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4     SELECT COMMITTEE TO INVESTIGATE THE  
5     JANUARY 6TH ATTACK ON THE U.S. CAPITOL,  
6     U.S. HOUSE OF REPRESENTATIVES,  
7     WASHINGTON, D.C.

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10  
11    DEPOSITION OF: KATHY BERDEN  
12  
13  
14

15                       Friday, March 11, 2022

16  
17                       Washington, D.C.  
18  
19

20                       The deposition in the above matter was held via Webex, commencing at 10:07  
21                       a.m.

1

2       Appearances:

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4

5       For the SELECT COMMITTEE TO INVESTIGATE

6       THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

7

8       [REDACTED] SENIOR ADMINISTRATIVE ASSISTANT

9       [REDACTED] PROFESSIONAL STAFF MEMBER

10      [REDACTED] SENIOR INVESTIGATIVE COUNSEL

11      [REDACTED] INVESTIGATIVE COUNSEL

12      [REDACTED] CHIEF CLERK

13      [REDACTED], PROFESSIONAL STAFF MEMBER

14

15      For THE WITNESS:

16

17      MICHAEL COLUMBO

18      DAVID A. WARRINGTON

19      ERIN POTTER

20      Dhillon Law Group Inc.

21      177 Post Street, Suite 700

22      San Francisco, CA 94108

1

2 [REDACTED] It is 10:07 a.m., on March 11th, and this is a deposition of Ms. Kathy  
3 Berden conducted by the House Select Committee to Investigate the January 6th Attack  
4 on the United States Capitol, pursuant to House resolution 503.

5 At this time, Ms. Berden, I'd ask you to please introduce yourself by stating your  
6 full name and spelling your last name for the record.

7 The Witness. My name is Kathleen Berden, B-e-r-d-e-n.

8 [REDACTED] Thank you, Ms. Berden, and good morning.

9 And then, counsel, if you could please introduce yourself as well as others who are  
10 attending this Webex deposition.

11 Mr. Columbo. Good morning. Michael Columbo, C-o-l-u-m-b-o, on behalf of  
12 Ms. Berden. And on the line today also is David Warrington.

13 [REDACTED] Very well. And then --

14 Mr. Columbo. Sorry, we also have Erin Potter, P-o-t-t-e-r, paralegal in our office.

15 [REDACTED] Okay. And do you anticipate anybody else joining you or being in  
16 the room with you and Ms. Berden?

17 Mr. Columbo. I don't believe so.

18 [REDACTED] Okay.

19 Mr. Columbo. That's everybody today. I don't believe Mr. Lacowski (ph) will be  
20 with us today.

21 [REDACTED] Okay. And if at any time that changes, if anybody else is planning  
22 to join from your side, please do let us know so we can make that known on the record.

23 As I introduced to you, Ms. Berden, my name is [REDACTED] I am a senior  
24 investigative counsel for the select committee. Sitting to my right in the room is [REDACTED]

25 [REDACTED] He is a professional staff member for the committee. And we have a few

1        others joining via with Webex platform as well, also staff for the committee.

2              Members are permitted to join and ask questions, and if any members do join, I  
3        will let you know as soon as I know so that you're aware that they're here.

4              This will be a staff-led deposition, which means that I will be the one primarily  
5        doing the questioning. If others have questions, of course, I will give up the floor and  
6        the microphone to them, but I anticipate being the one who asks most if not all of the  
7        questions today.

8              Under the House deposition rules, neither committee members nor staff may  
9        discuss the substance of the testimony that you provide unless the committee approves  
10       its release. You and your attorneys will have an opportunity to review the transcript  
11       after we're completed today, and I'll be in touch with Mr. Columbo and Mr. Warrington  
12       about that opportunity that you'll have.

13             So there are a few ground rules generally, and we do follow the House deposition  
14       rules that we've provided to you with the subpoena. There are official reporters. You  
15       can see a few of them listed in the Webex platform there. They are going to be taking  
16       the official record of this deposition. They're doing it with the court reporter keyboard  
17       platform. So it's important that you use complete sentences as your answers, and they  
18       can't take down things like head nods or incomplete responses like uh-huh, so please use  
19       complete sentences or words to respond to answers.

20             Because it's also being taken down by them, it's very helpful if you wait until I  
21       finish my question before answering, and I will make sure, as best as I can, to wait for you  
22       to finish your answer before asking my next question. That makes their lives quite a bit  
23       easier.

24             We do ask that you provide complete answers based on your best recollection.  
25       If the question that I ask you is not clear, please ask for clarification. I'd be happy to

1 rephrase it, and I'd prefer that you understand what I'm asking rather than having you  
2 answer something that you don't fully understand.

3 If you don't know the answer to something, you can say so, and please do so.  
4 But you can only refuse to answer a question to preserve a privilege that's recognized by  
5 the select committee. If you do refuse to answer a question based on any privilege,  
6 then staff may either proceed with the deposition or seek a ruling from the chairman on  
7 the objection. And, if the chairman overrules such an objection, you are required to  
8 answer the question.

9 At this time, I am going to ask that you stand and raise your right hand to be  
10 sworn by the reporter.

11 The Witness. Okay. You might lose me. I don't know.

12 Mr. Columbo. There we go.

13 The Witness. Okay.

14 The Reporter. Do you solemnly declare and affirm under the penalty of perjury  
15 that the testimony you are about to give will be the truth, the whole truth, and nothing  
16 but the truth?

17 The Witness. I do.

18 [REDACTED] Okay. So along those lines, I do want to remind you that it is  
19 unlawful to deliberately provide false information to Congress. And since you were just  
20 sworn and you are now under oath, deliberately providing false information could result  
21 in criminal penalties for perjury or providing false statements.

22 So, with all of that that I just said about the ground rules, do you understand what  
23 I went over?

24 The Witness. Yes.

25 [REDACTED] And do you have any questions about any of that?

1           The Witness. No.

2           ██████████ Very good. So, logically, if you do need to take a break to  
3 consult with your attorneys or for comfort, just please let us know and we'd be happy to  
4 do that. We can go off the record for any time that you need. Very good.

5           And, counsel, do you see any reason not to go ahead and proceed?

6           Mr. Columbo. No, █████ Fine to go ahead.

7           BY █████

8           Q All right. Thank you. So if we can pull up exhibit No. 1. And part of  
9 what we're going to do is show you a few documents on the screen, and I'll make sure  
10 that you can see them before we talk about them. But can you see what we're putting  
11 up as exhibit NO. 1, Ms. Berden?

12          A Uh-huh.

13          Q Okay. Very good. So that is a subpoena that the select committee sent to  
14 you. Do you recognize that?

15          A I do.

16          Q All right. And you are the person listed in the select committee subpoena  
17 that's exhibit 1. Is that right?

18          A I am.

19          Q Okay. Part of the subpoena asks you to produce documents to the select  
20 committee that were responsive to a schedule, a number of requests that accompanied  
21 the subpoena. Did you search for documents or provide documents to your attorneys  
22 to search and produce to the select committee?

23          A Yes.

24          Q Okay. And did that include documents, if any, that would've come from  
25 your email accounts?

1           A    Yes.

2           Q    All right. I understand you have an email account that involves your name  
3         as well as RNC@gmail.com. Was that one of the email accounts you provided your  
4         attorneys with access or searched for responsive documents?

5           A    Yes.

6           Q    Okay. And I understand you have a phone number ending in [REDACTED]?

7           A    I do.

8           Q    Okay.

9           A    I'm sorry.

10          Q    Did you -- that's quite all right. Nope. Thank you, Ms. Berden.

11          Did you look at the phone that uses that number for any responsive documents or  
12         messages to provide to the select committee?

13          A    Hmmm?

14          Mr. Columbo. May we take a moment for just a second, [REDACTED]?

15          [REDACTED] Yes, of course.

16          Mr. Columbo. Ms. Berden is about to explain that, you know, we conducted a  
17         forensic examination on her behalf. So you can go ahead, but, you know, you're getting  
18         into maybe things that are technical that happened with her permission and on her  
19         behalf.

20                      BY [REDACTED]

21          Q    Okay. Understood. Was the phone that uses that phone number, did you  
22         provide that or -- to allow this examination that Mr. Columbo just mentioned?

23          A    Yes.

24          Q    Okay. Very well. And how about any hard copy documents? Did you  
25         review or look for any hard copy documents that you may have that could be responsive

1 to the select committee's subpoena?

2 A I can't think of what a hard copy is.

3 Mr. Columbo. Things like papers.

4 The Witness. Oh, I -- yes.

5 Mr. Columbo. I guess, do you want to ask for clarification?

6 The Witness. Clarification, please.

7 [REDACTED] Yeah, of course.

8 Mr. Columbo. She wants to know what you meant by hard copy.

9 BY [REDACTED]

10 Q Yeah, sure. I guess, I'll -- the best way to do this would be by providing an  
11 example. So we're going to be talking about several electoral college vote certificates  
12 that you signed. I imagine a hard copy of that, of actual paper, physical copy exists  
13 somewhere in the world. So did you look to see whether you had any physical copies of  
14 documents or physical documents that would be responsive to the select committee's  
15 subpoena?

16 A I provided whatever they asked.

17 Q Okay. Excellent. And we did receive one audio voicemail and one image  
18 of an address label from your attorneys, and I'll plan to go over those with you today.

19 All right. Ms. Berden, so where do you live?

20 A The whole address? I live in Snaver, Michigan.

21 Q How long have you lived in Michigan?

22 A Oh, probably -- all of my life, since I was 9 months old.

23 Q Okay. What do you do for a living?

24 A Well, I'm a retired organic farmer -- was.

25 Q And I understand that you may be still but you certainly were the

1 national -- or a national committees person for Michigan for the Republican National  
2 Committee since about 2015. Is that right?

3 A Correct.

4 Q Are you still --

5 A Yes. Yes.

6 Q Okay. Can you tell me what that means?

7 A The national committee woman position?

8 Q Yes.

9 A It means I represent the Michigan Republican Party on a national level. I  
10 attend meetings and take back information and provide information to how our State is  
11 doing, and I attend Lincoln Day Dinners as a spokesperson and things like that.

12 Q Okay. Is that a statewide position, or do you represent just a small portion  
13 of Michigan in your role?

14 A It is statewide. There's one man and one woman per each State.

15 Q I see. That's helpful. Thank you.

16 Now, I understand that you were a Republican elector for the 2020 Presidential  
17 election. Is that right?

18 A On the advice of counsel, I assert my constitutional privilege under the Fifth  
19 Amendment and respectfully decline to answer that question, [REDACTED]

20 Q Okay.

21 Mr. Columbo. And would it be a permissible shorthand for her assertion of that  
22 privilege going forward to just say the word "Fifth"?

23 BY [REDACTED]

24 Q Yes, that's right. I am going to ask to clarify. And I do understand that the  
25 Fifth Amendment provides that no person shall be compelled in a criminal case to be a

1        witness against him or herself, and I just want to be clear that that's the portion of the  
2        Fifth Amendment that you're invoking here today, Ms. Berden. Is that correct?

3            A     Yes.

4            Q     Okay. Thank you. So, yes, moving forward, it would be permissible if  
5        you'd like to just say "Fifth" --

6            A     Thank you.

7            Q     -- in response to other questions.

8            A     Thank you, yes.

9            Q     Certainly. I am still going to plan to ask you questions that we would ask  
10      you, Ms. Berden. And so I understand that you may be asserting the Fifth Amendment  
11      right, but I'm still going to ask you the questions.

12           So had you been a Republican elector before the 2020 Presidential election?

13           A     Fifth.

14           Q     How did you become a Republican elector for the 2020 election?

15           A     Fifth, please.

16           Q     Are you familiar with the other Republican electors for the 2020 Presidential  
17      election, including Mayra Rodriguez, Meshawn Maddock, and others listed on the forms  
18      that we're going to be looking at in just a moment?

19           A     The Fifth, please, [REDACTED]

20           Q     Who provided you with information about the electoral college meeting on  
21      December 14th where elector -- Republican electors met and cast votes for Donald  
22      Trump?

23           A     Fifth, please.

24           Q     The State of Michigan was called -- or the Presidential race in the State of  
25      Michigan was called on Wednesday, November 4th, after the election. Do you recall

1       that?

2           A     The Fifth, please.

3           Q     And, ultimately, now, President Biden won that State by about 155,000  
4     votes.   Do you recall that?

5           A     Fifth.

6           Q     If you could please pull up exhibit No. 3.

7       All right.   Do you see what I'm showing you there, Ms. Berden?

8           A     Yes, I do.

9           Q     Okay.   Very good.   That's exhibit No. 3.   It's on State of Michigan Office  
10      of the Governor letterhead, and it's titled "Amended Certificate of Ascertainment of the  
11      Electors of the President and Vice President of the United States."

12       In this document -- if you scroll down just a bit, please, Grant -- it's issued by the  
13      Governor of Michigan and signed by the Governor of Michigan that shows that the  
14      Democratic electors in the Presidential election won approximately 2.8 million votes  
15      while the Republican Party won about 2.65 million votes during the Presidential election,  
16      and as a result, the Democratic electors were going to meet.   Do you remember ever  
17      seeing this document?

18           A     The Fifth, please.

19           Q     Now, President Trump did not request a recount in Michigan.   Is that your  
20      understanding, Ms. Berden?

21           A     The Fifth.

22           Q     Okay.   You can take that down.   Thank you, [REDACTED]

23       When did you first hear any talk about casting electoral votes for President Trump  
24      following the 2020 Presidential election in States that President Trump had lost?

25           A     The Fifth.

1           Q     Who did you first hear that idea from, that President Trump or his campaign  
2     would ask Republican electors to cast votes for him in States that he had lost?

3           A     The Fifth, please.

4           Q     When did you first hear about that? Specifically, did you hear about it  
5     before the election?

6           A     Fifth.

7           Q     When did you get specifics that you and other Republican electors in the  
8     State of Michigan would be meeting, or where you would be meeting and when it was  
9     supposed to happen?

10          A     Fifth.

11          Q     And from whom did the Republican electors for the State of Michigan obtain  
12     information about where the Republican electors would be meeting on December 14th?

13          A     Fifth.

14          Q     Did you ever discuss the plan to have Republican electors meet and cast  
15     votes in the State of Michigan for President Donald Trump with Stu Sandler?

16          A     Fifth.

17          Q     Did you ever discuss that plan with Troy Hudson?

18          A     Fifth.

19          Q     Did you communicate about any plans to have the Republican electors meet  
20     in the State of Michigan to cast votes for Donald Trump with anybody from the Trump  
21     campaign?

22          A     Fifth.

23          Q     And I'm just going to list off a number of people. Did you ever discuss it  
24     with Boris Epshteyn?

25          A     Fifth.

1 Q Did you ever --

2 A Fifth.

3 Q Did you ever discuss it with Jesse Law?

4 A Fifth.

5 Q Did you ever discuss it with Jesse Binnall?

6 A Fifth.

7 Q Did you ever discuss with Sean Flynn?

8 A Fifth.

9 Q Did you ever discuss with Jenna Ellis?

10 A Fifth.

11 Q Did you ever discuss it with Rudy Giuliani?

12 A Fifth.

13 Q Did you ever discuss it with Christina Bobb?

14 A Fifth.

15 Q Did you ever discuss it with Kenneth Chesebro?

16 A Fifth.

17 Q Did you ever discuss it with John Eastman?

18 A Fifth.

19 Q Did you ever discuss this plan with Ron McDaniel?

20 A Fifth.

21 Q Did you ever communicate with anybody in the White House about the plan

22 to have Republican electors meet and cast votes in State -- in -- or excuse me, cast votes

23 for Donald Trump in Michigan, where he had lost the popular vote?

24 A Fifth.

25 Q When you first heard that Republican electors would be meeting to cast

1       votes for Donald Trump in Michigan, what were you told the justification or purpose for  
2       that meeting would be?

3           A     Fifth.

4           Q     Did you ever discuss the effort to have Republican electors cast votes for  
5       Donald Trump in Michigan with other Michigan electors who didn't participate, including  
6       Gerald Wall or Terri Lynn Land?

7           A     Fifth.

8           Q     Did you ever talk about this plan from Republican electors from other States,  
9       including Pennsylvania, Georgia, Arizona, New Mexico, or Wisconsin?

10          A     Fifth.

11          Q     Did you ever discuss this plan in conference calls with lawyers for the  
12       campaign or the President or otherwise?

13          A     Fifth.

14          Q     Now, as far as the meeting itself, did you see any of the paperwork that you  
15       would sign and discuss to cast these electoral votes for Donald Trump before the meeting  
16       on December 14th?

17          A     Fifth.

18          Q     Did you see any legal memos that the campaign or anybody else provided  
19       justifying or discussing issues with the meeting of Republican electors in any State related  
20       to the 2020 election?

21          A     Fifth.

22          Q     I'm going to show you exhibit No. 4.   Okay.   Ms. Berden, can you see what  
23       we pulled up about exhibit No. 4?   It says "memorandum" at the top.

24          A     I do.

25          Q     Okay.   So that is a memo from Judge James R. Troupis.   Do you know who

1       that is?

2           A    No.  No, I don't.

3           Q    Okay.  And that's from Kenneth Chesebro.  Do you know who that is?

4           A    Fifth.

5           Q    It's dated November 18, 2020, and then, in brackets, it says:  12/10  
6       streamlined revision.  And it says:  RE: The real deadline for settling a State's electoral  
7       votes.

8           Do you recall ever seeing this memorandum in relation to the 2020 Presidential  
9       election?

10          A    The Fifth.

11          Q    Could you pull up exhibit No. 5, please.  All right.  This is another memo,  
12       though it looks very similar.  We've pulled it up as exhibit No. 5.  Can you see exhibit  
13       No. 5, Ms. Berden?

14          A    It looks like the same one as before.

15          Q    Okay.  So you can see it, and I'll go over it, but this one does say  
16       "memorandum" at the top.  It's to James R. Troupis from Kenneth Chesebro, dated  
17       December 9, 2020.  I represent to you the one we just looked at was dated  
18       November 18.

19          A    Okay.  Yeah, I see it then.  It's on your --

20          Q    Yes, okay.  And this is:  RE: Statutory requirements for December 14th  
21       electoral votes.

22           And then it says:  Here's a summary of the requirements under Federal law and  
23       under the law of the six States in controversy concerning what is required for Presidential  
24       electors to validly cast and transmit their vote.

25           Do you recall ever seeing this memo before December 14, 2020?

1           A     The Fifth.

2           Q     If you can go to page four of exhibit No. 5, please. So, on page four of  
3     exhibit No. 5, which is still the memo we were just talking about, sub point C says:  
4     Michigan: 16 electors. And then it talks about various provisions of the Michigan  
5     code. And it says: Michigan is much more specific about the location in which electors  
6     must meet, which could be a bit awkward.

7                 It goes on to say: Under section 168.47, the electors, quote, shall convene in the  
8     senate chamber at the Capitol of the State at 2 p.m. eastern standard time, and then,  
9     unquote. However, there is no requirement that they convene on the senate floor  
10    where presumably the Biden-Harris electors will convene. Presumably they could  
11    convene in the senate gallery.

12                 And then, if you go to page 5, please, the very bottom. It says: In conclusion, it  
13    appears that voting by an alternate slate of electors is unproblematic in Arizona and  
14    Wisconsin, slightly problematic in Michigan -- and it goes on -- somewhat dicey in other  
15    places and very problematic in others.

16                 Those provisions we just discussed about where Republican electors would need  
17    to meet in Michigan and questions about whether that is appropriate that are raised  
18    in this memo, were those ever discussed among the Republican electors who met to cast  
19    votes for Donald Trump in the State of Michigan despite the fact that he had lost in the  
20    State of Michigan?

21           A     The Fifth.

22           Q     Who organized the actual meeting place and time of the Republican electors  
23    in Michigan for December 14, 2020?

24           A     The Fifth.

25           Q     And you can take that down. Thank you, [REDACTED]

1 Who found replacements for the two Republican electors who opted not to  
2 participate on December 14, 2020, including Gerald Wall and Terri Lynn Land?

3 A The Fifth.

4 Q I understand that the Republican electors did not meet to cast votes at the  
5 Capitol itself but rather met at GOP headquarters on Seymour Street in Lansing,  
6 Michigan. Is that correct?

7 A The Fifth.

8 Q Were there any restrictions on who was allowed to attend the meeting of  
9 the Republican electors that day?

10 A The Fifth.

11 Q I understand that press was not allowed in to the building and that cell  
12 phones from the electors were taken before going in with a request that no pictures be  
13 taken of the proceedings. Is that correct?

14 A The Fifth.

15 Q I understand that Ian Northon attended at least parts of the meeting of the  
16 electors. What was his role that day?

17 A The Fifth.

18 Q I understand that Sean Flynn, who was associated with the Trump campaign,  
19 spoke to the Republican electors before they cast votes or at least some point during that  
20 day and included references to Hawaii, among other justifications for the Republican  
21 electors to cast votes. Is that correct?

22 A The Fifth.

23 Q Can you pull up exhibit No. 6, please.

24 Okay. Ms. Berden, we have put up on the screen exhibit No. 6, page 1. Can  
25 you see the document that we've put up there?

1           A     Yes, I can.

2           Q     Okay. And this is a memorandum addressed to the President of the  
3     Senate, the Archivist of the United States, the secretary of state for the State of Michigan,  
4     as well as the Chief Judge for the United States District Court in the Western District of  
5     Michigan. And if you scroll down a bit more, it is from Kathy Berden, Chairperson,  
6     electoral college of Michigan, dated December 14, 2020, regarding Michigan's electoral  
7     votes for President and Vice President.

8           Do you recognize this document, Ms. Berden?

9           A     The Fifth.

10          Q     If we can go to page 2, please. So page 2 of exhibit No. 6 is the certificate  
11        of the votes of the 2020 electors from Michigan. And, if you go down, it shows that for  
12        President the 16 electoral votes from Michigan would go to Donald J. Trump of the State  
13        of Florida and for Vice President to Michael R. Pence for the State of Indiana.

14          And, if you go to page 3, please, there are a list of signatures, including from Kathy  
15        Berden, Mayra Rodriguez, Meshawn Maddock, John Haggard, and others. Are you the  
16        Kathy Berden that's mentioned in the "from" line of this document as well as the person  
17        whose signature appears on page 3?

18          A     The Fifth, please.

19          Q     Have you ever seen this document before today?

20          A     The Fifth.

21          Q     If we can go to page 10 of exhibit No. 6. And I apologize; this is going to  
22        appear somewhat sideways. Oh, it appears correctly. This is a photocopy of a -- looks  
23        like a mailing envelope, registered mail that says, from -- on the right-hand side, from  
24        Kathy Berden, chair of the Michigan Republican electoral college to the Archivist of the  
25        United States in Washington, D.C.

1           Are you the Kathy Berden who sent this priority mail -- mailing envelope with the  
2 electoral college vote from the Republican electors that we've been looking at in exhibit  
3 No. 6?

4           A     The Fifth.

5           Q     And why did you send these votes to the Archivist of the United States on  
6 December 15, 2020?

7           A     Fifth.

8           Q     What happened with the paperwork? I understand that there are multiple  
9 copies of the votes. What did you do with them?

10          A     Fifth.

11          Q     You produced to us a document that we have as exhibit No. 2.

12          If you could please pull that up, [REDACTED]

13          This was provided to us yesterday from your counsel. And do you recognize  
14 that?

15          A     The Fifth.

16          Q     I understand that this was taken from your cell phone. Is that correct?

17          A     The Fifth.

18          Q     And why did you take a picture of this mailing label, Ms. Berden?

19          A     The Fifth.

20          Q     You can leave that down. Thank you.

21          So I understand that, after the electoral votes were cast by the Republican  
22 electors at the GOP headquarters in Michigan on December 14, 2020, at least some of the  
23 electors went to the Michigan State Capitol in Lansing. Did you join the electors who  
24 went to the Michigan State Capitol in Lansing?

25          A     The Fifth.

1           Q     I'm going to play for you part of a video of folks going to the Capitol that day,  
2     exhibit No. 9.

3                 [Video shown.]

4                 BY [REDACTED]

5           Q     We can stop the video there. And, just for the record, we're stopping that  
6     exhibit at the timestamp 3 minutes and 4 seconds.

7                 Were you in that group of people who went to the Capitol on December 14, 2020?

8           A     The Fifth.

9                 Mr. Columbo. [REDACTED] may I interject a question?

10                 [REDACTED] Of course.

11                 Mr. Columbo. I'm sorry. Is that a publicly available video?

12                 [REDACTED] I believe it is, yes.

13                 Mr. Columbo. Thank you.

14                 BY [REDACTED]

15           Q     That individual in the kind of light tan jacket who represented himself as Ian  
16     Northon, did you speak to Mr. Northon on that day on December 14, 2020?

17           A     The Fifth.

18           Q     Obviously, the electors -- the Republican electors, excuse me, did not make it  
19     into the Michigan State Capitol that day. What was the purpose of going in the first  
20     place?

21           A     The Fifth.

22           Q     So, by that point, December 14, 2020, Michigan had certified Mr. Biden as  
23     the winner of the Presidential election. Why do this at all, Ms. Berden?

24           A     The Fifth.

25           Q     I understand that some people have suggested that the State legislature

1 could've taken action to select the Republican slate of electors. It's essentially ratifying  
2 them in order to cast Michigan's electoral votes for Donald Trump. Was that a  
3 justification that you had ever heard before casting votes on December 14, 2020?

4 A The Fifth.

5 Q And were you aware that, on December -- or before that, before  
6 December 14, 2020, Senator Mike Shirkey said that the legislature wouldn't be taking that  
7 action essentially?

8 A The Fifth.

9 Q And I would ask you to pull up exhibit No. 7, please.

10 Can you see exhibit No. 7 that I just pulled up, Ms. Berden?

11 A Yes.

12 Q Okay. And that is titled "Shirkey issues statement regarding the election."  
13 And Senator Mike Shirkey is senate majority leader, a Republican from Clarklake. And  
14 he said at the bottom of this document that Michigan's Democratic slate of electors  
15 should be able to proceed with their duty free from threats of violence and intimidation.  
16 President-elect Biden and Vice President-elect Harris won Michigan's Presidential  
17 election. It is our responsibility as leaders to follow the law and move forward in pursuit  
18 of policies that contribute to the betterment of Michigan.

19 At that point, did you think that the Michigan legislature would take any actions to  
20 select Republican electors instead of Democratic electors in the Presidential election of  
21 2020?

22 A The Fifth.

23 Q One of the things that we looked at before -- and you can take this down,  
24 please.

25 One of the things we looked at in the memo from Mr. Chesebro talked about the

1 place of the meeting for electoral college voters, and that said that the electoral college  
2 voters had to meet in the senate chamber at the Capitol at 2 p.m. eastern standard time.

3 Another provision of law, 168.46, says that a person is not an elector until the  
4 Governor sends a certificate to the person in triplicate bearing the seal of the State of his  
5 or her election as an elector based on the popular vote as ascertained by the State Board  
6 of Canvassers.

7 So the first question I'll ask you is, did you ever receive a certificate from the  
8 Governor designating you as an elector based on the popular vote as ascertained by the  
9 State Board of Canvassers?

10 A The Fifth.

11 Q Did you have any concerns that you didn't receive such a document for the  
12 2020 Presidential election?

13 A The Fifth.

14 Q Did any of the Republican electors who meant to cast votes for Donald  
15 Trump in the State of Michigan express concern that they had not received such a  
16 document from the Governor certifying his or her election as an elector based on the  
17 popular vote?

18 A The Fifth.

19 Q And did any electors, including yourself, have any concerns that you are  
20 meeting in the GOP headquarters rather than in the senate chamber of the Capitol at  
21 2 p.m. as required by law on December 14, 2020?

22 A The Fifth.

23 Q If we could pull up exhibit No. 6, please, page two.

24 So this is going back to a document we looked at a few moments ago, but it's  
25 called "The Certificate of the Votes of the 2020 Electors from Michigan."

1           And if you could zoom in just a little bit on that. A little bit more. There we go.

2           Can you see the page that I'm showing you, Ms. Berden?

3           A     Yes.

4           Q     Okay. It says: We, the undersigned, being the duly elected and qualified  
5       electors for President and Vice President of the United States of America from the State  
6       of Michigan, do hereby certify the following: That we convened and organized in the  
7       State Capitol, in the city of Lansing, Michigan, and at 2 p.m. Eastern Standard Time on the  
8       14th day of December, 2020, performed the duties enjoined upon us.

9           So I'll start with that first paragraph. Did you or anybody else discuss concerns  
10      about stating that the Republican electors who met in Michigan on December 14th were  
11      not actually duly elected and qualified for the State of Michigan?

12          A     The Fifth.

13          Q     Were there any concerns about saying that the Republican electors actually  
14      convened and organized in the State Capitol at 2 p.m. eastern standard time on  
15      December 14th when, in fact, that meeting occurred at GOP headquarters?

16          A     The Fifth.

17          Q     Did any of the lawyers who were present or helping this effort express any  
18      concerns that you're aware of about either of those two statements that we just  
19      discussed on page two of exhibit 6?

20          A     The Fifth.

21          Q     And you can take that down. Thank you, [REDACTED]

22           By this time, December 14, 2020, efforts by the former President or his supporters  
23      to overturn the results through the courts had been rejected by at least 86 judges,  
24      including 9 Supreme Court Justices in Texas -- in the case of Texas v. Pennsylvania, as I  
25      understand it.

1           Was there an expectation that you or the others who met to cast votes as  
2        Republican electors in Michigan had that the courts would actually accept the Republican  
3        votes that you sent to the Archivist and President of the Senate following the meeting on  
4        December 14, 2020?

5           A     The Fifth.

6           Q     Meshawn Maddock, another of the Republican electors in Michigan, publicly  
7        stated that, quote, we fought to seat the electors. The Trump campaign asked us to do  
8        that. Under a lot of scrutiny for that today.

9           Was Ms. Maddock's statement that the Trump campaign asked us to seat electors  
10      accurate, as you understand it?

11          A     The Fifth.

12          Q     And her comment that the Trump campaign asked us to do it and that we  
13      fought to seat the electors, does that suggest there were disagreements about whether  
14      or not to seat the Republican electors before casting votes --

15          A     The Fifth.

16          Q     -- for President Trump on December 14th?

17          A     The Fifth. Sorry for interrupting.

18          Q     That's quite all right. Thank you, Ms. Berden.

19          Okay. We received from you a voicemail, and it said, in sum and  
20      substance -- I'm not going to read verbatim here -- but it says: Kathy, it's Anita.

21          Who's Anita?

22          A     My sister-in-law.

23          Q     It says: I have a couple that's very interested in going to the meeting in  
24      Washington, D.C., on January 6th. What was that about?

25          A     I don't recall. I didn't answer -- re-answer her phone message.

1 Q Were you aware of a meeting in Washington, D.C., on January the 6th?

2 A The Fifth.

3 Q Did that have anything to do with the joint session of Congress that  
4 convened on January the 6th, 2021?

5 A The Fifth.

6 Q When did you receive this voicemail that you provided to the committee?

7 A I don't recall -- or I don't recall.

8 Mr. Columbo. [REDACTED]

9 [REDACTED] Yes.

10 Mr. Columbo. We've got that information in the metadata, and I think that in  
11 the information that was provided via the electronic vendor, you may have that  
12 information.

13 [REDACTED] Okay. I will look for that. I had not seen that loaded yet, but I  
14 will go back and look for it. I appreciate that, Mr. Columbo.

15 BY [REDACTED]

16 Q I understand that Ms. Maddock may have had some role or understanding of  
17 a number of buses that traveled from Michigan to Washington, D.C., for -- on January the  
18 6th, or to be present on January the 6th. Do you know anything about that effort to  
19 have buses take people to the -- Washington, D.C., on January the 6th?

20 A The Fifth.

21 Q Do you know who funded those buses and paid for them to take people to  
22 Washington, D.C., on January the 6th?

23 A The Fifth.

24 Q Where were you on January the 6th, Ms. Berden?

25 A I was at the RNC meeting on Amelia Island in Florida.

1           Q     Okay. Somewhat separately, I understand that President Trump called  
2     William Hartman and Monica Palmer after Wayne County certified its election results in  
3     November of 2020. Do you know anything about that call?

4           A     The Fifth.

5           Q     Do you know whether Sean Flynn was a part of that call?

6           A     The Fifth.

7           Mr. Columbo. Hey, [REDACTED]

8           [REDACTED] Did you understand that there was an effort -- yes.

9           Mr. Columbo. [REDACTED] could I have just about 10 seconds or 15 seconds? I just  
10   have to --

11          [REDACTED] Of course. Absolutely. Take your time. We'll go off the record.

12          Mr. Columbo. Great. Thank you.

13          [Discussion off the record.]

14          BY [REDACTED]

15          Q     All right. Let's go back on the record. It's 10:52, and we're resuming the  
16   deposition of Ms. Kathy Berden.

17          I also understand that a State Board of Canvassers member, Aaron Van  
18   Langevelde, received outreach from a number of people before the statewide  
19   certification of the vote for the Presidential election in Michigan, and I believe that took  
20   place in late November. Do you know anything about outreach to Mr. Van Langevelde?

21          A     The Fifth.

22          [REDACTED] Bear with me just one moment. I will see if there's anybody on.  
23          And I don't know that any members have joined us, Ms. Berden, but I'll see if there's any  
24   questions from anyone. It doesn't look like it.

25          In that case, I think, at this point, we have concluded the deposition.

1           And, for Ms. Berden, I appreciate your time and appearance before the select  
2 committee today, and we will go off the record and close the deposition.

3           [Whereupon, at 10:53 a.m., the deposition was concluded.]

## 1                            Certificate of Deponent/Interviewee

2

3

4                I have read the foregoing \_\_\_\_ pages, which contain the correct transcript of the  
5                answers made by me to the questions therein recorded.

6

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10                          Witness Name

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14                          Date

15