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BUDGET  
ENVIRONMENT AND PUBLIC WORKS  
FINANCE  
JUDICIARY

**United States Senate**  
WASHINGTON, DC 20510-3905

<http://whitehouse.senate.gov>  
(202) 224-2921  
TTY (202) 224-7746  
170 WESTMINSTER STREET, SUITE 200  
PROVIDENCE, RI 02903  
(401) 453-5294

August 13, 2021

VIA EMAIL

The Honorable Bennie G. Thompson  
Chairman  
Select Committee to Investigate the January 6th Attack on the U.S. Capitol  
2466 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Thompson,

The attack on the Capitol on January 6 was the culmination of a months-long disinformation campaign designed to allow President Trump to remain in office. Public reporting indicates that this campaign was organized and funded by dark-money organizations and powerful donors, and aided and abetted by members of Congress and the Trump administration. As part of your investigation, I ask that the Select Committee to Investigate the January 6th Attack on the U.S. Capitol (“the Commission”) examine the funders and organizers whose efforts may have laid the groundwork for the violence that day.

The Commission is already examining President Trump’s attempts to subvert the election.<sup>1</sup> The President filed dozens of meritless lawsuits;<sup>2</sup> made direct threats to state and local officials;<sup>3</sup> and issued false public statements alleging election fraud. President Trump and his allies in the administration also sought to convince the Department of Justice to bolster his inaccurate claims and to pressure states to send separate slates of electors.<sup>4</sup> President Trump’s efforts culminated

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<sup>1</sup> Greg Sargent, *Shocking new Trump-DOJ revelations should shape the Jan. 6 investigation*, WASH. POST (Aug. 9, 2021), <https://www.washingtonpost.com/opinions/2021/08/09/trump-doj-revelations-jan-6-investigation/>.

<sup>2</sup> William Cummings, et al., *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA TODAY (Jan. 6, 2021), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

<sup>3</sup> Michael D. Shear & Stephanie Saul, *Trump, in Taped Call, Pressured Georgia Official to ‘Find’ Votes to Overturn Election*, N.Y. TIMES (Jan. 3, 2021), <https://www.nytimes.com/2021/01/03/us/politics/trump-raffensperger-call-georgia.html>.

<sup>4</sup> Katie Benner, *Former Acting Attorney General Testifies About Trump’s Efforts to Subvert Election*, N.Y. TIMES (Aug. 7, 2021), <https://www.nytimes.com/2021/08/07/us/politics/jeffrey-rosen-trump-election.html>.

in a groundless attempt to convince congressional allies and Vice President Pence to reject the electors from six states when Congress met to count the Electoral College votes on January 6.<sup>5</sup>

A well-organized network of conservative dark money groups—whose covert operations my Senate colleagues and I have tracked and reported on in other contexts<sup>6</sup>—lent financial and strategic support to President Trump’s efforts to overturn the election. For years, the Bradley Foundation “has heavily funded groups promulgating the falsehood that election fraud is widespread in America,” such as ALEC, Turning Point USA, and the Public Interest Legal Foundation.<sup>7</sup> These efforts accelerated during and after the 2020 election, as these organizations moved from manufacturing legal theories like the independent state legislature doctrine to funding troll farms to spread false fraud claims.<sup>8</sup> Cleta Mitchell, a Bradley Foundation board member and former outside counsel to ALEC, participated in the phone call in which President Trump threatened Georgia election officials with a criminal offense unless they “found” enough votes to overturn the election results.<sup>9</sup> A network of organizations coordinated by Federalist Society board co-chair Leonard Leo similarly propagated the false narrative that the election was stolen. Leo’s so-called Honest Elections Project filed a brief with the Supreme Court challenging the election results in Pennsylvania.<sup>10</sup> At the same time, the Leo-affiliated Judicial Crisis Network (JCN) funded Turning Point Action, a sister organization to Turning Point USA, and Nations in Action Globally Lifting Up, which propagated an election fraud conspiracy theory known as “Italygate.”<sup>11</sup>

Many of these same groups were involved in planning and organizing President Trump’s “Save America Rally” on January 6. These groups obtained permits, provided funding and equipment, and actively recruited participants. The March to Save America website listed eleven groups as rally sponsors.<sup>12</sup> Turning Point Action paid for 350 students to attend.<sup>13</sup> The policy arm of the JCN-funded<sup>14</sup> Republican Attorneys General Association, the Rule of Law Defense Fund, sent

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<sup>5</sup> Peter Baker, Maggie Haberman, & Annie Karni, *Pence Reached His Limit With Trump. It Wasn’t Pretty*, N.Y. TIMES (Jan. 12, 2021), <https://www.nytimes.com/2021/01/12/us/politics/mike-pence-trump.html>; Michael S. Schmidt, *Trump Says Pence Can Overturn His Loss in Congress. That’s Not How It Works*, N.Y. TIMES (Jan. 5, 2021), <https://www.nytimes.com/2021/01/05/us/politics/pence-trump-election.html>.

<sup>6</sup> See Democratic Policy and Communications Committee Report, *Captured Courts: The GOP’s Big-Money Assault on the Constitution, Our Independent Judiciary, and the Rule of Law* (May 2020), <https://www.democrats.senate.gov/imo/media/doc/Courts%20Report%20-%20FINAL.pdf>

<sup>7</sup> Jane Mayer, *The Big Money Behind the Big Lie*, THE NEW YORKER (Aug. 9, 2021), <https://www.newyorker.com/magazine/2021/08/09/the-big-money-behind-the-big-lie>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Jamie Corey, *Republican Attorneys General Dark Money Group Organized Protest Preceding Capitol Mob Attack*, DOCUMENTED (Jan. 7, 2021), <https://documented.net/2021/01/republican-attorneys-general-dark-money-group-organized-protest-preceding-capitol-mob-attack/>.

<sup>13</sup> Ewan Palmer, *Charlie Kirk Says Not Everyone in Capitol Mob Was an Insurrectionist*, NEWSWEEK (Jan. 12, 2021), <https://www.newsweek.com/charlie-kirk-insurrection-buses-washington-tweet-1560727>.

<sup>14</sup> Judicial Crisis Network IRS Form 990 (2013, 2014, 2015, 2016, 2017, 2018). See also David Halperin, *Republican Attorneys General Use Corporate Cash to Lobby for Kavanaugh*, REPUBLIC REPORT (Sept. 19, 2018), <https://www.republicreport.org/2018/republican-attorneys-general-use-corporate-cash-to-lobby-for-kavanaugh/>; Ciara Torres-Spellicy, *Tracing the Money Behind the Supreme Court Case Against Obamacare*,

robocalls encouraging people to march on the Capitol.<sup>15</sup> John Eastman, a Federalist Society practice group chair and one of the Public Interest Legal Foundation’s directors, spoke at the event.<sup>16</sup> Ali Alexander, one of the rally organizers, said the goal of the event was “putting maximum pressure on Congress while they were voting so that . . . we could change the hearts and the minds of Republicans who were in that body hearing our loud roar from outside.”<sup>17</sup>

There is evidence that Members of Congress were also involved in orchestrating the “Save America Rally.” Three members of the House of Representatives have been identified as alleged co-architects: Reps. Andy Biggs, Paul Gosar, and Mo Brooks.<sup>18</sup> These Representatives coordinated with other congressmen to object to the electoral count that day. It is unclear to what extent those other members were also aware of or involved in the plans for the rally. Clearly, it was in the interests of the attackers to have members keep the balloting open, and I have asked the Senate Ethics Committee to examine whether there was coordination, direct or indirect, between Senate objectors and those involved in the attack on the Capitol.<sup>19</sup>

In order to fully understand what happened on January 6, the Commission should further investigate the role these dark money groups played in propagating President Trump’s misinformation campaign and in orchestrating the “Save America Rally.” The Commission should also examine the extent of any coordination between those groups, the Trump administration, and the members of Congress who objected to the electoral count.

Thank you for your consideration.

Sincerely,



Sheldon Whitehouse  
U.S. Senator

Enclosure

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BRENNAN CENTER, Aug. 31, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/tracing-money-behind-supreme-court-case-against-obamacare>.

<sup>15</sup> Corey, *supra* note 12.

<sup>16</sup> Mayer, *supra* note 7.

<sup>17</sup> Ron Blitzer, *GOP lawmakers distance themselves from Capitol protest organizer after claim they helped plan march*, FOX NEWS (Jan. 13, 2021), <https://www.foxnews.com/politics/capitol-protest-organizer-gosar-brooks-biggs-planning>.

<sup>18</sup> *Id.*

<sup>19</sup> Letter from Sen. Sheldon Whitehouse to Chairman Christopher Coons and Vice Chairman James Lankford (Jan. 21, 2021), *available at*

<https://www.whitehouse.senate.gov/imo/media/doc/1.21.21%20Ethics%20Complaint%20Against%20Cruz%20and%20Hawley%20Final.pdf>. A copy of this letter is attached here.

# United States Senate

WASHINGTON, DC 20510

January 21, 2021

The Honorable Christopher Coons, Chairman  
The Honorable James Lankford, Vice Chairman  
Senate Committee on Ethics  
220 Hart Building  
U.S. Senate  
Washington, DC 20510

RE: Investigation Request for Senators Ted Cruz and Josh Hawley

Dear Chairman Coons and Vice Chairman Lankford,

When Senators Ted Cruz and Josh Hawley announced they would object to the counting of state-certified electors on January 6, 2021, they amplified claims of election fraud that had resulted in threats of violence against state and local officials around the country. While Congress was debating Senator Cruz's objection, a violent mob stormed the Capitol. These insurrectionists ransacked the building, stole property, and openly threatened Members of Congress and the Vice President.<sup>1</sup> Dozens of police officers were injured;<sup>2</sup> five people died, including U.S. Capitol Police Officer Brian Sicknick.<sup>3</sup> By proceeding with their objections to the electors after the violent attack, Senators Cruz and Hawley lent legitimacy to the mob's cause and made future violence more likely.

Senators Hawley and Cruz's actions have been denounced by individuals across the political spectrum. The Senate has the exclusive power to determine whether these actions violated its ethics rules, to investigate further conduct of which we may not be aware that may have violated these rules, and to consider appropriate discipline. The question the Senate must answer is not whether Senators Hawley and Cruz had the right to object to the electors, but whether the senators failed to "[p]ut loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department"<sup>4</sup> or engaged in "improper conduct reflecting on the Senate"<sup>5</sup> in connection with the violence on January 6. The Senate Ethics Committee should

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<sup>1</sup> See, e.g., Matthew S. Schwartz, *As Inauguration Nears, Concern Of More Violence Grows*, NPR (Jan. 9, 2021), <https://www.npr.org/sections/insurrection-at-the-capitol/2021/01/09/955289141/as-inauguration-nears-concern-grows-of-more-violence-to-come>.

<sup>2</sup> Peter Hermann & Julie Zauzmer, *Beaten, sprayed with mace and hit with stun guns: police describe injuries to dozens of officers during assault on U.S. Capitol*, Wash. Post (Jan. 11, 2021), [https://www.washingtonpost.com/local/public-safety/police-capitol-injures-trump/2021/01/11/ca68e3e2-5438-11eb-a08b-f1381ef3d207\\_story.html](https://www.washingtonpost.com/local/public-safety/police-capitol-injures-trump/2021/01/11/ca68e3e2-5438-11eb-a08b-f1381ef3d207_story.html).

<sup>3</sup> Schwartz, *supra* note 1.

<sup>4</sup> Code of Ethics for Government Service, H. Con. Res. 175, 85th Cong. (2d Sess. 1958).

<sup>5</sup> Senate Ethics Manual 432 (108th Cong. 2003 ed.).

investigate their conduct to fully understand their role. The actions of which we know demand an investigation and a determination whether disciplinary action is warranted. Until then, a cloud of uncertainty will hang over them and over this body.

## I. Facts

### A. Senators Hawley and Cruz Declared Their Intention to Object to the Vote Amidst Violent Threats

Senators Cruz and Hawley's objections on January 6 were part of an ongoing effort by President Trump and his allies to obstruct the counting of electoral votes that would confirm his defeat. The President filed dozens of meritless lawsuits;<sup>6</sup> made direct threats to state and local officials;<sup>7</sup> and issued false public statements alleging election fraud. President Trump's efforts culminated in an attempt to convince Congressional allies and Vice President Pence to reject groundlessly the electors from six states when Congress met to count the Electoral College votes on January 6.<sup>8</sup> Senators Cruz and Hawley became leaders of that effort.

At the time the senators announced their support for President Trump's scheme, his rhetoric had already incited threats of violence. By early December, President Trump's false fraud claims had provoked numerous threats against state and local election officials<sup>9</sup> and employees of voting machine companies.<sup>10</sup> On December 1, 2020, Gabriel Sterling, a Republican election official at the Georgia Secretary of State's office, stated that the false claims of election fraud by President Trump were "inspiring people to commit potential acts of violence."<sup>11</sup> He called on the President, as well as Senators Kelly Loeffler and David Perdue, to "step up" and "condemn" these threats.<sup>12</sup> Instead, President Trump continued to repeat the baseless claims. He called on

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<sup>6</sup> William Cummings, et al., *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA Today (Jan. 6, 2021), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

<sup>7</sup> Michael D. Shear & Stephanie Saul, *Trump, in Taped Call, Pressured Georgia Official to 'Find' Votes to Overturn Election*, N.Y. Times (Jan. 3, 2021), <https://www.nytimes.com/2021/01/03/us/politics/trump-raffensperger-call-georgia.html>.

<sup>8</sup> Peter Baker, Maggie Haberman, & Annie Karni, *Pence Reached His Limit With Trump. It Wasn't Pretty*, N.Y. Times (Jan. 12, 2021), <https://www.nytimes.com/2021/01/12/us/politics/mike-pence-trump.html>; Michael S. Schmidt, *Trump Says Pence Can Overturn His Loss in Congress. That's Not How It Works*, N.Y. Times (Jan. 5, 2021), <https://www.nytimes.com/2021/01/05/us/politics/pence-trump-election.html>.

<sup>9</sup> Michael Wines, *Here Are the Threats Terrorizing Election Workers*, N.Y. Times (Dec. 3, 2020), <https://www.nytimes.com/2020/12/03/us/election-officials-threats-trump.html>; Celine Castronuovo, *Fears of violence grow amid threats to election officials, lawmakers*, The Hill (Dec. 12, 2020), <https://thehill.com/homenews/campaign/529911-fears-of-violence-grow-amid-threats-to-election-officials-lawmakers>.

<sup>10</sup> Bente Berkeland & Miles Parks, *The Toll Of Conspiracy Theories: A Voting Security Expert Lives In Hiding*, NPR (Dec. 23, 2020), <https://www.npr.org/2020/12/23/948828692/the-toll-of-conspiracy-theories-a-voting-security-expert-lives-in-hiding>.

<sup>11</sup> Stephen Fowler, *'Someone's Going To Get Killed': Ga. Official Blasts GOP Silence On Election Threats*, NPR (Dec. 1, 2020), <https://www.npr.org/sections/biden-transition-updates/2020/12/01/940961602/someones-going-to-get-killed-ga-official-blasts-gop-silence-on-election-threats>.

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

his supporters to “Come to D.C. January 6th to ‘StopTheSteal.’” On December 19, he tweeted: “Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild!”<sup>13</sup>

Senators Ted Cruz and Josh Hawley lent legitimacy to President Trump’s false statements about election fraud by announcing that they would object to the certification of electors on January 6. On December 30, Sen. Hawley became the first Senator to state that he would object.<sup>14</sup> In a pair of Tweets later that day, Sen. Hawley explained: “Millions of voters concerned about election integrity deserve to be heard. I will object on January 6 on their behalf,”<sup>15</sup> and “Somebody has to stand up.”<sup>16</sup> On January 2, Sen. Cruz announced that he and ten other Senators would “reject the electors from disputed states . . . unless and until [an] emergency 10-day audit is completed.”<sup>17</sup> Sen. Hawley responded by Tweeting: “Glad to see more Senators joining the fight on #JAN6”<sup>18</sup> and “It’s time to STAND UP.”<sup>19</sup>

At the time Senators Hawley and Cruz announced their intent to object to the electors, Sen. Lindsay Graham, the Chairman of the Senate Judiciary Committee, noted that Sen. Cruz’s proposed audit had “zero chance of becoming reality.”<sup>20</sup> Both Senators Hawley and Cruz argued that the public perception of fraud justified their actions. This perception was created by President Trump’s baseless claims, and was magnified by Sens. Cruz and Hawley’s repetition of those claims. It is probable that Sens. Cruz and Hawley knew those claims to be false.

B. The Events on January 6 Were Coordinated, and May Have Been Coordinated With Members of Congress.

On January 6, as Congress was preparing to certify the election results, President Trump held an event dubbed the “Save America Rally.” The event was orchestrated by a network of groups who obtained permits, provided funding and equipment, and actively recruited participants. The

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<sup>13</sup> Donald J. Trump (@realDonaldTrump), Twitter (Dec. 19, 2020, 1:42 AM) (online and searchable at <https://www.thetrumparchive.com>).

<sup>14</sup> Press Release, Sen. Hawley Will Object During Electoral College Certification Process On Jan 6, Dec. 30, 2020, <https://www.hawley.senate.gov/sen-hawley-will-object-during-electoral-college-certification-process-jan-6>.

<sup>15</sup> Josh Hawley (@HawleyMO), Twitter (Dec. 30, 2020, 10:40 AM), <https://twitter.com/HawleyMO/status/1344307458085412867>.

<sup>16</sup> Josh Hawley (@HawleyMO), Twitter (Dec. 30, 2020, 11:48 PM), <https://twitter.com/HawleyMO/status/1344505790854553602>.

<sup>17</sup> Press Release, Joint Statement from Senators Cruz, Johnson, Lankford, Daines, Kennedy, Blackburn, Braun, Senators-Elect Lummis, Marshall, Hagerty, Tuberville, Jan. 2, 2021, [https://www.cruz.senate.gov/?p=press\\_release&id=5541](https://www.cruz.senate.gov/?p=press_release&id=5541).

<sup>18</sup> Josh Hawley (@HawleyMO), Twitter (Jan. 2, 2021, 12:33 PM), <https://twitter.com/HawleyMO/status/1345422983385538563>.

<sup>19</sup> Josh Hawley (@HawleyMO), Twitter (Jan. 2, 2021, 10:45 AM), <https://twitter.com/HawleyMO/status/1345426114538307584>.

<sup>20</sup> Lindsey Graham (@LindseyGrahamSC), Twitter (Jan. 3, 2021 11:36 AM), <https://twitter.com/LindseyGrahamSC/status/1345771122470621186?s=20>.

March to Save America website listed eleven groups as rally sponsors.<sup>21</sup> Many of these groups conscripted their members to attend the rally: Women for America First’s Facebook pages show the group calling on supporters to be part of a “caravan” to Washington.<sup>22</sup> Turning Point Action, an arm of Turning Point USA, paid for 350 students to attend,<sup>23</sup> and the so-called policy arm of the Republican Attorneys General Association, the Rule of Law Defense Fund, sent robocalls encouraging people to march on the Capitol.<sup>24</sup> Ali Alexander, one of the rally organizers, said the goal of the event was “putting maximum pressure on Congress while they were voting so that . . . we could change the hearts and the minds of Republicans who were in that body hearing our loud roar from outside.”<sup>25</sup> It also created a situation in which chaos was likely.

The extent, if any, of communication or coordination between Sens. Hawley and Cruz and the organizers of the rally remains to be investigated. Three members of the House of Representatives who coordinated with Senators Hawley and Cruz to object to the electors, Reps. Andy Biggs, Paul Gosar, and Mo Brooks, have been identified as alleged co-architects of the rally.<sup>26</sup> Further investigation is necessary to determine whether and to what extent Senators Cruz and Hawley were also aware of these groups’ activities or coordinated with their efforts.

### C. Senators Hawley and Cruz Continued Their Objections to the Electors After the Attack on the Capitol, Escalating the Crisis

On January 6, at 1:00 PM, the House and the Senate met in a Joint Session of Congress, with the Vice President presiding, to count the Electoral College’s votes.<sup>27</sup> On his way into the Capitol, Senator Hawley raised his fist in support of protestors who had already gathered there.<sup>28</sup>

Inside the Capitol, Rep. Gosar filed a written objection signed by Sen. Cruz challenging Arizona’s electors.<sup>29</sup> Outside the Capitol, Trump supporters attending the “Save America” rally attempted to breach the security barriers protecting the building.<sup>30</sup> Some members of the mob

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<sup>21</sup> Jamie Corey, *Republican Attorneys General Dark Money Group Organized Protest Preceding Capitol Mob Attack*, Documented (Jan. 7, 2021), <https://documented.net/2021/01/republican-attorneys-general-dark-money-group-organized-protest-preceding-capitol-mob-attack/>.

<sup>22</sup> Brian Schwartz, *Pro-Trump dark money groups organized the rally that led to deadly Capitol Hill riot*, CNBC (Jan. 9, 2021), <https://www.cnbc.com/2021/01/09/pro-trump-dark-money-groups-organized-the-rally-that-led-to-deadly-capitol-hill-riot.html>.

<sup>23</sup> Ewan Palmer, *Charlie Kirk Says Not Everyone in Capitol Mob Was an Insurrectionist*, Newsweek (Jan. 12, 2021), <https://www.newsweek.com/charlie-kirk-insurrection-buses-washington-tweet-1560727>.

<sup>24</sup> Corey, *supra* note 21.

<sup>25</sup> Ron Blitzer, *GOP lawmakers distance themselves from Capitol protest organizer after claim they helped plan march*, Fox News (Jan. 13, 2021), <https://www.foxnews.com/politics/capitol-protest-organizer-gosar-brooks-biggs-planning>.

<sup>26</sup> *Id.*

<sup>27</sup> Domenico Montanaro, *Timeline: How One Of The Darkest Days In American History Unfolded*, NPR (Jan. 7, 2021), <https://www.npr.org/2021/01/07/954384999/timeline-how-one-of-the-darkest-days-in-american-history-unfolded>.

<sup>28</sup> Manuel Quinones (@ManuelQ), Twitter (Jan. 6, 2021, 3:17 PM), <https://twitter.com/ManuelQ/status/1346913744736157714?s=20>

<sup>29</sup> Montanaro, *supra* note 27.

<sup>30</sup> *Id.*

carried firearms and spears; others had Molotov cocktails in nearby vehicles.<sup>31</sup> Many displayed racist symbols.<sup>32</sup> Within minutes, the mob breached the Capitol, forcing Members and staff to barricade themselves in offices or evacuate to secure locations, thus suspending the count.<sup>33</sup> The mob stormed Member offices, vandalized and smashed property, overturned furniture, and stole electronics.<sup>34</sup> They threatened and assaulted Capitol police and staff.<sup>35</sup> These events were reported in real time by major media organizations and on social media.

By the time the Capitol was secured and the count resumed, four insurrectionists had died.<sup>36</sup> It had also been widely reported that numerous police officers had been injured. When the Senate reconvened to debate Sen. Cruz's objection to Arizona's electors, several senators who had planned on joining the objection changed course. Although Sen. Loeffler said she had "fully intended to object to the certification of the electoral votes . . . , the events that have transpired today have forced me to reconsider, and I cannot now, in good conscience, object to the certification of these electors."<sup>37</sup> Six of the senators who had announced their intent to join Sen. Cruz's objection—Senators Lankford, Braun, Johnson, Daines, Blackburn, and Hagerty—also did not challenge the electors.

Rather than following their colleagues' example, Senators Cruz and Hawley continued to amplify the claims of fraud that they likely knew to be baseless and that had led to violence earlier that day. Sen. Cruz continued his objection to Arizona's electors, and voted against certifying the results in that state. Although Sen. Hawley acknowledged the disruption that had taken place, he also voted against certifying Arizona's electors. He also signed a written objection to Pennsylvania's electors,<sup>38</sup> and both he and Sen. Cruz voted against certifying the results in that state. By continuing to object to the electors after the insurrection, Senators Cruz and Hawley lent legitimacy to the mob's cause.

Violent action provoked by false fraud claims remains a persistent threat. On January 13, the FBI issued a Joint Intelligence Bulletin warning of a continued threat of violence from extremists

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<sup>31</sup> Special Agent Lawrence Anyaso Affidavit (Jan. 7, 2021) at 1, *available at* <https://www.justice.gov/opa/press-release/file/1351661/download>.

<sup>32</sup> Matthew Rosenberg & Ainara Tiefenthäler, *Decoding the Far-Right Symbols at the Capitol Riot*, N.Y. Times (Jan. 13, 2021), <https://www.nytimes.com/2021/01/13/video/extremist-signs-symbols-capitol-riot.html>

<sup>33</sup> Montanaro, *supra* note 27.

<sup>34</sup> Jack Brewster & Andrew Solender, *Clyburn's Ipad, Laptop From Pelosi's Office: Items Stolen, Destroyed In Capitol Attack*, Forbes (Jan. 7, 2021), <https://www.forbes.com/sites/jackbrewster/2021/01/08/clyburns-ipad-laptop-from-pelosis-office-items-stolen-destroyed-in-capitol-attack/?sh=13d0df845963>; Kel McClanahan, *The MAGA Insurrection in the Capitol Created a Huge New National-Security Threat*, Daily Beast (Jan. 8, 2021), <https://www.thedailybeast.com/the-maga-insurrection-in-the-capitol-created-a-huge-new-national-security-threat>; Senator Jeff Merkley (@SenJeffMerkley), Twitter (Jan. 6, 2021 11:36 PM), <https://twitter.com/SenJeffMerkley/status/1347039504528498688>.

<sup>35</sup> E.g. Katie Shephard, *Video shows Capitol mob dragging police officer down stairs. One rioter beat the officer with a pole flying the U.S. flag*, Wash. Post (Jan. 11, 2021), <https://www.washingtonpost.com/nation/2021/01/11/police-beating-capitol-mob/>.

<sup>36</sup> Ted Barrett et al., *US Capitol secured, 4 dead after rioters stormed the halls of Congress to block Biden's win*, CNN (Jan. 7, 2021), <https://www.cnn.com/2021/01/06/politics/us-capitol-lockdown/index.html>.

<sup>37</sup> 167 Cong. Rec. S21 (daily ed. Jan. 6, 2021) (statement of Sen. Loeffler).

<sup>38</sup> Doha Madani, *Hawley Objects to Pennsylvania Certification*, NBC News (Jan. 7, 2021), <https://www.nbcnews.com/politics/congress/live-blog/electoral-college-certification-updates-n1252864/ncrd1253215#blogHeader>.



emboldened by the January 6 attack and motivated by a “shared false narrative of a ‘stolen’ election.”<sup>39</sup> On January 14, FBI Director Christopher Wray announced that his agency was seeing “an extensive amount of concerning online chatter” about events with the potential for violence surrounding the inauguration of President-elect Joe Biden, including “potential armed protests and activity leading up to the inauguration.”<sup>40</sup> Vice President Pence<sup>41</sup> and Members of Congress<sup>42</sup> have been the subject of numerous death threats.

#### D. As Violence Was Threatened and Consumed the Capitol, Senators Hawley and Cruz Engaged in Fundraising Efforts

In the days leading up to January 6, both Sen. Cruz and Sen. Hawley touted their plan to challenge the electors to drum up campaign contributions. Sen. Cruz sent fundraising emails on January 3 and January 4 claiming he was “leading the charge” to challenge the electors.<sup>43</sup> In the week before the certification, Sen. Hawley sent a fundraising solicitation, asking donors to support his efforts to challenge the electors.<sup>44</sup> One hour before the count of the electoral votes began, Sen. Hawley’s campaign sent an email asking for donations.<sup>45</sup>

These solicitations continued during and after the insurrection. At 3:33 p.m. on January 6, after the mob had entered the Capitol, the Cruz campaign sent an automated fundraising text message.<sup>46</sup> His campaign sent a similar email approximately 10 minutes later.<sup>47</sup> Around the same time, Hawley’s campaign sent a fundraising text message stating that Hawley was “leading the charge to fight for free and fair elections.”<sup>48</sup> On January 8, the Senate Conservatives Fund sent out a fundraising email arguing that Sen. Hawley’s “decision to object to the election results

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<sup>39</sup> John Eligon et al., *FBI Urges Police Chiefs Across U.S. to Be on High Alert for Threats*, N.Y. Times (Jan. 13, 2021), <https://www.nytimes.com/2021/01/13/us/fbi-police-threats-inauguration.html>

<sup>40</sup> Brett Samuels, *FBI chief says agency tracking 'extensive' online chatter about potential inauguration threats*, The Hill (Jan. 14, 2021), <https://thehill.com/policy/national-security/534328-fbi-director-says-agency-tracking-extensive-online-chatter-about>.

<sup>41</sup> Bradford Betz, *Secret Service investigating death threats against Pence*, Fox News (Jan. 11, 2021), <https://www.foxnews.com/politics/secret-service-investigative-death-threats-against-pence>.

<sup>42</sup> Joan E. Greve & Joanna Walters, *Congress briefed on fresh security threats ahead of Biden inauguration*, The Guardian (Jan. 12, 2021), <https://www.theguardian.com/us-news/2021/jan/12/congress-security-threats-biden-inauguration>.

<sup>43</sup> Email from Sen. Ted Cruz, I’m objecting (Jan. 3, 2021 3:01 AM), <https://politicaemails.org/messages/331969>; Email from Sen. Ted Cruz, FW: I’m objecting (Jan. 4, 2021 10:01 PM), <https://politicaemails.org/messages/332750>.

<sup>44</sup> Nicholas Fandos, *With Objection to Biden’s Win, Josh Hawley Puts His Party in a Bind*, N.Y. Times (Jan. 4, 2021), <https://www.nytimes.com/2021/01/04/us/politics/josh-hawley-republican-party.html?searchResultPosition=4>.

<sup>45</sup> Bryan Lowry, *Hawley sent fundraising email on election objection as Capitol descended into chaos*, Kansas City Star (Jan. 6, 2021), <https://www.kansascity.com/news/politics-government/article248316415.html>.

<sup>46</sup> Text Message from Sen. Ted Cruz (Jan. 6, 2021, 3:33 PM), <https://pbs.twimg.com/media/ErKm2hHW8AojWnq?format=jpg&name=medium>.

<sup>47</sup> Email from Sen. Ted Cruz, Prepared to OBJECT – tune in shortly, (Jan. 6, 2021, 3:46 PM), <https://politicaemails.org/messages/333741>.

<sup>48</sup> *Id.*

showed tremendous courage.”<sup>49</sup> As of January 14, OANN, a conservative news network, continued to encourage donations to both senators on a page entitled “OAN Call to Action: How to Donate to Lawmakers Who Stayed True to President Trump.”<sup>50</sup> Investigation may reveal further connection or coordination with donors supporting the rally and the assault on the Capitol.

## II. Argument

The Senate has a duty to determine whether the actions of Senators Cruz and Hawley constitute “improper conduct” or other violations of the Senate code of ethics. Only then will this body restore public trust.

Congress has the exclusive power to punish and expel its Members. Under Article I of the Constitution, “Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.”<sup>51</sup> The Senate has delegated this authority to the Ethics Committee (formerly the Committee on Standards and Conduct), which is empowered to investigate “violations of the Senate Code of Official Conduct” and recommend to the Senate by report or resolution appropriate disciplinary action.<sup>52</sup>

The Senate has disciplined Members for conduct that it has deemed unethical or improper, regardless of whether it violated any written law or Senate rule or regulation, as well as violations of law.<sup>53</sup> According to the Senate Ethics Manual, “[s]uch conduct has been characterized as improper conduct that may reflect upon the Senate.”<sup>54</sup> The rule is intended to protect the integrity and reputation of the Senate as a whole,<sup>55</sup> and has been the basis for discipline on several occasions.<sup>56</sup>

The Senate Ethics Committee may also investigate and discipline senators for violations of the Code of Ethics for Government Service.<sup>57</sup> The Code requires, among other things, that elected officials “[p]ut loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department” and “[u]phold these principles, ever conscious that public

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<sup>49</sup> Marianne Levine, Holly Otterbein, & Burgess Everett, *Election gambit blows up on Hawley and Cruz*, Politico (Jan. 9, 2021), <https://www.politico.com/news/2021/01/09/hawley-cruz-2024-capitol-riots-456671>.

<sup>50</sup> *OAN Call to Action: How to Donate to Lawmakers Who Stayed True to President Trump*, OANN, <https://www.oann.com/oan-call-to-action-how-to-donate-to-lawmakers-who-stayed-true-to-president-trump/> (last visited Jan. 14, 2021).

<sup>51</sup> U.S. Const. art. I, § 5, cl. 2.

<sup>52</sup> S. Res. 338, § 2(a)(1), 88th Cong., 2d Sess. (1964), amended by S. Res. 110, 95th Cong., 1st Sess. (1977), § 2(a)(2); S. Rpt. 95–49.

<sup>53</sup> U.S. Senate Election, Expulsion and Censure Cases From 1793 to 1990, S. Doc. 103–33, (103d Cong. 1995); Senate Ethics Manual, *supra* note 5, at 432.

<sup>54</sup> Senate Ethics Manual, *supra* note 5, at 432.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 434–35.

<sup>57</sup> *Id.* at 7–8.

office is a public trust.”<sup>58</sup> The House has disciplined Members for violations of the Code on several occasions.<sup>59</sup>

Further investigation is necessary to develop a complete account of Senators Cruz and Senator Hawley’s involvement in the events of January 6. Because several of the House members who objected to the electors coordinated with the organizers of the “Save America” rally, it is not unreasonable to assume that Senators Cruz and Hawley may also have been involved. A Senate Ethics Committee investigation should seek to determine, among other things:

1. Whether Senators Cruz and Hawley, and/or their staff or campaigns or fundraisers, were in contact or coordinated with the organizers of the rally;
2. Whether Senators Cruz and Hawley were aware of other Members’ contacts with the organizers;
3. What Senators Cruz and Hawley, and/or their staff knew about the plans for the event, through public or private sources, or are otherwise accountable for the violence or for their failure to warn the Senate and the public about the risk of violence;
4. Whether Senators Cruz and Hawley received funding from organizations or donors that also funded the rally;
5. Whether Senators Hawley or Cruz took any action that encouraged the insurrectionists’ actions, and whether the insurrectionists cited Senators Hawley or Cruz as part of their rationale for storming the Capitol;<sup>60</sup> and
6. Whether Senators Cruz and Hawley and/or their offices, fundraisers, or campaigns otherwise engaged in criminal conduct, or unethical or improper behavior.

The Senate Ethics Committee should ask both senators to preserve all relevant emails and documents in order to ensure that a thorough investigation can occur.

The public record is already replete with information that predicates an investigation and possible discipline as may be appropriate. While it was within Senators’ rights to object to the electors, the conduct of Senators Cruz and Hawley, and potentially others, went beyond that. Both senators announced their intention to object to the electors after baseless claims of election fraud, which upon information and belief they knew to be baseless, had led to threats of violence. Both senators persisted in their objections after those threats came to fruition. Their actions lend credence to the insurrectionists’ cause and set the stage for future violence. And both senators used their objections for political fundraising. Their actions have been condemned by the

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<sup>58</sup> 104 Cong. Rec. 13556–57 (1958), 72 Stat. B12 (1958).

<sup>59</sup> Senate Ethics Manual, *supra* note 5, at 7-8.

<sup>60</sup> In one recording from January 6, insurrectionists are shown rifling through and filming papers at senators’ desks inside the Senate chamber. Luke Mogelson, *Among the Insurrectionists*, New Yorker (Jan. 25, 2021), <https://www.newyorker.com/magazine/2021/01/25/among-the-insurrectionists>. One of these men states, “I think Cruz would want us to do this... So I think we’re good.” *Id.*

public<sup>61</sup> and rejected by members of their own party.<sup>62</sup> As former Senator John Danforth argued, “Lending credence to Trump’s false claim that the election was stolen is a highly destructive attack on our constitutional government.”<sup>63</sup>

The Senate Ethics Committee should determine if Senators Cruz and Hawley failed in their duty to “[p]ut loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department”<sup>64</sup> or otherwise engaged in improper conduct.<sup>65</sup> Multiple crimes were committed on January 6, for which culpability may be assessed under doctrines of conspiracy, aiding and abetting, accessory, or providing aid and comfort. Disciplinary action may be necessary to protect the integrity of the Senate and ensure public trust and safety. The Senate Ethics Committee has jurisdiction over such determinations.

### III. Conclusion

For the foregoing reasons, the Senate Ethics Committee should open an investigation into the actions of Senators Hawley and Cruz, and perhaps others as investigation may reveal, in order to

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<sup>61</sup> Marina Pitofsky, *Kansas City paper says Hawley has blood on his hands*, The Hill (Jan. 7, 2021), <https://thehill.com/homenews/news/533071-hawley-hometown-paper-says-he-has-blood-on-his-hands> (“No one other than President Donald Trump himself is more responsible for Wednesday’s coup attempt at the U.S. Capitol than one Joshua David Hawley, the 41-year-old junior senator from Missouri, who put out a fundraising appeal while the siege was underway.”); Maria Recio, *Calls grow for Cruz to be punished for his role challenging electors*, Austin Am.-Statesman (Jan. 12, 2021), <https://www.statesman.com/story/news/politics/2021/01/12/calls-grow-ted-cruz-punished-challenging-electors/6645215002/> (“Two major Texas papers, the Houston Chronicle and the San Antonio Express-News, called on Cruz to leave office . . . ‘Resign, Senator Cruz, your lies cost lives,’ stated the Chronicle, and the Express-News asked, ‘Have you no decency, Sen. Cruz?’”); Jason Lemon, *Ted Cruz, Josh, Hawley, Other GOP Objectors Face Donation Boycott from Major Business*, Newsweek (Jan. 10, 2021), <https://www.newsweek.com/ted-cruz-josh-hawley-other-gop-objectors-face-donation-boycott-major-businesses-1560333> (Marriott International, Blue Cross Blue Shield and Commerce Bancshares withholding donations), <https://www.newsweek.com/ted-cruz-josh-hawley-other-gop-objectors-face-donation-boycott-major-businesses-1560333>).

<sup>62</sup> Alex Woodward, *Hawley and Cruz Campaigns sent fundraising emails to supporters as Capitol under siege*, Independent (Jan. 7, 2021), <https://www.independent.co.uk/news/world/americas/us-politics/hawley-cruz-email-washington-riot-b1784117.html> (Tom Cotton condemned “some senators who, for political advantage, were giving false hope to their supporters, misleading them into thinking that somehow yesterday’s actions in Congress could reverse the results of the election or even get some kind of emergency audit. . . . That was never going to happen, yet these senators, as insurrectionists literally stormed the Capitol, were sending out fundraising emails.”); (“Catie Edmondson, *Hawley Faces Blowback for Role in Challenging Election Results*, N.Y. Times (Jan. 8, 2021), <https://www.nytimes.com/2021/01/08/us/politics/josh-hawley-capitol-riot.html?searchResultPosition=3> (“‘Senator Hawley was doing something that was really dumbass,’” Senator Ben Sasse, Republican of Nebraska, told NPR. “‘This was a stunt. It was a terrible, terrible idea. And you don’t lie to the American people. And that’s what’s been going on.’”); Levine, *supra* note 46 (“Sen. Pat Toomey (R-Pa.) accused Cruz and Hawley of ‘directly’ undermining peoples’ rights to elect their leaders. Sen. Mitt Romney (R-Utah) said election objectors ‘will forever be seen as being complicit in an unprecedented attack against our democracy.’”); Maggie Astor, et. al., *Senator Cruz’s Communications Director Resigns*, N.Y. Times (Jan. 12, 2021), <https://www.nytimes.com/2021/01/12/us/ted-cruz-communications-director.html> (“A person familiar with [the communications director’s] decision said she had made it because of Mr. Cruz’s actions last week, when he and Senator Josh Hawley . . . formally challenged [Biden’s] victories in Arizona and Pennsylvania, promoting false claims of election fraud even as a pro-Trump mob motivated by those claims stormed the Capitol.”).

<sup>63</sup> Fandos, *supra*. note 41.

<sup>64</sup> Code of Ethics for Government Service, H. Con. Res. 175, 85th Cong. (2d Sess. 1958).

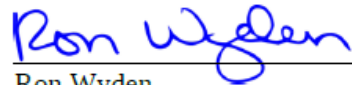
<sup>65</sup> Senate Ethics Manual, *supra* note 5, at 432.

protect the integrity, safety, and reputation of the Senate. The Committee should also offer recommendations for strong disciplinary action, including up to expulsion or censure, if warranted by the facts uncovered.


Sincerely,



Sheldon Whitehouse  
United States Senator



Ron Wyden  
United States Senator



Tina Smith  
United States Senator



Richard Blumenthal  
United States Senator



Mazie K. Hirono  
United States Senator



Tim Kaine  
United States Senator



Sherrod Brown  
United States Senator