

EMMETT TILL ANTILYNCHING ACT

FEBRUARY 25, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 55]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 55) to amend section 249 of title 18, United States Code, to specify lynching as a hate crime act, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Emmett Till Antilynching Act”.

**SEC. 2. LYNCHING; OTHER CONSPIRACIES.**

Section 249(a) of title 18, United States Code, is amended by adding at the end the following:

“(5) LYNCHING; OTHER CONSPIRACIES.—Whoever conspires to commit any offense under paragraph (1), (2), or (3), shall—

“(A) if death results from the offense, be imprisoned for any term of years or for life, fined in accordance with this title, or both; or

“(B) in any other case, be subject to the same penalties as the penalties prescribed for the offense the commission of which was the object of the conspiracy.”.

**Purpose and Summary**

H.R. 55, the “Emmett Till Antilynching Act,” would amend section 249 of title 18, United States Code, to specify lynching as a hate crime under federal law. The bill corrects a longstanding omission from federal civil rights law.

**Background and Need for the Legislation**

Lynchings were violent and public acts of torture used for nearly a century to enforce racial segregation.<sup>1</sup> Despite claiming the lives of thousands of victims, most of the perpetrators of these acts of terror were never held accountable and official inaction has left lasting scars on impacted communities.<sup>2</sup> Despite enacting a broad range of civil rights protections, the federal government has never specifically outlawed lynching, despite the unique damage it caused to the fabric of democratic society.

Lynching has been generally defined as a premeditated extrajudicial killing by a group.<sup>3</sup> The term has been most often used to characterize informal public executions by a mob in order to punish an alleged transgressor or to intimidate a group. Lynching can also be employed as an extreme form of informal group social control, and often conducted with the display of a public spectacle for maximum intimidation. H.R. 55 is named in honor of Emmett Till, a 14-year-old African American youth from Chicago who was lynched in 1955 while visiting an uncle in Mississippi.<sup>4</sup>

During the period between the Civil War and World War II, thousands of African Americans were lynched in the United States. Though lynching touched all races and religions, the practice was predominant in the South, and four out of five victims were African American. In 1892, the Tuskegee Institute began to record statistics of lynchings and reported that 4,742 reported incidents had taken place by 1968, of which 3,445 of the victims were African-Americans.<sup>5</sup> Through additional research, the Equal Justice Initiative (“EJI”) documented 4075 “racial terror lynchings” in twelve

<sup>1</sup>Equal Justice Initiative, *Lynching in America; Confronting the Legacy of Racial Terror*, at 5 (3rd ed. 2017), [www.lynchinginamerica.eji.org/report-landing](http://www.lynchinginamerica.eji.org/report-landing) (last visited Oct. 29, 2019).

<sup>2</sup>*Id.* at 4.

<sup>3</sup>See Amy Louise Wood, *Rough Justice: Lynching and American Society 1874–1947*, (North Carolina University Press (2009)).

<sup>4</sup>At his mother’s insistence, Till received an open-casket funeral so that people could see how badly her son had been beaten, which galvanized the response of the African American community throughout the nation. The state of Mississippi tried two defendants for his murder, but they were acquitted by an all-white jury, and later admitted their guilt.

<sup>5</sup>See Tuskegee University Archives Repository, *Lynching, Whites & Negroes, 1882–1968*, retrieved at <http://archive.tuskegee.edu/archive/handle/123456789/51>; Jessie P. Guzman, *Negro Yearbook* (1952), at 275–279, <https://archive.org/details/negroyearbook52tuskrich> (last visited Oct. 29, 2019).

Southern states between the end of Reconstruction in 1877 and 1950.<sup>6</sup> These violent incidents profoundly impacted race relations and shaped the geographic, political, social, and economic conditions of African American communities in ways that are still evident today and were largely tolerated by state and federal officials.

By the end of the nineteenth century, Southern lynching had become a tool of racial control that terrorized and targeted African Americans and their communities for wider violence. Though the circumstances of the thousands of African Americans lynched between 1877 and 1950 differed in many respects, in most cases, their murders can be categorized as one or more of the following: (1) lynchings that resulted from a wildly distorted fear of interracial sex; (2) lynchings in response to casual social transgressions; (3) lynchings based on allegations of serious violent crime; (4) public spectacle lynchings; (5) lynchings that escalated into large-scale violence targeting the entire African American community; and (6) lynchings of sharecroppers, ministers, and community leaders who resisted mistreatment, which were most common between 1915 and 1940.<sup>7</sup> EJI research revealed that lynchings peaked between 1880 and 1940, with Mississippi, Georgia, and Louisiana having the highest absolute number of African American victims during this period.

The antilynching movement set the stage for the creation of the civil rights movement that we recognize today. African Americans undertook efforts to combat the terror of lynching and the threat of racial violence through grassroots activism and the founding of integrated social justice organizations. The work of the National Association for the Advancement of Colored People (“NAACP”) was pivotal in awakening the nation to the urgency of combatting lynching. Founded in 1909 as an interracial civil rights protest organization, the NAACP conducted thorough investigations of lynchings and other crimes committed against African Americans and issued regular reports concerning the incidents. In 1919 the NAACP published *Thirty Years of Lynching in the United States, 1889–1918*, which examined the causes of lynching and the circumstances under which the crimes occurred.<sup>8</sup> Beginning in 1921, the NAACP also actively began endorsing antilynching legislation to make lynching a federal crime. Antilynching activists, like journalists Ida B. Wells and T. Thomas Fortune and Tuskegee sociologist Monroe Work, further harnessed the growing power of the black press to demand national accountability for racial violence.

The first federal antilynching legislation was introduced by Congressman George Henry White, then the only African American Member of Congress, in 1900 and referred to the Committee on the Judiciary.<sup>9</sup> During the first half of the 20th century, nearly 200

<sup>6</sup>See Equal Justice Initiative, *Lynching in America; Confronting the Legacy of Racial Terror*, at 5 (3rd ed. 2017), [www.lynchinginamerica.eji.org/report-landing](http://www.lynchinginamerica.eji.org/report-landing) (last visited Oct. 29, 2019). EJI distinguishes “terror lynchings” from racial violence and hate crimes that were prosecuted as criminal acts, classifying the incidents as acts of terrorism because the murders were carried out with impunity, sometimes in broad daylight, often “on the courthouse lawn.”

<sup>7</sup>*Id.* at 10.

<sup>8</sup>National Association for the Advancement of Colored People, *Thirty Years of Lynching in the United States 1889–1918* (April 1919), <https://www.loc.gov/teachers/classroommaterials/primarysourcesets/naacp/pdf/lynching.pdf> (last visited Oct. 29, 2019).

<sup>9</sup>See Benjamin Justensen, *George Henry White and the Anti-Lynching Bill of 1900* (2016), <https://www.georgehenrywhite.com/single-post/2016/09/17/George-Henry-White-and-the-Anti-Lynching-Bill-of-1900> (last visited Oct. 29, 2019). Rep. White’s legislation was ultimately un-

antilynching bills were introduced in Congress, but none were successful. Between 1920 and 1940, the House of Representatives passed three strong antilynching measures, the closest of which Congress came to enacting was sponsored by Congressman Leonidas C. Dyer in 1922. The Dyer Anti-Lynching Bill provided fines and imprisonment for persons convicted of lynching in federal courts, and fines and penalties against states, counties, and towns which failed to use reasonable efforts to protect citizens from mob violence. Although the bill was quickly passed by a large majority in the House of Representatives, and supported by then-President Warren G. Harding, it was prevented from coming to a vote in 1922, 1923, and 1924 in the U.S. Senate, due to filibusters by the Southern Democratic bloc who claimed the legislation would be unconstitutional and an infringement upon states' rights.<sup>10</sup> However, the extensive debate on the bill, in combination with the 1919 NAACP report and the related National Conference on Lynching, moved local and state governments to take lynching more seriously, leading to a dramatic decrease of incidents after 1922.<sup>11</sup>

The enactment of the Civil Rights Act of 1968 was the closest that Congress ever came in the post-Reconstruction era to enacting antilynching legislation. Codified at title 18, United States Code, section 241, the civil rights conspiracy statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory, or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States (or because of his/her having exercised the same) and further makes it unlawful for two or more persons to go in disguise on the highway or premises of another person with intent to prevent or hinder his or her free exercise or enjoyment of such rights.<sup>12</sup> Though section 241 does not specify the offense of lynching as a federal crime, this section has been used by the Department of Justice to prosecute civil rights era crimes and hate crimes that were described as lynchings in public discourse.

H.R. 55 seeks to amend section 249 of title 18 to specify lynching as a hate crime act. Section 249 includes a certification requirement from the Attorney General, or his or her designee, prior to initiating prosecution under this section.<sup>13</sup> Certification requires satisfying one of four elements: (1) that the state does not have jurisdiction; (2) that the state requested federal jurisdiction; (3) that the verdict or sentence obtained pursuant to state charges left demonstratively unvindicated the federal interest in eradicating bias-

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cessful and would not be voted on by the House of Representatives before his departure from that body in 1901.

<sup>10</sup> See Office of the Historian, U.S. House of Representatives, *Black Americans in Congress, 1870–007, Anti-Lynching Legislation Renewed*, U.S. Government Printing Office, (2008) <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Temporary-Farewell/Anti-Lynching-Legislation/> (last visited Oct. 29, 2019).

<sup>11</sup> Southern white organizations also began to condemn lynchings during the two decades before World War II. Among them were the Commission for Interracial Cooperation, which did research and issued publications which provided additional facts on lynchings, and the Association of Southern Women for the Prevention of Lynching, which was founded in Atlanta in 1930. See Robert A. Gibson, *The Negro Holocaust: Lynching and Race Riots in the United States 1880–1950*, Yale New Haven Teacher's Institute (2004). <http://teachersinstitute.yale.edu/curriculum/units/1979/2/79.02.04.x.html> (last visited Oct. 29, 2019).

<sup>12</sup> Depending upon the circumstances of the crime, and any resulting injury, the offense is punishable by a range of fines and/or imprisonment for any term of years up to life, or the death penalty. 18 U.S. Code § 241. Conspiracy against rights.

<sup>13</sup> 18 U.S.C. § 249(b).

motivated violence; or (4) that a prosecution by the federal government is in the public interest and necessary to secure substantial justice. This requirement ensures that while states are able to investigate and prosecute criminal conduct at the state level, the Department of Justice will be able to prosecute the act of lynching as a federal hate crime. When an offense is motivated by the victim's actual or perceived race, color, religion, or national origin, this bill will also enable federal law enforcement to investigate in instances where the state is unable or unwilling to prosecute the crime.

The significance of a federal antilynching statute became even more apparent following the murder of Ahmaud Arbery on February 23, 2020, which was described as a modern day lynching.<sup>14</sup> The county prosecutor in that case is currently charged with violating the oath of public office and obstructing and hindering a law enforcement officer for not only failing to adequately investigate the murder of Arbery, but even attempting to prevent arrest of a suspect.<sup>15</sup> Three men were ultimately arrested for Arbery's murder only after cell phone video footage of the attack was released online and public outcry motivated the Georgia Bureau of Investigation to take over the case. In April 2021, a federal grand jury indicted the three men on charges under section 245 that they intimidated Arbery, interfered with his right to use a public street, and attempted to kidnap him because of his race.<sup>16</sup> On February 22, 2022, a jury convicted the three men, finding that they were motivated by racism when they chased and murdered Arbery.<sup>17</sup> The men now face a federal sentence of up to life in prison in addition to the life sentences they received in state court.

Despite the existence of federal criminal enforcement against hate crimes, it remains important to enact federal antilynching legislation due to the historical context of these violent incidents. Lynching was a violent tactic of racial subordination and closely linked to the deprivation of freedmen's post-Reconstruction constitutional rights. The fear of lynching was also a major factor in the Great Migration to the North and changed the demographics of the nation. Politically, the terms of the lynching debate still echo through Congress and influence the debate around social justice policy. For that reason, in 2005, the Senate passed a resolution, sponsored by Senators Mary Landrieu and George Allen, apologizing for the Senate's failure to enact antilynching legislation as a federal crime, with Senator Landrieu commenting that, "There may be no other injustice in American history for which the Senate so uniquely bears responsibility."<sup>18</sup> Taking a further step to equal the record of the House of Representatives, the Senate voted unanimously in favor of the Justice for Victims of Lynching Act on De-

<sup>14</sup>The Associated Press, *Ahmaud Arbery's death called a modern day lynching*, AL.com, May 20, 2020, <https://www.al.com/news/2020/05/ahmaud-arberys-death-called-a-modern-day-lynching.html>.

<sup>15</sup>Alyssa Lukpat, *Former Prosecutor in Ahmaud Arbery's Death Faces Criminal Charges*, New York Times, published September 2, 2021, updated November 24, 2021, <https://www.nytimes.com/2021/09/02/us/jackie-johnson-indicted-ahmaud-arbery.html>.

<sup>16</sup>U.S. v. McMichael et al, United States District Court, Southern District of Georgia, <https://www.justice.gov/opa/press-release/file/1390396/download>.

<sup>17</sup>Mzezewa, Burch, and Fausset, *Three Men Are Found Guilty of Hate Crimes in Arbery Killing*, New York Times, February 22, 2022, <https://www.nytimes.com/2022/02/22/us/gregory-mcmichael-travis-mcmichael-william-bryan.html>.

<sup>18</sup>Avis Thomas-Lester, *A Senate Apology for Lynching*, Washington Post, June 14, 2005, <https://www.washingtonpost.com/archive/politics/2005/06/14/a-senate-apology-for-history-on-lynching/324dade8-ec0e-46d9-9674-c81c247eb214/>.

ember 19, 2018, putting to rest nearly a century of opposition to antilynching legislation in that chamber. The House of Representatives, however, failed to pass the Justice for Victims of Lynching Act prior to the end of that Congress.

Representative Bobby Rush introduced H.R. 35, the Emmett Till Antilynching Act on January 3, 2019, which passed the House of Representatives on February 26, 2020 without amendment and nearly unanimously. The current Emmett Till Antilynching Act, H.R. 55, builds on the consideration of prior antilynching legislation to ensure the Department of Justice is able to appropriately prosecute the crime of lynching as a federal hate crime.

### **Hearings**

For the purposes of clause 3(c)(6)(A) of House Rule XIII, the following hearing was used to develop H.R. 55: On February 17, 2022, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing titled, “The Rise in Violence Against Minority Institutions.” The witnesses were: Dr. Seth G. Jones, Senior Vice President, Harold Brown Chair, and Director of the International Security Program and Transnational Threats Project, Center for Strategic and International Studies; Dr. David K. Wilson, President, Morgan State University; Rabbi Charlie Cytron-Walker, Colleyville, Texas; Pardeep Singh Kaleka, Executive Director, Interfaith Conference of Greater Milwaukee; Margaret Huang, President and CEO, Southern Poverty Law Center; Dr. Demetrick Pennie, Retired Police Sergeant, Dallas Police Department; and Brandon Tatum, Former Tucson Police Officer, Founder and CEO, The Officer Tatum. The hearing explored, among other issues, the roots of domestic violence extremism in the United States, including the legacy of lynchings that took place in the early part of the 20th Century.

### **Committee Consideration**

On December 8, 2021, the Committee met in open session and ordered the bill, H.R. 55, favorably reported with an amendment in the nature of a substitute, by a voice vote, a quorum being present.

### **Committee Votes**

No recorded votes occurred during the Committee’s consideration of H.R. 55.

### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of House Rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House Rule X, are incorporated in the descriptive portions of this report.

### **Committee Estimate of Budgetary Effects**

Pursuant to clause 3(d)(1) of House Rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

**New Budget Authority and Congressional Budget Office  
Cost Estimate**

Pursuant to clause 3(c)(2) of House Rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House Rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee sets forth, with respect to the bill, H.R. 55, the following analysis and estimate prepared by the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, January 27, 2022.*

Hon. JERROLD NADLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 55, the Emmett Till Antilynching Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lindsay Wylie.

Sincerely,

PHILLIP L. SWAGEL,  
*Director.*

Enclosure.

<b>H.R. 55, Emmett Till Antilynching Act</b>			
As ordered reported by the House Committee on the Judiciary on December 8, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	0	0	not estimated
Statutory pay-as-you-go procedures apply?	Yes	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

H.R. 55 would classify the act of lynching as a hate crime. Individuals who violate the bill's provisions could be subject to criminal fines, so the federal government might collect additional fines under the legislation. Criminal fines are recorded as revenues and deposited in the Crime Victims Fund. Those funds are later spent without further appropriation action, which is classified as direct spending. CBO expects that any additional revenues and associated direct spending would not be significant because few additional cases would probably be affected.

The CBO staff contact for this estimate is Lindsay Wylie. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

### **Duplication of Federal Programs**

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 55 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of House Rule XIII, H.R. 55 will increase public safety and heal past and present racial injustice.

### **Advisory on Earmarks**

In accordance with clause 9 of House Rule XXI, H.R. 55 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

### **Section-by-Section Analysis**

The following discussion describes the bill as reported by the Committee.

*Sec. 1. Short Title.* Section 1 sets forth the short title of the bill as the “Emmett Till Antilynching Act.”

*Sec. 2. Lynching; Other Conspiracies.* Section 2 amends section 249(a) of title 18 of the United States Code to add a new subsection that designates lynching as a hate crime. If death results from the offense, it is punishable by a prison term up to life, a fine, or both. In any other case, the punishment is the same as the penalties for the offense the commission of which was the object of the conspiracy.

### **Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

#### **TITLE 18, UNITED STATES CODE**

\* \* \* \* \*

#### **PART I—CRIMES**

\* \* \* \* \*

#### **CHAPTER 13—CIVIL RIGHTS**

\* \* \* \* \*

#### **§ 249. Hate crime acts**

(a) IN GENERAL.—



(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(i) death results from the offense; or

(ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.—

(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person—

(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(I) death results from the offense; or

(II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

(I) across a State line or national border; or

(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

(iv) the conduct described in subparagraph (A)—

(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

(II) otherwise affects interstate or foreign commerce.

(3) OFFENSES OCCURRING IN THE SPECIAL MARITIME OR TERRITORIAL JURISDICTION OF THE UNITED STATES.—Whoever, within the special maritime or territorial jurisdiction of the United States, engages in conduct described in paragraph (1) or in paragraph (2)(A) (without regard to whether that conduct occurred in a circumstance described in paragraph (2)(B)) shall be subject to the same penalties as prescribed in those paragraphs.

(4) GUIDELINES.—All prosecutions conducted by the United States under this section shall be undertaken pursuant to guidelines issued by the Attorney General, or the designee of the Attorney General, to be included in the United States Attorneys' Manual that shall establish neutral and objective criteria for determining whether a crime was committed because of the actual or perceived status of any person.

(5) LYNCHING; OTHER CONSPIRACIES.—Whoever conspires to commit any offense under paragraph (1), (2), or (3), shall—

(A) if death results from the offense, be imprisoned for any term of years or for life, fined in accordance with this title, or both; or

(B) in any other case, be subject to the same penalties as the penalties prescribed for the offense the commission of which was the object of the conspiracy.

(b) CERTIFICATION REQUIREMENT.—

(1) IN GENERAL.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or a designee, that—

(A) the State does not have jurisdiction;

(B) the State has requested that the Federal Government assume jurisdiction;

(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or

(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(2) RULE OF CONSTRUCTION.—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.

(c) DEFINITIONS.—In this section—

(1) the term “bodily injury” has the meaning given such term in section 1365(h)(4) of this title, but does not include solely emotional or psychological harm to the victim;

(2) the term “explosive or incendiary device” has the meaning given such term in section 232 of this title;

(3) the term “firearm” has the meaning given such term in section 921(a) of this title;

(4) the term “gender identity” means actual or perceived gender-related characteristics; and

(5) the term “State” includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.

(d) STATUTE OF LIMITATIONS.—

(1) OFFENSES NOT RESULTING IN DEATH.—Except as provided in paragraph (2), no person shall be prosecuted, tried, or punished for any offense under this section unless the indictment for such offense is found, or the information for such offense is instituted, not later than 7 years after the date on which the offense was committed.

(2) DEATH RESULTING OFFENSES.—An indictment or information alleging that an offense under this section resulted in death may be found or instituted at any time without limitation.

(e) SUPERVISED RELEASE.—If a court includes, as a part of a sentence of imprisonment imposed for a violation of subsection (a), a requirement that the defendant be placed on a term of supervised release after imprisonment under section 3583, the court may order, as an explicit condition of supervised release, that the defendant undertake educational classes or community service directly related to the community harmed by the defendant’s offense.

\* \* \* \* \*

### Additional Views

Lynching is a tragic vestige of a dark period in our nation’s history. It is a particularly wicked and horrific crime that deserves a just and serious punishment. We write separately to note particular concern with how the Democrat majority amended the definition of “lynching” in H.R. 55, the Emmett Till Antilynching Act, during the Committee’s business meeting in a manner that threatens to trivialize this atrocious crime.

Commonly defined as mob-led, extrajudicial killings (often by hanging), lynching was prominent in the United States following the emancipation of slaves after the Civil War. Between 1882 and 1968, 4,743 people were lynched in the United States, including 3,446 African Americans and 1,297 whites.<sup>1</sup> More than 73 percent of lynchings in the post-Civil War period occurred in the Southern states.<sup>2</sup> Although some lynching victims were accused of crimes, these accusations were often pretexts for lynching African Americans who violated Jim Crow etiquette or engaged in economic competition with whites.<sup>3</sup>

In 1918, Representative Leonidas C. Dyer, a Missouri Republican, introduced the first bill in Congress to make lynching a federal crime. Over the next century, Members of Congress introduced more than 200 antilynching bills. Between 1920 and 1940, the House of Representatives passed three antilynching bills, but Southern Democrats in the Senate opposed the bill and blocked fur-

<sup>1</sup>Aneurin Canham-Clyne, *Despite repeated efforts, a federal anti-lynching law has not passed Congress in 130 years*, HOWARD CENTER FOR INVESTIGATIVE JOURNALISM (Oct. 31, 2021).

<sup>2</sup>*Id.*

<sup>3</sup>LYNCHING IN AMERICA, CONFRONTING THE LEGACY OF RACIAL TERROR, EQUAL JUSTICE INITIATIVE (2017).

ther action.<sup>4</sup> Most recently, Representative Bobby Rush (D–IL) has introduced antilynching bills in the 115th, 116th, and 117th Congresses.<sup>5</sup>

H.R. 55 is named after Emmett Till, a fourteen-year-old boy from Chicago who was visiting family in Mississippi. After being accused of whistling at a white woman, he was kidnapped, beaten, shot in the head, tied to a large metal fan with barbed wire, and thrown into the Tallahatchie River. His mother bravely chose to have an open casket during her son’s funeral to show the world the truth about lynching.<sup>6</sup>

The Committee should appropriately treat lynching as a serious crime, and an antilynching bill should set forth a clear and accurate definition of lynching. H.R. 55, as introduced, included such a definition. Indeed, its definition was identical to the definition in Representatives Rush’s bills in previous Congresses, including the version approved by the Committee in 2019 by voice vote.<sup>7</sup> H.R. 55, as introduced, would add a new federal crime of lynching to 18 U.S.C. 249 and define lynching as “willfully, acting as part of any collection of people, assembled for the purpose and with the intention of committing an act of violence upon any person, caus[ing] death.”<sup>8</sup>

During the Committee’s consideration of H.R. 55, however, Chairman Jerry Nadler offered an amendment in the nature of a substitute (ANS) that minimized the importance and the gravity of the crime of lynching altogether. Departing from the commonly accepted definition of lynching, the ANS would simply criminalize conspiracies to commit any type of hate crime. Representative Louie Gohmert (R–TX), a cosponsor of H.R. 55, offered an amendment to the ANS to revert the definition of lynching back to the text as introduced. In explaining his amendment, Representative Gohmert voiced serious concern that the new language would reduce the standard of injury to “bodily injury” and minimize the heinous act of lynching as an act that results in injuries as minor as a scratch or a bruise. This negligible standard, Representative Gohmert explained, would “minimize our discussion about lynching, and it should never minimize how serious it is.” Unfortunately, Representative Gohmert’s amendment failed, with 20 Democrat cosponsors of H.R. 55 voting against the definition of “lynching” as introduced.

Representative Gohmert’s concerns mirrored those articulated by Senator Rand Paul (R–KY) during Senate debate in the 116th Congress on a previous version of this bill. In seeking to clarify the

<sup>4</sup> Aneurin Canham-Clyne, *Despite repeated efforts, a federal anti-lynching law has not passed Congress in 130 years*, HOWARD CENTER FOR INVESTIGATIVE JOURNALISM (Oct. 31, 2021).

<sup>5</sup> H.R. 6086, 115th Cong. (2017); H.R. 35, 116th Cong. (2019); H.R. 55, 117th Cong. (2021).

<sup>6</sup> DeNeen L. Brown, *Emmett Till’s mother opened his casket and sparked the Civil Rights Movement*. The Wash Post. (Oct. 28, 2021) <https://www.washingtonpost.com/news/retropolis/wp/2018/07/12/emmett-tills-mother-openedhis-casket-and-sparked-the-civil-rights-movement/>.

<sup>7</sup> H.R. 35, 116th Cong. (2019). For reasons unclear to Republicans, the Democrat majority altered H.R. 35’s definition of lynching between Committee consideration and floor debate. The new definition, which was never explained by the bill’s proponents, changed “lynching” into conspiracy to commit any of four crimes under federal civil rights laws and reduce the punishment from life in prison to a maximum of 10 years in prison. Although H.R. 35 with this new definition passed the House, it did not pass the Senate due to concerns from Senator Rand Paul (R–KY) that the new definition trivialized the crime of lynching by lowering the standard of injury from death to “bodily injury.”

<sup>8</sup> H.R. 55, 117th Cong. (2021).

standard of injury as “serious bodily injury,” Senator Paul explained at the time:

I seek to amend this legislation, not because I take lynching lightly, but because I take it seriously and this legislation does not. Lynching is a tool of terror that claimed the lives of nearly 5,000 Americans between 1881 and 1968, but this bill would cheapen the meaning of lynching by defining it so broadly as to include a minor bruise or abrasion. Our nation’s history of racial terrorism demands more seriousness from us than that.<sup>9</sup>

The Senate ultimately failed to act on Senator Paul’s amendment, and the bill languished until the end of the 116th Congress.

The barbaric violence inflicted on Emmett Till and other victims of lynching deserves serious treatment. It is not comparable to, and should not be treated like, mere bruises or scratches. The Committee and the House should ensure that a federal definition of lynching appropriately captures the seriousness of the crime so that we may ensure it never happens again.

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*Ranking Member.*



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<sup>9</sup> 166 Cong. Rec. S2715 (2020).