

INTRODUCTION TO THE APPENDIX

This is a massive case, and the Court is *very* busy. The defense has tried to simplify things as best we can. When it comes to the exhibits, they are all listed here and they are a continuation of what was filed with the first omnibus brief, appearing at R.8. So, Exhibit E is the first to appear with *this* brief. To make things easier (the defense hopes) we have also created an index that cites the filing page number at the top of the brief or exhibit.

In addition, we are providing an indexed binder of the brief and the exhibits for the Court with another for the staff. This will (we hope) make identifying the exhibits and the page numbers as easy as possible.

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STATE OF WISCONSIN
IN SUPREME COURT

Case No. 20AP1971-OA

DONALD J. TRUMP, MICHAEL R. PENCE,
AND DONALD J. TRUMP FOR PRESIDENT,

Petitioners,

v.

ANTHONY S. EVERS, Governor, in his
official capacity, the WISCONSIN
ELECTIONS COMMISSION, ANN S.
JACOBS, Chair, in her official capacity,
SCOTT MCDONELL, Dane County Clerk,
in his official capacity, ALAN A. ARNSTEN,
Member, Dane County Board of Canvassers,
in his official capacity, JOYCE WALDROP,
Member, Dane County Board of Canvassers,
in her official capacity, GEORGE L.
CHRISTENSON, Milwaukee County Clerk,
in his official capacity, TIMOTHY H.
POSNANSKI, Member, Milwaukee Board of
Canvassers, in his official capacity, RICHARD
BASS, Member, Milwaukee County Board
of Canvassers, in his official capacity and
DAWN MARTIN, Member, Milwaukee
Board of Canvassers, in her official capacity,

Respondents.

PETITION FOR ORIGINAL ACTION
IN THE WISCONSIN SUPREME COURT

**RESPONSE OF RESPONDENTS
WISCONSIN ELECTIONS COMMISSION AND
COMMISSIONER ANN JACOBS**

EXHIBIT E

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EXHIBIT E

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INTRODUCTION

After failing to prevail in the November election for President of the United States, Donald Trump sought a partial recount of two counties, Dane and Milwaukee, where voters had voted particularly heavily for his opponent, Joe Biden. Election officials in those counties duly recounted the votes and confirmed the result, with minor adjustments resulting in a slightly higher margin in his opponent's favor. On November 30, the Chair of the Wisconsin Elections Commission canvassed the results and determined that the recount results were correct.

Wisconsin law, specifically Wis. Stat. § 9.01(6), provides the exclusive remedy to appeal such a determination. The Chair's determination triggered the Trump campaign's right to bring that appeal in circuit court. Instead, the campaign filed this petition for an original action before this Court.

This Court should not accept the petition because it does not meet the criteria for this Court's original jurisdiction. Wisconsin law provides the exclusive remedy for this type of case, and Petitioners must follow that path. Further, the basis for this appeal, four untimely-raised legal disagreements with how election officials applied the election statutes during voting, are not valid reasons to overturn the results of an election where voters relied in good faith on election officials' administration of that election. And specifically in the context of this partial recount and the remedy Petitioners seek here, disenfranchising voters in only these two counties would result in one set of rules being applied to some voters and a different, less strict set applied to other voters, a result prohibited by the U.S. Supreme Court.

EXHIBIT E

ARGUMENT

- I. This case is an inappropriate candidate for this Court’s original jurisdiction because Petitioners’ exclusive remedy is the recount appeal mechanism under Wis. Stat. § 9.01(6).**

The Petition does not meet the standard for an original action in the first instance because, as Petitioners recognize, Wis. Stat. § 9.01 provides the exclusive remedy to appeal a recount determination.

As the Petition lays out, Petitioners sought a partial recount for Dane and Milwaukee Counties. After the recount confirmed the original tally and the Chair of the Elections Commission canvassed and certified the results, the Petitioners could appeal that determination to circuit court under Wis. Stat. § 9.01(6). Indeed, their Memorandum acknowledges that that process is their “exclusive remedy.” (Mem at 26/27.)

But instead of pursuing that route, they came straight to this Court, arguing either that there was not time to utilize their exclusive remedy (Mem at 27) or potentially that the Governor’s signing the certificate of ascertainment was an “attempt to deny Petitioners their right to appeal the determination of the recount” (Petition at 9). Neither argument holds water.

Section 9.01 provides for expedited proceedings and makes no exception for Presidential elections. And federal law anticipates and incorporates such proceedings. The Governor’s signing of the certification of ascertainment does nothing to strip a candidate of his or her right to pursue a recount appeal.

Petitioners need to follow their statutory remedy here. This Court's original action jurisdiction is not a mechanism for a litigant to ignore statutorily-required procedures.

A. The exclusive remedy to pursue a recount appeal is Wis. Stat. § 9.01(6).

The petition should be denied because Petitioners cannot evade the “exclusive judicial remedy” for litigation arising out of recount proceedings: a judicial review proceeding under Wis. Stat. § 9.01 that begins in the circuit court and then works its way up the appellate ladder. Nowhere does Wis. Stat. § 9.01 allow Petitioners to evade its “exclusive” requirements simply by asking this Court to invoke its original jurisdiction.

As Wis. Stat. § 9.01(11) provides, “[t]his section constitutes the *exclusive judicial remedy* for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process.” *See also Carlson v. Oconto Cty. Bd. of Canvassers*, 2001 WI App 20, ¶ 7, 240 Wis. 2d 438, 623 N.W.2d 195 (describing Wis. Stat. § 9.01 as the “exclusive remedy for any claimed election fraud or irregularity”); *State ex rel. Shroble v. Prusener*, 185 Wis. 2d 102, 111, 517 N.W.2d 169 (1994) (noting legislative intent to “make[] the recount appeal procedure the exclusive judicial remedy for testing the right to hold elective office”). “The law is well settled that where a statutory remedy is provided, the procedure prescribed by the statute must be strictly pursued to the exclusion of others.” *Siskoy v. Walsh*, 22 Wis. 2d 127, 131, 125 N.W.2d 574 (1963).

The “exclusive judicial remedy” for a recount appeal has two critical aspects that are relevant here.

First, the appeal begins in circuit court, not this Court: “Within 5 business days after completion of the recount determination . . . any candidate, or any elector when for a referendum, aggrieved by the recount *may appeal to circuit court.*” Wis. Stat. § 9.01(6)(a). The supreme court’s only role is for its chief justice to appoint a circuit judge to hear the appeal, where the underlying election was held in more than one judicial administrative district (as was this one). Wis. Stat. § 9.01(6)(b). After the circuit court finishes the proceedings, any appeal then proceeds to the court of appeals. Wis. Stat. § 9.01(9).

Second, the “exclusive judicial remedy” entails a specific set of statutory procedures set forth in Wis. Stat. § 9.01(7)–(8). One crucial procedure relates to the record: the reviewing circuit court must “issue an order directing each affected county, municipal clerk, or board, and the commission, to transmit immediately all ballots, papers and records affecting the appeal to the clerk of court or to impound and secure such ballots, papers and records, or both.” Wis. Stat. § 9.01(7)(a).

Another key provision limits the scope of review to evidence presented and objections made during the recount: “The court may not receive evidence not offered to the board of canvassers” and “[a] party who fails to object or fails to offer evidence of a defect or irregularity during the recount waives the right to object or offer evidence before the court,” with narrow exceptions. Wis. Stat. § 9.01(8)(c). Similarly, Wis. Stat. § 9.01(8)(d) creates a deferential standard of review for factual findings: “If the determination depends on any fact found by the board of canvassers . . . , the court may not substitute its judgment for that of the board of canvassers or the chairperson or designee as to the weight of the evidence on any disputed finding of fact.”

Petitioners essentially ask this Court to nullify *all* these statutory requirements by accepting this matter as an original action. They ask this Court to skip the statutory requirement that recount appeals begin in the circuit court. Wis. Stat. § 9.01(6)(a). And they ask this Court to let them ignore all the important statutory procedures regarding the record and scope of review specified in Wis. Stat. § 9.01(7)–(8). It is difficult to see what remains of Wis. Stat. § 9.01’s “exclusive judicial remedy” if it can be evaded as easily as this.

Respondents are not aware of any authority that allows this Court to ignore exclusive statutory review mechanisms using either its constitutional original jurisdiction under Article VII, § 3, or its general superintending power over the lower courts. Indeed, the Legislature’s power to create exclusive judicial remedies would be eviscerated if someone could avoid them simply by initiating an original action like this one.¹

At bottom, ignoring every one of Wis. Stat. § 9.01’s requirements by initiating an original action—as Petitioners request here—is clearly not what the Legislature envisioned when it created “the *exclusive judicial remedy* for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process.” Wis. Stat. § 9.01(11). The petition should be dismissed on that basis, alone.

¹ Even if this Court concluded that it could ignore Wis. Stat. § 9.01’s mandate that recount appeals begin in circuit court, it should still adopt the procedures set out in Wis. Stat. § 9.01(7)–(8). Those procedures are designed to ensure the orderly review of recount disputes like this one. Without them, the parties will be left with no clear set of rules for resolving what may prove to be a complicated set of legal and factual election disputes.

B. Federal law anticipates and incorporates such recount proceedings, and the Governor's signing of a certification of a determination is no hindrance to those proceedings.

The Petitioners assert that in order for an orderly recount appeal process to take place in the 2020 presidential election, this Court must order the Governor to withdraw the certificate of ascertainment of Wisconsin's electors that he has already issued and transmitted to the United States Archivist pursuant to Wis. Stat. § 7.70(5)(b) and 3 U.S.C. § 6, and that the Court must enjoin both the Wisconsin Elections Commission and the Governor from certifying any electors until after Petitioners' recount appeal is completed. (Petition at 25–26; Mem. at 5.) Petitioners also assert that the normal recount appeal process under Wis. Stat. § 9.01(6)–(9) cannot be followed in this election because both state and federal law require Wisconsin to certify a slate of electors in time for them to cast their electoral votes on December 14, 2020. Pet. Mem. at 26–27. *See also* Wis. Stat. § 7.75(1); 3 U.S.C. § 7.

Those assertions are wrong. There is no reason to invalidate the existing certificate of ascertainment or to enjoin the Commissioner or the Governor from certifying electors, because the issuance of a certificate of ascertainment does not impair the Petitioners' ability to obtain a meaningful recount appeal under Wis. Stat. § 9.01(6). There is also no necessity for their recount appeal to bypass the procedural requirements in Wis. Stat. § 9.01(6)–(9) because, contrary to their suggestion, neither federal nor state law requires their recount appeal to be completed before December 14.

The recount appeal process allows a recount petitioner to obtain meaningful judicial review of any procedural irregularities in the administration of an election that have

been alleged in a recount petition. *See* Wis. Stat. § 9.01(6)–(9). The availability of such review is not affected by the issuance of a certificate of ascertainment prior to the completion of such litigation.

In a Presidential election, once a certificate of ascertainment has been prepared showing the results of the canvass of the Presidential election and the names of the chosen electors, the Governor is required to sign the certificate, affix the great seal of the state to it, and send it to the U.S. administrator of general services. Wis. Stat. § 7.70(5)(b); 3 U.S.C. § 6. In addition, the Governor must prepare six duplicate originals of the certificate of ascertainment and deliver them to one of the chosen presidential electors. *Id.* Those steps must be completed on or before the first Monday after the 2nd Wednesday in December (this year, December 14), which is the federally prescribed date on which the electors must convene and cast their electoral votes. *Id.* That statutory deadline ensures that Wisconsin’s electors will receive their certificates from the Governor in time for them to perform their duty to convene and cast their electoral votes on December 14. *See* Wis. Stat. § 7.75(1); 3 U.S.C. § 7. The procedure under Wis. Stat. § 7.70(5)(b) exactly parallels the first part of the corresponding federal statute, 3 U.S.C. § 6, with the addition that the federal provision requires a state governor to transmit the certificate of ascertainment not only on or before the first Monday after the 2nd Wednesday in December, but also “as soon as practicable” after the identity of the chosen electors has been ascertained through the state canvassing process. 3 U.S.C. § 6.

The second part of 3 U.S.C. § 6, however, provides an additional procedure for reporting the outcome of any election contest that may take place in state court. Specifically, if there shall have been any final determination

of a proceeding under state law for contesting the appointment of any or all of the state's electors, then the executive of the state is required, as soon as practicable, to send a "certificate of such determination" to the U.S. Archivist. 3 U.S.C. § 6. Then, prior to the first meeting of Congress thereafter, the U.S. Archivist must transmit copies of the certificate of determination to each House of Congress. *Id.*

The two-part structure of 3 U.S.C. § 6 thus provides that a state governor, in some circumstances, might issue both a certificate of "ascertainment," which is based on the results of state election canvassing, and a certificate of "determination" that reports the final outcome of any state election contest proceeding that may have been subsequently completed. The plain language of 3 U.S.C. § 6 anticipates the possibility of more than one certificate, because it requires that "copies in full of *each and every such certificate*" received by the Archivist must be transmitted to the two houses of Congress. 3 U.S.C. § 6 (emphasis added).

In addition, the language of 3 U.S.C. § 6 also impliedly indicates that a certificate of determination may be issued after the electors have convened and cast their electoral votes on the first Monday after the 2nd Wednesday in December. The certificate of ascertainment, which is expressly required to be issued on or before that date, is also required to be sent to the electors themselves—presumably so that they have their certificates when they convene and vote on that date. *See* 3 U.S.C. 6; Wis. Stat. § 7.70(5)(b). The certificate of determination, in contrast, is not required to be sent to the electors themselves, but rather is only required to be sent to the U.S. Archivist, who in turn must send it to Congress. *See* 3 U.S.C. § 6. That procedure reflects the fact that a certificate of determination may be issued after the electors have already convened and voted. Therefore, even if

a state court reaches a final decision on an election contest after the originally certified electors have convened and voted, the certificate of determination ensures that Congress will be advised of the state court decision when it convenes in joint session on January 6, 2021, for the purpose of counting the electoral votes from all the states. *See* U.S. Const., Amendment XII; 3 U.S.C. § 15.

A fairly recent and significant historical precedent illustrates the different functions of a certificate of ascertainment and a certificate of determination under 3 U.S.C. § 6. On November 26, 2000, Florida Governor Jeb Bush issued a certificate of ascertainment based on the initial certification of the election by the Florida Elections Canvassing Commission. Later, on December 13, 2000, Governor Bush issued a second Certificate of Final Determination of Contests Concerning the Appointment of Presidential Electors, which conveyed the final outcome of litigation in multiple courts contesting the initial election outcome that had been reflected in the original certificate of ascertainment. Therefore, when Congress met in joint session on January 6, 2001, it had the benefit of both certificates from Florida.²

Similarly, here, Wisconsin has already issued issue a certificate of ascertainment based on the initial state canvass of the presidential election, and would be required by 3 U.S.C. § 6 to submit a certificate of determination based on the subsequent outcome of a recount appeal in the

² An archived version of the two Florida 2000 certificates can be found at https://web.archive.org/web/20041203233758/http://www.archives.gov/federal_register/electoral_college/2000_certificates/ascertainment_florida.html.

Wisconsin state courts. Both certificates would then be presented to Congress for its ultimate decision.

For similar reasons, it is not necessary to super-expedite state court proceedings in order to complete them by December 14. Petitioners assert that if this Court does not immediately take this case, Wisconsin is at serious risk of having no representation in the Electoral College on December 14. (Pet. Mem. at 27.) That is simply false. Under both 7.70(5)(b) and 3 U.S.C. § 6, the Governor must issue a certificate of ascertainment to one slate of electors on or before that date. That slate of electors then must convene and vote on December 14. *See* Wis. Stat. § 7.75(1); 3 U.S.C. § 7. As long as these state and federal statutes are followed, there is no possibility that Wisconsin could end up without representation in the electoral college.

The only way that unlawful and completely unacceptable outcome could happen would be if this Court were to grant the Petitioners' request to enjoin the Governor from certifying a slate of electors by December 14, as required by both Wis. Stat. § 7.70(5)(b) and 3 U.S.C. § 6. As long as the Court does not interfere in the way requested by the Petitioners, there is zero risk that Wisconsin will have no electoral votes on December 14. The procedure prescribed by Congress accommodates Petitioners' right to a meaningful recount appeal.

II. This case is an inappropriate candidate for this Court's original action jurisdiction because a petition for recount cannot achieve the exclusion of ballots based on belated legal challenges to how election officials conducted the election.

The Petition is also an inappropriate candidate for this Court's original action jurisdiction because Petitioners' disagreement with the recount determination is based

entirely on legal disagreements with how election officials interpreted the voting laws in preparing for and carrying out the election. These challenges come too late and would unconstitutionally punish voters who relied in good faith on election officials' guidance.

Petitioners complain that people applied to absentee vote using form EL-122³, a form created by the Elections Commission and long in use⁴; that election officials relied on longstanding advice from the Elections Commission on correcting witness addresses (Memorandum at p.15 n.6); that local officials failed to take unspecified steps to ensure that voters who had self-identified as "indefinitely confined" had done so in compliance with the law; and that Dane County should not have collected absentee ballots to assist voters and should instead have required them to use U.S. Mail.⁵ Petitioners were aware that officials were applying the laws in each of these ways prior to the election.

Such disagreements cannot form the basis of a recount appeal, especially where the issues were known to the campaign prior to the election and where voters relied in

³ <https://elections.wi.gov/forms/el-122>.

⁴ While this Response does not undertake to explain the many flaws in Petitioners' understanding of the voting laws, their dislike of EL-122 is a good example. Nothing in Wisconsin's election law requires a voter to request an absentee ballot on a separate piece of paper rather than using the same paper used as a ballot envelope. The case they cite, *Lee v. Paulson*, 2001 WI App 19, 241 Wis. 2d 38, 623 N.W.2d 577, has nothing to do with this situation: that case dealt with voters who had made no written request.

⁵ Petitioners assert that the parks where ballots were collected were not "ballot sites." (Pet. 60.) This is simply incorrect; voters were dropping off absentee ballots, not voting.

good faith on election officials' administration of the election. Laches bars these claims because Petitioners could have challenged them before the election occurred and in time for the people of Wisconsin to adjust. Due process principles also bar the exclusion of ballots as Petitioners request because it would deprive voters of their right to vote when they reasonably relied on election officials' administration of the election.

A. Laches bars Petitioners' effort to use challenges to officials' construction of voting statutes as a way to selectively disenfranchise voters.

Laches is an equitable defense premised on the simple proposition that “equity aids the vigilant, and not those who sleep on their rights to the detriment of the opposing party.” *State ex rel. Wren v. Richardson*, 2019 WI 110, ¶ 14, 389 Wis. 2d 516, 936 N.W.2d 587 (internal quotations omitted); see also *Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (noting that court called upon to grant relief in election cases “should act and rely upon general equitable principles”). In Wisconsin, laches may properly bar a party's claims where the balance of equities favors its application and where the party asserting laches establishes three elements: (1) unreasonable delay in bringing a claim; (2) the defending party's lack of knowledge that the first party would raise the claim; and (3) prejudice to the defending party caused by the delay. *Wisconsin Small Bus. United, Inc. v. Brennan*, 2020 WI 69, ¶ 12, 393 Wis. 2d 308, 946 N.W.2d 101.

Laches plays an important role in, and is routinely applied to, election-related matters. *E.g.*, *In re Price*, 191 Wis. 17, 210 N.W. 844, 845–46 (1926) (finding petitioner challenging county canvass “guilty of laches” and noting that delay in seeking relief left inadequate time to remedy alleged defect without disruption to election process); *Soules*

v. Kauaians for Nukolii Campaign Comm., 849 F.2d 1176, 1180 (9th Cir. 1988) (noting that laches may bar post-election challenges “in order to create an appropriate incentive for parties to bring challenges to state election procedures when the defects are most easily cured”). As one court explained, the enforcement of laches in the election context prevents perverse, undemocratic outcomes: “[F]ailure to require pre-election adjudication would permit, if not encourage, parties who could raise a claim to lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing seek to undo the ballot results in a court action. *Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (1983) (internal quotations omitted); *see also*

As set out above, the four legal challenges raised by Petitioners turn entirely on state election procedures that could have been challenged months or, in some cases years, ago. Petitioners’ challenges focus on: (1) the requirement that in-person absentee voters request a ballot by written application (Pet. 20); (2) the counting of absentee ballots accompanied by a witness certification that election officials wrote on (Pet. 21); (3) absentee voting by electors who designated themselves as “indefinitely confined” after March 25, 2020 (Pet. 23); and (4) the collection of absentee ballots at “democracy in the park” events in Dane County (Pet. 26).

Petitioners’ belated claims regarding these issues satisfy each and every element for applying laches.

First, Petitioners unreasonably delayed in bringing these claims. “In the context of elections, . . . any claim against a state electoral procedure must be expressed expeditiously.” *Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990). Here, Petitioners can offer no excuse that would justify failing to present *before* the election their claims, premised as they are on procedures established *before* the

election to carry out the election in accordance with Wisconsin law. Petitioners waited to challenge widely known procedures until after millions of voters cast their ballots in reliance on those procedures. That delay is unreasonable under both the law and common sense.

To understand the extent Petitioners' lack of diligence, consider each challenge in turn. With regard to requesting an absentee ballot by written application under Wis. Stat. § 6.86(1)(ar), although Petitioners allege that officials in Dane and Milwaukee counties "did not require [in-person absentee] voters to submit a written application," their true contention is that the application method those officials used was insufficient. (Pet. 20.) What Petitioners do not mention is that it has long been apparent that the Commission has advised election officials that the combined absentee certificate envelope/application can be used to satisfy the application requirement for in-person absentee voters. *See* Wisconsin Elections Commission, Form EL-122 Official Absentee Ballot Application/Certification (revised Aug. 2020) (available at <https://elections.wi.gov/forms/el-122>). As one example, the Commission published guidance in January 2016 advising that, for in-person absentee voters, "the combination application/certification certificate envelope will suffice as the absentee application." *See* Wisconsin Election Commission, Overview of Absentee Voting Rule at 11 (Jan. 26, 2016) (available at <https://elections.wi.gov/publications/manuals/absentee-voting-overview>).

Regarding the propriety of clerks filling in missing address information for absentee ballot witness certificates, the Commission's guidance to local election officials has been in place for over four years. *Compare* Wisconsin Elections Commission, *Am. Memo. Re Absentee Certificate Envelopes*, dated Oct. 18, 2016 (available at <https://elections.wi.gov/node/4188>) *with* Wisconsin Elections Commission,

Memo. Re Spoiling Absentee Ballot Guidance, dated Oct. 19, 2020 (available at <https://elections.wi.gov/node/7190>). Again, this issue could have been ironed out *years* before the 2020 general election, without any risk of disenfranchising voters who already cast their ballots in reliance on the Commission's advice.

As for Petitioners' challenge to voters who claimed to be "indefinitely confined," that issue was litigated almost *eight months* ago. On March 27, 2020, Mark Jefferson and the Republican Party of Wisconsin filed a petition for an original action with this Court to address the issue. *See* Pet. for Original Action, date March 27, 2020, Supreme Court of Wisconsin, No. 2020AP000557-OA. This Court reviewed the Commission guidance on indefinite confinement to local officials and concluded that it "provides the clarification on the purpose and proper use of the indefinitely confined status that is required at this time." (Pet.-App. at 236 (Supreme Court March 31, 2020 Order).) And it also enjoined the Dane County clerk from dispensing his advice about indefinite confinement during the Governor's Safer at Home emergency order. (Pet.-App. at 236-237 (Supreme Court March 31, 2020 Order) (enjoining County Clerk for Dane County from "posting advice . . . inconsistent with . . . WEC guidance" regarding voters claiming indefinitely confined status and finding the WEC guidance "provides the clarification . . . that is required at this time").)

Given that litigation, Petitioners obviously could have pressed this indefinite confinement issue in the many months between when it emerged and the November general election, thus allowing Wisconsin voters to adjust accordingly.

The Petitioners' objections to "democracy in the park" events could, likewise, have been raised well before the November 3 election given that they were widely publicized

in advance and that they concluded on October 3. (Pet.-App. 163-184.) Indeed, the Wisconsin legislature was sufficiently aware of the event that, in the days before the first scheduled event, it sent a letter to the Madison City Clerk asking that she cancel the event.⁶ *See* Letter from Misha Tseytlin to Maribeth Witzel-Behl, Sept. 25, 2020 (*available at* https://www.wpr.org/sites/default/files/september_25_2020_letter_to_city_clerk_witzel-behl.pdf).

The second laches requirement—lack of notice to Respondents—is also met here. The Petitioners’ failure to present these claims when they would reasonably be expected to do so—that is, before the election—is sufficient to satisfy the second laches element. *See Brennan*, 393 Wis. 2d 308, ¶ 18 n.10 (noting that failure to bring claim within reasonable time supports conclusion that party asserting laches lacked knowledge); *Schafer v. Wegner*, 78 Wis. 2d 127, 133, 254 N.W.2d 193 (1977) (same); *see also* 27A Am. Jur. 2d *Equity* § 124 (noting that focus of this element is on whether party asserting laches “acted in good faith belief that the right had been abandoned”). In the context of election litigation, where arrangements must be made and procedures put in place well before an election so that electors can effectively exercise their right to vote, it is expected that legal challenges will be presented with sufficient time to adjust course. *See Fulani*, 917 F.2d at 1031 (“[A]ny claim against a state electoral procedure must be expressed expeditiously.”); *cf. Republican Nat. Comm. v. Democratic Nat. Comm.*, 140 S. Ct. 1205, 1207 (2020) (observing that the Supreme Court has “repeatedly emphasized” that courts should not alter election rules “on

⁶ The legislature never pursued any further action to enjoin or otherwise challenge the event.

the eve of an election”). Petitioners, who are no strangers to pre-election litigation, made no such effort here.

Lastly, the prejudice caused by Petitioners’ delay is obvious and profound. Petitioners sat on their claims, allowing the Commission and local officials to carry out the state election in accordance with their understanding of the law, allowing millions of Wisconsinites to vote in reliance on those procedures, only to attack those decisions after they became irreversible. *See Fulani*, 917 F.2d at 1031 (“As time passes, the state’s interest in proceeding with the election increases in importance as . . . irrevocable decisions are made.”). This is precisely the type of prejudice the laches doctrine exists to prevent.

Many courts—including this one—have recognized that impermissible prejudice occurs when a party unreasonably delays in pursuing an election challenge. *See*, e.g., *Hawkins v. Wisconsin Elections Comm’n*, 2020 WI 75, ¶ 5, 393 Wis. 2d 629, 948 N.W.2d 877 (“[I]t is too late to grant petitioners any form of relief that would be feasible and that would not cause confusion and undue damage to both the Wisconsin electors who want to vote and the other candidates in all of the various races on the general election ballot.”); *In re Price*, 191 Wis. 17, 210 N.W. 844, 845–46 (1926) (finding petitioner challenging county canvass “guilty of laches” and noting that delay in seeking relief left inadequate time to remedy alleged defect while complying with election deadlines).⁷

⁷ *See also Williams v. Rhodes*, 393 U.S. 23, 34–35 (1968) (upholding denial of equitable relief to litigant seeking ballot access, noting that delay in pursuing claim created potential for “serious disruption of election process”); *Kelly v. Pennsylvania*, No. 68 MAP 2020, 2020 WL 7018314, at *1 (Pa. Nov. 28, 2020)

The equities weigh heavily in favor of applying laches here. Nothing less than the right of every Wisconsinite to have their vote for President counted is at stake if Petitioners' requests are granted. It is difficult to imagine an equitable consideration favoring Petitioners that could outweigh so fundamental a right. *See State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 613, 37 N.W.2d 473 (1949) ("The right of a qualified elector to cast a ballot for the election of a public officer . . . is one of the most important of the rights guaranteed to him by the constitution."); *see also Roth v. Lafarge School Dist. Bd. of Canvassers*, 2004 WI 6, ¶ 19, 268 Wis. 2d 335, 677 N.W.2d 599 ("Wisconsin courts have consistently noted that they do not want to deprive voters of the chance to have their votes counted.").

As the U.S. Supreme Court has recognized, "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy."

("[I]t is beyond cavil that Petitioners failed to act with due diligence Equally clear is the substantial prejudice arising from Petitioners' failure to institute promptly a facial challenge to the mail-in voting statutory scheme, as such inaction would result in the disenfranchisement of millions of Pennsylvania voters."); *Liddy v. Lamone*, 398 Md. 233, 245, 919 A.2d 1276 (2007) (noting in context of challenges to state election procedure claims must be pursued "without unreasonable delay, so as to not cause prejudice to the defendant" and collecting cases); *Blankenship v. Blackwell*, 103 Ohio St. 3d 567, 572–74, 817 N.E.2d 382 (2004) ("If relators had acted more diligently, the Secretary of State would have had more time to defend against relators' claims"); *Marsh v. Holm*, 238 Minn. 25, 55 N.W.2d 302 (1952) ("One who intends to question the form or contents of an official ballot to be used at state elections must realize that serious delays, complications, and inconvenience must follow any action he may take and that, unless a reasonable valid excuse be presented, . . . he should not be permitted to complain.").

Purcell v. Gonzalez, 549 U.S. 1, 4 (2006). “If citizens are deprived of th[e] [right to vote], which lies at the very basis of our Democracy, we will soon cease to be a Democracy.” *Frederick*, 254 Wis. at 613. One could not shake the public’s confidence in our electoral process more vigorously than by allowing unforeseeable post-election legal challenges to nullify an entire state’s election for President.

In light of Petitioners’ inexcusable delay, equitable considerations must bar the relief Petitioners seek—the categorical disenfranchisement of thousands of Wisconsin voters. *See Donald J. Trump for Pres., Inc. v. Boockvar*, -- F. Supp. 3d --, 2020 WL 6821992, *1 (M.D. Pa. 2020) (“Plaintiffs ask this Court to disenfranchise almost seven million voters. This Court has been unable to find any case in which a plaintiff sought such a drastic remedy in the contest of an election . . .”).

**B. Constitutional due process bars
Petitioners’ efforts to invalidate votes
where the voters relied in good faith on
officials’ voting process.**

Even if laches did not bar Petitioners’ claims, the remedy they seek—the exclusion of hundreds of thousands of absentee ballots—would be unlawful because it would violate Wisconsin’s federal due process rights by retroactively overriding election procedures that those voters relied on.

Once a state legislature has directed that the state’s electors are to be appointed by popular election, the people’s “right to vote as the legislature has prescribed is fundamental.” *Bush*, 531 U.S. at 104 (per curiam). That fundamental right to vote includes “the right of qualified voters within a state to cast their ballots and have them counted.” *United States v. Classic*, 313 U.S. 299, 315 (1941).

Thus, the power that Article II vests in the state legislature is necessarily “subject to the limitation that [it] may not be exercised in a way that violates other specific provisions of the Constitution,” including provisions that protect the fundamental right to vote. *Williams v. Rhodes*, 393 U.S. 23, 29 (1968). And while Article II unquestionably allows a state legislature to change the method for choosing the state’s electors, it cannot make changes in such a manner or under circumstances that would violate the Due Process Clause of the Fourteenth Amendment. So while the Wisconsin Legislature could seek to amend the existing Wisconsin statutes to provide in *future* presidential contests for direct legislative appointment of presidential electors, the guarantee of due process forbids this Court from enforcing the type of post-election rule changes the Petitioners seek. *See Griffin v. Burns*, 570 F.2d 1065, 1079 (1st Cir. 1978) (retroactive invalidation of absentee ballots violated due process).

In general, a due process violation exists where two elements are present: “(1) likely reliance by voters on an established election procedure and/or official pronouncements about what the procedure will be in the coming election; and (2) significant disenfranchisement that results from a change in the election procedures.” *Bennett v. Yoshina*, 140 F.3d 1218, 1227 (9th Cir. 1998). As relevant here, Wisconsin voters who reasonably relied on the established voting procedures that Petitioners only now challenge will be disenfranchised by the thousands, raising serious concerns of a due process violation. This Court should avoid granting a remedy that will create a constitutional violation. *See Wright v. Sumter Cty. Bd. of Elections & Registration*, 361 F. Supp. 3d 1296, 1301 (M.D. Ga. 2018) (declining to adopt remedial redistricting plan proposed by plaintiff, and noting “the obligation of the Court

to ensure that a remedial plan is constitutional”), *aff’d*, No. 18-11510, 2020 WL 6277718 (11th Cir. Oct. 27, 2020); *Baber v. Dunlap*, 349 F. Supp. 3d 68, 77-78 (D. Me. 2018) (observing “a certain degree of irony because the remedy Plaintiffs seek could deprive more than 20,000 voters of what they understood to be a right to be counted with respect to the contest between [two candidates],” and noting that “such a result would [raise equal protection concerns about “valuing one class of voters . . . over another”]; *see also Ford v. Tennessee Senate*, No. 06-2031, 2006 WL 8435145, at *14 (W.D. Tenn. Feb. 1, 2006) (“Voters whose right to vote is challenged must be afforded minimal, meaningful due process to include, notice and opportunity to be heard before they can be disenfranchised”).

Federal courts have exhibited sensitivity to the reliance interests of voters in considering injunctive relief in response to election challenges. For example, in *Griffin*, the First Circuit held that a Rhode Island Supreme Court decision unexpectedly changed state law after voters had relied on their absentee ballots being counted, and that “due process is implicated where the entire election process including as part thereof the state’s administrative and judicial corrective process fails on its face to afford fundamental fairness.” 570 F.2d at 1078.

Similarly, in *Northeast Ohio Coalition for Homeless v. Husted*, the Sixth Circuit considered a case in which wrong-precinct and deficient-affirmation provisional ballots were disqualified because of poll-worker error that caused the ballot deficiencies. 696 F.3d 580, 585 (6th Cir. 2012). The court noted that the Due Process Clause protects against “extraordinary voting restrictions that render the voting system fundamentally unfair,” *id.* at 597, and concluded that “[t]o disenfranchise citizens whose only error was relying on poll-worker instructions appears to us to be fundamentally

unfair,” *id.* at 597. Accordingly, the Sixth Circuit affirmed a preliminary injunction entered by the district court that required ballots cast incorrectly as a result of poll-worker error to be counted. *Id.* at 589-90.

Because Petitioners made no effort to pursue these challenges earlier, thousands of Wisconsinites cast their votes in reliance on the procedures dictated to them by election officials. Widespread disenfranchisement for following the rules does not comport with due process or a healthy democracy.

* * * * *

Petitioners say they care about how these laws are applied in future elections (Petition at 24). They can pursue such clarification from the courts through a declaratory judgment action. But they cannot raise them as a way to disenfranchise voters who relied in good faith on election officials’ advice.

III. The Petition is an inappropriate candidate for this Court’s original action jurisdiction because the remedy Petitioners seek would violate the equal protection rights of voters in the recounted counties.

Leaving aside the exclusive recount remedy in Wis. Stat. § 9.01 and Petitioners’ unreasonable attempt to disenfranchise voters by waiting to bring these claims until *after* the election, the piecemeal relief they seek would create an equal protection violation of the kind recognized in *Bush v. Gore*, 531 U.S. 98 (2000). In a nutshell, Petitioners ask this Court to invalidate votes cast in Dane in Milwaukee counties but not votes cast in the same manner elsewhere in the state. Counting a vote cast in Green Bay but not one cast in an equivalent way in Madison or Milwaukee would deny Wisconsin voters the equal protection of the law.

In *Bush*, the U.S. Supreme Court reversed a decision of the Florida supreme court in the 2000 general election that, during a recount much like the one here, resulted in “arbitrary and disparate treatment [of] voters in . . . different counties.” *Id.* at 107. One kind of “uneven treatment” on which the court frowned was “counties us[ing] varying standards to determine what was a legal vote.” *Id.* These county-by-county differences violated the Fourteenth Amendment’s requirement that “[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Id.* at 104–05. The only way to avoid those problems during a recount would have been to “adopt[] . . . statewide standards for determining what is a legal vote.” *Id.* at 110.

Petitioners’ request to invalidate votes only in Dane and Milwaukee counties would violate these basic equal protection principles recognized in *Bush*. Each category of allegedly “illegal” votes they identify rests either on statewide guidance or on conduct that surely occurred statewide. But Petitioners, presumably for partisan reasons, have picked only two counties in which to invalidate votes.

First, consider Petitioners’ assertion that election officials in Dane and Milwaukee should not have considered absentee ballot envelopes to be the necessary written applications. (Pet. ¶¶ 19–20, 29–38.) But WEC’s statewide guidance indicates that “[t]here should be a written application for each absentee ballot envelope *except those issued in-person in the clerk’s office.*” (Pet. App. 195 (emphasis added).) It is therefore almost certainly true that other counties and municipalities across Wisconsin took the same approach as Dane and Milwaukee counties, meaning that Petitioners’ legal argument would affect many other absentee votes outside these two counties. But granting

Petitioners their relief would leave such ballots untouched anywhere in Wisconsin *except* Dane and Milwaukee counties, where they would be invalidated.

Second, Petitioners attack absentee ballots in Dane and Milwaukee counties in which election officials filled out missing address information in the witness certification. (Pet. ¶¶ 21–22, 39–45.) Again, however, WEC gave statewide guidance to this effect:

[C]lerk[s] should attempt to resolve any missing witness address information prior to Election Day if possible, and this can be done through reliable information (personal knowledge, voter registration information, through a phone call with the voter or witness). The witness does not need to appear to add a missing address.

See Wisconsin Elections Commission, *Spoiling Absentee Ballot Guidance*, Oct. 19, 2020, *available at* <https://elections.wi.gov/node/7190>. So, there are surely many more absentee ballots across Wisconsin where election officials filled out missing witness address information; but, again, Petitioners would have all those votes count, unless they were cast in Dane and Milwaukee counties.

Third, Petitioners seek to invalidate ballots cast in Dane and Milwaukee counties by certain voters who claimed indefinite confinement status. (Pet. ¶¶ 23–24, 46–57.) They contend that many such voters were not, in fact, indefinitely confined as defined in Wis. Stat. § 6.86(2)(b). Even if some Wisconsin voters had improperly claimed this status, there is no reason to think they resided only in Dane and Milwaukee counties. Yet Petitioners ask this Court to throw out these votes only in two counties, leaving all others in place.

Finally, Petitioners challenge absentee ballots that were witnessed and dropped off at various parks in Madison

before election day. (Pet. ¶¶ 26, 58–60.) Ballots dropped off at these so-called “Democracy in the Park” locations are not meaningfully different from those deposited in absentee ballot drop boxes that proliferated across Wisconsin to handle the expected surge in absentee ballots.⁸

Invalidating votes in these four categories only in Dane and Milwaukee counties would result in the kind of “arbitrary and disparate treatment [of] voters in . . . different counties” rejected in *Bush*, 531 U.S. at 107. Invalidating, for instance, an absentee ballot cast in Dane or Milwaukee County without a separate written application but not one cast similarly elsewhere would impermissibly result in “uneven treatment” through “varying standards to determine what [is] a legal vote” from county to county. *Id.*; see also *Hunter v. Hamilton Cty. Bd. of Elections*, 635 F.3d 219, 242 (6th Cir. 2011) (citing *Bush* for the proposition that “[s]tatewide equal-protection implications could arise” when equivalently situated votes are counted in some counties but not others); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 476 (6th Cir. 2008) (a state may not “arbitrarily deny [residents] the right to vote depending on where they live”).

The Fourteenth Amendment requires Wisconsin to apply “statewide standards for determining what is a legal vote.” *Bush*, 531 U.S. at 110. Because Petitioners’ requested relief would instead impose a patchwork of rules that vary depending solely on the county where a voter lives, it would be unconstitutional.

⁸ See, e.g., <https://www.wbay.com/2020/10/10/five-absentee-ballot-drop-boxes-activated-in-green-bay/>; <https://www.wisconsinwatch.org/2020/10/wisconsin-absentee-ballot-drop-box-search/>.

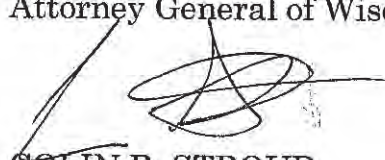
CONCLUSION

Respondents Wisconsin Elections Commission and its Chair ask this Court to deny the petition for original jurisdiction.

Dated this 1st day of December 2020.

Respectfully submitted,

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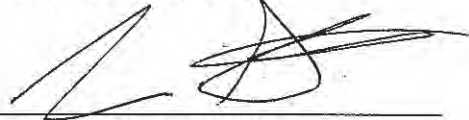
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CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b) and (c) for a response produced with a proportional serif font. The length of this response is 7183 words.

Dated this 1st day of December 2020.

A handwritten signature in black ink, appearing to read 'C. Stroud', is written over a horizontal line.

COLIN R. STROUD
Assistant Attorney General

No. _____

In the Supreme Court of Wisconsin

DONALD J. TRUMP, MICHAEL R. PENCE, and DONALD J. TRUMP FOR
PRESIDENT, INC.,

PETITIONERS,

V.

JOSEPH R. BIDEN, KAMALA D. HARRIS, MILWAUKEE COUNTY CLERK
c/o GEORGE L. CHRISTENSON, Milwaukee County Clerk, MILWAUKEE
COUNTY BOARD OF CANVASSERS c/o TIMOTHY H. POSNANSKI,
Chairman of Milwaukee County Board of Canvassers, DANE COUNTY CLERK
c/o SCOTT MCDONNELL, Dane County Clerk, DANE COUNTY BOARD OF
CANVASSERS c/o ALAN A. ARNSTEN, Member of Dane County Board of
Canvassers, WISCONSIN ELECTION COMMISSION, and ANN S. JACOBS,
Chairperson Wisconsin Elections Commission,

RESPONDENTS

ON APPEAL FROM A DECEMBER 11, 2020 DECISION AND
ORDER AFFIRMING THE DETERMINATIONS OF THE
CANVASSING BOARDS BY HONORABLE JUDGE STEPHEN
A. SIMANEK IN MILWAUKEE COUNTY CASE NO.
2020CV7092

EMERGENCY PETITION TO BYPASS COURT OF APPEALS WITH MOTION TO ACCEPT OPENING BRIEF AND APPENDIX AND SET EXPEDITED SCHEDULE

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EXHIBIT F

INTRODUCTION¹

A Presidential election is one of the most important matters in our Republic, representing to all Americans, and to the world, the sanctity of the rule of law. This matter poses the fundamental legal question regarding such an election: Do our state statutes governing elections mean what they say?

Wisconsin has made explicit choices on how it will conduct its elections, including a choice to treat absentee voting with great caution and guard it with mandatory rules. The Wisconsin Elections Commission (“WEC”) made choices explicitly contradicting what those statutes required and then, either on WEC’s advice or on their own volition, municipal clerks chose not to follow the absentee-voting statutes.

This Court must address these fundamental issues immediately, as identifying the validly appointed Presidential Electors to represent Wisconsin must be done on a timetable set in the United States Constitution which cannot be changed. There is no time for review by the Court of Appeals, the issues posed are of extraordinary statewide importance, and these fundamental legal issues can only be authoritatively resolved by this Court.

¹ Citations to “P. App. ____” refer to the page(s) of the Appendix filed with Petitioners’ Emergency Petition to Bypass the Court of Appeals in this matter; citations to the transcript of the Recount proceedings in Milwaukee County appear as “Milwaukee Cty. Trans. [date] at [page:line]”; and citations to the transcript of the Recount proceedings in Dane County appear as “Dane Cty. Trans. [date] at [page:line].”

ISSUES PRESENTED

1. May the State of Wisconsin establish mandatory procedures for absentee voting by law?
2. Were the procedures established by the laws of the State of Wisconsin for absentee voting complied with in Dane and Milwaukee Counties in the November 3, 2020 election?
3. Are the remedies prescribed by Wisconsin's election laws for violations of absentee-voting requirements mandatory?

RELIEF REQUESTED

1. That this Court take jurisdiction of this matter.
2. That the Court set an expedited schedule for briefing and oral argument within a time period that will allow for complete resolution of this case prior to January 6, 2021, the date for consideration of electoral votes in the United States Congress. If the Brief submitted herewith is accepted as Appellants' Opening Brief, a schedule the Court could consider is: 1) Responsive Briefs of other Parties due Wednesday, December 16, 2020; 2) Appellants' Reply Brief due Saturday, December 19, 2020; and 3) oral argument the week of December 21, 2020.
3. That the Court consider this a Motion to Accept the Brief filed herewith as the Petitioner/Appellants' Opening Brief.

STATEMENT OF THE CASE

I. Procedural Posture.

This matter was previously before this Court on a request for Original Action. *Trump v. Evers*, No. 2020AP1971-OA, 2020 Wisc. LEXIS 191, at *1 (Dec. 3, 2020). After this Court declined the Petitioners' request, Petitioners immediately began an action by Notice of Appeal in the Circuit Courts of Dane and Milwaukee Counties, the matters were consolidated, the parties presented the appeal, and the Circuit Court ruled. (P. App. 537-544). A Notice of Appeal of the Circuit Court's December 11, 2020 Final Order was immediately filed, and this Petition to Bypass was filed as quickly as possible with the Clerk of this Court. (P. App. 550).

II. Granting the Petition to Bypass is Essential to the Law of this State and to the Public Confidence in the Integrity of the Presidential Election and Future Elections.

This Court should immediately take jurisdiction because there is an exigent and compelling public interest in obtaining a prompt and authoritative determination of the election for President and Vice President of the United States. A decision by this Court is essential both as to the November 3, 2020 election and to all future elections. A determination of the legal issues unquestionably will control the outcome of this case.

The outcome of this case will affect the voting rights of all the citizens of Wisconsin and, particularly, those voting as absentee electors. A failure to immediately address the fundamental legal issues would leave in doubt the outcome of the 2020 election for President and Vice President of the United States and would

forever negatively affect the public's confidence in our elections, as well as the capacity of the Judiciary to serve as the ultimate arbiter of legal disputes. Only this Court can act with authoritative finality.

A. Bypass Rules.

Wis. Stat. § 808.05(1) provides that this Court may take jurisdiction of an appeal if "[i]t grants direct review upon a petition to bypass filed by a party[.]" Wis. Stat. § 809.62(1r) sets out some of the criteria the Court will apply to determine if a Bypass will be granted, but notes those are "neither controlling nor fully measur[e] the Court's discretion . . ."

Wis. Stat. § (Rule) 809.60(1) provides that a party may file with this Court "a petition to bypass the court of appeals pursuant to § 808.05 no later than 14 days following the filing of the respondent's brief under § 809.19[.]" The petition to bypass "must include a statement of reasons for bypassing the court of appeals." *Id.*

This Court's Internal Operating Procedures also address a petition to bypass:

2. Petition to Bypass, Certification and Direct Review. A party may request the court to take jurisdiction of an appeal or other proceeding pending in the Court of Appeals by filing a petition to bypass pursuant to Wis. Stat. § (Rule) 809.60. A matter appropriate for bypass is usually one which meets one or more of the criteria for review, Wis. Stat. § (Rule) 809.62(1),² and one the court concludes it will ultimately choose to consider regardless of how the Court of Appeals might decide the issues. At times, a petition for bypass will be granted where there is a clear need to hasten the ultimate appellate decision.

² The criteria for granting a petition for review in this Court are found in Wis. Stat. § (Rule) 809.62(1r).

Wisconsin Supreme Court Internal Operating Procedures, II.B.2.

B. The Petition Satisfies the Criteria for Bypass and Should Be Granted.

In our country, the Presidential election is one of the most solemn and significant events for all citizens. It represents the ultimate statement by all American citizens concerning the sanctity of the rule of law and the peaceful transfer of Executive power. It is unlike any other election, and its importance is recognized uniformly by American courts. *Bush v. Gore*, 531 U.S. 98, 112 (2000); *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 594 (6th Cir. 2006); *Green Party of Ga. v. Kemp*, 171 F. Supp. 3d 1340, 1367 (N.D. Ga. 2016); *Nader v. Keith*, No. 04 C 4913, 2004 U.S. Dist. LEXIS 16660, at *22 (N.D. Ill. Aug. 23, 2004)

As such, the legal issues raised during the Recount, addressed in this Appeal, are certainly as “special” and “important” as any case this Court is likely ever to hear. This Court has previously granted bypass in election-law cases of lesser moment. *Elections Bd. of Wisconsin v. Wisconsin Mfrs. & Commerce*, 227 Wis. 2d 650, 653, 670, 597 N.W.2d 721 (1999). *See also NAACP v. Walker*, 2014 WI 98, ¶¶1, 18, 357 Wis. 2d 469, 851 N.W.2d 262 (2014).

The legal issues posed are more fully described in the Brief of Petitioners filed simultaneously with this Petition, and Petitioners respectfully incorporate that Brief by reference. The circuit court’s decision has fully decided any factual matters, so no factual determinations remain to be made. The sole remaining issues are legal and, thus, fall squarely within the purview of the Court. Wis. Stat. § 809(1r)(3).

Ultimately, only this Court can issue a decision with statewide effect. Wis. Stat. § 809.62(1r)(2). A decision not to bypass would be, in effect, a decision by this Court never to allow a meaningful review of the Presidential election results in Wisconsin prior to January 6, 2021. A stop in the Court of Appeals would be little more than an exercise in futility with regard to one of the central errors committed during the election and Recount—the municipal clerk’s issuance of 170,140 absentee ballots without first having received a written application from the electors, and the Boards of Canvassers’ failure to exclude those ballots. (P. App. 18, 20-21, 29-30). That issue has already been addressed and decided in a published opinion of the Court of Appeals. *See Lee v. Paulson (in re Ballot Recount)*, 2001 WI App 19 (applying the plain language of Wis. Stat. §§ 6.84(2) & 6.86(1)(ar) and ordering the removal of all absentee ballots issued without a corresponding written application from the final vote totals and changing the outcome of an election). In light of *Lee*, the Court of Appeals cannot do anything other than reach the same conclusion in this case. *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246, 256 (1997) (“we conclude that the constitution and statutes must be read to provide that only the supreme court, the highest court in the state, has the power to overrule, modify or withdraw language from a published opinion of the court of appeals”). After the Court of Appeals conforms its ruling in this case to *Lee*, there is no doubt Respondents would then petition this Court to review the case. As to these, and the other matters of statutory construction, there is not sufficient time to follow that course.

In addition, there can be little doubt that the issues regarding the statutes governing absentee voting are of the type that will “recur unless resolved by the Supreme Court.” Wis. Stat. § 809.62(1r)(3). Absentee voting has dramatically increased over the years and will likely continue to increase. The issues raised by Petitioners concerning the mandatory character of the statutes, the remedies required for violations, and the legal effect of WEC advice, will most certainly recur in future recounts and elections and will control how future absentee voters cast their ballots. If this Court does not act, every future absentee voter will doubt if the vote they cast will be counted. The resulting lack of confidence in all future Wisconsin elections would be catastrophic.

C. The Court Should Grant Bypass Because the Time for a Meaningful Decision is Too Short to Allow for Intermediate Appellate Review.

In a more ordinary case— involving for example, the election of a member of a multi-member government body, such as a legislative chamber which can function without every member—this Court might wait for the Court of Appeals to issue a ruling before considering the case. However, here a grant of bypass is essential to ensure that the issues raised in this case are resolved so there can be a determination in Congress on January 6, 2021, of which slate of

electors, those pledged to Trump-Pence or those pledged to Biden-Harris, are properly counted as Wisconsin's votes for President and Vice President.³

Final resolution of judicial controversies can take as long as January 6th because, under the Constitution, none of the votes cast for President and Vice President are *opened* before that date. As the WEC explained in its earlier filing in this Court, the winner of Wisconsin's ten electoral votes can be certified "after the electors have convened and cast their electoral votes," and before January 6. Response of Respondents Wisconsin Elections Commission and Commissioner Ann Jacobs in Case. No. 20AP1971-OA, filed Dec. 1, 2020, at 8.⁴

³ Following the recommended approach to situations involving court challenges in Presidential elections which are not resolved by the time the Presidential electors must cast their votes pursuant to Art. II, § 1, cl. 4, and 3 U.S.C. § 7 (this year, December 14), the Trump-Pence Campaign has requested its electors to sign and send to Washington on that date their votes, to ensure that their votes will count on January 6 if there is a later determination that they are the duly appointed electors for Wisconsin.

This practice dates back at least as far as 1960, when the Kennedy electors in Hawaii voted on the date the Electoral College met, even though on that date the Nixon electors had been ascertained by the acting Governor to have won the state; only after further litigation were the votes of the Kennedy electors approved and ultimately counted in Congress. *See, e.g.,* Vasan Kesavan, *Is the Electoral Count Act Unconstitutional?*, 80 N. Car. L. Rev. 1654, 1691-92 (2002). *See also* Michael L. Rosin & Jason Harrow, "How to Decide a Very Close Election for Presidential Electors: Part 2," Take Care Blog, Oct. 23, 2020 (<https://takecareblog.com/blog/how-to-decide-a-very-close-election-for-presidential-electors-part-2>) (visited Dec. 9, 2020) (concluding that if "a state wants to have its electoral votes counted, but which presidential electors were appointed by the voters on election day remains uncertain . . . there is only one possible solution: both potentially-winning slates of electors should cast electoral votes on the day required while the recount continues").

⁴ *See also* *Bush v. Gore*, 531 U.S. 98, 144 (2000) (Ginsburg, J., dissenting) (noting that the date that has "ultimate significance" under federal law is "the sixth day of January," the date set by 3 U.S.C. § 15 on which "the validity of electoral votes" is determined); Laurence H. Tribe, *Comment: eroG.v hsuB and Its Disguises: Freeing Bush v. Gore From Its Hall of Mirrors*, 115 Harv. L. Rev. 170, 265-66 (2001) (noting that the only real deadline for a State's electoral votes to be finalized is "before Congress starts to count the votes on January 6").

We agree with WEC that because January 6, not December 14, is the real deadline, it is not “necessary to super-expedite state court proceedings . . .” *Id.* Nonetheless, any realistic prospect that this matter can be given due deliberation by this Court, and resolved soon enough that any aggrieved party would have a reasonable opportunity to seek United States Supreme Court review, *does* require that this Court grant bypass and set the appeal for expedited briefing and argument. It is simply not plausible that this appeal could be definitively concluded in the next three weeks or so if the parties were first required to brief and argue in the Court of Appeals.

CONCLUSION

This Court should grant the Petition for Bypass, and enter such other and further orders so as to ensure that the matter can be entirely resolved before January 6, 2021.

Dated this 11th day of December, 2020.

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4 SELECT COMMITTEE TO INVESTIGATE THE
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

8

9

10

11 DEPOSITION OF: ANDREW HITT

12

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14

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Monday, February 28, 2022

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Washington, D.C.

18

19

20 The deposition in the above matter was held via Webex, commencing at 10:04
21 a.m.

22

Present: Representative Schiff.

1

2 Appearances:

3

4

5 For the SELECT COMMITTEE TO INVESTIGATE

6 THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

7

8 [REDACTED] STAFF ASSOCIATE

9 [REDACTED], INVESTIGATIVE COUNSEL

10 [REDACTED], PROFESSIONAL STAFF MEMBER

11 [REDACTED], SENIOR INVESTIGATIVE COUNSEL

12 [REDACTED], CHIEF CLERK

13 [REDACTED], PROFESSIONAL STAFF MEMBER

14 [REDACTED], OF COUNSEL TO THE VICE CHAIR

15

16

17 For THE WITNESS:

18

19 STEVE BISKUPIC

20 Biskupic & Jacobs

21 1045 W Glen Oaks Lane

22 Suite 106

23 Mequon, WI 53092

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1

2

3 Ms. [REDACTED]. So the time is 10:03. We're going to go on the record. This is
4 a deposition of Andrew Hitt conducted by the House Select Committee to Investigate the
5 January 6th Attack on the United States Capitol pursuant to House Resolution 503. At
6 this time, I would like to ask the witness to please state his full name and spell his last
7 name for the record.

8 The Witness. Andrew Hitt, H-i-t-t.

9 Ms. [REDACTED]. And, counsel, can you please state your full name and spell your
10 last name for the record, please.

11 Mr. Biskupic. Sure. Counsel for Mr. Hitt is Steven Biskupic from the law firm
12 Biskupic and Jacobs. And Biskupic is spelled B as in boy, i-s-k-u, P as in Peter, i-c.

13 Ms. [REDACTED]. Great. Thank you. My name is [REDACTED], and I
14 serve as investigative counsel for the select committee. My colleague to the left, can
15 you please introduce yourself.

16 Mr. [REDACTED]. I'm [REDACTED], and I am a senior investigative counsel at the
17 committee and also the additional title of counsel to the Vice Chair Liz Cheney.

18 Ms. [REDACTED]. And to my right is [REDACTED] - [REDACTED]. He is a
19 professional staff member for the select committee. And we also have some other staff
20 members for the select committee on the line as well. This will be a staff-led deposition.
21 If any members of the select committee join, they, of course, may choose to also ask
22 questions. I will try to announce them as I see them join so that you're aware Mr. Hitt.
23 Under the House deposition rules, neither committee members nor staff may discuss the
24 substance of the testimony you provide today unless the committee approves its release.
25 You and your attorney will have an opportunity to review the transcript.

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1 Before we begin, I would like to discuss a few ground rules. We will follow the
2 House deposition rules that we have provided to you with the subpoena. There is an
3 official reporter transcribing the record of this deposition. Please wait until each
4 question is completed before you begin your response, and we will try to wait until your
5 response is complete before we ask your next -- our next question. And I know with
6 virtual proceedings, it can be a little difficult. So I apologize if I ever interrupt you. I
7 won't take it -- please don't take it personally, and I won't take it personally as well.
8 There is a little bit of a delay at times.

9 The stenographer cannot record nonverbal responses, such as shaking your head
10 or nodding your head. So it is important that you answer each question with an audible
11 verbal response. We ask that you please provide complete answers based on your best
12 recollection. If my question isn't clear, and it probably won't be at times, just please ask
13 for me to clarify. If you don't know the answer, please say so. You may only refuse to
14 answer a question to preserve a privilege recognized by the select committee. If you
15 refuse to answer a question based on a privilege, staff may proceed with the deposition
16 or seek a ruling from the chairman on the objection. If the chairman overrules such an
17 objection, you are required to answer the question.

18 I also want to remind you that it is unlawful to deliberately provide false
19 information to Congress. And we tell that to everyone. It's not specific to you. Since
20 this deposition is under oath, providing false information could result in criminal penalties
21 for perjury and/or providing false statements. Do you understand that?

22 The Witness. Yes.

23 Ms. [REDACTED] Okay. Great. Would you please stand and raise your right
24 hand to be sworn in.

25 The Reporter. Sir, do you solemnly declare and affirm, under the penalty of

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1 perjury, that the testimony you are about to give will be the truth, the whole truth, and
2 nothing but the truth?

3 The Witness. I swear.

4 Ms. [REDACTED]: Logistically, please let us know if you need any breaks, or if at
5 any time you would like to discuss anything with your attorney. We can go off the
6 record, mute ourselves, turn off the video, and feel free to talk to your counsel, and then
7 we can get back in. If you ever, you know, want water or anything, just let us know. I
8 know that these can be really draining. Just raise your hand. Perfect. Okay. Great.

9 The Witness. Okay.

10 Ms. [REDACTED]: Is there anything that you wanted -- any questions you have or
11 anything you wanted to discuss before we start?

12 The Witness. No.

13 EXAMINATION

14 BY MS. [REDACTED]:

15 Q Okay. Let's pull up exhibit 1, please.

16 Mr. Hitt, can you see that clearly?

17 A Yes, I can.

18 Q Great. Okay. So this is exhibit 1. You understand that you are
19 appearing pursuant to the subpoena dated January 28, 2022, which should be what
20 you're looking at right now on your screen. Is that right?

21 A Yes, I do.

22 Q And you're the Andrew Hitt listed in the subpoena in exhibit 1. Is that
23 right?

24 A Yes, I am.

25 Q Okay. Part of the subpoena requires you to produce documents and

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1 information, including electronically stored information. Do you understand that?

2 A Yes.

3 Q Can you just briefly describe the efforts that you took to comply with the
4 January 28th subpoena?

5 A Yes. So I have a couple of different email addresses that I used during my
6 time kind of as chairman. So I have an [REDACTED], and I have an [REDACTED] --

7 Mr. [REDACTED] Sorry, you don't have to say the full email address if you prefer to
8 not have it on record. So you're welcome to if you want, but if you have any privacy
9 concerns, you don't have to say the whole address.

10 The Witness. Okay. Sounds good. Thank you.

11 So what I did was -- I first went to the time period, the relevant time period that
12 we're talking about here, and I looked at everything in my inbox, everything in my sent,
13 and my calendar, and then I checked also my deleted or my trash box as well. From
14 there, then, I took specific terms, like "elector," "electors' meeting," "Jan 6,"
15 "January 6th," and did searches within the email. And then, from there, I did people
16 searches. So, as I was doing my review and sort of refreshing myself of what happened,
17 then I started doing searches for different names that were then generated records.

18 For text messages, I did something similar, I -- well, I went to my text messages
19 and would kind of put in the people to go back that far. I would put the -- bring up that
20 person, and then I would scroll back to that time period and reviewed all of the texts with
21 that person. And then I again used the search terms that I talked about and searched
22 for any text messages that would bring up, for example, "elector" or "electors' meeting"
23 or "electors."

24 BY MS. [REDACTED]

25 Q Perfect. And thank you. And we saw I think some emails from the two

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1 email addresses that you mentioned. So that makes sense. As far as text messages,
2 did you only use one cell phone number or one cell phone during the relevant time
3 period?

4 A So I have a work phone, but it is connected to my iMessage. So they would
5 be the same. And I have an iPad as well, but it's connected to my iMessage. And I
6 didn't use that phone separately for like SMS texts. In fact, I only used that phone
7 basically for a hotspot.

8 Q Perfect. And, as far as messaging applications, do you recall that you used
9 any applications, such as Signal WhatsApp, Telegram, during that relevant time period?

10 A I did not. I do have a WhatsApp account, but I don't use it -- I used it on a
11 trip I went on. So everybody who was on that trip used it. And then I do have a Signal
12 account, but I didn't get it until about October of this year. I went on a hunting trip, and
13 one of the guys basically only uses Signal, and so I do have that. I did look at Signal just
14 in case to see if there was anything in there that I couldn't remember from the last couple
15 of months based on kind of the subpoena, but there wasn't anything there.

16 Q And what about social media? Did you use social media at all during the
17 relevant time period? And I'm -- I'll say not more like the private messages, like direct
18 messages?

19 A No. I have -- I think the only social media I really have is Twitter. Like I
20 said, LinkedIn as well. I don't usually use those for messaging. So I didn't look at
21 those, but I would be happy to, but I don't believe there would be anything there.

22 Q Okay. Yeah, afterwards if you could just check, you know, using the search
23 terms you described just to see if there was anything there and, you know, LinkedIn or
24 whatever else, we would appreciate it.

25 A Absolutely.

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1 Q And, as far as I know you mentioned that you had like an iPad, did you also
2 search to see if you had any electronically stored documents, you know, on your desktop?

3 A Yeah, I searched my computer and my iPad.

4 Q Okay. And how about hardcopy documents?

5 A Yeah, I looked. I don't really save or have any hardcopy documents.

6 Q Did you coordinate with my members of President Trump's 2020 campaign,
7 President Trump's lawyers, anyone at the RNC, or anyone at the Wisconsin GOP in
8 responding to the document requests in the subpoena?

9 A The only person I talked to was Mark Jefferson. He is the executive
10 director of the Wisconsin GOP. As chair, I was a volunteer chair, so I have another job.
11 He kind of ran the day-to-day. So I did ask him because, at first, I only had text
12 messages that went back one year. That was on my phone because it's set to delete
13 after a year. So I actually asked him if he had text messages because I was going to ask
14 him if he would produce them -- help me produce them. When I was talking to him,
15 though, we realized that I have my iPad that he -- you know, I always -- I use that a lot,
16 and we decided to look at that. And I had that set to forever. So I didn't need to rely
17 on him in order to try to get the text messages -- the relevant text messages.

18 Q Understood. And, when you were talking to Mr. Jefferson, did he ever tell
19 you anything like "don't produce this" or "you shouldn't show the select committee that,"
20 anything along those lines?

21 A No, never.

22 Q Okay. And, when you were talking to Mr. Jefferson, did you ever have any
23 conversations about what you should or should not testify to the select committee
24 concerning, you know, the 2020 election?

25 A No.

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1 Q Okay.

2 A Yeah, no, we just talked about the logistics.

3 Q Okay. So is it fair to say you've produced everything to the select
4 committee in your possession, custody, or control that are responsive to the requests in
5 the subpoena, understanding that you're going to check maybe some social media apps
6 like LinkedIn?

7 A I believe so, consistent with how I went through my searches. We didn't
8 use an outside vendor or anything. This was just me.

9 Q Great. Thank you. Let's just go through a little bit of your background.
10 Where do you currently live?

11 A I live in Appleton, Wisconsin.

12 Q And I've actually been there. It's a great town.

13 A It is.

14 Q And how long have you lived in Wisconsin?

15 A Just about my whole life. I lived in Washington, D.C., in 2003 to 2004. I
16 worked for the National Institutes of Health for a year, and then came back to Wisconsin.

17 Q And why don't you just go through a little bit your professional background.

18 A Okay. Well, I'm a lawyer by training. Before law school, I did cancer
19 research. And then I went to law school. Out of law school, I was the law clerk on the
20 Wisconsin Supreme Court to Justice Annette Ziegler. Then I went to the district
21 attorney's office and was a prosecutor in the Milwaukee County District Attorney's Office.
22 From there, I went to Governor Walker's administration as his deputy legal counsel and
23 then senior advisor and then a member of his cabinet as an assistant secretary at the
24 Department of Health Services and the Department of Administration. From there, I
25 went and -- I went to a healthcare organization for a short time before coming to Michael

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1 Best, where I am both an attorney at Michael Best & Friedrich, and also a partner at
2 Michael Best Strategies, which is the consulting arm of Michael Best.

3 Q And what was the name of the healthcare organization that you mentioned?

4 A ElderSpan Management.

5 Q And what years were you there?

6 A Let's see.

7 Q If you can recall. To the best of your recollection?

8 A Yeah. It would have been January of 2015 until October of 2015.

9 Q And then did you join Michael Best in October 2015?

10 A Yeah. That's correct.

11 Q And you're currently at Michael Best, you said?

12 A Correct.

13 Q And when did you become the chairman of the Wisconsin Republican Party?

14 A I was elected in April of 2019. I served as the interim chair from March
15 of 2019 until the election in April of 2019.

16 Q And until when did you serve as chairman of the Wisconsin Republican
17 Party?

18 A In August of 2021.

19 Q And I forgot to ask, as part of your practice, either on the consulting side or
20 as a lawyer at Michael Best, do you do anything relating to election law?

21 A I have in the past, yes.

22 Q Is it set at the State -- like State law, election law in Wisconsin?

23 A Yeah, State. Primarily State law. I participated in some recounts at the
24 State level, and things of that nature regarding elections.

25 Q And correct me if I'm wrong, did you serve after your chairmanship as

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1 immediate past chairman on the executive committee of the Wisconsin Republican Party?

2 A Yes, as -- in the constitution of the Wisconsin GOP, all past -- all chairs
3 become immediate past chairs. It's very much a ceremonial role. I have not
4 participated in any executive committee meetings since I've departed.

5 Q And are you, to your knowledge, are you still on -- considered to be a part of
6 the executive committee even though it's a ceremonial role?

7 A Correct, I am.

8 Q Great. Can you just give us a brief overview of your responsibilities when
9 you were a chairman of the Wisconsin Republican Party?

10 A Yes. So you really have three duties: Media appearances and being the
11 public voice of the Republican Party of Wisconsin; fundraising and managing relationships
12 with grassroots, activists, and volunteers across the State; you're obviously involved in
13 the management of the Republican Party, you know, headquarters, but much of that is
14 sort of delegated to the executive director, who is a full-time position. But that person,
15 Mark Jefferson, and I talked daily, if not multiple times a day, about various things in
16 terms of elections or politics or decisions that needed to be made at the party.

17 Q And when you say worked with headquarters, is that the RNC? Would that
18 be the RNC in this case?

19 A Sorry, no. I meant the headquarters in Madison of the Wisconsin GOP.

20 Q I see. Okay.

21 A As a State chair, though, you are on the Republican National Committee.

22 Q And in the context of the 2020 election, and I'll include after election day,
23 that period, what were some of your responsibilities as chairman to the extent they
24 differed from what you already described?

25 A Well, they would be pretty consistent. Obviously, you know, during the

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1 2020 election, then that effort in terms of what we were discussing, in terms of politics
2 and ground -- you know, the ground, the ground game, if you will, the volunteers, the
3 staff, you're all working towards, you know, those elections and working on those
4 elections. And then after the election, I, you know, was focused again mostly on media
5 appearances and grassroots and talking with them and trying to -- sort of trying to
6 manage them and, you know, talk with them because they were very upset about the
7 election. So I spent a lot of time, you know, on the phone with or meeting with folks like
8 that and going to events.

9 Q And when you say managed them, are you referring to like the grassroots
10 Republican supporters and specifically in Wisconsin or you understood to be in
11 Wisconsin?

12 A Yeah. I really only focused on Wisconsin.

13 Q Okay. And as part of your duties as chairman of the Wisconsin Republican
14 Party, during the 2020 election, did you have to work with the Trump campaign at all?

15 A Yes, both the Trump campaign and the Republican National Committee.

16 Q And, if you could just give us a brief overview of how you worked with the
17 Trump campaign, in the context of the 2020 election, specifically.

18 A Sure. So I would preface it with saying most of the work is through the
19 RNC. There is a regional political director, a State director, all of those people work for
20 the RNC. So my primary points of contacts were the State director and the regional
21 political director. From time to time, I would talk with Nick Trainer, who was on the
22 campaign. I had, you know, a few conversations with Mike Roman, who -- I don't even
23 know what his title was -- did something with election day, operation-type stuff. And
24 then Ryan Terrell, who was I believe our regional election day operation person for the
25 RNC. That really is the main folks that I would have interacted with, you know, on the

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1 campaign.

2 Q Great. And we'll -- I have seen those names in the documents. So we'll
3 talk a little bit more about them throughout the deposition. You had mentioned that
4 you worked-- I think you said you worked mostly worked with the RNC and also a State
5 director. Who was the State director that you recall working with?

6 A Andrew Iverson.

7 Q Okay. And, to your knowledge, did he work for the RNC or for the
8 Wisconsin GOP?

9 A Yes. Yeah, he worked -- he worked for the RNC.

10 Q Okay. And the regional director, to your knowledge, did that person work
11 for the RNC as well?

12 A Yes.

13 Q Okay. And was that Ryan Terrell, or someone else?

14 A No, the regional political director was Clayton Henson, H-e-n-s-o-n. Ryan
15 Terrell would have been, I think, our -- I believe he is our -- he was the regional election
16 day operation individual.

17 Q Got it. Great. Thank you. During the 2020 Presidential election, you
18 served as a Republican Party elector. Is that right?

19 A Correct.

20 Q Had you served as an elector in a Presidential election before?

21 A I have not.

22 Q Okay. How did you become a Republican Party elector for the 2020
23 election?

24 A I believe -- we have a selection event, if you will, on October 6th, where you
25 have to sign the documents and say these are the electors. I don't know if there is -- I

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1 don't recall if there is like a specific process we used. You needed one person from each
2 congressional district. Generally, the people want to and volunteer for these
3 ceremonial type jobs. And then there is two at large. So I was told that generally the
4 chairman is -- the chairman of the party would serve as the chairman of the electors, and
5 so, I agreed to do that. And we filled out that paperwork on October 6th.

6 Q Do you recall who you talked to or talked with who told you that, typically,
7 the chairman of the State party who serves as the chairman of the electors?

8 A Mark Jefferson.

9 Q Okay. And do you know how the other Republican Party electors for
10 Wisconsin were chosen in the 2020 election?

11 A I believe it was just Mark and I working together and identifying people from
12 each congressional district and the at-large.

13 Q And do you remember any sort of criteria of how you thought of names
14 when you were deciding who to pick as electors?

15 A You know, it was pretty informal. You know, we picked people and talked
16 to people who were sort of active, you know, in the party and active in the cycle.
17 People who may have -- Mark would have this knowledge of people who in the past
18 wanted to do it but didn't get picked or weren't able to. And so it's something that you
19 sort of tried to spread around as an opportunity.

20 Q And I forgot to ask for Mark, Mr. Jefferson, to the best of your knowledge,
21 did he have any role within the Trump campaign in the 2020 election, or simply he
22 worked for the Wisconsin GOP?

23 A He worked for the Wisconsin GOP.

24 Q Okay. Are you familiar with a news publication called The Atlantic?

25 A Yes.

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1 Q Okay. So I'll represent to you, and we can pull up the article as well. In
2 September 2020, The Atlantic published an article online that suggested that the Trump
3 campaign may test the assumption that Presidential election -- electors would be chosen
4 by the popular vote.

5 Prior to election day, do you recall hearing anything about an idea that the Trump
6 campaign may try to have the Republican Party electors in a given State chosen even if
7 Trump had not won the popular vote in that state?

8 A No. I think the first time I kind of heard of any elector discussion was
9 around November 27th.

10 Q Okay. And I think you produced to us that text chain. So we can get to
11 that soon. I want to pull up really quickly, though, this article. If you can turn to
12 exhibit 3. And we'll go to page 24. I'll represent to you it's a very long article. So I
13 don't blame you for not having read it at the time.

14 A The Atlantic usually is long. I've done a couple of interviews with them.

15 Q So can you see that? I'm not sure how big it is on your screen.

16 A I can see it fine.

17 Q Perfect. So there's a paragraph that starts with, "Trump may test this." It
18 says: According to sources in the Republican Party at the State and national levels, the
19 Trump campaign is discussing contingency plans to bypass election results and appoint
20 loyal electors in battleground States where Republicans hold the legislative majority.
21 With a justification based on claims of rampant fraud, Trump would ask State legislators
22 to set aside the popular vote and exercise their power to choose a slate of electors
23 directly. The longer Trump succeeds in keeping the vote count in doubt, the more
24 pressure legislators will feel to act before the safe-harbor deadline expires.

25 Do you recall hearing any discussions within the Wisconsin Republican Party or

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1 elsewhere that the Trump campaign may seek to have the Republican Party electors
2 appointed through the legislator -- legislature even if President Trump lost the popular
3 vote in that State?

4 A I don't recall. And you're specifically asking about that time period around
5 this article?

6 Q That's right. It would have been like pre-election time period.

7 A I don't. I don't recall. If it did come up, it wasn't -- it wasn't a major topic
8 that I dealt with.

9 Q Okay. We'll go quickly to page 27. It's a little bit later on. This is the last
10 portion of this article. I'll show you where it says: Rival slates of electors could hold
11 mirror-image meetings in Harrisburg, Lansing, Tallahassee, or Phoenix, casting the same
12 electoral votes on opposite sides. Each slate would transmit its ballots as the
13 Constitution provides to the seat of the government of the United States, directed to the
14 President of the Senate. The next move would belong to Vice President Mike Pence.

15 You know, prior to election day, were you aware of the theory that rival or what
16 I'll call alternate slates of electors could cast purported electoral votes and send those to
17 the President of the Senate, where the decision of which slate of electors to count would
18 be up to Vice President Pence in his role as President of the Senate?

19 A I don't recall. If I did read the article or if it was sent to me, I might have
20 been aware of it. But like I said, it wasn't anything that I was dealing with. And it was
21 really after the election where I started to learn of this type of thing and the Hawaii case,
22 in particular.

23 Q Okay. And we'll get to the Hawaii case and your recollections after election
24 day in this deposition. If I refer to the Republican Party electors who, you know, passed
25 purported votes in states where President Trump had not been the certified winner of the

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1 popular vote as alternate slates or alternate electors, do you understand what I'm saying?

2 A Yes, I do.

3 Q Okay. Great. So I might use that phrase a few times today. I just want
4 to make sure that you understand what I'm saying, and I'm not confusing us.

5 A Sure. That sounds fine to me.

6 Q So is it safe to say, prior to election day, you don't recall any plans or
7 discussions to convene alternate electors in States that President Trump would lose the
8 popular vote to cast electoral votes for President Trump and by Vice President Pence?

9 A I don't recall any. If I was made aware, it wouldn't have been a major thing
10 that I was dealing with or working on.

11 Q Okay. And, prior to election day, do you recall any discussions about the
12 role of the Vice President Pence as President of the Senate in the counting of electoral
13 votes?

14 A No, I don't believe so.

15 Q You can take that down. Okay. Great.

16 So you've referenced it a few times. When do you first recall hearing discussions
17 at least about a potential meeting of the Republican Party electors to cast electoral votes
18 for President Trump and Vice President Pence on December 14th?

19 A So I believe it was November 27th. There could have been some instance
20 before. I'm not exactly sure when I became aware of like the Hawaii case. It could
21 have been shortly before that from RPW outside counsel Joe Olson. But it was
22 November 27th when I got that phone call from Clayton Henson, who was the regional
23 political director for the RNC, and he was asking who -- if they could have the Wisconsin
24 slate of electors.

25 Q And you mentioned the RPW, Joe Olson. Just so the record is clear, is RPW

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1 the Republican Party of Wisconsin?

2 A Yes. Sorry.

3 Q Oh, no, not a problem. So tell us a little bit more about this Henson call,
4 Mr. Henson when he called you. What, specifically, was he asking for?

5 A Yes, so my recollection of the call is, basically, from the text message where
6 that memorializes it from me to Mark Jefferson. But he asked for our slate of electors.
7 I don't recall doing this at the time, but I recall, you know, my text messages. I,
8 specifically, questioned him on why they needed it, and that the Trump campaign wasn't
9 going to try to make us say that we were the only proper electors. And he said: I don't
10 think so.

11 And I relayed that to Mark Jefferson. Mark and I decided we would send our
12 October 6th document, giving the slate of electors, so that we can -- we didn't send email
13 addresses, phone numbers of our electors.

14 Q And, when you spoke with Mr. Henson, do you recall where he said
15 this -- like why he needed the information, where it was coming from, this request?

16 A I do not.

17 Q And, to the best of your recollection, at that time, was it already -- had it
18 been decided that the Republican Party electors would meet in December 14th, or was it
19 still just a possibility?

20 A No, certainly, it still was a possibility. That was I believe -- you know, it
21 really wasn't until after November 27th, I started to have -- we started to, you know, have
22 our suspicions that we would be asked to do that, you know, because they were asking
23 for the electors. But it was, it was certainly after that where that advice came from Joel
24 Olson.

25 Q So let's pull up. We can pull the text message, so we're all on the same

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1 page. Let's go to exhibit 4. And this is -- as you can see that. I believe this is a text
2 message that you were referring to from November 27th with Mark, who I believe was
3 Mark Jefferson. Is that right?

4 A Correct.

5 Q And is this the text messages that you were thinking of?

6 A Yes.

7 Q Okay. So I believe -- how did -- it looks like Mark reached out to you asking:
8 What do you think the campaign wants to -- I think that's a typo -- list of electors for? I'll
9 send it to them about an half hour when I'm back on my computer.

10 Do you know how Mr. Jefferson became aware of this request for the list of
11 electors.

12 A I believe Clayton called him too. It was a frequent, a frequent approach, if
13 you will, that if somebody called me and didn't get me, they would call Mark after me.
14 You know, I think, in some regards, it was out of respect, but a realization that I was just a
15 volunteer chair. And so it was very typical for double phone calls to come in.

16 Q Okay. And so you say: I do know Clayton just called me. Did he call you
17 too? I told him outright that I hope they are not planning on asking us to do anything
18 like try and say we are the only proper electors. He said he didn't think so.

19 What do you recall about what you told Mr. Clayton, or Mr. Henson excuse me?

20 A Well, I don't recall -- I don't really recall much aside from this -- the text
21 message that memorializes it. But when I had concerns throughout, I would also -- I
22 would often voice them to Mr. Henson. So it was not atypical for me to voice concern,
23 or for me to push back to him when, for example, President Trump was saying things
24 about Republicans or Republicans in Wisconsin that I didn't agree with.

25 Q And, with respect to your specific concern, as described here, you say you

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1 hope they're not planning on asking us to do anything like try and say we are the only
2 proper electors. What specifically was your concern?

3 A I did not want them to ask us or demand to us that we would assert that we
4 were the proper electors based on, you know, the President's belief that there was
5 widespread fraud.

6 Q And then why, just to understand that a little bit better, why was that a
7 concern for you to represent that, you know, you all, the Republican Party electors were
8 the only proper electors, you know, at this point, in time November 27th?

9 A Yeah, so I think, by November 27th, there was often national figures on
10 television. And they were saying things that were not accurate about what occurred in
11 Wisconsin, and it gave me significant concern. They would talk about how the absentee
12 ballot requirements that were being contested only occurred in Dane County, which is
13 where Madison is, and Milwaukee County. That simply wasn't true. They said the
14 same thing, I believe, for indefinite confinement. And then one of the most troubling
15 for me is when they would talk about the Milwaukee votes and the Milwaukee absentee
16 ballots that came in in the early morning hours, you know, that Wednesday. And how
17 they would talk about it was inaccurate. We knew exactly how many absentee ballots
18 there were. And through our data program, I could have predicted for you within a
19 couple of percentage points how those would have gone, and how those votes would
20 have resulted, you know, the breakdown of Biden votes versus Trump votes. And it -- so
21 I was concerned because every time I turned on the TV, or nearly every time I turned on
22 the TV, some national figure was saying something that was simply inaccurate about
23 Wisconsin.

24 Q And thank you for your explanation on that. When you say "national
25 figures," were these -- do you have anyone specifically in mind?

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1 A Yeah, I mean Rudy Giuliani, certainly. Sidney Powell was another person
2 who was doing that. Those are the two that come to mind. But, you know, it's
3 certainly -- in the news, it wasn't just limited to them.

4 Q Okay. And, for Mr. Giuliani, was it your understanding he was a lawyer for
5 President Trump?

6 A Yes, I think so. But I guess I don't know if I really knew if he was a paid
7 lawyer or if he was just being kind a talking head on TV.

8 Q And how about Ms. Powell, did you have any understanding as to how
9 she -- if she had any sort of relationship with the Trump campaign?

10 A Well, it certainly seemed like she was on some sort of legal team. And I
11 think at one point she was, and then I think she was kind of dismissed from that legal
12 team. But it's not something that I really studied or really spent much time on.

13 Q Understood. You have a lot -- had a lot on your plate, I'm sure. Did you
14 have any discussions with, that you can recall if Mr. Giuliani, you know, I'll say it from like
15 the election day to, you know, January 20th, 2021?

16 A Yeah, I don't believe I've ever -- ever in my life talked to Rudy Giuliani.

17 Q Do you know if he ever reached out to you?

18 A He did not. I did get a phone call at one point from Ronna McDaniel that
19 said Rudy Giuliani -- she told me that Rudy Giuliani asked for my phone number, and he
20 might call. But I don't believe he ever did.

21 Q And this certainly isn't a memory test. Do you recall just about when that
22 conversation from -- with Ms. McDaniel was?

23 A I don't know for certain. But I do know that my phone records indicate that
24 I think around December 5th. I had a phone call from her that was around 5 or
25 5 minutes. It could have been then. She was also at some point running for

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1 re-election of the RNC chair, and I was asked to be on her leadership committee team.

2 It really ended up just being RNC members who said: Yes, I support you.

3 But we had a few phone calls and a few discussions from time to time. So I can't
4 say for certain because I know that there were conversations with her regarding that as
5 well.

6 Q And did Ms. McDaniel, did she tell you what she thought Mr. Giuliani -- why
7 he wanted to talk to you?

8 A No, I don't believe so. I think I just presumed it was about, about elections.

9 Q And about likely Wisconsin in particular?

10 A Yeah, right.

11 Q And how about Ms. Powell, did you ever talk to her, or do you know if she
12 ever tried to reach out to you?

13 A I don't believe so. I never talked to her. And I don't believe she ever tried
14 to reach out to me. I did have a couple of text messages in there from people who I
15 think were working for her or involved with her, but I didn't return -- I didn't return their
16 text messages or calls, I don't believe.

17 Q Do you recall who those text message were, who you are referring to?

18 A Yeah, I think one of them was either Dan or Don Brown. I don't recall his
19 first name. And then there was a woman. I think her first name was Wendy. I
20 believe it's in my text somewhere. Her last name might have been Phillips.

21 Q And you understood that they had some sort of connection or association
22 with Ms. Powell?

23 A Well, one of them -- certainly -- one of them, I think, indicated that they did.
24 And then one of them, I think, had to -- was working on some litigation in Texas.

25 Q Okay. And I do recall the text messages that you produced. And, just to

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1 go back to, I guess, the original question, I know you mentioned that you thought some
2 national figures were making some inaccurate statements about Wisconsin. So was it
3 your concern then that, if you were to say that you were the only proper electors, that
4 was not right because the proper electors were the electors of the Democratic Party. Is
5 that what your concern was?

6 A Well, I certainly wouldn't have wanted to say that we were the only proper
7 electors when Biden had won the State. But, if a court had ruled that the challenges
8 prevailed, then I understood -- my understanding was there could be this alternative slate
9 of electors that would have to, you know, would have to have met and done similar work.

10 Q So help us understand, where did your understanding come from that, you
11 know, if a court ruled, you could have this alternate slate of electors appointed?

12 A So my RPW, Republican Party of Wisconsin, counsel, Joe Olson, would have
13 given me, you know, advice on that. And he is the one who walked me through the
14 Hawaii case and why our electors would need to meet. And, you know, talk to me about
15 the fact that the only way these electors would really count is if a court said so. And
16 then, ultimately, also, the Governor would have to send a certificate of, I think, it's called
17 a certificate of final determination that would also indicate that these were the electors
18 to be utilized.

19 Q And was it your understanding this court ruling could happen and a
20 Governor could send the certificate after the safe-harbor deadline had passed?

21 A That was the advice I was given by counsel, yes.

22 Q Okay. And did Mr. Olson -- what was his, I guess, connection to Wisconsin
23 and this elector issue?

24 A So Mr. Olson has been a long-time outside counsel to the Republican Party
25 of Wisconsin for years and years, going on probably more than a decade or more. And

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1 I've worked with him extensively over the years on election issues. He is somebody that
2 I as state party chair would talk to and call upon frequently. He also at this time was
3 counsel for the RNC as well, like outside counsel.

4 Q And, to your understanding, was Mr. Olson also involved in any litigation
5 involving, like, challenges to the vote in Wisconsin in the 2020 election?

6 A Yes, yes, I would certainly say so. He is the one who, for example, sent me
7 the recount petition that the Trump campaign was going to file. So I don't know exactly
8 kind of what work he did or anything, but, you know, I would have considered him sort of
9 my main liaison to the Trump campaign legal team. **And he is who I would have**
10 **interacted with.**

11 Q Okay. So is it fair to say, as of November 27th, you understood that Biden
12 had -- Joe Biden had won the popular vote, but there was still a chance through litigation
13 that President Trump could win the State of Wisconsin, the popular vote?

14 A Certainly, there was the recount that was still going on at that point. My
15 understanding from Mr. Olson was that they would likely appeal if they were not -- and
16 when I say "they," the Trump campaign -- would likely appeal to the Wisconsin Supreme
17 Court if they did not prevail in that recount. And then, ultimately, if they didn't prevail
18 there, the plan was to appeal to the United States Supreme Court. There were also
19 some other Federal cases that were going on that I didn't -- that I wasn't really involved
20 in, and Mr. Olson and I didn't talk about them extensively, I think, because we were really
21 focused more on the recount than the other litigation that was going on.

22 Q And you were focused on the recount because presumably, if the recount
23 showed that President Trump won, then the Republican Party electors would be the
24 proper slate, sort of?

25 A Right. If -- correct. If -- there would be a difference between sort of what

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1 the vote count was and what votes legally counted. For example, if absentee ballots,
2 because there wasn't an application, a written application filed by the voter, if they were
3 thrown out, then that would change the outcome. If the indefinite confined -- the folks
4 that said they were indefinitely confined but weren't, if somehow that was thrown out,
5 that could change the outcome, the ultimate outcome of the election.

6 Q And, when you shared your concern with Mr. Henson that -- that if they
7 wanted you to stay, that you all were the Republican Party electors, were the only proper
8 electors, if you can recall -- do you recall if he shared that same concern as you?

9 A Yeah, I don't think I could. All I know is what I put in my text message.
10 That's all I can recall. He said he didn't think so.

11 Q And do you recall who he was talking to? It sounds from the text messages
12 that he was talking to other folks?

13 A I don't think we -- I don't believe we talked about that. Clayton, Mr.
14 Henson worked at the RNC at the time as the regional political director. But in the 2016
15 cycle, he worked, I believe, on the campaign and then worked in the White House for a
16 time. So he had many contacts and connections to the campaign in addition to the RNC.
17 He was not just some RNC employee that, you know, didn't have connections with other
18 folks on the campaign.

19 Q Okay. And so you're not sure whether he was talking to the Trump
20 campaign at this point in time about the issue of getting the Republican Party electors
21 together to vote on December 14th?

22 A I don't -- I don't know for certain. But, based on sort of the text messages
23 that I can see, you know -- from Mark, too: Well, what do you think the campaign
24 wants?

25 You know, it seemed like it was coming from the campaign as opposed to the RNC.

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1 But I don't really recall talking or thinking about it at the time.

2 Q Do you recall if you had any other concerns when you heard -- you know,
3 when you talked to Mr. Henson aside from saying that the Republican Party electors are
4 the only proper electors?

5 A I don't recall any others, no.

6 Q Do you recall if Mr. Jefferson ended up sending the list of electors to Mr.
7 Henson or to the campaign?

8 A He sent the October 6th document that lists everybody and, I believe, their
9 address, their street address to Mr. Henson and copied me on that email.

10 Q And I just want to note for the record Mr. Schiff, a member of the select
11 committee has joined.

12 A Thank you.

13 Q So, if we look on the same page, still you've -- I believe you send a
14 voicemail -- I believe that's from you -- to Mr. Jefferson. Do you recall who left you a
15 voicemail?

16 A No. No. Unless there is -- is this one where, on the next page -- is this the
17 Mr. Brown one or the Ms. Phillips one?

18 Q No, I mean, I'll -- if you look at the blue text. You say: To be honest with
19 you, I'm starting to run a little low on tolerance for some of this. My understanding is
20 Sidney Powell has been shit-canned from the legal team, so I'm not planning to bother
21 calling them back.

22 And he says: Better yet, the whole VM -- which I think is voicemail -- sounds
23 shady.

24 Does that refresh your recollection?

25 A I think it was somebody from the Sidney Powell team, but I don't -- or the

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1 voicemail referenced her, but I don't recall.

2 Q Do you recall if you called back this person?

3 A I don't believe I did.

4 Q Do you remember why -- or do you know why Mr. Jefferson said the whole
5 voicemail sounds shady?

6 A No, I don't really.

7 Q Mr. Jefferson also says: Shouldn't they work with Troupis. Do you
8 understand what he meant by that?

9 A Yeah, Jim Troupis was the Trump campaign counsel in Wisconsin, a long-time
10 lawyer in Wisconsin, a long time election law lawyer in Wisconsin, a former Dane County
11 Circuit Court judge, and that's who Mr. Jefferson was referring to.

12 Q So was it your understanding Mr. Jefferson, he is asking why
13 don't -- whoever called you just talk to Mr. Troupis because he was actually the one
14 involved in the litigation?

15 A That's correct.

16 Q If you go to your message right above, you say: Let's see how much
17 pressure they put on to try and get contact info. That will give us an indication.

18 Can you just explain what you meant by this text message? It seems like you had
19 some concerns about sharing contact information.

20 A Yes, I did have concerns, which is why we only gave them the January -- or
21 the October 6th document with names and -- names and addresses. You know, as I said
22 before, I was very concerned about national figures saying things that were false about
23 what occurred in Wisconsin. And I didn't want anybody -- any of these national people
24 calling our electors specifically and telling them -- putting pressure on them, telling them
25 anything as my text from above -- from that kind of memorialize the conversation I had

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1 with Clayton, I was concerned that they were going to try to push us to say we were the
2 only proper electors. And I didn't want them doing that to our individual electors across
3 the State. These are just volunteers who felt like they're doing a public service.

4 Q Do you recall that what ended up -- what you sent or what Mr. Jefferson
5 sent, the list from October 6th, it did not include like phone numbers, for instance, of the
6 electors?

7 A I don't believe so. It's one of the documents that we submitted.

8 Q Do you recall if you got any pushback, or if Mr. Jefferson received any
9 pushback for not providing the contact information of the Republican Party electors?

10 A I don't believe that he did.

11 Q And you might have already answered this, but just to confirm, when you
12 say in your message, "To be honest with you, I'm starting to run a little low on tolerance
13 for some of this," what was -- you know, what you referring to when you said "some of
14 this"?

15 A I believe, again, I was referring to these -- these national figures who were
16 talking about Wisconsin, and they were on TV doing press conferences, and what they
17 were saying simply was not accurate. For example, the Milwaukee vote and how it was
18 such a surprise and how there was something -- there was an illegal vote dump. That's
19 just not accurate. It's not the case.

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1

2 [11:01 a.m.]

3 BY MS. [REDACTED]:

4 Q Do you recall when the Wisconsin -- the recount was completed?

5 A I think the recount was completed like kind of around December 10th or
6 11th, because then they would have filed the petition. I believe it would be called in the
7 Wisconsin Supreme Court the next -- the next day or the same day, which I think was
8 around Friday, December 12th, or -- no, that would have been -- I think it was around
9 December 11th -- Friday, December 11th, if I have my dates right.

10 Q Okay. I have it, and I could be wrong, that the recount was completed
11 around November 29th, and that the Biden-Harris margin expanded -- I think it was
12 maybe a couple hundred votes. Does that sound right?

13 A I don't -- I don't recall the specific -- if that's --

14 Q Okay.

15 A -- what you have, then I'm sure it is.

16 Q Okay.

17 A There's a lot of nuance to the election laws and the reviews, so -- there's a
18 canvass that takes place, I recall, and then there's the recount, and then there is kind of
19 like the review of the recount. And I'm pretty sure that the -- they filed with the
20 Wisconsin Supreme Court like that December 10th or 11th time period. So something
21 would have triggered that. I don't know if it was a circuit court review or what it was.

22 Q At least, though, from your recollection, the recount was completed before
23 December 14th?

24 A Yes.

25 Q Go to page 2 of the same text message thread.

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1 Mr. Jefferson says: "Left you a rambling voicemail and interested in your take."

2 Do you recall if that had anything to do with this alternate elector issue?

3 A Yeah. I don't know for certain, but I don't believe it did.

4 Q On November 27th, at 7 p.m., he sends you the VCF for someone named Kim
5 Jorns. Do you see that?

6 A Yes.

7 Q Do you -- do you know whether that had anything to do with the elector
8 issue or the December 14th meeting?

9 A Probably not. Kim Jorns was an employee of the RNC. I don't recall her
10 exact role, but she has to do with State parties and developing State parties. And I
11 think -- I think around this time, she was taking a leave of absence from the RNC to do
12 Ronna McDaniel's RNC reelection. And as I'd indicated before, I was asked to be on the
13 leadership team, and I think that's what this was about.

14 Q You respond -- I'm not quite sure the time stamp, but it doesn't matter for
15 purposes of the question. You send a tweet from Jennifer Jacobs, and it's a clip of
16 Mr. Giuliani where he says: "We're going to the State legislatures. The public has only
17 a small idea of the kind of evidence that we have."

18 Do you recall why you sent this text message to Mr. Jefferson?

19 A Yeah. I think this is consistent with what we've talked about, which is, you
20 know, kind of ongoing concern about national figures and what they were saying about
21 the election, and what they might, you know, ask or ask, you know, Wisconsin legislators
22 to do, and I wanted Mark to see it.

23 Q And, specifically, what Mr. Giuliani says is: "We're going to the State
24 legislatures."

25 Do you -- did you ever hear that Mr. Giuliani went to any members of the

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1 Wisconsin State legislature?

2 A I don't believe -- I don't believe that I did, no.

3 Q Let's turn to exhibit 6.

4 These are text messages that you produced to us, Mr. Hitt. And let me
5 know -- can you see that okay?

6 A I can.

7 Q Great. So this is Bates 74. This is a text message thread with Joe Olson.
8 Is that the Mr. Olson we've been talking about who serves as outside counsel for
9 the Wisconsin Republican Party and was involved in the -- some of the litigation in the
10 State?

11 A Correct.

12 Q Okay. So on December 4th, at 9:06 a.m., he sends to you: "We are going
13 to need our electors to vote on the 14th."

14 So I interpreted this as, you know, as the decision has been made. Is this -- do
15 you recall, is this like the first time that you heard there was actually a plan to have the
16 Republican Party electors meet on December 14th?

17 A So leading up to this text message on December 4th, Joe Olson and I talked a
18 number of times, I believe like around the 29th of November and then December 2nd and
19 December 3rd. We had conversations at that point on -- on kind of the potential for the
20 electors to need to meet. So this wasn't -- this wasn't the first I had heard of it, but this
21 was the -- you know, the definitive advice that he said we're go -- we're going to need our
22 electors to vote.

23 Q Okay. Had you -- and I did not ask this earlier. Between that, you know,
24 November 27th and December 4th, had you talked to any of the other Republican Party
25 electors about this potential meeting on December 14th?

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1 A I don't -- I don't recall talking to anybody about it. I would have talked to
2 Mark Jefferson.

3 Q And he says: "They need to do it at the capitol, the legislature doesn't
4 need to take any formal action. The vote just needs to be happen at the capitol and be
5 recorded somehow."

6 Do you know the basis of his understanding when he said, you know, "They need
7 to do it at the capitol, the legislature doesn't need to take any formal action"?

8 A I do not, no.

9 Q Okay. Did you understand what he meant when he said "the legislature
10 doesn't need to take any formal action"?

11 A Not beyond really what it says, which --

12 Q Okay.

13 A -- which is, you know, basically that the elector meeting just has to occur so
14 you have an alternative slate, but the legislature doesn't need to do anything.

15 Q Okay. They don't need to, for instance, like, call a special session or
16 something and pass legislation saying that the Republican Party electors are the -- the
17 electors of the State. Is that fair?

18 A Correct. Yeah.

19 Q Okay.

20 A And he -- you know, he know -- he would know that I've never been through
21 this and never been an elector. So there was, during this process, a little bit more
22 hand-holding than -- than normal for me.

23 Q I know earlier you mentioned the Hawaii case, and we'll talk about that. To
24 your knowledge, had there ever been, you know, what I'll call the -- an alternate elector
25 meeting of either party in Wisconsin before?

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1 A I don't know.

2 Q Okay. Do you recall if you ever asked that to anyone?

3 A I -- Mr. Olson and I and then another lawyer, Mr. Kelly, and I, you know, had
4 some pretty extensive conversations. I don't recall if I ever asked that specific question.

5 Q Did Mr. Olson ever tell you that he was receiving any pressure to -- to
6 get -- to help convene this meeting of the alternate electors -- the Republican Party
7 electors on December 14th?

8 A No, he did not.

9 Q Okay. Did he ever tell you who else he would have been -- who he was
10 talking to in connection with this December 14th meeting?

11 A So I learned really through Mark Jefferson that he was talk -- that the legal
12 teams were -- were talking and that -- my understanding was Mr. Olson and Mr. Troupis
13 were in, you know, some kind of frequent conversations. I learned sort of
14 after -- actually, not until probably February of 2021, that Mr. Chesebro was involved
15 pretty extensively in Wisconsin.

16 Q Did you understand that Mr. Troupis had a -- some sort of association with
17 the Trump campaign?

18 A He was the Trump campaign's, I think it's fair to say, lead counsel in
19 Wisconsin for the recount and the litigation surrounding it.

20 Q And what about Mr. Chesebro? Do you have understanding of --

21 A I'm not sure --

22 Q -- understanding of his connection to the Trump campaign, if at all?

23 A No. I really don't. I -- I -- I didn't even know who Mr. Chesebro was until
24 December 14th, and I -- and I recall having to ask somebody, who is this guy? I didn't -- I
25 didn't know who he was. I didn't know why he was there. I don't recall if -- if I asked

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1 that at the RPW or if we were at the capitol at that point, but I recall saying, who is this
2 guy? And then I was told that it was Mr. Chesebro.

3 I had heard his name before from Mark Jefferson but really didn't understand kind
4 of the more significant role he seemed to play until February of 2021, when -- when we
5 were going through the complaint in the Wisconsin Elections Commission.

6 Q And, you know, without going into, you know, any privileged conversations
7 you might have had with your counsel, what did you learn about Mr. Chesebro's role?

8 A So, I mean, it seems pretty clear that he wrote a number of memo -- memos.
9 He was really the one that was sort of guiding this whole process and had come up with
10 the strategy and kind of laid it out.

11 Based -- not -- an email I didn't see or don't recall seeing until doing this between
12 him and Mr. Troupis, it seemed like Mr. Chesebro may have had -- had come up with this
13 in Wisconsin, and then it grew to other States.

14 Q So you -- so is it fair to say you -- you've learned this, but you didn't
15 appreciate that at the time? You've learned that since -- since the elector meeting in
16 February 2021, in fact?

17 A Correct. I didn't have -- I didn't have any interaction, I believe, with
18 Mr. Chesebro, except, you know, some forwarded emails that he -- that, you know, he
19 was on, and then meeting him on December 14th.

20 Q Do you know if Mr. Chesebro is from Wisconsin or otherwise has some sort
21 of connection to Wisconsin?

22 A I believe he's from Massachusetts. I don't know -- I don't know why he was
23 here, who asked him to come here, or if he has a connection to here.

24 Q So up until, you know, December 4th, had you had any direct
25 communications with anyone from the Trump campaign about meeting on

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1 December 14th for the alternate elector meeting?

2 A Up until December 4th, you're saying?

3 Q Yeah. The -- the text messages that we're looking at on exhibit 6, had you
4 talked to anyone from the Trump campaign, to your knowledge, about that meeting?

5 A No. Only -- the only person would have been -- sorry.

6 Q No, you can go ahead.

7 A The only person would have been Clayton Henson on November 27th, and
8 then Joe Olson kind of leading up to the 4th. I don't believe I talked to anybody else in
9 that time period.

10 Q Do you know how it went from a potential meeting to an actual meeting for
11 December 14th, such as did anything change, to your understanding, as to what was
12 happening in Wisconsin?

13 A Well, for -- for me, I guess my legal counsel said that we needed to meet.
14 That was on December 4th. December 7th, I called a meeting again with our legal
15 counsel. That was, I believe, at like 3 in the afternoon. I had also talked to special
16 counsel to the RPW at 11 o'clock that morning and worked our way through the issue. I
17 specifically called him and asked whether or not he was in the loop on this alternate
18 electors meeting. He said he wasn't.

19 We talked for about a half hour kind of thinking through -- thinking through the
20 issues and if -- what questions -- you know, what other questions do I need to ask and
21 think through. I don't think he was available for the 3 o'clock meeting, so then we had
22 that 3 o'clock meeting on December 7th.

23 Q I'm sorry. Who did you say who you asked if they were in the loop on the
24 alternate elector meeting on December 7th?

25 A Yeah. That was Dan Kelly, who was also a lawyer -- outside lawyer. His

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1 title is special counsel at that point. I had brought him on in Wisconsin to kind of help
2 with -- he's from Wisconsin. I brought him on to kind of advise on election law matters,
3 and I think he started in August.

4 You know, in April -- March-April of 2020, through the summer, as a result of the
5 pandemic, there were, at one point, seven legal -- seven different pieces of litigation
6 going on regarding election laws and procedures, and it just -- it was too much to be able
7 to keep up with, so I brought him on to kind of help -- help manage that and advise on it.

8 Q Okay. But other than the change being that legal counsel told you to meet,
9 you're not aware of what else might have prompted the decision to actually -- to actually
10 meet on December 14th?

11 A So certainly the -- the pending -- the litigation. So I think the -- if we're
12 going past kind of like December 4th, the main thing, at least here in Wisconsin, would
13 have been the Wisconsin Supreme Court litigation that was the recount. And then, even
14 once they decided that on the morning of the 14th, it was only -- it was a 4-3 decision.
15 So it was very, very close that they -- they would have overturned basically the results,
16 and then that was going to go to the United States Supreme Court.

17 Q Okay. So just to take it one by one, is it your understanding the Wisconsin
18 Supreme Court, they denied the emergency petition from the Trump campaign? Does
19 that sound right to you?

20 A They -- I don't recall the exact, like, litigation posture. I know -- they ruled
21 four to three not to rule in President Trump's favor is how I would say it.

22 Q Okay. So, meaning, like, the recount stood, or the President -- or Joe Biden
23 had won the popular vote in Wisconsin, and that had not -- that was not going to be
24 changed by the Wisconsin Supreme Court. Is that fair to say?

25 A Right. That would -- that would not be changed by the Wisconsin Supreme

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1 Court. I did know that the -- through Mr. Olson, that the Trump campaign was planning
2 to appeal to the United States Supreme Court. They did that, I believe, on like
3 December 29th.

4 Q I think that's right. That's what I said too. They filed their petition before
5 the Supreme Court. Okay. December 29th.

6 Let's see. Was there any other litigation that -- that you understood could affect
7 whether or not the Republican Party electors would want to meet on December 14th?

8 A There were Federal cases in Wisconsin going on. I think, at that point,
9 maybe just one Federal case. That was sort of in similar kind of litigation posture. It
10 was still ongoing. I don't recall when they would have lost at the district court. I think
11 it might have been up -- going up on appeal to the Seventh Circuit Court of Appeals. But
12 I know that case was going on. I did not follow that case very closely.

13 If I remember right, it wasn't the campaign that filed that. It wasn't the Trump
14 campaign that filed it, but it was somebody else. And so I just -- you know, I just didn't
15 spend a lot of time on that case.

16 Q And I think you mentioned you had some calls, at least in part, because you
17 didn't -- you were new to this and you didn't know what December 14th would entail. Is
18 that a fair characterization?

19 A Absolutely.

20 Q So what were the kinds of -- well, what kind of information or guidance were
21 you seeking in connection with the December 14th meeting in the days leading up?

22 A I had never been to -- sorry.

23 Q No problem.

24 A I had never been to -- I had never been to an elector meeting. Quite
25 frankly, I had no idea what even took place at it. So I wasn't necessarily somebody who

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1 required a line by line for a lot of things, but I didn't know what -- I didn't know what to
2 do. I didn't know what to say. I didn't know, you know, really what documents we had
3 to sign, what we had to do with them. And so it was sort of those logistic-type
4 questions of, okay, what do -- what do we have to do here?

5 Q And what information were you provided, from what you can recall?

6 A So, you know, I think -- I actually don't recall if they ever did give me the
7 line by line until that morning of December 14th. I'm fairly quick on my feet, and they
8 got used to that, and I think they gave it to me on the way to the capitol, but I don't really
9 recall seeing it, you know, what documents we were going to have to sign.

10 I remember one, you know, really specific thing was one of the electors couldn't
11 be there. He had a work conflict, you know, because we didn't really -- you know, we
12 didn't think we were going to have to meet, and so he had a work conflict that he let, you
13 know, go on the calendar. So we had to replace an elector. And so that was a fairly
14 significant part of the conversation, as I had to learn how it is I would go about doing that.

15 Q And when you say the line by line, is the -- are you referring to like -- like a
16 script that you would read during the -- the meeting?

17 A Correct.

18 Q Okay. But do you -- because I did not see a -- any script in your production,
19 which is fine if you don't have it anymore. Do you recall, like, actually reading from a
20 piece of paper during that meeting on December 14th?

21 A Yeah. I think they gave me some sort of, like, here's what you've got to say
22 sort of thing. Here are the motions you have to do. I remember thinking this isn't
23 much of a line by line. It -- there wasn't a lot there, but this -- this is sort of what you
24 need to do.

25 Q Now, I do recall from your production there were emails about a 2016 line

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1 by line. Does that refresh your recollection at all?

2 A Yes. Yes. They --

3 Q Okay.

4 A They started off by looking at the line by line that they would have produced
5 in 2016 for the then chairman. That was a frequent thing that would be done. I
6 remember getting line by lines for RPW conventions where it would be from years past
7 and they forgot to change something, so yes.

8 Q Okay. And in 2016, the Republican Party electors did actually vote for
9 the -- the certified winners of the State, which was President Trump and Vice President
10 Pence. Is that -- is that right?

11 A Yes. We did have a recount going on that year as well, though, and I
12 actually was involved in that recount on -- as a --

13 Q Okay.

14 A -- as legal counsel.

15 Q Okay. But you don't recall if the Democratic Party electors had an alternate
16 meeting -- alternate elector meeting in 2016, do you?

17 A I don't.

18 Q Okay. So -- and I know we've touched on this a little bit before, but, you
19 know, understanding that there had been this -- this recount that confirmed that Joe
20 Biden had won Wisconsin, the -- won the popular vote in Wisconsin, did you have, you
21 know, any concerns with participating in a -- in a meeting with the Republican Party
22 electors to cast, you know, purported electoral votes for President Trump and Vice
23 President Pence on December 14th?

24 A Well, that's why I met with legal counsel, to kind of walk through, you know,
25 what are we doing, do we have the authority to do it, what are we going to do after it,

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1 sort of understanding that, basically, if we didn't meet, that it was completely waived.
2 And what I mean by that is, if we -- if we didn't meet and a court subsequently
3 ruled that these challenges in Wisconsin were successful, the guidance I was given is it
4 would be irrelevant because the elector meeting had not taken place.

5 Q Okay. So you were -- from what you can recall, you were told by legal
6 counsel, if you all didn't meet on December 14th and there was later a court decision that
7 perhaps threw out a bunch of Biden votes and made President Trump the winner of the
8 State, it wouldn't matter because you -- you guys hadn't met on December 14th. Is that
9 fair?

10 A Yes, that's fair. I was told there would be a complete waiver. And I
11 remember -- I remember asking, how could that be? Like, how could you have, you
12 know, such a -- what seems like a ministerial task, you know, meet at the capitol
13 December 14th at noon, you know, how -- how could that be?

14 And I even asked: Let's say we can't -- you know, we are not allowed in the
15 capitol and we meet on the grass or the snow, you know, on the sidewalk. What
16 happens then? And the advice -- the advice I got back was: That might not count.
17 It's not complying with the statute. You have to meet.

18 Now, the only way -- so following up on that, the only way these vote -- these
19 alternative slate of electors would matter, though, is if a court said so. If a court ruled
20 that the challenges were successful and that -- that the challenges were successful and
21 that Trump had won, the only way these elector votes would count would be that, and
22 then that the Governor would have to send a certificate of, I believe it's called final
23 determination.

24 And there's a couple of other certificates too. There's a certificate of
25 ascertainment, and then there's a statement of the canvass from the Wisconsin Elections

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1 Commission that I -- I don't know for certain, but, at the time, I remember thinking that
2 all of those or at least some of that would also have to be sent for the -- for this to do
3 anything. Otherwise, what we did on December 14th is basically meaningless.

4 Q And who was the legal counsel who told you this --

5 A Mr. Olson.

6 Q -- about the waiver?

7 Mr. Olson. Okay. Was it any other people that you recall told you that?

8 A I only -- I think I only really talked with Mr. Olson and Mr. Kelly. I talked to
9 Mr. Troupis -- you know, looking at my phone records, I think there's one call in there,
10 short call. I don't remember, you know, the substance of the conversation, but I
11 didn't -- I didn't interact or talk much with the Trump legal campaign team.

12 Q And Mr. Olson -- you unders- -- did you understand that he had some sort of
13 association with the Trump campaign or solely with the Wisconsin Republican Party?

14 A He was the Republican Party of Wisconsin outside counsel. He was also
15 outside counsel for the Republican -- for the RNC for the recount as well. I don't -- I
16 don't think he had any role with the Trump campaign.

17 Q And you -- and you -- you're not aware if he was having at least
18 communications with the Trump campaign?

19 A Oh, I certainly believe he was having --

20 Q Oh.

21 A -- communications with the Trump legal team -- Trump campaign legal team,
22 like Mr. Troupis.

23 Q Okay.

24 A But I --

25 Q The legal team --

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1 A I don't know --

2 Q Oh, excuse me. You can go ahead. I'm sorry.

3 A I don't know that it was -- okay. I don't think it was beyond that, though, or
4 at least I don't know if it was.

5 Q Okay. And the legal team being, like, Judge or Mr. Troupis?

6 A Correct.

7 Q Okay. In the lead-up to December 14th, did you share this advice with any
8 of the other Republican Party electors?

9 A Yes, we did. We had a -- at some point, we had a conference call. I
10 couldn't actually find any phone record of it, but I know, in a text message, Mark
11 referenced and I -- I believe we did have one. I think I might have done it from the
12 Republican Party of Wisconsin, which is why it wouldn't have been on my phone records.
13 And then Mark sent some text messages with them regarding the elector meeting.
14 There was one elector, Darryl Carlson, who actually asked for the Hawaii case. I believe
15 Mark sent it to him. I asked him to, although I don't know for certain.

16 Q Okay. And did you say it was Darryl Carlson?

17 A Correct. He would have been the elector from the sixth -- Sixth
18 Congressional District?

19 Q Okay. And do you recall any of the other Republican Party electors ever
20 expressing any concerns about meeting on the 14th?

21 A They asked -- you know, they asked lots of good questions about, okay, so
22 what are we doing? How are we doing this? That's kind of typical thing. The -- the
23 bigger concerns that they asked about, though, were -- was just about security. They
24 were -- they were very concerned about their safety and their security.

25 Q And you anticipated where I was going to go next, because I did see in the

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1 text messages a lot of discussion about, you know, security guards or media risks.

2 And could you talk a little bit more about, you know, what concerns people had,
3 that you know of, regarding security, safety, and what efforts you all took to -- you know,
4 to help, I guess, protect the Republican Party electors on that day?

5 A Yeah. It was just -- I mean, it was obviously a very volatile time. There
6 were -- and, you know, in 2020, there were also, you know, instances where riots had
7 occurred in Madison. We had riots that occurred in Kenosha regarding an incident. I
8 think there was more that occurred in the Milwaukee area.

9 So there was just a general concern about -- about safety. And if -- if -- you
10 know, how we were going to keep everybody safe if somebody wanted to disrupt
11 something or if there was a protest that would occur.

12 You know, I also, throughout this time, got several phone calls to my office that
13 my secretary relayed to me demanding to know my exact location. I don't know -- I
14 don't have an exact idea of how frequent that was. I actually remember her at one
15 point telling me, we get daily calls asking to know where your exact location is.

16 I never verified, but I got a lot of threatening emails, quite frankly, from both sides
17 of the political aisle. And so it was a volatile time, and our electors were worried, and so
18 was I.

19 Q I'm sorry to hear that. We've heard from other officials in different States
20 similar stories.

21 Do you recall, were any of the calls that you got about, like, demanding
22 investigations into election fraud or asking what the party was doing with respect to
23 election fraud in the 2020 election?

24 A Yes. Absolutely, there were.

25 Q Yeah. And from what you can recall, was this, you know, continuous even

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1 after election day?

2 A Oh, it was -- it was more significant after election day and into -- this
3 continued well into the middle of January before it started to trail off. I had -- I had -- I
4 had significant concerns about going to public events.

5 Q And when you say mid-January, do you mean like -- we're talking like after
6 January 6th, like the middle of the month?

7 A Yes. Like --

8 Q Okay.

9 A You know, it was probably, you know, the -- around the -- maybe around
10 inauguration time when it finally started to trail off. It's not something I necessarily
11 wanted to have to deal with every day, but that -- you know, my secretary did -- did let
12 me know that.

13 Q Did you ever hear that you received any calls from anyone asking you to
14 appoint or participate in an alternate elector meeting on December 14th?

15 A No. Nobody really understood that. I mean, I -- I sort of -- sort of say this,
16 you know, kind of lightheartedly, but, like, you know, they -- they -- people would push so
17 hard that, you know, I didn't do anything, and I wasn't supporting the President, and they
18 would have no understanding or appreciation that, you know, we -- you know, we did this
19 alternate slate of electors in case there was a court ruling. That was the thing that we
20 could do.

21 But they -- I mean, it's just so nuanced and so -- I mean, people don't understand
22 the electoral college and have an appreciation for it, so --

23 Q Do you recall if you ever received any outreach from President Trump during
24 the 2020 election, including, you know, after election day?

25 A Yeah. No, I did not. I talked to the President twice in my life. Once was

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1 in April of 2019, when he came to Green Bay for a rally, and I talked to him briefly in the
2 photo line, maybe 10 seconds. And then I talked to him in January of 2020, when he
3 came to Milwaukee for a rally. And, again, I talked to him in the photo line. That
4 conversation maybe was a little longer. It was about 30 seconds long probably, because
5 he asked me about where farmers would be in Wisconsin, meaning how are the farmers
6 going to vote. But those are the only two conversations I believe I ever had with him.

7 Q Do you recall whether anyone, you know, called you during the 2020
8 election -- and I'll say, you know, after election day -- on his behalf, you know, maybe
9 other members of the White House or part of the Trump campaign, the nonlegal side?

10 A Yeah. No. Not -- I mean, not really. I mean, I have that one -- there's a
11 phone call from Mike Roman on December 12th in the morning. I believe it's Mike
12 Roman. It's a 202 number. I don't have Mr. Roman in my phone. I had to actually
13 google it as I was trying to figure out who -- you know, going back through my phone
14 records.

15 So I believe it was him, and I do recall, you know, getting a phone call from him.
16 And I think it was this December 12th one. And I initiated the call. So I think
17 somebody either called me or texted me, or he texted me and said can you call me.

18 And so I called him, and he -- he asked, are your elector -- are you guys -- are your
19 electors meeting on Monday? This was Saturday morning.

20 And I remember how -- I was struck by how odd the phone call was, because how
21 could he not know that we were meeting -- you know, to me, it was -- December 4th is
22 when I got that guidance from legal counsel saying we needed to meet. So it just -- it
23 seemed very, like, disconnected, and, you know, sort of unorganized.

24 That is on top of the December 11th call I received from the Pennsylvania chair,
25 which is in my phone records too. Lawrence -- I don't know how to say his last name. I

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1 think it's Tabas or Tabas. He had called me. I think he call -- he either called me earlier
2 in the week and left a voicemail or sent me a text message. I returned his call on
3 that -- that -- I think it was a Friday, December 11th. And he -- he asked me, are your
4 electors meeting. And I said, well, yeah. I mean, our electors are meeting. Why?

5 And he said, well, I guess this is just all new to me. I'm not sure why
6 we're -- what's going on or why we're doing this, and I'm getting all these calls from the
7 Trump campaign.

8 And -- and I -- it became very clear to me that Wisconsin was just in -- on a
9 different path and in a different position. And I -- and so I said to him -- I said, I
10 don't -- you know, I don't know what to tell you. In Wisconsin, you know, we've got
11 ongoing litigation. We're in the Wisconsin Supreme Court. I think we just filed that
12 day. We've got a bunch of like legal issues that are, you know, pretty significant here.
13 So it just seems like we're on a different path, and I couldn't -- I couldn't really help him
14 out much.

15 So he's not from the Trump campaign, but it informed my -- the call that I
16 then -- that I had on December 12th with Mr. Roman.

17 There's one other person that I would talk to from time to time from the White
18 House, but I don't recall ever talking to him in the fall. His name was, I think, Brian
19 Jacks, and I talked to him during the April election mainly. We had a pretty hotly
20 contested Wisconsin Supreme Court race, and he would often call and ask me how that
21 was -- was going and those types of things. But nobody -- nobody that I can recall from
22 the -- from the White House.

23 Q Is Mr. -- and I believe his name is Brian Jack. Is he from Wisconsin, do you
24 know?

25 A I don't know that.

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1 Q Okay.

2 A I talked to him maybe three or four times ever.

3 Q For Mr. Lawrence Tabas, did he -- did he ask you for like -- ask you about
4 what guidance the Wisconsin GO -- Republican Party electors had received in connection
5 with this December 14th meeting?

6 A I don't think he specifically referenced any guidance. He really asked if we
7 were -- if we were meeting and was trying to understand kind of why and where it was
8 coming from. It just seemed very -- it just seemed very clear to me that we were in a
9 much different position than -- than Pennsylvania.

10 Q And can you just explain a little bit more -- I know you touch on it -- why you
11 felt or why it seemed to you that Wisconsin was in a different position than maybe other
12 States, such as Pennsylvania?

13 A Yeah. Mainly, it just -- it seemed like -- it seemed like, from my
14 conversation with him, that it was like an afterthought, like, hey, we should have our
15 electors meet in Pennsylvania and these other States. Whereas, in Wisconsin, it seemed
16 like it was very well thought out, like, we've got this litigation going, if we don't meet and
17 we win this or the Trump campaign wins this litigation, we'll have waived it, and Trump
18 could actually have won Wisconsin but not if we didn't meet.

19 So it just seemed like we were on -- I remember saying to him: Seems like we're
20 on very different paths here.

21 Q Did Mr. Tabas, from what you can recall from that conversation, express any
22 concerns about meeting on December 14th?

23 A Yeah, he did.

24 Q Did he tell you that he wasn't going to participate in that meeting on
25 December 14th?

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1 A No, he didn't.

2 Q Okay. What -- what concerns do you recall him sharing in that
3 conversation?

4 A You know, it was -- it was -- it was, I think, twofold. It was one on process,
5 which is why I felt like it was sort of sprung on him at the last moment, which was very
6 different from me. And it seemed like he was actually talking to the campaign, where I
7 had not. And he was trying to understand why we would meet.

8 And, you know, I -- I'm quite certain I referenced the Hawaii case, and then would
9 have talked about, at least in Wisconsin, we have this litigation that's going, and, you
10 know, we've got a few issues that are going, and if a court ruled in our favor, it could
11 certainly impact the outcome of the election, and likely would.

12 Q Do you recall whether he asked for more information on the Hawaii case or
13 if he was familiar with it?

14 A No, I don't.

15 Q For the conversation that you had with Mr. Roman, did he -- do you recall if
16 he told you that he was calling, you know, as a member of the Trump campaign?

17 A He -- he didn't say anything like that. He real -- literally, his question was,
18 are you guys meeting on Monday?

19 Q And you said it was an odd call. Is it mainly because you thought it -- you
20 said it was -- seemed disconnected and, like, he didn't really understand what was
21 happening in Wisconsin?

22 A Yeah, which, I mean, it just seemed strange to me. How would you not
23 know?

24 Q Do you recall if there was anyone else on the phone call?

25 A I don't -- I don't think there was. If -- if there was, I didn't know about it.

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1 Q Do you ever recall interacting with someone named Michael Brown, like G.
2 Michael Brown, or Mike Brown, from the Trump campaign in connection with the
3 alternate electors?

4 A I don't -- yeah. I don't believe I did. I did see his -- I think his email
5 address in some of the documents I produced. But, you know, whereas I had heard
6 Mr. Chesebro's name leading up to December 14th a couple times, I don't think I ever
7 heard, you know, Mr. Brown's name.

8 Q Did you have any understanding as to why Mike Roman was involved in this
9 alternate elector issue in Wisconsin?

10 A No, not really. I mean, I know from 2016 that he was involved in that
11 recount in Wisconsin, and so, to that extent, it didn't seem strange to me that he would
12 be calling. It just seemed strange that he seemed to not know what was going on or
13 that we were meeting.

14 Q So I know you mentioned the call with Mr. Tabas from Pennsylvania. When
15 did you become aware that there was an effort not just in Wisconsin to convene, you
16 know, members of Republican Party electors on December 14th?

17 A I think it was around that time. And I don't remember -- I don't remember
18 the exact date, but I remember I have a text message to Mark Jefferson, which you
19 probably saw, where I said something like, clearly there's -- you know, clearly all -- there is
20 something more going on here with all the electors meeting.

21 And, again, it seemed like Wisconsin was just in a different place, on a different
22 path than -- than these other States.

23 Q I want to go a little bit -- back a bit when we were talking about security
24 concerns and safety concerns. I also saw references to -- to media risks.

25 Do you recall discussing media risks at the time before that --

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1 A Yeah. I think we were just --

2 Q -- December 14th meeting?

3 A Yeah. I think we were really just concerned that it would -- you know, that
4 that would lead to -- that would be the instigation of a protest.

5 Q Okay.

6 A Because I wanted to do a media statement. And you probably saw there
7 was a -- in a text message from Mark Jefferson to me, there's evidently a conference call
8 with Rudy G., so I'm assuming that's Rudy Giuliani, that said, no -- no media, no heads-up,
9 or something like that. And I responded to Mark basically: We'll do whatever we
10 want.

11 Q Was there a concern that, you know, members of the public or the media
12 would not understand what you all were doing on December 14th and perhaps think it
13 was improper? Was that a concern?

14 A No. No. I mean, we released our statement to explain everything. I
15 think that, for me, the bigger -- the issue was I didn't -- this was an alternative slate of
16 electors. I did not want anyone to think that we were saying we were the proper or the
17 only proper slate of electors. So I didn't -- I didn't want to make a big deal out of this.
18 This was a contingency plan in case the -- you know, the court ruled in the Trump
19 campaign's favor.

20 Q Did anyone ever tell you that your alternate -- this alternate slate of
21 Republican Party electors could be counted on January 6th even if the litigation did not
22 overturn the, you know, certified results of the vote in Wisconsin?

23 A No.

24 Q So you never heard of that being -- of being an option on January 6th, to use
25 that alternate slate even if the litigation did not go in favor of President Trump?

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1 A Correct. I would have had significant concerns about that.

2 Mr. [REDACTED] Well, why would you have had significant concerns about that?

3 The Witness. Well, one, I was told that these would only count if a court ruled in
4 our favor. So that would have been using our electors -- well, it would have been using
5 our electors in ways that we weren't told about and we wouldn't have supported.

6 Ms. [REDACTED] Did you ever tell any -- anyone that, that, you know, we're
7 doing this, but it's only if the litigation goes in favor of President Trump and changed the
8 results?

9 The Witness. Yes. I even said it at our electors meeting. That was -- you
10 know, the remarks I made, I think, were solely basically focused on that. And -- and
11 then, of course, the press release that I did indicated that and, you know, probably -- you
12 know, every single media interview I would have done would have been -- would have,
13 you know, indicated that as well.

14 Ms. [REDACTED]. So I know we've been going for a while. Do you want to
15 maybe take a -- maybe like a 5-minute break?

16 The Witness. That's up to you. I'm -- I'm okay.

17 Ms. [REDACTED]. Okay. We'll -- we can -- maybe take a 5-minute break? We
18 can come back at --

19 The Witness. Sure.

20 Ms. [REDACTED]. Well, it's our time 11:55. I'm not quite sure which time zone
21 you're in.

22 The Witness. Yeah. It's 10:50 here, so --

23 Ms. [REDACTED]. Okay.

24 The Witness. -- we'll come back in 5.

25 Ms. [REDACTED]. Great. Okay. So we'll go off the record at 11:50.

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1 [Recess.]

2 Ms. [REDACTED]. So let's go back on the record. It's 11:57.

3 BY MS. [REDACTED]:

4 Q Let's pull up exhibit 8.

5 These are text messages that you produced to us, Mr. Hitt, with Mark Jefferson.

6 If you can -- can you see that?

7 A Yes.

8 Q Okay. Great. So I believe these messages are from December 5th, based
9 off of the Trump tweet that you shared. Does that sound about right, December 5th?

10 A Yes. I think so.

11 And what's the Bates number, Mr. Biskupic asked?

12 Q Oh, excuse me. It's 80, 8-0.

13 A Eighty. Okay.

14 Yeah. December 6th.

15 Q Oh, December 6th. Okay. Perfect. Okay. That's helpful. Thank you.
16 Do you recall this --

17 A Yep. I actually -- I noticed -- sorry.

18 Q Oh, perfect. Thank you.

19 So Mr. Jefferson says to you: "Now, how are we gonna get this silly electors
20 meeting canceled? I fear that we won't."

21 You respond: "We won't. We will have to carefully craft a press release. Do
22 you think we can do it virtually?"

23 Do you recall having discussions with Mr. Jefferson about trying to get the
24 Republican Party elector meeting on December 14th canceled?

25 A I mean, you know, not in any kind of significant way beyond kind of what you

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1 see here. You know, it was sort of clear what the lawyer -- lawyers -- what Joe Olson
2 and company were telling us that we needed to do.

3 You know, it was a lot, though, to have to plan. You know, there was a lot of
4 moving parts for it. The cases -- you know, the -- there were cases going on, but the
5 outcome of the cases, you know, weren't real clear, and, you know, the -- what we were
6 seeing nationally about Wisconsin just kind of continued to kind of concern us. So
7 nothing really beyond that, I guess.

8 Q So he calls it, you know, a silly electors meeting. Do you know why or what
9 he meant by, you know, calling it silly?

10 A No. We didn't -- we didn't talk about it beyond -- that I recall, beyond kind
11 of what you see here.

12 Q Okay. Did you ever have any conversations with Mr. Jefferson or others
13 that, you know, it might be a long shot that what you all were doing on December 14th
14 could, you know, potentially have any sort of effect or that it would -- you know, your
15 votes could potentially be counted?

16 A So, I mean, we certainly, you know, knew that -- I think there's -- there's two
17 groups of cases going on. There is some Federal election -- or Federal cases going on
18 that didn't seem like they were going to be very successful. And then we had our
19 Wisconsin recount and Wisconsin Supreme Court case. That seemed, you know,
20 potentially that it very much could change things. It was a 4-3 decision and being
21 appealed to what I would say a much more conservative United States Supreme Court
22 case -- or United States Supreme Court. So, you know -- and -- and it was very clear that
23 the elections commission really didn't -- they didn't follow the letter of the law, you
24 know, in a number of things that they did.

25 So -- now, I think, you know, would they take that dramatic step to overturn

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1 election results? Nobody -- nobody really knew, but it was certainly a very, very close
2 case here in Wisconsin.

3 Q You write, you know, "We will have to carefully craft a press release."
4 What did you mean by that statement?

5 A I wanted to make sure our -- our intent was known, what we were doing,
6 and why we were doing it was known and was on the record.

7 Q Meaning that this was a sort of contingency plan. Is that fair?

8 A That's correct.

9 Q Okay. In your next message, you write: "Preserve legal rights as case
10 moves forward," dot, dot, dot, and then a rolling eyes emoji.

11 Can you explain what you meant when you sent that to Mr. Jefferson?

12 A Yeah. I think I was just kind of laying out, here is what we've got to focus
13 on, you know, preserving the legal rights as the case moves forward, you know,
14 regardless of, you know, anything else. I don't really recall beyond that, I guess.

15 Q Okay. And I guess, you know, not to make it out more than it is, but you
16 included, like, an emoji that's rolling the eyes. You know, what -- what -- what do you
17 recall you were trying to convey with that emoji?

18 A Yeah, I don't really recall. You know, I think -- I just -- I don't really recall
19 why I used that emoji as opposed to anything else. I think it was just, you know, kind
20 of -- at this point, you know, we were -- we were, you know, going through this. you
21 know, there was a lot of conversations with our lawyers about it. It's not like -- it's not
22 like we were jumping up and down to do this alternative slate of electors. It wasn't
23 something that either of us aspired to have to do.

24 Q Now, you shared a tweet from President Trump where he, I'll say -- I think
25 it's a fair characterization that he criticizes Governor Doug Ducey of Arizona and

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1 Governor Brian Kemp of -- excuse me -- of Arizona and Governor Brian Kemp of Georgia.
2 And you later write: "Both of us think it's unacceptable. I am seriously considering a
3 warning shot to Trainer or Clayton. If he does this in Wisconsin, I am going to defend
4 our guys."

5 Were you referring to that -- that tweet, what was unacceptable?

6 A Yes.

7 Q Okay. Okay. So you weren't talking about the meeting on the 14th being
8 acceptable; it was more President Trump's tweet?

9 A Correct. Like -- and I know that because when I had concerns about tweets
10 or about attacking other Republicans, Mr. Clayton and Mr. Trainer are the people that I
11 would make those -- my complaints known.

12 Q Do you recall if, during this time period, President Trump ever talked about
13 you in a tweet in -- I guess in a negative fashion?

14 A I had -- I don't -- I don't think he did, but I guess -- I think -- I think I would
15 recall that. I don't -- I don't -- and I don't think he did.

16 Q You ask: "Can we find out how the Dems plan to do it?"
17 Is that in reference to the meeting on the 14th?

18 A Yes, it is. Mark and I kind of go back -- we, you know, have a lot of things
19 going on, and we tend to go back and forth on things. But yes, that's what that would
20 be referring to.

21 I thought that the Democrats would probably do their -- their meeting virtually
22 just, you know, understanding where -- where COVID was and kind of how -- how they
23 were approaching COVID and how they campaigned during COVID was very different than
24 Republicans. And so I thought -- I thought they would probably meet virtually.

25 Q Did you ever find out how they -- how the Democratic Party electors planned

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1 to do the December 14th meeting in Wisconsin?

2 A I think we knew through a media report that they planned to meet in the
3 Governor's conference room.

4 Q At the capitol?

5 A Yes.

6 Q If you go to page 2, so Bates 81.

7 And you sent to Mr. Jefferson: "Ron called me right after and now is arguing for
8 us to have the legislature choose the electors. OMG."

9 Do you recall who Ron is?

10 A Yes. It's Senator Ron Johnson.

11 Q Okay. What do you recall about that -- that conversation with
12 Senator Johnson?

13 A Not a lot beyond what's in the text message. So that was on the evening of
14 December 7th. That was the night -- I think, at 6 or 7 p.m. our time -- we did a
15 conference call with county chairs -- all the county chairs across the State -- Republican
16 county chairs. And we oftentimes would ask a special guest to come on. It just -- I
17 think just so happened that it was Ron Johnson this time.

18 On that conversation -- or on that county chair call, we gave them an update on,
19 you know, where -- where the recount and the recount litigation was at, and we did some
20 frequently asked questions. I remember I got very forceful on the call regarding the
21 Milwaukee vote and the Milwaukee so-called vote dump.

22 Ron called me afterwards. I think he was a little surprised about -- about kind of
23 how forceful I was and said, you know, we need to -- we need to have our legislature
24 choose the electors.

25 I -- I know that I was not in support of that, that the legislature would likely not do

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1 that. I think, by that time, there was already a memo out from the legislative counsel
2 that said the legislature didn't have the power to do that. And so I, you know, conveyed
3 that to him.

4 Q And do you recall Ms. -- Senator Johnson's response when you conveyed
5 that information to him?

6 A I don't -- no, I don't.

7 Q And Senator Johnson, he's -- he's not a part of the Wisconsin legislature,
8 right?

1

2 [12:08 p.m.]

3 BY MS. [REDACTED]:

4 A No, correct. He is the United States Senator for Wisconsin.

5 Q Did he say that he was going to, you know, ask the legislature to do this, to
6 appoint the Republican Party electors?

7 A He did not, but, you know, I think -- I think there are news reports of him
8 talking about this. And I know, at some point I think in 2021 here, he went to the
9 legislature to talk to them about that. And there's news reports on that. Some of
10 those meetings, private caucus meetings were leaked out to the media. So there's some
11 public information on that.

12 Q When you -- you just mentioned a minute ago that you were not in favor of
13 this proposal of the State legislature appointing their own electors. Is that right?

14 A Correct.

15 Q So you mentioned the memo. What else, I guess, led you to believe that
16 that was not something -- that the State legislature should not do in Wisconsin?

17 A I guess I don't recall -- I don't recall who I would have talked to about this, if
18 this was Joel Olson or if it was just legislative counsel memo, but it didn't seem the
19 legislature had the power to do that in Wisconsin.

20 Ms. [REDACTED]. Yeah, that's fine.

21 BY MR. [REDACTED]:

22 Q In addition to the question about the legislature's power, did you have a
23 concern that maybe there wasn't a factual basis for the legislature to do that, meaning
24 there was not sufficient evidence that had been proven of fraud to overturn the results of
25 the election in Wisconsin?

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1 A Well, certainly, only if a court would have ruled that way, then there
2 wouldn't have been anything to support that. If the court would have, for example,
3 taken the absentee ballots that didn't have an absentee ballot application and tossed
4 them out, then maybe there would be a factual basis. But, absent some sort of ruling
5 and a recount or by a court, there wouldn't be.

6 BY MS. [REDACTED]:

7 Q Did Senator Johnson give any reasons from what you recall as to why he
8 wanted the State legislature in Wisconsin to take action?

9 A No, not that I recall.

10 Q Did Senator Johnson want you to do anything about it with respect to the
11 State legislature?

12 A No, it was more of a, I would say, a general complaint and that a legislature
13 should do it. He didn't ask me to call anybody. I don't know if he implied if he was
14 implying that I should. Certainly, I think it would be fair that he would have left the
15 conversation or understanding that I wasn't going to do that.

16 Q We've heard from various officials -- stories of the pressure that they felt
17 from the public to do something in the State, that there was this perception from their
18 constituents that they weren't doing enough to support President Trump. Did Senator
19 Johnson reference, you know, reports that he was getting or pressure he was receiving
20 from constituents to do something in Wisconsin?

21 A Yes. And that, you know, I think that would have sort of been my
22 experience as well if you consider -- my constituents are kind of grassroots activists.
23 There was a lot of complaints and concerns that we weren't doing enough.

24 Q Do you recall what -- when you received calls, what people wanted you to
25 do?

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1 A You know, it was -- that was sort of what was so frustrating for me is they
2 would be calling and, you know, they would be asking, you know, for example, about the
3 Milwaukee votes: You know, you've got to get rid of those Milwaukee votes; they're
4 illegal.

5 Well, no, they're not. Here's how they do absentee ballots in Wisconsin or in
6 Milwaukee: They take them all to central count. And after, after -- once you get to
7 election day, they start to process them. They take them, and they put them -- but they
8 don't put them in the computer to tabulate them until the very end. And that's what
9 happens. It happened in 2018, too. It's happened before. It may not be the best
10 practice, but this is how they do it.

11 Q So, I mean, is it fair to say at least some of the concerns you were getting, it
12 was frustrating because you didn't think they were based on what actually happened in
13 Wisconsin?

14 A Yes. True.

15 Q If you go back to the text message thread, after your response, OMG, Mr.
16 Jefferson writes: What is he doing?

17 And you write: There's a huge amount of pressure building on them to find a
18 way around the electoral college.

19 Can you explain this message for us?

20 A Yeah, I think I was just referring to, you know, everything that was going on
21 in the public and everything I was picking up, you know, in news reports and of, you
22 know, again national campaign figures, saying things that weren't true. And it was just
23 very clear -- my impression of all of this is that there was a lot of pressure on them. I
24 don't recall ever really talking to anybody about that or them telling me that, but that's
25 what seemed clear in the public.

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1 Q So did you feel -- did you personally feel pressure, I guess, to use your words
2 in this text, to find a way around the electoral college during the 2020 election?

3 A No, I really -- I really didn't. The questions that came to me were more
4 focused on dropboxes in the park, and, you know, indefinite confined. You know,
5 people would call and say: You didn't stop these indefinite confinement abuse that was
6 going on.

7 And then I would have to tell them that, well, actually, yes, I filed a temporary
8 restraining order in the Wisconsin Supreme Court and prevailed on that. The only
9 reason it did stop is because of what I did. It was extremely frustrating in that regard.

10 Q So was the pressure that you were feeling more about what you're doing to
11 investigate potential election fraud or voter fraud?

12 A I didn't feel as much as of that because I don't really have a role in it. I did
13 form, at some point I think, in maybe January, I formed an election reform task force at
14 the Republican Party of Wisconsin, basically, a way to give people who were working or
15 who cared a lot about this and who worked on this at a grassroots level, give them a sort
16 of a place to voice their concern, an outlet, if you will.

17 Q With respect to potential voter irregularities or voter fraud?

18 A Election reform. Yeah, election reform. So, basically, how do we make
19 sure that the indefinite confined statute isn't abused and people can just say they're
20 indefinitely confined and then not have to present a photo ID? How can we make sure
21 that absentee ballots rules are followed? Those sorts of things.

22 Q And you created this, you say, January 2021?

23 A Yeah, I think it was. I don't recall the exact -- I don't think I did it in
24 December. I think it was in, like, January of 2021.

25 Q So, when you said in this message, you know, there is a huge amount of

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1 pressure building on them to find their way around the electoral college, I guess, I am just
2 trying to understand more about -- pressure to -- what was the reference to the electoral
3 college and getting around it?

4 A I think it had to do with the State legislature choosing the electors. That
5 was, you know, the next text message down. So I think that's what it was in regard to.

6 Q And you perceived that, at least in the State of Wisconsin, having the State
7 legislature appoint their own electors could be perceived as a way of finding their way
8 around the electoral college?

9 A Steve would like to talk to me for a second.

10 Q Oh, sure. Yeah, we can go on mute and stop the video if you want.

11 [Discussion off the record.]

12 BY MS. [REDACTED]:

13 A Okay. I'm back.

14 Q Okay. I can -- are you prepared to answer, or I can repeat the question?

15 A Yeah, could you repeat it for me, please?

16 Q Yeah. So I was just trying to understand what you meant by there is a huge
17 amount of pressure building on them to find a way around the electoral college. What
18 were -- what was your perception of the ways around the electoral college?

19 A I guess, I don't -- I don't know if this text even really makes sense. I think it
20 had to do with the legislature choosing the electors. It might have had -- it might have
21 been -- it probably made more sense after the conversation, but I don't -- I don't really
22 know what else to offer beyond that, except that, you know, my perception was that
23 there was this pressure out there that was building.

24 Q And pressure on legislators in the State of Wisconsin and, I guess, Members
25 of Congress as well?

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1 A Yeah, I would just -- I would just say nationally. I think I was really looking
2 at public reports and watching what was going on.

3 Q Let's go to exhibit 11. This is Bates 5. This is -- if you can go down.
4 Can you see that Mr. Hitt?

5 A Yes.

6 Q So this was a message -- an email sent from Mr. Jefferson to you and Alex
7 Zimmerman on December 9th, 2020. And Mr. Jefferson provides a proposed Jim
8 Troupis statement on electors' meeting. Do you recall this proposed statement?

9 A Yes.

10 Q I know we've talked, I think, previously before you mentioned a statement,
11 discussions about potential statements for -- about the December 14th meeting. Can
12 you explain your recollection of this statement from Mr. Troupis, including why he
13 prepared it?

14 A So, actually, Mr. Jefferson prepared it. So, in -- and actually in the court
15 filing that was filed with the Wisconsin Supreme Court, the Trump campaign, Mr. Troupis
16 put in there, I guess, page 8, footnote 3 or 4, that, you know, the Wisconsin electors were
17 going to meet as an alternative slate and send their documents on. And so we wanted,
18 Mark and I wanted it to be known why we were doing this. And so we thought the most
19 appropriate person to comment on it would have been the Trump campaign and the
20 Trump campaign lawyer, Mr. Troupis. So Mark prepared this for him.

21 Q So why did you want it to be known about the meeting on the 14th?

22 A I wanted it to be known so that people would know we were doing this
23 alternative slate of electors that, in case that, you know, the cases were successful, that
24 we had met and that we wouldn't have waived the argument for, you know, ruling in the
25 Trump campaign's favor or for those votes counting.

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1 Q So it's your understanding that Mr. Jefferson prepared this for Mr. Troupis?

2 A Yes. That's my understanding.

3 Q Do you know whether Mr. Troupis at this point in time had any input into
4 the statement?

5 A I don't -- I don't think he had at that point. I think there was a separate
6 email where Mr. Jefferson sent it to Mr. Schimming, who was sort of doing
7 communications work with Mr. Troupis. And he looked at it. And then, based on the
8 email records, it looks like Mr. Chesebro looked at it as well.

9 Q In the proposed statement, the first sentence says: As the legal
10 proceedings continue to work their way through the Wisconsin court system, I have
11 advised the Republican Party of Wisconsin to convene a separate Republican electors'
12 meeting and vote at the Wisconsin State capitol on December 14th. Do you see that?

13 A Yes.

14 Q Do you know why only the Wisconsin court system is referenced in this
15 proposed statement?

16 A No. Our focus really was, though, on that recount in the Wisconsin case.
17 As I -- like I said before, the campaign -- I don't think the campaign had filed that Federal
18 case, and we weren't really significantly involved in it. And that Wisconsin recount and
19 the Wisconsin Supreme Court case or the case that went to the Supreme Court was really
20 what was driving us.

21 Q And, in the second paragraph, mentioned: Of course, there is precedent
22 for such a meeting. Democrats convened in Hawaii in 1960.

23 What was your understanding of what happened in Hawaii in 1960, and
24 understanding that I don't think you were there, but what you understand had
25 happened?

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1 A No. Yeah. You know I -- I mean -- I haven't read the case since, you know,
2 for over a year. I don't think anyway. I don't think I read it again when we had the
3 election commission complaint. But my -- you know, it was a case that was referenced
4 by our lawyer. I looked at it. It seemed to be, you know, a similar situation and a
5 precedent that was in place that, you know, really justified the Wisconsin electors
6 meeting. This has happened before. And, you know, I don't know that I can go into
7 the ins and outs of the legal case right now. But it was certainly one of the -- one of the
8 key aspects of kind of the legal advice that was given to us.

9 Q And you mentioned it seemed similar to what was happening in Wisconsin.
10 And I recognize this was a long time ago. Similar in what way?

11 A Oh, sure. Just similar in that there was an election that was still in doubt,
12 that -- still in doubt and proceedings were ongoing. And that it made then sense to do
13 this alternative elector meeting to prevent the complete waiver of the waiver if a court
14 ruled in favor of that specific campaign.

15 Q And I think you have already about talked this, but I just want to make sure
16 the record is clear. When you say the election is in doubt, it's in doubt from your
17 perspective in a sense that there was litigation about the results?

18 A Yes. Correct. I'm sorry, yes. The litigation is what would cause -- cause
19 it to be in doubt.

20 Q And if you look towards the bottom, I think it's the last sentence, it says:
21 Given this and the legal arguments that have yet to be decided, the GOP electors shall
22 also meet on Monday while we await a final resolution in Wisconsin. Do you see that?

23 A Yes.

24 Q And this might just be me not understanding the sentence and what it's
25 trying to say, but do you think what "and the legal arguments that have yet to be

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1 decided," what that's in reference to?

2 A I think it's in reference to the Wisconsin Supreme Court case. I suppose it
3 can be in reference to the Federal cases as well or the federal litigation that was going on.
4 But I think it's -- I really do think it's just focused on the Wisconsin Supreme Court, the
5 fact that they hadn't yet decided. And, even if they didn't rule in our favor, our
6 understanding was they were going to appeal to the United States Supreme Court.

7 Q And you respond to this, this email on December 9th at 7:45 p.m. -- if you
8 could go up -- and you write: I am good.

9 What did you mean by "I am good"?

10 A I just meant that I'm fine with the statement if -- so the implication is go
11 ahead and send it to Mr. Troupis for his review.

12 Q Do you know whether the proposed statement was sent to Mr. Troupis for
13 his review?

14 A Yeah, I do. I believe it was. There are some other emails that -- where I
15 think Mr. Troupis even makes a couple edits to it. And then I -- my belief is that it got
16 canceled, or he wasn't allowed to send it because of the conference call with Rudy
17 Giuliani that said no press, no heads up.

18 Q Can you tell us a little bit more of what your understanding was of that
19 conference call with Mr. Giuliani?

20 A Yeah, my only understanding is from my text messages with Mark on
21 December 12th in the afternoon, he asked me -- well, I texted him about the -- I think it
22 might have texted him -- no, I think he texted me about Chesebro wanting to meet, and
23 asking if I wanted to join, and I said no, that he could let me know. And then he also
24 then, I believe, kind of copied and pasted a message he got from Mr. Schimming to Mr.
25 Jefferson that said he was on a conference call, or they were on a conference call with

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1 Rudy G.; no, no press, no heads up regarding Monday, or something like that.

2 Q Let's actually -- we can turn to it just so it's clear in your mind. Let's go to
3 exhibit 8. So back to it. Page 4. And exhibit 8 is, it starts with Bates 80, and page 4
4 would be Bates 83.

5 A Okay.

6 Q If you want to take a second to review the messages. I think this is what
7 you were just referring to, if you look at --

8 A Yeah.

9 Q So why don't -- on December 12th, at 1:47 p.m., Mr. Jefferson writes:
10 Schimming is wanting me to talk with Ken Chesebro, who is sitting in their office. Any
11 interest in being on the call? Re: Electors meeting. And whatever else. I don't think
12 there is any particular concern, but it's still on no matter what, it appears.

13 Did you join that conference call?

14 A No, I did not.

15 Q Okay. Do you know if Mr. Jefferson did?

16 A I don't think he did, but I don't know for certain.

17 Q So a later message from Mr. Jefferson, he writes: Schimming: On the
18 phone conf with Rudy G. He is saying to all States: no heads up to any media on electors
19 meeting.

20 You respond: These guys are up to no good, and it's going to fail miserably.

21 Can you explain, you know, what you meant by "these guys are up to no good, and
22 it's going to fail miserably"?

23 A So, you know, for now we're going on, you know, well over a -- probably well
24 over month of repeated misstatements about what occurred in Wisconsin in the media by
25 people like Rudy Giuliani. And now they're saying no media, no heads up. And to me, I

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1 just thought, you know, that just seemed like they are up to no good and that media
2 certainly is going to find out about this. And you know what? We're going to do our
3 own statement. So I know they're going to find out about it in Wisconsin, which is why I
4 down below say: We can do whatever we want after and with us. We don't answer to
5 them.

6 Q Do you know whether there were other officials from different States on this
7 conference call with Mr. Giuliani or if it was just like Schimming from Wisconsin?

8 A I don't -- I mean from the texts, it certainly looks like other States were on,
9 but I don't -- I don't know.

10 Q Were you ever told why Mr. Giuliani did not want any media on the elector
11 meetings?

12 A No, I was not.

13 Q Okay. But you all did put out a statement -- is that right --

14 A Yes.

15 Q -- in connection with the meeting?

16 A Yes.

17 Q Did you ever receive pushback or outreach asking why you put out a
18 statement?

19 A I did not. I don't know if Mark received any. Usually he would tell me if I
20 did, but I don't know.

21 Q Do you know if Mr. Schimming or anyone else pushed back against Mr.
22 Giuliani when he said no media?

23 A I don't, no.

24 Q Is there anything else you recall about this conference call -- and I recognize
25 you weren't a part of it this -- but with Mr. Giuliani?

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1 A No, this is all I knew of it.

2 Q Okay. If you can go quickly to exhibit 12, and this is Bates 6. Can you see
3 that?

4 A Yeah.

5 Q So let's go down and you can see a forwarded message from Kenneth
6 Chesebro to Judge Troupis, and others. And I think you mentioned earlier when you
7 were preparing the documents for, you know, relevance and potential production to the
8 select committee, you saw emails with Chesebro and Troupis. Is that one of the emails
9 that you saw, but you didn't recall from before?

10 A Yes.

11 Q So, if we go to the next page, Bates No. 7, page 2, so Mr. Chesebro says:
12 Attached is a memo summarizing the requirements for casting electoral votes in the six
13 contested States.

14 Do you recall reviewing this message when you received it or the memo that Mr.
15 Chesebro references?

16 A I don't believe that I did. If you look at kind of the top of the string -- and
17 this was sort of common for Mark: He has a thought. He hits forward. His thought
18 when reading this is, hey, are we going to -- should we have the electors see what they're
19 going to sign? You know, based on -- well, based on the time, you know, the time of
20 day, it's like, you know, almost 10 o'clock at night, I'm sure I was reviewing -- I'm sure I
21 was looking at this on my phone. And I just looked at Mark's question and said yes. I
22 don't know if I looked at that memo from Mr. Chesebro. I don't recall looking at it. If I
23 did, I certainly didn't spend much time on it because I don't recall reviewing it.

24 Q Who is Brian Schimming? Do you know who he is?

25 A He -- yes, yes, of course. He is long-time communications professional and

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1 political person in Wisconsin. He knows Mr. Troupis very well. They've done a number
2 of recounts together. You know, Mr. Troupis is probably the preeminent guy in
3 Wisconsin on election law and recounts, and, you know, he's very well respected. And
4 Brian, Mr. Schimming, has done a lot of those recounts with him. And so he was
5 brought on to help with sort of coordination and to be sort of a right hand to Mr. Troupis
6 and to work on communications-type stuff and public affairs-type issues for Mr. Troupis
7 during the recount.

8 Q And did you have any direct communications with Mr. Schimming around
9 the December 14th meeting?

10 A I don't recall having any, no.

11 Q And, if we go down a bit on the page from the forwarded message, a little bit
12 down further, a little bit more.

13 You can see there is in the CC line an Austin Browning. Do you know who that
14 is?

15 A I do not.

16 Q Okay. And Joseph Olson. Is that Mr. Olson we have talked about today?

17 A Yes.

18 Q Was that the counsel for the Wisconsin Republican Party?

19 A Yes.

20 Q And how about George Burnett, do you know who that is?

21 A Yeah, yeah, of course. He's also a lawyer in Wisconsin. Very well
22 respected. Former State bar president. And he was, I believe, also retained by the
23 Trump campaign along with Mr. Troupis to work on the recount.

24 Q And I apologize, real quick. If we can go back again to the second page,
25 Bates 7. On that last paragraph for Mr. Chesebro, he writes: With that information, I

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1 can draft papers similar to knows we now have for Wisconsin ready to be signed in the
2 other five States (subject to careful review by key officials in those States).

3 Do you know whether a careful review by so-called key officials was done in
4 Wisconsin?

5 A No, I don't. I don't know what he would mean by "key officials," I guess.

6 Q At the time, did you have any understanding of what the other six contested
7 States, as he puts it, were?

8 A I don't know -- well, what is the date of this? I certainly didn't based on
9 kind of his because I wasn't working -- I didn't really interact with him. So
10 December 9th.

11 Q That is right.

12 A So it would be before -- before the Pennsylvania chair called me. So I don't
13 really think so. I was really not focused on the other States or following along what was
14 going on there. I remember, you know -- I remember thinking that if what I'm saying on
15 national media is, is as inaccurate about the other States as it is about what they're saying
16 about Wisconsin, then I don't know what's going on there.

17 Q I am going to go to exhibit 13. This isn't something that you produced to
18 us. I'm not sure if you've seen it. You can tell us whether you have you have or not.
19 And this is a memo from Mr. Chesebro. That same date is December 9th, and it's to Mr.
20 Troupis regarding statutory requirements for December 14th electoral votes. Do you
21 remember ever reviewing this memo?

22 A I've seen it since because it was in The New York Times like a couple of
23 weeks ago. And I read that article. I think this is the memo that was, you know, in that
24 email string, but I don't know for certain. I looked in my records actually specifically for
25 the memo when I was doing the searches, and then I looked again after it was in The New

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1 York Times, but I don't seem to have it.

2 Q So do you have any recollection and understanding -- it's been a while -- any
3 recollection of ever reviewing this memo at the time around the end of December?

4 A I don't think I did. And even if it was emailed to me, I may have popped it
5 open on my phone or something like that, but I don't -- I really do not remember
6 spending any time with this.

7 Q Do you have any information as to why Mr. Chesebro prepared this memo?

8 A No, I do not.

9 Q So I'm going to -- let's go to exhibit 14. This is another memo prepared by
10 Mr. Chesebro. And it's similar situation. I'm not sure if you've ever seen this. You
11 can take a second to review it. It's a November 18th, 2020, memo regarding the real
12 deadline for settling a State's electoral votes. Do you recall ever reviewing this memo?

13 A Yeah, I don't think I did either. And now that you've pointed out both
14 memos, I can't remember if it was this memo or the other one that was in The New York
15 Times article. But I don't believe I ever received this one either.

16 Q And just go to -- maybe we'll go to page 4 real quick just to see if this
17 refreshes your recollection in any way. If you go down a little bit. You can see there
18 is -- it actually talks, specifically, about Wisconsin. Do you remember ever reviewing a
19 memo that talks about Wisconsin law for Mr. Chesebro?

20 A Not for Mr. Chesebro. I was working really just with Mr. Olson. And, you
21 know, it was pretty, pretty well into December before I even had heard the Chesebro
22 name.

23 Q And do you remember references to memos from Mr. Chesebro at the time,
24 you know, in conversations?

25 A No.

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1 Q Okay. And did you talk to -- ever talk to Mr. Chesebro or Mr. Troupis about
2 any memos that had been prepared regarding the alternate electors?

3 A Yeah, Mr. -- I never -- the only thing -- conversation I ever with Mr. Chesebro
4 was on December 14th. So, you know, I don't think that I would have ever talked to
5 him. That was just an introductory hello after I had asked who he was. And then I
6 don't -- I don't believe Mr. Troupis and I ever talked about this. I was talking to Mr.
7 Olson. You know, I knew he was my lawyer. So, you know, Judge Troupis and I just -- I
8 don't recall having any conversations with him.

9 Q You produced us with I think are almost like template or draft documents for
10 the December 14th Republican Party elector meeting. Do you remember that?

11 A Yeah, I did have those in my -- in my -- my emails.

12 Q Do you recall how you received them?

13 A No, I guess, I don't. I think -- I think -- I think it was via email but I -- I don't.
14 And it could have been in -- it could have been in exhibits that were submitted in either
15 briefs or complaints.

16 Q Do you recall who prepared those -- those documents?

17 A I don't. I wasn't really involved in that aspect of it.

18 Q We can pull up one of them, exhibit 15. This is Bates 34. And this is, it
19 says: Page 1 of 2, How to Cast Electoral Votes in Wisconsin.

20 Do you recognize this document?

21 A Yes.

22 Q Okay. So do you remember how you received this document?

23 A I think it was in -- so I think this is the one that I actually didn't receive until
24 February of 2021 when there was the complaint filed in the Wisconsin Elections
25 Commission. And Mark forwarded -- Mr. Jefferson forwarded an email to myself and

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1 Anna Kelly, who was our new communications director. She had started I believe in
2 January. Maybe it was -- maybe as early as February. I think it's February actually.
3 And so Mark was forwarding this on to her because there was this complaint from the
4 elections commission that we had to, you know, put out a statement or respond to media
5 questions. So I don't believe I actually saw this until, you know, well after the fact.

6 Q Okay. That's helpful. Thank you. So you're not sure who even prepared
7 this document?

8 A Well, I thought -- well, I guess I'm not, but I thought from my review of the
9 records it came from Mr. Chesebro.

10 Q And go down to the bottom of this, understanding that you didn't receive
11 this at the time not until later. The questions just about this last, I guess, bullet point,
12 also preparing external FedEx envelopes addressed to this Trump campaign. Do you
13 remember whether was actually done in connection with the December 14th meeting,
14 sending the paperwork to the Trump campaign?

15 A I don't. I wasn't involved in the mailing or any of that.

16 Q Do you have any understanding of who from the Trump campaign would
17 have received any documentation from the December 14th meeting?

18 A I do not.

19 Q So we've talked a bit about some Trump campaign individuals. And I just
20 want to ask you a few other names to see if you had any conversations with them during
21 the election period. Do you remember ever talking to a Justin Clark about the alternate
22 elector meetings?

23 A I know Justin a little bit. I don't believe so. It's not a phone number I
24 have. We talked earlier in 2020 about the April 7th litigation, I think, mainly because we
25 were both interviewed for 60 Minutes. But I don't -- and they took him instead of me.

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1 That was going to be my claim to fame. So, yeah, I don't think so.

2 Q Okay. I know you mentioned an Nick Trainer earlier, did you talk to him
3 about the alternate elector meeting in 2020?

4 A So Nick and I talked in -- it's in my phone records -- I think it was around
5 December 5th, if I recall correctly. I don't recall what the conversation was about. It
6 wouldn't be something that I would normally talk to him about. He was like a -- I think
7 his title was something like battleground strategy or something like that. I would talk to
8 Mr. Trainer, you know, about surrogates, about memorabilia and getting it signed by the
9 President, and I would talk to him when I had complaints about something the President
10 was saying.

11 Q What about Matt Morgan, while talking to him about the alternate elector
12 meeting on December 14th?

13 A I don't think so. I don't think I know who that is.

14 Q Okay. How about someone named Jenna Ellis?

15 A No. I don't. I only recently have learned that name.

16 Q What about a law professor named John Eastman?

17 A No, I didn't talk to him, and I only recently learned of his name as well.

18 Q Christina Bobb? You recognize that name?

19 A No.

20 Q Okay. Boris Epstein?

21 A Again, no, but I have learned of his name recently.

22 Q Bernard Kerik?

23 A I know him from the New York City days of being the police commissioner,
24 something like that. But that's it.

25 Q And you mentioned Mike Roman, that phone call. Do you recall any other

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1 conversations with Mike Roman about the alternate elector meeting?

2 A No, I think that -- yeah, that was the only conversation I had with Mr. Roman
3 about it.

4 Q If you can turn to exhibit 16, which I believe is Bates 36. It's a little hard to
5 see, but I think it's Bates 36. And this is something you produced, Mr. Hitt.

6 A Okay.

7 Q Can you see that?

8 A Yeah.

9 Q So, if you go down a bit, this is -- well, I think it's a template or a draft version
10 of the Wisconsin Presidential Elector Official Ballot for President of the United States.
11 Does that sound right?

12 A Yeah, I can see it, yeah.

13 Q Okay. Do you recall any discussions prior to December 14th about this
14 document?

15 A No, I wasn't involved in it, in the drafting of it, or anything.

16 Q And you don't know who drafted it. You said maybe Mr. Chesebro, but
17 you're not sure?

18 A Yeah, I don't know who drafted them.

19 Q Do you recall if you actually, on December 14th, signed a document like this,
20 like a ballot?

21 A I don't think so. I think the only thing we signed was that -- or those -- were
22 the memo. And then the memo and then the replacing of Tom Schreiber.

23 Q So if we can turn to exhibit 20. I want to make sure what you're referring
24 to, what was signed. This isn't the signed version, but this is just template of it, I think.
25 Is this what you're referring to?

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1 A Yes.

2 Q Okay. So this is the Certificate of the Votes of the 2020 Electors from
3 Wisconsin, Bates 65, for the record. Do you remember any discussion about this
4 certificate prior to December 14th?

5 A No, not really.

6 Q Okay. Do you recall if it was -- if you go up a little bit the top, it says, you
7 know: We the undersigned, being the duly elected and qualified electors for President
8 and Vice President of the United States of America, from the State of Wisconsin, do
9 hereby certify the following. And then there's some language. Do you recall any
10 discussions about making revisions to the statement that you all were duly elected and
11 qualified electors?

12 A No, we didn't really talk about it. At least, I didn't.

13 Q Were you aware that in other States they revised the language on this page
14 to include language referencing litigation that was ongoing to -- you know, to suggest that
15 they were, they were only duly elected in the event that the litigation changed what
16 happened, the election results? Are you aware of that?

17 A Yeah, not until after the fact. I mean, I wish we would have put it in there.
18 I guess I was focused on our media statements, and the fact that my understanding was
19 this -- these didn't mean anything unless the court ruled so and unless a Governor, you
20 know, sent the certificate of final determination.

21 Q So you did not revise the language, but sitting here today you think -- you
22 wish you would have or would have known other States were doing that?

23 A Yeah, certainly.

24 Q Do you recall, or do you know when you submitted -- when the documents
25 were submitted from the December 14th meeting, whether there was any letter

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1 explaining the litigation that was ongoing in Wisconsin and the position that this was
2 contingent for this electoral slate?

3 A I don't think there was any letter, I think, pending. I mean, certainly, we
4 had public statements, and I, you know, think it was well-known. But, no.

5 Q If we can to exhibit 17. This is also, I think, just a template and --

6 A Right.

7 Q -- and memorandum. And is this another document that you recall signing
8 on December 14th? I think if you go down a bit, there's a certificate.

9 A Right. Yeah. I signed that.

10 Q So it has four addresses. Do you know whether the documents were sent
11 to these four addresses on the memo?

12 A I believe they were.

13 Q Do you recall who sent the paperwork?

14 A Yeah, I think in the -- I didn't at the time, but in reviewing the documents, I
15 think Chaz Nichols (ph), who is a RPW staffer sent them.

16 Q And do you recall any revisions to this -- to this memo, this memorandum
17 that we're looking at?

18 A I mean, the final would have had the RPW logo at the top of it.

19 Q And, for any of the template documents, do you recall making any
20 substantive revisions to them?

21 A No, I don't believe I saw them ahead of time.

22 Q Okay. If we turn to the second page of this, page 2, Bates 50. It looks like
23 another draft statement. It says: Draft language for WI Republican Party Re:
24 December 14 Casting of Electoral Votes. Do you recall seeing this at the time?

25 A I think this was the -- I think this might be the longer statement that Mr.

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1 Jefferson ended up drafting, but I guess I --

2 Mr. Biskupic. What's the Bates number?

3 BY MS. [REDACTED]:

4 Q Fifty. Five, zero. And definitely take a moment to review it so you can -- if
5 it refreshes your recollection.

6 A Yeah, I mean, I don't remember, unless this matches that email that Mr.
7 Jefferson sent me on 10 of December 13th. Here it is. Yeah, it looks to be the same.
8 So this -- well, I don't know where this one came from, I guess, I don't know.

9 Q Okay.

10 A Yeah.

11 Q So you don't recall who drafted this statement? Because it does appear a
12 little bit different.

13 A Yeah, it is. It looks like -- I'm sorry, I don't know.

14 Q No problem. If you can turn back to exhibit 8. This is a chain with Mr. -- a
15 text message chain with Mr. Jefferson. So let's go to page 3, which would be Bates 82.
16 And I think you might have referenced this conversation earlier. You said: I'm not sure
17 what to do with this. And it appears to be a message you relayed to someone named
18 Whitney Meyers, and this is December 11th, 2020. Do you recall this message?

19 A Not from at the time, no. Not until I produced the documents.

20 Q Do you know who Whitney Meyers is?

21 A No, I don't.

22 Q Do you remember talking to Ms. Meyers at the time, after she sent you this
23 message?

24 A Yeah, I don't believe I called her back.

25 Q Okay. A part of her message is: In addition to needing to know the status

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1 on Wisconsin and the elector slate, we also need a prominent member of the Wisconsin
2 legislature to put in an amicus brief in support of the Texas election SCOTUS filing.

3 Do you recall anything about this amicus brief in support of this SCOTUS filing?

4 A No, I don't. I'm not even sure what that litigation was.

5 Q And you don't know Ms. Meyers -- why she would want to know about the
6 electors slate in Wisconsin?

7 A No, I don't.

8 Q Okay. And I know you mentioned a Brian Jack, and you said you never
9 talked to President Trump. Do you ever recall talking to Mark Meadows about the
10 alternate electors slate from this time period?

11 A Yeah, the only time I ever saw Mr. Meadows was at a Trump rally. But, I
12 mean, he was like walking down the fence line, if you will, or whatever you would call it.

13 Q And how about a Peter Navarro?

14 A No, never. I know the name from the news, but, no, I have never talked to
15 him.

16 Q Stephen Miller?

17 A No.

18 Q For the December 14th meeting, I see references to recordings. Do you
19 recall if it was recorded by video or otherwise?

20 A Yes, somebody did record it. We were to have a video of it, but I don't
21 know where it is or who did it even.

22 Q Okay. Let's go to page 8 of this same exhibit, which would be the exhibit 8,
23 page 8, Bates 87. So continuation with Mr. Jefferson. And in that second message,
24 you appeared to relay a message from someone named Tommy Hicks. Do you see that?

25 A Yes.

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1 Q Okay. So, in the message that was sent to you by Mr. Hicks, he says:
2 Governor Perry introduced me to a Texas businessman (John Robinson) who's data expert
3 (self-funding I believe) who's trying do something that proves through statistics and
4 painting a narrative in MI, AZ, WI, GA.

5 So I believe Michigan, Arizona, Wisconsin, and Georgia. Do you recall this
6 message?

7 A No not -- I mean not from the time, I had just been refreshed as I produced
8 it.

9 Q Okay. Did you ever talk to Mr. Hicks in connection with this message he
10 sent to you?

11 A I don't think so. He is the co-chair of the Republican National Committee.

12 Q Okay. Did you ever talk to this John Robinson who's referenced?

13 A No, I did not.

14 Q Were you at the time aware of efforts to try to prove election fraud through
15 statistics at -- election fraud throughout the country through like data statisticians. Do
16 you remember any efforts about that?

17 A I remember reading about it in the news, but that's about it.

18 Q In the text, he mentions Wisconsin, are you aware of any efforts like that in
19 Wisconsin, specifically?

20 A No, I don't think so.

21 Q Did you do anything in connection with this text message?

22 A Well, I mean I sent it to Mark, yeah, but that's, but that's it. I don't know
23 if -- I don't know if, whichever person was supposed to call him, if they did. It looks it
24 like may be Shafer.

25 Q Okay. From Georgia?

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1 A Yeah. Or wherever he is. Yeah, for the work he did in Georgia, it says,

2 Q But you're not sure if anything happened in connection with this in

3 Wisconsin?

4 A Yeah, Mark never said anything about it, so I sort of doubt it.

5 Q Mr. Jefferson references someone named Bob Spindell. Do you know who
6 that is?

7 A Yeah, he is also an elector and is kind of a long-time activist. He is the chair
8 of the Fourth Congressional District for Republicans.

9 Q Do you know if Mr. Jefferson talked to Mr. Spindell specifically about this
10 message from Mr. Hicks and this data statistician?

11 A I don't think they're related, so I think that's -- I think that's about the elector
12 meeting. He says: I talked to Bob Spindell. He's open to whatever we decide. I'm
13 going to send a text message out to everybody now.

14 I think he is referring to the electors. And I think -- I think what he is referring to,
15 he is open to whichever we decide, whether or not Bob and I would go a little bit earlier
16 than everybody else.

17 Q Okay. And, in that message from Mr. Hicks, he said, I think this is
18 important for Jan 6. Do you know what he was referring to, what would be important?

19 A Yeah, I don't.

20 Q Let's see. And you later write: Clearly, there is some big plan in the works
21 with all the States still doing elector meetings. I believe you were talking about that
22 earlier, right? You became aware that meetings were happening in other States at the
23 same time?

24 A Right. Right.

25 Q Did you have any understanding of how -- what the elector meetings related

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1 to trying to prove, you know, it says "prove through statistic and painting a narrative in
2 Michigan, Arizona, Wisconsin, and Georgia" how those related?

3 A No, I don't.

4 Q Okay. Let's get to December 14th. Do you remember what your
5 expectations were for that day and the potential significance of your meeting?

6 A I guess we really just thought that, unless a court ruled, the meeting was sort
7 of irrelevant and meaningless. The court would have to rule in the Trump campaign's
8 favor. And then, I think, as I said before, the Governor would have to send a new
9 certificate of final determination for it to mean anything.

10 Q And can you talk us through just really from kind of beginning to end your
11 day on December 14th, you know, beginning with where you met everyone and maybe
12 where you went to next?

13 A Yeah, we met everybody at the Republican Party of Wisconsin, which is just
14 down the street from the capitol. I don't know, three blocks away. And then we kind
15 of just assembled in the conference room and just waited there until it was time to go, to
16 go to the capitol. We drove up to the capitol. We went into the capitol into the
17 conference room. I know we went up an elevator, but I don't remember which
18 necessarily floor or room it was on. I think we were only there about 10 minutes
19 maybe. It was a very quick. We came in, did what we were supposed to do, and then
20 we left, and then, after that, everybody -- went back to RPW, and then everybody went
21 home.

22 Q So, just to take it step by step, did you all drive to or drive to the capitol all in
23 one vehicle or separate vehicles?

24 A No, yeah, we wouldn't have been able to fit in all one vehicle. I think we
25 took a couple, two or three.

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1 Q And I've heard reports that at least some electors, Republican Party electors,
2 had issues getting into the capitol that day. Do you remember anything about that?

3 A I think this was, you know, pretty -- this was during COVID, and the capitol
4 was still not, not open to the public. So -- but the legislature was still meeting, and
5 people were still in there. So you just had -- the door had to be open for you.

6 Q And so did someone open the door for the Republican Party electors?

7 A Yes.

8 Q Do you remember who opened the door?

9 A I think it was Heather Smith, but I don't know for certain.

10 Q And who is Heather Smith?

11 A She worked in the building as a legislature staffer.

12 Q And was that --

13 A She is also --

14 Q Oh, excuse me, you can go.

15 A She is also Mr. Jefferson's girlfriend.

16 Q Oh, okay. Is she a staffer for a Republican member in the legislature, if you
17 recall?

18 A Yeah, at that time, she was for Pat Testin.

1

2 [1:07 p.m.]

3 BY MS [REDACTED]:

4 Q Okay. And do you remember what -- because my understanding is the
5 meeting began around noon. Is that right?

6 A Yeah, I think that's right.

7 Q Okay. So do you remember what time you all got to the actual capitol
8 building?

9 A I think it was like shortly before noon, like maybe 11:55.

10 Q And did you have security with you when you arrived?

11 A Oh, yeah. Yep. The RNC provided security service.

12 Q Okay. And did you all come in together or -- into the capitol building itself
13 or -- you know, kind of tell us how that -- how that went, actually getting into the
14 building.

15 A Yeah. No. We just got out of the vehicles and walked into the building
16 and then took the elevator up. I think we -- I don't recall if -- I don't think everybody
17 probably fit in one elevator. They're fairly small there. So we waited for everybody to
18 get up there, and then -- and then we did our -- did our meeting.

19 Q Did you see any press when you arrived at the capitol building, that you can
20 recall?

21 A Yeah. No, I don't think so. I know that -- I know that Mark talked to some
22 reporters on -- on the way there.

23 Q Do you recall if you were allowed to bring cell phones into the meeting?

24 A Yeah. Well, I think we were. I don't remember not bringing a cell phone.

25 Q Do you remember if you saw the Democratic Party electors at the capitol

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1 that day?

2 A Yeah, we didn't. We didn't see really anybody else.

3 Q And aside from the Republican Party electors and security, who do you recall
4 being in the actual meeting room with you?

5 A Yeah. I think it was just Mark Jefferson, Alec Zimmerman, and I'm pretty
6 sure Chesebro -- Mr. Chesebro was there.

7 Q And do you know why Mr. Jefferson and Mr. Zimmerman were at the
8 meeting?

9 A I mean, just one. I mean, Mr. Jefferson had seen several of these, so just, I
10 guess, staff support.

11 Q And when you say "seen several of these," you mean just in prior election
12 years?

13 A Correct.

14 Q Okay. And so he knew, like, the procedure and how they went?

15 A That's right.

16 Q Okay. And what about Zimmerman? Just for support staff?

17 A Yeah, I think so, yeah.

18 Q Okay. And I think I've seen some messages about it. Any idea why
19 Mr. Chesebro came that day?

20 A No. Mark, I don't think, was very happy about it. He did -- he didn't
21 really -- I think he said Mr. Chesebro invited himself, and -- but I don't -- I don't know -- I
22 don't really know why he was there.

23 Q Do you recall if he said anything during the meeting?

24 A I don't think he did. I -- I think it was there that I had to ask who -- who this
25 guy was.

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1 Q Okay. So is it fair to say he didn't really have a substantive role in the
2 meeting?

3 A No. I mean, it was really short.

4 Q Okay.

5 A We just came in, did the vote, signed, and then left.

6 Q Okay. Who -- do you recall who collected the paperwork after the
7 meeting?

8 A I -- I don't. I -- I -- I think I put it together and I handed it to somebody, and
9 that was -- I think that was the last I ever saw it.

10 Q So you don't recall being the person in charge of the paperwork and having
11 to mail anything?

12 A Oh, no, I did not.

13 Q I know that -- I understand there was a secretary for -- who was appointed
14 for purposes of the December 14th meeting. Is that right?

15 A Yes.

16 Q Do you know who decided who would be a secretary for the meeting?

17 A I -- no. I -- I don't. I mean --

18 Q Okay.

19 A -- if I had -- if I had to guess, I would guess that it was Mark and I just asked
20 Kelly if she would be the secretary.

21 Q Do you recall what the secretary's role was on that day during the meeting?

22 A I think her only role was to sit next to me.

23 Q Okay. All right. So she didn't have to prepare any remarks or take official
24 notes of the meeting?

25 A I don't rem- -- I don't recall her saying anything, and I don't recall her -- if she

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1 did, I don't -- I don't recall it.

2 Q Okay. So it sounds like it was just more of a ceremonial title or ceremonial
3 role? Okay.

4 A Right.

5 Q Uh-huh. Okay. And if we go to exhibit 22, I just want to confirm that this
6 was the document that you -- you all signed on December 14th, or a copy of it. And this
7 is Bates 96. So if you go down to page 2, Bates 97.

8 Does this look like the document that you all signed on December 14th?

9 A Yes.

10 Q Okay. And then you said -- if we can go to exhibit 23, which you also
11 produced. And this is Bates 95.

12 I believe this is a certificate of filling vacancy of the 2020 electors from Wisconsin.
13 Is this what you were referring to earlier that you had to replace one of the electors?

14 A Correct.

15 Q Okay. And you had to replace Mr. Schreiber with Kathy Kiernen. Is that
16 right?

17 A Correct.

18 Q Okay. And how was it decided who would replace Mr. Schreiber?

19 A She -- she was the -- well, we needed somebody from the Fifth Congressional
20 District, and she is the chair of the Fifth Congressional District.

21 Q Okay. Do you recall any issues that happened at -- at the meeting?

22 A No. It was very quick.

23 Q Okay. And you said you don't -- you don't know what happened with the
24 signed paperwork. It sounds like that was someone else's job.

25 A Correct.

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1 Q Okay. Oh, another person I did not ask earlier. Do you ever recall talking
2 to someone named Peter McGinnis in connection with the alternate electors?

3 A No.

4 Q Let's go to -- so immediately after the December 14th meeting, what -- what
5 did you do?

6 A We went back to RPW and, you know, everybody -- everybody started to go
7 home. I think I -- I started to go home as well, and then we had that conference call that
8 Ryan Terrill had asked for the day before around 2 -- 1 or 2 o'clock. And then -- and that
9 was it. I think I did that call on my way home.

10 Q We can turn to that real fast. Exhibit 32, that's Bates 17.

11 A Okay.

12 Q Just to make sure we're on the same page here.

13 Does this look like the call that you -- or an invitation to the call you were just
14 referring to?

15 A Yes.

16 Q Okay. So what do you remember about what was discussed during
17 this -- this so-called check-in call after the meeting of the electors on December 14th?

18 A I really don't remember much about it. In fact, I didn't even remember it
19 occurred until I was, you know, going through the records production. I think it was -- I
20 don't know. I think it was a pretty -- pretty quick call.

21 Q Okay. So you can see on the -- at least the list of invitees, there's a
22 Mike Roman from the Trump campaign, G. Michael Brown from the Trump campaign, and
23 then copied is Peter McGinnis from the Trump campaign.

24 Do you remember any -- any comments or any -- anything that these members of
25 the Trump campaign said during this call?

EXHIBIT G

1 A I'm sorry, I don't, no.

2 Q And what did you say -- I think you mentioned earlier an Andrew Iverson.
3 What do you recall about his involvement in the alternate elector meeting?

4 A I don't think he had much of a role. He was the State director for -- for the
5 RNC or Trump campaign, and, you know, he was pretty involved in the recount, especially
6 like -- excuse me -- recruiting volunteers and that kind of thing, but I don't really
7 remember much of a role in the alternative elector meeting.

8 Q Okay. So if you go to exhibit 25, this is Bates 109. And I believe this is the
9 statement that you released on December 14th after the meeting. Does that look right?
10 Want to go down a little?

11 A Yeah.

12 Q All right. I think you said earlier that the proposed statement that was
13 going to be from Mr. Troupis, that was canceled after the call with Mr. Giuliani. Is that
14 right?

15 A I -- I believe that's what triggered the cancellation of it, yes.

16 Q But you still went forward with -- with this, you know, I would say, you know,
17 one-sentence statement, much briefer statement. Is that right?

18 A Correct.

19 Q Okay.

20 A I thought it was really important to explain and put out what we did and why
21 we did it.

22 Q Do you remember receiving any pushback or outreach from anyone from the
23 RNC or Trump campaign after you released this statement?

24 A I did not. If Mark did, he didn't convey it to me, and normally he would.

25 Q Okay. And when you drafted this -- or when you released this statement,

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1 what were the -- to you, what was your understanding of the -- the legal options still left
2 for Wisconsin?

3 A Specifically, it would have been the appeal to the United States Supreme
4 Court. So in the morning of December 14th, I don't know, I think around 10 or 11, the
5 Wisconsin Supreme Court ruled 4-3 against the Trump campaign. I knew that and had
6 been told that the campaign was planning to apply -- appeal -- sorry -- to the United
7 States Supreme Court, and that's what that would have referred to.

8 Q Okay. So, mainly, this -- what you understood would be the appeal to the
9 U.S. Supreme Court, that litigation?

10 A Right.

11 Q Okay.

12 A Which is -- which ended up being a very close case. It was a 4-3 decision,
13 and Justice Hagedorn, you know, kind of relied upon some -- a laches argument that, you
14 know, I really thought had the potential to be overturned at the United States Supreme
15 Court. It was a very unusual legal theory to rely upon.

16 Q And I understand that at least one aspect -- they did get to the merits on one
17 of the arguments about what -- the indefinitely confined claim.

18 Do you remember that?

19 A I -- I mean, a little bit, yes.

20 Q Okay. Let's go to exhibit 27. And this is Bates 92.

21 These are text messages between you and someone named Alec. Do you
22 recognize that?

23 A Yeah. That's been in the -- the person that was in the meeting and then the
24 person that was on some of those emails.

25 Q Mr. Zimmerman? Is that right?

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1 A Correct.

2 Q Okay. Good. And if you look down -- if you go back down a
3 bit -- December 14th, I think it's at 2:12 p.m. -- it's a little cut off. Is this all part of the
4 same chain, do you remember?

5 A No. No. The green --

6 Q Uh-huh.

7 A -- that you're looking at right now, that was from another colleague of mine.
8 That was from a work colleague of mine.

9 Q Okay. That makes more sense.

10 Who's the -- who do you -- for the green, who's the work colleague, if you
11 remember?

12 A Oh, Rob Marchant.

13 Q And a work colleague at your law firm or at the Wisconsin GOP?

14 A Yep. Nope. At Michael Best. Sorry.

15 Q Ah, okay. So do you recall when this text message was sent? So I ask
16 because, in your message, you say: "Well, electoral college was yesterday."

17 So do you think this happened after December 14th, this message?

18 A Yeah. I think it -- yeah, I think it was the 15th.

19 Q I see. Okay. So you -- in your second message, you write: It's honestly
20 sucking the life out of me and I have pulled way back. Hardly involved, but I'm getting
21 destroyed by the right. Just trying to walk a fine line.

22 Can you just explain for us, you know, what -- what you are trying to convey
23 to -- to your work colleague, Rob, in this message?

24 A Yeah. Sure. I mean, it was -- you know, it was not a fun time to be
25 Republican Party of Wisconsin chairman. You're getting, you know, hit, if you will, and

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1 criticized from, you know, the left, or from -- from Democrats. But I was getting equally
2 criticized and hit, if you will, from -- from Republicans.

3 And, you know, I was conveying to him that, you know, this is -- it's sucking the life
4 out of me. This is absolutely miserable. And I, you know, had pulled way back. I was
5 not, you know, really involved in -- in the recount and -- and the things that were going
6 on.

7 Q Do you recall whether you were still getting, I guess, by your words,
8 destroyed or pushback even after the alternate elector meeting on December 14th?

9 A Actually, I think more pushback came after December 14th probably than
10 before. I would say it was a -- more of a steady growing buildup. And, you know, at
11 that time, this -- the court cases were still alive.

12 Q Do you recall what the pushback was about, I mean, once you've -- once it
13 was later in December 2020?

14 A Yeah. I mean, it -- it was pretty much the same throughout, people
15 asserting that we didn't do anything, that we didn't stop the election fraud that was going
16 on, that we should have brought the legal cases earlier because the -- you know, the
17 Supreme Court had relied on laches, basically saying you had waived the argument
18 because you brought it too late, those types of things.

19 I got specifically criticized for not filing any lawsuits of -- regarding Democracy in
20 the Park, which is something they did in Madison. It's not necessarily my role -- or, you
21 know, I could have, but not going to -- I don't have an endless supply of money, and I
22 specifically referred it to the Trump campaign, and they said, no, we're not going to file
23 any action on it.

24 So it was frustrating to me that, you know, I was getting criticized from -- from
25 people when I -- when the Trump campaign declined to file any action.

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1 Q And sorry. And I apologize. I'm not familiar. What is Democracy in the
2 Park?

3 A Yeah. So, in Wisconsin, it had to do with ballot drop boxes, and basically
4 they were -- in the city of Madison, they were doing -- they were doing absentee ballot
5 collection in -- in the park. They -- they could not -- they could not -- they couldn't do
6 certain things, but they could collect the ballots if somebody had already requested one, I
7 believe it was. And so that's what was going on.

8 Q And -- and you -- you did not file your own lawsuit about that, and you said
9 you talked to the Trump campaign, and they declined to as well, for at least Madison, I
10 think you said?

11 A Yeah. Right.

12 Q Okay. Let's go back to page -- or excuse me -- exhibit 8 with Mr. Jefferson,
13 the text chain. And if we go to page 11, which I believe is Bates 90.

14 A Uh-huh.

15 Q Okay. I believe these are text messages from January 4th, 2021. Do you
16 see that? Okay.

17 A Yep.

18 Q So Mr. Jefferson writes to you: Freaking Trump idiots want someone to fly
19 original elector papers to the Senate President. They're gonna call one of us to tell us
20 just what the hell is going on. They talked to Jordan. I told Jordan to tell them that.

21 What do you remember about the -- you know, this message from Mr. Jefferson,
22 what was -- what the Trump -- I presume the Trump campaign was asking?

23 A Well, I had wrote back to him that I had thought I had gotten a missed call
24 from Mike Roman -- this is at night too. This is like 9 o'clock at night -- and that
25 somebody else had texted me. I asked him if -- if they already -- or if he had talked to

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1 them already, and said, you know, this is -- I just said, this is kind of nuts, you know,
2 that -- that they would -- that they would need this. Like, how disorganized are they
3 that they would have to ask for this now?

4 Q Did you ever hear why they wanted someone to fly the original elector
5 papers to -- to Congress?

6 A It sounds like they -- sounds like the Senate President's Office had not
7 received the elector papers, even though -- even though the tracking number said they
8 had received them.

9 Q So is it your understanding they -- they wanted someone to fly the papers
10 because it didn't seem like the papers had been at least acknowledged by the Senate
11 President's Office?

12 A Yeah. I mean, that's -- I never talked to Mr. Roman or anybody, but that's
13 certainly what it seemed like.

14 Q Do you know why -- you know, at this point, it's December 4th -- why this
15 was needed --

16 Mr. [REDACTED] January.

17 Ms. [REDACTED] Yeah. For Jan- -- excuse me. For January 4th.

18 BY MS. [REDACTED]:

19 Q -- why this was needed for January 6th, you know, 2 days before?

20 A No, I didn't. Beyond that, it seemed like maybe our paperwork hadn't been
21 there. I know -- I knew that the campaign had just -- you know, they filed
22 December 29th, that petition, in the United States Supreme Court. I believe it was
23 around January 2nd or 3rd -- maybe it was like the 3rd that they filed for expedited
24 review in the United States Supreme Court.

25 So I didn't know if, you know, this was -- the Supreme Court was about to rule. I

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1 didn't know if -- you know, if -- if they didn't -- if the Senate President's Office didn't get
2 the alternative electors, or if this was just complete dysfunction on the part of the
3 campaign. It -- you know, as Mark and I said, it just -- it's silly. It doesn't make any
4 sense. It's just -- just kind of nonsense.

5 Q Did you ever call Mr. Roman back?

6 A No, I did not.

7 Q Do you recall who the text was from? You referenced a text in your
8 message.

9 A I think it was somebody who worked for Mr. Roman. Because I don't have
10 the number in my phone, I'm not able to, like, scroll back and get it. If I remember
11 correctly, it was -- it was somebody that was working with Roman and said that he had
12 just called.

13 Q Okay. But you didn't call that person back, that you can recall?

14 A No. I looked at my phone -- yeah. I looked at my phone records and I
15 don't have a call.

16 Q Do you know whether Mr. Jefferson talked to Mr. Roman or anyone else
17 from the Trump campaign in connection with this?

18 A I don't know. It looks like Jordan might have. He was the political
19 director of the Republican Party of Wisconsin. But I don't -- I don't know for certain.

20 Q And is that Perryman [ph]? Is that Jordan Perryman?

21 A Nope. That's somebody else. If you go to the top text message, it says:
22 They talked to Jordan --

23 Q Oh, yes.

24 A -- and I told Jordan to tell them that.

25 That's who -- that's who I was referring to.

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1 Q Okay. Do you -- do you know whether anyone from the Trump campaign
2 flew to D.C. to deliver original elector papers to the Senate President's Office?

3 A I believe an RPW staffer did, but then the -- if -- my understanding is
4 the -- the doc -- the paperwork that we sent out had been received. So I don't -- I don't
5 think anything ever came of it.

6 Q So they flew out, but then the paper had already been received, so it didn't
7 even matter?

8 A Correct.

9 Q Do you -- do you remember who the RPW staffer was who flew?

10 A I think it -- I'm pretty sure it was Alesha Guenther.

11 Q And she flew -- is it your understanding she flew because the Trump
12 campaign wanted someone to deliver the papers?

13 A Correct.

14 Q Okay. Do you know what day she flew to D.C.?

15 A I -- I believe it was January 5th.

16 Q Okay. And I think we talked about this a little bit before briefly in the
17 beginning. Do you recall a theory that was reportedly advocated by individuals
18 associated with the Trump campaign where Vice President Pence, as the President of the
19 Senate, if presented with dueling slates of electors, could pick which slate of electors to
20 count on January 6th during the joint session?

21 A I mean, I never talked to anybody about that, that I recall. And it certainly
22 would have directly conflicted with what our legal counsel was telling us. He had
23 indicated that basically these -- what we're doing -- the documents are meaningless
24 unless a court would rule in their favor and the Governor would send that certificate.

25 Q Did anyone ever tell you that if Wisconsin sent an alternate slate of electoral

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1 votes for Trump and Pence, that Vice President Pence, on January 6th, could use the fact
2 that there was this second slate as justification to delay counting during the joint session
3 on January 6th?

4 A No, I don't believe so.

5 Q Would that, in your words, have also conflicted with the advice that you had
6 provided -- you were provided by your legal counsel?

7 A Yeah, it would have directly conflicted. I mean, we were told very
8 specifically that these documents are meaningless unless the court rules. Only if a court
9 says they mean something would they mean something. And that was from my RPW
10 counsel, though.

11 Q Do you recall talking to any members of the Wisconsin State legislature
12 about your -- about the alternate elector vote on December 14th?

13 A I don't think -- you mean before December 14th?

14 Q Before or after, but after election day.

15 A Okay. Before? No, I don't -- I don't think so. And, gosh, you know, I
16 don't even think we talked after about it. I mean, after -- after the December 14th
17 meeting, I mean, it sort of just seemed to all go away.

18 Q Did you talk to -- aside from Senator Johnson, do you recall talking to any
19 Members of Congress about the alternate elector vote, either before or after
20 December 14th?

21 A No, I don't believe I did.

22 Q How about Vice President Pence or his staff, do you ever recall talking to him
23 about the alternate electoral slate from Wisconsin?

24 A Yeah. No, I never -- never had the opportunity to talk to the Vice President
25 or -- or his staff.

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1 Q So going into January 6th, 2021, did you have any expectation that the -- you
2 know, the purported electoral votes that the Republican Party had cast would be counted
3 by Vice President Pence during the joint session?

4 A Again, only if a court -- only if the United States had ruled that way before.

5 Q Okay. And -- and to your -- best of your recollection, did they on
6 January 6th, or before?

7 A No. They -- no, no. I believe it was February 22nd when they finally
8 denied cert of that Wisconsin recount case.

9 Q Okay. So -- which, in effect, meant that Joe Biden was the winner of the
10 popular vote in Wisconsin?

11 A Yes, absolutely.

12 Q Okay.

13 A Yes, that's correct.

14 Q Okay. And where were you on -- on January 6th?

15 A I was in Florida. There was a Republican National Committee had their
16 winter meeting, so -- oh, it was not Jacksonville, but Jacksonville, like the -- whatever that
17 island is off the coast there is where I think -- where our meeting was.

18 Q And do you have any information relating to -- to the attack on the Capitol
19 that day?

20 A I do not.

21 Q Okay. Okay.

22 Ms. [REDACTED]. Well, I think we're -- we're done here, Mr. Hitt. Thank you so
23 much for your time today.

24 Mr. [REDACTED]. So you know the kinds of things we're interested in. Is there
25 anything else that we should know that we haven't asked about yet?

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1 The Witness. Not that I can think of, but if I think of anything, I will -- I'll talk to
2 Steve. We'll let you know. We'll -- I'll look at the social media stuff. And, of course, if
3 you have any other questions, please let us know.

4 Mr. [REDACTED]. Great.

5 Ms. [REDACTED]. All right. Well, really appreciate your time, Mr. Hitt. And I
6 know it was -- you were asked a lot of questions, so we appreciate your patience going
7 through all the documents and also for -- for your production. It's been helpful today.

8 You know, if anything comes up, we'll -- we'll reach out to your counsel. And as
9 you just said, if you happen to see anything, any relevant information in any of your social
10 media messages, if you can provide that, we would appreciate that.

11 With that being said, we can conclude this deposition. It's 1:38 p.m. Eastern
12 time. We can go off the record.

13 [Whereupon, at 1:38 p.m., the deposition was recessed, subject to the call of the
14 chair.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

EXHIBIT G