



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

January 21, 2021

Senator James Lankford
Select Committee on Ethics
United States Senate
Room 220
Senate Hart Office Building
Washington, DC 20530

Re: Request for Senator James Lankford's Recusal from Senate Ethics Committee Investigations of January 6 Insurrection

Dear Senator Lankford:

Citizens for Responsibility and Ethics in Washington respectfully requests that Senator Lankford recuse from any investigation by the Senate Select Committee on Ethics ("Senate Ethics Committee") of senators accused of inciting the insurrectionist attack on the U.S. Capitol on January 6, 2021. Given Senator Lankford's involvement in events that led to the insurrection and connection to other senators who may face such investigations, his recusal is required by Senate rules. Even if his recusal were not required, discretionary recusal is warranted to avoid any appearance of impropriety that could undermine public confidence in the impartiality of the Ethics Committee's investigations.

Background

I. The January 6 Insurrectionist Attack on the Capitol

On January 6, 2021, Congress met in joint session to count the votes of the Electoral College and certify the election of Joe Biden and Kamala Harris as the next President and Vice President of the United States.

Earlier that day, President Donald Trump spoke to a crowd of supporters near the White House Ellipse at the "Save America March."¹ Continuing his months-long quest to overturn the results of the 2020 election, President Trump told the crowd: "We will never give up. We will never concede . . . We will stop the steal!"² He urged them to "fight much harder," and implored, "We're going to walk down to the Capitol . . . you'll never

¹ Marisa Peñaloza, Trump Supporters Storm U.S. Capitol, Clash with Police, *NPR*, Jan. 6, 2021, <https://n.pr/3qb8ncq>.

² Transcript: Donald Trump Speech "Save America" Rally, *Rev*, Jan. 6, 2021, <http://bit.ly/2XnwPLk>.

take back our country with weakness. You have to show strength, and you have to be strong.”³

Thousands of Trump supporters proceeded to march to the U.S. Capitol, where they breached security barricades and violently forced their way into the Capitol building, halting Congress’s counting of electoral votes for several hours.⁴ The horrific attack led to five deaths, numerous injuries, destruction of government property, and removal of sensitive government records.⁵ The Capitol Police officers’ union has called it the “greatest breach of the U.S. Capitol since the War of 1812.”⁶

II. Senator Lankford Was Part of a Coalition of 11 Senators Whose Actions May Have Helped to Incite the Insurrection

The events of January 6 were the culmination of months of baseless claims and conspiracy theories designed to sow doubts about the 2020 election. While these claims of a “stolen election” were uniformly rejected by state election officials and the courts, this did not stop President Trump and his congressional allies from touting them to the public, inflaming the thousands of Trump supporters who would later storm the Capitol.

Senator Lankford was one of those congressional allies. For instance, in a Senate hearing on December 16, he reprised a series of Trump campaign lawsuit claims about illegal voting in Nevada, including that “[f]orty-two thousand people in Nevada voted more than once,” and that dead people, out-of-state residents, and noncitizens had cast illegal ballots in Nevada in substantial numbers.⁷ He did so even though a Nevada court had dismissed the Trump campaign’s lawsuit nearly two weeks earlier, holding that the campaign “did not prove under any standard of proof that illegal votes were cast and counted.”⁸

Senator Lankford was also a member of Senator Ted Cruz’s “coalition of 11 Republican senators” who vowed “to reject the Electoral College tallies unless Congress launch[e] a commission to immediately conduct an audit of the election results.”⁹ On January 2, Senator Lankford joined a statement issued by that coalition reciting debunked allegations of voter fraud, and committing “to vote on January 6 to reject the electors from disputed states as not ‘regularly given’ and ‘lawfully certified’ (the statutory requisite), unless and until [an] emergency 10-day audit is completed.”¹⁰

³ *Id.*

⁴ Peñaloza, *NPR*, Jan. 6, 2021; Jaclyn Diaz, Bill Chappell, and Elena Moore, [Police Confirm Death of Officer Injured During Attack on Capitol](#), *NPR*, Jan. 7, 2021, <https://n.pr/35mxNMD>; [Associated Press Timeline of events at the Capitol](#), *Associated Press*, Jan. 6, 2021, <https://bit.ly/396br30>.

⁵ *Id.*

⁶ John Henry (@JohnHenryWUSA), Twitter (Jan. 7, 2021), <https://bit.ly/3igysEa>.

⁷ Jim Rutenberg, Nick Corasaniti, and Alan Feuer, [Trump’s Fraud Claims Died in Court, but the Myth of Stolen Elections Lives On](#), *New York Times*, Jan. 7, 2021, <https://nyti.ms/2XInJcf>.

⁸ *Id.*

⁹ [Lankford Among Republican Senators Supporting Effort To Undo Trump’s Election Loss](#), *Associated Press*, Jan. 4, 2021, <https://bit.ly/2LSUElu>.

¹⁰ Press Release, [Joint Statement from Senators Cruz, Johnson, Lankford, Daines, Kennedy, Blackburn, Braun, Senators-Elect Lummis, Marshall, Hagerty, Tuberville](#), Jan. 2, 2021, <https://bit.ly/3ieZ0po>.

In a separate statement issued on January 2, Senator Lankford insisted that there remained “significant questions about the November 3 election process.”¹¹ Despite recognizing that many of these questions had already been “reviewed by state leaders and courts,” he reiterated his plan “to oppose the electors on January 6” unless Congress formed an “electoral commission” to “audit” the election.¹² In an interview that same day, Senator Lankford conceded this was a “Hail Mary” attempt that had little chance of success.¹³

On January 6, at the very moment the rioters breached the Capitol, Senator Lankford was speaking on the Senate floor to oppose certification of Arizona’s electoral votes.¹⁴ The events of the day ultimately moved him to change his vote,¹⁵ but by then, the damage had already been done.

In the wake of January 6, calls have mounted for investigations of senators who may have helped to incite the insurrection.¹⁶ Earlier today, Senators Sheldon Whitehouse, Tina Smith, Mazie Hirono, Ron Wyden, Richard Blumenthal, Tim Kaine, and Sherrod Brown sent the Senate Ethics Committee a complaint requesting investigations of Senators Cruz and Josh Hawley in order to “fully understand their role” in the insurrection.¹⁷ The Committee has also received a complaint from the Campaign for Accountability (“CfA”), requesting investigations of Senators Cruz and Hawley for potentially inciting a riot and committing seditious conspiracy.¹⁸ As new details about the insurrection emerge, additional complaints are likely to come before the Committee.

Senator Lankford Must Recuse from Ethics Committee Investigations Relating to the Insurrection

I. Recusal is Required under Senate Ethics Committee Rules

Under subsection (d)(1) of Part I of the Senate Ethics Committee Rules, a “member of the Select Committee *shall* be ineligible to participate in . . . any preliminary inquiry or adjudicatory review”—as well as any resulting “determinations or recommendations” by the Committee—“relating to . . . the conduct of . . . such

¹¹ Press Release, [Lankford Calls for Election Commission to Review 2020 Voter Fraud](https://bit.ly/2LUk0G5), Jan. 2, 2021, <https://bit.ly/2LUk0G5>.

¹² *Id.*

¹³ Oklahoman Editorial Board, [Opinion: Lankford's disappointing “Hail Mary.”](https://bit.ly/38Myh0n) *The Oklahoman*, Jan. 4, 2021, <https://bit.ly/38Myh0n>.

¹⁴ Ryan Bort, [Pro-Trump Republicans Picked Up Where the Pro-Trump Mob Left Off](https://bit.ly/3ssPQKL), *Rolling Stone*, Jan. 7, 2021, <https://bit.ly/3ssPQKL>.

¹⁵ *Id.*

¹⁶ See, e.g., Jeet Heer, [The Enablers of Insurrection Should Be Ostracized](https://bit.ly/2XNPEaL), *The Nation*, Jan. 8, 2021, <https://bit.ly/2XNPEaL>; Donald K. Sherman, [It’s Time for Congress to Expel Trump’s Enablers In Its Ranks](https://bit.ly/39Cvx56), *Daily Beast*, Jan. 7, 2021, <https://bit.ly/39Cvx56>.

¹⁷ Letter from Senator Sheldon Whitehouse et al. to Senators Christopher Coons and James Lankford, Jan. 21, 2021, <https://bit.ly/3cdkX7B> (“Whitehouse Complaint”).

¹⁸ Letter from Michelle Kuppersmith to Senators James Lankford and Christopher Coons, Jan. 13, 2021, <https://bit.ly/3igXSS6> (“CfA Complaint”).

member.”¹⁹ The rule’s plain text makes clear that a Committee member must recuse not only from investigations of the member himself, but also from investigations of other senators that “relat[e] to” the member’s conduct.

Here, the Committee has received complaints accusing senators of inciting the insurrection that explicitly “relat[e] to” Senator Lankford’s conduct. For instance, CfA’s complaint cites, as proof of wrongdoing, Senator Cruz’s statements that he “assembled a coalition of 11 senators,” and “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.”²⁰ Senator Whitehouse’s complaint likewise discusses the conduct of Senator Cruz’s coalition of 11 senators.²¹ As explained above, Senator Lankford was a vocal member of the Cruz coalition.

CfA’s complaint also makes certain allegations of misconduct against Senators Cruz and Hawley that could likewise be made against Senator Lankford, including that they “decid[ed] to object to the electoral college certification process despite a total absence of fraud and numerous court decisions upholding the elections, ma[de] public statements discrediting the election results knowing these statements were untrue,” and “deliberately fuel[ed] President Trump supporters’ sense of grievance.”²²

Given Senator Lankford’s membership in Senator Cruz’s coalition, and his engagement in the same type of conduct challenged in CfA’s complaint, he must recuse from any investigation relating to the allegations made in that complaint and any similar investigations by the Committee.

II. Discretionary Recusal is Warranted

Even if Senator Lankford’s recusal were not mandatory, discretionary recusal would be warranted. Senate Ethics Committee Rules provide that a “member of the Select Committee may, at the discretion of the member, disqualify himself or herself from participating in any preliminary inquiry or adjudicatory review pending before the Select Committee and the determinations and recommendations of the Select Committee with respect to any such preliminary inquiry or adjudicatory review.”²³

In considering whether discretionary recusal is appropriate, recusal standards from other contexts are instructive. For instance, federal law requires that “[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned,” including “[w]here he has a personal bias or prejudice concerning a party, or personal knowledge

¹⁹ Rules of Procedure, U.S. Senate Select Committee on Ethics, Pt. I § (d)(1)(A)(i)(I), (d)(1)(B), <https://bit.ly/38RF48U> (“Senate Ethics Committee Rules”) (emphasis added).

²⁰ CfA Complaint at 4.

²¹ See Whitehouse Complaint at 3 & n.17, 5.

²² CfA Complaint at 6-7.

²³ Senate Ethics Committee Rules Pt. I § (d)(2).

of disputed evidentiary facts concerning the proceeding.”²⁴ Federal regulations similarly caution Executive Branch employees not to participate in matters where “the circumstances would cause a reasonable person with knowledge of the relevant facts to question [their] impartiality in the matter.”²⁵

There is ample reason to believe that Senator Lankford’s “impartiality might reasonably be questioned” if he were to participate in Ethics Committee investigations of senators relating to the January 6 insurrection. For one, Senator Lankford was an outspoken member of a coalition of 11 senators who many have claimed enabled or incited the insurrection. A reasonable person might question whether Senator Lankford could remain impartial in investigations of his fellow coalition members, especially those accused of engaging in conduct similar to his own. This appearance or risk of bias is reason enough to warrant discretionary recusal.

Senator Lankford may also have “personal knowledge of disputed . . . facts” that could arise in the Committee’s investigations. For example, as a member of Senator Cruz’s coalition, Senator Lankford may have personal knowledge of facts that tend to support or refute allegations against Senator Cruz regarding his role in enabling the insurrection. This is yet another ground for discretionary recusal.

Discretionary recusal would also be in keeping with Senator Lankford’s efforts, in the wake of January 6, to show contrition for contesting the 2020 election. On January 14, he wrote a letter apologizing to his “friends in North Tulsa” for failing to appreciate that his actions could have been viewed as a disenfranchisement effort designed to “cast[] doubt on the validity of votes coming out of predominantly Black communities like Atlanta, Philadelphia, and Detroit.”²⁶ “I deeply regret my blindness to that perception, and for that I am sorry,” he wrote.²⁷ He then asked “for grace and an opportunity for us to show the state what reconciliation looks like in moments of disagreement.”²⁸

If Senator Lankford is serious about pursuing meaningful reconciliation, he should recuse from Ethics Committee investigations relating to the insurrection. Due to the serious questions his participation in those investigations would raise, his recusal is a necessary step to promote public confidence in the critical work that lies ahead for the Committee.

Conclusion

Given the Ethics Committee’s role as the Senate’s chief ethics body, it is vital that Committee members exercise the utmost care on recusal questions. Such caution is especially needed now, when the country is both bitterly divided and desperately

²⁴ 28 U.S.C. §§ 455(a), (b)(1).

²⁵ 5 C.F.R. § 2635.502(a); *see also* U.S. Dept. of Justice, Departmental Ethics Office, Conflicts, <https://bit.ly/3bMTUjc> (“Generally, an employee should seek advice from an ethics official before participating in any matter in which her impartiality could be questioned.”).

²⁶ Letter from Senator James Lankford, Jan. 14, 2021, <https://bit.ly/38Se6hl>.

²⁷ *Id.*

²⁸ *Id.*

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searching for answers in the wake of a horrific attack on our democracy. Now more than ever, our leaders must take actions that promote public confidence in government rather than undermine it. It is in this spirit that we request Senator Lankford's recusal from any Ethics Committee investigations of senators relating to the January 6 insurrection.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder
Executive Director

cc: The Honorable Christopher Coons
U.S. Senate Select Committee on Ethics