

United States Senate

WASHINGTON, DC 20510

June 24, 2020

Dear Colleague:

Across the United States, protests continue to erupt after the killing of George Floyd. Despite their calls for racial justice, it might surprise some of these protestors to know that, had a recent piece of legislation been enacted into law, they could have been arrested and sentenced to ten years in prison for the crime of lynching.

I recently offered an amendment to the Emmett Till Antilynching Act (H.R. 35) designed to strengthen the bill. Not only would the amendment preserve the underlying bill's harsh sentence for the hateful crime of lynching, it would also ensure that minor altercations and lesser crimes are not categorized as a lynching punishable by up to a decade in prison. Unfortunately, recent events have validated this concern and demonstrated the necessity of my amendment.

On the nights of May 31 and June 22, protestors defaced St. John's Episcopal Church, located in Washington, D.C., across from the White House. While this crime is heinous and deserving of punishment, it is certainly not the legal equivalent of the brutal murder of Emmett Till. But the bill that bears his name would treat it as such.

As currently written, Section 3 of the Emmett Till Antilynching Act would establish a new federal crime called "lynching," which would penalize "[w]hoever conspires with another person to violate section 245, 247, or 249 of [title 18 of the U.S. Code] . . ."¹ Section 247 criminalizes damage to religious property. Specifically, an individual violates Section 247 when he "intentionally defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so."² Television and print news outlets widely reported that on June 22 "BHAZ" was spray painted on the columns of the church and that during the May 31 protest St. John's Church was burned and spray painted with the words "Matthew 19:24" and "God is still watching."³ These clearly religious messages suggest that the church was targeted for its religious character. All of the elements of the crime set forth in Section 247(a)(1) appear to have been met.

The existence of a conspiracy to deface St. John's Church appears certain. The essence of a conspiracy is an agreement between two or more persons to engage in some form of prohibited conduct.⁴ Without an overt act requirement, the conspiracy is complete upon agreement. Those

¹ H.R. 35, 116th Cong. § 3 (2020).

² 18 U.S.C. § 247(a)(1).

³ See e.g., Lauren Timmerman, *Washington's Historic St. John's Church Damaged by Rioters*, FOX BUS., (June 1, 2020), <https://www.foxbusiness.com/politics/st-johns-church-washington-dc-damage>; Rod Dreher, *They're Coming After Churches Next*, AM. CONSERVATIVE, (June 22, 2020, 8:54 PM), <https://www.theamericanconservative.com/dreher/shaun-king-churches-next-statues-andrew-jackson/>.

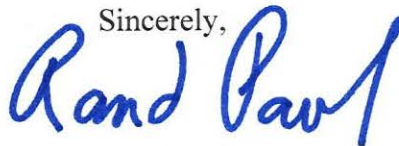
⁴ *United States v. Jimenez Recio*, 537 U.S. 270, 274 (2003) ("The Court has repeatedly said that the essence of a conspiracy is 'an agreement to commit an unlawful act.'"); see also *United States v. Flores*, 845 F.3d 687, 712 (2d

who procured the spray paint, carried the spray paint, spray-painted the Church, or otherwise agreed to deface St. John's Church could be considered to be involved in the conspiracy.

Thus, had the Emmett Till Antilynching Act been federal law, those who conspired to deface St. John's Church could be prosecuted for lynching and potentially lose their liberty for up to a decade.

Those who argue that the government will not prosecute such acts as a lynching are willfully blind to the flaws within our criminal justice system. If this bill is enacted without amendment, the jury trial will continue to erode, U.S. Attorneys will continue to brag about prosecution rates, and criminal justice reform will continue to elude us.

Americans are crying out for their country to live up to its own ideals. We cannot fight injustice by passing laws that will create more injustice by equating vandalism with lynching. That is why, as Congress considers police reform, I encourage my colleagues on both sides of the aisle to support my amendment to prevent this kind of unintended consequence while ensuring that lynching is criminalized at the federal level.

Sincerely,


Rand Paul, M.D.
United States Senator

Cir. 2019) ("The crux of a conspiracy is an agreement between two or more persons to join together to accomplish something illegal.").