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PRIVILEGED & CONFIDENTIAL

MEMORANDUM FOR: THE PRESIDENT

FROM: WILLIAM J. OLSON

SUBJECT: Preserving Constitutional Order

DATE: DECEMBER 28, 2020

You will recall that we last spoke about 5 pm on the afternoon of Christmas Day, when I reported that, at your suggestion, I had made a call to Acting Attorney General Jeff Rosen about 2 pm to discuss the Department of Justice's filing of an original action in the U.S. Supreme Court based on *Texas v. Pennsylvania*. You told me you would then call Mark Martin, former Chief Justice of North Carolina, to discuss the concept further, and then call Mr. Rosen. I know you called Mark Martin, and that he supported filing the case.

I wanted you to know that on December 26, I received a text from Mr. Rosen that said he had read our article proposing the suit, but only said "I think I understand your points." I responded to him in a text with an offer to help, but heard nothing back.

As I emailed Molly Saturday morning, we began acting on your question about our team revising the complaint filed by Texas into what could be the first draft of a complaint filed by the United States. The lawyers with whom I have been working took on that task, and we now have a draft that could be presented to you to review, and by you to Mr. Rosen to edit, improve and file. (A motion to accompany the complaint is also in the works.)

It is now the morning of December 28, 2020. I am assuming that the Attorney General is attempting to discourage filing such an action, or is slow-walking his response to you. I believe that Department of Justice will do nothing except continue to run out the clock. While time to act was short when we spoke on Christmas Day, **time is about to run out.**

In our long conversation earlier this week, I could hear the shameful and dismissive attitude of the lawyer from White House Counsel's office toward you personally — but more importantly toward the Office of the President of the United States itself. This is unacceptable. The feeling I had was that not just was he not offering you any options, but that he was there to make certain you did not consider any. But you do have options.

It is still possible that in response to this lawsuit that the U.S. Supreme Court will come to its senses and issue an Order that would disqualify the designation of electors selected by processes not authorized by state legislatures — indeed, often in defiance of state law. I believe we have a duty to try every judicial mechanism available to obtain relief. However, even if it results in another loss in the Supreme Court, this suit would serve an important function in exposing to the diminishing number of Americans who still have faith in government, the true depth of corruption.

If the Acting Attorney General were to refuse to file suit, and you were required to replace the AG to get it filed, it would create what the press would call a “constitutional crisis,” yet we are already in such a crisis brought on by corruption at the highest levels of government. We have suffered massive election fraud, and state and Federal courts avert their eyes. Election crimes have occurred, and the FBI and the Department of Justice see nothing. We have had a near collapse of the institutions of our government. Constitutionally, the President truly is the chief law enforcement of the United States — not the Attorney General whose position is not mentioned in the Constitution.

If the Supreme Court were then to refuse to act on this case, the deep corruption of that institution again would be laid bare for all to see — confirming what the People learned when the Texas case was dismissed. Thus, filing the case is a “win-win” with the overwhelming number of Americans who just voted for you. As you said, all you have is the People and the votes.

You have a duty to prevent this electoral fraud on the American People. The fact you were a candidate in the race may complicate the matter, but your duty is to ensure the election was not stolen exists nevertheless. It is no understatement to say that the very existence of our Constitutional Republic is slipping away — that which was entrusted to our generation by the Founders and each succeeding generation — unless you act, and act promptly. In short form, respectfully, here is what must be done.

1. The Office of White House Counsel has failed the Office of the President. That office can be expected to not just to fail to offer solutions, but also to refuse to follow your orders, and even interpose roadblocks. Therefore, I would urge you recruit and appoint [Kurt Olsen](#) XXXXXXXXXX a lawyer in Washington D.C., in whatever capacity may seem appropriate. Kurt formerly worked at Kirkland & Ellis, including working with Mr. Rosen when they were both at that firm, so he would be taken seriously. Kurt is a former Navy Seal, who has volunteered and worked tirelessly for weeks developing the papers for the suit brought by Texas. Also, this is a person who simply cannot be intimidated. You need a lawyer literally on your side who is principled, schooled in the constitution, brilliant, tough, and committed to both you and the Constitution. Then, Kurt can bring in a few other capable and principled lawyers to help you.

2. I do not believe you can do what is required to be done from Florida. And, it would send a message about your commitment to the task, to leave Mar-a-Lago to take charge at the White House. I urge you to return as soon as it can be arranged.

3. Order the Acting AG to file suit on behalf of the United States by 5 pm tomorrow, Tuesday, December 29. If he does not commit to exactly doing that, either replace him with a Senate-confirmed DOJ official who will (there are several such persons), either allowing Mr. Rosen to return to being Deputy AG, or to leave DOJ. This step will likely bring on a thousand stories making an analogy to “Saturday Night Massacre” in 1973 when President Nixon ordered AG Elliot Richardson to fire Archibald Cox as a special counsel investigating Watergate.

4. Task your new White House Counsel with identifying how the powers of the Presidency can be used to ensure that the People receive a fair election count, if that can be done. Through use of sampling from lists of registered voters it should not take long to accomplish this, but it requires the use of the powers given to your office. Our little band of lawyers is working on a memorandum that explains exactly what you can do. The media will call this martial law, but it that is “fake news” — a concept with which you are well familiar.

5. Communicate to the People that you may have been one of the candidates in the election, but that you are acting as President of the United States to preserve the election process. This is not just within your power, it is your solemn duty. Joseph Story explained that the oath that you took was designed to be: “a suitable pledge of his fidelity and responsibility to his country; and creates upon his conscience a **deep sense of duty**, by an appeal, at once **in the presence of God and man**, to the most sacred and solemn sanctions which can operate upon the human mind.” (This constitutional duty is explained further in the Appendix below.)

Appendix: The Duty the U.S. Constitution Imposes on the President

For 90 years the lawyers who dominate our ruling elites have been taught that the constitution is the province of the Supreme Court, but that body was never intended to be the final authority on matters of this sort.

The President is the only office holder vested by the Constitution with the sworn duty to “**preserve, protect and defend** the Constitution of the United States.” Article II, § 1, cl. 8 (emphasis added). All other federal government officers — legislative, executive, and judicial, federal and state — are only “bound by Oath or Affirmation, to **support** this Constitution.” See Article VI, cl. 3 (emphasis added).

The specific language of the Presidential oath was not a matter of happenstance. As originally proposed, the presidential oath read only that one would “**faithfully execute** the Office of President of the United States” (emphasis added). By seven votes in favor, one

against, and two abstentions, the oath was extended to “**preserve, protect and defend** the Constitution of the United States.” Art. 2, §1, cl. 8, [Document 1](#), Records of the Federal Convention reprinted in 3 [The Founders Constitution](#), Item # 1 at 574) (emphasis added).

Had the presidential oath or affirmation been adopted without modification, then the President’s fealty to the Constitution would have been no different from that of any other government official, federal or state, a “guaranty ... that he will be conscientious in the discharge of his duty.” Story’s [Commentaries](#) § 1838 reprinted in 4 [Founders](#), Item # 17 at 645. But more was to be required of the President.

By extending his oath or affirmation to include the duty to “preserve, protect and defend,” the President not only is constrained to act in accord with his specific constitutional obligations, but also, as Joseph Story so eloquently wrote in his [Commentaries](#):

It is a suitable pledge of his fidelity and responsibility to his country; and creates upon his conscience a **deep sense of duty**, by an appeal, at once **in the presence of God and man**, to the most sacred and solemn sanctions which can operate upon the human mind. [2 J. Story [Commentaries](#) at § 1488 at 325-26 (Little, Brown, 5th ed., 1891.) (emphasis added).]

The meaning of the Constitutional text could not be more clear:

In order for the President to discharge his duty to “**defend**” the Constitution, he must be vigilant, for example, to “drive back,” to “repel” and to “secure against” attacks on the liberties of American citizens from all sources.

In order to discharge his duty to “**preserve**” the Constitution, the president must, for example, “keep or save from injury,” “keep or defend from corruption,” and “save from decay” the federal system establishing the means by which the States select electors.

Finally, to be true to his oath to “**protect**” the Constitution, the President must, for example, “cover or shield from danger,” “preserve in safety” the separation of powers among the three branches of the federal government.

In contrast, the Constitution requires all other officers of the judicial and legislative branches of the federal government, and the President’s subordinates in the executive branch, simply to swear or affirm their “**support**” of the Constitution.

As President Andrew Jackson wrote in his message defending his veto of the Second Bank of the United States:

The Congress, **the Executive**, and the Court must each for itself be **guided by its own opinion of the Constitution**. Each public officer who takes an oath to support the Constitution swears that he will support it **as he understands it**, and not as it is understood by others.... The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges, than the opinion of Congress has over the judges, and on that point the President is independent of both. The authority of the Supreme Court [has] only such influence as the force of their reasoning may deserve.” [Andrew Jackson, Veto Message (July 10, 1832) (emphasis added).]

As a result of its abdication of the judicial role and usurpation of a political role, the High Court has lost the confidence of the people. As U.S. Supreme Court Justice Tom Clark explained: “Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.” *Mapp v. Ohio*, 367 U.S. 643, 659 (1961).

While the federal judiciary has gone deeply astray for a very long time, for the entire period of the existence of our Republic the vitality of the President’s distinctive oath has not waned, for it is the President, and the President alone, who wields the power of the “sword.” *See Federalist Paper No. 78* at 402. It is he who decides whether and how a law enacted by Congress is executed, or an order entered by this Court is enforced. It is he in whom is vested the principal and overriding responsibility and duty to enforce the Constitution of the United States of America.

For these reasons, the constitutional authority of the President of the United States to ensure that constitutional order is maintained, particularly when the federal judiciary has abdicated its role to decide controversies. At such a time, the President, armed with all of the executive power vested in the office of the presidency, has a duty to act decisively to “preserve, protect, and defend” the U.S. Constitution from threats, whether they be domestic, foreign, or both.