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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**ERIC SWALWELL,**

**Plaintiff,**



2021.07.0

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**v.**

**Civil Case Number: 1:21-CV-586 APM**

**DONALD J. TRUMP, DONALD J. TRUMP, JR.,  
REPRESENTATIVE MO BROOKS & RUDOLPH  
GIULIANI,**

**Defendants.**

**PETITION TO CERTIFY DEFENDANT MO BROOKS WAS ACTING WITHIN THE  
SCOPE OF HIS OFFICE OR EMPLOYMENT**

Comes defendant Mo Brooks ("Brooks") and, pursuant to 28 U.S.C. 2679, petitions this Court to certify that Brooks was acting within the scope of his office or employment as a Member of Congress (and, hence, employee of the United States of America) and, as such, Brooks should be dismissed as a defendant, and the United States of America substituted therefor as a defendant, with respect to all applicable Swalwell Complaint ("Complaint") Counts.

**PROCEDURAL BACKGROUND**

On or about June 7, 2021 (the day after Brooks was served the first of at least three Summons and Complaints), Brooks served the Complaint and a cover letter on the following:

- A. The House Administration Committee (“HAC”) and Office of General Counsel, House of Representatives, stating that the “role of the House Administration Committee is to submit the Agency Report as required under 28 CFR § 15.2.”<sup>1</sup>
- B. The Honorable Channing D. Phillips, Acting U.S. Attorney for the District of Columbia, Attorney General Merrick Garland, Acting Assistant Attorney General Brian Boynton (Civil Division), and Acting Assistant Attorney General Helaine Greenfeld (Office of Legislative Affairs) (collectively “Justice Department”), stating that “I assert to you my right to dismissal and substitution of the United States in my stead as the defendant under the Federal Tort Claims Act, 28 USC 2679, et al. After reviewing the filed complaint, petition and affidavit, and in accord with the facts and applicable law, I hereby request that you certify to the Court that I was acting within the scope of my employment with respect to Plaintiff’s alleged claims.”<sup>2</sup>

To date, neither the House Administration Committee nor the Office of General Counsel of the House of Representatives has compiled and submitted to the Justice Department the Agency Report required by 28 CFR §15.2.

To date, the Justice Department has not acted on Brooks’ request that it “certify to the Court that (Brooks) was acting within the scope of (Brooks’) employment” by the United States, pursuant to the Federal Tort Claims Act, 28 USC 2679, et al. The Justice Department states that it has not acted on Brooks’ request, in part, because:

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<sup>1</sup> See Brooks’ letter to the same, attached hereto.

<sup>2</sup> Brooks’ letter to the same, attached hereto.

- A. Neither the House Administration Committee nor the Office of General Counsel of the House of Representatives has compiled and submitted to the Justice Department the Agency Report that the Justice Department needs and that is required by law, and
- B. Swalwell has yet to serve a copy of the Summons and Complaint on the United States per Fed.R.Civ.P. 4(i)(3), which states:

*Officer or Employee Sued Individually.* To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

#### LEGAL AUTHORITY

This petition is made pursuant to 28 U.S.C. 2679, which states, in pertinent part:

**(b)(1)** The remedy against the United States provided by sections [1346\(b\)](#) and [2672](#) of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any [employee of the Government](#) while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to

the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

**(d)(3)** In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) [1] of the Federal Rules of Civil Procedure.

## I. FACTUAL BACKGROUND

### II. A. General Background

The Affidavit of Mo Brooks in support of this Petition is attached hereto.

Brooks has continually represented Alabama's 5<sup>th</sup> Congressional District as its United States Congressman since January of 2011.<sup>3</sup>

As a Member of Congress, Brooks is employed and paid by the United States Government, through its United States House of Representatives ("House"), and is controlled (in varying degrees) by the House and the citizens of Alabama's 5<sup>th</sup>

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<sup>3</sup> Brooks Affidavit, ¶2

Congressional District, both of which have the power to affect the hiring and firing of Brooks and both of which control one or more aspects of Brooks' employment.<sup>4</sup>

As a Member of Congress, Brooks swore the following oath of office pursuant to 3 U.S.C. 3331 and as required by the U.S. Constitution, Article VI: "I, Morris Jackson Brooks, Jr., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."<sup>5</sup>

Pursuant to U.S. Constitution Article I, Section 5 and via its rules and procedures, Brooks is subject to the will and rules of the House. By way of example but not limitation, the House controls the voting times at which Brooks must vote on the House Floor, the subject matters of those votes, the wearing of masks mask on the House Floor, what Brooks can bring on the House Floor, what Brooks may wear on the House Floor, what Brooks may or may not say on the House Floor, what ethical obligations control Brooks' conduct, whether Brooks may be expelled from Congress, and the like.<sup>6</sup>

Brooks' Congressional job duties include but are not limited to:<sup>7</sup>

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<sup>4</sup> Brooks Affidavit, ¶¶ 3, 4, 6

<sup>5</sup> Brooks Affidavit, ¶ 5

<sup>6</sup> Brooks Affidavit, ¶ 6

<sup>7</sup> Brooks Affidavit, ¶ 7

- Making speeches (on the House Floor and in public) on public policy issues, current events, American history, American civics, elections events and issues, and the like.
- Issuing public and private statements on public policy issues, current events, American history, American civics, elections events and issues, and the like.
- Interacting with the White House, President, Senators and Members of Congress on public policy issues, current events, elections events and issues, and the like.
- Participating in news conferences concerning public policy issues, current events, American history, American civics, elections events and issues, and the like.
- Persuading, encouraging, and cajoling (by various means) Congressmen, Senators and Presidents to vote on, or interact with, legislation and public policy issues in the way Brooks' constituents and Brooks believe are best for America,
- Participating in radio talk shows, zoom meetings, TV interviews, and other news media interactions about public policy issues, current events, American history, American civics, elections events and issues, and the like.
- Voting on and debating resolutions, legislation, amendments and the like on the House Floor and in House committees, and
- Many other things too numerous to itemize.

According to the Alabama Secretary of States' web site at [sos.alabama.gov](http://sos.alabama.gov), the official November 3, 2020 election results for Donald J. Trump and Joseph R. Biden in Alabama's 5<sup>th</sup> Congressional District five counties are:<sup>8</sup>

	<u>Donald J. Trump:</u>	<u>Joseph R. Biden:</u>	<u>Total:</u>
Jackson County	19,670 (84%)	3,717	23,387
Lauderdale County	31,721 (73%)	11,915	43,636
Limestone County	34,640 (72%)	13,672	48,312
Madison County	102,780 (54%)	87,286	190,066
<u>Morgan County</u>	<u>39,664 (75%)</u>	<u>13,234</u>	<u>52,898</u>
<b>Totals:</b>	<b>228,475 (64%)</b>	<b>129,824</b>	<b>358,299</b>

The little amount of Brooks' conduct that is specifically and accurately alleged in Swalwell's Complaint was primarily motivated by:

- A. Brooks' desire to represent the will of the citizens of Alabama's 5<sup>th</sup> Congressional District, who overwhelmingly preferred that Donald J. Trump serve as President of the United States from 2021 through 2025; and
- B. Brooks' oath of office to the Constitution, and, hence, the laws of the United States of America (to include but not be limited to: Article I, Section 4's Election Clause; the 12<sup>th</sup> Amendment; 3 U.S.C. 15; 2 U.S.C. 7; and the like).<sup>9</sup>

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<sup>8</sup> Brooks Affidavit, ¶ 8 & [sos.alabama.gov](http://sos.alabama.gov)

<sup>9</sup> Brooks Affidavit, ¶ 9

It is Brooks' judgment that a majority or plurality of Alabama 5<sup>th</sup> Congressional District citizens strongly support Brooks' conduct concerning the few matters specifically and accurately alleged in Swalwell's Complaint.<sup>10</sup>

Title 3 U.S.C. 15 imposes on Senators and Members of Congress the duty and job responsibility of examining and accepting or rejecting the electoral college vote submittals of the states.<sup>11</sup> 3 U.S.C. 15 states, in part (emphasis added):

Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified.

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<sup>10</sup> Brooks Affidavit, ¶ 10

<sup>11</sup> Brooks Affidavit, ¶ 11

## II. B. Swalwell “Fact” Complaint Allegations

Swalwell’s Complaint makes five different kinds of “fact” allegations against Brooks.

### 1. Swalwell Alleges Brooks’ Tweets.

Swalwell alleges Brooks sent out five (5) tweets<sup>12</sup> relating to voter fraud and election theft allegations.

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<sup>12</sup> Swalwell Complaint ¶ 78 tweet: “As a U.S. member, I’m going to be very hesitant to certify the results of this election if Joe Biden is declared the winner under these circumstances b/c I lack faith that this was an honest election. Listen to my interview on @WVNN where I explain why.”

Swalwell Complaint ¶ 79 tweet: ““Count Every LEGAL Vote!”

Swalwell Complaint ¶ 80 retweet: “Congress has the absolute right to reject the submitted electoral college votes of any state... @RepMoBrooks told me. “Any I’m not going to put my name in support of any state that employs an election system that I don’t have confidence in.”

Swalwell Complaint ¶ 82 tweet: “IMHO, Joe Biden DID NOT win vote majority in Georgia. Per its right & duty, Congress should reject any Georgia submission of 16 electoral college votes for Joe Biden. That is EXACTLY what I hope to help do. See below lawsuit for more! SORDID!”

Swalwell Complaint ¶ 84 tweet: “BIG DAY: I speak at tomorrow’s #StoptheSteal rally @ 7:50 am CT. @realDonaldTrump asked me personally to speak & tell the

All five tweets were issued within the scope of Brooks' employment as a United States Congressman. Common facts to all five tweets are:<sup>13</sup>

- All tweets were issued on a Congressional government twitter account.
- All tweets were issued using Congressional government electronic devices.
- All tweets were drafted and/or issued by Congressional government employees (Brooks' Congressional staff or Brooks).
- All tweets related to a pending Congressional government issue and vote, to-wit: whether to accept or reject electoral college vote submissions by various states on the statutorily prescribed January 6, 2021 (3 U.S.C. 15).
- Some or all tweets were issued from a Congressional government building.
- Some or all tweets were issued during normal Congressional government office working hours.

As such, the five "Brooks" tweets alleged as the factual basis for Swalwell's claim against Brooks were all issued pursuant to and within the scope of Brooks' employment as a United States Congressman.

## **2. Swalwell Brooks' Ellipse Speech Allegations.**

On January 5, 2021, Brooks was in Brooks' Congressional Office at the Rayburn House Office Building when a White House employee contacted Brooks during regular office hours and asked Brooks to speak at the Ellipse Rally on January 6, 2021 (the

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American people about the election system weaknesses that the Socialist Democrats exploited to steal this election. Watch: [youtube.com/watch?v=HrGJfQ...](https://www.youtube.com/watch?v=HrGJfQ...)"

<sup>13</sup> Brooks Affidavit, ¶¶ 29, 30, 31, 32, 33, 34

“Ellipse Speech”). Brooks asked the White House employee to work out the Brooks’ speech start time and other details with Brooks’ Congressional staff.<sup>14</sup>

Brooks only gave an Ellipse Speech because the White House asked him to, in his capacity as a United States Congressman, speak at the Ellipse Rally. But for the White House request, Brooks would not have appeared at the Ellipse Rally.

Later on January 5, 2021, Brooks’ Congressional staff informed Brooks that they had reached an agreement with the White House concerning speech parameters, at which point Brooks informed his Congressional staff that he would take the time to prepare and give the Ellipse Speech.<sup>15</sup>

Brooks then drafted his January 6, 2021 Ellipse Speech in Brooks’ Congressional Office using Brooks’ Congressional Office computer during Congressional Office work time.<sup>16</sup>

Brooks timed, reviewed, revised, and practiced Brooks’ Ellipse Speech in Brooks’ office in the Rayburn House Office Building.<sup>17</sup>

Swalwell Complaint ¶¶ 84, 85, 100, 105, 106, 107, 108, 129, 179<sup>18</sup> distort, take out of context, splice and dice, and otherwise mischaracterizes Brooks’ Ellipse Speech. Rather than respond to Swalwell’s deceitful mischaracterizations one by one, Brooks’

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<sup>14</sup> Brooks Affidavit, ¶ 37

<sup>15</sup> Brooks Affidavit, ¶ 37

<sup>16</sup> Brooks Affidavit, ¶ 38

<sup>17</sup> Brooks Affidavit, ¶ 38

<sup>18</sup> Brooks Affidavit, ¶ 33, 40, 41, 42, 43, 44, 45, 46, 50, 55

Ellipse Speech is cited in toto (as transcribed by Brooks' Congressional staff and reviewed by Brooks) and is Brooks' rebuttal to Swalwell's deceitful mischaracterizations:

*Thank you so much for being here today to help save America.*

*Now, I'm congressman Mo Brooks from Alabama's Fifth Congressional District. And I've got **a message that I need you to take to your heart, and take back home, and along the way stop at the Capitol.***<sup>19</sup>

*For seven decades, America's been the greatest nation in world history. We have a standard of living that is the best in history. We have a military that is unmatched in history. And we are a beacon of freedom for all.*

*Have you ever thought about why? Is it because we are just lucky? I would submit, no.*

*We are great because our ancestors sacrificed their blood, their sweat, their tears, their fortunes, and sometimes their lives.*<sup>20</sup> *And what did they sacrifice for, they sacrificed for foundational principles that that have combined to make us the greatest nation in world history.*

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<sup>19</sup> Note that Brooks plainly states he has "a message" (a verbal "message", not a call to violence stated at the end of Brooks' speech, to chant and verbalize "USA". Chanting "USA" is the only thing Brooks asked anyone to do.

<sup>20</sup> This passage describes the sacrifices Americans have endured throughout history, beginning with the Declaration of Independence in which the signers pledged their lives in pursuit of liberty, freedom and an independent America.

*First, they believed in moral principles that are the compass, to help us do the right thing rather than the wrong thing, with the power we enjoy as a great nation.*

*Second, we have a Bill of Rights that protects individual liberty from abusive government power. A Bill of Rights that is based on the principle that a government is simultaneously our best friend and our worst enemy. That a government powerful enough to give us anything is powerful enough to take everything from us.*

*Third, we are a free-enterprise economy, an economy where you get to decide what you want to do with your God-given talents. An economy based on freedom and liberty, that allows us to individually excel!*

*Fourth, we are a republic! We as individuals collectively control how our government works and what are destiny will be. But we are here today because America is at risk unlike it has been in decades and perhaps centuries.*

*Socialist Democrats attack and mock our moral values, even to the point of sarcastically in the United States Capitol, one of the most revered places in America, mockingly closing their hedonistic prayers with Amen and awomen!  
What is that?*

*Socialist Democrats attack our Bill of Rights on a daily basis. They attack Freedom of speech, they attack Freedom of association, they attack Freedom of all kinds including the right to bear arms. Now, let's be clear about these Socialist Democrats.*

*They also want to destroy our free enterprise system, they don't trust you with your individual liberty, and freedom to do what's best for yourselves or your families.*

*However, we're going to stop them.*

*Now, we have definitely had some setbacks with what happened in November. We have had some setbacks with what happened last night in Georgia. But we are not going to let the Socialists rip the heart out of our country. We are not going to let them continue to corrupt our elections, and steal from us our God-given right to control our nation's destiny.*

*The 2020 election is behind us. **Today is a time of choosing**<sup>21</sup>, and **tomorrow is a time for fighting**.<sup>22</sup>*

*Today is also a day of revelation and separation. **Today**, the curtain will be pulled back. And **American patriots will learn by their votes which***

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<sup>21</sup> Brooks is clear that "Today is a time of choosing" (emphasis: no call for violence). Choosing what? Which Senators and Congressmen to support, and oppose, in future elections.

<sup>22</sup> Brooks stated that "tomorrow is a time for fighting" (not today, tomorrow). Fighting whom? Those who don't vote like citizens prefer. Where do those dissatisfied citizens fight them? "Tomorrow", in **future elections**, as is emphasized later in the speech. Note that nowhere in the speech does Brooks call for physically "fighting" (i.e. – inflicting pain and suffering on anyone) at the Capitol on January 6 or at any other time!

***Republican Senators and Congressman have the courage to fight for America.<sup>23</sup>***

*Today, by their votes, Americans will learn which Republican Congressman and Senators love their bourbon, love their cigars, love their prestige, love their personal power, love their special interest group money more than they love America, because, today, Republican Senators and Congressman have a simple choice.*

*Today, Republican Senators and Congressmen will either vote to turn America into a godless, amoral, dictatorial, oppressed, and socialist nation on the decline or they will join us and they will fight and vote<sup>24</sup> against voter fraud and election theft, and vote for keeping America great.<sup>25</sup>*

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<sup>23</sup> What votes do Americans learn about "today"? The votes of Senators and Congressmen voter fraud and election theft issues.

<sup>24</sup> Brooks again uses the word "fight" . . . with respect to Senators and Congressmen "fighting" **and voting** on the House and Senate floors of the U.S. Capitol for the values we share. The "fight" is via words and votes.

<sup>25</sup> This paragraph emphasizes the choice: voting for or against voting fraud and election theft, and keeping America great.

*Now, I can't speak for anyone else, but I can promise you, as for me, Mo Brooks from Alabama's Fifth Congressional District **I will vote and fight for America**<sup>26</sup> on the House floor.*

*But let's be clear, regardless of today's outcome<sup>27</sup> **the 2022 and the 2024 elections are right around the corner**, and America does not need and cannot stand, cannot tolerate any more weakling, cowering, wimpy Republican Congressmen and Senators who covet the power and the prestige the swamp has to offer, while groveling at the feet and the knees of their special interest group masters. **As such, today is important in another way, today is the day American patriots start taking down names and kicking ass.**<sup>28</sup>*

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<sup>26</sup>Brooks again uses the word "fight" . . . "on the House floor"? What kind of fight? Again, with votes and words! Brooks never uses the word "fight" in the sense of physical violence against anyone.

<sup>27</sup> What outcome? The results of the votes and House and Senate floor fights on election theft to occur later that day.

<sup>28</sup> These two sentences in this one paragraph go together. The key "linkage" phrase is at the beginning of the 2<sup>nd</sup> sentence, to-wit: "As such". The phrase "As such" emphasizes that the second sentence is in the context of the first sentence's "2022 and 2024 elections" time frame . . . and the desire to beat offending Republicans in those elections! Whose names do we "take down" in the second sentence? Those Republicans who vote contrary to our desires. When do citizens "take down" names? Later in the day when the Senators and Congressmen cast their votes. When do

*Now, our ancestors sacrificed their blood, their sweat, their tears, their fortunes, and sometimes their lives to give us, their descendants, an America that is the greatest nation in world history. So, I have a question for you. Are you willing to do the same? My answer is yes. Louder! Are you willing to do what it takes to fight for America? Louder! Will you fight for America?*

*Let me conclude with these remarks.*

*In 1776, at a time of great peril an American patriot by the name of Thomas Payne said: "These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands by it now, deserves the love and thanks of man and women. Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph."*

*Such was the mettle of our founding fathers; and today's times do try our souls, but **today we can make our voices heard for America, by uttering words, uttering words**<sup>29</sup> that cause socialists and weak-kneed Republicans on*

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citizens kick those Republican asses? As stated in the first sentence, in the "2022 and 2024 elections that are right around the corner."

<sup>29</sup> Once again, Brooks makes no call for a physical attack on the Capitol. To the contrary, Brooks calls on Ellipse Speech attendees to do one thing: "utter words"! Brooks asks Ellipse Speech attendees to exercise their free speech rights and exercise

*Capitol Hill to know that we, American patriots, are not going to take it anymore. That we, American patriots, are going to come right at them.*

*That we, American patriots, are going to take America back and restore the foundational principles that have combined to make us the greatest nation in world history.*

**What are the simple words we must shout to the heavens and carry, the message, to Capitol Hill? What are the words** *that cause Socialists and weak-kneed Republicans on Capitol Hill to shake in their boots and cower in their foxholes? **What are the words** that scare the hell out of Socialists and weak-kneed Republicans alike?*

**Join with me! USA! USA! USA! USA ! USA! USA! USA!** *Washington! America! Heed those words, because we're going to carry them right to you. USA!<sup>30</sup> God Bless America; and the fight begins today!*

Brooks Ellipse Speech was given during normal Congressional work hours. Brooks left his office in the Rayburn House Office building to go to the Ellipse. Brooks was driven to and from the Ellipse by a Congressional staffer. Two other Congressional staffers went with Brooks from the car, through security, and to the Ellipse Rally stage.

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their right to petition their government for redress of their grievances, both of which are protected by the Constitution's First Amendment.

<sup>30</sup> This paragraph emphasizes that the only thing Brooks asked anyone to do is chant the words, "USA! USA! USA!", speech that is clearly protected by the First Amendment.

After Brooks spoke, Brooks' Congressional staffer drove Brooks back to the Rayburn House Office Building.<sup>31</sup>

Brooks' intent behind the Ellipse Speech was multi-faceted.<sup>32</sup>

Brooks sought to remind and inspire Ellipse Rally citizens that we are the greatest nation in world history, that we achieved that height because of foundational principles that have allowed us as a nation to excel and combined to make us who we are, and that America reached greatness because of the sacrifices of our ancestors.

Brooks sought to inspire and reinvigorate Ellipse Rally citizens who had just suffered horrible defeats in the November 3, 2020 elections followed by two horrible losses of U.S. Senate seats in Georgia, the day before (on January 5, 2021).

Brooks sought to encourage Ellipse Rally attendees to put the 2020 elections behind them (and, in particular, the preceding day's two Georgia GOP Senate losses) and to inspire listeners to start focusing on the 2022 and 2024 elections, which had already begun.

Brooks sought to inspire Ellipse Rally attendees to exercise their First Amendment Rights by chanting the words "USA".

In sum and substance, Brooks drafted, practiced and gave his Ellipse Rally Speech at the request of the White House and pursuant to Brooks' duties and job as a congressman concerning presidential election dispute resolution obligations imposed on

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<sup>31</sup> Brooks Affidavit, ¶ 49

<sup>32</sup> Brooks Affidavit, ¶ 47

Congress by the U.S. Constitution, generally, and the United States Code, 3 U.S.C. 15 in particular.

**3. Swalwell Accurate Allegation About Brooks.**

Swalwell Complaint ¶ 81 alleges, “On November 19— . . . —Brooks reiterated that “Congress controls who becomes president.” Yes. That is the law. Pursuant to the U.S. Constitution, generally, the U.S. Code, generally, and 3 U.S.C. 15, in particular, Congress is the final judge, jury and arbiter of presidential election contests and disputes.

**4. Swalwell Allegations Against Brooks that Violate F.R.Civ.P. 11(b)(3) Because They Lack Evidentiary Support and Will Not Have Evidentiary Support After Discovery Because They Are False, Scurrilous, Fictional, and Made Up for Improper Purpose.**

Swalwell and Swalwell’s Counsel, Caleb Andonian; Philip Andonian; Caleb Andonian, PLLC; Kaiser Dillon, PLLC; Matthew Kaiser; and Sarah Fink make various allegations that Violate F.R.Civ 11(b)(3) because they have zero evidentiary support, have no basis for evidentiary support after discovery, are made for improper purpose, are scurrilous, false, fictional, and should be the subject of sanctions once this litigation is resolved. Each of these allegations are rebutted by Brooks’ affidavit.

Swalwell Complaint ¶ 1 alleges “Brooks, defiled that sacrament through a campaign of lies and incendiary rhetoric which led to the sacking of the United States

Capitol on January 6, 2021.” This Complaint allegation is false, a lie, and has zero evidentiary support.<sup>33</sup>

Swalwell Complaint ¶ 20 alleges Brooks was “acting in his personal capacity” concerning all events alleged in the Complaint.” This Complaint allegation is false, a lie, and has zero evidentiary support. At all times related to Swalwell Complaint allegations, Brooks acted pursuant to Brooks’ duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, generally, the United States Code, generally, and 3 U.S.C. 15 in particular.<sup>34</sup>

Swalwell Complaint ¶ 20 alleges Brooks alleged “without evidence, that the election had been rigged and by pressuring elected officials, courts, and ultimately Congress to reject the results.” This Complaint allegation is false, a lie, and has zero evidentiary support. Brooks never “pressured” election officials or the courts to do anything in conflict with any law of the United States or any of the fifty states.<sup>35</sup>

Brooks certainly did everything lawful within Brooks’ power and duties as a congressman, to lawfully prevent acceptance of electoral college vote submittals from states whose election systems Brooks believed were so badly flawed as to render them untrustworthy and unworthy of Brooks’ trust and ratifying vote.

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<sup>33</sup> Brooks Affidavit, ¶ 12

<sup>34</sup> Brooks Affidavit, ¶ 25

<sup>35</sup> Brooks Affidavit, ¶ 26

Concerning this allegation, Brooks acted pursuant to Brooks' duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, generally, the United States Code, generally, and 3 U.S.C. 15 in particular.

Swalwell Complaint ¶¶ 21 alleges Brooks "directly incited the violence at the Capitol that followed." This Complaint allegation is false, a lie, and has zero evidentiary support. Brooks never, on or between November 3, 2020 and January 6, 2021, asked anyone to commit acts of violence at the United States Capitol.<sup>36</sup>

Swalwell Complaint ¶¶ 59 alleges, "The other Defendants—Mo Brooks, Rudolph Giuliani, and Donald Trump Jr.—all conspired with Trump, each other, and others to subvert the will of the people in the 2020 election." This Complaint allegation is false, a lie, and has zero evidentiary support.

To the contrary, in Brooks' capacity as a Congressman, Brooks worked to support and comply with the Constitution and U.S. Code and protect the will of the people by protecting and only counting lawful votes cast by eligible American citizens.<sup>37</sup>

In any event, the aforesaid activity was made pursuant to Brooks' duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, the United States Code, generally, and 3 U.S.C. 15. in particular.

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<sup>36</sup> Brooks Affidavit, ¶¶ 27

<sup>37</sup> Brooks Affidavit, ¶¶ 28

**5. Swalwell Allegations Against Defendants, Generally, that Include Brooks Inferentially, Violate F.R.Civ.P. 11(b)(3) Because, as to Brooks, They Lack Evidentiary Support and Have No Evidentiary Support Now and Will Have No Evidentiary If Discovery is Had Because They Are False, Scurrilous, Fictional, and Made Up for Improper Purpose.**

Swalwell Complaint ¶ 2 alleges, “The Defendants filed frivolous lawsuits.” This Complaint allegation is false, a lie, and has zero evidentiary support as to Brooks.

Brooks has no recollection of filing any lawsuits against anyone that relate to the November 3, 2020 elections.<sup>38</sup>

Swalwell Complaint ¶ 2 alleges, “The Defendants tried to intimidate state officials.” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

Brooks, to the best of his recollection, has never had any communication with any state election officials in any state allegedly won by Joe Biden and, hence, has not attempted to intimidate any such state officials.<sup>39</sup>

Swalwell Complaint ¶ 2 alleges, “Defendants called their supporters to Washington, D.C. on the day Congress met to certify Joe Biden’s win, telling them to “Stop the Steal” and “be wild.”” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

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<sup>38</sup> Brooks Affidavit, ¶ 13

<sup>39</sup> Brooks Affidavit, ¶ 14

To the best of Brooks' knowledge and belief, Brooks never asked a single supporter of his to go to Washington, D.C. on January 6, 2021 to either "Stop the Steal" rally or "be wild".<sup>40</sup>

Swalwell Complaint ¶ 2 alleges, "some were stirred to violence by the Defendants' words on that day." This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

Brooks never, on or before January 6, 2021, used any words designed to cause anyone to attack the U.S. Capitol or to engage in any form of violence.<sup>41</sup>

Swalwell Complaint ¶ 4 alleges Defendants used "false and incendiary allegations of fraud and theft". This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

In Brooks' judgment (a judgment Brooks is legally allowed to have in a free society, and a judgment Brooks has to make pursuant to his voting duties imposed by 3 U.S.C. 15), the evidence is overwhelming that the November 3, 2020 elections were the subject of voter fraud and election theft on a scale never before seen in America and that, if only lawful votes cast by eligible American citizens were counted, Donald Trump won the electoral college and should be serving his second term as President of the United States.<sup>42</sup>

Brooks welcomes public debate with anyone who ignorantly claims otherwise.

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<sup>40</sup> Brooks Affidavit, ¶ 15

<sup>41</sup> Brooks Affidavit, ¶ 16

<sup>42</sup> Brooks Affidavit, ¶ 17

Further, Brooks' allegations of voter fraud and election theft were uttered in the context of Brooks' duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, generally, the United States Code, generally, and 3 U.S.C. 15, in particular.

Swalwell Complaint ¶ 4 alleges "a violent mob attacked the U.S. Capitol" "in direct response to the Defendants' express calls for violence at the rally." This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

Brooks never "expressly", or otherwise, called for violence at the U.S. Capitol.<sup>43</sup>

Swalwell Complaint ¶ 7 alleges "the Defendants watched the events unfold on live television." This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

Brooks never saw any live television coverage of the January 6, 2021 violence at the Capitol nor did Brooks ever see a single, violent protestor during Brooks time at the U.S. Capitol on January 6, 2021.<sup>44</sup>

Swalwell Complaint ¶ 8 alleges "The horrific events of January 6 were a direct and foreseeable consequence of the Defendants' unlawful actions." This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

First, none of Brooks' actions were "unlawful".

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<sup>43</sup> Brooks Affidavit, ¶ 18

<sup>44</sup> Brooks Affidavit, ¶ 19

Second, Brooks has given hundreds if not thousands of political and/or rally speeches over the past four decades, many involving very similar language to the language used in Brooks' my Ellipse Speech. None of Brooks' previous speeches were followed by violence.

Third, prior to January 6, 2021, Brooks has never seen or heard of any Donald Trump rally being followed by the kind of violence that occurred at the U.S. Capitol on January 6, 2021.

As such, Brooks had no inkling that roughly three or more hours after Brooks' Ellipse Rally speech, and more than a mile away, violence would occur at the U.S. Capitol. Swalwell Complaint allegations to the contrary are pure fiction.<sup>45</sup>

Swalwell Complaint ¶ 12 alleges, "Defendants are the former President of the United States and three close associates who conspired with him and others, including the rioters who breached the Capitol on January 6, to prevent Congress from certifying President Biden's victory in the 2020 presidential election." This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

Brooks never unlawfully communicated or conspired with anyone to promote violence at the U.S. Capitol on January 6, 2021 or to prevent a vote on the states' electoral college vote submissions.<sup>46</sup>

Swalwell Complaint ¶ 13 alleges, "After his electoral defeat, Trump and the other Defendants conspired to undermine the election results by alleging, without evidence,

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<sup>45</sup> Brooks Affidavit, ¶ 20

<sup>46</sup> Brooks Affidavit, ¶ 21

that the election had been rigged and by pressuring elected officials, courts, and ultimately Congress to reject the results.” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

Brooks did not make speeches or vote on the House Floor “to undermine the election results”, Brooks made speeches and voted on the House Floor for the express purpose of protecting the lawful votes cast by eligible American citizens. Further, Brooks never “pressured” election officials or the courts to do anything in conflict with any governing law.<sup>47</sup>

Swalwell Complaint ¶ 16 alleges, “Trump Jr. conspired with the other Defendants.” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

To the best of Brooks’ knowledge, belief and recollection, Brooks never communicated with Trump Jr., much less “conspired” with Trump Jr., on or between November 3, 2020 and January 6, 2021.<sup>48</sup>

Swalwell Complaint ¶ 18 alleges, “Giuliani conspired with the other Defendants.” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

While Brooks vaguely recalls a meeting at the White House in which a significant number of Congressmen were invited and briefed by Giuliani on Giuliani’s view of November 3, 2020 election issues, to the best of Brooks’ recollection, Brooks used

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<sup>47</sup> Brooks Affidavit, ¶ 22

<sup>48</sup> Brooks Affidavit, ¶ 23

different arguments and evidence supporting Brooks' belief of voter fraud and election theft and did not use anything of substance presented by Giuliani.

In any event, the limited communications Brooks had with Giuliani were made pursuant to Brooks' duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, generally, the United States Code, generally, and 3 U.S.C. 15, in particular.<sup>49</sup>

Swalwell Complaint ¶ 83 alleges, "Brooks did these things in an effort to overturn the 2020 Presidential election results and to aid the other Defendants' efforts to do the same." This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it asserts did anything improper and insofar as it relates to Brooks.

Brooks never, as this allegation suggests, engaged in any effort to illegally "overturn' the 2020 Presidential election results". Rather, Brooks fought to protect and defend the U.S. Constitution, federal statutes, and the lawful votes cast by eligible American citizens and Brooks did these things pursuant to Brooks' duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, generally, the United States Code, generally, and 3 U.S.C. 15, in particular.<sup>50</sup>

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<sup>49</sup> Brooks Affidavit, ¶ 24

<sup>50</sup> Brooks Affidavit, ¶ 36

Swalwell Complaint ¶ 109 alleges, “Brooks said all those things solely in his personal capacity for his benefit and/or his personal partisan aims.” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

Swalwell errs. Brooks did the things he did because that was part of his job as a United States Congressman.<sup>51</sup> Further supporting evidence is spread throughout this pleading.

Swalwell alleges in ¶ 110 that Trump and Trump Jr. were standing back stage when Brooks spoke and that Brooks was one in a series of back-to-back speakers. Swalwell errs. Brooks arrived in the Ellipse vicinity at roughly 8:45AM E.T. while music was playing. The Ellipse Rally crowd was still making their way to the Ellipse Rally grounds. After much discussion about how long Brooks remarks could be (persons at the Ellipse sought to cut Brooks' speech time), the parties reached an agreement. Brooks started his speech sometime in the 9:00 AM E.T. to 9:15 AM E.T. time frame. In the ten to twenty minutes Brooks was in the Ellipse vicinity before Brooks spoke, music played. No other speaker spoke before Brooks while Brooks was there. In the roughly ten minutes it took Brooks to leave the Ellipse premises after Brooks spoke, Brooks heard music and no other speakers. While at the Ellipse Rally stage, Brooks saw and heard no other speakers. Brooks' Ellipse Rally speech was done pursuant to Brooks' duties and job as a United States Congressman concerning presidential election dispute

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<sup>51</sup> Brooks Affidavit, ¶ 47

resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.<sup>52</sup>

Swalwell Complaint ¶¶ 169 & 170 allege, "Defendants, by force, intimidation, or threat, agreed and conspired with one another to undertake a course of action to prevent President Joseph Biden and Vice President Kamala Harris from being certified as the winners of the 2020 presidential election and from accepting and/or holding their respective offices." Swalwell lies. At no time did I advocate "force, intimidation, or [unlawful] threat" against anyone nor did I ever conspire or communicate with any of the other defendants about using "force, intimidation, or [unlawful] threat" concerning anything having to do with the November 3, 2020 election voter fraud and election theft efforts.<sup>53</sup>

Swalwell Complaint ¶¶ 171 & 172 allege, "Defendants among themselves and with others agreed and conspired to injure members of Congress" or "property of members of Congress". This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

At no time did Brooks conspire with anyone to injure members of Congress, anyone else, or any property of any kind on or about January 6, 2021.<sup>54</sup>

Swalwell Complaint ¶ 173 alleges, "Defendants made public statements knowingly designed to undermine public confidence in the election. Such statements

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<sup>52</sup> Brooks Affidavit, ¶ 48

<sup>53</sup> Brooks Affidavit, ¶ 51

<sup>54</sup> Brooks Affidavit, ¶ 52

included falsely claiming that the election had been “rigged” and that fraudulent voting had been widespread enough to affect the outcome.” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

As previously stated, Brooks is persuaded by what is, to Brooks, overwhelming and compelling evidence that, if only lawful votes cast by eligible American citizens were counted, Donald Trump won the electoral college and should be serving his second term as President of the United States.

Brooks made numerous public statements consistent with Brooks’ belief, with the design to restore public trust in in America’s election process and to ferret out illegal ballots cast and limit the election count only to lawful votes cast by eligible American citizens.

Brooks statements were uttered pursuant to Brooks’ duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, generally, the United States Code, generally, and 3 U.S.C. 15, in particular.<sup>55</sup>

Swalwell Complaint ¶ 175 alleges, “Defendants promoted, supported, and endorsed a rally near the White House on January 6, 2021.” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

To the best of Brooks’ recollection, Brooks never personally helped organize, “promote, support or endorse” the Ellipse Rally in any public medium, never sent out a news release, appeared in public media, nor ever gave a speech in which Brooks

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<sup>55</sup> Brooks Affidavit, ¶ 53

encouraged anyone to attend the Ellipse Rally (excluding Brooks' staff that escorted Brooks to and from the Ellipse Rally before and after Brooks spoke).

Brooks would not have even gone to the Ellipse Rally if Brooks had not received the White House request that Brooks speak at the Ellipse Rally.

In any event, everything Brooks did relating to the January 6, 2021 Ellipse Rally (which was pretty much limited to Brooks' speech) was done pursuant to Brooks' duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, generally, the United States Code, generally, and 3 U.S.C. 15, in particular.<sup>56</sup>

Swalwell Complaint ¶ 182 alleges, "Each of the Defendants was aware of each other's incendiary remarks at the rally—and other, similar statements—and endorsed and supported them as part of, and in furtherance of, the Conspiracy." This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

Brooks did not watch any speeches given by anyone at the Ellipse Rally. Nor is Brooks aware of what Giuliani or Trump Jr said. Brooks is unaware of what Trump said, except for snippets of Trump's speech that Brooks gleaned from reading various internet articles well after the Ellipse Rally had concluded.<sup>57</sup>

Swalwell Complaint ¶ 187 alleges, "Defendants, by force, intimidation, or threat, conspired to prevent President Joseph Biden and Vice President Kamala Harris from being certified as the winners of the 2020 presidential election and from accepting

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<sup>56</sup> Brooks Affidavit, ¶ 54

<sup>57</sup> Brooks Affidavit, ¶ 56

and/or holding their respective offices.” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

Brooks never conspired with anyone to use illegal “force, intimidation, or threat” to do anything concerning the Ellipse Rally, the November 3, 2020 election contest, the January 6, 2021 Capitol protest, or the January 6, 2021 attack on the Capitol.<sup>58</sup>

Swalwell Complaint ¶ 189 alleges, “The Defendants commanded the attendance of tens of thousands of individuals at the rally in the District on January 6, 2021 for the purpose of coercing members of Congress to disregard the election results, and further incited thousands to violently storm the Capitol building shortly thereafter.” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

To the best of Brooks recollection, the only people Brooks asked to go to the Ellipse Rally were Congressional staffers who accompanied and drove Brooks to and from the Ellipse Rally. As such, Brooks never “commanded” anyone to illegally coerce anyone to do anything nor did Brooks incite anyone to engage in violence at the Capitol.<sup>59</sup>

Swalwell Complaint ¶ 190 alleges, “Defendants had the power to stop the rioters but refused and, instead, encouraged them.” This Complaint allegation is false, a lie, and has zero evidentiary support insofar as it relates to Brooks.

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<sup>58</sup> Brooks Affidavit, ¶ 57

<sup>59</sup> Brooks Affidavit, ¶ 58

Brooks had no power to “stop the rioters” at the Capitol nor did Brooks do anything to “encourage them” before or during the attack on the Capitol.<sup>60</sup>

Swalwell Complaint ¶¶ 191 through 261 simply reallege, either verbatim or in substance and effect, false allegations previously alleged and rebutted, heretofore. As such, Brooks reincorporates the foregoing statements in response to duplicative allegations.<sup>61</sup>

### **APPLICABLE LAW**

The Westfall Act is dispositive of this Petition. It states, in pertinent part:

#### **28 U.S.C. 2679 - Exclusiveness of remedy**

**(b)(1)** The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee.

**(d)(3)** [T]he employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the

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<sup>60</sup> Brooks Affidavit, ¶ 59

<sup>61</sup> Brooks Affidavit, ¶ 60

provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

Per 28 U.S.C. 2671, and numerous cases, the term "employee" includes Congressmen. "The plain meaning of this language is that members of Congress, federal judges, and the staffs of both all are included in the term "federal agency."" Carroll v. Trump, U.S.D.C. District of Columbia, 20-CV-7311 (2020).

The "purpose" of the Westfall Act is clear. "In 1988, (Congress) enacted the Federal Employees Liability Reform and Tort Compensation Act of 1988, more commonly known as the Westfall Act. The statute's "core purpose . . . is to relieve covered employees from the cost and effort of defending [a] lawsuit, and to place those burdens on the Government's shoulders." Carroll v. Trump, 20-cv-7311, 10/26/2020. U.S. District Court for the District of Columbia.

Numerous cases establish that Brooks numerous or all Counts must be dismissed against Brooks and the United States substituted as a defendant therefore.

In Council on American Islamic Relations v. Ballenger, 444 F.3d 659 (D.C. Cir. 2006), CAIR sued Congressman Ballenger for defamatory statements ("that CAIR was the "fund-raising arm for Hezbollah") the congressman made during an interview about Ballenger's marital relationship with his wife. Hence, the issue was "whether a congressman acted "within the scope of employment" when he discussed his marital status in his office, during regular business hours, in response to a reporter's inquiries."

The Court found that, under the Westfall Act, the "federal employees' immunity from state tort lawsuits for money damages hinges exclusively on whether they were acting within the scope of employment during the alleged incident." The court added

that, "Once a court determines that the federal employee acted within the scope of employment, the case is, *inter alia*, restyled as an action against the United States that is governed by the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680."

The Ballenger Court added, that "To qualify as conduct of the kind he was employed to perform, the [defendant's] actions must have either been of the same general nature as that authorized' or incidental to the conduct authorized" and that "the proper inquiry in this case "focuses on the underlying dispute or controversy, not on the nature of the tort, and is broad enough to embrace any intentional tort arising out of a dispute that was originally undertaken on the employer's behalf." (Emphasis added)

In applying governing law, the Court stated, "the proper inquiry in this case "focuses on the underlying dispute or controversy, not on the nature of the tort, and is broad enough to embrace any intentional tort arising out of a dispute that was originally undertaken on the employer's behalf," that the ""underlying dispute or controversy" was the phone call between Ballenger and Funk discussing the marital separation. The appropriate question, then, is whether that telephone conversation — not the allegedly defamatory sentence — was the kind of conduct Ballenger was employed to perform, and that ""speaking to the press during regular work hours in response to a reporter's inquiry falls within the scope of a congressman's "authorized duties", that, "Ballenger's allegedly defamatory statement was incidental to the kind of conduct he was employed to perform," that "even a *partial* desire to serve the master is sufficient", that "Ballenger's conduct was motivated — at least in part — by a legitimate desire to discharge his duty as a congressman, that "a Member's ability to do his job as a legislator effectively is

tied, as in this case, to the Member's relationship with the public and in particular his constituents and colleagues in the Congress," and that, hence, "Ballenger acted within the scope of his employment when he made the remark in question."

Wuterich v. Murtha, 562 F.3d 375 (DC Court Appeals, 2009) is instructive. In Murtha, Congressman John Murtha, *while in his campaign office*, allegedly made false, defamatory statements to the news media about the deaths of Iraqi civilians. While much of Murtha was about procedural issues, the Court rejected the plaintiff's complaint allegation that Congressman Murtha's "comments were made outside of the scope of his employment as a U.S. Congressman and [were] intended to serve his own private purposes and interests", and, after noting that Congressman Murtha's "underlying conduct — interviews with the media about the pressures on American troops in the ongoing Iraq war — is unquestionably of the kind that Congressman Murtha was employed to perform as a Member of Congress" and emphasizing that "even a *partial desire to serve the master is sufficient*," held that Congressman Murtha acted in the "scope of his employment" and the United States should be substituted as a defendant.

In Williams v. U.S., 71 F.3d 502 (5<sup>th</sup> Cir. 1995), Congressman Jack Brooks allegedly defamed plaintiff during a press interview about restoring the Battleship U.S.S. Texas. After emphasizing that "the legislative duties of Members of Congress are not confined to those directly mentioned by statute or the Constitution. Besides participating in debates and voting on the Congressional floor, a primary obligation of a Member of Congress in a representative democracy is to serve and respond to his or her constituents. Such service necessarily includes informing constituents and the public at large of issues being considered by Congress", the Court stated that "we are not

hesitant to find that as a matter of law Brooks's statements, including the alleged defamatory remarks and even assuming such remarks are defamatory, were made in the context of an interview addressing Congress' appropriation of money including Williams's lobbying fees for the restoration of the Battleship Texas, clearly fell within the course and scope of his position as a Member of Congress." (Emphasis added)

In *John Does 1-10 v. Debra Haaland; Elizabeth Warren* (U.S. Court of Appeals, 6<sup>th</sup> Cir. 2020, File Name 20a0293p.06, No. 19-6347), Congressman Haaland & Senator Warren issued a series of tweets allegedly defaming various Covington Catholic High School students.

Haaland's tweets stated:

This Veteran [Nathan Phillips] put his life on the line for our country. The students' display of blatant hate, disrespect, and intolerance is a signal of how common decency has decayed under this administration. Heartbreaking.

A Native American Vietnam War veteran was seen being harassed and mocked by a group of MAGA hatwearing teens.

Senator Warren's tweet stated:

Omaha elder and Vietnam War veteran Nathan Phillips endured hateful taunts with dignity and strength, then urged us all to do better. Listen to his words.

The district court "concluded that regardless of whether one agrees with Warren's and Haaland's communications, they were "intended to convey the politicians' views on matters of public interest to their constituents." R. 80, Dist. Ct. Order, PageID # 1081. Therefore, "the statements were made within the scope of defendants' employment as elected representatives" and they were entitled to the benefit of

sovereign immunity pursuant to 28 U.S.C. § 2679(b)(1). *Id.* This meant that the United States was substituted as Defendant in their place.”

On appeal, after citing and quoting numerous federal court decisions, the 6<sup>th</sup> Circuit stated, “out-of-circuit precedent involving situations closely aligned to the facts of this case strongly supports finding that these tweets were within the scope of Defendants’ employment as officers of the United States.”

In particular, the 6<sup>th</sup> Circuit relied on *Operation Rescue Nat’l v. United States*, 975 F. Supp. 92, 106 (D. Mass. 1997), wherein Senator Ted Kennedy publicly stated “that anti-abortion organizations like the plaintiff had a ‘national policy [of] firebombing and even murder.” “The district court found, in relevant part, that because “Senator Kennedy was providing political leadership and a basis for voters to judge his performance in office—two activities that public officials are expected, and should be encouraged, to perform,” his comments were within the scope of employment. *Id.* at 108. In this sense, the Senator’s employer was his constituents and he served them by fully informing them of his views and working to pass legislation he believed would benefit them.”

The 6<sup>th</sup> Circuit cited certain very important facts and reasoning in holding that the Haaland and Warren tweets were protected by the Westfall Act, to-wit:

- The comments “constituted a condemnation of a political adversary’s public acts”
- “Senator Warren and Representative Haaland were criticizing supporters of President Trump”
- The tweets related to “a topical and polarizing issue (i.e., the border wall)”

- “In each case, the allegedly defamatory statements were made in the context of informing constituents of the Congressmembers’ views and as part of their advocacy—whether for or against—current legislation”
- “If anything, Senator Kennedy’s allegations of domestic terrorism and murder were closer to the outer bounds of his scope of employment than Senator Warren’s and Representative Haaland’s less inflammatory tweets.”
- “Defendants were reasonably connecting Plaintiffs’ rhetoric and clothing to President Trump in order to comment on an event that had received widespread press attention and that resonated with the pressing issue of funding for the border wall.”
- “[I]t is the act of communicating one’s views to constituents and not the manner of communication that justifies application of the Westfall Act.
- “[T]hese tweets fit within the “wide range of legitimate ‘errands’ performed for constituents,” which includes “preparing so-called ‘news letters’ to constituents, news releases, and speeches delivered outside the Congress.””
- “Senator Warren and Representative Haaland sought to oppose the President and his legislative goals by putting on record their opposition to Plaintiffs’ actions.”
- “[T]he tweets were made in furtherance of the interests of Defendants’ employers.”
- “[The tweets] were calculated to serve the interests of Defendants’ constituents (i.e., employers) by informing them of Defendants’ views regarding a topical issue and related legislation.”

After consideration of the above, the 6<sup>th</sup> Circuit held, “Plaintiffs were “engaging in behavior appropriate to the normal scope of [their] employment.” . . . Congressmembers routinely broadcast their views on pending legislation and related current events through press releases, televised speeches, interviews, and, as in the present case, through social media postings. Defendants’ statements were made within the scope of their employment.”

### ANALYSIS

Brooks is a Member of Congress. Brooks is subject to the Westfall Act. The issue is whether Brooks acted in the scope of his employment as a Member of Congress when Brooks (or his Congressional staff) issued tweets and when Brooks gave the Ellipse Speech, at the request of the White House, on the issue of whether to accept or reject the electoral college vote submittals of various states, a matter before Congress as explicitly required by the U.S. Constitution, generally, the U.S. Code, generally, and 3 U.S.C. 15, in particular.

Brooks’ constituents overwhelmingly supported Donald Trump in the 2020 General Election (Trump handily beat Biden in Brooks’ Congressional District by a huge margin). As such, Brooks represented the interests of his constituency when Brooks challenged the electoral college vote submittals of states whose election processes were less than reliable in the judgment of Brooks.

However, under the law as stated in Williams v. U.S., 71 F.3d 502, it makes no difference whether Brooks is right or wrong. Brooks’ tweets, Ellipse Speech, and related conduct were indisputably made in the context of and in preparation for Congressional votes on January 6, 2021, as specifically mandated by 3 U.S.C. 15, and,

as such, were clearly within the scope of his employment as a United States Congressman.

Swalwell having made no other Complaint allegations of required specificity, and having no credible evidence supporting any other Complaint allegations, and pursuant to the analysis and holdings in Wuterich v. Murtha, 562 F.3d 375 (DC Court Appeals, 2009), Council on American Islamic Relations v. Ballenger, 444 F.3d 659 (D.C. Cir. 2006), and Williams v. U.S., 71 F.3d 502 (5<sup>th</sup> Cir. 1995) (all of which related to allegedly false statements made by Congressmen), Operation Rescue Nat'l v. United States, 975 F. Supp. 92, 106 (D. Mass. 1997), and John Does 1-10 v. Debra Haaland; Elizabeth Warren (U.S. Court of Appeals, 6<sup>th</sup> Cir. 2020, File Name 20a0293p.06, No. 19-6347), Brooks should be dismissed as a defendant in this matter concerning all applicable Complaint Counts and the United States of America should be substituted as a defendant in his stead pursuant to the Westfall Act.

Respectfully submitted this 24<sup>th</sup> day of June, 2021.



Morris Jackson "Mo" Brooks, Jr.  
1000 New Jersey S.E., Unit 1208  
Washington, DC 20003  
256-656-2752

#### CERTIFICATE OF SERVICE

I certify that on June 24, 2021, a copy of the foregoing was filed with the Clerk via email to [DCDml\\_Intake@dcd.uscourts.gov](mailto:DCDml_Intake@dcd.uscourts.gov), which, as Brooks understands it, will send a copy to all counsel of record.



Morris Jackson "Mo" Brooks, Jr.  
1000 New Jersey S.E., Unit 1208  
Washington, DC 20003  
256-656-2752

U.S. Dist. Ct. for the Dist. of Columbia

Case # 1:21-CV-586 APM

MO BROOKS  
5TH DISTRICT, ALABAMA

2180 RAYBURN HOB  
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www.brooks.house.gov



Congress of the United States  
House of Representatives

June 7, 2021

SCIENCE, SPACE, AND  
TECHNOLOGY COMMITTEE  
SPACE AND AERONAUTICS SUBCOMMITTEE  
ARMED SERVICES COMMITTEE  
CYBER, INNOVATIVE TECHNOLOGIES, AND  
INFORMATION SYSTEMS SUBCOMMITTEE  
STRATEGIC FORCES SUBCOMMITTEE

The Honorable Channing D. Phillips  
Acting United States Attorney for the District of Columbia  
United States Attorney's Office  
555 4th Street, NW

United States Attorney Phillips:

A lawsuit was served (illegally, but I am unsure of effect) on me on June 6, 2021. Hence, the Complaint Answer may be due as early as June 27, 2021. Please act expeditiously and accordingly.

Attached to this letter are copies of:

- (1) Eric Swalwell's lawsuit against me (in my capacity as a Congressman and within the scope of my federal employment).
- (2) The draft of my Petition To Certify Defendant Mo Brooks Was Acting Within The Scope Of His Office Or Employment (hopefully saving your staff research time).
- (3) My Affidavit in support of my Petition

As a federal employee, and as required by law, I assert to you my right to dismissal and substitution of the United States in my stead as the defendant under the Federal Tort Claims Act, 28 USC 2679, et al.

After reviewing the filed complaint, petition and affidavit, and in accord with the facts and applicable law, I hereby request that you certify to the Court that I was acting within the scope of my employment with respect to Plaintiff's alleged claims.

Respectfully,

Congressman Mo Brooks (AL-05)

CC:  
Attorney General Merrick Garland  
Acting Assistant Attorney General Brian Boynton (Civil Division)  
Acting Assistant Attorney General Helaine Greenfeld (Office of Legislative Affairs)

Email sent to: [doj.representation@usdoj.gov](mailto:doj.representation@usdoj.gov)  
[doj.correspondence@usdoj.gov](mailto:doj.correspondence@usdoj.gov)

Second copy mailed to,  
Office of Legislative Affairs  
U.S. Department of Justice (DOJ)  
950 Pennsylvania Avenue, NW, Room 1145  
Washington, DC 20530

U.S. Dist. Court for the Dist. Col.  
Case# 1:21-cv-586 APM

MO BROOKS  
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Congress of the United States  
House of Representatives

SPACE, AND  
TECHNOLOGY COMMITTEE  
SPACE AND AERONAUTICS SUBCOMMITTEE  
ARMED SERVICES COMMITTEE  
CYBER, INNOVATIVE TECHNOLOGIES, AND  
INFORMATION SYSTEMS SUBCOMMITTEE  
STRATEGIC FORCES SUBCOMMITTEE

June 7, 2021

Chairman Zoe Lofgren  
1309 Longworth House Office Building  
Washington, D.C. 20515

Ranking Member Rodney Davis  
1309 Longworth House Office Building  
Washington, D.C. 20515

Chairman Lofgren and Ranking Member Davis:

A lawsuit was served (illegally, but I am unsure of effect) on me on June 6, 2021. Hence, the Complaint Answer may be due as early as June 27, 2021. Please act expeditiously and accordingly.

As required under 28 USC 2679, I am supplying the Committee with a copy of the pleadings and process of the civil action filed against me by Eric Swalwell (the Complaint, my draft Petition To Certify Defendant Mo Brooks Was Acting Within The Scope Of His Office Or Employment, and my supporting Affidavit – I hope the latter two documents save your offices research time and establish how factually and legally compelling the assertion of my rights are).

As a Member of Congress and a federal employee, I seek certification that I was acting within the scope of my employment in relation to the allegations in the civil action filed against me by Eric Swalwell. The role of the House Administration Committee is to submit the Agency Report as required under 28 CFR § 15.2. According to the procedures and processes through the Federal Tort Claims Act and other statutes, I hereby request that the House Administration Committee, or any other Office or Committee with jurisdiction, provide a full detail of the facts related to the scope of my employment to the United States Attorney for the District of Columbia and the Attorney General recommending that they certify my actions were within the scope of employment.

As my draft Petition establishes, the facts, complaint allegations and law overwhelmingly compel support for my position.  
Respectfully,

*Mo Brooks*

\_\_\_\_\_  
Congressman Mo Brooks (AL-05)

CC: Office of General Counsel, House of Representatives

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ERIC SWALWELL,

Plaintiff,

v.

Case Number: 1:21-CV-586

DONALD J. TRUMP, DONALD J. TRUMP, JR.,  
REPRESENTATIVE MO BROOKS & RUDOLPH  
GIULIANI,

Defendants.

**Mo Brooks Affidavit In Support of Petition to Dismiss & Substitute**

I solemnly swear or affirm that the following information is true and accurate to the best of my knowledge, recollection and belief:

1. My name is Morris Jackson Brooks, Jr., nicknamed "Mo Brooks".
2. I represent Alabama's 5<sup>th</sup> Congressional District in the United States Congress, was first sworn into Congress on or about January 3, 2011, and have been a Member of Congress since then.
3. I am employed and paid by the United States Government (as a Member of the United States Congress) and employed by the citizens of Alabama's 5<sup>th</sup> Congressional District, all of whom control one or more aspects of my employment.
4. Alabama's 5<sup>th</sup> Congressional District citizens elected and employed me as their congressman in 2010, 2012, 2014, 2016, 2018 and 2020. My employment as a congressman is for a two-year term and may be terminated by the citizens I represent at any Congressional election.
5. As a Member of Congress, I swore the following oath of office pursuant to 3 U.S.C. 3331 and as required by the U.S. Constitution, Article VI: "I, Morris Jackson Brooks, Jr., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

6. As a Member of Congress, I am subject to the will and rules of the U.S. House of Representatives ("House"). For example, the House controls my conduct (pursuant to U.S. Constitution Article I, Section 5 and via its rules and procedures), to include but not be limited to, when I must vote on the House Floor, the subject matters of those votes, the wearing of masks mask on the House Floor, what I can bring on the House Floor, what I must wear on the House Floor, what I may or may not say on the House Floor, what ethical obligations control my conduct, whether I may be expelled from Congress, and the like.

7. My Congressional job duties include but are not limited to:

- Making speeches (on the House Floor and in public) on public policy issues, current events, American history, American civics, elections events and issues, and the like.
- Issuing public and private statements on public policy issues, current events, American history, American civics, elections events and issues, and the like.
- Interacting with the White House, President, Senators and Members of Congress on public policy issues, current events, elections events and issues, and the like.
- Participating in news conferences concerning public policy issues, current events, American history, American civics, elections events and issues, and the like.
- Persuading, encouraging, and cajoling (by various means) Congressmen, Senators and Presidents to vote on, or interact with, legislation and public policy issues in the way Brooks' constituents and Brooks believe are best for America,
- Participating in radio talk shows, zoom meetings, TV interviews, and other news media interactions about public policy issues, current events, American history, American civics, elections events and issues, and the like.
- Voting on and debating resolutions, legislation, amendments and the like on the House Floor and in House committees, and
- Many other things too numerous to itemize.

8. According to the Alabama Secretary of States' web site at [sos.alabama.gov](https://sos.alabama.gov), the official November 3, 2020 election results for Donald J. Trump and Joseph R. Biden in Alabama's 5<sup>th</sup> Congressional District five counties are:

	<u>Donald J. Trump:</u>	<u>Joseph R. Biden:</u>	<u>Total:</u>
Jackson County	19,670 (84%)	3,717	23,387
Lauderdale County	31,721 (73%)	11,915	43,636
Limestone County	34,640 (72%)	13,672	48,312
Madison County	102,780 (54%)	87,286	190,066
<u>Morgan County</u>	<u>39,664 (75%)</u>	<u>13,234</u>	<u>52,898</u>
<b>Totals:</b>	<b>228,475 (64%)</b>	<b>129,824</b>	<b>358,299</b>

9. My conduct alleged in Swalwell's Complaint was primarily motivated by the following:

- A. My desire to represent the will of my employer, the citizens of Alabama's 5<sup>th</sup> Congressional District, who overwhelmingly desired that Donald J. Trump serve as President of the United States from 2021 through 2025; and
- B. My oath of office to the Constitution, and, hence, the law of the United States of America (to include but not be limited to: Article I, Section 4's Election Clause; the 12<sup>th</sup> Amendment; 3 U.S.C. 15; 2 U.S.C. 7; and the like).

10. It is my judgment, based on various interactions and communications with them, that a majority or plurality of Alabama 5<sup>th</sup> Congressional District citizens strongly support my conduct concerning the few matters specifically and accurately alleged in Swalwell's Complaint about my efforts to only count lawful votes cast by eligible American citizens in the November 3, 2020 election.

11. Title 3 U.S.C. 15 imposes on Senators and Members of Congress the duty and job responsibility of examining and accepting or rejecting the electoral college vote submittals of the states. 3 U.S.C. 15 states, in part (emphasis added):

Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the

vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified.

12. Swalwell Complaint ¶ 1 alleges “Brooks, defiled that sacrament through a campaign of lies and incendiary rhetoric which led to the sacking of the United States Capitol on January 6, 2021.” Swalwell lies. All statements I made about voter fraud and election theft concerning the November 3, 2020 elections were made by me pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular, were made in good faith, are believed by me to be true and accurate to the best of my knowledge and belief at the time the comments were made, and are backed up by the best evidence I could obtain and examine.

13. Swalwell Complaint ¶ 2 alleges, “The Defendants filed frivolous lawsuits.” Swalwell errs. To the best of my knowledge, recollection and belief, I have filed no lawsuits against anyone relating to the November 3 2020 elections. I add this caveat because my Congressional staff may have done things (joining me as a plaintiff to something) that, at this time, I have no recollection or memory of.

14. Swalwell Complaint ¶ 2 alleges, “The Defendants tried to intimidate state officials.” Swalwell errs. To the best of my knowledge, recollection and belief, I have not communicated with any state election officials in any state allegedly won by Joe Biden and, hence, have not attempted to intimidate any such state officials.

15. Swalwell Complaint ¶ 2 alleges, “Defendants called their supporters to Washington, D.C. on the day Congress met to certify Joe Biden’s win, telling them to “Stop the Steal” and “be wild.”” Swalwell errs. To the best of my knowledge, recollection and belief, I never asked a single supporter of mine to travel to Washington, D.C. on January 6, 2021 to the so-called “Stop the Steal” rally or to “be wild” in Washington.

16. Swalwell Complaint ¶ 2 alleges, “some were stirred to violence by the Defendants’ words on that day.” I never, on or before January 6, 2021, used any “words” designed to cause anyone to attack the U.S. Capitol or to engage in any form of violence. In any event, the words I did use to stop voter fraud and election theft were

uttered pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

17. Swalwell Complaint ¶ 4 alleges I used “false and incendiary allegations of fraud and theft”. Swalwell errs. In my judgment, the evidence is overwhelming that the November 3, 2020 elections were the subject of voter fraud and election theft on a scale never before seen in America and that, if only lawful votes cast by eligible American citizens were counted, Donald Trump won the electoral college and should be serving his second term as President of the United States. I welcome public debate with anyone who claims otherwise. In any event, my allegations of voter fraud and election theft were uttered pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

18. Swalwell Complaint ¶ 4 alleges “a violent mob attacked the U.S. Capitol” “in direct response to the Defendants’ express calls for violence at the rally.” Swalwell errs. I never called for violence at the U.S. Capitol nor did I ever call for violence in my Ellipse Rally speech. My Ellipse Rally speech was made more than a mile from the U.S. Capitol and roughly three or more hours before the U.S. Capitol attack.

19. Swalwell Complaint ¶ 7 alleges “the Defendants watched the events unfold on live television.” Swalwell lies. I never saw any live television coverage of the January 6, 2021 violence at the Capitol nor did I ever see a single protestor, peaceful or violent, during my time on the House Floor or at the U.S. Capitol on January 6, 2021.

20. Swalwell Complaint ¶ 8 alleges “The horrific events of January 6 were a direct and foreseeable consequence of the Defendants’ unlawful actions.” Swalwell errs. First, none of my actions were “unlawful”. Second, I have given hundreds if not thousands of political and/or rally speeches over the past four decades, many involving very similar language to the language used in my Ellipse Speech. Many of my speeches have been vigorous and inspirational. None have ever been followed by violence. Third, prior to January 6, 2021, I have never seen or heard of any Donald

Trump rally being followed by the kind of violence that occurred at the U.S. Capitol on January 6, 2021. As such, I had no inkling that roughly three or more hours after my Ellipse Rally speech, and more than a mile away, violence would occur at the U.S. Capitol.

21. Swalwell Complaint ¶ 12 alleges, "Defendants are the former President of the United States and three close associates who conspired with him and others, including the rioters who breached the Capitol on January 6, to prevent Congress from certifying President Biden's victory in the 2020 presidential election." Swalwell lies. I never unlawfully communicated or conspired with anyone to promote violence at the U.S. Capitol on January 6, 2021. I did give an Ellipse Speech as part of and pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

22. Swalwell Complaint ¶ 13 alleges, "After his electoral defeat, Trump and the other Defendants conspired to undermine the election results by alleging, without evidence, that the election had been rigged and by pressuring elected officials, courts, and ultimately Congress to reject the results." Swalwell lies. In my judgment, the evidence is overwhelming and compelling that the December 3, 2020 elections were the most voter fraud and election theft riddled of any election in United States history. I welcome any public debate with Swalwell concerning the same. In my judgment and opinion, Swalwell's position to the contrary is indefensible and unsupported by the evidence. In my judgment and opinion, if only lawful votes were counted by eligible American citizens, then President Donald Trump would have been declared the winner of the 2020 presidential election contest. In any event, and as stated previously, I never "pressured" election officials or the courts to do anything in conflict with any law of the United States or any of the fifty states.

23. Swalwell Complaint ¶ 16 alleges, "Trump Jr. conspired with the other Defendants." Swalwell lies. To the best of my knowledge, belief and recollection, I never communicated with Trump Jr., much less "conspired" with Trump Jr., on or after November 3, 2020 and on or before January 6, 2021.

24. Swalwell Complaint ¶ 18 alleges, "Giuliani conspired with the other Defendants." Swalwell lies. While I recall a meeting at the White House in which a significant number of Congressmen were briefed by Giuliani on Giuliani's view of November 3, 2020 election issues, to the best of my recollection, I used different arguments and evidence supporting my belief of voter fraud and election theft and did not use anything of substance presented by Giuliani. In any event, the limited communications I had with Giuliani were made pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

25. Swalwell Complaint ¶ 20 alleges I was "acting in[my] personal capacity" concerning all events alleged in the Complaint. Swalwell errs. As is more fully shown in this affidavit, at all times related to Swalwell Complaint allegations, I acted pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

26. Swalwell Complaint ¶ 20 alleges I alleged "without evidence, that the election had been rigged and by pressuring elected officials, courts, and ultimately Congress to reject the results." Swalwell errs. I never "pressured" election officials or the courts to do anything in conflict with any law of the United States or any of the fifty states. But I certainly did everything lawful within my power and duties as a congressman, as permitted by the U.S. Constitution and U.S. Code, to prevent acceptance of electoral college vote submittals from states whose election systems were so badly flawed as to render them untrustworthy and unworthy of my trust and vote. In any event, the aforesaid activity was made pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

27. Swalwell Complaint ¶ 21 alleges I "directly incited the violence at the Capitol that followed." Swalwell lies. I never, on or after November 3, 2020 and on or before

January 6, 2021, asked or encouraged anyone to commit acts of violence at the United States Capitol.

28. Swalwell Complaint ¶ 59 alleges, "The other Defendants—Mo Brooks, Rudolph Giuliani, and Donald Trump Jr.—all conspired with Trump, each other, and others to subvert the will of the people in the 2020 election." Swalwell errs. To the contrary, in my capacity as a Congressman, I worked to enforce the Constitution and U.S. Code and protect the will of the people by protecting and only counting the lawful votes cast by eligible American citizens. In any event, the aforesaid activity was made pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

29. Swalwell Complaint ¶ 78 alleges I tweeted, "As a U.S. member, I'm going to be very hesitant to certify the results of this election if Joe Biden is declared the winner under these circumstances b/c I lack faith that this was an honest election. Listen to my interview on @WVNN where I explain why." To the best of my knowledge, recollection and belief, I did not issue this tweet, my Congressional staff did, and I did not find out about it until much after it was tweeted.

30. Swalwell Complaint ¶ 79 alleges I tweeted, "Count Every LEGAL Vote!" To the best of my knowledge, recollection and belief, I did not issue this tweet, my Congressional staff did, and I did not find out about it until much after it was tweeted.

31. Swalwell Complaint ¶ 80 alleges I tweeted, ""Congress has the absolute right to reject the submitted electoral college votes of any state... @RepMoBrooks told me. "Any I'm not going to put my name in support of any state that employs an election system that I don't have confidence in." To the best of my knowledge, recollection and belief, I did not issue this tweet, my Congressional staff did, and I did not find out about it until much after it was tweeted.

32. Swalwell Complaint ¶ 82 alleges I tweeted, "IMHO, Joe Biden DID NOT win vote majority in Georgia. Per its right & duty, Congress should reject any Georgia submission of 16 electoral college votes for Joe Biden. That is EXACTLY what I hope to help do. See below lawsuit for more! SORDID!"

33. Swalwell Complaint ¶¶ 84 alleges, "BIG DAY: I speak at tomorrow's #StoptheSteal rally @ 7:50 am CT. @realDonaldTrump asked me personally to speak & tell the American people about the election system weaknesses that the Socialist Democrats exploited to steal this election. Watch: youtube.com/watch?v-HrGJfQ.." To the best of my knowledge, recollection and belief, I did not issue this tweet, my Congressional staff did, and I did not find out about it until much after it was tweeted.

34. The above five tweets were issued on a Congressional office twitter account, using Congressional office electronic devices, by Congressional office staffers (or, perhaps one by me), concerning a Congressional office public policy issue: whether to accept or reject electoral college vote submissions by various states on the statutorily prescribed January 6, 2021 (3 U.S.C. 15), and, most likely, from a Congressional office.

35. Swalwell Complaint ¶¶ 81 alleges, "On November 19— . . . —Brooks reiterated that "Congress controls who becomes president." I concur. This is an accurate statement of the law pursuant to the U.S. Constitution and U.S. Code. Further, this comment was uttered pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

36. Swalwell Complaint ¶¶ 83 alleges, "Brooks did these things in an effort to overturn the 2020 Presidential election results and to aid the other Defendants' efforts to do the same." Swalwell errs. I did the things I did to protect and defend the U.S. Constitution, federal statutes, and the lawful votes cast by eligible American citizens. In any event, I did these things pursuant to the duties of my Congressional staff and my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

37. Also, for clarity, Donald Trump did not personally invite me to speak at the Ellipse Rally on January 6, 2021. The invitation was extended by a White House employee to me during regular office hours while I was in my Rayburn House Office Building office. I then delegated to my Congressional staff the task to work out the details (enough time to say something substantive, at a time wherein it would not interfere with my House

Floor duties on January 6, 2021). Later on January 5, 2021, my Congressional Staff informed me that they had nailed down the approximate speaking time and length, at which time I informed my Congressional staff that the speaking times and terms were good enough to cause me to take the time to draft and prepare a January 6, 2021 speech, which I then did. All of the work described in this paragraph was done pursuant to the duties of my Congressional staff and my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

38. I drafted my January 6, 2021 Ellipse Speech in my office at the Rayburn House Office building on my Congressional Office computer. I also timed, reviewed and revised, and practiced my Ellipse Speech in my office at the Rayburn House Office Building. As such, this Ellipse Speech preparatory work was done pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

39. Swalwell Complaint ¶ 84 alleges, "As recounted below, Brooks told the attendees at the rally that their country was literally being taken from them, that the scale of wrongdoing was of historical proportions, that it was time to start "kicking ass," and that the individuals who were there that day had to be ready to perhaps sacrifice even their lives for their country." Swalwell distorts and lies. My "kicking ass" comment referred to what patriotic Republicans needed to do in the 2022 and 2024 elections and had zero to do with the Capitol riot. My "sacrific[ing] even their lives for their country" comments related to what Americans have done throughout our history, are doing overseas right now, and may have to do in the future, to protect our Republic. In any event, the words were uttered pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

40. Swalwell Complaint ¶ 85 alleges, "Brooks said all these things solely in his personal capacity for his own benefit and/or personal partisan aims." Swalwell errs. I

uttered these words to protect the U.S. Constitution, federal laws, and the votes lawfully cast by eligible American citizens. In any event, the words were uttered pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

41. Swalwell Complaint ¶ 100 alleges, "The Defendants, and others, incited many of the other attendees to violence, whipping them into a frenzy and turning them into a violent mob that participated in the attack." Swalwell errs. I spoke at the Ellipse Rally more than a mile away from the Capitol and more than three hours before the violence at the Capitol. I also did not ask anyone to resort violence in any way, shape or form. In any event, the words I uttered were pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

42. Swalwell Complaint ¶ 105 alleges, "The theme of Brooks' speech was that patriots are sometimes required to make extraordinary sacrifices for their country, and that day, January 6, was one such occasion." Swalwell errs. At no time did I, during my January 6, 2021 Ellipse Speech, advocate that anyone make any "extraordinary sacrifices for their country" on January 6, 2021 at the U.S. Capitol. The one thing I asked Ellipse attendees to do was chant "USA", thus conveying that Ellipse attendees were law-abiding, patriotic American citizens exercising their First Amendment free speech right and right to petition their government for redress of their grievances. In any event, the words I uttered were pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

43. Swalwell Complaint ¶ 106 alleges, "Brooks told the crowd, just one minute into his speech, "We are great because our ancestors sacrificed their blood, their sweat, their tears, their fortunes, and sometimes their lives." I said the above words to remind America who we are and how we became the greatest nation in world history. I chose these particular words (and have used them in hundreds of speeches) because they are

representative of America's history and, in particular, are a spin-off of the last sentence in the United States Declaration of Independence, in which the Declaration signers state, "we mutually pledge to each other our Lives, our Fortunes and our sacred Honor." In any event, the words I uttered were pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

44. Swalwell Complaint ¶ 106 further alleges, "He continued that the country faced a crisis of historical magnitude, its greatest crisis since World War II, and perhaps even the Civil War: We are here today because America is at risk unlike it has been in decades, and perhaps centuries." I said these words pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

45. Swalwell Complaint ¶ 107 alleges, "He told the crowd that "Socialist Democrats" were attacking their freedoms and had literally stolen an election from them, and now had to be stopped: We are not gonna let the socialists rip the heart out of our country. We are not gonna let them continue to corrupt our elections and steal from us our God-given right to control our nation's destiny." The part of this allegation that contain my quoted words I uttered were pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

46. Swalwell Complaint ¶ 108 alleges, "And he told the crowd, before repeating his theme, that it was time to start "kicking ass": Today is the day American patriots start taking down names and kicking ass! [Crowd cheers.] Now, our ancestors sacrificed their blood, their sweat, their tears, their fortunes, and sometimes their lives, to give us, their descendants, an America that is the greatest nation in world history. So I have a question for you: Are you willing to do the same? My answer is yes. Louder! Are you willing to do what it takes to fight for America? Louder!! Will you fight for America?!"

Swalwell errs by splicing one sentence and omitting the preceding sentence in a two-sentence paragraph that emphasizes I am talking about "kicking ass" in the 2022 and 2024 **ELECTIONS!** The full paragraph states, in toto:

**But let's be clear, regardless of today's outcome, the 2022 and the 2024 elections are right around the corner**, and America does not need and cannot stand, cannot tolerate any more weakling, cowering, wimpy Republican Congressmen and Senators who covet the power and the prestige the swamp has to offer, while groveling at the feet and the knees of the special interest group masters. **As such, today** is important in another way, today is the day American patriots start taking down names and kicking ass.

My intent in uttering these words was to encourage Ellipse Rally attendees to put the 2020 elections behind them (and, in particular, the preceding day's two GOP Senator losses in Georgia) and to start focusing on the 2022 and 2024 elections.

"As such" is the key phrase in the second sentence because it emphasizes that the paragraph's second sentence is in the context of the paragraph's first sentence's 2022 and 2024 election cycles (that began November 4, 2020).

Consistent with this is the middle part of the paragraph's second sentence, which states, "taking down names". Whose names are to be "taken down"? The names of those Senators and Congressmen who do not vote for honest and accurate elections after the House and Senate floor debates later that afternoon and evening. Once we get and "take down" their names, our task is to "kick their ass" in the 2022 and 2024 election cycles.

47. Swalwell alleges in ¶ 109 that, "Brooks said all those things solely in his personal capacity for his benefit and/or his personal partisan aims." Swalwell errs. I gave the Ellipse Speech because I love my country and because I sought (amongst other things) to remind and inspire Ellipse Rally citizens:

- About America being the greatest nation in world history,
- About America having achieved that height because of foundational principles that have allowed us as a nation to excel and combined to make us who we are,
- About America having reached greatness because of the sacrifices of our ancestors,

- Who had just suffered horrible defeats in the November 3, 2020 elections followed by two horrible losses of U.S. Senate seats in Georgia, the day before (on January 5, 2021), to put the 2020 elections behind them (and, in particular, the preceding day's two Georgia GOP Senate losses) and start focusing on the 2022 and 2024 elections, which had already begun,
- To exercise their First Amendment freedom of speech rights and First Amendment right to petition their government for redress of grievances by chanting the words "USA",
- That America's foundational principles that have combined to make America the greatest nation in world history are at great risk, because America is at risk, because 2020 voter fraud and election theft activities were the worst in American history,
- About how we, as Americans, must work hard and sacrifice to do what is necessary to protect our Republic,
- About who we are as a nation.

All of this I did pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

48. Swalwell alleges in ¶ 110 that Trump and Trump Jr. were standing back stage when I spoke. Swalwell errs. The Complaint allegations also misrepresent that I was one of many back-to-back speakers, one after the other. That is false. I arrived in the Ellipse vicinity at roughly 8:45AM E.T. while music was playing. The Ellipse Rally crowd was still making their way to the Ellipse Rally grounds. After much discussion about how long my remarks could be (persons at the Ellipse wanted to significantly cut my speech time), we reached an agreement. I gave my speech. In the ten to twenty minutes I was in the Ellipse vicinity before I spoke, music was played. No other speaker spoke before me while I was there. In the roughly ten minutes it took me to leave the Ellipse premises after I spoke, I heard music and no other speakers. While at the Ellipse Rally stage, I saw no other speakers. I don't know how long the music lasted after my speech. All of this I did pursuant to my duties and job as a United States

Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

49. My Ellipse Speech was given during normal Congressional work hours. I left my office in the Rayburn House Office building to go to the Ellipse. I was driven to and from the Ellipse by a Congressional staffer. Two other Congressional staffers went with me from the car, through security, and to the Ellipse Rally stage. After I spoke, one or both of the same two Congressional staffers went with me from the Ellipse Rally stage to our waiting car that was being driven by the third Congressional staffer. All of this I did pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

50. Swalwell Complaint ¶ 129 states, "Trump and the other Defendants had put out a clear call to action, and the crowd responded." As the transcript of my Ellipse Speech establishes, the only "clear call to action" I requested of the Ellipse Rally attendees was to:

- Chant "USA", thus exercising their First Amendment Rights
- Take down the names of those Congressmen and Senators they want to beat in the 2022 & 2024 elections.
- In the 2022 & 2024 elections, beat (kick the ass of) those Congressmen and Senators whose names were taken down (because they did not vote the way Ellipse Rally attendees believed they should vote).

51. Swalwell Complaint ¶¶ 169 & 170 allege, "Defendants, by force, intimidation, or threat, agreed and conspired with one another to undertake a course of action to prevent President Joseph Biden and Vice President Kamala Harris from being certified as the winners of the 2020 presidential election and from accepting and/or holding their respective offices." Swalwell lies. At no time did I advocate "force, intimidation, or [unlawful] threat" against anyone nor did I ever conspire or communicate with any of the other defendants about using "force, intimidation, or [unlawful] threat" concerning

anything having to do with the November 3, 2020 election voter fraud and election theft efforts.

52. Swalwell Complaint ¶¶ 171 & 172 allege, "Defendants among themselves and with others agreed and conspired to injure members of Congress" or "property of members of Congress". Swalwell lies. At no time did I conspire with anyone to injure members of Congress, anyone else, or any property on or about January 6, 2021.

53. Swalwell Complaint ¶ 173 alleges, "Defendants made public statements knowingly designed to undermine public confidence in the election. Such statements included falsely claiming that the election had been "rigged" and that fraudulent voting had been widespread enough to affect the outcome." Swalwell errs. As previously stated, I am persuaded by what is, to me, overwhelming and compelling evidence that, if only lawful votes cast by eligible American citizens were counted, Donald Trump won the electoral college and should be serving his second term as President of the United States. I welcome a public debate with most any elected official who disagrees. In any event, the statements I uttered were pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

54. Swalwell Complaint ¶ 175 alleges, "Defendants promoted, supported, and endorsed a rally near the White House on January 6, 2021." Swalwell errs. To the best of my recollection, I never personally helped organize, "promote, support or endorse" the Ellipse Rally in any public medium. To the best of my recollection, I never sent out a news release, appeared in public media, or gave a speech in which I encouraged anyone to attend the Ellipse Rally (excluding my staff that escorted me to and from the Ellipse Rally before and after I spoke). I would not have even gone to the Ellipse Rally if I had not received the White House request that I speak at the Ellipse Rally. In any event, everything I did relating to the January 6, 2021 Ellipse Rally was done pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

55. Swalwell Complaint ¶ 179 alleges, "Brooks intended these words as a threat of violence or intimidation to block the certification vote from even occurring and/or to coerce members of Congress to disregard the results of the election." As stated above, I never in any way, shape or form advocated violence at the Capitol as a way to "block the certification vote" or "coerce members of Congress to disregard the results of the election" and, as such, certainly never intended any such thing. In any event, everything I did relating to the January 6, 2021 Ellipse Rally was done pursuant to my duties and job as a United States Congressman concerning presidential election dispute resolution obligations imposed on Congress by the U.S. Constitution, Amendment 12 in particular, and the United States Code, 3 U.S.C. 15 in particular.

56. Swalwell Complaint ¶ 182 alleges, "Each of the Defendants was aware of each other's incendiary remarks at the rally—and other, similar statements—and endorsed and supported them as part of, and in furtherance of, the Conspiracy." Swalwell lies. I did not watch any part of the rally live (excepting the short time I was there to give my speech, during which time I heard no other speakers and only heard music). As such, I am unaware of what Giuliani said or what Trump Jr said. I am aware (via hearsay) of snippets of Trump's speech but, even then, only from internet articles that happened to touch on the Ellipse Rally and bits and pieces of Trump's speech.

57. Swalwell Complaint ¶ 187 alleges, "Defendants, by force, intimidation, or threat, conspired to prevent President Joseph Biden and Vice President Kamala Harris from being certified as the winners of the 2020 presidential election and from accepting and/or holding their respective offices." Swalwell errs. I never conspired with anyone to use illegal "force, intimidation, or threat" to do anything concerning the Ellipse Rally, the November 3, 2020 election contest, the January 6, 2021 Capitol protest or the January 6, 2021 attack on the Capitol.

58. Swalwell Complaint ¶ 189 alleges, "The Defendants commanded the attendance of tens of thousands of individuals at the rally in the District on January 6, 2021 for the purpose of coercing members of Congress to disregard the election results, and further incited thousands to violently storm the Capitol building shortly thereafter." Swalwell errs. To the best of my recollection, the only people I asked to go to the Ellipse Rally were Congressional staffers who accompanied me and drove me to and from the

Ellipse Rally. As such, I never "commanded" anyone to illegally coerce anyone to do anything nor did I incite anyone to engage in violence at the Capitol.

59. Swalwell Complaint ¶ 190 alleges, "Defendants had the power to stop the rioters but refused and, instead, encouraged them." Swalwell errs. As stated above, I had no power to "stop the rioters" at the Capitol nor did I "instead, encourage them".

60. Swalwell Complaint ¶¶ 191 through 261 simply reallege, either verbatim or in substance and effect, false allegations previously alleged and rebutted in this affidavit. As such, I incorporate the foregoing statements in response to these duplicative allegation paragraphs.

61. I only gave an Ellipse Speech because the White House asked me, in my capacity as a United States Congressman, to speak at the Ellipse Rally. But for the White House request, I would not have appeared at the Ellipse Rally.

62. My entire Ellipse Speech (as transcribed by Clay Mills of my Congressional Staff) is:

*Thank you so much for being here today to help save America.*

*Now, I'm congressman Mo Brooks from Alabama's Fifth Congressional District. And I've got **a message that I need you to take to your heart, and take back home, and along the way stop at the Capitol.**<sup>1</sup>*

*For seven decades, America's been the greatest nation in world history. We have a standard of living that is the best in history. We have a military that is unmatched in history. And we are a beacon of freedom for all.*

*Have you ever thought about why? Is it because we are just lucky? I would submit, no.*

*We are great because our ancestors sacrificed their blood, their sweat, their tears, their fortunes, and sometimes their lives. And what did they sacrifice for, they sacrificed for foundational principles that that have combined to make us the greatest nation in world history.*

*First, they believed in moral principles that are the compass, to help us do the right thing rather than the wrong thing, with the power we enjoy as a great nation.*

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<sup>1</sup> Mo Comment: At the beginning of my speech, I plainly state I have "a message" (a verbal "message", not a call to violence). That message is stated at the end of the speech, to chant and verbalize "USA". Chanting "USA" is the only thing I asked anyone to do!

*Second, we have a Bill of Rights that protects individual liberty from abusive government power. A Bill of Rights that is based on the principle that a government is simultaneously our best friend and our worst enemy. That a government powerful enough to give us anything is powerful enough to take everything from us.*

*Third, we are a free-enterprise economy, an economy where you get to decide what you want to do with your God-given talents. An economy based on freedom and liberty, that allows us to individually excel!*

*Fourth, we are a republic! We as individuals collectively control how our government works and what are destiny will be. But we are here today because America is at risk unlike it has been in decades and perhaps centuries.*

*Socialist Democrats attack and mock our moral values, even to the point of sarcastically in the United States Capitol, one of the most revered places in America, mockingly closing their hedonistic prayers with Amen and awomen! What is that?*

*Socialist Democrats attack our Bill of Rights on a daily basis. They attack Freedom of speech, they attack Freedom of association, they attack Freedom of all kinds including the right to bear arms. Now, let's be clear about these Socialist Democrats.*

*They also want to destroy our free enterprise system, they don't trust you with your individual liberty, and freedom to do what's best for yourselves or your families.*

*However, we're going to stop them.*

*Now, we have definitely had some setbacks with what happened in November. We have had some setbacks with what happened last night in Georgia. But we are not going to let the Socialists rip the heart out of our country. We are not going to let them continue to corrupt our elections, and steal from us our God-given right to control our nation's destiny.*

*The 2020 election is behind us. **Today is a time of choosing<sup>2</sup>, and tomorrow is a time for fighting.<sup>3</sup>***

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<sup>2</sup> Mo Comment: "Today is a time of choosing" (emphasis: no call for violence). Choosing what? Which Senators and Congressmen to support, and oppose, in future elections.

<sup>3</sup> Mo Comment: "tomorrow is a time for fighting". Fighting whom? Those who don't vote like we prefer. Where do we fight them? In **future elections**, as is emphasized later in the speech. Note that nowhere in the speech do I call for physically "fighting" (i.e. – inflicting pain and suffering on anyone) at the Capitol today, or at any other time!

Today is also a day of revelation and separation. **Today**, the curtain will be pulled back. And **American patriots will learn by their votes which Republican Senators and Congressman have the courage to fight for America.**<sup>4</sup>

**Today, by their votes**, Americans will learn which Republican Congressman and Senators love their bourbon, love their cigars, love their prestige, love their personal power, love their special interest group money more than they love America, because, today, Republican Senators and Congressman have a simple choice.

Today, **Republican Senators and Congressmen** will either vote to turn America into a godless, amoral, dictatorial, oppressed, and socialist nation on the decline or they will join us and they **will fight and vote**<sup>5</sup> against voter fraud and election theft, and vote for keeping America great.<sup>6</sup>

Now, I can't speak for anyone else, but I can promise you, as for me, Mo Brooks from Alabama's Fifth Congressional District **I will vote and fight for America**<sup>7</sup> on the House floor.

But let's be clear, regardless of today's outcome<sup>8</sup> **the 2022 and the 2024 elections are right around the corner**, and America does not need and cannot stand, cannot tolerate any more weakling, cowering, wimpy Republican Congressmen and Senators who covet the power and the prestige the swamp has to offer, while groveling at the feet and the knees of their special interest group masters. **As such**, today is important in another way, today is the day **American patriots start taking down names and kicking ass.**<sup>9</sup>

Now, our ancestors sacrificed their blood, their sweat, their tears, their fortunes, and sometimes their lives to give us, their descendants, an America that is the greatest nation in world history. So, I have a question for you. Are you willing to do the same? My answer is yes. Louder! Are you willing to do what it takes to fight for America? Louder! Will you fight for America?

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<sup>4</sup> Mo Comment: What votes do we learn about "today"? January 6 is when we learn how Senators and Congressmen vote on voter fraud and election theft issues.

<sup>5</sup> Mo Comment: Note that I again use the word "fight" . . . with respect to Senators and Congressmen. But this is not a literal "fight" (inflicting physical pain and suffering), it is a figurative fight on the House and Senate floors of the Capitol for the values we share. It is a fight via words and votes.

<sup>6</sup> Mo Comment: This paragraph emphasizes the choice: voting for or against voting fraud and election theft.

<sup>7</sup> Mo Comment: I use the word "fight". How did I personally and in fact "fight" "on the House floor"? With my vote and my words! I never use the word "fight" in the sense of physical violence against anyone.

<sup>8</sup> Mo Comment: Referring to the vote on election theft later in the day.

<sup>9</sup> Mo Comment: These two sentences go together. The key "linkage" phrase is at the beginning of the 2<sup>nd</sup> sentence, to-wit: "As such". The phrase "As such" emphasizes that the second sentence is in the context of the first sentence's "2022 and 2024 elections" time frame . . . and the desire to beat offending Republicans in those elections! Whose names do we "take down" in the second sentence? Those Republicans who vote contrary to our desires. When do we "take down" those names? When they vote later in the day. When do we kick those Republican asses? As is stated, in the "2022 and 2024 elections that are right around the corner."

Let me conclude with these remarks.

In 1776, at a time of great peril an American patriot by the name of Thomas Payne said: "These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands by it now, deserves the love and thanks of man and women. Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph."

Such was the mettle of our founding fathers; and today's times do try our souls, but **today we can make our voices heard for America, by uttering words, uttering words**<sup>10</sup> that cause socialists and weak-kneed Republicans on Capitol Hill to know that we, American patriots, are not going to take it anymore. That we, American patriots, are going to come right at them.

That we, American patriots, are going to take America back and restore the foundational principles that have combined to make us the greatest nation in world history.

**What are the simple words we must shout to the heavens and carry, the message, to Capitol Hill? What are the words** that cause Socialists and weak-kneed Republicans on Capitol Hill to shake in their boots and cower in their foxholes? **What are the words** that scare the hell out of Socialists and weak-kneed Republicans alike?

**Join with me! USA! USA! USA! USA ! USA! USA! USA!** Washington! America! Heed those words, because we're going to carry them right to you. USA! God Bless America; and the fight begins today!



I do solemnly swear and affirm that the foregoing statements are true and accurate to the best of my present recollection, memory, knowledge and belief.

So sworn and affirmed June 23<sup>rd</sup>, 2021.

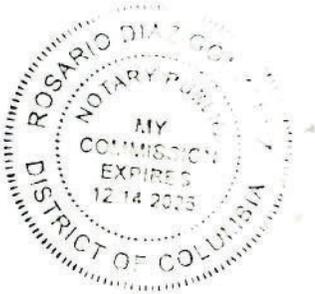
  
Morris Jackson "Mo" Brooks, Jr.

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<sup>10</sup> Mo Comment: Again, I made no call for a physical attack on the Capitol. To the contrary, I call on Ellipse Speech attendees to do one thing: "utter words"! I call on Ellipse Speech attendees to exercise their free speech rights and exercise their right to petition their government for redress of their grievances, both of which are protected by the Constitution's First Amendment.

**NOTARIZATION**

The foregoing affidavit was sworn to before me by Morris Jackson "Mo" Brooks, Jr., on June 23, 2021.



Rosario Diaz Gonzalez  
(signature)

Rosario Diaz Gonzalez  
(printed name)

Notary Public

My Commission Expires 12/14/2025

**Rosario Diaz Gonzalez**  
**Notary Public, District of Columbia**  
**My Commission Expires 12/14/2025**