INSURRECTION INCITERS TED CRUZ AND JOSH HAWLEY ONLY WANT THE VIOLENT JANUARY 6 CRIMINALS PROSECUTED

I just waded through the 159 pages of culture war questions — God, guns, and racism — that GOP Senators posed to Merrick Garland to justify their votes opposing the widely-respected moderate to be Attorney General. Along with a seemingly broad certainty among the Republican Senators that John Durham will finally find something 21 months into his investigation and a committed belief in outright lies told about Mike Flynn's prosecution, two of the Republicans — coup-sympathizers Ted Cruz and Josh Hawley — made it clear they think the only crime from January 6 that should be prosecuted is assault.

Cruz did so as part of a series of questions designed to both-sides domestic terrorism. While he may intend this question and a counterpart about *all protests* in Summer 2020 (whether conducted by leftists or not) to set up an attack on a DOJ appointee, Cruz created a false binary regarding crimes related to January 6, where people either simply "attended the Trump rally" or they "participate[d] in any act of violence."

> 66. Do you believe that an individual who attended the Trump rally on January 6, 2021 did not participate in any act of violence should be prohibited in holding a political position in the Department of Justice in a future administration, even if he or she did not personally engage in any unlawful conduct?
>
> **RESPONSE: Americans have a constitutional right to engage in**

> **lawful, peaceful protest. If confirmed, I would assess any candidate's fitness for a role in the Department on an individual basis and with the goal of hiring individuals who are capable of carrying out the Department's important mission with integrity.**

This ignores the people who committed a crime by peacefully entering the Capitol, as well as people who didn't enter the building but in some other way participated in efforts to prevent the certification of the vote.

Cruz also challenged the description of January 6 in terms of domestic terrorism.

> 69. At your hearing, you stated that your definition of "domestic terrorism" is "about the same" as the statutory definition.
>
> a. What is the statutory definition of "domestic terrorism"?
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> **RESPONSE: The term "domestic terrorism" is statutorily defined in 18 U.S.C. § 2331.**
>
> b. What is your definition of "domestic terrorism"?
>
> c. What is the difference between your definition and the statutory definition?
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> d. What relevance will your personal definition of "domestic terrorism" have to your duties, if confirmed, as Attorney General?
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> **RESPONSE: At the hearing, I described domestic terrorism as using violence or threats of violence in an attempt to disrupt democratic processes, noting that this definition is close to the statutory definition of the term in the criminal code codified at 18 U.S.C. § 2331. If confirmed, all of my actions as Attorney General would be guided by the**

> **law as written.**

Ultimately, Cruz seems to be objecting to treating the interruption of the certification of the vote as a particularly "heinous" crime, as Garland had labeled it during his confirmation hearing.

Meanwhile, Josh Hawley asked Garland how he intends to protect the First Amendment rights of Americans to "criticize their government and pursue political change" while investigating an insurrection that Hawley calls "rioting."

> 5. If you are confirmed as Attorney General, as you conduct your investigation of the rioting that took place at the Capitol grounds on January 6, 2021, what specific steps do you intend to take to ensure that Americans' First Amendment rights to criticize their government and pursue political change are not infringed?
>
> **RESPONSE: Americans have a fundamental right to engage in lawful, peaceful protest. If confirmed, I will vigorously defend this right. Acts of violence and other criminal acts are not protected under the Constitution.**

As Cruz did, Hawley's question treats the January 6 investigation as a binary, either violence or protected under the First Amendment.

This framework, in both cases, ignores that even those who didn't enter the Capitol, along with people who entered as part of a larger violent effort, are being charged both for obstructing the vote certification (the treatment of which as terrorism offended Cruz) and for conspiracy in the larger goal of obstructing the certification.

Mind you, both of these men should be safe. They have the right to raise questions about the vote, and the effect of the insurrection was to

interrupt whatever they were doing, even if it was, itself, delaying the certification. So their peaceful contributions to the events of January 6 should be fine.

Unless, of course, it can be shown that their efforts were coordinated with the larger effort, were an effort to buy time until the rioters could more effectively end the process of democracy that day.

In any case, both are very clearly working the soon-to-be ref here, hoping to limit the scope of the investigation to those who committed assault. As Hawley did the other day with his alarmed questions about normal legal process, we should expect Hawley to attempt to delegitimize any scrutiny into his far right allies from that day.