

C A M P A I G N F O R

# ACCOUNTABILITY

January 13, 2021

**BY E-MAIL: [mailbox\\_office@ethics.senate.gov](mailto:mailbox_office@ethics.senate.gov)**

The Honorable James Lankford, Chair  
The Honorable Chris Coons, Vice Chair  
Select Committee on Ethics  
United States Senate  
Room 220  
Senate Hart Office Building  
Washington, D.C. 20530

Re: Request for Investigation of Senators Josh Hawley and Ted Cruz

Dear Chairman Lankford and Vice Chairman Coons:

Campaign for Accountability respectfully requests that you investigate whether the conduct of Senators Josh Hawley (R-MO) and Ted Cruz (R-TX) in promoting insurrection violates federal law and Senate rules.

## **Background**

As you know, on January 6, 2021, the U.S. Senate and House of Representatives met in joint session in accordance with the Twelfth Amendment to the U.S. Constitution and the Electoral Count Act of 1887<sup>1</sup> to count the votes of the Electoral College and certify the election of Joseph R. Biden and Kamala Harris as the next President and Vice President of the United States.

Earlier that day, President Donald J. Trump and his allies held a rally (the so-called “Save America March”) to urge President Trump’s supporters to march to the U.S. Capitol and use force to prevent Congress from carrying out its duty to count the votes of the Electoral College.

Following a similarly inflammatory speech by President Trump urging those congregated to “fight,” the people attending the Save America March began marching up Pennsylvania Avenue to the U.S. Capitol, where they and others stormed barricades erected by the U.S. Capitol Police, broke windows, pushed through doors to enter the Capitol Building, and then used force to try and gain entry to the chambers of both the House of Representatives and the Senate, where representatives and senators were debating an objection to the electoral college votes submitted by the state of Arizona. Both chambers had to be evacuated - temporarily

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<sup>1</sup> U.S. Const., Amend. XII; 3 U.S.C. § 15.

achieving the rioters' goal of preventing Congress from carrying out its constitutional and statutory duty to count the votes of the Electoral College.<sup>2</sup>

After the Members of Congress were evacuated, the rioters occupied both the Senate and House chambers, ransacking desks and offices in both bodies and destroying and stealing federal property. The U.S. Capitol Police received reinforcements from the District of Columbia Metropolitan Police, the Secret Service, and the National Guards of the District of Columbia, Maryland and Virginia and eventually, the rioters were ejected from the Capitol Building and the grounds of the U.S. Capitol. The House of Representatives and the Senate reconvened later that day and completed the counting of the Electoral College votes in the early morning hours of January 7, 2021.<sup>3</sup>

### The Facts

#### Senator Josh Hawley

Prior to January 6, Senator Hawley frequently said that there was a need for somebody to “stand up” to protect the election results, using the phrase on Fox News on December 30, 2020,<sup>4</sup> on Twitter at least five times in the last six months,<sup>5</sup> and on his campaign website.<sup>6</sup>

Senator Hawley also tweeted and released a statement on December 30, 2020 indicating his intent to vote against certifying President-elect Biden's election victory because of baseless election interference.<sup>7</sup> He wrote:

*I cannot vote to certify the electoral college results on January 6 without raising the fact that some states, particularly Pennsylvania, failed to follow their own state election laws. And I cannot vote to certify without pointing out the unprecedented effort of mega corporations, including Facebook and Twitter, to interfere in this election, in support of Joe Biden. At the very least, Congress should investigate allegations of voter fraud and*

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<sup>2</sup> See generally Mob Attack, Incited By Trump, Delays Certification, *New York Times*, January 6, 2021 (available at <https://www.nytimes.com/live/2021/01/06/us/electoral-vote>).

<sup>3</sup> See generally Marc Fisher, Megan Flynn, Jessica Contrera and Carol D. Leonning, The Four-Hour Insurrection - How a Trump Mob Halted American Democracy, *Washington Post*, January 7, 2021 (available at <https://www.washingtonpost.com/graphics/2021/politics/trump-insurrection-capitol/>).

<sup>4</sup> Fox News, Baier Presses Hawley Over Elector Challenge: Are You Arguing 'Trump will be President' Jan. 20?, January 4, 2021 (available at: <https://www.foxnews.com/politics/bret-baier-josh-hawley-elector-challenge>).

<sup>5</sup> Twitter Advanced Search of Senator Hawley's campaign account @HawleyMO, accessed January 12, 2021 (available at: [https://twitter.com/search?q=%22stand%20up%22%20\(from%3Ahawleymo\)&src=typed\\_query&f=live](https://twitter.com/search?q=%22stand%20up%22%20(from%3Ahawleymo)&src=typed_query&f=live))

<sup>6</sup> JoshHawley.com, archived January 6, 2021 (available at: <https://web.archive.org/web/20210106155018/https://joshhawley.com/>)

<sup>7</sup> Barbara Sprunt, GOP Sen. Hawley Will Object to Electoral College Certification, *NPR*, December 30, 2020 (available at <https://www.npr.org/sections/biden-transition-updates/2020/12/30/951430323/gop-sen-hawley-will-object-to-electoral-college-certification>)

*adopt measures to secure the integrity of our elections. But Congress has so far failed to act.”<sup>8</sup>*

Senator Hawley also appears to have inflamed tensions on January 4, 2021 by falsely claiming that “Antifa scumbags” vandalized his home.<sup>9</sup> Local police called the protestors peaceful and reported that they did not hear any threats or witness any evidence of vandalism.<sup>10</sup>

On January 6, 2021 at about 12:30 pm, E&E photojournalist Francis Chung shot a photo of Senator Hawley as he approached the pro-Trump crowd assembled outside and “gave a thumbs up, a fist pump and waved as the crowd cheered.”<sup>11</sup> Regarding the moment, Chung said: “There’s just a mutual acknowledgment between the senator and the crowd... There was a mutual show of what I would interpret as approval or support.”<sup>12</sup>

At approximately the same time as Senator Hawley approached the rioters, his campaign sent out a fundraising email again raising his objections to the election results:

*Many career politicians in the D.C. establishment want me to stay quiet. I suppose you can assume nothing I do will matter. That it won’t matter if I object or not, so I should sit by and do nothing... But this is not about me! It is about the people I serve, and it is about ensuring confidence in our elections.<sup>13</sup>*

Hours later, after the mob illegally and violently breached the Capitol Building, Senator Hawley’s campaign continued to double down on his objections to the outcome of the election sending a fundraising text message that read “Hi, I’m Josh Hawley. I am leading the charge to fight for free and fair elections.”<sup>14</sup> Despite the armed insurrection, once the Capitol had been

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<sup>8</sup> Josh Hawley Twitter, December 30, 2020 (available at: <https://twitter.com/HawleyMO/status/1344307458085412867>)

<sup>9</sup> Josh Hawley Twitter, January 4, 2021 (available at: <https://twitter.com/HawleyMO/status/1346308783325253633>)

<sup>10</sup> Teo Armus, Sen. Josh Hawley Says ‘Antifa Scumbags’ Terrorized his Family’s Virginia Home. Police Called the Protesters ‘Peaceful.’, *Washington Post*, January 5, 2021 (available at <https://www.washingtonpost.com/nation/2021/01/05/hawley-protest-antifa-scumbags-virginia/>)

<sup>11</sup> Katie Bernard, A Photographer and a Fist Pump. The Story Behind the Image that Will Haunt Josh Hawley. *Kansas City Star*, January 7, 2021 (available at <https://www.kansascity.com/news/politics-government/article248354085.html>).

<sup>12</sup> *Id.*

<sup>13</sup> Bryan Lowry, Hawley Sent Fundraising Email on Election Objection as Capitol Descended into Chaos, *Kansas City Star*, January 6, 2021 (available at <https://www.kansascity.com/news/politics-government/article248316415.html>); Twitter Advanced Search of Senator Hawley’s campaign account @HawleyMO, accessed January 12, 2021 (available at [https://twitter.com/search?q=%22stand%20up%22%20\(from%3Ahawleymo\)&src=typed\\_query&f=live](https://twitter.com/search?q=%22stand%20up%22%20(from%3Ahawleymo)&src=typed_query&f=live)); JoshHawley.com, archived January 6, 2021 (available at <https://web.archive.org/web/20210106155018/https://joshhawley.com/>)

<sup>14</sup> Department of Defense, Planning and Execution Timeline for the National Guard’s Involvement In The January 6 Violent Attack, January 11, 2021 (available at <https://media.defense.gov/2021/Jan/11/2002563151/-1/-1/0/PLANNING-AND-EXECUTION-TIMELINE-FOR-THE-NATIONAL-GUARDS-INVOLVEMENT-IN-THE-JANUARY-6-2021-VIOLENT-ATTACK-AT-THE-US-CAPITOL.PDF>); KMOV4, *Sen. Hawley’s campaign sends*

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secured and the Senate resumed its deliberations, in the culminating act of his public campaign challenging the veracity of the election results, Senator Hawley voted to overturn the Arizona and Pennsylvania 2020 presidential election results.<sup>15</sup>

### Senator Ted Cruz

On January 4, 2021, Senator Cruz appeared on The Mark Levin Show, justifying his decision to object to certifying the 2020 presidential election results:

*Four times in recent years [Democrats] have objected to the counting of electors they did in in 1969, they did it in 2001, they did it in 2005, they did it in 2016. So the Democrats know full well that is the case, and none of those instances when it was the democrats objecting did the press light their hair on fire and run around saying ‘it’s a coup, it’s a coup, democracy is dying!’<sup>16</sup>*

During the interview with Mark Levin, Senator Cruz also took credit for persuading and organizing a group of senators to object to election certification:

*I reached out to a number of my colleagues and assembled a coalition of 11 senators, I convinced 10 other senators to join me, in saying we should follow the precedent of 1877, we should object to the electors and use that to press for appointing an electoral commission so these claims can be reviewed by a forum that has credibility, that is impartial, and can assess them on the merits...<sup>17</sup>*

On January 6, 2021, at approximately 2:40 pm, in the midst of the siege of the Capitol Building, Senator Cruz’s campaign sent out a fundraising text message digging in on his decision to reject the election results:

*Ted Cruz here. I’m leading the fight to reject electors from key states unless there is an emergency audit of the election results. Will you stand with me?...Just like you, I’ve been angered by how we’ve seen election officials act outside of their constitutional authority to rewrite voting laws. It’s why I was eager to join the recent legal efforts in Pennsylvania and Texas. I need your help in this fight to push back against the radical left to get our message out.”<sup>18</sup>*

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*fundraising text at height of Capitol siege*, January 7, 2021 (available at [https://www.kmov.com/news/sen-hawleys-campaign-sends-fundraising-text-at-height-of-capitol-siege/article\\_281a7014-507e-11eb-aead-a719246c8e1a.html](https://www.kmov.com/news/sen-hawleys-campaign-sends-fundraising-text-at-height-of-capitol-siege/article_281a7014-507e-11eb-aead-a719246c8e1a.html))

<sup>15</sup> Jenny Gross and Luke Broadwater, [Here Are the Republicans Who Objected to Certifying the Election Results](#), *New York Times*, January 7, 2021 (available at <https://www.nytimes.com/2021/01/07/us/politics/republicans-against-certification.html>).

<sup>16</sup> The Mark Levin Show, January 4, 2021, Minute 1:29:00 (available at: <https://wabcradio.com/show/mark-levin/>).

<sup>17</sup> The Mark Levin Show, January 4, 2021, Minute 1:33:40 (available at: <https://wabcradio.com/show/mark-levin/>).

<sup>18</sup> Elena Schneider Twitter, January 6, 2021 (available at: [https://twitter.com/ec\\_schneider/status/1346908291125882884](https://twitter.com/ec_schneider/status/1346908291125882884))

The riot incited by President Trump, Senators Hawley and Cruz, and others, resulted in five deaths, including the murder of a U.S. Capitol Police officer.<sup>19</sup>

### **Potential Violations**

#### **18 U.S.C. § 2101 (Riot)**

Federal law makes it a crime for anyone to use any “any facility of interstate or foreign commerce, including, but not limited to, the mail, telegraph, telephone, radio, or television” to (1) incite a riot, (2) organize, promote, encourage, participate in, or carry on a riot, or (3) aid or abet any person in inciting or participating in or carrying on a riot.<sup>20</sup>

Through their numerous press appearances and fundraising appeals disingenuously claiming election fraud and criticizing other senators’ failure to act, and through Senator Hawley’s fist pump to angry mob assembled outside the Capitol, it appears Senators Hawley and Cruz may have violated 18 U.S.C. § 2101 by (1) inciting a riot, (2) encouraging others to participate in or carry on a riot, or (3) aiding or abetting others, including President Trump, in inciting a riot.

#### **18 U.S.C. § 2383 (Rebellion or Insurrection)**

Federal law makes it a crime to incite, assist, or engage in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid and comfort thereto, and prohibits those who have done so from holding office.

By knowingly making false claims that the election was stolen and indicating to President Trump’s supporters that the results of the free and fair presidential election could be overturned, thereby encouraging unsophisticated Americans to believe that President Trump had falsely been denied another term and that by storming the Capitol and preventing certification of the election, President Trump might remain in an office a second term, Senators Hawley and Cruz incited and assisted the January 6 insurrection.

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<sup>19</sup> Marc Santora, Megan Specia and Mike Baker, Capitol Police Officer Brian Sicknick Dies From Injuries in Pro-Trump Riot, *New York Times*, January 8, 2021 (available at <https://www.nytimes.com/2021/01/08/us/brian-sicknick-police-capitol-dies.html>).

<sup>20</sup> 18 U.S.C. § 2101(a).

18 U.S.C. § 2384 (Seditious Conspiracy)

Federal law makes it a crime for two or more persons to conspire to use “force to prevent, hinder, or delay the execution of any law of the United States,” or to conspire to use “force to seize, take, or possess any property of the United States contrary to the authority thereof . . . .”<sup>21</sup>

Senators Hawley and Cruz knowingly and willfully spread misinformation about the election and that information was relied on and motivated the rioters to storm the Capitol to “prevent, hinder or delay” the House of Representatives and the Senate from carrying out their duty to execute the law to count the Electoral College votes pursuant to the Twelfth Amendment to the U.S. Constitution and the Electoral Count Act of 1887.<sup>22</sup>

In addition, by approaching the mob outside of the Capitol at the Save America March and raising his fist, after President Trump had exhorted listeners to march to the U.S. Capitol and start “taking names and kicking ass,” Senator Hawley may have conspired with others, including President Trump, to use force to “seize, take or possess property of the United States” – the U.S. Capitol Building itself as well as its contents.

U.S. Constitution

Section three of the 14<sup>th</sup> Amendment to the U.S. Constitution provides, in part:

No Person shall be a Senator or Representative or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State who, having previously taken an oath. . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.

This prohibition, enacted in the wake of the Civil War, was crafted to keep both federal and state governments free of those who had torn the country apart. Here, if the Senate Ethics Committee finds that Senators Hawley and Cruz, through a pattern of spreading misinformation, encouraged members of the public to believe that they, working in conjunction with President Trump, Senators Hawley and Cruz, and others, could effectively stop the certification of President-elect Biden’s win, and change the outcome of the election, Senators Hawley and Cruz may have engaged in insurrection or rebellion, and absent a two-thirds vote of the Senate, are disqualified from remaining in the Senate.

Improper Conduct that Reflects Upon the Senate

Finally, the Committee should investigate whether Senators Hawley and Cruz engaged in improper conduct that reflects upon the Senate. The senators’ myriad bad choices: deciding to object to the electoral college certification process despite a total absence of fraud and numerous

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<sup>21</sup> 18 U.S.C. § 2384.

<sup>22</sup> U.S. Const., Amend. XII; 3 U.S.C. § 15.

court decisions upholding the elections, making public statements discrediting the election results knowing these statements were untrue, deliberately fueling President Trump supporters' sense of grievance, sending out fundraising appeals designed specifically to capitalize on President Trump's false claims of voter fraud, deliberately making false statements suggesting the election had been unfair and could be overturned to capture the support of President Trump's voters to further their own presidential ambitions, and finally, objecting to the certification of a free and fair election – may have violated federal law and the U.S. Constitution itself. Considered together, the course of conduct engaged in by Senators Hawley and Cruz demonstrating a shocking abuse of position that reflects upon the Senate and merits the imposition of serious sanctions by the Committee.

The Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as improper conduct that may reflect upon the Senate.”<sup>23</sup> This rule is intended to protect the integrity and reputation of the Senate as a whole.<sup>24</sup> The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules . . .”<sup>25</sup> Notably, the Senate may discipline a member for any misconduct, including conduct or activity that does not relate to official duties when that conduct unfavorably reflects upon the Senate as a whole.<sup>26</sup>

The Senate has disciplined other members for violating this prohibition in the past, sometimes for offenses less serious than attempting to undermine our democratic government. In 1967, the Select Committee on Ethics investigated the first case of improper conduct involving Senator Thomas Dodd who was censured for converting campaign funds to personal use.<sup>27</sup> In 1990, the Senate denounced Senator David Durenberger, in part, based on his financial arrangements in connection with a condominium he owned in Minneapolis and in 1991, Senator Alan Cranston was severely reprimanded for improperly linking fundraising and official activities.<sup>28</sup> And, as previously stated, in 1995, the Committee recommended Senator Robert Packwood be expelled for repeated sexual misconduct.<sup>29</sup>

More recently, had Senator John Ensign not resigned, the Committee was prepared to recommend his expulsion for sexual misconduct as well as campaign finance and lobbying

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<sup>23</sup> *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432 (108<sup>th</sup> Cong. 2003 ed.).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 433; and fn. 10, citing a 1964 investigation into the activities of Bobby Baker, then-Secretary to the Majority of the Senate, in which the Committee on Rules and Administration issued a report stating, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88<sup>th</sup> Cong., 2d Sess. 5 (1964).

<sup>26</sup> Senate Ethics Counsel, The Packwood Report, *Times Books* (1995), p. 28 (citing S. Rep. 2508, 83<sup>rd</sup> Cong., 2d Sess. 20, 22 (1954)).

<sup>27</sup> Senate Ethics Manual at 434.

<sup>28</sup> *Id.* at 434-35.

<sup>29</sup> *Id.* at 432.

restriction violations.<sup>30</sup> In February 2008, the Committee found Senator Larry Craig engaged in improper conduct by committing disorderly conduct in a public restroom, attempting to use his official position to influence the arresting officer, and attempting to withdraw his guilty plea to evade the legal consequences of his actions.<sup>31</sup> In April 2008, the Committee found that by contacting a prosecutor about a pending corruption case that might have influenced an upcoming election, Senator Pete Domenici created an appearance of impropriety that reflected unfavorably on the Senate.<sup>32</sup>

The Select Committee on Ethics also has the option of censuring the conduct of Senators Hawley and Cruz. On some occasions, the Committee has stopped short of finding alleged conduct was “improper conduct reflecting upon the Senate,” but has found “that the conduct should not be condoned or should otherwise be criticized in a public statement by the Committee.”<sup>33</sup> For example, the Committee has found that a senator’s “interven[tion] with regulators gave the appearance of being improper and was attended with insensitivity and poor judgement,” that a senator “exercised poor judgment in intervening with regulators,” and that another senator conducted office business “in an inappropriate manner . . .”<sup>34</sup> The Committee also severely admonished Senator Robert Torricelli for creating at least an appearance of impropriety by accepting gifts in violation of the gift rules.<sup>35</sup> Therefore, even if the Committee is not persuaded that the conduct of Senators Hawley and Cruz reached the level of improper conduct required to recommend expulsion-- though given the circumstances it appears obvious it does -- at the very least, the Committee should recommend the Senate censure Senators Hawley and Cruz for their conduct.

### **Conclusion**

The potential violations here – incitement to riot and seditious conspiracy – are among the most serious crimes in the U.S. Criminal Code. Seditious conspiracy is literally a crime against democracy itself. In addition, the facts here are especially egregious. The riot at the Capitol resulted in the loss of five lives, including the death of a U.S. Capitol Police officer, the terrorization of countless members of Congress, congressional staff, journalists and members of the Capitol Police who feared for their lives as the mob patrolled the Capitol, as well as the destruction of federal property, including numerous historical artifacts. Sadly, Americans’ faith in the ability of its government institutions to function has been shaken by some the very individuals elected to run the government.

If the Senate Ethics Committee determines there is substantial reason to believe that Senators Hawley and Cruz violated the Constitution, 18 U.S.C. § 2101, 18 U.S.C. § 2383, 18

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<sup>30</sup> Paul Kane and Carol D. Leonnig, Senate Ethics Committee: Ensign Violated Federal Laws, *Washington Post*, May 12, 2011, available at [https://www.washingtonpost.com/politics/ethics-committee-to-unveil-ensign-probe-findings-in-senate-speeches/2011/05/12/AFhRvA0G\\_story.html](https://www.washingtonpost.com/politics/ethics-committee-to-unveil-ensign-probe-findings-in-senate-speeches/2011/05/12/AFhRvA0G_story.html).

<sup>31</sup> Letter from Senate Select Committee on Ethics to Senator Larry Craig, February 13, 2008.

<sup>32</sup> Letter from Senate Select Committee on Ethics to Senator Pete Domenici, April 24, 2008.

<sup>33</sup> *Id.* at 435.

<sup>34</sup> *Id.*, fn. 19.

<sup>35</sup> Letter from Senate Select Committee on Ethics to Senator Robert Torricelli, July 30, 2002.



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U.S.C. § 2384, and/or Senate rules, the Committee should recommend that the full Senate expel both senators. There should be no place in Congress for senators willing to sacrifice our democratic form of government at the altar of their own political ambition.

Campaign for Accountability and the American people look forward to your prompt investigation of this matter.

Sincerely,

A handwritten signature in black ink that reads "Michelle Koppersmith". The signature is written in a cursive style and is contained within a light gray rectangular border.

Michelle Koppersmith  
Executive Director