

THE JACK SMITH REPORT

Here's the report.

Here's the section on Insurrection – the only crime that would have disqualified Trump as President.

The Office considered, but ultimately opted against, bringing other charges. One potential charge was 18 U.S.C. § 2383, sometimes referred to as the Insurrection Act, which provides that “[w]hoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.” 18 U.S.C. § 2383. Section 2383 originated during the Civil War, as part of the Second Confiscation Act of 1862. See Act of July 17, 1862, ch. 195, § 2, Pub. L. No. 37-160, 12 Stat. 589,590.

[snip]

To establish a violation of Section 2383, the Office would first have had to prove that the violence at the Capitol on January 6, 2021, constituted an “insurrection against the authority of the United States or the laws thereof,” and then prove that Mr. Trump “incite[d]” or “assist[ed]” the insurrection, or “g[ave] aid or comfort thereto.” 18 U.S.C. § 2383

[snip]

The Office determined that there were reasonable arguments to be made that Mr. Trump’s Ellipse Speech incited the violence at the Capitol on January 6 and could satisfy the Supreme Court’s

standard for “incitement” under *Brandenburg v. Ohio*, 395 U.S. 444,447 (1969) (holding that the First Amendment does not protect advocacy “directed to inciting or producing imminent lawless action and ... likely to incite or produce such action”), particularly when the speech is viewed in the context of Mr. Trump’s lengthy and deceitful voter-fraud narrative that came before it. For example, the evidence established that the violence was foreseeable to Mr. Trump, that he caused it, that it was beneficial to his plan to interfere with the certification, and that when it occurred, he made a conscious choice not to stop it and instead to leverage it for more delay. But the Office did not develop direct evidence-such as an explicit admission or communication with co-conspirators-of Mr. Trump’s subjective intent to cause the full scope of the violence that occurred on January 6. Therefore, in light of the other powerful charges available, and because the Office recognized that the *Brandenburg* standard is a rigorous one, see, e.g., *NA.A.CF v. Claiborne Hardware Co.*, 458 U.S. 886, 902, 927-929 (1982) (speech delivered in “passionate atmosphere” that referenced “possibility that necks would be broken” and violators of boycott would be “disciplined” did not satisfy *Brandenburg* standard); *Brandenburg*, 395 U.S. at 446-447 (reversing conviction where Ku Klux Klan leader threatened “revengeance” for “suppression” of the white race), it concluded that pursuing an incitement to insurrection charge was unnecessary.

By comparison, the statutes that the Office did charge had been interpreted and analyzed in various contexts over many years. The Office had a solid basis for using Sections 3 71, 1512, and 241

to address the conduct presented in this case, and it concluded that introducing relatively untested legal theories surrounding Section 2383 would create unwarranted litigation risk.

Importantly, the charges the Office brought fully addressed Mr. Trump's criminal conduct, and pursuing a charge under Section 23 83 would not have added to or otherwise strengthened the Office's evidentiary presentation at trial. For all of these reasons, the Office elected not to pursue charges under Section 2383. 193

DOJ also released the Hunter Biden report, which attempts to prove the prosecution was not political but proves the opposite.

I'll return to both later.