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Protecting Elections and its Workers During the Social Media Era

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Protecting Elections and its Workers During the Social Media Era

Julia López*

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I. INTRODUCTION

Residents of Shasta County, California have threatened local election workers—like County Clerk, Cathy Darling Allen—since the 2020 United States Presidential Election (the 2020 election).¹ Election workers like Allen have been followed home and harassed by threatening figures dressed in black gear, who claim to be part of a task force.² Residents attempted to intimidate Allen one night after leaving work when they followed her to her car.³ She remains worried for her safety.⁴ “We have plexi[glass] on the counter downstairs for COVID but that won’t stop a person,” Allen said.⁵

Since the conclusion of the 2020 election, poll workers have experienced an increase in threats of harassment and violence.⁶ Many of these threats stem from former President Donald Trump’s claims that the 2020 election was stolen.⁷ Reports show that not only do protestors verbally harass election workers as they leave their offices, but armed protestors also follow workers home.⁸ The politically charged, virulent harassment is increasingly causing election workers across the country to feel unsafe in fulfilling their duties.⁹ The Federal Bureau of Investigation (FBI) states these threats do not just endanger election workers, but weaken the entire electoral process.¹⁰ In California, a majority of this election harassment is fixed at the local level, in rural counties, such as Shasta and Nevada Counties.¹¹

Twenty percent of the registrars in California either retired after the 2020 election or chose not to run for reelection.¹² They no longer wanted to experience the violence and harassment that came with this public position.¹³ Citizens reported between 1,000 and 1,500 threats to election officials and workers in the country to

¹ Dani Anguiano, ‘A Madness Has Taken Hold’ Ahead of US Midterms: Local Election Officials Fear for Safety, *GUARDIAN* (Oct. 27, 2022), <https://www.theguardian.com/us-news/2022/oct/27/us-midterms-rural-california-voters-election-officials-fear-for-safety> (on file with the *University of the Pacific Law Review*).

² *Id.* (explaining that the violence and harassment towards elections workers stems from their belief of widespread voter fraud).

³ Daniela Pardo & Jackson Ellison, *California Has a New Law to Protect Election Workers’ Privacy*, *SPECTRUM NEWS 1* (Oct. 4, 2022), <https://spectrumnews1.com/ca/la-west/inside-the-issues/2022/10/04/california-has-a-new-law-to-protect-election-workers--privacy> (on file with the *University of the Pacific Law Review*).

⁴ *Id.*

⁵ Anguiano, *supra* note 1.

⁶ Chelsey Cox, ‘We’re Going to Hang You’: DOJ Cracks Down on Threats to Election Workers Ahead of High-Stakes Midterms, *CNBC* (Oct. 27, 2022), <https://www.cnn.com/2022/10/27/were-going-to-hang-you-doj-cracks-down-on-threats-to-election-workers-ahead-of-high-stakes-midterms.html> (on file with the *University of the Pacific Law Review*).

⁷ Pardo, *supra* note 3.

⁸ Erin Banco, ‘People Are Fearful’: Threats to Midterm Election Workers Spur Law Enforcement Response Across U.S., *POLITICO* (Nov. 3, 2022), <https://www.politico.com/news/2022/11/03/threats-midterm-election-workers-law-enforcement00065017> (on file with the *University of the Pacific Law Review*).

⁹ Pardo, *supra* note 3.

¹⁰ Cox, *supra* note 6.

¹¹ Pardo, *supra* note 3.

¹² Brian Watt & Alexander Gonzalez, *Yes, Threats Against Election Officials (and Voters) Are Real. But the Law Is Fighting Back, Says California Election Expert*, *KQED* (Nov. 4, 2022), <https://www.kqed.org/news/11931157/yes-threats-against-election-officials-and-voters-are-real-but-the-law-is-fighting-back-says-california-election-expert> (on file with the *University of the Pacific Law Review*).

¹³ *Id.*

the Department of Justice (DOJ), of which ten percent included threats of bodily harm or death.¹⁴ One in three election officials reported feeling unsafe in their workplace, while roughly one in six reported death threats due to their occupation.¹⁵ The danger is very real.¹⁶

Chapter 554 allows election workers and government employees to enroll in the Safe at Home (SAH) program, which keeps private information, including home addresses, confidential.¹⁷ While these provisions are solid first steps towards protecting election workers, Chapter 554 fails to root out social media harassment and potential attacks.¹⁸ To adequately protect election workers, Chapter 554 must be amended to require the Secretary of State (SOS) to establish a task force that monitors election-related threats on social media platforms.¹⁹ Sixteen states utilized the National Guard (the Guard) to protect election integrity leading up to the 2020 election.²⁰ Chapter 554 needs a similar provision—employing the Guard when online rhetoric borderlines incitement and mandating the Guard be present at polling locations on election day.²¹ Since the Guard already functions in this capacity in other states, it should expand these operations in California.²²

II. LEGAL BACKGROUND

The animosity stemming from the 2020 election served as a catalyst for harassment towards election workers.²³ While politicians themselves played a major role in creating chaos, social media acted as a puppeteer, pushing false narratives.²⁴ Section A discusses the SOS and the Guard's role in assisting local elections.²⁵ Section B discusses United States Senator Alex Padilla's efforts to protect election workers by introducing legislation to Congress.²⁶ Section C describes the SAH Program, which Chapter 554 expands to public entity

¹⁴ *Id.*

¹⁵ SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 10 (Aug. 24, 2022).

¹⁶ *Id.*

¹⁷ Pardo, *supra* note 3.

¹⁸ Watt, *supra* note 12 (explaining that all media outlets are “more interested in selling fear than they are in selling hope,” and that this has been the case in political elections).

¹⁹ Governor Carney Authorizes Delaware National Guard Cybersecurity Squadron to Support 2020 Election, DEL. NEWS (Oct. 16, 2020), <https://news.delaware.gov/2020/10/16/governor-carney-authorizes-delaware-national-guard-cybersecurity-squadron-to-support-2020-election/> (on file with the *University of the Pacific Law Review*) (showing that Delaware proactively combated election-related violence and threats through monitoring social media).

²⁰ Ellen Mitchell, *Here's Where the National Guard is Activated on Election Day*, HILL (Nov. 3, 2020), <https://thehill.com/policy/defense/524252-heres-where-the-national-guard-is-activated-on-election-day/> (on file with the *University of the Pacific Law Review*).

²¹ *Id.*

²² *Id.*

²³ Zack Beauchamp, “We Are Going to Make You Beg for Mercy”: America's Public Servants Face a Wave of Threats, VOX (Nov. 18, 2021), <https://www.vox.com/22774745/death-threats-election-workers-public-health-school> (on file with the *University of the Pacific Law Review*).

²⁴ *Id.*

²⁵ *Infra* Section II.A.

²⁶ *Infra* Section II.B.

workers.²⁷ Section D outlines the progression of social media usage in relation to election coverage and its clash with the First Amendment.²⁸

A. California's Mechanisms for Creating Protective Legislation

In California, the SOS works to make the government more accessible and transparent in various areas, including elections.²⁹ The SOS establishes election integrity, ensuring that election laws are properly followed.³⁰ The Legislature can require the SOS to establish task forces under the provided guidelines in a bill's language.³¹ These bills provide information about other entities the SOS will collaborate with to establish and monitor the task force.³² Additionally, these bills lay out the established framework under which the task force must operate.³³

As an executive agency, the SOS works in collaboration with federal and state entities, having the ability to collaborate with the Guard.³⁴ The Guard is a branch of the United States military that performs federal and state duties.³⁵ The Guard is ordinarily retained to respond to domestic, state-level crises.³⁶ Recently, state governors deployed the Guard to respond to COVID-19 matters, hurricanes, wildfires, and protests when Minneapolis Police Officers murdered George Floyd.³⁷ Leading up to the 2020 election, "at least 16 states [had] Guard troops...ready for a range of missions, from cybersecurity support to assisting at polling locations out of uniform."³⁸ Additionally, these troops were prepared to respond to potential violence or protests on the night of the election or preceding days.³⁹ The Guard is prepared to assist states in many capacities.⁴⁰

²⁷ *Infra* Section II.C.

²⁸ *Infra* Section II.D.

²⁹ *Safe at Home*, CAL. SEC'Y OF STATE, SHIRLEY N. WEBER, <https://www.sos.ca.gov/registries/safe-home> (last visited June 16, 2023) (on file with the *University of the Pacific Law Review*).

³⁰ *Id.*

³¹ *Motor Voter Task Force*, CAL. SEC'Y OF STATE, SHIRLEY N. WEBER, <https://www.sos.ca.gov/registries/safe-home> (last visited June 16, 2023) (on file with the *University of the Pacific Law Review*) (showing as an example that Governor Newsom signed AB 796, establishing "a task force to consult with the Secretary of State and the Department of Motor Vehicles on the effective implementation of the California New Motor Voter Program").

³² *Id.*

³³ *Id.*

³⁴ *Id.* (showing that the SOS has a working relationship with the Governor of California and other entities); see also Mitchell, *supra* note 20 (showing state governors having the ability to deploy the Guard).

³⁵ *What Does the U.S. National Guard Do?*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/backgrounder/what-does-us-national-guard-do> (last visited July 7, 2023) (on file with the *University of the Pacific Law Review*) (Around four hundred and fifty thousand members serve in the National Guard across the country and in the three United States territories, as of January 2023.).

³⁶ *Id.*

³⁷ Mitchell, *supra* note 20; *Governor Newsom Activates National Guard to Bolster State's COVID-19 Testing Capacity*, OFF. OF GOVERNOR GAVIN NEWSOM (Jan. 7, 2022), <https://www.gov.ca.gov/2022/01/07/governor-newsom-activates-national-guard-to-bolster-states-covid-19-testing-capacity/> (on file with the *University of the Pacific Law Review*) (The National Guard provided interim clinical staff to aid in conducting COVID-19 tests to Californians.).

³⁸ Mitchell, *supra* note 20.

³⁹ *Id.*

⁴⁰ *Id.*

The Guard trains its members in various departments, including cybersecurity.⁴¹ Cyber soldiers execute cyberspace operations to detect violent behavior through their use of advanced military networks and cyber weapon systems.⁴² In October 2020, Delaware Governor John Carney signed Executive Order #46, deploying the Guard's 166th Cyberspace Operations Squadron to aid in the 2020 election.⁴³ One of the Squadron's essential tasks included monitoring online threats and responding to attacks.⁴⁴ Delaware was proactive in attempting to combat potential election-related threats and violence because Governor Carney signed the order prior to the 2020 election.⁴⁵ Proactive measures were further seen in states such as Kentucky and New Jersey, where the Guard aided officials at polling locations on election day.⁴⁶ Deployment of the Guard—coupled with cybersecurity intelligence—aimed to protect all civilians given the concern of violence at voting polls.⁴⁷

B. The Election Worker Protection Act

As California's former SOS, United States Senator Alex Padilla understands that election workers are vital to democratic elections.⁴⁸ In September 2022, United States Senators Alex Padilla, Amy Klobuchar, and Dick Durbin introduced the Election Worker Protection Act (The Act).⁴⁹ In response to harassment—such as death threats—on election workers following the 2020 election, the Act would provide monetary and training resources to states.⁵⁰ The Act seeks to ensure that both local law enforcement and state officials have tools to protect election workers.⁵¹

In particular, the Act would provide grants to states to recruit and train election workers and provide safety.⁵² The allocated funds would then be dispersed to train election workers and provide resources to keep workers' personal information confidential.⁵³ The Act would further establish threats to election

⁴¹ ARMY NAT'L GUARD, <https://www.nationalguard.com/careers/cyber> (last visited July 9, 2023) (on file with the *University of the Pacific Law Review*).

⁴² *Id.*

⁴³ *Governor Carney Authorizes Delaware National Guard Cybersecurity Squadron to Support 2020 Election*, DEL. NEWS (Oct. 16, 2020), <https://news.delaware.gov/2020/10/16/governor-carney-authorizes-delaware-national-guard-cybersecurity-squadron-to-support-2020-election/> (on file with the *University of the Pacific Law Review*).

⁴⁴ *Id.*

⁴⁵ *Id.* ("Throughout our country's history, Americans have sacrificed to secure voting rights for our fellow citizens. We have an obligation to take additional steps to protect that right from any cyber threats. This Executive Order is a proactive measure to do just that.").

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Padilla Introduces Legislation to Address the Rise in Threats Targeting Election Workers*, ALEX PADILLA U.S. SENATOR FOR CAL. (Sept. 26, 2022), <https://www.padilla.senate.gov/newsroom/press-releases/padilla-introduces-legislation-to-address-the-rise-in-threats-targeting-election-workers/> (on file with the *University of the Pacific Law Review*).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

workers as a federal crime and expand voter intimidation to include counting ballots and election certification.⁵⁴ The Act's provisions are in response to the influx of violent threats and harassment towards election workers across the United States.⁵⁵ The Act received bipartisan support of election workers and officials, including Republican Philadelphia City Commissioner Al Schmidt.⁵⁶ Schmidt is one of many who received threats against himself and his family following the 2020 election.⁵⁷ The Act has yet to be passed by Congress, but given that election workers facilitate the United States elections, Senators are pushing for its approval.⁵⁸

C. California's Safe at Home Program

In 1998, Governor Peter Wilson signed SB 489, establishing the SAH program.⁵⁹ California lists that the SAH program is within the office of the SOS.⁶⁰ SAH protects victims of domestic violence by keeping private information, such as their home address, confidential.⁶¹ In doing so, SB 489 effectively protected victims, allowing them to feel safe in their homes where their abusers could not find them.⁶² Participants can apply for a substitute address so that their attackers or potential new attackers cannot find them.⁶³ Once accepted into the program, victims get a substitute address for receiving mail, and that mail is then forwarded to their actual address.⁶⁴

The program establishes a four-year-term, after which the participant must reapply; however, they may exercise an early termination option before the term expires.⁶⁵ In an effort to expand the SAH program, Governor Joseph Davis signed AB 797 into law in 2002.⁶⁶ The bill extended the program to include reproductive health care service providers, their employees, and patients harassed for their association with reproductive health facilities.⁶⁷ Over several decades, SAH eligibility expanded to several groups including victims of domestic violence, stalking, sexual assault, human trafficking, as well as reproductive health care

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *U.S. Senators Reintroduce Legislation Aimed to Protect Local Election Officials*, NACO (May 25, 2023), <https://www.naco.org/blog/us-senators-reintroduce-legislation-aimed-protect-local-election-officials> (on file with the *University of the Pacific Law Review*).

⁵⁹ SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 4 (Apr. 18, 2022).

⁶⁰ SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 2 (Aug. 15, 2022); *Safe at Home*, CAL. SEC'Y OF STATE, SHIRLEY N. WEBER, <https://www.sos.ca.gov/registries/safe-home> (last visited July 28, 2023) (on file with the *University of the Pacific Law Review*).

⁶¹ SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 4 (Apr. 18, 2022).

⁶² *California Secretary of State – Safe at Home Program*, CAL. P'SHIP TO END DOMESTIC VIOLENCE, <https://www.cpedv.org/member-service/california-secretary-state-safe-home-program> (last visited July 10, 2023) (on file with the *University of the Pacific Law Review*).

⁶³ SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 4 (Apr. 18, 2022).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

employees, providers, and volunteers.⁶⁸ In signing SB 1131 into law in 2022, Governor Newsom expanded SAH eligibility to include election workers.⁶⁹

D. True Threats of Violence as an Unprotected Category Under the First Amendment

The First Amendment broadly protects one's right to speak freely, but this right is not without limits.⁷⁰ Subsection 1 describes Supreme Court precedent in relation to the First Amendment.⁷¹ Subsection 2 explains the Supreme Court's June 27, 2023, ruling on the First Amendment.⁷²

1. The Supreme Court's First Amendment Precedent

In *Brandenburg v. Ohio*, Clarence Brandenburg—a Ku Klux Klan officer—addressed his members, making derogatory remarks towards Jewish and African American people.⁷³ The Ohio State Court convicted Brandenburg of violating Ohio's Criminal Syndicalism law.⁷⁴ The law made it a crime to advocate for crime or harm towards a class of people in order to accomplish specific political reform.⁷⁵ Brandenburg appealed on the grounds that the act violated his First Amendment rights.⁷⁶ The Supreme Court overturned the decision, ruling that, unless speech is likely to incite imminent violence or lawless action, speech promoting illegal conduct is ultimately protected by the First Amendment.⁷⁷

In this decision, the Supreme Court set forth a standard to evaluate whether certain speech is protected by the First Amendment.⁷⁸ Calling for physical violence, in violation of the law, is not protected by the First Amendment.⁷⁹ A violation is determined by addressing whether the speaker directed their speech to incite or produce imminent lawless action, or would be likely to do so.⁸⁰ While Brandenburg engaged in racist rhetoric, he did not incite violence.⁸¹ Engaging in racist rhetoric is more common since the surge of social media—users have a

⁶⁸ *Safe at Home*, *supra* note 29.

⁶⁹ CAL. ELECTION CODE §§ 2166.5, 12105.5, 12108 (amended by Chapter 554); CAL. ELECTION CODE § 2166.8 (enacted by Chapter 554); CAL. CODE, GOV'T CODE §§ 6215, 6215.2 (from the "Today's Law as Amended" section).

⁷⁰ *The First and Second Amendments*, PBS, <https://www.pbs.org/tpt/constitution-usa-peter-sagal/rights/first-and-second-amendments/> (last visited July 11, 2023) (on file with the *University of the Pacific Law Review*) (explaining that just because a person doesn't agree with what is being said does not mean that the speech is not protected).

⁷¹ *Infra* Subsection II.D.1.

⁷² *Infra* Subsection II.D.2.

⁷³ James L. Walker, *Brandenburg v. Ohio* (1969), FIRST AMEND. ENCYCLOPEDIA, <https://www.mtsu.edu/first-amendment/article/189/brandenburg-v-ohio> (last visited July 12, 2023) (on file with the *University of the Pacific Law Review*).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

⁷⁹ *Id.* at 447.

⁸⁰ *Id.*

⁸¹ Walker, *supra* note 73.

universal range of expression, having the ability to post any thought or opinion.⁸² However, although the United States encourages freedom of thought, citizens do not have the right to incite lawless action.⁸³

2. The First Amendment: Today's Application

In the recent Supreme Court case *Counterman v. Colorado*, Billy Counterman sent continuous messages to a woman on Facebook, continuing to stalk her by making fake accounts after she blocked him.⁸⁴ Among the messages sent, Counterman commented that he was watching the woman and wanted her to be killed.⁸⁵ Counterman was convicted with one count of stalking and one count of harassment.⁸⁶ On appeal, Counterman argued that his convictions violated the First Amendment because his messages sent via Facebook were not true threats.⁸⁷

The Supreme Court's ruling in *Counterman* provided the threshold one must meet in order to prosecute someone for what is indisputably a "true threat" of violence.⁸⁸ In her majority opinion, Justice Kagan wrote that "a state must show that the defendant had some *subjective understanding* of the *threatening nature* of his statements."⁸⁹ The defendant need not just understand that the words are threatening, but must act recklessly or intentionally regarding the aggressive and alarming character of his words.⁹⁰ However, the mental state required to prosecute an individual based on alleged First Amendment conduct is difficult to prove because an individual's state of mind is not easily visible.⁹¹ Therefore, even under the current framework, the First Amendment protects speech that could potentially lead to violence.⁹²

⁸² *The Negative Impact of Social Media on Politics*, L. AND INTERNET FOUND. BLOG (July 22, 2022), <https://www.netlaw.bg/en/a/the-negative-impact-of-social-media-on-politics> (on file with the *University of the Pacific Law Review*).

⁸³ *Bradenburg*, 395 U.S. at 444.

⁸⁴ *Counterman v. Colorado*, OYEZ, <https://www.oyez.org/cases/2022/22-138> (last visited Aug. 1, 2023) (on file with the *University of the Pacific Law Review*).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Ed Whelan, *Today's Ruling in Counterman v. Colorado*, NAT'L REV. (June 27, 2023), <https://www.nationalreview.com/bench-memos/todays-ruling-in-counterman-v-colorado/> (on file with the *University of the Pacific Law Review*) (The decision came out on June 27, 2023.).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* (explaining that proving an individual's subjective understanding "can be challenging, as criminal intent is often difficult to prove directly, as it is a state of mind that is not visible to others").

⁹² *Id.*

III. CHAPTER 554

In September 2022, Governor Gavin Newsom expanded SAH to include election workers by signing SB 1131 into law as Chapter 554.⁹³ By doing so, Governor Newsom increased protections for statewide election workers.⁹⁴ Chapter 554's provisions apply to any individual employed or contracted with the SOS or any local person engaged in election-related work.⁹⁵ Chapter 554 keeps a public entity worker's voter status and personal information, such as address, phone number, and email address, confidential.⁹⁶

To qualify, a worker needs to provide evidence that they have been subjected to threats, harassment, or violence within a year of the application.⁹⁷ Workers need to show they are targeted because of their occupation in the public sector.⁹⁸ Workers must submit new applications to continue enrollment in the program because the confidentiality granted to public entity workers terminates after two years.⁹⁹ If a worker moves to a new county, they have sixty days to apply for the confidential voter status at their new residence.¹⁰⁰ The SOS must report the number of participants each year and allegations of abuse relating to election workers.¹⁰¹

Further, if a public entity worker's information is disclosed, an action against the government entity can commence only by a showing of willfulness or gross negligence.¹⁰² The Legislature aims to protect individuals who work for public entities against unreasonable and unwelcome conduct, causing them to fear for their personal safety or family's safety.¹⁰³ Due to the inclusion of an urgency clause, the bill went into effect the same day Governor Newsom signed it.¹⁰⁴ The clause intended maximum protection for election workers during the 2022 midterm elections.¹⁰⁵

⁹³ CAL. ELECTION CODE §§ 2166.5, 12105.5, 12108 (amended by Chapter 554); CAL. ELECTION CODE § 2166.8 (enacted by Chapter 554); CAL. CODE, GOV'T CODE §§ 6215, 6215.2 (from the "Today's Law as Amended" section).

⁹⁴ SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 3 (Aug. 24, 2022) (explaining "Public entity" is defined as a federal, state, or local government agency).

⁹⁵ ASSEMBLY FLOOR ANALYSIS, COMMITTEE ANALYSIS OF SB 1131, at 1 (Aug. 15, 2022).

⁹⁶ SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 3 (Aug. 24, 2022).

⁹⁷ ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 1131, at 12 (June 28, 2022).

⁹⁸ *Id.*

⁹⁹ CAL. ELECTION CODE §§ 2166.5, 12105.5, 12108 (amended by Chapter 554); CAL. ELECTION CODE §§ 2166.8 (enacted by Chapter 554); CAL. CODE, GOV'T CODE §§ 6215, 6215.2 (from the "Today's Law as Amended" section.).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 1131, at 13 (June 28, 2022).

¹⁰⁴ ASSEMBLY FLOOR ANALYSIS, COMMITTEE ANALYSIS OF SB 1131, at 2 (Aug. 15, 2022); Chris Micheli, *Urgency Clause Statutes in California Legislation*, CAL. GLOBE (Nov. 27, 2019), <https://californiaglobe.com/articles/urgency-clause-statutes-in-california-legislation/> (on file with the *University of the Pacific Law Review*) (describing that an urgency clause specifies that a bill is enacted the day it is chartered to preserve public peace, health, or safety).

¹⁰⁵ Pardo, *supra* note 3.

IV. ANALYSIS

Election workers are the backbone of America’s democracy and need to be protected.¹⁰⁶ Without adequate protection, election workers cannot ensure free and fair elections.¹⁰⁷ Section A discusses the strengths and shortcomings of Chapter 554, explaining how it protects workers’ confidential information but fails to protect those workers on the job and in public spaces.¹⁰⁸ Section B identifies some unintended consequences of the First Amendment for election workers.¹⁰⁹ Section C advocates for Chapter 554 to require the SOS to oversee a task force monitoring social media and utilize the Guard.¹¹⁰

A. Chapter 554’s Ultimate Deficiency in Protecting Election Workers

The SAH program has a proven track record of success, and amending it to include protection of election workers is a solid first step in protecting this threatened class.¹¹¹ As the 2020 election cycle unfolded, it became apparent to the Legislature that elections needed safety regulations.¹¹² The California Voter Foundation circulated a report regarding harassment to election officials in June 2021.¹¹³ The report reflected on the harassment perpetrated towards election officials in the United States leading up to the 2020 election.¹¹⁴

Of the eleven officials interviewed, ten reported that people made threats—including death threats—against them.¹¹⁵ These threats came via phone call and voicemail, and even went as far as stalking and in-person intimidation.¹¹⁶ Election workers faced harassment following social media posts that included their names, photographs, and home addresses.¹¹⁷ In passing Chapter 554, the Legislature showed they understood the urgent need to protect election workers from doxxing and harassment.¹¹⁸ Keeping election workers’ and officials’ personal information confidential was a logical first step in attempting to protect voter personnel.¹¹⁹

However, this first step ultimately falls short in protecting all election workers.¹²⁰ Even before Chapter 554 became law, experienced election workers likely had their confidential information, such as home address and phone number,

¹⁰⁶ Padilla Introduces Legislation to Address the Rise in Threats Targeting Election Workers, *supra* note 48.

¹⁰⁷ *Id.*

¹⁰⁸ *Infra* Subsection IV.A.

¹⁰⁹ *Infra* Subsection IV.B.

¹¹⁰ *Infra* Subsection IV.C.

¹¹¹ SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 6 (Aug. 24, 2022) (showing that the key solution is providing greater protection of personally identifiable information).

¹¹² ASSEMBLY FLOOR ANALYSIS, COMMITTEE ANALYSIS OF SB 1131, at 4 (Aug. 15, 2022).

¹¹³ SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 5 (Apr. 18, 2022).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 1131, at 14 (June 28, 2022).

¹¹⁸ SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 5 (Aug. 24, 2022).

¹¹⁹ SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 4 (Apr. 18, 2022) (showing a study found a possible solution was providing greater protection over personal information, such as a home address).

¹²⁰ *See* Anguiano, *supra* note 1.

publicly available online.¹²¹ Further, Chapter 554 does not account for problems arising in public spaces.¹²² Angry protestors are increasingly showing up at local election offices in California, demanding public records and following workers home.¹²³ While SAH might keep workers' personal information confidential, it is not keeping protestors from harassing election workers on the job and does not keep protestors from following workers home.¹²⁴

B. Election Worker Threats Dismantle the Democratic Process

While the First Amendment protects the freedom of speech, that freedom can also infringe on the rights of other individuals.¹²⁵ As the Supreme Court has made clear, unless speech deliberately incites violence, all speech—even hate speech—is protected by the First Amendment.¹²⁶ The United States favors the freedom of speech—overlooking their citizens' self-protection—thereby leaving the protection of citizens at the hands of the legislature.¹²⁷ Following the 2020 election, election workers increasingly fear for their lives.¹²⁸ Workers fear so much that they ask to remain anonymous when telling their experiences.¹²⁹ On the day of the 2022 midterm election, an election worker in Oregon called 911 four times regarding a single attacker.¹³⁰

Many citizens genuinely believe President Trump's 2020 election denial.¹³¹ President Trump and his followers used social media to spread their

¹²¹ CAL. ELECTION CODE §§ 2166.5, 12105.5, 12108 (amended by Chapter 554); CAL. ELECTION CODE § 2166.8 (enacted by Chapter 554); CAL. CODE, GOV'T CODE §§ 6215, 6215.2 (from the "Today's Law as Amended" section) (showing that Chapter 554 just now extends SAH to election workers).

¹²² See Anguiano, *supra* note 1 (explaining that given the widespread belief that the 2020 presidential election was subject to voter fraud, residents in Shasta county are "inundating" election offices demanding public records); see also CAL. ELECTION CODE §§ 2166.5, 12105.5, 12108 (amended by Chapter 554); CAL. ELECTION CODE § 2166.8 (enacted by Chapter 554); CAL. CODE, GOV'T CODE §§ 6215, 6215.2 (from the "Today's Law as Amended" section) (excluding references to protecting workers in any given public space).

¹²³ See Anguiano, *supra* note 1.

¹²⁴ See *id.* (explaining that in California's Nevada county, "the registrar-elect had to take out a restraining order against residents who harassed her and pushed their way into her office, assaulting a staffer," while residents in Shasta county showed up to homes wearing gear labeled "official voter taskforce"); see also CAL. ELECTION CODE §§ 2166.5, 12105.5, 12108 (amended by Chapter 554); CAL. ELECTION CODE § 2166.8 (enacted by Chapter 554); CAL. CODE, GOV'T CODE §§ 6215, 6215.2 (from the "Today's Law as Amended" section) (excluding references to increase election worker safety on the job and how to combat the ability to follow election workers home).

¹²⁵ Whelan, *supra* note 88 (explaining that to prosecute an individual, the requisite mental state is difficult to prove).

¹²⁶ Walker, *supra* note 73.

¹²⁷ CAL. ELECTION CODE §§ 2166.5, 12105.5, 12108 (amended by Chapter 554); CAL. ELECTION CODE § 2166.8 (enacted by Chapter 554); CAL. CODE, GOV'T CODE §§ 6215, 6215.2 (from the "Today's Law as Amended" section) (showing the legislature understanding the need to protect election workers).

¹²⁸ *Death Threats and Harassment: 2024 Election Workers Already Are Scared*, NPR (June 23, 2023), <https://www.npr.org/2023/06/23/1183931372/death-threats-and-harassment-2024-election-workers-already-are-scared> (on file with the *University of the Pacific Law Review*) (showing that workers are referred to as "Unidentified Election Worker1" and so on).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

message of fraudulent ballots across the nation.¹³² Social media's assistance in disseminating President Trump's denial of the 2020 election has had a catastrophic effect on society.¹³³ Social media users posted hateful and threatening rhetoric, giving users the courage to act on such speech.¹³⁴ Users posting in capital letters threatening to take back freedom exhibit a subjective understanding of their menacing language because of the tone, context, and implied anger behind their message.¹³⁵ Menacing posts spark incitement, which has detrimentally impacted election workers' physical safety.¹³⁶ Social media companies need to increasingly monitor their platforms, as some users utilize them to incite imminent violence.¹³⁷ Social media's misinformation provokes the easily influenced to engage in online hate speech and inciteful behavior towards election workers.¹³⁸

The negative impact of social media led to the downfall of election workers' safety preceding the 2020 election.¹³⁹ The violence and harassment directed at election workers was a trend that swept across the United States.¹⁴⁰ Many social media users believed the lies and false narratives pushed through their feeds, empowering them to act irrationally and violently.¹⁴¹ For example, in response to the 2020 election results, protests erupted outside Arizona's State House "top Republican['s]' home as his family cared for their ill daughter.¹⁴² The power of social media is frightening.¹⁴³ As opposed to being a public forum for

¹³² *The Clear and Present Danger of Trump's enduring 'Big Lie,'* NPR (Dec. 23, 2021), <https://www.npr.org/2021/12/23/1065277246/trump-big-lie-jan-6-election> (on file with the *University of the Pacific Law Review*).

¹³³ *Death Threats and Harassment: 2024 Election Workers Already Are Scared*, *supra* note 128 (election workers are being followed and attacked).

¹³⁴ *Id.* (explaining that violent attacks against election workers stem from the denial of the United States 2020 Presidential Election).

¹³⁵ Craig Silverman et al., *Facebook Groups Topped 10,000 Daily Attacks on Election Before Jan. 6, Analysis Shows*, WASH. POST (Jan. 4, 2022), <https://www.washingtonpost.com/technology/2022/01/04/facebook-election-misinformation-capitol-riot/> (on file with the *University of the Pacific Law Review*) (showing that posts on Facebook read: "WE ARE AMERICANS!!! WE FOUGHT AND DIED TO START OUR COUNTRY! WE ARE GOING OT FIGHT...FIGHT LIKE HELL. WE WILL SAVE HER <3 THEN WERE GOING TO SHOOT THE TRAITORS!!!!!!!!!!!!!!").

¹³⁶ *Death Threats and Harassment: 2024 Election Workers Already Are Scared*, *supra* note 128; Silverman et al., *supra* note 135 (showing that posts on Facebook read: "WE ARE AMERICANS!!! WE FOUGHT AND DIED TO START OUR COUNTRY! WE ARE GOING OT FIGHT...FIGHT LIKE HELL. WE WILL SAVE HER <3 THEN WERE GOING TO SHOOT THE TRAITORS!!!!!!!!!!!!!!").

¹³⁷ *Death Threats and Harassment: 2024 Election Workers Already Are Scared*, *supra* note 128 (showing that in response to the denial of the United States 2020 Presidential Election, people are harassing election workers).

¹³⁸ *Id.*

¹³⁹ Eric Cortellessa & Brian Bennett, *'There is Nowhere I Feel Safe': Jan. 6 Panel Hears from Election Officials Trump Targeted*, TIME (June 21, 2022), <https://time.com/6189560/jan-6-hearing-election-workers-trump/> (on file with the *University of the Pacific Law Review*).

¹⁴⁰ *Id.*

¹⁴¹ *Cf. id.* (saying "[d]eath threats promoted Georgia poll worker Ruby Freeman to leave her home for two months after Donald Trump falsely said she inserted fraudulent ballots into the 2020 election").

¹⁴² *Id.*

¹⁴³ *See id.* (explaining that Arizona's State House top Republican, Rusty Bowers, described the situation as "disturbing"); *Social Media and Online Speech: How Should Countries Regulate Tech Giants?*, COUNCIL ON FOREIGN RELS. (Feb. 9, 2021), https://www.cfr.org/in-brief/social-media-and-online-speech-how-should-countries-regulate-tech-giants?gclid=Cj0KCQjwoK2mBhDzARIsADGbjepHVICVvc35upSIvpdb6cUdK4TCICK267sNWUaKMEz3aWuaZUTmWloaArelEALw_wcB (on file with the *University of the Pacific Law Review*) (explaining that social media enables "harmful misinformation" to spread "with ease and speed").

respectful discourse, social media gives users the platform to spew hate and incite violence.¹⁴⁴ Social media's hold on society has normalized harassment towards election workers because users are indoctrinated into believing that the next logical step towards a free America is through violence.¹⁴⁵ Following the claims of fraudulent ballots counted in the 2020 election, egregious behavior was further evidenced as protestors broke into the home of Georgia SOS's widowed daughter.¹⁴⁶ Election workers have become social media's scapegoat.¹⁴⁷

President Trump's personal operation of social media—gathering support to overturn the election results—continued the rampage toward local election workers and officials.¹⁴⁸ While President Trump and his followers pushed false narratives on their social media platforms, President Trump's lawyers worked internally to subvert democracy.¹⁴⁹ Lawyers, such as John Eastman, pressured Arizona House Speaker Rusty Bowers to “convene a session of the state legislature to install a slate of fake electors for Trump.”¹⁵⁰ The Republican House Speaker stood up to the lawyers' demands and, in return, protestors showed up to his home screaming “pedophile” through a loudspeaker.¹⁵¹ The threatening protests outside Bower's home continued for days, as he and his family feared for their safety.¹⁵² While President Trump and his supporters have the right to express their opinions through social media and freely associate, their right is at the expense of others.¹⁵³ The Speaker and his family feared for their lives ultimately because of the misinformation disgruntled voters saw online.¹⁵⁴

Social media monitoring would have flagged President Trump's tweets.¹⁵⁵ Monitors could have also tracked commenters and retweets who may be participating in the unfounded allegations.¹⁵⁶ Because social media enables quick communication, constant monitoring would aid authorities in acting proactively rather than reactively.¹⁵⁷ News regarding the Georgia SOS would have been nearly instantaneous, putting the authorities on notice and increasing the likelihood that

¹⁴⁴ See Cortellessa, *supra* note 139 (showing the violence that occurred relating to the 2020 presidential election); *Social Media and Online Speech: How Should Countries Regulate Tech Giants?*, *supra* note 143 (explaining “social media has contributed to religious and ethnic violence, including against Muslims in India and Rohingya in Myanmar”).

¹⁴⁵ See Cortellessa, *supra* note 139 (explaining that a Georgia election worker, Shaye Moss, received death threats after President Trump's election campaign “disseminated surveillance footage from their Fulton County vote counting station . . . to falsely suggest they took 18,000 fraudulent ballots out of a suitcase and illegally inserted them into a voting machine”); *Social Media and Online Speech: How Should Countries Regulate Tech Giants?*, *supra* note 143 (explaining that the “deadly riot at the U.S. Capitol on January 6 is just one example of violence which national security experts say was fomented in large part on social media platforms”).

¹⁴⁶ Cortellessa, *supra* note 139.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Social Media and Online Speech: How Should Countries Regulate Tech Giants?*, *supra* note 143 (explaining that artificial intelligence systems effectively flag problematic posts on social media platforms).

¹⁵⁶ *Id.* (monitoring social media allows companies to see what is posted and therefore detect problematic posts).

¹⁵⁷ *Id.* (explaining that companies such as YouTube “employ thousands of people to screen posts for violations”).

the trespassers wouldn't have made it inside the widowed daughter's home.¹⁵⁸ If the legislature does not implement measures, the vile persecution of election workers will worsen.¹⁵⁹ Because American democracy rests upon elections and their workers, the ongoing harassment towards election workers results in a decline of this democracy.¹⁶⁰

C. The Expansion of Chapter 554 to Protect Election Workers on the Job and in Public Spaces

Currently, Chapter 554 can't protect election workers and officials when they are in public settings—like Cathy Allen leaving work.¹⁶¹ Therefore, Chapter 554 needs to establish a task force monitored by the SOS that utilizes the Guard to be proactive in preventing future attacks against election workers.¹⁶² The SOS would oversee the California Cybersecurity Task Force, which would monitor social media posts, flagging violent speech that is gaining traction.¹⁶³ The task force would utilize an algorithm, monitoring for key words such as “stolen election,” or “voter fraud.”¹⁶⁴ Once the algorithm flags potentially problematic speech, the Guard's cybersecurity members would verify whether or not the rhetoric is dangerous or intends to incite violence.¹⁶⁵ The cybersecurity members would understand the dynamics of extremist groups, including their code words and acronyms.¹⁶⁶ After posts are flagged by the algorithm and verified, the task force would further research the post's origin.¹⁶⁷ Having knowledge of who made the post, what specifically the post is about, and how many likes, comments, and reposts, puts the task force on notice of potential threats.¹⁶⁸ For example, posts

¹⁵⁸ Cortellesa, *supra* note 139 (explaining that death threats caused a poll worker in Georgia to not leave their home for over two months after President Trump falsely accused her of inserting fraudulent ballots in the 2020 elections).

¹⁵⁹ Whelan, *supra* note 88 (explaining that to prosecute an individual for violent speech, one must prove their subjective understanding nature of their violent speech).

¹⁶⁰ Padilla Introduces Legislation to Address the Rise in Threats Targeting Election Workers, *supra* note 48 (explaining that election workers are the backbone of American democracy).

¹⁶¹ SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 4 (Apr. 18, 2022) (explaining that the SAH protects workers by keeping their personal information, such as their home address, confidential).

¹⁶² California New Motor Voter Program, JUSTICIA, <https://law.justia.com/codes/california/2021/code-elec/division-2/chapter-4-5/section-2275/> (last visited July 9, 2023) (on file with the *University of the Pacific Law Review*) (showing that the SOS can establish a task force that includes specific members).

¹⁶³ See *Motor Voter Task Force*, *supra* note 31 (showing that a bill can require the SOS to monitor the specific responsibilities of a task force monitors).

¹⁶⁴ *Social Media and Online Speech: How Should Countries Regulate Tech Giants?*, *supra* note 143 (explaining that social media companies utilize algorithms to root out misinformation).

¹⁶⁵ *Id.* (explaining that artificial intelligence systems effectively flag problematic posts, but it's necessary to have workers double check what's flagged because they understand nuances).

¹⁶⁶ U.S. House Select Committee Investigating the January 6th Capitol Attack Requests Expert Statements from GPAHE, GLOB. PROJECT AGAINST HATE & EXTREMISM (June 6, 2022), https://globalextrémism.org/post/u-s-house-select-committee-investigating-the-january-6th-capitol-attack-requests-expert-statements-from-gpahe/?gclid=Cj0KCQjwtaMlBhD3ARIsAARoaEYNQCz2NGDgqIFhS9Ic4Zp3VyGD-gq0uo1GUVvZgNoY1Qo2rk0LgXlaArI_EALw_wcB (on file with the *University of the Pacific Law Review*) (explaining that leading up to the January 6, 2021 riot the Proud Boys utilized the saying "1776" within their social media chats and investigators knew that it referenced the plan to occupy crucial buildings in Washington).

¹⁶⁷ *Social Media and Online Speech: How Should Countries Regulate Tech Giants?*, *supra* note 143 (showing statistics of where problematic posts are found).

¹⁶⁸ *Id.* (monitoring social media allows companies to see what is posted and therefore detect problematic posts).

calling for the physical presence of people at a location would alert the task force, allowing authorities to prepare to intervene.¹⁶⁹

While the Guard's cybersecurity team would be essential members of the task force, the Guard can also be deployed to polling locations, homes, and public spaces when necessary.¹⁷⁰ Further, as other states have already implemented, Chapter 554 needs to require that the Guard show up to polling centers on election day.¹⁷¹ The Guard would show up to polling locations in counties considered high risk, such as Shasta County, and would dress in plain clothes to not intimidate voters.¹⁷² High risk counties would be determined by reported threats from election workers, as well as the locations of dangerous social media posts detected by the task force.¹⁷³ Subsection 1 highlights Facebook's successful social media task force and the negative outcome of rolling it back.¹⁷⁴ Subsection 2 discusses how California can strive to be successful by implementing a task force.¹⁷⁵

1. The Power of a Social Media Task Force

Leading up to the 2020 election, Facebook established a task force to monitor posts regarding the race.¹⁷⁶ The task force ultimately took down any problematic post, whether it was misinformation or threatening language.¹⁷⁷ However, after announcing the election results, Facebook rolled back this task force, as well as other enforcement measures previously in place.¹⁷⁸ The week after the election, leading up to January 6, 2021, misinformation proliferated throughout Facebook.¹⁷⁹ Not only were users posting about the legitimacy of the election, they posted messages that bordered on incitement.¹⁸⁰ Had Facebook decided to maintain its task force after the conclusion of the election, posts regarding the misinformation and the dismantling of the country would have been taken down.¹⁸¹ In agreement with other employees, a former Facebook integrity team employee said "Facebook took its eye off the ball in the interim time between Election Day and January 6."¹⁸² Monitoring social media for misinformation and violent rhetoric is successful, just as Facebook's successful task force illustrates.¹⁸³ Had Facebook

¹⁶⁹ *Id.*

¹⁷⁰ *California New Motor Voter Program*, *supra* note 162 (showing that the SOS can establish a task force that includes specific members).

¹⁷¹ Mitchell, *supra* note 20.

¹⁷² *Id.* (showing that the Guard showed up to polling locations in plain clothes).

¹⁷³ *Id.* (showing that the Guard was present at polling locations to prevent potential attacks against election workers).

¹⁷⁴ *Infra* Subsection IV.C.1.

¹⁷⁵ *Infra* Subsection IV.C.2.

¹⁷⁶ Silverman et al., *supra* note 135.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* (showing that posts on Facebook read: "WE ARE AMERICANS!!! WE FOUGHT AND DIED TO START OUR COUNTRY! WE ARE GOING TO FIGHT...FIGHT LIKE HELL. WE WILL SAVE HER <3 THEN WERE GOING TO SHOOT THE TRAITORS!!!!!!!!!!!!!!").

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

continued regulating online misinformation, Facebook’s task force employees believe the riots on January 6, 2021, might not have been as well-attended.¹⁸⁴

2. California’s Ability to Protect Election Workers Through a Task Force

If the SOS and the Guard worked together to monitor social media, California could better protect its citizens.¹⁸⁵ As the law currently stands, the First Amendment protects the freedom of speech, which has been shown to infringe on the physical rights of others.¹⁸⁶ Therefore, the California Legislature needs to act to preserve election-worker safety—while also safeguarding the First Amendment.¹⁸⁷ The task force would not limit a user’s ability to freely speak or associate, but would monitor social media platforms, flagging users who implement violent rhetoric regarding elections.¹⁸⁸ Chapter 554 could protect election workers without violating the constitution.¹⁸⁹

People would feel safer because social media tirades would be flagged and dealt with.¹⁹⁰ The task force would be on notice of dangerous rhetoric online and deploy the Guard to physical areas of concern, protecting election workers and officials.¹⁹¹ While California has the authority to call on the Guard, when elections include federal measures and candidates, the federal government would need to authorize the deployment of the Guard.¹⁹² Therefore, for California to utilize the Guard in upcoming United States presidential elections, the federal government needs to be consulted.¹⁹³ By including a provision that explicitly directs the SOS to establish and oversee a social-media-monitoring task force, Chapter 554 would take a bold step forward in protecting local election workers.¹⁹⁴

¹⁸⁴ *Id.*

¹⁸⁵ Whelan, *supra* note 88 (explaining that unless “the defendant had some subjective understanding of the threatening nature of his statements” all speech is protected by the First Amendment).

¹⁸⁶ Cortellessa, *supra* note 139 (explaining that death threats caused a poll worker in Georgia to not leave their home for over two months after President Trump falsely accused her of inserting fraudulent ballots in the 2020 elections).

¹⁸⁷ CAL. ELECTION CODE §§ 2166.5, 12105.5, 12108 (amended by Chapter 554); CAL. ELECTION CODE § 2166.8 (enacted by Chapter 554); CAL. CODE, GOV’T CODE §§ 6215, 6215.2 (from the “Today’s Law as Amended” section) (showing at the legislature knew election workers were being targeted and therefore created Chapter 554).

¹⁸⁸ Silverman et al., *supra* note 135 (showing that Facebook had a similar task force that was successful during the time it operated).

¹⁸⁹ Whelan, *supra* note 88 (explaining that unless “the defendant had some subjective understanding of the threatening nature of his statements” all speech is protected by the First Amendment).

¹⁹⁰ Pardo, *supra* note 3 (explaining that election workers feel unsafe in their jobs as a result from the harassment they face).

¹⁹¹ *Id.* (explaining that election workers feel unsafe in their jobs as a result from the harassment they face).

¹⁹² See *Frequently Asked Questions*, NAT’L GUARD, <https://www.nationalguard.mil/About-the-Guard/Army-National-Guard/FAQ/> (on file with the *University of the Pacific Law Review*) (explaining that when the Guard is “activated for a federal mission,” the Guard is a component of the U.S. Army).

¹⁹³ *Id.*

¹⁹⁴ *Governor Carney Authorizes Delaware National Guard Cybersecurity Squadron to Support 2020 Election*, *supra* note 43 (showing that Delaware proactively combated election-related violence and threats through monitoring social media).

V. CONCLUSION

Chapter 554 sought to protect election workers from violence and harassment proceeding the 2020 election.¹⁹⁵ The California Legislature understood the need to draft legislation to address the safety concerns of election workers, which is a positive first step.¹⁹⁶ Extending the SAH to election workers is helpful but does not get to the root of the problem.¹⁹⁷ Election workers are subjected to violence at their workplaces and in public spaces, not just in their homes.¹⁹⁸

The California Legislature should supplement Chapter 554 with legislation empowering the SOS and the Guard.¹⁹⁹ Utilizing the SOS and the Guard would spur legislation to be proactive rather than reactive.²⁰⁰ Social media platforms also need to be monitored because their algorithms too easily disseminate content that borders on incitement.²⁰¹ To further ensure election workers safety while on the job, the state must order the Guard present at polling locations in California on Election Day and the day following, if necessary.²⁰² If the Legislature does not amend Chapter 554 to adequately ensure on-the-job safety, election workers, such as Cathy Allen, will continue to face harassment and trust in elections will continue to erode.²⁰³

¹⁹⁵ SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1131, at 1 (Aug. 24, 2022).

¹⁹⁶ ASSEMBLY FLOOR ANALYSIS, COMMITTEE ANALYSIS OF SB 1131, at 4 (Aug. 15, 2022).

¹⁹⁷ CAL. ELECTION CODE §§ 2166.5, 12105.5, 12108 (amended by Chapter 554); CAL. ELECTION CODE § 2166.8 (enacted by Chapter 554); CAL. CODE, GOV'T CODE §§ 6215, 6215.2 (from the "Today's Law as Amended" section) (showing that Chapter 554 only *extends* the SAH program to election workers).

¹⁹⁸ Pardo, *supra* note 3.

¹⁹⁹ See *Governor Carney Authorizes Delaware National Guard Cybersecurity Squadron to Support 2020 Election*, *supra* note 43 (showing that Delaware proactively combated election-related violence and threats through monitoring social media); Mitchell, *supra* note 20.

²⁰⁰ CAL. ELECTION CODE §§ 2166.5, 12105.5, 12108 (amended by Chapter 554); CAL. ELECTION CODE § 2166.8 (enacted by Chapter 554); CAL. CODE, GOV'T CODE §§ 6215, 6215.2 (from the "Today's Law as Amended" section) (showing that Chapter 554 only *extends* the SAH program to election workers, not accounting for other factors that encourage harassment towards election workers).

²⁰¹ Sarah Palin's "It's Time to Take a Stand" (illustration), in *www.SarahPAC.com* (on file with the *University of the Pacific Law Review*) (showing how Sarah Palin's rhetoric ultimately incited violence).

²⁰² Mitchell, *supra* note 20 (showing other states have deployed the National Guard to polling locations).

²⁰³ Anguiano, *supra* note 1 (detailing the violence and harassment towards elections workers).

* * *