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The Gang Abatement and Prevention Act: A Counterproductive and Unconstitutional Intrusion into State and Local Responsibilities

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Violent street crime committed by gang members is a serious problem, but turning crimes that are fundamentally local in nature into federal crimes is not the solution. Approximately 95 percent of U.S. criminal investigations and prosecutions are conducted by law enforcement at the state and local levels[1]—not the federal level. Poorly defined, unjustified federal intervention against "gang crime" will detract from the most effective anti-gang strategies available to the state and local officials who are responsible for the vast majority of anti-gang-crime efforts.

Several times in recent Congresses, Members of Congress have proposed broad bills that attempt to federalize gang crime and to provide new mechanisms for spending large sums of federal money, under federal control, to fight gang crime in selected state and local districts.[2] The most recent examples of such legislation, the Senate's Gang Abatement and Prevention Act of 2007 (S. 456) and its counterpart in the House of Representatives (H.R. 1582), would:

- Create a host of new federal criminal offenses;
- Dramatically increase federal penalties for offenses the bills characterize as "gang crimes"; and
- Spend hundreds of millions of dollars—in the case of S. 456, at least $1.1 billion[3]—on new and expanded federal programs.

Although the current version of the Senate bill states more precisely who can be indicted than did its immediate predecessor, the legislation would still invite serious constitutional challenges. Like its predecessor bills in the Senate and its House counterpart, S. 456 may, in many cases, unconstitutionally attempt to extend Congress's powers beyond the limits of the Commerce Clause.[4] The bill incorporates boilerplate language purporting to establish jurisdiction under the Commerce Clause but nonetheless disregards most of the constitutional structure underlying the state and federal criminal justice systems.

Although inappropriate at the federal level, some of the Senate bill's proposals to criminalize gang activity might be good ones if made at the state level, where, as constitutional precedent has long held,[5] criminal law enforcement and crime prevention have traditionally (and most effectively) been handled.

Constitutional Objections. Violent street crime committed by gang members is a problem common to many states, so federal involvement may seem like a good idea. To warrant federal involvement, however, an activity must fall within Congress's constitutionally granted powers. There are serious reasons to doubt that S. 456 and H.R. 1582 do so.

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In the course of striking down provisions of the Violence Against Women Act of 1994, the Supreme Court in 2000 affirmed the fundamental limits on the legislative power created by the Constitution:

> Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution. "The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written."[6]

This limitation on Congress's power to legislate is neither arbitrary nor accidental: It was adopted to protect the American people—including those suspected of criminal conduct—from the encroaching power of a centralized national government. As the Court stated, "This constitutionally mandated division of authority 'was adopted by the Framers to ensure protection of our fundamental liberties.'"[7]

To skirt this limitation, the drafters of S. 456 attempt to rely on the Commerce Clause to establish Congress's power to assert federal jurisdiction over crimes that are essentially local in nature. But to fall within Congress's power to "regulate Commerce… among the several States," a problem must not merely be common to the states; it must be truly interstate in nature and "substantially affect" interstate commerce.[8] For this reason, Congress's power under the Commerce Clause does not include the authority to federalize most non-commercial street crimes, whether or not they have some minor nexus with interstate commerce.

Although broader and broader readings of the Commerce Clause during the latter part of the twentieth century allowed the federal government to regulate more and more economic activity,[9] the Supreme Court has set limits and rejected several recent attempts to federalize common street

1. *See, e.g.*, EDWIN MEESE III AND ROBERT MOFFIT, MAKING AMERICA SAFER: WHAT CITIZENS AND THEIR STATE AND LOCAL OFFICIALS CAN DO TO COMBAT CRIME xiv (Heritage Foundation 1997).
2. *See, e.g.*, S. 155, 109th Cong.; S. 1735, 108th Cong. Previous publications by the Heritage Foundation have addressed the flaws in several of these bills. *See* Erica Little and Brian W. Walsh, "Federalizing 'Gang Crime' Remains Counterproductive and Dangerous," Heritage Foundation *WebMemo* No. 1486, June 6, 2007, at *www.heritage.org/Research/Crime/wm1486.cfm*; Erica Little and Brian W. Walsh, "Federalizing Gang Crime Is Counterproductive and Dangerous," Heritage Foundation *WebMemo* No. 1221, September 22, 2006, at *www.heritage.org/Research/Crime/wm1221.cfm*; Edwin J. Feulner, "Ganging Up on Crime," Heritage Foundation *Commentary*, May 19, 2005, at *www.heritage.org/Press/Commentary/ed052005a.cfm*; Paul Rosenzweig, "The Gang Act Needs Modification," Heritage Foundation *WebMemo* No. 494, May 3, 2004, at *www.heritage.org/Research/Crime/wm494.cfm*.
3. Cong. Budget Office, *S.456, Gang Abatement and Prevention Act of 2007* 1, July 2, 2007, *available at* www.cbo.gov/ftpdocs/82xx/doc8294/s456.pdf ("Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 456 would cost $1.1 billion over the 2008-2012 period.").
4. The Commerce Clause grants Congress power "[t]o regulate commerce…among the several States." U.S. CONST. art. I, § 8, cl. 3.
5. *See*, *e.g.*, Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 426, 428 (1821) (Marshall, C.J.) (explaining that Congress has the right to punish violent crimes such as murder that are committed, for example, in federal facilities, but Congress has "no general right to punish [crimes] committed within any of the States"); *id.* at 428 ("It is clear, that Congress cannot punish felonies generally…."); *accord* United States v. Morrison, 529 U.S. 598, 618 (2000).
6. *Morrison*, 529 U.S. at 607 (quoting Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176 (1803) (Marshall, C.J.)); *accord* United States v. Lopez, 514 U.S. 549, 552 (1995) ("We start with first principles. The Constitution creates a Federal Government of enumerated powers."); THE FEDERALIST No. 45, 292-93 (C. Rossiter, ed., 1961) ("The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.").
7. *Lopez*, 514 U.S. at 552 (quoting Gregory v. Ashcroft, 501 U.S. 452, 458 (1991)).
8. Local, violent crime that is not directed at interstate commerce is not a proper subject matter for federal legislation. As the Supreme Court reaffirmed in 2000, the "regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the states." *Morrison*, 529 U.S. at 618.

crimes,[10] even ones that have some interstate impact. The expansive (many would say virtually unlimited) interpretation of the Commerce Clause employed to justify the creation of most new federal crimes ignores the original meaning of the Constitution. As Justice Thomas wrote in his concurring opinion in *United States v. Lopez*, if Congress had been given authority over any and every matter that simply "affects" interstate commerce, most of Article I, Section 8 would be superfluous, mere surplusage.[11]

In *Lopez*, the Supreme Court rejected the government's "costs of crime" and "national productivity" rationales for asserting federal authority over crime that is essentially local in nature. The government argued that violent crime resulting from the possession of firearms in the vicinity of schools affected interstate commerce by increasing the costs of insurance nationwide and by reducing interstate travel to locales affected by violent crime.[12] The government further argued that the possession of guns on or near school grounds threatened educational effectiveness, which would reduce productivity of students coming from those schools, which would in turn reduce national productivity.[13]

The Court explained that if it were to accept these attenuated chains of but-for reasoning, the limits on congressional power would be obliterated.

> Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under [these] theories…, it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.[14]

Congress's recent proposals to create a new set of federal "gang crimes" have all raised these same constitutional concerns.

The drafters of S. 456 attempt to take advantage of a similarly broad and erroneous view of the Commerce Clause by including "findings" that gang crime disrupts communities by reducing property values and inhibiting corporations from transacting business, presumably because safety concerns make an area less attractive. In light of recent Supreme Court precedent, this sort of lengthy, attenuated chain of causation is insufficient to establish federal jurisdiction over local crimes.[15] The bill's drafters have attempted to cure this problem by stating that gang presence, intimidation, and crimes "directly and substantially" affect interstate and foreign commerce. Saying so does not make it so; such verbiage adds little or nothing to the constitutional analysis.

In addition, several of the bill's operative provisions limit their own application to criminal street gang activities that "occur in or affect interstate or foreign commerce" in an attempt to safeguard the bill from constitutional invalidation. In *United States v. Morrison*, however, the Supreme Court ruled that this sort of language is not alone sufficient to bring an act within the scope of Congress's Commerce power.[16]

9. *See Lopez*, 514 U.S. at 555–56 (surveying the genesis and development of the Court's expansionist view of congressional commerce-clause power starting from the New Deal era).
10. *See generally Morrison*, 529 U.S. 598 (2000) (striking down § 13981 of the Violence Against Women Act of 1994 because the predicate crimes the Act created were beyond Congress's Commerce power); *Lopez*, 514 U.S. 549 (1995) (striking down the provision of the federal Gun-Free School Zones Act of 1990 that made it a federal crime to possess a firearm in a school zone because the provision exceeded Congress's power under the Commerce Clause).
11. 514 U.S. at 589 (Thomas, J., concurring). By contrast, the express powers to coin money and punish counterfeiting granted to Congress in Article I of the Constitution surely do affect interstate commerce.
12. *Lopez*, 514 U.S. at 564
13. *Id.*
14. *Lopez*, 514 U.S. at 564.
15. *See, e.g.*, *Morrison*, 529 U.S. at 618.

The regulated act must have more than some effect on interstate commerce; it must be a *substantial* one, and the connection between the regulated act and its substantial effect may not be too attenuated.[17]

Second Amendment Violations. In addition to the provisions of S. 456 that Congress lacks Commerce power to enact, section 215 of the bill raises serious Second Amendment concerns. Section 215 creates two new categories of persons whose Second Amendment rights to keep and bear arms would be denied by the federal government. The drastic step of prohibiting gun ownership is generally saved for those who commit violent crimes that constitute a felony. Its purpose is to keep weapons out of the hands of dangerous criminals. But section 215 does not distinguish trivial offenses from those serious offenses that may serve as bases for denying an individual's Second Amendment rights.[18]

The first category consists of persons who are convicted by any court, anywhere of a *misdemeanor* "gang-related offense." Persons in this category would be banned from exercising their Second Amendment rights for life. The idea of imposing a lifetime ban on the exercise of one's constitutional right for any misdemeanor (even a trivial one) that can somehow be construed to be gang-related should be troubling to any American who believes that all of the rights guaranteed by the Constitution serve as safeguards against tyranny and oppression. Congress is not free to choose which rights it deems important, and thus will respect, and which it is willing to deny on trivial grounds.

The second and perhaps more troubling category created by section 215 covers any person found to be in contempt (apparently including civil contempt) of a "gang injunction order." Gang injunction orders have become some jurisdictions' tool of choice for stifling gang-related activity and preventing violent street crime.[19] A typical gang injunction order designates a geographical area (some are as large as six square miles) in a city or town and enjoins specified gangs, named gang members, or both from engaging in otherwise lawful conduct within the designated area. This conduct may include wearing gang insignia, congregating, possessing alcohol or spray paint, and using cell phones and pagers. As one legal periodical describes it, "The city identifies a gang as a public nuisance and seeks court approval to enjoin certain conduct within the gang territory, with the potential penalty for violations of civil or criminal contempt and six months in jail."[20]

But the data on gang injunctions' effectiveness is inconclusive, and a divided Supreme Court affirmed a state supreme court's holding that an anti-loitering ordinance similar to typical anti-gang ordinances was unconstitutional because it violated due process and arbitrarily restricted personal liberty.[21] Given this Supreme Court precedent and the fundamental associational rights protected by the First Amendment that are implicated by most gang injunctions, merely violating an injunction almost certainly is not a sufficient predicate to strip a person of his or her constitutional rights.[22]

Section 215's denial of Second Amendment rights for relatively minor violations of civil or criminal law reflects the cavalier attitude toward constitutional protections—both structural and rights-based—that pervades this bill.

16. *Id.* at 612-613.

17. *Id.*

18. *See* Parker v. District of Columbia, 478 F.3d 370, 395 (D.C. Cir. 2007) (holding that the right to keep and bear arms is an individual right).

19. The *National Law Journal* reported this summer that California alone has approximately 40 local injunctions against gang crime. Pamela A. MacLean, *Ganging Up on Gangs: Cities across U.S. Imposing Anti-Gang Injunctions; Critics Question Legality*, NATIONAL LAW JOURNAL, June 11, 2007.

20. *Id.*

21. City of Chicago v. Morales, 527 U.S. 41, 51, 61 (1999) (6–3 decision, with three justices concurring in part in Justice Stevens's lead opinion and concurring in the judgment).

22. *Parker*, 478 F.3d at 395 (explaining that the Second Amendment protects the right of an individual to keep and bear arms and is not "contingent upon his or her continued or intermittent enrollment in the militia").

The Destructive Effects of Over-Federalization. S. 456 is yet another example of Congress's habit of expanding federal criminal law in response to cure all of society's ills.[23] The phenomenon of over-federalization of crime undermines state and local accountability for law enforcement, undermines cooperative and creative efforts to fight crime (which permit the states to carry out their vital roles of acting as "laboratories of democracy"), and injures America's federalist system of government.

Although S. 456, in its findings section, purports to recognize the crime-fighting expertise and effectiveness of local authorities, it would further erode state and local law enforcement's primary role in combating common street crime. The findings state that, because state and local prosecutors and law enforcement officers have "the expertise, experience, and connection to the community that is needed to assist in combating gang violence," consultation and coordination among state, local, and federal law enforcement is crucial. The bill characterizes the programs that it would establish, such as the federal-state working groups that would be part of the newly created High Intensity Gang Activity Areas, as attempts to create such collaboration.

Nonetheless, the bill would reduce the effectiveness and success of local prosecutors and law enforcement. Whenever state and local officials can blame failures to effectively prosecute crime on federal officials—and vice versa—accountability and responsibility are diluted. Although this is sometimes unavoidable for the limited set of crimes for which there truly is overlapping state and federal jurisdiction,[24] unclear lines of accountability for wholly intrastate crimes are unacceptable.

Combating common street crime is a governmental responsibility over which the states have historically been sovereign, with little intervention from the federal government.[25] Federal criminal law should be used only to combat problems reserved to the national government in the Constitution.[26] These include offenses directed against the federal government or its interests, express matters left to the federal government in the Constitution (such as counterfeiting), and commercial crimes with a substantial multi-state or international impact.[27]

Most of the basic offenses contained in S. 456 do not fall within any of these categories and so are not within the federal government's constitutional reach. For example, the fact that armed robberies committed by gang members may (rarely) involve interstate travel or some other incidental interstate connection does not justify federal involvement. In fact, the vast majority of prohibited conduct under S. 456 would almost never take place in more than one locale within a single state. Such conduct is, at most, only tangentially interstate in nature and does not justify federal intervention.

S. 456 ignores recent decades' lessons on how to successfully reduce crime. New York City and Boston in the 1990s and early 2000s demonstrated that when accountability is enhanced at the state and local levels, local police officials and prosecutors can make impressive gains against crime, including gang crime. By contrast, federalizing authority over crime reduces accountability of local officials

23. At the conclusion of its study, the American Bar Association Task Force on the Federalization of Criminal Law reported that, as of 1998, the frequently cited estimate of over 3,000 federal criminal offenses scattered throughout the 49 titles of the United States Code was certainly outdated and understated. TASK FORCE ON FEDERALIZATION OF CRIMINAL LAW, AMERICAN BAR ASSOCIATION, THE FEDERALIZATION OF CRIMINAL LAW app. C 94 (1998). Since 1998, these numbers have only increased. *See* John Baker, Jr. & Dale E. Bennett, *Measuring the Explosive Growth of Federal Crime Legislation*, Federalist Society for Law and Public Policy Studies *White Paper*, May 2004.

24. One among many possible examples would be a person in Virginia who extorts another person in Virginia but uses a federal facility, such as the United States Postal Service, to do so.

25. *See Morrison*, 529 at 613.

26. *See* William Rehnquist, *Remarks on the Federalization of Criminal Law*, 11 FED. SENT. R. 132 (1998). Counterfeiting currency and wiring proceeds of criminal acts across state lines to avoid detection are additional examples of crimes that are appropriately federalized.

27. *See generally id.* (quoting a report of the Judicial Conference of the United States).

because they can pass the buck to federal law enforcement authorities.

In addition, over-federalization results in the misallocation of scarce federal law enforcement resources, which in turn leads to selective prosecution. The expansive list of federal gang crimes in the bill would place significant demands on the Federal Bureau of Investigation, the U.S. Attorneys, and other federal law enforcers that would distract them from the truly national problems that undeniably require federal attention, such as the investigation and prosecution of foreign espionage and terrorism. The bill would create 94 additional Assistant U.S. Attorney positions, presumably to handle the increased work load that the new federal "gang crimes" in the bill would create. This dedication of resources not only diverts from more pressing needs that are truly federal, but constitutes legislative micromanaging of the executive branch's ability to enforce the laws.

Overbroad. On a voice vote with very little debate, the Senate Judiciary Committee recently passed a revised, substitute version of S. 456 that contains improved, tighter definitions. The previous version's definitions—including the central definition of "criminal street gang"—were so vague and vastly overbroad as to invite facial challenges to the constitutionality of many of the bill's criminal provisions. The version of S. 456 that passed out of the Judiciary Committee is less problematic than the version it replaced because its tighter, more precise definitions are less likely to be used to convict an individual of "gang crime" based merely on his association with alleged gang members.

Although the new, narrower definitions are better, the bill remains overbroad. The bill's extensive and unfocused list of predicate "gang crimes" has little to do with ending the most serious gang activity. The list of predicate offenses that would give rise to federal gang-crime prosecution includes many non-violent offenses, some of which are already federal crimes, such as obstruction of justice, tampering with a witness, misuse of identification documents, and harboring illegal aliens. Regardless of its unlawfulness, such conduct is not specific to criminal street gangs or gang crime. Including these offenses in a gang crime bill is an unfocused use of federal criminal law that dilutes the authority of the criminal law at both the state and federal levels.

In addition to duplicating state and federal criminal offenses that already exist, the bill also creates entirely new offenses that are overbroad. For example, S. 456 would prohibit "interstate tampering with a witness in a state criminal proceeding." This new criminal offense includes not only the use of physical force to retaliate or prevent a witness from testifying, but it also encompasses any non-physical attempt to "influence" a witness. Using or threatening physical force against any person, for any reason, is already a criminal offense in all states and should not be the basis for a new one. Duplicating this crime at the federal level would only increase federal intervention in state criminal proceedings. In addition, the broad definition of tampering or retaliation makes this a dangerous expansion of the federal criminal law. The word "influence" is vague and ambiguous and could be construed to include a wide variety of conduct that is not wrongful.

Federal Funding. Beyond the constitutional realm, S. 546 contains other flaws. Most notably, it includes $1.1 billion in grants that would violate the federalist structure of the U.S. government by interfering in state and local law enforcement and that would prove ineffective.

Federal grants to other levels of government should be carefully targeted toward the achievement of a traditional federal function and carefully audited to prevent diversion and abuse. Without such controls, the funds may be used to supplant current state and local funding, sometimes resulting in less overall spending on the targeted activity.[28]

Even when there is a federal prohibition against supplanting state funding, as there was in the federal Community Oriented Policing Services (COPS) legislation, a lack of federal supervision may still allow state and local governments to use the funds

28. *See* David B. Muhlhausen and Erica Little, *Federal Law Enforcement Grants and Crime Rates: No Connection Except for Waste and Abuse*, Heritage Foundation *Backgrounder* No. 2015, March 14, 2007, *available at www.heritage.org/Research/Crime/bg2015.cfm*.

to pay existing personnel. This resulted in several jurisdictions adding no additional police officers, despite promising to do so as a condition of receiving the federal grant money.[29] Even worse, some major jurisdictions took federal grant money for additional officers yet downsized their state-funded police forces.[30] Many media stories and independent reports have confirmed the COPS program's shortcomings.[31]

Accepting funding from the federal government carries the risk that, in addition to encouraging diversion and abuse, the money further reduces state and local autonomy. The initial grant may contain only a few strings, but Congress can be expected to exert increasing controls when it is signing the checks.

Congress should consider covering only state and local expenses that fall within the national government's constitutional obligations. For example, federal grants to assist states in detaining illegal aliens until federal immigration officers arrive would support the federal law enforcement priority of securing the borders. Such grants could allow states and local governments to spend more of their own money as they see fit on local gang crime abatement. Congress could also fund state participation in programs that identify illegal aliens in state or local jails and prisons. Removing such criminals from the streets also helps to reduce the resources used in incarceration. National security is another federal law enforcement priority where federal grants to state and local governments may be appropriate. These could include grants to fund terrorist surveillance and special homeland security projects that meet national objectives.

There is an avenue for a federal role in information-sharing and research, including the rigorous analysis of information coming from state and local agencies. Whether it is sharing successful policies and effective innovations or analyzing data and other intelligence, the federal government is well situated to perform this function. Created in 2004, the Federal Bureau of Investigation's National Gang Intelligence Center (NGIC) is an example of this function. The NGIC is intended to help federal, state, and local law enforcement to coordinate the collection of intelligence on gangs and then analyze and share the information. The NGIC is anticipated to allow law enforcement to identify linkages between gang members and gang activities across the nation.[32]

S. 456 itself contains some proposals along those lines that would allow Congress to engage in the fight against gang crime without violating federal-

29. For example, audits by the Justice Department's inspector general indicated that Atlanta, El Paso, and Sacramento used COPS grants to supplant local funding. *See* U.S. Department of Justice, Office of Inspector General, "Office of Community Oriented Policing Services Grants to the Atlanta, Georgia, Police Department," executive summary, *Audit Report* No. GR–40–98–006, April 1998; U.S. Department of Justice, Office of Inspector General, "Office of Community Oriented Policing Services Grants to the El Paso Police Department, El Paso, Texas," executive summary, *Audit Report* No. GR–80–01–013, May 30, 2001; U.S. Department of Justice, Office of Inspector General, "Office of Community Oriented Policing Services Grants to the City of Sacramento Police Department, California," executive summary, *Audit Report* No. GR–90–98–022, May 1998. For additional audits of COPS-funded police departments, *see* U.S. Department of Justice, Office of the Inspector General, Office of Community Oriented Policing Services Grant Reports, *www.usdoj.gov/oig/grants/_cops.htm* (last visited September 11, 2007).

30. Dallas, Louisville, and Newark actually reduced their force sizes after receiving grants to hire *additional* officers. See U.S. Department of Justice, Office of Inspector General, "Office of Community Oriented Policing Services Grants to the City of Dallas, Texas, Police Department," executive summary, *Audit Report* No. GR–80–00–003, November 1999; U.S. Department of Justice, Office of Inspector General, "Office of Community Oriented Policing Services Grants to the Louisville, Kentucky, Police Department," executive summary, *Audit Report* No. GR–40–01–002, February 2001; U.S. Department of Justice, Office of Inspector General, "Office of Community Oriented Policing Services Grants to the Newark, New Jersey Police Department," executive summary, *Audit Report* No. GR–70–98–007, June 1998.

31. David B. Muhlhausen, "Impact Evaluation of COPS Grants in Large Cities," Heritage Foundation *Center for Data Analysis Report* No. 06–03, May 26, 2006, at *www.heritage.org/Research/Crime/upload/97702_1.pdf;* David B. Muhlhausen, "Why the Bush Administration Is Right on COPS," Heritage Foundation *Backgrounder* No. 1647, at *www.heritage.org/Research/Crime/bg1647.cfm*.

ism principles. The bill would create a National Gang Activity Database that is designed to gather and disseminate crucial information on gang activities, members, and other information that would bring together the collective knowledge of law enforcement around the country, especially as members move throughout a region. The bill would also create the national Commission on Public Safety Through Crime Prevention to conduct a comprehensive study of the effectiveness of crime and delinquency prevention and intervention strategies. Many states may not have the resources or cross-state data for this type of meta-analysis, and such information could be a vital resource in choosing appropriate crime fighting policies.

The creation of a new National Gang Research, Evaluation and Policy Institute in section 301, however, seems particularly unnecessary. The Department of Justice already has a National Institute of Justice to study these issues.

Conclusion. Violent street crime committed by gang members is a problem in many of the 50 states—as is all crime. The existence of a problem alone does not justify the assertion and expansion of federal jurisdiction and authority. Even though many gangs have interstate connections, S. 456 does not restrict itself to the constitutional standard by covering only the wrongful conduct gang members commit that is directed at the instrumentalities and channels of interstate commerce or persons and goods in interstate commerce.[33]

Congress must tread carefully when bringing federal criminal law to bear on problems at the state and local level. Increasing the federal government's role invites unintended consequences, including the dilution of accountability among federal, state, and local law enforcement agencies. What Congress's various gang crime bills attempt to accomplish should largely be addressed at the state level. A bill similar to S. 546 would be appropriate if it were introduced in any state legislature, not in the United States Congress.

The best way to combat gang crime is to adhere to the principles of federalism by respecting the allocation of responsibilities among national, state, and local governments. To address gang-related crime appropriately, the national government should limit itself to handling tasks that are within its constitutionally designated sphere and that state and local governments are not equipped to perform.[34]

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32. David B. Muhlhausen and Erica Little, "Gang Crime: Effective and Constitutional Policies to Stop Violent Gangs" Heritage Foundation *Legal Memorandum* No. 20, June 6, 2007, at *www.heritage.org/Research/Crime/lm20.cfm*.

33. *See Morrison*, 529 U.S. at 608–09 (identifying the categories of activities Congress is confined to regulating when exercising its Commerce power).

34. *See* Muhlhausen and Little, "Gang Crime."