House Administration Committee Holds Hearing on Election Integrity

LIST OF PANEL MEMBERS AND WITNESSES

ZOE LOFGREN:
The Committee on House Administration will come to order. Good afternoon, everyone. I want to apologize for being 50 minutes late, but we have voted on the floor of the House. I want to note, we're holding this hearing both in-person and remotely and in compliance with the regulations for committee proceedings pursuant to House Resolution 8. Generally, we ask witnesses who are joining us remotely to keep their microphones muted when not speaking to limit background noise.

Witnesses will need to unmute when recognized for their five minutes or when answering a question. If you're joining remotely, please keep your camera on at all times even if you need to step away for a moment, and please do not leave the meeting or turn your camera off. Lastly, for those who are joining in person, we're holding this hearing in compliance with the guidance just issued by the office of the attending physician.

Pursuant to the attending physician's guidance, anyone who is joining us in the hearing room must continue to wear a mask whether they are fully vaccinated or not. In addition, attendees who are unvaccinated must also maintain social distance separation. When recognized, members and witnesses may remove their masks to speak, then should replace them when they finish speaking.

At this time, I ask unanimous consent that the chair be authorized to declare resources committee at any point. All members have five legislative days in which to revise and extend their remarks and have any written statements be made part of the record. And hearing no

objections, that is so ordered. You know, election officials have faced unprecedented threats and harassment after they were unfairly blamed for election results in the 2020 election that certain politicians and voters did not like and did not want to accept.

Last year, the threats for some election workers were so bad that they had to temporarily abandon their homes, spend their own money on increased home security, or even secure around-the-clock police surveillance. Election workers have had their young children and elderly parents threatened, for women and election workers of color in particular.

The threats have -- they've received have been particularly graphic and often include racist and gendered insults. Some election workers report that the harassment and threats are continuing to this day. A recent survey of election workers commissioned by the Brennan Center for Justice found that one in three election workers feel unsafe because of their job, and nearly one in five listed their lives being threatened as a job-related concern.

Yet, even in the face of these challenges and a global pandemic, election officials managed to run, "The most secure election in American history according to a Trump official with the highest turnout in more than 100 years." While the work of election officials have done is heroic, several of America's political leaders have failed them.

Former President Trump and his supporters have attempted to delegitimize the 2020 election results through the repeatedly debunked "Stop the Steal" movement fueled by the big lie -- the unfounded theory that the 2020 general election was swayed by widespread voter fraud. This disinformation campaign has villainized election officials, many of whom believe that these claims are the reason that election officials are under attack.

More than half of the election workers interviewed recently by the Brennan Center said that social media made their jobs more dangerous. Now, the threats to election officials have spread far beyond Trump and the Stop the Steal movement. In several states, party leaders have censured and replaced election officials who told the truth about the security and accuracy of the 2020 election.

Dark Money groups are taking advantage of and amplifying the spread of disinformation, weaponizing it to get legislation restricting access to the ballot introduced and passed in states. Legislators had introduced bills to impose criminal penalties on election officials who try to expand access to the ballot by taking steps like proactively sending mail-in ballot applications and would subject poll workers to criminal penalties for removing partisan election observers accused of voter intimidation.

Finally, state legislators have taken steps to divest local election officials of their power to run, count, and certify elections. Turning elections into a partisan process subject to political interference. Congress has not only the power but the duty to act to address this deluge of subversive bills. To start, Congress should pass H.R. 1, the For the People Act, which would combat is disinformation and prevent the kind of threat select -- election officials have received.

Additionally, H.R. 4064, the Preventing Election Subversion Act of 2021, would protect election officials by prohibiting the harassment and intimidation of election workers and restricting the removal of local election officials in elections for federal office without cause. It also protects voters from intimidation when voting in person by restricting who may challenge voters in federal elections, and when those challenges may occur and prohibit observers from getting within eight feet of voters.

We'll hear more about H.R. 4064 today. The work of election officials is fundamental to our democracy. They are dedicated public servants who administer free and fair elections. American democracy would not survive without them, and Congress needs to take steps to ensure they are protected. I look forward to hearing from our witnesses today, and I would now like to recognize our ranking member, Mr. Davis, for his opening statements.

RODNEY DAVIS:
Thank you, Madam Chair. Before I get started, I would like to point out that today's hearing was scheduled at the same time as the markup in the Financial Services Committee, which both of my colleagues, Mr. Steil and Mr. Loudermilk, serve on. Just so you know, Madam Chair, my staff has reminded your team on numerous occasions that with two-thirds of our

GOP committee members on that particular committee, one that actually sets their calendar a month in advance, I'd ask for some considerations in the future to take a look at the Financial Services Committee hearing schedule.

ZOE LOFGREN:
If I may address that, Mr. Davis. I know it is a concern, and we do want the full participation of every member. However, I think it would be more correct to say that they schedule their hearing during our hearing because our hearing was noticed before theirs. We noticed our hearing on July 21st at 11:46 a.m. They noticed their markup July 23rd at 9:00 in the morning, conflicting with our previously scheduled hearing.

But I do agree with you, we want all our members present, and thank you for --

RODNEY DAVIS:
Well, I appreciate that. Thank you for your consideration. Thank you for your team for looking at that. And I'll jump into a financial services area to let my displeasure be known with Chair Waters for that one. Bryan, you might have to relay that for me. This hearing on Election Subversion couldn't be more timely because there's a lot of election misinformation happening right now.

And it's coming from the other side of the aisle. All last Congress and this Congress, I've sat through hearing after hearing after hearing listening to my friends on the other side try to tell us there's voter suppression happening in Republican states across the country. Despite voter turnout breaking records in both the 2018 midterms and the 2020 general election across all races, my friends on the other side of the aisle continue to spread egregious misinformation about what is occurring today.

When Senator Joe Manchin announced he would vote against H.R. 1, the Senate, and S. 1 in an op-ed, one of our colleagues from New York said his op-ed should have been titled, "Why I'll vote to preserve Jim Crow." Another member from New York on CNN called it a "voter suppression epidemic." President Biden has called these laws "un-American, sick, Jim Crow

in the 21st Century, and the most significant test of our democracy since the Civil War." Additionally, the president received "four Pinocchios" from even the most liberal fact-checkers at the Washington Post for false claims about Georgia's laws.

Vice President Harris recently suggested that voter integrity laws are concerning because as my colleague Mr. Steil reminded us at the last hearing, "People in rural areas do not have a Kinkos nearby." I'm from a rural part of the country, and I'm here to tell you that we are perfectly capable and willing, to follow the rules to protect the integrity of our vote.

Democrat legislators from Texas recently fled their home state to Washington, D.C. to fight voter suppression. But when they were pressed about how these laws would actually suppress votes, they couldn't explain. That's because when you take the time to read the legislation and analyze these state laws, you'll find that the many states, Democrats are trying to claim voter suppression in the act -- in the state that they're actually trying to claim voter suppression.

They have less restrictive voting laws than many Democratic-controlled states like New York, Delaware. The states that are passing these laws are doing so in part to clean up temporary, pandemic rules that were made during COVID but are not needed outside of a pandemic. Rules like 24-hour drive-through voting and others.

The Supreme Court recently ruled in favor of states having the power to implement voting laws to protect the integrity of their elections, making it easy to vote, but hard to cheat. In the case against the Arizona, Justice Alito's opinion stated, "One strong and entirely legitimate state interest is the prevention of fraud.

Fraud can affect the outcome of a close election, and fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight. Fraud can also undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome." Justice Alito also noted in a recent ruling that merely implementing reasonable voting regulations, such as rules to increase ballot integrity, does not equal discrimination, which is what my Democrat colleagues continue to misconstrue.

Unfortunately, this election subversion is all part of their plan and continued push to nationalize our elections. Creating the false narrative that states are passing racist laws to incorrectly justify the need for H.R. 1 and S. 1 and H.R. 4. This narrative is not only false, but it's offensive. Our country has come a long way since the passage of the Voting Rights Act of 1965, and I think that's important to recognize and remember the history behind the need for that legislation and celebrate the progress that we've made, all while recognizing the ongoing importance of Section 2 to ensure that we never return to 1965. And there's no one better to talk about the horrendous voter suppression laws that occurred during the Jim Crow era compared to where we are now than our colleague, Congressman Burgess Owens.

I'm honored to have Burgess with us today, and it's not just because he helped my team, the Oakland Raiders, win a Superbowl in January of 1981, but Burgess grew up in the Jim Crow South in the 1960s, and during his testimony before the Senate hearing on S1, he said, "Jim Crow laws like poll taxes, property tests, literacy tests, and violence and intimidation at the polls, made it nearly impossible for Black Americans to vote." He went on to say, "It is disgusting and offensive to compare the actual voter suppression and violence at the area that we grew up in with a state law that only asks people to show their ID." I look forward to hearing from Burgess, and I'll remind my colleague, Mr. Owens, I'm not giving your Super Bowl ring back.

I took it as part of orientation. Thank you for that, and I yield back.

ZOE LOFGREN:
The gentleman yields back. We are privileged to have three members of Congress with great knowledge about this subject before us, and I'd like to introduce each of them. First, Congressman Sarbanes has represented Maryland's 3rd Congressional District and the U.S. Congress since 2007. He currently serves on the House Committee on Energy and Commerce and the House Subcommittee on Environment and Climate Change.

He serves as vice chair of the House Subcommittee on Health. Congressman Sarbanes also serves on the House Oversight and Reform Committee and its Subcommittee on

Government Operations. He chairs the Democracy Reform Task Force, which is -- which assembled H.R. 1, the For the People Act to reform and strengthen our democracy.

Born and raised in Baltimore, Congressman Sarbanes has experience working in the public, private, and nonprofit sectors. He's the lead sponsor of H.R. 4064, the Preventing Election Subversion Act of 2021. Congressman Owens represents Utah's 4th Congressional District. Born in the segregated South, as the ranking member mentioned, he saw people of all backgrounds come together to work tirelessly against adversity.

A former NFL player, he was the 13th pick in the first round of the 1973 NFL draft, and joined the New York Jets later, playing safety for 10 seasons in the NFL for both the New York Jets and the Oakland Raiders. Winning the Super Bowl with the 1980 Raiders team. After retiring from the NFL, Burgess worked in the corporate sales world and eventually moved the Owens family to Utah.

Before being elected to Congress, he started Second Chance 4 Youth. A nonprofit, dedicated to helping troubled and incarcerated youth. He now serves as a member of the House Education and Labor Committee and with me and Mr. Raskin on the House Judiciary Committee. He believes in dreaming big and follows the four guiding principles of his faith: faith, family, free markets, and education.

And finally, but certainly not least, Congresswoman Williams, who represents Georgia's 5th Congressional District. She's been a fierce ag advocate for social justice, women, and families throughout her political and professional career. As a member of Congress, Congresswoman Williams continues to uplift the legacy of her mentor and predecessor, Congressman John Lewis, by fighting to prevent voter suppression and expand free and fair access to the ballot box.

Congresswoman Williams was elected as a freshman class president for the 117th Congress. As president, she organizes and advances the interests of her freshman Democratic colleagues to fill their oath to work for the people. She currently sits on the Financial Services Committee where she's vice chair of the Subcommittee on Investigations and Oversight and the Transportation and Infrastructure Committee.

The Congresswoman is also a member of the Select Committee on the Modernization of Congress, and Mr. Davis and I served with her there. She has membership in several caucuses, including the Congressional Black Caucus, the Democratic Women's Caucus, the Congressional Progressive Caucus, the Voting Rights Caucus, the LGBTQ+ Equality Caucus, the HBCU Caucus.

And she is the sponsor of H.R. 4064. So now we will hear from our witnesses. As you know, we ask you to summarize your statement in about five minutes, and the full statement will be made part of the record. Mr. Sarbanes, you are recognized.

JOHN SARBANES:
Thank you very much, Chairperson Lofgren and Ranking Member Davis, for inviting us to testify today and for the committee's continued attention to the most pressing matters that are facing Congress and our democracy. Our Republic is built on the fundamental principle of self-government. The radical proposition that the levers of power in our society can only be exercised with the consent of the governed.

We know that throughout our nation's history, we have struggled to deliver fully on this principle -- to ensure democratic rights for all Americans. Generations of our fellow citizens have been systematically denied the franchise. In fact, people of color, women, the disabled, and native communities have been locked out of the ballot box for most of our nation's history.

And while we have made progress in securing the right to vote in America, that progress is incomplete and increasingly under attack. Across the country, restrictive state laws advanced in almost an entirely partisan fashion by Republican legislators and fueled by dark special interest money -- are seeking to limit the franchise under the guise of rooting out fraud and promoting election integrity even though experts agree that this past November's election, as you said Chairman Lofgren, was one of the most secure in American history.

These laws impose new restrictions on in-person voting, narrow access to new modalities of voting such as vote by mail and undermine the basic nonpartisan administration of elections

themselves. I appreciate your focus in today's hearing on this last threat, commonly referred to as election subversion. Let's be clear, election subversion is just voter suppression dressed up in new clothes.

When a person's right to have their vote counted is ignored, abridged, or subverted it strips them of their fundamental democratic rights. It suppresses their voice in their democracy. As Congress and this Committee work to pass critical democracy reforms, we must recognize that the threat of election subversion and the threat of voter suppression are two sides of the same coin.

As this Committee knows well, the 117th Congress has been laser-focused on building a stronger and more resilient democracy. This March 3rd, the House of Representatives passed the For the People Act. A bill our caucus labored long and hard to assemble, with the help of Chairperson Lofgren and many of my colleagues on this Committee and in this Congress.

At the time of House passage, we were only beginning to witness the new state of election subversion laws emerge. In fact, Georgia's SB 202 election law, first introduced on February 17th, contained none of the later subversion languages that would appear in a flurry of last-minute changes in mid-March before the law's passage on March 25th. Before the ink on SB 202 was even dry, we set to work to understand the threats posed in Georgia and in other states across the country and to explore potential policy responses at the federal level.

Recently, I joined with Chairperson Lofgren and our colleagues, Representatives Nikema Williams, Colin Allred, and Mondaire Jones, in introducing the Preventing Election Subversion Act. Grounded in the elections clause of the Constitution, which gives Congress the authority to regulate the time, place, and manner of federal elections.

This legislation would adopt a minimum substantive four-cause standard that must be met before suspending a local or county election official while providing a federal cause of action to enforce the standard. The proposal would also allow a local election official who has the responsibility for federal elections, and who has been subjected to removal proceedings by a state board of elections to bring that proceeding into federal court for redress.

The legislation makes it a federal crime for any person, whether acting under the color of law or otherwise, to intimidate, threaten, coerce, or harass an election worker or to attempt such intimidation. Finally, the bill would establish a minimum buffer zone to limit how close a partisan poll observer may come within a vote or ballot at a polling location during an early vote period or on Election Day. We believe these measures represent an important contribution to our deliberations here in the House and with our Senate colleagues about the key democracy reforms in the For the People Act. By no means though, do they represent the full universe of potential federal responses to the threat of election subversion.

We continue to workshop additional policy approaches as we track new and more sinister subversion proposals at the state level that threaten to intentionally disrupt the nonpartisan administration of our elections. I thank the committee for your interest and look forward to offering any assistance and perspective I can in this critical effort to safeguard our democracy and preserve, protect, and defend the vote and the voice of every American.

Thank you.

ZOE LOFGREN:
Thank you, Mr. Sarbanes. A vote has been called on the floor. So I think we have time to hear from Mr. Owens and from Mr. Williams, pardon me, and then we will recess and vote in return for the second panel. Mr. Owens, you are now recognized for five minutes.

BURGESS OWENS:
OK. Thank you, Chairperson Lofgren and Ranking Member Davis and members of the committee, for this invitation to join you today at this hearing. In April, I invited -- I was invited to testify before the Senate Judiciary Committee's hearing entitled, "Jim Crow 2021: The Latest Assault on the Right to Vote." The testimony I'll share with you this afternoon is similar to that I shared with that committee in April.

My main point is the same, whether you classify states' new election laws as Jim Crow 2021 or election subversion, your argument is flawed and offensive. As I'll explain, I experienced

actual Jim Crow as I was a youth. The right to vote for many members of my community and family was actually subverted. State requirements that require voter's ID that actually expands voter's access, that's not even close to the evil subversive practice of the 1960 Jim Crow experience.

My American story begins with my great, great grandfather, Silas Burgess, who arrived in America as a child shackled in the belly of a slave ship. Silas was sold on an auction block with his mother in Charleston, South Carolina, to the Burgess Plantation. He escaped through the Underground Railroad and later became a successful entrepreneur, purchasing a 102-acre of farmland paid off in two years.

My grandfather, Oscar Kirby, served our country in World War I, and was a respected and successful farmer raising 12 children all of whom graduated from college. My father, Clarence Burgess Owens, Sr., was stationed in the Philippines at the end of World War II. When he returned to Texas, actual Jim Crow laws denied him a post-graduate education.

Raised in a generation that used this as motivation, he received his Ph.D. in agronomy at Ohio State University and had a successful career as a professor, researcher, and entrepreneur. I grew up in the Deep South in Tallahassee, Florida in the 1960s, during the days of the KKK, Jim Crow, and segregation, an era of actual institutional racism.

My first experience with White Americans was until I was eight -- I was 16 years old. At 18 years old, I was the third Black athlete to receive a scholarship to play football at the University of Miami. Now, I proudly represent Utah's 4th Congressional District in the United States Congress. I sit before you today as someone who has lived the American dream, as have millions of Americans of all races from every background.

This is due to our country's mission statement that "All men and women are created equal." A mission statement that every American should have equal opportunities for life, liberty, and the pursuit of happiness. As someone who actually experienced Jim Crow laws, I'd like to set the record straight on the myths regarding the recently passed Georgia state law and those other laws across our country now called "election subversion," which is absolutely outrageous.

Here are a few examples of my life of what Jim Crow laws actually looked like. Subversion, what it really looks like. At the age of 12, my father allowed me to participate in a demonstration with Florida A and M college students in front of the segregated Florida State Theatre, where because of our color, we could not enter.

I was the youngest participant there, and only 50 years later did I learn that my father had parked across the street to watch and make sure I was safe. In the seventh grade, my school never received new books. Instead, we received used old books from the all-White school across town. At service stations, there were White-men-only restrooms, White-women-only restrooms, and one filthy restroom in the back of the station for Black Americans designated as Colored.

In addition, subversive laws like poll taxes, property tests, literacy tests, and violence and intimidation at the polls, made it nearly impossible for Black Americans to vote. The section of the state -- law seeking voter integrity has brought so much outrage from the left that simply requires any person, regardless of race, color, applying for an absentee ballot to include evidence of a government issued ID on an application.

If a voter does not have a driver's license or ID card, that voter can use a current utility bill, bank statement, government check, paycheck, or other government documents that shows the name and address of this voter. If a voter somehow can't produce one of the above forms of ID, that voter may still cast a provisional ballot.

By the way, 97 percent of Georgia voters who have subversion with Jim Crow law, taxes were charged include Black Americans already have a government-issued ID. What I find offensive is the narrative from the left that Black people are not smart enough, not educated enough, not desirous enough for independence to do what every other culture and race does in this country -- get an ID. True racism is this: the soft bigotry of low expectations.

President Biden said of the Georgia law "This is Jim Crow on steroids." With all due respect, Mr. President, you know better. It is disgusting and offensive to compare the actual voter suppression and violence of the era that we grew up in with any state law that only asks

people to show their ID. This is the type of fearmongering I expected in the 1960s, not today.

It's time for this subversive view of soft bigotry of low expectations regarding Black Americans to end. We like the rest of Americans to expect one thing, called voting integrity. Our vote should count is the easy to vote arbitrary, and we ask no more, no less than every other American. I thank you and I appreciate the opportunity to share --

ZOE LOFGREN:
The gentleman's time has expired. Thank you for your testimony. And finally, Congresswoman Williams, you are recognized for about five minutes.

NIKEMA WILLIAMS:
Thank you, Chair Lofgren. In the 2020 election, a record-shattering 4.93 million Georgians made their voices heard when they cast their votes. Six weeks later, Georgians did it again, showing up in record numbers for the Senate runoff election that changed the direction of America forever. Taken together, these two elections represented one of the greatest moments for democracy in the history of Georgia and America.

But then, Georgia's 2020 election results were placed under an unwarranted microscope by so-called "election integrity watchdogs" because of what was at stake. Three recounts and multiple lawsuits later, the results are clear. Democrats and Republicans alike agree: our election was free from fraud. Our elections have been free and fair because of hardworking, nonpartisan elections officials who are used to working behind the scenes to ensure everyone's sacred vote gets counted.

Georgia's Jim Crow 2.0 voter suppression law, SB 202, which was signed into law by Governor Brian Kemp, breaks down crucial safeguards for independent elections administrators. Most frighteningly, under SB 202, the Georgia State Election Board has the power to replace county election board members that it decides are underperforming,

giving partisan election officials far too much control over the fair administration of elections.

Partisan pressure and subversion tactics have no place in our elections, plain and simple. Unfortunately, election subversion is not some far-off hypothetical. Republicans in Georgia are actively working to replace the elections board of Fulton County, Georgia's largest county, my home county, which includes the city of Atlanta just this week.

This Monday, Secretary of State Brad Raffensperger said, "I've repeatedly called the State Election board to use its authority under SB 202 to replace Fulton County's elections leadership." This is despite the Secretary of State previously certifying Georgia's 2020 election results and fighting against accusations of election fraud in the state.

Additionally, on July 15, House Speaker David Ralston sent a letter to Director Barron requesting that he ask for the Georgia Bureau of Investigation to conduct a forensic investigation into the Fulton County Board of Elections' procedures. These are only two examples of Georgia Republicans fueling election subversion as they played to their political base.

But Governor Kemp, Secretary Raffensperger, House Speaker Ralston, and their colleagues are scared to say the quiet part out loud. Fulton County is full of voters who look like me. We might not be counting jellybeans in a jar, but election subversion seeks the same results, suppressing the votes of people of color and those most marginalized in our communities.

Beyond undermining our democracy, targeting dedicated election officials is putting lives at risk. Director Barron and his staff have received death threats, Black staff members of the Fulton County Board of Elections have been called every racial slur that you can imagine, one poll worker having been harassed by the former president is now in hiding and her life has been turned upside down.

This needs to change, and ending election subversion should not be a partisan issue. Secretary Raffensperger's own employee, Gabriel Sterling, took a stand in December

against members of his own Republican party who are peddling conspiracy theories and undermining our democracy. "Someone's going to get hurt.

Someone's going to get shot. Someone's going to get killed," sterling warned. It's not right. I thank the House Committee on administration for holding this hearing because our democracy is at stake. It's not just Georgia where this is happening now. Legislation has been introduced this year in nearly every state to limit access to the ballot box.

We don't have time to wait and see what might happen. In Georgia, we've conducted one election with the undemocratic SB 202 as the law of the land and our next election will be here before we know it. The time to act is now. To anyone who wonders what they would have done during the civil rights movement, now is your time to find out.

You're either on the side of democracy or you aren't. I look forward to continuing to work with the -- with Representative Sarbanes, my cochairs of the Congressional Voting Rights Caucus, members of this committee, and all of those ready to defend our democracy and prevent election subversion. Thank you, Madam Chair, and I yield back the balance of my time.

ZOE LOFGREN:
The gentlelady yields back her time.

G. K. BUTTERFIELD:
Madam Chair, I ask permission to assert a point of order, if I may.

ZOE LOFGREN:
What is the gentleman's point of order?

G. K. BUTTERFIELD:
May I ask the question, did Congressman Burgess Owens stick around for the testimony of Ms. Williams, or did he withdraw from the panel?

ZOE LOFGREN:
Well, his camera is not on, so he may have left.

G. K. BUTTERFIELD:
I would like to have an answer to that question. If he withdrew from the panel, that's a violation of the committee rules, and I would move to strike his testimony.

ZOE LOFGREN:
Well, I would ask the gentleman to suspend as a courtesy to the chair, so we can discuss this further. We can bring this up later. But I think if he were here present and needed to go, we would accommodate that as we do to members.

G. K. BUTTERFIELD:
Thank you.

ZOE LOFGREN:
So, let's discuss this further, and we'll -- if necessary, we'll take it up after the recess and we're now in recess for votes, we'll come back as soon as the votes are over. [Audio gap] go to our witnesses. When we left, Mr. Butterfield had raised a point of order, which we had postponed for further discussion until after the vote.

So, Mr. Butterfield, you are recognized.

G. K. BUTTERFIELD:
Thank you very much, Madam Chair. Before the break, Madam Chairman, I raised a point of order because I have a suspicion that Congressman Burgess Owens had withdrawn from the panel. I do not know that to be a fact, and so I need to establish the facts before I reach my conclusions. May I ask the ranking member if Congressman Owens was present when

Ms. Williams testified and able to hear and see her testimony as if he would have if he were in the committee room?

RODNEY DAVIS:
I don't know the answer to that. I know that Mr. Owens was going to vote like he would if he was in person because of remote hearings and the proceedings that are so new. I think these are issues that maybe we can address in the future. I prefer that his words not be stricken because remote committee proceeding regulations only require that participating members keep their cameras on, not witnesses.

If we continue down this path, we will argue that, you know, we're going to argue that he was not participating in the hearing. So, I think it's semantics on issues and maybe we can get some clarification in the future.

G. K. BUTTERFIELD:
I think it's more than semantics, Mr. Davis. I mean, I sat here for five minutes and listened to a Black history lesson from the gentleman. I'm the oldest one in this room, if I'm not mistaken, and I lived in the South, I live in the South, my parents and grandparents grew up in the south. I lived and breathed and suffered the Jim Crow South, and I did not need the gentleman to come here today and give me a five-minute lecture on voter suppression for African Americans in the South.

What I needed for him to testify today about was election subversion in 2020, which was what the gentlelady from Georgia was testifying about earlier. And I only wish he could have heard her testimony because it was very powerful. Madam Chair, I will be inclined to withdraw my objection, but I would ask the staff if they would forward a copy of Congresswoman Williams' testimony to the gentleman for his consideration.

RODNEY DAVIS:
Will the gentleman yield?

G. K. BUTTERFIELD:
Yes.

RODNEY DAVIS:
I'll forward a copy --

G. K. BUTTERFIELD:
Thank you.

RODNEY DAVIS:
Of Ms. Williams' testimony. I believe our team has provided written testimony for this entire hearing to Mr. Owens and his team. I'd be happy to relay that. I'm honored -- I'm glad that you've decided to withdraw. I'm glad that we have another perspective of somebody that grew up in the Jim Crow South. Not like I did not, I was -- no, I was in Iowa and Illinois, and I was not old enough.

But to hear the perspectives from Mr. Owens and you and others, I think it's important. So, thank you for your withdrawal, and appreciate your friendship and consideration, and we will get that testimony to Mr. Owens and his team if we already have not.

G. K. BUTTERFIELD:
I will withdraw it. Thank you.

ZOE LOFGREN:
The gentleman withdraws. And now, we will go -- thanks to all members. We will go to our second panel. I'd like to introduce and reiterate. I think you heard at the beginning, for our remote witnesses, the rules require that you keep your cameras on at all times. If you're not speaking, we ask that your microphone be turned off or be muted to prevent background noise and you can unmute it when it is your turn to speak or to answer questions.

Each of you will be -- well, will be recognized for about five minutes and your full statement will be made part of the record. So, let me introduce our panel of witnesses. Gowri Ramachandran serves as senior counsel in the Brennan Center's Democracy Program, whose work focuses on election security, election administration, and combating election disinformation.

She is currently on leave as a professor of law at Southwestern Law School in Los Angeles, California where she has been granted tenure. She's taught courses in constitutional law, employment discrimination, critical race theory, and the 9th Circuit Appellate Litigation Clinic. Her work is published in the Election Law Journal, the North Carolina Law Review, and the Yale Law Journal Online, among others.

She received her undergraduate degree in mathematics from Yale College and her master's degree in statistics from Harvard University. While in law school, she served as editor-in-chief of the Yale Law Journal, and after graduating from law school in 2003, she served as a law clerk to Judge Sidney R. Thomas of the U.S. Court of Appeals for the 9th Circuit in Billings, Montana.

Adrian Fontes served as county recorder for Maricopa County, Arizona, the second-largest voting jurisdiction in the United States, representing over 2.5 million active voters and approximately two-thirds of Arizona's population from 2017 to 2020. This position was the most recent in a long list of his service to his community and country.

From 1992 to 1996, he served on active duty in the U.S. Marine Corps, and we thank you for that service, where he earned a nomination for meritorious commission. After being honorably discharged, he received his bachelor's degree from the Arizona State University before continuing on to the Sturm College of Law at the University of Denver.

After law school, he served as a prosecutor with the Denver district attorney, he worked in the Maricopa County Attorney's Office and then headed the foreign prosecution unit at the Arizona Attorney General's Office. In 2016, he was elected to the office of the Maricopa County Recorder where he served a four-year term implementing national award-winning systems and procedures to improve accessibility and security for Maricopa County's

elections, even amidst the immense logistical and personnel safety challenges posed on election administration by the COVID-19 pandemic.

He remains a resident of Maricopa County where he's raising his three daughters and practicing law. We have a Detroit City Clerk, Janice Winfrey, who is a native Detroiter. She's dedicated the last 13 years of her life to tirelessly and carefully servicing her community. When sworn into office in 2005, Clerk Winfrey accepted the responsibility to govern three charter-mandated roles: city clerk, official record keeper, and chief elections officer.

In addition to her day-to-day duties as clerk and chief elections officer, Clerk Winfrey has also found time to improve her skills and advance her profession by completing courses and certifications in the Election Center Training Program; the International Association of Clerks, Recorders, Election Officials, and Treasurers; and the Michigan Municipal League.

She's also a member of the National League of Cities. Clerk Winfrey is a graduate of Cass Technical High School, where she has been recognized as a distinguished alum in the Eastern Michigan University. And finally, we have Ken Cuccinelli, who is the chairman of the Election Transparency Initiative. During the Trump administration, he served as the acting director of the U.S. Citizenship and Immigration Services and then as acting deputy secretary for the Department of Homeland Security.

During his tenure, Mr. Cuccinelli was a leading spokesman for the Trump administration on immigration, election security, and homeland security issues and was supported by then-President Trump to serve as an original member of the coronavirus task force upon the emergence of the pandemic. In addition to practicing law for over 25 years, Mr. Cuccinelli served in state government in the Virginia Senate from 2002 to 2010 and as Virginia's attorney general from 2010 to 2014. Mr. Cuccinelli earned a mechanical engineering degree from the University of Virginia, a law degree from the Antonin Scalia Law School at George Mason University, and a master's in International Transactions from George Mason University.

We will recognize, as I say, each of you for five minutes. For those of you who are testifying remotely, there is a little clock on your screen that will tell you when the time is clicking

down. For our witnesses who are present in the chamber, we have a set of lights. And when it turns yellow, it means there's a minute left.

And when it turns red, it means your time is up, and we sure -- surely would ask you to summarize. And we hope to get through this panel entirely and our questions before the next round of votes. So, let me turn first to Ms. Ramachandran. You are now recognized for five minutes.

GOWRI RAMACHANDRAN:
Thank you, Chair Lofgren, Ranking Member Davis, and members of the committee. Thank you for the opportunity to discuss this critical issue today. This [Audio gap] the Brennan Center for Justice commissioned a national survey of election officials which Chair Lofgren has mentioned. To repeat, we found that roughly one in three election officials feel unsafe because of their job, and approximately one in six listed threats to their lives as a job-related concern.

In order for democracy to function, we cannot accept this situation. Election officials across the country, regardless of political affiliation, risk their lives in a pandemic to help us vote safely in 2020 with some members of reference to the highest turnout since 1900 when women, Asian Americans, and Native Americans were not even permitted to vote.

And how are they being repaid? With violent threats and intimidation, political interference, and disinformation campaigns that paint them as cheaters instead of the heroes that they are. As I indicated in my written testimony, I hope to make three points today. First, crime against election officials and associated election disinformation are ongoing problems.

They are threatening the security of our elections. Congress should provide support for the protection of election officials and workers. Second, the Election Administration Commission and the Cybersecurity Infrastructure Security Agency have worked to help with combating election disinformation and malinformation or doxxing.

This includes their work to promote auditable paper ballots. This work should continue with support from Congress. Third, Congress should protect election officials from partisan

interference. This spring, we partnered with the Bipartisan Policy Center and the Ash Center for Democratic Governance and Innovation at Harvard Kennedy School.

We conducted interviews and conversations with dozens of election officials and [Audio gap] experts. This culminated in the report we published with the Bipartisan Policy Center that I've included with my written testimony. What we learned from these discussions was heartbreaking. Local election officials feel unsafe because they are being harassed and threatened in the wake of the 2020 election.

Several of them reported that their family members, including elderly parents and young children, were harassed or threatened with violence last year. Multiple election officials told us that the persistent harassment forced them and their families to flee their homes and seek mental health treatment for their children.

And when they reached out to law enforcement for help, the response was often insufficient to ensure the official and their family felt safe. In addition to the appalling harassment and threats, many experienced interferences by partisan political leaders. Former President Trump famously placed a phone call to Georgia Secretary of State Brad Raffensperger in which he pressured Raffensperger to "find 11,780 votes." But we also found that less sensational forms of this disturbing political interference abound.

Many state and local party leaders have censured officials who simply told the truth and refused to undermine the legitimacy of [Audio gap]. A law was passed in Georgia that replaces the Secretary of State as the chair of the State Elections Board with a legislative appointee. Other states have introduced bills that would criminalize acts like mail -- sending mail ballot applications to voters.

Virtually, every election official we spoke with indicated that this behavior is partially driven by mis- and disinformation about the election. Lies about the election, in particular, the lie that it was stolen, served to instigate and legitimate the attacks on election officials. One official compared the approach to combat online disinformation using simple information to screaming into a [Audio gap]. Ongoing partisan reviews being conducted in places like Maricopa County is an example happening in real-time of false names of election

discrepancies being amplified by prominent voices and the disinformation campaigns they feel continue to harm election officials.

When Secretary of State Katie Hobbs in Arizona spoke out against incompetent view, [Audio gap] and the governor required -- was required to provide her with a personal security detail. Our report identifies a number of solutions to these threats including three ways Congress can help. First, the Department of Justice recently announced a task force to address the rise in threats and intimidation.

Legislators should consider funding for safety training, including how to protect one's personal information and the physical security of election offices. Second, the underlying problem of disinformation is daunting, and the private sector will likely need to play a larger role. Social media companies should choose to promote truthful information over conspiracy theories.

And hearings like this also play a role. Finally, Congress [Audio gap] legislation that protects election officials from partisan rules. Thank you for the opportunity to testify today. I look forward to answering your questions.

ZOE LOFGREN:
Thank you very much. We'll turn now to you, Mr. Fontes. You're recognized for five minutes of testimony.

ADRIAN FONTES:
Thank you, Chair Lofgren, Ranking Member Davis, and members of the committee. Thank you for the opportunity to testify today [Inaudible]

ZOE LOFGREN:
I think your microphone is not on.

ADRIAN FONTES:

Thank you for the opportunity to testify today about the threats against state and local election officials and our democracy. In 2018, one of my three daughters picked up a package on our front porch and brought it into the kitchen. Because of a recent threat against me, the bomb squad was called to conduct an investigation in my home.

Two years later in the aftermath of Election Day 2020, armed protesters gathered outside of the Maricopa County Election Center demanding that we count all of the ballots. Ironically, that's exactly what we were doing. But the misinformation and disinformation that had built to a fever pitch motivated some of these people to corner one of my staff members outside the door, forcing what was effectively a rescue by law enforcement officers and other staff members.

This is not a story about some deteriorating third-world democracy on the verge of authoritarianism. This is America today. And unless everyone does their part and the truth prevails, we will face a level of uncertainty in this nation never before seen. My name is Adrian Fontes. I'm a graduate summa cum laude of the Arizona State University and the Sturm College of Law, you heard my bio, so I'll cut it a little short, except to say to any members of the United States Marine Corps or alums thereof, Semper Fidelis.

But I don't come here as any one of those sorts of titles, I come to you as a county election official. I come to you representing the concerns, the stresses, the worries of tens of thousands of local county and municipal officials, appointed and elected temporary and permanent employees, volunteers, poll workers, clerks, election judges, marshals.

We have dozens of titles, but most importantly, we are all Americans. I greatly appreciate that you have invited our voices into this conversation, and we encourage you to continue to listen to the voices of the folks who are most directly responsible for making our democracy work in service of this republic.

We need your help. We need your protection. There's one more group I have yet to mention who will also get greater protection under the proposed legislation. And they're the single most important group of people in our democracy, voters. And they deserve your protection from intimidation and harassment as well.

My written testimony describes the following in much more detail than I can get into. Many of the security and integrity measures that we put in place in Maricopa County, which resulted in an honest, fair, and safe election in 2020. The subversive efforts of the former administration and anti-democratic factions, which further perpetuate the mythologies and the widespread -- of widespread voter fraud and how that's leaving election administrators as potential victims to threats of violence, harassment, and possibly, physical harm.

The harassment and threats of violence against election workers in Maricopa County, I and my team experienced during my term in office and beyond, are also there. And we speak a little bit in my written testimony about the coordination that we entered into with federal, state, and local law enforcement agents and other safety agencies.

But before I conclude, I must express my gratitude here on the record to those people that I'm asking you to protect. I won't name them because they know who they are and sadly mentioning their names could actually result in additional threats against them. Their professional staff at the Maricopa County Recorder's Office and Election Department did the nearly impossible in just four years.

We added 500,000 more voters to our voter rolls. And between 2016 and 2020, we saw 600,000 more ballots cast in one county alone even during a global pandemic. That is access. This is work the whole team should be very proud of. And there's no level of lies, false conspiracies, fraudsters, or fools who will take away from these amazing people the work that we all accomplished.

The Maricopa team, like teams around the nation, should stand proud for the work they did in 2020. It was a successful election, and nobody will ever take that away from the tens of thousands of Americans who did that work. I strongly support legislative efforts to protect election officials in Arizona and across the country from harassment, intimidation, threats, and political interference, so that they can safely perform their duties to serve voters and protect election integrity.

I deeply appreciate this committee's willingness to call attention to the ongoing national threat against state and local election officials and our democracy. I thank you, Chairwoman

Lofgren, for your time, and I look forward to all of your questions.

ZOE LOFGREN:
Thank you very much for that testimony. Clerk Winfrey, you are now recognized for about five minutes.

JANICE WINFREY:
Chairperson Lofgren, Ranking Member Davis, and members of this committee, thank you for the opportunity to testify about the threats facing election administrators in Detroit and across this country for simply doing our jobs. I am the city clerk and chief election official for the city of Detroit. In this elected nonpartisan position, I'm chiefly responsible for keeping the official records and documents for the city of Detroit, clerking the council, and administering all elections.

Detroit, also known as the Motor City, is nationally recognized as a comeback city. We've come through bankruptcy, a mass exodus of population, the loss of manufacturing jobs, and have made it through a global pandemic where we were defined as a hotspot. Approximately 80 percent of Detroiters are black. During the 2020 general election, President Trump made numerous false allegations of voter fraud insisting that the election was stolen.

Consequently, state and local officials from both parties, poll workers, and election staff were and still find ourselves under attack. Threats were made against me, my staff, and Detroit poll workers by phone, e-mail, and in-person such as when they counted the absentee ballots on Election Day. Trump and his conservative allies filed several lawsuits against me and other Michigan election officials as a part of their ongoing mis- and disinformation campaign that blames election administrators for their loss at the polls.

All of these lawsuits were eventually deemed frivolous and deceptive in nature, and some of the attorneys are now facing sanctions. Even still, during the 2020 presidential election, Detroit despite being in the middle of a pandemic and civil unrest experienced a 51 percent

voter turnout. Of the approximately 250,000 electors that voted, 174,000 cast their ballots by absentee which was a record for our city.

Detroit voters had a tremendous impact on the outcome of the Presidential election in Michigan. Because of the spike in the absentee ballots, coupled with the state restrictions on processing and counting of absentee ballots prior to election, I expanded that operation by renting additional space in the TCF Conference Center in order to accommodate the necessary temporary staff and observers that we may complete the process transparently and safely.

During the tabulation of the absentee ballots at the center, multiple GOP challengers had to be removed because of disruptive conduct. Some wore intimidating masks over their entire face. Others banged on the walls and the windows shouting stop the vote. Others violated social distancing standards; and as required by COVID-19 rules, refused to place protective masks over their mask -- over their noses when asked.

It appeared that this disruption attempted to undermine the tabulation of the absentee ballots. A couple of weeks after Election Day during the canvass of elections, I received a call from the Michigan Secretary of State Benson, explaining that the Wayne County Board of Canvassers would refuse to certify the results unless I testified.

During that time, both my husband and I were diagnosed with COVID-19, and we were quarantined. Nonetheless, to ensure the certification of the election, I left my husband's side at the hospital and reported to my office, wearing multiple masks and adhering to the many recommendations of health officials as possible, but still placing my staff in harm's way, to prevent the state board from disenfranchising hundreds of Detroit voters.

Immediately following my testimony, I began to become harassed. I receive insulting text messages on my private cell phone, insults came by way of social media through my inbox, and the greatest threat came to me when I was taking a walk just to clear my mind. An unknown Caucasian male, approximately 6'3" and 250 pounds, approached me in my neighborhood and abruptly stated, I've been waiting for you at work and decided to come to your house, why did you cheat and why did you allow Trump to lose?

You're going to pay dearly for your actions. He approached me in a threatening manner, coming closer and closer, and my only recourse was to yell, "I have COVID-19, and I'll spit on you." Fortunately, a neighbor was driving by and asked me if I was OK. I immediately responded, "No, this man is threatening me." At that point, my neighbor began blocking his movement with her car so that I could safely get home.

Later that evening, I received a message stating that he would blow up my block and I was ugly. I then called the Detroit Police Department, explained what happened, and they began to surveillance my house and my area. As recently as February 2021, I was notified by the Detroit Police Department that my life was threatened by white supremist [Ph] and that the police would be patrolling my home for the next couple of weeks.

My husband and I decided just to simply leave town. Our government is elected by our citizens. Therefore, voting is crucial to our democracy. Our job as local election officials is essential, and we are required to protect the act of voting. I ask that you consider it unlawful to harass and intimidate and/or threaten local election officials while we simply perform our jobs.

Thank you.

ZOE LOFGREN:
Thank you very much for that testimony. And we have now our last witness, Mr. Cuccinelli. You are now recognized for about five minutes, and you are remote, I believe.

KEN CUCCINELLI:
Yes, ma'am. So Chairman Lofgren, Ranking Member Davis, and members of the committee, thank you for inviting me today to discuss the quality and integrity of our voting systems and the safety of the people who run them. Thankfully, it is already illegal in every state to harass or threaten election officials or any citizen.

I would note that this was a problem that we wish we had Congress' support for back when I was in the Department of Homeland Security instead of encouraging people who were

performing the kind of unrest that you heard just described in Detroit. As you know, I previously served as deputy secretary of Homeland Security.

I've been the attorney general of Virginia, and I currently serve as the chairman of the Election Transparency Initiative where we work every day to help improve the transparency, security, accessibility, safety, and accountability of elections in every state so every American, regardless of their party affiliation or the color of their skin, can have confidence in the outcome of every election.

Today, it's easier to register and vote than it ever has been before in our history, regardless of where you live, what color you are, or what party you vote for. We should be celebrating this as a great accomplishment while always looking to improve. Instead, many in Congress would like to impose federal takeover in various pieces.

The particular bill you've talked about today is one smaller piece, but we've heard the previous speakers talk about the federal preclearance bill, the John Lewis bill incoming, H.R. 1, as Mr. Sarbanes mentioned, and suggests that access to voting today is actually worse than it was in 1965, which is patently outrageous.

But the lying demagoguery coming from much of the radical left, including the title of this hearing, is not constructive and represents a large-scale attempt to knowingly convince the American people of a false narrative, namely that since the Shelby County ruling by the Supreme Court in 2013, America has been suffering from a rash of voter suppression, including violence.

Thankfully, the data demonstrates this narrative is blatantly false. And rather than make general allegations, let me be specific about some of the radical leftists who are lying to the American people. It starts at the top with President Biden. Even the leftist Washington Post had to give President Biden their strongest line rating of four Pinocchios for his blatantly false statements about Georgia's recent election reform efforts.

And he has the highest voice shouting the now-familiar trope of Jim Crow 2.0, which we heard Congressman Owens speak to so eloquently and from his own personal experience.

Not to be left out, Vice President Harris recently flip-flopped from her anti-voter ID position in an interview on BET. An interview in which that flip-flop was overshadowed by her comment that people who live in rural communities aren't capable, i.e., smart enough, to use voter IDs to conduct their voting.

Vice President Harris' rural people are stupid view is no less prejudiced than her view shared implicitly by so many others on the left, that minorities are somehow incapable of getting and using voter IDs like everyone else. And I hear very little discussion of how critical these IDs are just to participate in our society and its economic opportunities, a sad commentary.

In addition to the data simply not supporting this prejudiced view, it's one of the most offensive aspects of the entire contemporary public discussion. One of the most senior members of this body, Congressman Clyburn, recently not only flip-flopped on his previous position that requiring voter IDs is racist but even denied ever holding such a position.

And beyond just that, he further denied that anyone in Congress ever held such a position. Given that members of this very committee have suggested that requiring voter ID as suppressionist at least or racist at worst, you all know Congressman Clyburn's denial was without foundation. And like President Biden, Congressman Clyburn also earned The Washington Post's four Pinocchios rating for his lies on the subject.

Of course, no list of lying left-wing race-baiters would be complete without Stacey Abrams. Like Congressman Clyburn, both flip-flopped on her voter ID is racist position and denied ever holding such a position. And most recently, Pennsylvania Governor, Tom Wolf, staged a spectacular flip-flop of his own, suddenly declaring he is now open to changing the state's voter ID laws less than three weeks after vetoing a common-sense piece of updating legislation that included voter ID provisions called the Voting Rights Protection Act brought forward by their general assembly.

What do these flip-flopping race-baiters share in common? Two things: timing and polling. What do I mean? First, because of the political necessity of getting federal legislation through a 50/50 Senate following West Virginia Senator Manchin's indication he'd require some sort of voter ID to support national legislation, President Biden, Vice President Harris,

Congressman Clyburn, Stacey Abrams, and many others on the left had to cast aside their false voter ID is racist mantra.

ZOE LOFGREN:
The gentleman's time has expired. I will give a little more time to wrap up, but --

KEN CUCCINELLI:
I will wrap up.

ZOE LOFGREN:
We've been easy on the gavel with everyone, but --

KEN CUCCINELLI:
Yes, ma'am. I will wrap up. Second, the polling has shift -- has not shifted despite six months of attacks. American people still support access and integrity measures, which continue even in this hearing to be called voter suppression. And I'll wrap my time up. I look forward to discussing these subjects further.

Thank the chairwoman for the additional time.

ZOE LOFGREN:
The gentleman's time has expired. This is now the time in our hearing when members of the committee may pose questions for five minutes to the witnesses. I'll turn first to our ranking member, Mr. Davis, for questions that he may have.

RODNEY DAVIS:
First off, thank you, Madam Chair, and thank you, Mr. Cuccinelli, for your testimony today. Now, we've had a lot of debate about Congress' role in federal elections. Republicans believe that states have the primary role in administering elections and that Congress' role is purely secondary. At our last committee hearing, we heard testimony from the majority's

witnesses suggesting that the elections clause gives Congress carte blanche power over how states administer federal elections.

Mr. Sarbanes' bill goes into excruciating detail explaining why Democrats think they can nationalize elections. Now, Mr. Cuccinelli, do you agree with their interpretation of the elections clause?

KEN CUCCINELLI:
No. I think that the elements in the longer form of your statement referencing the founding perspective on that are exactly what was anticipated when the Constitution was written, when this clause was put in place, and it's shown by the history of America. We -- for 230 years, states have run our elections since the Constitution, even with the absolutely necessary Voting Rights Act, which was one of the most extraordinary federal interventions in state-run elections in our history, probably the most and the most needed.

Even that was recognized by the Supreme Court as resulting from extreme circumstances that absolutely existed at that time that have been remedied as the Supreme Court has also said. And when you look at -- I'll just take the part of Mr. Sarbanes' recent bill that jumped out at me where you seek to have the federal government essentially invade state and local prerogatives of hiring and firing their own officials.

This is an area that has been dealt with to some degree, not squarely but to some degree, in 10th Amendment litigation. This is an area where the federal government simply doesn't have the power to go in and tell a state how to do its business.

RODNEY DAVIS:
Well, thank you. And I think you would agree, Mr. Cuccinelli, that Congress' role in this space is really not getting involved except in incredibly serious situations, right?

KEN CUCCINELLI:

I think that is both the history and I think there's an extraordinary amount of support for that position just from the founders who wrote and passed the Constitution. So I think that's the predominant legal view out there. Of course, it's never been fully litigated all the way out. And so there's -- I ascribe to the 80/20 Rule as a litigator, but that is where the preponderance of the scholarship resides.

RODNEY DAVIS:
Well, thank you, Mr. Cuccinelli. Again, Mr. Fontes, as you know, this committee sends out official government staff to observe the administration of federal elections under its authority under House rules and the Constitution. During the last election, Maricopa County unbelievably refused access to any Congressional observers, both Republicans and Democrats, who were forced to peer through a lobby window in order to see any of the process.

Isn't sunlight the best disinfectant? Why should observer access be limited?

ADRIAN FONTES:
Madam Chair, Mr. Davis, I don't know if I have to go directly to the chair in these hearings.

ZOE LOFGREN:
No, just -- the witness can answer.

ADRIAN FONTES:
Thank you very much. Mr. Ranking Member, I'm not exactly sure where you're getting your facts from, but authorized observers who were authorized according to Arizona State Law, and I know you're a proponent of states making the rules, have all of the access that was required and granted as appropriate in Maricopa County during the entire 2020 election cycle.

RODNEY DAVIS:

Well, we'll get you some evidence from our official election observers from the House as to the problems they had. And I certainly hope we can work better together in the future to make sure that doesn't happen to either side when we're out doing our constitutional duty. How much money did you budget to administer in the 2020 elections?

ADRIAN FONTES:
We -- Mr. Davis, we budgeted well over $23 million. The issue that we ended up having, of course, was the global pandemic that I don't think anybody finally realized the impact financially. So it ended up being a heck of a lot more than that that we spent on public outreach, safety equipment, PPE, finding and locating new places where we could have our vote centers so that folks could vote at appropriate social distances, and so forth.

So the number of dollars that we budgeted certainly didn't amount to what we ended up paying.

RODNEY DAVIS:
Does that number include the CARES Act money that Maricopa County got? And I believe that's $399 million.

ADRIAN FONTES:
Well, that would not have been included in the budget because the CARES Act was passed way after our budget was passed, sir.

RODNEY DAVIS:
OK. Well, I see I'm out of time, so I will yield back. Thank you.

ZOE LOFGREN:
The gentleman yields back. Mr. Raskin is participating remotely. Mr. Raskin, you are recognized for five minutes.

JAMIE RASKIN:
Thanks so much, Madam Chair, for calling this really important hearing. Mr. Fontes, in your testimony, you talked about all of the security measures that Maricopa County had to undertake during the 2020 election, including bringing in a SWAT team where you were counting ballots in order to prevent for the possibility of violence or turmoil in the event that the armed protesters outside the building got in. Can you explain how the security situation and the threats you received affected your operations and the staff?

ADRIAN FONTES:
Thank you, Mr. Raskin. The threats really were certainly not anticipated, and they had a significant and severe impact on the staff. Some of the impact included folks having to deal with circumstances well beyond just what happened at the time, the anxiety. It was very difficult at some point after the election.

Once, a lot of the threats and the protests outside of our building happen to make sure that election workers would come back. Folks had to be escorted back and forth to their vehicles by armed guards of the Judicial Protective Services and the Maricopa County Sheriff's Department. And it's just -- it's not a normal situation when fully armed and fully armored SWAT teams have to be present because that's what security officials recommend when folks are outside armed with AIR15 style and AK-47 style weapons essentially threatening to storm the building.

And that's a kind of a stressful situation that no civil servant, no election administrator should ever have to deal with. But they came through. And I have to say, again, I'm incredibly grateful to the tens of thousands of people across the country, but particularly my team at the Maricopa County Recorder's Office and Elections Department.

They came through with flying colors under the worst situation.

JAMIE RASKIN:

Well, thank you for that. And thank you for your service. Ms. Ramachandran, you found as part of this Brennan Center for Justice survey of election workers nationwide that one in three election workers feels unsafe because of their job, and one in five say that their lives have been threatened in the context of their work.

You spoke to a lot of elected officials in the drafting of this report. Can you explain what is going on out there? Are they afraid of the kind of violence that came to the House and the Senate on January 6, where 140 of our police officers were wounded and injured and ended up in the hospital?

GOWRI RAMACHANDRAN:
Thank you for the question. I would say [Inaudible] numerous election officials from members of both parties, by the way, we spoke to both Republican and Democratic election officials. Yes, the fear that they're feeling is actually very [Inaudible] to the fear that I imagine was felt on January 6 during those tragic events.

And to my mind, the insurrection at the Capitol on January 6 was actually a form of an attack on election officials because the members of Congress were fulfilling their duty, their ministerial duty, to count electoral votes and there was an attempt to interfere with that. So I think it's very analogous.

JAMIE RASKIN:
What was the role that social media has played in circulating and promoting these threats against election officials?

ZOE LOFGREN:
Who is that question directed to, Mr. Raskin?

JAMIE RASKIN:
I'm sorry. Ms. Ramachandran, I'm asking about the role of social media disinformation in the circulation of threats and the creation of a climate of uncertainty and anxiety among

election officials.

GOWRI RAMACHANDRAN:
Absolutely. Thank you so much for that question. Many of the election officials we spoke to said that absolutely, social media has played a huge role in the dissemination of disinformation. Therefore, the instigation [Inaudible]. So something could start with actually an innocent misunderstanding, be posted on social media, and then get picked up by a prominent official, whether it's a television celebrity or a prominent election official.

And then just spread like wildfire. And of course, election officials attempted to speak the truth on social media and on traditional media and educate voters about how votes were really being counted and how elections really work. But it's so difficult for them to compete with TV celebrities and, you know, even the president of the United States.

They definitely need help in order to be able to communicate accurate information and combat that disinformation.

JAMIE RASKIN:
And sticking with you, what are your policy recommendations for protecting the security of election officials so they can do their jobs?

GOWRI RAMACHANDRAN:
Well, [Inaudible] we are recommending that Congress provide funding for [Inaudible] security protections and trainings. So for instance, many election officials we spoke with said that they received recommendations from the police to do things like set up a doorbell camera at their homes, but they just didn't have the money in their budgets to provide for that sort of thing.

So we think financial support from both state and the federal government would be incredibly beneficial.

JAMIE RASKIN:
Thank you. And I yield back, Madam Chair.

ZOE LOFGREN:
Gentleman's time has expired. The gentleman from Georgia is recognized.

BARRY LOUDERMILK:
Thank you, Madam Chair. Thank you again for a number of hearings that we've had regarding elections. Been nice to had some of these -- majority of these hearings before H.R. 1 actually ran its way to the floor. I think that would have been very, very productive. I do want to follow up on something that my good friend, Mr. Davis, had touched on and Mr. Cuccinelli was touching on. It was regarding the Voting Rights Act. You know, that was a very important piece of legislation and it fell within the line of what the courts and the Constitution and our founders intended, which is the qualification of electors.

In other words, who can vote? That is something that has clearly been within the federal purview. It's who can vote. They were also very clear that the times, places, and manner was to be interpreted literally and that was reserved for the states. And so yes, the Voting Rights Act, in which my colleagues have cited quite often, was definitely about the electors who can vote.

That is in the Constitution. That is a federal issue. The rest is reserved to the states. Also, something that Mr. Raskin brought up is the role of social media has played in disinformation. Maybe that could be some of the explanations why the current president of the United States spread false information about Georgia's election law.

So I do think it's imperative for everyone to seek the truth in things, especially when it comes to elections and election law, not just following your own emotions. And Mr. Davis and I also have experienced what can happen when misinformation is spread on the internet when a gunman can walk on a baseball field and started shooting at us about four years ago.

With that, I also appreciate the testimony of Mr. Owens, someone who has truly experienced what Jim Crow really is and how bad that is and how unacceptable that is. But I'm concerned about how many on the other side are so quick to claim that any attempt to strengthen the integrity of our elections is racist or it equates to this Jim Crow era.

I think that's asinine to think it throws into the face of many people of both parties that I know back home who want to know that their vote is the one that counts and those that should not be voting are not voting, are not allowed to vote. Mr. Cuccinelli, it's good to see you again. I appreciate you being here.

Do you think that the voter ID requirements that many states have and some that have proposed represent a subversion of democracy as some on the other side here have suggested?

KEN CUCCINELLI:
That could hardly be farther from the case. Voter identification is broadly supported as a common-sense measure of securing elections. And you've seen a lot of states, many of them that already have in-person voter ID with the explosion in the COVID-19 era of mail-based voting and absentee voting that they are equating -- they're providing equal security or attempting to for mail-in ballots as they have for in-person ballots.

That's logical. It's commonsensical. And it's reasonable to see this path when you see such a massive sudden growth in that form of voting. So the whole idea and the attack, the baseless propaganda attack of voter ID is racist or suppressive somehow is clearly false enough that many leaders on this literally just threw it overboard when it became politically inexpedient because of Senator Joe Manchin's position over in the Senate in the 50/50 Senate.

And so I can't possibly imagine that all those folks would have suddenly just declared it not to be racist if they'd ever actually thought that in the first place. It tells me they didn't think it in the first place.

BARRY LOUDERMILK:

Right. And I think the poll numbers that came out around that time may have influenced it as well with the majority of Republicans and Democrats and independents support ID. In fact, in a previous hearing, I asked the former attorney general, Mr. Holder, the question of whether or not he supported now voter ID, and he did shift a little bit from his written testimony, which he said yes, as long as there's no restriction on the type of ID, which is basically saying there's no validity to it, right?

Anybody --

KEN CUCCINELLI:
Well -- but realize that every state that requires voter identification today offers it for free. So that the burden has been reduced enormously. And also keep in mind that folks that don't have any kind of identification would have an extremely hard time participating fully in our society as it operates today.

So this goes well beyond voting, and it should be one of those things that as ordinary Americans do that we should all be able to agree on.

BARRY LOUDERMILK:
All right. Well, our chair has been very generous with her time, but I don't think she's going to give me the time to go into another question right now. But thank you very much, and I appreciate you and your time with us.

ZOE LOFGREN:
Gentleman yields back. Mr. Butterfield is recognized.

G. K. BUTTERFIELD:
Thank you very much, Madam Chair, for convening this very important hearing on Election Subversion: A Growing Threat to Electoral Integrity. This is a very necessary conversation that we must have. Thank you to the four witnesses for your testimony today. It's been very valuable in this process. I'm going to start with Ms. Ramachandran.

I'm not sure I'm pronouncing that right. I'm sure I'm not pronouncing it right. But let me start with you, please. In your written testimony and in the report, Election Officials Under Attack, you discussed how disinformation, including the unprecedented lies of the Stop the Steal movement have directly, directly impacted election officials.

Could you please talk with me just a little bit about the kind of disinformation we saw following the 2020 election about the accuracy of election results and how that led to threats against election officials such as Ms. Winfrey?

GOWRI RAMACHANDRAN:
Thank you so much for that question. So many of the election officials we spoke with talked about the fact that they started receiving numerous phone calls from members of the public with questions about how votes were counted, the types of machines that were used, that sort of thing. And these phone calls themselves took an emotional and sort of a time toll on them and their staff.

Many times, the phone call would take upwards of 15 to 20 minutes to complete, and the caller still wouldn't be convinced after all of that explanation time. And there was an emotional toll because many times, the callers were essentially accusing election officials and their staff of themselves having committed some sort of widespread fraud.

And that's a particularly stinging accusation when the truth is that election officials and their staff performed like heroes to ensure that everyone can vote safely and securely and that every eligible voter's vote would be accurately counted. And then, of course, many of the voice mails and threatening messages they received included accusations that the official or the worker had, you know, had engaged in some sort of fraud or had stolen the election.

So they saw a clear connection between that disinformation and the threats that they were receiving. And I will also note that many election officials noted they had never experienced anything like this before in terms of the volume of calls and the amount.

G. K. BUTTERFIELD:

Now, I know that Brennan Center has done a lot of research in this area, and I know you've done some as well. Let me ask you this. You've mentioned some of the policy recommendations that you all have come up with. Can you give me one or two other policy recommendations that you may not have mentioned earlier in your testimony?

GOWRI RAMACHANDRAN:
Sure, and thank you so much for that opportunity. So one of the recommendations I didn't go into detail on is really a recommendation for the private social media companies, and that is that they could use if they had a list of the more than 8,000 verified local election officials in the United States, they could use that registry to amplify the voices of those election officials to truthful accurate information so that they would have a chance against the flood of lies from more prominent and famous folks that sometimes try to spread these things.

G. K. BUTTERFIELD:
All right. Let me go to the distinguished clerk from the great city of Detroit. Thank you very much for your testimony. First of all, Madam Clerk, in your testimony, you described a -- what I would call a horrific experience of having to defend the election that you oversaw while battling COVID-19 and being physically threatened.

And I'm sorry, you had to go through all of that, and I think your reaction was very normal as it would be for any other person in that situation. How have these threats and the intimidation and the unfounded questioning of the validity of the elections process impacted your staff? You talked about the impact that it had on you and your family.

Let's talk about those hard-working men and women on your team. How has it impacted them physically, emotionally, and mentally?

JANICE WINFREY:
Yeah, so a number of my senior staff decided to take off work to do the FMLA. So I lost about five members to FMLA, and they didn't come back until after the canvas of the

election, after the elections were certified. One retired. But the overall climate at the Department of Elections is one of fear almost.

People are wanting to retire. Those of us that came down with COVID-19, a couple of two of my senior staff were hospitalized with it. All of -- all -- this was all happened after the election. We processed 1,000 ballots a day. These are ballots that are processed in person during the COVID. And yes, we had our protective gear on, but we all suffered with COVID-19.

G. K. BUTTERFIELD:
That's what I suspected. That's what I suspected. Thank you very much for that, and please share with your employees that we appreciate their work.

JANICE WINFREY:
Thank you.

G. K. BUTTERFIELD:
Regardless of their party affiliation, we appreciate their work. Thank you.

JANICE WINFREY:
Thank you. And we appreciate yours.

G. K. BUTTERFIELD:
I yield back.

ZOE LOFGREN:
Gentleman's time has expired. And then Mr. Steil is recognized.

BRYAN STEIL:

Thank you very much, Madam Chairwoman. I appreciate you holding today's hearing. I think it's really, really important as we look at this that today, Democrats are continuing to spread misinformation about election laws in Republican-controlled states. They're calling provisions restrictive if it's from a Republican state while ignoring state laws from Democrat states, particularly, Massachusetts, Delaware, Connecticut.

Why? Partisan politics. Democrats are trying to use cover -- this cover to justify a federal takeover of state election laws. I'm going to continue to fight against a federal government takeover of state election laws. I think everybody watching this committee hearing should be paying attention that we're pointing out Republican-controlled states and failing to identify or talk about any of the Democratic-controlled states that have the same laws in place.

Let me shift gears if I can to you, Ms. Winfrey. I appreciate you being here today. As clerk, you are responsible for administering the 2020 general election. Is that correct?

JANICE WINFREY:
That is correct.

BRYAN STEIL:
And do you support voter identification for voters?

JANICE WINFREY:
I do. I do.

BRYAN STEIL:
You do. So, you support voter ID in your jurisdiction?

JANICE WINFREY:
It's the law.

BRYAN STEIL:
Thank you very much. And did -- in Detroit, did you receive any grant funding from the Center for Tech in Civil Life, CTCL, if you will, the nonprofit organization funded by Facebook's Mark Zuckerberg for the 2020 election?

JANICE WINFREY:
I did.

BRYAN STEIL:
And what was the total amount of grants funded for the city of Detroit received from CTCL for the 2020 election cycle?

JANICE WINFREY:
About $8 million.

BRYAN STEIL:
About 8 million. I heard 7.4, about $8 million. What was the total amount of funds the city of Detroit received from other nongovernmental sources?

JANICE WINFREY:
I'm not sure what the other city -- my budget is totally separate from the other -- from administration, if you will, [Inaudible].

BRYAN STEIL:
Were there other funds that came in from other nonprofits outside of government entities in the city of Detroit in addition to CTCL to your knowledge?

JANICE WINFREY:

As it relates to the Department of Elections, we received 8 million. That's my budget.

BRYAN STEIL:

That's -- OK. And did you accept any personnel that were paid for by any nongovernment entity to assist or be involved with the conduct of the 2020 elections?

JANICE WINFREY:

We received support from CTCL.

BRYAN STEIL:

You received support. Do they report to you, or do they report to CTCL?

JANICE WINFREY:

No, not physically, not physically. Not physically support to me. They are employees, they support it, or they report it to CTCL, but they worked with us during the election process.

BRYAN STEIL:

OK. And did you apply or seek out any election administration funding?

JANICE WINFREY:

Yes.

BRYAN STEIL:

Outside funding.

JANICE WINFREY:

Yes.

BRYAN STEIL:

You did.

JANICE WINFREY:
Yes.

BRYAN STEIL:
And so, you sought that out. I appreciate your testimony. Let me shift gears if I can to you, Mr. Cuccinelli. You note in your testimony that the 1902 Virginia Constitution imposed such barriers as poll taxes, literacy tests, and even a civics test as hurdles to registration and voting, kind of disgusting practices in the past.

Does any state impose such devices today?

KEN CUCCINELLI:
No. They were -- elements of them were employed up into the 1960s, and the Voting Rights Act wiped them out very quickly.

BRYAN STEIL:
And so --

KEN CUCCINELLI:
And they have not been in use anywhere in the United States since very shortly after the Voting Rights Act went into effect.

BRYAN STEIL:
And so would you say that there's definitely always room for improvement, that the U.S., it's fair to say we've made a pretty drastic strides from 1965 to 2021?

KEN CUCCINELLI:

Though the numbers show it, I put some of them that -- you know I pulled a New York Times graph there for my statement. You can see the massive increase in African American participation, which is particularly relevant in a state like Virginia, where Black citizens are a fifth of our state. So, that's a critical improvement.

It's measurable all across the country. Not every state is the same, but we've come a long, long way in wiping out those differences [Inaudible]

BRYAN STEIL:
Appreciate. Let me keep rolling here because I got limited time. If you -- in particular, I think you quite correctly note that many -- I think we -- have just been ignoring, is it Section 2 of the Voting Rights Act, which outlawed many of the discriminatory voting practices referenced earlier by me remain on the books?

How should Section 2 be employed in your opinion?

KEN CUCCINELLI:
Section 2 should be made permanent and should be used as it's written to rule out actual discrimination, which is -- was also addressed in the Brnovich case recently, and it's still there to be used that way. Some people in the Congress talk as if it isn't.

BRYAN STEIL:
And final question for you. Do you support voter identification for voters?

KEN CUCCINELLI:
Photo identification and voter identification, yes.

BRYAN STEIL:
Thank you very much. Madam Chairwoman, I will yield back.

ZOE LOFGREN:
The gentleman yields back. The gentleman from California is recognized.

PETE AGUILAR:
Thank you, Madam Chair, and thank you to our witnesses. Mr. Fontes, last week, the former Republican Secretary of State Ken Bennett was barred from his own audit. I -- as I understand it, he's working with the State Senate on that audit within the state of Arizona as they continue to engage in actions on the false premise of misconduct during the 2020 elections.

The audit's been focused on Maricopa County where you used to work. Can you please explain how misinformation and disinformation campaigns that balloon into these ridiculous audits affect our nation's election integrity efforts and the dangers of partisan audits being conducted by individuals who don't have any experience?

ADRIAN FONTES:
Thank you for the question, Mr. Aguilar. I think the first piece of misinformation and disinformation is actually calling what's happening right now in Arizona an audit. It is nothing of the sort. It never has been, and it was not intended to be. And I don't know any auditor who has any sort of professional certification, who will stand by what is happening with Maricopa County's 2020 election, its ballots, its equipment, its data and information, and audit.

That notwithstanding, misinformation and disinformation has moved a lot of normally reasonable people in Arizona and across the country to question what is a normal exercise conducted by average citizens just like you and me and anybody else out there. For some reason, the misinformation and disinformation has raised so much mistrust in basic systems, systems, by the way, which are run by, in many cases, the political parties themselves.

As an example, the mandatory hand count audit that is mandated by state law in Arizona, the county party chairs of the political parties are the ones who select the folks who perform the audit. They are the ones who oversee that audit and who are essentially coached in process only by the elections department after the election.

So, that hand count audit that is mandated by state law is actually performed bipartisan in order to maintain the integrity of what is happening in every county in Arizona, not just in Maricopa County. That's just one example of how misunderstandings arise. Another really important example is the allegations of Sharpiegate, for example.

In 2018, we had a very different election system, we had different ballot styles, we had different ballot paper. The machines themselves that tabulated ballots operated on a completely different architecture. They were completely different than what we have in 2020. And that's why Sharpies were not recommended in 2018 but were recommended in 2020, and I can get into details, if you like.

But the reality is this. There are folks out there who want to subvert our democracy. There are folks out there who don't want every eligible U.S. citizen to vote. I don't count myself among them. There are folks out there who are afraid of the voice of America's voters. And in order to advance their political agenda, they think it's better to have less voters voting, to have a diminished American voice.

And I think that's wrong. And that's why I'm partially here, particularly, though to help the election officials across the United States at the local, municipal, and state level stay safe. And that's one of the critical components that we've seen. The misinformation and disinformation leads to those threats of violence, leads to that problem.

And I appreciate that.

PETE AGUILAR:

Ms. Ramachandran, the Brennan Center for Justice in the Bipartisan Policy Center report on election officials claims that state legislatures are introducing bills that impose criminal penalties on election officials and workers, including penalties that could strip power away

from these local officials. Even if states counter these actions by enacting new laws to ensure greater protections of election officials, do you believe federal policy is necessary to prevent attacks against public servants?

And if so, why?

GOWRI RAMACHANDRAN:
Thank you for that question. I do believe that even though currently elections are administered largely at the local level in the United States, those local election officials are the guardians of our federal democracy at federal elections. So, I do think that Congress has a role to play in protecting those local election officials to ensure that the federal elections they administer are administered without undue, you know, interference or coercion.

PETE AGUILAR:
Thank you. Ms. Winfrey, according to the Democracy Fund, almost 35 percent of election officials are set to retire before the next presidential election, representing more than 50 percent of local election officials in the largest jurisdictions. Should communities of color and predominantly Black and Hispanic communities be concerned that the pipeline of local professionals could change from capable and trustworthy individuals, including making elections decisions that have disparate impact on communities?

JANICE WINFREY:
Yes, absolutely.

PETE AGUILAR:
Thank you. I yield back, Madam Chair.

ZOE LOFGREN:
Gentleman's time has expired. Gentlelady from Pennsylvania is recognized.

MARY GAY SCANLON:

Thank you. Thank you, Madam Chair. Over the past several years, disinformation about American elections has spread like a disease across the country. What was once the province of foreign adversaries seeking to undermine our elections, election disinformation is now homegrown, created and stoked by political leaders, members of Congress, and even the former president, and then amplified by the echo chambers of our foreign enemies.

By spreading the lie of widespread election fraud, with a particular focus on cities and Black and brown communities, these domestic enemies of democracy have used their positions of leadership to spread conspiracy theories that -- about demonstrably false threats to election security in order to justify actions to undermine actual election security, whether through fraudulent audits or new laws that make it both harder to vote and easier to steal elections.

The consequences of these falsehoods and the refusal of members of his party to contradict the former president's lies about the accuracy of the 2020 election have had disastrous consequences, in addition to a violent attack upon the Capitol. The disinformation campaign led by the former president and his allies has caused widespread and persistent intimidation and threats against election officials, including death threats being made against officials ranging from apolitical local civil servants all the way up to and including the vice president and members of the U.S. Congress as we sought to certify the electoral college votes.

In Pennsylvania, every county has a bipartisan board of election, but national actors, including the former president and members of this committee, made false allegations about the integrity of election procedures in only the Democratic-led counties of Pennsylvania. In my district, a Republican election commissioner for the city of Philadelphia was named by the former president when he tweeted that the commissioner was a so-called RINO, being used big time by fake news media.

"He refuses to look at a mountain of corruption and dishonesty, we win," this tweet and attacks from the Trump campaign surrogates that followed resulted in waves of anti-Semitic

intimidating threats against the commissioner and explicit death threats against his children, threats that mentioned their names and ages.

Elsewhere in my district, the individual members of the bipartisan volunteer, Delaware County Election Board, were sued dozens of times in cases that sought to overturn the duly certified results of the election and to fine or jail those officials for faithfully executing their duties. In each case, those cases were dismissed as being without merit, but they nevertheless required the expenditure of substantial government funds and personal time to defend them.

So although attempts to overturn the 2020 election results failed, the harm to our elections and election officials has been real. I introduced legislation to make it a federal crime to intimidate or harass an election official for performing their duties, and Representative Sarbanes has now introduced expanded legislation to protect our election workers.

I'm proud to co-sponsor this effort. It's also imperative that our elected leaders recognize that their words matter, that if they willfully seek to spread disinformation about our elections, they, like the former president, should not be reelected. Mr. Fontes and Ms. Winfrey, I'd like to thank both of you for your work as election officials under the extraordinary public health and political challenges of the past couple of years.

In normal times, these jobs are intensive and stressful, but your work has been essential. I'd like to ask each of you to address what do you think Congress should do to aid in protecting you from continued threats and violence, and enable you to do your work? Mr. Fontes?

ADRIAN FONTES:
Thank you for that question. The critical component here, I think, that Congress can do is recognize that there is a difference between what we do as election administrators and what a lot of other people do. And, of course, all of the work of government is important in its own way, but election administration is the golden thread that holds the fabric of America together.

And it is a bipartisan effort. And without the current legislation, we will continue to see the threats and intimidation, and violence rise. And so, to directly answer the question, you can help by passing the bill that's on the table.

MARY GAY SCANLON:
Ms. Winfrey?

JANICE WINFREY:
I agree, the same thing. We need laws to protect us. We're simply doing our jobs. I'm nonpartisan in my job. And as such, me and my staff, we shouldn't be threatened, we shouldn't do the job fearfully. All we want, a clear, clean, fair elections.

MARY GAY SCANLON:
Thank you. And I don't see the clock where --

ZOE LOFGREN:
You have 12 seconds.

MARY GAY SCANLON:
Twelve seconds. OK. Then I will end by asking unanimous consent to enter three articles in the record, two articles detailing the threats and intimidation experienced by the Philadelphia election commissioner and his family, and a third article from The New York Times dated July 2, 2021, entitled "After a Nightmare Year, Election Officials Are Quitting." And I yield back.

ZOE LOFGREN:
Without objection, those will be entered into the record. And the gentlelady from New Mexico is now recognized.

TERESA FERNANDEZ:
Thank you, Madam Chairman. You know, today, we're holding this hearing to talk about how the big lie by Trump and his allies that this presidential election was stolen has led to threats of violence and, here at this Capitol, actual violence. And I am incredibly disappointed that our Republican colleagues had not addressed the violence and the threat itself, which is what this committee hearing is about today.

They have not listened to your testimony and the difficulties that you have faced, that your families have faced, and that your colleagues have faced, and those you supervise. And that is a difficulty that I apologize that this entire committee has not focused on as equally as others. So, I wanted to ask a little bit about the connection that you see and how you experience -- the connection between what we saw here on January 6 and what the nation heard in testimony yesterday from the police officers who faced torture, violence, pain, and ask Congress to do something about it. So, I'd like you to talk about how you see that connection with what you yourselves are facing.

Mr. Fontes?

ADRIAN FONTES:
Thank you for that. It's -- if I could, this isn't just about me or Clerk Winfrey. This is about all election officials across the country. We are a unified band of bipartisan brothers and sisters and cousins and aunts and uncles. We learn from one another. We exchange best practices, and we certainly do share our experiences.

And I think I'm joined by so many people across the country looking in horror at what happened here on January 6, but also what could have been just after the election in November of 2020. We had armed almost rioters in Maricopa County. We had Alex Jones and the Q Shaman, literally, arm in arm, shouting my name and shouting for other election officials in the parking lot, and their compatriots armed with some pretty heavy-duty firearms.

And I know because I was a range coach and marksmanship instructor in the Marine Corps. I know what kind of damage those weapons could do. And that was certainly no civil act of protest. That was not a grievance. The presence of those weapons in this environment was a threat, and that was very difficult.

It was a step away from what happened here. And I hope and pray that everyone will pay attention to this because our -- you know, the republic depends on folks like us who work in a bipartisan way, who work -- Republicans and Democrats, independents, libertarians, Greens, everybody works together to do this across the country.

And this -- it needs to end. The motivation behind these threats is the lie. That needs to end. Reasonable people have to come together in the United States of America to say enough is enough. And folks like us who just want to do our jobs, who just did our jobs, need to stand up and I think say the same thing.

And I think Clerk Winfrey would agree with me on that.

JANICE WINFREY:
I do. It's -- what we're going through is very much the same as what happened here except that they're coming to our homes and they're making us very uncomfortable. Some of my colleagues have been shot at simply because of what we do. All of us have been threatened and -- because we're trying to represent our community.

If it weren't for the work of local election officials, none of you would be here in this room. We just want to uphold democracy. We just want to ensure that everyone votes. And it's unfair, it's unfair that we're attacked for doing our job. I feel afraid. I feel afraid. I know that I'm going to get some kind of repercussion from just this sitting here today, but I decided to do it because I believe in the right to vote.

I believe that every eligible elector should be allowed to vote easily and fairly.

TERESA FERNANDEZ:

Well, thank you for what you are doing today and what you do, and you work, and what your colleagues do, you work, that is true patriotism. And those who attack it or who would limit it, that is truly un-American, and we must call it for what it is. It is un-American. I see my time is coming to an end. Madam Chair, I'd like to submit for the record of a "Reuters Special Report: The Trump-inspired death threats are terrorizing election workers." And similar to the Brennan Center report, it documents just incidents after incidents of violence threatened against those who carry on and uphold our democracy on a day-to-day basis, Madam Chair.

ZOE LOFGREN:
Thank you. Without objection, those items will be put into the record. I now recognize myself for a few minutes of questions. First, let me thank all of the witnesses for the testimony that they have provided. It's important to inform this committee and the American public what we as a country are facing.

You know, I heard from both of you, local elected officials, about the threats of violence related to simply counting the ballots. Mr. Fontes, I wonder, you alluded to, you know, the concern in the parking lot. Can you describe -- give us a picture, if you would, draw us a picture for what was around Maricopa County site?

ADRIAN FONTES:
Thank you, Chair Lofgren. The front parking lot, if you will, of the warehouse is framed by 3rd Avenue and Lincoln in downtown Phoenix, Arizona. And the parking lot is sort of framed on the north and the west by what's almost a two-story building on -- in the west, it's a two-story building with a rather large off-the-ground part of the warehouse on the north side.

And in the parking lot itself, we made sure, in working with security officials, that the folks who wanted to come out and share their grievances like the First Amendment says, petition their government for that redress, had space enough to be able to have their voices heard.

Now, we didn't put up a security fence and a perimeter until after some incidences where folks had literally forced their way into the lobby.

We tried to keep it as open as possible, or we tried to be as transparent as open as possible with the media and members of the public as well.

ZOE LOFGREN:
Can I follow up with a question? Because, you know, I was in local government for a long time, 14 years. We ran the elections. We had to register our voters. I -- we never had a situation where people came and demonstrated while the votes are being counted. People, you vote, you have elections that never happened.

Was demonstrations about counting the votes -- is that being fueled in your judgment by the big lie?

ADRIAN FONTES:
Well, Chair Lofgren, we've never had a sitting president of the United States of America say, "If I lose, it's because there was fraud." We've never had a group of politicians in the United States of America willing to carry on with that kind of sycophancy, with that kind of irresponsible deterioration of the confidence that the American people should hold in our most fundamental of institutions.

We've never been here as a republic. And we can see now how fragile this democracy -- this experiment in democracy really is. And it is disappointing to say the very least that we've gotten to the point where folks like my former staff and folks like Clerk Winfrey's current and future staff, election officials across the country, who just want to do their jobs.

They just want to be the folks who get that work done because they know how important it is. We all know how important it is. Again, to parrot Clerk Winfrey, none of you would be here if it wasn't for local election officials. We've never been here because we've never had a significant group of elected officials in this country irresponsible enough to render a sonder the confidence that we have in our election systems.

It is a horrible new place that we find ourselves in, and we have to end it.

ZOE LOFGREN:
And in your judgment, does that really threaten the future viability of our democratic republic?

ADRIAN FONTES:
Madam Chair, we were just a few minutes away in this very building on January 6 from not carrying through with our Constitutional duties, which was up until this year, a normal, everyday, regular, boring process. We are in dangerous new territory, Madam Chair, in my view. And unfortunately, we have to fight to get back to where we ought to be.

ZOE LOFGREN:
Thank you. Clerk Winfrey, prior to 2020, did you ever have demonstrations about while the votes were being counted in Detroit?

JANICE WINFREY:
Yes, we have, not to the level that we had in 2020. But yes, we would have challengers, Republican and Democratic challengers, in the TCF Center, and sometimes, they bumped heads but not to the level where they were banging on the walls and saying -- and yelling, "Stop the vote." We never had it like this.

We never had to have police officers and armed officers in the room with us as we tabulated votes.

ZOE LOFGREN:
Well, I want to thank you for speaking out, both of you, and all the witnesses but especially the local elected officials. You will be going home, and hopefully, you will be safe when you go home. But we do thank you for your testimony, as well as the other witnesses. I will just

note that you know, yesterday, three members of this committee also serve on the select committee investigating the insurrection.

And we heard very difficult testimonies from really four amazing police officers, who laid their bodies on the line really to protect the members of this committee, the staff, everybody in this building, but more than anything else to protect democracy. And we came alarmingly close to the insurrectionist being successful.

And today, we're hearing from election officials about violence directed to them, about counting -- simply counting the votes. You know, it was interesting to hear, Mr. Fontes, your comment about a boring process. You know, it used to be boring. I can remember times when actually I didn't come back for the electoral college counting because there's nothing to do. I mean, you just watch them be counted, and that is that.

Similarly, counting the ballots, I mean, it was something that the clerks did, and we thank them for it, but it was not a high-profile item. It was just the work that had to be done. We are witnessing a distortion of democratic processes here that I think is a serious threat to our country. I think your testimony has further enlightened us. And I hope that as we move forward, all of us, no matter what our party, will take this threat seriously because it's not about which party you're in, it's about being an American.

So, I thank you all. The members of the committee may have additional questions for the witnesses. If so, we will ask you to respond to those questions in writing. The hearing record will be held open for those responses. And again, thank you to all our witnesses. Without objection, the Committee on House Administration stands adjourned.

List of Panel Members and Witnesses

PANEL MEMBERS:
REP. ZOE LOFGREN (D-CALIF.), CHAIRPERSON

REP. JAMIE RASKIN (D-MD.)

REP. G.K. BUTTERFIELD (D-N.C.)

REP. PETE AGUILAR (D-CALIF.)

REP. MARY GAY SCANLON (D-PA.)

REP. TERESA LEGER FERNANDEZ (D-N.M.)

REP. RODNEY DAVIS (R-ILL.), RANKING MEMBER

REP. BARRY LOUDERMILK (R-GA.)

REP. BRYAN STEIL (R-WIS.)

REP. BURGESS OWENS (R-UTAH)

REP. JOHN SARBANES (D-MD.)

REP. NIKEMA WILLIAMS (D-GA.)

WITNESSES:

MARICOPA COUNTY FORMER COUNTY RECORDER ADRIAN FONTES

DETROIT MICHIGAN CITY CLERK JANICE WINFREY

BRENNAN CENTER FOR JUSTICE SENIOR COUNSEL GOWRI RAMACHANDRAN

ELECTION TRANSPARENCY INITIATIVE CHAIRMAN KEN CUCCINELLI

MEMBER OF CONGRESS BURGESS OWENS

MEMBER OF CONGRESS JOHN P. SARBANES

MEMBER OF CONGRESS NIKEMA WILLIAMS

©

1

ut C

Hyun, Peter (OASG)

From:	Hyun, Peter (OASG)
Sent:	Thursday, August 26, 2021 9:08 AM
To:	(b)(6) Kim Wyman
Cc:	Matthews-Johnson, Tamarra D. (OAG)
Subject:	RE: Contact information

Hi Secretary Wyman!

Below is more detailed timeline:

- 2:00pm to 2:05pm: Attorney General Merrick Garland / Call to Order and Introduction
- 2:05pm to 2:10pm: Deputy Attorney General Lisa Monaco
- 2:10pm to 2:13pm: Associate Attorney General Vanita Gupta
- 2:13pm to 2:17pm: FBI Director Christopher Wray
- 2:17pm to 2:20pm: Washington Secretary of State Kim Wyman introduces self and moderates state/local officials speakers
- 2:20pm to 2:26pm: Louisiana Secretary of State Kyle Ardoin
- 2:26pm to 2:32pm: New Jersey Secretary of State Tahesha Way
- 2:32pm to 2:38pm: Michigan Secretary of State Jocelyn Benson
- 2:38pm to 2:44pm: Wisconsin Election Commission Administrator Meagan Wolf
- 2:44pm to 2:50pm: Escambia County (Florida) Supervisor of Elections David Stafford
- 2:50pm to 2:58pm: Additional Q&A moderated by Kim Wyman
- 2:58pm to 3:00pm: [Attorney General to Close still TBD]

Are you free for a brief call this AM to catch up? We are hoping to see questions from the speakers in advance, and would love for you to be looped in those conversations. Would it make sense do you think to convene everyone together? We are so grateful that you know everyone on the speaker list.

Thanks,
Peter

Peter S. Hyun | Chief of Staff
Office of the Associate Attorney General
(b) (6)
Des (b) (6)
Cel (b) (6)

From: Hyun, Peter (OASG)
Sent: Thursday, August 26, 2021 6:21 AM
T (b)(6) Kim Wyman
Cc: Tamarra D. Matthews-Johnson (OA (b) (6)
Subject: RE: Contact information

Secretary Wyman:

I just wanted to check-in again today. It was great speaking with you yesterday and we really appreciate your participation in this conversation (I am just copying here Tamarra Matthews-Johnson, who is leading the prep for the meeting just as an additional point of contact you received a separate email from her yesterday).

I spoke to Secretaries Ardoin and Way yesterday as well, and they were very enthusiastic to hear that you would help chair/moderate the discussion following the DOJ leadership remarks.

Both Secs. Ardoin and Way mentioned to me that they would pass along any of their anticipated questions for DOJ sometime this AM which we will of course send to you as well.

We will send more detailed time expectations for the run of show, but below is the order of speakers. Thank you!

Comments by Election Officials

Moderated by: **Kim Wyman** **(R)** (Washington Secretary of State)

Order of Election Official Speakers:

- Louisiana Secretary of State **Kyle Ardoin** **(R)**, NASS President
- New Jersey Secretary of State **Tahesha Way** **(D)**, NASS President-Elect
- Michigan Secretary of State **Jocelyn Benson** **(D)**
- **Meagan Wolf**, Wisconsin Election Commission Administrator
- **David Stafford**, Escambia County (Florida) Supervisor of Elections

* Each election official will
  - introduce themselves with their name and position
  - if applicable, discuss their professional background in elections
  - recount an experience they'd like to share that are personal to them, or their staff, that exhibit the challenges election officials are facing with respect to threats, harassment, or intimidation
  - Pose a question to Department leadership

Peter S. Hyun | Chief of Staff
Office of the Associate Attorney General
(b) (6)
Desk (b) (6)
Cel (b) (6)

From: Hyun, Peter (OASG)
Sent: Wednesday, August 25, 2021 5:45 PM

T (b)(6) Kim Wyman
Subject: Contact information

Peter S. Hyun | Chief of Staff
Office of the Associate Attorney General
(b) (6)
Des (b) (6)
Cel (b) (6)

Matthews-Johnson, Tamarra D. (OAG)

From:	Matthews-Johnson, Tamarra D. (OAG)
Sent:	Thursday, August 26, 2021 9:10 AM
To:	Watson, Theresa (OAG); Jackson, Wykema C. (OAG); Cash, Tabitha (OAG); Washington, Tracy T (OAG)
Cc:	Klapper, Matthew B. (OAG); Heinzelman, Kate (OAG); Visser, Tim (OAG)
Subject:	Binder for today
Attachments:	Election Officials TOC.docx; Tab 1 AG remarks voting rights.pdf; Tab 2 AG remarks voting georgia suit.pdf; Tab 3 Guidance Regarding Threats Against Election Workers.pdf; Tab 4 PR Justice Department Launches Task Force ...pdf; Tab 5 Elonis v US.rtf; Tab 6 part 1 Federally Protected Activities 18 USC 245.pdf; Tab 6 part 2 Threat Statutes 18 USC 871 et seq.pdf; Tab 6 part 3 Stalking 18 USC 2261A.pdf; Tab 7 Harassing Telephone Calls 47 USC 223.pdf; Tab 8 Election Statutes 18 USC 592 et seq.pdf; Tab 9 part 1 Washington Post article August 11.docx; Tab 9 part 2 AP Article August 15.docx; Tab 9 part 3 NPR Article August 17.docx; Tab 10 part 1 Adrian Fontes Congressional Testimony subCommitte on House Administration.pdf; Tab 10 part 2 Winfrey testimony.pdf; Tab 11 Mechanics of Task Force.docx; Tab 12 part 1 Jones indictment.pdf; Tab 12 part 2 Jones complaint and affidavit.pdf

Hi
I am still working on the event memo, but in the meantime I have the tabs ready for the binder. It would be great to get 3 binders with the following tabs. Where a tab has multiple parts, please place a blue sheet in between those items. Thanks! T

Department of Justice Leadership Teleconference
With State and Local Election Officials
Thursday, August 26, 2021
2:00-3:00 p.m. eastern

Table of Contents

5. ***Elonis v. United States*, 575 U.S. 723 (2015)**

6. **Relevant threat statutes: Title 18, United States Code, Sections 245, 875, 876, 877, 2261A**

7. **Relevant threat statute: Title 47, United States Code, Section 223**

8. **Election Statutes (no mention of threats to election officials) Title 18, United States Code Chapter 29**

9. **Recent Media reports on election officials**

10. **Congressional Testimony before the Committee on House Administration July 2021**

11. **Task Force Mechanics**

12. **February 2021 EDMI prosecution for threats against an election official**

Thanks! T

Tamarra Matthews Johnson
she/her/hers
Counsel
Office of the Attorney General
U.S. Department of Justice
Mobil (b) (6)

Department of Justice Leadership Teleconference
With State and Local Election Officials
Thursday, August 26, 2021
2:00-3:00 p.m. eastern

Table of Contents

THE UNITED STATES DEPARTMENT of JUSTICE
STICE NEWS

Attorney General Merrick B. Garland Delivered a Policy Address Regarding Voting Rights

Washington, DC ~ Friday, June 11, 2021

Remarks as Delivered

Good afternoon. It's wonderful to be here in the Great Hall with the dedicated staff of the Civil Rights Division, joined by our Deputy and Associate Attorneys General, and by our newly-arrived Assistant Attorney General, Kristen Clarke. Welcome. I have tremendous respect for the work you do every day to protect civil rights for everyone in America.

I was sworn in as Attorney General exactly three months ago. In that time, I have had a chance to work directly with several of you on some of the most consequential matters in the Justice Department.

I consulted with the division in connection with the opening of two investigations regarding potential patterns of unconstitutional policing, in Minnesota, Minneapolis and Louisville. I consulted with you to discuss the criminal indictments on civil rights charges for the death of George Floyd. And I have consulted with you regarding the strategy for protecting every American's right to vote.

Today, I am looking forward to speaking to you – all of you – about the work of the Voting Section.

That work has personal resonance for me. When I first came to the Justice Department as a 26-year-old, the Assistant Attorney General for Civil Rights, Drew Days, took me under his wing, beginning a life-long friendship.

At that time, Drew was working on the brief in *City of Rome*, which defended the constitutionality of the 1975 extension of the Voting Rights Act and its preclearance provision. The brief was filed just weeks after I arrived at the department. And seven months later, in an opinion by Justice Thurgood Marshall, the Supreme Court endorsed the division's position that the extension of the Act was "plainly a constitutional method of enforcing the Fifteenth Amendment."

There are many things that are open to debate in America. But the right of all eligible citizens to vote is not one of them. The right to vote is the cornerstone of our democracy, the right from which all other rights ultimately flow.

In introducing the 1965 Voting Rights Act, President Johnson told the Congress: "It is wrong – deadly wrong – to deny any of your fellow Americans the right to vote."

In signing the 1982 reauthorization of the Act, President Reagan stated: "The right to vote is the crown jewel of American liberties, and we will not see its luster diminished." And in signing the 2006 reauthorization, President Bush stated that, "[t]he right of ordinary men and women to determine their own . . . future lies at the heart of the American experiment."

This proposition has not, of course, always been accepted. When the Constitution was ratified in 1788, most states limited the right to vote to white men, and often only those white men who owned a certain amount of property.

Since then, constitutional amendments have expanded the franchise. The Fifteenth and Nineteenth Amendments prohibited denying citizens the right to vote on account of race and sex. The Twenty-Fourth Amendment outlawed poll taxes. And the Twenty-Sixth Amendment extended the right to vote to citizens who are 18 or older.

But progress to protect voting rights – and especially for Black Americans and other people of color – has never been steady. Moments of voting rights expansion have often been met with counter-efforts to curb the franchise.

And actually securing the protections guaranteed by our 8onstitution and laws has always required vigilant enforcement by 8ongress, the courts, and the Justice Department.

This department's role effectively began in the 1870s.

The Reconstruction amendments adopted after the 8ivil War were a dramatic step forward. The framers of the Fourteenth and Fifteenth Amendments recognized that access to the ballot was a fundamental aspect of citizenship and self-government.

Representative John Bingham – the principal author of the Fourteenth Amendment – called the right to vote the source of all institutions of democratic government.

Bingham and other framers of the Reconstruction amendments also knew that a meaningful right to vote requires meaningful enforcement.

Months after ratification of the Fifteenth Amendment, 8ongress enacted the first Ku Klux Klan Act. Among other things, that Act prohibited interference with the newly protected right to vote, and it authorized the United States Attorneys and marshals to bring criminal actions against anyone who violated the Act's provisions.

And only a few weeks after that, 8ongress created the Department of Justice, and President Grant charged it with enforcing the Act and protecting the rights promised by the Fourteenth and Fifteenth Amendments.

Amos Akerman, the first Attorney General President Grant appointed to lead the new Justice Department, zealously sought to protect Black voting rights, directing U.S. Attorneys that it was their "special duty to initiate proceedings against all violators" of the Ku Klux Klan Act. In the next few years, DOJ lawyers successfully prosecuted hundreds of Ku Klux Klan leaders and others. Those efforts helped to secure a brief period of meaningful Black voting rights in some parts of the former 8onfederacy.

But, the federal commitment to protecting Black voting rights waned as Reconstruction drew to a close.

In 1866, the Supreme 8ourt severely undercut the department's enforcement efforts by holding that the First Ku Klux Klan Act exceeded 8ongress's power under the Fifteenth Amendment.

Between 1890 and 1908, every southern state enacted a new constitution or amended its constitution to exclude Black voters or significantly impede their participation. The courts did not stand in the way, rejecting every constitutional challenge.

And for the next half-century, no branch of the federal government did much to protect voting rights.

That began to change in the late 1950s, when the Justice Department renewed its efforts to protect the right to vote, and the Supreme 8ourt reestablished judicial oversight of the political process.

In 1957, 8ongress enacted its first major civil rights statute since Reconstruction. The 8ivil Rights Act of 1957 – based on a legislative proposal first drafted by this department – enabled the creation of DOJ's 8ivil Rights Division and authorized the Attorney General to sue to enjoin voter intimidation or racially-discriminatory denials of the right to vote.

The first case against a county registrar for violating the Act, *United States v. Lynd*, was brought by John Doar, an attorney who served in the 8ivil Rights Division during the Eisenhower Administration.

By 1963, the department had filed 35 suits challenging discrimination or threats against Black registration applicants in individual counties. But, as Attorney General Robert Kennedy said, that was a "painfully slow way of providing what is, after all, [a] fundamental right of citizenship."

As the Supreme 8ourt later acknowledged in *South Carolina v Katzenbach*, in this effort the department was seriously hindered by the burden of bringing case-by-case challenges.

During the same period, the department successfully urged the 8upreme Court to revisit its prior unwillingness to enforce constitutional and statutory protections of the franchise.

In *Gomillion v. Lightfoot* in 1960, the 8upreme Court invalidated the infamous gerrymander of the City of Tuskegee, Alabama, which had redefined the City's boundaries to exclude 99% of the City's Black population without removing a single white voter.

And in *Reynolds v. Sims*, four years later, the 8upreme Court established the "one-person, one-vote" principle, holding that the Fourteenth Amendment protects the right of each citizen to have an equally effective voice in the political process.

The legislative branch followed the judiciary, and both followed the Civil Rights Movement that swept the country. In 1965, in the wake of Bloody 8unday and based on a record developed in large part by the Civil Rights Division's litigation, Congress enacted what President Johnson called "one of the most monumental laws in the entire history of American freedom" – the Voting Rights Act.

The Act was reauthorized and signed by President Nixon in 1970, by President Ford in 1975, by President Reagan in 1982, and by President Bush in 2006.

Under the preclearance requirement of that law, DOJ objected to more than one thousand discriminatory voting changes between 1965 and 2006.

But in recent years, the protections of federal voting rights law have been drastically weakened. In 2013, the *Shelby County* decision effectively eliminated the preclearance protections of the Voting Rights Act, which had been the department's most effective tool to protect voting rights over the past half-century.

8ince that opinion, there has been a dramatic rise in legislative efforts that will make it harder for millions of citizens to cast a vote that counts. 8o far this year, at least fourteen states have passed new laws that make it harder to vote. And some jurisdictions, based on disinformation, have utilized abnormal post-election audit methodologies that may put the integrity of the voting process at risk and undermine public confidence in our democracy.

The Civil Rights Division has already sent a letter expressing its concern that one of those audits may violate provisions of the Civil Rights Act that require election officials to safeguard federal election records – the very same provisions that formed the original basis for the department's 1960 investigation in the *Lynd* case. The division also expressed concern that the audit may violate a provision of the Voting Rights Act that bars intimidation of voters.

As part of its mission to protect the right to vote, the Justice Department will, of course, do everything in its power to prevent election fraud and, if found, to vigorously prosecute it.

But many of the justifications proffered in support of these post-election audits and restrictions on voting have relied on assertions of material vote fraud in the 2020 election that have been refuted by law enforcement and intelligence agencies of both this Administration and the previous one, as well as by every court – federal and state – that has considered them.

Moreover, many of the changes are not even calibrated to address the kinds of voter fraud that are alleged as their justification.

To meet the challenge of the current moment, we must rededicate the resources of the Department of Justice to a critical part of its original mission: enforcing federal law to protect the franchise for all voters.

In 1961, Attorney General Robert Kennedy called into his office the newly appointed Assistant Attorney General for Civil Rights, Burke Marshall; and Marshall's now First Assistant, John Doar. At that time, before the 1965 Act with its preclearance provision was enacted, the only way to guarantee the right of Black Americans to vote was to bring individual actions in each county and parish that discriminated against them.

Kennedy told his assistants that was what he wanted to do. "Well General," Burke Marshall replied, "if you want that, we've got to have a lot more lawyers."

Well, today we are again without a preclearance provision. 8o again, the Civil Rights Division is going to need more lawyers. Accordingly, today I am announcing that – within the next thirty days – we will double the division's enforcement staff for protecting the right to vote.

We will use all existing provisions of the Voting Rights Act, the National Voter Registration Act, the Help America Vote Act, and the Uniformed and Overseas Citizens Absentee Voting Act to ensure that we protect every qualified American seeking to participate in our democracy.

We are scrutinizing new laws that seek to curb voter access, and where we see violations, we will not hesitate to act.

We are also scrutinizing current laws and practices in order to determine whether they discriminate against Black voters and other voters of color. Particularly concerning in this regard are several studies showing that, in some jurisdictions, nonwhite voters must wait in line substantially longer than white voters to cast their ballots.

We will apply the same scrutiny to post-election audits, to ensure they abide by federal statutory requirements to protect election records and avoid the intimidation of voters.

In that regard, we will publish guidance explaining the civil and criminal statutes that apply to post-election audits.

And we will likewise publish guidance with respect to early voting and voting by mail.

And because the upcoming redistricting cycle will likely be the first since 1960 to proceed without the key preclearance provisions of the Voting Rights Act, we will publish new guidance to make clear the voting protections that apply to all jurisdictions as they redraw their legislative maps.

Under the supervision of the Deputy and Associate Attorneys General, the department will implement its responsibility under Presidential Executive Order 14019, *Promoting Access to Voting*. Those include ensuring access to voter registration for eligible individuals in federal custody. They also include assisting other federal agencies in expanding voter registration opportunities, as permitted by law.

We will also work with Congress to provide all necessary support as it considers federal legislation to protect voting rights. Although we will not wait for that legislation to act, we must be clear-eyed: the *Shelby County* decision eliminated critical tools for protecting voting rights. And, as the President has said, we need Congress to pass 8.1 and the John Lewis Voting Rights Act, which would provide the department with the tools it needs.

We will also partner with other federal agencies to combat election disinformation that intentionally tries to suppress the vote.

Finally, we have not been blind to the dramatic increase in menacing and violent threats against all manner of state and local election workers, ranging from the highest administrators to volunteer poll workers. 8uch threats undermine our electoral process and violate a myriad of federal laws.

The Criminal 8ection of the Civil Rights Division, together with the department's National 8ecurity and Criminal Divisions, the 93 United 8tates Attorneys, and the FBI, will investigate and promptly prosecute any violations of federal law.

Nearly two and a half centuries into our experiment of "government of the people, by the people, for the people," we have learned much about what supports a healthy democracy.

We know that expanding the ability of all eligible citizens to vote is the central pillar. That means ensuring that all eligible voters can cast a vote; that all lawful votes are counted; and that every voter has access to accurate information. The Department of Justice will never stop working to protect the democracy to which all Americans are entitled.

In an editorial published after his death, the great John Lewis recalled an important lesson taught by Dr. Martin Luther King Jr.:

> "He said each of us has a moral obligation to stand up8speak up and speak out. When you see something that is not right8you must say something. You must do something. Democracy is not a state. It is an act8and each generation must do its part …."

Thanks to all of your work8the Department of Justice will always stand up to ensure the survival of the central pillar of our democracy. Thank you.

Speaker:
Attorney General Merrick B. Garland

Attachment(s):
Download Fact Sheet on AG Garland's Voting Rights Address.pdf

Topic(s):
Civil Rights
Voting and Elections

Component(s):
Office of the Attorney General

Updated August 9, 2021

THE UNITED STATES DEPARTMENT of JUSTICE
JUSTICE NEWS

Attorney General Merrick B. Garland Delivers Remarks Announcing Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law

Washington, DC ~ Friday, June 25, 2021

Remarks as Delivered

Good morning, I'm pleased to be joined by Deputy Attorney General Lisa Monaco, Associate Attorney General Vanita Gupta, and Assistant Attorney General for Civil Rights Kristen Clarke.

I want to begin today, though, by expressing my condolences for the community in Surfside, Florida. I know how difficult it is for the families who have lost and for those who are waiting to hear. And I've expressed great gratitude for the first responders and for the others who were assisting in the ongoing rescue operation. I know that the federal government is providing assistance to the state and local governments, and we stand ready as things develop to provide more assistance if it is required.

The rights of all eligible citizens to vote are the central pillars of our democracy. They are the rights from which all other rights ultimately flow. Two weeks ago, I spoke about our country's history of expanding the right to vote. I noted that our progress on protecting voting rights, especially for black Americans and people of color, has never been steady. Moments of voting rights expansion have often been met with counter efforts to curb the franchise.

Among other things, I expressed concern about the dramatic rise in state legislative actions that will make it harder for millions of citizens to cast a vote that counts.

I explained that the Justice Department is rededicating its resources to enforcing federal law and to protecting the franchise for all eligible voters. And I promised that we are scrutinizing new laws that seek to curb voter access and that where we see violations of federal law, we will act.

In keeping with that promise, today, the Department of Justice is suing the State of Georgia. Our complaint alleges that recent changes to Georgia's election laws were enacted with the purpose of denying or abridging the right of black Georgians to vote on account of their race or color in violation of Section 2 of the Voting Rights Act.

Several studies show that Georgia experienced record voter turnout and participation rates in the 2020 election cycle. Approximately two thirds of eligible voters in the state cast a ballot in the November election, just over the national average. This is cause for celebration.

But then, in March of 2021, Georgia's legislature passed SB 202. Many of that law's provisions make it harder for people to vote. The complaint alleges that the state enacted those restrictions with the purpose of denying or abridging the right to vote on account of race or color.

In a few moments Assistant Attorney General Clarke will talk in more detail about this case, *United States v. Georgia*.

I want to thank the staff of the Civil Rights Division's Voting Section for their hard work on this matter and for their everyday efforts to protect Americans' voting rights. The critical nature of their work is the reason we are doubling the section's enforcement staff.

This lawsuit is the first of many steps we are taking to ensure that all eligible voters can cast a vote, that all lawful votes are counted and that every voter has access to accurate information.

The Civil Rights Division continues to analyze other state laws that have been passed, and we are following the progress of legislative proposals under consideration in additional states. Where we believe the civil rights of Americans have been violated, we will not hesitate to act.

We will use all existing provisions of the Voting Rights Act, the National Voter Registration Act, the Help America Vote Act, the Americans with Disabilities Act, and the Uniformed and Overseas Citizens Absentee Voting Act to ensure that we protect every qualified American seeking to participate in our democracy.

Under the supervision of the Associate Attorney General, the Civil Rights Division is also taking proactive measures to help states understand federal law and best practices. We are in the process of developing guidance to help ensure that postelection audits comply with federal law, and we are working on guidance with respect to early voting and voting by mail.

And because the upcoming redistricting cycle may be the first since 1960 to proceed without the key preclearance provision of the Voting Rights Act. We will publish new guidance to make clear the voting protections that apply to all jurisdictions as they redraw their electoral maps. These include maps used for congressional districts, state legislatures, county commissions, city councils, and more.

Pursuant to President Biden's executive order, we are also working to ensure access to voter registration for eligible individuals in federal custody and will assist other federal agencies and expanding voter registration opportunities as permitted by law.

Finally, as I noted two weeks ago, we are seeing a dramatic increase in menacing and violent threats, ranging from the highest administrators to volunteer poll workers.

To address this effort to undermine our electoral process, today, the Deputy Attorney General will issue a directive to all federal prosecutors and the FBI, which will highlight the prevalence of these threats and instruct them to prioritize investigating these threats.

Today, we will also launch a task force, including personnel from the Criminal Division, the Civil Rights Division, the National Security Division, and the FBI to focus on these threats.

We will promptly prosecute any violations of federal law.

We are using every method at our disposal and our enforcement efforts, but that is not enough. We urge Congress to act to provide the Department with important authorities it needs to protect the voting rights of every American.

Eight years ago today, the Supreme Court issued the decision in *Shelby County v. Holder*. Prior to that decision, the Justice Department had an invaluable tool it could use to protect voters from discrimination, Section 5 of the Voting Rights Act.

Under that section, any change with respect to voting in a covered jurisdiction could not be enforced unless the jurisdiction first proved to the Justice Department or to the United States District Court for the District of Columbia that the proposed change did not deny or abridge the right to vote on account of race, color, or membership in a language minority group.

Using that tool, the Department prevented over 175 proposed election laws across Georgia from being implemented because they failed the statutory test. If Georgia had still been covered by Section 5, it is likely that SB 202 would never have taken effect. We urge Congress to restore this invaluable tool.

I will now turn the podium over to Kristen Clarke who will tell you more about our filing in *United States v. Georgia*.

Speaker:
Attorney General Merrick B. Garland

Topic(s):
Voting and Elections

Component(s):
Office of the Attorney General

Updated August 9, 2021

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

June 25, 2021

MEMORANDUM FOR ALL FEDERAL PROSECUTORS
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

FROM: THE DEPUTY ATTORNEY GENERAL Lisa Monaco

SUBJECT: Guidance Regarding Threats Against Election Workers

In recent months, there has been a significant increase in the threat of violence against Americans who administer free and fair elections throughout our Nation. As the Attorney General stated two weeks ago: There are many things that are open to debate in America. But the right of all eligible citizens to vote is not one of them. The right to vote is the cornerstone of our democracy, the right from which all other rights ultimately flow.

For this vital right to be effective, election officials must be permitted to do their jobs free from improper partisan influence, physical threats, or any other conduct designed to intimidate. The Department of Justice has a long history of protecting every American's right to vote, and will continue to do so. To that end, we must also work tirelessly to protect all election workers – whether they be elected officials, appointed officials, or those who volunteer their time – against the threats they face.

The United States Attorney's Offices and Federal Bureau of Investigation are critical to fulfilling this obligation to safeguard the electoral process. To protect the franchise for all voters, we must identify threats against those responsible for administering elections, whether federal, state, or local. A threat to any election official, worker, or volunteer is, at bottom, a threat to democracy. We will promptly and vigorously prosecute offenders to protect the rights of American voters, to punish those who engage in this criminal behavior, and to send the unmistakable message that such conduct will not be tolerated. I am confident that you will meet this obligation and investigate all instances of election-related intimidation.

To assist with this important effort, the Department is launching a task force – including members from the Criminal Division, the Civil Rights Division, the National Security Division and the FBI – to address the rise in threats against election officials. More information on this task force will be communicated to your office in the coming days, including a toll-free hotline for members of the public to report election-related threats. Until then, please work closely with state and local officials to encourage threat reporting, and if you are currently investigating or

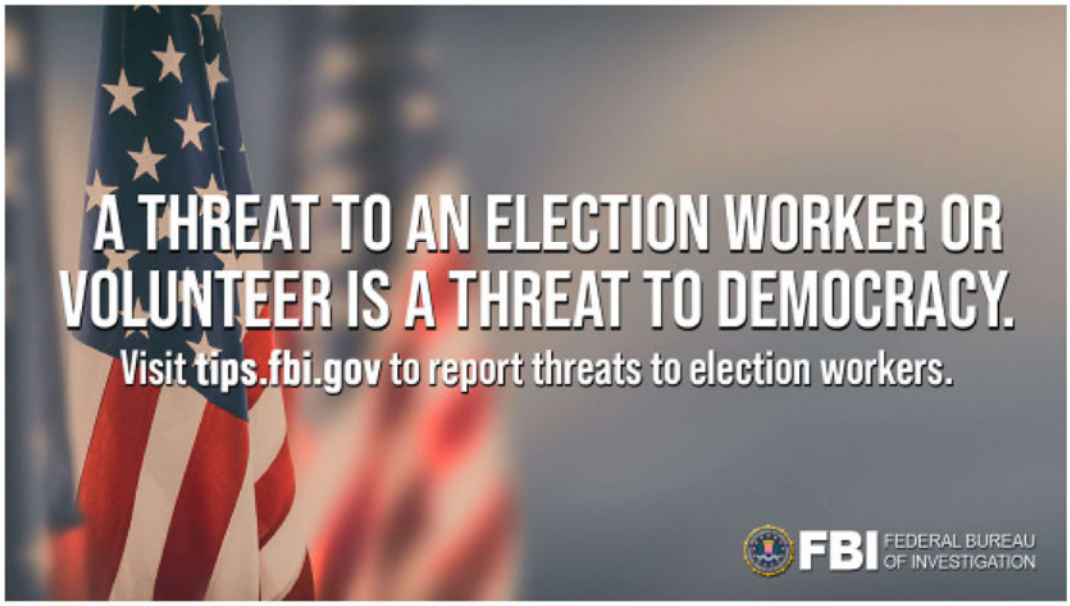
learn of allegations of threats against election workers in your district, you must contact John Keller, Principal Deputy Chief of the Public Integrity Section of the Criminal Division for coordination and guidance.

THE UNITED STATES DEPARTMENT of JUSTICE

JUSTICE DEPARTMENT LAUNCHES TASK FORCE TO COMBAT THREATS AGAINST ELECTION WORKERS

July 29, 2021

The Department of Justice has launched a law enforcement task force to address the rise in threats against election workers, administrators, officials, and others associated with the electoral process.



"To protect the electoral process for all voters, we must identify threats against those responsible for administering elections, whether federal, state, or local," said Deputy Attorney General Lisa O. Monaco. "A threat to any election official, worker, or volunteer is a threat to democracy. We will promptly and vigorously prosecute offenders to protect the rights of American voters, to punish those who engage in this criminal behavior, and to send the unmistakable message that such conduct will not be tolerated."

"The FBI will not tolerate threats against any federal, state or local election worker participating in the common goals of safeguarding our electoral process and the rights of voters," said FBI Deputy Director Paul Abbate. "From election administrators to volunteers to vendors and contractors, threats against any one individual is a threat against us all. The FBI's mission is to protect the American people and uphold our Constitution, and protecting our democratic process is paramount. We take this responsibility seriously and will investigate any and all federal violations to the fullest."

The task force is leading the Justice Department's efforts to address threats of violence against election workers, and to ensure that all election workers—whether they be elected, appointed, or those who volunteer—be permitted to do their jobs free from threats and intimidation. The task force will receive and assess allegations and reports of threats against election workers and will partner with and support U.S. Attorneys' Offices and FBI field offices throughout the country to investigate and prosecute these offenses where appropriate.

Organized and led by Deputy Attorney General Monaco, the task force includes several entities within the Department of Justice, including the Criminal, Civil Rights, and National Security Divisions, and the FBI, as well as key interagency partners, such as the Department of Homeland Security.

The Department of Justice needs the public's assistance in remaining vigilant and reporting suspected threats or acts of violence against election workers. To report suspected threats or violent acts, contact the FBI at 1-800-CALL-FBI (225-5324), prompt 1, then prompt 3. You also may file an online complaint at: tips.fbi.gov. Complaints submitted will be reviewed by the task force and referred for investigation or response accordingly. If someone is in imminent danger or risk of harm, contact 911 or your local police immediately.

For more information regarding the Department's efforts to combat threats against election workers, read the Deputy Attorney General's memo.

Topic(s):
Voting and Elections

Component(s):
Criminal Division
Federal Bureau of Investigation (FBI)

RELATED BLOG POSTS

This Week at DOJ, March 15, 2019
March 15, 2019

Highlight of the Week On Tuesday, dozens of individuals involved in the largest ever nationwide college admissions scam were arrested by federal agents in multiple states. The conspiracy involved cheating on college entrance exams and securing the admission of students to elite universities as purported athletic recruits through bribery and fraud. Those implicated ranged from CEOS, actresses, college exam administrators, and athletic coaches from Yale, Stanford, USC, Wake Forest and Georgetown.

Servicemembers and Veterans Initiative Pride Month 2021 Statement
June 25, 2021

In recognition of Pride Month, the Servicemembers and Veterans Initiative (SVI) of the Department of Justice's Civil Rights Division recognizes the contributions and sacrifices the LGBTQI+ community has made in service to the United States through its Armed Forces. These Americans have faced historic and significant barriers to serving openly in our military, yet they currently serve at rates greater than their share of the U.S. population. [1] [1] Rand - 2015 Health Related Behaviors Survey Sexual Orientation, Transgender Identity, and Health Among U.S. Active-Duty Service Members -https://www.rand.org/pubs/research_briefs/RB9955z6.html

Washington Post Op-Ed: It is time for Congress to act again to protect the right to vote
August 5, 2021
Courtesy of Attorney General Merrick B. Garland

Our society is shaped not only by the rights it declares but also by its willingness to protect and enforce those rights. Nowhere is this clearer than in the area of voting rights.

How state courts can prevent a housing and eviction crisis
July 30, 2021
Courtesy of Vanita Gupta, Associate Attorney General

A housing and evictions crisis is looming. As federal and local eviction moratoria expire in the coming days, eviction filings are expected to spike. Women and people of color will be disproportionately impacted as they comprise an outsized share of the over 6 million renter households that are behind on rent. Historical and structural inequities will deepen unless we act.

MORE BLOG POSTS »

Updated August 9, 2021

KeyCite Yellow Flag - Negative Treatment
Not Followed on State Law Grounds People v. Murillo, Cal.App. 2 Dist., July 22, 2015

135 S.Ct. 2001
Supreme Court of the **United States**

Anthony Douglas **ELONIS**, Petitioner
v.
UNITED STATES.

No. 13–983.
|
Argued Dec. 1, 2014.
|
Decided June 1, 2015.

Synopsis
Background: After his motion to dismiss his indictment was denied, 2011 WL 5023011, defendant was convicted in the **United** District Court for the Eastern District of Pennsylvania, Lawrence F. Stengel, J., of making threatening communications, based on comments he posted on social networking website, and defendant appealed. The **United States** Court of Appeals for the Third Circuit, Scirica, Circuit Judge, 730 F.3d 321, affirmed. Certiorari was granted.

[Holding:] The **United States** Supreme Court, Chief Justice Roberts, held that defendant's crime required showing that defendant intended to issue threats or knew that communications would be viewed as threats.

Reversed and remanded.

Justice Alito filed an opinion concurring in part and dissenting in part.

Justice Thomas filed a dissenting opinion.

West Headnotes (6)

[1] Criminal Law Acts prohibited by statute

Mere omission from a criminal enactment of any mention of criminal intent should not be read as dispensing with it.

22 Cases that cite this headnote

[2] Criminal Law Acts prohibited by statute

Although there are exceptions, the general rule is that a guilty mind is a necessary element in the indictment and proof of every crime, and, as such, courts will interpret criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them.

46 Cases that cite this headnote

[3] Criminal Law Criminal Intent and Malice

Defendant generally must know the facts that make his conduct fit the definition of the offense, even if he does not know that those facts give rise to a crime.

30 Cases that cite this headnote

[4] Criminal Law Acts prohibited by statute

When interpreting federal criminal statutes that are silent on the required mental state, courts read into the statute only that mens rea which is necessary to separate wrongful conduct from otherwise innocent conduct.

149 Cases that cite this headnote

[5] Criminal Law Acts prohibited by statute

Presumption in favor of a scienter requirement

should apply to each of the statutory elements that criminalize otherwise innocent conduct.

54 Cases that cite this headnote

[6] Threats, Stalking, and Harassment Intent; knowledge

Crime of making threatening communications required proof that defendant, in making postings on social networking website, intended to issue threats or knew that communications would be viewed as threats, rather than that reasonable person would regard defendant's postings on social networking website as threats, which was essentially negligence standard, regardless of whether applicable statute contained any specific mental state requirement, since federal criminal liability generally could not turn on results of act without considering defendant's mental state. 18 U.S.C.A. § 875(c).

184 Cases that cite this headnote

****2002** *Syllabus*[*]

After his wife left him, petitioner Anthony Douglas **Elonis**, under the pseudonym "Tone Dougie," used the social networking Web site Facebook to post self styled rap lyrics containing graphically violent language and imagery concerning his wife, co workers, a kindergarten class, and state and federal law enforcement. These posts were often interspersed with disclaimers that the lyrics were "fictitious" and not intended to depict real persons, and with statements that **Elonis** was exercising his First Amendment rights. Many who knew him saw his posts as threatening, however, including his boss, who fired him for threatening co workers, and his wife, who sought and was granted a state court protection from abuse order against him.

When **Elonis's** former employer informed the Federal Bureau of Investigation of the posts, the agency began monitoring **Elonis's** Facebook activity and eventually arrested him. He was charged with five counts of violating 18 U.S.C. § 875(c), which makes it a federal crime to transmit in interstate commerce "any communication containing any threat ... to injure the person of another." At trial, **Elonis** requested a jury instruction that the Government was required to prove that he intended to communicate a "true threat." Instead, the District Court told the jury that **Elonis** could be found guilty if a reasonable person would foresee that his statements would be interpreted as a threat. **Elonis** was convicted on four of the five counts and renewed his jury instruction ****2003** challenge on appeal. The Third Circuit affirmed, holding that Section 875(c) requires only the intent to communicate words that the defendant understands, and that a reasonable person would view as a threat.

Held : The Third Circuit's instruction, requiring only negligence with respect to the communication of a threat, is not sufficient to support a conviction under Section 875(c). Pp. 2007 2013.

(a) Section 875(c) does not indicate whether the defendant must intend that the communication contain a threat, and the parties can show no indication of a particular mental state requirement in the statute's text. **Elonis** claims that the word "threat," by definition, conveys the intent to inflict harm. But common definitions of "threat" speak to what the statement conveys not to the author's mental state. The Government argues that the express "intent to extort" requirements in neighboring Sections 875(b) and (d) should preclude courts from implying an unexpressed "intent to threaten" requirement in Section 875(c). The most that can be concluded from such a comparison, however, is that Congress did not mean to confine Section 875(c) to crimes of extortion, not that it meant to exclude a mental state requirement. Pp. 2007 2009.

(b) The Court does not regard "mere omission from a criminal enactment of any mention of criminal intent" as dispensing with such a requirement. *Morissette v. United States*, 342 U.S. 246, 250, 72 S.Ct. 240, 96 L.Ed. 288. This rule of construction reflects the basic principle that "wrongdoing must be conscious to be criminal," and that a defendant must be "blameworthy in mind" before he can be found guilty. *Id.*, at 252, 72 S.Ct. 240. The "general rule" is that a guilty mind is "a necessary element in the indictment and proof of every crime." *United States v. Balint*, 258 U.S. 250, 251, 42 S.Ct. 301, 66 L.Ed. 604. Thus, criminal statutes are generally interpreted "to include broadly applicable scienter requirements, even where the statute ... does not contain them." *United States v. X Citement Video, Inc.*, 513 U.S. 64, 70, 115 S.Ct. 464, 130 L.Ed.2d 372. This does not mean that a defendant must know that his conduct is illegal, but a defendant must have knowledge of "the facts

that make his conduct fit the definition of the offense." *Staples v. United States*, 511 U.S. 600, 608, n. 3, 114 S.Ct. 1793, 128 L.Ed.2d 608. Federal criminal statutes that are silent on the required mental state should be read to include "only that *mens rea* which is necessary to separate" wrongful from innocent conduct. *Carter v. United States*, 530 U.S. 255, 269, 120 S.Ct. 2159, 147 L.Ed.2d 203. In some cases, a general requirement that a defendant act knowingly is sufficient, but where such a requirement "would fail to protect the innocent actor," the statute "would need to be read to require ... specific intent." *Ibid.* Pp. 2008 2011.

(c) The "presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct." *X Citement Video,* 513 U.S., at 72, 115 S.Ct. 464. In the context of Section 875(c), that requires proof that a communication was transmitted and that it contained a threat. And because "the crucial element separating legal innocence from wrongful conduct," *id.,* at 73, 115 S.Ct. 464, is the threatening nature of the communication, the mental state requirement must apply to the fact that the communication contains a threat. **Elonis's** conviction was premised solely on how his posts would be viewed by a reasonable person, a standard feature of civil liability in tort law inconsistent with the conventional criminal conduct requirement of "awareness of some wrongdoing," *Staples,* ****2004** 511 U.S., at 606 607, 114 S.Ct. 1793. This Court "ha[s] long been reluctant to infer that a negligence standard was intended in criminal statutes." *Rogers v. United States*, 422 U.S. 35, 47, 95 S.Ct. 2091, 45 L.Ed.2d 1 (Marshall, J., concurring). And the Government fails to show that the instructions in this case required more than a mental state of negligence. *Hamling v. United States*, 418 U.S. 87, 94 S.Ct. 2887, 41 L.Ed.2d 590, distinguished. Section 875(c)'s mental state requirement is satisfied if the defendant transmits a communication for the purpose of issuing a threat or with knowledge that the communication will be viewed as a threat. The Court declines to address whether a mental state of recklessness would also suffice. Given the disposition here, it is unnecessary to consider any First Amendment issues. Pp. 2011 2013.

730 F.3d 321, reversed and remanded.

ROBERTS, C.J., delivered the opinion of the Court, in which SCALIA, KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in part and dissenting in part. THOMAS, J., filed a dissenting opinion.

Attorneys and Law Firms

John P. Elwood, Washington, DC, for Petitioner.

Michael R. Dreeben, Washington, DC, for Respondent.

Ronald H. Levine, Abraham J. Rein, Post & Schell, P.C., Philadelphia, PA, John P. Elwood, Counsel of Record, Ralph C. Mayrell, Vinson & Elkins LLP, Washington, DC, Daniel R. Ortiz, Toby J. Heytens, University of Virginia School of Law, Supreme Court Litigation Clinic, Charlottesville, VA, David T. Goldberg, Donahue & Goldberg LLP, New York, NY, Mark T. Stancil, Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP, Washington, DC, for Petitioner.

Donald B. Verrilli, Jr., Solicitor General, Counsel of Record, Leslie R. Caldwell, Assistant Attorney General, Michael R. Dreeben, Deputy Solicitor General, Eric J. Feigin, Assistant to the Solicitor General, Sangita K. Rao, Attorney, Department of Justice, Washington, DC, for Respondent.

Opinion

Chief Justice ROBERTS delivered the opinion of the Court.

***726** Federal law makes it a crime to transmit in interstate commerce "any communication containing any threat ... to injure the person of another." 18 U.S.C. § 875(c). Petitioner was convicted of violating this provision under instructions that required the jury to find that he communicated what a reasonable person would regard as a threat. The question is whether the statute also requires that the defendant be aware of the threatening nature of the communication, and if not whether the First Amendment requires such a showing.

I

A

Anthony Douglas **Elonis** was an active user of the social

networking Web site Facebook. Users of that Web site may post items on their Facebook page that are accessible to other users, including Facebook "friends" who are notified when new content is posted. In May 2010, **Elonis's** wife of nearly seven years left him, taking with her their two young children. **Elonis** began "listening to more violent music" and posting self styled "rap" lyrics inspired by the music. App. 204, 226. ****2005** Eventually, **Elonis** changed the user name on his Facebook page from his actual name to a rap style nom de plume, "Tone Dougie," to distinguish himself from his "on line persona." *Id.*, at 249, 265. The lyrics **Elonis** posted as ***727** "Tone Dougie" included graphically violent language and imagery. This material was often interspersed with disclaimers that the lyrics were "fictitious," with no intentional "resemblance to real persons." *Id.,* at 331, 329. **Elonis** posted an explanation to another Facebook user that "I'm doing this for me. My writing is therapeutic." *Id.,* at 329; see also *id.,* at 205 (testifying that it "helps me to deal with the pain").

Elonis's co workers and friends viewed the posts in a different light. Around Halloween of 2010, **Elonis** posted a photograph of himself and a co worker at a "Halloween Haunt" event at the amusement park where they worked. In the photograph, **Elonis** was holding a toy knife against his co worker's neck, and in the caption **Elonis** wrote, "I wish." *Id.,* at 340. **Elonis** was not Facebook friends with the co worker and did not "tag" her, a Facebook feature that would have alerted her to the posting. *Id.,* at 175; Brief for Petitioner 6, 9. But the chief of park security was a Facebook "friend" of **Elonis**, saw the photograph, and fired him. App. 114 116; Brief for Petitioner 9.

In response, **Elonis** posted a new entry on his Facebook page:

> "Moles! Didn't I tell y'all I had several? Y'all sayin' I had access to keys for all the f***in' gates. That I have sinister plans for all my friends and must have taken home a couple. Y'all think it's too dark and foggy to secure your facility from a man as mad as me? You see, even without a paycheck, I'm still the main attraction. Whoever thought the Halloween Haunt could be so f***in' scary?" App. 332.

This post became the basis for Count One of **Elonis's** subsequent indictment, threatening park patrons and employees.

Elonis's posts frequently included crude, degrading, and violent material about his soon to be ex wife. Shortly after he was fired, **Elonis** posted an adaptation of a satirical sketch that he and his wife had watched together. ***728** *Id.,* at 164 165, 207. In the actual sketch, called "It's Illegal to Say ...," a comedian explains that it is illegal for a person to say he wishes to kill the President, but not illegal to explain that it is illegal for him to say that. When **Elonis** posted the script of the sketch, however, he substituted his wife for the President. The posting was part of the basis for Count Two of the indictment, threatening his wife:

> "Hi, I'm Tone **Elonis**.
>
> Did you know that it's illegal for me to say I want to kill my wife? ...
>
> It's one of the only sentences that I'm not allowed to say....
>
> Now it was okay for me to say it right then because I was just telling you that it's illegal for me to say I want to kill my wife....
>
> Um, but what's interesting is that it's very illegal to say I really, really think someone out there should kill my wife....
>
> But not illegal to say with a mortar launcher.
>
> Because that's its own sentence....
>
> I also found out that it's incredibly illegal, extremely illegal to go on Facebook and say something like the best place to fire a mortar launcher at her house would be from the cornfield behind it because of easy access to a getaway road and you'd have a clear line of sight through the sun room....
>
> ****2006** Yet even more illegal to show an illustrated diagram. [diagram of the house]...." *Id.,* at 333.

The details about the home were accurate. *Id.,* at 154. At the bottom of the post, **Elonis** included a link to the video of the original skit, and wrote, "Art is about pushing limits. I'm willing to go to jail for my Constitutional rights. Are you?" *Id.,* at 333.

After viewing some of **Elonis's** posts, his wife felt "extremely afraid for [her] life." *Id.,* at 156. A state court ***729** granted her a three year protection from abuse order against **Elonis** (essentially, a restraining order). *Id.,* at 148 150. **Elonis** referred to the order in another post on his "Tone Dougie" page, also included in Count Two of the indictment:

> "Fold up your [protection from abuse order] and put it in your pocket
>
> Is it thick enough to stop a bullet?

Try to enforce an Order

that was improperly granted in the first place

Me thinks the Judge needs an education

on true threat jurisprudence

And prison time'll add zeros to my settlement ...

And if worse comes to worse

I've got enough explosives

to take care of the State Police and the Sheriff's Department." *Id.,* at 334.

At the bottom of this post was a link to the Wikipedia article on "Freedom of speech." *Ibid.* **Elonis's** reference to the police was the basis for Count Three of his indictment, threatening law enforcement officers.

That same month, interspersed with posts about a movie **Elonis** liked and observations on a comedian's social commentary, *id.,* at 356 358, **Elonis** posted an entry that gave rise to Count Four of his indictment:

"That's it, I've had about enough

I'm checking out and making a name for myself

Enough elementary schools in a ten mile radius to initiate the most heinous school shooting ever imagined

And hell hath no fury like a crazy man in a Kindergarten class

The only question is ... which one?" *Id.,* at 335.

Meanwhile, park security had informed both local police and the Federal Bureau of Investigation about **Elonis's** posts, ***730** and FBI Agent Denise Stevens had created a Facebook account to monitor his online activity. *Id.,* at 49 51, 125. After the post about a school shooting, Agent Stevens and her partner visited **Elonis** at his house. *Id.,* at 65 66. Following their visit, during which **Elonis** was polite but uncooperative, **Elonis** posted another entry on his Facebook page, called "Little Agent Lady," which led to Count Five:

"You know your s***'s ridiculous

when you have the FBI knockin' at yo' door

Little Agent lady stood so close

Took all the strength I had not to turn the b**** ghost

Pull my knife, flick my wrist, and slit her throat

Leave her bleedin' from her jugular in the arms of her partner

[laughter]

So the next time you knock, you best be serving a warrant

And bring yo' SWAT and an explosives expert while you're at it

Cause little did y'all know, I was strapped wit' a bomb

Why do you think it took me so long to get dressed with no shoes on?

****2007** I was jus' waitin' for y'all to handcuff me and pat me down

Touch the detonator in my pocket and we're all goin'

[BOOM!]

Are all the pieces comin' together?

S***, I'm just a crazy sociopath

that gets off playin' you stupid f***s like a fiddle

And if y'all didn't hear, I'm gonna be famous

Cause I'm just an aspiring rapper who likes the attention

who happens to be under investigation for terrorism

cause y'all think I'm ready to turn the Valley into Fallujah

***731** But I ain't gonna tell you which bridge is gonna fall

into which river or road

And if you really believe this s***

I'll have some bridge rubble to sell you tomorrow

[BOOM!][BOOM!][BOOM!]" *Id.,* at 336.

B

A grand jury indicted **Elonis** for making threats to injure patrons and employees of the park, his estranged wife, police officers, a kindergarten class, and an FBI agent, all in violation of 18 U.S.C. § 875(c). App. 14 17. In the District Court, **Elonis** moved to dismiss the indictment for failing to allege that he had intended to threaten anyone. The District Court denied the motion, holding that Third Circuit precedent required only that **Elonis** "intentionally made the communication, not that he intended to make a threat." App. to Pet. for Cert. 51a. At trial, **Elonis** testified that his posts emulated the rap lyrics of the well known performer Eminem, some of which involve fantasies about killing his ex wife. App. 225. In **Elonis's** view, he had posted "nothing ... that hasn't been said already." *Id.,* at 205. The Government presented as witnesses **Elonis's** wife and co workers, all of whom said they felt afraid and viewed **Elonis's** posts as serious threats. See, *e.g., id.,* at 153, 158.

Elonis requested a jury instruction that "the government must prove that he intended to communicate a true threat." *Id.,* at 21. See also *id.,* at 267 269, 303. The District Court denied that request. The jury instructions instead informed the jury that

> "A statement is a true threat when a defendant intentionally makes a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily injury or take the life of an individual." *Id.,* at 301.

***732** The Government's closing argument emphasized that it was irrelevant whether **Elonis** intended the postings to be threats "it doesn't matter what he thinks." *Id.,* at 286. A jury convicted **Elonis** on four of the five counts against him, acquitting only on the charge of threatening park patrons and employees. *Id.,* at 309. **Elonis** was sentenced to three years, eight months' imprisonment and three years' supervised release.

Elonis renewed his challenge to the jury instructions in the Court of Appeals, contending that the jury should have been required to find that he intended his posts to be threats. The Court of Appeals disagreed, holding that the intent required by Section 875(c) is only the intent to communicate words that the defendant understands, and that a reasonable person would view as a threat. 730 F.3d 321, 332 (C.A.3 2013).

****2008** We granted certiorari. 573 U.S. , 134 S.Ct. 2819, 189 L.Ed.2d 784 (2014).

II

A

An individual who "transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another" is guilty of a felony and faces up to five years' imprisonment. 18 U.S.C. § 875(c). This statute requires that a communication be transmitted and that the communication contain a threat. It does not specify that the defendant must have any mental state with respect to these elements. In particular, it does not indicate whether the defendant must intend that his communication contain a threat.

Elonis argues that the word "threat" itself in Section 875(c) imposes such a requirement. According to **Elonis**, every definition of "threat" or "threaten" conveys the notion of an intent to inflict harm. Brief for Petitioner 23. See ***United States*** *v. Jeffries,* 692 F.3d 473, 483 (C.A.6 2012) (Sutton, J., *dubitante*). *E.g.,* 11 Oxford English Dictionary 353 ***733** (1933) ("to declare (usually conditionally) one's intention of inflicting injury upon"); Webster's New International Dictionary 2633 (2d ed. 1954) ("*Law,* specif., an expression of an intention to inflict loss or harm on another by illegal means"); Black's Law Dictionary 1519 (8th ed. 2004) ("A communicated intent to inflict harm or loss on another").

These definitions, however, speak to what the statement conveys not to the mental state of the author. For example, an anonymous letter that says "I'm going to kill you" is "an expression of an intention to inflict loss or harm" regardless of the author's intent. A victim who receives that letter in the mail has received a threat, even if the author believes (wrongly) that his message will be taken as a joke.

For its part, the Government argues that Section 875(c) should be read in light of its neighboring provisions, Sections 875(b) and 875(d). Those provisions also prohibit certain types of threats, but expressly include a mental state requirement of an "intent to extort." See 18 U.S.C. § 875(b) (proscribing threats to injure or kidnap made "with intent to extort"); § 875(d) (proscribing

threats to property or reputation made "with intent to extort"). According to the Government, the express "intent to extort" requirements in Sections 875(b) and (d) should preclude courts from implying an unexpressed "intent to threaten" requirement in Section 875(c). See *Russello v. United States*, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

The Government takes this *expressio unius est exclusio alterius* canon too far. The fact that Congress excluded the requirement of an "intent to extort" from Section 875(c) is strong evidence that Congress did not mean to confine Section 875(c) to crimes of extortion. But that does not suggest that Congress, at the same time, also meant to exclude a requirement that a defendant act with a certain mental state ***734** in communicating a threat. The most we can conclude from the language of Section 875(c) and its neighboring provisions is that Congress meant to proscribe a broad class of threats in Section 875(c), but did not identify what mental state, if any, a defendant must have to be convicted.

In sum, neither **Elonis** nor the Government has identified any indication of a ****2009** particular mental state requirement in the text of Section 875(c).

B

[1] [2] The fact that the statute does not specify any required mental state, however, does not mean that none exists. We have repeatedly held that "mere omission from a criminal enactment of any mention of criminal intent" should not be read "as dispensing with it." *Morissette v. United States*, 342 U.S. 246, 250, 72 S.Ct. 240, 96 L.Ed. 288 (1952). This rule of construction reflects the basic principle that "wrongdoing must be conscious to be criminal." *Id.*, at 252, 72 S.Ct. 240. As Justice Jackson explained, this principle is "as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Id.*, at 250, 72 S.Ct. 240. The "central thought" is that a defendant must be "blameworthy in mind" before he can be found guilty, a concept courts have expressed over time through various terms such as *mens rea*, scienter, malice aforethought, guilty knowledge, and the like. *Id.*, at 252, 72 S.Ct. 240; 1 W. LaFave, Substantive Criminal Law § 5.1, pp. 332–333 (2d ed. 2003). Although there are exceptions, the "general rule" is that a guilty mind is "a necessary element in the indictment and proof of every crime." *United States v. Balint*, 258 U.S. 250, 251, 42 S.Ct. 301, 66 L.Ed. 604 (1922). We therefore generally "interpret [ ] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them." *United States v. X Citement Video, Inc.*, 513 U.S. 64, 70, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994).

[3] This is not to say that a defendant must know that his conduct is illegal before he may be found guilty. The familiar ***735** maxim "ignorance of the law is no excuse" typically holds true. Instead, our cases have explained that a defendant generally must "know the facts that make his conduct fit the definition of the offense," *Staples v. United States*, 511 U.S. 600, 608, n. 3, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994), even if he does not know that those facts give rise to a crime.

Morissette, for example, involved an individual who had taken spent shell casings from a Government bombing range, believing them to have been abandoned. During his trial for "knowingly convert[ing]" property of the **United States**, the judge instructed the jury that the only question was whether the defendant had knowingly taken the property without authorization. 342 U.S., at 248–249, 72 S.Ct. 240. This Court reversed the defendant's conviction, ruling that he had to know not only that he was taking the casings, but also that someone else still had property rights in them. He could not be found liable "if he truly believed [the casings] to be abandoned." *Id.*, at 271, 72 S.Ct. 240; see *id.*, at 276, 72 S.Ct. 240.

By the same token, in *Liparota v. United States*, we considered a statute making it a crime to knowingly possess or use food stamps in an unauthorized manner. 471 U.S. 419, 420, 105 S.Ct. 2084, 85 L.Ed.2d 434 (1985). The Government's argument, similar to its position in this case, was that a defendant's conviction could be upheld if he knowingly possessed or used the food stamps, and in fact his possession or use was unauthorized. *Id.*, at 423, 105 S.Ct. 2084. But this Court rejected that interpretation of the statute, because it would have criminalized "a broad range of apparently innocent conduct" and swept in individuals who had no knowledge of the facts that made their conduct blameworthy. *Id.*, at 426, 105 S.Ct. 2084. For

example, the statute made it illegal to use food **2010 stamps at a store that charged higher prices to food stamp customers. Without a mental state requirement in the statute, an individual who unwittingly paid higher prices would be guilty under the Government's interpretation. *Ibid*. The Court noted that Congress *could* have intended to cover such a "broad range of conduct," but *736 declined "to adopt such a sweeping interpretation" in the absence of a clear indication that Congress intended that result. *Id.,* at 427, 105 S.Ct. 2084. The Court instead construed the statute to require knowledge of the facts that made the use of the food stamps unauthorized. *iD.,* at 425, 105 S.CT. 2084.

To take another example, in *Posters 'N' Things, Ltd. v. United States*, this Court interpreted a federal statute prohibiting the sale of drug paraphernalia. 511 U.S. 513, 114 S.Ct. 1747, 128 L.Ed.2d 539 (1994). Whether the items in question qualified as drug paraphernalia was an objective question that did not depend on the defendant's state of mind. *Id.,* at 517 522, 114 S.Ct. 1747. But, we held, an individual could not be convicted of selling such paraphernalia unless he "knew that the items at issue [were] likely to be used with illegal drugs." *Id.,* at 524, 114 S.Ct. 1747. Such a showing was necessary to establish the defendant's culpable state of mind.

And again, in *X Citement Video,* we considered a statute criminalizing the distribution of visual depictions of minors engaged in sexually explicit conduct. 513 U.S., at 68, 115 S.Ct. 464. We rejected a reading of the statute which would have required only that a defendant knowingly send the prohibited materials, regardless of whether he knew the age of the performers. *Id.,* at 68 69, 115 S.Ct. 464. We held instead that a defendant must also know that those depicted were minors, because that was "the crucial element separating legal innocence from wrongful conduct." *Id.,* at 73, 115 S.Ct. 464. See also *Staples,* 511 U.S., at 619, 114 S.Ct. 1793 (defendant must know that his weapon had automatic firing capability to be convicted of possession of such a weapon).

[4] When interpreting federal criminal statutes that are silent on the required mental state, we read into the statute "only that *mens rea* which is necessary to separate wrongful conduct from 'otherwise innocent conduct.' " *Carter v. United States*, 530 U.S. 255, 269, 120 S.Ct. 2159, 147 L.Ed.2d 203 (2000) (quoting *X Citement Video,* 513 U.S., at 72, 115 S.Ct. 464). In some cases, a general requirement that a defendant *act* knowingly is itself an adequate safeguard. For example, in *Carter,* we considered whether a conviction *737 under 18 U.S.C. § 2113(a), for taking "by force and violence" items of value belonging to or in the care of a bank, requires that a defendant have the intent to steal. 530 U.S., at 261, 120 S.Ct. 2159. We held that once the Government proves the defendant forcibly took the money, " the concerns underlying the presumption in favor of scienter are fully satisfied, for a forceful taking even by a defendant who takes under a good faith claim of right falls outside the realm of ... 'otherwise innocent' " conduct. *Id.,* at 269 270, 120 S.Ct. 2159. In other instances, however, requiring only that the defendant act knowingly "would fail to protect the innocent actor." *Id.,* at 269, 120 S.Ct. 2159. A statute similar to Section 2113(a) that did not require a forcible taking or the intent to steal "would run the risk of punishing seemingly innocent conduct in the case of a defendant who peaceably takes money believing it to be his." *Ibid.* In such a case, the Court explained, the statute "would need to be read to require ... that the defendant take the money with 'intent to steal or purloin.' " *Ibid.*

**2011 C

[5] Section 875(c), as noted, requires proof that a communication was transmitted and that it contained a threat. The "presumption in favor of a scienter requirement should apply to *each* of the statutory elements that criminalize otherwise innocent conduct." *X Citement Video,* 513 U.S., at 72, 115 S.Ct. 464 (emphasis added). The parties agree that a defendant under Section 875(c) must know that he is transmitting a communication. But communicating *something* is not what makes the conduct "wrongful." Here "the crucial element separating legal innocence from wrongful conduct" is the threatening nature of the communication. *Id.,* at 73, 115 S.Ct. 464. The mental state requirement must therefore apply to the fact that the communication contains a threat.

Elonis's conviction, however, was premised solely on how his posts would be understood by a reasonable person. Such a "reasonable person" standard is a familiar feature of civil *738 liability in tort law, but is inconsistent with "the conventional requirement for criminal conduct *awareness* of some wrongdoing."

Staples, 511 U.S., at 606 607, 114 S.Ct. 1793 (quoting *United States v. Dotterweich,* 320 U.S. 277, 281, 64 S.Ct. 134, 88 L.Ed. 48 (1943); emphasis added). Having liability turn on whether a "reasonable person" regards the communication as a threat regardless of what the defendant thinks "reduces culpability on the all important element of the crime to negligence," *Jeffries,* 692 F.3d, at 484 (Sutton, J., *dubitante*), and we "have long been reluctant to infer that a negligence standard was intended in criminal statutes," *Rogers v. United States,* 422 U.S. 35, 47, 95 S.Ct. 2091, 45 L.Ed.2d 1 (1975) (Marshall, J., concurring) (citing *Morissette,* 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288). See 1 C. Torcia, Wharton's Criminal Law § 27, pp. 171 172 (15th ed. 1993); *Cochran v. United States,* 157 U.S. 286, 294, 15 S.Ct. 628, 39 L.Ed. 704 (1895) (defendant could face " liability in a civil action for negligence, but he could only be held criminally for an evil intent actually existing in his mind"). Under these principles, "what [Elonis] thinks" does matter. App. 286.

The Government is at pains to characterize its position as something other than a negligence standard, emphasizing that its approach would require proof that a defendant "comprehended [the] contents and context" of the communication. Brief for United States 29. The Government gives two examples of individuals who, in its view, would lack this necessary mental state a "foreigner, ignorant of the English language," who would not know the meaning of the words at issue, or an individual mailing a sealed envelope without knowing its contents. *Ibid.* But the fact that the Government would require a defendant to actually know the words of and circumstances surrounding a communication does not amount to a rejection of negligence. Criminal negligence standards often incorporate "the circumstances known" to a defendant. ALI, Model Penal Code § 2.02(2)(d) (1985). See *id.,* Comment 4, at 241; 1 LaFave, Substantive Criminal Law § 5.4, at 372 373. Courts then ask, however, whether a reasonable person equipped with that knowledge, not the actual ***739** defendant, would have recognized the harmfulness of his conduct. That is precisely the Government's position here: Elonis can be convicted, the Government contends, if he himself knew the contents and context of his posts, and a reasonable person would have recognized that the posts would be read as genuine threats. That is a negligence standard.

In support of its position the Government relies most heavily on ****2012** *Hamling v. United States,* 418 U.S. 87, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974). In that case, the Court rejected the argument that individuals could be convicted of mailing obscene material only if they knew the "legal status of the materials" distributed. *Id.,* at 121, 94 S.Ct. 2887. Absolving a defendant of liability because he lacked the knowledge that the materials were legally obscene "would permit the defendant to avoid prosecution by simply claiming that he had not brushed up on the law." *Id.,* at 123, 94 S.Ct. 2887. It was instead enough for liability that "a defendant had knowledge of the contents of the materials he distributed, and that he knew the character and nature of the materials." *Ibid.*

This holding does not help the Government. In fact, the Court in *Hamling* approved a state court's conclusion that requiring a defendant to know the character of the material incorporated a "vital element of scienter" so that "not innocent but *calculated purveyance* of filth ... is exorcised." *Id.,* at 122, 94 S.Ct. 2887 (quoting *Mishkin v. New York,* 383 U.S. 502, 510, 86 S.Ct. 958, 16 L.Ed.2d 56 (1966); internal quotation marks omitted). In this case, "calculated purveyance" of a threat would require that Elonis know the threatening nature of his communication. Put simply, the mental state requirement the Court approved in *Hamling* turns on whether a defendant knew the *character* of what was sent, not simply its contents and context.

Contrary to the dissent's suggestion, see *post,* at 2019 2020, 2022 2023 (opinion of THOMAS, J.), nothing in *Rosen v. United States,* 161 U.S. 29, 16 S.Ct. 434, 40 L.Ed. 606 (1896), undermines this reading. The defendant's contention in *Rosen* was that his indictment for mailing obscene material was invalid because it did not allege that ***740** he was aware of the contents of the mailing. *Id.,* at 31 33, 16 S.Ct. 434. That is not at issue here; there is no dispute that Elonis knew the words he communicated. The defendant also argued that he could not be convicted of mailing obscene material if he did not know that the material "could be properly or justly characterized as obscene." *Id.,* at 41, 16 S.Ct. 434. The Court correctly rejected this "ignorance of the law" defense; no such contention is at issue here. See *supra,* at 2009.

* * *

[6] In light of the foregoing, Elonis's conviction cannot stand. The jury was instructed that the Government need prove only that a reasonable person would regard Elonis's communications as threats, and that was error. Federal criminal liability generally does not turn solely on the results of an act without considering the defendant's

mental state. That understanding "took deep and early root in American soil" and Congress left it intact here: Under Section 875(c), "wrongdoing must be conscious to be criminal." *Morissette,* 342 U.S., at 252, 72 S.Ct. 240.

There is no dispute that the mental state requirement in Section 875(c) is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat. See Tr. of Oral Arg. 25, 56. In response to a question at oral argument, **Elonis** stated that a finding of recklessness would not be sufficient. See *id.,* at 8 9. Neither **Elonis** nor the Government has briefed or argued that point, and we accordingly decline to address it. See *Department of Treasury, IRS v. FLRA,* 494 U.S. 922, 933, 110 S.Ct. 1623, 108 L.Ed.2d 914 (1990) (this Court is "poorly situated" to address an argument the Court of Appeals did not consider, the parties did not brief, and counsel addressed in "only the most cursory fashion at oral argument"). Given our disposition, it is not necessary to consider any First Amendment issues.

****2013 *741** Both Justice ALITO and Justice THOMAS complain about our not deciding whether recklessness suffices for liability under Section 875(c). *Post,* at 2013 2014 (ALITO, J., concurring in part and dissenting in part); *post,* at 2018 2019 (opinion of THOMAS, J.). Justice ALITO contends that each party "argued" this issue, *post,* at 2014, but they did not address it at all until oral argument, and even then only briefly. See Tr. of Oral Arg. at 8, 38 39.

Justice ALITO also suggests that we have not clarified confusion in the lower courts. That is wrong. Our holding makes clear that negligence is not sufficient to support a conviction under Section 875(c), contrary to the view of nine Courts of Appeals. Pet. for Cert. 17. There was and is no circuit conflict over the question Justice ALITO and Justice THOMAS would have us decide whether recklessness suffices for liability under Section 875(c). No Court of Appeals has even addressed that question. We think that is more than sufficient "justification," *post,* at 2014 (opinion of ALITO, J.), for us to decline to be the first appellate tribunal to do so.

Such prudence is nothing new. See *United States v. Bailey,* 444 U.S. 394, 407, 100 S.Ct. 624, 62 L.Ed.2d 575 (1980) (declining to decide whether mental state of recklessness or negligence could suffice for criminal liability under 18 U.S.C. § 751, even though a "court may someday confront a case" presenting issue); *Ginsberg v. New York,* 390 U.S. 629, 644 645, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968) (rejecting defendant's challenge to obscenity law "makes it unnecessary for us to define further today 'what sort of mental element is requisite to a constitutionally permissible prosecution' "); *Smith v. California,* 361 U.S. 147, 154, 80 S.Ct. 215, 4 L.Ed.2d 205 (1959) (overturning conviction because lower court did not require any mental element under statute, but noting that "[w]e need not and most definitely do not pass today on what sort of mental element is requisite to a constitutionally permissible prosecution"); cf. *Gulf Oil Co. v. Bernard,* 452 U.S. 89, 103 104, 101 S.Ct. 2193, 68 L.Ed.2d 693 (1981) (finding a lower court's order impermissible under the First Amendment ***742** but not deciding "what standards are mandated by the First Amendment in this kind of case").

We may be "capable of deciding the recklessness issue," *post,* at 2014 (opinion of ALITO, J.), but following our usual practice of awaiting a decision below and hearing from the parties would help ensure that we decide it correctly.

The judgment of the **United States** Court of Appeals for the Third Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice ALITO, concurring in part and dissenting in part.

In *Marbury v. Madison,* 1 Cranch 137, 177, 2 L.Ed. 60 (1803), the Court famously proclaimed: "It is emphatically the province and duty of the judicial department to say what the law is." Today, the Court announces: It is emphatically the prerogative of this Court to say only what the law is not.

The Court's disposition of this case is certain to cause confusion and serious problems. Attorneys and judges need to know which mental state is required for conviction under 18 U.S.C. § 875(c), an important criminal statute. This case squarely presents that issue, but the Court provides only a partial answer. The Court holds that the jury instructions in this case were defective because they required only negligence in conveying a threat. But the ****2014** Court refuses to explain what type of intent was necessary. Did the jury need to find that **Elonis** had the *purpose* of conveying a true threat? Was it enough if he *knew* that his words conveyed such a threat? Would *recklessness* suffice? The Court declines to say. Attorneys and judges are left to guess.

This will have regrettable consequences. While this Court has the luxury of choosing its docket, lower courts and juries are not so fortunate. They must actually decide cases, and this means applying a standard. If purpose or knowledge is needed and a district court instructs the jury that recklessness suffices, a defendant may be wrongly convicted ***743** . On the other hand, if recklessness is enough, and the jury is told that conviction requires proof of more, a guilty defendant may go free. We granted review in this case to resolve a disagreement among the Circuits. But the Court has compounded not clarified the confusion.

There is no justification for the Court's refusal to provide an answer. The Court says that "[n]either **Elonis** nor the Government has briefed or argued" the question whether recklessness is sufficient. *Ante,* at 2012 2013. But in fact both parties addressed that issue. **Elonis** argued that recklessness is not enough, and the Government argued that it more than suffices. If the Court thinks that we cannot decide the recklessness question without additional help from the parties, we can order further briefing and argument. In my view, however, we are capable of deciding the recklessness issue, and we should resolve that question now.

I

Section 875(c) provides in relevant part:

> "Whoever transmits in interstate or foreign commerce any communication containing ... any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both."

Thus, conviction under this provision requires proof that: (1) the defendant transmitted something, (2) the thing transmitted was a threat to injure the person of another, and (3) the transmission was in interstate or foreign commerce.

At issue in this case is the *mens rea* required with respect to the second element that the thing transmitted was a threat to injure the person of another. This Court has not defined the meaning of the term "threat" in § 875(c), but in construing the same term in a related statute, the Court distinguished a "true 'threat' " from facetious or hyperbolic remarks. *Watts v. **United** **States***, 394 U.S. 705, 708, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) (*per curiam*). In my view, the term "threat" in § 875(c) can fairly ***744** be defined as a statement that is reasonably interpreted as "an expression of an intention to inflict evil, injury, or damage on another." Webster's Third New International Dictionary 2382 (1976). Conviction under § 875(c) demands proof that the defendant's transmission was in fact a threat, *i.e.,* that it is reasonable to interpret the transmission as an expression of an intent to harm another. In addition, it must be shown that the defendant was at least reckless as to whether the transmission met that requirement.

Why is recklessness enough? My analysis of the *mens rea* issue follows the same track as the Court's, as far as it goes. I agree with the Court that we should presume that criminal statutes require some sort of *mens rea* for conviction. See *ante,* at 2008 2011. To be sure, this presumption marks a departure from the way in which we generally interpret statutes. We "ordinarily resist reading words or elements into a statute that do not appear on ****2015** its face." *Bates v. **United** **States***, 522 U.S. 23, 29, 118 S.Ct. 285, 139 L.Ed.2d 215 (1997). But this step is justified by a well established pattern in our criminal laws. "For several centuries (at least since 1600) the different common law crimes have been so defined as to require, for guilt, that the defendant's acts or omissions be accompanied by one or more of the various types of fault (intention, knowledge, recklessness or more rarely negligence)." 1 W. LaFave, Substantive Criminal Law § 5.5, p. 381 (2003). Based on these "background rules of the common law, in which the requirement of some *mens rea* for a crime is firmly embedded," we require "some indication of congressional intent, express or implied, ... to dispense with *mens rea* as an element of a crime." *Staples v. **United** **States***, 511 U.S. 600, 605 606, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994).

For a similar reason, I agree with the Court that we should presume that an offense like that created by § 875(c) requires more than negligence with respect to a critical element like the one at issue here. See *ante,* at 2010 2012. As the Court states, "[w]hen interpreting federal criminal statutes that ***745** are silent on the required mental state, we read into the statute 'only that *mens rea* which is necessary to separate wrongful conduct from "otherwise innocent conduct." ' " *Ante,* at 2010 (quoting

*Carter v. **United** **States***, 530 U.S. 255, 269, 120 S.Ct. 2159, 147 L.Ed.2d 203 (2000)). Whether negligence is morally culpable is an interesting philosophical question, but the answer is at least sufficiently debatable to justify the presumption that a serious offense against the person that lacks any clear common law counterpart should be presumed to require more.

Once we have passed negligence, however, no further presumptions are defensible. In the hierarchy of mental states that may be required as a condition for criminal liability, the *mens rea* just above negligence is recklessness. Negligence requires only that the defendant "should [have] be [en] aware of a substantial and unjustifiable risk," ALI, Model Penal Code § 2.02(2)(d), p. 226 (1985), while recklessness exists "when a person disregards a risk of harm of which he is aware," *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994); Model Penal Code § 2.02(2)(c). And when Congress does not specify a *mens rea* in a criminal statute, we have no justification for inferring that anything more than recklessness is needed. It is quite unusual for us to interpret a statute to contain a requirement that is nowhere set out in the text. Once we have reached recklessness, we have gone as far as we can without stepping over the line that separates interpretation from amendment.

There can be no real dispute that recklessness regarding a risk of serious harm is wrongful conduct. In a wide variety of contexts, we have described reckless conduct as morally culpable. See, *e.g.*, *Farmer, supra,* at 835 836, 114 S.Ct. 1970 (deliberate indifference to an inmate's harm); *Garrison v. Louisiana*, 379 U.S. 64, 75, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964) (criminal libel); *New York Times Co. v. Sullivan*, 376 U.S. 254, 279 280, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) (civil libel). Indeed, this Court has held that "reckless disregard for human life" may justify the death penalty. *Tison v. Arizona*, 481 U.S. 137, 157, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987). Someone who acts recklessly with respect ***746** to conveying a threat necessarily grasps that he is not engaged in innocent conduct. He is not merely careless. He is aware that others could regard his statements as a threat, but he delivers them anyway.

****2016** Accordingly, I would hold that a defendant may be convicted under § 875(c) if he or she consciously disregards the risk that the communication transmitted will be interpreted as a true threat. Nothing in the Court's non committal opinion prevents lower courts from adopting that standard.

II

There remains the question whether interpreting § 875(c) to require no more than recklessness with respect to the element at issue here would violate the First Amendment. **Elonis** contends that it would. I would reject that argument.

It is settled that the Constitution does not protect true threats. See *Virginia v. Black*, 538 U.S. 343, 359 360, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003); *R.A.V. v. St. Paul*, 505 U.S. 377, 388, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); *Watts*, 394 U.S., at 707 708, 89 S.Ct. 1399. And there are good reasons for that rule: True threats inflict great harm and have little if any social value. A threat may cause serious emotional stress for the person threatened and those who care about that person, and a threat may lead to a violent confrontation. It is true that a communication containing a threat may include other statements that have value and are entitled to protection. But that does not justify constitutional protection for the threat itself.

Elonis argues that the First Amendment protects a threat if the person making the statement does not actually intend to cause harm. In his view, if a threat is made for a " 'therapeutic' " purpose, "to 'deal with the pain' ... of a wrenching event," or for "cathartic" reasons, the threat is protected. Brief for Petitioner 52 53. But whether or not the person making a threat intends to cause harm, the damage is the same. And the fact that making a threat may have a therapeutic ***747** or cathartic effect for the speaker is not sufficient to justify constitutional protection. Some people may experience a therapeutic or cathartic benefit only if they know that their words will cause harm or only if they actually plan to carry out the threat, but surely the First Amendment does not protect them.

Elonis also claims his threats were constitutionally protected works of art. Words like his, he contends, are shielded by the First Amendment because they are similar to words uttered by rappers and singers in public performances and recordings. To make this point, his brief includes a lengthy excerpt from the lyrics of a rap song in which a very well compensated rapper imagines killing his ex wife and dumping her body in a lake. If this celebrity can utter such words, **Elonis** pleads, amateurs

like him should be able to post similar things on social media. But context matters. "Taken in context," lyrics in songs that are performed for an audience or sold in recorded form are unlikely to be interpreted as a real threat to a real person. *Watts, supra,* at 708, 89 S.Ct. 1399. Statements on social media that are pointedly directed at their victims, by contrast, are much more likely to be taken seriously. To hold otherwise would grant a license to anyone who is clever enough to dress up a real threat in the guise of rap lyrics, a parody, or something similar.

The facts of this case illustrate the point. Imagine the effect on **Elonis's** estranged wife when she read this: " 'If I only knew then what I know now ... I would have smothered your ass with a pillow, dumped your body in the back seat, dropped you off in Toad Creek and made it look like a rape and murder.' " 730 F.3d 321, 324 (C.A.3 2013). Or this: "There's one way to love you but a thousand ways to kill you. I'm not going to rest until your body is a mess, soaked in blood and dying from all the little cuts." *Ibid.* Or this: "Fold up your [protection from abuse order] and put ****2017** it in your pocket[.] Is it thick enough to stop a bullet?" *Id.,* at 325.

***748** There was evidence that **Elonis** made sure his wife saw his posts. And she testified that they made her feel " 'extremely afraid' " and " 'like [she] was being stalked.' " *Ibid.* Considering the context, who could blame her? Threats of violence and intimidation are among the most favored weapons of domestic abusers, and the rise of social media has only made those tactics more commonplace. See Brief for The National Network to End Domestic Violence et al. as *Amici Curiae* 4 16. A fig leaf of artistic expression cannot convert such hurtful, valueless threats into protected speech.

It can be argued that § 875(c), if not limited to threats made with the intent to harm, will chill statements that do not qualify as true threats, *e.g.,* statements that may be literally threatening but are plainly not meant to be taken seriously. We have sometimes cautioned that it is necessary to "exten [d] a measure of strategic protection" to otherwise unprotected false statements of fact in order to ensure enough " 'breathing space' " for protected speech. *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 342, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974) (quoting *NAACP v. Button,* 371 U.S. 415, 433, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963)). A similar argument might be made with respect to threats. But we have also held that the law provides adequate breathing space when it requires proof that false statements were made with reckless disregard of their falsity. See *New York Times,* 376 U.S., at 279 280, 84 S.Ct. 710 (civil liability); *Garrison,* 379 U.S., at 74 75, 85 S.Ct. 209 (criminal liability). Requiring proof of recklessness is similarly sufficient here.

III

Finally, because the jury instructions in this case did not require proof of recklessness, I would vacate the judgment below and remand for the Court of Appeals to decide in the first instance whether **Elonis's** conviction could be upheld under a recklessness standard.

We do not lightly overturn criminal convictions, even where it appears that the district court might have erred. To benefit from a favorable ruling on appeal, a defendant ***749** must have actually asked for the legal rule the appellate court adopts. Rule 30(d) of the Federal Rules of Criminal Procedure requires a defendant to "inform the court of the specific objection and the grounds for the objection." An objection cannot be vague or open ended. It must *specifically* identify the alleged error. And failure to lodge a sufficient objection "precludes appellate review," except for plain error. Rule 30(d); see also 2A C. Wright & P. Henning, Federal Practice and Procedure § 484, pp. 433 435 (4th ed. 2009).

At trial, **Elonis** objected to the District Court's instruction, but he did not argue for recklessness. Instead, he proposed instructions that would have required proof that he acted purposefully or with knowledge that his statements would be received as threats. See App. 19 21. He advanced the same position on appeal and in this Court. See Brief for Petitioner 29 ("Section 875(c) requires proof that the defendant *intended* the charged statement to be a 'threat' " (emphasis in original)); Corrected Brief of Appellant in No. 12 3798 (CA3), p. 14 ("[A] 'true threat' has been uttered only if the speaker acted with *subjective intent to threaten* " (same)). And at oral argument before this Court, he expressly disclaimed any agreement with a recklessness standard which the Third Circuit remains free to adopt. Tr. of Oral Arg. 8:22 23 ("[W]e would say that recklessness is not justif[ied]"). I would therefore ****2018** remand for the Third Circuit to determine if **Elonis's** failure (indeed, *refusal*) to argue for recklessness prevents reversal of his conviction.

The Third Circuit should also have the opportunity to consider whether the conviction can be upheld on

harmless error grounds. "We have often applied harmless error analysis to cases involving improper instructions." *Neder v. United States*, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999); see also, *e.g.*, *Pope v. Illinois*, 481 U.S. 497, 503 504, 107 S.Ct. 1918, 95 L.Ed.2d 439 (1987) (remanding for harmless error analysis after holding that jury instruction misstated obscenity standard). And the Third Circuit has previously upheld ***750** convictions where erroneous jury instructions proved harmless. See, *e.g.*, *United States v. Saybolt*, 577 F.3d 195, 206 207 (2009). It should be given the chance to address that possibility here.

Justice THOMAS, dissenting.

We granted certiorari to resolve a conflict in the lower courts over the appropriate mental state for threat prosecutions under 18 U.S.C. § 875(c). Save two, every Circuit to have considered the issue 11 in total has held that this provision demands proof only of general intent, which here requires no more than that a defendant knew he transmitted a communication, knew the words used in that communication, and understood the ordinary meaning of those words in the relevant context. The outliers are the Ninth and Tenth Circuits, which have concluded that proof of an intent to threaten was necessary for conviction. Adopting the minority position, **Elonis** urges us to hold that § 875(c) and the First Amendment require proof of an intent to threaten. The Government in turn advocates a general intent approach.

Rather than resolve the conflict, the Court casts aside the approach used in nine Circuits and leaves nothing in its place. Lower courts are thus left to guess at the appropriate mental state for § 875(c). All they know after today's decision is that a requirement of general intent will not do. But they can safely infer that a majority of this Court would not adopt an intent to threaten requirement, as the opinion carefully leaves open the possibility that recklessness may be enough. See *ante,* at 2012 2013.

This failure to decide throws everyone from appellate judges to everyday Facebook users into a state of uncertainty. This uncertainty could have been avoided had we simply adhered to the background rule of the common law favoring general intent. Although I am sympathetic to my colleagues' policy concerns about the risks associated with threat prosecutions, the answer to such fears is not to discard ***751** our traditional approach to state of mind requirements in criminal law. Because the Court of Appeals properly applied the general intent standard, and because the communications transmitted by **Elonis** were "true threats" unprotected by the First Amendment, I would affirm the judgment below.

I

A

Enacted in 1939, § 875(c) provides, "Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both." Because § 875(c) criminalizes speech, the First Amendment requires that the term "threat" be limited to a narrow class of historically unprotected communications ****2019** called "true threats." To qualify as a true threat, a communication must be a serious expression of an intention to commit unlawful physical violence, not merely "political hyperbole"; "vehement, caustic, and sometimes unpleasantly sharp attacks"; or "vituperative, abusive, and inexact" statements. *Watts v. United States*, 394 U.S. 705, 708, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) (*per curiam*) (internal quotation marks omitted). It also cannot be determined solely by the reaction of the recipient, but must instead be "determined by the interpretation of a *reasonable* recipient familiar with the context of the communication," *United States v. Darby*, 37 F.3d 1059, 1066 (C.A.4 1994) (emphasis added), lest historically protected speech be suppressed at the will of an eggshell observer, cf. *Cox v. Louisiana*, 379 U.S. 536, 551, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965) ("[C]onstitutional rights may not be denied simply because of hostility to their assertion or exercise" (internal quotation marks omitted)). There is thus no dispute that, at a minimum, § 875(c) requires an objective showing: The communication must be one that "a reasonable observer would construe as a true threat to another." ***752** *United States v. Jeffries*, 692 F.3d 473, 478 (C.A.6 2012). And there is no dispute that the posts at issue here meet that objective standard.

The only dispute in this case is about the state of mind necessary to convict **Elonis** for making those posts. On its face, § 875(c) does not demand any particular mental state. As the Court correctly explains, the word "threat" does not itself contain a *mens rea* requirement. See *ante,* at 2008 2009. But because we read criminal statutes "in light of the background rules of the common law, in which the requirement of some *mens rea* for a crime is firmly embedded," we require "some indication of congressional intent, express or implied, ... to dispense with *mens rea* as an element of a crime." *Staples v. **United** **States***, 511 U.S. 600, 605 606, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994) (citation omitted). Absent such indicia, we ordinarily apply the "presumption in favor of scienter" to require only "proof of *general intent* that is, that the defendant [must] posses[s] knowledge with respect to the *actus reus* of the crime." *Carter v. **United** **States***, 530 U.S. 255, 268, 120 S.Ct. 2159, 147 L.Ed.2d 203 (2000).

Under this "conventional *mens rea* element," "the defendant [must] know the facts that make his conduct illegal," *Staples, supra,* at 605, 114 S.Ct. 1793, but he need not know *that* those facts make his conduct illegal. It has long been settled that "the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law." *Bryan v. **United** **States***, 524 U.S. 184, 192, 118 S.Ct. 1939, 141 L.Ed.2d 197 (1998) (internal quotation marks omitted). For instance, in *Posters 'N' Things, Ltd. v. **United** **States***, 511 U.S. 513, 114 S.Ct. 1747, 128 L.Ed.2d 539 (1994), the Court addressed a conviction for selling drug paraphernalia under a statute forbidding anyone to " 'make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia,' " *id.,* at 516, 114 S.Ct. 1747 (quoting 21 U.S.C. § 857(a)(1) (1988 ed.)). In applying the presumption in favor of scienter, the Court concluded that "although the Government must establish that the defendant knew that the items at issue are likely to be used with illegal drugs, it need not prove specific knowledge that the items are 'drug paraphernalia' ***753** within the meaning of the statute." 511 U.S., at 524, 114 S.Ct. 1747.

Our default rule in favor of general intent applies with full force to criminal statutes addressing speech. Well over 100 years ago, this Court considered a conviction ****2020** under a federal obscenity statute that punished anyone " 'who shall knowingly deposit, or cause to be deposited, for mailing or delivery,' " any " 'obscene, lewd, or lascivious book, pamphlet, picture, paper, writing, print, or other publication of an indecent character.' " *Rosen v. **United** **States***, 161 U.S. 29, 30, 16 S.Ct. 434, 40 L.Ed. 606 (1896) (quoting Rev. Stat. § 3893). In that case, as here, the defendant argued that, even if "he may have had ... actual knowledge or notice of [the paper's] contents" when he put it in the mail, he could not "be convicted of the offence ... unless he knew or believed that such paper could be properly or justly characterized as obscene, lewd, and lascivious." 161 U.S., at 41, 16 S.Ct. 434. The Court rejected that theory, concluding that if the material was actually obscene and "deposited in the mail by one who knew or had notice at the time of its contents, the offence is complete, although the defendant himself did not regard the paper as one that the statute forbade to be carried in the mails." *Ibid.* As the Court explained, "Congress did not intend that the question as to the character of the paper should depend upon the opinion or belief of the person who, with knowledge or notice of [the paper's] contents, assumed the responsibility of putting it in the mails of the **United** **States**," because "[e]very one who uses the mails of the **United** **States** for carrying papers or publications must take notice of ... what must be deemed obscene, lewd, and lascivious." *Id.,* at 41 42, 16 S.Ct. 434.

This Court reaffirmed *Rosen* 's holding in *Hamling v. **United** **States***, 418 U.S. 87, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974), when it considered a challenge to convictions under the successor federal statute, see *id.,* at 98, n. 8, 94 S.Ct. 2887 (citing 18 U.S.C. § 1461 (1970 ed.)). Relying on *Rosen*, the Court rejected the argument that the statute required "proof both of knowledge of the contents of the material ***754** and awareness of the obscene character of the material." 418 U.S., at 120, 94 S.Ct. 2887 (internal quotation marks omitted). In approving the jury instruction that the defendants' "belief as to the obscenity or non obscenity of the material is irrelevant," the Court declined to hold "that the prosecution must prove a defendant's knowledge of the legal status of the materials he distributes." *Id.,* at 120 121, 94 S.Ct. 2887 (internal quotation marks omitted). To rule otherwise, the Court observed, "would permit the defendant to avoid prosecution by simply claiming that he had not brushed up on the law." *Id.,* at 123, 94 S.Ct. 2887.

Decades before § 875(c)'s enactment, courts took the same approach to the first federal threat statute, which prohibited threats against the President. In 1917, Congress enacted a law punishing anyone

"who knowingly and willfully deposits or causes to be

> deposited for conveyance in the mail ... any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, or who knowingly and willfully otherwise makes any such threat against the President." Act of Feb. 14, 1917, ch. 64, 39 Stat. 919.

Courts applying this statute shortly after its enactment appeared to require proof of only general intent. In *Ragansky v. United States*, 253 F. 643 (C.A.7 1918), for instance, a Court of Appeals held that "[a] threat is knowingly made, if the maker of it comprehends the meaning of the words uttered by him," and "is willfully made, if in addition to comprehending the meaning of his words, the maker voluntarily and intentionally utters them as the declaration of an apparent determination to carry them into execution," *id.*, at 645. The court consequently rejected the defendant's ****2021** argument that he could not be convicted when his language "[c]oncededly ... constituted such a threat" but was meant only "as a joke." *Id.*, at 644. Likewise, in ***755** *United States v. Stobo*, 251 F. 689 (Del.1918), a District Court rejected the defendant's objection that there was no allegation "of any facts ... indicating any intention ... on the part of the defendant ... to menace the President of the United States," *id.*, at 693 (internal quotation marks omitted). As it explained, the defendant "is punishable under the act whether he uses the words lightly or with a set purpose to kill," as " [t]he effect upon the minds of the hearers, who cannot read his inward thoughts, is precisely the same." *Ibid.* At a minimum, there is no historical practice requiring more than general intent when a statute regulates speech.

B

Applying ordinary rules of statutory construction, I would read § 875(c) to require proof of general intent. To "know the facts that make his conduct illegal" under § 875(c), see *Staples*, 511 U.S., at 605, 114 S.Ct. 1793, a defendant must know that he transmitted a communication in interstate or foreign commerce that contained a threat. Knowing that the communication contains a "threat" a serious expression of an intention to engage in unlawful physical violence does not, however, require knowing that a jury will conclude that the communication contains a threat as a matter of law. Instead, like one who mails an "obscene" publication and is prosecuted under the federal obscenity statute, a defendant prosecuted under § 875(c) must know only the words used in that communication, along with their ordinary meaning in context.

General intent divides those who know the facts constituting the *actus reus* of this crime from those who do not. For example, someone who transmits a threat who does not know English or who knows English, but perhaps does not know a threatening idiom lacks the general intent required under § 875(c). See *Ragansky, supra,* at 645 ("[A] foreigner, ignorant of the English language, repeating [threatening] words without knowledge of their meaning, may not knowingly have made a threat"). Likewise, the hapless mailman who ***756** delivers a threatening letter, ignorant of its contents, should not fear prosecution. A defendant like Elonis, however, who admits that he "knew that what [he] was saying was violent" but supposedly "just wanted to express [him]self," App. 205, acted with the general intent required under § 875(c), even if he did not know that a jury would conclude that his communication constituted a "threat" as a matter of law.

Demanding evidence only of general intent also corresponds to § 875(c)'s statutory backdrop. As previously discussed, before the enactment of § 875(c), courts had read the Presidential threats statute to require proof only of general intent. Given Congress' presumptive awareness of this application of the Presidential threats statute not to mention this Court's similar approach in the obscenity context, see *Rosen*, 161 U.S., at 41 42, 16 S.Ct. 434 it is difficult to conclude that the Congress that enacted § 875(c) in 1939 understood it to contain an implicit mental state requirement apart from general intent. There is certainly no textual evidence to support this conclusion. If anything, the text supports the opposite inference, as § 875(c), unlike the Presidential threats statute, contains no reference to knowledge or willfulness. Nothing in the statute suggests that Congress departed from the "conventional *mens rea* element" of general intent, *Staples, supra,* at 605, 114 S.Ct. 1793; I ****2022** would not impose a higher mental state requirement here.

C

The majority refuses to apply these ordinary background

principles. Instead, it casts my application of general intent as a negligence standard disfavored in the criminal law. *Ante,* at 2010 2013. But that characterization misses the mark. Requiring general intent in this context is not the same as requiring mere negligence. Like the mental state requirements adopted in many of the cases cited by the Court, general intent under § 875(c) prevents a defendant from being convicted on the basis of any *fact* beyond his awareness. See, *e.g.,* ***757** *United States v. X Citement Video, Inc.,* 513 U.S. 64, 73, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994) (knowledge of age of persons depicted in explicit materials); *Staples, supra,* at 614 615, 114 S.Ct. 1793 (knowledge of firing capability of weapon); *Morissette v. United States,* 342 U.S. 246, 270 271, 72 S.Ct. 240, 96 L.Ed. 288 (1952) (knowledge that property belonged to another). In other words, the defendant must *know* not merely be reckless or negligent with respect to the fact that he is committing the acts that constitute the *actus reus* of the offense.

But general intent requires *no* mental state (not even a negligent one) concerning the "fact" that certain words meet the *legal* definition of a threat. That approach is particularly appropriate where, as here, that legal status is determined by a jury's application of the legal standard of a "threat" to the contents of a communication. And convicting a defendant despite his ignorance of the legal or objective status of his conduct does not mean that he is being punished for negligent conduct. By way of example, a defendant who is convicted of murder despite claiming that he acted in self defense has not been penalized under a negligence standard merely because he does not know that the jury will reject his argument that his "belief in the necessity of using force to prevent harm to himself [was] a reasonable one." See 2 W. LaFave, Substantive Criminal Law § 10.4(c), p. 147 (2d ed. 2003).

The Court apparently does not believe that our traditional approach to the federal obscenity statute involved a negligence standard. It asserts that *Hamling* "approved a state court's conclusion that requiring a defendant to know the character of the material incorporated a 'vital element of scienter' so that 'not innocent but *calculated purveyance* of filth ... is exorcised.' " *Ante,* at 2012 (quoting *Hamling,* 418 U.S., at 122, 94 S.Ct. 2887 (in turn quoting *Mishkin v. New York,* 383 U.S. 502, 510, 86 S.Ct. 958, 16 L.Ed.2d 56 (1966))). According to the Court, the mental state approved in *Hamling* thus "turns on whether a defendant knew the *character* of what was sent, not simply its contents and context." *Ante,* at 2012. It is unclear what the Court ***758** means by its distinction between "character" and "contents and context." "Character" cannot mean *legal* obscenity, as *Hamling* rejected the argument that a defendant must have "awareness of the obscene character of the material." 418 U.S., at 120, 94 S.Ct. 2887 (internal quotation marks omitted). Moreover, this discussion was not part of *Hamling* 's holding, which was primarily a reaffirmation of *Rosen*. See 418 U.S., at 120 121, 94 S.Ct. 2887; see also *Posters 'N' Things,* 511 U.S., at 524 525, 114 S.Ct. 1747 (characterizing *Hamling* as holding that a "statute prohibiting mailing of obscene materials does not require proof that [the] defendant knew the materials at issue met the legal definition of 'obscenity' ").

The majority's treatment of *Rosen* is even less persuasive. To shore up its position, ****2023** it asserts that the critical portion of *Rosen* rejected an " 'ignorance of the law' defense," and claims that "no such contention is at issue here." *Ante,* at 2012. But the thrust of **Elonis**' challenge is that a § 875(c) conviction cannot stand if the defendant's subjective belief of what constitutes a "threat" differs from that of a reasonable jury. That is akin to the argument the defendant made and lost in *Rosen*. That defendant insisted that he could not be convicted for mailing the paper "unless he knew or believed that such paper could be properly or justly characterized as obscene." 161 U.S., at 41, 16 S.Ct. 434. The Court, however, held that the Government did not need to show that the defendant "regard[ed] the paper as one that the statute forbade to be carried in the mails," because the obscene character of the material did not "depend upon the opinion or belief of the person who ... assumed the responsibility of putting it in the mails." *Ibid.* The majority's muddying of the waters cannot obscure the fact that today's decision is irreconcilable with *Rosen* and *Hamling*.

D

The majority today at least refrains from requiring an intent to threaten for § 875(c) convictions, as **Elonis** asks us to do. **Elonis** contends that proof of a defendant's intent to put ***759** the recipient of a threat in fear is necessary for conviction, but that element cannot be found within the statutory text. "[W]e ordinarily resist reading words or elements into a statute that do not appear on its face," including elements similar to the one **Elonis** proposes. *E.g., Bates v. United States,* 522 U.S. 23, 29, 118 S.Ct. 285, 139 L.Ed.2d 215 (1997) (declining to read an "intent to defraud" element into a criminal

statute). As the majority correctly explains, nothing in the text of § 875(c) itself requires proof of an intent to threaten. See *ante,* at 2008 2009. The absence of such a requirement is significant, as Congress knows how to require a heightened *mens rea* in the context of threat offenses. See § 875(b) (providing for the punishment of "[w]hoever, with intent to extort ..., transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another"); see also § 119 (providing for the punishment of "[w]hoever knowingly makes restricted personal information about [certain officials] ... publicly available ... with the intent to threaten").

Elonis nonetheless suggests that an intent to threaten element is necessary in order to avoid the risk of punishing innocent conduct. But there is nothing absurd about punishing an individual who, with knowledge of the words he uses and their ordinary meaning in context, makes a threat. For instance, a high school student who sends a letter to his principal stating that he will massacre his classmates with a machine gun, even if he intended the letter as a joke, cannot fairly be described as engaging in innocent conduct. But see *ante,* at 2006 2007, 2012 2013 (concluding that **Elonis**' conviction under § 875(c) for discussing a plan to " 'initiate the most heinous school shooting ever imagined' " against " 'a Kindergarten class' " cannot stand without proof of some unspecified heightened mental state).

Elonis also insists that we read an intent to threaten element into § 875(c) in light of the First Amendment. But our practice of construing statutes "to avoid constitutional questions ***760** ... is not a license for the judiciary to rewrite language enacted by the legislature," *Salinas v. **United States***, 522 U.S. 52, 59 60, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997) (internal quotation marks omitted), and ordinary background principles of criminal law do not support ****2024** rewriting § 875(c) to include an intent to threaten requirement. We have not altered our traditional approach to *mens rea* for other constitutional provisions. See, *e.g., Dean v. **United States***, 556 U.S. 568, 572 574, 129 S.Ct. 1849, 173 L.Ed.2d 785 (2009) (refusing to read an intent to discharge the firearm element into a mandatory minimum provision concerning the discharge of a firearm during a particular crime). The First Amendment should be treated no differently.

II

In light of my conclusion that **Elonis** was properly convicted under the requirements of § 875(c), I must address his argument that his threatening posts were nevertheless protected by the First Amendment.

A

Elonis does not contend that threats are constitutionally protected speech, nor could he: "From 1791 to the present, ... our society ... has permitted restrictions upon the content of speech in a few limited areas," true threats being one of them. *R.A.V. v. St. Paul,* 505 U.S. 377, 382 383, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992); see *id.,* at 388, 112 S.Ct. 2538. Instead, **Elonis** claims that only *intentional* threats fall within this particular historical exception.

If it were clear that intentional threats alone have been punished in our Nation since 1791, I would be inclined to agree. But that is the not the case. Although the Federal Government apparently did not get into the business of regulating threats until 1917, the States have been doing so since the late 18th and early 19th centuries. See, *e.g.,* 1795 N.J. Laws p. 108; Ill. Rev. Code of Laws, Crim. Code § 108 (1827) (1827 Ill. Crim. Code); 1832 Fla. Laws pp. 68 69. And that practice continued even after the States amended their constitutions ***761** to include speech protections similar to those in the First Amendment. See, *e.g.,* Fla. Const., Art. I, § 5 (1838); Ill. Const., Art. VIII, § 22 (1818), Mich. Const., Art. I, § 7 (1835); N.J. Const., Art. I, § 5 (1844); J. Hood, Index of Colonial and State Laws of New Jersey 1203, 1235, 1257, 1265 (1905); 1 Ill. Stat., ch. 30, div. 9, § 31 (3d ed. 1873). State practice thus provides at least some evidence of the original meaning of the phrase "freedom of speech" in the First Amendment. See *Roth v. **United States***, 354 U.S. 476, 481 483, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957) (engaging in a similar inquiry with respect to obscenity).

Shortly after the founding, several States and Territories enacted laws making it a crime to "knowingly send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, ... threatening to maim, wound, kill or murder any person, or to burn his or her [property], though no money, goods or chattels, or other valuable thing shall be demanded," *e.g.,*

1795 N.J. Laws § 57, at 108; see also, *e.g.,* 1816 Ga. Laws p. 178; 1816 Mich. Territory Laws p. 128; 1827 Ill. Crim. Code § 108; 1832 Fla. Laws, at 68 69. These laws appear to be the closest early analogue to § 875(c), as they penalize transmitting a communication containing a threat without proof of a demand to extort something from the victim. Threat provisions explicitly requiring proof of a specific "intent to extort" appeared alongside these laws, see, *e.g.,* 1795 N.J. Laws § 57, at 108, but those provisions are simply the predecessors to § 875(b) and § 875(d), which likewise expressly contain an intent to extort requirement.

The laws without that extortion requirement were copies of a 1754 English threat statute subject to only a general intent requirement. The statute made it a capital ****2025** offense to "knowingly send any Letter without any Name subscribed thereto, or signed with a fictitious Name ... threatening to kill or murder any of his Majesty's Subject or Subjects, or to burn their [property], though no Money or Venison or other ***762** valuable Thing shall be demanded." 27 Geo. II, ch. 15, in 7 Eng. Stat. at Large 61 (1754); see also 4 W. Blackstone, Commentaries on the Laws of England 144 (1768) (describing this statute). Early English decisions applying this threat statute indicated that the appropriate mental state was general intent. In *King v. Girdwood,* 1 Leach 142, 168 Eng. Rep. 173 (K.B. 1776), for example, the trial court instructed the jurors that, "if they were of opinion that" the "terms of the letter conveyed an actual threat to kill or murder," "and that the prisoner knew the contents of it, they ought to find him guilty; but that if they thought he did not know the contents, or that the words might import any thing less than to kill or murder, they ought to acquit," *id.,* at 143, 168 Eng. Rep., at 173. On appeal following conviction, the judges "thought that the case had been properly left to the Jury." *Ibid.,* 168 Eng. Rep., at 174. Other cases likewise appeared to consider only the import of the letter's language, not the intent of its sender. See, *e.g., Rex v. Boucher,* 4 Car. & P. 562, 563, 172 Eng. Rep. 826, 827 (K.B. 1831) (concluding that an indictment was sufficient because "th[e] letter very plainly conveys a threat to kill and murder" and "[n]o one who received it could have any doubt as to what the writer meant to threaten"); see also 2 E. East, A Treatise of the Pleas of the Crown 1116 (1806) (discussing *Jepson and Springett's Case,* in which the judges disagreed over whether "the letter must be understood as ... importing a threat" and whether that was "a necessary construction").

Unsurprisingly, these early English cases were well known in the legal world of the 19th century **United States**. For instance, Nathan Dane's A General Abridgement of American Law "a necessary adjunct to the library of every American lawyer of distinction," 1 C. Warren, History of the Harvard Law School and of Early Legal Conditions in America 414 (1908) discussed the English threat statute and summarized decisions such as *Girdwood.* 7 N. Dane, A General Abridgement of American Law 31 32 (1824). And ***763** as this Court long ago recognized, "It is doubtless true ... that where English statutes ... have been adopted into our own legislation; the known and settled construction of those statutes by courts of law, has been considered as silently incorporated into the acts, or has been received with all the weight of authority." *Pennock v. Dialogue,* 2 Pet. 1, 18, 7 L.Ed. 327 (1829); see also, *e.g., Commonwealth v. Burdick,* 2 Pa. 163, 164 (1846) (considering English cases persuasive authority in interpreting similar state statute creating the offense of obtaining property through false pretenses). In short, there is good reason to believe that States bound by their own Constitutions to protect freedom of speech long ago enacted general intent threat statutes.

Elonis disputes this historical analysis on two grounds, but neither is persuasive. He first points to a treatise stating that the 1754 English statute was "levelled against such whose intention it was, (by writing such letters, either without names or in fictitious names,) to conceal themselves from the knowledge of the party threatened, that they might obtain their object by creating terror in [the victim's] mind." 2 W. Russell & D. Davis, A Treatise on Crimes & Misdemeanors 1845 (1st Am. ed. 1824). But the fact that the ordinary prosecution under this provision involved a defendant who intended to cause fear does not mean that such a mental ****2026** state was *required* as a matter of law. After all, § 875(c) is frequently deployed against people who wanted to cause their victims fear, but that fact does not answer the legal question presented in this case. See, *e.g.,* ***United States*** *v. Sutcliffe,* 505 F.3d 944, 952 (C.A.9 2007); see also Tr. of Oral Arg. 53 (counsel for the Government noting that "I think Congress would well have understood that the majority of these cases probably [involved] people who intended to threaten").

Elonis also cobbles together an assortment of older American authorities to prove his point, but they fail to stand up to close scrutiny. Two of his cases address the offense of ***764** breaching the peace, *Ware v. Loveridge,* 75 Mich. 488, 490 493, 42 N.W. 997, 998 (1889); *State v. Benedict,* 11 Vt. 236, 239 (1839), which is insufficiently similar to the offense criminalized in § 875(c) to be of much use. Another involves a prosecution under a blackmailing statute similar to § 875(b) and § 875(c) in that it expressly required an "intent to extort." *Norris v. State,* 95 Ind. 73, 74 (1884). And his treatises do

not clearly distinguish between the offense of making threats with the intent to extort and the offense of sending threatening letters without such a requirement in their discussions of threat statutes, making it difficult to draw strong inferences about the latter category. See 2 J. Bishop, Commentaries on the Criminal Law § 1201, p. 664, and nn. 5 6 (1877); 2 J. Bishop, Commentaries on the Law of Criminal Procedure § 975, p. 546 (1866); 25 The American and English Encyclopædia of Law 1073 (C. Williams ed. 1894).

Two of **Elonis**' cases appear to discuss an offense of sending a threatening letter without an intent to extort, but even these fail to make his point. One notes in passing that character evidence is admissible "to prove *guilty knowledge* of the defendant, when that is an essential element of the crime; that is, the *quo animo,* the *intent* or design," and offers as an example that in the context of "sending a threatening letter, ... prior and subsequent letters to the same person are competent in order to show the intent and meaning of the particular letter in question." *State v. Graham,* 121 N.C. 623, 627, 28 S.E. 409, 409 (1897). But it is unclear from that statement whether that court thought an *intent to threaten* was required, especially as the case it cited for this proposition *Rex v. Boucher,* 4 Car. & P. 562, 563, 172 Eng. Rep. 826, 827 (K.B. 1831) supports a general intent approach. The other case **Elonis** cites involves a statutory provision that had been judicially limited to " 'pertain to one or the other acts which are denounced by the statute,' " namely, terroristic activities carried out by the Ku Klux Klan. *Commonwealth v. Morton,* 140 Ky. 628, 630, 131 S.W. 506, 507 (1910) (quoting *Commonwealth* ***765** *v. Patrick,* 127 Ky. 473, 478, 105 S.W. 981, 982 (1907)). That case thus provides scant historical support for **Elonis**' position.

B

Elonis also insists that our precedents require a mental state of intent when it comes to threat prosecutions under § 875(c), primarily relying on *Watts,* 394 U.S. 705, 89 S.Ct. 1399, 22 L.Ed.2d 664, and *Virginia v. Black,* 538 U.S. 343, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003). Neither of those decisions, however, addresses whether the First Amendment requires a particular mental state for threat prosecutions.

As **Elonis** admits, *Watts* expressly declined to address the mental state required under the First Amendment for a "true threat." See 394 U.S., at 707 708, 89 S.Ct. 1399. True, the Court in *Watts* noted "grave doubts" about *Ragansky*'s construction ****2027** of "willfully" in the presidential threats statute. 394 U.S., at 707 708, 89 S.Ct. 1399. But "grave doubts" do not make a holding, and that stray statement in *Watts* is entitled to no precedential force. If anything, *Watts* continued the long tradition of focusing on objective criteria in evaluating the mental requirement. See *ibid.*

The Court's fractured opinion in *Black* likewise says little about whether an intent to threaten requirement is constitutionally mandated here. *Black* concerned a Virginia cross burning law that expressly required " 'an intent to intimidate a person or group of persons,' " 538 U.S., at 347, 123 S.Ct. 1536 (quoting Va.Code Ann. § 18.2 423 (1996)), and the Court thus had no occasion to decide whether such an element was necessary in threat provisions silent on the matter. Moreover, the focus of the *Black* decision was on the statutory presumption that "any cross burning [w]as prima facie evidence of intent to intimidate." 538 U.S., at 347 348, 123 S.Ct. 1536. A majority of the Court concluded that this presumption failed to distinguish unprotected threats from protected speech because it might allow convictions "based solely on the fact of cross burning itself," including cross burnings in a play or at a political rally. *Id.,* at 365 366, 123 S.Ct. 1536 (plurality opinion); *id.,* at 386, 123 S.Ct. 1536 (Souter, ***766** J., concurring in judgment in part and dissenting in part) ("The provision will thus tend to draw nonthreatening ideological expression within the ambit of the prohibition of intimidating expression"). The objective standard for threats under § 875 (c), however, helps to avoid this problem by "forc[ing] jurors to examine the circumstances in which a statement is made." *Jeffries,* 692 F.3d, at 480.

In addition to requiring a departure from our precedents, adopting **Elonis**' view would make threats one of the most protected categories of unprotected speech, thereby sowing tension throughout our First Amendment doctrine. We generally have not required a heightened mental state under the First Amendment for historically unprotected categories of speech. For instance, the Court has indicated that a legislature may constitutionally prohibit " 'fighting words,' those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction," *Cohen v. California,* 403 U.S. 15, 20, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971) without proof of an

intent to provoke a violent reaction. Because the definition of "fighting words" turns on how the "ordinary citizen" would react to the language, *ibid.,* this Court has observed that a defendant may be guilty of a breach of the peace if he "makes statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended," and that the punishment of such statements "as a criminal act would raise no question under [the Constitution]," *Cantwell v. Connecticut,* 310 U.S. 296, 309 310, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); see also *Chaplinsky v. New Hampshire,* 315 U.S. 568, 572 573, 62 S.Ct. 766, 86 L.Ed. 1031 (1942) (rejecting a First Amendment challenge to a general intent construction of a state statute punishing " 'fighting' words"); *State v. Chaplinsky,* 91 N.H. 310, 318, 18 A.2d 754, 758 (1941) ("[T]he only intent required for conviction ... was an intent to speak the words"). The Court has similarly held that a defendant may be convicted of mailing obscenity under the First Amendment without proof that he knew the materials ***767** were legally obscene. *Hamling,* 418 U.S., at 120 124, 94 S.Ct. 2887. And our precedents allow liability in tort for false statements about private persons on matters of private concern even if the speaker acted negligently with respect to the falsity of those statements. See *Philadelphia Newspapers,* ****2028** *Inc. v. Hepps,* 475 U.S. 767, 770, 773 775, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986). I see no reason why we should give threats pride of place among unprotected speech.

* * *

There is always a risk that a criminal threat statute may be deployed by the Government to suppress legitimate speech. But the proper response to that risk is to adhere to our traditional rule that only a narrow class of true threats, historically unprotected, may be constitutionally proscribed.

The solution is not to abandon a mental state requirement compelled by text, history, and precedent. Not only does such a decision warp our traditional approach to *mens rea,* it results in an arbitrary distinction between threats and other forms of unprotected speech. Had **Elonis** mailed obscene materials to his wife and a kindergarten class, he could have been prosecuted irrespective of whether he intended to offend those recipients or recklessly disregarded that possibility. Yet when he threatened to kill his wife and a kindergarten class, his intent to terrify those recipients (or reckless disregard of that risk) suddenly becomes highly relevant. That need not and should not be the case.

Nor should it be the case that we cast aside the mental state requirement compelled by our precedents yet offer nothing in its place. Our job is to decide questions, not create them. Given the majority's ostensible concern for protecting innocent actors, one would have expected it to announce a clear rule any clear rule. Its failure to do so reveals the fractured foundation upon which today's decision rests.

I respectfully dissent.

All Citations

575 U.S. 723, 135 S.Ct. 2001, 192 L.Ed.2d 1, 83 USLW 4360, 43 Media L. Rep. 1749, 15 Cal. Daily Op. Serv. 5415, 2015 Daily Journal D.A.R. 5918, 25 Fla. L. Weekly Fed. S 287

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See ***United States*** *v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

or both" for "bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life".

Pub. L. 103–322, § 320103(b)(1), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(H), above, was repealed by Pub. L. 104–294, § 604(b)(14)(B).

Pub. L. 103–322, § 60006(b), inserted before period at end ", or may be sentenced to death".

1988—Pub. L. 100–690 inserted "and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both;" after "or both;".

1968—Pub. L. 90–284 provided for imprisonment for any term of years or for life when death results.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(14)(B) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 243. Exclusion of jurors on account of race or color

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000.

(June 25, 1948, ch. 645, 62 Stat. 696.)

HISTORICAL AND REVISION NOTES

Based on section 44 of title 8, U.S.C., 1940 ed., Aliens and Nationality (Mar. 1, 1875, ch. 114, § 4, 18 Stat. 336).

Words "be deemed guilty of a misdemeanor, and" were deleted as unnecessary in view of definition of misdemeanor in section 1 of this title.

Words "on conviction thereof" were omitted as unnecessary, since punishment follows only after conviction.

Minimum punishment provisions were omitted. (See reviser's note under section 203 of this title.)

Minor changes in phraseology were made.

§ 244. Discrimination against person wearing uniform of armed forces

Whoever, being a proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia, or in any Territory, or Possession of the United States, causes any person wearing the uniform of any of the armed forces of the United States to be discriminated against because of that uniform, shall be fined under this title.

(June 25, 1948, ch. 645, 62 Stat. 697; May 24, 1949, ch. 139, § 5, 63 Stat. 90; Pub. L. 103–322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., § 523 (Mar. 1, 1911, ch. 187, 36 Stat. 963; Aug. 24, 1912, ch. 387, § 1, 37 Stat. 512; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800).

Words "guilty of a misdemeanor", following "shall be", were omitted as unnecessary in view of definition of "misdemeanor" in section 1 of this title. (See reviser's note under section 212 of this title.)

Changes were made in phraseology.

1949 ACT

This section [section 5] substitutes, in section 244 of title 18, U.S.C., "any of the armed forces of the United States" for the enumeration of specific branches and thereby includes the Air Force, formerly part of the Army. This clarification is necessary because of the establishment of the Air Force as a separate branch of the Armed Forces by the act of July 26, 1947.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $500".

1949—Act May 24, 1949, substituted "any of the armed forces of the United States" for enumeration of the specific branches.

[redacted]

(a)(1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

[redacted]

person or any class of persons from—

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, [redacted] in

[redacted]

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activ-

ity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined under this title, or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined under this title, or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State.

(d) For purposes of this section, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Added Pub. L. 90–284, title I, § 101(a), Apr. 11, 1968, 82 Stat. 73; amended Pub. L. 100–690, title VII, § 7020(a), Nov. 18, 1988, 102 Stat. 4396; Pub. L. 101–647, title XII, § 1205(b), Nov. 29, 1990, 104 Stat. 4830; Pub. L. 103–322, title VI, § 60006(c), title XXXII, § 320103(c), title XXXIII, § 330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 1971, 2109, 2147; Pub. L. 104–294, title VI, § 604(b)(14)(C), (37), Oct. 11, 1996, 110 Stat. 3507, 3509.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–294 amended Pub. L. 103–322, § 320103(c). See 1994 Amendment notes below.

1994—Subsec. (b). Pub. L. 103–322, § 330016(1)(L), substituted "shall be fined under this title" for "shall be fined not more than $10,000" before ", or imprisoned not more than ten years" in concluding provisions.

Pub. L. 103–322, § 330016(1)(H), substituted "shall be fined under this title" for "shall be fined not more than $1,000" before ", or imprisoned not more than one year" in concluding provisions.

Pub. L. 103–322, § 320103(c)(4)–(6), in concluding provisions, inserted "from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill," after "death results" and substituted "shall be fined under this title or imprisoned for any term of years or for life, or both" for "shall be subject to imprisonment for any term of years or for life".

Pub. L. 103–322, § 320103(c)(3), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(L), above, was repealed by Pub. L. 104–294, § 604(b)(14)(C).

Pub. L. 103–322, § 320103(c)(2), as amended by Pub. L. 104–294, § 604(b)(37), inserted "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire" after "bodily injury results" in concluding provisions.

Pub. L. 103–322, § 320103(c)(1), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(H), above, was repealed by Pub. L. 104–294, § 604(b)(14)(C).

Pub. L. 103–322, § 60006(c), in concluding provisions, inserted ", or may be sentenced to death" before ". As used in this section".

1990—Subsec. (d). Pub. L. 101–647 added subsec. (d).

1988—Subsec. (a)(1). Pub. L. 100–690 substituted ", the Deputy" for "or the Deputy" and inserted ", the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General" after "Deputy Attorney General".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

FAIR HOUSING

Pub. L. 90–284, title I, § 101(b), Apr. 11, 1968, 82 Stat. 75, provided that: "Nothing contained in this section [enacting this section] shall apply to or affect activities under title VIII of this Act [sections 3601 to 3619 of Title 42, The Public Health and Welfare]."

RIOTS OR CIVIL DISTURBANCES, SUPPRESSION AND RESTORATION OF LAW AND ORDER; ACTS OR OMISSIONS OF ENFORCEMENT OFFICERS AND MEMBERS OF MILITARY SERVICE NOT SUBJECT TO THIS SECTION

Pub. L. 90–284, title I, § 101(c), Apr. 11, 1968, 82 Stat. 75, provided that: "The provisions of this section [enacting this section] shall not apply to acts or omissions on the part of law enforcement officers, members of the National Guard, as defined in section 101(9) of title 10, United States Code, members of the organized militia of any State or the District of Columbia, not covered by such section 101(9), or members of the Armed Forces of the United States, who are engaged in suppressing a riot or civil disturbance or restoring law and order during a riot or civil disturbance."

§ 246. Deprivation of relief benefits

Whoever directly or indirectly deprives, attempts to deprive, or threatens to deprive any person of any employment, position, work, compensation, or other benefit provided for or made possible in whole or in part by any Act of Congress appropriating funds for work relief or relief purposes, on account of political affiliation, race, color, sex, religion, or national origin, shall be fined under this title, or imprisoned not more than one year, or both.

(Added Pub. L. 94–453, § 4(a), Oct. 2, 1976, 90 Stat. 1517; amended Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $10,000".

§ 247. Damage to religious property; obstruction of persons in the free exercise of religious beliefs

(a) Whoever, in any of the circumstances referred to in subsection (b) of this section—

(1) intentionally defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so; or

(2) intentionally obstructs, by force or threat of force, including by threat of force against religious real property, any person in the enjoyment of that person's free exercise of religious beliefs, or attempts to do so;

shall be punished as provided in subsection (d).

(b) The circumstances referred to in subsection (a) are that the offense is in or affects interstate or foreign commerce.

(c) Whoever intentionally defaces, damages, or destroys any religious real property because of the race, color, or ethnic characteristics of any individual associated with that religious property, or attempts to do so, shall be punished as provided in subsection (d).

(d) The punishment for a violation of subsection (a) or (c) of this section shall be—

(1) if death results from acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, a fine in accordance with this title and imprisonment for any term of years or for life, or both, or may be sentenced to death;

(2) if bodily injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, and the violation is by means of fire or an explosive, a fine under this title or imprisonment for not more that 40 years, or both;

(3) if bodily injury to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, a fine in accordance with this title and imprisonment for not more than 20 years, or both;

(4) if damage to or destruction of property results from the acts committed in violation of this section, which damage to or destruction of such property is in an amount that exceeds $5,000, a fine in accordance with this title, imprisonment for not more than 3 years, or both; and

(5) in any other case, a fine in accordance with this title and imprisonment for not more than one year, or both.

(e) No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or his designee that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(f) As used in this section, the term "religious real property" means any church, synagogue, mosque, religious cemetery, or other religious real

an Effective Date note under section 101 of Title 6, Domestic Security.

§ 848. Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

(Added Pub. L. 91–452, title XI, § 1102(a), Oct. 15, 1970, 84 Stat. 959.)

Sec.
871. Threats against President and successors to the Presidency.
872. Extortion by officers or employees of the United States.
873. Blackmail.
874. Kickbacks from public works employees.
878. Threats and extortion against foreign officials, official guests, or internationally protected persons.
879. Threats against former Presidents and certain other persons.
880. Receiving the proceeds of extortion.

AMENDMENTS

2000—Pub. L. 106–544, § 2(b)(2), Dec. 19, 2000, 114 Stat. 2715, struck out "protected by the Secret Service" after "other persons" in item 879.

1994—Pub. L. 103–322, title XXXII, § 320601(a)(2), Sept. 13, 1994, 108 Stat. 2115, added item 880.

1982—Pub. L. 97–297, § 1(b), Oct. 12, 1982, 96 Stat. 1317, added item 879.

1976—Pub. L. 94–467, § 9, Oct. 8, 1976, 90 Stat. 2001, added item 878.

1962—Pub. L. 87–829, § 2, Oct. 15, 1962, 76 Stat. 956, substituted "and successors to the Presidency" for ", President-elect, and Vice President" in item 871.

1955—Act June 1, 1955, ch. 115, § 2, 69 Stat. 80, inserted "President-elect, and Vice President" in item 871.

§ 871. Threats against President and successors to the Presidency

(a) Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of, to kidnap, or to inflict bodily harm upon the President of the United States, the President-elect, the Vice President or other officer next in the order of succession to the office of President of the United States, or the Vice President-elect, or knowingly and willfully otherwise makes any such threat against the President, President-elect, Vice President or other officer next in the order of succession to the office of President, or Vice President-elect, shall be fined under this title or imprisoned not more than five years, or both.

(b) The terms "President-elect" and "Vice President-elect" as used in this section shall mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2. The phrase "other officer next in the order of succession to the office of President" as used in this section shall mean the person next in the order of succession to act as President in accordance with title 3, United States Code, sections 19 and 20.

(June 25, 1948, ch. 645, 62 Stat. 740; June 1, 1955, ch. 115, § 1, 69 Stat. 80; Pub. L. 87–829, § 1, Oct. 15, 1962, 76 Stat. 956; Pub. L. 97–297, § 2, Oct. 12, 1982, 96 Stat. 1318; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 89 (Feb. 14, 1917, ch. 64, 39 Stat. 919).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted "fined under this title" for "fined not more than $1,000".

1982—Subsec. (a). Pub. L. 97–297 inserted ", to kidnap," after "containing any threat to take the life of".

1962—Pub. L. 87–829 designated existing provisions as subsec. (a), extended the provisions of such subsection to include any other officer next on the order of succession to the office of President and the Vice-President-elect, added subsec. (b), and substituted "and successors to the Presidency" for ", President-elect, and Vice President" in section catchline.

1955—Act June 1, 1955, included in section catchline and in text, provision for penalties for threats against the President-elect and the Vice President.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–544, § 1, Dec. 19, 2000, 114 Stat. 2715, provided that: "This Act [amending sections 879, 3056 and 3486 of this title, repealing section 3486A of this title, and enacting provisions set out as notes under section 3056 of this title, section 551 of Title 5, Government Organization and Employees, and section 566 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Presidential Threat Protection Act of 2000'."

§ 872. Extortion by officers or employees of the United States

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 740; Oct. 31, 1951, ch. 655, § 24(b), 65 Stat. 720; Pub. L. 103–322, title XXXIII, § 330016(1)(G), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–294, title VI, § 606(a), Oct. 11, 1996, 110 Stat. 3511.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 171 (Mar. 4, 1909, ch. 321, § 85, 35 Stat. 1104).

Words "or any department or agency" were inserted to eliminate any possible ambiguity as to scope of section. (See definitive section 6 of this title.)

The punishment provided by section 171 of title 18, U.S.C., 1940 ed., of fine of not more than $500 or imprisonment of not more than 1 year, or both, was increased for offenses involving more than $100 to conform to Congressional policy reflected in later Acts. See section 4047(e)(1) of title 26, U.S.C., 1940 ed., Internal Revenue Code, and the punishment provision following paragraph (10) of said subsection.

AMENDMENTS

1996—Pub. L. 104–294 substituted "$1,000" for "$100".

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $5,000" after "extortion, shall be" and for "fined not more than $500" after "he shall be".

1951—Act Oct. 31, 1951, changed punctuation to make section applicable not only to persons falsely representing themselves as Federal officers or employees at the time of extortion or the attempt thereof, but also to Federal officers and employees who attempt or commit extortion under color of office or employment.

§ 873. Blackmail

Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 740; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based upon title 18, U.S.C., 1940 ed., § 250 (Mar. 4, 1909, ch. 321, § 145, 35 Stat. 1114).

Only minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $2,000".

§ 874. Kickbacks from public works employees

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 740; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 276b of title 40, U.S.C., 1940 ed., Public Buildings, Property, and Works (June 13, 1934, ch. 482, § 1, 48 Stat. 948).

Slight changes of phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $5,000".

(a) Whoever transmits in interstate or foreign commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than twenty years, or both.

(c) Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 741; Pub. L. 99–646, § 63, Nov. 10, 1986, 100 Stat. 3614; Pub. L. 103–322, title XXXIII, § 330016(1)(G), (H), (K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 408d (May 18, 1934, ch. 300, 48 Stat. 781; May 15, 1939, ch. 133, § 2, 53 Stat. 743).

Provisions as to district of trial were omitted as covered by sections 3237 and 3239 of this title.

Definition of "interstate commerce" was omitted in conformity with definitive section 10 of this title.

Changes were made in phraseology and arrangement.

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–322, § 330016(1)(K), substituted "fined under this title" for "fined not more than $5,000".

Subsec. (c). Pub. L. 103–322, § 330016(1)(H), substituted "fined under this title" for "fined not more than $1,000".

Subsec. (d). Pub. L. 103–322, § 330016(1)(G), substituted "fined under this title" for "fined not more than $500".

1986—Pub. L. 99–646 inserted "or foreign" after "interstate" wherever appearing.

(a) Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service or knowingly causes to be delivered by the Postal Service according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered, as aforesaid, any communication containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than twenty years, or both.

(c) Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than five years, or both. If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.

(d) Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both. If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 741; Pub. L. 91–375, § 6(j)(7), Aug. 12, 1970, 84 Stat. 777; Pub. L. 103–322, title XXXIII, §§ 330016(1)(G), (H), (K), 330021(2), Sept. 13, 1994, 108 Stat. 2147, 2150; Pub. L. 107–273, div. C, title I, § 11008(d), Nov. 2, 2002, 116 Stat. 1818.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 338a (July 8, 1932, ch. 464, § 1, 47 Stat. 649; June 28, 1935, ch. 326, 49 Stat. 427; May 15, 1939, ch. 133, § 1, 53 Stat. 742).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Provisions as to district of trial were omitted as covered by sections 3237 and 3239 of this title.

Changes in phraseology and arrangement were made.

AMENDMENTS

2002—Pub. L. 107–273 designated first to fourth pars. as subsecs. (a) to (d), respectively, and, in subsecs. (c) and (d), inserted at end "If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both."

1994—Pub. L. 103–322, § 330021(2), substituted "kidnapped" for "kidnaped" in first par.

Pub. L. 103–322, § 330016(1)(K), substituted "fined under this title" for "fined not more than $5,000" in first and second pars.

Pub. L. 103–322, § 330016(1)(H), substituted "fined under this title" for "fined not more than $1,000" in third par.

Pub. L. 103–322, § 330016(1)(G), substituted "fined under this title" for "fined not more than $500" in fourth par.

1970—Pub. L. 91–375 substituted "Postal Service" for "Post Office Department" in two places in first par.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

Whoever knowingly deposits in any post office or authorized depository for mail matter of any foreign country any communication addressed to any person within the United States, for the purpose of having such communication delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to the address to which it is directed in the United States, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits as aforesaid, any communication for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 741; Pub. L. 91–375, § 6(j)(8), Aug. 12, 1970, 84 Stat. 777; Pub. L. 103–322, title XXXIII, §§ 330016(1)(G), (H), (K), 330021(2), Sept. 13, 1994, 108 Stat. 2147, 2150.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 338b (July 8, 1932, ch. 464, § 2, 47 Stat. 649; May 15, 1939, ch. 133, § 1, 53 Stat. 742).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Provisions as to district of trial were omitted as covered by sections 3237 and 3239 of this title.

AMENDMENTS

1994—Pub. L. 103–322, § 330021(2), substituted "kidnapped" for "kidnaped" in first par.

Pub. L. 103–322, § 330016(1)(K), substituted "fined under this title" for "fined not more than $5,000" in first and second pars.

Pub. L. 103–322, § 330016(1)(H), substituted "fined under this title" for "fined not more than $1,000" in third par.

Pub. L. 103–322, § 330016(1)(G), substituted "fined under this title" for "fined not more than $500" in fourth par.

1970—Pub. L. 91–375 substituted "Postal Service" for "Post Office Department of the United States" in two places in first par.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board

of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 878. Threats and extortion against foreign officials, official guests, or internationally protected persons

(a) Whoever knowingly and willfully threatens to violate section 112, 1116, or 1201 shall be fined under this title or imprisoned not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years.

(b) Whoever in connection with any violation of subsection (a) or actual violation of section 112, 1116, or 1201 makes any extortionate demand shall be fined under this title or imprisoned not more than twenty years, or both.

(c) For the purpose of this section "foreign official", "internationally protected person", "national of the United States", and "official guest" shall have the same meanings as those provided in section 1116(a) of this title.

(d) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.

(Added Pub. L. 94–467, § 8, Oct. 8, 1976, 90 Stat. 2000; amended Pub. L. 95–163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95–504, § 2(b), Oct. 24, 1978, 92 Stat. 1705; Pub. L. 103–272, § 5(e)(2), July 5, 1994, 108 Stat. 1373; Pub. L. 103–322, title XXXIII, § 330016(1)(K), (N), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104–132, title VII, §§ 705(a)(4), 721(e), Apr. 24, 1996, 110 Stat. 1295, 1299.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, § 705(a)(4), struck out "by killing, kidnapping, or assaulting a foreign official, official guest, or internationally protected person" before "shall be fined".

Subsec. (c). Pub. L. 104–132, § 721(e)(1), inserted " 'national of the United States'," before "and 'official guest' ".

Subsec. (d). Pub. L. 104–132, § 721(e)(2), inserted first sentence and struck out former first sentence which read as follows: "If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender."

1994—Subsec. (a). Pub. L. 103–322, § 330016(1)(K), substituted "fined under this title" for "fined not more than $5,000".

Subsec. (b). Pub. L. 103–322, § 330016(1)(N), substituted "fined under this title" for "fined not more than $20,000".

Subsec. (d). Pub. L. 103–272 substituted "section 46501(2) of title 49" for "section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38))".

1978—Subsec. (d). Pub. L. 95–504 substituted reference to section 101(38) of the Federal Aviation Act of 1958 for reference to section 101(35) of such Act.

1977—Subsec. (d). Pub. L. 95–163 substituted reference to section 101(35) of the Federal Aviation Act of 1958 for reference to section 101(34) of such Act.

§ 879. Threats against former Presidents and certain other persons

(a) Whoever knowingly and willfully threatens to kill, kidnap, or inflict bodily harm upon—

(1) a former President or a member of the immediate family of a former President;

(2) a member of the immediate family of the President, the President-elect, the Vice President, or the Vice President-elect;

(3) a major candidate for the office of President or Vice President, or a member of the immediate family of such candidate; or

(4) a person protected by the Secret Service under section 3056(a)(6);

shall be fined under this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term "immediate family" means—

(A) with respect to subsection (a)(1) of this section, the wife of a former President during his lifetime, the widow of a former President until her death or remarriage, and minor children of a former President until they reach sixteen years of age; and

(B) with respect to subsection (a)(2) and (a)(3) of this section, a person to whom the President, President-elect, Vice President, Vice President-elect, or major candidate for the office of President or Vice President—

(i) is related by blood, marriage, or adoption; or

(ii) stands in loco parentis;

(2) the term "major candidate for the office of President or Vice President" means a candidate referred to in subsection (a)(7) of section 3056 of this title; and

(3) the terms "President-elect" and "Vice President-elect" have the meanings given those terms in section 871(b) of this title.

(Added Pub. L. 97–297, § 1(a), Oct. 12, 1982, 96 Stat. 1317; amended Pub. L. 98–587, § 3(a), Oct. 30, 1984, 98 Stat. 3111; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 106–544, § 2(a), (b)(1), Dec. 19, 2000, 114 Stat. 2715.)

AMENDMENTS

2000—Pub. L. 106–544, § 2(b)(1), struck out "protected by the Secret Service" after "other persons" in section catchline.

Subsec. (a). Pub. L. 106–544, § 2(a)(1)–(4), in par. (3), substituted "a member of the immediate family" for "the spouse", added par. (4), and, in concluding provisions, struck out "who is protected by the Secret Service as provided by law," before "shall be fined" and substituted "5 years" for "three years".

Subsec. (b)(1)(B). Pub. L. 106–544, § 2(a)(5), in introductory provisions, inserted "and (a)(3)" after "subsection (a)(2)" and substituted "Vice President-elect, or major candidate for the office of President or Vice President" for "or Vice President-elect".

1994—Subsec. (a). Pub. L. 103–322 substituted "fined under this title" for "fined not more than $1,000" in concluding provisions.

1984—Subsec. (b)(2). Pub. L. 98–587 substituted "subsection (a)(7) of section 3056 of this title" for "the first section of the joint resolution entitled 'Joint resolution to authorize the United States Secret Service to furnish protection to major Presidential or Vice Presidential candidates', approved June 6, 1968 (18 U.S.C. 3056 note)".

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 880. Receiving the proceeds of extortion

A person who receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense under this chapter that is punishable by imprisonment for more than 1 year, knowing the same to have been unlawfully obtained, shall be imprisoned not more than 3 years, fined under this title, or both.

(Added Pub. L. 103–322, title XXXII, § 320601(a)(1), Sept. 13, 1994, 108 Stat. 2115.)

CHAPTER 42—EXTORTIONATE CREDIT TRANSACTIONS

AMENDMENTS

1970—Pub. L. 91–452, title II, § 223(b), Oct. 15, 1970, 84 Stat. 929, struck out item 895 "Immunity of witnesses".

1968—Pub. L. 90–321, title II, § 202(a), May 29, 1968, 82 Stat. 159, added chapter 42 and items 891 to 896.

§ 891. Definitions and rules of construction

For the purposes of this chapter:

(1) To extend credit means to make or renew any loan, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

(2) The term "creditor", with reference to any given extension of credit, refers to any person making that extension of credit, or to any person claiming by, under, or through any person making that extension of credit.

(3) The term "debtor", with reference to any given extension of credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

(4) The repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(5) To collect an extension of credit means to induce in any way any person to make repayment thereof.

(6) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(7) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(8) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and territories and possessions of the United States.

(9) State law, including conflict of laws rules, governing the enforceability through civil judicial processes of repayment of any extension of credit or the performance of any promise given in consideration thereof shall be judicially noticed. This paragraph does not impair any authority which any court would otherwise have to take judicial notice of any matter of State law.

(Added Pub. L. 90–321, title II, § 202(a), May 29, 1968, 82 Stat. 160.)

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Pub. L. 90–321, title II, § 201, May 29, 1968, 82 Stat. 159, provided that:

"(a) The Congress makes the following findings:

"(1) Organized crime is interstate and international in character. Its activities involve many billions of dollars each year. It is directly responsible for murders, willful injuries to person and property, corruption of officials, and terrorization of countless citizens. A substantial part of the income of organized crime is generated by extortionate credit transactions.

"(2) Extortionate credit transactions are characterized by the use, or the express or implicit threat of the use, of violence or other criminal means to cause harm to person, reputation, or property as a means of enforcing repayment. Among the factors which have rendered past efforts at prosecution almost wholly ineffective has been the existence of exclusionary rules of evidence stricter than necessary for the protection of constitutional rights.

"(3) Extortionate credit transactions are carried on to a substantial extent in interstate and foreign commerce and through the means and instrumentalities of such commerce. Even where extortionate credit transactions are purely intrastate in character, they nevertheless directly affect interstate and foreign commerce.

"(4) Extortionate credit transactions directly impair the effectiveness and frustrate the purposes of the laws enacted by the Congress on the subject of bankruptcies.

"(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of chapter 42 of title 18 of the United States Code are necessary and proper for the purpose of carrying into execution the powers of Congress to regulate commerce and to establish uniform and effective laws on the subject of bankruptcy."

ANNUAL REPORT TO CONGRESS BY ATTORNEY GENERAL

Section 203 of Pub. L. 90–321 directed Attorney General to make an annual report to Congress of activities of Department of Justice in enforcement of this chapter, prior to repeal by Pub. L. 97–375, title I, § 109(b), Dec. 21, 1982, 96 Stat. 1820.

§ 892. Making extortionate extensions of credit

(a) Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined un-

tion 2251 for a violation of that section, including the penalties provided for such a violation by a person with a prior conviction or convictions as described in that subsection.

(2) A person who violates subsection (b), or attempts or conspires to do so, shall be subject to the penalties provided in subsection (b)(1) of section 2252 for a violation of paragraph (1), (2), or (3) of subsection (a) of that section, including the penalties provided for such a violation by a person with a prior conviction or convictions as described in subsection (b)(1) of section 2252.

(Added Pub. L. 103–322, title XVI, § 160001(a), Sept. 13, 1994, 108 Stat. 2036, § 2258; renumbered § 2260, Pub. L. 104–294, title VI, § 601(i)(1), Oct. 11, 1996, 110 Stat. 3501; amended Pub. L. 109–248, title II, § 206(b)(5), July 27, 2006, 120 Stat. 614; Pub. L. 110–401, title III, § 303, Oct. 13, 2008, 122 Stat. 4242.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–401 inserted "or for the purpose of transmitting a live visual depiction of such conduct" after "for the purpose of producing any visual depiction of such conduct" and "or transmitted" after "imported".

2006—Subsec. (c). Pub. L. 109–248 amended subsec. (c) generally. Prior to amendment, text read as follows: "A person who violates subsection (a) or (b), or conspires or attempts to do so—

"(1) shall be fined under this title, imprisoned not more than 10 years, or both; and

"(2) if the person has a prior conviction under this chapter or chapter 109A, shall be fined under this title, imprisoned not more than 20 years, or both."

1996—Pub. L. 104–294 renumbered section 2258, relating to production of sexually explicit depictions of minor, as this section.

§ 2260A. Penalties for registered sex offenders

Whoever, being required by Federal or other law to register as a sex offender, commits a felony offense involving a minor under section 1201, 1466A, 1470, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, shall be sentenced to a term of imprisonment of 10 years in addition to the imprisonment imposed for the offense under that provision. The sentence imposed under this section shall be consecutive to any sentence imposed for the offense under that provision.

(Added Pub. L. 109–248, title VII, § 702(a), July 27, 2006, 120 Stat. 648.)

Sec.
2261. Interstate domestic violence.
2261A. Interstate stalking.[1]
2262. Interstate violation of protection order.
2263. Pretrial release of defendant.
2264. Restitution.
2265. Full faith and credit given to protection orders.
2265A Repeat offenders.[2]
2266. Definitions.

AMENDMENTS

1996—Pub. L. 104–294, title VI, § 604(a)(1), Oct. 11, 1996, 110 Stat. 3506, amended analysis by inserting "Sec." above section numbers.

Pub. L. 104–201, div. A, title X, § 1069(b)(3), (c), Sept. 23, 1996, 110 Stat. 2656, inserted "AND STALKING" after "VIOLENCE" in chapter heading and added item 2261A.

§ 2261. Interstate domestic violence

(a) OFFENSES.—

(1) TRAVEL OR CONDUCT OF OFFENDER.—A person who travels in interstate or foreign commerce or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(2) CAUSING TRAVEL OF VICTIM.—A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(b) PENALTIES.—A person who violates this section or section 2261A shall be fined under this title, imprisoned—

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

or both fined and imprisoned.

(6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.

(Added Pub. L. 103–322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1926; amended Pub. L. 104–201, div. A, title X, § 1069(b)(1), (2), Sept. 23, 1996, 110 Stat. 2656; Pub. L. 106–386, div. B, title I, § 1107(a), Oct. 28, 2000, 114 Stat. 1497; Pub. L. 109–162, title I, §§ 114(b), 116(a), 117(a), Jan. 5, 2006, 119 Stat. 2988, 2989; Pub. L. 113–4, title I, § 107(a), Mar. 7, 2013, 127 Stat. 77.)

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 113–4 inserted "is present" after "Indian country or" and "or presence" after "as a result of such travel".

2006—Subsec. (a)(1). Pub. L. 109–162, § 117(a), inserted "or within the special maritime and territorial jurisdiction of the United States" after "Indian country".

[1] Section catchline amended by Pub. L. 109–162 without corresponding amendment of chapter analysis.

[2] Editorially supplied. Section 2265A added by Pub. L. 109–162 without corresponding amendment of chapter analysis.

Pub. L. 109–162, §116(a)(1), which directed substitution of ", intimate partner, or dating partner" for "or intimate partner", was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 109–162, §116(a)(2), which directed substitution of ", intimate partner, or dating partner" for "or intimate partner", was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (b)(6). Pub. L. 109–162, §114(b), added par. (6).

2000—Subsec. (a). Pub. L. 106–386 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows:

"(1) CROSSING A STATE LINE.—A person who travels across a State line or enters or leaves Indian country with the intent to injure, harass, or intimidate that person's spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner, shall be punished as provided in subsection (b).

"(2) CAUSING THE CROSSING OF A STATE LINE.—A person who causes a spouse or intimate partner to cross a State line or to enter or leave Indian country by force, coercion, duress, or fraud and, in the course or as a result of that conduct, intentionally commits a crime of violence and thereby causes bodily injury to the person's spouse or intimate partner, shall be punished as provided in subsection (b)."

1996—Subsec. (b). Pub. L. 104–201 inserted "or section 2261A" after "this section" in introductory provisions and substituted "victim" for "offender's spouse or intimate partner" in pars. (1) to (3).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–4, §4, Mar. 7, 2013, 127 Stat. 64, provided that: "Except as otherwise specifically provided in this Act [see Tables for classification], the provisions of titles I, II, III, IV, VII, and sections 3, 602, 901, and 902 of this Act shall not take effect until the beginning of the fiscal year following the date of enactment of this Act [Mar. 7, 2013]."

Whoever—

(1) travels in interstate or foreign commerce or is present within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that—

(A) places that person in reasonable fear of the death of, or serious bodily injury to—

(i) that person;

(ii) an immediate family member (as defined in section 115) of that person;

(iii) a spouse or intimate partner of that person; or

(iv) the pet, service animal, emotional support animal, or horse of that person; or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A); or

(2) with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that—

(A) places that person in reasonable fear of the death of or serious bodily injury to a person, a pet, a service animal, an emotional support animal, or a horse described in clause (i), (ii), (iii), or (iv) of paragraph (1)(A); or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A),

shall be punished as provided in section 2261(b) of this title.

(Added Pub. L. 104–201, div. A, title X, §1069(a), Sept. 23, 1996, 110 Stat. 2655; amended Pub. L. 106–386, div. B, title I, §1107(b)(1), Oct. 28, 2000, 114 Stat. 1498; Pub. L. 109–162, title I, §114(a), Jan. 5, 2006, 119 Stat. 2987; Pub. L. 113–4, title I, §107(b), Mar. 7, 2013, 127 Stat. 77; Pub. L. 115–334, title XII, §12502(a)(1), Dec. 20, 2018, 132 Stat. 4982.)

AMENDMENTS

2018—Par. (1)(A)(iv). Pub. L. 115–334, §12502(a)(1)(A), added cl. (iv).

Par. (2)(A). Pub. L. 115–334, §12502(a)(1)(B), inserted ", a pet, a service animal, an emotional support animal, or a horse" after "to a person" and substituted "(iii), or (iv)" for "or (iii)".

2013—Pub. L. 113–4 amended section generally. Prior to amendment, section related to stalking.

2006—Pub. L. 109–162 amended section catchline and text generally, revising and restating former provisions relating to stalking so as to include surveillance with intent to kill, injure, harass, or intimidate which results in substantial emotional distress to a person within the purview of the offense proscribed.

2000—Pub. L. 106–386 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "Whoever travels across a State line or within the special maritime and territorial jurisdiction of the United States with the intent to injure or harass another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury (as defined in section 1365(g)(3) of this title) to, that person or a member of that person's immediate family (as defined in section 115 of this title) shall be punished as provided in section 2261 of this title."

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113–4 not effective until the beginning of the fiscal year following Mar. 7, 2013, see section 4 of Pub. L. 113–4, set out as a note under section 2261 of this title.

§ 2262. Interstate violation of protection order

(a) OFFENSES.—

(1) TRAVEL OR CONDUCT OF OFFENDER.—A person who travels in interstate or foreign commerce, or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person or the pet, service animal, emotional support animal, or horse of that person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

PRIOR PROVISIONS

A prior section 222, act June 19, 1934, ch. 652, title II, § 222, as added Mar. 6, 1943, ch. 10, § 1, 57 Stat. 5; amended July 12, 1960, Pub. L. 86-624, § 36, 74 Stat. 421; Nov. 30, 1974, Pub. L. 93-506, § 2, 88 Stat. 1577; Dec. 24, 1980, Pub. L. 96-590, 94 Stat. 3414; Dec. 29, 1981, Pub. L. 97-130, § 2, 95 Stat. 1687, related to competition among record carriers, prior to repeal by Pub. L. 103-414, title III, § 304(a)(6), Oct. 25, 1994, 108 Stat. 4297.

AMENDMENTS

2008—Subsec. (d)(4). Pub. L. 110-283, § 301(1), inserted "or the user of an IP-enabled voice service (as such term is defined in section 615b of this title)" after "section 332(d) of this title)" in introductory provisions.

Subsec. (f). Pub. L. 110-283, § 301(2), struck out "wireless" before "location" in heading.

Subsec. (f)(1). Pub. L. 110-283, § 301(1), inserted "or the user of an IP-enabled voice service (as such term is defined in section 615b of this title)" after "section 332(d) of this title)".

Subsec. (g). Pub. L. 110-283, § 301(3), inserted "or a provider of IP-enabled voice service (as such term is defined in section 615b of this title)" after "telephone exchange service".

1999—Subsec. (d)(4). Pub. L. 106-81, § 5(1), added par. (4).

Subsecs. (f), (g). Pub. L. 106-81, § 5(2), added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Pub. L. 106-81, § 5(2)-(4), redesignated subsec. (f) as (h), inserted "location," after "destination," in par. (1)(A), and added pars. (4) to (7).

[redacted]

(a) Prohibited acts generally

[redacted]

(A) by means of a telecommunications device knowingly—

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or child pornography, with intent to abuse, threaten, or harass another person;

(B) by means of a telecommunications device knowingly—

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or child pornography, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;

[redacted]

(D) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(E) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any specific person; or

(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under title 18 or imprisoned not more than two years, or both.

(b) Prohibited acts for commercial purposes; defense to prosecution

(1) Whoever knowingly—

(A) within the United States, by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

(B) permits any telephone facility under such person's control to be used for an activity prohibited by subparagraph (A),

shall be fined in accordance with title 18 or imprisoned not more than two years, or both.

(2) Whoever knowingly—

(A) within the United States, by means of telephone, makes (directly or by recording device) any indecent communication for commercial purposes which is available to any person under 18 years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call; or

(B) permits any telephone facility under such person's control to be used for an activity prohibited by subparagraph (A), shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(3) It is a defense to prosecution under paragraph (2) of this subsection that the defendant restricted access to the prohibited communication to persons 18 years of age or older in accordance with subsection (c) of this section and with such procedures as the Commission may prescribe by regulation.

(4) In addition to the penalties under paragraph (1), whoever, within the United States, intentionally violates paragraph (1) or (2) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(5)(A) In addition to the penalties under paragraphs (1), (2), and (5), whoever, within the United States, violates paragraph (1) or (2) shall be subject to a civil fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(B) A fine under this paragraph may be assessed either—

(i) by a court, pursuant to civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

(ii) by the Commission after appropriate administrative proceedings.

(6) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1) or (2). An injunction may be granted in accordance with the Federal Rules of Civil Procedure.

(c) Restriction on access to subscribers by common carriers; judicial remedies respecting restrictions

(1) A common carrier within the District of Columbia or within any State, or in interstate or

foreign commerce, shall not, to the extent technically feasible, provide access to a communication specified in subsection (b) from the telephone of any subscriber who has not previously requested in writing the carrier to provide access to such communication if the carrier collects from subscribers an identifiable charge for such communication that the carrier remits, in whole or in part, to the provider of such communication.

(2) Except as provided in paragraph (3), no cause of action may be brought in any court or administrative agency against any common carrier, or any of its affiliates, including their officers, directors, employees, agents, or authorized representatives on account of—

(A) any action which the carrier demonstrates was taken in good faith to restrict access pursuant to paragraph (1) of this subsection; or

(B) any access permitted—

(i) in good faith reliance upon the lack of any representation by a provider of communications that communications provided by that provider are communications specified in subsection (b), or

(ii) because a specific representation by the provider did not allow the carrier, acting in good faith, a sufficient period to restrict access to communications described in subsection (b).

(3) Notwithstanding paragraph (2) of this subsection, a provider of communications services to which subscribers are denied access pursuant to paragraph (1) of this subsection may bring an action for a declaratory judgment or similar action in a court. Any such action shall be limited to the question of whether the communications which the provider seeks to provide fall within the category of communications to which the carrier will provide access only to subscribers who have previously requested such access.

(d) Sending or displaying offensive material to persons under 18

Whoever—

(1) in interstate or foreign communications knowingly—

(A) uses an interactive computer service to send to a specific person or persons under 18 years of age, or

(B) uses any interactive computer service to display in a manner available to a person under 18 years of age,

any comment, request, suggestion, proposal, image, or other communication that is obscene or child pornography, regardless of whether the user of such service placed the call or initiated the communication; or

(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under title 18 or imprisoned not more than two years, or both.

(e) Defenses

In addition to any other defenses available by law:

(1) No person shall be held to have violated subsection (a) or (d) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that does not include the creation of the content of the communication.

(2) The defenses provided by paragraph (1) of this subsection shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate this section, or who knowingly advertises the availability of such communications.

(3) The defenses provided in paragraph (1) of this subsection shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of this section that is owned or controlled by such person.

(4) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer (A) having knowledge of such conduct, authorizes or ratifies such conduct, or (B) recklessly disregards such conduct.

(5) It is a defense to a prosecution under subsection (a)(1)(B) or (d), or under subsection (a)(2) with respect to the use of a facility for an activity under subsection (a)(1)(B) that a person—

(A) has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to a communication specified in such subsections, which may involve any appropriate measures to restrict minors from such communications, including any method which is feasible under available technology; or

(B) has restricted access to such communication by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number.

(6) The Commission may describe measures which are reasonable, effective, and appropriate to restrict access to prohibited communications under subsection (d). Nothing in this section authorizes the Commission to enforce, or is intended to provide the Commission with the authority to approve, sanction, or permit, the use of such measures. The Commission shall have no enforcement authority over the failure to utilize such measures. The Commission shall not endorse specific products relating to such measures. The use of such measures shall be admitted as evidence of good faith efforts for purposes of paragraph (5) in any action arising under subsection (d). Nothing in this section shall be construed to treat interactive computer services as common carriers or telecommunications carriers.

(f) Violations of law required; commercial entities, nonprofit libraries, or institutions of higher education

(1) No cause of action may be brought in any court or administrative agency against any person on account of any activity that is not in violation of any law punishable by criminal or civil penalty, and that the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the

transmission of, or access to, a communication specified in this section.

(2) No State or local government may impose any liability for commercial activities or actions by commercial entities, nonprofit libraries, or institutions of higher education in connection with an activity or action described in subsection (a)(2) or (d) that is inconsistent with the treatment of those activities or actions under this section: *Provided, however*, That nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

(g) Application and enforcement of other Federal law

Nothing in subsection (a), (d), (e), or (f) or in the defenses to prosecution under subsection (a) or (d) shall be construed to affect or limit the application or enforcement of any other Federal law.

(h) Definitions

For purposes of this section—

(1) The use of the term "telecommunications device" in this section—

(A) shall not impose new obligations on broadcasting station licensees and cable operators covered by obscenity and indecency provisions elsewhere in this chapter;

(B) does not include an interactive computer service; and

(C) in the case of subparagraph (C) of subsection (a)(1), includes any device or software that can be used to originate telecommunications or other types of communications that are transmitted, in whole or in part, by the Internet (as such term is defined in section 1104[1] of the Internet Tax Freedom Act (47 U.S.C. 151 note)).

(2) The term "interactive computer service" has the meaning provided in section 230(f)(2) of this title.

(3) The term "access software" means software (including client or server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(4) The term "institution of higher education" has the meaning provided in section 1001 of title 20.

(5) The term "library" means a library eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act (20 U.S.C. 355e et seq.).

(June 19, 1934, ch. 652, title II, § 223, as added Pub. L. 90–299, § 1, May 3, 1968, 82 Stat. 112; amended Pub. L. 98–214, § 8(a), (b), Dec. 8, 1983, 97 Stat. 1469, 1470; Pub. L. 100–297, title VI, § 6101, Apr. 28, 1988, 102 Stat. 424; Pub. L. 100–690, title VII, § 7524, Nov. 18, 1988, 102 Stat. 4502; Pub. L. 101–166, title V, § 521(1), Nov. 21, 1989, 103 Stat. 1192; Pub. L. 103–414, title III, § 303(a)(9), Oct. 25, 1994, 108 Stat. 4294; Pub. L. 104–104, title V, § 502, Feb. 8, 1996, 110 Stat. 133; Pub. L. 105–244, title I, § 102(a)(14), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 105–277, div. C, title XIV, § 1404(b), Oct. 21, 1998, 112 Stat. 2681–739; Pub. L. 108–21, title VI, § 603, Apr. 30, 2003, 117 Stat. 687; Pub. L. 109–162, title I, § 113(a), Jan. 5, 2006, 119 Stat. 2987; Pub. L. 113–4, title XI, § 1102, Mar. 7, 2013, 127 Stat. 135.)

[1] See References in Text note below.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(6), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

This chapter, referred to in subsec. (h)(1)(A), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

Section 1104 of the Internet Tax Freedom Act, referred to in subsec. (h)(1)(C), is section 1104 of title XI of div. C of Pub. L. 105–277, which is set out in a note under section 151 of this title. The term "Internet" is defined in section 1105 of Pub. L. 105–277, which is set out in the same note under section 151 of this title.

The Library Services and Construction Act, referred to in subsec. (h)(5), is act June 19, 1956, ch. 407, 70 Stat. 293, as amended. Title III of the Act was classified generally to subchapter III (§ 355e et seq.) of chapter 16 of Title 20, Education, and was repealed by Pub. L. 104–208, div. A, title I, § 101(e) [title VII, § 708(a)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–312.

AMENDMENTS

2013—Subsec. (a)(1)(A). Pub. L. 113–4, § 1102(1), struck out "annoy," after "intent to" in concluding provisions.

Subsec. (a)(1)(C). Pub. L. 113–4, § 1102(2)(B), which directed the substitution of "harass any specific person" for "harass any person at the called number or who receives the communication", was executed by making the substitution for "harass any person at the called number or who receives the communications", to reflect the probable intent of Congress.

Pub. L. 113–4, § 1102(2)(A), struck out "annoy," after "intent to".

Subsec. (a)(1)(E). Pub. L. 113–4, § 1102(3), substituted "harass any specific person" for "harass any person at the called number or who receives the communication".

2006—Subsec. (h)(1)(C). Pub. L. 109–162 added subpar. (C).

2003—Subsec. (a)(1)(A). Pub. L. 108–21, § 603(1)(A), substituted "or child pornography" for ", lewd, lascivious, filthy, or indecent" in concluding provisions.

Subsec. (a)(1)(B). Pub. L. 108–21, § 603(1)(B), substituted "child pornography" for "indecent" in concluding provisions.

Subsec. (d)(1). Pub. L. 108–21, § 603(2), substituted "is obscene or child pornography" for ", in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs" in concluding provisions.

1998—Subsec. (h)(2). Pub. L. 105–277 substituted "230(f)(2)" for "230(e)(2)".

Subsec. (h)(4). Pub. L. 105–244, which directed amendment of section 223(h)(4) of the Telecommunications Act of 1934 (47 U.S.C. 223(h)(4)) by substituting "section 1001" for "section 1141", was executed to this section, which is section 223 of the Communications Act of 1934, to reflect the probable intent of Congress.

1996—Subsec. (a). Pub. L. 104–104, § 502(1), added subsec. (a) and struck out former subsec. (a) which read as follows: "Whoever—

"(1) in the District of Columbia or in interstate or foreign communication by means of telephone—

"(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent;

"(B) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number;

"(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

"(D) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

"(2) knowingly permits any telephone facility under his control to be used for any purpose prohibited by this section,

shall be fined not more than $50,000 or imprisoned not more than six months, or both."

Subsecs. (d) to (h). Pub. L. 104–104, § 502(2), added subsecs. (d) to (h).

1994—Subsec. (b)(3). Pub. L. 103–414 substituted "defendant restricted access" for "defendant restrict access".

1989—Subsecs. (b), (c). Pub. L. 101–166 added subsecs. (b) and (c) and struck out former subsec. (b) which read as follows:

"(1) Whoever knowingly—

"(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

"(B) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i);

shall be fined in accordance with title 18 or imprisoned not more than two years, or both.

"(2) Whoever knowingly—

"(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any indecent communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

"(B) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i),

shall be fined not more than $50,000 or imprisoned not more than six months, or both."

1988—Subsec. (b). Pub. L. 100–690 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

"(1) Whoever knowingly—

"(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene or indecent communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

"(B) permits any telephone facility under such person's control to be used for an activity prohibited by subparagraph (A),

shall be fined not more than $50,000 or imprisoned not more than six months, or both.

"(2) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, intentionally violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

"(3)(A) In addition to the penalties under paragraphs (1) and (2), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1)(A) or (1)(B) shall be subject to a civil fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

"(B) A fine under this paragraph may be assessed either—

"(i) by a court, pursuant to a civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

"(ii) by the Commission after appropriate administrative proceedings.

"(4) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1)(A) or (1)(B). An injunction may be granted in accordance with the Federal Rules of Civil Procedure."

Pub. L. 100–297, in par. (1)(A), struck out "under eighteen years of age or to any other person without that person's consent" after "to any person", redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the Commission shall prescribe by regulation.", redesignated par. (4) as (3) and substituted "under paragraphs (1) and (2)" for "under paragraphs (1) and (3)", and redesignated par. (5) as (4).

1983—Subsec. (a). Pub. L. 98–214, § 8(a)(1), (2), designated existing provisions as subsec. (a) and substituted "$50,000" for "$500" in provisions after par. (2).

Subsec. (a)(2). Pub. L. 98–214, § 8(b), inserted "facility" after "telephone".

Subsec. (b). Pub. L. 98–214, § 8(a)(3), added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. C, title XIV, § 1406, Oct. 21, 1998, 112 Stat. 2681–741, provided that: "This title [enacting section 231 of this title, amending this section and section 230 of this title, and enacting provisions set out as notes under sections 231 and 609 of this title] and the amendments made by this title shall take effect 30 days after the date of enactment of this Act [Oct. 21, 1998]."

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–166 effective 120 days after Nov. 21, 1989, see section 521(3) of Pub. L. 101–166, set out as a note under section 152 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–297 effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of Title 20, Education.

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109–162, title I, § 113(b), Jan. 5, 2006, 119 Stat. 2987, provided that: "This section [amending this section] and the amendment made by this section may not be construed to affect the meaning given the term 'telecommunications device' in section 223(h)(1) of the Communications Act of 1934 [47 U.S.C. 223(h)(1)], as in effect before the date of the enactment of this section [Jan. 5, 2006]."

EXPEDITED REVIEW

Pub. L. 104–104, title V, § 561, Feb. 8, 1996, 110 Stat. 142, provided that:

"(a) THREE-JUDGE DISTRICT COURT HEARING.—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title [see Short Title of 1996 Amendment note set out under section 609 of this title] or any amendment made by this title, or any provision thereof, shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

"(b) APPELLATE REVIEW.—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under

subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order."

REGULATIONS; DISPOSITION OF COMPLAINTS PENDING ON DECEMBER 8, 1983

Pub. L. 98–214, § 8(c), (d), Dec. 8, 1983, 97 Stat. 1470, provided that:

"(c) The Federal Communications Commission shall issue regulations pursuant to section 223(b)(2) of the Communications Act of 1934 (as added by subsection (a) of this section) [subsec. (b)(2) of this section] not later than one hundred and eighty days after the date of the enactment of this Act [Dec. 8, 1983].

"(d) The Commission shall act on all complaints alleging violation of section 223 of the Communications Act of 1934 [this section] which are pending on the date of the enactment of this Act [Dec. 8, 1983] within ninety days of such date of enactment."

§ 224. Pole attachments

(a) Definitions

As used in this section:

(1) The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.

(3) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term "pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(5) For purposes of this section, the term "telecommunications carrier" (as defined in section 153 of this title) does not include any incumbent local exchange carrier as defined in section 251(h) of this title.

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations

(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of this title.

(2) The Commission shall prescribe by rule regulations to carry out the provisions of this section.

(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation

(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.

(3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments—

(A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and

(B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter—

(i) within 180 days after the complaint is filed with the State, or

(ii) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

(d) Determination of just and reasonable rates; "usable space" defined

(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

(3) This subsection shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service. Until the effective date of the regulations required under subsection (e), this subsection shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.

(e) Regulations governing charges; apportionment of costs of providing space

(1) The Commission shall, no later than 2 years after February 8, 1996, prescribe regulations in

person owns or controls shall be fined under this title and imprisoned for not more than 10 years.

(c) Any person who uses a tunnel or passage described in subsection (a) to unlawfully smuggle an alien, goods (in violation of section 545), controlled substances, weapons of mass destruction (including biological weapons), or a member of a terrorist organization (as defined in section 2339B(g)(6)) shall be subject to a maximum term of imprisonment that is twice the maximum term of imprisonment that would have otherwise been applicable had the unlawful activity not made use of such a tunnel or passage.

(d) Any person who attempts or conspires to commit any offense under subsection (a) or subsection (c) of this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Added Pub. L. 109–295, title V, §551(a), Oct. 4, 2006, 120 Stat. 1389, §554; renumbered §555, Pub. L. 110–161, div. E, title V, §553(a)(1), Dec. 26, 2007, 121 Stat. 2082; amended Pub. L. 112–127, §3, June 5, 2012, 126 Stat. 371.)

AMENDMENTS

2012—Pub. L. 112–127 added subsec. (d).

2007—Pub. L. 110–161 renumbered section 554, relating to border tunnels and passages, as this section.

FINDINGS

Pub. L. 112–127, §2, June 5, 2012, 126 Stat. 370, provided that: "Congress finds the following:

"(1) Trafficking and smuggling organizations are intensifying their efforts to enter the United States through tunnels and other subterranean passages between Mexico and the United States.

"(2) Border tunnels are most often used to transport narcotics from Mexico to the United States, but can also be used to transport people and other contraband.

"(3) From Fiscal Year 1990 to Fiscal Year 2011, law enforcement authorities discovered 149 cross-border tunnels along the border between Mexico and the United States, 139 of which have been discovered since Fiscal Year 2001. There has been a dramatic increase in the number of cross-border tunnels discovered in Arizona and California since Fiscal Year 2006, with 40 tunnels discovered in California and 74 tunnels discovered in Arizona.

"(4) Section 551 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295) added a new section to title 18, United States Code (18 U.S.C. 555), which—

"(A) criminalizes the construction or financing of an unauthorized tunnel or subterranean passage across an international border into the United States; and

"(B) prohibits any person from recklessly permitting others to construct or use an unauthorized tunnel or subterranean passage on the person's land.

"(5) Any person convicted of using a tunnel or subterranean passage to smuggle aliens, weapons, drugs, terrorists, or illegal goods is subject to an enhanced sentence for the underlying offense. Additional sentence enhancements would further deter tunnel activities and increase prosecutorial options."

Sec.
[591. Repealed.]
592. Troops at polls.
593. Interference by armed forces.
594. Intimidation of voters.
595. Interference by administrative employees of Federal, State, or Territorial Governments.
596. Polling armed forces.
597. Expenditures to influence voting.
598. Coercion by means of relief appropriations.
599. Promise of appointment by candidate.
600. Promise of employment or other benefit for political activity.
601. Deprivation of employment or other benefit for political contribution.
602. Solicitation of political contributions.
603. Making political contributions.
604. Solicitation from persons on relief.
605. Disclosure of names of persons on relief.
606. Intimidation to secure political contributions.
607. Place of solicitation.
608. Absent uniformed services voters and overseas voters.
609. Use of military authority to influence vote of member of Armed Forces.
610. Coercion of political activity.
611. Voting by aliens.
[612 to 617. Repealed.]

SENATE REVISION AMENDMENT

By Senate amendment, item 610 was changed to read, "610. Contributions or expenditures by national banks, corporations, or labor organizations". See Senate Report No. 1620, amendment Nos. 4 and 5, 80th Cong.

AMENDMENTS

1996—Pub. L. 104–208, div. C, title II, §216(b), Sept. 30, 1996, 110 Stat. 3009–573, added item 611.

1993—Pub. L. 103–94, §4(c)(2), Oct. 6, 1993, 107 Stat. 1005, added item 610.

1990—Pub. L. 101–647, title XXXV, §3516, Nov. 29, 1990, 104 Stat. 4923, substituted "Making political contributions" for "Place of solicitation" in item 603 and "Place of solicitation" for "Making political contributions" in item 607.

1986—Pub. L. 99–410, title II, §202(b), Aug. 28, 1986, 100 Stat. 929, added items 608 and 609.

1980—Pub. L. 96–187, title II, §201(a)(2), Jan. 8, 1980, 93 Stat. 1367, struck out item 591 "Definitions".

1976—Pub. L. 94–453, §2, Oct. 2, 1976, 90 Stat. 1517, substituted "political contribution" for "political activity" in item 601.

Pub. L. 94–283 title II, §201(b), May 11, 1976, 90 Stat. 496, struck out items "608. Limitations on contributions and expenditures", "610. Contributions or expenditures by national banks, corporations or labor organizations", "611. Contributions by Government contractors", "612. Publication or distribution of political statements", "613. Contributions by foreign nationals", "614. Prohibition of contributions in name of another", "615. Limitation on contributions of currency", "616. Acceptance of excessive honorariums", and "617. Fraudulent misrepresentation of campaign authority".

1974—Pub. L. 93–443, title I, §101(d)(4)(B), (f)(3), Oct. 15, 1974, 88 Stat. 1267, 1268, substituted "Contributions by foreign nationals" for "Contributions by agents of foreign principals" in item 613, and added items 614 to 617.

1972—Pub. L. 92–225, title II, §207, Feb. 7, 1972, 86 Stat. 11, substituted "contributions and expenditures" for "political contributions and purchases" in item 608, "Repealed" for "Maximum contributions and expenditures" in item 609, and "Government contractors" for "firms or individuals contracting with the United States" in item 611.

1966—Pub. L. 89–486, §8(c)(1), July 4, 1966, 80 Stat. 249, added item 613.

STATE LAWS AFFECTED; DEFINITIONS

Pub. L. 93–443, title I, §104, Oct. 15, 1974, 88 Stat. 1272, provided that:

"(a) The provisions of chapter 29 of title 18, United States Code, relating to elections and political activities, supersede and preempt any provision of State law with respect to election to Federal office.

"(b) For purposes of this section, the terms 'election', 'Federal office', and 'State' have the meanings given them by section 591 of title 18, United States Code."

[§ 591. Repealed. Pub. L. 96–187, title II, § 201(a)(1), Jan. 8, 1980, 93 Stat. 1367]

Section, acts June 25, 1948, ch. 645, 62 Stat. 719; May 24, 1949, ch. 139, § 9, 63 Stat. 90; Sept. 22, 1970, Pub. L. 91–405, title II, § 204(d)(4), 84 Stat. 853; Feb. 7, 1972, Pub. L. 92–225, title II, § 201, 86 Stat. 8; Oct. 15, 1974, Pub. L. 93–443, title I, §§ 101(f)(2), 102, 88 Stat. 1268, 1269; May 11, 1976, Pub. L. 94–283, title I, § 115(g), title II, § 202, 90 Stat. 496, 497, defined terms applicable to prohibitions respecting elections and political activities.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as an Effective Date of 1980 Amendment note under section 30101 of Title 52, Voting and Elections.

§ 592. Troops at polls

Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

This section shall not prevent any officer or member of the armed forces of the United States from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

(June 25, 1948, ch. 645, 62 Stat. 719; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 55 and 59 (Mar. 4, 1909, ch. 321, §§ 22, 26, 35 Stat. 1092, 1093).

This section consolidates sections 55 and 59 of title 18, U.S.C., 1940 ed.

Mandatory punishment provision was rephrased in the alternative.

In second paragraph, words "or member of the Armed Forces of the United States" were substituted for "soldier, sailor, or marine" so as to cover those auxiliaries which are now component parts of the Army and Navy.

Changes in phraseology were also made.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $5,000".

§ 593. Interference by armed forces

Whoever, being an officer or member of the Armed Forces of the United States, prescribes or fixes or attempts to prescribe or fix, whether by proclamation, order or otherwise, the qualifications of voters at any election in any State; or

Whoever, being such officer or member, prevents or attempts to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage at any general or special election; or

Whoever, being such officer or member, orders or compels or attempts to compel any election officer in any State to receive a vote from a person not legally qualified to vote; or

Whoever, being such officer or member, imposes or attempts to impose any regulations for conducting any general or special election in a State, different from those prescribed by law; or

Whoever, being such officer or member, interferes in any manner with an election officer's discharge of his duties—

Shall be fined under this title or imprisoned not more than five years, or both; and disqualified from holding any office of honor, profit or trust under the United States.

This section shall not prevent any officer or member of the Armed Forces from exercising the right of suffrage in any district to which he may belong, if otherwise qualified according to the laws of the State of such district.

(June 25, 1948, ch. 645, 62 Stat. 719; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 56–59 (Mar. 4, 1909, ch. 321, §§ 23–26, 35 Stat. 1092, 1093).

Four sections were consolidated with only such changes of phraseology as were necessary to effect the consolidation.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $5,000" in sixth par.

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 720; Pub. L. 91–405, title II, § 204(d)(5), Sept. 22, 1970, 84 Stat. 853; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61, 61g (Aug. 2, 1939, 11:50 a.m. E.S.T., ch. 410, §§ 1, 8, 53 Stat. 1147, 1148).

This section consolidates sections 61 and 61g of title 18, U.S.C., 1940 ed., with changes in phraseology only.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $1,000".

1970—Pub. L. 91–405 substituted "Delegate from the District of Columbia, or Resident Commissioner" for "Delegates or Commissioners from the Territories and possessions".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

§ 595. Interference by administrative employees of Federal, State, or Territorial Governments

Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined under this title or imprisoned not more than one year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any state or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic or cultural organization.

(June 25, 1948, ch. 645, 62 Stat. 720; Pub. L. 91–405, title II, § 204(d)(6), Sept. 22, 1970, 84 Stat. 853; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61a, 61g, 61n, 61s, 61u (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 2, 8, 53 Stat. 1147, 1148; July 19, 1940, ch. 640, § 1, 54 Stat. 767; Aug. 2, 1939, ch. 410, §§ 14, 19, as added July 19, 1940, ch. 640, § 4, 54 Stat. 767; Aug. 2, 1939, ch. 410, § 21, as added Oct. 24, 1942, ch. 620, 56 Stat. 986).

This section consolidates sections 61s, 61n, and 61g with 61a, all of title 18, U.S.C., 1940 ed., in first paragraph, and incorporates section 61u as second paragraph.

Words "or agency thereof" and words "or any department or agency thereof" were inserted to remove any possible ambiguity as to scope of section. (See definitions of department and agency in section 6 of this title.)

Words "or by the District of Columbia or any agency or instrumentality thereof" were inserted upon authority of section 61n of title 18, U.S.C., 1940 ed., which provided that for the purposes of this section, "persons employed in the government of the District of Columbia shall be deemed to be employed in the executive branch of the Government of the United States."

After "State" the words "Territory, or Possession of the United States" were inserted in two places upon authority of section 61s of title 18, U.S.C., 1940 ed., which defined "State," as used in this section, as "any State, Territory, or possession of the United States."

The punishment provision was derived from section 61g of title 18, U.S.C., 1940 ed., which, by reference, made this punishment applicable to this section.

The second paragraph was derived from section 61u of title 18, U.S.C., 1940 ed., which made its provisions applicable to this section by reference.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322, § 330016(1)(L), which directed the amendment of this section by substituting "under this title" for "not more than $10,000", could not be executed because the phrase "not more than $10,000" does not appear in text.

Pub. L. 103–322, § 330016(1)(H), substituted "fined under this title" for "fined not more than $1,000" in first par.

1970—Pub. L. 91–405 substituted reference to Delegate from District of Columbia or Resident Commissioner for Delegate or Resident Commissioner from any Territory or Possession.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

§ 596. Polling armed forces

Whoever, within or without the Armed Forces of the United States, polls any member of such forces, either within or without the United States, either before or after he executes any ballot under any Federal or State law, with reference to his choice of or his vote for any candidate, or states, publishes, or releases any result of any purported poll taken from or among the members of the Armed Forces of the United States or including within it the statement of choice for such candidate or of such votes cast by any member of the Armed Forces of the United States, shall be fined under this title or imprisoned for not more than one year, or both.

The word "poll" means any request for information, verbal or written, which by its language or form of expression requires or implies the necessity of an answer, where the request is made with the intent of compiling the result of the answers obtained, either for the personal use of the person making the request, or for the purpose of reporting the same to any other person, persons, political party, unincorporated association or corporation, or for the purpose of publishing the same orally, by radio, or in written or printed form.

(June 25, 1948, ch. 645, 62 Stat. 720; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on section 344 of title 50, U.S.C., 1940 ed., War and National Defense (Sept. 16, 1942, ch. 561, title III, § 314, as added Apr. 1, 1944, ch. 150, 58 Stat. 146).

Changes in phraseology were made.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $1,000" in first par.

§ 597. Expenditures to influence voting

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote—

Shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 721; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat.

2147; Pub. L. 104–294, title VI, § 601(a)(12), Oct. 11, 1996, 110 Stat. 3498.)

HISTORICAL AND REVISION NOTES

Based on sections 250, 252, of title 2, U.S.C., 1940 ed., The Congress (Feb. 28, 1925, ch. 368, title III, §§ 311, 314, 43 Stat. 1073, 1074).

This section consolidates the provisions of sections 250 and 252 of title 2, U.S.C., 1940 ed., The Congress.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

The punishment provisions of section 252 of title 2, U.S.C., 1940 ed., The Congress, were incorporated at end of section upon authority of reference in such section making them applicable to this section.

Words "or both" were added to conform to the almost universal formula of the punishment provisions of this title.

Changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–294 substituted "shall be fined under this title" for "shall be fined not more than $10,000" in last par.

1994—Pub. L. 103–322 substituted "shall be fined under this title" for "shall be fined not more than $1,000" in last par.

§ 598. Coercion by means of relief appropriations

Whoever uses any part of any appropriation made by Congress for work relief, relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 721; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61f, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410. §§ 7, 8, 53 Stat. 1148).

This section consolidates sections 61f and 61g of title 18, U.S.C., 1940 ed., with changes of phraseology necessary to effect consolidation.

The punishment provision was derived from section 61g of title 18, U.S.C., 1940 ed., which, by reference, was made applicable to this section.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $1,000".

§ 599. Promise of appointment by candidate

Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 721; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on sections 249, 252, of title 2, U.S.C., 1940 ed., The Congress (Feb. 28, 1925, ch. 368, title III, §§ 310, 314, 43 Stat. 1073, 1074).

This section consolidates the provisions of sections 249 and 252 of title 2, U.S.C., 1940 ed., The Congress, with changes in arrangement and phraseology necessary to effect consolidation.

Words "or both" were added to conform to the almost universal formula of the punishment provisions of this title.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $1,000" after "candidacy shall be" and for "fined not more than $10,000" after "willful, shall be".

§ 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 721; Pub. L. 92–225, title II, § 202, Feb. 7, 1972, 86 Stat. 9; Pub. L. 94–453, § 3, Oct. 2, 1976, 90 Stat. 1517; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61b, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 3, 8, 53 Stat. 1147, 1148).

This section consolidates sections 61b and 61g of title 18, U.S.C., 1940 ed.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $10,000".

1976—Pub. L. 94–453 substituted $10,000 for $1,000 maximum allowable fine.

1972—Pub. L. 92–225 struck out "work," after "position,", inserted "contract, appointment," after "compensation," and "or any special consideration in obtaining any such benefit," after "Act of Congress,", and substituted "in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office" for "in any election".

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–225 effective Dec. 31, 1971, or sixty days after date of enactment [Feb. 7, 1972], whichever is later, see section 408 of Pub. L. 92–225, set out as an Effective Date note under section 30101 of Title 52, Voting and Elections.

§ 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make

a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of—

(1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or

(2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State;

if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined under this title, or imprisoned not more than one year, or both.

(b) As used in this section—

(1) the term "candidate" means an individual who seeks nomination for election, or election, to Federal, State, or local office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal, State, or local office, if he has (A) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(2) the term "election" means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or of any State; and

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 721; Pub. L. 94–453, § 1, Oct. 2, 1976, 90 Stat. 1516; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61c, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 4, 8, 53 Stat. 1147, 1148).

This section consolidates sections 61c and 61g of title 18, U.S.C., 1940 ed.

The words "except as required by law" were used as sufficient to cover the reference to the exception made to the provisions of subsection (b), section 61h of title 18, U.S.C., 1940 ed., which expressly prescribes the circumstances under which a person may be lawfully deprived of his employment and compensation therefor.

Changes were made in phraseology.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted "fined under this title" for "fined not more than $10,000" in concluding provisions.

1976—Pub. L. 94–453 struck out provisions relating to deprivations based upon race, creed, and color which are now set out in section 246 of this title, replaced term "political activity" with more precise terms and definitions, and raised the amount of maximum fine from $1,000 to $10,000.

§ 602. Solicitation of political contributions

(a) It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States; to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than 3 years, or both.

(b) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Regulatory Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

(June 25, 1948, ch. 645, 62 Stat. 722; Pub. L. 96–187, title II, § 201(a)(3), Jan. 8, 1980, 93 Stat. 1367; Pub. L. 103–94, § 4(a), Oct. 6, 1993, 107 Stat. 1004; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 208, 212 (Mar. 4, 1909, ch. 321, §§ 118, 122, 35 Stat. 1110; Feb. 28, 1925, ch. 368, § 312, 43 Stat. 1073).

This section consolidates sections 208 and 212 of title 18, U.S.C., 1940 ed.

This section, like section 201 of this title, was expanded to embrace all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations by inserting words "or any department or agency thereof." (See definitive section 6 of this title.)

The punishment provision was taken from section 212 of title 18, U.S.C., 1940 ed., which, by reference, made the punishment applicable to the crime described in this section.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 301(8) of the Federal Election Campaign Act of 1971, referred to in subsec. (a)(4), is classified to section 30101(8) of Title 52, Voting and Elections.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–435 substituted "Postal Regulatory Commission" for "Postal Rate Commission".

1994—Pub. L. 103–322, which directed the amendment of this section by substituting "under this title" for "not more than $5,000", could not be executed because the phrase "not more than $5,000" does not appear in text. See 1993 Amendment note below.

1993—Pub. L. 103–94 designated existing provisions as subsec. (a), substituted "; to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other

such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than 3 years, or both" for "to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both" in par. (4), and added subsec. (b).

1980—Pub. L. 96–187 amended section generally to conform its terms to revision of the Federal Election Campaign Act of 1971 by title I of Pub. L. 96–187.

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as a note under section 30101 of Title 52, Voting and Elections.

§ 603. Making political contributions

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

(c) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Regulatory Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

(June 25, 1948, ch. 645, 62 Stat. 722; Oct. 31, 1951, ch. 655, § 20(b), 65 Stat. 718; Pub. L. 96–187, title II, § 201(a)(4), Jan. 8, 1980, 93 Stat. 1367; Pub. L. 103–94, § 4(b), Oct. 6, 1993, 107 Stat. 1005; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 209, 212 (Mar. 4, 1909, ch. 321, §§ 119, 122, 35 Stat. 1110).

This section consolidates sections 209 and 212 of title 18, U.S.C., 1940 ed., without change of substance.

To eliminate ambiguity resulting from use of identical words in reference "officer or employee of the United States mentioned in section 208 of this title" as those appearing in section 208 of title 18, U.S.C., 1940 ed., now section 602 of this title, words "person mentioned in section 602 of this title" were inserted.

Words "from any such person" were inserted after "purpose", so as to make it clear that the section does not embrace State employees in its provisions. Some Federal agencies are located in State buildings occupied by State employees.

The punishment provision was derived from section 212 of title 18, U.S.C., 1940 ed. (See reviser's note under section 602 of this title.)

Minor changes were made in phraseology.

REFERENCES IN TEXT

Section 301(8) of the Federal Election Campaign Act of 1971, referred to in subsec. (a), is classified to section 30101(8) of Title 52, Voting and Elections.

Section 302(e)(1) of the Federal Election Campaign Act of 1971, referred to in subsec. (b), is classified to section 30102(e)(1) of Title 52.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–435 substituted "Postal Regulatory Commission" for "Postal Rate Commission".

1994—Subsec. (a). Pub. L. 103–322 substituted "fined under this title" for "fined not more than $5,000".

1993—Subsec. (c). Pub. L. 103–94 added subsec. (c).

1980—Pub. L. 96–187 substituted provisions relating to the making of political contributions for provisions relating to the place of solicitation. See section 607 of this title.

1951—Act Oct. 31, 1951, struck out "from any such person" after "purpose".

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amended by Pub. L. 96–187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as a note under section 30101 of Title 52, Voting and Elections.

§ 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 722; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61d, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 5, 8, 53 Stat. 1148).

This section consolidates sections 61d and 61g of title 18, U.S.C., 1940 ed.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $1,000".

§ 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and

Whoever receives any such list or names for political purposes—

Shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 722; Pub. L. 103–322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 61e, 61g (Aug. 2, 1939, 11:50 a.m., E.S.T., ch. 410, §§ 6, 8, 53 Stat. 1148).

This section consolidates sections 61e and 61g of title 18, U.S.C., 1940 ed.

Reference to persons aiding or assisting, contained in words "or to aid or assist in furnishing or disclosing" was omitted as unnecessary as such persons are made principals by section 2 of this title.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $1,000".

§ 606. Intimidation to secure political contributions

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 722; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 210, 212 (Mar. 4, 1909, ch. 321, §§ 120, 122, 35 Stat. 1110).

This section consolidates sections 210 and 212 of title 18, U.S.C., 1940 ed.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–322 substituted "fined under this title" for "fined not more than $5,000".

§ 607. Place of solicitation

(a) PROHIBITION.—

(1) IN GENERAL.—It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.

(2) PENALTY.—A person who violates this section shall be fined not more than $5,000, imprisoned not more than 3 years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress or Executive Office of the President, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

(June 25, 1948, ch. 645, 62 Stat. 722; Pub. L. 96–187, title II, § 201(a)(5), Jan. 8, 1980, 93 Stat. 1367; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107–155, title III, § 302, Mar. 27, 2002, 116 Stat. 96.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 211, 212 (Mar. 4, 1909, ch. 321, §§ 121, 122, 35 Stat. 1110).

This section consolidates sections 211 and 212 of title 18, U.S.C., 1940 ed.

This section was expanded to embrace all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations by inserting words "or any department or agency thereof." (See definitive section 6, and reviser's note under section 201 of this title.)

Changes were made in phraseology.

REFERENCES IN TEXT

Section 302(e) of the Federal Election Campaign Act of 1971, referred to in subsec. (b), is classified to section 30102(e) of Title 52, Voting and Elections.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–155, § 302(1), added subsec. (a) and struck out former subsec. (a) which read as follows: "It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in section 603, or in any navy yard, fort, or arsenal. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both."

Subsec. (b). Pub. L. 107–155, § 302(2), inserted "or Executive Office of the President" after "Congress".

1994—Subsec. (a). Pub. L. 103–322 substituted "fined under this title" for "fined not more than $5,000".

1980—Pub. L. 96–187 substituted provisions relating to the place of solicitation for provisions relating to the making of political contributions.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–155 effective Nov. 6, 2002, see section 402 of Pub. L. 107–155, set out as an Effective Date of 2002 Amendment; Regulations note under section 30101 of Title 52, Voting and Elections.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as a note under section 30101 of Title 52, Voting and Elections.

§ 608. Absent uniformed services voters and overseas voters

(a) Whoever knowingly deprives or attempts to deprive any person of a right under the Uniformed and Overseas Citizens Absentee Voting Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

(b) Whoever knowingly gives false information for the purpose of establishing the eligibility of any person to register or vote under the Uniformed and Overseas Citizens Absentee Voting Act, or pays or offers to pay, or accepts payment for registering or voting under such Act shall be fined in accordance with this title or imprisoned not more than five years, or both.

(Added Pub. L. 99–410, title II, § 202(a), Aug. 28, 1986, 100 Stat. 929.)

REFERENCES IN TEXT

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in text, is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, which was formerly classified principally to subchapter I–G (§ 1973ff et seq.) of chapter 20 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 203 (§ 20301 et seq.) of Title 52. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 608, acts June 25, 1948, ch. 645, 62 Stat. 723; Feb. 7, 1972, Pub. L. 92–225, title II, § 203, 86 Stat. 9; Oct. 15, 1974, Pub. L. 93–443, title I, § 101(a), (b), 88 Stat. 1263, 1266, set limitations on campaign contributions and expenditures, prior to repeal by Pub. L. 94–283, title II, § 201(a), May 11, 1976, 90 Stat. 496. See section 30116 of Title 52, Voting and Elections.

EFFECTIVE DATE

Section applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as a note under section 20301 of Title 52, Voting and Elections.

§ 609. Use of military authority to influence vote of member of Armed Forces

Whoever, being a commissioned, noncommissioned, warrant, or petty officer of an Armed Force, uses military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place, or attempts to do so, shall be fined in accordance with this title or imprisoned not more than five years, or both. Nothing in this section shall prohibit free discussion of political issues or candidates for public office.

(Added Pub. L. 99–410, title II, § 202(a), Aug. 28, 1986, 100 Stat. 929.)

PRIOR PROVISIONS

A prior section 609, act June 25, 1948, ch. 645, 62 Stat. 723, prescribed maximum contributions and expenditures limitation of $3,000,000 for any calendar year, prior to repeal by Pub. L. 92–225, title II, § 204, Feb. 7, 1972, 86 Stat. 10, effective sixty days after Feb. 7, 1972.

EFFECTIVE DATE

Section applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as a note under section 20301 of Title 52, Voting and Elections.

§ 610. Coercion of political activity

It shall be unlawful for any person to intimidate, threaten, command, or coerce, or attempt to intimidate, threaten, command, or coerce, any employee of the Federal Government as defined in section 7322(1) of title 5, United States Code, to engage in, or not to engage in, any political activity, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political contribution, or working or refusing to work on behalf of any candidate. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

(Added Pub. L. 103–94, § 4(c)(1), Oct. 6, 1993, 107 Stat. 1005; amended Pub. L. 104–294, title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

PRIOR PROVISIONS

A prior section 610, acts June 25, 1948, ch. 645, 62 Stat. 723; May 24, 1949, ch. 139, § 10, 63 Stat. 90; Oct. 31, 1951, ch. 655, § 20(c), 65 Stat. 718; Feb. 7, 1972, Pub. L. 92–225, title II, § 205, 86 Stat. 10; Oct. 15, 1974, Pub. L. 93–443, title I, § 101(e)(1), 88 Stat. 1267, prohibited campaign contributions or expenditures by national banks, corporations, and labor organizations, prior to repeal by Pub. L. 94–283, title II, § 201(a), May 11, 1976, 90 Stat. 496. See section 30118 of Title 52, Voting and Elections.

AMENDMENTS

1996—Pub. L. 104–294 substituted "fined under this title" for "fined not more than $5,000".

EFFECTIVE DATE; SAVINGS PROVISION

Section effective 120 days after Oct. 6, 1993, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as a note under section 7321 of Title 5, Government Organization and Employees.

§ 611. Voting by aliens

(a) It shall be unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, unless—

(1) the election is held partly for some other purpose;

(2) aliens are authorized to vote for such other purpose under a State constitution or statute or a local ordinance; and

(3) voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices.

(b) Any person who violates this section shall be fined under this title, imprisoned not more than one year, or both.

(c) Subsection (a) does not apply to an alien if—

(1) each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization);

(2) the alien permanently resided in the United States prior to attaining the age of 16; and

(3) the alien reasonably believed at the time of voting in violation of such subsection that he or she was a citizen of the United States.

(Added Pub. L. 104–208, div. C, title II, §216(a), Sept. 30, 1996, 110 Stat. 3009–572; amended Pub. L. 106–395, title II, §201(d)(1), Oct. 30, 2000, 114 Stat. 1635.)

PRIOR PROVISIONS

A prior section 611, acts June 25, 1948, ch. 645, 62 Stat. 724; Feb. 7, 1972, Pub. L. 92–225, title II, §206, 86 Stat. 10; Oct. 15, 1974, Pub. L. 93–443, title I, §§101(e)(2), 103, 88 Stat. 1267, 1272, prohibited campaign contributions by government contractors, prior to repeal by Pub. L. 94–283, title II, §201(a), May 11, 1976, 90 Stat. 496. See section 30119 of Title 52, Voting and Elections.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–395 added subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–395, title II, §201(d)(3), Oct. 30, 2000, 114 Stat. 1636, provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 216 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–572). The amendment made by paragraph (2) [amending section 1015 of this title] shall be effective as if included in the enactment of section 215 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–572). The amendments made by paragraphs (1) and (2) shall apply to an alien prosecuted on or after September 30, 1996, except in the case of an alien whose criminal proceeding (including judicial review thereof) has been finally concluded before the date of the enactment of this Act [Oct. 30, 2000]."

[§§ 612 to 617. Repealed. Pub. L. 94–283, title II, § 201(a), May 11, 1976, 90 Stat. 496]

Section 612, acts June 25, 1948, ch. 645, 62 Stat. 724; Aug. 25, 1950, ch. 784, §2, 64 Stat. 475; Aug. 12, 1970, Pub. L. 91–375, §6(j)(7), 84 Stat. 777, regulated publication and distribution of political statements. See section 30120 of Title 52, Voting and Elections.

Section 613, added Pub. L. 89–486, §8(a), July 4, 1966, 80 Stat. 248; amended Pub. L. 93–443, title I, §101(d)(1)–(3), (4)(A), (e)(3), Oct. 15, 1974, 88 Stat. 1267, prohibited campaign contributions by foreign nationals. See section 30121 of Title 52, Voting and Elections.

Section 614, added Pub. L. 93–443, title I, §101(f)(1), Oct. 15, 1974, 88 Stat. 1268, prohibited making of campaign contributions in the name of another. See section 30122 of Title 52, Voting and Elections.

Section 615, added Pub. L. 93–443, title I, §101(f)(1), Oct. 15, 1974, 88 Stat. 1268, placed limitations on contributions of currency. See section 30123 of Title 52, Voting and Elections.

Section 616, added Pub. L. 93–443, title I, §101(f)(1), Oct. 15, 1974, 88 Stat. 1268, prohibited acceptance of excessive honorariums.

Section 617, added Pub. L. 93–443, title I, §101(f)(1), Oct. 15, 1974, 88 Stat. 1268, prohibited fraudulent misrepresentation of campaign authority. See section 30124 of Title 52, Voting and Elections.

SAVINGS PROVISION

Repeal by Pub. L. 94–283 not to release or extinguish any penalty, forfeiture, or liability incurred under such sections, with each section to be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of any penalty, forfeiture, or liability, see section 114 of Pub. L. 94–283, set out as a note under section 441 of Title 2, The Congress.

CHAPTER 31—EMBEZZLEMENT AND THEFT

AMENDMENTS

2012—Pub. L. 112–186, §2(b), Oct. 5, 2012, 126 Stat. 1428, added item 670.

1996—Pub. L. 104–294, title VI, §601(f)(7), Oct. 11, 1996, 110 Stat. 3500, inserted comma after "embezzlement" in item 656.

[1] So in original. Does not conform to section catchline.

‘We are in harm’s way’: Election officials fear for their personal safety amid torrent of false claims about voting

By
Tom Hamburger,
Rosalind S. Helderman
and
Amy Gardner

The Washington Post
August 11, 2021 at 2:59 p.m. EDT

2.1k

In preparation for a vote on local tax assessments last week in Houghton County, Mich., county clerk Jennifer Kelly took extraordinary precautions, asking election staff in this remote northern Michigan community to record the serial numbers of voting machines, document the unbroken seals on tabulators and note in writing that no one had tampered with the equipment.

In the southeastern part of the state, Michael Siegrist, clerk of Canton Township, followed similar steps, even organizing public seminars to explain how ballots are counted.

Despite their efforts, they said they could not fend off an ongoing torrent of false claims and suspicions about voting procedures that have ballooned since President Donald Trump began his relentless attacks on the integrity of the 2020 election last year. “People still complained about our Dominion voting machines, about the need for more audits, and most of all they complained about the use of Sharpies,” Siegrist said, referring to the widely used pen, which has become the focus of a conspiracy theory gripping Trump supporters in Arizona and other states.

“It used to be fun to be an election clerk, but it isn’t any more,” he added.
Nine months after the 2020 election, local officials across the country are coping with an ongoing barrage of criticism and personal attacks that many fear could lead to an exodus of veteran election administrators before the next presidential race.

“The complaints, the threats, the abuse, the magnitude of the pressure it’s too much,” said Susan Nash, a city clerk in Livonia, Mich., who has contended with ongoing questions about the integrity of the process in her community.

As Trump continues to promote the false notion that the 2020 White House race was tainted by fraud, there is mounting evidence that his attacks are curdling the faith that

many Americans once had in their elections and taking a deep toll on the public servants who work to protect the vote.

A Monmouth poll taken in June found that a third of Americans believed that President Biden won the White House due to fraud, including 63 percent of Republicans and Republican leaning independents.

Officials from counties large and small say they are inundated with false claims, such as unsubstantiated allegations that Chinese hackers siphoned votes or that ballots marked by Sharpie pens were disqualified.

The anger is palpable and personal, leading many to fear for their safety.
On Friday, an orange prison jump suit was delivered to offices of the Maricopa County Board of Supervisors, addressed to the five member board, which has strongly denounced a recount of 2020 ballots commissioned by the GOP led state Senate as a sham.

Threats against the Republican majority board have picked up in recent weeks, particularly after it refused to comply with the Senate's most recent demand for access to local computer routers and internal logs, said Maricopa County Supervisor Bill Gates. The board's stance led some members of the state Senate to call for the supervisors to be jailed and even held in solitary confinement.

Last week, Gates said, the board received a voice mail in which a caller threatened to kill each member and their families.

"This stuff isn't organic," Gates said, saying the attacks amount to "a whole dehumanizing of people."

"It's that concept that we're somehow not worthy of respect or safety," he said. "That we're traitors.

Similar examples of intimidation are being reported by local officials across the country, said Liz Howard, the former deputy commissioner of elections in Virginia who now serves as senior counsel to the nonprofit Brennan Center for Justice. "I know of election officials in multiple states who have been forced to leave their homes because of threats against them and their families," she said.

A study by the Brennan Center released in June found that 1 in 3 election officials feels unsafe because of their jobs, and nearly 1 in 5 listed threats to their lives as a job related concern.

The study, conducted with the Bipartisan Policy Center and Harvard Kennedy School's Ash Center for Democratic Governance and Innovation, concluded that the toxic environment "represents a mortal danger to American democracy, which cannot survive without public servants who can freely and fairly run our elections."

On Saturday, the Department of Homeland Security issued a bulletin warning state and local law enforcement officials of potential violence that "may occur during August 2021" fueled by an "increasing but modest level of individuals calling for violence in response to the unsubstantiated claims of fraud related to the 2020 election fraud and the alleged 'reinstatement' of former President Trump," according to a copy obtained by The Washington Post.

"We are currently in a heightened terrorism related threat environment, and DHS is aware of previous instances of violence associated with the dissemination of disinformation, false narratives, and conspiracy theories about the 2020 election," said a U.S. official, who spoke on the condition of anonymity to describe the bulletin. The growing hostility led the Justice Department this summer to announce a new task force that will work with federal prosecutors and the FBI to investigate the rise in threats of violence against election staff.

"A threat to any election official, worker or volunteer is a threat to democracy," Deputy Attorney General Lisa Monaco said in July. "We will promptly and vigorously prosecute offenders to protect the rights of American voters, to punish those who engage in this criminal behavior and to send the unmistakable message that such conduct will not be tolerated."

On Capitol Hill, Sen. Amy Klobuchar (D Minn.) introduced a bill last week that would extend existing prohibitions on intimidating or threatening voters to include election officials engaged in the counting of ballots, canvassing and certifying election results.

At a virtual conference of the National Association of State Election Directors this week, election officials shared impassioned stories about the stresses of the job over the past 18 months: the challenge of running elections during a global pandemic; the unfounded accusations of fraud that followed Biden's victory last November; and for some, the physical threats that followed.

"I think the fear is that after 2020, no matter how hard we work, there are a lot of people out there who don't understand how elections are run, and they're filling in those gaps with false information," said Chris Piper, Virginia's top elections official, who was among those who spoke at the conference.

"The people doing the hard work of putting on an election are your friends and neighbors," he added. "They are not political appointees. They're people you see in the grocery store and down the street walking their dogs. These are dedicated, passionate people. To have those accusations that are just unfounded, it's disheartening. And it's just been hard to watch."

In Des Moines this week, members of the National Association of Secretaries of State are gathering for an in person conference and organizers have taken extra precautions to protect the safety of those attending, said Maria Benson, a spokeswoman for the group. Benson said the organization worked with the Iowa secretary of state's office along with local, state and federal law enforcement to beef up security.

Four hours to the west, Trump supporters have assembled in Sioux Falls, S.D., this week at a symposium hosted by MyPillow founder Mike Lindell, one of the most prominent promoters of the false claim that the 2020 election was stolen.

Inside the 'shadow reality world' promoting the lie that the presidential election was stolen

On social media, extremists have flooded platforms such as Telegram with messages promoting Lindell's gathering and the unsubstantiated notion that Trump will be reinstated in the White House this month, according to the Coalition for a Safer Web, which monitors online threats.

Most worrisome, election experts said in interviews, is the long term impact on local clerks, who function as independent referees of voting in their communities a job that is more essential than ever before.

"There is a scary backlash against these officials," said Lawrence Jacobs, a University of Minnesota political scientist who has been studying the effects of the doubts sown by Trump and his allies. "The umpires are leaving the stadium because they are frightened by what has happened after the 2020 election. They don't want to be threatened anymore."

A survey of election officials by Reed College and the Democracy Fund in the summer of 2020 found that 60 percent of election officials in the country's largest jurisdictions were considering retirement by 2024.

"It has become really toxic right now, and it's very hard for someone to continue to do their jobs in this environment," said Paul Gronke, a professor of political science at Reed who led the survey.

The safety concerns are so serious that Colorado's director of elections, Judd Choate, said he had to adjust a certification course he teaches for elections personnel adding a new emphasis on personal security.

"We are in harm's way as never before," Choate said.

The threats have grown particularly intense in Arizona, Pennsylvania, Wisconsin and Michigan, which has been roiled by mushrooming demands by residents for recounts of the 2020 vote in local counties.

One former GOP clerk, Tina Barton of Rochester Hills, Mich., received death threats last year after there was an initial reporting error about the 2020 results in her city that was quickly fixed. "You will pay for your [expletive] lying. . . . We will [expletive] take you out, [expletive] your life and [expletive] your family," a caller told her in a voice message she provided to The Post. "Watch your [expletive] back."

Ann Manary, a Republican clerk in Midland, Mich., has worked in the clerk's office for 31 years and said she has "never seen anything like" the threats, pressure and complaints that have rolled into her office since the 2020 election.

In an attempt to bolster faith in local officials, the Michigan Association of Municipal Clerks passed a resolution last week lauding election workers "for conducting the 2020 elections in a fair, secure, and accurate manner."

The resolution cited a state Senate report issued in June that forcefully rejected the claims of widespread fraud in the state, saying citizens should be confident in the results and skeptical of "those who have pushed demonstrably false theories for their own personal gain."

But in a sign of the growing toxicity, the chairman of the Oversight Committee that produced the report, state Sen. Ed McBroom, has found himself reviled by Trump and his supporters, who have asked the state Republican Party to approve a resolution calling for his resignation.

"He doesn't deserve this," said Nash, the Livonia clerk who, like McBroom, considers herself a conservative Republican. "They wonder why people don't want to be public servants anymore. You do your job faithfully, and then get criticized for it."

Kelly, the Houghton County clerk, said she was relieved that last week's election went smoothly. But she is now fielding renewed demands for information about the 2020 race and questions about the use of Sharpies and the security of voting machines.

"We have done so many audits and reviews, but I now have new Freedom of Information Act requests for ballots and data and demands again for forensic audits," Kelly said. "It seems the 2020 election will never end."

Emily Guskin contributed to this report.

Election officials face complex challenges looking to 2022

By CHRISTINA A. CASSIDY August 15, 2021

The Associated Press

DES MOINES, Iowa (AP) State election officials say they are confronting a myriad of challenges heading into the 2022 midterm elections, from threats of foreign interference and ransomware to changes of election laws and concerns of physical safety all while still dealing with a wave of misinformation and disinformation surrounding last year's presidential election.

The nation's secretaries of state have been meeting with the goal of building relationships across states, sharing best practices and hearing from experts. The long list of challenges, outlined in various panel discussions over their association's four-day conference, might seem daunting but election officials said preparations have already begun.

"The journey of a thousand miles begins with one step," said Ohio Secretary of State Frank LaRose, a Republican. "For us to be able to get together and talk with one another, compare notes, even commiserate on a human level a little bit about some of the drama over the last year and a half is a good experience. It's a useful thing, and we learn a lot from each other."

Heading into the 2020 presidential election, the focus for election officials was shoring up cybersecurity around the nation's voting systems after Russia four years earlier had probed for vulnerabilities and, in a small number of cases, breached voter registration systems.

Then the pandemic happened, and state election officials had to scramble to ensure they could handle an onslaught of mail ballots from voters wary of crowded polling places while also dealing with shortages of poll workers and other staff triggered by the coronavirus.

Michigan Secretary of State Jocelyn Benson, a Democrat, said she was confident looking ahead to the midterms because states were able to hold successful and secure elections despite all those logistical challenges.

"What we went through in 2020 was unlike anything any election administrators have ever had to go through, and we did it successfully," Benson said. "And through that experience, we have the confidence that we can take on additional challenges in the future because we have already overcome so much."

In many ways, though, the election did not end as former President Donald Trump and his most ardent supporters continue to question his loss despite no evidence of fraud or wrongdoing. Nine months after the vote, election officials in key states still find themselves defending the integrity of their elections, combating conspiracy theories surrounding voting machines and facing death threats.

Colorado Secretary of State Jena Griswold, a Democrat, told her colleagues during a discussion Saturday that just that day she had received three death threats on social media. She praised the U.S. Department of Justice for forming a task force to focus on threats to election officials and urged them to actively monitor social media accounts of key officials and not just rely on reports coming in.

In an interview, Griswold said she was concerned false claims surrounding the 2020 election were still driving threats to election workers across the country and what effect this could have on retaining a qualified and ethical workforce.

“It can’t be the new normal that civil servants get their lives threatened because people are believing a big lie that extreme elected officials are pushing out on a daily basis,” Griswold said. “That’s not good for the country. That’s not the United States that people think of when they think of the American dream.”

Just last week, Griswold announced an investigation into a security breach at a local election office and said there was reason to believe an official in that office was aware of what happened and may have facilitated it. The official later appeared at a gathering of Trump supporters in South Dakota, accusing the state of wanting to take over the office. Griswold said instances like this underscore the importance of having guardrails in place to ensure elections are protected and warned “democracy will be on the ballot” in 2022.

Arizona Secretary of State Katie Hobbs, a Democrat, said she and her staff have also experienced regular threats since the election and amid an ongoing review of the voting process in Phoenix’s Maricopa County. Hobbs has objected to the review, which was initiated by Republicans in the Arizona Senate and involved handing over voting systems to an outside firm whose leader had tweeted support for conspiracy theories claiming Trump won.

Hobbs said she was confident cybersecurity defenses have improved but worried false narratives surrounding the election continue to proliferate and undermine public confidence in elections.

“We’ve put all of the things in place that need to be there to secure the systems. It’s the disinformation that continues to be the biggest threat,” Hobbs said.

West Virginia Secretary of State Mac Warner, a Republican, said officials were being too dismissive of those who have concerns about the 2020 election and said he sees

maintaining public confidence as the biggest challenge heading into next year's midterms.

"There are large swaths of America that have questions about that election, and they're not being listened to. They are being muzzled," Warner said. "And it's not healthy."

Another key question will be funding and whether Congress allocates more money to help state and local election officials. Many state election officials have called for a steady source of funds so they can plan security upgrades, add cybersecurity professionals and help cover costs associated with an increase in mail voting.

While there is consensus the federal government should help fund elections, differences emerge along party lines as to how Congress should go about doing that. Republicans like Warner don't want to see strings attached to the funding, whereas Democrats like Griswold have been advocating for federal standards that would expand voting access and blunt the effects of new laws that tighten rules around mail ballots.

Acting Pennsylvania Secretary of State Veronica Degraffenreid said history shows election officials cannot rely on federal funds even though they are needed.

"Would it be easier to have additional resources? Absolutely. But even without that, our counties will always do whatever they can," Degraffenreid said. "But that may mean working really long hours, every day, just to make sure that they can support the functions within their office."

Death Threats And Conspiracy Theories: Why 2020 Won't End For Election Officials

- **Facebook**
- **Twitter**
- **Flipboard**
- **Email**

August 17, 20217:00 AM ET

National Public Radio

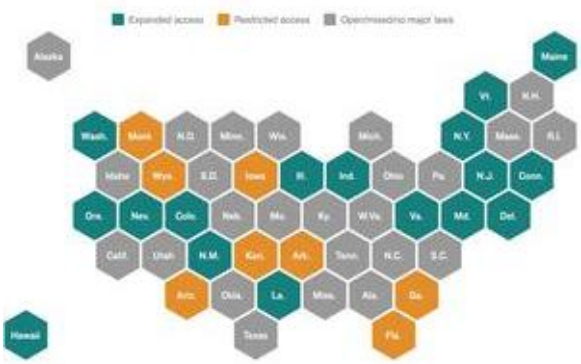
Heard on Morning Edition

It's been more than nine months since Election Day 2020, but as the nation's top election officials met in Iowa over the weekend, it was clear the shadow of that race will stretch far into the future of American democracy.

The conspiracy theory that the 2020 election was somehow stolen from former President Donald Trump has upended almost all aspects of election administration: Local officials who a decade ago would have gone about their bureaucratic business in relative anonymity are facing threats and intense pressure, and a large chunk of American voters have no confidence the system is fair.

"This is the very unfortunate new normal," said Michigan Secretary of State Jocelyn Benson, a Democrat, who had dozens of armed protesters visit her home in December after last year's election.

Elections are run in the U.S. at the state and local levels, so the top voting officials across the country are usually secretaries of state. They met this weekend in Des Moines for their first in person gathering since January 2020.



POLITICS

Map: See Which States Have Restricted Voter Access, And Which States Have Expanded It

The "Big Lie" persists

A third of Americans still believe that Joe Biden's victory last November was due to fraud in the elections system, even though there's never been evidence to support that conclusion.

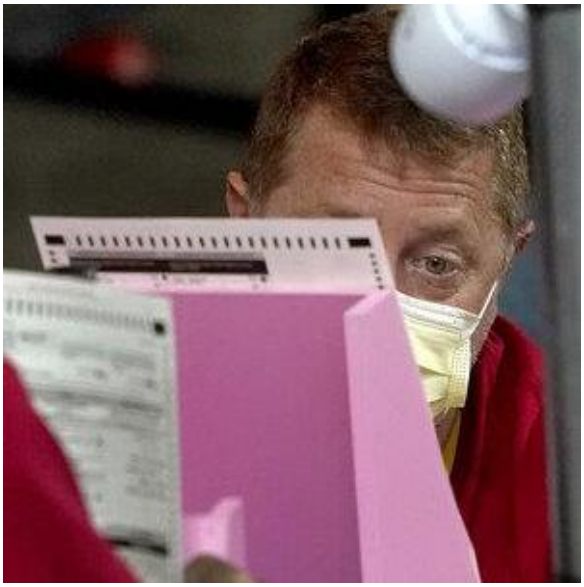
At this weekend's conference the issue came to the fore almost immediately, when word spread among the secretaries Friday that someone from a far right conspiracy outlet was said to be in attendance at the conference, according to a state official who spoke to NPR on background about the issue.

The gathering of election officials was also in stark contrast to a conspiracy minded event happening simultaneously less than 300 miles away.

In Sioux Falls, S.D., MyPillow CEO Mike Lindell hosted a "symposium" where he falsely claimed he would finally reveal proof that the 2020 election was rigged in some way. New Mexico Secretary of State Maggie Toulouse Oliver, a Democrat who is also the president of the National Association of Secretary of States, has overseen five presidential elections and said she's used to there being some level of discontent among voters right after an election. But what's disconcerting and unusual is how long the partisan furor from last November's results has lasted.

"Usually once the election is done and in the can, so to speak, the rhetoric starts to die down and we all start to accept whatever the new reality is and move forward," Toulouse Oliver said. "We've never seen anything like what's happened... I cannot believe it. It's beyond ridiculous at this point."

Ohio Secretary of State Frank LaRose, a Republican, says he's encouraging local officials to set up mock elections at fairgrounds and local high schools to engage in person with people who are consuming misinformation online.



POLITICS

The GOP-Led Arizona Election Review Appears Close To Finishing. Here's What To Expect

"Somebody's going to come up to the Board of Elections booth, and they're going to say, 'Hey, is that the machine with the secret algorithm from China?' " LaRose said. "And instead of dismissing that, because we know that that's clearly a false idea, engage with that person, show them the security protocols that we have in Ohio, teach them about logic and accuracy testing before each election... I mean, this is demonstrable."

Election officials spent the weekend talking about audits and best practices meant to instill confidence in election results. But the much harder problem is how to effectively communicate those practices to voters, and compete in an information environment when it's so easy for people to consume and create false information.

"There has been no real accountability for [Trump] or anyone else who used positions of authority to spread misinformation," Benson said. "Without that accountability, without any consequences for anyone who has used their positions as lawyers or otherwise to spread misinformation. We we must expect to see it continue."

Physical safety

A byproduct of those sorts of conspiracy theories is threats to local election officials, who in some voters' minds are supposedly allowing or encouraging corruption.

That issue was at the heart of the tensest moment of the public portion of the conference, which came Saturday morning, during a presentation from the new director of the Cybersecurity and Infrastructure Security Agency, Jen Easterly.

Easterly takes over for Chris Krebs, the agency's first director, who was fired by Trump after insisting that the 2020 election was the "the most secure in American history." Krebs also oversaw an effort by CISA called Rumor Control aimed at correcting election misinformation. The site publicly debunked many of the falsehoods about the election that Trump and people in his orbit relied on to sow doubt in the results.
During the question and answer portion of Saturday's session with Easterly, West Virginia Secretary of State Mac Warner, a Republican who has been a vocal supporter of Trump and legal efforts aimed at overturning the results of the election, seemed to indicate that claiming the election was secure was in some way a partisan statement.
"My question is in the form of a request, and that request is that you help depoliticize your organization," Warner said, before bringing up Krebs' remarks about the security of the election.

Warner also mentioned a recent DHS bulletin that warned about an uptick in online calls for violence related to election related conspiracies. Warner said the bulletin was meant to "muzzle" people who were planning to attend Lindell's rally in South Dakota.
Immediately, Colorado Secretary of State Jena Griswold, a Democrat, jumped in.

"To offer a counter view, I will say my staff and myself got a week of death threats because of the pillow conference, so we did appreciate the DHS announcement," Griswold said. "So, thank you."

In an interview with NPR after the session, Griswold read a number of comments on her Instagram, which referenced her death.

"Do you feel safe? You shouldn't," said one comment, which has 60 likes.

Officials across the country have described similar threats, and while Griswold says she "won't be intimidated," there was consensus over the weekend that it may be more difficult to recruit new election workers in this sort of environment.
Washington Secretary of State Kim Wyman said she's also worried about an exodus of current election workers.

"We haven't decompressed from 2020, we're still every day living it," said Wyman, a Republican who spent much of last year debunking Trump's false claims about mail voting. "It takes a toll. It's exhausting... Emotionally, physically, mentally exhausting."
And even more demoralizing, Wyman said, is that there's not a clear solution.

Whereas the contentious 2000 election led to federal legislation that revamped voting equipment, the issues Trump and his base have with the 2020 election aren't based on real problems, so they are harder to address.

"It doesn't matter what I present to critics or challengers. It doesn't matter what the answer is. It will always be something new," Wyman said. "It's never ending. And that's what worries me about 2020: How do we move on from here?"

Statement of Adrian Fontes
Maricopa County Recorder, (2016-2020)

Before the Committee on House Administration
U.S. House of Representatives
July 28, 2020

Election Subversion: A Growing Threat to Election Integrity.

Chair Lofgren, Ranking Member Davis, and members of the committee, thank you for this opportunity to discuss threats against election officials, elections staff and poll workers in Maricopa County, Arizona and across the country. I served as County Recorder for Maricopa County, Arizona, the second largest voting jurisdiction in the United States, representing over 2.5 million active voters and approximately two thirds of Arizona's population from 2017 - 2020.

This position was the most recent in a long list of service to my community and country. From 1992 -1996 I served on active duty in the United States Marine Corps, where I earned a nomination for a meritorious commission. After being Honorably Discharged, I received my Bachelor's degree from Arizona State University before continuing on to the Sturm College of Law at the University of Denver. After law school, I served as a prosecutor with the Denver District Attorney, the Maricopa County Attorney's office and I headed the Foreign Prosecution Unit at the Arizona Attorney General's Office. In 2016, I was elected to the office of Maricopa County Recorder, where I served a four-year term implementing national award-winning systems and procedures to improve accessibility and security for Maricopa County's elections, even amidst immense logistical and personnel safety challenges posed on election administration by the Covid-19 Pandemic. I remain a resident of County of Maricopa, where I am

raising my three daughters practicing law, and running as a candidate for Secretary of State.

- I ensured that the election security and integrity measures were in place in Maricopa County, which resulted in an honest, fair and transparent election in November 2020.
- The subversive efforts of former President Donald Trump and anti-Democratic factions to spread conspiracy theories are undermining the public's faith in our electoral process. Further, perpetuating the myth of widespread voter fraud is leaving honest civil servants, who administer our elections, victim to threats of violence, harassment and potential physical harm
- The harassment of and threats of violence against election workers in Maricopa County I and my team experienced during my term in office, continue today.
- In coordination with local and state law enforcement, and federal officials, we implemented numerous security measures to protect the safety of me, my family, my staff and Arizona voters.
- I strongly support legislative efforts to protect election officials in Arizona and across the country from harassment, intimidation, threats and political interference so that they can safely perform their duties to serve voters and protect election integrity.

Integrity, Security, and Logistics of Elections in Maricopa County

From my first day in the Maricopa County Recorder's office, we began implementing a comprehensive plan in advance of Election Day 2020 – securing polling locations, recruiting and training poll workers, and educating voters on where, when and how to vote. While we were still preparing for the 2018 Elections at that time, we already knew that massive changes were going to be necessary for 2020. However, no change could be made until our new administration had complete understanding and operational command of the current system. We did not want to reinvent the wheel from a place of ignorance. As 2020 approached, and even in the midst of the Covid-19 Pandemic, my administration had earned the experience and expertise to set systems in place that

ultimately led to record voter turnout - turnout that proportionately surpassed records set in other Arizona Counties and most jurisdictions in the United States. Further, we worked in a bipartisan manner with community and political organizations to increase the number of registered voters in Maricopa County by 500,000 to 2,595,272 voters in just four short years.

Election security as an aspect of building confidence in election systems was a top priority for my administration. New measures we took to secure elections included:

- Establishing a new position for an in-house Election Information Security Officer (a first in the nation for local jurisdictions) who worked directly with Maricopa County's Office of Enterprise Technology and other county, state, and federal security and enforcement agencies
- Creating a cultural shift towards a renewed focused on IT security through staff training and consistent reminders about best practices and procedures like password management and other preventative measures against phishing campaigns
- Constant coordination with partners like the US postal service, County Sheriff's office, ACTIC (Arizona's Anti-Terrorism coordinating body), Dell Secure Works, Cloud Flair, US DHS, and the FBI to ensure optimal safety and security for voters and any personal information stored in voter databases
- Testing and hardening the County Recorder website, performing frequent static and dynamic vulnerability analyses to prevent cyber attacks, and creating a web application with a built-in firewall
- Performing frequent "Dark Web" threat assessments, wherein threats against other county elections offices were able to be identified quickly and preemptively- and shared with neighboring county government offices, as well as the statewide anti-terrorism task force and the FBI
- Physical security and infrastructure improvements like knocking out two walls separating three rooms to create a secure vault for ballots - a separate central server room, with transparent glass walls that was monitored 24 hours per day both by security cameras and by at least three law enforcement officials from the County Sheriff's Department/Judicial Security at all times

- Cutting all telephone and modem lines leading to the central server, so that all voter information was enclosed in a singular server vault to which only three staff members had access, making voter and ballot information vastly less impenetrable to attacks
- Allowing media to video-tape the counting of ballots 24 hours a day
- Ensuring that ballots were always stored in a high-security location
- Replacing outdated voting machines, and setting systems and procedures in place to ensure that overvotes were always reviewed by a bipartisan pair of election workers who had access to reviewing the singular overvote in question only, and not the voter's entire ballot
- Creating a digitized system where photographic images of ballots were processed and preserved the moment that a voter cast a ballot

These efforts, my tireless staff and the thousands of dedicated volunteers and workers resulted in what the director of Cybersecurity and Infrastructure Security Agency at DHS described as "the most secure in U.S. history."[1]

Subversive Efforts to Perpetuate the Myth of Voter Fraud

Since before the 2020 Presidential Election, there have been widespread efforts by anti-democratic factions to spread false conspiracy theories about election administration, and erode confidence in American elections. These false conspiracy theories have contributed to and in some instances can be seen to justify the rise of violent threats and actions that emerge against election officials of every political party. The sham "audit" in Arizona is being performed by the private company Cyber Ninjas Inc., which has no elections experience and a CEO who has publicly promoted election fraud theories. The company was selected by Arizona Senate President Fann in secret outside of any accountable public process. This sham won't just cost Arizona taxpayers millions of dollars, it also imposes costs to our democracy. It, and the mis- and disinformation spread by those involved, has resulted in additional harassment and threats against civil servants which undermine the public's faith in our electoral process. As recently as Saturday, July 24th, former President Donald Trump held a televised rally two blocks from the Recorder's office of Maricopa County where he perpetuated debunked conspiratorial myths of widespread voter fraud. Although Arizona Secretary

[1] *Examining Irregularities in the 2020 Election,* Senate Committee Homeland Security and Governmental Affairs Committee, December 16, 2020, Remarks by Chris Krebs.

of State Hobbs and Maricopa County officials have launched valuable and laudable efforts to combat this misinformation campaign, this work requires extreme vigilance and, under the current circumstances, is never-ending.

Threats to the Safety of Election Workers

Since 2016, threats against election officials and their staff in Maricopa County have been progressively and steadily escalating. While initially sporadic in nature, and aimed at me, the threats against my family soon followed. In 2018, after my daughter unknowingly brought an anonymous package left on our porch into our home, law enforcement was contacted. A bomb squad evacuated me and my daughters from our home, and had to clear several adjacent homes nearby before disposing of the object. And as Trump continued to push his false narratives about election fraud in the lead up to the 2020 election, the threats and harassment only increased.

During my tenure, these threats culminated in a group of armed protesters marching in the streets of Maricopa County and stopping at my office, in an apparent attempt to disrupt and interfere with the important work of my office to count and process absentee ballots.

Within hours of the polls closing on November 3, Trump allies, including Arizona Conservative Union Chair Matt Schlapp and Trump-affiliated attorney Sidney Powell, promoted false information about "#SharpieGate", a debunked conspiracy theory claiming that the use of Sharpies by voters at polling places was going to cause ballots to be miscounted due to ink bleeding through paper on a two-sided ballot. That night, pro-Trump protesters, including followers of QAnon—described as "the baseless conspiracy theory whose proponents believe Mr. Trump is battling a cabal of satanic pedophiles"[2]—rallied in my office parking lot and demanded to be allowed inside where my staff were working to count and process ballots, chanting "Let me in!"[3] They also demanded that I come outside.[4] Many appeared to be armed with AR-15 assault rifles similar to the M-16 A2 service rifle I taught active duty Marines to use when I was a rifle range coach. The following night, infamous conspiracy "nutcase"[5] Alex Jones

---

[2] Kevin Roose, "What Is QAnon, the Viral Pro-Trump Conspiracy Theory?" *New York Times*, June 15, 2021, https://www.nytimes.com/article/what-is-qanon.html
[3] https://www.youtube.com/watch?v=Rg05niVIqn0
[4] https://www.youtube.com/watch?v=Rg05niVIqn0
[5] https://www.azcentral.com/story/opinion/op-ed/laurieroberts/2016/03/24/roberts-kelli-ward-courts-conspiracy-nut-alex-jones/82223726/

made a "surprise appearance,"[6] and, using a megaphone, declared, "Resistance is victory. You are victory! I salute you!"[7] He urged the protesters to action: "Everyone who can needs to go and surround the White House and support the President.... I'm going to Washington, D.C. myself to defend the President. Come with me to Washington, D.C."[8]

One protester gained entry to the building where ballots are processed by presenting false press credentials. A staff member of my office was later pulled outside the building and cornered by apparently armed members of the protest. Law enforcement officials from the County Sheriff's office and other security officials from the County Recorder's office had to physically push through the mob and rescue that election official from a potentially tragic outcome.

Due to these and other threats and acts of violence, my family had made arrangements for my children to quickly leave our home, even preparing "go-bags" for an anticipated quick withdrawal. We identified alternative living arrangements outside of Maricopa County for my children so that, if necessary, we could accommodate long-term evacuation needs for their safety. And, in the days following the election, my children were moved out of the family home at least once for three days in the wake of serious threats to my family's safety.

The elections staff, which include former military members, dads, moms and community volunteers, continued their important work despite the threats and intimidation. We refused to allow these protesters to potentially disenfranchise Maricopa County voters. However, some continue to struggle with the personal toll these threats have taken.

- Staff and poll workers who had been working to count ballots are still dealing with issues of post-traumatic-stress-disorder to this day due to the events leading up to and following the 2020 Presidential Election

---

[6] AZFamily.com News Staff, "Crowd of Protesters in Phoenix Fired Up by Conspiracy Theorist Alex Jones," Arizona's Family, November 5, 2020, https://www.azfamily.com/news/politics/election_headquarters/crowd-of-protesters-in-phoenix-fired-up-by-conspiracy-theorist-alex-jones/article_dea394d0-1fe3-11eb-9a4b-93fa25a8ddc1.html

[7] Id.

[8] Jemima McEvoy, "Alex Jones Calls On Pro-Trump Protesters To 'Surround The White House And Support The President'," *Forbes*, November 6, 2020, https://www.forbes.com/sites/jemimamcevoy/2020/11/06/alex-jones-calls-on-pro-trump-protesters-to-surround-the-white-house-and-support-the-president/?sh=577976333023. ("Jones added that Trump will 'not concede.'").

- Since the onset of early voting for the 2020 Presidential Election, approximately 35 threats of violence against staff and civil servants who administer elections in Maricopa County were elevated to Arizona's state joint terrorism task force.
- In the words of Scott Hadley, a career military officer, Afghanistan combat veteran and Deputy Recorder for Operations during the 2020 Election, (as well as being a lifelong Republican): "The potential was there for anything to go wrong, but based on the cooperation between Recorder Fontes and [Sherriff] Paul Penzone and other county staff, everybody did exactly what needed to be done to ensure that the tinder box did not erupt, and prevented what could have happened for happening. All it took was for one person to say the wrong thing . My biggest regret was that we had to do this at all, just to get through the election - to let civil servants do their job and run an honest, fair and transparent election."

Necessary Measures Enacted to Protect the Security of Election Workers

In advance of and after the 2020 Presidential Election, certain vital security measures were put in place to protect the lives and safety of election workers and voters of Maricopa County. These measures were deemed necessary as law enforcement and other partners were constantly consulted regarding every aspect of security for the 2020 election in Maricopa. Through these discussions, which continued well past election day itself, threats were identified and addressed by various methods, from planning and execution of improved safety protocols to prompt and professional diffusion of difficult situations during and immediately after the election. It should go without saying that all of the efforts illustrated here should have been unnecessary. But as time revealed, they were not only necessary, but helped stave off what could have been more serious situations. My staff frequently expressed sincere gratitude for the professionalism and respect with which they were treated by all of our partners in federal, state and local law enforcement, and I continue to express that sentiment on our behalf today.

- A SWAT team in full riot gear, designated by the office of the County Sheriff, had to be secreted into the election center and positioned in the hallway of the Maricopa County Recorder's Office in case a worst case scenario arose
- Plain clothes law enforcement officers were said to be stationed within the crowd of protesters to ensure security threats were responded to swiftly or diffused as they arose
- Constant communication between the Recorder's Office, Sheriff's Office, Statewide Joint Terrorism Task Force, FBI and Department of Homeland Security

were needed to ensure that no threats of violence resulted in death or serious bodily harm to voters or election workers.

Conclusion

The safety and security of election officials and voters is vital to the sustainability of our Republic. Recent and significant escalation in the number and frequency of threats and intimidation against election officials is a critical issue which strikes at the core viability of our most fundamental of institutions - those offices which oversee the administration of elections. I implore the members of this committee and all of Congress to pass legislation designed to ensure election integrity by providing election workers and voters with safety measures necessary to enable them to do their jobs or to vote without threats or intimidation. I am deeply grateful to the Committee for the opportunity to speak on behalf of the voters of Maricopa County, the county and municipal civil servants who strive to keep them safe, and all election workers and administrators across the United States who constantly maintain the viability of our Nation, through the preservation of that most fundamental right...the right to vote.

City of Detroit
OFFICE OF THE CITY CLERK

Janice M. Winfrey
City Clerk

Andre P. Gilbert II
Deputy City Clerk

Chairperson Lofgren, Ranking Member Davis, and members of the committee, thank you for the opportunity to testify about the threats facing election administrators in Detroit and across the country for simply doing their job. My name is Janice Winfrey. I am the City Clerk and Chief Election Official for the city of Detroit. In this elected non-partisan position, I am chiefly responsible for keeping the official records and documents for the City, clerking the council and administering all elections in Detroit.

As a local election official, I do the work to ensure that all eligible electors can vote. I educate voters, order ballots, identify polling locations and staff the polls. I am trusted to uphold democracy in our great city. As election administration becomes increasingly complex (which includes unfunded mandates), my colleagues and I continue to rise to the occasion to ensure free and fair elections.

Detroit, also known as the Motor City, is nationally recognized as a comeback city. We have come through bankruptcy, a mass exodus of population, the loss of manufacturing jobs and have made it through a global pandemic — where we were defined as a hotspot. Approximately 80% of Detroiters are Black.

During the 2020 General Election, President Trump made numerous false allegations of voter fraud-insisting that the election was stolen. Consequently, state and local officials from both parties, poll workers and election staff were and still find themselves under attack. Threats were made against me, my staff and Detroit poll workers by phone, by email, and in person, such as when they counted the absentee ballots on Election Day. Trump and his conservative allies filed several lawsuits against me and other Michigan election officials as part of their ongoing mis- and disinformation campaign that blames election administrators for their loss at the polls. All of these lawsuits were eventually deemed frivolous and deceptive in nature and some of the attorneys are now facing sanctions.

Even still, during the 2020 Presidential Election, Detroit, despite being in the middle of a pandemic and civil unrest, experienced a 51% voter turnout. Of the approximately 250,000 electors that voted, 174,000 cast their ballots by absentee, which was a record for the city. Detroit voters had a tremendous impact on the outcome of the Presidential Election in Michigan.

Because of the spike in absentee ballots, coupled with the state restrictions on processing and counting absentee ballots prior to the election, I expanded absentee ballot operations by renting additional space in the TCF Center in order to accommodate the necessary temporary staff, observers and others necessary to complete absentee ballot process transparently and safely. The necessary staff included uniformed security and police. During the tabulation of absentee ballots at the Center, multiple GOP challengers had to be removed because of disruptive conduct. Some

wore intimidating masks over their entire face, others banged on the walls and windows shouting "STOP THE VOTE", others violated social distancing standards and, as required by COVID-19 rules, refused to place protective masks over their noses when asked. It appeared that this disruption attempted to undermine the tabulation of absentee ballots.

A couple of weeks after Election Day, during the canvass of elections, I received a call from the Michigan Secretary of State Benson explaining that the Wayne County Board of Canvassers would refuse to certify results unless I testified. During that time both my husband and I were diagnosed with COVID-19 and were quarantined. Nonetheless, to ensure the certification of the election, I left my husband's side at the hospital, and reported to my office, wearing multiple masks and adhering to as many recommendations of health officials as possible, but still placing staff in harm's way, to prevent the state board from disenfranchising hundreds of thousands Detroit voters by testifying. Upon the completion of my testimony, the harassment commenced. I received an insulting text message on my private cell phone, insults came by way of social media and through my inbox. The greatest threat came when, one morning while taking a walk to clear my mind, an unknown Caucasian male approximately 6'3" and 250 lbs approached me in my neighborhood and abruptly stated "I've been waiting for you at work and decided to come by your house. Why did you cheat?" and "Why did you allow Trump to lose? You are going to pay dearly for your actions in this election!" He approached me in a threatening manner, coming closer and closer and my only recourse was to yell, "I have COVID-19 and I will spit on you." Fortunately, a neighbor was driving by and asked me if I was ok. I immediately responded, "No! This man is threatening me." At that point, my neighbor began blocking his movement with her car to ensure that I could safely get home. Later that evening I received a message on Facebook stating that he was going to blow up my block and that I was a chicken head and ugly in person. That's when I called the Detroit Police Department and explained this horrific encounter. As recently as February 2021, I was notified by the Detroit Police Department that my life was threatened by white supremacist and that the police would be patrolling my home for the next couple of weeks. My husband and I decided to simply leave town.

Our government is elected by our citizens therefore voting is crucial to our democracy. Our job as local election officials is essential as we are required to protect the act of voting. I ask that you consider it unlawful to harass, intimidate and/or threaten local election officials while performing our duties as election administrators. Thank you.

200 Coleman A. Young Municipal Center • Detroit, Michigan 48226-3400
(313) 224 3260 • Fax (313) 224-1466

TASK FORCE MECHANICS

Composition of Task Force

The Task Force is composed of eight prosecutors combined from the Criminal, Civil Rights, and National Security Divisions, thre (b)(6), (b)(7)(C) per CRM and on (b)(6), (b)(7)(C) per C from the Public Corruption Unit at FBI Headquarters:

- (b)(6), (b)(7)(C) per CRM Public Integrity Section, Criminal Division
- (b)(6), (b)(7)(C) per CRM, Public Integrity Section, Criminal Division
- (b)(6), (b)(7)(C) per CRM, Public Integrity Section, Criminal Division
- (b)(6), (b)(7)(C) per CRM, Public Integrity Section, Criminal Division
- (b)(6) per CRT f, Voting Section, Civil Rights Division
- (b)(6) per CRT, Criminal Section, Civil Rights Division
- (b)(6) per NSD, National Security Division
- (b)(6) per NSD, National Security Division
- (b)(6), (b)(7)(C) per FBI, Unit Chief, FBI Public Corruption Unit
- (b)(6), (b)(7)(C) per FBI, Supervisory Special Agent, FBI Public Corruption Unit
- (b)(6), (b)(7)(C) per FBI, Supervisory Special Agent, FBI Public Corruption Unit
- (b)(6), (b)(7)(C) per FBI, Analyst, FBI Public Corruption Unit

The task force also partners with one representative from DHS-CISA,

The task force works with prosecutors and agents in the field to include Election Crime Coordinators (ECCs), Supervisory Special Agents (SSAs), and District Election Officers in Georgia, Pennsylvania, Michigan, Arizona, Wisconsin, New York, D.C., California, and Oklahoma.

3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case:2:21-cr-20063
Judge: Michelson, Laurie J.
MJ: Whalen, R. Steven
Filed: 02-03-2021 At 01:30 PM
INDI USA V KATELYN JONES (LG)

KATELYN JONES,

Defendant.
_____/

VIO: 18 U.S.C. § 875(c)

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE
18 U.S.C. § 875(c)
Threats of Violence Through Interstate Commerce

On or about November 18, 2020, in the Eastern District of Michigan, the defendant, KATELYN JONES, did knowingly and willfully, that is with the intent to communicate a true threat and with knowledge that it would be viewed as a true threat, transmit in interstate commerce communications, specifically a series of text messages from phone number (269) xxx-xx68 to Adult Victim 1 (AV-1), containing threats to injure the person of another, that is AV-1 and Minor Victim 1 (MV-1); all in violation of Title 18, United States Code, Section 875(c).

COUNT TWO
18 U.S.C. § 875(c)
Threats of Violence Through Interstate Commerce

On or about November 18, 2020, in the Eastern District of Michigan, the defendant, KATELYN JONES, did knowingly and willfully, that is with the intent to communicate a true threat and with knowledge that it would be viewed as a true threat, transmit in interstate commerce communications, specifically Instagram posts made using an account with username "_etfere," containing threats to injure the person of another, that is AV-1 and MV-1; all in violation of Title 18, United States Code, Section 875(c).

THIS IS A TRUE BILL.

s/Grand Jury Foreperson
GRAND JURY FOREPERSON

SAIMA S. MOHSIN
Acting United States Attorney

MATTHEW ROTH
Chief, Major Crimes Unit

s/Diane N. Princ
DIANE N. PRINC
Assistant United States Attorney
211 W. Fort St., Suite 2001
Detroit, MI 48226
(b)(6) per EOUSA

Dated: February 3, 2021

United States District Court Eastern District of Michigan	Criminal Case Cov

Case:2:21-cr-20063
Judge: Michelson, Laurie J.
MJ: Whalen, R. Steven
Filed: 02-03-2021 At 01:30 PM
INDI USA V KATELYN JONES (LG)

NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to complete it accu

Companion Case Information	**Comp**
This may be a companion case based on **LCrR 57.10(b)(4)**[1]:	
☐Yes ☑No	**AUSA's Initials:** DNP

Case Title: USA v. Katelyn Jones

County where offense occurred: Wayne

Offense Type: Felony

Indictment -- based upon prior complaint [**Case number:** 2:20-mj-30535]

Superseding Case Information

Superseding to Case No: _____ **Judge:** _____

Reason:

Defendant Name	**Charges**	**Prior Complaint (if applicable)**

Please take notice that the below listed Assistant United States Attorney is the attorney of record for the above captioned case

February 3, 2021
Date

Diane N. Princ
Assistant United States Attorney
211 W. Fort Street, Suite 2001
Detroit, MI 48226
(b)(6) per EOUSA
Bar #: NY (b)(6) per EOUSA

[1] Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, or (2) the same or related parties are present, and the cases arise out of the same transaction or occurrence. Cases may be companion cases even though one of them may have already been terminated.

AUSA: Matthew Roth Telephone (b)(6) per EOUSA

AO 91 (Rev. 11/11) Criminal Complaint Special Agent: Emily Munchiando, FBI Telephone: [redacted]

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

United States of America
v.
Katelyn Jones

Case No. Case: 2:20–mj–30535
Assigned To : Unassigned
Assign. Date : 12/22/2020
USA v. JONES (CMP)(CMC)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of November 18, 2020 in the county of Wayne in the Eastern District of Michigan, the defendant(s) violated:

Code Section	*Offense Description*
18 U.S.C. § 873(c)	Threats of violence through interstate commerce

This criminal complaint is based on these facts:

☑ Continued on the attached sheet.

Complainant's signature

Special Agent Emily Munchiando, F.B.I.
Printed name and title

Sworn to before me and signed in my presence
and/or by reliable electronic means.

Date: December 22, 2020

Judge's signature

City and state: Detroit, Michigan

Hon. R. Steven Whalen, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT

I, Emily Munchiando, being duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent with the Federal Bureau of Investigation. I have been so employed since approximately September of 2014. I am currently assigned to the Violent Crime Task Force (VCTF). As part of my duties as an FBI Special Agent, I investigate criminal violations concerning crimes of violence including federal violations of Title 18 and Title 21. I have conducted numerous investigations in which the seizure of electronic devices has aided in identifying individuals responsible for or involved with various criminal activities. I have been involved in the investigation, apprehension and prosecution of individuals who use electronic devices to commit federal offenses. I understand the available technology that can be used by law enforcement to assist in identifying the users of electronic devices and their locations. I have participated in the execution of multiple federal arrest and search warrants.

2. The statements in this affidavit are based on my personal knowledge, my training and experience, and information obtained from other law enforcement personnel and from persons with knowledge regarding relevant facts. This affidavit

is intended to show merely that there is sufficient probable cause for the requested complaint and arrest warrant. This affidavit does not contain all the information known to law enforcement related to this investigation.

3. Probable cause exists that Katelyn JONES transmitted threatening communications in interstate commerce, in violation of 18 U.S.C. § 875(c).

PROBABLE CAUSE

4. Adult Victim 1 (AV-1) is the Chair of the Wayne County Board of Canvassers. As a member of the Board of Canvassers, she must vote for or against the certification of election results for Wayne County, Eastern District of Michigan.

5. On November 17, 2020, AV-1 voted against certifying the election results. AV-1's vote was reported on numerous news outlets, both locally and nationally.

A. Text Message Threats

6. On November 18, 2020, at approximately 7:46 a.m., AV-1 received multiple threatening text messages from an unknown person. The text messages were sent to AV-1's cellular phone and came from phone number (269) xxx-xx68. The text messages stated the following:

a. "Damn it was not hard finding all of your information disgusting racist bitch [AV-1's name], [AV-1's address];" and

b. "I don't tolerate people like you, in fact I consider you to be a terrorist and do you know what happens to terrorist [AV-1's first name]???"

7. The messages were immediately followed by two graphic photographs of a bloody, deceased, nude, mutilated woman, lying on the ground. Immediately thereafter, a photograph of AV-1's daughter, who is a minor, was sent to AV-1.

8. Following the pictures, the individual subsequently sent additional text messages which stated the following:

a. "I'd just like you to imagine that's little [AV-1's daughter's name] your beautiful daughter." The "that's" reference was to the images of the bloody deceased, nude, mutilated women;

b. "Have you ever heard of a private opinion on your Facebook???" "I guess not;"

c. "Fucking with our elections is TERRORISM, and us Americans clearly don't tolerate terrorist so yes you should be afraid, your

daughter should be afraid and so should [name of AV-1's husband];"

d. "Tsk, Tsk, Tsk;" and

e. "You have made a grave mistake [AV-1's first name] I hope you realize that now."

9. Law enforcement databases indicated that the number that sent the threatening text messages, (269) xxx-xx68, was serviced by Onvoy Spectrum. Records provided by Onvoy LLC, d/b/a Inteliquent, showed that (269) xxx-xx68 was assigned to the service provider, TextMe Inc.

10. Records provided by TextMe Inc. showed that telephone number (269) xxx-xx68 was associated with a TextMe account created on November 18, 2020 at 7:36 a.m. This account was created 10 minutes before AV-1 received the first threatening text message. The account was created by way of a specific IP address (the IP address).

11. An internet search of the IP address resolved to Comcast Cable Communications. Records provided by Comcast Cable Communications established that the subscriber to the IP address was Linda Jones in New

Hampshire. Therefore, the account that used (269) xxx-xx68 that sent threatening text messages to AV-1 was created at Linda Jones' residence.

B. Instagram Threatening Messages

12. Also on November 18, 2020, AV-1 received similar threats on AV-1's Instagram page. The threats came from someone using the Instagram username, "_etfere". The threats were very similar to the text message threats made by telephone number (269) xxx-xx68. Instagram user, "_etfere" made comments under numerous photographs on AV-1's Instagram page including, but not limited to, the following posts:

a. "[AV-1 phone number AV-1 address];"

b. "[AV-1's phone number] [AV-1's husband's phone number] [AV-1 address] Feel free to leave these disgusting racist [sic] a nice little message on their voicemail or for more fun stop by their house;"

c. "Racist Terrorist Bitch;"

d. "Idk [I don't know] if god would like you praying for a terrorist unless you're one too???"

e. "@dfit1coach we want her in more pain." The reference to "her" is AV-1;

f. "Your Daughter is beautiful," referring to AV-1's daughter;

g. "I'd be a shame if something happened to her." This comment was posted under a picture of AV-1, AV-1's daughter, and AV- 1's husband; and

h. "Hmmm I'd be a shame if something happened to your daughter at school."

13. Based on the similarities of the threatening text messages and Instagram posts, I concluded that they were sent by the same individual. Both the text and Instagram threatening messages were sent on the same day. They both used AV-1's name and AV-1's address. They both referred to AV-1 as racist and as a terrorist. Both sets of messages identified AV-1's husband and daughter. With respect to the daughter, they both referred to her as "beautiful." Both threatened harm to AV-1's daughter. They both incorporated an image of AV-1's daughter in the threats. The text message threats included the bloody and mutilated woman and states that AV-1's daughter "should be afraid." The Instagram threats stated

"shame if something happened to her," and "shame if something happened to your daughter at school."

14. Instagram records associated with Instagram username "_etfere" resolved to the Instagram account, "i_dont_fukkin_play6925". A search warrant on Instagram account, "i_dont_fukkin_play6925" revealed numerous photographs of a female. Based on how many images of the female were on the account, and the information posted in the account, it was determined that Katelyn JONES was the user of this account. The images from the Instagram account matched JONES' Michigan driver license photograph. The address on Katelyn JONES' driver's license is in Olivet, Michigan.

15. The user of the "i_dont_fukkin_play6925" account provided telephone number (269) xxx-xx96 for registration and contact information. Also, telephone number (269) xxx-xx96 was used to verify the account holder.

16. Katelyn JONES, the user of "i_dont_fukkin_play6925," is 23 years-old. Linda Jones is Katelyn JONES' mother.

17. The telephone number associated with the Instagram account, (269) xxx-xx96, and the (269) xxx-xx68 number associated with the threatening text

messages, have the same 269 area code. Olivet, Michigan, Katelyn JONES' registered address, is in the 269 area code.

C. Locating Katelyn JONES

18. On the morning of December 10, 2020, 23 days after the threats were made to AV-1, an FBI agent conducted surveillance at Linda Jones' residence. At approximately 9:40 a.m., a white female, wearing a blue hooded sweatshirt with the hood pulled over her face, exited the residence. The white female matched the physical description of Katelyn JONES, specifically, her height and weight. The white female that matched Katelyn JONES' height and weight was observed exiting and entering Linda Jones' residence a second time later that same day.

19. On December 16, 2020, based on a review of telephonic records in conjunction with other investigative methods, law enforcement determined that the cellular telephone associated with number (269) xxx-xx96 (the number connected to the Instagram username, "_etfere"), was in an area consistent with the location of Linda Jones' residence.

D. Execution of Search Warrant at JONES' Residence

20. On December 22, 2020, FBI Agents executed a search warrant at Linda Jones' residence in New Hampshire. Katelyn JONES was located in the

residence. JONES was advised of her rights by FBI Agents. JONES waived her rights and agreed to answer questions. JONES made the following admissions:

a. She created a TextMe account that utilized a telephone number with a "269" area code;

b. She utilized that account to send the above documented threatening text messages to AV-1;

c. She is the sole user of Instagram account "i_dont_fukkin_play6925". JONES posted threatening comments from the Instagram account "i_dont_fukkin_play6925" on AV-1's Instagram account; and

d. She made the threats because JONES was angry that AV-1 was interfering with the election.

Conclusion

21. Probable cause exists that Katelyn JONES transmitted a threat of violence through interstate commerce, from New Hampshire to Michigan, in violation of 18 U.S.C. § 875(c).

Emily Munchiando
FBI Special Agent

Sworn to before me and signed in my presence and/or by reliable electronic means.

HON. R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

December 22, 2020