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'Political Theater': Ethics Experts Expect Cruz, Hawley Disbarment Petitions to Fall Flat

An organizer of a disbarment petition against Texas Sen. Ted Cruz and Missouri Sen. Josh Hawley said their words and actions were unprecedented and undermined democracy. But legal ethics experts don't expect the claims to go far.

By Angela Morris | January 13, 2021



Sen. Ted Cruz, left, and Sen. Josh Hawley, right. Photos: Diego M. Radzinski/ALM.

Experts say it's unlikely that a petition seeking disbarment (https://docs.google.com/forms/d/e/1FAIpQLSdb1i4l8w--1XfdJaDEiEgqGCIX5u0zsGqIbUh_M1HVD-ypYg/viewform) of Sens. Ted Cruz, R-Texas, and Josh Hawley, R-Missouri, for allegedly lying about election fraud and inciting the Jan. 6 insurrection would spur bar prosecutors to launch discipline cases.

But one of the seven Yale Law School students who organized the petition, which has garnered nearly 11,000 signatures in five days, said the senators' words and actions were unprecedented, and it's important that bar associations take the petition's claims seriously.

"We think there is plenty of information in the public record that demonstrates they have lied repeatedly to the American public," said Daniel Ki, a third-year student who helped organize the petition.

Yet attorneys who practice lawyer ethics law in Texas and Washington, D.C., say that the disbarment petition strikes them as "political theater," is lacking specifics and ignores a constitutional immunity provision, which would likely dissuade bar prosecutors from pursuing attorney discipline cases.

"In my almost three decades of working in the ethics arena, both as a volunteer with our bar, and for the last decade representing both lawyers and judges in ethics matters, I have not seen, nor would I expect, our ethics system of governance to be used in such a manner as the petition signers envision," said Gaines West, partner in West Webb Allbritton & Gentry in College Station. "It is obviously to me following a political trajectory to attempt to punish two United States senators for engaging in their free speech and political speech, about which the petition signers disagree."

But Ki said he was horrified by the Jan. 6 insurrection and felt that speaking out is not enough. He wanted accountability, and so did the massive numbers of lawyers and students who signed on, Ki said.

Read the disbarment petition
(https://docs.google.com/forms/d/e/1FAIpQLSdb1i4I8w-1XfdJaDEiEgqGCIX5u0zsGqIbUh_M1HVD-ypYg/viewform)

The group is researching attorney discipline rules in Texas, Missouri and the District of Columbia—where Cruz and Hawley hold law licenses—and consulting with lawyer ethics attorneys for help drafting formal grievances with more details about the senators' actions, Ki said.

"We want the arguments to be the strongest possible," he said.

The petition alleged that the senators violated an attorney disciplinary rule that prohibits attorneys from committing a crime that reflects negatively on the lawyer's honesty, trustworthiness or fitness to be a lawyer. The petition also claimed they broke a rule barring lawyers from conduct that is dishonest, fraudulent, deceitful or misrepresentative.

It said that Cruz and Hawley's statements about the election and their actions in objecting to Congress certifying electoral votes had incited the insurrection. This potentially broke federal and Washington, D.C., laws that prohibit incitement to riot, it said. The petition said they disrespected courts by ignoring that judges had rejected Trump's efforts to overturn the election, and they disrespected the Constitution by engaging in an insurrection or rebellion against the country.

"These actions prove Senators Hawley and Cruz fundamentally unfit for membership in the legal profession. Both have flagrantly violated some of the most elementary ethics rules governing the legal profession," said the petition.

George Clark, a lawyer ethics solo practitioner in Washington, D.C., said he wasn't a "big fan" of the senators' actions, but based on the petition, bar prosecutors probably won't go too far in a discipline case.

Clark said the U.S. Constitution's speech and debate clause, which protects lawmakers from "being questioned in any other place" for their speech and debate in Congress, would prohibit disciplinary authorities from building a case against Cruz and Hawley.

"Whether they said anything outside of their speech and debate clause immunity, I don't know," Clark said.

He added that the petition's other allegations of discipline rule violations are too vague and need more details about any dishonesty or fraud by Cruz or Hawley.

"If someone wants to lay that out more specifically, I might agree. But it would also still have that speech or debate clause problem," Clark said. "To say that they potentially committed crimes—well, that's not what the rule talks about. It talks about criminal acts."

Cruz, whose office didn't immediately respond to a call or email seeking comment, was licensed in Texas in 1997 and in the District of Columbia in 1998. He earned his law degree from Harvard Law School in 1995.

Hawley has been licensed in Missouri since 2009, and he earned his law degree from Yale Law School.

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