Donoghue Testimony at 60; Exhibit C.
[162] Exhibit C.
[163] Richard Donoghue Testimony at 60.
[164] *Id.*
[165] Jeffrey Rosen Testimony at 63.
[166] BJay Pak Testimony at 68.

In conclusion, the available evidence illustrates that President Trump's focus was not on directing the DOJ or the FBI to take certain investigative action; rather his focus was on making sure that they were *aware* of election allegations and that they were doing their job to properly investigate them. It also appears that the President's concerns centered on his distrust and skepticism of the DOJ and FBI, which does not appear unfounded in light of the FBI's now-debunked Crossfire Hurricane investigation and the Robert Mueller Special Counsel investigation which, as noted in earlier in this report, saw the DOJ and FBI investigate the Trump campaign, transition team, and administration based on fabricated evidence and evidence infected with Russian disinformation.[167]

Lastly, as noted, Donoghue testified that President Trump had "no impact" on DOJ's election investigation activities.[168]

As discussed in the next section, the President's skepticism about the DOJ's efforts to investigate election fraud allegations appears to be well-founded in light of the historically passive investigative posture of the DOJ's Public Integrity Section and Election Crimes Branch.[169]

VI. THE PUBLIC INTEGRITY SECTION AND ELECTION CRIMES BRANCH WERE HISTORICALLY PASSIVE IN THEIR REVIEW OF ELECTION-RELATED ALLEGATIONS AND ONE OF ITS LEADERS, RICHARD PILGER, UNDERMINED THE DEPARTMENT'S ELECTION-RELATED EFFORTS.

On November 9, 2020, then-Attorney General Barr issued a memorandum that said, in part, "I authorize you to pursue substantial allegations of voting and vote tabulation irregularities prior to the certification of elections in your jurisdictions in certain cases."[170] Barr's memorandum noted that the standard protocol for the Public Integrity Section was to wait until after elections were certified to proceed with overt investigative activity.[171] Donoghue noted under questioning, "the general practice of the Department, per ECB, Election Crimes Branch, was to wait until the certification was done because, in their view, what the Department should be doing is prosecuting things after the fact in an attempt to deter misconduct in future elections."[172] Barr noted that this "passive and delayed enforcement approach" could result in matters that "cannot be realistically rectified."[173] During questioning, Pak confirmed, with

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[167] "IG Footnotes: Serious Problems With Dossier Sources Didn't Stop FBI's Page Surveillance" (April 15, 2020), https://www.grassley.senate.gov/news/news-releases/ig-footnotes-serious-problems-dossier-sources-didn-t-stop-fbi-s-page-surveillance.
[168] Richard Donoghue Testimony at 127.
[169] Exhibit D.
[170] Memorandum for United States Attorneys, the Assistant Attorneys General for the Criminal Division, Civil Rights Division, National Security Division, Director, Federal Bureau of Investigation, (Nov. 9, 2020), https://int.nyt.com/data/documenttools/barr-memo-elections-fraud/9bf5cac375012c4c/full.pdf.
[171] *Id.*
[172] Richard Donoghue Testimony at 68.
[173] Memorandum for United States Attorneys, the Assistant Attorneys General for the Criminal Division, Civil Rights Division, National Security Division, Director, Federal Bureau of Investigation, (Nov. 9, 2020), https://int.nyt.com/data/documenttools/barr-memo-elections-fraud/9bf5cac375012c4c/full.pdf.

respect to the Barr memorandum, that the existing investigation policy needed to be fine-tuned and more focused.[174]

During the 2020 election, Corey Amundson was the head of the Public Integrity Section (PIN), which is located within the DOJ's Criminal Division, and Richard Pilger was head of the Election Crimes Branch (ECB), which is a unit within the PIN.[175] Based on DOJ policy, the PIN is to be consulted on opening election fraud-related cases. PIN does not have veto power over whether a case is opened, although the testimony from witnesses and records from the DOJ indicate that the PIN attempted to assert that power.[176] For example, in a December 7, 2020, email from Amundson to redacted FBI officials, Amundson states, with respect to the investigation of election fraud allegations at State Farm Arena in Georgia, "[a]s explained below, PIN does not concur in any overt investigative activity, including the proposed interviews."[177] David Bowdich, then-Deputy Director of the FBI, was forwarded that email and he then sent it to Donoghue, who responded by saying, in part:

> Unfortunately, this is a continuation of a policy disagreement between the Election Crimes Branch (ECB) of PIN and the AG. While I understand ECB's concerns and the reasons for their historic practice, the AG simply does not agree with what he termed their "passive and delayed enforcement approach" (11/9/20 AG Memorandum) and has clearly directed that Department components should undertake preliminary inquiries and investigations of election-related allegations in certain circumstances even if election-related litigation is still ongoing. While this may be different from ECB's traditional approach (which was essentially to allow election fraud to take its course and hope to deter such misconduct in future elections through intervening prosecutions), the AG gets to make that call.[178]

Donoghue proceeded to say,

> While PIN says below that they do not "concur" in proceeding with interviews, their concurrence is not required by the Justice Manual, nor has it ever been required. That is language they use to imply that they have approval/disapproval authority when, in fact, they do not.[179]

[174] BJay Pak Testimony at 50.
[175] Richard Donoghue Testimony at 66.
[176] Exhibit D; Richard Donoghue Testimony at 69.
[177] Exhibit D.
[178] *Id*.
[179] *Id*.

Notably, the conflict between the PIN and FBI with respect to the State Farm Arena allegations was brought to Donoghue's attention, in part, because Bowdich raised it, which raises the possibility that if he had not, the DOJ's leadership may not have been aware of the issue and potentially other cases where the PIN could have asserted authority that it didn't have. To that point, Donoghue testified to the following:

Q. I see. So when the FBI does the interfacing with the Public Integrity Section and the ECB, in the process you just described, if the FBI does not go around PIN and ECB to apprise you, as was done here with Bowdich in the December 7, 2020, email, is there a chance that you, up the food chain, the leadership chain at DOJ, are not going to be aware of some of the FBI's frustrations downstream with the Public Integrity Section?

A. It's possible. But I would say that Dave Bowdich, as the deputy director, was very hands on. And Dave and I worked very closely together. We spoke probably every day, often several times a day. And he understood the AG's memo and -- though, there was a lot of back-and-forth there, but it's certainly possible that could be.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue[180]

[180] Richard Donoghue Testimony at 80-81.

When AG Barr's November 9, 2020, memorandum was released, Richard Pilger resigned his position at ECB, and his resignation letter was later leaked to the press.[181] According to Donoghue, his resignation "raised concerns because it left the perception that the Department was somehow doing something improper when, in fact, all along, what AG Barr wanted to make sure was that we were in a position to assess whether or not the election had been affected by fraud."[182] Donoghue also responded to questioning concerning the impact on DOJ of Pilger's decision to resign:

Q. Did Mr. Pilger's decision to resign and the subsequent leak -- obviously, I don't know who leaked the document -- but the subsequent leak of his resignation, did that frustrate the Department's ability to properly operate the Election Crimes Branch consistent with AG Barr's November memo?

A. Yes, it definitely did. It put the AG in a poor light publicly, which was totally unwarranted. People misunderstood the memo. They misunderstood what the AG was trying to do. And the immediate leak of the email, the memo and the related documents was not helpful to what the Department was trying to do at that time.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue[183]

Donoghue also testified that "ECB routinely implied that they had approval authority" for investigative steps to be taken or not to be taken, which was incorrect and frustrated the proper effectuation of DOJ efforts to investigate because the "District Election Officers in the U.S. Attorney's Office were extremely reluctant to proceed without the approval of ECB" and "FBI agents were, again, extremely reluctant to proceed without ECB's explicit approval" – approval which they didn't need.[184] Donoghue also stated that the PIN provided a non-concurrence to potential investigative activity relating to the 2020 election "several times" but could not remember exactly which incidents they involved.[185] However, Donoghue did note one example in Florida where Rosen limited some action by the U.S. Attorney.[186] The DOJ counsel in the interview objected to Donoghue answering clarifying questions about which instructions were

[181] Richard Donoghue Testimony at 66.
[182] *Id*. at 66-67.
[183] *Id*. at 67.
[184] *Id*. at 69.
[185] *Id*. at 73.
[186] *Id*. at 74.

provided by Rosen.[187] With respect to additional issues with ECB and their speed at which they investigated election allegations, Donoghue also said:

> explicit approval. And since ECB was not on the same page with AG Barr and they clearly disagreed with AG Barr's determination, they were, at best, dragging their feet and maybe more to keep these investigations from going forward, in my view.

Testimony by former Principal Associate Deputy Attorney General Richard Donoghue[188]

Pak also agreed with Donoghue's assessment of the PIN's passive approach to investigating matters:

> And then this email in full, I believe, was forwarded by Mr. Donoghue to you. So when the AG -- so when Donoghue said, "The AG simply does not agree with what he termed their" -- as in PIN and ECB[] -- "passive and delayed enforcement approach," do you agree with Attorney General Barr's assessment that the Public Integrity unit and the Election Crimes Branch had a passive and delayed enforcement approach?
>
> A. I think so, yeah. I would agree.

Testimony by former Assistant U.S. Attorney, Northern District of Georgia Byung J. "BJay" Pak[189]

Even with that view, Pak testified, in part, that he deferred investigations because the Georgia Special Election had yet to occur:

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[187] Richard Donoghue Testimony at 74.
[188] *Id*. at 69.
[189] BJay Pak Testimony at 57.

Q. Okay. And then could you describe how if in any way this policy change manifested in your work as a U.S. Attorney? Were you approached by Main Justice at any point to take a more forward-leaning approach to election fraud investigations?

A. Apart from the memo, no, they have not. You know, we took a -- internally at the U.S. Attorney's Office that I was leading, I took the approach of being conservative, of not -- of deferring every case that we can, particularly because, as I noted before, there was yet another election coming up.

By early December, the general election had been completed. It would not be an open polling place type of investigation that people are very sensitive to. But we just wanted to make sure that we don't do anything that would leave the public with an impression that we give some kind of substance to any type of allegation or otherwise. And so we were very sensitive to that.

Testimony by former Assistant U.S. Attorney, Northern District of Georgia Byung J. "BJay" Pak[190]

[190] BJay Pak Testimony at 30.

And when asked what the risks were to postponing initiating investigations, Pak testified:

> Q. So, sir, what do you think the -- let me say it this way then. What are the risks attendant to not taking investigative steps prior to certification?
> A. It depends on what the allegation is. I think you ultimately, for example, if there is spoliation of evidence or destruction of evidence or threat of physical harm to particular people, I think you would consider doing something before the actual certification or completion of the election process. And it would be fact-intensive.
> So loss of evidence and also physical harm I think would be two examples I could think of that may justify doing something prior to the final certification.

Testimony by former Assistant U.S. Attorney, Northern District of Georgia

Byung J. "BJay" Pak[191]

In conclusion, and with reference to the above information, the available evidence shows that there appears to be some factual basis for President Trump's concerns about the vigor with which the DOJ investigated election fraud allegations. Most relevant to his underlying concerns was the fact that the PIN was deemed by DOJ's leadership to be a passive entity with respect to election fraud investigations and the fact that the ECB's chief lawyer resigned in protest to the AG Barr memorandum which had instructed the DOJ to be more forward-leaning in its response to election fraud-related matters. In addition, Donoghue believed that Pak's employees "were dragging their feet a little bit in investigating" election fraud allegations.[192] Some witnesses were unaware whether certain allegations had been investigated.[193] Incredibly, DOJ objected to many questions related to the role PIN had during the 2020 election as well as actions DOJ may or may not have taken with respect to investigating election fraud claims.

[191] BJay Pak Testimony at 50-51.
[192] Richard Donoghue Testimony at 167.
[193] BJay Pak Testimony at 65, 68; Donoghue at 63, 125.

VII. THE BIDEN JUSTICE DEPARTMENT INTERFERED IN THE INVESTIGATION AND PREVENTED WITNESSES FROM ANSWERING RELEVANT QUESTIONS PERTAINING TO THE DEPARTMENT'S ROLE IN INVESTIGATING ELECTION FRAUD ALLEGATIONS.

In a January 23, 2021, letter to DOJ outlining the scope of the Committee's investigation, Committee Democrats stated that their focus would be on "deeply troubling questions regarding the DOJ's role in Trump's scheme to overturn the election."[194] By framing their request in this way, Democrats placed questions concerning DOJ and the manner and extent to which it responded to allegations of election fraud at the center of the Committee's investigation and therefore made it a relevant line of inquiry. In their letter to DOJ, Democrats cited to an article containing details about President Trump's conversations with Acting Attorney General Jeffrey Rosen regarding DOJ's response to allegations of election fraud.[195] They also requested materials from DOJ pertaining to those conversations and asked Rosen to testify before the Committee.[196]

The records and testimony that the Committee gathered in response to Democrats' requests show that President Trump repeatedly raised concerns with Rosen that the DOJ and FBI were not doing enough, in his view, to investigate allegations of election fraud.[197] The available evidence show that President Trump wanted to ensure that the DOJ and FBI were doing their job on behalf of the American people.[198] Moreover, as the preceding sections illustrated, President Trump's focus was on making sure DOJ was *aware* of allegations and that DOJ was doing their job to properly investigate them, rather than ordering a course of conduct.

During interviews, minority staff asked Rosen, Donoghue, and Pak logical follow-up questions about DOJ's response to election fraud allegations in order to establish whether or not the concerns President Trump raised with Rosen and others were well-founded. However, Biden Administration DOJ officials who were present in the interviews consistently interfered in order to prevent witnesses from answering these extremely relevant questions. [199]

Through the repeated objections made by DOJ officials, it became clear that President Biden's ostensibly broad waiver of executive privilege was not, in reality, broad at all. In effect, it was narrowly construed by DOJ officials to allow the release of information that was more likely in line with the Democrats' public narrative but not the release of information that could help establish factual context about existing election allegations under review.

For example, minority staff asked former Acting Attorney General Rosen "whether or not the Public Integrity Section and the Election Crimes Branch opened any election crime cases before the 2020 election was certified."[200] In response, Rosen deferred to the DOJ official who was present at the interview. The official stated that under the terms of President

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[194] January 23 Letter.
[195] *Id.;* January 22 New York Times Article.
[196] Letter from Chairman Richard J. Durbin, Chair, S. Comm. on the Judiciary, to Reginald Brown, Kirkland and Ellis LLP (May 18, 2021); January 23 Letter.
[197] Jeffrey Rosen Testimony at 63.
[198] *Id*. at 72.
[199] Richard Donoghue Testimony at 74, 76, 81-82, 84; BJay Pak Testimony at 21, 41-42, 46, 53, 60, 81**,** 82.
[200] Jeffrey Rosen Testimony at 123.

Biden's authorization, Rosen was not authorized to speak about "prosecutorial decisions in specific cases."[201] It is not clear why a question about whether any election crime cases were opened warrants an objection relating to prosecutorial decisions concerning a specific case.

Similarly, when minority staff asked Pak "how many election-related reports regarding 2020 were sent up [the] reporting chain," a DOJ official responded, "[t]he scope of the authorization deals with the circumstances on which [Pak] left and about pressure that was placed on him from the White House or DOJ leadership offices to investigate specific instances of alleged voter fraud."[202] DOJ's contention that only testimony relating to "pressure" from the White House or Department leadership was authorized reinforces the fact that the Biden Administration was not candid when it claimed it would allow witnesses to provide unrestricted testimony within the scope of the Committee's investigation.

DOJ also prevented Pak from testifying about whether his office opened any election related cases (other than the State Farm Arena allegations) before the 2020 election was certified, whether it looked into any voter fraud or election crime related allegations with respect to the 2020 election before the election was certified, and whether it opened any voter fraud or election crime related cases after the election was certified.[203] Of course, the number of election reports that DOJ looked into is squarely within the scope of the Committee's investigation and plainly relevant to the matter at hand. The answers to these questions are directly related to questions regarding DOJ's response to allegations of election fraud and questions regarding the accuracy and relevance of concerns that President Trump repeatedly raised with Rosen as well as President Trump's concern that DOJ and FBI were not doing enough to investigate allegations.

As mentioned in the preceding section, DOJ also repeatedly intervened to prevent witnesses from answering questions about a dispute between the ECB and PIN and former Attorney General Barr. In response to Democrats' January 23, 2021, request letter, DOJ produced a series of e-mail exchanges to the Committee that had been forwarded by Donoghue to Pak on December 7, 2020.[204] The exchanges included correspondence between Donoghue and Deputy FBI Director David Bowdich, as well as an e-mail that had been sent by Public Integrity Chief Corey Amundson to a redacted list of recipients. The e-mails documented the existence of a policy disagreement between the ECB, which adhered to a traditional approach that was labeled "passive," and according to the e-mail, "was essentially to allow election fraud to take its course and hope to deter such misconduct in future elections through intervening prosecutions" and a different approach that had been outlined by then-Attorney General Barr in a November 9, 2020, memorandum.[205] That memorandum had advocated for a more forward-leaning approach to investigating allegations of election fraud. Based upon this documentary evidence produced by DOJ, Committee staff attempted to ask Donoghue questions about the nature and extent of the disagreement and any efforts by former ECB head, Richard Pilger, who resigned his position on November 9, 2020, to frustrate Barr's policy guidance with respect to

[201] Jeffrey Rosen Testimony at 123.
[202] BJay Pak Testimony at 41-42.
[203] BJay Pak Testimony at 61-62.
[204] Exhibit D.
[205] *Id*.

investigating allegations of election fraud.[206]

The questions Committee staff asked were directly related to responsive documents that had been produced to the Committee by DOJ. They were also fully within the scope of the Committee's inquiry, since they dealt with questions pertaining to DOJ's policy and response to allegations of election fraud. Nevertheless, DOJ officials objected on the grounds that the questions addressed issues that were beyond the scope of President Biden's authorization.[207]

I. Donoghue Interview

1. Questioning by Minority Staff (Page 74)

[Concerning Acting Attorney General Rosen's instructions to U.S. Attorney Larry Keefe regarding how to proceed in a case involving a non-concurrence from PIN]:

Q. So Rosen provided him instructions to perform some actions, but not other actions?

Mr. Weinsheimer. On behalf of the department, I'm indicating that at this point, we've gone beyond the authorization, and the witness has already indicated it may relate to an ongoing matter. He's just not authorized to speak about ongoing matters.

[206] Richard Donoghue Testimony at 74, 76, 81-82.
[207] *Id.;* Richard Donoghue Testimony at 84.

2-3. Questioning by Minority Staff (Page 76)

Q. So specifically, sir, you know, as we focus here on the Public Integrity Unit and Barr's November memo altering this policy to be more aggressive and forward-leaning, are you able to specifically mention or name any specific department personnel that worked to frustrate the Barr memo, the November Barr memo?

Mr. Weinsheimer. On behalf of the department, I object. He shouldn't be getting into specific individuals other than those that he's already mentioned.

Mr. Flynn-Brown. Okay. So he's mentioned Richard Pilger. Can he get into more detail in his actions in potentially undermining the November Barr memo?

Mr. Weinsheimer. Again, I would object. I think that's outside the scope of the authorization at this point.

Mr. Flynn-Brown. No, I do think it's in scope, so we'll put a pin in that.

4-5. Questioning by Minority Staff (Pages 81-82)

[Concerning the relationship between PIN Chief Corey Amundson and former ECB head, Richard Pilger]

Q. So how did those two interact? Did those two get along, or did they often have disagreements with respect to how things should proceed forward?

And I see I'm going to get another objection here from DOJ.

Mr. Weinsheimer. I'm going to object. I think that is beyond the scope and talks about prosecutorial deliberations. Outside the scope.

BY MR. FLYNN-BROWN.

Q. So I'll say it this way, then. With respect to Richard Pilger and the public complaints that are attributed to him with respect to the Barr memo, were those complaints, those feelings, those concerns that Pilger had, did they permeate through the Public Integrity Unit, or were they specific to Mr. Pilger?

Mr. Weinsheimer. Again, same objection. I don't think it's within the scope of the opposition.

Mr. Flynn-Brown. I think it might be within the scope because the DOJ provided records relating to the questions that I am asking.

Mr. Weinsheimer. With respect to the communications between Corey Amundson and then Dave Bowdich and Mr. Donoghue. So those are what's within the scope.

6. Questioning by Majority Staff (Page 84)

[Concerning former ECB head Richard Pilger's reputation at DOJ]:

Q. And is it fair to say he is viewed as an expert on election crimes within the Department?

Mr. Weinsheimer. I think, once again, we're going outside the scope of the authorization. I'd object to further questions about Mr. Pilger.

Ms. Zdeb. Well, I'm sticking to the scope of the questions that my colleagues in the minority just asked. And I have a few -- I have a few questions pertaining to questions to which you did not object.

Mr. Weinsheimer. That one, I don't think is within the scope in terms of whether or not he's an expert.

II. Rosen Interview

7. Questioning by Minority Staff (Pages 123-124)

Q. So aside from the State Farm Arena allegations, are you aware of whether or not the Public Integrity Section and the Election Crimes Branch opened any election crime cases before the 2020 election was certified?

A. I think that I may need to refer you to the DOJ folks that are here as to the authorization for my appearance today was very explicit about the topics we've covered. It was a reservation of talking about individual cases that existed or are pending. I try to stay within the confines of the guidance, so I --

Q. Since DOJ is here, do you want to offer any comment on this issue? My questions are based on the documents that the Department provided.

Mr. Weinsheimer. Yeah, they offered -- they commented on many things. As the witness has indicated, he's limited with respect to the authorization. He can't talk about prosecutorial decisions in particular cases. He doesn't know anything about this particular case. He cannot talk about specific cases.

To the extent that there are allegations pursuant to the authorization that are actually from the White House, those are things that he's been authorized to talk about.

III. Pak Interview

8. Witness Testimony in Response to Questioning by Majority Staff (Pages 20-21)
[Pak is speaking and begins to say more than DOJ would like him to.]

With respect to the other type of investigations, there was nothing that kind of -- the FBI had taken steps to kind of verify few at that point, enough. I mean, there were allegations coming in. We were trying to make sure that we have resources and attention to particular types of complaints that were coming in. In particular, there were lots of threats being made to various people who were involved --

Mr. Weinsheimer. At this point, I'm concerned that Mr. Pak may be going beyond the scope. I don't think it's appropriate for him to talk about all of the investigations. The scope deals with the circumstances on which he left his position and pressure from the White House or Department leadership. So I just want to be careful that he doesn't go into other investigations that aren't within that scope.

9. Questioning by Minority Staff (Pages 41-42)

[Relating to reports that are transmitted to a DOJ reporting structure from U.S. Attorneys across the country to Main Justice]

Q. Okay. So can you say how many election-related reports regarding 2020 were sent up that reporting chain?

Mr. Weinsheimer. I would object to that question.

It's beyond the scope of the authorization.

Mr. Flynn-Brown. I think it's precisely in scope and a very critical question for him to answer.

Mr. Weinsheimer. The scope of the authorization deals with the circumstances on which he left and about pressure that was placed on him from the White House or the Department leadership offices to investigate specific instances of alleged voter fraud. This question goes beyond that scope.

10. Questioning by Minority Staff (Pages 45-46)

Q. Can you give us a description of the examples -- some description of the examples of the types of voter fraud and election crime allegations that you received relating to the 2020 election?

Mr. Weinsheimer. I would object to that question as beyond the scope of the authorization.

11. Questioning by Minority Staff (Page 52)

[Regarding the identity of the "Crim chief" in Pak's office]

Q. And when you say crim chief, who is the crim chief? Is that a crim chief for you or is that a crim chief back in Washington, D.C.?

A. Crim chief in my office.

Q. And who was that?
Mr. Weinsheimer. I would object to identifying who the individuals are. I didn't object to the DEO because that's something that was public. But to the extent that this is nonpublic information, I would object to it.

12. Questioning by Minority Staff (Pages 53-54)

[Regarding election related matters sent to Pak]

Q. And how many items were elevated to you as part of regular reporting for 2020?
Mr. Weinsheimer. I would object as beyond the scope of the authorization.
Mr. Flynn-Brown. I think Congress would like to know the answer.
Mr. Weinsheimer. It's beyond the scope of the authorization.
Mr. Flynn-Brown. For the record, I disagree.

13-15. Questioning by Minority Staff (Page 60)

Q. Aside from the State Farm Arena allegations, sir, did your office open any election related cases before the 2020 election was certified?

Mr. Weinsheimer. I would object to that question. It's overly broad and, on that basis, outside the scope of authorization.

BY MR. FLYNN-BROWN:

Q. Did your office open any voter fraud or election crime related allegations with respect to the 2020 election before the election was certified?

Mr. Weinsheimer. Same objection.

BY MR. FLYNN-BROWN:

Q. Did your office open any voter fraud or election crime related cases for the 2020 election after the election was certified?

Mr. Weinsheimer. It's the same objection.

In conclusion, DOJ's conduct speaks for itself and its lack of transparency has, yet again, frustrated legitimate congressional oversight relating to questions that Congress and the American people have a right to know the answers to. Moreover, DOJ's repeated objections to valid questions could cause the public to further doubt what steps it took, or did not take, to review election allegations – matters that could have been put to rest absent DOJ's objections.

VIII. THE WHITE HOUSE CHIEF OF STAFF IS THE RIGHT HAND OF THE PRESIDENT, AND WHEN SPEAKING TO FEDERAL AGENCIES IN HIS OFFICIAL CAPACITY IT IS COMMONLY UNDERSTOOD, HE IS SPEAKING FOR THE PRESIDENT.

During questioning, the majority implied that Mark Meadows, as Chief of Staff to the President, stepped beyond his bounds by speaking with DOJ leadership.[208] While the job description of a Chief of Staff is not codified in law and varies from administration to administration, the long established norms and customs dictate that the duties of a White House

[208] Richard Donoghue Testimony at 134.

Chief of Staff can be broken down into four roles, administrator, guardian, advisor, and proxy.[209] Specifically, they oversee the daily operation of the Executive Office of the President, supervise the entire White House staff, serve as both personal advisor and gatekeeper to the President, and act as a proxy for the President.[210] Further evidence of the Chief of Staff's critical role is highlighted by the fact that their office is historically positioned closer to the Oval Office than the Vice President's office, and unlike most White House personnel, the Chief of Staff receives twenty-four hour Secret Service protection. In effect, the Chief of Staff is the right hand of the president.

On January 27, 2017, the Trump Administration supplied guidance to all White House staff in the form of a memorandum which provided that the President, Vice President, White House Counsel, and Deputy White House Counsel could communicate with similarly designated officials at DOJ about specific investigations or cases.[211] Furthermore, this guidance specified that all such communications should be routed through the Attorney General, Deputy Attorney General, Associate Attorney General, or Solicitor General. The purpose of this guidance is to limit who can speak with DOJ about particular cases or investigations. During the course of this inquiry, Democrats have incorrectly argued that Mark Meadows ran afoul of this memorandum with respect to him emailing the acting Attorney General about election-related allegations of criminal wrongdoing.[212]

The President of the United States has a constitutional duty to "take care that all laws are faithfully executed."[213] This requires the President to oversee the activities of the DOJ, to set policy, and in some instances discuss specific investigations or cases. This requirement has been fulfilled by Republican and Democratic administrations. For example, former FBI Director Comey testified to the Senate Judiciary Committee on September 30, 2020, that he provided information with respect to Crossfire Hurricane to President Obama in the summer of 2016.[214] In addition, on January 5, 2017, President Obama met with Comey, Vice President Biden, Acting Attorney General Sally Yates, and National Security Advisor Susan Rice regarding aspects of Crossfire Hurricane, including plans to withhold from the Trump transition team with respect to Lt. Gen. Michael Flynn.[215] Moreover, during Pak's interview, he was presented with a press release from the Biden administration which noted that President Biden provided "policy

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[209] David B. Cohen, Karen M. Holt, & Charles E. Walcott, *The White House Chief of Staff (COS)—A Job First Appearing Under Dwight Eisenhower—is a Critical Position That Can Shape the Overall Success or Failure of a Presidency*, THE CHIEF OF STAFF (June 5, 2021), https://www.csa.org/journal/chief-of-staff/.
[210] *Id*.
[211] Memorandum from Donald F. McGahn II, Counsel to the President, to all White House Staff (Jan. 27, 2017), https://www.justsecurity.org/wp-content/uploads/2021/07/don-mcgahn-white-house-contacts-memo-janury-27-2017.pdf.
[212] Veronica Stracqualursi, et al., *Trump's Chief of Staff Mark Meadows Pushed DOJ to Investigate Baseless Election Fraud Claims*, CNN POLITICS (June 5, 2021), https://www.cnn.com/2021/06/05/politics/mark-meadows-doj-2020-election-fraud/index.html (quoting Dick Durbin, "[This] new evidence underscores the depths of the White House's efforts to co-opt the department and influence the electoral vote certification. This is a five alarm fire for our democracy.").
[213] U.S. Const. art. II § 3, https://constitution.congress.gov/browse/essay/artII_S3_1_3_1/ (stating, "[The President] shall . . . take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States").
[214] Oversight of the Crossfire Hurricane Investigation: Day 3 Before the S. Comm. on the Judiciary, 116th Cong. (Sept. 30, 2020), https://www.judiciary.senate.gov/meetings/oversight-of-the-crossfire-hurricane-investigation-day-3.
[215] Press Release, U.S. Senator Chuck Grassley, Grassley On Lt. Gen. Michael Flynn And The Russia Investigation (May 11, 2021), https://www.grassley.senate.gov/news/news-releases/grassley-lt-gen-michael-flynn-and-russia-investigation.

direction" to the Justice Department with respect to prohibiting the issuance of subpoenas for reporter information in leak investigations. Committee staff referenced the fact that this was an example of President Biden reaching down into the Justice Department to set policy and subsequently asked if President Trump had the same authority and duty with respect to election policy, to which Mr. Pak answered in the affirmative[216]:

14 Q. Fair enough. So my question to you, then, sir,
15 is would you agree that any President of the United States
16 has a similar authority to ensure the Department and its
17 components have the right policy with respect to
18 investigating and reviewing voter fraud and election crime
19 allegations?
20 A. I would agree that the President has that duty.

As the president's right hand, to fulfill this constitutional duty, the president and Chief of Staff must be able to communicate with officials within government agencies. Every recent administration has put in place policies for how communications regarding specific investigations with DOJ shall occur.[217] These policies exist to ensure that DOJ can exercise its investigatory and prosecutorial functions free from political interference or the appearance thereof. More importantly, these policies are not law but mere workplace guidance issued in the form of a memorandum. After the 2020 elections, the President and his Chief of Staff flagged election-related allegations to DOJ officials in an effort to verify or refute them. These communications were consistent with White House policy at the time, and with the President's Constitutional duty to oversee the executive branch.

In particular, Donoghue testified that he didn't think it was "all that unusual to have the Chief of Staff communicating to someone who, in effect, is a cabinet member at that point" in reference to Rosen.[218] In addition, Donoghue testified that Meadows was deferential to DOJ after he sent emails of voter fraud allegations.[219] Rosen, Donoghue and Pak also testified that any president has the constitutional responsibility to ensure that the Justice Department and its components are working properly on behalf of the American people.[220] As the president's right hand, it's not unreasonable for the Chief of Staff to do the same.

According to the memorandum, the only individuals who should communicate with DOJ regarding specific investigations and cases are the President, Vice President, Counsel to the

[216] BJay Pak Testimony at 115-16.
[217] Memorandum from Donald F. McGahn II, Counsel to the President, to all White House Staff (Jan. 27, 2017), https://www.justsecurity.org/wp-content/uploads/2021/07/don-mcgahn-white-house-contacts-memo-janury-27-2017.pdf.
[218] Richard Donoghue Testimony at 134.
[219] *Id*. at 126.
[220] Jeffrey Rosen Testimony at 62; Richard Donoghue Testimony at 59; BJay Pak Testimony at 46.

President, and Deputy Counsel to the President. This is not an all-inclusive list and the memorandum further states that "these individuals may designate subordinates to engage in ongoing contacts about a particular matter with counterparts at DOJ similarly designated by DOJ."[221] That the memorandum omits mentioning the Chief of Staff specifically is therefore a red herring, because as the most senior advisor to the President, principal subordinate and proxy, gatekeeper of information to the President, and overseer of all other White House personnel (including the White House Counsel), it is obvious that they speak for the president when communicating with other agencies.[222]

According to the Clinton Administration, the Chief of Staff "is responsible for directing, managing and overseeing **all** policy development, daily operations, and staff activities for the President."[223] According to CNN, the White House Chief of Staff is the "single most important personnel decision a newly elected President makes."[224] While speaking to the Harvard Kennedy School of Politics, Dennis McDonough, Chief of Staff for former President Obama, stated that the Chief of Staff calls the plays and "when you call the play everyone has to run the play including the President."[225] Multiple media outlets reported that former Chief of Staff, John Kelly, called Secretary of State Rex Tillerson and told him he was getting fired.[226] So, it's not uncommon for the Chief of Staff to communicate with a Cabinet Secretary on behalf of the President.

The Chief of Staff's standing as the right hand of the President is also a well-known custom among federal agencies.[227] For example, DOJ also promulgates its own policies regarding agency communications with the White House.[228] The policies in effect during the Trump administration were promulgated during the Obama Administration and were in effect until they were altered under Attorney General Garland on July 21, 2021.[229] Similarly, DOJ's

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[221] Memorandum from Donald F. McGahn II, Counsel to the President, to all White House Staff (Jan. 27, 2017), https://www.justsecurity.org/wp-content/uploads/2021/07/don-mcgahn-white-house-contacts-memo-janury-27-2017.pdf.

[222] Ray Uyeda, *The Chief of Staff is Sneaky Powerful. Here's What They Actually Do*, MIC (Nov. 17, 2020) https://www.mic.com/p/the-chief-of-staff-is-sneaky-powerful-heres-what-they-actually-do-43267915; *see also* Asawin Suebsaeng, *John Kelly: Rex Tillerson Was on the Toilet When I Told Him He'd Be Getting Fired*, DAILY BEAST (Mar. 16, 2018), https://www.thedailybeast.com/john-kelly-rex-tillerson-was-on-the-toilet-when-i-told-him-hed-be-getting-fired?source=TDB&via=FB_Page.

[223] *White House Internship Program*, FIRST GOV, https://clintonwhitehouse4.archives.gov/internship/dept.html (last visited Aug. 28, 2021) (emphasis added); Ray Uyeda, *The Chief of Staff is Sneaky Powerful. Here's What They Actually Do*, MIC (Nov. 17, 2021), https://www.mic.com/p/the-chief-of-staff-is-sneaky-powerful-heres-what-they-actually-do-43267915.

[224] Chris Cillizza, *What Joe Biden's Choice for Chief of Staff Says About His Plans for the Presidency*, CNN POLITICS (Nov. 12, 2020), https://www.cnn.com/2020/11/12/politics/ron-klain-joe-biden-2020-biden-chief-of-staff/index.html.

[225] Harvard Kennedy School's Institute of Politics, *Gatekeepers: White House Chiefs of Staff*, YouTube (Sep. 12, 2017), at 22:46, https://www.youtube.com/watch?app=desktop&v=E6mAG7oRdnk.

[226] Asawin Suebsaeng, *John Kelly: Rex Tillerson Was on the Toilet When I Told Him He'd Be Getting Fired*, DAILY BEAST (Mar. 16, 2018), https://www.thedailybeast.com/john-kelly-rex-tillerson-was-on-the-toilet-when-i-told-him-hed-be-getting-fired?source=TDB&via=FB_Page.

[227] David B. Cohen, Karen M. Holt, & Charles E. Walcott, *The White House Chief of Staff (COS)—a Job First Appearing Under Dwight Eisenhower—is a Critical Position That Can Shape the Overall Success or Failure of a Presidency*, THE CHIEF OF STAFF (June 5, 2021), https://www.csa.org/journal/chief-of-staff/.

[228] Memorandum from Eric H. Holder Jr., Att'y Gen. on Communications with the White House and Congress (May 11, 2009) (on file with author).

[229] Memorandum from Merrick B. Garland, Att'y Grn. on Dep't of Justice Communications with the White House (July 21, 2021), https://www.justice.gov/ag/page/file/1413766/download.

policies did not mention communications with the White House via the Chief of Staff; however, at no time during the interactions in this investigation did any DOJ official raise any concerns that they were not permitted to speak to the White House Chief of Staff. Indeed, Rosen called Meadows on January 3, 2021, to schedule a meeting with President Trump. As noted, when asked by Democrats if it was inconsistent with White House policy for the Chief of Staff to be having these conversations with DOJ, Donoghue testified "I don't think it's all that unusual to have the Chief of Staff communicating to someone who, in effect, is a cabinet member at this point."[230]

For these reasons, it was not inconsistent with White House policy for the White House Chief of Staff, Mark Meadows, to reach out to DOJ on behalf of the President to flag election-related allegations. At the time, the President was concerned with allegations of voter fraud and he had communicated these concerns with the DOJ as part of the President's ongoing efforts to ensure that these allegations were known and investigated. As the President's principal subordinate and chief adviser, the Chief of Staff is well within his authority to reach out to DOJ to convey the President's ongoing concerns with the integrity of our election. To suggest that the Chief of Staff would have to go through one of his subordinates – such as White House Counsel – in order to speak to an agency head shows a lack of understanding for the chain of command and how the White House historically functions.

IX. DEMOCRATIC MEMBERS LEAKED DETAILS OF THE INVESTIGATION BEFORE ANY INTERVIEWS HAD BEEN HELD AND MISCONSTRUED WITNESS TESTIMONY TO SUPPORT A MISINFORMATION CAMPAIGN.

Through their investigation, Committee Democrats sought to collect evidence to support their narrative that during his final days in office, President Trump attempted to "weaponize DOJ" in order to subvert the results of the 2020 election.[231] As the Committee began gathering evidence and testimony in response to Committee Democrats' requests, it became increasingly clear that the evidence contradicted the Democrats' narrative.

Instead of waiting until all of the facts were in, Committee Democrats went into offense mode. They began leaking records and other details of the investigation to the press prematurely and misconstruing witness testimony in order to feed selected media talking points and keep their narrative alive. In doing so, they continually tried to fit a "square peg into a round hole."[232]

For example, before the Committee held even a single interview, the *New York Times* was given access to portions of e-mails that, according to the newspaper, were discovered as part

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[230] Richard Donoghue Testimony at 134.
[231] Senator Dick Durbin (@SenatorDurbin), Twitter (June 5, 2021 12:13 PM), https://twitter.com/SenatorDurbin/status/1401210633123680260.
[232] Prepared Floor Remarks, Sen. Charles E. Grassley, *On the Democrats' Slanted Public Comments about Their Trump Investigation* (Aug. 9, 2021, 12:13PM), https://www.grassley.senate.gov/news/remarks/grassley-on-the-democrats-slanted-public-comments-about-their-trump-investigation.

of the Senate Judiciary Committee's investigation.[233] And, as noted in the Introduction, Chairman Durbin retweeted a link to the Judiciary Committee's post about the *New York Times* article and stated, conclusively, what his investigation had "found."[234] Senator Grassley's office did not provide the e-mails to the *New York Times*.

The June 5 article was characterized by the same politically slanted reporting style as the January 22 article. It stated that White House Chief of Staff Mark Meadows "repeatedly pushed the Justice Department to investigate unfounded conspiracy theories about the 2020 presidential election".[235] Specifically, it stated that:

> In five emails sent during the last week of December and early January, Mr. Meadows asked Jeffrey A. Rosen, then the acting attorney general, to examine debunked claims of election fraud in New Mexico and an array of baseless conspiracies that held Mr. Trump had been the actual victor. That included a fantastical theory that people in Italy had used military technology and satellites to remotely tamper with voting machines in the United States and switch votes for Mr. Trump to votes for Joseph R. Biden Jr.[236]

According to the article, these communications from Meadows showed "the increasingly urgent efforts by Mr. Trump and his allies during his last days in office to find some way to undermine, or even nullify, the election results while he still had control of the government."[237] The article further asserted that "the newly unearthed messages show how Mr. Meadows's private efforts veered into the realm of the outlandish, and sought official validation for misinformation that was circulating rampantly among Mr. Trump's supporters."[238] The article characterized Meadows' outreach as "audacious in part because it violated longstanding guidelines that essentially forbid almost all White House personnel, including the chief of staff, from contacting the Justice Department about investigations or other enforcement actions."[239]

On the same day that the June 5 *New York Times* article was published, the Senate Judiciary Committee's Democrat Twitter account posted a link to the article along with the caption: "BREAKING NEWS: Documents uncovered by the Senate Judiciary Committee and Chair @SenatorDurbin reveal that Mark Meadows pressured DOJ to investigate unfounded conspiracy theories about the 2020 presidential election in an attempt to nullify the results."[240]

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[233] Katie Benner, *Meadows Pressed Justice Dept. to Investigate Election Fraud Claims*, THE NEW YORK TIMES (June 5, 2021), https://www.nytimes.com/2021/06/05/us/politics/mark-meadows-justice-department-election.html. [Hereinafter June 5 New York Times Article].
[234] Senator Dick Durbin (SenatorDurbin), United States Senator, Twitter (June 5, 2021, 12:13 P.M.), https://twitter.com/SenatorDurbin/status/1401210633123680260.
[235] June 5 New York Times Article.
[236] *Id.*
[237] *Id.*
[238] *Id.*
[239] *Id.*
[240] Senate Judiciary Committee (@JudiciaryDems), Twitter (June 5, 2021, 12:11 P.M.), https://twitter.com/JudiciaryDems/status/1401210061301633026.

Chairman Durbin also tweeted a link to the article from his personal Senate office's Twitter account, along with the message:

> What my office found in our investigation is a five alarm fire for democracy, underscoring the depths of the White House's efforts to influence the electoral vote certification. I will demand all evidence of Trump's efforts to weaponize DOJ in his election subversion scheme.[241]

The totality of evidence and testimony gathered by the Committee concerning Meadows's e-mails does not support the claims that Committee Democrats and the *New York Times* made during their June 5 media blitz. The evidence shows that, far from being audacious, a "five alarm fire for democracy," or part of some effort to "nullify the results" of the election, Meadows' e-mails were an extension of President Trump's policy directions to DOJ, which were consistent with President Trump's constitutional authority to ensure DOJ was aware of allegations of election fraud and was taking proper steps to investigate legitimate allegations. Some of the most relevant information related to Meadows's e-mails was provided during testimony given *after June 5* by Rosen and Donoghue, which serves as an important reminder why it is necessary to wait until all of the facts are in before drawing conclusions during an investigation.

Concerning Meadows's e-mails to DOJ, Donoghue testified: "I think he was just trying to pass along whatever ended up on his desk, frankly. I think he was probably getting a lot of these reports as well, and my impression was he wanted to be able to say 'I passed it along to the Department.'"[242] Donoghue also agreed that Meadows was being "fairly deferential to DOJ" in that he was forwarding things and deferring to the Department's judgement and expertise after sending the information.[243] It is now clear that Meadows's approach of forwarding election fraud allegations that came across his desk to DOJ for evaluation and follow-up was consistent with his role as a proxy for President Trump as well as the policy direction President Trump set for DOJ. According to Rosen, President Trump consistently stressed to him, in his capacity as Acting Attorney General, that DOJ needed to do more to respond to election fraud allegations, which was predicated on the President's concern that DOJ was not doing a good enough job.[244]

Witness testimony reinforces the fact that President Trump had every right to chart such a policy direction for DOJ. In fact, Pak testified that President Trump had a *duty* to ensure that DOJ and its components have the right policy with respect to investigating and reviewing voter fraud and election crime allegations.[245] Donoghue testified that it wasn't unreasonable for the President to question what the DOJ and its components were doing to investigate legitimate complaints and reports of crimes.[246] Pak and Donoghue also both testified that they felt the Public Integrity Unit of the DOJ was too passive with respect to investigating election related

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[241] Senator Dick Durbin (@SenatorDurbin), United States Senator, Twitter (June 5, 2021, 12:13 P.M.), https://twitter.com/SenatorDurbin/status/1401210633123680260.
[242] Richard Donoghue Testimony at 111-12.
[243] *Id*. at 126.
[244] Jeffrey Rosen Testimony at 60, 64.
[245] BJay Pak Testimony at 116.
[246] Richard Donoghue Testimony at 59.

allegations, which further supports the concerns President Trump expressed to his advisors that not enough was being done.[247]

During his interview with the Committee, Donoghue was also questioned at length about the substance of the emails that Meadows sent. When asked whether Meadows asked he and Rosen to look into allegations involving Italy, Donoghue stated, "I don't specifically recall [Meadows] asking me or anyone else to do something specific. I don't think he asked me to run the guy's name. That was, I'm pretty sure, from the Acting Attorney General who said, 'Just check this guy out. See what we know about him.'"[248] Donoghue also testified that while an allegation related to Italy, "seemed pretty farfetched on its face…we have to take each of these individually and try to figure out what there is to support or refute it. And so I asked the FBI to look into it."[249]

During his interview, Rosen was also asked about an e-mail that Meadows forwarded with a request that DOJ look into "allegations of wrongdoing" related to Georgia.[250] Rosen testified that the allegations "had already been the subject of some review."[251] Regarding an e-mail exchange where Meadows asked Rosen to forward allegations to his team relating to ballot security issues in New Mexico, Rosen stated that some of the information was "not our issue" and other parts "had been considered, assessed, addressed previously" and the e-mail "was not one that raised new information that needed to be processed in a substantive way."[252]

Based on all of the evidence collected by the Committee, then, Meadows's e-mails to DOJ were benign in both substance and effect. They fail to live up to the sensational characterizations that the *The New York Times* and Committee Democrats made through their collaborative reporting and media statements on June 5.

Once the Committee began holding interviews, Democrat members of the Committee engaged in additional, selective leaks to the media, mischaracterizing statements from witness testimony in an attempt to shore up their narrative, even though it became increasingly clear over time that their narrative ran counter to the facts and evidence.

For example, immediately following a transcribed interview of former Acting Attorney General Jeffrey Rosen, Senator Blumenthal reportedly stated, "there is a real potential for criminal charges here."[253] During an interview on MSNBC following the interview, Blumenthal stated, in part:

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[247] *Id*. at 167; BJay Pak Testimony at 57.
[248] Richard Donoghue Testimony at 111.
[249] *Id*. at 112.
[250] Jeffrey Rosen Testimony at 133.
[251] *Id*. at 133-34.
[252] *Id*. at 135.
[253] *Transcript: The Rachel Maddow Show*, MSNBC (Aug. 9, 2021), https://www.msnbc.com/transcripts/transcript-rachel-maddow-show-8-9-21-n1276402; *Blumenthal: There's a real potential here for criminal charges*, Yahoo (Aug. 8, 2021), https://www.yahoo.com/now/blumenthal-theres-real-potential-criminal-193946902.html.

> I was struck by how close this nation came to catastrophe…. Let me be very blunt. The President of the United States, then Donald Trump, mounted a pressure campaign that was absolutely relentless, brutal, personally involved, directly aimed at the Department of Justice seeking to break it and weaponize it to overthrow the election. He sought, in effect, to engineer the Department of Justice taking his side in calling the election corrupt and overthrowing it, and he was relentless in seeking that goal, and so, only the Department of Justice refusing to break, standing up to him, was the means to avoid that kind of catastrophe.[254]

While these characterizations are faithful to the narrative Democrats have sought to prove since the outset of their investigation, they are inconsistent with the testimony Rosen actually gave during his interview, as well as with testimony Donoghue provided during an earlier interview with the Committee that Blumenthal also attended. Neither of those witnesses – nor any other – in association with this investigation has ever remotely suggested that any criminal act occurred. In fact, Donoghue was directly asked whether President Trump gave him or Rosen instructions to engage in illegal activity based on advice they rendered at the January 3, 2021 meeting, to which Donoghue answered that the President did not.[255]

Rosen and Donoghue testified that President Trump was persistent in raising concerns that DOJ was not doing enough to respond to allegations of election fraud.[256] They also testified that President Trump listened to and accepted the advice given to him by his advisors that DOJ could not file a draft complaint with the Supreme Court, Rosen should not be replaced by Jeff Clark, and DOJ could not send Jeff Clark's draft letter.[257] As Donoghue also confirmed, President Trump made it clear that he did not expect DOJ to change the outcome of the election.[258] President Trump repeatedly urged his advisors to investigate allegations of election fraud and election irregularities and did so wanting to know one way or the other if they had merit.[259]

Chairman Durbin also weighed in during an interview on CNN. During the interview, Durbin stated that "what was going on in the Department of Justice was frightening from a constitutional point of view."[260] He described Rosen as being under "extraordinary pressure" and characterized Jeff Clark as being the "heir apparent in Trump's mind if Rosen was not going to do his bidding," leaving out the fact that Trump had also considered Donoghue as Barr's replacement.[261]

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[254] *Blumenthal: There's a real potential here for criminal charges*, MSNBC (Aug. 8, 2021), https://www.msnbc.com/weekends-with-alex-witt/watch/blumenthal-i-was-there-for-all-7-hours-i-was-struck-by-how-close-this-nation-was-to-catastrophe-118148677730.
[255] Richard Donoghue Testimony at 50.
[256] *Id.* at 43-44; Jeffrey Rosen Testimony at 34-35, 60, 64, 72.
[257] Richard Donoghue Testimony at 171; Jeffrey Rosen Testimony at 53, 117-18.
[258] Richard Donoghue Testimony at 62.
[259] *Id.* at 43-44; Jeffrey Rosen Testimony at 34-35, 60, 64, 72.
[260] *Sen. Durbin on Trump's 'frightening' push to involve DOJ in election lies*, CNN (Aug. 8, 2021), https://www.cnn.com/videos/politics/2021/08/08/sotu-durbin-full-interview.cnn.
[261] *Id.*

The facts tell a different story. During his interview, Donoghue testified that President Trump had no impact on the Justice Department's investigative actions with respect to the 2020 election.[262] Also, Rosen testified that President Trump repeatedly accepted his recommendations concerning actions that DOJ would and would not take with respect to its handling of election fraud allegations.[263] According to both Rosen and Donoghue, at the January 3, 2021, meeting in the Oval Office, President Trump rejected replacing Rosen with Clark.[264]

The mischaracterizations did not end there. Following Pak's confidential interview on August 11, 2021, mischaracterizations of Pak's testimony were published in *The New York Times* in an article that same day.[265] According to the *New York Times,*

> Byung J. Pak, a former U.S. attorney in Atlanta, told congressional investigators on Wednesday that his abrupt resignation in January had been prompted by Justice Department officials' warning that President Donald J. Trump intended to fire him for refusing to say that widespread voter fraud had been found in Georgia, according to a person familiar with his testimony.[266]

This contradicts testimony that Pak provided to the Committee. According to Pak, Donoghue relayed to him that "the President was very unhappy" and wanted to fire him primarily because he believed that Pak was a "Never Trumper."[267] Donoghue gave similar testimony, and noted that during the January 3 meeting in the Oval Office, President Trump referenced negative remarks Pak had reportedly made about Trump in the past.[268] Based on all of the testimony received, it is clear that President Trump's main concerns with Pak stemmed from that belief.

Congressional oversight can and must remain nonpartisan, and we must remain zealous in our pursuit of truth rather than perpetuating false narratives for political purposes. Efforts such as selective leaks or misquoting testimony serve political purposes and give no credence to actual, legitimate congressional oversight.

X. CONCLUSION

Incorporating by reference the preceding sections, the available facts and evidence show that President Trump listened to his senior DOJ and White House advisors at every step of the fact pattern presented by this investigation and that he did not weaponize DOJ for his personal or campaign purposes. The records acquired by the Committee show that the President's concerns centered on what he perceived as an attack on the electoral system and his firm belief that the American people had been wronged by election fraud that undermined the sanctity of the 2020 election.[269] With these concerns in hand, President Trump's approach to DOJ was to ensure that

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[262] Richard Donoghue Testimony at 127.
[263] Jeffrey Rosen Testimony at 53, 117-18.
[264] Richard Donoghue Testimony at 48, 171; Jeffrey Rosen Testimony at 53.
[265] Katie Benner, *Former U.S. attorney in Atlanta says Trump wanted to fire him for not backing election fraud claims*, THE NEW YORK TIMES (Aug. 11, 2021), https://www.nytimes.com/2021/08/11/us/politics/byung-pak-trump-atlanta-election-fraud.html.
[266] *Id.*
[267] BJay Pak Testimony at 95.
[268] Richard Donoghue Testimony at 160-61.
[269] *See* Section IV.

it was aware of election fraud allegations and that, with knowledge of those allegations, they were actually doing their job to investigate them.[270] Indeed, with respect to some of the most consequential decisions which took place on January 3, 2021, President Trump twice rejected Clark's idea to send his letter to the individual states and twice rejected the notion of terminating Rosen as Acting Attorney General.[271] Moreover, as the testimony illustrates, President Trump did not fire any DOJ or FBI employee relating to his belief that more should've been done to investigate election fraud allegations, further undermining public claims that the President pressured DOJ to take action on his behalf.[272]

The available facts and evidence also illustrate that President Trump's focus was on "legitimate complaints" and "reports of crimes."[273] President Trump was inundated with information about election fraud allegations and witnesses testified that they believe he was wrongly informed by some people within his circle. However, when presented with the opportunity to order DOJ to take certain actions that would have been against the advice and recommendations of his senior counsel, such as terminating Rosen and sending Clark's letter, the President did not take those actions. As another example, when presented with the opportunity to order DOJ to file a lawsuit against states with reported voter irregularities, the President accepted the advice and recommendations of Rosen to not do so and did not challenge Rosen on his position.[274]

Accordingly, President Trump made four critical decisions that cut against the Democratic narrative: (1) he rejected Clark's draft letter; (2) he rejected the notion of terminating Rosen; (3) he did not fire anyone at DOJ or FBI relating to his concerns that more wasn't being done to investigate election allegations; (4) he did not order DOJ to file the draft complaint.

As such, with respect to whether or not President Trump had any impact on DOJ's election activities, Donoghue testified that he did not.[275] Indeed, with respect to claims that President Trump wanted DOJ to overturn the election, the investigative record shows that President Trump actually said on a phone call with Rosen and Donoghue that he "did not expect the DOJ" to do that.[276] Donoghue also testified that it wasn't unreasonable for the President to question what DOJ was doing to investigate election allegations; Pak testified to the same.[277] Rosen testified that the actions DOJ took to investigate were reasonable and that the President – any president – has a responsibility to ensure the Departments and agencies under his control are working on behalf of the American people.[278]

Indeed, when Pak was presented with evidence that President Biden reached down into DOJ to set policy with respect to prohibiting it from issuing subpoenas for reporter information in criminal leak investigations, Pak was asked if President Trump had the same authority with

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[270] *See* Sections IV and V.
[271] *See* Section III.
[272] *See* Section III.
[273] BJay Pak Testimony at 46.
[274] Jeffrey Rosen Testimony at 117-18.
[275] *See* Section IV.
[276] *See* Section V.
[277] *See* Section V.
[278] *See* Section IV.

respect to DOJ's election policy. Pak answered that President Trump did in fact have that similar duty.[279]

This investigation has also shown that President Trump's distrust of DOJ and FBI most likely contributed to his concerns that DOJ was not doing enough to investigate matters. Indeed, President Trump was correct to be concerned in light of the testimony and documentary evidence that the Public Integrity Section and Election Crimes Branch were passive in their approach to investigating election allegations and that Pak's people were "dragging their feet" in investigating matters.[280] Notably, when Committee staff attempted to learn more about the types of cases and number of matters investigated relating to the 2020 election, DOJ counsel repeatedly objected to the witnesses answering, further frustrating congressional oversight and the American people's right to know what their government did – or did not do – during the 2020 election.[281]

Based on the available facts and evidence, at every major decision point with respect to the scope of this investigation, the President met and listened to his most senior advisors and when they rendered the advice and recommendations that their job requires of them, President Trump followed their advice and recommendations.

[279] *See* Section IV.
[280] *See* Section VI.
[281] *See* Section VII.

EXHIBIT A

This letter was opposed by A/AG + OLC.

Donoghue, Richard (ODAG)

Discussed w/ POTUS on January 3, 2021, and he rejected AAG Clark's idea to send it.

From: Donoghue, Richard (ODAG)
Sent: Monday, December 28, 2020 5:50 PM
To: Clark, Jeffrey (ENRD)
Cc: Rosen, Jeffrey A. (ODAG)
Subject: RE: Two Urgent Action Items

Jeff,

I have only had a few moments to review the draft letter and, obviously, there is a lot raised there that would have to be thoroughly researched and discussed. That said, there is no chance that I would sign this letter or anything remotely like this.

While it may be true that the Department "is investigating various irregularities in the 2020 election for President" (something we typically would not state publicly), the investigations that I am aware of relate to suspicions of misconduct that are of such a small scale that they simply would not impact the outcome of the Presidential Election. AG Barr made that clear to the public only last week, and I am not aware of intervening developments that would change that conclusion. Thus, I know of nothing that would support the statement, "we have identified significant concerns that may have impacted the outcome of the election in multiple states." While we are always prepared to receive complaints and allegations relating to election fraud, and will investigate them as appropriate, we simply do not currently have a basis to make such a statement. Despite dramatic claims to the contrary, we have not seen the type of fraud that calls into question the reported (and certified) results of the election. Also the commitment that "the Department will update you as we are able on investigatory progress" is dubious as we do not typically update non-law enforcement personnel on the progress of any investigations.

More importantly, I do not think the Department's role should include making recommendations to a State legislature about how they should meet their Constitutional obligation to appoint Electors. Pursuant to the Electors Clause, the State of Georgia (and every other state) has prescribed the legal process through which they select their Electors. While those processes include the possibility that election results may "fail[ ] to make a choice", it is for the individual State to figure out how to address that situation should it arise. But as I note above, there is no reason to conclude that any State is currently in a situation in which their election has failed to produce a choice. As AG Barr indicated in his public comments, while I have no doubt that some fraud has occurred in this election, I have not seen evidence that would indicate that the election in any individual state was so defective as to render the results fundamentally unreliable. Given that, I cannot imagine a scenario in which the Department would recommend that a State assemble its legislature to determine whether already-certified election results should somehow be overridden by legislative action. Despite the references to the 1960 Hawaii situation (and other historical anomalies, such as the 1876 Election), I believe this would be utterly without precedent. Even if I am incorrect about that, this would be a grave step for the Department to take and it could have tremendous Constitutional, political and social ramifications for the country. I do not believe that we could even consider such a proposal without the type of research and discussion that such a momentous step warrants. Obviously, OLC would have to be involved in such discussions.

I am available to discuss this when you are available after 6:00 pm but, from where I stand, this is not even within the realm of possibility.

Rich

From: Clark, Jeffrey (ENRD) <JClark@ENRD.USDOJ.GOV>
Sent: Monday, December 28, 2020 4:40 PM

To: Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov>; Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
Subject: Two Urgent Action Items

Jeff and Rich:

(1) I would like to have your authorization to get a classified briefing tomorrow from ODNI led by DNI Radcliffe on foreign election interference issues. I can then assess how that relates to activating the IEEPA and 2018 EO powers on such matters (now twice renewed by the President). If you had not seen it, white hat hackers have evidence (in the public domain) that a Dominion machine accessed the Internet through a smart thermostat with a net connection trail leading back to China. ODNI may have additional classified evidence.

(2) Attached is a draft letter concerning the broader topic of election irregularities of any kind. The concept is to send it to the Governor, Speaker, and President pro temp of each relevant state to indicate that in light of time urgency and sworn evidence of election irregularities presented to courts and to legislative committees, the legislatures thereof should each assemble and make a decision about elector appointment in light of their deliberations. I set it up for signature by the three of us. I think we should get it out as soon as possible. Personally, I see no valid downsides to sending out the letter. I put it together quickly and would want to do a formal cite check before sending but I don't think we should let unnecessary moss grow on this

(As a small matter, I left open me signing as AAG Civil — after an order from Jeff as Acting AG designating me as actual AAG of Civil under the Ted Olson OLC opinion and thus freeing up the Acting AAG spot in ENRD for Jon Brightbill to assume. But that is a comparatively small matter. I wouldn't want to hold up the letter for that. But I continue to think there is no downside with as few as 23 days left in the President's term to give Jon and I that added boost in DOJ titles.)

I have a 5 pm internal call Non-Responsive . But I am free to talk on either or both of these subjects circa 6 pm+.

Or if you want to reach me after I reset work venue to home, my cell # is (b) (6) .

Jeff

Pre-Decisional & Deliberative/Attorney-Client or Legal Work Product
Georgia Proof of Concept

[LETTERHEAD]

Draft letter from Jeff Clark. Rejected by OAG ODAG, + OLC.

The Honorable Brian P. Kemp
Governor
111 State Capitol
Atlanta, Georgia 30334

The Honorable David Ralston
Speaker of the House
332 State Capitol
Atlanta, Georgia 30334

The Honorable Butch Miller
President *Pro Tempore* of the Senate
321 State Capitol
Atlanta, Georgia 30334

December 28, 2020

Dear Governor Kemp, Mr. Speaker, and Mr. President *Pro Tempore*:

The Department of Justice is investigating various irregularities in the 2020 election for President of the United States. The Department will update you as we are able on investigatory progress, but at this time we have identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia. No doubt, many of Georgia's state legislators are aware of irregularities, sworn to by a variety of witnesses, and we have taken notice of their complaints. *See, e.g.*, The Chairman's Report of the Election Law Study Subcommittee of the Standing Senate Judiciary Committee Summary of Testimony from December 3, 2020 Hearing, http://www.senatorligon.com/THE_FINAL%20REPORT.PDF (Dec. 17, 2020) (last visited Dec. 28, 2020); Debra, Heine, *Georgia State Senate Report: Election Results Are 'Untrustworthy;' Certification Should Be Rescinded*, THE TENNESSEE STAR (Dec. 22, 2020), *available at* https://tennesseestar.com/2020/12/22/georgia-state-senate-report-election-results-are-untrustworthy-certification-should-be-rescinded/ (last visited Dec. 28, 2020).

In light of these developments, the Department recommends that the Georgia General Assembly should convene in special session so that its legislators are in a position to take additional testimony, receive new evidence, and deliberate on the matter consistent with its duties under the U.S. Constitution. Time is of the essence, as the U.S. Constitution tasks Congress with convening in joint session to count Electoral College certificates, *see* U.S. Const., art. II, § 1, cl. 3, consider objections to any of those certificates, and decide between any competing slates of elector certificates, and 3 U.S.C. § 15 provides that this session shall begin on January 6, 2021, with the Vice President presiding over the session as President of the Senate.

The Constitution mandates that Congress must set the day for Electors to meet to cast their ballots, which Congress did in 3 U.S.C. § 7, and which for this election occurred on December 14, 2020. The Department believes that in Georgia and several other States, both a slate of electors supporting Joseph R. Biden, Jr., and a separate slate of electors supporting Donald J. Trump, gathered on that day at the proper location to cast their ballots, and that both sets of those ballots have been transmitted to Washington, D.C., to be opened by Vice President Pence. The Department is aware that a similar situation occurred in the 1960 election. There, Vice President Richard Nixon appeared to win the State of Hawaii on Election Day and Electors supporting Vice President Nixon cast their ballots on the day specified in 3 U.S.C. § 7, which were duly certified by the Governor of Hawaii. But Senator John F. Kennedy also claimed to win Hawaii, with his Electors likewise casting their ballots on the prescribed day, and that by January 6, 1961, it had been determined that Senator Kennedy was indeed the winner of Hawaii, so Congress accordingly accepted only the ballots cast for Senator Kennedy. *See* Jack M. Balkin, *Bush v. Gore and the Boundary Between Law and Politics*, 110 YALE L.J. 1407, 1421 n.55 (2001).

The Department also finds troubling the current posture of a pending lawsuit in Fulton County, Georgia, raising several of the voting irregularities pertaining to which candidate for President of the United States received the most lawfully cast votes in Georgia. *See Trump v. Raffensperger*, 2020cv343255 (Fulton Cty. Super. Ct.). Despite the action having been filed on December 4, 2020, the trial court there has not even scheduled a hearing on matter, making it difficult for the judicial process to consider this evidence and resolve these matters on appeal prior to January 6. Given the urgency of this serious matter, including the Fulton County litigation's sluggish pace, the Department believes that a special session of the Georgia General Assembly is warranted and is in the national interest.

The Electors Clause of the U.S. Constitution provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct," electors to cast ballots for President and Vice President. *See* U.S. Const., art. II, § 1, cl. 2. Many State Legislatures originally chose electors by direct appointment, but over time each State Legislature has chosen to do so by popular vote on the day appointed by Congress in 3 U.S.C. § 1 to be the Election Day for Members of Congress, which this year was November 3, 2020. However, Congress also explicitly recognizes the power that State Legislatures have to appoint electors, providing in 3 U.S.C. § 2 that "[w]henever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by [3 U.S.C. § 1], the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct."

The purpose of the special session the Department recommends would be for the General Assembly to (1) evaluate the irregularities in the 2020 election, including violations of Georgia election law judged against that body of law as it has been enacted by your State's Legislature, (2) determine whether those violations show which candidate for President won the most legal votes in the November 3 election, and (3) whether the election failed to make a proper and valid choice between the candidates, such that the General Assembly could take whatever action is necessary to ensure that one of the slates of Electors cast on December 14 will be accepted by Congress on January 6.

While the Department of Justice believes the Governor of Georgia should immediately call a special session to consider this important and urgent matter, if he declines to do so, we share with you our view that the Georgia General Assembly has implied authority under the Constitution of the United States to *call itself into special session* for the limited purpose of considering issues pertaining to the appointment of Presidential Electors. The Constitution specifies that Presidential Electors shall be appointed by the *Legislature* of each State. And the Framers clearly knew how to distinguish between a state legislature and a state executive, so their disparate choices to refer to one (legislatures), the other (executive), or both, must be respected.[1] Additionally,

[1] *See, e.g.*, U.S.C., art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of *the Legislature, or of the Executive* (when *the Legislature* cannot be convened) against domestic Violence.") (emphases added); *id.* art. VI ("The Senators and Representatives before mentioned, and the Members of the *several State Legislatures, and all executive and judicial Officers,* both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution ....") (emphasis added); *id.* XVII amend. ("When vacancies happen in the representation of any State in the Senate, *the executive authority of such State* shall issue writs of election to fill such vacancies: Provided, That *the legislature of any State* may empower

when the Constitution intends to refer to laws enacted by the Legislature and signed by the Governor, the Constitution refers to it simply as the "State." *See, e.g.*, U.S. Const., art. I, § 8 ("[Congress may] exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, *by Cession of particular States*, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of *the Legislature of the State* in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings") (emphasis added) (distinguishing between the "State," writ large, and the "Legislature of the State"). The Constitution also makes clear when powers are forbidden to any type of state actor. *See, e.g.*, U.S. Const., art. I, § 10, cl. 1 ("No State shall enter into any Treaty, Alliance, or Confederation ...."). Surely, this cannot mean that a State Governor could enter into such a Treaty but a State Legislature could not, or *vice versa*.

Clearly, however, some provisions refer explicitly to state legislatures — and there the Framers must be taken at their word. One such example is in Article V, which provides that a proposed Amendment to the Constitution is adopted "when ratified by the Legislatures of three fourths of the several States," which is done by joint resolution or concurrent resolution. Supreme Court precedent makes clear that the Governor has no role in that process, and that his signature or approval is not necessary for ratification. *See, e.g., Coleman v. Miller*, 307 U.S. 433 (1939). So too, Article II requires action only by the Legislature in appointing Electors, and Congress in 3 U.S.C. § 2 likewise recognizes this Constitutional principle.

The Supreme Court has explained that the Electors Clause "leaves it to the legislature exclusively to define the method" of appointing Electors, vesting the Legislature with "the broadest possible power of determination." *McPherson v. Blecker*, 146 U.S. 1, 27 (1892). This power is "placed absolutely and *wholly* with legislatures." *Id.* at 34-35 (emphasis added). In the most recent disputed Presidential election to reach the Supreme Court, the 2000 election, the Supreme Court went on to hold that when a State Legislature appoints Presidential Electors—which it can do either through statute or through direct action—the Legislature is not acting "solely under the authority given by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution." *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S.

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the executive thereof to make temporary appointments until the people fill the vacancies by election *as the legislature may direct*.") (emphases added).

70, 76 (2000). The State Legislature's authority to appoint Electors is "plenary." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam). And a State Legislature cannot lose that authority on account of enacting statutes to join the National Election. "Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power an any time, for it can neither be taken away nor abdicated." *McPherson*, 146 U.S. at 125.

The Georgia General Assembly accordingly must have inherent authority granted by the U.S. Constitution to come into session to appoint Electors, regardless of any purported limit imposed by the state constitution or state statute requiring the Governor's approval. The "powers actually granted [by the U.S. Constitution] must be such as are expressly given, or given by necessary implication." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 326 (1816). And the principle of necessary implication arises because our Constitution is not prolix and thus does not "provide for minute specification of its powers, or to declare the means by which those powers should be carried into execution." *Id.*. Otherwise, in a situation like this one, if a Governor were aware that the Legislature of his State was inclined to appoint Electors supporting a candidate for President that the Governor opposed, the Governor could thwart that appointment by refusing to call the Legislature into session before the next President had been duly elected. The Constitution does not empower other officials to supersede the state legislature in this fashion.

Therefore whether called into session by the Governor or by its own inherent authority, the Department of Justice urges the Georgia General Assembly to convene in special session to address this pressing matter of overriding national importance.

Sincerely,

Jeffrey A. Rosen Acting Attorney General	Richard Donoghue Acting Deputy Attorney General	Jeffrey Bossert Clark (Acting) Assistant Attorney General Civil Division

EXHIBIT B

No. , Original

In the Supreme Court of the United States

THE UNITED STATES OF AMERICA

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF STATE OF GEORGIA, STATE OF MICHIGAN, STATE OF WISCONSIN, STATE OF ARIZONA, AND STATE OF NEVADA

Defendants.

BILL OF COMPLAINT

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BILL OF COMPLAINT

Our Country is deeply divided in a manner not seen in well over a century. More than 77% of Republican voters believe that "widespread fraud" occurred in the 2020 general election while 97% of Democrats say there was not.[1] On December 7, 2020, the State of Texas filed an action with this Court, *Texas v. Pennsylvania, et al.*, alleging the same constitutional violations in connection with the 2020 general election pled herein. Within three days *eighteen* other states sought to intervene in that action or filed supporting briefs. On December 11, 2020, the Court summarily dismissed that action stating that Texas lacked standing under Article III of the Constitution. The United States therefore brings this action to ensure that the U.S. Constitution does not become simply a piece of parchment on display at the National Archives.

Two issues regarding this election are not in dispute. First, about eight months ago, a few non-legislative officials in the states of Georgia, Michigan, Wisconsin, Arizona, Nevada and the Commonwealth of Pennsylvania (collectively, "Defendant States") began using the COVID-19 pandemic as an excuse to unconstitutionally revise or violate their states' election laws. Their actions all had one effect: they uniformly weakened security measures put in place *by legislators* to protect the integrity of the vote. These

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[1]https://www.courant.com/politics/hc-pol-q-poll-republicans-believe-fraud-20201210-pcie3uqqvrhyvnt7geohhsyepe-story.html

changes squarely violated the Electors Clause of Article II, Section 1, Clause 2 vesting state legislatures with plenary authority to make election law. These same government officials then flooded the Defendant States with millions of ballots to be sent through the mails, or placed in drop boxes, with little or no chain of custody.[2] Second, the evidence of illegal or fraudulent votes, with outcome changing results, is clear—and growing daily.

Since *Marbury v. Madison* this Court has, on significant occasions, had to step into the breach in a time of tumult, declare what the law is, and right the ship. This is just such an occasion. In fact, it is situations precisely like the present—when the Constitution has been cast aside unchecked—that leads us to the current precipice. As one of the Country's Founding Fathers, John Adams, once said, "You will never know how much it has cost my generation to preserve your freedom. I hope you will make a good use of it." In times such as this, it is the duty of Court duty to act as a "faithful guardian[] of the Constitution." THE FEDERALIST NO. 78, at 470 (C. Rossiter, ed. 1961) (A. Hamilton).

Against that background, the United States of America brings this action against Defendant States based on the following allegations:

NATURE OF THE ACTION

1. The United States challenges Defendant States' administration of the 2020 election under the

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[2] https://georgiastarnews.com/2020/12/05/dekalb-county-cannot-find-chain-of-custody-records-for-absentee-ballots-deposited-in-drop-boxes-it-has-not-been-determined-if-responsive-records-to-your-request-exist/

Electors Clause of Article II, Section 1, Clause 2, and the Fourteenth Amendment of the U.S. Constitution.

2. This case presents a question of law: Did Defendant States violate the Electors Clause (or, in the alternative, the Fourteenth Amendment) by taking—or allowing—non-legislative actions to change the election rules that would govern the appointment of presidential electors?

3. Those unconstitutional changes opened the door to election irregularities in various forms. The United States alleges that each of the Defendant States flagrantly violated constitutional rules governing the appointment of presidential electors. In doing so, seeds of deep distrust have been sown across the country. In *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice Marshall described "the duty of the Judicial Department to say what the law is" because "every right, when withheld, must have a remedy, and every injury its proper redress."

4. In the spirit of *Marbury v. Madison*, this Court's attention is profoundly needed to declare what the law is and to restore public trust in this election.

5. As Justice Gorsuch observed recently, "Government is not free to disregard the [Constitution] in times of crisis. ... Yet recently, during the COVID pandemic, certain States seem to have ignored these long-settled principles." *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, 592 U.S. (2020) (Gorsuch, J., concurring). This case is no different.

6. Each of Defendant States acted in a common pattern. State officials, sometimes through pending litigation (*e.g.*, settling "friendly" suits) and sometimes unilaterally by executive fiat, announced

new rules for the conduct of the 2020 election that were inconsistent with existing state statutes defining what constitutes a lawful vote.

7. Defendant States also failed to segregate ballots in a manner that would permit accurate analysis to determine which ballots were cast in conformity with the legislatively set rules and which were not. This is especially true of the mail-in ballots in these States. By waiving, lowering, and otherwise failing to follow the state statutory requirements for signature validation and other processes for ballot security, the entire body of such ballots is now constitutionally suspect and may not be legitimately used to determine allocation of the Defendant States' presidential electors.

8. The rampant lawlessness arising out of Defendant States' unconstitutional acts is described in a number of currently pending lawsuits in Defendant States or in public view including:

- *Dozens of witnesses testifying under oath about*: the physical blocking and kicking out of Republican poll challengers; thousands of the same ballots run multiple times through tabulators; mysterious late night dumps of thousands of ballots at tabulation centers; illegally backdating thousands of ballots; signature verification procedures ignored;[3]
- *Videos of*: poll workers erupting in cheers as poll challengers are removed from vote counting centers; poll watchers being blocked from entering

[3]Complaint (Doc. No. 1), *Donald J. Trump for President, Inc. v. Benson*, 1:20-cv-1083 (W.D. Mich. Nov. 11, 2020) at ¶¶ 26-55 & Doc. Nos. 1-2, 1-4.

vote counting centers—despite even having a court order to enter; suitcases full of ballots being pulled out from underneath tables after poll watchers were told to leave.

- *Facts for which no independently verified reasonable explanation yet exists*: On October 1, 2020, in Pennsylvania a laptop and several USB drives, used to program Pennsylvania's Dominion voting machines, were mysteriously stolen from a warehouse in Philadelphia. The laptop and the USB drives were the *only* items taken, and potentially could be used to alter vote tallies; In Michigan, which also employed the same Dominion voting system, on November 4, 2020, Michigan election officials have admitted that a purported "glitch" caused 6,000 votes for President Trump to be wrongly switched to Democrat Candidate Biden. A flash drive containing tens of thousands of votes was left unattended in the Milwaukee tabulations center in the early morning hours of Nov. 4, 2020, without anyone aware it was not in a proper chain of custody.

9. Nor was this Court immune from the blatant disregard for the rule of law. Pennsylvania itself played fast and loose with its promise to this Court. In a classic bait and switch, Pennsylvania used guidance from its Secretary of State to argue that this Court should not expedite review because the State would segregate potentially unlawful ballots. A court of law would reasonably rely on such a representation. Remarkably, before the ink was dry on the Court's 4-4 decision, Pennsylvania changed that guidance, breaking the State's promise to this Court. *Compare Republican Party of Pa. v. Boockvar*, No. 20-542, 2020

U.S. LEXIS 5188, at *5-6 (Oct. 28, 2020) ("we have been informed by the Pennsylvania Attorney General that the Secretary of the Commonwealth issued guidance today directing county boards of elections to segregate [late-arriving] ballots") (Alito, J., concurring) *with Republican Party v. Boockvar*, No. 20A84, 2020 U.S. LEXIS 5345, at *1 (Nov. 6, 2020) ("this Court was not informed that the guidance issued on October 28, which had an important bearing on the question whether to order special treatment of the ballots in question, had been modified") (Alito, J., Circuit Justice).

10. Expert analysis using a commonly accepted statistical test further raises serious questions as to the integrity of this election.

11. The probability of former Vice President Biden winning the popular vote in four of the Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump's early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000. For former Vice President Biden to win these four States collectively, the odds of that event happening decrease to less than one in a quadrillion to the fourth power (*i.e.*, 1 in 1,000,000,000,000,000[4]). *See* Decl. of Charles J. Cicchetti, Ph.D. ("Cicchetti Decl.") at ¶¶ 14-21, 30-31. *See* App. a- a.[4]

12. Mr. Biden's *underperformance* in the Top-50 urban areas in the Country relative to former Secretary Clinton's performance in the 2016 election reinforces the unusual statistical improbability of Mr.

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[4] All exhibits cited in this Complaint are in the Appendix to the United States' forthcoming motion to expedite ("App. 1a ").

Biden's vote totals in the five urban areas in these four Defendant States, where he overperformed Secretary Clinton in all but one of the five urban areas. *See* Supp. Cicchetti Decl. at ¶¶ 4-12, 20-21. (App. a- a).

13. The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in these four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently exists when Mr. Biden's performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton's performance in the 2016 general election and President Trump's performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these four States collectively is 1 in 1,000,000,000,000,000[5]. *Id.* 10-13, 17-21, 30-31.

14. Put simply, there is substantial reason to doubt the voting results in the Defendant States.

15. By purporting to waive or otherwise modify the existing state law in a manner that was wholly *ultra vires* and not adopted by each state's legislature, Defendant States violated not only the Electors Clause, U.S. CONST. art. II, § 1, cl. 2, but also the Elections Clause, *id.* art. I, § 4 (to the extent that the Article I Elections Clause textually applies to the Article II process of selecting presidential electors).

16. Voters who cast lawful ballots cannot have their votes diminished by states that administered their 2020 presidential elections in a manner where it is impossible to distinguish a lawful ballot from an unlawful ballot.

17. The number of absentee and mail-in ballots that have been handled unconstitutionally in

Defendant States greatly exceeds the difference between the vote totals of the two candidates for President of the United States in each Defendant State.

18. In December 2018, the Caltech/MIT Voting Technology Project and MIT Election Data & Science Lab issued a comprehensive report addressing election integrity issues.[5] The fundamental question they sought to address was: "How do we know that the election outcomes announced by election officials are correct?"

19. The Caltech/MIT Report concluded: "Ultimately, the only way to answer a question like this is to rely on procedures that independently review the outcomes of elections, to detect and correct material mistakes that are discovered. In other words, elections need to be audited." *Id.* at iii. The Caltech/MIT Report then set forth a detailed analysis of why and how such audits should be done for the same reasons that exist today—a lack of trust in our voting systems.

20. In addition to injunctive relief sought for this election, the United States seeks declaratory relief for all presidential elections in the future. This problem is clearly capable of repetition yet evading review. The integrity of our constitutional democracy requires that states conduct presidential elections in accordance with the rule of law and federal constitutional guarantees.

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[5]Summary Report, Election Auditing, Key Issues and Perspectives attached at (the "Caltech/MIT Report") (App. a -- a).

JURISDICTION AND VENUE

21. This Court has original and exclusive jurisdiction over this action because it is a "controvers[y] between the United States and [Defendant] State[s]" under Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. § 1251(b)(2) (2018).

22. In a presidential election, "the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States." *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983). The constitutional failures of Defendant States injure the United States as *parens patriae* for all citizens because "'the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'" *Bush v. Gore*, 531 U.S. 98, 105 (2000) (quoting *Reynolds v. Sims*, 377 U. S. 533, 555 (1964)) (*Bush II*). In other words, United States is acting to protect the interests of *all* citizens—including not only the citizens of Defendant States but also the citizens of their sister States—in the fair and constitutional conduct of elections used to appoint presidential electors.

23. Although the several States may lack "a judicially cognizable interest in the manner in which another State conducts its elections," *Texas v. Pennsylvania*, No. 220155 (U.S. Dec. 11, 2020), the same is not true for the United States, which has *parens patriae* for the citizens of each State against the government apparatus of each State. *Alfred L. Snapp & Son v. Puerto Rico,* 458 U.S. 592, 610 n.16 (1982) ("it is the United States, and not the State, which represents them as *parens patriae*") (interior quotation omitted). For *Bush II*-type violations, the

United States can press this action against the Defendant States for violations of the voting rights of Defendant States' own citizens.

24. This Court's Article III decisions limit the ability of citizens to press claims under the Electors Clause. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing citizen plaintiffs from citizen relators who sued in the name of a state); *cf. Massachusetts v. EPA*, 549 U.S. 497, 520 (2007) (courts owe states "special solicitude in standing analysis"). Moreover, redressability likely would undermine a suit against a single state officer or State because no one State's electoral votes will make a difference in the election outcome. This action against multiple State defendants is the only adequate remedy to cure the Defendant States' violations, and this Court is the only court that can accommodate such a suit.

25. As federal sovereign under the Voting Rights Act, 52 U.S.C. §§10301-10314 ("VRA"), the United States has standing to enforce its laws against, *inter alia*, giving false information as to his name, address or period of residence in the voting district for the purpose of establishing the eligibility to register or vote, conspiring for the purpose of encouraging false registration to vote or illegal voting, falsifying or concealing a material fact in any matter within the jurisdiction of an examiner or hearing officer related to an election, or voting more than once. 52 U.S.C. § 10307(c)-(e). Although the VRA channels enforcement of some VRA sections—namely, 52 U.S.C. § 10303-10304—to the U.S. District Court for the District of Columbia, the VRA does not channel actions under § 10307.

26. Individual state courts or U.S. district courts do not—and under the circumstance of contested elections in multiple states, *cannot*—offer an adequate remedy to resolve election disputes within the timeframe set by the Constitution to resolve such disputes and to appoint a President via the electoral college. No court—other than this Court—can redress constitutional injuries spanning multiple States with the sufficient number of states joined as defendants or respondents to make a difference in the Electoral College.

27. This Court is the sole forum in which to exercise the jurisdictional basis for this action.

PARTIES

28. Plaintiff is the United States of America, which is the federal sovereign.

29. Defendants are the Commonwealth of Pennsylvania and the States of Georgia, Michigan, Arizona, Nevada, and Wisconsin, which are sovereign States of the United States.

LEGAL BACKGROUND

30. Under the Supremacy Clause, the "Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land." U.S. CONST. Art. VI, cl. 2.

31. "The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college." *Bush II*, 531 U.S. at 104 (citing U.S. CONST. art. II, § 1).

32. State legislatures have plenary power to set the process for appointing presidential electors: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors." U.S. CONST. art. II, §1, cl. 2; *see also Bush II*, 531 U.S. at 104 ("[T]he state legislature's power to select the manner for appointing electors is *plenary*." (emphasis added)).

33. At the time of the Founding, most States did not appoint electors through popular statewide elections. In the first presidential election, six of the ten States that appointed electors did so by direct legislative appointment. *McPherson v. Blacker*, 146 U.S. 1, 29-30 (1892).

34. In the second presidential election, nine of the fifteen States that appointed electors did so by direct legislative appointment. *Id.* at 30.

35. In the third presidential election, nine of sixteen States that appointed electors did so by direct legislative appointment. *Id.* at 31. This practice persisted in lesser degrees through the Election of 1860. *Id.* at 32.

36. Though "[h]istory has now favored the voter," *Bush II*, 531 U.S. at 104, "there is no doubt of the right of the legislature to resume the power [of appointing presidential electors] at any time, for *it can neither be taken away nor abdicated*." *McPherson*, 146 U.S. at 35 (emphasis added); *cf.* 3 U.S.C. § 2 ("Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.").

37. Given the State legislatures' constitutional primacy in selecting presidential electors, the ability to set rules governing the casting of ballots and counting of votes cannot be usurped by other branches of state government.

38. The Framers of the Constitution decided to select the President through the Electoral College "to afford as little opportunity as possible to tumult and disorder" and to place "every practicable obstacle [to] cabal, intrigue, and corruption," including "foreign powers" that might try to insinuate themselves into our elections. THE FEDERALIST NO. 68, at 410-11 (C. Rossiter, ed. 1961) (Madison, J.).

39. Defendant States' applicable laws are set out under the facts for each Defendant State.

FACTS

40. The use of absentee and mail-in ballots skyrocketed in 2020, not only as a public-health response to the COVID-19 pandemic but also at the urging of mail-in voting's proponents, and most especially executive branch officials in Defendant States. According to the Pew Research Center, in the 2020 general election, a record number of votes—about 65 million were cast via mail compared to 33.5 million mail-in ballots cast in the 2016 general election—an increase of more than 94 percent.

41. In the wake of the contested 2000 election, the bipartisan Jimmy Carter-James Baker commission identified absentee ballots as "the largest source of potential voter fraud." BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005).

42. Concern over the use of mail-in ballots is not novel to the modern era, Dustin Waters, *Mail-in Ballots Were Part of a Plot to Deny Lincoln Reelection in 1864*, WASH. POST (Aug. 22, 2020),[6] but it remains a *current* concern. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194-96 & n.11 (2008); *see also* Texas Office of the Attorney General, *AG Paxton Announces Joint Prosecution of Gregg County Organized Election Fraud in Mail-In Balloting Scheme* (Sept. 24, 2020); Harriet Alexander & Ariel Zilber, *Minneapolis police opens investigation into reports that Ilhan Omar's supporters illegally harvested Democrat ballots in Minnesota*, DAILY MAIL, Sept. 28, 2020.

43. Absentee and mail-in voting are the primary opportunities for unlawful ballots to be cast. As a result of expanded absentee and mail-in voting in Defendant States, combined with Defendant States' unconstitutional modification of statutory protections designed to ensure ballot integrity, Defendant States created a massive opportunity for fraud. In addition, the Defendant States have made it difficult or impossible to separate the constitutionally tainted mail-in ballots from all mail-in ballots.

44. Rather than augment safeguards against illegal voting in anticipation of the millions of additional mail-in ballots flooding their States, Defendant States *all* materially weakened, or did away with, security measures, such as witness or signature verification procedures, required by their respective legislatures. Their legislatures established those commonsense safeguards to prevent—or at least reduce—fraudulent mail-in ballots.

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[6]https://www.washingtonpost.com/history/2020/08/22/mail-in-voting-civil-war-election-conspiracy-lincoln/

45. Significantly, in Defendant States, Democrat voters voted by mail at two to three times the rate of Republicans. Former Vice President Biden thus greatly benefited from this unconstitutional usurpation of legislative authority, and the weakening of legislatively mandated ballot security measures.

46. The outcome of the Electoral College vote is directly affected by the constitutional violations committed by Defendant States. Those violations proximately caused the appointment of presidential electors for former Vice President Biden. The United States as a sovereign and as *parens patriae* for all its citizens will therefore be injured if Defendant States' unlawfully certify these presidential electors and those electors' votes are recognized.

47. In addition to the unconstitutional acts associated with mail-in and absentee voting, there are grave questions surrounding the vulnerability of electronic voting machines—especially those machines provided by Dominion Voting Systems, Inc. ("Dominion") which were in use in all of the Defendant States (and other states as well) during the 2020 general election.

48. As initially reported on December 13, 2020, the U.S. Government is scrambling to ascertain the extent of broad-based hack into multiple agencies through a third-party software supplied by vendor known as SolarWinds. That software product is used throughout the U.S. Government, and the private sector including, apparently, Dominion.

49. As reported by CNN, what little we know has cybersecurity experts extremely worried.[7] CNN also quoted Theresa Payton, who served as White House Chief Information Officer under President George W. Bush stating: "I woke up in the middle of the night last night just sick to my stomach. . . . On a scale of 1 to 10, I'm at a 9 — and it's not because of what I know; it's because of what we still don't know."

50. Disturbingly, though the Dominion's CEO denied that Dominion uses SolarWinds software, a screenshot captured from Dominion's webpage shows that Dominion does use SolarWinds technology.[8] Further, Dominion apparently later altered that page to remove any reference to SolarWinds, but the SolarWinds website is still in the Dominion page's source code. *Id.*

Commonwealth of Pennsylvania

51. Pennsylvania has 20 electoral votes, with a statewide vote tally currently estimated at 3,363,951 for President Trump and 3,445,548 for former Vice President Biden, a margin of 81,597 votes.

52. On December 14, 2020, the Pennsylvania Republican slate of Presidential Electors, met at the State Capital and cast their votes for President

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[7] https://www.cnn.com/2020/12/16/tech/solarwinds-orion-hack-explained/index.html

[8] https://www.theepochtimes.com/dominion-voting-systems-ceo-says-company-has-never-used-solarwinds-orion-platform_3619895.html

Donald J. Trump and Vice President Michael R. Pence.[9]

53. The number of votes affected by the various constitutional violations exceeds the margin of votes separating the candidates.

54. Pennsylvania's Secretary of State, Kathy Boockvar, without legislative approval, unilaterally abrogated several Pennsylvania statutes requiring signature verification for absentee or mail-in ballots. Pennsylvania's legislature has not ratified these changes, and the legislation did not include a severability clause.

55. On August 7, 2020, the League of Women Voters of Pennsylvania and others filed a complaint against Secretary Boockvar and other local election officials, seeking "a declaratory judgment that Pennsylvania existing signature verification procedures for mail-in voting" were unlawful for a number of reasons. *League of Women Voters of Pennsylvania v. Boockvar*, No. 2:20-cv-03850-PBT, (E.D. Pa. Aug. 7, 2020).

56. The Pennsylvania Department of State quickly settled with the plaintiffs, issuing revised guidance on September 11, 2020, stating in relevant part: "The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections."

57. This guidance is contrary to Pennsylvania law. First, Pennsylvania Election Code mandates that, for non-disabled and non-military

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[9] https://www.foxnews.com/politics/republican-electors-pennsylvania-georgia-vote-for-trump

voters, all applications for an absentee or mail-in ballot "shall be signed by the applicant." 25 PA. STAT. §§ 3146.2(d) & 3150.12(c). Second, Pennsylvania's voter signature verification requirements are expressly set forth at 25 PA. STAT. 350(a.3)(1)-(2) and § 3146.8(g)(3)-(7).

58. The Pennsylvania Department of State's guidance unconstitutionally did away with Pennsylvania's statutory signature verification requirements. Approximately 70 percent of the requests for absentee ballots were from Democrats and 25 percent from Republicans. Thus, this unconstitutional abrogation of state election law greatly inured to former Vice President Biden's benefit.

59. In addition, in 2019, Pennsylvania's legislature enacted bipartisan election reforms, 2019 Pa. Legis. Serv. Act 2019-77, that set *inter alia* a deadline of 8:00 p.m. on election day for a county board of elections to receive a mail-in ballot. 25 PA. STAT. §§ 3146.6(c), 3150.16(c). Acting under a generally worded clause that "Elections shall be free and equal," PA. CONST. art. I, § 5, cl. 1, a 4-3 majority of Pennsylvania's Supreme Court in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), extended that deadline to three days after Election Day and adopted a presumption that even *non-postmarked ballots* were presumptively timely.

60. Pennsylvania's election law also requires that poll-watchers be granted access to the opening, counting, and recording of absentee ballots: "Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and

recorded." 25 PA. STAT. § 3146.8(b). Local election officials in Philadelphia and Allegheny Counties decided not to follow 25 PA. STAT. § 3146.8(b) for the opening, counting, and recording of absentee and mail-in ballots.

61. Prior to the election, Secretary Boockvar sent an email to local election officials urging them to provide opportunities for various persons—including political parties—to contact voters to "cure" defective mail-in ballots. This process clearly violated several provisions of the state election code.

- Section 3146.8(a) requires: "The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D,1 shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections."
- Section 3146.8(g)(1)(ii) provides that mail-in ballots shall be canvassed (if they are received by eight o'clock p.m. on election day) in the manner prescribed by this subsection.
- Section 3146.8(g)(1.1) provides that the first look at the ballots shall be "no earlier than seven o'clock a.m. on election day." And the hour for this "pre-canvas" must be publicly announced at least 48 hours in advance. Then the votes are counted on election day.

62. By removing the ballots for examination prior to seven o'clock a.m. on election day, Secretary Boockvar created a system whereby local officials could review ballots without the proper

announcements, observation, and security. This entire scheme, which was only followed in Democrat majority counties, was blatantly illegal in that it permitted the illegal removal of ballots from their locked containers prematurely.

63. Statewide election officials and local election officials in Philadelphia and Allegheny Counties, aware of the historical Democrat advantage in those counties, violated Pennsylvania's election code and adopted the differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden. *See* Verified Complaint (Doc. No. 1), *Donald J. Trump for President, Inc. v. Boockvar*, 4:20-cv-02078-MWB (M.D. Pa. Nov. 18, 2020) at ¶¶ 3-6, 9, 11, 100-143.

64. Absentee and mail-in ballots in Pennsylvania were thus evaluated under an illegal standard regarding signature verification. It is now impossible to determine which ballots were properly cast and which ballots were not.

65. The changed process allowing the curing of absentee and mail-in ballots in Allegheny and Philadelphia counties is a separate basis resulting in an unknown number of ballots being treated in an unconstitutional manner inconsistent with Pennsylvania statute. *Id.*

66. In addition, a great number of ballots were received after the statutory deadline and yet were counted by virtue of the fact that Pennsylvania did not segregate all ballots received after 8:00 pm on November 3, 2020. Boockvar's claim that only about 10,000 ballots were received after this deadline has no way of being proven since Pennsylvania broke its promise to the Court to segregate ballots and co-

mingled perhaps tens, or even hundreds of thousands, of illegal late ballots.

67. On December 4, 2020, fifteen members of the Pennsylvania House of Representatives led by Rep. Francis X. Ryan issued a report to Congressman Scott Perry (the "Ryan Report," App. 139a-144a) stating that "[t]he general election of 2020 in Pennsylvania was fraught with inconsistencies, documented irregularities and improprieties associated with mail-in balloting, pre-canvassing, and canvassing that the reliability of the mail-in votes in the Commonwealth of Pennsylvania is impossible to rely upon."

68. The Ryan Report's findings are startling, including:

- Ballots with NO MAILED date. That total is 9,005.
- Ballots Returned on or BEFORE the Mailed Date. That total is 58,221.
- Ballots Returned one day after Mailed Date. That total is 51,200.

Id. 143a.

69. These nonsensical numbers alone total 118,426 ballots and exceed Mr. Biden's margin of 81,660 votes over President Trump. But these discrepancies pale in comparison to the discrepancies in Pennsylvania's reported data concerning the number of mail-in ballots distributed to the populace—now with no longer subject to legislated mandated signature verification requirements.

70. The Ryan Report also stated as follows:

> [I]n a data file received on November 4, 2020, the Commonwealth's PA Open Data sites reported over 3.1 million mail in ballots sent out. The CSV file from the state on November 4 depicts 3.1 million mail in ballots sent out but on November 2, the information was provided that only 2.7 million ballots had been sent out. ***This discrepancy of approximately 400,000 ballots from November 2 to November 4 has not been explained.***

Id. at 143a-44a. (Emphasis added).

71. The Ryan Report stated further: "This apparent [400,000 ballot] discrepancy can only be evaluated by reviewing all transaction logs into the SURE system [the Statewide Uniform Registry Electors]."[10]

72. In its opposition brief to Texas's motion to for leave file a bill of complaint, Pennsylvania said nothing about the 118,426 ballots that had no mail date, were nonsensically returned *before* the mailed date, or were improbably returned one day after the mail date discussed above.[11]

73. With respect to the 400,000 discrepancy in mail-in ballots Pennsylvania sent out as reported on November 2, 2020 compared to November 4, 2020 (one day after the election), Pennsylvania asserted

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[10] Ryan Report at App. a [p.5].

[11] Pennsylvania Opposition To Motion For Leave To File Bill of Complaint and Motion For Preliminary Injunction, Temporary Restraining Order, or Stay ("Pennsylvania Opp. Br.") filed December 10, 2020, Case No. 220155.

that the discrepancy is purportedly due to the fact that "[o]f the 3.1 million ballots sent out, 2.7 million were mail-in ballots and 400,000 were absentee ballots." Pennsylvania offered *no support* for its conclusory assertion. *Id.* at 6. Nor did Pennsylvania rebut the assertion in the Ryan Report that the "discrepancy can only be evaluated by reviewing all transaction logs into the SURE system."

74. These stunning figures illustrate the out-of-control nature of Pennsylvania's mail-in balloting scheme. Democrats submitted mail-in ballots at more than two times the rate of Republicans. This number of constitutionally tainted ballots far exceeds the approximately 81,660 votes separating the candidates.

75. This blatant disregard of statutory law renders all mail-in ballots constitutionally tainted and cannot form the basis for appointing or certifying Pennsylvania's presidential electors to the Electoral College.

76. According to the U.S. Election Assistance Commission's report to Congress *Election Administration and Voting Survey: 2016 Comprehensive Report*, in 2016 Pennsylvania received 266,208 mail-in ballots; 2,534 of them were rejected (.95%). *Id.* at p. 24. However, in 2020, Pennsylvania received more than 10 times the number of mail-in ballots compared to 2016. As explained *supra*, this much larger volume of mail-in ballots was treated in an unconstitutionally modified manner that included: (1) doing away with the Pennsylvania's signature verification requirements; (2) extending that deadline to three days after Election Day and adopting a presumption that even *non-postmarked ballots* were

presumptively timely; and (3) blocking poll watchers in Philadelphia and Allegheny Counties in violation of State law.

77. These non-legislative modifications to Pennsylvania's election rules appear to have generated an outcome-determinative number of unlawful ballots that were cast in Pennsylvania. Regardless of the number of such ballots, the non-legislative changes to the election rules violated the Electors Clause.

State of Georgia

78. Georgia has 16 electoral votes, with a statewide vote tally currently estimated at 2,458,121 for President Trump and 2,472,098 for former Vice President Biden, a margin of approximately 12,670 votes.

79. On December 14, 2020, the Georgia Republican slate of Presidential Electors, including Petitioner Electors, met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.[12]

80. The number of votes affected by the various constitutional violations far exceeds the margin of votes dividing the candidates.

81. Georgia's Secretary of State, Brad Raffensperger, without legislative approval, unilaterally abrogated Georgia's statutes governing the date a ballot may be opened, and the signature verification process for absentee ballots.

82. O.C.G.A. § 21-2-386(a)(2) prohibits the opening of absentee ballots until after the polls open

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[12] https://www.foxnews.com/politics/republican-electors-pennsylvania-georgia-vote-for-trump

on Election Day: In April 2020, however, the State Election Board adopted Secretary of State Rule 183-1-14-0.9-.15, Processing Ballots Prior to Election Day. That rule purports to authorize county election officials to begin processing absentee ballots up to *three weeks* before Election Day. Outside parties were then given early and illegal access to purportedly defective ballots to "cure" them in violation of O.C.G.A. §§ 21-2-386(a)(1)(C), 21-2-419(c)(2).

83. Specifically, Georgia law authorizes and requires a single registrar or clerk—after reviewing the outer envelope—to reject an absentee ballot if the voter failed to sign the required oath or to provide the required information, the signature appears invalid, or the required information does not conform with the information on file, or if the voter is otherwise found ineligible to vote. O.C.G.A. § 21-2-386(a)(1)(B)-(C).

84. Georgia law provides absentee voters the chance to "cure a failure to sign the oath, an invalid signature, or missing information" on a ballot's outer envelope by the deadline for verifying provisional ballots (*i.e.*, three days after the election). O.C.G.A. §§ 21-2-386(a)(1)(C), 21-2-419(c)(2). To facilitate cures, Georgia law requires the relevant election official to notify the voter in writing: "The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years." O.C.G.A. § 21-2-386(a)(1)(B).

85. There were 284,817 early ballots corrected and accepted in Georgia out of 4,018,064 early ballots used to vote in Georgia. Former Vice President Biden received nearly twice the number of

mail-in votes as President Trump and thus materially benefited from this unconstitutional change in Georgia's election laws.

86. In addition, on March 6, 2020, in *Democratic Party of Georgia v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga.), Georgia's Secretary of State entered a Compromise Settlement Agreement and Release with the Democratic Party of Georgia (the "Settlement") to materially change the statutory requirements for reviewing signatures on absentee ballot envelopes to confirm the voter's identity by making it far more difficult to challenge defective signatures beyond the express mandatory procedures set forth at GA. CODE § 21-2-386(a)(1)(B).

87. Among other things, before a ballot could be rejected, the Settlement required a registrar who found a defective signature to now seek a review by two other registrars, and only if a majority of the registrars agreed that the signature was defective could the ballot be rejected but not before all three registrars' names were written on the ballot envelope along with the reason for the rejection. These cumbersome procedures are in direct conflict with Georgia's statutory requirements, as is the Settlement's requirement that notice be provided by telephone (*i.e.*, not in writing) if a telephone number is available. Finally, the Settlement purports to require State election officials to consider issuing guidance and training materials drafted by an expert retained by the Democratic Party of Georgia.

88. Georgia's legislature has not ratified these material changes to statutory law mandated by the Compromise Settlement Agreement and Release, including altered signature verification requirements

and early opening of ballots. The relevant legislation that was violated by Compromise Settlement Agreement and Release did not include a severability clause.

89. This unconstitutional change in Georgia law materially benefitted former Vice President Biden. According to the Georgia Secretary of State's office, former Vice President Biden had almost double the number of absentee votes (65.32%) as President Trump (34.68%). *See* Cicchetti Decl. at ¶ 25, App. 7a-8a.

90. The effect of this unconstitutional change in Georgia election law, which made it more likely that ballots without matching signatures would be counted, had a material impact on the outcome of the election.

91. Specifically, there were 1,305,659 absentee mail-in ballots submitted in Georgia in 2020. There were 4,786 absentee ballots rejected in 2020. This is a rejection rate of .37%. In contrast, in 2016, the 2016 rejection rate was 6.42% with 13,677 absentee mail-in ballots being rejected out of 213,033 submitted, which more than *seventeen times greater* than in 2020. *See* Cicchetti Decl. at ¶ 24, App. 7a.

92. If the rejection rate of mailed-in absentee ballots remained the same in 2020 as it was in 2016, there would be 83,517 less tabulated ballots in 2020. The statewide split of absentee ballots was 34.68% for Trump and 65.2% for Biden. Rejecting at the higher 2016 rate with the 2020 split between Trump and Biden would decrease Trump votes by 28,965 and Biden votes by 54,552, which would be a net gain for Trump of 25,587 votes. This would be more than needed to overcome the Biden advantage of 12,670

votes, and Trump would win by 12,917 votes. *Id.* Regardless of the number of ballots affected, however, the non-legislative changes to the election rules violated the Electors Clause.

93. In addition, Georgia uses Dominion's voting machines throughout the State. Less than a month before the election, the United States District Court for the Northern District of Georgia ruled on a motion brought by a citizen advocate group and others seeking a preliminary injunction to stop Georgia from using Dominion's voting systems due to their known vulnerabilities to hacking and other irregularities. *See Curling v. Raffensperger*, 2020 U.S. Dist. LEXIS 188508, No. 1:17-cv-2989-AT (N.D. GA Oct.11, 2020).

94. Though the district court found that it was bound by Eleventh Circuit law to deny plaintiffs' motion, it issued a prophetic warning stating:

> The Court's Order has delved deep into the true risks posed by the new BMD voting system as well as its manner of implementation. These risks are neither hypothetical nor remote under the current circumstances. ***The insularity of the Defendants' and Dominion's stance here in evaluation and management of the security and vulnerability of the BMD system does not benefit the public or citizens' confident exercise of the franchise.*** The stealth vote alteration or operational interference risks posed by malware that can be effectively invisible to detection, whether intentionally seeded or not, are high once implanted, if equipment and software systems are not properly protected, implemented, and audited.

Id. at *176 (Emphasis added).

95. One of those material risks manifested three weeks later as shown by the November 4, 2020 video interview of a Fulton County, Georgia Director

of Elections, Richard Barron. In that interview, Barron stated that the tallied vote of over 93% of ballots were based on a "review panel['s]" determination of the voter's "intent"—not what the voter actually voted. Specifically, he stated that "so far we've scanned 113,130 ballots, we've adjudicated over 106,000. . . . The only ballots that are adjudicated are if we have a ballot with a contest on it in which there's some question as to how the computer reads it so that the vote review panel then determines voter intent."[13]

96. This astounding figure demonstrates the unreliability of Dominion's voting machines. These figures, in and of themselves in this one sample, far exceeds the margin of votes separating the two candidates.

97. Lastly, on December 17, 2020, the Chairman of the Election Law Study Subcommittee of the Georgia Standing Senate Judiciary Committee issued a detailed report discussing a myriad of voting irregularities and potential fraud in the Georgia 2020 general election (the "Report").[14] The Executive Summary states that "[t]he November 3, 2020 General Election (the 'Election') was chaotic and any reported results must be viewed as untrustworthy". After detailing over a dozen issues showing irregularities and potential fraud, the Report concluded:

> The Legislature should carefully consider its obligations under the U.S. Constitution. If a

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[13] https://www.c-span.org/video/?477819-1/fulton-county-georgia-election-update at beginning at 20 seconds through 1:21.

[14] (App. a -- a)

majority of the General Assembly concurs with the findings of this report, the certification of the Election should be rescinded and the General Assembly should act to determine the proper Electors to be certified to the Electoral College in the 2020 presidential race. Since time is of the essence, the Chairman and Senators who concur with this report recommend that the leadership of the General Assembly and the Governor immediately convene to allow further consideration by the entire General Assembly.

State of Michigan

98. Michigan has 16 electoral votes, with a statewide vote tally currently estimated at 2,650,695 for President Trump and 2,796,702 for former Vice President Biden, a margin of 146,007 votes. In Wayne County, Mr. Biden's margin (322,925 votes) significantly exceeds his statewide lead.

99. On December 14, 2020, the Michigan Republican slate of Presidential Electors *attempted* to meet and cast their votes for President Donald J. Trump and Vice President Michael R. Pence but were denied entry to the State Capital by law enforcement. Their tender of their votes was refused. They instead met on the grounds of the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.[15]

100. The number of votes affected by the various constitutional violations exceeds the margin of votes dividing the candidates.

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[15]https://thepalmierireport.com/michigan-state-police-block-gop-electors-from-entering-capitol/

101. Michigan's Secretary of State, Jocelyn Benson, without legislative approval, unilaterally abrogated Michigan election statutes related to absentee ballot applications and signature verification. Michigan's legislature has not ratified these changes, and its election laws do not include a severability clause.

102. As amended in 2018, the Michigan Constitution provides all registered voters the right to request and vote by an absentee ballot without giving a reason. MICH. CONST. art. 2, § 4.

103. On May 19, 2020, however, Secretary Benson announced that her office would send unsolicited absentee-voter ballot applications by mail to all 7.7 million registered Michigan voters prior to the primary and general elections. Although her office repeatedly encouraged voters to vote absentee because of the COVID-19 pandemic, it did not ensure that Michigan's election systems and procedures were adequate to ensure the accuracy and legality of the historic flood of mail-in votes. In fact, it did the opposite and did away with protections designed to deter voter fraud.

104. Secretary Benson's flooding of Michigan with millions of absentee ballot applications prior to the 2020 general election violated M.C.L. § 168.759(3). That statute limits the procedures for requesting an absentee ballot to three specified ways:

> An application for an absent voter ballot under this section may be made in *any of the following ways*:
>
> (a) By a written request signed by the voter.
>
> (b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.

(c) On a federal postcard application.

M.C.L. § 168.759(3) (emphasis added).

105. The Michigan Legislature thus declined to include the Secretary of State as a means for distributing absentee ballot applications. *Id.* § 168.759(3)(b). Under the statute's plain language, the Legislature explicitly gave *only local clerks* the power to distribute absentee voter ballot applications. *Id.*

106. Because the Legislature declined to explicitly include the Secretary of State as a vehicle for distributing absentee ballots applications, Secretary Benson lacked authority to distribute even a single absentee voter ballot application—much less the *millions* of absentee ballot applications Secretary Benson chose to flood across Michigan.

107. Secretary Benson also violated Michigan law when she launched a program in June 2020 allowing absentee ballots to be requested online, *without* signature verification as expressly required under Michigan law. The Michigan Legislature did not approve or authorize Secretary Benson's unilateral actions.

108. MCL § 168.759(4) states in relevant part: "An applicant for an absent voter ballot shall sign the application. Subject to section 761(2), a clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application."

109. Further, MCL § 168.761(2) states in relevant part: "The qualified voter file must be used to determine the genuineness of a signature on an application for an absent voter ballot", and if "the signatures do not agree sufficiently or [if] the signature is missing" the ballot must be rejected.

110. In 2016 only 587,618 Michigan voters requested absentee ballots. In stark contrast, in 2020, 3.2 million votes were cast by absentee ballot, about 57% of total votes cast – and more than *five times* the number of ballots *even requested* in 2016.

111. Secretary Benson's unconstitutional modifications of Michigan's election rules resulted in the distribution of millions of absentee ballot applications without verifying voter signatures as required by MCL §§ 168.759(4) and 168.761(2). This means that *millions* of absentee ballots were disseminated in violation of Michigan's statutory signature-verification requirements. Democrats in Michigan voted by mail at a ratio of approximately two to one compared to Republican voters. Thus, former Vice President Biden materially benefited from these unconstitutional changes to Michigan's election law.

112. Michigan also requires that poll watchers and inspectors have access to vote counting and canvassing. M.C.L. §§ 168.674-.675.

113. Local election officials in Wayne County made a conscious and express policy decision not to follow M.C.L. §§ 168.674-.675 for the opening, counting, and recording of absentee ballots.

114. Michigan also has strict signature verification requirements for absentee ballots, including that the Elections Department place a written statement or stamp on each ballot envelope where the voter signature is placed, indicating that the voter signature was in fact checked and verified with the signature on file with the State. *See* MCL § 168.765a(6).

115. However, Wayne County made the policy decision to ignore Michigan's statutory signature-verification requirements for absentee ballots. Former Vice President Biden received approximately 587,074, or 68%, of the votes cast there compared to President Trump's receiving approximate 264,149, or 30.59%, of the total vote. Thus, Mr. Biden materially benefited from these unconstitutional changes to Michigan's election law.

116. Numerous poll challengers and an Election Department employee whistleblower have testified that the signature verification requirement was ignored in Wayne County in a case currently pending in the Michigan Supreme Court.[16] For example, Jesse Jacob, a decades-long City of Detroit employee assigned to work in the Elections Department for the 2020 election testified that:

> Absentee ballots that were received in the mail would have the voter's signature on the envelope. While I was at the TCF Center, I was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file.[17]

117. In fact, a poll challenger, Lisa Gage, testified that not a single one of the several hundred to a thousand ballot envelopes she observed had a written statement or stamp indicating the voter

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16 *Johnson v. Benson*, Petition for Extraordinary Writs & Declaratory Relief filed Nov. 26, 2020 (Mich. Sup. Ct.) at ¶¶ 71, 138-39, App. 25a-51a.

17 *Id.*, Affidavit of Jessy Jacob, Appendix 14 at ¶15, attached at App. 34a-36a.

signature had been verified at the TCF Center in accordance with MCL § 168.765a(6).[18]

118. The TCF was the only facility within Wayne County authorized to count ballots for the City of Detroit.

119. Additional public information confirms the material adverse impact on the integrity of the vote in Wayne County caused by these unconstitutional changes to Michigan's election law. For example, the Wayne County Statement of Votes Report lists 174,384 absentee ballots out of 566,694 absentee ballots tabulated (about 30.8%) as counted without a registration number for precincts in the City of Detroit. *See* Cicchetti Decl. at ¶ 27, App. a. The number of votes not tied to a registered voter by itself exceeds Vice President Biden's margin of margin of 146,007 votes by more than 28,377 votes.

120. The extra ballots cast most likely resulted from the phenomenon of Wayne County election workers running the same ballots through a tabulator multiple times, with Republican poll watchers obstructed or denied access, and election officials ignoring poll watchers' challenges, as documented by numerous declarations. App. 25a-51a.

121. In addition, a member of the Wayne County Board of Canvassers ("Canvassers Board"), William Hartman, determined that 71% of Detroit's Absent Voter Counting Boards ("AVCBs") were unbalanced—*i.e.*, the number of people who checked in did not match the number of ballots cast—without explanation. *Id.* at ¶ 29.

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[18] Affidavit of Lisa Gage ¶ 17 (App. a).

122. On November 17, 2020, the Canvassers Board deadlocked 2-2 over whether to certify the results of the presidential election based on numerous reports of fraud and unanswered material discrepancies in the county-wide election results. A few hours later, the Republican Board members reversed their decision and voted to certify the results after severe harassment, including threats of violence.

123. The following day, the two Republican members of the Board *rescinded their votes* to certify the vote and signed affidavits alleging they were bullied and misled into approving election results and do not believe the votes should be certified until serious irregularities in Detroit votes are resolved. *See* Cicchetti Decl. at ¶ 29, App. a.

124. Michigan admitted in a filing with this Court that it "is at a loss to explain the[] allegations" showing that Wayne County lists 174,384 absentee ballots that do not tie to a registered voter. *See* State of Michigan's Brief In Opposition To Motions For Leave To File Bill of Complaint and For Injunctive Relief at 15 (filed Dec. 10, 2020), Case No. 220155.

125. Lastly, on November 4, 2020, Michigan election officials in Antrim County admitted that a purported "glitch" in Dominion voting machines caused 6,000 votes for President Trump to be wrongly switched to Democrat Candidate Biden in just one county. Local officials discovered the so-called "glitch" after reportedly questioning Mr. Biden's win in the heavily Republican area and manually checked the vote tabulation.

126. The Dominion voting tabulators used in Antrim County were recently subjected to a forensic

audit.[19] Though Michigan's Secretary of State tried to keep the Allied Report from being released to the public, the court overseeing the audit refused and allowed the Allied Report to made public.[20] The Allied Report concluded that "the vote flip occurred because of machine error built into the voting software designed to create error."[21] In addition, the Allied report revealed that "all server security logs prior to 11:03 pm on November 4, 2020 are missing and that there was other "tampering with data." *See* Allied Report at ¶¶ B.16-17 (App. a).

127. Further, the Allied Report determined that the Dominion voting system in Antrim County was designed to generate an error rate as high as 81.96% thereby sending ballots for "adjudication" to determine the voter's intent. *See* Allied report at ¶¶ B.2, 8-22 (App. a-- a).

128. Notably, the extraordinarily high error rate described here is consistent with the same situation that took place in Fulton County, Georgia with an enormous 93% error rate that required "adjudication" of over 106,000 ballots.

129. These non-legislative modifications to Michigan's election statutes resulted in a number of constitutionally tainted votes that far exceeds the margin of voters separating the candidates in

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[19] Antrim Michigan Forensics Report by Allied Security Operations Group dated December 13, 2020 (the "Allied Report") (App. a -- a);

[20] https://themichiganstar.com/2020/12/15/after-examining-antrim-county-voting-machines-asog-concludes-dominion-intentionally-designed-to-create-systemic-fraud/

[21] Allied Report at ¶¶ B.4-9 (App. a).

Michigan. Regardless of the number of votes that were affected by the unconstitutional modification of Michigan's election rules, the non-legislative changes to the election rules violated the Electors Clause.

State of Wisconsin

130. Wisconsin has 10 electoral votes, with a statewide vote tally currently estimated at 1,610,151 for President Trump and 1,630,716 for former Vice President Biden (*i.e.*, a margin of 20,565 votes). In two counties, Milwaukee and Dane, Mr. Biden's margin (364,298 votes) significantly exceeds his statewide lead.

131. On December 14, 2020, the Wisconsin Republican slate of Presidential Electors met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.[22]

132. In the 2016 general election some 146,932 mail-in ballots were returned in Wisconsin out of more than 3 million votes cast.[23] In stark contrast, 1,275,019 mail-in ballots, nearly a 900 percent increase over 2016, were returned in the November 3, 2020 election.[24]

133. Wisconsin statutes guard against fraud in absentee ballots: "[V]oting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be

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[22] https://wisgop.org/republican-electors-2020/.

[23] Source: U.S. Elections Project, *available at*: http://www.electproject.org/early 2016.

[24] Source: U.S. Elections Project, *available at*: https://electproject.github.io/Early-Vote-2020G/WI.html.

carefully regulated to prevent the potential for fraud or abuse[.]" WISC. STAT. § 6.84(1).

134. In direct contravention of Wisconsin law, leading up to the 2020 general election, the Wisconsin Elections Commission ("WEC") and other local officials unconstitutionally modified Wisconsin election laws—each time taking steps that weakened, or did away with, established security procedures put in place by the Wisconsin legislature to ensure absentee ballot integrity.

135. For example, the WEC undertook a campaign to position hundreds of drop boxes to collect absentee ballots—including the use of unmanned drop boxes.[25]

136. The mayors of Wisconsin's five largest cities—Green Bay, Kenosha, Madison, Milwaukee, and Racine, which all have Democrat majorities—joined in this effort, and together, developed a plan use purportedly "secure drop-boxes to facilitate return of absentee ballots." Wisconsin Safe Voting Plan 2020, at 4 (June 15, 2020).[26]

137. It is alleged in an action recently filed in the United States District Court for the Eastern District of Wisconsin that over five hundred

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[25] Wisconsin Elections Commission Memoranda, To: All Wisconsin Election Officials, Aug. 19, 2020, *available at*: https://elections.wi.gov/sites/elections.wi.gov/files/2020-08/Drop%20Box%20Final.pdf. at p. 3 of 4.

[26] Wisconsin Safe Voting Plan 2020 Submitted to the Center for Tech & Civic Life, June 15, 2020, by the Mayors of Madison, Milwaukee, Racine, Kenosha and Green Bay *available at*: https://www.techandciviclife.org/wp-content/uploads/2020/07/Approved-Wisconsin-Safe-Voting-Plan-2020.pdf.

unmanned, illegal, absentee ballot drop boxes were used in the Presidential election in Wisconsin.[27]

138. However, the use of *any* drop box, manned or unmanned, is directly prohibited by Wisconsin statute. The Wisconsin legislature specifically described in the Election Code "Alternate absentee ballot site[s]" and detailed the procedure by which the governing body of a municipality may designate a site or sites for the delivery of absentee ballots "other than the office of the municipal clerk or board of election commissioners as the location from which electors of the municipality may request and vote absentee ballots and to which voted absentee ballots shall be returned by electors for any election." Wis. Stat. 6.855(1).

139. Any alternate absentee ballot site "shall be staffed by the municipal clerk or the executive director of the board of election commissioners, or employees of the clerk or the board of election commissioners." Wis. Stat. 6.855(3). Likewise, Wis. Stat. 7.15(2m) provides, "[i]n a municipality in which the governing body has elected to an establish an alternate absentee ballot sit under s. 6.855, the municipal clerk shall operate such site as though it were his or her office for absentee ballot purposes and shall ensure that such site is adequately staffed."

140. Thus, the unmanned absentee ballot drop-off sites are prohibited by the Wisconsin Legislature as they do not comply with Wisconsin law

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[27] *See* Complaint (Doc. No. 1), *Donald J. Trump, Candidate for President of the United States of America v. The Wisconsin Election Commission*, Case 2:20-cv-01785-BHL (E.D. Wisc. Dec. 2, 2020) (Wisconsin Trump Campaign Complaint") at ¶¶ 188-89.

expressly defining "[a]lternate absentee ballot site[s]". Wis. Stat. 6.855(1), (3).

141. In addition, the use of drop boxes for the collection of absentee ballots, positioned predominantly in Wisconsin's largest cities, is directly contrary to Wisconsin law providing that absentee ballots may only be "mailed by the elector, or delivered *in person* to the municipal clerk issuing the ballot or ballots." Wis. Stat. § 6.87(4)(b)1 (emphasis added).

142. The fact that other methods of delivering absentee ballots, such as through unmanned drop boxes, are *not* permitted is underscored by Wis. Stat. § 6.87(6) which mandates that, "[a]ny ballot not mailed or delivered as provided in this subsection may not be counted." Likewise, Wis. Stat. § 6.84(2) underscores this point, providing that Wis. Stat. § 6.87(6) "shall be construed as mandatory." The provision continues—"Ballots cast in contravention of the procedures specified in those provisions may not be counted. *Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election.*" Wis. Stat. § 6.84(2) (emphasis added).

143. These were not the only Wisconsin election laws that the WEC violated in the 2020 general election. The WEC and local election officials also took it upon themselves to encourage voters to unlawfully declare themselves "indefinitely confined"—which under Wisconsin law allows the voter to avoid security measures like signature verification and photo ID requirements.

144. Specifically, registering to vote by absentee ballot requires photo identification, except for those who register as "indefinitely confined" or

"hospitalized." WISC. STAT. § 6.86(2)(a), (3)(a). Registering for indefinite confinement requires certifying confinement "because of age, physical illness or infirmity or [because the voter] is disabled for an indefinite period." *Id.* § 6.86(2)(a). Should indefinite confinement cease, the voter must notify the county clerk, *id.*, who must remove the voter from indefinite-confinement status. *Id.* § 6.86(2)(b).

145. Wisconsin election procedures for voting absentee based on indefinite confinement enable the voter to avoid the photo ID requirement and signature requirement. *Id.* § 6.86(1)(ag)/(3)(a)(2).

146. On March 25, 2020, in clear violation of Wisconsin law, Dane County Clerk Scott McDonnell and Milwaukee County Clerk George Christensen both issued guidance indicating that all voters should mark themselves as "indefinitely confined" because of the COVID-19 pandemic.

147. Believing this to be an attempt to circumvent Wisconsin's strict voter ID laws, the Republican Party of Wisconsin petitioned the Wisconsin Supreme Court to intervene. On March 31, 2020, the Wisconsin Supreme Court unanimously confirmed that the clerks' "advice was legally incorrect" and potentially dangerous because "voters may be misled to exercise their right to vote in ways that are inconsistent with WISC. STAT. § 6.86(2)."

148. On May 13, 2020, the Administrator of WEC issued a directive to the Wisconsin clerks prohibiting removal of voters from the registry for indefinite-confinement status if the voter is no longer "indefinitely confined."

149. The WEC's directive violated Wisconsin law. Specifically, WISC. STAT. § 6.86(2)(a) specifically

provides that "any [indefinitely confined] elector [who] is no longer indefinitely confined ... shall so notify the municipal clerk." WISC. STAT. § 6.86(2)(b) further provides that the municipal clerk "shall remove the name of any other elector from the list upon request of the elector or upon receipt of reliable information that an elector no longer qualifies for the service."

150. According to statistics kept by the WEC, nearly 216,000 voters said they were indefinitely confined in the 2020 election, nearly a fourfold increase from nearly 57,000 voters in 2016. In Dane and Milwaukee counties, more than 68,000 voters said they were indefinitely confined in 2020, a fourfold increase from the roughly 17,000 indefinitely confined voters in those counties in 2016.

151. On December 16, 2020, the Wisconsin Supreme Court ruled that Wisconsin officials, including Governor Evers, unlawfully told Wisconsin voters to declare themselves "indefinitely confined"—thereby avoiding signature and photo ID requirements. *See Jefferson v. Dane County*, 2020 Wisc. LEXIS 194 (Wis. Dec. 14, 2020). Given the near fourfold increase in the use of this classification from 2016 to 2020, tens of thousands of these ballots could be illegal. The vast majority of the more than 216,000 voters classified as "indefinitely confined" were from heavily democrat areas, thereby materially and illegally, benefited Mr. Biden.

152. Under Wisconsin law, voting by absentee ballot also requires voters to complete a certification, including their address, and have the envelope witnessed by an adult who also must sign and indicate their address on the envelope. *See* WISC. STAT. § 6.87. The sole remedy to cure an "improperly completed

certificate or [ballot] with no certificate" is for "the clerk [to] return the ballot to the elector[.]" *Id.* § 6.87(9). "If a certificate is missing the address of a witness, the ballot *may not be counted.*" *Id.* § 6.87(6d) (emphasis added).

153. However, in a training video issued April 1, 2020, the Administrator of the City of Milwaukee Elections Commission unilaterally declared that a "witness address may be written in red and that is because we were able to locate the witnesses' address for the voter" to add an address missing from the certifications on absentee ballots. The Administrator's instruction violated WISC. STAT. § 6.87(6d). The WEC issued similar guidance on October 19, 2020, in violation of this statute as well.

154. In the Wisconsin Trump Campaign Complaint, it is alleged, supported by the sworn affidavits of poll watchers, that canvas workers carried out this unlawful policy, and acting pursuant to this guidance, in Milwaukee used red-ink pens to alter the certificates on the absentee envelope and then cast and count the absentee ballot. These acts violated WISC. STAT. § 6.87(6d) ("If a certificate is missing the address of a witness, the ballot may not be counted"). *See also* WISC. STAT. § 6.87(9) ("If a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector . . . whenever time permits the elector to correct the defect and return the ballot within the period authorized.").

155. Wisconsin's legislature has not ratified these changes, and its election laws do not include a severability clause.

156. In addition, Ethan J. Pease, a box truck delivery driver subcontracted to the U.S. Postal Service ("USPS") to deliver truckloads of mail-in ballots to the sorting center in Madison, WI, testified that USPS employees were backdating ballots received after November 3, 2020. Decl. of Ethan J. Pease at ¶¶ 3-13. Further, Pease testified how a senior USPS employee told him on November 4, 2020 that "[a]n order came down from the Wisconsin/Illinois Chapter of the Postal Service that 100,000 ballots were missing" and how the USPS dispatched employees to "find[] . . . the ballots." *Id.* ¶¶ 8-10. One hundred thousand ballots supposedly "found" after election day would far exceed former Vice President Biden margin of 20,565 votes over President Trump.

State of Arizona

157. Arizona has 11 electoral votes, with a state-wide vote tally currently estimated at 1,661,677 for President Trump and 1,672,054 for former Vice President Biden, a margin of 10,377 votes. In Arizona's most populous county, Maricopa County, Mr. Biden's margin (45,109 votes) significantly exceeds his statewide lead.

158. On December 14, 2020, the Arizona Republican slate of Presidential Electors met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.[28]

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[28] https://arizonadailyindependent.com/2020/12/14/az-democrat-electors-vote-biden-republicans-join-pennsylvania-georgia-nevada-in-casting-electoral-college-votes-for-trump/

159. Since 1990, Arizona law has required that residents wishing to participate in an election submit their voter registration materials no later than 29 days prior to election day in order to vote in that election. Ariz. Rev. Stat. § 16-120(A). For 2020, that deadline was October 5.

160. In *Mi Familia Vota v. Hobbs*, No. CV-20-01903-PHX-SPL, 2020 U.S. Dist. LEXIS 184397 (D. Ariz. Oct. 5, 2020), however, a federal district court violated the Constitution and enjoined that law, extending the registration deadline to October 23, 2020. The Ninth Circuit stayed that order on October 13, 2020 with a two-day grace period, *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 955 (9th Cir. 2020).

161. However, the Ninth Circuit did not apply the stay retroactively because neither the Arizona Secretary of State nor the Arizona Attorney General requested retroactive relief. *Id.* at 954-55. As a net result, the deadline was unconstitutionally extended from the statutory deadline of October 5 to October 15, 2021, thereby allowing potentially thousands of illegal votes to be injected into the state.

162. In addition, on December 15, 2020, the Arizona state Senate served two subpoenas on the Maricopa County Board of Supervisors (the "Maricopa Board") to audit scanned ballots, voting machines, and software due to the significant number of voting irregularities. Indeed, the Arizona Senate Judiciary Chairman stated in a public hearing earlier that day that "[t]here is evidence of tampering, there is evidence of fraud" with vote in Maricopa County. The Board then voted to refuse to comply with those subpoenas necessitating a lawsuit to enforce the

subpoenas filed on December 21, 2020. That litigation is currently ongoing.

State of Nevada

163. Nevada has 6 electoral votes, with a statewide vote tally currently estimated at 669,890 for President Trump and 703,486 for former Vice President Biden, a margin of 33,596 votes. Nevada voters sent in 579,533 mail-in ballots. In Clark County, Mr. Biden's margin (90,922 votes) significantly exceeds his statewide lead.

164. On December 14, 2020 the Republican slate of Presidential Electors met at the State Capital and cast their votes for President Donald J. Trump and Vice President Michael R. Pence.[29]

165. In response to the COVID-19 pandemic, the Nevada Legislature enacted—and the Governor signed into law—Assembly Bill 4, 2020 Nev. Ch. 3, to address voting by mail and to require, for the first time in Nevada's history, the applicable county or city clerk to mail ballots to all registered voters in the state.

166. Under Section 23 of Assembly Bill 4, the applicable city or county clerk's office is required to review the signature on ballots, without permitting a computer system to do so: "The *clerk or employee shall check* the signature used for the mail ballot against all signatures of the voter available in the records of the clerk." *Id.* § 23(1)(a) (codified at NEV. REV. STAT. § 293.8874(1)(a)) (emphasis add). Moreover, the system requires that two or more employees be included: "If at least two employees in the office of the clerk believe there is a reasonable question of fact as to whether the

[29] https://nevadagop.org/42221-2/

signature used for the mail ballot matches the signature of the voter, the clerk shall contact the voter and ask the voter to confirm whether the signature used for the mail ballot belongs to the voter." *Id.* § 23(1)(b) (codified at NEV. REV. STAT. § 293.8874(1)(b)). A signature that differs from on-file signatures in multiple respects is inadequate: "There is a reasonable question of fact as to whether the signature used for the mail ballot matches the signature of the voter if the signature used for the mail ballot differs in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk." *Id.* § 23(2)(a) (codified at NEV. REV. STAT. § 293.8874(2)(a)). Finally, under Nevada law, "each voter has the right ... [t]o have a uniform, statewide standard for counting and recounting all votes accurately." NEV. REV. STAT. § 293.2546(10).

167. Nevada law does not allow computer systems to substitute for review by clerks' employees.

168. However, county election officials in Clark County ignored this requirement of Nevada law. Clark County, Nevada, processed all its mail-in ballots through a ballot sorting machine known as the Agilis Ballot Sorting System ("Agilis"). The Agilis system purported to match voters' ballot envelope signatures to exemplars maintained by the Clark County Registrar of Voters.

169. Anecdotal evidence suggests that the Agilis system was prone to false positives (*i.e.*, accepting as valid an invalid signature). Victor Joecks, *Clark County Election Officials Accepted My Signature—on 8 Ballot Envelopes*, LAS VEGAS REV.-J. (Nov. 12, 2020) (Agilis system accepted 8 of 9 false signatures).

170. Even after adjusting the Agilis system's tolerances outside the settings that the manufacturer recommends, the Agilis system nonetheless rejected approximately 70% of the approximately 453,248 mail-in ballots.

171. More than 450,000 mail-in ballots from Clark County either were processed under weakened signature-verification criteria in violation of the statutory criteria for validating mail-in ballots. The number of contested votes exceeds the margin of votes dividing the parties.

172. With respect to approximately 130,000 ballots that the Agilis system approved, Clark County did not subject those signatures to review by two or more employees, as Assembly Bill 4 requires. To count those 130,000 ballots without review not only violated the election law adopted by the legislature but also subjected those votes to a different standard of review than other voters statewide.

173. With respect to approximately 323,000 ballots that the Agilis system rejected, Clark County decided to count ballots if a signature matched at least one letter between the ballot envelope signature and the maintained exemplar signature. This guidance does not match the statutory standard "differ[ing] in multiple, significant and obvious respects from the signatures of the voter available in the records of the clerk."

174. Out of the nearly 580,000 mail-in ballots, registered Democrats returned almost twice as many mail-in ballots as registered Republicans. Thus, this violation of Nevada law appeared to materially benefited former Vice President Biden's vote tally. Regardless of the number of votes that were affected

by the unconstitutional modification of Nevada's election rules, the non-legislative changes to the election rules violated the Electors Clause.

COUNT I: ELECTORS CLAUSE

175. The United States repeats and re-alleges the allegations above, as if fully set forth herein.

176. The Electors Clause of Article II, Section 1, Clause 2, of the Constitution makes clear that only the legislatures of the States are permitted to determine the rules for appointing presidential electors. The pertinent rules here are the state election statutes, specifically those relevant to the presidential election.

177. Non-legislative actors lack authority to amend or nullify election statutes. *Bush II*, 531 U.S. at 104 (quoted *supra*).

178. Under *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985), conscious and express executive policies—even if unwritten—to nullify statutes or to abdicate statutory responsibilities are reviewable to the same extent as if the policies had been written or adopted. Thus, conscious and express actions by State or local election officials to nullify or ignore requirements of election statutes violate the Electors Clause to the same extent as formal modifications by judicial officers or State executive officers.

179. The actions set out in Paragraphs 41-128 constitute non-legislative changes to State election law by executive-branch State election officials, or by judicial officials, in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada in violation of the Electors Clause.

180. Electors appointed to Electoral College in violation of the Electors Clause cannot cast constitutionally valid votes for the office of President.

COUNT II: EQUAL PROTECTION

181. The United States repeats and re-alleges the allegations above, as if fully set forth herein.

182. The Equal Protection Clause prohibits the use of differential standards in the treatment and tabulation of ballots within a State. *Bush II*, 531 U.S. at 107.

183. The one-person, one-vote principle requires counting valid votes and not counting invalid votes. *Reynolds*, 377 U.S. at 554-55; *Bush II*, 531 U.S. at 103 ("the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements").

184. The actions set out in Paragraphs (Georgia), (Michigan), (Pennsylvania), (Wisconsin), (Arizona), and (Nevada) created differential voting standards in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, [Arizona (maybe not)], and Nevada in violation of the Equal Protection Clause.

185. The actions set out in Paragraphs (Georgia), (Michigan), (Pennsylvania), (Wisconsin), (Arizona). And (Nevada) violated the one-person, one-vote principle in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada.

186. By the shared enterprise of the entire nation electing the President and Vice President, equal protection violations in one State can and do adversely affect and diminish the weight of votes cast in other States that lawfully abide by the election

structure set forth in the Constitution. The United States is therefore harmed by this unconstitutional conduct in violation of the Equal Protection or Due Process Clauses.

COUNT III: DUE PROCESS

187. The United States repeats and re-alleges the allegations above, as if fully set forth herein.

188. When election practices reach "the point of patent and fundamental unfairness," the integrity of the election itself violates substantive due process. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981); *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580-82 (11th Cir. 1995); *Roe v. State of Ala.*, 68 F.3d 404, 407 (11th Cir. 1995); *Marks v. Stinson*, 19 F. 3d 873, 878 (3rd Cir. 1994).

189. Under this Court's precedents on procedural due process, not only intentional failure to follow election law as enacted by a State's legislature but also random and unauthorized acts by state election officials and their designees in local government can violate the Due Process Clause. *Parratt v. Taylor*, 451 U.S. 527, 537-41 (1981), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 532 (1984). The difference between intentional acts and random and unauthorized acts is the degree of pre-deprivation review.

190. Defendant States acted unconstitutionally to lower their election standards—including to allow invalid ballots to be counted and valid ballots to not be counted—with the express

intent to favor their candidate for President and to alter the outcome of the 2020 election. In many instances these actions occurred in areas having a history of election fraud.

191. The actions set out in Paragraphs (Georgia), (Michigan), (Pennsylvania), (Wisconsin), (Arizona), and (Nevada) constitute intentional violations of State election law by State election officials and their designees in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, and Arizona, and Nevada in violation of the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully request that this Court issue the following relief:

A. Declare that Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada administered the 2020 presidential election in violation of the Electors Clause and the Fourteenth Amendment of the U.S. Constitution.

B. Declare that the electoral college votes cast by such presidential electors appointed in Defendant States Pennsylvania, Georgia, Michigan, Wisconsin, Arizona, and Nevada are in violation of the Electors Clause and the Fourteenth Amendment of the U.S. Constitution and cannot be counted.

C. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College.

D. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College and authorize, pursuant to the Court's remedial authority,

the Defendant States to conduct a special election to appoint presidential electors.

E. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College and authorize, pursuant to the Court's remedial authority, the Defendant States to conduct an audit of their election results, supervised by a Court-appointed special master, in a manner to be determined separately.

F. Award costs to the United States.

G. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

December , 2020

EXHIBIT C

12/27/20

DAG Call - on w/ DOTUS + wants to
conference me in
P- County is up in arms over the corruption

Scott Perry (PA) + Senator of
PA - Guy Ragsdale - some of the many
calling

205K votes - more than try low
voters - PA
- flooded the market w/ ballots

- 600K Votes added
- 570K - for Biden
- for Trump + lots of blanks

0332 - flooded the market - all at
- multiple states
once

Jim Jordan - fights - wins like
3rd world country.

Detroit - look at districts in MI
- were ready all but not
Wayne City (Detroit)

- Call dropped ... ~ 3 times today

- We have thousands of people who went in to vote + were told you already voted by absentee ballot

- people are angry - blaming DOJ + for inaction
- Statistically - election night it was a done deal
  - somehow, overnight the outcome changed bc all these ballots showed up
  - AZ, GA, PA ...

People won't have confidence in the GA Senate race

GA, NV, AZ, MI - all corrupted elections

People are complaining to us constantly

Thousands of people called this WHAO + FGL

DOJ failing to respond to legitimate complaints/reports of crimes

PA - 5M voters in the State
(possibly true?) - but 5.25M votes - clearly fraud

GA - tape that shows fraud, election crimes
- Ruby Freeman - Hucksters - closed the facility + then came back w/ hidden ballots, under table...
- networks magnified the tape + saw them vary the truth repeatedly

"You guys may not be following the internet the way I do"

Detroit - threw the poll watchers out

Don't even look at the illegal aliens voting - don't need to, it's obvious

FBI will always say nothing there
- leaders there oppose me, SAs support me

(TM) – that whole thing, clergy...
- talked to the Gov't there
- also upset

- it made some bad decisions on leadership
FBI there, but it was laboring under an
illegal investigation – Special Cnsl.
should never have been commenced
- You figure out what to do
w/ H. Biden – people will
criticize the DOJ if it's not
investigated for real.

- GA Leg. is on our side – they want to bring
a case but the Gov won't let them

- Statistically impossible for me to lose
- bookies had me at 100% on
election night – dropped to
32% in 4 or 5 hours – never happen
- DAG – will look at whether have more ballots
in PA than registered voters – should
be able to check on that quickly
but understand that the DOJ
can't + won't snap its fingers
+ change the outcome of the
election, doesn't work that way
- P: "Don't expect you to do

that, just say that the election was was corrupt + leave the rest to me and the R. Congressmen."

- (RD) - Sir, we have done dozens of investig., hundreds of interviews major allegations are not supported by evid. developed.
  - GA / PA / MI / NV.
- We are doing our job. Much of the info you're getting is false.
  - e.g. MI - report says 68% error rate - but reality is it was .0063% error rate - less than 1 in 15K.
    - OK fine - but what about the others?
- PA Truck Driver - we interviewed on both ends - no ballots or couldn't even ID the envelope
  - OK, not sure I didn't mention that one - what about the others?
- GA - looked at the tape, interviewed the Ws, no suitcases (OK - but they looked like that), cutters left, no multiple scanning of ballots

- Double voting, dead people, Indians getting paid. Lots of fraud.

- AZ - d avg lead of 9K - clearly was fraud / transferred.

- Judges keep saying - where is the DOJ? Why are they not filing in these cases?
  - DAG/RD - Sec. we are not in a position based on the evidence - we can only act on the actual evidence developed

- Told him flat out that much of the info he is getting is false, +/or just not supported by the evidence
  - we looked at allegations but they don't pan out
- P - this is election-turning fraud

"We have an obligation to tell people that this was an illegal, corrupt election."

- People tell me Jeff Clark is great, I should put him in
- People want me to replace DOJ leadership

RD - fine, but won't change the Dept's position
- you should have the leadership you want

- Yes, Rich, should go to Fulton Cty + do a signature verification and [redacted] could see how illegal it is. You'll find tens of thousands.

- More votes than voters.
  - I told him in WI they have compared the 2020 votes cast to 2016 registration #s - not a valid complaint

- "Nobody trusts the FBI" - need others to comment this

- "I'd like to request" - Fulton City, GA
  - Check signatures against years prior - not this year
  - DAG responds: we will take into account

- These people who saying that the election isn't corrupt are corrupt

- Not much time left

- Asked for cell # - provided (he had it anyway) - may have elected officials w/ relevant info call

- Sen. Johnson has done great job getting to bottom of things
- and that's done in public, unlike DOJ investigations

NV - forensic accounting shows we won by 280k votes

Mark Martin - NC SC Justice - vetted, scholar

"Ballot drops" changed the election

EXHIBIT D

Document ID: 0.7.2774.160403

From: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov>
To: Pak, BJay (USAGAN) <bpak@usa.doj.gov>
Cc:
Bcc:
Subject: FW: [EXTERNAL EMAIL] - Georgia Video Consult
Date: Mon Dec 07 2020 12:48:45 EST
Attachments:

JFYI. Please do not forward.

From: Donoghue, Richard (ODAG)
Sent: Monday, December 7, 2020 12:09 PM
To: Bowdich, David L. (DO) (FBI) [redacted]
Subject: RE: [EXTERNAL EMAIL] - Georgia Video Consult

Dave,

Thanks for forwarding. It is antiquated indeed.

Unfortunately, this is a continuation of a policy disagreement between the Election Crimes Branch (ECB) of PIN and the AG. While I understand ECB's concerns and the reasons for their historic practice, the AG simply does not agree with what he termed their "passive and delayed enforcement approach" (11/9/20 AG Memorandum) and has clearly directed that Department components should undertake preliminary inquiries and investigations of election-related allegations in certain circumstances even if election-related litigation is still ongoing. While this may be different from ECB's traditional approach (which was essentially to allow election fraud to take its course and hope to deter such misconduct in future elections through intervening prosecutions), the AG gets to make that call. PIN recognizes that much when they say below that he "has ultimate decision-making authority on this issue." As I relayed last night, the AG told me last night that the FBI should conduct some interviews relating the State Farm Arena allegations so that we are not relying entirely on the work/assessments of non-federal law enforcement authorities. It may well be that the GA SOS is correct in concluding that nothing nefarious happened there, but the fact is that millions of Americans have come to believe (rightly or wrongly) that something untoward took place and it is incumbent on the Department to timely conduct a limited investigation to assure the American people that we have looked at these claims. If we come to the same conclusion as the GA SOS, then that should give the public increased confidence in the election results in GA. If we come to a different conclusion, then we'll deal with that. Either way, the AG made it clear that he wants to be sure that we are actually doing our job and not just standing on the sidelines.

While PIN says below that they do not "concur" in proceeding with interviews, their concurrence is not required by the Justice Manual, nor has it ever been required. That is language they use to imply that they have approval/disapproval authority when, in fact, they do not. The only requirement in the Justice Manual is for consultation with PIN and that clearly has been done here. Moreover, given that the AG has specifically directed that the FBI conduct some interviews here (he leaves the number and depth of the interviews entirely up to the FBI), the decision has been made. We all have a chain of command for a reason.

Sorry that you and your team have been dragged into this again. Unfortunately, this is the reality of working here these days.

Thanks and good luck with it.

Rich

From: Bowdich, David L. (DO) (FBI) [redacted]
Sent: Monday, December 7, 2020 8:18 AM
To: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov<mailto:ricdonoghue@jmd.usdoj.gov>>
Subject: FW: [EXTERNAL EMAIL] - Georgia Video Consult

This is putting us in a bad spot. We need to get this PIN issue settled as to how to proceed. I feel like we are operating under an antiquated thought process here. Everyone understood that before the election we should not do these types of inquiries, but we are in a place right now in this election cycle in which these types of allegations are important to vet out, particularly when many in the country are still questioning the results. I am no lawyer, but my interpretation of the AG's 2020 Memorandum is different from theirs. Let me know your thoughts on how to proceed. Our folks in Atlanta are prepared to begin when they receive direction from me. I am forwarding this to our General Counsel for his analysis as well.

DB

From: [redacted] (FBI) [redacted]
Sent: Monday, December 7, 2020 8:01 AM
To: Bowdich, David L. (DO) (FBI) [redacted]
Subject: FW: [EXTERNAL EMAIL] - Georgia Video Consult

From: [redacted] (FBI) [redacted]
Sent: Monday, December 7, 2020 7:51 AM
To: [redacted] (FBI) [redacted]
Subject: FW: [EXTERNAL EMAIL] - Georgia Video Consult

FYSA.

[redacted]

From: [redacted] (FBI)
Sent: Monday, December 07, 2020 5:19 AM
To [redacted] (FBI) [redacted]
Cc: [redacted]
Subject: Fwd: [EXTERNAL EMAIL] - Georgia Video Consult

Sir, guidance below from PIN in regard to the situation in GA. I have not yet provided to AT.

[redacted]

[redacted]

---------- Forwarded message ----------
From: "Amundson, Corey (CRM)" [redacted]
Date: Dec 7, 2020 12:34 AM
Subject: [EXTERNAL EMAIL] - Georgia Video Consult
To: [redacted] (FBI)" [redacted]

PIN understands that the FBI proposes to interview certain individuals appearing in a video depicting vote tabulation at State Farm Arena in Georgia as soon as this morning (Monday). PIN also appreciates that the Attorney General may have approved and directed the proposed steps and has ultimate decision-making authority on this issue. PIN nevertheless recognizes our continuing obligation to examine and provide input on the proposed investigative activity under the Justice Manual. Though we anticipate receiving a formal request, we recognize the need for timely input in advance of the interviews. PIN therefore provides this input now based on the information we currently have and with the understanding that additional information might change our input. As explained below, PIN does not concur in any overt investigative activity, including the proposed interviews.

Based on a review of the information provided by the FBI, including a summary of the Secretary of State (SOS) investigation, PIN concludes that the allegations here do not fall within the scope of the Attorney General's Memorandum Regarding Post-Voting Election Irregularity Inquiries (Nov. 9, 2020), which created an exception to the DOJ Election Non-Interference Policy for substantial, clear, apparently credible, and non-speculative allegations of voting and vote tabulation irregularities "that, if true, could potentially impact the outcome of a federal election in an individual State." Accordingly, any overt investigative activity (and only if sufficiently predicated) must wait until the elections in Georgia (including the forthcoming Jan. 5, 2021, special elections) are concluded, their results certified, and all recounts and election contests concluded, pursuant to the DOJ Election Non-Interference Policy (Federal Prosecution of Election Offenses, 8th ed. pp. 84-85).

The same conclusion is compelled by the Attorney General's Memorandum Regarding Election Year Sensitivities (May 15, 2020), which directs that Department employees "must be particularly sensitive to safeguarding the Department's reputation of fairness, neutrality, and nonpartisanship." SOS investigators have already conducted recorded interviews of the individuals at issue and such interviews reportedly revealed nothing to suggest nefarious activity with regard to the integrity of the election. The FBI "re-interviewing" those individuals at this point and under the current circumstances risks great damage to the Department's reputation, including the possible appearance of being motivated by partisan concerns.

Please consult again if and when your office seeks to open a full field and grand jury investigation or wants to pursue overt investigative steps after the elections in your area are concluded, certified, and uncontested. Lastly, it is our practice to note in all concurrences and certain consultations, even as to covert or future activity, that you should be aware and mindful that the Attorney General's Memorandum Regarding Election Year Sensitivities (May 15, 2020), directs, in part, that "[i]f you face an issue, or the appearance of an issue, regarding the timing of statements . . . near the time of a primary or general election, contact the Public Integrity Section of the Criminal Division for further guidance." Please consult as to any proposed press release or statement in this matter.

Corey R. Amundson
Chief | Public Integrity Section

Donoghue, Richard (ODAG)

From:	Donoghue, Richard (ODAG)
Sent:	Tuesday, January 5, 2021 10:22 AM
To:	Christine, Bobby (USAGAS)
Cc:	Amundson, Corey (CRM)
Subject:	Intro & Coordination

Bobby,

I just spoke to Corey Amundson (cc'ed), the DOJ Criminal Division's Public Integrity (PIN) Chief and he happens to be in GA for the elections today. He is aware of the allegations regarding the truck and knows more about what has been done on that than any of us. He is also our resident expert in what can/cannot be done under these circumstances. Thus, you two should talk about how to proceed today. As discussed with both of you, while we're all skeptical of this claim, we should do what we can today within our established policies, and no more. FBI is aware of the situation and I think they're talking to HSI directly. If they haven't done so already, they should at least go look at the truck this morning.

If you need anything at all, feel free to call me. That said, I have 100% confidence that I would agree with whatever you two think is the right approach, so don't feel the need to run anything by me. Good luck down there, and my thanks to you both for answering the call.

Bobby Cel (b) (6)
Corey Cel (b) (6)

Rich

Richard P. Donoghue
Principal Associate Deputy Attorney General
Office of the Deputy Attorney General
(202) 514-2105