

Contempt of Congress and Election Interference

50 Rutgers L. Rec. 131 (2023) | [WestLaw](#) | [LexisNexis](#) | [PDF](#)

I.INTRODUCTION
And because Elections ought to be free, the King commandeth upon great Forfeiture, that [no Man] by Force of Arms, nor by Malice, or Menacing, shall disturb any to make free Election.

? Statute of Westminster the First of 1275, 3 Edw. 3, c. 5

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On July 11, 1958, the United States Congress passed Joint Resolution 175, a code of ethics binding every employee of the federal government:

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.¹

Few things expose the weakness of a politician's commitment to these principles of public service like the heat of a contested election. The chaos of public uproar molds his mettle. The hammer of adversity pounds his principles. The friction between competing interests tempers his tenacity. The 2020 Presidential Election of the United States was such a contest.

By January 1, 2021, the outcome of the election was clear. President-elect Joseph R. Biden defeated incumbent President Donald A. Trump. But several members of Congress resisted the proven legitimacy of the Democratic victory. They propounded the idea that the election was stolen through voter fraud?²the Great Lie.? These members shamelessly fed this conspiracy using their soapboxes and social media accounts. The hot air spewing from these members combined with the humidity of an acrimonious political environment to create a perfect storm.

On January 6, 2021, a joint session of Congress convened to certify the election in President-elect Biden's favor. President Trump and his personal lawyer, Rudolph W. Giuliani, preached vitriolic sermons decrying the election outcome just down the street at a ?Save America? rally. Their pugnacious tone created an electric field ripe for a discharge of violence. Some of the protesters attending the rally transformed into a mob and diverted to the United States Capitol. The rioters stormed the halls of Congress like a microburst. The disturbance was sudden and terrifying, temporarily suspending the certification proceedings, and in its wake, creating a deluge of controversy.

In the aftermath of the Trump Riot, Representative Zoe Lofgren (Democrat, California), Chair of the House Committee on Administration, produced a social media report documenting the efforts of fellow members to overturn the election. In her opening letter, Representative Lofgren noted that ?Congress has broad and express authority under Article I to ?punish its Members for disorderly Behaviour.' More research on this question is warranted.? This article fulfills that warrant.²

I contend that Congress can vindicate assaults on the integrity of federal elections through contempt proceedings. I provide an extensive survey of relevant legislative history in Part II: I highlight three English contempt precedents and three American contested election precedents. I then explain how Congress can synthesize these two bodies of precedent with its current rules and procedures to hold members of the public, members of Congress, and members of the executive accountable for contemptuous interference with federal elections in Part III. Part IV concludes. Although I am fully aware of how arcane and politically impractical contempt proceedings may seem, contempt power remains an important vehicle for Congress to vindicate itself when other options are unavailing.

[1 H.R. Con. Res. 175, 85th Cong. \(July 11, 1958\).](#)

[2 STAFF OF S. COMM. ON HOMELAND SEC. AND GOVERNMENTAL AFF. & S. COMM. ON RULES AND ADMIN., 117TH CONG., EXAMINING THE U.S. CAPITOL ATTACK: A REVIEW OF THE SECURITY, PLANNING, AND RESPONSE FAILURES TO JANUARY 6, 1 \(2021\); ZOE LOFGREN, SOCIAL MEDIA REVIEW: MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES WHO VOTED TO OVERTURN THE 2020 PRESIDENTIAL ELECTION 2?3 \(2021\)\[hereinafter, ?HOUSE 2020 PRESIDENTIAL ELECTION SOCIAL MEDIA REVIEW?\].](#)

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