

THE JANUARY 6 REPORT IS SUBSTANTIALLY THE IMMUNITY BRIEF REPORTERS IGNORED IN OCTOBER

I want to say something about the structure of Jack Smith's report. For his description of Trump's alleged crimes, he includes a fairly high level narrative in the text, with detailed footnotes.

A great number of the footnotes – around 178 of them – cite to ECF 252.

³⁰ See ECF No. 252 at 30 & n.144; SCO-12998394 at 12 (Tr. of Georgia Secretary of State Call 01/02/2021).

³¹ See ECF No. 252 at 32 & nn.157-159; SCO-11532925 at 53-56 (Int. Tr.); SCO-00829361 at 15-24 (HSC Tr.).

³² See ECF No. 252 at 32-33 & nn.160-161; SCO-00829361 at 16-18 (HSC Tr.).

³³ See ECF No. 252 at 17 & n.63; SCO-12733339 at 3-5 (Int. Rep.); SCO-02296394 at 6 (Presidential Daily Diary 11/09/2020); see also *Democrats flip Arizona as Biden, Kelly score key election wins*, FOX NEWS (Nov. 3, 2020), <https://www.foxnews.com/video/6206934979001>; Jonathan J. Cooper and Anita Snow, *Biden wins Arizona, flips longtime Republican stronghold*, APNEWS.COM (Nov. 4, 2020), <https://apnews.com/article/election-2020-joe-biden-donald-trump-race-and-ethnicity-legislature-218ad4d596e87c6b1a223f19f817776e>.

³⁴ See ECF No. 252 at 17 & n.66; SCO-12733339 at 14 (Int. Rep.).

³⁵ See ECF No. 252 at 17 & nn.67-68; SCO-12733339 at 4 (Int. Rep.).

³⁶ See ECF No. 252 at 17 & n.68; SCO-12733339 at 4 (Int. Rep.).

ECF 252 is the immunity brief Jack Smith fought hard, over Trump's objections, to submit in October. The footnotes often then cite the Special Counsel's Bates stamp identifying that piece of evidence and include a short description of the source.

Take this footnote:

³⁹ See ECF No. 252 at 48, 56 & n.301; SCO-02341381 (Fraudulent "Arizona's Electoral Votes for President and Vice President"); SCO-02341386 (Fraudulent "Georgia's Electoral Votes for President and Vice President"); SCO-02341398 (Fraudulent "Michigan's Electoral Votes for President and Vice President"); SCO-02341415 (Fraudulent "Nevada's Electoral Votes for President and Vice President"); SCO-02341409 (Fraudulent "New Mexico's Electoral Votes for President and Vice President"); SCO-02341435 (Fraudulent "Pennsylvania's Electoral Votes for President and Vice President"); SCO-02341449 (Fraudulent "Wisconsin's Electoral Votes for President and Vice President").

It sources this assertion in the report itself:

Under this plan, they would organize the people who would have served as Mr. Trump's electors, had he won the popular vote, in seven states that Mr. Trump had lost-Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin-

and cause them to sign and send to Washington false certifications claiming to be the legitimate electors. 39

It cites to the following language in the immunity brief:

So in early December, the defendant and his co-conspirators developed a new plan regarding the targeted states that the defendant had lost (Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin): to organize the people who would have served as the defendant's electors had he won the popular vote, and cause them to sign and send to Pence, as President of the Senate, certifications in which they falsely represented themselves as legitimate electors who had cast electoral votes for the defendant. Ultimately, the defendant and his co-conspirators would use these fraudulent electoral votes—mere pieces of paper without the lawful imprimatur of a state executive—to falsely claim that in his ministerial role presiding over the January 6 certification, Pence had the authority to choose the fraudulent slates over the legitimate ones, or to send the purportedly “dueling” slates to the state legislatures for consideration anew.

[snip]

Notwithstanding obstacles, the defendant and his co-conspirators successfully organized his elector nominees and substitutes to gather on December 14 in the targeted states, cast fraudulent electoral votes on his behalf, and send those fraudulent votes to Washington, D.C., in order to falsely claim at the congressional certification that certain states had sent competing slates of electors.³⁰¹ When possible, the

defendant and co-conspirators tried to have the fake electoral votes appear to be in compliance with state law governing how legitimate electors vote.³⁰²

And this footnote *in the immunity brief*.

³⁰¹ GA 1420-1424 (Fraudulent "Arizona's Electoral Votes for President and Vice President"); GA 1357-1368 (Fraudulent "Georgia's Electoral Votes for President and Vice President"); GA 1369-1379 (Fraudulent "Michigan's Electoral Votes for President and Vice President"); GA 1425-1444 (Fraudulent "Nevada's Electoral Votes for President and Vice President"); GA 1445-1450 (Fraudulent "New Mexico's Electoral Votes for President and Vice President"); GA 1380-1393 (Fraudulent "Pennsylvania's Electoral Votes for President and Vice President"); GA 1451-1457 (Fraudulent "Wisconsin's Electoral Votes for President and Vice President"); GA 1458-1472 (Fraudulent "Wisconsin's Electoral Votes for President and Vice President");

As advertised, the footnote links to the Appendix and (in this case) the actual fake elector certificates.

In other words, for the narrative sourced to ECF 252 (one part of the narrative *not* sourced to the immunity brief pertains to the riot itself), we've already gotten this material. We got it in October, before the election.

It got only passing coverage.

We got much of this report, in more detailed form, in October. Many of the people who claim releasing *this report* would have made a difference in the election didn't read the immunity brief in October, much less make a big deal about it.

The structure is significant for a few more reasons. First, the footnotes in this report sometimes provide more description about what appears in the appendix. Second, for those (including state Attorneys General) who want the evidence from Smith's prosecution, the place to go is Tanya Chutkan, because it's all there in her docket, sealed.