
OKLAHOMA CITY UNIVERSITY LAW REVIEW

VOLUME 48

WINTER 2023

NUMBER 1

MANUSCRIPT

DOMESTIC TERRORISM AND THE FIRST AMENDMENT: BALANCING NATIONAL SECURITY AND CONSTITUTIONAL RIGHTS

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I. Introduction

The First Amendment of the United States Constitution was born of the American ideal of government: by the people and for the people. This is so ingrained in the American culture that it was declared in the United States' founding document,

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, and that among these are Life,

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Liberty, and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.¹

Further, the United States Constitution established a distinct separation between the government’s power and individual citizens’ rights.² With its defenses of speech, press, assembly, religion, and petition, the First Amendment provided a legal framework to protect citizens from the power of the federal government. Aptly put in the *Federalist Papers*, “In a free government the security for civil rights must be the same as religious rights.”³

As a definitive statement of American freedom, the First Amendment was at the core of the Bill of Rights, a collection of constitutional amendments designed to protect the rights of citizens from government overreach. Its language was short but highly impactful, stating that

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.⁴

Since the founding of the United States, this has been explicitly clear to include freedom of thought: “I have sworn upon the altar of god eternal hostility against every form of tyranny over the mind of man.”⁵ By enshrining these fundamental rights into law, the First Amendment provided a mechanism that citizens could use to defend themselves from the power of the federal government and fight for justice and liberty—the original hallmarks of America. The First Amendment has since been interpreted to protect citizens from a wide variety of government actions, from censorship to discrimination. It continues to be the cornerstone of all

1. THE DECLARATION OF INDEPENDENCE para. 2 (U.S 1776).

2. U.S. CONST. amend. I-X.

3. THE FEDERALIST NO. 51 (James Madison).

4. U.S. CONST. amend. I.

5. Letter from Thomas Jefferson to Benjamin Rush (September 23, 1800), Founders Online, NATIONAL ARCHIVES, <https://founders.archives.gov/documents/Jefferson/01-32-02-0102> (describing the importance of freedom of thought in the context of the First Amendment using freedom of religion as an analogy).

American civil rights.⁶

In the wake of the tragic Oklahoma City Murrah Building bombing, the United States Congress enacted the Antiterrorism Effective Death Penalty Act of 1996.⁷ This included the modern international terrorism statute, a comprehensive federal criminal law designed to combat international terrorism.⁸ However, even in the wake of multiple domestic terror attacks since the Oklahoma City bombing, including: the 2017 Charlottesville rally; the 2017 Las Vegas mass shooting; the 2018 Pittsburgh synagogue massacre; the 2019 El Paso mass shooting; and the takeover of the United States Capitol on January 6, 2021, there is still no federal criminal statute specifically targeting domestic terrorism. Despite various legislative attempts to pass such a law over the years, its enactment has been hindered by significant concerns about its implications for civil liberties.⁹

The language of the First Amendment has been broadly interpreted by courts to protect citizens from government interference with their expression and association in political matters.¹⁰ In other words, it protects individuals' rights to express unpopular ideas without fear of retaliation from government authorities.¹¹ While this freedom is essential for meaningful dissent and democracy-building activities like peaceful protest and civil disobedience, it also makes it difficult for governments to effectively prosecute domestic terrorists who often use these same forms of expression as a cover for their nefarious activities.

In theory, any new criminal domestic terrorism statute would have to be carefully crafted to not infringe upon constitutionally-protected speech and expression while still providing effective tools for prosecuting those responsible for committing terrorist acts against innocent civilians within the borders of the United States. There has long been debate over how best to design such legislation criminalizing domestic terrorism. This debate

6. *See generally* 42 U.S.C. § 1983.

7. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

8. 18 U.S.C. § 2332b.

9. Greg Myre, *An Old Debate Renewed: Does The U.S. Now Need A Domestic Terrorism Law?*, NPR (Mar. 16, 2021, 5:05 AM), <https://www.npr.org/2021/03/16/976430540/an-old-debate-renewed-does-the-u-s-now-need-a-domestic-terrorism-law>.

10. *See* *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2389 (2021); *See also* *NAACP v. Button*, 371 U.S. 415, 430 (1963).

11. *See* *Buckley v. Valeo*, 424 U.S. 1, 48 (1976).

has battled with ensuring that its provisions are sufficiently broad to encompass all forms of domestic terrorism, yet narrow enough so as not to impinge upon civil liberties guaranteed by our Constitution.¹² Such debates have proven particularly contentious in light of recent events involving white supremacists, violent rioting, and lawlessness, which has renewed calls for enacting a criminal domestic terrorism statute modeled after the current criminal international terrorism statute.¹³

This manuscript will discuss the implications of the First Amendment of the United States Constitution on the proposed criminal domestic terrorism statute and analyze the differences between a proposed criminal domestic terrorism statute and the current international terrorism statute. This essay will begin by examining the language of the First Amendment and its applicability to the proposed criminal domestic terrorism statute. It will then discuss the implications on the First Amendment that the proposed domestic terrorism statute may have. Further, this essay will compare the proposed domestic terrorism statute with the current international terrorism statute. Lastly, the overall constitutional rights implications of the proposed domestic terrorism statute will be examined.

II. Background

The United States has a long history of grappling with the issue of domestic terrorism.¹⁴ Acts of domestic terrorism have been committed by a variety of groups, including white supremacists, anti-government extremists, and animal rights activists.¹⁵ In recent years, there has been growing concern about the threat posed by domestic terrorism, particularly

12. Letter from ACLU, Nat'l Pol'y Advoc. Dep't., to Rep. Jerrold Nadler, Chairman, U.S. House Judiciary Committee, (Sept. 3, 2019), https://www.aclu.org/sites/default/files/field_document/2019-09-03_aclu_oppose_h.r._4192_confronting_the_threat_of_domestic_terrorism_act.pdf.

13. Dan Glaun, *A Timeline of Domestic Extremism in the U.S., from Charlottesville to January 6*, PBS FRONTLINE, (Apr. 21, 2021), <https://www.pbs.org/wgbh/frontline/article/timeline-us-domestic-extremism-charlottesville-january-6/>.

14. Brian Resnick & National Journal, *A Brief History of Terrorism in the United States*, THE ATLANTIC (Apr. 16, 2013), <https://www.theatlantic.com/politics/archive/2013/04/a-brief-history-of-terrorism-in-the-united-states/454713/>.

15. Catrina Doxsee et al., *Pushed to Extremes: Domestic Terrorism amid Polarization and Protest*, CTR. FOR STRATEGIC & INT'L STUD. (May 17, 2022), <https://www.csis.org/analysis/pushed-extremes-domestic-terrorism-amid-polarization-and-protest>.

in the wake of high-profile attacks such as the 2017 Charlottesville rally, the 2017 Las Vegas mass shooting, the 2018 Pittsburgh synagogue massacre, the 2019 El Paso mass shooting, and the takeover of the United States Capitol on January 6, 2021.¹⁶ In response to this threat, there have been calls for crafting legislation that creates a criminal domestic terrorism statute modeled after the criminal international terrorism statute.¹⁷ However, such a statute would raise significant First Amendment issues and would require careful consideration of constitutional issues and precedents.¹⁸ There is a particular concern because of the current break-neck pace of technology advancement where artificial intelligence, surveillance, and internet usage have brought the problem of policing criminal action directly into conflict with the First Amendment.¹⁹ The long-held protections of the First Amendment have been partially eroded in the current scheme of urban planning that has brought surveillance technology—that would make George Orwell blush—right to citizens’ doorsteps, literally by way of doorbell cameras.²⁰

The First Amendment of the United States Constitution is an essential component of our nation’s commitment to civil liberties. It ensures that individuals can express their beliefs and opinions without interference from the government, even if these beliefs or opinions are unpopular.²¹ In the landmark case of *Brandenburg v. Ohio*, the United States Supreme Court held that even unpopular views are protected from government censorship when it stated, “[f]reedoms 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

16. Dan Glaun, *A Timeline of Domestic Extremism in the U.S., from Charlottesville to January 6*, PBS FRONTLINE, (Apr. 21, 2021), <https://www.pbs.org/wgbh/frontline/article/timeline-us-domestic-extremism-charlottesville-january-6/>.

17. Jason M. Blazakis, *The Intangible Benefits of a Domestic Terrorism Statute*, GEO. J. OF INT’L AFF. (Jun. 24, 2021), <https://gjia.georgetown.edu/2021/06/24/the-intangible-benefits-of-a-domestic-terrorism-statute/>.

18. See PETER G. BERRIS ET AL. CONG. RSCH. SERV., R46829, DOMESTIC TERRORISM: OVERVIEW OF FEDERAL CRIMINAL LAW AND CONSTITUTIONAL ISSUES (2021).

19. See Marc Jonathan Blitz, *The Dangers of Fighting Terrorism with Techno-communitarianism: Constitutional Protections of Free Expression, Exploration, and Unmonitored Activity in Urban Spaces*, 32 FORDHAM URB. L. J. 677, 719 (2005).

20. Drew Harwell, *Home-security cameras have become a fruitful resource for law enforcement – and a fatal risk*, WASH. POST (Mar. 2, 2021, 6:00 a.m.), <https://www.washingtonpost.com/technology/2021/03/02/ring-camera-fears/>.

21. See e.g., *Spence v. Washington*, 418 U.S. 405, 409, 415 (1974).

action and is likely to incite or produce such action.”²² This includes allowing individuals to voice dissident political views.²³ The freedoms protected by the First Amendment are crucial for maintaining a healthy democracy; however, governments are hampered in preventing and prosecuting domestic terrorists.²⁴

The First Amendment protects freedom of speech, assembly, and association, which are essential to a democratic society. In *Lovell v. Griffin*, the Court explained that “[f]reedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action.”²⁵ Any law that restricts these rights must be “narrowly tailored to serve a compelling government interest.”²⁶ Creating a criminal domestic terrorism statute runs the risk of infringing on these rights, as it could be used to criminalize legitimate political dissent or activism.

The First Amendment to the United States Constitution protects the freedom of speech, religion, assembly, and the press.²⁷ These freedoms are essential to the functioning of a democratic society and are among the most cherished rights of American citizens. However, the First Amendment is not an absolute right, and there are certain types of speech that the Constitution does not protect. For example, the First Amendment does not protect speech that incites violence or constitutes a true threat.²⁸

This means that any potential criminal domestic terrorism statute must be carefully crafted so as not to infringe upon constitutionally protected speech and expression while still empowering prosecutors to hold those responsible for terrorist acts accountable. Even if such a law could be written in a manner that avoided infringing on civil liberties, there would be significant differences between it and the existing criminal international terrorism statute, 18 U.S.C. § 2332b, which was enacted to combat

22. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

23. *See Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 91 (1982).

24. Mikkel Dack et al., *Why is it so difficult to fight domestic terrorism? 6 experts share their thoughts*, THE CONVERSATION (Aug. 30, 2021, 8:28 a.m.), <https://theconversation.com/why-is-it-so-difficult-to-fight-domestic-terrorism-6-experts-share-their-thoughts-165054>.

25. *Lovell v. Griffin*, 303 U.S. 444, 450 (1938).

26. *Austin v. Mich. State Chamber of Com.*, 494 U.S. 652, 666 (1990).

27. U.S. CONST. amend. I.

28. *See Brandenburg*, 395 U.S. at 447.

international terrorism.²⁹

The issue of domestic terrorism raises complex First Amendment issues. On the one hand, the government has a compelling interest in preventing acts of terrorism and protecting national security.³⁰ On the other hand, the First Amendment protects the right to free speech and association, even for those who hold extremist views. The challenge for lawmakers is to balance these competing interests in a way that is consistent with the Constitution.

One approach that has been proposed is the enactment of a criminal domestic terrorism statute modeled after the criminal international terrorism statute.³¹ The current criminal international terrorism statute, codified at 18 U.S.C. § 2331, defines international terrorism as

[A]ctivities that—involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State . . . [or acts that] appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping.³²

The statute provides severe penalties for those engaging in international terrorism, including life imprisonment and the death penalty.³³

However, the scope of both statutes is distinctively different. The existing international terrorism statute focuses on prosecuting individuals who commit violent acts intending to influence foreign policy or intimidate a population in pursuit of a political or ideological objective. In contrast, the proposed domestic terrorism statute would expand this scope to include those who commit violent acts in pursuit of a political or ideological objective within the United States' borders, regardless of their intent to affect foreign policy or intimidate citizens abroad. Additionally, different definitions for “international terrorism” and “domestic terrorism”

29. 18 U.S.C. § 2332b(a)(1).

30. *National Strategy for Countering Domestic Terrorism*, NAT'L. SEC. COUNS., June 2021.

31. Domestic Terrorism Prevention Act of 2022, H.R. 350, 117th Cong. § 2 (2022).

32. 18 U.S.C. § 2331.

33. 18 U.S.C. § 2332(c).

are employed by various proponents of creating a domestic terrorism statute, including the current federal statute that contains the definition of each of the terms.³⁴ There are also distinctions between what elements would be proper for a criminal conviction based on the offender's activity. For instance, under existing law, a conviction for engaging in international terrorism requires that one committed an act involving violence against persons or property with the purpose of intimidating people into action—but this element is not present under proposed laws against domestic terrorism (unless terrorism can be linked back to conduct originating outside the United States).³⁵

Proponents of a criminal domestic terrorism statute argue that such a statute is necessary to address the growing threat of domestic terrorism.³⁶ They argue that a criminal domestic terrorism statute would provide law enforcement with the tools they need to investigate and prosecute acts of domestic terrorism and would send a strong message that such acts will not be tolerated.³⁷

However, opponents of a criminal domestic terrorism statute argue that such a statute would raise significant First Amendment issues.³⁸ Arguably, the definition of domestic terrorism is vague and overbroad, and it could be used to target individuals and groups based on their political beliefs rather than their actions.³⁹ Also argued is that a criminal domestic terrorism statute could be used to chill free speech and association, particularly for those who hold unpopular or controversial views.⁴⁰

Even Americans who hold extreme—even tasteless—views are afforded the protections of the First Amendment rights to free speech and association. The Supreme Court has held that the government may not regulate speech based on its content or viewpoint and that any such

34. 18 U.S.C. § 2331.

35. 18 U.S.C. § 2332b(g)(5).

36. Mary McCord, *Filling the Gap in our Terrorism Statutes*, GW PROGRAM ON EXTREMISM, Aug. 2019.

37. *Id.*

38. Christina E. Wells, *Assumptions About "Terrorism" and the Brandenburg Incitement Test*, 85 BROOK. L. REV. 111 (2019).

39. Letter from ACLU, Nat'l Pol'y Advoc. Dep't., to Rep. Jerrold Nadler, Chairman, U.S. House Judiciary Committee, (Sept. 3, 2019), https://www.aclu.org/sites/default/files/field_document/2019-09-03_aclu_oppose_h.r._4192_confronting_the_threat_of_domestic_terrorism_act.pdf.

40. See Francesca Laguardia, *Considering a Domestic Terrorism Statute and Its Alternatives*, 114 Nw. L. Rev. 212, 214-15 (2020).

regulation would presumptively violate the First Amendment.⁴¹ In *R.A.V. v. City of St. Paul*, the Court held, “The First Amendment does not permit [government] to impose special prohibitions on those speakers who express views on disfavored subjects.”⁴² This reflects the Court’s view that the First Amendment’s protection of freedom of speech prohibits the government from regulating speech based on its viewpoint.⁴³ The Court has also held that the government may not punish individuals for their beliefs or associations but only for their actions.⁴⁴ The government would need to ensure that any criminal domestic terrorism statute is narrowly tailored to target only those who engage in violent or dangerous acts and that it does not infringe on the First Amendment rights of individuals or groups who hold extremist views but do not engage in violence.⁴⁵

Enacting a criminal domestic terrorism statute would raise several additional constitutional challenges using the Due Process Clause and the Equal Protection Clause, only briefly discussed in this manuscript.⁴⁶ The Due Process Clause of the Fifth Amendment requires that the government provide individuals with notice and an opportunity to be heard before depriving them of life, liberty, or property.⁴⁷ The Fifth Amendment is applied to the states by way of the Due Process Clause of the Fourteenth Amendment.⁴⁸ A criminal domestic terrorism statute would need to provide clear notice of what conduct is prohibited and what penalties may be imposed, and it would need to provide individuals with a meaningful opportunity to challenge any charges brought against them.

Further, the Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated individuals and groups equally.⁴⁹ A criminal domestic terrorism statute would need to be applied equally to all individuals and groups, regardless of their race, religion, or political beliefs. The government would need to ensure that

41. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992).

42. *Id.*

43. *Id.*

44. *See Brandenburg*, 395 U.S. at 447.

45. Letter from ACLU, Nat’l Pol’y Advoc. Dep’t., to Rep. Jerrold Nadler, Chairman, U.S. House Judiciary Committee, (Sept. 3, 2019), https://www.aclu.org/sites/default/files/field_document/2019-09-03_aclu_oppose_h.r._4192_confronting_the_threat_of_domestic_terrorism_act.pdf.

46. *See* PETER G. BERRIS ET AL. CONG. RSCH. SERV., R46829, DOMESTIC TERRORISM: OVERVIEW OF FEDERAL CRIMINAL LAW AND CONSTITUTIONAL ISSUES (2021).

47. U.S. CONST. amend. V.

48. U.S. CONST. amend. XIV.

49. *Id.*

any enforcement of a criminal domestic terrorism statute is not based on impermissible factors such as race, religion, or political affiliation.

III. Analysis

A. The Language of the First Amendment and Its Applicability to the Proposed Criminal Domestic Terrorism Statute

The language of the First Amendment is both broad and complex. It provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”⁵⁰ The First Amendment also contains an implied freedom of association, which prohibits the government from interfering with the right of individuals to associate with others.⁵¹ The Court’s view that the First Amendment’s protection of freedom of association includes the right of individuals to choose whether or not to associate with certain groups or organizations was described in *Roberts v. United States Jaycees* as follows: “Freedom of association therefore plainly presupposes a freedom not to associate. Compelled association would be the antithesis of freedom. Membership in a group or participation in its activities can be as much a matter of individual choice as the right to speak or the right to refrain from speaking.”⁵²

In addition, Supreme Court precedent recognizes that even though an individual may be engaged in expressive activity that could be interpreted as advocating violence or terrorism, such conduct may still be protected under certain circumstances.⁵³ In *Watts v. United States*, the Court made this particularly clear when it held, “[t]he language of the political area . . . is often vituperative, abusive, and inexact. We have not previously suggested that the constitutional protection of free speech varies with the truth, timeliness, or tastelessness of a particular statement.”⁵⁴

Therefore, crafting any criminal domestic terrorism statute must be done with an eye toward protecting constitutionally guaranteed liberties

50. U.S. CONST. amend. I.

51. *Roberts v. United States Jaycees*, 468 U.S. 609, 622-23 (1984).

52. *Id.*

53. *See, e.g., Watts v. United States*, 394 U.S. 705, 708 (1969).

54. *Id.*

while also preventing terrorist acts from occurring within our borders. Achieving this balance will require careful consideration of what elements constitute “terrorism” and which activities should be excluded from its scope in order to avoid impinging upon constitutionally protected rights. It is essential to recognize that any criminal domestic terrorism statute must take into account existing case law dealing with issues related to terrorism and free speech protections. For instance, Supreme Court decisions have made clear that protected speech can never form a basis for criminal liability unless it incites imminent lawless action and is likely to produce such action.⁵⁵ The Court has also recognized the importance of allowing individuals to express their dissident views without fear of prosecution for their beliefs.⁵⁶ In *NAACP v. Alabama ex rel. Patterson*, it stated:

Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.⁵⁷

Stated more plainly, it is the Court’s view that the First Amendment’s protection of freedom of association is an essential aspect of the right to free speech.

Further, there are several differences between 18 U.S.C. § 2332b (Acts of Terrorism Transcending National Boundaries) and any proposed criminal domestic terrorism statute that must be considered when evaluating their implications on civil liberties. For example, unlike 18 U.S.C § 2332b, which only applies to international terrorist groups, a potential domestic terrorist statute would apply to all individuals operating within the borders of the United States.⁵⁸ Additionally, the application of the proposed domestic terrorism statute within the borders of the United States would have significant differences in application. This is because the Federal Bureau of Investigation’s enforcement mechanism would not

55. *Brandenburg*, 395 U.S. at 447.

56. *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958).

57. *Id.*

58. Domestic Terrorism Prevention Act of 2022, H.R. 350, 117th Cong. § 2 (2022).

be augmented by the Central Intelligence Agency's vast intelligence because of the prohibition of the CIA conducting counterintelligence on U.S. citizens within the United States.⁵⁹

Regarding its applicability to a criminal domestic terrorism statute, the First Amendment prohibits the government from interfering with an individual's right to express their political beliefs, provided those beliefs do not incite violence or criminal activity. There are several categories of speech that the First Amendment does not protect, such as lewd, obscene, profane, libelous speech, and insulting speech or "fighting words"—those that, by their very utterance, inflict injury or tend to incite an immediate breach of the peace.⁶⁰ Yet, the Supreme Court has unabashedly held:

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.⁶¹

Thus, without contention, it is fundamental that the First Amendment protects not only the freedom of speech but also the freedom of association, assembly, and petition of the government for a redress of grievances.⁶²

B. Implications for the First Amendment

The proposed criminal domestic terrorism statute would have

59. Exec. Order No. 12333, 3 C.F.R. 200 (1981).

60. *See e.g.*, *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942).

61. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969).

62. U.S. CONST. amend. I.

implications for the First Amendment of the United States Constitution. The freedom of speech, assembly, and association are deeply rooted fundamental rights protected by the vanguard of the First Amendment.⁶³ Under the proposed statute, individuals who participate in or are associated with domestic terrorism could be subject to criminal prosecution; thus, these individuals would not be able to exercise their right to free speech or assembly without fear of retaliation from the government.⁶⁴

A new criminal domestic terrorism statute could also affect organizations that support or sympathize with groups or individuals labeled as domestic terrorists. Such organizations could be subject to criminal prosecution under this test if they are found to provide material support or resources to such groups or individuals. This would limit the ability of these organizations to express their beliefs freely and associate with other individuals or groups without fear of retaliation from the government. The creation of a domestic terrorism statute could potentially violate the First Amendment rights of individuals and groups and could have a chilling effect on free speech and association.⁶⁵ The Court held in *New York Times Co. v. United States* that there is a high bar for the government to meet to justify prior restraint on speech.⁶⁶

Next, it is crucial to recognize that the proposed statute has implications for civil liberties beyond just those related to freedom of speech, assembly, and association. For example, it could affect law enforcement practices related to surveillance and investigations into domestic terrorist activities.⁶⁷ For a successful prosecution, law enforcement agencies would need access to information about individuals and groups involved in domestic terrorism activities—a process that could potentially infringe upon civil liberties such as privacy rights.⁶⁸ For example, if protesters engage in civil disobedience or nonviolent

63. *Id.*

64. See Letter from ACLU, Nat'l Pol'y Advoc. Dep't., to Rep. Jerrold Nadler, Chairman, U.S. House Judiciary Committee, (Sept. 3, 2019), https://www.aclu.org/sites/default/files/field_document/2019-09-03_aclu_oppose_h.r._4192_confronting_the_threat_of_domestic_terrorism_act.pdf.

65. *Id.*

66. See *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971).

67. *Fact Sheet: National Strategy for Countering Domestic Terrorism*, WHITE HOUSE, (June 15, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/15/fact-sheet-national-strategy-for-countering-domestic-terrorism/>.

68. Brian Michael Jenkins, *Five Reasons to Be Wary of a New Domestic Terrorism Law*, RAND BLOG (Feb. 24, 2021), <https://www.rand.org/blog/2021/02/five-reasons-to-be-wary-of-a-new-domestic-terrorism.html>.

resistance, they could be labeled as domestic terrorists and subject to criminal penalties.⁶⁹ This could significantly impact the ability of individuals and groups to engage in political activism and dissent. Trust between law enforcement and the communities they serve could be destroyed and cause the investigation of devastating terrorist attacks to be more difficult in those communities. The impact of technology on the proposed domestic terrorism statute is also a concern. The use of social media and other online platforms by domestic terrorists has raised questions about how law enforcement can effectively monitor and investigate these activities without infringing on individuals' First Amendment rights.⁷⁰

Furthermore, the use of a domestic terrorism statute to criminalize political dissent or activism could have a disproportionate impact on marginalized communities.⁷¹ Historically, marginalized communities have been targeted by law enforcement agencies for engaging in political activism and dissent.⁷² The use of a domestic terrorism statute could exacerbate this problem and could lead to further discrimination and violations of civil liberties. The term "terrorism" is often politically charged and could be used to justify government overreach and violations of the Due Process Clause.⁷³

Using technology to monitor and identify potential domestic terrorists could lead to overbroad surveillance and a chilling effect on protected speech.⁷⁴ The statute's language must be carefully crafted to avoid

69. Letter from ACLU, Nat'l Pol'y Advoc. Dep't., to Rep. Jerrold Nadler, Chairman, U.S. House Judiciary Committee, (Sept. 3, 2019), https://www.aclu.org/sites/default/files/field_document/2019-09-03_aclu_oppose_h.r._4192_confronting_the_threat_of_domestic_terrorism_act.pdf.

70. Marc Jonathan Blitz, *The Dangers of Fighting Terrorism with Techno-communitarianism: Constitutional Protections of Free Expression, Exploration, and Unmonitored Activity in Urban Spaces*, 32 FORDHAM URB. L. J. 677, 680 (2005).

71. Letter from ACLU, Nat'l Pol'y Advoc. Dep't., to Rep. Jerrold Nadler, Chairman, U.S. House Judiciary Committee, (Sept. 3, 2019), https://www.aclu.org/sites/default/files/field_document/2019-09-03_aclu_oppose_h.r._4192_confronting_the_threat_of_domestic_terrorism_act.pdf.

72. Compare *United States v. O'Brien*, 391 U.S. 367, 376 (1968) with *Tinker*, 393 U.S. at 513.

73. Hannah Allam, *How to fight domestic terrorism? First, officials have to define it*, WASH. POST (Dec. 28, 2022, 6:00 a.m.), <https://www.washingtonpost.com/national-security/2022/12/28/domestic-extremism-definition-fb-dhs/>.

74. See generally *United States v. Jones*, 565 U.S. 400, 401 (2012) (holding the warrantless use of a GPS tracking device constituted a search under the Fourth Amendment and was therefore unconstitutional).

infringing on First Amendment rights, such as freedom of speech, association, and assembly. Additionally, using social media platforms to spread extremist ideologies and recruit members raises questions about the responsibility of these platforms to monitor and remove such content while respecting users' free speech rights.⁷⁵ Balancing the need for national security with the protection of civil liberties and free speech will be a crucial consideration in developing and implementing any domestic terrorism statute.

As discussed above, the proposed statute would limit the First Amendment rights of individuals who participate in or—even more dangerously—are tangentially associated with individuals involved in acts that could be classified as domestic terrorism. This could have far-reaching implications for the right to freedom of speech, assembly, and association.

C. Differences Between the International Terrorism Statute and the Proposed Domestic Terrorism Statute

The proposed criminal domestic terrorism statute is distinct from the current criminal international terrorism statute in several important ways. For one, the proposed statute focuses on acts of domestic terrorism, while the current statute focuses on acts of international terrorism.⁷⁶ This difference is significant because the proposed statute would apply to acts of domestic terrorism not covered by the existing statute, such as those committed by domestic groups and individuals.⁷⁷ One of the chief functions of the federal government is to enact policies and laws and to take action that furthers national security—including all forms of terrorism. However, any law restricting fundamental rights must be narrowly tailored to serve the intended interest of the government action⁷⁸; in the domestic terrorism context, it must be crafted to protect national security. As described in *Schenck v. United States*, “The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”⁷⁹ The

75. VICTORIA L. KILLION, CONG. RSCH. SERV., R45713, *TERRORISM, VIOLENT EXTREMISM, AND THE INTERNET: FREE SPEECH CONSIDERATIONS* (2019).

76. Mary McCord, *Filling the Gap in our Terrorism Statutes*, GW PROGRAM ON EXTREMISM, Aug. 2019.

77. Domestic Terrorism Prevention Act of 2022, H.R. 350, 117th Cong. § 2 (2022).

78. *Austin*, 494 U.S. at 666.

79. *Schenck v. United States*, 249 U.S. 47, 52 (1919).

term “domestic terrorism” as currently used colloquially to describe various acts of violence is vague and overbroad, and it could be used to criminalize a wide range of activities that are not related to terrorism.⁸⁰

The proposed statute also has a different definition of a terrorist act than the international terrorism statute.⁸¹ Under the proposed statute, domestic terrorism is defined as any act that is “dangerous to human life” and is “intended to intimidate or coerce a civilian population, [or] influence the policy of a government by intimidation or coercion.”⁸² Contrastingly, under the current international terrorism statute, a terrorist act is defined as:

(1) Offenses. Whoever, involving conduct transcending national boundaries and in a circumstance described in subsection (b)—

(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any person within the United States; or

(B) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States or by attempting or conspiring to destroy or damage any structure, conveyance, or other real or personal property within the United States; in violation of the laws of any State, or the United States. . . .

(5) the term “Federal crime of terrorism” means an offense that—

(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and

(B) is a violation of . . .⁸³

80. Letter from ACLU, Nat’l Pol’y Advoc. Dep’t., to Rep. Jerrold Nadler, Chairman, U.S. House Judiciary Committee, (Sept. 3, 2019), https://www.aclu.org/sites/default/files/field_document/2019-09-03_aclu_oppose_h.r._4192_confronting_the_threat_of_domestic_terrorism_act.pdf.

81. Domestic Terrorism Prevention Act of 2022, H.R. 350, 117th Cong. § 2 (2022).

82. *Id.*; see also 18 U.S.C. § 2331; see also AMY C. COLLINS, *The Need for a Specific Law Against Domestic Terrorism*, GW PROGRAM ON EXTREMISM, Sept. 2020.

83. 18 U.S.C. § 2332b(a)(1), (g)(5)(A)-(B) (omitted a list following section (B) of the

Additionally, the current statute provides predicate offenses that meet the requirements of an act that would make a suspect liable to a criminal charge of international terrorism.⁸⁴ This statute has been used to prosecute individuals involved in international terrorist activities, such as the 1993 World Trade Center bombing and the 1998 United States Embassy bombings in Kenya and Tanzania.⁸⁵ It has also been used to prosecute individuals who provide material support to foreign terrorist organizations.⁸⁶

The proposed statute also differs from the current statute in scope. This difference is significant because it would mean that acts of domestic terrorism could be prosecuted under the proposed statute even if they did not meet the definitions of international terrorism.⁸⁷ This proposed statute would allow for the prosecution of individuals involved in domestic terrorist activities, such as the 1995 Oklahoma City bombing and the 2017 Charlottesville rally. The proposed criminal domestic terrorism statute would also allow for the prosecution of individuals who provide material support to domestic terrorist organizations, similar to those who provide aid to international terrorist organizations.

D. The Constitutional Implications of the Proposed Statute

The proposed criminal domestic terrorism statute raises important questions regarding its implications for the rights afforded to citizens under the United States Constitution. While the proposed statute is promoted as being necessary to address the threat of domestic terrorism, it must be crafted in a way that does not infringe upon the rights of individuals to express their political beliefs or associate with others for the purpose of expressing these beliefs. In order to avoid any constitutional issues, it is vital to consider existing case law and how it may be affected by the proposed statute.

The implication of government restriction of speech has been

violations that subject a criminal suspect to liability for the criminal statute of international terrorism).

84. *Id.*

85. Andrea Mitchell & Haley Talbot, *Two far-away bombings 20 years ago set off the modern era of terror*, NBC NEWS (Aug. 7, 2018, 7:26 a.m.), <https://www.nbcnews.com/news/world/two-far-away-bombings-20-years-ago-set-modern-era-n898196>.

86. *See e.g.*, Holder v. Humanitarian Law Project, 561 U.S. 1 (2010).

87. Domestic Terrorism Prevention Act of 2022, H.R. 350, 117th Cong. § 2 (2022).

contemplated since the founding; a quote often attributed to Benjamin Franklin aptly declared, “Freedom of speech is a principal pillar of a free government; when this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins.”⁸⁸ Thus, any criminal domestic terrorism statute must narrowly define what constitutes an act of terrorism so as not to inadvertently infringe upon an individual’s right to free expression. Notably, who determines what constitutes a “crime” and what would sweep up otherwise constitutionally protected conduct is a glaring point of contention between supporters of enacting a new criminal domestic terrorism statute and detractors. These detractors are concerned with the weaponization of government in order to label the dissent of government as a crime punishable by up to death.⁸⁹

Second, the proposed statute would likely interfere with individuals’ rights to freedom of association and assembly—both protected by the Constitution.⁹⁰ Often individuals who engage in acts associated with domestic terrorism are merely exercising their right to associate and congregate with others who share similar beliefs, agendas, or possibly even just passive associations. Therefore, any statutory provisions outlining what constitutes domestic terrorism must not interfere with this fundamental right by targeting individuals based on their political affiliation or beliefs.⁹¹ In addition, the creation of a domestic terrorism statute could have a significant impact on the ability of individuals and groups to engage in charitable and humanitarian activities.⁹² For example, individuals and groups providing aid to refugees or other vulnerable populations could be labeled domestic terrorists and subject to criminal penalties.⁹³ This could have a chilling effect on charitable and humanitarian activities and prevent individuals and groups from providing vital assistance to those in need.⁹⁴ There are also political and social implications which come with the use of the word “terrorism.” The use of

88. Anonymous Writer, *On Freedom of Speech and the Press*, PA. GAZETTE, NOV. 1737, reprinted in, THE WORKS OF BENJAMIN FRANKLIN, VOL. II, 285, PHILADELPHIA, HILLIARD, GRAY & CO. (1840) (attributed to Benjamin Franklin).

89. 18 U.S.C. § 2332b(c)(1)(A) (“for a killing, or if death results to any person from any other conduct prohibited by this section, by death, or by imprisonment for any term of years or for life”).

90. See *Patterson*, 357 U.S. at 460.

91. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

92. See *Humanitarian Law Project*, 561 U.S. at 31-32.

93. *Id.*

94. *Id.*

this term could be used to stigmatize certain groups or individuals based on their race, religion, or political beliefs.⁹⁵ This could violate the Equal Protection Clause of the Fourteenth Amendment, which prohibits discrimination based on these factors.⁹⁶

The creation of a domestic terrorism statute could also have a negative impact on international human rights law, as it could be used to justify human rights abuses and violations of Due Process. For example, a law enforcement agency targeting individuals or groups based on their religion or political beliefs could be discriminatory and unconstitutional. The United Nations has expressed concern about using the term “terrorism” to justify human rights abuses and violations of Due Process and has called on governments to ensure that any measures taken to combat terrorism are consistent with international human rights law.⁹⁷

The government already has a wide range of criminal laws to address violent acts committed by individuals or groups, including murder, assault, and conspiracy.⁹⁸ Creating a new domestic terrorism statute would be redundant and unnecessary.⁹⁹ Some legal scholars argue that the use of the term “terrorism” is more about politics than law enforcement and that it is often used to justify government overreach and violations of civil liberties.¹⁰⁰ By creating a domestic terrorism statute, the government could send a message that it is willing to sacrifice fundamental rights in the name of national security.¹⁰¹

Furthermore, the proposed statute could implicate the Fourth Amendment right against unreasonable searches and seizures if it authorizes government agents to surveil individuals for potential involvement in domestic terrorism activities without reasonable suspicion or probable cause.¹⁰² This could potentially lead to violating citizens’ privacy rights and create potential opportunities for abuse by law

95. *Latif v. Holder*, 686 F.3d 1122, 1126 (9th Cir. 2012).

96. U.S. CONST. amend. XIV.

97. Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, U.N. Doc. A/HRC/22/52 (Apr. 17, 2013).

98. See Francesca Laguardia, *Considering a Domestic Terrorism Statute and Its Alternatives*, 114 *Nw. L. Rev.* 212, 214-15 (2020).

99. *Id.*

100. DAVID COLE & JULES LOBEL, *LESS SAFE, LESS FREE: WHY AMERICA IS LOSING THE WAR ON TERROR* 17, 207, 252 (2007).

101. *Id.*

102. U.S. CONST. amend. IV.

enforcement personnel.¹⁰³ Thus, any potential statute must consider these critical constitutional protections to ensure citizens are not subjected to unjustified surveillance or intrusions into their privacy.¹⁰⁴

The proposed domestic terrorism statute would also impact the current state of the law. Several cases have addressed attempts by government entities to suppress certain forms of political expression. In *NAACP v. Claiborne Hardware Co.*, civil rights opponents sought an injunction against the NAACP, which had organized a boycott against white-owned businesses in Mississippi by conducting peaceful protests, picketing, and boycotts.¹⁰⁵ The Supreme Court held that while peaceful protests, picketing, and boycotts are protected under the First Amendment,¹⁰⁶ those who engage in violent activity are not entitled to similar protections and can be punished by the government for their actions.¹⁰⁷

The proposed statute would also affect the right to freedom of association. In *NAACP v. Alabama*, the Supreme Court held that the First Amendment protects the right of individuals to associate with other individuals for the purpose of expressing their beliefs.¹⁰⁸ Under the proposed statute, the government could criminalize associations if they had the purpose of committing acts of domestic terrorism. This would limit the ability of individuals to associate with each other to express their political beliefs. Furthermore, this could bring liability simply for personal relationships and associations with others who, unbeknownst to the unwitting party, may be engaged in acts amounting to domestic terrorism.

In *Brandenburg v. Ohio*, the Supreme Court held that the government may not criminalize speech that advocates lawless action unless the speech is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”¹⁰⁹ This is colloquially known as the *Brandenburg* test. Under the proposed statute, individuals who advocate for acts of domestic terrorism are likely to occur could be subject to criminal prosecution under this test.

Furthermore, in *Nwanguma v. Trump*, at a campaign rally in Louisville in March of 2016, President Donald Trump reacted to disruptive protesters

103. See *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

104. *Katz v. United States*, 389 U.S. 347, 351 (1967).

105. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 903-04 (1982).

106. *Id.* at 913.

107. *Id.* 916.

108. *Patterson*, 357 U.S. at 462.

109. *Brandenburg*, 395 U.S. at 447.

by stating, “get ‘em out of here.”¹¹⁰ Subsequently, the protesters were assaulted and removed from the venue.¹¹¹ Under the proposed statute, the protestors could be held liable due to their dissenting at the political rally of another and attempting to influence government action. President Trump could also be liable for inciting violent action of an opposing political party within the jurisdictional authority of the United States. Naturally, this creates significant First Amendment concerns—even speech in bad taste is protected.¹¹²

These cases illustrate how existing case law could impact how courts interpret laws related to domestic terrorism under the First Amendment’s protection of freedom of speech,¹¹³ association laws,¹¹⁴ and true threats.¹¹⁵ As such, any legislation related to domestic terrorism must take into account these precedents when crafting language around what activities constitute illegal acts, and which activities are protected under the United States Constitution.

The proposed criminal domestic terrorism statute raises important questions regarding its implications for the First Amendment of the United States Constitution—and the United States Constitution writ large.¹¹⁶ While the proposed statute may be a possible remedy to address the threat of domestic terrorism, it must be crafted in a way that does not infringe upon the rights of individuals to express their political beliefs or associate with others to express their beliefs. The proposed statute must also be carefully crafted to ensure that it does not interfere with existing case law or unconstitutionally limit the First Amendment rights of individuals.¹¹⁷

IV. Conclusion

It is essential to recognize that the threat of domestic terrorism is a

110. *Nwanguma v. Trump*, 903 F.3d 604, 608-11 (6th Cir. 2018).

111. *Id.*

112. *Cohen v. California*, 403 U.S. 15, 25 (1971).

113. *See id.*; *see also Texas v. Johnson*, 491 U.S. 397 (1989); *see also Reno v. ACLU*, 521 U.S. 844 (1997).

114. *See Claiborne Hardware Co.*, 458 U.S. at 913; *see also Patterson*, 357 U.S. at 462.

115. *See Brandenburg*, 395 U.S. at 447; *see also Nwanguma*, 903 F.3d at 609-13.

116. Francesca Laguardia, *Considering a Domestic Terrorism Statute and Its Alternatives*, 114 *Nw. L. Rev.* 212, 214-15 (2020).

117. Letter from ACLU, Nat’l Pol’y Advoc. Dep’t., to Rep. Jerrold Nadler, Chairman, U.S. House Judiciary Committee, (Sept. 3, 2019), https://www.aclu.org/sites/default/files/field_document/2019-09-03_aclu_oppose_h.r._4192_confronting_the_threat_of_domestic_terrorism_act.pdf.

serious issue that requires a comprehensive and nuanced approach.¹¹⁸ While creating a domestic terrorism statute may be one tool in the fight against domestic terrorism, it is not a panacea. While there are certainly valid concerns about the threat of domestic terrorism and the need for law enforcement to have the tools necessary to prevent and investigate such acts, there are also significant concerns about the potential negative consequences of creating a new domestic terrorism statute. Policymakers must also consider other strategies, such as improving intelligence gathering and information sharing, addressing the root causes of domestic terrorism, and improving relationships between law enforcement agencies and the communities they serve.¹¹⁹ Any criminal domestic terrorism statute must be implemented with proper oversight from Congress and the judicial branch. Congress should pass legislation that provides for appropriate oversight mechanisms to ensure that no individual's constitutional rights—including First Amendment rights—are violated in enforcing this statute.

One of the main concerns about creating a domestic terrorism statute is the potential for it to be used to target individuals or groups based on their race, religion, or political beliefs.¹²⁰ The targeting of individuals based on these factors may very well violate the Equal Protection Clause of the Fourteenth Amendment, which prohibits discrimination based on these factors.¹²¹ Additionally, the lack of consensus on the definition of the term “terrorism” could make it challenging to create a domestic terrorism statute that is narrowly tailored to serve a compelling government interest.¹²²

Creating a domestic terrorism statute could also harm the relationship between law enforcement agencies and the communities they serve. If particular communities are disproportionately targeted under a domestic

118. See PETER G. BERRIS ET AL. CONG. RSCH. SERV., R46829, DOMESTIC TERRORISM: OVERVIEW OF FEDERAL CRIMINAL LAW AND CONSTITUTIONAL ISSUES (2021).

119. *National Strategy for Countering Domestic Terrorism*, NAT'L. SEC. COUNS., June 2021.

120. Letter from ACLU, Nat'l Pol'y Advoc. Dep't., to Rep. Jerrold Nadler, Chairman, U.S. House Judiciary Committee, (Sept. 3, 2019), https://www.aclu.org/sites/default/files/field_document/2019-09-03_aclu_oppose_h.r._4192_confronting_the_threat_of_domestic_terrorism_act.pdf.

121. PETER G. BERRIS ET AL. CONG. RSCH. SERV., R46829, DOMESTIC TERRORISM: OVERVIEW OF FEDERAL CRIMINAL LAW AND CONSTITUTIONAL ISSUES (2021).

122. Hannah Allam, *How to fight domestic terrorism? First, officials have to define it*, WASH. POST (Dec. 28, 2022, 6:00 a.m.), <https://www.washingtonpost.com/national-security/2022/12/28/domestic-extremism-definition-fb-dhs/>.

terrorism statute, this could erode the trust and cooperation between law enforcement and those communities. This could make it more difficult for law enforcement to prevent and investigate actual acts of terrorism, as they may not have the support and cooperation of the communities affected by terrorism. Further, the creation of a domestic terrorism statute could hurt the criminal justice system, as it could lead to an increase in the use of pretrial detention and harsher sentencing for individuals accused of domestic terrorism. Notably, existing criminal statutes address the conduct that the proposed domestic terrorism statute is intended to address, such as murder, assault, and conspiracy.¹²³ A new domestic terrorism statute would simply duplicate the current criminal statutes. The word “terrorism” has been used to describe such a wide and varying range of conduct that the term has lost much of its effect in the mind of citizens and, unfortunately, has been politicized to describe actions that are not terrorism.

Given these concerns, it is important to carefully consider the potential consequences of creating a domestic terrorism statute. It should also be designed to protect civil liberties and human rights and not negatively impact the relationship between law enforcement agencies and the communities they serve. Alternatively, it is also essential to consider the potential benefits of creating a domestic terrorism statute. One of the benefits of enacting a domestic terrorism statute is that it would help fill the gaps currently existing in the country’s criminal justice system.¹²⁴ Existing laws that address domestic terrorism are geared towards prosecuting individual terrorists rather than whole organizations.

A domestic terrorism statute would provide a legal framework to target extremist organizations and allow law enforcement agencies to root out these groups successfully.¹²⁵ Additionally, the statute could provide law enforcement agencies with more resources, including increased funding for surveillance technologies such as social media monitoring, which could help detect and prevent terrorist attacks before they occur.¹²⁶ A statute would also promote better interagency coordination among various law enforcement bodies, leading to more effective responses to

123. See Francesca Laguardia, *Considering a Domestic Terrorism Statute and Its Alternatives*, 114 NW. L. REV. 212, 214-15 (2020).

124. Mary McCord, *Filling the Gap in our Terrorism Statutes*, GW PROGRAM ON EXTREMISM, Aug. 2019.

125. *See id.*

126. *National Strategy for Countering Domestic Terrorism*, NAT’L. SEC. COUNS., June 2021.

terrorism threats.¹²⁷ The enactment of a criminal domestic terrorism statute could also send a strong message that the United States takes the threat of domestic terrorism seriously and is committed to protecting the safety and security of all Americans.¹²⁸ A domestic terrorism statute would show the country's determination to combat both international and domestic terrorism and lead to increased cooperation with other nations in addressing terrorism worldwide.¹²⁹ Moreover, the statute would enable the government to coordinate with international partners more effectively to combat terrorism, as it will provide a common legal framework for defining and prosecuting such crimes.¹³⁰

However, to address the threat of domestic terrorism, other steps could be taken in addition to—or instead of—creating a domestic terrorism statute. For example, law enforcement agencies could work to improve their relationships with the communities they serve and can focus on community policing strategies that prioritize trust and cooperation. Law enforcement agencies could improve their intelligence infrastructure and better share information with other stakeholders to foster collaborative efforts with other agencies and organizations to prevent acts of terrorism. The root causes of domestic terrorism need additional attention and action by policymakers and other stakeholders. It is important to recognize that the threat of domestic terrorism is not limited to any group or ideology. While certain groups may be statistically more likely to engage in acts of domestic terrorism, it is crucial to remain vigilant against all forms of extremism and violence. Considering a domestic terrorism statute demands a commitment to protecting the civil liberties and human rights of all individuals, regardless of their race, religion, or political beliefs.

In conclusion, the potential impact of a domestic terrorism statute on the constitutional rights—specifically the First Amendment rights—of individuals and groups must be carefully considered and crafted if enacted. Ultimately, the fight against domestic terrorism requires a collaborative and multi-faceted approach that involves law enforcement agencies, policymakers, community leaders, and individuals from all walks of life.

127. *Id.*

128. *See generally* Fact Sheet: National Strategy for Countering Domestic Terrorism, WHITE HOUSE, (June 15, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/15/fact-sheet-national-strategy-for-countering-domestic-terrorism/>.

129. *See generally* Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, U.N. Doc. A/HRC/22/52 (Apr. 17, 2013).

130. *See id.*

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By working together, the United States can address the root causes of domestic terrorism, prevent acts of violence, and protect the safety and security of all Americans.