

Statement of Margot Juliette Cleveland

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Chairman Cruz, Ranking Member Whitehouse, and Members of the Subcommittee,

Thank you for the opportunity to testify concerning the grave constitutional violations inflicted as part of the Arctic Frost investigation.

After the 2020 election, an [anti-Trump](#) FBI agent named Tim Thibault attempted to use the justice department to destroy the President. Thibault's efforts [led](#) to the launch of Arctic Frost. Soon after, Merrick Garland [tapped](#) Jack Smith, a "hyper-aggressive prosecutor," known to "overstretch the meaning and intent of the law," to serve as Special Counsel.

Smith proved himself true to form, indicting Trump for allegedly violating a statute enacted in the aftermath of Enron, based in part on a theory of criminal liability the Supreme Court would later [hold](#) invalid. The Supreme Court would later [halt](#) Smith's efforts to prosecute Trump for actions that fell within the President's official duties.

Beyond being a partisan in his own right, Smith stacked his team with partisan Democrats, such as J.P. Cooney and Ray Hulser. Cooney and Hulser served as Smith's top deputies and in them, we see the clear double standard and political bias that permeated the DOJ and FBI.

Before joining Smith's team, Cooney [crafted](#) an outrageous sentencing memorandum that sought to send Trump advisor Roger Stone to prison for seven to nine years. Cooney's sentencing recommendations were so unhinged that then-Attorney General William Barr intervened. Cooney responded by [spreading](#) unfounded rumors that Barr and the Acting U.S. Attorney "were being improperly political," with media leaks furthering that narrative, eventually leading to an Inspector General's investigation: The IG [cleared](#) the Trump Administration but chastised Cooney.

Hulser, for his part, demonstrated his partisan proclivities when he headed up the Public Integrity Section and [refused](#) the FBI's request to open an investigation into the Clinton Foundation. But Hulser's partisan protection racket went further when he withheld a detailed six-page timeline of the Clinton Foundation investigation from the then-U.S. Attorney operating out of Little Rock, providing instead an abbreviated 2-page summary that "had omitted ALL references to interference from DOJ and FBI leadership."

In contrast, when the target was Trump, Hulser, along with Cooney, drafted a memorandum to justify subpoenaing the toll records of about a dozen members of Congress, notwithstanding internal email discussions acknowledging a [clear](#) Speech or Debate Clause problem. They then [hid](#) the details of these subpoenas by using the "prohibited access" functionality of Sentinel, which ghosts FBI records.

As this Committee well knows—because many of you were the victims—Smith approved the subpoenas and obtained the toll records of Senators Blackburn, Graham, Hagerty, Hawley, Lummis, Johnson, Kennedy, Scott, Sullivan, and Tuberville. Only Senator Cruz escaped this invasion into his

privacy and the violation of the Speech or Debate clause because his cell phone provider questioned the subpoena.

From this Subcommittee's January 7, hearing, you also know Smith's team sought a non-disclosure order from Chief Judge James Boasberg—apparently without informing him the subpoenas targeted members of Congress. I say “apparently” because, to date, Chairman Cruz's [request](#) that the non-disclosure application be unsealed has been ignored.

Here we see yet another double standard, as well as the political weaponization of the Courts: Judge Boasberg has still failed to order that Smith and his prosecutors show cause for why they should not be held in contempt for concealing that members of Congress were the subpoena targets. This fact should not be ignored—if you are to believe Smith and the Administrative Office of the Courts' testimony that Judge Boasberg did not know your identities, then it makes absolutely no sense that Boasberg would not enter a show cause order to hold Smith accountable for violating your rights, given Judge Boasberg's nearly year-long [crusade](#) to hold a member of the Trump Administration in contempt.

We know now that Smith's violations of the Speech or Debate Clause, rubber-stamped by Judge Boasberg, went further, and that the Arctic Frost team subpoenaed the toll records of the former Speaker Kevin McCarthy and House Judiciary Committee Chair Jim Jordan, under cover of non-disclosure orders. Add to these subpoenas the hundred or more served on individual Republicans, including Trump's attorneys, as well as Republican organizations such as Charlie Kirk's Turning Point USA—which sought not merely toll records but also bank records revealing their donor base.

The breadth of these constitutional intrusions is unprecedented, but to recap:

First, Smith was unconstitutionally named Special Counsel, in violation of the Appointments Clause. Second, the subpoenas of Congressional toll records violated the Speech or Debate Clause. Third, the vast and unjustified subpoenas to Republicans and related organizations infringed on their First Amendment associational rights. The targeting of Trump's attorneys also implicates his Sixth Amendment right to counsel, while the fishing expedition raises serious Fourth Amendment issues. And the use of “prohibited access” raises huge Due Process concerns because federal prosecutors cannot possibly provide defendants *Brady* material, if that material is invisible.

Smith and his team must be held accountable.

Thank you. I welcome your questions.