

119TH CONGRESS  
2D SESSION

# S. 3646

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2026

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 the Judiciary

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## 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;

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

6           (3) preliminary or permanent injunctive relief  
7 from the covered Government action that is not ulti-  
8 mately 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—

17                   (A) the prosecution was dismissed, the de-  
18 fendant was found not guilty, or pre-enforce-  
19 ment activities were enjoined by a court; and

20                   (B) the party demonstrates that the cov-  
21 ered Government action or covered enforcement  
22 claim was substantially motivated by protected  
23 speech or participation by the party; or



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.

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