

119TH CONGRESS
2D SESSION

S. _____

To stop the Government from attacking individuals and organizations for
their political speech or participation.

IN THE SENATE OF THE UNITED STATES

Mr. MURPHY (for himself, Mr. SCHUMER, Ms. ALSOBROOKS, Mr. BLUMENTHAL, Mr. BOOKER, Mr. MERKLEY, Mr. PADILLA, Mr. SCHIFF, Ms. SMITH, Mr. VAN HOLLEN, and Mr. WELCH) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To stop the Government from attacking individuals and
organizations for their political speech or participation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No Political Enemies
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Congress has not delegated to the President
2 the ability to designate an entity as a domestic ter-
3 rorist organization.

4 (2) The President does not have inherent au-
5 thority under Article II of the Constitution of the
6 United States to designate an entity as a domestic
7 terrorist organization.

8 (3) The First Amendment to the Constitution
9 of the United States explicitly guarantees the free-
10 dom of speech, freedom of the press, the right to
11 peaceably assemble, and the right to petition the
12 government for a redress of grievances.

13 (4) No Federal employee, including the Presi-
14 dent and the Vice President, may violate the Con-
15 stitutional rights of any person or group of people.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) COVERED ENFORCEMENT CLAIM.—The
19 term “covered enforcement claim” means a claim
20 brought by the Federal Government alleging a viola-
21 tion of Federal civil or criminal law (including regu-
22 lations).

23 (2) COVERED FEDERAL OFFICIAL.—The term
24 “covered Federal official” means an officer or em-
25 ployee of the executive branch of the Federal Gov-

1 ernment, including the President, the Vice Presi-
2 dent, and an officer or employee of an independent
3 agency of the executive branch of the Federal Gov-
4 ernment.

5 (3) COVERED GOVERNMENT ACTION.—The
6 term “covered Government action”—

7 (A) means an exercise of an investigative,
8 regulatory, or enforcement authority under any
9 Federal civil or criminal law (including regula-
10 tions) against a specific covered person, without
11 regard to whether the exercise of authority is
12 self-executing or requires additional compulsory
13 or judicial process;

14 (B) includes an investigative, regulatory,
15 or enforcement action that is taken without
16 legal authority; and

17 (C) does not include an action taken
18 against a Federal officer or employee with re-
19 spect to their employment with the Federal
20 Government.

21 (4) COVERED PERSON.—The term “covered
22 person” means—

23 (A) a domestic entity; or

24 (B) an individual who is—

- 1 (i) a citizen or national of the United
2 States;
3 (ii) an alien lawfully admitted for per-
4 manent residence to the United States; or
5 (iii) present in the United States or
6 its territories.

7 (5) DOMESTIC ENTITY.—The term “domestic
8 entity” means an entity organized under the laws of
9 the United States or any State or territory thereof
10 (including any branch of such an entity located out-
11 side the United States).

12 (6) PROTECTED SPEECH OR PARTICIPATION.—
13 The term “protected speech or participation” means
14 all constitutionally protected speech, including criti-
15 cism, dissent, or other protected speech, expression,
16 or association.

17 (7) SUBSTANTIALLY MOTIVATED BY PRO-
18 TECTED SPEECH OR PARTICIPATION.—

19 (A) IN GENERAL.—The term “substan-
20 tially motivated by protected speech or partici-
21 pation” means that the applicable protected
22 speech or participation is a motivating factor,
23 but shall not require that the protected speech
24 or participation be the sole or primary reason

1 for the covered Government action or covered
2 enforcement claim.

3 (B) LAWS REGULATING POLITICAL
4 SPEECH.—A covered Government action or cov-
5 ered enforcement claim is not substantially mo-
6 tivated by protected speech or participation
7 solely because the action or claim is brought
8 pursuant to a statute, regulation, or other au-
9 thority that directly regulates political speech or
10 participation, including—

11 (i) section 2003 or 2004 of the Re-
12 vised Statutes (52 U.S.C. 10102, 10101);

13 (ii) the Voting Rights Act of 1965 (52
14 U.S.C. 10301 et seq.);

15 (iii) the Voting Accessibility for the
16 Elderly and Handicapped Act (52 U.S.C.
17 20101 et seq.);

18 (iv) the Uniformed and Overseas Citi-
19 zens Absentee Voting Act (52 U.S.C.
20 20301 et seq.);

21 (v) the National Voter Registration
22 Act of 1993 (52 U.S.C. 20501 et seq.);

23 (vi) title III of the Civil Rights Act of
24 1960 (52 U.S.C. 20701 et seq.);

1 (vii) the Help America Vote Act of
2 2002 (52 U.S.C. 20901 et seq.); and
3 (viii) titles III and IV of the Federal
4 Election Campaign Act of 1971 (52 U.S.C.
5 30101 et seq.).

6 **SEC. 4. GENERAL PROHIBITION ON POLITICAL TARGETING.**

7 No covered Federal official may initiate or direct a
8 covered enforcement claim or a covered Government action
9 against a covered person that is substantially motivated
10 by protected speech or participation or otherwise to sup-
11 press, burden, or punish protected speech or participation.

12 **SEC. 5. AFFIRMATIVE DEFENSE FOR POLITICAL TAR-**
13 **GETING.**

14 (a) IN GENERAL.—It shall be an affirmative defense
15 to any covered enforcement claim that the claim brought
16 against the applicable covered person was substantially
17 motivated by the protected speech or participation of the
18 covered person.

19 (b) PROCEDURES.—If, at any time after the Govern-
20 ment initiates a covered enforcement claim, a covered per-
21 son presents substantial evidence that protected speech or
22 participation is or was a motivating factor in the covered
23 enforcement claim, including the underlying investigation
24 or other pre-enforcement activities—

25 (1) the court—

1 (A) shall order expedited discovery reason-
2 ably related to the alleged motivations of the
3 Government for pursuing the covered enforce-
4 ment claim; and

5 (B) may, if the Attorney General files an
6 affidavit under oath that any materials respon-
7 sive to a discovery request under subparagraph
8 (A) are privileged, review in camera and ex
9 parte such materials; and

10 (2) the Government shall bear the burden of
11 proving by clear and convincing evidence that—

12 (A) legitimate grounds unrelated to pro-
13 tected speech or participation by the covered
14 person justify the covered enforcement claim;
15 and

16 (B) the covered enforcement claim was not
17 substantially motivated by the protected speech
18 or participation of the covered person.

19 (c) RELIEF.—If the Government does not meet the
20 burden of proof under subsection (b)(2), the court shall
21 dismiss the covered enforcement claim or otherwise award
22 appropriate relief to ensure that no covered enforcement
23 claim substantially motivated by protected speech or par-
24 ticipation is able to proceed.

1 **SEC. 6. CIVIL ACTION TO SEEK AN INJUNCTION AGAINST**
2 **POLITICAL TARGETING.**

3 (a) IN GENERAL.—A covered person may bring a civil
4 action in an appropriate district court of the United States
5 or the United States District Court for the District of Co-
6 lumbia seeking injunctive or other equitable relief against
7 a covered Federal official who, and any Federal agency
8 in the executive branch that, has taken, is taking, or immi-
9 nently will take a covered Government action substantially
10 motivated by the protected speech or participation of the
11 covered person.

12 (b) BASIS FOR RELIEF.—

13 (1) IN GENERAL.—A civil action under sub-
14 section (a) lies whenever a covered Government ac-
15 tion causes or is likely to cause imminent or actual
16 ongoing harm to a covered person.

17 (2) ESTABLISHING A BASIS FOR RELIEF.—For
18 purposes of establishing a basis for relief—

19 (A) a violation of the rights of a covered
20 person under the First Amendment to the Con-
21 stitution of the United States shall be sufficient
22 to establish harm warranting injunctive or other
23 equitable relief; and

24 (B) if a covered person demonstrates a
25 likelihood of success in showing that the cov-
26 ered person is the subject of a covered Govern-

1 ment action substantially motivated by pro-
2 tected speech or participation, that shall be suf-
3 ficient to establish irreparable harm for pur-
4 poses of emergency, temporary, or preliminary
5 injunctive relief.

6 (c) JURISDICTION OF COURTS.—The Federal courts
7 shall have jurisdiction of a civil action under subsection
8 (a) without regard to section 1346(a), 2342, or 2349 of
9 title 28, United States Code, section 701(a) of title 5,
10 United States Code, or section 242 of the Immigration
11 and Nationality Act (8 U.S.C. 1252).

12 (d) AUTHORITY TO ORDER INJUNCTIVE RELIEF RE-
13 LATING TO TAX ASSESSMENTS OR COLLECTIONS.—A
14 Federal court may issue an injunction in a civil action
15 under subsection (a) to restrain the assessment or collec-
16 tion of a tax, without regard to section 7421 of the Inter-
17 nal Revenue Code of 1986, if the covered person seeking
18 the injunction demonstrates that the action of the Govern-
19 ment seeking to deny, investigate, or revoke the tax-ex-
20 empt status of the covered person is substantially moti-
21 vated by protected speech or participation.

22 **SEC. 7. CIVIL ACTION FOR DAMAGES FOR POLITICAL TAR-**
23 **GETING.**

24 (a) IN GENERAL.—A covered person may bring a civil
25 action in an appropriate district court of the United States

1 or the United States District Court for the District of Co-
2 lumbia against a covered Federal official seeking damages
3 if—

4 (1) the covered Federal official knowingly initi-
5 ated or directed a covered Government action
6 against the covered person that was substantially
7 motivated by the protected speech or participation of
8 the covered person; and

9 (2) the rights of the covered person under the
10 Constitution of the United States were violated in
11 connection with the covered Government action.

12 (b) ABROGATION OF IMMUNITY.—To the maximum
13 extent permitted by the Constitution of the United States,
14 a covered Federal official against whom a civil action is
15 brought under subsection (a) shall not have immunity ex-
16 cept as set forth in subsection (c).

17 (c) STATUTORY IMMUNITY.—A covered Federal offi-
18 cial shall be immune in a civil action under subsection (a)
19 if—

20 (1) the covered Federal official acted in good
21 faith; and

22 (2) any speech, expression, or association moti-
23 vating the covered Government action clearly was
24 not protected under the Constitution of the United
25 States.

1 (d) LIMITATION ON INDEMNIFICATION.—The United
2 States may not indemnify a covered Federal official in
3 connection with a civil action under subsection (a), un-
4 less—

5 (1) the court determines that the requirements
6 of immunity under subsection (c) are satisfied; or

7 (2) indemnification is necessary for complete re-
8 lief because—

9 (A) the person bringing the civil action re-
10 quests that the United States be required to
11 pay any judgment or attorneys fees awarded in
12 order to allow for full recovery; and

13 (B) the covered Federal official dem-
14 onstrates an inability to pay the full amount
15 awarded.

16 (e) CONSTRUCTION.—Nothing in this section shall be
17 construed to invalidate, limit, or otherwise adversely affect
18 any other judicially or statutorily created claims, remedies,
19 rights, or procedures.

20 **SEC. 8. ATTORNEYS FEES AND COSTS FOR MERITLESS PO-**
21 **LITICAL TARGETING.**

22 (a) DEFINITION.—In this section, the term “substan-
23 tially prevailed”, with respect to a party, means that the
24 party has obtained relief through—

1 (1) a judicial order or an enforceable written
2 agreement or consent decree;

(2) a voluntary or unilateral change in position
by the Federal Government, if the claim of the party
opponent is not insubstantial; or

(3) preliminary or permanent injunctive relief from the covered Government action that is not ultimately overturned.

9 (b) AWARD.—In connection with any proceeding in
10 a Federal court relating to a covered Government action
11 or covered enforcement claim, including a proceeding
12 under section 5, 6, or 7, the court may order the United
13 States to pay reasonable attorneys' fees and costs to a
14 party opponent if—

15 (1) with respect to a covered Government action
16 or covered enforcement claim under criminal law—

(A) the prosecution was dismissed, the defendant was found not guilty, or pre-enforcement activities were enjoined by a court; and

(B) the party demonstrates that the covered Government action or covered enforcement claim was substantially motivated by protected speech or participation by the party; or

1 (2) with respect to a covered Government action
2 or covered enforcement claim under civil law, the
3 party—

4 (A) has substantially prevailed; and

5 (B) demonstrates that the covered Govern-
6 ment action or covered enforcement claim was
7 substantially motivated by protected speech or
8 participation by the party.

9 (c) EXEMPTION FROM LIMITS ON ATTORNEY FEES
10 AND COSTS.—Notwithstanding section 2678 or 2412 of
11 title 28, United States Code, section 3006A of title 18,
12 United States Code, section 617 of the Departments of
13 Commerce, Justice, and State, the Judiciary, and Related
14 Agencies Appropriations Act, 1998 (18 U.S.C. 3006A
15 note), or any other provision of law (including related reg-
16 ulations), there shall not be a limit on the award of attor-
17 ney’s fees and costs under subsection (b).

18 **SEC. 9. PROHIBITION ON USE OF FUNDS FOR POLITICAL**
19 **TARGETING.**

20 Section 1341(a) of title 31, United States Code, is
21 amended—

22 (1) in paragraph (1)—

23 (A) in subparagraph (C), by striking “or”
24 at the end;

1 (B) in subparagraph (D), by striking the
2 period at the end and inserting “; or”; and

3 (C) by adding at the end the following:

4 “(E) obligate or expend Federal funds for any
5 covered Government action or covered enforcement
6 claim against a covered person that is substantially
7 motivated by protected speech or participation by
8 the covered person (as such terms are defined in sec-
9 tion 3 of the No Political Enemies Act).”; and

10 (2) by adding at the end the following:

11 “(3)(A) Any person aggrieved of a violation of para-
12 graph (1)(E) may bring a civil action in an appropriate
13 district court of the United States or the United States
14 District Court for the District of Columbia seeking injunc-
15 tive or other equitable relief.

16 “(B) The Federal courts shall have jurisdiction of a
17 civil action under subparagraph (A) without regard to sec-
18 tion 1346(a), 2342, or 2349 of title 28, section 701(a)
19 of title 5, or section 242 of the Immigration and Nation-
20 ality Act (8 U.S.C. 1252).”.

21 **SEC. 10. REGULAR REPORTING TO CONGRESS.**

22 (a) DEFINITIONS.—In this section

23 (1) DEPARTMENT.—The term “Department”
24 means the Department of Justice, including the

1 Federal Bureau of Investigation and each office of
2 a United States attorney.

3 (2) COVERED MATTER.—The term “covered
4 matter” means any criminal investigation, prosecu-
5 tion, or enforcement action—

6 (A) for which approval, consultation, or
7 sign-off by a component of the headquarters of
8 the Department or by the leadership of the De-
9 partment is required under statute, regulation,
10 or written Department policy; or

11 (B) designated by the Attorney General or
12 Deputy Attorney General as of significant pub-
13 lic interest or sensitivity.

14 (b) QUARTERLY REPORTS.—

15 (1) IN GENERAL.—Not later than 30 days after
16 the end of each calendar quarter, the Attorney Gen-
17 eral shall submit to the Committee on the Judiciary
18 of the Senate and the Committee on the Judiciary
19 of the House of Representatives a report con-
20 taining—

21 (A) a summary of all covered matters initi-
22 ated, approved, declined, or closed during the
23 preceding quarter;

1 (B) the basis for any declination, approval,
2 or directive issued by the leadership of the De-
3 partment in connection with a covered matter;

4 (C) any significant changes in Department
5 policy governing the approval or oversight of
6 covered matters; and

7 (D) aggregated data on prosecutorial dec-
8 larations

9 (2) **FORMAT AND CLASSIFICATION.**—Each re-
10 port under paragraph (1) shall be submitted in un-
11 classified form, but may include a classified annex as
12 necessary to protect ongoing investigations or sen-
13 sitive law enforcement information.

14 (c) **IMMEDIATE NOTIFICATION.**—The Attorney Gen-
15 eral shall notify the Committee on the Judiciary of the
16 Senate and the Committee on the Judiciary of the House
17 of Representatives not later than 3 business days after any
18 court—

19 (1) rejects or allows discovery into a prosecu-
20 torial declaration; or

21 (2) otherwise issues an order materially affect-
22 ing the confidentiality or validity of such declaration.

23 **SEC. 11. SEVERABILITY.**

24 If any provision of this Act or any amendment made
25 by this Act, or the application of a provision of this Act

1 or an amendment made by this Act to any person or cir-
2 cumstance, is held to be unconstitutional, the remainder
3 of this Act, and the application of the provision or amend-
4 ment to any other person or circumstance, shall not be
5 affected thereby.