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WEBINAR

TRUTH AND ACCOUNTABILITY POST-INSURRECTION:
WHERE DOES THE COUNTRY GO FROM HERE?

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P R O C E E D I N G S

MR. HUDAK: Good morning, everyone, and welcome virtually to the Brookings Institution. My name is John Hudak. I'm a senior fellow in Governance Studies and the deputy director of our Center for Effective Public Management. It's my pleasure to moderate today's panel entitled "Truth and Accountability: Where Does the Country Go From Here."

Americans now have images seared into their minds of what happened on January 6 here in Washington, D.C. After a type of pep rally outside the White House, the president and his surrogates urged supporters to march on the Capitol and fight. And so they did. Charged with a fact free conspiracy that President-elect Biden and Democrats conspired with Republican governors, Republican secretaries of state, conservative State Supreme Court Justices, Trump appointed Federal Judges, and a conservative Supreme Court to steal the election from President Trump, his supporters reacted. Rather than accept the results of the elections, some Trump supporters decided the better approach was to take up arms against their own government and invade the United States Capitol.

In its wake we have video of insurrection, and insurrectionists chanting for Vice President Pence to be assassinated, a search for House Speaker Nancy Pelosi. And also in its wake a Capitol police officer was murdered and dozens were injured.

As we approach the inauguration of President Joe Biden and Vice President Kamala Harris, we are in an unprecedented moment. We are seeing images of military grade security around the United States Capitol that signals what a difficult path we have moving forward from this insurrection.

Today I'm joined by four of my esteemed colleagues to discuss exactly that. They are Elaine Kamarck, a senior fellow and the director of the Center for Effective Public Management, Molly Reynolds, a senior fellow, Rashawn Ray, a David Rubenstein fellow, and Susan Hennessey, a senior fellow and executive editor of Lawfare.

I'd like thank all of you for joining me today for what is obviously a difficult discussion. I'd also like to thank the audience for tuning in. we know that there's a lot of you out there. If you're interested in sending in questions, we're going to take about a half hour toward the end of the panel to discuss these questions. And so please send them in either by emailing them to events@Brookings.edu, or on Twitter using the Brookings Governance Studies handle, which is @BrookingsGov, that's

@BrookingsGov.

To start today I'm going to throw a prompt out there for everyone, and maybe start with you, Elaine. Just to take moment to reflect on the events of January 6, the transition, and how it's been disrupted, the state of politics and society we're at right now as we approach the inauguration tomorrow.

MS. KAMARCK: Thank you, John, and thanks to everybody who's joined us today.

Never in American history have we seen a transition like this. We've been through some rocky times, we've gone through transitions when the country was in a time of crisis, but we have never had a transition where the president of the United States refused to accept the results of the election. If you think about this, it's almost the culmination of something that's been happening in the Republican Party for several years now.

Let's go back to Scott Walker, the governor of Wisconsin, who as he lost has the Republican Legislature pass a series of laws that constrained the incoming Democratic governor. It's kind of like, oh, yeah, we lost, but we're going to get you anyway. And the Republican Party has a piece of it — not all of it — there's a piece of the Republican Party that has constantly flouted democratic norms for years now. And of course the final culmination of this was Donald Trump's two month campaign to say that the election was not what the election was, ending in an actual insurrection. So this is a part — and the most extreme part of a very disturbing pattern within one of our major political parties.

MR. HUDAK: Thanks, Elaine.

Molly?

MS. REYNOLDS: Thanks, John, and thanks for all of you out there who are joining us today.

Just to kind of build on what Elaine was saying about the historic nature of this moment, it is remarkable that we are having this conversation in the terms that we are. I think for me, as someone who pays a lot of attention to the U.S. Congress, I think it's important to reflect on what this means for Congress, for the way it does its work. It's difficult for me to make sense of the more than 100 House Republicans who, after their own workplace was attacked by insurrectionists, in many cases instigated by the rhetoric those Republicans themselves have been articulating, went back into that building and voted as they were planning on beforehand, to throw out the results of a democratically conducted election, and

an election that to —– for —– to experts who specialize in election security and administration say was one of the best run elections we've had in this country, especially given the circumstances that we are —– that it was conducted under.

So I think that sort of thinking as we go forward about what this means for the legitimacy of how Congress sees itself, how Americans see Congress and the institution, is really important.

And then the last thing that I'll say is just that we can't have this conversation without reflecting on the degree to which kind of our system of white supremacy is at the center of what motivated those folks to go the Capitol and attack it during what is a really important —– if somewhat ceremonial piece —– of the conduct of our elections.

And so I think as we go forward we need to both think small in terms of how the actual members of Congress, where do they go from here, and then also just think really big and reflect on what it means for a large swath of this country to feel so motivated by what's happening and by kind of what they see as threats to a system of white supremacy to literally take up arms against the U.S. Capitol.

MR. HUDAK: Thanks.

Rashawn?

MR. RAY: It is great to be with everyone this morning.

I mean when I think about what's happened over the past several months and really past several years, to me it speaks to, not only as Molly mentioned, as I know we'll get more into, about white supremacy ideology, but also under-girding that is the way that Trump —– but even before him —– the way that institutional trust has been eroded. Trust has been eroded in our government, often times our local, state, and federal government. Trust has been eroded in our healthcare system, trust has been eroded in media, and trust has been eroded in science.

Now, it doesn't necessarily mean that all of those things are factual or that that should happen, it's more about the way that the narrative has been able to be used. And I think we've seen the power of social media being used in this election. I mean we know that in the 2016 election it played a big role. Over the past four years, it's been doubled down on and people have went to say Twitter to primarily listen to Trump over other sources of mediums.

And we also know that we've seen huge fluctuations in fissures throughout our country.

So, for example, Fox News, which has had pretty much the most viewers over the past couple of decades, for one of the first times dipped below CNN and MSNBC, and that kind of coincided around election night and people not necessarily hearing or seeing what they expected from that outlet. And it was interesting because even though they were trying to — and were — presenting objective information about the likelihood of Trump being able to say overtake Biden in Arizona, that didn't necessarily mean that it aligned with people wanted to hear or what they were thinking at the time.

So part of thinking about is that I think about Trump as injecting a steroid of hate into the American mainstream, not just the extreme, but the mainstream. And we have to be very clear that what's occurred, as things move forward, it will be interesting to determine whether or not Biden will really be able to unify the country or whether or not there is a growing set of people who are no longer fringe, but as Elaine was saying, is very much part of the Republican Party, that stems from not only the Tea Party and Tea Party rhetoric, but if we go back over the past few decades, we know even from the mid-1990s and some social network analysis that came out of sociology and political science, showing the way that Senate votes started to separate. That even though all of us know behind the scenes they will be having conversations, they will be talking to one another, but their Senate votes really started to split. And that was simultaneously around the time we started to see polarization in cable news. And then, of course, came social media a decade or so after that.

So we can think about how these fissures have manifested in our social institutions and how it's permanently I think — at least for a generation — fractured trust in our major social institutions, in government, science, health, and media.

MR. HUDAK: Thanks, Rashawn.

Susan?

MS. HENNESSEY: Yeah, so this is one of those somewhat unusual sort of significant security events where our understanding about what happened and how serious it was is growing over time. It actually looks worse and worse the further away we are, the more we have an understanding about what actually occurred on the Capitol grounds, the more videos that are being produces. So there's a little bit of a gap between sort of the initial perception of what was happening, which was, you know, sort of a rally that got a little rowdy, right, some people who got out of control. Sort of the way that

just by virtue of where cameras were and sort of how we were digesting that, it seemed more like we were talking about sort of a property damage, you know, or sort of a failure to respect the Capitol Building.

What's absolutely clear right now is that we came within maybe a minute, maybe 30 seconds of having a mass casualty event in the United States Congress. And, yes, there were people who were sort of random, you know, went along with the crowd and got in the building and asked where the bathrooms were and tried to grab laptops and didn't know what they were doing, there was clearly a group within that of people who were heavily armed, came with schematics of the Capitol and intended to kidnap and potentially assassinate members of Congress. And they got really, really, really close. And it's pretty alarming to see basically we're here by luck. You know, some quick thinking security guards and quick thinking Capitol police officers, you know, members of Congress sort of being — you know, baseline security plans being available, the structural layout of the building, right, how people can exit various rooms.

And so sort of the need to impress upon the American public, you know, this is not about, you know, supporters, you know, standing in the sacred space of the Senate, this is about a very, very real, very, very grave threat to the United States and to the legislature. And I think that's sort of — our understanding is getting worse and worse and sort of really needing the public to wrap their minds around that. It's a hard and a scary thing to comprehend, but that's just the basic reality.

And I think that ties to how we think about the question of accountability metrics and the way that it is going to sort of interact with the natural incentives. You know, for the Republican Party — and I don't mean sort of the hard core Trump base, the new emerging kind of QAnon caucus that's coming up in Congress, but those moderate Republicans who were really scared, who really hope that they can sort of move forward with the Republican Party without Donald Trump. The problem is they need his base to come along with them.

And so the incentives for those people — and I think we're already starting to see it emerge — is to be able to express disapproval without sort of tying themselves to the mast. It's a lot easier six months from now to sort of read the winds of where sort of Republican voters are, you know, and disavow a tweet if it's, you know, sort of the — it's kind of everybody is trying to memory hole it and

distance and sort of the best politics sort of to pretend as though this era and this event wasn't that bad in order to sort of avoid their own personal electoral accountability. Or if instead, you know, as we get further away, there's more condemnation. Being able to say, well, here's my statement, here's my tweet, here's how I showed disapproval, but allowing themselves to keep those options open because it's not clear which way the winds are going to blow.

Because of the gravity of the event and the — sort of the need to ensure that we never recreate the specific political circumstances that allowed this to happen, it's — there's a really — it's really important to force people to record their disapproval and rejection in the most formal sort of mechanisms and metrics available. And we're going to see that tension play out and really a fight and a desire to shape the narrative of what occurred, even though it was just, you know, a little over a week ago at this point. You know, because that's really I think what is at stake in the next couple of days. How do we understand this event two years from now, how do we understand this event 10 years from now, and how does that shape our political culture and ecosystems, sort of boundaries and guardrails?

MR. HUDAK: Susan, it was a great point made — well, a series of great points you made — but in particular that the more that we learn about what happened on January 6, the worse it looks. And in large part the irony of all of this is while the Capitol Building is filled with cameras and other types of technological capacity to track individual devices, etc., most of the evidence is coming from the perpetrators who were live streaming this on social media, posting selfies, posting pictures in other settings, emailing, you know, evidence to friends. And that's all coming up and outing a lot of these individuals in a way that perhaps the cameras in the Capitol would not have been able to do as effectively as the individuals streaming it. And I think, as I said at the outset, these are a lot of images that are seared in our memory.

One in particular that I'd like to pick up on, Rashawn, that touches on some writing that you've done on Brookings' How We Rise recently, we all saw the imagery of white supremacy in variety of contexts, whether it was Confederate flags, whether it was other white national symbols, whether it was anti-Semitic articles of clothing. Can you talk about the role of white supremacy and white supremacist views and culture in this, building on of course what Molly said in her opening remarks?

MR. RAY: Yeah, well, look, make no mistake. The Capitol coup, the insurgency, as

other people have said, domestic terrorists, storming and trying to take over the Capitol is about and was fundamentally about maintaining white supremacy ideology. That was at the heart of it. I mean we saw it in their expressions, as — I mean, as you mentioned, John, I mean there were so many examples of symbolism. I mean a noose hanging outside of the Capitol, a Camp Auschwitz shirt, Black police officers reporting being called the "N" word multiple times. And then also seeing some of their fellow co-workers while — some of them Black and white — were being accosted and chased by these domestic terrorists, seeing them kiki and ha ha-ing with them as these sort of things were happening. And what people have to understand is there is a historical link here with white supremacy ideology, that for the people who stormed the Capitol, they fundamentally view that America was founded for them and solely for them, and so that the Capitol exists because they are its only rightful heirs. And what they were doing was returning to the Capitol to reclaim it at a moment where they feel like it is slipping away. Yes, of course, being emboldened by Trump, but, again, that steroid of hate simply needed a little jolt to kind of percolate throughout society.

And what people have to understand about white supremacy ideology is that it's not simply about attitudes or even people's behavior to enact on it, but ideologies are also about controlling people and property. So if we think about the Capitol as property, as a building, it is about maintaining control of that space. And not only that space, but also state's capitols. And, again, we have a record of this. If we go back to 2020 with anti-lock down protests, these are some of the same people. They were testing it, they were trying to see what would happen to them, and nothing really happened to them. And then we say that we can compare it to Black Lives Matter protests. I often times like to have apples to apples comparisons. And I mean we know what happened in June 2020 when there was a large Black Lives Matter protest. Mind you, extremely diverse by race, as we saw the Black Lives Matter movement mobilize to become more diverse, but it was about ideology, it was about the fact that Black lives matter in pursuing racial equity. To people who pursued the Capitol is viewed is an antithesis to their goals and what they were trying to do.

And when it comes to law enforcement, I mean, look, we already know, as Susan was saying, I mean we have so much evidence. This becomes the power of mobile phone technology and the power of social media. That they showed us exactly what they were doing. I mean, John, as you noted, I

mean some of the cameras in the Capitol were limited in that regard, but their own mobile phones captured what they were doing. And we saw law — and we know that law enforcement and military personnel were flashing badges to gain access, we saw some police officers opening up gates to literally open the flood gates to attack the capital. We see them where the speaker and the vice president sits, just having casual conversations.

And I ask people to think about this — imagine if the people who stormed the Capitol were not white. Imagine if the images we saw of people scaling the Capitol walls were Black or Latino or Muslim. I mean as Ben Wittes said — we had this conversation — he said it probably would have been a bloodbath. And I can't disagree with him on that point.

And when it comes to the links between white supremacy and law enforcement, that history runs deep as well. We have to be very honest that what we saw at the Capitol is America, just like the way that law enforcement was founded in the U.S. stemming from slave patrols, where enslaved Black would flee plantations for their freedom and a group of people, mostly white men, but not always, would go after them and try to track them down. Why? Because Black bodies, as people, were actually property. And until we fundamentally understand the ideologies are also about people and property, we won't fundamentally understand that, as I say, that bad apple police officers, like some of those that were storming the Capitol, but also government elected officials and military personnel, that they come from rotten trees. And those same rotten trees are the ones that the domestic terrorists come from, which is laced with white supremacy ideology.

MR. HUDAK: Really powerful. Thanks for that.

A reminder to our audience, if you want to send in questions we'll get to those a little bit later on. You can send them by email to events@Brookings.edu, or post them on Twitter using Brookings Governance Studies handle, which is @BrookingsGov.

Elaine, a large part of why America is so divided and why so many Americans believe their only relief is to commit insurrection –– a large part of that is because of the language and the ideology that the president himself has created.

In the wake of January 6 there were calls for the vice president and Cabinet to invoke the 25th Amendment, but to no avail. Why do you think the 25th Amendment route didn't work? And did you

believe that it would have been appropriate for the vice president and Cabinet to invoke Section 4?

MS. KAMARCK: Well, it's a good question.

First of all, in Pence's own words why he did not invoke the 25th Amendment, he said because it was not intended as a means of punishment or usurpation. And I think that that was a — that's a sort of solid Constitutional ground that it wasn't meant to punish, it was meant if somebody was really out of his mind. Now, to many of us, Donald Trump seems out of his mind, but to others he's sane, he knows what he's doing and he is honestly and reliably intent on undermining the election that just happened, okay. So it's not — he's not sort of disabled in that sense.

I also think more practically, however, Pence made a decision to try to thread the needle, so to speak. He decided that he was not going to interrupt the vote count as the president asked him to do, he was going to preside over it, he read the Constitution, he said very clearly I don't have any authority to interrupt the count of the Electoral College. So he decided to go against Trump on that dimension. And then I think on the 25th Amendment, he just decided no, that was something — that was a bridge too far, he couldn't do it.

Since then he's decided to show up at the Capitol and be part of the hand over, the peaceful transition of power. So Pence is doing something which may or may not work. He is trying to be a mainstream Republican without totally, totally alienating the Trump base of the Party.

For all the members of the Republican Party who want to be president or want to be nominated in 2024, they are between a rock and a hard place. On the one hand, almost all of them, including Ted Cruz, they know that what the president has been doing is absolutely wrong. On the other hand, they also know that there is a piece of the Republican primary electorate come 2024 that is going to be a Donald Trump piece. And so they can't get too far away. And I think what you've seen in recent days is some of these members, particularly the senators, are trying to call for unity on the one hand and trying to kind of cover up the fact that — try to get people to forget the fact that they were in fact instigators of the insurrection. And by their votes on the Hill, as Molly pointed out, it was just — it's incredible that in the middle of the riot these people came back and still objected to the Electoral College vote.

So I think that they're all playing this delicate dance and looking at 2024, or the big

names in the Republican Party, they're looking at 2024 and trying to figure out, can we possibly do something close to the right thing and keep the Trump base.

MS. HENNESSEY: Just to add briefly to the — I think that was a really good point from Elaine about sort of the delicate hand. And I agree with everything that Elaine just said about sort of, you know, there's a reasonable argument for sort of to justify not invoking the 25th Amendment. There were early sort of reports that staffers seemed to believe the president like genuinely had a compromised mental state. If Pence didn't share that view genuinely, the 25th Amendment is not an available remedy.

But one thing as we think about sort of accountability and addressing sort of the 25th Amendment questions, the particular questions about impeachment, about the trial, is sort of to zoom back and to see a pattern emerging, which is arguing each point, why the sort of the particular remedy isn't appropriate, the 25th Amendment isn't appropriate, criminal sanctions aren't appropriate, impeachment isn't appropriate, removal isn't allowed if the president is out of office. And the problem is that whenever you zoom out, what's — the actual core of the argument is there is no remedy available. Whenever we think about a constitutional system that allows a president, a sitting president, to incite in the ordinary sort of vernacular sense of the term, an insurrection against the legislative branch and the response of the government is we have no available remedies to this, we just have to wait it out, that doesn't work, right. And so it's important to sort of debate each of these things on the clear individual merits and what their constitutional purpose is, but there's also a little bit of a trick being played here, which is, you know, good faith, reasonable arguments against the 25th Amendment, good faith, reasonable arguments against having a trial, right, and needing to also sort of step back and set a marker, responding, okay, if not the 25th Amendment, then what. And really tying those conversations together, because otherwise it's — I think it's all — at least for some people — just about sort of don't look over — you know, look over here, look over here, sort of distracting, and wait it out until essentially kind of the political pressure has died down.

MR. HUDAK: Yes, Susan. And it continues beyond that, right. It's not just around the events of January 6 or other events that we've had, but the argument out there that, you know, the president has been immune from criminal prosecution during his presidency because of a Department of Justice memo. And then the second argument is, well, he'll be out of office and he'll go away, so let's not

continue to pursue criminal charges against him, let's just let this go. And it just perpetuates that idea that there is no accountability in the system and there's always an excuse for letting bad behaviors go. Which of course as we know, particularly from other countries, that just incentivizes future bad behaviors from other actors. And so the accountability piece here as we're talking about it is so critical.

And, Susan, I'd actually like to come back to you. Part of accountability in this process is going to be raising truth up and raising honesty up and raising up facts. And one of the facts that we know to be true — and Molly touched on it in her opening remarks — is that the 2020 election was one of the most secure elections in American history. But there has been this rhetoric from the right and from the president to challenge that.

Can you talk a little bit, sort of functionally, with some detail about the security around this election this year and how that truly played out?

MS. HENNESSEY: Yeah, so look, there's absolutely no reason to doubt the integrity of the 2020 election. We've had that affirmed again and again. You know, look, we do not have an ideally secure, you know, sort of election system, and so declaring this the most secure election in U.S. history, which is factually true, is also not an opportunity to give ourselves a pat on the back.

That said, the idea of a foreign adversary sort of compromising election, you know, changing votes, doing things like that and avoiding the detection of U.S. federal law enforcement, the intelligence community, you know, sort of the larger global intelligence apparatus, it's just laughable. It's actually sort of impossible. And so these conspiracy theories are — these are not grains of truth that are then, you know, sort of spun out, these are completely sort of deranged fabrications. And there's just no credence to them whatsoever.

Of course, there are individual cases of sort of voter fraud, you know, people who sent in absentee ballots and didn't realize that they'd been — you know, sort of they'd been received on time and voted in person. There's always those sort of irregularities there and there. They're addressed at the state level, they happen on a bipartisan basis. You know, there was not sort of widespread voting fraud. You know, the outcome of the election is perfectly clear. I mean it's been perfectly clear from the beginning.

And one thing that we saw happen, and I think this is part of sort of needing to

understand what happened and how we got here, to make sure it doesn't happen again, was a particular sort of tactic, sort of establishment or mainstream Republicans employed in the weeks immediately following the election. So even though it was absolutely clear that Joe Biden had in fact fully, completely, and legitimately won the U.S. presidency, we saw sort of members of Congress, you know both the House and Senate, sort of saying well, the president is entitled to pursue these — you know, to pursue these cases in court. We have a legal system. And even though they were offering — you know, the president and his lawyers were offering constitutionally and logically absurd theories. So sort of beginning with sort of challenges to state law that didn't make any sense, got no traction whatsoever in the courts, sort of moving into these true sort of technically deranged conspiracy theories about Dominion Voting and these various systems, and the courts were really sort of batting them down, sort of Republicans were seeking refuge in this notion of well, he's just — he's allowed to use the process. There's nothing wrong with a candidate sort of attempting to get answers and these are the systems that exist. And so he's right to turn to the courts to do that.

And the problem is that they weren't doing that in order to say, hey, there are these sort of crazy anxieties, we're going to put this into the court system, and then say the courts have the final word. And this is really about resolving these questions definitively and saying, all right, you can raise this question. Look, the court said there's nothing to it, and now we're going to move forward and that's the end of it. Instead, they used sort of this ongoing legal process and this really sort of specious and abusive legal process in order to drag out the period of uncertainty, in order to sort of allow, you know, this broader sense of an illegitimate election to take root. And I think they discovered that it got out of control, something that lots and lots of people predicted at the very beginning, that even in the immediate days after the election, when Trump was sort of on his own, tweeting things, sort of, you know, I still won — sort of refusals to concede. The decision at that point to not very, very strongly, very, very clearly push back and say, Mr. President, Joe Biden is the president-elect. The decision to not call Joe Biden the president-elect, to not reach out and congratulate him, to not begin sort the process and the ceremonial but also important functional process of validating the legitimacy of the win, something that is important in all democratic systems, right, the of the both parties coming together to reaffirm, you know, that this is a legitimate sort of peaceful transfer of power, by failing to act in that moment, that's how we

got to January 6.

And so, you know, it's important to not just sort of rewind the clock to, you know, what happened in the days before, although of course we saw echoes. Senator Hawley and Senator Cruz saying well, we're just raising these questions on the Senate floor on behalf of our constituents who have these questions and we're availing ourselves of a perfectly valid process. And how dare you criticize us for using the tools that are available to us. This is, you know, absurd. Understanding that sort of using these processes in order to undermine legitimacy, in order sort of fan the flames of conspiracy theory, is itself an abuse of process. And it's not — our system is not well designed to respond to that. And I think the best thing we can do is understand it and call it out precisely for what it is, because especially as we go back and try and tell the story of what occurred, we're going to see lots of people saying, all I did was say that a president has the right to seek — you know, to file a suit in federal court. That's factually true. How could anybody say that this is, you know — you know, incitement or undermining the legitimacy of the election. As we look at those pieces, sort of understanding what was actually happening, understanding that it was clear at the time, understanding that the perils and sort of the January 6 outcome was not just foreseeable, foreseen and actually predicted. Those people were warned and continued to engage in that behavior.

And so I think a great many of them very much regretted that on January 6, but will still want to avoid personal accountability for getting us to this point. And it really is rooted in this decision to pretend as if concerns about the integrity of the election and the integrity of sort of voting systems was genuinely in doubt. And it never was, it isn't. And sort of doing the work of repairing public confidence in these systems is going to take a long, long time to do.

MR. HUDAK: Thanks, Susan.

To build on that I want to throw a question out for everyone. Susan really well highlighted the way in which the President weaponized the post-election period. And my question is do you think that Trump's decision to do that and other Republicans collaboration in that is an aberration, or do you think that is a new playbook for defeated presidents or defeated parties to behave after future elections?

MS. KAMARCK: I'll start, John.

I think a lot of that depends on what happens in the upcoming impeachment trial. Look,

the system did settle on accountability, right. Because the House went ahead, with 10 Republicans in addition to the Democrats, to vote for impeachment and there will be a trial. I mean they're going to have to figure out how to do it without interfering that much with Joe Biden's initial days, but McConnell is perfectly open to having a trial.

So one of the things that we're going to see in the next month is we're going to see what accountability looks like. If Donald Trump is convicted, or even if he comes close to conviction — because, remember, Andrew Johnson wasn't convicted, but he missed conviction by one vote and was gone from American politics. So, you know, close is pretty good. And if Donald Trump is convicted or close to convicted, and if he's convicted and he is barred from ever holding office again, then there will be a pretty powerful signal that this kind of behavior, the legal strategy that Susan laid out resulting in an armed insurrection, is absolutely unacceptable.

On the other hand, there is the possibility that this will break along party lines, as we saw in the past. Maybe he'll be convicted by one vote, by Senator Kamala Harris' vote, maybe Mitt Romney and Susan Collins and some other people will come along, but maybe they'll give him a pass, maybe they'll decide to withdraw and give him a pass. And I think that would be very, very serious, because if he gets a pass on this, if he is legally allowed to run for office again, even if he doesn't, his mere fact that he could is going to keep this very, very dangerous movement within the Republican Party of Trumpism alive for the next four years. And that I think is going to then say to others, frankly, Democrats or Republicans — I mean you could see this happening in either party — to say to others that doing what Donald Trump did is actually good for your politics, keeps you alive, keeps you in there, keeps your supporters all revved up. And that is a real, real danger.

So that's why I think what happens in the impeachment trial will be critical to answering your question.

MS. REYNOLDS: John, if I could come in. I don't know if we'll see something like this again with a presidential race, but we have certainly started to see it in other races down ballot. So we've seen a number of House candidates, I'm thinking particularly of Jim Oberweis in Illinois who tried to contest his loss to Lauren Underwood, there was an incident in the Pennsylvania State Senate where when the lieutenant governor of Pennsylvania was trying to swear in the new set of Pennsylvania State

Senators, Republicans had him removed from the presiding officer's chair over a controversy about an ongoing legal challenge to a particular Pennsylvania State Senate race in the Pittsburgh area.

So whether we end up with another kind of situation that — in the vein of what Susan described at the federal level with members of Congress saying the president has a right to pursue legal challenges to the elections — and I think Susan's kind of encapsulation of how we should think about that is spot on. But I think there's evidence that we're already starting to see this kind of disingenuous use of the legal system to try undermine election results at other levels of government. And the degree to which that works, is less important than, as Rashawn was saying in his opening, what it means both as cause and effect for Americans trust in our systems of governments and trust in our elections.

And so if people start to think that this is how this works, that's a really big problem for us going forward, even if we never get another, you know, eight weeks — or whatever it has been — that we've had over — in the very recent past with the result of a presidential election.

MR. HUDAK: Molly — oh, Susan?

MS. HENNESSEY: I'll just make a short point on this, and that's this is an evidence of over confidence in our system.

So in the 2000 election, we passed sort of in the wake of it the Transitions Improvement Act, we have the Presidential Transitions Act. And there was this question raised, right, sort of what is the period of ascertainment, a process that nobody knew about but now everybody knows about, where GSA declares who is the president-elect, begins this transition of power. In 2000, of course, there was a genuine (inaudible) questions based on a single state for several weeks about the outcome of the election. There were serious concerns about whether or not that led to sort of security gaps that heightened our risk of 9/11, you know nine months later. And in this process of deciding how we should amend the Presidential Transitions Act, to have this period, people actually brought up this question, right. So there's this concern of oh, well, you don't want wrong declare a winner too early when there is ongoing litigation because that could actually influence the outcome. And we could see in Bush v. Gore how that might have been the case.

At the time, people raised the question, well, if we put ascertainment as this idea of once all the legal questions are resolved, couldn't somebody just frivolously challenge the results of an election

and prevent ascertainment. And at that moment it was sort of laughed off. Surely the political parties wouldn't allow for this, surely this sort of absurd outcome couldn't happen, nobody would do this. Now, you know, 21 short years later here we are. And so whenever we think about how to — like sort of create the mechanisms to prevent this from moving forward, we need to take a pretty clear look at ourselves and not make the same assumptions about the great, strong, deeply rooted, normative protections because I think the lesson we're learning right now is how weak those ultimately are proving to be.

MR. HUDAK: Elaine and then Rashawn.

MS. KAMARCK: A quick point here. One of the things that Biden and the Democratic Congress should do very quickly is make sure that there is real money put to the states for upgrading their election systems. This is — I mean we said this after the 2000 election, which Susan just referred to, and, frankly, the money — they said they were going to do it, the money wasn't appropriated. There was some money in the CARES Act because of the problem with the Coronavirus, but the fact of the matter is that states have old equipment, they don't have enough people as poll watchers, they don't have enough ways to guarantee security and transparency. And given that this could become, as we've been discussing, something that happen repeatedly in the future, I think one of the protections, not the only one but one of the protections, will be a serious upgrade in election administration all across the country.

MR. RAY: Yeah, I mean I agree with all these points. I think what's important for Republicans and Democrats is, as all of us know, more people participated in the presidential election than Americans have over the past century. Part of what that means is that more people are paying attention now than they ever have. There are people who are new to the political system, there are people who have been disenfranchised for various reasons who are now back, who are saying, okay, we voted, and not only did we vote in a presidential election, we voted down ballot, right. So I'm thinking about people in Georgia, in Pennsylvania, in Michigan and other states — Arizona. And now they're saying, okay, what is going to happen here. And they're primarily saying, wow, is this how government operates. It's completely dysfunctional. A lot of people are saying well, it's actually worse than my own family or where I actually work. So I'm trying to figure out why I should trust you to do the right thing.

So part of what Democrats are doing and part of what Republicans are doing is I think they're recognizing this. And they're not only thinking about history and what history books are going to

say, they're also thinking about broken expectations for the people who put them in office. Even though Donald Trump is not there, yes, it's about hopefully preventing him and then hopefully holding other people accountable for the things that they've done, but it's also about broken expectations.

And then I think the interesting thing is even what's happening outside of government but it is related to it. So in this regard I'm thinking about Section 230 and the way that social media companies tried to get out ahead of what I think is going to be some big legislation this year around what's happening with social media. So they tried to ban Trump from those space. But, of course, I think Trump is simply — I think he's going to try to create an alternative, even beyond sites like Parler. But part of that will be whether or not Democrats and Republicans will be able to hold the attention and try to gain the trust of new voters who voted them in in 2020.

MR. HUDAK: Thanks, Rashawn.

I'm going to jump into impeachment next. But first I just want to remind our audience, if you have questions, we're going to get to them in about 15 minutes. Please send them in. You can email them to events@Brookings.edu or post them on Twitter using Brookings Governance Studies handle, which is @BrookingsGov.

So, Molly, as we noted before, the 25th Amendment was not invoked. It ended up being a remedy that was either not available or not used. But impeachment was a remedy that was relied on. On January 13 the House, in I think doubly historic fashion, both for the first time impeached a sitting president for the second time in his term. Also, interestingly enough, they came together to hold that vote in a chamber that seven days before was invaded by insurrectionists. And the imagery of that impeachment vote I think cut against the imagery from just a week prior, what was, as I said, doubly historic.

Now, a Senate trial awaits. Can you talk a little bit about the logistics of a Senate trial and how the trial might interrupt or impact the early days of the Biden administration?

MS. REYNOLDS: Sure.

So I can tell — I'll talk a little bit about what we know, I'll talk a little bit about what we don't know. For those of us who lived through last year's impeachment trial at about this time, you'll remember that there are things that the Senate's impeachment rules speak to, there are things the

Senate's impeachment rules don't speak to, details that get filled in. We're obviously in a very — in a whole host of ways in a very different moment now than we were a year ago.

But in terms of sort of pure logistics, the House, as you said, John, has approved a set of articles of impeachment. At some point they will send those articles over to the Senate. They'll send the Senate a message indicating that they have impeached and that they've appointed managers, so kind of the House's lawyers, if you will, in the impeachment trial. The Senate will then tell the House that it's ready to receive those managers. The articles will be read on the floor, and then the Senate will proceed to consider the articles. Either then next day at 1:00 p.m. or sooner if the Senate decides to do so, the Senate will need to take some steps to organize for the trial. One kind of question here has to do with who will preside over the trial. We know last year it was Chief Justice Roberts and the Constitution provides for the chief justice to preside in presidential impeachment trials. The question of sort of what happens when the president is no longer president, but has been impeached for conduct that happened when he was president, again, we all have sort of thrown around the degree to which this is unprecedented. That is one of the questions — will we see some resolution to that.

There are also open questions about things like will there be witnesses. So, again, if you paid close attention to last year's impeachment trial, it was a big debate, were the Republican who were going to vote with the Democrats call witnesses. This year, again, it's unclear. I think that over the past several days we've seen a number of Congressional Democrats really start to lean into the idea that, you know, every person participating in this trial constitutes a trial because they were themselves the victims of the attack on the Capitol that was incited by the president for — and that's behavior for which the president was impeached. So it may be the case that this is kind of signaling a decision that they're might not need — the Democrats might not choose to try and call additional witnesses because, again, they consider everyone in that room and everyone who works in the Capitol to have been witnesses to what happened.

On your specific point, John, about the schedule. So obviously we're having this conversation about 24 hours before Joe Biden will be inaugurated as the next president. When there is a new president coming into office there's a lot of business, particularly for the Senate to conduct, around confirming presidential nominees. It is certainly possible for the Senate to conduct business in either

legislative session, so to consider legislation or an —- what we call executive session, to confirm nominees. They could do that before noon and then convene the trial at noon, pursuant to the Senate's rules. They could adjourn the impeachment trial for the day and return to legislative or executive session to consider more business. They could also meet for other purposes on dates when the Senate is not meeting for trial. What's a little unclear is kind of how the Senate's rules and procedures for other business will interact with the rules for when the Senate is sitting for an impeachment trial. And here we get into things like when a cloture motion to cut off debate is filed on something would —- and there's an amount of time after which that cloture motion does what we call ripen or kind of comes up for a vote, does that interrupt the business of the Senate when the Senate is sitting for impeachment. There are questions about sort of the amount of time that has to —- that can expire after a cloture motion is —- after a cloture has been invoked.

So lot of sort of really kind of technical in the weeds questions, but the kind of big picture to zoom out for a second is that, yes, the impeachment trial, by virtue of its timing, has the potential to interact with the usual and really important business of the Senate at the beginning of a new presidential administration. And I think it will largely be up to Senate —- soon to be Senate majority leader, Chuck Schumer, and soon to be Senate minority leader, Mitch McConnell, to kind of work out what this is going to look like and figure out where are the real pressure points within their respective caucuses that might make it difficult to come to an agreement to both deal with the Senate's constitutional responsibility to conduct an impeachment trial and the really important business of government at the start of a new presidential administration.

MR. HUDAK: Thanks, Molly.

So now sort of as a horse race question, who thinks President Trump ends up getting —- or former President Trump ends up getting convicted? Anyone? (Laughter)

MS. HENNESSEY: I don't think it happens. As Elaine mentioned, I do think, you know, closure does kind of count here and sort of the bipartisan nature. Again, I don't think it's out of the realm of possibilities, especially sort of depending on what Trump might say and do. I do think that if in the Senate trial Donald Trump sends Rudy Giuliani or others to once again dispute the legitimacy of the election, things like that, that might be a bad strategic move.

That said, you know, we're in age of such intense political polarization that even in the instance in which Donald Trump told his supporters to go and fight and they came to the Capitol and committed acts of violence against Congress themselves, killed a police officer, even that is not enough to have clear bipartisan consensus that that is grounds for impeachment, immediate removal from office, and certainly from barring office in the future. So I think we're going to see a lot of members of Congress sort of pretending as though this is about, say, the meaning of the word impeachment and the constitutional Brandenberg precedent of it, things that really are not relevant for impeachment trials. But I think we'll see a lot of people sort of trying to use that as sort of the hook of how they can condemn but also not convict and prevent in the future. It's unfortunate and I think the term for it is it's pretty cowardly. And that decision, and if Trump is in fact not convicted, and more importantly not barred from holding office in the future, that will be a choice with significant consequences, you know, not just over the next four years, but in the long-term.

MS. KAMARCK: I would add to that, if you were looking to count votes in the Senate, you need to find 17 votes. And a lot of whether or not you find 17 votes — assuming that all the Democrats vote for impeachment — vote for a conviction — which they will — if you're looking for those 17 votes, you've got two categories to look for. First of all, you have the category of senators who did not go along with Trump in contesting the Electoral College vote. That's one group. And then you have a category of senators who just got reelected, some of whom, like Susan Collins, had a nine point win in her state of Maine while Trump was losing it by nine points. Now, the importance of looking at his group is twofold. First of all, in some states, like Maine, they did better than Trump, therefore they don't really have to worry about Trumpists coming after them. And, secondly, six years is a long time in American politics. Six years, we don't know what may happen. Donald Trump could be in jail, okay. I mean for all we know. Six years is just a long time. So that group and the overlap of that group, we counted them here at Brookings, amounts to 16 senators. And that I think is where the potential for getting conviction votes is.

And I want to reiterate the — I mean Susan talked about how — at the beginning how the longer this goes on the more we find out about it and the worse it looks. That I think it's very key to this because by the time they're really looking at this, I think it's going to look a lot worse even than it did

on the day when we saw it, where people thought well, was this just some crazy —- some people out of control, or was this organized. I think if it we find out —- by the time they're debating impeachment and conviction —- if we find out that this was organized, if we find out there were Republican House members who actually aided these people, if we find out that this looks much more like a formal insurrection than a sort of spontaneous riot, I think that could push some people in the conviction direction.

Will there be 17 votes in the end, I think that's a little bit difficult to find, but, frankly, if there are more votes than one or two, more Republican votes than one or two, I think it will be very significant in terms of telling people in the future that this behavior is simply not acceptable.

MR. HUDAK: Molly?

MS. REYNOLDS: Just to build on something that Elaine was saying. So I can sort of see two possibilities here, which is either a small number of Republicans join with the Democrats to vote for conviction, and here I'm thinking about kind of the usual suspects, the Mitt Romneys, the Lisa Murkowskis, so on and so forth. So you have kind of a handful of Republicans who join with the Democrats. Or there is an overwhelming turn away from the President and we get more than the 17 necessary votes. And there's just a big block of the Senate Republican conference who decides that they're going to convict the president.

And this is a —- Susan was talking before about the kind of intense polarization of American politics —- this is the future of the intense polarization of the United State Congress, which is that in kind of our current moment there are very few things that structurally are decided along kind of very close 50-50 lines. A lot of that has to do with the persistence of the Senate filibuster and the need to get to 60 for most things. And once you've built a coalition that can get you 60 in the Senate, you've often built yourself a coalition that can get you 75 or 80. And I think that as we think about kind of how an impeachment trial might shake out, that to my mind we're either going to see a small number of Republicans defect or we're going to see just a really big shift against the president.

MR. HUDAK: And to your point, Molly, I was asked about this yesterday. And what I think —- I agree generally with Susan's point. It's hard to see him getting convicted here, but I do think if in the pardons that come out in the next 24 hours, if he pardons the individuals who participated in the insurrection, I think that gets you the 17 votes. I think that becomes the bridge too far for enough

Republicans to say, you know, we can hold our nose during the electoral count, but we can't justify this.

MS. KAMARCK: And, John, I think that's why, as has been reported, at least his staff are advising him do not pardon people who were involved in the riot. I mean I think they see that coming down the pike. Whether he will listen to them or not is of course another story.

MR. HUDAK: We have a bunch of great questions that came in. And a lot of them actually center around another part of accountability, and that's really repair — repair to what has been done to institutions of government. And I want to jump into the beginning of that repair, which is the inaugural speech tomorrow, 25 hours from now.

But before we do, I want to touch on an area of repair that's more granular, that I think, Susan, you're best equipped to talk about. One of the areas of government where there has been a significant amount of challenge and problems and damage done during the last four years is in the national security space. We have reports now of burrowing at NSA and other problems that are popping up in the waning days of this administration.

As a former national security professional in government, can you talk a little bit about that damage and what advice you would give to the new administration about taking steps to repair that?

MS. HENNESSEY: I think the current situation at NSA is a great specific use case because it's easy to talk about this stuff in generalities. It's harder to sort of decide how to confront it in practice. I mean this is a really useful, helpful example.

So it's important to understand sort of in the national security space we have the career civil service. A civil service that is protected by a set of rules essentially designed to avoid improper political influence, sort of at two ends. So that we want to make sure that there's no political influence in deciding who gets particular jobs, who is qualified, you know, sort of — you know, who is sort of qualified on the merits. We don't want people to be hired for political reasons or ideological reasons. We also don't want people to be retaliated against sort of the back end, removed from positions, fired. There's sort of a set of productions there. So we have this sort of concept of a merit system protection. There's a board and there's this very elaborate system.

And in addition to that we have political appointees. Even in the national security space there are a limited number of people. And we don't mean political in a bad sense, it's political in a good

sense in the sense of being appointed by the president, accountable to him, and sort of responsible for discharging the policy instincts.

And so the real challenge of I think this moment is how — you know, President-elect and soon to be President Biden is going to come in and restore the sort of degradations that have occurred between — right. So sort of assaults and politicization of the career civil service and failure to sort of keep these two things separate. And so what's happening at NSA at the moment is that the individual they've selected to become the general counsel, there's lots of indications that the Trump administration broke the rules. They broke rules that were designed to avoid a political interference in the selection process and are now attempting to essentially force this individual into office mere days — hours at this point — before Biden takes office in order to give him those protections.

A lot of people are saying, you know, Biden should just come in and fire him. And he has the ability to do that, the legal ability to do that, but the challenge is though, of course, Biden also wants to come in and restore the civil service, restore the protections. He doesn't want to be perceived as, you know, retaliating for political reasons. And he also doesn't want to be perceived as somebody who doesn't care about getting the law right. And so this is a moment really in which deciding how to sort of confront this moment and get the public to understand the difference between impermissible politicization and impermissible political retaliation versus removing people as a means to protect the merit system, protect and restore the career civil service.

And so this is a high profile one that I think because of sort of the dramatic optics of the moment, this is a choice and an issue that the Biden administration is going to confront literally hundreds of times in the coming days. There's lots and lots of evidence of this kind of impermissible conversions that are going on. And it really speaks to this larger project of how is this administration going to come in and restore the notion of sort of keeping improper politics out of national security decisions, science decisions, data decisions, sort of the ordinary work of government that works not for a president and the people who voted for him, but for the American people and the U.S. Constitution.

It's a delicate issue and it's hard to get right. But I think this is a good sort of crystallization for the American public of what's at stake.

MR. HUDAK: Thanks, Susan.

So I have a few questions left that I didn't get to. So one of the things that I'm going to be able to do is pair them with some of the questions that came in from the audience.

And so my next one is going to be to you, Rashawn. The president-elect is going to be delivering his inaugural speech 25 hours from now on the west front of the Capitol. He is going to be sworn in to govern a nation that is deeply divided politically, racially, economically, along a variety of metrics. What are you looking for Mr. Biden to say during his speech? And what do you think the communities important to his electoral coalition are looking for?

And I'll pair that with a question from Kevin O'Connell, who asks that you expand a little bit on your discussion of the erosion of trust and how Biden might be able to change that during his administration?

MR. RAY: Yeah, I mean those are great questions.

I think what people are going to be expecting — and it could be — I'm very interested to see the viewership numbers on this. I mean I think for a lot of us, particularly people who live in the D.C. area, going out for inaugurations is something that happens, people travel from other parts of the country, I mean even around the world. Obviously, that's not going to happen. I mean for people in the D.C. area we all know that I mean it is literally on lock down. I mean in way that at least I haven't seen since I've been living here for about a decade.

And so I think what people really want to hear is not only him talk about, you know, continuing to heal America and reaching the soul of the Nation — which I think Biden has a track record of doing this. I mean one of the things that Trump tried to say during the campaign trail was he tried to criticize the length of time that Biden has been in Washington. But one of the interesting things about that is he's always been kind of a unifier and person who can compromise. I think that becomes important. But I think what the people who put him in office, particularly people who are often times marginalized by race or social class or even politically and have experienced this for a long period of time, they want to hear him talk about what sort of policies he's going to be able to double down on that helps create equity. In particular, racial equity. I mean it's very clear that he's been big on that, similar to how he's thought about gender equity.

I think what he should talk about are somethings that he's already done. I mean he has

assembled pretty much the most diverse cabinet as it relates to race and gender, across racial groups in particular, that we've seen in American history. He needs to talk about that. Part of what's going to happen is there's been so much that's happened over the past three months — I mean really over the past 12 months in particular from when the pandemic started, that there is a lot of noise that needs to be sifted through. And what Biden has the ability to do, this is speaking to the trust issue, he has the ability to establish himself as a key trustee of government, as a key trustee for pursuing equity, as a key trustee for science, and as a source of information. I think he can do that tomorrow. And it's going to be interesting to see the ways in which he plays it.

I mean if his speech is just as good, if not better, from one of the main speeches that he gave right before the election and then the one that he gave immediately after, I think that is something that a lot of people will listen to.

Now, again, he's going to have to speak to — look, people have a variety of different political attitudes on the right and the left. He's going to have to speak to people who say, yeah, I hear what you're saying over there, but really I want to know how it's going to affect a large swath of people. So he can't play too much into the extremes, I don't think, he needs to really double down on the majority of the people who are in the middle, whether they are on the left or the right. And I fully expect for him to do that, particularly when we talk about criminal justice reform, when we talk about immigration, when we talk about climate. And then I also think obviously his COVID stimulus bill, which deals with health and deals with the economy, are things that people are most going to be paying attention to.

MR. HUDAK: Elaine, you wrote on Brookings FixGov blog this week — or the end of last week, rather — about presidential inaugural speeches in moments of crisis. You talk about Lincoln, you talk about FDR. What are you looking for from president Biden tomorrow in his speech?

MS. KAMARCK: Well, you know, there's two ways to look at inaugural addresses. And, for instance, if we look at FDR's first inaugural address, what everybody remembers is the famous line, we have nothing to fear but fear itself. Now, if you go back and read the history, however, around that, yeah, that was good line, but you know what people really liked, they really liked his assertion of executive power and executive authority, because they were in trouble. They were in big trouble.

So I think what people are going to be looking for from Biden, I'm sure there will be some

wonderful phrases and some moving phrases, but they're going to look at the following: can he get us out of this mess, does he have a plan to get us out of this mess. Do something. The people in the Depression in 1933 wanted the president to do something. And I believe that given the way Trump has handled the Coronavirus pandemic, Biden first and really only job for the first year is going to be do something and make it work. If he can do that, then I think he buys himself an enormous amount of political good will. Then I think he can tackle a whole variety of issues. But if he can't get us out of this, if he can't get vaccines into the arms of enough Americans to end this thing, then I think he's going to be in a big, big, big pile of hurt. And he's going to have trouble doing anything on his agenda.

And that's where it's very similar to 1933 and to Roosevelt, who then took such dramatic action in the first 100 days. And, remember, you know, if we go back and read the history, some of that 100 days didn't really work, right. Some of that 100 days stuff just didn't work. But what it did do is it said a country, ah, here's a guy who's in charge and trying to solve the problems. And that's of course exactly the opposite of what Trump has been through the whole pandemic.

MR. HUDAK: Molly, I want to pivot back to Congress. We have a question from Amy Lombardi that I'm going to pair with another question too. She asks what can be done to hold accountable the members of Congress who have perpetuated lies about the election and perhaps participated in some ways in assisting the insurrection? And how might the insurrection ultimately change the way that Congress does business?

MS. REYNOLDS: That's a great question. And it — some of this goes back to something I said in my opening remarks. I mean there are — there's a kind of a range of formal responses. So at kind of one extreme the Congress does have the power to expel members. It takes a two-thirds to do so. It would not surprise me though if we see at least some efforts to bring votes expelling particular members to the floor in the House. As Susan put it towards the beginning, like this is a situation where we keep learning more and worse information. And if we do learn, for example, that there were members who were more explicitly involved in the planning of this. I'm not saying that's going to happen, but if hypothetically that kind of information were to come out, the idea that there would be a vote on whether or not to expel those member from the House I think is certainly in the range of possibilities.

A lot of the sanctions — there's also obviously the possibility of other punishment. So members can be fined. We've actually seen Speaker Pelosi try to start doing this in some related context over the past couple of weeks for members who refused to wear masks on the House floor, who refused to use metal detectors that are now installed just off the House floor for members, which is a pretty remarkable development in and of itself. So there are some kind of formal techniques.

There's also the possibility, you know, within a party of sanctioning members. The notion that the Republicans would do this to some of their own members I think is a little bit difficult to imagine in this moment. But we have seen in recent years Republicans remove some of their own members from committees. This happened to Congressman — now former Congressman Steve King of Iowa. So that there are kind of internal party sanctions.

And then there's this real question that I think a lot of folks on the — particularly on the Democratic side of the aisle — both members and their staff, who just to sort of digress for a moment, were also profoundly affected by what happened on this day. You know, these are people who were just going to do their jobs and the fact that, you know, we — our reaction to an armed attack on someone's workplace is to say, this is politics. Like that's really troubling, and I just want to sort of put that out there. You know, again, these are people who are public servants who are doing the good important work of the country, from people who work for members all the way down to the folks, who many of them Black and Brown, who cleaned up after this riot. So just remembering this story is also about them. But for Democratic members and their staff, there's this real question of how do you continue to engage in good faith with members who, you know, advanced the rhetoric that brought this armed attack on the building. And then, also as I pointed out before, came back in after that happened and voted to throw out the Electoral College votes from two states. And, you know, there was some reporting last week that said there are some Democratic members who might — whose posture on this might be to say I refuse to cosponsor any legislation with any member who voted for the Arizona and Pennsylvania objections, you know, should those folks get their bills scheduled to be heard by committee. Like it can filter down pretty quickly into the ins and outs of how Congress actually does its work.

I'll point out there are something like nine ranking members, they're top Republicans on House committees, who voted for one or both of the objections to the counting of the Arizona and the

Pennsylvania votes. So depending on how folks want to approach this, like this could get really consequential really quickly, even if we're not just talking about — do members actually get thrown out of the House for their involvement in what happened.

MR. HUDAK: Thanks, Molly. And also thanks for noting that Congressional staff were deeply affected by this. I think we look at this and too often the commentary is about members of Congress, the vice president, etc. But we often forget what those individuals who are dutiful public servants went through during the insurrection as well.

The next question I want to throw out there, it comes from a bunch of questions that came in all around the same topic, about whether in the wake of all that we've gone through, we should have a truth and reconciliation type commission that engages these issues and tries to paint a path forward toward some sort of societal recovery.

MS. KAMARCK: Well, let me start by responding to that, John.

It's a very interesting idea, because we are really in the unprecedented time of polarization and anger. And one of the things that's so disturbing about the attackers is, you know, it's not like people who had a — it's not like they have a policy agenda, right. It's not like they say we want A, B, and C and we want to have it now. No, they're policy agenda is absent. It's pure hatred, it's pure, as Rashawn said so eloquently, it's white supremacy. It goes — takes us all the way back to the Civil War.

So that says we've got to do something about this. Now, there's been a lot of these in the past. 40 countries in the world have had some version of the truth and reconciliation commission. The most famous one was in South Africa. That went on for about five years and that systematically dealt with the apartheid era. They actually prosecuted — as a result of that they prosecuted people. As a result of that there was the possibility of people who participated and recanted actually got excused from prosecution. So there's a whole rich history of this in other countries. And I think it's definitely something worth considering. And I know Rashawn has been thinking about this as well.

MR. RAY: Yeah, I mean Elaine is exactly right. I mean South Africa becomes one of the best international models to look at here. I mean so Congresswoman Barbara Lee from California has a truth and reconciliation bill that she's presented. H.Con.Res.100 has a lot of House signees onto it. I view it as a complementary bill to H.R.40, which is the reparations bill originally presented by

Congressman Conyers and has now been taken up by Congresswoman Sheila Jackson Lee from Texas. And I think that there is a lot of momentum in the House for this, obviously. I actually think that those legislations could probably pass at this point. And I think that is something that would be interesting to see if it happens in 2021. Going to the Senate, I actually think that becomes something where I tiebreaker from Vice President-elect Kamala Harris comes into play at this point.

And there are some models in the United States. So at the University of Maryland the Department of African American Studies has been having a series of workshops and events on this. And there are some models. So Asheville has a model, the state of California, which is the first state to put in place a truth and reconciliation commission, headed up by Dr. Shirley Weber. And then we have some universities. Like Georgetown has a program because what people have to realize is I think it was 272 slaves that were sold by the owners and the founders of Georgetown to create the endowment that Georgetown is. Princeton has a similar legacy. They've created a similar program to provide tuition for descendants of enslaved Black people who helped to create Princeton. The State of Maryland has a reparations bill headed up by Delegate Wanika Fisher. And Andre Perry, one of our colleagues, of course, in Metro and I, we've been writing about this and thinking about this a lot. And we do think 2021 will be an interesting year in which this happens.

But really what people want, and this is what Congresswoman Barbara Lee's bill really doubles down on, is that yes, we should be thinking about reparations and we've presented various packages to talk about that, but on the truth and reconciliation part, people are also looking at the way that students learn in class. I mean one of the interesting things about how we got to this point, for those of us who are older and who — I think especially people who have kids and don't have kids are equally surprised to read a social studies book and a history book and just to see the absence of just empirical history in the United States. That literally means there are generations of people who simply do not have a good understanding of the truth of the founding of the United States, of the Three-Fifths Compromise, of the 1877 Compromise, of the 13th, 14th, and 15th Amendments, of Jim Crow, of convict leasing. I mean a series of things that are fundamental to our country. That really speaks to part of the shock that people have right now is that a lot of us buy into American exceptionalism. We buy into the fact that we are a true democracy instead of what General John Allen, our president, always says — I like how he puts it

when he says we are in a (interruption) — is that we are in a Democratic experimentalization phase in terms of thinking through some of the things that happened. And these are some of the interesting things that we have to think about, that this is who America is. And if we want to do something about it, we do have to advance a particular process in truth and reconciliation.

That's what happens when you work from home and your kids are printing a whole bunch of stuff in your office. (Laughter)

MR. KAMARCK: We figured as much.

MR. HUDAK: A true shared experience, Rashawn. Technical issues in real time.

We've got eight minutes left. I'm going to pitch a question, sort of a combined question to Susan that we've been — a set we've been getting around issues of social media. So one is from Mary Ann McGrail, who asks to what extent and how can internet platforms be held accountable for speech and the issues such as selective posting of videos and remarks by users? And also, from Paul Jensen, who asks in pursuing truth, how do we go beyond fact checking in platform moderation to preventing mass manipulation that contributed to the insurrection?

MS. HENNESSEY: These are really difficult questions, in part because what's happening is that actually very, very complex and genuine legislative and technology policy debates surrounding how to regulate social media platforms, sort of internet providers more generally, that's been going on for a long time. Sort of the shorthand being kind of the Section 230 debate, although it's not really a debate about repealing Section 230, it's a debate about how to sort of — whether and how to sort of tweak things at the margins. That's now sort of being combined and confused with a sort of push by conservatives who are representing that somehow Section 30 immunizes social media companies and internet service providers from their retaliation against conservative speech. These are two things that really have nothing to do with one another. And in a sense sort of the rallying cry about repeal 230 actually has nothing to do with the substantive merits of the bill. It's more about threatening these companies with regulation in response to action that some conservative members of Congress are unhappy with taking steps like, you know, not allowing President Trump to use their platforms, removing QAnon content, sort of things like that.

You know, that said, these are hard questions. I mean this is a moment in which it's

really tempting for people who don't like the president to sort of say like, yes, you know, good for Twitter, good for Facebook, you know, good for Amazon, right. Sort of going down into the stock, refusing to provide services. This is not a First Amendment issue, because of course it's not the government acting, but it is actors who have a profound — their decisions have a profound impact over sort of the functioning of our democracy, right. They do have, you know, a lot of power in this space. And so we should think about that. And so I think as we sort of look at the social media companies' responses, it's important to take them on all on their terms. And whenever we evaluate the decision of Twitter or Facebook or sort of places that were justifying their decision to bar the president, essentially tying it to sort of an immediate threat, saying, look, the president is using this platform to incite violence or his use of these platforms could logically and foreseeably lead to violence. And so therefore we are doing this in order to prevent a threat and sort of consistent with our understanding of our obligations. We can debate sort of whether they should have done that earlier, whether, you know, the sort of propriety of doing that, but that's one argument.

As we move more into Shopify not allowing, you know, sort of MAGA merchandise to be sold or not allowing — you know, Stripe not allowing sort of the Trump campaign to use their payment processing, things that are more in kind of the symbolic space, again, I think it's important to kind of distinguish those two things. We might support those particular decisions and think they're justified. They're certainly legally permissible and repeal of Section 230 would not sort of alter those decisions. If anything it would accelerate the thing that conservatives are sort of purporting to be unhappy about.

That said, we should also think about what it means for private companies to have this kind of power. We should think about what choices we want to remain in sort of the hands of private companies versus what choices are best addressed by the government and the people collectively. So these are really, really hard decisions. I mean it's very easy to sort of allow our partisan identity or sort of political ideology to set the terms, especially for people who are coming into the specifics of this debate maybe for the first time, right. They haven't really been focused on issues of, you know, tech policy or social media regulation. You know, just fighting. These are legitimately difficult and complex questions and the challenge is going to be how do we get those addressed in a thoughtful manner without allowing all of this noise and distraction to sort of to take over. I think they answer is probably a little bit of time for

sort of cooler heads to prevail. But the worst thing that would happen is for all of the good and genuine and sort of live issues to be drowned out by the noise and then to have sort of reactive legislation or executive policy that ends up making the situation worse, not better.

MR. HUDAK: Thanks for that, Susan.

So we've got about two minutes left, so I'm just going to throw something out there. Each of you can take a stab at it or one, or however many.

If Joe Biden — if President Biden gives you a call tomorrow afternoon and says I need help to understand how we move forward, but I want to know about all the areas that we need help, what's a unique thing, what's an issue flying under the radar that my administration — my new administration might not be paying attention to that you think is critically important? What advice would you give?

MS. HENNESSEY: I'll go first just by — to give other people sort of time to think on the hot seat. I don't know if this isn't getting enough issue in a world in which everything is important, everything is urgent, everything is critical all the time, especially sort of in the age of Coronavirus.

You know, from my sort of research perspective, I think one of the most important things and most difficult challenges is how the Biden administration moved forward to restore the norms of independent law enforcement. And we want to bring up the conversation about the intelligence community, all of these other sort of restoring institutional confidence in lots of different parts of government. I think the Justice Department is a key area in which it's the necessary but not sufficient condition. If you don't get it right there, it's very, very difficult to get it right anywhere else. The answers are not always immediate or obvious, or more importantly, politically convenient. And so this question of when we come back to the project of normative restoration, a lot of times that's going to require self-constraint. And it's going to require a perception of unfairness. The last side got to break the rules, they got to do what they wanted, now we're bound — you know, we have to do the thing that's less convenient or more challenging or difficult by virtue of trying to sort of restore the status quo sort of ex ante before — it's not good politics. I can be challenging and frustrating policy, but those are the questions that we just have to get right if we're going to move forward. And really setting a clear tone for, you know, what we're aiming towards, what is the value based approach here I think is going to be essential to moving forward.

MR. RAY: Yeah, I want to double down quickly on this.

On the Department of Justice, I mean we know that there have been no —- pretty much no investigations during the Trump administration around law enforcement. Well, one thing I do know is that there are probably — definitely dozens if not hundreds of investigations that are sitting in the DOJ. The new DOJ is going to have a lot of work to do. And I think two keys are investigations of police departments, because consent decrees, which there were the most under the Obama-Biden administration, is the best way to create change for local police departments. But not only just policy change, but also to help good officers do their jobs better.

I work with a lot of police officers and they report scaling up investigations and then being retaliated against. We need to put things in place, as Susan was saying, to help protect officers who are trying to do their job and also hold bad police officers accountable. If that was the case, some of what happened at the Capitol coup might have not happened in the way that it did because that was about a lack of accountability, benign neglect at the least, and some sort of conspiracy at the most.

MS. REYNOLDS: I'd say sort of continuity of government issues. So form a Congressional perspective, it looks like Congress may — at least the House may sort of muddle through this pandemic experience with a kind of second best approach to remote deliberations, which then involved using proxy voting. But given the point that Susan made earlier, about how very close we came to having dead members of Congress on January 6, the Congress — and I think the executive branch and the clerks — remain woefully under prepared for a lot of really significant disasters that could befall them.

And so I think that that's an issue that we should keep paying even more attention to.

MS. KAMARCK: I'll end with a very — with a different note, which is the public health infrastructure. I think that what we have seen in the last year is a woefully inadequate public health infrastructure. It has accounted for the disparities among groups in terms of COVID, it's accounted for the disastrous testing, and now we're seeing it in the absence of vaccinations getting into people's arms.

So I think that's an under the radar — as you asked, John — sort of an under the radar issue that I think Biden needs to pay attention to.

MR. HUDAK: Well, I'll thank my colleagues and fellow panelists for joining today on this

critically important topic. And thank you to our audience who tuned in and watched. You can read all of our work on the Brookings website, at the How We Rise blog, at FixGov blog, and of course externally at the Lawfare blog where Susan and Molly write pretty regularly. And tune in for later Brookings events. You can find them at Brookings.edu.

Thanks, everyone.

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