

January 11, 2012

Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington DC 20530-0001

Dear Sir,

I wish to bring to your attention a matter of flagrant violation of the Constitution of the United States by officials of the United States Government. The specific issue I refer to is the refusal of the members of the Congress of the United States to call an Article V Convention as required by that document. I am including reference material with this letter for your convenience to which I will refer through this letter. I am requesting your office begin an immediate criminal investigation as to violation of oath of office by members of Congress in this regard.

The key point in this matter is contained in Article V of the Constitution which states [in part] "...on the application of two thirds of the legislatures of two thirds of the several states [Congress] shall call a convention for proposing amendments, which... shall be valid to all intents and purposes, as part of this Constitution...[when ratified as further described in Article V]." Scholars, historians and, more importantly, the Supreme Court, as well as statements made in open court by the Government itself all agree on a fundamental point: the call is peremptory meaning under no circumstances can Congress refuse to call the convention once the states have applied.

Simple reference to the United States Senate's own annotated reference is one of hundreds of references. This reference states, "The Constitution also authorizes a national convention, when two-thirds of the states petition Congress for such a convention...." In the federal lawsuit Walker v Members of Congress, the Solicitor General of the United States acknowledged that a convention call was "peremptory" and that a sufficient number of applications from the states have been submitted to cause Congress to call a convention. These facts, therefore, are irrefutable as they are all a matter of public record.

Equally, a matter of public record is the refusal of Congress to obey the Constitution. Their collective oaths of office are explicit. They shall have no "mental reservations" as to obedience to the Constitution, which, as I am sure you are aware, means they must obey the Constitution as written, without hesitation or evasion. Yet, the fact remains the members of Congress have not done so.

There is no question as to their criminal culpability in this matter. Congress has never even gathered the state applications into a single reference source so that tabulation of them can occur. When called upon by members of the public and more importantly in

two federal lawsuits, the members of Congress *unanimously* publicly opposed obeying the Constitution and calling an Article V Convention. This again, despite four separate unanimous Supreme Court decisions all decreeing Congress must call a convention if the states so apply.

Upon learning of the above facts, I made efforts to report the violation of oath of office to the appropriate law enforcement agencies. As the enclosed letters indicate, federal officials ignored my efforts and requests. The Senate Committee on Ethics refused to take any action; stating refusal to obey the Constitution was “within the prerogative of each member to determine.” A Ms. Donna Hayes of the House Committee on Ethics verbally informed me the committee was not interested in pursuing this matter. This, in spite of the fact the House Ethics Manual clearly specifies that all House members, “Uphold the Constitution... of the United States and ...never be a party to...[its] evasion.” As to the FBI, for the record, my name is John Guise, not FBI agent Steven E. Ibison. I believe this error alone demonstrates the level of seriousness and depth of investigation taken by FBI agent Sandra A. Bungo.

In other words, the individuals named in these letters or whom I have contacted made deliberate decisions. This includes formal decisions on the part of members of Congress. Please note the letter from the Senate refers to a decision by “the Committee.” All are federal officials sworn by oath of office to obey and support the Constitution of the United States. Instead, they their actions aided and abetted Congress in its violation of oath of office. No other conclusion is possible given the present evidence.

Simply put, members of the FBI do not have statutory authority to refuse to notify your office of a violation of federal law by federal officials let alone determine a decision of prosecution. Indeed, as noted below, federal law specifies that only you have that authority given the federal officials in this instance. The Constitution is “supreme law of the United States.” Therefore, federal law authorizes (indeed requires) the Senate Ethics Committee and the Department of Justice investigate and prosecute for violations of this law of the land as it is for any subservient law under the Constitution. A refusal on the part of the House not only violates federal law, the Constitution, but House ethics rules as well.

All these officials were presented with “evidence of improper conduct or violation of law.” I am aware of public law 28 U.S.C. 591 which demands grounds to investigate charges against members of Congress for violation of federal law, in this case violation of oath of office for refusal to obey the Constitution of the United States and call a convention as required by Article V of the Constitution. The key charge in this instance is in regards to the states' submission of applications. If evidence exists to prove the states have submitted sufficient applications to satisfy Article V of the Constitution, then the refusal on the part of Congress constitutes a violation of federal criminal law. The law mandates I provide to you a credible source proving the states have submitted sufficient applications to numerically satisfy the two-thirds requirement specified in Article V and acknowledged in the senate annotated copy of the Constitution. I refer you to the website, Friends of the Article V Convention (FOAVC) and their webpage at <http://www.article->

5.org/file.php/1/Amendments/index.htm in which over 700 applications from 49 states for an Article V Convention call have been collected by this organization. The collection consists entirely of photographic copies of the Congressional Record and earlier appropriate public records; in short, irrefutable public records demonstrating the states have satisfied Article V in that 34 states have submitted 34 applications to Congress for an Article V Convention call from an entirely credible source. In conjunction with the other written material I have provided you, I believe this more than satisfies the law as to grounds to commence an investigation.

The fact this nation has never held an Article V Convention does not excuse federal officials from their mandated duty prescribed not only in federal law but in the Constitution as well. The fact they have acted as they have, however, fully explains why we have never had a convention; deliberate and willful acts on the part of Congress to refuse to obey the Constitution.

Based on all of this information, I request, as previously noted, your office commence an immediate investigation into violation of oath of office by members of Congress with the aim of criminal prosecution against those members and to cause Congress to call a convention as mandated by the Constitution. As the matter is peremptory, it is not arguable it is the sole discretion of Congress. Therefore, no outside government agency may interfere in Congress' decision not to obey the Constitution. Indeed, the exact opposite is true. If the matter is peremptory then Congress has no option or discretion regarding the matter and by clear implication all parts of the government are empowered to cause it to obey the Constitution as it, the Congress, has no choice in this regard.

As a final point, I ask you to read the discussion by members of Congress following the submission of the first application for a convention submitted in 1789 by the state of Virginia. (General Annals of Congress 1 (J. Gales Ed.) Pg 257-61). In that discussion Congressman James Madison (who is credited with writing Article V at the 1787 convention) notes Congress has no right of vote, debate or even the authority of commitment to committee "as it would imply Congress had a right to decline." Clearly therefore the actions of the federal officials I have brought to your attention in this letter are therefore illegal and investigation is warranted.

Sincerely,

John C. Guise
15 Wakehurst Court
Sharpsburg, GA 30277

Enclosures are:

U. S. Senate: Reference

House Ethics Manual Reference

FBI Complaint

FBI Response

Senate Select Committee on Ethics Complaint

Senate Response

House Committee on Ethics Complaint

Statement of the Facts of Phone Conversation with Ms. Donna Hayes

**TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART II - DEPARTMENT OF JUSTICE
CHAPTER 40 - INDEPENDENT COUNSEL**

§ 591. Applicability of provisions of this chapter

(a) Preliminary Investigation With Respect to Certain Covered Persons.— The Attorney General shall conduct a preliminary investigation in accordance with section 592 whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(b) Persons to Whom Subsection (a) Applies.—The persons referred to in subsection (a) are—

- (1) the President and Vice President;
- (2) any individual serving in a position listed in section 5312 of title 5;
- (3) any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;
- (4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5;
- (5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;
- (6) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President; and
- (7) any individual who held an office or position described in paragraph (1), (2), (3), (4), or (5) for 1 year after leaving the office or position.

(c) Preliminary Investigation With Respect to Other Persons.—

(1) In general.— When the Attorney General determines that an investigation or prosecution of a person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(2) Members of congress.— When the Attorney General determines that it would be in the public interest, the Attorney General may conduct a preliminary investigation in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether a Member of Congress may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(d) Examination of Information to Determine Need for Preliminary Investigation.—

(1) Factors to be considered.— In determining under subsection (a) or (c) (or section 592 (c)(2)) whether grounds to investigate exist, the Attorney General shall consider only—

- (A) the specificity of the information received; and
- (B) the credibility of the source of the information.

(2) Time period for making determination.— The Attorney General shall determine whether grounds to investigate exist not later than 30 days after the information is first received. If within that 30-day period the Attorney General determines that the information is not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 30-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation

with respect to that information. If the Attorney General is unable to determine, within that 30-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 30-day period, commence a preliminary investigation with respect to that information.

(e) Recusal of Attorney General.—

(1) When recusal is required.—

(A) If information received under this chapter involves the Attorney General, the next most senior official in the Department of Justice who is not also recused shall perform the duties assigned under this chapter to the Attorney General.

(B) If information received under this chapter involves a person with whom the Attorney General has a personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior official in the Department of Justice who is not also recused to perform the duties assigned under this chapter to the Attorney General.

(2) Requirements for recusal determination.— Before personally making any other determination under this chapter with respect to information received under this chapter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to such information.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1867; amended Pub. L. 97–409, §§ 3, 4 (a), Jan. 3, 1983, 96 Stat. 2039, 2040; Pub. L. 98–473, title II, § 228(b), Oct. 12, 1984, 98 Stat. 2030; Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1293; Pub. L. 103–270, §§ 3(j), (k), 4, June 30, 1994, 108 Stat. 735, 736.)

Amendments

1994—Subsec. (b)(6) to (8). Pub. L. 103–270, § 4(b), redesignated par. (8) as (6) and substituted “; and” for the period at end, added par. (7), and struck out former pars. (6) and (7) which read as follows:

“(6) any individual who leaves any office or position described in any of paragraphs (1) through (5) of this subsection, during the incumbency of the President under whom such individual served in the office or position plus one year after such incumbency, but in no event longer than a period of three years after the individual leaves the office or position;

“(7) any individual who held an office or position described in any of paragraphs (1) through (5) of this subsection during the incumbency of one President and who continued to hold the office or position for not more than 90 days into the term of the next President, during the 1-year period after the individual leaves the office or position; and”.

Subsec. (c). Pub. L. 103–270, § 4(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Preliminary Investigation With Respect to Persons Not Listed in Subsection (b).—The Attorney General may conduct a preliminary investigation in accordance with section 592 if—

“(1) the Attorney General receives information sufficient to constitute grounds to investigate whether any person other than a person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction; and

“(2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.”

Subsec. (d)(2). Pub. L. 103–270, § 3(j), substituted “30” for “15” wherever appearing.

Subsec. (e). Pub. L. 103–270, § 3(k), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “(e) Recusal of Attorney General.—

“(1) When recusal is required.—If information received under this chapter involves the Attorney General or a person with whom the Attorney General has a current or recent personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior officer in the Department of Justice whom that information

does not involve and who does not have a current or recent personal or financial relationship with such person to perform the duties assigned under this chapter to the Attorney General with respect to that information.

“(2) Requirements for recusal determination.—The Attorney General shall, before personally making any other determination under this chapter with respect to information received under this chapter, determine under paragraph (1) whether to recuse himself or herself with respect to that information. A determination to recuse shall be in writing, shall identify the facts considered by the Attorney General, and shall set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to the information involved.”

1987—Pub. L. 100–191 amended section generally, substituting subsecs. (a) to (e) relating to applicability of chapter for former subsecs. (a) to (c) relating to similar subject.

1984—Subsec. (a). Pub. L. 98–473 substituted “Class B or C misdemeanor or an infraction” for “petty offense”.

1983—Subsec. (a). Pub. L. 97–409, § 4(a)(1), substituted “information sufficient to constitute grounds to investigate” for “specific information” after “the Attorney General receives”.

Subsec. (b)(3). Pub. L. 97–409, § 3, substituted “who is compensated at or above a rate equivalent to level II” for “and compensated at a rate not less than the annual rate of basic pay provided for level IV”.

Subsec. (b)(4), (5). Pub. L. 97–409, § 3, redesignated as par. (5) “the Director of Central Intelligence” and all that followed through end of par. (4). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 97–409, § 3, redesignated former par. (5) as (6) and substituted “through (5) of this subsection during the period consisting of the incumbency of the President such individual serves plus one year after such incumbency, but in no event longer than two years after the individual leaves office;” for “through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President; and”. Former par. (6) redesignated (8).

Subsec. (b)(7). Pub. L. 97–409, § 3, added par. (7).

Subsec. (b)(8). Pub. L. 97–409, § 3, redesignated former par. (6) as (8) and substituted “the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of the campaign exercising authority at the national level, such as the campaign manager or director, during the incumbency of the President” for “any officer of the principal national campaign committee seeking the election or reelection of the President”.

Subsec. (c). Pub. L. 97–409, § 4(a)(2), added subsec. (c).

Change of Name

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

Effective Date of 1994 Amendment; Transition Provisions

Section 7 of Pub. L. 103–270 provided that:

“(a) In General.—Except as provided in this section, the amendments made by this Act [amending this section and sections 592 to 596 and 599 of this title] shall apply with respect to independent counsels appointed before, on, or after the date of enactment of this Act [June 30, 1994].

“(b) Assignment of Employee To Certify Expenditures.—An independent counsel appointed prior to the date of enactment of this Act shall assign to an employee the duty of certifying expenditures, as required by section 594 (l) of title 28, United States Code, as added by section 3 (a), by the date that is 30 days after the date of enactment of this Act.

“(c) Office Space.—The Administrator of General Services, in applying section 594 (l)(3) of title 28, United States Code, as added by section 3 (a), to determine whether the office of an independent counsel appointed prior to the date of enactment of this Act should be moved to a Federal building, shall take into account the moving, legal, and other expenses that might arise if the office were moved.

“(d) Travel And Subsistence Expenses.—For purposes of the restrictions on reimbursement of travel and subsistence expenses of an independent counsel and employees of an office of independent counsel contained in paragraph (3) of section 594 (b) of title 28, United States Code, as amended by section 3 (b), as applied to the office of an independent

counsel appointed before the date of enactment of this Act, the 1-year service period shall begin on the date of enactment of this Act.

“(e) Rates of Compensation.—The limitation on rates of compensation of employees of an office of independent counsel contained in the last sentence of section 594 (c) of title 28, United States Code, as amended by section 3 (c), shall not be applied to cause a reduction in the rate of compensation of an employee appointed before the date of enactment of this Act.

“(f) Periodic Reappointment.—The determinations by the division of the court contained in the last sentence of section 596 (b)(2) of title 28, United States Code, as amended by section 3 (h), shall, for the office of an independent counsel appointed before the date of enactment of this Act, be required no later than 1 year after the date of enactment of this Act and at the end of each succeeding 1-year period.

“(g) Reporting Requirements.—No amendment made by this Act that establishes or modifies a requirement that any person submit a report to any other person with respect to an activity occurring during any time period shall be construed to require that a report submitted prior to the date of enactment of this Act, with respect to that time period be supplemented to include information with respect to such activity.

“(h) Regulatory Independent Counsel.—Notwithstanding the restriction in section 593 (b)(2) of title 28, United States Code, the division of the court described in section 49 of that title may appoint as an independent counsel any individual who, on the date of enactment of this Act, is serving as a regulatory independent counsel under parts 600 and 603 of title 28, Code of Federal Regulations. If such an individual is so appointed, such an independent counsel shall comply with chapter 40 of title 28, United States Code, as amended by this Act, in the same manner and to the same extent as an independent counsel appointed before the date of enactment of this Act is required to comply with that chapter, except that subsection (f) of this section shall not apply to such an independent counsel.

“(i) White House Personnel Report.—Section 6 [enacting provisions set out as a note under section 113 of Title 3, The President] shall take effect on January 1, 1995.”

Effective Date of 1987 Amendment

Section 6 of Pub. L. 100–191 provided that:

“(a) In General.—Subject to subsection (b), the amendments made by this Act [enacting section 599 of this title, amending this section, sections 49 and 592 to 598 of this title, sections 203 and 205 of Pub. L. 95–521 set out in the Appendix to Title 5, Government Organization and Employees, and section 202 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as a note under section 1 of this title, and amending provisions set out below] take effect on the date of the enactment of this Act [Dec. 15, 1987].

“(b) Pending Proceedings.—With respect to any proceeding under chapter 39 of title 28, United States Code (before the redesignation of such chapter as chapter 40 by section 144(g) of Public Law 99–554), or under chapter 40 of such title (after such redesignation), which is pending on the date of the enactment of this Act [Dec. 15, 1987], the following shall apply:

“(1) Except as provided in paragraphs (2) and (3), the provisions of chapter 40 of such title as in effect on the day before such date of enactment shall, in lieu of the amendments made by this Act, continue to apply on or after such date to such proceeding until such proceeding is terminated in accordance with such chapter.

“(2) The following provisions shall apply to such proceeding on or after such date of enactment:

“(A) Section 593 (f) of title 28, United States Code, as amended by section 2 of this Act, relating to the award of attorneys’ fees.

“(B) Section 594(d)(2) of such title, as added by section 2 of this Act, to the extent that such section 594 (d)(2) relates to reports by the Attorney General on expenditures by independent counsel, except that the first such report shall be made only with respect to expenditures on or after the date of the enactment of this Act.

“(C) Section 594(h)(1)(A) of such title, as added by section 2 of this Act, relating to reports by independent counsel, except that the 6-month periods described in such section 594 (h)(1)(A) shall be calculated from the date of the enactment of this Act.

“(D) Section 594(i) of such title, as added by section 2 of this Act, relating to the independence of the office of independent counsel for certain purposes.

“(E) Section 594(k) of such title, as added by section 2 of this Act, relating to custody of records of independent counsel.

“(F) Section 596(a)(3) of such title, as amended by section 2 of this Act, relating to judicial review of the removal of an independent counsel from office.

“(G) Section 596(c) of such title, as added by section 2 of this Act, relating to audits of expenditures of independent counsel.

“(H) The amendments made by section 3 of this Act [amending sections 203 and 205 of Pub. L. 95–521, set out in Appendix to Title 5, and section 202 of Title 18], relating to the status of independent counsel and their appointees as special government employees and to their financial disclosure requirements.

“(3) Section 594 (j) of title 28, United States Code, as added by section 2 of this Act, relating to certain standards of conduct shall, 90 days after the date of the enactment of this Act, apply to a pending proceeding described in this subsection.”

Effective Date of 1984 Amendment

Section 235(a)(1)(B)(ii)(IV) of Pub. L. 98–473 provided that the amendment made by Pub. L. 98–473 is effective Oct. 12, 1984.

Effective Date

Section 604 of Pub. L. 95–521 provided that: “Except as provided in this section, the amendments made by this title [enacting this chapter and sections 49, 528, and 529 of this title] shall take effect on the date of the enactment of this Act [Oct. 26, 1978]. The provisions of chapter 39 of title 28 of the United States Code, as added by section 601 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 591 of such title 28, if the Attorney General determines that—

“(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

“(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of the enactment of this Act; or

“(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act.”

Permanent Appropriation for Expenses of Independent Counsels

Pub. L. 100–202, § 101(a) [title II], Dec. 22, 1987, 101 Stat. 1329, 1329–9, as amended by Pub. L. 111–68, div. A, title I, § 1501(d), Oct. 1, 2009, 123 Stat. 2041, provided: “That a permanent indefinite appropriation is established within the Department of Justice to pay all necessary expenses of investigations and prosecutions by independent counsel appointed pursuant to the provisions of 28 U.S.C. 591 et seq. or other law”.

Contingency Fund for Independent Counsels

Section 601(c) of Pub. L. 95–521, as amended by Pub. L. 97–409, § 2(c)(2), Jan. 3, 1983, 96 Stat. 2039; Pub. L. 100–191, § 5(b), Dec. 15, 1987, 101 Stat. 1307, provided that: “There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any independent counsels appointed under chapter 40 (relating to independent counsels) of title 28 of the United States Code in the carrying out of functions under such chapter.”

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III - EMPLOYEES
Subpart B - Employment and Retention
CHAPTER 33 - EXAMINATION, SELECTION, AND PLACEMENT
SUBCHAPTER II - OATH OF OFFICE

§ 3331. Oath of office

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.” This section does not affect other oaths required by law.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

Historical and Revision Notes

Derivation	U.S. Code	Revised Statutes and Statutes at Large
5 U.S.C. 16. May 13, 1884, ch. 46, §§ 2, 3, 23 Stat. 22.		R.S. § 1757.

All but the quoted language in R.S. § 1757 is omitted as obsolete since R.S. § 1757 was originally an alternative oath to the oath prescribed in R.S. § 1756 which oath was repealed by the Act of May 13, 1884, ch. 46, § 2, 23 Stat. 22. The words “An individual, except the President, . . . in the civil service or uniformed services” are substituted for “any person . . . either in the civil, military, or naval service, except the President of the United States”. The second sentence of former section 16 is changed to read, “This section does not affect other oaths required by law.”

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III - EMPLOYEES
Subpart F - Labor-Management and Employee Relations
CHAPTER 73 - SUITABILITY, SECURITY, AND CONDUCT
SUBCHAPTER II - EMPLOYMENT LIMITATIONS

§ 7311. Loyalty and striking

An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

- (1) advocates the overthrow of our constitutional form of government;
- (2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;
- (3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or
- (4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 524.)

Historical and Revision Notes

Derivation	U.S. Code	Revised Statutes and Statutes at Large
5 U.S.C. 118p.		Aug. 9, 1955, ch. 690, § 1, 69 Stat. 624.
[Uncodified].		June 29, 1956, ch. 479, § 3, (as applicable to the Act of Aug. 9, 1955, ch. 690, § 1, 69 Stat. 624), 70 Stat. 453.

The word “position” is coextensive with and is substituted for “office or employment”.

In paragraphs (1) and (2), the words “in the United States” in former section 118p (1), (2) are omitted as unnecessary in view of the reference to “our constitutional form of government”.

In paragraphs (3) and (4), the reference to the “government of the District of Columbia” is added on authority of the Act of June 29, 1956, in order to make these paragraphs meaningful with respect to individuals employed by the government of the District of Columbia. The words “From and after July 1, 1956”, appearing in the Act of June 29, 1956, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Ex. Ord. No. 10450. Security Requirements for Government Employees

Ex. Ord. No. 10450, Apr. 27, 1953, 18 F.R. 2489, as amended by Ex. Ord. No. 10491, Oct. 15, 1953, 18 F.R. 6583; Ex. Ord. No. 10531, May 27, 1954, 19 F.R. 3069; Ex. Ord. No. 10548, Aug. 3, 1954, 19 F.R. 4871; Ex. Ord. No. 10550, Aug. 6, 1954, 19 F.R. 4981; Ex. Ord. No. 11605, July 2, 1971, 36 F.R. 12831; Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the

departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [sections 3301 and 7301 of this title]; the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632, et seq.) [section 1101 et seq. of this title]; section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j) [sections 3333 and 7311 of this title]; and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22-1, et seq.) [section 7501 et seq. of this title], and as President of the United States, and deeming such action necessary in the best interests of the national security it is hereby ordered as follows:

Section 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951 the provisions of that act shall apply to all other departments and agencies of the Government.

Sec. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

Sec. 3. (a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: Provided, that upon request of the head of the department or agency concerned, the Office of Personnel Management may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: Provided, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: And provided further, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field pre-appointment investigation has not been completed if the head of the department or agency concerned finds that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

Sec. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

Sec. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

Sec. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employees of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary the head of the department or agency concerned shall terminate the employment of such suspended officer in the interests of the national security, or employee whenever he shall determine such termination necessary or advisable in accordance with the said act of August 26, 1950.

Sec. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: Provided, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Office of Personnel Management that such person is eligible for such employment.

Sec. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:

(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications or omissions of material facts.

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction or sexual perversion.

(iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with any espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(5) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

(6) Intentional unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Office of Personnel Management, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Office. The Office shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Office of Personnel Management, and other departments and agencies may use such facilities under agreement with the Office.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the

matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

Sec. 9. (a) There shall be established and maintained in the Office of Personnel Management a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Office under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Office of Personnel Management information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

Sec. 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

Sec. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Office of Personnel Management on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: Provided, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Office of Personnel Management on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

Sec. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked.

Sec. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

Sec. 14. (a) The Office of Personnel Management, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of or directly or indirectly weaken, the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Office of Personnel Management shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.

(b) All departments and agencies of the Government are directed to cooperate with the Office of Personnel Management to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Office of Personnel Management in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this

order, advise the Office as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Office of Personnel Management is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.

Sec. 15. This order shall become effective thirty days after the date hereof.

Executive Order No. 11605

Ex. Ord. No. 11605. July 2, 1971, 36 F.R. 12831, which amended Ex. Ord. No. 10450, Apr. 27, 1953, 18 F.R. 2489, which related to security requirements for government employees, was revoked by Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053, set out below.

Ex. Ord. No. 11785. Security Requirements for Governmental Employees

Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States, including 5 U.S.C. 1101 et seq., 3301, 3571, 7301, 7313, 7501(c), 7512, 7532, and 7533; and as President of the United States, and finding such action necessary in the best interests of national security, it is hereby ordered as follows:

Section 1. Section 12 of Executive Order No. 10450 of April 27, 1953, as amended [set out as a note under this section], is revised to read in its entirety as follows:

“Sec. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked.”

Sec. 2. Neither the Attorney General, nor the Subversive Activities Control Board, nor any other agency shall designate organizations pursuant to section 12 of Executive Order No. 10450, as amended, nor circulate nor publish a list of organizations previously so designated. The list of organizations previously designated is hereby abolished and shall not be used for any purpose.

Sec. 3. Subparagraph (5) of paragraph (a) of section 8 of Executive Order No. 10450, as amended, is revised to read as follows:

“Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.”

Sec. 4. Executive Order No. 11605 of July 2, 1971, is revoked.

Richard Nixon.

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 93 - PUBLIC OFFICERS AND EMPLOYEES

§ 1918. Disloyalty and asserting the right to strike against the Government

Whoever violates the provision of section 7311 of title 5 that an individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

- (1) advocates the overthrow of our constitutional form of government;
- (2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;
- (3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or
- (4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia;

shall be fined under this title or imprisoned not more than one year and a day, or both.

(Added Pub. L. 89-554, § 3(d), Sept. 6, 1966, 80 Stat. 609; amended Pub. L. 104-294, title VI, § 601(a)(8), Oct. 11, 1996, 110 Stat. 3498.)

Historical and Revision Notes

Derivation	U.S. Code	Revised Statutes and Statutes at Large
5 U.S.C. 118r.		Aug. 9, 1955, ch. 690, § 3, 69 Stat. 625.
[Uncodified.]		June 29, 1956, ch. 479, § 3 (as applicable to the Act of Aug. 9, 1955, ch. 690, § 3, 69 Stat. 625), 70 Stat. 453.

The section is rewritten to conform to the style of title 18. The statement of the acts prohibited is supplied from the Act of Aug. 9, 1955, ch. 690, § 1, 69 Stat. 624, which is codified in section 7311 of title 5, United States Code.

The words “From and after July 1, 1956”, appearing in the Act of June 29, 1956, are omitted as executed.

The words “shall be guilty of a felony” are omitted as unnecessary in view of the definitive section 1 of this title. (See reviser’s note under section 550 of this title.)

Amendments

1996—Pub. L. 104-294 substituted “fined under this title” for “fined not more than \$1,000” in concluding provisions.