

# MY SIXTH AMENDMENT SENSE ABOUT JACK SMITH'S PROPOSED BOOK REPORT

Jack Smith initially filed his proposal on *how* to release his book report making the case that Trump is not immune from the January 6 charges against him under seal. After getting a first look at it (and the underlying filings), Judge Tanya Chutkan issued this order, unsealing it, and giving Trump *very* little time to respond to Smith's proposed redactions in the motion itself, less than five days, with slightly less than two weeks to do redactions on the exhibits themselves.

MINUTE ORDER as to DONALD J. TRUMP: The Clerk of the Court is directed to file on the public docket the Government's "Motion for Leave to File Unredacted Motion Under Seal, and to File Redacted Motion on Public Docket," ECF No. 245. It is hereby ORDERED that Defendant shall file under seal any objections to the proposed redactions in the Government's Motion for Immunity Determinations by 12:00 PM on October 1, 2024, and shall file under seal any objections to the proposed redactions in the Appendix to that Motion by 5:00 PM on October 10, 2024. Signed by Judge Tanya S. Chutkan on 9/27/2024. (zcll)

Why do you give a deadline of mid-day for the initial objections? I would not be surprised to see Trump ask for more time.

I expect Trump to complain about at least one other thing (though let's be honest; he's going to complain about all of it).

Smith wants to include the quotes from sensitive material, but not the identity of the people

quoted, in the immunity filing itself.

In the Motion's text, the Government has not redacted quotations or summaries of information from Sensitive Materials, but in the footnotes has redacted citations that reveal the non-public sources of such information, including grand jury transcripts, interview reports, or material obtained through sealed search warrants. In the proposed redacted Appendix, the Government has redacted non-public Sensitive Materials in their entirety. And the Government also has proposed limited redactions to some publicly-available materials, such as the defendant's Tweets, when such material identifies or targets an individual who—because of their status as a potential witness or involvement in underlying events—may be susceptible to threats or harassment, or may otherwise suffer a chilling effect on their trial testimony.

Trump may have even anticipated this proposal; Trump's response to Smith's request for an oversized brief twice raised concerns about confronting witnesses.

The proposed approach is fundamentally unfair, as the Office would attempt to set a closed record for addressing unfiled defense motions by crediting their own untested assessments of purported evidence, denying President Trump an opportunity to confront their witnesses,

[snip]

In this case, including through the Motion, the Special Counsel's Office is seeking to release voluminous conclusions to the public, without allowing President Trump to confront their witnesses and present his own, to

ensure the document's public release  
prior to the 2024 Presidential election.

In the hearing on this on September 5, John Lauro similarly emphasized the import of cross-examining witnesses – including *immediately* before he first raised the election.

They've had the ability to subpoena witnesses. They've had the ability to take people into the grand jury. They've had the ability to interview witnesses.

We've not had a full and fair opportunity to cross-examine. So they're asking for an asymmetrical protocol, where they submit information which we don't have the ability to cross-examine.

[snip]

These important issues, which the Supreme Court has said are of great magnitude to the country, should not be decided by an asymmetrical proffer from the Government without President Trump's ability under due process, the Fifth Amendment and the Sixth Amendment, to meet these witnesses and cross-examine them.

[snip]

MR. LAURO: Well, it's incredibly unfair in the sense that they're able to put in the public record at this very sensitive time in our nation's history –

THE COURT: Ah.

MR. LAURO: – which we can't ignore, that they're able to, you know, basically load up on what they think this case is about without our ability to meet those factual assertions with the right to cross-examine. The other issue that's very problematic here, your Honor, which we've not addressed, most of this information is under seal. So if we're

going to go that route, then we're going to have to have at least some determination among counsel as to what is unsealed and what is not unsealed. If we're going to go that proffer route, we're certainly going to put in the record a number of documents which we believe are incredibly exculpatory, which are now currently under seal.

We often forget, Trump's lawyers *have seen all this*, in discovery. They've been panicked about certain aspects of this case for some time, including the degree to which prosecutors could tie Trump to the crime scene, stuff that would not be remotely official (especially – even if – it involved siccing a mob on his Vice President).

We've known for 18 months that groups of rioters focused on Mike Pence – including, according to at least a few cooperating witnesses, the group that has the most obvious ties to Trump, the Proud Boys.

Even John Roberts might balk at the argument that ties between Trump and the militia he riled up at the first debate are protected under the duties of the President.

And – I predict – John Lauro is going to make a Sixth Amendment case that Jack Smith can't unseal these things.

Judge Chutkan has already made it clear she's uninterested about Lauro's arguments about "this sensitive time." But Lauro has already laid the foundation to make a Sixth Amendment argument about how (and if) this evidence can be made public.