



Capitol insurrection fallout: A PATRIOT Act 2.0?

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Let me get this part out of the way, right up front. Anybody who, on Jan. 6, 2021 while on the Capitol Hill campus, 1) attacked, injured or killed a cop or 2) broke into the Capitol building and threatened lawmakers, staff or journalists while attempting to subvert the lawful certification of the free and fair 2020 presidential election should be found, arrested, and prosecuted with the full force of the law.

Beyond that, lawmakers need to pause, take a deep breath, and not do the same idiotic thing their predecessors did six weeks after the 9/11 attacks: pass a terrible “domestic security” law (i.e., like the PATRIOT Act) that trashes the very rights they took an oath to uphold.

We’ve already had calls from Senate Majority Leader Chuck Schumer (D-N.Y.) and House Homeland Security Chairman Bennie Thompson (D-Miss.) for TSA to put any #CapitolRiot participant on the TSA “No Fly” list. That’s definitely a “guilty until proven innocent” approach to jurisprudence and public safety, and it’s clearly at odds with the intent of the First and Fourth Amendments to the Constitution of the United States.

The over 70 current federal defendants in the #CapitolRiot episode, listed on the Department of Justice website, clearly meet existing TSA criteria for inclusion on the “No Fly” list. But what about those who were at the rally-turned-insurrection who didn’t commit violence or property destruction? Will they be next? Will anyone who posted #StopTheSteal on a social media platform be deemed an insurrectionist and have their name placed on the “No Fly” list, or perhaps the somewhat less well known but equally infamous and ineffectual TSA “Quiet Skies” selectee list?

Some of the most potentially dangerous people at the #CapitolRiot drove to Washington. One was Lonnie Coffman of Alabama, whose red GMC pickup truck contained not just a loaded M-4 carbine but components for multiple incendiary devices (i.e., Molotov cocktails). The nation’s major rail transportation union apparently believes pro-Trump insurrectionists might use or even target passenger rail services, and have therefore called for an equally ineffectual “No Ride” list to be created by TSA. The Schumer-Thompson “No Fly” list expansion proposal would not stop

the next Lonnie Coffman from bringing homemade bombs to D.C. Neither would a “No Ride” list for Amtrak.

Those intent on committing violent acts are not deterred by words on paper, a reality that the incoming Biden administration is apparently ignoring. Nearly two months before the pro-Trump insurrectionist mob overran the Capitol, the Wall Street Journal reported that Biden would “make a priority of passing a law against domestic terrorism...”, a notion that’s clearly gaining steam among some left-leaning outlets.

Indeed, it’s been just over a year since Sen/ Dick Durbin (D-Ill.) and Rep. Brad Schneider (D-Ill.) introduced the Domestic Terrorism Prevention Act (S. 3190 and H.R. 5602, respectively). Neither bill picked up a single GOP co-sponsor in the last Congress, but given recent attack on the Capitol, it’s possible that could change in the new Congress. Like the euphemistically named PATRIOT Act, the Durbin-Schneider bill would not stop a single domestic terror attack on our soil.

However, it would create three new “Domestic Terrorism Offices” within DoJ, the FBI and DHS — still more taxpayer-funded government bureaucracy — and require “anti-terrorism” training for federal, state, tribal and local law enforcement agencies for the purpose of “understanding, detecting, deterring, and investigating acts of domestic terrorism and White supremacist and neo-Nazi infiltration of law enforcement and corrections agencies.”

Interestingly, the Durbin-Schneider bill contains no reference to prior racially and ethnically biased FBI training materials used to target Arab and Muslim Americans, and how law enforcement organizations should avoid similar bias and training errors in launching any new domestic terrorism dragnet.

In a March 27, 2012 letter to then-FBI Director Robert Mueller, Durbin stated that “FBI agents received counterterrorism training based on crude stereotypes of American Muslims and Arab Americans. For example, agents were told that, ‘Islam is a highly violent radical religion,’ ‘mainstream American Muslims are likely to be terrorist sympathizers,’ and the ‘Arabic mind’ is ‘swayed more by ideas than facts.’ These statements are inconsistent with American values of freedom and tolerance and the views of mainstream Democrats and Republicans.”

What’s also inconsistent with American values is Congressional de facto bills of attainder that seek to have law enforcement target individuals and groups with views and speech vehemently disfavored by polite society. The plain reality is that white supremacists, Neo-Nazis, “Three Percenters,” “Oathkeepers” and the like have free speech rights. You don’t have to take my word for it. The Supreme Court said so in the 1969 landmark Brandenburg v. Ohio case.

Clarence Brandenburg, a Ku Klux Klan leader in Ohio, was convicted under an Ohio statute for “advocat[ing] . . . the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform.” When the case ultimately made its way to the U.S. Supreme Court, the justices ruled that “Freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except

where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

The Durbin-Schneider bill makes no reference to the Brandenburg decision and its relevance to training law enforcement officers to make clear distinctions between protected speech and imminent incitements to violence. If the FBI’s history of utilizing religiously inaccurate or biased materials in counterterrorism training during the “War on Terror” is any guide, there’s no reason to believe they’ll get it right when looking at white supremacists, etc.

There’s still another reason why the Durbin-Schneider bill (or anything like it) is unwise and unneeded: the FBI has all the laws it needs to prosecute those who commit violent, politically motivated acts.

Whether the perpetrators have been Puerto Rican nationalist terrorists or anti-government fanatics like Timothy McVeigh, the FBI has had no difficulty in securing convictions for those who cross the line from using heated rhetoric to employing actual firearms or explosives. As the more than 70 arrests and indictments made so far in connection with the Jan. 6, 2021 incident clearly demonstrate, we don’t need a “PATRIOT Act 2.0” in response to the #CapitolRiot.

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