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The 45th President's Answer to Article of Impeachment:

IN THE SENATE
OF THE UNITED STATES OF AMERICA

ANSWER OF PRESIDENT DONALD JOHN TRUMP, 45TH PRESIDENT OF THE UNITED STATES, TO ARTICLE I: INCITEMENT OF INSURRECTION

To: The Honorable, the Members of the Unites States Senate:

The 45th President of the United States, Donald John Trump, through his counsel Bruce L. Castor, Jr., and David Schoen hereby responds to the Article of Impeachment lodged against him by the United States House of Representatives by breaking the allegations out into 8 Averments and,

Respectfully Represents:

1. The Constitution provides that the House of Representatives 'shall have the sole Power of Impeachment' and that the President 'shall be removed from Office on Impeachment for, and conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.'"

Answer 1:

Admitted in part, denied in part as not relevant to any matter properly before the Senate. It is admitted that the Constitutional provision at Averment 1 is accurately reproduced. It is denied that the quoted provision currently applies to the 45th President of the United States since he is no longer "President." The constitutional provision requires that a person actually hold office to be impeached. Since the 45th President is no longer "President," the clause 'shall be removed from Office on Impeachment for…' is impossible for

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the Senate to accomplish, and thus the current proceeding before the Senate is *void ab initio* as a legal nullity that runs patently contrary to the plain language of the Constitution. Article I, Section 3 of the Constitution states "[j]udgment in cases of impeachment shall not extend further than to removal from office, *and* disqualification to hold and enjoy an office of honor…" (emphasis added). Since removal from office by the Senate of the President is *a condition precedent which must occur before*, and jointly with, "disqualification" to hold future office, the fact that the Senate presently is unable to remove from office the 45th President whose term has expired, means that Averment 1 is therefore irrelevant to any matter before the Senate.

2. Further, section 3 of the 14th Amendment to the Constitution prohibits any person who has 'engaged in insurrection or rebellion against' the United States from 'hold[ing] any office…under the United States'.

Answer 2:

Admitted in part, denied in part, and denied as not relevant to any matter properly before the Senate. It is admitted that phrases from Section 3 of the 14th Amendment to the Constitution are correctly replicated in Averment 2. It is denied that the 45th President engaged in insurrection or rebellion against the United States. The 45th President believes and therefore avers that as a private citizen, the Senate has no jurisdiction over his ability to hold office and for the Senate to take action on this averment would constitute a Bill of Attainder in violation of Art. I, Sec. 9. Cl. 3 of the United States Constitution.

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The 45th President asks the Senate to dismiss Averment 2 relating to the 14th Amendment as moot.

3. In his conduct while President of the United States – and in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed.

Answer 3:

Denied, and irrelevant to any matter properly before the Senate. It is denied that the 45th President of the United States ever engaged in a violation of his oath of office. To the contrary, at all times, Donald J. Trump fully and faithfully executed his duties as President of the United States, and at all times acted to the best of his ability to preserve, protect and defend the Constitution of the United States, while never engaging in any high Crimes or Misdemeanors. Since the 45th President is no longer "President," the clause 'shall be removed from Office on Impeachment for…' referenced at Averment 1 above is impossible, and the current proceeding before the Senate is *void ab initio* as a legal nullity patently contrary to the plain language of the Constitution. As the present proceedings are moot and thus a nullity since the 45th President cannot be removed from an office he no longer occupies, Averment 3 is irrelevant to any matter properly before the Senate.

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4. Donald John Trump engaged in high Crimes and Misdemeanors by inciting violence against the Government of the United States, in that:

On January 6, 2021, pursuant to the 12th Amendment to the Constitution of the United States, the Vice President of the United States, the House of Representatives, and the Senate met at the United States Capitol for a joint session of Congress to count the votes of the Electoral College. In the months preceding the Joint Session, President Trump repeatedly issued false statements asserting that the Presidential election results were the product of widespread fraud and should not be accepted by the American people or certified by State or Federal officials.

Answer 4:

Admitted in part, denied in part, and denied as irrelevant to any matter properly before the Senate. It is admitted that on January 6, 2021 a joint session of Congress met with the Vice President, the House and the Senate, to count the votes of the Electoral College. It is admitted that after the November election, the 45th President exercised his First Amendment right under the Constitution to express his belief that the election results were suspect, since with very few exceptions, under the convenient guise of Covid-19 pandemic "safeguards" states election laws and procedures were changed by local politicians or judges without the necessary approvals from state legislatures. Insufficient evidence exists upon which a reasonable jurist could conclude that the 45th President's statements were accurate or not, and he therefore denies they were false. Like all Americans, the 45th President is protected by the First

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Amendment. Indeed, he believes, and therefore avers, that the United States is unique on Earth in that its governing documents, the Constitution and Bill of Rights, specifically and intentionally protect unpopular speech from government retaliation. If the First Amendment protected only speech the government deemed popular in current American culture, it would be no protection at all. Since the 45th President is no longer "President," the Constitutional clause at Averment 1 above 'shall be removed from Office on Impeachment for…' is impossible since the 45th President does not hold office and the current proceeding before the Senate is *void ab initio* as a legal nullity rendering Averment 4 irrelevant to any matter properly before the Senate.

5. Shortly before the Joint Session commenced, President Trump, addressed a crowd at the Capitol ellipse in Washington DC. There, he re-iterated false claims that "we won this election, and we won it by a landslide."

Answer 5:

Admitted in part, denied in part. It is admitted that President Trump addressed a crowd at the Capitol ellipse on January 6, 2021 as is his right under the First Amendment to the Constitution and expressed his opinion that the election results were suspect, as is contained in the full recording of the speech. To the extent Averment 5 alleges his opinion is factually in error, the 45th President denies this allegation.

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6. He also willfully made statements that, in context, encouraged – and foreseeably resulted in – lawless action at then Capitol, such as: "if you don't fight like hell you're not going to have a country anymore." Thus, incited by President Trump, members of the crowd he had addressed, in an attempt to, among other objectives, interfere with the Joint Session's solemn constitutional duty to certify the results of the 2020 Presidential election, unlawfully breached and vandalized the Capitol, injured and killed law enforcement personnel, menaced Members of Congress, the Vice President, and Congressional personnel, and engaged in other violent, deadly, destructive, and seditious act.

Answer 6:

Admitted in Part, denied in part. It is admitted that persons unlawfully breached and vandalized the Capitol, that people were injured and killed, and that law enforcement is currently investigating and prosecuting those who were responsible. "Seditious acts" is a term of art with a legal meaning and the use of that phrase in the article of impeachment is thus denied in the context in which it was used. It is denied that President Trump incited the crowd to engage in destructive behavior. It is denied that the phrase "if you don't fight like hell you're not going to have a country anymore" had anything to do with the action at the Capitol as it was clearly about the need to fight for election security in general, as evidenced by the recording of the speech. It is denied that President Trump intended to interfere with the counting of Electoral votes. As is customary, Members of Congress challenged electoral vote submissions by state under a process written into Congressional rules allowing for the

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respective Houses of Congress to debate whether a state's submitted electoral votes should be counted. In 2017, Democratic Members of Congress repeatedly challenged the electoral votes submitted from states where President Trump prevailed. In 2021, Republican Members of Congress challenged the electoral votes submitted from states where President Biden prevailed. The purpose of the Joint Sessions of Congress in 2017 and on January 6, 2021 was for Members of Congress to fulfill their duty to be certain the Electoral College votes were properly submitted, and any challenges thereto properly addressed under Congressional rules. Congress' duty, therefore, was *not* just to certify the presidential election. Its duty was to first determine whether certification of the presidential election vote was warranted and permissible under its rules.

7. "President Trump's conduct on January 6, 2021, followed his prior efforts to subvert the certification of the results of the 2020 Presidential Election. Those prior efforts, included a phone call on January 2, 2021, during which President Trump urged the secretary of state Georgia, Brad Raffensperger, to "find" enough votes to overturn the Georgia Presidential election results and threatened Secretary Raffensperger if he failed to do so.

Answer 7:

Admitted in part. Denied in part. Denied as irrelevant to any matter properly before the Senate. It is admitted that President Trump spoke on the telephone with Secretary Raffensperger and multiple other parties, including several attorneys for both parties, on January 2, 2021. Secretary Raffensperger

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or someone at his direction surreptitiously recorded the call and subsequently made it public. The recording accurately reflects the content of the conversation. It is denied President Trump made any effort to subvert the certification of the results of the 2020 Presidential election. It is denied that the word "find" was inappropriate in context, as President Trump was expressing his opinion that if the evidence was carefully examined one would "find that you have many that aren't even signed and you have many that are forgeries." It is denied that President Trump threatened Secretary Raffensperger. It is denied that President Trump acted improperly in that telephone call in any way. Since the 45th President is no longer "President," the Constitutional clause from Averment 1 above 'shall be removed from Office on Impeachment for…' is impossible since the 45th President does not hold office rendering the current proceeding before the Senate is *void ab initio* as a legal nullity making Averment 7 irrelevant to any matter properly before the Senate.

8. "In all this, President Trump gravely endangered the security of the United States and its institutions of Government. He threatened the integrity of the democratic system, interfered with the peaceful transition of power, and imperiled a coequal branch Government. He thereby betrayed his trust as President, to the manifest injury of the people of the United States.

Answer 8:

Denied, and denied as irrelevant to any matter properly before the Senate. It is denied that President Trump ever endangered the security of the United States and its institutions of Government. It is denied he threatened the

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integrity of the democratic system, interfered with the peaceful transition of power, and imperiled a coequal branch Government. It is denied he betrayed his trust as President, to the manifest injury of the people of the United States. Rather, the 45th President of the United States performed admirably in his role as president, at all times doing what he thought was in the best interests of the American people. The 45th President believes and therefore avers that in the United States, the people choose their President, and that he was properly chosen in 2016 and sworn into office in 2017, serving his term to the best of his ability in comportment with his oath of office. Since the 45th President is no longer "President," the Constitutional clause at Averment 1 above 'shall be removed from Office on Impeachment for…' is impossible for the Senate to accomplish since the 45th President does not hold office, meaning the current proceeding before the Senate is *void ab initio* as a legal nullity rendering Averment 8 irrelevant to any matter properly before the Senate.

To the extent there are factual allegations made against the 45th President of the United States contained in Article I that are not specifically addressed above, said allegations are **denied** and strict proof at time of hearing is demanded.

Legal Defenses

To: The Honorable, the Members of the Unites States Senate:

The 45th President of the United States, Donald John Trump, through his counsel Bruce L. Castor, Jr., and David Schoen hereby avers that the Article of Impeachment lodged against him by the United States House of

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Representatives is facially and substantively flawed, and otherwise unconstitutional, and must be dismissed with prejudice. In support thereof, the 45th President,

Respectfully Represents:

1. The Senate of the United States lacks jurisdiction over the 45th President because he holds no public office from which he can be removed, and the Constitution limits the authority of the Senate in cases of impeachment to removal from office as the prerequisite active remedy allowed the Senate under our Constitution.

2. The Senate of the United States lacks jurisdiction over the 45th President because he holds no public office from which he can be removed rendering the Article of Impeachment moot and a non-justiciable question.

3. Should the Senate act on the Article of Impeachment initiated in the House of Representatives, it will have passed a Bill of Attainder in violation of Article 1, Sec. 9. Cl. 3 of the United States Constitution.

4. The Article of Impeachment misconstrues protected speech and fails to meet the constitutional standard for any impeachable offense.

5. The House of Representatives deprived the 45th President of due process of law in rushing to issue the Article of Impeachment by ignoring it own procedures and precedents going back to the mid-19th century. The lack of due process included, but was not limited to, its failure to conduct any meaningful committee review or other investigation, engage in any full and fair

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consideration of evidence in support of the Article, as well as the failure to conduct any full and fair discussion by allowing the 45th President's positions to be heard in the House Chamber. No exigent circumstances under the law were present excusing the House of Representatives' rush to judgment. The House of Representatives' action, in depriving the 45th President of due process of law, created a special category of citizenship for a single individual: the 45th President of the United States. Should this body not act in favor of the 45th President, the precedent set by the House of Representatives would become that such persons as the 45th President similarly situated no longer enjoy the rights of all American citizens guaranteed by the Bill of Rights. The actions by the House make clear that in their opinion the 45th President does not enjoy the protections of liberty upon which this great Nation was founded, where free speech, and indeed, free *political* speech form the backbone of all American liberties. None of the traditional reasons permitting the government to act in such haste (i.e exigent circumstances) were present. The House had no reason to rush its proceedings, disregard its own precedents and procedures, engage in zero committee or other investigation, and fail to grant the accused his "opportunity to be heard" in person or through counsel – all basic tenets of due process of law. There was no exigency, as evidenced by the fact that the House waited until after the end of the President's term to even send the articles over and there was thus no legal or moral reason for the House to act as it did. Political hatred has no place in the administration of justice anywhere in America, especially in the Congress of the United States.

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6. The Article of Impeachment violates the 45th President's right to free speech and thought guaranteed under the First Amendment to the United States Constitution.

7. The Article is constitutionally flawed in that it charges multiple instances of allegedly impeachable conduct in a single article. By charging multiple alleged wrongs in one article, the House of Representatives has made it impossible to guarantee compliance with the Constitutional mandate in Article 1, Sec. 3, Cl. 6 that permits a conviction only by at least two-thirds of the members. The House charge fails by interweaving differing allegations rather than breaking them out into counts of alleged individual instances of misconduct. Rule XXIII of the *Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials* provides, in pertinent part, that an article of impeachment shall not be divisible thereon. Because the Article at issue here alleges multiple wrongs in the single article, it would be impossible to know if two-thirds of the members agreed on the entire article, or just on parts, as the basis for vote to convict. The House failed to adhere to strict Senate rules and, instead, chose to make the Article as broad as possible intentionally in the hope that some Senators might agree with parts, and other Senators agree with other parts, but that when these groups of senators were added together, the House might achieve the appearance of two thirds in agreement, when those two thirds of members, in reality, did not concur on the *same* allegations interwoven into an over-broad article designed for just such a

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purpose. Such behavior on the part of the House of Representatives may have a less nefarious reason, in the alternative, and simply be a by-product of the haste in which the House unnecessarily acted while depriving the 45th President of the United States of his American right to due process of law. The 45th President of the United States believes and therefore avers that the defect in the drafting of the Article requires that Senators be instructed that if two thirds of them fail to find *any* portion of the Article lacking in evidence sufficient for conviction, then the *entire* Article fails and should be dismissed.

8. The Chief Justice of the United States is not set to preside over the proceedings contemplated by the Senate, as he would be constitutionally required to do if the House was seeking to have the president removed from office under Art. I, Sec 3, Cl. 6 of the United States Constitution. Once the 45th President's term expired, and the House chose to allow jurisdiction to lapse on the Article of Impeachment, the constitutional mandate for the Chief Justice to preside at all impeachments involving the President evidently disappeared, and he was replaced by a partisan Senator who will purportedly also act as a juror while ruling on certain issues. The House actions thus were designed to ensure that Chief Justice John Roberts would not preside over the proceedings, which effectively creates the additional appearance of bias with the proceedings now being supervised by a partisan member of the Senate with a long history of public remarks adverse to the 45th President. The 45th President believes and therefore avers that this action of the House of Representatives, additionally,

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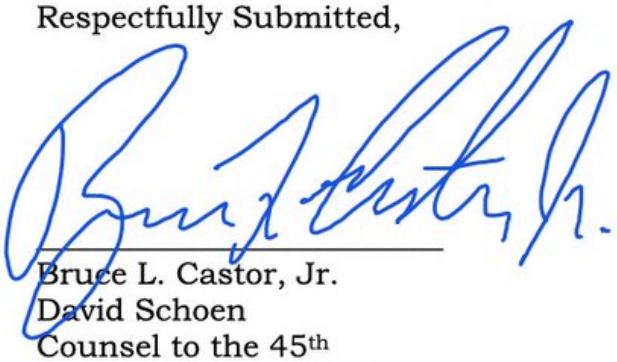
violated his right to due process of law because the House, effectively, maneuvered an ally in the Senate into the judge's chair.

WHEREFORE, Donald John Trump, 45th President of the United States respectfully requests the Honorable Members of the Senate of the United States dismiss Article I: Incitement of Insurrection against him as moot, and thus in violation of the Constitution, because the Senate lacks jurisdiction to remove from office a man who does not hold office. In the alternative, the 45th President respectfully requests the Senate acquit him on the merits of the allegations raised in the article of impeachment.

Respectfully Submitted,



Bruce L. Castor, Jr.
David Schoen
Counsel to the 45th
President of the United States

Date: February 2, 2021