



BROWN COUNTY COMMITTEE TO SAVE DEMOCRACY, LLC

A Political Action Committee to Defeat Donald J. Trump
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TRUMP AND INSURRECTION

Did Donald J Trump incite or engage in a rebellion or insurrection on January 6, 2021, in violation of Sec 18 U.S. Code 2383? That should be a question on voters' mind when deciding whether to vote for the former president.

Special Counsel Jack Smith has not charged Trump with a violation of the Statute, and we do not know why but one way or the other it's useful for us to know the available facts and law when deciding whether to vote for him for President. The counting and certification of the states' Electoral Votes was to take place on January 6 before a joint session of Congress with the Vice President Pence presiding. Normally, all that happens is that the Electoral Votes are received and counted and the candidate that receives 270 votes is declared President-Elect.

The facts as I understand them are from reported investigations, news and Trump's speeches and the criminal proceedings. Apparently, in furtherance of his "big lie" that the election was stolen, Trump and his election deniers concocted a plan for slates of "fake" electors from battleground states to be submitted to the Vice President at the time the legal Electoral Votes were being counted and substituted or at least declared in conflict with the official votes from the States. Trump leaned on the Vice President to go along with the plan, but Pence consulted his attorney and refused to go along the plan saying he had no legal authority to substitute new electors for the state certified electors.

To re-enforce this plan the President put out a call for his supporters to rally on the Eclipse near the White House on January 6th. He said, "it will be wild." Apparently, thousands attended, some armed. Trump ordered the security devices removed allowing everyone into the rally. Rudy Guliani, John Eastman and President Trump spoke to the crowd railing on about the election being stolen and how Pence, if he was brave enough. could "stop the steal," knowing all along that Pence was not going to do his bidding. In his speech he told the crowd to march to the Capitol and stop the stealing. "Fight, fight like Hell or you won't have a country anymore," he yelled. After his speech he reportedly wanted to go to the Capitol, but the Secret Service took him back to the White House.

He tweeted that Pence had refused to cooperate with the scheme. That apparently motivated the crowd to attack the Capitol Police and break into the Capitol causing Congress to seek safe quarters. The rest of the afternoon, Trump sat in his dining room watching the riot on TV ignoring aides' pleas that he tells the rioters to stop and go home. Finally, around 5:00pm Trump told the rioters to go home and "we love you." Five officers died and several were injured, and one supporter died in the attack.

What is the law? The text of the Section follows: "Whoever 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 and 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. June 25,1948, ch 645,62 Stat.808; Pub. law 103-333, title XXXIII, Sec. 330016(1)(L), Sept. 13,1994, 108 Stat. 2147." Legal precedent says that an insurrection is

a violent uprising or organized resistance against the government or its laws. It involves acts intended to overthrow, disrupt, or challenge the authority of the United States or impede the enforcement of federal laws.

Rebellion has a similar definition but is considered more widespread. To establish guilt the prosecutor must prove 1. Intent to incite; 2. Insurrection was against the United States and violated its laws; and 3. The actions were willful. Defenses are 1. Freedom of speech; 2. Actions were not willful or lacked intent to incite an insurrection; 3. No actual insurrection.

As voters we should decide if President Trump incited an insurrection or organized an obstruction, a lesser charge, for which he is charged. As I have written previously the Colorado Supreme Court, the Maine Director of Elections did find the then President incited an insurrection and is ineligible to be on the ballot for president.

My opinion, admittedly without all the facts, is he incited an insurrection or at least obstructed the proceeding of counting the Electoral College count. My greater concern, and one of the reasons I am urging voters to "Not vote for Trump" for President is if he loses again, he will repeat his actions and particularly if he were to win the popular vote and lose the Electoral Vote. In any event do we want this man to be President again?

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