



June 19, 2024

Honorable Jim Jordan  
Chairman, House Judiciary Committee  
Washington, D.C. 20510

Honorable Jerrold Nadler  
Ranking Member, House Judiciary Committee  
Washington, D.C. 20510

Dear Chairman Jordan and Ranking Member Nadler:

I write to you in support of the sound policies of H.R. 8672, the *Count the Crimes Act of 2024*. This bipartisan legislation, sponsored by Representative Chip Roy and cosponsored by Representatives David Trone and Andy Biggs, would require the Attorney General to produce a report of all the federal criminal statutes and federal regulations that have criminal penalties. For each federal criminal offense, the report would outline the elements, the penalties, the number of prosecutions brought by the Department of Justice in the last 15 years, and the mens rea element. This bill promotes policies that address the overcriminalization epidemic plaguing our criminal justice system.

The Congressional Research Service, the Justice Department, and the American Bar Association have all tried and failed to count the number of federal statutory and regulatory laws. However, estimates indicate that there may be around 4,000 existing statutory laws and nearly 300,000 regulatory laws.<sup>1</sup> But at best, these are still estimates. Nobody truly knows how many crimes exist in the United States.

James Madison warned of this issue in Federalist Paper 62, writing that “it will be of little avail to the people . . . if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood.”<sup>2</sup> The *Count the Crimes Act* addresses this problem head-on by finally requiring a fulsome audit and evaluation of federal statutory and regulatory laws.

This overwhelming volume of criminal laws is concerning when coupled with the inordinate amount of power and discretion that federal prosecutors and administrative agencies have. The policies of this bill will serve as a foundation to address the larger issue of overcriminalization and weaponization of prosecutions. When prosecutors have hundreds of thousands of crimes to choose from, it is easy for them to find a person to fit the crime. This is a troubling reality, but one that is becoming more evident as politics have migrated from the halls of Congress to the courtroom. Justice Scalia touches on this issue in his 1988 dissent in *Morrison v. Olson*, writing that “[n]othing

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<sup>1</sup> <https://www.heritage.org/report/revisiting-the-explosive-growth-federal-crimes>

<sup>2</sup> [https://avalon.law.yale.edu/18th\\_century/fed62.asp](https://avalon.law.yale.edu/18th_century/fed62.asp)

is so politically effective as the ability to charge that one's opponent and his associates are not merely wrongheaded, naïve, ineffective, but, in all probability, 'crooks.'" 487 U.S. 654, 713 (1988). Furthermore, he went on to say:

With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. *In such a case, it is not a question of discovering the commission of a crime and then looking for the man who committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. Id.* (emphasis added).

The *Count the Crimes Act* is sound, bipartisan legislation that will help prevent weaponized investigations and prosecutions. Understanding the volume of crimes, the attendant mens rea elements, and use of the crimes by the Justice Department will better inform legislators, prosecutors, defense attorneys, judges, and the public about what the laws are and how to stop the abuse of our criminal justice system.

When I served as the U.S. Attorney for the District of Utah, a plaque in the halls read, "The hallmark of fairness in the administration of justice is consistency." This bill promotes policies that will assist in achieving consistency in federal prosecutions. I strongly urge this Committee to consider and advance H.R. 8672, the *Count the Crimes Act*.

Sincerely,

**Brett Tolman**  
Executive Director  
Right on Crime