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[00:01:07] **Speaker 1** This program was made possible by contributions to your PBS station from viewers like you. Thank you.

[00:01:28] **Speaker 2** Good afternoon and welcome. I'm Judy Woodruff. We want to welcome you to this PBS News Hour special live coverage of the January six hearings held by the Select Committee of the House of Representatives to investigate last year's attack on the United States Capitol. This is the third of six hearings the committee plans to hold this month after a plan hearing yesterday was postponed. Today's hearing is expected to be potentially the most important to date. Officials say it will detail the lengths to which former President Trump went to have his vice president, Mike Pence, reject the Electoral College count of the 2020 presidential election, even after the former president was told this was illegal. Beyond that, how former President Trump's actions put Mr. Pence in danger. The witnesses today are Greg Jacobs, a former counsel to Vice President Pence and retired federal appellate judge Michael Luttig. He is and has been an informal adviser to the former vice president. The witnesses just arrived. And we now you can see the hearing room, the members of this House Select Committee entering the room. We expect them to get underway very quickly. You see the chair, Bennie Thompson, taking a seat along with other members of this nine member committee. And it looks like they are going to get underway. So we will go to Chairman Thompson.

[00:03:15] **Speaker 3** The Select Committee to investigate the January six attack on a United States Capitol would be in order. Without objection, the chair is authorized to declare the committee in recess at any point. Pursuant to House Deposition Authority Regulation ten, the chair announces the committee's approval to release the deposition material represented during today's hearing. Good afternoon. This is almost no idea more un-American than the notion that any one person could choose the American president. No idea. More un-American. I agree with that. Which is unusual because former Vice President Mike Pence and I don't agree on much. These are his words spoken a few months ago about Donald Trump's attempt to pressure the former vice president. Pressured him into going along with an unlawful and unconstitutional scheme to overturn the 2020 election and give Donald Trump a second term in office that he did not win. Today, the select committee is going to reveal the details of that pressure campaign. But what does the vice president of the United States even have to do with a presidential election? The Constitution says that the vice president of the United States oversees the process of counting the Electoral College votes, a process that took place on January six, 2021. Donald Trump wanted Mike Pence to do something no other vice president has ever done. The former president wanted Pence to reject the votes and either declare Trump the winner or send the votes back to the states to be counted again. Mike Pence said no. He resisted the pressure. He knew it was illegal. He knew it was wrong. We are fortunate for Mr. Pence's courage. On January six, our democracy came dangerously close to catastrophe. That courage put him in tremendous danger. When Mike Pence made it clear that he wouldn't give in to Donald Trump's scheme. Donald Trump turned the mob on him. A mob that was chanting Hang Mike Pence. A mob that had built a hangman's gallows just outside the Capitol. Thanks in part to Mike Pence. Our democracy withstood Donald Trump's scheme and the violence of January six. But the danger hasn't receded. Led by my colleague, Mr. Aguilar. Today, we'll lay out the facts for the American people. But first, I recognize my colleague from Wyoming, Liz Cheney. Any opening statement she'd care to offer.

[00:06:29] **Speaker 4** Thank you very much, Mr. Chairman. Let me take just a few minutes today to put the topic of our hearing in broader context. In our last hearing, we heard unequivocal testimony that President Trump was told his election fraud allegations were complete nonsense. We heard this from members of the Trump campaign. We heard this from President Trump's campaign lawyers. We heard this from President Trump's former attorney general, Bill Barr. We heard this from President Trump's former acting attorney general, Jeff Rosen. And we heard this from President Trump's former acting deputy attorney general, Richard Donoghue. We heard from members of President Trump's White House staff as well. Today, we're focusing on President Trump's relentless effort to pressure Mike Pence to refuse to count electoral votes on January six. Here again is how the former vice president phrased it in a speech before the Federalist Society, a group of conservative lawyers.

[00:07:32] **Speaker 1** Earlier this week. The President, Trump said, I had the right to overturn the election, but President Trump is wrong. I had no right to overturn the election. The presidency belongs to the American people and the American people alone. And frankly, there is no idea more un-American than the notion that any one person could.

[00:07:56] **Speaker 5** Choose the American president.

[00:07:59] **Speaker 4** What the president wanted the vice president to do was not just wrong. It was illegal and unconstitutional. We will hear many details in today's hearing, but please consider these two points. First, President Trump was told repeatedly that Mike Pence lacks the constitutional and legal authority to do what President Trump was demanding he do. This is testimony from Marc Short, the vice president's chief of staff who served in the Trump administration in multiple positions over four years.

[00:08:35] **Speaker 1** But just to pick up on that, Mr. Short, is it was it your impression that the vice president had directly conveyed his position on these issues to the president, not just to the world through a dear colleague letter, but directly to President Trump many times. And he'd been consistent in conveying his position to the press president. Very consistent. Okay.

[00:08:57] **Speaker 4** But President Trump plotted with a lawyer named John Eastman to pressure Pence to do so. Anyway, as the federal court has explained, quote, Based on the evidence, the court finds that it is more likely than not that President Trump and Dr. Eastman dishonestly conspired to obstruct the joint session of Congress on January six, 2021. What exactly did President Trump know? When exactly did President Trump know that it would be illegal for Mike Pence to refuse to count electoral votes? Here is one sample of testimony given by one of the witnesses before us today, the vice president's general counsel.

[00:09:43] **Speaker 1** Did John Eastman ever admit? Or, as you know, in front of the president. That his proposal would violate the Electoral Count Act. We have you dead on the fourth.

[00:09:58] **Speaker 4** That was January 4th, two days before the attack on Congress. A second point, please listen to testimony today about all of the ways that President Trump attempted to pressure Vice President Pence, including Donald Trump's tweet at 2:24 p.m. condemning Vice President Mike Pence when President Trump already knew a violent riot was underway at the Capitol. In future hearings, you will hear from witnesses who were present inside the White House, who were present inside the West Wing on that day. But today, we focus on the earnest efforts of Mike Pence, who is determined to abide by his oath of office. As Vice President, Pence prepared a statement on January 5th and sixth explaining that he could not illegally refuse to count electoral votes. He said this to his staff.

[00:10:55] **Speaker 1** I mean, the vice president said this may be the most important thing I have to say. Does this meaning the statement, the state that he really wanted to make sure that it was just some.

[00:11:07] **Speaker 4** You will hear today that President Trump's White House counsel believed that the vice president did exactly the right thing on January 6th, as did others in the White House, as did Fox News host Sean HANNITY. Vice President Pence understood that his oath of office was more important than his loyalty to Donald Trump. He did his duty. President Trump unequivocally did not. Thank you, Mr. Chairman. I yield back.

[00:11:36] **Speaker 3** Without objection, I recognized a gentleman from California, Mr. Aguilar, for an opening statement.

[00:11:45] **Speaker 6** Thank you, Mr. Chairman. Today, we intend to show the American people. January 6th was not an isolated incident. In the weeks culminating before it was illegal scheme and deception. We've already learned that President Trump knew he lost the 2020 election. Shortly after he began to look for a way to circumvent our country's most fundamental civic tradition. The peaceful transfer of power. The president latched on to a dangerous theory and would not let go because he was convinced it would keep him in office. We witnessed firsthand what happened when the president of the United States weaponized this theory. The capital was overrun. Police officers lost their lives. And the vice president was taken to a secure location because his safety was in jeopardy. Let's take a look at the effect of Donald Trump's words and actions. I want to warn our audience that the video contains explicit content.

[00:12:52] **Speaker 1** Mike Pence is going to have to come through for us. And if he doesn't, that will be a sad day for our country. And Mike Pence, I hope you're going to stand.

[00:13:02] **Unidentified** Up for the good of our Constitution and for the good of our country. And if you're not, I'm going to be very disappointed in you.

[00:13:11] **Speaker 1** I will tell you right now. I'm telling you what I'm hearing. The pence I heard the pence just gave. No. Is that true? I'm here. I'm hearing reports that Pence caved. I'm telling you, if Pence came, we're going to drag motherfuckers through the streets. You fucking politicians are going to get fucking dragged through the streets. I guess the hope is that there's such a show of force here that Pence will decide to do the right thing, according to the White House right now. All right. Now, but. All right, I'll my.

[00:14:03] **Speaker 6** How did we get to this point? How did we get to the point where President Trump's most radical supporters led a violent attack on the Capitol and threatened to hang President Trump's own vice president? You'll hear from witnesses that Donald Trump pressured Mike Pence to adopt a legally and morally bankrupt idea that the vice president could choose who the next president can be. You'll hear about how the vice president, the White House counsel and others told Donald Trump that the vice president had no such authority. But President Trump would not listen. You'll hear how Vice President Pence withstood an onslaught of pressure from President Trump both publicly and privately, a pressure campaign that built to a fever pitch with a heated phone call on January 6th. You'll also hear that the president knew there was a violent mob at the Capitol when he tweeted at 2:24 p.m. that the vice president did not have the, quote, courage to do what needed to be done. Let me be clear. Vice President Pence did the right thing that day. He stayed true to his oath to protect and defend the Constitution. I look forward to hearing from our witnesses this afternoon. Mr. Chairman, I yield back.

[00:15:22] **Speaker 3** Thank you, Mr. Aguilar. We are honored to have two distinguished witnesses who advised vice president regarding his role on January 6th. Judge Michael Ludic is one of the leading conservative legal thinkers in the country. He served in the administrations of President Ronald Reagan and George H.W. Bush. He was appointed by the latter to serve on the U.S. Court of Appeals for the Fourth Circuit, where he served from 1991 to 2006. He provided critical advice for Vice President Pence regarding the role of the vice president in the joint session of Congress. Shortly before that fateful moment. He's written that the vice president does not have the power to select the next president of the United States. He's also written that that contrary theory espoused by one of his own former law clerks was, quote, incorrect at every turn. We are also joined today by one of the people who was with Vice President Pence on January six. Greg Jacob was counsel to Vice President Pence. He conducted a thorough analysis of the role of the vice president in a joint session of Congress under the Constitution, the Electoral Count Act, and 230 years of historical practice. But he also has firsthand information about the attack on the Capitol because he lived through it. He was with by the vice president and his own life was in danger. I'll now swear in our witnesses. The witnesses will please stand and raise their right hand. Do you swear or affirm on the penalty of perjury that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God? Thank you. You may be seated. Let the record reflect the witnesses answered in the affirmative. I now recognize myself for questions. In the United States, the people choose our representatives, including the highest official in the land, the president of the United States. The American people did this on November 3rd, 2020. But President Trump did not like the outcome. He did everything he could to change the result of the election. He tried litigation. 62 cases, in fact. And that failed. He tried to pressure state legislatures to reverse the results of the election in their states, but they refused. He tried to enlist the Department of Justice in his efforts to overturn election results, but officials leading the department refused to comply. So eventually he latched on to a completely nonsensical and anti-democratic theory that one man, his own vice president, could determine the outcome of the election. He wanted the vice president to unilaterally select the president. This theory that the vice president could unilaterally select the president runs completely contrary to our Constitution, our laws and the entirety of our American experience. But that didn't stop. It didn't matter to President Trump. I would now like to explore how President Trump came to latch on to this ridiculous legal theory that the vice president can select the president of the United States. Mr. Jacob, how did this theory first come to your attention?

[00:19:38] **Speaker 5** The first time that I had a conversation with the vice president about the 12th Amendment and the Electoral Count Act was in early December. Around December 7th, the vice president called me over to his West Wing office and told me that he had been seeing and reading things that suggested that he had a significant role to play on January 6th in announcing the outcome of the election. He told me that he had been first elected to Congress in 2000 and that one of his earliest memories as a congressman was sitting in on the 2001 certification, and he recalled that Al Gore had gaveled down a number of objections that had been raised to Florida. And he asked me mechanically, how does this work at the joint session? What are the rules? And I told the vice president that, in fact, I had a fairly good idea of how things work, that actually there aren't rules that govern the joint session. But what there is, is a provision in the Constitution that's just one sentence long and then an electoral count act that had been passed in 1887. And I told the vice president that I could put a memo together for him overnight that would explain the applicable rules.

[00:21:01] **Speaker 3** So, Mr. Jacob, when you looked at this theory, what did you conclude?

[00:21:08] **Speaker 5** So we concluded that what you have is a sentence in the Constitution that is inartfully drafted. But the vice president's first instinct, when he heard this theory, was that there was no way that our framers who were bored, concentrated power, who had broken away from the tyranny of George the third, would ever have put one person, particularly not a person who had a direct interest in the outcome because they were on the ticket for the election in a role to have decisive impact on the outcome of the election. And our review of text history and frankly, just common sense all confirmed the Vice President's first instinct on that point. There is no justifiable basis to conclude that the vice president has that kind of authority.

[00:22:07] **Speaker 3** Thank you, Mr. Jacobs. We will hear more today about how, despite this conclusion by you and other top legal advisers, the former president used this discredited theory in his campaign to pressure the vice president to decide the outcome of the presidential election. I now recognize the young woman from Wyoming, Liz Cheney. Four questions.

[00:22:32] **Speaker 4** Thank you very much, Mr. Chairman. Judge Ludwig, thank you as well for being here with us today. You have issued a very important statement earlier today, which I urge all Americans to read. And I'd like to ask you, Judge, about one of the sentences in your statement and ask if you could explain to us the significance of it. You say, had the vice president of the United States obeyed the president of the United States, America would immediately have been plunged into what would have been tantamount to a revolution within a paralyzing constitutional crisis. Could you elaborate on that for us, Judge?

[00:23:26] **Speaker 7** Thank you. Madam Vice Chairman. That that passage in my statement this morning. A reference to. The most foundational. Concept. In America, which is the rule of law. Thus, as I interpret your question. You're asking about that foundational. Truth. Of these United States. Which we call America. The foundational truth is the rule of law. That foundational. Truth. Is. For the United States of America. The profound truth. But it's not nearly the profound truth. For the United States. It's also. The simple truth. The simple foundational truth. Of the American Republic. Thus. In my view. The hearings being conducted by this select committee. Are. Examining that. Profound truth. Namely the rule of law. In the United States of America. The specific question, of course, before you and before the nation. Not before me. Is whether. That. Foundational rule of law. Was supremely violated. On January six. 2021. Now. To the question specifically that you asked. Madame Vice Chair. I believe that had. Vice President Pence. Obey the orders. From his president. And the president of the United States of America. During the joint session. Of the Congress of the United States on January six. 2021. And. Declared Donald Trump. The next. President of the United States. Notwithstanding. That. Then President Trump. Had. Lost the Electoral College vote, as well as the. Popular vote in the 2020 presidential election. That declaration of Donald Trump as the next president. Would have. Plunged America. Into what? I believe. Would have been tantamount. Do a revolution. Within. A constitutional crisis. In America. Which in my view. And I'm only one man. Would have been. The first. Constitutional crisis. Since the founding of the Republic.

[00:28:42] **Speaker 4** Thank you very much, Judge, for your solemn attention to these issues and and for your appearance here today. We're going to describe and discuss in detail what happened. And as we do, I'm going to describe a few of the details now of some of the actions taken by a gentleman named Kenneth Cheese Barrow, uh, after the Electoral College met and cast their votes on December 14th. Actually, the day before they met Kenneth Cheese, bro sent a memo to Rudy Giuliani, the president's lead outside counsel. Mr. Cheeseburger wrote to Mayor Giuliani that the vice president is charged with, quote, making judgments about what to do if there are conflicting votes, close quote. Mr. Cheese Bro wrote that when the joint session of Congress got to Arizona in the alphabetical list of states, the vice president should not count the Biden votes, quote, because there are two slates of votes. His justification, which we will learn more about in our next hearing, was that a group of Trump supporters in Arizona and other swing states decided to proclaim themselves the true electors for the state, creating two sets of electors, the official electors selected by the state and a group of fake electors. This document was ordered to be produced to the select committee by a federal district court judge. As you will see on the screen shortly. Judge David Carter wrote, quote, The draft memo pushed a strategy that knowingly violated the Electoral Count Act. The judge concluded that, quote, The memo is both intimately related to and clearly advanced the plan to obstruct the joint session of Congress on January six, 2021. A few days later, Professor John Eastman took up this cause. Eastman was at the time a law professor at Chapman University Law School. He prepared a memo outlining the nonsensical theory that the vice president could decide the outcome of the election at the joint session of Congress on January 6th. You will see portions of this memo on the screen. In the first line, he wrote, quote, Seven states have transmitted dual slates of electors to the president of the Senate. But Dr. Eastman goes on to rely on those so-called dual slates of electors to say that Vice President Pence could simply declare President Trump the winner of the 2020 election. Mr. Jacob were there. In fact, dual slates of electors from seven states?

[00:31:44] **Speaker 5** No, there were none.

[00:31:46] **Speaker 4** And just a few days after that, Dr. Eastman wrote another memo. This one, quote, Wargaming out several scenarios. He knew the outcome he wanted and he saw a way to go forward if he simply pretended that fake electors were real. You will see that memo up on the screen now here. Dr. Eastman says the vice president can reject the Biden electors from the states that he calls, quote, disputed. Under several of the scenarios, the vice president could ultimately just declare Donald Trump the winner regardless of the vote totals that had already been certified by the states. However, this was false and Dr. Eastman knew it was false. In other words, it was a lie. In fact, on December 19th, 2020, just four days before Dr. Eastman sent this memo, Dr. Eastman himself admitted in an email that the fake electors had no legal weight, referring to the fake electors as, quote, dead on arrival in Congress, end quote, because they did not have a certification from their states. Judge Luttig, did the Trump electors in those seven states who were not certified by any state authority have any legal significance?

[00:33:18] **Speaker 7** Congresswoman there was. No support whatsoever in either the Constitution of the United States nor the laws of the United States. For. The vice president. Frankly. Ever. To count. Alternative electoral slates from the states that had not been officially certified by the designated. State official in the Electoral Count Act of 1887. I did notice. In the passage from. Mr. Eastman's memorandum, and I took a note on it. And correct me if I'm wrong. But. He said in that passage. That there was both legal authority. As well as. Historical precedent. I do know what. Mr. Eastman was referring to. When he said that there was historical precedent. We're doing so. He was incorrect. There was no historical precedent. From the beginning of the founding. In 1789. That even as. Mere historical precedent. As distinguished from legal precedent. Would support. The possibility of the vice president of the United States. Quote, counting alternative electoral slates that had not been officially certified. To the Congress pursuant to the Electoral Count Act of 1887. I would be glad to explain that historical precedent. If the committee. Wanted, but it would be a digression.

[00:36:07] **Speaker 4** Thank you very much, Judge. I know my colleagues will be pursuing that issue in more depth. And now I'd like to yield back, Mr. Chairman.

[00:36:17] **Speaker 3** Thank you very much. Pursuant to Section five eight of House Resolution 503, the chair recognizes the gentleman from California, Mr. Aguilar, and staff counsel Mr. John Wood for questioning.

[00:36:33] **Speaker 6** Thank you, Mr. Chairman. We're fortunate to have a bipartisan staff. Senior investigative counsel John Wood previously served as United States attorney in Missouri under President George W Bush. He and I will share today's lines of questioning. Mr. Wood.

[00:36:49] **Speaker 8** Thank you, Mr. Aguilar. Judge Ludwig, I had the incredible honor of serving as one of your law clerks. Another person who did was John Eastman. And you've written that Dr. Eastman's theory that the vice president could determine who the next president of the United States is is, in your words, incorrect at every turn. Could you please explain briefly your analysis?

[00:37:31] **Speaker 7** It was my honor. Mr. Wood. Have you served my Locklear? I could. Answer that question. Perfectly. If I had at my disposal. Either. Mr. Eastman's. Wait. Or my own. Analytical tweet of September 21st. But I don't. But. That said. Let me try to. Remember the. Analysis of. Mr. Eastman's analysis.

[00:38:27] **Speaker 8** And Judge, I can read to you and to the audience, I think, what was a really key passage from your very insightful analysis when you wrote, I believe that Professor Eastman was incorrect at every turn of the analysis in his January 2nd memorandum, beginning with his claim that there were legitimate competing slate of electors presented from seven states. And you've already addressed that issue. But your next sentence said, continuing to his conclusion that the vice president could unilaterally decide not to count the votes from the seven states from which competing slates were allegedly presented. So what was your basis for concluding that Dr. Eastman was incorrect in his conclusion that the Vice President could unilaterally decide not to count the votes from these disputed states?

[00:39:13] **Speaker 7** I understand. As I previously stated in response to Congresswoman Cheney. The. There was no. Basis in the Constitution or laws of the United States. At all. The theory espoused by Mr. Eastman. At all? None. With all respect to. My co panelists. He said. I believe in partial response to one of the select committee questions. That the single sentence in the. 12th Amendment. Was he thought in artfully written. That single sentence is not. Artfully written. It was. Christine clear. At the. President of the Senate. On January six, the incumbent vice president of the United States. Had little. Substantive constitutional authority. If any. At all. The 12th Amendment, the single sentence that Mr. Jacob refers to. Says in substance. That. Following the transmission of the certificates to the Congress of the United States. And under the Electoral Count Act of 1887. The archivist of the United States. That. The presiding. Officer. Shall open the certificates. In the presence. Of the Congress of the United States in joint session. It then says. Unmistakably. Not even that the. Vice president. Himself. Shall. Count the electoral votes. It clearly says. Merely that the electoral count votes. Shall then be counted. It was the Electoral Count Act of 1887 that. That filled in, if you will. The simple words of the 12th Amendment. In order to construct for the country. A process for the counting of the the sacred process. For the counting of the electoral votes from the states. That neither. Our original Constitution. Nor even the 12th Amendment. Had done. The irony, if you will, is that. From its founding until 1887. And when Congress passed the Electoral Count Act. The nation had been in. Considerable turmoil. During. At least five of its presidential elections. Beginning. As soon thereafter from the founding. As 1800. So it wasn't for almost 100 years later until the Electoral Count Act was passed. So that's why, in my view. That piece of legislation is not only a work in progress. For the country. But at this moment in history. Uh. An important work in progress that needs to take place. That was. Long winded. I understand.

[00:44:55] **Speaker 8** Well, Judge Luttig, at the risk of oversimplifying for the non-lawyers who are watching, is it fair to say that the 12th Amendment basically says two things happen? The vice president opens the certificates and the electoral votes are counted. Is it that straightforward?

[00:45:18] **Speaker 7** I would not want that to be my testimony before. The Congress of the United States. The language of the 12th Amendment. Is that simple.

[00:45:36] **Speaker 8** Thank you, Judge. Mr. Jacob, have a question for you. I believe during your deposition before this committee, you said something to the effect of you'd read every word written about the 12th Amendment, the Electoral Count Act and historical practice. I know in response to the Chairman's earlier question, you gave your bottom line conclusion, but can you tell us a little bit about the process that you and your colleagues went through of researching this issue and what conclusion you came to after your thorough research?

[00:46:06] **Speaker 5** So. You as a lawyer who's analyzing a constitutional provision, you start with the constitutional text. You go to structure. You go to history. So we started with the text. We do not think that the text was quite as unambiguous as Judge Luttig indicated in part. We had a constitutional crisis in 1876 because in that year, multiple slate of electors were certified by multiple slates. And when it came time to count those votes, the antecedent question of which ones had to be answered that required the appointment of an independent commission. That commission had had to resolve that question. And the purpose of the Electoral Count Act of 1887 had been to resolve those latent ambiguities. Now I am in complete agreement with Judge Luttig. It is unambiguous that the vice president does not have the authority to reject electors. There is no suggestion of any kind that it does. There is no mention of rejecting or objecting to electors anywhere in the 12th Amendment. And so the notion that the vice president could do that certainly is not in the text. But the problem that we had and that John Eastman raised in our discussions was we had all seen that in Congress in 2000 and 2004. In 2016, there had been objections raised to various states, and those had even been debated in 2004. And so here you have an amendment that says nothing about objecting or rejecting. And yet we did have some recent practice of that happening within the terms of the electoral count. And so we started with that text and I recalled in my discussion with the Vice President, he said. I can't wait to go to heaven and meet the framers and tell them. The work that you did in putting together our Constitution is a work of genius. Thank you. It was divinely inspired. There is one sentence that I would like to talk to you a little bit about. So then we went to structure. And again, the vice president's first instinct here is so decisive on this question, there is just no way that the framers of the Constitution who divided power and authority, who separated it out, who had broken away from George the third and declared him to be a tyrant, there was no way they would have put it in the hands of one person, the authority to determine who was going to be president of the United States. And then we went to history. We examined every single electoral vote count that had happened in Congress since the beginning of the country. We examined the Electoral Count Act. We examined practice under the Electoral Count Act. And critically, no vice president in 230 years of history had ever claimed to have that kind of authority. Hadn't claimed authority to reject electoral votes. Had not claimed authority to return electoral votes back to the states. In the entire history of the United States, not once had a joint session ever returned electoral votes back to the states to be counted. And in the crisis of 1876, Justice Bradley of the United States Supreme Court, who supplied the decisive final vote on that commission, had specifically looked at that question and said, first, the vice president clearly doesn't have authority to decide anything. And, by the way, also does not have authority to conduct an investigation by sending things back out for a public look at things. So the history was absolutely decisive. And again, part of my discussion with Mr. Eastman was, if you were right, don't you think Al Gore might have liked to have known in 2000 that he had authority to just declare himself president of the United States? Did you think that the Democrat lawyers just didn't think of this very obvious quirk that he could use to do that? And, of course, he acknowledged Al Gore did not and should not have had that authority at that point in time. But so text structure, history, I think what we had was some ambiguous text. That common sense and structure would tell you the answer cannot possibly be that the vice president has that authority. As the committee already played the vice president's remarks, there is almost no idea more un-American than the notion that any one person would choose the American president and then unbroken historical practice for 230 years if the vice president did not have such an authority.

[00:51:15] **Speaker 8** Thank you. I reserve the remainder of my time.

[00:51:18] **Speaker 6** Mr. Jacob, you weren't the only one who knew that the legal theory was wrong, though. Here is what various advisers to the president thought about that theory.

[00:51:32] **Speaker 1** You've been clear repeatedly with Mr. Meadows about you and the vice president having a different view about his authority on January six. I believe I had. Did Mr. Meadows ever explicitly or tacitly agreed with you or say, yeah, that makes sense. Okay. I believe that the market did agree. What makes you say that? I believe that's what he told me. But. As I mentioned, I think Mark Market told so many people, so many different things that it was not something that that I would necessarily accept his. Okay. Well, that means that's resolved. I say. Tell me more what he told you on this topic. Well, I think it was that, you know, the vice president doesn't have any broader role. And I think he was understanding that, too, despite the fact that he may have said other things to the president or others to you. He said he understands the vice president has no role. Yes. Did he say that to you? Several times. A couple of times before January 6th? Yes. Lay was communicated to me. It was that possible only that the idea was was nutty and had at what point confronted Eastman basically with the same sentiment. Pat expressed his admiration for the vice president's actions on the day of the sixth and said that he concurred with the legal analysis that that our team had put together to reach that point. It made no sense to me that in all the protections that were built into the Constitution. For a president to get elected and steps that have to be taken that the power to choose the next president would be sitting with the vice president. Do you know of Mr. Clarke or Mr.. MORGAN It's a wonderful view about that thought about that Mr. Estens advice. Yeah, they thought he was crazy. Do you know if they ever expressed an opinion on whether they thought the vice president had the power that Johnny's been said he did? I know for a fact that heard both say that his theory was crazy, that there was no validity to it in any way, shape or form. And did they express that before January 6th? Yes. To whom? I think anyone who would listen. Okay. What were your prior interactions with men? He described for me what he thought the ambiguity was in the statute, and he was walking through it at that time. And I said. Tim, hold on a second. I understand what you're saying. You're saying that you believe the vice president acting as president of the Senate. Can be the sole decision maker as to under your theory, who becomes the next president, United States. And. You said yes. I said, Are you out of your f in mind? Right. And I said, that was pretty blunt. I said, you're completely crazy. I said, you're going to turn around until 78 plus million people in this country. That your theory is this is how you're going to invalidate their votes because you think election was stolen. They're not going to tolerate that. You're going to cause riots in the streets. And he said. Words to the effect of there has been violence in the history of our country or to protect the democracy or protect the republic.

[00:55:16] **Speaker 6** In fact, there was a risk that the lawyers in the White House counsel's office would resign. For example, Fox News host Sean HANNITY expressed concern that the entire White House counsel's office could quit. As you can see from these texts. Mr. HANNITY wrote to White House Chief of Staff Mark Meadows that, quote, We can't lose the entire White House counsel's office. I do not see January six happening the way he is being told. A few days later, on January 5th, Mr. HANNITY wrote to Mr. Meadows that, quote, I'm very worried. The next 48 hours. Pence pressure. White House counsel will leave. While Sean HANNITY was apparently very concerned about the possibility that the White House counsel would resign in protest of the president's effort to force the vice president to violate the Constitution. Some others close to the president were more dismissive of the White House counsel's position. Here's what Trump's son in law and senior adviser Jared Kushner said during his deposition regarding the White House counsel Pat Cipollone. His threats to resign.

[00:56:27] **Speaker 4** Are you aware of instances where Pat Cipollone threatened to resign?

[00:56:33] **Speaker 1** I kind of like I said, my interest at that time was on trying to get as many partners done. And I know that, you know, he was always to him in the team or always saying, oh, we're going to resign, we're not going to be here. This happens if that happens. So I kind of took it up to just be whining, to be honest with you.

[00:56:54] **Speaker 6** The president's own lead outside counsel, Rudy Giuliani, also seemed to concede that the vice president did not have the authority to decide the outcome of the election or send it back to the states. Here's what Whitehouse attorney Eric Hirschman said about his call with Mayor Giuliani on the morning of the sixth.

[00:57:12] **Speaker 1** The morning of January six, I think he called me out of the blue. Right. And I was, like, getting dressed. And we had an intellectual discussion about easements is I don't know if it's easements per se, but the VP's role. And. And he was asking me my view and analysis and then the practical implications of it. And when we finished, he said. Rick. I believe that, you know, you're probably right. I think he thought we're done, that it would be something he'd have to consider if he was sitting on the bench, but he'd probably come down in that, you know. You couldn't interpret it or sustain the argument long term.

[00:57:59] **Speaker 6** Of course, the fact that Mayor Giuliani seemed to admit that the theory was wrong did not stop him from going before the crowd just a few hours later, on January 6th, and saying the exact opposite. Here is Mayor Giuliani speech at the Ellipse rally on January 6th.

[00:58:17] **Speaker 9** We're here just very briefly to make a very important two point. Number one. Every single thing that has been outlined as the plan for day is perfectly legal. I have Professor Eastman here with me to say a few words about that. He's one of the preeminent constitutional scholars in the United States. It is perfectly appropriate, given the questionable constitutionality of the Election Counting Act of 1887, that the vice president can cast it aside and he can do what the President called Jefferson did when he was vice president. He can decide. He can decide on the validity of these crooked ballots. Or he can send it back to the legislatures, give them 5 to 10 days to finally finish the work.

[00:59:33] **Speaker 6** And here's what Dr. Eastman said in his speech at the Ellipse on January 6th.

[00:59:41] **Unidentified** And all we are demanding of.

[00:59:43] **Speaker 1** Vice President Pence is this afternoon at 1:00.

[00:59:48] **Unidentified** He let the legislatures of the state look into this. So we get to the bottom of it.

[00:59:53] **Speaker 1** And the American people know whether we have control of the direction of our government or not.

[01:00:03] **Speaker 6** Even Dr. Eastman knew his theory didn't hold water. Mr. Jacob, you discussed and even debated this theory at length with Dr. Eastman. Dr. Eastman ever tell you what he thought the U.S. Supreme Court would do if it had to decide this issue?

[01:00:18] **Speaker 5** Yes. We had an extended discussion an hour and a half to 2 hours on January 5th. And when I pressed him on the point, I said. John, if the vice president did what you were asking him to do, we would lose nine to nothing in the Supreme Court, wouldn't we? And he initially started it. Well, I think maybe he would lose only 7 to 2. And after some further discussion, acknowledged. Well, yeah, you're right. We would lose nine nothing.

[01:00:50] **Speaker 6** I appreciate that. In our investigation, the select committee has obtained evidence suggesting that Dr. Eastman never really believed his own theory. Let me explain. On the screen, you can see a draft letter to the president from October 2020. In this letter, an idea was proposed that the vice president could determine which electors to count if the joint session of Congress. But the person writing in blue eviscerates that argument. The person who wrote the comments in blue wrote, quote, The 12th Amendment only says that the president of the Senate opens the ballots in the joint session and then in the passive voice, the votes shall then be counted. The comments in blue further state. Nowhere does it suggest that the president of the Senate gets to make the determination on his own. It's looting. Does it surprise you that the author of those comments in blue was, in fact, John Eastman?

[01:01:59] **Speaker 7** Yes, it does, Congressman. But let me. Watching this unfold. Let me try to unpack. What was. At the root. Of. What I have called the blueprint to overturn the 2020 election. And it is this. And I had foreshadowed this answer in my earlier testimony. To Congresswoman Cheney. Mr. Easement from the beginning. Said to the president. That there was both legal. As well as historic goal president. For the vice president to overturn the election. And what we've heard today. I believe. Is is what happened within the White House and elsewhere. As. All of the players. Led by. Mr. Eastman. Got wrapped around the axle. By the historical evidence claim. By Mr. Eastman. Let me explain. Very simply. This is what I said would require a digression that I would be glad to undertake if you wished. In short. If I had been advising the vice president of the United States on January 6th. And even if. Then. Vice president. Jefferson. And. Even then. Vice president. John Adams. And even. Then Vice president. Richard. Nixon. Had done. Exactly. What the president of the United States wanted his vice president to do. I would have laid my body. Across the road before I would have let the vice president. Overturn the 2020 election. On the basis of that. Historical precedent. But what this body needs to know. And now America needs to know. Is that? That was the centerpiece of the plan to overturn the 2020 election. It was the historical precedent. In the years and with the vice presidents that I named. As Congressman Raskin understands well. And. The the effort by Mr. Eastman and others was to to drive that. Historical precedent. Up to and under. That single sentence. Single pristine sentence. In the 12th Amendment to the United States Constitution. Taking advantage of. If you will. What many? Have said. Is the inartful wording. Of that sentence in the 12th Amendment. Scholars before 2020 would have used that historic old precedent. To argue, not that Vice President Pence could overturn the 2020 election. By accepting. Non-certified state electoral votes. But they would have made arguments as to some substantive. Not merely procedural. Authority. Possessed by the vice president of the United States. On on the. Statutorily prescribed for counting the Electoral College votes. This is. This is constitutional mischief.

[01:07:41] **Speaker 6** Judge. I think that's it. I think that's a good point. And I think it kind of begs the question that if the vice president had this power to determine the outcome of a presidential election, why hasn't it ever been used before? Why hasn't that ever happened? Why hasn't the vice president simply rejected the outcome of an election and declared someone else the winner? And instead, as the chairman mentioned in his opening for over two centuries, vice presidents who presided over the joint session of Congress in a purely ceremonial role. This even includes, as Mr. Jacob mentioned, Vice President Al Gore. For those of us who are old enough to remember, the 2000 election came down to one state, Florida. There were weeks of recounts and litigation after the election, and Al Gore conceded. Of course, Al Gore was vice president at the time, but he never suggested that he could simply declare himself the winner of the 2000 election when he presided over the counting of the electoral votes. Let's hear what Vice President Gore said when he described the situation he faced in 2000.

[01:08:44] **Speaker 1** Portions of the United States of America in all of human history. In Lincoln's phrase, we still are the last, best hope of humankind and the choice between one's own disappointment in your personal career and upholding the the noble traditions of America's democracy. It's a pretty easy choice when it comes down to it.

[01:09:13] **Speaker 6** Mr. Jacob, the doctor has been say whether he would want other vice presidents, such as Al Gore after the 2000 election or Kamala Harris after the 2024 election, to have the power to decide the outcome of the election.

[01:09:28] **Speaker 5** So this was one of the many points that we discussed on January 5th. He had come into that meeting trying to persuade us that there was some validity to his theory. I viewed it as my objective to persuade him to acknowledge he was just wrong. And I thought this had to be one of the most powerful arguments. I mean. John, back in 2000, you weren't jumping up and saying Al Gore had this authority to do that. You would not want Kamala Harris to be able to exercise that kind of authority in 2024 when I hope Republicans will win the election. And I know you hope that, too, John. And he said absolutely Al Gore did not have a basis to do it in 2000. Kamala Harris shouldn't be able to do it in 2024, but I think you should do it today.

[01:10:18] **Speaker 6** Marc Short told the select committee that Vice President Pence consulted with one of his predecessors, Vice President Dan Quayle, regarding the role of the vice president. Vice President Quayle confirmed Pence's view that the role was purely ceremonial. Mr. Short also told the committee that he Mr. Short, received a call from former House Speaker Paul Ryan. Here is Mr. Short's description of his conversation with Speaker Ryan.

[01:10:45] **Speaker 1** Speaker, I want to call and say, you know, you don't have any greater authority. And I, I said, you know, Mr. Speaker, you you know, Mike, you know, he doesn't you know, he recognized that. And we sort of laughed about it and he said, I get it. And he later spoke to the vice president to to, I think, have the same conversation.

[01:11:07] **Speaker 6** Fortunately for the fate of our republic, Vice President Pence refused to go along with President Trump's demands that he determine the outcome of the presidential election. Mr. Jacob. What was the vice president's reaction when you discussed with him the theory that the vice president could decide the outcome of the election?

[01:11:25] **Speaker 5** Congressman, as I testified, the vice president's first instinct was that there was no way that any one person, particularly the vice president who is on the ticket and has a vested outcome in the election, could possibly have the authority to decide it by rejecting electors or to decisively alter the outcome by suspending the joint session for the first time in history in order to try to get a different outcome from state legislatures.

[01:11:59] **Speaker 6** Despite the fact that the vice president had a strongly held and correct view that he could not decide the outcome of the election. President Trump launched a multi-week campaign, both public and private pressure to get the Vice President, Mike Pence, to violate the Constitution. Here are some examples of the intense pressure the vice president faced from all sides and what his chief of staff thought of it.

[01:12:25] **Speaker 1** And I hope Mike Pence comes through for us. I have to tell you.

[01:12:29] **Unidentified** I hope that our great vice president.

[01:12:33] **Speaker 1** Our great vice president comes through for us. He's a great guy because if he doesn't come through, I won't like him quite as much. Was it your impression that the vice president had directly conveyed his position on these issues to the president, not just to the world through a dear colleague letter, but directly to President Trump many times and had been consistent in conveying his position to the president. Very consistent.

[01:13:02] **Speaker 9** I am I am aware of the fact that the president was upset with the way Pence acted.

[01:13:09] **Speaker 1** Are we to assume that this is going to be a climactic battle? Well, I think a lot of that depends on the courage and the spine of the individuals involved. That would be a nice way to say a guy named Mike. Vice President Mike Pence. Yes. I think we've been clear what the vice president's poll is. They think the vice president made clear with the president. I think I've been clear with Mark Meadows. I think the vice president is going to throw down tomorrow and do the right thing. Because, Lou, like I said before, this is a time for choosing. People are going to look back at this moment tomorrow and remember where every single one of their elected officials were. Did they vote for the rule of law and getting these elections right or did they give it away to the Democrats or the people who cheated and stole their way through this election? Definitely the you know, that back in the town as the talks, they like the fifth and the sixth. The president was you know, all the attention was on what Mike would do or what Mike wouldn't do. The vice president really was not wavering in his commitment to what he what his responsibility was. And so. Yeah, was it. Was it painful? Sure.

[01:14:17] **Speaker 6** The president's pressure campaign started in December, for example, although the vice president made his views clearly and unmistakably known to the president and others in the White House. On December 23rd. President Trump retweeted a memo from an individual named Ivan Raichlen entitled Operation Pens Card that called on the vice president to refuse the Electoral College votes from certain states that had certified. Joe Biden is the winner. President Trump started his pressure campaign in December, but he dialed up the pressure as January 6th approached. The testimony we have received in our investigation indicates that by the time January 4th arrived, President Trump had already engaged in a, quote, multi-week campaign to pressure the vice president to decide the outcome of the election. The suit included private conversations between the two leaders, Trump's tweets and at least one meeting with members of Congress. We understand that the vice president started his day on January 4th with a rally in Georgia for the Republican candidates in the U.S. Senate runoff. When the vice president returned to Washington, he was summoned to meet with the president regarding the upcoming joint session of Congress. Mr. Jacob. Who attended that meeting?

[01:15:40] **Speaker 5** The attendees were the vice president, the president, Marc Short, the chief of staff to the vice president, myself and John Eastman. There was about a five minute period where Mark Meadows came in on a different issue.

[01:15:53] **Speaker 6** Let's show a photo of that meeting. Mr. Jacob, during that meeting between the president and the Vice President, what theories did Dr. Eastman present regarding the role of the Vice President in counting the electoral votes?

[01:16:08] **Speaker 5** During the meeting on January 4th, Mr. Eastman was opining that there were two legally viable arguments as to authorities that the vice president could exercise. Two days later, on January 6th. One of them was that he could reject electoral votes outright. The other was that he could use his capacity as presiding officer to suspend the proceedings and declare essentially a ten day recess during which states that he deemed to be disputed. There was a list of 5 to 7 states that the exact number changed from conversation to conversation. But the vice president could issue a demand to the state legislatures in those states to reexamine the election and declare who had won each of those states. So he said that both of those were legally viable options. He said that he did not recommend upon question and he did not recommend what he called the more aggressive option, which was reject outright because he thought that that would be less politically palatable. The imprimatur of state legislature authority would be necessary to ultimately have public acceptance of an outcome in favor of President Trump. And so he advocated that the preferred course of action would be the procedural route of suspending the joint session and sending the election back to the States.

[01:17:59] **Speaker 6** Mr. Jacob, I know you won't discuss the direct conversations between the President and the Vice President. So rather than asking you what the Vice President said in that meeting, I'll ask you a more general question. Did the vice president ever waver in his position that he could not unilaterally decide which electors to accept?

[01:18:16] **Speaker 5** The vice president never budged from the position that I have described as his first instinct, which was that it just made no sense from everything that he knew and had studied about our Constitution, that one person would have that kind of authority.

[01:18:31] **Speaker 6** Did the vice president ever waver in his position that he could not delay certification and send it back to the States?

[01:18:36] **Speaker 5** No, he did not.

[01:18:38] **Speaker 6** Did Dr. Eastman admit in front of the president that his proposal would violate the Electoral Count Act?

[01:18:45] **Speaker 5** So during that meeting on the fourth, I think I raised the problem that both of Mr. Eastman's proposals would violate several provisions of the Electoral Count Act. Mr. Eastman acknowledged that that was the case, that. Even what he viewed as the more politically palatable option would violate several provisions. But he thought that we could do so because in his view, the Electoral Act was unconstitutional. And when I raised concerns that that position would likely lose in court, his view was that the courts simply wouldn't get involved. They would invoke the political question doctrine, and therefore we could have some comfort proceeding with that path.

[01:19:31] **Speaker 8** Mr.. Wood. But just to reiterate, he told you maybe this was in a later conversation, but he told you at some point that if, in fact, the issue ever got to the Supreme Court, his theory would lose nine zero. Correct.

[01:19:45] **Speaker 5** The next morning, starting around 11 or 1130, we met for an hour and a half to 2 hours. And in that meeting, I've already described the text structure history conversation, but we started walking through all of that and I said, you know, John, basically what you have is some text that may be a little bit ambiguous, but then nothing else that would support it, including the fact that nobody would ever want that to be the rule. Wouldn't we lose nine to nothing in the Supreme Court? And again, he initially started well, maybe you'd only lose 7 to 2, but ultimately acknowledged that, no, we would lose nine zero. No judge would support his argument.

[01:20:33] **Speaker 6** After his meeting with the vice president, Donald Trump flew to Georgia for a rally in support of the Republican candidates in the United States Senate runoff. Even though the vice president had been steadfast in resisting the president's pressure, President Trump continued to publicly pressure Vice President Pence in his Georgia speech. Rather than focusing exclusively on the Georgia Senate runoff, Trump turned his attention to Mike Pence. Here's what the president said during that rally in Georgia.

[01:21:07] **Speaker 1** Hence it comes through for us. I have to tell you, I hope that our great vice president, our great vice president comes through for us. A great guy, because if he doesn't come through, I won't like him quite as much.

[01:21:27] **Speaker 6** So the president had been told multiple times that the vice president could not affect the outcome of the election, but he nonetheless publicly pressured Mike Pence to do exactly that by saying, quote, If he doesn't come through, I won't like him as much. Let's turn now to January 5th. Mr. Wood.

[01:21:46] **Speaker 8** Thank you. That morning meeting January 5th, the president issued a tweet expressly stating that the vice president had the power to reject electors. Let's look at what the president wrote. Quote, The vice president has the power to reject fraudulently chosen electors. Mr. Jacob, you've already told us about your meeting with Dr. Eastman and the President on January 4th, and you briefly made reference to the meeting you had with Dr. Eastman the next day, January 5th. Can you tell us a little bit more about that meeting with Dr. Eastman on January 5th, for example? Where was the meeting? Who was there?

[01:22:26] **Speaker 5** So at the conclusion of the meeting on the fourth, the President had asked that that our office meet with Mr. Eastman the next day to hear more about the positions he had expressed at that meeting. And the Vice President indicated that he offered me up as his counsel to fulfill that duty. So we met in Marc Shorts office in the Executive Office Building across the way from the White House. Dr. Eastman had a court hearing by Zoom that morning, so it didn't start first thing, but rather started around 11 and. That meeting went for about an hour and a half, 2 hours. Chief of Staff Marc Short was at that meeting most of the time. There were a few times that he left. And essentially, it was an extended discussion. What most surprised me about that meeting was that when Mr. Eastman came in, he said. I'm here to request that you reject the electors. So on the fourth, that had been the path that he had said, I'm not recommending that you do that. But on the fifth, he came in and expressly requested that. And I grabbed a notebook as I was heading into the meeting. I didn't hear much new from him to record, but that was the first thing I recorded in my notes was request that the VP reject.

[01:24:12] **Speaker 8** And just to be clear, you're saying that Dr. Eastman urged the vice president to adopt the very same approach that Dr. Eastman appeared to abandon in the Oval Office meeting with the president the day before. Is that correct?

[01:24:25] **Speaker 5** He had recommended against it the evening before. And then on the fifth came in, and I think it was probably his first words after introductions and as we sat down were. I'm here to request that you reject the electors in the disputed states.

[01:24:42] **Speaker 8** And you referenced a moment ago some handwritten notes which you've provided to the select committee. I'd now like to show you those notes. As you can see, you wrote there at the top, the writing is a little bit faint in the copy but you wrote requesting VPI reject. Is that accurately reflect what Dr. Eastman asked of you in your meeting on January 5th?

[01:25:07] **Speaker 5** Yes.

[01:25:08] **Speaker 8** And what was your reaction when Dr. Eastman said on January 5th that he was there to ask the vice president of the United States to reject electors at the joint session of Congress?

[01:25:18] **Speaker 5** I was surprised because I had viewed it as sort of one of the key concessions that we had secured the night before from Mr. Eastman that, um, that he was not recommending that we do that.

[01:25:32] **Speaker 8** So what did you say to him?

[01:25:35] **Speaker 5** Well, as I indicated to some extent, it simplified my task because the there are more procedural complexities to send it back to the states point of view. And I actually had spent most of my evening the night before writing a memorandum to the Vice President explaining all of the specific provisions of the Electoral Count Act that that plan would violate. So instead, since he was pushing the sort of robust unilateral power theory, I've already walked the committee through the discussions that we had, which, again, we I started out with our points of commonality or what I thought were our points of commonality were conservatives, were small government people. We believe in originalism as the means by which we're going to interpret this. And so we walked through the text, we walked through the history. And the committee has shown footage of Mr. Eastman on the stage on the sixth, claiming that Jefferson supported his position in a historical example of Jefferson. In fact, he conceded in that meeting, Jefferson did not at all support his position that in the election of 1800 there had been some small technical defect with the certificate. In Georgia, it was absolutely undisputed Jefferson had won Georgia. Jefferson did not assert that he had any authority to reject electors. He did not assert that he had any authority to resolve any issue during the course of that. And so he acknowledged by the end that there was no historical practice whatsoever that supported his position. He had initially tried to push examples of Jefferson and Adams. He ultimately acknowledged they did not work. As we've covered, he acknowledged it would lose. And I know in the Supreme Court. He again tried to say, but I don't think the courts will get involved in this. They'll invoke the political question doctrine. And so if the courts stay out of it, that will mean that we'll have the ten days for the states to weigh in and resolve it. And then the you know, they'll they'll send back the Trump slate of electors and the people will be able to accept that. And I expressed my vociferous disagreement with that point. I did not think that this was a political question. Among other things, if the courts did not step in to resolve this. There was nobody else to resolve it. You would be in a situation where you have a standoff between the president of the United States and counter factually the vice president of the United States saying that we've exercised authorities, that constitutionally we think we have, by which we have deemed ourselves the winners of the election. You would have an opposed House and Senate disagreeing with that. You would have state legislatures that to that point. I mean, Republican leaders across those legislatures had put together had put out statements, and we collected these for the vice president as well, that the people had spoken in their states and they had no intention of reversing the outcome of the election. We did receive some signed letters that Mr. Eastman forwarded us by minorities of leaders in those states, but no state had any legislative house that indicated that it had any interest in it. So you would have had. Just an unprecedented constitutional jump ball situation with that standoff. And as I expressed to him. That issue might well then have to be decided in the streets because if we can't work it out politically. We've already seen how charged up people are about this election, and so it would be a disastrous situation to be in. So I said, I think the courts will intervene. I do not see a commitment in the Constitution of the question whether the vice president has that authority to some other actor to resolve their arguments about whether Congress and the vice president jointly have a constitutional commitment to generally decide electoral vote issues. I don't think that they have any authority to object or reject them. I don't see it in the 12th Amendment. But nonetheless and I concluded by saying. John, in light of everything that we've discussed. Can't we just both agree that this is a terrible idea? And he couldn't quite bring himself to say yes to that. But he very clearly said, well. Yeah, I see. We're not going to be able to persuade you to do this. And that was how the meeting concluded.

[01:31:01] **Speaker 8** But you just described a terrifying scenario. Sounds like there could have been chaos under the easement approach, and you've described it as potentially could be decided in the streets. And you describe several concessions that Dr. Eastman made throughout that discussion or even debate that you had with him. At some point during that meeting on January 5th, Dr. Eastman seemed to admit that both of the theories that he had presented to the United States a day before. So. The theory that the vice president could reject electors outright and declare Donald Trump the winner and is less aggressive theory that the vice president could simply send it back to the states at some point in that conversation. On the fifth day, Dr. Eastman seemed to admit that both of these theories suffered from similar legal flaws.

[01:31:58] **Speaker 5** So I had at least one, possibly two other conversations with Dr. Eastman later that day. In the earlier meeting, we really were focused because his request he made had been reject the electors outright on why that theory was wrong and why we certainly would not be doing. Later that day, he pivoted back to, well, we hear you loud and clear. You're not going to reject. But remember last night I said that there was this more prudent course where you could just send it back to the States. Would you be willing to do that? And during the course of our discussion about his renewed request that we consider that option. He acknowledged to me, he put it both Mr. Eastman and myself are graduates of the University of Chicago Law School. And he said, Look, as graduates of that August institution, you and I will mutually understand that the underlying legal theory of plenary vice presidential authority is what you have to have to get there. Because this new theory, as I was pointing out to him or the procedural theory. Still violates several provisions of the Electoral Act, as he acknowledged. And the only way that you could ever be able to ignore several provisions of statutory law is if it was pretty clear that they were unconstitutional. And the only way they could be unconstitutional is if the vice president had the plenary authorities that were formed, the basis for the reject votes as well. So he acknowledged in those conversations that the underlying legal theory was the same. He just thought that the send it back to the states option would be more politically palatable and he hoped more palatable to the Vice President for that reason.

[01:34:00] **Speaker 8** And in fact, when Dr. Eastman made this concession during that meeting, according to your earlier deposition, Dr. Eastman said just between us, the University of Chicago check ins, is that right?

[01:34:14] **Speaker 5** I don't think that the University of Chicago is going to start a Chicago Chickens fundraiser. But yes, that is the terminology that he used. He said, you know, just between us Chicago chickens, we will understand as as lawyers who have studied the Constitution that the underlying basis really is the same.

[01:34:36] **Speaker 8** A reserve the remainder of my time.

[01:34:38] **Speaker 6** Thank you, Mr. Wood. Mr. Jacob. The President, the vice president meet again on that same topic the next day, January 5th, correct?

[01:34:47] **Speaker 5** There. So after my extended meeting with Mr. Eastman that morning, during that time, the Vice President had been back at his residence working on his statement to the nation that we released the next day. And he got down to the White House at some point between 1:00 and 2:00 as my meeting with Mr. Eastman was wrapping up. And when we Marc Short and I went over to meet with the vice president and actually we thought maybe we had good news, we felt like we had sort of defeated Mr. Eastman. He was sort of acknowledging that there was no there there. But the vice president was then asked down to the Oval Office, and he went down to the Oval Office while Marc and I stayed back in the vice president's office.

[01:35:42] **Speaker 6** You weren't in that meeting?

[01:35:44] **Speaker 5** I was not.

[01:35:45] **Speaker 6** In the book. Peril journalist Bob Woodward and Robert Costa write that the president said, quote, If these people say you have the power, wouldn't you want to? The vice president says, quote, I wouldn't want any one person to have that authority. The president responds, but wouldn't it almost be cool to have that power? Vice president is reported to have said, no, look, I've read this and I don't see a way to do it. We've exhausted every option. I've done everything I could and then some to find a way around this. It's simply not possible. My interpretation is no. To which the president says, no, no, no, you don't understand, Mike. You can do this. I don't want to be your friend anymore. If you don't do this. We asked Marc Short about this during his deposition.

[01:36:38] **Speaker 1** But understanding that I would have. In other conversations with the vice president, he articulated to me that, no, he wouldn't want that power bestowed upon any one person.

[01:37:02] **Speaker 6** Mr. Jacob, did you, Mr. Short and the vice president have a call later that day again with the President and Dr. Eastman?

[01:37:10] **Speaker 5** So yes, we did.

[01:37:12] **Speaker 6** And what did Dr. Eastman request on that call?

[01:37:17] **Speaker 5** On that phone call, which I believe was around 5:00 that afternoon, Mr. Eastman stated that he had heard it loud and clear that morning. We were not going to be rejecting electors, but would we be open to considering the other course that we had discussed on the fourth, which would be to suspend the joint session and request that state legislatures reexamine certification of the electoral votes?

[01:37:48] **Speaker 6** That same day, January 5th, The New York Times ran a story about the disagreement between the president and the vice president about whether the vice president could determine the outcome of the election. Even though the New York Times story was indisputably correct, Donald Trump denied it. Trump issued a statement claiming that the vice president had agreed that he could determine the outcome of the election, despite the fact that the vice president had consistently rejected that position. Let's look at what the president said in his statement. Quote The New York Times report regarding comments Vice President Pence supposedly made to me today is fake news. He never said that. The vice president and I are in total agreement that the vice president has the power to act. Mr. Jacob, how did the vice president's team react to the statement from the president that the vice president could take an active role in determining the winner of the presidential election?

[01:38:49] **Speaker 5** So we are shocked and disappointed because whoever had written and put that statement out, it was categorically untrue.

[01:39:02] **Speaker 6** Vice President's chief of staff, Marc Short, had an angry phone call with Trump campaign senior adviser Jason Miller about the statement. Here's what Mr. Short and Mr. Miller told the committee about that call.

[01:39:15] **Speaker 1** Tell me about the conversation you had with Jason. It was brief. I was irritated and expressed displeasure. That statement it could have gone out that misrepresented the vice president's viewpoint without consultation. The statement says The vice president and I are in total agreement and the vice president has the power left. Is that incorrect? I think the record shows that at sea we've we've been through many documents that clarify that this is not where the vice president was. Right. So essentially, the president is sending out a baldly false statement about being in alignment, purported alignment with the vice president, despite all of the predicate that you indicated had gone before the respective positions that effectively what happened? I interpret the statement as false. I'll let you figure out who sent it out. When Marc Short contacted you, he was upset. Is that what you said? He clearly was not pleased. Tell us what he said. What's the process for putting out a statement for a meeting where only two people were in the room? Did he ask you to retract the statement? Now. He just I think it went right to. What's the process for putting out a statement for a meeting when only two people were in the room? And he clearly disagreed with the substance, though, right? Because he said that he said the vice president doesn't agree with this. Try to think what exactly he said. I mean, the the tone was very clearly that. They use some language to strongly infer that the vice president disagree with with that tape. I don't remember what that language was. Did he dictate this statement? We dictated educated most of it I mean typically on these. Typically on these, I might have a couple of wording suggestions or maybe I have a sense or a rough framework or something of that. But I know with specifically on this one that it was me and him on the phone talking through it. And ultimately the way this came out was the way that he wanted to.

[01:41:49] **Speaker 6** The dispute between the president and the vice president had grown to the point where the vice president's chief of staff, Marc Short, was concerned that the president could, in Mr. Short's words, quote, lash out at the vice president on January 6th. In fact, Mr. Short was so concerned about it that he talked with the head of the vice president, Secret Service detail on January 5th. Here is Mr. Short.

[01:42:14] **Speaker 1** And ceremonies for the vice president's security. And so I wanted to make sure that had the vice president, Secret Service, was aware that that likely, as these disagreements became more public, that the president would lash out in some way.

[01:42:32] **Speaker 6** After the recess, we will hear that Mark Short's concerns were justified. The vice president was in danger. Mr. Chairman, I reserve.

[01:42:43] **Speaker 3** Pursuant to the order of the committee today, the chair declares the committee in recess for a period of approximately 10 minutes.