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DISTRICT 11

Arizona House of Representatives
Phoenix, Arizona 85007

COMMITTEES:
MILITARY AFFAIRS &
PUBLIC SAFETY
NATURAL RESOURCES
ENERGY & WATER
JUDICIARY

February 16, 2021

The Honorable Becky Nutt
Chairman, House Ethics Committee

The Honorable Sine Kerr
Chairman, Senate Ethics Committee

Dear Chairmen:

I write to submit a formal ethics complaint against the following members of the Arizona House (the "House Members"):

Representative Athena Salman
Representative Reginal Bolding
Representative Jennifer L. Longdon
Representative Domingo DeGrazia
Representative Melody Hernandez
Representative Charlene Fernandez
Representative Raquel Teran
Representative Diego Rodriquez
Representative Jennifer Pawlik
Representative Pamela Powers Hannley
Representative Randall Friese
Representative Lorenzo Sierra
Representative Alma Hernandez
Representative Andres Cano
Representative Cesar Chavez
Representative Richard C. Andrade
Representative Daniel Hernandez, Jr.
Representative Judy Schwiebert
Representative Mitzi Epstein
Representative Jennifer Jermaine
Representative Stephanie Stahl Hamilton
Representative Myron Tsosie
Representative Robert Meza

Representative Arlando Teller
Representative Diego Espinoza
Representative Kelli Butler
Representative Amish Shah
Representative Andrea Dalessandro

together with the following members of the Arizona Senate (the "Senate Members"):

Senator Rebecca Rios
Senator Lupe Contreras
Senator Martin Quezada
Senator Victoria Steele
Senator Juan Mendez
Senator Rosanna Gabaldon
Senator Lela Alston
Senator Kirsten Engel
Senator Sally Ann Gonzales
Senator Christine Marsh
Senator Sean Bowie
Senator Lisa Otondo
Senator Jamescita Peshlakai
Senator Tony Navarrete

and direct the attention of both Honorable Chairs to the facts asserted and law relied upon below:

Introduction

Speaking of the censorious tactics of the Communist Party in his native country, Czech film director Milos Forman remarked:

. . . [T]hey were absolutely brilliant in one way, you know: they knew how effective [it] is not to punish somebody who is guilty. . .
. What was important [was] that they punished [you] if you're innocent, because that puts everybody, you know, puts fear in everybody.

National Security Archive, Interview with Milos Forman dated January 18, 1997 (available at <https://nsarchive2.gwu.edu/coldwar/interviews/episode-14/forman2.html>).

Each of the above-named House and Senate Members has conspired, maliciously and in bad faith, to have me (and others) punished for exercising my First Amendment right to peaceably assemble and contest the legitimacy of the recent Presidential election. They have sought to do so by accusing me of fomenting an insurrection against the United States, and of encouraging criminal acts committed by persons who, according to the Department of Justice, conspired well before the events of January 6, 2021 to breach the United States Capitol. They have gone so far as to demand

that the acting Attorney General of the United States and the Director of the FBI open a criminal investigation into my actions, all while knowing full well that I am innocent of the charge.

Ironically, nothing could do greater harm to the rule of law and the fundamental principles of our Republic than this attempt by the House and Senate Members to transform speech that they find disagreeable into a crime. By using inflammatory rhetoric and the threat of criminal prosecution, the House and Senate Members and their media allies have sought to sow fear in order to place any questioning of the legitimacy of the recent election, and of the broader topic of election integrity in the United States, beyond the pale of political discourse. Their tactics are repugnant to our foundational belief in open and robust debate, and as such smack of the very tyranny that, only a few decades ago, we spent so much in blood and treasure to defeat.

But like all tyrants, their tactics betray fear and weakness. What are they so afraid of that they and their allies in the media deem it necessary to remove any question of election integrity from the table of legitimate discourse? Do they hope that shutting people up will make the controversy go away?

Perhaps the House and Senate Members and their media allies would like to prevent any mention of the fact that nearly fifty percent of likely U.S. voters believe that mail-in voting in the Presidential election was affected by fraud.¹ Or maybe they would prefer to memory-hole the fact that, just 14 months ago, some of the leading lights of their own Party raised alarms about the reliability of the very same voting technology that I have been pilloried and threatened with criminal prosecution for criticizing.²

Whichever way one looks at it, the House and Senate Members have conducted themselves in bad faith, have violated the Constitution of this State and the law of the United States, and have brought shame and upon the Legislature of this State. They must be sanctioned accordingly.

Statement of Facts

On January 21, 2021, the House Members and Senate Members authored and issued a letter to Jeffery A. Rosen, the then Acting Attorney General of the United States of America and FBI Director Christopher Wray, urging Messrs. Rosen and Wray to institute a criminal investigation of myself, together with former Representative Anthony Kern, and sitting United States House of Representative members Paul Gosar and Andy Biggs of Arizona (the "Criminal Referral"). A copy of the Criminal Referral is attached for the Chairs' ease of reference as Exhibit A.

¹ See

https://www.rasmussenreports.com/public_content/politics/elections/election_2020/most_say_mail_in_voting_worked_but_47_say_fraud_likely

² See December 6, 2019 Letters from Senators Elizabeth Warren, Ron Wyden, and Amy Klobuchar, and Congressman Mark Pocan directed to H.I.G. Capital, McCarthy Group, and Staple Street Capital Group
<<https://www.warren.senate.gov/imo/media/doc/H.I.G.%20McCarthy.%20&%20Staple%20Street%20letters.pdf>>.

The Criminal Referral issued by the House and Senate Members was issued under false pretenses, and was replete with material factual misrepresentations that were known to be false by the House and Senate Members at the time of issuance. Moreover, the Criminal Referral was not issued in good faith to institute a valid criminal referral, but instead was issued for base political purposes since it was emailed to the press immediately upon completion. These issues are addressed in turn below.

1. The Criminal Referral was Issued Under False Pretenses.

The Criminal Referral was issued by the House and Senate Members on letterhead that purported to be that of the Arizona State Legislature. Thus, the House and Senate Members falsely portrayed the Criminal Referral to Messrs. Rosen and Wray as an official act of the Arizona State Legislature, complete with the official seal of the Great State of Arizona placed prominently on the letterhead.

In fact, however, the Criminal Referral was not an official act of the Arizona State Legislature, as no resolution of either the House or the Senate, or any of their committees, authorized the Criminal Referral. It was thus unrelated to the discharge of any legislative duty on the part of its signatories. It was instead an unofficial act undertaken, in *ad hoc* fashion, solely by partisan members of the legislature acting on their own behalf in an effort to take base political advantage of the reprehensible criminal conduct of certain rogue actors who rioted on Capitol Hill and invaded the Capitol itself in Washington DC on January 6, 2021.

Without knowledge of the fact that: a) the letterhead upon which the Criminal Referral was placed was not the official letterhead of the Arizona State Legislature as it appeared to be, and; b) that the authors of the Criminal Referral were solely partisan Democrat politicians acting in bad faith and spewing patently false statements, the recipients of the Criminal Referral would assume – as the authors obviously deceptively and maliciously intended – that the Arizona State Legislature acting in an official manner had officially sanctioned the referral of a criminal matter for investigation by the United States Government. Thus, the House and Senate Members engaged in fraudulent and deceptive actions intended to misguide the most powerful and important law enforcement agencies in the United States when they falsely issued the Criminal Referral as the purported official act of the Arizona State Legislature.

2. The Criminal Referral was Replete with Material Factual Misrepresentations that were Unsupported by Evidence and Known to be False by the House and Senate Members at the Time of Issuance.

The Criminal Referral contains numerous intentional and malicious false statements, intentionally designed to malign and defame the undersigned, as well as former Representative Kern and Congressmen Gosar and Biggs, and hence the State of Arizona itself.

I begin by noting that the Criminal Referral contains no citation to any evidence that would show or even tend to show that I participated in or encouraged the assault on the Capitol. None.

The Referral states that my “own social media posts *strongly suggest*” that I was “present at the riot in Washington D.C. on January 6 and” that I “actively encouraged the mob. . . .” (emphasis added). But the Referral fails to point to a single such social media post from me, and the linked Twitter posts by Rep. Kern show nothing remotely resembling a riot or incitement to riot. Indeed, the only true statement in the Referral is that I was in Washington, D.C. on January 6.

The linked video by political activist Ali Alexander likewise contains no support for the Members’ allegations. In that video, Mr. Alexander clearly states that the purpose of the protest on January 6 was to “change the hearts and the minds of Republicans who were in [Congress], *hearing our loud roar from outside.*” (emphasis added).³ Thus, the House and Senate Members have deliberately mischaracterized Mr. Alexander’s statement, and I challenge the Members and their media allies to show in what manner Mr. Alexander’s expressed intentions of organizing a protest outside the Capitol in order to make the participants’ voices heard would amount to anything other than protected activity under the First Amendment.

The House and Senate Members even admit that they have no evidence against me. Referring to myself and my colleagues, the Members concede, “What they did outside of plain view we do not yet know.” Nevertheless, they go on to allege: “***But there is evidence*** to indicate that Arizona Representatives Mark Finchem, Anthony Kern, Paul Gosar and Andy Biggs encouraged, facilitated, participated and possibly helped plan this anti-democratic insurrection on January 6.” Referral at p. 2 (emphasis added).

Their use of the passive voice gives the game away. According to the House and Senate Members, “there is evidence!” What that evidence is and where it might be located, they do not bother to say. The House and Senate Members have brought the Department of Justice the man. It is up to the Department of Justice to find the crime.⁴

The Criminal Referral bears the date Tuesday, January 12, 2021. On January 11, 2021, I released a detailed statement regarding my presence in Washington D.C. from January 5 to January 8, 2021. My statement is attached hereto for the Chairs’ ease of reference as Exhibit B.

My statement established that: I was in Washington D.C. to attend and speak at a properly permitted event; that I never came within 500 yards from the Capitol; that I was told at about 1:55 pm EST that my planned speech was cancelled; that from where I was positioned, I could not see any activity associated with the breach of the Capitol; that I did not even learn that the Capitol had been breached until just prior to 5:00 pm that evening; and that to “connect my presence to speak in the company of other elected officials at a properly permitted public event at the Capitol event

³ https://twitter.com/jason_paladino/status/1347647000922230784?s=20

⁴ “You bring me the man, I will find you the crime.” - Attributed to Stalin’s chief of the NKVD, Lavrentiy Beria.

with 'leading an insurrection,' or that walking with the crowd to the Capitol can be construed as anything other than an exercise of my First Amendment right to free speech it is utterly absurd."

Accordingly, the day prior to the issuance of the Criminal Referral, I had very specifically dispelled any allegation that I had been involved in any way in the riot that ensued at the Capitol on January 6, 2021, and that to allege that I was in any way involved in 'leading an insurrection' was absurd. I made it absolutely clear that I have been "outspoken against violence for years," and that the events at the Capitol were "tragic."

Despite this knowledge, the Criminal Referral issued by the House and Senate Members the very next day casts me, along with former Representative Kern and Congressmen Gosar and Biggs, as a traitor to my country and a leader of an insurrection. It falsely implies that I "aided and abetted sedition, treason" and other federal crimes. The Criminal Referral further falsely implies that former Representative Kern, Congressmen Gosar and Biggs, and I "encouraged, facilitated, participated and possibly helped plan" for a "mob of domestic terrorists" to "forcefully interfere with the certification of a free and fair national election" that, intent upon "executing a coup" "threatened elected officials and staff, terrorized media professionals, destroyed federal property, and ultimately caused the death of five people, including a Capitol Police officer who was bludgeoned to death with a fire extinguisher." The Criminal Referral goes on to state that I "actively encouraged the mob, both before and during the attack on the Capitol."

As previously noted, none of these allegations have any basis in fact. The false and inflammatory statements in, and implications of, the Criminal Referral are numerous, significant, and damaging.

a) The tragic death of Officer Brian Sicknick.

Of great importance to me as a retired law enforcement officer is the terrible and regrettable death of Officer Brian Sicknick of the Capital Police Force, over which I grieve. To pass on wild fabricated stories regarding the tragic death of this brave law enforcement officer in an effort to use it to their political advantage, as the House and Senate Members do in the Criminal Referral, is absolutely unforgivable. As CNN and other major news outlets have confirmed, there is no evidence whatsoever that the terrible and unfortunate death of Officer Sicknick was caused by him being "bludgeoned to death with a fire extinguisher" as the House and Senate Members allege. In fact, on January 7, at least five days prior to the House and Senate Members issuing the Criminal Referral, the Capitol Police issued a statement that made it clear that Officer Sicknick returned to his division office before he collapsed and was taken to the hospital, where he expired on January 7th. The Capitol Police statement is attached hereto for the Chairs' ease of reference as Exhibit C. Accordingly, a simple Google search prior to issuing the Criminal Referral would have made it clear that Officer Sicknick was not "bludgeoned to death with a fire extinguisher" during the Capitol riots on January 6.

To imply that I would be involved in any way, shape or form in any activity that might result in the death of the fellow law enforcement officer, as the House and Senate Members do, cuts me to the quick, deeply offends my honor, and maligns my years of

public service in law enforcement. It is false, and anyone who knows me, as the House and Senate Members do, knows that it is false.

b) The implication that I aided and abetted sedition, treason and other federal crimes.

My actions regarding the 2020 election, including my attendance and willingness to speak at the legally permitted gathering at the Capitol on January 6, 2021, have swelled from my core beliefs in love of country, rule of law, and fundamental fairness. There is no evidence whatsoever that I engaged in any activity that could be objectively viewed as sedition, treason or any federal crime. The implication that I have, or even possibly have, is entirely baseless. Prior to the issuance of the Criminal Referral, I made my public written statement that entirely dispelled any such notion in great detail. Regardless of this, the House and Senate Members cast me, together with former Representative Kern and Congressmen Gosar and Biggs, as having aided and abetted sedition, treason, or other federal crimes. These implications are false, and were known by their authors to be false when they published them.

c) The statement that I actively encouraged the mob.

The statement that at any time I actively encouraged the mob to attack the Capitol is patently false and was known to be false at the time it was published. My statement, issued well prior to the Criminal Referral, made clear that I did no such thing. There is no evidence of any nature whatsoever that I did, or have ever done, any such thing.

In fact, the Office of the U.S. Attorney for the District of Columbia has charged key persons involved in the January 6 riot with conspiring to storm the Capitol in advance.⁵ On January 12, 2021 – the date of the House and Senate Members’ letter to Acting Attorney General Rosen and FBI Director Wray – it was widely reported in the media that the FBI had been warned of a violent “war” at the Capitol in the days preceding the events of January 6th.⁶ In other words, the House and Senate Members knew or had reason to know that the attack on our Capitol had been planned by the leading participants beforehand, and that my presence at a peaceful rally on that day had no causal relationship with those terrible events.

3. *The Criminal Referral was Issued in Bad Faith for Political Purposes.*

Given the above, any objective person would conclude that the Criminal Referral was issued in bad faith for political purposes, and not out of a legitimate, well-founded belief that I had

⁵ See “Self-styled militia members planned on storm U.S. Capitol days in advance of Jan. 6 attack, court documents say,” Washington Post, January 19, 2021 https://www.washingtonpost.com/local/legal-issues/conspiracy-oath-keeper-arrest-capitol-riot/2021/01/19/fb84877a-5a4f-11eb-8bef-3877871c819d_story.html.

⁶ See, e.g., “Washington Post: FBI warned of violent ‘war’ at Capitol in internal report issued day before deadly riot,” CNN, January 12, 2021 <https://www.cnn.com/2021/01/12/politics/fbi-report-warning-capitol-riot/index.html>

engaged in any criminal activity of any nature. The fact that it was released to the press upon its issuance to the DOJ and FBI confirms this.

Discussion

1. The Ethics Committee is Empowered to Investigate and Rule Upon this Complaint.

A.R.S. § 38-519 D. provides that “[e]ach ethics committee shall investigate complaints and charges against members of its house and, if necessary, report the results of the investigation to its house with recommendations for further action.”

The Arizona Constitution, Article IV, Part 2, Section 11 provides that “Each house may punish its members for disorderly behavior, and may, with the concurrence of two-thirds of its members, expel any member.” *See also* House Rule 1 (same). As noted in the Investigative Report Regarding Representative Daniel Patterson, Submitted March 30, 2012, “[n]o Arizona case or other legal authority appears to significantly narrow the scope of this constitutional provision and there is no reason to interpret this provision other than in its broadest sense.” Patterson Report at p. 6 (citing *State ex rel. La Prade v. Cox*, 43 Ariz. 147, 178, 30 P.2d 825, 827 (1934)).

2. The House and Senate Members have violated federal law.

18 U.S.C. § 1001 states in pertinent part that:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully --

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

The facts as set forth above establish that the House and Senate Members knowingly and willfully made several “materially false, fictitious, or fraudulent statement or representation(s)” to the executive branch regarding an active criminal investigation regarding the riot at and breach of the Capitol on January 6, 2021. The facts set forth above establish that these materially false, fictitious and fraudulent statements were knowingly made in bad faith solely to turn the tragic events to political advantage, the basest of motives.

The facts as set forth above further establish that the House and Senate Members made a “false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement.” The Criminal Referral contained many false, fictitious and fraudulent statements, and was intentionally submitted to agencies of the executive branch engaged in an important active criminal investigation in such a manner as to appear to be an official act of the Arizona State Legislators when the authors of that document knew full well it was not.

Accordingly, a *prima facie* case exists that the House and Senate Members have engaged in conduct constituting a criminal act under Federal Law, and should be fully investigated by the House and Senate Ethics Committees for having done so, and sanctioned accordingly.

3. *The House and Senate Members’ criminal act merits discipline.*

The false and baseless reporting of criminal activity to the highest law enforcement official in the nation, and the dissemination of that false report in the media, surely rises to a level of “dishonesty and untruthfulness beyond tolerable political puffery. . . .” Patterson Report at p. 16. Worse, it makes a mockery of our criminal justice system and veers dangerously toward the tactics of a banana republic, where politicians use the threat of criminal sanctions in an endless war of attrition. This sort of conduct does a terrible disservice to our constituents, and it brings shame and dishonor onto the law-abiding Members of the House and Senate.

Conclusion

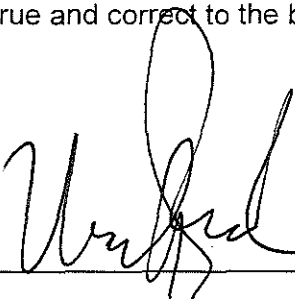
Based on the foregoing points and authorities, I respectfully ask that the Ethics Committees of the House and Senate conduct an investigation of and discipline the above-named House and Senate Members.

VERIFICATION

STATE OF ARIZONA)
) ss:
County of Maricopa)

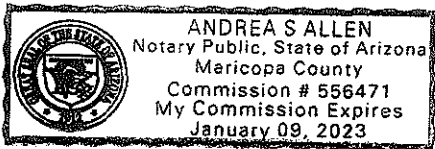
Mark Finchem, being duly sworn, deposes and says:

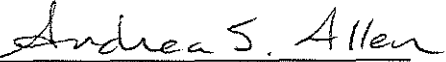
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Mark Finchem (Dist. 11)

SUBSCRIBED AND SWORN before me this 16th day February, 2021.





Notary Public

My Commission Expires:

January 9, 2023