

“THE SKY IS FALLING, THE SKY IS FALLING”¹: WHY INCITING MASS PSYCHOLOGICAL PANICS SHOULD TRIGGER LEGAL LIABILITY

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I. INTRODUCTION

And now, we have no option. We can't say 'maybe' 'it's possible' 'it looks very probable . . . ' No way! We have to say this is what the Bible teaches! This is fact! May 21, 2011, is the day of the Rapture, it is the day that Judgment Day begins.³

Harold Camping's inflammatory rants about the end of days caused a mass psychological panic, which is a phenomenon that poses significant risks to the overall health and well-being of society.⁴ Mass psychological panics are not a recent development in social behavior, but they have become an increasing threat with technological advancements in mass communication. While the risk they pose is significant, the law has been hesitant to penalize individuals who incite these panics.⁵ Along with Camping's doomsaying, this paper will discuss the current organization on social media, and fear rhetoric of the far-right conspiracy group, QAnon. Their rhetoric has led to many acts of violence including the insurrection at the United States Capitol on January 6, 2021.⁶

The federal government's lack of preparation for a mass psychological panic demonstrates that current laws are insufficient; therefore, a new law must be enacted to institute sufficient legal liability for inciting a mass panic. This new law should be modeled after the existing "Inducing Panic" statute⁷ in Ohio, which has exhibited that legislation of this kind is both necessary and effective. Thus, Ohio's statute should be the model for federal legislation.

First, it is important to begin by reviewing the most significant mass panics that have occurred due to mass broadcasts—starting as early as 1938

¹ CHICKEN LITTLE (Walt Disney Pictures 1943).

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³ Greg Stier, *Is it All Going Down on May 21?*, MITCHEL LEE (May 16, 2011), <https://mitchellee.com/another-judgment-day-insight/>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ OHIO REV. CODE ANN. § 2917.31 (West 2011).

with Orson Welles' famous "War of the Worlds" hoax.⁸ Next, the constitutionality of such a law will be analyzed and whether it would withstand a federal constitutional challenge under the void-for-vagueness doctrine. Subsequently, the potential civil and criminal penalties will be reviewed, and the policy implications will be discussed. Lastly, Harold Camping's and QAnon leaders' individual liabilities will be explored under such a law as representative cases for establishing how the federal law would operate. Enacting a federal law concerning the penalties of mass panic is imperative because it will aim to deter offenders from inciting mass panic, particularly regarding the end of "the very basis of society"⁹ proclaimed by far-right groups, as a rallying cry to violence.

II. BACKGROUND AND HISTORY

Technological improvements over the past century have made communicating information to the masses much simpler and much quicker. While the dissemination of information is vital to the public, the ease of mass communication also presents problems when the information being distributed is false and potentially elicits a fear-based response from large groups of people.¹⁰

The "War of the Worlds" hoax is a prime example of how a widely distributed broadcast message—via public channels of communications—to large audiences can cause riotous behavior in a short amount of time.¹¹ On October 30, 1938, the United States experienced one of the first mass psychological panics induced through a mass communication service—the radio.¹² This incident began when Orson Welles gave a radio broadcast—presented as a news bulletin—suggesting to many listeners that an actual alien invasion was in progress.¹³ The radio show appeared especially genuine because the broadcast was incorporated into a sustaining show—a show that runs without commercial interruption.¹⁴ Although this broadcast was meant for entertainment, many cities were forced to divert considerable resources from their law enforcement, media, and municipal services to cope with the

⁸ *War of the Worlds, The Broadcast*, (CBS radio broadcast Oct. 30, 1938).

⁹ Letter from Carlo Maria Vigano to President Donald Trump (Oct. 25, 2020) (on file at <https://qanon.pub/>).

¹⁰ See Nina Jankowicz & Cindy Otis, *Facebook Groups are Destroying America*, WIRED (June 17, 2020, 8:00 AM), <https://www.wired.com/story/facebook-groups-are-destroying-america/> (discussing that spreading disinformation of Facebook stokes political division, and COVID-19 fear pushes people further into "conspiracy-land").

¹¹ *War of the Worlds, The Broadcast*, *supra* note 8.

¹² *Id.*

¹³ Justin Levine, *A History and Analysis of the Federal Communications Commission's Response to Radio Broadcast Hoaxes*, 52 FED. COMM'NS L.J. 273, 277-78 (2000).

¹⁴ *War of the Worlds, The Broadcast*, *supra* note 8.

fallout of the program.¹⁵ It is estimated that between six to twelve million listeners heard the initial broadcast, many of whom took to the streets in panic to riot or protest, shared the story and their fear with others, and created a situation that responding police officers described as “a terror.”¹⁶

While not exactly a hoax, another prime example of a mass psychological panic was the feared disruption known as Y2K. People were worried about a potential collapse of the computer systems caused by the calendar cycling at the millennium.¹⁷ In 1999, the cost for millennium preparation was upwards of five hundred billion dollars.¹⁸ The mere thought of a global blackout of the computer information systems people had become so dependent on caused a panic.

Another panic occurred in 2012, based on the “time of great change” predicted by the Mayan culture five millennia ago.¹⁹ Many people put a great deal of faith into the apocalyptic and cryptic-sounding predictions that the world would end, or a time of great disaster would befall society because the end of Mayan calendar aligned with the Winter Solstice the night of December 21, 2012.²⁰ While word of the possible Y2K disaster started to spread several months before it occurred, the 2012 rumor mill was in action for many years.²¹ When December 2012 arrived, panic occurred around the world. In Russia, people were described as having a “collective mass psychosis” as stores were stripped clean of survival goods like food, matches, and candles.²² Similarly, in France, authorities barred access to sacred places thought to bring luck and protect those from an impending doomsday.²³

It has long been noted that the radio has a bond with its listeners.²⁴ Until the internet, no other medium established as deep a connection as the radio because it required both an emotional and imaginative bond.²⁵ Unlike television and print media, the radio did not require the audience’s undivided attention, and, therefore, could prey upon the unwary listener as they engaged

¹⁵ *Id.*

¹⁶ Levine, *supra* note 13.

¹⁷ *Id.*

¹⁸ Stanley Bing, *Oh, Sure. Now They’re Sorry Y2K Idiots Cost Business \$500 Billion! Is no One to be Punished?*, CNN MONEY (Feb. 2, 2000), http://money.cnn.com/magazines/fortune/fortune_archive/2000/02/07/272831/index.htm.

¹⁹ Benjamin Anastas, *The Final Days*, N.Y. TIMES MAG. (July 1, 2007), <https://www.nytimes.com/2007/07/01/magazine/01world-t.html?searchResultPosition=3>.

²⁰ *Id.*

²¹ *Id.*; Bing, *supra* note 18.

²² Ellen Barry, *In Panicky Russia, It’s Official: End of World is Not Near*, N.Y. TIMES (Dec. 1, 2012), <https://www.nytimes.com/2012/12/02/world/europe/mayan-end-of-world-stirs-panic-in-russia-and-elsewhere.html>.

²³ *Id.*

²⁴ See Colo. Pub. Radio Staff, *The Power Of Radio: Why We Listen in a Changing World*, COLO. PUB. RADIO (June 30, 2017), <https://www.cpr.org/2017/06/30/the-power-of-radio-why-we-listen-in-a-changing-world/>.

²⁵ *See id.*

in other activities and had their guard down.²⁶ There was a time in American history when an entire family would sit down to listen to the Presidential “fireside chat” as Franklin D. Roosevelt addressed the nation.²⁷ Until recently, people were not as inextricably connected with a form of media as they were in the golden age of radio; but now, a similar form of communication has grasped the world’s attention: social media such as Twitter, Facebook, Reddit, and other fringe sites such as Parler and Gab.²⁸

Social media, blogs, and news media sites run twenty-four hours a day, three hundred and sixty-five days a year—giving anyone who chooses to widely distribute false information an unlimited medium.²⁹ While much of the internet remains more like the newspaper and other traditional print media, social media stands out. For example, Twitter has the same ability as the radio to quickly disseminate information—all while not requiring the receiver of the information’s full attention or comprehension.³⁰ “Twitter comes from a long line of communication tools designed to reach out and connect communities and the world.”³¹ However, social media “puts the power of mass communication in the hands of the average person.”³² Essentially, Twitter, and more broadly, social media, are the evolutionary product of radio and the Internet.³³

In marketing, there is a strategy known as push and pull.³⁴ A push system will deliver messages straight to its audience, while a pull system is one in which the audience actively engages, thus having input and an impact on what is being distributed.³⁵ Most media are either push or pull, but social media employs both, which is why it is so dangerous with mass psychological panics. On social media, a message is not only broadcasted once. Participants can actively engage, respond, and increase the available audience of the original message—not only through one but through many social media

²⁶ Levine, *supra* note 13.

²⁷ Fdrlibrary, *Celebrating the Fireside Chat*, NAT’L ARCHIVES: FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBRARY AND MUSEUM (Mar. 10, 2021), <https://fdr.blogs.archives.gov/2021/03/10/celebrating-the-first-fireside-chat/>.

²⁸ Brooke Auxier & Monica Anderson, *Social Media Use in 2021*, PEW RSCH. CTR. (Apr. 7, 2021), <https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/>.

²⁹ Emily Stewart, *America’s Growing Fake News Problem, in One Chart*, VOX (Dec. 22, 2020, 2:20 PM EST), <https://www.vox.com/policy-and-politics/2020/12/22/22195488/fake-news-social-media-2020>.

³⁰ Tom Reidy, *Twitter is the New CB Radio*, SOC. MEDIA NZ (May 3, 2011), <http://socialmedianz.com/opinion2/2011/05/03/twitter-is-the-new-cb-radio/>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *The Difference Between Push and Pull Marketing Strategies*, RADD INTERACTIVE, <https://raddinteractive.com/the-difference-between-push-and-pull-marketing-strategies/> (last visited Nov. 3, 2021).

³⁵ *Id.*

avenues and networks.³⁶ This functions as a perfect breeding ground for fringe groups, cults, conspiracy theorists, and similar groups to develop a following and refine or expand their messaging. As currently see with QAnon, this process culminates all too frequently in detrimental real-world impacts.

Social media uniquely allows users to quickly communicate with a large number of people with perhaps only one demographic variable in common.³⁷ Factors such as age or location can be targeted, which presents unique challenges for law enforcement when attempting to curb or prevent mass panics.³⁸ An example of social media being used to further panic or protest was the Egyptian protests from February of 2011 and the similar protests in Tunisia and South America.³⁹ Local townspeople used social media to spread the word by educating the masses about their cause and giving an otherwise widely unknown position a voice.⁴⁰ Had those local protests occurred even a decade or two earlier, it is likely that the government would have quelled their voices long before they received the media attention necessary to make an impact. Other recent examples of positive organization through social media include: The Women's March and movement in 2016,⁴¹ Greta Thunberg's School Strikes for Climate in 2020,⁴² and the Black Lives Matter movement.⁴³ These protests used social media to "give a voice" to humanitarian causes; however, the same social media techniques could be employed for other, less positive aspirations. With the rapid development of social media giving everyone a voice, caution and restraint need to be exercised.

Over the past one hundred years, there have been more than one hundred predictions that the world would end.⁴⁴ Harold Camping made three

³⁶ *Id.*

³⁷ *Social Media Fact Sheet*, PEW RSCH. CTR. (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/social-media/?menuItem=2fc5fff9-9899-4317-b786-9e0b60934bcf>.

³⁸ Rebecca Riserbato, *What a Social Media Target Audience Is and how to Find it*, HUBSPOT: MARKETING (Oct. 8, 2020), <https://blog.hubspot.com/marketing/social-media-target-audience>.

³⁹ Julia Cohn, *Social Media Aids Middle East Protests*, E. CHAPEL HILL OBSERVER (Feb. 28, 2011), <https://echobserver.wordpress.com/2011/02/28/social-media-aids-middle-eastern-protests/>.

⁴⁰ *Id.*

⁴¹ Issie Lapowsky, *The Women's March Defines Protest in the Facebook Age*, WIRED (Jan. 21, 2017, 10:24 PM), <https://www.wired.com/2017/01/womens-march-defines-protest-facebook-age/>.

⁴² Steven Morris, *Greta Thunberg in Bristol: Thousands Turn out for Climate Strike*, THE GUARDIAN (Feb. 28, 2020, 08:53 EST), <https://www.theguardian.com/environment/2020/feb/28/greta-thunberg-bristol-schools-shut-students-join-climate-strike>.

⁴³ Aleem Maqbool, *Black Lives Matter: From Social Media Post to Global Movement*, BBC NEWS (July 10, 2020), <https://www.bbc.com/news/world-us-canada-53273381>.

⁴⁴ Bill Whitaker, *How Harold Camping Marketed the Rapture*, CBS NEWS (May 20, 2011, 8:23 PM), <https://www.cbsnews.com/news/how-harold-camping-marketed-the-rapture/>.

predictions of the impending end of the world.⁴⁵ The first was in 1994.⁴⁶ His next apocalyptic predictions were more recent, in May and October 2011.⁴⁷ The QAnon movement is saturated with apocalyptic thought about the end of days and the “Great Awakening.”⁴⁸ Harold Camping and QAnon have spouted end of the world rhetoric that has negatively affected many people and communities; therefore, a law needs to be enacted to prevent future mass psychological panics. It is essential to protect the public from unnecessary chaos, worry, and other devastating effects of a mass psychological panic.

III. LEGAL FOCUS

The United States Supreme Court has already decided that “words which create an immediate panic are not constitutionally protected speech.”⁴⁹ Over the past ninety years since *Schenck* was decided, it has been interpreted hundreds of times by a plethora of judges, and it has generally been found that an individual’s personal liberty interest in freedom of speech is not so great as to outweigh potential danger to the public good.⁵⁰

Schenck has clearly shown that it is not constitutionally protected free speech to enter a crowded theater and yell “fire” as the ensuing panic and threat to the public would be a greater than the infringement upon the liberty interest of the individual’s freedom of speech.⁵¹ The Supreme Court has continually held that the interest of the public outweighs the liberty interests of an individual.⁵² Thus, the public’s interest in preventing mass psychological panics *should* outweigh the interests of an individual who decides to make predictions that can have negative effects on the public health.

In the years since the *Schenck* decision, courts have interpreted the holding to include a much larger venue for where the “theater” may exist. *Schenck*’s holding, the clear and present danger test, has since been overruled in favor of an imminent lawless action test; however, the venue requirements

⁴⁵ Robert D. McFadden, *Harold Camping, Dogged Forecaster of the End of the World, Dies at 92*, N.Y. TIMES (Dec. 17, 2013), <https://www.nytimes.com/2013/12/18/us/harold-camping-radio-entrepreneur-who-predicted-worlds-end-dies-at-92.html>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Adrienne LaFrance, *The Prophecies of Q*, THE ATL. (June 2020), <https://www.theatlantic.com/magazine/archive/2020/06/qanon-nothing-can-stop-what-is-coming/610567/>.

⁴⁹ *City of Seattle v. Huff*, 767 P.2d 572, 573 (Wash. 1989) (citing *Schenck v. United States*, 249 U.S. 47, 52 (1919)).

⁵⁰ James M. McGoldrick, Jr., “*This Wearisome Analysis*”: *The Clear and Present Danger Test from Schenck to Brandenburg*, 66 S.D. L. Rev. 53, 53-108 (2021) (discussing the evolution of the restraint of free speech regarding dangerous speech).

⁵¹ *Schenck v. United States*, 249 U.S. 47, 52 (1919).

⁵² *See Dennis v. United States*, 341 U.S. 494, 503 (1951); *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 134 (2010).

of a crowded area have remained relatively the same but have expanded further in range.⁵³ The venue now ranges from individuals to communities to the entire global village.⁵⁴ This expansion of the venue to where one's speech can resonate is in large part due to the ever-increasing communication abilities of our society.⁵⁵ With every advancement in technology, we are becoming a more social community, and people who once had no voice are now being heard by huge groups of people.

One consideration for enacting a federal statute governing panic induction is whether such legislation is constitutional. The Ohio "Inducing Panic" statute was challenged in *State v. Cordell*,⁵⁶ on the grounds that it was void for vagueness.⁵⁷ It was found to be constitutionally valid.⁵⁸

The statute has often been used in criminal cases where the defendant caused a public panic by brandishing a firearm or weapon while committing a separate crime and panicking several victims.⁵⁹ In *State v. Mushrush*, the defendant was charged with three counts of inducing panic in violation of the Inducing Panic Statute—which are felonies of the fourth degree—as well as other charges.⁶⁰ Mushrush, the defendant, had opened a canister of mace in a gymnasium during a talent show with over four hundred spectators.⁶¹ Many spectators fled in a panic—with several people harmed amidst the chaos.⁶² The defendant was sentenced to over ten years in prison for inducing the panic.⁶³ In many ways, Harold Camping opened a canister of mace upon an unsuspecting public when he announced that the world would be ending on a specified date and time. People panicked, and as a result, there were injuries and even deaths.⁶⁴ It would be an injustice to let Camping get away with inducing a panic on a much larger scale, simply because his weapon was his message and not an actual canister of mace. QAnon opened another proverbial canister of mace with their apocalyptic rhetoric which led to the first insurrection and violence at the United States Capitol since the War of

⁵³ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

⁵⁴ Levine, *supra* note 13.

⁵⁵ *Id.*

⁵⁶ *State v. Cordell*, 604 N.E.2d 1389 (Ohio Mun. Ct. 1992).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *State v. Mushrush*, 733 N.E.2d 252, 255-56 (Ohio Ct. App. 1999).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 256.

⁶⁴ *Making the Most of our Time*, THECOMPASS (May 26, 2011), <https://www.thecompassnews.org/2011/05/making-most-of-our-time/>.

1812.⁶⁵ This event led to the deaths of four citizens and one police officer, among other consequences.⁶⁶

There are two standard ways to attack the constitutionality of a statute: (1) on its face or (2) in its application.⁶⁷ Normally, a new statute will first be challenged on its face as void for vagueness. The basis in determining whether a statute or ordinance is unconstitutional on its face due to being void for vagueness was set forth by the United States Supreme Court in the case of *Grayned v. Rockford*.⁶⁸ In that case, the Court held that pursuant to “basic principle[s] of due process, [a law] is void for vagueness if its prohibitions are not clearly defined.”⁶⁹ In other words, a statute is void if “persons of common intelligence must guess at the meaning of the statute.”⁷⁰ A void for vagueness challenge was attempted regarding the Ohio “Inciting Panic” statute⁷¹ in *State v. Cordell*.⁷² The defendant argued that the statute was invalid on its face.⁷³ This challenge ultimately failed with the *Cordell* court noting that “[t]he language contained in R.C. 2917.31 is clearly understandable so as to prevent innocent people from being trapped by not having a fair warning of what is required of residents of the state of Ohio.”⁷⁴

*Cordell*⁷⁵ was not the first time the Ohio statute⁷⁶ was challenged on its face. In *State v. Loless* the definition of what constitutes the actual inducement of a panic was at issue.⁷⁷ The defendant, a former contractor who had worked on bridges in Ohio, circulated messages to radio and television stations saying that the structure of no less than twenty-two bridges in the Ohio area had been altered and, if not corrected, may fail.⁷⁸ The court relied heavily on *Schenck*,⁷⁹ highlighting that “[w]hile the right of free speech entitles citizens to express their ideas, beliefs, and emotions, regardless of their popularity, it does not extend to the threatening of terror, inciting of riots, or verbalizing of false information that induces panic in a public

⁶⁵ *Burning of Washington, 1814*, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/generic/August_Burning_Washington.htm (last visited Sept. 24, 2021).

⁶⁶ Eric Levenson et al., *What We Know About the 5 Deaths in the Pro-Trump Mob that Stormed the Capitol*, CNN (Jan. 8, 2021, 5:29 PM ET), <https://www.cnn.com/2021/01/07/us/capitol-mob-deaths/index.html>.

⁶⁷ *State v. Cordell*, 604 N.E.2d 1389, 392 (Ohio Mun. Ct. 1992).

⁶⁸ *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

⁶⁹ *Id.*

⁷⁰ *Cordell*, 604 N.E.2d at 1392.

⁷¹ OHIO REV. CODE ANN. § 2917.31 (West 2011).

⁷² *Cordell*, 604 N.E.2d. 1389.

⁷³ *Id.* at 1392.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ § 2917.31.

⁷⁷ *State v. Loless*, 507 N.E.2d 1140, 1141-42 (Ohio Ct. App. 1986).

⁷⁸ *Id.* at 1141.

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

place.”⁸⁰ The *Loless* court interpreted the act of dispensing the information to a large media outlet as an attempt to cause serious public alarm, and an attempt to actually induce panic.⁸¹

The next potential challenge of the law, if it were enacted on a federal level, is that it is ambiguous in its application and, therefore, is unconstitutional. This avenue was also explored in *Cordell* with the court determining that “the statute as drafted by the legislators for the state of Ohio is precise so as not to impermissibly delegate basic policy matters or enforcement to policemen, judges and juries for resolution on an *ad hoc* and subjective basis, with the intended dangers of arbitrary and discriminatory application.”⁸²

The *Loless* court also analyzed whether the statute was unconstitutionally vague and overbroad.⁸³ The court noted that “[t]he vagueness doctrine under the Due Process Clause of the Fourteenth Amendment contemplates that criminal responsibility should not attach where an individual could not with reasonable certainty understand that his proposed conduct is disapproved when measured against the language of the statute.”⁸⁴ The court went on to find the defendant had adequate notice and the statute was valid both facially and in its application.⁸⁵ With the courts in *Cordell*⁸⁶ and *Loless*⁸⁷ demonstrating that the statute is *at least* valid on a state level, the federal government should consider implementing a similar statute at the federal level. They should not hesitate on the mere basis that it may be found unconstitutional on the federal level.

If the government is unwilling or unable to enact federal legislation based primarily on the Ohio “Inducing Panic” statute,⁸⁸ then—similar to when state funding was withheld to coerce the states into increasing the legal drinking age to twenty-one—it should consider giving states monetary incentives to pass legislation.⁸⁹

IV. HAROLD CAMPING CASE STUDY

Harold Camping died shortly after his apocalyptic predictions were proven false—meaning he and his rhetoric are no longer a threat to the

⁸⁰ *Loless*, 507 N.E.2d at 1142.

⁸¹ *Id.*

⁸² *Id.* at 1392.

⁸³ *Id.* at 1040.

⁸⁴ *Id.* at 1143.

⁸⁵ *Id.* at 1143-4.

⁸⁶ *State v. Cordell*, 604 N.E.2d 1389 (Ohio Mun. Ct. 1992).

⁸⁷ *Loless*, 507 N.E.2d. 1140.

⁸⁸ OHIO REV. CODE ANN. § 2917.31 (West 2011).

⁸⁹ 23 U.S.C. § 158.

public.⁹⁰ Because his narrative ran its course, we can examine what happened, his potential criminal liability, and how panic inducement protections could have prevented or mitigated the harm he caused. This analysis is useful for preventing future incidents and holding doomsayers adequately liable for the harm they create. Among existing laws, there are only a few avenues, though unlikely, through which Harold Camping may have been held liable. Harold Camping could have been charged with inciting a riot based upon a broad interpretation of *Schenck*,⁹¹ the federal definition of a riot, or the riot laws found in 18 U.S.C.A § 2101 and 2102.⁹² Section 2102 defined a riot as:

[A] public disturbance involving (1) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person or to the person of any other individual or (2) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual.⁹³

Harold Camping caused a public disturbance with his broadcast of the impending rapture and end of the world.⁹⁴ But, while there were several acts of violence and suicides as a result of his predictions, no reported “group crimes” were committed to meet the statute’s definition of a riot.

Some acts of violence followed directly from Harold Camping’s prediction of the end times. In late March of 2011, as a response to Camping’s Tribulation predictions, Lyn Benedetto attempted to murder her two daughters, age eleven and fourteen, as well as take her own life.⁹⁵ Although all three survived the attack, Benedetto remains in jail, and her daughters remain in the custody of their father—likely traumatized for life.⁹⁶

⁹⁰ *Doomsday Minister Harold Camping Dead at 92*, USA TODAY (Dec. 18, 2013, 7:28 AM ET), <https://www.usatoday.com/story/news/nation/2013/12/18/harold-camping-dead-minister/4107749/>.

⁹¹ *Schenck v. United States*, 249 U.S. 47, 52 (1919).

⁹² 18 U.S.C. §§ 2101-02.

⁹³ *Id.*

⁹⁴ McFadden, *supra* note 45.

⁹⁵ Kristal Roberts, *California Mother, Lyn Benedetto, Tries to Kill Kids Before the Tribulation, Deputies Say*, CULT EDUC. INST. (May 22, 2011), <https://culteducation.com/group/1258-harold-camping/9495-california-mother-lyn-benedetto-tries-to-kill-kids-before-the-tribulation-deputies-say.html/>.

⁹⁶ *Id.*

In Antioch, New York, on May 21, 2011, at the hour the rapture was supposed to arrive, Victor Frasnó reportedly tried to reach God across a lake, but could not swim and drowned.⁹⁷ In 1994, when Harold Camping made his first false Rapture prediction, a man committed suicide in New Jersey.⁹⁸ Although there were numerous reports of suicides and public instability that Harold Camping's prediction directly caused, he was never charged.⁹⁹

Although his predictions were dangerous and likely to threaten public health, he would not be liable for a broadcast hoax based on the Federal Communications Commission's prescribed regulations unless he knowingly made a false prediction.¹⁰⁰ The regulation is based in torts, and to be held liable a licensee who broadcasts a hoax must meet three narrowly tailored elements.¹⁰¹ The elements are (1) the licensee must know that the material broadcast is false, (2) that the hoax must directly cause immediate, substantial, and actual public harm, and (3) the resulting public harm must be foreseeable.¹⁰² Harold Camping could have claimed that he truly believed his prediction was accurate, so the first element of the offense would not be met. Under the broadcast hoax law, neither Harold Camping nor his parent company, Family Radio, would be found guilty. Harold Camping committed no federal crimes under existing law, which is why new federal legislation must be passed to prevent more victims of mass psychological panics.¹⁰³

Based upon his actions leading up to May 21, 2011, Harold Camping may have been civilly liable to the victims of his failed prediction. Camping and Family Radio spent months advertising that the world would end at 6 p.m. on May 21, 2011.¹⁰⁴ On the evening of May 20, 2011, many states set up suicide prevention hotlines—at the taxpayers' expense—because experts feared despondent followers who were depressed may take their own lives.¹⁰⁵ Harold Camping could have faced civil liability in California.¹⁰⁶ There he could have been held to a higher standard of care and considered an *expert* on a matter of theology based on his study of the Bible despite having no proper academic training in the study of theology.¹⁰⁷ Camping's profession

⁹⁷ Scott James, *Seeking to Unplug the Voice of Doomsday*, N.Y. TIMES (July 1, 2011), <https://www.nytimes.com/2011/07/01/us/01bcjames.html>.

⁹⁸ *Making the Most of our Time*, *supra* note 64.

⁹⁹ *Id.*

¹⁰⁰ 47 C.F.R. § 73.1217 (1992).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ As Harold Camping's message was spread worldwide, followers reported that donations grew, allowing Family Radio to spend millions on more than 5,000 billboards and twenty recreational vehicles plastered with the doomsday message. *Doomsday Prediction Fizzles Out*, FOX NEWS (Nov. 28, 2015), <http://www.foxnews.com/us/2011/05/21/christian-movement-prepares-doomsday/>.

¹⁰⁴ James, *supra* note 97.

¹⁰⁵ *Id.*

¹⁰⁶ See CAL. WELF. & INST. CODE § 15610.19 (West 2003).

¹⁰⁷ See *id.*

before retirement was civil engineering.¹⁰⁸ Harold Camping gave his professional, expert opinion that the world would be ending, which could have triggered civil tort liability.¹⁰⁹ Under California law, Camping would have been held to the same standard of care as a priest, rabbi, or cleric based on the definition of *clergy member* in the California Annotated Code.¹¹⁰ The Code defines a clergy member, for liability purposes, as “a priest, minister, rabbi, religious practitioner, or similar functionary of a church, synagogue, temple, mosque, or recognized religious denomination or organization.”¹¹¹

Since Camping qualified as a clergy member, he could have been sued for clergy malpractice. For a successful cause of action against a clergyman, California tort law requires a plaintiff to show (1) the creation of a legal duty, (2) a special relationship, (3) the foreseeability of the harm, (4) causation of the harm, and (5) public policy considerations.¹¹² Camping almost satisfied the element of a creation of a legal duty when he broadcast himself to the public on a weekly basis, giving advice and consulting on spiritual matters.¹¹³ A plaintiff may have been able to establish that Camping had a special relationship with his listeners and that he owed them a duty; however, the California Supreme Court has been hesitant to impose a duty on someone who broadcasts themselves out to the mass public for actions that they did not explicitly instruct their listeners to do.¹¹⁴ Even clergy malpractice claims against Harold Camping would likely have been unsuccessful, as he merely put an idea in to people’s heads, and they acted of their own volition. Sadly, the victims of this tragedy had little legal recourse.

Guidelines and other forms of education can be used to show the public the dangers posed by perpetuating hoaxes and frightening the general population. There are several mechanisms to elicit change when enacting legislation in public health law. Three of the main methods are education, taxation, and prohibition.¹¹⁵ The federal government responded to Harold Camping’s predictions through the Centers for Disease Control—which put out “Preparedness 101: Zombie Apocalypse” to educate people on how to deal with the undead rising after the Rapture.¹¹⁶ While education is a cost-effective way to limit mass psychological panics, a law with enforcement power may go a long way to reduce the potential destruction from large

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Nally v. Grace Cmty. Church*, 763 P.2d 948, 956-60 (Cal. 1988).

¹¹³ *Doomsday Prediction Fizzles Out*, *supra* note 103.

¹¹⁴ *See, e.g., Nally*, 763 P.2d. 948.

¹¹⁵ *Hopkins Study Dispels Panic Myth and Suggests Ways to Involve Public in Response to a Bioterrorist Attack*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH (Dec. 4, 2001), <https://publichealth.jhu.edu/2001/panic-myth>.

¹¹⁶ *Preparedness 101: Zombie Apocalypse*, MIRROR BLOG, (May 24, 2011), <https://americannaziparty.blogspot.com/2011/05/preparedness-101-zombie-apocalypse.html>.

groups of people panicking at the prospect that the world may be coming to an end.

Harold Camping never faced criminal or civil liability for the harm caused by his doomsaying broadcasts, and his identity was known. The following QAnon case study is an even more complex example. The leader is unknown and there is no specific date predicted for the apocalypse. However, the ongoing QAnon threat is so significant that it illustrates the need for federal legislation which can appropriately address, prevent, and punish leader inspiring panic, rather than those driven to violent action by their panic.

V. QANON CASE STUDY

On January 6, 2021, supporters of President Donald Trump gathered in numbers at the U.S. Capitol to contest the certification of electoral votes—the next step in the transition process at the end of Trump’s term to bring in President-Elect Joe Biden.¹¹⁷ Spurred by the words of Trump, the fear rhetoric of right-wing media, and the conspiracy theories of an insidious and existential threat circulating on social media, attendees did more than just protest; they climbed walls, pushed past police barricades, and forcefully entered the capitol building.¹¹⁸ Their entry stalled the certification and forced the evacuation of all the elected officials, including representatives, senators, and Vice-President Pence.¹¹⁹ Guns were brandished, four civilians and one police officer died, multiple bombs were found in the aftermath, and government property was damaged and stolen.¹²⁰ Not since 1814 had the government building in Washington been breached by aggressors.¹²¹ This event, which far surpassed a regular protest, was induced and organized by far-right organizations, including, in significant part, QAnon, through social media.

Fear rhetoric and panic inducement led to this tragedy, but from who, how, and why? Would a panic inducement statute be useful? Would its application be reasonable? QAnon adherents are a conspiracy group

¹¹⁷ Marisa Peñaloza, *Trump Supporters Storm U.S. Capitol, Clash with Police*, NPR (Jan. 6, 2021, 9:33 AM ET), <https://www.npr.org/sections/congress-electoral-college-tally-live-updates/2021/01/06/953616207/diehard-trump-supporters-gather-in-the-nations-capital-to-protest-election-resul>.

¹¹⁸ Lauren Leatherby et al., *How a Presidential Rally Turned into a Capitol Rampage*, N.Y. TIMES (Jan. 12, 2021), <https://www.nytimes.com/interactive/2021/01/12/us/capitol-mob-timeline.html>.

¹¹⁹ Ashley Parker et al., *How the Rioters who Stormed the Capitol Came Dangerously Close to Pence*, WASH. POST (Jan. 15, 2021, 9:56 AM EST), https://www.washingtonpost.com/politics/pence-rioters-capitol-attack/2021/01/15/ab62e434-567c-11eb-a08b-f1381ef3d207_story.html.

¹²⁰ Adam Goldman & Shaila Dewan, *Inside the Deadly Capitol Shooting*, N.Y. TIMES (Jan. 23, 2021), <https://www.nytimes.com/2021/01/23/us/capitol-police-shooting-ashli-babbitt.html>.

¹²¹ *Burning of Washington, 1814*, *supra* note 65.

following the anonymous web posting of the infamous “Q,”¹²² supposedly someone(s)¹²³ with insider knowledge of Washington’s circles of power as well as the Trump administration.¹²⁴ The premise of the conspiracy being uncovered by Q is that a “deep state” exists and is comprised of political, economic, and cultural elites, as well as the mainstream media.¹²⁵ These “elites” are not only secretly controlling the world but are also are pedophiles—or possibly even cannibals who worship Satan.¹²⁶ There are variants, but this foundation is ubiquitous. The only path to salvation is through Donald Trump, the apparent leader of the battle against this fictional enemy.¹²⁷ The followers are self-described “digital soldiers” and patriots who follow Q and Trump toward the “Great Awakening” or the apocalypse or both, whichever happens first.¹²⁸

QAnon began in 2017, when an anonymous self-described insider posted several cryptic messages on 4chan entitled “Calm Before the Storm.”¹²⁹ The adoption of the “Q” pseudonym arose because the anonymous poster described themselves as a “Q Clearance Patriot,” apparently indicating a special level of government clearance.¹³⁰ Q continues to post “breadcrumbs” on 4chan successor, 8kun, which are interpreted by important followers called “bread makers;” the “bread makers” then disseminate the information to the rest of the community through social media outlets like Facebook, Reddit, Gab, Parler, 4chan, Twitter, Instagram, and YouTube.¹³¹ The initial post was promoted by three individuals through one of their YouTube channels—the Patriots’ Soapbox.¹³² The three followers deliberately campaigned to spread the Q conspiracy, likely to increase their own public followings.¹³³

¹²² Reuters Staff, *Factbox: What is QAnon and how Are Social Media Sites Handling it?*, REUTERS (Aug. 28, 2020, 8:12 PM), <https://www.reuters.com/article/us-socialmedia-qanon-factbox/factbox-what-is-qanon-and-how-are-social-media-sites-handling-it-idUSKBN25P010>.

¹²³ Andrew Griffin, *What is QAnon? The Origins of Bizarre Conspiracy Theory Spreading Online*, INDEP. (Jan. 7, 2021, 18:22), <https://www.independent.co.uk/life-style/gadgets-and-tech/news/qanon-explained-what-is-trump-russia-investigation-pizzagate-a8845226.html>.

¹²⁴ *Id.*

¹²⁵ Reuters Staff, *supra* note 122.

¹²⁶ Kevin Roose, *What Is QAnon, the Viral Pro-Trump Conspiracy Theory?*, N.Y. TIMES (Sept. 3, 2021), <https://www.nytimes.com/article/what-is-qanon.html>.

¹²⁷ Mike Wendling, *QAnon: What Is it and Where Did it Come From?*, BBC NEWS (Jan. 6, 2021), <https://www.bbc.com/news/53498434>.

¹²⁸ *Id.*

¹²⁹ Griffin, *supra* note 123.

¹³⁰ *Id.*

¹³¹ Reuters Staff, *supra* note 122; Brandy Zadrozny & Ben Collins, *How Three Conspiracy Theorists Took ‘Q’ and Sparked Qanon*, NBC NEWS (Aug. 14, 2018, 11:25 AM CDT), <https://www.nbcnews.com/tech/tech-news/how-three-conspiracy-theorists-took-q-sparked-qanon-n900531>.

¹³² Zadrozny & Collins, *supra* note 131.

¹³³ *Id.* There are even some within the QAnon community who argue that the three original promoters are Q because of evidence found on livestreams. *Id.*

From its humble origins as a 4chan post and three YouTube promoters, the QAnon community grew rapidly.¹³⁴ While Q continued to post on 4chan—then its successor 8chan and later its successor 8kun—the format of Reddit was perfect for developing a community.¹³⁵ In focused subreddits, users spread the word of Q, attempted to decipher his cryptic posts, developed conspiracy theories, and organized a digital community.¹³⁶ QAnon expanded to Facebook, where they picked up an older and very malleable audience unfamiliar with social media, and therefore, more susceptible to misinformation.¹³⁷ At this point, the group was big enough that they spread to the other major social media sites, including Twitter.¹³⁸ To demonstrate the reach of the group, the Reddit following reached twenty thousand subscribers before it was shut down in 2018,¹³⁹ leader David Hayes reached over three hundred thousand Twitter followers and over thirty-three million views on YouTube—both are now shut down¹⁴⁰—and some early Imgur and YouTube videos surpassed two hundred thousand views.¹⁴¹

The apocalyptic rhetoric is powerful and terrifying. It is also convoluted and contradictory; Enlightenment values such as logic and reason are largely absent.¹⁴² The followers believe both that the end of the world is coming, that “nothing can stop what is coming,” and that we should all “watch the show.”¹⁴³ However, simultaneously, they believe that the only way to prevent that end is for true patriots to follow the *Q clues*.¹⁴⁴ More ominous language relating to this struggle frequently pops up, some of which comes from an open letter to Trump in 2020 penned by controversial former-Apostolic Nuncio to the United States, Carlo Maria Vigano, which was shared on qanon.pub and then elsewhere through QAnon’s social media networks:

Allow me to address you at this hour in which the fate of the whole world is being threatened by a global conspiracy against God and humanity. . . . [T]his historical moment sees the forces of Evil aligned in a battle without quarter against the forces of Good; the forces of Evil that appear powerful

¹³⁴ Rachel E. Greenspan, *The History of QAnon: How the Conspiracy Theory Snowballed from the Fringes of the Internet into the Mainstream*, INSIDER (Feb. 11, 2021, 12:48 PM), <https://www.insider.com/qanon-history-who-is-q-conspiracy-theory-what-does-believe-2021-2>.

¹³⁵ *Id.*

¹³⁶ Zadrozny & Collins, *supra* note 131.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ LaFrance, *supra* note 48.

¹⁴¹ Paris Martineau, *The Storm Is the New Pizzagate –Only Worse*, N.Y.: INTELLIGENCER (Dec. 19, 2017), <https://nymag.com/intelligencer/2017/12/qanon-4chan-the-storm-conspiracy-explained.html>.

¹⁴² LaFrance, *supra* note 48.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

and organized as they oppose the children of Light, who are disoriented and disorganized, abandoned by their temporal and spiritual leaders.

Daily we sense the attacks multiplying of those who want to destroy the very basis of society: the natural family, respect for human life, love of country, freedom from education and business. . . . A global plan called the Great Reset is underway. Its architect is a global elite that wants to subdue all of humanity, imposing coercive measure with which to drastically limit individual freedoms and those of entire populations. In several nations this plan has already been approved and financed.¹⁴⁵

This combination of beliefs makes panicked yet determined actors willing to do whatever it takes to prevent the coming doom. In general, the community is comfortable with the end of the world; as follower Shelley responded to an Atlantic reporter question about whether the end of the world was here, “[i]t wouldn’t surprise me.”¹⁴⁶

While the numbers tell their own success story for the movement, QAnon’s style and principles are tailor-made for social media.¹⁴⁷ The push-pull aspect of social media is magnified by the redundancy posting prompted by fear of shutdowns by big media.¹⁴⁸ The spread to multiple sites also occurs in multiple sub-communities, meaning that there are variants upon variants of the Q conspiracy.¹⁴⁹ Q is always cryptic in his drops.¹⁵⁰ Deciphering and interpreting are everyday activities for users, so the community flourishes.¹⁵¹ This process also offers a defensive measure against failed predictions; groups who interpreted old posts differently preserve Q’s validity so no failure can steer the group in a new direction.¹⁵² Some scholars, who study QAnon and conspiracy theories, argue that this aspect is the most dangerous because it gives QAnon longevity and scope.¹⁵³ The more the group is impinged online, the more devout followers become.¹⁵⁴

¹⁴⁵ Letter from Carlo Maria Vigano to President Donald Trump, *supra* note 9.

¹⁴⁶ LaFrance, *supra* note 48.

¹⁴⁷ Ian Haimowitz, *No One is Immune: The Spread of Q-anon Through Social Media and the Pandemic*, CTR. FOR STRATEGIC & INT’L STUDS. (Dec. 17, 2020), <https://www.csis.org/blogs/technology-policy-blog/no-one-immune-spread-q-anon-through-social-media-and-pandemic>.

¹⁴⁸ Lydia Morrish, *How QAnon Content Endures on Social Media Through Visuals and Code Words*, FIRST DRAFT (Dec. 3, 2020), <https://firstdraftnews.org/articles/how-qanon-content-endures-on-social-media-through-visuals-and-code-words/>.

¹⁴⁹ See *Examining Extremism: QAnon*, CTR. FOR STRATEGIC & INT’L STUDS. (June 10, 2021), <https://www.csis.org/blogs/examining-extremism/examining-extremism-qanon>.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² LaFrance, *supra* note 48.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

The QAnon community is dangerous.¹⁵⁵ It is extensive, devout, and spreads a powerfully uniting sentiment of apocalyptic fear.¹⁵⁶ Moreover, QAnon followers have been frequently known to engage in individual and group violence.¹⁵⁷ Here are a few of the violent incidents from the past four years which are directly tied to QAnon social media:

1. The Pizzagate incident in 2016 when a man entered a Comet pizza restaurant in D.C. with a rifle and a revolver to save children allegedly kept there for a deep-state pedophile ring is the spiritual successor to QAnon and drawn upon heavily as a conspiracy foundation. That man was later sentenced to four years in prison.¹⁵⁸
2. An Arizona resident and QAnon supporter used his armored car, two military rifles, and two handguns to block a bridge near the Hoover Dam to bring awareness to the fact that Trump had yet made mass, deep-state elite arrests. That man pleaded guilty to a terrorism charge and will be spending over ten years in prison.¹⁵⁹
3. A young man murdered a mob boss in Staten Island because he believed President Trump and Q wanted him to.¹⁶⁰
4. Three mass shootings were tied directly to 8chan, QAnon's then online home, including the mass shooting at the El Paso Walmart.¹⁶¹
5. A QAnon supporter smashed up a Catholic church in Arizona as a mission for Q because he believed the church was supporting human trafficking.¹⁶²
6. A QAnon supporter was arrested for planning the kidnapping of her son who was taken away from her by child welfare officials earlier that year because she believed the son's new family were pedophiles and worshipped Satan.¹⁶³ Similar kidnappings incidents occurred in Kentucky and Utah in 2020.¹⁶⁴
7. There were several incidents of public endangerment and property damage—including a twenty-mile car chase in Boston, the derailing

¹⁵⁵ See generally Jason Blazakis, *Op-Ed: Why QAnon's Similarity to Other Cults Makes it a Significant National Security Threat*, L.A. TIMES (Feb. 21, 2021, 3:05 AM PT), <https://www.latimes.com/opinion/story/2021-02-21/qanon-cults-capitol-attack-trump-threat>.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ LaFrance, *supra* note 48.

¹⁵⁹ Lois Beckett, *QAnon: A Timeline of Violence Linked to the Conspiracy Theory*, THE GUARDIAN (Oct. 16, 2020, 1:00 EDT), <https://www.theguardian.com/us-news/2020/oct/15/qanon-violence-crimes-timeline>.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

of a freight train, and the ramming of a truck through Canadian Prime Minister Justin Trudeau's home gate.¹⁶⁵

8. The insurrection at the Capitol on January 6, 2021.¹⁶⁶

In the absence of state or federal regulations, many private websites have attempted to shut down QAnon and limit their activity, but the movement has stayed in power.¹⁶⁷ Because they believe media and tech companies are part of the deep state, they constantly prepare for being “shut down” or “deleted” by posting on every social media site and backing up and saving posts.¹⁶⁸ The multi-spread strategy acts as both outreach and redundancy, creating backups that prevent the movement from backtracking when one of their many sites removes them for inducement to violence or some other rule violation.¹⁶⁹ To date, however, the following sites have been either shut down because of QAnon or have kicked QAnon off:

1. 8chan: After leaving 4chan because it had been infiltrated, Q moved to 8chan;¹⁷⁰ but, 8chan went dark following a series of shootings linked directly to 8chan posts.¹⁷¹ The owner, Jim Watkins, was brought in to testify before the House Committee on Homeland Security and asked to make changes.¹⁷² It was ultimately the CEO of Cloudflare who pulled services from 8chan, causing it to close, and 8chan was able to reappear soon after as 8kun.¹⁷³
2. Reddit: The QAnon community was also removed from Reddit by the company, citing as rationale their incitement to violence.¹⁷⁴
3. YouTube: Tens of thousands of QAnon videos, and hundreds of channels, were removed by YouTube starting in June 2019 to avoid the harmful spread of misinformation.¹⁷⁵ On October 15, 2020, YouTube began banning any QAnon content related to past or possible real-world violence.¹⁷⁶ For example, YouTube banned prominent QAnon user Zak Paine, better known as RedPill78, on October 15, 2020, after two years and nearly eight hundred videos.¹⁷⁷

¹⁶⁵ Beckett, *supra* note 159.

¹⁶⁶ *Id.*

¹⁶⁷ See Greenspan, *supra* note 134.

¹⁶⁸ LaFrance, *supra* note 48.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Zadrozny & Collins, *supra* note 131.

¹⁷⁵ Reuters Staff, *supra* note 122.

¹⁷⁶ Kari Paul, *YouTube Announces Plans to Ban Content Related to QAnon*, THE GUARDIAN (Oct. 15, 2020, 14:45 EDT), <https://www.theguardian.com/technology/2020/oct/15/youtube-ban-qanon-content-technology>.

¹⁷⁷ Ricky Varandas, *The Ripple Effect Podcast # 275*, iHEART, at 05:57 (Nov. 2, 2020), <https://www.iheart.com/podcast/256-the-ripple-effect-podcast-31042271/episode/the-ripple-effect-podcast-275-zak-73258875/>.

4. Facebook: Facebook banned QAnon community accounts for spreading misinformation, starting on August 19, 2020.¹⁷⁸ It more fervently started banning accounts tied to potential or actual real-world harm on October 6, 2020.¹⁷⁹
5. Twitter: In July of 2020, Twitter applied policies to ban or suspend users for causing real-world harm, affecting nearly one hundred and fifty thousand QAnon accounts.¹⁸⁰
6. Following January 6, 2021, insurrection: The severity of the insurrection coupled with it was primarily organized on social media led to crackdowns on Twitter and of right-wing social media sites like Parler.¹⁸¹ Twitter banned or suspended any account dedicated to sharing QAnon content, including prominent political actors Michael Flynn and Sidney Powell and 8kun administrator Ron Watkins.¹⁸² Others, such as YouTube and Facebook, have continued to block some—but not all—QAnon content.¹⁸³ Parler was removed from the Google and Apple app stores and cut off from web hosting services by Amazon.¹⁸⁴

Social media companies are helping prevent public violence, but this should be the purview of law to protect the public, not just the whim of private shareholders and CEOs.

Similar to the analysis of Harold Camping's case, it is difficult to pin down important QAnon leaders for liability for the violence and tangible harm that arises as a result of their message. For the January 6th Capitol insurrection, it is possible the participants could be charged under federal law with inciting a riot. There was a public disturbance involving "acts of violence by one or more persons part of an assemblage of three or more persons" which resulted in harm.¹⁸⁵ Unlike the Camping case, this was a riot—not just individual acts.¹⁸⁶ However, as discussed previously, there have been many more incidents where an individual acted alone because of

¹⁷⁸ *Id.*

¹⁷⁹ Julia Carrie Wong, *Facebook to Ban QAnon-Themed Groups, Pages and Accounts in Crackdown*, THE GUARDIAN (Oct. 6, 2020, 19:06 EDT), <https://www.theguardian.com/technology/2020/oct/06/qanon-facebook-ban-conspiracy-theory-groups>.

¹⁸⁰ *Id.*

¹⁸¹ Zadrozny & Collins, *supra* note 131; Frank Bajak & Barbara Ortutay, *Parler Squeezed as Trump Seeks New Online Megaphone*, ASSOC. PRESS (Jan. 10, 2021), <https://apnews.com/article/donald-trump-media-social-media-coronavirus-pandemic-dd9816678b27b9e387ea1c270f18adc5>.

¹⁸² Zadrozny & Collins, *supra* note 131.

¹⁸³ Jennifer Elias, *YouTube Says it Will Move More Quickly to Suspend Channels Posting Videos Claiming Widespread Voter Fraud*, CNBC (Jan. 7, 2021, 14:37 EST), <https://www.cnbc.com/2021/01/07/youtube-says-it-will-suspend-channels-claiming-widespread-voter-fraud.html>.

¹⁸⁴ Bajak & Ortutay, *supra* note 181.

¹⁸⁵ 18 U.S.C. §§ 2101-02.

¹⁸⁶ David Bauder, *Riot? Insurrection? Words Matter in Describing Capitol Siege*, AP NEWS (Jan. 14, 2021), <https://apnews.com/article/donald-trump-capitol-siege-riots-media-8000ce7db2b176c1be386d945be5fd6a>.

the conspiracy theories disseminated by Q.¹⁸⁷ Just like with Camping, it is likely impossible to pin any offense onto QAnon leadership that would result in criminal or civil liability. The public hoax statute¹⁸⁸ fails for the same reason; the QAnon members can claim or have actual belief in the predictions, and nobody but the invisible Q sets themselves out as any sort of an expert.¹⁸⁹ This is an unfortunate situation because the individuals who perpetrate the various *Q-inspired crimes* bear the punishment while the instigators do not.¹⁹⁰

A new statute, specifically addressing the issue of social media, could be a solution to technology-induced psychological panics. Although a new law may not provide solutions to all the problems of mass psychological panics, it would reduce the amount of harm that would occur with no law. Being proactive to maintain the status quo in society should be a governmental priority, and federal legislation is necessary to achieve it. Passing a federal law mirroring Ohio's "Panic Inducement" statute would punish individuals like Camping and QAnon leaders and set an example to deter similar behavior.

VI. LEGAL ANALYSIS

The best strategy to combat increasing mass psychological panic is for the federal government to pass a statute modeled off the current "Inducing Panic" statute¹⁹¹ that exists in Ohio. Ohio's statute, in pertinent part, is as follows:

- (A) No person shall cause the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing *any* of the following:
- (1) Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that such report or warning is false;
 - (2) Threatening to commit any offense of violence;
 - (3) Committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.

¹⁸⁷ Zadrozny & Collins, *supra* note 131.

¹⁸⁸ 47 C.F.R. § 73.1217 (1992).

¹⁸⁹ *Id.*

¹⁹⁰ Marc Fisher & Isaac Stanley-Becker, *The Mystery of 'Q': How an Anonymous Conspiracy-Monger Launched a Movement (if the Person Exists)*, WASH. POST (Aug. 1, 2018), https://www.washingtonpost.com/politics/the-mystery-of-q-how-an-anonymous-conspiracy-monger-launched-a-movement-if-he-even-exists/2018/08/01/6d10f5b4-95a3-11e8-80e1-00e80e1fd43_story.html.

¹⁹¹ OHIO REV. CODE ANN. § 2917.31 (West 2011).

(B) Division (A)(1) of this section does not apply to any person conducting an authorized fire or emergency drill.

(C) Whoever violates this section is guilty of inducing panic, a misdemeanor of the first degree. If violation of this section results in physical harm to any person, inducing panic is a felony of the fourth degree.¹⁹²

Enacting this law on a federal level or each state individually would curtail panic across all fifty states. The legislative notes from the statute also offer analysis on how the law would stand up to constitutional muster with *Schenck*.¹⁹³ If an offender falsely shouts “fire!” in a crowded theater and precipitates a general exodus, his conduct is a serious misdemeanor under this section.¹⁹⁴ If one of the patrons is trampled in the rush, the offender’s action becomes a felony.¹⁹⁵ The statute uses the offender’s actions as the causation of the panic and, therefore, any additional harm resulting from the panic is directly linked back to the offender as the proximate cause, which triggers criminal liability.¹⁹⁶

While there are many pros to enacting federal legislation to curb the incidences of mass psychological panics, there are still cons that would need to be addressed. Overall, the pros still outweigh the cons, but a review of potential pitfalls is still necessary before enacting sweeping legislation. One major obstacle of federal law is enforcing it identically across all fifty states and the territories employing U.S. law. While federal sentencing guidelines and the proscribed penalties in the enacting statute would outline the offense and its punishment, it is not uncommon for two people to perceive the same event differently. There may not be many offenders prosecuted immediately following the federal statute’s enactment, but the statute’s existence can be beneficial. Although there may not be many charges or arrests relating to particular incidents, people tend to police themselves better when they know that an activity is criminalized and there are penalties for violating the law—much like legislation banning phone use while driving.¹⁹⁷

The federal government is cognizant that sweeping federal legislation tends to limit a state’s autonomy and infringe on its constitutional rights.¹⁹⁸ State autonomy would be limited if Congress decided whether a panic inducing statute should be enacted. If any State decided to pass similar mass psychological panic legislation with its own methods of enforcement, it

¹⁹² *Id.*

¹⁹³ *Schenck v. United States*, 249 U.S. 47 (1919).

¹⁹⁴ § 2917.31.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Toni M. Rudisill et al., *Cellphone Legislation and Self-Reported Behaviors Among Subgroups of Adolescent U.S. Drivers*, 62 J. ADOLESCENT HEALTH 618, 618 (2018).

¹⁹⁸ ANDREW NOLAN ET AL., CONG. RSCH. SERV., R45323, FEDERALISM-BASED LIMITATION ON CONGRESSIONAL POWER: AN OVERVIEW 1 (2018).

would still be preferable to no law and would proactively establish a system to prevent harm to the public's well-being.

One difficult aspect of a federal inducing panic statute would be deciding when it applies. Currently, in Ohio, the law is often used in relation to armed robbery or other armed crimes and the resulting panic that is induced when victims or other witnesses see the firearm.¹⁹⁹ Applying this law to a Harold Camping incident may be a stretch, but it would depend on prosecutorial discretion where to apply the law and against which offenders. The law would more easily apply to QAnon leadership.

In applying the "Inducing Panic" statute,²⁰⁰ the Ohio legislature has promulgated a set of jury instructions and factors the jury uses to reach a decision.²⁰¹ The instructions note that an offender can be found guilty of any of the three listed offenses under subsection R.C. 2917.31(A), and that certain factors will impact the overall sentencing.²⁰² The following factors must be weighed are whether the defendant violated the statute: (1) knowingly, as defined in R.C. 2901.22(B), (2) recklessly, as defined in R.C. 2901.22(C), (3) with cause, (4) if they have an affirmative defense, and (5) the crime took place in public, caused public inconvenience, or alarm.²⁰³

A person acts knowingly when regardless of his purpose, when he is aware that [his] conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when [he] is aware that such circumstances probably exist A person acts recklessly when, with heedless indifference to the consequences, [he] disregards a substantial and unjustifiable risk that [his] conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, [he] disregards a substantial and unjustifiable risk that such circumstances are likely to exist.²⁰⁴

It seems apparent that if the federal government were to enact a statute similar to the Ohio statute, Harold Camping could have been found guilty of inducing panic when he broadcasted his Rapture message. Camping broadcasted his message with reckless disregard of the likelihood that its commission would cause serious public inconvenience or alarm, which precisely was what happened. A reasonable person would have known that claiming the world was ending would send a multitude of people into a panic, causing a serious public inconvenience and alarm. Many states had to expend

¹⁹⁹ State v. Pleban, No. 10CA009789, 2011 WL 2571628 (Ohio Ct. App. June 30, 2011).

²⁰⁰ OHIO REV. CODE ANN. § 2917.31 (West 2011).

²⁰¹ *Ohio Jury Instructions*, CR Section 517.31 (Rev. Sept. 14, 2013).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ § 2901.22(B)-(C).

extra resources to counter the paranoia that swept through the public.²⁰⁵ Those responsible should not go unpunished.²⁰⁶ While Camping may have claimed ignorance to the possibility of his message causing mass public panic, if a federal mass panic inducing statute existed, he would be in violation.

QAnon leaders like David Hayes, RedPill78, and Tracy Diaz would also likely be liable under such a statute.²⁰⁷ Their apocalyptic posts and videos would qualify as initiating or circulating a false report of a catastrophe with “reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.”²⁰⁸ These leaders and others have caused the evacuation of public places and *serious public inconvenience or alarm*. Due to their circulation of impending catastrophe on social media, the myriad of individual criminal acts listed above increased. Children kidnapped, people murdered, property damaged, and public and private places were threatened, invaded, and damaged.²⁰⁹ More than just the individual perpetrators should be held accountable for these crimes, and the implementation of Ohio’s “Panic Inducement” statute as federal law would provide such an avenue. This application meets the standard set in *Schenck*²¹⁰ because a citizen’s right of free speech “does not extend to the threatening of terror, inciting of riots, or verbalizing of false information that induces panic in a public place.”²¹¹

Apocalyptic rhetoric is not leaving the United States. University of Miami political science professor Joseph Uscinski studies conspiracy theories.²¹² He argues that QAnon’s apocalyptic thinking follows long religious and cult traditions that have longevity and power.²¹³ Conspiracy theories are as American as apple pie. They have been there in politics, popping up after the assassination of Kennedy, the moon landing, and 9/11, while also propelling full movements like McCarthyism and now Trumpism.²¹⁴ Combine that thinking with religious overtones for a potent poison. We should not assume that being wrong about the apocalypse and

²⁰⁵ “Rapture”: Believers Perplexed After Prediction Fails, BBC NEWS (May 22, 2011), <https://www.bbc.com/news/world-us-canada-13489641>.

²⁰⁶ See generally James, *supra* note 97.

²⁰⁷ Zadrozny & Collins, *supra* note 131.

²⁰⁸ § 2917.31.

²⁰⁹ Beckett, *supra* note 159.

²¹⁰ *Schenck v. United States*, 249 U.S. 47 (1919).

²¹¹ *State v. Loless*, 507 N.E.2d 1140, 1142 (Ohio Ct. App. 1986).

²¹² See *Conspiracy Theories!*, JOSEPH USCINSKI, <https://www.joescinski.com/> (last visited Oct. 5, 2021).

²¹³ Bulent Kenes, *QAnon: A Conspiracy Cult or Quasi-Religion of Modern Times?*, EUR. CTR. FOR POPULISM STUD. (Mar. 13, 2021), <https://www.populismstudies.org/qanon-a-conspiracy-cult-or-quasi-religion-of-modern-times/>; Marisa Meltzer, *QAnon’s Unexpected Roots in New Age Spirituality*, WASH. POST MAG. (Mar. 29, 2021), <https://www.washingtonpost.com/magazine/2021/03/29/qanon-new-age-spirituality/>.

²¹⁴ LaFrance, *supra* note 48.

the Trump presidency will make QAnon go away. William Miller predicted the Second Coming on October 22, 1844; when that was proven wrong, the Millerites became Adventists who became Seventh-day Adventists who boast over twenty million members worldwide.²¹⁵ These apocalyptic religions, like QAnon, were born in the United States. Following the end of the Trump Administration, the QAnon community likely expects the apocalypse to be drawing closer, and violence will increase.

V. CONCLUSION

Trust the plan. Enjoy the show. Nothing can stop what is coming.²¹⁶

The federal government's lack of preparation for the mass psychological panic in 2012 and 2021 demonstrates that current laws are insufficient. Therefore, a new law must be enacted to institute sufficient legal liability for inciting mass panic. It is clear, based on the inflammatory nature of Harold Camping's speech and the unfortunate results some of his followers and their families have had to endure, that a new law is needed, and the federal government's current laws are unsatisfactory. For families of murder victims and kidnappings, action is needed to prevent the dissemination of QAnon's panic rhetoric that is out of control and causing harm.

With the enactment of a federal law modeled after the existing Ohio statute,²¹⁷ the government would be more able to adequately respond to future mass panics and curtail the potential violence incited by QAnon. The public must be protected from acts of violence and terror directed not only at the U.S. Capitol²¹⁸ and the Michigan State Capitol²¹⁹ but also everywhere affected by social media and the internet.

If the government decides to ignore the ongoing situation, conspiracy theories will continue to take hold and give rise to violence; the public will suffer the consequences. If QAnon and social media are here to stay, now is the time for federal legislation to penalize and deter persons that aim to negatively impact society and endanger the public health.

²¹⁵ *Id.*

²¹⁶ A common QAnon slogan referring to the coming apocalypse is: "When the world as we know it comes to an end, everyone's a spectator." LaFrance, *supra* note 48.

²¹⁷ OHIO REV. CODE ANN. § 2917.31 (West 2011).

²¹⁸ Colleen Walsh, *Securing Public Spaces in the Wake of Capitol Violence*, THE HARV. GAZETTE (Jan. 15, 2021), <https://news.harvard.edu/gazette/story/2021/01/how-do-we-keep-public-spaces-open-but-safe-after-capitol-riot/>.

²¹⁹ Kathleen Gray, *In Michigan, a Dress Rehearsal for the Chaos at the Capitol on Wednesday*, N.Y. TIMES (Jan. 9, 2021), <https://www.nytimes.com/2021/01/09/us/politics/michigan-state-capitol.html>.