No. 21-932

In The

Supreme Court of the United States

DONALD J. TRUMP,

Petitioner,

v.

BENNIE G. THOMPSON, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF *AMICUS CURIAE* OF JACK JORDAN IN SUPPORT OF RESPONDENTS

JACK JORDAN
Counsel of Record
3102 Howell Street
North Kansas City, Missouri 64116
jack.jordan@emobilawyer.com
(816) 746-1955

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

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INTEREST OF *AMICUS CURIAE*

Amicus Curiae is a lawyer who was a soldier. For many years in conflicts around the world, *Amicus* and people he represents supported and defended our country and Constitution by risking or giving life or limb. Many gave their health and happiness. *Amicus* now supports American courts fulfilling their duty to support and defend the Constitution.[1]

SUMMARY OF ARGUMENT

To support and defend the Constitution, the Petition should be denied. Congress clearly has the power to request, reveal, and use (for legislative and other purposes) all evidence requested. Congress, the people and the press should have prompt access to evidence of the truth so that any future criticism, campaign, legislation, impeachment or other law enforcement can be based on fact and reason, not falsehoods, supposition, obfuscation or inflammation.

Petitioner repeatedly comingled contentions about Congress's constitutional powers with contentions about Committee powers. Petitioner appeared to be seeking clearly erroneous and unconstitutional rulings regarding Congress's powers.

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[1] Counsel of record for all parties received timely notice of the intent to file this brief under Rule 37(b) and all kindly consented to the filing of this brief. No one but *Amicus Curiae* authored any part of this brief or contributed any money that was intended to or did fund preparing or submitting this brief.

Petitioner appeared to imply false limits on legislative purposes and misrepresented Congress's power to expose official misconduct, enforce laws and conduct trials. Instead of addressing the clear meaning of the plain language of the Constitution and this Court's relevant precedent, Petitioner relied primarily on mere conclusory contentions in two decisions that clearly did not (and clearly could not) limit the foregoing powers of Congress.

Petitioner's misrepresentations pertain to matters that were very much on Petitioner's mind repeatedly regarding his two impeachments and two trials therefor, including those of less than one year ago. Such matters may be the unwritten reason for the Petition and contentions therein. Petitioner's contentions, if reiterated by this Court, could abridge Congress's powers to impeach and convict political candidates and remove incumbent executive, legislative and judicial branch employees. Such powers should be exercised, not abridged, against public officials or candidates responsible for the events of January 6. Congress's duty (to the Constitution and the people) is to bar such candidates and remove such officials.

REASONS TO DENY THE WRIT

"The critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness."

Watkins v. United States, 354 U.S. 178, 198 (1957). Congress's interests are of great weight.

I. The Committee's Requests Irrefutably Support Important Legislative Purposes.

The "American people's ability to reconstruct and come to terms with their history" should not "be truncated by an analysis of Presidential privilege that focuses only on the needs of the present." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 452-53 (1977). Congress clearly should protect present and future "substantial public interests," including "restor[ing] public confidence in our political processes" and "facilitating a full airing of" blatantly and outrageously unconstitutional conduct "leading to" the end of one presidency (and intended to prevent another presidency), "and Congress' need to understand how those political processes had in fact operated in order to gauge the necessity for remedial legislation." *Id*., at 453. "Thus," Congress's requests "aid the legislative process and" are "within the scope of Congress' broad investigative power." *Id*.

Congress has broad power "[t]o make all Laws which shall be necessary and proper for carrying into Execution" absolutely "all" the "Powers vested by this Constitution in the [federal] Government" or "any Department or Officer thereof." U.S. Const. Art. I, § 8. Congress may "provide for organizing," "governing" or "disciplining, the Militia" or "for calling forth the Militia to execute" federal "Laws" or "suppress Insurrections." *Id*.

Congress may "constitute Tribunals inferior to the supreme Court." *Id*. "Congress" may "ordain and establish" federal "inferior Courts" below the "one supreme Court," and ensure that all "Judges" of such "supreme and inferior Courts" do "hold their offices" only "during good Behaviour." Art. III, § 1.

The Constitution emphasized that "Congress may by Law, provide for the Case of Removal" or "Inability, both of the President and Vice President" to "discharge the Powers and Duties of" such "Office[s]." Art. II, § 1. "[T]he Vice President" and "such" others "as Congress may by law provide" may declare in writing to the "Senate" President and the "Speaker of the House" that "the President is unable to discharge" his "powers and duties." Amend. XXV, § 4. On January 6, the President and Vice President were (at least) unable to discharge their powers and duties (including the foregoing).

On January 6, the Vice President had powers and duties in two branches of government, including as "President of the Senate." Art. I, § 3. "The President of the Senate" with "the Senate and House of Representatives" together "shall" ensure that "the votes" of all electors "shall" be "counted." Amend. XII. "Each state shall appoint" a "Number of Electors" to elect the "President" and "Vice-President" for a "Term of four years." Art. II, § 1. "The Electors" shall vote and the "person having the greatest number of" such "votes for President, shall be the President." Amend. XII. Thereafter, "[t]he terms of the" incumbent "President and

Vice President shall end" on "the 20th day of January." Amend. XX, § 1.

What many (including Petitioner) did on January 6 made sense only if they expected and intended their actions would prevent the transfer of power in the constitutionally-prescribed manner. Many in the mob understood that was exactly what Petitioner intended his words, actions and inaction to accomplish. No one who fails (or pretends to fail) to understand as much as the mob should be involved in national government.

Petitioner publicly and expressly summoned "hundreds of thousands" of his most committed and potentially violent supporters "from all over the world."[2] He summoned them on the day of the count, to the location of the count, because of the count, and directed them to target the people counting at the place of counting.

With war cries, Petitioner incited his supporters to violence and directed who and what to attack. "[A]fter this," you're "going to walk down;" you're "going to walk down to the Capitol." *Id*. At the Capitol, you "fight. [You] fight like hell. And if you don't fight like hell, you're not going to have a country anymore." *Id*. "So" you're "going to walk down Pennsylvania Avenue" to "take back our country." *Id*. Everyone heard and understood.

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[2] *See Transcript of Trump's speech at rally before US Capitol riot* (Jan. 13, 2021) at https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27.

The evidence that Petitioner directed the attacks included what Petitioner knew, tweeted and failed to do about the attacks. "The President" was required to "take" appropriate "measures" to "suppress" the "insurrection, domestic violence, unlawful combination, or conspiracy" on January 6. 10 U.S.C. § 253. At the very least, "the President" was required to "immediately order the insurgents to disperse and retire peaceably [] within a limited time." 10 U.S.C. § 254. Instead, for hours, Petitioner expressly and publicly encouraged and allowed violent attackers and the supporting mob to openly act for Petitioner to physically prevent the Vice President, House and Senate from counting state electors' votes.

Many of Petitioner's supporters did fight like hell. The fighters and the mob did prevent the count. For hours, fighters smashed and bashed through line after line of Capitol police and Capitol doors and windows. The fighters (and the mob) showed no fear of—and some shouted for attackers to take (and even *use*)—police weapons.

As in any insurrection, the fighters could not take anything without much support, which many in the mob obviously and intentionally provided. The mob very effectively protected the fighters' backs. The mob repeatedly lent great physical and psychological weight to the fighters' attacks by streaming onto the Capitol grounds, into the Capitol, and throughout the Capitol.

Even before the most obvious and most violent and vicious attacks on Capitol police and the Capitol occurred, deadly pipe bombs were discovered nearby.

Petitioner allowed the attacks on Capitol police and Capitol doors and windows to be so prolonged and violent that the fighters and the mob eventually took most of the Capitol interior. They could have taken it all. They could have taken all the police weapons they needed to kill or subdue anyone they wanted.

Petitioner knew all or nearly all the foregoing while he allowed the most vicious and violent fighters to attack and occupy the Capitol and intimidate, threaten and hunt the Vice President and Speaker of the House to prevent the count.

All the foregoing occurred in broad daylight and was broadcast on national television and social media while many openly declared or boasted that their attacks and conquests were *for Petitioner*. For hours before and during their repeated and prolonged attacks, they prominently displayed flags and signs and shouted their plan and war cries to "storm the Capitol" to "stop the steal" for "Trump." They brought or planned to take weapons to do it. *See* https://www.nytimes.com/2021/06/30/us/jan-6-capitol-attack-takeaways.html.

A violent mob inside the Capitol doing Petitioner's express bidding had the power to choose to kill, cripple or capture the Vice President and members of Congress or their staff or Capitol police and burn the Capitol. They literally and publicly hunted the Vice President and the House Speaker. They loudly shouted

"Hang Mike Pence." They flaunted (to current and future Presidents, Vice Presidents, Congresses and judges) a noose—a historical means and symbol of extreme violence, oppression and intimidation.

Petitioner *gave* a violent mob the power to choose to do all of the foregoing to the people, processes and papers housed in and symbolized by the Capitol and the buildings of the Supreme Court, the Library of Congress and the National Archives (where the Declaration of Independence and the Constitution are safeguarded). Literally and legally, Petitioner failed to support and defend the Constitution. Petitioner, his fighters and his mob directly or indirectly threatened the people, papers and property of all three branches of government that challenged or failed to support Petitioner's pursuit of power.

For hours, Petitioner participated in, expressly supported or waited just down the street from all the foregoing. He knew what was happening. He incited it and watched it, apparently expecting fury and fire to consume our national treasures. Whether Petitioner chose to allow all the foregoing or he was unable to stop it, Congress clearly has the power and duty to ensure that Petitioner, any president and any violent mob never again so cavalierly take or give the power to threaten all the people, property, processes and principles that Petitioner put and left at risk on January 6.

Congress's potential legislation and other actions are vital to the protection of this nation's most cherished, valuable and vital symbols, property and public

servants, and to this nation, itself. Remember Benghazi. Remember the Reichstag.

The Reichstag (housing the German parliament) was set afire in 1933. Who was responsible is subject to debate. But the cause is far less relevant than the consequences. That fire propelled fascists to the zenith of domestic power. Very promptly, their political opponents were blamed, removed from office, arrested and imprisoned. The fascists' rise was fast and furious and marked by many domestic and foreign conquests. But only twelve years after the fire, Germany, itself, was burned, devastated and divided among conquerors.

Congress must ensure that Petitioner, any president and any mob have no power to do what Petitioner and his mob did, threatened or could have done on January 6. *See, e.g.*, *Gitlow v. New York*, 268 U.S. 652, 669 (1925):

> That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear. Such utterances, by their very nature, involve danger to the public peace and [] security []. They threaten [] ultimate revolution. And the immediate danger is none the less real and substantial, because the effect [] cannot be accurately foreseen. . . . A single revolutionary spark may kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration. [The government can reasonably act] to extinguish the [threat]

> without waiting until it has [] blazed into [such a] conflagration. It cannot reasonably be required to defer the adoption of measures for [reasonable] peace and safety until the revolutionary utterances lead to . . . imminent and immediate danger of [complete] destruction[. It] may [] suppress the threatened danger in its incipiency.

II. Congress May and Must Obtain and Use Information to Enforce the Constitution and Existing Laws against Federal Officials.

It helps the Petition not at all if "Congress repeatedly referred to the importance of the materials to the Judiciary" if "they shed light upon issues in civil or criminal litigation," which is "a social interest that cannot be doubted." *Nixon*, 433 U.S. at 453-54. It is "not [courts'] function" to test "the motives of committee members for this purpose." *Watkins*, 354 U.S. at 200. No mere "motives alone" can "vitiate an investigation" by Congress when a legitimate "purpose is being served." *Id*. Any mere "statements of" any "single Congressman cannot transform the real purpose of the Committee into something" else. *Id*., at 229 (Clark, J., dissenting) citing *United States v. Rumely*, 345 U.S. 41 (1953); *Sinclair v. United States*, 279 U.S. 263, 290, 295 (1929).

Moreover, "[a]part from" any "legislative concerns" Congress "unquestionably" has "broad authority to investigate, to inform the public, and, ultimately, to legislate against suspected corruption and abuse of

power in the Executive Branch." *Nixon*, 433 U.S. at 498 (Blackmun, J., concurring). Congress has the "inherent power" to "preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption." *Id*., at 499 quoting *Burroughs v. United States*, 290 U.S. 534, 545 (1934). "Congress has the power" to "punish obstructions of lawful governmental functions." *Id*. citing *Haas v. Henkel*, 216 U.S. 462 (1910).

Petitioner repeatedly misrepresented that "Congress cannot use information requests to exercise 'any of the powers of law enforcement' " because "[t]hose powers" purportedly "are assigned under our Constitution to the Executive and the Judiciary" and because Congress is not "a law enforcement or trial agency." Pet. at 19. Petitioner further misrepresented that "an investigation into alleged claims of wrong-doing" is "reserved to the executive and judicial branches." *Id*., at 20. *See also* Supp. Br. But the Constitution's plain language clearly requires Congress to enforce laws governing conduct and persons covered by the Committee's requests.

All the following and copious Supreme Court precedent emphasize that no public official has any power to violate any right or privilege of any person under the Constitution. They repeatedly emphasize the supremacy of specific legal authorities and every branch's power and duty to enforce them.

"[T]he People" did "ordain and establish this Constitution" to "establish Justice," to "secure the

Blessings of Liberty" and to "insure domestic Tranquility." U.S. Const. Preamble. All "powers" relevant here that were "not delegated to the United States by the Constitution" were expressly "reserved" to "the people." Amend. X.

Absolutely all "Senators and Representatives," "members" of "state legislatures, and all executive and judicial Officers, both of the United States and of the several States, *shall be bound*" to "support this Constitution." Art. VI (emphasis added). *Every* branch must enforce the Constitution and the law against *all* federal officials.

"No person" ever may "be deprived" by any public official "of life" or any "liberty" or "property, without due process of law." Amend. V. *See also* Amend. XIV § 1. The "Constitution" and "the Laws" and "Treaties" of "the United States, *shall* be the supreme Law of the Land" and all "Judges" necessarily "*shall be bound* thereby." Art. VI (emphasis added).

Federal "judicial Power" ultimately "shall be vested in one supreme Court," but "Congress" clearly "may" at any "time ordain and establish" as many "inferior courts" as necessary to enforce the Constitution and the law. Art. III, § 1. All federal "Judges, both of the supreme and inferior Courts," may "hold their Offices" only "during good Behaviour." *Id*. Their "judicial Power" (good behavior) "shall extend" no further than permitted "under this Constitution" and federal "Laws." *Id*., § 2.

"Each House" of Congress also "*shall* be the Judge of" any "Qualifications of its own Members," and may "determine the Rules of its Proceedings, punish its Members for disorderly Behavior" and even "expel a Member." Art. I, § 5 (emphasis added).

"The President" must in all ways "faithfully execute the Office of President," and "to the" absolute "best of" his "Ability, preserve, protect and defend the Constitution." Art. II, § 1. "[H]e shall take care that the Laws be faithfully executed, and shall Commission all" other executive "Officers" for such purposes. *Id*., § 3. His duties necessarily extend to all commands and prohibitions of the Constitution or federal law herein pertaining to electors, the count, the House, the Senate, the Vice President or the President.

The people also play vital roles in supporting and defending the Constitution, including by voting and obtaining and using information. So "Congress shall make no law" (under any label, *e.g*., civil, criminal, regulatory or disciplinary) in any way "abridging the freedom of speech, or of the press" or "the right of the people peaceably to assemble" and "petition the government" to "redress" any "grievances." Amend. I. *See also* Section IV, below.

The conduct of the fighters and the mob on January 6 was not peaceable. Any public official who was responsible must be held responsible. The January 6 attacks (on all three federal branches, state electors, voters, and the Constitution) were "evil" that "spreads in" all "directions." *Allentown Mack Sales and Service,*

Inc. v. NLRB, 522 U.S. 359, 375 (1998). It "is hard to imagine a more violent breach of" any public servant's constitutional duties "than" knowingly "applying [any purported] rule of primary conduct" that was "in fact different from the rule or standard formally announced" in the Constitution. *Id*., at 374. Each public official "must be required to apply in fact the clearly understood legal standards that" the Constitution "enunciates." *Id*., 376.

Any public official knowingly violating his oath to support the Constitution is "worse than solemn mockery." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 180 (1803) (Marshall, C.J.). Any public official who "usurp[s]" any power "not given" in the Constitution (including knowingly violating any provision of thereof) commits "treason to the Constitution." *United States v. Will*, 449 U.S. 200, 216, n.19 (1980) (Burger, C.J.) quoting *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (Marshall, C.J.). Such conduct can be criminal.

It is a crime for any person to act "under color of" any legal authority to "willfully" deprive any person targeted or victimized on January 6 "of any rights, privileges, or immunities" that were in any way "secured or protected by the Constitution" or any federal "laws." 18 U.S.C. § 242. It is a crime for any person to "conspire" with any other person to "injure, oppress, threaten, or intimidate" any person targeted or victimized on January 6 "in the free exercise or enjoyment of any right or privilege secured to" any of them "by the Constitution" or federal "laws" or because any of them

"exercised" any such "right or privilege." 18 U.S.C. § 241.

The foregoing crimes are and should be of special concern to all public servants regarding all who swore to support and defend the Constitution. "Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Miranda v. Arizona*, 384 U.S. 436, 479-80 (1966) quoting *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

Congress can and must legislate and take much more action to prevent anarchy. "The President, Vice President and all civil Officers of the United States, *shall* be *removed* from Office" after "Impeachment" and "Conviction" for "Treason, Bribery, or other high Crimes and Misdemeanors." U.S. Const. Art. II, § 4 (emphasis added). "Treason against the United States" includes "adhering to their Enemies, giving them Aid and Comfort." Art. III, § 3.

"The House" irrefutably "*shall*" exercise the "Power of Impeachment." Art. I, § 2 (emphasis added). "The Senate *shall*" exercise the "Power to try all Impeachments." *Id*., § 3 (emphasis added). "*When* the President" eventually "*is* tried, the Chief Justice shall preside." *Id*. (emphasis added). Impeachment is so important that in any "Cases of Impeachment," no "President" has any "Power to Grant Reprieves" or "Pardons." Art. II, § 2. "Judgment in Cases of Impeachment" may "extend" to "removal from Office" and to

"disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States." Art. I, § 3.

Some former public officials clearly must be disqualified. "No person" who "previously" took any constitutionally-required "oath" may "hold any office, civil or military," federal or state, after having "engaged in insurrection or rebellion against the" United States "or given aid or comfort to the enemies thereof." Amend. XIV, § 3. Congress has "the power to enforce" the foregoing with "legislation." *Id*. § 5. Congress did so, and Petitioner, himself, violated it. *See* 10 U.S.C. § 253. Petitioner took such an oath. *See* Art. II, § 1. All other members of any branch of federal or state government took such oaths. *See* Art. VI. *See also* 5 U.S.C. § 3331; 28 U.S.C. § 453.

Congress irrefutably does have law enforcement and trial functions and is not barred from obtaining, revealing and using information except for legislative purposes. To urge this Court to contradict the clear meaning of the Constitution's plain language, Petitioner presented irrelevant or erroneous contentions. Congress has no "*general* power to inquire into *private* affairs and compel disclosures" thereof, and "there is no congressional power" whatsoever "to expose for the sake of exposure." Pet. at 15 citing *Trump v. Mazars USA, LLP*, 140 S.Ct. 2019, 2032 (2020) (emphasis added).

"Congress can only *request information* tethered to a 'valid legislative purpose.' " Pet. at 18; *accord id*., at 15 quoting *Mazars* at 2031. "The 'valid legislative

purpose' requirement stems directly from the Constitution." Pet. at 20. "Congress's power to investigate 'is justified *solely* as an adjunct to the legislative process.' " *Id*. quoting *Watkins*, 354 U.S. at 197 (emphasis added). "Congress cannot" request information "for the sake of exposure." *Id*. quoting *Watkins* at 200.

Significantly and clearly, *Mazars* pertained only to "personal financial records." Pet. at 14. It did not restrict anyone's access to any evidence of any official conduct. *Watkins* even more clearly and emphatically did not do so, and Petitioner clearly improperly invoked *Watkins*. *Watkins* expressly and repeatedly emphasized Congress's power to obtain and use information such as the Committee does or may seek, including for the specific purposes Petitioner opposed.

Watkins never was a government employee. *See Watkins*, 354 U.S. at 182. So the Court was concerned with "ruthless exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it." *Id*., at 205.

Congress had initiated "investigations into the threat of subversion of the United States Government." *Id*., at 195. "This *new* phase of legislative inquiry involved a *broad-scale intrusion* into the lives and affairs of *private* citizens," compelling courts to consider "*novel* questions of the appropriate limits of congressional inquiry." *Id*., at 195 (emphasis added). So the Court emphasized "the rights and privileges of *individuals*" (*id*.), *i.e.*, that "an investigation into

individual affairs is invalid *if* unrelated to *any* legislative purpose" (*id*., at 198) (emphasis added).

The foregoing followed the Court's emphasis on the long history (and clear constitutionality) of congressional investigations into official conduct without any legislative purpose. "The Nation was almost one hundred years old before the first case reached this Court to challenge the use of compulsory process as a legislative device, rather than in inquiries concerning the elections or privileges of Congressmen." *Id.*, at 193-94. Next, the Court emphasized "the danger to effective and honest conduct of the Government if the legislature's power to probe corruption in the executive branch were unduly hampered." *Id*., at 194-95 citing *McGrain v. Daugherty*, 273 U.S. 135 (1927); *Sinclair*, 279 U.S. 263 (upholding Congress's authority to conduct challenged investigations).

Petitioner and courts have misrepresented that "there is no congressional power to expose for the sake of exposure." *Watkins*, 354 U.S. at 200. This Court repeatedly emphasized the opposite regarding public officials' official conduct.

"The public is, of course, entitled to be informed concerning the workings of its government." *Id*. "Congress" clearly has "the power" to "inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government." *Id*., n.33. "Congress has a broad power 'to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government.'" *Nixon*, 433 U.S. at 499 (Blackmun, J.,

concurring). "That was" literally "the only kind of activity described by Woodrow Wilson in *Congressional Government* when he wrote: 'The informing function of Congress should be preferred even to its legislative function.'" *Watkins* at 200, n.33 (citation omitted). "From the earliest times in its history, the Congress has assiduously performed an 'informing function' of this nature." *Id*. (citation omitted).

III. Congress Has the Duty to Exercise Law Enforcement and Trial Powers.

The primary points of *Marbury v. Madison* included that nobody—not even the President, Congress and the Supreme Court all together—can authorize any purported public servant to violate the Constitution, and no public servant can knowingly allow any other to violate any person's constitutional rights. For more than a hundred years, judges have invoked *Marbury* to assert judges' power to void unconstitutional conduct of legislative and executive branch officials precisely because judges have the constitutional duty to do so.

For the same reasons and purposes and under the same logic, Congress clearly and emphatically has the duty to impeach, try and convict executive and judicial officers who knowingly violate Americans' rights and privileges under the Constitution or federal law. This Court should not discourage Congress from exercising such powers much more vigorously and regularly than it does.

Congress should exercise its impeachment powers consistently against federal judges, in part, because of the judiciary's vital constitutional role and, in part, because the judiciary, despite its professed constitutional duties (sometimes willfully) fails to remedy its own constitutional violations. This Court can grant only an extremely small percentage of petitions, no matter how egregious or blatant the constitutional violations of lower court judges.

In part for that reason, a significant number of district and circuit court judges are as brazen and deliberate as Petitioner in flouting this Court's precedent and violating the Constitution and federal law. They do so to knowingly violate Americans' rights and privileges thereunder. Their judgments and opinions provide irrefutable proof. Sometimes, they are essentially signed confessions.

Such judges include even those who pretend to be of suitable character and quality that they should sit on this Court, including Judges Gruender and Stras (Eighth Circuit). Additional judges include Judges Benton, Loken and Erickson (Eighth Circuit), Chief Judge Phillips (Western District of Missouri), and Judge Contreras (D.C. District Court). Each repeatedly, knowingly, viciously and maliciously violated judges' oaths, the Constitution, federal law and litigants' rights and privileges thereunder and flouted this Court's precedent. The evidence is so copious, irrefutable and overwhelming that they could be impeached and convicted quickly.

Congress should impeach and convict judges who knowingly abuse their powers to violate litigants' constitutional rights. "[I]n declaring what shall be the *supreme* law of the land, the *constitution* itself is first mentioned." *Marbury*, 5 U.S. at 180. The Constitution also repeatedly emphasized that judges are bound by the Constitution and federal law. *See* page 12, above. "Thus, the particular phraseology of the constitution" emphatically and repeatedly "confirms" that "*courts*" clearly "are bound by" the Constitution and any judicial contention or conduct "repugnant to the constitution is void." *Marbury* at 180. "[T]he constitution controls any" judicial "act repugnant to it." *Id*., at 177. Any act "repugnant to the constitution" is "void." *Id*. No "act repugnant to the constitution, can become the law of the land." *Id*., at 176. Too many judges pretend to nothing less.

When judicial conduct constitutes willful "opposition to the constitution," Congress should impeach, try and convict judges "conformably to the constitution." *Id.*, at 178. "This is of the very essence of judicial duty" (and Congress's duty to impeach, try and convict) under the Constitution. *Id*. "It is emphatically" judges' "duty" to "say what the law is," not ignore or knowingly violate the law. *Id*., at 177. When applying any "rule," judges "must" expressly "expound and interpret that rule." *Id*. They must apply and comply with controlling legal authority.

Clearly, "the constitution" must "rule" the "government of *courts*." *Id*., at 179-80. Every litigant "has a right to resort to the laws of his country for a remedy."

Id. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Id.*, at 163. Judges "cannot" maliciously "sport away" any litigant's "vested rights," as too many judges do. *Id.*, at 166.

Allowing such misconduct by any purported public servant clearly "would subvert the very foundation of" the Constitution. *Id*., at 178. "It would declare, that" such purported public servants may "do what is expressly forbidden" by the Constitution, giving them "a practical and real omnipotence." *Id*., at 178. Such conduct "reduces to nothing what we have deemed the greatest improvement on political institutions—a written constitution." *Id*.

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it." *Butz v. Economou*, 438 U.S. 478, 506 (1978).

> That is what this suit is about. Power. The allocation of power among Congress, the President, and the courts in such fashion as to preserve the equilibrium the Constitution sought to establish—so that "a gradual concentration of the several powers in the same department," Federalist No. 51, p. 321 (J. Madison), can effectively be resisted. Frequently an issue of this sort will come before

> the Court clad, so to speak, in sheep's clothing: the potential of the asserted principle to effect important change in the equilibrium of power is not immediately evident, and must be discerned by a careful and perceptive analysis. But this wolf comes as a wolf.

Morrison v. Olson, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting).

IV. The First Amendment Supports Release of the Requested Information, Including to Facilitate Criticism of Official Misconduct Based on Evidence, not Speculation or Unfair Falsehoods.

Congress and the people should not be denied the requested information. Any discussion of such important issues should be based on evidence and facts. As the following confirms, the First, Fifth and Fourteenth Amendments strongly protect even false and extremely unfair criticism of public officials and public figures. Such protection poses very real hazards for Petitioner, his family, his official and unofficial advisors, supporting members of Congress, and anyone else (rightly or wrongly) associated with Petitioner or the events of January 6. It poses hazards for the integrity and reasonableness of future campaigns and elections.

The First Amendment was designed to protect our constitutional form of government and to protect public officials and the people from violence. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)

quoting *Whitney v. California*, 274 U.S. 357, 375-76 (1927). So "the censorial power is in the people over the Government, and not in the Government over the people." *Id.*, at 275 quoting Congressman James Madison. "The right of free public discussion of the stewardship of public officials was thus, in Madison's view, a fundamental principle of the American form of government." *Id*., at 268.

In all relevant respects, all "public men" are "public property," and "discussion cannot be denied and the right" and "the duty" of "criticism must not be stifled." *Id.*, at 268. "It is as much" the "duty" of "the citizen-critic of government" to "criticize as it is the official's duty to administer." *Id*., at 282 citing *Whitney*, 274 U.S. at 375 (Brandeis, J., concurring). *Accord id*., at 270 quoting Justice Brandeis. "The interest of the public here outweighs the interest" of any public official "or any other individual. The protection of the public requires not merely discussion, but information." *Id*., at 272.

"The public-official rule" extremely strongly "protects the paramount public interest in a free flow of information to the people concerning public officials," so "anything which" even "might touch on" any "official's fitness for office is relevant. Few personal attributes are more germane to fitness for office than dishonesty, malfeasance, or improper motivation." *Garrison v. Louisiana*, 379 U.S. 64, 77 (1964). So "the *New York Times* rule" clearly "absolutely prohibits" any type of "punishment of truthful criticism" of the foregoing. *Id.*, at 78.

"Truth may not be the subject of" any type of "either civil or criminal [or quasi-criminal] sanctions where discussion of public affairs is concerned." *Id.*, at 74. Moreover, the "constitutional guarantees" in the First, Fifth and Fourteenth Amendments "require" a universal "federal rule that prohibits" any "public official from" penalizing or preventing criticism "relating to" any "official conduct" except a "falsehood" that "was made with 'actual malice' [*i.e.*], with knowledge that it was false or with reckless disregard of whether it was false." *New York Times*, 376 U.S. at 279-80.

The "First Amendment" further "mandates a 'clear and convincing' standard" of proof regarding each material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). That "requirement must be" applied whenever "*New York Times* applies." *Id.*, at 244. Such burden cannot be borne regarding either falsehood or actual malice when all evidence of the truth is concealed.

Without access to the truth, criticism justifiably can be false and exceedingly unfair. Critics certainly may resort "to vilification of" public officials. *New York Times*, 376 U.S. at 271. Any "speech concerning public affairs" is "the essence of self-government," so "debate on public issues should be uninhibited, robust, and wide-open," and "it may well include vehement, caustic," and "unpleasantly sharp attacks on" current or former "public officials" or candidates. *Garrison*, 379 U.S. at 74-75.

Judges commonly pretend otherwise, but even a "judge may not" punish any critic who "ventures to publish anything that [merely] tends to make [a judge] unpopular or to belittle him" even by using "strong language, intemperate language," or "unfair criticism." *Craig v. Harney*, 331 U.S. 367, 376 (1947). *Accord Bridges v. California*, 314 U.S. 252 (1941); *Pennekamp v. Florida*, 328 U.S. 331 (1946). The "citizenry is the final judge of the proper conduct of public business." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 495 (1975).

Public officials cannot even "excise" a purportedly "scurrilous epithet from the public discourse" merely "because it" was "offensive." *Cohen v. California*, 403 U.S. 15, 22 (1971). Precisely "because governmental officials cannot make principled distinctions in this area," the "Constitution leaves matters of taste and style" to critics, and "so long as the means are peaceful, the communication need not meet standards of acceptability." *Id*., at 25. Moreover, a "principal function of free speech" is "to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest" or "even stirs people to anger." *Texas v. Johnson*, 491 U.S. 397, 408-09 (1989) (cleaned up) quoting *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949). If an "opinion" actually "gives offense," that "is a reason for according it constitutional protection." *Id*., at 409.

CONCLUSION

The Petition should be denied promptly. All public servants should enforce constitutional compliance and eschew violence.

Respectfully submitted,

JACK JORDAN
Counsel of Record
3102 Howell Street
North Kansas City, Missouri 64116
jack.jordan@emobilawyer.com
(816) 746-1955