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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff, vs. **SHAWNA COX, JAKE RYAN, et al.,** Defendants.	Case No.: 3:16-CR-00051-BR-26 **DEFENDANT'S MOTION TO DISMISS COUNT 1 AS OVERBROAD**

Certificate of Counsel

Undersigned counsel for Jake Ryan conferred in real time with AUSA Craig Gabriel about the issues raised in this motion. The government opposes the motion and the relief sought.

Motion

Defendants Jake Ryan and Shawna Cox, by and through counsel Jesse Merrithew and Tiffany Harris, and on behalf of all other defendants, respectfully moves this Court for an order

dismissing count one of the indictment because the criminal statute on which it is based is overbroad in violation of the Fifth and First Amendments to the U.S. Constitution.

This motion challenges 18 U.S.C. § 372—a conspiracy statute—as substantially overbroad because it targets speech and criminalizes statements entitled to protection under the First Amendment. The related doctrine of vagueness is addressed in a companion motion, filed by counsel for co-defendants O'Shaughnessy and Ryan.

Memorandum of Law

All defendants are charged with violating 18 U.S.C. § 372 by conspiring to interfere with federal officers in the performance of their official duties. That statute is unconstitutional because it seeks to criminalize speech and assembly without any limitation consistent with the First Amendment. In this case, the conflict between the statute and the First Amendment is particularly glaring because the statute is aimed at people directing grievances at public servants, thereby threatening one of the core values of the First Amendment. *See Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966) ("Criticism of government is at the very center of the constitutionally protected area of free discussion.")

I. Overbreadth Challenges Generally

The First Amendment to the United States Constitution provides:

> 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.

Defendants may challenge a statute as overbroad in violation of the First Amendment "not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Broadrick v. Oklahoma*, 413 U.S. 601,

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612 (1973); *Arce v. Douglas*, 793 F.3d 968, 984 (9th Cir. 2015) (same). A statute is facially invalid under the overbreadth doctrine if it prohibits a substantial amount of freedoms protected by the First Amendment as compared to its plainly legitimate sweep. *United States v. Stevens*, 559 U.S. 460, 473 (2010).

To determine whether a statute is overbroad, a court first must identify the meaning of the statute. *United State v. Williams*, 553 U.S. 285, 293 (2008).

II. History of 18 U.S.C. § 372

The text of the statute provides:

> If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined under this title or imprisoned not more than six years, or both.

18 U.S.C. § 372.

To say that that § 372 was drafted and passed in a time of tension would be an enormous understatement. The bill was passed in July of 1861, three months into the Civil War, and after the secession of the Confederate States. Steven C. Neff, Justice in Blue and Gray: A Legal History of the Civil War 20 (Harvard Univ. Press 2010).[1] Seats vacated by southern senators and House members left the 37th Congress with large Republican majorities bent on preserving the Union. *Id*. This very same Congress would go on to pass the Habeas Corpus Suspension Act of

[1] Professor Neff explains in his book that the bill grew out of the philosophy that President Lincoln and the Radical Republicans in control of the 37th Congress shared—that the crisis in the Southern states was not a war, it was "a law-enforcement action … to enforce the *ordinary* law of the land against recalcitrant *individuals* in the Southern states." Neff, at 20 (emphasis in original).

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1863. The conspiracy statute was one of several wartime powers extended to the executive branch as part of the effort to put down the rebellion. *Id*.

Congress enacted 18 U.S.C. § 372 to give the federal government a tool to arrest and prosecute people in the South who resisted the power of the federal government. 56 Cong. Globe, 37th Cong., 1st Sess. 277 (1861) (quoting the statements of Senator Trumbull in support of the bill).[2] The bill provoked an official protest from the remaining Democrats and Whigs in the Senate. *Id*. at 276-77. Seeing the bill through the lens of the current war, they argued that the bill was an unprecedented and undue expansion of prosecutions for treason that would water down the constitutional requirements for bringing those cases—specifically, proof of an overt act by two witnesses. *Id*. They worried that the bill "would give, from the uncertainty of the offense charged, and the proof requisite to sustain it, the utmost latitude to prosecutions founded on personal enmity and political animosity and the suspicions as to intention which they inevitably engender." *Id*. at 277.

Senator Trumbull and the bill's proponents rejected critiques of the bill based on the law of treason because they rejected the premise that a legitimate war had been declared. In the majority Republican view, there was no "war," only a limited insurrection in the Southern States. Therefore, Trumbull argued, "the object of this bill is not under another name to punish traitors, but it is to punish persons who conspire together to commit offenses against the United States not analogous to treason." *Id*. He cited the cases of (1) a "land officer" in a territory being "driven off by the settlers who are opposed to any sale of the public lands taking place"; (2) a postmaster St. Joseph, Missouri, who was prevented from "performing the duties of his office" by "threats

[2] A copy of this legislative history is included as Appendix A for the convenience of the Court and parties.

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of violence and intimidation" by "a number of persons"; and (3) "Other instances have occurred where route agents upon some of the railroads have been deterred from performing their duties." *Id*. Senator Trumbull did not offer any details as to how the offending parties prevented the execution of official duties—whether, for example, through picketing, petitioning, and peaceful protest or by direct threats of violence. Again, integral to Senator Trumbull's reasoning was his claim that the United States was not, in fact, at war, and therefore prosecuting acts of resistance in the South (while vital to the military objectives of the Union) did not require the evidence or legal formalities of prosecuting treason. *Id*. (explaining that the acts of resistance in the South that he cites were not treason because treason "consists in levying war against the United States… .").

The concern raised by the Congressional minority is that, in lessening the standards for proving a crime analogous to treason, Congress blurred the line between treason and protected conduct under the First Amendment. That blurred line is dangerous because it invites criminal prosecutions "in times of high excitement" based on political beliefs. *Id*.[3]

III. Application

The statute proscribes a substantial amount of protected speech and is therefore overbroad in violation of the First Amendment. In particular, by punishing "two or more persons" who "conspire to prevent, by . . . threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties

[3] During Reconstruction, Congress enacted a civil analogue in an attempt to reign in the activities of the Ku Klux Klan. *See Stern v. United States Gypsum, Inc.*, 547 F.2d 1329 (7th Cir. 1977) (discussing the legislative history of the Civil Rights Acts of 1871 generally); *see also* 77-68 Memorandum Opinion for the Attorney General 276 (Dec. 14, 1977) (discussing the relationship between this act and the Civil Rights Acts).

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thereof," § 372 expressly punishes speech protected by the First Amendment. *See Watts v. United States,* 394 U.S. 705 (1969) (statute that punished "knowingly and willfully . . . (making) any threat to take the life of or to inflict bodily harm upon the President," expressly criminalized pure speech); *see also Chaffee v. Roger*, 311 F.Supp.2d 962, 970 (D. Nev. 2004) (noting that a Nevada statute "by not defining the terms 'threat' or 'intimidation'" to exclude constitutionally protected speech, "is likely both overbroad and vague… .").

The First Amendment protects threats that, given their context and the speaker's intent, are hyperbolic political statements. *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life Activists*, 290 F.3d 1058, 1072 (9th Cir. 2002) (*en banc*). It does not protect "true threats." *Id*. A true threat is "a statement which, in the entire context and under all the circumstances, a reasonable person would foresee would be interpreted by those to whom the statement is communicated as a serious expression of intent to inflict bodily harm upon that person." *Id*. at 1077. "It is not necessary that the defendant intend to, or be able to carry out his threat; the only intent requirement for a true threat is that the defendant intentionally or knowingly communicate the threat." *Id*. at 1075.

Section 372 makes no distinction between "true threats" and threatening language that is otherwise protected. Congress' intention to apply § 372 broadly, without regard for this critical distinction, is plain in the language of the statute. The statutory language contains no requirement that the actionable "threat" or "intimidation" evidence a serious expression of intent to inflict bodily harm. *See also, Virginia v. Black*, 538 U.S. 343, 364 (2003) (holding that a provision of Virginia law eliminating any mental state requirement in relationship to cross burning was unconstitutional). It also contains no requirement that the speaker intentionally or knowingly communicate the threat. The statute's wartime history and emergent circumstances

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may explain its lack of precision, but cannot justify its unlawful curtailment of protected speech. In 1861, hyperbolic political threats against federal officials made by those who sympathized with the Confederacy may have been enough to prevent a federal official from carrying out his duties. A statement that today would clearly be protected speech might have seemed more dangerous with the country headed into a bloody Civil War. For example, the sweeping text of § 372 would punish the Vietnam War protester's statement to a group in *Watts* that "They always holler at us to get an education. And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J." *Watts*, 394 U.S. at 706. The Supreme Court held that *Watts* threat was protected First Amendment speech and not a "true threat." *Id*. at 708. That statement, made to a group of fellow protestors who agreed with it, however, would violate § 372 because "two or more persons" would have "conspire[d] to prevent, by . . . threat" the President of the United States "from discharging any duties" of his office.

Conclusion

The protection of government employees from threats of violence for performing their jobs is a legitimate, legislative goal. However, that goal must be balanced with the rights of citizens to lodge grievances against government officials—often loudly and in large groups. The Supreme Court has clearly stated where that line between protected speech and unlawful speech must be drawn—with the "true threat". In order to suppress the secessionists, Congress aimed § 372 directly at thoughts, speech, and expression. It did not require any overt act or mental state with regard to the use of "force, threat, or intimidation." The intent was to give the executive branch the means to prosecute the inchoate crime in order to aid the federal government in its

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political goal of winning the Civil War. The statute came into existence as a political tool to suppress and criminally punish political speech disfavored by the federal government, and its broad sweep allows the government to use it in the same manner today. .

The 37th Congress, in attempting to retain federal control over states that were in open rebellion, failed to adequately balance the need to police true threats against the right of the people to speak and assemble under the First Amendment. In doing so, it passed a law that is facially unconstitutional. This Court should so hold and dismiss count one of the indictment.

DATED this 27th day of April, 2016

By: /s Jesse Merrithew
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/s Tiffany Harris
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GOVERNMENT CONTRACTS.

The first bill on the Calendar was the bill (S. No. 43) to prevent and punish fraud on the part of officers intrusted with the making of contracts for the Government, which the Senate proceeded to consider as in Committee of the Whole. It proposes to enact that it shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, immediately after the passage of this act, to cause and require every contract made by them, severally, on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof, a copy of which is to be filed by the officer making and signing the contract in the "Returns office" of the Department of the Interior (hereafter to be established for that purpose) as soon after the contract is made as possible, and within thirty days, together with all bids, offers, and proposals to him made by persons to obtain the same, as also a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and papers in relation to each contract are to be attached together by a ribbon and seal, and numbered in regular order numerically, according to the number of papers composing the whole return. It is to be the further duty of that officer, before making his return, to affix to the same his affidavit in the following form, sworn to before some magistrate having authority to administer oaths: "I do solemnly swear (or affirm) that the copy of contract hereto annexed is an exact copy of a contract made by me with ————; that I made the same fairly without any benefit or advantage to myself, or allowing any corruptly to the said ————, or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided." And any officer convicted of falsely and corruptly swearing to such affidavit, is to be subject to all the pains and penalties now by law inflicted for willful and corrupt perjury.

Any officer making contracts, and failing or neglecting to make returns of the same, unless from unavoidable accident and not within his control, is to be deemed, in every case of such failure or neglect, to be guilty of a misdemeanor, and, on conviction thereof, to be punished by a fine of not less than $100, nor more than $500, and be imprisoned for not more than six months, at the discretion of the court trying the same. It is to be the duty of the Secretary of the Interior to provide a fit and proper apartment in his Department, to be called the "Returns office," within which to file the returns thus to be required, and to appoint a clerk to attend to the same, who is to be entitled to an annual salary of $1,200, and whose duty will be to file all returns made to that office, so that the same may be of easy access, filing all returns made by the same officer in the same place, and numbering them as they are made in numerical order. He is also to provide and keep an index book, with the names of the contracting parties, and the number of each and every contract opposite to the names; and to submit the index book and returns to any person desiring to inspect the same; and he is also to furnish copies of the returns to any person paying for them at the rate of five cents for every one hundred words, to which copies certificates are to be appended in every case by the clerk making the same, attesting their correctness, and that it is a full and complete copy of the return; which return, so certified under the seal of the Department, is to be evidence in all prosecutions under this act. It is to be the duty of the Secretary of War, and of the Secretary of the Navy, and of the Secretary of the Interior, immediately after the passage of this act, to furnish each and every officer severally appointed by them with authority to make contracts on behalf of the Government, with a printed letter of instructions, setting forth the duties of such officer under this act, and also to furnish therewith forms, printed in blank, of contracts to be made, and the affidavit of returns required to be affixed thereto, so that all the instruments may be as nearly uniform as possible.

Mr. COWAN. I move that the bill be amended in the twentieth line of the fourth section, by striking out the word "its," and inserting the word "their." This is a mere verbal correction.

The amendment was agreed to.

Mr. COWAN. In the third line of the fifth section, after the word "Navy," I move to insert the words, "and of the Secretary of the Interior;" so that it will read:

That it shall be the duty of the Secretary of War and of the Secretary of the Navy and of the Secretary of the Interior, immediately after the passage of this act, &c.

The object is to make it include the Department of the Interior as well as the War and Navy Departments.

The amendment was agreed to.

The bill was reported to the Senate as amended; and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. COWAN. I ask, on the part of the Committee on the Judiciary, to whom was referred a bill (S. No. 22) for the protection of Government contracts, that the committee be now discharged from the further consideration of that bill, this being a substitute for it.

The motion was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. ETHERIDGE, its Clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on bill (S. No. 2) to increase the present military establishment of the United States.

The message further announced that the House insists upon its amendments to the bill of the Senate (No. 36) to provide for the construction of one or more armored ships and floating batteries, and for other purposes, disagreed to by the Senate, asks a conference on the disagreeing votes of the two Houses thereon, and had appointed Mr. CHARLES B. SEDGWICK of New York, Mr. ALEXANDER H. RICE of Massachusetts, and Mr. JAMES E. ENGLISH of Connecticut, managers at the same on the part of the House.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills and joint resolution; which thereupon received the signature of the President *pro tempore:*

A bill (H. R. No. 69) to indemnify the States for expenses incurred by them in defense of the United States;

A bill (H. R. No. 76) to provide for the payment of the police organized by the United States for the city of Baltimore, and to enable the Mint to furnish small gold coins, and to provide for the manufacture or purchase of field signals;

A joint resolution (S. No. 9) relative to the exhibition of the industry of all nations, to be holden in London in the year 1862; and

A bill (H. R. No. 25) making additional appropriations for the legislative, executive, and judicial expenses of the Government for the year ending the 30th of June, 1862, and appropriations of arrearages for the year ending 30th of June, 1861.

BILLS BECOME LAWS.

The message further announced that the President of the United States had approved and signed, on the 24th instant, the following bills and joint resolution:

A bill (H. R. No. 17) authorizing the Secretary of the Treasury to remit fines and penalties incurred in certain cases;

A bill (H. R. No. 23) for the relief of certain musicians and soldiers stationed at Fort Sumter, in South Carolina;

A bill (H. R. No. 26) making additional appropriations for sundry civil expenses of the Government for the year ending the 30th of June, 1862, and appropriations of arrearages for the year ending 30th of June, 1861;

A bill (H. R. No. 56) in relation to forwarding soldiers' letters;

A bill (H. R. No. 57) for the relief of the Ohio and other volunteers; and

A joint resolution (H. R. No. 1) authorizing the appointment of examiners to examine a steam floating battery at Hoboken, New Jersey.

APPROVAL OF PRESIDENTIAL ACTS.

The PRESIDENT *pro tempore.* The hour of one o'clock having arrived, the Chair calls up for consideration the special order of the day assigned for that hour, which is the joint resolution (S. No. 1) to approve and confirm certain acts of the President of the United States, for suppressing insurrection and rebellion. The pending question is on the passage of the resolution; and on that question the Senator from Tennessee [Mr. JOHNSON] is entitled to the floor.

Mr. JOHNSON, of Tennessee. Mr. President, when I obtained the floor some time since, and made a motion for the postponement of this resolution, I did not obtain it for the purpose of addressing the Senate. I rise now, however, for the purpose of stating, if it meets the approbation of the Senate, that if the resolution is laid over until to-morrow at one o'clock, I shall make an effort to present some remarks in favor of its passage. If the Senate is anxious to have action upon it at once, I have no objection to their taking a vote on it now; and what little I have to say, I can say on some other proposition. If it meets the approbation of the Senate for it to go over until one o'clock to-morrow, I will make an effort to give my views at that time on the resolution, and the present crisis of the country. Whatever meets the views of the Senate will meet mine.

Several SENATORS. We have no objection to its going over.

Mr. JOHNSON, of Tennessee. Then, Mr. President, if it meets the approbation of the Senate, I move that the resolution be passed over until one o'clock to-morrow, and, God willing, I shall try to give my views on the subject then.

The PRESIDENT *pro tempore.* The Senator from Tennessee moves to postpone the further consideration of the joint resolution until to-morrow at one o'clock, and that it be made the special order for that hour.

The motion was agreed to.

PUNISHMENT OF CONSPIRACIES.

The next bill on the Calendar was the bill (H. R. No. 45) to define and punish certain conspiracies; which the Senate proceeded to consider as in Committee of the Whole. It provides that if two or more persons within any State or Territory of the United States shall conspire together to overthrow, or to put down, or to destroy by force, the Government of the United States, or to levy war against the United States, or to oppose by force the authority of the Government of the United States; or by force to prevent, hinder, or delay the execution of any law of the United States; or by force to seize, take, or possess any property of the United States against the will, or contrary to the authority of the United States; or by force, or intimidation, or threat, to prevent any person from accepting or holding any office, or trust, or place of confidence, under the United States; each and every person so offending shall be guilty of a high crime, and upon conviction in any district or circuit court of the United States having jurisdiction, or district or supreme court of any Territory of the United States having jurisdiction, shall be punished by a fine not less than $500 and not more than $5,000; or by imprisonment, solitary or social, and with or without hard labor, as the court shall determine, for a period not less than six months nor greater than six years, or by both such fine and imprisonment.

The bill was reported to the Senate without amendment.

Mr. TRUMBULL. I desire to move a verbal amendment to the bill. I move to strike out, in the twenty-first line, the words "solitary or social, and;" so that it will read:

Or by imprisonment with or without hard labor, &c.

The PRESIDENT *pro tempore.* That modification will be made if there be no objection. The Chair hears none.

The bill was ordered to a third reading, read the third time, and passed.

Mr. POWELL. I desire to present a protest of certain Senators against the passage of that bill. I send it to the table, and ask that it may be read.

The PRESIDENT *pro tempore.* The Senator from Kentucky sends to the Secretary's desk the following paper; which will be read for information:

The Secretary proceeded to read it, as follows:

Protest of the minority of the Senate of the United States against the passage of the House bill No. 45, entitled "An act to define and punish certain conspirators."

The undersigned, members of the Senate, dissent from the passage of the bill on the following grounds:

Mr. SUMNER. I would ask whether such a paper is in order?

The PRESIDENT *pro tempore*. The question of order cannot be raised on any paper until it is read for the information of the Senate.

Mr. SUMNER. The paper, by its title, shows that——

The PRESIDENT *pro tempore*. The Chair decides it to be in order at present.

The Secretary continued the reading, as follows:

The Government of the United States is a Government of specially delegated powers; and though treason is one of the highest crimes known to the law, it is a political offense.

To guard against the abuses which in times of high excitement had, in the history of England previous to the revolution of 1688, too often sacrificed able, virtuous, and innocent men on charges of treason and kindred offenses, unaccompanied by acts, the Constitution of the United States expressly defines the crime of treason in the following terms:

ART. 3, SEC. 3. "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

It further provides that "no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

The intent to restrict Congress in the creation of crimes of the nature created by this bill seems obvious; for in treason all are principals, and in any conspiracy of the kind stated in the bill, an overt act in pursuance of it, proved by two witnesses, would be treason against the United States.

Thus the creation of an offense, resting in intention alone, without overt act, would render nugatory the provision last quoted, and the door would be opened for those similar oppressions and cruelties which, under the excitement of political struggles, have so often disgraced the past history of the world. The undersigned can conceive no possible object in defining the crime of treason by our ancestors, and requiring proof by two witnesses to the same overt act to justify the conviction of the accused, unless it be to restrict the power of Congress in the creation of a political crime kindred to treason, and charged as resting in intent alone, which would, if accompanied by an overt act, be treason.

It matters not that the punishment prescribed in the law is not death, but imprisonment; for the passage of the bill, though it might not affect the life of an innocent man, would give, from the uncertainty of the offense charged, and the proof requisite to sustain it, the utmost latitude to prosecutions founded on personal enmity and political animosity and the suspicions as to intention which they inevitably engender.

JAMES A. BAYARD,
L. W. POWELL,
J. D. BRIGHT,
W. SAULSBURY,
TRUSTEN POLK,
J. A. PEARCE,
A. KENNEDY,
JOHN C. BRECKINRIDGE,
WALDO P. JOHNSON.

Mr. TRUMBULL. I do not know what the practice of the Senate has been in regard to papers of this kind. I have no sort of objection to gentlemen who are opposed to this bill presenting their views in any shape which they may desire, so that it is not inconsistent with the ordinary rules and proceedings of the Senate. If they suppose they can make the people of the United States believe, or have persuaded themselves, that the Congress of the United States have no right to punish persons who conspire together for the purpose of seizing public property, because there is such a crime as treason, I certainly have no objection to their making that effort. Now, sir, I do not suppose it would constitute treason if half a dozen persons conspired together to seize an article of property belonging to the United States. That is not what I understand to be treason. That consists in levying war against the United States, or aiding and abetting its enemies in time of war. This bill provides punishment against persons who conspire together for the purpose of seizing any property of the United States, or who come together or purpose, by force, or intimidation, or threat, to prevent any person from accepting or holding an office under the Government of the United States. I do not suppose that constitutes treason. I do not suppose, if they carried it out, that you could indict them for the overt act of treason. Suppose a land officer in one of our Territories, where there is a great deal of excitement in regard to the entry of public land, is driven off by the settlers who are opposed to any sale of the public lands taking place; suppose a number of the settlers meet together, and, by threats and intimidation, deter the officer from performing his duty: I would like to know if the Senator from Kentucky who presents this protest would call that treason?

Not long ago, I think, a case occurred somewhere in the State of Missouri, where a number of persons, by threats of violence and intimidation, prevented a postmaster from performing the duties of his office. I think that those persons ought to be punished; but I do not suppose it was treason on their part; and for my life I cannot see the similitude between the offense here provided against and that of treason. The object of this bill is not under another name to punish traitors, but it is to punish persons who conspire together to commit offenses against the United States not analogous to treason. In the very case I have instanced, you could not punish those parties for treason when they had carried out their purpose. Take the very case that occurred at St. Joseph, in the State of Missouri, where a number of men got together and by threats and intimidation drove off the postmaster and would not let him discharge his duties; I should like to know if you could indict and convict those persons for treason. Other instances have occurred where route agents upon some of the railroads have been deterred from performing their duties.

That, however, is not the question before the Senate; and in fact I scarcely know what the question before the Senate is. I am not aware whether the Senator from Kentucky made any motion at all. We have already passed the bill, and the Senator from Kentucky has presented a paper, for the consideration of the Senate, I suppose, in some shape; but what his precise motion was, I am not advised.

Mr. POWELL. The motion is, that the protest be entered upon the Journal of the Senate.

Mr. TRUMBULL. I understand, then, the motion of the Senator from Kentucky to be, to enter upon the Journal of the Senate his reasons why he thinks this bill ought not to be passed. Is there any precedent for such a proceeding as that? Is it usual? Has it ever been done? If there is any precedent for it, I have no objection to it; but if it is an innovation, and the adoption of a new practice in the Senate of the United States, for members who are opposed to the passage of a bill, after it has passed, to come in with a written speech against its passage and place it upon the Journal, I am opposed to establishing that precedent now. As I am not aware of any precedent, or any authority for such a proceeding, I should like to be referred to one, if there is one.

Mr. POWELL. It is not my purpose to reply to the arguments of the Senator from Illinois. If the Senate were always to consider the matter contained in a paper presented in the shape of a protest, when the only question pending is as to whether the protest shall be entered on the Journal, I suppose no protest ever would be entered; because, of course, the majority do not concur in the opinions and reasons set forth by the minority. I believe that it has been usual to allow the minority in cases like this to have their protest entered on the Journal. I understand from Senators, who have long served in this body, that it has been done on more occasions than one; and in conformity with that custom, the minority in this case desire to have their protest against the passage of this bill entered on the Journal of the Senate. I hope it will be done.

The PRESIDENT *pro tempore*. The question is upon the motion of the Senator from Kentucky, that this protest be entered on the Journal of the Senate.

Mr. BRIGHT. I suggest that as the paper was prepared by the Senator from Delaware, [Mr. BAYARD,] who is not in his seat, there will be great propriety in allowing the question to rest until he comes in, if there is opposition to the motion that is made to enter it upon the Journal. I think he ought to be allowed to state the reasons for preparing the paper. Let the question lie over until he shall be in his seat.

Mr. COLLAMER. The words of the paper, I believe, are respectful enough; I do not see anything improper in them; and I shall not object to the delay which is asked being granted for the purpose of enabling the Senator from Delaware to furnish us a precedent for this proceeding, if he can. I have understood that in our country, where the right to call for the yeas and nays and enter them on the record is secured by the Constitution, the entering of a protest is not a matter of course at all, but has always been protested against. If, however, a precedent can be found, I shall submit to it; otherwise, I shall not.

Mr. BRIGHT. I recollect distinctly that protests have been offered since I have been a member of this body—two certainly. Whether they have been spread on the Journal, I do not know. However, I suggest that the matter lie over until the Senator from Delaware shall come in. That, I think, is due to him.

Mr. TRUMBULL. I hope that course will be taken, and let the precedents be looked into. If the request made in this case is usual in the Senate, I have no objection to its being granted.

Mr. POWELL. I have no objection to its lying over until to-morrow.

The PRESIDENT *pro tempore*. There being no objection to the course suggested, the paper presented by the Senator from Kentucky will lie over for further consideration until to-morrow.

ARMORED SHIPS.

The Senate proceeded to consider the amendments of the House of Representatives to the bill (S. No. 36) to provide for the construction of one or more armored ships and floating batteries, and for other purposes, disagreed to by the Senate and insisted on by the House; and,

On motion of Mr. HALE, it was

Resolved, That the Senate insist on its disagreement to the amendments of the House of Representatives to the said bill, insisted on by the House, and agree to the conference asked by the House on the disagreeing votes of the two Houses thereon.

On motion of Mr. HALE, the President *pro tempore* was authorized to appoint the committee on the part of the Senate; and Mr. HALE, Mr. GRIMES, and Mr. THOMSON, were appointed.

SUPPRESSION OF REBELLION.

The PRESIDENT *pro tempore*. The next bill in order on the Calendar is the bill (H. R. No. 20) to provide for the suppression of rebellion against, and resistance to, the laws of the United States, and to amend the act entitled "An act to provide for calling forth the militia to execute the laws of the Union," &c., passed February 28, 1795; which is before the Senate as in Committee of the Whole.

The bill provides that whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory of the United States, it shall be lawful for the President to call forth the militia of any or all the States of the Union, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion. Whenever, in the judgment of the President, it may be necessary to use the military force thus directed to be employed and called forth by him, he is forthwith, by proclamation, to command the insurgents to disperse and retire peaceably to their respective abodes within a limited time. The militia so called into the service of the United States are to be subject to the same rules and articles of war as the troops of the United States, and be continued in service until discharged by proclamation of the President; but such continuance in service is not to extend beyond sixty days after the commencement of the next regular session of Congress, unless Congress shall expressly provide by law therefor. Every officer, non-commissioned officer, or private of the militia, who shall fail to obey the orders of the President of the United States in the cases recited in the bill, is to forfeit a sum not exceeding one year's pay and not less than one month's pay, to be determined and adjudged by a court-martial; and such officer is to be liable to be cashiered by a sentence of court-martial, and to be incapacitated from holding a commission in the militia for a term not exceeding twelve months, at the discretion of the court; and such non-commissioned officer and private are to be liable to imprisonment, by a like sentence, on failure of payment of the fines adjudged against them, for one calendar month for every twenty-five dollars of the fine. Courts-martial for the trial of militia are to be composed of militia officers only.

The bill further provides that marshals of the several districts of the United States, and their deputies, shall have the same powers in executing the laws of the United States as sheriffs and their deputies in the several States have, by law, in executing the laws of their respective States. It also repeals sections two, three, and four, of the