

ADMINISTRATIVE LAW REVIEW
SPRING 2024 SYMPOSIUM: WE THE
PEOPLE? THE FUTURE OF U.S.
ELECTIONS & DEMOCRACY

FEBRUARY 23, 2024

The Administrative Law Review’s Spring 2024 Symposium provided a thought-provoking glimpse into the future of U.S. elections and democracy. Panel discussions featured conversations on topics ranging from the Voting Rights Act and redistricting to presidential powers and the electoral system. The event culminated in keynote addresses, transcribed below,¹ from Representative Jamie Raskin and the Honorable Liz Cheney, two distinguished speakers whose service to this country offered inspiration to all attendees. We also thank panelists Marcia Johnson, Leah Tulin, Danielle Lang, Celina Stewart, Kathy Boockvar, Marcus A. R. Childress, Sarah Brannon, Dara Lindenbaum, Lisa J. Stevenson, Thomas Hicks, and Donald Palmer for their contributions to this year’s symposium.

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1. This transcript is not a certified transcript. It has been edited for length, clarity, and context. Citation: 9 ADMIN. L. REV. ACCORD 105 (2024).

KEYNOTE ADDRESS I: REPRESENTATIVE JAMIE RASKIN

CONGRESSMAN JAMIE RASKIN: When I was a law professor, I used to get to write a lot of law review articles. And nobody was ever interested in hearing me talk about them or anything. But now everybody wants to hear what I've got to say, but I have no time to write law review articles. So, what I'm going to give you today is not a law review article anyway yet, but it is a keynote speech, which sounds like it's something. So, I definitely have something to say. I want to dedicate my remarks to my beloved friend Liz Cheney. Because, in some sense, my remarks flow out of a kind of subtextual argument we had throughout the Select Committee to Investigate the January 6 Attack on the United States Capitol proceedings, where I represented a faction of the Committee, a minority faction, which wanted to deal with big, structural, constitutional, legal, policy questions—the kind that you're looking at today—and not just look at January 6 as a collection of criminal events and Donald Trump's hit job against the republic, which certainly it was, and that was the core of it. But I thought January 6 was related to some continuing and recurring structural weaknesses and deficiencies in American constitutional democracy, which I thought we should address. But the judgment of the group, led by the always articulate and compelling Liz Cheney, was that we would be biting off more than we could chew if we actually took on, for example, the Electoral College, the National Popular Vote movement, these more sweeping sorts of structural problems, which is what I want to talk about today.

So, I pray you accept these handwritten notes as a rough draft of a law review article. This event gave me the opportunity to start to put some thoughts together about this long running subterranean conflict. I don't want to overstate it because the Committee was busy doing a lot of things, but I think that when we came down to our recommendations—which I was working on a lot, and I was the one who delivered the criminal referrals to the Department of Justice and made the motion for our Committee to send them—if I had had my druthers, but we wanted to maintain unity within the Committee, we would've gone much further in terms of our recommendations for what America needed. Which is not to say I told you so, but we are suffering from some of those unaddressed problems. And we may indeed have made the right choice to zero in on just the criminal events and what we could do about them, and then some minor fixes to the Electoral Count Act.²

So out of deference and affection for my dear friend Liz Cheney, although I'm here obviously as a true blue Democrat member of Congress, I thought

2. Pub. L. 49-90, 24 Stat. 373 (1887).

I would begin on a bipartisan note by invoking our last great Republican President, Abraham Lincoln, who spoke of “government of the people, by the people, and for the people.”³ We didn’t start out that way. We started as a slave republic of Christian, white, male, property owners over the age of twenty-one. But we also started constitutionally with the promise of a constant quest to form a more perfect union.⁴

And if you read the Constitution⁵ and its amendments the way that I do, you will see that of the seventeen amendments that we’ve had since the original Bill of Rights in 1791, the vast majority of those amendments are democratizing amendments. They are all about enlarging, broadening, and deepening the meaning of political democracy. The Thirteenth Amendment abolished slavery,⁶ and the Fourteenth Amendment gave us equal protection and due process.⁷ The Fifteenth Amendment banned race discrimination in voting,⁸ on paper at least. The Seventeenth Amendment shifted the mode of election of the U.S. Senators from the legislatures to the people.⁹ The Nineteenth Amendment doubled the electorate in the country by granting women’s suffrage.¹⁰ The Twenty-Third Amendment gave people here in Washington the right to participate in presidential elections.¹¹ The Twenty-Fourth Amendment banned poll taxes in federal elections,¹² and the Twenty-Sixth Amendment lowered the voting age to eighteen.¹³

And those are only the most obvious manifestations of the democratizing push within the amendments. I would argue you could mobilize some of the other amendments to this general progress, too, including the Twelfth Amendment¹⁴ and the Twenty-Fifth Amendment.¹⁵ In any event, those are just the most obvious ones. But you see, our constitutional development has tracked the expansion of democracy and the deepening of the meaning of democracy. But we’re still not remotely there yet. And I think a lot of the problems that you’re talking about today as a part of this symposium and

3. Abraham Lincoln, U.S. President, Gettysburg Address (Nov. 19, 1863).

4. *See* U.S. CONST. pmbl.

5. U.S. CONST.

6. U.S. CONST. amend. XIII.

7. U.S. CONST. amend. XIV.

8. U.S. CONST. amend. XV.

9. U.S. CONST. amend. XVII.

10. U.S. CONST. amend. XIX.

11. U.S. CONST. amend. XXIII.

12. U.S. CONST. amend. XXIV.

13. U.S. CONST. amend. XXVI.

14. U.S. CONST. amend. XII.

15. U.S. CONST. amend. XXV.

that are going to be analyzed reflect the recurring deficiencies and problems of our original design. Starting with this, which is we did not begin with a constitutional amendment or a constitutional provision guaranteeing everyone the right to vote. Now, that's a rather obvious point, but it's a profound one when you look at what all of its historical implications have been.

So, we've had nothing like the Chapter I that you find in the modern South African Constitution,¹⁶ which says that everyone in South Africa has the right to vote in every election at every level of government over them.¹⁷ We don't have that now, why do we not have it? Well, when you think about it, we didn't start off with the idea of voting being a right that citizens have—most citizens couldn't vote, certainly most people couldn't vote. No one who was enslaved could vote. Indentured servants couldn't vote, women couldn't vote, children couldn't vote, people without property and wealth couldn't vote. People who were not white could not vote. So, you're talking about very small numbers of people who actually could vote. Now, it varied according to state, and women could vote in New Jersey, but the percentage of the population that could vote in a Southern state, for example, was tiny. You know, maybe around 12 or 15% of the population actually had the right to vote.

So look at what the implications of that are. If we're going to have a president of the United States, and there were people pushing for popular election of the president, it would make no sense to do it. Certainly, if you were from one of those states that disenfranchised the vast majority of the people in the state, you wouldn't say we should have a popular vote, because your vote is not going to mean much. And so that begins to give you a clue about how we ended up with the Electoral College system. The Electoral College system is a reflection of the fact that there was no universal national right to vote that applied to all citizens. It also reflected the weakness in communications technology and transportation systems in the fledgling republic.

But the idea was basically to allow each state to appoint electors. And this indirect screening mechanism would be a divide between the people, even as such as they existed, and the selection of the president, because we would allow the wise men to do the reasoning and the deliberation for us, and go forward and wheel and deal, and then figure out who would become president. Now, the Electoral College system through the three-fifths compromise¹⁸ reincarnated the basic pro-slavery nature of the original Constitution that ultimately ended up being transformed by the Civil War and the reconstruction amendments. But think about it. How are electors apportioned

16. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996, ch. 1.1.

17. *Id.*

18. *See* U.S. CONST. art. I, § 2.

among the states? Well, your state gets a number of electors equal to the number of representatives in the House, plus two for the senators, the so-called two bonus electors that you get for the senators.

So, how is that related to the Three-fifths Compromise? Well, as you know, the Three-fifths Compromise said essentially that 60% of the enslaved population would be counted for the purposes of apportioning House seats in all of the states. So, the Northern states were the ones who were saying, “Well, if you’re not going to allow your enslaved people to vote and to run for office,” and so on. “Certainly they shouldn’t count for the purposes of apportioning your House seats.” For these purposes and these purposes only, the slave master elites in the Southern states said no, they should count 100% in order to determine the right numbers for allocating the House seats. And that was how they arrived at the Three-fifths Compromise, borrowing a fraction that had been used also in the Articles of Confederation.¹⁹

So, after the first census took place in 1790, the congressional delegations from the slave-holding states had a dozen new members who could be attributed to the population of enslaved people who are now counted for apportionment purposes as part of the Southern base. So, how does that translate into presidential politics? Well, if Georgia ended up with, say, two or three extra representatives, or Virginia ended up with three or four extra representatives because of the slave population being counted, then they got that many extra electors. And what do you know, four out of our five first presidents—everybody but John Adams—were slave masters from Virginia. Seven of our first ten presidents owned slaves and brought them into the presidency with them. So, the Electoral College has always had this Dixie accent to it, even in the twentieth century.

If you go back and look at the history of presidential politics, it’s very common for old-school Democrats—Dixiecrats from the South like Harry Byrd, for example—to step outside of the Democratic Party and run for president on some kind of independent ticket. George Wallace did the same thing in 1972, and then these candidates would get twenty-five or thirty or thirty-five Electoral College votes, basically running on a segregationist platform, sending a sharp message to the Democratic party about what the political price would be of standing up for civil rights.

So, the Electoral College today, if you abstract from its roots in slavery-tilted institutions and you just look at how it operates, how well does it operate? Well, it is profoundly undemocratic, strictly speaking. It has given us five popular vote losers as president of the United States in our history, twice in this century alone, in 2000 and 2016—in the Bush election and in the

19. ARTICLES OF CONFEDERATION of 1777.

Trump election. It marginalizes, in presidential elections, the vast majority of the American people.

Most of us live in safe blue states or safe red states. My constituents in Maryland or people who live in Washington, D.C. are basically not the target of the presidential campaigns. Everybody knows that Maryland and D.C. are going to end up in the blue column. There's no campaigning, there's no campaign offices set up, there are no television advertisements in those states unless they spill over from a swing state. There's nothing that we would recognize as an active campaign, and that's true of blue states and red states, whether they're large or small. California is our biggest state, a safe blue state. There's no campaigning there except when candidates go to raise money in Hollywood or in San Francisco. But basically, it's gone dark. Texas is a safe red state for presidential elections. Again, one of the top four largest states in the union. It's pretty much off-limits. The Democrats have surrendered it. They don't put in millions of dollars trying to win there, right? And the Republicans similarly don't have to spend any money there because they know that they're going to win. And it's true of three of the four largest states, maybe all four of them now. Texas is red; California is blue; New York is blue. Florida used to be kind of contested, like in 2000, but these days is looking increasingly red. So you say, "Well that's right, the Electoral College helps the small states," right? No, it doesn't help the small states. If you look at the dozen smallest states, eleven out of twelve of them are safe blue states or safe red states. Like Rhode Island—totally blue, off limits. Delaware—blue, off limits. North Dakota, South Dakota, Idaho, Montana are all red states, nobody campaigns there. The only small swing state I could find was New Hampshire, which used to be the belle of the ball, the primary state that you went to, and also a general election tossup state.

But all of that is just perfectly arbitrary. There are six or seven swing states, including Pennsylvania—famously, everybody knows—Arizona, Colorado. Why are they swing states? Are they demographically representative of the rest of the country? Do we know that they have laboratory political conditions where the best political wisdom will emerge? No, they're swing states because they have relatively equal numbers of Democrats and Republicans. That's it. That's just completely arbitrary. It is just random, basically. That's a very weird way to do it.

We spend hundreds of millions of dollars every year exporting American democracy to incipient democracies around the world. All these countries that are writing new constitutions, the one thing they never come back to us with is, "You know, that Electoral College thing you got? That sounds really good. We think we'll bring it over to our society." I feel like we should be able to learn from our own experience and the experience of countries around the world. It's time for us to grow up. We're talking about just a

completely obsolete system. And these days, the Electoral College system, as we saw on January 6, 2021, can get you killed. Because if you've got strategic bad-faith actors out there, they can exploit every nook and cranny in this protracted, obsolete process, which was obviously based on pre-modern communications and technology. They can try to exploit that. To revisit the obvious result, what Congress was doing there that night on January 6, was a completely ministerial, obvious, and redundant task. We were there simply to receive the Electoral College votes. The so-called certificates of ascertainment that had been sent in by the governors of the states ratifying, the perfectly ministerial task, of the state legislatures appointing the electors, who themselves are part of a ministerial, administrative, bureaucratic process of saying somebody won in the state, right? And there are a dozen steps in the process. And I'm sure Donald Trump's team knows every single one of those steps at this point, because each one was an occasion for intervention in order to accomplish some kind of trickery or strategic reversal. That's the whole meaning of Donald Trump's call to Secretary of State Brad Raffensperger in Georgia. "Just find me 11,780 votes. That's all I want," he said. Hey, I'm a politician. Just find *me* 11,780 votes. That sounds pretty good if you're finding votes out there.

But in any event, the electoral process doesn't have to be remotely that complex and convoluted. We can actually make that happen simply by adopting a national popular vote, either by constitutional amendment or through the National Popular Vote Interstate Compact.²⁰ Now, we still lack a constitutional statement of a right to vote, a constitutional amendment on a right to vote, which creates huge problems beginning with the disenfranchisement of millions of former prisoners, for example. I think in forty-two states now, former prisoners have been re-enfranchised under the theory that if you do all of your time, you do good time, you get out, and you get every other right restored, including your right to vote. But there's seven or eight states that still say no, you don't get your right to vote back after serving your sentence. If we had a constitutional amendment guaranteeing the right to vote, it would reverse *Richardson v. Ramirez*,²¹ the constitutional decision by the Supreme Court that said that was constitutional for states to disenfranchise former prisoners.²²

But there are all these struggles still taking place around America. In Florida, the people voted by referendum to restore voting rights to the former

20. National Popular Vote Interstate Compact, MD. CODE ANN. ELEC. LAW § 8-5A-01 (West 2007).

21. 418 U.S. 24 (1974).

22. *Id.* at 56.

prisoners. And then the Florida legislature said, okay, we will accept the judgment of the voters. We'll restore voting rights to former prisoners *so long as* the prisoners pay the state back for the costs of their confinement. So just pay us this bill for fifty or sixty thousand dollars, which does sound a little bit like a poll tax in violation of the Twenty-Fourth Amendment. But that struggle is still taking place in Florida, and funds are being raised to try to pay for people to repay the state for their incarceration. That would be taken care of with a constitutional amendment guaranteeing the right to vote.

There's also the problem that we've got millions and millions of American citizens who are just outside of the formal electoral structure, including I'm sure a lot of people in this room. The United States is the only democracy on earth where the people of the capital city are disenfranchised in their own national parliament. Can you imagine if you told the people of Paris that they couldn't be represented in *l'assemble nationale* because they breathe the same air as representatives of other people from France? You'd have another French revolution on your hands. We have 713,000 tax-paying, draftable citizens right here in Washington, D.C., who have no voting representation in the House or the Senate. But I was proud to have been the floor leader in the 117th Congress for D.C.'s statehood bill,²³ which we passed in the House. It was not taken up in the Senate. And when we started, I thanked the people of Washington who have a real, true, valid political grievance, not a concocted imaginary grievance, but didn't come down to the Capitol and storm our buildings and beat the daylights out of 150 of our police officers and hospitalize them and try to overthrow an election.

The people of D.C. have done it the right way, and they've conducted a statehood constitutional convention, and they've asked for their statehood the way that thirty-seven other states have petitioned for statehood since the original thirteen created the compact.²⁴ And I'm proud to say as a Marylander that the Maryland delegation, except for one of us, has been supporting our friends in Washington, D.C. in their journey to statehood, which is the journey towards real political equality that people have taken historically in our country. We've got three and a half million American citizens in Puerto Rico who are not represented in the House and the Senate. It's time for Puerto Rican statehood, too. Another structural defect. And if we add a constitutional amendment guaranteeing the right to vote, it would be a spur to actually taking seriously the statehood aspirations of some of these left-out jurisdictions, because otherwise, if they had a constitutional right to vote at every level of government over them, the courts would have to deal with it. And that would be a complex undertaking. And so, the reasonable way to

23. Washington, D.C. Admission Act, H.R. 51, 117th Cong. (2021).

24. See U.S. CONST. art. IV, § 3, cl. 1.

do it is through statehood.

So, we need a right to vote. We need a popular right to vote for president. We need—and this is something you guys can help spell out in your work—we need a national electoral commission. Not the Federal Election Commission, which is not only broken and dysfunctional and frozen and paralyzed, but by design, it is limited only to dealing with these money issues. If you look at Canada and you look at Mexico, you look at countries all over the world, they have national electoral commissions, which are defined as independent non-partisan entities that are tasked with administering elections to make sure that everybody gets the right to vote to participate and all the votes are counted. And what do we have in America? We've got partisan elected officials, secretaries of state, all over the country running elections.

I remember when the scandal took place in 2000 leading to *Bush v. Gore*²⁵ with hundreds of thousands of people disenfranchised, including former prisoners, ballots being lost, butterfly ballots—it was crazy. The person in charge of overseeing the election, Katherine Harris, the Secretary of State of Florida, also happened to be the chair of the Bush for president campaign. She chaired the campaign of the candidate who was running in the election where there was just every kind of trickery and mischief afoot, right? That doesn't happen in most democratic countries on earth, but we've got political officials elected who have this built-in conflict of interest. So, if we can establish a right to vote and we can establish a popular vote for president, then we would need a national electoral commission to establish the electoral machinery to actually have a counting of the votes. By the way, that's something that we don't have in America. We've never had a national vote tally because it's left to the states. If they want to have presidential elections, they can have an election, and then they can report or not report whatever they think the votes are leading up to their appointment of the electors. But all that gets sent into Washington is the certificates of ascertainment by the governors saying, "Here's the electors, and here's where they're going." And from there, I think once we do that, then the sky's the limit in terms of our ability to improve our elections.

I'm the sponsor for the national rank choice voting legislation.²⁶ We should be able to move to rank choice voting, which simply says, anybody who wins an election should be the pick of a majority of the people rather than a plurality winner, i.e. somebody who's gotten, you know, 28% of the vote, 22% of the vote or what have you. Ranked choice voting simply says you vote for every candidate on the ballot and you rank them first, second,

25. 531 U.S. 98 (2000).

26. Ranked Choice Voting Act, H.R. 4464, 116th Cong. (2019).

third, fourth, fifth, sixth, and so on. And the last-place candidate is dropped off if nobody's got a majority, and the votes are redistributed toward the top. And you keep doing that until somebody crosses the 50% plus one threshold, which is why it's called instant runoff voting. It's a series of runoffs, and the runoffs are built into the ranked choice system. But we have a lot of improvements in our elections that can take place once we get the engines moving again. You know, Tocqueville said in *Democracy in America*²⁷ that democracy and voting rates in our country are either shrinking and subsiding, or they're growing and expanding, and it's one way or the other. And we've got to get back on the growth track. John Dewey said that the only cure to the ills of democracy is more democracy.²⁸ And what we're suffering from today is not democracy, it's the impediments to democracy. It's the obstacles to democracy. It's whether the majority will actually get to govern. And that basic question is reincarnated in every one of these struggles, the voter suppression tactics, the gerrymandering of our state and federal districts, the use of judicial activism to undermine people's right to vote, as in the demolition of the Voting Rights Act²⁹ in *Shelby County v. Holder*³⁰ in 2013. The filibuster is a profoundly anti-democratic instrument that enshrines a tyranny of the minority in a small minority over the majority. So, I would put all of those things together to say, the real question is whether we can get democracy moving again in the right direction, because the alternative, as Tocqueville saw, is a collapse of democratic institutions and practices into something else.

And already, you can see, both in America and all over the world, other forms of government vying against democracy, right? We've got the autocrats in Moscow, the kleptocrats in Mar-a-Lago. We've got the theocrats in MAGA³¹ and Speaker of the House of Representatives Mike Johnson. There are lots of contenders to the crown who would say, and many of say openly now, democracy really doesn't work. Whenever President Biden comes to talk to the Democratic caucus, he tells us the same story, which is that when he talks to the autocrats and the tyrants of the world, the Putins and the Xis of the world, they all say the same thing, which is: "You're a nice man, Joe Biden, but democracy has had its day. It doesn't move fast enough for the age of the internet. The problems are too big." Although they deny them publicly, privately they acknowledge climate change and the problems of governance and inequality in the world. They say, "Democracy can't do it.

27. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Henry Reeve, trans., 1835).

28. JOHN DEWEY, *THE PUBLIC AND ITS PROBLEMS* 146 (1946).

29. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965).

30. 570 U.S. 529 (2013).

31. "Make America Great Again" (MAGA) was President Donald Trump's campaign slogan during the 2016 election and is colloquially used to refer to his supporters as a group.

You need strong men. That's what you need." So that's really the question.

You know, your title *Administrative Law Review* might sound technical or nerdy, like nobody wants to read that, but really, it goes to the heart of whether we're going to have democracy. And what's the importance of democracy? Well, I'll leave you with an image that President Lincoln invoked. He was asked about the relationship between the Declaration of Independence³² and the Constitution. And Lincoln said the constitutional democracy is the beautiful frame, the beautiful silver frame upon which rests the golden apple of liberty and freedom,³³ by which I take him to mean that democracy is the structural presentation necessary for freedom. Necessary, but not sufficient, right? We can have the structure in place, but if you got the wrong people in office, like the Supreme Court—which after reconstruction, gutted it in *Plessy v. Ferguson*³⁴—and basically said that separate but equal and Jim Crow apartheid is perfectly consistent with equal protection, then democracy is not enough.

But it is necessary. The formal procedures of democracy are necessary towards freedom because the autocrats like Vladimir Putin, and Viktor Orbán in Hungary, and Marcos in the Philippines, and el-Sisi in Egypt, and Erdogan in Turkey—they're never going to give people their freedom. They're not interested in that. Freedom is a dangerous thing in an autocratic society. It's *only* in the democratic societies where we've got the *chance* of defending people's freedom. And that doesn't mean it's always going to work, right? In half of America right now, women cannot make their own reproductive decisions.³⁵ Half the country. Under the formal procedures of constitutional democracy and the rule of law, that's where we are. So, it's no guarantee; it's not sufficient, but it is necessary. What is required is for people to go out and fight, and for people to go out and imagine what it would mean for democracy to be *greater* in the twenty-first century than it was in the twentieth century. Not something less, not something inferior. So that job is yours, and I'm glad you guys are doing it. Thank you very much.

32. THE DECLARATION OF INDEPENDENCE (U.S. 1776).

33. See Abraham Lincoln, Fragment on the Constitution and the Union (Jan. 1861), in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN 168, 169 (John G. Nicolay & John Hay eds., Francis D. Tandy Co. 1905).

34. 163 U.S. 537 (1896) (overruled by *Brown v. Board of Educ. of Topeka, Kan.*, 347 U.S. 483 (1954)).

35. See Allison McCann & Amy Schoenfeld Walker, *Tracking Abortion Bans Across the Country*, N.Y. TIMES, <https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html> (Aug. 23, 2024, 12:26 PM) (identifying twenty-two states). See generally *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (holding that the Constitution does not provide a right to abortion, and the power to regulate abortion procedures lies with individual states and their elected officials).

KEYNOTE ADDRESS II: THE HONORABLE LIZ CHENEY

THE HONORABLE LIZ CHENEY: It's almost not fair to have your daughter introduce you because I end up teary-eyed before I even take the stage. But I want to thank you. Many of you may not know, but my daughter, Elizabeth, played a really crucial role working and doing research for us on the Select Committee, in an unpaid way, obviously. But, she was doing research really before the Committee even got going, looking at the criminal defendants, putting together the cases, putting together what they had said in so many of those trials. And so, it's really wonderful to have the chance to be here today. In addition to how special it is to be here with Elizabeth, it's also wonderful to be here with my former colleague and my dear friend, Jamie Raskin.

Jamie and I were elected to the House the same year. Jamie said to me at one point during the Select Committee exercises, he said to me, "You know, I really look forward to the days when you and I can disagree again." And I think it's a wonderful way to describe what the country's facing, and a wonderful way to describe how high the stakes are and where we find ourselves today. There were many moments on the Select Committee, many moments when the Committee was meeting when I think we all thought to ourselves how unusual it was, how unexpected in many ways it was that we found ourselves working so closely together—Jamie and I had known each other and were friends before—but to find ourselves in a situation where Republicans and Democrats were working in a way that frankly, I think all committees on the Hill should work.

And we weren't taking political shots at each other during our public hearings. We weren't engaged in partisan battles. We were very much focused on the really serious tasks at hand. And I also want to say a particular thanks to Jamie. I know, as you all know, as the ranking member of the House Oversight Committee, Jamie gets to spend his days with some really special people. As Americans, we all owe him a debt of gratitude for what he's doing on that committee. So, it's wonderful to be here. Thank you, Jamie.

Thinking about the topic of democracy and what it means and how we're all going to have to work together to protect our system into the future, when I look back over the course of the time that I've been involved in politics, there are some moments that really stand out very clearly. I've been involved, on some level, in politics for as long as I can remember. I was a volunteer in my first presidential campaign when I was ten years old. It was 1976, and my dad was President Ford's chief of staff. And so, my mom took my sister and me to the Ford campaign headquarters, and my job was to seal envelopes. So, I was given a plate, a huge wet sponge, and a bunch of envelopes to run over the sponge and seal. And I was really dedicated to my task

and very serious about it. As I was doing this, one of the supervisors came over, and she pointed out to me that I was so aggressive about my task that none of the envelopes were actually staying sealed. And then she fired me. But she did it gently, and I remained committed to democracy, to being involved in the process.

As a family, we've been participating in campaigns for many, many years. I just have to tell a story because Elizabeth's here, and I'm sorry Elizabeth, don't kill me. But Elizabeth has been very independent and dedicated from the very earliest days of her life. After the 2000 election, the whole family got Secret Service protection. And this didn't stop then-four-year-old Elizabeth from deciding that it was time to run away from home and to strike out on her own. And so some of our most treasured family photos are of Elizabeth standing at the end of our driveway negotiating with the Secret Service agents. I, actually to this day, am surprised that she didn't prevail, because even at four, I would not have wanted to be up against Elizabeth.

But that campaign in 2000 was one of the closest in our history. And when I look back on that campaign, and you think about how hard fought that was, and you think about the battle that came down to 537 votes in Florida. And then you think about what happened on the night that the Supreme Court decided.³⁶ And Al Gore on that night made what I believe is one of the finest political speeches in the history of our nation. I would urge every one of you to go and look at the speech that Vice President Gore gave that night because he talked about, he quoted speeches where other people who had lost had said, "Listen, I'm very disappointed in this loss. I know that this isn't how we wanted things to turn out, but I know that this is how things must turn out, and it's a time for us to put patriotism and put love of our country ahead of partisanship, ahead of partisan politics." And then, if you think about a few weeks after that when the swearing-in took place, and I remember very clearly being on the inaugural platform, on January 20 in 2001, watching that peaceful transfer of power. I remember clearly thinking about what a magnificent thing this is, and what a magnificent thing this is *because* of what we had been through, *because* of the emotion involved. But here we were as a nation coming together to honor and value, and uphold the peaceful transfer of power.

This concept of the peaceful transfer of power is so fundamental to who we are as Americans, so fundamental to the survival of the republic that it's depicted in one of the portraits in the Rotunda in the Capitol. It's a portrait of George Washington when he resigned his commission at the end of the Revolutionary War and handed power back to the Continental Congress.

36. *Bush v. Gore*, 531 U.S. 98 (2000).

Then he would do it again at the end of two terms as president. Think for a moment what it means, that throughout our entire history as a nation, every single president, every single one, regardless of party, has fulfilled that fundamental duty and obligation to hand power peacefully, to defend the peaceful transition of power. Every president until Donald Trump. And that is a very grave and serious set of circumstances that requires that we think very carefully about what that means.

Now, as we think about the challenges that we're facing and the challenges that you all are going to face—those of you who are students, as you graduate, as you go out into your careers as attorneys—there is not a more momentous time that I can think of, certainly, when this nation has needed young people skilled in the law and committed to the rule of law to ensure that we take very seriously what it means to be a nation of laws. And you will find, I certainly have found, that there are people today who say things like, look, let's move past what happened on January 6, 2021. Let's move past what happened after the last election. And it is really important for us as a country that we don't ignore what happened, that we don't whitewash what happened, that we don't minimize what happened. And it's very important to recognize the scope, the breadth, and the depth of the plan that Donald Trump oversaw to attempt to overturn that election. It was real and it was serious. And it wasn't just on January 6.

Now, if you think about what we're seeing now in terms of the litigation that's underway, and in particular, the former president's attempts to try to delay the January 6 trial. His attempts right now, in a whole range of levels, including his assertions, that the president of the United States has some sort of blanket immunity that covers all actions in office—including, according to his own lawyers, and according to Donald Trump himself—immunity from prosecution, even if he were to kill a political opponent. Now, his lawyer conditioned it and said, well, if he killed a political opponent, if he sent Seal Team Six to kill a political opponent, he could be prosecuted so long as he were impeached and convicted first. But Donald Trump doesn't even put that condition on it. Now, he's making those claims because he believes them, but he is also doing it because he is trying to delay his trial. And every time you hear people talk about the delay in the trial, and you hear people think about why he is trying to delay the trial, I would ask you to remember that what he's doing is trying to suppress the evidence, and he's trying to prevent the American people from hearing that evidence.

Now, you heard much of that evidence when the Select Committee put on our hearings—but not all of it, because the special counsel has had access to information and testimony that we didn't. And here's what Donald Trump knows about that testimony. He knows that the testimony in that trial isn't going to come from his political opponents. He knows that the

testimony in that trial is going to come from the people who knew him best. The people who worked most closely with him, it will come from those people who were the leaders of the Department of Justice, the leaders in the White House Counsel's Office, his closest political aides, his vice president, and members of his family, potentially. Those are the people who've testified in front of the grand jury.

And from those people, what we know is Donald Trump engaged in this multi-part effort that involved pressuring state legislatures to violate their oath of office and their duty, pressuring the vice president to violate his oath of office to violate the law and to pressure the Department of Justice, obviously corruptly to violate the law, to push his stolen election claims. But we also know from them what Donald Trump was doing while the attack was underway. And I would ask you just to think about a few pieces of that information. The Capitol of the United States is under violent assault—and don't let anybody tell you it wasn't a violent assault, there's a huge effort underway to claim that it wasn't. It was a violent, bloody assault. One of the police officers who fought that day said to me that night, at about 9:30 at night on January 6, he said to me, "I have fought in Iraq, but I have never seen the kind of bloody hand to hand combat, kind of pitched medieval battle that we had to fight today."

And look at the video from the west front of the Capitol. Donald Trump was watching all of that. He was sitting in the dining room next to the Oval Office watching that on television as members of his family and his senior staff pleaded with him, the White House counsel pleaded with him to tell the mob to go home, to tell the mob to leave the Capitol. We also know that while he was sitting at that table, he was handed a note and the note said, "A civilian has been shot at the entrance to the chamber of the U.S. House of Representatives." And we know that he put that note on the table in front of him. This is in our Select Committee report.³⁷ We have witness testimony. The note that said a civilian had been shot, was sitting on the table in front of Donald Trump, and he continued to watch the assault on our Capitol, and he continued to refuse to tell the mob to leave.

Now, that is a set of facts that Donald Trump knows. It doesn't matter if you are a Republican or a Democrat or an Independent. When you listen to the way that he conducted himself during the 187 minutes, you have to conclude it was depravity. It's not political. There's no justification for it. It was depravity. And that is the kind of thing that we cannot lose sight of as citizens, the lack of fitness for office in a man who would do that. The other

37. See SELECT COMM. TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL, H.R. REP. NO. 117-663 (2022).

thing that is important to remember as we're looking at the coming ten and eleven months here, sometimes I hear, especially from conservatives, from Republicans, "Look, we can go ahead and elect Donald Trump again because we have the balance of power. We have these institutions, the separation of power, all of those things will protect us from Donald Trump."

Now, I would ask you: first of all, that's really a hell of an argument to make for somebody that folks are supporting to be president. Like, go ahead and elect him, it won't be so bad. But that is the argument. But I think it's also important to realize how wrong that is. And to realize how wrong it is, you have to think about what does it mean to say the institutions will protect us from the president? Well, the institutions that are—in what I believe is absolutely a genius construct—devised and established in our Constitution, those institutions that balance the power of the executive are the Congress and the courts.³⁸ Now, the notion that the Congress is going to protect us from Donald Trump, we could put the lie to that notion by just looking at what the Republicans in Congress are doing today.

What they're doing today is allowing Donald Trump to prevent them from voting for legislation that would help to secure the border, from voting for legislation that'll provide aid and assistance to Ukraine. And he's not even the nominee. So, the idea that they will stand up against anything that he tries to do if he's elected again is just simply not true. The power that the Congress has against a president are things like impeachment, which certainly will not be an action that a Republican-led Congress would take against Donald Trump. Some people say, well, he has to get his nominees confirmed. He doesn't. He knows he doesn't. He'll put people in place as "acting" officials, and you know the kinds of people that he will put in place. There will not be people around him like Jeff Rosen and Pat Cipollone, some of the people that stopped him from the very worst that he tried to do. He will have people like Jeff Clark and John Eastman. I mean, they could be in jail, which might be an obstacle to his efforts to put them in office. But, you know, people like Mike Flynn, who when he appeared in front of the Select Committee, we asked him, "Do you believe in the peaceful transfer of power in the United States of America?" And he took the Fifth.³⁹ And then we asked him, "Do you believe that the attack on the Capitol on January 6 was justified?" And he had his lawyer say, "Well, are you asking was it morally justified or legally justified?" And I said, "Both." And then he took the Fifth.⁴⁰ So, Mike Flynn is somebody that Donald Trump suggests that he may well put in an important position of power again. The idea that the

38. See U.S. CONST. arts. I–III.

39. H.R. REP. NO. 117–663, at 118.

40. *Id.*

people around Donald Trump will stop him is simply not true.

That leaves the courts. And we are watching every day—and I know you all are watching this particularly closely—we’re watching the attack and the assault on the courts by a president, a former president, who is determined to seek vengeance, who’s determined to tear them down, who attacks the very system of justice and the rule of law on which we all depend. And here is perhaps the most important thing to remember: the rulings of our courts have no power unless the executive understands his obligation or her obligation to enforce them. If we have a president of the United States who refuses to enforce the rulings of our courts, that will immediately unravel the republic. And one of the things that I also heard, sometimes people would say to me, “Listen, it wasn’t so bad because if Donald Trump had tried to stay in office after January 20th, well, the Supreme Court would’ve gotten involved.”

Now, think about that. How would they have enforced any ruling if they did in fact get involved? If they did in fact rule that he needed to leave office, who would have made him do it? Those are the kinds of questions that we’ve never had to ask before in this country, but that we do have to ask now. And so I would say, as you’re thinking about this election and you’re thinking about the stakes that we’re facing, remember that a president—a chief executive—who’s willing to torch the Constitution, who’s willing to blow through the guardrails of our democracy, presents an existential threat. It doesn’t matter, in my view, what your policy views are on anything else. I have a lot of policy disagreements with the Biden administration. I know, though, that we can survive bad policy for four years. We cannot survive a president who’s willing to torch the Constitution.

And I would tell you that this also extends to members of the House and the Senate. Again, as someone who has been a lifelong Republican, when I look at the arguments that were being made and put forward by people like Speaker Mike Johnson—when I look at the fact that Mike Johnson still won’t today say that Joe Biden was elected president, he won’t say that Joe Biden won the election. Representative Elise Stefanik refuses to say whether she would certify the next election. I think that we have very sadly, and in a way that I find frankly heartbreaking, gotten to a point where we can’t count on this group of elected Republicans to defend the Constitution. And I hope—and I’m going to work very hard to make sure—that we can get back to a place where we have two parties that will have disagreements about policy, but that are fundamentally going to be devoted to and faithful to the Constitution.

In my view, we have to work on that project after 2024. In 2024, we’ve got to make sure we save the republic. And that comes down to all of you.

When you think about the damage that could be done with the appointment of unethical lawyers in a new administration, for example, and you think about the damage that *was* done by unethical lawyers after the 2020 election, it tells you how important it's going to be for us to have a cadre, particularly of young people, who are absolutely committed to fidelity to our Constitution, and who understand that some things have to matter. Some things have to matter. Every person in this room, everyone, every one of us, has faced challenges and decisions. You all know, you can hear the voice in your head, you can hear your conscience. You know when you are being asked to do something that is wrong, and you know that sometimes that path can seem easier.

And the lesson certainly that Jamie and I saw of what was going on in the Congress after the last election was a story of elected officials, who time and time again told themselves, "I'm just going to do this one more thing for Donald Trump. I'm just going to do this one more thing." And pretty soon that one more thing snowballs. And you get to a place you can't come back from. And you're accepting behavior that is unacceptable and you're defending the indefensible. And in our country, the institutions—though I believe that they are miraculous, that what our founders did, although imperfect, that that structure leads us to a more perfect union if we follow it. Although those institutions are the best that have ever been devised by human beings, they only work, and they are only sustained if individuals sustain them.

That is the other lesson, and the final lesson I want to leave with you. Those institutions don't defend themselves. And so when people again, they might say to you, we don't have to worry because we have these institutions—and I just heard Governor Chris Sununu actually saying this yesterday, "Oh, our country survived it. Don't worry. The country can always survive. We've been through difficult times." It's true. We've been through very difficult times, and we got through those difficult times because of people, because of the men and women who did the right thing. And that is the duty that we all share. It's incumbent upon all of you as you think about what you're going to do next and how you're going to be engaged and involved.

I would ask you—I know people are thinking about your careers in the law and where you're going next—I hope that you will also think about, and I know here you will, think about careers in public service and think about running for office yourselves. When we think about the gravity of the challenges our nation is facing, and I've talked mostly today just about the ones we're facing domestically, the gravity of the threat that we're facing globally is very significant and historic. And when you're facing complicated threats and challenges that you know are like up *here* in terms of their level of

sophisticated difficulty, and we elect people like Representatives Marjorie Taylor Greene and Lauren Boebert and elect people whose competence is down *here*, and then we say, you know, it'll be great. Let's go ahead and let them try to handle this. It won't work. Now, that means, though, that when you go to vote, you've got to have good options. And so that means that we need people like you guys to run for office. We need you to put your name on the ballot. We need you to understand how important it is and to understand that as citizens, none of us can be bystanders. None of us can be bystanders. We have elected officials who think they can be bystanders. None of us can be bystanders because there's nobody else coming to save us. It's up to us.

The thing that gives me hope and the message I want to leave you with is not only is it up to us, but we can do it. As I say that, I'm thinking, I know that the Barack Obama campaign slogan was "Yes, we can." And far be it from me to repeat a Barack Obama slogan, but we can. We can. And throughout history, the only thing that has ever made the difference has been the leadership and the passion and the engagement of people who care deeply about causes and were willing to work hard and to make the sacrifice and make the commitment to defend it. I know that we will be able to come through it. I know that as a nation, the vast majority of us, regardless of party, want our kids to grow up in freedom. They want our kids to live in a country that's characterized by the peaceful transfer of power. And that gives me real hope.

I hope that you all will take from this a renewed commitment and dedication to making sure that we do what's right. That in this election cycle especially, we commit ourselves to rising above partisanship and to recognizing that history is going to look back at this moment. And we have to be able to say, look, in our time of testing, we did the right thing. We loved this country so much that we were willing to put our commitment to our nation, to our Constitution, to democracy ahead of partisan politics. And I am confident that if we all do that we will prevail. We'll see this through, and Jamie and I can start disagreeing again. Thank you very much.